

MINUTES OF THE HOUSE COMMITTEE ON APPROPRIATIONS.

The meeting was called to order by Vice Chairperson Melvin Neufeld at 9:05 a.m. on January 26, 2000 in Room 514-S of the Capitol.

All members were present except: Rep. Allen - excused

Committee staff present: Alan Conroy, Kansas Legislative Research Department
Stuart Little, Kansas Legislative Research Department
Robert Waller, Kansas Legislative Research Department
Leah Robinson, Kansas Legislative Research Department
Jim Wilson, Office of the Revisor
Mike Corrigan, Office of the Revisor
David Stallings, Assistant to the Chairman
Mary Shaw, Committee Secretary

Conferees appearing before the committee:
Ron Thornburgh, Secretary of State

Others attending: See attached list.

Vice Chairman Neufeld opened the meeting by mentioning that the Committee would be hearing a staff briefing with possible action on **HB 2660 - Claims Against the State**.

Vice Chairman Neufeld introduced Dr. Bill Wolff, Kansas Legislative Research Department, who gave the briefing on **HB 2660**. Dr. Wolff mentioned that **HB 2660** represents the work product of the Joint Committee on Special Claims Against the State which met during the 1999 interim. Numerous claims were presented to the Joint Committee for consideration. He noted that what is seen in **HB 2660** are those claims for which the committee recommended some payment. Dr. Wolff continued detailing the Claims Bill. Within the bill, Dr. Wolff noted that the only claim in the bill where there was a direct appropriation recommended from the State General Fund, was for the prosecution and incarceration of Dr. L. Stan Naramore, who was subsequently acquitted by the Kansas Court of Appeals in the amount of \$250,000 dollars.

Chairman Adkins welcomed Representative Don Dahl, Chairman of the Joint Committee on Special Claims Against the State, who was available for questions, and mentioned that Representative Joe Shriver, member of the Appropriations Committee, was also a member of the Joint Committee and was available for questions.

Chairman Adkins mentioned several items that had been distributed to the Committee as follows:

- Memorandum from Harold Riehm, Kansas Association of Osteopathic Medicine (Executive Director during Dr. Naramore Case). (Attachment 1) Also a copy of an editorial that appeared in the January 17, 2000, Hays Daily News regarding the claim of Dr. Stan Naramore (copies available in the Kansas Legislative Research Department).
- Copy of a brief which is dated September 21, 1999, and is the entirety of the record submitted by the attorney for Gene, Peggy and Jennifer Schmidt before the Joint Committee on Special Claims Against the State (Attachment 2) and included with that brief is a letter dated October 18, 1999, addressed to Chairman Dahl and members of the Joint Committee by the Schmidt's attorney, Mr. James Adler (Attachment 3).
- The Chairman also included copies of an electronic mail message he received from Gene Schmidt the day before and he indicated to Mr. Schmidt that he would pass that message along to the members of the Committee (Attachment 4).

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Committee questions and discussion followed. Chairman Adkins called the Committee's attention, in looking over the bill, that the Naramore claim is the only claim that required a new State General Fund appropriation in the bill. All other claims being paid would come out of previously appropriated funds of the various departments indicated.

Chairman Adkins called the Committee's attention to **HB 2660** and asked what the Committee's pleasure was in regard to the bill:

HB 2660 - Claims Against the State

Representative Weber made a motion, and was seconded by Representative Neufeld, to delete the \$200,000 dollars from the bill for the Schmidt case beginning on page 5, line 37, under Section 6, item (a). Chairman Adkins recognized Representative Weber who explained that this is an item that had come before the Subcommittee by the Department of Corrections, and if the Committee would remember the testimony of last week, the Secretary of Correction related to the Committee that a litigation remedy had been sought for this and denied. It is her belief that the remedy has been denied and that it does not belong in the claims bill. With that information, she asked for support of the motion. A vote was taken and division was requested (14 in favor and 3 against). Motion carried.

Representative Hermes made a conceptual motion regarding agency personnel in processing late claims. The motion was withdrawn by Representative Hermes.

Committee discussion followed regarding the bill.

Representative Stone made a motion, and was seconded by Representative Pottorff, to take \$250,000 dollars from the balances from the Board of Healing Arts Fee Fund to pay the Dr. L. Stan Naramore claim of \$250,000. Committee discussion followed. Representative Stone withdrew his motion with the consent of Representative Pottorff who had seconded the motion.

Representative Spangler made a motion, and was seconded by Representative Stone, to adjust the bill to pay the claim in the amount of \$100,000 dollars from the Board of Healing Arts Fee Fund, \$100,000 dollars from the Attorney General's budget and \$100,000 dollars from the Health Care Stabilization Fund. Representative Spangler mentioned that it more accurately reflects the culpability dispersed among three different funds that mistreated this Kansas citizen and the claim should be paid. Chairman Adkins explained that this increases the amount of the claim to \$300,000 dollars with a third each coming from each of the agencies mentioned. Committee questions and discussion followed.

Representative McKechnie made a substitute motion, and seconded by Representative Pottorff, to leave the Naramore claim amount at \$250,000 dollars that one-third be paid from each of the three agencies, the Board of Healing Arts, the Attorney General and the Health Care Stabilization Fund Board of Governors. Motion carried.

Representative Hermes made a motion, and seconded by Representative Peterson, that the agency head designate that the individual responsible for the late payments of billings receive further training on processing claims by the Department of Administration to prevent further untimely filing or processing of claims. Committee questions and discussion followed. Representative Hermes withdrew her motion with the consent of Representative Peterson who had seconded the motion.

Representative Neufeld made a motion, and seconded by Representative Ballard, to correct a technical error recommended by the Revisor on page 7, line 27, to correct a mistaken citation of statute. Motion carried.

Committee discussion followed.

Representative Neufeld made a motion, and seconded by Representative Peterson, to report **HB 2660** favorable for passage as amended. Motion carried. The Chairman voted "no".

Chairman Adkins turned the Committee's attention to **SB 244**. The Chairman mentioned that the agenda

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was discussion regarding the presidential preference primary. He mentioned that subsequent to the Committee's action rejecting the Governor's request for \$1.5 million dollars in funding for the budget to fund the presidential preference primary, discussion has been going on regarding the participation of Kansas in a regional presidential preference primary. Chairman Adkins welcomed the state's chief election officer, Ron Thornburgh, Secretary of State. The Chairman referred to the article previously distributed from State Government News, and noted that Secretary Thornburgh has been a national leader on trying to articulate the need and benefits of a regional primary system. Chairman Adkins mentioned that, at his request, Secretary Thornburgh had agreed to appear before the Committee.

Chairman Adkins mentioned that a copy of a proposed **Substitute for SB 244** had been distributed to the Committee and would address the status of Kansas as a participant in a regional primary (Attachment 5). The Chairman asked Secretary Thornburgh for comments or concerns regarding that proposed substitute bill.

Secretary Thornburgh noted that this bill has been sort of a double-edge sword for him in that it cancels the primary for the year 2000 and he has been a vocal opponent to cancellation and that he felt there should be a primary in the year 2000.

Secretary Thornburgh mentioned that what is being asked for in the language of the bill is for authorization for the Secretary of State's Office to negotiate a multi-state primary. They will try to identify five other states to develop a regional primary system that the State of Kansas will participate in and they realize the Legislature's desire to move to an earlier primary date and they will certainly try to negotiate that with other states. Secretary Thornburgh noted that what he is also asking is that they leave the language rather broad in the bill in that they do not define what times and what states they have to combine with because there are a handful of plans out there today being developed at the national level. There is one plan for a rotating regional primary system that the Secretary noted that he tends to support that comes from the National Association of Secretaries of State in which they divide the country into four regions and each one of the regions would rotate giving a different region the opportunity to go first every 16 years. He mentioned that one of the most important elements of the language is that there is a provision that the Secretary of State's Office must report to the Legislature in November of the year prior to the presidential election. If they do not have a contract with five other states to conduct a multi-state primary in November of the year preceding the election then they automatically revert to, in all likelihood, a caucus system but leave it up to the parties to determine how they would want to select their presidential nominee. One of the great dangers right now in cancelling the primary so late is that campaigns, political parties and voters cannot adapt to changes this quickly and rapidly in what is going on with the system so the Secretary of State has tried to put in a firm deadline that if there is not a system in place, then the Secretary of State will announce what is going to be done, follow through and stick with that particular plan. Chairman Adkins thanked Secretary Thornburgh for appearing before the Committee.

Jim Wilson, Revisor, mentioned that the draft would be a **Substitute to SB 244** and he explained the bill section by section. Committee questions and discussion followed.

Proposed Substitute to SB 244

Representative Reardon made a conceptual motion for an amendment, and was seconded by Representative Dean, to leave all the language in the bill which refers to the structural content of the direction to the Secretary of State, but changes two things: (1) that it does not eliminate the primary for the year 2000 and (2) that the November date be removed and any reference to the fact that if it is not accomplished by November that it cancels the primary for 2004 and everything else in the bill would be the same. Representative Reardon moved his amendment. A vote was taken and division was requested. Motion failed.

Representative Neufeld made a motion, and was seconded by Representative Kline, to amend SB 244 by substituting a new bill as presented to Committee and recommend it favorable for passage. Motion carried.

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Representative Neufeld made the motion, and seconded by Representative Kline, for the Committee recommendation to report that SB 244 be amended by substituting a new bill and that the new bill, Substitute for SB 244, be reported favorable for passage. Motion carried.

Bill Introductions


Representative Adkins made a motion by request of Representative Ballard, and seconded by Representative Reinhardt, to introduce a Committee bill to establish the debt reduction fund providing for transfers of budget surpluses thereto. Motion carried.

The Chairman recognized Representative Dean who mentioned that in December 1999 at the National Conference of State Legislators in Washington, D.C., they were fortunate to hear General Colin Powell speak about children and young people and how they can help them become better citizens and more positive with the United States. He spoke about five points and the fifth point was the responsibility young people have in our societies. One of the things General Powell suggested was for young people to belong to the Junior ROTC. Representative Dean mentioned that some young people were present from the Wichita area that belong to the Junior ROTC and are shadows for Legislators for the day. The Chairman welcomed young guests and had them introduce themselves to those present at the meeting.

The meeting adjourned at 10:50 a.m. The next meeting is scheduled for January 27, 2000.



To: Chairman David Adkins and Members, House Appropriations Committee 01/26/00

From:  Harold Riehm, Kansas Association of Osteopathic Medicine (Executive Director during Dr. Naramomre Case)

Subject: Claim Against the State of Dr. Stan Naramore

I write to indicate support for the finding of the Claims Against the State Committee, in the claim of Dr. Stan Naramore. The Committee has recommended a claim payment of \$250,000. The overwhelming consensus of the Kansas physician community--M.D. and D.O.--is that Dr. Naramore committed no criminal act and that charges of the State were based on insufficient evidence.

This is a very complex case. Space here permits only these brief observations. There are more.

**** At the Court of Appeals level, not only did the Court reverse the conviction of Dr. Naramore, they acquitted him--an almost unheard of ruling at the appellate level. To quote from the Appeals decision: "*We find that no criminal jury could find criminal intent and guilt beyond a reasonable doubt based on the record here.*" The record referred to was the same evidence available to the State prior to charges.

**** The Kansas State Board of Healing Arts totally ignored its own procedures for peer review in reviewing charges not by using a rural family practice physician, but an urban anesthesiologist. Upon one physician's recommendation, the Board reported to the AG that there was likely evidence of a criminal act. That same Board consultant then became a paid witness and paid consultant to the prosecution prior to and during the trial.

**** Two physicians--an M.D. and a D.O.--declared the patient dead *before* artificial respiration was removed. Yet, based on a discredited exhumation autopsy report by the State, charges of first degree murder--premeditated--hard forty--were brought against Dr. Naramore, claiming the patient died from premature removal of artificial breathing. One of the physicians declaring the patient dead prior to removal was a deputy county coroner. This after Dr. Naramore had treated the patient for more than three hours in the St. Francis Hospital Emergency Room.

**** In the attempted murder conviction, Dr. Naramore, after family consultation, was administering pain relief to a cancer patient near death and experiencing excruciating pain. That such charges were brought against a physician in exercising his own professional judgment, with family consultation, has had a severe chilling effect on physicians who struggle with this most difficult of decisions--knowing that for near death patients, pain relief *could* hasten death. The State proved no intent.

In sum, this is a case involving charges that should not have been brought, a trial that should not have been held (most certainly not in St. Francis), and a verdict that no reasonable jury could reach.

The primary loser is Dr. Naramore--loss of reputation, family and earnings far greater than the amount of the recommended claim award. Other losers are patients near death and others under conditions of palliative care. We think the prosecution needs to be sent a message in this case that it erred. Thank you. I will be pleased to discuss this with any Committee member.

House Appropriations
1-26-00
Attachment 1

CLAIMS OF GENE SCHMIDT,
PEGGY SCHMIDT AND
JENNIFER SCHMIDT

BEFORE THE JOINT COMMITTEE ON SPECIAL
CLAIMS AGAINST THE STATE

CLAIM NUMBER 4690

SEPTEMBER 21, 1999

Prepared by:

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House Appropriations
1-26-00
Attachment 2

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September 17, 1999

Representative Donald A. Dahl
Chairman, Joint Committee on
Special Claims Against the State
and Members of the Committee

Re: *Claims of Gene, Peggy and Jennifer Schmidt*
Claim #: 4690

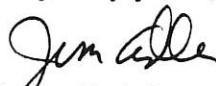
Dear Representative Dahl and Committee Members:

Attached is a Summary of the Case. I apologize for the length, but I wanted to provide you with the some of the key facts that were uncovered throughout the litigation of this matter. I believe you will be utterly shocked when you learn that the death of Stephanie Schmidt would not have happened had Robert Schirk, Donald Gideon's parole officer, simply followed the policy of the Kansas Department of Corrections (KDOC) and notified Gideon's place of employment of Gideon's sexually violent past. This is even more disturbing in light of the overwhelming evidence that sex offenders are rarely rehabilitated and almost always reoffend. In fact, Kansas Attorney General Carla Stovall (who was on the parole board that considered and denied Gideon's release three times), used Gideon's rape and murder of Stephanie Schmidt as a perfect example of the "desperate need" for the Kansas Sexual Predator Act. In her February 22, 1994 and February 23, 1996 Statements (Exhibit 3 and 4 attached), Ms. Stovall stated that "(v)iolent sex offenders are rarely if ever treatable for the crimes they commit" and "it was certain as the sun rising" that these released sex offenders were going to rape again.

I have countless exhibits which I could have attached which document and confirm each and every statement made in the attached summary. If you desire to see any of these additional documents, please feel free to contact me.

Thank you very much for your attention to this matter and for your service to the State of Kansas.

Very truly yours,


James F. Adler

Attachments

c: Mr. and Mrs. Gene Schmidt and Jennifer Schmidt, w/encl. via hand delivery
 Lisa Mendoza, w/encl. via hand delivery

w:schmidt\rep-dahl.ltr

SUMMARY OF THE CASE

I. Overview

This is a case about a tragic and easily preventable death. In fact, the Kansas Department of Corrections (KDOC) had implemented a policy to prevent this precise situation, but failed to follow its own policy. The Claimants have exhausted their legal remedies as the Kansas Supreme Court found that the Kansas Torts Claim Act provided immunity to the State. As the following facts will readily reveal, if it were not for immunity, the State would have been responsible. It is for this reason that the Claimant's request this Committee to allocate Gene and Peggy Schmidt funds to compensate them for the loss of their daughter and Jennifer Schmidt for the loss of her only sibling.

This case arose as a result of the rape, sodomy, and murder on June 30, 1993 of 20 year old Stephanie Schmidt, by Donald Ray Gideon, who was on parole and under the supervision of KDOC parole officer, Robert Schirk.

II. Background Facts on Gideon Known by the KDOC and Schirk

In 1982 Gideon was given a 20 year sentence for the aggravated rape and sodomy of a young woman whom he had just met earlier that evening. He raped and sodomized her in his vehicle by threatening her with a razor blade. Gideon was denied parole each of the three times he came before the parole board because he was still considered a danger to society. In November 1992, Gideon was mandatorily (i.e., conditionally) released from prison by operation of law as he had served 50% of his 20 year sentence. Thus, the State of Kansas had no choice--had the State had a choice, he would not have been released in 1992. (Exhibit 1, Schirk deposition, pp 14-15 and Exhibit 3).

Gideon's parole file reflects that after serving a 10 year sentence, Gideon had no empathy for his prior victim and was still making excuses for the rape and sodomy he had committed. (Exhibit 1, Schirk deposition, pp. 197-198). Since the KDOC knew that sex offenders are rarely rehabilitated, released sex offenders were automatically placed in the "high risk" category. Gideon also scored in the "high risk" category on the KDOC Risk Assessment sheet, so he was "high risk" not simply because he was a sex offender, but also because he was assessed at "high risk" based on the criteria indicated on the Risk Assessment form. (Exhibit 1, Schirk deposition, pp. 189-190). Gideon had spent about 95% of his life in prison or some form of institution since the age of 13 or 14. (Exhibit 1, Schirk deposition, pp. 25-26). Gideon's file reflected that he had been in foster care, youth care centers, been a runaway and had suicide attempts and fights in school. (Exhibit 1, Schirk deposition, pp. 25-27).

When Gideon was released, he was placed under the supervision of Robert Schirk, a parole officer with the KDOC in its Pittsburg, Kansas office. Right after his release, in December 1992, Gideon went to work at a small local restaurant, Hamilton's (owned by Tom Hamilton), where Stephanie Schmidt and many other young college woman worked as waitresses. Schirk was fully aware of Gideon's prior violent sex offenses and has admitted that:

- 1) Gideon was "highly likely to reoffend", (Exhibit 1, Schirk deposition, pp. 27, 55-57, 136-146, 149-151, 171-172, and 178-180)
- 2) that the young female waitresses working at Hamilton's were at "high risk" or in danger of being harmed by Gideon, (Exhibit 1, Schirk deposition, pp. 27-30, 50, 55, 136-137, 141-146, and 171-172)
- 3) the conditions and restrictions placed on a sex offender should be geared toward protecting the public from the future harm that a sex offender is

- likely to cause, (Exhibit 1, Schirk deposition, pp. 27, 149-151), and
- 4) his duty is to try to prevent an offender from committing future crimes. (Exhibit 1, Schirk deposition, pp. 203-209)

III. Schirk's Violation of the KDOC Policy

The KDOC had a policy in effect at the time, referred to by internal KDOC documents as the "Duty to Warn" policy, that required all parole officers to notify employers when the co-employees of the released offender are considered to be at risk. (Exhibit 2). Since Schirk has acknowledged that the waitresses at Hamilton's were at "high risk", Schirk had to notify these waitresses, pursuant to the Duty to Warn policy. Schirk ignored this policy because he felt he knew better. (Exhibit 1, Schirk deposition at pp. 55-57). Schirk felt that notifying the restaurant of Gideon's past *might* cost Gideon his job, even though the Duty to Warn policy did not give Schirk this discretion and even though he could not recall any parolee ever losing his job when the employer learned he was on parole. (Exhibit 1, Schirk deposition at pp. 3, 4, 31-34, 45, 55-57 and 219.) Tom Hamilton, the owner of Hamilton's, has indicated that had Schirk notified Hamilton, Gideon's employer, Hamilton would either have notified the waitresses that Gideon was a convicted rapist and sodomist or would not have hired Gideon (Exhibit 2, Hamilton deposition at pp. 23-27 and 31-36 - a copy of this deposition can be provided).

Schirk has indicated repeatedly that the waitresses at Hamilton's were at risk and that sex offenders like Gideon are highly likely to reoffend. (Exhibit 1, Schirk deposition at pp. 27, 55-57, 136-146, 149-151, 171-172, and 178-180). In fact, Schirk has testified that he would not have wanted his own 20 year old daughter around Schirk under any circumstances, i.e., even if she knew of his past and could try to take appropriate

precautions. (Exhibit 1, Schirk deposition at pp. 48, 68 & 84). Unfortunately, Schirk did not show the same concern for the Schmidt's 20 year old daughter.

Schirk totally shirked his responsibilities, as a parole officer, as he:

- 1) failed to notify Gideon's employer of Gideon's past, as required by KDOC policy, (Exhibit 1, Schirk deposition at pp. 136-146, 236-237 and 262-264).
- 2) failed to have any contacts with Gideon's employer to see how Gideon was doing (except when he accidentally bumped in to him at a convenience store),(Exhibit 1, Schirk deposition at pp. 328-329)
- 3) failed to place restrictions on Gideon when his own family was afraid of him, (Exhibit 1, Schirk deposition at pp. 40-42) and
- 4) was unaware of severe problems that Gideon was having and "bells and whistles" that were going off (a fight at a bar, throwing a woman's purse down the stairs, slapping a woman and insisting that a woman have oral sex with him) that made Gideon a virtual time bomb because no one knew Gideon was on parole and thus, no one knew who to report these incidents to. (Exhibit 1, Schirk deposition at pp. 60, 66-67)

Please note that the Schmidt's are not contending that Schirk had a duty to protect the public at large. He simply had a duty to protect those in a small group with whom he works, as the KDOC policy required. Notifying this group of co-employees is analogous to notifying the day care center your child attends that your child has chicken pox. While it would be irresponsible to fail to notify the day care center, it would not be irresponsible to fail to notify the entire city or public at large.

IV. KDOC'S Position

The KDOC contends it did nothing wrong simply because Gideon did not stalk and harass Stephanie specifically before he raped and murdered her. The Kansas Supreme Court agreed that from a legal standpoint this is necessary before the KDOC or a State can be sued. However, while the KDOC may not be liable in Court because of

immunity, as is pointed out below, the KDOC was certainly grossly negligent and, in fact, reckless.

The KDOC also contends that this Committee should deny the Schmidt's relief because they lost in Court. However, it is the Schmidt's understanding that this Committee was formed precisely for the purpose of considering relief for those denied such in the Courts. In fact, Rule 2 of this Committee, adopted on June 28, 1999, provides that this Committee can refuse to hear a case until relief in the Courts has first been considered and denied.

V. **Two Nationally Renowned Experts Agree with the Schmidt's that the KDOC Acted Totally Irresponsibly and Failed to Follow Generally Accepted Procedures.**

Dr. Stanton Samenow, a clinical psychologist and nationally renowned expert on criminal behavior, who trained parole officers at the KDOC, has been extremely critical of Schirk's handling of Gideon. He has labeled the above referenced conduct of the KDOC as not only grossly negligent, but "reckless" and even an "intentional" violation of the KDOC policy. Dr. Samenow has pointed out that rapists rarely fire warning shots, as they want to earn the trust of their victims. That is why department's of correction implement Duty to Warn or Third Party Notification policies. Dr. Samenow has also stated that 1) an offender who is employed (as Schirk felt was of paramount concern) is not necessarily less likely to re-offend than an offender who is employed, 2) in fact, employment can present offenders with an arena in which he/she can re-offend, and 3) a decision, policy or practice of not informing an employer about a rapists' past criminal history or record because of a fear that the offender will lose his job is an extremely

imprudent decision, policy and practice.

Additionally, it should be noted that Dr. Samenow did not say Gideon's behavior was not "expected" as the KDOC indicated in its September 13, 1999 letter to this Committee. What he said was it could not be expected that he would attack Stephanie specifically. It was expected that he would reoffend. Even Schirk has acknowledged that. All of the waitresses were at a high risk. That is why the KDOC policy required notification, even if the offender had not stalked anyone.

Additionally, John Douglas, an FBI agent for 25 years and generally considered the nation's leading expert on criminal personality profiling, has been extremely critical of Schirk's handling of this matter and discussed such in a chapter he included on the Schmidt's in his recent book Obsession.

Lastly, KDOC officials even acknowledged at their depositions, that under the above referenced facts, they would have notified Gideon's employer. (Copies of these depositions can be provided).

VI. It was Foreseeable and Readily Apparent to Schirk, the Parole Board and the KDOC that Gideon would Rape and Offend Again

Both Dr. Samenow and John Douglas have stated emphatically that it was inevitable that a man with Gideon's past would rape again, especially when you put the "fox in the chicken coop". Schirk and other KDOC officials have even acknowledged that such was highly likely. In the federal guidelines for parole officers, there are specific instructions not to let a bank embezzler work for a bank, not to let a child molester work at a day care center and not to let a rapist work in a college dorm. Obviously, if a parole

officer should not allow a child molester work in a daycare center, a parole officer should not allow a rapist work in a restaurant with young college woman, especially without warning the waitresses. Obviously, if Stephanie knew of Gideon's past, she would not have accepted a ride from him on the night he brutally raped and murdered her. Had Gideon not been allowed to develop that trust, through their employment, Stephanie would still be alive.

Kansas Attorney General Carla Stovall, who was on the parole board that denied Gideon's release three times, has also stated that the parole board knew Gideon would rape again as "(v)iolent sex offenders are rarely if ever treatable for the crimes they commit" and "it was certain as the sun rising" that released sex offenders are going to rape again. (Exhibits 3 and 4).

Astonishingly, despite these and other facts set forth in this outline, the KDOC continues to argue that it did not think that: 1) Gideon posed a risk, 2) Stephanie and the other waitresses at Hamilton's were at risk, and 3) there was any need to notify the waitresses at Hamilton's.

VII. Devastating Admissions Made by Defendant Robert Schirk at his April 27, 1995 and June 15, 1995 Depositions (in Addition to those Set Forth Above) Show How Grossly Irresponsible He Was in his Handling of Gideon.

(1) The primary objective or policy of supervising an offender is to protect the public. (Exhibit 1, Schirk deposition at pp. 112, 202-203)

(2) The primary policy or objective of supervising an offender is not to make sure the offender maintains his employment. pp. 112-113

(3) The only reason Schirk decided not to tell Hamilton's about

Gideon's criminal history is because he wanted Gideon to keep his job there, and he was afraid Gideon *might* be fired if he informed Hamilton's about Gideon's criminal history. pp. 3,4, 45, 176. However, Schirk had absolutely no basis for his belief that a rapist who is employed is less likely to reoffend. pp.46-47

(4) Schirk had no idea whether or not having a job would have any bearing on whether Gideon would offend again. pp46-47.

(5) Under the KDOC's current third-party notification policy the employer must be informed in all instances. pp. 8-9

(6) Under the current KDOC policy Hamilton's would have been immediately informed in writing that Gideon had been convicted of aggravated rape and sodomy, and Schirk supports that policy because he believes it is a good idea to inform. pp. 9-10

(7) Schirk, as Gideon's parole officer, had the power to impose special conditions on Gideon during his supervision. pp 20-21, 24-25

(8) Robert Schirk also made the following statements in response to questioning:

Q: How long have you spent working with sex offenders?

A: I imagine I've had sex offenders on the case load throughout that time [twelve years].

Q: Is there any statistics upon which you rely about **sex offenders' tendency to repeat?** I think its referred to as their recidivism rate?

A: It is highly likely that they will.

Q: What does highly likely mean?

A: I can't give you a percentage or anything like that.

Q: Is there anything higher than highly likely on the scale?

A: I wouldn't say so.

Q: You don't think there is?

A: I don't believe so.

at pp. 27

(9) During one training session on sex offenders that Schirk recalled attending Schirk was informed by the person who presented the seminar that sex offenders are not easily rehabilitated and they must be monitored very closely. pp. 155-156

(10) When Schirk began his supervision of Gideon he realized that he was a sex offender and yet did not inform Hamilton's or anybody at Hamilton's about Gideon's criminal history, although he realized that Gideon as a sex offender was highly likely to reoffend. pp. 27-30, 50, 55

(11) Schirk was aware when Gideon went to work at Hamilton's that young women were working at Hamilton's, and that Gideon's prior conviction was based on the aggravated rape and sodomy of a young woman. p. 30

(12) Schirk would not have allowed his 20 year old daughter to work with Gideon in a restaurant or for that matter be in close proximity to him anywhere, under any circumstances because he would be concerned for his daughter's safety. pp. 48, 68, 84

(13) Schirk, nonetheless, allowed the Schmidt's 20 year old daughter, Stephanie Schmidt, to work with him without knowledge that Gideon was a rapist and sodomist, although Schirk knew that Gideon was highly likely to reoffend. pp. 48-50

(14) In fact, Schirk made no effort whatsoever during his supervision of

Gideon to prevent him from being around young women, or at the very least to notify the young women he was around as to Gideon's past, even though he had the power to impose conditions on Gideon which would have limited young women's contact with him and he had the power to notify them. pp. 48-49

(15) Schirk knew that public safety should have been his main focus or consideration in supervising Gideon. pp. 50-51, 176-177

(16) Schirk knew that Gideon's prior victim had been a young woman and, therefore, knew that young women were particularly vulnerable to being victimized by Gideon. pp. 68, 69, 80

(17) Schirk was also aware, when he was supervising Gideon that his prior victim had been a woman he knew, not a stranger; in Schirk's opinion Gideon's history showed that he raped women he knew; Schirk realized Gideon was capable of raping a woman he worked with. pp. 81, 84

(18) Schirk realized Gideon was capable of raping a woman he worked with since his history showed that he raped women he got to know. pp. 84-85

(19) Schirk chose not to tell Hamilton's about Gideon's criminal past although he would not have allowed a former bank embezzler to work at a bank without first informing the bank of the offender's past criminal history as a bank embezzler. p. 31

(20) Schirk chose not to tell Hamilton's about Gideon's criminal past although he would not have allowed a child molester to work at a day care center. pp. 31-32

(21) When asked what made it appropriate to tell or restrict employment

in the case of the bank embezzler at a bank, or a child molester at a day care center, verses a rapist and sodomist working at a restaurant with young women he could not make any distinction between these various examples. p. 32

(22) The only place that Schirk felt it may have been inappropriate for Gideon to work is a women's dormitory, an all girl high school, or a strip bar. p. 32

(23) Schirk, in his supervision of Gideon, chose to not place any restrictions on Gideon's employment to assist in preventing him from raping again although he had the power to do so. pp. 33-34

(24) Prior to Stephanie's death, Schirk was aware that Gideon's own family, who Gideon was living with, was afraid of him and, in fact, that Gideon had to move out of his family's home and find another place to live due to their fear of him. pp. 40-42

(25) The only things that Schirk did to prevent or assist Gideon in not reoffending again was to verify that he was working through his pay stubs, verify that he was attending his mental health meetings (although that did not include in-depth conversations with his mental health counselor regarding his progress), verify law enforcement contact, that is, if he had had any run-ins with the law, and to make sure he was maintaining his apartment by paying his bills. pp. 39-44

(26) During the entire period of his supervision of Gideon, an offender who was highly likely to reoffend, he only spoke with Hamilton's employer, Thomas Hamilton, one time and that was as a result of a chance meeting at a Quik Stop when Schirk was on his bike and which lasted for about less than one minute. pp. 29, 36;

Further, Schirk admitted that he didn't recall "any real contact with Hamilton's" to find out how Gideon was doing at work. pp. 328-329

(27) When Gideon first got out of prison in November 1992, he went to work at Superior Industries for less than a month, and Superior Industries was aware that Gideon was on parole, and Schirk informed them that Gideon was a convicted rapist. pp. 51-52

(28) Superior did not terminate Gideon when they discovered that he was a convicted rapist and, therefore, Schirk knew that an employer would not automatically terminate Gideon as a result of having his criminal history revealed to his employer. pp. 52-53

(29) Defendant Schirk stated the following:

Q: Do you know why it is that under the current policy of the Kansas Department of Corrections sex offenders got-- employers of sex offenders have to be notified in writing?

A: I don't know for sure.

Q: Do you have any opinion as to why?

A: **I would say it is for confirmation that everyone is aware that this person is in the area.**

Q: It's important to tell employers of sex offenders in writing to make darn sure they know because they are highly likely to reoffend; isn't it, sir?

A: **(Whereupon, the witness nods his head.)**

Q: You're nodding your head yes?

A: Yes.

Q: An you knew that in November and December of '92; didn't you sir?

A: **Knew what?**

Q: That it was important to notify employers if the sex offender was in their employment because they are highly likely to reoffend?

A: **(Whereupon, the witness nods his head.)**

Q: You're nodding your head yes?

A: **I knew that.**

Q: In November of '92?
A: Yes.
Q: **And you consciously chose not to inform Hamilton's because you were afraid Mr. Gideon would lose his job; correct?**
A: Yes.
Q: Where is your concern for the waitresses at Gideon's [sic] with that decision-- at Hamilton's with that decision, the public?
A: As I indicated, I felt that the job was appropriate for Don Gideon.
Q: Answer my question, please.
A: What's your question?
Q: Where is your concern for the waitresses at Hamilton's with the decision not to notify Hamilton's of Gideon's past?
A: **My concern is with-- for Mr. Gideon to maintain employment.**
at pp. 55-57 (Emphasis added).

(30) The waitresses were at risk because, by virtue of working with Gideon, they would get to know him, trust him, they were no longer strangers to each other and that may give him an opportunity to rape them that he may not otherwise have; therefore, the waitresses were at high risk or danger of becoming Gideon's next victim.
pp. 137-138

(31) Schirk states that in applying the KDOC's third party at risk policy (i.e. : Duty to Warn policy) is supervision of Gideon at the time he was released, he determined that young females who Gideon had the opportunity to get to know were a third party at risk. However, he decided that Hamilton's was appropriate employment for Gideon and decided not to notify Hamilton's, although he knew the waitresses were at risk because a trust relationship could develop. pp. 141-146.

(32) Schirk knew that a waitress at Hamilton's, such as Stephanie

Schmidt, was more at risk of being Gideon's next victim than a woman in the general population because the waitress, by virtue of being a co-employee of Gideon's, were in close proximity to Gideon and, therefore, more at risk than other young women in the general public. pp. 142-145

(33) Schirk, visibly shaken asked if he could take a break from his deposition after just a few minutes of resuming the deposition, after he acknowledged that he knew the waitresses at Hamilton's were at high risk or danger of being seriously harmed by Gideon, and he had determined that young women working there were at risk but he decided not to tell Hamilton's about Gideon's criminal history. pp. 136-146.

(34) Schirk admitted that if he was an employer running a restaurant with college-aged waitresses he would have wanted to know if an employee he hired to work there was a convicted rapist "for everyone's safety." pp. 315-316

(35) Schirk believed that Gideon wasn't having problems at work, but the only thing he based that on was the fact that Gideon was collecting a paycheck; Schirk made no inquiries of Hamilton or Gideon's co-employees to determine whether Gideon was having problems. pp. 170

(35) Schirk admitted that if he had known of some of the incidents that Hamilton knew Gideon had been involved in, (i.e., a fight at a bar, throwing a woman's purse down the stairs, slapping a woman and Gideon insisting that a woman have oral sex with him) Schirk probably would have revoked Gideon's parole. p. 60, 66-67. Note: The people at Hamilton's did not know Gideon was on parole and thus, did not report these incidents to Schirk.

(36) Schirk admitted that had he informed Hamilton's about Gideon's past criminal record the waitresses at Hamilton's would have been more protected from the danger of becoming Gideon's next victim. pp. 180

(37) In May 1993 (six months after Gideon began his employment at Hamilton's and one month before Gideon raped, sodomized and murdered Stephanie), Schirk no longer felt that Gideon might lose his job at Hamilton's if he informed Hamilton's about Gideon's past criminal history, but he still did not inform Hamilton's although he knew that the waitresses were still at high risk or danger of being seriously harmed by Gideon. pp. 178-180, 171-172

(38) In 1992 and 1993, there was a verbal policy at the KDOC regarding informing an employer about an offender's criminal past if a third-party risk was determined to exist, i.e., a risk to the offenders' co-workers. pp. 184, pp. 214-215; further, Schirk admitted that if a third party risk existed it would be important to tell them of the offender's prior criminal history. pp. 227

(39) Under the third-party notification/duty to warn policy in effect in 1992 and 1993 the parole officer had to determine whether an offender's employment posed a third party risk, i.e., a risk to his co-workers. If a third party risk was determined to exist as a result of an offender's employment, the parole officer had a duty to inform the employer about the offender's prior criminal past; he had no discretion to not inform. pp. 236-237, 262-264

(40) To follow the third-party risk policy, if he determined that a third-party risk existed, he would have told the employer immediately about Gideon's past

criminal record and he would have advised the employer that he should inform the waitresses about Gideon's criminal past. pp. 230-232

(41) Astonishingly, Schirk states he would do it the same way all over again. pp. 72-73.

(42) Schirk never felt he was immune from liability for his actions; he realized he could be sued if he made a mistake and that he could be liable for money damages. pp. 209-210.

VIII. Shocking Nature of Schirk's Behavior

1. It is shocking that Schirk knew that it was foreseeable that Gideon would reoffend, but he failed to inform Hamilton's about Gideon's prior criminal record although the KDOC Third Party Notification Policy obligated him to do so.
2. It is shocking that Schirk believed that the waitresses at Hamilton's were highly at risk or in danger of becoming Gideon's next victim, but he failed to inform Hamilton's about Gideon's prior criminal record although the KDOC Third Party Notification Policy (i.e. Duty to Warn policy) obligated him to do so.
3. It is shocking that the only reason Schirk failed to inform Hamilton's about Gideon's criminal past was because he was afraid that Gideon *might* lose his job, although the KDOC Third Party Notification Policy required that he inform Hamilton's because he believed the waitresses were at risk or in danger of becoming Gideon's next victim.
4. It is shocking that Schirk would not under any circumstances have placed his 20 year old daughter in danger of becoming Gideon's victim by allowing her to work with Gideon, but he consciously decided to place the Schmidt's daughter in that very same dangerous situation.
5. It is shocking that the only reason Schirk decided to place the waitresses at Hamilton's in danger of becoming Gideon's next victim was because of his concern for Gideon, the unrepentant violent sex offender, rather than a concern for his potential victims.

6. It is shocking that Schirk's supervision plan for Gideon was completely devoid of anything geared to protecting co-employees or other third parties of being harmed by Gideon.

IX. Damages.

Life is precious and irreplaceable and it is impossible to place a dollar value on it. Most parents love their children so much that they would literally lay down their lives and die for them. If a Rembrandt masterpiece is considered priceless, then how much more is the value of a child?

Gene and Peggy Schmidt have lost a daughter, companion, friend, mother to their grandchildren and helper and bed side companion during their later years. Jennifer Schmidt has lost her only sibling, the maid of honor at her wedding, her best friend, confidant and the aunt to her children. It was one year before they laughed again or could listen to music they had played with Stephanie. They still do not laugh as much. Gene and Peggy Schmidt have indicated that literally not one day goes by when they do not think of Stephanie. The pain, heartache and sorrow is unimaginable.

No money could adequately compensate for these losses. Dr. Jack Ward, a nationally recognized economist at UMKC, has calculated the value of the loss of a child at approximately \$750,000.00 (Exhibit 5, p. 10).

Fortunately, the Schmidts have directed their grief and sorrow towards helping to prevent others from having to experience the same devastation. They have devoted their lives to bettering the State of Kansas and other states. They have worked tirelessly for the Speak Out For Stephanie Foundation (SOS) and towards the implementation of the

Kansas Sexual Predator Act and Kansas Sexual Registration Act. These laws which have become a model for the rest of the country and have brought recognition to Kansas. Carla Stovall has referred to the Schmidt's as heroes and they are.

The Schmidt's have required psychological counseling for the six years since this tragic event. Their income has dropped so significantly since the death of their daughter that they cannot pay their bills and are on the verge of bankruptcy.

Now the State of Kansas has an opportunity to compensate the Schmidt's as best it can for the loss of Stephanie. Actuarial tables indicate that Gene and Peggy Schmidt have approximately 40 years of life remaining. If the State were to simply compensate each of them for \$1,000.00 per month for these 40 years they would be compensated approximately \$500,000.00 each. Jennifer Schmidt has approximately 60 years of life remaining. The Schmidt's leave it up to this Committee and the great State of Kansas to determine what is fair compensation, but sincerely believe that an appropriate amount would be at least \$500,000.00 per person. Hopefully this will send a message to parole officers throughout Kansas to follow the policies that their departments implement based on studies and research funded at tax payer expense and to diligently carry out their responsibilities. If this Committee determined that an individual who was wrongfully incarcerated by the State of Kansas for seven years is entitled to \$350,000.00, then it seems that individuals who lose a daughter and sister for the rest of their lives should receive at least \$500,000.00 each.

It is inevitable that there will be victims of crimes and that released offenders will reoffend. Obviously, Kansas should not compensate all crime victims, as many crimes

could not have been prevented. However, this one clearly could have been. It is disturbing that the KDOC continues to defend Schirk's conduct and contend that he did nothing wrong. Please send them a message that Mr. Schirk's conduct was totally inappropriate and should not be repeated.

X. Conclusion

The facts discovered in this case show that the brutal rape, sodomy, and murder of Stephanie Schmidt could have been prevented if Schirk had simply done his job and followed the KDOC Third Party Notification Policy/Duty to Warn policy. Schirk, by his reckless, shocking and intentional acts, placed Stephanie Schmidt in danger of becoming Donald Ray Gideon's next victim.

Tragically, it simply does not get more egregious than this--Schirk failed to protect Gene and Peggy Schmidt's daughter from Gideon, but admitted that he would have protected his own daughter from him. He was obligated under the KDOC's own policy, to protect the Schmidt's daughter as well, yet he intentionally failed to do so. His lack of concern for Gideon's foreseeable potential victims in favor of his concern for keeping Gideon employed was outrageous and shocking.

Perhaps by compensating the Schmidt's we can prevent a repeat of this tragedy--remember, Schirk said he would do it the same way all over again. Please let him know, he needs to reconsider.

* * * * *

w:schmidt/sommittee.bri

1 IN THE DISTRICT COURT OF CRAWFORD COUNTY, KANSAS
 2
 3 GENE SCHMIDT, et al.,)
 4)
 5 Plaintiffs,)
 6 vs.) No. 94C61G
 7 HTG, INC., d/b/a)
 8 HAMILTON'S, et al.,)
 9 Defendants.)

10 DEPOSITION OF: Robert Schirk, Vol I

11 TAKEN ON BEHALF OF: Plaintiff

12 DATE TAKEN: April 27, 1995

13 PLACE TAKEN: Fisher, Patterson,

14 Saylor & Smith

15 210 UMB Overland Park Bldg.

16 11050 Roe

17 Overland Park, Kansas

18 A p p e a r a n c e s

19 For Plaintiff: Mr. James F. Adler

20 9233 Ward Parkway, Suite 280

21 Kansas City, Missouri 64114

22 and

23 Ms. Virginia P. Perez

24 1125 Grand Avenue, Suite 1610

25 Kansas City, Missouri 64106

1 ROBERT SCHIRK,
 2 a Defendant, of lawful age, being produced, sworn
 3 and examined on behalf of the Plaintiffs, deposeth
 4 and saith:

5 DIRECT EXAMINATION

6 BY MR. ADLER:

7 Q Would you state your name for the court and jury?

8 A My name is Robert Schirk.

9 Q Would you spell Schirk?

10 A S-c-h-i-r-k.

11 Q You are the defendant in this action?

12 A Yes.

13 Q Along with the Department of Corrections and other

14 defendants?

15 A Yes.

16 Q Would you please tell me why it is you didn't tell

17 Tom Hamilton about Mr. Gideon's record and history

18 and problems that were in your file?

19 MS. MENDOZA: Objection, that calls for

20 the witness to speculate.

21 A Well, in the case I didn't feel it was necessary.

22 Q (By Mr. Adler) Why is that?

23 MS. MENDOZA: Objection, calls for the

24 witness to speculate.

25 A I felt as though if he was working at a job, that

1 A p p e a r a n c e s (Cont')

2

3 For Defendants Messrs. Fisher, Patterson,

4 HTG and Hamilton: Saylor & Smith

5 210 UMB Overland Park Building

6 11050 Roe

7 Overland Park, Kansas 66211

8 By Mr. Michael K. Seck

9

10 For Defendants State of Kansas

11 Schirk and Department of Corrections

12 Dept. of Landon State Office Building

13 Corrections: 900 SW Jackson

14 Topeka, Kansas 66612

15 By Ms. Lisa A. Mendoza

16

17 Also Present: Mr. Gene Schmidt

18 Mrs. Peggy Schmidt

19

20 * * * * *

21

22 I n d e x

23

24 See regular transcript

25

1 that was a very positive thing for him and that I
 2 had no need at that time to notify.

3 Q (By Mr. Adler) Did you consider notifying?

4 A Not when he went to work there.

5 Q At Hamilton's?

6 A At Hamilton's, no.

7 Q Did Mr. -- did you discuss with anybody else

8 whether they thought it was a good idea to notify

9 anybody at Hamilton's as to Mr. Gideon's criminal

10 record and past and psychological profile and

11 make-up or any of those type of things?

12 A No, I don't believe so.

13 Q I'm sorry?

14 A No.

15 Q You didn't discuss it with anybody else?

16 A No.

17 Q Do you sometimes discuss issues like that with

18 other parolees -- with other people?

19 A At times, yes, and now we do, yes.

20 Q You've changed your procedure as a result of this

21 incident?

22 A Yes.

23 Q And now what is the procedure?

24 A Procedure is mandatory notification of all

25 employers.

1 Q Verbal or written?
 2 A It is verbal and in some cases there is written.
 3 Q It's required to be verbal, is it ever required to
 4 be written?
 5 A Yes, in the case of sex offenders and --
 6 Q So -- go ahead.
 7 A I'm trying to think of the description in order.
 8 It escapes me right now, but serious cases, sex
 9 offenses, that kind of thing.
 10 Q Let me make sure I'm understanding what you're
 11 saying.
 12 The current policy at the D.O.C., Kansas
 13 Department of Corrections, is that you must
 14 verbally notify employers as to a parolee's
 15 criminal record; is that correct?
 16 A No, not all.
 17 Q Tell me what I said wrong.
 18 A The current policy is that all parolees coming out
 19 are required to notify employers at the time of
 20 employment of their adult felony convictions.
 21 Q The parolee does it?
 22 A The parolee does it and then that is verified, that
 23 the employer is aware of the conviction history.
 24 Q And we're still talking about the current policy
 25 today?

1 A No.
 2 Q Do you have any opinion as to why?
 3 MS. MENDOZA: Object, calls for the
 4 witness to speculate.
 5 A I would imagine it would be to verify personally
 6 that this has taken place to assure that that has
 7 happened.
 8 Q (By Mr. Adler) Do you think it's necessary to have
 9 the parole officer confirm this with the employer?
 10 MS. MENDOZA: Object, calls for the
 11 witness to speculate.
 12 A Yes.
 13 Q (By Mr. Adler) Do you think it would be sufficient
 14 and reliable to rely on the parolee to tell you
 15 that he had told the employer?
 16 MS. MENDOZA: Objection, calls for the
 17 witness to speculate.
 18 A No, I would not rely on that.
 19 Q (By Mr. Adler) Why is that?
 20 A Due to the requirement to verify personally to
 21 assure that that is a truthful situation.
 22 Q But I'm not asking you what the requirement is
 23 because you've explained that to me. I'm asking
 24 you why you personally think it's a good idea to
 25 not rely on the parolee's information given to you?

1 A Yes.
 2 Q How's it verified?
 3 A It can be done by a phone call by an officer.
 4 Q So a person like yourself would call a Tom Hamilton
 5 to say, "Has Mr. Gideon told you he's a convicted
 6 rapist?"
 7 A Right.
 8 Q Yes?
 9 A Right.
 10 Q But you don't rely on the parolee to tell you that
 11 he told the employer today?
 12 A Right, no.
 13 Q And why is that?
 14 A Well, it's required that we verify that fact.
 15 Q Do you know why it is that the current policy does
 16 not allow you to rely on the parolee to tell you he
 17 told the employer and let that be sufficient?
 18 A Well, that verbalization is required.
 19 Q It's currently required for you to contact the
 20 employer to confirm that the parolee told them;
 21 correct?
 22 A Correct.
 23 Q Do you know why the policy doesn't allow you just
 24 to ask the parolee if he told them, if you know
 25 why?

1 A Because I would want to be sure of the fact.
 2 Q Because there's a possibility the parolee might lie
 3 to you; correct?
 4 A Yes.
 5 Q And again, I'm having trouble making sure I'm
 6 understanding the fine points of this current
 7 policy. You somehow have to verify -- the parolee
 8 can tell the employer but somehow you have to
 9 verify he's been told of his criminal record and
 10 that can all be done verbally unless we're dealing
 11 with sex offenders; am I correct?
 12 A Right.
 13 Q And when you say criminal record, what are the
 14 requirements of what must be told, the convictions,
 15 the psychological make-up, what type of things must
 16 be told?
 17 A Only the adult felony convictions.
 18 Q So in Mr. Gideon's case, if this policy had been in
 19 effect then, what would have been required for you
 20 to make sure that Mr. Hamilton knew about
 21 Mr. Gideon?
 22 A You're saying under the current policy?
 23 Q Correct.
 24 A There's a form that would have to be filled out and
 25 that would be supplied to Mr. Hamilton advising him

1 that he was aware of that and he would countersign
 2 it and return it to me.
 3 Q To make sure it didn't get lost in the mail?
 4 A Right.
 5 Q The D.O.C. wants to make darn certain the employer
 6 knows about in?
 7 A (Whereupon, the witness nods his head.)
 8 Q You have to give --
 9 A Yes, excuse me.
 10 Q What would that form -- you fill out the form?
 11 A Yes, we fill out the majority of the form and then
 12 supply it to him.
 13 Q If that policy were in effect when Mr. Gideon was
 14 paroled in November of '92, what would -- and when
 15 he got his job at Hamilton's in December '92, what
 16 would you have had to inform Hamilton's about
 17 Mr. Gideon? Tell me exactly what you would tell
 18 them on the form.
 19 A On the form, okay, the form would carry Donald
 20 Gideon's name and number, D.O.C. number, and it
 21 would describe the exact title of his offense, and
 22 I am not sure what other information is on that
 23 form.
 24 Q What I'm asking you is what would it have had said
 25 on Mr. Gideon about his offenses, rape, what would

1 Q Did you think it was a good idea?
 2 A Yes.
 3 Q Had it been proposed or discussed prior to -- such
 4 a policy been implemented prior to Mr. Gideon's
 5 parole at the Kansas Department of Corrections?
 6 MS. MENDOZA: The action calls for the
 7 witness to speculate.
 8 Answer if you know.
 9 A I do not know.
 10 Q (By Mr. Adler) Had you ever proposed such a thing
 11 prior to Mr. Gideon's parole to anybody at the
 12 Kansas D.O.C.?
 13 A I don't believe in a formal manner I've ever
 14 proposed that. Discussion with co-workers and
 15 supervisors, I believe we've all discussed that.
 16 Q What I'm trying to get at is have you been a
 17 proponent of this idea for awhile?
 18 A Yes.
 19 Q And before Mr. Gideon's release you thought it was
 20 a good idea to notify employers of parolee's
 21 criminal record; correct?
 22 A I wouldn't say that I did think it was a good idea
 23 before that time.
 24 Q Did you think it was a bad idea?
 25 A I thought it would limit opportunities for people

1 it say?
 2 A It would have described rape and sodomy.
 3 Q Is there anything else they would have had to tell
 4 them about Mr. Gideon other than he was a convicted
 5 rapist and sodomist and this data stuff with his
 6 address and those things?
 7 A I cannot recall.
 8 Q Would it have to tell that he had served ten years
 9 in prison, approximately?
 10 A I do not believe that sentence information is on
 11 that form.
 12 Q Would it have to tell that it was a mandatory
 13 parole versus one that the Parole Board thought was
 14 a good idea?
 15 A I do not believe that's on that form.
 16 Q The only thing you believe it would have had to
 17 make sure Mr. Hamilton knew was that he was a
 18 convicted rapist and sodomist?
 19 A Right.
 20 Q And is it your testimony that this policy came
 21 about at the Kansas Department of Corrections as a
 22 result of the Schmidt case?
 23 A I believe so.
 24 Q Did you support the new policy?
 25 A Yes.

1 to work.
 2 Q For parolees to work?
 3 A Right.
 4 Q But when you balance it all, you got a parolee's
 5 desire to work versus an employer's need to know
 6 and whatever else you want to throw on the scales,
 7 I'm not suggesting those are the only two things on
 8 the scales, how would you have tipped it?
 9 What would you have thought should have been
 10 the policy at the time Mr. Gideon was released?
 11 Should you notify employers of peoples' -- of sex
 12 offender's, we'll zero in on sex offenders,
 13 criminal record at the time Mr. Gideon was
 14 released? What do you think should have been the
 15 decision?
 16 MS. MENDOZA: Objection, calls for the
 17 witness to speculate.
 18 A I believe back at that time I was probably in favor
 19 of having the discretion to notify.
 20 Q (By Mr. Adler) At the time Mr. Gideon was
 21 released, it was your thought that it should be
 22 discretionary with the parole officer?
 23 A Right.
 24 Q For sex offenders or for all offenders?
 25 A For all offenders.

Q What about sex offenders at the time Mr. Gideon was released?

Did you think it should be discretionary or mandatory that parole officers notify employers of their criminal record?

A I would say discretionary.

Q And what factors would go into the time Mr. Gideon was released, what did you think factors should play a part in whether the employer should be notified?

MS. MENDGZA: Objection, calls for the witness to speculate about the factors, I'm sorry.

A I don't understand what factors you would be wanting.

Q (By Mr. Adler) Let me rephrase it. Let me zero in on Mr. Gideon.

When Mr. Gideon was released, released in November of '92; correct?

A (Whereupon, the witness nods his head.)

Q You have to give verbal.

A Yes.

Q It was a mandatory release because he had served his time; correct?

A Yes.

Q And the Parole Board had not approved it because they thought he was qualified for parole; correct?

MS. MENDOZA: Objection, calls for the witness to speculate about what the Parole Board's reasons for making any decision were. Answer if you know.

A I don't know.

Q (By Mr. Adler) You're going to sit here and tell me that you don't know why the Parole Board released Mr. Gideon?

A Parole Board didn't.

Q Who did?

A It was a mandated release.

Q That's all I was trying to ask you, sir.

A Right.

Q The Parole Board didn't release him; correct?

A Right.

Q When he was released in November of '92, when was the last time prior to that he had gone up before the Parole Board?

A I don't know.

Q Do you have a rough idea?

A No.

Q Would it have been within a year?

A I don't know.

Q Is it in your file?

A I don't -- I don't know that I have that in the file.

Q Obviously the last time he went before the Parole Board they denied it because he was still in prison; correct?

A Correct.

Q He was required to be released under Kansas state law because he had served his time; correct?

A Correct.

Q Parole Board couldn't stop it if they wanted to; correct?

A Correct.

Q Did you know what any people on the Parole Board thought about Mr. Gideon's release at the time he was released, if they thought it was a good idea?

MS. MENDOZA: Objection, calls for the witness to speculate about what the Kansas Parole Board members thought.

A No, I don't know.

Q (By Mr. Adler) Do you know what they stated in the file about him, if they thought he should be released?

A No.

Q Is that information available to you? I'm sorry,

was it available to you?

A I don't recall it being in the file, in the material that I got.

Q Is it usually in the material you get?

A It is not usually included in the file.

Q Could you have requested it?

A Yes, I could have.

Q Do you know if you did?

A No, I didn't.

Q You didn't request it?

A No.

Q And you could have?

A Yes.

Q Why didn't you?

A I don't consider it necessary for the supervision of the case.

Q Tell me what you consider necessary for the supervision of the case, and we'll zero it in with Mr. Gideon.

What did you think was necessary to know to properly supervise him?

A Well, that he be fully aware of the conditions of release and --

Q Mr. Gideon?

A Mr. Gideon, yes, and a thorough intake is done and

1 that he abide by those conditions and the special
 2 conditions for no contact with the victim and a
 3 health counseling as directed and that he work and
 4 be law abiding, just be cooperative with the
 5 supervision plan.
 6 Q You said a thorough intake was done?
 7 A Yes.
 8 Q What is a thorough intake?
 9 A He is advised of the conditions of release that is
 10 all read. He understands and signs the release
 11 certificate, and acknowledgment form is read to him
 12 that he signs and is given a copy of.
 13 I'm trying to think of any other forms that
 14 are processed at that time. An assessment of his
 15 case is done and he is advised of the supervision
 16 level and a supervision plan is developed.
 17 Q Who did the -- you said an assessment of his case
 18 is done; didn't you?
 19 A Yes.
 20 Q Who did the assessment of his case?
 21 A Initial assessment was done by the parole officer
 22 in Hutchinson.
 23 Q Chastain?
 24 A Yes, sir.
 25 Q Jim Chastain; is that it?

1 things independent or did you review what
 2 Mr. Chastain did? What did you do when he got
 3 transferred to you? Did you do your own
 4 evaluation, did you rely on Chastain?
 5 A I used the assessment form that Chastain had done
 6 because the case is -- due to the crime, the case
 7 is a mandatory high case, high supervision is what
 8 it's called.
 9 Q And who came -- why is it mandatory high
 10 supervision, because of the nature of the offense?
 11 A That's it.
 12 Q What offense made it mandatory high?
 13 A The rape, sodomy.
 14 Q So it's automatically a high supervision?
 15 A Right.
 16 Q Even if everybody thinks he's a saint and has been
 17 rehabilitated; correct?
 18 A Yes.
 19 Q Mr. Chastain did the initial work-up; correct?
 20 A He did the assessment, yes.
 21 Q Is there any difference between that and initial
 22 work-up?
 23 A As I remember the file, he did the initial
 24 discussion of the conditions of release with him
 25 and did an assessment.

1 A Yes.
 2 Q And then you did a follow-up assessment?
 3 A In six months, the next assessment, the
 4 reassessment.
 5 Q Which would have been when, in May of '93, is that
 6 what you're saying?
 7 A Right, yes.
 8 Q So what factors were taken into consideration --
 9 did you see the assessment of the case done by
 10 Mr. Chastain?
 11 A Yes, it's in the file.
 12 Q And what does he do, type of things does he do to
 13 make an assessment of the case?
 14 MS. MENDOZA: Objection, calls for the
 15 witness to speculate about what Mr. Chastain
 16 does or doesn't do.
 17 A Mr. Chastain would have reviewed the conviction
 18 data, the man's history. He had access to the SRDC
 19 report and the sex offender treatment summary and
 20 he interviewed Mr. Gideon initially.
 21 Q (By Mr. Adler) Did you do any of those things or
 22 review any of those things yourself?
 23 A I saw the assessment form when it was sent to me,
 24 yes.
 25 Q What I'm trying to get at, sir, is did you do these

1 Q The assessment being to determine if additional
 2 conditions of release should be added?
 3 A No, the assessment is done to determine a level of
 4 supervision.
 5 Q But you said it's high no matter what?
 6 A Right.
 7 Q So why do the assessment?
 8 A Still, the form is done and entered into the file
 9 and it is logged into data base.
 10 Q Is there any need for that since he's a high
 11 assessment? Does it help at all?
 12 A Well, it's something to refer back to in six months
 13 to see how the case has progressed and to verify
 14 that he was under that high level of supervision.
 15 Q Did you have the ability or the authority when the
 16 case was transferred to you to add conditions of
 17 release?
 18 A Yes, I could have recommended additional
 19 conditions.
 20 Q Who would you have recommended them to?
 21 A I would have discussed with my immediate supervisor
 22 a need.
 23 Q And if you think some additional conditions of
 24 release are necessary, you would recommend them to
 25 your supervisor and then he would, he or she, would

1 decide, your supervisors, if they agreed with you?
 2 A Right, yes.
 3 Q Did you recommend any to your immediate -- any
 4 additional conditions of release for Mr. Gideon to
 5 your immediate supervisor at the time he was
 6 paroled?
 7 A No.
 8 Q Who was your immediate supervisor at that time?
 9 A Mack Farmer.
 10 Q Could you spell that?
 11 A M-a-c-k F-a-r-m-e-r.
 12 Q Do you know if Mr. Chastain recommended any
 13 additional conditions of release to anybody?
 14 A No, I don't know that he did.
 15 Q Have you ever seen any reports that indicate he
 16 did?
 17 A No.
 18 Q Would this recommendation to the supervisor, if you
 19 were doing it, would it be done verbally or in
 20 writing?
 21 A Well, the discussion can be done verbally and if an
 22 agreement is made to add conditions, it is done on
 23 a special condition form.
 24 Q Did you ever discuss with Mr. Chastain whether he
 25 thought additional conditions of release should be

1 the hearing.
 2 Q Does it state the reasons the parole is denied?
 3 A Yes.
 4 Q Have you seen those on Mr. Gideon since his
 5 release, the minutes on his prior Parole Board?
 6 A No, I don't believe I have.
 7 Q And I'm sorry, you said you did review the
 8 psychological reports on Mr. Gideon before putting
 9 him back on the streets?
 10 MS. MENDOZA: Object.
 11 A Before putting him on the streets, no, no, I
 12 didn't.
 13 Q (By Mr. Adler) And those were available to you?
 14 A Well, I was not aware Mr. Gideon was out, you know,
 15 I wouldn't have reviewed them before his release.
 16 Q You're saying he was released and then -- he was on
 17 the streets and then came to you?
 18 A Yes, he was released to Hutchinson first and then
 19 moved down to the Pittsburg area.
 20 Q How long was he in Hutchinson?
 21 A I think two days, something like that.
 22 Q So then he got transferred to you and he was going
 23 to be in Pittsburg; correct?
 24 A Yes, that's with his family just outside of
 25 Pittsburg.

1 added to Mr. Gideon?
 2 A No.
 3 Q Did you ever talk with Mr. Chastain about this case
 4 before Mr. Gideon was released?
 5 A No.
 6 Q All you did was review the forms he had filled out
 7 that are in the file?
 8 A Yes.
 9 Q Did you review anything about Mr. Gideon's past
 10 other than his criminal record? Did you review
 11 anything about his past? Did you review his
 12 criminal record?
 13 A I didn't.
 14 Q Did you review his psychological reports?
 15 A Yes.
 16 Q Did you review his Parole Board results?
 17 A No, I don't believe I saw those, no.
 18 Q And those were available to you if you requested
 19 them?
 20 A Yes.
 21 Q What type of things would they be, minutes from the
 22 meeting? What would you have been able to ask for?
 23 A I would have probably received what is called a
 24 minute, that is just a short statement of date and
 25 time that this hearing was heard and the results of

1 Q That's why the transfer was made?
 2 A Yes.
 3 Q Did you, prior to commencing your supervision or
 4 shortly after commencing your supervision, review
 5 his psychological reports in an effort to determine
 6 if additional conditions of his release should be
 7 added?
 8 A I wouldn't say that that was why I was reviewing
 9 them, to determine if additional conditions were
 10 needed. I would be reviewing them to try to
 11 familiarize myself with this guy's history.
 12 Q Did you do that?
 13 A Yes.
 14 Q Right after you got them?
 15 A Yes.
 16 Q Within how many days or weeks?
 17 A I believe that is the material that Mr. Chastain
 18 faxed to me in order to have something in hand when
 19 Mr. Gideon showed up in Pittsburg.
 20 Q So you have the psychological reports initially
 21 when you first got the case?
 22 A I believe probably the day after he was released.
 23 Q And at that time after you reviewed them, did you
 24 have the authority and the power to impose
 25 additional conditions on Mr. Gideon's release?

1 A I could have recommended them.
 2 Q Could have recommended them to your supervisors?
 3 A Yes.
 4 Q Do your supervisors usually follow your
 5 recommendations?
 6 A Sometimes, usually, yes.
 7 Q But you didn't make any such recommendations to
 8 Mr. Farmer --
 9 A No.
 10 Q -- after reviewing those psychological reports?
 11 A No.
 12 Q And at any time did you ever make any
 13 recommendations to Mr. Farmer that there should be
 14 additional conditions of his release?
 15 A No.
 16 Q What type of things did those psychological reports
 17 say about Mr. Gideon? Can you give me a summary of
 18 what they were revealing?
 19 A Standard psychological would probably have a
 20 work-up about his early history, juvenile history,
 21 his home life, his parental circumstances,
 22 siblings, legal problems throughout his life,
 23 description of, I think in his -- there's a
 24 description of instances of foster care, youth
 25 center care, runaways, suicide attempts, fights in

1 of 1992?
 2 A Well, I've worked for the Department of Corrections
 3 12 years.
 4 Q How long had you spent working with sex offenders?
 5 A I imagine I've had sex offenders on the case load
 6 throughout that time.
 7 Q Is there any statistics upon which you rely about
 8 sex offenders' tendency to repeat? I think it's
 9 referred to as their recidivism rate?
 10 A It is highly likely that they will.
 11 Q What does highly likely mean?
 12 A I can't give you a percentage or anything like
 13 that.
 14 Q Is there anything higher than highly likely on the
 15 scale?
 16 A I wouldn't say so.
 17 Q You don't think there is?
 18 A I don't believe so.
 19 Q And do you have any understanding from your
 20 experience in this area why they are highly likely
 21 to re-offend, why sex offenders are highly likely
 22 to re-offend?
 23 MS. MENDOZA: Objection, calls for the
 24 witness to speculate.
 25 Answer if you can.

1 school.
 2 Q Is it fair to say with Mr. Gideon he had spent 95
 3 percent of his life from the age of 13 or 14 in
 4 institutions?
 5 A Yes.
 6 Q Hadn't been out on the streets very much at all
 7 since being 13 or 14 years old?
 8 A I believe that's right.
 9 Q He was how old when he was paroled?
 10 A I'm not sure. I believe 30.
 11 Q So for the last 17 or 18 years, roughly, how many
 12 of those years had he spent in prison or in some
 13 institution?
 14 A Approximately 15 years.
 15 Q And what type of conclusions did these
 16 psychological reports make on Mr. Gideon's mental
 17 make-up and likelihood to repeat his offense?
 18 A I cannot remember the conclusions drawn there.
 19 Q You don't remember at all?
 20 A I cannot recall them, no.
 21 Q Was there a likelihood, did they indicate there was
 22 a likelihood he was going to repeat his offense?
 23 A I don't know that they said that.
 24 Q Are you familiar with -- how long have you worked
 25 with sex offenders? How long had you in November

1 A I think a combination of factors in their lives
 2 contributes to that likelihood.
 3 Q (By Mr. Adler) Would you tell me what those
 4 combination of factors are?
 5 A Parental upbringing, history of offenses early on,
 6 probably early psychological studies showing
 7 tendencies and those kinds of things.
 8 Q And when you released Mr. Gideon in November -- I'm
 9 sorry, when you were supervising Mr. Gideon in
 10 November of '92, you knew he was a sex offender;
 11 correct?
 12 A Yes.
 13 Q And you knew that sex offenders were highly likely
 14 to re-offend; correct?
 15 A Yes.
 16 Q And you made no recommendations to your supervisor
 17 to add any additional conditions to his release;
 18 correct?
 19 A Yes.
 20 Q And you made no effort to contact his employer to
 21 advise him as to who was working for him; correct?
 22 A Yes.
 23 MS. MENDOZA: Objection, what period of
 24 time are we talking about here?
 25 MR. ADLER: He's answered the question.

1 Q (By Mr. Adler) During the whole time he was
 2 employed at Hamilton's, other than this one meeting
 3 at the Quick Stop which we'll get to, did you have
 4 any dealings with anybody at Hamilton's to advise
 5 them as to who was in their employment?
 6 A I don't understand the question.
 7 Q Tell me every meeting you had with anybody at
 8 Hamilton's to tell them anything about Mr. Gideon.
 9 A I recall one meeting with Mr. Hamilton.
 10 Q At the Quick Stop?
 11 A Right.
 12 Q And what did you tell him there about Mr. Gideon's
 13 past and his likelihood -- his highly likely
 14 ability to re-offend, anything?
 15 A I don't recall anything.
 16 Q Did you ever tell anybody at Hamilton's about
 17 Mr. Gideon's record, that he was a convicted rapist
 18 and sodomist?
 19 A No.
 20 Q Did you ever tell anybody at Hamilton's that a
 21 convicted rapist and sodomist was likely -- highly
 22 likely to re-offend?
 23 A No.
 24 Q Did you ever have an opportunity to tell anybody at
 25 Hamilton's either of those things?

1 where Mr. Gideon might have problems and re-offend?
 2 A No.
 3 Q You didn't think that was a possibility or a
 4 concern?
 5 A No, I didn't see it as a concern, no.
 6 Q Tell me why.
 7 A Because I felt like he was working in the kitchen
 8 and doing dishes and that kind of thing. I really
 9 didn't see that he would have any more of an
 10 opportunity in those cases than he would anywhere
 11 else.
 12 Q Are you talking about an opportunity to rape a
 13 customer or a co-employee?
 14 A Either.
 15 Q Would you allow a bank embezzler to go work in a
 16 bank?
 17 A I would probably not without them being aware of
 18 it.
 19 Q Without the bank being aware of it?
 20 A Right.
 21 Q In November of '92, that would have been the way
 22 you felt?
 23 A Yes.
 24 Q What about a child molester in a daycare center?
 25 A No.

1 A Yes, the opportunity was there.
 2 Q When, the whole time; wasn't it?
 3 A Yes.
 4 Q Did Mr. Gideon tell you he had told anybody at
 5 Hamilton's any of those things?
 6 A No.
 7 Q Did you have any reason to believe that anybody at
 8 Hamilton's knew that Gideon was a convicted rapist
 9 and sodomist?
 10 A No.
 11 Q Did you have any reason to believe that anybody at
 12 Hamilton's knew that a convicted rapist and
 13 sodomist was highly likely to re-offend?
 14 A No.
 15 Q Did you know there were a lot of young women
 16 working at Hamilton's?
 17 A I knew that there were staff there that were young
 18 women.
 19 Q Answer my question, please.
 20 A I knew that there were staff there that were young
 21 women, yes.
 22 Q And what was Mr. Gideon's prior victim?
 23 A A young female.
 24 Q The did these facts that we've just been talking
 25 about cause you any concern that this was a place

1 Q You wouldn't allow that?
 2 A No.
 3 Q And you wouldn't have allowed that in November '92?
 4 A No.
 5 Q But you think it's okay to have a rapist working
 6 around college waitresses?
 7 A Yes.
 8 Q What's the distinction, why one is -- two are okay
 9 and -- I'm sorry, two aren't okay and one is? I
 10 don't see the distinction, sir, and I'd like you to
 11 explain it to me.
 12 A Well, I felt like Mr. Gideon had an opportunity to
 13 be employed there. It was a manual labor situation
 14 and he had had a problem at a previous employment
 15 and I felt like it was an appropriate situation.
 16 Q Why do you feel the other two, the bank embezzler
 17 and the child molester, are inappropriate? They
 18 give them an opportunity to work and all these
 19 things you just said. Why are those inappropriate?
 20 A I don't know.
 21 Q Is there any place you think it would have been
 22 inappropriate for Mr. Gideon to work?
 23 A I can't think of any, possibly a women's dormitory
 24 or something like that.
 25 Q Did you put that restriction on his employment?

1 A No.
 2 Q What about a strip bar, how would he do at a strip
 3 bar?
 4 MS. MENDOZA: Objection, calls for the
 5 witness to speculate.
 6 A I don't know.
 7 Q (By Mr. Adler) Do you think that would -- do you
 8 think you should have restricted him from working
 9 at a strip bar?
 10 MS. MENDOZA: Objection, calls for the
 11 witness to speculate.
 12 A I wouldn't have allowed him to work at a strip bar.
 13 Q (By Mr. Adler) Did you put that restriction on
 14 him?
 15 A No.
 16 Q And you didn't put the dormitory restriction on
 17 him?
 18 A No.
 19 Q Female dormitory obviously; correct?
 20 A Yes.
 21 Q Any place else it wouldn't be a good idea for him
 22 to work for?
 23 A I can't think of any.
 24 Q How about an all girl high school, would that be
 25 appropriate for him to work there?

1 paid his bills and was law abiding.
 2 Q What did you do to closely monitor him?
 3 A Had frequent personal contacts with him.
 4 Q What's frequent personal contacts?
 5 A Three times per month.
 6 Q Three times a month for how long, each session?
 7 A I couldn't tell you exactly how long.
 8 Q Three hours, sir?
 9 A No.
 10 Q Half hour?
 11 A Sometimes, yes.
 12 Q Approximately a half hour?
 13 A Probably.
 14 Q You met him with an hour and a half a month;
 15 roughly?
 16 A Roughly.
 17 Q Did you do anything other than that hour and a
 18 half? Did you talk to his counselor, did you talk
 19 to his employer, did you talk to his friends, did
 20 you talk to his landlord, did you do any of those
 21 things to monitor his behavior?
 22 MS. MENDOZA: Object to the form of the
 23 question. Ask one question at a time.
 24 Q (By Mr. Adler) Please answer the question.
 25 A Well, I had contacts with his mental health

1 A No.
 2 Q How about an all girl college, would that be
 3 appropriate for him to work there?
 4 A No.
 5 Q Did you put either of those restrictions on his
 6 employment?
 7 A No.
 8 Q What restriction did you put on his employment to
 9 stop him from raping again, tell me one?
 10 A I didn't place any restriction on him.
 11 Q What was your goal in supervising Mr. Gideon's
 12 parole? What were you trying to accomplish?
 13 MS. MENDOZA: Objection to the form of
 14 the question. Which one do you want him to
 15 answer?
 16 Q (By Mr. Adler) Go ahead and answer the question.
 17 A Which one?
 18 Q Goal and trying to accomplish to me are synonymous.
 19 Do you see a distinction between goal and what
 20 you were trying to accomplish?
 21 A Well, with Don Gideon I was trying to accomplish
 22 some sort of successful reintegration and to have
 23 some close monitoring.
 24 Q Go on, I want to hear them all.
 25 A To see that he worked and maintained a residence,

1 counselor. I observed his pay stubs from work. I
 2 observed his appointment cards from mental health.
 3 Q What else?
 4 A I had contacts with law enforcement.
 5 Q What else, I want to hear them all, what you did to
 6 closely monitor him?
 7 A Contacts with family.
 8 Q What else?
 9 A I think that's probably --
 10 Q Take your time. I want to make sure we've got them
 11 all.
 12 Would you have the record reflect there's a
 13 pause and he's thinking.
 14 A I had the one contact with Tom Hamilton regarding
 15 him.
 16 Q The chance meeting at the Quick Stop while he was
 17 buying a paper for less than a minute?
 18 A Yes.
 19 Q And you asked him how Tom was doing or somehow that
 20 came up and he said Tom was doing fine and that was
 21 the gist of the conversation?
 22 A (Whereupon, the witness nods his head.)
 23 MS. MENDOZA: It presumes facts not in
 24 evidence.
 25 MR. ADLER: He just nodded his head yes.

1 MS. MENDOZA: You just asked him if it
 2 was Tom and that is clearly not who we're
 3 talking about here.
 4 Q (By Mr. Adler) Did you just nod your head yes,
 5 sir?
 6 A Do you mean Don Gideon?
 7 Q Let me rephrase the question. I don't believe I
 8 said -- if I said it wrong.
 9 You were talking about a chance meeting with
 10 Tom Hamilton at a Quick Stop while you were there
 11 on your bike and you happened to bump into him and
 12 you talked to him about a minute and asked him how
 13 Don was doing and the response was fine or
 14 something to that effect; is that your dealings
 15 with Mr. Hamilton?
 16 A Yes.
 17 Q Anything else?
 18 A I don't recall further.
 19 Q Well, if you do recall, when you read the
 20 deposition, would you insert it at that time for
 21 me?
 22 A Yes.
 23 Q And we can come back and ask you about those
 24 questions and something you forgot to tell me
 today.

1 personal contact.
 2 Q Would you say, "How's Don doing," and he'd say
 3 "Fine," and that would be the end of discussion or
 4 would it go into depth about tests he had taken or
 5 things he had done or verification that he was
 6 doing fine?
 7 A No, we didn't go into depth about tests taken.
 8 Q Did you go into depth in these conversations to try
 9 to verify that Don Gideon was doing fine?
 10 A As I remember, the mental health therapist
 11 indicated that Don was doing fine and he felt like
 12 he was adjusting as well as he could.
 13 Q What did you do to verify that Don Gideon was doing
 14 fine on parole besides your meeting with
 15 Mr. Hamilton at the Quick Stop and asking his
 16 mental health counselor what he thought?
 17 A Well, I was verifying that he was working through
 18 his pay stubs. I was verifying that he was
 19 attending the mental health meetings. I was
 20 verifying through law enforcement that he was
 21 having no law contact. He was maintaining his
 22 apartment by paying his bills.
 23 Q Who told you that?
 24 A He was maintaining the apartment?
 25 Q Who told you he was paying his bills?

1 Do you think what did you was sufficient, sir?
 2 A Yes.
 3 Q That's the way you'd do it again?
 4 A Yes.
 5 Q Of course you wouldn't be able to do it that way
 6 again because now the state requires you to send
 7 written verification for sex offenders like Don
 8 Gideon to people like Tom Hamilton; correct?
 9 A Yes.
 10 Q So even if you wanted to proceed with these
 practices, you couldn't; correct?
 12 A Yes.
 13 Q The state will no longer allow you to handle a case
 like you handled Don Gideon's?
 15 A Yes.
 16 Q How many times did you talk to his mental health
 counselor?
 18 A I don't recall exactly.
 19 Q What's the most number of times you talked to him?
 A I don't recall.
 21 Q You don't have a clue?
 22 A Exactly, no.
 Q Would these have been phone calls, "How's Don
 doing," "Fine, thank you"?
 25 A There was some phone contact. There was some

1 A Well, I would imagine that he has to pay his rent.
 2 Q You presumed that he was paying his bills; correct?
 3 A Yes.
 4 Q You didn't verify it?
 5 A Not his apartment rent, no.
 6 Q Okay, I interrupted you. Go on with whatever else
 7 you did to verify he was doing fine.
 8 A I had contact with family.
 9 Q Phone calls with them, "How's Don doing?" "He's
 10 doing fine"?
 11 A Phone calls, yeah.
 12 Q Isn't it true his family told you at one of these
 13 phone calls or one of these meetings that they were
 14 scared of him, their own family member?
 15 A I believe they were concerned about him being moody
 16 at the house of his sister and that they thought
 17 that he needed to find another place to live.
 18 Q Did they tell you they were scared of him?
 19 A I don't recall.
 20 Q Might have?
 21 A Might have.
 22 Q If they had told you that, what would you have done
 23 to closely monitor Mr. Gideon?
 24 MS. MENDOZA: Objection, calls for the
 25 witness to speculate.

1 A Well, in the instance that we're talking about, the
 2 mother wanted it kept confidential, so I guess that
 3 would be an indicator that she didn't want him
 4 upset.
 5 Q (By Mr. Adler) So we better make sure we honor
 6 that mother's concern for confidentiality, that's
 7 your No. 1 concern in monitoring Mr. Gideon?
 8 A In discussing the issue with Mr. Gideon, I made it
 9 apparent to him the concern of the family and we
 10 had a thorough discussion of the incident.
 11 Q What did you tell Mr. Gideon, "Stop making your
 12 family scared of you"?
 13 A We discussed that issue and he indicated that it
 14 was a silly incident over television control with a
 15 nephew and that he was indicating to me that he was
 16 looking for another place to live.
 17 Q So he told you, "Don't worry about it," and you
 18 didn't worry about it?
 19 A I felt like he understood the circumstances.
 20 Q You didn't think there was -- after talking with
 21 him and hearing his perspective on the story that
 22 the family shouldn't have been scared, you didn't
 23 do anything; correct?
 24 A Well, I believe we decided mutually that he should
 25 find another place to live.

1 Q (By Mr. Adler) Your concerns -- I'm sorry, your
 2 goals and what you were trying to accomplish with
 3 Mr. Gideon were your first thing you said was to
 4 successfully reintegrate him; correct?
 5 A (Whereupon, the witness nods his head.)
 6 MS. MENDOZA: You have to answer out
 7 loud.
 8 A Yes.
 9 Q (By Mr. Adler) How do you successfully reintegrate
 10 a Don Gideon? What did you do to successfully
 11 reintegrate him?
 12 A The things that we've already talked about, trying
 13 to get him in a situation of living, which the
 14 family offered a place and offered to assist him,
 15 to see that he was able to maintain work and be
 16 stable in that sense, try to begin to live his life
 17 in the community.
 18 Q What did you do, if anything, to make sure he
 19 didn't re-offend?
 20 A I was trying to make sure that he was adhering to
 21 the conditions of his release.
 22 Q Which were to stay away from his prior victim;
 23 correct?
 24 A Yes.
 25 Q And, I think the other, correct me if I'm wrong,

1 Q Did he do that?
 2 A As soon as he has the funds to be able to afford an
 3 apartment.
 4 Q But if he doesn't have the funds, it's okay for him
 5 to stay there and have his family scared; is that
 6 right?
 7 A At that point, that was where he was staying.
 8 Q Did he have the funds to move?
 9 A I believe at that point he indicated that he did.
 10 Q You think he did?
 11 A I think so.
 12 Q But you're not positive?
 13 A I can't recall.
 14 Q So you don't know if he had the funds to get out of
 15 this situation that was scaring his family?
 16 MS. MENDOZA: Object, calls for the
 17 witness to speculate about what was or wasn't
 18 scaring his family, Mr. Gideon's family.
 19 Q (By Mr. Adler) Go ahead and answer the question.
 20 She makes objections for the record and in a
 21 deposition you go ahead and answer.
 22 A What was the question?
 23 (Whereupon, the pending question was read
 24 back by the reporter.)
 25 A I don't know for sure if he had the funds, no.

1 was to maintain steady employment?
 2 A No.
 3 Q What was the other one?
 4 A Attend mental health counseling.
 5 Q So he did those two things and that's all you did
 6 to make sure he didn't re-offend?
 7 A (Whereupon, the witness nods his head.)
 8 Q You have to give a verbal response. You're nodding
 9 your head?
 10 A Well, compliance with the conditions, yes.
 11 Q Those are the only two conditions and you didn't
 12 add any more; correct?
 13 A The conditions of his release are eight or nine.
 14 Q What did you do to make sure he didn't re-offend
 15 other than what we've been talking about, anything
 16 else?
 17 A No.
 18 Q Did you do anything else other than what we talked
 19 about?
 20 MS. MENDOZA: Objection, asked and
 21 answered.
 22 Q (By Mr. Adler) Did you do anything else other than
 23 what we've been talking about, objection noted?
 24 A No.
 25 Q Do you think you should have?

MS. MENDOZA: Objection, calls for the witness to speculate.

3 A No.

Q (By Mr. Adler) Do you think you should have told Mr. Hamilton he was a convicted rapist?

6 MS. MENDOZA: Objection, asked and answered.

7 A No.

9 Q (By Mr. Adler) Why not?

MS. MENDOZA: Same objection.

A Because at the time it was my decision, my call. I felt like his employment would probably be more secure in that circumstance.

Q (By Mr. Adler) So the reason you didn't tell Mr. Hamilton is because you were afraid he might lose his job?

A Yes.

Q You heard Mr. Hamilton testify yesterday that had he known he was a convicted rapist he wouldn't necessarily have fired him. You heard that; didn't you?

A Yes.

Q Do you have any reason to doubt that to be the case?

MS. MENDOZA: Objection, calls for the

witness to speculate.

A No.

Q (By Mr. Adler) Why was it so paramount to you that he maintained his job?

A Well, I feel like a job is a main part of a person's adjustment back in the community. It gives him an ability to sustain himself and begin to make some positive changes in bettering himself. He can obtain more personal goals by having a steady income, legal income.

Q If I'm understanding you correctly, and tell me if I'm wrong, your concern with Mr. Gideon to get him reintegrated, that was your concern in dealing with him? Am I correct?

A Yes.

Q Did you have any concern for the public?

A Yes.

Q And what did you do to protect the public from a guy who was highly likely to re-offend and rape other than what we've talked about?

A As I said, I checked to see that he had law contacts.

Q Other than what we've talked about.

A I don't recall.

Q Do you think whether he has a job has any bearing

1 on whether he's going to re-offend and rape again?

2 A I don't know.

3 Q Do you think -- you don't think it has any bearing, is that what you're telling me?

5 A I would think that having stable income would be a positive thing in his life.

7 Q So if he has money, he's not going to rape; is that what you're telling me?

9 A I wouldn't say that, no.

10 Q Tell me what you're saying, you're saying, if I understand you, you're saying if he has a job you think he's less likely to rape again; is that what you're telling me, sir?

14 A No.

15 Q That's not what you're telling me.

16 A No.

17 Q Then the fact he has a job are not -- does not protect the public?

19 A I think it contributes to protecting the public.

20 Q So then having a job makes him less likely to re-offend, in your mind?

22 A Yes.

23 Q And how so?

24 A Because it's an indicator of some positive adjustment in the community.

1 Q That's an indicator to you that he's becoming more normal; correct?

3 A Yes.

4 Q What's that got to do with whether he's going to rape again?

6 A I don't know.

7 Q Nothing; right?

8 A I don't know.

9 Q In June of '93, would you have wanted your 20 year old daughter working with Mr. Gideon in a restaurant not knowing he was a convicted rapist?

12 A No.

13 Q You allowed Stephanie Schmidt to be in that situation; didn't you, sir?

15 A Yes.

16 Q And why is it you wouldn't have wanted your 20 year old daughter to be working in a restaurant with him in June of '93?

19 MS. MENDOZA: Object, calls for the witness to speculate. Assumes facts not in evidence.

22 A Preferably I wouldn't want my 20 year old daughter close to anyone like that anywhere.

24 Q (By Mr. Adler) And what did you do to prevent 20 year old women from being around Mr. Gideon in your

1 supervision of his parole?
 2 A Nothing.
 3 Q And you don't see anything wrong with that?
 4 A I was supervising him to the standards at the time,
 5 yes.
 6 Q Did you have the ability to impose some conditions
 7 that would have prevented 20 year old women from
 8 being around him?
 9 MS. MENDOZA: Objection, asked and
 10 answered.
 11 A Yes.
 12 Q (By Mr. Adler) Then you weren't doing it to the
 13 highest standards you could have; were you?
 14 A I believe I was.
 15 Q Did you have the ability to say to Mr. Farmer, "I
 16 don't think he should work in restaurants that
 17 employ college women"?
 18 MS. MENDOZA: Objection, asked and
 19 answered.
 20 Q (By Mr. Adler) Is there anything prohibiting you
 21 from doing that?
 22 A No.
 23 Q But you didn't do it?
 24 A No.
 25 Q And you knew he was working around college women;

1 A That should be the main focus.
 2 Q Mr. Gideon had worked at a place called Superior --
 3 MS. PEREZ: Industrial or something.
 4 Q (By Mr. Adler) Superior -- where was it he worked?
 5 A Superior Industries.
 6 Q Did they know that Mr. Gideon was a convicted
 7 rapist?
 8 MS. MENDOZA: Objection, calls for the
 9 witness to speculate about what Superior knew
 10 or didn't know.
 11 A I am not sure if they knew or not. I believe I
 12 spoke to -- I believe I spoke to personnel out
 13 there and indicated his history.
 14 Q (By Mr. Adler) Which would have been you would
 15 have told them he was a convicted rapist?
 16 A I believe so.
 17 Q And your records will reflect that Mr. Gideon told
 18 you he told them he was a convicted rapist; don't
 19 they?
 20 A I'm not sure.
 21 Q Well, there's a little box on your record that
 22 asked Mr. Gideon to fill out did he inform his
 23 employer of his history, and he said yes during the
 24 time he was working for Superior; didn't he?
 25 A I don't know which -- what you're talking about.

1 didn't you?
 2 MS. MENDOZA: Objection, asked and
 3 answered.
 4 A Yes.
 5 Q (By Mr. Adler) And you knew he was highly likely
 6 to re-offend; correct?
 7 MS. MENDOZA: Objection, calls for the
 8 witness to speculate and asked and answered.
 9 A I knew that he was a sex offender and there was the
 10 possibility that he may re-offend.
 11 Q (By Mr. Adler) And the state of the art, if you
 12 will, is at the time that sex offenders are highly
 13 likely to re-offend, you told me that; correct?
 14 A I think I said that.
 15 MS. MENDOZA: Asked and answered.
 16 Q (By Mr. Adler) Which was more important to you,
 17 Mr. Gideon or the public?
 18 A Well, I believe public safety is more important.
 19 Q Public safety was more important?
 20 A It's important and it's a balance between the two.
 21 Q Which was more important or were they equal? One
 22 is more or they are equal, please tell me which it
 23 is, there's three choices?
 24 A I would say public safety.
 25 Q A lot more, little more?

1 Q You're not familiar with your own forms?
 2 A Which form are you talking about?
 3 Q We'll leave this.
 4 MS. MENDOZA: If you want him to look at
 5 the form --
 6 MR. ADLER: I'll examine him the way I
 7 want to.
 8 Q (By Mr. Adler) You client form --
 9 MS. MENDOZA: Ask your question, I'm
 10 sorry I interrupted you; all right?
 11 MR. ADLER: Forget it.
 12 Q (By Mr. Adler) Your client report form that he
 13 fills out appears to me when he shows up for his
 14 three times a month meeting?
 15 A Uh-huh.
 16 Q Little box like the fourth question down, Does your
 17 employer know of your criminal record and he said
 18 yes?
 19 A I think it says does your employ know you're on
 20 parole.
 21 Q I think you're right. He was saying yes at the
 22 time he was in Superior?
 23 A Uh-huh.
 24 Q Did they fire him?
 25 A No.

1 Q And to the best of your recollection, you believe
 2 they knew he was a rapist?
 3 A I believe I discussed it with the personnel people.
 4 Q So to the best of your recollection they knew but
 5 you're not positive?
 6 A Not positive, no.
 7 Q They knew he was a rapist and he quit there; right?
 8 A Yes.
 9 Q He wasn't fired because he was a rapist; was he?
 10 A No.
 11 Q So them knowing he was a rapist didn't affect his
 12 employment; did it?
 13 A No.
 14 Q When he started to work for Hamilton's for several
 15 weeks, he'd check the box they didn't know; didn't
 16 he?
 17 A I don't recall for sure.
 18 Q Well, I'll represent to you that he did, okay, so
 19 if he's checking that box, you think he's telling
 20 you the truth?
 21 A I believe so.
 22 Q And you have no reason to believe that they knew he
 23 was a rapist; do you?
 24 A No.
 25 MS. MENDOZA: Objection, calls --

1 MS. MENDOZA: Objection, asked and
 2 answered.
 3 Q (By Mr. Adler) Was there anything you saw in
 4 Gideon's background that made you think he was less
 5 likely to rape than some other rapist?
 6 MS. MENDOZA: Objection, calls for the
 7 witness to speculate.
 8 A No.
 9 Q (By Mr. Adler) The answer was no?
 10 A Yes.
 11 Q Do you know why it is that under the current policy
 12 of the Kansas Department of Corrections sex
 13 offenders got -- employers of sex offenders have to
 14 be notified in writing?
 15 MS. MENDOZA: Objection, calls for the
 16 witness to speculate about why the policy was
 17 enacted.
 18 Answer, if you know.
 19 A I don't know for sure.
 20 Q (By Mr. Adler) Do you have an opinion as to why?
 21 A I would say it is for confirmation that everyone is
 22 aware that this person is in the area.
 23 Q It's important to tell employers of sex offenders
 24 in writing to make darn sure they know because they
 25 are highly likely to re-offend; isn't it, sir?

1 A I --
 2 MS. MENDOZA: Sorry, let me make my
 3 objection first and my objection is calls for
 4 -- question calls for the witness to speculate
 5 about what they knew or didn't know.
 6 Q (By Mr. Adler) Any time while you were supervising
 7 Mr. Gideon, did you ever go back any further and
 8 look at any of these documents I referred to
 9 earlier in more detail or request any of them, the
 10 Parole Board record, the psychological profile, did
 11 you ever look at them ever again later, any of that
 12 stuff?
 13 A I don't recall.
 14 Q Did it surprise you when you found out Donald
 15 Gideon raped again?
 16 A Yes.
 17 Q Why is that?
 18 A I had no indication that it would occur.
 19 Q And what you did to find out if you had any
 20 indication was what you've told us?
 21 A Repeat that, please.
 22 Q Did you do anything other than what you've told us
 23 to find out if there was any indication he was
 24 going to do it?
 25 A No.

1 MS. MENDOZA: Objection, calls for the
 2 witness to speculate about whether or not
 3 anybody is highly likely to re-offend.
 4 A (Whereupon, the witness nods his head.)
 5 Q (By Mr. Adler) You're nodding your head yes?
 6 A Yes.
 7 Q And you knew that in November and December of '92;
 8 didn't you, sir?
 9 A Knew what?
 10 Q That it was important to notify employers if the
 11 sex offender was in their employment because they
 12 are highly likely to re-offend?
 13 A (Whereupon, the witness nods his head.)
 14 Q You're nodding your head yes?
 15 A I knew that.
 16 Q In November of '92?
 17 A Yes.
 18 Q And you consciously chose not to inform Hamilton's
 19 because you were afraid Mr. Gideon would lose his
 20 job; correct?
 21 A Yes.
 22 Q Where is your concern for the waitresses at
 23 Gideon's with that decision -- at Hamilton's with
 24 that decision, the public?
 25 A As I indicated, I felt that the job was appropriate

1 for Don Gideon.
 2 Q Answer my question, please.
 3 A What's your question?
 4 Q Where is your concern for the waitresses at
 5 Hamilton's with the decision not to notify
 6 Hamilton's of Mr. Gideon's past?
 7 A My concern is with -- for Mr. Gideon to maintain
 8 employment.
 9 Q How many times had you been in Hamilton's
 10 restaurant prior to June 30th of '93?
 11 A I would say once. I can't recall really.
 12 Q Did you talk to Mr. Gideon while you were there?
 13 A No.
 14 Q Was it to do your job or were you there socially?
 15 A I believe we had dinner there one time.
 16 Q What's the answer to my question?
 17 A Socially.
 18 Q And you noticed a lot of college women waitressing
 19 there?
 20 MS. MENDOZA: Objection, assumes facts
 21 not in evidence.
 22 A Yes, there were women.
 23 Q (By Mr. Adler) And this is when you knew
 24 Mr. Gideon was working there, that you had this
 25 dinner there?

1 mischaracterized it.
 2 MS. MENDOZA: I can make my action.
 3 MR. ADLER: That's not an objection.
 4 MS. MENDOZA: Yes, it is an objection.
 5 Q (By Mr. Adler) Go ahead.
 6 A I don't recall exactly what was said there in that
 7 testimony.
 8 Q What do you recall the gist of it being?
 9 A Was it something about something on a windshield?
 10 Q He got real mad at the guy who had painted on his
 11 girl friend's windshield; correct?
 12 A He was upset, yes, at someone from next door or
 13 something like that.
 14 Q He got in a brawl, we don't know exactly what, he
 15 might have gotten hit with a shot glass or thrown a
 16 shot glass at Frankie's; right, you heard that
 17 yesterday?
 18 MS. MENDOZA: Objection, mischaracterizes
 19 the evidence. I don't think Frankie's was
 20 even in existence at the time.
 21 (Whereupon, there was an off-the-record
 22 discussion.)
 23 Q (By Mr. Adler) Got in a fight --
 24 MS. MENDOZA: Wait, I want that on the
 25 record, thank you.

1 A Yes.
 2 Q Did the thought occur to you that this might not be
 3 a good environment for Mr. Gideon to be working in?
 4 A No.
 5 Q You heard Mr. Hamilton testify to what I think was
 6 five occurrences that happened involving Mr. Gideon
 7 while he was employed there but while he was off of
 8 work during his term of employment while he was off
 9 of work. You heard him testify to those; didn't
 10 you?
 11 A Yes.
 12 Q He testified that he threw a purse down a flight of
 13 stairs, a women's purse?
 14 A Uh-huh.
 15 Q That he called a woman a bitch; yes?
 16 A (Whereupon, the witness nods his head.)
 17 Q You're nodding your head to both of these?
 18 A Yes, uh-huh.
 19 Q That he got violent with somebody who painted on
 20 his girl friend's windshield, you heard him testify
 21 to that?
 22 MS. MENDOZA: Objection, it
 23 mischaracterizes the testimony previously
 24 given.
 25 MR. ADLER: He'll tell me if I

1 MR. ADLER: She told me Gussie's and I
 2 said thank you.
 3 Q (By Mr. Adler) He got in a fight at Gussie's was
 4 what Mr. Hamilton testified to yesterday?
 5 A Yes.
 6 Q And Mr. Hamilton reported that the police showed
 7 up. We don't know if that's true or not; correct?
 8 A Showed up where?
 9 Q As a result of the brawl at Gussie's?
 10 A At Gussie's? I don't remember that.
 11 Q Did you know about any of those things prior to
 12 June 30th of '93?
 13 A No.
 14 Q Does that surprise you that Mr. Gideon was doing
 15 those type of things considering his past?
 16 A I was unaware that that was happening.
 17 Q Answer the question, please, and we'll get out of
 18 here a lot sooner.
 19 MS. MENDOZA: I think he's trying to
 20 answer your question.
 21 A What is the question?
 22 (Whereupon, the pending question was read
 23 back by the reporter.)
 24 A No.
 25 Q (By Mr. Adler) Did you ask anybody if he was doing

1 those type of things prior to June 30th of '93?
 2 A I had contact with law enforcement regularly and
 3 they had no information regarding him.
 4 Q Ask anybody else?
 5 A I had no notification from family or that incident
 6 of slapping someone never was relayed to me.
 7 Q Ask anybody else?
 8 A Mental health therapist never indicated that other
 9 problem.
 10 Q Did you ask anybody else?
 11 A No.
 12 Q What you're telling me is nobody volunteered it;
 13 correct?
 14 A Yes.
 15 Q Did you expect Mr. Gideon to come to his parole
 16 officer and say, "I just slapped a woman"?
 17 MS. MENDOZA: Objection, calls for the
 18 witness to speculate about what Mr. Gideon
 19 might or might not have been expected to do.
 20 A No.
 21 Q (By Mr. Adler) You said it didn't surprise you he
 22 had done those type of things; correct?
 23 A Yes.
 24 Q Why is that?
 25 A Well, I believe his history shows there was a

1 about them?
 2 A Yes.
 3 Q What would have been a darn good way to find out if
 4 he was having problems? What could you have done
 5 to know that Mr. Gideon was doing just fine? Could
 6 have gone and talked to Mr. Hamilton in detail;
 7 couldn't you?
 8 A (Whereupon, the witness nods his head.)
 9 MS. MENDOZA: Object, calls for the
 10 witness to speculate about what he might or
 11 might not have done.
 12 Q (By Mr. Adler) You just nodded your head; didn't
 13 you, sir?
 14 A I could have.
 15 Q You could have gone and talked to other employees
 16 at Hamilton's; couldn't you?
 17 MS. MENDOZA: Same objection.
 18 A (Whereupon, the witness nods his head.)
 19 Q (By Mr. Adler) Nodded your head again?
 20 A Could have.
 21 Q Anything in your job description or case load that
 22 prohibited you from contacting Mr. Hamilton or
 23 other employees at Hamilton's?
 24 MS. MENDOZA: Same objection.
 25 A No.

1 history of fighting and that kind of thing.
 2 Q Does that go with the rapist or is that something
 3 different in his history?
 4 A I think that was the history, I think that was
 5 juvenile, I believe.
 6 Q What were you doing to protect the public from this
 7 type of behavior, making sure he kept his job?
 8 A Yes.
 9 Q Anything else you were doing?
 10 A The things that I've indicated before.
 11 Q Nothing else?
 12 A No.
 13 Q And you're aware that people can get into some
 14 pretty big trouble and there not be any record of
 15 it with the police department; isn't there?
 16 Let me rephrase that, do some pretty bad
 17 things and there not be any record of it with the
 18 police department; aren't you?
 19 A I'm sure that happens.
 20 Q And that he may not -- someone can do a pretty bad
 21 thing and not go tell his mental health counselor
 22 about it; correct?
 23 A Yes.
 24 Q So you were aware that Mr. Gideon could have been
 25 doing some pretty bad things and you wouldn't know

1 Q (By Mr. Adler) Why is it that you weren't
 2 surprised about these five incidents but you were
 3 surprised about the rape?
 4 A I was surprised about the rape in that I had --
 5 what was it, it was after the disappearance of the
 6 girl is when I heard about it, you speak about
 7 surprise, that's what I'm speaking about.
 8 Q Explain that, I don't follow you.
 9 A I didn't follow what you were talking about, the
 10 surprise.
 11 Q You indicated you weren't surprised when you heard
 12 he had raped Stephanie Schmidt. I thought that's
 13 what you testified to.
 14 A I thought you were speaking of another incident.
 15 Q Let's get clear here.
 16 Were you surprised when you heard that Don
 17 Gideon had raped Stephanie Schmidt?
 18 A Yes.
 19 Q But you weren't surprised when you heard about
 20 these five episodes or incidents with Mr. Gideon
 21 we've just been talking about? You said that;
 22 didn't you?
 23 A Yes.
 24 Q Why did the five -- why did the rape surprise you
 25 but the five incidents didn't?

1 A I don't know.
 2 Q If you had known about the five incidents, would
 3 you have been surprised when you heard he raped
 4 Stephanie Schmidt?
 5 MS. MENDOZA: Objection, calls for the
 6 witness to speculate.
 7 A I don't know.
 8 Q (By Mr. Adler) If you'd heard about the five
 9 incidents, would you have done anything to restrict
 10 Mr. Gideon?
 11 MS. MENDOZA: Objection, calls for the
 12 witness to speculate.
 13 A Yes.
 14 Q (By Mr. Adler) What would you have done?
 15 A About which incident?
 16 Q You tell me on each one what you would have done.
 17 You heard he slapped a woman and called her a
 18 bitch.
 19 MR. ADLER: Did I get that right?
 20 MS. PEREZ: I'm not sure.
 21 Q (By Mr. Adler) Tell me the incidents each one and
 22 tell me what you would have done. You're finding
 23 this humorous, Mr. Schirk?
 24 A I cannot recall what incidents you're talking
 25 about, one by one.

1 A Yes.
 2 Q What type of restrictions -- if after your
 3 investigation you concluded that Mr. Gideon did all
 4 these things unprovoked, and it was inappropriate
 5 behavior, all five of them, what would you have
 6 done to him?
 7 MS. MENDOZA: Objection, calls for the
 8 witness to speculate.
 9 Q (By Mr. Adler) What would you have recommended be
 10 done to him, same objection?
 11 MS. MENDOZA: Same.
 12 A We would have pursued getting him off the street.
 13 Q (By Mr. Adler) Throw him back in prison?
 14 A Exactly, with assaulted behavior.
 15 Q Had you done that, Stephanie Schmidt would be alive
 16 today? She wouldn't have been killed by
 17 Mr. Gideon; correct?
 18 A Yes.
 19 MS. MENDOZA: Objection, calls for the
 20 witness to speculate.
 21 Q (By Mr. Adler) So, had you found out your parolee
 22 was being involved in these things, he would have
 23 been back in prison on June 30th of '93?
 24 MS. MENDOZA: Objection, calls for the
 25 witness to speculate.

1 Q Throwing a woman's purse down a flight of stairs.
 2 You heard about that. Would you have done anything
 3 to Mr. Gideon?
 4 A I would have found out what incident precipitated
 5 this and what was going on.
 6 Q Might be justifiable for him to throw a woman's
 7 purse down a flight of stairs?
 8 A Yes, I would hear his story about it, yes.
 9 Q And if he said, "Because" -- what could he have
 10 said to justify that to you?
 11 A I don't know.
 12 Q If you heard he slapped a woman, what would you
 13 have done to Mr. Gideon?
 14 MS. MENDOZA: Objection, calls for the
 15 witness to speculate.
 16 A I would try to verify that this incident occurred
 17 and take statements and discuss the incident with
 18 my supervisor and make a decision as to how to
 19 proceed.
 20 Q (By Mr. Adler) You heard he got in a fight at
 21 Gussie's, would you have done anything?
 22 A Yes.
 23 Q What?
 24 A Just exactly what I said.
 25 Q Same thing?

1 A Yes.
 2 Q (By Mr. Adler) Prior to June 30th of '93, were you
 3 aware that Mr. Gideon had told Bryant Hamilton that
 4 a woman told Mr. Gideon not to hurt him -- not to
 5 hurt her?
 6 A No.
 7 Q Never talked to Bryant Hamilton prior to June 30th
 8 of '93; huh, sir?
 9 A No.
 10 Q Were you aware that prior to June 30th of '93 he
 11 had told -- Don Gideon had told a women she had to
 12 have oral sex with him?
 13 A No.
 14 Q So I understand this correctly, you wouldn't have
 15 wanted your 20 year old daughter to be around Don
 16 Gideon on June 30th of '93 under any circumstances?
 17 MS. MENDOZA: Objection, asked and
 18 answered.
 19 Q (By Mr. Adler) Is that your answer?
 20 A Yes.
 21 Q Don Gideon being a rapist and his prior victim
 22 being a young woman, does that tell you that
 23 there's a certain group of people that are
 24 especially vulnerable to him?
 25 A (Whereupon the witness nods his head.)

1 Q You're nodding your head?
 2 A Yes.
 3 Q What group of people is that?
 4 A Young women.
 5 Q What do you mean by young women, what age range?
 6 A I don't know what age range.
 7 Q You just used the term young women, I want to know
 8 what you meant by it.
 9 A I would say from 15 to 20.
 10 Q Other than what we've talked about, did you do
 11 anything to protect that class of people?
 12 MS. MENDOZA: Objection, asked and
 13 answered.
 14 A No.
 15 Q (By Mr. Adler) What could you have done to be
 16 easier on Mr. Gideon?
 17 MS. MENDOZA: Objection, calls for the
 18 witness to speculate.
 19 Q (By Mr. Adler) What I'm trying to get at is I
 20 don't understand how you could have been any easier
 21 on a parolee than you were on Mr. Gideon.
 22 I want to know what you felt you did to try to
 23 prevent this crime. The conditions of his
 24 probation seem fairly standard to me of what you've
 25 told me to seek counseling and stay away from his

1 A This condition was added to his release.
 2 Q What percent of your felons have a condition of
 3 probation of your felons, not just sex offender
 4 felons, to go to mental health counseling, what
 5 percent?
 6 A I have no idea.
 7 Q Is it over 50?
 8 A I don't know.
 9 Q You don't have a clue? Might be 10 percent, sir,
 10 is that what you're telling me?
 11 A It might be.
 12 Q So to be milder, you could have -- you didn't have
 13 the power to remove those two conditions; did you?
 14 You couldn't do it if you wanted to; did you --
 15 could you?
 16 A No.
 17 Q Did you have the power to remove those two
 18 conditions?
 19 MS. MENDOZA: Objection, asked and
 20 answered.
 21 A There is a way to appeal for waiver of conditions,
 22 yes.
 23 Q (By Mr. Adler) And you added no conditions other
 24 than the two given to you by someone else?
 25 MS. MENDOZA: Objection, asked and

1 prior victim. Are those standard conditions of
 2 probation?
 3 A Those are the conditions that he was released
 4 under.
 5 Q Are those standard conditions of probation?
 6 MS. MENDOZA: Mr. Adler, please control
 7 your tone of voice?
 8 MR. ADLER: If you'd ask him to answer
 9 the question I wouldn't have to repeat it.
 10 A Those were not standard conditions. Those were the
 11 conditions that were added to his release.
 12 Q (By Mr. Adler) So ordinarily it's okay for people
 13 to go around their prior victims when they are
 14 released from prison?
 15 A That was -- in this case that was a stipulation of
 16 the Board.
 17 Q That's not normal? You'd let a convicted felon go
 18 around the victim when he got out of prison?
 19 A That happens, yes.
 20 Q And what about mental counseling --- mental health
 21 counseling, is that normal?
 22 A It was a condition that was added.
 23 Q Please answer the question.
 24 A What do you mean by normal?
 25 Q Was it routine?

1 answered.
 2 A No.
 3 Q (By Mr. Adler) What I said is true?
 4 MS. MENDOZA: Objection to the form of
 5 the question.
 6 A Yes.
 7 Q (By Mr. Adler) Were you reprimanded in any fashion
 8 as a result of the Don Gideon/Stephanie Schmidt
 9 situation?
 10 A No.
 11 Q Was any discussion with you about why you -- by
 12 anybody at the D.O.C. or the Parole Board why you
 13 did what you did?
 14 A No.
 15 Q And if I understand you correctly, if you had to do
 16 it over again, you'd do it the same way unless the
 17 state required you to do what they are now
 18 requiring you to do; is that correct?
 19 MS. MENDOZA: Objection, asked and
 20 answered.
 21 A Under the guidelines of the time, that's the way
 22 the case would have been, yes.
 23 Q (By Mr. Adler) If the guidelines hadn't been
 24 changed, you'd do it the same way tomorrow?
 25 MS. MENDOZA: Same objection.

1 A Yes.
 2 Q (By Mr. Adler) Is that yes?
 3 A Yes.
 4 Q How many rapes is it going to take for you to
 5 change that answer, sir?
 6 MR. SECK: This is getting argumentative
 7 and that is a crock.
 8 MS. MENDOZA: This is just crazy. Let's
 9 not carry on this way.
 10 Q (By Mr. Adler) Go ahead and answer the question.
 11 MR. SECK: I hope you're having fun.
 12 MR. ADLER: I'm not having the least bit
 13 of fun.
 14 MR. SECK: This is argumentative.
 15 There's no need --
 16 MR. ADLER: Do you have an objection,
 17 it's argumentative, okay, thank you.
 18 MS. MENDOZA: What was the question?
 19 Please repeat the question for the witness.
 20 (Whereupon, there was an off-the-record
 21 discussion, then the pending question was read
 22 back by the reporter.)
 23 MR. ADLER: He said, "I'll be glad to
 24 repeat it's a crock because it is."
 25 MR. SECK: I said it's a crock because

1 A Some of it could be in a classroom. Some of it are
 2 regular region meeting training sessions, things
 3 like that.
 4 Q I think you said you've been with the D.O.C. 12
 5 years, do you recall that?
 6 A Altogether 12 years.
 7 Q When were you employed before that?
 8 A I was working in Independence, Montgomery County.
 9 Q Why don't you give me your work history from when
 10 you got out of high school till today?
 11 A Worked -- you want everything, ever?
 12 Q (Whereupon, the witness nods his head.)
 13 A Okay. I worked at Peterson Manufacturing Company
 14 in Kansas City, Missouri for a summer after I
 15 graduated from high school. I entered the Marine
 16 Corps in September after --
 17 Q Give me the year you graduated high school.
 18 A 1968. I was in the Marine Corps and completed that
 19 in November of '69.
 20 Q So how long was that in the Marine Corps?
 21 A 13 months.
 22 Q Honorable discharge?
 23 A Yes.
 24 Q Go on.
 25 A I worked for F.O. Doty (ph) and Sons as a laborer

1 there's no need for you to be rude to the
 2 witness.
 3 Q (By Mr. Adler) Go ahead and answer the question.
 4 MS. MENDOZA: I've indicated that to you
 5 previously.
 6 MR. ADLER: You've indicated what?
 7 MS. MENDOZA: That you do not need to
 8 carry on in the tone of voice that you're
 9 carrying on in. We can all be adult and we
 10 can all be professional.
 11 I understand it's a sensitive case but we
 12 do not need this here. If we're going to
 13 carry on like this, we'll conclude the
 14 deposition and we'll all come back at a later
 15 time.
 16 Q (By Mr. Adler) Go ahead and answer the question.
 17 A I don't know.
 18 Q What is your professional training?
 19 A I've completed a Department of Corrections 200 hour
 20 basic training course and I've sustained at least
 21 40 hours of training per year while employed,
 22 annually.
 23 Q Is that a requirement?
 24 A Yes.
 25 Q And is that in a classroom?

1 while going to P.S.U. I worked that full time and
 2 part time. Went to work for the Crawford County
 3 Sheriff's Department in 1971, I believe, or '72,
 4 '72. I worked for them for two years as a deputy
 5 sheriff.
 6 Q Full time?
 7 A Yes. I quit that job and went to Wichita State
 8 University and finished my degree out there. I
 9 worked -- while I was out there I worked some
 10 part-time jobs to supplement home income.
 11 Completed my degree --
 12 Q What degree?
 13 A Administration of justice.
 14 Q That's an undergraduate degree?
 15 A Right.
 16 Q P.S.U.?
 17 A At Wichita State. I had, I think, 12 hours of
 18 graduate work. I got a job at Olathe Police
 19 Department.
 20 Q Let me interrupt, 12 hours of graduate work in
 21 what?
 22 A In administration of justice.
 23 Q At Wichita State?
 24 A Yes, I worked for a very short time at the Olathe
 25 Police Department.

Q Olathe Police Department?

A Olathe, yes. I just did not like it at all and we moved back to Pittsburg and I went to work as an assistant manager for Sherwin Williams, retail store there in Pittsburg.

In March of 1977 I went to work for the Department of Corrections at the Independence parole office as a parole officer.

Q The Independence, Kansas parole office?

A Independence, Kansas, yes.

Q What did you start as, a parole officer?

A Yes.

Q And you've maintained that position for the 12 years?

A I worked there for two years and went to work for the 14th Judicial District as the Chief Court Service Officer. There was a new agency formed called Court Services and I worked for them for a short time, six months, I believe is what it was, and I did not like the situation there and I quit that job, and from there I did some construction work around Independence for myself, and then eventually I came and March of 1985 went back to work for the Department of Corrections at Pittsburg parole office.

A Surprised, yes.

Q You were surprised by Stephanie's rape?

A I was surprised by both. Both incidents, I thought you were talking about that other incident coming to light.

Q On the employment history, if I understand it, you had 12 years but it was interrupted with the D.O.C.?

A Right.

Q And you had, I think you said, four years with Court Appointed Services?

A No, I was with Court Services for six months at the time of the implementation of that agency in Independence.

Q But there was something else with the gap. You said it was a four-year gap?

A Right, after that we were still living in Independence and I was doing construction on my own, you know, part-time work, that kind of thing.

Q So you have roughly 12 and a half years in social services?

A Right.

Q And you've always been a parole officer?

A Probation officer.

Q Probation and parole or is it just called

Q How long was the gap in the employment, roughly?

A Must have been about four years.

(Whereupon, a break was taken at this time.)

Q (By Mr. Adler) Had you completed your employment history before we took the break?

A Yes, I believe that's where we are today.

Q Is your degree a BA or BS?

A BS.

Q That's the only degree you have?

A Yes.

MS. MENDOZA: I'm sorry to interrupt you.

Mr. Schirk told me during the break that he thinks that you were talking at cross purposes back when you were talking about being surprised about a rape, and he has indicated -- if you want to tell him what you're confused or what you thought to make sure we're clear on the record here.

Q (By Mr. Adler) That's good.

A When you mentioned that I thought you were talking about the other incident that came to light.

Q The April '93 rape?

A Yes, that's what I thought you were speaking of.

Q So you're talking about whether you were surprised?

probation?

A We used to be called probation and parole officers, now we're called parole officers.

Q What type of parole officer, is there a certain level, a I or a II or anything like that?

A I'm a Parole Officer I.

Q Is that the lower level or higher level?

A Lower level.

Q And Mr., I forgot his name, Farmer, was he a Parole Officer II?

A Yes.

Q And yours is Roman Numeral I?

A (Whereupon, the witness nods his head.)

Q And you indicated that you felt young women were particularly at risk with respect to Mr. Gideon; correct?

MS. MENDOZA: Objection, asked and answered.

A Yes.

Q (By Mr. Adler) Anything else more specific such as young women he worked with?

A I wouldn't draw that distinction even.

Q You would or wouldn't?

A I wouldn't.

Q You didn't think women he worked with were any more

1 suspect than women at large, if you will?
 2 A Yes.
 3 Q Was his prior -- what was his relationship with his
 4 prior victim?
 5 A It was just someone he met at a party and got to
 6 know like, the way I remember it, it was one
 7 evening and they ended up going out together alone.
 8 Q And the April '93 incident which you didn't know
 9 about on June 30th of '93 --
 10 A No.
 11 Q -- what type of victim was that?
 12 A I don't know.
 13 Q Was he the type who raped people he knew or did he
 14 rape strangers?
 15 MS. MENDOZA: Objection, calls for the
 16 witness to speculate.
 17 A The history shows it's people he knew.
 18 Q (By Mr. Adler) And you would know your
 19 co-employees; would you not?
 20 A Yes.
 21 Q So doesn't it follow that young women who he worked
 22 with were a particular class that was very highly
 23 at risk?
 24 MS. MENDOZA: Objection, calls for the
 25 witness to speculate.

1 A I don't know.
 2 Q So it's your testimony that you didn't think you
 3 needed any particular restrictions to protect young
 4 women he worked with any more than you would have
 5 to protect the general public with respect to
 6 Mr. Gideon?
 7 MS. MENDOZA: Objection, asked and
 8 answered.
 9 A Yes.
 10 Q (By Mr. Adler) Would you say that nobody in the
 11 public should be with -- from the time Mr. -- let
 12 me start over.
 13 During the time Mr. Gideon was on parole, did
 14 you feel it would be inappropriate for him to be
 15 around anybody in the public?
 16 A No.
 17 Q You obviously felt it was okay for him to be in the
 18 public because you let him do that?
 19 A Sure.
 20 Q Right?
 21 A Sure.
 22 Q You wouldn't allow your young daughter to be around
 23 him; correct?
 24 MS. MENDOZA: Objection, asked and
 25 answered. Please.

1 A (Whereupon, the witness nods his head.)
 2 Q (By Mr. Adler) You're nodding your head yes?
 3 A Yes, that could be.
 4 Q Did you consider the women he worked with more at
 5 risk or highly at risk?
 6 MS. MENDOZA: Objection, calls for the
 7 witness to speculate.
 8 MR. ADLER: Let me rephrase the question
 9 and your objection will be noted in this
 10 question.
 11 Q (By Mr. Adler) The young women he worked with were
 12 highly at risk?
 13 MS. MENDOZA: Same objection.
 14 A I did not draw that distinction.
 15 Q (By Mr. Adler) And why is that?
 16 A I would say with his history and the crime that he
 17 committed, you would be looking at young women in
 18 general.
 19 Q Were the young women he worked with more at risk
 20 than the general public?
 21 MS. MENDOZA: Objection, speculation.
 22 A I don't know.
 23 Q (By Mr. Adler) You don't think the young women he
 24 worked with were more at risk than the general
 25 public?

1 Q (By Mr. Adler) Correct?
 2 A I would not want her around him.
 3 Q So you've drawn a distinction between young women
 4 and the general public; correct?
 5 A Yes.
 6 Q And you wouldn't want your 20 year old daughter to
 7 work with him; would you?
 8 MS. MENDOZA: I think we've been through
 9 all this, objection.
 10 A I wouldn't.
 11 Q (By Mr. Adler) And why is that?
 12 MS. MENDOZA: Same objection.
 13 A Because my personal concern for my daughter.
 14 Q (By Mr. Adler) And you wouldn't want her to get
 15 close to him, correct, in a relationship, in a
 16 friendship; correct?
 17 A Yes.
 18 Q Because that's when he rapes; correct?
 19 MS. MENDOZA: Objection, calls for the
 20 witness to speculate.
 21 A That's what the history shows, yes.
 22 Q (By Mr. Adler) That he rapes young women he knows?
 23 MS. MENDOZA: Asked and answered,
 24 objection.
 25 Q (By Mr. Adler) Correct?

1 A Yes.

2 Q Such as co-employees?

3 MS. MENDOZA: Same objection.

4 Q (By Mr. Adler) Correct?

5 A Yes.

6 Q Was there any policy in effect at the Kansas

7 Department of Corrections at the time Mr. Gideon

8 was paroled that required employer notification of

9 his history?

10 A No.

11 Q Not for any particular class of people?

12 A No.

13 MS. MENDOZA: I'm sorry, are you talking

14 about a written policy?

15 MR. ADLER: I'm talking about any, verbal

16 or written.

17 A No.

18 Q (By Mr. Adler) Let me clarify I'm understanding

19 you and you'll probably object it's been asked and

20 answered but I'm confused.

21 You're saying there was no verbal or written

22 policy at the time Mr. Gideon was released that

23 would require you to notify an employer of

24 Mr. Gideon's under any circumstances? Is that your

25 testimony?

1 Answer if you can.

2 A I don't know.

3 Q (By Mr. Adler) Is there a policy to notify

4 landlords? Is there a policy to notify anybody

5 besides employers?

6 A Yes.

7 Q Who else do you have to notify?

8 A There's also a third party notification policy that

9 if a circumstance arises where an officer feels

10 there should be concern for a third party or a

11 third party should warrant notification, there is a

12 new policy to do that.

13 Q And would that be the situation of a Donald Gideon

14 to notify a Tom Hamilton today?

15 A Sure, yes.

16 Q In writing?

17 A Yes.

18 Q And there was no policy to do that verbally or

19 anything at the time of Mr. Gideon's release; is

20 that correct?

21 A No.

22 Q Was there any policy in effect that if a

23 determination -- at the time Mr. Gideon was

24 released, was there a policy in effect that if you

25 made a determination that a certain third party was

1 A Notify them of his criminal history?

2 Q Correct.

3 A No, I don't believe there was.

4 Q Notify them of anything about him? Was there any

5 policy requiring you to do that?

6 A No.

7 Q And why is it that these policies are to notify

8 employers and not landlords and teachers and dorm

9 superintendents, whatever they are called, why do

10 they notify employers?

11 MS. MENDOZA: Objection, calls for the

12 witness to speculate about the purpose any

13 such policy would be enacted or the reason the

14 policy was enacted.

15 Q (By Mr. Adler) Go ahead and answer the question.

16 A Are you speaking of the new policies?

17 Q No -- yes, I am.

18 MS. MENDOZA: Let's break it down.

19 Q (By Mr. Adler) The policy in effect now you say

20 requires -- the policy in effect now requires

21 employers to get mandatory written notification of

22 sex offenders. Why is it only to employers?

23 MS. MENDOZA: Objection, calls for the

24 witness to speculate about the purpose for

25 which the policy was enacted.

1 at risk that you had to notify employers?

2 A I don't -- no, I don't believe so.

3 Q Was there anything in your -- I forgot what you

4 called it, when you came up with your supervisor's

5 plan or whatever you called it where you had to

6 make any determination in November of '92, whether

7 there was a third party at risk, is that part of

8 your plan?

9 A I don't believe it was.

10 Q In general, I'm not talking about Mr. Gideon, was

11 that part of your process to prepare a supervision

12 plan?

13 A I don't believe so.

14 Q With respect to Mr. Gideon, did you make -- when he

15 was released, did you make any effort to determine

16 whether you thought there was a particular group of

17 people that were at risk with him?

18 A No.

19 Q Do you know who a Robert Harrison is?

20 A With Kansas Department of Corrections?

21 Q Yes.

22 A Yes.

23 Q What's his position there?

24 A I don't know what it is right now.

25 Q It's above you?

1 A Yes.
 2 Q More than one level?
 3 A Yes.
 4 Q Is he the head of the Kansas Department of
 5 Corrections?
 6 A Parole Services at one time.
 7 Q Is he still there?
 8 A No.
 9 Q Are you aware of the fact that he's indicated to
 10 the Kansas City Star -- let me rephrase that.
 11 There's an article in the Kansas City Star in
 12 which it's reported that Mr. Harrison says, quote,
 13 Kansas also would notify employers on a case by
 14 case basis if a parole officer determined there was
 15 a third party risk.
 16 Is that an accurate statement by Mr. Harrison
 17 at the time Mr. Gideon was released?
 18 A That would be, yeah, that would be a discretionary
 19 unwritten policy, I believe.
 20 Q So you say it wasn't a policy but it was a
 21 discretionary move by the parole officer?
 22 A Yes.
 23 Q So you could have determined if there was a third
 24 party at risk with respect to Mr. Gideon and then
 25 decided to notify his employer?

1 that determination?
 2 A I would say that was discretionary.
 3 Q You didn't think it was an unwritten policy that
 4 you had to consider whether there was a third party
 5 at risk at the time Mr. Gideon was released?
 6 MS. MENDOZA: Object to the form of the
 7 question. It's vague and ambiguous.
 8 Answer it if you can.
 9 A You want to rephrase that?
 10 MR. ADLER: Let me reword it. She thinks
 11 it's vague and ambiguous. Maybe it is.
 12 Q (By Mr. Adler) Did you feel at the time Mr. Gideon
 13 was released that you had -- that there was an
 14 unwritten policy that you had to make a
 15 determination whether there was a third party at
 16 risk?
 17 A No.
 18 MS. MENDOZA: Same objection.
 19 Q (By Mr. Adler) You didn't think there was such an
 20 unwritten policy?
 21 A I thought you --
 22 MS. MENDOZA: Do you understand his
 23 question?
 24 THE WITNESS: No, I don't. I don't
 25 understand.

1 A Yes.
 2 Q But you didn't make the determination that there
 3 was a third party at risk so you didn't notify his
 4 employer; correct?
 5 A Correct.
 6 Q But you're saying this wasn't a policy?
 7 A Maybe -- I believe it's an unwritten policy, I
 8 believe, is what he's talking about.
 9 Q So it's a policy but it's not in writing or it was
 10 a policy but it wasn't in writing?
 11 A I believe so.
 12 Q You didn't follow this policy, if I'm understanding
 13 you correctly?
 14 A Well, it was -- I believe it was a discretionary
 15 thing with an officer.
 16 Q It was discretionary whether you should notify the
 17 employer because you thought a third party was at
 18 risk but it wasn't discretionary whether you should
 19 follow a policy; was it?
 20 A I don't understand what you're getting at.
 21 Q What was discretionary?
 22 A For the officer to make a determination that
 23 someone should be notified.
 24 Q But was it discretionary whether he should attempt
 25 to make the determination or did he have to make

1 Q (By Mr. Adler) We're not connecting apparently.
 2 A Yeah.
 3 Q The way I'm understanding this, and correct me if
 4 I'm wrong, it's discretionary whether you think
 5 there's a third party at risk; right?
 6 A Yes.
 7 Q But it's not discretionary whether you have to make
 8 that determination, whether you have to consider
 9 the possibility; is that correct?
 10 A I think it's discretionary to make that
 11 determination. You can make a determination case
 12 by case.
 13 Q I understand. The decision of whether there's a
 14 third party at risk is discretionary; right?
 15 A Yes.
 16 Q But whether you have to consider whether there's a
 17 third party at risk is not discretionary; is it?
 18 MS. MENDOZA: Objection, I think you're
 19 asking him to make some kind of conclusion
 20 about what the policy actually required.
 21 MR. ADLER: That's correct, I am.
 22 A Well, then, I must not be familiar with that part
 23 of the policy. I can't make an answer about it.
 24 Q (By Mr. Adler) Did you understand the unwritten
 25 policy to require you to consider whether there was

1 a third party at risk situation?
 2 A I'm -- I'm sorry, I just don't understand what
 3 you're trying to say.
 4 Q There was an unwritten policy you just referred to;
 5 correct?
 6 A Yes.
 7 Q What did the unwritten policy provide?
 8 A Provided that a parole officer had the discretion
 9 to notify a certain people, certain third parties
 10 if he felt the need.
 11 Q Was it required that you assess or attempt to
 12 determine whether there was a third party at risk?
 13 A I don't believe so.
 14 (Whereupon, there was an off-the-record
 15 discussion.)
 16 Q (By Mr. Adler) Give me your full name. I don't
 17 think I've ever gotten your middle name?
 18 A Robert David Schirk.
 19 Q And your date of birth and Social Security number?
 20 A 6-1 of '50, 512-52-1272.
 21 Q And where do you currently reside?
 22 A 909 East 11th, Pittsburg, Kansas.
 23 Q How long have you lived there?
 24 A Seven years.
 25 Q And where did you live before that?

1 A Since 1985.
 2 Q What does she do there?
 3 A She is -- now she is, I can't remember her title.
 4 It's something like Coordinator of Risk Management.
 5 Q What is her area that she works in? You work in
 6 social services, what type of stuff does she do?
 7 A She deals with administration in the hospital
 8 relating to all types of problems.
 9 Q Do you have any children?
 10 A Yes.
 11 Q How many and their ages and names and all that
 12 stuff.
 13 A Our oldest is Brian, he is 21; Casey, 19; Lynn is
 14 16.
 15 Q And any of them working currently?
 16 A No, they are not. The boys are in college and Lynn
 17 is in high school.
 18 Q Are they living at home?
 19 A No, two boys at K-State and K.U.
 20 Q They come home for the summer?
 21 A Yes.
 22 Q Have you ever been convicted of a misdemeanor or
 23 felony?
 24 A No.
 25 Q Have you ever been sued before?

1 A 303 East Hudson, Pittsburg, Kansas.
 2 Q How long have you lived in Pittsburg?
 3 A This time since 1985.
 4 Q And prior to that what was the span in Pittsburg,
 5 what years, roughly?
 6 A '85 to current and then prior to that was from '77
 7 to '85 in Independence and prior to that we lived
 8 in Pittsburg, prior to that Wichita.
 9 Q Are you married?
 10 A Yes.
 11 Q Your wife's name?
 12 A Terry Lynn Schirk.
 13 Q How long have you been married?
 14 A 24 years.
 15 Q I'm sorry?
 16 A 24 years.
 17 Q And is this your only wife?
 18 A Yes.
 19 Q Are you her only husband?
 20 A Yes.
 21 Q Ever?
 22 A Yes.
 23 Q Where does she work?
 24 A Mt. Carmel Medical Center.
 25 Q And how long has she worked there?

1 A No.
 2 Q Have you ever testified in court before?
 3 A Yes.
 4 Q Have you ever given your deposition before?
 5 A Yes.
 6 Q Have you ever testified in a case in which the
 7 Kansas Department of Corrections was a defendant?
 8 A No.
 9 Q What were the circumstances -- how many times have
 10 you testified in court before?
 11 A Probably 20 to 25, something like that.
 12 Q Were those probation parole revocation hearings?
 13 A Many of them.
 14 Q Anything other than that?
 15 A I don't believe so.
 16 Q Ever testify in a case in which the State of Kansas
 17 was a defendant?
 18 A No.
 19 Q Or the Kansas Parole Board?
 20 A No.
 21 Q Do you have any materials from any of your training
 22 that you've retained? You know you go to these
 23 seminars you've told us all about, do you have any
 24 of those books and manuals upon which you were
 25 trained?

1 A Yes.
 2 Q And where do you keep those?
 3 A I have a file in my desk.
 4 Q Are there notebooks that you get at some of these
 5 seminars?
 6 A Some may be notebooks, some may be just a type of
 7 certificate of attendance and completion, some of
 8 them are not in the file. It is not a complete
 9 file.
 10 Q But you do maintain some at your office?
 11 A Yes.
 12 Q Are there some at your home as well?
 13 A I don't believe so.
 14 Q Is there any particular book, manual or material or
 15 author upon which you rely?
 16 A No.
 17 Q How about this Field Service Order Manual?
 18 A Okay, yes.
 19 Q Anything other than that?
 20 A I thought you were talking about training things.
 21 Those are the parole field order guidelines, yes.
 22 Q This Parole Service Order Manual is what you're
 23 referring to?
 24 A Yes.
 25 Q Is there anything else you rely or use on a monthly

1 A Personally I just change them out, just move them
 2 and discard the other one.
 3 Q So where would I be able to get the policies that
 4 were in effect in 1992? Who would have that?
 5 A I don't know. I would say probably central office.
 6 Q Which is where?
 7 A In Topeka.
 8 Q And who is in charge of that office?
 9 A Chris Rieger.
 10 Q How do you spell Rieger?
 11 A R-i-e-g-e-r.
 12 Q Who sends you the updates? Is it Chris Rieger or
 13 somebody else?
 14 A They come through the central office, yes, I'm not
 15 familiar with who exactly puts them in the mail.
 16 They are signed off by Secretary of Corrections.
 17 Q Are you aware that we filed a document request upon
 18 you through your attorney on December 13, '94
 19 that's asked you to produce quite a few documents?
 20 A I'm sure that -- I'm sure that legal counsel was
 21 aware of that.
 22 Q I'm asking if you're aware.
 23 A I believe so.
 24 Q Have you reviewed any document request to determine
 25 if we have all the documents we requested, if

1 -- at least once a month in your work besides this
 2 manual?
 3 A Yes, there are other things used regularly.
 4 Q What are the names of these manuals?
 5 A There's a new manual that we just started in April
 6 regarding called BI Profile Plus Reporting
 7 Guidelines and it has to do with the use of a
 8 contracted agency who is collecting supervision for
 9 us and there's a lot of bookkeeping process
 10 involved in that and that's one thing I can think
 11 of.
 12 Q Try to think of some more. I want to know what
 13 there are.
 14 A I can't recall others right now.
 15 Q Would there be any problem with you letting us look
 16 at these books? Is there anything in there we
 17 shouldn't see?
 18 A No.
 19 Q Were there any different books in effect in
 20 November of '92 that are no longer used?
 21 A Well, the policies are changed regularly.
 22 Q And what do you do when it's changed? Do you keep
 23 the old book and the new or do you pull out the
 24 old? Tell me what you do when the policies are
 25 changed.

1 you've given them to your attorney?
 2 A I don't know.
 3 Q Are you aware we sent Interrogatories to you, I
 4 believe it was in December, that haven't been
 5 answered?
 6 A No.
 7 Q Have you ever seen those?
 8 A I'm not sure. If you want to show them to me.
 9 Q Here's the document request. Sorry.
 10 MS. MENDOZA: Please don't just toss
 11 things. Can you hand them nicely.
 12 A I'm not familiar with those.
 13 Q (By Mr. Adler) You haven't seen either of those?
 14 A I don't believe so.
 15 Q Are you aware that we were provided with a copy of
 16 your Field Service Order Manual?
 17 A I think I was told that, yes.
 18 Q Do you know how it is that we got this? Was this a
 19 copy of yours? Was another copy pulled off a
 20 shelf?
 21 A I don't know.
 22 MR. ADLER: Do you know how this came
 23 about?
 24 MS. MENDOZA: We copied the one that's
 25 maintained in our legal section and sent it to

1 you.
 2 (WHEREUPON, DEPOSITION EXHIBIT NO. 3 WAS
 3 MARKED FOR IDENTIFICATION.)
 4 Q (By Mr. Adler) Can you tell me where in this
 5 manual there are the third party notification to
 6 employer documents that you've testified to that
 7 currently exist? Would you show those to me in
 8 there? We've added the post-its. I'll represent
 9 that to you.
 10 A Have you marked them any place?
 11 Q All we've done is add the post-its. These ones
 12 here were loose just like they are. Only thing
 13 we've added is the post-its.
 14 MR. ADLER: Lisa, do you have your copy
 15 with you?
 16 MS. MENDOZA: Is it 3.105, Bob?
 17 THE WITNESS: Yes.
 18 MS. MENDOZA: Is it behind that?
 19 THE WITNESS: Yes, 3.106 is --
 20 MR. ADLER: Can I see yours while he's
 21 doing that?
 22 MR. SECK: You can hand him mine which is
 23 right there on the floor.
 24 MS. MENDOZA: Just a second here.
 25 THE WITNESS: It's noted in the contents

1 there.
 2 MS. MENDOZA: Objection, calls for
 3 Mr. Schirk to speculate about why anything is
 4 in the document that he did not provide to
 5 you.
 6 MR. ADLER: Can you explain it to me,
 7 please?
 8 MS. MENDOZA: I've just indicated I don't
 9 know why it isn't in there. Apparently it was
 10 not copied for you.
 11 Q (By Mr. Adler) Do you have a copy with you today
 12 of 3.105?
 13 MS. MENDOZA: That's what I'm looking
 14 for. Yes, as a matter of fact, I do.
 15 MR. ADLER: Where have you located that?
 16 MS. MENDOZA: Wait a minute. This isn't
 17 a notebook that I have. It just has separate
 18 documents of my own that I've been gathering.
 19 MR. ADLER: There's not one in the copy I
 20 was provided, not one in the copy you brought
 21 and there's not one in Mr. Seck's of a
 22 critical document dealing with the third party
 23 notification procedures; is there?
 24 MS. MENDOZA: Apparently not and your
 25 tone of voice is not appreciated.

1 as 3.105.
 2 MS. MENDOZA: Are they missing? Is that
 3 what you're telling me?
 4 MR. ADLER: I don't know what the manual
 5 looks like, ma'am. Maybe I should say what
 6 the manual should look like.
 7 MS. MENDOZA: And that should be the -- I
 8 think you're missing one, for which I would
 9 apologize.
 10 MR. ADLER: Pretty important one.
 11 MS. MENDOZA: It was put into effect last
 12 year.
 13 MR. ADLER: Your book has 3.105 and ours
 14 does not. Actually yours doesn't have 3.105.
 15 MS. MENDOZA: Mine doesn't.
 16 MR. SECK: I think it's in there, just
 17 not numbered.
 18 MR. ADLER: I don't see it in anywhere.
 19 MR. SECK: You're talking about the third
 20 party notification?
 21 Q (By Mr. Adler) The third party document that deals
 22 with the third party notification is not in ours;
 23 is it, Mr. Schirk?
 24 A I don't see it.
 25 Q I'd like an explanation as to why it's not in

1 MR. ADLER: It's not appreciated that I
 2 wasn't given a pretty important document in
 3 response to a document request.
 4 MS. MENDOZA: Well, sir, if you want to
 5 carry on with this privately, then we can do
 6 so, but we're not going to carry on on the
 7 record about a document request he doesn't
 8 know anything about and he already testified
 9 he doesn't know about.
 10 MR. ADLER: Then I'll deal with you on
 11 it, where was it?
 12 MS. MENDOZA: Fine, off the record.
 13 MR. ADLER: I want it on the record. I
 14 want to know why I wasn't given a document
 15 prior to this deposition.
 16 MS. MENDOZA: I indicated to you
 17 previously, I don't know that, and I've also
 18 indicated to you previously yesterday that I
 19 only just took over this case, that I knew
 20 that there was outstanding discovery, and that
 21 I would provide it to you as soon as possible,
 22 and if the record will reflect, my tone is
 23 getting a little hostile as well and we've
 24 gone over this and I am offering to provide
 25 this document to you right now.

1 MR. ADLER: I'd certainly like it.
 2 MS. MENDOZA: We will take a break and
 3 we'll get a copy.
 4 MR. ADLER: I don't see any reason for a
 5 break. Let me --
 6 MS. MENDOZA: Mr. Seck is entitled to
 7 have a copy of the document right now.
 8 MR. ADLER: Fine, let's use it right now
 9 as an exhibit.
 10 MS. MENDOZA: We're going to make a copy
 11 of it.
 12 MR. ADLER: Go run a copy.
 13 (WHEREUPON, PLAINTIFFS' EXHIBIT NO. 3-A
 14 WAS MARKED FOR IDENTIFICATION.)
 15 Q (By Mr. Adler) I'm going to hand you a document
 16 that's been identified had as Exhibit 3-A,
 17 Plaintiffs' Exhibit 3-A.
 18 Is that the document that was not in the
 19 manual that I was provided and that your attorney
 20 has just provided us this morning that refers to
 21 notification to third parties?
 22 A Yes, I believe so.
 23 Q And Mr. Seck did not have that document as well?
 24 A Yes.
 25 Q Do you have any explanation as to why that wasn't

1 I ask you please not to do that.
 2 Q (By Mr. Adler) Did it cause you any problem when I
 3 handed that to you, Mr. Schirck?
 4 A No.
 5 Q Thank you. Is that the -- could you answer the
 6 question now?
 7 A Yes.
 8 Q The answer to the question is yes?
 9 A Yes.
 10 Q And these are the sex crimes that is now required
 11 by the Kansas D.O.C. for a parole officer to notify
 12 employers of in writing?
 13 A Right.
 14 Q Is rape on there?
 15 A Yes.
 16 Q And is sodomy on there?
 17 A Yes.
 18 Q Are there any crimes on there that aren't sex
 19 crimes?
 20 A No.
 21 Q Is bank embezzler on there?
 22 A No.
 23 Q Is child molester on there?
 24 A Yes.
 25 Q Because -- is child molester a sex crime?

1 in the manual I was given?
 2 A No.
 3 MR. ADLER: Do you, Lisa?
 4 MS. MENDOZA: I've indicated I don't know
 5 and I've already apologized for that.
 6 MR. ADLER: I understand.
 7 Q (By Mr. Adler) Is that the field service order
 8 pertaining to notification of third parties that's
 9 currently in effect by the Kansas Department of
 10 Corrections you testified about earlier this
 11 morning?
 12 A Yes.
 13 Q That's the one that came about as a result of the
 14 Schmidt/Gideon incident, question mark, end of
 15 sentence, is that?
 16 A I believe so.
 17 Q This has -- sets forth the requirements you
 18 testified about this morning?
 19 A Yes.
 20 Q And on the seventh page it has certain crimes in
 21 which there's mandatory notification to employers;
 22 correct?
 23 MS. MENDOZA: I want the record to
 24 reflect that you just tossed the document at
 25 him. I'd asked you not to do that before and

1 A Yes.
 2 Q And there's a form right after that page that's
 3 actually the form you fill out to send to the
 4 employer; correct?
 5 A Yes.
 6 Q And the next form is -- you said on here that the
 7 employer acknowledges receipt of this. How does he
 8 do that, this page?
 9 MS. MENDOZA: What page are you referring
 10 to?
 11 MR. ADLER: It's the second to the last.
 12 MS. MENDOZA: Attachment B?
 13 THE WITNESS: B.
 14 MR. ADLER: Yes.
 15 A Attachment C is the actual one that is for employer
 16 acknowledgement.
 17 Q (By Mr. Adler) But it said up there, offender to
 18 employer which sounds to me like Donald Gideon
 19 would be sending this to Tom Hamilton. That's the
 20 way I interpret this.
 21 A Right, this would be filled out and the client
 22 would take it to the employer.
 23 Q Where on these forms, Attachment B and C or
 24 anywhere in this Exhibit 3-A, does it have the
 25 employer acknowledge he got receipt?

1 A At the bottom.
 2 Q At the bottom of Attachment C?
 3 A Yes.
 4 Q Okay, the way I understood you was he acknowledges
 receipt of your notice but you're telling me he
 6 acknowledges receipt of the offender's notice; is
 7 that correct?
 A Yes.
 9 Q Do you have any way of knowing whether the offender
 perhaps -- is there any safeguard to know whether
 the offender forged the employer's signature?
 12 A At that point, as I remember the parole officer is
 supposed to check back with the employer by
 telephone or in person and verify it.
 15 Q And that's what you do?
 A Yes.
 Q I'd like you to show me in that manual where
 18 there's the supervision standards that are
 currently in effect, and I'll point out to you what
 I see is 3.101 in the table of contents as
 21 supervision standards.
 22 Are the supervision standards in that book
 that was produced to me by your attorney?
 24 A Right here.
 25 MS. MENDOZA: The pink?

1 on, what the difference is in the 3.101s? There's
 2 two 3.101s, two different 3101s is what I'm trying
 3 to say.
 4 I'll point out to you if it helps any this has
 5 an effective date of 1-4-93 and this has an
 6 effective date, the one in the book -- let me make
 7 the record clear.
 8 Exhibit 4 has an effective date of 1-4-93 and
 9 Exhibit 3, the pages you've initialed that are pink
 10 has an effective date of 4-1-95. Does that help
 11 you answer my question?
 12 A Yes, you're asking what the difference is in them?
 13 Q Yes.
 14 A I would have to review them and look at it.
 15 Q I don't mean by content, I mean what I'm presuming,
 16 and tell me if I'm wrong, that Exhibit 4 was the
 17 prior one and it was superseded by this, am I
 18 correct?
 19 A That's right.
 20 Q This was the policy, Exhibit 4, pertaining to it
 21 was your field service order and supervision
 22 standards that were in effect at the time
 23 Mr. Gideon was on parole; correct?
 24 A I believe so.
 25 Q Exhibit 4 is. What does it say on the second page

1 A Yeah, it's a memo update.
 MS. MENDOZA: Policy memorandum 95-003.
 Q (By Mr. Adler) Is there a service order for that?
 4 MS. MENDOZA: That is.
 Q (By Mr. Adler) You're telling me these pink pages,
 would you please -- I'd like you to place your
 7 initials at the bottom of the pages that you say
 constitute 3.101 with my pen right there, put your
 initials and date it.
 10 A (Whereupon the witness complies.)
 Q (By Mr. Adler) Are you initialing and dating?
 (WHEREUPON, PLAINTIFFS' EXHIBIT NO. 4 WAS
 13 MARKED FOR IDENTIFICATION.)
 Q (By Mr. Adler) Are you done?
 A Yes, sir.
 16 Q I'm going to hand you what's been marked as Exhibit
 4, can you identify that for me?
 MS. MENDOZA: I just want it on the
 19 record again you tossed it at him and I think
 that reflects some disrespect in how you are
 handling this. Please.
 22 A It's a field service order 3.101 effective dated
 1-4-93.
 Q (By Mr. Adler) Do you know how that squares with
 25 these documents you've just placed your initials

1 under policy, Roman Numeral V, Part A, your primary
 2 objective is?
 3 A Primary objective of supervising offender in the
 4 community shall be to protect the public.
 5 Q Is that what you understood it to be at the time
 6 Mr. Gideon was on parole?
 7 A Yes.
 8 Q Is there anywhere in the policy where it says an
 9 objective is to make sure he maintains his
 10 employment?
 11 A No.
 12 MS. MENDOZA: Did you review the whole
 13 document?
 14 THE WITNESS: He was talking about --
 15 MS. MENDOZA: Just talking about the
 16 policy?
 17 Q (By Mr. Adler) I was just talking about the
 18 policy.
 19 MS. MENDOZA: The entire policy or just
 20 the policy section Roman Numeral V?
 21 MR. ADLER: The later, Roman Numeral V
 22 was all the question was meant to inquire.
 23 Q (By Mr. Adler) Is that correct, your answer is the
 24 same? Is there any place in there in Roman Numeral
 25 V where it's part of the policy to make sure the

1 parolee keeps his employment?
 2 A Part B pertains to that.
 3 Q How is that?
 4 A Parole officer shall use supervision techniques
 5 which promote the offenders' lawful behavior and
 6 deter offender from new criminal acts.
 7 Q You interpret that to mean you want to make sure he
 8 keeps his employment?
 9 A I would classify that as related to maintaining
 10 employment, yes.
 11 Q Now, turn to the last page referred to as
 12 Attachment A in Exhibit 4, do you have that?
 13 A Yes.
 14 Q It's got levels of supervision and Mr. Gideon was
 15 high; correct?
 16 A Yes.
 17 Q And what does it require you to do there? It's
 18 called Summary of Contact Requirements; is it not?
 19 A Yes.
 20 Q It says the contacts that are required are personal
 21 contact, you had that; correct?
 22 A Yes.
 23 Q It says home visits, you did not have that with
 24 Mr. Gideon; did you?
 25 A Yes, I did.

1 A He was in employment, yes.
 2 Q And you verified that twice a month?
 3 A Yes.
 4 Q How did you do that?
 5 A Observing pay stubs.
 6 Q And what is the report form referring to?
 7 A That is the standard report form that's filled out
 8 monthly.
 9 Q Was that done with Mr. Gideon?
 10 A Yes.
 11 Q Do you have any knowledge as to why I was not given
 12 this document, Exhibit 4, prior -- from you all?
 13 A No.
 14 Q Have you all produced that to me, to your
 15 knowledge?
 16 A Yes.
 17 Q When did you do that?
 18 A Well, you're holding it.
 19 Q I didn't get this from you all.
 20 A I don't know.
 21 MR. ADLER: Lisa, have you given me this?
 22 MS. MENDOZA: I don't know everything
 23 that's been given to you so I can't answer
 24 your question.
 25 Q (By Mr. Adler) It wasn't in the manual I was

1 Q What was your home visit? What home visit did you
 2 have with Mr. Gideon?
 3 A I had several home visits.
 4 Q In his apartment?
 5 A In his apartment and another place he lived.
 6 Q Says collateral contacts, what did you consider to
 7 be your collateral contacts?
 8 A Collateral contacts with law enforcement, with
 9 family, observing the pay stubs, observing mental
 10 health appointment cards, contact with mental
 11 health therapists.
 12 Q Did you do that with Mr. Gideon twice per month as
 13 it requires?
 14 A Yes.
 15 Q Did you do the home visits one every two months as
 16 it requires?
 17 A Um, yes.
 18 Q Um, yes, what does that mean?
 19 A I believe so.
 20 Q What does it mean when it says employment/training
 21 (if applicable)?
 22 A That means if he's in some type of a vocational or
 23 educational training program, try to verify that he
 24 is attending.
 25 Q Was he in that type of program?

1 given, Exhibit 4?
 2 A No.
 3 MR. ADLER: I'd appreciate it, what I'd
 4 like to do, Lisa, and I understand you just
 5 got in the case, but we're going to break for
 6 lunch, and if you need some extra time I'm not
 7 confident that I have the right materials.
 8 I'd like you to compare what you have in
 9 your folder that's not in your manual versus
 10 this so I know I've got the complete
 11 documents, because two critical ones I haven't
 12 been given.
 13 MS. MENDOZA: What other critical one are
 14 you discussing?
 15 MR. ADLER: Exhibit 4.
 16 MS. MENDOZA: That's a superseded policy.
 17 I believe this is only the current policies.
 18 You may well have made a request for all, I
 19 understand that, and we've discussed that
 20 but --
 21 MR. ADLER: I'd like for you to check so
 22 we can proceed with the deposition.
 23 MS. MENDOZA: My book so far as I know is
 24 the same as your book.
 25 MR. ADLER: Frankly I'm inclined to think

that's the case. My concern is where you got 3.105 out of, to see if any of those documents are not in what I have as well, wherever you pulled that, are those your personal books?

MS. MENDOZA: That was from my personal notebook and I obtained that from Chris Rieger.

MR. ADLER: I'm asking if you can go through that on our break to see if there's anything else I ought to have.

MS. MENDOZA: I can't tell you what else you ought to have. Anything I collected, I think is covered by a privilege or work product.

MR. ADLER: You can look over our document request is what I'm saying.

MS. MENDOZA: I'll do what -- I'll take a look at it.

MR. ADLER: I'm trying to avoid the necessity of having to bring him back here for a deposition if you have all the documents.

MS. MENDOZA: What other documents are you concerned about? All I can tell you again is my book appears to be the same as your book.

1 with what you have.

2 MS. MENDOZA: I will do the best I can
3 with what I have.

4 MR. ADLER: Can you follow up and let me
5 know?

6 MS. MENDOZA: I've indicated I would.
7 Don't make me bang my head against the table.
8 I already indicated I understand discovery is
9 outstanding, you made a request and I will do
10 what I can.

11 Again, I ask you, is there anything in
12 particular that you want to focus on this
13 afternoon?

14 MR. ADLER: We want the policies that
15 were in effect at the time Mr. Gideon was on
16 parole.

17 You've asked a question, I'd like to have
18 an opportunity to answer it and Vickie will
19 read you the rest from the document request
20 that hasn't been responded to formally or
21 informally.

22 MS. MENDOZA: Have you received by
23 Federal Express from the Department of
24 Corrections copies of numerous files
25 concerning Mr. Gideon?

1 MR. ADLER: Are you unwilling to go look
2 at what you have to --

3 MS. MENDOZA: I've not indicated that at
4 all.

5 MR. ADLER: Will you do that over the
6 lunch break?

7 MS. MENDOZA: I already said I would.

8 MR. ADLER: That's all I've asked at this
9 stage.

10 MS. MENDOZA: I've asked you, is there
11 anything else in particular perhaps I can call
12 my office and get a fax copy of?

13 MR. ADLER: Not that I know of but I
14 don't know what I know of.

15 MS. PEREZ: I do. We would like every
16 single policy, essentially the FSO manual,
17 that was in effect at the time -- at the
18 relevant time periods, which is '92 and '93.
19 I don't think we have any of those.

20 MS. MENDOZA: If it's still in effect,
21 it's in the book. If it was superseded then
22 it's held in a different file completely and I
23 can't do that quickly or easily this
24 afternoon.

25 MR. ADLER: You can do the best you can

1 MR. ADLER: I'll let her answer.

2 MS. PEREZ: I'll tell you what have not
3 been responded to.

4 MS. MENDOZA: Answer my question first.
5 Have you received documents from us?

6 MS. PEREZ: Yes, we did.

7 MS. MENDOZA: That includes this FSO
8 manual we've been talking about, also includes
9 inmate files concerning Gideon; correct?

10 MS. PEREZ: Correct.

11 MS. MENDOZA: I understand there are
12 other things that you feel have not been
13 answered and, again, all I can say is I will
14 attempt to respond to this as soon as I can.

15 MS. PEREZ: That would be, what we have
16 not gotten full or any response to, would be
17 Document Request No. 7, 8, 9, I don't think
18 has been completely responded to, 10, 11,
19 that's it.

20 MS. MENDOZA: All right, what I will do
21 during our lunch break is review to see if
22 there's anything else that I can add.

23 I ask you again, is there anything in
24 particular this afternoon that you wish to
25 focus on concerning the FSOs that you want to

1 -- perhaps I can just get a couple of these.
 2 I don't know how many others or to get the
 3 entire thing updated, I don't think I can do
 4 that in the space of time of an hour.

5 MR. ADLER: Go ahead, Vickie.

6 MS. PEREZ: With regard to the FSO
 7 manual, I don't think there's anything
 8 specific. It would be very helpful if you all
 9 do get us the documents now that are
 10 responsive to our request regarding any
 11 instances where Mr. Schirck or anyone at the
 12 parole office has made a notification to an
 13 employer under the old policy in '92 and '93.

14 MS. MENDOZA: And having just reviewed
 15 this briefly, to my knowledge, so far as I can
 16 tell right now, there is no collected data
 17 base but I am having someone look to see if
 18 there is any kind of record collection on
 19 that, but because it's such a tremendous -- I
 20 mean we have thousands of people on parole, so
 21 I don't know necessarily that it's possible to
 22 determine that but I am attempting to look at
 23 that.

24 Q (By Mr. Adler) Do you have people you notified --
 25 that you know of without their names that you

1 A The -- it's a summary of case activity.

2 Q It's not -- would it be filed under the parolee or
 3 would it just be in chronological order of the day
 4 you sent it out?

5 A It would be in the parolee's case file, the
 6 individual file.

7 Q So the only way you could determine it is to go
 8 through each parolee's file?

9 A Probably so, yes.

10 Q How hard --

11 A Unless you had a personal memory of it.

12 Q How hard would that be for you to do for the year
 13 1992?

14 A I could go back to old case load lists and look.

15 Q How long would it, roughly, take you to do that?

16 A I don't know, it would take a little while to
 17 review and try to remember if there was a
 18 notification.

19 Q But you could look at your case load reports that
 20 would tell you who your parole --

21 A I would look for the names on the case load
 22 reports.

23 Q And have to pull the file?

24 A Have to find a dead file, which they have been sent
 25 to the repository in Topeka.

1 recall notifying people, employers?

2 MS. MENDOZA: This particular question is
 3 extremely broad.

4 Q (By Mr. Adler) Did you notify any employers prior
 5 to June 30, '93 of criminal records of any of your
 6 parolees?

7 A I can't recall personally doing that. I know it's
 8 been done.

9 Q Would it have been with one of your parolees
 10 someone else did or was it done with yours?

11 A Well, I handled a case, there was a nursing school
 12 student who went to work at a nursing home, had a
 13 drug history that we notified the personnel people.

14 Q But you didn't personally do it but it was one of
 15 your people?

16 A Yes.

17 Q Any others that you're remembering?

18 A I can't recall.

19 Q Would there be any document you could look at that
 20 would -- how would you be able to determine if
 21 there were others? What would you need to do?

22 A Prior to that, prior to the new statement, I
 23 believe it would be included in a note in the
 24 chronological data.

25 Q What's the chronological?

1 Q And it's your recollection -- independent
 2 recollection, you only did it once?

3 A That's one I can remember right now.

4 Q Do you think you did it more than once or do you
 5 not have any idea?

6 A I can't recall a lot of instances where I notified
 7 employers of parolees, of being on parole, persons
 8 being on parole.

9 Q Verbal or written; right?

10 A Right.

11 Q And what caused you to deal with this drug
 12 situation, explain that to me again.

13 A This man had a drug history and he was a parolee
 14 from another state and he went to the nursing
 15 department for his R.N at P.S.U. and he was
 16 supervised by another officer through that period,
 17 and I supervised the case towards the last but
 18 while he was going there and after he got his
 19 nursing degree, he went to work at a nursing home,
 20 and I believe they were notified.

21 Q What was your concern there that caused you to do
 22 that?

23 A He would have access to drugs.

24 Q You're afraid for him or for the other people in
 25 the nursing home or the public at large? Who are

you concerned with?

A Concerned that he may abuse, you know, he'd been clean for a long time but it was felt they should know.

Q Did he lose his job because of this notification?

A He subsequently -- well, I couldn't say that. He subsequently was involved in an incident where there was a loss and they did let him go.

Q Any time where you ever notified an employer about any sex offenders prior to these new guidelines?

A I can't recall any.

Q Do you know if -- do you have any knowledge of any other parole officer doing such, of advising an employer of a sex offender under the old -- before this policy was in effect?

A I would imagine it was done, surely someone was doing that, yes.

Q But you don't have any first-hand knowledge of someone telling you, "I do it with my sex offenders," or something like that, or "I did it with Mr. Doe"?

A I can't recall one.

Q You don't know?

A I don't know.

Q Is there any way you can determine whether other

1 Mr. Adler.

2 MS. MENDOZA: You're doing kind of the
3 same thing you were doing yesterday so that's
4 why I asked.

5 MS. PEREZ: Which is having a reaction of
6 my own to something that Mr. Adler said.

7 MS. MENDOZA: That's not the way it
8 appeared to me but, all right. Let's move on.

9 MS. PEREZ: You are way too sensitive on
10 this thing.

11 MS. MENDOZA: Thanks for your comment.

12 Q (By Mr. Adler) Mr. Schirk, who do you rely upon
13 as an authority in the parole officer area to give
14 you advice and guidance?

15 A That would be my immediate supervisor, would be
16 Mack Farmer.

17 Q Anybody else?

18 A We have access to parole supervisors at the
19 regional office or the --

20 Q Names?

21 A Rick Fishlie or I can't remember the other parole
22 supervisor's name right now, Tom Vohs is the parole
23 director.

24 Q How about Mr. Harrison, Rob Harrison?

25 A Yes.

people were doing it or whether you were doing it, same way -- same procedure we just talked about, you have to pull the files?

A Pretty much, yes.

MR. ADLER: Take a break for lunch.

(Whereupon, a lunch break was taken at this time.)

MR. ADLER: Lisa, you want to make a record of what you told me about the documents?

MS. MENDOZA: I don't have anything else I can give you today.

Like I have indicated, I'll go back and we'll take a look at everything and I understand the documents that we've discussed previously that you want.

MR. ADLER: And you will get interrogatories answered and a formal response to the document to me in a couple weeks?

MS. MENDOZA: I can't guarantee you exactly when but I will do it as promptly as possible.

Ms. Perez, you have something to say to me?

MS. PEREZ: No, I was responding to

1 Q Mr. Terrones, Jim Terrones?

2 A He's no longer there.

3 Q Do you rely on him as having -- being knowledgeable
4 in this area?

5 MS. MENDOZA: I'm sorry, what was the
6 question, did you or do you?

7 Q (By Mr. Adler) Do you remember the question?

8 A Do I rely on him?

9 Q Yes.

10 A No, he's no longer there.

11 Q I'm not just talking about people on a day-to-day
12 basis, I'm talking about authors of books, teachers
13 at seminars, people that are recognized by you as
14 being authorities in the area in which you work.

15 A I don't recall a specific person.

16 Q Who had assembled this manual, Plaintiffs' Exhibit
17 3?

18 A I don't know.

19 Q There's nobody in the field, no educators or
20 anybody in the area you work that you acknowledge
21 as being an expert?

22 A I don't know who develops field service orders, if
23 that's what you're asking.

24 Q That's not what I'm asking. I'm asking what
25 authors, lecturers, teachers, people that work in

1 your area that you recognize as being experts and
 2 authorities upon whom you rely for information?
 3 A I don't know any.
 4 Q There are none that you know of?
 5 A No, I can't off the top of my head recall.
 6 Q So the only people you receive guidance from in
 7 your area are the people you just mentioned, the
 8 names you just gave within the Kansas D.O.C.?
 9 A Yes.
 10 Q Are there people outside the Kansas D.O.C. that are
 11 experts you just aren't familiar with them and
 12 don't rely on them?
 13 A I'm sure we've had numerous people for training
 14 that have come in. I can't recall their names
 15 specifically.
 16 Q You supervised Mr. Gideon's parole; correct?
 17 A Yes.
 18 Q And you had the ability to make recommendations to
 19 your supervisor about additional controls to place
 20 on him; correct?
 21 MS. MENDOZA: Objection, asked and
 22 answered.
 23 A Yes.
 24 Q (By Mr. Adler) And additional restrictions to
 25 place on him?

1 Q Did you have the ability to control his life?
 2 A No, I was not with him 24 hours a day.
 3 Q I didn't say 24 hours a day. Did you have the
 4 ability to place controls on his life?
 5 A In the sense of conditions.
 6 Q So the answer to the question is yes?
 7 A In the sense of conditions.
 8 Q Is the answer to the question yes?
 9 MS. MENDOZA: I think he's answered the
 10 question to the best of his ability.
 11 Q (By Mr. Adler) Is a condition a control?
 12 A Well, it's a guideline of a way to behave on the
 13 street, yes.
 14 Q Mr. Gideon was not free to do as he pleases like
 15 you or I; correct?
 16 A That's correct.
 17 Q His life was controlled by others; correct?
 18 A In accord with the parole conditions, the
 19 conditions of the release.
 20 Q So his life was controlled by others; correct?
 21 MS. MENDOZA: I think he's asked --
 22 objection, asked and answered.
 23 Q (By Mr. Adler) Go ahead and answer the question.
 24 MS. MENDOZA: If you can.
 25 A In a sense that he adhered to the conditions of

1 MS. MENDOZA: Same objection.
 2 A Yes.
 3 Q (By Mr. Adler) You had the ability to control his
 4 life style; correct?
 5 MS. MENDOZA: Objection, asked and
 6 answered.
 7 A I would say I monitored his life style.
 8 Q (By Mr. Adler) You had the ability to control
 9 where he worked; correct?
 10 A To some extent.
 11 Q You had the ability to place controls upon his
 12 life; correct?
 13 MS. MENDOZA: I'm going to object to the
 14 use of the term control. If you want to
 15 define that a little bit more and be more
 16 specific with that.
 17 Q (By Mr. Adler) Could you go ahead and answer the
 18 question?
 19 MS. MENDOZA: Do you understand the
 20 question?
 21 THE WITNESS: Not really.
 22 Q (By Mr. Adler) It's my understanding you don't
 23 understand what the word control means?
 24 A Under the guidelines of his parole, his parole
 25 conditions, he was required to adhere to those.

1 release, yes.
 2 Q (By Mr. Adler) The Parole Board controlled his
 3 life, correct, by placing conditions on him;
 4 correct?
 5 A Yes, in that sense.
 6 Q You controlled his life by placing conditions and
 7 requirements upon him?
 8 A I outline conditions to him for him to follow.
 9 (Whereupon, the last question was read
 10 back by the reporter.)
 11 Q (By Mr. Adler) Would you please answer that
 12 question?
 13 MS. MENDOZA: I would object as it's been
 14 asked and answered several times.
 15 Q (By Mr. Adler) What was the answer, yes or no?
 16 MS. MENDOZA: Read back his answer.
 17 MR. ADLER: It wasn't a yes or no and the
 18 question called for a yes or no.
 19 MS. MENDOZA: Perhaps he cannot give you
 20 a yes or no answer.
 21 Q (By Mr. Adler) Did you have the ability to
 22 control his life by placing restrictions and
 23 conditions on him?
 24 A In a sense of placing conditions and restrictions
 25 on him, yes.

Q That controlled his life in that sense?
 A In that sense.
 Q You could have prohibited him from working at Hamilton's?
 A I could have, yes.
 Q You didn't; correct?
 A Right.
 Q That is a control you had over his life, the ability to impose?
 MS. MENDOZA: Objection, question calls for a conclusion?
 A Would you repeat that, please?
 (Whereupon, the pending question was read back by the reporter.)
 A In the sense of imposing conditions, yes.
 Q (By Mr. Adler) You had the ability to control him and tell him he couldn't work at Hamilton's; correct?
 A Yes.
 MS. MENDOZA: Objection, asked and answered.
 Q (By Mr. Adler) You had the ability to control him and tell him he couldn't live in a certain place; didn't you?
 A To the extent of the condition, yes.

1 you?
 2 A Yes.
 3 Q Did you ever visit Mr. Gideon at the apartment he lived in above Hamilton's?
 4
 5 A Yes.
 6 Q How many times?
 7 A I can't recall how many.
 8 Q What's the minimum number?
 9 A Two or three, probably.
 10 Q And how long would these visits take, time at the apartment, not travel time?
 11
 12 A I would say 20 to 30 minutes.
 13 Q On Exhibit 4, Attachment A, it refers on the back page, we were talking about this earlier, collateral contacts under high risk -- high level of supervision people; do you see that?
 14
 15
 16
 17 A Yes.
 18 Q Does collateral contacts include contacts with the employer?
 19
 20 A Yes.
 21 Q And you made no contacts with the employer other than that meeting at the Quick Stop?
 22
 23 A Well, collateral contacts includes employers among others, yes.
 24
 25 Q I understand.

1 Q You had the ability to control his life and file a parole violation-report and try to get him back in prison; didn't you?
 2
 3
 4 A I had that ability, yes.
 5 Q You had the ability to control his life and make him report to you more often than he was if you chose to; didn't you?
 6
 7
 8 MS. MENDOZA: I'm going to have a standing objection to the use of the word control. I think you need to be more specific about exactly what you mean by this word.
 9
 10
 11 MR. ADLER: Your objection is noted and that's fine.
 12
 13 MS. MENDOZA: If you understand the question, answer it.
 14
 15 A What was the question?
 16
 17 (Whereupon, the pending question was read back by the reporter.)
 18
 19 A Yes.
 20 Q (By Mr. Adler) You had the ability to make him go to more counseling if you wanted to?
 21
 22 A Well, his counseling was at the direction of the therapist, the professional who would recommend if he saw a need for an area.
 23
 24 Q You had the ability to switch therapists; didn't

1 A Yes.
 2 Q Your answer isn't the only collateral contact is an employer?
 3
 4 A Right.
 5 Q And you never phoned anybody or had any dealings or meetings or conversations with anybody at Hamilton's other than that Quick Stop meeting;
 6
 7
 8 correct?
 9 A I cannot recall for sure that I called there at one time to contact him.
 10
 11 Q So you might have talked to whoever answered the phone to get to Don?
 12
 13 A Yes, and I can't say for sure. I thought it was Tom Hamilton.
 14
 15 Q Did you speak with him at all about Don Gideon when you did that?
 16
 17 A I don't think to any extent.
 18 Q If I understood you correctly earlier, you told me that you thought that the waitresses at Hamilton's were at a high risk by being around Mr. Gideon; is that correct?
 19
 20
 21
 22 A Are you asking thinking of it now?
 23 Q I want to know if you agree with that statement.
 24 A I would have to say yes.
 25 Q And at the time prior to June 30th of '93, you

1 thought that those waitresses were at a high risk
 2 by virtue of being around Mr. Gideon; didn't you?
 3 A I would have to say yes.
 4 Q And by virtue of working at Hamilton's -- let me
 5 rephrase that.
 6 Prior to June 30, '93, the waitresses by
 7 virtue of working at Hamilton's were at a high
 8 risk?
 9 A I would have to say yes.
 10 Q And what is it that put these waitresses at a high
 11 risk by being around Mr. Gideon? What is it about
 12 him and the situation that created that high risk?
 13 A Would just be the matter of him being employed and
 14 his history.
 15 Q Is it the fact that he would get to know them and
 16 they would get to know him and that -- was that
 17 part of the risk factor?
 18 MS. MENDOZA: Objection, calls for
 19 speculation.
 20 A I would say yes.
 21 Q (By Mr. Adler) The fact that they were no longer
 22 strangers to this man put them at a high risk?
 23 MS. MENDOZA: Same objection.
 24 A I would have to say yes.
 25 Q (By Mr. Adler) And that by virtue of working with

1 Q Has Mr. Gideon, to your knowledge, ever raped a
 2 stranger?
 3 MS. MENDOZA: Object, assumes facts not
 4 in evidence.
 5 A I don't know.
 6 Q (By Mr. Adler) Do you have any knowledge of him
 7 ever raping someone who was a stranger to him?
 8 A No, I don't know that.
 9 Q In 199 -- November of '92, through June 30th of
 10 '93, you've testified that there was a verbal
 11 policy regarding the notification to an employer
 12 about a parolee's criminal record if a third party
 13 at risk is determined to exist; correct?
 14 MS. MENDOZA: I'm sorry, I object as
 15 being vague and ambiguous.
 16 Do you understand the question?
 17 THE WITNESS: No.
 18 Q (By Mr. Adler) In November of '92 to June of '93,
 19 the Kansas D.O.C. had a verbal policy regarding
 20 notification to employers; correct?
 21 A Yes.
 22 Q And that policy was dealing with notifying
 23 employers about the parolee's criminal record if a
 24 third party risk was determined to exist; correct?
 25 A Yes.

1 him, a trust relationship could develop; so that
 2 also what put them at a high risk?
 3 A That would be possible, yes.
 4 Q Is that the part of Mr. -- Mr. Gideon's history you
 5 referred to that put them at a high risk, what is
 6 it about his history that put them at a high risk?
 7 A His crime.
 8 Q And what was -- there's rape -- what is it about
 9 his crime, the mere fact it was rape or how the
 10 rape was committed?
 11 A Just the fact that it's a rape.
 12 Q Did you think Mr. Gideon's make-up was such that
 13 the women were at a high risk because he would get
 14 to know them and make them feel comfortable and
 15 that would be the way he would get the opportunity
 16 to rape them?
 17 A I didn't know.
 18 Q I'm sorry?
 19 A I didn't know.
 20 Q Is that part of the factors that put them at a high
 21 risk, though?
 22 A That's possible factors, yes.
 23 Q Is that a factor in your mind why you said it was a
 24 high risk?
 25 A I would say yes.

1 Q Did you follow these guidelines and policies of the
 2 D.O.C. during that time period?
 3 A Yes.
 4 Q To follow that policy, didn't you have to determine
 5 whether or not a parolee's employment posed a third
 6 party risk situation?
 7 A At my discretion, if I felt there was a risk, I
 8 would make a determination.
 9 Q That wasn't my question, though. I don't want to
 10 hear about your discretion. I want to hear about
 11 whether you had to follow that policy, what you had
 12 to do to follow that policy.
 13 You had to determine whether or not the
 14 parolee's employment posed a third party risk?
 15 A I don't understand what you're asking.
 16 Q Each case that came across your desk, you had to
 17 make a determination whether there was a third
 18 party risk involved under that policy; correct?
 19 A It was up to my discretion to make that call.
 20 Q It was up to your discretion to reach the
 21 conclusion of whether there was a third party at
 22 risk but it wasn't up to your discretion to
 23 consider the issue; was it?
 24 A I consider the issue on every client.
 25 Q You follow the policy?

1 A Sure.

2 Q And consider the issue on every client, that's what

3 I'm asking; correct?

4 A Sure.

5 Q And then it's up to you to decide if that situation

6 poses a third party risk; correct?

7 A That's correct.

8 Q At that time in November of '92 to June 30, '93,

9 were you making a determination in every case you

10 had whether there was a third party at risk?

11 A I was using my judgment to that effect.

12 Q You were following the policy?

13 A Yes.

14 Q Did you make -- did you follow that policy with

15 respect to Mr. Gideon?

16 A Yes.

17 Q And did you make the determination as to whether

18 there was a third party at risk situation with

19 respect to Mr. Gideon?

20 A Yes.

21 Q And what determination did you make?

22 A I determined that the job was satisfactory for his

23 circumstances.

24 Q Did you determine whether there was any third party

25 at risk situation with Mr. Gideon?

1 strangers?

2 MS. MENDOZA: Objection, calls for

3 speculation on the part of the witness.

4 A I don't really know that.

5 Q (By Mr. Adler) Let me ask you a question. You've

6 got your daughter on the one hand, let's assume

7 she's 20 years old, she's not working with him,

8 she's home living with you.

9 You have Stephanie Schmidt on the other hand

10 who is working with him.

11 Who is more at risk?

12 MS. MENDOZA: Object as improper use of a

13 hypothetical, speculation.

14 Q (By Mr. Adler) Or are they at equal risk?

15 A The person that would be around him would be at

16 more risk.

17 Q Stephanie Schmidt is more at risk than your

18 daughter in my hypothetical; correct?

19 A Yes.

20 Q That is because she's working with him; correct?

21 MS. MENDOZA: Objection, asked and

22 answered.

23 Q (By Mr. Adler) Answer the question.

24 A Yes, she's around him.

25 Q What other reasons are there that she's more at

1 A Yes.

2 Q And what was the third party that was at risk, what

3 was the group?

4 A Well, it was my determination, my discretion, was

5 that there was no other more -- any more risk than

6 any other rapist that I would be supervising.

7 Q I understand you've said that. I want to know what

8 third party group you determined was at risk with

9 Mr. Gideon?

10 MS. MENDOZA: Objection, asked and

11 answered.

12 A Well, I'd have to relate to the young females.

13 Q (By Mr. Adler) Young females who he gets to know?

14 A Yes.

15 Q Young females who he works with?

16 A I would say any young female.

17 Q But especially a young female he works with?

18 MS. MENDOZA: Objection, asked and

19 answered.

20 A I wouldn't say that.

21 Q (By Mr. Adler) Young females in general are at

22 risk is what you just told me; correct?

23 A Yes.

24 Q And are young females who he gets to know more at

25 risk because he knows them and they are not

1 risk, Stephanie is more at risk, than your daughter

2 with respect to Mr. Gideon?

3 A I don't understand the question.

4 Q What other reasons other than the fact that

5 Stephanie Schmidt is around Mr. Gideon make you

6 feel that she's more at risk than your daughter?

7 MS. MENDOZA: Objection, calls for

8 speculation on the part of the witness.

9 A All I can say is just that she is in the close

10 proximity of him.

11 Q (By Mr. Adler) How does that make her more at

12 risk?

13 A Just being close to him.

14 Q He's got a car; doesn't he?

15 A He did have, yes.

16 Q He can get around Pittsburg, he can get to your

17 daughter; correct?

18 A Uh-huh.

19 Q Yes?

20 A Yes.

21 Q How's Stephanie Schmidt more at risk by virtue of

22 being in the proximity?

23 MS. MENDOZA: Object, asked and answered.

24 A Just the idea that she's in the proximity of his --

25 him and what he does every day.

1 Q (By Mr. Adler) And that they get to know each
 2 other?
 3 A (Whereupon, the witness nods his head.)
 4 Q Yes?
 5 A That could be, yes.
 6 Q And that a trust relationship develops; correct?
 7 A Yes.
 8 Q You've indicated -- you were aware of what you just
 9 told me in June of '93; correct?
 10 A Aware of what?
 11 Q That Stephanie Schmidt by virtue of working with
 12 Mr. Gideon was more at risk than your daughter, a
 13 20 year old daughter, if you had one; correct?
 14 MS. MENDOZA: Objection, assumes facts
 15 not in evidence, no evidence that he knew
 16 Stephanie Schmidt.
 17 A I knew Donald Gideon's history then and his
 18 employment situation.
 19 Q (By Mr. Adler) In June of '93, you were aware that
 20 a female employee working with Mr. Gideon was more
 21 at risk than a female who wasn't working with
 22 Mr. Gideon; correct?
 23 A I would say yes.
 24 Q And a young female employee working with Mr. Gideon
 25 was more at risk than a young female who wasn't

1 A It's usually an officer has an assigned county or a
 2 split with another officer, depending on how the
 3 case load is, and just all cases coming to that
 4 area are your cases.
 5 Q So is it Crawford County, is that what Pittsburg
 6 is?
 7 A Yes.
 8 Q You have all the cases in Crawford County?
 9 A I don't have Crawford County now.
 10 Q What do you have?
 11 A I have Neosho, Labette, that's what I have right
 12 now.
 13 Q How is it that you got Mr. Gideon?
 14 A At that time I was -- I had half of Crawford
 15 County.
 16 Q Who had the other half?
 17 A I am thinking Don Powell, I believe, but it may
 18 have been from Farmer, I'm not sure.
 19 Q He would have been a contemporary of yours and got
 20 promoted or did he do it even though he was higher
 21 up than you, Mr. Farmer?
 22 A I believe he was handling a case load at the time
 23 even as the office supervisor.
 24 Q How would it have been determined, whoever the
 25 other person was, who got which cases in Crawford

1 working with Mr. Gideon; correct?
 2 A I would say yes.
 3 Q And you still made the determination and the
 4 decision to not notify Mr. Hamilton of Mr. Gideon's
 5 record; correct?
 6 A Yes.
 7 Q And your company policy was to consider such -- the
 8 D.O.C.'s policy was to consider such situations?
 9 A Yes.
 10 (Whereupon, a break was taken at this
 11 time.)
 12 Q (By Mr. Adler) Had Mr. Hamilton or anybody asked
 13 you if Mr. Gideon -- about Mr. Gideon's record,
 14 would you have told them that he was a rapist?
 15 A Yes.
 16 Q Where do you stand at the D.O.C. with seniority for
 17 Parole I's? Are you high on seniority or low,
 18 somewhere in between? How high up are you?
 19 A I don't really know.
 20 Q How's it determined at the D.O.C. who gets what
 21 cases?
 22 A Are you speaking of our area?
 23 Q Yes.
 24 A Down there in Pittsburg?
 25 Q Your area, I'm sorry.

1 County?
 2 A On that basis it would be just kind of a whoever is
 3 up would get it.
 4 Q What I'm trying to get is do you have a certain
 5 area of expertise that makes you get certain types
 6 of cases?
 7 A No.
 8 Q What percentage of your cases in November of '92
 9 were sex offender cases?
 10 A I don't know.
 11 Q Do you have a range of what it would be, a ball
 12 park?
 13 A Fairly small, I would say.
 14 Q Under 25 percent?
 15 A I would think so, yes.
 16 Q Under 10 percent?
 17 A I would say so.
 18 Q Do you have an estimate as to how many sex
 19 offenders you've supervised in your 12 years with
 20 the D.O.C.?
 21 A I really couldn't tell you, no.
 22 Q How about rapists?
 23 A I've had several.
 24 Q What would be your range of how many rapists you've
 25 supervised?

1 A Five to ten, maybe.
 2 Q And have you found the five to ten rapists that you
 3 supervised -- let me withdraw that.
 4 What percent of those five to ten rapists that
 5 you've supervised have raped again while on parole?
 6 A None that I recall.
 7 Q You have made the statement that you understand
 8 that rapists are, I think the words were, highly
 9 likely to re-offend; is that correct?
 10 A That's, that's a possibility is there to re-offend,
 11 yes.
 12 Q But have you read and learned that they are highly
 13 likely to re-offend?
 14 A I don't recall specifically learning that. There's
 15 a high possibility that they may re-offend.
 16 Q And does re-offend mean re-rape?
 17 A I would say generally that re-offend would include
 18 any kind of a crime.
 19 Q Are you familiar with a lady named Jan McCloud,
 20 M-c-l-o-u-d, with Sedgwick County Corrections
 21 Office?
 22 A No.
 23 Q Have you ever heard a statistic that 90 percent of
 24 sex offenders cannot be rehabilitated and that they
 25 will continue to commit sex offenses if the

1 and perhaps it is.
 2 Q (By Mr. Adler) In November of '92 to June of '93,
 3 you felt that it was highly probable that sex
 4 offenders cannot be rehabilitated and that they
 5 will continue to commit sex offenses if the
 6 opportunity exists; correct?
 7 A I would say that there's a high possibility that
 8 they may re-offend.
 9 Q And that's the way you felt from November of '92 to
 10 June of '93?
 11 A Yes, about sex offenders, yes.
 12 Q Do you expect a sex offender's -- let me withdraw
 13 that.
 14 Did you expect Don Gideon's behavior at work
 15 to be relatively acceptable and normal?
 16 A Did I expect that?
 17 Q Yes.
 18 A Yes, I had no indications otherwise.
 19 Q And is that common for sex offenders?
 20 MS. MENDOZA: Object, calls for
 21 speculation as to what is or is not common in
 22 sex offenders.
 23 A I don't really know if it's common or not.
 24 Q (By Mr. Adler) Why is it that you don't know
 25 what's common to sex offenders if you're

1 opportunities exist?
 2 A I don't know that I've heard that specific
 3 statement.
 4 Q Do you agree with that statement?
 5 A I would say that that's probable, probably likely.
 6 Q So does that make you agree with this statement?
 7 A That's -- I don't know that that's a fact. I don't
 8 know that there's a study done like that or
 9 something like that.
 10 Q But you would say that instead of 90 percent, you
 11 agree that it's highly likely that sex offenders
 12 cannot be rehabilitated -- I'm sorry, cannot be
 13 rehabilitated and that they will continue to commit
 14 sex offenses if the opportunity exists? You would
 15 agree with that statement; correct?
 16 A There's a high possibility that that will happen,
 17 yes.
 18 Q And you felt that way in 1992, in November of '92
 19 to June of '93?
 20 MS. MENDOZA: Objection, question is
 21 vague, ambiguous, calls for speculation on the
 22 part of the witness.
 23 A Yes, I felt that way.
 24 MR. ADLER: So that there's no confusion
 25 because your attorney thinks it's ambiguous

1 supervising them on parole?
 2 A You say is it common for them to have a good
 3 rapport at work, is that what you're saying? I
 4 don't know that that's a common factor or not.
 5 Q What do you consider common about sex offenders?
 6 Tell me the profile of a sex offender.
 7 A I really don't know what the profile of a sex
 8 offender would be.
 9 Q And you're supervising sex offenders and you were
 10 supervising sex offenders for the Kansas Department
 11 of Corrections from November of '92 to June of '93
 12 and you don't know what's common about them, I'm
 13 sorry, what their profiles are like?
 14 A Explain what you're asking about a profile, please.
 15 Q You don't know what a psychological profile of a
 16 person is?
 17 A Is that what you're asking, a psychological
 18 profile?
 19 Q Yes.
 20 A Okay, common psychological profile of a sex
 21 offender, I see a lot of their psychologicals
 22 indicating abuse when they were children, sexual
 23 abuse, unstable families, parental negligent,
 24 sexual abuse by family members, those kind of
 25 things.

1 Q How about their behavior, what is their behavior
 2 typically like?
 3 MS. MENDOZA: Object, calls for
 4 speculation on the part of the witness.
 5 Answer if you know.
 6 A Their behavior would be, I would say a common
 7 factor would be not completing school, foster care,
 8 contact with youth authorities, juvenile problems,
 9 juvenile court problems, that's it.
 10 Q (By Mr. Adler) What about things like how they
 11 behave at work? Are they usually relatively normal
 12 at work or are they the type of people that get
 13 into trouble at work?
 14 MS. MENDOZA: Object, calls for
 15 speculation on the part of the witness.
 16 Q (By Mr. Adler) If you know.
 17 A I don't really know.
 18 Q Let's zero in on just rapists as compared to sex
 19 offenders. What is their conduct -- is there a
 20 normal conduct for a rapist when he's not raping,
 21 when he's out at work, in public, how he behaves?
 22 Is there anything like that?
 23 MS. MENDOZA: Object to the question as
 24 calling for speculation on the part of the
 25 witness.

1 Q Have you ever taken any classes on how to supervise
 2 a rapist while he's on parole?
 3 A I have had some training.
 4 Q By whom and when?
 5 A I attended a seminar in, I want to say, Wichita
 6 several years ago and I cannot remember who it was,
 7 but a lady presented that seminar. I believe she
 8 worked with the Department of Corrections.
 9 Q Would there be anything you could check to
 10 determine at your office what this lady's name was
 11 or any way you could find out who the lady was that
 12 gave you the seminar?
 13 A I may have something in that file from that. I'm
 14 wanting to say her name was Alford.
 15 Q Alford being the last name?
 16 A Yes.
 17 Q Would you be kind enough if you do check to put it
 18 on your correction sheet what her name is?
 19 A Yes.
 20 Q Again, the topic of this seminar was what, so I'm
 21 understanding?
 22 A I really can't recall what the topic was but it was
 23 relating to sex offenders and their treatment in
 24 the institution and she covered success rates,
 25 expectations for the future rehabilitation, that

1 Q (By Mr. Adler) That you know of?
 2 A I'm not really familiar with a set of common
 3 attributes. The people that I've dealt with, as I
 4 can recall, have been pretty -- pretty compliant in
 5 what was expected of them.
 6 Q At work?
 7 A At work.
 8 Q And in dealing with the public?
 9 A Yes, dealing with the public, with parole, they
 10 were pretty conforming.
 11 Q The ones you've worked with you wouldn't know they
 12 were a sex offender if you hadn't been told;
 13 correct? I'm sorry, a rapist if you hadn't been
 14 told?
 15 A I would say yes.
 16 Q Have you ever read any books on this subject of the
 17 psychological profile of rapists?
 18 A No.
 19 Q How about the conduct and behavior of rapists, have
 20 you ever read any books on that?
 21 A I don't believe I have.
 22 Q Have you ever read any books on the appropriate way
 23 to supervise a rapist while he's on probation or
 24 parole?
 25 A No, I haven't read a book about that.

1 kind of thing.
 2 Q She gave you the dismal outlook you've indicated?
 3 A That's correct.
 4 Q Do you recall what she told you about dealing with
 5 rapists on parole, how they should be supervised
 6 and dealt with?
 7 A Just -- I can't recall exactly, the idea is that
 8 just close supervision and monitor them closely.
 9 Q Are you done, I'm sorry?
 10 A Yes.
 11 Q They are the highest risk and require the highest
 12 supervision; correct? Is that correct?
 13 A Well, initially, yes, that's the -- they are on
 14 high supervision.
 15 Q When do they stop requiring -- when do they stop
 16 posing the highest risk and stop requiring the
 17 highest supervision?
 18 A Every case is reassessed every six months and if
 19 everything has been going well, there's no
 20 indicators, they are adverse, conceivably a sex
 21 offender or a high case can be reduced.
 22 Q Was Mr. Gideon ever reduced from high risk and high
 23 supervision?
 24 A Yes.
 25 Q When was that done?

A Last of May.
 Q Right after he'd raped again?
 A First of June, I believe, yes.
 Q Right after he'd raped again?
 MS. MENDOZA: Objection, assumes facts not in evidence.
 Q (By Mr. Adler) Right after he raped again; correct?
 A I don't know.
 Q Have you learned that Mr. Gideon raped again in April of '93?
 A I have heard that.
 Q Do you have any reason to doubt that to be true?
 A I don't know.
 Q And we do know as a fact that's right before he raped again, this time when you reduced him from highest to what did you say?
 A I believe he went to intermediate supervision.
 Q And you made this determination based on the supervision you had been giving him based on what you testified -- the supervision you'd been giving him as you testified earlier?
 A Yes, all factors indicated that he was doing well.
 Q Had there been any psychological testing while he was on parole?

A The assessment form.
 MS. MENDOZA: The one Ms. Perez is waving around.
 (WHEREUPON, PLAINTIFFS' EXHIBIT NO. 5 WAS MARKED FOR IDENTIFICATION.)
 Q (By Mr. Adler) I'm going to hand you Plaintiffs' Exhibit 5, which appears to be an assessment form dated May 28 of '93. Is that what that was that you filled out?
 A Yes.
 Q You reduced Mr. Gideon from high to intermediate on May 28 -- high to intermediate supervision on May 28, '93; correct?
 A Yes.
 Q Did you need anybody's approval to do that?
 A The parole director reviewed the assessment and noted it.
 Q That this okay 6/3 on the second page?
 A Yes, that's okay, T.R.
 Q Who is that?
 A Tony Ramos.
 Q Was that your supervisor at the time?
 A That was the parole director at the time.
 Q Do you think you were -- with hindsight, do you think you were correct in your assessments on here?

A I don't know. That would have been done by the therapists. There was an evaluation by the intake person at mental health and I'm sure they did some of their own testing, I believe.
 Q Before making that determination -- I'm sorry, what did you say you reduced him from, high to what, intermediate or --
 A I believe intermediate.
 Q Right before you reduced him from high to, you believe, intermediate, did you think it was important to talk to his employer and people at work to see how he was doing?
 MS. MENDOZA: Object, calls for speculation on the part of the witness.
 A In reviewing the file, he had been employed steadily, showing pay stubs and there were no indications of problems.
 Q (By Mr. Adler) And those were the factors by which you reduced his supervision level?
 A That among other things.
 Q What are the other things?
 A I would have to look at an assessment form, probably.
 Q What would you need to refer to to help you answer the question?

MR. ADLER: Please have the record reflect the pause.
 MS. MENDOZA: Let the record reflect the pause to show that he's reviewing the document.
 MR. ADLER: That's fine, that's all I meant.
 MS. MENDOZA: Okay.
 A According to what I knew at the time, yes, I believe that's appropriate assessment, reassessment.
 Q (By Mr. Adler) On No. 14 there's some initials there or something, two letters, I guess I should say, MH circled, do you know what that means?
 A That means mental health, just a note to myself.
 Q And prior to doing this assessment on May 28, -- withdraw that.
 The purpose of doing this assessment on May 28, '93 was to determine whether his -- Mr. Gideon's level of supervision should be reduced; correct?
 A Yes.
 Q And prior to making that determination, did you think it was important to talk to anybody at Mr. Gideon's place of employment?

1 A No, he was still employed and showing pay stubs and
 2 I had no adverse information.
 3 Q How did you expect to obtain any adverse
 4 information?
 5 A Well, I would have felt that if there was a
 6 problem, that Tom Hamilton knew of the parole and
 7 would be interested in contacting me, and if
 8 there's a problem, I would hear from law
 9 enforcement in making collateral contacts. I would
 10 hear from family members.
 11 Q You relied on others to contact you; correct?
 12 A Well, information from others.
 13 Q Correct. Did you know -- you knew he was doing
 14 well with his job; correct?
 15 A Yes.
 16 Q Did you expect Mr. Hamilton to give you information
 17 that would cause him to have -- Mr. Gideon to have
 18 his parole revoked?
 19 MS. MENDOZA: Object, calls for
 20 speculation on the part of the witness as to
 21 what he could expect Mr. Hamilton --
 22 Mr. Hamilton doing or not doing.
 23 A I would have expected a notification from him if
 24 there was a problem.
 25 Q (By Mr. Adler) You knew on May 28, '93 that

1 that would change. We still continued on the same
 2 supervision plan of maintaining employment and the
 3 attending mental health, those kind of things.
 4 Q (By Mr. Adler) On May 28, '93, how did you know
 5 Mr. Hamilton even knew that Mr. Gideon was on
 6 parole?
 7 A I believe Mr. Gideon had told me that he had
 8 finally indicated to him that he was on parole.
 9 Q So the only basis upon which you had to believe
 10 that Mr. Gideon had told Mr. Hamilton was that
 11 Mr. Gideon reported that to you?
 12 A I believe that's right.
 13 Q You made no verification that Mr. Hamilton even
 14 knew you existed?
 15 A No, I don't believe so.
 16 Q How do you know he knew you existed other than
 17 Mr. Gideon's word?
 18 A I don't know.
 19 Q But you were relying on Mr. Hamilton to contact you
 20 and tell you if there were problems at work and he
 21 'may not have even known you existed; correct?
 22 A Yes, I heard Mr. Hamilton's testimony yesterday and
 23 I can't recall exactly, I thought we had a phone
 24 conversation at one time.
 25 Q But I'm talking about on May 28, '93, you didn't

1 Mr. Hamilton -- let me rephrase that.
 2 Did you have any reason to believe on May 28,
 3 '93 that Mr. Hamilton knew that Mr. Gideon was a
 4 convicted rapist?
 5 A No.
 6 Q When you're reduced to supervision from high to
 7 intermediate, what did that have you do with
 8 respect to his restrictions and your control?
 9 A Really I believe the only thing that that does is
 10 reduce contacts with him, required contacts.
 11 Q You believe that's the only thing it does?
 12 A That's the reason for the reassessment, to see how
 13 he's been doing for the last six months and make a
 14 determination from that.
 15 Q So when you reduced his level from high to
 16 intermediate, that meant to you that he would now
 17 have to see you less often; is that what you're
 18 telling me?
 19 A Yes.
 20 Q And did that take place?
 21 A Yes.
 22 Q Any other changes in your control over him?
 23 MS. MENDOZA: Object to the use of the
 24 word control.
 25 A I cannot think of any other supervision guidelines

1 know for certain that Mr. Hamilton even knew
 2 Mr. Gideon had a parole officer?
 3 A I didn't know that, no.
 4 Q And even if he did know he had a parole --
 5 Mr. Hamilton did know Mr. Gideon had a parole
 6 officer, you had no idea if he knew it was you?
 7 A (Whereupon, the witness nods his head.)
 8 MS. MENDOZA: Object, calls for
 9 speculation on the part of the witness.
 10 Q (By Mr. Adler) Did you nod your head yes?
 11 A That would be right, yes.
 12 Q So how were you expecting to hear of problems at
 13 work?
 14 A Well, he knew he was on parole through Mr. Gideon
 15 and --
 16 Q You believe he knew he was on parole?
 17 A I believe he knew he was on parole. Mr. Hamilton
 18 -- I feel Mr. Hamilton knew who to contact.
 19 Q You just thought that and hoped that?
 20 A As I indicated, I thought that at some point we had
 21 had a phone conversation.
 22 Q Possibly?
 23 A Possibly.
 24 Q Not even sure?
 25 A I am not sure.

Q Have you ever been lied to by a felon before?

A Yes.

Q Often?

MS. MENDOZA: Object to the use of the word often, ambiguous, vague.

A I would say frequently.

Q (By Mr. Adler) That they have a bigger propensity to lie than non-felons?

MS. MENDOZA: Objection, calls for speculation on the part of the witness.

Q (By Mr. Adler) If you know?

A I don't know.

Q Have you ever read or learned anywhere that felons have a bigger tendency to lie than non-felons?

A I think that that's a good possibility, yes.

Q You were afraid to tell Mr. Hamilton that Mr. Gideon was a rapist because you were afraid he might fire him; correct, you testified to that earlier?

MS. MENDOZA: Object to the form of the question. It mischaracterizes testimony he's previously given.

A When he went to work there I was concerned about that.

Q (By Mr. Adler) You didn't want to tell

1 been working there for two or three months at that
2 time, Mr. Hamilton you knew wouldn't have known to
3 have been able to report anything to you during
4 that period of time because he definitely didn't
5 know you existed; correct?

6 A I'm not sure.

7 Q You didn't tell Hamilton -- you don't know for
8 certain you told Mr. Hamilton that Mr. Gideon was a
9 convicted felon ever; correct? You might have
10 during this one phone call?

11 A I don't know.

12 Q You don't recall specifically telling him that;
13 correct?

14 A I can't recall it.

(WHEREUPON, PLAINTIFFS' EXHIBIT NO. 6 WAS
MARKED FOR IDENTIFICATION.)

17 Q (By Mr. Adler) You have testified that you were
18 relying on Mr. Gideon to have told Mr. Hamilton he
19 was a convicted felon; correct?

20 A Yes, Mr. Gideon had said that he had told him.

21 Q I'm going to refer you to Plaintiffs' Exhibit 6,
22 which are the client report forms Mr. Gideon fills
23 out with you; correct?

24 A Uh-huh.

25 MS. MENDOZA: Look at the document first,

Mr. Hamilton that Mr. Gideon was a rapist because
you thought he might fire him; correct?

A That would have been possible, yes.

Q So isn't it also possible that Mr. Gideon wouldn't
want to tell Mr. Hamilton that because he might get
fired?

MS. MENDOZA: Objection, calls for
speculation on the part of the witness.

A I don't know.

Q (By Mr. Adler) Is it possible?

A That would be possible.

Q In your dealings with felons for 12 some odd years,
and your education in the social sciences like
this, don't you think that's a darn good
possibility?

A It is a possibility.

Q In fact, your own forms that Mr. Gideon filled out
reflected that he had failed to tell him for a long
time, I should say for a couple months; correct?

A Yes.

Q So he hadn't been truthful with Mr. Hamilton, you
knew it for at least a couple months; correct?

A I believe so.

Q And during this two months, maybe we should say, I
think your first form reflects in March of '93 he'd

1 okay.

2 Q (By Mr. Adler) Is that what that is?

MS. MENDOZA: Look at all of them. Are
these all of them?.

THE WITNESS: I don't know that that's
all of them.

MR. ADLER: I'll represent to you, Lisa,
these are the ones you gave me. If they are
not all of them, I sure want to know.

MS. MENDOZA: If they are the ones I gave
you, then so far as I know they are because I
know that I looked at his parole file.

A This appears to be the report forms.

Q (By Mr. Adler) There's an undated one right after
the December 18, '92 one. It's got a date at the
bottom of December 23. Do you see that one?

A Yes.

Q He's working -- Gideon is working at Hamilton's
then; right?

A Yes.

Q About the eighth question down or something like
that, Does your employer know you are on probation
or parole, what's the answer Mr. Gideon gave you?

A No.

Q Let's flip to the next one, January 7, '92, what's

1 the answer he gave you, the same question?
 2 A No.
 3 Q So during this period of time, Mr. Hamilton would
 4 have had no knowledge to tell anybody at the parole
 5 office if Mr. Gideon had a problem; correct?
 6 A Yes.
 7 MS. MENDOZA: Calls for speculation on
 8 the part of the witness.
 9 Q (By Mr. Adler) January 21, '93, same question,
 10 what's the answer?
 11 A No.
 12 Q So, again, Mr. Hamilton wouldn't know who to tell
 13 what if Mr. Gideon was having problems at work;
 14 would he?
 15 MS. MENDOZA: Same objection.
 16 A No.
 17 Q (By Mr. Adler) Is what I said true?
 18 MS. MENDOZA: Object to the form of the
 19 question.
 20 Q (By Mr. Adler) Is what I just said true, sir?
 21 MS. MENDOZA: Same objection.
 22 A Yes.
 23 Q (By Mr. Adler) February 5, '93, what's he say to
 24 same question?
 25 A No.

1 A I don't know.
 2 Q So you didn't know if Mr. Gideon was having
 3 problems after work?
 4 A I didn't have that information.
 5 Q All you knew is he was continuing to get a pay
 6 check; correct?
 7 A And reside there in the same building and I had no
 8 other information from law enforcement about
 9 contacts or anything like that.
 10 Q What assurances did you have that the public was
 11 safe from Mr. Gideon, an individual you've
 12 acknowledged was highly likely to re-offend?
 13 A Well, the assurance that he is stable in work and
 14 residence and that he's attending mental health and
 15 response from mental health is positive and I feel
 16 like that for Mr. Gideon has been fairly good
 17 adjustment.
 18 Q You indicated that you thought that the waitresses
 19 were at high risk at Hamilton's; correct?
 20 MS. MENDOZA: Object, asked and answered.
 21 Q (By Mr. Adler) Correct?
 22 A That's what I said previously.
 23 Q What assurances did you have that that wasn't the
 24 case, that was no longer the case?
 25 A I couldn't say that I had any assurances.

1 Q March 4th of '93, what's he say?
 2 A Yes.
 3 Q So to the best of your knowledge, he's worked there
 4 for the month -- part of December, January and
 5 February and part of March and Mr. Hamilton
 6 wouldn't have known who to call if there were any
 7 problems; would he?
 8 MS. MENDOZA: Object, calls for
 9 speculation on the part of the witness about
 10 what Mr. Hamilton knew or did not know.
 11 Q (By Mr. Adler) Please answer the question.
 12 A I would say no.
 13 Q Is what I said true?
 14 MS. MENDOZA: Object to the form of the
 15 question.
 16 Q (By Mr. Adler) Is what I said true?
 17 A Yes.
 18 Q Well, please explain to me how it is, then, that
 19 ... you felt a comfort level since you hadn't heard
 20 from Mr. Hamilton that Mr. Gideon wasn't having any
 21 problems?
 22 A Because I felt that he was maintaining his job and
 23 residence in the same building.
 24 Q Does maintaining his job mean he's not having
 25 problems after work?

1 Q They were still at high risk the whole time
 2 Mr. Gideon worked there; correct?
 3 A I would say that.
 4 Q And they were still at high risk when you lowered
 5 his supervision from high to intermediate; weren't
 6 they?
 7 A Yes.
 8 Q Did you ever once go talk to any of those
 9 waitresses to see if Mr. Gideon had been acting
 10 improperly towards them?
 11 A No.
 12 Q Did you ever once call them or make any contacts
 13 with them?
 14 A No.
 15 Q And why is it that you didn't think that was
 16 important to do?
 17 A Because I had no other indications that there were
 18 problems.
 19 Q From people who didn't even know how to contact
 20 you?
 21 A Well, from employer who eventually did know he was
 22 on parole and know -- had no indicators from mental
 23 health or law enforcement that he was out --
 24 Q Did -- go ahead.
 25 A Go ahead.

1 Q No, you go ahead and finish your answer.
 2 A No indicators from law enforcement that he was out
 3 in off hours creating disturbances or anything like
 4 that.
 5 Q In your knowledge and dealings with felons and your
 6 education and background, do you think it's
 7 reasonable to conclude that a felon might lie to
 8 his mental health counselor about what's going on
 9 in his life?
 10 A That's very possible.
 11 Q And you were relying on these mental health reports
 12 to determine your supervision of Mr. Gideon?
 13 A Yes, to some degree, yes.
 14 Q And you didn't know if the mental health counselor
 15 was working with truthful information; did you?
 16 A No.
 17 Q That is what I said true?
 18 A Yes.
 19 Q And if you had to do this case over again, you'd
 20 testify other than the change in the policy, you'd
 21 do it the same way?
 MS. MENDOZA: Object, asked and answered.
 23 A I would say probably with all things being equal
 24 that it would have occurred the same way, yes.
 Q (By Mr. Adler) And you do think, I believe you

1 Q And you thought that in November '92 to June of
 2 '93?
 3 A I was trying to say to you before that I think back
 4 then it was my thinking that this type of a policy
 5 would hinder these people from working.
 6 Q You thought that the fact it would hinder them from
 7 working meant you shouldn't do it?
 8 A The policy change was made and it is a good idea.
 9 Q I want to know in November of '92 to June of '93,
 10 you've indicated you thought it would hinder their
 11 employment, was that fact that it would hinder
 12 their employment sufficient to make you draw the
 13 conclusion you shouldn't notify the employers?
 14 MS. MENDOZA: Object, we've gone over
 15 this several times and it's -- you're asking
 16 him to speculate about what he thought.
 17 If you know what you thought, tell him,
 18 if you don't know what you thought, tell him
 19 you don't know.
 20 If you don't know, tell him you don't
 21 know.
 22 A I don't know what you're getting at.
 23 Q (By Mr. Adler) Mr. Schirk, it seems obvious if you
 24 tell an employer they have a sex offender in their
 25 employment, it may cause them to lose their job;

told me, you thought that this new policy of
 mandatory notification of employers of sex
 3 offenders is a good idea?
 4 A Yes.
 5 Q And you thought that in November of '92 through
 6 June of '93; correct?
 7 A I believe I said at that time that I had the
 8 feeling that notification would probably hinder
 9 people from maintaining work.
 10 Q But I think we said when you balance it all out,
 11 you came down to the conclusion that during the
 12 time period November '92 to June of '93 you thought
 13 it was a good idea to notify employers if they were
 14 employing a sex offender; correct?
 15 A As I said, I think before that I said that at that
 16 time it was my feeling that notification would
 17 probably be a problem for these people.
 18 Q It may be a problem but you've got to balance all
 19 the factors.
 20 What did you think was a good idea for policy
 21 in November of '92 to June of '93 respecting
 22 notification of employment for a sex offender?
 23 A I would have to say that that is a good idea.
 24 Q It is?
 25 A Yes.

1 correct?
 2 A It may.
 3 Q We have to balance that on the one hand, do we not,
 4 with the safety of the public on the other hand;
 5 correct?
 6 A Yes.
 7 Q When you balance those two factors -- did you ever
 8 balance those two factors in your mind prior to
 9 June 30, '93?
 10 A Yes, those factors were considered.
 11 Q And did you come to a conclusion of whether it was
 12 a good idea prior to June 30, '93 for you to notify
 13 employers of -- when they were employing sex
 14 offenders?
 15 A Yes, it was my decision not to.
 16 Q Not to?
 17 A Yes.
 18 Q And the principal reason not to is you were afraid
 19 it would jeopardize their employment?
 20 A That it could, yes.
 21 Q That it could. Was there any other reasons you
 22 chose not to?
 23 A No, not really.
 24 Q What is your primary objective -- what was the
 25 policy in November of '92 to June of '93 as to the

1 primary objective of your parole office? Let me
 2 rephrase that.
 3 In November of '92 to June of '93, was the
 4 policy of the parole office that their primary
 5 objective was to protect the public?
 6 A I believe that's the primary one.
 7 Q The policy was not that the primary objective is to
 8 help parolees maintain their jobs?
 9 A That's right.
 10 Q Your sole function, I'm sorry, your main function,
 11 is to protect the public; correct?
 12 A In conjunction with trying to work with people
 13 coming out on parole into the public, into the
 14 community, and to -- with all things balanced and
 15 figured.
 16 Q Mr. Gideon was coming out because he had to come
 17 out under Kansas law; right?
 18 A That's right.
 19 Q You knew that; right?
 20 A Yes.
 21 Q And your primary objective was you've got a guy
 22 who's got to come out to protect the public;
 23 correct?
 24 A That's the primary, yes.
 25 Q And your primary concern was for him to keep his

1 speculation on the part of the witness.
 2 A I don't believe so. I believe he was already
 3 working very well for Mr. Hamilton and doing well
 4 there at the time.
 5 Q (By Mr. Adler) So in May of '93, you feel if you
 6 told Mr. Hamilton the public would have been more
 7 protected and it wouldn't have affected his job;
 8 correct?
 9 A I believe that's possible, yes.
 10 Q Why didn't you therefore tell Mr. Hamilton in May
 11 of '93 about Mr. Gideon's record?
 12 A I didn't feel a need to do that.
 13 Q You just indicated, did you, not, sir, that it
 14 would better protect the public; didn't you?
 15 A That's understood, yes.
 16 Q That wasn't a need to you?
 17 A In this case I think that everything was -- the
 18 other indicators showed that Mr. Gideon was doing
 19 well and I felt like it was not necessary.
 20 Q What was the risk of telling Mr. Hamilton? Was
 21 there any potential harm to Mr. Gideon or the
 22 public if you told Mr. Hamilton in May of '93?
 23 MS. MENDOZA: Objection, question calls
 24 for the witness to speculate.
 25 A I can't see that there would have been a lot of

1 job; correct?
 2 A That is one of my concerns.
 3 Q Have you ever had a case that you know of where you
 4 advised an employer that their employee was a sex
 5 offender and the guy got fired because of that?
 6 A I can't recall. I don't know.
 7 (Whereupon, a break was taken at this
 8 time.)
 9 Q (By Mr. Adler) Do you think the public would have
 10 been more protected had you informed Mr. Hamilton
 11 of Mr. Gideon's record?
 12 MS. MENDOZA: Objection, calls for
 13 speculation on the part of the witness.
 14 A I would say yes.
 15 Q (By Mr. Adler) And do you think it would have
 16 affected his employment?
 17 MS. MENDOZA: Objection, calls for
 18 speculation on the part of the witness.
 19 A I feel that initially it probably would have about
 20 him being able to get a job.
 21 Q (By Mr. Adler) What about in May of '93, when he
 22 had the job, do you think it would have affected
 23 his employment if you would have told Mr. Hamilton
 24 then?
 25 MS. MENDOZA: Objection, calls for

1 risk.
 2 Q (By Mr. Adler) And there would have been some
 3 benefit in that the public would have been more
 4 protected; correct?
 5 A That's correct.
 6 Q In May of '93?
 7 A Yes.
 8 Q And these waitresses at Hamilton's would have been
 9 more protected in May of '93 had you told
 10 Mr. Hamilton?
 11 MS. MENDOZA: Object, calls for
 12 speculation on the part of the witness.
 13 A Had I told him, yes, they would have been.
 14 Q (By Mr. Adler) Do you think Stephanie Schmidt
 15 would have gotten in the car with Mr. Hamilton if
 16 she had known he was a convicted rapist alone at
 17 night?
 18 A I don't know.
 19 Q Do you know anyone that would have, any female,
 20 young female?
 21 A I don't know of anyone, no.
 22 Q In November of '92 to June of '93, did the Kansas
 23 Department of Corrections follow the federal
 24 guidelines --
 25 MS. MENDOZA: I'm going to object as

vague and ambiguous.

2 Q (By Mr. Adler) -- with respect to the supervision
3 of parolees?

A I don't know.

5 Q They may have?

6 A I don't know what the federal guidelines are.

Q You've never seen them?

8 A I don't believe so.

9 Q Have you ever seen any guidelines or articles that
talk about the fact you don't put bank embezzlers
11 in banks?

12 A I haven't seen guidelines like that.

Q Have you ever heard of that scenario or example?

14 A I think I have.

15 Q Where?

A Probably along with the child molesters in daycare
17 centers like that.

18 Q Which is where?

A I believe probably in some monthly training, you
20 know, in some type of a seminar given.

21 Q You would have had those two examples given to you,
the bank embezzler and the child molester, during
23 the period November '92 to June '93; correct?

24 A I believe probably so.

Q And you agreed with those concepts; correct?

A Yes.

Q Any other classic, if you will, examples like you
3 don't put a bank embezzler in a bank and a child
molester in a daycare center that you had ever
heard of?

6 A I can't recall any.

Q Any places you had ever heard that you don't put
rapists?

9 A In a female dormitory, something like that --

Q Where else?

A -- employed there. I don't remember all the
12 places.

Q But a restaurant with female waitresses is okay?

A Yeah, I haven't really heard that as an example.

15 Q Do you think it's okay?

A Yes.

Q Who communicated -- in November of '92, who was
18 communicating to you in and advising you as to what
the D.O.C.'s policies were? How did you learn the
policy is what I'm trying to get at?

21 A Well, there are changes regularly to the FSOs that
come down, those changes are discussed at regular
monthly meetings of the region.

24 Q And you stay on top of that type of stuff?

A Try to, yes.

1 Q What other policies and procedures were in effect
2 in November of '92 with respect to the supervision
3 of rapists other than the one we talked about
4 earlier about the third party at risk?

5 A Just the fact that any of these types of crimes
6 coming out would be automatically a high category
7 of supervision initially.

8 Q Any sex offender crimes would be high supervision,
9 that was the policy?

10 A Yes.

11 Q Verbal or written?

12 A It's written for the first six months.

13 Q Is that still in this book, Exhibit 3?

14 A I believe it is.

15 Q Show me where.

16 A It's the standards.

17 MS. MENDOZA: 3.101 is the current one in
18 there but the one in effect at the time --

19 Q (By Mr. Adler) What number did you just say?

20 A 3.101; right?

21 Q But I want to know what was going on, we're talking
22 in '92 so that one.

23 MS. MENDOZA: Would have been the
24 precursor to.

25 Q (By Mr. Adler) Is this what you're looking for,

1 Exhibit 4?

2 A I was looking for the list of the offenses.

3 Q But that wasn't in effect in '92, you're talking
4 about the sex offender mandatory requirement?

5 A Right, is that what you're asking?

6 Q No, I'm asking what was the policy of the D.O.C.
7 with respect to sex offenders in '92, November '92?

8 MS. MENDOZA: With regard to what?

9 MR. ADLER: Everything, any policies of
10 how you deal with them on supervision of
11 parole, were there any policies?

12 A What I've indicated already.

13 Q (By Mr. Adler) Tell me what they are so we're
14 connected here.

15 A Just that initially when they come out that they
16 would be under a high supervision category, which
17 means really close contact, monitoring and --

18 Q What else, third party risk assessment?

19 A That's not a written policy.

20 Q I understand, we're talking verbal or written.

21 A Okay.

22 Q It was a verbal policy, the third party risk
23 assessment?

24 A Uh-huh.

25 Q We talked about that for a long time; right?

1 A Uh-huh.
 2 Q Yes?
 3 A Yes.
 4 Q What else, verbal or written?
 5 A Those are basically it, I believe.
 6 Q In '92?
 7 A I believe so.
 8 Q If you want to look through that table of contents
 9 to refresh your memory, please feel free to do so.
 10 A Is this book the current book?
 11 Q That's the current book.
 12 MS. MENDOZA: Supposed to be the current
 13 book.
 14 MR. ADLER: Well put.
 15 MS. MENDOZA: And you're wanting to know
 16 again?
 17 Q (By Mr. Adler) In '92, November of '92 when
 18 Mr. Gideon was let out, whether there were any
 19 other verbal or written policies with respect to
 20 how he should be dealt with, policies of the
 21 D.O.C.?
 22 MS. MENDOZA: All of them at some point
 23 or another. I don't mean to answer for him
 24 but just so you understand, the policies would
 25 have an effect not only Mr. Gideon as a

1 MS. MENDOZA: Can I clarify, you're
 2 talking about state parole or just a county on
 3 a county level they were doing that?
 4 MR. ADLER: I meant state parole. I ...
 5 meant was it done different county by county.
 6 Q (By Mr. Adler) Same answers to my questions?
 7 A Yes, sir.
 8 Q Why did you get transferred from Crawford County?
 9 A Well, I believe there was a change in personnel
 10 from Independence and we had to pick up another
 11 county and we did that. I was transferred to that
 12 county. Mr. Farmer picked up more of a case load
 13 and changed around with the other parole officer
 14 also in the office.
 15 Q Did it have anything to do with the Schmidt case?
 16 A I am not aware of it.
 17 Q May have but not to your knowledge?
 18 A Not to my knowledge.
 19 Q And, again, with respect to whether the D.O.C.
 20 policies and procedures followed the federal
 21 guidelines, they may have but you don't know?
 22 A I don't know.
 23 Q Who would know?
 24 A I would say either Chris Rieger or Tim Madden,
 25 chief legal counsel.

1 convicted rapist or sex offender but on any
 2 person who was under parole as a condition of
 3 his supervision.
 4 Q (By Mr. Adler) Basically what I'm understanding is
 5 you're saying that whole book as it existed,
 6 Exhibit 3, as it would have existed in '92 would
 7 have been the D.O.C. policy?
 8 A Yes.
 9 Q For all people?
 10 A For all people under supervision, yes.
 11 Q Any other verbal policies that wouldn't have been
 12 in the book and just with sex offenders?
 13 A I can't think of any.
 14 Q Were there certain counties that in -- of the State
 15 of Kansas that in '92 were giving written
 16 notification to employers when they were dealing
 17 with sex offenders?
 18 A I don't know.
 19 Q It's possible, you don't know?
 20 A Yeah, I don't know.
 21 Q The county you were in, Crawford County, wasn't
 22 doing that in '92 --
 23 A No.
 24 Q -- as being mandatory?
 25 A No.

1 (WHEREUPON, PLAINTIFFS' EXHIBIT NO. 7 WAS
 2 MARKED FOR IDENTIFICATION.)
 3 Q (By Mr. Adler) I'm going to hand you a document
 4 marked as Exhibit 7 which appears to me to be the
 5 Kansas -- I mean the federal guidelines with
 6 respect to the supervision of parolees and ask if
 7 you've ever seen this or are familiar with its
 8 contents.
 9 A I've never seen it.
 10 MR. SECK: Could I see those please,
 11 thank you.
 12 Q (By Mr. Adler) You indicated earlier that
 13 Mr. Chastain performed the initial risk assessment
 14 with respect to Mr. Gideon; correct?
 15 A Yes.
 16 Q And that you didn't do that, you relied on what
 17 Mr. Chastain did; correct?
 18 A That's correct.
 19 (WHEREUPON, PLAINTIFFS' EXHIBIT NO. 8 WAS
 20 MARKED FOR IDENTIFICATION.)
 21 Q (By Mr. Adler) I'm going to hand you Plaintiffs'
 22 Exhibit 8. Is that Mr. Chastain's risk assessment,
 23 initial? Let me show you it's dated November 9th
 24 if that helps you, '92?
 25 A Yes, I believe it is.

1 Q That's not your handwriting?
 2 A No.
 3 Q And he gave him a risk total of 20; correct?
 4 A Yes.
 5 Q And on the second page there's a risk assessment of
 6 14; correct -- I'm sorry, needs total of 14?
 7 A Yes.
 8 Q And then there's a chart at the bottom of Page 1
 9 that has a range, if you're 26 to 35 you're high,
 10 do you add those two figures, the 20 and the 14
 11 together, or how do you figure out where you fall
 12 in the grid?
 13 A No, it is -- the supervision level is strictly
 14 attributed to risk.
 15 Q It says in No. 9 that he is a maximum risk, No. 3;
 16 correct, No. 9 comes up, says Mr. Chastain
 17 concludes that Mr. Gideon is a No. 3, which is a
 18 maximum risk?
 19 A What are you speaking of? Okay, yes.
 20 Q Is that correct?
 21 A Yes.
 22 Q And regardless of how he scored, it's my
 23 understanding of what you said that he would have
 24 been a maximum risk by virtue of the fact that he
 25 is a sex offender?

1 Q (By Mr. Adler) This means to reassess in May of
 2 '93 as you speculated?
 3 A Yes.
 4 Q You said yes on the record?
 5 A Yes.
 6 Q Exhibit 9, can you identify that for me and I'll
 7 tell you the second and third pages appear to me to
 8 be your initial risk assessment. I'm not sure what
 9 the first page is. Tell me if I'm right or wrong.
 10 Actually your name is on the top of Page 1 so I
 11 presume it's all your initial risk assessment, am I
 12 correct?
 13 A I don't know who that would be.
 14 Q Who would be the initials with 11-23?
 15 A 11-24. That doesn't look like my secretary's. My
 16 secretary is Carolyn Grillot.
 17 Q Why would she be filling out this form?
 18 A She wouldn't be filling it out. She would be
 19 entering it into the computer and that doesn't look
 20 like her initials to me.
 21 Q Whose are those on the second page on the bottom
 22 above 11-23?
 23 A Tony Ramos.
 24 Q I'm sorry, who did you tell me he was?
 25 A He was the parole director.

1 A Yes.
 2 Q But he hit maximum risk on his own, if you will, by
 3 No. 9 in Mr. Chastain's mind?
 4 A Yes.
 5 Q Bottom of Page 2 there's a little something down
 6 there, I can't quite read, but it says 5/'93; do
 7 you know what's going on there?
 8 A I think that's probably when the next risk needs is
 9 due.
 10 Q What is that right before that? I can't hardly
 11 read it. Do you have any idea what that might have
 12 been?
 13 A (Whereupon, the witness shakes his head.)
 14 Q No idea?
 15 A I really don't.
 16 Q And in No. 12, Item 12 on Page 2 of Exhibit 8, it
 17 says that his need levels are a maximum, which is
 18 3; correct?
 19 A Yes.
 20 (WHEREUPON, PLAINTIFFS' EXHIBIT NO. 9 WAS
 21 MARKED FOR IDENTIFICATION.)
 22 MS. MENDOZA: I will tell you that I am
 23 now looking at the original document. Next to
 24 5/'93 is REASS period.
 25 A Reassess.

1 Q Your boss?
 2 A Yes.
 3 Q Did you fill out Page 1 and 2 of this form and 3,
 4 for that matter?
 5 A I believe I did.
 6 Q So you did, in fact, do an initial risk assessment
 7 of Mr. Gideon on November 20th of '92?
 8 A Yes and this form on the top is related to a pilot
 9 program, pilot study that we were doing at the
 10 time, and it had to do with what's called CMC, case
 11 management classification, and it was a part of
 12 people in Topeka gathering a data base and we were
 13 sending in this information, and this is a copy I
 14 made to put in my file for me to prove that I've
 15 sent it back into them.
 16 It is related to in the file, there's a form
 17 that has a bunch of black questionnaire kind of
 18 thing with a bunch of black -- and that's related
 19 to it, also.
 20 MS. MENDOZA: Yeah, that.
 21 A There you go.
 22 Q (By Mr. Adler) So what did you do to -- how did
 23 you come to the conclusions you came to on these
 24 forms?
 25 What did you look at to come to the conclusion

1 that Mr. Gideon was high risk and that your high is
 2 in all caps and circled?
 3 A Because this is a -- the way he had scored out,
 4 their information gathering process up there was
 5 that they wanted the number on the risk score and
 6 then the risk level and what those two meant, they
 7 were actually a close point score but the guy was
 8 actually a high case. He was actually because of
 9 the crime and --
 10 Q Now, how did he get a risk score of 20? Was that
 11 your determination or somebody else's?
 12 A I believe that was the amount of score on the
 13 initial one by Mr. Chastain.
 14 Q Okay, and then the high circled is because he's a
 15 sex offender, is that why you did that?
 16 A Yes.
 17 Q And again, now on the second page this is you
 18 filling out the same form Mr. Chastain had and in
 19 No. 9 you say he's a maximum -- you say he's a
 20 medium risk, sorry. Why did you say medium instead
 21 of maximum?
 22 A That was my interpretation of him.
 23 Q And what did you do to come to these conclusions?
 24 You interviewed Mr. Gideon?
 25 A Right.

1 A No, that's how long -- we're talking about
 2 reviewing his material.
 3 Q Then what else would you do that would take time?
 4 A Well, if I had the information from the file and
 5 note the date that I did this, I could tell whether
 6 it was on the day that we did -- what date is on
 7 there?
 8 Q The date on the CMC inventory is November 25, '92.
 9 A Okay, that was later than this then.
 10 Q You interview them for, I think you said, about a
 11 half hour and you review his records for a half
 12 hour to an hour and you come to these conclusions?
 13 Is that what you're telling me?
 14 A That's basically it.
 15 Q These conclusions in Exhibit 9?
 16 A No, this is related to this form here.
 17 Q What did you do to come to the conclusions on Page
 18 2 of Exhibit 9?
 19 A I don't believe -- were these pieces of paper
 20 attached in the file?
 21 MR. ADLER: I believe so.
 22 MS. PEREZ: I think they were.
 23 Q (By Mr. Adler) They really shouldn't have been?
 24 A I don't think so. This should have been something
 25 that went in after doing that and beginning --

1 Q Did you tell me you read his psychological reports?
 2 A Yes, I had.
 3 Q But you hadn't read Parole Board documents?
 4 A No, I don't believe so. This second assessment,
 5 this assessment done by me right here, I believe,
 6 probably was done when he first came in to see me,
 7 and I was still waiting for the material from Jim
 8 Chastain and in order to get him -- I didn't know
 9 that Jim Chastain had already done one at the time.
 10 In order to get him in the computer, I did one of
 11 these.
 12 Q How long would you have spent, do you recall, how
 13 long did you spend going over his psychological
 14 data to come to your conclusions and to familiarize
 15 yourself with Mr. Gideon?
 16 A I don't know. I read the material that I received.
 17 Q Every word of it?
 18 A I believe so.
 19 Q How long does it typically take?
 20 A I couldn't tell you. I would say 30 to -- 30
 21 minutes to an hour of uninterrupted review and time
 22 to sit there and, you know, run through things.
 23 Q And that would be an estimate of how long you
 24 probably spent on Mr. Gideon, 30 minutes to an
 25 hour?

1 well, this would have gone in just after that.
 2 Q So it's your belief that Page 1 of Exhibit 9 would
 3 have been completed after this GMC inventory?
 4 A Right.
 5 Q And the Pages 2 and 3 would have been completed
 6 before it?
 7 A I believe I did this while I was waiting for the
 8 material from Mr. Chastain in order to probably
 9 facilitate maybe getting this done and getting it
 10 into them.
 11 Q So Pages 2 and 3 were done after the half hour to
 12 hour review of his records and half hour interview
 13 of Mr. Gideon?
 14 A Uh-huh.
 15 Q Yes?
 16 A I would say yes.
 17 (WHEREUPON, PLAINTIFFS' EXHIBIT NO. 10
 18 WAS MARKED FOR IDENTIFICATION.)
 19 MS. MENDOZA: Just so you know, I just
 20 looked at the original file. It doesn't
 21 appear that that first page of Exhibit 9 was
 22 stapled, so I don't know what happened there.
 23 MR. SECK: You want to separate them and
 24 make one 9 and one 9-A? 9-A, B and C?
 25 MR. ADLER: I'd rather leave them the way

they are.

2 Q (By Mr. Adler) I'm going to hand you Plaintiffs' Exhibit 10. What is that? Did you fill that out?

A Yes.

3 Q Do you have any idea when?

6 A This is a worksheet that is in relation to this CMC inventory risk assessment and it's an attempt to establish some areas to work on, work goals in the supervision plan, establishing a supervision plan.

9 Q I want to direct your attention to the last entry at the very bottom, says lack empathy for victim, is that what it says?

A Yes.

4 Q How did you draw that conclusion?

15 A I believe that was done through the interview relating to this questionnaire and his responses to questions in that indicated that.

18 Q The way I interpret that, tell me if I'm wrong, is that you concluded that he didn't have, Mr. Gideon, still didn't have any concern for his prior rape victim; am I correct?

A That's, yes, that's the way I would view that.

3 Q After ten years in prison, he's being released and he still doesn't have any empathy towards what he did to that young woman; correct?

A I think he was still verbalizing excuses.

3 Q Does that indicate to you a person in need of additional rehabilitation?

A Yes.

6 Q Does that indicate to you a person likely to re-offend?

A I don't know if it would or not.

9 Q The fact he hasn't shown remorse for his prior acts doesn't mean anything to you that he might do it again?

A That's a possibility.

12 Q You've got down there right here, needs to ID his sources of pain, anger and bitterness; correct?

A Yes.

13 Q What made you come to that conclusion?

A Again, it was whatever was said at the time of the questionnaire.

18 Q After your interview and -- I don't understand what you're saying it was, before I go on, you're saying -- give me your answer, what are you saying this means? It's what he said during the interview?

A Right, what his answers were during this interview led me to indicate that.

24 Q You don't recall what it was that he said that made you think that?

1 A I don't know.

2 Q After this evaluation process you did, did you think it was appropriate for Mr. Gideon to be released?

5 A I didn't really consider that. I just -- I was just there to supervise him as a parolee.

7 Q Did you think he was in need of further rehabilitation?

9 A I would say in need of counseling and continued counseling in that manner.

11 Q How do you distinguish counseling from rehabilitation?

13 A It's a part of rehabilitation, I would say.

14 Q What else is a part of rehabilitation?

15 A Well, Mr. Gideon's being able to perform the daily living skills that he was doing, working, going to counseling, maintain himself in his own residence and paying his bills, reporting like he's supposed to, keeping low key and not having law contacts, those kinds of things.

21 Q You didn't think you needed to know for the purposes of developing a supervision plan whether you thought he should have been released; correct?

24 A That is out of my hands.

25 Q I understand it's not your decision, but you do

1 have an opinion on it and you didn't think you needed to come to an opinion on that; correct?

3 MS. MENDOZA: Objection, asked and answered.

5 A I didn't have an opinion on that.

6 Q (By Mr. Adler) Did you think it was necessary for you to come to an opinion as to whether he should be released?

9 MS. MENDOZA: Objection, asked and answered.

11 A No.

12 (WHEREUPON, PLAINTIFFS' EXHIBIT NO. 11 WAS MARKED FOR IDENTIFICATION.)

14 Q (By Mr. Adler) I'm handing you Exhibit 11. That's your supervision plan you came up with?

16 A Yes.

17 Q Now, is that dated January 7th of '93?

18 A I believe so.

19 Q You didn't have a supervision plan for him for 45 days or so?

21 A That's right.

22 Q And why is that?

23 A Just in the course of activating the case and receiving the material and seeing just where he was going to be going as far as mental health and those

1 kinds of things, and establishing these parameters
 2 on this worksheet, as I say, again, this was a
 3 pilot study that they had us doing and we were
 4 performing these on, I want to say, every third
 5 releasee.
 6 Q You didn't do a supervision plan on everybody?
 7 A Another type of supervision plan, yes.
 8 Q Am I correct that there's nothing in this
 9 supervision plan dealing with the issue that he's a
 10 sex offender?
 11 (Whereupon, Mr. Seck leaves the room at
 12 this time.)
 13 MS. MENDOZA: Wait till Mr. Seck comes
 14 back to answer.
 15 (Whereupon, there was an off-the-record
 16 discussion at this time.)
 17 MR. ADLER: It's okay to keep going. Go
 18 ahead and answer the question.
 19 A This form doesn't have a statement of sex offense
 20 or sex offender, but it is relating to the issues
 21 in his life that were the contributing factors, I
 22 believe, in some of his criminality and it
 23 addresses those and discusses a way to pursue some
 24 help and it gets his agreement to follow through
 25 with these things.

1 A Yes.
 2 (Whereupon, there was an off-the-record
 3 discussion.)
 4 Q (By Mr. Adler) Explain to me what you would do for
 5 a high risk person or a high supervision person
 6 that you wouldn't do for an intermediate
 7 supervision person?
 8 A Are you asking about how he would be supervised?
 9 Q Yes.
 10 A Number of contacts, that difference?
 11 Q I want to know when someone goes from intermediate
 12 to high what do you do in addition because they are
 13 in that higher category now?
 14 A Okay, you are required to attend -- see them more
 15 often, make more contacts with collaterals, check
 16 on mental health counseling.
 17 Q More often?
 18 A More log contacts, yes.
 19 Q So same things but more often; is that what you're
 20 telling me?
 21 A Basically.
 22 Q The purpose -- is the purpose of the restrictions
 23 you place on someone to protect the public from
 24 future offenses?
 25 A Can you explain what you're asking there? What

1 Q (By Mr. Adler) Your action plan, I take it, is
 2 your game plan and your procedures you think are
 3 appropriate to deal with Mr. Gideon; is that
 4 correct?
 5 A Yes, these are a part of it. These are a part of
 6 it to attempt to achieve, I believe, these two
 7 goals right here.
 8 Q There's nothing in the action plan pertaining to
 9 protecting the public; is there?
 10 A Well, that is -- no, there's nothing stated
 11 specifically regarding protection of the public.
 12 Q Which is your primary objective as a parole
 13 officer; correct?
 14 A That is the first objective that's listed among
 15 others.
 16 Q Is that your primary objective or isn't it?
 17 A That's one of several objectives.
 18 Q Is there a primary objective as a parole officer?
 19 A That is -- I think that is probably the first
 20 objective is to protect the public.
 21 Q It wasn't your primary objective -- isn't your
 22 primary objective as a parole officer to protect
 23 the public?
 24 A I would say it is.
 25 Q It is your primary objective?

1 type of restrictions are you talking about?
 2 Q All the restrictions you've put on a parolee that
 3 we've been talking about.
 4 A Parole conditions.
 5 Q Parole conditions?
 6 A Release conditions.
 7 Q Release conditions, your methods and procedures
 8 that you use such as your release conditions, is
 9 the purpose of them and the policy behind them to
 10 protect against future offenses?
 11 A Yes, it is an attempt to do that, yes.
 12 Q It's an attempt; is that what you said?
 13 A Yes, it's an attempt to do that.
 14 Q There are risks involved in letting parolees out?
 15 A Yes.
 16 Q Some more foreseeable than others; correct?
 17 A Yes.
 18 Q And you've indicated that it's very foreseeable
 19 that a sex offender is going to pose a harm for the
 20 public; correct?
 21 A That's very possible.
 22 Q And the whole purpose behind the conditions of
 23 release that you place on parolees is to prevent
 24 these future harms; correct?
 25 A Yes, that's an attempt to do that.

1 Q You're trying to protect the public; yes?
 2 A Along with helping him to adjust and giving him
 3 some guidelines to live by and trying to see that
 4 he attends to every one of those conditions for
 5 employment and counseling and all those kinds of
 6 things to give him a better opportunity to make it
 7 on parole.

8 Q And you have a responsibility and a duty to try to
 9 protect against these problems; correct?

10 MS. MENDOZA: Object to the form of the
 11 question. Calls for him to form a legal
 12 conclusion about what any duties he has might
 13 be.

14 A Could you repeat the question, please?

15 (Whereupon, the pending question was read
 16 back by the reporter.)

17 A That is my job as the parole officer supervising
 18 the case is to attempt to direct him and guide him
 19 towards some positive adjustment in a community
 20 abiding by the conditions.

21 Q (By Mr. Adler) And to try to prevent him from
 22 harming somebody?

23 A Yes, hopefully that behavior.

24 Q And you indicated, I think you wanted --

25 MS. MENDOZA: Were you finished with your

1 answer?

2 A Hopefully that behavior would be of a positive
 3 nature where no one is going to get injured.

4 Q (By Mr. Adler) And you indicated you want him to
 5 readjust, that's part of your goal and job;
 6 correct?

7 A Yes.

8 Q And the reason you want him to adjust is so that he
 9 won't harm the public; correct?

10 A Yes, along with readjusting so that he doesn't
 11 return as a parole violator.

12 Q So he doesn't re-offend?

13 A Right.

14 Q And re-offend people in the public?

15 A Right.

16 Q If you will, your focus is not him, it's the
 17 public; correct?

18 A My focus is both.

19 Q Let me make sure I'm understanding you. The reason
 20 you care about his -- Mr. Gideon's rehabilitation
 21 and readjustment is so that he won't re-offend
 22 against the public; correct?

23 A So that he is successful on parole, yes, and
 24 there's no more offenses to deal with and that he
 25 is able to adjust to a life in the community.

1 Q And not be re-offending while he's in the
 2 community?

3 A Exactly.

4 Q And any focus you have on him is for the ultimate
 5 protection of the public; correct?

6 A Yes.

7 Q That's why the taxpayers pay you?

8 A Yes.

9 Q Is to protect them; correct?

10 A Yes.

11 Q And the way you protect them is by making sure the
 12 parolees don't re-offend them?

13 A That is part of the effort that I put out, yes.

14 Q What is the other part?

15 A I'm trying to make sure that they follow those
 16 conditions and are doing everything that is stable
 17 in the community.

18 Q And the reason you want all that is to protect the
 19 public?

20 A Yes, they'll assist in protecting the public, yes.

21 Q You're working for the public, not for Mr. Gideon;
 22 correct?

23 A I am paid by the state and I feel that I am working
 24 some for Mr. Gideon.

25 Q Who is your ultimate responsibility to, Mr. Gideon

1 or the public?

2 A I believe the public.

3 Q So that Mr. Gideon won't re-offend and hurt anybody
 4 in the public?

5 A Yes.

6 Q That's the whole purpose of all this activity you
 7 do; correct?

8 A Yes, both areas are -- there's an attempt to do
 9 both things.

10 Q What are both things?

11 A Working with him and protecting the public.

12 Q But you work with him --

13 A There's a fine balance a lot of time.

14 Q But you work with him so that you can protect the
 15 public; correct?

16 A Yes.

17 Q That's your job?

18 A Yes.

19 Q That's your responsibility, yes?

20 A Yes, sir.

21 Q That's why you get paid to do what you do; yes?

22 A Well, I get paid to work with these people to
 23 attempt to have them integrate in the community.

24 Q It's your duty to the public; correct?

25 MS. MENDOZA: Object, calls for him to

1 form a legal conclusion.
 2 Q (By Mr. Adler) What do you feel? Do you feel
 3 that's your duty to the public?
 4 MS. MENDOZA: Same objection.
 5 Answer it if you know.
 6 A I feel my duty lies in both fields.
 7 Q (By Mr. Adler) To rehabilitate the felon so he
 8 doesn't harm the public?
 9 A To work towards that, yes.
 10 Q I'm sorry?
 11 A To work towards that, yes.
 12 Q And specifically to protect the part of the public
 13 that's the most at risk is part of your job;
 14 correct?
 15 A Explain that, what are you getting at?
 16 Q I'm trying to zero in. You owe a duty to the
 17 public but you specifically have a duty to the
 18 people who are most likely to be hurt by the felon?
 19 MS. MENDOZA: Object, asking him to draw
 20 a legal conclusion about what duty he owes.
 21 Q (By Mr. Adler) Just what you feel.
 22 A I feel my job is to protect the community as a
 23 whole and assist this man in a proper adjustment.
 24 Q And that includes those that are most at risk and
 25 most vulnerable; correct?

1 Q So you thought if you made a mistake, you would be
 2 held accountable?
 3 MS. MENDOZA: Object, asked and answered.
 4 He already testified he didn't think about it.
 5 A I can't remember considering it, really.
 6 MR. ADLER: We can stop for today. Have
 7 we got everything out there? Have they come
 8 back.
 9 MR. SECK: Here are the copies to take
 10 with Brenda.
 11 MR. ADLER: I'm withdrawing the originals
 12 and she can make copies.
 13 (Whereupon, Exhibit 3 was withdrawn at
 14 this time and the deposition was recessed to
 15 be concluded at a time and date uncertain.)
 16 * * * * *
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 MS. MENDOZA: Object, asked and answered.
 2 A I would say yes.
 3 Q (By Mr. Adler) When you were performing your job
 4 in November of '92 to June of '93, did you feel
 5 that you were immune from being sued for any
 6 wrongful acts you might commit?
 7 MS. MENDOZA: Objection, calls for a
 8 legal conclusion on the part of the witness.
 9 Not qualified to testify about whether or not
 10 he's immune from anything.
 11 Q (By Mr. Adler) Go ahead.
 12 A I don't believe I ever felt like that.
 13 Q You didn't think you were immune?
 14 A No, what do you mean?
 15 Q Did you think you could get sued if you made a
 16 mistake?
 17 A Yes, I didn't have a feeling of being immune.
 18 Q You felt if you made a mistake, you would be held
 19 ... accountable and responsible for money damages?
 20 A I don't think I ever thought about it, really,
 21 during that time. I never really thought about it.
 22 Q You never thought one way or the other if you had
 23 any responsibility financially to people if you
 24 made a mistake, never thought about that issue?
 25 A I never thought I was immune or never --

1 IN THE DISTRICT COURT OF CRAWFORD COUNTY, KANSAS
 2
 3 GENE SCHMIDT, et al.,)
 4)
 5 Plaintiffs,)
 6 vs.) No. 94C61G
 7 HTG, INC., d/b/a)
 8 HAMILTON'S, et al.,)
 9 Defendants.)

10 DEPOSITION OF: Robert Schirk, Vol II
 11 TAKEN ON BEHALF OF: Plaintiffs
 12 DATE TAKEN: June 15, 1995
 13 PLACE TAKEN: Fisher, Patterson,
 14 Sayler & Smith
 15 210 UMB Overland Park Bldg.
 16 11050 Roe
 17 Overland Park, Kansas

18 A p p e a r a n c e s
 19 For Plaintiff: Mr. James F. Adler
 20 9233 Ward Parkway, Suite 280
 21 Kansas City, Missouri 64114
 22 and
 23 Ms. Virginia P. Perez
 24 1125 Grand Avenue, Suite 1610
 25 Kansas City, Missouri 64106

1 (WHEREUPON, DEPOSITION EXHIBIT NO. 12
 2 THROUGH 14 WERE MARKED FOR IDENTIFICATION.)
 3 ROBERT SCHIRK,
 4 a Defendant, of lawful age, being produced, sworn
 5 and examined on behalf of the Plaintiffs deposeseth
 6 and saith:

7 DIRECT EXAMINATION (Cont'd)
 8 BY MR. ADLER:
 9 Q Mr. Schirk, are you under any medication today?
 10 A No, not today, no.
 11 Q Are you feeling okay?
 12 A I feel fine.
 13 Q If you have any problems understanding something I
 14 say, please let me know.
 15 A Okay.
 16 Q Let me make sure I understand your testimony.
 17 At the time Mr. Gideon was paroled or let out,
 18 there was a policy, an unwritten policy, with the
 19 Department of Corrections for the parole officer to
 20 make a determination as to whether there was a
 21 third party at risk situation; correct?
 22 A That's correct, yes.
 23 Q And that policy remained in effect the entire time
 24 from November of '92 to July of '93; correct?
 25 A Correct.

1 A p p e a r a n c e s
 2
 3 For Plaintiffs: James Adler & Associates
 4 9233 Ward Parkway, Suite 280
 5 Kansas City, Missouri 64114
 6 By Mr. James F. Adler
 7
 8 For Defendants Messrs. Fisher, Patterson,
 9 HTG and Hamilton: Sayler & Smith
 10 210 UMB Overland Park Building
 11 11050 Roe
 12 Overland Park, Kansas 66211
 13 By Mr. Michael K. Seck
 14
 15 For Defendants State of Kansas
 16 Schirk and Department of Corrections
 17 Dept. of Landon State Office Building
 18 Corrections: 900 SW Jackson
 19 Topeka, Kansas 66612
 20 By Ms. Lisa A. Mendoza
 21
 22 Also Present: Mr. & Mrs. Gene Schmidt
 23

24 I n d e x
 25 See regular transcript

1 Q And with respect to Mr. Gideon, did you make such a
 2 determination as to whether there was a third party
 3 at risk situation?
 4 A I don't recall actually making any determination.
 5 I did not feel that there was a third party at
 6 risk.
 7 Q When you say you didn't feel but you didn't make
 8 the determination, what is the difference between
 9 feeling and determining in your mind?
 10 A I don't know.
 11 Q But I guess what you're saying is clearly you
 12 didn't send a memo or make a written report that
 13 there was no third party at risk?
 14 A No, I did not.
 15 Q What I said is correct?
 16 A Yes.
 17 MS. MENDOZA: Object to the form of the
 18 question.
 19 Q (By Mr. Adler) And this policy we've just referred
 20 to to make a determination as to whether there was
 21 a third party at risk was an unwritten policy?
 22 A Yes, there is not a written policy regarding that.
 23 Q So you felt there was no third party at risk and
 24 therefore did not notify any employers; correct?
 25 A I didn't feel there was anyone at risk, yes.

1 Q And did you make this -- you made this
2 determination when he initially came into your
3 control after he was transferred to Pittsburg;
4 correct?

5 MS. MENDOZA: Object to the use of the
6 word control, calls for a legal conclusion.
7 Answer, if you can.

8 A Say it again, please.

9 (Whereupon, the last question was read
10 back by the reporter.)

11 A After he came to Pittsburg and was under
12 supervision in the Pittsburg area, yes.

13 Q (By Mr. Adler) You made that determination?

14 A That's when I began supervision.

15 Q You made the determination there was no third party
16 at risk; correct?

17 A As I said, I don't recall really making any
18 determination about this case, of there being a
19 third party at risk.

20 Q You felt there was no third party at risk?

21 A Right, I did.

22 Q Then when he took his job at Hamilton's, when
23 Mr. Gideon took his job at Hamilton's, did you make
24 such a determination?

25 A I felt that there was -- that that was a good

1 A Simultaneously, I don't think he worked at Superior
2 very long at all.

3 Q Simultaneous with which job, the Superior or the
4 Hamilton's?

5 A Hamilton's, I would say.

6 Q Did you notify Superior, anyone at Superior, as to
7 Mr. Gideon's record?

8 A I don't recall.

9 Q You may have?

10 A I may have called them at the time he applied. We
11 had a good situation with our personnel people out
12 there about hiring parolees and I may have called
13 them or they may have actually called me and we
14 discussed his background and his conviction.

15 Q So you had placed parolees with Superior in the
16 past?

17 A Yes.

18 Q And had you ever notified anybody at Superior as to
19 the record of any of these other parolees?

20 A Each time we had a discussion about this person
21 with the Personnel Department out there I believe
22 that was discussed, yes.

23 Q So the best of your recollection, you believe with
24 all the parolees other than Hamilton and -- let me
25 rephrase that.

1 employment situation for him and that there
2 wouldn't be really anyone else who would be at
3 risk.

4 Q So if I'm understanding you, when Mr. Gideon took
5 his job at Hamilton's, you didn't feel there was a
6 third party at risk situation; is that correct?

7 A No, I didn't.

8 Q Is what I said true?

9 MS. MENDOZA: Object to the form of the
10 question.
11 Answer it, if you can.

12 Q (By Mr. Adler) Is what I said correct?

13 A What I said was the way I felt, yes.

14 Q I'm unclear with your answer.

15 When he took the job at Hamilton's, did you
16 feel there was a third party at risk situation?

17 A No, I really didn't.

18 Q Prior to working at Hamilton's, Mr. Gideon worked
19 at Superior Industries, I believe it is?

20 A Yes.

21 Q Were there any other jobs he had, to your
22 knowledge?

23 A I think he did some part-time work with a brother
24 painting doing some painting for a local realtor.

25 Q In between the two jobs or simultaneously?

1 With all the other parolees, to the best of
2 your recollection, you believe you informed
3 Superior as to their record?

4 A The best I can recall.

5 Q And you believe you may have told them with
6 Hamilton but you don't recall -- I'm sorry, with
7 Gideon but you don't really recall?

8 A I don't really recall that.

9 Q If they testified that you did tell them, would you
10 dispute that?

11 A No, I wouldn't.

12 Q And did you ever have any experience with anybody
13 at Superior firing one of your parolees because you
14 had told them of their record?

15 A I don't recall that. I couldn't say that with a
16 certainty.

17 Q None come to mind?

18 A I don't recall that.

19 Q Do you recall any of the parolees you've ever
20 supervised being fired because you notified their
21 employer of their record?

22 A I can't recall any.

23 Q Do you believe there were some that you're not
24 recalling the names or there aren't any?

25 A I just can't recall all of the times that has

1 occurred and subsequent dismissals. I would say
2 that a parole may have weighed in the factor of a
3 dismissal for, you know, in conjunction with other
4 reasons.

5 Q That's speculation on your part?

6 A That is, yes.

7 Q And what I'm trying to find out, though, is right
8 after you told -- can you recall any situation
9 where right after you told the employer as to a
10 parolee's record that they fired them?

11 A I can't recall any.

12 Q They may have subsequently fired them and you
13 wouldn't know all the factors; correct?

14 A Yes.

15 Q Why is it that you told the people at Superior as
16 to many of your parolees' records?

17 A Because upon making application at Superior, these
18 people would indicate on their conviction and I
19 would tell them outright to be -- put it on their
20 application that Mr. Schirk is the parole officer
21 and have them contact me if they have a question.

22 Q If I'm understanding you correctly, you're saying
23 this Superior application inquired as to whether
24 someone was a convicted felon?

25 A I believe it does.

1 long time that was the only place you could receive
2 an application.

3 Back at that time, I don't recall if -- I
4 don't really recall if Mr. Gideon would have gone
5 through the Job Service Center.

6 Q You made the statement, I think that for a long
7 time that was the only place you could receive an
8 application. Are you saying that for a long time
9 in Pittsburg the only place that would hire
10 parolees was Superior?

11 A No, that's not what I was saying.

12 Q What did you mean by that statement?

13 A For a long time in the employment practice of
14 Superior, I believe the only place you could obtain
15 an application was at the local Job Service and
16 file the application with them and their personnel
17 people would pick up the application directly from
18 Job Service and review them and then attempt to
19 contact the applicant.

20 Q Why did you think it was important to follow up
21 with Superior about your parolees' applications?

22 A Well, at times to just -- if I hadn't heard from
23 them and I knew that Superior was hiring all the
24 time, I would just check back and try to get the
25 name in front of the personnel people again for

1 Q You told your people to be truthful and give that
2 answer?

3 A Yes.

4 Q Did you then independently talk with anybody, I
5 shouldn't say -- did you then ever talk with
6 anybody at Superior about it, about the record?

7 A Yes, I have.

8 Q They would see that on the application and call you
9 to inquire as to what the nature of the conviction
10 was?

11 A Most likely they would and if I hadn't heard from
12 them in a week or two, at times I would make the
13 call myself to see if they actually have received
14 the application and had reviewed it, maybe get
15 their name in front of the personnel people again
16 and let them review -- possibly review the
17 application again.

18 Q What do you mean if they had received the
19 application?

20 A At times a client, a parolee, will be told to put
21 in an application and actually won't do it.

22 Q How would they have the application? They would
23 get it from Superior or would they get it from you?

24 A We have had applications at our office, the local
25 Job Service Center has the applications and for a

1 another consideration.

2 Q And if I'm understanding you correctly, it was the
3 custom and practice of Superior to call you to
4 inquire as to the parolee's record?

5 A I don't say that -- I don't know that. I had had
6 calls regarding my people who have applied there or
7 I have called them.

8 Q Why would you call them if they didn't call you?

9 A Just simply because I had not heard from them and
10 normally anyone -- I believe anyone putting in
11 applications is going to be reviewed and their
12 application would be checked. Superior had a hard
13 time holding people and maintaining a work force
14 and there were openings all the time.

15 Q When they would ask you about a parolee's record,
16 what would be the nature of the information you
17 would provide?

18 A I would give them the conviction history, probably
19 time incarcerated, just released on parole, that
20 kind of information.

21 Q Let's do a hypothetical. If they called you about
22 -- if they had called you about Don Gideon, you
23 testified you're not sure if they did, what would
24 you have told them about Don Gideon?

25 MS. MENDOZA: Object as an improper

hypothetical.

Answer if you can.

A Just what I just indicated. I would give them the -- normally Linda Scherz would call me and she would ask, "What about this guy, what's he done?"

Q (By Mr. Adler) Can you spell Linda Scherz to the best of your ability?

A S-c-h-e-r-z, I believe.

Q I want you to give me the specifics of what you would have told on a Don Gideon.

MS. MENDOZA: I object to the form of the question. It calls for speculation and it's an improper hypothetical.

A To the best that I can recall, I would have told that Mr. Gideon was a recent releasee from the institution, he was convicted of such and such crimes.

Q (By Mr. Adler) Which was?

A Aggravated sodomy and rape. He did so many years.

Q Ten years?

A Ten years, and he's back living with his -- back in this area with his family needing work. That's all I know about him and I would ask them to look at his application.

Q Is that all you knew about him?

A That's basically it. That's basically what I could divulge to them.

Q You knew about -- you had read his psychological records that you testified to last time; correct?

A Right.

Q And you knew a little bit of his makeup, if you will?

A Correct.

Q Somewhat?

A Yes.

Q And you could divulge that to them; couldn't you?

A No.

Q You think the law prohibits you from doing that?

A I believe so.

Q Would you have told them that he was mandatorily released?

A I don't recall that I did.

Q Would that be something you would want to avoid or just kind of if it comes to mind you tell them?

A It wouldn't be a necessary part of that.

Q Necessary or unnecessary?

A It wouldn't be necessary.

Q Would you give them any advice or precautions or suggestions as to how to deal with him?

A No, not normally, no.

Q Do you recall if you contacted Superior or if they contacted you about Mr. Gideon?

A I really -- I cannot recall. I don't recall.

Q Might have been either way?

A It could have been, yes.

Q You testified last time, if I understood you correctly, that you think that parolees being employed is important to their rehabilitation; correct?

A Yes, I feel it's important.

Q Do you feel that them being employed protects the public?

A I believe it is a factor in that, yes.

Q How important of a factor, the No. 1 factor?

A It is very important, yes.

Q The No. 1 factor?

A I couldn't say if it's the No. 1 factor. It's a very important factor to them to be able to sustain themselves and be responsible.

Q What else would be very important factors other than employment to protect the public?

A Well, that they are complying with their conditions of release.

Q What else, I want to hear all the important factors to protect the public.

A Well, that they are complying with their release conditions, attending to any after care or mental health counseling requirements, working steadily.

Q Informing third parties that you feel are at risk would be important to protect the public; wouldn't it?

A If I felt there was a third party at risk.

Q To inform them would be important; correct?

A That would have been, yes.

Q It still is; correct?

A Yes.

Q How does them being employed protect the public?

A It shows an officer that the man is being responsible and maintaining himself in a work situation, earning legal money, taking up his time during a day and not just laying and having idle time, being able to begin to sustain himself by payment of his own bills and taking those responsibilities rather than relying on others and the system.

Q Are you aware of any statistics or authorities in the field that support the position that an employed rapist, convicted rapist, is less likely to re-offend than an unemployed one?

A I don't know.

1 Q Do you have any statistics or authority to support
 2 that proposition?
 3 A I don't know of statistics relating to that.
 4 Q Have you ever heard that concept from anybody? Do
 5 you believe that concept?
 6 A I believe that, yes. I believe that from personal
 7 experience that people that are working are more
 8 apt to make a better adjustment.
 9 Q I want to confine this to rapist, though, not just
 10 all parolees.
 11 Do you believe that an employed rapist is less
 12 likely to re-offend than an unemployed rapist?
 13 A I don't know that. You're asking me if it's my
 14 belief?
 15 Q Yes.
 16 A I believe so, yes.
 17 Q Why?
 18 A Because of the reasons I just gave to you.
 19 Q Do you know of anybody that works in your field,
 20 any authority in your field, lecturer, author,
 21 authority, that feels the same way?
 22 A I don't know of lecturers, people of that nature.
 23 I believe anyone dealing with parole service would
 24 feel that way.
 25 Q That's your speculation and opinion or do you know

1 Q You didn't know that from reading --
 2 A No.
 3 Q Who had he raped in the past?
 4 A A woman.
 5 Q He knew?
 6 A He knew her for a very short time.
 7 Q To your knowledge, had you ever known him to rape a
 8 stranger at the time he was working at Hamilton's?
 9 A Well, that's -- his first victim, by all accounts,
 10 was someone he met for -- had knew him for three or
 11 four hours.
 12 Q But someone he knew for a short while?
 13 A For a very short while, yes.
 14 Q Did you, when you reviewed his psychological
 15 reports that you indicated you reviewed before
 16 coming up with your plan for him, did you see
 17 anything in there that indicated whether he was --
 18 whether he raped strangers or people he knew?
 19 A Just as I said, the information showed that the
 20 person he had raped was someone he had just met,
 21 just that night.
 22 Q I understand that. What I'm trying to find out is
 23 if the reports indicated his tendencies or the type
 24 of person he was?
 25 A I don't recall that they did.

1 that as a fact?
 2 A That's my belief.
 3 Q Have you ever been trained or taught that by
 4 anybody?
 5 A I'm sure in the overall training of parole officers
 6 that is a major factor.
 7 Q With rapists?
 8 A Yes, with all clients.
 9 Q Again, that's your speculation but you can't give
 10 me a specific?
 11 A A specific what?
 12 Q Where you know that somebody has trained or taught
 13 you that?
 14 A I can't recall the specific time or training
 15 session, no.
 16 Q But you're confident that you've been taught that
 17 at some point in your career?
 18 A Yes.
 19 Q But you don't know by whom or where or when?
 20 A I can't put a name to that, no.
 21 Q You knew when Don Gideon became employed by
 22 Hamilton's that he was the type of individual who
 23 raped people he knew rather than strangers;
 24 correct?
 25 A I didn't know that.

1 Q They may have but you don't know?
 2 A I don't recall that, no.
 3 Q The best of your knowledge they didn't?
 4 A I don't recall that they specifically stated that.
 5 Q When you do determine if -- let me rephrase that.
 6 If you would determine that there was a third
 7 party at risk situation with respect to Mr. Gideon
 8 working at Hamilton's, if you had made that
 9 determination, what would you have done?
 10 MS. MENDOZA: Object, calls for
 11 speculation on the part of the witness.
 12 Answer if you can.
 13 A You're asking what -- like what procedure I would
 14 have gone through?
 15 Q (By Mr. Adler) Yes, back in '92, '92 and '93, not
 16 today.
 17 A If I had made that determination, I probably would
 18 have contacted Tom Hamilton immediately.
 19 Q And told him something like what you told me
 20 earlier you would have told Superior if you talked
 21 to them?
 22 A Yes.
 23 Q Would you have contacted the waitresses at
 24 Hamilton's directly?
 25 A I don't believe I probably would have.

1 Q Would you have suggested to Mr. Hamilton that he or
 2 somebody else at his company advise the waitresses
 3 as to Mr. Gideon's record?
 4 A I would probably say that, I would think.
 5 Q Would you require any type of verification from him
 6 that he had done that?
 7 A Well, as I said, back at that time I don't suppose
 8 I would have sought verification. I would have
 9 notified him and probably recommended that he talk
 0 to his people.
 1 Q Under today's policy at the D.O.C., which has been
 12 changed because of this case, you would have had to
 13 have written verification that Mr. Hamilton knew of
 14 Mr. Gideon's past; correct?
 15 A Yes.
 16 Q What about with respect to whether Mr. -- today
 17 would you have contacted the waitresses directly?
 18 A I don't believe I would.
 19 Q Would you have required verification -- you would
 20 have informed Mr. Gideon to tell the waitresses;
 21 correct, under today's policy?
 22 A We're speaking under today's policy about employer
 23 notification?
 24 Q Correct. You would have notified Mr. Gideon -- I'm
 25 sorry, Mr. Hamilton of Mr. Gideon's past under

1 how he could keep track.
 2 Q What is the reason for notifying employers when a
 3 determination is made that there's a third party at
 4 risk?
 5 A I think you're talking about two different things
 6 here.
 7 Q I don't mean to be. Tell me why you think that.
 8 A What was your question about third parties and
 9 employers?
 10 MS. MENDOZA: If you want him to look at
 11 the policy, in the policy there is employer
 12 notification and third party at risk
 13 notification. You're sort of blending the
 14 two.
 15 Q (By Mr. Adler) Explain the difference of the two.
 16 MS. MENDOZA: Do you need to look at the
 17 policy?
 18 MR. ADLER: The book is right here if you
 19 want to.
 20 A Employer notification would be mandatory under the
 21 policy of today. It is a written notification.
 22 That form that we had discussed earlier outlines
 23 what information is provided, employer is supposed
 24 to sign off on it and the parolee returns it to the
 25 parole officer and the parole officer contacts the

1 today's policy; correct?
 2 A Correct.
 3 Q And you would have -- I'm asking you under today's
 4 policy, would you have suggested to Mr. Hamilton
 5 that he tell the waitresses about Mr. Gideon's
 6 past?
 7 A As I understand today's policy, I don't believe
 8 that is a requirement. That would be something you
 9 could do.
 10 Q Would you have done it?
 11 A Well, if the consideration was that the people at
 12 risk would be waitresses, I would say probably I
 13 would. I would make sure they were aware of his
 14 situation.
 15 Q When you say you would make sure they were aware of
 16 his situation, do you mean that you would require
 17 verification from Mr. Hamilton that he had told
 18 them, the waitresses?
 19 A I would say that would probably be the way it would
 20 be done.
 21 Q And verbal or written verification from
 22 Mr. Hamilton?
 23 A Well, I think it would probably only be verbal in
 24 that I had the written verification from him with
 25 his changes of employees regularly and I don't see

1 employer for verification.
 2 Third party, third party notification would, I
 3 would say, would probably be to individuals who a
 4 determination was made may be at risk.
 5 Q (By Mr. Adler) So if I'm understanding you
 6 correctly, what you're telling me is under today's
 7 policy at the D.O.C., when a sex offender is
 8 released there is mandatory notification to an
 9 employer without having to make a determination as
 10 to whether there's third parties at risk, it's
 11 mandatory; correct?
 12 A Mandatory, yes, to the employer, yes.
 13 Q When a determination is made that a third party is
 14 at risk, there's mandatory notification to the
 15 third party; correct?
 16 A Yes, when that determination is made, there is a
 17 written notification to be done.
 18 Q And this third party at risk notification, was that
 19 in effect in June of '93?
 20 A No.
 21 Q That wasn't -- isn't that the unwritten policy that
 22 you've referred to?
 23 A No, I don't believe so.
 24 Q What is the unwritten policy that was in effect in
 25 June of '93 as distinguished from what you've just

1 referred to?

2 A I don't know what you're referring to exactly.

3 MR. ADLER: Can you help here, Lisa?

4 MS. MENDOZA: Prior to the implementation

5 of this policy, I don't mean to testify, but

6 prior to the implementation of the policy, as

7 you recall, there was the unwritten policy

8 about notification, case by case

9 discretionary.

10 THE WITNESS: Right.

11 MS. MENDOZA: I can't presume to explain

12 the policy, but that would appear to be this

13 kind of the written form of the previously

14 unwritten policy as far as third parties who a

15 determination has been made after reviewing

16 the case could be at risk.

17 Is that what you understood?

18 THE WITNESS: Yes.

19 MR. ADLER: I think I understood Lisa but

20 to make sure I did --

21 MS. MENDOZA: It was a little confusing,

22 I apologize.

23 Q (By Mr. Adler) The current policy of mandatory

24 notification when there is a determination made

25 that there is a third party at risk was previously

1 MS. MENDOZA: Object to the form of the

2 question. Calls for him to speculate about

3 the reason the policy was enacted.

4 If you know, answer.

5 A I don't know that.

6 Q (By Mr. Adler) You believe that to be the case?

7 A That may be the case.

8 Q Because I thought you testified to that last time.

9 A I believe I mentioned that, yes.

10 Q So under the current policy -- let me rephrase

11 that.

12 If the current policy was in effect in June of

13 '93, would you have had to notify Mr. Hamilton?

14 A If the current policy was in effect, yes.

15 Q Would you have had to notify Stephanie Schmidt?

16 A I don't know that that determination would have

17 been made.

18 Q What determination?

19 A That the women at the place of business were

20 required to be notified.

21 Q Because whether they were at risk?

22 A Whether they were at risk, yes.

23 Q Who would have made that determination? Who would

24 make that determination under today's policy

25 whether the waitresses at Hamilton's are at risk;

1 an unwritten policy at the D.O.C. in June of '93;

2 wasn't it?

3 A Yes.

4 Q And in June of '93, if the determination was made

5 that there was a third party at risk under this

6 unwritten policy it would be mandatory written

7 notification to third parties at risk; correct?

8 A No.

9 Q What type of -- what part of what I said is wrong?

10 A The notification I suppose could have been written.

11 It could have been written, it could have been

12 verbal, it could have been a matter of the officer

13 discussing it with a supervisor and their agreement

14 being made that, yes, this person should be

15 notified that the person is in the area and that

16 could be done, you know, by a personal contact, a

17 phone call.

18 Q Under today's policy, the notification to third

19 parties at risk would have to be made in writing;

20 is that correct?

21 A Under today's policy, yes.

22 Q And both of those changes in the policy, the

23 employer notification and the third party at risk

24 notification, came about at the D.O.C. as a result

25 of the Stephanie Smith incident; correct?

1 just you?

2 A No, I believe I would discuss that with a

3 supervisor.

4 Q Was that the policy in effect in June of '93, that

5 you would discuss it with a supervisor?

6 A No, I believe it was, as a case by case basis, it

7 would be the discretion of the officer and a lot of

8 times that was done with a supervisor, you know,

9 discussion.

10 Q Would you decide whether you wanted to call in the

11 supervisor or would the supervisor decide whether

12 he wanted to get involved?

13 A That would be probably my choice of talking to a

14 supervisor.

15 Q And your supervisor at the time was Tony Ramos?

16 A My immediate supervisor would be Mack Farmer.

17 Q Mack Farmer, okay, at the time, the whole time

18 Mr. Gideon was under your supervision?

19 A Yes.

20 Q Was Mack Farmer?

21 A Yes.

22 Q How would he know about the Gideon file to know

23 whether he should get involved? Would it have come

24 across his desk before yours?

25 A No, not really.

1 Q So he would have had to have heard from you?

2 A Yes, there would have been discussion between he
3 and I with me sitting down with the file and kind
4 of outlining what his background was and --

5 Q Go ahead, are you finished, I'm sorry?

6 A Yes, I'm finished.

7 Q In June of '93 were you required to sit down with
8 Mr. Farmer to make this third party at risk
9 determination?

10 A No.

11 Q It was your decision whether you wanted to do that?

12 A Yes.

13 Q Did you make such a decision with respect to
14 Mr. Gideon?

15 A I did not do that. That would have been the
16 decision I made is I didn't discuss this with
17 Mr. Farmer.

18 Q Do you recall thinking about that decision?

19 MS. MENDOZA: Just so we're clear, the
20 decision to discuss with Mr. Farmer?

21 MR. ADLER: Yes, thank you.

22 A I don't recall that.

23 Q (By Mr. Adler) Do you recall thinking about
24 whether there was a third party at risk situation
25 with respect to Mr. Gideon working at Hamilton's?

1 Q (By Mr. Adler) What did you say?

2 A Well, after knowing what has occurred and that and
3 looking back, I would say that after this has
4 occurred, I would look back and say that, yes, in
5 consideration of that, I would suppose maybe they
6 were at risk more.

7 Q Let's go back to at the time without the benefit of
8 hindsight, when Mr. Gideon became employed at
9 Hamilton's, did you feel that the waitresses there
10 were highly -- were at risk?

11 A I really didn't feel that.

12 Q Did you ever feel that at any time he was employed
13 at Hamilton's, Mr. Gideon was employed at
14 Hamilton's, that the waitresses were at risk?

15 A No.

16 Q It didn't concern you that a rapist was working
17 around young college women?

18 A I don't recall that being a consideration. I
19 didn't feel that it was a risk at the time. I felt
20 like the employment situation was a good one for
21 Mr. Gideon.

22 Q What about for the waitresses?

23 A I really did not consider that a risk situation.

24 Q What would have been a risky situation for
25 Mr. Gideon?

1 A I don't recall considering that, really, no.

2 Q What, if you had considered it, what factors would
3 you have weighed? How would you have made the
4 determination is what I'm trying to find out?
5 Think out loud with me of what you would have
6 thought.

7 A I suppose I would have been considering the man's
8 crime and his history as outlined in his
9 psychological and I think it would have had to have
10 been very obvious to me that there were people that
11 may be harmed if Mr. Gideon -- that's just
12 speculation now, as to what I would consider. I'm
13 trying to think of other factors that I would
14 consider.

15 Q Can you think of any?

16 A I don't recall.

17 Q As I recall your testimony at your beginning of
18 your deposition on, I believe it was April 27th,
19 you said you felt that the waitresses at Hamilton's
20 were highly at risk; correct?

21 MS. MENDOZA: What time period are we
22 talking about here?

23 MR. ADLER: When Mr. Gideon was working
24 here.

25 A I don't believe that's what I said.

1 A I don't know.

2 Q Knowing what you knew at the time, anything?

3 A I don't recall. I don't know. I can't say what
4 would be a risk situation. I don't know: We've
5 talked before about what did we say?

6 Q I believe you testified that, tell me if I'm
7 understanding you correctly, that working in a
8 women's dormitory would have been a risky
9 situation, would have placed the women in the dorm
10 highly at risk; correct?

11 A Something like that, yes.

12 Q I think you might have said at a strip bar, I can't
13 recall, would you feel, let's ask you that today,
14 would you feel that him working at a strip bar
15 would place the strippers highly at risk?

16 A I don't think that would be appropriate, yes.

17 Q Because they would be highly at risk?

18 A Yes.

19 Q Any other places that people would be highly at
20 risk if Mr. Gideon worked there?

21 A I don't know.

22 Q Would they have been -- would the waitresses at
23 Hamilton's be less at risk had you notified
24 Mr. Hamilton?

25 A I don't know.

1 Q You don't think they would have been less at risk
 2 if you notified Mr. Hamilton?
 3 A I don't really know if they would have been or not.
 4 Q Would the waitresses have been less at risk if you
 5 notified them?
 6 A I don't know. I would say yes, probably.
 7 Q Go back to what you talked about last time about
 8 your 20 year old daughter.
 9 What you knew at the time prior to what
 10 Mr. Gideon did to Stephanie Schmidt, would you have
 11 wanted your daughter to be working with him, your
 12 20 year old daughter, to be working with Mr. Gideon
 13 at Hamilton's?
 14 A I would not have wanted that.
 15 Q Why is that?
 16 A Just simply because I wouldn't have wanted her in
 17 the proximity of Mr. Gideon.
 18 Q Why is that, because she was at risk?
 19 A Because of me knowing what Mr. Gideon had done. I
 20 believe any female in the community would be at
 21 risk.
 22 Q And women in close proximity to him would have been
 23 more at risk; correct?
 24 A I don't know that.
 25 Q But what you knew prior to June of '93, you

1 discussion.)
 2 Q (By Mr. Adler) How many parolees were you
 3 supervising in June of '93 when Mr. Gideon did what
 4 he did to Stephanie Schmidt?
 5 A As I recall, I believe 62 in three counties.
 6 Q Was that a normal case load for you?
 7 A I don't really know what the normal case load is
 8 considered any more.
 9 Q What is your current case load?
 10 A I believe more than that, I believe right now.
 11 Q Roughly how many?
 12 A Right about the same, I believe, right about that.
 13 Q Do you recall it ever being less than 62?
 14 A Yes, it has been.
 15 Q What's the lowest you recall it being?
 16 A I think around 47 at one time, something like that.
 17 Q Mr. Hamilton testified about this meeting at the
 18 Quick Stop; do you recall that?
 19 A Yes.
 20 Q And he indicated, I believe, you said something to
 21 the effect that you gave, either he or you, I
 22 forgot which it was, gave Don a wide path. Do you
 23 recall that comment?
 24 A I remember you mentioning that as being a comment.
 25 I don't remember who said that in the conversation

1 wouldn't have wanted your own daughter to be
 2 working with Mr. Gideon; correct?
 3 A No, I wouldn't.
 4 Q Not even if you had notified her of Mr. Gideon's
 5 past; correct?
 6 A That's correct.
 7 Q And the reason for that statement of yours is
 8 because it would have been risky for her to work
 9 there; correct?
 10 A Well, as I said, I think any female in the
 11 community would be at risk.
 12 Q And you're saying a woman out there --
 13 A Simply because that's who his victim was was a
 14 woman.
 15 Q Your testimony to this court and jury is you don't
 16 think the women working with him were more at risk
 17 than women in the general public?
 18 MS. MENDOZA: Object to the form of the
 19 question. We're not in front of a court and
 20 jury this morning, we're just in front of a
 21 deposition and asked and answered. He already
 22 told you several times that he thought women
 23 in the general public would be at risk.
 24 A I don't know that.
 25 (Whereupon, there was an off-the-record

1 or if it was said. I don't really recall that.
 2 Q Did you give Don a wide path?
 3 A In what manner? What do you mean?
 4 Q Those were the words that Mr. Hamilton used. If
 5 you don't know what it means, tell me that.
 6 A I don't know what that means, really.
 7 Q Did you give him a lot of leeway?
 8 A As in what? In adherence to the conditions?
 9 Q Yes.
 10 A No, I don't believe so.
 11 Q Were you strict with him?
 12 A He was adhering to the conditions, yes.
 13 Q Were you strict with him?
 14 MS. MENDOZA: Object to the form of the
 15 question, vague, ambiguous, be a little more
 16 specific about what you mean.
 17 Q (By Mr. Adler) Do you understand my question?
 18 A Well, I believe I supervised him in the category of
 19 supervision he was in in the manner I would anyone,
 20 yes.
 21 Q Do you agree -- let me withdraw that.
 22 Have you given statements other than your
 23 prior deposition here to anybody about this
 24 situation?
 25 MS. MENDOZA: Are you talking about other

than to an attorney?

MR. ADLER: Let me rephrase it.

Q (By Mr. Adler) Have you spoken to the K.B.I.?

A I don't really recall speaking to a K.B.I. officer.

Q Pittsburg Police Department?

A I might have had a phone call with a policeman -- well, I believe I did, yes, yes, Kenny Orender, I believe.

Q Can you spell that?

MS. MENDOZA: I think that's in his chronological, O-r-e-n-d-e-r, Kenny.

Q (By Mr. Adler) With Pittsburg Police Department?

A With Pittsburg Police Department and officer named Sellers with the Frontenac Police Department.

Q Have you ever seen this statement transcribed or anything that you gave to them?

A I don't believe I have.

Q How about the Crawford County Sheriff's Department?

A I don't recall. I don't recall speaking to a Crawford County officer.

Q Any county sheriff in that area or any area for that matter?

A I don't know. I don't recall it.

Q F.B.I.?

A I don't believe so.

1 A I don't know that they would be.

2 Q It's your testimony they are all at equal risk?

3 A I would say yes.

4 Q But you would acknowledge there's something you could do to lessen the risk of the waitresses which is to notify either their employer or them; correct?

8 A Notification would have probably reduced that risk.

9 Q What went wrong here, sir, when a co-employee rapes another co-employee, does that connote to you that something went wrong?

MS. MENDOZA: Object, calls for speculation on the part of the witness.

If you can answer that.

15 A I don't know what went wrong. All the indications were that everything was going very well.

17 Q (By Mr. Adler) You don't think anything went wrong here?

MS. MENDOZA: I don't think that's what he testified to.

21 Q (By Mr. Adler) Then let me ask you that. Do you think anything went wrong here?

23 A I don't know what it would be.

MS. MENDOZA: I guess I object to being a little vague. Are you talking about the

Q Anybody at the D.O.C.?

A I think there was discussion about the case, yes.

Q With whom?

A Oh, with my immediate supervisor, Mack Farmer, with the parole director, Tony Ramos. I don't recall other conversations. I don't recall who we talked to, really, at central office.

Q Any notes taken of these meetings with these people at the D.O.C. that you recall?

A I don't recall. I think there were notations made on the chronological.

Q Anybody else you recall speaking with about this situation?

A No, not really.

(Whereupon, a break was taken at this time.)

Q (By Mr. Adler) Mr. Schirk, we have the women at large in Pittsburg in June of '93 prior to this incident, we have the women at large at Pittsburg, in Pittsburg, the women working at Hamilton's and hypothetically your 20 year old daughter working at Hamilton's. Are they all at equal risk, sir?

A I don't know.

Q Is anybody more at risk than the other of those three groups?

1 entire situation or are you talking about his supervision or be a little more specific perhaps.

MR. ADLER: Let me rephrase and do another question.

6 Q (By Mr. Adler) Do you think Stephanie Schmidt's death could have been avoided?

8 A I don't know.

9 Q Do you think she would be alive today if you had the current D.O.C. policy in effect?

11 A I don't know.

12 Q Do you think she would have gotten in the car with him if she knew he was a rapist?

14 A I don't know.

15 Q Would you have gotten in the car with him if you knew he was a rapist?

17 A I wouldn't have had a problem doing that, no.

18 Q But you wouldn't have wanted your 20 year old daughter to get in the car with him at night if he was a rapist; would you?

21 A I wouldn't have wanted that, no.

22 Q I don't recall if I asked you this so forgive me if I did.

24 Have you ever seen a statement of yours other than this deposition transcribed that you've given

1 relative to this incident?
 2 A I don't believe so.
 3 Q Have you ever been sued before?
 4 A No.
 5 Q Have you ever sued anybody yourself?
 6 A No.
 7 Q Have you had an opportunity to review your, I think
 8 it's April 27th depo, April 27th deposition?
 9 A Yes.
 10 Q Is there anything in there that you feel is
 11 inaccurate?
 12 A After reading that, I believe there's some areas
 13 there that I noted that there was some question
 14 about the time frame of your questioning and what I
 15 felt prior to June '93 or July '93 and what I felt
 16 after, and I think there's some -- I would say some
 17 changes probably need to be made in there.
 18 Q Have you made the changes on your signature page?
 19 A I haven't as yet.
 20 Q Can you tell me the nature of these changes and
 21 what you were just referring to?
 22 A I would have to get my notes and look at the pages.
 23 Q Give me a summary, though, of what you're saying
 24 about the time frames that were inaccurate.
 25 A Well, I'd prefer to look at my notes.

1 Q Would you have allowed in June of '93 a child
 2 molester to work in a day care center?
 3 A No.
 4 Q Would you allow a rapist to work in a women's
 5 college dormitory?
 6 A No.
 7 Q And would you allow a rapist to work in a
 8 restaurant with college waitresses there?
 9 A I didn't see that to be a problem.
 10 Q How long has this new D.O.C. policy with the
 11 mandatory notification of employers with sex
 12 offenders and the third party at risk situation
 13 been in effect?
 14 A I would have to look at the policy for sure. I
 15 believe it was September '94, I believe.
 16 MS. MENDOZA: I think that's right.
 17 Q (By Mr. Adler) How many times have you had to
 18 notify an employer, if you know?
 19 MS. MENDOZA: Since September of '93 --
 20 '94?
 21 MR. ADLER: Yes.
 22 A I don't believe I've had a sex offender employed
 23 where I have had to do that yet.
 24 Q (By Mr. Adler) You would have had to do it?
 25 A Yes.

1 Q But you'll do this in your correction sheet?
 2 A Yes.
 3 Q Do you think it's important as a parole officer to
 4 keep parolees away from situation that are
 5 conducive to them committing a crime?
 6 MS. MENDOZA: Object to the form of the
 7 question. It's vague, ambiguous.
 8 A I don't know how that can be done. I don't. I
 9 don't control these people 24 hours a day. I don't
 10 do that.
 11 Q (By Mr. Adler) But you testified last time, I
 12 believe, and correct me if I'm wrong, that you
 13 don't let a bank embezzler work at a bank; correct?
 14 A I don't believe I would.
 15 Q And you -- would you allow that with one of your
 16 parolees?
 17 A No, that wouldn't be appropriate.
 18 Q So you wouldn't even let them work there, much less
 19 only notify them of his record, you'd stop him even
 20 working there?
 21 A I don't believe it would be appropriate.
 22 Q If you had a parolee that was a bank embezzler,
 23 would you allow him, and we're talking in June of
 24 '93, would you have allowed him to work at a bank?
 25 A No.

1 Q You haven't had a sex offender under your
 2 supervision; correct?
 3 A I have one who is non-employed.
 4 Q What about the third party at risk situation? Have
 5 you ever had to notify any of them since September
 6 of '94?
 7 A I notified a scrap hauling company in Neodesha
 8 regarding a man driving for them who had an alcohol
 9 history, a D.U.I. history, suspension history. I
 10 wanted to be sure that they were aware of that
 11 history and he had a legal D.L.
 12 Q Legal driver's license?
 13 A Right.
 14 Q So you notified the employer?
 15 A Right.
 16 Q Who was at risk in that situation?
 17 A The company itself for legal liability, wrecks, the
 18 public driving, possibly, could be.
 19 Q The public at large would have been at risk?
 20 A (Whereupon, the witness nods his head.)
 21 Q Yes?
 22 A Yes.
 23 Q Anybody in the public more at risk than anybody
 24 else in that situation?
 25 A I don't know.

1 Q Can you think of anybody in the public in that
 2 situation that's more at risk than the public at
 3 large?
 4 A Possibly if the man's intoxicated the people
 5 driving on the road.
 6 Q But that's the public at large; isn't it, sir?
 7 A No, those drivers.
 8 Q Any group of -- sorry.
 9 A Drivers.
 10 Q Any group of people more at risk in that situation
 11 than another?
 12 A I don't know of what group it would be.
 13 Q But you determined there was a third party at risk
 14 and notified the employer?
 15 A Right, I felt like the possibility of him driving
 16 drunk was a possibility and I wanted to contact
 17 them.
 18 Q Did you have to discuss this with any of your
 19 supervisors before you did this?
 20 A I believe I did discuss that with Mr. Farmer.
 21 Q Any other situations where you discussed it with
 22 somebody at the D.O.C. such as Mr. Farmer and then
 23 the determination was made not to notify the
 24 employer or the third parties at risk?
 25 A I don't believe so.

1 A I don't know all of them. I don't really have a
 2 knowledge of that and I don't have a knowledge,
 3 really, of ones done in our office. Possibly the
 4 other officer in the office has done one, I'm not
 5 sure.
 6 Q What happened with your D.U.I. fellow that you
 7 notified or third party at risk, the guy where you
 8 notified his employer you just testified to, what
 9 happened with him? Did he keep his job?
 10 A Yes.
 11 Q Was there a to-do about it? Was there any
 12 discussion when you notified him and that was the
 13 end of it?
 14 A When I contacted them it was after probably two
 15 different visits with him when I told him he was
 16 required to notify them and he had just started the
 17 job.
 18 I contacted them and they were still not aware
 19 of that type of history. I explained that to them
 20 and our concerns and the owner, it was a small
 21 company, the owner talked with him about it and was
 22 comfortable with him and allowed him to continue
 23 working. He did so and has since moved onto
 24 operating heavy equipment.
 25 Q So he's doing well despite his record?

1 Q Have you heard of any other third party at risk
 2 notifications made by the D.O.C. since September
 3 of '94?
 4 A I believe there's been one done in our office and I
 5 believe Mr. Farmer did that and --
 6 Q You --
 7 A I'm sorry, third party you're saying?
 8 Q Yes.
 9 A I believe that was done by Mr. Farmer.
 10 Q What are the circumstances of that?
 11 A I cannot recall. I can't even recall the name of
 12 the case. I seem to remember that he did follow
 13 that procedure and make a notification.
 14 Q Do you have any idea what the guy's record was?
 15 A I don't remember. He was a sex offender.
 16 Q So there would have been mandatory employer
 17 notification?
 18 A Right.
 19 Q And then what you're saying you believe there was
 20 also specific third party notification?
 21 A I think he may have done that. I think so.
 22 Q You think so. Any other employer notification with
 23 respect to sex offenders that you've heard about at
 24 the D.O.C., the Kansas D.O.C., since September of
 25 '94?

1 A Seems to be, yes.
 2 Q Did you have any concern when you notified them
 3 that he might lose his job?
 4 A Yes, there was some concern about that.
 5 Q If you had -- if you were under the old policy, you
 6 would have still had to notify him; correct, in
 7 that situation?
 8 A Under the old policy?
 9 Q The unwritten policy that was in effect in June of
 10 '93?
 11 A No, I believe that would have been my discretion to
 12 do that.
 13 Q But after you determined there was a third party at
 14 risk situation, it wasn't your discretion, you had
 15 to notify them under the old policy as well;
 16 correct?
 17 A Well, yes, if you saw that there was a problem
 18 possible there you would notify, yes.
 19 Q The only thing that you're testifying to under the
 20 old policy that was discretionary was the actual
 21 determination whether there was a third party at
 22 risk; correct?
 23 A As I understood that unwritten policy was first
 24 there was discretionary to make that determination.
 25 You could make a determination as, yes, there is or

1 no, there's not, and that it's discretionary, if
 2 there is a third party that it's discretionary as
 3 to whether you advise someone.
 4 Q Even if you feel they were at risk you felt it was
 5 discretionary?
 6 A That would be where you would discuss it with a
 7 supervisor and make a determination.
 8 Q It's your testimony under the old policy if a
 9 determination was made that there was a third party
 10 at risk that it was still discretionary whether to
 11 advise anybody of that situation?
 12 A I believe that's the way I interpreted it.
 13 Q You're not sure what the policy was?
 14 A It was unwritten and I'm not aware of it. That was
 15 my interpretation of it.
 16 Q I'm going to hand you what has been marked as
 17 Plaintiff's Exhibit 12 and I'm just going to refer
 18 you to the top page of that which reads, Inserts
 19 for August 26, 1994 regional meeting summary.
 20 Have you seen this document before?
 21 MS. MENDOZA: You need to look at it? Do
 22 you remember it?
 23 MR. SECK: Is this from a prior depo or
 24 is this a new exhibit?
 25 MR. ADLER: This is a new exhibit and it

1 let me know that but don't pull your hair out.
 2 MS. MENDOZA: I can't remember the exact
 3 date. I think it was approximately January of
 4 '94.
 5 Q (By Mr. Adler) Back to the question. Have you
 6 seen this document before? Are you familiar with
 7 it?
 8 A I have seen this, yes.
 9 MS. MENDOZA: Have you seen the first
 10 page?
 11 THE WITNESS: I don't recall.
 12 MS. MENDOZA: Do you remember seeing
 13 that?
 14 THE WITNESS: No.
 15 Q (By Mr. Adler) All I'm going to be referring to is
 16 the first page. If you want to look at it all,
 17 that's fine, but refer to the first paragraph, FSO
 18 3.10, read that and tell me if that was your
 19 understanding of the old policy. Just read it to
 20 yourself not out loud.
 21 A I believe so.
 22 Q And it starts off, if you read the first sentence
 23 for me?
 24 A FSO 3.105?
 25 Q Uh-huh.

1 was in the stuff she just gave us.
 2 MS. MENDOZA: Just so you understand it,
 3 there was a period of time when -- I think
 4 this would have been after you, the Pittsburg
 5 office, went into the Kansas City regional.
 6 THE WITNESS: I believe so.
 7 MS. MENDOZA: There was a --
 8 MR. ADLER: What's the significance of
 9 that?
 10 MS. MENDOZA: I'm just trying to make
 11 sure for his purposes if I was correct in
 12 assuming that he would have been a part of
 13 this region at the time of this meeting, prior
 14 to, I think, maybe in January of '94?
 15 THE WITNESS: I don't recall when this
 16 was.
 17 MS. MENDOZA: I'm not sure and I'll find
 18 out if you if you really desperately need to
 19 know. Pittsburg used to be part of the region
 20 that included the Topeka area and then it was
 21 changed to the region which includes now
 22 Kansas City, Kansas, Olathe, Paola, that
 23 eastern part of Kansas, but I thought this
 24 should have --
 25 MR. ADLER: I'd appreciate it if you'd

1 A Also provides a form for use when a parole officer
 2 believes that the offender poses a specific risk
 3 and that a third party should be notified of
 4 offender's criminal history.
 5 Q Go on.
 6 A These types of situations have been referred to in
 7 the past as duty to warn situations. This policy
 8 simply establishes a procedure and form for use
 9 during such notifications.
 10 Q I interpret that to be saying, and you tell me if
 11 you agree, that in the past when you determined
 12 that there was a third party at risk situation, you
 13 had a duty to warn which meant you had to. It
 14 wasn't discretionary. Am I correct?
 15 A That sounds like that's the way that they are
 16 talking about it. It sounds like that's the way it
 17 is.
 18 Q So your recollection you've just given me a couple
 19 minutes ago as to the policy was inaccurate;
 20 correct?
 21 A Apparently so.
 22 Q So that we're perfectly clear under the old policy,
 23 the June of -- the policy that was in effect in
 24 June of '93, if you determined that there was a
 25 third party at risk, you had a -- you had to warn

1 the third parties; correct?
 2 A Well, according to that, apparently that's the
 3 idea.
 4 Q It wasn't discretionary; correct?
 5 A I would say not.
 6 Q Was it discretionary?
 7 A I would say it was not discretionary.
 8 Q It says in quotes in this document, duty to warn.
 9 What does that mean to you?
 10 MS. MENDOZA: I object. The question
 11 calls for a legal conclusion on the part of
 12 the witness.
 13 Q (By Mr. Adler) I don't want a legal conclusion. I
 14 want what it means to you.
 15 A What it would mean to me would mean simply that I
 16 would be required to do that.
 17 Q We talked last time as to whether the D.O.C.
 18 follows the federal guidelines and you testified,
 19 as I recall, that you didn't know; correct?
 20 A I believe so.
 21 Q Have you made a determination, do you know now
 22 whether they follow the federal guidelines?
 23 A No, I don't know.
 24 Q Do you know if Mr. Hamilton had contacted the
 25 police department or the sheriff's office what they

1 mandatory release?
 2 A I believe that probably would have been released,
 3 yes.
 4 Q You're not sure but you think?
 5 A I think so.
 6 Q Who would know at the D.O.C. what they could have
 7 given out? Who would be the person that could
 8 answer that question for me?
 9 A Probably Chris Rieger.
 10 Q Is there anybody at the D.O.C. that's your mentor
 11 that's taught you a lot that you look up to and
 12 rely on for guidance with your job?
 13 A Well, I've worked for almost ten years with
 14 Mr. Farmer. Like I say, he is probably the one
 15 person in the department as a supervisor who I
 16 would be closest to.
 17 Q Do you respect his opinions?
 18 A He has a lot of experience and yes, I would say so.
 19 Q Do you think he knows how to deal with parolees in
 20 situations?
 21 A I believe so.
 22 Q Do you think he knows how to make third party at
 23 risk determinations?
 24 A I believe so.
 25 Q Has he -- as your supervisor, does he train you?

1 would have determined about Mr. Gideon's record?
 2 MR. SECK: Object to the form of the
 3 question to the extent that it calls for
 4 speculation on the part of the witness.
 5 A I don't know.
 6 Q (By Mr. Adler) You don't know what was public
 7 information with regard to Mr. Gideon's record in
 8 June of '93?
 9 A No, I don't.
 10 Q Or in November of '92; correct?
 11 A I don't know.
 12 Q If he had contacted your office, would they have
 13 been able to tell him anything in November or
 14 December of '92?
 15 MR. SECK: Same objection as before.
 16 A Yes.
 17 Q (By Mr. Adler) What would they have been able to
 18 tell him?
 19 A Would have been able to tell him his conviction
 20 information, his criminal record information.
 21 Q Which would have been the time served?
 22 A Would have been his convictions, his sentence.
 23 Q Time served?
 24 A Yes.
 25 Q Would they have been able to indicate that it was a

1 A He has had that position in the past, yes.
 2 Q Who else trains you at the D.O.C. besides
 3 Mr. Farmer?
 4 A Well, we have monthly regional meetings in which
 5 other personnel at the regional office may present
 6 training in this meeting. We may have persons from
 7 other agencies come in to present information.
 8 Q Who at the D.O.C. has done it that you recall,
 9 trained you besides Mr. Farmer?
 10 A Well, back when we were in the region out of
 11 Topeka, the parole director Ramos, Bob Hainline.
 12 Q Could you spell that?
 13 A H-a-i-n-l-i-n-e.
 14 Q What's his title?
 15 A He's a parole supervisor. There's another parole
 16 supervisor there by the name of Davis. I don't
 17 recall his first name. Then in Kansas City the
 18 parole director was Tom Vose and the parole
 19 supervisors were Rick Fishley and I don't recall
 20 his name, Jennifer Welsh, I believe, was a training
 21 officer, had that designation as a training
 22 officer.
 23 Q Who has trained you with respect to the
 24 determinations of third parties at risk, who has
 25 given you guidance and training with respect to

1 that issue?

2 A I would say probably Mr. Farmer has at some time.

3 Also who has also done some training regarding

4 these issues would be Tim Madden, the legal

5 counsel. I'm sure he has done that.

6 Q Anybody else that's coming to mind?

7 A I can't recall others, really.

8 Q If I understand the situation correctly with

9 respect to Mr. Gideon, you trusted him to tell

10 Mr. Hamilton that he was on parole; correct?

11 A I didn't trust him to do that. He wasn't required

12 to do that at the time.

13 Q Because you had made a determination there wasn't a

14 third party at risk?

15 A I didn't feel there was.

16 Q But your form that he filled out we went over last

17 time where he checks a box as to whether he's

18 informed his employer, and he had left it with a no

19 until March of '93, you were just trusting him to

20 do that and you were also trusting whether he was

21 X-ing the box correctly; correct?

22 A As I indicated, he didn't have to tell his

23 employer. He felt like, and I did, too, that as he

24 was there longer he would reveal this information

25 of his parole.

1 A I didn't feel it was necessary.

2 Q Why was it on your form?

3 A I believe that's an indicator of a parolee's status

4 in the work place as to whether those people knew

5 he was on parole or not.

6 Q Why does that matter?

7 A Matters about contacting the employer, that type of

8 thing.

9 Q What would you have to contact an employer about?

10 A Well, the reason that I felt the reason that it was

11 on the form was to make us aware of which clients

12 employers knew that they were on parole.

13 Q Why does that matter?

14 A It matters in that we would not go out and contact

15 an employer with them not knowing that this man was

16 on parole.

17 Q Are you saying you wouldn't want the first they

18 learn of it, the parole, to be when you show up at

19 their place of employment?

20 A That's what that was an indicator for previously,

21 yes.

22 Q Why would you go out to the place of employment?

23 A To make an employment visit, to see the parolee at

24 the job site.

25 Q And you never did that with Mr. Gideon; did you?

1 Q Why did you and he feel as he was there longer he

2 would reveal it?

3 A He felt that as he got more comfortable with Mr.

4 Hamilton and was there longer and showed them what

5 he could do work wise that that information would

6 come out.

7 Q Why would it come out later? Why was it necessary

8 to come out at all?

9 A Well, I believe that Mr. Gideon was also indicating

10 that he was going to be up front with Mr. Hamilton

11 and tell him what his history was.

12 Q Did you think it was necessary for it to come out

13 later?

14 A At that time it wasn't, you know, it wasn't

15 required to be given.

16 Q Did you think it was necessary for that information

17 to come out later?

18 MS. MENDOZA: Object, asked and answered.

19 A It wasn't required to be given.

20 Q (By Mr. Adler) Did you think it was necessary?

21 MS. MENDOZA: Object, asked and answered.

22 A That's my answer.

23 Q (By Mr. Adler) It wasn't required but there's

24 things you can think are necessary that aren't

25 required; aren't there, sir?

1 A I don't believe I did.

2 Q And you didn't know for certain that Mr. Gideon had

3 even told Mr. Hamilton he was on parole, you just

4 knew he had reported to you he had told him;

5 correct?

6 A I believe that's right.

7 Q Did the parolees receive any money from the state

8 while they were on parole?

9 A I don't believe so.

10 Q You testified last time, I believe, correct me if

11 I'm wrong, that Mr. Hamilton subsequent to this

12 situation has called you about a parolee he had?

13 Did I recall that correctly?

14 A I'm sorry, say it again.

15 Q Let me rephrase the question.

16 Has Mr. Hamilton ever contacted you about one

17 of his employees?

18 A I believe just this past week, I believe, he called

19 our office asking our secretary.

20 Q About an individual he was employing?

21 A About someone who has applied, yes.

22 Q Do you remember that individual's name?

23 A No, I don't.

24 Q But the person was on parole?

25 A No, he wasn't in our system.

Q Other than that, has he ever contacted the D.O.C.?
 2 A I'm not aware of it.
 3 Q Who was the lady you dealt with at Superior?
 A I believe Linda Scherz is the actual personnel
 5 director.
 6 Q Did you know her pretty well?
 A No, just in dealing with her on the phone. I think
 8 I've seen her one time at the plant.
 9 Q But you had frequent contacts with her about
 parolees that Superior was employing?
 11 A I had had when I worked in Crawford County, yes.
 12 Q Isn't it true that you and her had a running joke
 of whether she had been lied to today by one of
 4 your parolees?
 15 A I'm not familiar with that.
 Q Did you ever make a comment to her of, "Been lied
 7 to today by anybody?"
 10 A I don't recall that.
 Q Did she or anybody at Superior ever make a comment
 0 to you about that, like that?
 21 A That's possible. I don't recall an incident of
 that. That is possible. I don't know.
 3 Q Parolees have a bigger tendency to lie than the
 public at large; don't they, sir?
 24 MS. MENDOZA: Object to the form of the

1 A No.
 2 Q None of that would have been done in writing?
 3 A No, it wouldn't have.
 4 Q The only thing you may have done is you may have
 5 told Mr. Farmer of your decision?
 6 A I can't recall actually talking with him about
 7 that.
 8 Q I understand. I'm not saying you're saying you
 9 did. You just may have but you don't recall?
 10 A I may have.
 11 Q Can you explain for me the relationship of the
 12 Parole Board and the D.O.C.?
 13 MS. MENDOZA: Vague, broad, ambiguous,
 14 geez, if you know or could do that, tell him.
 15 A They are two separate agencies, two different
 16 interests and federally --
 17 Q (By Mr. Adler) Does one have power over the other?
 18 A No, I don't believe so.
 19 Q What were you going to say before I interrupted
 20 you?
 21 A I think the Parole Board is political appointments
 22 and they actually have some control on the numbers
 23 of persons coming out of the institution by
 24 decisions that they make, and I really can't
 25 explain a relationship there.

question. Calls for speculation about what
 parolees generally do or don't do or have a
 3 tendency to do or not do.
 Q (By Mr. Adler) Go ahead and answer the question.
 A I don't have any idea.
 5 Q You don't have any idea whether a convicted felon
 is more likely to lie than a person in the general
 public?
 7 A I don't know that they are.
 Q Do you feel they are?
 A It's possible.
 12 Q With respect to Mr. Gideon, did you tell Mr. Farmer
 or anybody else at the D.O.C. that you had decided
 not to inform Hamilton's of Mr. Gideon's record
 prior to June of '93?
 A I don't believe I did.
 Q You may have?
 17 A I don't believe I discussed it with Mr. Farmer but
 I may have. I cannot recall.
 Q Did you make any written notification to anybody at
 the D.O.C. that you had made that decision that
 there was no third party at risk situation?
 A No.
 22 Q Or that you had chosen not to notify anybody at
 Hamilton's?

1 Q If they put a condition of release with respect to
 2 a parolee, you have to honor it; correct?
 3 A That's the idea, yes.
 4 Q You don't have the discretion to veto it or reject
 5 it?
 6 A No, there is a policy of procedure for appealing a
 7 condition and getting it waived.
 8 Q But you can't arbitrarily do it without going
 9 through the procedure; right?
 10 A Correct.
 11 Q Do you frequently add conditions to their
 12 conditions, you, Bob Schirk?
 13 A I wouldn't say frequently. If there is an obvious
 14 reason to do so, at times I will do that and that
 15 is endorsed by a supervisor.
 16 Q What percentage of your cases do you do that with?
 17 A I have no idea.
 18 Q Is it more than 25 percent?
 19 A I don't know.
 20 Q It might be?
 21 A It might be.
 22 Q Might be more than 50 percent?
 23 A I don't know.
 24 Q You don't know if it's over 50 percent of your
 25 cases that you add your own conditions?

1 A No, I don't know. I don't know what the percentage
 2 would be.
 3 Q Is there any statistic you would have -- how would
 4 you make that determination? What would you have
 5 to do to answer my question?
 6 A I would have to go back and review each case that
 7 I've dealt with.
 8 Q There's no statistics kept like that?
 9 A I don't believe so, no.
 10 Q Your attorney produced for me a bunch of stuff and
 11 in there was some exams you had to take when you
 12 were being apparently trained and they had a bunch
 13 of questions you had to answer. Are you familiar
 14 with that at all?
 15 A I'm sure there is. I would have to review all
 16 that.
 17 Q There was just questions. There was no answers.
 18 They were blank forms that said exam at the top.
 19 A I'm not familiar.
 20 MS. MENDOZA: If I could explain for you?
 21 MR. ADLER: Sure.
 22 MS. MENDOZA: The documents I sent to
 23 you, that apparently was the training method
 24 used, part of the training method used at the
 25 time where they had a series of questions

1 Q Can you check and if you do let me have them
 2 through your attorney?
 3 MS. MENDOZA: As I understand, the way
 4 they did that was concerning the FSO manual in
 5 effect at the time which I can't tell you
 6 exists or not.
 7 Q (By Mr. Adler) Is that your understanding that you
 8 would have been trained from the FSO manual?
 9 A Yes.
 10 Q That's how you got the knowledge to answer those
 11 questions.
 12 A (Whereupon, the witness nods his head.)
 13 (Whereupon, a break was taken at this
 14 time.)
 15 Q (By Mr. Adler) I'm going to hand you Exhibit 13
 16 which appears to be a field service order that was
 17 issued on April 8, '92; is that correct?
 18 A Yes.
 19 Q I'm going to refer you to Roman Numeral I, Capital
 20 A, Paragraph 2 and it says, "Assessments are
 21 completed following the risk and needs assessment
 22 instruction booklet"; correct?
 23 A Yes.
 24 Q Have you ever seen such a booklet?
 25 A Yes.

1 concerning each FSO.
 2 As I understood it, I believe you
 3 underwent the same kind of exam. Do you have
 4 that with you?
 5 MR. ADLER: I don't have it with me.
 6 MS. MENDOZA: Mine is in the car. A
 7 series of pages where you had to answer each
 8 one as part of the parole training and your
 9 supervisor had to review them and --
 10 THE WITNESS: That was done at the
 11 office.
 12 MS. MENDOZA: I think it was done as part
 13 of basic training at the time you would have
 14 -- do you recall that?
 15 THE WITNESS: Would have been like in '85
 16 when I started there?
 17 MS. MENDOZA: My understanding is that
 18 was the procedure in effect then.
 19 Q (By Mr. Adler) That's what it looked like to me
 20 what she said.
 21 What I'm trying to find out is where are the
 22 materials that you were trained on where you were
 23 to gain the knowledge to be able to answer those
 24 questions.
 25 A I don't know. I may have them in my desk possibly.

1 MR. ADLER: Have you produced that to me?
 2 MS. MENDOZA: Yes, what I gave you the
 3 other day, the risk and needs assessment?
 4 MR. ADLER: November of '92 thing you
 5 gave me the other day?
 6 MS. MENDOZA: Yes.
 7 MR. ADLER: That's it?
 8 MS. MENDOZA: For November of '92 and on
 9 until it was replaced. It was replaced again
 10 in '94.
 11 MR. ADLER: For the record, that's a
 12 document you gave me that wasn't around but
 13 was on the computer and you generated one for
 14 me. There were two but the first one had
 15 typos and you believe the one you gave me was
 16 the cleaned up one?
 17 MS. MENDOZA: My understanding from the
 18 person who obtained it for me was that there
 19 had been more than one in effect. There were
 20 -- I don't think there were substantive
 21 errors, as I understand it, but we think this
 22 would have been the more current up to date
 23 one.
 24 MR. ADLER: Regardless of whether it is
 25 or isn't, that's the best you can do for me

1 today?
 2 MS. MENDOZA: That's the best I can do
 3 for now because the others, once -- I
 4 understand, are destroyed once they are
 5 updated.
 6 Q (By Mr. Adler) Other than that booklet, is there
 7 any other material you had that set forth the
 8 procedures and the criteria to make a third party
 9 at risk determination?
 10 MS. MENDOZA: Which book, I'm sorry?
 11 MR. ADLER: The book you just referred
 12 to?
 13 MS. MENDOZA: The risks and needs
 14 assessment?
 15 MR. ADLER: Let me withdraw that
 16 question.
 17 Q (By Mr. Adler) Does that booklet give you guidance
 18 as to how to make a third party at risk
 19 determination?
 20 A No, not at all.
 21 Q What did you have from November of '92 to June of
 22 '93 that gave you guidelines as to how to make a
 23 third party at risk determination?
 24 A I don't believe I had -- I don't know. I don't
 25 believe I had anything at hand that would give that

1 A That's what it says.
 2 Q So we've got a mistake again that Exhibit 14 should
 3 have been in Exhibit 3?
 4 MS. MENDOZA: Well, it should have been
 5 and it was provided to you.
 6 MR. ADLER: I understand but it wasn't
 7 provided with Exhibit 3. You gave me Exhibit
 8 14 but we didn't get it.
 9 MS. MENDOZA: It was not in Exhibit 3.
 10 MR. ADLER: Again, it was a mistake?
 11 MS. MENDOZA: Right.
 12 Q (By Mr. Adler) Did you want Exhibit 14, I was done
 13 with it.
 14 A No, do you want me to hold onto this?
 15 Q No, you can close it. We're done with it for right
 16 now. I will go back to Exhibit 14, and I'm going
 17 to refer you to Roman Numeral V, Subpart D and you
 18 can read that to me.
 19 A Subpart D?
 20 Q I have a little mark by it.
 21 A "Offender shall be supervised at the lowest level
 22 of supervision that will provide adequate
 23 protection to the community."
 24 Q Again, the FSO is stressing the need to protect the
 25 public; correct?

1 guidelines.
 2 Q So the D.O.C. had a policy that you had to make
 3 that determination but didn't give you any written
 4 guidelines to follow it; is that your testimony?
 5 MS. MENDOZA: I think he's testified
 6 previously that it was an unwritten policy.
 7 MR. ADLER: I meant to say unwritten.
 8 A I believe so, yes.
 9 Q (By Mr. Adler) So the only guidance you got from
 10 the D.O.C. was verbal guidance as to how to follow
 11 this unwritten policy; correct?
 12 A I believe so.
 13 Q Exhibit 3, which we used last time, which is this
 14 FSO manual, you have represented as the current
 15 booklet being used by parole officers?
 16 MS. MENDOZA: I think I represented that.
 17 Q (By Mr. Adler) You guys have produced this to give
 18 me the current booklet?
 19 A You've got the most recent one.
 20 Q I'm going to refer you to order No. 2.104, which
 21 has a date of June 1 of '90; correct?
 22 A Yes.
 23 Q And I'm going to hand you Exhibit 14, which appears
 24 to be a 2.104 that has an effective date of 3-12-93
 25 and ask if you can tell me if that's correct?

1 A Correct.
 2 Q Which is your primary objective as a parole
 3 officer?
 4 A That's one of the primary objectives, yes.
 5 Q What are the others?
 6 A I don't have the list in front of me.
 7 Q Tell me some of them that you can recall.
 8 A Assisting the parolee or releasee to integrate into
 9 the community properly and I really can't recall
 10 all of them.
 11 Q The reason for having them integrate, though, is to
 12 protect the public; correct?
 13 A Integrate normally and, yeah, law abiding fashion.
 14 Q That's why you care that they get integrated, so
 15 they don't break laws and harm the public?
 16 A Yes.
 17 Q The public is your No. 1 concern; isn't it, sir?
 18 A There is a -- yes, public is a major concern and
 19 the offender is also a major concern of mine.
 20 Q For the purposes of protecting the public?
 21 A Purposes of trying to assist him to integrate into
 22 the community.
 23 Q For the purposes of protecting the public?
 24 MS. MENDOZA: Objection, asked and
 25 answered. He's already given you his answer.

1 A That's my answer, yes.
 2 Q (By Mr. Adler) With a rapist such as Mr. Gideon,
 3 from November of '92 to June of '93, would you have
 4 expected his conduct and behavior at work to be
 5 satisfactory?

6 MS. MENDOZA: Object to the form of the
 7 question. Calls for speculation on the part
 8 of the witness.

9 A I have no way of foretelling what his conduct would
 10 be. He maintained his employment and verified that
 11 with pay stubs and seemed to be doing well.

12 Q (By Mr. Adler) Is the fact that he seems to be
 13 doing well at work, does that fact mean that he's
 14 not likely to re-offend?

15 MS. MENDOZA: Object to the form of the
 16 question. Calls for speculation on the part
 17 of the witness as to whether or not anybody
 18 can tell who will re-offend.

19 A Yeah, I don't know that.

20 Q (By Mr. Adler) Are there other factors that would
 21 play a part as to whether he's likely to re-offend
 22 other than his job performance?

23 MS. MENDOZA: Object to the form of the
 24 question. Calls for speculation on the part
 25 of the witness.

1 Q And to attempt to intervene and prevent the
 2 commission of a crime; correct?

3 A If we have information that would lead us to
 4 believe that there is potential for another crime
 5 to be committed, yes, that would be the idea.

6 Q Part of your job is to try to obtain that
 7 information to prevent the commission of another
 8 crime; correct?

9 A At times, yes.

10 Q When wouldn't it be?

11 A When the information comes to us, yes, we try to
 12 investigate these issues and determine if an
 13 incident has occurred that would lead to possibly
 14 further offenses.

15 Q But your job, and you can do different things to
 16 accomplish this, is to prevent future crimes by
 17 your parolees; correct?

18 A I don't believe it specifically is stated in that
 19 way as preventing future crimes. I think my job is
 20 to try to assist him to adjust in a proper manner
 21 in adherence to the conditions of his parole which
 22 one of them is to be law abiding toward the end of
 23 protecting the public.

24 Q What was a crime that you foresaw Mr. Gideon of
 25 being likely to commit?

1 A In speculating I would say the adherence to the
 2 conditions of his release would be indicators if
 3 he's doing well, which he was adhering to those
 4 conditions, attending mental health.

5 Q (By Mr. Adler) And you had quite a few parolees
 6 over the years who were adhering to their
 7 conditions and doing well at work and attending
 8 mental health that re-offended; haven't you, sir?

9 MS. MENDOZA: Object to the question.
 10 Assumes facts not in evidence.

11 Can you answer that?

12 A I'm sure I've had some parolees who seem to be
 13 doing well that re-offend.

14 Q (By Mr. Adler) As a parole officer, are you always
 15 -- let me rephrase that.

16 What was the D.O.C.'s procedure in November of
 17 '92 to June of '93 to make you are aware of policy
 18 changes and procedural changes? Did they do it
 19 with written memoranda?

20 A Repeatedly, yes, written, changes to the FSOs and,
 21 like I said, also discussion in regional meetings
 22 of changes.

23 Q Is it your responsibility as a parole officer to
 24 monitor your parolee's behavior?

25 A We attempt to do that, yes.

1 MS. MENDOZA: Object to the form of the
 2 question. Calls for speculation on the part
 3 of the witness.

4 A I didn't foresee him committing a crime.

5 Q (By Mr. Adler) Did you think it was possible he
 6 was going to rape again?

7 A I don't believe there was any way to tell that.

8 Q Did you think it was possible that he was going to
 9 rape again?

10 A Anything is possible.

11 Q Did you think it was likely he was going to rape
 12 again?

13 A I don't know.

14 Q Did you try to make that determination, whether it
 15 was likely that he was going to rape again?

16 A I don't recall that.

17 Q Is that part of your job to make that determination
 18 if it's likely that he's going to rape again?

19 A Well, I can't predict the future as to whether he
 20 will or not.

21 Q That's not my question.

22 Do you think it's part of your job to try to
 23 make that determination?

24 A I think when you consider everything, his history
 25 and all those factors, I suppose that would be a

part of it.

2 Q What would be a part of it?

3 A Is to attempt to see what kind of possibility there is. It's kind of a judgment thing as to a possibility of a re-offense.

5 Q That's part of your job?

6 A I would say probably, yes.

8 Q And then when a determination is made of what's possible or likely to happen you try to do things to prevent it from happening to protect the public; correct?

10 A Yes.

11 Q Is one of the things that you have the power to do to prevent a crime from reoccurring by one of your parolees to restrict their employment?

13 A That could be, yes.

14 Q And this is in June of '93 we're talking about with all these questions. Did you understand that?

16 A Yes.

17 Q And it would also be to notify their employers as to their past; correct?

19 A If there were indicators that showed the likelihood of re-offenders.

21 Q And you felt there were indicators in Mr. Gideon's past; did you not, that he was likely to re-offend?

1 highly likely to re-offend?

2 A I didn't feel that he was.

3 Q I believe you testified last time we were here that there is a high recidivism rate with respect to sex offenders. Let me rephrase that. That sex offenders in general are highly likely to re-offend. Did you testify to that?

5 A I believe you indicated that there was material out that indicated that that's a possibility.

6 Q Let me ask you, do you think -- in June of '93 did you think sex offenders were highly likely to re-offend?

7 A Well, sex offenders as a whole?

8 Q Yes.

9 A I would say that the information I had, literature or training or whatever, said that that is a possibility.

10 Q That they are highly likely to re-offend?

11 MS. MENDOZA: Object, asked and answered.

12 He already indicated that he thinks it's a possibility.

13 A That it's a possibility that they may re-offend.

14 Q (By Mr. Adler) Is it highly likely they'll re-offend? Is that what the material told you?

15 MS. MENDOZA: Object, asked and answered.

A I had nothing on hand that would tell me that, that he was likely to re-offend.

3 Q Did you have access to anything that would tell you that, such as the Parole Board's documents?

4 A I didn't have that.

5 Q You had access to it though; correct?

6 A I've never had one. I have never had a Parole Board note or anything like that.

7 Q And it's your testimony that in the psychological reports you had on Mr. Gideon that there was nothing that indicated he was likely to re-offend; is that your testimony?

8 A I believe the reports that I recall indicated that they felt that he had no significant psychological problems at the time and that he had completed a sex offender treatment program in a very good fashion and that, I think, there was something in there about his probably having the skills to resocialize adequately, something like that.

9 Q Are you testifying that you came to the conclusion he wasn't highly likely to re-offend?

10 A I really didn't have anything that I could say would tell me that he is highly likely to re-offend.

11 Q So did you come to the conclusion that he was not

1 A I don't recall that it's highly likely that they will re-offend.

2 Q (By Mr. Adler) You believe that the literature told you it's possible they would re-offend?

3 A That's right, possibly.

4 Q And is there anything in Mr. Gideon's file that would have made you think he was different from that norm?

5 A I don't know. As I indicated, the psychological report from the sex offender treatment indicated they felt he had done very well and that he had gained a lot of knowledge and information in that treatment program.

6 I believe it indicated that he was -- I can't remember the exact verbiage. They felt that he had the tools to be able to resocialize and carry on.

7 Q Did that make you conclude that he was different from the norm?

8 MS. MENDOZA: Object to the use of the term norm. I probably should have objected previously. There's no evidence as to what is the norm.

9 Q (By Mr. Adler) The norm you just referred to?

10 MS. MENDOZA: No way for Mr. Schirk to know what the norm is.

1 If you know something from your own
 2 experience.
 3 Q (By Mr. Adler) Let me make sure we're clear on
 4 this.
 5 It's my understanding you've testified that
 6 sex offenders were -- it was possible that they
 7 would re-offend; correct?
 8 A Yes.
 9 Q Is there anything about Mr. Gideon that made you
 10 think he was different than that and that he wasn't
 11 possibly -- it wasn't possible for him to
 12 re-offend?
 13 (Whereupon, the last question was read
 14 back by the reporter.)
 15 A I don't recall anything.
 16 Q (By Mr. Adler) And it's your testimony that from
 17 November of '92 to June of '93 you were not
 18 familiar with any statistics or authority that says
 19 that sex offenders are highly likely to re-offend?
 20 A I don't recall.
 21 Q You thought the statistics and authorities simply
 22 said that they were possibly likely to re-offend?
 23 A I believe so.
 24 (Whereupon, there was an off-the-record
 25 discussion.)

1 A Yes.
 2 Q Why did you think it was a good idea in light of
 3 the fact that it may cause them to lose their job
 4 that's so important for them to have?
 5 A Well, because of what I know after the fact of July
 6 of '93 I feel like this is a step towards further
 7 protection of the public.
 8 Q So what you learned as a result of the Schmidt case
 9 has caused you to support this new policy of the
 10 D.O.C.?
 11 A Yes.
 12 Q Anything else that caused you to change your
 13 thought process?
 14 A I don't know.
 15 Q If Mr. Gideon had been in prison and was paroled
 16 and his crime had been he had stolen from a cash
 17 register, would you have notified Mr. Hamilton of
 18 that?
 19 MS. MENDOZA: Object to the question in
 20 the form of the question calls for speculation
 21 on the part of the witness. It's a
 22 hypothetical, something that didn't ever
 23 occur.
 24 A I don't know if I would have.
 25 Q (By Mr. Adler) We're talking in June of '93, you

1 Q (By Mr. Adler) You testified earlier this morning,
 2 I believe, that you felt anybody employed with the
 3 D.O.C. would feel that if a rapist was employed he
 4 was less likely to re-offend; correct?
 5 A I think that that's a factor that everyone would
 6 consider as a positive thing, yes.
 7 Q And you've also testified that you think notifying
 8 employers of sex offenders' past causes them a --
 9 increases the likelihood they'll lose their job;
 10 correct?
 11 A I felt that it could, yes.
 12 Q Why was this policy changed, then, which would
 13 possibly cause them to lose their job that's so
 14 important for them to have to keep from
 15 re-offending, if you know?
 16 MS. MENDOZA: Object to the form of the
 17 question. Calls for the witness to speculate
 18 about why the policy was enacted.
 19 If you know, but only if you know, tell
 20 him. Otherwise this is a question probably
 21 better directed to the policymakers.
 22 A I couldn't say for sure, I don't know.
 23 Q (By Mr. Adler) You indicated last time we met that
 24 you supported and thought this change was a good
 25 idea; correct?

1 don't know if you would have told him?
 2 A From November to June?
 3 Q Right.
 4 A No.
 5 Q May have, may not have?
 6 A I don't know that I would have.
 7 Q The Schmidts are sitting in here today. They have
 8 heard you testify for a day and a half, roughly, is
 9 there anything you would like to say to them about
 10 this incident?
 11 MS. MENDOZA: Object to this question and
 12 I would advise my client not to answer it.
 13 Q (By Mr. Adler) Are you refusing to answer on
 14 advice of counsel?
 15 A I will take the counsel's advice.
 16 MR. ADLER: I haven't asked what he wants
 17 to say, I've asked if there's anything he'd
 18 like to say.
 19 MS. MENDOZA: I'm instructing him not to
 20 answer such questions. They are
 21 inappropriate.
 22 MR. ADLER: I'd like to have the question
 23 certified.
 24 Q (By Mr. Adler) And you're refusing to even answer
 25 the question whether there's something you even

want to say on advice of counsel?

A Yes, on advice of counsel.

Q Do you know Robert Harrison?

A I know who he is, yes.

Q What's his position at the D.O.C.?

A I don't know what it is right now.

Q What was it in July of '93?

A I believe he was the Parole Services Administrator; is that right?

MS. MENDOZA: If you know, tell him.

He's asking what you know. If you don't know, tell him you don't know.

A I don't know for sure what his title was.

Q (By Mr. Adler) Did he deal with D.O.C. policies?

A I believe he did.

Q In July of '93?

A Uh-huh.

Q Yes?

A Yes.

Q How about Jim Terrones, T-e-r-r-o-n-e-s?

MS. MENDOZA: Terrones.

Q (By Mr. Adler) Are you familiar with him?

A I know of him, yes.

Q Is he with the D.O.C.?

A I am not sure now.

Q Has he been with the D.O.C.?

A Yes.

Q Was he involved with the policy there?

A I don't know that.

Q Are you aware -- I'll withdraw the question.

From November of '92 to June of '93 were you given any special instructions with how to deal with sex offenders -- with rapists, as compared to other parolees, different rules that you were told to follow or apply with respect to them?

A I don't believe so.

Q How about sex offenders as compared to other parolees, any special rules that applied to them from November of '92 to June of '93?

A I don't recall.

Q So from November of '92 to June of '93 it's your testimony you were treating your rapists and sex offenders the exact same way you'd treat your other parolees?

MS. MENDOZA: Object to the form of the question. I think that mischaracterizes the testimony. He's indicated he doesn't know and he doesn't recall.

Q (By Mr. Adler) I'm asking how you treated yours.

A I supervised them under the guidelines that were

1 the standards at the time. I assess the cases for
2 the first six months. A sex offender's would be in
3 high supervision, I supervised him that way.

4 Q So you're saying that sex offenders were
5 automatically put into high supervision; correct?

6 A Yes.

7 Q Then you treated them as you would any other person
8 in high supervision?

9 A Yes.

10 Q And the reason they were put in high supervision
11 is?

12 A Because of the serious nature of the crime, the sex
13 offense.

14 Q And the likelihood of re-offending?

15 A I don't know that.

16 Q So you're saying that you would have put him in
17 high supervision as an additional punishment
18 because of the serious nature of the crime?

19 A That was the standard, the guideline, that was set
20 forth in the FSO is that all these cases that are
21 this conviction would be in a high category of
22 supervision for at least the first six months.

23 Q And that's because sex offenders require a high
24 level of supervision; correct?

25 MS. MENDOZA: Object to the form of the

1 question. Calls for speculation.

2 A I don't know that.

3 Q (By Mr. Adler) Are you testifying you don't have
4 any reason to know why sex offenders were put --
5 mandatorily put in high supervision?

6 A It was because of the serious nature of that crime.

7 Q Which meant what?

8 A It was a serious offense.

9 Q Were murderers automatically put in high
10 supervision?

11 MS. MENDOZA: During the period of?

12 Q (By Mr. Adler) November '92 to June of '93?

13 A I believe if it was a heinous crime they were also
14 put in.

15 Q And you have no idea why?

16 A As I've said, it was because of the serious nature
17 of the crime.

18 Q But why is a serious crime put in high supervision?
19 They have served their time, they are out?

20 MS. MENDOZA: Object as asked and
21 answered. He doesn't set the policy.

22 MR. ADLER: I'm asking if he knows why.

23 A Because I would say probably because they want
24 closer supervision, more frequent contacts.

25 Q (By Mr. Adler) Why?

1 MS. MENDOZA: Object, asked and answered.
 2 He's already said the serious nature of the
 3 crime.
 4 Q (By Mr. Adler) What does closer supervision
 5 accomplish?
 6 A It should enable an officer to be more aware of
 7 what this man's doing in the community.
 8 Q Why do you need to be more concerned with what
 9 these people who commit, I think you said, serious
 10 crimes, are doing in the community?
 11 A I would say to better assist them and have more of
 12 an idea of what they are actually up to in order to
 13 protect the community.
 14 Q From future crimes by this person?
 15 A Possibly.
 16 Q What else are you protecting them from?
 17 A Future crime.
 18 MR. ADLER: As promised, we will take our
 19 break.
 20 (Whereupon, a lunch break was taken at
 21 this time.)
 22 Q (By Mr. Adler) Prior to June of '93, from November
 23 of '92 to June of '93, this responsibility you had
 24 to make a third party at risk determination, how
 25 often did you have to do that?

1 question in the sense that it calls for a
 2 legal conclusion.
 3 A I can't recall any.
 4 Q (By Mr. Adler) Might have been, you just don't
 5 recall?
 6 A I cannot think of any.
 7 Q Have you ever been reprimanded for anything you've
 8 done at your job with the D.O.C.?
 9 A I don't believe I have. I think verbally I've had
 10 a discussion with Mr. Farmer about cases, about
 11 handling of cases.
 12 Q What type of comments were made by Mr. Farmer?
 13 A As close as I can come to it, a reprimand, was a
 14 discussion about a case with a female client being
 15 upset at my seeking her out for a urine sample.
 16 Q A female parolee, when you say client?
 17 A Parolee, yes.
 18 Q Anything else?
 19 A No.
 20 Q You weren't reprimanded for this Stephanie Schmidt
 21 incident?
 22 A Not that I'm aware of.
 23 Q How long -- was his first name Bob Chastain? Was
 24 that his first name? What's his first name?
 25 A Jim.

1 A Do you mean in an individual case how often would
 2 that be done?
 3 Q Yes.
 4 A It would be throughout the supervision, I would
 5 say.
 6 Q It was an ongoing --
 7 A Sure.
 8 Q -- determination?
 9 A Yes.
 10 Q And especially when there was a new job?
 11 A That would be a reason, yes.
 12 Q Do you know an individual by the name of Mr. Huber
 13 or Hubert, I believe he's a parole officer? Have
 14 you ever heard that name?
 15 MR. ADLER: Do you have a first name?
 16 MRS. SCHMIDT: Herbert.
 17 Q (By Mr. Adler) Herbert Hubert?
 18 A No.
 19 Q Never heard of him as a parole officer or anybody?
 20 A (Whereupon, the witness shakes his head.)
 21 Q So that will save some questions.
 22 Have you ever had any of your parolees ever,
 23 besides Mr. Gideon, commit any crime on a
 24 co-employee?
 25 MR. SECK: Object to the form of the

1 Q Jim Chastain, how long has he been a parole
 2 officer?
 3 MS. MENDOZA: Objection, calls for
 4 speculation on the part of the witness.
 5 If you know.
 6 Q (By Mr. Adler) If you know?
 7 A I don't know.
 8 Q Has he been around as a parole officer longer than
 9 you; do you know that?
 10 A I think about the same amount of time. A little
 11 bit longer, possibly.
 12 Q Do you know anything about his abilities? Does he
 13 do a good job, in your opinion?
 14 A I don't know.
 15 Q Have you ever worked with him other than inheriting
 16 this case?
 17 A Not really, no.
 18 Q What is your CMC inventory sheet? What is that?
 19 A That is a pilot project that was instituted in the
 20 region that I was in at the time, the Topeka
 21 region. It had to do, CMC designates case
 22 management classification, and it was a study, they
 23 were gathering statistics for a year using this
 24 tool to analyze new cases and determine, I don't
 25 know, as an assistance in determining supervision

tactics.

Q Or conditions?

A Not particularly conditions.

Q What do you mean by supervision tactics?

A Well, statistics and strategies to use with certain types of clients as determined by this long questionnaire that was scored, and such a score would put them in a certain category and then this category would have a recommended plan of action, that type of thing.

Q And I want to make sure I'm clear on one thing. Prior to June of '93, would you have wanted your 20 year old daughter working with Mr. Gideon at Hamilton's?

MS. MENDOZA: We've been through this. He's asked and answered. I don't think you have any different answer than what you gave before.

A I've answered.

Q (By Mr. Adler) Would you please answer the question?

MS. MENDOZA: I think I just indicated he's answered.

A I've answered.

Q (By Mr. Adler) I don't recall your answer.

MS. MENDOZA: Then we'll go all the way back and have them read it.

Q (By Mr. Adler) Go ahead and answer the question.

MS. MENDOZA: I think he's just answered.

Q (By Mr. Adler) Please answer the question.

MS. MENDOZA: He has.

A I answered it.

Q (By Mr. Adler) Tell me what the answer is.

MS. MENDOZA: The answer is he already told you what he said. If you don't recall we'll go back and read it.

MR. ADLER: I want to make sure we're sure what time frame he's dealing with since he's now saying they're differences in different time frames. That's what I'm trying to confirm.

MS. MENDOZA: Ask your question again.

Q (By Mr. Adler) Prior to June of '93, would you have wanted your daughter working with Mr. Gideon at Hamilton's, your 20 year old daughter?

MS. MENDOZA: Still object to as we've been all through this.

MR. ADLER: That's fine.

A Personally I would not.

Q (By Mr. Adler) Why is that?

1 A Because I would not want her in the proximity of anyone who is a rapist.

3 Q Did you give Mr. Gideon any guidance as to the type of employment that he should seek at any time when he was on parole?

6 MS. MENDOZA: I just want to object because he was not on parole. He was on conditional release.

9 Q (By Mr. Adler) While he was on conditional release?

11 A I can't recall particularly guidance towards a certain type of work or anything like that.

13 Q Anything was acceptable to you, any type of employment?

15 A Yes, I wanted him working. If he obtained work, upon that I would look at it and see if it was appropriate, yes.

18 Q And if you found a certain type of employment inappropriate, what would you have done?

20 MS. MENDOZA: Object, calls for speculation on the part of the witness.

22 A As we've indicated previously, situations such as the dormitory and that kind of thing, I wouldn't feel would be appropriate.

25 Q (By Mr. Adler) So if he came back and said, "I

1 just got a job at some women's dormitory," you would have made him quit the job?

3 A I would have, yes.

4 Q Is there a lady or gentleman named Kohler that worked at Superior? Does that name ring a bell with you?

7 A No, it doesn't.

8 Q Do you know what Mr. Gideon did for Superior?

9 A He was some type of wheel pressure tester and he had a problem with that machine and that's what, I think he was scared, basically, and didn't think it was safe.

13 Q Do you know if there were young women working at Superior with him?

15 A I don't know that.

16 Q Did you inquire of anybody whether there were?

17 A No.

18 Q The name I'm showing in my notes is Melissa Kohler at Superior, does the name Melissa or Kohler ring a bell with you?

21 A I don't know for sure. I know a Melissa who works out there. I don't know that -- I don't remember her last name.

24 Q Okay, do you recall having a conversation with Melissa at Superior about being lied to today by

1 any of the parolees?
 2 A I can't really recall that.
 3 Q May have?
 4 A I can't recall.
 5 Q Did it concern you that Mr. Gideon had not reported
 6 to Mr. Hamilton until -- did not report to him
 7 until March of '93 that he was on parole?
 8 A No, not really.
 9 Q And why is that?
 10 A Just because it was not a requirement that I was
 11 making on him as a part of the parole supervision.
 12 It wasn't required.
 13 Q Did Don Gideon ever report to you that he was
 14 having any weird thoughts while he was on
 15 conditional release?
 16 A No.
 17 Q Are you aware that he says he reported that to you?
 18 A No.
 19 Q Did Don Gideon ever get angry with you?
 20 A I don't think angry with me. We had a heated
 21 conversation about his loss of a job at Superior.
 22 Q Tell me about the conversation.
 23 A As I remember it, I confronted him about quitting
 24 the job without giving it very much time, and that
 25 I emphasized to him that employment was very

1 seem to agree with his decision?
 2 A Because jobs are hard to come by in southeast
 3 Kansas and if a person is employed, I expect them
 4 to maintain that.
 5 Q Were you ever fearful for your own health or safety
 6 during any of this heated conversation or any other
 7 time with Mr. Gideon?
 8 A No, I don't believe so.
 9 Q Did the conversation end with him agreeing with you
 10 or is he still disagreeing with you?
 11 A Well, he disagreed that he wasn't going to work at
 12 a place that he thought was unsafe, and in me
 13 having a day to think about it, looking back at the
 14 way things are with this man, he had never worked
 15 in a factory and he'd never worked around large
 16 machines and it very well may have been
 17 intimidating for him and kind of frightening.
 18 Q Where did Mr. Gideon receive counseling while he
 19 was on conditional release? Is that the word you
 20 use, Lisa?
 21 MS. MENDOZA: Conditional release.
 22 Q (By Mr. Adler) Conditional release?
 23 A At the Community Mental Health Center, Crawford
 24 County.
 25 Q What's the name of that?

1 important and that Superior would be a good
 2 situation for him, and he got pretty verbal that he
 3 wasn't going to get hurt for anyone and wasn't
 4 going to work at an unsafe machine, that kind of
 5 thing.
 6 (Whereupon, there was an off-the-record
 7 discussion.)
 8 Q (By Mr. Adler) Did you require him to go back to
 9 Superior or request that he go back to Superior?
 10 A No, I didn't.
 11 Q Did you believe him about his concern for his
 12 safety at Superior?
 13 A It appeared to me that it was a real concern to him
 14 and I called and talked to Superior about that, I
 15 believe possibly I talked to Linda Scherz, and they
 16 had done a check of the machine and supposedly
 17 other people were working on it and it was safe
 18 enough for them.
 19 Q Did he have the job at Hamilton's when he had quit
 20 at Superior?
 21 A No, he did not have it then.
 22 Q How long was he between jobs?
 23 A I don't recall exactly, not very long.
 24 Q What was it that had you upset that he had left, he
 25 had quit Superior, besides the fact that you didn't

1 A Community Mental Health Center of Crawford County.
 2 Q What city is that in?
 3 A It's in Pittsburg.
 4 Q Any place else?
 5 A Not that I'm aware of.
 6 Q And the person there, only person, to your
 7 knowledge that dealt with him was Charles Motes?
 8 A That's all indirectly, yes. There was an intake
 9 done, I believe, by a worker whose name I gave you
 10 before, I believe it's Ellen Foshag (ph).
 11 Q That would have just been an intake?
 12 A I am not sure how they go about that. I don't know
 13 if she interviewed him initially and decided that
 14 he probably should see Charles, you know.
 15 Q You've also -- what was the test you said he did
 16 well on, some sex offenders' test? I forgot what
 17 you called it, that made you think everything was
 18 well. Maybe it was his counseling. He had done
 19 well in some sex education program?
 20 A This is in the institution.
 21 Q That was all in the institution?
 22 A Uh-huh.
 23 Q There was no program outside the institution, all
 24 he had was the Crawford County counseling; correct?
 25 A Uh-huh, right.

1 Q Did they have an individual therapy session or
 2 group session or what was it?
 3 A He was put in individual therapy.
 4 Q No program, was there a program he was in
 5 specifically designed for sex offenders or anything
 6 like that?
 7 A He was not put in that program, no.
 8 Q He just had a one on one with the therapist?
 9 A Right.
 10 Q Is Motes, what, is he a psychologist, psychiatrist,
 11 social worker?
 12 A I think psychologist, right.
 13 Q Did you keep any notes regarding your conversations
 14 with Mr. Motes as to how Mr. Gideon was doing?
 15 A Just notes that are in the chronological summary.
 16 Q Now, on that chronological summary, how's that
 17 created? It's got initials which I presume are the
 18 secretary who did it? How does that chronological
 19 summary get there? It's got entries by you and
 20 other people?
 21 A Well, most of the entries are by me. Initially the
 22 entries are by Jim Chastain and I believe he
 23 initialed his entries.
 24 Q How do they get there? They are typed up?
 25 A Typed up by a secretary.

1 to it, yes.
 2 Q I'm not talking about her typing, I'm talking about
 3 you dictating?
 4 A I dictate -- as often as I can I dictate as soon as
 5 I've had the contact or the activity.
 6 Q Are you aware that Mr. Gideon reported to Charles
 7 Motes that he was having trouble adjusting and that
 8 he didn't think Motes was helping him?
 9 A No.
 10 Q You've never heard that before?
 11 A No, I don't believe I have.
 12 Q Either from Mr. Motes or Mr. Gideon or someone
 13 else?
 14 A I can't recall, I can't recall that.
 15 Q Did you have access to the mental health records
 16 kept by Dr. Motes? Could you see those records if
 17 you wanted to?
 18 A I don't know that we have access to those.
 19 Q Did you ever see any of them?
 20 A No, no, I didn't.
 21 Q If you were running a restaurant, would you want to
 22 know if one of your employees was a convicted
 23 felon?
 24 MS. MENDOZA: Object to the form of the
 25 question. Calls for speculation on the part

1 Q Do you dictate them every day you see them
 2 contemporaneous with the meetings?
 3 A I make tapes and give them to my secretary.
 4 Q Are they done the minute --
 5 A I try to do them the moment I get done with it
 6 because I forget things.
 7 Q A tape you would have on February 6, '93,
 8 hypothetically, you may make an entry on Mr. Gideon
 9 and on Mr. Smith and on Mr. Jones and she'll put it
 10 on the right chart?
 11 A Right.
 12 Q That the way it happens?
 13 A That's right.
 14 Q You don't devote a tape to Mr. Gideon and go back
 15 for three weeks and recreate what you recall?
 16 A No, but one tape may have a couple of days on it.
 17 Q You forget to do it for a couple days and you catch
 18 up?
 19 A No, just a matter of not coming back to the office
 20 and getting it to her and just going ahead and
 21 using more than just a small amount of tape.
 22 Q But you try to stay pretty much on top of it and
 23 have your notes dictated within a day or two of the
 24 events you're dictating about?
 25 A I would say within a week if the secretary can get

1 of the witness, it's also an improper
 2 hypothetical.
 3 A I don't know.
 4 Q (By Mr. Adler) Would you want to know if he was a
 5 convicted rapist?
 6 MS. MENDOZA: Same objection.
 7 A I don't know.
 8 Q (By Mr. Adler) If you had college women working in
 9 your restaurant that you were running, would you
 10 want to know if one of your employees was a
 11 convicted rapist?
 12 MS. MENDOZA: Same objection.
 13 A If I was running the restaurant, I would say I
 14 would want to know.
 15 Q (By Mr. Adler) If you were running a restaurant
 16 with college women working there as waitresses,
 17 would you want to know that someone was a convicted
 18 rapist who had just been released and had to be
 19 released?
 20 MS. MENDOZA: Same objection.
 21 A I would want to know.
 22 Q (By Mr. Adler) Why would you want to know?
 23 A For my own information.
 24 Q For your own safety?
 25 A I would say probably just to be aware of all the

facts and the history of the people working there.

2 Q Why would you want to know that?

3 A For everyone's safety.

4 Q The waitresses'?

5 A Everyone's.

6 Q Including the waitresses?

7 A All personnel, yes.

8 Q How did you feel when you first heard Stephanie Schmidt was missing and that Don Gideon was the last person seen with her?

10 A Sick.

12 Q Why were you sick?

13 A That's the way I felt.

14 Q Nauseous? Did you throw up?

15 A It just -- no, I didn't throw up.

16 Q Describe your sick feeling.

17 A Well, when I found out that this is what had occurred, I felt really, really badly.

19 Q Why?

20 MS. MENDOZA: Well, I'm going to object to all these questions. I think we've been through it. It's just another way to get at the same question you asked earlier which is how did you feel and what would you tell the Schmidts and I think that's inappropriate.

1 Q (By Mr. Adler) Go ahead and tell me why you felt sick. I don't want to know what you would have told the Schmidts. I'm not asking you that now. Really, that's not what I'm asking.

5 MS. MENDOZA: I object to this whole line of questioning.

7 Q (By Mr. Adler) Go ahead.

8 A Because I felt like it was a tragedy that this whole thing had happened and I think it's something that every parole officer fears of happening and reality is it happened and I felt bad.

12 Q Did you feel any responsibility?

13 MS. MENDOZA: Object to the question as it calls for a legal conclusion on the part of the witness.

16 A I felt like I had supervised the case appropriately and to the guidelines and that I did my job. I felt like I did good case supervision.

19 Q (By Mr. Adler) So you didn't feel responsibility; is that what you're saying?

21 MS. MENDOZA: Object as asked and answered. He already told you what he felt.

23 A I don't feel responsible for the death of Stephanie Schmidt, no.

25 Q (By Mr. Adler) Are you aware if anybody at the

1 D.O.C. or anybody, we'll put it anybody, ever wrote a letter of recommendation on Donald Gideon?

3 A No, I'm not.

4 Q To Mr. Hamilton or to anybody else?

5 A No.

6 MS. MENDOZA: Do you need a break?

7 THE WITNESS: No, I'm fine.

8 Q (By Mr. Adler) Do you know if Mr. Gideon had other job opportunities besides Hamilton's that for some reason or another he didn't take?

11 A No.

12 Q He may have but you don't know it?

13 A I don't know it, no.

14 Q Did you attempt or assist him in finding a job after he left Superior?

15 A I don't recall. I don't really -- I don't remember.

18 Q Were there other places in the area like Superior that hired a lot of parolees?

20 A There were several factories around that parolees work at, yes.

22 Q What are the names of some of those factories or all of them, if you can remember?

24 A National Screen Printing, National Paper, Hicks Manufacturing, Pit Plastics, Vinylplex, Sugar

1 Creek, numerous construction companies around town.

2 Q Did you contact any of those companies in an effort to find Mr. Gideon a job before he took the job at Hamilton's?

3 A No, I don't believe so.

4 Q Is there a reason you didn't?

5 A No.

6 Q Those places sound like factories and construction jobs?

7 A Basically, yes.

8 Q To your knowledge, were their jobs available there at the time he took the job at Hamilton's?

9 A I don't know. I would say somewhere there would have probably been a job available.

11 Q Do you think those would have been more appropriate jobs for him than Hamilton's?

12 MS. MENDOZA: Object, calls for speculation on the part of the witness.

13 A I wouldn't say any more appropriate.

14 Q (By Mr. Adler) Equal?

15 A Yeah, the same. There's a lot of fast food in Pittsburg, also, up and down Broadway that was available.

17 Q Do these construction companies employ a lot of young women; do you know?

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1 A I don't know.

2 Q Did the factories employ a lot of young women; do

3 you know?

4 A I don't know.

5 Q And it's your testimony that the factory, the

6 construction jobs and Hamilton's were all on the

7 same level of appropriateness for Mr. Gideon?

8 A I feel, yes.

9 Q Did Mr. Gideon ever complain to you that he was

10 having trouble adjusting to life outside of prison?

11 A I don't recall that, no.

12 Q Did you ever hear he complained of that to anybody?

13 A No, I don't believe so.

14 (WHEREUPON, DEPOSITION EXHIBIT NO. 15 WAS

15 MARKED FOR IDENTIFICATION.)

16 Q (By Mr. Adler) I'm going to hand you Exhibit 15.

17 Is this -- well, what do you call that? What's the

18 title you give that?

19 A It's a copy of a chronological summary.

20 Q And this is what you were referring to earlier that

21 you would try to dictate within a week and your

22 secretary would type it up?

23 A Right.

24 Q If you look down right after the date column,

25 there's a column with initials and there's ADMS and

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1 OVs and CCs on the first page. What are those?

2 A Those are types of entries being made. ADM would

3 be administrative, OV is office visit, CC is

4 collateral contact.

5 Q And TC is?

6 A Telephone contact.

7 Q And these are your entries with respect to

8 Mr. Gideon -- I'm sorry, the D.O.C.'s entries with

9 respect to Mr. Gideon?

10 A It would be mine and Mr. Chastain's.

11 Q I think later there are some from Mr. Farmer's,

12 that's why I say the D.O.C.'s?

13 A Donna Pyle, Carolyn Grillot would be the secretary

14 of our office.

15 Q Are those names spelled in here?

16 A No, just initials, CG and DP. Carolyn,

17 G-r-i-l-l-o-t, Donna Pyle, P-y-l-e.

18 Q And I'm going to refer you to February 3rd of '93.

19 Would you read me the sentence that starts on the

20 third line with the word she?

21 MS. MENDOZA: First read the whole thing

22 and then give your answer.

23 MR. ADLER: If you're going to do it that

24 way, you don't need to read it after you're

25 done. I'll just ask the questions. Tell me

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1 what you're done reading it.

2 A Okay.

3 Q (By Mr. Adler) Would you describe for me what the

4 February 3rd entry says, the gist of it? I don't

5 need you to read it.

6 A It's a telephone call from a mother of Don Gideon

7 asking for confidentiality in discussing some of

8 his behavior at his sister's home and at the

9 driver's license bureau.

10 Q And what's the type of behavior that she's

11 explaining to you?

12 A Exhibiting anger and stress in her daughter's home.

13 Q And his own -- Mr. Gideon's own family is fearful

14 of him?

15 MS. MENDOZA: Object to the form of the

16 question. Calls for a conclusion and

17 speculation about what Mr. Gideon's family

18 felt.

19 Q (By Mr. Adler) That's what was reported to you;

20 correct?

21 A They were concerned about his -- the stress that he

22 created at the sister's home.

23 Q And Don Gideon's mother reported to you that his

24 family was fearful of him; correct?

25 A That's what I said, yes.

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1 Q This is your entry on February 3rd; correct?

2 A Yes.

3 Q And he also -- the mother reported to you that he

4 had gotten angry at the driver's license examiner's

5 office; correct?

6 A Right, yes.

7 Q What actions, if any, did you take with respect to

8 your supervision of Mr. Gideon with respect to this

9 phone call with his mother?

10 A I phoned Mr. Motes at the mental health center that

11 day and either that day or the next day, well,

12 there was also a contact at the home that is not a

13 part of the chronological.

14 I saw Mr. Gideon down at the sister's home and

15 discussed this issue with him, and in our

16 discussion, it eventually came out that I had the

17 call from the mother and we discussed that and I

18 think the whole thing at the home, stress in the

19 home, was about a t.v. remote changer, the young

20 boy, his nephew using it and he wanting to use it,

21 that kind of thing.

22 We discussed this out at my car and we

23 discussed that their concern was that he maybe try

24 to find someplace else to live and he was already

25 working on that.

1 Then I'd also discussed his current situation
 2 with Mr. Motes on 2-4-93 and he says that he feels
 3 like these responses are normal for what Mr. Gideon
 4 comes from and that they were -- they would mellow
 5 as he's out longer.
 6 Q What did he mean or what did you think he meant
 7 when he said from what Mr. Gideon comes from?
 8 A With his long institution history and his incidents
 9 of abuse, that's what I assume and speculated
 10 that's what he meant.
 11 Apparently in our conversation I discussed
 12 anger issues and family of Mr. Gideon and their
 13 support and that kind of thing.
 14 Q Did this cause you any concern? Did this cause you
 15 any concern?
 16 A Sure, it did.
 17 Q Did it cause you any concern with respect to any
 18 third parties who might be at risk due to
 19 Mr. Gideon's behavior as reported to you by his
 20 mother?
 21 A No, I didn't feel the family was at risk with him,
 22 and after I talked with him about it, he had a
 23 grasp of their concern and was in the process of
 24 finding his own place. He felt stress, also, from
 25 the sister and mother.

1 co-employees.
 2 Q Go to the June 20, '93 entry. Is that your entry?
 3 A Yes.
 4 Q Would you read that and then I'll ask you some
 5 questions on it.
 6 A Okay.
 7 Q It says there that Mr. Hamilton reported to you at
 8 first he, being Mr. Gideon, was very rigid and
 9 didn't want anyone in his space; is that correct?
 10 A That's what he says, yes.
 11 Q Did that cause you any concern-for any third
 12 parties at risk?
 13 A No, not really.
 14 Q Did you consider at that time and make another
 15 determination as to whether there were any third
 16 parties at risk?
 17 A You could say that, yes, that I made a
 18 determination. I can recall discussions with
 19 Mr. Gideon at the time when he went to work at
 20 Hamilton's that he liked being back there washing
 21 dishes and having his own area and his own
 22 responsibilities.
 23 Q But the fact that Mr. Hamilton reported to you that
 24 Mr. Gideon didn't want anyone in his space, did
 25 that cause you to make a determination as to

1 Q Did you have any concern that the people working
 2 with Mr. Gideon might be more at risk because of
 3 this incident that was reported to you?
 4 A No, I didn't feel that.
 5 Q Did you consider that?
 6 A I don't recall considering that particularly.
 7 Q Did you make another third party at risk
 8 determination at this time?
 9 MS. MENDOZA: With reference to what? Do
 10 you understand the question?
 11 A No, go ahead.
 12 Q (By Mr. Adler) When you learned this incident
 13 from Mr. Gideon's mother, did you make another
 14 third party at risk determination as to whether
 15 there was anybody, any third parties, at risk with
 16 Mr. Gideon out there?
 17 A Regarding third parties as the family?
 18 Q Any third parties?
 19 A I would say that, yes, I made a determination
 20 ... there.
 21 Q That the family was not?
 22 A That the family was not at risk.
 23 Q Did you consider whether his co-employees were at
 24 risk?
 25 A I don't recall in this instance considering

1 whether there was any third party at risk situation
 2 with him working at Hamilton's?
 3 A I didn't determine that there was any more risk
 4 involved there.
 5 Q Did you consider it?
 6 A I considered that.
 7 Q And determined there wasn't?
 8 A Yes.
 9 Q What type of things might you have learned about
 10 Mr. Gideon's employment at Hamilton's that would
 11 have caused you to be concerned that there were
 12 third parties at risk there?
 13 MS. MENDOZA: Object to the form of the
 14 question. Calls for speculation on the part
 15 of the witness.
 16 A I don't know.
 17 Q (By Mr. Adler) Are there any?
 18 A I'm sure there are.
 19 Q Tell me some that would have caused you to be
 20 concerned and caused you to notify either
 21 Mr. Hamilton or the waitresses of Mr. Gideon's
 22 record.
 23 A Well, if I had instances of law contacts come to me
 24 of assaultive behavior, of violence to other
 25 people, fights with co-workers, incidences of just

1 law might activity that the law enforcement people
 2 were aware of, that kind of thing.
 3 Q And you did no investigation to determine whether
 4 those things had happened, you just relied on
 5 people to contact you and tell you; correct?
 6 MS. MENDOZA: Object to the form of the
 7 question.
 8 A There were no law contacts.
 9 Q (By Mr. Adler) Did you do any investigation to see
 10 if any of those type of things had happened that
 1 you just mentioned?
 2 A I checked with law enforcement.
 13 Q What else?
 4 A Family, we had those family contacts. I felt like
 5 things were going fairly well here.
 16 Q Let's zero in on what you could have heard was
 7 going on at work to cause you concern for the
 8 people at his place of employment.
 19 What type of things might you have learned
 0 going on at work, at Hamilton's, that would have
 1 caused you concern of a third party at risk?
 22 MS. MENDOZA: I believe it's asked and
 3 answered.
 4 Q (By Mr. Adler) Same type of things you just said?
 25 A Yes, basically.

1 several different.
 2 MR. ADLER: I want to know those
 3 initials, first July 6, '93 entry, the
 4 initials CG at the end of that entry?
 5 A Carolyn Grillot.
 6 Q (By Mr. Adler) Does that mean she made this entry?
 7 A I believe it does, yes.
 8 Q So if there are no initials at the end -- actually,
 9 when it says RS you made it; right?
 10 A Right.
 11 Q And DP on a July 4th at the top of that page?
 12 A That's Donna Pyle.
 13 Q These are the names you gave me previously?
 14 A Right.
 15 (Whereupon, a break was taken at this
 16 time.)
 17 Q (By Mr. Adler) Why were Carolyn Grillot and Donna
 18 Pyle, if I got those names right, involved in this
 19 file?
 20 A Carolyn Grillot, because they had contact, if I
 21 could see the chrono.
 22 Q You can.
 23 A They had certain contacts with persons regarding
 24 case activity in this case at the time of this
 25 incident.

1 Q What investigation did you do to see if any of
 2 those things were going on at Hamilton's?
 3 MS. MENDOZA: Same objection.
 4 A I don't recall any, any real contact with
 5 Hamilton's.
 6 Q (By Mr. Adler) The only meeting with anybody at
 7 Hamilton's is this chance meeting at the Quick
 8 Stop; correct?
 9 A I believe that's all that's documented, yes.
 10 Q Are there any others that aren't documented?
 11 A I think as I've indicated before, I thought there
 was a phone call at one point.
 12 Q Other than that?
 13 A I don't believe so.
 14 Q On July 6th of '93, there is the initials, the
 15 first July 6th of '93, at the very end CG. Who is
 16 that?
 17 A Carolyn Grillot.
 18 MS. MENDOZA: Let's make sure we talk
 19 about the same one, several entries.
 20 MR. ADLER: I said the first July 6th?
 21 MS. MENDOZA: 7-6-93?
 22 MR. ADLER: I'm talking very end --
 23 MS. MENDOZA: Which entry are you talking
 24 about, which page are you on? There are

1 Q But am I correct that they didn't get involved
 2 until after Stephanie was missing?
 3 MS. MENDOZA: Go back and look page by
 4 page at all the entries.
 5 Q (By Mr. Adler) Let me withdraw the question.
 6 What was their job at the D.O.C.?
 7 A Carolyn Grillot is the Pittsburg parole office
 8 secretary and Donna Pyle is another parole officer.
 9 Q When you mean secretary, do you mean secretary as
 10 in typist or in head of the office?
 11 A Typist, clerk, office manager, basically.
 12 Q What about Pyle?
 13 A She is another parole officer.
 14 Q Now, you can answer, were they involved prior to --
 15 did they not get involved until after Stephanie was
 16 missing?
 17 A Because I believe at that time, I believe I
 18 received the initial phone call from PO Pyle
 19 because it was on the holiday, it was 7-4-93.
 20 Q Pyle got involved because you were on vacation?
 21 A She got a telephone call from the police
 22 department. She called me.
 23 Q So you believe she was just involved the day you
 24 were gone?
 25 A Well, it was a holiday. Everyone was gone. She

1 had had a telephone call from a police officer
 2 saying that they were concerned about this guy and
 3 she knew he was my client and she called me.
 4 Q Had you ever been told by a member of -- had you
 5 ever learned that Mr. Gideon had strangled his
 6 sister prior to June 30th of '93?
 7 A No.
 8 Q Had you ever heard that?
 9 A No.
 10 Q By anybody?
 11 A No.
 12 Q Have you ever heard that allegation prior to today?
 13 A No.
 14 (WHEREUPON, DEPOSITION EXHIBIT NOS. 16
 15 and 16-A THROUGH 16-E WERE MARKED FOR
 16 IDENTIFICATION.)
 17 Q (By Mr. Adler) I've handed you six exhibits marked
 18 16 and 16-A through E. It's my understanding, and
 19 correct me if I'm wrong, that those are the
 20 psychological reports you had on Mr. Gideon at the
 21 time you commenced supervising his conditional
 22 release? Lisa is shaking her head, so tell me what
 23 they are, Lisa.
 24 MS. MENDOZA: Let me make sure I have
 25 them all in correct order. These are taken

1 later?
 2 A No, I didn't have those.
 3 Q You've never had those?
 4 A No.
 5 Q Have you ever seen those prior to today? ...
 6 A No.
 7 MR. ADLER: Lisa, can you tell me why you
 8 gave me these?
 9 MS. MENDOZA: You asked for, as I recall,
 10 all his contact with mental health centers,
 11 whoever, while incarcerated and these
 12 documents as I'm looking at them, appear to me
 13 to be the mental health progress summaries or
 14 other documents that were maintained in their
 15 facility files. They were never part of a
 16 parole file.
 17 MR. ADLER: These are incarceration
 18 files?
 19 MS. MENDOZA: These are incarceration
 20 files.
 21 Q (By Mr. Adler) 16-A, B, D and E?
 22 A Right.
 23 Q Would you have had access to 16-A, B, D and E if
 24 you requested it?
 25 A I probably could have.

1 from all the documents, it looks like, the
 2 mental health progress notes would not have
 3 been available to him or were not available.
 4 MS. MENDOZA: I asked you but let's go
 5 back to him.
 6 Q (By Mr. Adler) Do you know, can you answer this
 7 question instead of her? I'd rather have you
 8 answer if you can.
 9 A I can indicate to you what were in the file.
 10 Q Tell me which of those exhibits were in the file
 11 when you commenced your supervision of him?
 12 A These two right here.
 13 Q Which ones?
 14 A No. 16 and 16-C.
 15 Q Were there any others in the file besides those two
 16 when you commenced your supervision?
 17 A No, I don't believe so.
 18 MS. MENDOZA: Can we like identify these
 19 before we keep going?
 20 MR. ADLER: He said 16 and 16-C were in
 21 the file.
 22 MS. MENDOZA: You haven't identified
 23 them. You've just marked them.
 24 MR. ADLER: We'll get to them.
 25 Q (By Mr. Adler) 16-A, B, D and E you acquired

1 Q But the only ones you had were 16 and 16-C;
 2 correct?
 3 A Yes.
 4 MS. MENDOZA: This is like a copy of
 5 April of '91. This is the same thing. You
 6 have -- this is the same document.
 7 A Because I've only got one sheet in the file.
 8 Q (By Mr. Adler) You're telling me the two pages
 9 that are 16-C are the same pages?
 10 A Uh-huh.
 11 Q Let me hand you this one, May of '91, that I've got
 12 in my hand that's not marked. Is that another one
 13 you would have had in the file?
 14 A No.
 15 (WHEREUPON, DEPOSITION EXHIBIT NO. 16-F
 16 WAS MARKED FOR IDENTIFICATION.)
 17 Q (By Mr. Adler) 16-F you're testifying was not in
 18 your file and you've never seen that prior?
 19 A (Whereupon, the witness shakes his head.)
 20 Q Is that correct?
 21 A That's right.
 22 Q Is this another incarceration document?
 23 A I believe so.
 24 Q That you would have had access to but didn't
 25 request?

1 A I suppose I would have had access to it.
 2 Q And if it's okay with you to make the record clear
 3 since you've told me 16-C is two pages of the same
 4 thing, I'm going to turn 16-C into a one-page
 5 document. Is that acceptable with you?

6 A Yes.

7 MR. ADLER: I'm done with those
 8 documents. You said you wanted them
 9 identified. Did you want to read something
 10 into the record that will satisfy you?

11 MS. MENDOZA: I have 16 as being the R/D
 12 report, 16-A as --

13 MR. ADLER: Hold on, I need to go slow.

14 MS. MENDOZA: Reception and diagnostic
 15 report is 16. 16-A were mental health
 16 progress notes from the facility. 16-B is
 17 treatment summary accident, looks like, from
 18 the facility dated August 18, 1989. 16-C is
 19 the SOTP, sex offender treatment program,
 20 discharge summary dated April of 1991. D,
 21 looks like a sex offender treatment program
 22 evaluation dated May of 1991. Is this the
 23 same thing as F?

24 MR. ADLER: You tell me. Looks like 16-D
 25 and F are the same thing.

1 A That's what it says, yes.

2 Q What does that mean? What is acceptable and what
 3 is the employment plan?

4 MS. MENDOZA: You need to look at your
 5 chronologicals to make reference to that to
 6 recall.

7 A I believe he would have been employed at that time.

8 MS. MENDOZA: On 12-8?

9 THE WITNESS: I don't think so. We
 10 should look. Do you have the chronos?

11 MS. MENDOZA: Or the report forms?

12 Q (By Mr. Adler) That's Exhibit 15.

13 A Yes, he was. He was employed at Superior.

14 Q Where was he employed?

15 A Superior.

16 Q But it says the employment plan is acceptable. Is
 17 there an employment plan?

18 A It's just the fact that he has a job.

19 Q So you were approving the employment at Superior?

20 A Yes.

21 Q Did he have that job prior to you getting
 22 supervision of him?

23 A He got it after he came and the course of this
 24 activation of the case is several days there, and
 25 during the time that he actually came to Pittsburg

1 MS. MENDOZA: Do you want to withdraw it?

2 MR. ADLER: We'll leave it there since we
 3 have a record.

4 MS. MENDOZA: 16-E looks like this is a
 5 facility risk screening -- risk assessment
 6 screening for, this is, I think it says
 7 although part of it looks like it's been hole
 8 punched out, I think that should read minimum
 9 custody by exception and this is dated 3 --
 10 March 3, 1992.

11 MR. ADLER: Done? I'll get these in
 12 order.

13 MR. SECK: If you're done with those I'll
 14 go have someone copy them.

15 (WHEREUPON, DEPOSITION EXHIBIT NO. 17 WAS
 16 MARKED FOR IDENTIFICATION.)

17 Q (By Mr. Adler) I'm going to hand you what's been
 18 marked as Plaintiff's Deposition Exhibit No. 17.
 19 Can you identify that for me, please?

20 A This would be my formal written reply to the P.O.
 21 Jim Chastain of Hutchinson accepting the case for
 22 supervision in Pittsburg.

23 Q It says on Item 2 under in reference to the
 24 investigation request the employment plan is
 25 acceptable; correct?

1 and by the time that I actually sent this written
 2 notice that I've taken the case from Mr. Chastain,
 3 he had already had employment.

4 Q To your knowledge, is there a document similar to
 5 this approving the employment plan at Hamilton's?

6 A No.

7 Q Why is there on this one but not the other one?

8 A This is just a form. There are times when -- it's
 9 just a written notice of a change from the case
 10 from out there to here.

11 There are times that there may actually be a
 12 notation on there of a checkmark for the employment
 13 plan is approved or okay or whatever. My secretary
 14 is the one who runs through this form in the
 15 computer and does that.

16 Q So it's peculiar to the fact that he had just been
 17 transferred to you is what you're telling me?

18 A That's it, yes.

19 (WHEREUPON, DEPOSITION EXHIBIT NO. 18 WAS
 20 MARKED FOR IDENTIFICATION.)

21 Q (By Mr. Adler) I'm going to hand you Plaintiff's
 22 Exhibit No. 18. Is that the violation report you
 23 issued for an absconder warrant when this whole
 24 situation started?

25 A Yes.

1 Q Would you read to yourself Item 4 about
 2 recommendations so we can discuss it.
 3 A Yes.
 4 Q The two reasons you have listed for issuing a
 5 warrant for Mr. Gideon's arrest when Stephanie
 6 Schmidt was found missing was the fact that he was
 7 on -- he had previously committed rape and
 8 aggravated sodomy for which he was on parole, says
 9 here, and that he had not been in Pittsburg. Those
 10 are the two reasons?
 11 A He had not been located in Pittsburg by family or
 12 police.
 13 Q What does the fact that -- I'm --
 14 A For several days.
 15 Q I'm sorry?
 16 A For several days.
 17 Q What did the fact that he was, as this report says,
 18 on parole for rape and aggravated sodomy got to do
 19 with why a warrant should be issued for his arrest?
 20 A I don't understand what you're asking.
 21 Q Why is that a reason that a warrant was issued for
 22 his arrest?
 23 A Well, basically I am telling Tony Ramos, the
 24 supervisor, I'm enlightening him as to what this
 25 guy's crimes were, and those are serious crimes,

1 _____
 2 WITNESS
 3 Subscribed and sworn to before me, a
 4 Notary Public within and for _____
 5 County, _____, this _____ day of
 6 _____, 1995.
 7 My Commission expires _____.
 8 _____
 9 NOTARY PUBLIC
 10
 11
 12
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 25

1 the guy is not found locally and we can assume he
 2 has absconded with all the other information that
 3 was coming to light at that time.
 4 Q Are you -- if he had had a minor crime and was
 5 missing, would you have issued the warrant?
 6 A If he was not found and he should have been. I
 7 think I already indicated he had a contact with me
 8 that he had missed. He had not shown up for work
 9 and, yes, we would probably issue a warrant.
 10 Q Even if his prior crime had not been something as
 11 serious as rape and aggravated sodomy?
 12 A That's just speculation. I would say probably we
 13 would if he was not found locally.
 14 (Whereupon, a break was taken at this
 15 time.)
 16 MR. ADLER: No questions.
 17 MR. SECK: No questions. I have no
 18 questions.
 19 * * * * *

1 Certificate
 2 STATE OF KANSAS)
 3) ss:
 4 COUNTY OF JOHNSON)
 5 I, BRENDA FITZGERALD, a Notary Public, do
 6 hereby certify that there came before me, witness:
 7 ROBERT SCHIRK,
 8 who was by me first duly sworn; and the transcript
 9 thereof transcribed.
 10 I further certify it was stipulated by and
 11 between counsel that the signature of the witness to his
 12 deposition may be taken before any Notary Public; that
 13 the deposition was thereafter by the witness subscribed
 14 and sworn to as shown on the preceding page; and that
 15 said deposition is now herewith returned.
 16 IN TESTIMONY WHEREOF, I have hereunto set my
 17 seal at my office in said County and State, this 10th
 18 day of May, 1995.
 19 My Commission expires February 5, 1997.
 20
 21 Notary Public
 22
 23
 24
 25

Martha Town, Director of the Rainbow Mental Health Center spoke about the state of mental health care in Kansas, and the process of referring individuals to mental health hospitals. Ms. Town stated that due to "mental health reform", entries into institutions for those with mental illnesses are more controlled, and when a hospitalization is allowed it is generally for a shorter duration - just long enough to stabilize the person. Once released from a State hospital the individual is responsible for contacting his/her local mental health agency for follow-up care.

All people referred for hospitalization or civil commitment must have screening by mental health professionals. In the Kansas City, Kansas area Wyandot Mental Health Center is responsible for pre-hospitalization screenings.

Chris Reiger, Corrections Manager and chair of the FSO Committee introduced staff to FSO 3.105 "Notification to Third Parties." The policy takes effect 9-15-94 and will require that all offenders under supervision advise their employers of all current and prior adult criminal convictions. Offenders holding employment prior to 9-15-94 will not be required to notify their employers of criminal records unless specifically directed to do so by their supervising parole officer. Offenders convicted of certain listed offenses (generally sex offenses) will be required to notify employers of their convictions, and to have the employer verify that notification in writing using a form that is then returned to the parole officer. The form is to be prepared for the offender by the parole officer, then given to the offender who has the responsibility for notifying the employer, having the form signed, and returning the form to the parole officer. For those offenders not convicted of a Mandatory Notification crime, compliance can be monitored using the Monthly Report Form.

FSO 3.105 also provides a form for use when a parole officer believes that the offender poses a specific risk and that a third party should be notified of an offenders criminal history. [These types of situations have been referred to in the past as "duty to warn" situations.] This policy simply establishes a procedure and form for use during such notifications.

All offenders will be informed of this policy via parole officer, by a letter which will be generated from the Central Office. The letter will serve as a special condition to each offender. Offenders released to supervision after 9-15-94 should be given a special condition to notify employers of their criminal histories, using the wording provided in FSO 3.105.

FSO 3.105 SUMMARY
NOTIFICATION TO THIRD PARTIES

NOTIFICATION TO EMPLOYERS

Offenders released on or after 9-15-94 or those currently under supervision who obtain different or additional employment after 9-14-94 are required to notify their employer of current and past adult felony convictions.¹

- A special condition will be added on newly released offenders at the initial interview.
- Offenders currently under supervision, other than B/I offenders, shall be presented with the special condition at the next scheduled office visit.
- Offenders under B/I supervision will be notified of the employment notification requirement, by letter containing an explanation of the change as well as a special condition of parole requiring that notification be made.

Offenders convicted of mandatory notification crimes (those released, acquiring or changing employment after 9-14-94) fall into a category of a higher priority of notification. Offenders in this category will notify the employer by presenting a written copy of their criminal record to the employer.

The parole officer will provide the Offender to Employer Acknowledgement of Disclosure form to the offender.

The offender is to provide the form to the employer, or to any new employer upon change or addition of employment.

Offender is to return the form to the PO within 2 calendar days of initial or subsequent employment.

The PO is to verify the employer's knowledge of the convictions by telephone or personal visit within 5 days of receipt of the employer signed form from the offender.

If the offender fails to return the form, or the officer learns of unreported employment, the employer is to be immediately notified by the most expedient means.

NOTIFICATION TO OTHERS

When parole officer becomes aware of change of residence, employment or change of criminal record of any offender, he/she shall evaluate the need for notification.

¹Offenders holding employment prior to 9-15-94 are not required to notify their current employer of their criminal record unless the parole officer determines that there is potential risk of harm to certain individuals.

Confidential letter - Client information

Kansas Department of Corrections
Division of Community and Field Services
Eastern Parole Region

MEMORANDUM

TO: All Eastern Region staff
FROM: *JW* Jennifer Welch
DATE: September 8, 1994
SUBJECT: FSO 3.105 - Notification to Third Parties

- . As required by FSO 3.105, all offenders released to supervision on or after 9-15-94 should be given a special condition concerning their requirement to notify employers of criminal convictions. In anticipation of that, attached is a special condition for your use. If you prefer to type your own, be sure to use the same wording, as it is specified in the policy.

KANSAS DEPARTMENT OF CORRECTIONS
DIVISION OF COMMUNITY AND FIELD SERVICES

SPECIAL CONDITION/INSTRUCTION OF PAROLE

TO: _____ INST. & NO.: _____
(Last Name First Middle Initial)

FROM: _____ OFFICE: _____
(Parole Officer)

I have been informed by my parole officer that it has been determined that the following Special Condition(s)/Instruction(s) of parole is/are imposed effective this date:

1. As a special condition of parole, you are required to notify each or your employers of all of your current and past adult felony convictions (excluding expunged convictions) prior to or at the time of your hire.
2. _____
3. _____
4. _____

I understand that failure to comply with the Special Condition(s) may result in initiating revocation proceedings. I further understand that if I refuse to sign this form, the Special Condition(s)/Instruction(s) is/are still binding.

(Signature of Parole Officer)

(Signature of Parolee)

(Date)

(Date)

Parole Director or Designee

017/1092

EXHIBIT 3

TESTIMONY OF CARLA J. STOVALL
HOUSE JUDICIARY COMMITTEE
HB 2849
FEBRUARY 22, 1994

The sexually violent predator bill -- a bill that would keep still sexually violent inmates off the streets after their criminal sentence has been served. Not passing this bill would allow convicted rapists and child molesters to walk through prison gates and back into our communities to rape and molest again.

And rape and molest they will. One study of 126 rapists that I recently read indicated that they had an average of 7 victims each. An F.B.I. study of serial rapists showed an average of over 20 rapes each in their histories.

The statistics on child sexual abuse offenses is absolutely staggering. A study funded by the National Institute of Mental Health reported on 453 sexual offenders who had abused an average of 52 girls or 150 boys each. The same study indicated that the typical offender begins molesting children when he is 15 and molests an average of 117 children--most of whom do not report the molestation.

Because of the nature of sexually violent crimes and the psychological makeup of those who are prone to commit them, we must take extraordinary precautions to protect society from them. This means enacting this bill into law across the state of Kansas. We cannot open our prison doors and let these animals back into our communities. If we do -- we are accomplices to the atrocities which they will surely commit.

Let me share with you for a moment the utter frustration I experienced as a member of the Kansas Parole Board. I would routinely see sexual offenders and pass them as long as possible (which was usually one year). I would see them each year and deny release again and again. But when the inmates reached their conditional release date (which was one-half of their maximum sentence), they had to be set free.

The file would come to the Board only for the purpose of setting conditions for their release. We would establish requirements such as: Report to the parole officer. Maintain employment. Have no contact with the victim or victim's family. Attend sexual offender treatment.

As I would write out those conditions, a knot would always grow in my stomach. [I knew the rapists or child molesters were being turned loose on an unsuspecting public to reoffend. I knew there was at least one woman or one child, but probably more, who were going to fall victim to this animal. It was as certain as the sun rising the next morning.] And there was nothing I could do to

EXHIBIT 4

State of Kansas

Office of the Attorney General

301 S.W. 10TH AVENUE, TOPEKA 66612-1597

CARLA J. STOVALL
ATTORNEY GENERALSTATEMENT OF
ATTORNEY GENERAL CARLA J. STOVALL
BEFORE THE SENATE JUDICIARY COMMITTEE
RE: SENATE BILL 241
FEBRUARY 23, 1996MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
FAX: 296-6296

Dear Chairperson Emert and Members of the Committee:

I want to thank you for the opportunity to testify on behalf of SB 241. This bill was introduced last session and deals with harsh penalties for the persistent sex offender.

After studying the sentencing issue of life imprisonment for the persistent sex offender this past year, I have determined that an amendment should be made in New Section 1, line 15, that the imprisonment for the persistent sex offender should be 40 years instead of life. Violent sex offenders are rarely if ever treatable for the crimes they commit. What this bill does is allow the courts to remove the persistent sex offender from communities so that no further sex crimes will be committed by this offender.

Sexually violent crimes are defined in K.S.A. 22-3717. They are rape, indecent liberties with a child, aggravated indecent liberties with a child, criminal sodomy, aggravated criminal sodomy, indecent solicitation with a child, aggravated indecent solicitation with a child, sexual exploitation of a child, and aggravated sexual battery.

I would also like to propose several amendments to this bill that deal with sex crimes. Convicted sex offenders should be fined an additional \$100 at the time of sentencing. This money would be used to help fund sexual assault centers who work with victims of sexually violent crimes. Currently there is no state money dedicated to funding sexual assault centers and this would be an avenue to make the convicted offender pay for programs that assist the victim.

Several years ago the Kansas legislature amended all sex crimes that allowed a spouse to be exempt from committing sex crimes against his or her spouse except of sex battery. Sex battery still has language in it that allows a spouse to be

Page 2

excluded from this charge. I would ask for an amendment to change this exemption.

My final amendment would include a change in the expungement statute for juveniles. At this time the law allows a juvenile to expunge the crime of rape when the victim is less than 14 years of age, however an adult cannot expunge this crime. I believe that persons who commit sex crimes should not be able to have their record expunged. Currently, records on sex offenses committed by adults where children are victims, cannot be expunged. Juveniles who commit certain sex offenses against children cannot have their records expunged. A juvenile who is 17 years of age and fondles a 15 year old could be charged with indecent liberties and that crime cannot be expunged from the juvenile's record. However, a 17 year old who rapes a four year old can have that crime expunged from their record.

I want to ensure that no offender of any sex crime is able to expunge his or her record of this heinous crime. I believe the expungement statutes for adults and juveniles should be the same in regard to sex offenses.

Thank you for your consideration for these changes. I appreciate your support for this bill and these amendments.

lar services. These hours are calculated over Stephanie's mother's normal life expectancy.

Direct Hours of Parental Care in Raising a Child

Direct hours of care provided by Gene and Peggy Schmidt in raising Stephanie are based on hours of services provided to a child rather than hours of child supervision. These direct hours of care would include feeding and bathing the child as opposed to watching the child, reading to the child, or being available to help the child. The latter activities involve supervision and are not included in the parental direct services classification. Direct service hours are very small when compared to supervision hours, hence, the estimate of parental care based on direct services is very conservative estimate of the total amount of parental time required to raise a child.

Estimates of the value of direct parental care are based on the average amount of household services performed by parents as reported in The Dollar Value of Household Work [William H. Gauger and Kathryn E. Walker, New York State College of Human Ecology, Cornell University]. The direct child care hours are calculated as the difference between total household service work by a husband and wife with and without a child. The number of hours of services performed are presented in Table One.

The value of parental care is calculated from birth through the date of Stephanie's 18th birthday. The value of parental care is set to the average of the median hourly wages of Social Workers, Licensed Practical Nurses, and Elementary School Teachers. The average hourly value for 1994 is \$13.19 per hour [Employment and Earnings, U.S. Department of Labor, Bureau of Labor Statistics, January 1995, pages 209-210].

The value of parental care services is adjusted for differences in the earnings of service industry workers in the State of Kansas, 18.11% lower than national averages [Average Annual Pay by State and Industry, 1994, U.S. Department of Labor, Bureau of Labor Statistics, News Release #95-376]. The 1994 Kansas adjusted value of parental care services is \$10.80 per hour.

The 1994 dollar value is adjusted in other years using the employment cost index for compensation to nonfarm business sector workers [Economic Report of the President, 1995, page 328].

This estimate of the value of parental care does not include any foregone income or expenditure calculation. Therefore, interest on the past value of parental care is not included in this loss estimate. As a result, this estimate of the value of the services provided by the parents is a very conservative estimate of the total financial commitment required to raise a child.

Investment Costs

Parental investment costs in raising Stephanie to the date of her death are based on the United States Department of Agriculture's estimates of the 1994 costs to parents in urban midwest areas with family annual incomes greater than \$55,500 in raising a child [Family Economics Review, United States Department of Agriculture, Family Economics Research Group, Mark Lino].

Social investment costs in raising Stephanie from beginning school age to through the 12th grade are based on the average annual expenditure per pupil enrolled in public elementary and secondary schools in the United States in 1993, \$5,171 per year [Statistical Abstract of the United States, 1994, U.S. Department of Commerce, Bureau of the Census, page 161].

Past investment levels are adjusted in other years using the Consumer Price Index for All Items [Economic Report of the President, 1995, page 341].

Interest on past investment is calculated using the past yields on High Grade Municipal bonds [Economic Report of the President, 1995, p. 358].

Lost earnings capacity is based on the average annual earnings of females with a bachelor's degree by age group [Money Income of Households, Families, and Persons in the United States: 1992, U.S. Department of Commerce, Bureau of the Census, September 1993, Table 30, page 147].

Earnings Capability

Earnings capacity is calculated from the date that Stephanie would have left college to Peggy Schmidt's normal life expectancy of 31.6 years from her last birthday [Vital Statistics of the United States, 1990, Life Tables, Volume II, Section 6, U.S. Department of Health and Human Services].

Earnings capacity is based on the average annual earnings of females with a bachelor's degree by age group [Money Income of Households, Families, and Persons in the United States: 1992, U.S. Department of Commerce, Bureau of the Census, September 1993, Table 30, page 147].

The census earnings data is recorded in 1992 dollars. The 1992 levels are increased annually by 2.9% for 1993-95 earnings equivalencies. The earnings growth rates for 1992 to 1995 are the percentage increases in the employment cost index for the wages and salaries of all private industry workers [Compensation & Working Conditions, U.S. Department of Labor, Bureau of Labor Statistics, March 1995: page 65, August 1995: page 78].

The national average earnings data is adjusted for differences in earnings in Kansas, 14.06% lower than national averages in 1992 [Average Annual Pay by State and In-

Lost guidance and counsel provided by Stephanie is set 7 hours per week. The hourly value of guidance and counsel is based on the average earnings of Social, Recreation, and Religious Workers in the United States, \$12.30 in 1993 and \$12.48 per hour in 1994 [Employment and Earnings, U.S. Department of Labor, January 1995, page 209].

The national value of guidance and counsel services is adjusted for differences in the earnings of service industry workers in the State of Kansas, 18.11% lower than national averages [Average Annual Pay by State and Industry, 1994, U.S. Department of Labor, Bureau of Labor Statistics, News Release #95-766]. The 1994 Kansas adjusted hourly value of guidance and counsel services is \$10.21.

Lost Value of Stephanie's Household Services

The value of services which could have been provided by Stephanie to her family members is calculated to Peggy Schmidt's normal life expectancy [above].

The number of service hours that could have been performed by Stephanie is based partly upon information provided by the Schmidt's and partly on the hours spent by employed females in maintaining a household and performing services for the benefit of family members [The Dollar Value of Household Work, William H. Gauger and Kathryn E. Walker, New York State College of Human Ecology, Cornell University]. Loss is set to 13.5 hours per week for 5 months a year through age 22 and 13.5 hours per week adjusted by the probability of joint household thereafter.

The labor marketplace for workers who perform services similar to household tasks is the best place to derive hourly values for pricing household work. This labor marketplace would include such workers as: cooks; kitchen helpers; cleaning persons; yard workers; laundry workers; and, house makers. The median weekly earnings of wage-earners who perform services similar to household tasks are presented in Table Five.

The national value of household services is set to \$6.51 in 1993 and \$6.51 in 1994. The value of household services from the date of injury to the present is adjusted for differences in the earnings of service industry workers in the State of Kansas, 18.12% lower than national averages [Average Annual Pay by State and Industry, 1994, U.S. Department of Labor, Bureau of Labor Statistics, News Release #95-376]. The 1994 Kansas adjusted hourly value of household services is \$5.33.

Growth and Discount Rates

Average nominal and real economy wide compensation per hour, interest, and inflation rates during the 1969 to 1994 period are:

Summary Data for 1969 to 1994

	Nonfarm Compensation per Hour	3 Year U.S. Treasury Bonds	Aaa Municipal Bonds	CPI-U All Items
Nominal Rate	6.46%	8.19%	7.25%	5.77%
Real Rate	0.6%	2.3%	1.4%	n/a

U.S. Treasury and Aaa Municipal bond yield rates are reported in the Economic Report of the President, 1995 [page 358].

The Consumer Price Index is reported in the Economic Report of the President, 1995 [page 341].

Compensation growth rates are the rates of growth in the hourly compensation to nonfarm business sector workers as reported in the Economic Report of the President, 1995 [page 328] and the Monthly Labor Review [U.S. Department of Labor, Bureau of Labor Statistics, March 1995, page 115].

When determining a future stream of interest and growth rates, economists predict current real interest and earnings growth rates will in the long term move about a mean expected level. In this loss projection, earnings are increased and discounted to present value using the following rates:

Time Period	Nonfarm Business Compensation per Hour	3 Year U.S. Treasury Bonds	Net Discount Rate
Dec-93 to Dec-94		1994 Average	
Current Nominal Rate	3.1%	6.27%	3.1%
CPI-U All Items Inflation Rate	2.7%	2.6%	
Current Real Rate	0.4%	3.6%	3.2%
Long Term Real Rate	0.6%	2.3%	1.7%
Years to Achieve Long Term	2	5	

The net discount rate is the geometric subtraction of the interest rate and the earnings growth rate. The interpretation of the above table is that farm labor services are discounted in the future beginning with the current real net discount rate which is

linearly decreased until, after 5 years, the expected long term net discount rate is realized.

The current real rate of growth in the value of farm labor is based on the percentage increase in the Employment Cost Index for Total Compensation of all private industry workers from December 1993 to December 1994 as reported in Compensation & Working Conditions [United States Department of Labor, Bureau of Labor Statistics, March 1995, page 30]. The long-term real rate of growth rate in earnings is set to the average real growth rate in nonfarm compensation per hour from 1969 to 1994 [above].

The CPI-U All Items inflation rates are for the twelve months ending December 1994 (2.7%) and the average for 1994 (2.6) as reported in the CPI Detail Report, Data for February 1995 [U.S. Department of Labor, Bureau of Labor Statistics, page 64].

The 3 Year U.S. Treasury bond yield rate is the average for 1994 and is reported in the Economic Report of the President, 1995 [page 358]. The long-term real discount rate is set to the average real discount rate on 3 Year U.S. Treasury bonds from 1969 to 1994 [above].

The value of guidance and counsel and household services is increased and discounted to present value using the following rates:

Time Period	ECI Service Occupations	Aaa Municipal Bonds	Net Discount Rate
	Dec-93 to Dec-94	1994 Average	
Current Nominal Rate	2.8%	6.19%	3.3%
CPI-U All Items Inflation Rate	2.7%	2.6%	
Current Real Rate	0.1%	3.5%	3.4%
Long Term Real Rate	0.6%	1.4%	0.8%
Years to Achieve Long Term	5	5	

The current real rate of growth in the value of services is based on the percentage increase in the Employment Cost Index for Total Compensation of all private service industry workers from December 1993 to December 1994 as reported in Compensation & Working Conditions [United States Department of Labor, Bureau of Labor Statistics, March 1995, page 30]. The long-term real rate of growth rate in the value of services is set to the average real growth rate in nonfarm compensation per hour from 1969 to 1994 [above].

The CPI-U All Items inflation rates are for the twelve months ending December 1994 (2.7%) and the average for 1994 (2.6%) as reported in the CPI Detail Report, Data for February 1995 [U.S. Department of Labor, Bureau of Labor Statistics, page 64].

The Aaa Municipal bond yield rate is the average for 1994 and is reported in the Economic Report of the President, 1995 [page 358]. The long-term real discount rate is set to the average real discount rate on Aaa Municipal bonds from 1969 to 1994 [above].

Summary of Economic Loss


The loss computations presented in this report are limited to those purely economic in nature that are traditionally and generally accepted as measures of economic loss.

Many economic and non-economic elements of loss are not included in the loss figures reported below. Examples are: funeral expenses; loss of enjoyment of life; bereavement, suffering, mental anguish, or emotional distress; loss of society, companionship, comfort, or protection; loss of the value of a complete family; or, loss of filial care or attention.

The estimate of economic loss is based on parental and social investment in raising Stephanie, valuation of Gene and Peggy Schmidt's parental care, the value of Stephanie's earnings and household services directly beneficial to her family members, and the value of Stephanie's guidance and counsel to family members.

Economic losses calculated are:

	Present Value of Economic Loss		
	To Death	After Death	Total
Value of Parental Care to Raise Stephanie	\$142,604		\$142,604
Parental Investment in Raising Stephanie	\$293,107		\$293,107
Social Investment in Raising Stephanie	\$86,720		\$86,720
Stephanie's Guidance and Counsel to Family	\$8,541	\$94,562	\$103,103
Stephanie's Services for Family	\$3,592	\$19,008	\$22,600
Stephanie's Potential Earnings Support		\$120,990	\$120,990
	\$534,564	\$234,560	\$769,124



 John O. Ward, Ph.D.

Table One — Value of Parental Care in Raising Stephanie Schmidt

Year	Beginning of Year Age	Hours per Day of Direct Care	1994 \$ Value of Parent's Care	Compensation Index	Annual Value of Parent's Care	Labor Discount Factor	Discounted Annual Value of Parent's Care
1973	0	4.0	\$7,819	45.4	\$2,170	1.0000	\$2,170
1974	0	4.0	\$15,768	49.9	\$4,809	1.0000	\$4,809
1975	1	3.0	\$11,826	54.9	\$3,969	1.0000	\$3,969
1976	2	3.0	\$11,826	59.6	\$4,308	1.0000	\$4,308
1977	3	3.0	\$11,826	64.4	\$4,655	1.0000	\$4,655
1978	4	3.0	\$11,826	70.1	\$5,067	1.0000	\$5,067
1979	5	3.0	\$11,826	76.7	\$5,544	1.0000	\$5,544
1980	6	2.5	\$9,855	84.9	\$5,114	1.0000	\$5,114
1981	7	2.5	\$9,855	93.0	\$5,602	1.0000	\$5,602
1982	8	2.5	\$9,855	100.0	\$6,024	1.0000	\$6,024
1983	9	2.5	\$9,855	104.0	\$6,265	1.0000	\$6,265
1984	10	2.5	\$9,855	108.3	\$6,524	1.0000	\$6,524
1985	11	2.5	\$9,855	112.8	\$6,795	1.0000	\$6,795
1986	12	4.0	\$15,768	118.4	\$11,412	1.0000	\$11,412
1987	13	4.0	\$15,768	122.5	\$11,807	1.0000	\$11,807
1988	14	4.0	\$15,768	127.7	\$12,308	1.0000	\$12,308
1989	15	4.0	\$15,768	132.0	\$12,722	1.0000	\$12,722
1990	16	4.0	\$15,768	139.2	\$13,416	1.0000	\$13,416
1991	17	4.0	\$15,768	146.2	\$14,091	1.0000	\$14,091
To Age 18			\$236,458		\$142,604		\$142,604

Table Two — Present Value of Costs to Raise Stephanie Schmidt

Part One — Parental Investment

Begin Year	End of Year Age	1990\$ Annual Parental Expenditures on a Child	CPI Inflation Index	Current \$ Parental Expenditures on a Child	Aaa Municipal Bond Rate	Inflation Discount Factor	Present Value of Investment	Cumulative Present Value of Investment
1973	0	\$10,030	44.4	\$1,490	5.18%	4.8986	\$7,300	\$7,300
1974	1	\$10,030	49.3	\$3,337	6.09%	4.6574	\$15,540	\$22,839
1975	2	\$10,030	53.8	\$3,641	6.89%	4.3900	\$15,985	\$38,824
1976	3	\$10,430	56.9	\$4,005	6.49%	4.1070	\$16,447	\$55,270
1977	4	\$10,430	60.6	\$4,265	5.56%	3.8567	\$16,449	\$71,719
1978	5	\$10,430	65.2	\$4,589	5.90%	3.6536	\$16,765	\$88,484
1979	6	\$10,530	72.6	\$5,158	6.39%	3.4500	\$17,797	\$106,281
1980	7	\$10,530	82.4	\$5,855	8.51%	3.2428	\$18,986	\$125,267
1981	8	\$10,530	90.9	\$6,459	11.23%	2.9885	\$19,302	\$144,569
1982	9	\$10,050	96.5	\$6,544	11.57%	2.6868	\$17,582	\$162,151
1983	10	\$10,050	99.6	\$6,754	9.47%	2.4082	\$16,265	\$178,416
1984	11	\$10,050	103.9	\$7,046	10.15%	2.1998	\$15,500	\$193,916
1985	12	\$10,440	107.6	\$7,580	9.18%	1.9971	\$15,138	\$209,054
1986	13	\$10,440	109.6	\$7,721	7.38%	1.8292	\$14,123	\$223,177
1987	14	\$10,440	113.6	\$8,003	7.73%	1.7035	\$13,632	\$236,809
1988	15	\$11,620	118.3	\$9,276	7.76%	1.5813	\$14,667	\$251,476
1989	16	\$11,620	124.0	\$9,723	7.24%	1.4674	\$14,267	\$265,743
1990	17	\$11,620	130.7	\$10,248	7.25%	1.3683	\$14,022	\$279,765
1991	18	\$5,810	136.2	\$5,340	6.89%	1.2758	\$6,812	\$286,578
1992	19	\$5,810	140.3	\$5,470	6.41%	1.1936	\$6,529	\$293,107
Pre-Death		\$200,920		\$122,501			\$293,107	

Part Two — Social Investment

Year	End of Year Age	1993\$ Annual Expenditures per Child	CPI Inflation Index	Current \$ Annual Expenditures on a Child	Aaa Municipal Bond Rate	Inflation Discount Factor	Present Value of Investment	Cumulative Present Value of Investment
1979	6	\$2,155	72.6	\$1,083	6.39%	3.4500	\$3,735	\$3,735
1980	7	\$5,171	82.4	\$2,949	8.51%	3.2428	\$9,562	\$13,297
1981	8	\$5,171	90.9	\$3,253	11.23%	2.9885	\$9,721	\$23,018
1982	9	\$5,171	96.5	\$3,453	11.57%	2.6868	\$9,278	\$32,296
1983	10	\$5,171	99.6	\$3,564	9.47%	2.4082	\$8,583	\$40,880
1984	11	\$5,171	103.9	\$3,718	10.15%	2.1998	\$8,179	\$49,059
1985	12	\$5,171	107.6	\$3,851	9.18%	1.9971	\$7,690	\$56,749
1986	13	\$5,171	109.6	\$3,922	7.38%	1.8292	\$7,174	\$63,923
1987	14	\$5,171	113.6	\$4,065	7.73%	1.7035	\$6,925	\$70,848
1988	15	\$5,171	118.3	\$4,233	7.76%	1.5813	\$6,694	\$77,542
1989	16	\$5,171	124.0	\$4,437	7.24%	1.4674	\$6,511	\$84,054
1990	17	\$2,155	130.7	\$1,949	7.25%	1.3683	\$2,667	\$86,720
Pre-Death		\$56,019		\$40,477			\$86,720	

Table Three — Future Lost Average Bachelor's Degree Earnings Capacity — Stephanie Schmidt

Year	End of Year Age	Fraction of Year	Average Bachelor's Earnings	times Probability Living	times Probability Able to Participate	times Probability Employed	equals Expected Earnings Capability	times Earnings Discount Factor	equals Discounted Expected Earnings Capability	times Joint Household Probability	equals Discounted Joint Household Probability Earnings Capability
1995	22	0.500	\$9,333	0.9988	0.9954	0.9400	\$8,722	1.0000	\$8,722	0.4800	\$4,187
1996	23		\$19,899	0.9984	0.9954	0.9400	\$18,588	0.9691	\$18,014	0.4800	\$8,647
1997	24		\$21,133	0.9979	0.9954	0.9400	\$19,732	0.9422	\$18,591	0.4800	\$8,924
1998	25		\$22,367	0.9974	0.9954	0.9400	\$20,874	0.9189	\$19,181	0.2000	\$3,836
1999	26		\$23,600	0.9969	0.9930	0.9400	\$21,963	0.8990	\$19,746	0.2000	\$3,949
2000	27		\$24,834	0.9964	0.9930	0.9400	\$23,099	0.8819	\$20,371	0.2000	\$4,074
2001	28		\$25,804	0.9959	0.9930	0.9400	\$23,989	0.8672	\$20,803	0.2000	\$4,161
2002	29		\$26,774	0.9954	0.9930	0.9400	\$24,877	0.8528	\$21,215	0.2000	\$4,243
2003	30		\$27,744	0.9948	0.9930	0.9400	\$25,764	0.8386	\$21,606	0.2000	\$4,321
2004	31		\$28,714	0.9942	0.9908	0.9400	\$26,587	0.8247	\$21,927	0.2000	\$4,385
2005	32		\$29,684	0.9936	0.9908	0.9400	\$27,468	0.8110	\$22,277	0.2000	\$4,455
2006	33		\$30,172	0.9929	0.9908	0.9400	\$27,901	0.7975	\$22,251	0.2000	\$4,450
2007	34		\$30,659	0.9922	0.9908	0.9400	\$28,332	0.7843	\$22,219	0.2000	\$4,444
2008	35		\$31,147	0.9915	0.9908	0.9400	\$28,761	0.7712	\$22,181	0.2000	\$4,436
2009	36		\$31,634	0.9907	0.9884	0.9400	\$29,118	0.7584	\$22,083	0.1700	\$3,754
2010	37		\$32,122	0.9898	0.9884	0.9400	\$29,541	0.7458	\$22,032	0.1700	\$3,745
2011	38		\$31,836	0.9889	0.9884	0.9400	\$29,251	0.7334	\$21,453	0.1700	\$3,647
2012	39		\$31,551	0.9879	0.9884	0.9400	\$28,960	0.7212	\$20,887	0.1700	\$3,551
2013	40		\$31,265	0.9869	0.9884	0.9400	\$28,668	0.7092	\$20,332	0.1700	\$3,456
2014	41		\$30,979	0.9858	0.9818	0.9400	\$28,185	0.6975	\$19,658	0.1700	\$3,342
2015	42		\$30,694	0.9846	0.9818	0.9400	\$27,891	0.6859	\$19,129	0.1700	\$3,252
2016	43		\$30,861	0.9832	0.9818	0.9400	\$28,005	0.6745	\$18,888	0.1700	\$3,211
2017	44		\$31,028	0.9818	0.9818	0.9400	\$28,115	0.6633	\$18,647	0.1700	\$3,170
2018	45		\$31,194	0.9802	0.9818	0.9400	\$28,220	0.6522	\$18,406	0.1700	\$3,129
2019	46		\$31,361	0.9784	0.9810	0.9400	\$28,295	0.6414	\$18,149	0.1400	\$2,541
2020	47		\$31,528	0.9764	0.9810	0.9400	\$28,388	0.6307	\$17,906	0.1400	\$2,507
2021	48		\$31,422	0.9742	0.9810	0.9400	\$28,229	0.6203	\$17,509	0.1400	\$2,451
2022	49		\$31,315	0.9718	0.9810	0.9400	\$28,063	0.6100	\$17,117	0.1400	\$2,396
2023	50		\$31,208	0.9691	0.9810	0.9400	\$27,890	0.5998	\$16,729	0.1400	\$2,342
2024	51		\$31,102	0.9662	0.9729	0.9400	\$27,481	0.5898	\$16,210	0.1400	\$2,269
2025	52		\$30,995	0.9629	0.9729	0.9400	\$27,295	0.5800	\$15,832	0.1400	\$2,217
2026	53	0.693	\$21,364	0.9593	0.9729	0.9400	\$18,744	0.5704	\$10,692	0.1400	\$1,497
Post October 20, 1995			\$905,324				\$826,996		\$610,763		\$120,990

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Table Four — Value of Lost Guidance & Counsel — Stephanie Schmidt

Year	End of Year Age	Fraction of Year	<i>Guidance and Counsel Hours</i>		<i>times 52</i>	<i>equals</i>	<i>times</i>	<i>equals</i>	Cumulative Discounted Guidance & Counsel
			Guidance & Counsel Hours per Week	Hourly Value of Services	Annual Lost Value Guidance & Counsel	Services Discount Factor	Discounted Guidance & Counsel		
1993	20	0.504	7.00	\$10.07	\$1,848	1.0000	\$1,848	\$1,848	
1994	21		7.00	\$10.21	\$3,718	1.0000	\$3,718	\$5,566	
1995	22	0.800	7.00	\$10.21	\$2,975	1.0000	\$2,975	\$8,541	
Pre October 20, 1995						\$8,541		\$8,541	
1995	22	0.200	7.00	\$10.21	\$744	1.0000	\$744	\$744	
1996	23		7.00	\$10.21	\$3,718	0.9671	\$3,596	\$4,340	
1997	24		7.00	\$10.21	\$3,718	0.9401	\$3,496	\$7,835	
1998	25		7.00	\$10.21	\$3,718	0.9185	\$3,415	\$11,250	
1999	26		7.00	\$10.21	\$3,718	0.9020	\$3,354	\$14,604	
2000	27		7.00	\$10.21	\$3,718	0.8903	\$3,310	\$17,914	
2001	28		7.00	\$10.21	\$3,718	0.8833	\$3,284	\$21,198	
2002	29		7.00	\$10.21	\$3,718	0.8763	\$3,258	\$24,457	
2003	30		7.00	\$10.21	\$3,718	0.8694	\$3,233	\$27,689	
2004	31		7.00	\$10.21	\$3,718	0.8625	\$3,207	\$30,896	
2005	32		7.00	\$10.21	\$3,718	0.8557	\$3,182	\$34,078	
2006	33		7.00	\$10.21	\$3,718	0.8490	\$3,157	\$37,234	
2007	34		7.00	\$10.21	\$3,718	0.8423	\$3,132	\$40,366	
2008	35		7.00	\$10.21	\$3,718	0.8356	\$3,107	\$43,473	
2009	36		7.00	\$10.21	\$3,718	0.8290	\$3,082	\$46,556	
2010	37		7.00	\$10.21	\$3,718	0.8225	\$3,058	\$49,614	
2011	38		7.00	\$10.21	\$3,718	0.8160	\$3,034	\$52,648	
2012	39		7.00	\$10.21	\$3,718	0.8096	\$3,010	\$55,658	
2013	40		7.00	\$10.21	\$3,718	0.8032	\$2,986	\$58,644	
2014	41		7.00	\$10.21	\$3,718	0.7968	\$2,963	\$61,607	
2015	42		7.00	\$10.21	\$3,718	0.7906	\$2,939	\$64,546	
2016	43		7.00	\$10.21	\$3,718	0.7843	\$2,916	\$67,463	
2017	44		7.00	\$10.21	\$3,718	0.7781	\$2,893	\$70,356	
2018	45		7.00	\$10.21	\$3,718	0.7720	\$2,870	\$73,226	
2019	46		7.00	\$10.21	\$3,718	0.7659	\$2,848	\$76,074	
2020	47		7.00	\$10.21	\$3,718	0.7599	\$2,825	\$78,899	
2021	48		7.00	\$10.21	\$3,718	0.7539	\$2,803	\$81,702	
2022	49		7.00	\$10.21	\$3,718	0.7479	\$2,781	\$84,483	
2023	50		7.00	\$10.21	\$3,718	0.7420	\$2,759	\$87,242	
2024	51		7.00	\$10.21	\$3,718	0.7362	\$2,737	\$89,979	
2025	52		7.00	\$10.21	\$3,718	0.7304	\$2,716	\$92,695	
2026	53	0.693	7.00	\$10.21	\$2,577	0.7246	\$1,867	\$94,562	
Post October 20, 1995						\$114,865		\$94,562	
Totals						\$123,406		\$103,103	

Table Five — National Value of Household Services

Occupational Title	Median Weekly Earnings Full-Time Workers									
	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994
Private Household Workers	\$132	\$121	\$133	\$140	\$158	\$172	\$164	\$179	\$187	\$179
Child Care Workers	\$88	\$91	\$94	\$119	\$127	\$132	\$132	\$154	\$152	\$158
Cleaners and Servants	\$154	\$147	\$161	\$160	\$185	\$190	\$186	\$191	\$205	\$195
Kitchen Workers, Food Preparation	\$169	\$166	\$179	\$179	\$191	\$215	\$221	\$236	\$235	\$232
Maids and Housemen	\$188	\$189	\$198	\$201	\$213	\$220	\$228	\$233	\$245	\$246
Janitors and Cleaners	\$235	\$247	\$258	\$259	\$269	\$280	\$292	\$291	\$303	\$293
Construction Trades, except Supervisors	\$377	\$389	\$401	\$407	\$424	\$457	\$467	\$479	\$477	\$475
Vehicle Washers and Equipment Cleaners	\$205	\$215	\$229	\$221	\$232	\$249	\$247	\$273	\$268	\$280
Grounds Keepers and Gardeners	\$218	\$222	\$229	\$245	\$254	\$267	\$269	\$276	\$273	\$287
Average Hourly Earnings	\$4.91	\$4.96	\$5.23	\$5.36	\$5.70	\$6.06	\$6.13	\$6.42	\$6.51	\$6.51

Source:

U.S. Department of Labor
 Bureau of Labor Statistics
Employment and Earnings, January 1990-95
 and
 U.S. Department of Labor
 Bureau of Labor Statistics
Handbook of Labor Statistics, August 1989

Table Six — Value of Lost Household Services (Joint Household) — Stephanie Schmidt

Year	End of Year Age	Fraction of Year	Service Hours per Week	times	equals	times 52	equals	times	equals	Cumulative
			Hours per Week	Joint Household Probability	Lost Hours per Week	Hourly Value of Work	Annual Lost Value of Household Services	Services Discount Factor	Discounted Lost Services	Discounted Lost Services
1993	20	0.504	5.6	100%	5.63	\$5.33	\$786	1.0000	\$786	\$786
1994	21		5.6	100%	5.63	\$5.33	\$1,559	1.0000	\$1,559	\$2,345
1995	22	0.800	5.6	100%	5.63	\$5.33	\$1,247	1.0000	\$1,247	\$3,592
Pre October 20, 1995							\$3,592		\$3,592	
1995	22	0.200	5.6	100%	5.63	\$5.33	\$312	1.0000	\$312	\$312
1996	23		13.5	48%	6.48	\$5.33	\$1,796	0.9671	\$1,737	\$2,049
1997	24		13.5	48%	6.48	\$5.33	\$1,796	0.9401	\$1,689	\$3,738
1998	25		13.5	20%	2.70	\$5.33	\$748	0.9185	\$687	\$4,425
1999	26		13.5	20%	2.70	\$5.33	\$748	0.9020	\$675	\$5,100
2000	27		13.5	20%	2.70	\$5.33	\$748	0.8903	\$666	\$5,766
2001	28		13.5	20%	2.70	\$5.33	\$748	0.8833	\$661	\$6,427
2002	29		13.5	20%	2.70	\$5.33	\$748	0.8763	\$656	\$7,083
2003	30		13.5	20%	2.70	\$5.33	\$748	0.8694	\$651	\$7,734
2004	31		13.5	20%	2.70	\$5.33	\$748	0.8625	\$646	\$8,379
2005	32		13.5	20%	2.70	\$5.33	\$748	0.8557	\$640	\$9,020
2006	33		13.5	20%	2.70	\$5.33	\$748	0.8490	\$635	\$9,655
2007	34		13.5	20%	2.70	\$5.33	\$748	0.8423	\$630	\$10,286
2008	35		13.5	20%	2.70	\$5.33	\$748	0.8356	\$625	\$10,911
2009	36		13.5	17%	2.30	\$5.33	\$636	0.8290	\$527	\$11,438
2010	37		13.5	17%	2.30	\$5.33	\$636	0.8225	\$523	\$11,961
2011	38		13.5	17%	2.30	\$5.33	\$636	0.8160	\$519	\$12,481
2012	39		13.5	17%	2.30	\$5.33	\$636	0.8096	\$515	\$12,996
2013	40		13.5	17%	2.30	\$5.33	\$636	0.8032	\$511	\$13,507
2014	41		13.5	17%	2.30	\$5.33	\$636	0.7968	\$507	\$14,013
2015	42		13.5	17%	2.30	\$5.33	\$636	0.7906	\$503	\$14,516
2016	43		13.5	17%	2.30	\$5.33	\$636	0.7843	\$499	\$15,015
2017	44		13.5	17%	2.30	\$5.33	\$636	0.7781	\$495	\$15,510
2018	45		13.5	17%	2.30	\$5.33	\$636	0.7720	\$491	\$16,001
2019	46		13.5	14%	1.89	\$5.33	\$524	0.7659	\$401	\$16,403
2020	47		13.5	14%	1.89	\$5.33	\$524	0.7599	\$398	\$16,801
2021	48		13.5	14%	1.89	\$5.33	\$524	0.7539	\$395	\$17,196
2022	49		13.5	14%	1.89	\$5.33	\$524	0.7479	\$392	\$17,587
2023	50		13.5	14%	1.89	\$5.33	\$524	0.7420	\$389	\$17,976
2024	51		13.5	14%	1.89	\$5.33	\$524	0.7362	\$386	\$18,362
2025	52		13.5	14%	1.89	\$5.33	\$524	0.7304	\$383	\$18,744
2026	53	0.693	13.5	14%	1.89	\$5.33	\$363	0.7246	\$263	\$19,008
Post October 20, 1995							\$22,528		\$19,008	
Totals							\$26,121		\$22,600	

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October 18, 1999

Representative Donald A. Dahl
Chairman, Joint Committee on
Special Claims Against the State
and Members of the Committee
Room 545 N. Statehouse
300 SW 10th Avenue
Topeka, Kansas 66612-1504

*Re: Claims of Gene, Peggy and Jennifer Schmidt
Claim #: 4690*

Dear Representative Dahl and Committee Members:

I wish to thank you and the entire Committee for the time and interest you all spent on this matter on September 17, 1999. I would like to clarify some issues that were raised.

1. Stephanie's Law or the Kansas Sexual Predator Act. As a result of Stephanie Schmidt's rape and murder, Kansas passed the Sexual Predator Act, which prohibits the State from releasing sex offenders, such as Gideon, from prison until a Court determines that they no longer present a danger to society. The constitutionality of this law was upheld by the United States Supreme Court. Carla Stovall and others have referred to this as Stephanie's Law. The law was passed because the Kansas legislature recognized what John Douglas, Dr. Stanton Samenow and many other experts have found, which is that sex offenders are usually not rehabilitated and thus pose a threat and danger to society, especially those with whom they work. Many other states have acknowledged the same danger posed by convicted sex offenders and have passed similar laws.

Except when they feel compelled to defend themselves from claims by the Schmidts, the Kansas Department of Corrections (KDOC) always acknowledges the danger posed by sex offenders. They do this in their literature, in Court and in their policies. Please recall that the KDOC policy that was in effect at the time of Stephanie's murder in July 1993, acknowledged the danger posed by sex offenders as it required sex offenders to automatically be considered "high risk" and supervised accordingly. The KDOC's current policy, set forth in FSO 3-105 (which at the hearing I incorrectly stated may have been in effect in 1992), requires mandatory notification of employers when any sex offender is released. Additionally, please recall that Kansas rigorously defended the necessity of the sexual predator law all the way to the United States Supreme Court.

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Astonishingly, the KDOC argued before this Committee on September 17, 1999 that it had no way of knowing that Gideon would rape again and did not pose a danger. In my opinion, that is either during a blind eye and deaf ear to the KDOC's own policies and studies, or is disingenuous.

2. Megan's Law or the Kansas Sexual Registration Act. Acknowledging that it is dangerous to be around a sex offender without knowledge of the sex offender's past, every state in the union has passed some sort of sexual registration law which requires convicted sex offenders to register with the county in which they reside so that law enforcement officials and the public know that a dangerous criminal resides in the area. Many of these laws, including that passed by Kansas, allows for newspapers to publish this information. These types of laws are often referred to as Megan's Law because they are named after a young woman named Megan Kenka who was raped by a sex offender because she, like Stephanie Schmidt, was not armed with the knowledge that someone she knew and trusted was a convicted sex offender.

Subsequent to Stephanie's murder, after the Kansas legislature heard testimony from many people, including Gene, Peggy and Jenny Schmidt, about how Stephanie Schmidt's death would have been prevented if Stephanie simply knew that Gideon was a sex offender, Kansas passed a sexual registration act, the constitutionality of which has been upheld by the Kansas Supreme Court.

These laws acknowledge what the KDOC refuses to acknowledge to this Committee, which is that sex offenders are a danger, can con their preys into trusting them so they can attack them and do not typically fire warning shots by stalking and harassing their victims beforehand. That is why notification is so important and why the conduct of Schirk was so reprehensible in this situation.

Schirk knew of Gideon's violent past and the manner in which sex offenders typically act (they convince their prey that they can be trusted), yet refused to merely inform Stephanie Schmidt what he knew so she could take precautions. Please recall that former Parole Officer Schirk said he would not want his own daughter around Gideon even if she knew of Gideon's past--he was that dangerous. Yet, Schirk allowed the Schmidt's daughter to be around Gideon without any knowledge.

3. Schirk Knew of the Danger Posed by Gideon Before Stephanie's Death, Not Just After Her Death as was Argued by the KDOC at the September 17, 1999 Hearing.

A careful reading of Schirk's deposition will reveal that Schirk knew of the danger Gideon posed to the waitresses at Hamilton's before Stephanie's murder and not just after, as the KDOC tried to argue at the September 17, 1999 hearing. The following are but a few examples of this:

- a. Schirk felt (i.e., past tense, not present tense) young woman were particularly at risk (p. 80, ln 14-18).

Representative Donald A. Dahl
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- b. Schirk would not want his young around Gideon because his history shows he rapes young woman he knows (p. 84, In 6-p. 85, In 1)
- c. Prior to June 30, 1993 (the date of Stephanie's abduction), Schirk thought the waitresses were at a high risk. (p 136, In 25-137, In3).

Additionally, Schirk's review of Gideon's file would have revealed that Gideon posed a danger to the waitresses as Hamilton's as it would reveal that 1) Gideon had been denied parole each time he was before the parole board and was only released because state law compelled his release since he had served half of his sentence, 2) Gideon's prior victim was a young woman he knew that he raped with a razor blade, 3) he showed no remorse for his prior victim and was still making excuses for the offense 10 years later, 4) he had spent 95% of his life since the age of 12 in prison and 5) he scored "high risk" on the KDOC Risk Assessment.

4. The KDOC's Own Officials Have Been Critical of Schirk's Conduct and Have Admitted that the Waitresses Should Have Been Notified. (Copies of Depositions will be Provided upon Request.)

a. Elizabeth Gillespie, Deputy Secretary of the KDOC, Chris Rieger, KDOC Chief of the KDOC Central Office, Robert Harrison, KDOC Chief of Parole Services and James Terrones, KDOC official all admitted that if Schirk determined that the employees at Hamilton's were at risk, then they should have been notified. (Gillespie Deposition, p. 3-4; Rieger Deposition, p. 14-16; Harrison Deposition, p. 54; Terrones Deposition, p.6). Please recall that Schirk has testified repeatedly that he felt the waitresses at Hamilton's were at risk (see pages 2,9 and 12 of Summary of Case provided at September 17, 1999 hearing).

b. Jim Terrones, KDOC official admitted that he would not allow his 21 year old daughter to work in a restaurant with a rapist if she did not know he was a rapist. (Terrones Deposition, p. 12-13). Chris Rieger, Chief of the KDOC Central Office admitted he "probably" would not allow his daughter to work at Hamilton's even if she knew of Gideon's past and if she did work there he would want her to know of his past so she could quit. Mr. Rieger also admitted that the safety of the waitresses should be more important than Gideon keeping his job. (Rieger Deposition p. 19-20 and 30).

In light of this, it is inexcusable that Schirk would not notify the waitresses and would admit to Tom Hamilton, at his only meeting with him, when he accidentally ran in to him at convenience store, that he gives "Don a wide path", i.e., even though he has been determined to be a "high risk", he does not supervise him very much. (Hamilton Deposition at pp. 16-17, 268-270. A copy of this deposition will be provided upon request).

Representative Donald A. Dahl
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5. Contrary to the KDOC's assertions, Dr. Stanton Samenow was Extremely Critical of the KDOC's Conduct. As noted in my Summary of Case provided at the hearing, Dr. Stanton Samenow, a clinical psychologist and nationally renowned expert on criminal behavior, who trained parole officers at the KDOC, has been extremely critical of Schirk's handling of Gideon. He has labeled the above referenced conduct of the KDOC as not only grossly negligent, but "reckless" and even an "intentional" violation of the KDOC policy. Please see pages 5-6 for additional discussion of Dr. Samenow's criticism of Kansas' handling of Gideon.

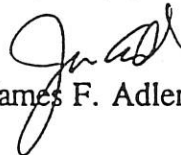
6. The Law provides that the State of Kansas is Responsible for the Conduct of Schirk, who is an Employee of the KDOC, a State Agency. While Schirk is the individual to blame, the law is clear that the State of Kansas is responsible for his actions as he works for and is an agent of the State through his employment at the KDOC, a state agency.

7. Amount of Time and Expense Expended on this Matter by Counsel for the Schmidt's.
At the hearing I was asked the amount of time I had spent on this matter and the amount of out of pocket expenses incurred in pursuing this matter through the Courts. I believe I was close to correct on my estimate of the time spent as I said about 1000 hours and that is correct. However, I was wrong on my recollection of the out of pocket expenses. They are approximately \$20,000.00.

It is my understanding that the Committee will consider this matter on October 25, 1999 at 3:15 p.m.. We would be glad to attend and answer any other questions. Please let me know if you desire such. If not, I will be available by telephone, should a question or issue arise.

Thank you very much for your attention to this matter and for your service to the State of Kansas.

Very truly yours,


James F. Adler

c: Mr. and Mrs. Gene Schmidt and Jennifer Schmidt via fax
Lisa Mendoza



Mail Message

From: "Gene Schmidt" <sos@oz.sunflower.org>
To: SGWROUTE.SMTP3."AdlerEsq@aol.com",
SGWROUTE.SMTP3."AdlerEsq@aol.com"
Subject: Claim #4690
Attachments: Mime.822 (Save As: Binary, Size=7959 bytes)

Message: Chairman David Adkins
Chairman of the House Appropriations Committee
The State Capitol Room 448-N
Topeka, KS 66612

Re: Gene, Peggy and Jennifer Schmidt
Claim #4690

Dear Chairman Adkins

It is my understanding that a briefing and possible disposition is scheduled

in this matter for 9:00 a.m. on January 26, 2000. My wife, daughter and I would very much like to appear, along with our attorney, Jim Adler, to explain our position and to explain to the Appropriations Committee why our

case is different from the typical "parolee re-offends" case. For details, I would refer you to the binder our attorney overnighted to you yesterday which was presented to the Joint Claims Committee. The following is a brief

response to further explain our position and opinions and why the \$200,000.00 award seems like too small of an amount, given the egregious violations of KDOC policy by Parole Officer Schirk.

Most recently, KDOC Secretary Simmons said it would be wrong for the state

to pay our family \$200,000.00 for the extreme grief, torment and agony we have suffered and will continue to suffer which has literally placed us in the position to literally have to consider filing bankruptcy. He further attempted to raise concerns to the Legislature that if they would award money to us, they would be forced to award money in hundreds of other cases

each year in which parolees are convicted of new crimes. That is preposterous, and in my opinion, is either a blind eye to the truth or

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We have not and would not have asked to be compensated simply because a parolee reoffended. That happens every day. We are asking to be compensated because Parole Officer Schirk has admitted that he failed to follow existing KDOC policy which required him to notify the waitresses at Hamilton's (after he determined that Stephanie and the other waitresses at Hamilton's were "highly at risk") that they were working for a recently released, non repentant, career criminal, violent sex offender.

Carla Stovall, who served on the last parole board that denied Gideon his parole before he was mandatorily released because he had served 1/2 of his sentence, is on record as saying that they knew Gideon would reoffend as sure as they knew that the sun would rise the next morning. Yet, the KDOC still, with a straight face says they did not know Gideon was going to reoffend. They hang their hat on the argument (and the Kansas Supreme Court agreed from a technical legal point) that they didn't know he was going to reoffend against Stephanie in particular. No one knew who would be his next victim and that is why the KDOC had a notification policy that Schirk ignored--so people could be armed with knowledge and take appropriate safeguards.

It is a well known fact, within the criminal justice community, that rapists like Gideon do not salivate at the mouth and fire warning shots for their parole officer or future victim to see. Instead they work to gain their future victim's trust.

Nationally renowned experts on criminal behavior and supervision of parolees such as John Douglas and Dr. Stanton Samenow (who has trained KDOC parole officers) have been extremely critical of the KDOC's actions in this case (see overnighted binder from our attorney for details). They are not critical of every case. We just happen to have an atrocious set of facts that hopefully will not be duplicated. However, if they go unpunished and in fact, approved by the courts and now the legislature, it will be open season on ignoring all KDOC policies.

This is about holding the KDOC accountable. If they are not held accountable on circumstances so egregious as our case, then aren't we creating a

When Secretary Simmons expresses concerns about this case opening the door for other cases, is he acknowledging that the KDOC indeed plans on ignoring other policies in the future? Is Secretary Simmons alluding to hundreds of cases where innocent people are going to be killed every year? If so, doesn't this cry out for the very changes within the department that this claim would help create?

It is my feeling that if the claim is enforced, that it will indeed set a precedent: a precedent evoking positive changes. It will establish a clear path for the department to do their job. Isn't it time the face up to their own inadequacies and do something about it?

This lackadaisical attitude that a pay check stub is evidence of rehabilitation must stop, now. If we are going to continue to release people

from prison early, then we must do some supervision of the parolee. A simple review of Gideon's file will reveal that nothing was done to either supervise or rehabilitate Gideon. He was released and the KDOC followed up with nothing more than wishful thinking (if that) that he would see the light and not reoffend. This despite the fact that bells and whistles were going off every where. Schirk was unaware of the bells and whistles because he had his head in the sand and since no one knew Gideon was on parole, no one knew to whom they should report these incidents.

The KDOC had a file thick setting forth the predictability of Don Gideon's behavior. They had access to all the indicators of his dangerousness. They had an obligation to warn those who could be easily identified and easily informed. Instead, they chose to remain silent. And, in their silence, they became silent partners in the death of Stephanie Schmidt.

Now, after the fact, they claim they had no way of knowing that Don Gideon was dangerous because they could not predict future behavior. Yet, Secretary Simmons seems to be able to predict the future dangerousness of "hundreds" of others.

This summer, a joint committee on claims against the state validated our claim and were equally appalled as were we. However, they reduced the amount of the claim from fifty cents per Kansas citizen to "eight cents" per

message to the KDOC. It was further feared by the attorney's on the committee, that such an award would "open the flood gates" for additional claims. One of those opposed even went as far to say that she was not sure the parole officer had any way of knowing that this fellow (Gideon) was immediately dangerous." Did she not read the file or Schirk's deposition? Schirk admitted that he knew Gideon was dangerous and was highly likely to reoffend.

We appreciate the committees validation of the gross negligence and appalling behavior of the KDOC. However, we only question if the \$200,000 sends a strong enough message to evoke the necessary changes. How many more citizens have to bury their children before the KDOC begins to follow their policies? Is a lost child only worth \$200,000.00? Please approve the allocation of adequate funds to compensate us for our preventable and tragic loss. The only doubt should be "will the KDOC get the message?"

Thank you for your consideration,

Gene Schmidt for
Peggy and Jennifer Schmidt

sos@oz.sunflower.org
website: www.ljworld.com/sos
January 25, 2000
page 2

PROPOSED HOUSE SUBSTITUTE FOR SENATE BILL NO. 244

For Consideration By Committee on Appropriations

AN ACT relating to elections; concerning the presidential preference primary election; amending K.S.A. 1999 Supp. 25-4501 and repealing the existing section; also repealing sections 2 and 3 of chapter 3 of the 1996 Session Laws of Kansas.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1999 Supp. 25-4501 is hereby amended to read as follows: 25-4501. ~~On the first Tuesday in April of the year 2000~~ (a) Subject to the provisions of this section, there shall be held a presidential preference primary election in the year 2004, and every fourth year thereafter, there shall be held a presidential preference primary election.

(b) On or before November 3, 2003, and on or before November 1 every fourth year thereafter, the secretary of state shall certify to the governor, to the chief clerk of the house of representatives and to the secretary of the senate a common date in the next succeeding year on which at least five other states will hold a presidential preference primary election, a delegate or mass convention or a caucus of qualified voters at which delegates to a national convention are selected. On or before each such date, if the secretary of state determines that there is no common date on which at least five states are conducting such a selection process in the next succeeding year, the secretary of state shall not make a certification under this subsection but shall notify the governor, the chief clerk of the house of representatives and the secretary of the senate of that determination.

(c) The date certified by the secretary of state pursuant to subsection (b) shall be the date on which the presidential preference primary election authorized by subsection (a) shall be held in the state of Kansas.

(d) If no common date is certified by the secretary of state under subsection (b), there shall be no presidential preferential primary election in the next succeeding year. In each such case, all fees received by the secretary of state from candidates

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filing declarations of intent to become candidates for nomination at a presidential preference primary to be held in the next succeeding year, in accordance with K.S.A. 25-4502, and amendments thereto, shall be refunded and returned to the candidates from whom such fees were received. In each such case, delegates and alternates to a national party convention held during the next succeeding year shall be selected or as otherwise provided by party rules adopted by the state committees of the political parties.

(e) The secretary of state may enter into negotiations with other states in order to coordinate a common date for the holding of a presidential preference primary election, convention or caucus in such states.

New Sec. 2. All fees received by the secretary of state from candidates filing declarations of intent to become candidates for nomination at a presidential preference primary to be held in the year 2000, in accordance with K.S.A. 25-4502, and amendments thereto, shall be refunded and returned to the candidates from whom such fees were received.

New Sec. 3. Delegates and alternates to a national party convention held during 2000 shall be selected as otherwise provided by party rules adopted by the state committees of the political parties.

Sec. 4. K.S.A. 1999 Supp. 25-4501 and sections 2 and 3 of Chapter 3 of the 1996 Session Laws of Kansas are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the Kansas register.