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VOL 1

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
AND FOR THE NORTHERN DISTRICT OF CALIFORNIA
UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES PURSUANT
TO SECTION 2284, TITLE 28 UNITED STATES CODE

RALPH COLEMAN, ET AL.,	)	
	)	
PLAINTIFFS,	)	
	)	
VS.	)	NO. CIV S-90-0520 LKK JFM P
	)	
ARNOLD SCHWARZENEGGER, ET AL.	)	
	)	THREE-JUDGE COURT
DEFENDANTS.	)	
	)	
MARCIANO PLATA, ET AL.,	)	
	)	
PLAINTIFFS,	)	
	)	
VS.	)	NO. C 01-1351 TEH
	)	
ARNOLD SCHWARZENEGGER, ET AL.	)	
	)	
DEFENDANTS.	)	
	)	

TRANSCRIPT OF PROCEEDINGS

SAN FRANCISCO, CALIFORNIA
TUESDAY, NOVEMBER 18, 2008

(APPEARANCES ON FOLLOWING PAGES)

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PROCEEDINGS; TUESDAY, NOVEMBER 18, 2008

THE CLERK: CALLING CIVIL CASE C01-1351, PLATA VERSUS SCHWARZENEGGER; CALLING CIVIL CASE NO. CIV S-90-0520, COLEMAN VERSUS SCHWARZENEGGER.

APPEARANCES, COUNSEL.

MR. SPECTER: THANK YOU. GOOD MORNING. DONALD SPECTER FROM THE PRISON LAW OFFICE FOR THE PLAINTIFFS AND SARA NORMAN FROM THE PRISON LAW OFFICE.

MR. BIEN: GOOD MORNING, YOUR HONORS. MICHAEL BIEN ON BEHALF OF THE COLEMAN PLAINTIFFS, ALONG WITH JANE KAHN, MARIA MORRIS, ERNIE GALVAN, LISA ELLS, AND AMY WHELAN.

MR. HENDERSON: GOOD MORNING, YOUR HONORS. JIM HENDERSON, NATALIE LEONARD AND GREGG ADAM FOR INTERVENOR CCPOA.

MR. MELLO: GOOD MORNING, YOUR HONORS. PAUL MELLO OF HANSON BRIDGETT FOR PLATA DEFENDANTS, AND I'M JOINED BY MY COLLEAGUE ANNE JOHNSON OF HANSON BRIDGETT.

MS. TILLMAN: GOOD MORNING, YOUR HONOR. LISA TILLMAN OF BEHALF OF THE COLEMAN DEFENDANTS, FROM THE CALIFORNIA ATTORNEY GENERAL'S OFFICE.

MR. KAUFHOLD: GOOD MORNING, YOUR HONORS. STEVE KAUFHOLD AND TERESA WANG FROM AKIN, GUMP, STRAUSS, HAUER & FELD FOR THE LEGISLATIVE INTERVENORS.

MR. MITCHELL: GOOD MORNING, YOUR HONORS. BILL MITCHELL FOR THE DA INTERVENORS.

1 **MS. HALL:** GOOD MORNING, YOUR HONORS. KIMBERLY HALL,
2 BARLOW, JONES & MAYER, ON BEHALF OF THE LAW ENFORCEMENT
3 INTERVENORS.

4 **MS. WOODWARD:** GOOD MORNING, YOUR HONORS. CAROL
5 WOODWARD ON BEHALF OF SAN MATEO COUNTY INTERVENORS.

6 **MS. FUENTES:** GOOD MORNING, YOUR HONORS. THERESA
7 FUENTES, COUNTY COUNSEL WITH SANTA CLARA COUNTY, AND ALSO LEAD
8 ATTORNEY FOR COUNTY INTERVENORS.

9 **MS. KECK:** GOOD MORNING, YOUR HONORS. ANNE KECK,
10 DEPUTY COUNTY COUNSEL ON BEHALF OF SONOMA COUNTY INTERVENORS.

11 **JUDGE KARLTON:** NOBODY ON THAT SIDE WANTS TO SAY
12 ANYTHING?

13 **JUDGE HENDERSON:** JUST A REMINDER TO HAVE ALL OF THE
14 MANY COUNSEL INVOLVED SAY YOUR NAME BEFORE YOU SPEAK, UNTIL WE
15 GET USED TO YOU AT LEAST. SO BEFORE YOU SAY ANYTHING, GO ON
16 RECORD, STATE YOUR NAME.

17 BEFORE WE HEAR OPENING STATEMENTS, AS WE WILL IN JUST
18 A FEW MINUTES, WE ARE GOING TO MAKE THE FOLLOWING PRELIMINARY
19 ORDERS:

20 FIRST, THE TIME LIMITS PROPOSED IN THE JOINT PRETRIAL
21 STATEMENT FILED YESTERDAY ARE ADOPTED AS ORDERS OF THIS COURT.
22 WHAT THIS MEANS IS THAT PLAINTIFFS AND INTERVENOR CCPOA WILL
23 CONCLUDE THEIR CASE NO LATER THAN DECEMBER 4TH, 2008, AND
24 DEFENDANTS AND DEFENDANT INTERVENORS WILL BEGIN THEIR CASE NO
25 LATER THAN THE FOLLOWING DAY, DECEMBER 5TH, 2008. THE COURT

1 WILL CONSIDER EXTENDING THE TIME FOR PLAINTIFFS AND CCPOA ONLY
2 IF THE DEFENDANTS AGREE TO GIVE UP PART OF THEIR TIME TO
3 PLAINTIFFS.

4 WE SHOULD NOTE THAT THE JOINT PRETRIAL STATEMENT
5 CALCULATIONS ARE BASED ON 5-1/2 HOURS OF ACTUAL COURT TIME PER
6 DAY, WHILE THE COURT'S CALCULATION REFLECTS 5-3/4 HOURS PER DAY.
7 SO KEEP THAT IN MIND.

8 SECOND, THE EXCERPTS FROM ROBIN DEZEMBER'S
9 DEPOSITIONS THAT PLAINTIFF SEEKS TO INTRODUCE INTO EVIDENCE
10 APPEAR TO BE ADMISSIBLE STATEMENTS OF A PARTY OPPONENT. THUS,
11 PURSUANT TO THE COURT'S NOVEMBER 12TH ORDER, DEFENDANT SHALL
12 HAVE FIVE COURT DAYS TO FILE AND SERVE ANY OBJECTIONS TO THESE
13 DEPOSITION EXCERPTS AND ANY COUNTERDESIGNATIONS THERETO.

14 THIRD, PLAINTIFFS AND DEFENDANTS ARE HEREBY ORDERED
15 TO FILE BY 8:30 A.M. TOMORROW MORNING REVISED COPIES OF THEIR
16 REVISED EXHIBIT LISTS THAT INCLUDE OBJECTIONS AND RESPONSES
17 THERETO. THE ONES YOU FILED DIDN'T INCLUDE OBJECTIONS
18 RESPONSES.

19 FOURTH, DEFENDANTS' MOTION FOR RECONSIDERATION OF THE
20 COURTS' ORDER DENYING DEFENDANTS' MOTION TO DISMISS OR, IN THE
21 ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT IS DENIED. HAVING
22 CAREFULLY CONSIDERED THE DEFENDANTS' MOTION FOR RECONSIDERATION,
23 THE COURT FINDS NO BASIS FOR ALTERING ITS ORIGINAL DECISION.

24 FINALLY, DEFENDANTS' MOTION FOR RECONSIDERATION OF
25 THE COURTS' ORAL RULING PROHIBITING EVIDENCE OF CONSTITUTIONAL

1 COMPLIANCE AT TRIAL IS ALSO DENIED. IF, AS DEFENDANTS CONTEND,
2 THERE ARE NO LONGER ANY CONSTITUTIONAL VIOLATIONS AT ISSUE IN
3 PLATA OR COLEMAN, THEN THERE WILL BE NO REASON TO CONTINUE
4 EITHER THE RECEIVERSHIP IN PLATA OR THE SPECIAL MASTERSHIP IN
5 COLEMAN. THOSE ARE MATTERS FOR AN INDIVIDUAL COURT TO DECIDE,
6 AND DEFENDANTS SHOULD, THEREFORE, FILE MOTION FOR APPROPRIATE
7 RELIEF BEFORE ME OR JUDGE KARLTON INDIVIDUALLY IN THOSE CASES.
8 THESE THREE-JUDGE COURT PROCEEDINGS ARE NOT THE PLACE FOR THOSE
9 ARGUMENTS.

10 HAVING MADE THESE PRELIMINARY RULINGS WE WILL PROCEED
11 WITH OPENING STATEMENTS. REMEMBER THAT EACH STATEMENT WILL BE
12 NO MORE THAN 15 MINUTES. YOU MAY PROCEED WHEN YOU ARE READY,
13 COUNSEL.

14 AND I WILL ASK YOU, MS. ESPINOSA, TO LET COUNSEL KNOW
15 WHEN THEY HAVE FIVE MINUTES REMAINING.

16 **THE CLERK:** I WILL.

17 **JUDGE HENDERSON:** YOU MAY PROCEED, COUNSEL.

18 **OPENING STATEMENT BY MR. SPECTER**

19 **MR. SPECTER:** GOOD MORNING, YOUR HONORS. MY NAME IS
20 DONALD SPECTER. I AM APPEARING ON BEHALF OF THE PLAINTIFFS IN
21 THIS CASE.

22 I STAND BEFORE YOU TODAY REPRESENTING MORE THAN
23 150,000 INDIVIDUALS WHO ARE COMPLETELY DEPENDENT ON THE GOVERNOR
24 AND THE OFFICIALS OF THE CALIFORNIA DEPARTMENT OF CORRECTIONS
25 AND REHABILITATION FOR ALL OF THEIR BASIC NEEDS. AMONG THOSE

1 NEEDS IS THE NEED FOR MEDICAL AND MENTAL HEALTH SERVICES. FOR
2 MORE THAN A DECADE THOSE BASIC NEEDS HAVE NOT BEEN MET. THIS
3 PROCEEDING WILL DETERMINE WHETHER THAT IS PRIMARILY DUE TO
4 OVERCROWDING, AND IF IT DOES, FUTURE PROCEEDINGS WILL BE
5 NECESSARY TO DETERMINE WHETHER THE COURT SHOULD ORDER THE STATE
6 TO REDUCE THE PRISON POPULATION TO MEET THOSE BASIC NEEDS.

7 BECAUSE OF THE PUBLIC SAFETY IMPLICATIONS OF SUCH AN
8 ORDER AND THE SCALE OF THE CALIFORNIA PRISON SYSTEM, IT IS NOT A
9 STEP THAT WE URGE LIGHTLY. WE RECOGNIZE THAT THE SIZE OF THE
10 PRISON POPULATION MAKES THIS MOTION UNUSUAL, TO SAY THE LEAST,
11 BUT THE USE OF A CAP ON THE PRISON POPULATION IS CERTAINLY
12 COMMON IN CALIFORNIA, WITH MORE THAN 20 COUNTIES OPERATING WITH
13 A LIMIT ON THEIR JAIL POPULATION.

14 INDEED, IN ENACTING THE PRISON LITIGATION REFORM ACT,
15 CONGRESS IMPLICITLY RECOGNIZED THAT A REDUCTION IN THE PRISON
16 POPULATION IS THE ONLY WAY TO IMPROVE AN UNCONSTITUTIONAL PRISON
17 CONDITION. A PRISON RELEASE ORDER IS NECESSARY HERE BECAUSE
18 WITHOUT SUCH AN ORDER, UNNECESSARY INJURY, SUFFERING AND EVEN
19 DEATH WILL CONTINUE FOR THE FORESEEABLE FUTURE.

20 THE PLRA IMPOSES A SUBSTANTIAL BURDEN ON A PARTY
21 SEEKING A PRISONER RELEASE ORDER. IT REQUIRES PLAINTIFFS TO
22 PROVE BY CLEAR AND CONVINCING EVIDENCE THAT OVERCROWDING IS THE
23 PRIMARY CAUSE OF THE CONSTITUTIONAL VIOLATIONS; IN THIS CASE,
24 THE FAILURE OF THE STATE TO PROVIDE ADEQUATE MEDICAL AND MENTAL
25 HEALTH CARE. ALTHOUGH THIS BURDEN IS HIGH, THE EVIDENCE YOU

1 WILL HEAR WILL LEAVE LITTLE QUESTION THAT, IN FACT, IT IS THE
2 CASE HERE.

3 MY PRESENTATION WILL CONCENTRATE MOSTLY, ALTHOUGH NOT
4 ENTIRELY, ON THE PLATA CASE. AND MY CO-COUNSEL, MICHAEL BIEN,
5 WILL FOCUS ON THE COLEMAN CASE.

6 THIRTEEN YEARS AGO MENTALLY ILL PRISONERS OF THE
7 STATE OF CALIFORNIA WERE GRANTED RELIEF BY JUDGE KARLTON FROM
8 THE CRUEL AND UNUSUAL CONDITIONS THAT THE COURT HELD VIOLATED
9 THE EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION. AT THAT
10 TIME THE COURT HELD THAT THERE WERE INSUFFICIENT STAFF, SPACE,
11 AND SERVICES TO PROVIDE FOR THE THOUSANDS OF MENTALLY ILL
12 PRISONERS WITH MINIMAL ADEQUATE CARE TO ADDRESS THEIR SERIOUS
13 CONDITIONS.

14 SIX YEARS AGO JUDGE HENDERSON GRANTED PRISONERS WITH
15 SERIOUS MEDICAL CONDITIONS RELIEF FROM THE CRUEL AND UNUSUAL
16 PUNISHMENT THAT VIOLATED THE EIGHTH AMENDMENT THROUGH A
17 STIPULATED INJUNCTION. AND THREE YEARS AGO JUDGE HENDERSON
18 FOUND INJUNCTIVE RELIEF INSUFFICIENT TO CURE THE HORRENDOUS
19 CONDITIONS AND IMPOSED A SEVERE BUT LESS INTRUSIVE REMEDY WE
20 SEEK HERE BY APPOINTING A RECEIVER. IN SO RULING, THE COURT
21 FOUND A PRISONER WAS DYING NEEDLESSLY AT THE SHOCKING RATE OF
22 EVERY SIX OR SEVEN DAYS.

23 NOW, 25 MONTHS AGO THE DEFENDANT GOVERNOR OF THE
24 STATE OF CALIFORNIA ISSUED AN EMERGENCY PROCLAMATION ON PRISON
25 OVERCROWDING IN WHICH HE STATED, AMONG OTHER THINGS THAT, QUOTE:

1 "THE CURRENT SEVERE OVERCROWDING IN 29 CDCR
2 PRISONS HAS CAUSED SUBSTANTIAL RISK TO THE
3 HEALTH AND SAFETY OF THE MEN AND WOMEN WHO WORK
4 INSIDE THOSE PRISONS AND THE INMATES HOUSED IN
5 THEM."

6 HERE IS A VIDEO FROM THE DEPARTMENT OF CORRECTIONS
7 DEPICTING THOSE OVERCROWDING CONDITIONS, WHICH I'M TOLD WILL BE
8 ON THE SCREEN AT YOUR HONORS' SCREENS.

9 (VIDEO PLAYED.)

10 **MR. MELLO:** YOUR HONORS, I OBJECT. THIS IS AN
11 EXHIBIT THAT'S BEEN OBJECTED TO BY COUNSEL IN THE RECORD.

12 **JUDGE KARLTON:** WILL YOU TURN IT OFF, PLEASE?

13 **MR. MELLO:** WE INTERPOSE -- PAUL MELLOW FOR
14 DEFENDANTS. DEFENDANTS HAVE OBJECTED TO THIS EVIDENCE. IT'S
15 NOT BEEN ADMITTED INTO TRIAL. IT CONTAINS HEARSAY. IT DOESN'T
16 GO TO THE ULTIMATE ISSUES IN THIS CASE, AND WE DO NOT BELIEVE IT
17 IS APPROPRIATE. WE SPOKE TO PLAINTIFFS' COUNSEL ABOUT THIS.

18 AND THE COURT HAS NOT RULED ON THE OBJECTIONS TO
19 EVIDENCE. THIS HAS NOT BEEN ADMITTED INTO EVIDENCE, AND IT'S
20 CLEARLY HEARSAY. AND I APOLOGIZE, BECAUSE I DO NOT OBJECT
21 DURING OPENING STATEMENTS. I THINK THE RECORD NEEDS TO BE
22 CLEAR.

23 **MR. SPECTER:** WOULD YOU LIKE ME TO RESPOND?

24 **JUDGE HENDERSON:** PLEASE.

25 **MR. SPECTER:** THIS IS AN OPENING STATEMENT, YOUR

1 HONOR. IT'S NOT ADMITTED INTO EVIDENCE. YOU CAN -- THIS IS A
2 COURT TRIAL. THERE'S NO PREJUDICE. IF YOU LATER DECIDE THAT
3 IT'S NOT ADMISSIBLE, YOU CAN DISREGARD IT.

4 AND, BY THE WAY, WE DO THINK IT'S ADMISSIBLE. THIS
5 IS SOMETHING THAT THE DEFENDANTS HAVE ON THEIR WEBSITE. SO IT'S
6 NOT SOMETHING THAT'S -- YOU CAN ALMOST TAKE JUDICIAL NOTICE OF
7 IT. SO I WOULD LIKE TO PROCEED.

8 **JUDGE REINHARDT:** DEFENDANTS ARE AWARE OF IT?

9 **MR. SPECTER:** YES, IT'S ON THE CDCR WEBSITE.

10 **JUDGE KARLTON:** CRC WEBSITE?

11 **MR. SPECTER:** CDCR WEBSITE, DEPARTMENT OF
12 CORRECTIONS.

13 **JUDGE KARLTON:** IT'S ON THEIR WEBSITE?

14 **MR. SPECTER:** YES, SIR.

15 **JUDGE HENDERSON:** OKAY. PROCEED. LET'S HAVE AN
16 UNDERSTANDING THAT WE'LL DO THAT SOMETIME TODAY, BUT NO MORE
17 PROPOSED EXHIBITS UNTIL THEY'VE BEEN ADMITTED. PROCEED WITH
18 THIS ONE.

19 **MR. SPECTER:** MY WHOLE OPENING STATEMENT INVOLVES
20 SOME OF THESE CLIPS. I CAN READ THEM TO YOU. I MEAN, IF I
21 READ -- I'M GOING TO BE -- THERE ARE ADMISSIONS FROM THE
22 GOVERNOR WE ARE GOING TO SHOW YOU. THERE ARE JUST ADMISSIONS --
23 THEY ARE STATEMENTS BY A DEFENDANT IN THIS CASE. IT SEEMS LIKE
24 I SHOULD BE ABLE TO REFER TO THEM IN OPENING STATEMENT.

25 **JUDGE HENDERSON:** THAT MISSES THE POINT. AT SMALLER

1 TRIALS WE DO THIS AT PRETRIAL. WE ARE NOT GOING TO OBJECT TO
2 EVERY EXHIBIT AS THE TRIAL GOES. WE'LL FIND THE TIME TO ADMIT
3 THEM, RESOLVE ALL THAT, BUT LET'S GO FORWARD AS YOU PLANNED.

4 **MR. SPECTER:** THANK YOU, YOUR HONOR.

5 **JUDGE HENDERSON:** THE DEFENDANTS' OBJECTION WILL BE
6 RESERVED FOR THE RECORD.

7 (VIDEO PLAYED.)

8 **MR. SPECTER:** THANK YOU, YOUR HONOR. I'M GOING TO
9 HAVE -- CAN I HAVE SOME MORE TIME BECAUSE THE OBJECTIONS WERE
10 ABOUT FIVE OR SO MINUTES? SO IF I CAN FINISH?

11 LAST YEAR, AFTER TOURING ONE OF THESE OVERCROWDED
12 PRISONS, THE GOVERNOR SPOKE ABOUT THE OVERCROWDING CRISIS WHICH
13 WE ARE HERE ABOUT TODAY.

14 (VIDEO PLAYED.)

15 **MR. SPECTER:** WE ARE HERE TODAY, YOUR HONORS, BECAUSE
16 THE SAME OVERCROWDING CONDITIONS THAT LED TO THE EMERGENCY
17 PROCLAMATION THAT THE GOVERNOR ISSUED STILL EXISTS. THE STATE
18 OF EMERGENCY IS STILL IN EFFECT, AND, TRAGICALLY, THE RISK TO
19 THE HEALTH AND SAFETY OF THE INMATES HOUSED AT CALIFORNIA
20 PRISONS IS SHOCKINGLY HIGH. IN A SPEECH TO THE CALIFORNIA
21 DISTRICT ATTORNEYS' ASSOCIATION, THE GOVERNOR ACKNOWLEDGED THIS
22 DANGER.

23 (VIDEO PLAYED.)

24 **MR. SPECTER:** IN FACT, OVERCROWDING HAS ALREADY
25 BECOME A DISASTER, A QUIET DISASTER, THAT DOES NOT MAKE

1 HEADLINES BECAUSE IT OCCURS OVER TIME AND BEHIND PRISON WALLS.

2 THE RECEIVER RECENTLY ISSUED AN ASSESSMENT OF THE
3 MEDICAL CARE PROVIDED TO ALL THE PRISONERS WHO DIED LAST YEAR.
4 HIS OFFICE CONCLUDED THAT OF 110 UNEXPECTED DEATHS FROM NATURAL
5 CAUSES, 44, THAT'S 44 OUT OF A HUNDRED UNEXPECTED DEATHS, 44
6 WERE PREVENTABLE OR POSSIBLY PREVENTABLE. THAT AMOUNTS TO
7 40 PERCENT OF UNEXPECTED DEATHS. THAT FIGURE DOESN'T EVEN
8 INCLUDE AN ADDITIONAL TWO DOZEN DEATHS FROM OTHER CAUSES.

9 THIS MEANS THAT SUCH DEATHS -- WHEN YOU ADD UP ALL
10 DEATHS, IT OCCURS ONCE EVERY FIVE OR SIX DAYS. AND IN A
11 STATISTIC THAT HAS RAMIFICATIONS FOR THE ENTIRE PLAINTIFF CLASS.
12 OF THE SMALL SET OF 395 DEATHS THAT THE RECEIVER'S OFFICE
13 REVIEWED, THERE WERE 292 EXTREME, EXTREME DEPARTURES FROM
14 GENERALLY ACCEPTED STANDARDS OF CARE.

15 LEST THERE BE ANY DOUBT THAT THE OVERCROWDING CAUSES
16 THESE LETHAL PROBLEMS, THE RECEIVER'S REPORT ATTRIBUTES
17 CAUSATION TO THE CLASSIC SYMPTOMS OF OVERCROWDING. DELAYS IN
18 ACCESS TO CARE, THE VOLUME OF CARE NEEDED OFTEN EXCEEDS
19 CAPACITY, AND THE CROWDED CONDITIONS THEMSELVES PROMOTE ERROR
20 AND PROHIBIT CONFIDENTIALITY AND INADEQUATE STAFFING DUE IN PART
21 TO THE ISOLATING AND FLAGRANTLY UNPROFESSIONAL ENVIRONMENT.

22 WE COME BEFORE YOU TO PROVE BY CLEAR AND CONVINCING
23 EVIDENCE THAT GOVERNOR SCHWARZENEGGER IS RIGHT, THAT
24 OVERCROWDING IS CAUSING A SUBSTANTIAL RISK TO THE HEALTH AND
25 SAFETY OF PRISONERS, AND WE BELIEVE THAT RISK IS PRIMARILY DUE

1 TO THE CONSTITUTIONAL VIOLATIONS THAT PERPETUATE THIS DEADLY AND
2 DANGEROUS CONDITION.

3 THE CURRENT SECRETARY OF CORRECTIONS, MATTHEW CATE,
4 WAS RIGHT WHEN HE TESTIFIED IN HIS DEPOSITION THAT OVERCROWDING
5 IS PERVASIVE AND MAKES EVERYTHING MORE DIFFICULT IN THE
6 INSTITUTIONS, INCLUDING MEDICAL AND MENTAL HEALTHCARE. HIS
7 PREDECESSOR JIM TILTON WAS RIGHT. REFERRING IN PART TO MEDICAL
8 SERVICES, HE STATED:

9 "UNTIL I GET OVERCROWDING REDUCED, THEN I
10 DON'T HAVE THE OPPORTUNITY TO PROVIDE THE
11 PROGRAM WHICH I BELIEVE IS MY CHARGE."

12 MR. TILTON ECHOED THAT SENTIMENT ON AN OFFICIAL CDCR
13 VIDEO.

14 (VIDEO PLAYED.)

15 **MR. SPECTER:** IN ADDITION TO THESE AND OTHER
16 ADMISSIONS OF THE DEFENDANTS IN THIS CASE, WE OFFER TWO OTHER
17 SOURCES OF PROOF THAT OVERCROWDING IS A PRIMARY CAUSE OF THE
18 CONSTITUTIONAL VIOLATIONS.

19 FIRST, BOTH THE CURRENT AND FORMER RECEIVERS HAVE
20 STATED THAT OVERCROWDING IS PREVENTING THE DELIVERY OF
21 CONSTITUTIONALLY ADEQUATE HEALTHCARE.

22 MR. SILLEN SAID, QUOTE:

23 "IT IS CLEAR THAT OVERCROWDING IS AT THE
24 ROOT OF MANY OF THE DIFFICULTIES THAT AFFLICT
25 MEDICAL CARE."

1 THE CURRENT RECEIVER STATES THAT SOME OF THE CURRENT
2 FACILITIES ARE LITERALLY FALLING APART AND THAT THERE IS LESS
3 THAN HALF THE CLINICAL SPACE THAT IS NECESSARY IN MANY OF THE
4 PRISONS. THE DEMAND FOR RESOURCES SO OUTSTRIPS THE SUPPLY OF
5 AVAILABLE CARE THAT HE PROPOSES TO SPEND BILLIONS OF DOLLARS
6 BUILDING MEDICAL FACILITIES FOR PRISONERS.

7 THE SECOND SOURCE OF OUR PROOF IS AN UNPARALLELED
8 GROUP OF EXPERTS. ONE WORKED FOR THE CALIFORNIA DEPARTMENT OF
9 CORRECTIONS FOR OVER TWO DECADES BEFORE RETIRING AS THE ACTING
10 SECRETARY. THREE OTHERS ARE EITHER THE CURRENT OR FORMER HEADS
11 OF FOUR OTHER STATE PRISON SYSTEMS, INCLUDING TEXAS, WASHINGTON
12 STATE, AND PENNSYLVANIA.

13 DR. RONALD SHANSKY RAN THE PRISON HEALTH SYSTEM IN
14 ILLINOIS. HE WORKED FOR SEVERAL YEARS AS A MEDICAL CONSULTANT
15 TO THE DEPARTMENT OF CORRECTIONS. HE WAS APPOINTED BY THIS
16 DISTRICT COURT AS A SPECIAL MASTER TO MONITOR OUR AGREEMENT TO
17 IMPROVE HEALTHCARE AT SAN QUENTIN, AND HE WAS THE RECEIVER OVER
18 THE WASHINGTON, D.C. PRISON MEDICAL SYSTEM.

19 ALL OF THESE EXPERTS WILL TESTIFY THAT OVERCROWDING
20 IS THE CAUSE OF THE HARM, THAT IT IS THE PRIMARY AND MOST
21 IMPORTANT FACTOR, AND THAT THE CONSTITUTIONAL LEVELS OF CARE ARE
22 NOT POSSIBLE, AT LEAST WITHIN ANY REASONABLE TIME, WITHOUT A
23 SUBSTANTIAL REDUCTION IN POPULATION.

24 NOW, WHY IS THAT? DEFENDANTS AND SOME INTERVENORS
25 WILL SAY THAT THE RECEIVERSHIP IS REMEDY ENOUGH. THERE ARE AT

1 LEAST TWO ANSWERS TO THAT PROBLEM. ONE IS SIMPLE.

2 ONE OF THE ESSENTIAL ELEMENTS FOR THE RECEIVER'S PLAN
3 IS TO BUILD AND UPGRADE MEDICAL FACILITIES, BUT THE STATE HAS
4 BLOCKED THE APPROPRIATION OF FUNDS THE RECEIVER BELIEVES IS
5 NECESSARY TO PROVIDE CONSTITUTIONAL ADEQUATE CARE. AND EVEN IF
6 IT WASN'T BLOCKED, IT WOULD TAKE MANY YEARS FOR THOSE FACILITIES
7 TO COME ON LINE.

8 THE SECOND ANSWER IS MORE COMPLICATED BUT NO LESS
9 PERSUASIVE. PRISONS ARE CLOSED ENVIRONMENTS, WHICH MEANS THAT
10 THERE ARE LIMITS TO THE ACTIVITIES THAT CAN TAKE PLACE IN EACH
11 INSTITUTION, AND EACH ACTIVITY IS INTERRELATED AND HAS TO BE
12 COORDINATED. SO, FOR EXAMPLE, IF YOU INCREASE THE NUMBER OF
13 ADDRESSES, YOU RUN UP AGAINST THE FACT THERE IS NOT ENOUGH SPACE
14 OR EQUIPMENT FOR THE DOCTORS TO USE.

15 ONE WITNESS WHO YOU WILL HEAR FROM IN THIS
16 PROCEEDING, SPEAKING OF REHABILITATIVE PROGRAMMING, PUT IT THIS
17 WAY:

18 "WHEN THE INFRASTRUCTURE CAPACITY CAN HANDLE
19 MORE INMATES, SUCH AS WHEN A CELL CAN ADEQUATELY
20 ACCOMMODATE TWO INMATES EVEN IF IT WAS BUILT FOR
21 ONE, THEN EXCEEDING DESIGN CAPACITY IS
22 MANAGEABLE. A PROBLEM ARISES WHERE THE LEVEL OF
23 POPULATION EXCEEDS INFRASTRUCTURE CAPACITY."

24 PUT ANOTHER WAY, HE STATED:

25 "INMATES CAN BE SAFELY AND APPROPRIATELY

1 HOUSED AT A POPULATION THAT EXCEEDS DESIGN
2 CAPACITY AS LONG AS THE INFRASTRUCTURE,
3 STAFFING, AND SPACE ARE AVAILABLE TO SERVE THE
4 ADDITIONAL POPULATION."

5 MR. KERNAN IS NOT A WITNESS FOR US. HE'S A WITNESS
6 FOR THE STATE, AND HE'S CURRENTLY THE UNDERSECRETARY FOR THE
7 DEPARTMENT. HIS TESTIMONY IS EQUALLY APPLICABLE TO HEALTHCARE:

8 "INCREASED RESOURCES SUCH AS STAFFING CAN'T
9 FIX THE PROBLEM BECAUSE THE INFRASTRUCTURE
10 REMAINS INADEQUATE, AND THERE IS NO DISPUTE THAT
11 IT WILL REMAIN INADEQUATE FOR YEARS TO COME."

12 DEFENDANTS PRESENT A SINGLE MEDICAL EXPERT TO SUPPORT
13 THEIR POSITION THAT OVERCROWDING IS NOT THE PRIMARY CAUSE OF THE
14 CONSTITUTIONAL VIOLATION.

15 IN DR. THOMAS' OPINION, THE FUNDAMENTAL PROBLEM WITH
16 MEDICAL CARE IS NOT THE INFRASTRUCTURE, STAFFING, OR CLINICAL
17 SPACE; RATHER, IT IS THE CULTURE OF CUSTODIAL INTERFERENCE WITH
18 HEALTHCARE. WELL, THERE IS NO DOUBT THIS REMAINS A SERIOUS
19 PROBLEM, BUT THE TESTIMONY WILL SHOW THAT THE CULTURE IS ITSELF
20 A FUNCTION OF OVERCROWDING, AND IT CANNOT POSSIBLY BE
21 RESPONSIBLE FOR ALL THE PROBLEMS THAT PLAGUE CALIFORNIA PRISONS.

22 IN ITS ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY
23 JUDGMENT, THIS COURT NOTED THAT CROWDING REFERS TO POPULATION
24 DENSITY. THE COURT SAID THAT IT REFERS TO THE SITUATION WHERE
25 THE POPULATION EXCEEDS THE AVAILABLE RESOURCES AND FACILITIES.

1 IN OTHER TERMS, CROWDING OCCURS WHEN THE DEMAND FOR SERVICES,
2 WHETHER IT BE A PLACE TO SLEEP OR A NEED FOR HEALTHCARE, EXCEEDS
3 THE SUPPLY OF THAT SERVICE, WHETHER IT BE A BED OR A CLINICIAN.

4 DEFENDANTS HAVE SAID THAT OVERCROWDING ISN'T THE MAIN
5 PROBLEM, INSTEAD THE PROBLEM IS LACK OF STAFF OR SPACE IN THE
6 RECORD. BUT AS THE COURT ANALYSIS IMPLIES, THAT IS JUST THE
7 OTHER SIDE OF THE SAME COIN.

8 THE TRUTH IS IS THAT THE LEGITIMATE DEMAND FOR
9 HEALTHCARE SERVICES HAS FAR OUTSTRIPPED THE SUPPLY FOR AT LEAST
10 A DECADE BEFORE THE COLEMAN COURT ORDERED INJUNCTIVE RELIEF FOR
11 THE LIFE OF THE PLATA INJUNCTION, INCLUDING THE RECEIVERSHIP
12 DURING THE TWO YEARS SINCE WE BROUGHT THIS MOTION, AND IT WILL
13 CONTINUE TO DO SO WITH DEADLY CONSEQUENCES FOR YEARS TO COME
14 UNLESS THE POPULATION OF CALIFORNIA PRISONS IS REDUCED TO A
15 MANAGEABLE LEVEL.

16 AS YOU, JUDGE HENDERSON, NOTED IN YOUR FINDINGS AND
17 CONCLUSIONS WHEN DECIDING TO APPOINT A RECEIVER, THERE ARE MANY
18 CAUSES OF CONSTITUTIONAL VIOLATIONS. THERE HAVE TO BE IN A
19 SYSTEM AS LARGE AND AS COMPLEX AS THIS ONE. BUT THE EVIDENCE
20 WILL LEAVE NO DOUBT THAT CROWDING TODAY IS THE PRIMARY CAUSE OF
21 THE CONSTITUTIONAL VIOLATIONS.

22 AND WE RECOGNIZE, IN CLOSING, THAT THE COURT
23 APPROACHES THESE PROCEEDINGS WITH THE GRAVITY APPROPRIATE TO THE
24 RELIEF WE SEEK, BUT THE STATE OF CALIFORNIA THROUGH DECADES OF
25 INACTION, INCLUDING THE LAST TWO YEARS SINCE THIS MOTION WAS

1 FILED AND IN THE 25 MONTHS SINCE THE EMERGENCY PROCLAMATION WAS
2 ISSUED, HAS LEFT THIS COURT WITH NO CHOICE.

3 GOVERNOR SCHWARZENEGGER IN COMMENTS MADE ABOUT A YEAR
4 AGO HAS SAID AS MUCH.

5 (VIDEO PLAYED.)

6 **MR. SPECTER:** I THINK THAT SAYS IT ALL. THANK YOU
7 VERY MUCH.

8 **JUDGE HENDERSON:** THANK YOU, COUNSEL.

9 **OPENING STATEMENT BY MR. BIEN**

10 **MR. BIEN:** MAY IT PLEASE THE COURT. MY NAME IS
11 MICHAEL BIEN. I AM A PARTNER AT THE FIRM ROSEN, BIEN & GALVAN.
12 I REPRESENT THE PLAINTIFF CLASS IN THE COLEMAN CASE, PRISONERS
13 INCARCERATED IN CALIFORNIA'S PRISON WITH SERIOUS MENTAL
14 DISORDERS.

15 TODAY THERE ARE MORE THAN 35,000 PRISONERS IN THE
16 COLEMAN CLASS. MORE THAN ONE OF EVERY FIVE PRISONERS IS
17 PRESENTLY DIAGNOSED WITH A SERIOUS MENTAL DISORDER. COLEMAN AND
18 PLATA CLASS MEMBERSHIP IS FLUID AND OVERLAPS. A PRISONER MAY
19 HAVE HEART DISEASE AND SCHIZOPHRENIA, DIABETES AND DEPRESSION.

20 ANYONE IN PRISON MAY SUFFER AN ILLNESS, ACCIDENT, OR
21 A PSYCHOTIC BREAK AND REQUIRE BASIC MEDICAL AND MENTAL HEALTH
22 SERVICES. THE ISSUE BEFORE THIS COURT TODAY IS WHAT IS A
23 PRIMARY REASON THAT THESE BASIC CONSTITUTIONAL-REQUIRED
24 FUNDAMENTAL RIGHTS ARE NOT IN PLACE TODAY IN CALIFORNIA PRISONS
25 AFTER MORE THAN A DECADE OF MORE THAN SUSTAINED EFFORTS BY TWO

1 FEDERAL COURTS CHARGED WITH THE POWER AND RESPONSIBILITY TO
2 PROTECT AND RESTORE THESE RIGHTS?

3 IT IS A GREAT RESPONSIBILITY FOR ME TO STAND HERE
4 BEFORE YOU TO ADVOCATE FOR THIS LARGE GROUP OF MEN AND WOMEN WHO
5 ARE DESPERATE, POWERLESS, AND OFTEN SUFFERING AS A RESULT OF THE
6 FAILURE OF TODAY'S INADEQUATE SYSTEMS. THE PROMISED REMEDY HAS
7 BEEN DELAYED MANY TIMES.

8 THE PLATA AND COLEMAN COURTS, AIDED BY THE SPECIAL
9 MASTER AND RECEIVER, HAVE IDENTIFIED AND ATTEMPTED TO OVERCOME
10 OBSTACLES AND BARRIERS TO THE REMEDIAL PROCESS.

11 THE PRISON LITIGATION REFORM ACT AND THE PRINCIPLES
12 OF EQUITY, COMITY, AND FEDERALISM HAVE DIRECTED THAT
13 OVERCROWDING BE DIRECTED ONLY AS A LAST RESORT.

14 PLAINTIFFS WILL PRESENT CLEAR AND CONVINCING EVIDENCE
15 THAT THE TIME HAS COME, THE EXTREME LONG LASTING AND PERSUASIVE
16 OVERCROWDING OF THE CALIFORNIA PRISON SYSTEM MUST BE ADDRESSED
17 AND MUST BE ADDRESSED NOW SO THE REMEDIAL PROCESS IN THE COLEMAN
18 AND PLATA CASES CAN FINALLY MOVE FORWARD AND BE COMPLETED.
19 FURTHER DELAY IN ADDRESSING THE PRIMARY CAUSE OF THESE PROBLEMS
20 WILL CERTAINLY MEAN ADDITIONAL AVOIDABLE PAIN, SUFFERING AND
21 DEATH FOR OUR CLIENTS.

22 IT IS UNDISPUTED IN THE RECORD BEFORE THIS COURT THAT
23 CALIFORNIA'S PRISON SYSTEM IN NOVEMBER OF 2008, MORE THAN 13
24 YEARS AFTER THE COLEMAN COURT ISSUED ITS DECISION, CANNOT AND
25 DOES NOT PROVIDE TIMELY AND APPROPRIATE ACCESS TO MENTAL

1 HEALTHCARE SUFFICIENT TO ADDRESS THE BASIC AND FUNDAMENTAL NEEDS
2 OF THE COLEMAN CLASS. THESE DEFICIENCIES EXACERBATE THEIR
3 MENTAL ILLNESS AND CAUSE PAIN, INJURY AND SUFFERING.

4 DEATH BY SUICIDE ALSO CONTINUES TO OCCUR FAR TOO
5 OFTEN. ACCORDING TO THE COLEMAN SPECIAL MASTER'S MOST RECENT
6 REPORT, MORE THAN 70 PERCENT OF THE PRISON SUICIDES WERE
7 FORESEEABLE OR AVOIDABLE. HE ALSO FOUND AGAIN THAT THE SUICIDE
8 RATE IN CALIFORNIA PRISONS CONTINUES TO BE FAR ABOVE THE
9 NATIONAL AVERAGE. THESE PROBLEMS PERSIST DESPITE THE YEARS OF
10 COLEMAN COURT ORDERS, EXTENSIVE MONITORING BY A SKILLED SPECIAL
11 MASTER AND A TEAM OF NATIONALLY PROMINENT EXPERTS, AND AFTER
12 MULTIPLE PLANS BY DEFENDANTS.

13 WHY IS THE MENTAL HEALTH DELIVERY SYSTEM BACKSLIDING?
14 PROBLEMS GETTING WORSE RATHER THAN BETTER? WHY ARE WE IN
15 NOVEMBER 2008 HAVING A TRIAL ABOUT MANY OF THE SAME FUNDAMENTAL
16 PROBLEMS THAT THE COURT FOUND TO EXIST IN 1995?

17 PLAINTIFFS SUBMIT AND THE EVIDENCE WILL SHOW THAT THE
18 PRIMARY CAUSE OF THE CONSTITUTIONAL VIOLATIONS NOW IS THE
19 EXTREME LEVEL OF OVERCROWDING, WHICH CONTINUES IN THE CALIFORNIA
20 PRISON SYSTEM THAT OPERATES TODAY AT MORE THAN 190 PERCENT OF
21 DESIGN CAPACITY. THE PRISON SYSTEM SIMPLY CANNOT FUNCTION
22 SAFELY AND EFFECTIVELY AND CANNOT DELIVER HEALTHCARE AT THIS
23 LEVEL OF OVERCROWDING. THERE IS SIMPLY FAR TOO MANY PRISONERS
24 WITH SERIOUS MENTAL ILLNESS AND FAR TOO FEW OF THE REQUIRED
25 SERVICES FOR A FUNCTIONING MENTAL HEALTH SYSTEM.

1 THE EVIDENCE IS OVERWHELMING. FIRST, AS YOU'VE SEEN
2 A SMALL PORTION OF, THERE ARE ADMISSIONS BY THE GOVERNOR AND
3 OTHER STATE OFFICIALS, AS WELL AS BLUE RIBBON COMMISSIONS AND
4 PANELS THAT HAVE CONSISTENTLY FOUND THAT THE CALIFORNIA PRISON
5 SYSTEM IS DANGEROUS, AND BROKEN, AND THAT OVERCROWDING IS A MOST
6 URGENT ISSUE THAT HAS TO BE ADDRESSED.

7 SECOND ARE THE REPORTS BY THE COLEMAN SPECIAL MASTER
8 AND THE PLATA RECEIVER THAT DETAIL THE ONGOING SERIOUS
9 DEFICIENCIES IN THE MEDICAL AND MENTAL HEALTHCARE AND ESTABLISH
10 THAT OVERCROWDING REMAINS AN INSURMOUNTABLE BARRIER TO THE
11 REMEDIAL PROCESS IN BOTH CASES.

12 THE COLEMAN PLAINTIFFS WILL ALSO PRESENT THE
13 TESTIMONY OF TWO DISTINGUISHED AND WELL-QUALIFIED EXPERTS.
14 TODAY YOU WILL HEAR FROM DR. PABLO STEWART, A BOARD CERTIFIED
15 PSYCHIATRIST WHO WORKED FOR TEN YEARS, COURT MEDIATOR,
16 MONITORING THE GATES VERSUS DEUKMEJIAN CONSENT DECREE, WHICH
17 INVOLVED THE CALIFORNIA MEDICAL FACILITY. DR. STEWART HAS BROAD
18 EXPERIENCE IN THE EVALUATION AND OPERATION OF PRISON MENTAL
19 HEALTH SYSTEMS.

20 WE WILL ALSO PRESENT THE TESTIMONY OF DR. CRAIG
21 HANEY, A PSYCHOLOGIST WHO HAS STUDIED AND WRITTEN EXTENSIVELY ON
22 THE PSYCHOLOGICAL EFFECTS OF IMPRISONMENT AND OVERCROWDING.
23 DR. HANEY HAS TESTIFIED AS AN EXPERT IN MANY PRISON CLASS
24 ACTIONS, INCLUDING AT THE TRIAL OF THIS CASE IN 1993.

25 IN MAY OF 2007, THE COLEMAN SPECIAL MASTER, MICHAEL

1 KEATING, REPORTED TO THE COURT CONCERNING THE IMPACT OF
2 OVERCROWDING ON THE COLEMAN REMEDIAL PROCESS IN THE PRISON
3 SYSTEM. THE SPECIAL MASTER'S REPORT IS COMPELLING EVIDENCE IN
4 AND OF ITSELF ESTABLISHING THE NEXUS BETWEEN OVERCROWDING AND
5 THE ONGOING CONSTITUTIONAL VIOLATIONS IN MENTAL HEALTHCARE.

6 DR. HANEY AND DR. STEWART, THROUGH THEIR OWN
7 INVESTIGATIONS, HAVE CONFIRMED THE SPECIAL MASTER'S FINDINGS,
8 AND THAT 18 MONTHS LATER, NO MATERIAL CHANGES HAVE OCCURRED. IN
9 ADDITION, SOME INDICATORS POINT TO A WORSENING CONDITION FOR THE
10 COLEMAN CLASS.

11 I THINK IT'S TO BE NOTED THAT MR. KEATING'S SERVICE
12 TO THIS COURT, A DOZEN YEARS AS SPECIAL MASTER, IS
13 EXTRAORDINARY, AND THAT GAVE HIM AN AMAZING PERSPECTIVE ON THE
14 CALIFORNIA SYSTEM, WHAT WAS GOING ON. BUT, IN ADDITION,
15 MR. KEATING HAS WORKED ON SEVERAL PRIOR CLASS ACTIONS INVOLVING
16 OVERCROWDING AROUND THE COUNTRY AND IS QUITE FAMILIAR WITH HOW
17 OVERCROWDING AFFECTS SYSTEMS.

18 SPECIAL MASTER KEATING FOUND THAT OVERCROWDING SET
19 BACK THE REMEDIAL PROCESS, AND I QUOTE:

20 "OVER THE PAST 11 PLUS YEARS MUCH HAS BEEN
21 ACHIEVED, AND MANY OF THE ACHIEVEMENTS HAVE
22 SUCCUMBED TO AN INEXTRICABLY RISING TIDE OF
23 POPULATION, LEAVING BEHIND GROWING FRUSTRATION
24 AND DESPAIR," END QUOTE.

25 HE ALSO EXPLAINED HOW SEVERE OVERCROWDING HAS

1 AFFECTED THE CALIFORNIA PRISON SYSTEM. AGAIN I QUOTE:

2 "THE INEVITABLE RESULT OF SEVERE
3 OVERCROWDING IS THAT EVERYONE ALSO SPENDS MORE
4 AND MORE TIME IN THEIR CELLS. GYMS ARE NO
5 LONGER AN OPTION FOR RECREATION, FOR TIME OUT OF
6 CELL. DAYROOMS SHARE MANY OF THE SAME PROBLEMS.
7 WORK OR VOCATIONAL OPPORTUNITIES SHRINK IN THE
8 EXPANDING POPULATION. DISTURBANCES OCCUR MORE
9 FREQUENTLY WITH RESULTING INCREASES IN THE
10 NUMBER AND DURATION OF LOCKDOWNS. ALL INMATES
11 MUST SPEND INCREASINGLY LARGE CHUNKS OF THEIR
12 DAY IN THEIR CELLS, OR MUCH MORE DANGEROUSLY, IN
13 ONE OF THOSE TRIPLE-BUNKED, NON-TRADITIONAL
14 SPACES.

15 "NONE OF THIS IS CONDUCIVE TO THE HEALTH OR
16 WELL BEING OF ANY INMATE, MUCH LESS A SERIOUSLY
17 MENTALLY DISORDERED INMATE PATIENT. IT
18 INEVITABLY ESCALATES THE INCIDENT OF MENTAL
19 ILLNESS AND EXACERBATES THE CONDITIONS OF THOSE
20 ALREADY FRAGILE AND VOLATILE," END QUOTE.

21 OVERCROWDING NOT ONLY INTERFERES WITH DELIVERY OF
22 MENTAL HEALTHCARE, BUT AT THE SAME TIME, INCREASES THE DEMAND
23 FOR SUCH CARE. OVERCROWDING AFFECTS EVERYONE, NOT JUST THOSE IN
24 GYMS AND DAYROOM HOUSING.

25 SPECIAL MASTER KEATING'S FINDINGS CONTINUE TO BE TRUE

1 TODAY.

2 THE NUMBER OF COLEMAN CLASS NUMBERS HAS INCREASED IN
3 THE PAST 18 MONTHS EVEN THOUGH THE PRISON POPULATION HAS
4 STABILIZED. THE ACUITY OF THE COLEMAN CLASS HAS ALSO INCREASED
5 DURING THIS PERIOD. THAT IS, A HIGHER PERCENTAGE OF THE PRISON
6 POPULATION NOW REQUIRES MENTAL HEALTHCARE THAN THEY DID IN
7 MARCH 2007. AND OF THAT GROUP, THE DEMAND FOR HIGHER LEVELS OF
8 CARE HAS INCREASED AT AN EVEN HIGHER RATE. THE WAIT LIST FOR
9 ALL HIGHER LEVELS OF CARE PERSISTS, AND SOME HAVE WORSENERED.

10 THERE ARE FOUR GENERAL WAYS THAT OVERCROWDING CAUSES
11 HARM TO THE MENTAL HEALTH SYSTEM.

12 FIRST, RECRUITING AND RETAINING SUFFICIENT CLINICAL
13 STAFF NECESSARY TO PROVIDE MENTAL HEALTHCARE TO THIS EXPANDING
14 POPULATION AND OVERCROWDING PRISONS HAS BEEN IMPOSSIBLE. MENTAL
15 HEALTHCARE IS DELAYED OR INADEQUATE AS A RESULT. ADEQUACY IN
16 CLINICAL STAFFING IS MEASURED BY A RATIO OF PATIENTS TO
17 CLINICIANS.

18 DESPITE SOME INCREASES IN THE ABSOLUTE NUMBER OF
19 MENTAL HEALTH CLINICIANS OVER TIME, DUE TO OVERCROWDING, THE GAP
20 CONTINUES TO GROW. ACCORDING TO SPECIAL MASTER, DEFENDANTS HAVE
21 SUFFICIENT STAFFING TO TREAT TWO-THIRDS OF THE COLEMAN CLASS IN
22 2007. THIS YEAR AN OUTSIDE CONSULTANT PERFORMED A WORKLOAD
23 STUDY AND FOUND, ONCE AGAIN, THAT THE PRISONS WERE SEVERELY
24 UNDERSTAFFED WITH MENTAL HEALTH CLINICIANS.

25 SPECIAL MASTER LOATS RECENTLY FOUND THAT THE NEW

1 STUDY UNDERESTIMATED THE MENTAL HEALTH STAFFING NEEDS. THE
2 NECESSARY STAFFING RATIO CAN ONLY BE MET BY CONTROLLING
3 POPULATION.

4 THE SECOND MAJOR OVERCROWDING-RELATED ISSUE IS THE
5 SHORTAGE OF OFFICE AND TREATMENT SPACE. THE SPECIAL MASTER
6 DIRECTLY LINKED OVERCROWDING TO THE SPACE DEFICITS LIMITING THE
7 ABILITY TO DELIVER MEDICAL AND MENTAL HEALTHCARE. I QUOTE
8 AGAIN:

9 "THE GROWING PROBLEMS REFLECT THE IMPACT OF
10 OVERCROWDING. THE SHEER NUMBER OF INMATES
11 NEEDING ALL SORTS OF TIME OUT OF THEIR CELLS FOR
12 ALL SORTS OF REASONS PUTS INCREDIBLE PRESSURE ON
13 AVAILABLE SPACE. EXCESSIVE POPULATION, THUS,
14 RESULTS IN A REDUCTION OF PROGRAMMING SPACE NOW
15 OCCUPIED BY INMATE BUNKS, GREATER COMPETITION
16 FOR THE USE OF DIMINISHING AVAILABLE SPACE,
17 FEWER ESCORTING CORRECTIONAL OFFICERS TO PERMIT
18 ACCESS TO DIMINISHING SPACE, AND, ULTIMATELY THE
19 INCREASING FRUSTRATION AND DEMORALIZATION OF
20 CLINICIANS TRYING TO PROVIDE THE TREATMENT. THE
21 LACK OF PROGRAMMING SPACE IS A HUGE PROBLEM."
22 END QUOTE.

23 THE TREATMENT AND OFFICE SPACE SHORTAGES THROUGH THE
24 33 PRISONS ARE ALSO A MAJOR FACTOR STANDING IN THE WAY OF
25 RECRUITMENT AND RETENTION OF CLINICIANS. THE COMPETITION FOR

1 SPACE IN THESE CROWDED PRISONS IS NEVER ENDING. MENTAL HEALTH
2 CLINICIANS ATTEMPT TO TREAT THEIR PATIENTS IN CAGES AND
3 HALLWAYS, ON DAYROOM FLOORS, IN CONVERTED BATHROOMS AND BROOM
4 CLOSETS, IN AD SEG UNITS, AND JURY RIGGED SPACES OF ALL TYPES.

5 AS A RESULT OF OVERCROWDING, CONFIDENTIALITY, A
6 FUNDAMENTAL ELEMENT TO MENTAL HEALTHCARE, IS FREQUENTLY
7 COMPROMISED.

8 THE THIRD MAJOR OVERCROWDING FACTOR IS DELAYED ACCESS
9 TO HIGHER LEVELS OF CARE. AGAIN, THE SPECIAL MASTER DIRECTLY
10 LINKED OVERCROWDING TO THE BED SHORTAGES. I QUOTE:

11 "THE CURRENT SYSTEM STILL PROVIDES
12 INSUFFICIENT BEDS, AND UNLESS AND UNTIL
13 POPULATION IS REDUCED, WILL CONTINUE TO DO SO
14 FOR YEARS TO COME. WHATEVER THE CAUSE,
15 DEFENDANTS ARE FACING A FOUR TO FIVE-YEAR GAP IN
16 THE AVAILABILITY OF SUFFICIENT BEDS TO MEET THE
17 TREATMENT NEEDS OF MANY PATIENTS WHO REQUIRE
18 HIGHER LEVELS OF CARE. IN THE MEANTIME, THEY
19 ARE LEFT SUFFERING. THIS MEANS THAT NEARLY 12
20 YEARS AFTER THE DETERMINATION, THAT MENTAL
21 HEALTH SERVICES IN CDCR ARE EGREGIOUSLY
22 UNCONSTITUTIONAL. HUNDREDS, CERTAINLY, AND
23 POSSIBLY THOUSANDS OF CDCR INMATE PATIENTS, ALL
24 MEMBERS OF THE COLEMAN CLASS CERTIFIED IN THE
25 EARLY '90S, ARE STILL LOOKING FOR BEDS AT THE

1 LEVEL OF TREATMENT THEY REQUIRE", END QUOTE.

2 **THE CLERK:** FIVE MINUTES, COUNSEL.

3 **MR. BIEN:** WAIT LISTS AND LONG DELAYS REMAIN THE RULE
4 FOR DEFERRALS TO MENTAL HEALTH CRISIS BEDS, ENHANCED OUTPATIENT
5 PROGRAMS AND IN-PATIENT PSYCHIATRIC HOSPITALIZATION PROVIDED BY
6 DEPARTMENT OF MENTAL HEALTH.

7 IN ADDITION, DUE TO THE EMERGENCY CONDITIONS OF
8 OVERCROWDING, EVEN CLASS MEMBERS WHO GET TO THESE HIGHER LEVELS
9 OF CARE, ARE LIKELY TO END UP IN INADEQUATE, AD HOC TEMPORARY
10 UNITS.

11 AS A DIRECT RESULT OF OVERCROWDING, THE COLEMAN COURT
12 HAS BEEN REQUIRED TO ORDER THE STATE TO WAIVE LICENSING AND
13 HEALTH AND SAFETY STANDARDS AND OPERATE TEMPORARY MENTAL HEALTH
14 PROGRAMS IN CONVERTED PRISON HOUSING UNITS WITHOUT CLINICAL
15 OFFICES OR CONFIDENTIAL TREATMENT SPACE. THESE, QUOTE,
16 "TEMPORARY EMERGENCY PROGRAMS," WILL BE REQUIRED TO OPERATE FOR
17 MANY YEARS, MAYBE FOREVER, UNLESS OVERCROWDING IS BROUGHT UNDER
18 CONTROL. THESE ARE BAD BEDS TO THE SAME EXTENT THAT GYMS AND
19 DAYROOMS FILLED WITH BUNKS ARE BAD BEDS.

20 CDCR CLINICIANS WHO CANNOT TRANSFER THEIR PATIENTS TO
21 HIGHER LEVELS OF CARE ARE FORCED TO USE DANGEROUS MAKESHIFT
22 ALTERNATIVES. THEY ARE PRACTICING BATTLEFIELD PSYCHIATRY,
23 DEALING ONLY WITH CRITICAL EMERGENCIES AND CRISES AND RISKING
24 LIVES. THEY ARE MAKING HEROIC EFFORTS IN UNREASONABLE
25 CONDITIONS.

1 THE FOURTH OVERCROWDING FACTOR ARE THE HOUSING UNITS
2 THEMSELVES. YOU'VE SEEN THE GYMS AND DAYROOMS. THEY STILL
3 EXIST TODAY. AND ACCORDING TO DEFENDANTS, 5,500 COLEMAN CLASS
4 MEMBERS ARE TODAY LIVING IN OVERCROWDED GYMS AND DAYROOMS.
5 FOURTEEN THOUSAND PRISONERS ARE STILL IN GYMS AND DAYROOMS. THE
6 MENTALLY ILL ARE ESPECIALLY VULNERABLE TO THE TENSION AND STRESS
7 OF THESE EXTREMELY OVERCROWDED CONDITIONS.

8 BUT PLAINTIFFS WILL DEMONSTRATE THAT OVERCROWDING
9 UNDERMINES PROGRAMS AND ACTIVITIES EVERYWHERE IN THE SYSTEM, NOT
10 JUST IN THE BAD BEDS.

11 DR. HANEY INSPECTED TEHACHAPI STATE PRISON IN AUGUST.
12 HE INTERVIEWED SEVERAL PRISONERS WHO HAD BEEN REFERRED AND
13 ACCEPTED FOR THE HIGHEST LEVELS OF IN-PATIENT CARE IN THE ACUTE
14 PSYCHIATRIC PROGRAM AT CMF THAT IS OPERATED BY DEPARTMENT OF
15 MENTAL HEALTH. RATHER THAN BEING TRANSFERRED THERE, THEY WERE
16 STILL WAITING TO GO, EVEN THOUGH THEY HAD BEEN ACCEPTED AND THEY
17 WERE WAITING FOR MONTHS, THAT'S BECAUSE DMH NOW ONLY ACCEPTS
18 PEOPLE WHO ARE ACUTELY SUICIDAL OR HOMICIDAL, BUT NOT MERELY
19 PEOPLE WHO MEET THEIR QUALIFICATIONS. THESE MEN WERE NOT HOUSED
20 IN A MENTAL HEALTH CRISIS BED OR INFIRMARY, BUT IN AN AD SEG
21 UNIT.

22 ONE OF THE MEN TOLD DR. HANEY THAT HE HAD NOT BEEN
23 OUT OF HIS CELL FOR FOUR MONTHS. WHEN DR. HANEY ASKED THE
24 CORRECTIONAL OFFICERS ABOUT THIS IMPOSSIBLE CLAIM, THEY
25 CONFIRMED THAT NO ONE IN THE UNIT HAD BEEN ALLOWED YARD IN FOUR

1 MONTHS. AND THE REASON WAS THERE HAD BEEN A SERIOUS ATTACK AT
2 TEHACHAPI PRISON ON CORRECTIONAL OFFICERS IN THAT UNIT FOUR
3 MONTHS BEFORE. THE PRISONERS RESPONSIBLE FOR THE ATTACK HAD
4 BEEN IMMEDIATELY TRANSFERRED AWAY TO ANOTHER PRISON, BUT THE
5 PRISONERS WHO REMAINED IN THE UNIT WERE ON LOCKDOWN, DEPRIVED OF
6 ALL PROGRAMMING, INCLUDING YARD, FOR FOUR MONTHS.

7 THIS TYPE OF EXTREME CORRECTIONAL RESPONSE IS A
8 DIRECT RESULT OF EXTREME OVERCROWDING. THE EXPERTS OBSERVED
9 THIS PROBLEM THROUGHOUT THE TOURS. THERE IS NO ESCAPE FROM THE
10 EFFECTS OF OVERCROWDING. EVERYONE WHO LIVES OR WORKS IN THE
11 SYSTEM IS IMPACTED EVERY DAY.

12 A REDUCED AND CONTROLLED PRISON POPULATION WILL
13 REMOVE THE MAJOR BARRIER TO THE COURT'S EFFORTS TO BRING THE
14 SYSTEM TO CONSTITUTIONAL LEVEL OF CARE. WITHOUT POPULATION
15 REDUCTION AND CONTROL, THE REMEDY WILL FOREVER REMAIN JUST A SET
16 OF PLANS ON PAPER, AND THE COLEMAN AND PLATA CLASSES WILL
17 CONTINUE TO EXPERIENCE UNNECESSARY AND AVOIDABLE PAIN,
18 SUFFERING, AND DEATH FROM INADEQUATE MEDICAL AND MENTAL
19 HEALTHCARE.

20 IF I HAVE COULD A MOMENT, I WANT TO SHOW SOME PHOTOS
21 THAT WERE TAKEN IN AUGUST, MOST CURRENT CONDITIONS. THESE FIRST
22 TWO ARE OF GYMS. THE FIRST IS OF A GYM AT TEHACHAPI. OUR
23 EXPERTS IN THE TOURS IN JULY AND AUGUST ASKED TO TAKE PHOTOS,
24 AND THE PRISON OFFICIALS BROUGHT ALONG A PRISON OFFICIAL TO TAKE
25 PHOTOS FOR US WHERE OUR EXPERTS ASKED THEM TO OBTAIN. THESE

1 EXIST IN THE RECORD AT PLAINTIFF'S EXHIBITS 336 TO 341. THEY
2 WILL BE REFERRED TO.

3 **MS. TILLMAN:** WE WOULD LIKE TO OBJECT FOR THE RECORD.
4 I BELIEVE WE'VE ALREADY FILED OBJECTIONS WITH THIS COURT ON
5 THESE PARTICULAR PICTURES. WE HAVEN'T RECEIVED A RULING ON
6 QUALITY OR EVIDENTIARY NATURE. SO WE DO LODGE THE OBJECTION
7 BEFORE THEY ARE SHOWN TO THE AUDIENCE AND TO THE COURT.

8 **JUDGE HENDERSON:** OBJECTION WILL BE PRESERVED.

9 **MR. BIEN:** THIS IS A GYM AT TEHACHAPI STATE PRISON
10 TAKEN ON JULY 9 AT FACILITY 4B AS PART OF EXHIBIT 337.

11 THIS SECOND PICTURE IS AT MULE CREEK STATE PRISON,
12 PLAINTIFFS' EXHIBIT 339, TAKEN AT THE B YARD GYM DORM.

13 THE NEXT SERIES OF PICTURES SHOW CLINICIANS USING
14 WHAT WE EUPHEMISTICALLY CALL ALTERNATIVE SPACES TO DELIVER
15 HEALTHCARE. THIS PICTURE WAS TAKEN AT TEHACHAPI ON JULY 29TH IN
16 THE RECEPTION CENTER, YARD THREE, BUILDING FIVE. THESE ARE
17 CLINICIANS DOING RECEPTION CENTER MENTAL HEALTH INTERVIEWS.

18 THE WOMAN OVER HERE ON THE RIGHT IS DOING IT AT A
19 TABLE, AND THE OTHER CLINICIAN IS INTERVIEWING INMATES IN CAGES,
20 OR, AS THEY CALL THEM, TREATMENT MODULES.

21 THE NEXT PICTURE IS TAKEN AT SALINAS VALLEY STATE
22 PRISON ON JULY 29TH, 2008. THESE ARE HOLDING CELLS FOR PEOPLE
23 WHO CAN'T GET INTO THE MENTAL HEALTH CRISIS BED THAT IS
24 FREQUENTLY FULL. IN OTHER WORDS, THESE PEOPLE HAVE BEEN
25 REFERRED FOR CRISIS CARE, BUT THE CRISIS BEDS ARE FULL. THESE

1 ARE WHAT'S CALLED DRY HOLDING CELLS. THEY'RE LITTLE CAGES.
2 THEY DON'T HAVE WATER OR BATHROOMS.

3 THE NEXT PICTURE, ALSO PART OF PLAINTIFFS' 339, IS
4 TAKEN ON AUGUST 1ST AT MULE CREEK STATE PRISON. THIS IS A
5 CONVERTED HOUSING UNIT CONVERTED INTO SOMETHING CALLED A MHOHU,
6 A MENTAL HEALTH OUTPATIENT HOUSING UNIT. AND, AGAIN, THIS IS
7 THE PLACE THAT THE BEDS HAVE BEEN REMOVED. THERE IS A TOILET
8 INSIDE. BUT A MHOHU IS AN ALTERNATIVE TO A MENTAL HEALTH CRISIS
9 BED WHERE PRISONERS ARE HELD, SOMETIMES FOR SUICIDE WATCH.

10 **THE CLERK:** COUNSEL, YOUR TIME IS UP.

11 **MR. BIEN:** OKAY. TWO MORE.

12 THE NEXT ONE IS ALSO MULE CREEK STATE PRISON TAKEN ON
13 AUGUST 1ST, CR BUILDING 12. THIS IS A PICTURE OF A CLINICIAN
14 DOING AN INTERVIEW IN A CAGE ON THE DAYROOM FLOOR.

15 AND THE FINAL PICTURE I'M GOING TO SHOW WAS TAKEN AT
16 WASCO STATE PRISON ON AUGUST 1ST, 2008. IT'S FACILITY B,
17 BUILDING 2B. THIS IS A RECEPTION CENTER HOUSING UNIT WHERE
18 EOP'S, ARMSTRONG CLASS MEMBERS, OTHERS WERE MIXED TOGETHER, AND
19 THESE ARE -- THOSE PEOPLE YOU SEE SITTING OUTSIDE THE CELLS ARE
20 PERFORMING SUICIDE WATCH.

21 THESE ARE TODAY'S CONDITIONS. THIS IS WHAT THIS CASE
22 IS ABOUT. THANK YOU, YOUR HONOR.

23 **JUDGE HENDERSON:** THANK YOU, COUNSEL.

24 **OPENING STATEMENT BY MR. ADAM**

25 **MR. ADAM:** GOOD MORNING, YOUR HONORS. GREG ADAM OF

1 CARROLL, BURDICK & MCDONOUGH ON BEHALF OF CCPOA.

2 CCPOA IS A LABOR ORGANIZATION THAT REPRESENTS
3 APPROXIMATELY 30,000 CORRECTIONAL OFFICERS, CORRECTIONAL
4 SERGEANTS, CORRECTIONAL LIEUTENANTS, CORRECTIONAL COUNSELORS,
5 AND PAROLE AGENTS. THE MEN AND WOMEN REPRESENTED BY OUR UNION
6 WORK IN EVERY CORRECTIONAL FACILITY IN THE STATE OF CALIFORNIA.
7 EVERY DAY THEY BEAR WITNESS TO THE IMPACT OF OVERCROWDING ON THE
8 CONDITIONS INSIDE THE PRISONS AS THEY AFFECT BOTH INMATES AND
9 STAFF. ON THE FIRST VIDEO EXCERPT, THAT WAS ONE OF OUR MEMBERS
10 SPEAKING TO THE CAMERA.

11 YOUR HONORS, IN THIS OPENING STATEMENT, I WANT TO
12 COVER THREE ISSUES. FIRST OF ALL, WHY CCPOA INTERVENED IN THIS
13 CASE; AND SECOND IS WHY CCPOA INTERVENED ON THE PLAINTIFFS' SIDE
14 IN THIS CASE; AND, THIRD IS A STATEMENT OF WHAT OUR WITNESSES
15 ARE GOING TO ATTEST TO.

16 SO TURNING TO THE FIRST QUESTION, WHY CCPOA
17 INTERVENED IN THIS CASE, THE BASIC REASON IS THAT BECAUSE OF THE
18 MASSIVE OVERCROWDING IN OUR PRISONS, WHICH IS EXACERBATED BY
19 CHRONIC UNDERSTAFFING AND DELAPIDATED FACILITIES, CALIFORNIA'S
20 PRISONS PRESENT AN INCREASINGLY UNSAFE WORKING CONDITION FOR
21 STAFF AND UNSAFE CUSTODY CONDITIONS FOR INMATES.

22 THERE ARE TWICE AS MANY INMATES IN THE SYSTEM AS THE
23 SYSTEM WAS DESIGNED FOR. INMATES ARE ROUTINELY DOUBLE CELLED.
24 THEY ARE ROUTINELY DOUBLE AND TRIPLE BUNKED, AS THE PICTURES
25 ATTEST TO.

1 THERE ARE INCREASING INMATE-ON-INMATE ASSAULTS,
2 PRISON GANG ACTIVITY, AND INMATE-ON-STAFF ASSAULTS. CANCELING
3 OF INMATE PROGRAMS IS ROUTINE, ALMOST INVARIABLE. LOCKDOWNS AND
4 LIMITATIONS ON EXERCISE OF INMATES ARE THE NORMAL. THERE'S ALSO
5 AN INCREASINGLY SUBSTANTIAL RISK FOR THE TRANSMISSION OF
6 INFECTIOUS ILLNESSES AMONG BOTH INMATES AND STAFF. THESE
7 CONDITIONS CREATE DISCONTENT AMONG INMATES AND PRESENT SERIOUS
8 SAFETY CONCERNS FOR BOTH INMATES AND FOR STAFF.

9 FOR STAFF, WE SEE THESE PROBLEMS AS BOILING DOWN TO
10 TWO MAIN ISSUES. FIRST IS THE SAFETY CONCERNS THAT THE
11 CORRECTIONAL STAFF ARE HAVING TO BEAR AND THE ENORMOUS PHYSICAL
12 PRICE OF THAT, AND WE HAVE AN OVERRIDING OBLIGATION AS A LABOR
13 UNION TO REPRESENT OUR MEMBERS, BUT WE THINK IT GOES BEYOND
14 THAT, YOUR HONORS.

15 WE BELIEVE THAT THESE CONDITIONS CREATE A
16 DEHUMANIZING EFFECT ON CORRECTIONAL STAFF; ONE, BY HAVING TO
17 WITNESS THESE CONDITIONS AND WORK IN THEM. THEN, COMBINED WITH
18 THAT, COMES THE SUFFERING THAT GOES WITH HAVING AN INABILITY TO
19 DO ANYTHING ABOUT IT. FOR THESE REASONS, YOUR HONORS, CCPOA
20 ENERGETICALLY SUPPORTED THE CONVENING OF THIS PANEL.

21 POINT NUMBER TWO, WHY DID CCPOA INTERVENE ON THE
22 PLAINTIFFS' SIDE?

23 FOR YEARS, YOUR HONORS, CCPOA PRESCRIBED TO THE
24 BUILD-TO-FIX APPROACH. THAT WAS TRUE THROUGHOUT THE '70'S,
25 '80'S AND BEYOND. THAT, OF COURSE, WOULD HAVE PROBABLY HAD US

1 LINING UP ON THIS SIDE OF THE COURTROOM.

2 HOWEVER, AT SOME POINT CCPOA CONCLUDED THE PRISON
3 SYSTEM WAS IRREPARABLY BROKEN, WHETHER IT WAS THE REVOLVING DOOR
4 OF AGENCY SECRETARIES COMING AND GOING WITH LITTLE OR NO
5 IMPROVEMENT, OR THE FACT THAT AB 900 A MERE 18 MONTHS AGO WAS
6 GOING TO BE THE SOLUTION TO THE MAJORITY OF THESE PROBLEMS, AND
7 TODAY WE FIND THERE'S BEEN LITTLE, IF ANY, PROBLEM.

8 BUT, MORE IMPORTANTLY TO CCPOA, IT BECAME CLEAR THE
9 DEFENDANTS LACKED THE ABILITY IN THE INSTITUTIONAL CAPACITY,
10 FIRST OF ALL, TO EFFECTIVELY ADDRESS THE OVERCROWDING, AND,
11 SECONDLY, WE BELIEVE TO EVEN FULLY RECOGNIZE THE ENORMITY OF THE
12 PROBLEMS.

13 IN ESSENCE, CALIFORNIA'S PRISONS HAVE BECOME SO
14 OVERCROWDED FOR SO LONG, THE DEFENDANTS ACCEPT OVERCROWDING
15 LEVELS OF 180, 190, AND EVEN 200 PERCENT AS AN ACCEPTABLE NORM.
16 AND, THUS, WHILE IT'S THE INDIVIDUAL PRISONERS THAT EXPERIENCE
17 THE ACTUAL OVERCROWDING, THE PROBLEMS THAT PERMIT THESE
18 OVERCROWDING CONDITIONS TO OCCUR PRIMARILY STEM FROM DECISIONS
19 MADE AT CDCR HEADQUARTERS. WITH THESE THOUGHTS IN MIND AND WITH
20 NO OTHER FEASIBLE SOLUTION IN SIGHT, CCPOA CONCLUDED THAT AN
21 INMATE POPULATION CAP OFFERS THE ONLY MEANINGFUL SHORT TO
22 MEDIUM-TERM POSSIBILITY OF SAFER WORKING CONDITIONS FOR THE
23 STAFF THAT WE REPRESENT AND SAFER AND BETTER CUSTODY CONDITIONS
24 FOR INMATES.

25 TURNING TO OUR SIX WITNESSES AND WHAT THEY WILL SAY

1 AT THIS TRIAL. CCPOA'S UNIQUELY SITUATED -- OR OUR WITNESSES
2 ARE UNIQUELY SITUATED IN THIS LITIGATION BECAUSE THEY ARE
3 DAY-TO-DAY IN THE PRISONS. THEY ARE THERE WHEN THE LIGHTS GO
4 OUT, WHEN THE LIGHTS COME ON. THEY ARE THERE WHEN TOURS ARE
5 BEING OPERATED AND WHEN PRISONS, KNOWING THAT PRISON TOURS ARE
6 COMING, PREPARE FOR PRISON TOURS. THEY'RE ALSO THERE WHEN
7 CONDITIONS ARE ROLLING ALONG AS NORMAL.

8 OUR WITNESSES WILL PROVIDE FIRSTHAND OBSERVATIONS OF
9 THE ADVERSE CONSEQUENCES OF OVERCROWDING ON THE DELIVERY OF
10 MEDICAL AND MENTAL HEALTH SERVICES, INCLUDING SHORTAGES OF
11 EQUIPMENT, SUCH AS PRESCRIBED MEDICAL EQUIPMENT; SPECIAL
12 PILLOWS, MATTRESSES FOR SPECIFIC INMATE MEDICAL CONDITIONS; THE
13 LACK OF AVAILABLE SPACE TO CONDUCT TREATMENT; LACK OF EMERGENCY
14 VEHICLES; LACK OF HOLDING CELLS AND SAFETY CELLS; INADEQUATE
15 NUMBERS OF WORKING TOILETS, SINKS AND SHOWERS.

16 AND EVEN WHERE THE SUFFICIENT EQUIPMENT EXISTS, OUR
17 WITNESSES WILL TESTIFY TO FREQUENT DELAYS IN OBTAINING MATERIALS
18 AND SERVICES, INCLUDING FOOD, LAUNDRY, MEDICAL TREATMENT; WILL
19 TESTIFY TO THE FACT THAT INMATES WITH SCHEDULED APPOINTMENTS ARE
20 NOT ABLE TO BE SEEN BY HEALTHCARE PRACTITIONERS DUE TO THE SHEER
21 VOLUME OF INMATES WHO ARE REQUIRING MEDICAL SERVICES. THEY WILL
22 ALSO SPEAK TO THE ATTENDANT LACK OF SPACE FOR INMATES, INCLUDING
23 ANY SPACE FOR ANY MEDICAL SUPPLIES THAT AN INMATE MAY REQUIRE.

24 IT WILL SPEAK TO CRUMBLING INFRASTRUCTURE OF OUR
25 PRISONS. THEY WILL SPEAK TO THE UNSANITARY AND UNHEALTHY LIVING

1 CONDITIONS. GYMS BEING USED WITH BUNKS THREE BEDS HIGH; AGAIN,
2 PICTURES SHOWED THAT, WHICH NEGATIVELY IMPACTS THEIR ABILITY TO
3 ADEQUATELY PROVIDE CUSTODY FOR INMATES. IT'S EXACTLY WHAT THE
4 INDIVIDUAL IN THE FIRST VIDEO EXCERPT SPOKE TO.

5 THEY'LL SPEAK TO INMATES DOING LAUNDRY EITHER IN THE
6 SINK THAT'S USED FOR THE SERVICE OF FOOD OR IN THEIR TOILETS.
7 THEY'LL SPEAK TO THE SHORTAGE OF PERSONNEL, SUCH AS CORRECTIONAL
8 OFFICER ESCORTS WHO ARE NEEDED TO TAKE INMATES FROM THEIR CELLS
9 TO WHEREVER THEY'RE SUPPOSED TO RECEIVE MEDICAL TREATMENT.
10 THEY'LL SPEAK TO THE SHORTAGE OF HOLDING CELLS AND SAFETY CELLS.
11 THEY'LL ALSO SPEAK TO THE SUBSTANTIAL DELAYS IN SETTING UP AND
12 CONDUCTING FOLLOW-UP MEDICAL TREATMENT.

13 ESSENTIALLY, THERE'S TOO MANY INMATES TO BE
14 ADEQUATELY MONITORED, AND THAT INCLUDES THE INABILITY OF STAFF
15 TO VERIFY THAT INMATES ARE EVEN TAKING THEIR MEDICATIONS THAT
16 THEY'RE PRESCRIBED.

17 IN ADDITION, THEY'LL TESTIFY FOR THE HIGHER POTENTIAL
18 FOR VIOLENCE THAT INVOLVES INMATES IN MEDICAL HEALTH AND MENTAL
19 HEALTH UNITS, PARTICULARLY OF DOUBLE CELLED AS OPPOSED TO SINGLE
20 CELLED.

21 IN CONCLUSION, OUR INMATES -- PARDON ME -- OUR
22 WITNESSES ARE GOING TO SAY THAT ALL THESE PROBLEMS STEM
23 PRIMARILY FROM OVERCROWDING. AND WHEN THEIR EVIDENCE IS
24 CONSIDERED, ALONG WITH THE EVIDENCE THE PLAINTIFFS WILL PUT ON,
25 WE BELIEVE THE INESCAPABLE CONCLUSION FOR THE COURT WILL BE THAT

1 OVERCROWDING IS THE PRIMARY CAUSE OF CONSTITUTIONAL VIOLATIONS.

2 THANK YOU.

3 **JUDGE HENDERSON:** THANK YOU, COUNSEL. DO DEFENDANTS
4 WISH TO BEGIN?

5 **OPENING STATEMENT BY MR. MELLO**

6 **MR. MELLO:** YES.

7 GOOD MORNING AGAIN, YOUR HONORS. PAUL MELLO OF
8 HANSON BRIDGETT ON BEHALF OF THE PLATA DEFENDANTS.

9 FIRST, THIS IS NOT AN OVERCROWDING CASE. IT'S NOT
10 ABOUT HOUSING CONDITIONS OR PROGRAMMING IN CDCR'S PRISONS. IN
11 FACT, THERE HAS BEEN NO LAWSUIT FILED, MUCH LESS ANY JUDICIAL
12 DETERMINATION THAT THE HOUSING OR OTHER ENVIRONMENTAL CONDITIONS
13 IN CDCR'S PRISONS VIOLATE THE CONSTITUTION. RATHER, THIS
14 THREE-JUDGE PANEL PROCEEDING RELATES TO THE DELIVERY OF MEDICAL
15 CARE TO INMATES IN CALIFORNIA'S PRISONS AND THE PURPORTED
16 BARRIERS TO THE DELIVERY OF THAT CARE. THE EVIDENCE WILL SHOW
17 THAT OVERCROWDING IS NOT THE PRIMARY BARRIER TO THE DELIVERY OF
18 THAT CARE.

19 HERE PLAINTIFFS SEEK A PRISONER RELEASE ORDER. IN
20 THEIR PRETRIAL BRIEF, PLAINTIFFS STATE THAT THEY SEEK A
21 POPULATION CAP ON CALIFORNIA'S PRISONS AT 130 PERCENT OF DESIGN
22 BED CAPACITY. THAT AMOUNTS TO A CAP OF AT ABOUT 104,000 INMATES
23 ON CALIFORNIA'S PRISONS AND THE RELEASE OF MORE THAN 52,000
24 INMATES OVER A TWO-YEAR PERIOD OF TIME IN ORDER TO MEET THE CAP
25 REQUESTED BY PLAINTIFFS.

1 IN ORDER TO PREVAIL IN THIS PHASE ONE TRIAL,
2 PLAINTIFFS MUST MEET THE STRINGENT REQUIREMENTS OF THE PRISON
3 LITIGATION REFORM ACT. SPECIFICALLY, PLAINTIFFS MUST PROVE THAT
4 CROWDING IS THE PRIMARY CAUSE OF THE VIOLATION OF A FEDERAL
5 RIGHT. IN PLATA, THE ALLEGED UNCONSTITUTIONAL DELIVERY OF
6 MEDICAL CARE.

7 PLAINTIFFS MUST SATISFY THIS REQUIREMENT BY CLEAR AND
8 CONVINCING EVIDENCE. CLEAR AND CONVINCING EVIDENCE IS AN
9 EXACTING STANDARD. IT REQUIRES EVIDENCE SO CLEAR, DIRECT,
10 WEIGHTY AND CONVINCING AS TO ENABLE THE FACT FINDER TO COME TO A
11 CLEAR CONVICTION WITHOUT HESITANCY OF THE TRUTH OF THE PRECISE
12 FACTS IN ISSUE. THE EVIDENCE WILL SHOW THAT PLAINTIFFS CANNOT
13 MEET THIS EXACTING STANDARD.

14 FIRST, THE EVIDENCE WILL SHOW THAT THE PLATA RECEIVER
15 HAS ALREADY REPORTED THAT OVERCROWDING IS NOT THE PRIMARY CAUSE
16 OF THE ALLEGED UNCONSTITUTIONAL DELIVERY OF MEDICAL CARE. AT
17 THE REQUEST OF THE PLATA COURT, THE PLATA RECEIVER ISSUED AN
18 OVERCROWDING REPORT IN MAY OF 2007. IN THAT REPORT, THE
19 RECEIVER STATED THAT, QUOTE:

20 "THOSE WHO BELIEVE THAT THE CHALLENGES FACED
21 BY THE PLAN OF ACTION ARE UNCOMPLICATED AND WHO
22 THINK THAT POPULATION CONTROLS WILL SOLVE
23 CALIFORNIA'S PRISON HEALTHCARE PROBLEMS ARE
24 SIMPLY WRONG," END QUOTE.

25 HE FURTHER WROTE THAT "THE CURE," QUOTE:

1 " ... TO EXISTING HEALTHCARE PROBLEMS WILL
2 BE DIFFICULT AND COSTLY TO IMPLEMENT REGARDLESS
3 OF POPULATION CONTROLS," END QUOTE.

4 THE RECEIVER'S POINT IS CLEAR. OVERCROWDING IS NOT
5 THE PRIMARY CAUSE OF THE ALLEGED CONSTITUTIONAL DEFICIENCIES IN
6 CALIFORNIA'S MEDICAL CARE IN ITS PRISONS.

7 THE COURT WILL HEAR FROM ONLY TWO MEDICALLY TRAINED
8 MEDICAL EXPERTS IN THIS PROCEEDING. DEFENDANTS' EXPERT
9 DR. DAVID THOMAS AND PLAINTIFFS' EXPERT DR. RONALD SHANSKY.

10 DR. THOMAS WILL TESTIFY THAT CROWDING IS NOT THE
11 PRIMARY BARRIER TO CARE IN CALIFORNIA'S PRISONS. HE WILL ALSO
12 TESTIFY ABOUT WHAT HE BELIEVES TO BE THE MOST IMPORTANT
13 COMPONENTS TO QUALITY CORRECTIONAL MEDICAL CARE DELIVERY SYSTEM.

14 PLAINTIFF'S SOLE CORRECTIONAL MEDICAL CARE EXPERT,
15 DR. SHANSKY, WILL TESTIFY THAT THE CONSTITUTIONAL DELIVERY OF
16 MEDICAL CARE HAS MULTIPLE INTERRELATED COMPONENTS AND THAT IT IS
17 VERY DIFFICULT TO RANK IN IMPORTANCE THESE INTERRELATED
18 COMPONENTS AND THAT THE DELIVERY OF CONSTITUTIONALLY ADEQUATE
19 MEDICAL CARE IS MULTIFACETED.

20 DR. SHANSKY WILL ALSO TESTIFY THAT THE KEY FACTORS OR
21 COMPONENTS TO IMPROVING THE DELIVERY OF MEDICAL CARE IN
22 CALIFORNIA'S PRISONS ARE ALREADY BEING ACCOMPLISHED OR IMPROVED
23 BY THE PLATA RECEIVER.

24 DR. SHANSKY WILL TESTIFY, AND THE RECEIVER HAS
25 ALREADY STATED, THAT NOT ONLY WILL OTHER MEASURES SOLVE THE

1 PROBLEMS WITH THE DELIVERY OF MEDICAL CARE IN CALIFORNIA'S
2 PRISONS, OTHER MEASURES ARE NECESSARY TO SOLVE THOSE PROBLEMS.

3 IF NOT, AS THE COURT POINTED OUT EARLIER, THE
4 RECEIVER'S EFFORTS ARE NOT NECESSARY -- WOULD NOT BE NECESSARY
5 TO REMEDY THE ALLEGED DEFICIENCIES AND THERE WOULD BE NO REASON
6 FOR THE PLATA COURT TO CONTINUE THE PLATA RECEIVERSHIP.

7 BY WAY OF BACKGROUND, IN ORDER TO ESTABLISH THAT CARE
8 IS UNCONSTITUTIONAL, IT MUST VIOLATE THE EIGHTH AMENDMENT, WHICH
9 IS SHOWN BY PROVING THAT THE STATE IS DELIBERATELY INDIFFERENT
10 TO SERIOUS MEDICAL NEEDS OF INMATE PATIENTS.

11 IN 2002 THE STATE DEFENDANTS ENTERED INTO A
12 STIPULATION AIMED AT IMPROVING CARE IN CALIFORNIA'S PRISONS.
13 THE STIPULATION FOR INJUNCTIVE RELIEF IDENTIFIED NUMEROUS
14 COMPONENTS TO QUALITY CORRECTIONAL MEDICAL CARE, AND IT INCLUDED
15 MANY OF THE IMPORTANT COMPONENTS THAT DRS. THOMAS AND SHANSKY
16 WILL TESTIFY ABOUT AT THIS TRIAL.

17 THE EVIDENCE WILL SHOW THE STATE IS FAR FROM
18 INDIFFERENT TO THE MEDICAL NEEDS OF ITS INMATE PATIENTS AND THE
19 STATE AND THE PLATA RECEIVER ARE ADDRESSING THE INTERRELATED
20 COMPONENTS IDENTIFIED IN THE STIPULATION FOR INJUNCTIVE RELIEF,
21 IDENTIFIED IN SUBSEQUENT PLATA COURT ORDERS, IDENTIFIED BY THE
22 FORMER PLATA MEDICAL EXPERTS, IDENTIFIED BY THE RECEIVER
23 HIMSELF, AND IDENTIFIED BY DRS. THOMAS AND SHANSKY IN THEIR
24 TESTIMONY AT THIS TRIAL.

25 FOR EXAMPLE, THE EVIDENCE WILL SHOW THAT THE STATE

1 HAS PUT ITS MONEY WHERE ITS MOUTH IS WITH RESPECT TO HEALTHCARE
2 SPENDING. IN 1995 THE STATE SPENT MORE THAN \$340 MILLION ON
3 PRISON HEALTHCARE.

4 BY FISCAL YEAR 2005/2006, THE YEAR THE PLATA RECEIVER
5 WAS APPOINTED, CALIFORNIA SPENT \$1.252 BILLION ON PRISON
6 HEALTHCARE. IN FISCAL YEAR 2008/2009 CALIFORNIA ANTICIPATES
7 SPENDING \$2.193 BILLION ON PRISON HEALTHCARE.

8 THE AMOUNT OF MONEY SPENT ON EACH PRISONER HAS ALSO
9 GONE UP OVER TIME. IT INCREASED FROM JUST OVER \$2,700 PER
10 INMATE IN 1995 TO JUST UNDER \$14,000 PER INMATE IN FISCAL YEAR
11 '08/'09. THESE NUMBERS ARE WELL, WELL ABOVE NATIONAL AVERAGES
12 AND MULTIPLE TIMES HIGHER THAN THE AMOUNT THE FEDERAL BUREAU OF
13 PRISONS SPENDS PER INMATE PER YEAR ON MEDICAL AND MENTAL
14 HEALTHCARE SERVICES.

15 HERE IT IS UNDISPUTED THAT THERE HAVE BEEN
16 SIGNIFICANT IMPROVEMENTS IN THE DELIVERY OF MEDICAL CARE IN
17 CALIFORNIA'S PRISONS SINCE THE APPOINTMENT OF THE PLATA
18 RECEIVER. THESE IMPROVEMENTS HAVE OCCURRED IN THE FACE OF
19 POPULATION PREDATORS, AND THIS EVIDENCES THAT POPULATION IS NOT
20 THE PRIMARY CAUSE OF THE ALLEGED UNCONSTITUTIONAL DELIVERY OF
21 MEDICAL CARE IN CALIFORNIA'S PRISONS.

22 **THE CLERK:** FIVE MINUTES, COUNSEL.

23 **MR. MELLO:** THANK YOU.

24 CDCR'S PHYSICIAN STAFFING HAS INCREASED DRAMATICALLY,
25 AND IT'S WITHIN FIVE PERCENT OF THE RECEIVER'S GOAL TO FILL

1 90 PERCENT OF POSITIONS. LIKewise, STAFFING OF REGISTERED
2 NURSES IS NOW WITHIN TWO PERCENT OF THE RECEIVER'S STATEWIDE
3 GOAL TO FILL 90 PERCENT OF NURSING POSITIONS. REMARKABLY,
4 BETWEEN JULY 2007 AND JULY 2008, THE STATE AND THE RECEIVER
5 HIRED MORE THAN 1,400 DOCTORS AND NURSES.

6 LET'S TALK ABOUT SOME OF THE HIRING.

7 CHIEF PHYSICIANS AND SURGEONS, IN OCTOBER 2005 WHEN
8 THE PLATA COURT ISSUED ITS FINDINGS OF FACT AND CONCLUSIONS OF
9 LAW, THERE WERE TEN STATE-EMPLOYED CHIEF PHYSICIANS AND
10 SURGEONS. BY THE END OF AUGUST 2008, THERE WERE 28.

11 IN BETWEEN NOVEMBER 2007 AND AUGUST 2008, THE STATE
12 AND THE RECEIVER HIRED 62 FULL-TIME STATE-EMPLOYED PRIMARY CARE
13 PHYSICIANS, PHYSICIAN'S ASSISTANTS, ALSO KNOWN AS PHYSICIAN
14 EXTENDERS. THE NUMBER OF THESE CLASSIFICATIONS ROSE FROM ONE IN
15 APRIL 2006 TO 13 IN AUGUST OF 2008.

16 NURSE PRACTITIONERS, ALSO KNOWN AS PHYSICIAN
17 EXTENDERS, THERE WERE 11 IN OCTOBER OF 2005, AND THERE ARE 44 BY
18 THE END OF AUGUST 2008. REGISTERED NURSES, THE EVIDENCE WILL
19 SHOW THAT THE NUMBER OF REGISTERED NURSES ROSE FROM 818 IN
20 AUGUST 2005 TO 1,556 BY AUGUST 2008. THIS IS DESPITE THE
21 FACT -- THIS ALMOST DOUBLING IS DESPITE THE FACT THAT THERE IS A
22 NATIONWIDE SHORTAGE OF REGISTERED NURSES.

23 LVNS, LICENSED VOCATIONAL NURSES, THE EVIDENCE WILL
24 SHOW THERE WERE FOUR IN MAY OF 2007 AND THERE WERE 937 BY THE
25 END OF AUGUST 2008.

1 FINALLY, THE EVIDENCE WILL SHOW THAT THE NUMBER OF
2 CORRECTIONAL OFFICES EMPLOYED BY THE DEPARTMENT ROSE FROM 20,741
3 IN OCTOBER 2005 TO JUST OVER 24,090 IN AUGUST OF 2008.

4 THE EVIDENCE WILL ALSO SHOW THAT IN ADDITION TO
5 STATE-EMPLOYED PROVIDERS, THAT THE LARGE NUMBERS OF REGISTERED
6 PHYSICIANS AND NURSES FILL OR LARGELY FILL THE REMAINING
7 VACANCIES IN HEALTHCARE POSITIONS IN CDCR'S INSTITUTIONS.

8 LIKEWISE, THE NUMBER OF CORRECTIONAL OFFICER
9 VACANCIES IN THE SYSTEM ARE BEING FILLED LARGELY BY OVERTIME.

10 THE EVIDENCE WILL SHOW THAT DEATHS ARE DOWN
11 SIGNIFICANTLY IN CDCR PRISONS, NEARLY 30 PERCENT SINCE 2006.
12 AND COUNSEL ALLUDED TO THIS EARLIER IN HIS OPENING, BUT THE
13 RECEIVER'S OFFICE HAS ISSUED TWO REPORTS RELATING TO ANALYZING
14 DEATHS. ONE REPORT ANALYZED 2006 DEATHS. THE OTHER ONE
15 ANALYZED 2007 DEATHS.

16 IN THOSE REPORTS, THE RECEIVER'S OFFICE USES TWO
17 TERMS: PREVENTABLE DEATHS AND POSSIBLY PREVENTABLE DEATHS.
18 THEY DEFINE A PREVENTABLE DEATH AS ONE WHERE, QUOTE:

19 "BETTER MEDICAL MANAGEMENT OR A BETTER
20 SYSTEM OF CARE WOULD LIKELY HAVE PREVENTED THE
21 PATIENT'S DEATH," END QUOTE.

22 THEY DEFINE A POSSIBLY PREVENTABLE DEATH AS ONE
23 WHERE, QUOTE:

24 "BETTER MEDICAL MANAGEMENT OR A BETTER
25 SYSTEM OF CARE MAY HAVE PREVENTED THE PATIENT'S

1 DEATH," END QUOTE.

2 "POSSIBLY PREVENTABLE" IS SPECULATIVE BY ITS VERY
3 DEFINITION.

4 THERE WILL BE NO EVIDENCE AT THIS THREE-JUDGE TRIAL
5 THAT ON AVERAGE AN INMATE IN ONE OF CALIFORNIA'S PRISONS
6 EXPERIENCES A PREVENTABLE DEATH EVERY SIX TO SEVEN DAYS DUE TO
7 ALLEGED CONSTITUTIONAL DEFICIENCIES IN CDCR'S MEDICAL CARE
8 DELIVERY SYSTEM. INSTEAD, THE EVIDENCE WILL SHOW THERE WERE A
9 TOTAL OF THREE ALLEGED PREVENTABLE DEATHS IN ADULT INSTITUTIONS
10 IN 2007. THIS EQUATES TO AN ALLEGED PREVENTABLE DEATH EVERY 121
11 DAYS, AND THE THREE ALLEGED PREVENTABLE DEATHS AMOUNT TO LESS
12 THAN ONE PERCENT OF THE 395 DEATHS REVIEWED. THIS IS
13 ASTONISHING AND EVIDENCE OF THE MAGNITUDE OF THE IMPROVEMENTS TO
14 DATE.

15 THE EVIDENCE WILL SHOW MANY OTHER IMPROVEMENTS, BUT I
16 HIGHLIGHT JUST A FEW.

17 THE RECEIVER'S DEVELOPING NEW SCREENING AND
18 ASSESSMENT PROCESSES AT INCEPTION AND RELEASE; NEW HEALTHCARE
19 ACCESS UNITS, INCLUDING LARGE NUMBERS OF CORRECTIONAL OFFICERS
20 TO ENSURE TIMELY ACCESS TO MEDICAL CARE; REDESIGNING AND
21 IMPROVING SICK CALL PROCESSES, FORMS, AND STAFFING MODELS;
22 IMPROVED CHRONIC CARE. FOR EXAMPLE, THE NUMBER OF INMATES WHOSE
23 ASTHMA DEATHS WERE DEEMED TO BE PREVENTABLE BY THE RECEIVER WENT
24 FROM SIX IN 2006 TO ZERO IN 2007.

25 RECEIVER'S WORKING ON IMPROVED EMERGENCY RESPONSE

1 PLANS IN THE SYSTEM, IMPROVED PROVISION AND ACCESS TO SPECIALTY
2 CARE AND HOSPITAL SERVICES, IMPROVED PEER REVIEW AND DEATH
3 REVIEW PROGRAMS. HE'S WORKING ON THE ESTABLISHMENT OF A
4 COMPREHENSIVE, SAFE AND EFFICIENT PHARMACY PROGRAM, INCLUDING
5 THE DEVELOPMENT OF THE DRUG FORMULARY AND THE ROLLOUT
6 COMPUTERIZED PHARMACY SYSTEM --

7 **THE CLERK:** TIME'S UP, COUNSEL.

8 **MR. MELLO:** ONE MORE MOMENT.

9 -- DESIGNED TO IMPROVEMENT MEDICATION MANAGEMENT IN
10 CDCR INSTITUTIONS.

11 CROWDING HAS NEVER BEEN IDENTIFIED AS A SIGNIFICANT
12 BARRIER TO CONSTITUTIONALLY ADEQUATE MEDICAL CARE IN
13 CALIFORNIA'S PRISONS. IN FACT, AT NO TIME BEFORE THE FILING OF
14 THIS MOTION TO CONVENE A THREE-JUDGE PANEL WAS CROWDING
15 IDENTIFIED AS A SIGNIFICANT IMPEDIMENT TO THE DELIVERY OF CARE,
16 LET ALONE A PRIMARY BARRIER TO IT.

17 DEFENDANTS, HOWEVER, DO NOT DISPUTE THAT CROWDING
18 IMPACTS SERVICES AND PROGRAMMING IN CDCR PRISONS, INCLUDING THE
19 DELIVERY OF MEDICAL CARE. THE EVIDENCE WILL SHOW, HOWEVER, THAT
20 CROWDING IS NOT THE PRIMARY, MOST IMPORTANT, PRINCIPAL CAUSE OF
21 THE ALLEGED UNCONSTITUTIONAL DELIVERY OF MEDICAL CARE.

22 THE STATE TAKES VERY SERIOUSLY ITS OBLIGATIONS TO
23 INMATES AND THE PUBLIC. THIS IS EVIDENCED BY THE FUNDING IT
24 DEVOTES TO CDCR HEALTHCARE SYSTEMS, AND IT IS UNDISPUTED THAT
25 MEDICAL CARE HAS IMPROVED DRAMATICALLY IN THE LAST FEW YEARS.

1 THE STATE HAS TAKEN STEPS TO APPROPRIATELY ADDRESS
2 OVERCROWDING IN ITS PRISON. IT HAS REDUCED ITS RELIANCE ON
3 NON-TRADITIONAL BEDS AND HAS REDUCED THE NUMBER OF PRISONERS
4 HOUSED IN ITS IN-STATE INSTITUTIONS.

5 IN CONCLUSION, DEFENDANTS ARE CERTAIN THAT AFTER IT
6 HAS HEARD ALL THE EVIDENCE, THE COURT WILL FIND THAT PLAINTIFFS
7 HAVE NOT PROVEN BY CLEAR AND CONVINCING EVIDENCE THAT
8 OVERCROWDING IS THE PRIMARY CAUSE OF THE ALLEGED
9 UNCONSTITUTIONAL DELIVERY OF MEDICAL CARE IN CALIFORNIA'S
10 PRISONS AND ARE CERTAIN THAT THIS COURT WILL FIND IN THEIR
11 FAVOR.

12 THANK YOU.

13 **JUDGE HENDERSON:** THANK YOU, COUNSEL.

14 **OPENING STATEMENT BY MS. TILLMAN**

15 **MS. TILLMAN:** MAY IT PLEASE THE COURT, COUNSEL. MY
16 NAME IS LISA TILLMAN. I REPRESENT THE DEFENDANTS IN THE COLEMAN
17 CASE.

18 THANK YOU FOR PROVIDING THE COLEMAN CASE, WITH ITS
19 DISCRETE POPULATION OF SERIOUSLY MENTALLY ILL INMATE PATIENTS OF
20 THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION,
21 WITH A SEPARATE OPPORTUNITY TO BE HEARD ON THIS IMPORTANT
22 MATTER, WHETHER THE CARE OF THE COLEMAN PLAINTIFFS, THOSE
23 INMATES WITH SERIOUS MENTAL DISORDERS, CAN OCCUR IN A
24 CONSTITUTIONALLY ADEQUATE MANNER, INDEPENDENT OF THE OVERALL
25 NUMBER OF CALIFORNIA DEPARTMENT OF CORRECTION AND REHABILITATION

1 INMATES.

2 DEFENDANTS RESPECTFULLY SUBMIT THAT SUCH
3 CONSTITUTIONALLY ADEQUATE CARE CAN OCCUR, INDEPENDENT OF THE
4 OVERALL POPULATION OF THE DEPARTMENT OF CORRECTIONS AND
5 REHABILITATION. IN OTHER WORDS, PLAINTIFFS CANNOT MEET THEIR
6 BURDEN OF PROVING BY CLEAR AND CONVINCING EVIDENCE THAT THE
7 PRIMARY CAUSE OF ANY DEFICIENCIES THAT MAY EXIST IN THE MENTAL
8 HEALTHCARE SERVICES DELIVERY SYSTEM IS THE OVERALL NUMBER OF
9 INMATES WITHIN THE DEPARTMENT OF CORRECTIONS AND REHABILITATION.

10 THE EVIDENCE WILL SHOW, AS FORMER SPECIAL MASTER
11 KEATING HIMSELF FOUND JUST A YEAR AGO, MENTALLY ILL INMATES NEED
12 AND GET SPECIALIZED MENTAL HEALTHCARE BEDS FOR THEIR TREATMENT
13 SEPARATE AND APART FROM THE GENERAL POPULATION. MENTALLY ILL
14 INMATES NEED AND GET SPECIALIZED MENTAL HEALTHCARE CLINICIANS,
15 PSYCHIATRISTS, PSYCHOLOGISTS, SOCIAL WORKERS SEPARATE AND APART
16 FROM WHAT IS PROVIDED TO THE GENERAL POPULATION OF INMATES
17 WITHIN THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND
18 REHABILITATION. AND THE MOST ACUTELY ILL OF THE MENTALLY ILL,
19 ESPECIALLY THOSE WHO ARE NOT ONLY EXTREMELY ILL BUT,
20 UNFORTUNATELY, EXTREMELY VIOLENT AND POSE SECURITY RISKS BECAUSE
21 OF THAT, THEY NEED MORE OF THOSE SPECIALIZED MENTAL HEALTHCARE
22 CLINICIANS AND SPECIALIZED MENTAL HEALTHCARE BEDS, THAT NEED IS
23 NOT CAUSED BY THE OVERALL POPULATION OF THE DEPARTMENT OF
24 CORRECTIONS AND REHABILITATION.

25 MENTAL HEALTH CLINICIANS ARE NOT SPREAD LIKE BUTTER.

1 MENTAL HEALTHCARE BEDS OFTEN LICENSED UNDER STATE REGULATIONS
2 AND ACCREDITED BY THE NATIONAL ORGANIZATION DON'T SPRING FROM
3 SIMPLY VACATED EMPTY CELLS. RATHER, THAT NEED WILL NOT BE MET,
4 EVEN WITH THE RELEASE OF A HUNDRED THOUSAND INMATES, ACCORDING
5 TO SPECIAL MASTER KEATING.

6 RATHER, A CONSTITUTIONALLY ADEQUATE SYSTEM OF MENTAL
7 HEALTHCARE IS NOT ABOUT RELEASING INMATES. IT'S ABOUT SERVING
8 THE MENTALLY ILL INMATES. THE EVIDENCE WILL SHOW THAT THE
9 MENTAL HEALTHCARE SYSTEM IS CREATED AND IS MAINTAINED BY ACTIONS
10 UNDERTAKEN BY DEFENDANTS WITH THE UNDERSTANDING THAT THEIR
11 MISSION IS TO INCLUDE TO CARE FOR MENTALLY ILL INMATES IN MENTAL
12 HEALTHCARE BEDS STAFFED BY MENTAL HEALTHCARE CLINICIANS.

13 THE SEPARATE COLEMAN CLASS IS ENTITLED TO AND
14 RECEIVES THE CORE ELEMENTS OF A CONSTITUTIONALLY ADEQUATE
15 SYSTEM. THOSE CORE ELEMENTS ARE ABOUT INCLUDING BEDS AND
16 SERVICES FOR THE MENTALLY ILL, NOT EXCLUDING THE OVERALL
17 POPULATION, AND CERTAINLY NOT EXCLUDING THE MENTALLY ILL.

18 THE COLEMAN COURT'S PUBLISHED DECISION SOME YEARS AGO
19 SPOKE OF FIVE CORE ELEMENTS: SUFFICIENT POLICIES AND PROCEDURES
20 TO ENSURE UNIFORM SCREENING AND DIAGNOSIS AND TREATMENT OF THESE
21 MENTALLY ILL INMATES; SUFFICIENT BEDS TO PROPERLY HOUSE THESE
22 INMATES; SUFFICIENT MENTAL HEALTHCARE STAFF TO PROVIDE THE
23 NECESSARY TREATMENT; SUICIDE PREVENTION PROGRAMS BECAUSE OF THE
24 HIGHER RISK OF SUICIDE; AND ADEQUATE RECORD KEEPING TO ENSURE
25 THAT THE TREATMENT WAS NOT ONLY DONE BUT RECORDED IN A MANNER TO

1 ENSURE ITS CONTINUITY AND CONSISTENCY.

2 THOSE ELEMENTS EXIST TODAY INDEPENDENT OF THE OVERALL
3 POPULATION. YOU WILL HEAR TESTIMONY FROM ROBIN DEZEMBER, WHO IS
4 THE HEAD OF THE HEALTHCARE DIVISION WITHIN THE DEPARTMENT OF
5 CORRECTIONS AND REHABILITATION, ABOUT THE FIRST ELEMENT. THE
6 SEPARATE SET OF MENTAL HEALTHCARE POLICIES NOW USED UNIFORMLY
7 THROUGHOUT 33 INSTITUTIONS IN THE STATE TO DETECT AND TREAT
8 MENTALLY ILL INMATES.

9 THE COLEMAN COURT APPROVED THIS UNIFORM SET OF
10 POLICIES CALLED "THE REVISED PROGRAM GUIDE" IN 2006. THIS
11 REVISED PROGRAM GUIDE PROVIDES FOR LEVELS OF CARE BASED ON THE
12 ACUITY PRESENTED BY THE MENTALLY ILL PATIENT.

13 THE SECOND ELEMENT, DESIGNATED BEDS, ALSO PROVIDES
14 FOR APPROPRIATE BEDS TO SERVE THE MENTALLY ILL PATIENT IN ACCORD
15 WITH THEIR ACUITY LEVEL.

16 YOU WILL HEAR ROBIN DEZEMBER, AS WELL AS CINDY
17 RADAUSKY, WHO IS WITH THE DEPARTMENT OF MENTAL HEALTH AND A
18 PARTNER IN PROVIDING CARE FOR THESE INMATES, THAT THERE IS A
19 RANGE OF BEDS PROVIDED, RANGING FROM THE LOWEST OUTPATIENT CARE
20 LEVEL OF CORRECTIONAL CLINICAL CASE MANAGEMENT SERVICES, WHERE
21 THEY ARE HOUSED WITH THE GENERAL POPULATION BECAUSE THEY ARE
22 ABLE TO BE HOUSED WITH THE GENERAL POPULATION AND STILL RECEIVE
23 ADEQUATE MENTAL HEALTHCARE, TO OTHER LEVELS OF CARE WHERE THE
24 MENTALLY ILL INMATES ARE LITERALLY HOUSED SEPARATE AND APART
25 FROM THE GENERAL POPULATION.

1 THOSE IN THE ENHANCED OUTPATIENT PROGRAM ARE HOUSED
2 SEPARATE AND APART. THOSE WHO REQUIRE IN-PATIENT HOSPITAL
3 SETTINGS LIKE INTERMEDIATE CARE, ALSO SEPARATE AND APART. NOT
4 ONLY ARE THEY SEPARATE AND APART FROM THE GENERAL POPULATION OF
5 CDCR INMATES, BUT THEY ARE PROVIDED CARE WITHIN DMH-STAFFED
6 FACILITIES AT CDCR SITES, SUCH AS WASCO PSYCHIATRIC PROGRAM,
7 SUCH AS SALINAS VALLEY PSYCHIATRIC PROGRAM, AS WELL AS MORE
8 DISTANT SITES, LIKE DEPARTMENT OF MENTAL HEALTH HOSPITALS, LIKE
9 COALINGA STATE HOSPITAL AND ATASCADERO STATE HOSPITAL.

10 CINDY RADAUSKY WILL TELL YOU THESE HOSPITALS ARE NOT
11 OVERCROWDED. THEY CANNOT BE. THEY ARE SUBJECT TO STRICT
12 LICENSURE REQUIREMENTS, STRICT ACCREDITATION STANDARDS. THERE
13 ARE NO GYMS. THERE ARE NO DAYROOMS FILLED WITH TRIPLE BUNKS IN
14 THE HOSPITAL SITES PROVIDING CARE TO THE MOST ACUTELY ILL OF THE
15 DEPARTMENT OF CORRECTIONS' MENTALLY ILL INMATES.

16 THE EVIDENCE WILL SHOW THAT DEFENDANTS ARE COMMITTED
17 TO CREATING ADDITIONAL BEDS, AS STATED IN THEIR COURT-APPROVED
18 AUGUST 2007 MENTAL HEALTH BED PLAN, A BED PLAN THAT WAS
19 SUBMITTED EVEN AFTER THE LOWER COURT GRANTED PLAINTIFFS' MOTION
20 TO CONVENE THESE PROCEEDINGS.

21 OTHER BEDS ARE UNDERWAY. THERE HAVE BEEN RECENT
22 OPENINGS OF ADDITIONAL MENTAL HEALTH BEDS AT VARIOUS SITES
23 THROUGHOUT THE STATE. YOU WILL HEAR EVIDENCE ABOUT THE IMPACT
24 OF THOSE ADDITIONAL BEDS AT THE CALIFORNIA MEDICAL FACILITY AT
25 CALIFORNIA STATE PRISON SACRAMENTO AND KERN VALLEY STATE PRISON

1 ON THE CARE PROVIDED TO MENTALLY ILL INMATES.

2 THOSE BEDS ARE STAFFED BY MENTAL HEALTH CLINICIANS.
3 THIS IS THE THIRD ELEMENT OF A CONSTITUTIONALLY ADEQUATE SYSTEM,
4 MENTAL HEALTH CLINICIANS THAT ARE LICENSED PROFESSIONALS,
5 RANGING FROM PSYCHIATRIST TO SOCIAL WORKERS.

6 THE EVIDENCE WILL SHOW THAT IN 1994 WHEN THE TRIAL
7 COURT FIRST ENTERED ITS FINDINGS AND RECOMMENDATIONS IN THIS
8 MATTER, THERE WERE BARELY 300 PROFESSIONALS PROVIDING MENTAL
9 HEALTHCARE TO INMATES. NOW THERE'S OVER 2,000.

10 THE EVIDENCE WILL SHOW THAT WITH THE BENEFIT OF
11 COURT-ORDERED PEAK PAY PACKAGES, WITH THE BENEFIT OF RECRUITMENT
12 AND RETENTION STRATEGY, BOTH DEPARTMENT OF CORRECTIONS AND
13 DEPARTMENT OF MENTAL HEALTH HAVE BENEFITED BY INCREASED STAFFING
14 OF THEIR MENTAL HEALTHCARE PROGRAMS AND, IN OTHER WORDS,
15 DECREASED VACANCIES IN THEIR AVAILABLE POSITIONS.

16 THE FOURTH ELEMENT, SUICIDE PREVENTION PROGRAMS, HAVE
17 LONG EXISTED WITHIN THE CALIFORNIA DEPARTMENT OF CORRECTIONS.
18 THE FINDINGS AND RECOMMENDATIONS FOUND IN 1994, THE DESIGN OF
19 THE SUICIDE PREVENTION PROGRAM WAS ADEQUATE. IT WAS SIMPLY THEN
20 ALL ABOUT IMPLEMENTATION.

21 NOT ONLY HAS THE DESIGN REMAINED WITHIN THE
22 DEPARTMENT OF CORRECTIONS, BUT IT'S NOW BEEN EXPANDED IN LIGHT
23 OF A COLLABORATIVE WORK, WITH NOT ONLY THE SPECIAL MASTER'S TEAM
24 AND PLAINTIFF COUNSEL'S, BUT MULTI-DISCIPLINARY TEAMS WITHIN THE
25 DEPARTMENT OF CORRECTIONS, BRINGING TOGETHER NOT ONLY

1 CORRECTIONAL OFFICERS AND CLINICIANS, BUT ALSO FACILITY MANAGERS
2 AND PLANT OPERATIONS TO ENSURE A SAFE ENVIRONMENT FOR ALL
3 INMATES, BUT PARTICULARLY THOSE MOST AT RISK FOR SUICIDE.

4 THERE'S NO QUESTION THAT SUICIDE IS MULTIFACETED IN
5 ITS CAUSES AND OFTEN UNKNOWABLE IN NATURE, BUT THE EVIDENCE WILL
6 SHOW THAT THE DEFENDANTS HAVE UNDERTAKEN ACTIONS IN COURT,
7 PROVED PLANS TO REDUCE THAT RISK.

8 THE LAST AND FIFTH ELEMENT IS RECORDKEEPING OR, AS
9 THEY NOW SAY IN THE NEW MILLENNIUM, INFORMATION TECHNOLOGY.

10 THERE WILL BE EVIDENCE SHOWING THAT THE MENTAL HEALTH
11 TRACKING SYSTEM HAS EXISTED FOR MANY YEARS. IT'S NOT THE LATEST
12 GREATEST SYSTEM. IT IS A SYSTEM THAT WORKS. IT ENABLES
13 CLINICIANS TO LITERALLY TRACK THOSE INMATES IN NEED OF MENTAL
14 HEALTHCARE AND WHAT SERVICES HAVE BEEN PROVIDED TO THOSE INMATES
15 IN NEED OF MENTAL HEALTHCARE.

16 DEFENDANTS ARE AWARE OF THE NEED TO ENHANCE THAT
17 SYSTEM WITH THE LATEST IN INFORMATION TECHNOLOGY AND HAVE PLANS
18 TO ENGAGE IN THAT DEVELOPMENT IN COLLABORATION WITH THE RECEIVER
19 AND IN COMPLIANCE WITH THE PLATA AND COLEMAN AND ARMSTRONG AND
20 PEREZ COURTS' ORDER TO COORDINATE THE DEVELOPMENT OF THAT
21 PROJECT. YOU WILL HEAR EVIDENCE ABOUT THOSE PLANS.

22 ANY DEFICIENCIES IN MEETING THESE FIVE CORE ELEMENTS
23 OF A CONSTITUTIONALLY ADEQUATE SYSTEM ARISE NOT FROM THE SIZE OF
24 THE OVERALL POPULATION. AFTER ALL, THESE ELEMENTS ARE NOT ABOUT
25 SERVING THE OVERALL POPULATION. THEY ARE ABOUT SERVING THE

1 MENTAL HEALTH POPULATION, A DISCRETE PART OF THE DEPARTMENT OF
2 CORRECTIONS AND REHABILITATION.

3 YOU WILL HEAR EVIDENCE THAT THAT SERVICE HAS BEEN
4 INCLUSIVE, THE DEFENDANTS HAVE CONSISTENTLY ENCOURAGED MENTAL
5 HEALTHCARE CLINICIANS, EVEN CORRECTIONAL OFFICERS, EVEN INMATES
6 THEMSELVES TO REFER TO THE MENTAL HEALTH SERVICE DELIVERY SYSTEM
7 SHOULD THERE BE A DEMONSTRATED NEED OR APPARENT SYMPTOM OF
8 MENTAL HEALTH ISSUES.

9 YOU WILL HEAR EVIDENCE THAT THE NUMBER OF IDENTIFIED
10 MENTALLY ILL INMATES HAS INCREASED FROM THE 7.9 PERCENT FIGURE
11 AT TRIAL IN 1994 TO NOW NEARLY 20 PERCENT OF THE OVERALL
12 POPULATION OF THE DEPARTMENT OF CORRECTIONS AND REHABILITATION
13 IS IDENTIFIED AS RECEIVING MENTAL HEALTHCARE SERVICES.

14 THE EVIDENCE WILL SHOW THAT THAT SERVICE HAS BEEN
15 PROVIDED IN AN APPROPRIATE FASHION TO AT LEAST SOME 60 PERCENT
16 OF THE PATIENTS WITH MENTAL HEALTHCARE NEEDS, AS SPECIAL MASTER
17 KEATING HIMSELF REPORTED IN HIS MAY 2007 REPORT TO THE COLEMAN
18 COURT.

19 THOSE NOT GETTING THE CARE THEY NEED ARE, ACCORDING
20 TO THE SPECIAL MASTER'S REPORT, THOSE WHO ARE MENTALLY ILL WHO
21 NEED TO BE HOUSED SEPARATELY AND WHO NEED TO BE HOUSED NOT ONLY
22 SEPARATELY, BUT IN HIGH SECURITY FACILITIES. THESE ARE THE MOST
23 ACUTE OF THE ACUTELY ILL AND THE MOST VIOLENT OF THOSE. THEY
24 REQUIRE NOT ONLY HOSPITAL SETTINGS BUT HOSPITAL SETTINGS WITH
25 HIGH SECURITY ARCHITECTURE, HIGH SECURITY DESIGN. DEFENDANTS

1 ARE DEEPLY AWARE THAT THOSE BEDS AT THIS POINT ARE IN THE
2 PLANNING STAGE, BUT IT MUST BE NOTED THAT THEY ARE IN THE
3 PLANNING STAGE.

4 AS SPECIAL MASTER KEATING SAID, THERE ARE MULTIPLE
5 FACTORS AT PLAY IN LOOKING AT THE MENTAL HEALTH SERVICES
6 DELIVERY SYSTEM. WE CAN TALK ABOUT RESOURCES. WE CAN TALK
7 ABOUT MANAGEABLE SKILL IN USING THOSE RESOURCES. WE CAN TALK
8 ABOUT THE DESIGN OF PRISONS AND WE CAN TALK ABOUT EACH OF THOSE
9 FACTORS. BUT NEVER ONCE DID HE, OR EVEN THE TRIAL COURT, SAY IT
10 WAS SIMPLE, IT WAS AS SIMPLE AS REDUCING THE OVERALL POPULATION
11 OF THE DEPARTMENT OF CORRECTIONS AND REHABILITATION. RATHER,
12 IT'S ABOUT PROVIDING ENOUGH BEDS, ENOUGH CLINICIANS TO PROVIDE
13 APPROPRIATE MENTAL HEALTHCARE TO THE MENTALLY ILL.

14 **THE CLERK:** FIVE MINUTES, COUNSEL.

15 **MS. TILLMAN:** THE EVIDENCE WILL SHOW THERE IS NO
16 NEXUS BETWEEN THE OVERALL POPULATION OF THE DEPARTMENT OF
17 CORRECTIONS AND THE MENTAL HEALTHCARE OF ITS MENTALLY ILL
18 PATIENTS. THE EVIDENCE WILL SHOW THAT THE MENTAL HEALTHCARE
19 SYSTEM IS AS INDEPENDENT OF THE OVERALL NUMBER OF CDCR INMATES.
20 INDEED, THE SUCCESS, THE CONSTITUTIONAL ADEQUACY OF THE MENTAL
21 HEALTHCARE SYSTEM RESTS NOT ON THE NUMBER OF INMATES WITHIN THE
22 DEPARTMENT OF CORRECTIONS. IT IS INDEPENDENT OF THAT CENSUS.

23 RATHER, IT RESTS ON THE CONTINUANCE OF ITS MISSION TO
24 INCLUDE MENTALLY ILL INMATES WITHIN ITS SYSTEM TO PROVIDE THE
25 CARE AND TREATMENT NECESSARY FOR THEM BY PROVIDING SUFFICIENT

1 CLINICIANS AND SUFFICIENT BEDS.

2 IT'S NOT ABOUT THE RELEASE OF ANY INMATES, AND
3 CERTAINLY IT'S NOT ABOUT THE RELEASE OF THE MENTALLY ILL
4 INMATES. IT'S ABOUT PROVIDING BEDS, PROVIDING THOSE SPECIALIZED
5 BEDS, THOSE SPECIALIZED MENTAL HEALTH CLINICIANS TO CARE FOR THE
6 MENTALLY ILL INMATES.

7 DEFENDANTS RESPECTFULLY THANK THIS COURT FOR HEARING
8 THE COLEMAN DEFENDANTS' SEPARATE OPENING STATEMENT.

9 **OPENING STATEMENT BY MR. KAUFHOLD**

10 **MR. KAUFHOLD:** GOOD MORNING, MAY IT PLEASE THE COURT.
11 MY NAME IS STEVE KAUFHOLD FROM AKIN, GUMP, STRAUSS, HAUER &
12 FELD. I AM COUNSEL FOR THE LEGISLATIVE INTERVENORS AND SPEAKING
13 THIS MORNING ON BEHALF OF THE DEFENDANT INTERVENORS IN THIS
14 ACTION THAT OPPOSE THE ISSUANCE OF A PRISONER RELEASE ORDER.

15 WE APPRECIATE HAVING THE OPPORTUNITY TO PARTICIPATE
16 IN THIS PHASE OF THE LITIGATION AND TO MAKE HEARD THE VOICES OF
17 THE SCORES OF INDIVIDUAL LAW ENFORCEMENT PERSONNEL, DISTRICT
18 ATTORNEYS, COUNTY OFFICIALS AND STATE LEGISLATORS THAT WE'RE
19 PRIVILEGED TO REPRESENT.

20 IN ORDER TO PROCEED BEYOND THIS FIRST PHASE OF THE
21 BIFURCATED PROCEEDINGS, THE PLAINTIFFS MUST DEMONSTRATE BY CLEAR
22 AND CONVINCING EVIDENCE THAT, QUOTE, "CROWDING IS THE PRIMARY
23 CAUSE OF THE VIOLATION OF A FEDERAL RIGHT," END QUOTE, AND THE
24 PLAINTIFF CLASSES MUST MEET THE BURDEN SEPARATELY IN THE PLATA
25 AND COLEMAN CASES.

1 IN ADDITION, THE LAW ENFORCEMENT, DISTRICT ATTORNEY,
2 AND LEGISLATIVE INTERVENORS ARE PARTICIPATING IN THIS PHASE IN
3 ORDER TO EMPHASIZE TWO KEY ISSUES.

4 FIRST, FROM THE EVIDENCE THAT IS PROVIDED -- HAS BEEN
5 PROVIDED TO DATE BY THE PLAINTIFF CLASSES, THE PLAINTIFFS WILL
6 NOT BE ABLE TO MAKE THE REQUISITE SHOWING THAT CROWDING IS THE
7 PRIMARY CAUSE OF ANY VIOLATION OF THEIR FEDERAL RIGHTS. THIS IS
8 PARTICULARLY TRUE IN LIGHT OF THE TESTIMONY OF PLAINTIFFS' OWN
9 EXPERTS DURING THEIR DEPOSITIONS AND THE HIGH CLEAR AND
10 CONVINCING STANDARD AND BURDEN OF PROOF THAT THEY MUST SATISFY.

11 SECOND, THE PLAINTIFF CLASSES HAVE DISCLAIMED THE
12 NEED TO DEMONSTRATE THAT THERE ARE ANY CURRENT CONSTITUTIONAL
13 VIOLATIONS OF THEIR FEDERAL RIGHTS, AND OUR UNDERSTANDING IS
14 THAT THE COURT HAS HELD THAT NO SUCH EVIDENCE WILL BE PRESENTED
15 IN THIS PHASE OF THE PROCEEDING. WE RESPECTFULLY BELIEVE THIS
16 RULING IS CONTRARY TO THE TERMS OF THE PRISON LITIGATION REFORM
17 ACT ACCORDINGLY --

18 **JUDGE KARLTON:** SIR, I AM THE VERY SOURCE OF
19 PATIENCE. IF YOU BELIEVE THAT, I'LL SELL YOU A PIECE OF THE
20 BROOKLYN BRIDGE REALLY CHEAP. TWICE THIS COURT HAS SAID WE WILL
21 NOT RECEIVE THAT EVIDENCE. YOU HAVE MADE AS CLEAR A RECORD AS
22 YOU CAN. PLEASE DON'T WASTE OUR TIME.

23 **MR. KAUFHOLD:** I AM NOT TRYING TO WASTE YOUR TIME,
24 YOUR HONOR.

25 **JUDGE KARLTON:** BUT YOU ARE.

1 **JUDGE HENDERSON:** MOVE ON.

2 **JUDGE KARLTON:** MOVE ON.

3 **JUDGE HENDERSON:** YOU PRESERVED THE RECORD. DON'T
4 MAKE IT IN YOUR OPENING STATEMENT. THE RECORD IS CLEAR YOU
5 DON'T LIKE THAT RULING.

6 **MR. KAUFHOLD:** AND SINCE WE --

7 **JUDGE HENDERSON:** MOVE ON, COUNSEL.

8 **MR. KAUFHOLD:** YES, YOUR HONOR. SINCE WE HAD NOT
9 RAISED THAT, I JUST WANTED TO MAKE THAT CLEAR.

10 **JUDGE KARLTON:** MOVE ON, COUNSEL. I THINK YOU MUST
11 HAVE SOME TROUBLE UNDERSTANDING. MOVE ON.

12 **MR. KAUFHOLD:** THAT WAS MY SECOND AND FINAL POINT,
13 YOUR HONOR. THANK YOU FOR YOUR CONSIDERATION.

14 **JUDGE HENDERSON:** OKAY. I THINK WE WILL TAKE A
15 15-MINUTE RECESS BEFORE WE PRESENT OUR FIRST WITNESS AND --

16 **JUDGE KARLTON:** SIR, WERE YOU SPEAKING FOR THE DA AND
17 LAW ENFORCEMENT AS WELL?

18 **MR. KAUFHOLD:** YES, YOUR HONOR, I WAS, BUT NOT FOR
19 THE COUNTIES.

20 **JUDGE KARLTON:** BUT NOT FOR THE COUNTIES.

21 **MS. KECK:** MY NAME IS ANNE KECK FOR SONOMA COUNTY
22 INTERVENORS.

23 **JUDGE KARLTON:** I'M HAVING TROUBLE HEARING YOU, ANNE.

24 **MS. KECK:** MAY IT PLEASE THE COURT, THE COUNTIES AND
25 SONOMA COUNTY INTERVENORS ARE NOT GOING TO PRESENT A SEPARATE

1 STATEMENT, AS OUR EVIDENCE IS GOING TO BE PRESENTED IN PHASE
2 TWO.

3 HOWEVER, I WOULD LIKE TO ASK IF THE COURT WOULD
4 ENTERTAIN A QUESTION TO CLARIFY A RULING OF THIS MORNING, THAT
5 IS, WITH RESPECT TO THE DEPOSITION EXCERPTS, THE COURT STATED
6 THE DEPOSITION EXCERPTS THAT WERE IDENTIFIED BY PLAINTIFFS OF
7 ROBIN DEZEMBER WOULD BE ALLOWED, DID THE COURT IMPLIEDLY,
8 THEREFORE, REJECT ALL OF THE OTHER PROPOSED DEPOSITIONS
9 EXCERPTS, OR WOULD THE COURT HOLD ITS RULING IN ABEYANCE ON
10 THOSE OTHER EXCERPTS REQUESTED TO BE ENTERED BY THE PARTIES?

11 **JUDGE HENDERSON:** WE ARE GOING TO HOLD THE RULING IN
12 ABEYANCE, AND WE ARE GOING TO COME UP WITH A STRATEGY, THAT WE
13 APPARENTLY HAVE NOT YET, SO WE WILL RULE ON ALL OF THESE THINGS
14 IN THE MORNING BEFORE WE START SO THAT WE DON'T DO IT PIECEMEAL.

15 ONE OF THE THINGS WE'RE GOING TO BE ASKING, IN
16 ADDITION TO IDENTIFYING THE WITNESSES EACH DAY, IS THE EXHIBITS
17 WITH THAT WITNESS, AND WE'LL CLEAR IT UP BEFORE WE START AND NOT
18 DO IT EVERY TIME WE GET TO A BUMP IN THE ROAD.

19 **MS. KECK:** THANK YOU, YOUR HONOR. THE REASON I RAISE
20 THIS POINT, THIS IS THE ONLY DAY I HOPE TO GRACE THIS COURT WITH
21 MY PRESENCE, AS SONOMA COUNTY INTERVENORS ARE NOT GOING TO BE
22 ENGAGED IN THE PRESENTATION OF EVIDENCE. HOWEVER, WE DID SUBMIT
23 AN OBJECTION TO THE DEPO EXCERPTS OF DAVID BENNETT THAT
24 PLAINTIFFS HAD REQUESTED TO ADMIT AS EVIDENCE IN THEIR CASE IN
25 CHIEF.

1 SO MY QUESTION WAS WITH RESPECT TO WHETHER OR NOT THE
2 COURT HAD IMPLIEDLY REJECTED THEIR REQUESTED EXCERPTS OR WHETHER
3 THE COURT WAS GOING TO RULE ON THAT IN THE FUTURE, AND, IF SO,
4 IF I COULD HAVE SOME NOTICE OF THAT, OR IF THE COURT NEEDED
5 FURTHER INFORMATION FROM ME. THAT IS ALL, AS I WILL NOT BE HERE
6 ON A DAILY BASIS. HOWEVER, THERE WILL BE OTHER INTERVENOR
7 COUNSEL HERE WHO WOULD BE, I'M SURE, HAPPY TO PROVIDE ME WITH
8 THAT INFORMATION.

9 **JUDGE HENDERSON:** WE WILL BE RULING ON THAT IN THE
10 FUTURE, AND WE WILL BE DOING THAT AS QUICKLY AS WE CAN WITH AS
11 MUCH ADVANCE NOTICE.

12 **MS. KECK:** THANK YOU VERY MUCH, YOUR HONORS.

13 **JUDGE HENDERSON:** OKAY. COURT IS IN RECESS FOR 15
14 MINUTES.

15 (RECESS TAKEN.)

16 **THE CLERK:** COME TO ORDER. COURT IS BACK IN SESSION.

17 **THE CLERK:** PLEASE BE SEATED.

18 **MS. WHELAN:** GOOD MORNING, YOUR HONORS. AT THIS TIME
19 PLAINTIFFS CALL DR. PABLO STEWART AS THEIR WITNESS ON BEHALF OF
20 THE COLEMAN AND PLATA PLAINTIFFS.

21 **MR. MELLO:** MAY WE BE HEARD BRIEFLY? YOUR HONORS
22 WERE SPEAKING ABOUT SOME HOUSEKEEPING MATTERS. AND ONE OF THE
23 ISSUES, I BELIEVE, ANOTHER ONE OF THOSE MATTERS WERE THE
24 OBJECTIONS TO THE EXPERT REPORTS.

25 AND I JUST WANTED TO KNOW IF YOU WERE GOING TO RULE

1 BEFORE THEY TESTIFIED OR AFTER?

2 THANK YOU.

3 **JUDGE KARLTON:** THAT'S IMPORTANT.

4 **JUDGE HENDERSON:** OKAY. WHAT WE'VE DECIDED,
5 COUNSEL -- AND THIS WILL GO FOR THE REST OF THE TRIAL --
6 OBJECTIONS WITH REGARD TO WITNESSES, EXHIBITS AND EXPERTS WILL
7 BE PRESERVED.

8 MAKE YOUR OBJECTIONS. THEY WILL BE PRESERVED UNTIL
9 THE END OF THE TRIAL. WE CAN THINK OF NO OTHER WAY, GIVEN THE
10 EXTRAORDINARY CIRCUMSTANCES OF VOLUME THAT YOU HAD TO DEAL WITH.

11 ORDINARILY, WE WOULD HAVE LIKED TO HAVE HAD THAT
12 RESOLVED AT THE PRETRIAL.

13 SO OBJECTIONS TO WITNESSES, EXPERTS AND EXHIBITS WILL
14 BE MADE, AND THEN PRESERVED THROUGHOUT THE TRIAL.

15 **JUDGE KARLTON:** LET'S BE CLEAR. ANYTHING THAT YOU'VE
16 ALREADY EXPRESSED YOU DON'T HAVE TO REEXPRESS TO KEEP THE
17 OBJECTION ALIVE. ALL OF THOSE ARE JUST SIMPLY PRESERVED. AND WE
18 WILL TRY TO FIGURE OUT WHAT TO DO AT THE END OF THE TRIAL.

19 AND, COUNSEL, I APOLOGIZE. I DID NOT GET YOUR NAME.

20 **MS. WHELAN:** SORRY. I DON'T THINK I SAID IT. I'M
21 AMY WHELAN. I'M COUNSEL FOR THE PLAINTIFF CLASS. AND AT THIS
22 TIME WE CALL DR. PABLO STEWART.

23 **JUDGE HENDERSON:** PLEASE STEP FORWARD AND BE SWORN
24 IN, SIR.

25 **THE CLERK:** PLEASE RAISE YOUR RIGHT HAND.

1 (THEREUPON, THE WITNESS WAS SWORN.)

2 **THE CLERK:** HAVE A SEAT. SPEAK INTO THE MICROPHONE
3 AND STATE AND SPELL YOUR FULL NAME FOR THE RECORD.

4 **THE WITNESS:** MY NAME IS PABLO STEWART. P-A-L-B-O
5 S-T-E-W-A-R-T.

6 **MS. WHELAN:** YOUR HONORS, DR. STEWART'S
7 QUALIFICATIONS ARE SET FORTH IN PARAGRAPHS 1 THROUGH 19 OF HIS
8 NOVEMBER 9TH, 2007 REPORT, AND IN HIS CV, WHICH IS APPENDED A TO
9 BOTH HIS INITIAL NOVEMBER 9, 2007 REPORT AND HIS AUGUST 15, 2008
10 SUPPLEMENTAL REPORT.

11 WE OFFER BOTH OF HIS REPORTS INTO EVIDENCE AT THIS
12 TIME. AND THEY APPEAR AS COLEMAN DOCKET NUMBERS 3217 AND 3221
13 THROUGH 3221-2.

14 **MS. TILLMAN:** YOUR HONORS, LISA TILLMAN ON BEHALF OF
15 THE COLEMAN DEFENDANTS. WE STATE THE OBJECTIONS WE PREVIOUSLY
16 FILED WITH THIS COURT IN REGARDS TO THOSE EXPERT REPORTS.

17 **JUDGE KARLTON:** THAT'S FINE. YOU REALLY DON'T HAVE
18 TO DO THAT ANYMORE. IF YOU STATED IT, WE'RE AWARE.

19 WE WILL BECOME AWARE OF IT, IF WE HADN'T, WHEN WE SIT
20 DOWN AND TRY TO RESOLVE THIS CASE.

21 THEREUPON --

22 **DR. PABLO STEWART**

23 WAS CALLED AS A WITNESS ON BEHALF OF THE PLAINTIFFS, AND AFTER
24 HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS
25 FOLLOWS:

DIRECT EXAMINATION

BY MS. WHELAN

Q. DR. STEWART, YOUR REPORTS DETAIL YOUR EXPERIENCE, BUT COULD YOU BRIEFLY EXPLAIN YOUR EXPERIENCE IN PRISON PSYCHIATRY AND MEDICAL CARE?

A. I'M A PSYCHIATRIST CURRENTLY EMPLOYED AS A CLINICAL PROFESSOR OF PSYCHIATRY, UNIVERSITY OF CALIFORNIA, SAN FRANCISCO.

I'M ALSO CURRENTLY ACTING AS A PRIVATE PSYCHIATRIC CONSULTANT. MY PARTICULAR EXPERIENCE AROUND PRISON MENTAL HEALTH AND PRISON MEDICAL CARE BEGAN WHEN I FIRST COMPLETED MY FORMAL PSYCHIATRIC TRAINING AT UNIVERSITY OF CALIFORNIA IN 1986, WHERE MY FIRST JOB WAS RUNNING THE INPATIENT JAIL PSYCHIATRIC UNIT AT THE SAN FRANCISCO GENERAL HOSPITAL.

THIS WAS THE HIGH SECURITY INPATIENT UNIT FOR ALL OF THE INMATES THAT WERE HOUSED IN VARIOUS JAILS WITHIN THE CITY AND COUNTY OF SAN FRANCISCO.

THAT WAS A POSITION THAT I HELD FOR A LITTLE OVER FOUR YEARS. DURING THE PERIOD OF TIME, APPROXIMATELY 18 MONTHS DURING THAT FOUR YEARS, I WAS ALSO THE DIRECTOR OF FORENSIC PSYCHIATRIC SERVICES FOR THE CITY AND COUNTY OF SAN FRANCISCO.

AND IN THAT CAPACITY I WAS RESPONSIBLE FOR OVERSEEING THE PROVISION OF PSYCHIATRIC CARE WITHIN THE JAILS IN THE CITY AND COUNTY OF SAN FRANCISCO, IN ADDITION TO SUPERVISING THE PRISON, THE PSYCHIATRIC UNITS IN THE HOSPITAL.

1 I ALSO HAVE ADDITIONAL EXPERIENCE AS A
2 COURT-APPOINTED MEDICAL AND PSYCHIATRIC EXPERT IN THE GATES
3 VERSUS DEUKMEJIAN MATTER, WHICH INVOLVED APPROPRIATE PSYCHIATRIC
4 CARE AT THE CALIFORNIA MEDICAL FACILITY. I WAS ONE OF THE
5 COURT-APPOINTED PSYCHIATRIC EXPERTS DURING THE PERIOD OF 1990
6 UNTIL APPROXIMATELY 2000.

7 I ALSO HAVE EXPERIENCE IN THE MADRID V. GOMEZ CONSENT
8 DECREE WHERE I WAS ONE OF THE PSYCHIATRIC TEAM WHO EVALUATED
9 CONDITIONS AT PELICAN BAY STATE PRISON.

10 IN ADDITION TO THAT, I HAVE ACTED AS PSYCHIATRIC
11 EXPERT FOR THE U.S. DEPARTMENT OF JUSTICE IN MONITORING THE
12 CONDITIONS OF JUVENILE JUSTICE SYSTEM IN THE STATE OF GEORGIA.
13 I DID THAT FOR APPROXIMATELY SIX YEARS, AS WELL AS MONITORING
14 JUVENILE JUSTICE SYSTEMS FOR THE STATE OF CALIFORNIA AND THE
15 STATE OF MICHIGAN.

16 **MS. WHELAN:** PLAINTIFFS OFFER DR. STEWART AS AN
17 EXPERT ON PRISON PSYCHIATRY AND PRISON MEDICAL CARE.

18 **JUDGE HENDERSON:** COURT FINDS HIM SO QUALIFIED.

19 **BY MS. WHELAN**

20 **Q.** DR. STEWART, YOU PRESENT SEVERAL OPINIONS IN YOUR REPORTS.
21 BUT BEFORE I GET TO THE SUBSTANCE OF THOSE, COULD YOU DESCRIBE
22 BRIEFLY WHAT YOU DID IN ORDER TO REACH YOUR OPINIONS IN THIS
23 CASE?

24 **A.** IN ORDER TO ARRIVE AT MY OPINIONS IN THIS MATTER, I DID A
25 VARIETY OF THINGS. I REVIEWED VOLUMINOUS MATERIALS THAT INVOLVED

1 SPECIAL MASTER REPORTS, REPORTS FROM THE RECEIVER. I ALSO
2 VIEWED A VARIETY OF COURT DOCKETS, THE PROGRAM GUIDE, VARIOUS
3 AND NUMEROUS DOCUMENTS REGARDING PSYCHIATRIC CARE WITHIN THE
4 CALIFORNIA DEPARTMENT OF CORRECTIONS.

5 IN ADDITION, I DID SIX TOURS OF VARIOUS PRISONS IN
6 THE STATE OF CALIFORNIA, A TOTAL OF FIVE PRISONS, IN THAT I WENT
7 TO THE SALINAS VALLEY STATE PRISON TWICE. MY FIRST SET OF TOURS
8 OCCURRED IN OCTOBER AND NOVEMBER OF 2007 WHERE I TOURED THE DVI
9 RECEPTION CENTER. I ALSO LOOKED AT THE SALINAS VALLEY STATE
10 PRISON AS WELL AS THE SOLANO STATE PRISON.

11 AND MY FOLLOW-UP SET OF TOURS OCCURRED IN JULY AND
12 AUGUST OF 2008, WHERE I WENT BACK AND REVISITED SALINAS VALLEY
13 STATE PRISON. I ALSO REVISITED THE CALIFORNIA MEDICAL FACILITY
14 AS WELL AS THE MULE CREEK STATE PRISON.

15 DURING THE COURSE OF THESE TOURS, THE TYPICAL DAY, IF
16 YOU WILL, OF MY TOURS WERE WE BEGAN WITH A MORNING MEETING OF
17 BOTH PRISON OFFICIALS, HEALTH STAFF, MENTAL HEALTH STAFF,
18 REPRESENTATIVES FROM CUSTODY STAFF, AND WE WERE PRESENTED AN
19 OVERVIEW OF WHAT THE PRISON'S MISSION WAS, THE TYPE OF PRISONER,
20 ET CETERA, THE TYPE OF CARE.

21 WE WERE GIVEN REVIEWS, GIVEN PRESENTATIONS ON
22 STAFFING, ON SECURITY ISSUES, ON VARIOUS ISSUES. AND I WAS ALSO
23 ABLE TO ASK QUESTIONS OF THE STAFF AT THESE MORNING MEETINGS.

24 AFTER THESE MEETINGS, I PROCEEDED ON A TOUR OF THE
25 FACILITY, AND I LOOKED AT THE VARIOUS HOUSING UNITS WHERE

1 COLEMAN CLASS MEMBERS WERE HOUSED AND ALSO HOUSING UNITS WHERE
2 COLEMAN CLASS MEMBERS WERE NOT HOUSED.

3 DURING THE COURSE OF THESE -- OF MY WALKING PORTION
4 OF THE TOUR, I WAS ABLE TO SPEAK WITH A VARIETY OF CUSTODY
5 STAFF, AS WELL AS CLINICAL STAFF, ASKING THEM VERY PARTICULAR
6 QUESTIONS ON THE PROVISION OF MENTAL HEALTHCARE. AND ALSO
7 DURING THESE WALKING TOURS I HAD THE OPPORTUNITY TO CONDUCT --
8 AND, AGAIN, THIS IS OVER THE COURSE OF ALL OF MY TOURS --
9 APPROXIMATELY 60, WHAT I'LL DESCRIBE AS FORMAL INTERVIEWS, WHERE
10 I HAD PRIVATE INTERVIEWS WITH VARIOUS MEMBERS OF THE COLEMAN
11 CLASS. AND THOSE PEOPLE I ALSO HAD THE OPPORTUNITY TO REVIEW
12 THEIR UNIT HEALTH RECORD, AND, YOU KNOW, TO REVIEW THEIR MEDICAL
13 CARE AND PSYCHIATRIC CARE.

14 IN THE ADDITION TO THESE FORMAL INTERVIEWS, WHICH WAS
15 APPROXIMATELY 60 OVER THE COURSE OF THESE SIX PRISONS THAT I
16 VISITED, I HAD AN OPPORTUNITY TO SPEAK WITH AT LEAST 100
17 INMATES, SOME OF THEM IN THE COLEMAN CLASS, SOME OF THEM NOT IN
18 THE COLEMAN CLASS.

19 AND THESE WERE I WOULD DESCRIBE AS VERY INFORMAL. I
20 WOULD SEE PEOPLE WAITING IN THE PILL LINE, AND I WOULD TALK WITH
21 THEM.

22 I WOULD GO TO VARIOUS HOUSING UNITS AND SPEAK WITH
23 VARIOUS MEMBERS OF THE COLEMAN CLASS. AND AGAIN, THAT TOTALED TO
24 AROUND 100.

25 Q. YOU WERE ASKED TO FORM AN OPINION AS TO WHETHER OVERCROWDING

1 IN THE CALIFORNIA PRISON SYSTEM IS THE PRIMARY CAUSE OF
2 CONSTITUTIONAL VIOLATIONS IN THE DELIVERY OF MEDICAL AND MENTAL
3 HEALTHCARE.

4 WHAT DID YOU CONCLUDE?

5 **A.** I CONCLUDED THAT OVERCROWDING WAS THE PRIMARY CAUSE OF THE
6 ONGOING CONSTITUTIONAL VIOLATIONS.

7 **Q.** CAN YOU EXPLAIN WHY YOU REACHED THAT CONCLUSION?

8 **A.** A VARIETY OF REASONS THAT I USED TO REACH THIS -- THAT
9 OPINION. I'M VERY AWARE THAT THE COLEMAN CLASS HAS HAD THE
10 ABILITY OF BEING MONITORED BY THE COLEMAN COURT FOR A NUMBER OF
11 YEARS. I BELIEVE IT BEGAN AROUND 1994, 1995.

12 **UNIDENTIFIED SPEAKER:** YOUR HONOR, WE CAN'T HEAR THE
13 WITNESS, IF YOU COULD ASK HIM TO SPEAK UP.

14 **JUDGE KARLTON:** CAN YOU SPEAK UP? I MUST CONFESS
15 THERE'S A LOT OF ECHO, SO IT'S HARD FOR ME TO FULLY HEAR.

16 **THE WITNESS:** YOUR HONOR, I'M SORRY. IS THIS BETTER
17 HERE?

18 I'M RARELY ACCUSED OF BEING SOFT SPOKEN, SO I WAS
19 TAKEN A LITTLE ABACK BY THAT.

20 GETTING BACK TO WHAT I -- WHY I FELT THAT THE
21 OVERCROWDING WAS THE PRIMARY CAUSE OF THE ONGOING CONSTITUTIONAL
22 VIOLATIONS IS THAT BASED ON MY EXPERIENCE AS BEING A
23 COURT-APPOINTED MONITOR DURING A FEDERAL OVERSIGHT OF AN
24 INSTITUTION REGARDING MENTAL HEALTHCARE, IT'S REMARKABLE TO ME
25 THAT AFTER OVER 10 YEARS OF VERY CLOSE MONITORING AND HUNDREDS

1 OF THOUSANDS OF HOURS OF CONSULTATION ON THE PART OF A GROUP OF
2 NATIONALLY-RECOGNIZED PSYCHIATRIC PRISON EXPERTS THAT THESE
3 CONDITIONS PERSIST AFTER THIS CLOSE SCRUTINY OVER ALL THESE MANY
4 YEARS.

5 THAT WAS ONE THING THAT I NOTED. ANOTHER ISSUE IS
6 THAT THE SPECIAL MASTER, I BELIEVE WAS MASTER KEATING AT THE
7 TIME, NOTED THAT POPULATION PRESSURES THAT HAVE OCCURRED
8 MID-TO-LATTER PART OF THIS DECADE HAVE UNDERMINED -- HAD
9 UNDERMINED PROGRESS THAT DEFENDANTS WERE MAKING TOWARDS
10 ADDRESSING THEIR ACKNOWLEDGED DIFFICULTIES AND PROBLEMS IN
11 PROVIDING CONSTITUTIONALLY-ADEQUATE PSYCHIATRIC CARE.

12 ANOTHER POINT THAT I THINK IS IMPORTANT TO REMEMBER
13 IS THAT THE ACTUAL COLEMAN CLASS -- AND LOOKING AT A PERIOD FROM
14 2003 TO 2007, THE COLEMAN CLASS ITSELF HAS INCREASED AT A MUCH
15 GREATER RATE THAN THE OVERALL POPULATION OF CDCR. DURING THE
16 TIME FRAME, AGAIN, APPROXIMATELY, I BELIEVE, JANUARY, 2003, TO
17 JULY 2007, THE OVERALL CDC POPULATION INCREASED AROUND 8 TO
18 ALMOST 9 PERCENT. DURING THE SAME TIME FRAME COLEMAN CLASS
19 MEMBERS HAVE INCREASED OVER 30 PERCENT.

20 AND, IN FACT, BETWEEN MY FIRST -- BETWEEN MY FIRST
21 TOURS, WHICH WERE IN OCTOBER, NOVEMBER, OF 2007, AND MY SECOND
22 SET OF TOURS, JULY AND AUGUST, 2008, THE ACTUAL POPULATION OF
23 THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION
24 DECREASED.

25 IT DECREASED BY APPROXIMATELY 6,000 INMATES. DURING

1 THIS SAME TIME FRAME, THE NUMBER OF THE COLEMAN CLASS MEMBERS
2 INCREASED BY 1996 PEOPLE. EVEN WHEN THERE WAS A SLIGHT
3 POPULATION DIP, THE COLEMAN CLASS CONTINUED TO GROW.

4 AND, AGAIN, I ATTRIBUTE THIS DIRECTLY TO THE
5 OVERCROWDING CONDITIONS THAT EXIST.

6 AND, FINALLY, THE BASIS, THE LAST BASIS OF THIS
7 OPINION IS THE FACT THAT THE OVERCROWDING CONDITIONS
8 THEMSELVES -- AND I WOULD USED THE WORD "OVERWHELMING"
9 OVERCROWDING CONDITIONS THEMSELVES CREATE SITUATIONS THAT
10 CONTRIBUTE TO THE INABILITY OF THE CDCR TO PROVIDE
11 CONSTITUTIONAL CARE. AND BY THAT I MEAN THE NECESSITY TO HOUSE
12 INMATES IN DORMS, THE NECESSITY TO USE OTHER WHAT I WOULD KINDLY
13 REFER TO AS "OVERFLOW UNITS."

14 FOR EXAMPLE, THERE'S NOT ENOUGH MENTAL HEALTH CRISIS
15 BEDS IN THE SYSTEM, AND THE DEFENDANTS HAVE ACKNOWLEDGED THIS.

16 AND BECAUSE OF THAT, THEY HAVE CREATED A VARIETY OF
17 OVERFLOW UNITS TO THESE MENTAL HEALTH CRISIS BEDS WHERE COLEMAN
18 CLASS MEMBERS IN PSYCHIATRIC CRISIS ARE HOUSED. AND THESE
19 CONDITIONS THEMSELVES CONTRIBUTE TO THE ONGOING CONSTITUTIONAL
20 VIOLATIONS.

21 THE FACT THAT COLEMAN CLASS MEMBERS ARE LITERALLY
22 STUCK IN THE RECEPTION CENTER. WHEN I VISITED THE RECEPTION
23 CENTER AT DVI, THE PROGRAM GUIDE SAYS AN EOP MEMBER OF THE
24 COLEMAN CLASS SHOULD BE PLACED IN AN EOP PRISON WITHIN 60 DAYS
25 OF ARRIVAL AT RECEPTION CENTER.

1 THERE WERE INMATES THAT I INTERVIEWED AND CHARTS THAT
2 I ALSO REVIEWED THAT PEOPLE HAD BEEN THERE SIX AND SEVEN MONTHS.
3 SO THEY HAVE CREATED THESE DEFACTO ADSEG UNITS.

4 THE FACT THAT THERE'S TOO MANY INMATES AT THE SALINAS
5 VALLEY STATE PRISON IN THE GENERAL POPULATION YARD THAT HAD
6 RESULTED IN AN ALMOST CONTINUOUS LOCKDOWN. THE STAFF CALL IT
7 "MODIFIED PROGRAM." BUT BASICALLY IT'S A LOCKDOWN WHERE
8 PRISONERS ARE NOT ALLOWED OUT OF THEIR CELLS. THIS ALMOST
9 CONTINUOUS LOCKDOWN FOR A PERIOD OF SEVERAL YEARS, THIS
10 SIGNIFICANTLY IMPACTS THE MENTAL HEALTH OF COLEMAN CLASS MEMBERS
11 THAT ARE ASSIGNED TO THESE YARDS AT SALINAS VALLEY STATE PRISON,
12 FOR EXAMPLE.

13 **Q.** YOU MENTIONED USING ALTERNATIVE PLACEMENTS FOR PEOPLE IN
14 PARTICULAR WHO REQUIRE MENTAL HEALTH CRISIS PLACEMENT. WERE
15 YOU -- CAN YOU EXPLAIN IN MORE DETAIL WHAT YOU FOUND DURING YOUR
16 TOURS?

17 **A.** DURING MY TOURS -- AND I SAW THIS AT THE DVI STATE PRISON. I
18 SAW THIS AT MULE CREEK. I SAW IT AT SALINAS VALLEY STATE PRISON
19 WHERE, BECAUSE OF THE FACT THAT COLEMAN CLASS MEMBERS ARE UNABLE
20 TO ACCESS APPROPRIATE LEVELS OF MENTAL HEALTHCARE, THEY ARE
21 UNABLE TO ACCESS INPATIENT SERVICES IN A TIMELY MANNER, THEY ARE
22 UNABLE TO ACCESS MENTAL HEALTH CRISIS BEDS IN A TIMELY MANNER,
23 THAT THEY ARE HOUSED IN THESE ALTERNATIVE SETTINGS THAT, TO MY
24 OPINION, ARE VERY INADEQUATE AND CAUSE DANGER AND SUFFERING TO
25 THE COLEMAN CLASS MEMBERS.

1 I THINK WE HAVE SOME PICTURES. ARE WE GOING TO SHOW
2 THOSE NOW?

3 **JUDGE KARLTON:** BEFORE YOU DO THAT, THEY CAUSE DAMAGE
4 AND SUFFERING. THE QUESTION IS: DO THEY CAUSE DECOMPENSATION?
5 THAT IS, ARE THEY CONTRIBUTING FACTORS IN THE INCREASE WHICH YOU
6 NOTED IN THE NUMBER OF COLEMAN CLASS MEMBERS?

7 **THE WITNESS:** I WOULD SAY YES, YOUR HONOR, THEY
8 ABSOLUTELY DO. AND I THINK IF THE COURT WOULD SEE THESE, THE
9 SETTINGS THAT I'M TALKING ABOUT, YOU CAN ARRIVE AT YOUR OWN
10 OPINIONS WHETHER OR NOT -- IT'S CERTAINLY MY OPINION THAT THESE
11 SETTINGS ARE UNACCEPTABLE FOR ANY SORT OF PSYCHIATRIC TREATMENT,
12 ESPECIALLY SOMEONE WHO IS IN A PSYCHIATRIC CRISIS.

13 WE'RE NOT TALKING ABOUT NONCOLEMAN CLASS INMATES.
14 WE'RE NOT TALKING ABOUT EVEN COLEMAN CLASS INMATES THAT ARE NOT
15 IN CRISIS. THESE ARE PEOPLE THAT HAVE BEEN IDENTIFIED AS
16 NEEDING A HIGHER LEVEL OF PSYCHIATRIC CARE, AND THEY ARE PLACED
17 IN THESE SETTINGS.

18 **MS. WHELAN:** PART OF PLAINTIFF'S EXHIBIT P339 ARE
19 PICTURES OF -- FROM A TOUR THAT DR. STEWART CONDUCTED AT MULE
20 CREEK STATE PRISON. IF WE COULD SHOW PICTURES 10, 11 AND 12.

21 **BY MS. WHELAN**

22 **Q.** DR. STEWART, COULD YOU EXPLAIN WHAT WE'RE LOOKING AT HERE?

23 **A.** THIS PICTURE IS WHAT IS REFERRED TO -- EXCUSE ME. THIS
24 PICTURE IS WHAT IS REFERRED TO AS A MENTAL HEALTH OUTPATIENT
25 HOUSING UNIT. THESE ARE USED TO HOUSE COLEMAN CLASS MEMBERS WHO

1 ARE IN PSYCHIATRIC CRISIS AND THAT HAVE BEEN IDENTIFIED WHO NEED
2 MENTAL HEALTH CRISIS BEDS.

3 SO THOSE ARE THE PEOPLE THAT UTILIZE THESE, AND THIS
4 IS WHAT THEY ARE.

5 Q. AND DID YOU HAVE AN OPPORTUNITY TO SPEAK WITH ANY CLASS
6 MEMBERS WHO HAD BEEN HOUSED IN THESE CELLS, IN PARTICULAR,
7 DURING YOUR TOURS?

8 MR. MELLO: OBJECTION, YOUR HONOR. HEARSAY, YOUR
9 HONOR.

10 THE WITNESS: I DID HAVE AN OPPORTUNITY TO SPEAK TO
11 MANY CLASS MEMBERS. ONE IN PARTICULAR WAS TALKING ABOUT BEING
12 HOUSED IN THIS SETTING.

13 MS. TILLMAN: SAME OBJECTION, YOUR HONOR.

14 JUDGE KARLTON: I'M SORRY?

15 MS. TILLMAN: OBJECTION. HEARSAY, YOUR HONOR, TO THE
16 EXTENT HE INDICATES TO THE COURT OUT OF COURT STATEMENTS OF
17 INMATES.

18 JUDGE HENDERSON: I'M SORRY. I WAS PREOCCUPIED. SAY
19 THAT AGAIN, COUNSEL

20 MS. TILLMAN: I'M SORRY. I'M LISA TILLMAN, AND I'M
21 OBJECTING ON THE BASIS OF HEARSAY TO HIS TESTIMONY CONCERNING
22 THE STATEMENTS MADE TO HIM DURING HIS TOURS BY INMATES.

23 JUDGE KARLTON: I'M ASSUMING THAT THAT'S WHAT
24 PSYCHIATRIC EXPERTS DO IS TALK TO PEOPLE AND FIND OUT WHAT THE
25 CIRCUMSTANCES ARE.

1 **JUDGE HENDERSON:** OKAY.

2 **JUDGE KARLTON:** WHAT IS THE POSITION OF THE
3 DEFENDANT? I THINK I MISUNDERSTOOD.

4 **MS. TILLMAN:** I RECOGNIZE THAT HE'S QUALIFIED UNDER
5 JUDGE HENDERSON'S OR THIS COURT'S RULING. HOWEVER, I ALSO
6 RECOGNIZE TO THE EXTENT THIS STATEMENT IS BEING OFFERED TO PROVE
7 THE TRUTH, IT IS HEARSAY.

8 **THE COURT:** OKAY. I'M GOING TO OVERRULE THE
9 OBJECTION, COUNSEL.

10 **MS. WHELAN:** THANK YOU.

11 **THE WITNESS:** YES, THE METHOD IN WHICH I UTILIZED TO
12 INTERVIEW AND ARRIVE AT OPINIONS WAS THE SAME METHOD THAT I'VE
13 ALWAYS USED WHEN I'VE BEEN COURT APPOINTED, AS WELL AS THE
14 CURRENT METHOD USED BY COLEMAN CLASS EXPERTS INTERVIEWING
15 INMATES.

16 SO IN INTERVIEWING THIS ONE PARTICULAR GENTLEMAN WHO
17 HAD BEEN IN THIS SETTING -- AND YOU CAN'T GET A REAL FEEL FROM
18 IT FROM THAT ANGLE. I BELIEVE THERE MIGHT BE OTHER PICTURES THAT
19 SHOW IT A LITTLE MORE, A LITTLE BETTER.

20 THESE ARE CONCRETE CELLS THAT HAVE BEEN RETROFITTED
21 FOR THE USE FOR MENTALLY ILL PEOPLE IN CRISIS. THE ONE
22 GENTLEMAN THAT I SPOKE WITH HAD BEEN IN THERE FOR EIGHT DAYS
23 AWAITING MENTAL HEALTH CRISIS PLACEMENT. AND HE DECOMPENSATED
24 TO THE POINT WHERE HE ENDED UP HAVING -- HE ENDED UP SPREADING
25 FECES AND FINALLY WAS ABLE TO BE REMOVED FROM THIS SETTING.

1 I ALSO INTERVIEWED A VARIETY OF PEOPLE WHO WERE
2 CURRENTLY HOUSED IN THESE OUTPATIENT HOUSING UNITS, AS THEY ARE
3 REFERRED TO. AND THEY HAD BEEN THERE FOR A NUMBER OF DAYS, ALL
4 OF THEM WAITING TO BE PLACED IN A MENTAL HEALTH CRISIS BED.

5 **BY MS. WHELAN**

6 **Q.** AND THIS CELL APPEARS TO BE EMPTY. WAS THIS HOW THEY WERE
7 WHEN YOU WERE THERE?

8 **A.** YES. THAT'S HOW THE CELLS ARE. AND IT'S IMPORTANT TO NOTE
9 THAT WHEN A PERSON IS PLACED IN THIS CELL, THEY ARE WEARING A
10 SUICIDE SMOCK, AND THAT IS IT. NO UNDERWEAR, NO SHOES, NO
11 BLANKET, NO MATTRESS. AND, IN FACT, THE ONE INMATE THAT I SPOKE
12 WITH HAD BEEN THERE FOR SEVEN, EIGHT DAYS UNTIL HE FINALLY WAS
13 GIVEN ONE OF THESE LITTLE THIN MATTRESSES TO LIE ON. BUT,
14 AGAIN, NO BLANKETS.

15 AND THIS IS IMPORTANT TO REMEMBER THAT THESE ARE
16 SETTINGS THAT ARE USED TO HOUSE MENTALLY ILL PEOPLE IN CRISIS.
17 THESE AREN'T JUST GENERAL COLEMAN CLASS MEMBERS. THESE ARE
18 PEOPLE THAT HAVE BEEN IDENTIFIED AS NEEDING A HIGHER LEVEL OF
19 CARE.

20 **Q.** CAN YOU EXPLAIN WHY THE CONDITIONS THAT YOU JUST DESCRIBED
21 IN PARTICULAR ARE TROUBLING FROM A MENTAL HEALTH PERSPECTIVE?

22 **A.** WELL, FROM A MENTAL HEALTH PERSPECTIVE THEY ARE TROUBLING
23 FOR MANY REASONS IN THAT I KNOW OF NO OTHER SETTING WHERE PEOPLE
24 WOULD BE HOUSED THERE FOR AN EXTENDED PERIOD OF TIME WAITING TO
25 ACCESS APPROPRIATE LEVELS OF MENTAL HEALTHCARE.

1 BUT AS EQUALLY AS DANGEROUS IS THE FACT THAT IN A
2 PRISON WORD GETS OUT REALLY QUICKLY BASED ON MY EXPERIENCE. SO
3 IT'S THE PEOPLE WHO WOULD UTILIZE MENTAL HEALTH SERVICES ARE
4 VERY AWARE THAT THESE ARE THE CONDITIONS IN WHICH THEY WOULD BE
5 PLACED IF THEY COME FORWARD EXPRESSING THEIR SUICIDAL THOUGHTS
6 TO A STAFF MEMBER, TO A CUSTODY OFFICER, TO ANOTHER INMATE WHO
7 WOULD THEN REPORT IT.

8 AND IN MY EXPERIENCE, THIS SIGNIFICANTLY INHIBITS
9 PEOPLE FROM COMING FORWARD TO EXPRESSING THEIR TRUE STATE OF
10 THEIR MENTAL ILLNESS, THEIR TRUE LEVELS OF SUICIDAL IDEATION OR
11 PLAN, ET CETERA.

12 SO THAT'S, TO MY VIEW, A VERY DANGEROUS ASPECT OF THE
13 PROLONGED USE OF THESE VERY INADEQUATE HOUSING MODULES.

14 Q. YOU ALSO MENTIONED YOUR TOUR AT SALINAS VALLEY STATE PRISON.

15 MS. WHELAN: AND I BELIEVE WE ALSO HAVE SOME PICTURES
16 FROM THAT TOUR, IF WE COULD SHOW PLAINTIFFS' TRIAL EXHIBIT 338,
17 PICTURES 11, 12 AND 13.

18 BY MS. WHELAN:

19 Q. DR. STEWART, COULD YOU DESCRIBE WHAT WE'RE SEEING HERE?

20 A. WHAT WE'RE SEEING THERE IS -- IT'S REALLY DIFFICULT TO
21 COMPREHEND. THIS IS WHERE PEOPLE WHO CANNOT -- WHO ARE IN MENTAL
22 HEALTH CRISIS, WHO ARE UNABLE TO ACCESS MENTAL HEALTH CRISIS
23 BEDS BECAUSE OF THE FACT OF OVERCROWDING HAVE TO WAIT. THESE ARE
24 CAGES. PEOPLE NEED TO SIT UPRIGHT.

25 MS. TILLMAN: OBJECTION. MISCHARACTERIZES THE

1 EVIDENCE BY USE OF THE TERM "CAGES."

2 **JUDGE HENDERSON:** I DIDN'T HEAR YOU, COUNSEL.

3 **MS. TILLMAN:** I'M SORRY. LISA TILLMAN SPEAKING.

4 OBJECTION TO THE TERM "CAGES." THAT MISCHARACTERIZES THE
5 EVIDENCE. IT'S INFLAMMATORY AND ARGUMENTATIVE.

6 **JUDGE HENDERSON:** WELL, I DON'T KNOW HOW TO
7 CHARACTERIZE IT.

8 **JUDGE KARLTON:** IT IS WHAT IT IS.

9 **MS. TILLMAN:** I BELIEVE THE COURT SPECIAL MONITOR
10 HAS FOUND THIS TO BE HOLDING CELLS, AND OTHER ARRANGEMENTS ARE
11 CALLED "THERAPEUTIC MODULES."

12 **MS. WHELAN:** YOUR HONORS, THESE ARE ALSO PART OF
13 THEIR OBJECTIONS.

14 **JUDGE HENDERSON:** LET'S CALL IT THAT A ROSE BY ANY
15 OTHER NAME --

16 **THE WITNESS:** THESE THERAPEUTIC MODULES THAT ARE VERY
17 CAGE-LIKE ARE USED TO --

18 **MS. TILLMAN:** I'M GOING TO OBJECT TO THE USE OF THE
19 TERM "THERAPEUTIC MODULE." THIS PICTURE IS NOT OF A THERAPEUTIC
20 MODULE. IT IS OF A HOLDING CELL.

21 **THE WITNESS:** THESE HOLDING CELLS --

22 **MS. TILLMAN:** I'M SORRY THAT THE EXPERT DOESN'T
23 RECOGNIZE THE DIFFERENCE.

24 **THE WITNESS:** YOUR HONOR, REGARDLESS OF WHAT THEY ARE
25 CALLED, THE COLEMAN CLASS MEMBER WHO IS IN PSYCHIATRIC CRISIS

1 WHO HAS BEEN IDENTIFIED AS NEEDING TO BE HOUSED IN A MENTAL
2 HEALTH CRISIS BED IS FORCED TO SIT UPRIGHT IN THESE CAGES --
3 EXCUSE ME -- IN THESE UNITS DURING THE DAY WHERE THERE'S NO
4 TOILET. THERE'S NO WATER. THERE'S NO HEALTH OR SAFETY
5 FACILITIES THERE, AND WHILE THEY ARE WAITING FOR PLACEMENT IN A
6 MENTAL HEALTH CRISIS BED. AND THIS OCCURS AT THE SALINAS VALLEY
7 STATE PRISON.

8 **BY MS. WHELAN**

9 **Q.** DR. STEWART, YOU'RE ALSO A PSYCHIATRIST. WERE YOU ABLE TO
10 MONITOR AND VISIT AND LOOK INTO THE MEDICATION MANAGEMENT
11 SYSTEMS AT THE PRISONS DURING YOUR TOURS AND THROUGH YOUR REVIEW
12 OF DOCUMENTS?

13 **A.** YES.

14 **Q.** AND CAN YOU DESCRIBE TO THE COURT WHAT YOU FOUND AND WHAT
15 YOUR CONCLUSIONS WERE?

16 **A.** REGARDING THE MEDICATION MANAGEMENT SYSTEM, IT IS MY OPINION
17 THAT THE MEDICATION MANAGEMENT SYSTEM CURRENTLY AS IT EXISTS IN
18 THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION IS
19 OVERWHELMED. THERE ARE JUST TOO MANY PEOPLE THAT ARE PRESCRIBED
20 TOO MANY MEDICATIONS FOR THE SYSTEM TO ADEQUATELY ADDRESS.

21 AT SOLANO STATE PRISON INMATES HAVE TO ROUTINELY
22 CHOOSE BETWEEN GOING TO MORNING BREAKFAST VERSUS GETTING THEIR
23 PILLS.

24 IN OTHER SETTINGS, WHERE THERE IS PERSISTENT
25 LOCKDOWNS THE STAFF TAKE THE MEDICINES TO THE CELLS AND

1 ADMINISTER IT THROUGH THE FOOD PORTS. AND THEY SPEND LITERALLY
2 SECONDS, AS FAST AS IT TAKES TO POP OUT WHATEVER PILLS THERE ARE
3 FROM THE BLISTER PACK, AND HAND THEM TO THE FOOD PORT IS HOW
4 LONG THE PERSON STAYS -- THE STAFF STAYS IN FRONT OF THE COLEMAN
5 CLASS MEMBER WHO IS BEING PRESCRIBED A VARIETY OF VERY POTENT
6 ANTIPSYCHOTIC ANTIDEPRESSANT AND MOOD STABILIZING MEDICATIONS.

7 THE PILL LINES, PEOPLE WAITING LONG PERIODS OF TIME
8 AND, AGAIN, WHEN THEY GET TO THE FRONT OF IT THEY ARE THERE FOR
9 A FEW SECONDS TO GET THEIR MEDICATIONS.

10 I SAW NO EVIDENCE OF -- THE TERM THAT I USE IS
11 "CLINICAL MANAGEMENT."

12 THERE'S NO EVIDENCE THAT THE PERSON ADMINISTERING THE
13 MEDICATION HAS THE TIME OR THE OPPORTUNITY TO ASK THE PERSON
14 ABOUT THE PRESENCE OF ANY UNTOWARD SIDE EFFECTS; OF ANY PROBLEMS
15 THEY HAVE IN TAKING THE MEDICATIONS, IN GENERAL; MEDICATION
16 ADHERENCE OR COMPLIANCE; AS WELL AS DOING A QUICK CHECK ON THE
17 EFFICACY OF THE MEDICINE.

18 SO THIS GETS BACK TO THE FACT THAT SPEAKING WITH THE
19 CHIEF PSYCHIATRIST AT MULE CREEK STATE PRISON, DOCTOR FOWLER,
20 SAYS THAT THERE'S NO OBJECTIVE OUTCOME MEASURES THAT LOOK AT
21 WHETHER OR NOT ANYTHING THAT THE PSYCHIATRISTS DO, ANY
22 THERAPEUTIC INTERVENTIONS -- AND IN THIS CASE MEDICATIONS -- ARE
23 HAVING ANY POSITIVE EFFECT FOR THEIR CLIENTS, BECAUSE THERE'S NO
24 FEEDBACK LOOP BECAUSE OF THE OVERWHELMING NUMBER OF PEOPLE THAT
25 ARE SUPPOSED TO BE GIVEN MEDICATIONS IN THESE LITERALLY SECONDS

1 A PERSON STANDS IN FRONT OF YOU.

2 THERE'S NO FEEDBACK LOOP TO THE PRESCRIBER. THERE'S
3 NO FEEDBACK LOOP FROM THE PRESCRIBER TO THE PERSON GIVEN THE
4 MEDICATION. IT'S CLEAR TO ME THE SYSTEM IS OVERWHELMED.

5 THIS IS FURTHER EVIDENCED BY MY DISCUSSIONS WITH THE
6 DMH STAFF. DR. GHANDI, WHO IS IN CHARGE OF THE DMH PROGRAMS AT
7 THE VACAVILLE PSYCHIATRIC PROGRAM LOOKED AT PEOPLE BEING
8 ADMITTED TO THE DMH UNITS THERE. AND IT WAS OVER 70 PERCENT, I
9 BELIEVE. IT WAS A VERY LARGE NUMBER, 70 OR 80 PERCENT OF THE
10 COLEMAN CLASS MEMBERS THAT WERE BEING ADMITTED TO THE DMH UNITS
11 HAD NO EVIDENCE OR MINIMAL EVIDENCE IN THEIR BLOODSTREAM OF ANY
12 OF THEIR PRESCRIBED MEDICATIONS, WHICH FURTHER EVIDENCED TO ME
13 THAT WILL MEDICATION SYSTEM CANNOT --

14 **MS. TILLMAN:** OBJECT TO THE EXTENT THAT GOES INTO
15 HEARSAY, YOUR HONORS.

16 **JUDGE HENDERSON:** WE JUST CAN'T HEAR YOU, COUNSEL.
17 I'M SORRY.

18 **MS. TILLMAN:** OBJECTION, HEARSAY. HE'S OFFERING IT
19 NOW FOR THE PROOF.

20 **JUDGE HENDERSON:** OVERRULED.

21 **THE WITNESS:** MY CONVERSATIONS WITH DR. GHANDI, AS
22 WELL AS OTHER STAFF MEMBERS, WERE JUST PART OF MY BASIS OF MY
23 OPINION STATING THAT MEDICATION MANAGEMENT SYSTEM IS COMPLETELY
24 OVERWHELMED.

25 **JUDGE KARLTON:** DOCTOR, HOW IS IT -- I DON'T

1 UNDERSTAND HOW IS IT THAT THE BLOODSTREAM DOESN'T REFLECT THE
2 TAKING OF THE DRUGS. WHAT DO YOU UNDERSTAND THAT TO MEAN?

3 **THE WITNESS:** THE MOST OBVIOUS ANSWER TO THAT, YOUR
4 HONOR, IS THAT, IN FACT, WHEN THESE PEOPLE COME -- THE COLEMAN
5 CLASS MEMBERS COME IN FRONT OF THE PILL DISTRIBUTING STAFF, THAT
6 THEY CANNOT ENSURE THAT THEY ARE, IN FACT, TAKING IT.

7 THE FACT THAT THERE'S NO MEDICATION EVIDENCED IN
8 THEIR BLOODSTREAM MEANS THAT THEY ARE NOT TAKING THE MEDICATION
9 BECAUSE THERE'S NOT ENOUGH TIME SPENT BY THE CLINICAL STAFF TO
10 ENSURE THAT, IN FACT, PEOPLE ARE TAKING THE MEDICINE.

11 AND THIS IS FURTHER EVIDENCED, YOUR HONOR, BY
12 VERY -- A VERY WELL-USED PSYCHIATRIC MEDICATION. IT GOES BY THE
13 BRAND NAME OF "WELLBUTRIN." IT'S A VERY GOOD ANTIDEPRESSANT.
14 AND IT HAS BEEN TAKEN OFF THE FORMULARY, MEANING THAT THE
15 INMATES CAN NO LONGER BE PRESCRIBED THAT BECAUSE IT DOES HAVE A
16 VERY SMALL RISK OF ABUSE.

17 IF YOU STORE THEM UP, YOU TAKE A BUNCH OF THEM AT
18 ONCE, YOU CAN SORT OF GET A LITTLE BIT OF A HIGH, KIND OF LIKE A
19 PSYCHOSTIMULANT.

20 THIS MEDICATION HAS BEEN TAKEN OFF THE FORMULARY.
21 AND TO ME, THAT'S JUST ADMISSION ON THE PART OF THE CDCR THAT
22 THEY CAN'T ADEQUATELY SUPERVISE THE DISTRIBUTION OF MEDICATION.

23 **BY MS. WHELAN**

24 **Q.** WE ONLY HAVE A COUPLE OF MINUTES LEFT. AND I KNOW IN YOUR
25 REPORTS YOU TALK ABOUT CHALLENGES THAT CLINICIANS AND STAFF

1 MEMBERS FACE. AND CAN YOU TALK ABOUT HOW THESE CONDITIONS
2 AFFECT CLINICIANS ON A DAILY BASIS?

3 **A.** WHAT I WAS STRUCK WITH -- AND, AGAIN, I HAD THE BENEFIT OF
4 BEING INVOLVED IN THE GATES MATTER AND THE MADRID MATTER BACK IN
5 THE '90'S. AND SO I WAS ABLE TO COMPARE MY TWO EXPERIENCES.

6 WHAT I FOUND OVERWHELMINGLY, AGAIN, DUE TO THE
7 OVERWHELMING POPULATION PRESSURES PLACED ON THE SYSTEM, THAT
8 CLINICAL STAFF ARE PLACED IN THESE UNTENABLE SITUATIONS WHERE
9 THEY HAVE -- THEY ARE FORCED TO MAKE THESE DECISIONS TO PUT A
10 PERSON IN PSYCHIATRIC CRISIS IN A UNIT THAT IS STILL UP HERE ON
11 THE STAND -- ON THE SCREEN.

12 I MEAN, THAT'S AN UNTENABLE POSITION TO BE PLACED IN
13 AS A CLINICIAN. I MEAN, SOMETHING LIKE THIS COULD EVEN
14 JEOPARDIZE SOMEONE'S LICENSURE, TO PARTICIPATE IN THIS TYPE OF
15 CARE. AND I SAW IT TIME AND AGAIN THAN CLINICAL STAFF ARE
16 FORCED INTO MAKING THESE VERY, VERY DIFFICULT DECISIONS BECAUSE
17 OF THE FACT OF OVERCROWDING.

18 **MS. WHELAN:** THANK YOU.

19 **THE COURT:** CROSS-EXAMINATION?

20 **CROSS-EXAMINATION**

21 **BY MS. TILLMAN:**

22 **Q.** GOOD MORNING, DR. STEWART.

23 **A.** GOOD MORNING.

24 **Q.** I UNDERSTAND THAT YOU ARE A BOARD CERTIFIED PSYCHIATRIST,
25 CORRECT?

1 A. YES, I AM.

2 Q. YOU ARE NOT AN INTERNIST, CORRECT?

3 A. I'M SORRY?

4 Q. YOU'RE NOT AN INTERNAL MEDICINE SPECIALIST?

5 A. AN INTERNAL MEDICINE SPECIALIST? I'M NOT AN INTERNAL
6 MEDICINE SPECIALIST. I DID A YEAR OF INTERNAL MEDICINE BEFORE I
7 STARTED MY PSYCHIATRIC TRAINING, BUT I'M NOT AN INTERNIST.

8 Q. AND THAT YEAR WAS OVER 25 YEARS AGO; WOULD THAT BE RIGHT?

9 A. IT WAS ACTUALLY 26 YEARS AGO.

10 Q. WHO'S COUNTING?

11 YOUR CAREER HAS BEEN DEDICATED WORKING AS A BOARD
12 CERTIFIED PSYCHIATRIST. PRESENTLY YOU HOLD AN ACADEMIC TEACHING
13 POSITION WITH UNIVERSITY OF CALIFORNIA, CORRECT?

14 A. YES.

15 Q. AND YOU OCCASIONALLY CONSULT ON VARIOUS LITIGATION MATTERS,
16 CORRECT?

17 A. I CONSULT ON A VARIETY OF MATTERS. SOME OF THEM INCLUDE
18 LITIGATION, YES.

19 Q. YOU MENTIONED EARLIER THAT YOU WORKED ON WHAT WAS KNOWN AS
20 THE GATES CASE, WHICH WAS ONE OF THE FIRST-CLASS ACTION CASES
21 BROUGHT AGAINST THE DEPARTMENT OF CORRECTIONS AND REHABILITATION
22 INVOLVING JUST ONE INSTITUTION, CORRECT? THE CALIFORNIA MEDICAL
23 FACILITY AT VACAVILLE?

24 A. YES, IT DID JUST INVOLVE THE CALIFORNIA MEDICAL FACILITY.

25 Q. AND IT INVOLVED A MULTIPLICITY OF ISSUES RANGING FROM

1 MEDICAL CARE, MENTAL HEALTHCARE TO OTHER ISSUES INVOLVING
2 DIFFERENT INMATES WITH DISABILITIES UNDER THE AMERICANS WITH
3 DISABILITIES ACT, CORRECT?

4 **A.** YES, IT DID.

5 **JUDGE KARLTON:** I'M HAVING A LITTLE TROUBLE HEARING
6 YOU. I'M TRYING TO READ IT OFF THE SCREEN BECAUSE I'M HAVING A
7 LITTLE TROUBLE UNDERSTANDING YOU. I'M NOT SURE IF IT'S
8 CORRECTABLE.

9 **MS. TILLMAN:** I'LL SEE IF I CAN GET A LITTLE CLOSER
10 TO THE MICROPHONE, OKAY?

11 **THE CLERK:** SPEAK INTO THE MICROPHONE, COUNSEL.

12 **MS. TILLMAN:** BETTER?

13 **THE CLERK:** INTO IT.

14 **MS. TILLMAN:** OKAY. THANK YOU.

15 **BY MS. TILLMAN:**

16 **Q.** NOW, YOU MENTIONED IN YOUR REPORT THAT YOU'VE WORKED ON
17 VARIOUS CORRECTIONAL MATTERS INVOLVING THE CORRECTIONAL SYSTEM
18 OF MICHIGAN, CORRECT?

19 **A.** A JUVENILE INSTITUTION IN MICHIGAN, YES.

20 **Q.** AND A CORRECTIONAL SYSTEM IN GEORGIA, CORRECT?

21 **A.** THAT WAS THE JUVENILE JUSTICE SYSTEM IN THE STATE OF
22 GEORGIA, YES.

23 **Q.** AND CORRECTIONAL SYSTEM IN NEW MEXICO, CORRECT?

24 **A.** I WAS DEFENDANT'S EXPERT IN NEW MEXICO.

25 **Q.** AND OBVIOUSLY NONE OF THOSE SYSTEMS THAT YOU WORKED ON IN

1 MICHIGAN, GEORGIA, AND NEW MEXICO INVOLVED THE CORRECTIONAL
2 SETTING THAT WE HAVE HERE IN CALIFORNIA IN TERMS OF THE BREADTH
3 AND THE SIZE OF THE SYSTEM; IS THAT CORRECT?

4 **A.** THAT'S ABSOLUTELY CORRECT.

5 **Q.** NOW, SOME 20 YEARS AGO, JUST AS YOU WERE FINISHING YOUR
6 RESIDENCY, YOU WORKED AS THE DIRECTOR OF FORENSIC SERVICES FOR
7 THE CITY AND COUNTY OF SAN FRANCISCO, CORRECT?

8 **A.** YES, FOR A PERIOD OF TIME.

9 **Q.** AND THAT PERIOD OF TIME WAS FROM 1988 TO 1989, CORRECT?

10 **A.** WHEN I WAS THE OVERALL FORENSIC DIRECTOR, YES.

11 **Q.** AND YOU HAD JUST COMPLETED YOUR RESIDENCY AT UNIVERSITY OF
12 CALIFORNIA, SAN FRANCISCO, SOMETIME IN 1986, CORRECT?

13 **A.** YES.

14 **Q.** AND IN THE COURSE OF THAT WORK, YOU PROVIDED CARE FOR A
15 NUMBER OF DIFFERENT TYPES OF MENTALLY ILL PATIENTS, CORRECT?

16 **A.** I'M NOT SURE WHAT YOU MEAN "DIFFERENT TYPES." WE PROVIDED
17 MENTAL HEALTHCARE TO ANYONE WHO NEEDED IT.

18 **Q.** AND AS PART OF THAT CARE PACKAGE, YOUR ROLE WAS --

19 **MS. TILLMAN:** STRIKE THAT.

20 **BY MS. TILLMAN**

21 **Q.** AS PART OF THAT CARE PACKAGE, THE CITY AND COUNTY OF SAN
22 FRANCISCO AT THAT TIME SEPARATED OUT THOSE PATIENTS NEEDING WHAT
23 WE WOULD CALL IN THE DEPARTMENT OF CORRECTIONS "ENHANCED
24 OUTPATIENT PROGRAM CARE" FROM THE GENERAL POPULATION, CORRECT?

25 **A.** WE HAD A VARIETY OF WHAT WE REFERRED TO THEN AS "PSYCH

1 TANKS." THERE WERE UNITS THAT WERE EXCLUSIVELY USED FOR THE
2 PLACEMENT OF PEOPLE WE WERE TREATING, YES.

3 Q. AND THAT TYPE OF SEPARATION OF THESE ENHANCED OUTPATIENT
4 PROGRAM PATIENTS WAS SOMETHING THAT YOU FOUND APPROPRIATE FOR
5 THEIR CARE, CORRECT?

6 A. YES.

7 Q. AND YOU'RE AWARE, AREN'T YOU, THAT THE SAME SEPARATION OF
8 ENHANCED OUTPATIENT PROGRAM PATIENTS FROM THE GENERAL POPULATION
9 OCCURS WITHIN THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND
10 REHABILITATION, RIGHT?

11 A. YES, IT DOES.

12 Q. AND, IN FACT, IN RETROSPECT NOW THAT YOU HAVE THE
13 OPPORTUNITY OF LOOKING BACK AT THE TIME PERIOD WHEN YOU SERVED
14 AS THE DIRECTOR OF FORENSIC SERVICES FOR THE CITY AND COUNTY OF
15 SAN FRANCISCO, NOW SOME 20 ODD YEARS LATER YOU FOUND THAT THAT
16 SYSTEM MET THE CONSTITUTIONAL ELEMENTS LAID OUT BY THE COLEMAN
17 COURT AND WAS, INDEED, CONSTITUTIONALLY ADEQUATE, CORRECT?

18 A. YES. WE HAVE TALKED ABOUT THIS BEFORE WHERE DURING THE
19 PERIOD OF TIME IN THE LATE '80'S -- AROUND '88, '89 -- I
20 REMEMBER, BECAUSE THE GIANTS WERE IN THE WORLD SERIES THAT YEAR,
21 AND IT WAS THE EARTHQUAKE YEAR, THAT IT WAS MY OPINION -- AGAIN,
22 RETROSPECTIVELY -- THAT THE CITY AND COUNTY WAS MEETING THEIR
23 CONSTITUTIONAL REQUIREMENTS THAT HAVE SUBSEQUENTLY BEEN LAID OUT
24 BY THE COLEMAN COURT.

25 Q. AND THAT IS THE ONLY CORRECTIONAL SYSTEM THAT YOU ARE AWARE

1 OF; ISN'T THAT RIGHT, THAT IS OR WAS MEETING THOSE
2 CONSTITUTIONAL MANDATES?

3 **A.** IT WAS THE ONLY SYSTEM THAT I HAD PERSONAL EXPERIENCE WITH,
4 YES.

5 **Q.** AND YOU WOULD AGREE THAT THE ELEMENTS OF A CONSTITUTIONALLY
6 COMPLIANT MENTAL HEALTHCARE SYSTEM INVOLVE UNIFORM POLICIES AND
7 PROCEDURES TO PROVIDE CARE, SUFFICIENT BEDS TO PROVIDE CARE,
8 SUFFICIENT CLINICAL STAFF, AND COMPETENT STAFF TO PROVIDE CARE,
9 A SUICIDE PREVENTION PROGRAM AND A RECORDKEEPING SYSTEM,
10 CORRECT?

11 **A.** WELL, IN ADDITION TO THOSE THINGS THAT YOU MENTIONED IT ALSO
12 CALLS TO HAVE AN ADEQUATE SYSTEM FOR THE IDENTIFICATION, THE
13 SCREENING AND REFERRAL OF PEOPLE WHO REQUIRE MENTAL HEALTHCARE
14 WITHIN THE SYSTEM. AND ALSO STATES THAT PEOPLE WITHIN THE SYSTEM
15 HAVE ACCESS TO APPROPRIATE LEVELS OF PSYCHIATRIC CARE, INCLUDING
16 MEDICATIONS. AND THAT THEY NEED TO HAVE AN ADEQUATE
17 RECORDKEEPING SYSTEM, AS WELL AS A SUICIDE PREVENTION PROGRAM.

18 **Q.** NOW, IN TERMS OF ADEQUATE SCREENING AND IDENTIFICATION OF
19 THE MENTALLY ILL INMATES, WOULDN'T YOU AGREE THAT THE FACT THAT
20 THE COLEMAN MENTAL HEALTH POPULATION HAS INCREASED OVER THE
21 YEARS, EVEN INCREASED AT A TIME WHEN THE GENERAL POPULATION WAS
22 DECREASING, WOULD INDICATE THAT, INDEED, MENTAL HEALTH
23 CLINICIANS ARE DOING THEIR JOB IN SCREENING AND IDENTIFYING
24 THOSE INMATES WHO ARE NEEDING MENTAL HEALTHCARE SERVICES?

25 **A.** I DON'T KNOW IF YOU CAN NECESSARILY MAKE THAT LEAP, BASED ON

1 WHAT I PERSONALLY OBSERVED AT THE DVI RECEPTION CENTER WHERE
2 THEY HAVE OVER 500 INTAKES ON AVERAGE A WEEK. AND ABOUT
3 25 PERCENT OF THOSE INMATES, BASED ON MY CONVERSATIONS WITH DR.
4 COPPOLA, THE CHIEF PSYCHIATRIST, ACKNOWLEDGED THAT THEY ARE
5 MENTALLY ILL.

6 THAT THE SCREENINGS THAT I SAW WERE DONE IN
7 NONCONFIDENTIAL SETTINGS. THEY WERE DONE IN GROUP ROOMS. THEY
8 HAD A HIGH POSSIBILITY OF NOT CATCHING EVERYONE WHO COULD
9 SERIOUSLY BE SUFFERING FROM MENTALLY ILLNESS.

10 Q. BUT THEY ARE CATCHING MORE THAN EVER, AREN'T THEY?

11 A. WELL, I THINK WHAT THAT SPEAKS OF, AGAIN, THAT SHOWS WHAT
12 I'VE BEEN TRYING TO SAY ALL MORNING IS THAT THE SYSTEM IS SO
13 OVERWHELMED THAT IT'S CREATING MORE AND MORE MENTALLY ILL. THAT
14 EVEN IN THIS OVERWHELMED SYSTEM THEY ARE IDENTIFYING SOME OF
15 THEM.

16 Q. WHEN YOU SPEAK --

17 JUDGE KARLTON: EXCUSE ME.

18 IS IT YOUR VIEW THAT IT IS LIKELY THAT THERE IS MORE
19 THAN 25 PERCENT OF THE PRISON POPULATION IS SUFFERING SERIOUS
20 MENTAL ILLNESSES?

21 THE WITNESS: YOUR HONOR, BASED ON WHAT I SAW AT THE
22 RECEPTION CENTER THE STAFF THERE ARE ABSOLUTELY OVERWHELMED ON A
23 DAILY BASIS BY THE NUMBER OF PEOPLE WHO COME IN TO BE SCREENED.
24 AND THEN, THE SCREENINGS THAT DO OCCUR OCCUR IN A GROUP SETTING
25 WHERE THERE'S NO CONFIDENTIALITY.

1 SO IN LOOKING AT THE SHEER NUMBER, AS WELL AS THE
2 MANNER IN WHICH THE SCREENINGS ARE DONE, ONE COULD OPINE THAT
3 THEY ARE NOT CATCHING EVERYONE, AND YOU'RE ONLY GETTING THE MOST
4 SEVERE.

5 **BY MS. TILLMAN**

6 **Q.** YOU WERE SPEAKING ABOUT THE SCREENING THAT OCCURS IN A
7 RECEPTION CENTER, CORRECT?

8 **A.** YES.

9 **Q.** AND YOU SAW A SINGLE RECEPTION, CORRECT?

10 **A.** YES.

11 **Q.** THAT WAS AT A DUAL LOCATION INSTITUTION, CORRECT?

12 **A.** YES, CORRECT.

13 **Q.** YOU HAVEN'T TOURED THE OTHER RECEPTION CENTERS THROUGHOUT
14 THE 33 INSTITUTIONS OF THE CALIFORNIA DEPARTMENT OF CORRECTIONS,
15 HAVE YOU?

16 **A.** I HAVE NOT.

17 **Q.** AND HAVE YOU COLLECTED ANY DATA SHOWING THAT AS A PERSON
18 STAYS WITH THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND
19 REHABILITATION FOR A LONGER AND LONGER PERIOD OF TIME THERE'S AN
20 INCREASED LIKELIHOOD OF THAT PERSON BECOMING MENTALLY ILL?

21 **A.** I DON'T KNOW EXACTLY WHAT YOU MEAN BY "DATA," BUT DURING THE
22 COURSE OF MY TOUR -- AND NOW I'M SPEAKING SPECIFICALLY OF MY
23 TOUR OF THE SOLANO STATE PRISON -- WHERE THERE WAS IN USE ONE OF
24 THESE DORMS, TRIPLE-BUNK DORMS WHERE THERE ARE JUST TREMENDOUS
25 NUMBER OF PEOPLE IN THERE GIVEN THE SPACE, I INTERVIEWED SEVERAL

1 CLASS MEMBERS THAT ONE -- TWO -- TWO OF THE CLASS MEMBERS WERE
2 SUFFERING FROM STAPH INFECTIONS THAT THEY GOT WHILE LIVING IN
3 THESE UNHEALTHY CONDITIONS.

4 BUT IN ADDITION, THAT THEY ADMITTED THAT THEY HAD NO
5 HISTORY OF MENTAL ILLNESS PRIOR TO BEING PLACED IN THESE DORMS.
6 AND THAT DURING THE COURSE OF THEIR HOUSING IN THESE DORMS WHERE
7 THERE'S AN ABSOLUTE LACK OF PRIVACY, THERE'S AN ABSOLUTE LACK OF
8 ANY SORT OF ADEQUATE SPACE, THE LIGHTS ARE ON ALL THE TIME,
9 THERE'S THIS -- IT SOUNDS LIKE YOU'RE ON A RUNWAY OF AN AIRPORT,
10 HOW LOUD IT IS IN THERE. THAT THESE PEOPLE OVER TIME -- THIS
11 ONE PERSON IN PARTICULAR IS REPORTING THAT AFTER AWHILE THEY ARE
12 RUNNING THESE FANS BECAUSE IT'S SO HOT THERE DURING THE
13 SUMMERTIME THAT HE STARTED HEARING VOICES WITHIN THE FANS.

14 HE STARTED GETTING DELUSIONAL. HE STARTED GETTING
15 PARANOID JUST BECAUSE OF THE HOUSING SETTING.

16 Q. BUT YOU WOULD ADMIT, WOULDN'T YOU, THAT YOU'VE NOT ACTUALLY
17 COMPARED THE PERCENTAGES OF INMATES WITH MENTAL ILLNESS AT
18 RECEPTION CENTERS VERSUS THE PERCENTAGE OF INMATES AT MAIN LINE
19 INSTITUTIONS THAT HAVE BEEN TRANSFERRED FROM RECEPTION TO A MAIN
20 LINE INSTITUTION WHO HAVE A MENTAL ILLNESS, CORRECT?

21 A. I'M SORRY. I LOST YOUR QUESTION IN THERE.

22 Q. YOU WOULD AGREE, WOULDN'T YOU, THAT YOU'VE MADE NO ANALYSIS
23 COMPARING THE NUMBER OR PERCENTAGE OF INMATES AT A RECEPTION
24 CENTER WHO HAVE MENTAL ILLNESS VERSUS THE NUMBER OR PERCENTAGE
25 OF INMATES AT A MAIN LINE INSTITUTION WHO HAVE MENTAL ILLNESS,

1 HAVE YOU?

2 **A.** I HAVE NOT.

3 **Q.** YOU'VE TALKED TO A LOT OF DIFFERENT PEOPLE DURING YOUR TOURS
4 OF -- WHAT WAS IT -- FIVE INSTITUTIONS, CORRECT?

5 **A.** FIVE DIFFERENT INSTITUTIONS, SIX TOURS.

6 **Q.** AND DURING THOSE TOURS, WHAT, YOU SPENT A DAY, SOMETIMES A
7 HALF A DAY AT EACH INSTITUTION?

8 **A.** YES.

9 **Q.** SOME OF YOUR OPINIONS WERE BASED ON TALKING TO INMATES,
10 CORRECT?

11 **A.** YES.

12 **Q.** AND SOME OF THESE INMATES WERE NOT PEOPLE THAT YOU WOULD
13 FIND TO BE NORMALLY TRUSTWORTHY, WOULD YOU?

14 **A.** I DON'T KNOW WHAT YOU MEAN BY THAT.

15 **Q.** SOME OF THE PEOPLE THAT YOU SPOKE TO WERE STAFF OF THE
16 CALIFORNIA DEPARTMENT OF CORRECTIONS, CORRECT?

17 **A.** I'M SORRY. WERE STAFF AT THE CALIFORNIA DEPARTMENT OF
18 CORRECTIONS?

19 **Q.** STAFF, YES.

20 **A.** THAT I DIDN'T BELIEVE WHAT THEY WERE TELLING ME?

21 **Q.** I SAID:

22 "SOME OF THE PEOPLE THAT YOU SPOKE TO WERE STAFF
23 OF THE DEPARTMENT OF CORRECTIONS, CORRECT?"

24 **A.** YES.

25 **Q.** BUT YOU HAVEN'T HAD THE OPPORTUNITY, HAVE YOU, TO LOOK AT

1 ONGOING SET OF MEASUREMENTS OR DATA REGARDING THE ACTUAL
2 DELIVERY OF MENTAL HEALTHCARE SERVICES, HAVE YOU?

3 **A.** WELL, NO. I THINK I HAVE. I'VE EXTENSIVE REVIEW OF THE
4 MASTER'S REPORTS OF VARIOUS REPORTS THAT THE MASTER HAS PUT OUT.
5 IN ADDITION TO -- I DON'T KNOW IF HE REFERS TO THEM AS
6 "QUARTERLY REPORTS," BUT SUICIDE REPORT, MASTER'S REPORT ON
7 OVERCROWDING.

8 SO -- AND THE MASTER IN COLEMAN HAS DONE EXTENSIVE
9 DATA COLLECTION, IF YOU WILL, AROUND THE ACTUAL PROVISION OF
10 CARE THROUGHOUT THE SYSTEM. SO I WOULD DISAGREE WITH THAT.

11 **Q.** BUT YOU WOULD DEFER TO THE SPECIAL MASTER'S FINDINGS OF FACT
12 CONCERNING VARIOUS MEASUREMENTS OF THESE DIFFERENT ELEMENTS OF A
13 CONSTITUTIONALLY-ADEQUATE MENTAL HEALTHCARE SYSTEM?

14 **A.** I CERTAINLY WOULD TAKE THAT INTO CONSIDERATION.

15 **Q.** YOU UNDERSTAND THAT THE SPECIAL MASTER HAS A TEAM OF
16 PSYCHIATRISTS AS WELL AS PSYCHOLOGISTS AND ATTORNEYS THAT WORK
17 TO MONITOR THESE INSTITUTIONS, CORRECT?

18 **A.** YES.

19 **Q.** YOU WOULD AGREE THAT THE SPECIAL MASTER HAS PROVIDED
20 MONITORING REPORTS ALMOST EVERY SIX TO NINE MONTHS SINCE THE
21 INCEPTION OF THE MONITORING IN THIS CASE, CORRECT?

22 **A.** I COULDN'T SWEAR TO WHAT THE FREQUENCY IS. I KNOW THAT I
23 THINK HE'S UP TO 19 OR 20. SO HOW MANY THAT IS, SPREAD OVER THE
24 TIME.

25 **Q.** YOU HAVEN'T RECEIVED ALL THOSE REPORTS, HAVE YOU?

1 **A.** I HAVE NOT.

2 **Q.** YOU'VE RECEIVED AND REVIEWED, WHAT, THE 19TH AND THE 20TH
3 MONITORING REPORTS?

4 **A.** I'VE CERTAINLY LOOKED AT THE 19TH AND 20TH, YES.

5 **Q.** AND IN THOSE MONITORING REPORTS FROM THE 19TH TO THE 20TH,
6 DID YOU SEE ANY EXPRESS LANGUAGE FINDING --

7 **MS. TILLMAN:** LET ME STRIKE THAT.

8 **BY MS. TILLMAN:**

9 **Q.** IN THE COURSE OF YOUR WORK IN REVIEWING THESE MONITORING
10 REPORTS FROM THE 19TH ROUND AND THE 20TH ROUND, ISN'T IT CORRECT
11 THAT THOSE MONITORING REPORTS MADE NO RECOMMENDATION TO THE
12 COURT TO DO -- TO UNDERTAKE ANY ACTION TO REDUCE THE OVERALL
13 POPULATION OF THE DEPARTMENT OF CORRECTIONS?

14 **A.** I'M NOT THAT FAMILIAR WITH WHAT THE FINAL RECOMMENDATIONS
15 WERE, SO I CAN'T SWEAR TO THAT. I DON'T BELIEVE THERE WERE,
16 HOWEVER.

17 **Q.** DO YOU RECALL THE SPECIAL MASTER'S LAST MONITORING REPORT,
18 THE 20TH ROUND MONITORING REPORT, ACTUALLY FOUND THAT SEVERAL
19 INSTITUTIONS WERE IN SUBSTANTIAL COMPLIANCE WITH THE
20 COURT-APPROVED POLICIES AND PROCEDURES FOR PROVIDING MENTAL
21 HEALTHCARE?

22 **A.** I WASN'T FAMILIAR WITH THAT.

23 **Q.** YOU DON'T RECALL THAT AT ALL?

24 **A.** I DON'T RECALL THAT.

25 **Q.** ANY REASON TO DISPUTE THAT?

1 **A.** AGAIN, I JUST DON'T RECALL IT.

2 **Q.** YOU ARE AWARE THAT THE DEFENDANTS HAVE OBTAINED COURT
3 APPROVAL OF THEIR UNIFORM POLICIES AND PROCEDURES FOR PROVIDING
4 CARE TO THE MENTALLY ILL, AREN'T YOU?

5 **MS. WHELAN:** OBJECTION, YOUR HONOR.

6 JUST BECAUSE THIS IS A VERY OVERBROAD QUESTION, COULD
7 YOU SPECIFY WHAT ORDER YOU'RE TALKING ABOUT?

8 **JUDGE KARLTON:** I ASSUME SHE'S TALKING ABOUT THE
9 PROTOCOLS.

10 **BY MS. TILLMAN:**

11 **Q.** THE REVISED PROGRAM GUIDE WAS APPROVED BY THIS COLEMAN COURT
12 IN MARCH, 2006.

13 **A.** THAT'S MY UNDERSTANDING, YES.

14 **Q.** AND LET ME JUST TAKE A BREAK AND SEE IF THE COURT WOULD LIKE
15 TO TAKE A LUNCH BREAK AT SOME POINT?

16 **JUDGE HENDERSON:** WE'RE THINKING OF 12:30, COUNSEL.

17 **BY MS. TILLMAN:**

18 **Q.** YOU'VE ADMITTED THAT YOU'RE NOT VERY FAMILIAR WITH THE
19 REVISED PROGRAM GUIDE, CORRECT?

20 **A.** I'M SORRY?

21 **Q.** YOU'RE NOT VERY FAMILIAR WITH THE REVISED PROGRAM GUIDE,
22 CORRECT?

23 **A.** I DON'T KNOW THAT I EVER SAID THAT.

24 **Q.** I BELIEVE YOU SAID IT AT YOUR DEPOSITION, ACTUALLY.

25 WOULD YOU LIKE ME TO REFRESH YOUR RECOLLECTION?

1 **A.** I BELIEVE THE QUESTIONS AROUND THE REVISED PROGRAM GUIDE IS
2 I'M MOST CERTAINLY AWARE OF THE PROVISION OF THE PROGRAM GUIDE.
3 I WASN'T AWARE THAT THE CURRENT ONE IS REFERRED TO AS A "REVISED
4 PROGRAM GUIDE."

5 SO WE HAD THAT DISCUSSION, IF I REMEMBER, FROM OUR
6 DEPOSITION.

7 **Q.** I THINK THE QUESTION WAS AT PAGE 52 OF YOUR DEPOSITION:

8 "IS IT YOUR UNDERSTANDING THAT THE REVISED
9 PROGRAM GUIDE" --

10 THE COURT REPORTER: I'M SORRY?

11 **JUDGE KARLTON:** I DIDN'T UNDERSTAND YOU.

12 **MS. TILLMAN:** LET ME START OVER.

13 **BY MS. TILLMAN:**

14 "IS IT YOUR UNDERSTANDING THAT THE REVISED
15 PROGRAM GUIDE" --

16 **MS. WHELAN:** I'M JUST GOING TO OBJECT.

17 IF YOU COULD SHOW HIM THE DEPOSITION IF YOU WANT TO
18 ASK HIM A QUESTION ABOUT IT.

19 **JUDGE KARLTON:** YOU MAY PROCEED, MA'AM.

20 **BY MS. TILLMAN:**

21 **Q.** "IS IT YOUR UNDERSTANDING THAT THE REVISED PROGRAM GUIDE
22 PROVIDES THE POLICIES AND PROCEDURES FOR DETERMINING
23 THE LEVEL OF CARE TO PROVIDE TO A MENTALLY ILL
24 INMATE?

25 "ANSWER: I AM AWARE THAT THE PROGRAM GUIDE

1 DOES. I'M NOT THAT FAMILIAR WITH THE REVISED PROGRAM
2 GUIDE."

3 SO YOU WOULD DEFER TO THE SPECIAL MASTER'S FINDING
4 CONCERNING SUBSTANTIAL COMPLIANCE WITH THE REVISED PROGRAM GUIDE
5 BY SEVERAL INSTITUTIONS, WOULDN'T YOU.

6 **A.** AGAIN, I'M NOT DISPUTING THE FACT THE SPECIAL MASTER MAY
7 HAVE SAID THAT IN CERTAIN INSTITUTIONS REGARDING CERTAIN ASPECTS
8 OF THE CONSTITUTIONAL CARE THAT CDCR MAY BE MEETING THE
9 CONSTITUTIONAL REQUIREMENTS.

10 I'M NOT DISPUTING THAT FACT.

11 **Q.** YOU'RE ALSO NOT DISPUTING THAT THIS COURT IN 1994 FOUND THE
12 SUICIDE PREVENTION PLAN TO BE ADEQUATELY DESIGNED, CORRECT?

13 **A.** SAY IT AGAIN, PLEASE?

14 **JUDGE KARLTON:** I WANT TO INTERRUPT SAYING: NOT THIS
15 COURT; THE COLEMAN COURT.

16 **MS. TILLMAN:** THANK YOU, YOUR HONOR.

17 **BY MS. TILLMAN:**

18 **Q.** YOU'RE ALSO NOT DISPUTING THE FACT THAT THE COLEMAN COURT IN
19 1994 FOUND THE SUICIDE PREVENTION PROGRAM TO BE ADEQUATELY
20 DESIGNED.

21 **A.** THAT THE COLEMAN COURT FOUND THAT, YES.

22 **Q.** AND YOU'RE NOT DISPUTING THAT THE DEFENDANTS HAVE MET WITH
23 THE PLAINTIFFS' COUNSEL, WITH THE SPECIAL MASTER'S TEAM IN 2006
24 TO EXPAND THE SUICIDE PREVENTION PROGRAM AND OBTAINED APPROVAL
25 OF THAT EXPANDED SUICIDE PREVENTION PLAN?

1 A. AND YOUR QUESTION IS? I'M SORRY.

2 Q. YOU'RE NOT DISPUTING THE FACT THAT THE DEFENDANTS
3 COLLABORATED WITH THE SPECIAL MASTER'S TEAM, WITH THE PLAINTIFFS
4 AND THEIR EXPERTS IN DEVELOPING AN EXPANDED SUICIDE PREVENTION
5 PLAN, CORRECT?

6 A. AGAIN, I'M NOT FAMILIAR, BUT I'M NOT DISPUTING THAT.

7 Q. AND YOU'RE NOT DISPUTING THAT THAT EXPANDED SUICIDE
8 PREVENTION PLAN HAS BEEN APPROVED BY THE COLEMAN COURT, CORRECT?

9 A. YES.

10 Q. YOU DON'T DISPUTE THAT SUICIDES CAN OCCUR EVEN UNDER THE
11 BEST OF CIRCUMSTANCES?

12 A. BY THE "BEST OF CIRCUMSTANCES," IF YOU MEAN THAT
13 EVERYTHING -- THAT THERE WAS AN ADEQUATE PSYCHIATRIC DELIVERY
14 CARE SYSTEM IN PLACE WHERE THERE WAS ACCESS TO APPROPRIATE
15 LEVELS OF PSYCHIATRIC CARE; THAT THERE WAS A MEDICATION SYSTEM
16 THAT COULD ENSURE THAT, IN FACT, THE PATIENT WAS TAKING THE
17 MEDICINE; THAT THERE WAS A RECORD SYSTEM IN PLACE TO DOCUMENT
18 THE FACT OF CURRENT CLINICAL SITUATIONS, THEN, IN FACT, YES,
19 SUICIDE STILL CAN OCCUR WHEN ALL THE PIECES ARE IN PLACE.

20 Q. WE SEE IT OCCUR IN THE GENERAL COMMUNITY, SADLY, AND WE ALSO
21 SEE IT OCCUR IN CORRECTIONAL SETTINGS, CORRECT?

22 A. YES.

23 Q. AND, IN FACT, THERE ARE KNOWN RISK FACTORS FOR SUICIDE,
24 AREN'T THERE?

25 A. IT SEEMS THAT BEING ADMITTED TO THE DEPARTMENT OF

1 CORRECTIONS IS A RISK FACTOR, AS SPECIAL MASTER HAS FOUND THAT
2 OVER 72 PERCENT OF SUICIDES WERE FORESEEABLE AND PREVENTABLE.

3 **MS. TILLMAN:** I'M GOING TO MOVE TO STRIKE THAT AS
4 NONRESPONSIVE AND ARGUMENTATIVE.

5 **BY MS. TILLMAN:**

6 **Q.** WOULDN'T YOU AGREE THAT A JAIL POPULATION THAT IS COMPOSED
7 OF PRISONERS AGING 45 OR OLDER HAS A HIGHER RISK OF SUICIDE?

8 **A.** PSYCHIATRIC LITERATURE AND MY PERSONAL EXPERIENCE CONFIRMS
9 THAT SUICIDE RATES ARE HIGHER FOR THE ELDERLY. AND MY DEFINITION
10 OF "ELDERLY" CHANGES BY THE DAY.

11 **Q.** I'M SORRY. I COULDN'T QUITE HEAR YOU.

12 **A.** MY DEFINITION OF "ELDERLY" CHANGES BY THE DAY.

13 **Q.** I THINK YOU WOULD AGREE, THOUGH, IS THAT THE OLDER A PERSON
14 GETS THE GREATER THE RISK OF SUICIDE?

15 **A.** THERE'S A CORRELATION, YES.

16 **Q.** AS YOU PUT IT IN YOUR DEPOSITION SOMETIMES THE SUICIDE RATE
17 IS A MEASURE OF HOW GOOD YOUR SUICIDE PREVENTION PLAN IS, AND
18 SOMETIMES, AS YOU PUT IT IN YOUR DEPOSITION, YOU JUST GET LUCKY?

19 **A.** SOMETIMES YOU DO.

20 **Q.** NOW, AS MUCH AS WE'VE HEARD ABOUT INMATES REPORTING TO YOU
21 OF CONCERNS ABOUT THEIR MENTAL HEALTH WHILE HOUSED IN
22 TRIPLE-BUNK AREAS, NONTRADITIONAL HOUSING, WHAT WE'VE SEEN FROM
23 THE SPECIAL MASTER IS A FOCUS ON ADMINISTRATIVE SEGREGATION
24 UNITS.

25 ISN'T IT CORRECT THAT THE SPECIAL MASTER HAS

1 INDICATED MORE THAN ONCE THAT THE DEFENDANTS ARE TO ADDRESS
2 SUICIDE TRENDS THAT OCCUR IN ADMINISTRATIVE SEGREGATION UNITS?

3 **A.** YES, I'M AWARE THAT SPECIAL MASTER HAS INSTRUCTED THEM TO
4 ADDRESS THAT.

5 **Q.** AND, IN FACT, THE RISK OF SUICIDE IN ADMINISTRATIVE
6 SEGREGATION UNITS EXISTS BECAUSE INMATES ARE HOUSED ALONE IN
7 SINGLE CELLS IN THOSE UNITS; ISN'T THAT RIGHT?

8 **A.** WELL, THAT ISN'T THE ONLY FACTOR. THE FACTOR THAT I
9 ENCOUNTERED ON MY TOURS IS THAT ADMINISTRATIVE SEGREGATION UNITS
10 ARE ROUTINELY USED TO HOUSE PEOPLE AS AN OVERFLOW HOUSING
11 BECAUSE THEY CAN'T ACCESS MENTAL HEALTH CRISIS BEDS. THAT OCCURS
12 ROUTINELY AT DVI, AND THAT OCCURS ROUTINELY AT MULE CREEK STATE
13 PRISON.

14 SO THAT NEEDS TO BE TAKEN INTO CONSIDERATION WHEN
15 YOU'RE LOOKING AT SUICIDE RISKS IN ADMINISTRATIVE SEGREGATION
16 UNITS.

17 **Q.** AND WHAT ALSO NEEDS TO BE TAKEN INTO CONSIDERATION WHEN
18 LOOKING AT THE ISSUE OF OVERCROWDING IS THE FACT THAT THERE'S NO
19 DATA SHOWING A HIGHER NUMBER OF SUICIDES IN THE TRIPLE-BUNK
20 AREAS AS OPPOSED TO THE ADSEG AREAS, CORRECT?

21 **JUDGE KARLTON:** LET ME -- I DIDN'T GET THE QUESTION.
22 LET ME TRY AND READ IT.

23 OKAY. DID YOU GET THE QUESTION?

24 **THE WITNESS:** I DID A SECOND AGO, YOUR HONOR.

25 CAN YOU SAY IT AGAIN, PLEASE?

1 **BY MS. TILLMAN:**

2 **Q.** AND WHAT ALSO NEEDS TO BE TAKEN INTO CONSIDERATION IN
3 LOOKING AT THE SUICIDE RATE AND THE IMPACT OF OVERCROWDING IS
4 THE FACT THAT THERE'S NO DATA SHOWING THAT THERE'S A HIGHER RATE
5 OF SUICIDES WITHIN THOSE VERY AREAS PLAINTIFFS COMPLAIN ABOUT
6 MOST: THE AREAS WHERE THERE'S OVER -- WHERE THERE'S TRIPLE
7 BUNKS, GYMS AND DAY ROOMS. THERE'S NO HIGHER SUICIDE TRENDS IN
8 THOSE AREAS AS OPPOSED TO THE AREAS WHERE THERE'S SINGLE CELL IN
9 ADSEG UNIT.

10 **MS. WHELAN:** OBJECTION AS COMPOUND.

11 **JUDGE HENDERSON:** BREAK IT DOWN, COUNSEL.

12 **BY MS. TILLMAN:**

13 **Q.** ISN'T IT CORRECT THAT THERE'S NO DATA SHOWING THAT THE AREAS
14 OF TRIPLE-BUNK HOUSING, SUCH AS THE GYMS AND THE DAY ROOM, POSE
15 GREATER SUICIDE TRENDS THAN THOSE IN ADMINISTRATIVE SEGREGATION
16 UNITS WHERE PEOPLE ARE HOUSED SINGLE CELL?

17 **A.** YOU KNOW, I'M NOT FAMILIAR WITH WHETHER OR NOT THE LAST
18 SUICIDE REPORT I REVIEWED, WHICH WAS THE 2006 REPORT, BROKE IT
19 DOWN BY DIFFERENT AREAS LIKE THAT, SO I JUST DON'T KNOW.

20 **Q.** AND, IN FACT, THERE'S NO ORDER ADDRESSING SUICIDE TRENDS IN
21 THESE TRIPLE-BUNK, GYM OR DAY ROOM AREA OF DEPARTMENT OF
22 CORRECTIONS, IS THERE?

23 **A.** I'M NOT AWARE OF ONE.

24 **Q.** AND THERE'S NO ORDER CONCERNING SUICIDE TRENDS FOR THOSE
25 PATIENTS WHO WERE PROVIDED INPATIENT HOSPITAL CARE AT THE DMH

1 FACILITIES, IS THERE?

2 **A.** NO.

3 IF I MAY ANSWER THE OTHER QUESTION, I DIDN'T GET TO
4 ANSWER IT FULLY FROM MY PERSPECTIVE.

5 SUICIDE IS NOT THE ONLY MEASURE OF SUFFERING.
6 CERTAINLY THAT'S THE ULTIMATE MEASURE. BUT JUST BECAUSE THERE
7 MAY NOT BE A HIGHER RATE OF SUICIDE, WHICH IS YET TO BE
8 DETERMINED, IN THE COLEMAN CLASS MEMBERS THAT ARE HOUSED IN
9 THESE TRIPLE-BUNK DORMS DOESN'T MEAN THEY ARE NOT SUFFERING.

10 **MS. TILLMAN:** I'M GOING TO FILE A MOTION TO STRIKE.
11 THAT IS NONRESPONSIVE. THE QUESTION WAS SIMPLY ABOUT DATA, NOT
12 ABOUT ANY ARGUMENT FROM THE WITNESS CONCERNING SUFFERING.

13 **JUDGE HENDERSON:** HE'S RESPONDING TO THE INFERENCE.
14 I'LL ALLOW THE QUESTION.

15 **BY MS. TILLMAN:**

16 **Q.** YOU WOULD ALSO AGREE, WOULDN'T YOU, THAT THE ETHNICITY OF AN
17 INMATE AND THE RACE OF AN INMATE CAN ALSO BE RISK FACTORS FOR
18 SUICIDE?

19 **A.** THERE ARE TRENDS ASSOCIATED WITH DIFFERENT ETHNIC GROUPS
20 THAT CAUCASIANS TEND TO HAVE A HIGHER RATE OF SUICIDE THAN OTHER
21 ETHNIC GROUPS.

22 **Q.** AND WOULDN'T YOU AGREE THAT THE HISPANIC INMATES HAVE SHOWN
23 AN INCREASED LIKELIHOOD OF SUICIDE OVER THE PAST FEW YEARS?

24 **A.** I'M NOT FAMILIAR WITH THAT.

25 **Q.** YOU DON'T HAVE ANY CRITICISM, DO YOU, OF THE DEFENDANTS'

1 PLAN TO CREATE SAFER ENVIRONMENTS FOR INMATES WITHIN
2 ADMINISTRATIVE SEGREGATION UNITS BY REMOVING ATTACHMENT POINTS,
3 BY ENABLING INCREASED ROUNDING, BY DOING ADDITIONAL PRESCREENING
4 BEFORE THEY ARE PLACED IN ADSEG UNITS?

5 **MS. WHELAN:** OBJECTION, COMPOUND.

6 **JUDGE HENDERSON:** YOU MAY ANSWER THE QUESTION,
7 DOCTOR.

8 **THE WITNESS:** I CERTAINLY, AS I SIT HERE TODAY,
9 WOULDN'T ARGUE WITH THE DEPARTMENT'S ATTEMPTS TO MAKE THE ADSEG
10 HOUSING UNITS SAFER.

11 **BY MS. TILLMAN:**

12 **Q.** YOU WOULD AGREE, WOULDN'T YOU, WITH SPECIAL MASTER KEATING'S
13 ILLUSTRATION OF THE MENTAL HEALTHCARE PATIENTS AND THEIR LEVELS
14 OF CARE AS DESCRIBED IN HIS MAY, 2007 REPORT, WHERE HE MENTIONED
15 THE INMATE OR PATIENTS WITH THE LOWEST CARE NEEDS, CALLED THE
16 "CORRECTIONAL CLINICAL AND CASE MANAGEMENT SYSTEM" ARE AT THE
17 BASE OF THE PYRAMID. THE NEXT LEVEL UP SMALLER IN THIS
18 POPULATION ARE THOSE INMATE PATIENTS WHO RECEIVE ENHANCED
19 OUTPATIENT PROGRAM CARE. GOING TOWARDS THE APEX OF THE PYRAMID
20 ARE THOSE PATIENTS WHO NEED INTERMEDIATE INPATIENT CARE. AND AT
21 THE TOP OF THIS PYRAMID ARE THOSE PATIENTS WHO NEED ACUTE
22 INPATIENT HOSPITAL CARE.

23 **A.** AND THE QUESTION WAS?

24 **Q.** DO YOU AGREE WITH THAT ILLUSTRATION OF THE MENTAL HEALTH
25 CASELOAD WITHIN THE DEPARTMENT OF CORRECTIONS?

1 **A.** IN THE MOST GENERAL SENSE, YES, THAT IS AN ACCURATE
2 CHARACTERIZATION.

3 **Q.** AND YOU WOULD AGREE, WOULDN'T YOU, WITH THE SPECIAL MASTER'S
4 ANALYSIS OF THE BED NEEDS OF THAT POPULATION IN TERMS OF HIS
5 FOCUS ON THE NEED FOR ADDITIONAL BEDS TO SERVE THOSE PATIENTS AT
6 THE APEX OF THE PYRAMID, THOSE WHO NEED THE INPATIENT HOSPITAL
7 CARE?

8 **JUDGE KARLTON:** I'M SORRY. YOU AREN'T SUGGESTING --
9 MAYBE YOU ARE SUGGESTING. YOU AREN'T -- ARE YOU SUGGESTING THAT
10 THE SPECIAL MASTER SAYS:

11 "DISREGARD THE PEOPLE AT THE LOWER END, AND
12 WE WILL JUST TAKE CARE OF THE FOLKS AT THE TOP"?
13 THAT'S NOT WHAT -- IS THAT WHAT YOU'RE SAYING?

14 **MS. TILLMAN:** I'M NOT SUGGESTING THAT. I'M
15 SUGGESTING THAT THERE WAS A FOCUS.

16 **JUDGE KARLTON:** WHAT THE SPECIAL MASTER WAS SAYING
17 WAS THERE'S THIS CRITICAL NEED AT THE VERY TOP. WE'VE GOT TO --
18 I'M SORRY. I DON'T WANT TO --

19 **MS. TILLMAN:** LET ME REFRAME THE QUESTION.

20 **JUDGE KARLTON:** IT JUST -- I DON'T UNDERSTAND WHERE
21 YOU'RE GOING, MS. TILLMAN. BUT GO AHEAD.

22 **BY MS. TILLMAN:**

23 **Q.** YOU'D AGREE WITH THE SPECIAL MASTER'S ANALYSIS THAT THE
24 PATIENTS WHO NEED THE HIGHEST LEVEL OF CARE, THIS APEX OF THE
25 PYRAMID, AND THOSE WITHIN THAT GROUP WHO POSE THE HIGHEST

1 SECURITY ISSUES ARE THE ONES WHO ARE OFTEN NOT ABLE TO ACCESS
2 THE TYPE OF CARE THEY NEED IN A TIMELY FASHION, RIGHT?

3 **MS. WHELAN:** OBJECTION. MISCHARACTERIZES THE SPECIAL
4 MASTER'S REPORT.

5 **JUDGE HENDERSON:** I DON'T KNOW. DO YOU UNDERSTAND
6 THE QUESTION?

7 **THE WITNESS:** I BELIEVE SO, YOUR HONOR.

8 **JUDGE HENDERSON:** YOU MAY ANSWER.

9 **THE WITNESS:** WHAT I'M AWARE OF IS WHAT I SAW ON MY
10 TOURS. AND THAT THERE WAS OVER 170 PEOPLE WAITING TO ACCESS
11 INTERMEDIATE CARE FACILITIES, INTERMEDIATE AT LEVEL FOUR
12 INSTITUTIONS AT THE SALINAS VALLEY PSYCHIATRIC PROGRAM.

13 SO I GUESS THAT AGREES WITH WHAT YOU'RE SAYING THAT
14 THERE ARE PEOPLE THAT NEED HIGHER LEVELS OF CARE THAT ALSO HAVE
15 HIGHER SECURITY LEVELS THAT CURRENTLY AREN'T GETTING IT.

16 **BY MS. TILLMAN:**

17 **Q.** AND EVEN WITH THE RELEASE OF A HUNDRED THOUSAND INMATES,
18 THOSE PATIENTS MIGHT STILL BE WAITING FOR CARE BECAUSE OF A LACK
19 OF APPROPRIATE INPATIENT BEDS WITH THE SECURITY ENVIRONMENT THAT
20 THEY NEED, CORRECT?

21 **A.** AND WHO IS SAYING THIS?

22 **Q.** FORMER SPECIAL MASTER KEATING.

23 **JUDGE KARLTON:** SAID WHAT? IF YOU RELEASE A HUNDRED
24 THOUSAND INMATES THERE ARE GOING TO BE A LOT MORE BEDS. I'M
25 SORRY, MA'AM. I'M COMPLETELY -- I THINK I'VE MISUNDERSTOOD YOUR

1 QUESTION.

2 LET ME READ IT AGAIN.

3 **MS. TILLMAN:** IF I MIGHT JUST STEP TO MY TABLE TO GET
4 THAT REPORT.

5 **JUDGE KARLTON:** WAIT. WAIT. WAIT. THE QUESTION I
6 THINK IS:

7 "AND EVEN" -- WELL, I'M READING IT:

8 "AND EVEN WITH THE RELEASE OF A HUNDRED THOUSAND
9 INMATES, THOSE PATIENTS MIGHT STILL BE WAITING FOR
10 CARE BECAUSE OF A LACK OF APPROPRIATE INPATIENT BEDS
11 WITH THE SECURITY ENVIRONMENT THAT THEY NEED,
12 CORRECT?"

13 AND I GUESS THAT'S THE QUESTION.

14 DO YOU HAVE A VIEW OF THAT PROBLEM?

15 **THE WITNESS:** YOUR HONOR, TO BETTER INFORM THE COURT
16 ON THIS I WOULD LIKE TO BE MORE CLEAR EXACTLY WHAT THE SPECIAL
17 MASTER SAID.

18 **JUDGE KARLTON:** WELL, FORGET ABOUT THE SPECIAL
19 MASTER. YOU FOUND A WHOLE BUNCH OF FOLKS WHO WERE AWAITING CARE
20 AND NEEDED CARE.

21 **THE WITNESS:** YES, YOUR HONOR.

22 **JUDGE KARLTON:** AND THE QUESTION IS: EVEN IF YOU
23 RELEASED A HUNDRED THOUSAND, AND THOSE PEOPLE WERE PEOPLE WITH
24 SERIOUS MENTAL ILLNESSES WHO ALSO REQUIRED HEAVY SECURITY, THE
25 QUESTION IS IF YOU -- EVEN IF YOU RELEASED A HUNDRED THOUSAND

1 OTHER FOLKS, WOULD YOU STILL HAVE A PROBLEM BECAUSE THERE WOULD
2 BE INSUFFICIENT BEDS WITH THE APPROPRIATE SECURITY NEEDS?

3 IS THIS THE POINT, MS. TILLMAN?

4 **MS. TILLMAN:** YES.

5 **JUDGE KARLTON:** IS THAT YOUR VIEW? DO YOU KNOW?

6 **THE WITNESS:** YOUR HONOR, I DON'T HAVE AN OPINION ON
7 THAT BECAUSE IT'S -- I MEAN, IT'S OUT OF -- IT'S PRETTY
8 FANTASTIC TO CONSIDER THAT. AND TO HAVE A HUNDRED THOUSAND
9 PEOPLE RELEASED IT WOULD NECESSARILY FREE UP MANY RESOURCES.

10 BUT I'M UNABLE TO FULLY ANSWER THAT. I DON'T HAVE ALL
11 THE DATA.

12 **BY MS. TILLMAN:**

13 **Q.** LET ME GIVE YOU ADDITIONAL DATA FROM THE SPECIAL MASTER'S
14 REPORT OF MAY 31, 2007, PAGE 15.

15 HE INDICATED THAT:

16 "BECAUSE STAFFING RATIOS ARE MORE INTENSIVE IN
17 THE HIGHER LEVEL CARE BEDS, SUCH AS MENTAL HEALTH
18 CRISIS BED UNITS, PSYCHIATRIC SERVICE UNITS, ENHANCED
19 OUTPATIENT PROGRAMS THAN IN THE GENERAL CORRECTIONAL
20 CLINICAL CASE MANAGEMENT PROGRAMS, EVEN THE RELEASE
21 OF A HUNDRED THOUSAND INMATES WOULD LIKELY LEAVE THE
22 DEFENDANTS WITH A LARGELY UNMITIGATED NEED TO PROVIDE
23 INTENSIVE MENTAL HEALTH SERVICES TO PROGRAM
24 POPULATIONS THAT WOULD REMAIN UNDIMINISHED BY A
25 REDUCTION OF SOME 19,000 CORRECTIONAL CLINICAL CASE

1 MANAGEMENT SYSTEM PATIENTS."

2 DOES THAT PROVIDE YOU WITH ENOUGH DATA TO --

3 **MR. BIEN:** YOUR HONOR, COULD SHE COMPLETE READING THE
4 NEXT TWO SENTENCES?

5 **JUDGE HENDERSON:** READ THOSE, MS. TILLMAN, THE NEXT
6 SENTENCES.

7 **MS. TILLMAN:** CERTAINLY.

8 "ONLY THE TARGETED RELEASE OF SERIOUSLY MENTALLY
9 ILL INMATES WILL SERVE QUICKLY TO REDUCE CURRENT
10 DEFICIENCIES, ESPECIALLY OF BED AND PROGRAM SPACE.
11 STILL THE MOST SERIOUSLY MENTALLY ILL INMATE PATIENTS
12 IN THE DEPARTMENT OF CORRECTIONS AND REHABILITATION
13 ARE UNLIKELY TO BE AMONG THOSE RELEASED PURSUANT TO
14 ANY OF THE PROVISIONS OF DEFENDANTS' ASSEMBLY BILL
15 900," END QUOTE.

16 **THE WITNESS:** SO IS THERE A QUESTION PENDING?

17 **JUDGE KARLTON:** NO. SHE'S JUST CALLING THAT TO THE
18 COURTS' ATTENTION, I THINK.

19 **BY MS. TILLMAN:**

20 **Q.** I HAD A QUESTION AT SOME POINT.

21 DO YOU AGREE WITH THAT ANALYSIS THAT YOU'VE JUST
22 HEARD FROM THOSE FOUR SENTENCES READ TO YOU?

23 **A.** I AGREE THAT -- WHAT I AGREE WITH IS THAT THE CURRENT STATE
24 OF OVERCROWDING IN THE CALIFORNIA DEPARTMENT OF CORRECTIONS IS
25 THE PRIMARY CAUSE OF THE UNCONSTITUTIONAL UNMET NEEDS OF MENTAL

1 ILLNESS, OKAY?

2 IF THERE WERE SOME SORT OF TARGETED POPULATION
3 REDUCTION THAT WOULD OCCUR, IN FACT THERE MAY BE -- AND THIS IS
4 YET TO BE SEEN -- THERE MAY BE UNMET NEEDS THAT CONTINUED TO
5 EXIST, BUT WE WOULDN'T KNOW.

6 THE DEPARTMENT DOESN'T HAVE A CHANCE OF EVEN COMING
7 CLOSE TO ADDRESSING THESE UNTIL WE GET SOME POPULATION RELIEF.
8 THERE'S JUST TOO MANY PEOPLE IN THE CURRENT SYSTEM FOR THE
9 PEOPLE TO ADEQUATELY TREAT.

10 AND I'M NOT THE ONLY ONE THAT AGREES WITH THAT.

11 **Q.** ARE YOU SAYING THERE'S TOO MANY MENTALLY ILL PEOPLE?

12 **A.** THERE ARE TOO MANY PEOPLE. AND AS MENTAL ILLNESS IS A
13 PROPORTION OF THE OVERALL POPULATION, THERE ARE, HENCE, TOO MANY
14 MENTALLY ILL PEOPLE FOR THE SYSTEM TO ADEQUATELY TREAT.

15 **JUDGE KARLTON:** DOCTOR, THE POINT THAT I THINK IS
16 BEING INQUIRED IS: IF YOU HAD A RELEASE ORDER, AND THE RELEASE
17 ORDER DID NOT REACH THOSE PERSONS WHO WERE SEVERELY IN NEED, BUT
18 ALSO VIOLENT -- WHICH IS LIKELY TO BE THE CASE, THOSE ARE
19 UNLIKELY TO BE PEOPLE RELEASED -- WOULD YOU BY VIRTUE OF THE
20 RELEASE OF OTHER PEOPLE IN SOME WAY BE AFFECTING THE DELIVERY OF
21 SERVICES TO THOSE IN NEED WHO ARE NOT PRESENTLY BEING TREATED?

22 **THE WITNESS:** I BELIEVE IT WOULD, YOUR HONOR.

23 **JUDGE KARLTON:** CAN YOU EXPLAIN TO US WHY?

24 THAT WAS THE THRUST OF YOUR QUESTION, RIGHT?

25 **THE WITNESS:** I BELIEVE THAT AS BEEN STATED HERE

1 ALREADY TODAY IS THAT THE CURRENT STATE OF OVERCROWDING LEADS TO
2 GREATER NUMBER OF ASSAULTS, BOTH INMATE-ON-INMATE AND
3 INMATE-ON-STAFF, WHICH WOULD NECESSARILY INCREASE THEIR SECURITY
4 LEVEL.

5 AND AS THE SYSTEM WOULD GET INTO A MORE MANAGEABLE
6 POPULATION LEVEL, I THINK IT'S FAIR TO SAY THAT THOSE SORTS OF
7 INCIDENCES WOULD DECREASE, AND THAT COLEMAN CLASS MEMBERS WOULD
8 NECESSARILY BE AFFECTED BY THAT WHERE THEY WOULDN'T ALWAYS BE
9 ROCKETED TO THE HIGHEST LEVEL OF SECURITY BECAUSE OF ACTING OUT
10 BECAUSE OF THEIR UNMET MENTAL HEALTH NEEDS.

11 **JUDGE KARLTON:** HANG ON JUST A SECOND. I THINK WHAT
12 YOU'RE SAYING, DOCTOR -- FORGIVE ME IF I'VE GOT IT WRONG -- IS
13 BECAUSE OF THE OVERCROWDING, THERE IS AN INCREASE IN MENTAL
14 ILLNESS AND IN SECURITY BREACHES WHICH INCREASES THE NUMBER OF
15 PEOPLE WHO NEED TREATMENT WHO ARE NOT RECEIVING TREATMENT. IS
16 THAT WHAT YOU'RE SAYING?

17 **THE WITNESS:** YES, YOUR HONOR. AND THAT BECAUSE OF
18 UNMET MENTALLY ILL NEEDS THERE IS ACTING OUT ON THE PART OF THE
19 COLEMAN CLASS MEMBERS, MEANING BEHAVIORAL PROBLEMS DUE TO MENTAL
20 HEALTH PROBLEMS THAT ENDS UP PUTTING THEM AT HIGHER SECURITY
21 LEVELS.

22 AND THEN, THEY GET STUCK BECAUSE ONCE YOU GET A
23 SECURITY LEVEL YOU HAVE TO MAINTAIN GOOD BEHAVIOR IN ORDER TO
24 GET DOWN. AND IF YOU'RE GETTING ADEQUATE MENTAL HEALTHCARE
25 YOU'RE STUCK IN THIS LOOP.

1 SO I THINK IT'S FAIR TO SAY THAT ONCE THE SYSTEM WILL
2 RETURN TO SOME SORT OF CONSTITUTIONAL CARE THAT THOSE INCIDENCES
3 WOULD DECREASE.

4 **BY MS. TILLMAN:**

5 **Q.** DOCTOR, ISN'T IT CORRECT THAT THE RELEASE OF INMATES WILL
6 NOT RENDER THE MENTAL HEALTHCARE SYSTEM AUTOMATICALLY
7 CONSTITUTIONALLY COMPLIANT?

8 **A.** I AGREE WITH YOU, YES.

9 **Q.** IT'S SIMPLY WHAT YOU CALL THE FIRST STEP TOWARDS
10 CONSTITUTIONAL COMPLIANCE, ISN'T IT?

11 **A.** WELL, AGAIN, REMEMBER MY WORDS:

12 "THE PRIMARY CAUSE OF THE ONGOING
13 CONSTITUTIONAL VIOLATIONS," OKAY?

14 THERE MAY BE OTHER CAUSES IN THERE, BUT THIS IS A
15 PRIMARY CAUSE.

16 **Q.** AND THE OTHER CAUSES MAY WELL BE THE SHORTAGE OF APPROPRIATE
17 BEDS OF INPATIENT SETTINGS FOR THOSE INMATE PATIENTS IN THE
18 HIGHEST LEVELS OF CARE, CORRECT?

19 **A.** IT MAY BE.

20 **Q.** AND ANOTHER CAUSE MAY WELL BE THE FACT THAT THE DEPARTMENT
21 OF CORRECTIONS, AS WELL AS THE DEPARTMENT OF MENTAL HEALTH, HAVE
22 HAD TO WORK VERY, VERY HARD OVER THE PAST YEAR TO REDUCE THEIR
23 VACANCY RATES AMONGST THEIR TOP LEVEL OF PROFESSIONALS, LIKE
24 PSYCHIATRISTS?

25 **A.** I AGREE THAT THEY HAVE HAD TO WORK VERY HARD TO MAINTAIN

1 STAFFING LEVELS BECAUSE OF THE CHAOTIC CONDITIONS THAT CURRENTLY
2 EXIST.

3 Q. AND ALSO BECAUSE -- ALSO BECAUSE THEY HAVE STAFF POSITIONS
4 THAT AREN'T GETTING FILLED FOR ANY NUMBER OF REASONS, THIS
5 COLEMAN COURT HAS ALSO ADDRESSED THE ISSUE OF PAY AND ENHANCED
6 THE PAY TO ATTRACT CLINICIANS. ISN'T THAT CORRECT, THAT THAT'S
7 A GOOD STEP TO TAKE, TO ENHANCE PAY, TO ATTRACT CLINICIANS TO
8 TAKE THESE JOBS?

9 A. IT'S A GOOD FIRST STEP IN THAT, YOU KNOW, RECRUITING PEOPLE
10 TO WORK IN PRISONS IS VERY DIFFICULT ON A GOOD DAY, ALL RIGHT?

11 BUT THEN, GIVEN THE CURRENT STATE OF AFFAIRS IT'S
12 EXCEEDINGLY DIFFICULT. YOU ADD LEVELS OF DIFFICULTY TO IT
13 BECAUSE OF THE POPULATION PRESSURES THAT ARE PUT ON STAFF AND
14 THEIR ATTEMPTS TO DELIVER CONSTITUTIONAL CARE.

15 Q. AND THAT IS WHY THE DEPARTMENT OF MENTAL HEALTH HAS
16 HISTORICALLY DONE BETTER IN ITS RECRUITMENT EFFORTS THAN THE
17 DEPARTMENT OF CORRECTIONS BECAUSE THE PATIENTS THAT THEY PROVIDE
18 CARE TO, INCLUDING THE CDCR INMATES, ARE PROVIDED CARE IN
19 HOSPITAL SETTINGS THAT ARE NOT OVERCROWDED, THAT DO NOT INVOLVE
20 TRIPLE BUNKS IN GYMS OR DAY ROOMS, CORRECT?

21 A. WELL, YES, WITH A PROVISIO. I ABSOLUTELY AGREE WITH YOU IN
22 THAT THE HISTORY OF RECRUITING HAS BEEN EASIER FOR DMH, THE
23 DEPARTMENT OF MENTAL HEALTH, BECAUSE THERE ARE A SET NUMBER OF
24 BEDS, OKAY?

25 AND SO THEY ARE CURRENTLY NOT OVER TRIPLE-BUNKED IN

1 THE DEPARTMENT OF MENTAL HEALTH. BUT THE WHOLE SYSTEM IS SO
2 OVERSUBSCRIBING THESE BEDS IS THAT IT BACKS UP THE ENTIRE
3 SYSTEM.

4 THERE'S A WAITING LIST TO GET INTO THE HOSPITAL. AS I
5 MENTIONED EARLIER, THERE'S 171 PEOPLE WAITING TO GET INTO LEVEL
6 FOUR INTERMEDIATE CARE FACILITIES AT SALINAS VALLEY'S
7 PSYCHIATRIC PROGRAM DURING MY TOURS. THAT'S NOT GOING TO
8 CHANGE.

9 Q. IT WILL CHANGE, WON'T IT, THOUGH, IF THE DEFENDANTS' PLAN TO
10 CREATE ADDITIONAL INPATIENT, AS WELL AS OUTPATIENT, BEDS IN
11 THEIR AUGUST 2007 BED PLAN IS PERMITTED TO GO FORWARD?

12 A. THAT'S NOT GOING TO DO ANYTHING FOR THAT INMATE THAT I SAW
13 THAT WAS HOUSED IN ONE OF THESE UPRIGHT HOUSING SMALL THINGS
14 THAT LOOK LIKE A CAGE, OKAY?

15 Q. I'M TALKING ABOUT THAT PICTURE THAT YOU SAW --

16 A. LET ME FINISH, PLEASE. I'M NOT DONE. I'M NOT FINISHED
17 ANSWERING THE QUESTION.

18 SO ANY BUILDING PLANS ARE EXACTLY THAT: PLANS ON A
19 PIECE OF PAPER THAT AREN'T GOING TO IMMEDIATELY AFFECT THE FACT
20 THAT PEOPLE IN ACUTE PSYCHIATRIC CRISIS ARE BEING HOUSED IN
21 ADSEG, BECAUSE THERE'S NO OTHER PLACE FOR THEM, OKAY?

22 THAT THEY HAVE TO WAIT THERE WITHOUT A MATTRESS OR A
23 BLANKET. AND THEY ARE HOUSED IN THESE OTHER SETTINGS WHERE
24 THERE'S NO TOILET. THIS IS -- A BUILDING PLAN IS NOT GOING TO
25 CHANGE THAT.

1 Q. BUT YOU WERE PROBABLY GLAD TO SEE, WEREN'T YOU, TOURING YOUR
2 TOUR OF CALIFORNIA MEDICAL FACILITY THAT THERE HAD RECENTLY BEEN
3 THE ACTIVATION OF 50 MENTAL HEALTH CRISIS BEDS TO SERVE THE
4 NEEDS OF THESE COLEMAN PATIENTS IN CRISIS, AND THAT WAS
5 ACTIVATED IN JUNE, 2008?

6 A. CERTAINLY, YOU KNOW, 50 ADDITIONAL MENTAL HEALTH CRISIS BEDS
7 IS CERTAINLY 50 ADDITIONAL MENTAL HEALTH CRISIS BEDS. BUT IF WE
8 LOOK TO THE NUMBER OF REFERRALS THAT OCCUR IN THAT MONTH
9 REFERRALS HAD BEEN GOING INTO THE MID-TO-HIGH TWO HUNDREDS. AND
10 FOR THE MONTH THAT UNIT OPENED THEY EXCEEDED 350.

11 JUDGE HENDERSON: LET'S FIND A COMFORTABLE PLACE TO
12 BREAK FOR LUNCH, WHEREVER THAT MIGHT BE FOR YOU.

13 MS. TILLMAN: I'M SORRY?

14 JUDGE HENDERSON: LET'S FIND A COMFORTABLE PLACE TO
15 BREAK FOR LUNCH WHEREVER THAT COMFORTABLE PLACE MAY BE FOR YOU.

16 MS. TILLMAN: THIS IS FINE RIGHT HERE, YOUR HONOR.

17 JUDGE HENDERSON: IS THIS OKAY?

18 MS. TILLMAN: THANK YOU.

19 THE COURT: COURT IS RECESS. WE WILL RESUME IN AN
20 HOUR WITH THIS TESTIMONY.

21 COURT'S ADJOURNED.

22 (THEREUPON, THE LUNCHEON RECESS WAS FROM
23 12:16 P.M. UNTIL TAKEN 1:34 P.M.)

24 JUDGE HENDERSON: WHILE YOU'RE CONTINUING TO SET UP,
25 COUNSEL, WE'RE GOING TO READ THIS ANNOUNCEMENT:

1 HAVING SEEN THE COMPLETE SET OF EXHIBITS IN THE
2 COURTROOM, THE COURT'S RECONSIDERED THE PROVISION OF COURTESY
3 COPIES TO CHAMBERS. WE'LL NOW ACCEPT ELECTRONIC COPIES OF THE
4 EXHIBITS IN LIEU OF PAPER COPIES. CD-ROM SHOULD BE SENT TO OUR
5 INDIVIDUAL CHAMBERS BY THE END OF THE TRIAL.

6 **MR. BIEN:** YOU WANT THEM ALL HERE IN SAN FRANCISCO OR
7 WOULD YOU LIKE THEM TO THE INDIVIDUAL CHAMBERS?

8 **JUDGE HENDERSON:** INDIVIDUAL CHAMBERS, YES. UNLESS,
9 IF YOU GET THEM HERE BEFORE THE TRIAL IS OVER, YOU CAN JUST HAND
10 THEM.

11 YOU MAY BEGIN WHEN YOU'RE READY, COUNSEL.

12 **MS. TILLMAN:** THANK YOU, YOUR HONORS.

13 **CROSS-EXAMINATION BY MS. TILLMAN**

14 BY MS. TILLMAN

15 **Q** GOOD AFTERNOON, DR. STEWART.

16 **A** GOOD AFTERNOON.

17 **Q** BEFORE WE ENDED FOR OUR LUNCH BREAK, I BELIEVE WE WERE
18 TALKING ABOUT THE ISSUE OF PRISONER RELEASE AND WHETHER OR NOT
19 THAT WOULD HAVE AN IMPACT ON THE DELIVERY OF MENTAL HEALTHCARE
20 SERVICES. YOU AGREE, DON'T YOU, THAT EVEN WITH THE RELEASE OF
21 INMATES, DEFENDANTS WILL STILL HAVE TO ADDRESS THE HOUSING NEED
22 FOR THE MENTALLY ILL PATIENTS?

23 **A** EVEN GIVEN PRISONER REDUCTION ORDER, THAT THE DEFENDANTS
24 WOULD STILL NEED TO PROVIDE ADEQUATE MENTAL HEALTHCARE? YES.

25 **Q** NOT ONLY WILL HAVE TO PROVIDE ADEQUATE MENTAL HEALTHCARE,

1 BUT IN ORDER TO DO SO, THEY'LL HAVE TO TAKE STEPS TO ENSURE
2 THERE'S AN ADEQUATE SUFFICIENT NUMBER OF MENTAL HEALTHCARE BEDS
3 AVAILABLE TO THE MENTALLY ILL POPULATION, CORRECT?

4 **A** THAT'S CORRECT.

5 **Q** EVEN WITH THE RELEASE OF INMATES, DEFENDANTS WILL STILL HAVE
6 TO TAKE STEPS TO ENSURE THERE'S AN ADEQUATE NUMBER OF COMPETENT,
7 TRAINED MENTAL HEALTHCARE PROFESSIONALS TO SERVE THE MENTALLY
8 ILL INMATES, CORRECT?

9 **A** THAT'S CORRECT.

10 **JUDGE REINHARDT:** COUNSEL, ARE YOU ASKING ABOUT THIS
11 FOR THE PURPOSE OF REMEDY OR TO SHOW THAT OVERCROWDING IS NOT
12 THE PRIMARY CAUSE?

13 **MS. TILLMAN:** TO SHOW IT IS NOT THE PRIMARY CAUSE,
14 YOUR HONOR. AS MUCH AS DR. STEWART HAS INDICATED THAT PRISONER
15 REDUCTION OR RELEASE IS THE FIRST STEP, HE'S ALSO TESTIFIED IT
16 DOES NOT ACTUALLY RENDER THE SYSTEM CONSTITUTIONALLY ADEQUATE,
17 SO WE ARE PURSUING THAT CONCEPT.

18 BY MS. TILLMAN

19 **Q** NOW, DR. STEWART, YOU ARE AWARE, AREN'T YOU, THAT THE
20 DEFENDANT CREATED A DECENTRALIZED MODE OR MODEL PROVIDING MENTAL
21 HEALTHCARE TO ITS INMATE PATIENTS?

22 **A** HOW DO YOU MEAN, DECENTRALIZED MODE OF MENTAL HEALTHCARE?

23 **Q** BY DECENTRALIZED, I'M REFERRING TO THE FACT THAT THERE ARE
24 33 INSTITUTIONS OF CDCR, CALIFORNIA DEPARTMENT OF CORRECTIONS
25 STATEWIDE, AND, AS PART OF THE MENTAL HEALTHCARE SERVICES

1 DELIVERY SYSTEM, MANY OF THOSE INSTITUTIONS, IN FACT, NEARLY ALL
2 OF THEM, ARE ENGAGED IN PROVIDING MENTAL HEALTHCARE SERVICES TO
3 MENTALLY ILL PATIENTS.

4 **A** AND?

5 **Q** THAT WOULD BE DECENTRALIZED CARE, WOULDN'T IT?

6 **A** BY MEANING THAT EVERY INSTITUTION NEEDS TO PROVIDE
7 CONSTITUTIONALLY ADEQUATE CARE AS DECENTRALIZED FROM WHAT OR
8 WHERE, I'M NOT SURE. BUT YOU ARE RIGHT, IT'S NOT ALL DONE IN
9 ONE SPOT.

10 **Q** I THINK THAT'S PROBABLY THE BEST WAY TO PUT IT. THANK YOU.

11 AS PART OF THAT MOTIF OF DECENTRALIZED CARE, YOU'VE
12 ENCOUNTERED EVEN ON YOUR TOURS, HAVEN'T YOU, THAT THERE'S A
13 DIFFERENT VARIETY OF BEDS AVAILABLE TO MENTALLY ILL PATIENTS
14 DEPENDING UPON THEIR LEVEL OF ACUITY, CORRECT?

15 **A** I WOULD SAY THAT THERE'S A VARIETY OF BEDS THAT ARE
16 UNAVAILABLE TO THE COLEMAN CLASS BASED ON CERTAIN ACUITY, AND
17 THE HIGHER ACUITY IT IS, THE MORE ACUTE DIFFICULTIES PEOPLE HAVE
18 OF ACCESSING IT.

19 **Q** YOU ARE AWARE THAT FOR THOSE THAT AT THE HIGHER LEVEL OF
20 CARE, LIKE THOSE REQUIRING INPATIENT INTERMEDIATE CARE, THOSE
21 REQUIRING INPATIENT ACUTE CARE, THOSE PATIENTS RECEIVE CARE AT
22 SITES SEPARATE AND APART FROM THE GENERAL POPULATION OF CDCR,
23 CORRECT?

24 **A** THAT'S CORRECT.

25 **Q** AND, IN FACT, SOME OF THESE PATIENTS ARE ACTUALLY

1 TRANSFERRED TO THE DEPARTMENT OF MENTAL HEALTH TO OBTAIN CARE AT
2 STATE HOSPITALS, LIKE COALINGA STATE HOSPITAL, ATASCADERO STATE
3 HOSPITAL, PATTON STATE HOSPITAL, CORRECT?

4 **A** I AM AWARE THOSE ARE AVAILABLE, YES.

5 **Q** YOU DIDN'T TOUR ATASCADERO STATE HOSPITAL AS PART OF YOUR
6 WORK IN THIS CASE, DID YOU?

7 **A** I DID NOT.

8 **Q** AND YOU DIDN'T TOUR COALINGA STATE HOSPITAL AS PART OF YOUR
9 WORK IN THIS CASE, DID YOU?

10 **A** I DID NOT.

11 **Q** NOR DID YOU TOUR PATTON STATE HOSPITAL AS PART OF YOUR WORK
12 IN THIS CASE, CORRECT?

13 **A** I DID NOT.

14 **Q** TO THE EXTENT YOU DID TOUR FACILITIES, THEY WERE ALL LOCATED
15 WITHIN THE DEPARTMENT OF CORRECTIONS AND REHABILITATION,
16 CORRECT?

17 **A** THAT'S CORRECT.

18 **Q** AND THEY NUMBERED ABOUT FIVE OF THE 33 INSTITUTIONS,
19 CORRECT?

20 **A** YES.

21 **Q** AND TO THE EXTENT YOU TALKED TO INMATES OF THE CALIFORNIA
22 DEPARTMENT OF CORRECTIONS DURING THESE TOURS OF FIVE FACILITIES,
23 THOSE INMATE INTERVIEWS WERE NOT FULL-FLEDGED PSYCHIATRIC
24 EVALUATIONS OF EACH INDIVIDUAL PATIENT THAT YOU TALKED TO, WERE
25 THEY?

1 **A** THEY WERE NOT, AS YOU SAID, FULL-FLEDGED DIAGNOSTIC
2 INTERVIEWS, YES.

3 **Q** WHAT YOU HEARD FROM THE INMATES YOU TOOK AS TRUE, AND YOU
4 RECORDED IT IN TERMS OF WHAT THEIR CONCERNS WERE REGARDING THE
5 MENTAL HEALTHCARE SERVICES DELIVERY SYSTEM, CORRECT?

6 **A** WELL, NOT EXACTLY. THE PURPOSES OF MY FORMAL INTERVIEWS WAS
7 BASICALLY TO DOCUMENT THE CURRENT PSYCHIATRIC CONDITION OF THE
8 INMATE, SO I NOTED IF THEY WERE DEPRESSED, SUICIDAL, PSYCHOTIC,
9 COGNITIVELY IMPAIRED, ET CETERA. THEN BASED ON A COMPREHENSIVE
10 REVIEW OF THEIR HEALTH RECORD, I WAS ABLE TO NOTE WHAT CDCR
11 CLINICIANS WERE DIAGNOSING THESE PEOPLE AS AND ALSO WHAT
12 TREATMENTS THEY WERE BEING PROVIDED.

13 **Q** WERE YOU ABLE TO ACCOMPLISH ALL THIS WITHIN A ONE-DAY TOUR
14 OF EACH FACILITY?

15 **A** YES.

16 **Q** NOW, WHEN YOU SAID YOU SPOKE TO SOME 60 COLEMAN CLASS
17 MEMBERS AND A HUNDRED OTHER INMATES OF THE CALIFORNIA DEPARTMENT
18 OF CORRECTIONS, I TRIED TO DO A LITTLE MATH. IT LOOKS LIKE YOU
19 THEN INTERVIEWED SOME 160 INMATES OF THE DEPARTMENT OF
20 CORRECTIONS, CORRECT?

21 **A** APPROXIMATELY.

22 **Q** AND ACCORDING TO WHAT I UNDERSTAND PLAINTIFFS' COUNSEL
23 REPRESENTED IN HIS OPENING STATEMENT, THERE'S SOME 35,000
24 INMATES WITHIN THE COLEMAN CASELOAD, CORRECT?

25 **A** THAT'S MY UNDERSTANDING.

1 Q SO YOUR INTERVIEWS OF EVEN JUST 60 COLEMAN CASELOAD MEMBERS
2 WAS, WELL, FAR LESS THAN ONE PERCENT OF THE POPULATION OF
3 COLEMAN CLASS MEMBERS, WEREN'T THEY?

4 A I HAVEN'T DONE THE MATH, BUT, YES, I THINK YOU'RE RIGHT.

5 Q AND WHEN YOU ADD UP THESE NUMBERS AND LOOK AT JUST THE SHEER
6 NUMBER OF PEOPLE OR INMATES THAT YOU INTERVIEWED AND COMPARE IT
7 TO THE TOTAL NUMBER OF INMATES WITHIN THE DEPARTMENT OF
8 CORRECTIONS AND REHABILITATION, AGAIN, WE'RE LOOKING AT SOME 160
9 PEOPLE INTERVIEWED BY YOU, VERSUS A TOTAL POPULATION SOMEWHERE
10 IN THE 170,000 AREA, AND, AGAIN, YOUR INTERVIEWS INVOLVED LESS
11 THAN ONE PERCENT OF THE POPULATION, CORRECT?

12 A YES.

13 Q NOW, YOU DON'T DISPUTE THE FACT, DO YOU, THAT MENTALLY ILL
14 INMATES WHO NEED HIGHER LEVELS OF CARE WITHIN INPATIENT BEDS
15 SHOULD BE PLACED IN INPATIENT BEDS THAT ARE APPROPRIATELY
16 LICENSED AND GOVERNED BY THE USUAL HOSPITAL REQUIREMENTS THAT
17 APPLY TO SUCH BEDS, DO YOU?

18 A THAT INMATE PATIENTS WHO REQUIRE INPATIENT LEVEL OF CARE
19 SHOULD RECEIVE IT IN THE SETTING THAT YOU JUST DESCRIBED? YES,
20 I BELIEVE THEY SHOULD.

21 Q AND YOU UNDERSTAND THAT THE DEPARTMENT OF MENTAL HEALTH
22 PROVIDES THOSE SORTS OF LICENSED MENTAL HEALTH BEDS FOR THE CARE
23 OF DEPARTMENT OF CORRECTIONS INMATE PATIENTS, CORRECT?

24 A THEY DO, BUT THE PROBLEM THAT I ENCOUNTERED ON MY TOURS IS
25 THAT PEOPLE WEREN'T ABLE TO ACCESS THIS LEVEL OF CARE IN A

1 TIMELY MANNER IN A WAY THAT ACTUALLY FACILITATED THEIR MENTAL
2 HEALTH TREATMENT. OFTENTIMES, THEY WERE LEFT IN LESSER LEVELS
3 OF CARE WHERE THEIR ILLNESS WAS NOT BEING ADEQUATELY ADDRESSED.

4 **Q** AND YOU WOULD WANT EVERY INMATE REQUIRING HOSPITAL LEVEL
5 CARE TO GET THAT CARE IN A TIMELY WAY AND BENEFIT FROM WHAT SOME
6 PEOPLE CALL THE DEPARTMENT OF MENTAL HEALTH THERAPEUTIC
7 ENVIRONMENT MILIEU, WOULDN'T YOU?

8 **A** YES. IT'S FAIR TO SAY I WOULD WANT DEPARTMENT OF
9 CORRECTIONS AND REHABILITATION TO FOLLOW ITS OWN PROGRAM GUIDE.

10 **Q** AND YOU WOULD ALSO WANT DEPARTMENT OF CORRECTIONS AND
11 REHABILITATION TO FOLLOW THROUGH ON ITS PLAN TO CREATE
12 ADDITIONAL INPATIENT MENTAL HEALTH HOSPITAL BEDS FOR ITS INMATES
13 THAT WILL BE STAFFED BY THE DEPARTMENT OF MENTAL HEALTH AND
14 GIVEN THAT THERAPEUTIC ENVIRONMENT, WOULDN'T YOU?

15 **A** I WOULD CERTAINLY HOPE THAT AS PART OF THE CONSTITUTIONAL
16 CARE, THERE WOULD BE AN ADEQUATE NUMBER OF BEDS THAT CURRENTLY
17 DOES NOT EXIST, SO THAT INMATES CAN ACCESS THESE SERVICES IN A
18 TIMELY MANNER.

19 **Q** AND YOU UNDERSTAND THAT EVEN WITH THE TRANSFER OF INMATES TO
20 OUT-OF-STATE LOCATIONS, INMATES BEING NOT THE MENTAL HEALTH
21 CASELOAD INMATES, BUT OTHER INMATES WITHIN THE CUSTODY OF
22 DEPARTMENT OF CORRECTIONS AND REHABILITATION, WITH THE TRANSFER
23 OF THOSE INMATES, THERE HAVE BEEN REDUCED USAGE OF THE
24 NON-TRADITIONAL BEDS, THE TRIPLE BUNKS IN SOME OF THE GYMS AND
25 DAYROOMS; YOU UNDERSTAND, DON'T YOU?

1 **JUDGE KARLTON:** I DIDN'T EVEN UNDERSTAND THE
2 QUESTION.

3 **MS. TILLMAN:** LET ME TRY AGAIN.

4 **JUDGE KARLTON:** TRY AGAIN.

5 **MS. TILLMAN:** THANK YOU.

6 **JUDGE KARLTON:** YOU KNOW THAT PEOPLE ARE BEING
7 TRANSFERRED OUT OF STATE?

8 **THE WITNESS:** I DO, YOUR HONOR.

9 **JUDGE KARLTON:** AND DO YOU KNOW THAT I HAVE NOT
10 ALLOWED THEM TO TRANSFER OUT OF STATE COLEMAN CLASS MEMBERS?

11 **THE WITNESS:** THAT'S MY UNDERSTANDING.

12 **JUDGE KARLTON:** NONETHELESS, THOSE TRANSFERS HAVE NOT
13 RESULTED IN A SIGNIFICANT REDUCTION OF THE TRIPLE BUNKING; IS
14 THAT THE QUESTION?

15 **MS. TILLMAN:** ACTUALLY NOT, YOUR HONOR. I APPRECIATE
16 YOUR INQUIRY.

17 **JUDGE KARLTON:** ALL RIGHT. GO AHEAD.
18 BY MS. TILLMAN

19 **Q** YOU WANT TO SEE THE MENTALLY ILL PATIENTS IN THE RIGHT BED
20 AT THE RIGHT TIME, DON'T YOU?

21 **A** I THINK, AS I SAID, I CERTAINLY WOULD, AND, YOU KNOW, A
22 STARTING POINT, IT WOULD BE NICE IF THE DEPARTMENT COULD FOLLOW
23 ITS OWN COURT-APPOINTED ADVISED PROGRAM GUIDE.

24 **Q** AND ANOTHER STARTING POINT WOULD BE IF THE DEFENDANTS WOULD
25 GO AHEAD AND IMPLEMENT THE COURT-APPROVED AUGUST 2007 BED PLAN

1 TO CREATE MORE LICENSED MENTAL HEALTH BEDS AS WELL AS MORE
2 ENHANCED OUTPATIENT PROGRAM BEDS, CORRECT?

3 **A** YOU KNOW, I'M CERTAINLY NOT GOING TO SIT HERE AND SAY THAT
4 DEFENDANTS SHOULDN'T PROVIDE ADEQUATE NUMBERS OF CARE, BUT THIS
5 BED PLAN AND OTHER PLANS THAT YOU'VE TALKED ABOUT DON'T DO
6 ANYTHING FOR THE PERSON WHO'S CURRENTLY IN THIS MENTAL HEALTH
7 OUTPATIENT CONCRETE SLAB UP IN MULE CREEK WITHOUT A MATTRESS,
8 WITHOUT A BLANKET, WAITING TO ACCESS MENTAL HEALTHCARE. IT
9 DOESN'T DO ANYBODY ANY GOOD FOR THIS ACUTELY PSYCHOTIC GUY WHO
10 HAS TO BE LOWER PRIORITIZED BECAUSE OF THE OVERSUBSCRIPTION OF
11 INPATIENT BEDS. IT DOESN'T DO ANYTHING FOR THAT PERSON NOW.

12 **Q** NOR WILL THEIR RELEASE, ISN'T THAT RIGHT, BECAUSE ACTUALLY
13 THE RELEASE OF INMATES WILL NOT ACTUALLY CAUSE APPROPRIATE BEDS
14 TO SOMEHOW SPRING FROM THESE EMPTY CELLS; ISN'T THAT RIGHT?

15 **A** WELL, SEE, BUT THAT'S YET TO BE SEEN. WE DON'T KNOW. ALL I
16 KNOW RIGHT NOW IS THAT, BASED ON WHAT I REVIEWED AND BASED ON
17 WHAT I TOURED, THE SYSTEM HAS TOO MANY PEOPLE. I'VE SAID THAT
18 ALREADY. AND THAT THE DEPARTMENT CANNOT MEET ITS CONSTITUTIONAL
19 OBLIGATIONS AS FAR AS MENTAL HEALTHCARE.

20 **Q** AND IT'S -- BASED UPON WHAT YOU'VE SEEN, YOU'RE SAYING
21 THERE'S TOO MANY PEOPLE BECAUSE THERE'S NOT ENOUGH BEDS FOR THE
22 MENTALLY ILL TO TREAT THEM AT THE RIGHT TIME, IN THE RIGHT
23 PLACE, AND THERE'S NOT ENOUGH MENTAL HEALTHCARE PROVIDERS TO
24 STAFF THOSE BEDS, CORRECT?

25 **A** CORRECT, BUT THOSE FACTORS THAT YOU LIST ARE A REFLECTION OF

1 THE OVERCROWDING. THE FACT THAT YOU CAN'T RETAIN -- MAINTAIN AN
2 ADEQUATE NUMBER OF COMPETENT PERMANENT STAFF HAS EVERYTHING TO
3 SAY ABOUT THE LEVEL OF OVERCROWDING. THE FACT THAT THERE IS NOT
4 ADEQUATE NUMBER OF BEDS FROM THE EOP LEVEL ON UP IS A REFLECTION
5 OF THE OVERCROWDING. SO EVERYTHING GOES BACK TO THE
6 OVERCROWDING.

7 **Q** EITHER IT IS A REFLECTION OF THE OVERCROWDING, OR WOULDN'T
8 YOU AGREE THAT STATISTICALLY WHAT WE'RE SEEING IS A GREATER
9 NUMBER OF CLINICIANS THAN EVER BEFORE, AS I SAID IN MY OPENING,
10 I THINK YOU WERE HERE FOR IT? IN 1994 WE NUMBERED OUR
11 CLINICIANS IN THE HUNDREDS, NOW DEFENDANT CAN NUMBER THEM IN THE
12 THOUSANDS. DON'T YOU THINK WITH THAT ARRAY OF CLINICIANS OUT IN
13 THE FIELD, YOU ARE GOING TO HAVE BETTER DETECTION,
14 IDENTIFICATION, AND TREATMENT OF MENTALLY ILL PERSONS, PERHAPS
15 NOT ALWAYS IN THE RIGHT BED OR AT THE RIGHT TIME, BUT THEY'LL
16 GET THE TREATMENT? THEY'RE BEING FOUND?

17 **A** I DIDN'T FIND THAT IN MY TOURS. I FOUND THE FACT THAT CCCMS
18 INMATES AT SALINAS VALLEY STATE PRISON OVER THE COURSE OF TEN
19 MONTHS SAW SEVEN DIFFERENT PSYCHIATRISTS AND HAD THEIR
20 MEDICATION CHANGED MANY TIMES. I SAW EOP INMATES THAT
21 COMPLAINED TO ME THAT EVERY TIME THEY SEE A PSYCHIATRIST, IT'S A
22 DIFFERENT PERSON, AND THEY CHANGE THEIR MEDICATIONS, AND THEY
23 HAVE NOBODY TO GO TO AS FAR AS COMPLAINING ABOUT SIDE AFFECTS
24 BECAUSE NO ONE ASKS THEM. THAT'S WHAT I SAW.

25 **Q** I KNOW THAT YOU'VE INDICATED A CONCERN ABOUT WHAT ARE CALLED

1 THE MENTAL HEALTH OUTPATIENT HOUSING UNITS. ARE YOU AWARE
2 WHETHER OR NOT -- LET ME STRIKE THAT.

3 ARE YOU AWARE THAT THOSE MENTAL HEALTH HOUSING --
4 MENTAL HEALTH OUTPATIENT HOUSING UNITS HAVE BEEN MONITORED BY
5 THE COLEMAN SPECIAL MASTER'S TEAM?

6 **A** I BELIEVE THEY HAVE.

7 **Q** ARE YOU AWARE THAT THEY HAVE BEEN APPROVED BY THE COLEMAN
8 SPECIAL MASTER'S TEAM?

9 **A** I BELIEVE THEY HAVE.

10 **Q** AND YOU'RE NOT AWARE OF ANY ORDERS FROM THE COLEMAN COURT TO
11 SHUT THOSE CELLS DOWN, ARE YOU?

12 **A** I AM NOT AWARE OF ANY ORDERS, BUT I AM AWARE OF WHAT I SAW
13 IN MY TOURS.

14 **Q** SO YOU DIFFER WITH THE COLEMAN SPECIAL MASTER'S TEAM ABOUT
15 THE UTILITY OF THESE MENTAL HEALTH OUTPATIENT HOUSING UNITS,
16 DON'T YOU?

17 **A** WHAT I HAVE STATED ALREADY AND WHAT I WILL STATE AGAIN IS
18 THAT THE HOUSING UNITS THAT WE SAW HERE EARLIER, THOSE LITTLE
19 CONCRETE BUNKERS WHERE YOU PUT PEOPLE WHO ARE ACUTELY MENTALLY
20 ILL, ARE ABSOLUTELY INADEQUATE GIVEN WHY THE PEOPLE ARE PLACED
21 THERE. THAT'S WHAT I'M SAYING.

22 **Q** YOU WOULD LIKE TO SEE NEW AND BETTER AND PARTICULARLY
23 APPOINTED CELLS FOR THAT PURPOSE, WOULDN'T YOU?

24 **A** I WOULD LIKE TO SEE THE DEPARTMENT BE ABLE TO OFFER INMATES
25 THE APPROPRIATE LEVEL OF PSYCHIATRIC CARE THAT THEIR CLINICAL

1 CONDITION DICTATES, AND THEY HAVEN'T BEEN ABLE TO DO THAT.

2 **Q** NOW, YOU ALSO MENTIONED A CONCERN ABOUT HOLDING CELLS. WE
3 SAW A PICTURE UP ON THE SCREEN A LITTLE WHILE AGO, AND THERE'S
4 ALSO SOME MENTION OF THERAPEUTIC MODULES. AGAIN, ISN'T IT
5 CORRECT THAT THE COLEMAN SPECIAL MASTER'S TEAM REGULARLY TOURS
6 THESE FACILITIES AND IS AWARE OF THOSE HOLDING CELLS?

7 **A** THEY MAY OR MAY NOT BE.

8 **Q** YOU'VE SEEN MENTION OF THE HOLDING CELLS' USAGE IN THE
9 MONITORING REPORTS FROM THE COLEMAN SPECIAL MASTER?

10 **A** YES, AND WHERE I'VE SEEN THEM MENTIONED, HE ALSO MENTIONS
11 THAT THEY ARE UNACCEPTABLE FOR ACUTE PSYCHIATRIC CARE.

12 **Q** AND ISN'T IT CORRECT THAT THERE'S BEEN NO ORDER TO REMOVE
13 THOSE HOLDING CELLS, BECAUSE WHEN THEY ARE USED APPROPRIATELY,
14 THEN THE COURT APPROVES THEIR USE?

15 **A** I CAN'T SPEAK FOR THE COURT. ALL I CAN TELL YOU, FROM A
16 CLINICAL STANDPOINT, THOSE ARE HORRIBLE SETTINGS. THOSE ARE
17 INADEQUATE. THERE'S NOTHING GOOD. YOU WOULDN'T PUT PEOPLE IN
18 THERE THAT REQUIRE PSYCHIATRIC CARE, WAITING THERE FOR SEVERAL
19 DAYS.

20 **Q** NOW, ARE YOU AWARE OF WHAT ARE CALLED THE THERAPEUTIC
21 MODULES TO ENABLE GROUP THERAPY TO OCCUR AMONGST INMATE PATIENTS
22 WHO POSE VERY HIGH RISK OF ASSAULT TOWARDS OTHERS OR ESCAPE
23 ATTEMPTS?

24 **A** I AM AWARE THAT THE DEPARTMENT USES WHAT YOU REFER TO AS
25 THERAPEUTIC MODULES, WHAT I REFER TO AS CAGES.

1 **Q** ISN'T IT CORRECT THAT DR. METZNER, WHO'S BEEN ON THE COLEMAN
2 SPECIAL MASTER'S TEAM AS A COURT-APPOINTED EXPERT FOR MANY
3 YEARS, WAS PERSONALLY INVOLVED IN THE SPECIFICATIONS USED IN
4 THOSE THERAPEUTIC MODULES?

5 **A** I AM. I'M AWARE THAT DR. METZNER IS INVOLVED IN THE COLEMAN
6 MONITORING TEAM. DR. METZNER AND I WORKED BRIEFLY TOGETHER ON
7 THE MADRID CASE, AND IT'S MY UNDERSTANDING THAT IT'S HIS OPINION
8 THAT THESE, QUOTE/UNQUOTE, "THERAPEUTIC MODULES" ARE ADEQUATE
9 TREATMENT, ARE ADEQUATE SPACES TO PUT MENTALLY ILL INMATES.

10 **JUDGE KARLTON:** I'M SORRY. ARE OR AREN'T INADEQUATE?

11 **THE WITNESS:** IT'S MY UNDERSTANDING, YOUR HONOR, THAT
12 DR. METZNER FEELS THAT WAY.

13 BY MS. TILLMAN

14 **Q** SO WHEN WE TALKED ABOUT THE HOUSING OF INMATE PATIENTS,
15 THERE MAY BE DIFFERENCES OF OPINIONS AMONGST THE EXPERTS ON WHAT
16 IS APPROPRIATE, ISN'T THAT RIGHT?

17 **A** NOW, HOUSING OR THESE VARIOUS DEVICES THAT ARE USED TO HOLD
18 PEOPLE IN? HOUSING IS VERY DIFFERENT THAN WHAT WE'RE TALKING
19 ABOUT HERE.

20 **Q** WE'LL TAKE THE LATTER. WHEN IT COMES TO THERAPEUTIC MODULES
21 AND HOLDING CELLS, YOU APPARENTLY DIFFER WITH THE
22 COURT-APPOINTED EXPERTS, DON'T YOU?

23 **A** WELL, AGAIN, I COME IN FROM MY PERSPECTIVE OF BEING ON THE
24 GATES MONITORING TEAM WHEN THE COLEMAN -- WHEN THE ORIGINAL
25 PROGRAM GUIDE WAS IMPLEMENTED AS FAR AS CCCMS, EOP, ET CETERA.

1 THERE WAS NEVER A USE OF THESE THERAPEUTIC MODULES AT THAT
2 POINT.

3 IN STEPPING AWAY FROM THEM AND COMING BACK OVER TEN
4 YEARS LATER, I FEEL THEY'RE ABSOLUTELY INADEQUATE AND
5 INAPPROPRIATE FOR USE IN ACUTELY MENTALLY ILL INMATES. LET'S
6 MAKE SURE WE UNDERSTAND THAT'S WHAT WE'RE TALKING ABOUT.

7 PEOPLE THAT ARE MENTALLY ILL -- AND IF THE SECURITY
8 OF THE INSTITUTION IS AT RISK BECAUSE PEOPLE ARE SO MENTALLY ILL
9 THAT THEY HAVE TO BE PUT IN THESE MODULES, AS YOU'RE CALLING
10 THEM, THEN THAT SPEAKS TO HOW BAD THE QUALITY OF THE MENTAL
11 HEALTHCARE IS, BECAUSE IF THE MENTAL HEALTHCARE WAS BEING
12 ADEQUATELY PROVIDED TO PEOPLE, THEY WOULDN'T BE AT SUCH A GREAT
13 RISK OF ACTING OUT.

14 SO, IN FACT, YOU COULD LOOK AT IT AS AN ADMISSION ON
15 THE FACT OF THE INADEQUACY OF THE MENTAL HEALTHCARE THAT, IN MY
16 OPINION, IS STRICTLY DUE, PRIMARILY DUE TO THE OVERCROWDING.

17 **Q** IT'S INTERESTING THE COLEMAN SPECIAL MASTER'S TEAM HAS NEVER
18 INDICATED THAT THE USE OF THE HOLDING CELLS OR THE THERAPEUTIC
19 MODULES --

20 **JUDGE KARLTON:** ARE YOU TESTIFYING?

21 **MS. TILLMAN:** LET ME STRIKE THAT.

22 **JUDGE KARLTON:** I'M SORRY, MA'AM?

23 **MS. TILLMAN:** I'LL STRIKE THAT. THANK YOU.

24 BY MS. TILLMAN

25 **Q** YOU'RE FAMILIAR WITH THE REVISED PROGRAM GUIDES' REQUIREMENT

1 THAT A PERSON -- INMATE PATIENT ON SUICIDE WATCH BE PLACED UNDER
2 AN ORDER CALLED PARTICULAR PRECAUTIONS, CORRECT?

3 **A** YES.

4 **Q** AND ONE OF THOSE PRECAUTIONS IS THEIR USUAL CLOTHING IS
5 REMOVED, AND THEY'RE GIVEN A SUICIDE SMOCK, CORRECT?

6 **A** I UNDERSTAND UNDER CERTAIN CIRCUMSTANCES A SUICIDE SMOCK IS
7 THERAPEUTICALLY INDICATED, YES.

8 **Q** SO THEY DON'T USE THEIR OWN CLOTHING TO IN ANY WAY HARM
9 THEMSELVES, CORRECT?

10 **A** THAT IS THE INTENT OF A SUICIDE SMOCK, MEANT TO BE A VERY
11 SHORT-TERM INTERVENTION, PREVENT SOMEONE FROM HARMING
12 THEMSELVES; NOT MEANT AS THE PERSON'S CLOTHING ISSUE FOR THE
13 NEXT WEEK WHILE THEY'RE WAITING TO ACCESS A MENTAL HEALTH CRISIS
14 BED. THAT WAS NEVER INTENDED.

15 **Q** WHEN YOU SPEAK OF MEDICATION MANAGEMENT, IS IT CORRECT THAT
16 YOUR CONCERN IS THAT THE DEPARTMENT OF CORRECTIONS AND
17 REHABILITATION ENGAGE IN AUDITING INMATE PATIENTS' CONSUMPTION
18 OF PRESCRIBED MEDICATIONS IN AN APPROPRIATE MANNER?

19 **A** I'M SORRY. I DIDN'T FOLLOW YOUR QUESTION.

20 **Q** ISN'T IT CORRECT THAT YOUR CONCERN ABOUT MEDICATION
21 MANAGEMENT IS, IN PART, THAT SOME PATIENTS APPARENTLY ARE NOT
22 TAKING THEIR MEDICATIONS?

23 **A** NON-COMPLIANCE HAS BEEN DOCUMENTED BY DEPARTMENT OF MENTAL
24 HEALTH AND, YES, THAT IS ONE OF THE ASPECTS OF WHAT I BASE MY
25 OPINION ON, THAT THE MEDICATION MANAGEMENT SYSTEM IS

1 OVERWHELMED.

2 **Q** ARE YOU AWARE THAT THE DEPARTMENT OF MENTAL HEALTH AND
3 DEPARTMENT OF CORRECTIONS HAVE WORKED TOGETHER ON THE ISSUE OF
4 ENSURING PATIENTS DO TAKE THEIR MEDICATIONS?

5 **A** IF THEY HAVE, IT'S NOT INDICATED BY THE STAFF THAT I SPOKE
6 TO OR THE DATA THAT WAS COLLECTED. IT STILL SHOWED THAT OVER
7 70 PERCENT OF INMATES ADMITTED TO DEPARTMENT OF MENTAL HEALTH
8 UNITS HAD NO EVIDENCE OF THEIR PRESCRIBED MEDICATIONS IN THEIR
9 BLOODSTREAM.

10 **Q** ISN'T IT CORRECT THAT THE DEPARTMENT OF CORRECTIONS RECENTLY
11 SENT OUT A MEMORANDA TO FIELD CLINICIANS INDICATING THAT FOR ANY
12 PATIENT WHO'S REFERRED TO A HIGHER LEVEL OF CARE, THAT PATIENT
13 SHOULD UNDERGO A BLOOD TEST TO ENSURE THEY'VE GOT A CERTAIN
14 AMOUNT OF PRESCRIBED MEDICATION IN THEIR BODY?

15 **A** I DON'T KNOW IF THAT MEMORANDUM HAS GONE OUT.

16 **JUDGE KARLTON:** WOULD IT MAKE ANY DIFFERENCE?

17 **THE WITNESS:** YOUR HONOR, WHAT THAT -- IF THAT
18 MEMORANDUM HAS GONE OUT, WHAT IT IS IS AN ADMISSION, IN MY
19 OPINION, ON THE PART OF THE CALIFORNIA DEPARTMENT OF CORRECTIONS
20 THAT THEY CANNOT, BASED ON WHAT THEY'RE CURRENTLY DOING, ENSURE
21 THAT INMATES HAVE THE APPROPRIATE AMOUNT OF MEDICATION
22 COMPLIANCE.

23 BY MS. TILLMAN

24 **Q** ARE YOU AWARE OF THE DEFENDANTS' WORK WITH THE RECEIVER TO
25 ENHANCE THE PHARMACY?

1 **A** I AM AWARE THE RECEIVER'S INVOLVED IN A VARIETY OF MATTERS
2 AROUND THE PHARMACY, YES.

3 **Q** ARE YOU AWARE WHEN THE RECEIVER'S PLANS FOR THE PHARMACY
4 WILL BE COMPLETELY ROLLED OUT?

5 **A** I DO NOT.

6 **Q** YOU'VE HAD THE OPPORTUNITY TO REVIEW THE SPECIAL MASTER'S
7 20TH ROUND PART A REPORT, HAVEN'T YOU?

8 **A** THE 20TH ROUND, WHAT WORD DID YOU SAY AFTER THAT?

9 **Q** PART A.

10 **A** PART A? I'M NOT SURE WHAT PART A IS.

11 **Q** IT'S BASICALLY THE FIRST INSTALLATION OF THE 20TH ROUND
12 REPORT, AND, QUITE FRANKLY, THERE'S BEEN NO OTHER INSTALLATIONS
13 YET.

14 **A** OKAY.

15 **Q** SO YOU HAVE REVIEWED THAT, CORRECT?

16 **A** I BELIEVE I HAVE, YES.

17 **Q** NOW, DO YOU AGREE WITH THE SPECIAL MASTER'S STATEMENT IN
18 THAT 20TH ROUND REPORT AT PAGE 161, THAT STAFFING SHORTAGES
19 AMONG SUPERVISORY AND LINE PSYCHIATRISTS AND CLINICIANS REMAINED
20 THE SINGLE MOST SIGNIFICANT BARRIER TO THE EFFECTIVE DELIVERY OF
21 MENTAL HEALTH SERVICES IN CDCR INSTITUTIONS?

22 **A** AM I AWARE OF THAT, OR DO I AGREE WITH IT, OR WHAT?

23 **Q** DO YOU AGREE WITH IT?

24 **A** I AGREE WITH THE FACT THAT THE SHORTAGES EXIST. BUT, AGAIN,
25 MY VIEW OF THAT IS THAT THE FACT THAT YOU CAN'T HIRE SUPERVISORY

1 PEOPLE IS A REFLECTION OF HOW BAD THE SYSTEM IS DUE TO
2 OVERCROWDING THAT YOU CAN'T HIRE PEOPLE. MY UNDERSTANDING IS
3 THESE ARE VERY GOOD JOBS AS FAR AS MENTAL HEALTH JOBS GO, AND IF
4 YOU CAN'T FILL THESE JOBS, THEN IT REALLY REFLECTS ON HOW
5 CHAOTIC THE CURRENT SITUATION IS.

6 **Q** YOU WOULD AGREE THERE'S A NATIONAL SHORTAGE OF HIGHLY
7 SKILLED MENTAL HEALTH CLINICIANS LIKE PSYCHIATRISTS, WOULDN'T
8 YOU?

9 **A** I UNDERSTAND WE CERTAINLY ARE NOT -- THERE'S NOT ENOUGH
10 PSYCHIATRISTS TO MEET THE CURRENT NEEDS NATIONWIDE.

11 **Q** AND SO EVEN WITH THE RELEASE OF INMATES FROM THE DEPARTMENT
12 OF CORRECTIONS, DEFENDANTS WILL STILL ENCOUNTER THE CHALLENGE OF
13 RECRUITING AND RETAINING HIGHLY SOUGHT-AFTER PROFESSIONAL
14 PSYCHIATRISTS FOR THE CARE OF MENTALLY ILL INMATES, WON'T THEY?

15 **A** IT CERTAINLY WILL REQUIRE THAT THEY CONTINUE TO PUT FORTH
16 EFFORT. BUT WHEN THE SYSTEM IS NOT SO OVERWHELMINGLY CROWDED
17 AND WHEN THE WORKING CONDITIONS ARE BETTER -- RIGHT NOW I WAS AT
18 DVI, AND SEVEN CLINICIANS HAD TO SHARE ONE LITTLE, SMALL, WHAT
19 USED TO BE A BROOM CLOSET. I DON'T CARE WHO YOU ARE, YOU ARE
20 NOT GOING TO -- THAT'S NOT A VERY NICE WORKING CONDITION TO WORK
21 IN.

22 SO, IT'S MORE THAN JUST THE NUMBER OF CLINICIANS;
23 IT'S THE OVERALL SYSTEM IN WHICH THEY'RE WORKING IN.

24 **Q** SO THAT WOULD BE YOUR EXPLANATION FOR WHY THE DEPARTMENT OF
25 MENTAL HEALTH IS MORE SUCCESSFUL AT RECRUITING MENTAL HEALTH

1 CLINICIANS THAN THE DEPARTMENT OF CORRECTIONS, BECAUSE THE
2 DEPARTMENT OF MENTAL HEALTH IS NOT OVERCROWDED, CORRECT?

3 **A** WELL, TO ANSWER THAT QUESTION I WOULD HAVE TO SAY THAT THE
4 DEPARTMENT OF MENTAL HEALTH HAS A SET NUMBER OF BEDS, I BELIEVE,
5 IF WE LOOK AT THE ACUTE BEDS, WHICH IS THE HIGHEST LEVEL, OF
6 APPROXIMATELY 130. SO BECAUSE THERE'S NO MORE BEDS, THAT'S AS
7 HIGH AS THEIR POPULATION GOES. SO, IN FACT, THEY DON'T EXCEED
8 THAT NUMBER.

9 BUT THE SYSTEM ITSELF IS VERY OVERCROWDED, AND THE
10 FACT THAT THESE PLACES ARE FULL MEANS THAT PEOPLE CAN'T ACCESS
11 THEM IN A TIMELY WAY. THEY WAIT TWO WEEKS, FOUR WEEKS.

12 I INTERVIEWED A YOUNG MAN AT CALIFORNIA MEDICAL
13 FACILITY INPATIENT UNIT THAT HAD TO WAIT APPROXIMATELY TWO
14 MONTHS FOR AN ACUTE BED, AND HE WAS THERE SIX MONTHS AND
15 REMAINED EXCEEDINGLY PSYCHOTIC. SO JUST THE FACT THAT THERE'S
16 NOT, QUOTE/UNQUOTE, OVERCROWDED DEPARTMENT OF CORRECTIONS -- I
17 MEAN DEPARTMENT OF MENTAL HEALTH DOESN'T MEAN IT DOESN'T AFFECT
18 THE WHOLE SYSTEM.

19 **Q** SO IT WOULD BE YOUR STATEMENT THAT EVEN IF PRISONERS ARE
20 RELEASED BY WAY OF A COURT ORDER, THE DEPARTMENT OF MENTAL
21 HEALTH WOULD STILL HAVE WAIT LISTS FOR ITS ACUTE CARE BEDS AND
22 ITS INTERMEDIATE CARE BEDS THAT EXIST TODAY, CORRECT?

23 **A** WE DON'T KNOW THAT FOR A FACT. YOU DON'T KNOW THAT.

24 **Q** WE DON'T KNOW THAT BECAUSE YOU DON'T KNOW IF THE MENTALLY
25 ILL WILL BE RELEASED, IS THAT WHAT IT IS?

1 **A** NO, WE DON'T KNOW WHAT EFFECT REDUCTION IN POPULATION WOULD
2 HAVE ON THE OVERALL DEGREE TO WHICH THESE ACUTE BEDS ARE BEING
3 ACCESSED. IT'S MY OPINION THAT THEY WOULD BE LOWER, SO WE DON'T
4 KNOW IF, IN FACT, THEY WOULD NEED TO BUILD MORE BEDS, NOT ENOUGH
5 BEDS. WE JUST DON'T KNOW.

6 **Q** IF THE PRISONER RELEASE ORDER EXCLUDED MENTALLY ILL
7 PATIENTS, THEN WOULDN'T IT BE CORRECT THAT EVEN WITH THE RELEASE
8 OF INMATES FROM THE DEPARTMENT OF CORRECTIONS REHABILITATION,
9 THE EXISTING POOL, THE EXISTING SUBSET OF THE POPULATION
10 CONSISTING OF THE COLEMAN CASELOAD MEMBERS, WOULD STILL HAVE TO
11 BE PROVIDED MENTAL HEALTHCARE IN A SETTING WHERE DEFENDANTS HAVE
12 ACKNOWLEDGED THERE'S A NEED FOR MORE BEDS, PARTICULARLY OF
13 INPATIENT VARIETY, OF HIGH SECURITY VARIETY, AND THERE'S A NEED
14 FOR MORE CLINICIANS?

15 **A** IF I UNDERSTAND YOUR QUESTION, THEY CERTAINLY WOULD HAVE THE
16 RESPONSIBILITY TO STILL PROVIDE THOSE HIGH LEVEL OF ACUITY BEDS.
17 HOWEVER, I BELIEVE THAT A REDUCTION IN THE OVERALL PRISON
18 POPULATION WOULD RESULT IN A SMALLER COLEMAN CLASS, BECAUSE THE
19 POPULATION ITSELF CREATES A SITUATION WHERE MENTAL ILLNESS IS
20 EITHER CAUSED OR EXACERBATED.

21 **Q** AND YET HAVE YOU SHOWN US ANY DATA IN YOUR REPORTS OR
22 TODAY'S TESTIMONY, I DON'T BELIEVE SO, WHERE LONGITUDINAL
23 STUDIES HAVE SHOWN THAT, SAY AT RECEPTION A PERSON COMES IN
24 HEALTHY, AND BY THE TIME THEY STAYED WITH THE DEPARTMENT OF
25 CORRECTIONS REHABILITATION AND MAINLINE INSTITUTION, THEIR

1 CASELOADING MADE SUFFERING FROM A MENTAL ILLNESS?

2 **A** I HAVEN'T SHOWN YOU ANY DATA ADDRESSING THAT, BUT THE
3 SCIENTIFIC LITERATURE IS VERY CLEAR ON THE FACT THAT CROWDING
4 CREATES MENTAL HEALTH PROBLEMS, THAT CROWDING CREATES SUICIDAL
5 SITUATIONS, OKAY?

6 AND, ALSO, IT IS MY EXPERIENCE AS WORKING AS A COURT
7 MONITOR FOR GATES AND FOR MADRID AND FOR THE U.S. DEPARTMENT OF
8 JUSTICE, THAT THE MORE CROWDED A SITUATION IS, THE MORE CROWDED
9 A SETTING IS, THE GREATER DEGREE OF MENTAL ILLNESS AND GREATER
10 ACUITY OF MENTAL ILLNESS. SO BY LOWERING THE OVERALL
11 POPULATION, YOU ARE GOING TO LOWER THE ACUITY AND PROBABLY LOWER
12 THE INCIDENCE.

13 **Q** OF COURSE, THAT MEANS YOU ARE NOT IN ANY WAY FACTORING INTO
14 YOUR ANALYSIS THE SEPARATE HOUSING PROVIDED TO THOSE PATIENTS IN
15 INPATIENT HOSPITAL SETTINGS AND ENHANCED OUTPATIENT PROGRAM
16 BEDS; YOUR CONCERN IS NOT AT ALL WITH THOSE PEOPLE?

17 **A** NO. MY CONCERN IS CERTAINLY WITH THOSE PEOPLE AND
18 OVERCROWDING. YOU ACT AS IF OVERCROWDING DOESN'T AFFECT PEOPLE
19 IN THE DMH BEDS OR THE EOP BEDS, WERE QUITE THE CONTRARY,
20 THAT -- LET'S LOOK AT IT THIS WAY:

21 WHEN I EVALUATED -- WHEN I WENT THROUGH SALINAS
22 VALLEY STATE PRISON, THERE WAS 171 PEOPLE WAITING TO ACCESS THE
23 INTERMEDIATE CARE FACILITIES. NOW, AS A CLINICIAN AT THE
24 INTERMEDIATE FACILITY AT SALINAS VALLEY STATE PRISON, YOU CAN'T
25 HELP BUT THINK THERE'S AN OVERWHELMING PRESSURE ON THESE PEOPLE

1 TO GET THOSE FOLKS OUT OF THAT INTERMEDIATE CARE FACILITY SO NEW
2 PEOPLE CAN COME IN.

3 **MS. TILLMAN:** I OBJECT TO THE EXTENT THAT CALLS FOR
4 SPECULATION.

5 **JUDGE KARLTON:** OVERRULED. YOU MAY PROCEED.

6 **JUDGE HENDERSON:** I WOULD HAVE DONE THE EXACT SAME
7 THING.

8 **THE WITNESS:** THE FACT THAT THESE INDIVIDUAL UNITS
9 ARE NOT, AS YOU SAY, OVERCROWDED, THEY ARE STILL IMPACTED BY THE
10 OVERCROWDING IN THE SYSTEM. THESE EOP UNITS THAT I EVALUATED,
11 THERE'S NOT ENOUGH ADEQUATE TREATMENT SPACE FOR THEM BECAUSE OF
12 THE FACT OF OVERCROWDING.

13 THE EOP UNIT, THE MAINLINE AT SALINAS VALLEY STATE
14 PRISON HAS TO RUN THEIR GROUPS OUTSIDE. THEY DON'T HAVE ANY
15 INDOOR GROUP ROOMS. SO IF THERE'S INCLEMENT WEATHER, IF THERE'S
16 ANY SORT OF WHAT THE DEPARTMENT REFERS TO AS MODIFIED
17 PROGRAMMING, WHICH, IN MY WORDS, ARE LOCKDOWNS, THEN ALL GROUPS
18 STOP BECAUSE OF OVERCROWDING. SO THE OVERCROWDINGS DO AFFECT
19 THE EOP UNITS. OVERCROWDING DOES AFFECT THE DMH UNITS.

20 BY MS. TILLMAN

21 **Q** YOU WOULD DEFER TO THE COURT'S RESPONSE ON THOSE ISSUES,
22 WOULDN'T YOU, WHERE THE COURT HAS RESPONDED TO THOSE ISSUES BY
23 INDICATING TO DEFENDANTS TO CREATE BED PLANS, INTERIM BED PLANS,
24 LONG-TERM BED PLANS, INTERMEDIATE BED PLANS TO RESOLVE THE
25 BEDDING ISSUES FOR THESE MENTALLY ILL PATIENTS; WOULDN'T YOU

1 DEFER TO THAT?

2 **A** I WOULD CERTAINLY DEFER TO THAT, BUT I WOULD ALSO USE THAT
3 AS AN INDICATOR TO ME THAT THERE'S A REALIZATION ON THE FACT
4 THAT THEY DON'T HAVE ENOUGH RESOURCES TO MEET THE CURRENT LEVEL
5 OF PEOPLE THAT NEED IT BECAUSE OF OVERCROWDING, AND SO IT'S AN
6 ADMISSION OF OVERCROWDING AND THE EFFECTS OF OVERCROWDING,
7 BECAUSE THEY'RE SAYING WE NEED TO BUILD MORE GROUP ROOMS, WE
8 NEED TO BUILD MORE TREATMENT SPACES, BECAUSE CURRENTLY WE DON'T
9 HAVE THEM BECAUSE WE HAVE TOO MANY PEOPLE. IT'S AN ADMISSION OF
10 OVERCROWDING.

11 **Q** WOULDN'T YOU AGREE WITH SPECIAL MASTER KEATING'S REMARKS AND
12 HIS REPORT ON THE AUGUST 2000 BED PLAN IN WHICH HE NOTED THAT
13 THE DEFENDANTS' DESIGN OF PRISONS IN THE, QUOTE, "PRISON
14 CONSTRUCTION YEARS OF THE 1980'S," DID NOT INVOLVE MENTAL HEALTH
15 SPACE AND SO NOW DEFENDANTS ARE LEFT WITH PRISONS THAT DO NOT
16 HAVE APPROPRIATE SPACE FOR MENTAL HEALTHCARE?

17 **A** THEY DON'T HAVE APPROPRIATE SPACE FOR MENTAL HEALTHCARE
18 BASED ON THE NUMBER OF PEOPLE THEY NEED TO TREAT, YES, I AGREE
19 WITH THAT, ABSOLUTELY.

20 **Q** WOULDN'T YOU AGREE ACTUALLY THAT WHAT MR. KEATING WAS SAYING
21 WAS THAT DEFENDANTS DON'T HAVE APPROPRIATE MENTAL HEALTHCARE
22 SPACES BECAUSE THE PRISONS WERE NEVER DESIGNED IN THE EARLY
23 '80'S TO PROVIDE MENTAL HEALTHCARE SPACE REGARDLESS OF THE
24 POPULATION AT THE TIME OR EVEN TODAY?

25 **A** BUT IT CAN'T BE HELD IRREGARDLESS OF THE POPULATION, BECAUSE

1 IF THERE WAS A MANAGEABLE POPULATION, THEN THERE WOULD BE ENOUGH
2 SPACE, EVEN IN THE PRISONS THAT THE SPECIAL MASTER ADMITTED WERE
3 POORLY DESIGNED BACK IN THE '80'S, OR WHENEVER THEY WERE BUILT.
4 IF THERE WAS A MANAGEABLE NUMBER OF PATIENTS, THEN THERE WOULD
5 BE ENOUGH ROOM AND THERE ISN'T ENOUGH ROOM.

6 **Q** YOUR TESTIMONY TODAY IS THAT THE FIRST STEP IS A PRISONER
7 RELEASE ORDER AND THAT THAT FIRST STEP WILL NOT AUTOMATICALLY
8 CREATE A CONSTITUTIONALLY ADEQUATE MENTAL HEALTHCARE SYSTEM,
9 CORRECT?

10 **A** MY OPINION TODAY IS THAT OVERCROWDING IS A PRIMARY CAUSE OF
11 THE ONGOING CONSTITUTIONAL VIOLATIONS IN CDCR.

12 **Q** RELIEVING THAT OVERCROWDING BY WAY OF A PRISONER RELEASE
13 ORDER WILL NOT REMEDY THOSE VIOLATIONS, WOULD IT?

14 **A** I MENTIONED A PRISONER REDUCTION ORDER LOWERING THE NUMBER
15 OF PEOPLE THERE CURRENTLY REQUIRING SERVICES WOULDN'T
16 NECESSARILY BRING THE SYSTEM INTO CONSTITUTIONAL COMPLIANCE JUST
17 BY THAT.

18 **MS. TILLMAN:** THANK YOU. NOTHING FURTHER.

19 **JUDGE HENDERSON:** THANK YOU, COUNSEL.

20 **JUDGE KARLTON:** HANG ON. THERE'S SOMEONE ELSE.

21 **JUDGE HENDERSON:** INTERVENORS, DEFENDANT INTERVENORS.

22 **MS. JOHNSON:** GOOD AFTERNOON, YOUR HONORS. ANNE
23 JOHNSON ACTUALLY ON BEHALF OF THE PLATA DEFENDANTS. WE HAVE A
24 MOTION WE WOULD LIKE TO BRING WITH RESPECT TO DR. STEWART'S
25 TESTIMONY. THE PLATA DEFENDANTS NOTE DR. STEWART IS A

1 PSYCHIATRIST, NOT AN INTERNIST OR GENERAL PRACTITIONER, AND HAS
2 ONLY OFFERED A BARE CONCLUSION REGARDING OVERCROWDING AS THE
3 PRIMARY CAUSE OF THE ALLEGED DEFICIENCIES IN MEDICAL DELIVERY IN
4 CALIFORNIA'S PRISONS AND THE ALLEGED CONSTITUTIONAL VIOLATIONS
5 IN THE PLATA CASE. DR. STEWART'S TESTIMONY AND REPORT
6 FOCUSED --

7 **JUDGE HENDERSON:** WE'VE LISTENED TO IT. WHAT'S THE
8 OBJECTION? NOT A SPEECH, BUT WHAT'S THE OBJECTION?
9 INADMISSIBLE?

10 **MS. JOHNSON:** WE'RE MOVING TO STRIKE HIS BARE
11 CONCLUSION REGARDING OVERCROWDING AS THE PRIMARY CAUSE OF THE
12 ALLEGED CONSTITUTIONAL VIOLATIONS IN THE PLATA CASE AS LACKING
13 ANY FACTUAL BASIS OR EXPLANATION.

14 **JUDGE HENDERSON:** OKAY. OVERRULED. IT GOES TO THE
15 WEIGHT OF THAT TESTIMONY. LET'S PROCEED. IF IT GOES TO
16 ANYTHING.

17 **MS. WANG:** TERESA WANG FOR THE LEGISLATIVE
18 INTERVENORS, YOUR HONOR. THE DEFENDANT INTERVENORS HAVE NO
19 FURTHER QUESTIONS.

20 **JUDGE HENDERSON:** OKAY. OKAY. THEN REDIRECT.

21 **MS. WHELAN:** YOUR HONOR, ON BEHALF OF THE PLAINTIFFS,
22 WE HAVE NO FURTHER QUESTIONS.

23 THANK YOU, DR. STEWART.

24 **JUDGE HENDERSON:** OKAY. THEN THANK YOU VERY MUCH FOR
25 APPEARING, DR. STEWART. YOU'RE EXCUSED.

1 **THE WITNESS:** THANK YOU, YOUR HONORS.

2 **JUDGE HENDERSON:** OKAY. YOU MAY CALL YOUR NEXT
3 EXPERT, DR. SCOTT.

4 **MS. NORMAN:** PLAINTIFFS CALL DR. -- MR. DOYLE WAYNE
5 SCOTT.

6 **JUDGE HENDERSON:** MISTER. THANK YOU.

7 **WAYNE SCOTT,**
8 HAVING BEEN CALLED AS A WITNESS BY THE PLAINTIFFS WAS FIRST
9 DULY SWORN AND EXAMINED AS FOLLOWS:

10 **THE WITNESS:** I WILL.

11 **THE CLERK:** PLEASE HAVE A SEAT.

12 **JUDGE KARLTON:** PLEASE STATE YOUR NAME.

13 **THE CLERK:** STATE AND SPELL YOUR FULL NAME FOR THE
14 RECORD.

15 **THE WITNESS:** MY NAME IS WAYNE SCOTT, W-A-Y-N-E
16 S-C-O-T-T.

17 **DIRECT EXAMINATION BY MS. NORMAN**

18 **MS. NORMAN:** GOOD MORNING, YOUR HONORS. SARA NORMAN
19 FROM THE PRISON LAW OFFICE FOR PLAINTIFFS. I'M SORRY. GOOD
20 AFTERNOON.

21 BY MS. NORMAN

22 **Q** AND GOOD AFTERNOON, MR. SCOTT.

23 **A** GOOD AFTERNOON.

24 **Q** HOW LONG DID YOU WORK FOR THE TEXAS DEPARTMENT OF CRIMINAL
25 JUSTICE?

1 **A** APPROXIMATELY 30 YEARS.

2 **Q** AND THAT'S THE AGENCY THAT RUNS THE TEXAS PRISON SYSTEM,
3 RIGHT?

4 **A** YES, MA'AM. CORRECT.

5 **Q** WHAT WAS THE HIGHEST RANK YOU ACHIEVED IN THAT SYSTEM?

6 **A** I WAS THE EXECUTIVE DIRECTOR OF THE AGENCY.

7 **Q** AND WHEN WERE YOU THE EXECUTIVE DIRECTOR?

8 **A** I BEGAN TEMPORARILY IN OCTOBER OF 1995. I BECAME THE
9 PERMANENT DIRECTOR IN JANUARY OF '96, AND RETIRED IN JULY OF
10 2001.

11 **Q** SINCE THAT TIME, HOW HAVE YOU BEEN EMPLOYED?

12 **A** I DID ABOUT A YEAR WITH THE STATE PAROLE BOARD. THE
13 GOVERNOR ASKED ME TO TAKE AN APPOINTMENT AFTER I RETIRED FROM
14 THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE. I STAYED THERE ALMOST
15 A YEAR. AND FROM THAT POINT FORWARD, I BECAME A CORRECTIONS
16 CONSULTANT.

17 **Q** IN WHAT AREAS HAVE YOU SERVED AS A CORRECTIONS CONSULTANT?

18 **A** YOU MEAN WHAT JURISDICTIONS HAVE I BEEN --

19 **Q** YES.

20 **A** -- EMPLOYED?

21 I HAVE BEEN IN THE STATES OF INDIANA, KENTUCKY,
22 OKLAHOMA, MASSACHUSETTS, NEW MEXICO, PUERTO RICO. I'M SURE
23 THERE ARE OTHERS.

24 **Q** IN THOSE JURISDICTIONS, WHO HAS SOUGHT YOUR EXPERTISE?

25 **A** I'M SORRY?

1 Q WHO HAS SOUGHT YOUR EXPERTISE? WHO HIRED YOU TO COME IN AS
2 A CONSULTANT?

3 A IT VARIES. I WORKED FOR THE FEDERAL JUDGE IN PUERTO RICO.
4 I WORKED FOR THE STATE LEGISLATURE IN OKLAHOMA AND WORKED FOR
5 THE DEPARTMENT OF CORRECTIONS IN THE OTHER JURISDICTIONS.

6 Q AND --

7 A ALSO COOK COUNTY JAIL.

8 Q AND AS A CONSULTANT, YOU'VE ANALYZED AND REVIEWED STAFFING
9 AND SECURITY IN OTHER CORRECTIONAL MANAGEMENT OPERATIONS; IS
10 THAT RIGHT?

11 A YES, I HAVE. THANK YOU.

12 Q THE TEXAS PRISON SYSTEM HAS ABOUT 150,000 PRISONERS, ISN'T
13 THAT RIGHT?

14 A YES.

15 Q SO THAT MAKES IT LIKE CALIFORNIA, ONE OF THE LARGEST PRISON
16 SYSTEMS IN THE WORLD?

17 A I BELIEVE IT'S PROBABLY SECOND ONLY TO CALIFORNIA AT THIS
18 POINT.

19 Q IN THIS COUNTRY? IN THIS COUNTRY?

20 A YES.

21 Q AS THE EXECUTIVE DIRECTOR IN THE TEXAS SYSTEM, MEDICAL AND
22 MENTAL HEALTHCARE WERE UNDER YOUR ULTIMATE AUTHORITY, RIGHT?

23 A YES.

24 Q SO YOU DIDN'T MAKE CLINICAL DECISIONS, BUT YOU RAN THE
25 OPERATIONAL SUPPORT STRUCTURE TO ENSURE THAT CARE WAS DELIVERED

1 TO PRISONERS; IS THAT RIGHT?

2 **A** THAT'S CORRECT, YES.

3 **Q** HOW DID YOU ENSURE THAT THE PRISONERS IN YOUR CUSTODY HAD
4 ACCESS TO MEDICAL AND MENTAL HEALTHCARE?

5 **A** VARIOUS WAYS. ONE IS WE COMPILED A LOT OF REPORTS ON ACCESS
6 TO MEDICAL CARE THAT WERE FORWARDED TO MY OFFICE FOR REVIEW. I
7 MET WITH THE MEDICAL DIRECTOR WEEKLY.

8 THERE WAS A COMMITTEE FORMED BY THE LEGISLATURE TO
9 OVERSEE INMATE MEDICAL CARE BECAUSE OF THE INVOLVEMENT OF THE
10 TWO UNIVERSITY TEACHING SCHOOLS THAT WE'RE DOING THE MEDICAL AND
11 MENTAL HEALTHCARE FOR OUR SYSTEM. THEY HELD MONTHLY MEETINGS,
12 AND I ALWAYS ATTENDED THOSE MEETINGS.

13 **Q** SO, SPECIFICALLY, COULD YOU DESCRIBE THE ROLE THAT'S PLAYED
14 IN -- BY NON-CLINICAL PRISON ADMINISTRATORS IN ENSURING THAT
15 PRISONERS GET SEEN AND PROVIDED WITH THE APPROPRIATE MEDICAL AND
16 MENTAL HEALTHCARE?

17 **A** STARTING WITH CORRECTIONAL OFFICERS?

18 **Q** SURE.

19 **A** OKAY. CORRECTIONAL OFFICERS ARE REALLY THE FIRST LINE.
20 THEY ARE THE ONES THAT HAVE THE MOST DIRECT CONTACT WITH THE
21 OFFENDERS ON A DAILY BASIS. THEY'RE THE ONES THAT OBSERVE THEIR
22 BEHAVIOR. IF THEY'RE EVIDENCING ANY SYMPTOMS, THE CORRECTIONAL
23 OFFICER IS THE FIRST TO USUALLY SEE THAT AND THEN REPORT THAT OR
24 ENCOURAGE THE OFFENDER TO GO SEEK MEDICAL CARE.

25 THE WARDEN -- EVERYBODY, THE MID LEVEL MANAGERS AND

1 THE WARDENS MONITOR VERY CAREFULLY THE STATISTICS THAT ARE
2 GENERATED BY THEIR ACCESS TO CARE GROUP AT THE FACILITY, AND
3 THOSE ARE THEN FORWARDED UP THROUGH THE RANKS ALL THE WAY UP TO
4 THE EXECUTIVE DIRECTOR'S OFFICE.

5 Q DO CUSTODIAL STAFF ALSO PLAY A ROLE IN PROVIDING ESCORTS AND
6 SECURITY FOR APPOINTMENTS?

7 A YES, THEY DO. IN FACT, THEY ESCORT THE OFFENDERS TO AND
8 FROM THE MEDICAL APPOINTMENTS IN SOME CASES. SOME CASES THEY
9 ISSUE A PASS, DEPENDING ON THE CUSTODY LEVEL. THEY DRIVE THE
10 VEHICLES TO TAKE THE OFFENDERS TO THE OFFSITE SPECIALTY
11 APPOINTMENTS. IN FACT, IN TEXAS WE HAD A SPECIAL GROUP OF
12 TRANSPORTATION OFFICERS THAT DID NOTHING BUT MEDICAL
13 TRANSPORTATION.

14 Q DO CUSTODIAL MANAGEMENT STAFF ALSO RUN CLASSIFICATION
15 SYSTEMS TO ENSURE THAT PRISONERS ARE HOUSED IN THE APPROPRIATE
16 PLACES TO RECEIVE MEDICAL AND MENTAL HEALTHCARE?

17 A WE DO HAVE STAFF. I WOULDN'T CALL THEM CUSTODIAL STAFF.
18 THEY ARE FREE WORLD STAFF, WHAT I WOULD CALL, BUT WE DO HAVE
19 CLASSIFICATION MANAGERS AT EACH OF OUR INSTITUTIONS, YES.

20 Q YOU'RE FAMILIAR WITH THE RUIZ CASE IN TEXAS?

21 A OH, YES.

22 Q IN THAT PRISONERS -- PRISONER REFORM LAWSUIT, THE COURT
23 FOUND CRUEL AND UNUSUAL PUNISHMENT EXISTING IN THE TEXAS PRISONS
24 AS A RESULT OF OVERCROWDING, RIGHT?

25 A YES, THEY DID.

1 Q AND THE COURT FOUND SEVERE OVERCROWDING IN THE TEXAS SYSTEM
2 SOMETHING LIKE 200 PERCENT?

3 A YES, THEY DID.

4 Q THE COURT ALSO FOUND UNCONSTITUTIONAL MEDICAL AND MENTAL
5 HEALTHCARE DELIVERED IN THE SYSTEM, CORRECT?

6 A THAT'S CORRECT.

7 Q AND AFTER THE FINDINGS IN THE RUIZ COURT CAME DOWN, TEXAS
8 UNDERWENT DECADES OF COURT-ORDERED REFORMS; IS THAT RIGHT?

9 A ABOUT TWO DECADES, YES.

10 Q AND YOU AND TEXAS DID HAVE SUCCESS IN ENDING THE COURT
11 ORDERS REGARDING MEDICAL AND MENTAL HEALTHCARE BECAUSE YOU
12 BROUGHT MEDICAL AND MENTAL HEALTHCARE UP TO CONSTITUTIONAL
13 LEVELS, ISN'T THAT RIGHT?

14 A YES.

15 Q WHAT WERE -- IN TEXAS WHAT WERE THE OPERATIONAL PROBLEMS?
16 AND YOU LIVED THROUGH ALL OF THIS IN THE TEXAS SYSTEM, DIDN'T
17 YOU?

18 A (NODS HEAD.)

19 Q WHAT WERE THE OPERATIONAL PROBLEMS CAUSED BY THE SEVERE
20 OVERCROWDING IN THE TEXAS SYSTEM?

21 A WELL, MUCH, MUCH OF THE SAME PROBLEMS WE HAD ARE THE
22 PROBLEMS THAT I SEE HERE. IT'S THE INABILITY TO GET THE
23 OFFENDERS OUT TO MEET THEIR MEDICAL APPOINTMENTS BECAUSE OF LACK
24 OF STAFF AND BECAUSE STAFF IS SOMETIMES OTHERWISE OCCUPIED WITH
25 OVERCROWDING ISSUES; INABILITY TO GET STAFF TO OFFSITE

1 APPOINTMENTS -- I'M SORRY -- TO GET INMATES TO OFFSITE
2 APPOINTMENTS BY STAFF THAT ARE TASKED TO DO THAT.

3 WE RAN INTO SOME ISSUES WITH MISCLASSIFYING OFFENDERS
4 AND PUT THEM IN THE WRONG SPOT, WHICH MEANS THAT THEY DIDN'T GET
5 THE PROPER MEDICAL AND MENTAL HEALTH ATTENTION THAT THEY NEEDED.

6 **Q** DID OVERCROWDING ALSO IMPACT YOUR MANAGEMENT SYSTEMS?

7 **A** YES. FROM THE LOWEST LEVEL CORRECTIONAL OFFICER TO THE
8 SYSTEM ADMINISTRATOR, THE FACILITY ADMINISTRATOR TO THE SYSTEM
9 ADMINISTRATOR. IT WAS REALLY A CRISIS MANAGEMENT SITUATION.

10 EVERY DAY SOMETHING WAS BREAKING DOWN AT YOUR
11 FACILITY BECAUSE OF THE OVERCROWDING AND THE IMPACT IT WAS
12 HAVING ON YOUR INFRASTRUCTURE OR YOUR TIMELINES TO GET THINGS
13 DONE, AND YOU WERE ALWAYS IN A CRISIS MODE TRYING TO RESOLVE
14 THOSE ISSUES.

15 **Q** YOU HAVE BEEN TO EIGHT CALIFORNIA PRISONS IN THE LAST YEAR
16 OR SO; IS THAT RIGHT?

17 **A** YES, MA'AM.

18 **Q** AND YOU TOURED THE PRISONS, WENT TO THE LIVING UNITS, YOU
19 TALKED TO STAFF AND PRISONERS AND ADMINISTRATORS?

20 **A** YES, I DID.

21 **Q** YOU'VE ALSO -- WELL, BEFORE WE MOVE ON, WERE YOU SURPRISED
22 BY THE CONDITIONS THAT YOU SAW IN THE CALIFORNIA PRISONS?

23 **A** I REALLY WAS. I HAVE BEEN IN A LOT OF JURISDICTIONS OVER
24 THE LAST FIVE YEARS, AND I HAVEN'T SEEN THIS LEVEL OF
25 OVERCROWDING IN ANY OF THOSE JURISDICTIONS.

1 **JUDGE KARLTON:** I'M SORRY. LET ME INTERRUPT FOR A
2 MOMENT.

3 YOU HAVE BEEN IN A LOT OF PRISONS. YOU'VE NEVER SEEN
4 A PRISON WITH THIS KIND OF OVERCROWDING. DO YOU PERCEIVE THAT
5 THE OVERCROWDING, SETTING ASIDE WHETHER THE OVERCROWDING ITSELF
6 IS UNDESIRABLE, THE QUESTION ULTIMATELY BECOMES THE RELATIONSHIP
7 OF OVERCROWDING TO THE DELIVERY OF MENTAL AND PHYSICAL CARE.
8 WERE YOU ABLE TO PERCEIVE OR DO YOU PERCEIVE THAT THERE IS SUCH
9 A RELATIONSHIP?

10 **THE WITNESS:** YES, I DO.

11 **JUDGE KARLTON:** GO AHEAD. I HOPE YOU'LL GET TO THE
12 POINT OF THIS TRIAL EVENTUALLY.

13 **MS. NORMAN:** ALL RIGHT. LET'S GET TO IT DIRECTLY.
14 BY MS. NORMAN

15 **Q** IN WHAT WAYS DID YOU SEE OVERCROWDING IN CALIFORNIA
16 IMPACTING MEDICAL AND MENTAL HEALTHCARE PROVISION?

17 **A** WELL, I DID SEE A LOT OF PROBLEMS WITH THE CLASSIFICATION
18 SYSTEM. I SAW LACK OF STAFF IN ALL OF THE AREAS THAT I
19 PERSONALLY VISITED. IN TALKING TO STAFF AND OFFENDERS, I KNOW
20 THAT ACROSS THE BOARD THERE WAS A LOT OF FRUSTRATION ON BOTH
21 SIDES. THEY WERE, IN SOME CASES, ANGRY BECAUSE THEY COULDN'T
22 GET IN IN A TIMELY FASHION TO SEE THE MEDICAL DOCTOR OR THE
23 PSYCHIATRIC CLINICIAN. SOME OF THEM MISSED THEIR OFFSITE
24 SPECIALTY APPOINTMENTS.

25 STAFF IS FRUSTRATED ALSO BECAUSE OF HAVING TO DEAL

1 WITH THE SHEER MAGNITUDE OF BODIES THAT THEY WERE HAVING TO DEAL
2 WITH. A NUMBER OF THE AREAS THAT I WENT INTO, PARTICULARLY DORM
3 AREAS, WERE REALLY, REALLY OVERCROWDED.

4 **MR. MELLO:** OBJECTION.

5 **THE WITNESS:** I'M SORRY. REALLY, REALLY OVERCROWDED.

6 **MR. MELLO:** THIS IS PAUL MELLO FOR DEFENDANTS.

7 OBJECTION; HEARSAY TO THE EXTENT --

8 **JUDGE KARLTON:** USE THE MICROPHONE.

9 **MR. MELLO:** SORRY. PAUL MELLO FOR PLATA DEFENDANTS.

10 OBJECTION; HEARSAY TO THE EXTENT THAT THE INFORMATION
11 HE'S TESTIFYING TO ABOUT HIS CONVERSATIONS WITH OTHERS ARE BEING
12 OFFERED FOR THE TRUTH OF THE MATTER ASSERTED.

13 **JUDGE KARLTON:** MAYBE WE OUGHT TO GET THIS DONE
14 QUICK.

15 SIR, YOU HAVE BEEN TO ALL THESE INSTITUTIONS AND
16 HIRED BY PEOPLE. ONE OF THE THINGS THAT YOU DO GO TALK TO THE
17 STAFF?

18 **THE WITNESS:** YES.

19 **JUDGE KARLTON:** AND WHEN YOU TALK TO THE STAFF,
20 THAT'S PART OF HOW YOU MAKE YOUR DECISIONS ABOUT WHAT'S GOING
21 ON?

22 **THE WITNESS:** CORRECT.

23 **JUDGE KARLTON:** AND THAT'S TRUE OF ANYBODY WHO'S IN
24 YOUR POSITION?

25 **THE WITNESS:** YES.

1 **JUDGE HENDERSON:** OVERRULED.

2 BY MS. NORMAN

3 **Q** WHAT DID STAFF AT THE INSTITUTIONS YOU VISITED IN CALIFORNIA
4 TELL YOU ABOUT OVERCROWDING?

5 **A** WELL, FROM THE VERY LOWEST CORRECTIONAL OFFICER TO THE
6 FACILITY SUPERINTENDENTS, EVERYBODY THAT I SPOKE TO ALWAYS
7 VOICED THEIR DISPLEASURE WITH THE OVERCROWDING THAT THEY WERE
8 HAVING TO DEAL WITH AT THEIR PARTICULAR INSTITUTION.

9 **Q** DID THEY GIVE YOU ANY --

10 **MR. MELLO:** I DO NOT WANT TO BELABOR THE POINT, BUT
11 CAN I HAVE A STANDING OBJECTION WITH RESPECT TO HEARSAY SO I
12 DON'T HAVE TO JUMP UP EVERY TIME?

13 **JUDGE HENDERSON:** YOU MAY HAVE A STANDING OBJECTION.
14 AND I ASSURE YOU WHEN WE RULE, WE WON'T FIND THAT THAT STATEMENT
15 THAT THE GUARD GAVE MR. SCOTT WAS TRUE THAT --

16 **MR. MELLO:** UNDERSTOOD, YOUR HONOR. I JUST WANT TO
17 MAKE SURE TO PRESERVE THE RECORD. THANK YOU.

18 **JUDGE HENDERSON:** YOU'VE GOT A STANDING OBJECTION
19 THROUGHOUT THE TRIAL, NOT JUST ON THIS WITNESS.

20 **MR. MELLO:** THANK YOU, YOUR HONOR.

21 **JUDGE HENDERSON:** ON THAT ISSUE.

22 BY MS. NORMAN

23 **Q** WERE YOU ABLE TO DRAW ANY CONCLUSIONS ABOUT THE EXTENT TO
24 WHICH OVERCROWDING IMPACTED THE ACCESS TO MEDICAL AND MENTAL
25 HEALTHCARE BASED ON WHAT STAFF TOLD YOU AT THE INSTITUTIONS?

1 **A** WELL, AGAIN, THEY WERE FRUSTRATED BECAUSE THEY WERE
2 OVERWHELMED WITH THEIR DUTIES, A LOT OF THE TIMES THEY COULDN'T
3 GET OUT TO TAKE THE OFFENDERS TO THEIR MEDICAL APPOINTMENT, TO
4 THE MENTAL HEALTH APPOINTMENTS SIMPLY BECAUSE THEY WERE
5 OVERWHELMED WITH OTHER TASKS.

6 **Q** DID YOU SEE EVIDENCE OF BREAKDOWNS AND PROBLEMS WITH
7 INFRASTRUCTURE DUE TO OVERCROWDING IN CALIFORNIA PRISONS?

8 **A** YES, I DID.

9 **Q** WHAT KINDS OF INFRASTRUCTURE PROBLEMS DID YOU SEE?

10 **A** I SAW IN MANY CASES GYMNASIUMS, OVERCROWDED DORMITORIES,
11 DAYROOMS, PROGRAM SPACE THAT WERE BEING USED TO HOUSE PRISONERS
12 IN DOUBLE AND TRIPLE BUNK BEDS WHERE THERE WERE VERY SPARSE
13 AMOUNTS OF TOILET FIXTURES, SHOWERS, LAVATORIES FOR THEM TO USE
14 FOR SANITARY PURPOSES.

15 **Q** AND IN WHAT WAYS DOES THAT LEVEL OF OVERCROWDING THAT YOU
16 JUST DESCRIBED, IN WHAT WAYS DOES THAT IMPACT ACCESS TO MEDICAL
17 AND MENTAL HEALTHCARE?

18 **A** WELL, FOR ONE THING, PUTTING OFFENDERS IN A REALLY DENSELY
19 COMPACTED AREA SUCH AS WHAT I'VE DESCRIBED REALLY CREATES THE
20 PROBABILITY OF SPREAD OF INFECTIOUS DISEASE, ESPECIALLY WHEN THE
21 TOILETS, THE SHOWERS AND THE WASHBASINS AREN'T VERY SANITARY,
22 WHICH, IN MOST CASES, I FOUND THAT TO BE THE CASE.

23 I ALSO FOUND THAT A NUMBER OF THE TOILETS WERE BROKEN
24 FROM OVERUSE, A NUMBER OF THE SHOWERS WERE BROKEN FROM OVERUSE,
25 AND THERE WERE A LOT OF OFFENDERS COMPETING FOR THOSE SCARCE

1 RESOURCES.

2 **Q** IN YOUR OPINION, DO THE FACTORS YOU JUST DESCRIBED THAT YOU
3 SAW IN CALIFORNIA RENDER CALIFORNIA UNABLE TO PROVIDE
4 CONSTITUTIONAL MEDICAL AND MENTAL HEALTHCARE?

5 **A** YES, AND OTHERS. I MEAN, I THINK ONE OF THE THINGS WE
6 HAVEN'T DISCUSSED VERY MUCH IN THE TESTIMONY, THE OBJECTIVE
7 CLASSIFICATION PLAN AND HOW THAT IMPACTS MEDICAL AND MENTAL
8 HEALTHCARE HERE IN THE STATE.

9 **Q** AND CAN YOU DESCRIBE WHAT YOU FOUND WITH REGARDS TO
10 CLASSIFICATION SYSTEMS IN CALIFORNIA?

11 **A** SURE, SURE. WELL, FIRST LET ME SAY, MANAGING A PRISON, NO
12 MATTER WHAT CUSTODY LEVEL, IS A VERY RISKY PROPOSITION, AND THE
13 BEST TOOL IN THE WARDEN'S ARSENAL TO MANAGE THAT IS AN OBJECTIVE
14 CLASSIFICATION PLAN. THAT HELPS THE WARDEN SPREAD THE RISK
15 APPROPRIATELY.

16 **JUDGE KARLTON:** I'VE READ YOUR DIRECT -- WHAT EXACTLY
17 IS A CLASSIFICATION SYSTEM AND WHAT DOES IT DO?

18 **THE WITNESS:** CLASSIFICATION SYSTEM IS AN INSTRUMENT.
19 IT'S AN OBJECTIVE TOOL THAT PROVIDES AN -- A RISK ASSESSMENT ON
20 EVERY INDIVIDUAL OFFENDER. IT TAKES INTO CONSIDERATION SUCH
21 FACTORS AS AGE, CRIMINAL HISTORY, EDUCATIONAL LEVELS OR
22 DEFICIENCIES, MENTAL HEALTH ISSUES, MEDICAL ISSUES, SO ON, SO
23 THAT YOU CAN PROPERLY CLASSIFY AND PLACE OFFENDERS IN THE
24 APPROPRIATE CUSTODY HOUSING LEVEL.

25

1 BY MS. NORMAN

2 **Q** AND WHAT IMPACT DID YOU SEE THE OVERCROWDING IN CALIFORNIA
3 HAVE ON THE CLASSIFICATION PROCESS?

4 **A** WELL, IT'S PRETTY STANDARD ACROSS THE COUNTRY TO HAVE ABOUT
5 A TEN PERCENT OVERRIDE ON CLASSIFICATION -- OBJECTIVE
6 CLASSIFICATION DECISIONS THAT ARE GIVEN OUT BY YOUR INSTRUMENT.
7 IN CALIFORNIA IT WAS MUCH HIGHER THAN THAT, WHICH MEANS YOU'RE
8 TAKING ON RISK THAT YOU DON'T NEED TO ASSUME. AND ONE OF THE
9 FACTORS, ONE I'VE NEVER SEEN BEFORE THAT THEY USE HERE, IS A
10 VALIDATING FACTOR TO OVERRIDE IS POPULATION CONTROL. THAT'S NOT
11 A VALIDATING FACTOR IN ANY OTHER JURISDICTION THAT I'VE EVER
12 SEEN, WHICH TELLS ME THAT YOU DON'T HAVE THE APPROPRIATE CUSTODY
13 CLASSIFICATION BED TO PUT THE OFFENDER IN, SO FOR POPULATION
14 CONTROL REASONS, YOU PLACE THEM WHERE YOU CAN.

15 **Q** SO IS IT FAIR TO SAY THAT IN CALIFORNIA, DUE TO
16 OVERCROWDING, PRISONERS ARE BEING PLACED INCONSISTENT WITH
17 APPROPRIATE CLASSIFICATION TECHNIQUES AND TOOLS?

18 **A** YES, I THINK IT WAS NOTED IN MY REPORT THAT THEIR OVERRIDE
19 LEVEL IS ABOUT 25 PERCENT, WHICH IS MUCH, MUCH HIGHER THAN THE
20 NORM. AND, AGAIN, YOU ARE ASSUMING RISK THAT YOU REALLY DON'T
21 NEED TO ASSUME. IN TEXAS, FOR INSTANCE, OUR OVERRIDE PERCENTAGE
22 WAS ABOUT THREE PERCENT DURING THE TIME I WAS THERE.

23 **Q** AFTER YOU HAD GOTTEN THE OVERCROWDING UNDER CONTROL?

24 **A** YES.

25 **Q** AND HOW DOES THAT IMPACT MEDICAL AND MENTAL HEALTHCARE

1 DELIVERY WHEN PRISONERS ARE BEING MISCLASSIFIED AND MISPLACED?

2 **A** OKAY. SEVERAL WAYS. ONE IS IF YOU MISCLASSIFY A LOWER
3 LEVEL OFFENDER TO A HIGHER CUSTODY LEVEL, YOU SUBJECT THEM TO
4 THE PREDATORY BEHAVIOR OF PEOPLE IN THAT HIGHER CUSTODY LEVEL.
5 IF THE OPPOSITE IS TRUE, IF YOU TAKE A HIGHER CUSTODY LEVEL
6 OFFENDER AND YOU PUT THEM IN A LOWER CUSTODY LEVEL, THEY CAN
7 BECOME PREDATORS.

8 A GOOD OBJECTIVE CLASSIFICATION SYSTEM DRAWS
9 ATTENTION TO MENTAL HEALTH AND MEDICAL DEFICIENCIES, AND YOU
10 SHOULD BE HOUSED ACCORDINGLY. THAT'S A VERY STRONG FACTOR AND
11 THAT RECOMMENDS A HOUSING ACCORDING TO TREATMENT FOR THOSE KINDS
12 OF DEFICIENCIES.

13 NOW, IF YOU'RE PLACED IN AN AREA THAT THE OFFICERS OR
14 THE STAFF DON'T KNOW THAT THIS PERSON POSSESSES ANY MENTAL OR
15 MEDICAL DEFICIENCIES, IF THEY SEE A PERSON ACTING OUT, THEY MAY
16 MISTAKE THEIR ACTING OUT FOR DEFIANCE OF AUTHORITY INSTEAD OF
17 PROBLEMS ASSOCIATED WITH THEIR MEDICAL OR MENTAL HEALTH HISTORY.

18 **Q** YOU TALKED ABOUT CRISIS DECISION MAKING HAPPENING IN TEXAS
19 AS A RESULT OF THE OVERCROWDING THERE. DID YOU ALSO SEE CRISIS
20 DECISION MAKING IN CALIFORNIA IN WAYS THAT IMPACTED THE DELIVERY
21 OF MEDICAL AND MENTAL HEALTHCARE?

22 **A** AGAIN, THE WARDENS WERE VERY VOCAL ABOUT THE DEMANDS THAT
23 OVERCROWDING WAS PLACING ON THEM AND THEIR STAFFS AND THE
24 PROBLEMS IT WAS CREATING FOR THEM, AND ALL OF THAT LEADS TO
25 CRISIS DECISION MAKING ON A DAILY BASIS.

1 Q BASED ON YOUR EXPERTISE FROM YOUR DECADES IN TEXAS AND YOUR
2 REVIEWS OF OTHER CORRECTIONAL SYSTEMS AROUND THE COUNTRY AND
3 YOUR OBSERVATIONS AND RESEARCH ON CALIFORNIA, IS IT YOUR OPINION
4 THAT OVERCROWDING IS THE PRIMARY CAUSE OF THE MEDICAL AND MENTAL
5 HEALTHCARE VIOLATIONS IN CALIFORNIA PRISONS?

6 A YES. EVERYTHING REVOLVES AROUND OVERCROWDING. THE
7 DEFICIENCIES IN THE CLASSIFICATION PLAN, THE DEFICIENCIES IN THE
8 UNAVAILABILITY OF STAFF BECAUSE THEY ARE DOING OTHER TASKS
9 ASSOCIATED WITH OVERCROWDING PROBLEMS TO DO ONSITE MEDICAL
10 APPOINTMENTS OR OFFSITE MEDICAL APPOINTMENTS, THE WEAR AND TEAR
11 ON THE INFRASTRUCTURE. I KNOW THERE HAVE BEEN ELECTRICAL
12 OUTAGES BECAUSE OF THE OVERLOAD THAT THE LARGE NUMBER OF
13 OFFENDERS IS CAUSING AT INSTITUTIONS. THERE'S ALSO BEEN WATER
14 PROBLEMS AT A NUMBER OF THE INSTITUTIONS, AND I THINK THE
15 GOVERNOR'S PROCLAMATION CLEARLY DESCRIBED A LOT OF THOSE ISSUES.

16 SO THOSE WERE JUST SOME OF THE ISSUES, THAT
17 OVERCROWDING CREATES PROBLEMS FOR MEDICAL AND MENTAL HEALTH
18 DELIVERY.

19 Q AS EXECUTIVE DIRECTOR OF THE TEXAS PRISON SYSTEM, YOU
20 OVERSAW ON YOUR WATCH THE STATE'S EMERGENCE FROM COURT ORDERS
21 OVER UNCONSTITUTIONAL MEDICAL AND MENTAL HEALTHCARE, RIGHT?

22 A I DID.

23 Q COULD YOU HAVE DONE THAT IF THE POPULATION REMAINED AT
24 200 PERCENT CAPACITY?

25 A I'M CONVINCED NO. ONCE WE GOT OUR POPULATION DOWN TO THE

1 APPROPRIATE SIZE FOR THE SPACE AND INFRASTRUCTURE THAT WE HAD AT
2 EACH FACILITY, WITH SOME FLEXIBILITY SPACE FOR CLASSIFICATION
3 PURPOSES AND ALSO FOR MAINTENANCE, ROUTINE MAINTENANCE, SOME
4 CELLS WERE DOWN, ONCE WE ALIGNED ALL THOSE PROBLEMS, THEN WE
5 BEGAN TO REALLY MAKE PROGRESS IN ELIMINATING ALL OF THE
6 OUTSTANDING ISSUES THAT WE HAD WITH THE COURT.

7 **Q** IN YOUR OPINION, IS THAT PRELIMINARY STEP OF POPULATION
8 REDUCTION, IS THAT ALSO ESSENTIAL IN CALIFORNIA IN ORDER TO GET
9 A HANDLE ON THE MEDICAL AND MENTAL HEALTHCARE VIOLATIONS?

10 **A** BASED ON MY EXPERIENCE IN TEXAS AND WHAT I HAVE SEEN, I
11 WOULD SAY YES TO THAT.

12 **Q** ONE LAST QUESTION, MR. SCOTT. WHEN WAS THE LAST TIME THAT
13 YOU TESTIFIED ON BEHALF OF A PRISONER OR A CLASS OF PRISONERS?

14 **A** I'VE NEVER TESTIFIED IN THEIR BEHALF.

15 **MS. NORMAN:** THANK YOU.

16 **THE WITNESS:** YOU'RE WELCOME.

17 **JUDGE HENDERSON:** THANK YOU, COUNSEL.

18 CROSS-EXAMINATION.

19 **MR. MELLO:** DO YOU WANT ME TO START?

20 **JUDGE HENDERSON:** YES.

21 **CROSS-EXAMINATION BY MR. MELLO**

22 BY MR. MELLO

23 **Q** GOOD AFTERNOON, MR. SCOTT. PAUL MELLO FOR PLATA DEFENDANTS.

24 MR. SCOTT, YOU DO NOT HOLD ANY DEGREES BEYOND YOUR
25 BACHELOR'S DEGREE IN BUSINESS ADMINISTRATION?

1 **JUDGE KARLTON:** I'M SORRY. I'M HAVING TROUBLE. LIFT
2 THAT THING UP IF YOU CAN.

3 **MR. MELLO:** I PROBABLY AM, TOO.
4 BY MR. MELLO

5 **Q** MR. SCOTT, YOU DO NOT HAVE ANY DEGREES BEYOND YOUR
6 BACHELOR'S DEGREE IN BUSINESS ADMINISTRATION, DO YOU?

7 **A** NO.

8 **Q** YOU DO NOT HAVE ANY DEGREES IN THE MEDICAL FIELD, CORRECT?

9 **A** NO, I DO NOT.

10 **Q** YOU DO NOT HAVE ANY DEGREES IN THE MENTAL HEALTH FIELD
11 CORRECT?

12 **A** NO, I DO NOT.

13 **Q** YOU HAVE NEVER BEEN A CLINICIAN WHO PROVIDED MEDICAL OR
14 MENTAL HEALTHCARE TO PATIENTS, CORRECT?

15 **A** THAT'S RIGHT, I NEVER HAVE.

16 **Q** MR. SCOTT, YOU DON'T HAVE ANY EXPERIENCE ANALYZING PRISON
17 STAFFING OR STAFFING RATIOS AS THEY RELATE TO MEDICAL CLINICIANS
18 OR MENTAL HEALTH CLINICIANS, DO YOU?

19 **A** NO.

20 **Q** MR. SCOTT, WHEN YOU WERE THE EXECUTIVE DIRECTOR OF THE TEXAS
21 DEPARTMENT OF CRIMINAL JUSTICE, YOU DID NOT DIRECTLY MANAGE
22 MEDICAL AND MENTAL HEALTHCARE SERVICES, CORRECT?

23 **A** NO, I DID NOT.

24 **Q** OKAY. WHEN YOU WERE THE EXECUTIVE DIRECTOR OF THE TEXAS
25 DEPARTMENT OF CRIMINAL JUSTICE, BOTH MEDICAL AND MENTAL HEALTH

1 SERVICES WERE RUN BY A MEDICAL DIRECTOR WHO WAS A PHYSICIAN,
2 CORRECT?

3 **A** THAT'S CORRECT. I SUPERVISED HER ADMINISTRATIVELY, BUT I
4 DID NOT DEAL IN ANY CLINICAL DECISIONS AT ALL.

5 **Q** AND, IN FACT, THAT MEDICAL DIRECTOR ACTUALLY REPORTED TO A
6 DEPUTY OF YOURS, CORRECT?

7 **A** THAT'S CORRECT.

8 **Q** MR. SCOTT, YOU WERE NEVER QUALIFIED TO BE THE MEDICAL
9 DIRECTOR OF THE TEXAS SYSTEM, WERE YOU?

10 **A** COULD YOU ASK THAT AGAIN?

11 **Q** SURE.

12 WERE YOU EVER QUALIFIED IN YOUR MIND TO BE THE
13 DIRECTOR OF THE MEDICAL SYSTEM IN THAT POSITION THAT REPORTED TO
14 YOU? WERE YOU EVER QUALIFIED TO DO THAT?

15 **A** NO. IT CALLED FOR A PHYSICIAN.

16 **Q** OKAY. I BELIEVE YOU TESTIFIED OR SPOKE ABOUT IN ONE OF YOUR
17 DEPOSITIONS OR IN YOUR REPORT THAT -- YOUR REPORTS THAT YOU
18 PERFORMED ANALYSIS OF SEVERAL STATES REGARDING HOW MANY
19 CORRECTIONAL OFFICERS WERE NEEDED FOR MEDICAL EXPORTS -- PARDON
20 ME -- ESCORTS TO TRANSFER INMATES TO BOTH ONSITE AND OFFSITE
21 MEDICAL SERVICES, CORRECT?

22 **A** THAT'S CORRECT.

23 **Q** OKAY. AND YOU DID THAT IN FLORIDA?

24 **A** YES.

25 **Q** AND YOU DID THAT IN OKLAHOMA?

1 **A** YES.

2 **Q** AND YOU DID IT IN KENTUCKY?

3 **A** YES.

4 **Q** DID YOU ALSO DID IT IN INDIANA?

5 **A** YES.

6 **Q** AND NEW MEXICO?

7 **A** YES.

8 **Q** AND PUERTO RICO?

9 **A** YES.

10 **Q** OKAY. WHEN YOU DID THAT TYPE OF ANALYSIS IN FLORIDA IN
11 2006, YOU VISITED EIGHT INSTITUTIONS, SPENDING TWO FULL DAYS AT
12 EACH INSTITUTION, CORRECT?

13 **A** THAT'S RIGHT.

14 **Q** IN THIS CASE YOU'VE OFFERED OPINIONS REGARDING THE EFFECTS
15 OF OVERCROWDING ON MEDICAL AND MENTAL HEALTHCARE ACROSS
16 CALIFORNIA'S 33 PRISONS, CORRECT?

17 **A** YES, I HAVE.

18 **Q** OKAY. IN FORMING THOSE OPINIONS, DID YOU VISIT EACH ONE OF
19 CALIFORNIA'S 33 PRISONS?

20 **A** NO, I VISITED EIGHT.

21 **Q** YOU VISITED EIGHT, CORRECT?

22 **A** I DID, YES.

23 **Q** AND YOU VISITED FIVE LAST YEAR, CORRECT?

24 **A** IT WAS FOUR AND FOUR.

25 **Q** FOUR AND FOUR?

1 **A** YES.

2 **Q** I'M SORRY.

3 SO IN 2007, WHICH FOUR INSTITUTIONS DID YOU VISIT?

4 **A** CIM, AVENAL, VALLEY STATE AND SAN QUENTIN.

5 **Q** DID YOU SPEND TWO DAYS AT EACH ONE OF THOSE INSTITUTIONS IN
6 2007?

7 **A** NO, I DID NOT.

8 **Q** IN FACT, YOU SPENT LESS THAN A FULL DAY AT EACH OF THOSE
9 INSTITUTIONS, CORRECT?

10 **A** I THINK I SPENT A FULL DAY AT CIM, BUT THAT WAS THE ONLY
11 ONE, YES, SIR.

12 **Q** APPROXIMATELY HOW LONG DID YOU SPEND AT VALLEY STATE?

13 **A** A HALF A DAY.

14 **Q** OKAY. DID YOU ALSO SPEND A HALF DAY AT AVENAL?

15 **A** AVENAL WAS VERY LARGE. IT WAS A LITTLE LONGER. FIVE OR SIX
16 HOURS PROBABLY.

17 **Q** AND HOW ABOUT AT SAN QUENTIN?

18 **A** FIVE OR SIX, SEVEN HOURS. IT'S PRETTY LARGE ALSO.

19 **Q** OKAY. MR. SCOTT, DID YOU PREPARE THE FIRST DRAFT OF EITHER
20 ONE OF YOUR REPORTS IN THIS CASE?

21 **A** DID I PREPARE THE DRAFT MYSELF? NO.

22 **Q** OKAY. WHO PREPARED THE FIRST DRAFT OF YOUR REPORTS?

23 **A** MS. NORMAN.

24 **Q** I'M SORRY?

25 **A** MS. NORMAN.

1 Q PLAINTIFFS' COUNSEL?

2 A YES.

3 Q IN YOUR FIRST REPORT, YOUR NOVEMBER 2007 REPORT, AT PAGE 44,
4 PARAGRAPH 79 -- PUT IT UP ON THE SCREEN. I ALSO HAVE A HARD
5 COPY IF THAT'S EASIER FOR YOU, BUT I BELIEVE IT'S RIGHT IN FRONT
6 OF YOU.

7 (DOCUMENT DISPLAYED.)

8 BY MR. MELLO

9 Q YOU SAID IN PARAGRAPH 79:

10 "IT IS IMPOSSIBLE UNDER CURRENT CONDITIONS
11 TO PROVIDE ADEQUATE MEDICAL AND MENTAL
12 HEALTHCARE TO CALIFORNIA'S PRISONERS."

13 DO YOU SEE THAT?

14 A YES, I DO.

15 Q AND YOU -- AT THE TIME YOU ISSUED THAT STATEMENT, THAT WAS
16 BASED UPON VISITS AT FOUR INSTITUTIONS, CORRECT?

17 A YES.

18 Q OKAY. NEXT WE ARE GOING TO GO TO PARAGRAPH 59 OF YOUR
19 REPORT ON APPROXIMATELY PAGE 33. IN THAT SECTION OF YOUR REPORT
20 YOU WROTE THAT:

21 "AN OFFICER ALONE WITH SEVERAL HUNDRED
22 INMATES IS UNLIKELY, FOR EXAMPLE, TO PERFORM
23 EMERGENCY FIRST AID OR CPR. IT IS SIMPLY UNSAFE
24 TO DO SO WITH NO BACKUP WHEN PRISONERS COULD
25 EASILY SIMULATE AN EMERGENCY AS A CONSEQUENCE --

1 AS A DIVERSION. THIS INABILITY TO PERFORM BASIC
2 LIFESAVING FUNCTIONS COULD HAVE POTENTIALLY
3 DEVASTATING CONSEQUENCES ON THE LIFE AND HEALTH
4 OF A PRISONER UNDERGOING A MEDICAL OR MENTAL
5 HEALTH EMERGENCY."

6 DO YOU REMEMBER THAT BEING IN YOUR REPORT?

7 **A** YES.

8 **Q** OKAY. AT THE TIME THIS WAS WRITTEN, YOU WERE NOT AWARE OF
9 EVEN A SINGLE INCIDENT WHERE AN INMATE IN ANY OF CALIFORNIA'S
10 PRISONS WAS DENIED MEDICAL CARE DUE TO THE LACK OF CUSTODIAL
11 STAFF, WERE YOU?

12 **A** NO. THAT STATEMENT WAS BASED UPON MY EXPERIENCE IN TEXAS
13 WHEN WE WERE UNDERGOING THE OVERCROWDING THERE.

14 **Q** IT WASN'T BASED ON ANYTHING YOU LEARNED DURING YOUR TOURS OR
15 INVESTIGATION IN THIS MATTER?

16 **A** NO. I WOULD SAY, THOUGH, THAT IT'S VERY LIKELY THAT THE
17 SAME SITUATION COULD OCCUR AS IT OCCURRED IN TEXAS MORE THAN
18 ONCE.

19 **Q** BUT YOU CAN'T TELL ME ONE INMATE WHO HAD SUCH A
20 CIRCUMSTANCE, CORRECT?

21 **A** NOT FROM PERSONAL KNOWLEDGE, NO.

22 **Q** OKAY. IN FORMING YOUR OPINIONS IN THIS CASE, DID YOU RELY
23 ON THE RECEIVER'S ANALYSIS OF CDCR DEATH REVIEWS FOR 2006 OR
24 2007? THE 2006 REPORT IS DEFENDANTS' EXHIBIT 1107, AND WE'LL
25 PUT UP THE FRONT PAGE IF POSSIBLE.

1 (DOCUMENT DISPLAYED.)

2 BY MR. MELLO

3 Q I DON'T BELIEVE YOU REVIEWED THIS PRIOR TO DRAFTING EITHER
4 ONE OF YOUR REPORTS; IS THAT CORRECT?

5 A I DID NOT.

6 Q OKAY. AND LET'S PULL UP THE 2008 -- I MEAN, THE 2007
7 REVIEW. I'M SORRY. IT'S 1233, DEFENDANTS' 1233.

8 (DOCUMENT DISPLAYED.)

9 BY MR. MELLO

10 Q DID YOU REVIEW THIS DOCUMENT BEFORE ARRIVING AT ANY OF YOUR
11 OPINIONS IN THIS CASE?

12 A NO.

13 Q OKAY. AT THE TIME YOU WROTE YOUR STATEMENT IN PARAGRAPH 59
14 OF YOUR NOVEMBER 2007 REPORT THAT WAS JUST QUOTED EARLIER BY ME,
15 YOU WERE NOT AWARE OF THE ALLEGED 18 PREVENTABLE DEATHS
16 IDENTIFIED IN THE 2006 REPORT, WERE YOU?

17 A NO.

18 Q AND YOU WERE NOT AWARE IF NONE OF THOSE 18 PREVENTABLE
19 DEATHS WERE THE RESULT OF POOR RESPONSE TO EMERGENCY OR MAN-DOWN
20 SITUATIONS, WERE YOU?

21 A NO.

22 Q AND, IN FACT, AND I BELIEVE YOU'VE ALREADY TESTIFIED TO
23 THIS, YOU DID NOT BASE YOUR STATEMENT JUST QUOTED ON ANY DATA
24 ABOUT INCIDENTS IN CALIFORNIA'S PRISONS, DID YOU?

25 A WELL, I SAW, OBVIOUSLY SAW A LOT OF THE INDIVIDUAL CASES

1 THAT WERE PRESENTED IN THE RECEIVER'S REPORTS THAT I HAD
2 REVIEWED PRIOR TO GIVING BOTH DEPOSITIONS. SO I'M SURE THAT HAD
3 SOME IMPACT ON MY DECISION MAKING.

4 **Q** BUT YOU'RE NOT AWARE OF THE FACT OF THOSE 18 DEATHS,
5 PREVENTABLE DEATHS OR ALLEGEDLY PREVENTABLE DEATHS IN 2006, THE
6 RECEIVER DID NOT REPORT THAT ANY OF THEM WERE THE RESULT OF POOR
7 RESPONSE TO EMERGENCY OR MAN-DOWN SITUATIONS?

8 **A** NO, I DIDN'T REVIEW THAT REPORT.

9 **Q** OKAY. DO YOU KNOW THE STATE OF MEDICAL OR MENTAL HEALTHCARE
10 DELIVERY AT AVENAL STATE PRISON AS OF AUGUST 2008?

11 **A** THAT'S A BROAD QUESTION. CAN YOU -- THAT'S A BROAD
12 QUESTION. CAN YOU CLARIFY IT A LITTLE BIT?

13 **Q** WHEN WAS THE LAST TIME YOU WERE AT AVENAL STATE PRISON?

14 **A** LATE OCTOBER, EARLY NOVEMBER OF 2007.

15 **Q** HAVE YOU REVIEWED ANY DOCUMENTS RELATING TO AVENAL STATE
16 PRISON SINCE THAT TIME?

17 **A** ONLY IN REGARDS TO WHAT HAS BEEN IN THE RECEIVER'S REPORTS
18 OR ANY EXPERT REPORTS I REVIEWED.

19 **Q** AS YOU SIT HERE TODAY, CAN YOU TELL ME SPECIFICALLY ABOUT
20 THE QUALITY OF CARE AT AVENAL STATE PRISON AS OF AUGUST 2008?

21 **A** THE QUALITY OF CARE, NO, THAT WAS NOT MY CHARGE. I DIDN'T
22 LOOK AT QUALITY OF CARE ISSUES.

23 **Q** WHEN I USE THE TERM "QUALITY OF CARE," I MEAN WHETHER
24 MEDICAL AND MENTAL HEALTHCARE ROSE TO CONSTITUTIONAL LEVELS. IS
25 THAT YOUR UNDERSTANDING, TOO?

1 **A** AGAIN, I'M NOT EXACTLY SURE WHAT YOU'RE SAYING, BUT I DIDN'T
2 LOOK AT QUALITY OF CARE ISSUES.

3 **Q** OKAY.

4 **A** I LOOKED AT IMPEDIMENTS TO DELIVERY OR ACCESS TO THE CARE
5 ONLY.

6 **Q** AND YOU DON'T FEEL QUALIFIED TO TESTIFY ABOUT THE QUALITY OF
7 MEDICAL OR MENTAL HEALTHCARE, CORRECT?

8 **A** WELL, ONLY AS A LAYMAN WHO HAS ACTUALLY SUPERVISED AS A
9 WARDEN MENTAL HEALTH IN A HOSPITAL AT MY INSTITUTION, AND AS THE
10 EXECUTIVE DIRECTOR OF AN AGENCY, I HAD TO OVERSEE CONSTITUTIONAL
11 LEVELS OF CARE IN BOTH OF THOSE AREAS.

12 **Q** HAVE YOU BEEN -- WHEN WAS THE LAST TIME YOU WERE AT CIM OR
13 CALIFORNIA INSTITUTE OF MEN?

14 **A** AT THAT SAME TIME PERIOD.

15 **Q** DO YOU KNOW THE QUALITY OF MEDICAL OR MENTAL HEALTHCARE AT
16 CIM AS OF AUGUST 2008?

17 **A** NO. AGAIN, I DIDN'T LOOK AT QUALITY OF CARE ISSUES.

18 **Q** OKAY. DO YOU KNOW THE NUMBER OF CUSTODIAL STAFF AT AVENAL
19 STATE PRISON AS OF AUGUST 2008?

20 **A** AUGUST 2008, NO, I DON'T.

21 **Q** DID YOU KNOW THE NUMBER OF CUSTODIAL STAFF AS OF ANY TIME IN
22 2007 AT AVENAL STATE PRISON?

23 **A** DID I KNOW? YES, IT WAS IN MY NOTES.

24 **Q** WAS IT REFLECTED IN YOUR REPORT?

25 **A** I DON'T REMEMBER IF I PUT IT IN THE REPORT OR NOT.

1 Q IF I REPRESENTED TO YOU THAT I DID NOT BELIEVE THOSE NUMBERS
2 WERE IN YOUR REPORT, WOULD YOU BE SURPRISED BY THAT?

3 A I DON'T REMEMBER, SO I WOULD TAKE YOUR WORD FOR IT. I DO
4 REMEMBER TAKING THE NOTES.

5 Q I DON'T KNOW IF I'D DO THAT.

6 A I DO REMEMBER SPECIFICALLY ASKING THE QUESTION AT EACH
7 INSTITUTION AND MAKING NOTATIONS IN MY HANDWRITTEN NOTES THAT I
8 KEPT.

9 Q DO YOU KNOW THE NUMBER OF CORRECTIONAL OFFICERS AT VALLEY
10 STATE PRISON FOR WOMEN AS OF AUGUST 2008?

11 A NO, I DON'T.

12 Q OKAY. DO YOU KNOW THE NUMBER OF MEDICAL AND MENTAL HEALTH
13 STAFF AT AVENAL OR ANY OF THE PRISONS YOU VISITED IN 2007 AS OF
14 AUGUST 2008?

15 A NO, I DIDN'T LOOK AT MEDICAL OR CLINICAL STAFF AT ALL.

16 Q OKAY. AND, AGAIN, I'M GUESSING I KNOW THE ANSWER HERE, BUT
17 YOU DO NOT KNOW THE STATE OF MEDICAL OR MENTAL HEALTH DELIVERY
18 AT CALIFORNIA STATE PRISON SAN QUENTIN AS OF AUGUST 2008 EITHER,
19 DO YOU?

20 A I THINK YOU ASKED THAT QUESTION DIFFERENTLY THAN YOU DID IN
21 THE PAST. YOU USED THE WORD "DELIVERY" THAT TIME.

22 Q I DID USE THE WORD "DELIVERY." DO YOU KNOW THE STATUS OF
23 MEDICAL DELIVERY AT SAN QUENTIN AS OF AUGUST 2008?

24 A AS OF ONLY WHAT I HAVE SEEN IN THE RECEIVER'S REPORTS.

25 Q AND YOU DON'T KNOW THE STATUS OF MENTAL HEALTHCARE DELIVERY

1 AT SAN QUENTIN AS OF AUGUST 2008 EITHER, CORRECT?

2 **A** AGAIN, IT WOULD BE WHAT I READ IN THE RECEIVER'S REPORTS.

3 **Q** AND I ASSUME YOU DO NOT KNOW THE NUMBER OF CUSTODIAL STAFF
4 AT SAN QUENTIN AS OF AUGUST 2008, CORRECT?

5 **A** NO, I DON'T.

6 **Q** YOU TOURED FOLSOM PRISON IN JUNE 2008, CORRECT?

7 **A** YES.

8 **Q** SO IN 2008, YOU TOURED FOLSOM. WHICH THREE OTHER PRISONS
9 DID YOU TOUR IN 2008?

10 **A** SACRAMENTO, SOLANO, AND THE LAST ONE ESCAPES ME.

11 **Q** THE LAST ONE DOES?

12 **A** FOLSOM, SACRAMENTO, SOLANO. OH, DVI.

13 **Q** OKAY. WHEN YOU TOURED FOLSOM IN JUNE 2008, NEITHER THE
14 MEDICAL STAFF NOR THE WARDEN TOLD YOU ANYTHING ABOUT THE STATUS
15 OF DELIVERY OF MEDICAL OR MENTAL HEALTHCARE AT FOLSOM, DID THEY?

16 **A** NOT THAT I RECALL.

17 **Q** OKAY. DO YOU KNOW THE -- DID YOU KNOW THE NUMBER OF
18 CUSTODIAL STAFF AT FOLSOM PRISON AFTER JUNE 2008?

19 **A** AFTER JUNE -- NO, I DON'T.

20 **Q** HOW ABOUT IN JUNE 2008?

21 **A** WHEN I DID MY TOUR, I ASKED THE QUESTION AND TOOK THE NOTES.

22 **Q** AND DID YOU -- STRIKE THAT.

23 HOWEVER, YOUR REPORT DID NOT INDICATE THE NUMBER OF
24 CORRECTIONAL STAFF AT FOLSOM PRISON, CORRECT?

25 **A** AGAIN, I DON'T RECALL.

1 Q WHEN YOU TOURED CAL STATE PRISON SOLANO IN JUNE 2008,
2 NEITHER THE MEDICAL STAFF, NOR THE WARDEN TOLD YOU ANYTHING
3 ABOUT THE STATUS OF DELIVERY OF MEDICAL OR MENTAL HEALTHCARE AT
4 SOLANO, DID THEY?

5 A I DIDN'T SEE THE WARDEN.

6 Q DID ANYBODY -- DID THE MEDICAL OR MENTAL HEALTH STAFF TELL
7 YOU THE STATUS OF DELIVERY OF MEDICAL OR MENTAL HEALTHCARE AT
8 SOLANO DURING YOUR JUNE TOUR?

9 A NO.

10 Q AND, AGAIN, DID YOU KNOW THE NUMBER OF CORRECTIONAL STAFF AT
11 SOLANO IN JUNE 2008?

12 A I DID ON THE DAY OF THE TOUR.

13 Q HOWEVER, YOU DID NOT PLACE THOSE NUMBERS IN YOUR REPORT,
14 CORRECT?

15 A I'LL TAKE YOUR WORD FOR IT. IF YOU SAY THEY ARE NOT THERE,
16 THEY'RE NOT THERE.

17 Q OKAY. AND DO YOU KNOW THE NUMBER OF CORRECTIONAL STAFF
18 SINCE JUNE 2008 AT SOLANO?

19 A NO, I DON'T.

20 Q OKAY. YOU TOURED DVI IN JUNE 2008?

21 A I DID.

22 Q AND YOU DID NOT LEARN OF ANY SPECIFIC DELAYS IN THE DELIVERY
23 OF MEDICAL OR MENTAL HEALTHCARE WHEN YOU TOURED THAT FACILITY,
24 CORRECT?

25 A NO, THAT'S NOT TRUE.

1 Q OKAY. WHAT WERE YOU TOLD, OR WHAT DID YOU LEARN?

2 A OKAY. BY BOTH OFFENDERS AND STAFF, IT'S A RECEPTION CENTER,
3 AND THERE WERE A LARGE BODY OF OFFENDERS WAITING TO GET THROUGH
4 THE RECEPTION AND DIAGNOSTIC PROCESS. AND IN TALKING WITH BOTH
5 THE RECEPTION OFFENDERS AND THE NON-RECEPTION OFFENDERS THAT
6 WERE PERMANENTLY ASSIGNED THERE, ONE, I LEARNED FROM THE
7 RECEPTION OFFENDERS THAT THEY WERE -- THE PROCESS WAS DRAGGING
8 OUT VERY LONG, AND THAT THEY WERE ANXIOUS TO BE CLASSIFIED AND
9 MOVE ALONG TO THEIR PERMANENT LEVEL OF ASSIGNMENT.

10 AND, SECONDLY, FROM THE PERMANENT OFFENDERS THERE,
11 PERMANENTLY ASSIGNED OFFENDERS THERE, THEY WERE FRUSTRATED
12 BECAUSE THEY COULDN'T GET IN FOR THEIR MEDICAL APPOINTMENT
13 BECAUSE ALL THE PROCESSING WAS TAKING PLACE AND THERE WAS NOT
14 TIME FOR THEM TO RECEIVE THEIR REGULAR APPOINTMENTS.

15 Q DID ANY OF THOSE INDIVIDUALS TELL YOU HOW LONG THE DELAYS
16 WERE?

17 A THEY DID, AND THE ANSWERS VARIED FROM WEEKS TO MONTHS.

18 Q OKAY. DID ANY OF THE INDIVIDUALS THAT YOU SPOKE TO WHO
19 SPOKE OF DELAYS IN ACCESS TO MEDICAL OR MENTAL HEALTHCARE TELL
20 YOU THAT THEY SUFFERED AN ADVERSE MEDICAL CONSEQUENCE AS A
21 RESULT OF THOSE DELAYS?

22 A NO, BUT I DIDN'T ASK THAT QUESTION.

23 Q AND NOBODY OFFERED THAT TO YOU EITHER?

24 A NO.

25 Q DO YOU KNOW THE NUMBER OF CUSTODIAL STAFF AT DVI SINCE YOU

1 LAST VISITED THERE?

2 **A** NO, I DO NOT.

3 **Q** SO YOU DON'T KNOW IT AS OF THE END OF AUGUST 2008, CORRECT?

4 **A** NO.

5 **Q** THAT'S CORRECT?

6 **A** THAT'S CORRECT.

7 **Q** YOU TOURED CAL STATE OR CAL -- THE PRISON AT SACRAMENTO,
8 CORRECT?

9 **A** YES.

10 **Q** IN JUNE 2008?

11 **A** YES.

12 **Q** AND NEITHER THE MEDICAL STAFF NOR THE WARDEN TOLD YOU
13 ANYTHING ABOUT THE STATUS OF DELIVERY OF MEDICAL OR MENTAL
14 HEALTHCARE AT SAC, DID THEY?

15 **A** NO.

16 **Q** THAT'S CORRECT?

17 **A** THAT IS CORRECT.

18 **Q** WHEN YOU TOURED SAC IN JUNE 2008, WAS IT OVERCROWDED, IN
19 YOUR OPINION?

20 **A** YES.

21 **Q** WHEN YOU TOURED -- WHEN YOU TOURED SAC IN JUNE 2008, YOU
22 CONCLUDED THAT THE CORRECTIONAL TREATMENT CENTER AT THE PRISON
23 WAS IN EXCELLENT CONDITION, DIDN'T YOU?

24 **A** SANITATION-WISE, YES.

25 **Q** WHAT DO YOU MEAN BY THAT?

1 **A** IT MEANS THAT IT WAS MORE SANITARY THAN THE OTHER AREAS THAT
2 I HAD VISITED IN THAT PARTICULAR FACILITY AND ALL THE OTHER
3 FACILITIES THAT I HAD BEEN IN. THAT'S THE REASON I MADE A NOTE
4 OF IT, BECAUSE IT STOOD OUT.

5 **Q** WAS THAT FACILITY OVERCROWDED?

6 **A** YES.

7 **Q** I HATE TO BE REPETITIVE, BUT YOU HAVE NO IDEA WHAT THE
8 NUMBERS OF CORRECTIONAL STAFF IN AUGUST 2008 WERE AT SAC?

9 **A** NO.

10 **Q** THAT'S RIGHT?

11 **A** NO, I DON'T KNOW.

12 **Q** IN FORMING YOUR OPINION REGARDING THE EFFECTS OF
13 OVERCROWDING IN MEDICAL AND MENTAL HEALTHCARE, YOU SPOKE WITH
14 PRISON STAFF, CORRECT?

15 **A** YES.

16 **Q** DID YOU TAKE ANY -- OR STRIKE THAT.

17 YOU DID NOT TAKE ANY SPECIFIC ACTION AFTER SPEAKING
18 WITH STAFF TO CONFIRM THE ACCURACY OF THEIR PARTICULAR
19 STATEMENTS, DID YOU?

20 **A** IN REGARDS TO WHAT?

21 **Q** IN REGARDS TO THE INFORMATION THAT THEY CONVEYED TO YOU
22 WHICH FORM THE BASIS OF YOUR OPINIONS IN THIS CASE?

23 **A** NO, I COMPARED THEIR ANSWERS WITH OTHER ANSWERS THAT STAFF
24 HAD GIVEN ME. THEY WERE ALL VERY CONSISTENT.

25 **Q** IN FORMING YOUR OPINION REGARDING THE EFFECTS ON MEDICAL AND

1 MENTAL HEALTHCARE, YOU SPOKE WITH INMATES?

2 **A** YES.

3 **Q** DID YOU TAKE ANY ACTION TO CONFIRM THE ACCURACY OF THEIR
4 PARTICULAR STATEMENTS IN ARRIVING AT YOUR OPINIONS IN THIS CASE?

5 **A** AGAIN, THE SAME RESPONSE. IN TALKING TO A NUMBER OF THE
6 OFFENDERS, THEIR RESPONSES WERE VERY CONSISTENT. I HAD NO
7 REASON TO DISBELIEVE.

8 **Q** AND DID YOU FEEL LIKE BOTH STAFF AND INMATES WERE FORTHRIGHT
9 WHEN THEY SPOKE TO YOU?

10 **A** I DID.

11 **Q** YOU THOUGHT THEY WERE TELLING YOU THE TRUTH?

12 **A** YES.

13 **Q** I'M NOW GOING TO TAKE YOU TO PARAGRAPH FOUR OF YOUR
14 AUGUST 2008 REPORT, AND THAT SHOULD POP UP ON THE SCREEN.

15 IN THAT PARAGRAPH, YOU OPINE THAT THE USE OF
16 INAPPROPRIATE PLACES FOR HOUSING PRISONERS, QUOTE, "HAS REDUCED
17 THE AVAILABILITY OF PROGRAM AND RECREATION SPACE," END QUOTE,
18 RESULTING IN -- AND LATER YOU USE THE TERM "CHRONIC ILLNESS."
19 DO YOU SEE THAT? "CHRONIC IDLENESS." PARDON ME.

20 **A** YES.

21 **Q** YOU DON'T KNOW OF EVEN ONE INSTANCE WHERE AN INMATE BECAME
22 ILL DUE TO THE REDUCED AVAILABILITY OF PROGRAMMING OR RECREATION
23 SPACE, DO YOU?

24 **A** NO, I -- AGAIN, I DIDN'T LOOK AT INDIVIDUAL CASES. I LEFT
25 THAT UP TO THE MEDICAL EXPERTS AND THE RECEIVER TO REPORT ON

1 THAT. I ONLY LOOKED AT IMPEDIMENTS TO THE DELIVERY OF CARE.

2 Q SO THE ANSWER IS YOU ARE NOT AWARE OF ONE INMATE WHO
3 SUFFERED AN ADVERSE CONSEQUENCE, CORRECT?

4 A I THINK I ANSWERED THAT I DID NOT.

5 Q OKAY. YOU DO NOT EVEN KNOW OF ONE INSTANCE WHERE AN INMATE
6 BECAME ILL DUE TO CHRONIC IDLENESS, DO YOU?

7 A NO.

8 Q YOU DO NOT KNOW OF EVEN ONE INSTANCE WHERE AN INMATE WAS
9 DENIED NEEDED MEDICAL CARE DUE TO A REDUCED AVAILABILITY OF
10 PROGRAMMING OR RECREATION SPACE, DO YOU?

11 A NO.

12 Q YOU DO NOT KNOW OF EVEN ONE INSTANCE WHERE AN INMATE WAS
13 DENIED MEDICAL CARE DUE TO CHRONIC IDLENESS, DO YOU?

14 A NO.

15 JUDGE HENDERSON: EXCUSE ME, MR. MELLO. I JUST
16 RECEIVED A NOTE THAT OUR REPORTER'S FINGERS ARE GETTING TIRED.
17 LET'S FIND A CONVENIENT PLACE TO TAKE A 15-MINUTE RECESS.

18 MR. MELLO: SURE. COUPLE MORE QUESTIONS.

19 BY MR. MELLO

20 Q ON PAGE 3, PARAGRAPH 5 OF YOUR AUGUST 2008 REPORT, YOU
21 OPINED THAT, QUOTE, "IT IS INHUMANE TO WAREHOUSE PRISONERS TWO
22 TO A CELL UNDER SUCH CONDITIONS," END QUOTE; DO YOU SEE THAT?

23 A YES.

24 Q YOU DO NOT KNOW OF EVEN ONE INSTANCE WHERE AN INMATE BECAME
25 SICK DUE TO DOUBLE CELLING, DO YOU?

1 **A** NO.

2 **Q** YOU DO NOT KNOW OF EVEN ONE INSTANCE WHERE AN INMATE WAS
3 DENIED MEDICAL CARE DUE TO DOUBLE CELLING, DO YOU?

4 **A** NO. FROM PERSONAL KNOWLEDGE, NO.

5 **MR. MELLO:** WE CAN BREAK.

6 **JUDGE HENDERSON:** OKAY. COURT IS ADJOURNED FOR 15
7 MINUTES.

8 (RECESS TAKEN.)

9 **THE CLERK:** PLEASE COME TO ORDER. COURT IS IN
10 SESSION.

11 PLEASE BE SEATED.

12 **JUDGE HENDERSON:** OKAY. YOU MAY RESUME WHEN YOU'RE
13 READY, COUNSEL.

14 **MR. MELLO:** THANK YOU.

15 **BY MR. MELLO:**

16 **Q.** MR. SCOTT, I'M GOING TO ASK YOU QUESTIONS ABOUT PARAGRAPH
17 SEVEN OF YOUR AUGUST, 2008 REPORT.

18 IN THAT REPORT AT PARAGRAPH SEVEN YOU OPINE THAT
19 FOLSOM'S BUILDING FIVE HAD SOLID METAL DOORS, DOOR CELLS MAKING,
20 QUOTE:

21 "DIRECT SUPERVISION EXTREMELY DIFFICULT," END
22 QUOTE AND MAKING STAFF, QUOTE:

23 "EVEN LESS LIKELY TO BE ABLE TO RESPOND
24 APPROPRIATELY TO MEDICAL AND MENTAL HEALTHCARE
25 EMERGENCIES," END QUOTE.

1 DO YOU SEE THAT?

2 **A.** YES, I DO.

3 **Q.** MR. SCOTT, YOU DO NOT KNOW OF EVEN A SINGLE INSTANCE IN ANY
4 CALIFORNIA PRISONS WHERE AN INMATE BECAME SICK OR WAS DENIED
5 NEEDED CARE OF ANY KIND DUE TO THE EXISTENCE OF SOLID METAL
6 DOORS THAT YOU DESCRIBED, DO YOU?

7 **A.** NOT FROM PERSONAL KNOWLEDGE. ONLY FROM BASED ON MY
8 EXPERIENCE I KNOW THESE THINGS ARE LIKELY TO HAPPEN.

9 **Q.** OKAY. BUT YOU DON'T KNOW OF IT HAPPENING IN CALIFORNIA,
10 CORRECT?

11 **A.** I DON'T KNOW THAT IT HAPPENED HERE.

12 **Q.** OKAY.

13 PARAGRAPH EIGHT OF THAT SAME REPORT YOU OPINE THAT
14 FOLSOM'S BUILDING FIVE HAD SOLID METAL DOOR CELLS ON THE FIRST
15 TIERS THAT WERE ALSO INDIVIDUALLY KEYED MAKING A QUICK EXIT IN
16 AN EMERGENCY EXTREMELY DIFFICULT AND ESCORTS MORE TIME-CONSUMING
17 AND STAFF-INTENSIVE.

18 DO YOU SEE THAT?

19 **A.** YES.

20 **Q.** OKAY. YOU DO NOT KNOW OF EVEN A SINGLE INSTANCE IN ANY
21 CALIFORNIA PRISON WHERE AN INMATE WAS INJURED OR BECAME SICK OR
22 WAS DENIED NEEDED MEDICAL CARE OR MENTAL HEALTHCARE DUE TO THE
23 FACT THAT CELL DOORS WERE INDIVIDUALLY KEYED, DO YOU?

24 **A.** NO. AGAIN, BASED ON MY EXPERIENCE I MADE THIS OPINION. I
25 HAVE SEEN IT IN THE PAST, AND I FULLY EXPECT IT HAS HAPPENED

1 HERE. I JUST DON'T HAVE PERSONAL KNOWLEDGE OF IT.

2 Q. AND THAT'S YOUR EXPERIENCE IN TEXAS AND OTHER JURISDICTIONS,
3 CORRECT?

4 A. THAT'S CORRECT.

5 Q. AND THAT'S NOT YOUR EXPERIENCE HERE IN CALIFORNIA, CORRECT?

6 A. NO. I HAVEN'T SEEN IT IN CALIFORNIA IN THIS PARTICULAR
7 AREA, NO.

8 Q. ALL RIGHT. OKAY. SAME REPORT, PARAGRAPH SIX.

9 JUDGE HENDERSON: I'M WONDERING, COUNSEL -- I DON'T
10 WANT TO DO YOUR CROSS FOR YOU -- BUT I'M WONDERING IF THERE
11 ISN'T SOME INCLUSIVE QUESTION INSTEAD OF STEP-BY-STEP. MAYBE HE
12 DOESN'T KNOW ANY INMATE WHOSE HAD ANYTHING HAPPEN TO THEM --

13 MR. MELLO: RIGHT.

14 JUDGE HENDERSON: -- WHICH WOULD SAVE US ALL OF THESE
15 BABY STEPS.

16 MR. MELLO: OKAY. I CAN TRY. BUT I THINK WE'RE
17 GETTING CLOSE, FRANKLY, YOUR HONOR. I DON'T HAVE MUCH MORE.

18 BY MR. MELLO:

19 Q. PARAGRAPH SIX OF YOUR REPORT YOU REPORTED THAT YOU BELIEVED
20 THAT ADMINISTRATIVE SEGREGATION PRISONERS AT SOLANO DO NOT
21 RECEIVE, QUOTE:

22 "THE REQUIRED 10 HOURS PER WEEK OF RECREATION
23 BECAUSE THERE'S SIMPLY NOT ENOUGH SPACE AVAILABLE TO
24 PROVIDE THEM ACCESS TO SAFE EXERCISE."

25 DO YOU SEE THAT?

1 **A.** YES.

2 **Q.** AND MUCH TO THE CHAGRIN OF JUDGE HENDERSON, YOU DO NOT KNOW
3 OF EVEN A SINGLE INSTANCE IN ANY CALIFORNIA PRISON WHERE AN
4 INMATE BECAME SICK OR WAS DENIED MEDICAL OR MENTAL HEALTHCARE
5 DUE TO A LACK OF SPACE TO PROVIDE EXERCISE; IS THAT CORRECT?

6 **A.** NO.

7 **Q.** THAT'S CORRECT?

8 **A.** YES, THAT'S CORRECT.

9 **Q.** PARAGRAPH NINE OF YOUR REPORT ON PAGE FOUR, THE SAME AUGUST
10 REPORT, YOU STATED THAT:

11 "A CONVERTED GYMNASIUM IN SOLANO, H BUILDING
12 CONTAINED 225 TRIPLE-BUNKS, A WALL OF SOUND AND
13 BODIES AND NOISE," END QUOTE.

14 DO YOU SEE THAT?

15 **A.** YES.

16 **MR. MELLO:** SORRY, YOUR HONOR.

17 **BY MR. MELLO:**

18 **Q.** DO YOU KNOW OF EVEN A SINGLE INSTANCE IN ANY CALIFORNIA
19 PRISON WHERE AN INMATE BECAME SICK OR WAS DENIED NEEDED MEDICAL
20 OR MENTAL HEALTHCARE DUE TO TRIPLE-BUNKING?

21 **A.** NO. AGAIN, THAT OPINION IS BASED ON MY PAST EXPERIENCE.

22 **Q.** IN OTHER JURISDICTIONS?

23 **A.** CORRECT.

24 **Q.** IN PARAGRAPH 10 OF YOUR AUGUST REPORT YOU DESCRIBE DVI AS
25 EXTREMELY OVERCROWDED, CORRECT?

1 **A.** YES.

2 **Q.** DO YOU KNOW OF ANY INMATE AT DVI WHO SUFFERED AN ADVERSE
3 MEDICAL OR MENTAL HEALTH CONSEQUENCE AS A RESULT OF THE
4 OVERCROWDING YOU DESCRIBED AS "EXTRAORDINARY"?

5 **A.** WELL, I DID -- IN MY EARLIER TESTIMONY I TALKED ABOUT
6 INMATES NOT COMPLAINING ABOUT NOT GETTING IN TO SEE THE DOCTORS
7 AND TO COMPLETE THE PROCESSING, AND ALSO THE
8 PERMANENTLY-ASSIGNED OFFENDERS NOT BEING ABLE TO KEEP THEIR
9 MEDICAL APPOINTMENTS BECAUSE THE PROCESSING INMATES WERE TAKING
10 ALL THE LICENSED CLINICIANS' TIME.

11 I WOULD ASSUME THAT THERE WAS SOME NEGATIVE IMPACTS
12 FROM THAT, BUT I DON'T HAVE PERSONAL KNOWLEDGE OF ANY ONE
13 INMATE.

14 **Q.** OKAY. SO YOU ASSUME IT, BUT YOU DON'T KNOW IT?

15 **A.** I THINK THAT'S WHAT I SAID.

16 **Q.** AND I BELIEVE YOU TESTIFIED ABOUT THIS SUBJECT ON YOUR
17 DIRECT, BUT IN PARAGRAPH 12 OF YOUR AUGUST REPORT, YOU OPINE
18 THAT THESE OVERCROWDED CONDITIONS BREED FEAR, ANONYMITY AND
19 MISTRUST ON THE PART OF CUSTODY STAFF WHICH LEAD TO AN INCREASED
20 RISK OF INAPPROPRIATE RESPONSES BY SUCH STAFF TO MEDICAL AND
21 MENTAL HEALTHCARE NEEDS, ESPECIALLY IN EMERGENCIES.

22 DO YOU SEE THAT?

23 **A.** YES, I DO.

24 **Q.** AND, AGAIN, YOU DO NOT KNOW OF EVEN A SINGLE SPECIFIC
25 INSTANCE WHERE AN INMATE WAS DENIED NEEDED MEDICAL CARE BECAUSE

1 OF FEAR OF ANONYMITY OR MISTRUST BY CUSTODY STAFF, DO YOU?

2 **A.** NOT IN CALIFORNIA. I SAW A GREAT DEAL OF THIS IN TEXAS WHEN
3 WE WERE VERY OVERCROWDED SUCH AS CALIFORNIA IS NOW.

4 **Q.** WHEN YOU FORMED YOUR OPINIONS YOU DID NOT KNOW THE INMATE TO
5 MENTAL HEALTHCARE CLINICAL STAFF RATIO IN CDCR'S PRISONS, DID
6 YOU?

7 **A.** I DID NOT LOOK AT THAT.

8 **Q.** AND WHEN YOU FORMED YOUR OPINIONS YOU DID NOT KNOW THE
9 STAFFING LEVELS FOR PHYSICIANS IN CALIFORNIA'S PRISONS, DID YOU?

10 **A.** NO, I HAVEN'T LOOKED AT THAT.

11 **Q.** AND WHEN YOU FORMED YOUR OPINIONS IN THIS CASE, YOU DID NOT
12 KNOW THE STAFFING LEVELS FOR REGISTERED NURSES AT CALIFORNIA'S
13 PRISONS, EITHER, CORRECT?

14 **A.** NO. I MEAN, I CAN TELL YOU BASED ON MY EXPERIENCE AS AN
15 EXECUTIVE DIRECTOR THAT RAN AN AGENCY ALMOST AS LARGE AS
16 CALIFORNIA I HAD THE RESPONSIBILITY OF MAKING SURE THAT
17 CONSTITUTIONAL LEVELS OF MENTAL HEALTH AND MEDICAL CARE WERE
18 GIVEN, AND I KEPT -- I UNDERSTAND THAT IT TAKES CLINICIANS AND
19 IT TAKES NURSES AND IT TAKES PHYSICIANS TO DO THAT.

20 SO IN THAT REGARD I THINK I CAN MAKE SOMEWHAT OF AN
21 OPINION.

22 **Q.** OKAY.

23 **MR. MELLO:** AND I'D MOVE TO STRIKE THAT AS
24 NONRESPONSIVE.

25

1 **BY MR. MELLO:**

2 **Q.** MY QUESTION IS MUCH MORE BASIC THAN THAT. WHEN YOU FORMED
3 YOUR OPINIONS, YOU DID NOT KNOW THE STAFFING LEVEL FOR
4 REGISTERED NURSES AT CALIFORNIA'S PRISONS, DID YOU?

5 **A.** NO, DIDN'T LOOK AT IT.

6 **Q.** WHEN YOU FORMED YOUR OPINIONS IN THIS CASE, YOU DID NOT KNOW
7 THE STAFFING LEVELS FOR LICENSED VOCATIONAL NURSES AT
8 CALIFORNIA'S PRISONS, EITHER, CORRECT?

9 **A.** NO, I ONLY LOOKED AT CUSTODY ISSUES AND IMPEDIMENTS IN
10 REGARDS TO OPERATIONAL CUSTODY ISSUES. I DID NOT LOOK AT
11 CLINICAL STAFFING LEVELS WHATSOEVER.

12 **Q.** OKAY. OR RATIOS?

13 **A.** OR RATIOS.

14 **Q.** IN FACT, MR. SCOTT, THERE ARE MANY OTHER FACTORS THAT IMPACT
15 THE ABILITY OR INABILITY TO DELIVER MEDICAL AND MENTAL
16 HEALTHCARE TO CALIFORNIA'S INMATES BEYOND THE NUMBER OF
17 CUSTODIAL STAFF TO PROVIDE ESCORTS OR TAKE INMATES TO OFF-SITES
18 APPOINTMENTS, CORRECT?

19 **A.** THERE ARE A NUMBER OF FACTORS INVOLVED, YES.

20 **Q.** IN FORMING YOUR OPINION THAT OVERCROWDING WAS THE PRIMARY
21 CAUSE OF MEDICAL AND MENTAL HEALTHCARE CONSTITUTIONAL VIOLATIONS
22 IN CALIFORNIA'S PRISONS, YOU ONLY LOOKED AT THE ROLE OF
23 CORRECTIONAL STAFF IN FACILITATING MEDICAL AND MENTAL
24 HEALTHCARE, CORRECT?

25 **A.** I LOOKED AT, AGAIN, THE IMPEDIMENTS TO THE DELIVERY OF

1 ADEQUATE MEDICAL AND MENTAL HEALTHCARE PRESENTED BY ANY SYSTEMS
2 FAILURES IN THE OPERATIONS AREA.

3 Q. AND BY THAT, YOU MEANT CORRECTIONAL STAFF, CORRECT?

4 A. YES.

5 Q. YOU HAVE NOT DONE ANY FORMAL ANALYSIS OF CUSTODIAL STAFFING
6 NEEDS FOR MEDICAL ESCORTS AND MENTAL HEALTHCARE ESCORTS ON AND
7 OFF-SITE TRANSFERS AND THE LIKE FOR CALIFORNIA'S PRISONS, HAVE
8 YOU?

9 A. NO, OTHER THAN WHAT I EYEBALLED ON MY TOURS.

10 Q. OKAY. OTHER THAN WHAT YOU EYEBALLED ON THE FOUR TOURS IN
11 2007 AND THE FOUR TOURS IN 2008?

12 A. YES.

13 Q. BUT NO FORMAL ACTUAL ANALYSIS OF ALL 33 INSTITUTIONS AND
14 ACCESS TO CARE AND USE OF CORRECTIONAL OFFICERS TO ACCESS CARE,
15 CORRECT?

16 A. I DID NOT DO THAT.

17 Q. AT THE TIME YOU FORMED YOUR OPINIONS, YOU WERE NOT AWARE OF
18 THE STAFFING VACANCY PERCENTAGE OF CORRECTIONAL OFFICERS IN
19 CDCR, WERE YOU?

20 A. I WAS TO AN EXTENT. I READ SCOTT KERNAN'S DECLARATION. I
21 BELIEVE HE QUOTED THAT THEY WERE 4,000 SHORT WHENEVER HE GAVE
22 HIS DECLARATION. I BELIEVE IT MAY HAVE BEEN MID-2007.

23 Q. AND YOU DON'T KNOW WHAT THOSE VACANCY RATES ARE TODAY, DO
24 YOU?

25 A. NO, I HAVEN'T SEEN ANY RECENT STATISTICS.

1 Q. AND YOU HAVE NO IDEA HOW MANY OF THOSE VACANCIES ARE FILLED
2 BY WAY OF OVERTIME, CORRECT?

3 A. NO, I DO NOT.

4 JUDGE KARLTON: SIR, IN YOUR VIEW, IS OVERTIME USE OF
5 CORRECTIONAL OFFICERS A PROPER SUBSTITUTION FOR INADEQUATE
6 STAFFING?

7 THE WITNESS: TO A DEGREE. AND LET ME EXPLAIN THAT.
8 IF YOU USE A LOT OF OVERTIME IN A VERY STRESSFUL SITUATION,
9 STAFF GETS WORN DOWN VERY, VERY QUICKLY, AND THEY BECOME
10 INEFFECTIVE.

11 IF YOU USE IT VERY SPARINGLY, THEN YOU CAN PROBABLY
12 DO THAT.

13 MR. MELLO: MAY I?

14 JUDGE KARLTON: YES.

15 BY MR. MELLO:

16 Q. AND YOU HAVE NO KNOWLEDGE AS TO THE LEVEL AND AMOUNT OF USE
17 OF OVERTIME WITH RESPECT TO CORRECTIONAL OFFICERS IN
18 CALIFORNIA'S PRISONS AS OF AUGUST, 2008, CORRECT?

19 A. NO, I HAVEN'T SEEN THOSE STATS.

20 Q. AT THE TIME YOU DID YOUR REPORTS --

21 MR. MELLO: STRIKE THAT.

22 BY MR. MELLO:

23 Q. IN YOUR OPINION, THE LACK OF THE APPROPRIATE NUMBER OF
24 CUSTODIAL STAFF IS NOT THE SINGLE MOST IMPORTANT FACTOR, BUT
25 ONLY ONE OF THE FACTORS INVOLVED IN ADEQUATE MEDICAL AND MENTAL

1 HEALTHCARE DELIVERY, CORRECT?

2 **A.** LET ME SEE IF I UNDERSTAND. DID YOU SAY -- IT WAS GARBLED.

3 DID YOU SAY THAT THE LACK OF CUSTODY STAFF WAS ONLY
4 ONE FACTOR?

5 **Q.** YES.

6 **A.** YES, I WOULD AGREE WITH THAT.

7 **Q.** AND IT'S NOT THE SINGLE MOST IMPORTANT FACTOR, IS IT?

8 **A.** NO, OVERCROWDING IS THE SINGLE MOST IMPORTANT FACTOR.

9 **Q.** MORE IMPORTANT THAN DOCTORS?

10 **A.** CAN'T REALLY DO ANYTHING UNTIL YOU GET YOUR OVERCROWDING
11 DOWN. THAT'S MY OPINION.

12 **Q.** AND THAT'S BASED UPON YOUR EXPERIENCE IN TEXAS?

13 **A.** YES.

14 **Q.** AND THAT'S BASED UPON YOUR REVIEW OF OR VISITS TO 8 OF THE
15 33 PRISONS IN CALIFORNIA?

16 **A.** YES, AND MY REVIEW OF THE RECEIVER'S REPORT, THE SPECIAL
17 MASTER'S REPORTS, THE OTHER EXPERTS' REPORTS.

18 **Q.** AND YOUR DISCUSSIONS WITH PLAINTIFFS' COUNSEL?

19 **A.** I DON'T KNOW THAT THEY HAVE OPINED ON THAT TO ME OR ASKED ME
20 TO ADOPT THEIR OPINION.

21 **Q.** AND YOU TESTIFIED BRIEFLY ABOUT YOUR EXPERIENCE GETTING OUT
22 FROM UNDER THE COURT ORDERS IN TEXAS.

23 **A.** YES.

24 **Q.** AND THAT INVOLVED BUILDING NEW PRISONS, CORRECT?

25 **A.** YES.

1 **MR. MELLO:** I HAVE NO FURTHER CROSS AT THIS TIME.

2 I'LL RESERVE THE REST OF MY CROSS, IF THERE IS ANY
3 REDIRECT.

4 **JUDGE HENDERSON:** OKAY. THANK YOU, COUNSEL.

5 **MR. MELLO:** THANK YOU.

6 **JUDGE HENDERSON:** DEFENDANT INTERVENOR CROSS?

7 **MR. KAUFHOLD:** STEVE KAUFHOLD FOR THE LEGISLATIVE
8 INTERVENORS. THE INTERVENORS DO NOT HAVE ANY QUESTIONS FOR MR.
9 SCOTT.

10 **JUDGE HENDERSON:** THANK YOU, COUNSEL.

11 REDIRECT.

12 **MS. NORMAN:** THANK YOU.

13 SARA NORMAN FROM THE PRISON LAW OFFICE.

14 **REDIRECT EXAMINATION**

15 **BY MS. NORMAN:**

16 **Q.** MR. SCOTT, ARE THE OPINIONS THAT YOU EXPRESSED IN YOUR
17 REPORTS YOUR OWN?

18 **A.** THEY ARE MINE AND ONLY MINE.

19 **Q.** WERE THE REPORTS PREPARED UNDER YOUR DIRECTION?

20 **A.** YES, THEY WERE.

21 **Q.** DID YOU REVIEW EVERY WORD OF YOUR TWO REPORTS AND MAKE ALL
22 EDITS TO ENSURE THAT THEY ACCURATELY REFLECTED YOUR OPINIONS
23 BEFORE SIGNING THEM?

24 **A.** ALL THE WAY DOWN TO THE GRAMMATICAL REMARKS.

25 **Q.** AND WERE THOSE REPORTS PREPARED BASED UPON YOUR DICTATION,

1 ESSENTIALLY?

2 **A.** YES, THE FIRST REPORT I DICTATED MY OBSERVATIONS AND
3 OPINIONS TO THE LEAD ATTORNEY. AND THE SECOND REPORT I HAD A
4 TELEPHONE CONVERSATION WITH YOU AFTER I GOT BACK FROM THE TOURS
5 AND GAVE YOU MY THOUGHTS AND OPINIONS.

6 **Q.** DID YOU SIGN YOUR TOUR REPORTS?

7 **A.** I'M SORRY?

8 **Q.** DID YOU SIGN YOUR TOUR REPORTS?

9 **A.** YES.

10 **Q.** OKAY. MR. MELLO ASKED YOU A LITTLE BIT ABOUT YOUR WORK IN
11 FLORIDA WHERE YOU LOOKED AT SEVERAL INSTITUTIONS AND SPENT TWO
12 DAYS AT EACH PRISON.

13 **A.** THAT'S CORRECT.

14 **Q.** WHY DID YOU SPEND LONGER IN THE FLORIDA PRISONS THAN YOU
15 SPENT IN THE CALIFORNIA PRISONS?

16 **A.** BECAUSE I DID A FAR MORE COMPREHENSIVE REVIEW THERE THAN
17 WHAT I DID HERE. I ALSO HAD TWO OTHER PEOPLE WITH ME, SO THERE
18 WERE ACTUALLY THREE PEOPLE SPENDING TWO DAYS THERE. WE LOOKED
19 AT EVERY OPTIONAL ASPECT OF THEIR SYSTEM AND MADE
20 RECOMMENDATIONS FOR IMPROVEMENTS TO THE DIRECTOR OF THE AGENCY.

21 **Q.** AND YOU BASED YOUR OPINIONS RENDERED IN THIS CASE ON
22 OBSERVATIONS AND INFORMATION LEARNED ON YOUR PRISON TOURS, BUT
23 ALSO ON OTHER SOURCES, DIDN'T YOU?

24 **A.** YES.

25 **Q.** I THINK YOU'VE REFERENCED SEVERAL OF THEM: MANY, MANY

1 REPORTS FROM THE RECEIVER AND THE SPECIAL MASTER IN THESE CASES?

2 **A.** YES, THE GOVERNOR'S PROCLAMATION, SCOTT KERNAN'S
3 DECLARATION, THE OTHER EXPERTS' REPORTS.

4 **Q.** YOU'VE REVIEWED REPORTS FROM THE LEGISLATURE, HAVEN'T YOU?

5 **A.** OH, THAT'S TRUE. I DID THAT ALSO, YES.

6 **Q.** AND THE DEUKMEJIAN COMMISSION?

7 **A.** YES, THE HOOVER GROUP.

8 **Q.** THE LITTLE HOOVER?

9 **A.** YES. I'M NOT SURE WHAT THE EXACT TITLE OF THAT GROUP IS.

10 **Q.** AND YOU LISTED ALL OF THE DIFFERENT SOURCES THAT YOU
11 REVIEWED IN RENDERING YOUR OPINION IN YOUR TWO REPORTS, RIGHT?

12 **A.** YES. YES, I DID.

13 **Q.** MR. MELLO ASKED YOU ABOUT STAFFING, CUSTODIAL STAFFING. WHAT
14 DID YOU FIND ON YOUR OCTOBER, 2007 TOURS WITH REGARDS TO
15 CUSTODIAL STAFFING?

16 **A.** THAT THEY WERE VASTLY UNDERSTAFFED EVERYWHERE I WENT.

17 **Q.** AND WHAT -- COULD YOU DESCRIBE HOW YOU CAME TO THAT OPINION
18 --

19 **A.** YES.

20 **Q.** -- WHAT YOU SAW?

21 **A.** WELL, FOR ONE THING I HAVE A LOT OF EXPERIENCE IN THIS AREA
22 GOING THROUGH ALL THE JURISDICTIONS THAT I'VE GONE THROUGH
23 PREPARING STAFFING ANALYSES. IT'S REALLY SECOND NATURE TO ME AT
24 THIS POINT. AND I DID A VERY COMPREHENSIVE STAFFING REVIEW OF
25 THE STATE OF TEXAS, ALSO, WHICH IS WHERE I FIRST BECAME VERY

1 KNOWLEDGEABLE ABOUT STAFFING.

2 EVEN WHEN THEY SAY THAT THEY ARE FULLY STAFFED, IN MY
3 OPINION THEY ARE NOT. THEY DON'T HAVE ENOUGH STAFF FOR THE
4 OVERCROWDED CELL BLOCKS AND DORMITORIES AND GYMNASIUMS AND
5 PROGRAM SPACE AND DAY ROOMS THAT I SAW.

6 STAFF WAS SIMPLY OVERWHELMED. THEY COULDN'T PERFORM.

7 **Q.** AND COULD YOU DESCRIBE SOME OF THE CONDITIONS WITH REGARDS
8 TO STAFFING IN SOME OF THE HOUSING UNITS YOU WENT INTO?

9 **A.** WELL, THE THING THAT IS MOST TROUBLING TO ME, IN PARTICULAR,
10 WHEN I WENT INTO THE DORMITORIES THEY WERE STACKED SO HIGH WITH
11 DOUBLE AND TRIPLE-BUNKS, AND THEY WERE SO CROWDED AND THERE WERE
12 NO CLEAR SIGHT LINES. SO EVEN --

13 **JUDGE KARLTON:** NO CLEAR WHAT, SIR?

14 **THE WITNESS:** SIGHT LINES.

15 **JUDGE KARLTON:** SIGHT LINES.

16 **THE WITNESS:** YES, SIR. WHICH MEANS THAT STAFF FROM
17 THE CONTROL AREA AT THE FRONT, USUALLY LOCATED AT THE FRONT, DID
18 NOT HAVE ANY DIRECT OBSERVATION OF WHAT WAS GOING ON BEHIND
19 THOSE DOUBLE AND TRIPLE-BUNKS.

20 AND ANYBODY CAN TELL YOU THAT'S BEEN IN THIS BUSINESS
21 FOR A LONG TIME THERE'S A LOT OF PREDATORY BEHAVIOR THAT GOES ON
22 IN PRISON SETTINGS IF STAFF AREN'T THERE TO CONTROL IT.

23 **BY MS. NORMAN:**

24 **Q.** AND WHAT KINDS OF -- WHAT NUMBERS ARE WE TALKING ABOUT HERE?
25 WHEN YOU WENT INTO A DORMITORY OR GYM WITH SEVERAL HUNDRED

1 PRISONERS, HOW MANY STAFF ARE YOU SEEING WORKING IN THOSE UNITS?

2 **A.** USUALLY I SAW ONE OR TWO. ON SOME OCCASIONS I SAW THREE ON
3 THE VERY, VERY LARGE DORMS.

4 BUT, AGAIN, I SAW STAFF HANGING CLOSE TO THE FRONT.
5 THEY WERE REALLY OVERWHELMED BECAUSE THE NUMBER OF OFFENDERS
6 THAT KEPT COMING UP ASKING THEM QUESTIONS AND TAKING THEIR TIME,
7 THEY REALLY HAD NO TIME TO TAKE PEOPLE OUT FOR APPOINTMENTS, TO
8 TAKE PEOPLE OUT TO RECREATION, TO DO THEIR ROUNDS, TO DO THEIR
9 INSPECTIONS, AND TO TRY TO CONTROL WHAT BEHAVIOR WAS GOING ON
10 THAT THEY COULDN'T SEE.

11 **Q.** IN YOUR OPINION AND IN YOUR EXPERIENCE, IS ONE OR TWO OR
12 EVEN THREE CUSTODY STAFF IN A DORM OR GYM WITH SEVERAL HUNDRED
13 PRISONERS, IS THAT ADEQUATE STAFFING TO RESPOND TO MEDICAL OR
14 MENTAL HEALTH EMERGENCIES?

15 **A.** NO. AGAIN, THEY JUST DIDN'T HAVE CONTROL OF THE ENVIRONMENT
16 THAT THEY WERE TRYING TO MANAGE. AND THEY WERE UNABLE. I
17 WOULDN'T SAY "UNWILLING," BUT THEY WERE UNABLE TO GO TO THE BACK
18 AND DO THEIR ROUNDS, SIMPLY BECAUSE THEY ARE OVERWHELMED WITH
19 OTHER TASKS ASSOCIATED WITH THE HEAVY NUMBER OF OFFENDERS THAT
20 THEY WERE TRYING TO MANAGE.

21 **Q.** IN YOUR EXPERIENCE COULD STAFF IN SUCH SETTINGS MAKE GOOD
22 DECISIONS WITH REGARD TO, SAY, MEDICAL OR MENTAL HEALTHCARE
23 NEEDS OF PRISONERS?

24 **MR. MELLO:** OBJECTION. PAUL MELLO. OBJECTION. IT
25 CALLS FOR SPECULATION.

1 **JUDGE KARLTON:** OVERRULED.

2 **JUDGE HENDERSON:** OVERRULED, COUNSEL.

3 **THE WITNESS:** YES, I HAVE ACTUALLY BEEN ONE OF THOSE
4 STAFF IN TEXAS THAT'S TRIED TO MANAGE AN OVERCROWDED DORMITORY
5 AND CELL BLOCK. AND I CAN TELL YOU THAT IT WAS A BURDEN ON ME
6 TO MAKE THE PROPER DECISIONS WHEN I WAS TRYING TO MANAGE THAT.
7 AND I EXPECT THE SAME THING IS HAPPENING WITH THE STAFF IN THE
8 CALIFORNIA DEPARTMENT OF CORRECTIONS.

9 **BY MS. NORMAN:**

10 **Q.** AND, IN FACT, ON YOUR -- ON YOUR PRISON TOURS, SOME OF THE
11 WARDENS TOLD YOU THAT THEY DIDN'T HAVE VERY HIGH VACANCY RATES
12 FOR CUSTODIAL STAFFING; ISN'T THAT RIGHT?

13 **A.** THAT'S CORRECT.

14 **Q.** AND YET, AS I BELIEVE YOU MENTIONED EARLIER, YOU STILL FOUND
15 THAT THEY HAD INADEQUATE CUSTODIAL STAFFING?

16 **A.** IN MY OPINION THEY HAD INADEQUATE STAFFING IN ALMOST EVERY
17 HOUSING AREA THAT I WENT TO.

18 **Q.** OKAY. MR. MELLO QUOTED PARAGRAPH FOUR OF YOUR AUGUST, 2008
19 REPORT. AND I'D LIKE YOU TO TAKE A LOOK AT THAT.

20 I'M SORRY. I DON'T HAVE A FANCY SCREEN ARRANGEMENT.
21 BUT IN PARAGRAPH FOUR OF YOUR --

22 **A.** WHICH REPORT?

23 **Q.** THE AUGUST, 2008 REPORT.

24 **A.** OKAY.

25 **Q.** SO THE SUPPLEMENTAL REPORT.

1 A. OKAY. ALL RIGHT.

2 Q. MR. MELLO QUOTED YOU QUOTING SOMEBODY ELSE.

3 A. THAT'S CORRECT.

4 Q. TALKING ABOUT WIDESPREAD AGREEMENT AMONG CORRECTIONAL
5 EXPERTS THAT CHRONIC IDLENESS PRODUCES NEGATIVE PSYCHOLOGICAL
6 AND BEHAVIORAL EFFECTS IN PRISON.

7 DO YOU SEE THAT?

8 A. YES.

9 Q. AND YOU AGREE WITH THAT OPINION, RIGHT?

10 A. YES, I CERTAINLY BELIEVE THAT. AND I TOOK A QUOTE FROM
11 MR. TILTON, WHO WAS THE SECRETARY OF CORRECTIONS HERE IN
12 CALIFORNIA, AND HE OPINED THE SAME THING.

13 Q. MR. MELLO ASKED YOU A LOT ABOUT INDIVIDUAL CASES, WHETHER
14 YOU KNEW OF INDIVIDUALS WHO HAD BEEN HARMED BY SPECIFIC BARRIERS
15 AND IMPEDIMENTS YOU OBSERVED IN CALIFORNIA.

16 I'D LIKE YOU TO LOOK, AGAIN, IN THE SAME REPORT, YOUR
17 SUPPLEMENTAL REPORT. AND IN THE SAME PARAGRAPH, MOVING DOWN THE
18 PARAGRAPH, I'D LIKE YOU TO LOOK AT THE PART WHERE IN QUOTE MARKS
19 IT STATES:

20 "THE RISK OF CATASTROPHIC FAILURE -- THE RISK OF
21 CATASTROPHIC FAILURE IN A SYSTEM STRAINED FROM SEVERE
22 OVERCROWDING IS A CONSTANT THREAT. IT IS MY
23 PROFESSIONAL OPINION THIS LEVEL OF OVERCROWDING IS
24 UNSAFE, AND WE ARE OPERATING ON BORROWED TIME."

25 DO YOU SEE THAT?

1 **A.** YES.

2 **Q.** AND DO YOU AGREE WITH THAT OPINION?

3 **A.** I DO VERY MUCH.

4 **Q.** AND WHOSE OPINION WAS THAT?

5 **A.** THAT WAS, AGAIN, MR. TILTON'S OPINION.

6 **MS. NORMAN:** NO FURTHER QUESTIONS.

7 **JUDGE HENDERSON:** FURTHER CROSS OR RECROSS?

8 **RECROSS-EXAMINATION**

9 **BY MR. MELLO:**

10 **Q.** MR. SCOTT, YOU QUOTED MR. TILTON IN YOUR REPORT. WHO
11 SELECTED THAT QUOTE TO GO INTO YOUR REPORT?

12 **A.** MS. NORMAN. SHE CALLED IT TO MY ATTENTION, AND I APPROVED
13 IT.

14 **MR. MELLO:** THANK YOU.

15 **MS. NORMAN:** NO FURTHER QUESTIONS.

16 **JUDGE HENDERSON:** OKAY. THANK YOU FOR YOUR TESTIMONY,
17 MR. SCOTT. YOU MAY STEP DOWN.

18 **THE WITNESS:** THANK YOU, JUDGE.

19 **MR. SPECTER:** YOUR HONOR, I KNOW THIS IS A COURTROOM
20 AND NOT A CHURCH, BUT I HAVE TO CONFESS THAT WE COMMITTED A SIN
21 IN NOT HAVING A WITNESS HERE FOR YOU FOR THE LAST HALF HOUR. WE
22 THOUGHT IT WOULD GO ABOUT THIS LONG, AND WE WEREN'T SURE. SO WE
23 WILL BE READY TO START AT 9:15 TOMORROW WITH -- WE HAVE THREE
24 WITNESSES.

25 **JUDGE HENDERSON:** OKAY. AND I THINK WE'RE LEARNING

1 HOW THINGS ARE GOING, AND WE WILL CONTINUE TO LEARN HOW LONG
2 THESE ARE REALLY GOING TO TAKE.

3 MR. SPECTER: OKAY. THANK YOU.

4 JUDGE HENDERSON: OKAY.

5 JUDGE REINHARDT: WOULDN'T DO ANY HARM TO HAVE AN
6 EXTRA WITNESS.

7 JUDGE HENDERSON: YES. ERR ON THE SIDE OF --

8 MR. SPECTER: YES, WE DID, BUT THEY ARE COMING FROM
9 ALL OVER THE COUNTRY SO IT'S --

10 JUDGE HENDERSON: RIGHT.

11 JUDGE REINHARDT: SO ARE SOME OF US.

12 MR. SPECTER: PARDON ME?

13 JUDGE REINHARDT: SO ARE SOME OF US.

14 JUDGE HENDERSON: BE WARNED, COUNSEL, WE MAY AND
15 PROBABLY WILL RECESS A LITTLE EARLIER THAN WE PLANNED ON FRIDAY,
16 PERHAPS AN HOUR EARLIER THAN SCHEDULED.

17 MR. SPECTER: OKAY.

18 JUDGE HENDERSON: BUT WE WILL TALK ABOUT THAT ON
19 THURSDAY.

20 MR. SPECTER: SURE. AND I JUST SHOULD TELL YOU WHO
21 IS DOING WHAT TOMORROW.

22 JUDGE HENDERSON: OKAY.

23 MR. SPECTER: DR. BEARD WILL START.

24 JUDGE HENDERSON: OKAY.

25 MR. SPECTER: THEN, IT WILL BE MR. LEHMAN. AND THEN,

1 IF WE HAVE TIME IT WILL BE DR. HANEY.

2 **JUDGE KARLTON:** DOCTOR?

3 **MR. SPECTER:** HANEY, H-A-N-E-Y.

4 **JUDGE HENDERSON:** OKAY.

5 **MS. JOHNSON:** YOUR HONOR, ANNE JOHNSON FOR THE PLATA
6 DEFENDANTS. BECAUSE WE HAVE A LITTLE BIT OF EXTRA TIME THERE
7 WAS A HOUSEKEEPING MATTER WE NEED TO ADDRESS WITH RESPECT TO
8 DEFENDANTS' EXPERT, DR. THOMAS.

9 WE HAD SPOKEN AT THE PRETRIAL CONFERENCE --

10 **JUDGE HENDERSON:** THAT'S THE DOCTOR THAT HAS SOME
11 MEDICAL PROBLEM?

12 **MS. JOHNSON:** THAT'S CORRECT. AND WE HAD THOUGHT
13 THAT HE COULD COME ON THE 11TH OF DECEMBER AND TESTIFY OUT OF
14 ORDER. BUT AT THIS TIME WE'RE NOT CERTAIN THAT THIS CASE IS
15 GOING TO GO THAT LONG. SO WE NEED TO KEEP IN MIND WHAT WE'RE
16 GOING TO DO.

17 HE'S UNDERGOING A NONDISCRETIONARY SURGICAL PROCEDURE
18 TODAY, SO HE WILL NOT BE AVAILABLE FOR LIVE TESTIMONY UNTIL THE
19 SECOND WEEK OF DECEMBER IN CALIFORNIA.

20 HE CAN BE AVAILABLE BY VIDEO CONFERENCING THE FIRST
21 WEEK OF DECEMBER. HE COULD GO TO A FACILITY IN FLORIDA WHERE HE
22 LIVES, BUT HE'S NOT GOING TO BE IN A CONDITION TO FLY OUT HERE
23 FOR TRIAL.

24 THERE MAY ALSO BE A SCHEDULING ISSUE WITH DR. PACKER.
25 SO WE HAVE THE OPTION OF HAVING DR. THOMAS TESTIFY THE SECOND

1 WEEK -- I'M SORRY -- THE FIRST WEEK OF DECEMBER BY VIDEO
2 CONFERENCING, OR WE COULD MAYBE HAVE ONE SPECIAL DAY WHERE DR.
3 PACKER AND DR. THOMAS COULD TESTIFY DURING THAT SECOND WEEK OF
4 DECEMBER. BUT WE NEED TO FIGURE OUT HOW TO HANDLE THAT.

5 **JUDGE KARLTON:** SPEAKING FOR MYSELF AND NOT FOR MY
6 COLLEAGUES, I DON'T KNOW WHY HE HAS TO FLY OUT HERE. WE CAN JUST
7 TAKE HIM BY VIDEO, IF THAT'S ACCEPTABLE.

8 **MS. JOHNSON:** WE HAVE NO PROBLEM WITH THAT. THE
9 PLAINTIFFS HAVE OBJECTED TO THAT, YOUR HONOR.

10 **JUDGE KARLTON:** I'M SORRY. YOU HAVE A PROBLEM?

11 **MS. JOHNSON:** WE HAVE NO PROBLEM WITH THAT. WE HAVE
12 SUGGESTED THAT. PLAINTIFFS HAVE OBJECTED TO THAT SUGGESTION.

13 **MR. SPECTER:** WE JUST WANTED TO MAKE -- IF IT'S
14 MEDICALLY NECESSARY -- SORRY.

15 **JUDGE HENDERSON:** WHY DON'T YOU MEET AND CONFER,
16 THEN?

17 **MR. SPECTER:** YES, SIR.

18 **JUDGE HENDERSON:** AND CHECK ON YOUR CONCERNS ABOUT
19 MEDICAL NECESSITY.

20 **MR. SPECTER:** YES.

21 **JUDGE HENDERSON:** SPEAKING ONLY FOR MYSELF, I WOULD
22 BE SO DELIGHTED IF IT DOESN'T GO UNTIL DECEMBER 11TH, THAT I'LL
23 AGREE TO ALMOST ANYTHING.

24 **JUDGE KARLTON:** NOT ONLY THAT. IT'S REALLY IMPORTANT
25 IF THE GENTLEMAN IS NOT WELL THAT YOU RECOGNIZE THAT REALITY --

1 **JUDGE HENDERSON:** YES.

2 **JUDGE KARLTON:** -- AND, YOU KNOW, NOT BE --

3 **JUDGE HENDERSON:** YES. MAYBE GET WHAT VALIDATION YOU
4 NEED FROM HIS DOCTOR.

5 **MR. SPECTER:** THAT'S WHAT -- I THINK WHEN WE MET AND
6 CONFERRED BEFORE HE HADN'T HAD THE OPERATION. WE WANTED TO KNOW
7 WHAT HAPPENED. WE WILL DO THAT. WE WILL TALK TO THEM.

8 **MS. HARDY:** AND, YOUR HONORS, THERE IS ACTUALLY ONE
9 REBUTTAL WITNESS. I'M ALISON HARDY FOR THE PLAINTIFFS.

10 WE DO HAVE ONE REBUTTAL WITNESS WHO IS A PROFESSOR AT
11 CAL WHICH YOU WOULD THINK WOULD BE EASIER TO SCHEDULE, BUT
12 UNFORTUNATELY HE'S IN GREAT DEMAND. AND HE IS AVAILABLE ONLY ON
13 THE MORNING OF DECEMBER 9 SO -- BECAUSE HE'S OUT OF TOWN.
14 THAT'S WELL WITHIN THE DECEMBER 19TH CUTOFF, BUT DECEMBER 9 IS
15 WHEN HE'S AVAILABLE. AND HE'S REBUTTAL.

16 **JUDGE REINHARDT:** HE'S IN GREAT DEMAND FOR WHAT?

17 **MS. HARDY:** HE'S AN EPIDEMIOLOGIST, YOUR HONOR.

18 **JUDGE REINHARDT:** HE'S WHAT?

19 **MS. HARDY:** HE'S AN EPIDEMIOLOGIST, AND HE'S A
20 CONSULTANT ALL OVER THE COUNTRY.

21 **JUDGE HENDERSON:** OKAY. WE STARTED SOMETHING HERE.

22 **JUDGE KARLTON:** I MIGHT SAY ABOUT YOUR DOCTOR YOU
23 MIGHT FIND SOME WAY TO VIDEO HIM IN, AS WELL, BECAUSE THAT WOULD
24 BE A VERY GOOD THING TO DO.

25 **MS. TILLMAN:** MY NAME IS LISA TILLMAN. I JUST WANTED

1 TO INFORM THE COURT ABOUT DR. PACKER'S UNAVAILABILITY DUE TO A
2 TRIAL IN ANOTHER PROCEEDING. WE WILL WORK WITH PLAINTIFF COUNSEL
3 TO SEE WHAT WE CAN COME UP WITH BY WAY OF A WORKABLE SOLUTION.
4 RIGHT NOW HE'S ONLY AVAILABLE THAT SECOND WEEK OF DECEMBER
5 BECAUSE OF ANOTHER PROCEEDING.

6 BUT WE WILL TRY TO WORK WITH PLAINTIFF COUNSEL ON
7 THAT.

8 **JUDGE HENDERSON:** GOOD.

9 **MS. LEONARD:** NATALIE LEONARD, CALIFORNIA
10 CORRECTIONAL PEACE OFFICERS' ASSOCIATION.

11 THIS MORNING THE COURT APPROVED 15 MINUTES OF DIRECT
12 AND 30 MINUTES OF REDIRECT FOR OUR WITNESSES. IN THE MEANTIME,
13 WE LEARNED THAT THE COURT INTENDS TO RULE ON OBJECTIONS AT THE
14 VERY END.

15 WE RECEIVED WITH RESPECT TO OUR DECLARATIONS 12 PAGES
16 OF OBJECTIONS THIS MORNING, PRIMARILY LACK OF FOUNDATION. UNDER
17 THAT CIRCUMSTANCE, WE'D BE REQUIRED TO USE OUR 15 MINUTES SOLELY
18 TO ADDRESS THE FOUNDATIONAL ISSUES.

19 WE WOULD REQUEST THAT THE COURT NOT INCREASE OUR
20 TOTAL TIME OF 45 MINUTES, BUT GIVE US LEAVE TO REALLOCATE THAT
21 TIME, 30 MINUTES OF DIRECT, 15 MINUTES OF REDIRECT OR SOMETHING
22 ELSE THAT THE COURT FEELS APPROPRIATE IN LIGHT OF THIS NEW
23 INFORMATION.

24 **JUDGE HENDERSON:** OKAY. THAT'S A REASONABLE -- AND
25 LET ME ASK YOU TO, AGAIN, MEET AND CONFER, SEE IF YOU CAN AGREE

1 UPON THE REALLOCATION.

2 BUT NO OBJECTION TO THAT REALLOCATION.

3 **MR. MELLO:** WE WILL MEET AND CONFER FURTHER ABOUT IT.

4 **JUDGE HENDERSON:** OKAY.

5 **MR. MELLO:** MY INCLINATION WAS NO, BUT I'M A DEFENSE
6 ATTORNEY, SO I'LL THINK ABOUT IT.

7 **JUDGE HENDERSON:** WELL, WE'RE PROFESSIONAL
8 TIE-BREAKERS. MEET AND CONFER, AND WE WILL BREAK ANY TIES.

9 **MR. MELLO:** UNDERSTOOD.

10 **MS. LEONARD:** THANK YOU, YOUR HONORS.

11 **JUDGE HENDERSON:** OKAY. COURT IS ADJOURNED UNTIL 9:15
12 TOMORROW MORNING.

13 (THEREUPON, THIS TRIAL WAS RECESSED UNTIL
14 WEDNESDAY, NOVEMBER 19, 2008, AT 9:15
15 O'CLOCK A.M.)
16
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CERTIFICATE OF REPORTER

WE, JOAN MARIE COLUMBINI AND KATHERINE WYATT, OFFICIAL REPORTERS FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN CIV S-90-0520 LKK JPM P, RALPH COLEMAN, ET AL V. ARNOLD SCHWARZENEGGER AND C 01-1351 TEH, MARCIANO PLATA V. ARNOLD SCHWARZENEGGER, WERE REPORTED BY US, CERTIFIED SHORTHAND REPORTERS, AND WERE THEREAFTER TRANSCRIBED UNDER OUR DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY US AT THE TIME OF FILING.

THE VALIDITY OF THE REPORTER'S CERTIFICATION OF SAID TRANSCRIPT MAY BE VOID UPON DISASSEMBLY AND/OR REMOVAL FROM THE COURT FILE.

/S/ JOAN MARIE COLUMBINI

JOAN MARIE COLUMBINI, CSR 5435, RPR

S/ KATHERINE WYATT

KATHERINE WYATT, CSR 9866, RMR

TUESDAY, NOVEMBER 18, 2008

**JOAN MARIE COLUMBIN, CSR, RPR
KATHERINE WYATT, CSR, RMR
OFFICIAL COURT REPORTERS - USDC
415-255-6842**

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
AND FOR THE NORTHERN DISTRICT OF CALIFORNIA
UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES PURSUANT
TO SECTION 2284, TITLE 28 UNITED STATES CODE

RALPH COLEMAN, ET AL.,)
)
 PLAINTIFFS,)
)
 VS.) NO. CIV S-90-0520 LKK JFM P
)
 ARNOLD SCHWARZENEGGER, ET AL.)
) THREE-JUDGE COURT
 DEFENDANTS.)

MARCIANO PLATA, ET AL.,)
)
 PLAINTIFFS,)
)
 VS.) NO. C 01-1351 TEH
)
 ARNOLD SCHWARZENEGGER, ET AL.)
)
 DEFENDANTS.)

TRANSCRIPT OF PROCEEDINGS

SAN FRANCISCO, CALIFORNIA
WEDNESDAY, NOVEMBER 19, 2008

(APPEARANCES ON FOLLOWING PAGES)

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PROCEEDINGS; WEDNESDAY, NOVEMBER 19, 2008

THE CLERK: PLEASE STATE YOUR APPEARANCES, COUNSEL.

MR. SPECTER: DONALD SPECTER, ALISON HARDY FOR THE
PLAINTIFFS.

MR. BIEN: MICHAEL BIEN FOR THE COLEMAN PLAINTIFFS.

JUDGE KARLTON: YOU DON'T NEED TO GO THROUGH ALL
THAT. JUST PEOPLE ANNOUNCE WHEN THEY ARE SPEAKING.

MS. LEONARD: NATALIE LEONARD, CARROLL, BURDICK &
MCDONOUGH.

JUDGE HENDERSON: WE WILL ASSUME EVERYONE IS HERE.
WHY DON'T WE GET GOING?

JUDGE REINHARDT: COULD WE DO YESTERDAY OVER TODAY?
NOW I CAN HEAR.

JUDGE HENDERSON: YOU MAY CALL YOUR NEXT WITNESS,
COUNSEL.

MR. SPECTER: THANK YOU, YOUR HONOR. PLAINTIFFS CALL
DR. JEFFREY BEARD.

JUDGE KARLTON: YOU VIOLATED THE FIRST RULE. YOU
DIDN'T SAY WHO YOU WERE.

MR. SPECTER: YOU ARE RIGHT. I SINNED AGAIN.

DONALD SPECTER FOR THE PLAINTIFFS.

JEFFREY A. BEARD, PH.D.

HAVING BEEN CALLED AS A WITNESS BY THE PLAINTIFFS WAS FIRST
DULY SWORN AND EXAMINED AS FOLLOWS:

1 **THE WITNESS:** I DO.

2 **THE CLERK:** SPELL AND STATE YOUR FULL NAME FOR THE
3 RECORD.

4 **THE WITNESS:** JEFFREY A. BEARD. J-E-F-F-R-E-Y,
5 MIDDLE INITIAL A., B-E-A-R-D.

6 **MR. SPECTER:** THANK YOU.

7 YOUR HONORS, JUST A BRIEF NOTE OF INTRODUCTION,
8 DR. BEARD IS NOT A RETAINED WITNESS. WE DID NOT FILE A REPORT
9 FOR HIM, THEREFORE, I'M GOING TO GO INTO SOME MORE DETAIL ABOUT
10 HIS BACKGROUND AND EXPERIENCE THAN WE HAVE BEEN WITH THE REST OF
11 THE WITNESSES.

12 **JUDGE HENDERSON:** FINE. OKAY.

13 **DIRECT EXAMINATION BY MR. SPECTER**

14 **BY MR. SPECTER**

15 **Q** DR. BEARD, WHERE ARE YOU CURRENTLY EMPLOYED?

16 **A** I'M CURRENTLY SECRETARY OF THE PENNSYLVANIA DEPARTMENT OF
17 CORRECTIONS.

18 **Q** WHY DO WE CALL YOU DOCTOR?

19 **A** BECAUSE I HAVE A PH.D. FROM PENN STATE UNIVERSITY.

20 **Q** IN WHAT DISCIPLINE?

21 **A** COUNSELING.

22 **Q** AND ARE YOU A LICENSED PSYCHOLOGIST?

23 **A** I AM.

24 **Q** HOW LONG HAVE YOU BEEN THE SECRETARY OF THE PENNSYLVANIA
25 DEPARTMENT OF CORRECTIONS?

1 **A** I TOOK OVER AS SECRETARY IN -- I WAS CONFIRMED IN FEBRUARY
2 OF 2001.

3 **Q** OKAY. BEFORE THAT HOW LONG -- WELL, IN TOTAL HOW LONG HAVE
4 YOU WORKED FOR THE PENNSYLVANIA DEPARTMENT OF CORRECTIONS?

5 **A** I STARTED WORKING FOR THE PENNSYLVANIA DEPARTMENT OF
6 CORRECTIONS IN JUNE OF 1972, SO THAT'S JUST A LITTLE OVER 36
7 YEARS.

8 **Q** OKAY. AND IF YOU COULD COLLAPSE 36 YEARS INTO JUST A FEW --
9 BRIEF DESCRIPTION OF THE POSITIONS YOU'VE HELD IN THAT
10 DEPARTMENT?

11 **A** WELL, I STARTED OFF AS A PSYCHOLOGIST IN THE SYSTEM; BECAME
12 A DEPUTY SUPERINTENDENT AT THE FIRST INSTITUTION THAT I WORKED
13 IN; WENT FROM THERE AND BECAME A SUPERINTENDENT FOR 3-1/2 YEARS
14 AND OPENED UP A NEW FACILITY.

15 THEN I WAS PROMOTED TO ANOTHER INSTITUTION AS
16 SUPERINTENDENT, IT WAS A LARGER INSTITUTION, AFTER THEY HAD TWO
17 DEVASTATING RIOTS. I REMAINED THERE FOR ABOUT 3-1/2 YEARS. I
18 WAS THEN PROMOTED INTO CENTRAL OFFICE, BECAME A REGIONAL DEPUTY,
19 SECRETARY, EXECUTIVE DEPUTY SECRETARY, AND THEN IN 2001 BECAME
20 THE SECRETARY.

21 **Q** IN YOUR POSITIONS, IN THE POSITIONS AS DEPUTY SUPERINTENDENT
22 ON UP, HAVE YOU BEEN RESPONSIBLE FOR THE DELIVERY OF HEALTHCARE
23 SERVICES TO PRISONERS?

24 **A** YES.

25 **Q** TO MAKE SURE THAT OCCURS?

1 **A** YES. AS THE DEPUTY SUPERINTENDENT FOR TREATMENT AT THE
2 STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, ONE OF MY
3 RESPONSIBILITIES WAS TO OVERSEE NOT ONLY THE HEALTHCARE
4 DEPARTMENT, BUT ALSO THE PSYCHOLOGY DEPARTMENT, MENTAL
5 HEALTHCARE, DENTAL CARE AND THINGS LIKE THAT. THEN, OF COURSE,
6 AS WARDEN OF TWO INSTITUTIONS, I WAS ULTIMATELY RESPONSIBLE FOR
7 THE HEALTH AND MENTAL HEALTHCARE IN THOSE FACILITIES. THEN AS A
8 DEPUTY SECRETARY AND NOW A SECRETARY, I'M ALSO ULTIMATELY
9 RESPONSIBLE AT DIFFERENT LEVELS FOR THOSE CARE -- FOR THOSE
10 TYPES OF CARE.

11 **Q** IN YOUR CURRENT POSITION CAN YOU PLEASE DESCRIBE WHAT
12 ACTIVITIES YOU PURSUE IN TERMS OF HEALTHCARE?

13 **A** IN MY CURRENT POSITION?

14 **Q** YES.

15 **A** WELL, WE CONTRACT FOR OUR MEDICAL CARE AND FOR OUR MENTAL
16 HEALTH CARE, SO I'M REGULARLY INVOLVED IN REVIEWING THE RFP'S
17 AND RESPONSES TO RFP'S THAT GO OUT TO ENSURE WE ARE PROVIDING
18 COMPREHENSIVE MENTAL HEALTH AND MEDICAL CARE TO THE INMATE
19 POPULATION.

20 **Q** SO DO YOU PRACTICE AS A PSYCHOLOGIST?

21 **A** I DON'T. I HAVEN'T PRACTICED SINCE ABOUT 4-1/2 YEARS INTO
22 MY STAY WITH THE PENNSYLVANIA DEPARTMENT OF CORRECTIONS, AND
23 I'VE ACTUALLY -- MY LICENSE IS IN AN INACTIVE STATUS RIGHT NOW
24 BECAUSE OF THAT.

25 **Q** NEVERTHELESS, DO YOU CONSIDER YOURSELF AN EXPERT IN ANY

1 ASPECT OF THE DELIVERY OF HEALTHCARE TO PRISONERS?

2 **A** WELL, I CERTAINLY CONSIDER MYSELF AN EXPERT IN THE VARIOUS
3 THINGS THAT ARE REQUIRED TO MAKE SURE THAT WE'RE DELIVERING
4 CONSTITUTIONALLY ADEQUATE HEALTHCARE TO THE INMATE POPULATION.
5 I'M NOT A PHYSICIAN, SO WHEN IT GETS TO INDIVIDUAL CLINICAL CARE
6 OF AN INDIVIDUAL, THAT'S NOT MY AREA OF EXPERTISE, CERTAINLY.
7 BUT I DO KNOW AND HAVE -- THROUGH MY LONG YEARS OF EXPERIENCE DO
8 KNOW THE VARIOUS ELEMENTS THAT ARE REQUIRED TO PROVIDE PROPER
9 HEALTHCARE AND PROPER MENTAL HEALTHCARE TO THE INMATE
10 POPULATION.

11 **Q** AND COULD YOU BRIEFLY SUMMARIZE YOUR UNDERSTANDING OF THOSE
12 ELEMENTS, PLEASE?

13 **A** WELL, WHEN YOU ARE TALKING ABOUT HEALTHCARE, FIRST OF ALL,
14 YOU HAVE PEOPLE COMING INTO YOUR SYSTEM. YOU HAVE TO IDENTIFY
15 THE VARIOUS MEDICAL PROBLEMS AND MEDICAL NEEDS THAT THOSE
16 INDIVIDUALS HAVE. YOU HAVE TO HAVE PRIMARY CARE PHYSICIANS
17 WORKING FOR YOU IN ADEQUATE NUMBERS SO THEY CAN REVIEW NOT ONLY
18 THE INCOMING PEOPLE, BUT ON AN ONGOING BASIS TAKE CARE OF SICK
19 CALL AND THINGS LIKE THAT.

20 YOU HAVE TO HAVE SPECIALISTS ON CONTRACT SO WHEN A
21 INDIVIDUAL HAS A DERMATOLOGICAL PROBLEM OR ORTHOPEDIC PROBLEM,
22 YOU CAN REFER THEM TO SOME SPECIALIST FOR CARE. YOU HAVE TO
23 HAVE CONTRACTS WITH HOSPITALS SO THAT IF AN INDIVIDUAL NEEDS TO
24 GO OUT FOR SOME KIND OF OPERATION OR WHATEVER, THAT'S AVAILABLE.
25 YOU NEED TO HAVE TERTIARY CARE HOSPITALS FOR PEOPLE WHO NEED

1 HIGHER LEVELS OF CARE. YOU HAVE TO HAVE A PROPER MEDICAL
2 RECORDS SYSTEM IN PLACE SO THAT YOU CAN FOLLOW THE INMATE, YOU
3 CAN PROVIDE CONTINUITY OF CARE, AND THAT IF THEY MOVE FROM ONE
4 INSTITUTION TO ANOTHER INSTITUTION, THE PEOPLE ARE AWARE OF WHAT
5 THEY NEED. YOU HAVE TO HAVE A MEDICATION SYSTEM IN PLACE SO
6 THAT THOSE INDIVIDUALS WHO NEED MEDICATION RECEIVE MEDICATION
7 AND RECEIVE IT IN A TIMELY MANNER. YOU HAVE TO HAVE POLICIES IN
8 PLACE THAT SEE THAT ALL OF THIS CARE IS PROVIDED IN AN
9 APPROPRIATE MANNER TO THE INMATE POPULATION.

10 **Q** DO YOU HAVE TO HAVE ANY QUALITY ASSURANCE PROGRAMS?

11 **A** CERTAINLY. I DID MISS THAT. IN OUR STATE WE DO HAVE A VERY
12 EXTENSIVE QUALITY ASSURANCE PROGRAM THERE. THAT'S REALLY A
13 KEY -- IT'S A KEY NO MATTER WHAT YOU DO, WHETHER YOU'RE
14 PROVIDING MENTAL HEALTH CARE OR WHETHER YOU'RE PROVIDING MEDICAL
15 CARE OR PROVIDING PROGRAMS, BECAUSE IF YOU DON'T HAVE THAT IN
16 PLACE, YOU ARE NOT ABLE TO SEE WHERE YOU ARE DEVELOPING
17 PROBLEMS, MAYBE WHERE YOU ARE NOT DOING WHAT YOU SHOULD BE DOING
18 AND WHERE YOU NEED TO MAKE CHANGES.

19 **Q** WHAT'S THE CURRENT POPULATION OF THE PENNSYLVANIA DEPARTMENT
20 OF CORRECTIONS?

21 **A** WE CURRENTLY HAVE JUST A LITTLE OVER 48,000 INMATES.

22 **Q** HOW MANY PRISONS ARE THOSE INMATES HOUSED IN?

23 **A** THEY'RE HOUSED IN 26 PRISONS AND A BOOT CAMP.

24 **Q** ARE YOU HOUSING PRISONERS OVER DESIGN CAPACITY IN
25 PENNSYLVANIA?

1 **A** WE DON'T USE THE TERM "DESIGN CAPACITY." WE USE "OPERABLE
2 CAPACITY." WE LOOK AT EACH ONE OF OUR FACILITIES AND SEE WHAT
3 THOSE FACILITIES -- NOT ONLY SPACE-WISE BUT JOB-WISE,
4 PROGRAM-WISE, RECEIVER-WISE, WHAT THEY CAN HANDLE, AND WE
5 DETERMINE AN OPERABLE CAPACITY. WE'RE CURRENTLY OPERATING ABOUT
6 5,000 INMATES OVER THAT OPERABLE CAPACITY IN OUR SYSTEM.

7 **Q** AND DOES THAT CONCERN YOU IN ANY WAY IN TERMS OF THE
8 OPERATION OF YOUR SYSTEM?

9 **A** IT CERTAINLY CONCERNS ME. I THINK IT'S NOT HIGH ENOUGH YET
10 THAT WE CAN'T PROVIDE THE BASIC CARE THAT WE NEED TO PROVIDE TO
11 THE INMATES WITHIN THE INSTITUTION, AND WE MONITOR THAT VERY
12 CLOSELY. BUT ANY TIME THAT YOU'RE RUNNING OVER CAPACITY, YOU
13 HAVE MORE INMATES WHO DON'T HAVE JOBS THAT ARE IDLE, YOU HAVE
14 MORE POSSIBILITIES OF HAVING PROBLEMS WITHIN AN INSTITUTION. IT
15 INCREASES THE LEVEL OF RISK EVEN IF YOU ARE ONLY SOMEWHAT OVER
16 CAPACITY.

17 SO, YOU KNOW, MY HOPE AND ONE OF THE DIRECTIONS I'M
18 TAKING IN MY STATE IS TRY TO GET US DOWN TO A POINT WHERE WE GET
19 CLOSER TO THAT OPERABLE CAPACITY.

20 **Q** SO WHAT HAVE YOU DONE TO GET CLOSER TO THE OPERABLE
21 CAPACITY?

22 **A** WELL, ONE OF THE THINGS THAT WE DID IS WE RECENTLY PASSED
23 SOME LEGISLATION THAT HAS A -- REALLY WHAT IS TERMED AN EARNED
24 TIME PROVISION IN IT TO ALLOW CERTAIN NONVIOLENT OFFENDERS TO
25 GET OUT EARLIER, AND WE HAVE ANOTHER PIECE OF THAT, A STATE

1 INTERMEDIATE PUNISHMENT.

2 **MR. MELLO:** YOUR HONORS, PAUL MELLO FOR DEFENDANTS.
3 I'M GOING TO OBJECT. I THINK IT'S A PHASE TWO ISSUE. PAUL
4 MELLO FOR PLATA DEFENDANTS. I BELIEVE THIS IS A PHASE TWO
5 SUBJECT MATTER, AND I OBJECT ON THE BASIS OF RELEVANCE.

6 **JUDGE HENDERSON:** OKAY. I'M GOING TO OVERRULE IT.
7 THE OBJECTION WILL BE PRESERVED.

8 **BY MR. SPECTER**

9 **Q** MR. MELLO INTERRUPTED YOU IN THE MIDDLE -- PURSUANT TO THE
10 JUDGE'S REMARKS. SO DO YOU REMEMBER WHERE YOU WERE IN THE
11 MIDDLE OF THAT?

12 **A** YES. WE HAVE THE EARNED TIME PROVISION THAT WILL HELP. IT
13 WILL INCENTIVIZE INMATES. IT'S IMPORTANT WITH WHAT WE KNOW
14 ABOUT THESE -- SOME OF THE LESS SERIOUS OFFENDERS IS THE
15 IMPORTANT THING ISN'T TO CONFINED THEM FOR LONG PERIODS OF TIME.
16 IN FACT, CONFINEMENT IS NOT SHOWN TO BE EFFECTIVE WITH THAT
17 GROUP OF PEOPLE.

18 THE IMPORTANT THING IS YOU ADDRESS THE CRIMINOGENIC
19 FACTORS THAT BROUGHT THEM TO PRISON IN THE FIRST PLACE. MOST OF
20 THAT -- SUBSTANCE ABUSE ISSUES IS ONE OF THE BIG ONES. THERE'S
21 CRIMINAL THINKING. THERE'S VIOLENCE ISSUES, THINGS LIKE THAT
22 THAT YOU HAVE TO ADDRESS. IF YOU ADDRESS THOSE ISSUES, THEY ARE
23 MORE LIKELY TO GO OUT AND SUCCEED AND NOT COME BACK TO PRISON.

24 SO WE DESIGNED A PACKAGE OF BILLS THAT HELPS
25 INCENTIVIZE THE INMATES TO GO THROUGH THEIR PROGRAMS, AND IF

1 THEY COMPLETE THEIR PROGRAMS, THEY CAN GET OUT A LITTLE BIT
2 EARLIER.

3 WE'VE ALSO DEVELOPED ANOTHER PROGRAM, A STATE
4 INTERMEDIATE PUNISHMENT PROGRAM, THAT WAS DESIGNED SPECIFICALLY
5 FOR SUBSTANCE ABUSE OFFENDERS. THEY COME IN, GET A VERY HIGH
6 QUALITY TREATMENT PROGRAM, EXTENSIVE AFTERCARE. IF THEY
7 COMPLETE THAT SUCCESSFULLY, THEY GET OUT EARLIER THAN THEY WOULD
8 HAVE HAD THEY GONE THROUGH A TRADITIONAL SENTENCE.

9 Q YOU HAVE INPATIENT -- YOU HAVE VARIOUS LEVELS OF MENTAL
10 HEALTHCARE, FOR EXAMPLE, IN YOUR FACILITIES, DO YOU NOT?

11 A YES, WE DO.

12 Q AND ARE THOSE -- EVEN THOUGH YOU'RE ABOVE DESIGN CAPACITY,
13 ARE THOSE LEVELS OF CARE FULL?

14 A NO, THEY'RE NOT. IN FACT, THE VERY HIGHEST LEVELS OF CARE
15 WITHIN MY SYSTEM, WE'RE ONLY RUNNING ABOUT 80 PERCENT OF
16 CAPACITY. WE HAVE LICENSED INPATIENT UNITS FOR THOSE PEOPLE
17 THAT ARE COMMITTED TO THOSE UNITS WITHIN OUR INSTITUTIONS, AND
18 WE ALSO RUN A FORENSIC HOSPITAL. WE HAVE BEEN PRETTY
19 CONSISTENTLY RUNNING AT ABOUT 80 PERCENT.

20 PART OF THE REASON I ATTRIBUTE TO THAT, BECAUSE WE DO
21 HAVE ABOUT 19 PERCENT OF OUR OVERALL POPULATION THAT IS MENTALLY
22 ILL, IS BECAUSE WE RECOGNIZE THEM WHEN THEY FIRST COME INTO THE
23 SYSTEM, AND WE HAVE A SPECIAL UNIT TO TRY TO STABILIZE
24 INDIVIDUALS, RATHER THAN LETTING THEM GET WORSE. AND THEN WE
25 HAVE SPECIAL NEEDS UNITS WITHIN ALL OF OUR INSTITUTIONS WHERE WE

1 PLACE THESE INDIVIDUALS SO THAT WE CAN SEE THAT THEY GET THE
2 PROPER CARE AND THEY DON'T DETERIORATE TO THE POINT WHERE THEY
3 HAVE TO GO TO THESE LICENSED UNITS IN OUR FORENSIC HOSPITAL.

4 **Q** SO THE FACT THAT THESE UNITS HAVE SOME VACANCIES, DOES THAT
5 HELP YOU MANAGE YOUR SYSTEM IN AN APPROPRIATE WAY?

6 **A** WELL, IT CERTAINLY DOES, BECAUSE, YOU KNOW, IF I HAVE AN
7 INDIVIDUAL THAT NEEDS SOME PARTICULAR LEVEL OF CARE, I'M ABLE TO
8 PROVIDE THAT CARE TO THEM. IF THOSE UNITS WERE FULL, AND I HAD
9 SOMEBODY THAT NEEDED THE CARE, THEN I COULDN'T. IT WOULD MAKE
10 IT MORE DIFFICULT FOR ME TO MANAGE MY SYSTEM.

11 **Q** SO WOULD IT BE FAIR TO SAY, IN ORDER TO HAVE A PROPERLY
12 FUNCTIONING SYSTEM, YOU NEED A VACANCY RATE IN THOSE KIND OF
13 PROGRAMS?

14 **A** YEAH, I THINK YOU NEED SOME -- I DON'T KNOW THAT WE NEED THE
15 80 PERCENT RATE THAT WE HAVE. CERTAINLY YOU NEED SOME VACANCY
16 RATE BECAUSE IT IS A VARIATION. YOU DO SEE OVER TIME SOMETIMES
17 YOU WILL SLIDE UP A LITTLE BIT, HAVE MORE PEOPLE IN THOSE UNITS,
18 AT OTHER TIMES A LITTLE BIT LESS.

19 YOU KNOW, IT SEEMS A LOT OF TIMES INMATES AROUND THE
20 HOLIDAYS, THEY GET A LOT MORE AGITATED, AND SOMETIMES WE SEE
21 MORE PEOPLE GOING IN AS THE HOLIDAY SEASONS ARE COMING.

22 **Q** YOU HAVE HEARD THE TERM "HOT BUNKING"?

23 **A** I HAVE.

24 **Q** CAN YOU DESCRIBE TO THE JUDGES WHAT YOU UNDERSTAND IT MEANS?

25 **A** WELL, WHERE I FIRST HEARD THE TERM "HOT BUNKING" WAS LIKE

1 WITH SUBMARINES BACK IN WORLD WAR II WHERE WE DIDN'T HAVE ENOUGH
2 BEDS FOR PEOPLE, SO TWO PEOPLE WOULD SHARE THE SAME BED. THAT'S
3 NOT SOMETHING THAT WE DO OR HAVE EVER DONE IN PENNSYLVANIA,
4 DESPITE THE FACT THAT I READ IN ONE OF THE EXPERT'S REPORTS THAT
5 WE DID THAT. I DON'T KNOW WHERE THAT INDIVIDUAL GOT THAT.

6 **Q** NOW, YOU BECAME THE WARDEN OF AN INSTITUTION CALLED CAMP
7 HILL; IS THAT CORRECT?

8 **A** YES.

9 **Q** CAN YOU DESCRIBE THE CIRCUMSTANCES UNDER WHICH YOU BECAME
10 THE WARDEN OF THAT INSTITUTION?

11 **A** WELL, THAT WAS BACK IN 1989 AT A TIME WHEN OUR SYSTEM WAS
12 QUITE OVERCROWDED. WE WERE AT ABOUT 150 OR 160 PERCENT OF OUR
13 CAPACITY. MOST OF OUR INSTITUTIONS WERE HAVING DIFFICULTIES
14 OPERATING. CAMP HILL WAS PARTICULARLY OVERCROWDED, AND THEY HAD
15 TWO VERY SERIOUS RIOTS WITHIN THREE DAYS. A LOT OF PEOPLE WERE
16 HURT. A LOT OF PEOPLE WERE INJURED. AND IT WAS SOME TEN DAYS
17 AFTER THAT RIOT THAT I WAS ASSIGNED TO TAKE OVER THAT FACILITY.

18 **Q** AND DO YOU ATTRIBUTE THE RIOTS IN ANY WAY TO THE
19 OVERCROWDING?

20 **A** ABSOLUTELY. THERE WAS NO QUESTION THAT WE HAD RIOTS,
21 ACTUALLY, NOT ONLY AT CAMP HILL, BUT AT ROCKVIEW AND AT
22 HUNTINGTON, TWO OF OUR OTHER PRISONS, IN THE SAME TIME PERIOD.
23 AND THERE'S ABSOLUTELY NO QUESTION IN MY MIND THAT HAVING TOO
24 MANY INMATES IN THOSE FACILITIES, MAKING IT DIFFICULT TO MANAGE
25 THOSE FACILITIES SAFELY, LED TO THOSE RIOTS.

1 Q OKAY. AND DID THE LEVEL OF OVERCROWDING THAT YOU
2 EXPERIENCED IN PENNSYLVANIA DURING THAT TIME AFFECT THE
3 DEPARTMENT'S ABILITY TO PROVIDE ADEQUATE HEALTHCARE TO
4 PRISONERS?

5 A YOU KNOW, WHEN I LOOK BACK, THE ANSWER IS YES. YOU KNOW,
6 WHEN YOU'RE THERE AND YOU'RE DOING SOMETHING AT A PARTICULAR
7 TIME, YOU THINK YOU ARE DOING A GOOD JOB, BUT WE ACTUALLY HAD A
8 CLASS ACTION LAWSUIT PUT AGAINST US IN 1990, THE AUSTIN SUIT,
9 WHERE THE PLAINTIFFS WERE SAYING THAT WE REALLY WEREN'T
10 PROVIDING ADEQUATE MENTAL HEALTH AND MEDICAL CARE.

11 WHEN I LOOK BACK ON WHAT THEY WERE REQUESTING AND
12 WHAT WE FINALLY AGREED TO DO, BECAUSE WE SETTLED THAT SUIT,
13 THERE'S NO QUESTION THAT THE CARE WE PROVIDE TODAY IS FAR BETTER
14 THAN WHAT WE WERE PROVIDING BACK AT THAT TIME.

15 Q DID THE STATE OF CALIFORNIA EVER ASK YOU TO HELP THEM IN
16 RELATION TO ITS PRISON SYSTEM?

17 A I WAS ASKED TO BE A MEMBER OF THE EXPERT PANEL TO TAKE A
18 LOOK AT DESIGNING A ROAD MAP TO PROGRAMMING WITHIN THE STATE
19 BECAUSE I UNDERSTOOD THAT THEY WANTED TO GET MORE PROGRAMS IN
20 THEIR SYSTEM TO TRY TO REDUCE RECIDIVISM. SO I WAS PART OF THAT
21 PANEL.

22 Q WHEN WAS THAT?

23 A IT WAS BACK A COUPLE OF YEARS AGO.

24 Q 2006, END OF 2006?

25 A THAT WOULD BE ABOUT RIGHT.

1 **JUDGE HENDERSON:** EXCUSE ME. LET ME GO BACK A
2 MINUTE. I MAY HAVE MISSED IT, BUT WHAT WAS THE LEVEL OF
3 OVERCROWDING AT THE TIME OF THE RIOTS YOU JUST REFERRED TO; DO
4 YOU RECALL?

5 **THE WITNESS:** WE WERE AT 150 TO 160 PERCENT OF OUR
6 CAPACITY AT THAT TIME, YOUR HONOR.

7 **BY MR. SPECTER**

8 **Q** DURING THE COURSE OF YOUR PARTICIPATION AS A MEMBER OF WHAT
9 HAS BEEN REFERRED TO AS THE EXPERT PANEL, DID YOU -- WERE YOU
10 PROVIDED WITH INFORMATION ABOUT THE CALIFORNIA PRISON SYSTEM?

11 **A** YES. WE WERE PROVIDED WITH PRETTY MUCH ANYTHING WE ASKED
12 FOR, DATA, INFORMATION, REPORTS. WE ALSO HAD SOME PRESENTATIONS
13 BY MEMBERS OF THEIR STAFF, AND MEMBERS OF THEIR STAFF WERE PART
14 OF THE EXPERT PANEL.

15 **Q** AND THE PRESENTATIONS INCLUDED FROM THE SECRETARY OF THE
16 DEPARTMENT?

17 **A** THE SECRETARY -- SECRETARY TILTON DID ATTEND THE FIRST
18 MEETING THAT WE HAD AS AN EXPERT PANEL, YES.

19 **Q** AND THEY PROVIDED YOU INFORMATION ON HOW OVERCROWDED THEY
20 WERE AND ANY INFORMATION THAT YOU NEEDED TO PERFORM YOUR TASK;
21 IS THAT RIGHT?

22 **A** YES, THAT'S CORRECT.

23 **Q** SO YOU UNDERSTAND THAT CALIFORNIA IS CLOSE TO 200 PERCENT OF
24 DESIGN CAPACITY; IS THAT RIGHT?

25 **A** YES. AT THE TIME THAT WE WERE DOING THAT BACK IN 2006, I

1 THINK THEY WERE OVER 200 PERCENT, AND I THINK NOW THEY'RE DOWN
2 AROUND 190-SOME PERCENT OF CAPACITY.

3 JUDGE HENDERSON: LET ME INTERRUPT AGAIN.

4 MR. SPECTER: SURE.

5 JUDGE HENDERSON: YOU TALK IN PENNSYLVANIA IN TERMS
6 OF OPERABLE CAPACITY AND WE'RE NOW TALKING ABOUT DESIGN. ARE
7 THOSE APPLES AND ORANGES, OR TELL US HOW WE CAN --

8 THE WITNESS: WELL, I THINK, YOUR HONOR, PROBABLY
9 MORE COMPARABLE THAN THEY WOULD BE TODAY, BECAUSE BACK AT THAT
10 TIME WE WERE STILL LOOKING AT SINGLE CELLING ALL OF OUR INMATES,
11 AND WE WERE LOOKING AT DESIGN CAPACITY. SINCE THEN WE HAVE
12 BUILT FACILITIES FOR DOUBLE CELLING, AND WE HAVE GONE MORE TO
13 DOUBLE CELLING, AND THAT'S WHY WE WENT TO THIS OPERABLE CAPACITY
14 THING.

15 WE ALSO SPENT MILLIONS OF DOLLARS UPGRADING THE
16 INFRASTRUCTURE AT OLDER INSTITUTIONS SO THAT WE WERE CAPABLE OF
17 PUTTING MORE INMATES THAN THAT INSTITUTION WAS ORIGINALLY
18 DESIGNED FOR. SO THAT'S WHY IT'S NO LONGER APPROPRIATE FOR US
19 TO TALK ABOUT DESIGN CAPACITY.

20 BUT THE 150 OR 60 PERCENT I MENTIONED WAS BASED ON
21 DESIGN CAPACITY AT THAT TIME.

22 JUDGE HENDERSON: OKAY.

23 BY MR. SPECTER

24 Q HOW BIG ARE THE PRISONS IN PENNSYLVANIA IN TERMS OF THE
25 SIZE, OF THE NUMBER OF PRISONERS THAT ARE HOUSED THERE?

1 **A** WE LIKE TO RUN OUR PRISONS AT ABOUT 2,000 INMATES. WE HAVE
2 TWO LARGER PRISONS, THE ONE RUNS IN AROUND 3,200. THE OTHER ONE
3 RUNS AROUND 3,300. THOSE ARE OUR LARGEST TWO PRISONS.

4 EVERYTHING ELSE IS 2,000 OR LESS. I SHOULD SAY 2,500 OR LESS.

5 WE FOUND THAT AS PRISONS GET MUCH HIGHER THAN 3,000,
6 3,500, THEY BECOME VERY, VERY DIFFICULT FOR ONE MANAGEMENT TEAM
7 TO OPERATE.

8 WE DID HAVE A PRISON, GRATERFORD, THAT WAS SEVERELY
9 OVERCROWDED BACK AT THE TIME I TALKED ABOUT IN THE LATE '80'S
10 AND EARLY '90'S. THAT PRISON, WHICH WAS ORIGINALLY DESIGNED FOR
11 2,000 INMATES WAS RUNNING CLOSE TO 4,100 INMATES. IT WAS
12 ACTUALLY OVER A HUNDRED -- TWO HUNDRED PERCENT OF CAPACITY.
13 THAT WAS OUR WORST PRISON, OUR MOST DIFFICULT PRISON. HIGH
14 RATES OF ASSAULTS AND INCIDENTS IN THAT PRISON, VERY DIFFICULT
15 TO MANAGE.

16 WE'VE BROUGHT THAT DOWN TO ABOUT 3,200. NOW WE ARE
17 ABLE TO MANAGE THAT PRISON. BUT THAT'S SORT OF LIKE HITTING THE
18 UPPER LIMITS OF WHERE I WOULD WANT TO RUN A PRISON ABOUT, YOU
19 KNOW, 3,000 TO 3,500. I WOULDN'T WANT TO GO OVER THAT.

20 **Q** SO DURING THE COURSE OF YOUR PARTICIPATION IN THE EXPERT
21 PANEL, YOU BECAME AWARE OF THE SIZE OF THE CALIFORNIA PRISONS;
22 IS THAT CORRECT?

23 **A** YES, I DID.

24 **Q** AND WHAT'S YOUR UNDERSTANDING OF HOW LARGE THEY ARE?

25 **A** WELL, MY UNDERSTANDING IS SOME OF THE PRISONS RUN UPWARDS OF

1 7,000 OR MORE INMATES.

2 **Q** WHAT'S YOUR OPINION ABOUT AN ABILITY TO MANAGE AN
3 INSTITUTION WHICH IS THAT OVERCROWDED AND THAT LARGE?

4 **A** MY OPINION IS IT IS IMPOSSIBLE TO REALLY DO A GOOD JOB WITH
5 PRISONS THAT LARGE. AND THAT COMES FROM EXPERIENCE OF RUNNING A
6 PRISON, THE CAMP HILL PRISON. BEFORE I LEFT THERE, GOT UP TO
7 BETWEEN -- I THINK WE GOT UP TO ABOUT 3,300 INMATES, AND THAT
8 WAS STARTING TO BECOME DIFFICULT AT THAT TIME TO MANAGE THAT
9 PRISON. AND SO I WOULD SAY I WOULDN'T WANT TO HAVE TO RUN A
10 PRISON THAT WAS 7,000 INMATES.

11 **JUDGE KARLTON:** YOU JUST SAID IT'S IMPOSSIBLE TO RUN
12 A PRISON AND DO A GOOD JOB. I'M NOT SURE I KNOW WHAT A GOOD JOB
13 IS IN TERMS OF PRISON. WOULD YOU GIVE ME AN IDEA, IF YOU CAN --

14 **THE WITNESS:** SURE.

15 **JUDGE KARLTON:** -- OF WHAT KINDS OF THINGS YOU CAN'T
16 DO?

17 **THE WITNESS:** WELL, ONE OF THE BIG THINGS IS -- THE
18 KEY, IN MY OPINION, TO RUNNING PRISONS IS THE WARDEN AND HIS
19 TEAM WITHIN THE PRISON. AND THE KEY TO THEM DOING A GOOD JOB IS
20 GOING OUT AND GETTING AROUND THE INSTITUTION, TALKING TO THE
21 INMATES, TALKING TO THE STAFF, TAKING CARE OF THE LITTLE
22 PROBLEMS THAT EXIST WITHIN PRISONS, SEEING THAT THOSE LITTLE
23 PROBLEMS DON'T BECOME BIG PROBLEMS. AND THE BIGGER THE PRISON
24 GETS, THE MORE DIFFICULT IT IS FOR THAT MANAGEMENT TEAM TO
25 REALLY SUCCESSFULLY GO OUT THERE AND TAKE CARE OF THOSE SMALLER

1 PROBLEMS AND PREVENT THEM FROM GETTING BIGGER.

2 I'VE DONE A LOT OF WORK STUDYING PRISON DISTURBANCES
3 AND RIOTS AROUND THE COUNTRY, LOOKED AT SOME OF THE THINGS
4 WITHIN MY OWN STATE, AND WHAT YOU FIND IS WHEN YOU HAVE PROBLEMS
5 LIKE THAT, IT'S ONE OF TWO THINGS. EITHER THE PRISONS ARE SO
6 LARGE THAT THE TEAM CAN'T HANDLE THAT PRISON, OR YOU HAVE A POOR
7 MANAGEMENT TEAM.

8 SO YOU CAN HAVE A SMALLER PRISON, 2,000 INMATES, AND
9 IF YOU HAVE A POOR WARDEN AND POOR DEPUTIES THAT NEVER GET OUT,
10 NEVER TALK TO ANYBODY, YOU CAN HAVE PROBLEMS WITHIN THAT PRISON.
11 SO, FROM MY EXPERIENCE, THAT'S THE BIGGEST THING OF HELPING YOU
12 MANAGE IT.

13 THERE'S A LOT OF OTHER THINGS ABOUT WHETHER YOU HAVE
14 THE CAPABILITY WITHIN THE PRISON. YOU KNOW, IF YOU TAKE A
15 PRISON THAT'S BUILT FOR 4,000 INMATES AND YOU PUT 7,000 INMATES
16 IN THERE, THAT IS EVEN A COMPLICATING PROBLEM THEN. NOT ONLY IS
17 IT SO HUGE THAT YOUR MANAGEMENT TEAM CAN'T DO A GOOD JOB, BUT
18 ALL YOUR SERVICES START SUFFERING WITHIN THAT PRISON. YOU KNOW,
19 YOUR ABILITY TO PROVIDE, SAY, PROPER SANITATION, YOU KNOW,
20 BECAUSE YOUR SHOWERS, THEY'RE OVERUSED, EVERY DAY PEOPLE ARE
21 GOING IN THE SHOWERS AND OUT. YOU DON'T HAVE TIME TO CLEAN THE
22 SHOWERS APPROPRIATELY BECAUSE THEY'RE IN USE ALL THE TIME. OR
23 THE LAUNDRY SERVICES, YOU ARE NOT ABLE TO CLEAN THE CLOTHES AND
24 GET THE CLOTHES BACK TO THE INMATES. YOU KNOW, ALL OF THESE
25 THINGS START SUFFERING WHEN YOU GET SO OVERCROWDED AND SO BIG

1 AND THERE'S ALL THIS DAY-TO-DAY ACTIVITY THAT GOES ON WITHIN A
2 PRISON.

3 YOU KNOW, I THINK PEOPLE SOMETIMES DON'T UNDERSTAND
4 THE COMPLEXITY OF RUNNING THESE PRISONS. THIS IS LIKE RUNNING A
5 CITY. I MEAN, WE HAVE TO PROVIDE WATER. WE HAVE TO PROVIDE
6 SEWAGE. WE HAVE TO PROVIDE JOBS TO PEOPLE. WE HAVE TO PROVIDE,
7 YOU KNOW, THE LAUNDRY SERVICES. WE HAVE TO PROVIDE FOOD.

8 WHEN YOU OVERCROWD PRISONS, THINGS GET USED MORE,
9 THINGS BREAK DOWN A LOT MORE THAN THEY WOULD THAT YOU ARE
10 CONSTANTLY RUNNING OUT THERE FIXING THINGS. YOUR INFRASTRUCTURE
11 SUFFERS. ALL OF THESE THINGS OCCUR AS YOU PUT MORE AND MORE
12 INMATES IN A FACILITY THAT WAS DESIGNED FOR LESS INMATES.

13 **JUDGE KARLTON:** PARTICULARLY IN TERMS OF WHAT THIS
14 LAWSUIT IS ABOUT, IS IT YOUR VIEW THAT IF THE INSTITUTION RUNS
15 MORE THAN 3,200 PEOPLE, PLUS OR MINUS, I UNDERSTAND, THERE IS
16 EFFECTS UPON THE PROVISION OF MEDICAL AND MENTAL HEALTH CARE,
17 AND, IF SO, HOW?

18 **THE WITNESS:** I GUESS WHAT I WOULD SAY WITH THAT IS
19 IT IS POSSIBLE TO HAVE LARGER PRISONS AND TO PROVIDE PROPER
20 MEDICAL AND MENTAL HEALTH CARE IN THOSE PRISONS, BUT THAT'S
21 ASSUMING THAT THOSE PRISONS WERE DESIGNED FOR THE NUMBER OF
22 INMATES THAT YOU HAVE IN THERE. THAT ASSUMES THAT YOU HAVE
23 ENOUGH SPACE IN THOSE PRISONS TO -- YOU KNOW, TO PROVIDE
24 WHATEVER THE CARE NEEDS TO BE DONE, TO INTERVIEW THE INMATES, TO
25 SEE THE INMATES. THAT MAKES THOSE KINDS OF ASSUMPTIONS.

1 AND IT ALSO ASSUMES THAT THE LARGE SIZE OF THE PRISON
2 HAS NOT SERIOUSLY AFFECTED YOUR ABILITY TO RUN THAT PRISON
3 SAFELY, WHICH CAN HAPPEN. AGAIN, AS THAT MANAGEMENT TEAM HAS
4 MORE DIFFICULTY MANAGING THESE LARGER NUMBERS OF PEOPLE, THEN
5 YOUR PRISON COULD BECOME MORE UNSAFE. THERE'S MORE IDLENESS IN
6 THE PRISON AND THINGS -- YOU KNOW, IT COULD MAKE IT THEN
7 DIFFICULT -- FOR INSTANCE, IF YOU RELY A LOT ON LOCKDOWNS TO
8 CONTROL YOUR PRISON, HOW ARE PEOPLE GETTING TO THEIR MENTAL
9 HEALTHCARE? HOW ARE THEY GETTING TO THEIR MEDICAL CARE? HOW
10 ARE THEY GETTING THEIR MEDICATION APPROPRIATELY? THOSE KINDS OF
11 THINGS DO GET IMPACTED.

12 SO I GUESS, TO ANSWER YOUR QUESTION, IT'S POSSIBLE TO
13 DO IT, BUT IT BECOMES THAT MUCH MORE DIFFICULT EVEN IF YOU HAVE
14 THE RESOURCES AND SPACE BECAUSE OF THE OTHER THINGS THAT START
15 OCCURRING THAT START INTERFERING WITH THE ABILITY TO PROVIDE
16 THIS KIND OF CARE.

17 **BY MR. SPECTER**

18 **Q** TO ELABORATE ON THE JUDGE'S QUESTION FOR A BIT, YOU'RE AWARE
19 THAT CALIFORNIA'S PRISONS, LIKE YOU SAID, ARE CLOSE TO
20 200 PERCENT -- BETWEEN 190 TO 200 PERCENT OF CAPACITY, AND WITH
21 THAT LEVEL OF OVERCROWDING, IS IT POSSIBLE TO PROVIDE ADEQUATE
22 HEALTHCARE SERVICES TO PRISONERS?

23 **A** WELL, FROM EVERYTHING THAT I HAVE SEEN, THE REPORTS THAT
24 I'VE LOOKED AT AND REVIEWED FROM THE VARIOUS EXPERTS AND OTHER
25 PEOPLE, I DON'T SEE HOW CALIFORNIA COULD, AS IT CURRENTLY SITS

1 WITH THE NUMBER OF INMATES THEY HAVE, DELIVER PROPER MENTAL
2 HEALTH OR MEDICAL CARE, BECAUSE THEIR PRISONS ARE UNSAFE.

3 AND WHEN I TALK ABOUT UNSAFE, YOU LOOK AT THE NUMBER
4 OF INCIDENTS THAT THEY HAVE. YOU LOOK AT THEIR ASSAULT RATES
5 WITHIN THE PRISON. THE ASSAULT RATES ARE GOING UP, AT LEAST UP
6 THROUGH 2006. THAT'S THE ONLY REPORTS I WAS ABLE TO SEE OFF
7 THEIR WEBSITE. THEIR INCIDENT RATES ARE GOING UP.

8 AND THEN I SORT OF COMPARED IT TO OUR ASSAULT RATES.
9 IT'S LIKE 2-1/2 TIMES, IF YOU BRING IT DOWN COMPARISON-WISE SIZE
10 OF THE INSTITUTION. THEIR HOMICIDE RATE IS EXTREMELY HIGH. YOU
11 LOOK BETWEEN 2000 AND 2006, AND THE AVERAGE IS 11.34 HOMICIDES
12 WITHIN THEIR SYSTEM. IF YOU APPLIED THAT TO MY SYSTEM, WE WOULD
13 HAVE THREE A YEAR. DURING THAT PERIOD OF TIME, WE'VE HAD THREE
14 OVER THAT PERIOD OF TIME, NOT THREE A YEAR. SUICIDE RATES, FROM
15 WHAT I'VE READ AND FROM THE NUMBERS OF THAT I'VE SEEN, THEY'RE
16 JUST ABOUT TWICE WHAT THE NATIONAL AVERAGE IS.

17 ALL OF THOSE THINGS SHOW ME THAT YOU HAVE A SYSTEM
18 THAT ISN'T SAFE. THEY RELY LARGELY ON LOCKDOWNS TO CONTROL
19 THEIR SYSTEM, AND THEY HAVE TO DO THAT. I MEAN, YOU CAN'T HAVE
20 PEOPLE RUNNING AROUND HURTING PEOPLE. BUT, YOU KNOW, I THINK IN
21 2006, THEY HAD 449 LOCKDOWNS, WHICH AVERAGED 12 DAYS A LOCKDOWN.
22 AND THEY HAD 20 OR SO OF THOSE LOCKDOWNS THAT WERE OVER 60 DAYS.
23 THOSE THINGS IMPACT UPON YOUR ABILITY TO PROPERLY DELIVER ANY
24 SERVICE WITHIN AN INSTITUTION, INCLUDING MENTAL HEALTH AND
25 MEDICAL SERVICES.

1 Q AND YOU MENTIONED A LOT OF FACTORS THAT GO INTO THE DELIVERY
2 OF CARE AND THE OPERATION OF THE PRISONS. IN TERMS OF THE MOST
3 IMPORTANT, WHICH ONE IS MOST IMPORTANT IN YOUR MIND?

4 A MOST IMPORTANT?

5 Q IN TERMS OF INHIBITING THE ABILITY OF --

6 A I THINK FROM EVERYTHING THAT I'VE SEEN AND ALL OF THE
7 REPORTS AND INFORMATION THAT I'VE SEEN, I THINK THE BIGGEST
8 INHIBITING FACTOR RIGHT NOW IN CALIFORNIA BEING ABLE TO DELIVER
9 APPROPRIATE MENTAL HEALTH AND MEDICAL CARE IS THE SEVERE
10 OVERCROWDING OF THEIR SYSTEM.

11 Q AND DO YOU BELIEVE THAT THEY ARE GOING TO BE ABLE -- BASED
12 ON YOUR EXPERIENCE IN PENNSYLVANIA AND THE INFORMATION YOU'VE
13 REVIEWED, DO YOU BELIEVE THEY'LL BE ABLE TO PROVIDE ADEQUATE
14 CARE WITHOUT REDUCING THE POPULATION TO A MANAGEABLE LEVEL?

15 A THE ONLY WAY THAT I COULD SEE THAT THAT COULD OCCUR IS IF
16 WE'RE WILLING -- OR IF THEY'RE WILLING TO WAIT FOR MANY YEARS,
17 SPEND HUGE AMOUNTS OF MONEY. AND I'M NOT EVEN SURE THAT THAT
18 WOULD GET THEM THERE, BECAUSE, YOU KNOW, OVER THE LAST 20 YEARS
19 THEY'VE SPENT BILLIONS OF DOLLARS ON CONSTRUCTION AND BUILDING,
20 AND THEY HAVEN'T REALLY BEEN ABLE TO DIG THEIR WAY OUT OF THE
21 HOLE.

22 SO I THINK IT WOULD BE VERY DIFFICULT TO JUST, YOU
23 KNOW, SAY, RELY ON CONSTRUCTION ALONE TO DEAL WITH THIS PROBLEM.
24 I THINK THEY HAVE TO FIND SOME WAY TO FAIRLY SUBSTANTIALLY
25 REDUCE THE INMATE POPULATION.

1 Q AND IN TERMS OF YOUR EXPERIENCE OF TRYING TO BUILD YOUR WAY
2 OUT OF THE PROBLEM, CAN YOU EXPLAIN WHY YOU -- WHY YOU DON'T
3 THINK THAT IS A TIMELY RESPONSE TO THE ISSUES?

4 A WELL, THE REASON I DON'T THINK IT'S A TIMELY RESPONSE IS
5 WHEN I LOOK AT WHAT'S HAPPENED IN MY STATE, AND EVEN SOME OTHER
6 STATES AROUND THE COUNTRY, PEOPLE AREN'T REALLY WILLING TO PUT
7 THE KINDS OF MONEY INTO THAT THAT NEEDS TO BE PUT IN. SO WE'LL
8 HAVE APPROVED PROJECTS TO BUILD A NEW PRISON OR TO BUILD FIVE
9 NEW PRISONS, AND IT'S VERY SLOW COMING BECAUSE EVEN THOUGH THE
10 PROJECT IS APPROVED, SOMEBODY HAS TO RELEASE THE MONEY FOR
11 DESIGN AND SOMEBODY HAS TO RELEASE THE MONEY FOR CONSTRUCTION.

12 SO IN MY EXPERIENCE, YOU KNOW, STATES WANT TO SPEND
13 AS LITTLE AS THEY CAN ON THE PRISON SYSTEMS BECAUSE THERE'S SO
14 MANY OTHER COMPETING THINGS OUT THERE. I MEAN, YOU KNOW, YOU
15 HAVE HEALTHCARE AND EDUCATION, THE ELDERLY AND ALL THESE OTHER
16 IMPORTANT THINGS TO SPEND MONEY ON. SO THEY TEND TO ONLY SPEND
17 WHAT THEY ABSOLUTELY HAVE TO, AND THAT'S WHY I THINK THEY'RE
18 NEVER ABLE TO BUILD THEIR WAY OUT, BECAUSE THEY NEVER REALLY SIT
19 DOWN AND SAY, OKAY, WE GOT TO BUILD 20 NEW PRISONS, OR WHATEVER
20 IT IS.

21 Q WHAT ABOUT ISSUES OF SITING IN THE COMMUNITY?

22 A YOU KNOW, I MEAN, I DON'T KNOW IF BY THAT YOU MEAN THE
23 AB 900.

24 Q NO. I MEAN THE ABILITY OF COMMUNITIES TO ACCEPT PRISONS IN
25 THEIR NEIGHBORHOODS.

1 **A** OKAY. WELL, THERE'S NO QUESTION THAT THAT'S A PROBLEM. WE
2 HAD THAT PROBLEM IN PENNSYLVANIA. YOU HAVE THAT PROBLEM AROUND
3 THE COUNTRY.

4 I HAD -- EXCELLENT EXAMPLE. WE HAD AN OLD PRISON,
5 OVER A HUNDRED YEARS OLD. WE WANTED TO CLOSE IT. WE WANTED TO
6 BUILD A NEW PRISON NEAR IT. IT WAS IN THE PITTSBURGH AREA. WE
7 COULDN'T FIND A SITE NEARBY. WE KEPT GETTING RUN OUT OF TOWN;
8 THERE'S A SCHOOL TOO CLOSE, OR WHATEVER. WE ENDED UP HAVING TO
9 BUILD THAT IN SOME MORE RURAL AREA, FAR REMOVED FROM WHERE WE
10 WANTED TO BUILD IT.

11 AND I THINK YOU ARE GOING TO FIND THE SAME THING
12 HERE, PARTICULARLY, YOU KNOW, IF YOU WANT TO BUILD A LOT OF
13 REENTRY FACILITIES. YOU SHOULD BUILD THOSE REENTRY FACILITIES
14 NEAR YOUR MAJOR METROPOLITAN AREAS WHERE MOST OF YOUR INMATES
15 COME FROM. I THINK IT'S GOING TO BE VERY, VERY DIFFICULT TO
16 SITE THOSE FACILITIES CLOSE TO THOSE AREAS.

17 **Q** COULDN'T THE PROBLEM -- COULD THE PROBLEM OF THE LACK OF
18 HEALTHCARE BE CAUSED BY THE CULTURE OF THE PRISON SYSTEM IN
19 TERMS OF THE CUSTODIAL INTERFERENCE WITH THE DELIVERY OF CARE
20 RATHER THAN OVERCROWDING?

21 **A** WELL, FROM WHAT I CAN SEE, YOU KNOW, THE CULTURE IS A
22 PROBLEM. THERE IS NO QUESTION ABOUT THAT. BUT YOU GOT TO LOOK
23 BACK WHERE DID THIS CULTURE COME FROM. AND AT LEAST FROM WHAT
24 I'VE READ, CALIFORNIA BACK IN THE EARLY 1970'S WAS ONE OF THE
25 MOST PROGRESSIVE SYSTEMS IN THIS NATION, AND THEY WENT FROM

1 BEING ONE OF THE MOST PROGRESSIVE SYSTEMS TO BEING ONE OF THE
2 MOST OVERCROWDED SYSTEMS IN THIS NATION, AND THEY DID THAT
3 BECAUSE OF ALL THE LAWS, AND THE DRUG LAWS, AND ALL THE THINGS,
4 THE MANDATORIES, AND THE TWO STRIKES, AND THREE STRIKES, AND
5 EVERYTHING ELSE THAT DRIVES THAT POPULATION.

6 NOW, IF YOU FIX THE CROWDING PROBLEM, THAT DOESN'T
7 FIX ALL THE PROBLEM. YOU DO HAVE TO DEAL WITH THE CULTURE, BUT
8 YOU HAVE TO REALIZE THAT THE CULTURE GREW OUT OF THE
9 OVERCROWDING.

10 IF I'M RUNNING AN INSTITUTION, IF I'M A WARDEN OF AN
11 INSTITUTION, MY FIRST JOB IS TO SEE THAT THAT INSTITUTION RUNS
12 SAFELY FOR MY STAFF AND FOR MY INMATES, AND IF IT'S NOT RUNNING
13 SAFELY, I'VE GOT TO TAKE THE STEPS THAT I'VE GOT TO TAKE.

14 AND FROM WHAT I CAN SEE, CALIFORNIA, THEY HAVE
15 INMATES COMING IN, SO THEY HAVE TO HAVE BED SPACE. THEY HAVE TO
16 FIND A PLACE TO PUT PEOPLE. THEY ARE HAVING A DIFFICULT TIME
17 CONTROLLING THEIR PRISONS, SO THEY HAVE TO TAKE A STRONG
18 CUSTODIAL APPROACH TO IT. THEY HAVE TO RELY ON THE LOCKDOWNS.
19 THEY HAVE TO RELY ON GUNS, GAS, THOSE KINDS OF THINGS, TO
20 CONTROL THE PRISONS SO THEY'RE SAFE FOR THE STAFF AND FOR THEIR
21 INMATES.

22 IF YOU TRY TO CHANGE THAT CULTURE, YOU CAN'T. YOU
23 CAN'T CHANGE THE CULTURE UNTIL YOU REDUCE THE POPULATION AND CAN
24 MAKE THE INSTITUTION SAFE. BUT THEN YOU DO HAVE TO DEAL WITH
25 THE CULTURE AND TRY TO CHANGE THAT AS WELL.

1 Q I UNDERSTAND. OKAY.

2 YOU'VE COMPARED THE NUMBER OF ADMISSIONS IN
3 CALIFORNIA TO NUMBER OF PEOPLE COMING IN TO PENNSYLVANIA,
4 CORRECT?

5 A YES.

6 Q AND WHAT HAVE YOU LEARNED FROM THAT COMPARISON?

7 A WELL, YOU KNOW, WHEN I TALK --

8 MR. MELLO: OBJECTION. PAUL MELLO AGAIN FOR PLATA
9 DEFENDANTS. THIS IS ALL PHASE TWO. DEFENDANTS OBJECT ON THE
10 BASIS OF RELEVANCE AND OBJECT TO ALL THIS PHASE TWO TESTIMONY
11 AND MOVE TO STRIKE IT. THANK YOU.

12 JUDGE HENDERSON: OVERRULED. AND YOU WILL BE DEEMED
13 TO HAVE A CONTINUING OBJECTION IN THIS AREA, COUNSEL.

14 THE WITNESS: WHEN I --

15 JUDGE KARLTON: BEFORE YOU DO THAT, SIR, MR. MELLO,
16 WILL YOU HELP ME? I DON'T KNOW WHY YOU WOULD EVEN THINK THAT.
17 THE JUDGE'S RULING, OF COURSE, WILL STAND, BUT I WANT TO
18 UNDERSTAND WHAT IT IS THAT YOU THINK THIS -- WHY THIS RELATES TO
19 THE SECOND PHASE RATHER THAN THE FIRST PHASE.

20 MR. MELLO: WE'VE SPENT A GREAT DEAL OF TIME IN THIS
21 PARTICULAR WITNESS'S TESTIMONY DISCUSSING INTAKE, WHAT THEY'RE
22 DOING IN PENNSYLVANIA TO DEAL WITH POPULATION. WE HAVE NOT
23 SPENT ALMOST ANY TIME DISCUSSING THE BARRIERS TO THE DELIVERY OF
24 CONSTITUTIONALLY ADEQUATE MEDICAL AND MENTAL HEALTH CARE.

25 JUDGE KARLTON: I UNDERSTAND WHAT YOU THINK THE

1 TESTIMONY IS. THANK YOU, SIR, FOR HELPING ME UNDERSTAND.

2 **MR. SPECTER:** MAY I CONTINUE?

3 **JUDGE KARLTON:** YES. THE JUDGE'S RULING STANDS. I
4 JUST WANTED TO UNDERSTAND WHY HE THOUGHT THIS WAS PHASE TWO.
5 YOU MAY PROCEED.

6 **MR. SPECTER:** OKAY. THANK YOU, YOUR HONOR.

7 **BY MR. SPECTER**

8 **Q** YOU WERE TALKING ABOUT THE ADMISSIONS AND WHEN -- WELL, I'LL
9 ASK YOU A FOLLOW-UP QUESTION AFTER YOU DO THAT.

10 **A** WELL, YOU KNOW, WHEN I LOOK AT THE CALIFORNIA SYSTEM, NOT
11 ONLY DO THEY HAVE A PROBLEM WITH THE SEVERE OVERCROWDING WITH
12 THE GROSS NUMBER OF INMATES, BUT THEY HAVE A SERIOUS PROBLEM
13 WITH THE THROUGHPUT INTO THE SYSTEM.

14 THEY HAVE A TREMENDOUS AMOUNT OF PEOPLE COMING IN TO
15 THEIR RECEPTION CENTERS. I THINK SOME OF THOSE RECEPTION
16 CENTERS, THE LAST I LOOKED, ARE OVER 300 PERCENT OF CAPACITY?

17 AND WHEN YOU ASK ABOUT THE NUMBERS, THE COMPARISON,
18 THEY GET LIKE SOMEWHERE AROUND 140,000 ADMISSIONS A YEAR. IN
19 PENNSYLVANIA WE'RE ABOUT 28 PERCENT OF THE SIZE OF THEIR SYSTEM.
20 WE ONLY GET 15,000. SO WE ONLY GET LIKE ONE-NINTH THE AMOUNT.

21 NOW, ONE OF THE HUGE REASONS FOR THAT IS THE NUMBER
22 OF TECHNICAL VIOLATORS THEY HAVE COMING BACK IN. BUT THAT
23 THROUGHPUT INTO THE SYSTEM AND THE FACT THOSE PEOPLE STAY FOR
24 SUCH A SHORT PERIOD OF TIME, THEY ALSO DIRECTLY INTERFERE WITH
25 THE ABILITY TO PROVIDE PROPER MENTAL HEALTH AND MEDICAL CARE TO

1 THE INMATE POPULATION.

2 Q THAT WAS MY FOLLOW-UP QUESTION. COULD YOU EXPLAIN WHY
3 THAT'S TRUE?

4 A BECAUSE WHEN YOU HAVE SUCH HUGE NUMBERS COMING INTO THE
5 SYSTEM AND STAYING FOR, IN SOME CASES, RELATIVELY SHORT PERIODS
6 OF TIME, YOU DON'T HAVE THE CAPACITY TO IDENTIFY PEOPLE WHO HAVE
7 MENTAL HEALTH PROBLEMS AND THEN TO PROPERLY SLOT THOSE PEOPLE
8 WHERE THEY NEED TO GO.

9 AND YOU MAY MISS PEOPLE WHO HAVE MEDICAL PROBLEMS.
10 BECAUSE OF THIS HUGE THROUGHPUT THAT'S COMING IN, YOU MAY MISS
11 PEOPLE WHO HAVE CERTAIN NEEDS AND CERTAIN CARE NEEDS THAT AREN'T
12 BEING DEALT WITH. SO, YOU KNOW, I THINK TO DEAL WITH THE
13 PROBLEM, YOU NOT ONLY HAVE TO REDUCE THE POPULATION BUT TRY TO
14 DO THINGS THAT ALSO DEAL WITH THAT HUGE AMOUNT OF RECEPTIONS
15 THAT THEY GET.

16 Q AND YOU MENTION THE FACT YOU HAVE TO PLACE THEM IN OTHER --
17 YOU KNOW, ONCE THEY COME INTO RECEPTION, YOU HAVE TO PUT THEM IN
18 A PRISON IN WHICH THEY STAY FOR THE REST OF THEIR TERM.
19 PENNSYLVANIA USES A CLASSIFICATION SYSTEM; IS THAT CORRECT?

20 A YES.

21 Q HOW DOES OVER -- WELL, CAN YOU JUST EXPLAIN BRIEFLY -- A
22 WITNESS BEFORE YOU YESTERDAY EXPLAINED WHAT A CLASSIFICATION
23 SYSTEM IS. IF YOU COULD SO THE JUDGES ARE FAMILIAR WITH THAT,
24 BUT IF YOU COULD EXPLAIN WHAT YOU DO IN PENNSYLVANIA?

25 A WE CLASSIFY INDIVIDUALS ON SEVERAL GROUNDS. NUMBER ONE, WE

1 LOOK AT THEIR SECURITY LEVEL. WE HAVE WHAT WE CALL A PACK
2 SYSTEM THAT MAKES THEM MINIMUM, MEDIUM, CLOSED, OR MAXIMUM
3 SECURITY. THAT'S ONE OF THE THINGS, WE HAVE TO SLOT THEM TO AN
4 INSTITUTION THAT'S CAPABLE OF DEALING WITH THE SECURITY LEVEL.

5 BUT WE ALSO LOOK AT RISK LEVEL, RISK TO REOFFEND, AND
6 WE LOOK AT THE NEEDS THAT THAT INDIVIDUAL HAS, THE PROGRAMS THAT
7 THAT HAS. WE DO THIS ASSESSMENT WITHIN OUR DIAGNOSTIC CENTER,
8 BECAUSE WE'VE LEARNED THAT LOW RISK PEOPLE, YOU REALLY SHOULDN'T
9 WASTE YOUR RESOURCES ON THEM. THEY'RE GOING TO SUCCEED NO
10 MATTER WHAT YOU DO WITH THEM.

11 YOU'VE GOT TO TARGET MODERATE AND HIGH RISK
12 INDIVIDUALS, AND THEN YOU HAVE TO SEE WHAT OTHER PARTICULAR
13 NEEDS, WHETHER THOSE NEEDS ARE SUBSTANCE ABUSE NEEDS, OR
14 CRIMINAL THINKING NEEDS, OR VIOLENCE ISSUES, SEX OFFENDER
15 ISSUES.

16 AND SO WHEN WE'RE CLASSIFYING SOMEBODY, WE'RE LOOKING
17 TO PUT THEM NOT ONLY IN AN INSTITUTION THAT CAN MEET THEIR
18 SECURITY NEEDS, BUT ALSO AN INSTITUTION THAT CAN MEET THEIR
19 PROGRAM NEEDS.

20 AND THIS -- YOU KNOW, WE ALSO WOULD TAKE INTO ACCOUNT
21 MEDICAL NEEDS. FOR INSTANCE, IF YOU HAD AN INDIVIDUAL WHO
22 REQUIRES NURSING HOME LEVEL OF CARE, THEY HAVE TO GO TO MY ONE
23 INSTITUTION THAT CAN PROVIDE THE NURSING HOME LEVEL OF CARE. IF
24 THEY ARE A MENTAL HEALTH INMATE, THAT HAS TO BE TAKEN INTO
25 ACCOUNT IN CLASSIFYING THEM TO GET THEM TO A FACILITY THAT HAS

1 THE APPROPRIATE FACILITY TO DEAL WITH THAT.

2 SO WE CLASSIFY INDIVIDUALS ON A NUMBER OF GROUNDS
3 BEFORE WE SLOT THEM OUT THERE, WHICH IS ONE OF THE OTHER THINGS
4 THAT HUGE OVERCROWDING CREATES A PROBLEM, BECAUSE YOU HAVE AN
5 INDIVIDUAL WHO NEEDS TO GO TO INSTITUTION A, AND INSTITUTION A
6 IS FULL. SO WHERE DO YOU PUT HIM. YOU KNOW, YOU END UP HAVING
7 TO PUT THEM SOMEWHERE THAT MAYBE IS NOT THE MOST APPROPRIATE FOR
8 THAT INDIVIDUAL.

9 Q AND BASED ON THE MATERIALS YOU'VE REVIEWED, HAVE YOU FOUND
10 THAT THAT'S A PROBLEM IN CALIFORNIA?

11 A BASED ON THE MATERIALS THAT I'VE REVIEWED FROM THE EXPERTS,
12 OTHER EXPERTS THAT HAVE BEEN TESTIFYING, OR WILL TESTIFY IN THIS
13 CASE, REPORTS FROM THE MASTER AND THE RECEIVER, YES.

14 Q YOU KNOW, DURING YOUR DEPOSITION MR. MELLO ASKED YOU ABOUT
15 MORTALITY RATES; DO YOU RECALL THAT DISCUSSION?

16 A YES.

17 Q AND THERE WAS A STUDY BY BUREAU -- DEPARTMENT OF JUSTICE
18 BUREAU OF JUSTICE STATISTICS WHICH RANKED CALIFORNIA 14TH LOWEST
19 OF ALL THE PRISON SYSTEMS IN THE COUNTRY IN TERMS OF THE
20 MORTALITY RATE. HAVE YOU SEEN THAT STUDY?

21 A I DIDN'T SEE THE SPECIFIC -- YES, I DID. I'M SORRY. I DID
22 LOOK AT THAT STUDY SUBSEQUENT TO THE DEPOSITION.

23 Q AND WHAT SIGNIFICANCE WOULD YOU PLACE ON THE FACT THAT
24 CALIFORNIA IS THE 14TH LOWEST, IF ANY?

25 A IN TERMS OF WHETHER THAT MEANS THEY'RE PROVIDING PROPER CARE

1 OR NOT?

2 **Q** EXACTLY, YES.

3 **A** THAT'S SIMPLY ONE FACTOR YOU WOULD LOOK AT AND WOULD NOT BE
4 A FACTOR THAT WOULD LEAD ME -- THAT ALONE WOULD NOT BE A FACTOR
5 THAT WOULD LEAD ME TO CONCLUDE THEY'RE PROVIDING
6 CONSTITUTIONALLY ADEQUATE CARE.

7 **Q** COULD THE DEMOGRAPHICS OF THE DIFFERENT STATE PRISON
8 POPULATIONS HAVE AN EFFECT ON THE --

9 **A** THERE'S A LOT OF THINGS THAT HAVE THE EFFECT ON THAT.
10 DEMOGRAPHICS CAN HAVE AN EFFECT OF IT. THE AGE OF THE
11 POPULATION.

12 PROBABLY THE BIGGEST THING IS THE AGE DISTRIBUTION OF
13 THE POPULATION. YOU KNOW, YOU COULD HAVE THE SAME AVERAGE AGE
14 POPULATION, BUT YOU MIGHT HAVE A BUNCH OF PEOPLE IN THAT OLDER
15 GROUP THAT COULD DRIVE UP YOUR STATISTICS, FOR INSTANCE. SO YOU
16 HAVE TO REALLY LOOK AND ADJUST IT FOR AGE WHEN YOU'RE LOOKING AT
17 THOSE KIND OF STATISTICS.

18 **JUDGE KARLTON:** SIR, BECAUSE OF THE LENGTHIER
19 SENTENCES THAT CALIFORNIA APPARENTLY IMPOSES, CONTRASTED WITH
20 OTHER PLACES IN THE COUNTRY, I AM TOLD THAT WE HAVE AN AGING
21 POPULATION.

22 **THE WITNESS:** MM-HMM.

23 **JUDGE KARLTON:** NOW, HAVING AN AGING POPULATION, BUT
24 STILL THE 14TH LOWEST, DOESN'T THAT SUGGEST SOMETHING ABOUT
25 MEDICAL CARE AND ITS ADEQUACY? I'M ASKING YOU, NOT TELLING YOU.

1 **THE WITNESS:** CERTAINLY IT'S A PIECE OF INFORMATION,
2 BUT IT'S ONLY ONE PIECE OF INFORMATION. THERE MAY BE OTHER
3 THINGS, LIKE, FOR INSTANCE, IN PENNSYLVANIA OUR RATE IS HIGHER,
4 AND ONE OF THE REASONS OUR RATE IS HIGHER IS BECAUSE IN
5 PENNSYLVANIA LIFE IS LIFE, AND WE HAVE OVER 4,000 LIFERS THAT
6 WILL NEVER GO HOME. YOU CAN'T BE CONSIDERED AFTER SO MANY YEARS
7 IF YOU HAVE A LIFE SENTENCE IN PENNSYLVANIA.

8 SO WHEN WE LOOK AT OUR AGE DISTRIBUTION, WE FIND A
9 HUGE NUMBER OF PEOPLE IN THAT OVER AGE 55 WHERE YOU TEND TO RUN
10 INTO THESE PROBLEMS. WHEN WE THEN TAKE OUR AGE DISTRIBUTION AND
11 ADJUST IT FOR AGE, LOOKING AT THE AVERAGES AROUND THE COUNTRY,
12 OUR DEATH RATE FALLS EXACTLY WHERE IT SHOULD FALL BASED ON
13 ADJUSTING IT FOR AGE.

14 SO WITHOUT REALLY EXAMINING IT CLOSER, CERTAINLY IT'S
15 A FACTOR YOU CAN TAKE A LOOK AT, AND, CERTAINLY THE LOWER THAT
16 IS, THE BETTER, BUT I WOULD WANT TO UNDERSTAND IT BETTER, TOO.

17 THE OTHER THING WE RUN INTO SOME DIFFICULTIES WHEN WE
18 TRY TO MAKE COMPARISONS BETWEEN STATES, IS THE WAY THEY COUNT
19 THINGS. COUNTING RULES CAN BE DIFFERENT. LIKE, FOR INSTANCE, I
20 KNOW THAT WE INCLUDE DEATHS IN OUR COMMUNITY CORRECTION CENTERS
21 IN OUR TOTAL NUMBERS. WE INCLUDE INMATE HOMICIDES, THE FEW THAT
22 WE HAVE WITHIN OUR NUMBERS. OTHER STATES MAY NOT INCLUDE THOSE
23 TWO THINGS, SO THEIR COUNTING RULE MAY BE DIFFERENT THAN OURS.
24 SO ANY TIME YOU TRY TO DRAW COMPARISONS, YOU'VE GOT TO BE VERY,
25 VERY CAREFUL.

1 **BY MR. SPECTER**

2 **Q** DR. BEARD, YOU HAVE BEEN A CORRECTIONS PROFESSIONAL FOR 36
3 YEARS. HAVE YOU EVER TESTIFIED IN A CASE -- IN A PLAINTIFF'S
4 CASE?

5 **A** ON WHAT?

6 **Q** FOR THE PLAINTIFFS.

7 **A** NO.

8 **Q** AND YOU'RE HERE AS A NON-RETAINED EXPERT. THAT MEANS YOU
9 ARE NOT BEING PAID FOR YOUR TESTIMONY, CORRECT?

10 **A** THAT'S CORRECT.

11 **Q** COULD YOU EXPLAIN TO THE COURT WHY YOU ARE -- YOU TOOK THE
12 TIME OUT FROM RUNNING YOUR SYSTEM TO COME TO CALIFORNIA TO
13 TESTIFY TODAY?

14 **A** WELL, IT'S SORT OF -- I GUESS IT'S A COMPLEX ANSWER. MAYBE
15 IT'S NOT A COMPLEX ANSWER.

16 I HAVE GIVEN 36 YEARS TO -- IN TRYING TO SEE THAT WE
17 RUN A SAFE SYSTEM IN PENNSYLVANIA, SAFE FOR INMATES, SAFE FOR
18 STAFF, AND THAT WE PROVIDE THE PROPER CARE, WHATEVER THAT CARE
19 MAY BE, WHETHER IT'S MEDICAL, MENTAL HEALTH, WHATEVER THE CARE
20 IS, TO THE INMATE POPULATION.

21 AND WHEN I CAME OUT HERE TO CALIFORNIA, I MET MANY
22 VERY GOOD PEOPLE THAT WORKED FOR THE CALIFORNIA DEPARTMENT OF
23 CORRECTIONS, PEOPLE WHO WANT TO DO THE RIGHT THING, PEOPLE WHO
24 WANT TO MOVE AHEAD. AND I BEGAN LOOKING AT ALL THESE REPORTS
25 OVER THE LAST 20 YEARS, THE LITTLE HOOVER COMMISSION, THE

1 INDEPENDENT REVIEW PANEL REPORTS, AND I SEE THAT CALIFORNIA HAS
2 THIS PROBLEM THAT HAS JUST BEEN GOING ON AND ON AND ON FOR YEARS
3 AND YEARS AND YEARS, AND NOBODY SEEMS TO BE WILLING TO STEP UP
4 TO THE PLATE AND FIX THE PROBLEM. AND AS A RESULT OF THAT, THEY
5 HAVE HUGELY OVERCROWDING PRISONS. THEY HAVE -- THEY'RE UNABLE
6 TO PROVIDE PROPER CARE IN SOME CASES, MENTAL HEALTH CARE AND
7 MEDICAL CARE WITHIN THOSE PRISONS.

8 AND, MORE IMPORTANTLY, TO ME, AS A FORMER WARDEN IS
9 THE PRISONS AREN'T SAFE. THEY AREN'T SAFE FOR THE STAFF AND THE
10 INMATES, AND THEY HAVE TO RELY ON ALL THESE DIFFERENT UNUSUAL
11 KIND OF THINGS TO CONTROL THOSE PRISONS.

12 I GUESS IF THERE'S ANYTHING THAT I CAN DO TO HELP SEE
13 THAT CALIFORNIA MOVES IN A DIRECTION THAT WILL ALLOW THE PEOPLE
14 THAT WORK WITHIN THE CALIFORNIA DEPARTMENT OF CORRECTIONS TO
15 START RUNNING A GOOD, SAFE SYSTEM AND PROVIDING THE PROPER CARE
16 THEY SHOULD BE PROVIDING TO THOSE PEOPLE THAT ARE PUT INTO OUR
17 CHARGE AND TO BE ENABLED TO DO THE PROGRAMS FOR THE INMATES SO
18 WHEN THOSE INMATES ARE RELEASED, THE PUBLIC SAFETY ISN'T
19 ADVERSELY AFFECTED. I SUPPOSE IF I CAN DO ANYTHING TO HELP IN
20 THAT, THAT'S WHY I'M HERE TODAY.

21 Q THANK YOU. COUPLE MORE QUESTIONS.

22 YOU MENTIONED YOU'VE REVIEWED VARIOUS REPORTS FROM
23 DR. SHANSKY, THE SPECIAL MASTER, THE RECEIVER, MS. WOODFORD,
24 MR. SCOTT AND THE LIKE. DID YOU -- ARE THOSE TYPE OF REPORTS
25 THAT YOU WOULD GENERALLY RECEIVE AS SECRETARY?

1 **A** YES. AS SECRETARY OF CORRECTIONS IN A RELATIVELY LARGE
2 STATE, YOU CAN'T BE EVERYWHERE ALL THE TIME, AND SO YOU HAVE TO
3 RELY ON DATA THAT YOU GET FROM THE INSTITUTIONS. YOU HAVE TO
4 RELY ON REPORTS THAT YOU GET FROM YOUR SUPERINTENDENTS OR, IN MY
5 CASE, I ALSO HAVE MY REGIONAL DEPUTIES THAT GO OUT WITH TEAMS ON
6 A REGULAR BASIS TO REVIEW WHAT'S GOING ON, TO TELL ME WHAT'S
7 GOING ON IN MY PRISONS, AND I VISIT THEM MYSELF AS WELL, BUT I
8 CAN'T BE THERE ALL THE TIME.

9 SO I RELY LARGELY ON THOSE REPORTS, AND WHAT I READ
10 IN THESE EXPERT REPORTS THAT YOU MENTION, THAT'S THE KIND OF
11 INFORMATION THAT, IF I GOT THOSE KINDS OF THINGS, I WOULD BE
12 VERY, VERY CONCERNED ABOUT.

13 I KNOW WAYNE SCOTT. I KNOW JEANNE WOODFORD. THESE
14 PEOPLE ARE CONSUMMATE PROFESSIONALS. THEY HAVE BEEN IN THE
15 BUSINESS FOR OVER 30 YEARS. THE KINDS OF STUFF THEY WRITE IN
16 THEIR REPORTS ARE THE VERY KINDS OF THINGS I COULD SEE ME
17 WRITING IF I WAS WALKING THROUGH THE SAME INSTITUTIONS AND
18 SEEING THE SAME THINGS.

19 **Q** IF THOSE REPORTS REFERRED -- INSTEAD OF REFERRING TO THE
20 DEPARTMENT OF CORRECTIONS IN CALIFORNIA, THEY REFERRED TO THE
21 PENNSYLVANIA DEPARTMENT OF CORRECTIONS, WHAT WOULD BE YOUR
22 REACTION?

23 **A** MY REACTION WOULD BE THAT I WOULD NOT BE SITTING HERE TODAY;
24 I WOULD BE BACK IN PENNSYLVANIA FIXING WHATEVER PROBLEMS I
25 NEEDED TO FIX.

1 **MR. SPECTER:** THANK YOU VERY MUCH FOR YOUR TESTIMONY.

2 **JUDGE HENDERSON:** THANK YOU, COUNSEL.

3 CROSS-EXAMINATION.

4 **JUDGE KARLTON:** IS CCPOA GOING TO QUESTION?

5 **MS. LEONARD:** NO FURTHER QUESTIONS, YOUR HONOR.

6 THANK YOU.

7 **CROSS-EXAMINATION BY MR. MELLO**

8 **MR. MELLO:** AGAIN, PAUL MELLO FOR DEFENDANTS.

9 **BY MR. MELLO**

10 **Q** GOOD MORNING AGAIN, SECRETARY BEARD.

11 **A** GOOD MORNING.

12 **Q** YOU TESTIFIED THAT YOU HAVE A PH.D. IN COUNSELING. YOU HAVE
13 NO MEDICAL DEGREES, CORRECT?

14 **A** THAT'S CORRECT.

15 **Q** WHEN WAS THE LAST TIME YOU PROVIDED MENTAL HEALTH TREATMENT
16 AS A CLINICIAN, WHAT YEAR?

17 **A** PROBABLY 1974.

18 **Q** WHEN I TOOK YOUR DEPOSITION BACK IN PENNSYLVANIA, SEEMS LIKE
19 YESTERDAY, BUT --

20 **A** YES.

21 **Q** EARLIER, AT THE TIME I TOOK YOUR DEPOSITION, YOU DID NOT
22 KNOW THE PHYSICIAN-TO-INMATE RATIO FOR THE PENNSYLVANIA PRISON
23 SYSTEM, CORRECT?

24 **A** YES.

25 **Q** THAT'S CORRECT, RIGHT?

1 **A** I DIDN'T KNOW IT AT THAT TIME, NO.

2 **Q** DO YOU KNOW IT NOW?

3 **A** THE PHYSICIAN-TO-INMATE RATIO?

4 **Q** YES.

5 **A** OUR PRIMARY CARE PHYSICIANS AND PA'S IS ABOUT 3.14 PER
6 THOUSAND.

7 **Q** DO YOU KNOW WHAT THE RATE IS FOR MENTAL HEALTH CLINICIANS?

8 **A** FOR PSYCHIATRISTS, 1.45 PER THOUSAND.

9 **Q** PSYCHIATRISTS?

10 **A** PARDON?

11 **Q** YOU SAID FOR PSYCHOLOGISTS?

12 **A** PSYCHIATRISTS.

13 **Q** I'M SORRY.

14 **A** WE HAVE FAR MORE PSYCHOLOGISTS, AND I DON'T HAVE THE RATIO
15 OF THE PSYCHOLOGISTS, BUT MOST OF OUR INSTITUTIONS HAVE SIX,
16 SEVEN. DEPENDS ON THE SIZE OR MORE PSYCHOLOGISTS.
17 PSYCHIATRISTS IS 1.45 PER THOUSAND.

18 **Q** YOU'VE NEVER EVALUATED THE DELIVERY OF MEDICAL AND MENTAL
19 HEALTH CARE IN CALIFORNIA'S PRISONS, CORRECT?

20 **A** I HAVE NOT PERSONALLY VISITED ANY OF THE PRISONS TO EVALUATE
21 THAT CARE. I'VE ONLY REVIEWED THE REPORTS THAT WE MENTIONED
22 EARLIER.

23 **Q** INCLUDING TRIAL AFFIDAVITS OF PLAINTIFF'S EXPERTS IN THIS
24 CASE, CORRECT?

25 **A** PARDON?

1 Q INCLUDING THE TRIAL AFFIDAVITS OF PLAINTIFFS' EXPERTS IN
2 THIS CASE, CORRECT? WHEN YOU SAY "THE REPORTS OF THE EXPERTS,"
3 YOU ARE REFERRING TO PLAINTIFFS' EXPERTS, CORRECT?

4 A YES. I HAVE -- YOU MEAN I DIDN'T REVIEW THE DEFENDANTS'
5 EXPERTS?

6 Q I'M JUST ASKING IF YOU REVIEWED PLAINTIFFS' EXPERT REPORTS,
7 CORRECT?

8 A AND DEFENDANTS' EXPERTS REPORTS.

9 Q AND DURING YOUR TESTIMONY, YOU INDICATED THOSE WERE THE
10 TYPES OF THINGS YOU WOULD REVIEW IF YOU WERE -- THOSE ARE THE
11 TYPES OF ITEMS THAT YOU REVIEW IN YOUR POSITION IN PENNSYLVANIA,
12 CORRECT?

13 A THAT'S ONE OF THE KINDS OF THINGS THAT I WOULD BE REVIEWING.
14 INPUTS FROM MY DOCTOR, WE HAVE DOCTORS THAT WORK FOR ME THAT
15 OVERSEE THE HEALTHCARE. I HAVE A PSYCHIATRIST THAT WORKS FOR
16 ME. THEY PROVIDE ME REPORTS. SO THEY MAY NOT BE EXACTLY LIKE
17 THESE REPORTS, BUT THEY'RE SIMILAR. THEY WOULD PROVIDE ME A
18 REPORT IF WE HAVE A DEATH SOMEWHERE, WHETHER THAT DEATH WAS AN
19 APPROPRIATE DEATH OR NOT, THAT KIND OF THING.

20 Q YOU REVIEW EXPERTS' REPORTS, CORRECT?

21 A YES.

22 Q DO YOU REGULARLY REVIEW LITIGATION REPORTS FROM EXPERTS IN A
23 CASE?

24 A NO.

25 Q AND IT'S TRUE THAT YOU'VE NEVER EVALUATED WHETHER

1 DEFICIENCIES EXIST IN THE MEDICAL AND MENTAL HEALTH CARE
2 DELIVERY SYSTEMS IN CALIFORNIA AS WELL, RIGHT?

3 **A** YOU HAVE TO REPHRASE WHAT YOU'RE ASKING THERE.

4 **Q** SURE. YOU HAVE NEVER EVALUATED WHAT, IF ANY, DEFICIENCIES
5 EXIST IN THE MEDICAL AND MENTAL HEALTH CARE SYSTEMS IN
6 CALIFORNIA PRISONS --

7 **A** NO, I HAVE NOT PERSONALLY GONE TO THE PRISONS AND DONE THAT.
8 I'VE ONLY REVIEWED THE REPORTS WE TALKED ABOUT.

9 **Q** AND IN THE LAST TWO YEARS YOU'VE VISITED ONE PRISON,
10 CORRECT?

11 **A** THAT'S CORRECT.

12 **Q** WHICH PRISONS WAS THAT?

13 **A** THAT WAS OLD FOLSOM.

14 **Q** WHEN WAS THAT?

15 **A** A LITTLE OVER A YEAR AGO.

16 **Q** DURING YOUR TESTIMONY, YOUR DIRECT TESTIMONY WITH
17 MR. SPECTER, YOU MENTIONED THE PROBLEMS THAT COULD POSSIBLY
18 EXIST AT RECEPTION CENTERS; DO YOU REMEMBER THAT TESTIMONY?

19 **A** YES.

20 **Q** AND YOU DISCUSS THE FACT THAT IF RECEPTION CENTERS ARE
21 OVERCROWDED, THAT SCREENINGS MIGHT BE MISSED, CORRECT?

22 **A** YES.

23 **Q** ARE YOU AWARE OF ANY INMATE IN A CALIFORNIA PRISON WHO
24 SUFFERED AN ADVERSE MEDICAL OR MENTAL HEALTH CONSEQUENCE AS A
25 RESULT OF A MISSED SCREENING?

1 **A** NO.

2 **Q** WHEN YOU WERE DEPOSED BY ME IN THIS CASE, YOU COULD NOT
3 REMEMBER WHY YOU HAD TOURED FOLSOM PRISON, BUT IT WAS NOT IN
4 CONNECTION WITH EVALUATING THE STATUS OF THE DELIVERY OF MEDICAL
5 OR MENTAL HEALTH CARE, CORRECT?

6 **A** I DID NOT TOUR THAT PRISON TO REVIEW THE MENTAL HEALTH OR
7 MEDICAL CARE. THAT'S CORRECT. IT WAS DONE, I BELIEVE, MORE FOR
8 THE EXPERT PANEL LOOKING AT PROGRAMS AND STUFF.

9 **Q** AS A HIGH RANKING PRISON ADMINISTRATOR, YOU DO NOT SUPPORT
10 THE USE OF ANECDOTAL EVIDENCE TO EVALUATE A PRISON OR PRISON
11 SYSTEM, DO YOU?

12 **A** I CERTAINLY DO NOT SUPPORT ANECDOTAL EVIDENCE, NO.

13 **Q** YOU AGREE THAT A SINGLE EVENT AT AN INSTITUTION DOES NOT
14 NECESSARILY APPLY ACROSS THE ENTIRE SYSTEM, CORRECT?

15 **A** I WOULD AGREE IF IT'S ONLY A SINGLE EVENT, THAT THAT SHOULD
16 NOT APPLY ACROSS THE SYSTEM.

17 **Q** AND YOU TESTIFIED, I BELIEVE, THAT YOU SERVED ON THE EXPERT
18 PANEL, RIGHT?

19 **A** YES.

20 **Q** OKAY. AND THAT EXPERT PANEL LOOKED AT THE EFFECTS OF
21 OVERCROWDING ON PROGRAMMING, NOT MEDICAL AND MENTAL HEALTH CARE,
22 CORRECT?

23 **A** YES.

24 **Q** YOU USE THE TERM "OPERABLE" --

25 **A** EXCUSE ME.

1 Q SURE.

2 A I BELIEVE, AS I THINK BACK ON IT, WHEN WE WERE TALKING ABOUT
3 PROGRAMMING, WE DID GET INTO SOME OF THE MENTAL HEALTH CARE
4 ISSUES AND THE LACK OF BEDS AT CERTAIN ACUITY LEVELS FOR
5 MENTALLY ILL INMATES. I BELIEVE THERE WAS SOME DISCUSSION OF
6 THAT DURING THE REPORT.

7 Q CAN YOU RECALL ANY OF THOSE DISCUSSIONS AS YOU SIT HERE
8 TODAY?

9 A PARDON?

10 Q CAN YOU RECALL ANY OF THOSE DISCUSSIONS --

11 A JUST THE FACT THAT THE ACU- -- THERE WERE INMATES WHO HAD
12 HIGHER ACUITY LEVELS OF MENTAL ILLNESS, AND THERE WASN'T
13 APPROPRIATE BEDS TO PROVIDE CARE FOR THOSE INMATES.

14 Q RIGHT. OKAY. THANK YOU.

15 WE HEARD THE TERM "DESIGN BED CAPACITY" AND "OPERABLE
16 CAPACITY" DURING YOUR DIRECT TESTIMONY, CORRECT?

17 A YES.

18 Q AND YOU TOLD US THAT OPERABLE CAPACITY, YOU HAD A DEFINITION
19 FOR THAT, CORRECT?

20 A YES.

21 Q DO YOU KNOW THAT CALIFORNIA -- OR AT LEAST PLAINTIFFS'
22 COUNSEL USED THE WORD "DESIGN CAPACITY" WITH RESPECT TO
23 CALIFORNIA'S PRISONS; DO YOU KNOW WHAT HE MEANT?

24 A TO THE BEST OF MY UNDERSTANDING, IT WAS WHAT THAT PRISON WAS
25 DESIGNED TO HOLD ORIGINALLY.

1 **Q** AND ARE YOU AWARE THAT CALIFORNIA'S PRISONS' INFRASTRUCTURE
2 WERE DESIGNED TO ACCOMMODATE A POPULATION OF 190 PERCENT OR SO
3 OF DESIGN BED CAPACITY?

4 **A** THAT'S NOT WHAT I'VE READ IN MANY OF THE EXPERT REPORTS THAT
5 I'VE READ.

6 **Q** WHICH ONES?

7 **JUDGE KARLTON:** ASSUMES SOMETHING NOT IN EVIDENCE,
8 COUNSEL. I KNOW THE PLAINTIFFS WANTED TO MAKE THAT OBJECTION.

9 **MR. SPECTER:** YES, THANK YOU, YOUR HONOR. I'M HAVING
10 A LITTLE TROUBLE HEARING YOU, PAUL. I DIDN'T KNOW THE NUMBER.

11 **MR. MELLO:** IT'S INTENTIONAL.

12 I SAID 190. AND IT'S CROSS-EXAMINATION. I BELIEVE I
13 CAN ASK --

14 **JUDGE KARLTON:** A QUESTION THAT HAS NO EVIDENTIARY
15 BASIS, AND TELL HIM THAT'S THE FACT? AS GENEROUS AS I AM --

16 **MR. MELLO:** OKAY.

17 **BY MR. MELLO**

18 **Q** HAVE YOU EVER HEARD THAT INFORMATION?

19 **A** PARDON?

20 **Q** WITHOUT ANY REPRESENTATION OF WHETHER OR NOT IT'S TRUE, HAVE
21 YOU EVER HEARD THAT CALIFORNIA'S PRISONS' INFRASTRUCTURE WAS
22 DESIGNED TO ACCOMMODATE A POPULATION OF 190 DESIGN BED CAPACITY?

23 **A** NO. IN FACT, THAT'S NOT WHAT I READ IN A LOT OF THE EXPERT
24 REPORTS.

25 **Q** AND YOU NEVER DETERMINED THAT THE OPERABLE CAPACITY OF

1 CALIFORNIA'S PRISON SYSTEM, HAVE YOU?

2 **A** NO. AS I TESTIFIED IN A DEPOSITION, IN ORDER TO DO THAT, I
3 WOULD HAVE TO GO OUT AND VISIT EVERY FACILITY. CERTAINLY
4 SOMETHING I'M CAPABLE OF DOING, BUT I WOULD PROBABLY HAVE TO
5 RETIRE FROM MY CURRENT JOB TO HAVE THE TIME TO DO THAT.

6 **Q** RIGHT. SO YOU HAVE NO IDEA WHAT CALIFORNIA'S OPERABLE
7 CAPACITY IS?

8 **A** I HAVE NO IDEA WHAT THE OPERABLE CAPACITY IS, BUT AS I SAID
9 IN THE DEPOSITION, I DID REVIEW THE INDEPENDENT REVIEW PANEL'S
10 REPORT OF 2004 WHERE A GROUP OF EXPERIENCED WARDENS SAID THAT
11 ABOUT 145 PERCENT WOULD BE THE MAXIMUM THAT THE SYSTEM SHOULD GO
12 FOR. AND HAVING MET MANY OF THE STAFF OUT HERE I WOULD THINK
13 THAT A GROUP OF EXPERIENCED WARDENS IN CALIFORNIA WOULD HAVE A
14 PRETTY GOOD HANDLE ON WHAT THE SYSTEM COULD HANDLE.

15 I ALSO SAW THAT THE STRIKE TEAM HAD RECOMMENDED A
16 CAPACITY OF 130 PERCENT. SO THAT WOULD LEAD ME TO CONCLUDE, IF
17 I WENT OUT AND WENT THROUGH ALL OF THE FACILITIES, I WOULD COME
18 OUT SOMEWHERE IN THAT 130 TO 145 PERCENT OF CAPACITY AS AN
19 OPERABLE CAPACITY FOR THE SYSTEM.

20 **Q** BUT YOU HAVE NO IDEA UNLESS YOU ACTUALLY DID IT YOURSELF?

21 **A** THAT'S CORRECT, UNLESS I DID IT MYSELF.

22 **JUDGE KARLTON:** WELL, HE SAID YOU HAVE NO IDEA.

23 **THE WITNESS:** THAT'S TRUE. I'M SORRY, YOUR HONOR. I
24 DO HAVE SOME IDEA BASED ON WHAT MY COMMENTS THAT I JUST MADE TO
25 YOU.

1 **BY MR. MELLO**

2 **Q** YOU BELIEVE THAT CONSTITUTIONALLY ADEQUATE MEDICAL AND
3 MENTAL HEALTH CARE CAN BE PROVIDED IN OVERCROWDED CONDITIONS,
4 CORRECT?

5 **A** I BELIEVE THAT IT CAN BE PROVIDED UP TO CERTAIN LIMITATIONS
6 OF OVERCROWDING, YES.

7 **Q** AND YOU BELIEVE THAT INCREASED NUMBERS OF QUALIFIED AND
8 COMPETENT NURSES, PHYSICIAN'S ASSISTANTS, DOCTORS,
9 PSYCHOLOGISTS, PSYCHIATRISTS WOULD IMPROVE THE QUALITY OF
10 MEDICAL AND MENTAL HEALTH CARE IN CALIFORNIA'S PRISONS, CORRECT?

11 **A** IT MAY. IT DEPENDS WHETHER YOU HAVE ALL OF THE OTHER
12 INFRASTRUCTURE TO SUPPORT THE STAFF.

13 **Q** AND THAT INFRASTRUCTURE WOULD INCLUDE CORRECTIONAL OFFICERS?

14 **A** WELL, THE INFRASTRUCTURE WOULD INCLUDE CORRECTIONAL
15 OFFICERS, BUT IT WOULD ALSO INCLUDE SPACE TO DO EXAMS, PLACES
16 WHERE THERE'S PRIVACY SO IT CAN BE DONE PRIVATELY, YOU KNOW,
17 PLACES THAT ARE, YOU KNOW, SANITARY AND CLEAN. AND ALSO THE
18 ABILITY TO PROVIDE THE PROPER LEVEL OF CARE ONCE YOU DETERMINE
19 WHAT THAT IS.

20 AND, AGAIN, THAT REQUIRES A SPACE. THAT REQUIRES
21 SOMEPLACE TO PUT PEOPLE. AND AT LEAST FROM WHAT I'VE SEEN IN
22 THE REPORTS, THAT SEEMS TO BE A HUGE PROBLEM OUT HERE.

23 AND THEN ALSO, AS I'VE MENTIONED, YOU CAN'T BE HAVING
24 ALL THESE LOCKDOWNS ALL THE TIME, BECAUSE THEN THAT IS GOING TO
25 INTERFERE WITH THE ABILITY TO PROVIDE THE CARE AS WELL, AND THAT

1 GETS BACK TO THE SAFETY OF THE SYSTEM.

2 Q AND I BELIEVE --

3 JUDGE HENDERSON: EXCUSE ME, MR. MELLO. I FIND THE
4 QUESTION A BIT VAGUE. INCREASED MEDICAL, NURSING, DOCTORS,
5 INCREASED FROM WHAT? FROM WHEN THE SUIT WAS FILED? FROM WHERE
6 WE ARE RIGHT NOW? WHAT DO WE INCREASE ALL OF THAT FROM TO MAKE
7 IT BETTER?

8 BY MR. MELLO

9 Q SECRETARY BEARD, DO YOU HAVE ANY UNDERSTANDING OF THE
10 INCREASED NUMBER OF CORRECTIONAL OFFICERS SINCE THE APPOINTMENT
11 OF A RECEIVER IN PLATA IN OCTOBER 2005 THROUGH THE END OF
12 AUGUST 2008; DO YOU KNOW WHAT THAT NUMBER IS?

13 A I DON'T KNOW WHAT THE INCREASE IS, BUT I KNOW THAT THEY DO
14 HAVE MORE CORRECTIONS OFFICERS TODAY, AND SO THAT IS ONE PROBLEM
15 AREA THAT SHOULD BE OF SOMEWHAT LESS CONCERN.

16 Q OKAY. IF THE NUMBER INCREASED BY 2,200, DO YOU BELIEVE THAT
17 WOULD HELP IMPROVE ACCESS TO MEDICAL AND MENTAL HEALTH CARE?

18 A WELL, AS YOU SAID, I HAVEN'T GONE OUT AND PERSONALLY LOOKED
19 AT IT, SO I WOULDN'T WANT TO MAKE THAT KIND OF -- I WOULDN'T
20 WANT TO ANSWER THAT QUESTION.

21 Q UNDERSTOOD.

22 SO YOU COULDN'T, BASED UPON YOUR EXPERIENCE AND THE
23 REPORTS YOU'VE REVIEWED, EVALUATE WHETHER CARE WOULD IMPROVE IF
24 THE NUMBER OF CORRECTIONAL OFFICERS INCREASED BY 2,200
25 CORRECTIONAL OFFICERS SINCE OCTOBER OF 2005, CORRECT?

1 **A** AS I SAID, THAT WAS ONLY ONE OF THE THINGS I READ ABOUT IN
2 THE REPORTS.

3 **JUDGE KARLTON:** DR. BEARD, WHATEVER THE LEVEL OF
4 IMPROVEMENT, FROM YOUR OWN EXPERIENCE, PROVIDING GREATER NUMBERS
5 OF CORRECTIONAL OFFICERS, PARTICULARLY IF YOU HAVE BEEN SHORT
6 THEM, HAS GOT TO HAVE SOME IMPROVEMENT. THE QUESTION IS WHETHER
7 IT MAKES ANY LONG TERM DIFFERENCE, WHICH IS A DIFFERENT QUESTION
8 MR. MELLO IS ASKING YOU ABOUT. BUT EVEN ONE MORE IS SOME
9 INCREMENTAL BENEFIT, WOULD YOU NOT AGREE?

10 **THE WITNESS:** I WOULD AGREE WITH THAT, YOUR HONOR.

11 **BY MR. MELLO**

12 **Q** AND YOU WOULD AGREE THAT THE HIRING OF 1,400 PHYSICIANS AND
13 NURSES SINCE JULY OF 2007 WOULD HAVE SOME INCREMENTAL VALUE TO
14 THE DELIVERY OF MEDICAL AND MENTAL HEALTH CARE, CORRECT?

15 **A** YES.

16 **Q** AND YOU TESTIFIED THAT YOU BELIEVE PENNSYLVANIA IS CURRENTLY
17 PROVIDING CONSTITUTIONALLY ADEQUATE MEDICAL AND MENTAL HEALTH
18 CARE TO ITS INMATE PATIENTS, CORRECT?

19 **A** YES.

20 **Q** DO YOU KNOW THE AVERAGE AGE OF THE OFFENDERS IN
21 PENNSYLVANIA'S DEPARTMENT OF CORRECTIONS IS 37?

22 **A** YES.

23 **Q** MR. SPECTER ASKED YOU ABOUT IT. IT SOUNDS TO ME LIKE MAYBE
24 SINCE YOUR DEPOSITION, YOU REVIEWED THE DEPARTMENT OF JUSTICE
25 REPORT?

1 **A** YES.

2 **Q** RELATING TO DEATHS?

3 **A** I DID. AND IF I MIGHT SAY, UPON DOING THAT, I HAD FORGOTTEN
4 THAT WE HAD ACTUALLY REVIEWED THAT REPORT AT THE TIME IT CAME
5 OUT, AND THERE HAD BEEN A REPORT BY MY DOCTOR ON IT.

6 **Q** AND IT'S YOUR TESTIMONY THAT A PRISON SYSTEM'S DEATH RATE IS
7 A FACTOR THAT YOU WOULD LOOK TO SEE IF THERE MIGHT BE A PROBLEM
8 IN THE DELIVERY OF MEDICAL AND MENTAL HEALTH CARE, CORRECT?

9 **A** CERTAINLY, YES.

10 **Q** AND ARE YOU AWARE THAT THAT STUDY -- AND I BELIEVE IT'S
11 DEFENDANT'S EXHIBITS 1011 -- FROM THE PERIOD OF 2001 TO 2004
12 RANKED CALIFORNIA'S PRISONS AMONG THE TOP 15 -- I BELIEVE
13 MR. SPECTER SAID 14, SO I COUNTED WRONG -- IN TERMS OF DEATH
14 RATES; IS THAT CORRECT?

15 **A** I BELIEVE SO, YES.

16 **Q** AND ARE YOU AWARE, ACCORDING TO THE SAME REPORT, THAT
17 PENNSYLVANIA WAS IN THE BOTTOM FIVE?

18 **A** YES.

19 **Q** OKAY. AND YOU WERE IN COMPANY WITH LOUISIANA, TENNESSEE,
20 WEST VIRGINIA, AND KENTUCKY?

21 **A** YES.

22 **Q** ARE YOU AWARE THAT, ACCORDING TO OFFICIAL PRISON CENSUS DATA
23 PUBLISHED BY CDCR, THAT THE AVERAGE AGE OF CALIFORNIA INMATES,
24 LIKE PENNSYLVANIA'S, IS 37 YEARS OLD?

25 **A** I AM. BUT, AS I SAID, YOU HAVE TO ADJUST IT FOR THE

1 DISTRIBUTION OF THE AGE WITHIN YOUR POPULATION.

2 Q OKAY. I BELIEVE THAT -- DOES PENNSYLVANIA PUBLISH SOMETHING
3 CALLED "POPULATION HIGHLIGHTS, THE ANNUAL STATISTICS REPORT,
4 2006, OF THE PENNSYLVANIA DEPARTMENT OF CORRECTIONS"?

5 A I BELIEVE WE DO. WE HAVE A LOT OF STUFF UP ON OUR WEBSITE,
6 YES.

7 Q OKAY. I'M GOING TO PULL IT UP.

8 (DOCUMENT DISPLAYED.)

9 **BY MR. MELLO**

10 Q HAVE YOU SEEN THAT DOCUMENT?

11 A YES.

12 Q OKAY. CAN WE GO TO THE NEXT PAGE? THAT'S YOU. AND YOU
13 SIGNED IT?

14 A YES.

15 Q OKAY. LET'S GO TO THE NEXT PAGE THAT'S HIGHLIGHTED, AND
16 IT'S PAGE -- RIGHT THERE.

17 IT SAYS THE AVERAGE AGE OF DO -- OF A DOC OFFENDER IN
18 2006 WAS 37, AND APPROXIMATELY HALF OF THE OFFENDERS WERE WITHIN
19 THE AGES OF 25 TO 39 YEARS; DO YOU SEE THAT?

20 A YES.

21 Q IS THAT A TRUE STATEMENT, TO YOUR KNOWLEDGE?

22 A I'M ASSUMING IT IS. I DIDN'T CHECK THE STATISTICS. I DON'T
23 PUT THIS DOCUMENT TOGETHER.

24 Q THIS IS A PUBLIC DOCUMENT PUT FORTH IN THE REGULAR BUSINESS
25 PRACTICE OF YOUR DEPARTMENT, CORRECT?

1 **A** YES.

2 **Q** AND ACCORDING TO -- ITS MY UNDERSTANDING --

3 **JUDGE KARLTON:** WE DON'T CARE WHAT YOUR UNDERSTANDING
4 IS, SIR.

5 **MR. MELLO:** SURE, SURE.

6 CAN WE GO TO DEFENDANT'S EXHIBIT 1255, TABLE 6? MAY
7 I HAVE A TWO-MINUTE BREAK TO TRY TO FIX THIS, PLEASE?

8 **JUDGE HENDERSON:** YOU MAY.

9 (PAUSE IN PROCEEDINGS.)

10 **MR. MELLO:** OKAY. I'M SORRY.

11 **JUDGE HENDERSON:** OKAY. YOU MAY PROCEED.

12 **BY MR. MELLO**

13 **Q** AGAIN, I BELIEVE YOU TESTIFIED THAT THE DOCUMENT PUT
14 TOGETHER BY YOUR DEPARTMENT INDICATES THAT APPROXIMATELY HALF OF
15 THE OFFENDERS IN YOUR DEPARTMENT ARE AGES 25 TO 39 AND THAT THE
16 AVERAGE AGE WAS 37 YEARS; DO YOU SEE THAT? THAT'S CORRECT?

17 **A** YES.

18 **Q** ACCORDING TO THIS DOCUMENT IF YOU ADD UP THE NUMBERS I
19 BELIEVE IT INDICATES THAT -- AND THIS IS AN OFFICIAL CALIFORNIA
20 PUBLICATION PUT TOGETHER BY CDCR. IT'S AN OFFICIAL BUSINESS
21 RECORD.

22 **JUDGE KARLTON:** WAIT A MINUTE. I'M LOST. I THOUGHT
23 THIS WAS ABOUT PENNSYLVANIA.

24 **MR. MELLO:** NO, THIS IS ABOUT CALIFORNIA NOW, TO MAKE
25 THE COMPARISON.

1 **MR. BIEN:** WHAT EXHIBIT NUMBER IS THIS?

2 **JUDGE KARLTON:** I WAS ABOUT TO ASK.

3 **MR. MELLO:** 1255.

4 **JUDGE HENDERSON:** TABLE 6.

5 **MR. SPECTER:** OBJECT ON RELEVANCE GROUNDS, BECAUSE
6 THE TITLE OF THE DOCUMENT IS -- RELATES TO PAROLEES. SO I DON'T
7 KNOW WHAT THE RELEVANCE --

8 **MR. MELLO:** THEY DIDN'T OBJECT, BUT I'LL WITHDRAW THE
9 QUESTION.

10 **JUDGE KARLTON:** THEY'RE OBJECTING NOW THAT HE SAW IT.

11 **MR. MELLO:** SORRY ABOUT THE DELAY FOR THAT BUILDUP TO
12 NOTHING.

13 **BY MR. MELLO**

14 **Q** JUST IN CLOSING, DR. BEARD, ARE YOU AWARE OF ANY INMATE IN A
15 CALIFORNIA PRISON IN THE LAST THREE YEARS WHO SUFFERED AN
16 ADVERSE MEDICAL OR MENTAL HEALTH CONSEQUENCE AS A RESULT OF THE
17 ALLEGED OVERCROWDING?

18 **A** NO.

19 **MR. MELLO:** THANK YOU.

20 **JUDGE HENDERSON:** DEFENDER INTERVENOR.

21 **MR. MITCHELL:** GOOD MORNING. BILL MITCHELL FOR THE
22 DA INTERVENORS. BRIEF CROSS-EXAMINATION.

23 **JUDGE HENDERSON:** PROCEED.

24 **CROSS-EXAMINATION BY MR. MITCHELL**

25

1 **BY MR. MITCHELL**

2 **Q** GOOD MORNING, DR. BEARD.

3 **A** GOOD MORNING.

4 **Q** GOOD MORNING, SIR.

5 SIR, YOU'VE INDICATED YOU REVIEWED A NUMBER OF
6 REPORTS, THOSE OF MR. SCOTT, THE WOODFORD REPORT, THE STEWART
7 REPORT, THE SHANSKY REPORT. DID YOU REVIEW ANY OF THE
8 DEFENDANTS' EXPERTS' REPORTS?

9 **A** YES.

10 **Q** WAS THAT AFTER YOUR DEPOSITION THAT YOU REVIEWED THOSE?

11 **A** YES.

12 **Q** ARE YOU PRETTY COMFORTABLE THAT YOU'VE REVIEWED ALL THE
13 REPORTS THAT ARE FILED IN THIS CASE?

14 **A** I DON'T KNOW THAT I REVIEWED EVERY REPORT. I REVIEWED A
15 NUMBER OF REPORTS FROM THE RECEIVER, A NUMBER OF REPORTS FROM
16 THE MASTER, DR. SHANSKY'S, DR. STEWART'S, NOT ONLY THEIR
17 ORIGINAL, BUT THEIR FOLLOW-UP REPORTS. JEANNE WOODFORD, HER
18 ORIGINAL AND FOLLOW UP. WAYNE SCOTT, AND THEN DR. THOMAS, AND
19 DR. PACKER FROM THE DEFENDANTS.

20 **Q** AND YOU'VE ALSO REVIEWED THE RECEIVER'S REPORTS?

21 **A** I REVIEWED SOME. I CAN'T SAY I READ EVERY SINGLE WORD, BUT
22 I REVIEWED SOME OF THE RECEIVER'S REPORTS. I BELIEVE THE REPORT
23 ON OVERCROWDING, THEIR EIGHTH AND NINTH REPORT, AND THEIR
24 TURNAROUND PLAN.

25 **Q** SINCE THE TIME OF THE DEPOSITION, YOU DID REVIEW THE NINTH

1 REPORT?

2 **A** YES.

3 **Q** YOU ALSO REVIEWED THE DEUKMEJIAN REPORT, THE LITTLE HOOVER
4 COMMISSION REPORT, THE GOVERNOR'S EMERGENCY PROCLAMATION?

5 **A** I DID.

6 **Q** YOU WERE PART OF THE EXPERT PANEL IN 2006?

7 **A** I WAS.

8 **Q** AND WHO CREATED THE EXPERT PANEL?

9 **A** CALIFORNIA DEPARTMENT OF CORRECTIONS, AS FAR AS I
10 UNDERSTAND.

11 **Q** AS I UNDERSTAND IT, YOU WORKED CLOSELY WITH A LOT OF MEMBERS
12 OF THAT CURRENT -- OR NOT THE CURRENT ONE, BUT THE CALIFORNIA
13 DEPARTMENT OF CORRECTIONS STAFF AT THAT TIME, CORRECT?

14 **A** I DID.

15 **Q** DO YOU STAY IN COMMUNICATION NOW WITH THE CALIFORNIA
16 DEPARTMENT OF CORRECTIONS STAFF?

17 **A** I'VE TALKED TO THE CURRENT SECRETARY.

18 **Q** FROM YOUR EXPERIENCE IN WORKING WITH THE INDIVIDUALS HERE IN
19 CALIFORNIA THAT ARE RESPONSIBLE FOR THE MANAGEMENT OF OUR
20 PRISONS AND THE DELIVERY OF THE HEALTHCARE IN THE PRISONS, I
21 THINK YOU TOLD US IN YOUR TESTIMONY EARLIER THAT GOOD PEOPLE
22 WANT TO MOVE AHEAD TRYING TO FIX THE PROBLEMS; IS THAT CORRECT?

23 **A** THAT'S CORRECT. THAT'S MY ASSESSMENT OF THE PEOPLE THAT I
24 TALKED TO, YES.

25 **Q** THEY STUDY THE PROBLEM. THEY'RE DOING WHAT THEY CAN TO FIX

1 THE PROBLEM. AND YOU'VE ACTUALLY SEEN OVER THE -- AT LEAST THE
2 LAST 18 MONTHS TO TWO YEARS STEADY IMPROVEMENTS IN THE SYSTEM,
3 CORRECT?

4 **A** FROM READING THE REPORTS, THERE DOES SEEM TO BE SOME
5 IMPROVEMENTS OVER THE LAST MONTHS, YES.

6 **Q** IN PENNSYLVANIA THE DEPARTMENT OF CORRECTIONS IS RESPONSIBLE
7 NOT ONLY FOR THE CONDITIONS IN THE 27 PRISONS, BUT ALSO FOR THE
8 COUNTY JAIL SYSTEM, CORRECT?

9 **A** NO, THAT'S NOT CORRECT. WE -- IF YOU WOULD LIKE ME TO
10 EXPLAIN? UNDER THE LAW THERE'S A THING CALLED TITLE 37, AND
11 THERE IS -- WE GO IN AND INSPECT THOSE PRISONS, BUT WE ARE NOT
12 RESPONSIBLE FOR THE OPERATION OF THE -- I MEAN, THE COUNTY
13 JAILS. WE INSPECT THEM, BUT WE'RE NOT RESPONSIBLE FOR THEIR
14 OPERATION.

15 **Q** BUT THE DEPARTMENT OF CORRECTIONS IS RESPONSIBLE TO ENSURE
16 THAT THE JAILS MEET MINIMUM STANDARDS, CORRECT?

17 **A** WE DO DO REPORTS TO SEE THAT THEY MEET CERTAIN STANDARDS,
18 YES.

19 **Q** AND YOU FOUND THAT IN MAINTAINING OR IN EVALUATING THE
20 CONDITIONS OF THE JAILS, THAT SOME DO A VERY GOOD JOB AND SOME
21 DO A VERY POOR JOB, CORRECT?

22 **A** THAT'S CORRECT.

23 **Q** OF THE INSTITUTIONS OR THE JAILS THAT YOU FOUND DID A POOR
24 JOB, YOU SAID THAT -- OR DO YOU RECALL SAYING THAT THE POOR JOB
25 OR THE BAD CONDITIONS USUALLY STEM FROM THINGS SUCH AS

1 OVERCROWDING, LACK OF MAINTENANCE, UNDERSTAFFING, THINGS OF THAT
2 SORT, LACK OF RESOURCES?

3 **A** I'M NOT SURE WHAT DOCUMENT YOU ARE TALKING ABOUT THERE, BUT
4 FROM MY REVIEW OF THE VARIOUS REPORTS THAT ARE DONE BY MY STAFF,
5 OVERCROWDING IS A SIGNIFICANT ISSUE IN SOME OF THE COUNTY JAILS
6 THAT CREATE THE PROBLEM. INFRASTRUCTURE PROBLEMS, SANITATION
7 PROBLEMS, THOSE THINGS ARE PROBLEMS THAT I DO SEE IN THE REPORTS
8 THAT I GET FROM THE COUNTY JAILS IN PENNSYLVANIA THAT ARE NOT
9 DOING WHAT THEY SHOULD BE DOING.

10 **Q** AND IT IS GENERALLY FROM A LACK OF RESOURCES, CORRECT?

11 **A** GENERALLY, IT IS A LACK OF RESOURCES, YES.

12 **Q** AND, GENERALLY, IT'S NOT FOR WANT OF THE PEOPLE IN THE
13 POSITIONS TO WANT TO DO A GOOD JOB AND PROVIDE --

14 **A** I WOULD SAY IN MOST CASES THAT'S CORRECT. EVERY ONCE IN A
15 WHILE YOU RUN INTO SOMEBODY THAT REALLY DOESN'T KNOW WHAT
16 THEY'RE DOING OR ISN'T DOING THE PROPER THING, BUT, GENERALLY,
17 YES, I THINK GENERALLY PEOPLE WANT TO DO THE RIGHT THING, AND IF
18 THEY HAD THE RESOURCES, THEY WOULD.

19 **Q** GENERALLY SPEAKING, THAT'S WHAT YOU'VE SEEN HERE IN
20 CALIFORNIA --

21 **A** FROM THE PEOPLE THAT I'VE TALKED TO, YES.

22 **Q** AND THE LEADERSHIP, CORRECT?

23 **A** YES.

24 **Q** NOW, THE PENNSYLVANIA CORRECTIONAL SYSTEM HAD AN OVERHAUL
25 THAT WAS INSTIGATED IN PART FROM RIOTS THAT TOOK PLACE AND FROM

1 A LAWSUIT THAT WAS FILED, AUSTIN VERSUS DEPARTMENT OF
2 CORRECTIONS?

3 A YES, I MENTIONED THAT EARLIER.

4 Q AND THAT LED TO A LOT OF REFORM MEASURES BEING PASSED,
5 CORRECT?

6 A CERTAINLY DID.

7 Q AND THAT LAWSUIT DEALT WITH OVERCROWDING AND THE LACK OF THE
8 PROVISION OF ADEQUATE MEDICAL AND MENTAL HEALTHCARE IN THE
9 PENNSYLVANIA PRISONS, CORRECT?

10 A WHAT WAS THE FIRST PART OF YOUR THING?

11 Q THAT LAWSUIT DEALT WITH THE LACK --

12 A IT DEALT WITH NOT HAVING ENOUGH RESOURCES. I WOULD HAVE TO
13 GO BACK AND READ EXACTLY WHAT THE LAWSUIT SAID. THAT'S A LONG
14 TIME AGO. SO, YOU KNOW, IF YOU ARE READING SOMETHING FROM THAT
15 DOCUMENT -- FROM THAT LAWSUIT, I WOULD ASSUME THAT'S ACCURATE,
16 BECAUSE WE WERE OVERCROWDED AT THE TIME, AND, YOU KNOW, WE
17 WEREN'T PROVIDING THE CARE THAT WE SHOULD HAVE BEEN PROVIDING.

18 Q MEDICAL AND MENTAL HEALTH CARE?

19 A YES.

20 Q AND THAT CASE WAS ULTIMATELY SETTLED?

21 A YES.

22 Q AND IN THE SETTLEMENT, THE TERMS OF THE SETTLEMENT TO
23 RESOLVE THE ISSUES OF THE LACK OF ADEQUATE MENTAL AND MEDICAL
24 CARE IN PENNSYLVANIA, YOU ADDRESSED -- OR THE SETTLEMENT
25 ADDRESSED APPROXIMATELY FIVE DIFFERENT AREAS, WHICH I THINK YOU

1 ALLUDED TO EARLIER FROM THE MINIMUM NUMBER OF MEDICAL AND MENTAL
2 HEALTH, INCLUDING DENTISTS, TO POLICIES AND PROCEDURES,
3 SUFFICIENT EQUIPMENT AT FACILITIES, QUALITY ASSURANCE PROGRAMS
4 AND MONITORING, CORRECT?

5 **A** YOU ARE READING FROM THAT REPORT. I HAVEN'T READ THAT
6 AUSTIN SUIT FOR 20-SOME YEARS. I WILL JUST HAVE TO SAY IF
7 THAT'S -- IF YOU ARE READING FROM THE REPORT, THEN MAYBE THAT'S
8 ACCURATE. I CAN'T SAY THAT'S ACCURATE WITHOUT SEEING IT.

9 **Q** IF THE SETTLEMENT COVERED PARTICULAR -- SPECIFIC FIVE AREAS
10 THAT REQUIRED IMPROVEMENTS IN THE PROVISION OF MEDICAL AND
11 MENTAL HEALTHCARE --

12 **A** IT PROVIDED FOR VARIOUS IMPROVEMENTS IN MENTAL HEALTH AND
13 MEDICAL CARE. HOW MANY EXACTLY IT WAS AND WHAT ALL THOSE THINGS
14 WERE, I CAN'T -- I CAN'T DIRECTLY RECOLLECT WITHOUT REVIEWING
15 THE DOCUMENT.

16 **Q** IN ANY EVENT, IT LED TO PENNSYLVANIA, IN YOUR OPINION,
17 ACHIEVING CONSTITUTIONAL HEALTHCARE AND MENTAL HEALTH CARE --

18 **A** IT HAD NEVER BEEN PROVEN THAT WE WERE UNCONSTITUTIONAL AT
19 THE TIME, BUT IT CERTAINLY IMPROVED BOTH THE MEDICAL AND MENTAL
20 HEALTHCARE IN PENNSYLVANIA.

21 **Q** THAT WAS ALL DONE WITHOUT A PRISONER RELEASE ORDER, CORRECT?

22 **A** PARDON?

23 **Q** ALL DONE WITHOUT A PRISONER RELEASE ORDER?

24 **A** THAT WAS DONE WITHOUT A PRISONER RELEASE ORDER, THAT'S
25 CORRECT.

1 Q MR. MELLO TOUCHED ON THE DEATH RATES IN PENNSYLVANIA.

2 JUDGE KARLTON: SIR, CAN I INTERRUPT FOR JUST A
3 MOMENT. THAT'S NOT AN UNIMPORTANT POINT.

4 YOU INDICATED THAT -- I THINK YOU INDICATED -- IF I
5 AM MISSTATING, FEEL FREE TO SAY I GOT THAT WRONG -- THAT AT
6 LEAST PART OF THE PROBLEM THAT PENNSYLVANIA FACED WHEN THE SUIT
7 WAS FILED WAS OVERCROWDING; IS THAT RIGHT?

8 THE WITNESS: THAT'S CORRECT.

9 JUDGE KARLTON: BUT YOU ACHIEVED SOMEHOW OR OTHER A
10 SATISFACTORY MENTAL AND MEDICAL HEALTH WITHOUT A PRISONER
11 RELEASE ORDER. DID YOU DO ANYTHING ABOUT REDUCING THE PRISON
12 POPULATION WITHOUT A PRISONER RELEASE ORDER?

13 THE WITNESS: NO. NO. WE DIDN'T REDUCE THE PRISON
14 POPULATION AT THAT TIME. IN ADDITION TO SOME OF THE CHANGES
15 THAT WE MADE IN THE MENTAL HEALTH AND MEDICAL CARE, WE ALSO WENT
16 ON AN AGGRESSIVE CONSTRUCTION PROGRAM AND ADDED A LOT OF CELLS
17 TO THE SYSTEM.

18 AND WE WEREN'T REALLY IN -- AS I RECOLLECT, IN THE
19 POSITION WHERE WE DIDN'T HAVE SPACE TO DO THINGS. IT WAS MORE
20 THAT WE DIDN'T HAVE ENOUGH STAFF TO DO THINGS, THAT THE STAFFING
21 RATIOS WERE NOT SEEMED TO BE APPROPRIATE. AND SO THE --
22 WHATEVER CHANGES WE HAD TO MAKE, EQUIPMENT, PERSONNEL, AND
23 STUFF, WE WERE ABLE TO MAKE IT WITHIN OUR EXISTING SYSTEM TO
24 MEET THE NEEDS OF THE SETTLEMENT.

25 JUDGE KARLTON: ASSUMING THAT CALIFORNIA'S PRISON

1 SYSTEM IS NOT IN THAT DESIRABLE OF SHAPE, DO YOU BELIEVE THAT --
2 DO YOU BELIEVE THAT A CONSTITUTIONALLY SUFFICIENT MEDICAL AND
3 MENTAL HEALTH SYSTEM CAN BE ACHIEVED THROUGH ADDITIONAL
4 BUILDING, UNDERSTANDING THAT WOULD TAKE TIME? BUT SETTING ASIDE
5 THE TIME QUESTION, WOULD YOU AGREE THAT THAT COULD OCCUR?

6 **THE WITNESS:** THEORETICALLY, YES, SIR. YES, YOUR
7 HONOR.

8 **JUDGE KARLTON:** BUT YOU DON'T BELIEVE IT PRACTICALLY?
9 THEORETICALLY, YES; PRACTICALLY, NO. WHY?

10 **THE WITNESS:** WELL, I DON'T BELIEVE IT PRACTICALLY
11 BECAUSE OF THE TIME THAT IT TAKES AND THE COSTS THAT IT TAKES,
12 THE HUGE COSTS THAT IT TAKES TO DO THINGS LIKE THIS. AND AT
13 LEAST FROM MY EXPERIENCE, STATES JUST HAVEN'T BEEN WILLING TO
14 MOVE AHEAD WITH THAT KIND OF THING AND TO DO THAT. SO -- AND
15 CONSTRUCTION, IF YOU START BUILDING TODAY, AT LEAST IN MY STATE,
16 I PROBABLY CAN'T GET A PRISON IN THREE YEARS. IT'S PROBABLY
17 GOING TO BE CLOSER TO FOUR YEARS TO GET A PRISON UP AND RUNNING.
18 AND THEN IF YOU NEED A WHOLE BUNCH OF PRISONS -- YOU KNOW, FOR
19 INSTANCE, ONE OF THE PROBLEMS OR CONCERNS I HAVE ABOUT AB 900 IS
20 THE IN-FILL BACKS, BECAUSE ALL YOU'RE DOING IS BUILDING ANOTHER
21 PLACE FOR THESE PEOPLE TO BE. IT'S STILL AN OVERCROWDED PRISON.

22 SO, YOU KNOW, YOU'D HAVE TO GO OUT AND BUILD A WHOLE
23 BUNCH OF PRISONS TO REALLY DO THIS, AND THAT'S GOING TO TAKE YOU
24 YEARS, BECAUSE YOU ARE GOING TO BE THREE OR FOUR BEFORE YOU GET
25 THE FIRST PRISONS, AND YOU CAN'T BUILD, LIKE, YOU KNOW, 30

1 PRISONS ALL AT ONCE. SO YOU'D BE, LIKE, SEVEN, EIGHT YEARS OUT,
2 NINE YEARS OUT BEFORE YOU GET TO THE PLACE WHERE YOU HAVE THE
3 PROPER THING.

4 THAT'S WHY I THINK THE CONSTRUCTION, IN MY MIND,
5 WHILE CERTAINLY IT SHOULD BE A PART OF ANY PLAN AND SHOULD BE
6 PART OF A PLAN, IF YOU TRY TO RELY ON THAT ALONE, YOU ARE
7 PROBABLY NEVER GOING TO GET THERE, BECAUSE THEY HAVEN'T BEEN
8 ABLE TO GET THERE OVER THE LAST 20 YEARS.

9 JUDGE KARLTON: SORRY TO HAVE INTERRUPTED, COUNSEL.

10 MR. MITCHELL: THANK YOU.

11 BY MR. MITCHELL

12 Q REGARDING THE DEATH RATES THAT YOU AND MR. MELLO SPOKE
13 ABOUT, WOULD YOU AGREE THAT THE MAJORITY OF DEATHS RESULT FROM
14 CONDITIONS PRESENT AT THE TIME OF INCARCERATION IN A PRISON
15 SYSTEM?

16 A WOULD I AGREE THAT THE MAJORITY OF DEATHS RESULT FROM THE
17 CONDITIONS IN THE PRISON SYSTEM?

18 Q NO. CONDITIONS THAT ARE PRESENT IN THE INDIVIDUAL INMATE AT
19 THE TIME OF INCARCERATION.

20 A WHERE ARE WE TALKING ABOUT?

21 Q THEY COME INTO THE PRISON WITH THEIR DISEASES.

22 A WELL, MANY INMATES DO COME IN -- INMATES ARE NOT AS A RULE A
23 HEALTHY PART OF OUR POPULATION. THEY HAVE BAD LIFESTYLES. THEY
24 GET INVOLVED IN A LOT OF THINGS THEY SHOULDN'T GET INVOLVED IN,
25 WHICH DOES DRIVE SOME OF THE HEALTHCARE ISSUES AND PROBLEMS THAT

1 WE SEE IN THE SYSTEM, CERTAINLY.

2 **Q** MANY OF THE SERIOUS CONTAGIOUS DISEASES THAT ARE PRESENT IN
3 THE PRISONS WERE ACQUIRED BY THE INMATES DUE TO IV DRUG USE AND
4 UNSAFE SEX PRACTICES WHILE THEY WERE IN THE COMMUNITY, CORRECT?

5 **A** A LOT OF THE PEOPLE WHO COME IN, THAT'S WHAT WE SEE. WE SEE
6 A LOT OF IT BEING BROUGHT INTO THE SYSTEM FROM PEOPLE HAVING THE
7 UNSAFE SEX PRACTICES AND IV DRUG USE, THAT'S CORRECT.

8 **Q** FOR A GOOD MAJORITY OF THE INMATES COMING INTO THE PRISON
9 SYSTEM, CALIFORNIA INCLUDED, THE FIRST INTENSIVE MEDICAL CARE
10 THEY ARE GETTING IS WHEN THEY COME INTO PRISON, CORRECT?

11 **A** I CAN SPEAK FOR MY STATE, AND THAT'S TRUE FOR MANY OF THE
12 INMATES WHO COME IN. THEY COME FROM A LOT OF OUR INNER CITIES
13 AND THEY HAVEN'T SEEN DOCTORS OR DENTISTS OR ANYTHING ELSE
14 BEFORE THEY'VE COME TO US, THAT'S CORRECT.

15 **Q** DO YOU AGREE THAT PRISONS ARE NOT INCUBATORS FOR DISEASE?

16 **A** I PERSONALLY DO NOT BELIEVE THAT PRISONS ARE INCUBATORS FOR
17 DISEASE. THEY COULD BE IF YOUR POPULATION DENSITIES GET SO
18 INTENSE. LIKE, FOR INSTANCE, IF YOU HAVE A GYMNASIUM THAT YOU
19 TRIPLE BUNK AND PUT HUNDREDS AND HUNDREDS OF PEOPLE IN A CLOSED,
20 DENSE AREA, THAT COULD CERTAINLY SERVE AS SOMEWHAT OF AN
21 INCUBATOR FOR IT, BUT, IN GENERAL, I DON'T BELIEVE THAT PRISONS
22 ARE AN INCUBATOR FOR DISEASE, NO.

23 **Q** WOULD YOU AGREE THAT IF PRISONS INCUBATED AND SPREAD
24 DISEASE, THERE WOULD BE EVIDENCE OF TRANSMISSION TO STAFF AND
25 GENERAL INCREASES IN INFECTIONS AMONG INMATES NOT PREVIOUSLY

1 OBSERVED?

2 **A** WHEN YOU SAY "TRANSMISSIONS TO STAFF," I THINK YOU HAVE TO
3 BE CAREFUL, BECAUSE YOU ARE TALKING ABOUT DISEASES THAT USUALLY
4 CAN ONLY BE TRANSMITTED, AT LEAST THE ONES YOU MENTIONED, BY IV
5 DRUG USE OR UNSAFE SEX PRACTICES. SO IF YOU HAVE THOSE KINDS OF
6 DISEASES, IT'S UNLIKELY YOU ARE GOING TO PASS THAT ON TO THE
7 STAFF.

8 **Q** IN FACT, YOU ARE NOT AWARE THAT THAT PHENOMENON HAS BEEN
9 OBSERVED IN ANY PRISONS, PENNSYLVANIA, CALIFORNIA, AND THERE
10 HAVEN'T BEEN ANY STUDIES --

11 **A** ON WHAT?

12 **Q** ON WHETHER OR NOT PRISONS CONTRIBUTE TO THE SPREAD OF THOSE
13 TYPES OF CONTAGIOUS DISEASES.

14 **A** THE STUDIES THAT ARE OUT THERE DO NOT CONFIRM THAT'S THE
15 CASE, AND, IN FACT, THAT'S SOMETHING THAT -- WE WERE LOOKING AT
16 DOING SOME PRE, POST TESTING TO LOOK INTO THAT VERY MATTER IN
17 OUR STATE BECAUSE WE DON'T BELIEVE IT IS.

18 **Q** JUST IN CLOSING, DO YOU KNOW HOW MUCH PENNSYLVANIA SPENDS
19 PER INMATE ON HEALTHCARE?

20 **A** WE SPEND ABOUT \$4,400 A YEAR. THE LAST YEAR WE DID I THINK
21 WAS 44-SOMETHING, IN OUR LAST BUDGET REPORT FOR EACH INMATE.

22 **Q** ARE YOU AWARE THAT CALIFORNIA IS CURRENTLY SPENDING OVER
23 13,000 PER INMATE?

24 **A** I'M NOT AWARE OF PRECISELY WHAT CALIFORNIA SPENDS ON THEIR
25 INMATES.

1 **MR. MITCHELL:** THANK YOU, DR. BEARD.

2 **JUDGE HENDERSON:** COUNSEL, REDIRECT?

3 **REDIRECT EXAMINATION BY MR. SPECTER**

4 **BY MR. SPECTER**

5 **Q** MR. MITCHELL ASKED YOU QUESTIONS ABOUT THE -- ABOUT WHETHER
6 THE STAFF IN CALIFORNIA WANT TO DO THE RIGHT THING AND PROVIDE
7 THE CARE AND CUSTODY THAT THEIR PRISONERS ARE CONSTITUTIONALLY
8 ENTITLED TO IN PRISONS; DO YOU RECALL THAT DISCUSSION?

9 **A** YES.

10 **Q** DO YOU BELIEVE UNDER THE CURRENT OVERCROWDED CONDITIONS THEY
11 CAN DO THE RIGHT THING?

12 **A** NO.

13 **MR. SPECTER:** NO FURTHER QUESTIONS.

14 **JUDGE HENDERSON:** OKAY. THAT LOOKS LIKE --

15 **JUDGE KARLTON:** LET'S EXCUSE THE WITNESS FIRST.

16 **JUDGE HENDERSON:** THAT'S WHAT I WAS GOING TO SAY. IT
17 LOOKS LIKE WE'RE FINISHED WITH THE TESTIMONY. THANK YOU VERY
18 MUCH FOR APPEARING, MR. BEARD. WE WILL NOW TAKE A 15-MINUTE
19 RECESS.

20 (RECESS TAKEN.)

21 **JUDGE HENDERSON:** OKAY. YOU MAY CALL YOUR NEXT
22 WITNESS WHEN YOU ARE READY, COUNSEL.

23 **MR. SPECTER:** THANK YOU, YOUR HONOR. PLAINTIFFS CALL
24 JOSEPH LEHMAN.

25 **JUDGE HENDERSON:** STEP FORWARD AND BE SWORN IN, SIR.

1 **JOSEPH D. LEHMAN,**
2 HAVING BEEN CALLED AS A WITNESS BY THE PLAINTIFFS WAS FIRST
3 DULY SWORN AND EXAMINED AS FOLLOWS:

4 **THE WITNESS:** I DO.

5 **THE CLERK:** SPELL AND STATE YOUR FULL NAME FOR THE
6 RECORD.

7 **THE WITNESS:** JOSEPH D. LEHMAN, L-E-H-M-A-N.

8 **DIRECT EXAMINATION BY MR. SPECTER**

9 **BY MR. SPECTER**

10 **Q** GOOD MORNING, MR. LEHMAN.

11 **A** GOOD MORNING.

12 **Q** MR. LEHMAN, WHAT'S YOUR CURRENT OCCUPATION?

13 **A** I AM THE ADMINISTRATOR OF A PARISH, A CHURCH, IN LAKEWOOD,
14 WASHINGTON.

15 **Q** ARE YOU IN ANY SORT OF TRAINING PROGRAM?

16 **A** YES, I AM, IN THE DEACON FORMATION TRAINING PROGRAM, WHICH
17 IS AN ORDAINED MINISTER'S PROGRAM.

18 **Q** BEFORE THAT, YOU WORKED IN CORRECTIONS, DID YOU NOT?

19 **A** YES, I DID.

20 **Q** AND FOR HOW MANY YEARS?

21 **A** APPROXIMATELY 35 YEARS.

22 **Q** AND DURING THAT TIME, WERE YOU IN CHARGE OF ANY STATES'
23 PRISONS SYSTEMS?

24 **A** YES, I WAS.

25 **Q** WHICH ONES?

1 **A** PENNSYLVANIA, AND MAINE, AND THEN THE STATE OF WASHINGTON.

2 **Q** AND WHICH STATE DID YOU SPEND THE MAJORITY OF YOUR TIME IN
3 CORRECTIONS?

4 **A** IN THE STATE OF WASHINGTON.

5 **Q** HOW MANY YEARS DID YOU WORK THERE?

6 **A** ABOUT 29 YEARS.

7 **Q** AND COULD YOU BRIEFLY DESCRIBE WHAT POSITIONS YOU HELD, JUST
8 BRIEFLY, PLEASE?

9 **A** I WORKED IN ALL PARTS OF THE CORRECTIONS DEPARTMENT,
10 INCLUDING THE COMMUNITY SIDE, THE PRISON SIDE, WORK RELEASE, AND
11 IN MANAGEMENT OF THE SYSTEM.

12 **Q** AND DURING YOUR TIME IN WASHINGTON, WERE YOU RESPONSIBLE FOR
13 THE OPERATION AND/OR MANAGEMENT OF ANY OF THE PRISONS?

14 **A** YES, I WAS.

15 **Q** HOW SO?

16 **A** I WAS, IN FACT, WHAT WE REFER TO AS A COMMAND MANAGER OF A
17 COMPLEX OF THREE PRISONS IN MONROE, WASHINGTON, AND SUBSEQUENTLY
18 I WAS THE DIRECTOR OF DIVISION OF PRISONS.

19 **Q** AND COULD YOU DESCRIBE THE CHRONOLOGY OF -- FIRST, YOU WERE
20 IN WASHINGTON, THEN WHAT STATE DID YOU GO TO IN WHAT CAPACITY?

21 **A** OF COURSE, FIRST I WAS IN WASHINGTON UNTIL ABOUT 1990. I
22 WENT TO PENNSYLVANIA TO HEAD UP THE PENNSYLVANIA DEPARTMENT OF
23 CORRECTIONS. SUBSEQUENTLY, TO THE STATE OF MAINE TO HEAD UP
24 THEIR DEPARTMENT. AND, ULTIMATELY, BACK TO WASHINGTON TO HEAD
25 UP THE DEPARTMENT OF CORRECTIONS IN WASHINGTON STATE.

1 Q I SEE. WHEN YOU BECAME THE SECRETARY OF CORRECTIONS IN
2 PENNSYLVANIA, DID YOU REORGANIZE THAT DEPARTMENT IN ANY WAY THAT
3 AFFECTS THE DELIVERY OF HEALTHCARE?

4 A YES, I DID. WHEN I CAME INTO THE DEPARTMENT OF CORRECTIONS,
5 THERE WAS NOT A CENTRALIZED AUTHORITY. THERE WAS NOT A
6 CENTRALIZED AUTHORITY IN RELATION TO HEALTHCARE, SO I CREATED A
7 DIRECTOR OF HEALTHCARE SERVICES.

8 Q AND DID YOU DO SOMETHING SIMILAR IN WASHINGTON STATE?

9 A YES, I DID. THE SAME SET OF CIRCUMSTANCES. HEALTHCARE
10 EXISTED WITHIN THE PRISON SYSTEM, BUT THERE WAS NO COORDINATION
11 OF THAT HEALTHCARE, NO MEANS OF ENSURING CONTINUITY, SO I
12 CREATED A DIRECTOR OF HEALTHCARE SERVICES IN THE STATE OF
13 WASHINGTON.

14 Q COULD YOU MAYBE -- I'M HAVING TROUBLE HEARING YOU, AND IT'S
15 NOT YOU; IT'S THE ACOUSTICS IN THE ROOM. SO MAYBE YOU COULD
16 JUST STAY AWAY FROM THE MIC JUST A LITTLE BIT.

17 WHEN YOU CREATED THOSE DIVISIONS, DID YOU STILL
18 MAINTAIN ANY RESPONSIBILITY FOR HEALTHCARE?

19 A I WAS CERTAINLY RESPONSIBLE FOR THE PROMULGATION OF THE
20 POLICIES AND PROCEDURES, ULTIMATELY FOR THE POLICIES AND
21 PROCEDURES OF THE HEALTHCARE PROGRAM, AS WELL AS FOR THE
22 OVERSIGHT OF THE DIRECTOR OF HEALTHCARE SERVICES.

23 MS. JOHNSON: YOUR HONORS, EXCUSE ME. I COULDN'T
24 UNDERSTAND ANY OF THAT ANSWER.

25 JUDGE KARLTON: I DON'T KNOW WHAT WE CAN DO. YOU

1 WILL SEE THE JUDGES ARE NOW WEARING WHATEVER THESE THINGS ARE.

2 JUDGE HENDERSON: HEADPHONES.

3 JUDGE KARLTON: I DON'T KNOW WHAT WE CAN DO ABOUT IT.

4 MR. SPECTER: I JUST ASKED THE WITNESS IF YOU COULD
5 MOVE A LITTLE FARTHER BACK AND SPEAK A LITTLE LOUDER, AND MAYBE
6 THAT WILL WORK.

7 JUDGE REINHARDT: ARE YOU HAVING TROUBLE GENERALLY
8 HEARING?

9 MR. SPECTER: THE LAST WITNESS I HEARD FINE. THIS
10 ONE IS A LITTLE BIT MORE DIFFICULT. MAYBE I COULD BORROW YOUR
11 HEADPHONES.

12 JUDGE REINHARDT: YOU OUGHT TO GET SOME. THEY ARE
13 REALLY WONDERFUL.

14 JUDGE KARLTON: THEY ARE WONDERFUL. YESTERDAY I
15 COULDN'T HEAR ANYTHING. I HOPE YOU DIDN'T HAVE ANYTHING
16 IMPORTANT --

17 MS. JOHNSON: COULD WE ACTUALLY HAVE THAT ANSWER
18 BACK? I LITERALLY COULD NOT HEAR IT.

19 JUDGE KARLTON: "I WAS CERTAINLY RESPONSIBLE FOR THE
20 PROMULGATION OF THE POLICIES AND PROCEDURES, ULTIMATELY...OF THE
21 HEALTHCARE PROGRAM AS WELL AS OVERSIGHT OF THE DIRECTOR OF
22 HEALTH SERVICES."

23 BY MR. SPECTER

24 Q MR. LEHMAN, WHAT WERE THE CIRCUMSTANCES THAT LED TO YOUR
25 APPOINTMENT AS THE SECRETARY OF CORRECTIONS IN PENNSYLVANIA?

1 **A** THERE WERE TWO -- WELL, THERE WERE APPROXIMATELY THREE
2 RIOTS. A RIOT, A PARTICULARLY DEVASTATING RIOT, THAT OCCURRED
3 IN THE CAMP HILL FACILITY IN PENNSYLVANIA, WHICH WAS DESTROYED,
4 GOOD PARTS OF IT DESTROYED BY FIRE. THERE WERE 50 HOSTAGES
5 TAKEN. AND I REPLACED THE COMMISSIONER AT THAT TIME.

6 **Q** I SEE. AND THE PRISONS IN PENNSYLVANIA WERE OVERCROWDED AT
7 THE TIME, CORRECT?

8 **A** THE PRISONS WERE OVERCROWDED, YES.

9 **Q** A LAWSUIT WAS FILED IN PENNSYLVANIA, I BELIEVE IT IS THE
10 AUSTIN LAWSUIT, WHICH CONCERNED INADEQUATE HEALTHCARE AS WELL AS
11 OVERCROWDING; IS THAT RIGHT?

12 **A** THAT IS CORRECT. TWO WEEKS AFTER TAKING THE POSITION, I
13 RECEIVED A LETTER FROM AN ATTORNEY AT THE ACLU INDICATING THEIR
14 INTENTION TO SUE THE DEPARTMENT.

15 **Q** AND DID YOU EVENTUALLY -- AND YOU WERE ONE OF THE NAMED
16 DEFENDANTS IN THAT LAWSUIT?

17 **A** YES.

18 **Q** AND DID YOU RESOLVE THAT LAWSUIT SHORT OF A TRIAL?

19 **A** WE -- ACTUALLY, IT WAS RESOLVED DURING THE TRIAL.

20 **Q** UH-HUH.

21 **A** I -- INITIALLY, WHEN I HAD WORD OF THE DEFICIENCIES RELATIVE
22 TO THE HEALTHCARE, I HIRED TWO EXPERT WITNESSES WHO WERE EXPERTS
23 IN THE FIELD OF HEALTHCARE, INCLUDING MENTAL HEALTH; HAD THEM
24 COME TO THE DEPARTMENT OF CORRECTIONS AND DO ASSESSMENTS, AND
25 THEN MAKE SOME RECOMMENDATIONS ABOUT ACTIONS TO BE TAKEN, WHICH

1 WE DID.

2 **Q** I SEE. AND IN YOUR EXPERIENCE, DID YOU FIND THAT THE
3 OVERCROWDING IN PENNSYLVANIA WAS RELATED IN ANY WAY TO THE
4 INADEQUATE HEALTHCARE?

5 **A** ABSOLUTELY. IT WAS A SYSTEM WHERE THE -- THEY WERE
6 OVERWHELMING DEMAND WITH THE NEED TO PROVIDE SERVICES AND UNABLE
7 TO PROVIDE IT.

8 **Q** COULD YOU MOVE BACK A LITTLE BIT AND TALK A LITTLE LOUDER?
9 I'M STILL HAVING A LITTLE TROUBLE --

10 **A** I'LL WORK AT IT.

11 **Q** OKAY. YOU WERE ABOUT 150 PERCENT OVERCROWDED AT THAT TIME
12 IN PENNSYLVANIA?

13 **A** YES, OVER 150.

14 **Q** THAT'S GREAT.

15 SO WHAT WAS THE FIRST ACTION THAT YOU TOOK TO --
16 WELL, I SHOULD BACK UP.

17 GIVEN THAT OVERCROWDING WAS PRESENTING THESE
18 PROBLEMS, DID YOU TAKE ANY ACTIONS TO REDUCE THE NUMBER OF
19 PRISONERS IN YOUR DEPARTMENT?

20 **A** THE FIRST THING I DID IS I GOT AHOLD OF THE FEDERAL BUREAU
21 OF PRISONS, ASKED FOR THEIR ASSISTANCE AND SHIPPED APPROXIMATELY
22 800 INMATES OUT, OUT OF THE SYSTEM, TO THE FEDERAL SYSTEM.

23 **Q** AND DID YOU TRANSFER THOSE PRISONERS TO THE FEDERAL SYSTEM
24 BECAUSE ALL THE GYMS AND DAYROOMS AND OTHER PROGRAMS AND
25 NON-HOUSING SPACE WAS FULL?

1 **A** NO, WE DID NOT, IN FACT, USE GYMS OR ACTIVITY SPACE FOR
2 HOUSING.

3 **Q** OKAY. LET ME ASK YOU ABOUT ANOTHER TECHNIQUE THAT I'VE
4 HEARD OF BUT NEVER -- WELL, LET ME ASK YOU ABOUT A PRACTICE
5 CALLED HOT BUNKING. IN YOUR EXPERIENCE --

6 **JUDGE KARLTON:** BEFORE YOU GO TO HOT BUNKING, ON WHAT
7 BASIS, IF YOU CAN TELL ME, WAS THE FEDERAL SYSTEM ABLE TO ACCEPT
8 800 STATE PRISONERS?

9 **THE WITNESS:** THE FEDERAL SYSTEM, OF COURSE, HAS A
10 MUCH LARGER SYSTEM THAN PENNSYLVANIA, OR ANY OTHER STATE, AND
11 THEY WERE WILLING TO, IN FACT, DO THAT AND HAD THE ROOM TO DO
12 IT.

13 **JUDGE KARLTON:** SO YOU CALLED THEM AND SAID, GEE,
14 GUYS, YOU GOT SPACE FOR 800 PEOPLE? AND THEY SAY, SURE, JUST
15 SEND THEM ALONG?

16 **THE WITNESS:** IN ACTUALITY, I CALLED THE DIRECTOR,
17 KATHY HAWK, AT THE TIME, ASKED FOR ASSISTANCE, INDICATED THE
18 DIFFICULTIES WE WERE HAVING IN PENNSYLVANIA, INCLUDING THE RIOTS
19 THAT HAD OCCURRED, AND SHE SAID THAT THEY COULD, AND THEY DID.

20 **JUDGE KARLTON:** YOU PAID THEM FOR THAT?

21 **THE WITNESS:** YES.

22 **JUDGE KARLTON:** DO YOU KNOW WHETHER THE FEDERAL
23 SYSTEM PRESENTLY -- I MEAN, AS MANY PEOPLE AS I SEND TO PRISON
24 EVERY DAY, I THINK THE ANSWER IS NO, BUT DO YOU KNOW WHETHER THE
25 FEDERAL SYSTEM CAN ACCEPT PRISONERS TODAY?

1 **THE WITNESS:** I DO NOT KNOW, YOUR HONOR.

2 **BY MR. SPECTER**

3 **Q** IN YOUR OPINION, COULD YOU HAVE PROVIDED -- WELL, YOU
4 EVENTUALLY RESOLVED THE LAWSUIT AND WERE ABLE TO PROVIDE WHAT
5 YOU BELIEVE TO BE CONSTITUTIONALLY ADEQUATE HEALTHCARE; IS THAT
6 RIGHT?

7 **A** THAT'S CORRECT.

8 **Q** AND COULD YOU HAVE PROVIDED THAT ADEQUATE CARE WITHOUT
9 REDUCING THE PRISON POPULATION?

10 **A** DID I PROVIDE THE CARE WITHOUT --

11 **Q** COULD YOU HAVE DONE THAT WITHOUT --

12 **A** NO.

13 **Q** OKAY. NOW, YOU'RE FAMILIAR WITH THE TERM "HOT BUNKING"?

14 **A** YES, I AM.

15 **Q** IT'S BEEN DESCRIBED BEFORE BY MR. -- DR. BEARD, SO I WON'T
16 BOTHER ASKING YOU WHAT IT MEANS AGAIN. BUT HAVE YOU EVER HEARD
17 OF IT BEING DONE IN PRISONS?

18 **A** NO, I HAVE NOT.

19 **Q** AND IT WAS NEVER DONE IN ANY OF THE SYSTEMS, INCLUDING
20 PENNSYLVANIA?

21 **A** IT HAS NEVER BEEN DONE IN ANY SYSTEM THAT I RAN OR AM
22 FAMILIAR WITH.

23 **Q** OKAY. THE STATE OF CALIFORNIA, DID THEY ASK YOU TO
24 PARTICIPATE IN WHAT IS COMMONLY REFERRED TO AS THE EXPERT PANEL?

25 **A** YES, I WAS ASKED TO PARTICIPATE IN THAT ENDEAVOR.

1 Q AND YOU WERE ASKED BY THE STATE OF CALIFORNIA, CORRECT?

2 A THAT'S CORRECT.

3 Q AND THAT PANEL WAS DESIGNED TO PROVIDE RECOMMENDATIONS TO
4 THE STATE FOR IMPROVING PROGRAMMING WITHIN THE DEPARTMENT OF
5 CORRECTIONS AND REHABILITATION; IS THAT CORRECT?

6 A THAT'S SPECIFICALLY REHABILITATIVE PROGRAMMING.

7 Q RIGHT. WHEN WAS THAT?

8 A IT WAS -- THE PANEL WAS PULLED TOGETHER IN DECEMBER OF 2006.
9 IT REALLY ACTUALLY OPERATED IN 2007.

10 Q OKAY. AFTER THAT PANEL COMPLETED ITS WORK, DID THE STATE
11 ASK YOU AGAIN TO PERFORM ANY OTHER SERVICE?

12 A I WAS ASKED TO PARTICIPATE ALONG WITH A COUPLE OTHER
13 INDIVIDUALS, ON WHAT THEY REFERRED TO AS A STRIKE TEAM,
14 GOVERNOR'S STRIKE TEAM, TO ASSIST IN THE IMPLEMENTATION OF THE
15 RECOMMENDATIONS.

16 Q DURING -- WHAT WAS THE FIRST RECOMMENDATION OF THE EXPERT
17 PANEL?

18 A REDUCE OVERCROWDING.

19 Q OKAY. AND WAS THAT BECAUSE THE PANEL BELIEVED THAT WITHOUT
20 A REDUCTION IN OVERCROWDING, IT WOULD BE DIFFICULT, IF NOT
21 IMPOSSIBLE, TO PROVIDE THE PROGRAMMING THE PANEL ALSO
22 RECOMMENDED?

23 A THAT WAS QUITE EVIDENT. IT WAS A PREREQUISITE TO DOING
24 ANYTHING ELSE.

25 Q AND THE SAME LOGIC APPLIES TO PROVIDING MANY HEALTHCARE

1 SERVICES, DOES IT NOT?

2 **A** THAT IS CORRECT.

3 **Q** AND IN THE COURSE OF THIS WORK ON REHABILITATIVE
4 PROGRAMMING, YOU BECAME AWARE OF THE OVERCROWDING IN
5 CALIFORNIA'S PRISONS; IS THAT RIGHT?

6 **A** YES, I DID.

7 **Q** OKAY. AND YOU TOURED SOME OF THE PRISONS IN CONNECTION WITH
8 THAT WORK?

9 **A** IN CONNECTION WITH THE EXPERT PANEL AND THE STRIKE TEAM,
10 YES.

11 **Q** OKAY. WHAT WAS YOUR IMPRESSION FROM THE TOURS AS IT RELATES
12 TO OVERCROWDING?

13 **A** IT WAS IMMEDIATELY EVIDENT, GIVEN NOT ONLY THE TESTIMONY OF
14 THE STAFF THAT WERE PRESENT, BUT THE FACT THAT WE WERE OBSERVING
15 OTHERWISE PROGRAM SPACE, SUCH AS EDUCATION SPACE, FILLED WITH
16 INMATES IN TERMS OF DORMITORIES, AS WELL AS RECREATIONS, GYMS
17 FILLED WITH BEDS AND BUNK BEDS.

18 **Q** AND DID YOU TALK TO ANY STAFF DURING YOUR TOURS?

19 **A** YES, WE HAD CONVERSATIONS WITH THE STAFF, EXTERNAL CUSTODY
20 STAFF, WITHIN THE CELL BLOCKS.

21 **Q** AND DID THEY TELL YOU ANYTHING THAT RELATES TO OVERCROWDING?

22 **A** THEY INDICATED THAT IT WAS A VERY DIFFICULT SITUATION TO BE
23 IN. THEY CERTAINLY RECOGNIZED, AS WE DID, THE OVERCROWDING AND
24 TRIPLE BUNKING AND INDICATED IT WAS A DIFFICULT -- IT WAS
25 DIFFICULT TO OPERATE IN THOSE CIRCUMSTANCES.

1 Q OKAY. AND IN YOUR EXPERIENCE -- YOU KNOW THAT CALIFORNIA'S
2 ABOUT 195, 196 PERCENT OF DESIGN CAPACITY, CORRECT?

3 A YES, I DO.

4 Q IN YOUR EXPERIENCE, HAVE YOU EVER KNOWN OF A CORRECTIONAL
5 SYSTEM THAT WAS THIS HIGH?

6 A NEVER.

7 Q OKAY. IN YOUR EXPERIENCE, HOW DOES OVERCROWDING AFFECT THE
8 DELIVERY OF HEALTHCARE?

9 A WELL, INITIALLY, OVERCROWDING IN AND OF ITSELF CONTRIBUTES
10 TO THE DIFFICULTIES OF HEALTHCARE DELIVERY BY VIRTUE OF THE FACT
11 THAT IT INCREASES THE INCIDENCE OF ILLNESSES, INFECTIOUS
12 DISEASE. IT INCREASES THE AMOUNT OF TENSION, THE LEVEL OF
13 VIOLENCE, CERTAINLY REQUIRING RESPONSES, BOTH IN TERMS OF
14 CUSTODIAL AND MEDICAL.

15 IT IS A SITUATION WHERE THE DEMAND SIGNIFICANTLY
16 OUTSTRETCHES THE ABILITY TO RESPOND TO THE HEALTHCARE NEEDS,
17 BOTH IN TERMS OF TIMING AND ACTUAL SERVICE.

18 Q AND YOU'RE AWARE THAT THE COURTS IN THE TWO CASES THAT WE'RE
19 PRESENT -- OF THIS PRESENT PROCEEDING HAVE EITHER DECLARED OR
20 THERE'S BEEN A STIPULATION TO THE FACT THAT THEY'RE
21 UNCONSTITUTIONAL; IS THAT CORRECT?

22 A YES, I AM.

23 Q THE DELIVERY OF CARE IS NOT ADEQUATE, CORRECT?

24 A YES.

25 Q BASED ON THE INFORMATION YOU RECEIVED ABOUT CALIFORNIA'S

1 PRISON SYSTEM, WHAT'S YOUR OPINION ABOUT WHETHER OVERCROWDING IS
2 THE PRIMARY CAUSE OF THE UNCONSTITUTIONAL HEALTHCARE?

3 **A** I THINK THAT IS THE PRIMARY CAUSE OF THE INABILITY TO
4 PROVIDE THE SERVICES. IT'S OVERWHELMING THE SYSTEM BOTH IN
5 TERMS OF SHEER NUMBERS, IN TERMS OF THE SPACE AVAILABLE, IN
6 TERMS OF PROVIDING HEALTHCARE.

7 MY UNDERSTANDING, FOR EXAMPLE, IS YOU COULD HAVE AN
8 INSTITUTION AT 200 PERCENT CAPACITY, BUT THE HEALTHCARE -- THE
9 PHYSICAL SPACE PROVIDED IS BASED ON THE HUNDRED PERCENT
10 POPULATION AS OPPOSED TO 200 PERCENT. SO IT'S SIMPLY NOT ABLE
11 TO PROVIDE THE SERVICES THAT IS REQUIRED.

12 **Q** OKAY. YOU ARE AWARE THAT THE RECEIVER -- JUDGE HENDERSON
13 APPOINTED A RECEIVER TO IMPROVE THE MEDICAL CARE SYSTEM AND THEN
14 ACTUALLY TO RUN THE MEDICAL CARE SYSTEM IN CALIFORNIA?

15 **A** YES, I AM.

16 **Q** WHAT DO YOU SAY TO THE ARGUMENT THAT THE COURT SHOULD NOT
17 REDUCE THE POPULATION BECAUSE THERE'S THIS RECEIVER WHO'S GOT
18 AUTHORITY TO MAKE IMPROVEMENTS?

19 **A** I THINK YOU HAVE TO ADDRESS THE OVERCROWDING. IT IS SO
20 OVERWHELMING, IT'S OVERWHELMING IN THE SENSE OF NOT -- OF NOT
21 BEING ABLE TO MEET THE IMMEDIATE DEMANDS, BUT IT'S OVERWHELMING,
22 EXASPERATING THE PROBLEM IN THE FIRST PLACE. YOU CANNOT
23 PROVIDE -- IN MY OPINION, YOU CANNOT PROVIDE ADEQUATE HEALTHCARE
24 AND MENTAL HEALTHCARE UNDER THE CURRENT SITUATION OF CROWDING
25 WITHIN THE STATE OF CALIFORNIA.

1 Q IS THAT TRUE EVEN THOUGH THE RECEIVER HAS BEEN ABLE TO HIRE
2 ADDITIONAL BOTH CUSTODIAL AND CLINICAL STAFF?

3 A I UNDERSTAND THAT, BUT THE PROBLEM STILL EXISTS BECAUSE
4 WHERE'S THIS SPACE THAT YOU ARE GOING TO PROVIDE THOSE SERVICES
5 IN? I MEAN, WHERE ARE THE PROVIDERS GOING TO WORK AND HOW --
6 AND, BY THE WAY, THE ACTUAL REPORTS INDICATE THEY ARE NOT ABLE
7 TO PROVIDE THE SERVICES.

8 Q SO WOULD THAT -- WOULD IT BE FAIR TO SAY THAT UNLESS YOU
9 HAVE WHAT WE'VE REFERRED TO AS THE INFRASTRUCTURE TO ALLOW THE
10 CARE TO BE PROVIDED, JUST HIRING STAFF ITSELF ISN'T GOING TO
11 WORK?

12 A IT'S NOT GOING TO -- IT'S NOT GOING TO, GIVEN THE
13 OVERCROWDING.

14 Q NOW, WHEN YOU WERE THE SECRETARY OF THE DEPARTMENT OF
15 CORRECTIONS IN PENNSYLVANIA, THE POPULATION IN THE PRISONS
16 WAS -- IT WAS OVERCROWDED, RIGHT?

17 A ABSOLUTELY.

18 Q DID YOU INFORM THE GOVERNOR OF YOUR STATE, OF THAT STATE, OF
19 THAT PROBLEM?

20 A YES, I DID.

21 Q AND WHAT WAS HIS RESPONSE?

22 A HIS RESPONSE WAS, WELL, WE HAVE TO, IN FACT, ENGAGE IN
23 ACTIVITIES TO, IN FACT, REDUCE THAT POPULATION.

24 Q NOW, IF YOU WERE THE SECRETARY OF CORRECTIONS FOR THE
25 DEPARTMENT OF CALIFORNIA, WHAT WOULD BE THE FIRST THING YOU'D

1 SAY TO THE GOVERNOR?

2 **A** I'D SAY TO THE GOVERNOR, YOU ARE NOT GOING TO PROVIDE
3 ADEQUATE SERVICES TO THIS POPULATION WITHOUT REDUCING THE
4 POPULATION.

5 **Q** OKAY. NOW, TWO LAST QUESTIONS FOR YOU.

6 IN YOUR -- IS IT 35 YEARS OF EXPERIENCE?

7 **A** YES.

8 **Q** -- THIRTY-FIVE YEARS OF EXPERIENCE, HOW MANY TIMES HAVE YOU
9 TESTIFIED ON BEHALF OF PRISONERS?

10 **A** THIS IS THE FIRST.

11 **Q** AND WHY ARE YOU DOING THIS TODAY?

12 **A** I THINK THE SITUATION IN CALIFORNIA IS SO EGREGIOUS -- I
13 MEAN, I'VE WORKED IN SYSTEMS WHERE THERE WAS OVERCROWDING, A
14 LEVEL OF OVERCROWDING. WASHINGTON STATE SYSTEM WAS 150 PERCENT
15 WHEN I TOOK OVER AS SECRETARY. IT WAS 107 WHEN I LEFT. THE
16 PENNSYLVANIA SYSTEM WAS, IN FACT, OVER 150 PERCENT OVERCROWDED.
17 IT WAS DOWN TO OPERATING CAPACITY WHEN I LEFT. YOU HAVE TO DEAL
18 WITH THE OVERCROWDING.

19 **Q** IT'S AS SIMPLE AS THAT?

20 **A** YES.

21 **MR. SPECTER:** THANK YOU. NO FURTHER QUESTIONS.

22 **JUDGE HENDERSON:** THANK YOU, COUNSEL.

23 DOES CCPOA COUNSEL HAVE ANY QUESTIONS OF THIS
24 WITNESS?

25 **MS. LEONARD:** NO FURTHER QUESTIONS, YOUR HONOR.

1 **JUDGE HENDERSON:** OKAY. CROSS-EXAMINATION.

2 **CROSS-EXAMINATION BY MS. JOHNSON**

3 **MS. JOHNSON:** GOOD MORNING. ANNE JOHNSON ON BEHALF
4 OF THE DEFENDANTS.

5 **BY MS. JOHNSON**

6 **Q** GOOD MORNING, MR. LEHMAN.

7 **A** GOOD MORNING.

8 **Q** MR. LEHMAN, YOU DO NOT HAVE ANY ADVANCED DEGREES OTHER THAN
9 YOUR MASTER'S DEGREE, WITH AN EMPHASIS IN CRIMINAL JUSTICE, DO
10 YOU?

11 **A** THAT'S CORRECT.

12 **Q** YOU DO NOT HAVE ANY DEGREES OR TRAINING IN THE MEDICAL
13 FIELD, CORRECT?

14 **A** NO, I DO NOT.

15 **Q** AND YOU DON'T HAVE ANY DEGREES OR TRAINING IN THE MENTAL
16 HEALTH FIELD, CORRECT?

17 **A** NO, I DO NOT.

18 **Q** AND YOU HAVE NEVER BEEN A CLINICIAN WHO PROVIDED EITHER
19 MEDICAL OR MENTAL HEALTH CARE, HAVE YOU?

20 **A** I HAVE NOT.

21 **Q** YOU HAVE NEVER HELD A POSITION SUCH AS HEALTHCARE MANAGER AT
22 A PRISON, HAVE YOU?

23 **A** I HAVE NOT.

24 **Q** YOU HAVE NEVER HELD A POSITION SUCH AS HEAD OF THE HEALTH
25 DEPARTMENT OR A PRISON SYSTEM, HAVE YOU?

1 **A** I HAVE NOT.

2 **Q** WHEN YOU WERE COMMISSIONER OF THE MAINE DEPARTMENT OF
3 CORRECTIONS, THERE WAS A STAFF PERSON BELOW YOU WHO WAS IN
4 CHARGE OF WORKING TO CREATE HEALTHCARE POLICIES AND PROCEDURES,
5 CORRECT?

6 **A** THAT'S CORRECT.

7 **Q** WHEN YOU WERE SECRETARY OF THE PENNSYLVANIA DEPARTMENT OF
8 CORRECTIONS, YOU CREATED A HEALTH DEPARTMENT THAT WAS RUN BY A
9 FORMER HEALTHCARE MANAGER AT ONE OF THE PRISONS, CORRECT?

10 **A** THAT'S CORRECT.

11 **Q** AND WHEN YOU WERE SECRETARY FOR THE WASHINGTON STATE
12 DEPARTMENT OF CORRECTIONS, YOU DID NOT DIRECTLY MANAGE HEALTH
13 SERVICES YOURSELF, DID YOU?

14 **A** NO, I DID NOT.

15 **Q** IN FACT, WHEN YOU WERE SECRETARY FOR THE WASHINGTON STATE
16 DEPARTMENT OF CORRECTIONS, BOTH MEDICAL AND MENTAL HEALTH
17 SERVICES WERE RUN BY A MEDICAL DIRECTOR WHO WAS A PHYSICIAN,
18 CORRECT?

19 **A** THAT'S CORRECT. A POSITION I ESTABLISHED.

20 **Q** THAT WAS MY NEXT QUESTION.

21 THE HEAD OF THE HEALTH DEPARTMENT FOR THE WASHINGTON
22 STATE DEPARTMENT OF CORRECTIONS WAS RESPONSIBLE FOR CREATING THE
23 POLICIES AND PROCEDURES DEALING WITH HEALTHCARE, CORRECT?

24 **A** THAT'S CORRECT.

25 **Q** THE HEAD OF THE HEALTH DEPARTMENT FOR THE WASHINGTON STATE

1 DEPARTMENT OF CORRECTIONS WAS RESPONSIBLE FOR SETTING UP A
2 SYSTEM TO MONITOR COMPLIANCE WITH THOSE POLICIES AND PROCEDURES,
3 CORRECT?

4 **A** THAT'S CORRECT.

5 **Q** AND THE HEAD OF THE HEALTH DEPARTMENT FOR THE WASHINGTON
6 STATE DEPARTMENT OF CORRECTIONS WHILE YOU WERE SECRETARY WAS
7 RESPONSIBLE FOR OVERSEEING AND PARTICIPATING IN THE HIRING OF
8 HEALTHCARE STAFF, CORRECT?

9 **A** THAT'S CORRECT.

10 **Q** YOU WERE NOT QUALIFIED TO SERVE AS HEAD OF THE HEALTH
11 DEPARTMENT OF THE WASHINGTON STATE DEPARTMENT OF CORRECTIONS
12 WHICH YOU HAD CREATED AS SECRETARY, WERE YOU?

13 **A** CLARIFY THAT, PLEASE.

14 **Q** WOULD YOU HAVE HIRED YOURSELF FOR THAT POSITION?

15 **A** NO, I WOULD NOT.

16 **Q** YOU DO NOT RECALL READING ANY STUDIES OR REPORTS OR BEST
17 PRACTICES MANUALS REGARDING PRISON MEDICAL CARE, DO YOU?

18 **A** I CERTAINLY LOOKED AT LITERATURE IN TERMS OF THE AMERICAN
19 CORRECTIONAL ASSOCIATION AND HEALTHCARE ASSOCIATION. I
20 CERTAINLY DID LOOK AT ARTICLES RELATIVE TO THE APPROPRIATE LEVEL
21 OF CARE FOR AN INMATE POPULATION.

22 **Q** WHEN DID YOU LOOK AT THOSE? WAS THAT AFTER YOUR DEPOSITION
23 IN THIS CASE?

24 **A** NO. I LOOKED AT IT WHILE I WAS HEAD OF THE DEPARTMENT OF
25 CORRECTIONS.

1 Q OKAY. WELL, IF I COULD REFRESH YOUR RECOLLECTION, WHEN I
2 ASKED YOU THE SAME QUESTION AT YOUR DEPOSITION YOU SAID YOU
3 DIDN'T RECALL HAVING READ THOSE TYPES OF ARTICLES.

4 A WELL, THE ARTICLES I DID. I'M SORRY.

5 Q SO YOU SERVED ON THE CALIFORNIA DEPARTMENT OF CORRECTIONS
6 AND REHABILITATION EXPERT PANEL ON ADULT OFFENDER AND RECIDIVISM
7 REDUCTION PROGRAM, CORRECT?

8 A YES, I DID.

9 Q AND THAT TITLE KIND OF SPEAKS FOR ITSELF, DOESN'T IT?

10 A I THINK SO.

11 Q SO THAT EXPERT PANEL DID NOT ADDRESS HEALTHCARE ISSUES IN
12 CALIFORNIA'S PRISONS, DID IT?

13 A NO, IT DID NOT.

14 Q IN YOUR REPORT --

15 JUDGE KARLTON: DR. -- I'M SORRY. MR. LEHMAN, DO YOU
16 HAVE TO BE A DOCTOR TO FIGURE OUT THAT YOU GOT TO HAVE THE SPACE
17 TO TREAT PEOPLE IN ORDER TO TREAT THEM EFFECTIVELY?

18 THE WITNESS: NO, YOU DO NOT. IN FACT, IT WOULD BE
19 THE SECRETARY'S RESPONSIBILITY TO ASSURE THERE WERE SUFFICIENT
20 SPACE AND ACCESS TO THOSE SERVICES.

21 BY MS. JOHNSON

22 Q IN YOUR REPORT THAT YOU PREPARED FOR THIS CASE IN AUGUST OF
23 2008, YOU DID NOT REVIEW -- IN PREPARING THAT REPORT, YOU DID
24 NOT REVIEW ANY OF THE PLATA RECEIVER'S REPORTS, CORRECT?

25 A NO, I DID NOT, AT THAT TIME.

1 Q IN PREPARING YOUR REPORT, YOU DID NOT REVIEW ANY OF THE
2 COLEMAN SPECIAL MASTER'S REPORTS, CORRECT?

3 A NO, I DID NOT.

4 Q IN PREPARING YOUR REPORT, YOU DID NOT KNOW WHAT THE SPACE
5 NEEDS WERE FOR MEDICAL OR MENTAL HEALTHCARE IN CALIFORNIA'S
6 PRISONS, DID YOU?

7 A SPECIFICALLY, NO.

8 Q YOU DID NOT TOUR A SINGLE ONE OF CALIFORNIA'S 33 PRISONS FOR
9 THE PURPOSES OF PREPARING YOUR OPINION REGARDING THE IMPACT OF
10 OVERCROWDING ON MEDICAL OR MENTAL HEALTHCARE, DID YOU?

11 A NOT FOR THOSE PURPOSES, NO.

12 Q WHEN YOU PREPARED YOUR REPORT, YOU DID NOT HAVE KNOWLEDGE OF
13 THE STATUS OF MEDICAL CARE DELIVERY IN CALIFORNIA'S PRISONS AS
14 OF AUGUST 2008, DID YOU?

15 A I'M SORRY. REPEAT THE QUESTION.

16 Q WHEN YOU PREPARED YOUR REPORT, YOU DID NOT HAVE KNOWLEDGE OF
17 THE STATUS OF MEDICAL CARE DELIVERY IN CALIFORNIA'S PRISONS AS
18 OF AUGUST 2008, DID YOU?

19 MR. SPECTER: OBJECT AS VAGUE.

20 JUDGE HENDERSON: VAGUE? VAGUENESS?

21 MR. SPECTER: VAGUE.

22 JUDGE HENDERSON: LET ME ASK THE WITNESS. DO YOU
23 UNDERSTAND THE QUESTION?

24 THE WITNESS: REPEAT THE QUESTION.
25

1 **BY MS. JOHNSON**

2 **Q** WHEN YOU PREPARED YOUR REPORT --

3 **A** YES.

4 **Q** -- YOU DID NOT HAVE KNOWLEDGE OF THE STATUS OF MEDICAL CARE
5 DELIVERY IN CALIFORNIA'S PRISONS AS OF AUGUST 2008, DID YOU?

6 **A** NO, I DIDN'T. ONLY ABOUT THE OVERCROWDING ITSELF.

7 **Q** WHEN YOU PREPARED YOUR REPORT, YOU DID NOT HAVE KNOWLEDGE OF
8 THE STATUS OF MENTAL HEALTH DELIVERY IN CALIFORNIA'S PRISONS AS
9 OF AUGUST 2008, DID YOU?

10 **A** NO.

11 **Q** YOU DID NOT PREPARE THE FIRST DRAFT OF YOUR REPORT IN THIS
12 CASE, DID YOU?

13 **A** I HAD CONVERSATIONS WITH MR. SPECTER. WE DID TALK ABOUT THE
14 OVERCROWDING. WE TALKED ABOUT THE IMPACT OF THE OVERCROWDING IN
15 THE SYSTEM, PARTICULARLY IN TERMS OF ITS CLASSIFICATION, THE
16 APPROPRIATE HOUSING OF INMATES. ON THAT BASIS THE REPORT WAS
17 DRAFTED.

18 **Q** DID YOU WRITE THE FIRST DRAFT OF YOUR REPORT, MR. LEHMAN?

19 **A** NO. I ASKED MR. SPECTER TO DO THAT BASED ON OUR
20 CONVERSATIONS.

21 **Q** SO IT'S YOUR TESTIMONY THAT PLAINTIFF COUNSEL, MR. SPECTER,
22 WROTE THE FIRST DRAFT OF YOUR REPORT?

23 **A** BASED -- ONCE AGAIN, BASED ON OUR CONVERSATION.

24 **Q** ON PAGE 3 OF YOUR REPORT -- IF WE COULD HAVE THAT UP?

25 (DOCUMENT DISPLAYED.)

1 **BY MS. JOHNSON**

2 **Q** PAGE 3, PARAGRAPH 8, THE REPORT STATES:

3 "PRISON OVERCROWDING IN MANY RESPECTS MAKES
4 THE PRISON CLASSIFICATION SYSTEM MEANINGLESS."

5 **A** YES.

6 **Q** "THE CLASSIFICATION OF INMATES BECOMES NO
7 MORE THAN A DRILL TO FIND AN EMPTY BED."

8 DO YOU SEE THAT?

9 **A** YES, I DO.

10 **Q** YOU DO NOT KNOW HOW MANY INMATES, IF ANY, HAVE BEEN
11 IMPROPERLY CLASSIFIED IN CALIFORNIA'S PRISONS DUE TO
12 OVERCROWDING, DO YOU?

13 **A** HOW MANY INMATES?

14 **Q** HOW MANY.

15 **A** ARE -- NO, I DO KNOW FROM TALKING TO -- VISITING AT A
16 RECEPTION CENTER, VISITING THE STAFF OF THE RECEPTION CENTER,
17 VISITING WITH THE DEPARTMENT OF STAFF WHO WERE RESPONSIBLE FOR
18 ASSIGNMENT OF STAFF SUBSEQUENT TO RECEPTION, THAT THEIR ONLY
19 TASK AND PRIMARY TASK WAS TO FIND AN EMPTY BED. I WAS TOLD
20 THAT.

21 **Q** OKAY. I'D LIKE TO READ FROM YOUR DEPOSITION TRANSCRIPT,
22 PAGE 73, LINES 10 THROUGH 21.

23 (DOCUMENT DISPLAYED.)

24 **BY MS. JOHNSON**

25 **Q** THAT IS -- STARTING AT LINE 10:

1 "ON PAGE 3 OF YOUR REPORT, JUST AGAIN THE
2 NEXT SENTENCE DOWN, YOU WROTE 'PRISON
3 OVERCROWDING IN MANY RESPECTS MAKES THE PRISON
4 CLASSIFICATION SYSTEM MEANINGLESS. THE
5 CLASSIFICATION OF INMATES BECOMES NO MORE THAN A
6 DRILL TO FIND AN EMPTY BED.' DO YOU SEE THAT?"

7 **A** YES, I DO.

8 **Q** ANSWER -- I'M READING FOR RIGHT NOW.

9 **A** I'M SORRY.

10 **Q** "ANSWER: YES.

11 "QUESTION: TO YOUR KNOWLEDGE, HOW MANY
12 INMATES HAVE BEEN IMPROPERLY CLASSIFIED DUE TO
13 OVERCROWDING?

14 "ANSWER: I CAN'T MAKE A QUANTITATIVE
15 JUDGMENT."

16 **MR. SPECTER:** I WOULD LIKE THE NEXT SENTENCE READ, OR
17 THE NEXT TWO -- LINES 22 THROUGH PAGE 74, LINE 5.

18 **JUDGE HENDERSON:** COULD YOU READ THOSE ALSO, COUNSEL?

19 **MS. JOHNSON:** I'M SORRY. I DIDN'T HEAR THOSE.

20 **JUDGE HENDERSON:** REPEAT THE LINES YOU WANT ADDED,
21 MR. SPECTER.

22 **MR. SPECTER:** PAGE 73, LINES 22 TO PAGE 74, LINE 5.

23 **JUDGE HENDERSON:** READ THOSE INTO THE RECORD, IF YOU
24 WOULD.

25 **MS. JOHNSON:** "QUESTION: SO WHAT WAS THE BASIS

1 OF YOUR STATEMENT THAT THE CLASSIFICATION OF
2 INMATES BECOMES NO MORE THAN A DRILL TO FIND AN
3 EMPTY BED IF YOU DON'T EVEN KNOW HOW MANY INMATES
4 HAVE BEEN MISCLASSIFIED?

5 "ANSWER: I OBSERVED THE PROCESS OF THE
6 CLASSIFICATION UNIT, OR RECEPTION CENTER UNIT,
7 RATHER. I HAD CONVERSATION WITH THE PERSON WHO
8 HAD OVERALL RESPONSIBILITY WITHIN THE DEPARTMENT
9 RELATIVE TO CLASSIFICATION."

10 **MR. SPECTER:** THANK YOU.

11 **BY MS. JOHNSON**

12 **Q** ON PAGE 3 OF YOUR REPORT, AGAIN AT PARAGRAPH 8 YOU WROTE:

13 "THE CLASSIFICATION AS A DRILL TO FIND AN
14 EMPTY BED, 'RESULTS IN A GREATER RISK OF
15 VIOLENCE AND THE INAPPROPRIATE HOUSING OF
16 PRISONERS WHO NEED HEALTHCARE SERVICES'."
17 DO YOU SEE THAT?

18 **A** YES.

19 **Q** YOU DO NOT KNOW HOW MANY INMATES WHO NEED HEALTHCARE
20 SERVICES ARE CLASSIFIED INAPPROPRIATELY IN CALIFORNIA'S PRISONS,
21 DO YOU?

22 **A** I CANNOT PUT A NUMBER TO IT, YES.

23 **Q** YOU DO NOT KNOW HOW MANY INMATES WHO NEED HEALTHCARE
24 SERVICES WERE NOT IN APPROPRIATE HOUSING AS OF AUGUST 2008, DO
25 YOU?

1 **A** NO, I DO NOT.

2 **Q** ON PAGE 3 OF YOUR REPORT, PARAGRAPH 9, YOU WROTE:

3 "THE CONCLUSION THE EXPERT PANEL REACHED
4 WITH RESPECT TO REHABILITATION IS EQUALLY
5 APPLICABLE TO HEALTHCARE. THE INCIDENCES OF
6 VIOLENCE AND OTHER NEGATIVE CONSEQUENCES OF
7 OVERCROWDING DEGRADE THE CDCR'S ABILITY TO
8 CONSISTENTLY OPERATE REHABILITATION PROGRAMS IN
9 THE PRISON ENVIRONMENT.

10 "WHILE LOCKDOWNS AND CONTROLLED MOVEMENTS
11 ALLOW THE CDCR TO INCREASE THE SAFETY OF ITS
12 CORRECTIONAL OFFICERS AND PRISONERS, WHEN
13 WARDENS ENACT THE SECURITY MEASURES, THEY CANCEL
14 ALL PROGRAMMING IN THE AFFECTED PRISON AREAS."
15 WHEN YOU PREPARED YOUR REPORT IN THIS CASE, YOU DO
16 NOT KNOW OF EVEN ONE SPECIFIC INSTANCE IN THE PRECEDING YEAR
17 WHERE A PRISONER WAS DENIED MEDICAL HEALTHCARE DUE TO A
18 LOCKDOWN, DID YOU?

19 **A** NO, NOT A SPECIFIC.

20 **Q** WHEN YOU PREPARED YOUR REPORT IN THIS CASE, YOU DID NOT KNOW
21 OF EVEN ONE SPECIFIC INSTANCE IN THE PRECEDING YEAR WHERE A
22 PRISONER WAS DENIED NEEDED MENTAL HEALTHCARE DUE TO A LOCKDOWN,
23 DID YOU?

24 **A** I DID READ A CASE ABOUT A DEVELOPMENTALLY DISABLED INMATE
25 THAT WAS NOT PROVIDED SERVICES. FROM MY EXPERIENCE, IN TERMS OF

1 THE OVERCROWDING, IN TERMS OF THE INCREASED LEVEL OF VIOLENCE
2 AND TENSION, IT WAS MY CONCLUSION THAT THERE WAS NOT SUFFICIENT
3 CAPACITY TO PROVIDE HEALTHCARE RESPONSE TO THAT POPULATION.

4 Q OKAY. I WOULD LIKE TO READ FROM YOUR DEPOSITION ON PAGE 81,
5 LINE 6 THROUGH 14, STARTING ON LINE 6.

6 "OKAY. TO YOUR KNOWLEDGE, IN THE LAST YEAR,
7 HOW MANY SPECIFIC INSTANCES HAVE OCCURRED WHERE
8 A PRISONER WAS DENIED NEEDED MEDICAL --"

9 JUDGE KARLTON: WHAT BASIS IS THERE FOR YOU TO READ
10 IT? IT'S NOT IMPEACHMENT. HE AGREES WITH YOU THAT HE'S SIMPLY
11 EXPRESSING HIS OPINION BASED ON 35 YEARS OF EXPERIENCE, NOT
12 GOING OUT AND ASKING INDIVIDUALS WHETHER OR NOT THEY RECEIVED
13 ADEQUATE MEDICAL CARE. WHY ARE YOU READING THIS?

14 MS. JOHNSON: I WAS READING IT FOR IMPEACHMENT, YOUR
15 HONOR, BECAUSE HE DID NOT ANSWER A SIMPLE "NO" TO THE QUESTION,
16 WHICH IS WHAT HE DID -- HE DOES NOT HAVE INFORMATION ABOUT ANY
17 SPECIFIC INSTANCES WHERE A PRISONER WAS DENIED MENTAL
18 HEALTHCARE.

19 JUDGE KARLTON: I BELIEVE YOU. I ALSO BELIEVE HIM
20 WHEN HE SAID HE DIDN'T DO IT.

21 BY MS. JOHNSON

22 Q ON PAGE 4 OF YOUR REPORT AT PARAGRAPH 10, YOU WROTE --

23 JUDGE KARLTON: I'M SORRY. I SPOKE FOR MYSELF
24 INSTEAD OF --

25 JUDGE HENDERSON: THAT'S FINE.

1 **JUDGE KARLTON:** I KEEP FORGETTING THOSE GUYS ARE
2 THERE.

3 **BY MS. JOHNSON**

4 **Q** "SEVERE OVERCROWDING LIKE THAT
5 AFFECTING CALIFORNIA PRISONS RESULTS IN A LACK
6 OF TREATMENT AND OFFICE SPACE AND DECREASED
7 ACCESS TO HEALTHCARE SERVICES."

8 WHEN YOU PREPARED YOUR REPORT IN THIS CASE, YOU DID
9 NOT KNOW OF EVEN ONE SPECIFIC INSTANCE IN THE PRECEDING YEAR
10 WHERE A PRISONER WAS DENIED ACCESS TO HEALTHCARE SERVICES DUE TO
11 SEVERE OVERCROWDING, DID YOU?

12 **A** I DID NOT KNOW OF A SPECIFIC CASE.

13 **Q** ON PAGE 4 OF YOUR REPORT, AGAIN AT PARAGRAPH 10, YOU WROTE:

14 "OVERCROWDING REDUCES THE OPPORTUNITY FOR
15 PRISONERS TO PROGRAM WHICH CAUSES OBVIOUS
16 IDLENESS."

17 YOU ARE NOT AWARE OF ANY INSTANCES WHERE PRISONER
18 IDLENESS RESULTED IN THE DENIAL OF NEEDED MENTAL HEALTHCARE OR
19 MEDICAL HEALTHCARE, ARE YOU?

20 **A** SPECIFIC CASES AGAIN, NO.

21 **Q** AT TIMES WHEN YOU WERE SECRETARY OF THE WASHINGTON STATE
22 DEPARTMENT OF CORRECTIONS, THE PRISON POPULATION EXCEEDED THE
23 SYSTEM'S DESIGN CAPACITY, CORRECT?

24 **A** THAT'S CORRECT.

25 **Q** AT TIMES WHEN YOU WERE SECRETARY OF THE WASHINGTON STATE

1 DEPARTMENT OF CORRECTIONS, THE PRISON POPULATION EXCEEDED THE
2 PRISON SYSTEM'S OPERATIONAL CAPACITY, CORRECT?

3 **A** THAT'S CORRECT.

4 **Q** IT IS YOUR OPINION THAT THE WASHINGTON STATE DEPARTMENT OF
5 CORRECTIONS WAS STILL PROVIDING ADEQUATE MEDICAL AND MENTAL
6 HEALTHCARE AT THE TIMES THE PRISONS WERE ABOVE EVEN OPERATIONAL
7 CAPACITY WHEN YOU WERE SECRETARY, CORRECT?

8 **A** THAT'S CORRECT.

9 **Q** SO, IN YOUR EXPERIENCE, IT IS POSSIBLE FOR A PRISON SYSTEM
10 THAT IS ABOVE OPERATIONAL CAPACITY TO PROVIDE ADEQUATE MEDICAL
11 AND MENTAL HEALTHCARE, CORRECT?

12 **A** DEPENDING ON THE LEVEL OF CROWDING, THERE IS A SIGNIFICANT
13 DIFFERENCE OF THE LEVEL OF CROWDING IN THE STATE OF CALIFORNIA
14 AND ANY OTHER JURISDICTION THAT I HAVE BEEN INVOLVED IN.

15 **JUDGE KARLTON:** BUT THE QUESTION IS -- LET'S START
16 FROM THE BEGINNING. IT IS POSSIBLE AT SOME LEVEL OF
17 OVERCROWDING TO NONETHELESS PROVIDE ADEQUATE CARE?

18 **THE WITNESS:** AT SOME LEVEL, YES.

19 **JUDGE KARLTON:** BUT YOUR OPINION IS THAT CALIFORNIA'S
20 OVERCROWDING, I TAKE IT THAT -- FEEL FREE TO TELL ME I GOT IT
21 WRONG. I TAKE IT THAT YOUR OPINION IS THAT CALIFORNIA'S SYSTEM
22 IS SO OVERCROWDED THAT THAT IS NOT POSSIBLE?

23 **THE WITNESS:** THAT IS MY OPINION. IT IS -- I DON'T
24 KNOW OF ANOTHER STATE, YOUR HONOR, THAT HAS EXPERIENCED ANYTHING
25 CLOSE TO THIS LEVEL OF OVERCROWDING. IT IS JUST -- IT JUST

1 DOESN'T EXIST.

2 **BY MS. JOHNSON**

3 **Q** WHEN YOU WERE IN PENNSYLVANIA AND YOU HAD THAT LAWSUIT THAT
4 WAS BROUGHT AFTER THE RIOTS -- YOU AND MR. SPECTER SPOKE ABOUT
5 ON DIRECT, YOU RECALL THAT?

6 **A** YES, I DO.

7 **Q** ONE OF THE SOLUTIONS WAS SHIPPING 800 OF THE PRISONERS TO
8 FEDERAL BUREAU OF PRISONS?

9 **A** THAT'S CORRECT.

10 **Q** AND ANOTHER SOLUTION WAS BUILDING FIVE MORE PRISONS IN THREE
11 YEARS?

12 **A** THERE WERE FIVE PRISONS BUILT IN FIVE YEARS, BUT THERE WAS
13 ADDITIONAL OTHER THINGS. WE WENT TO THE LEGISLATURE. WE
14 CREATED NEW SENTENCING LAWS. IT WAS A STATE SIMILAR TO
15 CALIFORNIA. THE SENTENCING GRID IN PENNSYLVANIA AT THE TIME,
16 YOUR HONOR, INITIALLY WAS -- ONLY ALLOWED FOR SENTENCE OF TOTAL
17 CONFINEMENT. WE MODIFIED THE GRID AND ALLOWED MORE INTERMEDIATE
18 SANCTIONS AND NON-TOTAL CONFINEMENT CENTERS.

19 **Q** ONE OF THE SOLUTIONS WAS TO BUILD MORE PRISONS, CORRECT?

20 **A** THAT'S RIGHT.

21 **Q** MR. LEHMAN, JUST TO CLARIFY, YOU WERE PAID BY PLAINTIFFS TO
22 TESTIFY IN THIS CASE, WERE YOU NOT?

23 **A** YES.

24 **JUDGE HENDERSON:** COUNSEL?

25 ///

CROSS-EXAMINATION BY MR. KAUFHOLD

MR. KAUFHOLD: STEVE KAUFHOLD FOR THE LEGISLATIVE INTERVENORS.

BY MR. KAUFHOLD

Q MR. LEHMAN, I WANT TO ASK JUST REAL QUICKLY ABOUT THE RESOLUTION OF THE AUSTIN CASE THAT YOU TESTIFIED ABOUT EARLIER. WERE YOU STILL THE SECRETARY WHEN THAT CASE WAS RESOLVED?

A YES, I WAS.

Q AND AS PART OF THE RESOLUTION OF THAT CASE, OR AT THE TIME OF THE RESOLUTION, DID YOU BELIEVE THAT THE PENNSYLVANIA SYSTEM WAS OVERCROWDED?

A YES, I DID.

Q AND WHEN YOU --

A AT THE TIME OF THE RESOLUTION OR THE TIME OF THE -- IN EITHER CASE, YES.

Q AND WHEN THE CASE WAS RESOLVED, THE RESOLUTION DID NOT INVOLVE A PRISONER RELEASE ORDER; IS THAT CORRECT?

A THAT'S CORRECT.

MR. KAUFHOLD: NO FURTHER QUESTIONS.

JUDGE HENDERSON: REDIRECT?

MR. SPECTER: I COULDN'T HEAR HIS LAST ANSWER. COULD YOU READ THAT TO ME, PLEASE?

JUDGE KARLTON: THE LAST ANSWERS WAS "YES."

MR. SPECTER: I'M SORRY.

JUDGE KARLTON: "WHEN THE CASE WAS RESOLVED, THE

1 RESOLUTION DID NOT INVOLVE A PRISONER RELEASE
2 ORDER; IS THAT CORRECT?

3 "ANSWER YES."

4 MR. SPECTER: THANK YOU.

5 REDIRECT EXAMINATION BY MR. SPECTER

6 BY MR. SPECTER

7 Q WAS THE PRISON POPULATION -- WAS THE CROWDING LOWER THAN IT
8 WAS WHEN THE CASE WAS FILED?

9 A I'M SORRY, COUNSEL?

10 Q I'LL START -- I'LL BACK UP A LITTLE BIT.

11 SPEAKING OF THE AUSTIN CASE?

12 A OKAY.

13 Q WHEN IT WAS FILED, YOU WERE AT ABOUT 150 PERCENT OF
14 OVERCROWDING, RIGHT?

15 A THAT'S CORRECT.

16 Q WHAT WAS THE PERCENT OF OVERCROWDING WHEN IT WAS RESOLVED?
17 WAS IT LOWER OR HIGHER OR WHAT?

18 A ACTUALLY, IT WAS RESOLVED WITHIN SEVERAL MONTHS, AND IT WAS
19 RESOLVED ON SPECIFIC COMMITMENTS WE MADE IN TERMS OF BUILDING
20 AND REDUCING THE CROWDING.

21 Q OKAY. AND WHEN THE LEVEL OF MEDICAL CARE MET THE
22 REQUIREMENTS OF THE SETTLEMENT -- FIRST, YOU HAD A SETTLEMENT
23 WHICH REQUIRED YOU TO IMPROVE THE MEDICAL CARE SYSTEM; IS THAT
24 RIGHT?

25 A THAT'S CORRECT.

1 Q AND THAT TOOK SOME TIME TO EFFECTUATE; IS THAT RIGHT?

2 A THAT'S CORRECT.

3 Q AND DURING TIME WHEN YOU WERE EFFECTUATING THAT, THE
4 POPULATION OF THE PRISON SYSTEM WAS -- THE CROWDING AT LEAST WAS
5 BEING -- WAS REDUCED, RIGHT?

6 A THE CROWDING WAS -- THERE WAS NOT A SPECIFIC TIMELINE
7 RELATIVE TO IT. WE CREATED -- THE AGREEMENT WAS TO CREATE A
8 HEALTHCARE DEPARTMENT.

9 Q RIGHT.

10 A THE AGREEMENT WAS TO FOLLOW THE RECOMMENDATIONS OF THE
11 EXPERTS THAT WE BROUGHT IN AND TO ACQUIRE ADDITIONAL SPACE IN
12 RELATION TO HEALTHCARE THROUGH THE CONSTRUCTION PROGRAM.

13 Q SO WHAT I'M SAYING IS THAT, ISN'T IT TRUE THAT THE
14 CROWDING -- THE LEVEL OF CROWDING WAS REDUCED FROM THE TIME WHEN
15 THE CASE WAS FIRST BROUGHT UNTIL THE TIME WHEN THE MEDICAL --
16 THE PROVISION OF MEDICAL CARE --

17 A YES.

18 Q -- BECAME ADEQUATE?

19 A I'M SORRY. YES.

20 Q OKAY. AND YOU MENTIONED INTERMEDIATE SANCTIONS OR -- IN
21 RESPONSE TO A QUESTIONS BY MS. JOHNSON. DID THOSE INTERMEDIATE
22 SANCTIONS INVOLVE NOT COMING TO PRISON?

23 A YES, IT DID.

24 Q SO THEY WERE SENTENCED FOR THE SAME TYPE OF FELONIES, BUT
25 THE LEGISLATURE, WHOEVER THE AUTHORITY WAS, DECIDED TO SHIFT THE

1 SENTENCING STRUCTURE SO THAT FEWER PEOPLE -- FEWER PEOPLE FOR
2 THOSE CRIMES CAME TO PRISON?

3 **A** THAT'S CORRECT, BECAUSE THE ORIGINAL GRID ONLY PROVIDED FOR
4 TOTAL CONFINEMENT.

5 **Q** I SEE. AND IN SUBSEQUENT DEPOSITION, YOU HAVE REVIEWED
6 REPORTS OF THE RECEIVER AND THE SPECIAL MASTER; IS THAT CORRECT?

7 **A** THAT'S CORRECT.

8 **Q** DO THOSE REPORTS CHANGE YOUR OPINION IN ANY WAY ABOUT THE
9 EFFECT OF OVERCROWDING ON THE DELIVERY OF HEALTHCARE SERVICES?

10 **A** NO. IN FACT, IT ONLY MADE MY OPINION STRONGER. I MEAN,
11 BECAUSE READING THOSE REPORTS, YOU GET THE CLEAR PICTURE OF THE
12 INADEQUACY OF THE SPACE AVAILABLE RELATIVE TO HEALTHCARE.

13 **MR. SPECTER:** THANK YOU, YOUR HONOR.

14 THANK, MR. LEHMAN.

15 **JUDGE HENDERSON:** OKAY. AND THANK YOU FOR
16 TESTIFYING, MR. LEHMAN. YOU MAY STEP DOWN, AND YOU'RE EXCUSED.

17 WE WILL TAKE OUR LUNCH RECESS AT THIS TIME FOR ONE
18 HOUR. AND LET ME REMIND THE PARTIES THAT WE NEED ENOUGH
19 WITNESSES TO GO THE REST OF THE DAY. OKAY. COURT IS ADJOURNED.

20 (LUNCHEON RECESS TAKEN FROM 11:55 A.M. UNTIL
21 1:05 P.M.)

22 **JUDGE HENDERSON:** OKAY. COURT IS BACK IN SESSION.
23 YOU MAY PROCEED WHEN YOU'RE READY, COUNSEL.

24 **MS. KAHN:** GOOD AFTERNOON, YOUR HONOR. JANE KAHN ON
25 BEHALF OF PLAINTIFFS. AND WE CALL OUR NEXT WITNESS, DR. CRAIG

1 HANEY.

2 **THE CLERK:** PLEASE STEP UP, AND RAISE YOUR RIGHT
3 HAND.

4 (THEREUPON, THE WITNESS WAS SWORN.)

5 **THE WITNESS:** YES, I DO.

6 **THE CLERK:** PLEASE HAVE A SEAT. SPEAK INTO THE
7 MICROPHONE. MY NAME IS CRAIG WILLIAM HANEY, H-A-N-E-Y.

8 **MS. KAHN:** YOUR HONORS, DR. HANEY'S QUALIFICATIONS
9 ARE SET FORTH IN PARAGRAPHS ONE THROUGH TEN OF THE AUGUST 15TH,
10 2008 REPORT. AND HIS CV IS LOCATED IN APPENDIX A TO THE
11 AUGUST 15, 2008 EXPERT REPORT.

12 WE OFFER THIS REPORT NOW, WHICH IS LOCATED AT COLEMAN
13 DOCKET 3201 AS DR. HANEY'S DIRECT TESTIMONY.

14 DR. HANEY IS A PROFESSOR OF PSYCHOLOGY AT THE
15 UNIVERSITY OF CALIFORNIA AT SANTA CRUZ.

16 HE STUDIED THE PSYCHOLOGICAL EFFECTS OF LIVING AND
17 WORKING IN PRISONS FOR THE PAST 35 YEARS AND HAS ANALYZED PRISON
18 CONDITIONS IN AT LEAST 20 DIFFERENT STATE PRISON SYSTEMS AND IN
19 THE FEDERAL AND INTERNATIONAL PRISON SYSTEMS.

20 HE'S BEEN QUALIFIED AS AN EXPERT IN --

21 **MS. TILLMAN:** OBJECTION TO COUNSEL TESTIFYING.

22 **JUDGE HENDERSON:** PARDON?

23 **MS. TILLMAN:** OBJECTION TO COUNSEL TESTIFYING. I
24 APOLOGIZE. THIS MICROPHONE IS NOT WORKING.

25 **JUDGE HENDERSON:** SHE'S LAYING HIS QUALIFICATIONS.

1 **JUDGE KARLTON:** IT'S ALL IN EVIDENCE, AND SHE'S JUST
2 REPEATING IT. AND IT'S HER TIME, IF SHE THINKS THAT IS A USEFUL
3 THING TO DO, TO SPEND IT ON.

4 **MS. KAHN:** SHORTENING THE TIME, YOUR HONORS.

5 HE'S BEEN QUALIFIED AS AN EXPERT IN NUMEROUS FEDERAL
6 CASES ON PRISON CONDITIONS, INCLUDING IN THE COLEMAN TRIAL.

7 WE NOW OFFER DR. HANEY AS AN EXPERT ON THE PSYCHOLOGY
8 OF IMPRISONMENT AND IMPACT OF PRISON CONDITIONS, INCLUDING
9 OVERCROWDING OF PRISONERS IN THE PRISON SYSTEMS.

10 **JUDGE HENDERSON:** COURT WILL FIND HE IS SO QUALIFIED.

11 THEREUPON --

12 **DR. CRAIG WILLIAM HANEY**

13 WAS CALLED AS A WITNESS ON BEHALF OF THE PLAINTIFFS, AND AFTER
14 HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS
15 FOLLOWS:

16 **DIRECT EXAMINATION**

17 **BY MS. KAHN:**

18 **Q.** DR. HANEY, I WOULD LIKE YOU TO BRIEFLY EXPLAIN WHAT IS
19 OVERCROWDING IN PRISONS AND IN WHAT WAYS DOES OVERCROWDING IN
20 PRISONS EFFECT THE FUNCTIONING OF A PRISON SYSTEM?

21 **A.** OVERCROWDING IN A PRISON SYSTEM CAN BE DEFINED AS A PRISON
22 OR PRISON SYSTEM HOLDING MORE PEOPLE THAN IT HAS THE RESOURCES
23 TO HUMANLY AND SAFELY ACCOMMODATE.

24 SO IT MEANS WHAT IT MEANS IN MOST OTHER CONTEXTS:
25 HAVING TOO MANY PEOPLE IN A PARTICULAR ENVIRONMENT. BUT IN A

1 PRISON SETTING, IT MEANS A COUPLE OF ADDITIONAL THINGS.

2 IN A PRISON ENVIRONMENT, BECAUSE PRISONS ARE TOTAL
3 INSTITUTIONS, THE ENVIRONMENT ITSELF HAS A RESPONSIBILITY FOR
4 PROVIDING FOR AND ADDRESSING THE NEEDS OF PRISONERS IN A MORE
5 COMPLETE OR FULL WAY THAN ALMOST ANY OTHER CONTEXT IN SOCIETY
6 THAN ANY ONE OF US FREE CITIZENS WOULD ENTER.

7 SO WHEN OVERCROWDING OCCURS IN A PRISON SETTING, IT
8 CAN REVERBERATE THROUGHOUT THE ENTIRE SYSTEM. THE SYSTEM HAS THE
9 RESPONSIBILITY OF, AS I SAID, ADDRESSING THE NEEDS OF THE
10 PRISONERS.

11 AND WHEN THOSE NEEDS BEGIN TO BE -- THE PRISON BEGINS
12 TO FAIL TO ADDRESS THOSE NEEDS, THEN THOSE PROBLEMS CAN AN
13 ACCUMULATE OR AGGREGATE IN THE PRISON SYSTEM BECAUSE PRISONERS
14 HAVE NO OTHER WAY, NO OTHER AVENUE, NO OTHER OUTLET TO GET THOSE
15 NEEDS AND THOSE PROBLEMS ADDRESSED.

16 IT'S PARTICULARLY POIGNANT ALSO IN A PRISON SYSTEM
17 BECAUSE PRISONERS WHO LEAVE A SYSTEM THAT IS OVERCROWDED, NOT
18 HAVING HAD THOSE PROBLEMS OR THOSE NEEDS ADDRESSED, ARE
19 OFTENTIMES AT GREATER RISK OF COMING BACK INTO THAT SYSTEM.

20 SO THAT OVER TIME AN OVERCROWDED SYSTEM TENDS TO
21 BECOME SELF-AGGRANDIZING OR SELF-EXACERBATING, IF YOU WILL.
22 THAT IS TO SAY PROBLEMS THAT DON'T GET ADDRESSED AT AN EARLIER
23 POINT IN TIME HAVE A WAY OF INCREASING OR INTENSIFYING OVER
24 TIME.

25 AND SO A SYSTEM THAT IS OVERCROWDED ALMOST BEGETS

1 ADDITIONAL OVERCROWDING, BECAUSE IT FAILS TO ADDRESS THE
2 PROBLEMS OF PEOPLE WHO WERE THERE, SOME PERCENTAGE OF WHOM WILL
3 COME BACK INTO THAT SYSTEM.

4 **Q.** DOES THE DURATION THAT A SYSTEM HAS BEEN OVERCROWDED HAVE AN
5 IMPACT ON THE EFFECT OF OVERCROWDING IN A SYSTEM?

6 **A.** YES, FOR PRECISELY --

7 **MS. TILLMAN:** OBJECTION, VAGUE AND AMBIGUOUS.

8 **JUDGE KARLTON:** I'M SORRY?

9 **MS. TILLMAN:** VAGUE AND AMBIGUOUS.

10 **BY MS. KAHN:**

11 **Q.** DOES THE DURATION OF TIME, THE NUMBER OF YEARS A SYSTEM HAS
12 BEEN OVERCROWDED, IMPACT ON THE EFFECT OF WHEN A SYSTEM IS
13 OVERCROWDED?

14 **A.** YES, IT DOES. AND, AGAIN, FOR EXACTLY THAT REASON.

15 PRISONERS TEND TO STAY IN PRISON FOR A PERIOD OF TIME, AGAIN,
16 UNLIKE OTHER ENVIRONMENTS IN SOCIETY THAT MIGHT BE OVERCROWDED.

17 IF YOU THINK, FOR EXAMPLE, OF A DOCTOR'S OFFICE OR
18 SUBWAY STATION, YOU'RE THERE FOR A BRIEF PERIOD OF TIME, AND THE
19 OVERCROWDING IS SOMETHING THAT YOU CAN ESCAPE FROM OR CAN BE
20 ABATED OVER TIME.

21 IN A PRISON SYSTEM PRISONERS ARE THERE FOR A LONG
22 PERIOD OF TIME. SO IF THEY ARE IN A OVERCROWDED ENVIRONMENT AND
23 NEEDS AND PROBLEMS THEY HAVE ARE NOT BEING SOLVED AND ADDRESSED,
24 THOSE PROBLEMS TEND TO EXACERBATE.

25 SO THERE WAS AN AGGREGATION OF PROBLEMS WITHIN A

1 SYSTEM AT THE TIME THE PRISONERS ARE THERE. AND THEN, THERE'S
2 THIS OTHER DIMENSION THAT I ALLUDED TO A MOMENT AGO, WHICH IS
3 WHEN PRISONERS ARE RELEASED FROM PRISON, IF THEY ARE RELEASED
4 WITH UNMET NEEDS OR PROBLEMS THAT HAVE NOT BEEN RESOLVED OR
5 ISSUES THAT HAVE NOT BEEN ADDRESSED WHILE THEY ARE INCARCERATED,
6 THEY ARE AT RISK OF COMING BACK INTO THE SYSTEM OFTENTIMES WITH
7 THOSE PROBLEMS THE SAME OR HAVING EXACERBATED AFTER THEY ARE
8 RELEASED.

9 SO, AGAIN, THE PERIOD OF TIME THAT THE SYSTEM IS
10 OVERCROWDED MATTERS, BECAUSE THE LONGER THE OVERCROWDING OCCURS,
11 THE LONGER THE SYSTEM OPERATES, AND THE GREATER THE NUMBER OF
12 UNMET NEEDS THAT AGGREGATE OVER TIME, THE WORSE THE SITUATION
13 GETS.

14 AND AS I SAID, AS A RESULT OVERCROWDED, PARTICULARLY
15 SEVERELY OVERCROWDED SYSTEMS, TEND TO BEGAT EVEN MORE
16 OVERCROWDING, BECAUSE THEY ARE NOT SOLVING PROBLEMS THAT OVER
17 TIME EITHER HAVE TO BE SOLVED OR RESULT IN PEOPLE COMING BACK
18 INTO THE PRISON SYSTEM AT HIGHER RATES.

19 **Q.** IN WHAT WAYS IS CALIFORNIA'S PRISON SYSTEM OVERCROWDED?

20 **A.** IT'S OVERCROWDED IN VIRTUALLY EVERY CONCEIVABLE WAY ONE
21 WOULD MEASURE OVERCROWDING. IT'S OVERCROWDED IN THE SENSE OF
22 HAVING FAR TOO FEW SPACES FOR PEOPLE TO BE HOUSED. AND IN A
23 CERTAIN SENSE, THAT'S THE MOST BASIC AND FOCUSED DEFINITION OF
24 OVERCROWDING. SO AS I'M SURE THE COURT KNOWS, THIS SYSTEM HAS
25 BEEN OPERATING AT ROUGHLY 190 PERCENT OF CAPACITY.

1 190 PERCENT OF CAPACITY COMPARATIVELY SPEAKING IS
2 ALMOST AN UNHEARD OF NUMBER, AN UNHEARD OF AMOUNT OF
3 OVERCROWDING OPERATING AT A LEVEL BEYOND PHYSICAL OR DESIGN
4 CAPACITY OF THE SYSTEM.

5 THE PHYSICAL OR DESIGN CAPACITY TAKES INTO ACCOUNT
6 NOT ONLY THE NUMBER OF SPACES THAT ARE AVAILABLE FOR PEOPLE TO
7 LIVE IN, BUT DESIGN CAPACITY ALSO IS CALCULATED ON THE BASIS OF
8 PROGRAMMING IN OTHER NECESSARY SPACE WITHIN THE SYSTEM.

9 SO A SYSTEM THAT IS OPERATING AT 190 PERCENT OF
10 CAPACITY HAS NOT ONLY APPROXIMATELY HALF THE SPACES AVAILABLE
11 FOR PEOPLE TO BE HOUSED IN, BUT IT ALSO HAS APPROXIMATELY HALF
12 OF THE SPACES THAT ARE AVAILABLE TO PROVIDE PROGRAMMING AND
13 OTHER KINDS OF SUPPORT WITHIN THE SYSTEM.

14 CALIFORNIA IS -- SO THE DEPTH OF THE PROBLEM OR THE
15 MAGNITUDE OF THE OVERCROWDING IS ALMOST UNHEARD OF. AND I SAY
16 THAT, WHEN I SAY "ALMOST UNHEARD OF," I MEAN EVEN HISTORICALLY
17 ALMOST UNHEARD OF.

18 IN A PERIOD OF TIME IN THE LAST 30 YEARS WHEN LOTS OF
19 PRISON SYSTEMS HAVE BEEN VERY OVERCROWDED, A LEVEL OF
20 OVERCROWDING OF 190 PERCENT IS REMARKABLE. IT'S NOT
21 UNPRECEDENTED, BUT IT'S REMARKABLE.

22 CALIFORNIA'S OVERCROWDED IN ANOTHER SENSE. AND THAT
23 IS IN THE SENSE THAT THE OVERCROWDING IS WIDESPREAD. IT IS NOT
24 RESTRICTED TO JUST A FEW INSTITUTIONS. IT'S OCCURRED THROUGHOUT
25 THE SYSTEM.

1 SO YOU'RE LOOKING AT INDIVIDUAL PRISONS THAT ARE
2 OPERATING AT 180, 190 OR EVEN OVER 200 PERCENT OF CAPACITY. AND
3 THAT'S ESSENTIALLY ACROSS THE BOARD IN THE SYSTEM. IT'S
4 OVERCROWDED IN A COMPARATIVE SENSE.

5 I KNOW OF NO OTHER LARGE PRISON SYSTEM IN THE UNITED
6 STATES THAT IS AS REMOTELY OVERCROWDED AS CALIFORNIA IS.

7 AS BEST I'VE BEEN ABLE TO DETERMINE, THE ONLY STATE
8 THAT IS AS -- THAT IS EVEN CLOSE TO CALIFORNIA IN TERMS OF
9 EXTENT OF OVERCROWDING IS THE STATE OF ALABAMA, A VERY, VERY
10 SMALL SYSTEM COMPARED TO CALIFORNIA'S.

11 AND IT'S OVERCROWDED IN THE FINAL SENSE IN THAT IT
12 IS -- IT HAS BEEN OVERCROWDED FOR A LONG PERIOD OF TIME. IT
13 BEGAN TO BE OVERCROWDED 10 OR SO YEARS AGO. IT HAS CONTINUED TO
14 OPERATE. IT BEGAN TO BE OVERCROWDED EVEN LONGER THAN THAT AGO,
15 BUT IT BEGAN TO BE SEVERELY OVERCROWDED 10 OR SO YEARS AGO AND
16 HAS CONTINUED TO OPERATE FOR THE LAST FIVE OR SIX YEARS AT A
17 LEVEL OF OVERCROWDING THAT, AS I SAID, IS ROUGHLY 190 PERCENT OF
18 CAPACITY.

19 AND ON ALL OF THOSE MEASURES THAT IS AN EXTRAORDINARY
20 LEVEL OF OVERCROWDING.

21 **Q.** DR. HANEY, WHAT IS YOUR OPINION OF WHETHER OVERCROWDING IN
22 THE CALIFORNIA PRISONS IS THE PRIMARY CAUSE OF THE
23 CONSTITUTIONAL VIOLATIONS IN MEDICAL AND MENTAL HEALTHCARE?

24 **A.** WELL, MY OPINION IS FOR ALL OF THE REASONS THAT I JUST
25 STATED THAT THE LEVEL OF OVERCROWDING IS UNPRECEDENTED IN THAT

1 THERE IS NO QUESTION THAT IT IS THE PRIMARY CAUSE OF THE
2 UNCONSTITUTIONAL PROVISION OF MENTAL HEALTHCARE IN THE SYSTEM.

3 Q. IN FORMING YOUR OPINION, IS IT CORRECT THAT YOU RELIED ON
4 KEY DOCUMENTS IN THE CASE PRODUCED BY THE DEFENDANTS AND SPECIAL
5 MASTER AND RECEIVER, AND YOU TOURED EIGHT CALIFORNIA PRISONS?

6 A. YES, THAT'S CORRECT.

7 Q. DURING YOUR TOURS DID YOU SPEAK WITH PRISON STAFF AND
8 INTERVIEW PRISONERS DURING THE EIGHT PRISON SITE INSPECTIONS?

9 A. YES. EVERY ONE OF THE INSPECTIONS THERE WAS A BRIEFING, AND
10 THEN THERE WERE OFFICIALS FROM THE PRISON WHO ACCOMPANIED US
11 THROUGHOUT THE TOUR.

12 Q. DO YOU RELY ON THESE TYPE OF INTERVIEWS WITH PRISON STAFF
13 AND PRISONERS IN THE COURSE OF YOUR WORK AS AN EXPERT?

14 A. I DO ALL THE TIME.

15 Q. DO OTHERS IN YOUR FIELD RELY ON THESE TYPE OF INTERVIEWS
16 WITH STAFF AND PRISONERS?

17 A. YES, OF COURSE.

18 Q. OKAY. DID YOU ALSO ON YOUR TOURS OF CDCR STAFF PERSONS ON
19 THE LAST FOUR PRISON SITE INSPECTIONS TAKE PHOTOS THAT YOU
20 DIRECTED TO HAVE TAKEN?

21 A. YES, WE DIDN'T HAVE A CAMERA IN THE FIRST FOUR, BUT WE DID
22 ON THE SECOND FOUR. AND WE HAD PHOTOGRAPHS THAT WERE TAKEN.

23 Q. OKAY. I'D LIKE TO TURN TO THE PRISON SITE INSPECTIONS THAT
24 YOU UNDERTOOK IN THE CASE WHICH FORMED THE BASIS OF YOUR
25 OPINION, AND ASK YOU WHAT YOU SAW DURING THE SITE INSPECTIONS

1 THAT LED YOU TO INCLUDE THAT OVERCROWDING WAS THE PRIMARY CAUSE?

2 **A.** I SAW A SYSTEM AS REFLECTED IN EACH ONE OF THESE INSPECTIONS
3 THAT WAS OVERWHELMED WITH THE SHEER NUMBER OF PEOPLE WHO WERE
4 CONFINED THERE. THESE WERE SYSTEMS THAT WERE CHOKED WITH TOO
5 MANY PRISONERS, NOT ENOUGH SPACE, INSUFFICIENT AMOUNT OF STAFF.

6 IN ALMOST EVERY DIRECTION THAT I TURNED I SAW
7 EVIDENCE AND EXAMPLES OF THIS, OF A SYSTEM OPERATING AT ROUGHLY
8 200 PERCENT OF ITS CAPACITY AND STRAINING UNDER THE WEIGHT OF
9 THAT CAPACITY.

10 UNABLE TO DELIVER SERVICES, UNABLE TO ADDRESS THE
11 NEEDS OF THE PEOPLE WHO WERE IN THE SYSTEM. I SAW AND HEARD FROM
12 INDIVIDUAL PRISONERS AND NUMEROUS STAFF MEMBERS ABOUT ALL OF THE
13 OVERCROWDING-RELATED PROBLEMS THAT THEY WERE CONFRONTING ON A
14 DAILY BASIS, WHETHER IT RANGED FROM THE KIND OF HOUSING THAT
15 PRISONERS WERE FORCED TO LIVE IN IN THE CALIFORNIA SYSTEM,
16 HOUSING IN SOME INSTANCES UNLIKE HOUSING I'VE SEEN ANYWHERE ELSE
17 IN ANY OTHER PRISON SYSTEM. AND I'VE BEEN LOOKING AT PRISONS FOR
18 A LONG TIME.

19 I SAW --

20 **Q.** AND WHAT TYPE OF HOUSING WERE YOU TALKING ABOUT?

21 **A.** I'M TALKING ABOUT PRISONERS LIVING IN CONVERTED OR MAKESHIFT
22 DORMITORIES. PRISONERS STRETCHED OUT IN DOUBLE AND TRIPLE BUNKS
23 AS FAR AS THE EYE CAN SEE. I'M TALKING ABOUT A VERY BIZARRE
24 HOUSING UNIT IN CALIFORNIA INSTITUTION FOR MEN IN THE COLUSA
25 UNIT WHERE THERE'S A DORMITORY HAS BEEN CREATED INSIDE THE

1 HOUSING UNIT IN THE DAYROOM OF THE HOUSING UNIT AND A CHAIN LINK
2 FENCE HAS BEEN PLACED AROUND THE DORMITORY INSIDE THAT HOUSING
3 UNIT.

4 THERE WERE DORMITORIES IN MANY OF THE REGULAR HOUSING
5 UNITS IN THE PRISONS THAT HAD BEEN CONVEYED FROM DAYROOM SPACES.
6 AS YOU PROBABLY KNOW, MOST PRISON HOUSING UNITS HAVE AREAS,
7 DAYROOM AREAS WHERE PRISONERS CAN CONGREGATE DURING THE DAY WHEN
8 THEY ARE NOT IN OTHER ACTIVITIES AND THEY ARE NOT IN THEIR
9 CELLS.

10 IN VIRTUALLY EVERY PRISON I TOURED AND INSPECTED MANY
11 OF THESE DAYROOMS HAD BEEN CONVERTED INTO DORMITORIES. SO THERE
12 WERE DOUBLE AND TRIPLE BUNKS NOW PLACED 20 OR SO ON THE SIDE OF
13 EACH ONE OF THE --

14 **Q.** WHAT OTHER AREAS, DR. HANEY -- EXCUSE ME -- DID YOU SEE
15 WHERE OVERCROWDING HAD IMPACTED THE DELIVERY OF CARE DURING YOUR
16 TOURS?

17 **A.** WHAT OTHER KINDS OF AREAS?

18 **Q.** BESIDES HOUSING?

19 **MS. TILLMAN:** IF I MIGHT JUST ASK MS. KAHN TO GET A
20 LITTLE CLOSER TO THE MICROPHONE. HER VOICE IS NOT CARRYING --

21 **JUDGE HENDERSON:** DO THAT, PLEASE.

22 LET US KNOW IF IT WORKS.

23 **BY MS. KAHN:**

24 **Q.** HOUSING WAS THE FIRST AREA?

25 **A.** HOUSING WAS VERY MUCH CONNECTED TO PROGRAMMING. SO IT'S NOT

1 JUST HOW PEOPLE WERE LIVING, WHAT THEY ARE DOING IN THEIR CELLS,
2 HOW THEY ARE BEING CONFINED IN THEIR CELLS AND WHAT KIND OF
3 CELLS OR DORMITORIES THEY ARE IN, BUT OVERCROWDING HAS A DIRECT
4 IMPACT ON PROGRAMMING.

5 THE LEVELS OF IDLENESS IN THE CALIFORNIA DEPARTMENT
6 OF CORRECTIONS ARE SEVERE AND WIDESPREAD. IT IS THE CASE THAT
7 ROUGHLY FIFTY PERCENT OF THE PRISONERS WHO EXIT THE CALIFORNIA
8 DEPARTMENT OF CORRECTIONS AT ANY GIVEN TIME HAVE NOT
9 PARTICIPATED IN A SINGLE PROGRAM, NOT AN EDUCATIONAL PROGRAM,
10 NOT A VOCATIONAL TRAINING PROGRAM, AND NOT A WORK PROGRAM.

11 SO THEY HAVE BEEN IDLE DURING THEIR ENTIRE PERIOD OF
12 TIME IN THE DEPARTMENT OF CORRECTIONS. AND THAT WAS OBVIOUS IN
13 THE VARIOUS HOUSING UNITS THAT I'VE TOURED.

14 SO PROGRAMMING IS IMPACTED.

15 **JUDGE KARLTON:** THIS IS NOT A CASE IN WHICH THE
16 PLAINTIFFS HAVE CHARGED THAT BY VIRTUE OF OVERCROWDING THERE IS
17 A GENERAL UNCONSTITUTIONAL CONDITION. IT SPECIFICALLY RELATES TO
18 WHETHER OVERCROWDING IS THE PRIMARY CAUSE OF THE FAILURE TO
19 DELIVER CONSTITUTIONALLY-ADEQUATE MENTAL AND PHYSICAL HEALTH.

20 I DON'T WANT TO CUT YOU OFF, BUT I DO WANT TO GET TO
21 WHAT THIS CASE IS ABOUT.

22 **MS. KAHN:** EXACTLY.

23 **JUDGE KARLTON:** WOULD YOU DISCUSS THAT WITH US, SIR?

24 **THE WITNESS:** THOSE THINGS ARE RELATED. THE
25 ENVIRONMENT IN WHICH PEOPLE LIVE IS RELATED TO THEIR MENTAL

1 HEALTH. THE KINDS OF ADVERSE LIVING CONDITIONS THAT I SAW ARE
2 THE KINDS THAT HAVE BEEN ASSOCIATED WITH ADVERSE MENTAL HEALTH
3 CONSEQUENCES IN A NUMBER OF DIFFERENT SETTINGS.

4 IDLENESS IS ALSO SOMETHING WHICH ALSO UNDERMINES
5 PEOPLE'S MENTAL HEALTH. SO WE'RE TALKING ABOUT A SYSTEM WHICH
6 IS CAPABLE OF EITHER GENERATING OR EXACERBATING ADVERSE MENTAL
7 HEALTH CONDITIONS AS A RESULT OF THE GENERAL CONDITIONS OF
8 CONFINEMENT. BUT THERE WERE MANY OTHER MORE SPECIFIC ISSUES
9 THAT I CONFRONTED AND OBSERVED AS I WENT THROUGH THESE
10 INSTITUTIONS THAT SPEAK DIRECTLY TO YOUR HONOR'S POINT.

11 THE ACCESS TO APPROPRIATE LEVELS OF CARE WAS DIRECTLY
12 IMPACTED BY THE LEVEL OF OVERCROWDING. AND THERE WERE EXAMPLES
13 OF THIS IN NUMEROUS DIFFERENT CONTEXTS.

14 THE ABILITY OF THE SYSTEM TO MOVE PEOPLE WHO WERE IN
15 CRISIS, SOMETIMES SUICIDAL OR DECOMPENSATING PRISONERS IN THE
16 MENTAL HEALTH CRISIS BEDS. THESE ARE CRISIS BEDS COVERED BY
17 TITLE 22.

18 THERE'S A CERTAIN SPECIFIED KIND OF BED, KIND OF BED
19 A PERSON WHO IS IN NEED OF A MENTAL HEALTH CRISIS BED ARE TO BE
20 PLACED IN.

21 THERE ARE TIME LINES FOR PLACEMENT OF PEOPLE IN THESE
22 BEDS. EVERYWHERE I WENT IN THE SYSTEM I SAW ALTERNATIVE HOUSING
23 OR WAITING AREAS WHERE PRISONERS WHO WERE WAITING TO GET INTO
24 THESE MENTAL HEALTH CRISIS BEDS WERE BEING HOUSED. NOT FOR
25 HOURS, BUT DAYS AT A TIME.

1 IN SOME INSTANCES IN TERMS OF THE MORE SHORT-TERM
2 CONFINEMENT, THEY WERE BEING HOUSED IN CAGES THAT EXIST IN THE
3 DIFFERENT PARTS OF THE PRISON.

4 SOMETIMES IN HALLWAYS, SOMETIMES ON THE DAYROOM FLOOR
5 OF A PARTICULAR UNIT, THEY WERE HOUSED IN WAITING ROOMS. THEY
6 WERE HOUSED IN OUTPATIENT HOUSING UNIT, UNLICENSED FACILITIES OR
7 CLINICS WITHIN THE PRISON SYSTEM ITSELF, BACKED UP IN THE SYSTEM
8 AWAITING AN OPPORTUNITY TO GET INTO A MENTAL HEALTH CRISIS BED
9 OF THE SORT THAT THEY NEEDED.

10 **JUDGE KARLTON:** LET ME INTERRUPT, AGAIN, SIR. IN YOUR
11 VIEW, IS THE DELAY WHICH YOU ARE DESCRIBING AND THE KIND OF
12 HOUSING UNITS THAT WERE BEING OCCUPIED BY PEOPLE WHO WERE BACKED
13 UP, IF YOU WILL, CONTRIBUTING TO THE MENTAL HEALTH PROBLEMS OF
14 THE POPULATION; OR THEY WERE JUST SICK BEFOREHAND, AND THEY
15 COULDN'T GET TREATMENT, OR BOTH?

16 **THE WITNESS:** I WOULD SAY BOTH, YOUR HONOR. I BELIEVE
17 THAT THESE WERE PEOPLE WHO WERE, BY DEFINITION, SICK, BUT THEY
18 WERE GETTING SICKER AS A RESULT OF THEIR INABILITY TO GET THE
19 APPROPRIATE LEVEL OF CARE.

20 IN SOME INSTANCES THERE WERE EXAMPLES OF PEOPLE WHO
21 STARTED OUT RELATIVELY WELL WHO EITHER HAD NO MENTAL HEALTH
22 BACKGROUND OR WHO WERE AT A LOWER LEVEL OF MENTAL HEALTHCARE
23 NEED. AND I INTERVIEWED AND SAW IN THEIR RECORDS EXAMPLES OF
24 THEM NOT GETTING THE APPROPRIATE LEVEL OF CARE, AND THEN WORKING
25 THEIR WAY TOWARDS MORE AND MORE EXTREME NEEDS, A HIGHER LEVEL OF

1 ACUITY, AND BEING PLACED IN MORE AND MORE DIRE CIRCUMSTANCES AS
2 A RESULT OF THE SYSTEM'S INABILITY TO RESPOND IN AN APPROPRIATE
3 AND TIMELY WAY TO THE NEEDS WHICH THEY HAD. MENTAL HEALTH CARE
4 MENTAL HEALTH CARE MENTAL HEALTH CARE.

5 **JUDGE KARLTON:** I WOULD ASSUME, BUT DON'T KNOW.
6 MAYBE I OUGHT TO ASK YOU THAT, FIRST OF ALL.

7 SIR, IS BEING CONFINED IN A PRISON A FACTOR
8 CONTRIBUTING TO MENTAL ILLNESS, MAYBE?

9 **THE WITNESS:** I WOULD ANSWER YOUR HONOR BY SAYING
10 THAT IT DEPENDS ON THE KIND OF PRISONS. I MEAN, I THINK THE
11 RESEARCH DONE OVER THE LAST 30 OR SO YEARS SUGGESTS THAT BEING
12 CONFINED IN A PRISON AND A WELL-RUN PRISON THAT IS NOT
13 SIGNIFICANTLY OVERCROWDED WHERE YOU'RE PROVIDED PROGRAMMING,
14 WHERE YOU HAVE AN OPPORTUNITY TO ENGAGE IN EDUCATIONAL OR
15 VOCATIONAL TRAINING, AND SO ON AND SO FORTH, THOSE --
16 CONFINEMENT UNDER THOSE KINDS OF CONDITIONS CERTAINLY DOES NOT
17 MAKE PEOPLE MENTALLY ILL OR EXACERBATE PREEXISTING MENTAL
18 ILLNESS.

19 BUT THE MORE SEVERE OR ADVERSE KINDS OF CONDITIONS OF
20 CONFINEMENT CAN, IN FACT, EXACERBATE EITHER PREEXISTING MENTAL
21 ILLNESS OR PREEXISTING PROBLEMS PEOPLE HAVE, WHICH GET WORSE
22 ONCE THEY ARE CONFRONTED WITH THESE KIND OF HARSH CONDITIONS OF
23 CONFINEMENT.

24 **JUDGE KARLTON:** SO IT'S YOUR TESTIMONY -- I THINK I
25 UNDERSTAND YOU TO SAY YOUR TESTIMONY IS THAT PRESENT

1 OVERCROWDING IN CALIFORNIA IS SUCH THAT IT IS LEADING TO MORE
2 SIGNIFICANT ILLNESS THAN ONE WOULD FIND IN A PROPERLY RUN PRISON
3 WITH PROPER POPULATION.

4 **THE WITNESS:** YES. AND ONE WITH AN ADEQUATELY
5 FUNCTIONING MENTAL HEALTHCARE DELIVERY SYSTEM.

6 **BY MS. KAHN:**

7 **Q.** SO, DR. HANEY, SO FAR YOU HAVE TESTIFIED THAT YOU OBSERVED
8 DURING YOUR TOURS HOUSING CONDITIONS THAT WERE EITHER -- YOU
9 TESTIFIED ABOUT HOUSING CONDITIONS AND ACCESS TO MENTAL HEALTH
10 CARE. WERE THERE OTHER THINGS THAT YOU OBSERVED DURING YOUR
11 TOURS THAT YOU FELT WHERE OVERCROWDING IMPACTED ON THE DELIVERY
12 OF HEALTHCARE?

13 **A.** YES, THERE WERE TWO OTHER MAJOR AREAS. ONE HAS TO DO WITH
14 TREATMENT SPACE. THE ABILITY OF CLINICIANS IN THE MENTAL
15 HEALTHCARE DELIVERY SYSTEM TO GARNER APPROPRIATE SPACE IN WHICH
16 TO DO TREATMENT. AND I'M NOT TALKING ABOUT MOVING PEOPLE TO
17 APPROPRIATE LEVELS OF CARE WHICH, IN SOME SENSE, IS A
18 SPACE-RELATED ISSUE. THERE AREN'T ENOUGH BEDS IN THE SYSTEM.

19 BUT I'M TALKING ALSO ABOUT THE ABILITY OF CLINICIANS
20 IN THE SYSTEM TO FIND APPROPRIATE SPACE IN WHICH TO ENGAGE IN
21 THERAPEUTIC ACTIVITY WITH PEOPLE WHO ARE ON THE MENTAL HEALTH
22 CASELOAD.

23 I SAW NUMEROUS EXAMPLES OF THE WAY IN WHICH
24 OVERCROWDING HAS UNDERMINED OR PRECLUDED THE ABILITY OF
25 CLINICIANS TO MAKE USE OF OPPORTUNITIES FOR THERAPY. WE'RE

1 TALKING ABOUT THE ABSENCE OF TREATMENT SPACE IN MANY UNITS,
2 PRISONERS HAVING TO BE TAKEN OUT OF UNITS, OFTENTIMES ESCORTED
3 LONG DISTANCES TO GET TO THE ONLY AVAILABLE TREATMENT SPACE IN
4 THE FACILITY.

5 CLINICIANS CONVERTING CHAPELS OR CLASSROOMS INTO
6 MAKESHIFT CLINICAL SPACES. CONVERTING EVEN A CLOSET OR A
7 STOREROOM INTO AN AREA WHERE A CLINICAL TREATMENT ATTEMPTS TO BE
8 ACCOMPLISHED.

9 I'VE ALREADY ALLUDED TO THE USE OF CAGES. CAGES ARE
10 USED NOT ONLY AS HOLDING AREAS OR HOLDING FACILITIES IN THE
11 CALIFORNIA DEPARTMENT OF CORRECTIONS. BUT FOR PRISONERS WHO
12 WERE IN ADMINISTRATIVE SEGREGATION, THEY ARE THE MOST COMMON
13 FORM OF THERAPEUTIC OR TREATMENT SPACE THAT IS PROVIDED.
14 OFTENTIMES THESE CAGES ARE ARRANGED --

15 **MS. TILLMAN:** I'M GOING TO OBJECT TO THE EXTENT THAT
16 THE USE OF THE TERM "CAGES" IS MISCHARACTERIZING THE EVIDENCE.
17 I BELIEVE THEY ARE EITHER CALLED "HOLDING CELLS," IF THEY ARE
18 USED TO HOLD A PERSON PENDING TRANSFER FOR A SHORT PERIOD OF
19 TIME, OR IN A CASE OF A DIFFERENT TYPE OF SETTING THERE ARE WHAT
20 ARE CALLED "THERAPEUTIC MODULES."

21 I CAN'T TELL FROM HIS TESTIMONY WHAT HE MEANS BY
22 "CAGES."

23 **JUDGE KARLTON:** WELL, YOU CAN FULLY EXAMINE THAT WHEN
24 YOU CROSS-EXAMINE HIM.

25 **THE WITNESS:** THESE, THE CAGES THAT ARE USED FOR

1 THERAPY, IN MY EXPERIENCE ARE INDISTINGUISHABLE FROM THE ONES IN
2 TERMS OF THE PHYSICAL STRUCTURE USED AS HOLDING CAGES. BUT IT'S
3 NOT JUST THE USE OF CAGES FOR THESE THERAPEUTIC ACTIVITIES.

4 THE CAGES ARE OFTENTIMES LOCATED OUT ON THE DAYROOM
5 FLOOR OF AN ADMINISTRATIVE SEGREGATION FACILITY. IN SOME
6 INSTANCES THE CAGES ARE ARRAYED IN ROWS OR SEMICIRCLES IN AREAS
7 THAT LOOK LIKE UTILITY ROOMS.

8 IN ONE OF THE FACILITIES, SALINAS VALLEY, FOR
9 EXAMPLE, THE CAGE -- THESE TREATMENT CAGES ARE IN AN AREA THAT
10 APPEARS TO BE A UTILITY ROOM WHERE THE NOISE THAT IS COMING FROM
11 THE MACHINERY IN THE IMMEDIATE AREA SO IS LOUD THAT IT'S
12 DIFFICULT EVEN TO CONVERSE IN THIS ENVIRONMENT.

13 THESE ARE OFTENTIMES DEGRADING PLACES FOR PRISONERS
14 TO BE PUT IN. THEY WILL TELL YOU THAT.

15 THEY DON'T PROVIDE CONFIDENTIALITY. THEY DON'T
16 PROVIDE THE KIND OF CONFIDENTIALITY THAT IS IMPORTANT IN A
17 CLINICAL OR THERAPEUTIC SETTING.

18 THEY ARE ALSO USED OFTENTIMES FOR SCREENING IN A
19 NUMBER OF THE RECEPTION CENTERS THAT I TOURED AND INSPECTED.
20 THE CAGES ARE USED FOR PSYCHOLOGICAL SCREENING. SO PRISONERS
21 WHO ARE COMING INTO THE PRISON SYSTEM ARE PLACED IN ONE OF THESE
22 CAGES IN THE RECEPTION CENTER, AND THEN THERE'S AN ATTEMPT BY A
23 CLINICIAN TO DO A CLINICAL INTERVIEW.

24 AND, AGAIN, THEY PROVIDE VERY LITTLE IN THE WAY OF
25 PRIVACY, VERY LITTLE IN THE WAY OF DIGNITY, FRANKLY, FOR THE

1 PRISONERS THAT ARE CONFINED THERE.

2 **BY MS. KAHN:**

3 **Q.** THANK YOU, DR. HANEY. AND WHAT WAS THE LAST AREA, GENERAL
4 AREA WHERE YOU OBSERVED OVERCROWDING IMPACTING ON THE DELIVERY
5 OF HEALTHCARE?

6 **A.** STAFFING. THIS IS A PROFOUND IMPACT BY THE LEVEL OF
7 OVERCROWDING IN THE DEPARTMENT OF CORRECTIONS. I MENTIONED AT
8 THE VERY OUTSET THAT OVERCROWDING CAN BE DEFINED AS HAVING TOO
9 MANY PEOPLE FOR THE RESOURCES THAT ARE NEEDED TO ADDRESS THE
10 NEEDS AND THE PROBLEMS OF THE PEOPLE WHO ARE IN THAT
11 ENVIRONMENT.

12 OBVIOUSLY, STAFFING IS AN ISSUE THAT IS IMPLIED BY
13 THAT DEFINITION. SO YOU DON'T JUST NEED SPACE. A LOT OF TIMES
14 YOU THINK OF OVERCROWDING AS JUST TOO MANY PEOPLE CONGESTED IN A
15 PARTICULAR ENVIRONMENT. BUT PARTICULARLY WHEN YOU'RE TALKING
16 ABOUT PRISONERS AND PARTICULARLY WHEN YOU'RE TALKING ABOUT
17 PRISONERS WHO HAVE SIGNIFICANT MENTAL HEALTH NEEDS YOU HAVE TO
18 TAKE INTO ACCOUNT THE ADEQUACY OF THE STAFF WHO IS AVAILABLE TO
19 ADMINISTER TO THOSE NEEDS.

20 AND IN THE CALIFORNIA DEPARTMENT OF CORRECTIONS THERE
21 ARE STAFFING SHORTAGES, STAFFING VACANCIES AT ALL CLINICAL
22 LEVELS. IN ADDITION, THERE ARE SHORTAGES OF ASSOCIATED
23 PERSONNEL WHO ARE NEEDED TO ASSIST IN THE PROVISION OF SERVICES.
24 FOR EXAMPLE, ESCORTS WHO HAVE TO BE PROVIDED FOR PRISONERS BEING
25 TAKEN FROM ONE AREA TO ANOTHER IN ORDER TO RECEIVE TREATMENT OR

1 THERAPY.

2 I HEARD ACCOUNTS OF OVERCROWDING CAUSED STAFF
3 SHORTAGES AND UNDERSTAFFING IN VIRTUALLY EVERY PRISON THAT I
4 VISITED AND WITH WHOM I DISCUSSED THIS ISSUE WITH STAFF.

5 IT'S A PROFOUND PROBLEM. IT COMPETES, REALLY, WITH
6 THE SPACE SHORTAGE AS A CONSEQUENCE OF OVERCROWDING. IT IS
7 WIDESPREAD NOT ONLY IN THE PRISONS THAT I LOOKED AT, BUT I
8 VIEWED DEPARTMENT-WIDE DATA TO SUGGEST THAT IN SOME OF THE
9 PRISONS THAT I DIDN'T VISIT THE PROBLEM IS EVEN GREATER THAN THE
10 ONES THAT I DID SEE.

11 Q. THANK YOU.

12 THE CLERK: YOU HAVE FIVE MINUTES.

13 MS. KAHN: OKAY.

14 CAN WE PLEASE SEE -- I WOULD LIKE TO SHOW EXHIBIT --
15 DEFENDANTS' EXHIBIT 263. I MEAN, PLAINTIFFS' EXHIBIT 263, WHICH
16 IS A CHART THAT WAS CREATED BY ROSEN BIEN AND GALVAN AT THE
17 DIRECTION OF DR. HANEY. AND THIS IS TAB SIX IN YOUR BINDERS.

18 EXHIBIT 263.

19 JUDGE KARLTON: WHILE YOU'RE DOING THAT, DOCTOR,
20 WILL YOU LOOK AT PLAINTIFFS' 237, AND TELL ME ARE THOSE TYPICAL
21 OF THE CAGES THAT YOU'VE BEEN DISCUSSING?

22 THE WITNESS: YES, YOUR HONOR. THOSE ARE TYPICAL. I
23 HAVE TO TELL YOU THAT I'VE SEEN A NUMBER OF THEM THAT ARE
24 ACTUALLY IN WORSE SHAPE THAN THESE, BUT THESE ARE CERTAINLY
25 TYPICAL.

1 **JUDGE KARLTON:** THANK YOU, SIR.

2 **JUDGE HENDERSON:** OKAY.

3 **MS. KAHN:** YOUR HONORS, WE WOULD LOVE TO BE ABLE TO
4 GO THROUGH ALL THESE. WE DON'T HAVE ENOUGH TIME.

5 **JUDGE HENDERSON:** NO, BUT I JUST WANTED TO CLEAR --
6 RESPOND TO THE OBJECTION ABOUT TERMINOLOGY.

7 SO THE RECORD SHOULD REFLECT THAT PLAINTIFFS' 337 IS
8 A PICTURE ENTITLED:

9 "RECEPTION CENTER YARD THREE, CLINIC HOLDING
10 CELLS."

11 AND THOSE ARE THE CELLS THAT DR. HANEY IS REFERRING
12 TO, ALSO, AS HOLDING CAGES.

13 **MS. KAHN:** THANK YOU.

14 **BY MS. KAHN:**

15 **Q.** DR. HANEY, CAN YOU DESCRIBE THIS CHART, PLEASE?

16 **A.** YES. THIS IS A CHART THAT I HAD PREPARED TO TRY TO DOCUMENT
17 AND ADDRESS THE ISSUE OF WHETHER THIS WAS A SYSTEM THAT IN
18 RECENT TIME WAS IMPROVING IN TERMS OF THE DELIVERY OF MENTAL
19 HEALTHCARE OR NOT.

20 AND THIS PARTICULAR PARAGRAPH SPEAKS TO THE ISSUE
21 THAT I WAS TALKING ABOUT EARLIER: ACCESS TO APPROPRIATE LEVELS
22 OF CARE.

23 SO THAT YOU CAN SEE THAT WHAT WE'VE DONE IS TO GRAPH
24 OVER TIME, BEGINNING ABOUT A YEAR -- WELL, ACTUALLY, THIS BEGINS
25 ABOUT TWO YEARS AGO, IN NOVEMBER OF 2006.

1 THE BLUE LINE ON THE TOP SHOWS WHAT ARE CALLED
2 "MENTAL HEALTHCARE REFERRALS."

3 AS YOU MAY KNOW, THE DEPARTMENT MAINTAINS A
4 HEALTHCARE PLACEMENT OVERSIGHT PROGRAM. AND WHAT THIS IS IS AN
5 OFFICE IN SACRAMENTO WHERE INDIVIDUAL PRISONS IN THE DEPARTMENT
6 OF CORRECTIONS THAT ARE IN NEED OF A MENTAL HEALTHCARE BED, A
7 MENTAL HEALTHCARE CRISIS BED CAN CONTACT THE OFFICE AND ASK THE
8 OFFICE TO LOCATE A BED SOMEWHERE IN THE SYSTEM WHERE THEY CAN
9 SEND A PRISONER WHO IS IN CRISIS WHO IS IN NEED OF SUCH A MENTAL
10 HEALTHCARE CRISIS BED, BUT WHERE ONE IS NOT AVAILABLE AT THE
11 PARTICULAR FACILITY THAT PRISONER IS IN.

12 AND THIS CAN BE A FACILITY THAT ACTUALLY HAS ITS OWN
13 MENTAL HEALTHCARE CRISIS BEDS OR WHICH ARE FULL, OR IT COULD BE
14 A FACILITY THAT DOESN'T HAVE MENTAL HEALTHCARE CRISIS BEDS.

15 YOU SEE BEGINNING TWO YEARS AGO, NOVEMBER, 2006,
16 THERE WERE 85 OF THESE. AND THEN, YOU CAN SEE THAT OVER TIME
17 THE NUMBER OF SUCH REFERRALS, THE REQUEST FOR MENTAL HEALTH
18 CRISIS BEDS BY PRISONS THAT EITHER DIDN'T HAVE ANY OR DIDN'T
19 HAVE ANY AVAILABLE HAS INCREASED CONSISTENTLY, AND I WOULD SAY
20 FAIRLY DRAMATICALLY, OVER TIME, REACHING THE HIGH OF 388 IN
21 JUNE, AND DECREASING SOMEWHAT TO 322 IN JULY.

22 WHAT YOU CAN SEE GRAPHED WITH THE RED LINE AT THE
23 BOTTOM IS THE NUMBER OF PLACEMENTS THAT WERE MADE BY THIS
24 OFFICE. AND, AGAIN, THIS IS QUITE OBVIOUS, BUT A FAIRLY
25 CONSISTENT NUMBER OR FLATLINE NOT INCREASING TERRIBLY

1 DRAMATICALLY UNTIL JULY OF 2008.

2 I BELIEVE THE CLEAREST EXPLANATION OF THAT IS A
3 FIFTY-BED MENTAL HEALTH CRISIS BED UNIT AT THE CALIFORNIA
4 MEDICAL FACILITY WENT ONLINE IN JULY, AND SO THERE'S AN INCREASE
5 IN THE NUMBER OF SUCH BEDS THAT HAVE BEEN PROVIDED OR THE NUMBER
6 OF TRANSFERS THAT HAVE BEEN MADE.

7 THIS IS AN EXAMPLE OF THE KIND OF SYSTEM THAT I SAW,
8 A SYSTEM THAT IS IN CRISIS WHERE THE CRISIS IN MANY RESPECTS IS
9 GETTING WORSE, NOT BETTER.

10 AND THIS IS A MEASURE OF UNMET NEED IN THE SYSTEM OF
11 WHICH THERE ARE MANY OTHERS.

12 **MS. KAHN:** YOUR HONORS, IN YOUR BINDER -- WE WON'T
13 HAVE TIME -- AT TABS SEVEN, EIGHT AND NINE ARE -- PLAINTIFFS'
14 TRIAL EXHIBITS SEVEN, EIGHT AND NINE ARE TRIAL EXHIBITS THAT
15 SHOW PLACEMENTS, PHOTOS TAKEN OF ALTERNATIVE PLACEMENTS THAT WE
16 SAW DURING SITE INSPECTIONS.

17 **JUDGE KARLTON:** WHAT IS THE EXHIBIT NUMBER FOR THE --

18 **MS. KAHN:** THE EXHIBIT NUMBER -- I'M SORRY.

19 **JUDGE KARLTON:** NO. NO. NO. FOR THE --

20 **MS. KAHN:** FOR THE PHOTOS?

21 **JUDGE KARLTON:** -- FOR THE CHART?

22 **MS. KAHN:** THE CHART IS EXHIBIT NUMBER 263.

23 **JUDGE KARLTON:** THANK YOU, MA'AM.

24 **MS. KAHN:** AND PHOTOS ARE TRIAL EXHIBIT 341, NUMBER
25 13; TRIAL EXHIBIT 341, NUMBER 17; TRIAL EXHIBIT 377, NUMBER 11;

1 AND TRIAL EXHIBITS 337, NUMBER 28.

2 AND THOSE ARE ALL PHOTOS THAT WERE TAKEN BOTH AT
3 WASCO AND CCI.

4 AND COULD WE PLEASE SEE QUICKLY TRIAL EXHIBIT P264?

5 THIS IS ANOTHER CHART THAT WAS CREATED BY ROSEN BIEN
6 AND GALVAN AT THE DIRECTION OF DR. HANEY. ALSO USED THE CDCR
7 MONTHLY DATA PROVIDED TO THE SPECIAL MASTER AND TO PLAINTIFFS'
8 COUNSEL.

9 264.

10 **JUDGE KARLTON:** I'M SORRY. THIS IS WHAT NUMBER?

11 **MR. BIEN:** 264.

12 **MS. KAHN:** 264. THIS IS TAB NINE. IT'S A CHART OF THE
13 EOP PROGRAM UNMET NEEDS.

14 YOUR HONORS, I'M NOT SURE WE CAN PROJECT THIS.

15 **BY MS. KAHN:**

16 **Q.** DR. HANEY, DO YOU HAVE THIS CHART, THIS EXHIBIT IN FRONT OF
17 YOU, AS WELL? CAN YOU DESCRIBE TO THE COURT WHAT THIS EXHIBIT
18 SHOWS?

19 **A.** THIS PARTICULAR EXHIBIT, THE ONE THAT'S ON THE SCREEN?

20 **Q.** NO, THE EOP UNMET NEED CHART.

21 **A.** YES.

22 DOES THE COURT HAVE THAT AVAILABLE?

23 YES. AGAIN, I WAS INTERESTED IN TRYING TO DEVELOP
24 SOME ANALYSIS OR UNDERSTANDING OF THE MOVEMENT OF THE SYSTEM
25 OVER TIME.

1 I'M AWARE THAT THE COURT ASKED FOR AND RECEIVED
2 ANALYSES OF THE EFFECT OF OVERCROWDING ON THE SYSTEM, BOTH IN
3 TERMS OF THE MEDICAL AND MENTAL HEALTHCARE DELIVERY IN 2007, IN
4 MAY OF 2007.

5 I LOOKED AT THE SYSTEM AFTER THAT. SO I WANTED TO SEE
6 HOW WAS THE SYSTEM CHANGING OVER TIME; HOW IT HAD CHANGED SINCE
7 THOSE ANALYSES HAD BEEN DONE BY THE RECEIVER AND BY THE SPECIAL
8 MASTER.

9 AND SO THIS IS A GRAPH OF EN -- ON THE BLUE LINE AT
10 THE TOP, IT SHOWS THE ENHANCED OUTPATIENT PROGRAM POPULATION,
11 THE NUMBER OF PRISONER PATIENTS IN THE SYSTEM WHO HAVE BEEN
12 IDENTIFIED AS ENHANCED OUTPATIENT OR EOP PRISONERS.

13 AND YOU CAN SEE THAT FROM DECEMBER OF 2006 UNTIL
14 AUGUST OF 2008, THERE HAS BEEN A CONSISTENT, AND I THINK
15 SUBSTANTIAL, INCREASE, ABOUT 900 ADDITIONAL PRISONERS IDENTIFIED
16 AS PART OF THE EOP POPULATION IN THE SYSTEM, REFLECTING AN
17 INCREASING LEVEL OF ACUITY OR NUMBERS OF PEOPLE AT THAT HIGHER
18 LEVEL OF ACUITY IN THE SYSTEM.

19 AND WHAT YOU CAN ALSO SEE GRAPHED ON THE RED LINE ON
20 THE BOTTOM IS THE SYSTEM'S CAPACITY TO HANDLE OR DEAL WITH OR
21 ADDRESS THE NEEDS OF THOSE MENTALLY ILL PRISONERS HAS NOT
22 INCREASED IN ANY REMOTELY COMPARABLE WAY OVER TIME.

23 THE DISPARITY BETWEEN -- IF WE LOOK AT THE VERY END
24 OF THE GRAPHS, THE DISPARITY BETWEEN THE 4,051, WHO ARE IN THE
25 SYSTEM, THE SYSTEM'S CAPACITY TO ADDRESS THEIR NEED, AND THE

1 5,000 PEOPLE WHO NEED THE MENTAL HEALTHCARE PROVIDED IN THE EOP
2 PROGRAM IS A MEASURE OF INDEX OF UNMET NEED.

3 AND THAT GAP, THAT GAP WHICH I'VE DESCRIBED AS UNMET
4 NEED, HAS BEEN INCREASING OVER TIME, NOT DECREASING. AND THAT,
5 TOO, SPEAKS TO THE ISSUE OF OVERCROWDING IN MY OPINION.

6 **Q.** AND HOW DID OVERCROWDING IMPACT THOSE 4,000 THAT COULD BE
7 HOUSED IN EOP PROGRAMS?

8 **A.** WELL, THE OVERCROWDING HAS IMPACTED THOSE PEOPLE, EVEN THE
9 PEOPLE WHO ARE FORTUNATE ENOUGH TO BE IN THE EOP PROGRAM, IN A
10 NUMBER OF DIFFERENT WAYS.

11 I TALKED EARLIER ABOUT TREATMENT SPACE. MANY OF THE
12 EOP PROGRAMS ARE SEVERELY COMPROMISED IN TERMS OF THE AMOUNT OF
13 AVAILABLE TREATMENT SPACE THAT THEY HAVE. SO EVEN THOUGH THERE
14 ARE EOP PROGRAMS, THEY DON'T HAVE A SUFFICIENT AMOUNT OF SPACE
15 IN WHICH TO ENGAGE IN THERAPEUTIC OR TREATMENT ACTIVITIES.

16 THEY ARE IMPACTED BY STAFF SHORTAGES, AS WELL. STAFF
17 SHORTAGES THAT ARE REFLECTED NOT ONLY IN THE ACTUAL VACANCIES,
18 BUT ALSO ON THE BASIS OF THE SPECIAL MASTER'S WORKLOAD STUDY,
19 VACANCIES OR STAFF SHORTAGES WHICH ARE EVEN GREATER THAN THOSE
20 REFLECTED IN THE ACTUAL DEPARTMENT OF CORRECTIONS VACANCIES.

21 THEY'RE IMPACTED, IN ADDITION, BY ANOTHER
22 OVERCROWDING-RELATED ISSUE THAT PLAGUES THE CALIFORNIA SYSTEMS:
23 LOCKDOWNS. LOCKDOWNS ARE USED IN THE CALIFORNIA DEPARTMENT OF
24 CORRECTIONS, I BELIEVE, IN LARGE PART BECAUSE OF THE PROFOUND
25 LEVEL OF OVERCROWDING AT A LEVEL THAT IS UNHEARD OF IN

1 CORRECTIONS DEPARTMENTS ACROSS THE UNITED STATES WITH WHICH I'M
2 FAMILIAR.

3 LOCKDOWNS MEAN THAT PRISONERS, INCLUDING EOP
4 PRISONERS, IF THEY ARE IN A UNIT THAT IS LOCKED DOWN, ARE
5 ESSENTIALLY WITHOUT PROGRAMS DURING THE PERIODS OF TIME THAT THE
6 LOCKDOWN IS IN PLACE.

7 THERE ARE HOUSING UNITS IN THE CALIFORNIA DEPARTMENT
8 OF CORRECTIONS THAT ARE LOCKED DOWN MORE OFTEN THAN THEY ARE
9 UNLOCKED.

10 THERE IS A NOTORIOUS FACILITY IN THE SALINAS VALLEY
11 STATE PRISON WHICH IS LOCKED DOWN ALMOST ALL THE TIME. AND WHERE
12 OBVIOUSLY PRISONERS, SOME OF WHOM ARE ON THE MENTAL HEALTH
13 CASELOAD, ARE NOT RECEIVING ANY TREATMENT, THERAPY OR OTHERWISE,
14 IN THE COURSE OF THE LOCKDOWN.

15 Q. THANK YOU, DR. HANEY.

16 SO CAN YOU QUICKLY SUM UP WHY YOU CONCLUDED
17 OVERCROWDING IS THE PRIMARY CAUSE?

18 A. I DON'T BELIEVE IN A SYSTEM THIS OVERCROWDED AT THIS
19 MAGNITUDE OF OVERCROWDING WITH OVERCROWDING AS WIDESPREAD AS IT
20 HAS BEEN IN CALIFORNIA FOR AS LONG A PERIOD THAT IT HAS BEEN
21 THAT THERE'S ANY OTHER PLAUSIBLE OR CREDIBLE EXPLANATION FOR THE
22 FAILURE OF THE SYSTEM TO PROVIDE CONSTITUTIONALLY-ADEQUATE
23 MENTAL HEALTHCARE.

24 THE COURT'S BEEN MONITORING THIS ISSUE FOR MANY, MANY
25 YEARS. THERE HAVE BEEN MANY, MANY COURT ORDERS, AND THERE HAVE

1 BEEN MANY ACTIVITIES THAT HAVE BEEN ENGAGED IN IN TRYING TO
2 BRING THIS SYSTEM'S MENTAL HEALTHCARE DELIVERY INTO
3 CONSTITUTIONAL COMPLIANCE.

4 IN THE FACE OF ALL OF THOSE EFFORTS THERE HAS BEEN
5 THIS OVERWHELMING OVERCROWDING PROBLEM OF SUCH A DEGREE,
6 MAGNITUDE AND DURATION THAT IT HAS INCAPACITATED THE SYSTEM'S
7 ABILITY TO DELIVER CONSTITUTIONALLY-ADEQUATE CARE. AND I SAW
8 NUMEROUS EXAMPLES OF IT WHEN I TOURED, AND NUMEROUS EXAMPLES OF
9 IT REFLECTED IN THE DOCUMENTS I REVIEWED.

10 Q. THANK YOU.

11 JUDGE HENDERSON: I HAVE A QUESTION THAT GOES BACK,
12 DR. HANEY. IN THE SALINAS PRISON WHICH YOU DESCRIBED AS BEING
13 UNDER LOCKDOWN ALMOST ALL THE TIME, ARE YOU ABLE TO DETERMINE IS
14 THIS BECAUSE OF THE LEVEL OF OVERCROWDING THERE IS MORE SEVERE,
15 OR DO THEY HAVE A WARDEN WHO HOLDS THE LOCKDOWN TRIGGER FASTER,
16 OR DO YOU KNOW?

17 THE WITNESS: AS BEST I CAN TELL YOUR HONOR IS THAT
18 PARTICULAR HOUSING, IT'S A LARGE HOUSING UNIT, ABOUT A THOUSAND
19 PRISONERS. WE'RE NOT TALKING ABOUT A SMALL UNIT IN THIS PRISON.
20 IT'S A FACILITY THAT IS LOCKED DOWN, AND IT'S A FACILITY THAT IS
21 BESET WITH A LOT OF CONFLICTS. AND OVERCROWDED SYSTEMS TEND TO
22 RESPOND TO CONFLICTS WITH LOCKDOWNS. AND THAT'S WHAT HAS BEEN
23 HAPPENING IN CALIFORNIA, AND THAT'S WHAT IS HAPPENING IN THAT
24 PARTICULAR PRISON.

25 AND WHAT IT RESULTS IN IS A LARGE NUMBER OF

1 PRISONERS, MANY OF WHOM HAVE MENTAL HEALTHCARE PROBLEMS, BEING
2 LOCKED IN THEIR CELLS AROUND THE CLOCK FOR WEEKS AND MONTHS ON
3 END.

4 **JUDGE HENDERSON:** THANK YOU.

5 CCPOA COUNSEL HAVE ANY?

6 **MS. LEONARD:** NO FURTHER QUESTIONS, YOUR HONOR.

7 **JUDGE HENDERSON:** OKAY.

8 CROSS-EXAMINATION.

9 **CROSS-EXAMINATION**

10 **BY MS. TILLMAN:**

11 **Q.** GOOD AFTERNOON. THIS IS LISA TILLMAN ON BEHALF OF THE
12 COLEMAN DEFENDANTS.

13 GOOD AFTERNOON, DR. HANEY.

14 **A.** GOOD AFTERNOON.

15 **Q.** DR. HANEY, I UNDERSTAND THAT YOU'VE TESTIFIED IN VARIOUS
16 COURTS, INCLUDING FEDERAL COURTS, A NUMBER OF TIMES IN A NUMBER
17 OF DIFFERENT CASES; IS THAT CORRECT?

18 **A.** YES.

19 **Q.** AND YOU'VE EVEN TESTIFIED AS AN EXPERT AT THE UNDERLYING
20 TRIAL OF THE COLEMAN CASE, CORRECT?

21 **A.** YES, I DID.

22 **Q.** YOU'VE TESTIFIED ON CORRECTIONAL ISSUES IN THE RUIZ CASE IN
23 TEXAS, A CLASS ACTION CASE IN TEXAS, CORRECT?

24 **A.** YES. YES.

25 **Q.** IN THE GATES CASE INVOLVING THE CALIFORNIA MEDICAL FACILITY,

1 CORRECT?

2 **A.** YES.

3 **Q.** AND IN THE MADRID CASE INVOLVING SECURE HOUSING UNITS,
4 CORRECT?

5 **A.** YES.

6 **Q.** YOU'VE TESTIFIED IN THOSE CASES AND TODAY ON THE BASES OF
7 YOUR WORK AS A PROFESSOR OF PSYCHOLOGY, CORRECT?

8 **A.** YES.

9 **Q.** AND YOUR EXPERTISE IN PSYCHOLOGY IS WHAT IS CALLED, I
10 BELIEVE, THE SOCIAL COMPARISON THEORY WHERE YOU STUDY HOW PEOPLE
11 ARE INFLUENCED BY EVENTS IN THEIR ENVIRONMENT?

12 **A.** I DO STUDY HOW PEOPLE ARE AFFECTED BY EVENTS IN THEIR
13 ENVIRONMENT. THAT'S NOT TECHNICALLY SOCIAL COMPARISON THEORY,
14 WHICH IS ACTUALLY SOMETHING ELSE.

15 **Q.** YOU'VE NEVER SERVED AS A CORRECTIONAL ADMINISTRATOR, HAVE
16 YOU?

17 **A.** NO, I STUDY PRISON SYSTEMS. I HAVEN'T WORKED IN THEM.

18 **Q.** AND YOU'VE NOT WORKED IN A PRISON SYSTEM AS A PSYCHOLOGIST,
19 EITHER, HAVE YOU?

20 **A.** NO, I HAVEN'T WORKED FOR A PRISON SYSTEM.

21 **Q.** AND YOU ARE NOT A MEDICAL DOCTOR, CORRECT?

22 **A.** CORRECT.

23 **Q.** SO YOU'VE NOT WORKED IN A PRISON STEM PROVIDING MEDICAL
24 CARE.

25 **A.** I HAVEN'T WORKED IN A PRISON SYSTEM AT ALL.

1 Q. AND WHILE YOU DO HAVE A PH.D, YOU ARE NOT -- A PH.D IN
2 PSYCHOLOGY, YOU'RE NOT A LICENSED CLINICAL PSYCHOLOGIST,
3 CORRECT?

4 A. NO, I DON'T PROVIDE TREATMENT OR DO DIAGNOSIS.

5 Q. LIKEWISE, WHILE YOU DO HAVE A JURIS DOCTORATE DEGREE, YOU
6 HAVE NOT TAKEN THE BAR EXAM AND HAVE NOT PRACTICED LAW?

7 A. NO, I STUDY LEGAL ISSUES. I DON'T PRACTICE LAW OR PRACTICE
8 CLINICAL PSYCHOLOGY.

9 Q. AND WHEN YOU TESTIFIED IN THE UNDERLYING COLEMAN TRIAL IN
10 THE EARLY '90'S, THAT TESTIMONY IN THAT CASE AT THE TIME REALLY
11 FOCUSSED ON AN UNIDENTIFIED GROUP OF INMATES THAT NEEDED MENTAL
12 HEALTHCARE, CORRECT?

13 A. IT WAS AN UNDERIDENTIFIED GROUP. I'M NOT SURE THEY WERE
14 UNIDENTIFIED. THEY WERE UNDERIDENTIFIED. THERE WERE CERTAINLY
15 MENTAL PATIENTS WERE IDENTIFIED IN THE DEPARTMENT OF
16 CORRECTIONS, BUT THE QUESTION WAS: HOW MANY OF THEM WERE THERE?

17 Q. AND AT THE TIME OF YOUR TESTIMONY IN THE UNDERLYING TRIAL OF
18 COLEMAN, THERE WAS NO LEVEL OF CARE KNOWN AS THE CORRECTIONAL
19 CASE MANAGEMENT SYSTEM AT THE TIME, CORRECT?

20 A. YES, THAT'S CORRECT. ALL OF THAT IS POST COLEMAN, POST THAT
21 HEARING, POST MY TESTIMONY.

22 Q. AND WHEN YOU SAY "ALL OF THAT," THAT INCLUDES ENHANCED
23 OUTPATIENT PROGRAM LEVEL CARE DID NOT EXIST WHEN YOU TESTIFIED
24 IN THE COLEMAN TRIAL IN THE EARLY '90'S, CORRECT?

25 A. A WHOLE DIFFERENT DESIGNATION FOR MENTALLY ILL PRISONERS IN

1 THOSE DAYS.

2 Q. THE REVISED PROGRAM GUIDE OF 2006 OBVIOUSLY DIDN'T EXIST AT
3 THE TIME OF THE TRIAL IN THE EARLY '90'S, CORRECT?

4 A. WITHOUT A DOUBT.

5 Q. AND, IN FACT, THE 1997 PROVISIONALLY-APPROVED PROGRAM GUIDE
6 DID NOT EXIST AT THAT TIME, CORRECT?

7 A. I DON'T EVEN THINK IT WAS A GLIMMER IN ANYONE'S EYE AT THAT
8 TIME.

9 Q. NOR WAS PROBABLY THE MENTAL HEALTH TRACKING SYSTEM THAT WE
10 NOW HAVE TODAY, CORRECT?

11 A. CERTAINLY NOT THE ONE WE HAVE TODAY.

12 Q. SO THERE HAVE BEEN SOME CHANGES TO THE CARE PROVIDED TO
13 MENTALLY ILL INMATES SINCE THE TIME OF YOUR TESTIMONY IN THE
14 UNDERLYING TRIAL OF THE COLEMAN CASE, CORRECT?

15 A. YES, THE WHOLE COLEMAN-RELATED SYSTEM AND STRUCTURE AND
16 MONITORING PROCESS AND SO ON, ABSOLUTELY.

17 Q. NOW, IN THE PLAINTIFFS' COUNSEL ASKED YOU TO FORM AN OPINION
18 REGARDING WHETHER OVERCROWDING WAS THE PRIMARY CAUSE OF ANY
19 DEFICIENCIES IN THE MENTAL HEALTHCARE SYSTEM. WOULDN'T IT BE
20 CORRECT TO SAY THAT YOU UNDERTOOK THE TASK OF FIRST REVIEWING
21 AVAILABLE LITERATURE IN YOUR FIELD ON THE IMPACT OF
22 OVERCROWDING?

23 A. YES, I DID. I MEAN, I WRITE ABOUT THESE ISSUES ALL THE TIME,
24 SO I CERTAINLY CONSULTED THE LITERATURE. BUT IT WAS LITERATURE
25 WITH WHICH I WAS ALREADY FAMILIAR --

1 Q. BECAUSE --

2 A. -- THE FIRST TIME, YES.

3 Q. -- BECAUSE OF YOUR SCHOLARLY WORK WITHIN THE UNIVERSITY OF
4 CALIFORNIA AT SANTA CRUZ, CORRECT?

5 A. YES.

6 Q. AND SOME OF THAT ACADEMIC LITERATURE, SOME OF THOSE
7 SCHOLARLY PUBLICATIONS THAT YOU REVIEWED AS PART OF YOUR WORK IN
8 THIS CASE CONCERNED OTHER CORRECTIONAL SYSTEMS IN OTHER STATES,
9 CORRECT?

10 A. SOME OF IT DID, YES. THE RESEARCH HAS BEEN DONE AT DIFFERENT
11 CORRECTIONAL SYSTEMS ACROSS THE UNITED STATES.

12 Q. AND YOU PROVIDED A DISCUSSION OF THOSE ACADEMIC PUBLICATIONS
13 IN YOUR OWN EXPERT REPORT THAT WAS PROVIDED TO THIS COURT, THE
14 EXPERT REPORT DATED AUGUST, 2008, CORRECT?

15 A. YES. AND A NUMBER OF THE GENERAL EFFECTS OF OVERCROWDING,
16 YES.

17 Q. AND SO, SAY, FROM PAGE 27 OF YOUR EXPERT REPORT, WHERE IT
18 DISCUSSES THE PSYCHOLOGICAL EFFECTS OF OVERCROWDING, THROUGH
19 PAGE 34, IT'S ESSENTIALLY A DISCUSSION OF THE ACADEMIC
20 PUBLICATIONS CONCERNING OVERCROWDING, CORRECT?

21 A. YES.

22 Q. AND YOU ALSO PROVIDED A SCHOLARLY DISCUSSION OF THE
23 BEHAVIORAL EFFECTS OF OVERCROWDING ON PRISONERS IN PRISONS IN
24 OTHER AREAS OF YOUR REPORT, SAY, AT PAGES 34 THROUGH 74,
25 CORRECT?

1 **A.** YES. LET ME MAKE SURE THAT'S RIGHT. I REMEMBER HAVING DONE
2 THAT, BUT COULD YOU GIVE ME THE PARAGRAPHS AGAIN?

3 **Q.** I BELIEVE IT WAS PARAGRAPHS 58 THROUGH 74.

4 **A.** YES.

5 **Q.** OTHER PARTS OF YOUR REPORT CONCERN DATA FROM YOUR TOURS OF
6 THE CALIFORNIA STATE PRISONS AND FROM YOUR REVIEW OF MONITORING
7 REPORTS OF THE CALIFORNIA STATE PRISONS, CORRECT?

8 **A.** YES, AS WELL AS OTHER DOCUMENTS. DIFFERENT REPORTS THAT THE
9 DEPARTMENT OF CORRECTIONS HAS ISSUED, STATISTICAL COMPILATIONS
10 REPORTS, A LOT OF INFORMATION THAT I GOT ACTUALLY AT THE TIME OF
11 THE TOURS. SO EACH TIME WE WENT ON A SITE INSPECTION WE WERE
12 OFTENTIMES GIVEN ADDITIONAL MATERIAL BY THE STAFF AT THE PRISON.
13 AND I RELIED ON THAT, WHEN APPROPRIATE.

14 **Q.** YOUR REPORT IN SOME RESPECTS CAN BE EVENLY SPLIT -- I'M
15 SORRY -- CAN BE -- CAN BE SPLIT BETWEEN ONE PART OF THE REPORT
16 PROVIDES A SCHOLARLY DISCUSSION, OVERVIEW OF VARIOUS SCHOLARLY
17 ARTICLES AND PUBLICATIONS ON THE IMPACT OF OVERCROWDING AND THE
18 OTHER PORTION OF YOUR REPORT DISCUSSES YOUR ACTUALLY FINDINGS ON
19 TOUR AND LOOKING AT MONITORING REPORTS AND LOOKING AT THE
20 CALIFORNIA STATE PRISONS YOURSELF, CORRECT?

21 **A.** I DON'T KNOW WHAT YOU MEAN BY "SPLIT." I MEAN, THERE ARE
22 DIFFERENT SECTIONS OF THE REPORT.

23 **Q.** DIFFERENT SECTIONS.

24 **A.** YES.

25 **Q.** NOW, IN ONE SECTION OF YOUR REPORT THERE IS A DISCUSSION OF

1 THE IMPACT OF OVERCROWDING AND THE USE OF SEGREGATION UNITS. DO
2 YOU RECALL THAT PART OF YOUR REPORT?

3 **A.** YES.

4 **Q.** AND IN THAT DISCUSSION, ISN'T IT CORRECT THAT YOU FOUND THAT
5 WITHIN THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND
6 REHABILITATION SUICIDES ARE ACTUALLY MUCH MORE LIKELY TO OCCUR
7 INSIDE SEGREGATED HOUSING UNITS?

8 **A.** YES, I BELIEVE THE STATISTICS SHOW -- AND THIS IS NOT FROM
9 MY SCHOLARLY REVIEW OF THE LITERATURE. THERE IS A -- DR.
10 PATTERSON DOES A YEARLY ANALYSIS OF THE COMPLETED SUICIDES IN
11 THE DEPARTMENT OF CORRECTIONS. AND I READ THAT REPORT, AND I
12 INCORPORATED HIS FINDINGS, IDENTIFYING ISOLATED SINGLE-CELLED
13 PRISONERS AS BEING MORE LIKELY TO HAVE ENGAGED IN OR COMPLETED
14 SUICIDES.

15 **Q.** AND SEGREGATED HOUSING UNITS ARE SINGLE CELL, CORRECT?

16 **A.** MOSTLY, YES.

17 **Q.** AND WHEN YOU TALK ABOUT DR. RAY PATTERSON, JUST FOR THE
18 BENEFIT OF THOSE WHO AREN'T FAMILIAR WITH SOME OF THE TEAM
19 MEMBERS ON THE COLEMAN SPECIAL MASTER'S TEAM, DR. RAY PATTERSON
20 IS A PSYCHIATRIST ON THE COLEMAN SPECIAL MASTER TEAM, A
21 COURT-APPOINTED EXPERT, CORRECT?

22 **A.** YES. I BELIEVE HE'S A PROFESSOR OF PSYCHIATRY AT
23 GEORGETOWN, BUT HE'S PART OF THE MONITORING TEAM IN THE COLEMAN
24 CASE.

25 **Q.** AND YOU HAVE NO REASON TO IN ANY WAY QUESTION HIS FINDINGS

1 THAT SUICIDES ARE MUCH MORE LIKELY TO OCCUR IN THESE SEGREGATED
2 HOUSING UNITS WHERE THERE ARE SINGLE CELLS, CORRECT?

3 **A.** NO, IT'S NOT A SHOCKING FINDING. I MEAN, IT'S COMMON SENSE.
4 BUT HE DOCUMENTS THE DEGREE TO WHICH IT'S TRUE, YES.

5 **MS. TILLMAN:** IF I MIGHT HAVE A MOMENT.

6 **BY MS. TILLMAN:**

7 **Q.** THERE IS NO DISCUSSION IN DR. PATTERSON'S REPORT UPON YOUR
8 REVIEW OF ANY CONCERNS --

9 **MS. TILLMAN:** LET ME STRIKE THAT.

10 **BY MS. TILLMAN:**

11 **Q.** WHEN DR. PATTERSON DISCUSSED THE LIKELIHOOD OF SUICIDE
12 WITHIN SEGREGATED HOUSING UNITS, HE FOUND THAT SUICIDE WAS MUCH
13 MORE LIKELY TO OCCUR IN THOSE SEGREGATED HOUSING UNITS THAN
14 OTHER PLACES, OTHER HOUSING UNITS WITHIN THE DEPARTMENT OF
15 CORRECTIONS, CORRECT?

16 **A.** YES, I THINK I JUST ACKNOWLEDGED THAT. THAT'S WHAT THE
17 STATISTICAL ANALYSIS SHOWS, THAT THAT'S A PLACE WHERE A
18 PREDOMINATE LARGE NUMBER OF THOSE EVENTS OCCURRED. AND THAT
19 THAT'S NOT A -- THAT THAT COMPORTS WITH OTHER FINDINGS, AND
20 OTHER STUDIES OF SUICIDES IN CORRECTIONAL ENVIRONMENTS.

21 **Q.** SO, IN ESSENCE, SUICIDE IS GOING TO OCCUR OR IS MORE
22 LIKELY IN THESE SEGREGATED HOUSING UNITS THAN THE TRIPLE-BUNK
23 AREAS, GYMS AND DORMS, CORRECT?

24 **A.** STATISTICALLY SPEAKING, YES, THAT'S CORRECT. THERE'S A
25 REASON FOR THAT, OBVIOUS REASON FOR THAT, OF COURSE, RIGHT?

1 SUICIDE IS AN EVENT WHICH INQUIRIES AN OPPORTUNITY.
2 AND SO PEOPLE WHO ARE SINGLE-CELLED HAVE AN OPPORTUNITY TO,
3 SADLY, ATTEMPT TO TAKE THEIR LIFE IN A WAY WHERE PEOPLE WHO ARE
4 HOUSED WITH OTHER PEOPLE DON'T.

5 SO THAT'S WHAT I THINK MOST EXPERTS IN THIS AREA
6 WOULD ACKNOWLEDGE AS THE EXPLANATION FOR THAT.

7 NOW, THE EVENTS THAT LEAD UP TO SOMEBODY BEING
8 MENTALLY ILL ENOUGH TO WANT TO TAKE THEIR LIFE, HOWEVER, ARE
9 RELATED TO A NUMBER OF DIFFERENT THINGS, MANY OF WHICH I'VE BEEN
10 TALKING ABOUT AND WHICH DR. PATTERSON ACKNOWLEDGES IN HIS
11 ANALYSES OF COMPLETED SUICIDES.

12 Q. NOW, WHEN YOU'VE LOOKED AT THE CALIFORNIA DEPARTMENT OF
13 CORRECTIONS AND REHABILITATIONS SUICIDE RATE IN EVALUATING THE
14 IMPACTS OF OVERCROWDING, WOULDN'T YOU AGREE THAT THE SUICIDE
15 RATE IS NOT INCREASED ON A ONE-TO-ONE, OR AS YOU PUT IN IT YOUR
16 DEPOSITION, A MONOTONIC BASIS AS THE CALIFORNIA DEPARTMENT OF
17 CORRECTIONS AND REHABILITATION POPULATION HAS INCREASED?

18 A. NO, IT HASN'T. YOU WOULDN'T NECESSARILY EXPECT IT TO, AND
19 IT HASN'T. IT'S VERY, VERY HIGH, AS YOU PROBABLY KNOW, COMPARED
20 TO VIRTUALLY ANY OTHER SYSTEM IN THE COUNTRY, WHICH I THINK
21 INDIRECTLY HAS TO DO WITH THE LEVEL OF OVERCROWDING IN THE
22 SYSTEM. BUT THERE'S NOT A SIMPLE ONE-TO-ONE INCREASE,
23 POPULATION AND SUICIDE RATE AUTOMATICALLY GOES UP. THERE ARE A
24 COMPLICATED SET OF FACTORS INVOLVED.

25 Q. AND WHEN YOU SAY THERE'S A COMPLICATED SET OF FACTORS

1 INVOLVED, YOU WOULD AGREE THAT DEMOGRAPHIC FACTORS SUCH AS AGE,
2 RACE CAN BE COSIDERED IN DETERMINING THE SUICIDE RATES AND THEIR
3 CAUSES, CORRECT?

4 **A.** YES, AS WELL AS MANY OTHER THINGS. FOR EXAMPLE, THE
5 ENVIRONMENTAL CONDITIONS UNDER WHICH PRISONERS LIVE. YOU'RE
6 PROBABLY AWARE THAT THERE ARE STUDIES WHICH PROVIDED A DIRECT
7 CONNECTION BETWEEN LEVELS OF OVERCROWDING AND SUICIDE.

8 AND, IN FACT, IN ONE OF DR. PATTERSON'S OWN ARTICLES
9 HE TALKS ABOUT THE IMPORTANCE OF OVERCROWDING AS A POTENTIAL
10 CAUSAL FACTOR IN SUICIDE.

11 SO THAT, TOO, IS AN IMPORTANT CONSIDERATION.

12 **Q.** HOWEVER, YOU WOULD AGREE THAT IT'S IN THE SINGLE CELLS WHERE
13 THE SUICIDE RATE IS THE HIGHEST, ISN'T IT?

14 **JUDGE HENDERSON:** HASN'T THAT BEEN ASKED AND ANSWERED
15 SEVERAL TIMES?

16 **MS. TILLMAN:** IT'S CROSS.

17 **JUDGE HENDERSON:** I KNOW IT'S CROSS. IT'S ALSO --

18 **JUDGE KARLTON:** IT'S CUMULATIVE.

19 **JUDGE HENDERSON:** WE MANAGE TRIALS ON TIME.

20 **MS. TILLMAN:** YOU'VE HEARD IT?

21 **JUDGE HENDERSON:** YES.

22 **JUDGE KARLTON:** IN ANY EVENT, EVEN IF IT BE AN
23 APPROPRIATE OBJECTION OF CROSS, CUMULATIVE IS A PERFECTLY
24 APPROPRIATE OBJECTION. AND IT IS CERTAINLY CUMULATIVE.

25 **MS. TILLMAN:** THANK YOU. I'LL RESPECT THAT.

1 **BY MS. TILLMAN:**

2 **Q.** SUICIDES CAN AND HAVE OCCURRED WITHIN
3 CONSTITUTIONALLY-ADEQUATE SYSTEMS, CORRECT?

4 **A.** YES, SADLY THAT'S A FACT OF LIFE IN PRISON ENVIRONMENTS AND
5 JAIL ENVIRONMENTS, AS WELL.

6 **Q.** I'M SORRY. CAN YOU JUST GET A TEENY BIT CLOSER TO THAT
7 MICROPHONE? THANK YOU.

8 **A.** YES. SO I SAID: YES, IT'S A FACT OF LIFE IN PRISON AND
9 JAIL ENVIRONMENTS, UNFORTUNATELY.

10 **Q.** AND, IN FACT, SOME MENTALLY ILL INMATES MIGHT DECOMPENSATE
11 EVEN WHEN THEY ARE NOT IN AN OVERCROWDED SYSTEM, CORRECT?

12 **A.** YES, THAT'S THE -- I'M NOT A CLINICIAN, BUT I KNOW ENOUGH
13 ABOUT MENTAL ILLNESS TO KNOW PEOPLE SOMETIMES DECOMPENSATE EVEN
14 UNDER THE BEST OF CIRCUMSTANCES.

15 BUT THEY ARE MORE LIKELY TO UNDER THE WORST OF
16 CIRCUMSTANCES.

17 **Q.** YOU'VE MENTIONED THE FACT THAT YOU TOURED EIGHT FACILITIES,
18 CORRECT?

19 **A.** YES.

20 **Q.** AND IN TOURING THESE FACILITIES YOU MET WITH PATIENTS, YOU
21 MET WITH STAFF, YOU MET WITH CLINICIANS, CORRECTIONAL OFFICERS,
22 CORRECT?

23 **A.** YES, SUPERVISORS, THE WARDENS WERE ALWAYS PRESENT, ASSOCIATE
24 WARDENS.

25 **Q.** AND YOU FOUND THAT THE CALIFORNIA DEPARTMENT OF CORRECTIONS

1 AND REHABILITATION STAFF, THE CLINICIANS, THE CORRECTIONAL
2 OFFICERS TO BE FORTHCOMING WITH INFORMATION, DIDN'T YOU?

3 **A.** THEY WERE EXTREMELY FORTHCOMING, YES, AND QUITE COOPERATIVE.
4 AND WE WERE APPRECIATIVE OF THAT.

5 **Q.** AND IN TERMS OF THE PATIENTS THAT YOU MET WITH, SOME WERE
6 SELECTED BY THE PLAINTIFFS, CORRECT?

7 **A.** YES.

8 **Q.** SOME WERE SELECTED BY YOU AS YOU WERE TOURING, RIGHT?

9 **A.** YES.

10 **Q.** AND THE PERSONS OR PATIENTS THAT YOU MET WITH, WHETHER THEY
11 WERE ACTUALLY CASELOAD PATIENTS OR NOT, WERE PERSONS THAT, FOR
12 YOU, SEEMED TO BE EITHER DISTRESSED OR SOMEHOW REPRESENTATIVE OF
13 THE UNIT THAT THEY WERE HOUSED ON, CORRECT?

14 **A.** YES, ALTHOUGH THERE WERE TWO EXCEPTIONS TO THAT. IN ONE
15 INSTANCE, SOME OF THE PEOPLE THAT WERE INTERVIEWED WERE ACTUALLY
16 SELECTED BY DEFENDANT'S EXPERT, AND THOSE SELECTIONS WERE
17 RANDOM. SO I HAD NOTHING TO DO WITH THE IDENTIFICATION OF THOSE
18 PEOPLE.

19 AND THEN, THERE WAS AN INSTANCE IN WHICH A GROUP OF
20 PEOPLE WAS BROUGHT TO US WHO THE PRISON SOMEHOW HAD, I THINK,
21 MISTAKENLY DECIDED OR CONCLUDED THAT WE WANTED TO INTERVIEW.
22 THEY WERE NOT ON OUR LIST, BUT THEY WERE PART OF THE COLEMAN
23 CASE, AND I INTERVIEWED THEM, ANYWAY. AND THEY WERE PRODUCTIVE
24 INTERVIEWS.

25 SO WITH THOSE TWO EXCEPTIONS, IT WAS AS YOU DESCRIBE

1 IT.

2 Q. YOUR JOB IN PERFORMING YOUR WORK FOR PLAINTIFFS' COUNSEL IN
3 EVALUATING THE ISSUE OF OVERCROWDING WAS NOT TO DIAGNOSE ANY OF
4 THE PATIENTS THAT YOU MET WITH, CORRECT?

5 A. ABSOLUTELY CORRECT.

6 Q. AND IT WASN'T TO TREAT ANY OF THESE PATIENTS, CORRECT?

7 A. CORRECT.

8 Q. YOU RELIED UPON WHAT THE PATIENTS TOLD YOU IN REGARDS TO
9 THEIR EXPERIENCE OF THEIR HOUSING UNIT AND THEIR CARE, CORRECT?

10 A. I RELIED ON THAT, IN PART. IT WASN'T ALL I RELIED ON, EVEN
11 WITH RESPECT TO THE PEOPLE I INTERVIEWED. AS YOU KNOW, I HAD AN
12 OPPORTUNITY TO REVIEW RECORDS AT THE INSTITUTION. I ALSO
13 REQUESTED RECORDS, WHICH I REVIEWED SUBSEQUENT TO THE
14 INTERVIEWS. AND IN MOST INSTANCES WHEN APPROPRIATE I HAD AN
15 OPPORTUNITY TO TALK TO EITHER CORRECTIONAL OFFICERS OR CLINICAL
16 STAFF ABOUT A PARTICULAR PRISON PATIENT.

17 Q. AND WHEN YOU TOURED THESE FACILITIES AND MET WITH THESE
18 PERSONS, THE INMATES, THE STAFF, YOU'RE VIEWING THESE
19 INSTITUTIONS AS ENVIRONMENTS, WHOLE ENVIRONMENTS TO CONSIDER IN
20 LOOKING AT THE IMPACT OF OVERCROWDING ON THE MENTAL HEALTHCARE
21 SYSTEM, CORRECT?

22 A. I'M NOT SURE WHAT YOU MEAN BY "WHOLE ENVIRONMENTS."

23 I CERTAINLY WAS LOOKING AT THE ENVIRONMENT IN WHICH
24 THE PRISONER WAS HOUSED. AND I WAS LOOKING AT -- PARTICULARLY
25 BECAUSE THESE WERE MEMBERS OF THE COLEMAN CLASS, I WAS LOOKING

1 AT THE MENTAL HEALTH DELIVERY SYSTEM TO WHICH THEY HAD ACCESS.

2 SO I MADE A POINT, FOR EXAMPLE, IF THERE WAS A
3 CORRECTIONAL TREATMENT CENTER, OF VIEWING THAT FACILITY. OR IF
4 THERE WAS AN OUTPATIENT HOUSING UNIT I WENT THERE.

5 IN THE CASE OF SALINAS VALLEY I WENT TO THE
6 DEPARTMENT OF MENTAL HEALTH OPERATED FACILITY. BUT I DIDN'T
7 PURPORT TO LOOK AT EVERY SINGLE ASPECT OF THE PRISON. BUT
8 RATHER THE PARTS OF THE PRISON THAT WERE RELEVANT TO THE PEOPLE
9 THAT I WAS INTERVIEWING AND/OR THAT WERE RELEVANT TO THE MENTAL
10 HEALTHCARE DELIVERY SYSTEMS.

11 Q. THOSE PARTS THAT ARE NECESSARY TO ACTUALLY CREATE AN
12 INTEGRATED AND APPROPRIATE MENTAL HEALTHCARE CARE SYSTEM?

13 A. YES. FOR THE MOST PART, YES.

14 Q. NOW, ARE YOU AWARE OF THE TERM "RATED CAPACITY"?

15 A. I'M AWARE OF THE TERM. IT MEANS DIFFERENT THINGS IN
16 DIFFERENT CONTEXTS.

17 Q. I THINK IN YOUR REPORT OF AUGUST, 2008, YOU MENTIONED -- THE
18 RATE OF CAPACITY, AT LEAST IN YOUR REPORT, WAS DEFINED AS:

19 "THE RATIO OF PRISONERS TO THE RATED CAPACITY OF
20 A PARTICULAR FACILITY."

21 DO YOU RECALL THAT?

22 A. YES. IT'S SOMETIMES CALLED "THE RATIO TO DESIGN CAPACITY,"
23 BUT, YES.

24 Q. AND THE CONCEPT WOULD BE THAT THE RATE OF CAPACITY WOULD
25 INCREASE AS YOU HAVE A DECREASED NUMBER OF PRISONERS, CORRECT?

1 **A.** THE DEGREE OF OVERCROWDING WOULD -- IF YOU'RE USING THAT
2 MEASURE, I MEAN, IF YOU'RE USING SIMPLY A MEASURE OF RATIO OF
3 THE NUMBER OF PEOPLE THERE TO DESIGN CAPACITY, THEN, YES. AS
4 YOU DECREASE THE NUMBER OF PRISONERS YOU WOULD DECREASE THAT
5 RATIO, OR THE DEGREE OF OVERCROWDING.

6 THERE ARE OTHER WAYS TO THINK ABOUT IT AND TALK ABOUT
7 IT, BUT THAT'S ONE WAY TO DO IT, YES.

8 **Q.** AND WOULD IT BE CORRECT TO SAY THAT WHEN YOU LOOK AT
9 OVERCROWDING YOU'RE NOT JUST LOOKING AT A FORMULAIC RATIO OF THE
10 NUMBER OF PRISONERS TO THE NUMBER OF CELLS?

11 **A.** WELL, I'M LOOKING AT THAT, AND IN ADDITION LOOKING AT SOME
12 OTHER THINGS. AND THAT'S WHAT I TRIED TO TALK ABOUT EVEN FROM
13 THE VERY OUTSET OF MY TESTIMONY WHEN I SAID IT'S NOT JUST A
14 MATTER OF HOW MANY CELLS ARE THERE AND HOW MANY PRISONERS ARE
15 THERE OR HOW MANY SPACES ARE THERE TO HOUSE PEOPLE AND HOW MANY
16 PRISONERS ARE THERE.

17 YOU HAVE TO LOOK AT ALSO OTHER KINDS OF RESOURCES.
18 IN THE CASE OF MENTAL HEALTHCARE DELIVERY YOU'RE TALKING ABOUT
19 SPACE, THINGS LIKE THINGS I TALKED ABOUT: SPACES FOR TREATMENT,
20 ACCESS TO APPROPRIATE LEVELS OF CARE, STAFFING, AND SO ON.

21 ALL OF THAT HAS TO BE FACTORED INTO UNDERSTANDING THE
22 EXTENT TO WHICH A FACILITY IS OVERCROWDED.

23 **Q.** I THINK YOU SAID IT VERY WELL IN YOUR REPORT AT PARAGRAPH
24 39, PAGE 23 -- I'M GOING TO HAVE IT PUT UP ON THE SCREEN --
25 WHERE IT STARTS:

1 "IT IS IMPORTANT TO NOTE THAT OVERCROWDING IS
2 MEASURED OR UNDERSTOOD AS A FUNCTION OF MORE THAN
3 JUST THE RATIO OF PRISONERS TO THE RATED CAPACITY OF
4 A PARTICULAR FACILITY."

5 AND THERE YOU INDICATE, ISN'T IT CORRECT, THAT:

6 "WHEN PRISON SYSTEMS INCREASE THEIR RATED
7 CAPACITY WITHOUT COMMENSURATE INCREASES IN
8 PROGRAMMING, MEDICAL AND MENTAL HEALTH RESOURCES THEY
9 ARE STILL OVERCROWDED, EVEN THOUGH TECHNICALLY THEY
10 DO NOT HOUSE A GREATER NUMBER OF PRISONERS THAN THEY
11 ARE DESIGNED TO HOLD."

12 IS THAT CORRECT.

13 **A.** YES. YES. A SYSTEM COULD BE OVERCROWDED IN THAT SENSE, YES.
14 INSUFFICIENT RESOURCES GIVEN THE NUMBER OF PEOPLE WHO HAVE TO
15 BE -- WHOSE PROBLEMS AND NEEDS NEED TO BE ADDRESSED.

16 **Q.** SO, AGAIN, YOU'RE LOOKING AT THE WHOLE MENTAL HEALTHCARE
17 SYSTEM, NOT JUST THE NUMBER OF PEOPLE IN THAT SYSTEM?

18 **A.** WELL, YES. THOSE FACTORS HAVE TO BE TAKEN INTO ACCOUNT. I
19 MEAN, IF YOU LOOK AT THE SENTENCE THAT YOU'VE -- THAT FOLLOWS
20 THE ONE THAT'S CUT OFF, I SAID HERE THAT:

21 "CALIFORNIA PRISONS ARE CHRONICALLY AND SEVERELY
22 OVERCROWDED, BOTH IN THE SENSE THAT THEY DO NOT --
23 THAT THEY HOUSE FAR MORE PEOPLE THAN THEY WERE
24 DESIGNED TO HOLD AND BECAUSE THEY DO NOT HAVE
25 REMOTELY ENOUGH PROGRAMMING, MEDICAL, MENTAL

1 HEALTHCARE RESOURCES, STAFF, SPACE, OTHER
2 INFRASTRUCTURE TO HOUSE THE UNPRECEDENTED NUMBERS OF
3 PRISONERS HOUSED IN THEM."

4 SO I CERTAINLY TOOK THOSE THINGS INTO ACCOUNT IN
5 EVALUATING THE SYSTEM IN THAT WAY.

6 **Q.** YOU TOOK INTO ACCOUNT THE AVAILABILITY OF PROGRAMMING IN
7 THEORIES OF THERAPEUTIC PROGRAMMING AND SPACE TO PROVIDE THAT
8 THERAPY?

9 **A.** THERAPEUTIC PROGRAMMING, PROGRAMMING BROADLY SPEAKING. I
10 MEAN, MENTAL HEALTH CRISIS PATIENTS, LIKE ALL PRISONERS, NEED
11 PROGRAMMING OF A VARIETY OF SORTS. AND PART OF THE PROBLEM WITH
12 OVERCROWDING IN THE CALIFORNIA SYSTEM IS NOT ONLY IS THERE NOT
13 THERAPEUTIC PROGRAMMING, THERE IS ALMOST NO OTHER KIND OF
14 PROGRAMMING, EITHER.

15 SO IN MOST SYSTEMS WHERE YOU'RE PROVIDING MENTAL
16 HEALTHCARE AND YOU'RE PROVIDING A PARTICULAR NUMBER OF HOURS OF
17 THERAPEUTIC PROGRAMMING THAT'S DONE IN THE CONTEXT WHERE YOU'RE
18 ALSO ASSUMING THAT THOSE PRISONERS, THOSE MENTALLY ILL PRISONERS
19 ARE GETTING OTHER KINDS OF PROGRAMMING.

20 IN THE CALIFORNIA SYSTEM THEY ARE OVERWHELMINGLY NOT.
21 SO THOSE THINGS HAVE TO BE TAKEN INTO ACCOUNT, AS WELL.

22 SO, TOO, DOES NOT ONLY THE STAFFING VACANCIES, BUT
23 THE CHRONIC UNDERSTAFFING THAT EXISTS THROUGHOUT THE MENTAL
24 HEALTHCARE DELIVERY SYSTEM IN CALIFORNIA. AND I TOOK THAT INTO
25 ACCOUNT, AS WELL.

1 Q. AND THAT'S WHY YOU WROTE IN YOUR REPORT --

2 A. YES.

3 Q. -- THAT YOU NEED TO HAVE A COMMENSURATE INCREASE IN
4 PROGRAMMING, MEDICAL AND MENTAL HEALTH RESOURCES, CORRECT?

5 A. YES, GIVEN THE NUMBER OF PEOPLE WHO ARE IN THE PRISON, THOSE
6 ARE THE SHORTFALLS. SO IT'S NOT JUST THERE ARE TOO FEW CELLS OR
7 TOO FEW PLACES TO HOUSE PEOPLE. IT'S THAT WE DON'T HAVE ENOUGH
8 OF ALL THOSE THINGS, AS WELL, GIVEN THE NUMBER OF PEOPLE WHO ARE
9 IN THE SYSTEM.

10 Q. AND MOVING ON TO THE ISSUE OF HOUSING, FOR THE PURPOSE OF
11 PROVIDING CONSTITUTIONALLY-ADEQUATE MENTAL HEALTHCARE, YOU WOULD
12 AGREE THAT THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND
13 REHABILITATION DOES NOT NEED TO PROVIDE EVERY INMATE WITH THEIR
14 OWN CELL, CORRECT?

15 A. YES. I THINK THAT'S BEEN DECIDED A LONG TIME AGO, BOTH
16 CONSTITUTIONALLY AND BY CORRECTIONAL EXPERTS. THAT'S A MODEL
17 FROM A DIFFERENT TIME AND PLACE, AND IT'S A BYGONE ERA.

18 Q. AND SO PUTTING TWO INMATES IN A CELL THAT MAY HAVE BEEN
19 DESIGNED FOR ONE IS, IN AND OF ITSELF, NOT ENOUGH TO ENDANGER A
20 PRISONER'S MENTAL HEALTH CONDITION, CORRECT?

21 A. NOT NECESSARILY. FOR SOME PRISONERS, IT IS. I MEAN, AND
22 THAT'S -- IT'S -- YOU WANT TO GET CLOSE TO A LINE HERE.

23 I WOULDN'T SUGGEST TO YOU THAT IT'S CONSTITUTIONALLY
24 OR PSYCHOLOGICALLY IMPERMISSIBLE TO PUT TWO PRISONERS IN A CELL
25 DESIGNED FOR ONE.

1 HOWEVER -- AND THE "HOWEVER" IS IMPORTANT HERE --
2 DEPENDS ON THE PRISONERS. DEPENDS ON WHAT ELSE IS GOING ON AT
3 THE PRISON. IT DEPENDS ON THE CELLS. IT DEPENDS ON THE ABILITY
4 OF THAT SYSTEM TO RESPOND TO MENTAL HEALTH PROBLEMS, IF THEY
5 ARISE AS A RESULT OF THAT KIND OF HOUSING OR FOR OTHER REASONS,
6 AND SO ON AND SO FORTH.

7 SO THE "IT DEPENDS" PART IS HUGE IN THAT FORMULATION.

8 **Q.** WHAT YOU'RE REALLY SAYING IS IT'S NOT ABOUT PUTTING TWO
9 PEOPLE IN A CELL DESIGNED FOR ONE. IT'S ABOUT STAFFING. IT'S
10 ABOUT PROGRAMMING SPACE. IT'S ABOUT THE ABILITY TO ACCESS
11 MENTAL HEALTHCARE. IT'S ABOUT THE AVAILABILITY OF PATIENT CARE
12 INFORMATION. IT'S ABOUT THE ABILITY OF THE MENTAL HEALTHCARE
13 SYSTEM TO SCREEN AND DETECT FOR MENTALLY ILL; ISN'T THAT RIGHT?

14 **A.** YES. IT'S ABOUT ALL THOSE THINGS. AND THAT'S WHY I
15 CONCLUDED THAT THE OVERCROWDING HAS IMPAIRED THE ABILITY OF THIS
16 SYSTEM TO PROVIDE ALL OF THOSE THINGS AT A
17 CONSTITUTIONALLY-REQUIRED LEVEL.

18 **Q.** NOW, IN REGARDS TO THE NUMBER OF STAFF AVAILABLE TO PROVIDE
19 MENTAL HEALTHCARE, YOU WOULD DEFER TO A SPECIAL MASTER'S TEAM IN
20 THE COLEMAN CASE AND THEIR ONGOING MONITORING REPORTS REGARDING
21 WHETHER OR NOT PATIENTS ARE RECEIVING CONSTITUTIONALLY-ADEQUATE
22 MENTAL HEALTHCARE, WOULDN'T YOU?

23 **A.** WELL, I WOULD DEFER TO THEM NOT ONLY ON THAT ISSUE, BUT I
24 WOULD DEFER TO THEM ALSO IN TERMS OF THE EVALUATION OF WHETHER
25 OR NOT THOSE STAFFING RATIOS WERE ACCURATELY AND VALIDLY

1 ESTABLISHED.

2 SO, AS I'M SURE YOU KNOW, THERE'S A WORKLOAD STUDY
3 WHICH HAS BEEN COMPLETED WHICH, IN FACT, INDICATES THAT THOSE
4 ORIGINAL STAFFING RATIOS, WHICH THE DEPARTMENT HAS NOT REMOTELY
5 BEGUN TO MEET IN MANY RESPECTS, GROSSLY UNDERSTATE THE STAFFING
6 NEEDS OF THE MENTAL HEALTH DELIVERY SYSTEM IN THE DEPARTMENT.

7 AND THEN, IN ADDITION, AS AGAIN I'M SURE YOU KNOW,
8 THE SPECIAL MASTER HIMSELF HAS PROVIDED A FAIRLY DETAILED
9 CRITIQUE OF EVEN THAT WORKLOAD STUDY SUGGESTING THAT THE
10 WORKLOAD STUDY ITSELF UNDERESTIMATES THE NUMBER OF STAFF MEMBERS
11 WHO ARE NEEDED TO ADEQUATELY PROVIDE CONSTITUTIONAL MENTAL
12 HEALTHCARE IN THE SYSTEM.

13 SO IT'S NOT JUST THE SPECIAL MASTER'S MONITORING
14 REPORTS, BUT IT'S ALL THE OTHER THINGS THE SPECIAL MASTER HAS
15 DONE WHICH UNDERSCORE MY CONCLUSION THAT THIS IS A GROSSLY
16 UNDERSTAFFED SYSTEM.

17 **Q.** YOU HAVE NO REASON TO QUESTION THE SPECIAL MASTER'S FINDING
18 AND RECOMMENDATIONS CONCERNING THE NUMBER OF STAFF POSITIONS
19 NECESSARY TO FULLY IMPLEMENT THE REVISED PROGRAM GUIDE OF 2006,
20 DO YOU?

21 **MS. KAHN:** OBJECTION. IT'S A VAGUE QUESTION. WHAT
22 RECOMMENDATION?

23 **JUDGE KARLTON:** I'M SORRY, MA'AM?

24 **JUDGE HENDERSON:** OBJECTION IS VAGUENESS. WE HAVE NO
25 REASON TO QUESTION -- DO YOU HAVE ANY REASON TO QUESTION THAT?

1 **JUDGE KARLTON:** ASSUMING THAT THERE WAS SUCH A THING.

2 **MS. TILLMAN:** I BELIEVE THE SPECIAL MASTER FILED A
3 REPORT WITH THE COLEMAN COURT.

4 **JUDGE KARLTON:** I'M SORRY. LET ME PUT THIS PUT THIS
5 BACK ON.

6 GO AHEAD.

7 **MS. TILLMAN:** I BELIEVE THE SPECIAL MASTER FILED A
8 REPORT WITH THE COLEMAN COURT SHORTLY BEFORE THE COLEMAN COURT
9 ORDERED SOME 500 ODD POSITIONS.

10 **JUDGE KARLTON:** RIGHT.

11 **MS. TILLMAN:** WE SOUGHT BY THE CALIFORNIA DEPARTMENT
12 OF CORRECTIONS TO FULLY IMPLEMENT THE PROGRAM GUIDE. AND THAT'S
13 WHAT I AM REFERRING TO.

14 **JUDGE KARLTON:** IT'S NOT CLEAR TO ME THAT IT WAS TO
15 FULLY IMPLEMENT THE PROGRAM GUIDE, BUT IT WAS CERTAINLY IN
16 SUPPORT OF THAT.

17 BUT IN ANY EVENT, WHAT'S YOUR QUESTION, AGAIN,
18 BECAUSE I GOT LOST?

19 **JUDGE HENDERSON:** YES.

20 **MS. TILLMAN:** SHALL I TRY AGAIN?

21 **JUDGE HENDERSON:** THE QUESTION WAS: DOES HE HAVE ANY
22 REASON TO QUESTION THE SPECIAL MASTER'S FINDING IN THAT REGARD.

23 **THE WITNESS:** OKAY.

24 **BY MS. TILLMAN:**

25 **Q.** YES.

1 **A.** WELL, IT'S A STARTING POINT. AND I THINK THE SPECIAL MASTER
2 HIMSELF ACKNOWLEDGES IT'S A STARTING POINT. IN ADDITION TO THE
3 POSITIONS WHICH ARE NEEDED IN ORDER TO HELP IMPLEMENT THE
4 PROGRAMMING GUIDE, THERE IS, AS I MENTIONED A MOMENT AGO, A
5 WORKLOAD STUDY THAT SUGGESTS A SHORTFALL IN THE NEIGHBORHOOD OF
6 407 POSITIONS, ADDITIONAL POSITIONS NOT CONTEMPLATED IN EARLIER
7 ALLOCATIONS.

8 AND THEN, THERE IS THE SPECIAL MASTER'S ANALYSIS OF
9 THAT, ANALYSIS SUGGESTING THAT THAT'S AN UNDERSTATEMENT.

10 SO I HAVE NO -- I HAVE CERTAINLY NO REASON TO
11 QUESTION ALL OF THOSE INPUTS FROM THE SPECIAL MASTER WHO HAS
12 BEEN MONITORING THE DELIVERY OF THESE SERVICES FOR A LONG TIME
13 AND WHOSE ANALYSIS APPEARS TO BE SCRUPULOUSLY CAREFUL.

14 **Q.** LIKEWISE, IN LOOKING AT THE NUMBER OF BEDS THAT ARE REQUIRED
15 BY THE DEFENDANTS TO ENABLE CONSTITUTIONALLY-ADEQUATE MENTAL
16 HEALTHCARE, YOU WOULD DEFER TO THE SPECIAL MASTER'S FINDINGS
17 CONCERNING THE AUGUST 2000 BED PLAN SUBMITTED BY THE DEFENDANTS,
18 WOULDN'T YOU.

19 **A.** WELL, I'D HAVE TO LOOK AT THAT. I DON'T RECALL THAT,
20 OFFHAND. I MEAN, I'VE JUST IDENTIFIED EARLIER IN MY DIRECT
21 TESTIMONY A FAIRLY STAGGERING SHORTFALL OF AVAILABLE BEDS JUST
22 FOR PEOPLE IN THE ENHANCED OUTPATIENT PROGRAM.

23 I'M AWARE THAT THERE ARE BUDGET REQUESTS TO BUILD
24 ADDITIONAL PROGRAMMING SPACE IN THREE OR FOUR FACILITIES FOR THE
25 ENHANCED OUTPATIENT PROGRAMS THAT EXIST AT SALINAS, THE

1 CALIFORNIA STATE PRISON IN SACRAMENTO, MULE CREEK, AND I BELIEVE
2 CMF.

3 AND I'M AWARE THAT THERE ARE LOTS OF PLANS TO BEGIN
4 TO ADDRESS THE LIMITATIONS OF SPACE IN A WAY IN WHICH THE
5 OVERCROWDING IN THIS SYSTEM HAS MADE IT ALMOST IMPOSSIBLE TO
6 DELIVER CONSTITUTIONALLY-ADEQUATE MENTAL HEALTHCARE TO A
7 SIGNIFICANT POPULATION OF PEOPLE IN THE SYSTEM.

8 I'M NOT SURE WHETHER THE SPECIAL MASTER HAS APPROVED
9 THOSE THINGS OR WHAT HIS POSITION IS ON BUILDING PLANS.

10 Q. SO YOU'RE NOT -- I'M SORRY. ARE YOU FINISHED?

11 A. YES.

12 Q. SO YOU'RE NOT AWARE THAT THE COLEMAN COURT ACTUALLY APPROVED
13 THE AUGUST 2000 BED PLAN SUBMITTED BY DEFENDANTS?

14 A. I BELIEVE --

15 MS. KAHN: OBJECTION.

16 THE WITNESS: I DON'T KNOW. YOU ASKED ME ABOUT THE
17 SPECIAL MASTER. I BELIEVE THAT I'VE SEEN THE BED PLAN, AND I
18 BELIEVE THAT IT'S BEEN APPROVED. AND I HAVE NO REASON TO
19 DISPUTE THE DESIRABILITY THAT IS EXPRESSED FOR INCREASING THE
20 BEDS THAT ARE AVAILABLE IN THE MENTAL HEALTHCARE DELIVERY
21 SYSTEM.

22 BY MS. TILLMAN:

23 Q. AND YOU ACTUALLY DO NOT KNOW WHETHER THERE IS AN OBJECTIVE
24 STANDARD THAT MUST BE MET BY THE CALIFORNIA DEPARTMENT OF
25 CORRECTIONS AND REHABILITATION IN ORDER TO SHOW COMPLIANCE WITH

1 THIS CORE ELEMENT OF A CONSTITUTIONALLY-ADEQUATE MENTAL
2 HEALTHCARE SYSTEM, SUFFICIENT MENTAL HEALTHCARE BEDS FOR THE
3 MENTAL HEALTHCARE POPULATION?

4 **A.** I'M WELL-AWARE THAT THERE ARE -- THAT THE AVAILABILITY OF
5 BEDS IS ONE COMPONENT IN THE DELIVERY OF A
6 CONSTITUTIONALLY-ADEQUATE MENTAL HEALTHCARE SYSTEM.

7 THE SPECIAL MASTER'S ANALYSIS OF OVERCROWDING TALKS
8 ABOUT THE PROVISION OF BEDS AS ONE COMPONENT OF THAT, AS WELL AS
9 STAFFING. AND IT'S CERTAINLY A COMPONENT THAT I TOOK INTO
10 ACCOUNT AS I WENT THROUGH THESE FACILITIES AND REACHED THE
11 CONCLUSIONS I DID ABOUT A YEAR OR SO AFTER THE SPECIAL MASTER'S
12 ANALYSIS OF THESE ISSUES.

13 **Q.** AND YOU RECALL AT PAGE 90 OF YOUR DEPOSITION, LINE 19, YOU
14 WERE ASKED:

15 "ARE YOU AWARE OF WHAT OBJECTIVE STANDARD MUST
16 BE MET BY THE CALIFORNIA DEPARTMENT OF CORRECTIONS
17 AND REHABILITATION IN ORDER TO SHOW COMPLIANCE WITH
18 THE ELEMENTS OF PROVIDING SUFFICIENT MENTAL HEALTH
19 BEDS FOR THE MENTAL HEALTHCARE POPULATION TO SHOW A
20 CONSTITUTIONAL COMPLIANCE?"

21 YOUR ANSWER AT LINE 24:

22 "NO, I'M NOT. I DON'T KNOW HOW TO CALCULATE
23 THAT."

24 YOU WERE THEN ASKED AT PAGE 91, LINE 12:

25 "AND YOU WOULD RELY UPON THOSE REPORTS IN

1 FINDING" -- I THINK YOU'RE REFERRING TO THE SPECIAL
2 MASTER'S REPORTS -- "IN FINDING CONSTITUTIONAL
3 VIOLATIONS WITHIN THE CALIFORNIA PRISON SYSTEM?"

4 AND YOUR ANSWER WAS:

5 "YES."

6 **A.** YOU WANT ME --

7 **MS. KAHN:** OBJECTION, YOUR HONOR. CAN MS. TILLMAN
8 READ THE SENTENCE IN-BETWEEN THOSE TWO SENTENCES, THE QUESTIONS
9 AND ANSWERS?

10 **JUDGE HENDERSON:** READ THAT, PLEASE.

11 **MS. TILLMAN:** I'M SORRY. THERE WAS ANOTHER QUESTION
12 AND ANSWER BETWEEN THOSE TWO. WOULD YOU LIKE THAT READ?

13 **JUDGE HENDERSON:** LET MS. KAHN TELL US. SHE'S ASKED
14 FOR SOMETHING FURTHER TO BE READ.

15 WHAT LINE WOULD YOU LIKE?

16 **MS. KAHN:** STARTING ON PAGE 91 AT THE TOP OF THE PAGE
17 THERE'S A QUESTION THAT SHE SKIPPED.

18 **MS. TILLMAN:** THE PAGE 91, LINE ONE, THERE'S A
19 QUESTION:

20 "ARE YOU AWARE OF WHAT PARTICULAR OBJECTIVE
21 MEASURE MUST BE MET BY THE CALIFORNIA DEPARTMENT OF
22 CORRECTIONS AND REHABILITATION IN SHOWING COMPLIANCE
23 WITH THE CONSTITUTIONAL ELEMENT OF PROVIDING ADEQUATE
24 MEDICAL" -- AND THEN, I SAID -- "I'M SORRY.
25 MEDICATION MANAGEMENT OF THOSE MENTAL HEALTH PATIENTS

1 NEEDING MEDICATIONS FOR THEIR MENTAL ILLNESS?

2 "ANSWER: I DON'T KNOW HOW THE SPECIAL MASTER
3 QUANTIFIES THAT. AS I SAID, I REVIEWED THE SPECIAL
4 MASTER'S REPORTS AND THEIR SUMMARY TO THE EXTENT TO
5 WHICH THEY'RE IN COMPLIANCE," END OF SENTENCE.

6 **JUDGE HENDERSON:** THANK YOU.

7 **BY MS. KAHN:**

8 **Q.** NOW, ON THE ISSUE OF VIOLENCE, VIOLENCE ARISING FROM
9 INMATES, YOU AGAIN LOOK AT THE ENVIRONMENT IN WHICH THOSE
10 INMATES ARE HOUSED, CORRECT?

11 **A.** I'M NOT SURE WHAT YOU MEAN. IN WHAT CONTEXT?

12 **Q.** IF, FOR INSTANCE, THERE WAS A REDUCTION IN THE POPULATION,
13 WOULDN'T YOU AGREE THAT THAT REDUCTION MIGHT NOT ACTUALLY RESULT
14 IN ANY CHANGE IN THE RATE OF VIOLENCE AMONGST INMATES?

15 **A.** IT WOULD DEPEND. IT'S POSSIBLE.

16 **Q.** AND IT WOULD DEPEND --

17 **A.** IT'S POSSIBLE THAT IT WOULD, AND IT'S POSSIBLE THAT IT
18 WOULDN'T.

19 **Q.** AND IT WOULDN'T, FOR EXAMPLE, IF NECESSARY STAFFING WASN'T
20 AVAILABLE TO ADDRESS THE NEEDS OF THE INMATES, CORRECT?

21 **A.** THAT WOULD BE ONE COMPONENT OF THE ANALYSIS THAT YOU WOULD
22 DO TO UNDERSTAND THE VIOLENCE RATES IN A SYSTEM, YES.

23 **Q.** OKAY. YOU'VE HAD A CHANCE TO REVIEW THE 20TH ROUND
24 MONITORING REPORT, CORRECT?

25 **A.** YES.

1 Q. AND IN THAT MONITORING REPORT THERE ARE SITE-BY-SITE
2 EVALUATIONS OF COMPLIANCE WITH THE ELEMENTS OF A
3 CONSTITUTIONALLY-ADEQUATE MENTAL HEALTHCARE SYSTEM, CORRECT?

4 A. YES.

5 Q. AND ONE ELEMENT, OF COURSE, INVOLVES THE APPROPRIATE CARE OF
6 MENTALLY ILL INMATES, INCLUDING PROVIDING THEM WITH APPROPRIATE
7 MEDICATION IN A TIMELY WAY, CORRECT?

8 A. YES.

9 Q. AND DID YOU NOTICE IN THE SPECIAL MASTER'S 20TH ROUND REPORT
10 THAT WAS FILED WITH THIS COURT IN SEPTEMBER, 2008, AT PAGE 58
11 THERE IS A DESCRIPTION OF MULE CREEK STATE PRISON'S MEDICATION
12 MANAGEMENT PROGRAM?

13 A. I DON'T RECALL IT SPECIFICALLY. I WOULDN'T BE SURPRISED TO
14 FIND THERE WAS ONE THERE.

15 Q. DO YOU RECALL THAT REPORT INDICATING, QUOTE:

16 "PHARMACY OPERATIONS WERE TRANSFORMED BY A 100
17 PERCENT INCREASE IN STAFFING AND INSTALLATION OF
18 MAXOR NATIONAL PHARMACY SERVICES CORPORATIONS PAREN
19 (MAXOR'S) END PAREN, NEW MANAGEMENT INFORMATION
20 SYSTEM"?

21 A. YES. NOW THAT YOU'VE REMINDED ME, I REMEMBER HAVING READ
22 THAT.

23 Q. AND THAT'S A POSITIVE SIGN, ISN'T IT, TOWARDS THE
24 DEVELOPMENT AND ESTABLISHMENT OF A CONSTITUTIONALLY-ADEQUATE
25 MENTAL HEALTHCARE SYSTEM AT MULE CREEK?

1 **MS. KAHN:** OBJECTION.

2 MS. TILLMAN, CAN YOU READ THE REST OF THIS QUOTE.

3 **MS. TILLMAN:** THIS GOES ON FOR OVER A PARAGRAPH, YOUR
4 HONORS. I'M HAPPY TO ALLOW MS. KAHN TO ENGAGE IN REDIRECT, IF
5 SHE NEEDS TO.

6 **JUDGE HENDERSON:** LET'S DO IT THAT WAY. THAT'S FINE.

7 **BY MS. TILLMAN:**

8 **Q.** ISN'T IT CORRECT THAT YOU'VE CONCLUDED THAT THE REDUCTION OF
9 THE OVERALL CALIFORNIA DEPARTMENT OF CORRECTIONS REHABILITATION
10 POPULATION IS ONLY THE FIRST STEP TOWARDS A
11 CONSTITUTIONALLY-COMPLIANT MENTAL HEALTHCARE SYSTEM?

12 **A.** YES, IT'S A NECESSARY BUT NOT SUFFICIENT CONDITION. IF
13 THAT'S ALL YOU DID AND YOU STOPPED THERE, THEN THAN WOULDN'T DO
14 IT. BUT I DON'T BELIEVE YOU CAN DO IT WITHOUT DOING THAT,
15 BECAUSE IT IS THE PRIMARY CAUSE OF THE PROBLEMS THAT I'VE BEEN
16 DESCRIBING.

17 **Q.** AND I BELIEVE AT YOUR DEPOSITION AT PAGE 118, AT LINE EIGHT
18 THROUGH 20, YOU SAID IT VERY WELL.

19 LET'S SEE IF WE CAN GET A BETTER RESOLUTION ON THAT.
20 YOU SAID:

21 "IT'S ONE STEP, YES, ABSOLUTELY, AN EXTREMELY
22 IMPORTANT STEP IN MY OPINION. I THINK A NECESSARY,
23 BUT NOT SUFFICIENT CONDITION."

24 YOU WERE ASKED:

25 "BUT EVEN AFTER IMPLEMENTING THAT CONDITION OTHER

1 STEPS MUST BE TAKEN BY DEFENDANTS TO REACH
2 CONSTITUTIONAL COMPLIANCE, RIGHT?

3 "ANSWER: YES. AND WE'VE BEEN TALKING ABOUT
4 STAFFING. WE'VE BEEN TALKING ABOUT PROGRAMMING
5 SPACE. WE'VE BEEN TALKING ABOUT ALL THESE OTHER
6 THINGS THAT ARE PART OF A CONSTITUTIONAL SYSTEM,"
7 CORRECT?

8 **A.** IT'S WHAT I SAID IN THE DEPOSITION. IT'S WHAT I'VE SAID
9 HERE.

10 **MS. TILLMAN:** THANK YOU. NOTHING FURTHER.

11 **JUDGE HENDERSON:** OKAY, COUNSEL.

12 **MS. KAHN:** OKAY.

13 **JUDGE HENDERSON:** ANY INTERVENORS WISH TO
14 CROSS-EXAMINE THIS WITNESS?

15 **MS. JOHNSON:** ANNE JOHNSON FOR THE PLATA DEFENDANTS.
16 SIMILAR TO THE MOTION TO STRIKE WE MADE YESTERDAY
17 WITH RESPECT TO DR. STEWART'S TESTIMONY, THE PLATA DEFENDANTS
18 MOVE TO STRIKE DR. HANEY'S BARE CONCLUSIONS REGARDING MEDICAL
19 CARE AND THE PRIMARY CAUSE OF THE ALLEGED CONSTITUTIONAL
20 VIOLATIONS IN THE PLATA CASE AS LACKING ANY FACTUAL BASIS OR
21 EXPLANATION.

22 WE WOULD NOTE THAT DR. HANEY IS NOT A PHYSICIAN. AND
23 ALL OF HIS TESTIMONY RELATES TO THE COLEMAN MEMBERS AND THE
24 MENTAL HEALTH ISSUES, NOT MEDICAL CARE.

25 **THE COURT:** SIMILAR TO THE RULING YESTERDAY, MOTION'S

1 OVERRULED OR DENIED.

2 **MS. WANG:** TERESA WANG FOR THE LEGISLATOR
3 INTERVENORS, YOUR HONORS.

4 **CROSS-EXAMINATION**

5 **BY MS. WANG:**

6 **Q.** I JUST HAVE A COUPLE OF QUESTIONS FOR YOU, DR. HANEY.

7 ISN'T IT TRUE THAT YOU DO NOT HAVE A DIRECT OPINION
8 ON HOW OVERCROWDING IS THE PRIMARY CAUSE OF ANY ALLEGED
9 DEFICIENCIES IN THE MEDICAL HEALTHCARE PROVISION?

10 **A.** NO, ACTUALLY THAT'S NOT TRUE. I HAVE -- I'VE WRITTEN A
11 200-PAGE REPORT WHICH ADDRESSES ALMOST NOTHING ELSE.

12 **Q.** I'M SORRY. TO CLARIFY, THE MEDICAL HEALTHCARE PROVISION?

13 **A.** I'M SORRY. MEDICAL HEALTHCARE, NO. I THINK I'VE TALKED IN
14 THE REPORT ABOUT THE WAY IN WHICH THE SYSTEM BREAKDOWN IN A
15 SYSTEM THAT IS AS OVERCROWDED AS CALIFORNIA'S SYSTEM EFFECTS THE
16 DELIVERY OF ALL OF THE SERVICES. IT EFFECTS PROGRAMMING. IT
17 EFFECTS PROVISION OF EDUCATIONAL PROGRAMMING. IT EFFECTS
18 MEDICAL, AS WELL AS MENTAL HEALTHCARE.

19 MANY OF THE UNITS THAT I VISITED WHERE MENTAL
20 HEALTHCARE WAS TAKING PLACE ARE ALSO THE UNITS WHERE MEDICAL
21 CARE WAS TAKING PLACE.

22 THEY ARE SEVERELY CONGESTED AND CROWDED, AND
23 PRISONERS REPORTED DIFFICULTIES WITH MEDICAL CARE AS WELL AS
24 MENTAL HEALTHCARE.

25 **Q.** IF I COULD JUST REFER YOU TO PAGE 84 OF YOUR DEPOSITION

1 TAKEN BY MS. TILLMAN EARLIER THIS YEAR.

2 ON PAGE 84, LINE ONE, MS. TILLMAN ASKED:

3 "COULD YOU LET ME KNOW HOW OVERCROWDING IS THE
4 PRIMARY CAUSE OF THE MEDICAL SYSTEM'S FAILURE TO
5 PROVIDE CONSTITUTIONAL LEVELS OF CARE?

6 "ANSWER: WELL, I REALLY ADDRESSED THAT ONLY
7 INDIRECTLY AS PART -- AS OBVIOUSLY MY MAIN FOCUS WAS
8 ON THE PROVISION OF MENTAL HEALTHCARE."

9 AND YOU GO ON TO DISCUSS, DOCTOR, THE INTERSECTION OF
10 YOUR REPORT DISCUSSING THE INTERSECTION BETWEEN MEDICAL AND
11 MENTAL HEALTHCARE.

12 AS IT READS ON THE SCREEN:

13 "I DO DISCUSS IN THE REPORT BRIEFLY HOW THE TWO
14 ARE SOMEWHAT INTERCONNECTED IN THAT PRISONERS WHO ARE
15 RECEIVING INADEQUATE MENTAL HEALTHCARE MAY HAVE -- IT
16 MAY IMPACT THEIR ACCESSING OF THE MEDICAL SYSTEM, AS
17 WELL. THAT PRISONERS WHO ARE BEING INADEQUATELY
18 TREATED MAY BE RELUCTANT TO USE THE MEDICAL SYSTEM,
19 MAY BEGIN TO EXPERIENCE MEDICAL PROBLEMS THAT THEY
20 ARE UNABLE TO RECEIVE ADEQUATE TREATMENT FOR, AND SO
21 ON. BUT IT'S REALLY ONLY THAT CROSSOVER AS A
22 CONNECTION BETWEEN THE TWO SYSTEMS. I DIDN'T LOOK IN
23 ANY PARTICULARLY SYSTEMIC WAY AT THE PROVISION OF
24 MEDICAL SERVICES. I WAS FOCUSING ON MENTAL
25 HEALTHCARE."

1 DO YOU RECALL THAT BEING YOUR TESTIMONY, DOCTOR?

2 **A.** YES.

3 **Q.** AND SO THEN YOU DO AGREE THAT THAT WAS THE FOCUS OF
4 -- THAT YOUR REPORT TOUCHED UPON MEDICAL CARE INSOFAR AS IT
5 INVOLVED INMATES SEEKING MENTAL HEALTHCARE SERVICES WHO MAY HAVE
6 BEEN DISSUADED FROM SEEKING MEDICAL SERVICES?

7 **A.** WELL, THAT WAS PART OF IT, YES. AND I JUST DESCRIBED AN
8 ADDITIONAL PART, WHICH IS THE WAY IN WHICH OVERCROWDED SYSTEMS
9 BEGIN TO FALTER AND FAIL IN THE PROVISION OF ALL SERVICES.

10 AND THEN, I ALSO ADDED A MOMENT AGO THAT IN THE
11 COURSE OF TOURING THESE FACILITIES IT WAS POSSIBLE TO VIEW AND
12 TO TALK TO CLINICAL STAFF ABOUT THE CONGESTED NATURE OF THE
13 MEDICAL TREATMENT AREAS, AS WELL AS THE MENTAL HEALTH AREAS.

14 ONE OF THE DISCUSSIONS THAT WE OFTENTIMES HAD WAS THE
15 WAY IN WHICH BECAUSE OF THE OVERCROWDING IN THE PRISONS THE
16 MENTAL HEALTHCARE SYSTEM WAS COMPETING WITH THE MEDICAL SYSTEM.

17 FOR EXAMPLE, THERE WERE WHAT WERE CALLED "FLEX BEDS"
18 WHICH COULD BE CONVERTED FROM A MEDICAL USE TO A MENTAL HEALTH
19 USE, AND BECAUSE OF THAT THESE KINDS OF BEDS WERE COMPETING WITH
20 ONE ANOTHER.

21 AND THE DIFFICULTY SOMETIMES IN CORRECTIONAL
22 TREATMENT FACILITIES THAT EVEN WHERE THEY HAD ENOUGH ROOMS,
23 ENOUGH AVAILABLE BEDS, BECAUSE ONE OR ANOTHER OF THE SYSTEM,
24 EITHER THE MEDICAL OR THE MENTAL HEALTH SYSTEM WAS OVERCROWDED
25 AT THE TIME, THE OTHER SYSTEM COULDN'T BE ACCOMMODATED AT THAT

1 INSTITUTION.

2 SO THOSE WERE THE OTHER WAYS IN WHICH THEY WERE
3 INTERCONNECTED. AND I DID SEE THEM DURING THE COURSE OF THE
4 TOURS.

5 Q. THANK YOU.

6 NO FURTHER QUESTIONS.

7 JUDGE HENDERSON: THANK YOU, COUNSEL.

8 REDIRECT?

9 MS. KAHN: I JUST HAVE A COUPLE OF QUESTIONS HERE.
10 MAY I APPROACH THE WITNESS?

11 JUDGE HENDERSON: YOU MAY.

12 THIS IS PLAINTIFFS' TRIAL EXHIBIT 477.

13 MS. TILLMAN: WHAT IS IT?

14 MS. KAHN: COLEMAN MENTAL HEALTH BED PLAN.

15 REDIRECT EXAMINATION

16 BY MS. KAHN:

17 Q. DR. HANEY, MS. TILLMAN A FEW MINUTES AGO WAS ASKING YOU
18 ABOUT THE AUGUST 17 BED PLAN WHICH WAS APPROVED BY THE COURT.
19 AND WHAT I'VE HANDED YOU HERE IS THE NEWEST VERSION OF THAT BED
20 PLAN, WHICH IS THE MENTAL HEALTH BED PLAN DATED JULY 16, 2008.
21 IT'S EXHIBITED 477.

22 HAVE YOU REVIEWED THIS?

23 A. YES, I BELIEVE I HAVE.

24 Q. OKAY. I'D LIKE TO HAVE YOU TURN TO ATTACHMENT C, WHICH IS
25 AT THE BACK, THE SECOND TO LAST PAGE OF THE EXHIBIT.

1 **A.** YES.

2 **Q.** OKAY. CAN YOU DESCRIBE WHAT THIS CHART IS?

3 **A.** YES.

4 **JUDGE REINHARDT:** WHAT PAGE IS THAT ON?

5 **MS. KAHN:** I'M SORRY, YOUR HONOR. IT'S ATTACHMENT C,
6 WHICH IS THE SECOND TO LAST PAGE OF THIS BED PLAN.

7 **JUDGE REINHARDT:** OKAY.

8 **JUDGE KARLTON:** THE QUESTION WAS:

9 "CAN YOU TELL US WHAT THIS CHART IS?"

10 **BY MS. KAHN:**

11 **Q.** CAN YOU TELL US WHAT THIS CHART IS, DR. HANEY?

12 **A.** YES. IT'S A VERY NEAT CHART DEPICTION OF THE STATUS OF
13 VARIOUS PROPOSED BUILDING PROGRAMS IN THE DEPARTMENT OF
14 CORRECTIONS WITH RESPECT TO THE PROVISION OF TREATMENT SPACE.

15 IT SHOWS THE DATE THAT THE COURT ORDERED IT. AND
16 THEN, AS YOU MOVE TOWARDS THE MIDDLE IT SHOWS THE STATUS. AND
17 THEN, THE VERY FAR RIGHT COLUMN IT SHOWS THE -- THERE'S A
18 COMMENTARY ABOUT WHAT'S HAPPENED TO THE FATE OF THE PROGRAM.

19 **Q.** AND IS IT YOUR UNDERSTANDING THAT THIS IS THE STATUS OF THE
20 AUGUST 17, 2007 BED PLAN?

21 **A.** YES, EXACTLY.

22 MS. TILLMAN ASKED ME ABOUT THIS PLAN AND WHETHER IT
23 WAS APPROVED. AND, OF COURSE, THE PLANS ARE APPROVED. BUT THE
24 GAP BETWEEN THE PLANS AND THE IMPLEMENTATION OF THE PLANS AND
25 CERTAINLY BETWEEN THE PLANS BEING APPROVED AND THE COMPLETION OF

1 THE PLANS IS WIDE AND WIDENING.

2 **Q.** MS. TILLMAN ALSO WAS ASKING YOU QUESTIONS ABOUT ADSEG AND
3 SINGLE CELLING. AND I'D LIKE YOU TO ADDRESS HOW OVERCROWDING
4 AFFECTS PRISONERS WHO ARE HOUSED IN ADSEG ON SINGLE CELL STATUS.

5 **A.** WELL, OVERCROWDING AFFECTS THEM IN A NUMBER OF SIGNIFICANT
6 WAYS. IT OVER -- IT AFFECTS THEM, FIRST OF ALL, IN TERMS OF AN
7 ISSUE THAT I'VE BEEN TALKING ABOUT REPEATEDLY, WHICH IS ACCESS
8 TO TREATMENT SPACE.

9 WHETHER A PRISONER IS SINGLE OR DOUBLE-CELLED IN THE
10 ADMINISTRATIVE SEGREGATION, THEIR ACCESS TO TREATMENT SPACE IS
11 SEVERELY LIMITED BY THE OVERCROWDING THAT PLAGUES THE SYSTEM.

12 THE TREATMENT SPACES ARE AS I'VE DESCRIBED THEM. THE
13 COURT HAS SEEN PICTURES OF THE CAGES WHICH ARE USED. WHAT ARE
14 NOT DEPICTED IN THOSE PHOTOGRAPHS ARE THE LOCATION OF THOSE
15 CAGES IN SOME OF THE ADMINISTRATIVE SEGREGATION UNITS THAT I
16 TOURED.

17 MANY OF THEM OUT ON THE DAYROOM FLOOR OF THE
18 ADMINISTRATIVE SEGREGATION UNITS, SO THAT IF A PRISONER IS
19 ENGAGED IN ALLEGEDLY THERAPEUTIC ACTIVITY, THAT'S WITNESSED BY
20 ALL THE OTHER PRISONERS IN ADMINISTRATIVE SEGREGATION.

21 GROUP THERAPY SOMETIMES TAKES PLACE IN A TINY AREA
22 WHERE IT'S ALMOST IMPOSSIBLE FOR THE CAGES TO FIT IN THE AREA.

23 IN MANY INSTANCES, PRISONERS, EVEN SINGLE-CELLED
24 ADMINISTRATIVE SEGREGATION PRISONERS ARE AFFECTED BY
25 OVERCROWDING BECAUSE OF THE SHORTAGE OF CLINICAL STAFF TO

1 PROVIDE THEM WITH THE TREATMENT OPPORTUNITIES THAT THEY ARE
2 ENTITLED TO.

3 THEY ARE IMPACTED BY OVERCROWDING BECAUSE OF THE
4 SHORTAGE OF ESCORTS. AN ADMINISTRATIVE SEGREGATION PRISONER HAS
5 TO BE ESCORTED BY A CORRECTIONAL OFFICER WHENEVER THEY LEAVE THE
6 ADMINISTRATIVE SEGREGATION UNIT TO GET ACCESS TO THERAPY OR TO
7 GET ACCESS TO ANYTHING OUTSIDE OF THE ADMINISTRATIVE SEGREGATION
8 UNIT.

9 IN ADDITION, THEY ARE IMPACTED BY OVERCROWDING
10 BECAUSE OF THE DIFFICULTIES OF THE ADMINISTRATIVE SEGREGATION
11 UNITS IN PROVIDING THE CONSTITUTIONALLY-MANDATED ACCESS TO
12 EXERCISE.

13 **Q.** HOW IS EXERCISE PROVIDED TO PRISONERS HOUSED IN ADSEG?

14 **A.** WELL, THEY HAVE TO BE INDIVIDUALLY ESCORTED TO THE EXERCISE
15 AREA. MANY OF THEM, THEY TYPICALLY EXERCISE BY THEMSELVES. AND
16 THERE ARE INADEQUATE NUMBER OF THOSE EXERCISE FACILITIES
17 AVAILABLE.

18 AND THERE'S SOMETIMES CALLED "SMALL MANAGEMENT
19 YARDS." THE COURT HAS ORDERED THOSE SMALL MANAGEMENT YARDS TO
20 BE CONSTRUCTED SO THAT PRISONERS WHO ARE IN ADMINISTRATIVE
21 SEGREGATION CAN GET THIS ACCESS.

22 IT'S NOT BEING PROVIDED NOW. AND, IN PART, IT'S NOT
23 BEING PROVIDED BECAUSE THERE'S A RESOURCE SHORTAGE, AN, I
24 BELIEVE, OVERCROWDING-RELATED RESOURCE SHORTAGE.

25 IN SOME INSTANCES ADMINISTRATIVE SEGREGATION UNITS

1 THEMSELVES, EVEN THOUGH THEY ARE ALREADY LOCKED DOWN UNITS ARE
2 LOCKED DOWN EVEN FURTHER.

3 I TOURED AN ADMINISTRATIVE SEGREGATION UNIT IN THE
4 CALIFORNIA CORRECTIONAL INSTITUTION IN TEHACHAPI WHERE THERE HAD
5 BEEN A VIOLENT INCIDENT THAT HAD OCCURRED IN THE BEGINNING OF
6 APRIL OF THIS PAST YEAR.

7 I TOURED THAT UNIT AT THE END OF JULY. THE PRISONERS
8 IN THAT UNIT HAD BEEN LOCKED DOWN AND HAD NOT GOTTEN OUTDOOR
9 EXERCISE BECAUSE THAT UNIT HAD BEEN LOCKED DOWN. THAT
10 ADMINISTRATIVE SEGREGATION UNIT HAD BEEN LOCKED DOWN FROM THE
11 BEGINNING OF APRIL UNTIL THE END OF JULY. SO NOT ONLY WERE THEY
12 NOT GETTING 10 HOURS A WEEK OF OUTDOOR EXERCISE, THEY WERE
13 GETTING NO HOURS A WEEK OF OUTSIDE EXERCISE.

14 LOCKDOWN IS A DIRECT RESULT OF A SYSTEM BEING
15 OVERCROWDED AND OVERWHELMED AND HAVING TOO MANY PEOPLE AND NOT
16 HAVING A WAY TO MANAGE CONFLICTS IN ANY OTHER WAY. AND IT CAN
17 IMPACT EVEN ADMINISTRATIVE SEGREGATION UNITS.

18 Q. THANK YOU.

19 NO MORE QUESTIONS.

20 JUDGE HENDERSON: OKAY. THANK YOU, COUNSEL.

21 OKAY. WE'RE GOING TO TAKE A 15-MINUTE RECESS.

22 MS. TILLMAN: YOUR HONOR, CAN I JUST ASK ONE OR TWO
23 MORE QUESTIONS?

24 THE COURT: CERTAINLY. SORRY, MS. TILLMAN.

25 MS. TILLMAN: I'LL TRY TO KEEP IT SHORT.

1 **JUDGE HENDERSON:** IT'S YOUR CROSS-EXAMINATION.

2 **RECROSS-EXAMINATION**

3 **BY MS. TILLMAN:**

4 **Q.** DR. HANEY, YOU'VE MENTIONED CONCERN ABOUT THE USE OF
5 THERAPEUTIC MODULES FOR PROVIDING GROUP THERAPY FOR THE MOST
6 VIOLENT OF THE PATIENTS ON THE MENTAL HEALTH CASELOAD, HAVEN'T
7 YOU?

8 **A.** PATIENTS WHO ARE IN ADMINISTRATIVE SEGREGATION TYPICALLY
9 RECEIVE THERAPEUTIC PROGRAMMING IN THE CAGES THAT WE'VE BEEN
10 TALKING ABOUT.

11 **Q.** HAVE YOU EVER HAD A CONVERSATION WITH COURT-APPOINTED EXPERT
12 DR. METZNER ABOUT THOSE THERAPEUTIC MODULES AND THEIR DESIGN?

13 **A.** I KNOW DR. METZNER. I DON'T KNOW THAT WE'VE EVER TALKED
14 ABOUT THE PARTICULAR THERAPEUTIC MODULES THAT I'VE DESCRIBED IN
15 THE REPORT AND THAT THE COURT HAS PICTURES OF.

16 **Q.** WERE YOU AWARE THAT DR. METZNER PROVIDED THE SPECIFICATIONS
17 FOR DESIGN OF THOSE THERAPEUTIC MODULES?

18 **A.** MS. TILLMAN, I'M FAIRLY CERTAIN DR. METZNER DID NOT PROVIDE
19 THE SPECIFICATIONS FOR THE THERAPEUTIC MODULES THAT I SAW IN THE
20 ADMINISTRATIVE SEGREGATION UNITS THAT I TOURED, SOME OF WHICH
21 THE COURT DOES HAVE PHOTOGRAPHS OF.

22 WE'RE TALKING ABOUT OLD CAGES THAT HAVE NOT BEEN
23 RECENTLY CREATED THAT DR. METZNER CANNOT POSSIBLY HAVE HAD ANY
24 INPUT INTO BECAUSE THEY HAVE BEEN AROUND IN THIS SYSTEM FOR A
25 LONG TIME.

1 Q. SO YOU WOULD APPROVE, THEN, THE USE OF THERAPEUTIC MODULES
2 THAT HAVE BEEN BUILT RECENTLY, SAY IN THE PAST YEAR, PURSUANT TO
3 THE SPECIFICATIONS PROVIDED BY DR. METZNER THEN, WOULDN'T YOU?

4 A. NO, I DIDN'T SAY THAT. AND LET ME TRY TO ADDRESS THIS. I
5 THINK I UNDERSTAND THE CONTEXT OF THIS, AND IF I DON'T I HOPE
6 YOU'LL CORRECT ME.

7 Q. I THINK YOU'VE ANSWERED THE QUESTION, ACTUALLY.

8 MS. KAHN: OBJECTION? CAN THE WITNESS ANSWER THE
9 QUESTION?

10 THE WITNESS: I KNOW THAT DR. METZNER HAS HAD SOME
11 INPUT SOMETIME AGO IN THE CREATION OF THERAPEUTIC MODULES OR
12 CAGES THAT WERE ORIGINALLY INTENDED FOR USE IN A THERAPEUTIC
13 ENVIRONMENT, PSYCHIATRIC SERVICES AS A MATTER OF FACT.

14 WHEN THE ISSUE WAS HOW TO PROVIDE CARE IN A
15 THERAPEUTIC CONTEXT LIKE A PSU FOR PRISONERS WHO ALSO HAD
16 SERIOUS OR SIGNIFICANT SECURITY CONCERNS OR ISSUES. IT'S A HARD
17 PROBLEM. IT'S A DIFFICULT ISSUE TO ADDRESS.

18 Q. YOU DON'T WANT YOUR STAFF TO GET ASSAULTED. THAT'S REALLY
19 WHAT THE ISSUE IS. YOU DON'T WANT THE INMATE PATIENT TO ASSAULT
20 ANOTHER INMATE IN THAT THERAPEUTIC GROUP?

21 A. YES. AND, YET, THERE'S A NEED FOR THE INMATE PATIENT TO
22 HAVE A THERAPEUTIC CONTACT IN AN ENVIRONMENT WHERE THERE ARE
23 OTHER PEOPLE PRESENT.

24 NOW, THIS IS AN ISSUE ABOUT WHICH REASONABLE PEOPLE
25 AND REASONABLE EXPERTS CAN DISAGREE WHETHER IT CAN OR SHOULD BE

1 DONE IN CAGES OR NOT.

2 DR. METZNER'S CONTRIBUTION WAS TO SAY IF IT'S GOING
3 TO BE DONE IN THESE CAGES, THE CAGES SHOULD BE IN A THERAPEUTIC
4 CONTEXT, SHOULD BE OF A PARTICULAR KIND. THEY SHOULD HAVE A
5 PARTICULAR DESIGN.

6 IF THAT'S THE WAY THE DEPARTMENT HAS DECIDED TO
7 APPROACH THIS, THEN THIS IS WHAT THESE EXERCISE OR THESE THERAPY
8 CAGES OUGHT TO LOOK LIKE.

9 THOSE ARE NOT THE CAGES. THOSE ARE NOT THE CAGES
10 THAT I SAW IN THE UNITS THAT WERE BEING USED IN ADMINISTRATIVE
11 SEGREGATION UNITS, IN ALL OF THE PRISONS THAT I LOOKED AT THAT
12 HAD ADSEG UNITS. THOSE ARE NOT THE KINDS OF CAGES WE'RE TALKING
13 ABOUT.

14 AND I DOUBT VERY SERIOUSLY -- AND, OF COURSE, DR.
15 METZNER CAN SPEAK FOR HIMSELF -- THAT HE WOULD APPROVE OF THE
16 KINDS OF CAGES THAT I SAW IN THE ADMINISTRATIVE SEGREGATION
17 UNITS THAT I TOURED AND ABOUT WHICH I WROTE IN MY REPORT.

18 Q. NOW, YOU WOULDN'T DISAGREE, WOULD YOU, THAT THE USE OF
19 THERAPEUTIC MODULES HAS BEEN ACCEPTED AS PART OF THE
20 COURT-APPROVED REVISED PROGRAM GUIDE OF 2006?

21 A. I THINK IT'S -- I THINK IT'S CONTEMPLATED IN LIEU OF
22 ALTERNATIVE APPROACHES. BUT, AGAIN, WE'RE TALKING -- YOU'RE
23 TALKING ABOUT THIS AS AN ABSTRACTION.

24 I'M TALKING ABOUT THE REALITY OF WHAT THOSE CAGES
25 LOOK LIKE AND WHERE THEY ARE LOCATED, AND WHAT THEY ARE USED

1 FOR.

2 THOSE ARE THE ISSUES ABOUT WHICH I WAS CONCERNED AND
3 ABOUT WHICH I EXPRESSED MYSELF IN MY REPORT.

4 Q. AND YOU DON'T DISPUTE THAT IN THE 20TH ROUND MONITORING
5 REPORT SPECIAL MASTER LOPES FOUND THAT SEVERAL CALIFORNIA
6 DEPARTMENT OF CORRECTION REHABILITATION INSTITUTIONS WERE
7 SUBSTANTIALLY COMPLIANT WITH THE REVISED PROGRAM GUIDE AND WITH
8 COURT-ORDERED STANDARDS.

9 A. SPECIAL MASTER LOPES FOUND A NUMBER OF THINGS. IRONICALLY,
10 ONE OF THE THINGS THAT HE WAS MOST CONCERNED ABOUT AND, IN FACT,
11 ONE OF THE RECOMMENDATIONS HE MADE HAD TO DO WITH THE USE OF
12 THESE CAGES, HAD TO DO WITH THE USE OF THESE CAGES AS
13 ALTERNATIVE PLACEMENTS IN LIEU OF PUTTING PEOPLE IN MENTAL
14 HEALTH CRISIS BEDS.

15 IT'S THE THIRD RECOMMENDATION. HE'S CONCERNED ENOUGH
16 ABOUT IT TO RECOMMEND THAT THE ACTUAL USE OF THESE THINGS BE
17 VERY CAREFULLY DOCUMENTED.

18 Q. I'M JUST REFERENCING, ACTUALLY, PAGE SIX OF THE 20TH ROUND
19 MONITORING REPORT IN THE FIRST INTRODUCTORY STATEMENT WHERE IT
20 SAYS:

21 "OVERALL, THE MONITOR'S REVIEW FOUND THAT
22 SEVERAL CALIFORNIA DEPARTMENT OF CORRECTIONS AND
23 REHABILITATION INSTITUTIONS WERE SUBSTANTIALLY
24 COMPLIANT WITH PROGRAM GUIDE AND COURT-ORDERED
25 STANDARDS," CORRECT?

1 **A.** YES. I'M SURE SEVERAL WERE. THEY WERE NOT THE FACILITIES
2 THAT I SAW. BUT I DON'T DOUBT THAT THERE WERE SEVERAL THAT
3 WERE.

4 **Q.** THANK YOU.

5 NOTHING FURTHER.

6 **JUDGE HENDERSON:** BEFORE WE GET TO REREDIRECT --
7 OKAY.

8 REREDIRECT?

9 **MS. KAHN:** THANK YOU, YOUR HONOR.

10 **REREDIRECT EXAMINATION**

11 **BY MS. KAHN:**

12 **Q.** DR. HANEY, I JUST WANTED TO CLARIFY, MAKE SURE THIS IS THE
13 RECOMMENDATION THAT YOU'RE TALKING ABOUT. THAT THIS IS FROM THE
14 20TH REPORT, THAT SPECIAL MASTER LOPES' THIRD RECOMMENDATION IS
15 THAT:

16 "DEFENDANTS SHALL BE ORDERED TO IMPLEMENT AND
17 MAINTAIN INSTITUTIONAL ELECTRONIC AND MANUAL TRACKING
18 LOGS FOR INMATES WHO HAVE BEEN PLACED INTO
19 ALTERNATIVE HOUSING PENDING MHCb TRANSFERS, AND
20 THE DATES, TIMES AND PLACES OF RETURN TO REGULAR
21 HOUSING FOR INMATE-PATIENTS NOT TRANSFERRED TO AN
22 MHCb. THE TRACKING LOGS SHOULD ALSO INDICATE THE
23 SPECIFIC LEVELS OF CLINICAL MONITORING THAT WERE
24 REQUIRED (SUICIDE WATCH, SUICIDE PRECAUTION, OR
25 PSYCHIATRIC OBSERVATION), AND THE CLINICAL MONITORING

1 THAT OCCURRED. WHEN AN INMATE IS REFERRED TO AN
2 MHCB FOR TREATMENT OF A SUICIDAL THREAT OR BEHAVIOR,
3 AND THE REFERRAL IS RESCINDED OR THE INMATE-PATIENT
4 IS NOT ADMITTED TO AN MHCB, THE INMATE SHALL RECEIVE
5 FOLLOW-UP TREATMENT INCLUDING DAILY CONTACT FOR FIVE
6 CONSECUTIVE DAYS FOLLOWING HIS OR HER RETURN TO
7 REGULAR HOUSING. QUALITY MANAGEMENT FOR
8 IMPLEMENTATION OF DISCHARGE PLANNING, REQUIRED WHEN
9 AN INMATE IS DISCHARGED FROM AN MHCB, SHALL BE
10 IMPLEMENTED FOR THESE INMATES."

11 **MS. TILLMAN:** OBJECTION.

12 **BY MS. KAHN:**

13 **Q.** IS THAT THE RECOMMENDATION YOU WERE REFERRING TO, DR. HANEY?

14 **MS. TILLMAN:** OBJECTION. LEADING THE WITNESS.
15 MISCHARACTERIZES THE WITNESS. IT ADDRESSES ALTERNATIVE HOUSING.
16 IT DOES NOT ADDRESS THERAPEUTIC MODULES.

17 **JUDGE HENDERSON:** I THINK THE PORTION JUST READ, WAS
18 THAT THE PORTION THAT DR. HANEY --

19 **BY MS. KAHN:**

20 **Q.** WAS THIS THE RECOMMENDATION THAT YOU --

21 **A.** YES.

22 **MS. KAHN:** OKAY.

23 THANK YOU.

24 **JUDGE HENDERSON:** OKAY. COURT IS IN RECESS FOR 15
25 MINUTES.

1 **THE WITNESS:** MAY I BE RELEASED?

2 **JUDGE HENDERSON:** OH, I'M SORRY. YES, YOU MAY BE
3 RELEASED.

4 (THEREUPON, A RECESS WAS TAKEN.)

5 **THE CLERK:** PLEASE BE SEATED.

6 **JUDGE HENDERSON:** OKAY. YOU MAY CALL YOUR NEXT
7 WITNESS, COUNSEL.

8 **MR. SPECTER:** OKAY, YOUR HONORS. PLAINTIFFS CALL
9 JEANNE WOODFORD.

10 (THEREUPON, THE WITNESS WAS SWORN.)

11 **THE CLERK:** STATE AND SPELL YOUR FULL NAME FOR THE
12 RECORD.

13 **THE WITNESS:** MY NAME IS JEANNE WOODFORD, J-E-A-N-N-E
14 W-O-O-D-F-O-R-D.

15 THEREUPON --

16 **JEANNE WOODFORD**

17 WAS CALLED AS A WITNESS ON BEHALF OF THE PLAINTIFFS, AND AFTER
18 HAVING FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

19 **DIRECT EXAMINATION**

20 **BY MR. SPECTER:**

21 **Q.** MS. WOODFORD, YOU WERE -- YOU KNOW THESE CASES ARE BOTH THE
22 COLEMAN AND PLATA CASES, CORRECT?

23 **A.** YES, I'M AWARE OF BOTH CASES.

24 **Q.** PART OF THE REASON YOU'RE AWARE OF BOTH CASES IS THAT YOU
25 WERE A DEFENDANT AT ONE TIME; IS THAT TRUE?

1 A. YES, I WAS A DEFENDANT IN BOTH CASES.

2 Q. AND THAT'S BECAUSE YOU WORKED FOR THE CALIFORNIA DEPARTMENT
3 OF CORRECTIONS; IS THAT RIGHT?

4 A. THAT IS CORRECT.

5 Q. FOR HOW LONG DID YOU WORK FOR THEM?

6 A. I WORKED FOR THE DEPARTMENT OF CORRECTIONS FOR A LITTLE OVER
7 27 YEARS.

8 Q. AND IS IT TRUE THAT YOU HAVE -- YOU WORKED YOUR WAY UP FROM
9 A CORRECTIONAL COUNSELOR POSITION AT SAN QUENTIN TO THE ACTING
10 SECRETARY OF THE ENTIRE DEPARTMENT OF CORRECTIONS?

11 A. I ACTUALLY WORKED MY WAY UP FROM A CORRECTIONAL OFFICER
12 POSITION AT SAN QUENTIN INTO BECOMING THE ACTING SECRETARY OF
13 THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION.

14 Q. AND SO DURING -- COULD YOU GIVE US A LITTLE BRIEF SUMMARY OF
15 THAT JOURNEY IN TERMS OF THE POSITIONS YOU'VE HELD?

16 A. I STARTED AT SAN QUENTIN IN JUNE OF 1978, TWO WEEKS AFTER
17 GRADUATING FROM SONOMA STATE UNIVERSITY WITH A DEGREE IN
18 CRIMINAL JUSTICE.

19 I WAS A CORRECTIONAL OFFICER FOR ABOUT FIVE YEARS.
20 THEN, I WAS A CORRECTIONAL COUNSELOR I, CORRECTIONAL COUNSELOR
21 II, A CORRECTIONAL COUNSELOR III, A PROGRAM ADMINISTRATOR, A
22 CORRECTIONAL CAPTAIN, AN ASSOCIATE WARDEN, AND THEN A CHIEF
23 DEPUTY WARDEN UNTIL BEING APPOINTED BY GOVERNOR DAVIS IN 1999 AS
24 A WARDEN AT SAN QUENTIN.

25 I WAS THE WARDEN AT SAN QUENTIN UNTIL 2004 WHEN

1 GOVERNOR SCHWARZENEGGER APPOINTED ME CHIEF DIRECTOR CALIFORNIA
2 DEPARTMENT OF CORRECTIONS. AND THEN, ABOUT A YEAR-AND-A-HALF
3 LATER IN JULY OF 2006, I WAS APPOINTED AS THE UNDERSECRETARY OF
4 THE CALIFORNIA DEPARTMENT OF CORRECTIONS.

5 AND DURING MY TIME AS THE UNDERSECRETARY, THE
6 SECRETARY STEPPED DOWN, SO I WAS THE ACTING SECRETARY FOR A
7 SHORT TIME.

8 Q. GREAT. AND YOU LEFT THE UNDERSECRETARY'S POSITION IN JULY OF
9 2007 OR SIX? SEVEN?

10 A. I THINK IT WAS 2007. I'D HAVE TO LOOK AT MY RESUME, BUT I
11 BELIEVE IT WAS JULY, 2007.

12 Q. AND --

13 A. ACTUALLY, IT WAS JULY, 2006. I'M SORRY.

14 Q. OKAY. SO YOU WERE WORKING AT SAN QUENTIN IN THE EARLY
15 1980'S, WERE NOW NOT?

16 A. YES, I WAS.

17 Q. AND AT THAT TIME YOU WERE NOT IN A MANAGEMENT POSITION. YOU
18 WERE WORKING IN THE CELLBLOCKS; IS THAT RIGHT?

19 A. THAT'S CORRECT.

20 Q. AND YOU WERE FAMILIAR WITH A CASE CALLED TOUSSAINT?

21 A. I WAS VERY FAMILIAR WITH A CASE CALLED TOUSSAINT.

22 Q. AND THAT WAS A CASE THAT AROSE OUT OF A JUDGMENT OF THIS
23 COURT, THE DISTRICT COURT OF CALIFORNIA IN THE NORTHERN
24 DISTRICT?

25 A. THAT'S CORRECT.

1 Q. RIGHT. AND IN THAT CASE -- WELL, DURING THAT TIME PERIOD DID
2 YOU SEE THE POPULATION RISE DURING YOUR TIME AT SAN QUENTIN IN
3 THE EARLY '80'S?

4 A. YES, I DID. ACTUALLY, WHEN I STARTED AT SAN QUENTIN THERE
5 WERE CELLBLOCKS THAT WERE COMPLETELY CLOSED. AND THEN, LATER WE
6 BEGAN TO EXPERIENCE LARGE NUMBER OF INMATES COMING INTO THE
7 SYSTEM AS A RESULT OF A CHANGE IN THE SENTENCING LAWS IN
8 CALIFORNIA.

9 Q. I SEE. AND CAN YOU EXPLAIN TO THE COURT WHAT EFFECTS YOU SAW
10 FROM THAT INCREASE IN THE POPULATION AT SAN QUENTIN?

11 A. WELL, WHEN I FIRST STARTED AT THE PRISON IT REALLY REMINDED
12 YOU OF A COLLEGE CAMPUS. YOU SAW INMATES TRAVELING TO SCHOOL AND
13 GOING TO THEIR WORK ASSIGNMENTS, CARRYING BOOKS.

14 THERE WERE VERY ACTIVE PROGRAMS GOING ON INVOLVING
15 INMATES. MOST OF THE INMATES WERE SINGLE-CELLED. THERE WAS NO
16 IDLENESS AT ALL.

17 WITHIN A VERY SHORT AMOUNT OF TIME, THE DETERMINATE
18 SENTENCING ACT BEGAN TO SEND PRISONERS WITHIN THE PRISON SYSTEM.

19

20 SO WITHIN A COUPLE OF YEARS OF ME STARTING THERE, WE
21 STARTED TO RECEIVE MORE AND MORE INMATES INTO THE SYSTEM. AND
22 THESE WERE YOUNGER INMATES WHO WERE SERVING SENTENCES OF 25 TO
23 LIFE AS A RESULT OF THE CHANGE IN THE SENTENCING LAW.

24 SO WE WERE GETTING MORE AND MORE PEOPLE WHO WERE
25 SERVING LONGER AND LONGER SENTENCES. AND BECAUSE THE PURPOSE OF

1 SENTENCING NOW WAS PUNISHMENT, WE SAW MANY PROGRAMS GOING AWAY.

2 SO WE HAD THE IMPACT OF SEVERE OVERCROWDING ALONG
3 WITH VERY LITTLE FOR INMATES TO DO.

4 SO SAN QUENTIN AND FOLSOM WERE THE TWO PRISONS THAT
5 HOUSED INMATES IN SECURITY HOUSING UNITS. AND SAN QUENTIN BEGAN
6 TO GET VERY OVERCROWDED AS WELL OVERGROWING INTO OTHER
7 BUILDINGS, BESIDES THE ORIGINAL ADJUSTMENT CENTER. AND
8 OVERCROWDING CONTINUED IN THOSE UNITS.

9 AS A RESULT WE WERE SUED OVER CONDITIONS OF
10 CONFINEMENT TO INCLUDE OVERCROWDING IN THE CASE THAT YOU
11 REFERRED TO, TOUSSAINT.

12 **Q.** AND YOU UNDERSTAND OR YOU'RE AWARE BECAUSE YOU HELPED COMPLY
13 WITH THE DECREE THAT THE COURT ENTERED A DECREE IN THAT CASE; IS
14 THAT RIGHT?

15 **A.** I WAS INVOLVED INITIALLY IN INTERVIEWING INMATES TO
16 DETERMINE WHY THEY WERE IN LOCK-UP, BECAUSE OUR SYSTEM REALLY
17 DIDN'T KNOW, SOME OF THEM HAD BEEN IN LOCK-UP SO LONG. AND
18 THEN, I BECAME PART OF THE COMPLIANCE EFFORT TO COME INTO
19 COMPLIANCE WITH ALL ASPECTS OF THE CONSENT DECREE.

20 **Q.** WHAT EFFECT DID THE CROWDING THAT YOU JUST REFERRED TO HAVE
21 ON VIOLENCE IN THE INSTITUTION?

22 **A.** THE PRISON BECAME VERY VIOLENT VERY QUICKLY. WE ACTUALLY
23 ALMOST EVERY MORNING WOULD HEAR GUNSHOTS AS STAFF WERE USING
24 GUNS TO QUELL DISTURBANCES AMONG THE INMATE POPULATION. MANY
25 INMATE DEATHS. WE HAD AN INCREASE IN SUICIDES, ACTUALLY.

1 WE HAD DIFFICULTY KEEPING THE UNITS CLEAN. THE NOISE
2 LEVEL OF THE UNITS WERE UNBEARABLE. IT WAS JUST UNBELIEVABLE
3 CIRCUMSTANCES.

4 Q. AND COULD YOU ALSO COMMENT ON HOW THE CROWDING AFFECTED THE
5 ABILITY TO DELIVER MEDICAL AND MENTAL HEALTHCARE?

6 A. WELL, I WOULD -- IT BECAME VERY DIFFICULT TO KEEP UP WITH
7 MEDICAL CARE. WE PRETTY MUCH HAD THE SAME SYSTEM WE HAVE NOW.
8 INMATES WOULD PUT IN A SICK CALL SLIP, AND IT WOULD BE WEEKS
9 BEFORE THEY WOULD ACTUALLY BE SEEN BY A DOCTOR IN MANY CASES.

10 MENTAL HEALTHCARE WASN'T VERY CLEARLY DEFINED DURING
11 THAT TIME. SO YOU HAD MANY INMATES IN OUR HOUSING UNITS WHO
12 WERE SO SEVERELY MENTALLY ILL AND VERY FEW OF THEM WERE
13 RECEIVING ANY KIND OF TREATMENT AT ALL.

14 NONE OF US, NONE OF THE STAFF WERE REALLY TRAINED ON
15 SIGNS AND SYMPTOMS OF MENTAL HEALTHCARE. THERE WERE VERY FEW
16 DOCTORS THERE.

17 AS A RESULT, SOME INMATES WERE FORCED MEDICATED IN
18 VIOLATION OF THE LAW, AND THERE WAS ACTUALLY CASES FILED ON
19 THAT, SEPARATE AND APART FROM TOUSSAINT.

20 SO IT REALLY WAS UNBELIEVABLE CONDITIONS FOR BOTH
21 STAFF AND INMATES.

22 Q. AND AT THAT TIME DO YOU RECALL WHAT THE LEVEL OF
23 OVERCROWDING WAS?

24 A. THE LEVEL OF OVERCROWDING IN THE SHU UNITS AT SAN QUENTIN
25 WAS ABOUT AT 140 PERCENT.

1 Q. NOW, LATER ON AFTER THE COLEMAN AND PLATA CASES WERE FILED,
2 AND THEN JUDGMENTS WERE ENTERED, DID YOU BECOME FAMILIAR WITH
3 THOSE AS PART OF YOUR RESPONSIBILITIES AS WARDEN AT SAN QUENTIN?

4 A. YES, I BECAME FAMILIAR WITH BOTH PLATA AND COLEMAN AS THE
5 WARDEN AT SAN QUENTIN.

6 Q. AND CAN YOU EXPLAIN TO THE COURT WHAT DIFFICULTIES, IF ANY,
7 THERE WERE YOU HAD AT SAN QUENTIN IN COMPLYING WITH THOSE
8 DECREES AND WHAT THE CAUSE OF THOSE DIFFICULTIES WERE?

9 A. WELL, IT WAS VIRTUALLY IMPOSSIBLE TO COMPLY WITH BOTH OF THE
10 DECREES, AND THE DIFFICULTY WAS PRIMARILY BECAUSE OF THE
11 OVERCROWDING AT SAN QUENTIN.

12 AND TO DESCRIBE IT, I THINK YOU HAVE TO UNDERSTAND
13 THE THREE MISSIONS THAT SAN QUENTIN HAS. ONE BEING THE
14 RECEPTION CENTER WHERE AT TIMES WE WERE RECEIVING ANYWHERE
15 BETWEEN 100 AND 200 INMATES A DAY.

16 SO WITH THAT KIND OF INTAKE INTO OUR -- INTO SAN
17 QUENTIN AND WITH THE KIND OF OVERCROWDING YOU SPENT YOUR DAY
18 MANAGING WHERE TO HOUSE PEOPLE.

19 MEDICAL STAFF DUE TO VACANCIES AND JUST THE SHEER
20 NUMBERS AND LACK OF SPACE WERE UNABLE TO KEEP UP WITH PHYSICALS
21 OR PROVIDING ANY KIND OF CHRONIC CARE FOLLOW-UP AT THE RECEPTION
22 CENTER POPULATION.

23 INMATES IN THE RECEPTION CENTER WHO WERE DIAGNOSED AS
24 MENTALLY ILL, EITHER AS EOP'S OR TRIPLE CMS WEREN'T RECEIVING
25 REALLY ANY TREATMENT BEYOND IDENTIFYING THAT THEY WERE TRIPLE

1 CMS OR EOP.

2 THERE CERTAINLY WASN'T ANYTHING IN THE RECEPTION
3 CENTER THAT WE WERE DOING TO PREVENT FURTHER DETERIORATION OF
4 PEOPLE'S MENTAL ILLNESS OR TO PREVENT MEDICAL PROBLEMS.

5 ALSO BECAUSE OF THE OVERCROWDING AROUND THE SYSTEM WE
6 WOULD END UP WITH INMATES BACKED UP IN THE RECEPTION CENTER WITH
7 NOWHERE TO SEND THEM, AND THE MORE SEVERELY MENTALLY ILL THE
8 HARDER IT WAS TO GET THEM OUT OF THE RECEPTION CENTER. AND SO
9 WE WOULD HAVE INMATES IN THE RECEPTION CENTER THAT WERE THERE IN
10 EXCESS OF A YEAR, SOME AS LONG AS TWO YEARS.

11 EVEN MORE COMPLEX MEDICAL CASES IT WAS DIFFICULT TO
12 FIND PLACES TO SEND THEM THROUGHOUT THE SYSTEM. AND PARTICULARLY
13 THOSE INMATES WHO ARE DUAL DIAGNOSES AND WHO HAD LENGTHY PRISON
14 TERMS TO DO, SO THEY WERE THE HIGHER SECURITY INMATES, THEY
15 WOULD BACK UP IN THE RECEPTION CENTER.

16 SO YOU WOULD SPEND YOUR TIME AS THE WARDEN TRYING TO
17 FIGURE OUT HOW TO HOUSE PEOPLE APPROPRIATELY. AND YOU WOULD RUN
18 OUT OF SOLUTIONS OFTEN.

19 AND THEN, THE SECOND MISSION OF SAN QUENTIN, OF
20 COURSE, IS DEATH ROW. AND THAT IS REALLY OVER 600 DEATH ROW
21 INMATES THAT ARE HOUSED IN A SECURITY HOUSING UNIT KIND OF
22 SETTING.

23 AT ONE POINT IN TIME, THERE WEREN'T ENOUGH STAFF TO
24 PROVIDE ANY MENTAL HEALTH TREATMENT FOR DEATH ROW INMATES AT
25 ALL. PROVIDING MEDICAL CARE FOR THE DEATH ROW INMATES WAS

1 INCREASINGLY MORE DIFFICULT BECAUSE WE DIDN'T HAVE ENOUGH STAFF
2 TO DO THE MEDICAL ESCORTS TO THE HOSPITAL.

3 AND IN SPITE OF OUR EFFORTS TO TRY TO JUSTIFY MORE
4 POSITIONS WE ACTUALLY WERE CUT POSITIONS FOR MEDICAL ESCORTS FOR
5 DEATH ROW INMATES.

6 THE THIRD MISSION IS THE GENERAL POPULATION, WHICH IS
7 A LARGE GENERAL POPULATION. THE POPULATION AT SAN QUENTIN WOULD
8 GET AS HIGH AS 6200 DURING THE TIME I WAS WARDEN, WITH THE
9 GENERAL POPULATION OVER A COUPLE OF THOUSAND INMATES.

10 AGAIN, DIFFICULTY, EVEN THOUGH THEY COULD GO TO THE
11 INFIRMARY -- I WAS CALLED "INFIRMARY" AT THAT TIME -- LATER
12 BECAME A CTC -- THEMSELVES, BECAUSE OF THE NEED TO PROCESS
13 RECEPTION CENTER INMATES IN THAT SPACE, STAFF OFTEN -- MEDICAL
14 STAFF OFTEN WOULD NOT HAVE THE SPACE TO PROVIDE TREATMENT FOR
15 INMATES IN THE GENERAL POPULATION, EITHER FOR THEIR MEDICAL CARE
16 OR FOR THEIR ONGOING NEEDS IN THE MENTAL HEALTH PROGRAM.

17 Q. NOW, MS. WOODFORD, YOU MENTIONED YOU WERE SPENDING A LOT OF
18 TIME TRYING TO PLACE INMATES. DID THAT TAKE TIME? OR HOW DID
19 THAT AFFECT YOUR ABILITY TO COMPLY WITH THE REQUIREMENTS OF THE
20 PLATA POLICIES AND PROCEDURES AND THE COLEMAN POLICIES AND
21 PROCEDURES?

22 A. WELL, I THINK IT'S VERY DIFFICULT TO PLAN ANYTHING WHEN YOU
23 SPEND YOUR DAY FIREFIGHTING. AND THAT'S REALLY WHAT YOU WOULD
24 DO WHEN I WAS THE WARDEN AT SAN QUENTIN.

25 AND I SHOULD MENTION THERE WERE TIMES AT SAN QUENTIN

1 WHEN WE WERE DOWN OVER 125 CORRECTIONAL OFFICERS, NOT TO MENTION
2 VACANCIES IN OUR SERGEANT AND LIEUTENANT CATEGORIES, AS WELL.

3 BUT YOU WOULD SPEND YOUR DAY TRYING TO FIGURE OUT HOW
4 TO HOUSE PEOPLE. IT WAS A CRISIS. IT WOULD TAKE SOMETIMES UNTIL
5 MIDNIGHT OR AFTER TO HOUSE THE INTAKE THAT CAME IN THE RECEPTION
6 CENTER THAT DAY.

7 AND YOU WERE HAVING TO MAKE DECISIONS THAT WERE
8 CONTRARY TO GOOD CUSTODY PRACTICES. SO HOUSING INMATES THAT YOU
9 KNEW HAD ENEMY ISSUES OR GANG ISSUES, YOU WOULD HAVE TO HOUSE
10 THEM IN AREAS THAT WEREN'T QUITE APPROPRIATE.

11 YOU WOULD SPEND YOUR TIME TRYING TO -- FOR A
12 SPECIALTY CASES THAT YOU COULDN'T GET TRANSFERRED ON THE PHONE,
13 TRYING TO CALL TO GET HEADQUARTERS TO HELP YOU MOVE PEOPLE TO
14 APPROPRIATE SPACES, TO HAVE THEM TELL YOU THAT THERE WAS NOWHERE
15 TO MOVE THEM.

16 AND I CAN TELL YOU THAT IT GOT TO THE POINT WHERE I
17 WOULD CALL HEADQUARTERS, AND THE ANSWER WOULD BE:

18 "OH, YOU'RE CALLING ABOUT YOUR OVERCROWDING,
19 AGAIN, HUH?"

20 NO ONE HAD ANSWERS FOR THIS OVERCROWDING PROBLEM THAT
21 WAS INTERFERING WITH OUR ABILITY TO COMPLY WITH EITHER COLEMAN
22 OR PLATA.

23 Q. OKAY. DR. BEARD TESTIFIED THIS MORNING. YOU WERE NOT HERE,
24 BUT HE TESTIFIED THAT IN PENNSYLVANIA THEY HAVE A CLASSIFICATION
25 SYSTEM WHICH LOOKS AT NOT ONLY THE PRISONERS' CUSTODY NEEDS, BUT

1 WHAT HE CALLED THE CRIMINOGENIC FACTORS AND THE PRISONERS'
2 MENTAL HEALTH AND MEDICAL NEEDS, AS A CLASSIFICATION SYSTEM.
3 AND THEN, THEY WOULD SEND PRISONERS TO THE APPROPRIATE
4 INSTITUTION BASED ON THOSE FACTORS.

5 WERE YOU ABLE TO CLASSIFY PRISONERS -- WELL, FIRST OF
6 ALL, DO YOU THINK THAT'S A GOOD CORRECTIONAL PRACTICE? IS THAT
7 SOMETHING THAT WOULD KEEP PRISONERS SAFE?

8 **A.** I THINK IT'S AN EXCELLENT CORRECTIONAL PRACTICE.

9 **Q.** OKAY.

10 **A.** AND IF I COULD COMMENT, IT ALSO MAKES BETTER USE OF YOUR
11 CORRECTIONAL SYSTEM. IF YOU ONLY TAKE INTO CONSIDERATION THE
12 SECURITY LEVEL, IT LIMITS YOUR ABILITY TO MOVE INMATES AROUND,
13 AS WELL.

14 **Q.** SO WAS THAT THE CASE IN SAN QUENTIN THAT YOU WEREN'T ABLE
15 TO TAKE INTO ACCOUNT THEIR OTHER NEEDS, NOT TO MENTION WHAT THEY
16 CALL THE CRIMINOGENIC FACTORS?

17 **A.** THAT IS CORRECT. SECURITY ISSUES WERE ALWAYS THE FIRST ISSUE
18 THAT HAD TO BE ADDRESSED. THE LEVEL ONES WENT TO LEVEL ONES.
19 LEVEL TWOS TO LEVEL TWOS. THREES AND FOURS, LEVEL THREES WENT
20 TO LEVEL THREES AND LEVEL FOURS WENT TO LEVEL FOURS.

21 **Q.** YOU ALSO HAD RESPONSIBILITY WHILE YOU WERE AT
22 HEADQUARTERS -- AND BY THAT I MEAN THE TIME YOU SPENT AS THE
23 DIRECTOR OF THE DEPARTMENT OF CORRECTIONS, AND THEN THE
24 UNDERSECRETARY, AND THEN THE ACTING SECRETARY. YOU HAD
25 RESPONSIBILITIES AT THAT TIME FOR MANAGING THE COMPLIANCE WITH

1 COLEMAN AND PLATA; IS THAT CORRECT?

2 **A.** THAT IS CORRECT.

3 **Q.** AND WERE YOU ABLE TO SPEND SUFFICIENT TIME ON THOSE AREAS TO
4 PROVIDE WHAT YOU THOUGHT WAS AN ADEQUATE RESPONSE TO THE COURT'S
5 ORDERS?

6 **A.** I WOULD HAVE TO SAY THAT IN THOSE POSITIONS THAT YOU JUST
7 DIDN'T HAVE ENOUGH TIME AND ABSOLUTELY DID NOT HAVE SUFFICIENT
8 TIME TO ADDRESS THE ISSUES OF COLEMAN AND PLATA JUST BECAUSE
9 THERE WAS SO MANY ISSUES THAT YOU WERE TRYING TO ADDRESS IN
10 THOSE POSITIONS.

11 **Q.** AND DID YOU BECOME FAMILIAR THROUGH YOUR RESPONSIBILITIES AT
12 HEADQUARTERS WITH THE REQUIREMENTS FROM A SYSTEM LEVEL OF
13 COLEMAN AND PLATA?

14 **A.** THAT'S ABSOLUTELY TRUE. BECAUSE OF OVERCROWDING, WHEN
15 YOU'RE OUT IN THE FIELD AS THE WARDEN, YOU KNOW THAT THE ANSWERS
16 HAVE TO COME FROM SACRAMENTO, BECAUSE OVERCROWDING NEEDED TO BE
17 ADDRESSED IN ORDER TO COME INTO COMPLIANCE WITH THE MANY ISSUES
18 OF COLEMAN AND PLATA.

19 SO AS THE DIRECTOR AND UNDERSECRETARY AND SECRETARY,
20 WE UNDERSTOOD IT WAS OUR RESPONSIBILITY TO TRY TO ADDRESS THOSE
21 ISSUES SO THAT THE PRISONS COULD RUN APPROPRIATELY AND PROVIDE
22 THE CARE AND TREATMENT THAT WAS REQUIRED BY BOTH CASES.

23 **Q.** AND HOW, IF AT ALL, DID THE SYSTEM-WIDE OVERCROWDING AFFECT
24 YOUR ABILITY AT HEADQUARTERS TO MANAGE THE COLEMAN AND PLATA
25 CASES?

1 **A.** IT WAS REALLY CLEAR THAT THERE WERE NO EASY ANSWERS FOR
2 OVERCROWDING. AND THAT IT WAS IMPOSSIBLE TO GET THE MONEY OR THE
3 RESOURCES THAT YOU NEEDED TO ADDRESS THAT ISSUE.

4 AND I WILL SAY, YOU KNOW, WHEN YOU'RE THE WARDEN
5 YOU'RE DEALING WITH IT EVERY DAY. AND YOU SEE THE PEOPLE. AND
6 IT'S ABOUT INDIVIDUALS. AND YOU UNDERSTAND THE IMPACT OF
7 OVERCROWDING ON THE INMATES AND YOUR STAFF AND ON YOU.

8 AND AT HEADQUARTERS IT GETS TO BE A LITTLE MORE
9 ABSTRACT. YOU'RE UP THERE TRYING TO SOLVE THE PROBLEMS. AND I
10 CLEARLY UNDERSTOOD AS BEING OUT THERE IN THE FIELD AS THE WARDEN
11 THINKING THAT HEADQUARTERS WASN'T TRYING TO DO ANYTHING TO HELP
12 YOU AND HOW FRUSTRATED I WAS AS A WARDEN UNDERSTANDING NOW AS
13 THE DIRECTOR HOW DIFFICULT IT WAS TO GET SOLUTIONS, AND THE
14 FIELD NOT THINKING THAT ANY ANSWERS WERE COMING THEIR WAY.

15 SO IT MADE IT HARDER FOR THE FIELD TO ATTRACT GOOD
16 STAFF AND KEEP GOOD STAFF, BECAUSE IT WAS A MORALE ISSUE.

17 SO I EVEN WAS MORE FRUSTRATED AS THE DIRECTOR AND
18 UNDERSECRETARY AND SECRETARY REMEMBERING MY EXPERIENCES AS
19 OPERATIONALLY AS A WARDEN.

20 **Q.** OKAY. AND I THINK YOU ALLUDED TO THIS A LITTLE BIT, BUT YOU
21 MENTIONED THE PROBLEM OF TRANSFERRING PRISONERS FROM ONE PRISON
22 TO ANOTHER IF YOU DON'T HAVE A PLACE FOR THEM.

23 WAS IT DIFFICULT TO TRANSFER PRISONERS TO OTHER
24 PRISONS BECAUSE OF THE OVERCROWDING SITUATION?

25 **A.** IT'S NEARLY IMPOSSIBLE TO TRANSFER INMATES AROUND FOR THE

1 RIGHT REASONS. YOU WOULD HAVE TO TRANSFER INMATES AROUND BECAUSE
2 THERE WERE OPEN BEDS AND YOU NEEDED TO MOVE INMATES INTO THOSE
3 PARTICULAR BEDS.

4 BUT IN TERMS OF TRYING TO ADDRESS MANY OF THE MEDICAL
5 AND PARTICULARLY THE MENTAL HEALTH PROBLEMS, IT WAS IMPOSSIBLE
6 TO MOVE INMATES WHERE THEY NEEDED TO BE.

7 Q. AND --

8 JUDGE KARLTON: THAT'S BECAUSE THERE WASN'T ANY SPACE
9 BECAUSE OF OVERCROWDING?

10 THE WITNESS: THERE WAS NO SPACE BECAUSE OF
11 OVERCROWDING, YES.

12 BY MR. SPECTER:

13 Q. AND WHEN YOU MENTIONED THE TIMES YOU SPENT DEALING WITH
14 COLEMAN AND PLATA AT HEADQUARTERS, WERE YOU SPENDING JUST A
15 LITTLE BIT OF YOUR TIME ON THESE CASES? WERE THEY AN
16 AFTERTHOUGHT OR SOMETHING DIFFERENT?

17 A. THEY CERTAINLY WERE NOT AN AFTERTHOUGHT. I SPEND A GREAT
18 DEAL OF TIME TRYING TO WORK WITH STAFF, DISCUSSING ISSUES WITH
19 DIFFERENT MEMBERS OF THE LEGISLATURE, TRYING TO FIND SOLUTIONS,
20 TALKING TO THE ADMINISTRATION ABOUT POTENTIAL SOLUTIONS, WORKING
21 WITH DEPARTMENT OF MENTAL HEALTH, BECAUSE THEY HAD GREAT
22 CONCERNS IN TERMS OF NOT HAVING ADEQUATE SPACE AND THE
23 APPROPRIATE NUMBER OF BEDS TO PROVIDE THE QUALITY MENTAL
24 HEALTHCARE THAT THEY WANTED TO PROVIDE.

25 I THINK THAT IT WAS A DAILY TOPIC OF DISCUSSION IN

1 MANY, MANY, MANY MEETINGS WITH THE VARIETY OF PEOPLE TRYING TO
2 BRING SOME SOLUTIONS TO THE DEPARTMENT OF CORRECTIONS.

3 Q. AND SO, GIVEN ALL THAT EFFORT BOTH ON A INSTITUTION
4 MANAGEMENT INSTITUTION LEVEL AND ON THE HEADQUARTERS LEVEL AS A
5 HIGH LEVEL MANAGER, GIVEN ALL THAT EXPERIENCE AND YOUR
6 EXPERIENCE WITH THE DEPARTMENT OF CORRECTIONS, WHAT DO YOU THINK
7 WAS THE PRIMARY CAUSE OF THE INABILITY TO PROVIDE HEALTHCARE TO
8 PRISONERS?

9 A. I ABSOLUTELY BELIEVE THE PRIMARY CAUSE IS OVERCROWDING,
10 BECAUSE WE WOULD COME UP WITH WONDERFUL IDEAS AND HAVE GREAT
11 PLANNING, BUT OVERCROWDING INTERFERED WITH OUR ABILITY TO
12 IMPLEMENT ANY OF THOSE IDEAS, TO BRING RESOLUTION TO ANY OF THE
13 PROBLEMS THAT WE'RE FACING IN BOTH OF THOSE LAWSUITS.

14 AND THE OVERCROWDING WAS EVERY DAY, MORE AND MORE
15 INMATES COMING INTO THE SYSTEM.

16 Q. AND WHEN YOU'RE AT THE HEADQUARTERS DID YOU EXPRESS THAT
17 CONVICTION TO ANY OF YOUR SUPERIORS?

18 A. YES.

19 Q. AND WHO WOULD YOU TALK TO ABOUT THAT?

20 A. WELL, I WOULD TALK TO -- WELL, AS THE DIRECTOR I WOULD TALK
21 TO THE UNDERSECRETARY AND SECRETARY ABOUT THAT. THEN, WHEN I WAS
22 THE UNDERSECRETARY AND ACTING SECRETARY I TALKED TO THE
23 GOVERNOR'S STAFF ABOUT THE OVERCROWDED CONDITIONS AND THAT WE
24 NEEDED TO ADDRESS OVERCROWDING IN ORDER FOR US TO BE SUCCESSFUL
25 AT ANY OF THE EFFORTS WE WERE TRYING TO DO, INCLUDING PROVIDING

1 MEDICAL CARE, MENTAL HEALTHCARE AND REHABILITATIVE SERVICES TO
2 INMATES.

3 **JUDGE HENDERSON:** CAN I INTERRUPT YOU?

4 **MR. SPECTER:** SURE.

5 **JUDGE HENDERSON:** I WANT TO MAKE SURE I HAVE THIS
6 TIMELINE. YOU TALKED ALMOST LONGINGLY ABOUT THE GOOD OLD DAYS AT
7 SAN QUENTIN WHEN THERE WAS NOT OVERCROWDING. THAT'S MY
8 CHARACTERIZATION.

9 AND YOU NOW ARE TALKING ABOUT THE OVERCROWDING. WOULD
10 IT BE FAIR TO SAY THAT IN THOSE DAYS OF YOR, I DON'T KNOW IF
11 THERE WERE MEDICAL INADEQUACIES, BUT WOULD YOU, IF YOU WERE
12 ASKED THEN "ARE THEY SOLVABLE" BECAUSE THERE'S NOT OVERCROWDING,
13 WOULD IT HAVE BEEN YOUR VIEW LOOKING BACK THAT THEY ARE SOLVABLE
14 AND THAT BECAUSE OF THE OVERCROWDING THEY ARE NO LONGER
15 SOLVABLE?

16 IS THAT A FAIR SUMMATION?

17 **THE WITNESS:** YES, YOUR HONOR. THAT'S A VERY FAIR
18 SUMMATION.

19 **JUDGE REINHARDT:** YOU GOT UP TO WHEN YOU WERE
20 UNDERSECRETARY. WHEN YOU WERE ACTING SECRETARY TO WHOM DID YOU
21 TALK? WHO WERE YOUR SUPERIORS THEN?

22 **THE WITNESS:** WELL, I WORKED FOR THE GOVERNOR, BUT I
23 DID NOT GET TO HAVE A CONVERSATION WITH THE GOVERNOR UNTIL MY
24 LAST DAY WHEN I STEPPED DOWN AS SECRETARY. SO I WAS TALKING TO
25 HIS CHIEF OF STAFF AND THE CABINET SECRETARY AND HIS LEGAL

1 PERSON, ANDREA HOAK, ABOUT THOSE ISSUES.

2 JUDGE REINHARDT: AND THE CHIEF OF STAFF IS SUSAN
3 KENNEDY?

4 THE WITNESS: YES, THAT'S CORRECT.

5 BY MR. SPECTER:

6 Q. AND DID YOU NOT GET TO TALK TO THE GOVERNOR BECAUSE YOU
7 FAILED TO ASK FOR AN APPOINTMENT TO SEE HIM?

8 MR. MELLO: PAUL MELLO. CALLS FOR SPECULATION.

9 JUDGE KARLTON: WHY DON'T YOU PUT IT THE OTHER WAY?

10 MR. SPECTER: SURE.

11 JUDGE KARLTON: DID YOU ASK TO SPEAK TO THE GOVERNOR?

12 MR. MITCHELL: YES, I DID, ON MORE THAN ONE OCCASION.

13 MR. SPECTER: THANK YOU, YOUR HONOR.

14 BY MR. SPECTER:

15 Q. DID YOU ATTRIBUTE ANY OF THE PROBLEMS RECRUITING STAFF WITH
16 OVERCROWDING?

17 A. I THINK OVERCROWDING WAS -- IS -- WAS AND IS A GREAT
18 HINDRANCE TO TRYING TO RECRUIT AND RETAIN STAFF.

19 Q. YOU'RE AWARE THAT -- WELL, YOU MENTIONED THAT THERE WERE A
20 LOT OF VACANCIES WHEN YOU LEFT THE DEPARTMENT, CORRECTIONAL
21 OFFICER VACANCIES, CORRECT?

22 A. YES, THAT'S CORRECT.

23 Q. AND YOU'RE AWARE THAT THE CORRECTIONAL OFFICER VACANCIES
24 HAVE GONE DOWN, ARE YOU NOT?

25 A. YES, I'VE BEEN TOLD THAT CORRECTIONAL OFFICER VACANCIES HAVE

1 GONE DOWN.

2 **Q.** DOES THAT GIVE YOU CONFIDENCE THAT THOSE CORRECTIONAL
3 OFFICER VACANCIES WILL STAY THAT -- THAT VACANCY RATES WILL BE
4 STABLE OVER TIME?

5 **A.** NO, IT DOES NOT. WHEN THE ECONOMY IS REALLY, REALLY GOOD,
6 IT'S INCREASINGLY MORE DIFFICULT TO RECRUIT AND RETAIN
7 CORRECTIONAL OFFICERS. AND WHEN THE ECONOMY IS BAD, IT'S A
8 LITTLE EASIER.

9 AND THEN, I'M ALSO AWARE OF THE FACT THAT THERE'S
10 SOME CLOSURES GOING ON IN THE JUVENILE JUSTICE SIDE OF THE
11 HOUSE, WHICH HAS BROUGHT STAFF FROM JUVENILE JUSTICE INTO THE
12 PRISON SYSTEM, AS WELL.

13 SO I THINK BECAUSE I WAS THERE 27 YEARS I'VE SEEN US
14 FULLY STAFFED, AND THEN I'VE SEEN THOSE PERIODS WHERE WE'VE HAD
15 GREAT, GREAT DIFFICULTY BRINGING STAFF INTO THE SYSTEM.

16 **THE CLERK:** YOU HAVE FIVE MINUTES, COUNSEL.

17 **MR. SPECTER:** OKAY.

18 **BY MR. SPECTER:**

19 **Q.** YOU TOOK SOME TOURS OF THE INSTITUTIONS, DID YOU NOT?

20 **A.** YES, I DID.

21 **Q.** AND THAT WAS IN THIS YEAR; IS THAT CORRECT?

22 **A.** YES, IN JULY AND AUGUST, I BELIEVE.

23 **Q.** RIGHT. AND ONE OF THE PRISONS YOU TOOK WAS -- YOU TOURED
24 WAS LANCASTER; ISN'T THAT CORRECT?

25 **A.** YES, THAT'S CORRECT.

1 Q. AND I'M GOING TO REFER YOU TO THE PICTURE THAT'S ON SCREEN
2 THAT'S PLAINTIFF'S EXHIBIT 345. COULD YOU DESCRIBE WHAT YOU SEE
3 THERE, PLEASE?

4 A. I SEE A PICTURE OF WHAT LOOKS LIKE A GYMNASIUM WITH TRIPLE
5 BUNKS. LOOKS LIKE IT'S SEVERELY OVERCROWDED.

6 LOOKS LIKE THERE'S BARELY ROOM BETWEEN THE BUNKS.
7 AND IT ALSO LOOKS LIKE IT'S CROWDED TO THE POINT INMATES ARE
8 EXPECTED TO BE ON THEIR BUNKS.

9 Q. AND FROM A CORRECTIONS ADMINISTRATOR'S PERSPECTIVE DO YOU
10 SEE ANY PROBLEMS WITH THAT HOUSING ARRANGEMENT?

11 A. I ABSOLUTELY SEE MANY PROBLEMS, AND I'VE SEEN SCENES LIKE
12 THIS ALL OVER THE DEPARTMENT AS THE DIRECTOR AND UNDERSECRETARY
13 OF THE DEPARTMENT OF CORRECTIONS, AND IN MY OWN EXPERIENCE AS
14 THE WARDEN AT SAN QUENTIN, OVERCROWDING INMATES INTO THE
15 GYMNASIUM THERE.

16 IT'S VERY DIFFICULT TO HAVE OF GOOD LINES OF SIGHT OF
17 THE INMATES. IT'S VERY DIFFICULT TO KNOW WHO THE INMATES ARE IN
18 THESE CROWDED SITUATIONS.

19 I THINK IT'S REALLY HARD ON THE INMATES WHEN THERE
20 ISN'T ROOM FOR THEM TO MOVE AROUND AT ALL, AND THEY SPEND THE
21 MAJORITY OF THEIR DAY ON OR NEAR THEIR BUNKS. YOU END UP WITH
22 VIOLENCE BREAKING OUT IN THESE SITUATIONS.

23 I'VE PERSONALLY EXPERIENCED MORE THAN ONE RIOT AT SAN
24 QUENTIN, AND I KNOW THAT OCCURS AROUND THE DEPARTMENT OF
25 CORRECTIONS. AND, YOU KNOW, STAFF, MANY STAFF DON'T FEEL EVEN

1 COMFORTABLE WALKING AROUND UNITS LIKE THIS BECAUSE THEY ARE SO
2 OVERCROWDED, AND SO IT'S VERY HARD ON INMATES WHO ARE MORE
3 VULNERABLE.

4 AND IT'S REALLY DIFFICULT TO KNOW OFTEN IF THERE'S
5 MEDICAL ISSUES AND PARTICULARLY MENTAL HEALTH ISSUES WHEN YOU'RE
6 THIS CROWDED AND YOU'RE NOT HAVING THAT CONSTANT CONVERSATION
7 AND CONTACT WITH THE INMATES AS A STAFF PERSON.

8 **Q.** AND WHEN YOU TOOK A TOUR IN AUGUST OF 2008, DID YOU SEE
9 UNITS WHERE OR HAD YOU HEARD ABOUT INCIDENTS WHERE THERE
10 WEREN'T ENOUGH STAFF ON THE UNIT?

11 **A.** YES, I HEARD THAT WHEN I WAS AT LANCASTER.

12 BY THE WAY, WHEN WE WALKED IN THE -- WHEN I WALKED IN
13 THE GYM AT LANCASTER -- I DON'T KNOW IF IT WAS THIS GYM, BUT A
14 GYM LIKE THIS -- THERE WAS ONLY ONE OFFICER THERE. AND SHE TOLD
15 ME THAT THERE WAS A SECOND OFFICER ASSIGNED THERE, BUT HE WAS
16 OUT ESCORTING INMATES.

17 SO THIS CLEARLY WAS A SITUATION WHERE THERE WASN'T
18 ENOUGH STAFF IN THE UNIT TO EVEN ATTEMPT TO WALK AROUND IN A
19 BUILDING THIS CROWDED.

20 BUT IN ANOTHER CASE, WE WERE IN AN EOP UNIT, AND I
21 BELIEVE IT WAS AN EOP UNIT AT LANCASTER. AND THE STAFF TOLD US
22 THAT THE DAY BEFORE THEY WERE SO SHORT OF STAFF THAT THERE WAS
23 NO STAFF ON THE FLOOR.

24 AND THAT THE ONE STAFF MEMBER THAT WAS ASSIGNED TO
25 THE UNIT HAD TO GO UP TO THE CONTROL BOOTH AND MONITOR THE

1 INMATES FROM THE CONTROL BOOTH.

2 AND DURING THAT TIME, AN INMATE HAD A MEDICAL
3 EMERGENCY, INJURED HIS FOOT IN HIS CELL. AND THE INMATE HAD TO
4 GET THE ATTENTION OF THE STAFF IN THE CONTROL BOOTH. AND
5 WITHOUT ANYONE TALKING TO HIM ON THE FLOOR, THEY OPENED THE
6 DOOR. THE INMATE TOLD THE STAFF THAT HE'D INJURED HIMSELF, AND
7 THE STAFF SAID:

8 "ARE YOU ABLE TO GET OVER TO THE CTC ON YOUR
9 OWN?"

10 AND HE SAID:

11 "I THINK SO."

12 AND THEY LET HIM OUT OF THE UNIT WITHOUT ANYBODY
13 DOING A PHYSICAL CHECK OF THE INMATE.

14 Q. AND WHILE YOU WERE IN THE DEPARTMENT, WAS THERE AN INCIDENT
15 AT THE CALIFORNIA REHABILITATION CENTER INVOLVING INMATE DEATH
16 IN A GYM THAT WAS NOTEWORTHY?

17 A. YES. WHILE I WAS -- I BELIEVE I WAS THE DIRECTOR. I MAY
18 HAVE BEEN THE UNDERSECRETARY. BUT I THINK I WAS THE DIRECTOR.
19 THERE WAS A DEATH IN A CROWDED GYM AT CRC THAT WENT ON. IT WAS
20 A HOMICIDE OF AN INMATE, AND IT WENT UNNOTICED BY STAFF FOR
21 SEVERAL HOURS.

22 AN INVESTIGATION WAS ACTUALLY OPENED UP OF THAT CASE,
23 AND I'M SORRY I DON'T KNOW THE OUTCOME OF THE INVESTIGATION.
24 BUT CLEARLY IT'S VERY DIFFICULT TO OBSERVE INMATES APPROPRIATELY
25 IN OVERCROWDED SITUATIONS LIKE THIS.

1 AND YOU CAN HAVE MEDICAL EMERGENCIES THAT GO
2 UNNOTICED BY STAFF AND CAN END UP IN DEATH, AS THE CASE WAS AT
3 CRC.

4 **Q.** SO DID THE TOURS -- WHAT EFFECT, IF ANY, DID THE TOURS HAVE
5 ON YOUR THOUGHTS ABOUT OVERCROWDING AFFECTING THE ABILITY OF THE
6 DEPARTMENT TO PROVIDE ADEQUATE HEALTHCARE?

7 **A.** I'M STILL CONVINCED THAT OVERCROWDING IS A PRIMARY ISSUE
8 THAT INHIBITS THE DEPARTMENT FROM BEING SUCCESSFUL AT PROVIDING
9 BOTH HEALTHCARE OR MENTAL HEALTHCARE FOR INMATES THAT ARE IN THE
10 DEPARTMENT OF CORRECTIONS AND REHABILITATION.

11 **Q.** IN HIS DEPOSITION, MATT CATE TESTIFIED THAT OVERCROWDING
12 MAKES ALL THE OPERATIONS OF A PRISON MORE DIFFICULT, HE SAID,
13 INCLUDING MEDICAL AND MENTAL HEALTHCARE.

14 DO YOU AGREE WITH THAT STATEMENT?

15 **A.** I ABSOLUTELY AGREE WITH SECRETARY CATE. RUNNING A PRISON IS
16 A COORDINATED EFFORT. IN ADDITION TO PROVIDING MENTAL HEALTHCARE
17 AND MEDICAL CARE INMATES HAVE TO BE TAKEN TO THE DINING HALL TO
18 BE FED. THEY NEED TO HAVE THE APPROPRIATE AMOUNT OF EXERCISE.

19 THEY NEED TO BE INVOLVED IN PROGRAMS. AND ALL OF
20 THAT HAS TO BE DONE WITHIN A SHORT AMOUNT OF TIME BECAUSE MOST
21 PRISONS RUN THEIR OPERATIONS DURING DAYLIGHT HOURS, ESPECIALLY
22 THE HIGHER SECURITY ONES.

23 THE MORE OVERCROWDED YOU ARE, THE MORE DIFFICULT IT
24 IS TO MEET THE BASIC, BASIC NEEDS OF INMATES.

25 AND IT EVEN GETS TO BE IMPOSSIBLE TO GET TO THEM

1 THEIR MENTAL HEALTH TREATMENT AND HEALTHCARE EXAMS WHEN YOU'RE
2 TRYING TO DO JUST BASIC OPERATIONS IN AN OVERCROWDED SETTING.

3 **Q.** IN TERMS OF INMATE WELL-BEING, PRISONER WELL-BEING AND THE
4 SAFETY OF PRISONERS, HOW SHOULD A PRISON SYSTEM REALLY BE
5 FUNCTIONING?

6 **A.** WELL, I THINK IT'S THE RESPONSIBILITY OF PRISON
7 ADMINISTRATORS TO DESIGN A SYSTEM THAT ALLOWS INMATES TO HAVE AN
8 APPROPRIATE LIVING ENVIRONMENT, A SYSTEM THAT PROVIDES
9 PREVENTION OF MEDICAL PROBLEMS, AND THAT DOESN'T HAVE A
10 SITUATION WHERE INMATES DECOMPENSATE MENTALLY.

11 WE NEED TO TREAT PEOPLE HUMANELY. YOU KNOW, I THINK
12 THE MOST GLARING EXAMPLE IS THE RECEPTION CENTERS WHERE SUCH A
13 LARGE PERCENT OF OUR POPULATION IS. ABOUT 25 PERCENT OF THE
14 INMATE POPULATION IS IN RECEPTION CENTERS, AND IN THOSE
15 RECEPTION CENTERS WHEN YOU HAVE PEOPLE HOUSED IN BUNKS LIKE THIS
16 (INDICATING).

17 WE ARE PAROLING A LARGE NUMBER OF INMATES EVERY WEEK.
18 SAN QUENTIN OVER 200 A WEEK ARE PAROLED OUT OF A SITUATION LIKE
19 THIS (INDICATING).

20 I THINK JUST ANY CORRECTIONAL ADMINISTRATOR WOULD SAY
21 THAT THIS IS ABSOLUTELY INAPPROPRIATE TO HOUSE HUMAN BEINGS IN
22 THIS KIND OF SITUATION AND RETURN THEM BACK TO OUR SOCIETY WHERE
23 MENTALLY THEY ARE NO BETTER OFF, AND PROBABLY IN WORSE SHAPE AND
24 IN SITUATIONS LIKE THIS WHERE WE HAVE DONE NOTHING TO ASSIST
25 WITH THEIR MEDICAL TREATMENT IN A WAY THAT WOULD BE CONSIDERED

1 APPROPRIATE.

2 Q. AND IS IT -- JUST TWO MORE QUESTIONS.

3 IS IT YOUR OPINION THAT WITHOUT A REDUCTION IN
4 OVERCROWDING THAT THE DEPARTMENT OF CORRECTIONS WILL BE UNABLE
5 TO PROVIDE ADEQUATE MEDICAL AND MENTAL HEALTHCARE?

6 A. IT'S ABSOLUTELY MY OPINION. AND WITHOUT ADDRESSING THE
7 ISSUE OF OVERCROWDING, THE DEPARTMENT OF CORRECTIONS WILL NEVER
8 BE ABLE TO PROVIDE APPROPRIATE MEDICAL OR MENTAL HEALTHCARE AND
9 SUSTAIN -- SUSTAIN ANY KIND OF QUALITY CONSTITUTIONALLY-ADEQUATE
10 MEDICAL OR MENTAL HEALTHCARE. MEDICAL OR MENTAL HEALTHCARE.

11 Q. AND TWO MORE QUESTIONS, MS. WOODFORD.

12 FIRST, HOW MUCH ARE YOU GETTING PAID TO BE HERE
13 TODAY?

14 A. I'M NOT BEING PAID TO BE HERE TODAY.

15 Q. SO YOU DID ALL THESE TOURS AND REVIEW OF THE DOCUMENTS FOR
16 FREE, BASICALLY? AND WHY DID YOU DO THAT?

17 A. I DID IT FOR FREE BECAUSE I TRULY BELIEVE THAT WE CAN DO
18 BETTER THAN WE ARE IN CALIFORNIA. I THINK IT'S UNBELIEVABLE THAT
19 IN THIS STATE THAT WE HAVE THE KIND OF OVERCROWDED CONDITIONS
20 THAT WE HAVE; THAT WE DO LITTLE OR NOTHING TO PREPARE PEOPLE FOR
21 THE RETURN TO SOCIETY IN SPITE OF THE FACT THAT WE PAROLE 10,000
22 PEOPLE A MONTH FROM OUR PRISON SYSTEM.

23 AND I ABSOLUTELY BELIEVE THAT WE MAKE PEOPLE WORSE,
24 AND THAT WE ARE NOT MEETING PUBLIC SAFETY BY THE WAY WE TREAT
25 PEOPLE.

1 AND THAT I BELIEVE OVERCROWDING IS PROHIBITING US
2 FROM PROVIDING QUALITY MEDICAL CARE AND MENTAL HEALTHCARE TO
3 INMATES IN OUR SYSTEM.

4 AND FOR CALIFORNIA TO BE IN THE SHAPE THAT IT'S IN IS
5 JUST UNBELIEVABLE. I MEAN, WE JUST RECENTLY PASSED AN INITIATIVE
6 THAT GIVES CHICKENS APPROPRIATE LIVING SPACE, AND YET WE HAVE
7 PRISONS THAT LOOK LIKE THIS (INDICATING).

8 **MR. SPECTER:** NO FURTHER QUESTIONS, YOUR HONOR.

9 **JUDGE HENDERSON:** DOES CCPOA HAVE ANY QUESTIONS?

10 **MS. LEONARD:** NO FURTHER QUESTIONS OF THIS WITNESS,
11 YOUR HONOR.

12 **THE COURT:** ALL RIGHT.

13 CROSS-EXAMINATION?

14 **MR. MELLO:** GOOD AFTERNOON. PAUL MELLO FOR
15 DEFENDANTS.

16 **CROSS-EXAMINATION**

17 **BY MR. MELLO:**

18 **Q.** GOOD AFTERNOON, MS. WOODFORD.

19 **A.** HI.

20 **Q.** WHEN WAS THE LAST TIME YOU WORKED IN SAN QUENTIN PRISON?

21 **A.** IT'S BEEN ABOUT THREE YEARS. WELL, I LEFT THERE IN FEBRUARY
22 OF 2004.

23 **Q.** OKAY.

24 **A.** SO IT'S BEEN FOUR YEARS.

25 **Q.** FOUR YEARS. ALMOST FIVE?

1 A. YES.

2 Q. OKAY. AND YOU'VE NEVER BEEN A CLINICIAN WHO PROVIDED MEDICAL
3 OR MENTAL HEALTHCARE, CORRECT?

4 A. THAT IS CORRECT.

5 Q. AND WHEN YOU WERE THE WARDEN AT SAN QUENTIN THERE WAS A
6 CHIEF MEDICAL OFFICER WHO WAS CHARGED WITH RUNNING MEDICAL
7 SERVICES AT THE PRISON, CORRECT?

8 A. YES, THAT IS CORRECT.

9 Q. AND WHEN YOU WERE THE WARDEN AT SAN QUENTIN THERE WAS A
10 CHIEF PSYCHIATRIST WHO WAS CHARGED WITH RUNNING THE MENTAL
11 HEALTH SERVICES AT THE INSTITUTION, CORRECT?

12 A. YES, THERE WERE. THERE WAS.

13 Q. AND WHEN YOU WERE THE DIRECTOR OF THE DEPARTMENT OF
14 CORRECTIONS THERE WAS A STATEWIDE CHIEF MEDICAL OFFICER,
15 CORRECT?

16 A. THAT IS CORRECT.

17 Q. WHEN YOU WERE THE UNDERSECRETARY OF CDCR A PHYSICIAN WAS THE
18 HEAD OF THE MEDICAL AND MENTAL HEALTHCARE SERVICES OF THE PRISON
19 SYSTEM, CORRECT?

20 A. YES, THERE WAS A PHYSICIAN THAT WAS RESPONSIBLE FOR MANAGING
21 THAT AREA, BUT IN ALL OF THE POSITIONS THAT YOU NAMED I STILL
22 HAD RESPONSIBILITY FOR ENSURING THAT PEOPLE RECEIVE MEDICAL AND
23 MENTAL HEALTH SERVICES.

24 Q. UNDERSTOOD.

25 YOU TESTIFIED ON DIRECT ABOUT AN EVENT AT CRC, A

1 DEATH AT CRC. WHAT YEAR WAS THAT?

2 **A.** IT WAS EITHER 2005 OR 2006. I'M NOT SURE ABOUT THE YEAR.

3 **Q.** AND I WANT TO NOW ASK YOU QUESTIONS ABOUT YOUR NOVEMBER,
4 2007 REPORT. NOW, I'M GOING TO ASK YOU TO GO TO PAGE TWO,
5 PARAGRAPH SIX OF THAT REPORT.

6 AND IN YOUR REPORT YOU OPINED THAT OVERCROWDING IS
7 THE PRIMARY CAUSE OF THE CONSTITUTIONAL VIOLATIONS IN THE PLATA
8 AND COLEMAN CASES, CORRECT?

9 AND I BELIEVE I'VE ALSO GOT IT ON THE SCREEN TO YOUR
10 RIGHT.

11 **A.** YES.

12 **Q.** OKAY. IN FORMING THE OPINIONS EXPRESSED IN YOUR NOVEMBER,
13 2007 REPORT YOU DID NOT READ ANY OF THE PLATA RECEIVER'S REPORTS
14 OR PLAN OF ACTION, CORRECT?

15 **A.** I'M SORRY. I DIDN'T HEAR THE FIRST PART OF YOUR QUESTION.

16 **Q.** SURE. IN FORMING YOUR OPINIONS EXPRESSED IN YOUR NOVEMBER,
17 2007 REPORT, YOU DID NOT READ ANY OF THE RECEIVER'S REPORTS OR
18 HIS PLAN OF ACTION, RIGHT?

19 **A.** THAT'S CORRECT.

20 **Q.** OKAY. IN FORMING YOUR OPINIONS IN YOUR NOVEMBER, 2007
21 REPORT, YOU HAD NOT VISITED ANY CDCR PRISONS SINCE THE MIDDLE OF
22 2006, CORRECT?

23 **A.** NO, BUT I DID READ THE SERVICE PLAN OF ACTION AND REPORTS
24 FOR MY SUPPLEMENTAL, AND I DID VISIT PRISONS FOR MY SUPPLEMENTAL
25 REPORT.

1 Q. AND I WAS ASKING YOU SPECIFICALLY ABOUT YOUR NOVEMBER, 2007
2 REPORT.

3 AND MY QUESTION IS: AT THE TIME THAT YOU WERE
4 FORMING THE OPINIONS EXPRESSED IN YOUR NOVEMBER, 2007 REPORT YOU
5 HAD NOT VISITED A SINGLE CDCR INSTITUTION SINCE AT LEAST THE
6 MIDDLE OF 2006. THAT'S TRUE, RIGHT?

7 A. THAT IS TRUE.

8 Q. IN FORMING THE OPINIONS EXPRESSED IN YOUR NUMBER OF 2007
9 REPORT, YOU DID NOT KNOW WHETHER THERE HAD BEEN ANY IMPROVEMENTS
10 IN THE DELIVERY OF MEDICAL CARE OR MENTAL HEALTHCARE SINCE YOU
11 LEFT CDCR, RIGHT?

12 A. THAT'S CORRECT.

13 Q. IN FORMING THE OPINIONS EXPRESSED IN YOUR NOVEMBER, 2007
14 REPORT, YOU DID NOT KNOW IF THERE WERE MORE OR FEWER
15 CORRECTIONAL OFFICERS SINCE YOU LEFT THE DEPARTMENT IN 2006,
16 CORRECT?

17 A. NO, I THINK I HAD -- AS I RECALL, I DID KNOW THAT THE
18 DEPARTMENT WAS STILL DOWN MANY CORRECTIONAL OFFICERS AT THAT
19 TIME.

20 Q. I'M SORRY?

21 A. I BELIEVE THAT I KNEW THE DEPARTMENT WAS STILL DOWN MANY
22 CORRECTIONAL OFFICERS AT THAT TIME.

23 Q. BUT DID YOU KNOW WHETHER OR NOT THERE WERE MORE OFFICERS OR
24 LESS OFFICERS THAN WHEN YOU LEFT THE DEPARTMENT?

25 A. NO, I DID NOT KNOW THAT.

1 Q. AND IN FORMING THE OPINIONS EXPRESSED IN YOUR NOVEMBER, 2007
2 REPORT, YOU DID NOT KNOW WHETHER THERE WERE MORE CLINICIANS
3 PROVIDING MEDICAL OR MENTAL HEALTHCARE SINCE YOU LEFT THE
4 DEPARTMENT IN 2006, CORRECT?

5 A. I BELIEVE THAT'S CORRECT.

6 Q. BEFORE SIGNING YOUR NOVEMBER 7, 2000 -- 2000 --

7 MR. MELLO: STRIKE THAT.

8 BY MR. MELLO:

9 Q. BEFORE SIGNING YOUR NOVEMBER, 2007 REPORT, YOU DID NOT
10 REVIEW ANY DOCUMENTS THAT LISTED THE AMOUNT OF CLINICAL SPACE IN
11 CALIFORNIA'S PRISONS, DID YOU?

12 A. NOT THAT I RECALL.

13 Q. OKAY. IN FORMING THE OPINIONS EXPRESSED IN YOUR NOVEMBER,
14 2007 REPORT, YOU DID NOT KNOW THE STATUS OF THE DELIVERY OF
15 MEDICAL AND MENTAL HEALTHCARE AT EACH OF THE 33 PRISONS,
16 CORRECT?

17 A. I DID NOT KNOW THE CURRENT STATUS AT THE TIME THAT I SIGNED
18 IT, BUT I WILL SAY THAT I HAD NOT BEEN GONE FROM THE DEPARTMENT
19 VERY LONG AT THAT POINT, EITHER.

20 Q. RIGHT. I MEAN, THE EVIDENCE WILL SHOW THAT YOU WERE GONE
21 BETWEEN SOMETIME IN 2006 AND SOMETIME IN 2007. THAT'S
22 UNDISPUTED, RIGHT?

23 A. YES, THAT'S CORRECT.

24 Q. THE FIRST DRAFT OF YOUR NOVEMBER, 2007 REPORT WAS PREPARED
25 AND MADE AVAILABLE TO YOU ON AN INTERNET SITE BY PLAINTIFFS'

1 COUNSEL, CORRECT?

2 **A.** THAT'S CORRECT.

3 **Q.** YOU DID NOT HANDWRITE YOUR REPORT, CORRECT?

4 **A.** NO, I ASSISTED IN PREPARING THE REPORT, BUT I DID NOT
5 HANDWRITE IT, THAT'S CORRECT.

6 **Q.** THE FIRST TIME YOU SAW YOUR REPORT WAS WHEN YOU VIEWED IT ON
7 AN INTERNET SITE, CORRECT?

8 **A.** THE FIRST TIME I SAW IT TYPED IS WHEN I REVIEWED IT ON THE
9 INTERNET SITE, THAT'S CORRECT.

10 **Q.** DID YOU EVER SEE IT IN SOME OTHER FORM THAN TYPED PRIOR TO
11 LOOKING AT IT ON THE INTERNET SITE PROVIDED YOU TO BY
12 PLAINTIFFS' COUNSEL?

13 **A.** NO, I DID NOT SEE IT IN WRITTEN FORM. I HAD DISCUSSIONS,
14 OBVIOUSLY, WITH THE PRISON LAW OFFICE IN PREPARING THE REPORT.

15 **Q.** ON PAGE FOUR OF YOUR NOVEMBER, 2007 REPORT AT PARAGRAPH 11,
16 YOU WROTE THAT:

17 "CDCR LACKS A SUFFICIENT NUMBER OF PERSONNEL WHO
18 HAVE THE NECESSARY SKILL AND TRAINING TO MANAGE SUCH
19 A LARGE COMPLEX ORGANIZATION," END QUOTE.

20 **A.** YES.

21 **Q.** WHEN PREPARING YOUR REPORT, THE NOVEMBER, 2007 REPORT, YOU
22 DID NOT KNOW THE EXISTING PHYSICIAN-TO-INMATE RATIO AT CDCR, DID
23 YOU?

24 **A.** DID YOU SAY "PHYSICIAN-TO-INMATE RATIO"?

25 **Q.** YES, I DID.

1 **A.** NO, I DID NOT.

2 **Q.** DID YOU KNOW THE CLINICIAN-TO-INMATE RATIO WITH RESPECT TO
3 MENTAL HEALTHCARE AT THAT TIME?

4 **A.** NO, I DID NOT.

5 **Q.** WHEN PREPARING YOUR NOVEMBER, 2007 REPORT YOU DID NOT KNOW
6 THE EXISTING VACANCY RATE AT ANY OF THE INSTITUTIONS, ALL 33 OF
7 THEM, WITH RESPECT TO PHYSICIANS, NURSE PRACTITIONERS,
8 PHYSICIANS' ASSISTANTS, RN'S, LVN'S PSYCHIATRISTS OR
9 PSYCHOLOGISTS, DID YOU?

10 **A.** I DID NOT KNOW SPECIFIC NUMBERS, BUT I DID KNOW THAT THERE
11 WAS STILL A PROBLEM IN FILLING POSITIONS.

12 **Q.** DID YOU NOTE THAT PROBLEM, EVEN A RANGE, ANYWHERE IN YOUR
13 NOVEMBER, 2007 REPORT?

14 **A.** NOT THAT I RECALL.

15 **Q.** ON PAGE FIVE OF YOUR REPORT AT PARAGRAPH 13, YOU WROTE THAT:

16 "CROWDING CAUSES DELAYS IN MOVING RECEPTION
17 CENTER PRISONERS TO OTHER PRISONS FOR TREATMENT."

18 WHEN YOU PREPARED YOUR REPORT YOU DID NOT KNOW
19 WHETHER CROWDING HAD CAUSED DELAYS IN MOVING OF RECEPTION CENTER
20 PRISONERS TO OTHER PRISONS FOR TREATMENT SINCE YOU LEFT THE
21 DEPARTMENT, CORRECT?

22 **A.** I DID NOT KNOW SPECIFIC EXAMPLES, BUT I BELIEVE I KNEW THAT
23 IT WAS STILL A PROBLEM MOVING INMATES OUT OF RECEPTION CENTERS
24 JUST BECAUSE I KEEP IN CONTACT WITH PEOPLE WHO WORK IN THE
25 DEPARTMENT.

1 Q. BUT YOU CAN'T GIVE US --

2 JUDGE KARLTON: SIR, THERE'S NO QUESTION -- ARE YOU
3 GOING TO PUT ON EVIDENCE THAT, IN FACT, WE'VE BEEN ABLE TO MOVE
4 PEOPLE OUT OF THE RECEPTION CENTERS EFFICIENTLY?

5 THE ANSWER'S "NO," CORRECT?

6 MR. MELLO: YOUR HONOR, I BELIEVE THAT PLAINTIFFS
7 HAVE THE BURDEN IN THIS CASE.

8 JUDGE KARLTON: I UNDERSTAND.

9 MR. MELLO: AND THEY HAVE PROFFERED VARIOUS
10 EXPERTS --

11 JUDGE HENDERSON: DON'T RAISE YOUR VOICE.

12 MR. MELLO: I DIDN'T MEAN TO.

13 JUDGE KARLTON: I'M GOING TO ASK YOU AGAIN: IS THERE
14 GOING TO BE ANY EVIDENCE TENDERED BY THE DEFENDANTS THAT THE
15 BELIEFS OF THIS WITNESS, AND OTHERS LIKE HER, IS INACCURATE?

16 MR. MELLO: WHETHER WE'RE GOING TO PUT ON EVIDENCE?

17 JUDGE KARLTON: THAT THE BELIEFS OF THE WITNESS, AS
18 AN EXAMPLE, ABOUT THE MOVEMENT OF PEOPLE OUT OF THE RECEPTION
19 CENTERS IS INACCURATE?

20 MR. MELLO: I DON'T KNOW, YOUR HONOR. I DON'T BELIEVE
21 THAT THAT'S MY BURDEN IN THIS CASE. I BELIEVE IT'S PLAINTIFFS'
22 BURDEN IN THIS CASE.

23 JUDGE KARLTON: OKAY. ALL RIGHT. YOU'VE ANSWERED THE
24 QUESTION.

25 WE WILL CONTINUE TO SPEND TIME DOING THIS.

1 **BY MR. MELLO:**

2 **Q.** ON PAGE SEVEN, PARAGRAPH 19 OF YOUR NOVEMBER, 2007 REPORT,
3 YOU WROTE THAT OFFICERS WHO ARE -- PARDON?

4 **JUDGE REINHARDT:** MAY I ASK YOU ONE QUESTION?

5 **MR. MELLO:** SURE.

6 **JUDGE REINHARDT:** ABOUT THE PROBLEM WITH THE DATES,
7 YOU'RE NOT QUESTIONING THE ACCURACY OF THE WITNESS'S STATEMENTS
8 AS OF THE YEAR EARLIER. YOU'RE ASKING WHETHER SHE KNEW OF ANY
9 CHANGES BETWEEN THE TIME SHE LEFT WHEN SHE KNEW ALL THESE
10 THINGS, AND ONE YEAR LATER.

11 **MR. MELLO:** WELL, I DON'T BELIEVE THAT PLAINTIFFS
12 HAVE ESTABLISHED THAT SHE KNEW ALL THOSE THINGS WITH ANY
13 SPECIFICITY IN 2006 WHEN SHE LEFT THE DEPARTMENT.

14 **JUDGE REINHARDT:** WELL, YOUR ONLY QUESTION HERE ABOUT
15 WHETHER SHE KNEW ANYTHING A YEAR LATER --

16 **MR. MELLO:** CORRECT. I AM QUESTIONING WHEN SHE --

17 **JUDGE REINHARDT:** CAN I ASK YOU A QUESTION?

18 **MR. MELLO:** I'M SORRY. YES.

19 **JUDGE REINHARDT:** WHAT DATE DO YOU THINK IS RELEVANT
20 FOR OUR JOB IN PHASE I TO DETERMINE WHAT THE PRIMARY CAUSE OF
21 THE HEALTH AND MENTAL HEALTH VIOLATIONS WAS WHEN THE TWO
22 FINDINGS WERE MADE?

23 **MR. MELLO:** I BELIEVE THIS COURT -- AND I HAVEN'T
24 SPOKEN WITH MY CO-COUNSEL. BUT I BELIEVE THIS COURT ESTABLISHED
25 A CUTOFF THAT THE RELEVANT DATE WAS THE END OF AUGUST, 2008.

1 **JUDGE REINHARDT:** NO. NO, FOR EVIDENCE. BUT AS TO
2 THE PHASE I ISSUE, WHAT WAS THE PRIMARY CAUSE OR IS THE PRIMARY
3 CAUSE OF THE VIOLATIONS THAT WERE FOUND IN PLATA AND COLEMAN?

4 WHAT DO YOU THINK THE COURT NEEDS TO ESTABLISH WHAT
5 THE PRIMARY CAUSE IS AS OF 2008 AS OF DATE THE FINDINGS WERE
6 MADE? WHAT IS YOUR POSITION WITH RESPECT --

7 **MR. MELLO:** I BELIEVE THAT THE PLRA IS WRITTEN IN THE
8 PRESENT TENSE WITH RESPECT TO THIS ISSUE. AND I BELIEVE THAT
9 CURRENT CONDITIONS ARE WHAT ARE RELEVANT.

10 I BELIEVE THIS COURT HAS TOLD US THAT WE CANNOT ARGUE
11 ABOUT WHETHER WE ARE CURRENTLY IN CONSTITUTIONAL COMPLIANCE. BUT
12 I BELIEVE THAT THE CURRENT CONDITIONS, THE STATUTE IS WRITTEN IN
13 THE PRESENT TENSE, I BELIEVE. AND I BELIEVE THAT CURRENT
14 CONDITIONS ARE THOSE ITEMS THAT ARE RELEVANT TO THIS JUDGES'
15 DETERMINATION OF WHETHER OR NOT PLAINTIFFS CAN SHOW BY CLEAR AND
16 CONVINCING EVIDENCE THAT OVERCROWDING IS THE PRIMARY CAUSE OF
17 THE ALLEGED DEFICIENCIES RIGHT NOW IN CDCR'S MEDICAL AND MENTAL
18 HEALTHCARE SYSTEMS.

19 AND I BELIEVE THAT THE CURRENT STATUS IS PROBABLY THE
20 MOST IMPORTANT THING, AS OPPOSED TO SOMETHING THAT SHE RECALLS
21 WHEN SHE WAS A WARDEN BACK AT SAN QUENTIN YEARS AGO.

22 I BELIEVE THAT'S IMPORTANT. I BELIEVE THAT THE
23 EVIDENCE ALREADY TO DATE HAS SHOWN THAT THERE HAVE BEEN
24 INCREASES IN MANY, MANY THINGS, BOTH IN MENTAL HEALTH AND IN
25 MEDICAL CARE.

1 AND I BELIEVE THOSE GO TO THE FACT THAT WHILE WE
2 CAN'T PUT ON EVIDENCE THAT CURRENT CONSTITUTIONAL COMPLIANCE IS
3 MET, THAT THAT OVERCROWDING IS NOT THE PRIMARY BARRIER.

4 **JUDGE REINHARDT:** WELL, SHE'S SAYING, I GATHER, THAT
5 THE CONSTITUTIONAL VIOLATION HAD TO EXIST FOR PHASE I PURPOSES;
6 THAT WHAT IS RELEVANT IS WHETHER THERE'S A CONSTITUTIONAL
7 VIOLATION TODAY, NOT WHETHER THERE WAS WHEN THE FINDINGS WERE
8 MADE BY THE COURT. THAT'S REALLY IRRELEVANT. IT'S ONLY WHETHER
9 THERE'S A CONSTITUTIONAL VIOLATION TODAY.

10 **MR. MELLO:** I DON'T BELIEVE IT'S IRRELEVANT, BUT I DO
11 BELIEVE WHAT IS RELEVANT IS THE CURRENT CONDITIONS IN THE
12 SYSTEM.

13 AND I BELIEVE THE EVIDENCE HAS SHOWN AND WILL
14 CONTINUE TO SHOW THAT THAT CURRENT EVIDENCE DOESN'T SHOW THAT
15 OVERCROWDING IS THE PRIMARY BARRIER TO THE UNCONSTITUTIONAL
16 DELIVERY OF MEDICAL AND MENTAL HEALTHCARE.

17 **JUDGE REINHARDT:** OKAY. THANK YOU.

18 **MR. MELLO:** I'VE COMPLETELY FORGOTTEN WHERE I AM. I
19 USUALLY --

20 **JUDGE REINHARDT:** YOU WERE IN ABOUT 2006 OR --

21 **MR. MELLO:** I'M PRETTY SURE I WAS IN 2008.

22 **JUDGE REINHARDT:** THAT'S THE SUPPLEMENTAL REPORT.

23 **MR. MELLO:** OH, YOU ARE RIGHT. I WAS IN 2007. THANK
24 YOU, YOUR HONOR.

1 **BY MR. MELLO:**

2 **Q.** THANKS FOR THE CUE.

3 ON PAGE SEVEN, PARAGRAPH 19 OF YOUR NOVEMBER, 2007
4 REPORT YOU WROTE THAT SOME STAFF WORKED BACK-TO-BACK DOUBLE
5 SHIFTS AND WOULD SLEEP IN THEIR CARS IN THE PRISON PARKING LOT
6 INSTEAD OF MAKING A LONG COMMUTE HOME.

7 DO YOU SEE THAT?

8 **A.** YES.

9 **Q.** AND MUCH TO -- I'LL JUST ASK THE QUESTION.

10 IN FORMING THE OPINIONS EXPRESSED IN YOUR NOVEMBER,
11 2007 REPORT, YOU DID NOT KNOW HOW MANY OCCASIONS CORRECTIONAL
12 OFFICERS, IF ANY, HAD ACTUALLY SLEPT IN THEIR CARS TO WORK
13 BACK-TO-BACK SHIFTS IN THE PRECEDING YEAR, DID YOU?

14 **A.** NO, I DID NOT.

15 **Q.** ON PAGE SEVEN, ALSO PARAGRAPH 19 OF YOUR REPORT, YOU WROTE
16 THAT OFFICERS WHO ARE TIRED AND SUFFER FROM LOW MORALE ARE LESS
17 THAN PRODUCTIVE AND DO NOT FULFILL ALL THEIR RESPONSIBILITIES TO
18 PROVIDE FOR THE BASIC NEEDS OF THEIR PRISONERS.

19 DO YOU SEE THAT?

20 **A.** YES.

21 **Q.** IN FORMING THOSE OPINIONS EXPRESSED IN YOUR NOVEMBER, 2007
22 REPORT YOU DID NOT KNOW WHETHER, SINCE YOU HAD LEFT CDCR, THERE
23 HAD BEEN ANY CORRECTIONAL OFFICERS WHO WERE SO TIRED OR WHO
24 SUFFERED SUCH LOW MORALE THAT THEY DID NOT FULFILL THEIR
25 RESPONSIBILITIES TO PROVIDE HEALTHCARE TO INMATES, CORRECT?

1 **A.** I HAD NO SPECIFIC KNOWLEDGE OF THAT AT THAT TIME, YES.

2 **Q.** IN FORMING YOUR OPINIONS EXPRESSED IN THE NOVEMBER, 2007
3 REPORT, YOU DID NOT KNOW WHETHER CORRECTIONAL OFFICERS BEING
4 TIRED AND SUFFERING LOW MORALE LED TO THE DEATHS OR ANY OTHER
5 ADVERSE MEDICAL OR MENTAL HEALTH CONSEQUENCES AS A RESULT OF
6 BEING TIRED, CORRECT?

7 **A.** CORRECT.

8 **Q.** IN FACT, YOU DO NOT KNOW WHETHER THOSE CIRCUMSTANCES THAT
9 YOU DESCRIBE IN YOUR REPORT LED TO THE UNCONSTITUTIONAL DELIVERY
10 OF MEDICAL CARE OR MENTAL HEALTHCARE IN 2006, 2007 OR 2008.

11 **A.** WELL, YOU KNOW, I DISAGREE WITH THAT STATEMENT. I THINK THE
12 GOVERNOR'S OVERCROWDING STATE OF EMERGENCY PROCLAMATION, WOULD
13 LET YOU KNOW THAT OVERCROWDING WAS STILL A SEVERE PROBLEM, AND
14 THAT IT WAS LEADING TO VIOLENCE IN MANY OF THE PRISONS IN THE
15 STATE OF CALIFORNIA.

16 AND SO I THINK I HAD GOOD REASON TO BELIEVE THAT
17 LITTLE HAD CHANGED WHEN I SUBMITTED MY REPORT IN 2007. IT WAS
18 SUCH A SHORT AMOUNT OF TIME FROM THE TIME I LEFT THE PRISON
19 SYSTEM UNTIL THAT DATE. AND GOING THROUGH THE PRISON SYSTEM FOR
20 THE 27 YEARS I WAS THERE AND KNOWING HOW SLOWLY IT TAKES TO FIX
21 ANYTHING AND HOW YOU CAN TAKE ONE STEP FORWARD AND TWO STEPS
22 BACK JUST BECAUSE OF THE OVERCROWDING AND THE NUMBER OF INMATES
23 COMING INTO THE SYSTEM THAT I FELT VERY CONFIDENT THAT WHAT I
24 STATED IN THIS REPORT WAS ACCURATE.

25 **Q.** I'M GOING TO ASK YOU -- I'M GOING TO PULL UP A COUPLE OF

1 PORTIONS OF YOUR TRANSCRIPT.

2 I'D LIKE -- FROM YOUR DEPOSITION LAST DECEMBER, I
3 BELIEVE. PAGE 79, 21 THROUGH 25. 21 THROUGH 25.

4 AND I ASKED YOU:

5 "DO YOU KNOW WHETHER -- WHETHER THAT
6 CIRCUMSTANCES" -- THAT'S A GREAT QUESTION -- "WHETHER
7 THAT CIRCUMSTANCES, OFFICERS BEING TIRED AND
8 SUFFERING FROM LOW MORALE AND BEING LESS PRODUCTIVE,
9 WHETHER THAT LED TO ANY DEATHS IN 2006?"
10 DO YOU SEE THAT?

11 **A.** YES, I DO.

12 **Q.** AND YOU SAID:

13 "I DO NOT KNOW," CORRECT?

14 **A.** THAT IS CORRECT.

15 **Q.** OKAY. AND NOW ON THE NEXT PAGE, PAGE 80, LINES ONE THROUGH
16 FOUR, YOU TESTIFIED WHEN QUESTIONED BY ME THAT:

17 "YOU DO NOT KNOW WHETHER THESE CIRCUMSTANCES LED
18 TO THE UNCONSTITUTIONAL DELIVERY OF MEDICAL CARE OR
19 MENTAL HEALTHCARE IN 2006, 2007."

20 AND YOU SAID:

21 "I DO NOT."

22 **A.** YOU KNOW, I MAYBE MISINTERPRETED YOUR QUESTION. I THOUGHT
23 YOU WERE ASKING ME ABOUT SPECIFIC EVENTS. I DID NOT HAVE ANY
24 DETAILS ABOUT ANY SPECIFIC CASE.

25 **Q.** AND SO YOUR TESTIMONY IS DIFFERENT. YOU BELIEVE THAT THOSE

1 CIRCUMSTANCES LED TO UNCONSTITUTIONAL DELIVERY OF MEDICAL CARE
2 AND MENTAL HEALTHCARE IN 2006, 2007 DESPITE WHAT YOU SAID IN
3 YOUR DEPOSITION?

4 **A.** I DON'T THINK IT'S DIFFERENT THAN WHAT I SAID IN MY
5 DEPOSITION. AGAIN, I THINK THAT IN MY DEPOSITION I THOUGHT YOU
6 WERE ASKING ME ABOUT SPECIFIC CASES. IN THE REPORT THAT I SIGNED
7 I WAS TALKING ABOUT OVERCROWDING AS FROM A MORE GLOBAL
8 PERSPECTIVE.

9 **Q.** WHEN YOU SIGNED YOUR NOVEMBER, 2007 REPORT, YOU HADN'T SEEN
10 THE RECEIVER'S ANALYSIS OF 2006 DEATHS, WHICH IS DEFENDANTS'
11 EXHIBIT 1107, CORRECT?

12 **A.** I DON'T BELIEVE I DID.

13 **Q.** AND THAT'S JUST THE FRONT PAGE. DOES THAT REFRESH YOUR
14 RECOLLECTION?

15 **MR. SPECTER:** OF SOMETHING SHE HASN'T SEEN?

16 **MR. MELLO:** WELL --

17 **THE WITNESS:** I HAVE SEEN THIS. I HAVE REVIEWED THIS,
18 BUT I DON'T KNOW THAT I HAD REVIEWED IT AT THE TIME OF THE
19 DEPOSITION.

20 **BY MR. MELLO:**

21 **Q.** ON PAGE THREE, PARAGRAPH FOUR, OF YOUR AUGUST -- PARDON ME.

22 ON PAGES THREE AND FOUR, PARAGRAPH 8 OF YOUR
23 AUGUST 8, 2000 REPORT --

24 **JUDGE KARLTON:** THERE WASN'T A 2000 REPORT.

25 **MR. MELLO:** DID I MISSPEAK?

1 **JUDGE KARLTON:** YES.

2 **MR. MELLO:** I'M SORRY. LET ME START OVER.

3 THANK YOU.

4 **BY MR. MELLO:**

5 **Q.** ON PAGES THREE AND FOUR, PARAGRAPH 8 OF YOUR AUGUST, 2008
6 REPORT, IT READS:

7 "THIS ALLOWED PRISONERS WITH DIFFERENT POTENTIAL
8 FOR VIOLENCE TO BE MIXED IN HOUSING UNIT -- IN A
9 HOUSING UNIT WHERE THERE WAS SCANT ABILITY TO PROVIDE
10 SUPERVISION."

11 DO YOU SEE THAT?

12 **A.** MY SCREEN JUST WENT BLANK.

13 **Q.** SO THE ANSWER IS "NO"?

14 **A.** OKAY. I'M SORRY. WHICH LINE AGAIN?

15 **Q.** YEAH. I BELIEVE WE'RE IN THE WRONG PLACE.

16 IT'S PARAGRAPH EIGHT.

17 **A.** PARAGRAPH EIGHT?

18 **Q.** YEAH.

19 **A.** YES.

20 **Q.** I'M TALKING ABOUT -- PARDON ME. I'M TALKING ABOUT THE
21 AUGUST, 2008 REPORT. PAGE THREE AND FOUR, PARAGRAPH 8.

22 OKAY. IN THAT REPORT, IT READS THAT:

23 "THIS ALLOWED PRISONERS WITH DIFFERENT POTENTIAL
24 FOR VIOLENCE TO BE MIXED IN A HOUSING UNIT WHERE
25 THERE WAS SCANT ABILITY TO PROVIDE SUPERVISION."

1 DO YOU SEE THAT?

2 **A.** YES.

3 **Q.** WHEN THIS WAS WRITTEN, YOU WERE NOT AWARE OF EVEN A SINGLE
4 SPECIFIC EXAMPLE AT LANCASTER WHERE A CORRECTIONAL OFFICER HAD
5 FAILED TO PROVIDE ASSISTANCE TO A PRISONER WITH A HEALTH ISSUE
6 DUE TO THE MIXING OF POTENTIALLY VIOLENT PRISONERS, WERE YOU?

7 **A.** NOT DUE TO THE MIXING OF POTENTIALLY VIOLENT PRISONERS, NO.

8 **Q.** ON PAGE FOUR, PARAGRAPH NINE OF YOUR REPORT, YOUR AUGUST,
9 2008 REPORT, IT READS:

10 "ADDING TO THE RISK OF HARM IS THE FACT THAT
11 THESE UNITS ARE VERY HOT WITH THE OUTSIDE TEMPERATURE
12 BETWEEN 95 AND 102 DEGREES."

13 DO YOU SEE THAT?

14 **A.** YES.

15 **Q.** YOU WERE NOT AWARE OF ANY SPECIFIC EXAMPLES OF MEDICAL OR
16 MENTAL HEALTH ISSUES ARISING AT CTF CORCORAN OR LANCASTER DUE TO
17 THE INTERIOR TEMPERATURE OF THE HOUSING UNITS, ARE YOU?

18 **A.** I'M NOT AWARE OF SPECIFIC CASES, NO.

19 I NEED TO SAY, THOUGH, THAT WE DID RECEIVE COMPLAINTS
20 FROM INMATES ABOUT HOW HOT IT WAS IN THEIR CELLS.

21 **JUDGE KARLTON:** BUT THAT WAS IN 2006. THERE'S NO
22 REASON TO THINK THAT THAT WAS THE CONDITION IN --

23 **BY MR. MELLO:**

24 **Q.** I'M SORRY. WHEN WAS THAT THAT YOU RECEIVED THOSE COMPLAINTS
25 THAT YOU JUST TESTIFIED ABOUT?

1 A. WHEN I TOURED LANCASTER AND CORCORAN.

2 Q. IN 2008?

3 A. IN 2008.

4 Q. AND DESPITE THEM EXPLAINING TO YOU THAT IT WAS HOT AND THAT
5 THEY -- THAT IT WAS HOT, NONE OF THEM TOLD YOU AND YOU DID NOT
6 LEARN OF ANY OF THEM HAVING ADVERSE MEDICAL OR MENTAL HEALTH
7 CONSEQUENCES AS A RESULT OF THOSE TEMPERATURES, CORRECT?

8 A. THEY COMPLAINED ABOUT THE DISCOMFORT, BUT I DIDN'T KNOW THE
9 SPECIFIC MEDICAL CASES, NO.

10 Q. AND NONE OF THEM WROTE -- IDENTIFIED FOR YOU ANY SPECIFIC
11 MEDICAL CASES, CORRECT?

12 A. I DON'T KNOW THAT THAT ACCURATELY DESCRIBES WHAT THEY TALKED
13 ABOUT. WHILE I CAN'T -- YOU KNOW, I CAN'T GIVE YOU SPECIFICS OF
14 A CONVERSATION, I DO THINK THAT THERE WERE COMPLAINTS ABOUT IT
15 AGGRAVATING THEIR MEDICAL CONDITIONS AND THINGS.

16 THERE WERE THOSE KINDS OF GENERAL COMPLAINTS.

17 Q. GENERAL COMPLAINTS?

18 A. UM-HUM.

19 Q. THAT YOU CAN'T REMEMBER AS YOU SIT HERE TODAY, CORRECT?

20 A. THAT'S CORRECT.

21 Q. ON PAGE 11 OF YOUR AUGUST, 2008 REPORT AT PARAGRAPH 22, IT
22 READS:

23 "AT CTF THE NORTH FACILITY HAD BEEN ON LOCKDOWN
24 FOR ABOUT A MONTH PRIOR TO THE VISIT."

25 DO YOU SEE THAT?

1 A. YES.

2 Q. YOU'RE NOT AWARE OF ANY SPECIFIC INCIDENTS WHERE A PRISONER
3 BECAME SICK OR WAS DENIED NEEDED MEDICAL OR MENTAL HEALTHCARE
4 DUE TO THIS LOCKDOWN, ARE YOU?

5 A. NO, I DON'T KNOW THE SPECIFIC INCIDENT.

6 Q. ISN'T IT TRUE THAT INMATES CAN STILL BE ESCORTED TO MEDICAL
7 AND MENTAL HEALTH APPOINTMENTS DURING LOCKDOWNS?

8 A. IT IS TRUE THAT THAT CAN HAPPEN, BUT THE STAFF THEMSELVES
9 TOLD US THAT THEY WERE HAVING DIFFICULTY MEETING ALL THE MEDICAL
10 AND MENTAL HEALTH NEEDS OF THE INMATE POPULATION AT SOLEDAD.

11 Q. DESPITE BEING TOLD THAT, YOU WERE NOT TOLD OF ANY INMATE
12 SUFFERING ADVERSE MEDICAL OR MENTAL HEALTH CONSEQUENCE AS A
13 RESULT OF THOSE LOCKDOWNS, CORRECT?

14 A. WE DID NOT HAVE A DISCUSSION ABOUT ANY PARTICULAR CASES AT
15 SOLEDAD, NO.

16 Q. YOU AGREE THAT THE PROVISION OF HOUSING TO INMATES IS
17 DIFFERENT THAN THE PROVISION OF MEDICAL AND MENTAL HEALTHCARE,
18 CORRECT?

19 A. I'M SORRY. I DIDN'T HEAR THE FIRST PART OF THAT.

20 Q. YOU AGREE THAT THE PROVISION OF HOUSING TO INMATES IS
21 DIFFERENT THAN FROM THE PROVISION OF MEDICAL AND MENTAL
22 HEALTHCARE TO INMATES, CORRECT?

23 A. I'M NOT SURE THAT I UNDERSTAND THE QUESTION.

24 Q. PULL UP PAGE 90, LINES 17 THROUGH 20 OF YOUR FIRST
25 DEPOSITION.

1 **A.** OKAY. I SEE THAT.

2 **Q.** OKAY. AND I ASKED YOU:

3 "WOULD YOU AGREE THAT THE PROVISION OF HOUSING
4 IS DIFFERENT FROM THE PROVISION OF MEDICAL AND MENTAL
5 HEALTHCARE?"

6 **A.** AGAIN, I WANT TO BE SURE THAT WE'RE TALKING ABOUT THE SAME
7 THING. SO COULD YOU EXPLAIN WHAT YOU MEAN BY THAT?

8 **JUDGE REINHARDT:** I DON'T UNDERSTAND THE QUESTION
9 MYSELF.

10 **MR. MELLO:** OKAY.

11 **JUDGE REINHARDT:** OBVIOUSLY, PROVIDING HOUSING IS
12 DIFFERENT FROM PROVIDING MEDICAL CARE.

13 **MR. MELLO:** OKAY.

14 **JUDGE REINHARDT:** BUT WHERE DOES THAT LEAD US?

15 **MR. MELLO:** UNDERSTOOD. AND I'LL WITHDRAW THE
16 QUESTION. HOW'S THAT?

17 **JUDGE REINHARDT:** OKAY.

18 **BY MR. MELLO:**

19 **Q.** IN YOUR OPINION, IF THE ADULT POPULATION IN CALIFORNIA'S
20 INSTITUTIONS WAS DECREASED BY 40,000 INMATES TOMORROW AND
21 NOTHING ELSE WAS DONE, THE CDCR WOULD NOT BE ABLE TO PROVIDE
22 CONSTITUTIONALLY-ADEQUATE MEDICAL OR MENTAL HEALTHCARE TO ITS
23 INMATES, WOULD IT?

24 **A.** IF THE POPULATION WERE REDUCED AND NOTHING ELSE WAS DONE,
25 MEANING THAT WE DIDN'T HIRE THE APPROPRIATE MEDICAL STAFF AND

1 PROVIDE APPROPRIATE MEDICAL FACILITIES AND ALL THAT, THEN I
2 WOULD AGREE YOU STILL WOULD NOT MEET A CONSTITUTIONAL LEVEL OF
3 CARE.

4 **Q.** AND IN YOUR OPINION, EVEN IF CDCR RELEASED UP TO 40,000 OF
5 THE MOST PHYSICALLY SICK AND MOST ACUTELY MENTALLY ILL INMATES
6 OVER A PERIOD OF TIME AT THE END OF THAT PERIOD CDCR WOULD NOT
7 HAVE A CONSTITUTIONALLY-ADEQUATE MEDICAL AND MENTAL HEALTHCARE
8 SYSTEM UNLESS IT ALSO ADDRESSED OTHER PROBLEMS, SUCH AS ACCESS
9 TO CARE -- HEALTHCARE RECORDS, INFORMATION TECHNOLOGY,
10 CONTINUITY OF CARE, JUST TO NAME A FEW, CORRECT?

11 **A.** MEDICATION MANAGEMENT AND MANY OTHER PROVISIONS OF
12 HEALTHCARE, YES.

13 **Q.** CORRECT?

14 **A.** CORRECT.

15 **MR. MELLO:** NOTHING FURTHER.

16 THANK YOU.

17 **THE WITNESS:** THANK YOU.

18 **JUDGE HENDERSON:** ANY OTHER DEFENDANTS OR
19 INTERVENORS?

20 **MS. WANG:** THE DEFENDANT INTERVENORS HAVE NO FURTHER
21 QUESTIONS, YOUR HONOR.

22 **JUDGE HENDERSON:** THANK YOU, COUNSEL.
23 REDIRECT?

24 **REDIRECT EXAMINATION**

25

1 **BY MR. SPECTER:**

2 **Q.** MR. MELLO ASKED YOU WHETHER BEFORE YOU WROTE YOUR NOVEMBER,
3 2007 REPORT YOU REVIEWED VARIOUS DOCUMENTS FROM THE RECEIVER AND
4 SPECIAL MASTER. SUBSEQUENT TO THAT REPORT, HAVE YOU REVIEWED
5 SUCH DOCUMENTS?

6 **A.** YES, I'VE REVIEWED MANY, MANY DOCUMENTS FROM A VARIETY OF
7 PEOPLE, INCLUDING THE RECEIVER'S STAFF, THE RECEIVER'S OFFICE,
8 AS WELL AS EXPERTS IN THIS CASE.

9 **Q.** AND DO THEY CHANGE YOUR OPINION IN ANY WAY?

10 **A.** NO, THEY DO NOT CHANGE MY OPINION IN ANY WAY.

11 **Q.** THANK YOU, YOUR HONOR. I MEAN, THANK YOU, MS. WOODFORDFORD.

12 **A.** THANK YOU.

13 **MR. SPECTER:** THANK YOU, YOUR HONORS.

14 **JUDGE KARLTON:** MS. WOODFORD, YOU HAD 27 YEARS
15 EXPERIENCE.

16 I'M SORRY. YOU HAD 27 YEARS, PLUS OR MINUS YEARS
17 EXPERIENCE WITH THE DEPARTMENT. GIVEN ALL OF THAT EXPERIENCE AND
18 ALL OF YOUR KNOWLEDGE, DO YOU HAVE ANY REASON TO BELIEVE THAT
19 THE DIFFERENCE BETWEEN YOUR UNDERSTANDING OF HOW THE SYSTEM
20 WORKED AND WHAT THE PROBLEMS WERE IN 2006 WAS SIGNIFICANTLY
21 DIFFERENT THAN WHAT HAPPENED -- THAN IN 2007?

22 **THE WITNESS:** THEY WEREN'T SIGNIFICANTLY DIFFERENT AT
23 ALL, YOUR HONOR.

24 **JUDGE KARLTON:** AND EVEN THOUGH YOU DIDN'T HAVE ANY
25 SPECIFIC INFORMATION ABOUT THAT, WHAT GIVES YOU CONFIDENCE THAT

1 THAT WAS TRUE?

2 **THE WITNESS:** WELL, I WAS ABLE TO TOUR THREE
3 FACILITIES.

4 **JUDGE KARLTON:** BEFORE YOU TOURED THE FACILITIES,
5 MR. MELLO WAS ASKING YOU --

6 **THE WITNESS:** OH, OKAY.

7 **JUDGE KARLTON:** -- QUESTIONS ABOUT YOUR REPORT.

8 **THE WITNESS:** WELL, BECAUSE I FOLLOWED WHAT WAS GOING
9 ON IN THE NEWSPAPER AND READ WHAT THE RECEIVER HAD TO SAY ABOUT
10 THE HEALTHCARE IN THE STATE OF CALIFORNIA.

11 I ALSO FOLLOWED THE STATE'S DISCUSSION ABOUT BUILDING
12 MORE FACILITIES TO REDUCE OVERCROWDING SO THEY CAN MEET THE
13 NEEDS OF INMATES, NONE OF WHICH HAS HAPPENED, OF COURSE.

14 I KNOW THE GOVERNOR ISSUED AN EMERGENCY DECLARATION
15 BECAUSE OF THE OVERCROWDING. AND I STAY IN TOUCH WITH LOTS OF
16 PEOPLE WHO STILL WORK IN THE DEPARTMENT OF CORRECTIONS.

17 **JUDGE KARLTON:** AS A PRACTICAL MATTER, DO YOU BELIEVE
18 THAT THERE WOULD BE A RADICAL CHANGE IN THE CONDITIONS BETWEEN
19 2006 AND 2007 WITHOUT IT BEING BROUGHT TO YOUR ATTENTION JUST AS
20 SOMETHING RATHER REMARKABLE?

21 **THE WITNESS:** IF I UNDERSTAND THE QUESTION, DO I
22 THINK THINGS COULD CHANGE THAT QUICKLY IN THE DEPARTMENT OF
23 CORRECTIONS? BASED ON MY YEARS OF EXPERIENCE, ABSOLUTELY NOT.

24 IT TOOK -- FOR EXAMPLE, THE TOUSSAINT COURT CASE, I
25 THINK IT TOOK US OVER 20 YEARS TO COME INTO COMPLIANCE TO HAVE

1 THAT CASE END. NOTHING MOVES QUICKLY IN THE STATE OF CALIFORNIA.

2 JUDGE HENDERSON: OKAY. THANK YOU FOR TESTIFYING, MS.
3 WOODFORD.

4 THANK YOU. YOU MAY STEP DOWN.

5 YOU'RE EXCUSED. AND WE WILL ADJOURN FOR THE DAY.

6 MR. MELLO: I BELIEVE MS. LEONARD --

7 THE COURT: OH, EXCUSE ME.

8 MR. MELLO: -- HAS SOME WITNESS ISSUES, I BELIEVE, WE
9 NEED TO DISCUSS.

10 MS. LEONARD: YES, YOUR HONORS. NATALIE LEONARD,
11 CALIFORNIA CORRECTIONAL PEACE OFFICERS.

12 THIS CASE IS GOING VERY QUICKLY. MOST LIKELY DUE TO
13 EXCELLENT JUDICIAL MANAGEMENT. AND WE HAVE BEEN WORKING
14 DILIGENTLY TO GET OUR WITNESSES HERE. WE HAVE SIX WITNESSES IN
15 TOTAL. I CAN PRODUCE FOUR TOMORROW.

16 I AM NOT CERTAIN WHETHER THAT WILL FILL THE DAY. THE
17 REASONS FOR THE OTHER TWO, THE FIRST IS WORKING RIGHT NOW IN A
18 CORRECTIONAL FACILITY UNTIL 10:00 P.M. TONIGHT ON THE
19 CALIFORNIA-ARIZONA BORDER. AND HE'S WILLING TO FLY OUT VERY
20 EARLY TOMORROW, BUT WOULD NOT GET HERE IN TIME WITH THE
21 CONNECTIONS.

22 THE SECOND HAS A SPECIAL NEEDS CHILD THAT REQUIRES
23 SPECIALIZED 24-HOUR CARE. AND WE HAVE THE CARE PROVIDER SET UP
24 FOR FRIDAY MORNING. SO WITH THE COURT'S PERMISSION AND
25 COMPASSION I WOULD LIKE TO BE ABLE TO PRODUCE THOSE TWO ON

1 FRIDAY.

2 JUDGE HENDERSON: OKAY.

3 JUDGE REINHARDT: ARE YOU THROUGH WITH ALL YOUR
4 WITNESSES?

5 MR. SPECTER: WE HAVE ONE MORE WITNESS TOMORROW.

6 JUDGE KARLTON: DR. SHANSKY?

7 MR. SPECTER: YES. HE'LL START TOMORROW.

8 JUDGE REINHARDT: HOW LONG DO YOU EXPECT THAT HE WILL
9 TAKE?

10 MR. SPECTER: PARDON ME?

11 JUDGE REINHARDT: HOW LONG DO YOU EXPECT THAT HE WILL
12 TAKE?

13 MR. SPECTER: WELL, ABOUT A HALF HOUR ON DIRECT, AND
14 THEN CROSS.

15 JUDGE REINHARDT: BUT I MEAN, REALISTICALLY, WHAT DO
16 YOU BOTH THINK?

17 MR. MELLO: I BELIEVE AN HOUR-AND-A-HALF TO TWO
18 HOURS. HE'S THEIR MEDICAL EXPERT IN PLATA, CROSS.

19 MR. SPECTER: SO FROM A 9:15 TO 11:30, NOON.

20 JUDGE REINHARDT: AND YOUR FOUR WITNESSES, HOW LONG
21 WILL THEY TAKE?

22 MS. LEONARD: WE WILL TAKE THIRTY ON DIRECT AND 15
23 ON REDIRECT, ONLY IF NEEDED.

24 JUDGE REINHARDT: SO YOU HAVE FOUR WITNESSES. WON'T
25 THAT TAKE THE AFTERNOON?

1 **MS. LEONARD:** WE MAY. BUT BECAUSE WE HAVE NOT BEEN
2 CERTAIN BECAUSE THE TIMES HAVE NOT BEEN COMPLETELY TO THE
3 PRETRIAL STATEMENT, WE WANTED TO ALERT THE COURT TO THE
4 POSSIBILITY. AND WE UNDERSTAND OUR RESPONSIBILITY TO THIS
5 COURT. ONE OF THE WITNESSES, FOR EXAMPLE, WILL DRIVE IN THE
6 MIDDLE OF THE NIGHT AND PROVIDE CHILDCARE FOR HER FOUR CHILDREN
7 AT HOME.

8 **JUDGE REINHARDT:** BUT YOU HAVE FOUR, AND THERE ARE
9 ONLY TWO THAT MIGHT NOT BE HERE, RIGHT?

10 **JUDGE HENDERSON:** FOUR WILL DEFINITELY BE HERE.

11 **JUDGE REINHARDT:** SOUNDS LIKELY IT WILL TAKE THE
12 WHOLE DAY, BUT IF IT DOESN'T --

13 **MR. MELLO:** AND THAT GETS TO OUR POINT. WE'RE ALSO
14 SURPRISED BY THE SPEED AT WHICH THIS IS GOING, AND WE ONLY HAVE
15 TWO LIVE WITNESSES AVAILABLE ON FRIDAY. IN THE WITNESS LIST WE
16 DID LIST THE FACT THAT WE HAVE THREE WITNESSES TESTIFYING BY WAY
17 OF DEPOSITION.

18 WE OBVIOUSLY WOULD PREFER THAT THAT DEPOSITION
19 TESTIMONY BE READ INTO THE RECORD, BUT WE VERY MUCH REALIZE THAT
20 PROBABLY WON'T HAPPEN FROM THIS COURT. SO I JUST WANT TO POINT
21 OUT WE ONLY HAVE TWO LIVE WITNESSES, ALTHOUGH WE TRIED JUST
22 BECAUSE WE DIDN'T THINK WE WOULD GET THERE ON FRIDAY.

23 **JUDGE REINHARDT:** AND IF YOUR TWO CAME ON FRIDAY THAT
24 WOULD SOLVE YOUR PROBLEM.

25 **JUDGE KARLTON:** I MEAN, I'M VERY SURPRISED WE'RE

1 MOVING ALONG THIS QUICKLY, EITHER. IT'S OBVIOUSLY JUDGE
2 HENDERSON'S --

3 JUDGE HENDERSON: AW, SHUCKS, FELLOWS.

4 JUDGE KARLTON: BUT WHAT I THINK I'M HEARING -- WELL,
5 LET ME ASK: MS. TILLMAN, ARE YOU DOING ANYTHING ADDITIONAL TO
6 WHAT MR. MELLO IS DOING IN THE WAY OF PRESENTATION OF WITNESSES?

7 MS. TILLMAN: I THINK MR. MELLO WAS SPEAKING,
8 ACTUALLY, IN REGARDS TO BOTH PLATA AND COLEMAN. WE HAD SET ASIDE
9 TWO WITNESSES FOR FRIDAY.

10 JUDGE KARLTON: THAT'S FINE.

11 JUDGE REINHARDT: WHAT ABOUT THE INTERVENORS?

12 JUDGE KARLTON: INTERVENORS, ARE YOU PUTTING ON ANY
13 TESTIMONY AS TO THE FIRST PART -- WHAT AM I ASKING?

14 JUDGE REINHARDT: FIRST PHASE.

15 JUDGE KARLTON: THANK YOU.

16 MS. WANG: WE -- ACTUALLY, YOUR HONOR, WE HAD
17 PREVIOUSLY LISTED SENATOR RUNNER AS A WITNESS, BUT IT'S VERY
18 LIKELY THAT IN VIEW OF THE COURT'S RULING ON THE FACT NO
19 EVIDENCE WILL BE PRESENTED ON CONSTITUTIONAL VIOLATIONS THAT ARE
20 CURRENT OR ONGOING THAT WE WILL WITHDRAW SENATOR RUNNER.

21 BUT WE ARE CONFIRMING TODAY, AND WE WILL GET BACK TO
22 THE COURT TOMORROW.

23 JUDGE KARLTON: WHAT ABOUT INTERVENORS?

24 MR. MITCHELL: INTERVENORS HAVE NOT NOTICED ANY
25 WITNESSES FOR THIS PHASE.

1 **JUDGE KARLTON:** THANK YOU.

2 AND YOU'RE THE SAME.

3 **MS. WANG:** THAT'S CORRECT. NOR HAVE THE COUNTIES AND
4 LAW ENFORCEMENT INTERVENORS.

5 **JUDGE KARLTON:** SO WE MAY BE DONE BY NEXT WEEK.

6 **JUDGE HENDERSON:** WE'RE DARK.

7 **JUDGE KARLTON:** IS THE ALL OF NEXT WEEK THAT WE'RE
8 DARK?

9 **JUDGE REINHARDT:** YES.

10 **JUDGE KARLTON:** OH, OKAY.

11 **MS. TILLMAN:** YOUR HONOR, THIS IS LISA TILLMAN.

12 JUST IN REGARDS TO ADDITIONAL WITNESSES FOR PHASE I,
13 WE HAVE TODD JERUE, CINDY RADAUSKY, WHO ARE AVAILABLE THIS
14 FRIDAY, AND THEN ROBIN DEZEMBER, WHO ARE NOT AVAILABLE THIS
15 FRIDAY.

16 **JUDGE HENDERSON:** OKAY. BUT CAN WE HAVE THE NAMES OF
17 THE WITNESSES WE'RE NOW TALKING ABOUT?

18 WE WILL HAVE FOUR FROM CCPOA. WHO ARE THEY?

19 **MS. LEONARD:** YES, YOUR HONOR. THEY ARE GARY
20 BENSON, KEVIN RAYMOND, ERIC ADELMAN, AND BRENDA GIBBONS (ALL
21 PHONETIC).

22 **JUDGE HENDERSON:** OKAY? PLUS DR. SHANSKY.

23 **MS. LEONARD:** YES, YOUR HONOR.

24 **JUDGE HENDERSON:** OKAY. SO THAT WILL BE TOMORROW,
25 AND WE WILL GO HOWEVER LONG THAT TAKES US. AND THEN, ON FRIDAY

1 WE HAVE TWO ADDITIONAL CCPOA WITNESSES.

2 AND WHO ARE THOSE, COUNSEL?

3 **MS. LEONARD:** THOSE ARE DEBORAH ROLET, AND RUBIN
4 LAYHA (ALL PHONETIC).

5 **JUDGE HENDERSON:** OKAY. AND THEN, WE HAVE TWO FROM
6 DEFENDANTS. WHO ARE THOSE, COUNSEL?

7 **MS. TILLMAN:** THAT WOULD BE -- I'M SORRY.

8 YOUR HONORS, WE HAVE MS. RADAUSKY AND MR. JERUE FOR
9 THIS FRIDAY. AND WE WILL SUBSEQUENTLY SCHEDULE FOR THE
10 FOLLOWING, I GUESS, TWO WEEKS AFTER THAT, MR. DEZEMBER AND
11 EXPERT DR. PACKER.

12 **JUDGE HENDERSON:** OKAY.

13 **JUDGE REINHARDT:** IS THAT IT?

14 **MS. TILLMAN:** I'M SORRY. I MISSED ONE. FOR BOTH
15 PLATA AND COLEMAN, MR. KERNAN, PROBABLY THE FIRST WEEK OF
16 DECEMBER.

17 **JUDGE HENDERSON:** DEZEMBER IN DECEMBER?

18 **MS. TILLMAN:** IT CAN GET CONFUSING.

19 **JUDGE REINHARDT:** WILL THOSE THREE BE -- ONLY TAKE
20 ONE DAY AMONG ALL OF THEM OR MORE THAN THAT?

21 **MR. MELLO:** WE STILL HAVE THE ISSUE WITH RESPECT TO
22 THE EXPERTS, AND THEIR REBUTTAL EXPERT THAT HAVE AVAILABILITY
23 PROBLEMS FOR THAT WHOLE WEEK, I BELIEVE AND WE'RE TALKING ABOUT
24 VIDEO, BUT THAT'S STILL AN ISSUE.

25 **JUDGE KARLTON:** I'M CONFUSED. THE GUY WHO IS GOING

1 TO TESTIFY BY VIDEO MOST LIKELY, WHEN ARE WE SETTING HIM UP FOR?

2 **MR. SPECTER:** WE DON'T KNOW YET. WE'RE TRYING TO
3 FIND OUT HOW HIS SURGERY WENT, AND THEN WE WILL COME BACK TO YOU
4 AND YOU CAN BREAK TIES, IF YOU WANT TO.

5 **MR. MELLO:** YOU GUYS WILL BREAK TIES.

6 **JUDGE HENDERSON:** WILL WE KNOW THAT FRIDAY OR --

7 **MR. SPECTER:** MS. JOHNSON SAYS SHE'S GOING TO CALL
8 HIS STAFF TOMORROW TO SEE HOW THE SURGERY WENT. IF THERE
9 WEREN'T COMPLICATIONS, WE WILL HAVE A BETTER IDEA. IF THERE
10 WERE COMPLICATIONS WE WILL KNOW THAT, TOO. WE WILL BE ABLE TO
11 TELL YOU BY -- IT'S LIKELY, IN MY OPINION -- SORRY. IT'S
12 LIKELY, IN MY OPINION, WE WILL FINISH VERY EARLY THE FIRST WEEK
13 OF DECEMBER. AND THEN, WE WILL HAVE TO DO THOSE REMAINING
14 WITNESSES.

15 MY SUGGESTION IS WE PROBABLY COULD LET YOU GO, AND WE
16 PICK A DAY WHERE WE COME BACK FOR ONE OR TWO WITNESSES BY VIDEO
17 CONFERENCE OR SOMETHING LIKE THAT. BUT WE WILL KNOW MORE LATER.

18 **JUDGE HENDERSON:** OKAY. THANK YOU, COUNSEL.

19 COURT'S ADJOURNED. WE WILL RESUME 9:15 TOMORROW
20 MORNING.

21 (THEREUPON, THIS TRIAL WAS CONTINUED UNTIL
22 THURSDAY, NOVEMBER 20, 2008 AT 9:15 O'CLOCK
23 A.M.)
24
25

I N D E X

PLAINTIFF'S WITNESSES

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CERTIFICATE OF REPORTER

WE, JOAN MARIE COLUMBINI AND KATHERINE WYATT, OFFICIAL REPORTERS FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN CIV S-90-0520 LKK JPM P, RALPH COLEMAN, ET AL V. ARNOLD SCHWARZENEGGER AND C 01-1351 TEH, MARCIANO PLATA V. ARNOLD SCHWARZENEGGER, WERE REPORTED BY US, CERTIFIED SHORTHAND REPORTERS, AND WERE THEREAFTER TRANSCRIBED UNDER OUR DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY US AT THE TIME OF FILING.

THE VALIDITY OF THE REPORTER'S CERTIFICATION OF SAID TRANSCRIPT MAY BE VOID UPON DISASSEMBLY AND/OR REMOVAL FROM THE COURT FILE.

/S/ JOAN MARIE COLUMBINI

JOAN MARIE COLUMBINI, CSR 5435, RPR

S/ KATHERINE WYATT

KATHERINE WYATT, CSR 9866, RMR

WEDNESDAY, NOVEMBER 19, 2008

**JOAN MARIE COLUMBINI, CSR, RPR
KATHERINE WYATT, CSR, RMR
OFFICIAL COURT REPORTERS - USDC
415-255-6842**

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
AND FOR THE NORTHERN DISTRICT OF CALIFORNIA
UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES PURSUANT
TO SECTION 2284, TITLE 28 UNITED STATES CODE

RALPH COLEMAN, ET AL.,)
)
PLAINTIFFS,)
)
VS.) NO. CIV S-90-0520 LKK JFM P
)
ARNOLD SCHWARZENEGGER, ET AL.)
) THREE-JUDGE COURT
DEFENDANTS.)
)

MARCIANO PLATA, ET AL.,)
)
PLAINTIFFS,)
)
VS.) NO. C 01-1351 TEH
)
ARNOLD SCHWARZENEGGER, ET AL.)
)
DEFENDANTS.)
)

TRANSCRIPT OF PROCEEDINGS

SAN FRANCISCO, CALIFORNIA
THURSDAY, NOVEMBER 20, 2008

(APPEARANCES ON FOLLOWING PAGES)

REPORTED BY: JOAN MARIE COLUMBINI, CSR 5435, RPR
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OFFICIAL COURT REPORTERS, U.S. DISTRICT COURT

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P R O C E E D I N G S

NOVEMBER 20, 2008

9:15 O'CLOCK A.M.

THE CLERK: PLEASE BE SEATED.

JUDGE HENDERSON: OKAY. GOOD MORNING, COUNSEL.

YOU MAY CALL YOUR FIRST WITNESS WHEN YOU'RE READY.

MS. HARDY: GOOD MORNING, YOUR HONORS. ALISON HARDY
FOR THE PLAINTIFFS. AND PLAINTIFFS CALL DR. RONALD M. SHANSKY.

THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

(THEREUPON, THE WITNESS WAS SWORN.)

THE CLERK: PLEASE STATE AND SPELL YOUR FULL NAME FOR
THE RECORD.

THE WITNESS: MY NAME IS RONALD MARK SHANSKY,
S-H-A-N, AS IN NANCY, S-K-Y.

THEREUPON --

DR. RONALD MARK SHANSKY

WAS CALLED AS A WITNESS ON BEHALF OF THE PLAINTIFFS, AND AFTER
HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS
FOLLOWS:

DIRECT EXAMINATION

BY MS. HARDY:

Q. GOOD MORNING, DR. SHANSKY.

A. GOOD MORNING.

Q. YOU'RE A BOARD CERTIFIED PHYSICIAN IN INTERNAL MEDICINE AND
IN QUALITY ASSURANCE; ISN'T THAT RIGHT?

1 A. THAT'S CORRECT.

2 Q. AND YOU'VE BEEN A PHYSICIAN FOR OVER 30 YEARS?

3 A. YES.

4 Q. AND THE FOCUS OF YOUR PRACTICE OVER THE COURSE OF THREE
5 DECADES HAS BEEN ON CORRECTIONAL MEDICINE; ISN'T THAT RIGHT?

6 A. THAT'S CORRECT.

7 Q. AND YOU STARTED YOUR CAREER AS A PHYSICIAN RIGHT OUT OF
8 RESIDENCY AT THE FEDERAL JAIL IN CHICAGO?

9 A. YES. THAT WAS MY FIRST CORRECTIONAL HEALTHCARE WORK.

10 Q. AND THEN -- AND HOW LONG DID YOU DO THAT JOB?

11 A. SEVEN YEARS.

12 Q. AND THEN, IN 1982, YOU BECAME THE MEDICAL DIRECTOR OF THE
13 ILLINOIS STATE PRISON SYSTEM; IS THAT RIGHT?

14 A. THAT'S CORRECT.

15 Q. AND YOU DID THAT JOB FOR HOW LONG?

16 A. FOR 11 YEARS.

17 Q. AND THEN, SO YOU LEFT IN '93, BUT YOU RETURNED IN '98. WHY
18 WAS THAT?

19 A. THERE WAS A NEW DIRECTOR OF CORRECTIONS, AND HE CALLED ME
20 AND ASKED ME IF I WOULD SERVE. AND I SAID I WAS FINISHING OUT
21 MY RECEIVERSHIP, AND SO I COULD ONLY FILL THAT CAPACITY ON A
22 PART-TIME BASIS. BUT HE SAID THAT WAS GOOD ENOUGH, AND SO I
23 CAME BACK FOR A YEAR ON A PART-TIME BASIS.

24 Q. AND SINCE YOU LEFT THE DEPARTMENT OF CORRECTIONS IN ILLINOIS
25 YOU'VE BEEN A CORRECTIONAL HEALTHCARE CONSULTANT; IS THAT RIGHT?

1 A. THAT'S CORRECT.

2 Q. AND OVER THE COURSE OF YOUR ENTIRE CAREER, YOU'VE CONSULTED
3 WITH MORE THAN TWO DOZENS CORRECTIONAL AGENCIES ON HEALTHCARE
4 ISSUES; IS THAT RIGHT?

5 A. MORE THAN HOW MANY?

6 Q. TWO DOZEN?

7 A. APPROXIMATELY.

8 Q. OKAY. AND THAT'S BEEN BOTH DOMESTICALLY AND INTERNATIONALLY;
9 IS THAT RIGHT?

10 A. A FEW INTERNATIONALLY.

11 Q. AND IN THE COURSE OF YOUR CAREER YOU HAVE BEEN TO WELL OVER
12 A HUNDRED PRISONS TO SPECIFICALLY -- SPECIFICALLY FOR THE
13 PURPOSE OF REVIEWING HEALTHCARE IN THOSE FACILITIES; IS THAT
14 RIGHT?

15 A. BOTH PRISONS AND JAILS.

16 Q. ADDITIONALLY, COURTS HAVE APPOINTED YOU IN DIFFERENT CASES
17 IN VARIOUS CAPACITIES; IS THAT RIGHT?

18 A. THAT'S CORRECT.

19 Q. AND IN WHAT CAPACITIES HAVE YOU SERVED?

20 A. WELL, I'VE BEEN APPOINTED AS A SPECIAL MASTER, AS A
21 COURT-APPOINTED EXPERT, AS A SPECIAL MONITOR, AS A RECEIVER IN
22 THE CASE OF THE D.C., WASHINGTON D.C JAIL.

23 Q. AND YOU'VE ALSO EDITED A BOOK ON CORRECTIONAL MEDICINE; IS
24 THAT RIGHT?

25 A. I WAS ONE OF THE ASSOCIATE EDITORS OF THE TWO EDITIONS OF

1 CLINICAL PRACTICE OF CORRECTIONAL MEDICINE.

2 Q. AND YOU CONSIDER YOURSELF AN EXPERT ON CORRECTIONAL
3 HEALTHCARE, DON'T YOU?

4 A. YES.

5 Q. YOU'RE AWARE THAT THE PLATA COURT HAS FOUND THE MEDICAL CARE
6 IN THE CDR VIOLATES THE CONSTITUTION; IS THAT RIGHT?

7 A. YES.

8 Q. AND IN YOUR OPINION, WHAT IS THE CAUSE FOR THE
9 CONSTITUTIONALLY INADEQUATE MEDICAL CARE?

10 A. FROM MY TOURS AND MY REVIEW OF THE DOCUMENTS, I WOULD SAY
11 OVERCROWDING IS THE PRIMARY CAUSE OF THE ONGOING INABILITY TO
12 MEET CONSTITUTIONAL LEVELS OF CARE.

13 Q. DOCTOR, HOW CERTAIN ARE YOU OF THAT OPINION?

14 A. I'M CONFIDENT IN IT.

15 Q. OKAY. YOU TOURED NINE PRISONS, CDCR PRISONS IN THE LAST 13
16 MONTHS; IS THAT RIGHT?

17 A. THAT'S CORRECT.

18 Q. AND DID YOUR OBSERVATIONS ON THESE TOURS PROVIDE A BASIS FOR
19 YOUR OPINION?

20 A. YES.

21 Q. AND WHAT DID YOU OBSERVE ON THESE TOURS?

22 A. WELL, THERE WERE A VARIETY OF PROBLEMS RELATED TO INADEQUATE
23 PHYSICAL ENVIRONMENT, IMPACTING ON PROCESS OF CARE, BEGINNING
24 WITH THE RECEPTION PROCESS AND ABILITY TO PERFORM A
25 COMPREHENSIVE EXAM ON INTAKE.

1 THERE WERE PROBLEMS WITH ACCESS TO CARE IN TERMS OF
2 LACK OF OFFICERS, ESPECIALLY DURING LOCKDOWN PERIODS, AND
3 THEREFORE SCHEDULED VISITS DIDN'T OCCUR ANYWHERE NEAR THE RATE
4 THAT THEY DID USUALLY.

5 THERE WERE PROBLEMS WITH MEDICAL RECORDS, DOCUMENTS
6 NOT BEING FILED; DOCUMENTS BEING VERY DIFFICULT TO LOCATE; THE
7 MEDICAL RECORDS QUITE DISORGANIZED, WHICH INHIBITS DOCTORS TO
8 HAVE A SOUND FOUNDATION OF THE FACTS WITH A GIVEN PATIENT.

9 THERE WERE A VARIETY OF THOSE KINDS OF THINGS WE
10 IDENTIFIED.

11 **Q.** AND WHEN YOU TOURED PRISONS, YOU REVIEWED HEALTHCARE -- OR,
12 SORRY, I MEAN HEALTH RECORDS SPECIFICALLY, A SAMPLE OF THEM,
13 DIDN'T YOU?

14 **A.** YES. WE REVIEWED RECORDS AT EACH OF THE FACILITIES.

15 **Q.** AND WHAT DID YOU FIND IN THOSE RECORDS, SPECIFICALLY?

16 **A.** WELL, I WAS LOOKING AT THE -- I WAS FOCUSING ON THESE
17 REVIEWS ON THE ABILITY OF THE PROGRAM TO PROVIDE NECESSARY
18 FOLLOW-UP AND CONTINUITY FOR INDIVIDUALS WHOSE PROBLEMS WERE
19 SERIOUS ENOUGH TO CAUSE THEM TO BE SENT OFFSITE, EITHER ON A
20 SCHEDULED BASIS FOR A CONSULTATION OR A CT EXAM OR AN MRI, OR ON
21 AN UNSCHEDULED BASIS, THAT IS, ON THE BASIS OF AN EMERGENCY
22 PROBLEM.

23 AND WHAT WE FOUND WAS IN A SIGNIFICANT PORTION OF THE
24 CASES WE REVIEWED, THERE WAS AN ABSENCE OF DOCUMENTS FROM THE
25 OFFSITE PROVIDER. SO EVEN THOUGH THE PATIENT WENT OFFSITE, THE

1 CONSULTATION REPORT WASN'T THERE. THE CT REPORT WASN'T THERE.
2 THE MRI REPORT WASN'T THERE.

3 AND THERE WERE OTHER INSTANCES WHEN REPORTS HAD BEEN
4 FILED, BUT NO ONE HAD ACTUALLY SEEN THEM, INITIALED THEM AND
5 ACTED ON THEM.

6 THERE WERE ALSO INSTANCES IN WHICH WHEN THE REPORTS
7 WERE THERE, THERE WAS NO FOLLOW-UP WHEN THE PATIENT RETURNED
8 TO -- SORRY.

9 JUDGE KARLTON: NOT YOUR FAULT. NOBODY KNOWS WHY
10 THAT HAPPENS.

11 THE WITNESS: OKAY. THERE WERE MANY INSTANCES IN
12 WHICH THE FOLLOW-UP ASPECT OF CARE WAS NOT PROVIDED. AND THAT
13 WAS IN A SIGNIFICANT PORTION OF THE RECORDS AT VIRTUALLY ALL THE
14 FACILITIES WE WENT TO.

15 IN FACT, THE POLICIES OF THE CDCR REQUIRE, ARE
16 DESIGNED TO FACILITATE CONTINUITY, AND YET THE PROGRAMS WERE NOT
17 YET ABLE TO NOT ONLY COMPLY WITH THE POLICIES, BUT ENSURE THE
18 CONTINUITY OF CARE THAT IS REQUIRED FOR ADEQUATE SERVICES.

19 BY MS. HARDY:

20 Q. AND GIVEN THAT LACK OF CONTINUITY, IS THERE A RISK OF HARM
21 TO THE PATIENT?

22 A. ABSOLUTELY. THERE'S UNQUESTIONABLY A RISK.

23 Q. ON YOUR PRISON TOURS YOU SPOKE WITH PRISON CLINICIANS AND
24 WITH PRISON ADMINISTRATORS, CORRECT?

25 A. YES.

1 Q. AND DID THEY TELL YOU HOW OVERCROWDING WAS IMPACTING THEIR
2 OPERATIONS?

3 A. YES, THEY DESCRIBED THEIR INABILITY TO ENSURE THAT PATIENTS
4 WERE SEEN TIMELY, BOTH FOR SERVICES PROVIDED ON-SITE AND FOR
5 SCHEDULING AND OBTAINING SERVICES OFFSITE.

6 Q. AND DID THEY DESCRIBE HOW THE IMPACT OF THE AVAILABLE
7 CLINICAL SPACE AFFECTED THEIR ABILITY TO DELIVER CARE?

8 A. YES, THERE WERE AT LEAST A FEW, IF NOT MORE, THAT INDICATED
9 THAT ONE OF THE MAJOR INHIBITING FACTORS AS THEY HAVE ADDED
10 ADDITIONAL STAFF WAS THEIR INABILITY TO MAXIMALLY UTILIZE THE
11 STAFF BECAUSE OF THE INADEQUATE SPACE ARRANGEMENTS.

12 Q. WERE THE FINDINGS THAT YOU MADE ON THESE PRISON TOURS
13 CONSISTENT WITH OTHER DOCUMENTS YOU REVIEWED IN THIS CASE?

14 A. YES, PARTICULARLY DOCUMENTS THAT WERE PRODUCED BY THE
15 RECEIVER'S OFFICE. IT'S REALLY CONSISTENT WITH THE GOVERNOR'S
16 STATEMENT AND CONSISTENT WITH THE RECENT DEATH REVIEW DOCUMENT.

17 Q. SO YOU REVIEWED THE RECEIVER'S 2007 PRISONER DEATH REPORT;
18 IS THAT RIGHT?

19 A. YES.

20 Q. AND IN THAT REPORT, THAT DEATH REVIEW COMMITTEE DIVIDES THE
21 DEATHS IN PREVENTABLE, POSSIBLY PREVENTABLE AND NONPREVENTABLE
22 DEATHS, CORRECT?

23 A. CORRECT.

24 Q. AND YOU'RE FAMILIAR WITH THOSE TERMS, RIGHT?

25 A. YES.

1 Q. IN YOUR EXPERIENCE AS A PHYSICIAN HAVE YOU DONE DEATH
2 REVIEWS?

3 A. YES.

4 Q. AND IS IT YOUR EXPERIENCE THAT PHYSICIANS ARE RELUCTANT OR
5 LIBERAL IN ATTRIBUTING PREVENTABILITY TO A PATIENT DEATH?

6 A. IN MY EXPERIENCE -- AND I HAVE DONE DEATH REVIEWS. NOT ONLY
7 DID I DO ALL OF THEM IN THE ILLINOIS SYSTEM FROM 1982 TO 1993,
8 BUT ALSO IN MY TRAVELS AROUND THE COUNTRY I HAVE PARTICIPATED IN
9 DEATH REVIEWS WITH COLLEAGUES FROM DIFFERENT SYSTEMS.

10 AND I DO THINK THE ATTRIBUTION OF "PREVENTABLE" IS
11 SOMETHING THAT DOCTORS ARE RELUCTANT TO DO FREQUENTLY, BECAUSE I
12 BELIEVE IT, IN THEIR MIND, MAY CONNOTE A CLINICIAN
13 RESPONSIBILITY FOR THE DEATH. AND SO THERE IS UNQUESTIONABLY A
14 RELUCTANCE TO DO THAT.

15 AND, THEREFORE, I THINK THAT'S WHAT MADE PEOPLE MORE
16 COMFORTABLE WITH THE CATEGORY OF "POSSIBLY PREVENTABLE."

17 Q. DOES YOUR REVIEW OF THE REPORT AFFECT OR IMPACT YOUR OPINION
18 THAT CROWDING IS THE PRIMARY CAUSE OF THE CONSTITUTIONAL
19 VIOLATIONS IN THE CDCR?

20 A. MY REVIEW OF THE REPORT BUTTRESSES MY VIEW OF THAT. IT IS
21 PARTICULARLY BUTTRESSED BY WHEN YOU LOOK AT THE TYPES OF LAPSES
22 IN CARE WHICH WERE EXTREME DEPARTURES FROM THE STANDARD OF CARE,
23 THERE ARE SEVERAL THAT CLEARLY ARE A CONSEQUENCE OF
24 OVERCROWDING.

25 THINGS LIKE DELAY IN ACCESS, FAILURE TO ADEQUATELY

1 PURSUE ABNORMAL TEST RESULTS, FAILURE OF PROVIDER-TO-PROVIDER
2 COMMUNICATION, MEDICATION DELIVERY PROBLEMS, MEDICATION
3 PRESCRIBING ERRORS. THERE'S A SERIES OF ITEMS WHICH CLEARLY CAN
4 RESULT FROM OVERCROWDING.

5 **Q.** FOR THE 395 CASES THAT ARE REVIEWED IN THAT DEATH REVIEW
6 REPORT, THERE WERE 292 EXTREME DEPARTURES FROM THE COMMUNITY
7 STANDARD OF CARE IDENTIFIED; IS THAT CORRECT?

8 **A.** THAT'S CORRECT.

9 **Q.** WERE YOU SURPRISED TO SEE THIS NUMBER OF LAPSES IN A SAMPLE
10 OF THIS SIZE?

11 **A.** WELL, THE FACT THAT THE LAPSES OCCURRED IN ALMOST 60 PERCENT
12 OF THE CASES, YES, BECAUSE WHEN I REVIEWED -- AND MY POLICY THAT
13 I PROMULGATED I HAD TO REVIEW EVERY DEATH IN THE ILLINOIS
14 SYSTEM. AND WHERE THERE WAS AN EXTREME LAPSE I WOULD MAKE IT
15 CLEAR TO THE DIRECTOR OF CORRECTIONS.

16 WE WOULD SEE FIVE, MAYBE TEN PERCENT OF THE DEATHS IN
17 WHICH THERE WAS AN EXTREME DEPARTURE FROM THE STANDARD OF CARE.

18 **JUDGE KARLTON:** WHAT WAS THE PERCENTAGE FOR
19 CALIFORNIA THAT YOU WERE LOOKING AT?

20 **THE WITNESS:** ABOUT A LITTLE LESS THAN 60 PERCENT OF
21 THE TOTAL CASES, INCLUDING PREVENTABLE AND NONPREVENTABLE.

22 **BY MS. HARDY:**

23 **Q.** DID YOU LOOK AT THE RATE OF DEATHS THAT WERE PREVENTABLE
24 OR POSSIBLY PREVENTABLE FROM THE 110 DEATHS THAT WERE COSIDERED
25 NATURAL AND UNEXPECTED?

1 **A.** YES.

2 **Q.** AND WHAT DID YOU CONCLUDE FROM THAT?

3 **A.** IF YOU DO THE MATH, OUT OF 110 THERE WERE 44 THAT WERE
4 POSSIBLY PREVENTABLE OR PREVENTABLE. SO YOU'RE LOOKING AT A
5 40 PERCENT RATE OF THE NATURAL, UNEXPECTED DEATHS THAT WERE
6 EITHER POSSIBLY PREVENTABLE OR PREVENTABLE. AND THAT'S EXTREMELY
7 HIGH.

8 **JUDGE REINHARDT:** OVER WHAT PERIOD OF TIME?

9 **THE WITNESS:** THIS IS THE CALENDAR YEAR, I BELIEVE,
10 2007.

11 **BY MS. HARDY:**

12 **Q.** AND THEN, YOU ALSO LOOKED AT THE DEATHS FOR THE 328 DEATHS
13 THAT OCCURRED BECAUSE OF ILLNESS, BOTH EXPECTED AND UNEXPECTED.
14 AND WHAT PROPORTION OF THOSE WERE COSIDERED PREVENTABLE OR
15 POSSIBLY PREVENTABLE?

16 **A.** ABOUT 20 PERCENT, AS I RECALL.

17 **Q.** AND COMPARED TO OTHER SETTINGS THAT YOU'VE WORKED IN, DO YOU
18 BELIEVE THAT THOSE RATES ARE HIGH?

19 **A.** YES.

20 **Q.** AND COMPARED BOTH TO THE ILLINOIS SETTING ARE THERE OTHER
21 SETTINGS THAT --

22 **A.** WELL, STATES, FOR OBVIOUS REASONS, DON'T NECESSARILY PUBLISH
23 THIS TYPE OF DATA. BUT, IN MY EXPERIENCE OF REVIEWING RECORDS
24 WITH SYSTEMS OVER THE COURSE OF THE LAST FEW DECADES, THAT RATE
25 SEEMS TO BE QUITE HIGH.

1 **JUDGE KARLTON:** MAY I INQUIRE? YOU INDICATED THAT
2 STATES ORDINARILY DON'T PUBLISH THIS KIND OF DATA. IS THERE ANY
3 STATE AT ALL THAT YOU ARE AWARE OF THAT ATTEMPTS TO DISTINGUISH
4 BETWEEN PREVENTABLE AND UNPREVENTABLE.

5 **THE WITNESS:** I BELIEVE MANY SYSTEMS DO THAT, BUT
6 THEY DO NOT PUBLISH IT. CONCERNS ABOUT LITIGATION.

7 **JUDGE KARLTON:** I SEE.

8 **BY MS. HARDY:**

9 **Q.** BASED ON THE NUMBER OF LAPSES THAT YOU SAW IN THIS COHORT OF
10 395 DEATHS IN WHICH THERE WERE 292 EXTREME DEPARTURES FROM THE
11 COMMUNITY STANDARD OF CARE, DO YOU BELIEVE THAT THE EXTREME
12 DEPARTURES ARE LIMITED AND OCCURRING ONLY IN THE CASES OF
13 PATIENTS WHO DIE?

14 **A.** OH, NO, ABSOLUTELY NOT. WHEN YOU LOOK AT THESE -- AT THIS
15 REPORT YOU CAN SEE THAT EXTREME LAPSES CAN OCCUR EVEN IN A DEATH
16 CASE, BUT IT DOESN'T NECESSARILY CONTRIBUTE TO THE DEATH.

17 ON THE OTHER HAND, EXTREME LAPSES CAN CONTRIBUTE TO
18 DELAYS IN DIAGNOSIS AND TREATMENT, CAN CONTRIBUTE TO AVOIDABLE
19 EMERGENCY ROOM TRIPS, CAN CONTRIBUTE TO AVOIDABLE
20 HOSPITALIZATIONS.

21 SO, I DON'T THINK THERE'S ANY QUESTION FROM REVIEWING
22 THIS DATA YOU WOULD HAVE TO BELIEVE THAT THESE LAPSES ARE PRETTY
23 WIDESPREAD AT THIS POINT.

24 **Q.** AND YOU BELIEVE THAT THE LAPSES THAT WERE IDENTIFIED APPEAR
25 TO BE SYSTEMIC OR INDIVIDUAL CARE LAPSES?

1 A. WELL, LAPSES CAN BE A MIXTURE OF BOTH. BUT CLEARLY SEVERAL
2 OF THESE POINT TO SYSTEMIC ISSUES RELATED TO CROWDING
3 UNQUESTIONABLY.

4 Q. YOU'RE AWARE THAT THE RECEIVER HAS HIRED QUITE A FEW NURSES
5 AND ALSO HIRED PHYSICIANS; IS THAT RIGHT?

6 A. YES.

7 Q. DOES THIS CHANGE YOUR OPINION THAT CROWDING IS CAUSING THE
8 CONSTITUTIONAL MEDICAL PROBLEMS?

9 A. NO. AGAIN, IT BUTTRESSES IT. AT THE BEGINNING OF -- WELL,
10 SOMEWHERE IN THE MIDST OF THE PLATA CASE, I HAD A DISCUSSION
11 WITH JUDGE HENDERSON ABOUT HIS CONCERNS ABOUT THE QUALITY OF
12 PHYSICIANS AND HIS DESIRE AND INTENT TO DO SOMETHING ABOUT THAT
13 ISSUE SINCE THAT WAS AN ISSUE THAT ONE MIGHT CHARACTERIZE IN A
14 CERTAIN SENSE AS "LOW-HANGING FRUIT."

15 YOU COULD INTERVENE ON THAT WITH THE TOOLS OF THE
16 COURT. AND AS A RESULT, IMPACT THINGS LIKE DEATH RATES AND
17 SEVERE NEGATIVE OUTCOMES. ULTIMATELY, THEN, THINGS CHANGED. IT
18 BECAME A FULL RECEIVERSHIP.

19 BUT THERE'S NO QUESTION THAT, A: THE QUALITY OF
20 CLINICAL PROVIDERS WAS CLEARLY KNOWN TO JUDGE HENDERSON WHENEVER
21 THAT WAS, TWO OR THREE YEARS AGO, AND A MAJOR CONCERN.

22 AND IT'S CLEAR, AGAIN, FROM THE RECEIVER'S DOCUMENTS
23 THAT THEY BELIEVE THE MAJOR CONTRIBUTING FACTOR TO THE DECREASE
24 IN DEATH RATE IS RELATED TO THE INCREASE IN QUALITY AND QUANTITY
25 OF CLINICAL STAFF.

1 Q. WHY NOT THEN LET THE RECEIVER JUST GO AHEAD AND FIX THE
2 PROBLEM?

3 A. WELL, IN MY VIEW -- AND I DRAW -- I GUESS THERE'S NO WAY OF
4 AVOIDING IT -- FROM MY EXPERIENCE WHEN I WAS APPOINTED THE
5 RECEIVER AT THE D.C. JAIL.

6 I WAS THE FIRST RECEIVER OF A CORRECTIONAL HEALTHCARE
7 PROGRAM, AND I HAD OBVIOUSLY A STEEP LEARNING CURVE.

8 I DIDN'T APPRECIATE THAT AT THE D.C. JAIL AT THE TIME
9 I WAS APPOINTED RECEIVER THE JAIL WAS ALREADY UNDER A POPULATION
10 CAP, AND THE POPULATION HAD BEEN SUBSTANTIALLY REDUCED -- I
11 THINK IT WAS TWO OR THREE YEARS -- BEFORE MY APPOINTMENT.

12 AND WHEN I CAME ON AS THE RECEIVER, I, THEREFORE, HAD
13 THE ADVANTAGE OF BEING ABLE TO PUT TOGETHER A BRAND NEW SYSTEM,
14 IN A SENSE, INTO AN ENVIRONMENT THAT WAS NOT SUFFERING THE
15 STRESSES OF OVERCROWDING.

16 AND I DIDN'T APPRECIATE IT THEN BECAUSE THE ONLY
17 THING I KNEW WAS THAT SITUATION WHICH I HAD BEEN APPOINTED TO.

18 BUT IT'S CLEAR TO ME NOW THAT THAT GAVE ME A
19 TREMENDOUS ADVANTAGE OVER WHAT THE RECEIVER IS TRYING TO DO HERE
20 IN CALIFORNIA.

21 Q. AND THAT ADVANTAGE WAS?

22 A. WELL, THAT ADVANTAGE IS WHEN YOU'RE TRYING TO CREATE A NEW
23 SYSTEM IN THE MIDST OF OVERCROWDING, WHICH STRESSES EVERY
24 ASPECT, ENVIRONMENTAL RESOURCES, INFRASTRUCTURE SYSTEMS, MEDICAL
25 RECORDS, TRACKING, SCHEDULING, QUALITY AND QUANTITY OF STAFF,

1 THE ENVIRONMENT IN WHICH THOSE STAFF ARE GOING TO BE ATTEMPTED
2 TO BE RETAINED ONCE THEY ARE HIRED, THAT DRAMATICALLY REDUCES
3 YOUR ABILITY TO BRING A SYSTEM INTO COMPLIANCE.

4 AND WHAT IT DOES IS IT -- IF THE SYSTEM CAN BE
5 BROUGHT INTO COMPLIANCE UNDER THE CONDITIONS OF OVERCROWDING, AT
6 A MINIMUM THAT IS GOING TO DELAY THE TIME FRAME THAT THAT'S
7 ACHIEVABLE FOR A LENGTHY PERIOD OF TIME, WHICH JUST EXTENDS THE
8 PERIOD OF AVOIDABLE SUFFERING, HOSPITALIZATIONS AND DEATH.

9 Q. THANK YOU, DR. SHANSKY.

10 JUDGE HENDERSON: THANK YOU.

11 CCPOA WISH TO QUESTION THIS WITNESS?

12 MR. LEONARD: NO FURTHER QUESTIONS.

13 JUDGE HENDERSON: OKAY.

14 CROSS-EXAMINATION.

15 CROSS-EXAMINATION

16 BY MR. MELLO:

17 Q. GOOD MORNING, DR. SHANSKY.

18 A. GOOD MORNING, MR. MELLO.

19 Q. IN YOUR OPINION IS THE CALIFORNIA PRISON SYSTEM
20 OVERPOPULATED TODAY?

21 A. YES.

22 Q. AND POPULATION AND PERCENTAGE OF OVER DESIGN CAPACITY VARY
23 BETWEEN PRISONS IN THE SYSTEM, CORRECT?

24 A. THAT'S CORRECT.

25 Q. AND, IN FACT, SOME SEGMENTS OR UNITS IN PRISONS ARE LESS

1 OVERPOPULATED THAN OTHERS, CORRECT?

2 **A.** CORRECT.

3 **Q.** OKAY. AND SOME PRISONS, LIKE CMF, AS I BELIEVE YOU
4 TESTIFIED, HAVE BEEN MORE PROTECTED THAN OTHERS FROM POPULATION
5 SURGES, CORRECT?

6 **A.** THAT'S CORRECT.

7 **Q.** DR. SHANSKY, HAVE YOU HEARD THE TERM "TO A DEGREE OF MEDICAL
8 CERTAINTY" BEFORE?

9 **A.** YES.

10 **Q.** AND IS IT SYNONOMOUS WITH THE TERM "TO A DEGREE OF MEDICAL
11 PROBABILITY," OR DO THEY MEAN SOMETHING DIFFERENT?

12 **A.** WELL, I'M USED TO THE PHRASE "TO A DEGREE OF MEDICAL
13 CERTAINTY" WHEN IT'S USED IN RELATIONSHIP TO A DIAGNOSIS: BASED
14 ON CLINICAL INFORMATION, TO WHAT DEGREE OF MEDICAL CERTAINTY DO
15 YOU HAVE THAT THIS IS A PARTICULAR DIAGNOSIS BASED ON THE DATA
16 AVAILABLE?

17 **Q.** ARE YOU FAMILIAR WITH THE USE OF EITHER ONE OF THOSE TERMS
18 IN THE MALPRACTICE SETTING?

19 **A.** I DON'T DO MALPRACTICE CASES, BUT COLLEAGUES HAVE MENTIONED
20 THAT.

21 **Q.** OKAY. AND IS IT YOUR UNDERSTANDING THAT FOR SOMETHING TO BE
22 TO A DEGREE OF MEDICAL PROBABILITY IN A MALPRACTICE --

23 **JUDGE KARLTON:** YOU LOST --

24 **THE WITNESS:** I CAN'T HEAR YOU.

25 **MR. MELLO:** I'M SORRY. LET ME TRY AGAIN.

1 **BY MR. MELLO:**

2 **Q.** IS IT YOUR UNDERSTANDING BASED UPON YOUR EXPERIENCE IN YOUR
3 DISCUSSIONS WITH SEVERAL COLLEAGUES THAT "TO A MEDICAL
4 PROBABILITY" MEANS THAT AN ADVERSE MEDICAL CONSEQUENCE IS MORE
5 LIKELY TO HAVE HAPPENED OR NOT? IS THAT YOUR UNDERSTANDING?

6 **A.** I HAVEN'T USED -- I HAVEN'T HEARD OF THE TERM "TO A MEDICAL
7 PROBABILITY," SO I'M JUST NOT INFORMED.

8 **Q.** HOW ABOUT "TO A MEDICAL CERTAINTY" IN THE MALPRACTICE
9 SETTING? HAVE YOU HEARD THAT TERM USED THAT A DEATH IS MORE
10 LIKELY THAN NOT TO HAVE OCCURRED, AND, THEREFORE, IT COULD BE
11 SAID TO A MEDICAL CERTAINTY?

12 **JUDGE KARLTON:** REASONABLE MEDICAL CERTAINTY.

13 **MR. MELLO:** REASONABLE MEDICAL CERTAINTY. I'M SORRY,
14 YOUR HONOR.

15 **THE WITNESS:** AS I SAY, I HAVEN'T PARTICIPATED, BUT
16 MY COLLEAGUES HAVE MENTIONED THAT LANGUAGE TO ME.

17 **BY MR. MELLO:**

18 **Q.** IT WAS YOUR UNDERSTANDING WHEN YOU WORKED FOR CDCR THAT
19 DEPARTMENT USED AN INMATE RATIO OF ONE PRIMARY CARE PHYSICIAN TO
20 EVERY 550 INMATES FOR GENERAL MEDIUM SECURITY PRISONS, CORRECT?

21 **A.** THAT'S MY UNDERSTANDING.

22 **Q.** AND IN 2005 YOU WHILE YOU WERE EMPLOYED BY THE CDCR AS AN
23 EXPERT IN PLATA AND TWO OF THE PLATA COURT'S EXPERTS, DOCTOR WE
24 SIS AND DOCTOR GOLDENSON APPLIED TO BE A TEMPORARY RECEIVER IN
25 THE PLATA CASE, CORRECT?

1 A. CORRECT.

2 Q. AND IN YOUR WRITTEN PROPOSAL TO BECOME THE TEMPORARY
3 RECEIVER YOURSELF, AND DRS. PUISIS AND GOLDENSON, YOU STATED
4 THAT THE CURRENT OVERALL PHYSICIAN-TO-INMATE RATIO IN
5 CALIFORNIA'S PRISONS WAS APPROXIMATELY ONE INMATE TO EVERY 478
6 INMATES, CORRECT?

7 A. YES, I THINK THAT INCLUDED THE TOTAL IN ALL THE FACILITIES.
8 RIGHT.

9 Q. IN THE SAME PROPOSAL, YOU STATED THAT:

10 "IN A TYPICAL PRISON WITH A NONSPECIAL MISSION
11 A WELL-RUN HEALTHCARE PROGRAM CAN FUNCTION WITH A
12 PHYSICIAN-INMATE RATIO OF 1 TO 800," CORRECT?

13 A. CORRECT. THAT'S PRIMARY CARE HOURS.

14 Q. RIGHT.

15 DR. SHANSKY, YOU WOULD AGREE THAT A KEY GOAL TO A
16 CONSTITUTIONALLY-ADEQUATE MEDICAL CARE PRISON DELIVERY SYSTEM IS
17 TO REDUCE UNNECESSARY MORBIDITY AND MORTALITY, CORRECT?

18 A. CORRECT.

19 Q. AND IN LAY TERMS THAT MEANS REDUCING UNNECESSARY ILLNESS AND
20 DEATH, CORRECT?

21 A. YES.

22 Q. IN YOUR OPINION, IS THE FACT THAT PRISONERS ARE HOUSED IN
23 NONTRADITIONAL HOUSING --

24 MR. MELLO: STRIKE THAT.
25

1 BY MR. MELLO:

2 Q. IN YOUR OPINION, THE FACT THAT PRISONERS ARE HOUSED IN
3 NONTRADITIONAL HOUSING DOES NOT NECESSARILY MEAN THAT THEY ARE
4 NOT -- THAT THEY ARE RECEIVING INADEQUATE MEDICAL CARE, CORRECT?

5 A. CORRECT.

6 Q. ISN'T IT TRUE THAT A PRISON CAN HOUSE PRISONERS IN
7 NONTRADITIONAL HOUSING AND STILL PROVIDE
8 CONSTITUTIONALLY-ADEQUATE MEDICAL CARE TO THOSE PRISONERS?

9 A. IT'S CONCEIVABLE.

10 Q. IT'S CONCEIVABLE?

11 A. YES.

12 Q. AND ISN'T IT ALSO TRUE THAT NOT EVERY LESS-THAN-IDEAL
13 CIRCUMSTANCE IN A PRISON CLINICAL SETTING RENDERS THE DELIVERY
14 OF MEDICAL CARE CONSTITUTIONALLY INADEQUATE?

15 A. COULD YOU REPEAT THAT?

16 Q. SURE.

17 NOT EVERY LESS-THAN-IDEAL CIRCUMSTANCE IN A PRISON
18 CLINICAL SETTING RENDERS THE DELIVERY OF MEDICAL CARE
19 UNCONSTITUTIONAL, DOES IT?

20 A. NOT NECESSARILY.

21 Q. I'M NOW GOING TO TAKE YOU TO -- WELL, I'M NOT. I'LL JUST
22 REFERENCE IT. AND IF YOU WANT TO SEE IT, I'LL BRING IT UP.

23 BUT ON PAGE SIX, PARAGRAPH 16 OF YOUR NOVEMBER, 2007
24 REPORT, YOU EXPRESSED CONCERNS ABOUT A SMALL EXAM ROOM OFF THE
25 GYMNASIUM AT VALLEY STATE PRISON FOR WOMEN THAT'S ONLY

1 ACCESSIBLE FROM THE PRISONERS' BATHROOM AND SHOWER AREA.

2 DO YOU REMEMBER?

3 A. YES, IF I COULD HAVE A SECOND I'LL FIND MY --

4 Q. SURE.

5 WE'VE PUT IT ON YOUR SCREEN FOR YOU TO YOUR RIGHT,
6 TOO, DOCTOR. SO EITHER WAY.

7 A. ALL RIGHT. GIVE ME A SECOND HERE.

8 OKAY. NOW, WHAT PAGE?

9 Q. PAGE SIX, PARAGRAPH 16.

10 A. PAGE SIX.

11 AND PARAGRAPH 16, YOU SAID?

12 Q. YES.

13 A. OKAY.

14 Q. AND YOU'RE TALKING ABOUT THAT EXAM ROOM.

15 A. YES.

16 Q. THAT IT WAS ONLY ACCESSIBLE FROM THE BATHROOM. DO YOU
17 REMEMBER THAT?

18 A. YES. YES.

19 Q. IN AND OF ITSELF, THE LOCATION OF THAT EXAM ROOM WAS NOT THE
20 CAUSE OF CONSTITUTIONALLY-INADEQUATE HEALTHCARE IN YOUR OPINION,
21 WAS IT?

22 A. YOU MEAN, THROUGHOUT THE SYSTEM?

23 YOU'RE TALKING ABOUT --

24 Q. I'LL ASK IT AGAIN. I'LL ASK THE QUESTION AGAIN.

25 A. OKAY.

1 Q. IN AND OF ITSELF, THE LOCATION OF THE EXAM ROOM WAS NOT A
2 CAUSE OF CONSTITUTIONALLY-ADEQUATE (SIC) MEDICAL CARE IN YOUR
3 OPINION AT THAT FACILITY?

4 JUDGE KARLTON: THAT FACILITY.

5 THE WITNESS: CONSTITUTIONALLY INADEQUATE, YOU'RE
6 SAYING.

7 BY MR. MELLO:

8 Q. RIGHT.

9 A. NO. TAKEN IN ISOLATION, THAT, IN ITSELF, WOULDN'T
10 NECESSARILY ALWAYS CORRELATE WITH UNCONSTITUTIONAL CARE.

11 Q. AND, IN FACT, IT'S YOUR OPINION THAT
12 CONSTITUTIONALLY-ADEQUATE MEDICAL CARE COULD BE PROVIDED IN THAT
13 UNUSUAL SETTING IF PLAINTIFFS WERE SEEN TIMELY AND WITH
14 APPROPRIATE ASSESSMENT AND FOLLOWTHROUGH, CORRECT?

15 A. CORRECT.

16 Q. AND IN YOUR OPINION IN EVEN VERY ODD SETTINGS
17 CONSTITUTIONALLY-ADEQUATE MEDICAL CARE CAN BE DELIVERED IF
18 PATIENTS ARE SEEN WITH TIMELY AND APPROPRIATE ASSESSMENT AND
19 FOLLOWTHROUGH, CORRECT?

20 A. YES.

21 Q. IT'S FAIR TO SAY BASED UPON YOUR TOURS AT THE VARIOUS
22 PRISONS THAT THE LEVEL OF MEDICAL CARE BEING PROVIDED IN CDCR'S
23 PRISONS VARIES FROM UNIT TO UNIT WITHIN DIFFERENT PRISONS IN
24 CALIFORNIA'S SYSTEM, CORRECT?

25 A. YES.

1 Q. IN PREPARING YOUR FIRST REPORT IN NOVEMBER, 2007 -- AND LET
2 ME JUST STOP. ARE YOU HAVING A HARD TIME HEARING ME?

3 A. SOMETIMES. THE ACOUSTICS ARE NOT GREAT.

4 MR. SPECTER: WE ARE HAVING A HARD TIME.

5 MR. MELLO: I DON'T CARE ABOUT YOU GUYS.

6 THE WITNESS: GO AHEAD.

7 BY MR. MELLO:

8 Q. OKAY. SORRY, DOCTOR. IF I COULD JUST WALL OFF -- OKAY.

9 IN PREPARING YOUR NOVEMBER, 2007 REPORT, YOU REVIEWED
10 LETTERS PREPARED BY PLAINTIFFS' COUNSEL FOLLOWING TOURS THAT
11 THEY HAD DONE OF VARIOUS INSTITUTIONS, CORRECT?

12 A. THAT'S CORRECT.

13 Q. AND YOU ALSO REVIEWED THOSE POST-TOUR LETTERS IN PREPARING
14 YOUR SEPTEMBER, 2008 REPORT, CORRECT?

15 A. YES.

16 Q. IN YOUR -- ON PAGE 15 OF YOUR SEPTEMBER, 2008 REPORT, YOU
17 DISCUSS MULE CREEK STATE PRISON.

18 A. YES.

19 Q. OKAY. AND IN PREPARING THAT REPORT, YOU LOOKED AT CDCR'S
20 WEEKLY POPULATION REPORT FOR AUGUST 20, 2008, CORRECT?

21 A. I HONESTLY DON'T REMEMBER. IT MAY HAVE BEEN.

22 Q. I THINK IT MIGHT REFRESH YOUR RECOLLECTION IF YOU LOOK AT
23 THAT PAGE.

24 LET ME JUST BACK UP AND TRY TO SPEED IT UP HERE. DID
25 YOU UNDERSTAND THAT MULE CREEK STATE PRISON WAS OVER 215 PERCENT

1 OF DESIGN BED CAPACITY?

2 **A.** YES.

3 **Q.** OKAY. SO IN YOUR OPINION, MULE CREEK WAS SEVERELY
4 OVERCROWDED?

5 **A.** YES.

6 **Q.** ARE YOU AWARE THAT PLAINTIFFS' COUNSEL, MR. FAMA, PREPARED A
7 POST-TOUR REPORT FOLLOWING HIS TOUR OF MULE CREEK STATE PRISON
8 ON MARCH 4TH AND 5TH OF 2008?

9 **A.** YES.

10 **Q.** OKAY. AND WE SPOKE ABOUT THAT AT YOUR DEPOSITION ON THAT
11 SATURDAY IN CHICAGO, RIGHT?

12 **A.** YES. YES.

13 **Q.** AND THAT'S DEFENDANTS' EXHIBIT 1084, PAGE TWO. AND I'LL
14 PULL IT UP, AND IT WILL BE ON THE SCREEN THERE.

15 **A.** DO YOU HAVE A --

16 **Q.** IT WILL BE ON THE SCREEN, AND HE'LL BLOW IT UP FOR YOU.
17 OKAY?

18 AND IN THAT REPORT, IT READS THAT:

19 "MULE CREEK STATE PRISON'S COMPLIANCE WITH KEY
20 ACCESS TO CARE TIME FRAME REQUIREMENTS, INCLUDING FOR
21 REGISTERED NURSE TRIAGE AND PCP APPOINTMENTS,
22 INCLUDING CHRONIC CARE AS WELL AS FOR SPECIALTY CARE
23 IS GENERALLY VERY GOOD AT PRESENT TIME."

24 DO YOU SEE THAT?

25 **A.** YES.

1 Q. AND IT GOES ON TO SAY:

2 "CERTAIN EXCEPTIONS ARE MENTIONED BELOW. THIS IS
3 DUE TO, AMONG OTHER THINGS, DILIGENT EFFORTS BY
4 STAFF, INCLUDING THE SCHEDULERS, A RELATIVELY LARGE
5 NUMBER OF PCP'S ALLOWING AT TIMES FOR THE SCHEDULING
6 OF DOUBLE PCP LINES IN CLINICS AND THE LOW VACANCY
7 RATE AMONG RN'S," CORRECT?

8 A. YES.

9 Q. IN YOUR OPINION FROM THIS SUMMARY IT APPEARS THAT ACCESS TO
10 NEEDED MEDICAL CARE CAN BE PROVIDED IN EVEN SEVERELY OVERCROWDED
11 CONDITIONS, CORRECT?

12 A. ACCORDING TO THAT. WHEN I DO MY REVIEWS, I GENERALLY USE A
13 COMBINATION OF EXACTLY THAT TYPE OF SCHEDULING INFORMATION WITH
14 A SELECTED RECORD SAMPLE, WHICH IS THE VERIFICATION METHODOLOGY.

15 Q. OKAY.

16 A. AND I DON'T KNOW IF MR. FAMA USED THE RECORD METHODOLOGY.

17 Q. OKAY. DO YOU HAVE ANY REASON TO BELIEVE HE DID OR DID NOT?

18 A. I HAVE NO IDEA.

19 Q. OKAY.

20 SINCE THE PLATA RECEIVER WAS APPOINTED IN APRIL,
21 2006, IN YOUR OPINION THERE HAVE BEEN NUMEROUS IMPROVEMENTS IN
22 THE DELIVERY OF MEDICAL CARE IN THE PRISONS, CORRECT?

23 A. THAT'S MY UNDERSTANDING, YES.

24 Q. AND THERE HAVE BEEN IMPROVEMENTS IN THE DELIVERY OF MEDICAL
25 CARE IN CALIFORNIA PRISONS AT THE TIME YOU SIGNED YOUR NOVEMBER,

1 2007 REPORT, CORRECT?

2 **A.** YES.

3 **Q.** THE POST-TOUR LETTERS PREPARED BY PLAINTIFFS' COUNSEL WHICH
4 YOU REVIEWED IN CONNECTION WITH PREPARING YOUR NOVEMBER, 2007
5 REPORT, DOCUMENTED SOME OF THOSE IMPROVEMENTS, CORRECT?

6 **A.** YES.

7 **Q.** AND IN THEIR POST-TOUR LETTERS PLAINTIFFS DOCUMENTED
8 RESPONSIVENESS TO APPEALS, TIMELINESS OF APPOINTMENTS?

9 **A.** WHERE ARE YOU REFERRING TO NOW?

10 **Q.** I CAN TAKE YOU TO YOUR DEPOSITION, IF YOU WANT.

11 LET ME ASK YOU A QUESTION.

12 **A.** OKAY. IT WOULD BE HELPFUL, BECAUSE I'M NOT SURE --

13 **Q.** OKAY. LET ME ASK THE QUESTION, AND THEN YOU CAN TELL ME IF
14 YOU NEED YOUR RECOLLECTION REFRESHED.

15 **A.** OKAY.

16 **Q.** IN THEIR POST-TOUR LETTERS THAT YOU REVIEWED IN PREPARATION
17 OF YOUR REPORTS IN THIS CASE, PLAINTIFFS' COUNSEL DOCUMENTED
18 NUMEROUS IMPROVEMENTS IN RESPONSIVENESS AND APPEALS, TIMELINESS
19 OF APPOINTMENTS AND FILLING OF CLINICAL POSITIONS, CORRECT?

20 DO YOU REMEMBER TESTIFYING TO THAT?

21 **A.** I MAY HAVE. I WOULD REALLY PREFER SEEING THE DEPOSITION.

22 **Q.** OKAY. SURE.

23 **MR. MELLO:** LET'S PULL UP DAY ONE OF HIS DEPOSITION.

24 **THE WITNESS:** NOW, WHICH DEPOSITION WAS THIS?

25

1 BY MR. MELLO:

2 Q. LAST DECEMBER.

3 A. WELL, THE FIRST?

4 Q. YES.

5 A. THE FIRST DEPOSITION, OKAY.

6 Q. PAGE 70, LINE 25 THROUGH 71, LINE NINE, PLEASE.

7 MS. HARDY: WHICH DEPOSITION?

8 MR. MELLO: DECEMBER.

9 THE WITNESS: OKAY. I SEE LINE NINE.

10 BY MR. MELLO:

11 Q. OKAY. DO YOU WANT TO LOOK AT THOSE LINES THAT I JUST
12 MENTIONED TO SEE IF IT REFRESHES YOUR RECOLLECTION?

13 A. LINES NINE THROUGH?

14 Q. I'M SORRY. I THINK I SAID LINES --

15 JUDGE REINHARDT: THREE THROUGH NINE.

16 BY MR. MELLO:

17 Q. PAGE 70. 70, LINE 25.

18 A. 25, OKAY.

19 Q. THROUGH PAGE 71, LINE NINE.

20 A. OKAY.

21 JUDGE KARLTON: THAT'S NOT WHAT YOU'VE GOT UP.

22 MR. MELLO: PARDON ME?

23 JUDGE KARLTON: I SAY CURRENTLY THAT'S NOT WHAT
24 YOU'VE GOT UP.

25 OR IS IT? MAYBE IT IS.

1 **THE WITNESS:** 25 BEGINS WITH:

2 "DO YOU RECALL AS YOU SIT HERE TODAY ANY OF THE
3 IMPROVEMENTS THAT WERE IDENTIFIED IN ANY OF THOSE
4 POST-TOUR LETTERS?"

5 **JUDGE KARLTON:** OH, I SEE.

6 **BY MR. MELLO:**

7 **Q.** RIGHT. AND THEN, WHAT DID YOU ANSWER?

8 **A.** YES, I -- WHAT I STATED WAS:

9 "THERE WERE -- AND I CAN'T REMEMBER BY FACILITY
10 -- BUT THERE WERE IMPROVEMENTS WITH REGARD TO
11 RESPONSIVENESS IN APPEALS. THERE WERE IMPROVEMENTS
12 WITH REGARD TO TIMELINESS OF APPOINTMENTS IN SOME
13 INSTANCES. THERE WERE IMPROVEMENTS IN SOME INSTANCES
14 WITH REGARD TO STAFFING, YOU KNOW, FILLING POSITIONS,
15 THOSE KINDS OF THINGS."

16 **Q.** AND YOU BELIEVE THAT TO BE ACCURATE?

17 **A.** YES.

18 **Q.** OKAY. AND TRUE, TO THE EXTENT THEY ARE DIFFERENT.

19 NOW, THAT' MY -- I'LL WITHDRAW THAT QUESTION.

20 **A.** OKAY.

21 **Q.** IN NOVEMBER, 2007 YOU SAID AT THE TIME YOU SIGNED THAT
22 REPORT YOU WERE AWARE THAT THE NUMBER OF BOARD-CERTIFIED,
23 BOARD-ELIGIBLE PHYSICIANS HAD INCREASED, CORRECT?

24 **A.** YES.

25 **Q.** IN YOUR OPINION, IMPROVED CREDENTIALS OF PHYSICIANS

1 GENERALLY MEANS IMPROVED COMPETENCE, CORRECT?

2 **A.** CORRECT.

3 **Q.** OTHER IMPROVEMENTS THAT YOU HAVE OBSERVED INCLUDE AN
4 IMPROVEMENT IN NURSE STAFFING FILLED POSITIONS, CORRECT?

5 **A.** CORRECT.

6 **Q.** YOU ARE AWARE -- BECAUSE YOU WERE ASKED ABOUT IT AT YOUR
7 DEPOSITION, I BELIEVE -- BUT YOU ARE AWARE THAT THE RECEIVER HAS
8 REPORTED THAT THE GOAL OF FILLING 90 PERCENT OF REGISTERED NURSE
9 POSITIONS HAS BEEN ACHIEVED AT 22 INSTITUTIONS, CORRECT?

10 **A.** I KNOW THEY ARE VERY CLOSE. I FORGET WHAT THE TOTAL WAS, BUT
11 THAT SOUNDS ABOUT RIGHT.

12 **Q.** AND DOES IT ALSO SOUND ABOUT RIGHT THAT SYSTEM-WIDE HE WAS
13 WITHIN 2 PERCENT OF HIS STATED GOAL OF FILLING 90 PERCENT OF
14 NURSING POSITIONS?

15 **A.** EXCUSE ME. IS THAT IN ONE OF THE RECENT STAFFING REPORTS
16 THEY PRODUCED?

17 **Q.** YES.

18 MY QUESTION IS: DO YOU BELIEVE THAT TO BE TRUE OR
19 NOT?

20 **A.** IF IT'S IN THE THEIR REPORT, I BELIEVE IT TO BE TRUE.

21 **JUDGE KARLTON:** THE QUESTION IS WHETHER YOU YOURSELF
22 BELIEVE IT. AND YOU DON'T KNOW; IS THAT RIGHT?

23 **THE WITNESS:** CORRECT.

24 **BY MR. MELLO:**

25 **Q.** RIGHT. YOU ARE AWARE THAT THE RECEIVER HAS --

1 **MR. MELLO:** STRIKE THAT.

2 **BY MR. MELLO:**

3 **Q.** THE RECEIVER, YOU BELIEVE, HAS AT LEAST CLOSELY REACHED
4 90 PERCENT FILLED REGISTERED NURSING RATES AT APPROXIMATELY 22
5 INSTITUTIONS, CORRECT? SOMEWHERE IN THAT NEIGHBORHOOD?

6 **A.** I'M NOT SURE, BUT IF IT'S IN THE REPORT I CERTAINLY BELIEVE
7 IT.

8 **Q.** LET ME ASK IT THIS WAY: ARE YOU AWARE THAT THE RECEIVER HAS
9 HIRED MORE THAN 1400 DOCTORS AND NURSES SINCE JULY, 2007?

10 **A.** I BELIEVE I SAW THAT IN SOME DOCUMENT THAT THEY PRODUCED.

11 **Q.** AND YOU AGREED THAT THAT WAS TRUE IN YOUR DEPOSITION IN
12 CHICAGO, CORRECT?

13 **A.** YES.

14 **Q.** AND THERE'S A NATIONWIDE SHORTAGE OF REGISTERED NURSES,
15 CORRECT?

16 **A.** YES.

17 **Q.** AND IT'S SEVERE, CORRECT?

18 **A.** I'M SORRY?

19 **Q.** IT'S A SEVERE SHORTAGE OF REGISTERED NURSES, CORRECT?

20 **A.** YES.

21 **Q.** THEREFORE, THE HIRING OF THAT MANY REGISTERED NURSES AND
22 DOCTORS SINCE JULY, 2007 IS QUITE IMPRESSIVE, ISN'T IT?

23 **A.** YES, IT IS.

24 **Q.** IN YOUR OPINION, THE HIRING OF MORE THAN 1400 DOCTORS AND
25 NURSES SINCE JULY, 2007 WILL IMPROVE THE DELIVERY OF MEDICAL

1 CARE TO CALIFORNIA'S INMATE PATIENTS, CORRECT?

2 **A.** IT WILL, WITH THE CAVEAT THAT WAS INTRODUCED, I BELIEVE, IN
3 THE DEATH SUMMARY THAT THERE'S CONCERN ABOUT THE POTENTIAL FOR
4 PEOPLE NOT TO BE RETAINED IF THE ENVIRONMENT AND INFRASTRUCTURE
5 ARE NOT DEALT WITH EXPEDITIOUSLY.

6 **Q.** AND YOU SPOKE ABOUT THAT VERY ISSUE IN ONE OR BOTH OF YOUR
7 REPORTS, CORRECT?

8 **A.** THAT'S CORRECT.

9 **Q.** AND WE WILL GET TO THAT PORTION OF YOUR REPORT LATER --

10 **A.** OKAY.

11 **Q.** -- IN CROSS, OKAY?

12 **A.** OKAY.

13 **Q.** I PROMISE.

14 YOU HAVE SPOKEN WITH THE CHIEF MEDICAL OFFICER,
15 DOCTOR -- AT FOLSOM PRISON -- DR. KAGAN AS RECENTLY AS AUGUST,
16 2008, CORRECT?

17 **A.** I SAW HER IN OCTOBER AT THE NATIONAL COMMISSION CONFERENCE.
18 WE TALKED THEN.

19 **Q.** AND YOU ALSO SPOKE TO HER IN AUGUST, CORRECT?

20 **A.** I THINK SO.

21 **Q.** OKAY. AND YOU, AS I, RESPECT HER AS A PHYSICIAN AND PERSON
22 RIGHT?

23 **A.** YES.

24 **Q.** YOU BELIEVE HER TO BE A COMPETENT, QUALIFIED PHYSICIAN,
25 CORRECT?

1 A. YES.

2 Q. AND AT THE TIME YOU SPOKE TO HER IN AUGUST OF 2008, DR.
3 KAGAN INDICATED THAT SHE HAD MADE IMPROVEMENTS AND CHANGES AT
4 FOLSOM, AND THEY WERE TRYING TO LEARN NEW WAYS TO IMPROVE AND
5 PROVIDE QUALITY CARE TO INMATES MORE EFFICIENTLY, CORRECT?

6 A. CORRECT.

7 Q. AND YOU UNDERSTOOD IN TALKING TO DR. KAGAN IN AUGUST OF
8 2008, THAT SHE FELT WITH HER TEAM THAT SHE HAD BEEN ABLE TO MAKE
9 SIGNIFICANT IMPROVEMENTS IN THE QUALITY OF CARE BEING RECEIVED
10 BY INMATE PATIENTS AT FOLSOM, CORRECT?

11 A. YES.

12 Q. IN AUGUST, 2008 YOU VISITED SOLANO PRISON, CORRECT?

13 A. CORRECT.

14 Q. THE MEDICAL STAFF AT SOLANO DESCRIBED IMPROVEMENTS IN THE
15 DELIVERY OF MEDICAL CARE SINCE THE APPOINTMENT OF THE RECEIVER
16 TO YOU, CORRECT?

17 A. CORRECT.

18 Q. AT SOLANO THE MEDICAL STAFF REPORTED IMPROVED PHYSICIAN
19 STAFFING; IMPROVED PHYSICIAN AND NURSE STAFFING, CORRECT?

20 A. CORRECT.

21 Q. AND IMPROVED COORDINATION WITH CUSTODY, CORRECT?

22 A. CORRECT.

23 Q. AND THE CREATION OF ALTERNATIVE SOMETIMES CREATIVE CLINICAL
24 SPACE, CORRECT?

25 A. YES.

1 Q. YOU'RE AWARE THAT THE RECEIVER -- AND I BELIEVE YOU
2 TESTIFIED TO IT ON DIRECT -- HAS IMPLEMENTED A FORMAL DEATH
3 REVIEW PROCESS.

4 A. YES.

5 Q. AND IN YOUR OPINION A LEGITIMATE DEATH REVIEW PROCESS WILL
6 IMPROVE THE QUALITY OF CARE THAT CDCR DELIVERS TO INMATE
7 PATIENTS, CORRECT?

8 A. AS LONG AS IT'S USED IN THAT WAY. AND IT APPEARS FROM THE
9 DEATH SUMMARY THAT THAT'S WHAT THEY INTEND TO DO.

10 Q. AN EFFECTIVE AND UTILIZED DEATH REVIEW PROCESS IMPROVES
11 QUALITY OF CARE, CORRECT?

12 A. YES, IT CAN.

13 Q. AND IT'S YOUR TESTIMONY THAT YOU'VE REVIEWED THE RECEIVER'S
14 MOST RECENT ANALYSIS OF 2007 DEATHS, CORRECT?

15 A. CORRECT.

16 Q. AND YOU ALSO TESTIFIED EARLIER IN YOUR DEPOSITION THAT YOU
17 REVIEWED THE 2006 -- THE ANALYSIS OF 2006 DEATH REVIEWS,
18 CORRECT?

19 A. YES.

20 Q. AND IN THAT REPORT, THE 2006 REPORT, WHICH IS DEFENDANTS'
21 EXHIBIT 1107, THE RECEIVER REPORTED THAT THERE WERE SIX ASTHMA
22 DEATHS THAT ARE WERE PREVENTABLE IN 2006, CORRECT?

23 A. CORRECT.

24 Q. DO YOU UNDERSTAND IN REVIEWING THE 2007 DEATH REVIEW REPORT
25 THAT THERE WERE ZERO PREVENTABLE DEATHS DUE TO ASTHMA-RELATED

1 ISSUES IN 2007?

2 **A.** CORRECT.

3 **Q.** YOU'VE SPOKEN ABOUT "POSSIBLY PREVENTABLE" AND
4 "PREVENTABLE," AND THOSE ARE DEFINED IN THE 2007 DEATH REPORT,
5 CORRECT?

6 **A.** CORRECT.

7 **Q.** THE 2007 DEATH REPORT DEFINES "POSSIBLY PREVENTABLE" AS A
8 DEATH THAT IN THE JUDGMENT OF THE REVIEWER BETTER MEDICAL
9 MANAGEMENT OR A BETTER SYSTEM OF CARE MAY HAVE PREVENTED THE
10 PATIENT'S DEATH, CORRECT?

11 **A.** RIGHT.

12 **Q.** IT USES THE WORD "MAY HAVE." DOES THAT MEAN IT'S MORE OR
13 LESS LIKELY THAN NOT THAT BETTER CARE WOULD HAVE PREVENTED THE
14 DEATH, OR CAN YOU TELL?

15 **A.** I HAVE NOT TALKED WITH ANY OF THE PEOPLE WHO PARTICIPATED IN
16 THE DEATH REVIEW PROCESS, SO I REALLY CAN'T ANSWER THAT.

17 **Q.** IT USES THE TERM "PREVENTABLE," AND IT DEFINES "PREVENTABLE"
18 IN THAT REPORT, AS WELL. IT DEFINES A PREVENTABLE DEATH OR THE
19 DEFINITION OF "PREVENTABLE" IS:

20 "IN THE JUDGMENT OF THE REVIEWER BETTER
21 MEDICAL MANAGEMENT OR A BETTER SYSTEM OF CARE WOULD
22 LIKELY HAVE PREVENTED THE PATIENT'S DEATH," CORRECT?

23 **A.** YES, THAT'S CORRECT.

24 **Q.** SO THAT MEANS IT'S MORE LIKELY THAN NOT THAT BETTER CARE
25 WOULD HAVE PREVENTED THE PATIENT'S DEATH, CORRECT?

1 A. CORRECT.

2 Q. AND THAT'S VERSUS MAY HAVE PREVENTED THE PATIENT'S DEATH,
3 WHICH IS DEFINED AS "POSSIBLY PREVENTABLE," CORRECT?

4 A. CORRECT.

5 Q. SO YOU DON'T KNOW WHETHER OR NOT OF THOSE POSSIBLY
6 PREVENTABLE DEATHS IDENTIFIED IN THE RECEIVER'S REPORT THAT ANY
7 OF THEM WOULD HAVE OCCURRED, CORRECT? WOULD NOT HAVE OCCURRED
8 WITH BETTER CARE, CORRECT?

9 A. CAN YOU REDO THAT QUESTION?

10 Q. SURE. YOU BELIEVE THAT -- YOU UNDERSTAND THAT THE TERM
11 "PREVENTABLE" AND "POSSIBLY PREVENTABLE" ARE BEING USED
12 DIFFERENTLY IN THE REPORT, CORRECT?

13 A. YES.

14 Q. AND "PREVENTABLE" USES THE TERM "WOULD LIKELY," CORRECT?

15 A. YES.

16 Q. DOES THAT MEAN TO YOU OR DO YOU UNDERSTAND THAT TO MEAN THAT
17 THE DEATH WOULD HAVE MORE LIKELY THAN NOT OCCURRED WITH BETTER
18 CARE AND, THEREFORE, IT'S DEEMED PREVENTABLE?

19 A. THE DEATH MORE LIKELY WOULD NOT HAVE OCCURRED.

20 Q. WITH BETTER CARE.

21 A. CORRECT.

22 Q. AND THAT WOULD BE A PREVENTABLE DEATH?

23 A. CORRECT.

24 Q. CAN YOU SAY THE SAME THING WITH RESPECT TO THE DEFINITION OF
25 "POSSIBLY PREVENTABLE"?

1 **A.** NO, I THINK THE CONCLUSION SUGGESTS LESS CLARITY WITH REGARD
2 TO THE PREDICTABILITY OF THE DEATH.

3 **Q.** IN FACT, IT SUGGESTS THAT IT'S LESS LIKELY THAN NOT THAT THE
4 DEATH COULD HAVE BEEN PREVENTED, CORRECT?

5 **A.** SO --

6 **MS. HARDY:** OBJECTION, YOUR HONOR.

7 **THE WITNESS:** -- I'M A LITTLE CONFUSED BY THE
8 QUESTION, AGAIN.

9 **MS. HARDY:** OBJECTION, YOUR HONOR. DR. SHANSKY HAS
10 STATED THAT HE HAS NOT SPOKEN TO THE PEOPLE WHO HAVE WRITTEN
11 THIS REPORT ABOUT THEIR CRITERIA, AND HE'S ANSWERED THAT
12 QUESTION.

13 **MR. MELLO:** I HAVE TWO RESPONSES TO THAT, IF I MAY.

14 **JUDGE HENDERSON:** WELL, LET ME JUST -- ANSWER THE
15 QUESTION AS IT'S POSED TO YOU.

16 **THE WITNESS:** CAN YOU READ IT BACK TO ME?

17 **BY MR. MELLO:**

18 **Q.** SURE.

19 THE "POSSIBLY PREVENTABLE" DEFINITION SAYS THAT
20 BETTER CARE MAY HAVE PREVENTED THE PATIENT'S DEATH, CORRECT?

21 **A.** CORRECT.

22 **Q.** AND "MAY HAVE" SUGGESTS THAT IT'S NOT MORE LIKELY THAN NOT
23 THAT BETTER CARE WOULD HAVE PREVENTED THE DEATH, BUT LESS LIKELY
24 THAN NOT THAT BETTER CARE WOULD HAVE PREVENTED THE DEATH,
25 CORRECT?

1 **JUDGE KARLTON:** ARE YOU ASKING THIS AS A QUESTION OF
2 ENGLISH OR A QUESTION OF --

3 **MR. MELLO:** I'M ASKING HIM HIS UNDERSTANDING BASED
4 UPON HIS EXPERIENCE WHOSE DONE -- AND HE'S GOT AN UNDERSTANDING
5 OF THE TERM "POSSIBLY PREVENTABLE."

6 **THE WITNESS:** I DON'T THINK I WOULD SAY "LESS
7 LIKELY." I WOULD INTERPRET IT AS FIFTY-FIFTY.

8 **BY MR. MELLO:**

9 **Q.** OKAY. BUT, AGAIN, YOU HAVEN'T HAD THE OPPORTUNITY TO SPEAK
10 TO THE RECEIVER?

11 **A.** CORRECT.

12 **Q.** OR DR. IMAI WHO AUTHORED THE REPORT, CORRECT?

13 **A.** CORRECT.

14 **Q.** AND HE WILL NOT BE TESTIFYING AT THIS TRIAL, CORRECT?

15 **A.** I DON'T KNOW.

16 **Q.** YOU ARE AWARE THAT IN THE RECEIVER'S NINTH QUARTERLY REPORT,
17 THE RECEIVER STATED THAT:

18 "PRISONER -- THE PRISONER DEATH RATE IN
19 CALIFORNIA'S PRISONS HAS TRENDED DOWNWARD IN THE LAST
20 10 QUARTERS STARTING IN JANUARY 1, 2006," CORRECT?

21 **A.** THAT'S IN THE DEATH REVIEW SUMMARY, THE MORE RECENT DEATH
22 REVIEW SUMMARY. IS THAT WHAT YOU'RE --

23 **Q.** I BELIEVE IT'S IN THE NINTH QUARTERLY REPORT, AS WELL.

24 **A.** OKAY.

25 **Q.** DO YOU BELIEVE THAT TO BE TRUE?

1 **A.** I'M SORRY?

2 **Q.** DO YOU BELIEVE THAT THE DEATH RATE HAS TRENDED DOWN IN THE
3 LAST 10 QUARTERS STARTING IN JANUARY 1, 2006?

4 **A.** YES.

5 **Q.** OKAY. AND YOU AGREE WITH THE RECEIVER THAT THE DOWNWARD
6 TREND IN MORTALITY RATES IS RELATED, IN PART, TO AN INFLUX OF
7 NEW PHYSICIANS AND NURSES, CORRECT?

8 **A.** CORRECT.

9 **Q.** AND IN YOUR OPINION, THE DOWNWARD TREND IS VERY ENCOURAGING
10 WITH RESPECT TO WHETHER AND WHEN CONSTITUTIONALLY-ADEQUATE
11 MEDICAL CARE CAN BE PROVIDED SYSTEM-WIDE, CORRECT?

12 **A.** CORRECT.

13 **Q.** IN YOUR OPINION, WHILE NOT THE ONLY FACTOR, MORTALITY RATE
14 IS AN IMPORTANT FACTOR RELATED TO A CONSTITUTIONAL SYSTEM OF
15 PRISON MEDICAL CARE, CORRECT?

16 **A.** IT'S A SIGNIFICANT FACTOR, YES.

17 **Q.** AND ARE YOU AWARE THAT IN A REPORT DONE BY THE DEPARTMENT OF
18 JUSTICE THAT CALIFORNIA RANKED IN THE TOP 15 WITH RESPECT TO
19 DEATH RATES NATIONWIDE SYSTEM-WIDE?

20 **A.** YES, I'VE HEARD THAT.

21 **Q.** AND ARE YOU AWARE THAT PENNSYLVANIA RANKED IN THE BOTTOM
22 FIVE?

23 **A.** I DON'T RECALL LOOKING AT PENNSYLVANIA, BUT I DID SEE THE
24 DOCUMENT. IT'S -- THE ONE I SAW WAS SEVERAL YEARS OLD.

25 **Q.** IT WAS FROM ANALYSIS FROM EVEN BEFORE THE RECEIVER, CORRECT?

1 **A.** CORRECT.

2 **Q.** AND IT SHOWED THAT CALIFORNIA WAS WELL BELOW NATIONAL
3 AVERAGES, CORRECT?

4 **A.** YES.

5 **Q.** AND IT SHOWED THAT CALIFORNIA WAS WELL BELOW REGIONAL
6 AVERAGES, CORRECT?

7 **A.** I BELIEVE SO, YES.

8 **Q.** AND THAT WAS, AGAIN, PRIOR TO THE APPOINTMENT OF THE PLATA
9 RECEIVER?

10 **A.** YES.

11 **Q.** IN YOUR OPINION -- AND I BELIEVE YOU TESTIFIED TO THIS -- IT
12 IS POSSIBLE THAT SOME UNITS IN CALIFORNIA'S PRISONS ARE
13 CURRENTLY PROVIDING CONSTITUTIONAL LEVELS OF CARE TO INMATE
14 PATIENTS, CORRECT?

15 **A.** THAT'S POSSIBLE.

16 **Q.** IN YOUR NOVEMBER 7 -- NOVEMBER, 2007 REPORT, AT PAGES FOUR
17 AND FIVE, PARAGRAPH 12 -- AND I DON'T QUOTE IT, SO I SUMMARIZE
18 IT. BUT WE WILL PULL IT UP FOR YOU.

19 YOU NOTE THAT THE RECEPTION CENTER SCREENING AT CIM
20 IS TOO SMALL, AND EACH ROOM IS SEPARATED ONLY BY A THIN WHITE
21 FABRIC FOLDING SCREEN.

22 DO YOU REMEMBER THAT?

23 **A.** YES.

24 **Q.** TAKE YOUR TIME GETTING THERE. DO YOU REMEMBER THAT?

25 **A.** YES, I DO.

1 Q. OKAY. IN YOUR OPINION, THAT PARTICULAR SPACE ISSUE COULD BE
2 ADDRESSED BY PROVIDING A MORE APPROPRIATELY-DESIGNED SCREENING
3 AREA, CORRECT?

4 A. YES.

5 Q. AND IT WOULDN'T NECESSARILY REQUIRE THE REDUCTION IN THE
6 PRISON POPULATION, CORRECT?

7 A. WITH REGARD TO THE USE OF THAT SPACE AND HAVING TWO PEOPLE
8 SIMULTANEOUSLY?

9 Q. YES.

10 A. YES, YOU COULD ADDRESS THAT BY CHANGING THE SPATIAL
11 ARRANGEMENTS.

12 Q. WITHOUT THE RELEASE OF PRISONERS, CORRECT?

13 A. YES, THAT'S CORRECT.

14 Q. ON PAGE FIVE OF YOUR REPORT IN NOVEMBER -- PARAGRAPH 13 --
15 IN NOVEMBER, 2007, YOU STATE THAT KERN VALLEY STATE PRISON IS
16 EMBLEMATIC OF INADEQUATE CLINICAL SPACE.

17 DO YOU REMEMBER SAYING THAT?

18 A. WHAT PARAGRAPH?

19 Q. PARAGRAPH 13. I BELIEVE IT'S PAGE FIVE.

20 IT'S ALSO ON THE SCREEN, DOCTOR.

21 A. YES, I SEE IT.

22 Q. IN YOUR OPINION, NEW CONSTRUCTION OR MODULE SPACES COULD
23 ASSIST IN ALLEVIATING THAT PROBLEM, CORRECT?

24 A. YES, THE SPACE ISSUE COULD BE ADDRESSED BY NEW SPATIAL
25 CONFIGURATIONS.

1 Q. IN FACT, ALTERNATIVES FOR CREATING ADDITIONAL HEALTHCARE
2 SPACE COULD INCLUDE THE RENTAL OF TRAILERS, USE OF MODULARS, OR
3 PREFABRICATED BUILDINGS, OR SIMPLY FIXING CURRENT SPACE,
4 CORRECT?

5 A. I DON'T KNOW ABOUT FIXING THE CURRENT SPACE, BUT THE OTHER
6 OPTIONS ARE CERTAINLY POSSIBILITIES.

7 Q. OKAY.

8 IN YOUR OPINION, THE MANAGEMENT AND MAINTENANCE OF
9 MEDICAL RECORDS HAS BEEN A PROBLEM AT CDCR, CORRECT?

10 A. YES.

11 Q. AND IT'S YOUR UNDERSTANDING THAT MANY PRISONS' MEDICAL
12 DEPARTMENTS NOW OPERATE AT LEAST TWO SHIFTS, CORRECT?

13 A. YES.

14 Q. OKAY. AND THAT'S A MAJOR IMPROVEMENT IN YOUR OPINION,
15 CORRECT?

16 A. YES, THAT WOULD ALLOW THEM TO UTILIZE MORE STAFF IN ORDER TO
17 GET THE JOB DONE.

18 Q. AND IN YOUR OPINION, MEDICAL RECORDS CAN BE IMPROVED WITH
19 MORE SHIFTS, CORRECT?

20 A. YES.

21 Q. AND IN YOUR OPINION MEDICAL RECORDS COULD BE IMPROVED WITH
22 MORE MEDICAL RECORD STAFF, CORRECT?

23 A. CORRECT.

24 Q. YOU VISITED PLEASANT VALLEY STATE PRISON IN AUGUST OF 2007,
25 CORRECT?

1 PARDON ME, 2008.

2 **A.** 2008, I BELIEVE, RIGHT.

3 **Q.** TRIED TO TRICK YOU. NO, I'M SORRY.

4 SO YOU VISITED THAT PRISON IN AUGUST OF 2008, AND YOU
5 NOTED THAT SEVERAL INMATES FAILED TO RECEIVE FOLLOW-UP WITH A
6 PRIMARY CARE PHYSICIAN, CORRECT?

7 **A.** THAT'S CORRECT.

8 **Q.** IN YOUR OPINION, ONE POTENTIAL FIX FOR THAT PROBLEM WOULD BE
9 INCREASING STAFFING, CORRECT?

10 **A.** WELL, STAFFING ALONE IS NOT GOING TO FIX THAT. YOU HAVE TO
11 PUT IN THE SYSTEMS TO ENSURE THAT THE SCHEDULING TAKES PLACE;
12 THAT THEIR DOCUMENTS FROM THE OFFSITE ENCOUNTERS ARE AVAILABLE
13 AND REVIEWED SO IT'S A MULTIFACTORIAL PROBLEM THAT HAS TO BE
14 ADDRESSED IN ORDER TO FIX IT.

15 **Q.** BUT ONE COMPONENT OF THAT MULTIFACTORIAL PROBLEM IS
16 PHYSICIAN STAFFING, CORRECT?

17 **A.** YES.

18 **Q.** AND IN YOUR OPINION, THOSE OTHER FACTORS THAT YOU MENTION
19 WOULD CONTRIBUTE TO THE FIX OF THAT PARTICULAR PROBLEM, CORRECT?

20 **A.** YES.

21 **Q.** AS WOULD ADDITIONAL CLINICAL SPACE AT PLEASANT VALLEY STATE
22 PRISON?

23 **A.** YES.

24 **Q.** IN YOUR OPINION, YOU EXPECT THAT THE RECEIVER WILL USE
25 ADDITIONAL HIRINGS, TEMPORARY SPACE, PERMANENT SPACE, ELECTRONIC

1 MEDICAL RECORDS AND INCREASED STAFF TO DEAL WITH PAPER RECORDS
2 TO ADDRESS INCREASED POPULATION, CORRECT?

3 **A.** YES, THE RECEIVER CAN USE ALL OF THOSE TOOLS.

4 **Q.** IN YOUR OPINION, THE ADJUSTMENT OF THE MEDICAL
5 CLASSIFICATION SYSTEM IS ALSO A POSSIBLE SOLUTION TO THE
6 STAFFING ISSUES AT SOME OF THE REMOTE PRISONS, CORRECT?

7 **A.** YES, IF YOU'RE TALKING ABOUT, IN ESSENCE, KIND OF TRIAGING
8 PATIENTS WITH MORE CLINICAL ISSUES TO FACILITIES THAT HAVE MORE
9 INTENSE MEDICAL RESOURCES.

10 **Q.** AND ANOTHER POTENTIAL FIX OR PARTIAL FIX TO PROBLEMS AT
11 REMOTE PRISONS WOULD BE INCREASED USE OF TELEMEDICINE, CORRECT?

12 **A.** YES.

13 **Q.** YOU ARE AWARE THAT IN THE FINDINGS OF FACT AND CONCLUSIONS
14 OF LAW APPOINTING THE RECEIVER IN THIS CASE THE PLATA COURT
15 STATED THAT, QUOTE:

16 "THE PROVISION OF ADEQUATE MEDICAL CARE IN THIS
17 SITUATION PRESENTS A CLASSIC EXAMPLE OF A POLYCENTRIC
18 PROBLEM," END QUOTE.

19 YOU'RE AWARE OF THAT, RIGHT?

20 **A.** I BELIEVE SO. THAT WAS AWHILE AGO.

21 **Q.** AND DO YOU AGREE THAT IT'S A POLYCENTRIC PROBLEM?

22 **A.** I THINK IT WAS AT THAT TIME, YES.

23 **Q.** YOU BELIEVE IT IS TODAY?

24 **A.** WELL, AT THIS POINT IN TIME, I THINK CONDITIONS HAVE
25 CHANGED. THEY HAVE CHANGED WITH THE ADVENT OF THE RECEIVER. AND

1 THE CHANGES -- AND, AGAIN, THIS COMES PARTLY FROM MY
2 EXPERIENCE -- THE RECEIVER -- THE RECEIVER HAS A SET OF TOOLS
3 TO, IN ESSENCE, CREATE A NEW SYSTEM.

4 THE RECEIVER DOES NOT HAVE A TOOL THAT DIRECTLY
5 ADDRESSES CROWDING. INSTEAD, WHAT THE RECEIVER IS LEFT TO DO IS
6 DO -- USE A BUNCH OF TOOLS IN A VARIETY OF WAYS BECAUSE OF THE
7 STRESSES PUT ON THE SYSTEM BY OVERCROWDING. AND AS A RESULT, THE
8 LONGEVITY OF THE RECEIVERSHIP WILL UNQUESTIONABLY -- I CAN SAY
9 THIS WITH A HUNDRED PERCENT CERTAINTY -- THE LONGEVITY OF THE
10 RECEIVERSHIP WILL BE EXTENDED IF CROWDING ISN'T ADDRESSED AND
11 ADDRESSED DIRECTLY AND SIGNIFICANTLY.

12 AND THE END RESULT IS THAT THE RECEIVER'S ABILITY TO
13 FIX THINGS WILL BE SUBSTANTIALLY DELAYED AND, THEREFORE, WHAT
14 WILL OCCUR AS A CONSEQUENCE IS UNNECESSARY, AVOIDABLE SUFFERING,
15 HOSPITALIZATIONS AND POTENTIALLY DEATHS. AND THAT'S THE IMPACT
16 OF CROWDING ON THE RECEIVER'S ABILITY TO SOLVE THINGS USING HIS
17 TOOLS.

18 Q. SO, IN SUMMARY, IT WILL TAKE THE RECEIVER LONGER IF
19 CROWDING ISN'T ADDRESSED, IN YOUR OPINION?

20 A. SUBSTANTIALLY LONGER.

21 Q. IN FACT, I BELIEVE AT THE TIME OF YOUR DEPOSITION YOU
22 COULDN'T TELL US HOW MUCH SHORTER IT WOULD BE WITH POPULATION
23 REDUCTION MEASURES, CORRECT?

24 A. IT DEPENDS ON THE DEGREE OF POPULATION REDUCTION. BUT I
25 COULD -- I WAS THINKING ABOUT THIS PRIOR TO MY TESTIMONY. AND

1 GIVEN THE RECEIVER'S ABILITIES TO USE THOSE TOOLS AS
2 DEMONSTRATED THUS FAR, IF THE POPULATION WERE REDUCED TO -- I
3 DON'T KNOW -- LET'S SAY A HUNDRED THOUSAND TOTAL -- AND I'VE
4 BEEN THINKING ABOUT THIS -- I BELIEVE THAT THE MAJORITY OF
5 PRISONS WOULD BE CONSTITUTIONAL WITHIN THREE YEARS.

6 **Q.** SO EVEN WITH A REDUCTION IN POPULATION OF 56,000 INMATES
7 IT WOULD TAKE THREE YEARS, IN YOUR OPINION, TO HAVE 17 OF THE
8 INSTITUTIONS IN CONSTITUTIONAL COMPLIANCE?

9 **A.** WELL, IT'S POSSIBLE THE RECEIVER COULD, IN SOME INSTANCES,
10 GO MORE RAPIDLY IN ACHIEVING THOSE GOALS. BUT GIVEN MY
11 UNDERSTANDING OF THE PLANS WITH REGARDS TO I.T. AND SOME OF THE
12 OTHER ISSUES, I THINK THAT'S COMPLETELY REASONABLE.

13 AND MAYBE IT WOULD BE TWO-THIRDS OR THREE-QUARTERS
14 WOULD BE CONSTITUTIONAL WITHIN THREE YEARS.

15 THERE'S NO QUESTION THAT WITH REGARD TO HIRING, FOR
16 INSTANCE, THERE'S BEEN A SIGNIFICANT IMPROVEMENT.

17 **Q.** AND THOSE ITEMS IN HIS TOOLBOX THAT ARE SEPARATE AND APART
18 FROM OVERCROWDING, THOSE ARE SOME OF THE INTERRELATED COMPONENTS
19 TO THE DELIVERY OF A CONSTITUTIONAL -- THE DELIVERY OF
20 CONSTITUTIONALLY-ADEQUATE MEDICAL CARE?

21 **A.** YES.

22 **Q.** AND WAS THE SYSTEM OVERCROWDED IN 2005?

23 **A.** WAS THE SYSTEM OVERCROWDED? I DON'T HAVE THE NUMBERS.

24 **Q.** DO YOU KNOW IF IT WAS OVERCROWDED WHEN YOUR DEPOSITION WAS
25 TAKEN IN DECEMBER OF 2007?

1 **A.** YES.

2 **Q.** WAS IT OVERCROWDED WHEN I TOOK YOUR DEPOSITION IN DECEMBER
3 OF 2007, AND YOU TOLD ME THAT THE DELIVERY OF MEDICAL CARE IN
4 CALIFORNIA'S PRISONS WAS A POLYCENTRIC PROBLEM?

5 **A.** THAT'S IN WHICH DEPOSITION?

6 **Q.** IN YOUR DECEMBER DEPOSITION. DO YOU REMEMBER --

7 **A.** DECEMBER '07?

8 **Q.** CORRECT.

9 **A.** OKAY. LET HELP JUST QUICKLY.

10 **Q.** AND WHY DON'T WE JUST PULL IT UP? PAGE 88, LINES 20 THROUGH
11 24.

12 **A.** THIS WAS AT THE TIME OF THE -- THIS IS PRIOR TO THE
13 RECEIVER.

14 **Q.** OKAY.

15 **A.** YES.

16 **Q.** SO YOU AGREE?

17 **A.** YES.

18 **Q.** OKAY.

19 **A.** AT THAT TIME.

20 **JUDGE REINHARDT:** CAN I ASK YOU A QUESTION ON THAT?

21 **THE WITNESS:** YES.

22 **JUDGE REINHARDT:** WHAT DOES THE TERM "POLYCENTRIC
23 PROBLEM" MEAN?

24 **THE WITNESS:** WELL, FROM THE WAY I INTERPRET IT, IT
25 CONNOTES A PROBLEM THAT HAS MULTIPLE SOURCES THAT ARE

1 SIMULTANEOUSLY IMPACTING IT.

2 **JUDGE REINHARDT:** IS IT POSSIBLE TO HAVE A
3 POLYCENTRIC PROBLEM WITH A PRIMARY CAUSE?

4 **THE WITNESS:** I THINK SO. I THINK SO.

5 **BY MR. MELLO:**

6 **Q.** JUST TO FOLLOW UP ON THAT POINT, THE DELIVERY OF MEDICAL
7 CARE IN CALIFORNIA'S PRISONS INVOLVES MULTIPLE INTERRELATED
8 COMPONENTS, CORRECT?

9 **A.** CORRECT.

10 **Q.** AND YOU'VE DISCUSSED SOME OF THOSE INTERRELATED COMPONENTS
11 ALREADY. YOU'VE DISCUSSED ADEQUATE NUMBER OF ADEQUATELY TRAINED
12 AND CREDENTIALLED PHYSICIANS, CORRECT?

13 **A.** CORRECT.

14 **Q.** APPROPRIATE NUMBER OF ASSISTANTS AND STAFF AND NURSES AND
15 RECORDS FOLKS, CORRECT?

16 **A.** CORRECT.

17 **Q.** AN ADEQUATE ENVIRONMENT WITHIN WHICH TO WORK, CORRECT?

18 **A.** CORRECT.

19 **Q.** AND A SYSTEM FOR DOCUMENTING HEALTHCARE INTERACTIONS,
20 CORRECT?

21 **A.** CORRECT.

22 **Q.** JUST TO NAME A FEW?

23 **A.** YES.

24 **Q.** THESE COMPONENTS OF A CONSTITUTIONALLY-ADEQUATE MEDICAL CARE
25 SYSTEM ALSO INCLUDE AND MUST INCLUDE A SYSTEM TO TRACK AND

1 ENSURE CONTINUITY WITH REGARD TO ALL ELEMENTS OF
2 PROFESSIONALLY-CREATED PLANS, CORRECT?

3 **A.** CORRECT.

4 **Q.** A SYSTEM THAT ALLOWS FOR THE MOVEMENT OF PATIENTS TO
5 IMPROVE -- TO APPROPRIATE LEVELS OF CARE BASED UPON NEED AND
6 COMPLEXITY OF MEDICAL PROBLEMS, CORRECT?

7 **A.** CORRECT.

8 **Q.** THE ABILITY TO ENSURE TIMELY ACCESS TO SPECIALTY CARE?

9 **A.** YES.

10 **Q.** THE ABILITY TO ENSURE ACCESS TO MEDICAL CARE REGARDLESS OF
11 CUSTODY LEVEL?

12 **A.** YES.

13 **Q.** SUFFICIENT COMMUNITY RESOURCES TO PROVIDE OFFSITE SERVICES?

14 **A.** YES.

15 **Q.** AND IN YOUR OPINION IT'S DIFFICULT TO RANK THOSE
16 INTERRELATED COMPONENTS IN TERMS OF IMPORTANCE BECAUSE THEY ARE
17 INTERRELATED, CORRECT?

18 **A.** CORRECT.

19 **Q.** IN FACT, WITH RESPECT TO THOSE COMPONENTS, YOU ARE RELUCTANT
20 TO RANK ONE OF THEM FIRST, CORRECT?

21 **A.** CORRECT.

22 **Q.** IN YOUR OPINION, ONE OF THE MOST IMPORTANT THINGS IN TERMS
23 OF REMEDYING CDCR'S FAILED OR FORMERLY FAILED MEDICAL CARE
24 DELIVERY SYSTEM IS THE CULTURE, CORRECT?

25 **A.** THE CULTURE IS IMPORTANT.

1 Q. AND CULTURE HELPS ENSURE TIMELY AND APPROPRIATE ACCESS TO
2 MEDICAL CARE, CORRECT?

3 A. CULTURE IS CRUCIAL, IN MY VIEW, BECAUSE APPROPRIATE CULTURE
4 CONNOTES A HEALTHCARE STAFF TEAM THAT IS INVESTED IN THEIR
5 PATIENT OUTCOMES.

6 THAT'S THE CRITICAL ASPECT OF CULTURE.

7 Q. HOW MANY INSTITUTIONS HAVE YOU VISITED IN THE LAST
8 YEAR-AND-A-HALF?

9 A. NINE.

10 Q. NINE.

11 AND DID YOU SEE THAT CULTURE THAT YOU JUST DESCRIBED
12 WHEN YOU MET WITH MEDICAL AND CUSTODY STAFF AT THOSE
13 INSTITUTIONS?

14 A. I WOULD -- IT WOULD BE PRESUMPTUOUS OF ME WITH MY QUICK ONE
15 DAY IN-AND-OUT DESCRIBE THE CULTURE. I WAS IMPRESSED AT A
16 VARIETY OF PLACES WITH THE INDIVIDUALS THAT I DID GET A CHANCE
17 TO SPEAK WITH, IN THAT THERE DID SEEM TO BE AN INCREASED LEVEL
18 OF CONCERN ABOUT PATIENT OUTCOMES.

19 Q. AND DIDN'T MANY OF THOSE INDIVIDUALS REPORT YOU TO THAT THE
20 CULTURE THAT YOU DESCRIBED EARLIER HAD IMPROVED AT THEIR
21 INSTITUTIONS?

22 A. WE DIDN'T REALLY DISCUSS THE CULTURE MUCH. FOR INSTANCE,
23 WHEN I WAS WORKING WITH -- WHEN I WAS REVIEWING MEDICAL RECORDS,
24 ONE OF THE THINGS I ALWAYS DO IS HAVE A STAFF CLINICIAN REVIEW
25 THE RECORDS WITH ME SO THAT I AM NOT CONCLUDING THAT SOMETHING

1 WASN'T THERE OR DIDN'T HAPPEN ON THE BASIS OF MY OWN
2 OBSERVATIONS, BUT RATHER IT'S A SHARED CONCLUSION, SHARED WHICH
3 A PERSON WHO WORKS IN THE INSTITUTION AND KNOWS WHERE TO LOOK IN
4 THE EXTRA PLACES, ET CETERA, ET CETERA.

5 WHEN WE WERE DOING THAT AND WE WOULD FIND THINGS THAT
6 SHOULD HAVE OCCURRED, BUT DIDN'T OCCUR, OR THINGS THAT DIDN'T
7 OCCUR TIMELY, MY SENSE WAS THAT THE INDIVIDUALS I TALKED TO
8 GENERALLY WERE EXTREMELY CONCERNED ABOUT IT AND EXTREMELY
9 BOTHERED BY THE FACT THAT THERE WAS THIS RISK TO THEIR PATIENTS.

10 Q. SO THEY CARE ABOUT THEIR PATIENTS?

11 A. YES.

12 Q. AND THEY WANTED THE BEST FOR THEIR INMATE-PATIENTS?

13 A. YES.

14 Q. THERE'S A DIRECT CORRELATION BETWEEN THE QUALITY AND
15 STABILITY OF LEADERSHIP AND THE QUALITY OF CARE, ISN'T THERE?

16 A. YES, THERE IS.

17 Q. OKAY.

18 IN YOUR OPINION, A FACTOR THAT COULD RESULT IN THE
19 INSUFFICIENT DELIVERY OF SPECIALTY CARE TO CDCR INMATES IS
20 INADEQUATE CLINICAL PATIENT COMMUNICATION WITH REGARD TO CURRENT
21 AND FUTURE PLANS, CORRECT?

22 A. YES.

23 Q. IN YOUR OPINION, SIMPLY REDUCING THE NUMBER OF THE PRISON
24 POPULATION BY ITSELF WILL NOT CURE THE DEFICIENCIES WITH RESPECT
25 TO SPECIALTY MEDICAL CARE AT CDCR, WILL IT?

1 **A.** WELL, IF -- LET ME RESPOND IN THE WAY I UNDERSTAND IT. IF
2 SOME OF THE ABSENCE OF FOLLOW-UP VISITS AND COMMUNICATION
3 BETWEEN PATIENT AND CLINICIAN AFTER AN OFFSITE SERVICE WAS
4 PROVIDED FOR A SERIOUS MEDICAL PROBLEM, IF THE REASONS FOR THE
5 VISITS NOT OCCURRING WERE BECAUSE OF A DEMAND TO RESOURCE
6 MISMATCH, THEN CROWDING AND REDUCING THE POPULATION WILL BRING
7 THE DEMAND-TO-RESOURCE RELATIONSHIP MORE INTO LINE AND THE
8 PROBABILITY OF THOSE VISITS AND THE COMMUNICATION OCCURRING WILL
9 BE GREATLY ENHANCED.

10 **Q.** DO YOU KNOW SPECIFICALLY WHETHER ANY OF THOSE CIRCUMSTANCES
11 THAT YOU JUST DESCRIBED, OR POSSIBILITIES, WERE THE RESULT OF
12 OVERCROWDING?

13 **A.** I KNOW THAT CLINICIANS TOLD ME THAT PATIENTS WERE NOT SEEN
14 AND FOLLOWED UP TIMELY BECAUSE OF LACK OF AVAILABLE SPACE, SLOTS
15 FOR PHYSICIANS TO SEE THEM TIMELY. AND THAT WAS PARTLY RELATED
16 TO CUSTODY ISSUES, PARTLY RELATED TO THE PHYSICAL SPACE ISSUES,
17 ONLY ONE EXAM ROOM IN A CLINIC AREA. BUT IT WAS THEIR
18 PERCEPTION THAT CROWDING WAS THE MAJOR FACTOR THAT IMPACTED IT.

19 **Q.** AND, AGAIN, THOSE ISSUES COULD BE ADDRESSED BY INCREASING
20 SPACE AND INCREASING STAFFING, CORRECT?

21 **A.** POTENTIALLY.

22 **Q.** IN YOUR OPINION, AN EFFECTIVE COMPUTER NETWORK IS ESSENTIAL
23 TO PROVIDING MEDICAL CARE ACCESS TO CLINICAL INFORMATION,
24 CORRECT?

25 **A.** YES, IN THIS DAY AND AGE IT REALLY IS CRITICAL.

1 Q. AND IN YOUR OPINION, A REDUCTION IN THE PRISONER POPULATION
2 WILL NOT RESULT IN THE EFFECTIVE -- IN THE EFFECTIVE COMPUTER
3 NETWORK THAT IS ESSENTIAL TO A MEDICAL CARE DELIVERY SYSTEM,
4 WILL IT?

5 A. JUST REDUCING THE POPULATION WILL NOT CREATE AN I.T.
6 STRUCTURE, THAT'S CORRECT.

7 Q. IN YOUR NOVEMBER, 2007 REPORT YOU NOTE THAT:

8 "UNIT HEALTH RECORDS FOR RETURNING PRISONERS ARE
9 STORED AT A SOUTHERN REGIONAL FACILITY, WHICH IS A
10 PROBLEM, BECAUSE WHEN THE INFORMATION IS NOT
11 AVAILABLE -- WHICH IS A PROBLEM BECAUSE SOMETIMES
12 INFORMATION IS NOT AVAILABLE AT INTAKE," CORRECT?

13 A. YES, THAT'S CORRECT.

14 Q. IN YOUR OPINION, A REDUCTION IN THE PRISON POPULATION WOULD
15 NOT RESOLVE THE FACT THAT CDCR STORES THESE UNIT HEALTH RECORDS
16 AT A FACILITY IN SOUTHERN CALIFORNIA, WILL IT?

17 A. I DON'T KNOW WHY THEY ARE STORED AT A FACILITY IN SOUTHERN
18 CALIFORNIA. BUT IF THEY HAD SPACE LOCALLY, BASED ON THE FACT
19 THAT THE NUMBER OF RECORDS THAT NEEDED TO BE STORED WAS SMALLER,
20 THEN POSSIBLY THEY COULD MAKE MORE LOCAL ARRANGEMENTS THAT WOULD
21 BE MORE EFFECTIVE. I JUST DON'T KNOW.

22 MR. MELLO: CAN WE PULL UP PAGE 135, LINES THREE
23 THROUGH EIGHT OF HIS FIRST DEPOSITION, PLEASE?

24 THE WITNESS: I'M SORRY, FIRST?
25

1 **BY MR. MELLO:**

2 **Q.** YOUR FIRST DEPOSITION.

3 **A.** DEPOSITION.

4 **Q.** PAGE 135, LINES THREE THROUGH EIGHT.

5 **A.** WHAT PAGE WAS IT?

6 **Q.** IT'S UP RIGHT IN FRONT OF YOU.

7 **MS. HARDY:** OBJECTION. THAT MISSTATES THE
8 STATEMENT --

9 **THE WITNESS:** I'M SORRY. WHAT PAGE?

10 **JUDGE HENDERSON:** 135, LINES THREE THROUGH EIGHT.

11 **THE WITNESS:** OKAY.

12 **MR. MELLO:** I'M SORRY.

13 **MS. JOHNSON:** STARTING AT LINE 12, ON PAGE 135.

14 **BY MR. MELLO:**

15 **Q.** STARTING AT LINE 12, ON PAGE 135.

16 **A.** OKAY. I GOT IT.

17 **Q.** I HAD IT WRONG. SORRY.

18 IN FORMING THE OPINIONS EXPRESSED IN YOUR NOVEMBER,
19 2007 REPORTS, YOU REVIEWED DOCUMENTS IDENTIFIED BY PLAINTIFFS'
20 COUNSEL AND INSPECTED FACILITIES, BUT DID NOT DO ANY OF YOUR OWN
21 RESEARCH, CORRECT?

22 **A.** MY OWN RESEARCH? I'M NOT SURE WHAT YOU'RE REFERRING TO, BUT
23 I REVIEWED DOCUMENTS AND INSPECTED FACILITIES.

24 **Q.** AND YOU REVIEWED DOCUMENTS THAT WERE IDENTIFIED BY
25 PLAINTIFFS' COUNSEL, CORRECT?

1 A. YES.

2 Q. YOU DIDN'T CONDUCT ANY OF YOUR OWN RESEARCH ON THE INTERNET
3 OR ANYTHING LIKE THAT WITH RESPECT TO THE ISSUES IN THIS CASE,
4 CORRECT?

5 A. CORRECT.

6 Q. AND YOU WENT TO PRISON FACILITIES, CORRECT?

7 A. CORRECT.

8 Q. AND YOU DIDN'T GO TO ANY LIBRARY OR DO ANY OTHER RESEARCH
9 WITH RESPECT TO THE ISSUES PRESENTED TO YOU IN THIS CASE,
10 CORRECT?

11 A. CORRECT.

12 Q. OKAY. AND YOU DID NOT PREPARE THE FIRST DRAFT OF YOUR
13 NOVEMBER, 2007 REPORT, CORRECT?

14 A. WE JOINTLY PREPARED IT. I'M NOT SURE WHAT YOU MEAN.

15 Q. YOU DID NOT TYPE IT, CORRECT?

16 A. NO.

17 Q. YOU DID NOT DICTATE IT, CORRECT?

18 A. WELL, WE DISCUSSED WHAT -- THE WAY WE DID IT WAS WE SAT
19 DOWN, AND I WENT OVER ALL OF THE ISSUES THAT I FOUND, AND THE
20 CONCERNS I HAD WITH REGARD TO THOSE ISSUES.

21 AND THEN, ON THAT BASIS STEVE AND ALISON TYPED IT.
22 AND THEN, I WENT BACK OVER IT, AND WE DISCUSSED IT, AND I
23 REVISED IT.

24 Q. AND YOU'RE TALKING ABOUT YOUR NOVEMBER, 2007 REPORT?

25 A. YES.

1 Q. OKAY. I'D LIKE TO PULL UP PAGE 51 OF YOUR FIRST DEPOSITION,
2 LINES NINE THROUGH 11. AND HOPEFULLY GET THE RIGHT ONES THIS
3 TIME.

4 CAN YOU READ THAT, PLEASE?

5 A. WHICH LINE?

6 Q. NINE THROUGH 11. IT'S UP THERE ON THE SCREEN, AS WELL.

7 A. YES, I CLEARLY MISSPOKE.

8 Q. YOU MISSPOKE DURING YOUR DEPOSITION?

9 A. YES.

10 IF THE QUESTION WAS:

11 "DID YOU TYPE IT," THEN THE ANSWER IS:

12 "NO, I DID NOT."

13 I HATE TYPING.

14 Q. NOR DID YOU DICTATE IT, NOR DID YOU WRITE IT OUT BY HAND,
15 CORRECT?

16 A. IN THE SENSE THAT I TOLD THEM WHAT I WANTED IN THERE. IF
17 YOU WANT TO CALL THAT "DICTATION," THEN CALL IT "DICTATION."

18 Q. WAS EVERY ITEM THAT'S IN HERE ONE OF YOUR REPORTS ITEMS THAT
19 YOU ASKED TO BE PRESENT IN THOSE REPORTS?

20 A. YES, THOSE WERE THE --

21 Q. EVERY SINGLE QUOTE?

22 A. I DON'T KNOW THAT EVERY SINGLE QUOTE I GAVE THEM. BUT I WENT
23 OVER IN A FAIR AMOUNT OF DETAIL.

24 Q. YOU AGREED WITH IT.

25 A. WHAT?

1 Q. YOU AGREED WITH YOUR REPORT.

2 A. WELL, I STARTED OUT INDICATING THE AREAS THAT I WANTED TO
3 ADDRESS AND WHAT MY CONCERNS WERE.

4 Q. BUT YOU DID NOT SELECT EVERY ITEM OF TEXT IN THAT REPORT,
5 CORRECT? PLAINTIFFS' COUNSEL SUGGESTED MUCH OF THE REPORT.

6 A. THAT'S CORRECT.

7 Q. THIS PREPARING YOUR SEPTEMBER 10TH, 2008 REPORT, YOU VISITED
8 NORTH KERN STATE PRISON, PLEASANT VALLEY STATE PRISON, SOLANO
9 AND HIGH DESERT STATE PRISON, CORRECT?

10 A. NORTH CONCERN -- YOU'RE MISSING ONE. AND SATF.

11 Q. OH, AND SATF.

12 SO YOU WENT TO SIX PRISONS, THEN?

13 A. NO, FIVE. YOU ONLY GAVE ME FOUR.

14 Q. I SAID:

15 "NORTH KERN, PLEASANT VALLEY, SOLANO AND HIGH
16 DESERT."

17 A. THAT'S FOUR.

18 Q. OKAY. AND SATF.

19 A. YOU TRIED TO TRICK ME AGAIN.

20 Q. I'M SORRY.

21 YOU DO NOT KNOW WHETHER THOSE FIVE PRISONS ARE
22 REPRESENTATIVE OF THE CLINICAL SPACE AT ALL OTHER 28 PRISONS, DO
23 YOU?

24 A. I CAN'T SAY "ALL OTHERS." I DO KNOW THAT THE DEPARTMENT TO
25 SOME EXTENT HAS USED TEMPLATES, AND BUILT SEVERAL PRISONS A

1 GIVEN MODEL. AND I HAVE SEEN SEVERAL DIFFERENT MODELS.

2 I CAN'T TELL YOU WHAT PERCENTAGE OF THE TOTAL BEDS
3 THAT I'VE SEEN ARE REPRESENTATIVE OF THE ENTIRE SET OF BEDS IN
4 THE AGENCY. BUT I DO KNOW THAT THAT'S HOW THEY DESIGNED AND
5 BUILT.

6 SO IF YOU WENT TO A PARTICULAR MODEL, IT'S LIKELY
7 THAT THERE ARE TWO, THREE, FOUR, FIVE OTHER SIMILARLY-DESIGNED
8 PRISONS.

9 Q. BUT YOU'RE NOT CERTAIN THAT THE FIVE PRISONS THAT YOU
10 VISITED IN AUGUST, 2008 ARE REPRESENTATIVE OF THE OTHER 28
11 PRISONS, CORRECT?

12 A. CORRECT.

13 Q. ON PAGES 35 AND 36, AT PARAGRAPH 118 OF YOUR SEPTEMBER 10,
14 2008 REPORT, WHY DON'T YOU GET THERE? AND I'M GOING TO READ A
15 PORTION OF IT.

16 A. WHAT WERE THE PAGES, AGAIN?

17 Q. 35 AND 36, PARAGRAPH 118.

18 A. OKAY. YES.

19 Q. YOU HAVE THAT IN FRONT OF YOU?

20 A. YES.

21 Q. LOOKS LIKE SOME OF THE TEXT IS CUT OFF ON THE SCREEN. I
22 BELIEVE IT READS THAT:

23 "THE CONDITIONS IN NONTRADITIONAL BEDS
24 INCLUDING THE CONVERTED GYMS, CREATE POTENTIAL
25 BREEDING GROUNDS FOR DISEASE."

1 DO YOU SEE THAT?

2 A. YES.

3 Q. WHEN YOU WROTE THAT, YOU WERE NOT AWARE OF ANY OUTBREAKS OF
4 DISEASE THAT WERE CAUSED IN THE PRECEDING YEARS BY THE USE OF
5 NONTRADITIONAL BEDS IN CDCR'S INSTITUTIONS, WERE YOU?

6 A. THAT'S CORRECT.

7 Q. ON PAGE SIX, PARAGRAPH 18 OF YOUR SEPTEMBER 10, 2008 REPORT,
8 YOU WROTE -- SO PAGE SIX, PARAGRAPH 18 OF THE SAME REPORT.

9 A. OKAY.

10 Q. "I BELIEVE THE LACK OF CLINICAL AND MEDICAL OFFICE SPACE
11 CREATES AN UNPROFESSIONAL WORKING ATMOSPHERE AND
12 LIKELY IMPEDES CDCR'S RECRUITMENT AND RETENTION
13 EFFORTS," END QUOTE.

14 DO YOU SEE THAT?

15 A. YES.

16 Q. WHEN YOU WROTE THAT YOU WERE NOT AWARE OF EVEN A SINGLE
17 INSTANCE WHERE A RECRUIT DECLINED A CLINICAL STAFF POSITION DUE
18 TO THE LACK OF CLINICAL AND MEDICAL OFFICE SPACE, WERE YOU?

19 A. I DON'T KNOW NAMES, BUT SOME OF THE CMO'S I TALKED TO
20 INDICATED THAT THEY HAD PEOPLE COME IN, AND DO THEIR INTERVIEW
21 AND LOOK AROUND, AND THEN DECIDE IT WASN'T FOR THEM.

22 Q. I'M GOING TO TAKE YOU TO PAGE 84 OF YOUR SECOND DEPOSITION
23 ONE MORNING IN CHICAGO, PAGE 84, LINES 13 THROUGH 17.

24 A. PAGE 84?

25 OH, IT'S THE FOUR-THINGS-TO-PAGE. WAIT A MINUTE.

1 Q. IT'S ALSO PROBABLY ON THE SCREEN.

2 A. YES, OKAY. AND WHAT LINES?

3 Q. LINES 13 THROUGH 17.

4 A. YES.

5 Q. OKAY. AND IT SAYS:

6 "ARE YOU AWARE OF ANY SPECIFIC INSTANCE WHERE
7 A RECRUIT DECLINED A CLINICAL STAFF POSITION DUE TO A
8 LACK OF CLINICAL AND MEDICAL OFFICE SPACE," AND YOU
9 SAID:

10 "NO," CORRECT?

11 A. CORRECT. I THOUGHT YOU WERE REFERRING TO A SPECIFIC PERSON.

12 Q. BUT YOU DIDN'T TELL HELP THAT AT YOUR DEPOSITION?

13 A. CORRECT.

14 Q. YOU WROTE THAT, OR YOUR SEPTEMBER, 2008 REPORT STATES AT
15 PAGE 36, PARAGRAPH 119 THAT:

16 "I STILL BELIEVE THAT SOME OF THE HIRING GAINS
17 FOR CLINICIANS WILL BE LOST IF THESE SYSTEMATIC
18 ISSUES ARE NOT ADDRESSED, BECAUSE MANY NEWLY-HIRED
19 CLINICIANS WILL BE UNWILLING TO RISK THEIR
20 PROFESSIONAL CREDENTIALS AND REPUTATIONS BY
21 PRACTICING IN AN ENVIRONMENT WHERE THEIR PATIENTS ARE
22 AT RISK OF HARM," END QUOTE.

23 DO YOU SEE THAT?

24 A. YES.

25 Q. WHEN YOU WROTE THAT YOU HAD NOT DONE ANY SURVEY OF THE

1 NEWLY-HIRED CLINICIANS AT CDCR, HAD YOU?

2 **A.** NO, NOT AT THAT TIME.

3 **Q.** AND WHEN YOU WROTE THAT YOU WERE NOT AWARE OF ANY SURVEYS
4 DONE BY CDCR OR THE RECEIVER REGARDING NEWLY-HIRED CLINICIANS,
5 WERE YOU?

6 **A.** NOT AT THAT TIME.

7 **Q.** AND THAT OPINION WAS NOT BASED -- PARDON ME.

8 AND THAT OPINION WAS NOT BASED OF ANY STUDIES OF
9 NEWLY-HIRED CLINICIANS IN ANY OTHER SYSTEMS, WAS IT?

10 **A.** NO.

11 **Q.** AND THAT OPINION WAS BASED SOLELY ON ANTIDOTAL INFORMATION
12 YOU RECEIVED FROM INDIVIDUAL PHYSICIANS IN OTHER STATES WHO QUIT
13 THEIR JOBS, CORRECT?

14 **A.** WELL, BASED ON MY EXPERIENCE, NOT JUST ANTIDOTAL
15 INFORMATION.

16 I HAVE DEALT WITH THAT MYSELF IN HIRING PEOPLE.

17 **Q.** BUT IT WAS NOT BASED UP ANY STUDIES OR SURVEYS OR REPORTS IN
18 CALIFORNIA, CORRECT?

19 **A.** CORRECT.

20 **Q.** DR. SHANSKY, YOU HAVE EXPERIENCE WORKING WITH OR EVALUATING
21 BADLY OVERCROWDED SYSTEMS, INCLUDING ILLINOIS IN THE '80'S,
22 CORRECT?

23 **A.** CORRECT.

24 **Q.** IN FACT, AS YOU TESTIFIED ON THE DIRECT, YOU WERE THE
25 MEDICAL DIRECTOR OF ILLINOIS SYSTEM FOR A PERIOD OF YEARS.

1 A. YES.

2 Q. AND ILLINOIS SYSTEM EVENTUALLY -- OR WAS IN CONSTITUTIONAL
3 COMPLIANCE, CORRECT?

4 A. ILLINOIS SYSTEM WAS WHAT?

5 Q. LET ME BACK UP.

6 A. OKAY.

7 Q. AT THE TIME IT WAS OVERCROWDED, WAS THE ILLINOIS SYSTEM IN
8 CONSTITUTIONAL COMPLIANCE?

9 A. I WAS FORTUNATE. AT THE TIME THAT I BECAME MEDICAL
10 DIRECTOR, THE SYSTEM WAS NOT BADLY OVERCROWDED. THERE WERE TWO
11 EXISTING LAWSUITS. ONE WAS LIGHTFOOT VERSUS WALKER, INVOLVING
12 MENARD, THE OTHER WAS COOK VERSUS ROE, INVOLVING STATEVILLE.

13 BUT THOSE CASES WERE NOT ABOUT CROWDING. IT WAS
14 ABOUT -- THEY WERE ABOUT AN INADEQUATE HEALTHCARE SYSTEM. AND
15 THOSE WERE RESOLVED WITHIN A YEAR OR TWO, AFTER I CAME ONBOARD.
16 BUT WE DIDN'T HAVE A CROWDING CASE.

17 Q. YOU DID NOT HAVE A CROWDING CASE, BUT I BELIEVE YOU
18 TESTIFIED THAT YOU HAD CROWDING?

19 A. LATER ON IN MY TENURE, YES.

20 Q. AND WERE YOU ABLE TO ADDRESS THE MEDICAL DEFICIENCIES IN
21 YOUR SYSTEMS WITHOUT A PRISONER RELEASE ORDER IN ILLINOIS?

22 A. YES.

23 JUDGE HENDERSON: CAN YOU CLARIFY WHETHER "CROWDING"
24 IS THE SAME AS "OVERCROWDING"?

25 MR. MELLO: SURE.

1 BY MR. MELLO:

2 Q. YOU HAD OVERCROWDING IN ILLINOIS, CORRECT?

3 A. NOWHERE NEAR TO THE EXTENT THAT IT IS HERE. I THINK SOME
4 PLACES MAY HAVE GOTTEN AS HIGH AS ABOUT 140 PERCENT OF
5 OCCUPANCY.

6 Q. AND WHEN YOU SAY "140 PERCENT OF OCCUPANCY," IS THAT
7 OPERABLE CAPACITY, DESIGN CAPACITY, SOME OTHER CAPACITY?

8 A. I THINK IT'S DESIGN CAPACITY.

9 Q. HAVE YOU HEARD THE TERM "OPERABLE CAPACITY"?

10 A. I'M NOT SURE WHAT THAT MEANS, THOUGH.

11 Q. AND BUT ILLINOIS WAS OVERCROWDED, CORRECT?

12 A. YES.

13 Q. AND IT SOLVED ITS MEDICAL CARE DEFICIENCIES WHILE
14 OVERCROWDED WITHOUT THE USE OF A PRISONER RELEASE ORDER,
15 CORRECT?

16 A. CORRECT.

17 Q. DR. SHANSKY, YOU WORKED AS A CONSULTANT FOR CDCR IN A SERIES
18 OF TWO-YEAR CONTRACTS THROUGH JUNE OF 2006, CORRECT?

19 LET ME JUST BACK IT UP, AND MAKE IT LESS COMPLICATED.

20 YOU WORKED AS A CONSULTANT TO THE CDCR FOR SOME
21 PERIOD OF TIME, CORRECT?

22 A. YES.

23 Q. AND YOU WORKED ON THIS VERY PLATA CASE FOR CDCR, CORRECT?

24 A. YES.

25 Q. AND YOU STOPPED WORKING FOR CDCR ON PLATA IN JUNE OF 2006,

1 CORRECT?

2 **A.** YES.

3 **Q.** DR. SHANSKY, YOU HAVE NEVER LEARNED OF AN INMATE-PATIENT
4 SUFFERING AN ADVERSE MEDICAL CONSEQUENCE AS A RESULT OF A
5 LOCKDOWN AT A CDCR INSTITUTION, HAVE YOU?

6 **MS. HARDY:** EXCUSE ME. I DIDN'T HEAR THE QUESTION.

7 **THE WITNESS:** I DIDN'T HEAR YOU.

8 **MR. MELLO:** SHE DIDN'T HEAR THE QUESTION.

9 CAN YOU READ IT BACK?

10 **THE COURT REPORTER:** SURE.

11 (THE QUESTION WAS READ BACK BY THE REPORTER

12 AS FOLLOWS:

13 **"QUESTION:**DR. SHANSKY, YOU HAVE NEVER
14 LEARNED OF AN INMATE-PATIENT SUFFERING AN
15 ADVERSE MEDICAL CONSEQUENCE AS A RESULT OF A
16 LOCKDOWN AT A CDCR INSTITUTION, HAVE YOU?"

17 **THE WITNESS:** I WOULDN'T NECESSARILY AGREE WITH THAT.
18 I CLEARLY WAS FAMILIAR WITH MANY INSTANCES OF ACCESS BEING
19 SUBSTANTIALLY DELAYED AND ADVERSE OUTCOMES OCCURRING. WHETHER
20 SOME WERE THE RESULT OF LOCKDOWNS, SPECIFICALLY, I'M NOT
21 CERTAIN. BUT CLEARLY SUBSTANTIALLY-DELAYED ACCESS RESULTING IN
22 ADVERSE OUTCOMES I WAS AWARE OF.

23 **BY MR. MELLO:**

24 **Q.** YOU WERE AWARE OF ADVERSE OUTCOMES?

25 **A.** RELATED TO SUBSTANTIALLY-DELAYED ACCESS, ABSOLUTELY.

1 Q. AND WAS THAT SUBSTANTIALLY-DELAYED ACCESS THE RESULT OF A
2 LOCKDOWN?

3 A. I DON'T KNOW, SO I'M NOT CERTAIN ONE WAY OR THE OTHER.

4 Q. OKAY. IN FACT, SUBSTANTIALLY-DELAYED ACCESS COULD BE THE
5 RESULT OF PATIENT REFUSALS, CORRECT?

6 A. WELL, THAT WE WOULDN'T CONCERN -- PATIENT REFUSAL WOULDN'T
7 BE INCLUDED IN A DELAYED ACCESS CLASSIFICATION.

8 Q. BUT YOU COULD IMPROVE ACCESS TO CARE WITH MORE MEDICAL
9 ESCORTS, CORRECT?

10 A. I DIDN'T HEAR YOU.

11 Q. YOU COULD IMPROVE ACCESS TO CARE WITH ADDITIONAL MEDICAL
12 ESCORTS, CORRECT?

13 A. YES.

14 Q. AND YOU'VE HEARD THAT THE RECEIVER HAS PILOTED MEDICAL CARE
15 ACCESS TEAMS THAT INCLUDE LARGE NUMBERS OF CORRECTIONAL
16 OFFICERS, CORRECT?

17 A. CORRECT.

18 Q. AND YOU BELIEVE THAT TO BE A GOOD THING, CORRECT?

19 A. CORRECT.

20 Q. AND YOU BELIEVE THAT WILL IMPROVE THE QUALITY AND IMPROVING
21 THE QUALITY OF CARE IN CDCR'S INSTITUTIONS, CORRECT?

22 A. YES, IT SHOULD.

23 Q. AS PART OF YOUR CONSULTATION WITH CDCR, YOU HAD A ROLE IN
24 DRAFTING THE PLATA POLICIES AND PROCEDURES THAT WERE ADPOTED BY
25 THE PARTIES IN THE PLATA CASE, CORRECT?

1 **A.** THAT'S CORRECT.

2 **Q.** AND WHILE YOU WERE A CONSULTANT TO CDCR, YOU MADE NUMEROUS
3 RECOMMENDATIONS AT IMPROVING CDCR'S MEDICAL CARE DELIVERY
4 SYSTEM, CORRECT?

5 **A.** CORRECT.

6 **Q.** AND WHEN YOU WERE A CONSULTANT TO CDCR, YOU NEVER SUGGESTED
7 TO CDCR THAT IT REDUCE ITS INMATE POPULATION TO 130 PERCENT OF
8 DESIGN BED CAPACITY, DID YOU?

9 **A.** NO, I DIDN'T MAKE ANY RECOMMENDATIONS WITH REGARD TO
10 POPULATION.

11 **Q.** PARDON?

12 **A.** I MADE NO RECOMMENDATIONS WITH REGARD TO POPULATION.

13 **Q.** AND WHEN YOU APPLIED TO BE THE TEMPORARY RECEIVER IN THE
14 PLATA CASE, YOU DID NOT MAKE ANY RECOMMENDATIONS WITH RESPECT TO
15 POPULATION, EITHER, DID YOU?

16 **A.** NO, THAT WAS -- I MEAN, THE TEMPORARY RECEIVERSHIP WAS
17 FOCUSED ON PHYSICIAN QUALITY. AND SO WE WERE -- BY PROPOSAL
18 DISCUSSED HOW WE WOULD ATTEMPT TO ACHIEVE IMPROVED PHYSICIAN
19 QUALITY.

20 **Q.** BECAUSE YOU BELIEVE THAT TO BE -- AT THAT TIME YOU BELIEVED
21 THAT TO BE THE SINGLE MOST IMPORTANT ASPECT TO IMPROVING MEDICAL
22 CARE IN CALIFORNIA SYSTEMS?

23 **A.** THAT WAS THE CONCERN OF JUDGE HENDERSON, AND IT'S CLEARLY
24 HIS DECISION AS TO WHAT PATH TO TAKE.

25 AND IN MY DISCUSSION WITH HIM, HE PERCEIVED THAT AS

1 SOMETHING THAT COULD BE ADDRESSED EFFECTIVELY RELATIVELY
2 QUICKLY.

3 **Q.** AND I BELIEVE YOU'VE TESTIFIED GENERALLY ABOUT POPULATION
4 REDUCTION NUMBERS TO 100,000. THAT'S A NUMBER YOU USED?

5 **A.** I GAVE THAT AS A HYPOTHETICAL.

6 **Q.** AS A HYPOTHETICAL EXAMPLE.

7 ISN'T IT TRUE, IN FACT, THAT YOU HESITATE TODAY TO
8 COME UP WITH A FIGURE TO WHICH THE PRISON POPULATION NEEDS TO BE
9 REDUCED TO ACHIEVE CONSTITUTIONAL LEVELS OF CARE, BECAUSE IN
10 YOUR OPINION THAT WOULD REQUIRE DOING A STUDY THAT REQUIRES DATA
11 FROM THE PLATA RECEIVER?

12 **A.** YES, THAT'S CORRECT.

13 **Q.** AND IN YOUR OPINION, IF THE ONLY IMPROVEMENT THAT WAS MADE
14 IN THE NEXT TWO YEARS IS THE DECREASE OF THE POPULATION IN
15 CALIFORNIA'S PRISONS BY 40,000 INMATES, AND EVERYTHING ELSE
16 REMAINED THE STATUS QUO, CDCR WOULD STILL NOT HAVE A SYSTEM-WIDE
17 CONSTITUTIONALLY-ADEQUATE MEDICAL CARE SYSTEM, CORRECT?

18 **A.** YES, I BELIEVE THAT.

19 **Q.** AND YOU, DR. SHANSKY, DO NOT HAVE AN OPINION AS TO WHETHER
20 OR NOT POPULATION IS THE PRIMARY CAUSE OF THE UNCONSTITUTIONAL
21 DELIVERY AT EACH OF THE INSTITUTIONS COVERED BY THE PLATA
22 STIPULATION, DO YOU?

23 **A.** I HAVE. MY OPINION IS THAT THE PRIMARY CAUSE OF THE
24 SYSTEM'S UNCONSTITUTIONALITY, ONGOING UNCONSTITUTIONALITY IS
25 OVERCROWDING.

1 **MR. MELLO:** I THINK I ONLY HAVE ONE MORE QUESTION.

2 I'D LIKE TO PULL UP PAGE 151 OF HIS FIRST DEPOSITION,
3 LINES FIVE THROUGH 10.

4 **THE WITNESS:** 151?

5 **BY MR. MELLO:**

6 **Q.** IT'S ALSO ON THE SCREEN, DR. SHANSKY.

7 **A.** YES, I'M LOOKING AT IT IN THE DOCUMENT.

8 **Q.** AND DR. SHANSKY, I'M JUST GOING TO READ THAT INTO THE
9 RECORD.

10 THE QUESTION WAS:

11 "DR. SHANSKY, DO YOU HAVE AN OPINION AS TO
12 WHETHER OR NOT POPULATION IS THE PRIMARY CAUSE OF THE
13 UNCONSTITUTIONAL DELIVERY OF HEALTHCARE IN EACH ONE
14 OF THE 32 INSTITUTIONS?

15 "ANSWER: I DON'T HAVE AN OPINION ON THAT
16 BECAUSE I HAVE NO DATA."

17 DO YOU SEE THAT?

18 **A.** YES. THE CRITICAL PHRASE THERE IS:

19 "IN EACH ONE OF THE INSTITUTIONS."

20 I COULDN'T SPEAK TO EACH ONE OF THE INSTITUTIONS.

21 **Q.** SO YOUR TESTIMONY IS THAT YOU CAN'T TELL THIS COURT WHETHER
22 OR NOT OVERCROWDING IS THE PRIMARY CAUSE OF THE UNCONSTITUTIONAL
23 DELIVERY OF HEALTHCARE AT THE 32 PRISONS THAT WERE STILL SUBJECT
24 TO THE PLATA STIPULATION IN DECEMBER, 2007?

25 **JUDGE KARLTON:** THAT'S DIFFERENT QUESTION. DIFFERENT

1 QUESTION.

2 THIS QUESTION SAYS:

3 "IN THE 32."

4 THE OTHER QUESTION SAYS:

5 "IN EACH OF THE 32."

6 **BY MR. MELLO:**

7 **Q.** OKAY. CAN YOU TELL ME WHETHER IT'S THE PRIMARY CAUSE AT
8 EACH INSTITUTION IN THE SYSTEM?

9 YOU SAID BEFORE YOU COULDN'T. CAN YOU TELL ME TODAY?

10 **A.** AT EACH INDIVIDUAL PRISON, I CAN'T COMMENT ON EACH
11 INDIVIDUAL PRISON. I CAN TELL YOU FOR THE ENTIRE SYSTEM THERE'S
12 NO QUESTION IN MY MIND THAT IT'S THE PRIMARY CAUSE OF ONGOING
13 UNCONSTITUTIONALITY, AND IT'S OVERCROWDING.

14 **Q.** DESPITE THE FACT THAT YOU CAN'T TELL ME WHETHER IT'S THE
15 PRIMARY CAUSE AT ANY OF THE PRISONS THAT YOU DIDN'T VISIT?

16 **MS. HARDY:** OBJECTION, ARGUMENTATIVE.

17 OBJECTION, ARGUMENTATIVE.

18 **JUDGE HENDERSON:** ANSWER IT, DR. SHANSKY.

19 **THE WITNESS:** COULD YOU REPEAT THE QUESTION?

20 **JUDGE HENDERSON:** IN SPITE OF THE FACT THAT YOU SAID
21 HERE THAT YOU DON'T HAVE AN OPINION ON WHETHER IT'S
22 UNCONSTITUTIONAL IN EACH ONE OF THE 32 INSTITUTIONS.

23 **BY MR. MELLO:**

24 **Q.** SO THE QUESTION IS: CAN YOU TELL ME -- IT'S A NEW QUESTION.

25 CAN YOU TELL ME WHICH ONE OF THE 33 CALIFORNIA

1 INSTITUTIONS AT WHICH OVERCROWDING IS THE PRIMARY CAUSE OF THE
2 UNCONSTITUTIONAL DELIVERY OF HEALTHCARE IN LIGHT OF YOUR
3 PREVIOUS TESTIMONY?

4 **A.** AT WHICH OF THE 32 DO I BELIEVE BASED ON MY EXPERIENCES THAT
5 IT IS THE PRIMARY CAUSE. I CAN TELL YOU FROM, A: MY REVIEW OF
6 NINE FACILITIES, IT'S CLEARLY THE PRIMARY CAUSE AT THOSE NINE.

7 AND IN READING THE RECEIVER'S DOCUMENTS ABOUT THE
8 SYSTEM, IN GENERAL, INCLUDING THE DEATH REVIEW SUMMARY, THE
9 CONCLUSION IS, TO ME, NOT EVEN IN DOUBT THAT FOR THE ENTIRE
10 SYSTEM THIS IS THE PRIMARY CAUSE OF ONGOING UNCONSTITUTIONALITY.
11 AND THIS IS THE MAJOR REASON THAT THE RECEIVER WILL TAKE LONGER
12 TO FIX THE SYSTEM THAN WERE THE POPULATION REDUCED.

13 **Q.** AND BACK TO THAT DEATH REVIEW, YOU'VE REVIEWED THE 2007
14 DEATH REVIEW, CORRECT?

15 **A.** YES.

16 **Q.** AND THAT DEATH REVIEW PROVIDES THERE WERE THREE PREVENTABLE
17 DEATHS IN 2007, CORRECT?

18 **A.** YES.

19 **Q.** THREE OUT OF 395 THAT WERE REVIEWED, CORRECT?

20 **A.** YES.

21 **Q.** THAT'S WELL BELOW 1 PERCENT, CORRECT?

22 **A.** YES.

23 **Q.** IS THAT NUMBER SURPRISING TO YOU?

24 **A.** NO, THAT NUMBER IS NOT SURPRISING. BUT WHEN YOU ADD THE
25 PREVENTABLE WITH THE POSSIBLY ARE PREVENTABLE THAT NUMBER IS

1 SURPRISING.

2 Q. AND IT'S YOUR TESTIMONY THAT "POSSIBLY PREVENTABLE" MEANS
3 IT'S FIFTY-FIFTY THAT BETTER CARE WOULD HAVE POSSIBLY PREVENTED
4 THE DEATH?

5 A. MITIGATED THE OUTCOME, YES.

6 Q. ONE SECOND.

7 MR. MELLO: THAT'S IT. THANK YOU, DR. SHANSKY.

8 THE WITNESS: THANK YOU.

9 JUDGE HENDERSON: WE'RE GOING TO TAKE A 15-MINUTE
10 RECESS AT THIS POINT.

11 THE CLERK: COURT'S ADJOURNED.

12 (THEREUPON, A RECESS WAS TAKEN.)

13 JUDGE HENDERSON: OKAY. YOUR CROSS-EXAMINATION.

14 CROSS-EXAMINATION BY MR. KAUFHOLD

15 MR. KAUFHOLD: THANK YOU, YOUR HONOR. STEVE KAUFHOLD
16 FOR THE LEGISLATIVE INTERVENORS.
17 BY MR. KAUFHOLD

18 Q GOOD MORNING, DR. SHANSKY.

19 A GOOD MORNING.

20 Q TURN TO THE FIRST PAGE OF YOUR SECOND EXPERT REPORT FROM
21 SEPTEMBER OF THIS YEAR. ON THE FIRST PAGE, THERE'S A HEADING
22 THAT SETS FORTH THE BASIS FOR YOUR EXPERT OPINIONS.

23 IN PARAGRAPH FIVE THERE YOU WRITE:

24 "I HAVE BEEN ASKED TO RENDER MY OPINION WITH

25 RESPECT TO WHETHER OVERCROWDING IN THE

1 CALIFORNIA DEPARTMENT OF CORRECTIONS AND
2 REHABILITATION CDCR IS THE PRIMARY CAUSE OF THE
3 CURRENT UNCONSTITUTIONAL CONDITIONS EXPERIENCED
4 BY MEMBERS OF THE COLEMAN AND PLATA CLASSES."
5 DO YOU SEE WHERE I'M REFERRING TO?

6 **A** YES.

7 **Q** MY QUESTION IS THIS: WHEN YOU REFER TO THE CURRENT
8 UNCONSTITUTIONAL CONDITIONS, WAS THAT SOMETHING THAT WAS PART OF
9 YOUR RESEARCH AND ANALYSIS AND OPINION, OR IS THAT A FACT THAT
10 YOU TOOK AS A GIVEN IN YOUR ANALYSIS?

11 **MS. HARDY:** OBJECTION, YOUR HONOR. RELEVANCE.

12 **JUDGE KARLTON:** OVERRULED. OH, EXCUSE ME.

13 **JUDGE HENDERSON:** IT'S BEEN SAID BETTER THAN I COULD.

14 **THE WITNESS:** I TOOK IT AS A GIVEN, BUT IT ALSO WAS
15 CONFIRMED BY MY REVIEWS OF THE PRISONS I WENT TO.

16 BY MR. KAUFHOLD

17 **Q** SO IS IT YOUR TESTIMONY THAT YOU HAVE AN EXPERT OPINION ON
18 THE LEGAL ISSUE OF THE CURRENT CONSTITUTIONALITY OF THE
19 CALIFORNIA PRISONS?

20 **A** ASK THE QUESTION AGAIN.

21 **Q** SURE. MY QUESTION IS: IS IT YOUR TESTIMONY THAT YOU HAVE
22 FORMED AND HAVE TODAY AN EXPERT OPINION REGARDING THE CURRENT
23 CONSTITUTIONALITY OF THE CALIFORNIA PRISONS?

24 **A** NO. AS I SAID, THAT WAS A GIVEN, BUT MY REVIEWS WERE
25 CONSISTENT WITH THAT GIVEN.

1 Q JUST TO MAKE COMPLETELY CLEAR. SO THAT IS NOT PART OF THE
2 FORMAL OPINION THAT YOU ARE OFFERING TO THE COURT TODAY; IS THAT
3 CORRECT?

4 A "THAT" BEING?

5 Q "THAT" BEING THE ULTIMATE EXPERT OPINION THAT THERE IS
6 CURRENT UNCONSTITUTIONALITY IN THE CALIFORNIA PRISONS. THAT IS
7 NOT PART OF YOUR EXPERT OPINION; IS THAT CORRECT?

8 A THAT'S CORRECT.

9 Q TURNING TO THE FINAL PAGE OF THE SAME REPORT, THAT'S PAGE 36
10 OF YOUR SEPTEMBER 9, SECOND SUPPLEMENTAL DECLARATION, OR EXPERT
11 REPORT, I'M SORRY. YOU STATE:

12 "BASED ON ALL THAT I HAVE SET FORTH ABOVE IN
13 MY PREVIOUS REPORTS, I CONTINUE TO BELIEVE THAT
14 OVERCROWDING IS THE PRIMARY CAUSE OF THE CURRENT
15 STATE OF MEDICAL CRISIS IN THE CDCR."

16 DO YOU SEE WHERE I'M REFERRING TO?

17 A YES.

18 Q AND IN THE CONCLUSIONS PORTIONS OF YOUR OPINION, THERE'S NO
19 REFERENCE TO CURRENT UNCONSTITUTIONAL CONDITIONS; IS THAT
20 CORRECT?

21 A IN THIS PARAGRAPH?

22 Q CORRECT.

23 A I DON'T REFER TO THAT, CORRECT.

24 Q REFERRING TO YOUR EARLIER TESTIMONY WHEN YOU HAD YOUR
25 CONVERSATION WITH MR. MELLO, YOU DISCUSSED THE HYPOTHETICAL

1 FIGURE OF A HUNDRED THOUSAND INMATES IN THE SYSTEM; DO YOU
2 RECALL THAT?

3 **A** YES.

4 **Q** AND YOU HAVE NOT, HOWEVER, DONE ANY SYSTEMATIC ANALYSIS OF
5 WHAT AN APPROPRIATE NUMBER OF INMATES FOR THE CALIFORNIA CDCR
6 WOULD BE, HAVE YOU?

7 **A** NO, BECAUSE I DIDN'T SAY THAT WAS THE APPROPRIATE NUMBER.
8 MY TESTIMONY WAS IF SUCH A NUMBER WERE REACHED, HYPOTHETICALLY,
9 THEN THE RECEIVER WOULD BE ABLE TO ACHIEVE A CONSTITUTIONAL
10 LEVEL OF CARE IN A MAJORITY OF THE PRISONS WITHIN THREE YEARS.

11 **Q** RIGHT. AND, IN FACT, IN YOUR SWORN TESTIMONY TO MR. MELLO,
12 YOU STATED YOU HAD, QUOTE, "NO CLUE," END QUOTE, WHAT AN
13 APPROPRIATE TARGET NUMBER IS; IS THAT CORRECT?

14 **A** THAT'S CORRECT.

15 **Q** NOW, ON SEPTEMBER 28TH OF THIS YEAR, 2008, YOU FILED A THIRD
16 SUPPLEMENTAL EXPERT REPORT; DO YOU REMEMBER THAT?

17 **A** YES.

18 **Q** WHOSE IDEA WAS IT THAT YOU FILE A THIRD SUPPLEMENTAL REPORT;
19 WAS THAT YOUR IDEA OR PLAINTIFFS' COUNSEL?

20 **A** I DISCUSSED IT WITH PLAINTIFFS' COUNSEL.

21 **Q** WHOSE IDEA -- WHO WAS IT THAT RAISED THAT POSSIBILITY; WAS
22 IT YOU OR PLAINTIFFS' COUNSEL?

23 **A** PLAINTIFFS' COUNSEL.

24 **Q** WHAT WAS THE PURPOSE FOR THAT?

25 **A** I THINK IT WAS RESPONDING TO THE RECEIVER'S REPORT.

1 Q TURNING TO THE SECOND PAGE OF THAT REPORT, OF YOUR SECOND
2 REPORT, WHICH WAS SUBMITTED TO THE COURT AND DATED
3 SEPTEMBER 28TH, 2008, YOU STATE:

4 "DISCUSSING THIS DEVELOPMENT THE RECEIVER
5 EMPHASIZES THAT, QUOTE, 'A CONSTITUTIONALLY
6 ADEQUATE AND SUSTAINABLE PRISON MEDICAL SYSTEM
7 WILL NOT BE ESTABLISHED UNTIL THE TURNAROUND
8 PLAN OF ACTION IS FULLY IMPLEMENTED,' " END
9 QUOTE.

10 AND THEN YOU WRITE:

11 "I AGREE. AND THE INADEQUATE SYSTEM WILL
12 CONTINUE TO EXIST FOR LONGER THAN OTHERWISE --
13 LONGER THAN IT OTHERWISE WOULD UNLESS THERE'S A
14 SIGNIFICANT REDUCTION IN THE POPULATION."
15 DO YOU SEE WHERE I'M REFERRING TO?

16 A YES.

17 Q AND DO YOU AGREE WITH THAT STATEMENT TODAY?

18 A YES, YES.

19 Q DO YOU BELIEVE THE FULL IMPLEMENTATION OF THE TURNAROUND
20 PLAN WILL ENSURE A CONSTITUTIONAL LEVEL OF HEALTHCARE AND MENTAL
21 HEALTH CARE IN CALIFORNIA?

22 A ALONG WITH THE OTHER ADDITIONAL CHANGES THEY'RE MAKING.

23 Q SO YOU BELIEVE ADDITIONAL CHANGES ARE NEEDED BEYOND THOSE
24 SET FORTH IN THE TURNAROUND PLAN?

25 A NO. THE TURNAROUND PLAN LISTS A VARIETY OF THINGS, BOTH

1 ENVIRONMENTAL AND STAFFING AND I.T. ALL OF THOSE THINGS
2 TOGETHER WILL EVENTUALLY BE ABLE TO ADDRESS MOST OF THE
3 PROBLEMS, UNLESS, OF COURSE, THE POPULATION WILDLY INCREASES
4 AGAIN.

5 **Q** RIGHT. AND IT IS NOT PART OF THE TURNAROUND PLAN -- THERE'S
6 NO REQUEST OR PLAN FOR A PRISONER RELEASE ORDER OF ANY SORT; IS
7 THERE?

8 **A** NOT THAT I'M AWARE OF.

9 **JUDGE KARLTON:** SIR, THE PLAN REQUIRES THE
10 LEGISLATURE TO PROVIDE LARGE SUMS OF MONEY THAT THEY HAVE NOT
11 YET DONE AND MAY NOT DO. IS YOUR QUESTION -- IT APPEARS TO ME,
12 BUT I MAY BE WRONG -- THAT YOUR QUESTION IS TALKING ABOUT A
13 HYPOTHETICAL THAT AS OF NOW IS NOT LIKELY TO OCCUR.

14 **MR. KAUFHOLD:** I CAN'T RESPOND TO THE LIKELIHOOD,
15 YOUR HONOR, BUT IT'S ABSOLUTELY A HYPOTHETICAL IN THE SENSE MY
16 QUESTION TO THE WITNESS WAS THAT, IF YOU ASSUME THAT EVERYTHING
17 IN THE TURNAROUND PLAN IS FULLY IMPLEMENTED, FULLY FUNDED, FULLY
18 IMPLEMENTED, THEN WOULD THAT BE THE RESULT.

19 **JUDGE KARLTON:** OKAY.

20 BY MR. KAUFHOLD

21 **Q** NOW, IN TERMS OF THE TIMEFRAME OF POSSIBLY ACHIEVING THAT,
22 DR. SHANSKY, I THINK YOU'VE TESTIFIED PREVIOUSLY THAT IT WASN'T
23 FORESEEABLE WHEN THAT COULD BE ACHIEVED ABSENT A PRISONER
24 RELEASE ORDER OR A POPULATION CAP OF SOME SORT; IS THAT CORRECT?

25 **A** THAT'S CORRECT.

1 **Q** BUT ISN'T IT -- ISN'T IT A FACT THAT IN THE TURNAROUND PLAN
2 ITSELF, THE RECEIVER SAYS IF THE TURNAROUND PLAN IS FULLY
3 IMPLEMENTED, WE CAN EXPECT TO SEE A CONSTITUTIONAL LEVEL OF
4 HEALTHCARE WITHIN THREE TO FIVE YEARS?

5 **A** YES.

6 **MR. KAUFHOLD:** I DON'T HAVE ANY FURTHER QUESTIONS.
7 THANK YOU, DR. SHANSKY.

8 **THE WITNESS:** THANK YOU.

9 **JUDGE HENDERSON:** ANY OTHER DEFENDANTS HAVE
10 CROSS-EXAMINATION OR INTERVENORS?

11 **MR. MITCHELL:** WILLIAM MITCHELL FOR THE D.A.
12 INTERVENORS. THERE'S ONLY ONE COUNSEL QUESTIONING --

13 **JUDGE HENDERSON:** THANK YOU FOR REMINDING ME.
14 REDIRECT, COUNSEL.

15 **MS. HARDY:** MAY I APPROACH THE WITNESS, YOUR HONOR?

16 **JUDGE HENDERSON:** YOU MAY.

17 **REDIRECT EXAMINATION BY MS. HARDY**

18 BY MS. HARDY

19 **Q** DR. SHANSKY, I HAVE HANDED YOU THE POST TOUR LETTER FROM
20 MULE CREEK STATE PRISON THAT IS DEFENDANT'S TRIAL EXHIBIT 1084
21 THAT THEY HANDED YOU EARLIER, THAT THEY DISCUSSED WITH YOU
22 EARLIER.

23 **MR. MELLO:** OBJECTION. PAUL MELLO FOR PLATA
24 DEFENDANTS. OBJECTION, HEARSAY.

25 **JUDGE HENDERSON:** THIS IS A DOCUMENT THAT MR. MELLO

1 USED?

2 **MS. HARDY:** THIS IS THE DOCUMENT MR. MELLO USED
3 EARLIER.

4 **MR. MELLO:** I USED A PORTION OF THE DOCUMENT WHICH I
5 GET TO SELECT AS A PARTY ADMISSION. IT'S NOT A PARTY ADMISSION
6 FOR PLAINTIFFS. IT'S HEARSAY. IT CAN'T BE OFFERED FOR THE
7 TRUTH OF THE MATTER ASSERTED. I UNDERSTAND THE COURT WILL
8 PROBABLY PRESERVE THE OBJECTION.

9 **JUDGE KARLTON:** MORE IMPORTANTLY, IF THIS IS A
10 CONTRIBUTION TO HIS OPINION, IT COMES IN ON THAT BASIS. I DON'T
11 KNOW WHETHER IT IS OR NOT.

12 DID YOU READ THIS BEFORE?

13 **THE WITNESS:** A WHILE AGO.

14 **JUDGE KARLTON:** AND DID YOU TAKE IT INTO
15 CONSIDERATION IN FORMING YOUR OPINIONS?

16 **THE WITNESS:** YES, PARTICULARLY WITH REGARD TO THE
17 THESE DOCUMENTS AND THEIR CREDIBILITY.

18 BY MS. HARDY

19 **Q** YOU TESTIFIED EARLIER ABOUT THIS PARTICULAR EXHIBIT THAT
20 MR. FAMA HAD WRITTEN THAT THERE APPEARED TO BE SOME LEVEL OF
21 COMPLIANCE WITH SOME OF ACCESS ISSUES AT MULE CREEK STATE
22 PRISON; IS THAT RIGHT?

23 **A** THAT'S CORRECT.

24 **Q** OKAY. I WOULD LIKE YOU TO TURN TO PAGE 12 OF THAT DOCUMENT.

25 **JUDGE KARLTON:** MA'AM, BEFORE HE DOES THAT, IS THE

1 DOCUMENT IN EVIDENCE?

2 **MS. HARDY:** IT IS DEFENDANTS' DOCUMENT EXHIBIT NO.
3 1084.

4 **JUDGE KARLTON:** YOU MAY PROCEED.

5 **MS. HARDY:** THANK YOU. I'LL START READING FROM THE
6 HEADING WHICH SAYS, "CTC AND OHU MEDICAL BEDS."

7 **MR. MELLO:** YOUR HONORS, PAUL MELLO AGAIN. I DON'T
8 BELIEVE ANY DOCUMENTS ARE ACTUALLY IN EVIDENCE YET. THERE ARE
9 DOCUMENTS THAT HAVE BEEN OFFERED. I DON'T BELIEVE THAT THE
10 COURT HAS ADMITTED ANY DOCUMENT INTO EVIDENCE, ANY EXHIBIT. WE
11 HAVE NOT MOVED IT INTO EVIDENCE. AND I BELIEVE THIS IS HEARSAY,
12 AND I DO NOT BELIEVE THAT THEY HAVE ESTABLISHED THAT HE USED
13 THIS DOCUMENT TO RELY ON IT IN FORMING HIS OPINIONS.

14 I BELIEVE THE RECORD WILL ACTUALLY DEMONSTRATE HE SAW
15 IT FOR THE FIRST TIME WHEN I TOOK HIS DEPOSITION.

16 **JUDGE HENDERSON:** I WAS LISTENING. I THINK JUDGE
17 KARLTON JUST ASKED HIM IF HE DID SO USE IT AND HE SAID HE DID.

18 **MR. MELLO:** OKAY. THEN I APOLOGIZE.

19 BY MS. HARDY

20 **Q** DR. SHANSKY, IT STATES HERE:

21 "IT IS NO SECRET THAT STATEWIDE THE CDCR
22 LACKS ADEQUATE NUMBER OF BEDS AND/OR
23 APPROPRIATELY EQUIPPED AND STAFFED HOUSING UNITS
24 FOR PATIENTS WITH COMPLICATED MEDICAL NEEDS.
25 THE RECEIVER HAS IDENTIFIED THE NEED TO BUILD

1 LARGE NUMBERS OF SUCH BEDS AND/OR UNITS. UNTIL
2 THEN, THE VERY SICK AND/OR ELDERLY WITH
3 COMPLICATED MEDICAL COMPLICATIONS UNFORTUNATELY
4 ARE LARGELY KEPT IN PRISON'S GENERAL POPULATIONS
5 OR CTC OR OHU BEDS AT VARIOUS STATE PRISONS.

6 "MCSP IS AN EXAMPLE OF THE CHALLENGES FACED
7 WHEN A PRISON MEDICAL DELIVERY SYSTEM GEARED
8 TOWARDS PROVIDING CARE TO A GENERAL INMATE
9 POPULATION ALSO MUST CARE FOR THE VERY SICK.
10 MCSP'S CTC HAS ONLY TWO MEDICAL BEDS (THE OTHERS
11 ARE USED FOR MENTAL HEALTH PLACEMENTS), AND ITS
12 RELATIVELY SMALL OHU (SIX CELLS) IS USED
13 ENTIRELY FOR MENTAL HEALTH PATIENTS, INCLUDING
14 CRISIS BEDS PATIENTS FOR WHOM THERE IS NO ROOM
15 AT THE CTC."

16 **MR. MELLO:** SAME OBJECTION TO THE HEARSAY TO THE
17 EXTENT THAT IS COMING IN FOR THE TRUTH OF THE MATTERS ASSERTED.
18 PLAINTIFFS CANNOT USE THEIR OWN STATEMENTS AS A PARTY ADMISSION.
19 BY MS. HARDY

20 **Q** DR. SHANSKY, ARE THOSE STATEMENTS --

21 **JUDGE HENDERSON:** OBJECTION WILL BE PRESERVED.
22 BY MS. HARDY

23 **Q** DR. SHANSKY, IS WHAT'S WRITTEN THERE CONSISTENT WITH THE
24 TYPES OF ISSUES THAT YOU VIEWED WHEN YOU WENT THROUGH THE PRISON
25 ON YOUR NINE PRISON TOURS?

1 **A** YES, I DID SEE PATIENTS HOUSED IN THOSE ARRANGEMENTS WITH
2 COMPLEX MEDICAL PROBLEMS.

3 **JUDGE KARLTON:** DID YOU ACTUALLY VISIT MULE STATE?

4 **THE WITNESS:** NO, NOT ON THIS TOUR.

5 BY MS. HARDY

6 **Q** DR. SHANSKY, MR. MELLO ASKED QUESTIONS ABOUT THE ITEMS THAT
7 YOU REFERRED TO AS ITEMS IN THE RECEIVER'S TOOLBOX THAT INCLUDE
8 STAFFING, THE PHARMACY SYSTEM. WILL THOSE IMPROVEMENTS
9 ACCOMPLISH AND CREATE -- USE OF THOSE TOOLS CREATE A
10 CONSTITUTIONAL MEDICAL SYSTEM IF THE RECEIVER USES THEM?

11 **A** YOU HAVE TO -- YOU ARE TALKING ABOUT AN ENTIRE SYSTEM OF THE
12 DEPARTMENT OF CORRECTIONS, AND YOU WOULD HAVE TO BE ABLE TO
13 INTEGRATE THE IMPLEMENTATION OF ALL THOSE CHANGES, AND CURRENTLY
14 YOU WOULD BE FORCED TO DO THAT IN THE FACE OF DRAMATIC
15 OVERCROWDING, WHICH COMPROMISES YOUR ABILITY TO SUCCESSFULLY
16 IMPLEMENT THEM. WHEREAS, IN THE FACE OF A SYSTEM THAT IS NOT
17 HEAVILY OVERCROWDED, YOUR ABILITY TO USE THOSE TOOLS AND
18 SUCCESSFULLY CREATE AN ADEQUATE DELIVERY SYSTEM IS GREATLY
19 ENHANCED, AND THE TIMEFRAME TO DOING IT IS DRAMATICALLY
20 SHORTENED.

21 **Q** MR. MELLO POINTED OUT THAT AT CERTAIN PRISONS, AND YOU
22 AGREE, THAT IF THEY RAISE THE STAFFING LEVELS, THEN THAT WOULD
23 IMPROVE CARE. WOULD THAT RESOLVE THE CONSTITUTIONAL PROBLEMS,
24 BY RAISING STAFFING LEVELS?

25 **A** NO. YOU HAVE TO ADDRESS ALL OF THESE THINGS SYSTEMWIDE AND

1 WITHIN GIVEN FACILITIES IN ORDER TO ACHIEVE CONSTITUTIONAL
2 LEVELS.

3 **Q** IN FACT, THE RECEIVER HAS SAID THAT THE SYSTEM HAS ONLY HALF
4 THE NECESSARY SPACE FOR THE NEEDED CLINICIANS FOR THE CURRENT
5 POPULATION; IS THAT RIGHT?

6 **A** THAT'S CORRECT.

7 **Q** MR. MELLO ASKED YOU WHETHER, IF PRISONERS ARE HOUSED IN
8 NON-TRADITIONAL BEDS, THEY NECESSARILY RECEIVE UNCONSTITUTIONAL
9 MEDICAL CARE.

10 **A** YES, HE ASKED ME THAT.

11 **Q** INCREASING STAFFING LEVELS AND CLINIC SPACE WILL NOT CURE
12 THE PROBLEM OF NON-TRADITIONAL BEDS IF THOSE NON-TRADITIONAL
13 BEDS ARE BREEDING GROUNDS FOR DISEASE; IS THAT RIGHT?

14 **MR. MELLO:** OBJECTION, YOUR HONOR. PAUL MELLO AGAIN.
15 THAT'S AN INCOMPLETE HYPOTHETICAL.

16 **JUDGE HENDERSON:** REPHRASE IT, COUNSEL.
17 BY MS. HARDY

18 **Q** YOU TESTIFIED THAT NON-TRADITIONAL BEDS IN AND OF THEMSELVES
19 DO NOT MEAN THAT PRISONERS ARE RECEIVING UNCONSTITUTIONAL
20 MEDICAL CARE, CORRECT?

21 **A** CORRECT.

22 **Q** HOWEVER, NON-TRADITIONAL BEDS DO POSE PROBLEMS FOR THE
23 MEDICAL CARE DELIVERY SYSTEM, DON'T THEY?

24 **A** THERE'S AMPLE DATA THAT SHOWS THAT KIND OF CONGREGATED
25 HOUSING INCREASES PROBLEMS IN A VARIETY OF WAYS, INCLUDING THE

1 RISK OF COMMUNICABLE DISEASE, ESPECIALLY INFECTIONS, SKIN
2 INFECTIONS CERTAINLY, AS WELL AS INCREASES STRESS AMONG THE
3 POPULATION THAT CAN RESULT IN VARIOUS KINDS OF ACTING OUT,
4 VIOLENCE, ET CETERA.

5 Q WHEN THERE IS ACTING OUT, HOW DOES THAT IMPACT THE DELIVERY
6 OF CARE?

7 A THEN YOU GET INJURIES, AND IT JUST INCREASES THE DEMAND ON A
8 SYSTEM THAT IS ALREADY INADEQUATE TO MEET THE EXISTING DEMAND.

9 Q YOU TESTIFIED THAT WHEN YOU DO FILE REVIEWS OF MEDICAL FILES
10 AT PRISONS, YOU SIT WITH THE -- WITH A PHYSICIAN FROM THAT
11 INSTITUTION AS YOU GO THROUGH THE FILES; IS THAT CORRECT?

12 A THAT'S CORRECT.

13 Q AND WHEN YOU DID THE LATEST ROUND OF FILE REVIEWS, I BELIEVE
14 IT WAS IN AUGUST, GENERALLY YOU HAD THE CHIEF PHYSICIAN WITH
15 YOU; ISN'T THAT RIGHT?

16 A THAT'S CORRECT.

17 Q AND YOU TESTIFIED THAT YOU FOUND WHEN YOU WENT THROUGH THESE
18 FILES, THAT THE PHYSICIANS YOU TALKED TO WERE CONCERNED ABOUT
19 THEIR PATIENT CARE AND THE APPARENT LAPSES; IS THAT CORRECT?

20 A THAT'S CORRECT.

21 Q WERE THE PHYSICIANS SURPRISED AT THE LAPSES?

22 A NO. THAT WAS, UNFORTUNATELY, THE PATTERN THROUGHOUT. THEY
23 WERE AWARE THAT THE SYSTEM THAT THEY WERE RESPONSIBLE FOR WAS
24 STILL NOT ADEQUATELY RESPONDING TO THE CLINICAL NEEDS.

25 Q DOCTOR, YOU HAVE BEEN TO A NUMBER OF -- MANY STATES, AND YOU

1 HAVE REVIEWED SCORES OF PRISONS, AND YOU HAVE BEEN THROUGH MANY
2 PRISON SYSTEMS. IN ORDER TO DETERMINE WHETHER OR NOT
3 OVERCROWDING IS THE CAUSE OF UNCONSTITUTIONAL MEDICAL CARE IN A
4 SYSTEM, DO YOU HAVE TO GO TO EVERY PRISON FACILITY?

5 **A** NO, GENERALLY NOT. WE CAN GO TO A SUBSET, BUT IN THIS
6 PARTICULAR SITUATION, WE HAVE EVIDENCE BEYOND JUST THE PERSONAL
7 TOURS. AND PARTICULARLY FROM THE RECEIVER'S OFFICE THERE ARE
8 REMARKABLY WELL-DOCUMENTED REPORTS THAT DESCRIBE THE ONGOING
9 DEFICIENCIES, AND THE RESOURCE-TO-DEMAND MISMATCH THAT IS
10 ENDEMIC THROUGHOUT THE SYSTEM.

11 **Q** MR. MELLO ASKED YOU ABOUT FILLED CLINICAL POSITIONS, AND YOU
12 AGREED THAT THE RECEIVER HAS ACHIEVED 90 PERCENT OF --
13 90 PERCENT FILL RATE FOR CERTAIN CLINICAL POSITIONS, CORRECT?

14 **A** YES.

15 **Q** DO YOU KNOW WHETHER THOSE ARE ALL THE POSITIONS THAT THE
16 RECEIVER NEEDS IN THE SYSTEM?

17 **A** I DO NOT KNOW.

18 **Q** AND HAVE YOU SEEN A STAFFING STUDY OR WORKLOAD STUDY DONE BY
19 THE RECEIVER TO DETERMINE WHETHER OR NOT THOSE POSITIONS WILL BE
20 SUFFICIENT FOR THE SYSTEM?

21 **A** I DON'T RECALL SEEING SUCH A STUDY.

22 **Q** DO YOU RECALL TALKING TO PHYSICIANS ON YOUR TOURS WHO
23 INDICATED THAT THEY HAD OPINIONS ABOUT THE LEVEL OF STAFFING?

24 **A** YES. SOME OF THE CMO'S INDICATED THAT THEIR VIEW WAS THAT
25 EVEN IF ALL THE BUDGETED POSITIONS WERE FILLED, THEY WOULD STILL

1 NOT HAVE ADEQUATE CLINICAL RESOURCES TO MEET THE CLINICAL
2 DEMANDS.

3 Q AND THEN THE OBVERSE WAS YOU SPOKE TO OTHER CLINICIANS WHO
4 TOLD YOU THAT, EVEN IF ALL THE POSITIONS WERE FILLED, WOULD THEY
5 HAVE HAD A PLACE TO PUT THEM?

6 A I WAS ALSO TOLD BY SOME OF THE CMO'S THAT THEY WOULDN'T HAVE
7 SPACE IF ALL THE BUDGETED POSITIONS WERE FILLED.

8 Q YOU LISTED A NUMBER OF INTERRELATED FACTORS THAT MAKE UP A
9 MEDICAL CARE SYSTEM, AND THAT INCLUDES MEDICAL STAFF,
10 MEDICATIONS DELIVERY SYSTEM, TRACKING, ACCESS TO SPECIALTY CARE,
11 OFFSITE CARE, AND YOU SAID THAT ALL OF THOSE ELEMENTS ARE
12 IMPORTANT; ISN'T THAT CORRECT?

13 A YES.

14 Q AND THERE ARE DEFICIENCIES IN THESE AREAS IN CDCR; IS THAT
15 CORRECT?

16 A YES.

17 Q AND WHAT IS THE RELATIONSHIP OF OVERCROWDING TO THOSE
18 DEFICIENCIES?

19 A WELL, OVERCROWDING EXACERBATES DEMAND, AND WHEN A SYSTEM IS
20 NOT DESIGNED TO MEET BASIC NEEDS AND THEN YOU INCREASE THE
21 DEMAND ON IT, THE INADEQUACIES COME TO THE FORE MUCH MORE
22 FREQUENTLY.

23 MS. HARDY: THANK YOU, DR. SHANSKY.

24 JUDGE HENDERSON: THANK YOU, COUNSEL.

25 MR. MELLO: I HAVE NOTHING FURTHER.

1 **JUDGE HENDERSON:** THANK YOU.

2 **JUDGE KARLTON:** NOTHING FURTHER.

3 **JUDGE HENDERSON:** DO YOU HAVE ANYTHING FURTHER?

4 **MR. KAUFHOLD:** NOTHING FURTHER, YOUR HONOR.

5 **JUDGE HENDERSON:** THANK YOU VERY MUCH, DR. SHANSKY.
6 YOU'RE EXCUSED.

7 I BELIEVE OUR NEXT WITNESS IS GARY BENSON; IS THAT
8 CORRECT?

9 **MS. LEONARD:** WE WILL BEGIN WITH ERIC ADELMAN, WITH
10 YOUR PERMISSION, YOUR HONOR.

11 **JUDGE HENDERSON:** OKAY. WILL YOU CALL MR. ADELMAN
12 IN?

13 **MS. LEONARD:** YES, YOUR HONOR.

14 **JUDGE HENDERSON:** REMAIN STANDING AND BE SWORN IN,
15 MR. ADELMAN.

16 **ERIC ADELMAN**

17 HAVING BEEN CALLED AS A WITNESS BY THE PLAINTIFFS WAS FIRST
18 DULY SWORN AND EXAMINED AS FOLLOWS:

19 **THE WITNESS:** YES.

20 **THE CLERK:** STATE AND SPELL YOUR FOR THE RECORD.

21 **THE WITNESS:** MY NAME IS ERIC ADELMAN, E-R-I-C. LAST
22 NAME IS A-D-E-L-M-A-N.

23 **MR. HENDERSON:** GOOD MORNING, YOUR HONORS. MY NAME
24 IS JAMES HENDERSON. I WILL BE EXAMINING MR. ADELMAN ON BEHALF
25 OF CALIFORNIA PEACE OFFICERS ASSOCIATION.

DIRECT EXAMINATION BY MR. HENDERSON

BY MR. HENDERSON

Q MR. ADELMAN, ARE YOU EMPLOYED BY THE CALIFORNIA DEPARTMENT
OF CORRECTIONS AND REHABILITATION?

A YES.

Q WHAT IS YOUR POSITION?

A I'M A CORRECTIONAL OFFICER AT THE CALIFORNIA MEDICAL
FACILITY IN VACAVILLE.

Q HOW LONG HAVE YOU BEEN AT THAT FACILITY?

A I HAVE BEEN AT VACAVILLE SINCE FEBRUARY 1994.

MR. HENDERSON: YOUR HONORS, WE SUBMITTED A
DECLARATION OF DIRECT TESTIMONY; I'M SURE YOU ARE FAMILIAR WITH
IT. THE FOUNDATION FOR MR. ADELMAN'S BACKGROUND AND EMPLOYMENT
WITH THE DEPARTMENT IS SET FORTH IN DETAIL THERE. I WON'T GO
THROUGH THAT AT THIS POINT.

BY MR. HENDERSON

Q WHAT IS YOUR PRESENT POSITION, SIR?

A I'M ASSIGNED AS HEALTHCARE ACCESS OFFICER.

Q OKAY. AND CAN YOU TELL US WHAT YOUR DUTIES ARE IN THAT
CAPACITY?

A GENERALLY SPEAKING, I ENSURE THAT INMATES GET TO THEIR
MEDICALLY -- OR THERE ARE DUCATED MEDICAL APPOINTMENTS.

Q ANY OTHER DUTIES YOU HAVE IN CONNECTION WITH THAT?

A PART OF OUR JOB, OR MY JOB IN PARTICULAR, AND OTHER OFFICERS
ASSIGNED IS WE DO AMBULANCE CODE RESPONSES. IF AN AMBULANCE HAS

1 TO LEAVE THE INSTITUTION, WE ARE THE FIRST OFFICERS TO BE
2 DESIGNATED TO GO WITH THAT AMBULANCE.

3 **Q** WHAT SHIFT DO YOU WORK, SIR?

4 **A** WE CALL IT SECOND WATCH. MY SHIFT IS 7:00 A.M. TO 3:00 P.M.

5 **Q** HOW MANY OFFICERS ARE CURRENTLY ASSIGNED TO THE SECOND WATCH
6 AS HEALTHCARE ACCESS OFFICERS?

7 **A** MONDAY THROUGH FRIDAY, THERE'S 12 HEALTHCARE ACCESS
8 OFFICERS, PLUS OFFICERS DESIGNATED TO COVER PARTICULAR CLINICS,
9 BUT THERE'S 12 OF US WHO DO ESCORTS.

10 **Q** NOW, CAN YOU TELL US -- CAN YOU BRIEFLY SUMMARIZE YOUR
11 DUTIES WITH RESPECT TO MAKING SURE THAT INMATES ATTEND DUCATED
12 APPOINTMENTS WITHIN THE FACILITY ITSELF?

13 **A** INMATES GET DUCATED THE PREVIOUS EVENING TO APPEAR AT A
14 DENTAL CLINIC OR EYE CLINIC, WHATEVER THE CLINIC MAY BE. IF
15 THEY DON'T SHOW UP WITHIN A FEW MINUTES OF THAT DESIGNATED TIME,
16 THEN WE GO TO THEIR HOUSING UNIT TO FIND OUT WHERE THEY ARE, TO
17 REMIND THEM OR PHYSICALLY BRING THEM DOWN, IF THEY HAPPEN TO BE
18 FOR ANY NUMBER OF REASONS.

19 **Q** OTHER THAN INMATES WHO FORGET WHERE THEY ARE SUPPOSED TO BE
20 GOING, ARE THERE ANY OTHER SITUATIONS YOU WILL BE INVOLVED IN
21 GETTING AN INMATE TO A MEDICAL APPOINTMENT?

22 **A** IT COULD BE ANY NUMBER OF REASONS. IT INCLUDES OF
23 INSTITUTIONAL-LOCKDOWNS-CAUSED DELAYS. MAYBE THE INMATE'S AT
24 WORK AND CAN'T GET OUT OF WORK. MAYBE HE JUST FORGOT OR DIDN'T
25 REALIZE HE HAD TO BE THERE.

1 Q SO LOCKDOWNS WILL REQUIRE YOU TO ESCORT --

2 A LOCKDOWNS REQUIRE ME TO ESCORT A LOT MORE INMATES, YES.

3 Q WHAT ABOUT AD-SEG INMATES?

4 A INMATES IN ADMINISTRATIVE SEGREGATION, BY THE NATURE OF
5 THEIR BEING LOCKED DOWN, CANNOT BRING THEMSELVES TO THEIR OWN
6 DUCATS, SO THEY HAVE TO BE ESCORTED DOWN. WE HAVE TO GO TO
7 AD-SEG UNITS, PLACE WAIST RESTRAINTS ON INMATES, TAKE THEM OUT
8 OF THE CELL, BRING THEM TO THE CLINIC, WAIT FOR THE DOCTOR TO
9 SEE HIM, BECAUSE WE HAVE TO BE WITH HIM THE WHOLE TIME, AND TAKE
10 HIM BACK TO HIS HOUSING UNIT.

11 Q AND WITH RESPECT TO THE OFFSITE AMBULANCE CODE RESPONSES,
12 WHAT IS THE PROCEDURE THERE FOR HEALTHCARE ACCESS TO OFFICERS?

13 A WELL, WE HAVE TWO TYPES OF CODES, CODE THREE AND CODE TWO.
14 CODE THREES ARE IMMEDIATE ONES THAT REQUIRE THE OUTSIDE FIRE
15 AGENCY, IN OUR CASE VACAVILLE FIRE DEPARTMENT, TO REPORT WITH AN
16 AMBULANCE TO THE PRISON, AND THE INMATE IS TAKEN TO THE CLOSEST
17 HOSPITAL, WHICH IS VACA VALLEY HOSPITAL. THAT KIND OF CODE
18 HAPPENS WITHIN MINUTES.

19 CODE TWO AMBULANCE WOULD BE SOMETHING MORE SCHEDULED.
20 THE INMATE MAY NEED A TEST OR ADMITTED TO A HOSPITAL. SOMETIMES
21 THOSE ARE SCHEDULED ANYWHERE FROM 15 TO 20 MINUTES TO A COUPLE
22 OF HOURS LATER.

23 IF I AM A CODE RESPONDER FOR THE DAY AND WE HEAR A
24 CODE THREE BEING CALLED, I IMMEDIATELY LEAVE MY ASSIGNED WORK
25 AREA, TURN MY EQUIPMENT IN, PICK UP THE EQUIPMENT THAT WE USE TO

1 ESCORT THE INMATE. THAT WOULD BE THE CHAINS AND OUR PEPPER
2 SPRAY AND OUR OTHER SECURITY EQUIPMENT.

3 MY PARTNER, THE OTHER OFFICER, WOULD, IN TURN, GO GET
4 A VEHICLE AND A WEAPON, AND HE WOULD ESCORT THE AMBULANCE
5 INSIDE. THEN TOGETHER, I'D STAY WITH THE INMATE IN THE CLINIC,
6 INTO THE AMBULANCE, BACK OUTSIDE TO THE OUTSIDE HOSPITAL WHILE
7 MY PARTNER FOLLOWS ME IN A STATE VEHICLE.

8 **Q** ARE THE TWO OFFICERS THAT RESPOND ON AN AMBULANCE RESPONSE
9 REQUIRED TO STAY WITH THE INMATE THE ENTIRE TIME THE INMATE IS
10 OUTSIDE OF THE FACILITY?

11 **A** YES.

12 **Q** SO EACH AMBULANCE RESPONSE REQUIRES TWO OF THE HEALTHCARE
13 ACCESS OFFICERS TO RESPOND?

14 **A** YES.

15 **Q** HAVE YOU HAD SITUATIONS WHERE THERE WERE MORE THAN ONE
16 AMBULANCE RESPONSE ON A GIVEN SHIFT?

17 **A** YES.

18 **Q** AS MANY AS HOW MANY?

19 **A** I'VE SEEN TWO OR THREE WITHIN AN EIGHT-HOUR PERIOD,
20 SOMETIMES MORE.

21 **Q** SO YOU COULD HAVE A SITUATION WHERE ACTUALLY HALF OF THE
22 HEALTHCARE ACCESS OFFICERS ARE OFFSITE?

23 **A** THEY PROBABLY WOULDN'T TAKE THAT MANY. THEY WOULD START
24 TAKING OFFICERS FROM OTHER UNITS, WHICH WOULD IMPACT THE OTHER
25 UNITS.

1 Q NOW, WITH RESPECT TO THE CLINICS THEMSELVES AT THE FACILITY,
2 CAN YOU TELL US THE GENERAL NATURE OF WHEN THE INMATES ARE
3 BROUGHT THERE, ARE THEY IMMEDIATELY SEEN BY A DOCTOR?

4 A NOT NECESSARILY, NO.

5 Q WHAT IS PROCEDURE IF THEY ARE NOT IMMEDIATELY SEEN?

6 A WELL, IF THE INMATE IS A GENERAL POPULATION INMATE, HE WOULD
7 SHOW UP AT 9:05 FOR A 9:00 O'CLOCK DUCAT, WHICH WOULD BE
8 REASONABLE. HE WOULD WAIT UNTIL THE DOCTOR IS READY TO SEE HIM.
9 THE DOCTOR MAY HAVE TWO OR THREE INMATES AHEAD OF HIM.
10 DOCTORS -- THE INMATES ARE DUCATED SOMETIMES WITH A 15 OR
11 20-MINUTE WINDOW FOR EACH APPOINTMENT, HOWEVER, IT MAY TAKE
12 LONGER, THEREBY CAUSING A BACKUP.

13 Q AND ARE THERE WAITING AREAS FOR THE VARIOUS MEDICAL CLINICS
14 AT CMF?

15 A THERE ARE TWO CLINICS THAT HAVE WAITING AREAS, BUT WE HAVE
16 OTHER MEDICAL AREAS THAT DON'T HAVE WAITING AREAS, IF THAT MAKES
17 SENSE.

18 Q THE TWO THAT DO, WHICH ONES ARE THOSE?

19 A WOULD BE THE AMBULATORY CARE CLINIC. THAT'S A BUILDING THAT
20 HAS 15 EXAMINATION ROOMS OR 14 EXAMINATION ROOMS. THAT HAS A
21 SEATING WAITING OF MAYBE 24, TWO DOZEN INMATES. WE HAVE AN AREA
22 CALLED SPECIALTIES CLINIC WHERE SIX OR SEVEN DOCTORS FROM
23 OUTSIDE COME IN FOR A SPECIALTY-TYPE VISIT, AND THAT SEATS MAYBE
24 A DOZEN.

25 Q HAVE YOU SEEN SITUATIONS WHERE THOSE WAITING ROOM AREAS, TWO

1 WAITING ROOM AREAS, HAVE BEEN COMPLETELY FILLED WITH INMATES?

2 **A** YES.

3 **Q** HAVE THERE BEEN ADDITIONAL INMATES THAT WERE WAITING FOR
4 APPOINTMENTS?

5 **A** I'M SORRY.

6 **Q** HAVE THERE BEEN ADDITIONAL INMATES WAITING FOR APPOINTMENTS
7 AT THOSE CLINICS?

8 **A** YES.

9 **Q** WHERE DO THEY GO?

10 **A** THEY STAND UP IN THAT SAME WAITING AREA OR THEY WAIT IN
11 HALLWAYS.

12 **Q** OKAY. WHAT ARE THE OTHER CLINICS THAT DON'T HAVE WAITING
13 AREAS? CAN YOU BRIEFLY JUST DESCRIBE OR SUMMARIZE WHICH ONES
14 THOSE ARE?

15 **A** THE OTHER CLINICS WOULD INCLUDE THE BREATHING TREATMENT
16 AREA; EARS, EYES, NOSE, THROAT; THE DENTAL AREA, OUR URGENT
17 CARE, AND PHYSICAL THERAPY, AND NONE OF THOSE HAVE WAITING
18 AREAS.

19 **Q** WHERE DO THE INMATES WAIT FOR THOSE?

20 **A** THE HALLWAY.

21 **Q** THEY JUST STAND IN THE HALLWAYS?

22 **A** STAND, SIT IN WHEELCHAIRS, SIT ON THE FLOOR, YES.

23 **Q** ARE THERE ANY BENCHES OR ANYTHING OUT IN THE HALLWAYS?

24 **A** THEY PUT LITTLE REGULAR CHAIRS OUT THERE, BUT THERE'S NEVER
25 ENOUGH.

1 Q IN THE TIMES YOU'VE TAKEN INMATES TO THE CLINICS WHERE
2 YOU'VE HAD TO REMAIN WITH AN INMATE, AN AD-SEG INMATE, HOW LONG
3 HAVE YOU SEEN INMATES WAIT FOR APPOINTMENTS?

4 A I WAITED WITH THEM FOR SOMETIMES UP TO TWO HOURS.

5 Q WHAT EFFECT HAVE YOU OBSERVED THAT TO HAVE ON THE INMATES
6 THAT HAVE BEEN IN THAT SITUATION?

7 A YOU'VE GOT VOLATILE INMATES WITH PHYSICAL OR MEDICAL NEEDS.
8 YOU COULD ALMOST EXPECT WHAT COULD HAPPEN. IT COULD CREATE A
9 VOLATILE SITUATION AT TIMES, FRUSTRATION, IMPATIENCE.

10 Q ARE THERE INMATES THAT HAVE INDICATED TO YOU THAT THEY
11 DIDN'T WANT TO WAIT ANY LONGER?

12 A YES. THE INMATES HAVE THE OPTION TO SIGN MEDICAL REFUSALS.
13 A NURSE OR MEDICAL PERSONNEL WOULD COME UP TO THEM AND THEY
14 WOULD WAIVE THEIR APPOINTMENT FOR THAT DAY.

15 Q YOU HAVE -- SO INMATES ACTUALLY CANCEL THE APPOINTMENT AFTER
16 WAITING ONE TO TWO HOURS?

17 A YES.

18 Q WITH RESPECT TO THE CLINICS AND PROVISION OF MEDICAL CARE
19 THERE AT CMF, WHAT HAVE YOU OBSERVED IN MEETING THE NEEDS OF THE
20 INMATES?

21 A I THINK BEING THAT WE ARE A MEDICAL FACILITY, THAT WE HAVE
22 SO MANY MEDICAL INMATES THAT NEED SO MUCH MEDICAL CARE AND
23 DIFFERENT VARIETIES OF MEDICAL CARE, THAT NEEDS AREN'T ALWAYS
24 MET.

25 Q WHAT DO YOU ATTRIBUTE THAT TO?

1 **A** IT WOULD BE THE LACK OF DOCTORS, THE LACK OF SPACE, THE
2 GEOGRAPHY OF THE BUILDING, AND THE GREAT NUMBER OF MEDICAL
3 INMATES THAT WE HAVE AT --

4 **Q** SO TOO MANY INMATES FOR THE SERVICES AND THE SPACE THAT'S
5 PROVIDED FOR MEDICAL NEEDS?

6 **A** THAT WOULD BE PART OF IT, YES. YES, I THINK.

7 **Q** OKAY. DO YOU SEE ANY RISKS THAT RESULT FROM THE SITUATION
8 THAT YOU OBSERVED IN THE CLINICS?

9 **A** WITHIN THE PRISON, THE GREATEST RISK WE ALWAYS ENCOUNTER
10 WOULD BE THE SAFETY AND SECURITY OF THE INSTITUTION. WHEN YOU
11 HAVE INMATES IN A CROWDED AREA, BAD THINGS CAN HAPPEN. WHEN YOU
12 HAVE INMATES THAT ARE IMPATIENT, BAD THINGS CAN HAPPEN. IT'S
13 PRISON, AND BAD THINGS HAPPEN.

14 AND WHEN THEY ARE UPSET THAT THEY'RE LATE OR THEY'RE
15 NOT GETTING THE TREATMENT THEY THINK THEY NEED OR WANT, THAT CAN
16 KIND OF -- IT CAN CREATE PROBLEMS.

17 THEN THE HEALTH RISKS INVOLVED. WHEN YOU HAVE TWO
18 DOZEN INMATES WAITING TO GO INTO CLINICS AND THEY HAVE ANY
19 VARIETY OF VIRUSES, AILMENTS, DISEASE -- THE EXCHANGE RATE OF
20 THE DISEASE IS HIGH. WE AS OFFICERS ARE EXPOSED TO HIV,
21 HEPATITIS INSTANCES HAVE HAPPENED IN OUR PRISON, INFECTIONS. SO
22 THE RISK IS JUST -- IT'S MULTI-FACETED.

23 **Q** ARE YOU AWARE OF THE CURRENT INMATE POPULATION AT CMF?

24 **A** APPROXIMATELY 3100.

25 **Q** DO YOU KNOW IF THAT'S ABOVE OR BELOW DESIGN CAPACITY?

1 **A** IT'S PROBABLY JUST A TAD BELOW.

2 **Q** GIVEN THAT FACT, DO YOU STILL FEEL THAT OVERCROWDING IS AN
3 ISSUE AT CMF?

4 **A** OVERCROWDING IN THE SENSE, YES, BECAUSE THERE IS TOO MANY
5 INMATES WITH MEDICAL NEEDS TO HAVE THEIR NEEDS MET PROPERLY AT
6 THE PRISON.

7 **Q** NOW, THERE WAS A 50-BED MENTAL HEALTH UNIT RECENTLY OPENED
8 THERE?

9 **A** MENTAL HEALTH CRISIS UNIT, YES.

10 **Q** HOW LONG DID IT TAKE TO BUILD THAT UNIT?

11 **A** APPROXIMATELY TWO YEARS.

12 **Q** IS THERE -- YOU SAY THAT THE FACILITY IS SLIGHTLY UNDER
13 DESIGN CAPACITY. DO YOU HAVE AN UNDERSTANDING -- DOES THAT MEAN
14 THERE'S EMPTY BEDS THERE AT CMF?

15 **A** NO, THERE WOULD BE NOT, THAT I AM AWARE OF, THAT THERE'S
16 EMPTY BEDS, NO. I'M NOT SURE OF YOUR QUESTION.

17 **Q** I AM TRYING TO FIND OUT IF THAT MEANS THERE ARE VACANCIES
18 THERE AT CMF THAT ARE NOT BEING FILLED BY INMATES FROM OTHER
19 FACILITIES.

20 **MS. JOHNSON:** ANNE JOHNSON FOR THE DEFENDANTS. LACKS
21 FOUNDATION.

22 **JUDGE HENDERSON:** LAY A FOUNDATION, COUNSEL.
23 BY MR. HENDERSON

24 **Q** ARE YOU AWARE OF THE FUNCTION OF THE CMF FACILITY WITHIN THE
25 CORRECTIONAL SYSTEM?

1 **A** IT'S A MEDICAL FACILITY.

2 **Q** WHERE DOES IT DERIVE ITS INMATES FROM?

3 **A** WE GET INMATES, OBVIOUSLY, FROM THE COURT SYSTEMS, BUT OTHER
4 INSTITUTIONS SEND THEM TO US TO MEET THEIR MEDICAL AND PSYCH
5 NEEDS.

6 **Q** OKAY. SO IS THAT GENERALLY WHERE THE INMATES, TO YOUR
7 KNOWLEDGE, COME FROM?

8 **A** I COULDN'T TELL YOU STATISTICALLY IF THEY COME -- I JUST
9 KNOW FOR EVERY TIME AN INMATE LEAVES, THERE'S AT LEAST ONE OR
10 TWO WAITING TO REPLACE THEM.

11 **Q** SO THERE ARE NO VACANT BEDS THERE FOR ANY LONG PERIOD OF
12 TIME?

13 **A** I WOULDN'T THINK SO, NO.

14 **MR. HENDERSON:** THANK YOU, SIR. I THINK THAT'S ALL I
15 HAVE AT THIS POINT.

16 **JUDGE HENDERSON:** THANK YOU, COUNSEL.
17 CROSS-EXAMINATION.

18 **MR. MELLO:** MR. MITCHELL IS GOING TO GO FIRST. WE'RE
19 GOING TO RESERVE TIME, IF ANY, AFTER MR. MITCHELL.

20 **JUDGE HENDERSON:** OKAY. THANK YOU.

21 **CROSS-EXAMINATION BY MR. MITCHELL**

22 BY MR. MITCHELL

23 **Q** GOOD MORNING.

24 **A** HI.

25 **Q** BILL MITCHELL FOR THE DA INTERVENORS.

1 MR. ADELMAN, YOU HAVE BEEN WITH THE DEPARTMENT OF
2 CORRECTIONS AS A CORRECTIONAL OFFICER SINCE 1991?

3 **A** NO. IN 1991 I STARTED AS A SUPERVISING COOK. I WENT
4 THROUGH CORRECTIONAL ACADEMY IN JANUARY 1993.

5 **Q** YOU HAVE BEEN AT CMF VACAVILLE SINCE 1994?

6 **A** VACAVILLE SINCE 1994.

7 **Q** DID I PRONOUNCE THAT WRONG?

8 **A** YES.

9 **Q** MUST BE MY CHICAGO ACCENT.

10 NOW, A GOOD PART OF THE TIME RECENTLY YOU HAVE SPENT
11 ON CONSTRUCTION PROJECTS; IS THAT CORRECT?

12 **A** CORRECT.

13 **Q** WHAT WAS THE LAST CONSTRUCTION PROJECT YOU WORKED ON?

14 **A** I WAS ON THE GROUNDBREAKING OF THE MENTAL HEALTH CRISIS
15 BUILDING.

16 **Q** WHEN DID YOU WORK ON THAT PROJECT?

17 **A** GOT TO DO SOME MATH IN MY HEAD HERE. I BELIEVE IT WAS IN
18 THE SPRING OF '06 THAT I STARTED OUT THERE, 2006.

19 **Q** 2006. AND THAT WAS FROM THE GROUND UP THEY BUILT THAT
20 CONSTRUCTION, THAT BUILDING?

21 **A** YES, SIR.

22 **Q** THAT WAS A MENTAL HEALTH CRISIS BED BUILDING?

23 **A** YES, SIR.

24 **Q** HAS IT BEEN COMPLETED?

25 **A** YES, SIR.

1 Q AND IT'S OPEN AND FUNCTIONING?

2 A YES.

3 Q AND YOUR ROLE WAS TO ESCORT THE CONSTRUCTION CREW IN AND OUT
4 OF THE PRISON, CORRECT?

5 A THAT, TO CONTROL INVENTORY. LIKE YOU MENTIONED, THE
6 ESCORTS, IN AND OUT; GATE CLEARANCES FOR THE STAFF; GETTING THE
7 CONTRACTORS INTO THE BUILDING, INTO THE MAIN CMF BUILDING, IF
8 THEY NEEDED TO CONNECT THE PLUMBING OR ELECTRICAL, THINGS LIKE
9 THAT.

10 Q THAT WAS 19 TO 20 MONTHS YOU SPENT ON THAT PROJECT?

11 A I WAS PROBABLY THERE ABOUT 20 MONTHS, YES.

12 Q ALMOST TWO YEARS?

13 A CORRECT. I LEFT BEFORE THE BUILDING WAS COMPLETED.

14 Q AND PRIOR TO THAT, YOU WERE WORKING IN ANOTHER CONSTRUCTION
15 PROJECT?

16 A THERE WAS A GAP. IN BETWEEN THE TWO BUILDINGS I WORKED IN
17 THE ADMINISTRATIVE SEGREGATION AREA BETWEEN THE TWO BUILDINGS.

18 Q THE GAP BETWEEN THE TWO BUILDING PROJECTS YOU WORKED ON WAS
19 FOR HOW MANY MONTHS?

20 A PROBABLY LESS THAN A YEAR.

21 Q LESS THAN A YEAR?

22 A YEAH, I BELIEVE SO.

23 Q AND THEN THE INITIAL CONSTRUCTION PROJECT THAT YOU WORKED
24 ON, WHAT WAS THAT FOR?

25 A THAT WAS CALLED THE AMBULATORY CARE CLINIC. WE CALL IT THE

1 ACC.

2 Q WAS THAT FROM THE GROUND UP ALSO?

3 A FROM THE GROUND UP.

4 Q WHAT YEAR DID THAT START?

5 A I'D HAVE TO DO THE NUMBERS IN MY HEAD. THREE OR FOUR YEARS
6 AGO. I DON'T -- WE JOB CHANGE SOMETIMES SO OFTEN, BUT IT WAS
7 PROBABLY ABOUT THREE YEARS AGO.

8 Q 2003?

9 A MORE OR LESS, I'M GUESSING.

10 Q DID YOU WORK ENTIRELY FROM GROUND UP TO COMPLETION OF THAT
11 PROJECT?

12 A THAT BUILDING I COMPLETED, YES.

13 Q SO YOU WERE ON THAT PROJECT FOR APPROXIMATELY THREE YEARS?

14 A NO. BUILDING WAS APPROXIMATELY 13 OR 14 MONTHS. THAT'S WHY
15 I'M UNCLEAR. I WOULD HAVE TO LITERALLY WRITE THE DATES OUT TO
16 FIGURE IT OUT.

17 Q IN 13 MONTHS THEY COMPLETED THAT CONSTRUCTION PROJECT?

18 A YES, SIR.

19 Q AND WHILE YOU WERE WORKING ON THAT CONSTRUCTION PROJECT,
20 LIKE WHEN YOU WERE WORKING ON THE MENTAL HEALTH CRISIS BED
21 BUILDING, YOU DID NOT HAVE INMATE CONTACT?

22 A NO. THERE'S ALWAYS INMATE CONTACT BECAUSE I WAS ON GROUNDS.
23 HOWEVER, THE BULK OF MY JOB HAD TO DO WITH OUTSIDE CONTRACTORS.
24 INMATES ARE IN THE PRISONS, SO I ALWAYS HAVE INMATE CONTACT.

25 Q BUT YOU WEREN'T INVOLVED IN THE DELIVERY OF MEDICAL CARE OR

1 ESCORTING INMATES TO RECEIVE MEDICAL CARE DURING THE TIME PERIOD
2 YOU WERE WORKING 13 MONTHS ON THE ONE PROJECT OR THE 20 MONTHS
3 ON THE SECOND PROJECT?

4 **A** CORRECT.

5 **Q** YOU INDICATED AT CERTAIN TIMES INMATES SOMETIMES HAVE TO
6 WAIT FOR MEDICAL CARE?

7 **A** YES.

8 **Q** AND THE WAITING ROOMS GET CROWDED?

9 **A** YES.

10 **Q** HAVE YOU EVER HAD TO WAIT FOR MEDICAL CARE?

11 **A** YES.

12 **Q** DO THE WAITING ROOMS GET CROWDED?

13 **A** SOMETIMES, YES.

14 **Q** DO YOU AND SOME OF THE OTHER PATIENTS WAITING FOR MEDICAL
15 CARE GET FRUSTRATED?

16 **A** YES.

17 **Q** WE PUT UP WITH THAT, DON'T WE?

18 **A** SOMETIMES, YES.

19 **Q** AND SOMETIMES WE GET FRUSTRATED AND WE LEAVE?

20 **A** I DON'T.

21 **Q** THE ROLE OF THE ESCORT OFFICER, YOU EVEN GO TO LENGTHS OF
22 TRACKING DOWN INMATES WHO DON'T SHOW UP FOR THEIR APPOINTMENTS;
23 YOU WILL GO GET THEM?

24 **A** YES.

25 **Q** AND MAKE SURE THEY GET THE MEDICAL CARE THAT THEY HAVE PUT

1 IN A DUCAT FOR AT ONE TIME?

2 **A** I MAKE SURE THEY GET TO THEIR APPOINTMENT.

3 **Q** AND THOSE WHO DON'T HAVE APPOINTMENTS CAN REQUEST MEDICAL
4 ATTENTION AT 9:00 A.M. AT SICK CALL AND THEN -- IS THAT CORRECT?

5 **A** NO.

6 **Q** DID YOU SAY THAT THE PROCEDURE FOR THE GENERAL POPULATION IS
7 THAT THEY -- WHEN THEY DON'T HAVE AN APPOINTMENT, AT 9:00 A.M.
8 THERE'S A PROCEDURE THEY CAN FILL OUT A REQUEST?

9 **A** THAT'S MORE CORRECT. THAT DOESN'T MEAN -- WE DON'T HAVE A
10 SICK CALL PER SE. WE HAVE SCHEDULED APPOINTMENTS. BUT WITHIN
11 THE HOUSING UNITS, THEY HAVE CLINICIANS WHO DO MEDICATION OR
12 NURSES THAT DO MEDICATION. THE INMATES CAN TELL THEM THAT THEY
13 MAY HAVE A MEDICAL ISSUE. THAT NURSE WILL CONTACT OUR URGENT
14 CARE CLINIC, WHO MAY OR MAY NOT CALL TO SEE THAT INMATE THAT
15 DAY.

16 **Q** IS IT DEPENDENT UPON WHAT THEIR SYMPTOMS ARE OR THEIR
17 COMPLAINTS ARE WHETHER THEY GET SEEN THAT DAY OR NOT?

18 **A** I DON'T KNOW WHAT THE STANDARD IS. I JUST ESCORT INMATES.

19 **Q** SO YOUR ROLE IS ONLY TO FACILITATE THE INMATE PUTTING IN HIS
20 REQUEST AND PERHAPS GETTING SEEN THAT DAY AND BEING ESCORTED?

21 **A** NO, I DON'T HELP HIM FACILITATE PUTTING IN HIS REQUEST. I
22 MAKE SURE HE GETS TO HIS APPOINTMENT.

23 **Q** YOU'VE INDICATED THAT AT TIMES SOME INMATES DON'T GET TO BE
24 SEEN ON THE DAY THEY PUT IN THEIR REQUEST?

25 **A** THAT'S NOT WHAT I SAID. I SAID THEY DON'T GET TO BE SEEN

1 THE DAY THEY HAVE AN APPOINTMENT.

2 Q THAT CAN BE FOR ANY NUMBER OF REASONS, CORRECT?

3 A YES.

4 Q NOT ALWAYS THE POPULATION OR THE CROWDED WAITING ROOM,
5 CORRECT?

6 A I DIDN'T SAY THAT EITHER. WHAT I SAID IS IT COULD BE THE
7 NUMBER OF INMATES THAT NEED TO BE SEEN FOR THE AMOUNT OF
8 CLINICIANS CAN CREATE MAJOR DELAYS.

9 Q NOT ALWAYS HAVING TO DO WITH CROWDED CONDITIONS?

10 A IF YOU HAVE A LOT OF INMATES THAT NEED TO SEE NOT ENOUGH
11 CLINICIANS, I WOULD THINK YOU COULD SAY THAT WOULD BE A
12 CROWDING -- YOU HAVE TOO MANY PEOPLE.

13 Q YOU INDICATED THAT CMF IS UNDER DESIGN CAPACITY?

14 A BY 50 OR 60 IS THE LAST NUMBER I THINK I SAW. NOT VERY
15 MANY.

16 Q TECHNICALLY, THAT WOULDN'T QUALIFY AS BEING OVERCROWDED,
17 ACCORDING TO DEFINITIONS THAT HAVE BEEN BANTERED ABOUT IN THE
18 COURTROOM?

19 A I DON'T KNOW HOW THEY COME UP WITH THE DEFINITION OF WHAT IS
20 THE CAPACITY OR NOT, BUT THE QUESTION IS WHETHER THE INMATES GET
21 SEEN BASED ON THE NUMBER OF INMATES THAT NEED TO BE SEEN. I
22 CAN'T SPEAK TO THE POPULATION AS WHY 3,100 IS A MAGIC NUMBER OR
23 SOMETHING LIKE THAT.

24 WHAT I DO SEE IS THAT WE HAVE TOO MANY INMATES AT
25 TIMES THAT NEED TO BE SEEN OR DOCTORS TOO FAR BEHIND SCHEDULE OR

1 NOT ENOUGH DOCTORS, THEREBY CREATING DELAYS.

2 **Q** IF THEY INCREASE THE NUMBER OF STAFF TO ESCORT THE NUMBER OF
3 DOCTORS AND CLINICIANS TO SEE THESE INMATES, THAT COULD RESOLVE
4 SOME OF THE PROBLEMS OF MISSED --

5 **A** I WOULD THINK IT'S NOT A SIMPLE QUESTION WITH A SIMPLE
6 ANSWER. YOU CAN INCREASE THE NUMBER OF STAFF, MEDICAL STAFF,
7 ALL YOU WANT. IF YOU DON'T HAVE THE SPACE, IT DOESN'T SOLVE THE
8 PROBLEM. IF YOU STILL HAVE TOO MANY INMATES, IT DOESN'T SOLVE
9 THE PROBLEM.

10 SO, NO, I DON'T THINK YOU CAN BLANKET STATEMENT SAY,
11 INCREASING THE AMOUNT OF MEDICAL STAFF WOULD SOLVE THAT PROBLEM.
12 WE ARE STILL OVERCROWDED WITH LIMITED THE MEDICAL SPACE.

13 **Q** IF YOU INCREASE THE MEDICAL SPACE, SUCH AS WITH ANOTHER
14 CONSTRUCTION PROJECT ON THE GROUNDS, AND ADDED MORE STAFF, THAT
15 WOULD RESOLVE THE PROBLEM?

16 **A** THAT WOULD BE POSSIBLE.

17 **Q** YOU'VE SEEN A LARGE INCREASE IN THE NUMBER OF CLINICIANS OR
18 MEDICAL STAFF WITH THE RECEIVER TAKING OVER MEDICAL CARE?

19 **A** I HAVE.

20 **Q** HAVE YOU SEEN IMPROVEMENTS IN THE DELIVERY OF HEALTHCARE
21 WITH THE RECEIVER'S EFFORTS?

22 **A** THAT'S A BROAD QUESTION. THAT WOULD BE A YES AND NO IS MY
23 ANSWER. THE INCREASE OF THE STAFF HAS NOT --

24 **Q** I THINK YOU ANSWERED IT. THANK YOU.

25 WOULD YOU AGREE THAT THE STAFF THAT YOU WORK WITH IN

1 THE DELIVERY OF MEDICAL CARE IS EARNESTLY CONCERNED WITH
2 PROVIDING ADEQUATE SUFFICIENT CONSTITUTIONAL HEALTHCARE TO THE
3 INMATES?

4 **A** I WOULDN'T COMMENT OR JUDGE ON THAT.

5 **Q** PARDON?

6 **A** I SAID I WOULD NOT COMMENT OR JUDGE WHAT THEIR QUALITY OF
7 CARE IS, IF THAT'S YOUR QUESTION. DO I BELIEVE THEY ARE GIVING
8 CONSTITUTIONAL CARE, YOU WOULD HAVE TO ASK EACH INDIVIDUAL
9 DOCTOR.

10 **Q** I DIDN'T ASK YOU THAT, AND I UNDERSTAND YOU DON'T WANT TO
11 ANSWER THAT QUESTION.

12 THE CARE THAT YOU PROVIDE, YOU DO YOUR BEST TO
13 GIVE -- YOUR BEST EFFORTS FOR FULFILLING YOUR FUNCTION AND YOUR
14 DUTIES AS A CORRECTIONAL OFFICER, RIGHT?

15 **A** YES, SIR.

16 **Q** IN YOUR DEPOSITION YOU HAVE A STATEMENT YOU MADE. I WANT TO
17 MAKE SURE THAT YOU SAID THIS CORRECTLY. DO YOU RECALL SAYING, I
18 BELIEVE IT'S AT PAGE 40, LINE 25, TO PAGE 41, LINE 6.

19 "IF YOU HAD LESS INMATES THAT NEEDED TO BE
20 SEEN, MORE WOULD BE SEEN."

21 DID YOU SAY THAT?

22 **A** IF IT'S IN MY DEPOSITION, I'LL SAY, YES, I SAID IT. I DON'T
23 RECALL SAYING IT, BUT THAT WOULD BE SOMETHING I WOULD HAVE SAID,
24 YES.

25 **Q** WERE YOU PRESENT WHEN DR. THOMAS HAD HIS VISIT IN

1 DECEMBER 2007?

2 **A** I BELIEVE THAT WAS THE DOCTOR I TOURED.

3 **Q** YES.

4 **A** YES.

5 **Q** WERE YOU PART OF THE TOUR?

6 **A** I WAS PROVIDING SECURITY.

7 **Q** DR. THOMAS IN HIS VISIT INDICATED THERE WERE NO CLAIMS THAT
8 OVERCROWDING IMPACTED FUNCTIONS OR PUT -- STATED OVERCROWDING
9 WAS AN ISSUE REGARDING THE DELIVERY OF MEDICAL CARE. DID YOU
10 HAVE CONVERSATIONS WITH DR. THOMAS?

11 **A** NO. ACTUALLY, I DIDN'T.

12 **Q** WERE YOU PRESENT WHEN SOMEONE REMARKED, "I DON'T GET
13 HEALTHCARE AS GOOD AS THEY GET"?

14 **A** I DON'T RECALL THAT STATEMENT BEING MADE.

15 **Q** DO YOU HAVE ANY MEDICAL TRAINING?

16 **A** CPR.

17 **Q** THAT'S ALL?

18 **A** THAT'S IT.

19 **Q** SO YOU HAVE NO KNOWLEDGE REGARDING WHAT THE PROPER TREATMENT
20 IS FOR A PERSON WITH INFECTIOUS DISEASE, RIGHT?

21 **A** NO MEDICAL KNOWLEDGE.

22 **Q** MEDICAL TRAINING?

23 **A** NO.

24 **Q** I THINK YOU'VE ALREADY INDICATED YOU DON'T HAVE AN OPINION
25 WITH RESPECT TO THE QUALITY OR THE LEVEL OF MEDICAL CARE THAT

1 INMATES ARE RECEIVING, CORRECT?

2 **A** NO.

3 **Q** EXCUSE ME. ONE MOMENT.

4 (PAUSE IN PROCEEDINGS.)

5 BY MR. MITCHELL

6 **Q** HAVE YOU ALSO WORKED AS MENTAL HEALTHCARE OFFICER?

7 **A** WE DON'T HAVE THAT TITLE, SO I'M NOT SURE WHAT YOU MEAN. I
8 WORKED IN THE DEPARTMENT OF MENTAL HEALTH, IF THAT'S WHAT YOU'RE
9 ASKING.

10 **Q** WHEN WAS THAT?

11 **A** JULY 2007 TO FEBRUARY 2008.

12 **Q** WHAT WAS YOUR ROLE THERE?

13 **A** I WAS A CORRECTIONAL OFFICER THAT COVERED TWO WINGS, Q1, Q2,
14 WITHIN THE DEPARTMENT OF MENTAL HEALTH.

15 **Q** AND YOU ESCORTED THEM TO THEIR APPOINTMENTS, OR WERE MOST OF
16 THEIR SERVICES PERFORMED IN THE WING THERE?

17 **A** FOR THE MAJORITY, THEY WERE PERFORMED WITHIN THE WING, THEIR
18 SERVICES.

19 **Q** ALL THE CLINICIANS WOULD COME INTO THE WING AND PROVIDE THE
20 CARE TO THE INMATES AT THAT LOCATION?

21 **A** YES.

22 **Q** NOW, WERE YOU INVOLVED IN THE DELIVERY OF MEDICAL OR
23 MEDICINE OR PRESCRIPTION DRUGS TO THE INMATES?

24 **A** WITH -- NO. I'M NOT SURE I UNDERSTAND YOUR QUESTION. IS
25 THAT PART OF MY FUNCTION AS A HEALTHCARE OFFICER?

1 Q YES.

2 A NO. LET ME QUALIFY THAT PART OF OUR JOB IS WE DO COVER A
3 COUPLE OF HOUSING UNITS WHERE WE WATCH THE NURSE DISTRIBUTE
4 MEDICATION TO PROVIDE SECURITY, BUT I'M NOT SURE IF THAT'S WHAT
5 YOU'RE ASKING.

6 MR. MITCHELL: THANK YOU. I HAVE NOTHING FURTHER.

7 MR. MELLO: NOTHING FURTHER.

8 JUDGE HENDERSON: THANK YOU, COUNSEL.

9 REDIRECT, MR. HENDERSON?

10 MR. HENDERSON: SHORT REDIRECT, YOUR HONOR.

11 REDIRECT EXAMINATION BY MR. HENDERSON

12 BY MR. HENDERSON

13 Q MR. ADELMAN, YOU WERE ASKED ABOUT YOUR OWN EXPERIENCES WHEN
14 YOU GO TO APPOINTMENTS WITH HEALTHCARE PROVIDERS, IN THE
15 CROSS-EXAMINATION?

16 A YES.

17 Q AND YOU WERE ASKED IF YOU HAD TO WAIT SOMETIMES FOR MEDICAL
18 APPOINTMENTS?

19 A YES.

20 Q OKAY. WHEN YOU -- WITH RESPECT TO THE INMATES THAT ARE IN
21 THE WAITING AREAS, IN THE HALLWAYS, IN CONNECTION WITH THE
22 CLINICS AT CMF, ARE THEY PROVIDED ANYTHING TO DO WHILE THEY'RE
23 WAITING THERE?

24 A NO.

25 Q THEY JUST STAND?

1 **A** YES.

2 **Q** OKAY. WHEN YOU GO TO APPOINTMENTS, YOU CAN BRING MAGAZINES
3 AND BOOKS TO READ?

4 **A** YES.

5 **Q** OR YOU CAN READ THE OUTDATED ONES IN THE WAITING ROOMS?

6 **A** CORRECT.

7 **Q** AND IF YOU WANT TO GET UP AND GET SOMETHING TO EAT, YOU CAN
8 DO THAT, CORRECT?

9 **A** CORRECT.

10 **Q** ARE THE INMATES ALLOWED TO DO THAT?

11 **A** NO.

12 **Q** OKAY. AND USUALLY WHEN YOU GO TO MEDICAL APPOINTMENTS, YOU
13 HAVE A PLACE TO SIT?

14 **A** CORRECT.

15 **Q** DO THE INMATES HAVE THAT?

16 **A** NO. FOR THE MOST PART, NO.

17 **Q** ARE THERE ANY INMATES AT CMF THAT ARE DOUBLE CELLED?

18 **A** YES.

19 **Q** APPROXIMATELY WHAT FACILITY OR WHAT LOCATIONS ARE THEY IN?

20 **A** THEY'RE THE GENERAL POPULATION INMATES.

21 **Q** ARE THERE TIMES WHEN THERE ARE NOT SUFFICIENT HEALTHCARE
22 OFFICERS, ACCESS OFFICERS, TO GET INMATES TO SCHEDULED
23 APPOINTMENTS?

24 **A** YES.

25 **Q** OKAY. WHAT HAPPENS WHEN THERE'S A LOCKDOWN AT THE FACILITY

1 IN TERMS OF GETTING PEOPLE TO APPOINTMENTS?

2 **A** A LOCKDOWN ACTUALLY INCREASES THE AMOUNT OF INMATES I HAVE
3 TO GO GET, BECAUSE THE FACT THE INSTITUTION IS ON LOCKDOWN, THE
4 INMATES CAN'T JUST COME ON THEIR OWN. SO EVEN A GENERAL
5 POPULATION OR MAINLINE INMATE MIGHT REQUIRE AN ESCORT.

6 **Q** SO THERE'S AN -- EVEN DURING LOCKDOWN, THERE'S AN EVEN
7 GREATER LIKELIHOOD THAT AN INMATE MAY NOT MEET HIS APPOINTMENT
8 AS SCHEDULED?

9 **A** THAT'S CORRECT.

10 **Q** OKAY. ARE THERE -- HOW OFTEN DO LOCKDOWNS OCCUR AT CMF?

11 **A** LOCKDOWNS HAPPEN BECAUSE OF PRISON, SO THEY HAPPEN --

12 **MR. HENDERSON:** OBJECT AS OUTSIDE THE SCOPE OF
13 CROSS-EXAMINATION. OBJECTION.

14 **MR. MITCHELL:** I ASKED ABOUT LOCKDOWNS IN DIRECT,
15 YOUR HONOR.

16 **JUDGE HENDERSON:** HE'S TALKING ABOUT
17 CROSS-EXAMINATION. YOU'RE REVISITING CROSS-EXAMINATION, SO I'LL
18 SUSTAIN THAT OBJECTION.

19 BY MR. HENDERSON

20 **Q** ARE THE INMATES THAT ARE IN THE WAITING AREAS, ARE THEY IN
21 DIFFERENT SECURITY LEVELS?

22 **A** YES.

23 **Q** WHAT SECURITY LEVELS ARE PRESENT AT CMF?

24 **A** LEVEL ONES THROUGH LEVEL FOURS.

25 **Q** WHAT ARE LEVEL FOURS?

1 **A** THE HIGHEST RATED SECURITY. SOMETIMES THEY'RE AD-SEGS.
2 THEY HAVE A LOT OF POINTS, ANY NUMBER OF CRITERIA. THE HIGHER
3 THE POINTS, THE HIGHER THE LEVEL.

4 **Q** AND THERE'S NO SEGREGATION OF THE VARIOUS LEVELS WHEN THEY
5 ARE IN THE WAITING AREAS?

6 **A** ONLY THE ADMINISTRATIVE SEGREGATED INMATES. WE TRY TO
7 ESTABLISH SOME SPACE BETWEEN THEM AND THE GP, GENERAL POPULATION
8 INMATES.

9 **Q** ARE THERE LEVEL FOUR INMATES IN THE GENERAL POPULATION?

10 **A** I BELIEVE THERE STILL ARE AT CMF.

11 **Q** SO THEY WOULD NOT BE SUBJECT TO AD-SEG?

12 **A** NO, SIR.

13 **Q** DO YOU LIKE WORKING AT CMF, SIR?

14 **A** YES.

15 **Q** WHY IS THAT?

16 **MR. MITCHELL:** OBJECT ON RELEVANCE GROUNDS.

17 **JUDGE HENDERSON:** I'M GOING TO ALLOW IT.

18 CMF, HAVE YOU WORKED ANYPLACE ELSE OTHER THAN CMF?

19 **THE WITNESS:** YES, SIR. I WORKED AT SAN QUENTIN WHEN
20 I WORKED AT -- WHEN I FIRST LEFT THE ACADEMY.

21 **JUDGE HENDERSON:** WAS THE QUESTION CMF OR THE JOB?

22 **MR. HENDERSON:** CMF.

23 **JUDGE HENDERSON:** YOU MAY ANSWER.

24 **THE WITNESS:** THE QUESTION AGAIN?
25

1 BY MR. HENDERSON

2 Q WHY IS IT YOU LIKE WORKING AT CMF?

3 A I'M FAMILIAR WITH IT. I HAVE BEEN THERE A LONG TIME. I
4 THINK WE'RE A GOOD PRISON. WE DO GOOD THINGS. WE HAVE A LOWER
5 RATE OF INCIDENTS COMPARED TO OTHER INSTITUTIONS. I THINK A LOT
6 BECAUSE OF OUR MEDICAL INMATES, THAT WE DON'T HAVE THE HIGH
7 VIOLENCE RATE. DOESN'T MEAN WE DON'T HAVE ANY VIOLENCE, JUST
8 NOT AS MUCH AS OTHER PLACES WHERE THERE'S HIGH GANG ACTIVITY.
9 THERE COULD BE ANY NUMBER OF REASONS. I'M STILL NOT EXACTLY
10 SURE OF THE QUESTION.

11 Q I THINK YOU ANSWERED IT FOR ME.

12 A THANK YOU.

13 MR. HENDERSON: THANK YOU, SIR.

14 JUDGE HENDERSON: RECROSS?

15 MR. MITCHELL: JUST BRIEFLY.

16 RECROSS-EXAMINATION BY MR. MITCHELL

17 BY MR. MITCHELL

18 Q MR. ADELMAN, YOU INDICATED THAT, IN YOUR OPINION, YOUR
19 INSTITUTION IS OVERCROWDED.

20 A NO, I DON'T THINK I SAID THAT. I THINK IT'S OVERCROWDED FOR
21 ITS MEDICAL NEEDS BECAUSE WE HAVE SUCH A HIGH RATE OF MEDICAL
22 NEED INMATES.

23 Q AND YOU THINK IT'S OPERATING FAIRLY WELL?

24 A I DIDN'T SAY THAT EITHER. I THINK THERE ARE TIMES WHEN ANY
25 NUMBER OF PROGRAMS DON'T OPERATE WELL BECAUSE, A, IT'S THE

1 STATE, THERE'S NOT ALWAYS A LOT OF MONEY, BUDGET CONSTRAINTS,
2 MEDICAL CONSTRAINTS. SO, NO, I DON'T THINK I SAID THAT.

3 Q BUT YOU ARE DOING A GOOD JOB?

4 A PARDON ME?

5 Q YOU JUST INDICATED PREVIOUSLY YOU ARE DOING A GOOD JOB.

6 A I BELIEVE I'M DOING A GOOD JOB WITHIN THE CONFINES OF WHERE
7 I'M WORKING, YES.

8 MR. MITCHELL: THANK YOU.

9 JUDGE HENDERSON: OKAY. LET'S TAKE A ONE-HOUR -- I
10 ASSUME YOU DON'T HAVE --

11 MR. SPECTER: COULD I RAISE SOMETHING BEFORE WE BREAK
12 FOR LUNCH?

13 JUDGE HENDERSON: OKAY.

14 MR. SPECTER: DONALD SPECTER FOR THE PLAINTIFFS.

15 I WANTED TO -- AS YOU KNOW, THE PLAINTIFFS HAVE
16 FINISHED WITH OUR WITNESSES, AND THE STATE IS GOING TO START
17 PRESENTING ITS WITNESSES TOMORROW. SO I WANTED TO RAISE KIND OF
18 A LEGAL ISSUE WITH YOU BEFORE THAT HAPPENS, SO IF IT NEEDS TO BE
19 RESOLVED, IT CAN BE RESOLVED.

20 AS YOU KNOW, WHEN YOU BIFURCATED THE PROCEEDINGS
21 HERE, YOU PUT PRIMARY CAUSE IN THIS PROCEEDING AND NO OTHER
22 RELIEF IN THE OTHER PART OF THE PROCEEDING, AND I UNDERSTAND
23 THAT. BUT THE ISSUE COMES DOWN TO WHERE THE DIVIDING LINE
24 BETWEEN THE NO OTHER RELIEF IS AND THE PRIMARY CAUSE.

25 AS YOU HAVE HEARD THE TESTIMONY FROM OUR WITNESSES,

1 THEY'VE TESTIFIED BOTH THAT IT'S THE PRIMARY CAUSE AND THAT
2 NOTHING SHORT OF A POPULATION REDUCTION WILL ALLOW THE STATE OR
3 THE RECEIVER TO PROVIDE THE ADEQUATE MEDICAL AND MENTAL
4 HEALTHCARE THAT THE CONSTITUTION REQUIRES. THAT SOMEWHAT SLIPS
5 IN, IN A WAY, TO THE ISSUE OF NO OTHER -- WHETHER THERE'S NO
6 OTHER RELIEF ISSUE.

7 I -- WE AS THE PLAINTIFFS ARE GOING TO REQUEST A
8 FINDING, FACTUAL FINDING, AT THE LEAST, THAT CROWDING IS THE
9 PRIMARY CAUSE AND THAT THE -- WITHOUT A POPULATION REDUCTION,
10 THE -- YOU KNOW, LEVEL OF CONSTITUTIONAL CARE WON'T BE PROVIDED
11 FOR MANY, MANY YEARS TO COME.

12 SO I DIDN'T WANT TO GO INTO THE NEXT PHASE OF THE
13 PROCEEDING WITHOUT IT BEING CLEAR WHICH WAY THAT STRIKES, AND I
14 DIDN'T WANT THE DEFENSE TO BE PUT ON WITHOUT IT BEING CLEAR THAT
15 THAT'S AT LEAST OUR POSITION, THAT THAT ISSUE NEEDS TO BE
16 ADDRESSED IN PHASE ONE OF THE PROCEEDINGS.

17 **JUDGE KARLTON:** MR. SPECTER, CANDIDLY, I DON'T
18 UNDERSTAND WHAT YOU'RE SAYING. ARE YOU SAYING YOU BELIEVE --
19 FIRST OF ALL, LET'S LET THIS GUY GO HOME.

20 **JUDGE HENDERSON:** YES. THANK YOU FOR TESTIFYING,
21 SIR. YOU MAY STEP DOWN, AND YOU'RE EXCUSED.

22 **THE WITNESS:** THANK YOU.

23 **JUDGE KARLTON:** ARE YOU SAYING YOU DON'T INTEND TO
24 PUT ON ANY ADDITIONAL EVIDENCE CONCERNING ALTERNATIVE RELIEF
25 BECAUSE YOU THINK YOU'VE COVERED IT ALREADY?

1 **MR. SPECTER:** I'M SORRY. I COULDN'T HEAR THE
2 QUESTION, YOUR HONOR, BECAUSE OF THE ACOUSTICS.

3 **JUDGE KARLTON:** I'LL TRY ONCE MORE.

4 **MR. SPECTER:** OKAY.

5 **JUDGE KARLTON:** ARE YOU SAYING --

6 **MR. SPECTER:** YES.

7 **JUDGE KARLTON:** -- THAT YOU WILL NOT BE PUTTING ON
8 ANY MORE EVIDENCE CONCERNING ALTERNATIVE ORDERS BECAUSE YOU
9 BELIEVE YOU'VE CARRIED -- YOU'VE COVERED IT IN THE COURSE OF
10 PHASE ONE?

11 **MR. SPECTER:** IN A WAY, I GUESS I AM SAYING THAT.

12 **JUDGE KARLTON:** ALL RIGHT.

13 **MR. SPECTER:** BECAUSE -- THAT'S WHY I THINK -- IT'S
14 THE FLIP SIDE OF THE PRIMARY CAUSE PRONG. IF IT IS THE PRIMARY
15 CAUSE, THEN IT'S --

16 **JUDGE KARLTON:** I'M REALLY NOT ASKING FOR AN
17 ARGUMENT. I'M TRYING TO UNDERSTAND WHAT YOU ARE TALKING ABOUT.

18 **MR. SPECTER:** I THINK THE ONLY OTHER EVIDENCE THAT WE
19 WOULD PUT ON IS MORE OR LESS REBUTTAL IF THE DEFENDANTS, YOU
20 KNOW --

21 **JUDGE REINHARDT:** IT SEEMS TO ME YOU COULD, IF THE
22 TWO OF YOU AGREE THAT YOU HAVE COVERED WHAT WE HAVE SAID IS
23 GOING TO BE PART OF PHASE TWO --

24 **JUDGE KARLTON:** THAT'S FINE.

25 **JUDGE REINHARDT:** IF YOU BOTH AGREE THAT YOU FULLY

1 EXPLORED IN PHASE ONE THE QUESTION OF ALTERNATIVE CAUSES --
2 ALTERNATIVE RELIEF, THEN I SUPPOSE, CERTAINLY, WE WOULD BE
3 WILLING TO ACCEPT THAT IF YOU ALL AGREE, BUT IF THERE'S A
4 DISAGREEMENT ABOUT THAT, WE HAVE SAID THAT THAT'S GOING TO BE
5 CONSIDERED IN PHASE TWO.

6 **MR. SPECTER:** WELL, I UNDERSTAND THAT YOU'VE SAID
7 THAT, BUT THE QUESTION --

8 **JUDGE REINHARDT:** WE MEANT IT.

9 **MR. SPECTER:** I'M NOT TRYING TO CHANGE THAT. I'M
10 JUST TRYING TO FIGURE OUT WHERE THE DIVIDING LINE COMES BETWEEN
11 FACTUAL ISSUES AND RELIEF.

12 **JUDGE KARLTON:** THAT'S NOT OUR PROBLEM. I'M SORRY.
13 I DON'T WANT TO --

14 **MR. SPECTER:** OKAY. IT'S MY PROBLEM?

15 **JUDGE KARLTON:** YES.

16 **MR. SPECTER:** OKAY. THEN THAT'S OUR POSITION. I
17 JUST WANTED TO MAKE IT CLEAR.

18 **JUDGE REINHARDT:** YOUR POSITION IS NO --

19 **MR. SPECTER:** PARDON ME?

20 **JUDGE REINHARDT:** YOUR POSITION IS NO MATTER WHAT
21 THEY DO IN PHASE TWO, YOU DON'T INTEND TO OFFER ANY ADDITIONAL
22 EVIDENCE?

23 **MR. SPECTER:** NO, I DIDN'T SAY THAT.

24 **JUDGE KARLTON:** NO, NO. MR. SPECTER --

25 **MR. SPECTER:** I JUST WANTED TO RAISE IT SO IT'S CLEAR

1 AND EVERYBODY --

2 JUDGE REINHARDT: NOTHING IS VERY CLEAR ABOUT
3 DIVIDING LINES IN THIS CASE.

4 JUDGE KARLTON: LOOK, IT'S YOUR CASE.

5 MR. SPECTER: YES.

6 JUDGE KARLTON: OKAY? IF YOU THINK YOU'VE COVERED IT
7 SUFFICIENTLY SO THAT YOU DON'T INTEND TO PUT ON ANY MORE OF YOUR
8 CASE IN CHIEF OR YOU'RE RESERVING THE RIGHT TO REBUT IT, THAT'S
9 FINE. IT'S YOUR CASE. WE ARE NOT GOING TO TELL YOU HOW TO RUN
10 YOUR CASE.

11 MR. SPECTER: I UNDERSTAND.

12 JUDGE REINHARDT: IF YOUR OPPONENTS ARE RESERVING THE
13 RIGHT TO PUT ON EVIDENCE ABOUT ALTERNATIVE REMEDIES IN PHASE
14 TWO, THAT WOULD BE CONSISTENT WITH OUR ORDER.

15 MR. SPECTER: OKAY.

16 JUDGE REINHARDT: ONE OTHER QUESTION I HAVE, WOULD IT
17 BE POSSIBLE FOR YOU ALL TO GIVE US AN ESTIMATE -- YOU GAVE US AN
18 ESTIMATE ABOUT HOW LONG PHASE ONE WOULD LAST, WHICH WAS NOT VERY
19 ACCURATE, BUT WE'RE DELIGHTED. COULD YOU GET TOGETHER AND GIVE
20 US SOME KIND OF AN ESTIMATE ABOUT HOW MUCH TIME YOU WOULD NEED
21 FOR PHASE TWO?

22 MR. SPECTER: YES, YOUR HONOR, WE WOULD BE HAPPY TO
23 DO THAT.

24 JUDGE REINHARDT: AND IT WOULD HELP IF WE COULD DO
25 THAT EITHER BY THE END OF TODAY OR TOMORROW MORNING SO WE MIGHT

1 BE ABLE TO COME UP WITH SOME --

2 **MR. SPECTER:** SURELY. CERTAINLY, YOUR HONOR. WE
3 WOULD BE HAPPY TO DISCUSS IT.

4 **JUDGE REINHARDT:** IF YOU CAN. I SEE SOME NEGATIVE
5 RESPONSES.

6 **MR. SPECTER:** NOT EVERYBODY -- IN FAIRNESS, NOT
7 EVERYBODY OF THE INTERVENORS IS HERE, SO IT MIGHT TAKE US -- IT
8 WON'T TAKE US, BUT IT MIGHT TAKE THEM A LITTLE LONGER TO FIGURE
9 IT OUT.

10 **JUDGE REINHARDT:** IF WE DON'T HAVE IT BY TOMORROW, WE
11 WON'T HAVE IT TOMORROW. IT JUST MAY BE EASIER FOR EVERYBODY TO
12 START THINKING ABOUT WHEN WE ARE GOING TO DO THAT.

13 **MR. SPECTER:** THAT -- ACTUALLY, THAT WAS PART OF WHY
14 I RAISED THIS ISSUE, BECAUSE WE WANT -- OBVIOUSLY, WE'LL WANT --
15 IF THE COURT AGREES WITH OUR POSITION ABOUT THE PRIMARY CAUSE
16 ISSUE, WE WOULD LIKE TO MOVE INTO THE SECOND PHASE OF THE
17 PROCEEDING AS SOON AS POSSIBLE. I DON'T KNOW YOUR --

18 **JUDGE KARLTON:** IT'S SOMETHING LIKE THAT TRIAL; IF
19 PIGS HAD WINGS, THEY'D ALL FLY. LET'S JUST GO TO LUNCH.

20 **MR. MELLO:** TWO QUICK POINTS. I DON'T THINK THE
21 COURT HAS RULED IN FAVOR OF PLAINTIFFS IN PHASE ONE YET, SO WE
22 MIGHT BE GETTING AHEAD OF OURSELVES, NUMBER ONE.

23 NUMBER TWO, THE COURT'S POINT IS WELL TAKEN. ONE OF
24 THE INTERVENORS WITH THE MOST WITNESSES IS NOT HERE. WE'LL
25 ENDEAVOR TO DO THAT. WE WILL SURE ENDEAVOR TO DO -- THE

1 POSSIBILITY OF PHASE ONE IS FOUND FOR PLAINTIFFS, WE CAN TRY TO
2 DO THAT. I DON'T KNOW IF WE CAN DO IT BY THE END OF THE DAY OR
3 TOMORROW.

4 **JUDGE REINHARDT:** I THINK WE CAN SET A TENTATIVE
5 SCHEDULE ON THE ASSUMPTION THERE'S A RULING OR THE POSSIBILITY
6 THERE'S A RULING ON PHASE ONE, AND IF THE RULING IS IN YOUR
7 FAVOR, THEN WE DON'T USE THOSE DAYS.

8 **MR. MELLO:** GREAT. RIGHT. THANK YOU.

9 **JUDGE HENDERSON:** OKAY. COURT IS ADJOURNED FOR ONE
10 HOUR.

11 (LUNCHEON RECESS TAKEN AT 12:30 P.M.)

12 **THE CLERK:** PLEASE BE SEATED.

13 **JUDGE HENDERSON:** OKAY. ARE YOU READY TO PROCEED,
14 COUNSEL?

15 **MR. HENDERSON:** YES, YOUR HONORS.

16 **JUDGE HENDERSON:** WHY DON'T YOU CALL YOUR NEXT
17 WITNESS?

18 **MR. HENDERSON:** YES, WE WILL CALL MR. KEVIN RAYMOND.

19 **THE CLERK:** PLEASE STEP UP, AND RAISE YOUR RIGHT
20 HAND.

21 (THEREUPON, THE WITNESS WAS SWORN.)

22 **THE WITNESS:** I DO.

23 **THE CLERK:** PLEASE HAVE A SEAT. STATE AND SPELL YOUR
24 FULL NAME FOR THE RECORD.

25 **THE WITNESS:** KEVIN LEE RAYMOND. K-E-V-I-N, L-E-E,

1 R-A-Y-M-O-N-D.

2 THEREUPON --

3 **KEVIN LEE RAYMOND**

4 CALLED AS A WITNESS FOR THE PLAINTIFFS HEREIN, HAVING
5 BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

6 **DIRECT EXAMINATION**

7 **BY MR. HENDERSON:**

8 **Q.** GOOD AFTERNOON, MR. RAYMOND.

9 **MR. HENDERSON:** YOUR HONORS, I'LL AGAIN POINT YOU TO
10 THE FACT THAT WE SUBMITTED A DIRECT TESTIMONY DECLARATION, AND
11 THERE'S FOUNDATIONAL INFORMATION CONTAINED IN THERE, BUT I WILL
12 ASK SOME QUESTIONS OF THE WITNESS REGARDING HIS BACKGROUND.

13 **BY MR. HENDERSON:**

14 **Q.** MR. RAYMOND, YOU'RE PRESENTLY EMPLOYED BY THE CALIFORNIA
15 DEPARTMENT OF CORRECTIONS AND REHABILITATION?

16 **A.** YES.

17 **Q.** OKAY. AND HOW LONG HAVE YOU BEEN EMPLOYED BY THEM.

18 **A.** 18 YEARS, TWO MONTHS.

19 **Q.** OKAY. AND WHAT IS YOUR CURRENT POSITION?

20 **A.** CORRECTIONAL OFFICER.

21 **Q.** OKAY. AND WHERE -- IN CONNECTION WITH YOUR DUTIES AS A
22 CORRECTIONAL OFFICER, WHERE ARE YOU CURRENTLY ASSIGNED?

23 **A.** I'M ASSIGNED TO FOLSOM STATE PRISON, BUT I'M DETACHED DUTY
24 TO THE OFFICE OF FACILITIES MANAGEMENT.

25 **Q.** I'M SORRY. THE OFFICE OF FACILITIES MANAGEMENT?

1 A. YES, SIR.

2 Q. WHERE IS THAT LOCATED?

3 A. OLD PLACERVILLE ROAD IN SACRAMENTO.

4 Q. AND HOW LONG HAVE YOU BEEN ON DETACHED DUTY TO THE OFFICE OF
5 FACILITIES MANAGEMENT?

6 A. SINCE OCTOBER OF 2006.

7 Q. AND WHAT ARE YOUR DUTIES AT THE OFFICE OF FACILITIES
8 MANAGEMENT?

9 A. I'M A LIAISON BETWEEN THE CALIFORNIA CORRECTIONAL PEACE
10 OFFICERS' ASSOCIATION AND THE DEPARTMENT WHEN IT COMES TO
11 MATTERS OF CONSTRUCTION.

12 Q. OKAY. WHAT ARE THE TASKS THAT ARE ASSIGNED TO THE OFFICE OF
13 FACILITIES MANAGEMENT?

14 A. DEVELOPING STAFFING PACKAGES FOR NEW CONSTRUCTION, REVIEWING
15 BLUEPRINTS FOR ANY NEW CONSTRUCTION THAT THE DEPARTMENT DOES.

16 Q. AND WITHIN THAT -- THOSE CATEGORIES, WHAT, SPECIFICALLY, IS
17 YOUR INVOLVEMENT?

18 A. I ASSIST THE CORRECTIONAL CAPTAINS THAT ARE ASSIGNED TO THE
19 DESIGN STANDARDS BRANCH IN DEVELOPING THE STAFFING PACKAGES AND
20 REVIEWING THE PLANS FOR SAFETY, SECURITY AND SO FORTH.

21 Q. CAN YOU DESCRIBE FOR US WHAT YOU MEAN BY "STAFFING
22 PACKAGES"?

23 A. WHEN A NEW CONSTRUCTION PROJECT IS DONE THEY DEVELOP A
24 STAFFING PACKAGE TO BASICALLY STAFF, WHETHER IT BE A NEW
25 BUILDING INSIDE AN EXISTING FACILITY, OR IN THE CASE OF WHAT

1 THEY ARE PLANNING NOW, NEW FACILITIES OUTSIDE OF THE EXISTING
2 FACILITIES IN ACCORDANCE WITH AB900 TO INFILL BEDS IN THE
3 REENTRY PROGRAM.

4 **Q.** NOW, YOU MENTIONED "AB900." CAN YOU TELL US WHAT YOU'RE
5 REFERRING TO BY "AB900"?

6 **A.** ASSEMBLY BILL 900 THAT AUTHORIZED THE BUILDING OF INFILL
7 BEDS AND REENTRY BEDS, COUNTY JAIL BEDS, TO ALLEVIATE
8 OVERCROWDING.

9 **Q.** OKAY. AND THE -- WITHIN THE CONCEPT OF THE STAFFING
10 PACKAGE, WHAT STAFFING, SPECIFICALLY, ARE YOU REFERRING TO?

11 **A.** WELL, STAFFING PACKAGE DEVELOPED FOR ALL STAFF: CUSTODY,
12 MEDICAL, EDUCATION.

13 **Q.** ADMINISTRATIVE?

14 **A.** YES, ANYBODY THAT WORKS INSIDE OR OUTSIDE THE ADMINISTRATION
15 OF THE PRISON.

16 **Q.** OKAY. AND WITH RESPECT TO THE STAFFING OF CUSTODIAL
17 OFFICERS, HOW IS THAT DETERMINED IN FORMULATING STAFFING
18 PACKAGES?

19 **A.** HOW IS IT DETERMINED?

20 **Q.** HOW --

21 **JUDGE KARLTON:** WHAT ARE THE STANDARDS, I THINK IS
22 WHAT HE'S ASKING.

23 **MR. HENDERSON:** I'M SORRY, YOUR HONOR?

24 **JUDGE KARLTON:** WHAT ARE THE STANDARDS?
25

1 **BY MR. HENDERSON:**

2 **Q.** WHAT IS UTILIZED TO DETERMINE HOW TO STAFF A NEW FACILITY
3 THAT IS BEING CONSTRUCTED FROM THE CUSTODIAL STANDPOINT?

4 **A.** AS FAR AS CORRECTIONAL OFFICERS, BASICALLY THE DEPARTMENT
5 PRETTY MUCH GOES ON PAST PRACTICE, WHAT THEY HAVE ALREADY
6 ESTABLISHED AT EXISTING FACILITIES.

7 **Q.** OKAY. AND WITH RESPECT TO CUSTODIAL -- OR I'M SORRY --
8 CORRECTIONAL OFFICERS ASSIGNED TO HOUSING UNITS, IS THERE --
9 WHAT IS THE RATIO OF OFFICERS TO INMATES THAT IS UTILIZED?

10 **A.** THERE IS A CONCEPT OF THE PRINCIPLES OF DIRECT SUPERVISION
11 WHICH SAYS THAT YOU SHOULD HAVE ONE OFFICER FOR EVERY 64
12 INMATES.

13 NATIONAL INSTITUTE OF CORRECTIONS DID A STUDY
14 SOMETIME IN THE PAST, AND CAME UP WITH THAT, THAT ANYTHING
15 BEYOND THAT YOU'RE REALLY IN DANGER OF WHAT THEY CALL "LOSING
16 THE COMMUNITY."

17 HOWEVER, THE DEPARTMENT OF CORRECTIONS RECOGNIZES
18 THAT, BUT THEY DON'T STAFF AT THAT LEVEL.

19 **JUDGE REINHARDT:** CAN I ASK A DIFFERENT QUESTION?
20 YOU SAY YOUR JOB IS WITH RESPECT TO NEW FACILITIES BUILT UNDER
21 AB900? OR ARE YOU TALKING ABOUT PAST, EXISTING FACILITIES?

22 **THE WITNESS:** WELL, CURRENTLY THEY ARE BUILDING OTHER
23 BUILDINGS INSIDE OF FACILITIES, NEW CONSTRUCTION, MENTAL HEALTH
24 BEDS AND SO FORTH. SO THAT DOES GO THROUGH THE OFFICE OF
25 FACILITIES MANAGEMENT, ALSO. AND ALSO THE AB900 ASPECT OF

1 INFILL AND REENTRY.

2 BUT WHAT I WAS TRYING TO DO WAS COMPARE THE STAFFING
3 THAT'S ALREADY CURRENTLY IN PLACE TO THE STAFFING PACKAGES THAT
4 THE DEPARTMENT IS CURRENTLY DEVELOPING.

5 JUDGE REINHARDT: OKAY. WELL --

6 JUDGE KARLTON: GO AHEAD, COUNSEL.

7 MR. HENDERSON: THANK YOU, YOUR HONOR.

8 JUDGE REINHARDT: ARE THERE ANY FACILITIES THAT ARE
9 BEING BUILT PURSUANT TO AB900?

10 THE WITNESS: THEY HAVE THE PLANS. THE MONEY ACTUALLY
11 HAS NOT BEEN ALLOCATED THROUGH AB900, SO THEY ARE PRETTY MUCH
12 STUCK RIGHT NOW WITH JUST PLANS.

13 MR. HENDERSON: MAY I PROCEED? THANK YOU.

14 BY MR. HENDERSON:

15 Q. IN TERMS OF DETERMINING STAFFING, CORRECTIONAL OFFICER
16 STAFFING, WHAT GUIDELINES ARE USED BY THE OFFICE OF FACILITIES
17 MANAGEMENT IN DETERMINING THE TOTAL NUMBER OF INMATES AT A
18 FACILITY?

19 A. COULD YOU REPHRASE THAT? I'M NOT SURE I --

20 Q. OKAY. WHAT I'M TRYING TO FIND OUT IS: HOW DO THEY
21 DETERMINE HOW MANY INMATES ARE GOING TO BE AT A FACILITY WHEN
22 IT'S BEING PLANNED?

23 JUDGE KARLTON: WHEN IT'S BEING PLANNED?

24 MR. HENDERSON: WHEN IT'S BEING PLANNED.

25 JUDGE KARLTON: ALL RIGHT.

1 **MR. LEWIS:** PARDON ME. KYLE LEWIS ON BEHALF OF THE
2 STATE.

3 YOUR HONOR, I OBJECT TO THIS QUESTION. THERE'S NO
4 FOUNDATION FOR THIS WITNESS TO SPEAK ABOUT INMATE POPULATION
5 DESIGN CAPACITY.

6 **JUDGE HENDERSON:** WELL, THIS QUESTION IS HOW DO THEY
7 TAKE INTO ACCOUNT SIZE WHEN THEY ARE PLANNING.

8 BUT LAY A FOUNDATION, PLEASE.

9 **BY MR. HENDERSON:**

10 **Q.** PART OF YOUR DUTIES AT THE OFFICE OF FACILITIES MANAGEMENT
11 INVOLVE DETERMINING THE NUMBER OF CUSTODIAL STAFF THAT WILL BE
12 NECESSARY FOR A NEW FACILITY TO BE CONSTRUCTED; IS THAT CORRECT?

13 **A.** YES.

14 **Q.** OKAY. AND IN DOING THAT, YOU UTILIZE CERTAIN PROCEDURES
15 WITHIN THE OFFICE OF FACILITIES MANAGEMENT TO DETERMINE HOW MANY
16 CUSTODIAL CORRECTIONAL STAFF WILL BE NECESSARY FOR A NEW
17 FACILITY; IS THAT CORRECT?

18 **A.** YES. YOU'RE TALKING DEVELOPING THE STAFFING PACKAGE.

19 **Q.** RIGHT. DEVELOPING THE STAFFING PACKAGE.

20 NOW, IN DEVELOPING THE STAFFING PACKAGE, WHAT INMATE
21 POPULATION -- HOW IS THE INMATE POPULATION DETERMINED FOR A NEW
22 FACILITY THAT IS CONTEMPLATED TO BE CONSTRUCTED?

23 **A.** IT'S -- THE STAFFING PACKAGE GOES OFF THE PREMISE OF THE
24 DESIGN CAPACITY IS ONE INMATE PER CELL. SO THE INITIAL STAFFING
25 PACKAGE IS AT A HUNDRED PERCENT DESIGN BED CAPACITY.

1 THE SECOND PART OF THE STAFFING PACKAGE IS THE
2 OVERCROWDING PACKAGE, WHICH, DEPENDING ON THE LEVEL OF THE
3 FACILITY BEING BUILT, COULD BE 150 PERCENT, 175 PERCENT,
4 190 PERCENT OR 200 PERCENT.

5 Q. AND IS THIS ACTUAL CAPACITY TAKEN INTO ACCOUNT AT THE TIME
6 OF THE PLANNING AND THE DEVELOPMENT OF THE STAFFING PACKAGE?

7 A. THE STAFFING PACKAGE INCLUDES THE DESIGN BED CAPACITY AND
8 THE OVERCROWDING.

9 Q. OKAY. SO THE STAFFING PACKAGE -- WE HAVE TWO SEPARATE
10 PACKAGES, THEN, CORRECT? WE HAVE THE STAFFING PACKAGE, AND WE
11 HAVE THE OVERCROWDING PACKAGE; IS THAT A FAIR SUMMARY?

12 A. YES.

13 Q. OKAY. NOW, THE STAFFING PACKAGE AS YOU'VE INDICATED IS BASED
14 ON A DESIGN BED CAPACITY OF ONE INMATE PER CELL?

15 A. YES.

16 Q. OKAY. NOW, ARE THE FACILITIES DESIGNED IN REALITY WITH THE
17 ASSUMPTION THAT THERE'S ONLY GOING TO BE ONE INMATE PER CELL?

18 MR. LEWIS: OBJECTION, YOUR HONOR. THIS CALLS FOR A
19 LACK -- OR THIS QUESTION CALLS FOR LACK OF FOUNDATION. THIS
20 WITNESS IS SIMPLY NOT QUALIFIED TO ANSWER.

21 HE'S A LIAISON IN FACILITIES MANAGEMENT STAFFING, NOT
22 ABOUT DESIGN CAPACITY OR INMATES OR ANYTHING LIKE THAT.

23 JUDGE HENDERSON: I'LL SUSTAIN THAT WITHOUT PREJUDICE
24 FOR LAYING A FOUNDATION, COUNSEL.

25

1 **BY MR. HENDERSON:**

2 **Q.** MR. RAYMOND, YOU'VE SEEN THE PACKAGES THAT THE OFFICE OF
3 FACILITIES MANAGEMENT HAS PUT TOGETHER FOR NEW CONSTRUCTION; IS
4 THAT CORRECT?

5 **A.** YES.

6 **Q.** OKAY. AND THESE PACKAGES CONTAIN A DESIGN BED STAFFING
7 PACKAGE, CORRECT?

8 **A.** YES.

9 **Q.** AND THAT IS BASED ON ONE INMATE PER CELL?

10 **A.** YES, SIR.

11 **Q.** AND HAVE YOU SEEN PLANS FOR THESE FACILITIES WHILE THEY ARE
12 STILL IN THE PLANNING STAGE WHERE, IN REALITY, THE PLANS SHOW
13 TWO BEDS PER CELL?

14 **A.** YES, EVERYTHING --

15 **Q.** I'M SORRY?

16 **A.** EVERYTHING IS DESIGNED AT A HUNDRED PERCENT DESIGN BED
17 CAPACITY AS FAR AS EDUCATIONAL SPACES AND SO FORTH.

18 **Q.** OKAY.

19 **A.** THE ONLY DIFFERENCE HAS COME UP IN THE LAST YEAR, AND THAT'S
20 WITH THE FEDERAL RECEIVER HAVING THE MEDICAL SPACES INCREASED.

21 **Q.** ARE THERE ASPECTS OF THE NEW CONSTRUCTION THAT ARE DESIGNED
22 TO REFLECT THE ACTUAL ANTICIPATED INMATE POPULATION?

23 **A.** THE ONLY THING THAT'S TAKEN INTO CONSIDERATION AS FAR AS WHO
24 WILL ACTUALLY BE HOUSED THERE IS ANYTHING THAT THEY TERM TO BE
25 "STUFF."

1 IN OTHER WORDS, I CAN PUT TWO INMATES IN A CELL. I
2 CAN ONLY HAVE A DESIGN BED CAPACITY A HUNDRED PERCENT SPACE FOR
3 EDUCATION. I CAN DOUBLE-SHIFT THAT, WHATEVER I HAVE TO DO TO
4 MAKE THAT WORK.

5 BUT WHEN IT COMES TO INMATE CONFIDENTIAL FILES AND SO
6 FORTH, THAT ACTUALLY TAKE UP PHYSICAL SPACE, I CAN'T PUT TWO
7 FILES IN A SPACE THAT I PROVIDED FOR ONE.

8 SO THE ONLY THING THAT THEY CONSIDER -- AND THEY DO
9 IT ON A CASE-BY-CASE BASIS. ANYTHING THAT IS COSIDERED "STUFF,"
10 THEN THEY LOOK AT IT AND SAY:

11 "OKAY. WE NEED TO INCREASE THE SPACE ALLOTTED

12 FOR THAT," BECAUSE YOU CAN'T DO AWAY WITH THAT BY

13 DOUBLE SHIFTING FILES. IT DOESN'T WORK.

14 **Q.** SO --

15 **MR. LEWIS:** EXCUSE ME, YOUR HONOR. I'M GOING TO
16 ASSERT ANOTHER OBJECTION. THIS WITNESS IS JUST BASICALLY
17 TESTIFYING WITHOUT A LACK OF FOUNDATION.

18 NOW, THEY ARE TALKING ABOUT "STUFF" AND "FILES."

19 THIS WITNESS WAS PROFFERED FOR THE PURPOSE OF
20 STAFFING ASSESSMENT. THIS IS FAR BEYOND THE SCOPE, AND THE
21 QUESTION IS NOT RESPONSIVE.

22 **JUDGE KARLTON:** APPARENTLY, HE DOES.

23 APPARENTLY, THAT'S WHAT YOU DO FOR THE ORGANIZATION
24 YOU'RE ASSIGNED TO.

25 **THE WITNESS:** YES, SIR. IF I MAY EXPAND?

1 **JUDGE KARLTON:** SURE.

2 **THE WITNESS:** I MEAN, MAYBE PEOPLE TOOK IT WRONG WHEN
3 I SAID "LIAISON BETWEEN CCPOA AND THE OFFICE OF FACILITIES
4 MANAGEMENT."

5 BUT PART OF THAT AGREEMENT WAS THAT I WOULD ACTUALLY
6 BE IN THE UNIT AND ACTUALLY WORK AND DO THE SAME JOB AS THE REST
7 OF THEM DO IN THE UNIT.

8 **MR. HENDERSON:** ARE THE FOUNDATIONAL CONCERNS
9 RESOLVED, YOUR HONOR, AT LEAST FOR NOW?

10 **JUDGE HENDERSON:** YES.

11 **MR. HENDERSON:** THANK YOU.

12 **BY MR. HENDERSON:**

13 **Q.** SO BASICALLY THE PLANS WILL TAKE INTO ACCOUNT THE NEED FOR
14 RECORDS FOR THE ACTUAL ANTICIPATED NUMBER OF INMATES THAT ARE
15 GOING TO BE HOUSED IN THAT FACILITY, BUT THE STAFFING PACKAGE
16 DOES NOT; IS THAT FAIR TO SAY?

17 **A.** YOU MAY WANT TO REPHRASE THAT ONE. I'M NOT SURE I GOT THAT.

18 **Q.** OKAY. WE'VE GOT A STAFFING PACKAGE, AS I UNDERSTAND IT,
19 THAT IS BASED ON ONE -- THAT'S BASED ON A RATIO. AND YOU SAID
20 IT'S SUBJECT TO SOME MODIFICATION OF ONE -- I'M SORRY.

21 YOU GOT A STAFFING PACKAGE THAT IS BASED ON A DESIGN
22 BED OF ONE INMATE PER CELL, CORRECT?

23 **A.** RIGHT, ON THE BASE STAFFING.

24 **Q.** AND YET AT THE TIME THESE PLANS ARE BEING TAKEN INTO ACCOUNT
25 THERE'S A HIGHER ACTUAL OCCUPANCY CAPACITY THAT'S CONTEMPLATED

1 AS BEING IN PLACE WHEN THIS FACILITY OPENS; IS THAT CORRECT?

2 **A.** YES.

3 **JUDGE REINHARDT:** APPARENTLY, HE SAID THERE WAS AN
4 ALTERNATIVE STAFFING PACKAGE FOR UP TO 200.

5 **THE WITNESS:** THERE IS THE BASE STAFFING PACKAGE, AND
6 THEN THERE IS AN ADDITIONAL OVERCROWDING PACKAGE THAT'S ALSO
7 ATTACHED TO IT.

8 **JUDGE REINHARDT:** YOU HAVE MORE THAN ONE STAFFING
9 PACKAGE.

10 **THE WITNESS:** WELL, IT IS TECHNICALLY ONE STAFFING
11 PACKAGE, BUT IT HAS THE HUNDRED PERCENT DESIGN BED CAPACITY, AND
12 THEN IT SHOWS WHAT ADDITIONAL STAFF WILL COME ON WITH THE
13 OVERCROWDING.

14 **JUDGE REINHARDT:** SO I'M NOT SURE I UNDERSTAND THE
15 POINT OF THIS.

16 **BY MR. HENDERSON:**

17 **Q.** WELL, THE OVERCROWDING PACKAGE THAT WE'VE BEEN TALKING ABOUT
18 IS DESIGNED AS -- THAT'S A TEMPORARY -- IN THEORY, IT'S SUPPOSED
19 TO BE A TEMPORARY ASSIGNMENT OF STAFF; IS THAT CORRECT?

20 **MR. LEWIS:** YOUR HONOR, I OBJECT TO THIS. THE
21 ATTORNEY IS LEADING THE WITNESS, AND HAS BEEN DOING IT FOR LONG.

22 **JUDGE KARLTON:** SIT DOWN, COUNSEL. SIT DOWN.

23 I DON'T KNOW WHAT HE'S TALKING ABOUT. I DON'T KNOW
24 WHAT YOU'RE OBJECTING TO, BECAUSE I CAN'T UNDERSTAND. I MEAN,
25 YOU MAY BE RIGHT, BUT UNTIL WE CAN FIGURE OUT WHAT HE'S SAYING,

1 WE COULDN'T RULE, ANYHOW.

2 **MR. LEWIS:** THANK YOU, YOUR HONOR.

3 **JUDGE KARLTON:** HE DOESN'T KNOW WHAT THE QUESTION IS.
4 PUT THE QUESTION AGAIN.

5 **THE WITNESS:** PLEASE.

6 **JUDGE KARLTON:** LOOK, LET ME SEE WHETHER I'VE GOT
7 THIS MUCH RIGHT.

8 YOU'RE IN THE BUSINESS OF PROVIDING STAFFING SERVICES
9 TO THIS DEPARTMENT; IS THAT RIGHT?

10 **THE WITNESS:** YES, PROPOSED STAFFING.

11 **JUDGE KARLTON:** PROPOSED STAFFING.

12 AND IN CONNECTION WITH THAT, YOU GET TO REVIEW -- I
13 THINK THIS IS WHAT YOU'RE SAYING -- YOU GET REVIEW THE ENTIRE
14 DESIGN PACKAGE; IS THAT RIGHT?

15 **THE WITNESS:** YES.

16 **JUDGE KARLTON:** AND THE DESIGN PACKAGE CONTEMPLATES
17 ONE PERSON PER CELL, BUT THERE'S A RECOGNITION THAT IT COULD GO
18 UP TO TWO PEOPLE PER CELL; IS THAT RIGHT?

19 **THE WITNESS:** YES.

20 **JUDGE KARLTON:** WELL, I GOT THAT MUCH RIGHT.

21 **BY MR. HENDERSON:**

22 **Q.** OKAY. NOW, THE DESIGN BED STAFFING PACKAGE IS PREMISED ONLY
23 ON A ONE-INMATE-PER-CELL RATIO, CORRECT?

24 **A.** YES.

25 **Q.** OKAY. AND ANY ADDITIONAL --

1 **JUDGE REINHARDT:** WAIT. WAIT. I DON'T UNDERSTAND.

2 I THOUGHT YOU SAID THAT THE PACKAGE NOT ONLY HAS ONE
3 PERSON PER CELL, BUT HAS ALTERNATIVES FOR 150 PERCENT, ONE
4 PERSON IN THE OTHER CELL, AND IT HAS UP TO 200 PERCENT. SO THAT
5 THE PACKAGE ALSO PROVIDES THE STAFFING FOR TWO PERSONS PER CELL.

6 **THE WITNESS:** YES, SIR. BUT WHAT HE ASKED ABOUT, IF
7 I'M NOT MISTAKEN, WAS THE DESIGN BED CAPACITY, WHICH IS
8 100 PERCENT, ONE PERSON PER CELL.

9 **JUDGE REINHARDT:** I THOUGHT YOU WERE TALKING ABOUT
10 STAFFING.

11 **BY MR. HENDERSON:**

12 **Q.** WELL, MAYBE YOU CAN EXPLAIN TO CLARIFY WHAT THE STAFFING
13 PACKAGE CONSISTS OF AND WHEN IT COMES INTO PLAY.

14 **A.** DEPENDING ON THE LEVEL OF THE INSTITUTION, WHETHER IT BE A
15 LEVEL TWO, LEVEL THREE, LEVEL FOUR, OR SECURITY HOUSING UNIT OR
16 ADMINISTRATIVE SEGREGATION, THEY ALL HAVE DIFFERENT PERCENTAGES,
17 IF YOU WILL, OF ACCEPTABLE OVERCROWDING.

18 LEVEL TWO BEING THE LEAST LEVEL. THEY GO UP TO 200
19 PERSON OF THE OVERCROWDING. SO IF YOU HAD CELLS YOU COULD PUT
20 TWO PEOPLE IN EVERY CELL IN THAT INSTITUTION.

21 THOSE NUMBERS DROP AS THE LEVELS GO UP BECAUSE THEY
22 REALIZE AS THE LEVELS GO UP THERE'S MORE PROPENSITY FOR
23 VIOLENCE.

24 SO WHEN THEY DO THE STAFFING PACKAGE, DEPENDING ON
25 WHAT LEVEL THEY ANTICIPATE TO PUT IN THAT FACILITY, THEY WILL DO

1 THE SECOND PART OF THE OVERCROWDING PACKAGE AND WILL COINCIDE
2 WITH THAT LEVEL AT 175, 190 PERCENT OR 200 PERCENT, DEPENDING ON
3 THE LEVEL.

4 **Q.** BUT THE OVERCROWDING PACKAGE IS A SEPARATE AND DISTINCT
5 PACKAGE FROM THE STAFFING PACKAGE THAT IS PART OF THE DESIGN
6 BED?

7 **A.** YES. IT'S A STAFF ENHANCEMENT OF THE DESIGN BED PACKAGE,
8 BECAUSE YOU HAVE MORE INMATES THAN YOU DESIGN THE PLACE FOR.
9 THEORETICALLY -- AND IT DOES ACTUALLY HAPPEN -- WHEN
10 THEY DO GO AWAY, THAT STAFFING PACKAGE GOES AWAY. EVERYTHING
11 YOU'VE GOT WITH THAT STAFFING PACKAGE GOES AWAY.

12 IT'S NO LONGER FUNDED BY THE DEPARTMENT OF FINANCE
13 BECAUSE NOW YOU'RE BACK AT A HUNDRED PERCENT.

14 **JUDGE HENDERSON:** CAN I ASK A QUESTION? IN LEVEL
15 TWO, THE OVERCROWDING PACKAGE CAN GO UP TO 200 PERCENT. IS THERE
16 A COMPARABLE LEVEL FOR LEVEL THREE? CAN IT GO UP TO WHAT?

17 **THE WITNESS:** 190 PERCENT.

18 **JUDGE HENDERSON:** 190. AND WHAT ABOUT LEVEL FOUR?

19 **THE WITNESS:** 175.

20 **JUDGE HENDERSON:** WHAT ABOUT SHU?

21 **THE WITNESS:** SHU AND ADSEG IS 150.

22 **BY MR. HENDERSON:**

23 **Q.** SO JUST SO WE CAN SUMMARIZE ON THESE DIFFERENT LEVELS OF
24 THE OVERCROWDING PACKAGES, LEVEL TWO WILL COME INTO EFFECT WHEN
25 YOU REACH 150 PERCENT OF DESIGN CAPACITY?

1 **JUDGE KARLTON:** NO.

2 **MR. LEWIS:** OBJECTION, YOUR HONOR. THAT MISSTATES
3 THE TESTIMONY.

4 **JUDGE KARLTON:** SUSTAIN THE OBJECTION. I THINK WHAT
5 HE SAID IS IF IT'S DESIGNED FOR LEVEL TWO, IT CAN GO UP TO
6 150 PERCENT.

7 **THE WITNESS:** UP TO 200.

8 **JUDGE KARLTON:** I'M SORRY. 200 PERCENT.

9 **MR. HENDERSON:** I'M SORRY. I HAD MY --

10 **BY MR. HENDERSON:**

11 **Q.** IS THERE --

12 **MR. HENDERSON:** STRIKE THAT.

13 **BY MR. HENDERSON:**

14 **Q.** THE OVERCROWDING PACKAGE THAT'S PUT TOGETHER, WHAT POSITIONS
15 DOES THIS SUPPLY?

16 **A.** IT WILL BE MORE CUSTODY STAFF. DEPENDING ON WHAT PROGRAMS
17 YOU'RE RUNNING, IT COULD BE MORE EDUCATIONAL STAFF, MORE MEDICAL
18 STAFF.

19 **Q.** WHO DETERMINES THE ALLOCATIONS OF THIS STAFF FROM THE
20 OVERCROWDING PACKAGES FOR A NEW FACILITY?

21 **A.** THAT ALL COMES THROUGH THE OFFICE OF FACILITIES MANAGEMENT.

22 **Q.** OKAY. WILL THESE ALSO INCLUDE CORRECTIONAL OFFICERS THAT ARE
23 WORKING IN THE HOUSING UNITS?

24 **A.** YES, SIR.

25 **Q.** OKAY. ARE THERE ANY CURRENT NEW CONSTRUCTION IN THE PLANNING

1 STAGES?

2 **A.** YES, THERE ARE A COUPLE PLANS FOR FACILITIES. THE TWO THAT
3 ARE ACTUALLY MOVING FORWARD ARE TWO REPURPOSING OF FACILITIES
4 THAT ARE ALREADY CONSTRUCTED. OBVIOUSLY, THEY ARE THE QUICKEST
5 ONES THAT YOU CAN PUT ONLINE.

6 SO THERE'S THE FORMER NORTHERN CALIFORNIA WOMEN'S
7 FACILITY, WHICH IS BEING LOOKED AT FOR A REENTRY FACILITY. AND
8 THE FORMER YOUTH FACILITY AT PASA ROBLES THAT'S BEING LOOKED AT
9 FOR A LEVEL TWO MALE PRISON.

10 **Q.** OKAY. AND DURING THE TIME THAT YOU'VE BEEN THERE, WHAT HAS
11 BEEN THE GENERAL PRACTICE WITH RESPECT TO ALLOCATIONS OF MEDICAL
12 STAFF TO CONSTRUCTION?

13 WHAT WAS THE PROCEDURE WHEN YOU FIRST GOT THERE?

14 **A.** WHEN I FIRST GOT THERE AND WE WERE TRYING TO DO THE STAFFING
15 PACKAGES, WE TRIED TO GET RATIOS OF DOCTORS, NURSES, ET CETERA,
16 FROM THE RECEIVER SO THAT, YOU KNOW, WE TELL HIM, YOU KNOW:

17 "THIS IS GOING TO BE A THOUSAND BED FACILITY.

18 HOW MANY DOCTORS WILL YOU NEED? HOW MANY NURSES?"

19 AND I DON'T THINK THEY HAD ANY RATIOS DEVELOPED AT
20 THAT TIME, BECAUSE WE WERE UNABLE TO GET THOSE.

21 SO IN THE INITIAL STAFFING PACKAGES THEY WERE JUST
22 KIND OF PLUGGING NUMBERS IN.

23 SUBSEQUENT TO THAT, THEY WENT TO JUST ZEROING OUT THE
24 MEDICAL PORTION OF IT, JUST PUTTING ZEROS IN THERE. BUT THE LAST
25 TWO FACILITIES THAT I MENTIONED, THE PASA ROBLES AND THE FORMER

1 NCWF, THEY ACTUALLY HAVE MEDICAL NUMBERS BACK IN THOSE PACKAGES.

2 AND I'M QUITE HONESTLY NOT SURE IF THEY DID THAT IN
3 CONJUNCTION WITH THE RECEIVER OR NOT.

4 Q. HAS THE PROCEDURE IN DEALING WITH THE RECEIVER CHANGED
5 RECENTLY?

6 A. THE PROCEDURE IN DEALING WITH THE RECEIVER?

7 Q. BETWEEN THE OFFICE OF FACILITIES MANAGER AND THE RECEIVER
8 WITH RESPECT TO MEDICAL STAFF.

9 MR. LEWIS: OBJECTION. CALLS FOR SPECULATION ON THE
10 PART OF THIS WITNESS.

11 JUDGE KARLTON: HE EITHER KNOWS OR HE DOESN'T KNOW.
12 DO YOU KNOW?

13 THE WITNESS: I'M NOT SURE I UNDERSTAND THE QUESTION.

14 BY MR. HENDERSON:

15 Q. OKAY. I'M TRYING TO FIND OUT: IS THE PROCEDURE YOU'VE JUST
16 DESCRIBED --

17 JUDGE KARLTON: THERE WAS NO PROCEDURE. WHAT THE
18 WITNESS SAID IS INITIALLY THEY WOULD ASK THE RECEIVER, AND THE
19 RECEIVER COULDN'T GIVE THEM AN ANSWER.

20 HAS ANYTHING CHANGED SINCE THAT TIME?

21 THE WITNESS: NOTHING THAT I'M AWARE OF.

22 BY MR. HENDERSON:

23 Q. WHAT IS THE PROCEDURE AFTER THE OFFICE OF FACILITIES
24 MANAGEMENT HAS PUT TOGETHER A BED PACKAGE? WHERE DOES IT GO
25 FROM THERE?

1 **A.** I THINK YOU MIGHT HAVE MISSPOKE. DID YOU SAY A "BID
2 PACKAGE" OR A "BED PACKAGE"?

3 **Q.** I'M SORRY?

4 **A.** DID YOU SAY A "BID PACKAGE"?

5 **Q.** DESIGN BED PACKAGE, WHERE DOES IT GO?

6 **A.** IT GOES OVER TO 1515 S STREET, CDCR HEADQUARTERS. THEY RUN
7 IT THROUGH THE PROGRAM SERVICES UNIT. AND THEN, IT GOES TO
8 DEPARTMENT OF FINANCE TO BE COSTED OUT, AND THEN THEY DO THEIR
9 THING WITH IT.

10 **Q.** NOW, THE OVERCROWDING PACKAGE THAT YOU REFERRED TO, THESE
11 ARE POSITIONS THAT YOU SAY ARE BASED ON NUMBERS THAT ARE IN
12 EXCESS OF THE DESIGN CAPACITY FOR THE FACILITY?

13 **A.** RIGHT.

14 **Q.** OKAY. AND WHAT HAPPENS WHEN THOSE NUMBERS ARE LOWERED?
15 WHAT HAPPENS TO THE OVERCROWDING POSITIONS?

16 **A.** THE OVERCROWDING PACKAGES DISAPPEAR WHEN THE INMATE
17 POPULATION DECREASES THAT CALLED FOR IT.

18 **Q.** AND DOES THIS -- HAVE YOU SEEN SITUATIONS WHERE THIS CAN
19 CREATE PROBLEMS?

20 **JUDGE KARLTON:** WHAT, LOWERING THE NUMBER?

21 **BY MR. HENDERSON:**

22 **Q.** LOWERING THE NUMBER, IN TERMS OF THE OVERCROWDING PACKAGES.

23 **A.** YES, THROUGH A LOT OF OUTSIDE INFLUENCES OVER THE YEARS THE
24 DEPARTMENT HAS LOST POSITIONS OUT OF THEIR BASE PACKAGES FOR
25 THEIR INSTITUTIONS. DIFFERENT FINANCIAL CRISIS HAVE CAUSED

1 CUTS, THINGS OF THAT NATURE. DEPARTMENT OF FINANCE HAS COME
2 BACK AND JUST TAKEN POSITIONS FROM THE DEPARTMENT.

3 SO WHAT HAPPENS IS YOU END UP LIVING ON THE
4 OVERCROWDING PACKAGE. AND THEN, WHEN THE OVERCROWDING PACKAGE
5 DISAPPEARS, YOU DON'T HAVE ENOUGH LEFT IN WHAT WAS ORIGINALLY
6 YOUR BASE PACKAGE TO RUN THE INSTITUTION.

7 **JUDGE REINHARDT:** WELL, WHY DON'T YOU HAVE ENOUGH IF
8 THE INSTITUTION'S RUNNING ON THE DESIGN CAPACITY, AND THAT'S ONE
9 PERSON PER CELL? AND IF THAT'S WHAT'S HAPPENING, WHAT'S THE
10 PROBLEM?

11 **THE WITNESS:** WELL, THE EXAMPLE THAT I'LL GIVE YOU --
12 AND I'LL TRY TO MAKE IT AS EASY AS POSSIBLE. IF I HAVE AN
13 INSTITUTION THAT HOUSES A HUNDRED INMATES, THAT WOULD BE 100
14 INMATES AT DESIGN BED CAPACITY.

15 MY STAFF FOR THIS INSTITUTION IS 50 STAFF MEMBERS.

16 **JUDGE REINHARDT:** YES.

17 **THE WITNESS:** NOW, OVER THE NEXT 10 YEARS I HAVE
18 OVERCROWDING IN THIS FACILITY. I GO UP TO 200 INMATES. SO I
19 GET ADDITIONAL STAFF. NOW, I HAVE 75 STAFF MEMBERS TO RUN THIS
20 INSTITUTION WITH 200 INMATES.

21 BUT OVER THE COURSE OF THAT 10 YEARS, THROUGH THE
22 DEPARTMENT OF FINANCE OR, YOU KNOW, THE GOVERNOR, WHOEVER, I CUT
23 POSITIONS IN THAT INSTITUTION. IF I TAKE THEM FROM MY ORIGINAL
24 FIFTY STAFFING PACKAGE, AND THEN I GO BACK TO A HUNDRED PERCENT.
25 SAY I TAKE 10 POSITIONS OUT OF MY ORIGINAL 50. I GO BACK TO A

1 HUNDRED PERCENT, OR A HUNDRED INMATES IN THIS CASE. AND NOW I
2 HAVE 40 STAFF MEMBERS TO RUN THE PRISON.

3 **JUDGE KARLTON:** WELL, WHY? BECAUSE -- I'M SORRY,
4 SIR. I'M SURE IT'S ME AND NOT YOU.

5 **JUDGE REINHARDT:** IT'S NOT YOU.

6 **JUDGE KARLTON:** BUT YOU HAD 75 PEOPLE, BECAUSE YOU
7 WERE AT 200 PERCENT.

8 **THE WITNESS:** YES, SIR.

9 **JUDGE KARLTON:** THEN, THROUGH THE POLITICAL PROCESS
10 YOU WERE LOSING STAFF. BUT YOU'D BEEN LOSING STAFF FROM 75, NOT
11 FROM 50.

12 **THE WITNESS:** WELL, I'M LOSING MY 10 OUT OF MY
13 ORIGINAL FIFTY.

14 **JUDGE KARLTON:** OH, I SEE.

15 **THE WITNESS:** SEE? AND THEN, WHEN THE OVERCROWDING
16 GOES AWAY, I LOSE THE ADDITIONAL 25 I GOT FOR THAT.

17 **JUDGE KARLTON:** SO WHAT YOU'RE TELLING US IS THE WAY
18 THE SYSTEM WORKS IS THAT THEY DETERMINE HOW MANY PEOPLE THEY
19 GIVE YOU BASED UPON THE ORIGINAL DESIGN, NOT UPON WHAT'S REALLY
20 GOING ON IN THE INSTITUTION ITSELF.

21 IS THAT WHAT YOU'RE SAYING?

22 **THE WITNESS:** YES. OVER TIME IT BECOMES CONVOLUTED.

23 **JUDGE HENDERSON:** OKAY.

24 **JUDGE KARLTON:** TO SAY THE LEAST.
25

1 **BY MR. HENDERSON:**

2 **Q.** CURRENTLY, MR. RAYMOND, WHAT IS THE TIME ESTIMATE FOR THE
3 PROCESS FROM THE COMMENCEMENT OF THE PLANNING OF A NEW FACILITY
4 THROUGH THE OPENING OF THE FACILITY?

5 **A.** WITHOUT ANY MAJOR ROADBLOCKS YOU'RE LOOKING AT, FROM DESIGN
6 TO BUILD, APPROXIMATELY FIVE YEARS.

7 **JUDGE REINHARDT:** THAT'S ASSUMING YOU GET THE MONEY
8 IMMEDIATELY.

9 **THE WITNESS:** YES, SIR. WITH NO ROADBLOCKS.

10 **MR. HENDERSON:** THANK YOU, SIR.

11 NOTHING FURTHER.

12 **JUDGE KARLTON:** SIR, YOU'RE GOING TO BE
13 CROSS-EXAMINED IN A MINUTE, BUT I'M NOT SURE THAT WE EVEN --
14 SOME DEPARTMENT OF THE FEDERAL GOVERNMENT SAID ONE STAFF FOR
15 EVERY 64; IS THAT RIGHT?

16 **THE WITNESS:** NATIONAL INSTITUTE OF CORRECTIONS.

17 **JUDGE KARLTON:** ALL RIGHT. NATIONAL INSTITUTE SAID
18 ONE FOR 64. IS CALIFORNIA PLANNING ONE FOR 64?

19 **THE WITNESS:** NOT THAT I'M AWARE OF. IF I --

20 **JUDGE KARLTON:** GO AHEAD.

21 **THE WITNESS:** WHAT HAPPENS A LOT OF TIMES WE GET
22 STUCK IN PAST PRACTICE. SO IF YOU WERE TO SEND A STAFFING
23 PACKAGE TO THE DEPARTMENT OF FINANCE THAT WAS THAT RICH, THEY
24 WOULD KICK IT BACK AND SAY, YOU KNOW:

25 "FOR THE LAST 50 YEARS, YOU'VE BEEN LIVING AT A

1 HIGHER RATIO THAN THAT. WHY ALL OF A SUDDEN DO YOU
2 NEED THAT?"

3 **JUDGE KARLTON:** CAN YOU TELL ME WHAT THE STAFF RATIO
4 THAT THE DEPARTMENT OF FINANCE APPROVES.

5 **THE WITNESS:** I BELIEVE IT'S 5.62, SOMEWHERE IN THAT
6 AREA.

7 **JUDGE KARLTON:** FOR --

8 **THE WITNESS:** STAFF TO INMATE RATIO.

9 **JUDGE KARLTON:** YOU HAVE FIVE -- I DON'T KNOW WHAT
10 THAT MEANS.

11 **THE WITNESS:** 5.62 INMATE TO EVERY STAFF MEMBER.

12 **JUDGE KARLTON:** WELL, THAT'S CONSIDERABLY MORE THAN
13 ONE TO 64.

14 **MR. HENDERSON:** YOUR HONOR, I CAN CLARIFY THAT.

15 **THE WITNESS:** BUT THAT'S ALL STAFF.

16 **JUDGE KARLTON:** OH, I AM TALKING CUSTODIAL STAFF.

17 **THE WITNESS:** NO.

18 **JUDGE KARLTON:** I ASKED THE WRONG QUESTION.

19 WHAT IS THE LEVEL THAT THE DEPARTMENT OF FINANCE HAS
20 APPROVED, GENERALLY SPEAKING, FOR CUSTODIAL STAFF VIS-A-VIS
21 PRISONERS?

22 **THE WITNESS:** I DON'T KNOW THAT THERE IS AN ACTUAL
23 RATIO FOR INMATE TO JUST CUSTODY STAFF.

24 **JUDGE REINHARDT:** THE NATIONAL INSTITUTE OF
25 CORRECTIONS, IS THAT A GOVERNMENT INSTITUTE OR A CORRECTIONS

1 OFFICERS INSTITUTE?

2 **THE WITNESS:** IT WAS AN EXPERT PANEL THAT WAS PUT
3 TOGETHER -- I CAN'T REMEMBER EXACTLY WHEN -- OF SUPPOSED
4 CORRECTIONAL EXPERTS THAT LOOKED AT THOSE KIND OF THINGS, THE
5 STAFFING RATIOS AND SO FORTH.

6 **JUDGE HENDERSON:** THANK YOU, COUNSEL.

7 **MR. LEWIS:** GOOD AFTERNOON, YOUR HONORS. IT'S KYLE
8 LEWIS ON BEHALF OF THE STATE DEFENDANTS.

9 **CROSS-EXAMINATION**

10 **BY MR. LEWIS:**

11 **Q.** GOOD AFTERNOON, MR. RAYMOND.

12 **A.** HOW ARE YOU DOING?

13 **Q.** ARE YOU AWARE THAT THE AMOUNT OF CORRECTIONAL OFFICER
14 POSITIONS IN CDCR HAS RISEN FROM 20,741 IN OCTOBER, 2005, TO
15 24,090 IN AUGUST, 2008?

16 **A.** NO, SIR.

17 **MR. LEWIS:** NO FURTHER QUESTIONS, YOUR HONOR.

18 **JUDGE HENDERSON:** I ASSUME THERE'S NO DIRECT?

19 **MR. HENDERSON:** NO, YOUR HONOR.

20 **JUDGE HENDERSON:** OKAY. THANK YOU VERY MUCH FOR
21 TESTIFYING, MR. RAYMOND.

22 **THE WITNESS:** THANK YOU, JUDGE.

23 **JUDGE HENDERSON:** YOU'RE EXCUSED.

24 OKAY. IF YOU WOULD STEP TO THE FRONT, MA'AM, AND BE
25 SWORN IN.

1 **MR. HENDERSON:** RIGHT OVER HERE.

2 (THEREUPON, THE WITNESS WAS SWORN.)

3 **THE WITNESS:** I DO.

4 **THE CLERK:** HAVE A SEAT. STATE AND SPELL YOUR FULL
5 NAME FOR THE RECORD.

6 **THE WITNESS:** MY NAME IS BRENDA GIBBONS, B-R-E-N-D-A,
7 G-I-B-B-O-N-S.

8 **MR. HENDERSON:** AND, YOUR HONOR, I'LL REFER TO THE
9 DECLARATION FOR THE FOUNDATIONAL BACKGROUND FOR THIS WITNESS, IN
10 GENERAL. BUT WE WILL GO INTO SOME MORE SPECIFIC QUESTIONS WITH
11 HER.
12 THEREUPON --

13 **BRENDA GIBBONS**

14 CALLED AS A WITNESS FOR THE PLAINTIFFS HEREIN, HAVING
15 BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

16 **DIRECT EXAMINATION**

17 **BY MR. HENDERSON:**

18 **Q.** MS. GIBBONS, ARE YOU EMPLOYED BY THE CALIFORNIA DEPARTMENT
19 OF CORRECTIONS AND REHABILITATION?

20 **A.** YES, I AM.

21 **Q.** WHAT'S YOUR POSITION?

22 **A.** CORRECTIONAL OFFICER.

23 **Q.** AND WHERE DO YOU WORK?

24 **A.** I WOULD AT SALINAS VALLEY STATE PRISON.

25 **Q.** AND HOW LONG HAVE YOU WORKED THERE?

1 A. SINCE IT ACTIVATED IN '96.

2 Q. OKAY. AND WHERE ARE YOU PRESENTLY ASSIGNED WITHIN THAT
3 FACILITY?

4 A. FACILITY D, BUILDING FOUR, FLOOR ONE.

5 Q. OKAY. NOW, FLOOR ONE REFERS TO YOUR POSITION, CORRECT?

6 A. CORRECT.

7 Q. IT'S ACTUALLY BUILDING D4, IS -- WHAT INMATES ARE HOUSED IN
8 D4?

9 A. IT'S AN EOP UNIT.

10 Q. OKAY. AND CAN YOU TELL ME WHAT "EOP" REFERS TO?

11 A. IT IS "ENHANCED OUTPATIENT."

12 Q. OKAY. AND WHAT DOES THAT REFER TO, SPECIFICALLY, WITH
13 RESPECT TO EOP INMATES?

14 A. IT'S A HOUSING UNIT FOR INMATES WHO HAVE PSYCHIATRIC ISSUES.

15 Q. OKAY.

16 A. THAT CAN'T PROGRAM ON A NORMAL YARD.

17 Q. THIS IS NOT A GENERAL POPULATION UNIT, THEN?

18 A. NO, IT IS NOT.

19 Q. OKAY. AND HOW LONG HAVE YOU BEEN FLOOR OFFICER ONE AT D4?

20 A. FEBRUARY OF THIS YEAR. BEFORE THAT I WORKED THE SAME UNIT,
21 BUT A DIFFERENT WATCH.

22 Q. OKAY. EXCUSE ME ONE MOMENT.

23 AND HOW LONG WERE YOU IN THE PRIOR UNIT?

24 A. I'M SORRY?

25 Q. HOW LONG WERE YOU IN THE PRIOR EOP UNIT?

1 **A.** IT'S THE SAME UNIT. IT WAS A DIFFERENT WATCH. AND I'VE
2 BEEN THERE SINCE --

3 **Q.** WHAT WATCH ARE YOU CURRENTLY ON?

4 **A.** I'M ON SECOND WATCH, WHICH IS THE MORNING SHIFT, 06:00 TO
5 14:00 HOURS.

6 **Q.** OKAY. AND WHAT WAS THE WATCH YOU WERE PREVIOUSLY ON ON THAT,
7 AT D4?

8 **A.** SWING SHIFT, WHICH IS 14:00 HOURS TO 22:00 HOURS.

9 **Q.** AND WHEN DID YOU FIRST START WORKING AT D4?

10 **A.** PROBABLY SOMETIME --

11 **Q.** BEST ESTIMATE?

12 **A.** -- IN '98.

13 **Q.** OKAY. AND WAS IT AN EOP UNIT AT THAT TIME?

14 **A.** YES.

15 **Q.** AND IT'S CONTINUED THAT WAY EVER SINCE?

16 **A.** YES.

17 **Q.** OKAY. NOW, HOW MANY INMATES ARE LOCATED IN D4, CURRENTLY?

18 **A.** IT CHANGES EVERY DAY, BUT IT'S APPROXIMATELY A HUNDRED, 105.

19 **Q.** AND WHAT IS YOUR UNDERSTANDING OF THE CURRENT CAPACITY THAT
20 HAS BEEN ASSIGNED BY THE DEPARTMENT TO THAT FACILITY?

21 IN OTHER WORDS, WHAT'S THE MAXIMUM NUMBER OF INMATES?

22 **A.** IF EVERY BED WAS TAKEN IT WOULD BE 128.

23 **Q.** OKAY. HOW MANY CELLS ARE THERE IN THAT?

24 **MR. HENDERSON:** STRIKE THAT.

25

1 **BY MR. HENDERSON:**

2 **Q.** THERE ARE CELLS IN THAT FACILITY, CORRECT?

3 **A.** YES.

4 **Q.** AND HOW MANY CELLS ARE THERE IN THAT UNIT?

5 **A.** 64.

6 **Q.** SO MOST OF THE CELLS ARE OCCUPIED BY TWO INMATES?

7 **A.** YES.

8 **Q.** NOW, DO YOU HAVE AN UNDERSTANDING OF WHAT THE DESIGN
9 CAPACITY IS?

10 **MR. HENDERSON:** STRIKE THAT.

11 **BY MR. HENDERSON:**

12 **Q.** DO YOU HAVE AN UNDERSTANDING OF THE TERM "DESIGN CAPACITY"?

13 **A.** YES.

14 **Q.** AND WHAT IS YOUR UNDERSTANDING OF THAT TERM?

15 **A.** IT WOULD BE WHAT THE BUILDING WAS DESIGNED -- I GUESS YOU
16 MEAN DRAWN -- TO HOUSE.

17 **Q.** AND DO YOU HAVE AN UNDERSTANDING OF WHAT THE DESIGN CAPACITY
18 OF THAT BUILDING D4 WAS?

19 **A.** I BELIEVE ON CONCEPTION THE 180 DESIGNED BUILDINGS WERE
20 MEANT TO HOUSE 64 INMATES.

21 **Q.** AND IS THAT ON THE BASIS OF ONE INMATE PER CELL?

22 **A.** CORRECT.

23 **Q.** DO YOU REMEMBER IN YOUR DEPOSITION YOU INDICATED YOU THOUGHT
24 THE DESIGN CAPACITY WAS 128?

25 **A.** IT'S POSSIBLE.

1 Q. OKAY. WHAT WERE YOU REFERRING TO AT THAT TIME?

2 A. WHEN YOU LOOK IN A CELL AND YOU SAY "DESIGN CAPACITY," IF
3 YOU LOOK IN THE CELL AND YOU SEE TWO BUNKS, IT'S HARD TO TELL IF
4 THEY MEANT TO PUT TWO PEOPLE IN THERE OR NOT MEANT TO PUT TWO
5 PEOPLE.

6 WE LOOK AT MORE TRIGGER NUMBERS FOR STAFFING
7 PACKAGES. BUT DESIGN CAPACITY, IF YOU PUT TWO BUNKS IN THERE,
8 IT DIDN'T MAKE SENSE THAT YOUR DESIGN CAPACITY WAS 64.

9 Q. WHAT --

10 MR. LEWIS: YOUR HONOR, PARDON ME. I'M GOING TO
11 OBJECT TO THIS LINE OF QUESTIONING. ALSO, THE WITNESS' LAST
12 ANSWER WAS PURELY SPECULATION. ASK IT BE STRICKEN FROM THE
13 RECORD.

14 JUDGE HENDERSON: OVERRULED. SHE WAS EXPLAINING HER
15 ANSWER IN HER DEPOSITION, AS I UNDERSTAND IT.

16 BY MR. HENDERSON:

17 Q. WHAT IS IT THAT LEADS YOU TO CONCLUDE THAT THE ORIGINAL
18 DESIGN CAPACITY IS 64 INMATES?

19 A. THE STAFFING PACKAGE THAT WENT WITH THAT WAS FOR A HUNDRED
20 PERCENT. THEN, AS WE GOT TO 150 PERCENT POPULATION, WE WOULD GET
21 MORE OFFICERS. WHEN YOU GOT TO 200 PERCENT, YOU WOULD HAVE A
22 DIFFERENT STAFFING PACKAGE, WHICH WOULD BE MORE OFFICERS.

23 Q. SO IS IT CORRECT, THEN, THAT AT SOME POINT ANOTHER OFFICER
24 WAS ADDED TO THAT FLOOR WHEN THE NUMBER OF INMATES REACHED 96?

25 A. CORRECT.

1 Q. NOW, WHAT HAVE YOUR OBSERVATIONS BEEN OF THE INMATES THAT
2 ARE HOUSED THERE IN TERMS OF THEIR DAY-TO-DAY FUNCTIONING?

3 A. MY OBSERVATIONS?

4 Q. YES. HOW DO THEY DIFFER FROM THE GENERAL POPULATION?

5 A. SOME OF THEM ARE SEVERELY MENTALLY ILL AND SOME JUST A
6 LITTLE MENTALLY ILL.

7 Q. ARE THERE SOME OF THE INMATES THAT YOU UNDERSTAND HAVE BEEN
8 ASSIGNED TO BE TRANSFERRED TO DMH?

9 A. WE HAVE INMATES IN OUR UNIT WHO ARE WAITING TO GO TO DMH,
10 AND WE HAVE SOME THAT HAVE COME OUT OF DMH.

11 Q. OKAY. AND THE ONES THAT HAVE BEEN WAITING FOR DMH, HAVE YOU
12 HAD INMATES THAT HAVE WAITED MORE THAN SIX MONTHS?

13 A. YES.

14 Q. HAVE YOU HAD INMATES THAT HAVE WAITED OVER A YEAR?

15 A. YES.

16 Q. WHAT -- IN TERMS OF THE INMATES' ABILITY TO DEAL WITH
17 DAY-TO-DAY ISSUES IN THE FACILITY, WHAT ARE YOUR OBSERVATIONS?

18 A. THAT WOULD DEPEND ON THE INMATE.

19 Q. OKAY. ALL RIGHT. THERE'S SOME THAT ARE ABLE TO FUNCTION
20 FAIRLY WELL?

21 A. CORRECT.

22 Q. AND SOME THAT ARE NOT?

23 A. CORRECT.

24 Q. OKAY. HAVE YOU NOTICED PROBLEMS THAT HAVE ARISEN WITH THE
25 DOUBLE-CELLING, THAT IS TWO INMATES TO A CELL, IN D4?

1 **A.** YES.

2 **Q.** AND WHAT PROBLEMS HAVE YOU NOTICED?

3 **A.** A LOT OF TIMES WITH MENTALLY ILL INMATES YOU HAVE SOME THAT
4 HAVE BEHAVIOR DISORDERS THAT MAKE THEM SORT OF PREDATORIAL. AND
5 YOU HAVE OTHER GUYS WHO ARE REALLY LOW FUNCTIONING.

6 IF THEY CELL UP TOGETHER, IT'S PRETTY OBVIOUS THAT
7 THE LOWER FUNCTIONING GUY GETS VICTIMIZED EASILY BY THE HIGHER
8 FUNCTIONING INDIVIDUAL.

9 **Q.** AND BY "VICTIMIZED" WHAT DO YOU MEAN?

10 **A.** IN-CELL FIGHTS, GETTING MONEY, GETTING CANTEEN, GETTING
11 THINGS FROM THAT INMATE THAT AREN'T APPROPRIATE TO TAKE.

12 **Q.** ARE IN-CELL FIGHTS A FREQUENT OCCURRENCE AT D4 DURING YOUR
13 SHIFT?

14 **A.** IT'S NOT EVERY DAY, BUT, I MEAN, IT HAPPENS. WE HAD ONE LAST
15 WEEK.

16 **Q.** NOW, ARE THERE -- YOU ENCOUNTER ANY DIFFICULTIES IN DEALING
17 WITH THE INMATES IN TERMS OF THEIR EXPECTATIONS WITH RESPECT TO
18 THE DAY-TO-DAY ACTIVITIES THAT GO ON AT THE FACILITY?

19 **MR. LEWIS:** OBJECTION, YOUR HONOR. VAGUE WITH
20 RESPECT TO THE TERM "EXPECTATIONS"?

21 **JUDGE HENDERSON:** CLARIFY THAT TERM, COUNSEL.

22 **MR. HENDERSON:** YES, YOUR HONOR.

23 **BY MR. HENDERSON:**

24 **Q.** DO EOP -- DO SOME OF THE EOP INMATES HAVE EXPECTATIONS THAT
25 WHEN THINGS OCCUR AT A CERTAIN TIME THAT THEY ARE GOING TO

1 CONTINUE AT THAT TIME IN THE FUTURE?

2 **A.** EOP INMATES HAVE A DIFFICULT TIME WHEN YOU CHANGE THEIR
3 PROGRAM.

4 **Q.** OKAY.

5 **A.** PROBABLY MORE SO THAN THE GP UNIT.

6 **Q.** NOW, BY "PROGRAM," WHAT ARE YOU REFERRING TO?

7 **A.** ANYTHING THAT HAPPENS AT A CERTAIN TIME, PLACE, PRETTY MUCH
8 ANYTHING.

9 **Q.** OKAY. WOULD THAT INCLUDE CANTEEN PRIVILEGES?

10 **A.** CANTEEN, LAUNDRY, MEALS, GROUPS, YARD. SOMETIMES IF YOU
11 HAVE A PROGRAM AT A CERTAIN TIME, IF YOU CHANGE THEIR PROGRAM IT
12 WILL REALLY -- IT WILL REALLY THROW THEM OFF.

13 **Q.** NOW, HAVE THERE BEEN DISRUPTIONS IN, FOR EXAMPLE, CANTEEN
14 PRIVILEGES FOR THE INMATES AT D4?

15 **A.** OF COURSE.

16 **Q.** AND WHAT REACTIONS HAVE YOU OBSERVED FROM THAT?

17 **A.** IT CAN RANGE. A LOT OF TIMES THEY ARE REALLY NEEDY. IT'S A
18 CONSTANT:

19 "WHAT TIME IS CANTEEN? ARE WE GETTING IT
20 TODAY, OR ARE WE GETTING IT TOMORROW? ARE WE GETTING
21 IT LATER?"

22 AND THEY ARE EASILY AGITATED.

23 **Q.** NOW, ARE THE -- AS EOP PATIENTS, THEY PARTAKE IN VARIOUS
24 THERAPEUTIC PROGRAMS; IS THAT CORRECT?

25 **A.** CORRECT.

1 Q. AND WHERE ARE THOSE PROGRAMS HELD?

2 A. THERE'S A MENTAL HEALTH BUILDING ACROSS THE YARD. THEY GO
3 THERE FOR THEIR GROUP SESSIONS. THEY HAVE SOME -- I WANT TO
4 SAY -- 20, 25-MAN ROOMS WHERE THEY WILL HAVE STRUCTURED GROUP,
5 LIKE ANGER MANAGEMENT AND THINGS OF THAT NATURE.

6 AND THEN, THEY HAVE YARD GROUPS THAT TAKE PLACE ON
7 THE -- YOU KNOW, IT'S A YARD, BUT THERE'S NO GRASS. BUT RIGHT
8 THERE.

9 Q. AND WHAT PERCENTAGE OF THE PROGRAMS INVOLVE BEING OUTSIDE IN
10 THE YARD FOR THE PROGRAM?

11 ESTIMATE.

12 A. DEPENDING ON THE INMATE, I WOULD PROBABLY SAY 40,
13 50 PERCENT.

14 Q. OKAY. AND IF THE YARD IS UNAVAILABLE, DO THOSE PROGRAMS
15 THEN NOT TAKE PLACE?

16 A. CORRECT.

17 Q. AND WHAT SITUATIONS CAN CAUSE THE YARD TO BE UNAVAILABLE?

18 A. WEATHER, HEAT. WE LOCK UP IF THERE'S ANY TEMPERATURE OVER
19 95.

20 IF THERE'S AN INCIDENT ON ANOTHER YARD, IF THERE'S
21 NOT ENOUGH STAFF TO COVER THE YARD.

22 Q. OKAY.

23 A. THINGS LIKE THAT.

24 Q. IS THE YARD SHARED WITH ANOTHER FACILITY OR UNIT?

25 A. IT IS SHARED, BUT DIVIDED. ON THE 180 YARDS THERE ARE FOUR

1 BUILDINGS ON ONE SIDE, FOUR BUILDINGS ON THE OTHER SIDE. AND
2 THAT'S CALLED "A FACILITY."

3 SO THE INMATES CAN'T GET FROM ONE FACILITY TO THE
4 OTHER EASILY, OR JUST WALK THERE FREELY, I'D SAY. BUT IT IS
5 STILL CONSIDERED THE SAME FACILITY.

6 Q. ARE THERE ANY OTHER BUILDINGS THAT SHARE THE SAME SPECIFIC
7 YARD THAT D4 DOES?

8 A. NO. DELTA THREE AND DELTA FOUR.

9 Q. I'M SORRY?

10 A. IT'S DELTA THREE AND DELTA FOUR.

11 Q. OKAY. SO IS DELTA THREE ALSO AN EOP?

12 A. CORRECT.

13 Q. AND DO YOU HAVE AN UNDERSTANDING WHY THE PROGRAMS TAKE PLACE
14 IN THE YARD THAT ARE CONDUCTED THERE?

15 A. YES.

16 Q. AND WHAT'S THAT?

17 A. THEY HAVE A LOT OF PSYCH TECHS, AND THEY HAVE PSYCH
18 INTERACTION WITH THE INMATE POPULATION WHEN THEY ARE ON THE
19 YARD. IT ENCOURAGES THEM TO GET OUT. FOR THE GUYS WHO ARE LESS
20 FUNCTIONING THAT MIGHT BE THE BEST THEY GET. AND SOMETIMES IF
21 THEY GET OUT AND THEY GET WALKING, LIKE WALKING AROUND IS ONE OF
22 THE BEST ANTIDEPRESSANTS THERE IS.

23 SO THEY WILL GET OUT, AND THE PSYCH TECHS WILL GET
24 INVOLVED WITH THEM. AND THEY ALSO HAVE TOURNAMENTS TO KIND OF
25 GET THE GUYS TO DO SOME GROUP ACTIVITIES TOGETHER WHERE THEY

1 HAVE TO INTERACT.

2 Q. WELL, IS A LACK OF AVAILABLE SPACE FOR PROGRAMS ANOTHER
3 REASON THAT THEY USE THE YARD FACILITIES?

4 A. WE DON'T USE -- THOSE KIND OF RECREATIONAL ACTIVITIES, YOU
5 COULD USE A GYM, BUT THEY DON'T USE THE GYM, SO I DON'T THINK
6 THERE'S A SPACE LARGE ENOUGH FOR THAT.

7 Q. ARE YOU FAMILIAR WITH THE TERM "DECOMPOSITION" (SIC)?

8 A. YES.

9 Q. CAN YOU TELL ME WHAT YOUR UNDERSTANDING OF THAT TERM IS?

10 A. THAT TERM IN MY WORK PLACE WOULD MEAN CERTAIN INMATES FOR
11 ONE REASON OR ANOTHER -- I DON'T REALLY KNOW WHY -- BUT THEY
12 WILL START TO DECOMPENSATE.

13 SOMETIMES IT MIGHT BE BAD NEWS. IT MIGHT BE LACK OF
14 PROGRAMMING. IT MIGHT BE CHANGE IN MEDICATION. AND THEY WILL
15 START TO DETERIORATE.

16 THEY WILL HYGIENE. THEY WILL HAVE HYGIENE ISSUES.
17 CLOTHING, THEY WILL LOOK DISHEVELED.

18 Q. ALL RIGHT. I BELIEVE I MISSPOKE. IT'S BEEN POINTED OUT TO
19 ME IT'S "DECOMPENSATION" AND NOT "DECOMPOSITION." I APOLOGIZE
20 FOR THAT.

21 BUT THAT'S WHAT YOU WERE REFERENCING, CORRECT?

22 A. YES.

23 Q. AND WHEN THAT OCCURS, IS THERE ANYTHING SPECIFIC THAT'S DONE
24 TO ASSIST THAT INMATE?

25 A. IF I'M WORKING I'LL DO A PSYCH REFERRAL AND TRY TO GET HIS

1 DOCTOR TO COME SEE HIM, BECAUSE THEY MIGHT NOT. THE INMATE
2 MIGHT NOT HAVE BEEN OUT. THE DOCTOR MIGHT NOT EVEN KNOW. SO
3 I'LL DO A PSYCH REFERRAL.

4 **Q.** NOW, DO YOU FEEL THAT THERE IS ADEQUATE STAFF IN D4 FOR YOU
5 TO MONITOR THE INMATES PROPERLY?

6 **A.** WE'RE DOING THE BEST WE CAN.

7 **Q.** OKAY. NOW, WE REFERENCED --

8 **JUDGE KARLTON:** THE QUESTION ISN'T WHETHER YOU'RE
9 DOING THE BEST YOU CAN. EVERYBODY WILL BELIEVE THAT. THE
10 QUESTION IS: AS YOU VIEW THE TOTALITY OF THE CIRCUMSTANCES DO
11 YOU BELIEVE THAT MORE PERSONNEL ARE APPROPRIATE FOR THE JOB?

12 **THE WITNESS:** MORE WOULD BE BETTER.

13 **BY MR. HENDERSON:**

14 **Q.** WITH RESPECT TO THE HYGIENE WITHIN THE D4, HOW WOULD YOU
15 DESCRIBE THAT?

16 **A.** HYGIENE OF THE UNIT OR THE INMATES?

17 **Q.** YES, THE UNIT?

18 **A.** THE UNIT CAN GET KIND OF DIRTY. WE DO OUR BEST. I HAVE A
19 CREW OF GUYS THAT WORK WITH ME TO HELP CLEAN THE UNIT. BUT SOME
20 OF IT -- THERE'S NOT A LOT OF CLEANING SUPPLIES. YOU GET A
21 LIMITED AMOUNT PER MONTH. SO WE DO THE BEST WE CAN.

22 **JUDGE HENDERSON:** SO I DON'T HAVE A SENSE. IS HYGIENE
23 GOOD, OR IS IT BAD? OR WHAT IS THE POINT OF HYGIENE HERE?

24 I DON'T KNOW ANYTHING ABOUT HYGIENE, OTHER THAN THEY
25 ARE TRYING TO KEEP IT CLEAN.

1 **BY MR. HENDERSON:**

2 **Q.** ARE THERE INMATES THAT ARE CURRENTLY WASHING THEIR CLOTHES
3 IN THE TOILETS AT D4?

4 **MR. LEWIS:** OBJECTION, YOUR HONOR, LEADING.

5 **JUDGE HENDERSON:** I'M GOING TO ALLOW IT, COUNSEL.

6 **THE WITNESS:** YES.

7 **BY MR. HENDERSON:**

8 **Q.** OKAY. AND WHAT IS YOUR UNDERSTANDING OF THE REASON FOR THAT?

9 **A.** IF INMATES SEND THEIR LAUNDRY OUT TO BE CLEANED, A LOT OF
10 TIMES IT WON'T COME BACK. SOME OF IT WON'T COME BACK. THE BAGS
11 ARE MISSING. IT'S HARD FOR THEM TO GET REPLACEMENT CLOTHES FOR
12 THAT.

13 AND A LOT OF THE HIGHER FUNCTIONING INMATES BELIEVE
14 THAT IF THEY WASH THEIR OWN CLOTHES THAT THEY ARE LESS LIKELY TO
15 GET SOME OF THE DIFFERENT SKIN INFECTIONS AND THINGS THAT GO
16 AROUND THE UNIT. SO THEY WILL WASH THEIR OWN CLOTHES IN THE
17 TOILET.

18 **Q.** WHAT ABOUT HEALTH CONDITIONS THERE? ARE THERE ANY PROBLEMS
19 WITH INFECTIOUS DISEASES?

20 **MR. LEWIS:** OBJECTION, YOUR HONOR. THIS WITNESS DOES
21 NOT HAVE THE FOUNDATION TO ANSWER THAT QUESTION.

22 **JUDGE HENDERSON:** OVERRULED.

23 TELL US WHAT YOU SEE WITH RESPECT TO INFECTIOUS
24 DISEASES, IF ANYTHING.

25 **THE WITNESS:** WE HAVE A LOT OF -- IT'S IN THE LAST

1 YEAR THERE'S BEEN MORE CASES OF STAPH INFECTIONS.

2 **BY MR. HENDERSON:**

3 **Q.** BY "MORE CASES OF STAPH INFECTIONS," WHAT ARE YOU REFERRING
4 TO IN TERMS OF NUMBERS?

5 **A.** CAN YOU REPEAT THE QUESTION?

6 **Q.** I'M ASKING YOU WHAT'S YOUR ESTIMATE OF STAPH INFECTIONS THAT
7 YOU YOURSELF HAVE OBSERVED IN D4?

8 **A.** WE HAVE -- IT'S ONGOING. IT SEEMS TO GET PASSED AROUND. SO,
9 I MEAN, IT'S KIND OF A ROLLING NUMBER.

10 **Q.** IS THERE -- ARE CORRECTIONAL STAFF REQUIRED TO WORK
11 MANDATORY OVERTIME?

12 **A.** YOU MEAN, LIKE RIGHT THIS SECOND? TODAY? I DON'T KNOW.

13 **Q.** IN THE PAST SIX MONTHS?

14 **A.** YEAH.

15 **Q.** HAS THAT BEEN AN ONGOING SITUATION?

16 **A.** CORRECT, IF SOMETHING HAPPENS. WE DON'T HAVE THE ABILITY TO
17 JUST LEAVE OUR POST AT THE END OF EIGHT HOURS, AND IF THERE'S
18 NOT ENOUGH STAFF TO COMPLETE THE TASK AT HAND OR THE NEXT SHIFT,
19 THEN YOU'RE AUTOMATICALLY MANDATED OVERTIME.

20 **Q.** AND DO YOU GET MEAL BREAKS --

21 **MR. HENDERSON:** STRIKE THAT.

22 **BY MR. HENDERSON:**

23 **Q.** SO YOU'RE WORKING 16 HOUR SHIFTS?

24 **A.** CORRECT.

25 **Q.** AND DO YOU GET MEAL BREAKS AS PART OF THAT?

1 **A.** NO.

2 **Q.** YOU ARE JUST THERE?

3 **A.** CORRECT.

4 **Q.** OKAY. IS THERE ANY ACCESS TO FOOD IN THE FACILITY IF YOU
5 HAVE TO WORK DOUBLE SHIFTS?

6 **A.** YOU CAN'T LEAVE A HOUSING UNIT. SO, I MEAN, A LOT OF TIMES
7 PEOPLE WILL GIVE FOOD TO YOU OR WATER BECAUSE THEY KNOW HOW IT
8 FEELS.

9 **Q.** ARE THERE SITUATIONS WHERE YOU DON'T KNOW WHETHER YOU'RE
10 WORKING MANDATORY OVERTIME UNTIL YOU ARRIVE AT THE FACILITY FOR
11 YOUR SHIFT?

12 **A.** RIGHT.

13 **MR. LEWIS:** OBJECTION, YOUR HONOR. I'M GOING TO
14 OBJECT TO THIS LINE OF QUESTIONING. WE'RE GETTING INTO
15 INCREDIBLY IRRELEVANT TESTIMONY.

16 **JUDGE HENDERSON:** OVERTIME IS RELEVANT, COUNSEL.

17 **MR. LEWIS:** THANK YOU, YOUR HONOR.

18 **BY MR. HENDERSON:**

19 **Q.** YOU HAVE MY QUESTION IN MIND?

20 **A.** CAN YOU REPEAT THE QUESTION?

21 **Q.** YES.

22 HAVE YOU HAD SITUATIONS WHERE YOU HAVE --

23 **MR. HENDERSON:** OR STRIKE THAT.

24 **BY MR. HENDERSON:**

25 **Q.** ARE THERE SITUATIONS WHERE CORRECTIONAL OFFICERS WILL NOT

1 LEARN THAT THEY HAVE MANDATORY OVERTIME UNTIL THEY ACTUALLY
2 ARRIVE AT THE FACILITY TO START THEIR REGULAR SHIFT?

3 **A.** PRETTY MUCH ALWAYS.

4 **Q.** THAT'S PRETTY MUCH HOW IT WORKS?

5 **A.** RIGHT.

6 **Q.** OKAY. I'D LIKE TO SHOW YOU SOME PICTURES, AND ASK YOU IF YOU
7 CAN IDENTIFY THOSE FOR ME.

8 CAN YOU TELL ME WHAT THIS PICTURE DEPICTS?

9 **A.** THOSE ARE HOLDING CAGES THAT ARE IN A -- IT'S LIKE A CLOSET
10 OR USED TO BE A STORAGE AREA AT CTC AT SALINAS VALLEY.

11 **Q.** I'M SORRY?

12 **MR. LEWIS:** OBJECTION, YOUR HONOR. THE WITNESS HAS
13 NOT ESTABLISHED THAT THESE PICTURES ARE OF HER HOUSING UNIT OR
14 WHERE THEY ARE.

15 WE WOULD ASK THAT THE ATTORNEY LAY THAT FOUNDATION.

16 **JUDGE HENDERSON:** LAY A FOUNDATION FOR THESE
17 PICTURES.

18 **JUDGE KARLTON:** HOW DO YOU KNOW WHAT THIS IS?

19 **MR. HENDERSON:** THIS IS A PHOTOGRAPH OF PLAINTIFF'S
20 EXHIBIT 338, WHICH IS THE EXPERT REPORT. IT'S AN ATTACHMENT TO
21 THE EXPERT REPORT. I BELIEVE IT SHOWS THE DATES. THESE WERE
22 PREVIOUSLY SHOWN EARLIER IN THE TRIAL.

23 **JUDGE KARLTON:** THE QUESTION IS HOW THE WITNESS KNOWS
24 WHAT THEY ARE.

25 **MR. HENDERSON:** OKAY.

1 **BY MR. HENDERSON:**

2 **Q.** HOW DO YOU KNOW THAT?

3 **JUDGE KARLTON:** HOW DID YOU KNOW WHAT THOSE ARE?
4 HAVE YOU BEEN THERE BEFORE?

5 **THE WITNESS:** YES, THEY ARE ON MY PRISON.

6 **BY MR. HENDERSON:**

7 **Q.** HAVE YOU BEEN THERE WHEN THEY HAVE BEEN OCCUPIED BY INMATES?

8 **A.** YES.

9 **Q.** AND WHAT IS THE USE OF THOSE?

10 **MR. LEWIS:** PARDON ME, YOUR HONOR. I'M GOING TO
11 OBJECT. THE WITNESS SAYS THESE ARE AT HER PRISON. BUT SHE'S NOT
12 IDENTIFIED WHERE. SHE IDENTIFIED SHE WORKS IN D4, BUT THESE
13 PICTURES, WE DON'T KNOW WHERE THEY ARE. SHE SAID SHE DON'T
14 KNOW -- SHE HAS NOT SAID WHERE EXACTLY THEY ARE.

15 **JUDGE HENDERSON:** SHE'S SEEN THEM. SHE'S A
16 PERCIPIENT WITNESS TO THOSE --

17 **MR. LEWIS:** YOUR HONOR, WE DON'T KNOW IF SHE'S SEEN
18 THESE PARTICULAR CAGES. WE DON'T KNOW WHERE THESE PARTICULAR
19 CAGES ARE.

20 **MR. HENDERSON:** WELL, YOUR HONOR, I THINK SHE
21 IDENTIFIED WHERE SHE HAD SEEN THEM AT THE FACILITY BEFORE.
22 COUNSEL INTERRUPTED WITH HIS OBJECTION.

23 WE CAN HAVE HER STATE IT AGAIN.

24 **JUDGE HENDERSON:** OBJECTION IS OVERRULED.

25 **MR. LEWIS:** THANK YOU, YOUR HONOR.

1 **BY MR. HENDERSON:**

2 **Q.** HAVE YOU SEEN THESE HOLDING CAGES IN USE? IN OTHER WORDS,
3 WHERE THEY HAVE BEEN OCCUPIED BY INMATES?

4 **A.** YES, THEY'RE IN A FORMER STORAGE AREA AT THE CTC.

5 **Q.** OKAY. AND WHAT HAVE THESE CAGES BEEN USED FOR?

6 **A.** THEY ARE HOLDING CAGES FOR INMATES WHO ARE WAITING FOR
7 APPOINTMENTS. THEY ARE USED FOR INMATES WHO ARE WAITING FOR
8 SUICIDE BED OR MENTAL HEALTH CRISIS BED. THEY ARE JUST LIKE A
9 WAITING ROOM, LIKE A LITTLE WAITING ROOM.

10 **Q.** SO INMATES -- IS IT CORRECT THAT INMATES WHO ARE ON SUICIDE
11 WATCH HAVE BEEN HOUSED IN THESE CAGES?

12 **A.** CORRECT.

13 **Q.** AND HOW LONG HAVE THE INMATES -- WHAT IS THE DURATION THAT
14 THE INMATES WILL BE HOUSED IN THESE UNITS THAT YOU HAVE
15 OBSERVED?

16 **MR. LEWIS:** OBJECTION. CALLS FOR SPECULATION ON THE
17 PART OF THE WITNESS.

18 **MR. HENDERSON:** I'VE ASKED HER WHAT SHE'S OBSERVED,
19 YOUR HONOR.

20 **JUDGE HENDERSON:** TELL US WHAT YOU'VE OBSERVED.

21 **THE WITNESS:** THEY WILL SOMETIMES -- THE POLICY
22 CHANGED. NOW THEY CAN ONLY STAY IN THERE FOR FOUR HOURS AT A
23 TIME. YOU TAKE THEM OUT. YOU MOVE THEM TO ANOTHER ROOM, AND DO
24 IT LIKE THAT. SO FOUR HOURS AT A TIME.

25

1 **BY MR. HENDERSON:**

2 **Q.** AND WHEN DID THAT POLICY COME INTO EFFECT TO YOUR KNOWLEDGE?

3 **A.** PROBABLY WITHIN THE LAST YEAR, TWO YEARS.

4 **Q.** OKAY. AND HOW LONG WERE THEY HELD -- I'M SORRY.

5 HOW LONG WERE THEY KEPT IN THOSE CAGES PRIOR TO THAT
6 TO YOUR KNOWLEDGE?

7 **A.** UNTIL THE NEXT DAY WHEN THERE WAS ROOM AT THE CTC FOR THEM
8 TO GET A NORMAL BED.

9 **Q.** SO THEY WOULD BE KEPT THERE OVERNIGHT?

10 **A.** CORRECT.

11 **Q.** THESE WOULD BE SUICIDE WATCH INMATES?

12 **A.** CORRECT.

13 **JUDGE KARLTON:** DESPITE THE POLICY, HAVE INMATES BEEN
14 KEPT IN THESE CAGES FOR MORE -- I'M SORRY. I'M SORRY. SOMEBODY
15 WILL TELL ME THEY ARE NOT CAGES -- IN THESE ROOMS.

16 **JUDGE HENDERSON:** HOLDING CELLS.

17 **JUDGE KARLTON:** HOLDING CELLS. THANK YOU. FOR MORE
18 THAN FOUR HOURS?

19 **THE WITNESS:** RIGHT.

20 **JUDGE KARLTON:** HAS IT HAPPENED?

21 **THE WITNESS:** YES.

22 **JUDGE KARLTON:** AND WHEN YOU MOVE THEM, EVEN AT THE
23 END OF FOUR HOURS WHEN YOU MOVE THEM, WHERE DO YOU MOVE THEM TO?

24 **THE WITNESS:** THEY WILL MOVE THEM TO A HOLDING --
25 THEY HAVE A WAITING ROOM NEARBY WHERE THESE CAGES ARE LOCATED.

1 SO THEY WILL CHANGE THE GUY IN THE CAGE TO THE WAITING ROOM, AND
2 THE GUY IN THE WAITING ROOM TO THE CAGE.

3 **JUDGE KARLTON:** AND THEN THE NEXT FOUR HOURS, THEY
4 WILL SWITCH THEM BACK.

5 **THE WITNESS:** CORRECT.

6 **BY MR. HENDERSON:**

7 **Q.** NOW, YOU SAID EARLIER THAT MORE STAFF WOULD BE BETTER AT THE
8 D4 FACILITY?

9 **A.** CORRECT.

10 **Q.** WHY IS THAT? WHAT WOULD BE BETTER WITH MORE STAFF? WHAT
11 COULD YOU DO THAT YOU CAN'T DO NOW?

12 **A.** IF THERE'S AN EMERGENCY -- WE HAVE THE STAFF NECESSARY TO
13 PERFORM THE NORMAL FUNCTIONS. BUT IF THERE'S AN EMERGENCY AND
14 WE HAVE TO REMOVE STAFF FROM THE YARD, OR THERE'S A STAFFING
15 SHORTAGE AND WE DON'T HAVE ENOUGH STAFF ON THE YARD, THEN
16 EVENTUALLY WHAT HAPPENS IS YOU DON'T HAVE PROGRAM.

17 YOU HAVE TO CANCEL PROGRAM. AND IF YOU HAD MORE TO
18 DRAW FROM, YOU'D PROBABLY BE ABLE TO MODIFY PROGRAM VERSUS
19 SUSPEND PROGRAM.

20 **Q.** DO YOU TRY TO GET TO KNOW THE INMATES THAT ARE ON YOUR UNIT?

21 **A.** YES.

22 **Q.** AND DO YOU FIND THAT IT'S DIFFICULT TO DO WHEN YOU'RE
23 DEALING WITH 105 INMATES?

24 **A.** I TRY REALLY HARD.

25 **Q.** PARDON ME?

1 **A.** I TRY REALLY HARD.

2 **Q.** OKAY. WOULD IT BE EASIER FOR YOU TO GET TO KNOW THOSE
3 INMATES IF THERE WAS MORE STAFF AVAILABLE?

4 **MR. LEWIS:** OBJECTION, YOUR HONOR. CALLS FOR
5 SPECULATION.

6 **JUDGE HENDERSON:** OVERRULED, COUNSEL.

7 **THE WITNESS:** I WOULD OBVIOUSLY HAVE MORE TIME IN THE
8 HOUSING UNIT PODS OR ON THE TIERS.

9 **BY MR. HENDERSON:**

10 **Q.** WOULD MORE STAFF BE BETTER FROM A SAFETY STANDPOINT WITHIN
11 THE UNIT?

12 **A.** YES.

13 **Q.** AND IN WHAT RESPECTS?

14 **A.** YOU COULD HAVE -- IF YOU HAD EXTRA STAFF THAT COULD TAKE
15 OVER, SAY, THE GUN POSITION WITH THE DOORS, THE MANUAL DOORS,
16 YOU COULD HAVE MORE PEOPLE IN THE PODS WITH THE INMATES, MEANING
17 PSYCH STAFF, BECAUSE THERE WOULD BE GUN COVERAGE FOR THAT
18 PARTICULAR POD.

19 **Q.** OKAY.

20 **MR. HENDERSON:** I THINK I'M AT THE END OF MY TIME
21 HERE, SO I'LL REST AT THIS POINT.

22 **JUDGE HENDERSON:** OKAY. THANK YOU, COUNSEL.

23 **JUDGE KARLTON:** HOW MUCH STAFF DO YOU HAVE PER
24 EIGHT-HOUR SHIFT, PER SHIFT?

25 **THE WITNESS:** IN THE HOUSING UNIT THERE'S TWO FLOOR

1 OFFICERS, A CONTROL BOOTH OFFICER. HE'S A GUNNER. AND THERE'S
2 TWO YARD OFFICERS.

3 **JUDGE KARLTON:** SO THERE ARE FIVE CUSTODIAL OFFICERS
4 FOR THE HUNDRED AND PLUS FOLKS; IS THAT RIGHT?

5 **THE WITNESS:** ACTUALLY, JUST THREE: THE TWO FLOOR
6 AND THE GUNNER.

7 **JUDGE HENDERSON:** OKAY. THANK YOU, COUNSEL.
8 CROSS-EXAMINATION.

9 **MR. LEWIS:** YES, YOUR HONOR.

10 **CROSS-EXAMINATION**

11 **BY MR. LEWIS:**

12 **Q.** GOOD AFTERNOON, MS. GIBBONS.

13 **A.** HI.

14 **Q.** YOU CURRENTLY WORK AS A CORRECTIONAL OFFICER AT SALINAS
15 VALLEY STATE PRISON, CORRECT?

16 **A.** YES, SIR.

17 **Q.** AND YOU HAVE WORKED THERE SINCE APPROXIMATELY 1998, CORRECT?

18 **A.** NINETY-SIX.

19 **JUDGE KARLTON:** NINETY-SIX.

20 **MR. LEWIS:** THANK YOU.

21 **BY MR. LEWIS:**

22 **Q.** PRIOR TO WORKING AT SALINAS VALLEY, YOU WERE AT THE
23 CORRECTIONAL TRAINING FACILITY CENTER OR CORRECTIONAL TRAINING
24 FACILITY?

25 **A.** I WORKED AT CTF SOLEDAD FROM '94 TO '96.

1 Q. SO YOU HAVE NOT WORKED AT ANY PRISONS OTHER THAN SALINAS
2 VALLEY OR SOLEDAD SINCE 1994?

3 A. CORRECT.

4 Q. SO YOU CANNOT TESTIFY REGARDING OBSERVATIONS RELATED TO
5 PRISON POPULATION OR ACTIONS AT ANY OTHER PRISONS SINCE 1994?

6 A. NO, I THINK THAT'S WRONG. I WORK IN A PRISON RIGHT NOW.

7 Q. YOU WORK AT SALINAS VALLEY, CORRECT, THOUGH?

8 A. IT'S A PRISON.

9 Q. AND YOU WORK AT CTF OR YOU WORKED AT CTF PREVIOUSLY?

10 A. PREVIOUS.

11 Q. OTHER THAN THOSE TWO FACILITIES -- AND THANK YOU FOR
12 CLARIFYING MY QUESTION -- YOU HAVE NOT OBSERVED ANY OTHER PRISON
13 OPERATIONS BESIDE THOSE TWO FACILITIES, CORRECT?

14 A. NO, I HAVE NOT.

15 Q. AND JUST FOR EASE OF REFERENCE, YOU CURRENTLY WORK AT
16 FACILITY D, BUILDING FOUR?

17 A. CORRECT.

18 Q. AND THAT'S OTHERWISE KNOWN AS "D4"?

19 A. YES.

20 Q. SINCE YOU MOVED TO SVSP, SALINAS VALLEY, IN 1996, D4 HAS
21 BEEN YOUR PRIMARY POST, CORRECT?

22 A. IT HAS BEEN MY PRIMARY POST.

23 Q. AND YOU HAVEN'T WORKED AT ANY OTHER FACILITY WITHIN SVSP AS
24 YOUR PRIMARY POST, HAVE YOU?

25 A. NOT AS A PRIMARY POST.

1 Q. DO YOU HAVE ANY MEDICAL OR MENTAL HEALTH FORMAL TRAINING OR
2 EDUCATION?

3 A. NO.

4 Q. YOU'RE NOT A MEDICAL DOCTOR OR AN INTERNIST --

5 JUDGE KARLTON: SHE JUST FINISHED SAYING SHE DIDN'T
6 HAVE ANY TRAINING. WHY ARE YOU GOING TO ASK A SILLY QUESTION?

7 MR. LEWIS: THANK YOU, YOUR HONOR.

8 BY MR. LEWIS:

9 Q. DO YOU RECALL IN YOUR DEPOSITION FOR THIS CASE STATING THAT
10 PRIOR TO THE PLATA LAWSUIT IT WAS MORE DIFFICULT TO GET THINGS
11 DONE?

12 A. YES.

13 Q. AND THE PLATA LAWSUIT HAS BEEN AROUND FOR MANY YEARS,
14 CORRECT?

15 IS THAT A YES?

16 A. I DON'T KNOW WHAT YEAR IT CAME OUT.

17 Q. HAS THE PLATA LAWSUIT BEEN AROUND FOR MORE THAN TWO YEARS,
18 DO YOU KNOW?

19 JUDGE HENDERSON: IT'S BEEN AROUND AS LONG AS IT'S
20 BEEN AROUND, AND WE WILL TAKE JUDICIAL NOTICE OF THAT.

21 MR. LEWIS: THANK YOU, YOUR HONOR.

22 BY MR. LEWIS:

23 Q. YOU ALSO STATED IT WAS MORE DIFFICULT BECAUSE THERE WAS A
24 DIFFERENT ATTITUDE TOWARDS MEDICAL DELIVERY, CORRECT?

25 A. CORRECT.

1 Q. AND THEN, YOU WENT ON TO EXPLAIN THAT PRIOR TO THE PLATA
2 LAWSUIT IT WAS MORE DIFFICULT TO GET THINGS DONE?

3 A. IT WAS MORE DIFFICULT TO GET THINGS DONE.

4 Q. WHY WAS IT MORE DIFFICULT?

5 A. WITH THE PLATA -- AFTER PLATA, WE STARTED GETTING TRAINED IN
6 PLATA ISSUES. AND WE WERE TRAINED ABOUT THE DUCAT SYSTEM AND
7 WORKING THE DUCAT. WE GOT MORE DOCTORS. WE GOT MORE NURSES. WE
8 GOT MORE PSYCH TECHS AND LVN'S.

9 Q. WAS THERE ALSO A DIFFERENT ATTITUDE TOWARDS DELIVERY OF
10 MEDICAL CARE?

11 A. WELL, WHAT DO YOU MEAN?

12 Q. AMONG THE CORRECTIONAL STAFF?

13 A. WE WERE TAUGHT THAT THERE WAS SPECIFIC RULES THAT WE MUST
14 FOLLOW TO BE IN COMPLIANCE WITH PLATA.

15 Q. WOULD YOU SAY THAT THE ATTITUDE WAS TAKEN MORE SERIOUSLY
16 AMONG THE CORRECTIONAL STAFF REGARDING THE DELIVERY OF
17 HEALTHCARE?

18 A. CORRECT.

19 MR. LEWIS: THANK YOU.

20 NO FURTHER QUESTIONS, YOUR HONOR.

21 JUDGE HENDERSON: THANK YOU, COUNSEL.

22 MR. MITCHELL: GOOD AFTERNOON. BILL MITCHELL FOR THE
23 INTERVENORS, DEFENDANT INTERVENORS.

24 CROSS-EXAMINATION

25

1 **BY MR. MITCHELL:**

2 **Q.** MS. GIBBONS, YOU MENTIONED BRIEFLY IN YOUR DIRECT TESTIMONY
3 THAT YOU HAD OBSERVED ON OCCASION SOME INMATES WOULD WASH THEIR
4 CLOTHES IN THE TOILETS?

5 **A.** CORRECT.

6 **Q.** ARE YOU AWARE -- DO YOU HAVE ANY EVIDENCE THAT THEIR WASHING
7 THEIR CLOTHES EVER CAUSED ANY ADVERSE MEDICAL CONDITIONS?

8 **A.** I HAVE NO IDEA WHY THEY ARE WASHING THEIR CLOTHES IN THE
9 TOILET.

10 **Q.** AND ARE YOU AWARE THAT WASHING THEIR CLOTHES IN THE TOILET
11 EVER CAUSED ANY OF THEM TO BECOME SICK?

12 **A.** I DO NOT KNOW.

13 **Q.** SO YOU HAVE NO EVIDENCE THAT WASHING THEIR CLOTHES IN THE
14 TOILET EVER CAUSED ANY TO BECOME SICK?

15 **A.** I DO NOT KNOW.

16 **JUDGE KARLTON:** YOU COULD ASK THE QUESTION A THIRD
17 TIME, IF YOU LIKE.

18 **MR. MITCHELL:** I'M TRYING TO MAKE SURE SHE UNDERSTOOD
19 THE QUESTION, AND I UNDERSTOOD HER ANSWER.

20 **JUDGE KARLTON:** YOU MAY PROCEED.

21 **MR. MITCHELL:** THANK YOU, YOUR HONOR.

22 **BY MR. MITCHELL:**

23 **Q.** ANY INDICATION OR ANY EVIDENCE THAT THE CONDITIONS ON THE
24 UNIT ARE CAUSING THE STAPH INFECTIONS THAT YOU'VE OBSERVED?

25 **A.** COULD YOU REPEAT THAT?

1 Q. DO YOU HAVE ANY EVIDENCE OF WHAT IS CAUSING THE STAPH
2 INFECTIONS THAT YOU'VE OBSERVED IN THE UNIT WHERE YOU WORK?

3 A. I HAVE NO IDEA WHAT IS CAUSING THEM.

4 Q. YOU JUST HAVE SEEN THEM?

5 A. I HONESTLY DON'T KNOW THE CAUSE OF STAPH INFECTION OTHER
6 THAN WHAT THEY TELL US IS DIRT, HYGIENE.

7 Q. NOTHING FURTHER.

8 JUDGE HENDERSON: REDIRECT?

9 REDIRECT EXAMINATION

10 BY MR. HENDERSON:

11 Q. YOU SAID EARLIER THAT YOUR OBSERVATIONS WERE THAT STAPH
12 INFECTIONS GOT PASSED AROUND WITHIN THE UNIT. WHAT DO YOU MEAN
13 BY THAT?

14 A. THERE IS USUALLY SOMEBODY WITH IT, AND THEN AS SOON AS THEY
15 GET RID OF IT SOMEBODY ELSE WILL HAVE IT.

16 Q. YOU SAID THAT IT WAS MORE DIFFICULT TO GET THINGS DONE
17 BEFORE THE LAWSUIT. YOU REMEMBER BEING ASKED ABOUT THAT?

18 A. YES.

19 Q. IS IT STILL DIFFICULT TO GET SOME THINGS DONE?

20 A. OH, YES.

21 Q. OKAY. AND SINCE YOU'VE BEEN -- YOU WERE ASKED ABOUT YOUR
22 PRIMARY WORKSTATION AT SVSP AS BEING D4. HAVE YOU WORKED ON
23 OTHER UNITS ON OVERTIME SHIFTS?

24 A. YES.

25 Q. MOST OF THE UNITS WITHIN THE FACILITY?

1 **A.** YES.

2 **Q.** OKAY. THANK YOU.

3 **MR. HENDERSON:** THAT'S ALL I HAVE.

4 **JUDGE HENDERSON:** DO YOU HAVE SOMETHING IN RESPONSE
5 TO THAT?

6 **MR. LEWIS:** NOTHING FURTHER, YOUR HONOR.

7 **JUDGE HENDERSON:** THANK YOU, COUNSEL.

8 OKAY. THANK YOU, MS. GIBBONS. YOU'RE EXCUSED.

9 **THE WITNESS:** THANK YOU.

10 **JUDGE HENDERSON:** YOU MAY CALL YOUR NEXT WITNESS.

11 **MR. HENDERSON:** YOUR HONOR, IF I COULD ASK WHAT TIME
12 WE MIGHT BE TAKING THE AFTERNOON BREAK.

13 WOULD THIS BE APPROPRIATE TIME?

14 **JUDGE HENDERSON:** WE CAN DO ONE NOW. YOU'RE NOT
15 READY TO PROCEED?

16 **MR. HENDERSON:** NO. I'M READY TO PROCEED. I WILL
17 PROBABLY HAVE ABOUT A HALF HOUR OR SO OF THIS WITNESS.

18 **JUDGE REINHARDT:** AND THIS IS THE LAST WITNESS OF THE
19 DAY?

20 **MR. HENDERSON:** YES, YOUR HONOR.

21 **JUDGE REINHARDT:** WE MIGHT AS WELL GO AHEAD.

22 **JUDGE HENDERSON:** YES, WHY DON'T WE?

23 **MR. HENDERSON:** OKAY.

24 (THEREUPON, THE WITNESS WAS SWORN.)
25

1 **THE WITNESS:** I DO.

2 **THE CLERK:** PLEASE HAVE A SEAT, AND STATE AND SPELL
3 YOUR FULL NAME FOR THE RECORD.

4 **THE WITNESS:** MY NAME IS GARY BENSON, G-A-R-Y,
5 B-E-N-S-O-N.

6 **MR. HENDERSON:** AND, YOUR HONOR, I'LL REFER TO THE
7 DECLARATION FOR BACKGROUND AND FOUNDATION. AND I WILL ASK A FEW
8 QUESTIONS OF THIS WITNESS RELATING TO THAT.
9 THEREUPON --

10 **GARY BENSON**

11 CALLED AS A WITNESS FOR THE PLAINTIFFS HEREIN, HAVING
12 BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

13 **DIRECT EXAMINATION**

14 **BY MR. HENDERSON:**

15 **Q.** MR. BENSON, ARE YOU PRESENTLY EMPLOYED BY THE CALIFORNIA
16 DEPARTMENT OF CORRECTIONS AND REHABILITATION?

17 **A.** YES.

18 **Q.** AND WHAT IS YOUR PRESENT POSITION?

19 **A.** I'M A CORRECTIONAL OFFICER.

20 **Q.** OKAY. AND WHERE DO YOU WORK?

21 **A.** I WORK IN THE TTA CLINIC.

22 **Q.** AT WHAT FACILITY?

23 **A.** AT OLD FOLSOM.

24 **JUDGE KARLTON:** WHAT DOES "TTA" STAND FOR?

25 **THE WITNESS:** TREATMENT TRIAGE AREA. IT'S EMERGENCY

1 URGENT CARE FACILITY.

2 **BY MR. HENDERSON:**

3 **Q.** WE WILL REFER TO IT AS "TTA" FROM THIS POINT FORWARD, JUST
4 FOR REFERENCE PURPOSES.

5 AND HOW LONG HAVE YOU BEEN ASSIGNED TO THE TTA
6 FACILITY?

7 **A.** ABOUT TWO-AND-A-HALF TO THREE YEARS.

8 **Q.** AND WHAT SHIFT ARE YOU CURRENTLY ASSIGNED TO?

9 **A.** SECOND WATCH FROM 5:00 A.M. TILL 1:00 P.M.

10 **Q.** AND THE TTA -- I BELIEVE YOU STATED THIS, BUT LET ME JUST
11 CLARIFY -- IS OPEN 24 HOURS A DAY?

12 **A.** CORRECT.

13 **Q.** SO THE INMATES HAVE ACCESS TO IT ALL THREE WATCHES THERE?

14 **A.** YES.

15 **Q.** HAS THAT ALWAYS BEEN YOUR SHIFT THAT YOU'VE WORKED AT AT THE
16 TTA?

17 **A.** NO, SIR.

18 **Q.** OKAY. WHAT OTHER SHIFTS HAVE YOU WORKED?

19 **A.** I WORKED THE THIRD SHIFT WATCH FROM ONE TO NINE.

20 **Q.** AND WHEN DID YOU DO THAT?

21 **A.** ABOUT A YEAR-AND-A-HALF AGO.

22 **Q.** OKAY. AND HAVE YOU BEEN WORKING THE SECOND WATCH
23 CONSISTENTLY SINCE THEN?

24 **A.** YES.

25 **Q.** OKAY. HAVE YOU EVER WORKED THE FIRST WATCH ON AN OVERTIME

1 SHIFT?

2 **A.** NOT THERE.

3 **Q.** OKAY. NOW, THE TREATMENT, THE TTA, WHAT IS ITS FUNCTION,
4 SPECIFICALLY?

5 **A.** IT'S TO CARE FOR THE INMATES THAT ARE IN URGENT OR EMERGENCY
6 CARE. IF THERE'S A FIGHT OR A CHEST PAIN, SOMETHING URGENT OR
7 EMERGENCY.

8 **Q.** AND WHAT IS THE -- WHAT PORTION OF THE INMATE POPULATION AT
9 FOLSOM DOES IT SERVE?

10 **A.** ALL OF -- THE WHOLE FACILITY.

11 **Q.** I SEE. AND IS THIS THE ONLY CLINIC OF THIS TYPE AT FOLSOM?

12 **A.** YES.

13 **Q.** AND HOW MANY INMATES ARE PRESENTLY AT FOLSOM, APPROXIMATELY?

14 **A.** APPROXIMATELY 4,000.

15 **Q.** OKAY. CAN YOU DESCRIBE FOR ME THE PHYSICAL LAYOUT OF THE
16 TTA FACILITY?

17 FIRST OF ALL, WHAT BUILDING IS IT IN?

18 **A.** IT'S JUST OUTSIDE OF THE UNIT TWO. IT'S A MAIN CLINIC THAT
19 IS THE ENTIRE BUILDING, AND IT'S ATTACHED TO BUILDING TWO.

20 **Q.** OKAY. NOW, YOU SAY IT'S THE MAIN CLINIC. ARE THERE OTHER
21 MEDICAL FACILITIES WITHIN THE BUILDING THAT TTA IS LOCATED?

22 **A.** THEY HAVE PUT THE NURSING STATIONS AND DOCTORS' OFFICES IN
23 EACH UNIT THROUGHOUT THE FACILITY.

24 **Q.** OKAY. ARE THERE ANY MEDICAL CLINICS IN THE BUILDING THAT TTA
25 IS LOCATED, OTHER MEDICAL CLINICS?

1 **A.** WHAT DO YOU MEAN BY THAT?

2 **Q.** LIKE SAY DENTAL, PSYCHIATRIC?

3 **A.** I UNDERSTAND. YES, THERE IS A DENTAL LAB. THERE IS A BLOOD
4 LAB. THERE IS WHERE THEY DO DENTAL WORK, DENTAL SURGERIES.
5 THERE'S A PSYCHIATRIC CARE UNIT THERE.

6 I THINK THAT'S ALL OF THEM.

7 **Q.** OKAY. NOW, THE TTA FACILITY ITSELF, WHAT DOES IT CONSIST OF?

8 **A.** AS FAR AS WHAT?

9 **Q.** AS FAR AS ROOM LAYOUTS.

10 **A.** THEY HAVE ONE ROOM THAT IS WHERE THE GURNEY COMES IN ON
11 EMERGENCY. THEY HAVE A ROOM THAT IS THE MAIN BODY OF THE TTA,
12 AND THEN THEY'RE A DOCTORS' LINE ROOM AND AN RN LINE ROOM.

13 **Q.** OKAY. NOW, THE DOCTORS' LINE ROOM AND THE RA -- OR RN LINE
14 ROOM, CAN YOU DESCRIBE FOR US WHAT THOSE ARE?

15 **A.** YES, THE DOCTORS' LINE IS WHERE THERE'S THE SECOND ROOM
16 WHERE WE CAN PUT A GURNEY. AND THE RN LINE ROOM IS WHERE THE RN
17 DOES BUILDING TWO'S DUCATED INMATES FOR ROUTINE DUCATS AND
18 EXAMINATIONS OF THEM.

19 THAT USED TO BE OUR SECURE ROOM WHERE ALL THE
20 NARCOTICS, SHARPS, THE TOOLS, ALL THE EMERGENCY BAGS, ALL THAT
21 THAT THE MEDICATIONS ALL THAT WAS KEPT IN THERE.

22 **Q.** OKAY. I WANT TO GO BACK TO THAT IN A MINUTE.

23 THE DOCTORS' LINE ROOM, IS THAT A PART OF THE TTA
24 CLINIC ITSELF?

25 **A.** YES.

1 Q. OKAY. THE NURSES' LINE ROOM, IS THAT A PART OF THE TTA
2 CLINIC?

3 A. YES.

4 Q. OKAY. PHYSICALLY A PART, BUT IS IT A PART IN TERMS OF THE
5 OPERATIONS?

6 A. NO.

7 Q. OKAY. WHAT IS THE NURSES' LINE ROOM? WHAT UNIT DOES THAT
8 SERVICE?

9 A. UNIT TWO.

10 Q. JUST UNIT TWO?

11 A. YES.

12 Q. AND WHAT ARE THOSE INMATES IN UNIT TWO? WHAT DO THEY GO
13 THERE FOR?

14 A. THEY GO IN FOR DUCATED CHRONIC CARE. THEY REVIEW THEIR
15 MEDICAL FILES FOR ANY AILMENTS THAT THEY HAVE, ANYTIME THEY HAVE
16 GONE FOR PROCEDURES AND COME FOR FOLLOW-UPS AND JUST ROUTINE
17 DENTAL -- OR I MEAN ROUTINE DOCTOR APPOINTMENTS.

18 Q. NOW, YOU SAID THAT THE NURSES' LINE ROOM USED TO BE THE
19 SECURE ROOM FOR THE TTA CLINIC ITSELF?

20 A. YES.

21 Q. OKAY. AND WHAT WAS KEPT IN THERE?

22 A. THE SHARPS CONTAINER OR THE SHARPS CONTAINING THE NEEDLES
23 AND ANY OF THE SHARPS.

24 Q. WHAT ARE YOU REFERRING TO BY "SHARPS"?

25 A. LIKE THE SCALPELS AND ANY OF THE ITEMS THAT COULD BE

1 DANGEROUS.

2 Q. THAT INCLUDES SCISSORS?

3 A. YES.

4 Q. OKAY. AND WHEN THIS -- WHEN WAS THIS ROOM CONVERTED TO THE
5 NURSES' LINE ROOM?

6 A. THEY TOOK -- ABOUT SIX MONTHS AGO, THEY TOOK THE NURSES'
7 ROOM AND THE SECURED ROOM, AND THEY TOOK IT AWAY FROM US FROM
8 THE MAIN TTA'S USE FOR URGENT AND EMERGENCY CARE AND GAVE IT TO
9 BUILDING TWO, AND BUILDING THE TWO NURSES AND DOCTORS' OFFICE.

10 Q. NOW, THE DOCTORS' OFFICE IS FOR BUILDING THREE.

11 A. THE DOCTORS' OFFICE IS FOR UNIT TWO AND THREE, AND THE
12 NURSES' LINE IS FOR THREE.

13 Q. BUT THAT'S NO LONGER APART OF THE TTA CLINIC, THEN, ITSELF,
14 CORRECT?

15 A. NO.

16 Q. WHERE DID THEY MOVE THE NARCOTICS AND THE SHARP INSTRUMENTS
17 WHEN THEY CONVERTED THE ROOM?

18 A. THEY BROUGHT ALL OF THOSE ITEMS OUT AND PUT THEM IN WOODEN
19 BOXES WITH PADLOCKS ON THEM, AND CRASH CART, AS WELL.

20 Q. AND ARE THESE BOXES, ARE THEY ALL IN ONE BOX?

21 A. NO. THERE'S APPROXIMATELY SIX BOXES THAT ARE MOUNTED ON THE
22 WALLS AROUND DIFFERENT VARIOUS SITES IN THE TTA.

23 Q. OKAY. VARIOUS POINTS IN THE ROOM?

24 A. YES.

25 Q. AND WHERE -- WHAT HAPPENS WHEN THEY NEED ACCESS TO ITEMS IN

1 THOSE BOXES?

2 **A.** THE DOCTORS OR THE NURSES TAKES THEIR MEDICAL KEYS AND THEY
3 UNLOCK THE PADLOCKS AND TAKE THE ITEMS OUT.

4 **Q.** AND THEN, THEY ARE LEFT OPEN WHILE THE DOCTORS ARE WORKING
5 ON PATIENTS?

6 **A.** YES.

7 **Q.** OKAY. HOW BIG A ROOM IS THE TTA CLINIC CURRENTLY? WHAT ARE
8 THE DIMENSIONS, APPROXIMATELY?

9 **A.** IT'S ABOUT 35 FEET BY 20 FEET IS THE MAIN BODY.

10 **Q.** OKAY. AND WHAT ACTIVITIES ARE GOING ON IN THERE AT THAT
11 TIME DURING --

12 **MR. HENDERSON:** STRIKE THAT.

13 **BY MR. HENDERSON:**

14 **Q.** WHAT -- HOW MANY WORKSTATIONS ARE THERE WITHIN THAT ROOM
15 CURRENTLY?

16 **A.** THEY HAVE THE NURSES' LINE FOR BUILDING TWO. THEY HAVE THE
17 --

18 **Q.** I WANT TO EXCLUDE THE NURSES' LINE AND THE DOCTORS' LINE. I
19 WANT TO JUST TALK ABOUT THE ROOM THAT IS ACTUALLY USED FOR THE
20 TTA ACTIVITIES.

21 **A.** OH, I UNDERSTAND.

22 THE MAIN TTA IS SUPPOSED TO HAVE ONLY URGENT AND
23 EMERGENCY, SUCH AS CHEST PAINS, SEVERE CUTS, SHORTNESS OF
24 BREATH, LIFE THREATENING, FISTFIGHTS, ANY OF THE URGENT WHERE
25 THEY HAVE, SAY, A RIOT ON THE YARD OR A FIGHT ON THE YARD.

1 THE INMATES ARE BROUGHT DOWN TO US FOR
2 DECONTAMINATION. THEY HAVE 7219'S DRAWN ON THEM AT THAT TIME.

3 AND THAT'S ANY OF THE WALK-IN PATIENTS THAT COME IN
4 FOR SEVERE COLDS, FLU, THAT TYPE OF THING.

5 Q. HOW MANY INMATES CAN BE SEEN AT A TIME IN THE TTA CLINIC?
6 WHAT'S THE MOST YOU'VE SEEN TREATED IN THAT ROOM?

7 JUDGE HENDERSON: IN A DAY? IN AN HOUR?

8 BY MR. HENDERSON:

9 Q. AT ANY ONE GIVEN TIME, TOTAL NUMBER.

10 JUDGE KARLTON: YOU MEAN, TREATED OR WAITING FOR
11 TREATMENT?

12 BY MR. HENDERSON:

13 Q. BEING TREATED AT ONE POINT IN TIME.

14 A. INSIDE OF THE TTA THERE IS GENERALLY ABOUT FOUR TO SIX
15 INMATES AT A TIME IN THERE.

16 Q. OKAY. AND ARE THERE OTHER INMATES THAT ARE IN THE ROOM AT
17 THAT TIME, AS WELL?

18 A. I KEEP IT TO A MINIMUM. I TRY AND HAVE ONLY ONE COME IN AT A
19 TIME.

20 I'M AT THE DOOR, BUT I CAN'T HAVE COMPLETE CONTROL
21 OVER IT, BECAUSE THERE'S, YOU KNOW, INMATES COMING FROM TWO
22 DIFFERENT DOORS. THERE'S SO MANY PROGRAMS. AND TO WHERE ONE
23 INMATE ISN'T DONE BEING TREATED BY A NURSE, AND A DOCTOR IS
24 BRINGING ANOTHER INMATE IN.

25 AND THEN, WE COULD HAVE LIKE A FISTFIGHT WHERE TWO

1 OFFICERS ARE BRINGING THESE INMATES IN AND THEY ARE, YOU KNOW,
2 CUT AND BLEEDING, NEEDING TREATMENT. SO THERE ARE COULD BE
3 QUITE A FEW.

4 Q. WHAT --

5 JUDGE REINHARDT: I THOUGHT YOU SAID THERE WAS FOUR
6 TREATED AT A TIME. AND NOW YOU SAID THERE'S ONE IN THE ROOM AT
7 A TIME?

8 THE WITNESS: I'M SORRY?

9 JUDGE REINHARDT: I THOUGHT A MINUTE AGO YOU SAID
10 THERE WAS USUALLY FOUR BEING TREATED IN THE ROOM AT THE SAME
11 TIME. AND THEN, I UNDERSTOOD YOU TO SAY THAT YOU TRY TO KEEP IT
12 TO ONE IN A ROOM AT THE SAME TIME. WHAT DO I MISUNDERSTAND?

13 THE WITNESS: NO, I BRING THEM IN ONE AT A TIME. AND
14 I TRY AND KEEP IT TO A MINIMUM. BUT I SAID ON A GENERAL RULE
15 THERE'S GENERALLY BETWEEN FOUR AND SIX INMATES IN THE MAIN BODY
16 OF THE TTA.

17 JUDGE KARLTON: THERE WILL BE SIX INSIDE, AND WHEN
18 ONE LEAVES HE LET'S ONE MORE IN?

19 THE WITNESS: CORRECT.

20 BY MR. HENDERSON:

21 Q. NOW, DOES THAT ALSO INCLUDE INMATES THAT ARE COMING IN TO
22 SEE EITHER A DOCTOR OR A NURSE IN CONNECTION WITH THE DOCTORS'
23 LINE ROOM OR THE NURSES' LINE ROOM?

24 A. YES.

25 Q. THEY WILL COME IN ALSO IN ADDITION TO THE ONES THAT ARE

1 BEING TREATED AT THE TTA?

2 **A.** YES.

3 **Q.** AND HOW MANY CAN THAT INVOLVE, ADDITIONALLY?

4 **A.** TWO.

5 **Q.** OKAY. AND YOU SAY THERE ARE TWO DOORS INTO THE TTA
6 FACILITY?

7 **A.** PARDON ME?

8 **Q.** THERE ARE TWO DOORS INTO THE TTA FACILITY?

9 **A.** CORRECT.

10 **Q.** OKAY. SO YOU HAVE -- YOU ARE THE CORRECTIONAL OFFICER THAT
11 IS ASSIGNED TO MAINTAIN SECURITY AT THE TTA CLINIC, CORRECT?

12 **A.** CORRECT.

13 **Q.** OKAY. SO YOUR DUTIES INVOLVE MONITORING THE INMATES THAT
14 COME IN AND WATCHING WHAT IS GOING ON WHILE THEY ARE IN THERE?

15 **A.** CORRECT.

16 **Q.** OKAY. AND THESE SECURITY BOXES FOR THE NARCOTICS AND THE
17 SHARP INSTRUMENTS ARE BASICALLY LOCATED AROUND THE WALLS IN THE
18 ROOM?

19 **A.** YES.

20 **Q.** OKAY. SO YOU HAVE TO KEEP TRACK OF ALL OF THIS AT THE SAME
21 TIME?

22 **A.** YES.

23 **Q.** HOW DO YOU DEAL WITH THAT?

24 **A.** IT'S VERY DIFFICULT, MULTITASKING.

25 **Q.** IS THERE --

1 **MR. HENDERSON:** STRIKE THAT.

2 **BY MR. HENDERSON:**

3 **Q.** IF THE BOXES --

4 **MR. HENDERSON:** STRIKE THAT.

5 **BY MR. HENDERSON:**

6 **Q.** THE INMATES -- THERE ARE INMATES WAITING TO GET IN TO THE
7 TTA FACILITY, CORRECT?

8 **A.** CORRECT.

9 **Q.** WHERE ARE THEY LOCATED?

10 **A.** THERE IS A HOLDING CAGED AREA. IT'S A CHAIN LINK FENCED AREA
11 THAT HAS A LOCK ON IT AND A RESTROOM. AND THAT'S LOCATED
12 OUTSIDE THE HALLWAY OF THE HOSPITAL DOOR.

13 **Q.** OKAY. AND WHAT -- THIS CAGE THAT YOU'RE TALKING ABOUT, WHAT
14 ARE THE DIMENSIONS OF IT?

15 **A.** APPROXIMATELY 12 BY 20.

16 **Q.** OKAY. AND WHAT IS INSIDE THAT LOCATION?

17 **A.** THERE'S A TOILET AND A TV.

18 **Q.** OKAY. AND IS THAT TV -- DOES THE TV RUN REGULAR CHANNELS OR
19 --

20 **A.** NO. IT JUST HAS A PRISON CHANNEL.

21 **Q.** I'M SORRY?

22 **A.** A PRISON CHANNEL.

23 **Q.** A PRISON CHANNEL? AND WHAT'S ON THE PRISON CHANNEL?

24 **MR. MITCHELL:** OBJECT ON RELEVANCE GROUNDS.

25 **MR. HENDERSON:** I'LL WITHDRAW IT.

1 **JUDGE KARLTON:** I REALLY WANT TO KNOW. I'M CURIOUS.

2 **JUDGE HENDERSON:** WHAT IS THE PRISON CHANNEL?

3 IT'S IRRELEVANT, COUNSEL.

4 **MR. HENDERSON:** OKAY.

5 **JUDGE HENDERSON:** BUT, NO, WE WANT TO BE EDUCATED.

6 WHAT IS IT?

7 **THE WITNESS:** THE PRISON CHANNEL, IT HAS MOVIES. IT
8 HAS EDUCATIONAL PROGRAMS ON IT. AND IT ALSO BROADCASTS PRISON
9 NEWS OF WHEN THEY GO TO GET THEIR CANTEEN AND, YOU KNOW, WHAT
10 THE PROGRAM IS FOR THE DAY.

11 **BY MR. HENDERSON:**

12 **Q.** ARE THERE ANY MAGAZINES OR BOOKS IN THIS HOLDING AREA?

13 **A.** NO.

14 **Q.** THERE'S A BENCH THERE?

15 **A.** IN THE HALLWAY OUTSIDE THE DOOR OF THE TTA THERE IS A BENCH.

16 **Q.** IS THERE A BENCH IN THE CAGED AREA?

17 **A.** YES.

18 **Q.** AND HOW MANY PEOPLE CAN SIT ON THAT BENCH?

19 **A.** PROBABLY ABOUT 20.

20 **Q.** THAT'S IF THEY ARE ALL SCRUNCED TOGETHER?

21 **A.** YES.

22 **Q.** OKAY. AND ABOUT HOW MANY PEOPLE --

23 **MR. HENDERSON:** STRIKE THAT.

24 **BY MR. HENDERSON:**

25 **Q.** WHAT'S THE MAXIMUM AMOUNT YOU'VE SEEN IN THAT 12 BY 20-FOOT

1 AREA?

2 **A.** I'VE SEEN APPROXIMATELY 50 INMATES IN THERE AT A TIME.

3 **Q.** FIFTY?

4 **A.** YES.

5 **Q.** OKAY. AND THE MAJORITY OF THEM -- WHEN YOU'VE OBSERVED THAT,
6 HAVE YOU OBSERVED THAT ON MORE THAN ONE OCCASION?

7 **A.** PRETTY MUCH EVERY DAY.

8 **Q.** OKAY. IS THAT 50 INMATES WAITING TO GET INTO THE TTA
9 FACILITY?

10 **A.** NO, THEY HAVE DUCATS TO GO SEE THE PSYCH. THEY HAVE DUCATS
11 TO GO TO GET DENTAL WORK. THE X-RAY LAB IS UP THERE TO GET
12 X-RAYS. DOCTOR APPOINTMENTS, THE NURSING LINE.

13 **Q.** SO ANY INMATE THAT'S COMING IN THE BUILDING TO GET MEDICAL
14 SERVICES, WHETHER IT'S TTA OR ONE OF THE CLINICS OR THE LINE
15 OFFICE WILL FIRST GO IN THIS HOLDING CAGE?

16 **A.** YES.

17 **Q.** OKAY. AND HOW LONG DO THE INMATES STAY IN THAT LOCATION?

18 **A.** ON AN AVERAGE OR --

19 **Q.** WELL, ON THE AVERAGE, YES.

20 **A.** I WOULD SAY A MINIMUM OF TWO HOURS.

21 **Q.** AND HAVE YOU SEEN THEM STAY LONGER THAN TWO HOURS?

22 **A.** YES.

23 **Q.** AND WHAT'S THE LONGEST YOU RECALL SEEING AN INMATE IN THAT
24 AREA?

25 **A.** LIKE WHEN WE'VE HAD INCIDENTS ON THE YARD, AN ALARM, THEY

1 HAVE BEEN IN THERE UPWARDS OF FOUR TO FIVE HOURS.

2 Q. OKAY. ARE THERE OTHER LOCATIONS FOR INMATES WAITING TO GET
3 INTO THE TTA FACILITY BESIDES THE CAGE?

4 A. OUTSIDE OF PSYCH, THEY HAVE A WAITING AREA LIKE GENERALLY
5 LIKE A DOCTORS' WAITING AREA.

6 Q. IS THAT ON THE SAME FLOOR AS THE TTA FACILITY?

7 A. NO. IT'S ON THE THIRD FLOOR. OR, EXCUSE ME, SECOND FLOOR.

8 Q. OKAY. HAVE THERE BEEN TIMES WHEN THERE HAVE BEEN MORE THAN
9 40 OR 50 INMATES PRESENT IN THE -- WAITING TO GET IN FOR SOME
10 KIND OF MEDICAL TREATMENT?

11 JUDGE HENDERSON: IN THE CAGE OR WAITING WHERE?

12 BY MR. HENDERSON:

13 Q. JUST GENERALLY WAITING TO GET IN FOR TREATMENT, WHETHER IT'S
14 IN THE CAGE OR OUTSIDE.

15 A. OH, ABSOLUTELY.

16 Q. OKAY. WHERE ARE THOSE INMATES PLACED?

17 A. THERE IS AN OVERFLOW OF THE FIRST CAGED AREA OUTSIDE WHERE
18 THERE'S A CHAIN LINK. THERE'S AN ADDITIONAL SPACE THAT IS NEXT
19 TO IT. AND THEY CAN OPEN UP THE GATE TO THAT, AND IT'S ABOUT
20 ANOTHER 12 TO 20 FEET.

21 Q. HAVE YOU EVER SEEN THAT ONE FULL OF INMATES AS WELL AS THE
22 INMATES IN THE HOLDING?

23 A. YES.

24 Q. WHEN MOST RECENTLY DID YOU SEE THAT?

25 A. DAY BEFORE YESTERDAY.

1 Q. WHAT HAVE YOU OBSERVED IN TERMS OF THE INTERACTION OF THE
2 INMATES WHEN THEY ARE IN THIS HOLDING CAGE?

3 A. IRRITATED, ANTSY. AND THAT'S ONE OF THE REASONS THEY JUST
4 PUT THE TV IN THERE.

5 Q. OKAY. DOES THAT SOLVE THE PROBLEM?

6 A. NO.

7 Q. ARE THERE INMATES THAT HAVE REQUESTED CANCELLATION OF THEIR
8 REQUESTED TREATMENT?

9 A. YES.

10 Q. WHILE THEY WERE IN THE CAGE?

11 A. YES.

12 Q. WHAT HAVE THEY INDICATED TO YOU IS THE REASON?

13 A. THEY DIDN'T CARE TO WAIT.

14 MR. LEWIS: OBJECTION, HEARSAY, YOUR HONOR.

15 MR. HENDERSON: GOES TO STATE OF MIND.

16 JUDGE HENDERSON: OVERRULED.

17 JUDGE KARLTON: IT'S OVERRULED.

18 JUDGE HENDERSON: YOU CAN ANSWER.

19 THE WITNESS: WHAT? DID YOU WANT ME TO ANSWER?

20 BY MR. HENDERSON:

21 Q. YEAH.

22 A. I SEE IT EVERY DAY. AND THE REASON THEY TELL ME, THE
23 INMATES WILL ACTUALLY CALL ME OVER AND ASK ME TO GET THEM A
24 REFUSAL FOR MEDICAL TREATMENT SO THEY CAN SIGN BECAUSE THEY SAY
25 THAT THEY ARE NOT GOING TO WAIT.

1 Q. BASED ON YOUR OBSERVATIONS IS THE TTA A FACILITY ADEQUATE
2 FOR DEALING WITH EMERGENCY AND URGENT CARE NEEDS OF THE INMATES
3 AT FOLSOM STATE PRISON AS IT'S PRESENTLY CONFIGURED?

4 MR. LEWIS: OBJECT AS LACKING FOUNDATION.

5 JUDGE HENDERSON: OVERRULED.

6 THE WITNESS: NOT IN MY OPINION IT'S NOT.

7
8 BY MR. HENDERSON:

9 Q. WHY IS THAT?

10 A. THERE'S TOO MANY PROGRAMS, TOO MANY DOCTORS, TOO MANY NURSES
11 AND WAY TOO MANY INMATES IN THAT SMALL OF A SPACE TO DO THE JOB;
12 THAT IT'S NOT AN URGENT EMERGENCY AREA. IT'S NOT BEING USED
13 THAT WAY. THERE'S TOO MANY PROGRAMS TO BE SAFE.

14 Q. NOW, HAVE YOU SEEN INMATES COME IN WITH STAPH INFECTIONS
15 FOR TREATMENT AT THE TTA?

16 A. YES.

17 Q. AND DID YOU -- WHAT HAVE YOU OBSERVED? HAVE YOU OBSERVED
18 PHYSICALLY THE CONDITIONS THAT THEY HAVE? THE STAPH INFECTIONS?

19 A. YES.

20 Q. OKAY. AND WHAT HAVE YOU OBSERVED WHEN YOU'VE SEEN THOSE?
21 CAN YOU DESCRIBE FOR US WHAT YOU WERE REFERRING TO BY A "STAPH
22 INFECTION?

23 A. BLEEDING, OOZING WITH PUS THAT IS SOAKING THROUGH THEIR
24 CLOTHES WHEN THEY COME IN TO GET THE WOUND COVERED AND TREATED.

25 Q. OKAY. AND HAVE YOU WORKED OTHER LOCATIONS WITHIN THE FOLSOM

1 STATE PRISON ON OVERTIME SHIFTS?

2 **A.** YES.

3 **Q.** HAVE SOME OF THOSE POSITIONS THAT YOU'VE WORKED REQUIRED YOU
4 TO SUPERVISE INMATES THAT ARE TAKING SHOWERS?

5 **A.** YES.

6 **Q.** AND HAVE YOU SEEN INMATES WHEN THEY WERE SHOWERING WHERE YOU
7 OBSERVED STAPH INFECTIONS?

8 **A.** YES.

9 **Q.** AND WHERE WERE THOSE STAPH INFECTIONS LOCATED THAT YOU
10 OBSERVED?

11 **MR. MITCHELL:** OBJECTION, LACK OF FOUNDATION AS TO
12 LOCATION AND/OR TIME. IT'S VAGUE AS TO BOTH.

13 **JUDGE HENDERSON:** HE'S ASKING HIM TO TELL US WHAT HE
14 SAW.

15 **MR. MITCHELL:** BUT ABOUT THE LOCATION -- EXCUSE ME,
16 YOUR HONOR -- OF THE PRISON SHOWER, THE FACILITY WHERE HE'S
17 TALKING ABOUT, AND WHEN HE'S SPEAKING ABOUT IS VAGUE AS TO TIME
18 AS TO BOTH OF THOSE.

19 **MR. HENDERSON:** I'LL BACK UP ON --

20 **JUDGE HENDERSON:** DO THAT.

21 **MR. HENDERSON:** I'LL BACK UP ON THAT, YOUR HONOR.

22 **BY MR. HENDERSON:**

23 **Q.** DO YOU RECALL SPECIFIC LOCATIONS WITHIN THE PRISON
24 FACILITY WHERE YOU'VE BEEN ON DUTY WHERE YOU'VE OBSERVED INMATES
25 SHOWERING?

1 **A.** I WORKED IN EVERY BUILDING.

2 **Q.** OKAY. DID YOU OBSERVE INMATES SHOWERING WHEN YOU WERE
3 WORKING AT --

4 **MR. HENDERSON:** STRIKE THAT.

5 **BY MR. HENDERSON:**

6 **Q.** WHERE DID YOU WORK PRIOR TO THE TTA?

7 **A.** WHERE WAS I ASSIGNED?

8 **Q.** YEAH. YES.

9 **A.** FTTF, THE DRUG REHAB PROGRAM.

10 **Q.** IS THAT A SEPARATE BUILDING?

11 **A.** YES.

12 **Q.** HOW MANY INMATES ARE HOUSED IN THAT BUILDING?

13 **JUDGE KARLTON:** LET'S NOT GO THROUGH THIS, PLEASE.

14 **JUDGE HENDERSON:** YOU WERE ABOUT TO TELL US HE SAW
15 SOME PEOPLE SHOWERING WITH STAPH INFECTIONS.

16 **MR. HENDERSON:** I WAS GOING TO --

17 **JUDGE HENDERSON:** WHERE WAS THAT? TELL US WHERE THAT
18 WAS.

19 **MR. HENDERSON:** IF I CAN SHORTCUT IT.

20 **JUDGE KARLTON:** NO.

21 WHERE WAS IT?

22 **MR. HENDERSON:** OKAY.

23 **THE WITNESS:** I'VE SEEN INMATES SHOWERING IN BUILDING
24 ONE, BUILDING TWO, BUILDING THREE, BUILDING FIVE, AND FTTF.

25 **JUDGE KARLTON:** HOW LONG AGO DO YOU SEE THESE FOLKS

1 SHOWERING WITH STAPH INFECTION? IT'S VERY IMPORTANT FOR THE
2 COURT TO KNOW THAT. THE CASE TURNS ON IT.

3 GO AHEAD.

4 **THE WITNESS:** THE LATEST I'VE SEEN WAS DAY BEFORE
5 YESTERDAY WHEN I WAS AT WORK.

6 **BY MR. HENDERSON:**

7 **Q.** OKAY.

8 **A.** I WALKED THROUGH BUILDING FIVE.

9 **Q.** OKAY. AND CAN YOU DESCRIBE FOR US THE SHOWER, THE
10 CONFIGURATIONS OF THE SHOWER WHERE YOU'VE OBSERVED THIS?

11 **A.** THEY ARE MULTIPLE SHOWER HEADS THAT ARE STICKING OUT OF THE
12 WALLS. AND IN BUILDING ONE THEY HAVE THE CHRISTMAS TREE TYPE
13 THAT SHOWERS COME UP ON A POLE, AND THEY SPRAY OUTWARDS, AND THE
14 INMATES STAND AROUND IT AND SHOWER.

15 **Q.** ARE THERE BENCHES IN THESE AREAS WHERE THE INMATES SIT?

16 **A.** JUST OUTSIDE THE SHOWER AREA.

17 **Q.** WHERE THEY DRY OFF?

18 **A.** YES, SIR.

19 **Q.** OKAY. HAVE YOU SEEN -- IN THOSE SITUATIONS, HAVE YOU SEEN
20 STAPH INFECTIONS ON THE BUTTOCKS OF THE INMATES?

21 **A.** YES.

22 **Q.** WHAT OTHER AREAS OF THE BODY?

23 **A.** ON THE UNDERNEATH OF THEIR FOREARMS, ON THEIR STOMACHS, ON
24 THEIR THIGHS, ON THEIR CALFS, ON THEIR FACES AND NECKS A LOT.

25 **Q.** OKAY.

1 SIR, ARE YOU FAMILIAR WITH -- I'M GOING TO READ THIS
2 SO I DON'T MISPRONOUNCE LIKE I DID THE LAST TIME. I MAY STILL
3 MISPRONOUNCE IT, THOUGH -- METHICILLIN-RESISTANT STAPHYLOCOCCUS
4 AUREUS, OTHERWISE KNOWN AS MSRA?

5 **A.** YES.

6 **Q.** AND HOW ARE YOU FAMILIAR WITH THAT? WHAT'S YOUR
7 UNDERSTANDING OF THAT CONDITION?

8 **A.** IT'S A STAPH INFECTION THAT'S RESISTANT TO THE ANTIBIOTICS.

9 **Q.** AND HOW ARE YOU FAMILIAR WITH THAT?

10 **A.** I CONTRACTED IT AT WORK.

11 **Q.** AND WHEN DID YOU CONTRACT IT?

12 **A.** JULY OF '06.

13 **Q.** AND WHERE WERE YOU WORKING AT THE TIME?

14 **A.** FTTF.

15 **Q.** OKAY. IS THERE -- ARE YOU AWARE OF INMATES THAT HAVE BEEN
16 DIAGNOSED WITH MSRA?

17 **A.** YES.

18 **Q.** OKAY. ARE THERE ANY PROCEDURES FOR ISOLATING THOSE INMATES
19 FROM THE REST OF THE POPULATION?

20 **A.** NO.

21 **Q.** ARE THOSE INMATES RETURNED BACK TO THEIR LIVING
22 ARRANGEMENTS?

23 **A.** YES.

24 **Q.** AND ARE YOU -- HAVE YOU EVER BEEN NOTIFIED BY --

25 **MR. HENDERSON:** OR STRIKE THAT.

1 **BY MR. HENDERSON:**

2 **Q.** IS IT THE DEPARTMENT POLICY NOT TO NOTIFY CORRECTIONAL STAFF
3 OF WHICH INMATES HAVE MSRA?

4 **A.** YES.

5 **Q.** OKAY.

6 **MR. HENDERSON:** I BELIEVE THAT'S ALL I HAVE AT THIS
7 TIME, YOUR HONOR.

8 **JUDGE HENDERSON:** OKAY. THANK YOU, COUNSEL.
9 CROSS.

10 **MR. MITCHELL:** THANK YOU. BILL MITCHELL FOR THE
11 DEFENDANT INTERVENORS.

12 **CROSS-EXAMINATION**

13 **BY MR. MITCHELL:**

14 **Q.** GOOD AFTERNOON, SIR.

15 **A.** GOOD AFTERNOON.

16 **Q.** IN WORKING IN THE TTA, THE TREATMENT TRIAGE CENTER, THE
17 SPACE WAS RECENTLY REDESIGNED AND CHANGES WERE MADE TO THE SPACE
18 ALLOCATION; IS THAT CORRECT?

19 **A.** THEY RECENTLY REDESIGNED WHAT PROGRAMS THAT THEY WAS GOING
20 TO PUT IN THERE, AND THEY TOOK THE -- ALL THE EQUIPMENT, THE
21 SAFE BOXES. THAT ONE ROOM, IT WAS THE NURSES' ROOM WAS ACTUALLY
22 CALLED "THE SECURE ROOM."

23 AND THAT'S WHERE ALL THE NARCOTICS, ALL THE
24 MEDICATIONS, ALL THE NEEDLES, THE INJECTABLES, ALL THE TOOLS,
25 THE SHARP -- ANYTHING THAT COULDN'T BE LEFT UNLOCKED WAS ALL PUT

1 IN THAT SAFETY ROOM. AND THEY TOOK ALL THAT STUFF OUT, AND NOW
2 IT'S MOUNTED ON THE WALLS OF THE MAIN TTA TO PUT THE NURSES'
3 LINE IN THERE.

4 **Q.** AND HOW LONG AGO WAS ALL OF THOSE CHANGES DONE?

5 **A.** SIX MONTHS AGO.

6 **Q.** ALL UNDER THE DIRECTION OF THE RECEIVER?

7 **A.** I DON'T KNOW WHOSE DIRECTION.

8 **Q.** HAS THE RECEIVER TAKEN OVER THAT YOU'VE OBSERVED, THE
9 CONTROL OF THE DELIVERY OF MEDICAL CARE AT YOUR PRISON?

10 **A.** YES.

11 **Q.** AND THOSE DIRECTIONS TOOK PLACE -- I MEAN, THE CHANGES TOOK
12 PLACE AFTER THE RECEIVER CAME IN AND TOOK CONTROL OF THE
13 DELIVERY OF MEDICAL CARE THERE?

14 **A.** YES.

15 **Q.** HAVE THERE BEEN INCIDENTS WHERE INMATES HAVE GOTTEN CONTROL,
16 TAKEN CONTROL OF SHARP INSTRUMENTS THAT WERE AVAILABLE IN THE
17 LOCKED BOXES THAT THE NURSES AND DOCTORS HAVE ACCESS TO?

18 **MR. HENDERSON:** I'LL NOTE AN OBJECTION AS CALLING FOR
19 SPECULATION. IF HE WANTS TO -- I'LL OBJECT AS CALLING FOR
20 SPECULATION.

21 **JUDGE HENDERSON:** LET'S ASSUME HE MEANS: ARE YOU
22 AWARE OF ANY SUCH INSTANCES?

23 **THE WITNESS:** NO, I'M NOT.

24 **JUDGE HENDERSON:** DID YOU OBSERVE ANY SUCH INSTANCES?

25 **THE WITNESS:** I HAVE NOT OBSERVED AN INMATE TAKE ONE

1 YET.

2 **BY MR. MITCHELL:**

3 **Q.** YOU HAVE OBSERVED THEM TAKE ONE?

4 **A.** HAVE NOT.

5 **Q.** HAVE NOT. THANK YOU.

6 SIR, COULD I ASK YOU TO PLEASE MOVE A LITTLE CLOSER
7 TO THE MICROPHONE? I'M HAVING A VERY HARD TIME WITH HEARING
8 YOU.

9 **A.** YES.

10 **Q.** THANK YOU.

11 THE HOLDING CAGE THAT WAS REFERRED TO IN YOUR DIRECT
12 TESTIMONY, IS THAT THE TERM THAT YOU AS A CORRECTIONAL OFFICER
13 REFER TO THAT FACILITY BY?

14 **A.** IT'S JUST A HOLDING AREA. BUT I WAS TRYING TO DESCRIBE IT
15 TO YOU SO THAT YOU WOULD UNDERSTAND WHAT IT LOOKS LIKE. IT'S
16 JUST A HOLDING AREA THAT'S CHAIN LINK FENCED, WITH A GATE ON IT.

17 **Q.** BUT IN THE PRISON AS A CORRECTIONAL OFFICER YOU REFER TO IT
18 AS A HOLDING CELL OR A HOLDING AREA?

19 **A.** HOLDING AREA.

20 **Q.** HOLDING AREA. THANK YOU.

21 **A.** YES, SIR.

22 **Q.** AND YOU'VE INDICATED SOMETIMES INMATES, AS MANY AS 40 TO 50,
23 CAN WAIT IN THERE AN AVERAGE OF TWO HOURS, SOMETIMES, BUT UP TO
24 FOUR TO FIVE HOURS?

25 **A.** YES.

1 Q. AND SOMETIMES INMATES MAY GET A LITTLE BIT IRRITATED AND
2 WANT TO FOREGO THEIR APPOINTMENT FOR BEING SEEN BY MEDICAL STAFF
3 AND GO SOMEPLACE ELSE?

4 A. YES, SIR.

5 Q. AND WHERE WOULD IT BE THAT THEY WOULD GO ONCE THEY LEAVE
6 THERE, RATHER THAN GO TO THEIR MEDICAL APPOINTMENT?

7 A. USUALLY UP TO THE YARD.

8 Q. AND IT'S A CHOICE THAT THEY CAN MAKE EITHER TO WAIT AND GET
9 SEEN BY A DOCTOR AND A NURSE, OR GO OUT TO YARD?

10 A. YES.

11 Q. AND THOSE THAT FOREGO THEIR APPOINTMENT ON THAT DAY, IS
12 THERE ANYTHING TO PREVENT FROM THEM COMING BACK THE NEXT DAY?

13 A. THEY WOULD HAVE TO BE REDUCATED.

14 Q. ANYTHING THAT CAN PREVENT THEM FROM BEING REDUCATED?

15 A. THEY WOULD ACTUALLY HAVE TO FILL OUT PAPERWORK TO BE
16 REDUCATED.

17 Q. ON THE -- WELL, LET ME ASK YOU THIS: ARE YOU AWARE OF HOW
18 LONG AN INMATE HAS TO WAIT TO BE SEEN ONCE THEY FILL OUT THE
19 PAPERWORK, THE DUCATS, REQUESTING TO BE SEEN?

20 A. I DON'T KNOW.

21 Q. YOU INDICATED THAT SIX INMATES CAN BE TREATED AT ONE TIME IN
22 THIS TRIAGE AREA?

23 A. COULD BE OR ARE?

24 Q. ARE.

25 A. GENERALLY, YES.

1 Q. AND HAVE YOU SEEN THE STAFF, MEDICAL STAFF, THE NURSES AND
2 THE DOCTORS, THE NUMBER OF THEM, HAS THAT INCREASED WITHIN THE
3 LAST 12 TO 18 MONTHS?

4 A. YES. IN THE TTA, CORRECT.

5 Q. YOU'VE INDICATED SOME CONCERN OVER THE SPACE THAT IS
6 AVAILABLE FOR THE TREATMENT OF THE INMATES IN THE TTA AREA,
7 CORRECT?

8 A. YES.

9 Q. IF YOU HAD ADDITIONAL SPACE, THAT WOULD ALLEVIATE SOME OF
10 YOUR CONCERN?

11 A. IF THAT SPACE THAT WAS TAKEN AWAY, YOU MEAN?

12 Q. IF YOU HAD ADDITIONAL SPACE AT THIS TIME, EITHER THE SPACE
13 THAT WAS TAKEN AWAY, OR IF ADDITIONAL SPACE WAS MADE AVAILABLE,
14 WOULD THAT ALLEVIATE SOME OF THE CONCERNS YOU HAVE REGARDING THE
15 DELIVERY OF MEDICAL CARE AND SAFETY CONCERNS?

16 A. YES.

17 Q. AND IF YOU HAD ADDITIONAL STAFF TO ASSIST YOU IN MAKING SURE
18 NONE OF THE INMATES GOT CONTROL OF ANY OF THE SHARP INSTRUMENTS
19 THAT ARE THERE, OR TO CONTROL THEM FOR DISTURBANCES, WOULD
20 ALLEVIATE SOME OF THE CONCERNS YOU'VE EXPRESSED?

21 A. YES.

22 Q. YOU INDICATED THAT YOU CONTRACTED -- AND I'LL REFER TO IT AS
23 "MRSA," BECAUSE I KNOW I CAN'T SAY IT.

24 A. YES.

25 Q. AND YOU BELIEVE YOU CONTRACTED IT AT WORK?

1 **A.** THE DOCTORS, THE WORKERS' COMP DOCTORS, THEY CONCLUDED THAT
2 I DID, IN FACT.

3 **Q.** WHAT PART OF YOUR BODY, SIR?

4 **A.** MY TESTICLES, SCROTUM.

5 **Q.** THE STAFF USE A STAPH RESTROOM, DO THEY NOT?

6 **A.** PARDON ME?

7 **Q.** TO THE STAFF, CORRECTIONAL OFFICERS, USE A RESTROOM THAT IS
8 SEPARATE AND APART FROM THAT USED BY THE INMATES?

9 **A.** YES.

10 **Q.** YOU DON'T SHOWER WITH THE INMATES, DO YOU?

11 **A.** NO, SIR.

12 **Q.** YOU DON'T SIT ON THE BENCHES THAT THEY SIT ON IN THE SHOWER,
13 DO YOU?

14 **A.** NO.

15 **Q.** ARE YOU AWARE THAT THE INCIDENCE OF MRSA HAS INCREASED IN
16 THE COMMUNITY?

17 **JUDGE HENDERSON:** WHAT COMMUNITY?

18 **MR. HENDERSON:** OBJECTION.

19 **MR. MITCHELL:** SORRY, SIR?

20 **JUDGE HENDERSON:** WHAT COMMUNITY? THIS WORLD
21 COMMUNITY?

22 **BY MR. MITCHELL:**

23 **Q.** ARE YOU AWARE OF THE INCIDENCE, THE NUMBER OF MRSA
24 INFECTIONS OCCURRING HAS ACTUALLY INCREASED IN THE FREE
25 COMMUNITY, IN SOCIETY, IN GENERAL?

1 A. YES.

2 Q. AND ARE YOU AWARE THAT IT EVEN OCCURS THIS HOSPITAL
3 SETTINGS?

4 A. YES.

5 Q. IT CAN OCCUR AT A HEALTH FACILITY?

6 A. YES.

7 Q. HEALTH CLUB. ARE YOU A MEMBER OF THE HEALTH CLUB?

8 A. I AM NOW.

9 Q. PARDON?

10 A. I AM NOW, YES.

11 Q. WERE YOU THEN?

12 A. NO.

13 Q. IT CAN BE CONTRACTED IN SCHOOLS, CORRECT?

14 A. YES.

15 Q. ANY NUMBER OF PLACES.

16 A. YES.

17 Q. ARE YOU AWARE OF ANY EVIDENCE THAT INDICATES THAT THE NUMBER
18 OF --

19 MR. MITCHELL: I KNOW THE ANSWER, BUT I'LL STRIKE
20 THAT. NEVER MIND.

21 BY MR. MITCHELL:

22 Q. THE POPULATION THAT YOU'RE DEALING WITH AT UNIT TWO, YOU
23 INDICATED A POPULATION OF ABOUT 4,000. ARE THOSE LIFERS?

24 A. THE POPULATION OF THE ENTIRE INSTITUTION IS ABOUT 4,000.

25 Q. IT'S ABOUT 4,000?

1 **A.** CORRECT.

2 **Q.** THE INDIVIDUALS THAT YOU OBSERVED THE STAPH INFECTIONS ON,
3 ARE THEY SHORT-TIMERS, OR ARE THEY NEWLY-RECEIVED, NEW
4 ADMITTEES, ARE THEY LIFERS? HOW LONG HAVE THEY BEEN THERE?

5 **A.** I WOULDN'T HAVE AN IDEA.

6 **Q.** IS THIS A RECEPTION CENTER AREA?

7 **A.** NO.

8 **Q.** DO YOU SEE EVIDENCE THAT THE INMATES ENGAGE IN TATTOOING?

9 **A.** I DON'T VIEW THEM TATTOOING. I KNOW THAT IT GOES ON, BUT I
10 HAVE NOT SEEN AN INMATE TATTOOING ANOTHER INMATE.

11 **Q.** AND INMATES WILL HAVE TATTOOS ON THEIR ARMS?

12 **A.** YES.

13 **Q.** THEIR FOREARMS?

14 **A.** YES.

15 **Q.** THEIR FACES?

16 **A.** YES.

17 **Q.** MANY OF THE AREAS IN WHICH YOU'VE SEEN STAPH INFECTIONS?

18 **A.** YES.

19 **Q.** THANK YOU.

20 **MR. MITCHELL:** NO FURTHER QUESTIONS.

21 **JUDGE HENDERSON:** THANK YOU, COUNSEL.

22 DEFENDANTS, DO YOU HAVE ANY?

23 **MR. LEWIS:** NO QUESTIONS, YOUR HONOR.

24 **MR. HENDERSON:** JUST A COUPLE ON REDIRECT, YOUR

25 HONOR.

1 **JUDGE HENDERSON:** REDIRECT.

2 **REDIRECT EXAMINATION**

3 **BY MR. HENDERSON:**

4 **Q.** MR. BENSON, YOU INDICATED THAT YOU HADN'T SEEN ANY INMATE
5 TAKE NARCOTICS OR SHARP INSTRUMENTS FROM ANY OF THE BOXES IN THE
6 TTA FACILITY; IS THAT CORRECT?

7 **A.** CORRECT.

8 **Q.** ISN'T IT TRUE THAT INMATES ARE PRETTY QUICK ABOUT GETTING
9 WHAT THEY WANT WHEN THEY NEED TO GET IT?

10 **A.** YES.

11 **Q.** OKAY. AND YOU HAVE A NUMBER OF ACTIVITIES, I THINK AS YOU'VE
12 DESCRIBED TO US, WHICH IS WATCHING ANYWHERE FROM FOUR TO SIX
13 INMATES THAT ARE IN THE FACILITY AT THE TIME, CHECKING INMATES
14 THAT ARE COMING IN THE DOOR, OBSERVING THE DOCTORS AND NURSES
15 ALL AT THE SAME TIME; IS THAT CORRECT?

16 **A.** YES.

17 **Q.** IS IT POSSIBLE FOR YOU TO WATCH EVERY ONE OF THE SECURITY
18 BOXES THAT HAVE EITHER NARCOTICS OR SHARP INSTRUMENTS AT THE
19 SAME TIME IF YOU'RE DOING YOUR JOB AND THE VARIOUS DUTIES THAT
20 YOU HAVE?

21 **A.** NO.

22 **Q.** YOU INDICATED THERE WAS AN INCREASE IN DOCTORS AND NURSES
23 SINCE THE RECEIVER BECAME INVOLVED FOR THE TTA FACILITY; AM I
24 CORRECT?

25 **A.** THE INCREASE OF THE NURSES AND DOCTORS WERE THE ONES THAT

1 THEY PUT IN OUR NURSING LINE ROOM AND THE DOCTORS' LINE ROOM.

2 Q. OKAY. SO THOSE ARE THE ONES THAT WERE DEALING WITH INMATES
3 COMING IN WITH APPOINTMENTS FOR BUILDINGS TWO AND THREE, THEN,
4 CORRECT?

5 A. CORRECT.

6 Q. THERE WASN'T ANY INCREASE IN THE DOCTORS AND NURSES FOR THE
7 URGENT CARE FACILITY, WAS THERE?

8 A. NOT ASSIGNED TO THE TTA, NO.

9 Q. AND YOU WERE ALSO ASKED ABOUT ADDITIONAL SPACE BEING OF
10 ASSISTANCE TO YOU, OR YOU FELT ADDITIONAL SPACE WOULD BE HELPFUL
11 FOR WHAT HAS TO BE DONE AT THE TTA FACILITY, CORRECT?

12 A. CORRECT.

13 Q. DO YOU HAVE ANY IDEA WHERE THAT SPACE WOULD COME FROM?

14 A. NO.

15 Q. AND ISN'T IT TRUE THAT, IN FACT, THEY TOOK SPACE AWAY FROM
16 THE TTA FACILITY TO CREATE THE DOCTORS' AND THE NURSES' LINES
17 ROOMS?

18 A. CORRECT.

19 Q. NOW, WHEN YOU WERE --

20 MR. HENDERSON: STRIKE THAT.

21 I THINK THAT'S ALL I HAVE, YOUR HONOR.

22 THANK YOU.

23 MR. MITCHELL: BILL MITCHELL FOR DEFENDANT
24 INTERVENORS.

25 RECROSS-EXAMINATION

1 **BY MR. MITCHELL:**

2 **Q.** THE INSTRUMENTS, THE NEEDLES, THE THINGS THAT THE NURSES AND
3 THE DOCTORS USE, HAVE THEY REPORTED THAT INMATES HAVE TAKEN OR
4 THAT THEY ARE MISSING ANY OF THOSE ITEMS?

5 **A.** ALL THE TIME.

6 **Q.** THEY REPORT THEY ARE MISSING?

7 **A.** ALL THE TIME.

8 **Q.** NOTHING FURTHER.

9 **JUDGE HENDERSON:** OKAY.

10 THANK YOU, MR. BENSON. YOU'RE EXCUSED.

11 **THE WITNESS:** THANK YOU.

12 **JUDGE KARLTON:** MR. BIEN, YOU GOT UP TO DO SOMETHING,
13 I GATHER.

14 **MR. BIEN:** YOUR HONOR, THERE ARE TWO MORE CCPOA
15 WITNESSES TOMORROW. PLAINTIFFS HAVE FINISHED OUR WITNESSES FOR
16 THIS PHASE.

17 WE WOULD LIKE TO SHOW THE COURT SOME OF THE PHOTOS
18 THAT WE HAVE OFFERED INTO EVIDENCE. WE BELIEVE THIS IS IMPORTANT
19 FOR THE COURT TO SEE, AS THEY SHOW CURRENT CONDITIONS.

20 AND WE'D ALSO LIKE TO SHOW SOME OF THE VIDEOS OF
21 GOVERNOR SCHWARZENEGGER AND OTHER DEFENDANTS INTERVENORS
22 SPEAKING ABOUT THE ISSUES GOING TO PHASE I.

23 IF THERE'S EXTRA TIME EITHER TODAY OR TOMORROW, WE
24 COULD DO THAT IN A PRETTY SHORT TIME. NO ARGUMENT. JUST SHOW
25 WHAT IT IS, PLAY IT AND PROCEED LIKE THAT.

1 IF WE HAD EXTRA TIME, I WAS JUST SUGGESTING TO THE
2 COURT.

3 JUDGE HENDERSON: LET'S TALK ABOUT -- AND GET BACK TO
4 THAT -- THE REST OF OUR SCHEDULE FOR PHASE I.

5 WE HAVE TWO MORE CCPOA WITNESSES, AND I UNDERSTAND
6 FROM YESTERDAY WE ANTICIPATE TWO DEFENSE WITNESSES TOMORROW.

7 MR. MELLO: CORRECT.

8 JUDGE HENDERSON: IS THAT CORRECT?

9 MR. MELLO: YES.

10 JUDGE HENDERSON: OKAY. AFTER THAT WHAT HAVE WE GOT
11 LEFT?

12 JUDGE REINHARDT: HOW LONG IS YOUR SHOWING GOING TO
13 TAKE.

14 MR. BIEN: I WOULD SAY 15 MINUTES.

15 JUDGE KARLTON: 1-5?

16 MR. BIEN: 1-5 MINUTES.

17 JUDGE HENDERSON: OKAY. WE CAN CERTAINLY DO THAT.

18 MR. MELLO: JUST AS AN ASIDE, I DON'T BELIEVE THE
19 COURT HAS RULED UPON THE ADMISSIBILITY OF THOSE. WE HAD
20 OBJECTIONS TO THOSE, NOT ONLY TO CUMULATIVE, BUT TO RELEVANCE.
21 AND I DON'T BELIEVE THE COURT HAS RULED ON THAT YET.

22 I UNDERSTAND YOU PRESERVED.

23 MR. BIEN: WE UNDERSTAND, TOO. AND I FORGOT ONE
24 OTHER THING. THERE'S ALSO THREE CHARTS THAT WE HAD PREPARED
25 THAT DEFENDANTS HAVE RAISED VARIOUS OBJECTIONS TO, WHICH ARE

1 PRESERVED. ONE OF THEM IS AS TO HOW THEY WERE PREPARED AND THE
2 MANNER IN WHICH THEY ARE PREPARED.

3 AND, IF NECESSARY, WE'RE PREPARED TO BRING IN A
4 WITNESS FROM MY OFFICE WHO COULD TESTIFY AS TO WHICH DEFENDANT
5 DOCUMENTS THEY LOOKED AT AND PUT THEM ON THE CHART.

6 BUT WE WOULD LIKE TO SHOW THESE THREE CHARTS. THE
7 COURT SAW THEM BRIEFLY DURING DR. HANEY'S TESTIMONY. AND
8 THERE'S ONE OTHER ONE. BUT THEN, IF THERE'S AN ISSUE WE CAN
9 BRING A WITNESS IN, IF IT'S -- IF THERE'S NOT AN ISSUE, MAYBE
10 WE'RE FINISHED.

11 **MR. MELLO:** I JUST WANT TO THE ASK A POINT OF
12 CLARIFICATION. THE COURT HAS NOT RULED ON --

13 **JUDGE KARLTON:** PLEASE GO TO THE PODIUM.

14 **MR. MELLO:** I'M SORRY. PAUL MELLO FOR DEFENDANTS.

15 THE COURT HAS NOT RULED ON ANY OF THESE ITEMS OR THE
16 ADMISSIBILITY OF THEM. AND I JUST WANT TO ASK A QUESTION FOR
17 CLARIFICATION.

18 IS THIS THE WAY IT'S GOING TO WORK? WE'RE GOING TO
19 ALL OF A SUDDEN DO PRESENTATIONS OF OUR EXHIBITS AT SOME POINT
20 DURING TRIAL?

21 IT SEEMS STRANGE, TO SAY THE LEAST. AND ESPECIALLY IN
22 LIGHT OF THE FACT THERE HAS BEEN NO RULING WITH RESPECT TO ANY
23 OF THOSE ISSUES. AND I BELIEVE THAT -- WELL, I'LL LEAVE IT AT
24 THAT, YOUR HONOR.

25 **JUDGE KARLTON:** WELL, LET'S TAKE AN EXAMPLE. THE

1 CHARTS THAT THE PLAINTIFFS WANTED TO SHOW THE COURT THAT WERE
2 SHOWN APPARENTLY DURING DR. HANEY'S, YOU PERSIST IN FOUNDATIONAL
3 OBJECTIONS?

4 IT'S ALL RIGHT IF YOU DO.

5 **MR. MELLO:** I HAVE TO ADMIT, I MEAN, THEY HAVE MANY,
6 MANY EXHIBITS, AND I DON'T KNOW WHAT OUR SPECIFIC OBJECTIONS
7 WERE TO THOSE EXHIBITS, I HAVE TO ADMIT.

8 **JUDGE KARLTON:** WELL, THE POINT IS THAT IF IT IS A
9 PROBLEM THAT THEY HAVE GOT TO BRING WITNESSES IN TO ESTABLISH
10 THE FOUNDATION, THEN THEY HAVE GOT TO DO IT.

11 IF YOU ARE WAIVING THOSE BUT RESERVING THE OTHER
12 OBJECTIONS YOU HAVE, THAT'S ANOTHER STORY.

13 **MR. MELLO:** CAN WE SPEAK ABOUT IT IN THE MORNING,
14 YOUR HONOR?

15 **JUDGE KARLTON:** SURE.

16 **MR. MELLO:** ABOUT THOSE THREE CHARTS AS TO WHETHER
17 THERE'S A FOUNDATIONAL DISPUTE OR NOT?

18 IT SEEMS TO ME THERE ARE THREE CHARTS AT ISSUE. I
19 THINK THERE ARE MORE ISSUES.

20 AND I THINK, IN ADDITION, THEY SHOULD PROBABLY HAVE
21 TO IDENTIFY FOR US WHICH VIDEOS AND PICTURES THEY WOULD LIKE TO
22 SHOW, BECAUSE THE COURT HASN'T RULED ON THAT, AS WELL.

23 AND I DON'T MIND MEETING AND CONFERRING AND TRYING TO
24 BE SEMIREASONABLE ON THE ISSUES.

25 **JUDGE REINHARDT:** HOW ABOUT BEING REALLY REASONABLE?

1 **MR. MELLO:** I'M KIDDING. I WAS TRYING TO BE -- IT'S
2 BEEN A LONG DAY. SO I WILL TRY TO BE REASONABLE AND TAKE IT
3 INTO CONSIDERATION, BUT DO I BELIEVE THAT -- WELL, THANK YOU.

4 **JUDGE HENDERSON:** OKAY. THE COURT --

5 **JUDGE REINHARDT:** YOU'RE GOING TO MEET AND DISCUSS
6 ALL OF THOSE.

7 **JUDGE HENDERSON:** YES. BUT WE STILL WOULD LIKE AN
8 IDEA -- WE NEED TO SCHEDULE -- HOW MUCH -- HOW MANY MORE
9 WITNESSES WE'RE GOING TO HAVE FOR PHASE I.

10 WE HAVE TWO FROM CCPOA. WE HAVE TWO FROM DEFENDANT
11 TOMORROW. AND I ASSUME WE WILL RECESS TOMORROW AFTER THAT.

12 WHAT HAVE WE GOT AFTER THAT?

13 **MR. MELLO:** I BELIEVE THAT WE THEN HAVE TWO MORE
14 NONEXPERT WITNESSES, PERCIPIENT WITNESSES. AND THEN, THE TWO
15 EXPERTS THAT WE STILL HAVEN'T FIGURED OUT HOW WE'RE GOING TO
16 DEAL WITH THEM, BY VIDEO OR COMING BACK ANOTHER DAY.

17 AND THEN, I BELIEVE PLAINTIFFS INDICATED THEY HAD A
18 REBUTTAL EXPERT THAT WAS ALSO A SCHEDULING ISSUE, DR. REINGOLD.
19 AND I DON'T KNOW IF ANY OF THE INTERVENORS -- I BELIEVE THAT
20 THERE WAS A POSSIBILITY THAT SENATOR RUNNER WAS TESTIFYING, BUT
21 I DON'T KNOW THE STATUS OF THAT.

22 AND YOU WANT TO KNOW THE TIME, RIGHT?

23 **JUDGE REINHARDT:** FIRST, AFTER THE TWO TOMORROW, THEN
24 YOU HAVE TWO OTHER EXPERTS?

25 **MR. MELLO:** NO. SO THERE ARE TWO CCPOA WITNESSES

1 TOMORROW, AND TWO WITNESSES BY US. AND THEN, I BELIEVE WE HAVE
2 TWO PERCIPIENT WITNESSES. AND THEN, WE HAVE TWO EXPERT
3 WITNESSES.

4 HAVE I MISSED ANYONE?

5 **JUDGE HENDERSON:** OKAY. SO THAT'S FOUR PLUS.

6 **JUDGE REINHARDT:** AND BOTH OF THOSE TWO EXPERTS MAY
7 APPEAR BY VIDEO OR ONLY ONE?

8 **MR. MELLO:** BOTH. MAYBE ALL THREE, I THINK,
9 INCLUDING THE REBUTTAL EXPERT.

10 **JUDGE REINHARDT:** AND THAT YOU HAVEN'T WORKED IT OUT
11 YET?

12 **MR. MELLO:** NO.

13 **MR. BIEN:** YOUR HONOR, WE ARE WILLING TO FACILITATE
14 DEFENDANTS AND DO THEIR TWO EXPERTS BY VIDEO TESTIMONY, IF THEY
15 SET UP THE ELECTRONICS. I DON'T KNOW HOW TO DO THAT.

16 BUT WE'D BE GLAD TO ACCOMMODATE THE COURT AND THEM BY
17 DOING IT.

18 **JUDGE REINHARDT:** IS THAT TRUE OF YOUR EXPERT, TOO?

19 **MR. MELLO:** NO, THIS IS OURS.

20 **JUDGE REINHARDT:** NO, YOURS I UNDERSTAND.

21 **MR. SPECTER:** OUR REBUTTAL EXPERT, I WAS -- HE
22 DOESN'T KNOW THIS YET, BUT I WAS GOING TO TALK TO HIM LATER AND
23 SUGGEST THAT OUR REBUTTAL EXPERT COME IN BY HIS REPORT AND THEIR
24 DEPO DESIGNATIONS. THEY CROSSED HIM ON THE DEPOSITION. I DON'T
25 KNOW WHETHER THAT'S ACCEPTABLE TO THEM OR NOT.

1 **MR. MELLO:** I'D BE GLAD TO TALK TO HIM ABOUT THAT. I
2 THINK IT MAY BE, BUT I WOULD BE GLAD TO TALK TO THEM.

3 ONE LAST POINT WE DID RAISE WAS WE DID HAVE THREE
4 WITNESSES THAT WE WERE PUTTING IN BY WAY OF DEPOSITION
5 TESTIMONY. AND WE DID ASK THAT IT BE READ INTO THE RECORD. I
6 ASSUME THE COURT IS GOING TO RULE THAT THAT'S NOT GOING TO
7 HAPPEN, BUT HAVE YOU DECIDED, YOUR HONORS?

8 **JUDGE HENDERSON:** WE HAVE NOT.

9 **MR. MELLO:** OKAY. THANK YOU. BECAUSE THAT WOULD --
10 THOSE WOULD BE OUR FIRST THREE FOLKS AFTER CCPOA COMPLETES.

11 **MR. SPECTER:** AND WE HAVE NO OBJECTION. IN FACT, WE
12 WOULD RATHER THAT TIME BE SPENT NOT READING THE DEPO EXCERPTS
13 INTO THE RECORD AND JUST SUBMIT THEM. THAT WOULD BE FINE WITH
14 US.

15 **JUDGE HENDERSON:** OKAY. TRYING TO --

16 **JUDGE KARLTON:** WAIT. I WANT TO KNOW ABOUT -- NO,
17 NOT FROM YOU -- SENATOR RUNNER IS OR IS NOT GOING TO BE
18 TESTIFYING IN PHASE I?

19 **MR. KAUFHOLD:** HE WILL NOT BE TESTIFYING IN PHASE I,
20 YOUR HONOR.

21 **JUDGE KARLTON:** THANK YOU.

22 AND AS FAR AS YOU KNOW, GENTLEMEN, ARE ANY OF THE
23 INTERVENORS PROPOSING EVIDENCE AS TO PHASE I?

24 **MR. MITCHELL:** NO, YOUR HONOR.

25 **JUDGE KARLTON:** OKAY.

1 **JUDGE HENDERSON:** OKAY. LOOKING AT THE -- BEYOND
2 TOMORROW, THE TWO PERCIPIENT WITNESSES, THE TWO EXPERTS,
3 PLAINTIFFS' REBUTTAL, IS THERE ANY REASON WE CAN'T DO THOSE --
4 WE'RE DARK NEXT WEEK, AS YOU KNOW, ON THE 25TH AND 26TH --
5 TUESDAY AND WEDNESDAY OF NOVEMBER?

6 **MR. SPECTER:** YOU WANT TO DO INSTEAD OF DECEMBER --

7 **JUDGE KARLTON:** RIGHT. IS THERE ANY REASON? WE
8 ASSUMED DECEMBER BECAUSE YOU GUYS SAID IT WAS GOING TO TAKE
9 TIME. BUT IT APPEARS NOW THAT WE CAN GET TO THEM AT THE END OF
10 NOVEMBER.

11 **MR. SPECTER:** YOU MEAN, NEXT WEEK?

12 **JUDGE REINHARDT:** THE WEEK AFTER NEXT.

13 **JUDGE KARLTON:** THE WEEK AFTER NEXT.

14 **JUDGE HENDERSON:** WE'RE DARK NEXT WEEK.

15 **MR. SPECTER:** THAT'S THE 25TH.

16 **MR. MELLO:** WE'RE BACK TO THE 2ND.

17 **MR. BIEN:** YOU MEAN, DECEMBER 2ND.

18 **MR. MELLO:** YES, YOU MEAN THE 2ND AND 3RD?

19 **JUDGE HENDERSON:** OH, I LOOKED -- I DIDN'T TURN
20 ENOUGH. YES, I'M SORRY.

21 **MR. MELLO:** SO ASSUMING AVAILABILITY OF WITNESSES, I
22 SEE NO REASON WHY WE CAN'T BE DONE BY THE 3RD.

23 **JUDGE HENDERSON:** OKAY. AND I THINK -- WE CLEARLY
24 HAVEN'T RULED YET -- BUT IN TERMS OF SCHEDULING, WE SHOULD BE
25 READY AFTER THAT -- AND WE WILL TALK ABOUT IT FURTHER -- TO GO

1 INTO PHASE II.

2 **JUDGE KARLTON:** BEFORE YOU DO THAT, I HAVE TO ASK
3 PLAINTIFFS AND CCPOA: ARE YOU PUTTING ON ANY EVIDENCE AS TO
4 PHASE II, OR ARE YOU JUST WAITING TO REBUT WHATEVER THE
5 DEFENDANT INTERVENORS PUT ON AS TO PHASE II?

6 **MS. LEONARD:** YOUR HONOR, CCOPA DOES NOT PLAN TO
7 INTRODUCE EVIDENCE.

8 SORRY. CCOPA DOES NOT PLAN TO INTRODUCE EVIDENCE IN
9 PHASE II.

10 **JUDGE KARLTON:** OKAY.

11 **MS. LEONARD:** WE RESERVE OUR RIGHT TO CROSS.

12 **MR. BIEN:** WE DO. WE HAVE EVIDENCE IN PHASE II.

13 **JUDGE KARLTON:** OKAY.

14 **MR. KAUFHOLD:** AND, YOUR HONOR, LEGISLATIVE
15 INTERVENORS AND OTHER INTERVENORS, AS WELL, WILL BE PRESENTING
16 PHASE II.

17 **JUDGE KARLTON:** OH, I KNOW THAT. I UNDERSTAND THAT
18 ENTIRELY. IT'S A QUESTION OF WHO GOES FIRST AND WHAT DO WE DO.

19 LOOK, LET ME TELL YOU WHAT WE'RE WORRYING ABOUT, WHAT
20 EVERYBODY OUGHT TO KNOW. AND THIS ISN'T MAGIC. WE HAVEN'T
21 RULED, BUT WE WANT TO KEEP GOING.

22 SO WHAT WE WANTED TO TELL THE PLAINTIFFS IS YOU'RE
23 PUTTING ON EVIDENCE AS TO PHASE II. YOU GOT TO BE READY TO PUT
24 ON THE EVIDENCE RIGHT AFTER EVERYBODY COMPLETES PHASE I. YOU GOT
25 TO BE READY.

1 I'M NOT TELLING -- YOU KNOW, YOU MAY NOT GET THERE,
2 BUT YOU GOT TO HAVE WITNESSES HERE, ALL RIGHT?

3 **MR. BIEN:** AT THE END OF THAT WEEK.

4 **JUDGE KARLTON:** WHENEVER IT IS.

5 **MR. SPECTER:** NO, THE 4TH.

6 **MR. BIEN:** RIGHT.

7 **JUDGE KARLTON:** WHENEVER IT IS.

8 **MR. MELLO:** DOES THE COURTS -- I BELIEVE JUDGE
9 REINHARDT AND I HAD A DISCUSSION ON THIS -- DOES THE COURT
10 ENVISION CLOSING BRIEFS OR CLOSING ARGUMENTS ON PHASE I?

11 **JUDGE KARLTON:** YOU KNOW, WE'VE TALKED ABOUT THAT A
12 LOT. WHAT WE THINK WE WANT TO DO -- BUT ACTUALLY, CAN WE TAKE 10
13 MINUTES TO TALK ABOUT THIS? MIGHT BE SENSIBLE.

14 WE INFORMALLY -- INFORMALLY WE'RE TALKING ABOUT IT --
15 AND THOUGHT THAT THE BEST THING TO DO IF IT'S AT THE END OF
16 PHASE I, YES. BUT, OTHERWISE, KICK IT ALL TO THE END. IF WE'RE
17 GOING TO HAVE PHASE II, WAIT UNTIL THE END TO HAVE FINDINGS,
18 PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW.

19 BRIEFING, WHAT DID WE WANT TO DO?

20 **JUDGE REINHARDT:** CLOSING ARGUMENT.

21 **JUDGE KARLTON:** YES. WE WANTED CLOSING ARGUMENTS,
22 BUT BRIEFS WAITING UNTIL THE END.

23 **MR. MELLO:** AND I UNDERSTAND THE COURT'S POSITION.
24 THE DEFENDANTS -- I DON'T KNOW IF I SPEAK FOR INTERVENORS --
25 WOULD LIKE TO HAVE BOTH ARGUMENT AND BRIEFING AT THE END OF

1 PHASE I. THAT'S OUR PREFERENCE, BUT I UNDERSTAND YOU'RE THE
2 COURT.

3 **JUDGE KARLTON:** WELL, YES. BUT, YOU KNOW, THAT MAKES
4 A DIFFERENCE.

5 **MR. SPECTER:** WE WOULD BE WILLING TO WAIVE THE
6 BRIEFING. BUT IF YOU'RE GOING TO HAVE BRIEFING, WE WOULD
7 SUGGEST IT BE DONE CONCURRENT WITH THE CLOSE OF THE EVIDENCE.

8 **JUDGE KARLTON:** WHAT WE WERE THINKING OF DOING -- I
9 MEAN, LET'S BE ALL CANDID ABOUT IT -- WAS RULING WITHOUT WRITING
10 AN OPINION SO THAT WE COULD GET ON TO PHASE II, IF THAT BECOMES
11 NECESSARY. AND THEN, AWAITING THE COMPLETION OF THE TESTIMONY
12 TO GET BRIEFING AND ARGUMENT AS TO THE ENTIRETY OF THE CASE.

13 WELL, YOU KNOW, WE WILL DO PHASE I ORAL ARGUMENT, AND
14 THEN AFTER THE COMPLETION OF PHASE II, DO BRIEFING AND PROPOSED
15 FINDINGS OF FACT.

16 IS THAT NOT YOUR PREFERENCE, SIR?

17 **MR. MELLO:** THAT IS DEFINITELY NOT OUR PREFERENCE.
18 WE WOULD LIKE A COMPLETED RECORD. WE WOULD LIKE A WRITTEN ORDER
19 AT THE END OF PHASE I.

20 **MR. MITCHELL:** JUST FOR SCHEDULING PURPOSES, BILL
21 MITCHELL FOR THE DEFENDANT INTERVENORS. PREVIOUSLY THE COURT
22 HAD ANNOUNCED WE WERE GOING TO BE DARK FOR THE DAYS OF THE 16TH
23 AND 17TH OF DECEMBER.

24 **JUDGE KARLTON:** RIGHT.

25 **MR. MITCHELL:** DOES THAT STILL HOLD TRUE? SHOULD WE

1 HAVE WITNESSES AVAILABLE OR LINED UP FOR THE 18TH AND 19TH?

2 **JUDGE HENDERSON:** YOU SHOULD.

3 **MR. MITCHELL:** SHOULD. WHAT ABOUT THE FOLLOWING WEEK,
4 THE WEEK OF THE HOLIDAYS?

5 **JUDGE HENDERSON:** WELL, WE'VE ONLY SCHEDULED UP TO
6 THE 19TH.

7 **MR. MITCHELL:** UP TO THE 19TH, BUT WHAT ABOUT
8 THEREAFTER?

9 **JUDGE REINHARDT:** LET'S HOPE WE'RE DONE.

10 **JUDGE HENDERSON:** IF WE'RE NOT DONE, WE'LL HAVE TO
11 FIGURE IT OUT. WE WILL KNOW AS WE APPROACH THAT.

12 **JUDGE KARLTON:** MAY I INQUIRE OF MR. MELLO? I WOULD
13 HAVE THOUGHT THAT YOU ALL WOULD HAVE PREFERRED TO DO WHAT WE
14 THOUGHT WAS THE SENSIBLE THING TO DO.

15 WHY DO YOU WANT A WRITTEN ORDER? BECAUSE IT'S GOING
16 TO TAKE -- IT'S GOING TAKE A WEEK OR TWO OF HARD AND INTENSIVE
17 -- A WEEK OR TWO, GOD WILLING AND THE RIVER DON'T RISE -- TO
18 WRITE A FORMAL OPINION.

19 **MR. MELLO:** I THINK FOR THE COMPLETENESS OF THE
20 RECORD -- THIS IS A VERY IMPORTANT CASE. THE COURT BIFURCATED
21 THIS TRIAL INTO TWO PROCEEDINGS. IT WAS GOING TO DECIDE IN
22 PHASE I WHAT THE PHASE I ISSUES ARE. AND I THINK IN LIGHT OF
23 THE MAGNITUDE OF THE CASE, AND EVEN THOUGH WE'VE BEEN QUICK THE
24 MAGNITUDE OF THE EVIDENCE THAT THIS COURT HAS SEEN AND WILL SEE
25 ON PHASE I, THAT WE BELIEVE THAT IT'S APPROPRIATE TO ARGUE IT,

1 BRIEF IT AND RECEIVE A FORMAL ORDER BEFORE WE MOVE TO PHASE II.

2 THAT'S OUR POSITION, AND I UNDERSTAND --

3 **JUDGE HENDERSON:** JUST FOR GUIDANCE OR FOR PHASE II

4 OR WHAT?

5 **MR. MELLO:** FOR MANY REASONS, YOUR HONOR. I MEAN, IF

6 WE'RE GOING TO BE FRANK, I MEAN WE NEED TO UNDERSTAND THE

7 POSITION OF THE CASE BEFORE WE MOVE INTO PHASE II.

8 **JUDGE REINHARDT:** I DON'T SEE THAT THERE'S MUCH TO

9 UNDERSTAND --

10 **MR. MELLO:** UNDERSTOOD.

11 **JUDGE REINHARDT:** -- PHASE I. EITHER THEY HAVE

12 ESTABLISHED WHAT THE PRIMARY CAUSE IS, OR THEY HAVEN'T.

13 **MR. MELLO:** THAT'S FINE. I'M JUST TRYING TO PRESERVE

14 MY RECORD. I UNDERSTAND.

15 **JUDGE REINHARDT:** NO. NO.

16 **JUDGE KARLTON:** BELIEVE IT OR NOT, MR. MELLO, THIS IS

17 NOT A RECORD QUESTION. THIS IS REALLY TRYING TO UNDERSTAND WHAT

18 THE SENSIBLE THING TO DO IS.

19 I AGREE WITH YOU -- I'M SURE MY COLLEAGUES DO -- THIS

20 IS A VERY IMPORTANT CASE AND IT'S A DIFFICULT CASE. AND IT'S A

21 VERY INVOLVED CASE.

22 AND THAT IS A MAJOR REASON THAT WE THOUGHT THAT WE

23 WANTED TO GIVE OUR -- THAT WE WANTED TO GIVE OURSELVES AN

24 OPPORTUNITY, APPROPRIATE OPPORTUNITY TO FULLY THINK OUR WAY

25 THROUGH ALL OF THE ISSUES. AND, YOU KNOW, IF WE WERE TO TAKE

1 TIME OFF AFTER THE CLOSE OF PHASE I TO WRITE AN OPINION, IT'S
2 GOOD FOR A MONTH -- GOD WILLING AND THE RIVER DON'T RISE -- IT'S
3 GOOD FOR A MONTH.

4 WELL, I THINK YOU UNDERSTAND MY CONCERN.

5 **MR. MELLO:** I TOTALLY UNDERSTAND WHAT THE COURT'S
6 POSITION IS. BUT IT'S OUR POSITION THAT THE MAGNITUDE OF THE
7 CASE DESERVES BRIEFING AFTERWARDS AND AN ORAL ORDER. AND THAT'S
8 OUR POSITION, AND I UNDERSTAND YOU FOLKS MAY HAVE A DIFFERENT --
9 YOUR HONOR'S MAY HAVE A DIFFERENT VIEW.

10 THANK YOU.

11 **JUDGE KARLTON:** ALL RIGHT.

12 **MR. BIEN:** I'LL JUST SAY THAT THE COURT IN ITS
13 DISCRETION ORDERED THE BIFURCATION IN RESPONSE TO THE PARTIES'
14 ESTIMATES.

15 **JUDGE KARLTON:** SCARING THE HECK OUT OF US.

16 **MR. BIEN:** YES. ESTIMATES FOR TIME, WHICH TURNED
17 OUT TO BE INACCURATE. AND YOU SET ASIDE YOUR VERY VALUABLE
18 TIME, AS DID WE AND OUR WITNESSES TO DO THIS TRIAL BEFORE
19 DECEMBER 19. AND WE WOULD APPRECIATE THE OPPORTUNITY TO DO IT
20 RATHER THAN TRY TO RESCHEDULE IT.

21 AND PLUS, OF COURSE, THIS IS AN INJUNCTIVE RELIEF
22 MATTER. AND WE, AS QUICKLY AS CAN BE DONE IN A FAIR AND
23 APPROPRIATE WAY, WOULD LIKE TO MOVE FORWARD.

24 **JUDGE REINHARDT:** WE DID NOT ORIGINALLY CONTEMPLATE
25 THAT THERE WAS ANY NEED TO DECIDE PHASE I BEFORE PHASE II. WE

1 HAD ORIGINALLY SCHEDULED THIS FOR JUST TO PROCEED STRAIGHT
2 THROUGH. IT WAS ONLY THE NUMBER OF WITNESSES THAT CAUSED US TO
3 SEPARATE IT FOR CONVENIENCE.

4 YOU KNOW, I DON'T THINK IT'S EVEN REALLY NECESSARY TO
5 MAKE AN ORAL RULING ON PHASE I. BUT I THINK FOR THE CONVENIENCE
6 OF THE COURT AND OUR OWN, IF WE'RE GOING TO CUT IT OFF AT PHASE
7 I, WE OUGHT TO DO IT, INSTEAD OF WASTING ANYBODY'S TIME ON PHASE
8 II.

9 ALTHOUGH, WE WOULD HAVE GONE STRAIGHT THROUGH HAD IT
10 NOT BEEN FOR THE NUMEROUS WITNESSES YOU ALL TOLD US WE HAD TO
11 HEAR.

12 BUT I THINK OUR PRESENT PLAN NOW IS THAT EVERYBODY'S
13 CONVENIENCE TO, WHEN IT'S OVER, HEAR ARGUMENTS. AND IF YOU, YOU
14 KNOW, COULD GET A BRIEF IN AT THE SAME TIME, FINE.

15 **JUDGE KARLTON:** DON'T EVEN --

16 **JUDGE REINHARDT:** BUT FOR A TENTATIVE RULING AT LEAST
17 ORALLY AS TO WHAT WE THINK MAY NOT ULTIMATELY BE OUR RULING. BUT
18 IT'S JUST FOR CONVENIENCE TO TRY TO SAVE EVERYBODY'S TIME.

19 **JUDGE KARLTON:** I MEAN, IT REALLY IS -- I MEAN, I
20 KNOW NOBODY OVER THERE BELIEVES IT -- WE'RE TALKING ABOUT A
21 TENTATIVE RULING SO PEOPLE GET THE FEEL FOR WHERE THE CASE
22 PROBABLY GOES.

23 BUT, ULTIMATELY, THE FINAL RULING WILL DEPEND UPON
24 THE BRIEFING OF THE PARTIES AND ARGUMENT AT THE END. AND WHEN
25 WE SIT DOWN TO WRITE -- AND WHO KNOWS WHEN WE SIT DOWN TO WRITE

1 WE MAY FIND THAT THE TENTATIVE OPINION DOESN'T LAST.

2 **JUDGE REINHARDT:** AND, ALSO, I'M NOT SURE YOU'VE
3 ASKED -- I'M NOT SURE IT BREAKS THAT EASILY IN THE PHASE I TO
4 PHASE II.

5 **JUDGE KARLTON:** THAT'S TRUE, TOO.

6 **JUDGE REINHARDT:** YOU'VE GOT THE MIDDLE PART OF
7 ALTERNATIVE REMEDIES, WHICH WOULD BE IN PHASE I, COULD BE IN
8 PHASE II.

9 I THINK WE ORIGINALLY HAD IT IN PHASE I.

10 **MR. MELLO:** ORIGINALLY, YES.

11 **JUDGE REINHARDT:** AND MOVED TO PHASE II. SO IT'S NOT
12 SO CLEAR, BUT I THINK IT'S WORTHWHILE TRYING TO GIVE A TENTATIVE
13 RULING AFTER WE HEAR ALL THE THINGS WE'VE NOW --

14 **MR. MELLO:** JUST ONE LAST POINT. AND THAT IS I DO
15 KNOW THAT WE CALLED SOME OF OUR WITNESSES OFF. AND I DON'T KNOW
16 WHAT HAPPENED WITH THEIR SCHEDULES IN LIGHT OF THAT FACT.

17 SO I JUST DON'T KNOW ABOUT SEVERAL OF MY EXPERTS. I
18 DON'T KNOW ABOUT SEVERAL OF MY WITNESSES WHO WERE NOW -- WILL
19 COME IN IN PHASE II, IF THERE IS A PHASE II.

20 AND THAT'S JUST TO BE STRAIGHT WITH YOU, BECAUSE WE
21 DID CALL THEM OFF, AND WE HAVE SEVERAL FROM OTHER PLACES, ALL
22 HAVE BUSY SCHEDULES.

23 **JUDGE KARLTON:** WE WILL HAVE TO LIVE OUR WAY THROUGH
24 THAT, AS WELL.

25 **JUDGE HENDERSON:** NOT TO DO TIT FOR TAT FROM THE

1 COURT, BUT A VERY SIGNIFICANT PROBLEM -- THIS IS UNUSUAL.

2 MR. MELLO: RIGHT.

3 JUDGE HENDERSON: WE HAVE A BUSY NINTH CIRCUIT JUDGE
4 WHO HAS CARVED OUT TIME, AND HE'S GOT A SCHEDULE.

5 MR. MELLO: UNDERSTOOD.

6 JUDGE HENDERSON: HE'S GOT EXPECTATIONS TO GET BACK
7 TO PASADENA, AND THAT IS PART OF WHAT WE'RE WEIGHING.

8 JUDGE REINHARDT: I CAN DO WITHOUT THAT.

9 JUDGE HENDERSON: OKAY.

10 JUDGE KARLTON: AND, YOU KNOW, I WANT TO REMIND YOU
11 PEOPLE THAT I CARRY THE HIGHEST LOAD OF DISTRICT JUDGES IN THE
12 UNITED STATES OF AMERICA. EVERY DAY THAT I'M GONE, OTHER
13 PEOPLE'S RIGHTS ARE NOT BEING ADJUDICATED. NOT TO SAY -- THIS
14 IS A TERRIFICALLY IMPORTANT CASE, AND IT DESERVES OUR FULL
15 ATTENTION.

16 BUT YOU HAVE TO UNDERSTAND IF YOU START PUTTING IT
17 ALL TOGETHER YOU SEE HOW DIFFICULT IT ALL IS FOR US.

18 ALL RIGHT. ENOUGH.

19 JUDGE HENDERSON: OKAY. WE WILL RESUME AT 9:15
20 TOMORROW MORNING.

21 MR. MELLO: THANK YOU.

22 MR. BIEN: YOUR HONOR, SHOULD WE LOOK AT THE PHOTOS
23 OR NOT, HAVE A BREAK?

24 JUDGE HENDERSON: 15 MINUTES.

25 JUDGE REINHARDT: I THOUGHT YOU WERE GOING TO

1 DISCUSS --

2 MR. MELLO: I THOUGHT WE WERE GOING TO TALK --

3 MR. BIEN: WELL --

4 MR. MELLO: I THOUGHT THEY WERE GOING TO SHOW US THE
5 EXHIBITS AND WE WERE GOING TO TALK --

6 MR. BIEN: THE PHOTOS --

7 JUDGE HENDERSON: ARE THOSE AGREED?

8 MR. MELLO: NO.

9 MR. SPECTER: YOU HAVE TO LOOK AT THE EXHIBIT. THEY
10 ARE VIDEOS. YOU CAN LOOK AT THEM, AND THEN YOU'LL RULE ON THEIR
11 ADMISSIBILITY. YOU WON'T BE ABLE TO RULE ON THEM BEFORE YOU SEE
12 THEM, ANYWAY.

13 MR. MELLO: THE EXACT OPPOSITE WAS DISCUSSED
14 MOVEMENTS AGO.

15 JUDGE HENDERSON: THAT'S WHAT I THOUGHT, YES.

16 JUDGE REINHARDT: WELL, WE'D LIKE TO SEE THE
17 GOVERNOR. IT'S ALWAYS ENTERTAINING.

18 JUDGE KARLTON: I'D LIKE YOU GUYS TO TRY TO WORK IT
19 OUT, MEANING --

20 MR. SPECTER: THEY ARE NEVER GOING TO AGREE.

21 JUDGE KARLTON: WHAT?

22 MR. SPECTER: THEY ARE NEVER GOING TO AGREE TO IT.

23 MR. BIEN: THEY'VE HAD IT FOR TWO WEEKS.

24 JUDGE HENDERSON: IF YOU CAN DO IT. WE DON'T WANT TO
25 SIT UP HERE UNTIL 4:15. BUT IF YOU THINK YOU CAN GET IT

1 TOGETHER.

2 JUDGE KARLTON: HE SAYS THAT THEY ARE NEVER GOING TO
3 AGREE.

4 MR. MELLO: HE SAID WE'RE NEVER GOING TO AGREE.

5 JUDGE KARLTON: I SAID:

6 "HE SAID YOU WOULD NEVER AGREE."

7 MR. MELLO: AND MR. SPECTER HAS NOT IDENTIFIED THE
8 EXHIBITS FOR US.

9 MR. SPECTER: I HAVE A SUGGESTION. WE HAVE UNTIL
10 4:30.

11 JUDGE REINHARDT: LET'S TAKE A BREAK.

12 MR. SPECTER: YOU CAN COME BACK IN 15 MINUTES. WE
13 WILL GIVE YOU OUR ANSWER THEN.

14 JUDGE REINHARDT: WE WILL BE BACK AT 4:15.

15 MR. SPECTER: OKAY. THANK YOU.

16 (THEREUPON, A RECESS WAS TAKEN.)

17 JUDGE HENDERSON: OKAY. WE ARE BACK IN SESSION.

18 MR. BIEN: YOUR HONOR, I THINK THE DEFENDANTS ARE
19 STILL DECIDING. WE'RE ALMOST THERE.

20 (PAUSE IN PROCEEDINGS.)

21 MR. BIEN: I THINK, YOUR HONOR, THE DEFENDANTS'
22 POSITION IS THAT THEY'RE NOT WAIVING ANY OF THEIR OBJECTIONS.
23 I'LL LET YOU SAY YOUR POSITION.

24 MS. JOHNSON: YOUR HONORS, WE ARE NOT CONSENTING TO
25 THIS. WE ARE GOING TO STAND ON OUR OBJECTIONS. OBVIOUSLY, IT

1 WILL BE UP TO THE COURT TO DECIDE WHAT THE COURT WANTS TO DO.

2 **JUDGE HENDERSON:** OKAY. WE WILL LOOK AT IT ALL WHEN
3 WE GET A CHANCE TO THEN. THAT'S THE WAY WE'LL DO IT.

4 **JUDGE KARLTON:** GO AHEAD AND PLAY IT, AND WE'LL
5 DECIDE WHETHER WE ARE GOING TO PAY ANY ATTENTION TO IT WHEN WE
6 START RULING ON ALL THE OBJECTIONS. YOU GUYS PUT A THOUSAND
7 OBJECTIONS, THOUSANDS OF OBJECTIONS. SOMEBODY HAS TO SPEND TIME
8 TO GO THROUGH THEM.

9 **JUDGE HENDERSON:** AND IN THAT VEIN, BEFORE WE START,
10 WE'RE MINDFUL OF MR. MELLO'S CONCERN ABOUT A LOT OF THE EXHIBITS
11 NOT BEING RULED UPON. WE'LL START THIS PROCESS. WE'RE GOING TO
12 CHANGE THE SCHEDULE FOR PRODUCING CD-ROMS SO THAT WE CAN BEGIN
13 THAT PROCESS. YOU'RE TO BRING CD-ROMS FOR THE THREE MEMBERS OF
14 THE COURT TO TRIAL ON DECEMBER 2ND AND, AT THAT SAME TIME, YOU
15 ARE TO MAIL A COPY TO JUDGE KARLTON IN SACRAMENTO AND A COPY TO
16 JUDGE REINHARDT IN LOS ANGELES BY DECEMBER 2ND, ALSO.

17 **JUDGE KARLTON:** YOU LEFT YOURSELF OUT.

18 **JUDGE HENDERSON:** I'LL HAVE ONE HERE, BUT YOU GUYS
19 WILL BE AT BOTH PLACES. YOU CAN WORK HERE AND BACK AT HOME.

20 **MS. LEONARD:** YOUR HONOR, CCPOA DOES NOT HAVE FORMAL
21 EXHIBITS. WE HAVE ONLY OUR TRIAL DECLARATIONS. WOULD YOU LIKE
22 US TO PRESS CD COPIES OF THOSE TRIAL DECLARATIONS?

23 **JUDGE KARLTON:** YES, IF THEY ARE BEING OBJECTED TO,
24 AND I GATHER THEY ARE.

25 **MS. LEONARD:** YES, THEY ARE, AND WE SHALL.

1 **JUDGE KARLTON:** GO AHEAD AND PLAY.

2 **MR. BIEN:** YOUR HONOR, AS TO THE THREE CHARTS, WE ARE
3 GOING TO TRY TO WORK SOME MORE WITH THE DEFENDANTS. WE ARE NOT
4 GOING TO SHOW YOU THOSE. WE CAN RESOLVE THE CONFLICT ON THAT.

5 WE WOULD LIKE TO START WITH 336, PLEASE.

6 (PHOTOGRAPHS DISPLAYED.)

7 **MR. BIEN:** EACH PICTURE STATES ON IT THE DATE AND
8 PLACE AND LOCATION. THESE ARE -- ALL THE PICTURES WE ARE GOING
9 TO SHOW YOU TODAY WERE TAKEN ON THE PLAINTIFFS' EXPERT TOURS IN
10 JULY AND AUGUST OF 2008.

11 **MS. JOHNSON:** COUNSEL, COULD YOU INDICATE WHERE THE
12 EXHIBIT NUMBER IS ON THIS?

13 **MR. BIEN:** THE EXHIBIT NUMBER IS -- THIS IS 336,
14 WHICH IS A SERIES -- IT'S ON THE LEFT SIDE. IT'S A SERIES OF
15 PHOTOS TAKEN AT SATF PRISON, A SUBSTANCE ABUSE TREATMENT
16 FACILITY, ON JULY 28TH, '08.

17 **JUDGE HENDERSON:** AND THE OBJECTIONS TO THESE ARE AS
18 TO WHO TOOK IT AND WHAT DAY AND THAT KIND OF THING?

19 **MR. BIEN:** THEY WERE TAKEN BY CDCR PHOTOGRAPHERS
20 ALONG ON THE TOUR.

21 **MS. JOHNSON:** THE OBJECTIONS, I BELIEVE, FOR THE MOST
22 PART, WITHOUT LOOKING AT INDIVIDUAL OBJECTIONS, ARE GENERALLY TO
23 RELEVANCE AND CUMULATIVE NATURE.

24 **JUDGE HENDERSON:** OKAY.

25 **JUDGE REINHARDT:** WHETHER IT'S RELEVANT TO THE

1 QUESTION WHETHER THERE'S OVERCROWDING OR WHETHER --

2 JUDGE KARLTON: AREN'T YOU EMBARRASSED TO SAY THAT?

3 MR. MELLO: I'M SORRY?

4 JUDGE KARLTON: NOTHING. NOTHING.

5 MS. JOHNSON: IF THE COURT WAS HONESTLY ASKING FOR AN
6 EXPLANATION OF OUR OBJECTION, I COULD OFFER IT.

7 JUDGE REINHARDT: MAYBE AFTER WE SEE IT.

8 (PHOTOGRAPHS DISPLAYED.)

9 MR. BIEN: THIS IS THE FACILITY B YARD GYM.

10 THIS IS FACILITY E, BUILDING 4C. THESE ARE BUNKS IN
11 THE DAYROOM OF THIS UNIT.

12 THIS IS FACILITY E, BUILDING 1, THE AD-SEG MENTAL
13 HEALTH CLINICIAN AREA.

14 THE NEXT GROUP OF PICTURES WAS TAKEN AT CCI, WHICH IS
15 KNOWN AS TEHACHAPI PRISON, ON JULY 29TH, 2008. THE FIRST IS AT
16 THE RECEPTION CENTER YARD 3, CLINIC HOLDING CELLS. THIS IS
17 FACILITY 4B GYM. THIS IS AN INMATE IN AN OUTPATIENT HOUSING
18 UNIT CELL.

19 JUDGE KARLTON: THERE'S NOBODY IN IT.

20 MR. BIEN: THERE IS SOMEONE IN THERE ON THE MAT.

21 JUDGE KARLTON: I CAN'T SEE IT.

22 MR. BIEN: THIS IS A MENTAL HEALTH CLINICAL OFFICE
23 AND FACILITY FOR A-8. THIS IS THE SAME OFFICE INTERIOR. THIS
24 IS THE RECEPTION CENTER YARD 3, BUILDING 5. THIS IS THE
25 RECEPTION CENTER HOLDING CELLS AND RECEPTION PROCESS. THIS IS A

1 GYM IN THE RECEPTION CENTER YARD 3. DR. HANEY ON THE LEFT SIDE
2 THERE. THIS IS ANOTHER VIEW OF THE SAME RECEPTION CENTER, YARD
3 3 GYM.

4 WE'VE NOW MOVED TO SALINAS VALLEY STATE PRISON. THIS
5 WAS A TOUR ALSO ON JULY 29TH, 2008. THIS IS A HOLDING CELL IN
6 THE CTC. THIS IS AGAIN, THIS IS OUTSIDE OF THE MHC, ANOTHER
7 VIEW OF THE HOLDING CELL. THESE ARE EXERCISE YARD CAGES OUTSIDE
8 THE ASU IN THE D YARD OF SALINAS VALLEY.

9 **JUDGE KARLTON:** TELL ME WHAT AN ASU IS.

10 **MR. BIEN:** I'M SORRY, YOUR HONORS. IT'S
11 ADMINISTRATION SEGREGATION UNIT. THESE ARE WALK ALONE
12 SEGREGATION YARDS.

13 THIS IS THE INTERIOR OF THE D YARD, BUILDING 5
14 TREATMENT SPACE. THIS IS THE CONVERTED UNIT FOR DMH USE AT
15 SALINAS VALLEY.

16 THIS IS A PHOTO THAT I THINK DR. HANEY SHOWED DURING
17 MULE CREEK STATE PRISON. THIS IS A CALLED A MHOHU CELL IN C-13
18 BUILDING. "MHOHU" STANDS FOR MENTAL HEALTH OUTPATIENT HOUSING
19 UNIT.

20 **JUDGE HENDERSON:** LET'S FOCUS ON THAT ONE. WHY ISN'T
21 DEFENSE COUNSEL RIGHT? IT IS CUMULATIVE. WE'VE SEEN THIS.

22 **JUDGE KARLTON:** IT'S THE SAME PHOTOGRAPH.

23 **MR. BIEN:** YOU'RE RIGHT.

24 **JUDGE KARLTON:** SO THE OBJECTION IS TO IT BEING
25 INTRODUCED, NOT THAT IT'S BEING SHOWN. HOWEVER, COUNSEL, IF

1 WE'VE SEEN IT BEFORE, PLEASE DON'T SHOW IT AGAIN.

2 **MR. BIEN:** WELL, OKAY.

3 SO FOR THE COURT'S REFERENCE, EXHIBITS 336 THROUGH
4 348 ARE ALL PHOTOS THAT ARE GATHERED -- AND THIS IS THE AREA OF
5 PLAINTIFF'S EXHIBIT, OR THEY ARE, WHERE YOU CAN REVIEW THEM. WE
6 WILL REFER TO THEM IN OUR POST FINDINGS RATHER THAN DO THAT.

7 I GUESS WE WOULD NOW LIKE TO SHOW AP 357, PLEASE.

8 **JUDGE REINHARDT:** BEFORE WE GET TO THAT, YOU ASKED
9 WHETHER -- YOU ASKED WHETHER WE WOULD LIKE TO HAVE AN
10 EXPLANATION OF YOUR OBJECTION. IS IT ON RELEVANCE GROUNDS? ARE
11 YOU OBJECTING, SAYING IT'S NOT RELEVANT TO THE QUESTION OF
12 OVERCROWDING OR WHETHER OVERCROWDING IS THE PRIMARY CAUSE?

13 **MS. JOHNSON:** IT DEPENDS ON THE PHOTO, BUT IT COULD
14 BE ONE OR EITHER. I DON'T THINK THAT -- I DON'T BELIEVE WE
15 THINK THAT SHOWING PHOTO AFTER PHOTO AFTER PHOTO OF TRIPLE BUNKS
16 ESTABLISHES ANYTHING.

17 **JUDGE REINHARDT:** OVERCROWDING?

18 **MS. JOHNSON:** WE ARE AWARE TRIPLE BUNKS EXIST. I
19 DON'T THINK ANYONE IS NOT AWARE OF THAT.

20 **JUDGE REINHARDT:** YOU ARE NOT STIPULATING TO
21 OVERCROWDING?

22 **MS. JOHNSON:** ARE WE STIPULATING WE ARE OVERCROWDED?

23 **JUDGE REINHARDT:** YES.

24 **MS. JOHNSON:** I GUESS IT WOULD DEPEND ON THE
25 DEFINITION ONE WAS GOING TO USE FOR OVERCROWDED, BUT DO WE

1 ACKNOWLEDGE THAT TRIPLE BUNKS CAN EXIST? YES. SO THE PHOTOS --
2 I DON'T THINK IN THIS CASE THE PHOTO IS WORTH A THOUSAND WORDS.
3 IT'S A --

4 **JUDGE REINHARDT:** IN A CRIMINAL CASE WHERE THERE'S NO
5 DISPUTE ABOUT THE FACTS THAT SOMEONE IS MURDERED, THE STATE IS
6 ALWAYS VERY ANXIOUS TO SHOW PICTURES OF THE BODY AND IN VARIOUS
7 POSITIONS, BLOODY PICTURES OF THE VICTIM. NOBODY DISPUTES THERE
8 WAS A VICTIM. SO I DON'T KNOW WHY HERE THE PICTURES OF THE
9 OVERCROWDING AREN'T RELEVANT TO THE QUESTION OF OVERCROWDING.

10 **MS. JOHNSON:** I'M NOT SURE HOW TO ADDRESS WHAT
11 HAPPENS IN A CRIMINAL CASE. THIS IS A CIVIL CASE.

12 **JUDGE REINHARDT:** BUT INVOLVING PRISONERS, PEOPLE
13 THAT HAVE BEEN CONVICTED OF CRIMES. IT'S ODD FOR ME TO HEAR THE
14 STATE SUDDENLY OBJECTING TO PICTURES THAT PROVE A POINT OR
15 DEMONSTRATE A POINT IN A CASE INVOLVING THE RIGHTS OF PRISONERS.

16 **MS. JOHNSON:** I DON'T REALLY KNOW HOW -- THIS IS THIS
17 CASE. IT'S NOT ANOTHER CASE. THIS HAS TO DO WITH WHAT'S
18 RELEVANT IN THIS CASE AND WHAT'S CUMULATIVE IN THIS CASE, YOUR
19 HONOR, AND IT HAS NOTHING TO DO WITH CRIMINAL LAW.

20 **JUDGE KARLTON:** JUST LET IT GO.

21 **MS. JOHNSON:** THE POINT OF ALL THIS IS THAT THEY SHOW
22 TRIPLE BUNK SITUATION. IT DOESN'T ESTABLISH ANYTHING ABOUT
23 WHETHER OVERCROWDING IS THE PRIMARY CAUSE OF THE ALLEGED
24 CONSTITUTIONAL VIOLATIONS OF MEDICAL OR MENTAL HEALTH CARE, AND
25 SHOWING PHOTO AFTER PHOTO AFTER PHOTO IS OBVIOUSLY CUMULATIVE.

1 **JUDGE REINHARDT:** I DIDN'T ASK ABOUT CUMULATIVE.
2 THAT I UNDERSTAND.

3 **JUDGE KARLTON:** OKAY. THANK YOU. GO AHEAD.

4 **MR. BIEN:** THIS IS A SPEECH THAT YOU SAW JUST A SHORT
5 EXCERPT FROM. WE ARE NOT DOING THE WHOLE SPEECH, BUT THIS IS
6 GOVERNOR SCHWARZENEGGER ON MARCH 6, 2007 AFTER HE TOURED A
7 FACILITY CALLED NORCO, WHICH IS A CCR FACILITY.

8 (VIDEO PLAYED.)

9 **MR. BIEN:** AGAIN, THIS IS NUMBER 373, PLEASE. THIS
10 IS DOWNLOADED FROM THE CDCR WEBSITE. IT'S A SPEECH AGAIN BY
11 GOVERNOR SCHWARZENEGGER GIVEN ON JUNE 6TH, '06.

12 (VIDEO PLAYED.)

13 **MR. BIEN:** THAT WAS MY FAULT AND NOT HIS. WE SHOWED
14 YOU A SHORT EXCERPT FROM THIS IN THE OPENING. THIS IS A LONGER
15 PIECE OF THIS FROM THE CDCR WEBSITE. I APOLOGIZE. THIS IS
16 PLAINTIFF'S 373. GO AHEAD -- 363? PLAINTIFFS' 363.

17 **MR. MELLO:** OBJECTION. HEARSAY TO ALL THAT, FOR THE
18 TRUTH OF THE MATTER ASSERTED. I KNOW THE COURT PRESERVED THE
19 OBJECTION, BUT I FELT COMPELLED TO RAISE IT AGAIN.

20 **JUDGE HENDERSON:** ACKNOWLEDGED.

21 **MR. BIEN:** THE NEXT IS PLAINTIFF'S 373, GOVERNOR
22 SCHWARZENEGGER'S SPEECH OF JUNE 26, '06.

23 (VIDEO PLAYED.)

24 **MR. BIEN:** THE NEXT IS PLAINTIFFS' 383. THIS IS A
25 SPEECH BY SENATOR GOGDILL, ALSO ON JUNE 26TH, '08.

1 **JUDGE REINHARDT:** SENATOR WHO?

2 **MR. BIEN:** HE IS AN INTERVENOR, ONE OF THE REPUBLICAN
3 INTERVENORS.

4 **JUDGE REINHARDT:** SENATOR WHO?

5 **MR. BIEN:** COGDILL, REPUBLICAN SENATOR. HE'S ONE OF
6 THE --

7 **JUDGE REINHARDT:** THAT'S FINE.

8 (VIDEO PLAYED.)

9 **MR. BIEN:** AND I MISSPOKE. THAT WAS JUNE 26TH OF
10 2008.

11 MR. SPECTER HAS JUST EDITED DOWN THE PHOTOS TO JUST A
12 FEW MORE, AND THEN WE'D BE FINISHED. IT'S WITHIN THE STUFF THAT
13 WE TOLD YOU.

14 THIS IS PART OF PLAINTIFFS' 339. IT'S MULE CREEK
15 STATE PRISON AUGUST 1, 2008 TOUR, C YARD, BUILDING 12. SHOWS AN
16 AD-SEG UNIT. THESE ARE A GROUP OF TREATMENT MODULES FOR A GROUP
17 SESSION -- FOR GROUP THERAPY SESSION FOR MENTAL HEALTH.

18 THIS IS THE B YARD GYM DORM, MULE CREEK STATE PRISON.
19 THIS IS THE A YARD GYM DORM, ALSO MULE CREEK.

20 **JUDGE KARLTON:** SIR, IF THE REST OF THESE PICTURES
21 ARE FURTHER DEMONSTRATIONS OF GYMNASIUMS BEING USED FOR SLEEPING
22 QUARTERS, ET CETERA, I THINK WE'VE GOT THE IDEA. I CAN'T
23 IMAGINE WHY IT WOULD BE NECESSARY TO SEE --

24 **MR. SPECTER:** TWO MORE THAT ARE NOT GYMNASIUMS.

25 **JUDGE KARLTON:** ALL RIGHT.

1 (PHOTOGRAPHS DISPLAYED.)

2 **MR. BIEN:** THIS IS PLAINTIFFS' EXHIBIT 341. THIS WAS
3 A TOUR OF WASCO STATE PRISON, AND THIS WAS A CELL WHERE SUICIDE
4 WATCH WAS PERFORMED IN FACILITY D, BUILDING 6A. SO THERE'S BEEN
5 SOME CONVERSION IN THE CELL TO MAKE IT SAFER FOR SUICIDE SWATCH.

6 THIS IS A DIFFERENT KIND OF A DORM. THERE ARE -- IF
7 YOU CAN SEE UP ON THE TWO TIERS AND UNDERNEATH THE TIER, THOSE
8 ARE DORM BEDS. THIS IS FACILITY C 4A AT WASCO. THAT'S AN
9 ENLARGEMENT. JUST A DIFFERENT TYPE OF HOUSING.

10 THAT'S IT. THANK YOU.

11 **MR. MELLO:** CAN I JUST BRING UP ONE ITEM THAT
12 OCCURRED TO US DURING THE BREAK?

13 WITH RESPECT TO SCHEDULING PHASE TWO -- CAN YOU HEAR
14 ME? WITH RESPECT TO SCHEDULING PHASE TWO, OBVIOUSLY, OUR CROSS
15 EXAMINATION OF THEIR PHASE ONE WITNESSES DID NOT GO INTO PHASE
16 TWO ISSUES. SO I ASSUME PLAINTIFFS WILL HAVE TO BRING ALL OF
17 THOSE WITNESSES BACK THAT WE JUST HEARD FROM, CORRECT? BECAUSE
18 WE CLEARLY DIDN'T GO INTO ALTERNATIVE RELIEF, ADVERSE IMPACT ON
19 PUBLIC SAFETY, AND ALL THOSE ISSUES.

20 **JUDGE KARLTON:** THAT'S THEIR PROBLEM IF THE EVIDENCE
21 IS INSUFFICIENT.

22 **MR. MELLO:** EXCEPT IT'S IN THEIR DECLARATIONS, THEIR
23 TRIAL AFFIDAVITS, AND I WASN'T ALLOWED TO CROSS-EXAMINE THEM ON
24 THOSE ISSUES OR -- AND DEFENDANT INTERVENORS WERE NOT.

25 **MR. SPECTER:** WE UNDERSTAND MR. MELLO'S CONCERN, AND

1 THE LAST THING WE WANT TO DO IS DEPRIVE HIM OF HIS DUE PROCESS
2 IN THIS PROCEEDING.

3 **JUDGE KARLTON:** MEANING WHAT?

4 **MR. SPECTER:** MEANING THAT IF THEY ARE GOING TO
5 TESTIFY ABOUT PHASE TWO ISSUES, THEY WILL BE BACK HERE.

6 **JUDGE REINHARDT:** HE SAID THE AFFIDAVITS WERE IN, HE
7 SAID --

8 **MR. SPECTER:** PARDON ME?

9 **JUDGE REINHARDT:** MR. MELLO SAYS THE AFFIDAVITS OF
10 THE EXPERTS THAT WE HAVE ADMITTED CONTAIN INFORMATION ABOUT
11 PHASE TWO ISSUES, OR THE DECLARATIONS, OR WHATEVER -- WAS IT
12 THEIR ACTUAL TESTIMONY?

13 **MR. MELLO:** IT'S THEIR REPORTS. I'M SORRY. I
14 MISSPOKE. THE EXPERT REPORTS CONTAIN PHASE TWO TESTIMONY.

15 **MR. SPECTER:** THEY HAVE QUITE UNDERSTANDABLY OBJECTED
16 TO PARTS OF ALL OF OUR EXPERTS' REPORT THAT DISCUSS PHASE TWO,
17 AND THEY'VE LODGED THOSE OBJECTIONS. AND IF WE MOVE ON IN THE
18 CASE, IF YOU FIND PRIMARY CAUSE, THEN WE WILL BE SEEKING TO HAVE
19 THE REST OF THE REPORTS SUBMITTED, AND THEY WILL BE ABLE TO
20 CROSS-EXAMINE THE EXPERTS ON THEM.

21 **MR. MELLO:** SO THEY HAVE TO COME BACK IS THE POINT.

22 **MR. SPECTER:** WE UNDERSTAND. WE ARE GOING TO HAVE TO
23 HAVE SOME OF THEM BACK. WE MAY EXPLORE VIDEO CONFERENCING FOR
24 SOME OF THE ONES THAT ARE FARTHEST AWAY.

25 **JUDGE REINHARDT:** WHATEVER YOU EXPLORE AND AGREE ON

1 IS GOING TO BE FINE.

2 **JUDGE HENDERSON:** OKAY. COURT'S ADJOURNED.

3 (PROCEEDINGS ADJOURNED AT 4:49 P.M.)

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I N D E X

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CERTIFICATE OF REPORTER

WE, JOAN MARIE COLUMBINI AND KATHERINE WYATT, OFFICIAL REPORTERS FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN CIV S-90-0520 LKK JPM P, RALPH COLEMAN, ET AL V. ARNOLD SCHWARZENEGGER AND C 01-1351 TEH, MARCIANO PLATA V. ARNOLD SCHWARZENEGGER, WERE REPORTED BY US, CERTIFIED SHORTHAND REPORTERS, AND WERE THEREAFTER TRANSCRIBED UNDER OUR DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY US AT THE TIME OF FILING.

THE VALIDITY OF THE REPORTER'S CERTIFICATION OF SAID TRANSCRIPT MAY BE VOID UPON DISASSEMBLY AND/OR REMOVAL FROM THE COURT FILE.

/S/ JOAN MARIE COLUMBINI

JOAN MARIE COLUMBINI, CSR 5435, RPR

S/ KATHERINE WYATT

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THURSDAY, NOVEMBER 20, 2008

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OFFICIAL COURT REPORTERS - USDC
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UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES PURSUANT
TO SECTION 2284, TITLE 28 UNITED STATES CODE

RALPH COLEMAN, ET AL.,)
)
 PLAINTIFFS,)
)
 VS.) NO. CIV S-90-0520 LKK JFM P
)
 ARNOLD SCHWARZENEGGER, ET AL.)
) THREE-JUDGE COURT
 DEFENDANTS.)
)

MARCIANO PLATA, ET AL.,)
)
 PLAINTIFFS,)
)
 VS.) NO. C 01-1351 TEH
)
 ARNOLD SCHWARZENEGGER, ET AL.)
)
 DEFENDANTS.)
)

TRANSCRIPT OF PROCEEDINGS

SAN FRANCISCO, CALIFORNIA
FRIDAY, NOVEMBER 21, 2008

(APPEARANCES ON FOLLOWING PAGES)

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PROCEEDINGS; FRIDAY, NOVEMBER 21, 2008

JUDGE HENDERSON: OKAY. GOOD MORNING, COUNSEL.

BEFORE WE BEGIN WITH OUR NEXT WITNESS, I HAVE SOMETHING TO READ TO YOU. THE COURT HAS REVIEWED THE PARTIES' OBJECTIONS TO PREFERRED EXHIBITS AND NOW RULES AS FOLLOWS:

FIRST, AS TO OBJECTIONS BASED ON RELEVANCE AND CUMULATIVENESS, THE COURT AGREES THAT SOME OF THE PREFERRED EVIDENCE IS ARGUABLY IRRELEVANT, AND SOME OF IT, SUCH AS THE PHOTOS WE SAW AT THE END OF THE DAY YESTERDAY, IS ARGUABLY CUMULATIVE. HOWEVER, THE COURT FINDS NO PREJUDICE TO ADMITTING THE CONTESTED EXHIBITS IN THIS BENCH TRIAL. IF THE EVIDENCE IS NOT RELEVANT, WE WILL NOT RELY ON IT. CUMULATIVE EVIDENCE WILL, SIMILARLY, HAVE NO IMPACT ON THE COURT'S DECISION.

ACCORDINGLY, WHILE THE COURT WOULD HOPE THAT COUNSEL WILL NOT HEREAFTER INTRODUCE EVIDENCE THAT IS ONLY TANGENTIALLY RELEVANT AND/OR IS CUMULATIVE, ALL OBJECTIONS AS TO RELEVANCE OR CUMULATIVENESS ARE OVERRULED.

SECOND, AS TO OBJECTIONS BASED ON HEARSAY, MOST OF THE RESPONSES TO THE OBJECTIONS APPEAR TO SUPPORT APPLICATION OF A HEARSAY EXCEPTION OR THE CONCLUSION THAT THE EXHIBIT IS NOT BEING INTRODUCED FOR THE TRUTH OF THE MATTER ASSERTED. THE PARTIES HAVE CLEARLY OVERREACHED IN THEIR ATTEMPT -- ATTEMPTED APPLICATION OF THE HEARSAY RULES, AND THE COURT FINDS IT INEFFICIENT TO RULE ON THE OBJECTIONS AS PRESENTED. INSTEAD

1 THE COURT ORDERS THE PARTIES TO MEET AND CONFER IN GOOD FAITH
2 TO ATTEMPT TO RESOLVE ALL OUTSTANDING HEARSAY DISPUTES.

3 THIRD, AS TO --

4 **JUDGE KARLTON:** HEARSAY AND FOUNDATION.

5 **JUDGE HENDERSON:** HEARSAY AND FOUNDATION. THANK
6 YOU, JUDGE.

7 THIRD, AS TO OBJECTIONS BASED ON FOUNDATION OR
8 AUTHENTICITY, THE COURT UNDERSTANDS THAT THE PARTIES ARE
9 ALREADY MEETING AND CONFERRING ON SOME OF THESE OBJECTIONS.
10 FOR EXAMPLE, THOSE CONCERNING THE CHARTS THAT PLAINTIFF SOUGHT
11 TO INTRODUCE INTO EVIDENCE YESTERDAY.

12 THE COURT NOW ORDERS THE PARTIES TO MEET AND CONFER
13 ON ALL SUCH OBJECTIONS. DURING THEIR MEET AND CONFER THE
14 PARTIES SHALL CONSIDER WHETHER TO WITHDRAW ANY EXHIBITS WHOSE
15 FOUNDATION WAS TO BE LAID BY A WITNESS WHO IS NO LONGER
16 TESTIFYING.

17 BASED ON THE ABOVE, THE COURT DENIES ALL OF THE
18 OBJECTIONS TO THE PREFERRED EXHIBITS. OBJECTIONS BASED ON
19 RELEVANCE, AS WELL AS THOSE BASED ON CUMULATIVENESS, ARE DENIED
20 WITH PREJUDICE. ALL OTHER OBJECTIONS ARE DENIED WITHOUT
21 PREJUDICE, SUBJECT TO THE PARTIES AND INTERVENORS FURTHER
22 MEETING AND CONFERRING. THE COURT FULLY EXPECTS EVERYONE TO
23 MEET AND CONFER REASONABLY AND IN GOOD FAITH IN ATTEMPTING TO
24 REACH INFORMAL RESOLUTION REGARDING WHICH EXHIBITS SHOULD BE
25 ADMITTED INTO EVIDENCE. ASSUMING THE PARTIES AND INTERVENORS

1 ARE UNABLE TO RESOLVE ALL OF THEIR DISPUTES, THEY SHALL PRESENT
2 THEIR LIST OF OUTSTANDING OBJECTIONS, WHICH THE COURT EXPECTS
3 TO BE MUCH MORE NARROW THAN THE LIST FILED EARLIER THIS WEEK,
4 IN A JOINT FILING ON OR BEFORE MONDAY, DECEMBER 8TH.

5 IN THAT FILING, THE PARTIES AND INTERVENORS SHALL
6 IDENTIFY ALL EXHIBITS FOR WHICH ADMISSIBILITY REMAINS
7 CONTESTED, ALONG WITH THE SPECIFIC OBJECTION, RESPONSE AND
8 REPLY. FOR EXAMPLE, FOR ALL EXHIBITS FOR WHICH A HEARSAY
9 OBJECTION IS CLAIMED BY THE OPPOSING PARTY, THE OFFERING PARTY
10 SHALL INCLUDE A REPLY EXPLAINING WHY IT CONTENDS THE EXCEPTION
11 DOES NOT APPLY.

12 TO BE CLEAR, THE ABOVE RULINGS DO NOT APPLY TO ANY
13 EXPERT REPORTS AND TRIAL DECLARATIONS IDENTIFIED AS EXHIBITS.
14 NOR DO THE RULINGS APPLY TO OBJECTIONS TO PREFERRED DEPOSITION
15 EXCERPTS. THE COURT WILL RULE ON THOSE OBJECTIONS AT A LATER
16 TIME.

17 ADDITIONALLY, THE COURT -- ADDITIONALLY, THE COURT
18 HAS CONCLUDED THAT WITH RESPECT TO THE DEPOSITION TESTIMONY
19 OFFERED BY DEFENDANTS, YOU MAY READ IT INTO THE RECORD AT AN
20 APPROPRIATE TIME.

21 **JUDGE REINHARDT:** BEFORE WE TAKE EVIDENCE,
22 MR. MELLO, IF YOU WOULD COME UP. I'D LIKE TO JUST CONTINUE FOR
23 A MOMENT OUR DISCUSSIONS PREVIOUSLY. I THINK THERE IS A
24 MISUNDERSTANDING OF SOME SORT ABOUT WHAT PHASE ONE IS.

25 THE PLAINTIFFS SUGGESTED WE COMBINE PHASE ONE WITH A

1 PART OF PHASE TWO. PHASE TWO CONSISTS OF TWO PARTS; ONE, WHAT
2 ALTERNATIVES ARE POSSIBLE AND BEEN EXHAUSTED WITH RESPECT TO
3 RESOLVING THE CONSTITUTIONAL VIOLATIONS SHORT OF A PRISONER
4 RELEASE ORDER. THE SECOND PART OF PHASE TWO IS SHOULD THERE BE
5 A PRISONER RELEASE ORDER IN THE EVENT THAT THE OTHER AVENUES
6 FAIL OR ARE NOT AVAILABLE; SHOULD THERE BE A PRISONER RELEASE
7 ORDER UNDER ALL OF THE CIRCUMSTANCES DESCRIBED IN THE STATUTE
8 AND IF SO, WHY?

9 THE FIRST PART OF PHASE TWO THAT THE PLAINTIFFS
10 SUGGESTED BE COMBINED WITH PHASE ONE WAS WHAT ARE THE OTHER
11 NON-PRISONER RELEASE ORDER REMEDIES, HAVE THEY BEEN TRIED, DO
12 THEY EXIST? YOU OBJECTED TO THEIR SUGGESTION THAT THAT BE
13 MOVED INTO PHASE ONE, AND YOU PREVAILED ON THAT OBJECTION.
14 THEREFORE, PHASE ONE IS LIMITED SOLELY TO THE QUESTION OF WHAT
15 IS THE PROXIMATE CAUSE OR THE PRIMARY CAUSE OF THE
16 CONSTITUTIONAL VIOLATION, WHICH HAS ALREADY BEEN FOUND IN BOTH
17 OF THE CASES AND WAS ALSO REFOUND, IN EFFECT, IN THE COURT'S
18 ORDERS FOR THE THREE-JUDGE DISTRICT COURT.

19 SO FOR PHASE ONE THERE'S NO PARTICULAR REASON TO
20 HAVE ANY EVIDENCE ABOUT ANYTHING OTHER THAN WHAT IS THE PRIMARY
21 CAUSE OF THE VIOLATION. EVIDENCE AS TO WHAT HAS BEEN TRIED
22 SINCE THEN, WHETHER IT'S BEEN SUCCESSFUL SINCE THEN, HOW MUCH
23 MONEY HAS BEEN SPENT, WHAT CHANGES HAVE BEEN MADE, TO ME -- AND
24 THIS IS NOT FOR THE COURT, BUT HAS BEEN MY DISCUSSION WITH
25 YOU -- EVIDENCE AS TO HOW MUCH MONEY HAS BEEN SPENT OR WHAT THE

1 STATE HAS TRIED TO DO SINCE THE VIOLATION DOES NOT SEEM TO ME
2 TO BE RELEVANT AT ALL TO THE QUESTION OF WHAT THE PRIMARY CAUSE
3 OF THE VIOLATION WAS. THAT TYPE OF EVIDENCE WOULD SEEM TO ME
4 TO BE RELEVANT TO THE FIRST PART OF PHASE TWO.

5 **JUDGE KARLTON:** I WANT TO SAY JUDGE REINHARDT WAS
6 SPEAKING FOR HIMSELF, BUT LAST NIGHT WHEN I READ THE STUFF YOU
7 PROPOSED TO PUT ON TODAY, I KEPT SAYING, MAYBE I'M
8 MISUNDERSTOOD. I KEPT SAYING, THIS IS ALL PHASE TWO, WHY IS
9 THIS BEING OFFERED NOW? SO I JOIN JUDGE REINHARDT'S
10 OBSERVATION.

11 **MR. MELLO:** OBSERVATION AND QUESTION?

12 **JUDGE REINHARDT:** WELL, YOU ARE FREE TO COMMENT,
13 YES.

14 **MR. MELLO:** I BELIEVE THAT THE TESTIMONY THUS FAR
15 FROM PLAINTIFF'S EXPERTS HAS ALL IDENTIFIED MULTIPLE
16 INTERRELATED COMPONENTS THAT CONSTITUTE BARRIERS OR NOT
17 BARRIERS TO THE CONSTITUTIONAL DELIVERY OF MEDICAL CARE AND
18 MENTAL HEALTH CARE. NOW, I BELIEVE THAT THE FACT THAT THERE
19 ARE MULTIPLE AND INTERRELATED COMPONENTS IS EVIDENCE THAT
20 OVERCROWDING IS NOT THE PRIMARY CAUSE AND, THEREFORE, THAT
21 EVIDENCE GOES TO THE FACT THAT IT'S NOT THE PRIMARY CAUSE.

22 I DO BELIEVE THAT -- OR I DO UNDERSTAND THE COURT'S
23 POSITION THAT IT ARGUABLY GOES TO THE SECOND HALF OF OLD PHASE
24 ONE BACK WHEN YOU DID THE FIRST ORDER BACK IN TIME. I DON'T
25 DISAGREE WITH YOU THAT IT COULD CONCEIVABLY FALL INTO THAT, BUT

1 I BELIEVE IT ALSO GOES TO PRIMARY CAUSE BECAUSE PRIMARY CAUSE
2 MUST BE THE SINGLE MOST IMPORTANT CAUSE. IF ALL THOSE OTHER
3 THINGS HAVE BEEN IDENTIFIED AS BARRIERS, THAT IS EVIDENCE THAT
4 OVERCROWDING IS NOT THE PRIMARY BARRIER IN DEFENDANT'S MIND,
5 BUT I UNDERSTAND THE COURT'S POSITION.

6 **JUDGE REINHARDT:** WE HAVE BEEN VERY LIBERAL IN
7 ALLOWING THE PARTIES -- I'M SURE WE WILL CONTINUE TO BE --
8 ALLOWING THE PARTIES TO PUT ON ANY EVIDENCE THEY CONSIDER
9 RELEVANT. AND AS JUDGE HENDERSON'S READING OF OUR RULINGS
10 DEMONSTRATES, I THINK, WE DON'T INTEND TO BE STRICT ABOUT -- WE
11 WANT YOU TO PUT ON WHATEVER IS RELEVANT.

12 IT DOES SEEM TO ME YOU OUGHT TO CONSIDER WHETHER
13 SOME OF YOUR EVIDENCE ISN'T REALLY MORE HELPFUL TO THE
14 PLAINTIFFS THAN TO YOU. IF YOU ARE TRYING TO PROVE THAT YOU'VE
15 EXHAUSTED ALL THE OTHER POSSIBILITIES AND THAT THEY'RE NOT THE
16 CAUSE, BECAUSE YOU ARE SPENDING A LOT OF MONEY, THAT COULD WELL
17 BE ARGUED TO SHOW THAT THE CAUSE MUST BE THE OVERCROWDING.

18 **MR. MELLO:** AND I HAVE DEFINITELY READ YOUR HONOR'S
19 MOTION -- DECISION ON OUR MOTION FOR SUMMARY JUDGMENT, AND THAT
20 THEME CAME THROUGH. I UNDERSTAND. I UNDERSTAND THE POSITION.

21 I THINK I'VE ARTICULATED OUR ALTERNATIVE POSITION.
22 AND IT ALSO GOES BACK TO THE QUESTION OR THE DISCUSSION WE HAD
23 A FEW DAYS AGO WITH RESPECT TO WHAT IS RELEVANT AND WHEN IS THE
24 EVIDENCE RELEVANT. AND, AGAIN, I BELIEVE OUR POSITION THAT
25 WHAT'S CURRENTLY HAPPENING IS CLEARLY MORE RELEVANT THAN WHAT

1 HAPPENED IN THE PAST, BECAUSE IT'S -- IN OUR MINDS, YOUR HONOR.

2

3 **JUDGE REINHARDT:** NO, NO, YOU ARE FREE TO DO
4 WHATEVER YOU WANT. BUT IF YOU ARE TRYING TO PROVE YOU'VE TRIED
5 A LOT OF OTHER THINGS AND THEY DON'T WORK AND THAT DOESN'T
6 SOLVE THE PROBLEM, YOU MAY BE PROVING THAT OVERCROWDING IS THE
7 ONLY CAUSE BECAUSE THAT'S THE ONLY ONE THAT HADN'T BEEN TRIED.

8 **MR. MELLO:** I UNDERSTAND THE COURTS' --

9 **JUDGE KARLTON:** I WANT TO BACK UP BEFORE YOU
10 RESPOND. JUDGE REINHARDT SAID YOU ARE FREE TO DO EVERYTHING
11 YOU WANT. IF IT REALLY IS TRUE THAT IT'S PROPERLY, IN OUR
12 VIEW, PHASE TWO, I'M SORRY -- PROPERLY PHASE TWO MATTERS, WE
13 MAY JUST SAY ANY OBJECTION WILL BE SUSTAINED WITHOUT PREJUDICE
14 TO YOUR PUTTING IT ON IN THE APPROPRIATE PART OF THE CASE. I
15 DIDN'T WANT TO JOIN JUDGE REINHARDT'S OPEN INVITATION FOR YOU
16 TO JUST PUT ANYTHING ON THAT YOU CHOOSE WHENEVER YOU CHOOSE TO.
17 ALL RIGHT.

18 **MR. MELLO:** UNDERSTOOD. AND I BELIEVE THERE ARE A
19 COUPLE MORE DEFENDANT -- PLAINTIFF INTERVENOR WITNESSES, AND WE
20 HEAR THE COURT, AND WE WILL TALK ABOUT IT. OKAY. THANK YOU.

21 **JUDGE REINHARDT:** THANK YOU VERY MUCH.

22 **JUDGE HENDERSON:** THANK YOU, COUNSEL.

23 OKAY. YOU MAY PROCEED WITH YOUR NEXT WITNESS,
24 COUNSEL.

25 **MR. HENDERSON:** THANK YOU, YOUR HONOR. BEFORE WE

1 START, I WOULD JUST LIKE TO NOTIFY THE COURT THE NEXT WITNESS
2 HAS AN AUTISTIC SON AT HOME THAT HAS SPECIAL CARE. SHE HAS A
3 CELL PHONE THAT'S STILL ON TO RING. SHE DOESN'T HAVE IT ON
4 HER. IT'S OVER AT THE TABLE. BUT IF IT DOES RING, WE WANT TO
5 LET THE COURT KNOW THAT WILL BE THE EXPLANATION FOR IT.

6 JUDGE HENDERSON: OKAY.

7 MR. HENDERSON: THANK YOU.

8 JUDGE HENDERSON: STEP FORWARD, MA'AM, AND BE SWORN
9 IN.

10 DEBBRA ROWLETT

11 HAVING BEEN CALLED AS A WITNESS BY THE PLAINTIFFS WAS FIRST
12 DULY SWORN AND EXAMINED AS FOLLOWS:

13 THE CLERK: PLEASE STATE AND SPELL YOUR FULL NAME
14 FOR THE RECORD.

15 THE WITNESS: MY NAME IS DEBBRA ROWLETT, D-E-B-B-R-A
16 R-O-W-L-E-T-T.

17 DIRECT EXAMINATION BY MR. HENDERSON

18 BY MR. HENDERSON

19 Q MS. ROWLETT, BY WHOM ARE YOU PRESENTLY EMPLOYED?

20 A PARDON ME?

21 Q BY WHOM ARE YOU PRESENTLY EMPLOYED?

22 A CSP SOLANO DEPARTMENT OF CORRECTIONS AND REHABILITATION.

23 Q HOW LONG YOU HAVE YOU BEEN EMPLOYED BY THE DEPARTMENT OF
24 CORRECTIONS AND REHABILITATION?

25 A APPROXIMATELY 11 YEARS.

1 Q OKAY.

2 I WILL REFER THE COURT AGAIN, AS WITH THE OTHER
3 WITNESSES, TO PARAGRAPHS TWO THROUGH TEN, I BELIEVE, OF OUR
4 DECLARATION REGARDING HER BACKGROUND, AND WE'LL MOVE ON FROM
5 THAT POINT.

6 ARE YOU CURRENTLY WORKING AT -- STRIKE THAT.

7 HOW LONG HAVE YOU BEEN ASSIGNED TO CSP SOLANO?

8 A I STARTED AT CSP SOLANO IN APRIL OF 2000.

9 Q OKAY. AND ARE YOU CURRENTLY WORKING THERE AT THE PRESENT
10 TIME?

11 A NO, I AM NOT.

12 Q AND WHY IS THAT?

13 A I FRACTURED MY ARM, AND I'M OUT ON DISABILITY AT THIS TIME.

14 Q AND WHEN DID YOU GO OUT ON DISABILITY?

15 A JULY 27TH.

16 Q OF THIS YEAR?

17 A YES.

18 Q UP UNTIL THAT TIME YOU WORKED THERE, THOUGH, YOU WORKED
19 CONTINUOUSLY?

20 A YES.

21 Q NOW, WITH RESPECT TO YOUR -- WHAT IS YOUR CURRENT
22 POSITION -- WHAT WAS YOUR POSITION AT CSP SOLANO WHEN YOU WENT
23 OUT ON DISABILITY?

24 A CORRECTIONAL OFFICER.

25 Q WHERE WERE YOU ASSIGNED TO?

1 **A** IN THE SPECIALTY CLINIC.

2 **Q** WHAT WERE YOUR DUTIES THERE AS A CORRECTIONAL OFFICER AT
3 THE SPECIALTY CLINIC?

4 **A** TO PROVIDE SAFETY AND SECURITY FOR THE CLINIC AREA.

5 **Q** OKAY. WHAT GOES ON IN THE CLINIC AREA?

6 **A** THEY HAVE SEVERAL DIFFERENT DOCTORS THAT COME IN FROM
7 OUTSIDE, SPECIALISTS, X-RAY, PHYSICAL THERAPY,
8 GASTROENTEROLOGISTS, DIFFERENT TYPES OF DOCTORS. THERE'S ALSO
9 A LAB IN THAT AREA AND A DENTAL AREA.

10 **Q** OKAY. AND DO YOU HAVE ANY OTHER DUTIES DURING YOUR
11 SHIFT -- STRIKE THAT.

12 WHAT SHIFT DO YOU WORK ON?

13 **A** I WORK FROM 6:00 A.M. TO 2:00 P.M.

14 **Q** DO YOU HAVE ANY DUTIES DURING YOUR SHIFT THAT TAKE PLACE
15 BEFORE THE SPECIALTY CLINIC OPENS UP?

16 **A** YES. AT 6:00 A.M. I GO TO THE PRIMARY CLINIC AND PROVIDE
17 SECURITY FOR THE MEDICATION ADMINISTRATION LINE.

18 **Q** AND AS I UNDERSTAND IT, AND AS YOUR DECLARATION SETS FORTH,
19 PRIOR TO WORKING AS A -- STRIKE THAT.

20 WHEN DID YOU BECOME A CORRECTIONAL OFFICER?

21 **A** WHEN?

22 **Q** YES.

23 **A** IN MAY OR JUNE OF 2007.

24 **Q** AND BEFORE THAT, HOW WERE YOU EMPLOYED BY THE DEPARTMENT OF
25 CORRECTIONS AND REHABILITATION?

1 **A** I WAS A MEDICAL TECHNICAL ASSISTANT, WHICH IS A NURSE AND A
2 CORRECTIONAL OFFICER FOR THE DEPARTMENT.

3 **Q** OKAY. AND ARE YOU A -- WERE YOU A LICENSED VOCATIONAL
4 NURSE WHEN YOU WERE PERFORMING THOSE DUTIES?

5 **A** YES.

6 **Q** OKAY. AT THE TIME THAT YOU LEFT DUE TO YOUR DISABILITY,
7 WAS THERE OVERCROWDING OF INMATES AT CSP SOLANO?

8 **A** I'M SORRY.

9 **Q** AT THE TIME YOU WENT OUT ON YOUR DISABILITY, WAS THERE
10 OVERCROWDING OF INMATES AT CSP SOLANO?

11 **A** YES.

12 **Q** HOW LONG HAD THAT CONDITION BEEN THERE, TO YOUR
13 OBSERVATION?

14 **A** WHEN I STARTED THERE IN 2000 THERE WAS OVERCROWDING.

15 **Q** OKAY. HAS THAT OVERCROWDING OF INMATES AT CSP SOLANO
16 IMPACTED THE DELIVERY OF MEDICAL CARE TO THOSE INMATES?

17 **A** YES.

18 **Q** HOW SO?

19 **A** THERE'S AN IMPACT WITH THE AMOUNT OF CARE WE CAN GIVE TO
20 INMATES, STAFF VERSUS THE AMOUNT OF INMATES THAT NEED THE
21 MEDICAL CARE.

22 **Q** OKAY. LET'S TALK FIRST ABOUT THE THINGS THAT YOU WOULD
23 OBSERVE SPECIFICALLY IN CONNECTION WITH YOUR DUTIES, BOTH AS A
24 LICENSED VOCATIONAL NURSE AND AS A CORRECTIONAL OFFICER AT THE
25 SPECIALTY CLINIC. ARE YOU INVOLVED IN THE DISTRIBUTION OF

1 INSULATION AT THE FACILITY?

2 JUDGE KARLTON: INSULATION?

3 MR. HENDERSON: I'M HAVING TROUBLE PRONOUNCING WORDS
4 HERE, YOUR HONOR. I APOLOGIZE.

5 BY MR. HENDERSON

6 Q INSULIN.

7 A I DO NOT GIVE THE INSULIN, BUT I HAVE OBSERVED INSULIN
8 BEING GIVEN FROM THE TIME I WAS AN MTA THROUGH BEING A
9 CORRECTIONAL OFFICER.

10 Q WHEN DOES THAT PROCESS OCCUR?

11 A THAT PROCESS OCCURS IN THE PRIMARY CLINIC.

12 JUDGE KARLTON: HE SAID WHEN.

13 BY MR. HENDERSON

14 Q WHEN?

15 A WHEN.

16 Q IN THE MORNING AND --

17 A IN THE MORNING AND IN THE EVENING BEFORE BREAKFAST AND
18 BEFORE DINNER.

19 Q OKAY. ARE THERE PROBLEMS WITH THE DISTRIBUTION OF INSULIN
20 DOSES TO INMATES DUE TO OVERCROWDING?

21 A YES.

22 Q WHAT ARE THOSE PROBLEMS THAT YOU'VE OBSERVED?

23 A THERE ARE SUBSTANTIAL AMOUNT OF INMATES THAT NEED THE
24 INSULIN, AND WITH ONLY ONE NURSE BEING ABLE TO ADMINISTER THE
25 INSULIN, THERE'S NOT ANOTHER NURSE TO DO DOUBLE-CHECKING OF THE

1 RIGHT DOSE AND THE CORRECT INSULIN THAT'S BEING GIVEN.

2 THERE'S ALSO NOT ENOUGH NURSING STAFF FOR THE NURSE
3 THAT GIVES THE INSULIN TO ALSO BE THE NURSE THAT GETS A FINGER
4 STICK, WHICH IS THE NUMBER THAT WOULD DETERMINE HOW MUCH
5 INSULIN THEY WOULD GET DEPENDING ON THEIR BLOOD SUGAR LEVELS.
6 THEY HAVE ANOTHER PERSON DO IT, AND THEN GIVE THEM THE NUMBERS,
7 AND THEN THEY WOULD DISTRIBUTE THE MEDICATION DEPENDING ON WHAT
8 NUMBERS THEY WERE GIVEN.

9 **Q** WHAT SITUATION HAPPENS AS A RESULT OF --

10 **JUDGE KARLTON:** BEFORE YOU DO, MA'AM, IS THE
11 STANDARD OF CARE OUTSIDE OF THE PRISON SYSTEM THAT THERE ARE
12 TWO PERSONS INVOLVED IN THE ADMINISTRATION OF INSULIN, OR IS
13 THAT JUST PRACTICE IN THE PRISON SYSTEM, IF YOU KNOW?

14 **THE WITNESS:** I WORKED AT A HOSPITAL, SUTTER
15 GENERAL, SUTTER MEMORIAL, SUTTER AUBURN FAITH HOSPITAL, AS A
16 FLOOR NURSE, AND THE GENERAL PRACTICE TO GIVE INSULIN WOULD BE
17 TWO NURSES THAT GIVE IT, BECAUSE THE SLIGHTEST AMOUNT OFF YOU
18 COULD REALLY HURT AN INMATE.

19 **BY MR. HENDERSON**

20 **Q** HAVE YOU SEEN ANY PROBLEMS RESULT DURING THE DISTRIBUTION
21 OF INSULIN TO THE INMATES?

22 **A** YES.

23 **Q** WHAT PROBLEMS HAVE YOU SEEN?

24 **A** THERE HAVE BEEN SEVERAL TIMES WHEN INMATES WERE GIVEN THE
25 WRONG TYPE OF INSULIN.

1 Q HAVE THERE BEEN ANY PROBLEMS WHERE INMATES HAVE BEEN GIVEN
2 THE WRONG AMOUNT OF INSULIN?

3 A YES.

4 Q HOW IS THAT BROUGHT TO THE ATTENTION OF THE NURSE?

5 A THE INMATE USUALLY TELLS THE NURSE IT'S THE WRONG AMOUNT OR
6 THE WRONG INSULIN THAT THEY'RE GIVING THEM.

7 Q HOW OFTEN HAVE YOU SEEN THAT HAPPEN?

8 A DAILY.

9 Q OKAY. ARE THERE OVERCROWDING PROBLEMS -- STRIKE THAT.

10 DOES OVERCROWDING HAVE ANY OTHER EFFECTS ON THE
11 DELIVERY OF MEDICAL CARE TO THE INMATES AT CSP SOLANO THAT YOU
12 OBSERVED?

13 A YES.

14 Q WHAT OTHER SITUATIONS DO WE HAVE?

15 A THERE ARE SITUATIONS WHERE INMATES ARE SCHEDULED AN
16 APPOINTMENT IN THE MORNING, AND IT WILL BE TWO TO THREE HOURS
17 BEFORE THEY'RE SEEN BY A DOCTOR. THERE ARE TIMES WHEN INMATES
18 FILL OUT SICK CALL SLIPS, AND BY THE TIME THEY COME INTO THE
19 CLINIC, THEY WILL TELL THE CORRECTIONAL OFFICERS THEY NO LONGER
20 NEED TO BE SEEN BECAUSE THEIR SYMPTOMS HAVE RESOLVED BY THE
21 TIME THEY'RE SCHEDULED IN.

22 Q ARE THERE ANY PROBLEMS WITH THE CONFIDENTIALITY OF THE
23 INMATES AND THEIR CONDITIONS?

24 A THE INMATES, BESIDES WHEN THEY'RE ACTUALLY IN SEEING THE
25 DOCTOR, THERE IS NO CONFIDENTIALITY. WHEN THEY ARE BEING

1 TRIAGED BY THE NURSE AND THEY ASK THEM WHAT'S WRONG WITH THEM,
2 WHAT BROUGHT THEM TO THE CLINIC FOR THE DAY, THAT'S DONE IN THE
3 HALLWAY WHERE OTHER INMATES ARE SITTING WAITING FOR TREATMENTS,
4 GETTING BLOOD PRESSURES DONE, OTHER TREATMENTS AT THE SAME
5 TIME.

6 **Q** OKAY. IN YOUR DECLARATION, YOU REFERRED TO A SITUATION
7 WHERE A SECRETARY HAS TO WORK IN AN EXAMINATION ROOM AT THE
8 CLINIC?

9 **A** YES. IN THE SPECIALTY CLINIC, THE SCHEDULING SECRETARY
10 THAT DOES ALL THE SCHEDULING FOR THAT AREA HAS TO WORK THERE
11 SOMETIMES IN THE DARK IF THEY'RE DOING EYE EXAMINATIONS, AND
12 THEY DO OTHER EXAMINATIONS WHILE SHE'S IN THE ROOM, AND IT'S A
13 VERY SMALL ROOM.

14 **Q** WHAT OTHER KIND OF EXAMINATIONS DO THEY DO?

15 **A** THEY DO HEMORRHOID EXAMINATIONS. THEY DO ANY TYPE OF BODY
16 EXAMINATION THAT YOU CAN THINK OF.

17 **Q** OKAY. HAVE THERE BEEN SITUATIONS INVOLVING THE COMPROMISE
18 OF CONFIDENTIALITY WITH RESPECT TO TB TESTING?

19 **A** YES.

20 **Q** CAN YOU TELL US WHAT THAT INVOLVES?

21 **A** TUBERCULOSIS TESTING IS DONE IN A MASS MANNER INSIDE THE
22 HOUSING UNITS, AND THE INMATES FORM TWO LINES. ONE LINE IS
23 WHERE THE INMATES WILL BE TESTED FOR TUBERCULOSIS. THE OTHER
24 LINE IS FOR WHERE INMATES ALREADY HAVE TUBERCULOSIS OR HAVE HAD
25 A POST POSITIVE OF TUBERCULOSIS, AND THEY STAND IN A SECOND

1 LINE IN THE MIDDLE OF THE DAYROOM FLOOR.

2 Q SO THEY ARE IN FULL VIEW OF ALL THE INMATES THEN?

3 A EVERYONE.

4 Q THE ONES THAT HAVE HAD PRIOR TUBERCULOSIS AND ARE STANDING
5 IN THAT LINE?

6 A CORRECT. AFTER THE MASS TESTING THEY DO, THEY READ THE
7 RESULTS, AND IF YOU'VE HAVE A POSITIVE RESULT, THEY HAVE YOU
8 STAND OFF TO THE SIDE, AND THEY ESCORT YOU OUT OF THE BUILDING
9 TO GET A CHEST X-RAY. SO EVERYONE THAT'S IN THAT BUILDING
10 KNOWS AT THAT POINT THAT YOU HAVE NOW TESTED POSITIVE.

11 Q OKAY. ARE THERE PROBLEMS OR -- STRIKE THAT.

12 HAVE YOU OBSERVED ANY PROBLEMS RELATING TO
13 OVERCROWDING OF INMATES AT CSP SOLANO THAT RELATE TO MEDICATION
14 DISTRIBUTION?

15 A YES.

16 Q OKAY. WHAT CAN YOU TELL US ABOUT THAT?

17 A WHEN I FIRST STARTED AT CSP SOLANO, I HELPED WITH
18 MEDICATION ADMINISTRATION WHEN THERE WERE NARCOTICS TO BE
19 PASSED OUT, AND AT THE TIME WE APPROXIMATELY HAD 30 INMATES
20 THAT RECEIVED NARCOTICS. AND TO THIS DAY THERE'S APPROXIMATELY
21 300 INMATES WHO RECEIVE NARCOTICS AND THE SAME AMOUNT OF STAFF
22 DOING THE JOB.

23 THEY CANNOT PROPERLY IDENTIFY THE MEDICATION, DO
24 THEIR PROPER NURSING CHECKS TO MAKE SURE IT'S THE RIGHT INMATE,
25 THE RIGHT AMOUNT OF MEDICATION AND THE RIGHT MEDICATION THAT

1 THEY'RE GETTING. THEY CANNOT CRUSH THE MEDICATION, WHICH IS A
2 POLICY OF THE INSTITUTION TO PREVENT HOARDING AND CHEEKING OF
3 THE MEDICATION.

4 **Q** BY "CHEEKING OF THE MEDICATIONS," WHAT ARE YOU REFERRING
5 TO?

6 **A** I MEAN NOT SWALLOWING THE MEDICATION, PUTTING IT OFF TO THE
7 TOP OF THEIR MOUTH, TO THE TOP OF THE ROOF OF THEIR MOUTH SO
8 THEY COULD SPIT IT OUT LATER.

9 **Q** TO YOUR EXPERIENCE, IS CHEEKING A FREQUENT OCCURRENCE WITH
10 INMATES IN TERMS OF MEDICATION DISTRIBUTION?

11 **A** YES, IT'S A DAILY OCCURRENCE.

12 **Q** I BELIEVE YOU INDICATED IN YOUR DECLARATION THAT YOU FOUND
13 NUMEROUS INSTANCES WHERE YOU FOUND PILLS OUT IN THE YARD WHERE
14 INMATES HAVE DISCHARGED THEM AFTER THEY RECEIVED THEM?

15 **A** YES, YOU CAN.

16 **Q** HOW OFTEN?

17 **A** YOU CAN WALK THROUGH THE YARD DAILY AND SEE MEDICATION ON
18 THE CEMENT.

19 **Q** WHAT ARE THE OTHER REASONS THAT YOU'RE AWARE OF THAT
20 INMATES WOULD CHEEK MEDICATIONS IN ADDITION TO JUST SPITTING
21 THEM OUT LATER?

22 **A** REASONS WHY AN INMATE MAY CHEEK A MEDICATION WOULD BE
23 ADVERSE SIDE EFFECTS. THEY DON'T LIKE THE SIDE EFFECTS THAT
24 THE MEDICATION GIVES THEM, SO THEY DON'T WANT TO TAKE THEM.
25 WITH NARCOTICS THEY MIGHT BE FORCED TO GIVE THEM TO ANOTHER

1 INMATE. THEY MIGHT BE SELLING THE MEDICATION, OR THEY -- IN
2 ONE INSTANCE, AN INMATE WAS CHEEKING THE MEDICATION TO TRY TO
3 COMMIT SUICIDE. HE OVERDOSED ON HIS NARCOTICS.

4 **Q** NOW, IN THE DISTRIBUTION PROCESS, HOW DOES THAT WORK AT CSP
5 SOLANO WHERE YOU ARE LOCATED?

6 **A** THERE'S A LINE OF INMATES. ONE OF THEM WALKS UP TO THE
7 WINDOW. THERE'S A SMALL HOLE LIKE A TELLER. THE INMATE GIVES
8 THE NURSE HIS I.D. THE NURSE GIVES HIM HIS MEDICATION. HE
9 SWALLOWS IT, AND I STAND BY TO SEE IF THE INMATE IS CHEEKING
10 HIS MEDICATION.

11 **Q** OKAY. DO YOU HAVE ENOUGH TIME TO CONFIRM WHETHER OR NOT
12 THE INMATE IS CHEEKING HIS MEDICATIONS?

13 **A** NO, THERE'S TOO MANY INMATES IN A SHORT WINDOW TO TRY TO
14 PROVIDE THE MEDICATION ADMINISTRATION TO DO IT.

15 **Q** HOW MANY INMATES ARE -- YOU SAID 300 INMATES FOR THE
16 MEDICATION?

17 **A** FOR THE NARCOTICS.

18 **Q** THE NARCOTICS?

19 **A** YES.

20 **Q** AND OVER WHAT PERIOD OF TIME IS THAT ACCOMPLISHED?

21 **A** YOU HAVE APPROXIMATELY ONE HOUR TO AN HOUR AND A HALF TO
22 GET THAT DONE.

23 **Q** OKAY. ARE THERE -- THERE'S SUPPOSED TO BE A PROCEDURE FOR
24 INQUIRING ABOUT SIDE EFFECTS THAT THE INMATES MAY BE
25 EXPERIENCING?

1 **A** YES. YOU SHOULD BE ABLE TO ASK INMATES IF THEY DON'T SHOW
2 UP FOR THEIR MEDICATION, IF THEY REFUSE THEIR MEDICATION, OR
3 JUST AN INMATE SHOULD BE ABLE TO COME UP TO A NURSE AT THE LINE
4 WHEN HE'S -- WHEN THE MEDICATION IS BEING ADMINISTERED TO HIM
5 TO TALK TO HIM ABOUT HIS MEDICATION, MAKE SURE THAT THE
6 MEDICATION IS WORKING OKAY FOR HIM.

7 **Q** IS THERE SUFFICIENT TIME TO ACCOMPLISH THAT GIVEN THESE
8 LINES AND THE NUMBER OF INMATES?

9 **A** NO.

10 **Q** OKAY. HAVE THERE BEEN SITUATIONS THAT YOU'VE OBSERVED
11 WHERE THE INMATES HAVE EITHER GOTTEN THE WRONG DOSE OR THE
12 WRONG TYPE OF MEDICATION IN THESE MEDICATION DISTRIBUTIONS?

13 **A** YES.

14 **Q** CAN YOU GIVE US ANY EXAMPLES OF THAT?

15 **A** I WAS WORKING IN A MEDICATION ADMINISTRATION WINDOW, AND
16 INMATES GET SOMETHING CALLED BULK MEDS. BULK MEDS IS
17 MEDICATION THEY CAN TAKE BACK TO THEIR HOUSING UNIT, WHICH IS
18 NOT A DIRECT OBSERVATION MEDICATION, AND I PULLED A BAG OF
19 MEDICATION OUT. THE OUTSIDE OF THE MEDICATION PRESCRIPTION
20 SAID THAT IT WAS PENICILLIN, AND THE MEDICATION INSIDE THE BAG
21 WAS PREDNISONE.

22 **Q** AND DO YOU KNOW WHAT THE DRUG PREDNISONE IS USED FOR?

23 **A** PREDNISONE IS A STEROID.

24 **Q** DO YOU KNOW OF ANY OTHER SITUATIONS WHERE INMATES HAVE
25 GOTTEN THE WRONG MEDICATION?

1 **A** YES. AN INMATE CAME UP TO ME AND GAVE ME A BAG OF
2 MEDICATION FULL OF PINK PILLS, WHICH I IDENTIFIED AS LITHIUM,
3 AND THE INMATE WAS NOT ON LITHIUM, AND HE DID NOT KNOW WHY HE
4 HAD THOSE PINK PILLS.

5 **Q** OKAY. IS THERE -- WITH RESPECT TO THE MEDICATION
6 DISTRIBUTION, IS THERE SUPPOSED TO BE DOUBLE-CHECKING UTILIZED
7 FOR THAT PROCESS AS WELL?

8 **A** YES.

9 **Q** IS IT USED THERE AT THE FACILITY?

10 **A** NO.

11 **Q** OKAY. NOW, THERE'S ALSO -- WHAT OTHER MEDICATION YOU
12 SAID -- YOU HAVE TALKED ABOUT THE NARCOTIC MEDICATION AND THE
13 INSULIN DISTRIBUTION. IS THERE ANY OTHER MEDICATION
14 DISTRIBUTION THAT GOES ON AT CSP SOLANO?

15 **A** PSYCHOTROPIC MEDICATIONS.

16 **Q** CAN YOU TELL US WHAT YOU MEAN BY PSYCHOTROPIC MEDICATIONS?

17 **A** MEDICATION FOR THE USE OF MENTAL HEALTH INMATES.

18 **Q** THAT'S A SEPARATE DISTRIBUTION?

19 **A** YES.

20 **Q** AND HOW MANY INMATES ARE INVOLVED IN THAT DISTRIBUTION
21 PROCESS?

22 **MR. MITCHELL:** INTERPOSE OBJECTION. BILL MITCHELL,
23 DEFENDANT INTERVENORS, LACK OF FOUNDATION REGARDING THE
24 DISTRIBUTION OF MENTAL HEALTH MEDICINES.

25 **MR. HENDERSON:** I'LL --

1 **BY MR. HENDERSON**

2 **Q** ARE YOU PRESENT AS A SECURITY OFFICER WHEN PROPHYLACTIC --
3 WHEN PSYCHOTROPIC MEDICATIONS ARE GIVEN TO INMATES?

4 **A** YES, I HAVE BEEN AT THE LINE OBSERVING WHEN THE
5 PSYCHOTROPIC MEDICATIONS ARE ADMINISTERED.

6 **Q** YOU'RE ALSO FAMILIAR WITH THE PROCESS WHEN YOU WERE A
7 LICENSED VOCATIONAL NURSE AT CSP SOLANO?

8 **A** YES.

9 **Q** OKAY. HOW MANY INMATES ARE INVOLVED -- IN JULY OF 2008,
10 HOW MANY INMATES AT CSP SOLANO WERE INVOLVED IN RECEIVING
11 PSYCHOTROPIC MEDICATIONS?

12 **A** AT EACH WINDOW, APPROXIMATELY 4- TO 600 INMATES. IT WOULD
13 VARY DEPENDING OF THE POPULATION ON THAT YARD.

14 **JUDGE KARLTON:** I'M SORRY. I DON'T UNDERSTAND THE
15 ANSWER. THERE ARE TWO LINES, TWO WINDOWS, CORRECT? INCORRECT?

16 **THE WITNESS:** INCORRECT.

17 **JUDGE KARLTON:** THERE'S ONE WINDOW?

18 **THE WITNESS:** THERE'S ONE WINDOW FOR EACH DIFFERENT
19 TYPE OF MEDICATION ADMINISTRATION.

20 **JUDGE KARLTON:** IF YOU ARE TALKING ABOUT
21 PSYCHOTROPIC DRUGS, HOW MANY WINDOWS ARE THERE?

22 **THE WITNESS:** THERE ARE FOUR WINDOWS, ONE ON EACH
23 YARD. AT CSP SOLANO THERE ARE FOUR YARDS.

24 **JUDGE KARLTON:** OKAY. BUT IN THE YARD THAT YOU ARE
25 WORKING, THERE'S ONE WINDOW THEN?

1 **THE WITNESS:** CORRECT.

2 **JUDGE KARLTON:** AND HOW MANY PRISONERS ON -- ONE
3 WINDOW FOR PSYCHOTROPIC DRUGS?

4 **THE WITNESS:** CORRECT.

5 **JUDGE KARLTON:** HOW MANY INMATES ARE ON THAT LINE
6 EVERY DAY ROUGHLY?

7 **THE WITNESS:** APPROXIMATELY 400.

8 **JUDGE KARLTON:** SO THAT OVERALL THERE ARE ABOUT
9 1,200?

10 **THE WITNESS:** CORRECT.

11 **JUDGE KARLTON:** OKAY.

12 **BY MR. HENDERSON**

13 **Q** IS THE DISTRIBUTION PROCESS SIMILAR TO THAT THAT YOU'VE
14 DESCRIBED FOR THE NARCOTIC MEDICATION DISTRIBUTION?

15 **A** YES.

16 **Q** ANY DIFFERENCES IN IT?

17 **A** THERE ARE A NUMBER OF MEDICATIONS THAT ARE GIVEN, SO IT
18 COULD BE FOUR TO TWELVE MEDICATIONS THAT ARE GIVEN AT THE
19 PSYCHOTROPIC WINDOW VERSUS ONE TO TWO MEDICATIONS GIVEN AT THE
20 NARCOTIC WINDOW.

21 **Q** ARE THERE -- IS THERE A DOUBLE-CHECKING PROCESS USED FOR
22 THE PSYCHOTROPIC MEDICATIONS?

23 **A** THERE'S NOT ENOUGH TIME FOR THE NURSES TO DOUBLE-CHECK.

24 **Q** SO THE ANSWER IS NO, THERE'S NOT?

25 **A** NO, THERE IS NOT.

1 Q OKAY. AND HOW MUCH TIME IS THERE ALLOTTED FOR DISTRIBUTING
2 THE PSYCHOTROPIC MEDICATIONS TO 400 INMATES A DAY?

3 A THE PSYCHOTROPIC MEDICATION IS DELIVERED IN THE MORNING
4 BEFORE BREAKFAST, AND THERE'S APPROXIMATELY ONE HOUR TO DELIVER
5 THAT MEDICATION.

6 Q OKAY. NOW, HAVE YOU SEEN IN THE PSYCHOTROPIC -- WITH THE
7 PSYCHOTROPIC MEDICATIONS SITUATIONS WHERE INMATES HAVE BEEN
8 PRESCRIBED WRONG MEDICATION OR AMOUNTS?

9 JUDGE KARLTON: NOT PRESCRIBED, DELIVERED.

10 MR. HENDERSON: I'M SORRY. DELIVERED.

11 THE WITNESS: YES.

12 BY MR. HENDERSON

13 Q OKAY. I THINK YOU MENTIONED ONE WAY TO AVOID THE CHEEKING
14 WOULD BE TO CRUSH UP THE MEDICATIONS, THE PILL MEDICATIONS,
15 INTO A POWDER FORM?

16 A CORRECT.

17 Q ARE YOU AWARE OF ANY OTHER PROCEDURES THAT MIGHT BE USED
18 THAT WOULD MINIMIZE THE POTENTIAL FOR CHEEKING?

19 A YES, I HAVE SUGGESTED TO THE HEALTHCARE ADMINISTRATION THAT
20 THEY USE LIQUID NARCOTICS INSTEAD OF PILLS, AND THEY TOLD ME
21 THAT THAT WAS NOT FISCALLY POSSIBLE TO DO THAT.

22 Q NOW, DURING LOCKDOWNS IS THERE ANY CHANGE IN THE PROCEDURES
23 FOR THE DELIVERY OF NARCOTIC OR PSYCHOTROPIC MEDICATIONS?

24 A YES. ALL OF THE MEDICATION DURING LOCKDOWN IS DELIVERED TO
25 THE BUILDINGS.

1 Q OKAY. AND THEN THEY ARE HANDED OUT AT THE BUILDINGS?

2 A AT EACH CELLFRONT DOOR.

3 Q SO THE INMATES AT THAT FACILITY ARE THEN MADE AWARE OF
4 WHICH INMATES ARE RECEIVING MEDICATIONS?

5 A YES.

6 Q OKAY. AND HOW ARE THE MEDICATIONS GIVEN TO THE INMATES AT
7 THAT TIME?

8 A THE NURSES COME IN, AND THEY PACK THE MEDICATION IN SMALL
9 COIN ENVELOPES, AND THEN THEY PASS THEM THROUGH THE CRACK IN
10 THE DOOR.

11 Q OKAY. DOES THAT PROCESS TAKE ADDITIONAL TIME OVER AND
12 ABOVE WHAT WOULD BE TAKEN IF THEY WERE BEING HANDED OUT AT THE
13 LINES AT THE SPECIALTY CLINIC?

14 A THEY DON'T HAND OUT MEDICATION IN THE SPECIALTY CLINIC.

15 Q I'M SORRY. WHERE THE WINDOWS ARE WHERE THE MEDICATIONS ARE
16 HANDED OUT AT THE PRIMARY CLINIC.

17 A YES, BECAUSE YOU HAVE TO TRANSFER INFORMATION FROM THE
18 MEDICATION ADMINISTRATION RECORD ONTO THE COIN ENVELOPE, AND
19 THEN PACK THE MEDICATION IN THE COIN ENVELOPE AND CARRY THE
20 MEDICATION OUT TO THE BUILDINGS.

21 Q ARE THE NURSES THAT WORK AT CSP SOLANO REQUIRED TO WORK
22 MANDATORY DOUBLE SHIFTS?

23 A YES, THEY ARE.

24 Q HOW MUCH DOES THAT HAPPEN?

25 A DAILY.

1 Q OKAY. WHAT EFFECT, IF ANY, HAVE YOU OBSERVED ON THE NURSES
2 AS THEY WORK A DOUBLE SHIFT?

3 A THE NURSES ARE FATIGUED. THEY ARE EMOTIONALLY UPSET. THEY
4 ARE TIRED.

5 Q BY "EMOTIONALLY UPSET," WHAT ARE YOU REFERRING TO?

6 A THEY CRY.

7 Q OKAY. HAVE YOU OBSERVED A DIMINISHED PERFORMANCE OF THOSE
8 NURSES THAT ARE WORKING ON DOUBLE SHIFTS?

9 MR. LEWIS: OBJECTION. CALLS FOR LACK OF FOUNDATION
10 ON THIS WITNESS. SHE HAS NOT TESTIFIED TO OBSERVATIONS OF ANY
11 OTHER NURSING ACTIVITIES.

12 MR. HENDERSON: MAYBE I CAN BACK UP.

13 BY MR. HENDERSON

14 Q WHEN YOU WERE A LICENSED VOCATIONAL NURSE, WERE YOU
15 REQUIRED TO WORK MANDATORY DOUBLE SHIFTS?

16 A YES.

17 Q DID YOU NOTICE A DIMINISHMENT IN YOUR PERFORMANCE TOWARDS
18 THE END OF YOUR SECOND SHIFT?

19 A YES.

20 Q DID YOU -- CAN YOU -- STRIKE THAT.

21 JUDGE KARLTON: DID YOU OBSERVE OTHER NURSES IN A
22 SIMILAR SITUATION?

23 THE WITNESS: YES, I HAVE.

24 JUDGE KARLTON: AND WAS IT YOUR OBSERVATION THAT
25 THEIR PERFORMANCE WAS THE SAME OR DIMINISHED OR WHAT?

1 **THE WITNESS:** DIMINISHED.

2 **BY MR. HENDERSON**

3 **Q** OKAY. IN THE COURSE OF YOUR EMPLOYMENT AS A CORRECTIONAL
4 OFFICER, IN ADDITION TO WORKING AT THE SPECIALTY CLINIC, HAVE
5 BEEN ASSIGNED TO ANY HOUSING FACILITIES?

6 **A** YES, I HAVE.

7 **Q** WHAT HOUSING FACILITIES HAVE YOU BEEN ASSIGNED TO?

8 **A** PRETTY MUCH ALL THE HOUSING FACILITIES. I WAS A SICK
9 RELIEF CORRECTIONAL OFFICER, SO WHEN ANYONE CALLED IN SICK, I
10 WOULD WORK IN THEIR POSITION.

11 **Q** OKAY. I'D LIKE TO PUT ON A PHOTOGRAPH WHICH I WILL
12 IDENTIFY FOR THE RECORD AS -- I BELIEVE IT'S FROM EXHIBIT P346.

13 **THE CLERK:** YOU HAVE FIVE MINUTES.

14 **MR. HENDERSON:** I'M SORRY?

15 **THE CLERK:** FIVE MINUTES.

16 (PHOTOGRAPH DISPLAYED.)

17 **BY MR. HENDERSON**

18 **Q** P346, PHOTOGRAPH ONE, DO YOU RECOGNIZE THIS PHOTOGRAPH?

19 **A** YES, I DO.

20 **Q** WHAT DOES IT DEPICT?

21 **A** THIS IS THE H DORM.

22 **Q** HAVE YOU WORKED IN THE H DORM?

23 **A** YES, I HAVE.

24 **Q** AND DOES THIS DEPICT THE CONDITION OF THE H DORM AT THE
25 TIME YOU WORKED IN IT?

1 **A** YES.

2 **Q** WHAT WE HAVE -- CAN YOU TELL US BEYOND THE BENCHES AND THE
3 TV, WHAT'S GOING ON IN THE BACK THERE?

4 **A** THE INMATES ARE HANGING OUT.

5 **Q** ARE THOSE BUNKS IN THOSE LOCATIONS?

6 **A** WHERE THE LOCKERS ARE, THOSE ARE BUNKS.

7 **Q** OKAY. HOW MANY BUNKS ARE THERE IN A TIER?

8 **A** THERE ARE THREE BUNKS.

9 **Q** OKAY. CAN WE GO TO 346-3? THREE. I'M SORRY.

10 DOES THIS PHOTOGRAPH DEPICT THE BUNK CONDITIONS THAT
11 YOU HAVE OBSERVED IN H DORM?

12 **A** YES.

13 **Q** OKAY. ARE THOSE THE TYPES OF BUNKS THAT ARE INVOLVED?

14 **A** YES.

15 **Q** OKAY. DO THOSE BUNKS HAVE ANY TYPE OF -- THE UPPER BUNKS
16 HAVE ANY TYPE OF RAILING?

17 **A** NO, THEY DO NOT.

18 **Q** OKAY. ARE YOU AWARE OF ANY INCIDENTS THAT OCCURRED WHEN
19 YOU'VE WORKED IN ANY OF THE DORMS WHERE INMATES HAVE FALLEN OFF
20 OF THE THIRD BUNK AND INJURED THEMSELVES?

21 **A** YES.

22 **Q** WHAT HAVE YOU SEEN -- DID YOU ACTUALLY WITNESS THE INMATE
23 FALLING OFF?

24 **A** NO, I HAVE NOT.

25 **Q** OKAY. WHAT HAVE YOU SEEN OR OBSERVED THAT LED YOU TO THE

1 CONCLUSION THAT SOMEBODY HAD FALLEN OFF A BUNK?

2 **A** WHILE I WORKED IN THE PRIMARY CLINIC WHERE -- THAT'S THEIR
3 TRIAGE TREATMENT AREA, I'VE HAD INMATES COME IN WITH POSSIBLE
4 FRACTURES, HEAD INJURIES, BACK INJURIES FROM FALLING OFF OF THE
5 TOP BUNK.

6 **MR. MITCHELL:** OBJECT AS CALLING FOR HEARSAY AND
7 SPECULATION AS TO THE CAUSE.

8 **JUDGE HENDERSON:** OVERRULED.

9 **BY MR. HENDERSON**

10 **Q** WHEN YOU WERE IN H DORM, DID YOU RESPOND TO ANY INCIDENTS
11 WHEN YOU FOUND AN INMATE ON THE FLOOR WHO APPARENTLY HAD FALLEN
12 FROM HIS BUNK?

13 **A** YES.

14 **Q** WHAT'S THE NOISE LEVEL -- WHAT WAS THE NOISE LEVEL LIKE IN
15 H BUILDING WHEN YOU WERE THERE?

16 **A** IT VARIED DEPENDING ON THE TYPE OF PROGRAM THAT WAS RUNNING
17 DURING THE TIME, BUT DURING DAYROOM, IT WAS HARD TO EVEN HEAR
18 YOUR PARTNER TALKING TO YOU.

19 **Q** OKAY. WOULD YOU BE ABLE TO HEAR SOMEONE OR -- STRIKE THAT.
20 WHAT WAS CONTRIBUTING TO THE NOISE LEVEL THERE?

21 **A** THE FANS IN THE BUILDINGS, RADIOS, TELEVISIONS, THE INMATES
22 TALKING OVER EACH OTHER, TELLING STORIES.

23 **Q** OKAY. WHEN YOU WERE IN H BUILDING, PART OF YOUR DUTIES
24 WERE TO MONITOR AND RESPOND TO MEDICAL CONDITIONS FOR THE
25 INMATES THAT WERE THERE?

1 **A** YES.

2 **Q** WERE YOU ABLE TO DO THAT JOB EFFICIENTLY IN H DORM WHEN YOU
3 WERE THERE?

4 **A** IF THERE WAS A MEDICAL CONDITION, I WOULD RESPOND TO THE
5 MEDICAL CONDITION, YES.

6 **Q** OKAY. WHAT ABOUT BEING ABLE TO MONITOR MEDICAL CONDITIONS?

7 **A** NO, I COULD NOT MONITOR THAT MANY INMATES TO TELL IF THEY
8 HAD A MEDICAL CONDITION.

9 **Q** OKAY. SO IT WOULD BE LIMITED TO WHAT YOU EITHER COULD
10 OBSERVE YOURSELF OR HAVE SOMEONE REPORT TO YOU?

11 **A** CORRECT.

12 **Q** AND YOUR ABILITIES TO BE INVOLVED IN OBSERVATION WERE
13 LIMITED BY THE NUMBER OF INMATES?

14 **A** CORRECT.

15 **Q** HOW MANY INMATES WERE IN H DORM AT THE TIME YOU WERE THERE?

16 **A** APPROXIMATELY 250 TO 300 INMATES.

17 **Q** WERE THE INMATES -- HOW MANY CORRECTIONAL OFFICERS ON YOUR
18 SHIFT IN THE DAY SHIFT?

19 **A** THERE ARE TWO OFFICERS THAT WORK ON THE FLOOR IN THAT
20 BUILDING, AND THEN THERE'S A GUNNER AT THE TOP OF THE CEILING.

21 **Q** SO YOURSELF AND ONE OTHER OFFICER WERE ON THE FLOOR?

22 **A** YES.

23 **Q** DID YOU HAVE AN INCIDENT WITH AN INMATE WHO HAD A SEIZURE
24 PROBLEM IN THE BUNKS?

25 **A** YES. THERE WAS AN INMATE THAT SLEPT ON A MIDDLE BUNK, AND

1 HE HAD SEIZURES DAILY AND FREQUENTLY DURING THE DAY ON A DAILY
2 BASIS.

3 **Q** AND WHAT WOULD YOU DO -- DID YOU EVER OBSERVING HIM GO INTO
4 SEIZURE?

5 **A** PARDON ME?

6 **Q** DID YOU EVER OBSERVE THAT INMATE GO INTO SEIZURE?

7 **A** YES, I DID.

8 **Q** WHAT WOULD YOU DO IN RESPONSE TO THAT?

9 **A** MYSELF AND THE OTHER OFFICER WORKING ON THE FLOOR IN THE
10 BUILDING WOULD GO STAND ON THE SIDE OF THE BUNKS SO HE WOULDN'T
11 FALL OUT.

12 **Q** AND HOW OFTEN DID THAT OCCUR, DID YOU HAVE TO DO THAT?

13 **A** ONE PARTICULAR DAY WHEN I WAS WORKING IN THERE THREE TIMES.

14 **Q** OKAY. THAT WOULD MEAN BOTH CORRECTIONAL OFFICERS ON THE
15 FLOOR WOULD BE AT THAT ONE BUNK, CORRECT?

16 **A** YES.

17 **Q** AND -- THANK YOU.

18 **THE CLERK:** COUNSEL, TIME'S UP.

19 **MR. HENDERSON:** OKAY. THANK YOU.

20 **JUDGE KARLTON:** BEFORE YOU DO THAT, DO PLAINTIFFS
21 HAVE ANYTHING THEY WANT TO ASK?

22 **MR. BIEN:** I DO. MICHAEL BIEN ON BEHALF OF THE
23 COLEMAN PLAINTIFFS.

24 ///

25 ///

DIRECT EXAMINATION BY MR. BIEN

BY MR. BIEN

Q WHILE YOU WERE WORKING AT SOLANO IN THE LAST SIX MONTHS,
BEFORE YOU TOOK LEAVE, WERE THERE ANY LOCKDOWNS?

A YES.

Q OKAY. DO YOU RECALL THE DURATION OF ANY LOCKDOWNS THAT
OCCURRED?

A PARDON ME?

Q HOW LONG WERE ANY OF THE LOCKDOWNS IN THE LAST SIX MONTHS
BEFORE YOU TOOK LEAVE?

A I BELIEVE IT STARTED IN THE SUMMER, AND THEY WERE STILL ON
LOCKDOWN WHEN I LEFT AT THE END OF JULY.

Q OKAY. SO MORE THAN A MONTH?

A YES.

Q WHEN YOU DISTRIBUTED MEDICATION -- YOU SAID YOU WERE
INVOLVED IN DISTRIBUTION OF MEDICATION DURING LOCKDOWNS; IS
THAT CORRECT?

A YES.

Q AND WHEN YOU DISTRIBUTE MEDICATION THROUGH A LOCKDOWN, HOW
CAN YOU DESCRIBE THE PHYSICAL PROCESS OF DISTRIBUTING THE
MEDICATION? HOW DO YOU GET IT TO INMATES?

A FROM THE START TO THE END OR ONCE WE HAVE THE MEDICATION
PACKED?

Q JUST FROM WHEN -- I UNDERSTAND YOU ACTUALLY TAKE IT TO
THEIR CELL; IS THAT CORRECT?

1 **A** THAT'S CORRECT.

2 **Q** SO WHAT HAPPENS NEXT?

3 **A** YOU WALK UP TO A DOOR AND YOU ASK THEM IF THEY WANT THEIR
4 MEDICATION.

5 **Q** OKAY.

6 **A** AND THEY EITHER SAY YES OR THEY REFUSE THEIR MEDICATION.
7 IF THEY SAY THEY WANT THEIR MEDICATION, THEY BRING THEIR I.D.
8 TO THE WINDOW. YOU PASS IT THROUGH A SMALL CRACK,
9 APPROXIMATELY ONE INCH WIDE. THEY TAKE THE MEDICATION OUT OF
10 THE COIN ENVELOPE, DO WHATEVER THEY'RE DOING WITH IT, AND THEY
11 GIVE YOU THE COIN ENVELOPE BACK.

12 **JUDGE KARLTON:** YOU CAN'T TELL WHETHER THEY ARE
13 CHEEKING IT IF IT'S BEING DELIVERED IN A CELL?

14 **THE WITNESS:** NO, I COULD NOT.

15 **JUDGE HENDERSON:** LET ME -- I'M CONFUSED. IF YOU
16 ASK THEM WHETHER THEY WANT THEIR MEDICATION, I ASSUME IF THEY
17 SAY, NO, YOU DON'T GIVE IT TO THEM?

18 **THE WITNESS:** CORRECT.

19 **JUDGE HENDERSON:** WHY DO WE WORRY ABOUT CHEEKING?
20 WHY IS CHEEKING RELEVANT IF ALL THEY HAVE TO DO IS SAY, NO? I
21 MEAN, EXCEPT FOR THOSE WHO ARE HOARDING AND MAY BE SELLING, BUT
22 THE ONES WHO SPIT IT OUT, I DON'T UNDERSTAND THAT.

23 **THE WITNESS:** THERE ARE SEVERAL RELEVANCE TO
24 CHEEKING OF MEDICATION. FOR PSYCHOTROPIC MEDICATIONS, NOT
25 EVERY INMATE IS GOING TO HAVE THE MENTAL CAPACITY TO BE ABLE TO

1 DETERMINE IF THEY'RE DECOMPENSATING. IF WE THINK THEY'RE
2 ALWAYS TAKING THEIR MEDICATION AND THE PSYCHOLOGIST OR THE
3 PSYCHIATRIST LOOKS AT THEIR MEDICATION ADMINISTRATION RECORD,
4 AND IT SHOWS THEY ARE COMPLIANT WITH TAKING THEIR MEDICATION,
5 THEN THEY MIGHT NOT BE ADDRESSED IN THE SAME FASHION AS
6 SOMEBODY THAT'S NOT TAKING THEIR MEDICATION.

7 **BY MR. BIEN**

8 **Q** HAVE YOU EVER DISTRIBUTED MEDICATION TO AN INMATE DURING A
9 LOCKDOWN WHEN THERE ARE TWO INMATES IN THE CELL?

10 **A** YES.

11 **Q** AND IS THERE ANY PRIVACY TO THE INMATE WHO YOU ARE
12 DISTRIBUTING THE MEDICATION TO IN THAT CIRCUMSTANCE?

13 **A** NO.

14 **MR. BIEN:** THANK YOU.

15 **JUDGE HENDERSON:** CROSS.

16 **CROSS-EXAMINATION BY MR. MITCHELL**

17 **BY MR. MITCHELL**

18 **Q** GOOD MORNING. BILL MITCHELL FOR THE DEFENDANT INTERVENORS.

19 GOOD MORNING, OFFICER ROWLETT.

20 **A** GOOD MORNING.

21 **Q** OFFICER ROWLETT, YOU HAVE BEEN AT SOLANO SINCE 2000, YOU
22 TOLD US; IS THAT CORRECT?

23 **A** YES.

24 **Q** YOU FIRST STARTED THERE AS AN MTA?

25 **A** YES.

1 Q YOUR POSITION CHANGED IN FEBRUARY OF 2008? OR WHEN WAS IT
2 YOUR POSITION CHANGED FROM MTA TO CORRECTIONAL OFFICER?

3 A IN THE SUMMER OF 2007.

4 Q WAS THAT A VOLUNTARY CHANGE IN GRADE FOR YOU OR DEMOTION?
5 WHAT WAS THAT?

6 A IT WAS NOT A DEMOTION. I MAKE THE SAME AMOUNT OF MONEY.
7 ACTUALLY, I MAKE A HUNDRED DOLLARS MORE A MONTH BECAUSE OF MY
8 EDUCATION. IT WAS A TRANSFER OF NO LONGER DOING NURSING
9 SERVICES.

10 Q DID THE RECEIVER DO AWAY WITH THE MTA POSITION?

11 A NO, HE DID NOT. THE MTA POSITION IS STILL UP AND RUNNING
12 AT DMH, AND IF I WISHED TO HAVE CONTINUED MY
13 NURSING/CORRECTIONAL OFFICER JOB AS AN MTA, I COULD HAVE
14 TRANSFERRED TO DMH, BUT I CHOSE TO STAY AT CSP SOLANO.

15 Q THE OBSERVATIONS YOU RELATED TO US HERE TODAY OF THE
16 DIFFERENT DELIVERY OF MEDICATIONS TO INMATES, DID THAT TAKE
17 PLACE WHILE YOU WERE A CORRECTIONAL OFFICER OR DURING YOUR TIME
18 AS AN MTA?

19 A COULD YOU REPEAT THE QUESTION, PLEASE?

20 Q YOUR OBSERVATIONS THAT YOU'VE RELATED TO US TODAY ABOUT THE
21 DELIVERY OF MEDICATION FROM INSULIN TO EXAMINATIONS OF
22 INDIVIDUALS AND MED DISTRIBUTION, THOSE WERE OBSERVATIONS THAT
23 WERE MADE WHILE YOU WERE AN MTA OR A CORRECTIONAL OFFICER?

24 JUDGE KARLTON: BOTH.

25 THE WITNESS: BOTH.

1 **BY MR. MITCHELL**

2 **Q** DO YOU RECALL WRITING IN YOUR TRIAL AFFIDAVIT THAT THERE
3 WERE MANY NUMEROUS CONDITIONS AT SOLANO CREATING PROBLEMS
4 REGARDING THE HEALTH OF INMATES?

5 **A** I'M SORRY. I'M HARD OF HEARING. COULD YOU SPEAK A LITTLE
6 LOUDER?

7 **Q** YES. DO YOU RECALL WRITING IN YOUR TRIAL AFFIDAVIT THAT
8 THERE ARE NUMEROUS CONDITIONS AT SOLANO CREATING PROBLEMS
9 REGARDING THE HEALTH OF INMATES AND THE DELIVERY OF CARE AND
10 THAT THESE ARE DUE, AT LEAST IN PART, TO OVERCROWDING?

11 **A** YES.

12 **Q** YOU WOULD AGREE THAT THERE ARE REASONS OTHER THAN
13 OVERCROWDING CONTRIBUTING TO SOME OF THE PROBLEMS IN THE
14 DELIVERY OF MEDICAL CARE TO INMATES AT SOLANO, CORRECT?

15 **A** YES.

16 **Q** REGARDING THE DELIVERY OF PSYCHOTROPIC MEDICATIONS THAT YOU
17 TESTIFIED TO HERE TODAY, ARE YOU AWARE OF THE DIRECT
18 OBSERVATION THERAPY PROTOCOL THAT'S BEEN INSTITUTED AT SOLANO?

19 **A** YES, I AM.

20 **Q** DO YOU AGREE THAT THERE IS NOT A NUMBER ONE REASON FOR ALL
21 OF THE PROBLEMS REGARDING THE DELIVERY OF MEDICAL CARE AT
22 SOLANO?

23 **A** YES.

24 **Q** REGARDLESS OF THE PROBLEMS THAT YOU'VE DESCRIBED FOR US
25 HERE TODAY, WOULD YOU AGREE THAT THE INMATES, WHEN IT COMES TO

1 URGENT CARE, THEY GET THE CARE THAT THEY NEED?

2 **A** NO.

3 **Q** DO YOU RECALL TESTIFYING IN YOUR DEPOSITION THAT, AS FAR AS
4 URGENT CARE, YOU WOULD SAY THAT AT SOLANO THEY ARE UP TO SPEED
5 IF IT'S URGENT?

6 **A** I DON'T THINK I SAID THEY WERE UP TO SPEED.

7 **MR. MITCHELL:** COULD WE HAVE DEPOSITION AT PAGE 41?
8 (DOCUMENT DISPLAYED.)

9 **BY MR. MITCHELL**

10 **Q** YOU RECALL BEING ASKED THE QUESTION:

11 "DO YOU KNOW SPECIFICALLY WHAT TYPES OF DELAYS
12 INMATES ARE EXPERIENCING IN RECEIVING SPECIALTY
13 CARE?"

14 AND ANSWERING:

15 "AS FAR AS URGENT, I WOULD SAY AT SOLANO THEY'RE
16 UP TO SPEED IF IT'S URGENT. THEY'LL EITHER SEND THEM
17 OUT, OR IF THAT SPECIALIST IS THERE THAT DAY, THEY'LL
18 BE ABLE TO SEE THEM"?

19 **A** THAT'S REFERRING TO SPECIALTY CARE, NOT URGENT CARE.
20 URGENT CARE TO ME WOULD BE SOMEONE THAT'S URGENTLY HURT OR VERY
21 SICK. SPECIALTY CARE FOR URGENT REFERRALS WOULD BE AN INMATE
22 THAT'S SEEN IN ONE TO THREE DAYS.

23 **Q** AS FAR AS SPECIALTY CARE WHEN THEY ARE HAVING URGENT
24 MATTERS, THEY'RE GETTING THE CARE THEY NEED?

25 **A** WITHIN ONE TO THREE DAYS, YES.

1 Q YOU WORKED IN THE COMMUNITY AS AN LVN, CORRECT?

2 A YES.

3 Q YOU WORKED IN AN EMERGENCY ROOM?

4 A YES.

5 Q WAS THAT A BUSY EMERGENCY ROOM?

6 A YES.

7 Q ARE THE PATIENTS THAT COME INTO THE EMERGENCY ROOMS WHEN
8 YOU WORKED IN THE COMMUNITY IN A GENERAL HOSPITAL, DO THEY
9 TRIAGE THE PATIENTS, AND THE ONES THAT NEED URGENT CARE GET
10 SEEN AHEAD OF THE ONES THAT AREN'T SO URGENT?

11 A I WORKED AT SUTTER ROSEVILLE EMERGENCY ROOM. IT'S A BIT
12 DIFFERENT THAN ANY OTHER TYPE OF EMERGENCY ROOM. WE WERE A
13 TRAUMA FOUR WITH LIFE FLIGHT, SO I REALLY CAN'T COMPARE THE
14 TWO.

15 Q YOU WOULD AGREE IN EMERGENCY ROOMS THAT THEY TRIAGE
16 PATIENTS ACCORDING TO THE SERIOUSNESS OF THEIR ILLNESS OR
17 INJURY, CORRECT?

18 A YES.

19 Q THE SAME TAKES PLACE IN THE PRISON SETTING, CORRECT?

20 A TRIAGES TAKE PLACE. THEY DO NOT TAKE PLACE IN THE SAME
21 TYPE OF MANNER.

22 Q HAVE YOU SEEN AN INCREASE IN THE NUMBER OF NURSES OVER THE
23 LAST YEAR AT SOLANO?

24 MR. HENDERSON: OBJECTION. VAGUE.

25 THE WITNESS: I HAVE SEEN MORE INMATES.

1 **MR. HENDERSON:** OBJECTION. VAGUE.

2 **JUDGE HENDERSON:** HAVE YOU SEEN INCREASES IN NURSES
3 IN THE LAST YEAR? WHAT'S VAGUE ABOUT THAT?

4 **MR. HENDERSON:** IN WHAT LOCATION, YOUR HONOR? JUST
5 NURSES GENERALLY?

6 **JUDGE KARLTON:** THAT'S THE QUESTION. YOU MAY
7 ANSWER.

8 **THE WITNESS:** CAN YOU REPEAT THE QUESTION?

9 **BY MR. MITCHELL**

10 **Q** YES. HAVE YOU SEEN AN INCREASE IN THE NUMBER OF NURSES,
11 THE STAFF POSITIONS FOR NURSES, AT SOLANO WITHIN THE LAST YEAR?

12 **A** YES.

13 **Q** HAVE YOU SEEN A CHANGE IN PROCEDURES FOR THE DELIVERY OF
14 MEDICAL CARE AT SOLANO WITHIN THE LAST YEAR?

15 **MR. HENDERSON:** I'LL OBJECT AS OVERBROAD, YOUR
16 HONOR.

17 **JUDGE HENDERSON:** OVERRULED.

18 **THE WITNESS:** THERE HAVE BEEN CHANGES IN POLICY, IS
19 THAT WHAT YOU MEAN, OR HOW THE NURSES ARE DOING THEIR JOB?

20 **BY MR. MITCHELL**

21 **Q** POLICIES AND THE DELIVERY OF MEDICAL CARE TO INMATES, HAVE
22 THOSE CHANGED OVER THE LAST YEAR?

23 **A** I DON'T KNOW. I'M A CORRECTIONAL OFFICER NOW.

24 **MR. MITCHELL:** NO FURTHER QUESTIONS.

25 **JUDGE HENDERSON:** ANYTHING BY STATE DEFENDANTS?

1 **MR. MELLO:** NO, YOUR HONOR.

2 **JUDGE HENDERSON:** OKAY. REDIRECT.

3 **MR. HENDERSON:** JUST A FEW, YOUR HONOR.

4 **JUDGE HENDERSON:** YES.

5 **MR. HENDERSON:** COULD WE HAVE THE DEPOSITION PAGE
6 BROUGHT UP ON THE SCREEN, PAGE 41 THAT WAS PREVIOUSLY SHOWN TO
7 THE WITNESS?

8 **MR. MELLO:** YOUR HONOR?

9 **JUDGE HENDERSON:** EVERYONE IS POINTING AT EVERYONE.

10 **MR. MELLO:** ARE WE SUPPOSED TO DO THAT WITH OUR
11 EQUIPMENT?

12 **JUDGE KARLTON:** IF YOU'VE GOT IT. IT IS A QUESTION
13 OF CONVENIENCE.

14 **MR. HENDERSON:** I CAN READ IT, YOUR HONOR.

15 **JUDGE KARLTON:** IF YOU'VE GOT IT, BRING IT UP.

16 **MR. HENDERSON:** CAN WE TAKE THE HIGHLIGHTED PART
17 OUT, PLEASE? WELL, THAT WAS A LITTLE MORE THAN I WANTED.

18 **JUDGE KARLTON:** WHY DON'T YOU READ IT?

19 **THE WITNESS:** THE ONLY THING I WOULD LIKE TO DO IS
20 JUST READ INTO THE RECORD THE ADDITIONAL PARAGRAPH TO THE
21 WITNESS'S ANSWER TO THE QUESTION SHE WAS POSED, AND I'LL --

22 **JUDGE HENDERSON:** FOR FUTURE REFERENCE IT WORKS
23 BETTER IF YOU HAVE THEM DO IT AT THE TIME FOR THE COMPLETE
24 RECORD.

25 **JUDGE KARLTON:** THAT'S ALL RIGHT.

1 **MR. HENDERSON:** I'M SORRY. I DIDN'T CATCH IT AT THE
2 TIME.

3 **JUDGE HENDERSON:** OKAY.

4 **REDIRECT EXAMINATION BY MR. HENDERSON**

5 **BY MR. HENDERSON**

6 **Q** SPECIFICALLY -- AND I'M READING STARTING ON LINE 20:

7 "FOLLOW-UP CARE, THE DOCTOR MAY WANT TO SEE A
8 FOLLOW-UP APPOINTMENT IN TWO WEEKS, BUT IT MIGHT BE
9 FOUR TO SIX TO EIGHT. SOME OF THEM ARE THREE MONTHS,
10 SIX MONTHS BEHIND WITH FOLLOW-UPS BECAUSE THEY ARE SO
11 INUNDATED WITH NEW CONSULTS THAT COME IN."

12 WAS THAT YOUR TESTIMONY AT THE TIME?

13 **A** YES.

14 **Q** IS THAT STILL TRUE AND CORRECT TODAY?

15 **A** I DON'T KNOW AS FAR AS TODAY. AS FAR AS JULY WHEN I WAS
16 THERE LAST, YES, IT WAS STILL CORRECT.

17 **MR. HENDERSON:** OKAY. THANK YOU. THAT'S ALL I
18 HAVE.

19 **JUDGE HENDERSON:** ANYTHING BY INTERVENORS OR --
20 THANK YOU VERY MUCH, MS. ROWLETT. YOU'RE EXCUSED.

21 **THE WITNESS:** THANK YOU.

22 **JUDGE HENDERSON:** OKAY. YOU MAY CALL YOUR NEXT
23 WITNESS.

24 **MR. HENDERSON:** DO YOU WANT TO PROCEED WITH A BREAK
25 OR DO YOU WANT ME TO BRING THE WITNESS IN? IT WILL PROBABLY BE

1 ABOUT 30 MINUTES.

2 JUDGE HENDERSON: LET'S PROCEED.

3 RUBEN LEIJA

4 HAVING BEEN CALLED AS A WITNESS BY THE PLAINTIFFS WAS FIRST
5 DULY SWORN AND EXAMINED AS FOLLOWS:

6 THE CLERK: STATE AND SPELL YOUR FULL NAME FOR THE
7 RECORD, PLEASE.

8 THE WITNESS: RUBEN LEIJA, JUNIOR. R-U-B-E-N
9 L-E-I-J-A.

10 DIRECT EXAMINATION BY MR. HENDERSON

11 BY MR. HENDERSON

12 Q MR. LEIJA, ARE YOU PRESENTLY EMPLOYED?

13 A YES.

14 Q AND BY WHOM?

15 A CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION.

16 Q HOW LONG HAVE YOU BEEN EMPLOYED BY THEM?

17 A FOR 12 YEARS NOW.

18 Q WHAT IS YOUR CURRENT TITLE?

19 A CORRECTIONAL OFFICER.

20 Q AND HAS ALL OF YOUR EMPLOYMENT WITH CDCR BEEN AS A
21 CORRECTIONAL OFFICER?

22 A YES.

23 MR. HENDERSON: I WILL AGAIN DRAW THE COURT'S
24 ATTENTION TO MR. LEIJA'S EXPERIENCE IN PARAGRAPHS ONE AND TWO
25 OF HIS DIRECT TESTIMONY DECLARATION.

1 **BY MR. HENDERSON**

2 **Q** SIR, WHERE ARE YOU CURRENTLY ASSIGNED AS A CORRECTIONAL
3 OFFICER? WHAT PRISON FACILITY?

4 **A** CHUCKAWALLA VALLEY STATE PRISON.

5 **Q** FOR THOSE OF US THAT HAVE NEVER BEEN WITHIN HAILING
6 DISTANCE OF CHUCKAWALLA PRISON FACILITY, CAN YOU TELL US WHERE
7 THAT IS?

8 **A** IT'S LOCATED IN THE DESERT IN SOUTHERN CALIFORNIA,
9 TWENTY-TWO MILES WEST OF THE CITY OF BLYTHE.

10 **Q** THAT'S IN RIVERSIDE COUNTY?

11 **A** YES, IN RIVERSIDE COUNTY.

12 **Q** WHAT IS YOUR CURRENT POST AT CHUCKAWALLA?

13 **A** MY CURRENT POST IS D10 FLOOR HOUSING UNIT.

14 **Q** OKAY. AND BUILDING D10, WHAT IS THE COMPOSITION OF THE
15 INMATE POPULATION OF THAT UNIT?

16 **A** THREE HUNDRED FORTY INMATES.

17 **Q** WHAT TYPES OF INMATES ARE LODGED THERE?

18 **A** LEVEL TWO INMATES.

19 **Q** AND I THINK YOU INDICATED THERE'S PRESENTLY ABOUT 340
20 INMATES IN THAT UNIT?

21 **A** YES.

22 **Q** OKAY. AND CAN YOU DESCRIBE THE UNIT FOR US IN TERMS OF ITS
23 PHYSICAL CONFIGURATION?

24 **A** THERE'S TWO TIERS, A LOWER TIER AND AN UPPER TIER. EACH
25 TIER HAS CUBICLES WITH BUNKS IN THERE, TRIPLE BUNKS AND DOUBLE

1 BUNKS.

2 **Q** ARE THESE OPEN-ACCESS CUBICLES; IN OTHER WORDS, THERE'S NO
3 DOORS THAT HAVE TO BE UTILIZED?

4 **A** YES.

5 **Q** CAN YOU BRING YOUR MICROPHONE A LITTLE CLOSER TO YOU
6 BECAUSE YOU ARE HARD TO PICK UP? THANK YOU.

7 IN THE CUBICLES, APPROXIMATELY HOW MANY INMATES ARE
8 HOUSED IN EACH OF THE CUBICLES?

9 **A** THERE'S ANYWHERE BETWEEN 16 AND 20 INMATES IN A CUBICLE.

10 **Q** HOW ARE THEY HOUSED WITHIN THE CUBICLE? WHAT KIND OF
11 BEDDING DO THEY HAVE?

12 **A** THEY HAVE DOUBLE AND TRIPLE BUNKS. EACH BUNK SITS ON TOP
13 OF EACH OTHER.

14 **Q** DO THE BUNKS HAVE RAILINGS ON THEM?

15 **A** NO.

16 **Q** OKAY. HOW MANY OTHER -- WHAT SHIFT DO YOU WORK THERE?

17 **A** THIRD WATCH, FROM 2:00 P.M. TO 10:00 P.M.

18 **Q** AND HOW MANY OTHER CORRECTIONAL OFFICERS WORK THAT SHIFT AT
19 D10 DURING THE THIRD WATCH?

20 **A** FOUR, TOTAL OF FOUR.

21 **Q** COUNTING YOURSELF?

22 **A** YES.

23 **Q** SO THERE'S FOUR CORRECTIONAL OFFICERS FOR 340 INMATES?

24 **A** YES.

25 **Q** OKAY. HOW MANY CORRECTIONAL OFFICERS WORK ON THE FIRST

1 SHIFT AT D10?

2 **A** THERE'S THREE.

3 **Q** AND HOW MANY WORK ON THE SECOND SHIFT?

4 **A** THERE'S ALSO THREE.

5 **Q** WHAT ARE YOUR JOB DUTIES AT D10?

6 **A** MY MAIN DUTIES ARE OBSERVATION OF INMATES AND RUNNING THE
7 PROGRAM AS FAR AS DOOR LOCKS, UNLOCKS, SEEING THAT PEOPLE,
8 INMATES GET THE MEDICAL, AND OTHERS NUMEROUS OTHER DUTIES.

9 **Q** OKAY. DO THOSE DUTIES ALSO INCLUDE MONITORING FOR
10 POTENTIAL MEDICAL CONDITIONS OF INMATES?

11 **A** YES.

12 **Q** AND HOW IS THAT DONE?

13 **A** MAINLY BY TOURS, WALKING AROUND, JUST TALKING WITH THE
14 INDIVIDUALS.

15 **Q** DO YOU FEEL THAT YOU'RE ABLE TO EFFECTIVELY MONITOR FOR
16 MEDICAL CONDITIONS AS A CORRECTIONAL OFFICER?

17 **A** NO.

18 **Q** WHY IS THAT?

19 **A** BECAUSE IT'S CROWDED IN THE BUILDINGS. THE CUBICLES ARE
20 HARD TO LOOK INTO, ESPECIALLY WITH THE TRIPLE RACKS IN THERE
21 NOW.

22 **Q** CAN YOU -- IS THERE A WORK STATION THAT YOU WORK AT WITHIN
23 THE BUILDING?

24 **A** YES.

25 **Q** WHERE IS THAT LOCATED?

1 **A** IN THE CENTER OF THE BUILDING.

2 **Q** OKAY. DOES THAT GIVE YOU A FULL LINE OF SIGHT INTO ALL
3 AREAS OF BUILDING D10?

4 **A** NO.

5 **Q** WHAT AREAS DON'T YOU SEE?

6 **A** THE -- BOTH CORNERS ON EACH SIDE OF THE BUILDING.

7 **Q** OKAY. ARE THERE -- HAVE YOU HAD SITUATIONS INVOLVING
8 INMATES WITH INFECTIOUS DISEASES?

9 **A** YES.

10 **Q** ARE THERE -- HAVE THESE BEEN SITUATIONS -- ARE THERE SOME
11 OF THESE SITUATIONS WHERE THE INMATES HAVE COME FORWARD TO TELL
12 YOU THEY HAVE AN INFECTIOUS DISEASE?

13 **A** YES.

14 **Q** ARE THERE OTHER SITUATIONS WHERE YOU FOUND OUT BY OTHER
15 MEANS?

16 **A** YES.

17 **Q** ARE THERE SITUATIONS WHERE YOU'VE OBSERVED THE INMATES TO
18 CONCEAL THEIR CONDITIONS?

19 **A** YES.

20 **Q** WHAT IS YOUR UNDERSTANDING OF THE REASONS FOR THE
21 CONCEALMENTS?

22 **A** SOME OF THE REASONS ARE THEY DON'T WANT OTHER INMATES TO
23 FIND OUT IF THEY HAVE SOMETHING THAT'S ESPECIALLY CONTAGIOUS,
24 OR THEY JUST ARE EMBARRASSED JUST TO COME UP TO EVEN DESCRIBE
25 THAT THEY NEED WHATEVER THEY NEED, WHATEVER ISSUE THEY HAVE.

1 Q WHAT KINDS OF SPECIALTY CONTAGIOUS CONDITIONS ARE WE
2 TALKING ABOUT?

3 A STAPH INFECTIONS.

4 Q AND YOU RELATED AN INCIDENT IN YOUR DEPOSITION THAT INVOLVE
5 AN INMATE THAT HAD A STAPH INFECTION THAT WAS TREATED BY ONE OF
6 HIS CUBICLE MATES?

7 A YES. THE INMATE THAT WAS HELPING HIS BUNKIE, THE PERSON
8 THAT HE WAS SLEEPING ABOVE, THEY BOTH APPROACHED ME. HE TOLD
9 ME THAT HIS BUDDY NEEDED SOME HELP AND THAT HE HAD BEEN USING A
10 SPOON DIGGING OUT A STAPH INFECTION ON HIS BACK SHOULDER.

11 Q DID HE TELL YOU WHY HE HAD COME FORWARD OR THEY HAD COME
12 FORWARD AT THAT POINT?

13 A HE JUST SAID HE DIDN'T WANT ANYBODY TO KNOW.

14 Q IS THERE MEDICATION DISTRIBUTIONS THAT GO ON IN THE -- IN
15 D10?

16 A YES.

17 Q WHEN DO THOSE OCCUR?

18 A USUALLY THOSE OCCUR WHEN WE'RE LOCK DOWNED.

19 Q AND HOW ARE THOSE HANDLED?

20 A THEY WILL COME UP TO -- THE NURSES WILL COME UP TO THE
21 OFFICER STATION, AND THEY'LL USE THE PA, PUBLIC ANNOUNCEMENT
22 SYSTEM, AND THEY'LL CALL FOR CERTAIN INDIVIDUALS, OR THEY'LL
23 MAKE AN ANNOUNCEMENT THAT THEY ARE PASSING OUT CERTAIN MEDS,
24 MEDICATION.

25 Q OKAY. AND WHAT ANNOUNCEMENTS WILL THEY MAKE BY -- ARE

1 THERE SPECIFIC TYPES OF MEDICATIONS THEY WILL MAKE
2 ANNOUNCEMENTS FOR?

3 **A** USUALLY THEY SAY "HOT MEDS, REPORT TO OFFICER STATION."

4 **Q** WHAT IS YOUR UNDERSTANDING OF HOT MEDS?

5 **A** THAT IT'S A PSYCHIATRIC MEDICATION.

6 **Q** AND THEY WILL SAY "HOT MEDS," AND THEN THAT'S THE
7 INDICATION FOR THE INMATES THAT ARE TO BE RECEIVING HOT MEDS TO
8 COME DOWN AND GET THEM?

9 **A** YES.

10 **Q** OKAY. AND THIS IS DONE RIGHT IN THE DAY ROOM THERE IN FULL
11 VIEW OF EVERYBODY?

12 **A** YES.

13 **Q** OKAY. AND HOW MANY INMATES DO YOU CURRENTLY HAVE AT THE
14 FACILITY AT D10 THAT ARE RECEIVING HOT MEDS?

15 **A** APPROXIMATELY TEN IN MY BUILDING RIGHT NOW.

16 **Q** HAS THAT NUMBER FLUCTUATED?

17 **A** YES. THE MONTH BEFORE IT WAS 15.

18 **Q** ARE YOU ADVISED BY MEDICAL STAFF WHEN AN INMATE HAS AN
19 INFECTIOUS DISEASE?

20 **A** NO.

21 **Q** BUT YOU ARE AWARE THAT THERE ARE INMATES THAT DO HAVE
22 INFECTIOUS DISEASES LIVING IN D10, CORRECT?

23 **A** YES.

24 **Q** HOW DOES THAT AFFECT THE WAY YOU DO YOUR WORK?

25 **A** WE'RE MORE CAUTIOUS AS FAR AS SEARCHING, AND THEN THERE'S

1 NUMEROUS PAT DOWNS AS FAR AS GOING IN AND OFF THE FACILITY. WE
2 HAVE TO TAKE EXTREME CAUTION, ESPECIALLY WITH, LIKE, RAZOR
3 BLADES AND SYRINGES.

4 **MR. BIEN:** I CAN'T HEAR YOU. CAN YOU SPEAK UP?

5 **JUDGE HENDERSON:** THEY'RE HAVING TROUBLE HEARING
6 YOU. SPEAK UP.

7 **BY MR. HENDERSON**

8 **Q** ARE YOU FAMILIAR WITH THE TERM "UNIVERSAL PRECAUTIONS"?

9 **A** YES.

10 **Q** WHAT IS YOUR UNDERSTANDING OF THAT TERM?

11 **A** THAT WE'RE SUPPLIED WITH GLOVES AND OTHER SUPPLIES TO KEEP
12 US FROM GETTING AN INFECTION.

13 **Q** OKAY.

14 **A** REDUCING --

15 **Q** I'M SORRY.

16 **A** AND REDUCING THE CHANCES OF GETTING -- CATCHING ANYTHING.

17 **Q** AND UNDER UNIVERSAL PRECAUTIONS, ARE YOU TO CHANGE GLOVES
18 EACH TIME YOU ENCOUNTER SOME DIFFERENT SITUATION?

19 **A** YES.

20 **Q** DO YOU FOLLOW THE UNIVERSAL PRECAUTIONS?

21 **A** YES.

22 **Q** OKAY. DO YOU GLOVE UP ALL THE TIME?

23 **A** NOT WITH EVERY INTERACTION WITH THE INMATES.

24 **Q** WHY IS THAT?

25 **A** WELL, WHEN WE HELP THEM WITH PAPERWORK OR ANYTHING LIKE,

1 EXCHANGE PAPERWORK OR BOOKS, IT'S -- THE INMATE FEELS IT'S
2 DISRESPECTFUL IF WE TELL THEM, WAIT A MINUTE, PUT ON GLOVES AND
3 THEN DEAL WITH THEM, AND THEY JUST GET UPSET OVER THAT. SO WE
4 CAN'T USE THEM EVERY SINGLE TIME WE'RE INTERACTING WITH THE
5 INMATES.

6 **Q** NOW, THE FACILITY D10 HAS ITS OWN TOILETS, SINKS, AND
7 SHOWERS, CORRECT?

8 **A** YES.

9 **Q** AND I THINK WHEN YOUR DEPOSITION WAS TAKEN -- AND, AGAIN,
10 IN YOUR DECLARATION YOU GAVE AN ESTIMATE OF THE NUMBER OF
11 TOILETS AND SHOWERS AND SINKS THAT ARE LOCATED AT D10?

12 **A** YES.

13 **Q** OKAY. AND I BELIEVE YOU INDICATED EIGHT TOILETS,
14 APPROXIMATELY EIGHT TOILETS, TWELVE SINKS -- TEN SINKS, AND
15 TWELVE SHOWERS?

16 **A** YES.

17 **Q** AND HAVE YOU GONE BACK AND ACTUALLY COUNTED THE NUMBER OF
18 TOILETS, SHOWERS, AND SINKS SINCE YOU GAVE YOUR DECLARATION?

19 **A** YES. THE TOTAL FOR THE ENTIRE BUILDING IS TWENTY-TWO
20 SINKS, FIFTEEN SHOWERS, TEN TOILETS, SIX URINALS.

21 **Q** OKAY. THAT'S FOR 340 INMATES?

22 **A** YES.

23 **Q** AND HAS THE -- SINCE YOU HAVE BEEN IN THAT -- OR STRIKE
24 THAT.

25 WAS THE -- WITHIN THE LAST TWO YEARS HAS THE SHOWER

1 NUMBER ALWAYS BEEN 15?

2 **A** NO. IT USED TO BE 20, BUT AFTER THEY DID MODIFICATIONS TO
3 THE ROOFS AND THE REPAIRS INSIDE THE BUILDING, THEY'VE TAKEN
4 AWAY FIVE SHOWERS OUT OF EACH BUILDING.

5 **Q** OKAY. NOW, ARE THERE -- OBVIOUSLY, PART OF YOUR DUTIES IS
6 TRYING TO ENSURE THAT THE DORM STAYS IN A CLEAN STATE?

7 **A** YES.

8 **Q** HOW IS THAT -- HOW DO YOU ATTEMPT TO ACCOMPLISH THAT?

9 **A** THOSE ARE DONE BY -- THE CLEANING IS DONE BY PORTERS THAT
10 WE HAVE WORKING IN THE HOUSING UNIT.

11 **Q** WITH RESPECT TO THE SHOWERS AND THE TOILETS, ARE YOU ABLE
12 TO KEEP THEM IN A CLEAN CONDITION?

13 **A** NO, NOT FOR VERY LONG.

14 **Q** WHAT'S THE PROBLEM THERE? WHAT PREVENTS THAT FROM
15 HAPPENING?

16 **A** AS SOON AS THE PORTER IS DONE CLEANING THE RESTROOM, IT
17 IMMEDIATELY GETS FULL RIGHT AFTERWARDS. IT DOESN'T STAY CLEAN
18 FOR VERY LONG.

19 **Q** WHAT -- IN THE SUMMER, WHAT IS THE OUTSIDE WEATHER LIKE AT
20 CHUCKAWALLA?

21 **A** IT COULD GET INTO THE 120'S.

22 **Q** HOW ABOUT -- HOW OFTEN ARE THE TEMPERATURES OVER A HUNDRED
23 DEGREES?

24 **A** THEY CAN REMAIN UP TO THREE MONTHS DURING THE SUMMER.

25 **Q** THREE MONTHS AT A TIME?

1 **A** YEAH, THREE MONTHS AT A TIME.

2 **Q** HAVE YOU SEEN MEDICAL REACTIONS FROM INMATES THAT ARE THERE
3 AT THE FACILITY DUE TO THE EFFECTS OF THE SUN?

4 **A** YES. HEAT STROKES GO UP, AND ALSO SEIZURES.

5 **Q** WHAT KIND OF CIRCUMSTANCES, IF YOU KNOW, OCCUR?

6 **A** IT'S USUALLY --

7 **Q** WHAT DO YOU SEE WHEN IT MANIFESTS ITSELF?

8 **A** THE INMATE USUALLY IS -- DROPS TO THE GROUND, JUST STARTS
9 SHAKING, CONVULSING.

10 **Q** DO YOU KNOW IF THOSE SEIZURES HAD AFFECTED ANY OF THE
11 INMATES YOU KNEW TO BE TAKING HOT MEDS?

12 **A** YES.

13 **JUDGE HENDERSON:** COUNSEL, IT'S CLEAR TO ME THAT
14 THIS IS A HEAT PROBLEM. IT'S LESS CLEAR THIS IS AN
15 OVERCROWDING PROBLEM.

16 **MR. HENDERSON:** WELL, I THINK IT RELATES TO THE
17 FACT -- WELL, I DON'T KNOW IF YOU WANT ARGUMENT AT THIS POINT,
18 YOUR HONOR. OKAY. I'M MOVING ON FROM THAT TOPIC ANYWAY.

19 **BY MR. HENDERSON**

20 **Q** IS THERE FORCED OVERTIME AT CHUCKAWALLA?

21 **A** YES.

22 **Q** AND DOES THIS CONSIST OF MANDATORY DOUBLE SHIFTS?

23 **A** YES.

24 **Q** AND, BASICALLY, HOW IS THE FORCED OVERTIME ASSIGNED?

25 **A** IT'S ASSIGNED BY SENIORITY, OF COURSE. LOWEST SENIORITY

1 NUMBER WILL GO FIRST, AND IT DEPENDS ON HOW MANY VACANT
2 POSITIONS THAT NEED TO BE FILLED.

3 Q AND, TYPICALLY, WITH RESPECT TO FORCED OVERTIME, WHEN WILL
4 A CORRECTIONAL OFFICER BE NOTIFIED THAT HE'S GOING TO NEED TO
5 WORK A DOUBLE SHIFT?

6 A TOWARDS THE END OF THE SHIFT, THEIR OWN SHIFT.

7 Q OKAY. NOW, YOU, YOURSELF, SIR, HOW FAR AWAY IN TIME DO YOU
8 LIVE FROM THE UNIT, CHUCKAWALLA?

9 A CAN YOU CLARIFY?

10 Q YES. IN TERMS OF HOW LONG DOES IT TAKE YOU TO DRIVE TO
11 WORK EACH DAY?

12 A HOUR AND TEN MINUTES.

13 Q OKAY. ARE YOU AWARE OF MANY CORRECTIONAL OFFICERS THAT
14 LIVE MORE THAN AN HOUR AWAY FROM THE FACILITY?

15 A YES.

16 Q OKAY. WHAT'S -- YOU, YOURSELF, HAVE HAD TO WORK MANDATORY
17 DOUBLE SHIFTS, CORRECT?

18 A YES.

19 Q WHAT'S THE LONGEST YOU HAVE HAD TO WORK ON A CONTINUOUS
20 BASIS?

21 A THE LONGEST SHIFT I EVER DID WAS 20 HOURS.

22 Q AND WHAT DO YOU DO YOURSELF WHEN YOU DO HAVE TO -- STRIKE
23 THAT.

24 WHEN YOU WORK DOUBLE SHIFTS, IS THERE ANYTHING YOU
25 DO TO MAINTAIN YOUR ABILITY TO PERFORM YOUR DUTIES DURING THE

1 SECOND SHIFT?

2 **A** DRINK LOTS OF COFFEE.

3 **Q** AND OVER A TWO-SHIFT PERIOD, HOW MUCH ARE WE TALKING ABOUT?

4 **A** OVER 12 CUPS, POT. WHATEVER I THINK, 12 CUPS.

5 **Q** IS THAT PER SHIFT OR IS THAT FOR BOTH SHIFTS?

6 **A** IT'S USUALLY CLOSE TO PER SHIFT.

7 **Q** OKAY. YOU ARE DRINKING MORE IN THE FIRST SHIFT BECAUSE YOU
8 KNOW YOU ARE GOING TO BE WORKING THE SECOND SHIFT?

9 **A** YES.

10 **Q** WHAT PROBLEMS HAVE YOU PERCEIVED CAN RESULT FROM WORKING
11 DOUBLE SHIFTS?

12 **A** I DO THE BEST I CAN AS FAR AS BEING ALERT. IT'S TOUGH.

13 **Q** OKAY. WHAT -- WHEN -- I TAKE IT WITH A DOUBLE SHIFT YOU
14 ARE OFF EIGHT HOURS, AND YOU ARE SUPPOSED TO BE BACK AT WORK,
15 CORRECT?

16 **A** YES.

17 **Q** HOW DO --

18 **JUDGE REINHARDT:** IS THIS ABOUT WHETHER THE GUARDS
19 GET TOO MUCH OVERTIME?

20 **MR. HENDERSON:** I'M SORRY?

21 **JUDGE REINHARDT:** IS THIS ABOUT WHETHER THE PRISON
22 GUARDS ARE GETTING TOO MUCH OVERTIME PAY?

23 **MR. HENDERSON:** NO, NOT TOO MUCH OVERTIME PAY, JUST
24 THE EFFECTS OF THE OVERTIME ON THE GUARDS' ABILITIES TO HANDLE
25 SITUATIONS AT THE FACILITY.

1 **JUDGE KARLTON:** I'M CONFUSED AS WELL. OVERTIME --
2 HOW IS OVERTIME RELATED TO OVERCROWDING? IT SEEMS TO ME THAT
3 IT'S A PROBLEM THAT THE SYSTEM HAS FAILED TO HIRE ENOUGH GUARDS
4 FOR A REMOTE PRISON SUCH AS THIS ONE. I MEAN, IS IT AT ALL
5 CONNECTED TO PHASE ONE?

6 **MR. HENDERSON:** WELL, I THINK IT IS, YOUR HONOR,
7 BECAUSE IT GOES TO THE QUESTION OF THE HEALTH PROBLEMS THAT ARE
8 CREATED BY OVERCROWDING ARE FURTHER AFFECTED BY THE ABILITY OF
9 THE GUARDS TO DO THEIR DUTIES. IF THEY ARE ON A --

10 **JUDGE KARLTON:** I SEE. I UNDERSTAND.

11 **MR. HENDERSON:** THANK YOU, YOUR HONOR.

12 **JUDGE KARLTON:** BUT EVEN THAT -- I'M SORRY, I SAY I
13 SEE, BUT I DON'T SEE, NOW THAT I THINK ABOUT IT.

14 CONCEDING THAT, AGAIN THAT'S A PROBLEM, APPARENTLY,
15 OF THE INABILITY OR UNWILLINGNESS TO HIRE A SUFFICIENT NUMBER
16 OF GUARDS FOR A REMOTE PRISON SUCH AS THIS, AND WHILE IT HAS
17 OBVIOUSLY ADVERSE EFFECTS, THE QUESTION IS WHETHER THAT RELATED
18 TO CROWDING, OVERCROWDING.

19 **MR. HENDERSON:** WELL, I THINK IT -- I GUESS THE
20 QUESTION THEN IS, YOUR HONOR, IF YOU HAD ENOUGH GUARDS, WOULD
21 YOU HAVE --

22 **JUDGE KARLTON:** WILL YOU EXPLAIN TO US WHAT HE'S
23 DOING?

24 **MR. ADAM:** GREGG ADAM, ALSO CARROLL, BURDICK &
25 MCDONOUGH, ALSO REPRESENTING CCPOA. I REPRESENT CCPOA MORE

1 GENERALLY DOING LABOR CONDITIONS.

2 HERE'S THE CONNECTION, YOUR HONOR: THE INCREASED
3 NEED FOR OVERTIME IS DIRECTLY DRIVEN BY THE OVERCROWDING. THE
4 MORE INMATES YOU HAVE, THE MORE NEED FOR STAFF. THAT'S WHAT
5 ONE OF OUR WITNESSES TESTIFIED TO YESTERDAY. SO PART OF THE
6 PROBLEM IS, DUE TO THE INABILITY TO HIRE MORE STAFF, YOU HAVE
7 MORE AND MORE NEED FOR OVERTIME. AND THE PROBLEMS WE ARE
8 IDENTIFYING IS THIS INCREASING NEED FOR OVERTIME HAS ALL KINDS
9 OF ADVERSE EFFECTS ON THE ABILITY OF CORRECTIONAL OFFICERS,
10 NURSES, WHATEVER STAFF, TO PROPERLY PERFORM THEIR DUTIES, AND
11 THAT HAS AN IMPACT ON INMATES. IF A CORRECTIONAL OFFICER IS
12 HALF ASLEEP AT THE END OF A 16 OR 20-HOUR SHIFT, HE OR SHE IS
13 GOING TO BE MUCH LESS COMPETENT IN IDENTIFYING MEDICAL ISSUES
14 AMONG INMATES.

15 **JUDGE KARLTON:** COUNSEL, THAT WOULD BE TRUE IF THERE
16 WERE HALF THE NUMBER OF INMATES.

17 **MR. ADAM:** RIGHT. BUT IF THERE WAS HALF THE NUMBER
18 OF INMATES, THERE WOULDN'T BE THE NEED FOR OVERTIME. THERE
19 WOULD BE REDUCED NEED FOR STAFF. AGAIN, THE OVERTIME, THE
20 NUMBER OF STAFF NECESSARY --

21 **JUDGE KARLTON:** WE ARE SPENDING MORE TIME TRYING TO
22 FIGURE OUT IF IT'S RELEVANT.

23 **MR. ADAM:** THE NUMBER OF STAFF NECESSARY IS DRIVEN
24 BY THE NUMBER OF INMATES.

25 **JUDGE KARLTON:** THAT WAS AN INVITATION FOR YOU TO

1 STOP TALKING.

2 **MR. ADAM:** I WILL.

3 **JUDGE REINHARDT:** I THINK WE COULD SPEED UP THIS
4 SUBJECT -- I MEAN, WHETHER HE LIVES -- DRIVES AN HOUR TO WORK
5 OR NOT BECAUSE HE LIVES IN THE DESERT -- I HAVE TO DRIVE AN
6 HOUR TO WORK, AND I LIVE NEAR THE OCEAN. I MEAN, PART OF THIS
7 MAY BE RELEVANT, BUT I THINK THE NUMBER OF THE QUESTIONS WOULD
8 BE ELIMINATED.

9 **MR. HENDERSON:** THE POINT IS THIS --

10 **JUDGE REINHARDT:** I ALSO SOMETIMES WORK 20 HOURS A
11 DAY.

12 **JUDGE KARLTON:** THAT'S BECAUSE YOU ARE A GLUTTON.

13 **MR. HENDERSON:** I UNDERSTAND. THE POINT IS THIS,
14 YOUR HONOR, AND I WON'T BELABOR THIS. THE POINT IS THEY DRIVE
15 AN HOUR EACH WAY. THAT GIVES THEM SIX HOURS TO DO EVERYTHING
16 ELSE.

17 **JUDGE REINHARDT:** HAVE THEM MOVE CLOSER THEN. OKAY,
18 FINE.

19 **BY MR. HENDERSON**

20 **Q** WHAT EFFECTS HAVE YOU SEEN AS A RESULT OF OVERCROWDING AT
21 CHUCKAWALLA?

22 **A** THE LACK OF GETTING THEM TO MEDICAL, EITHER ON THE YARDS OR
23 CENTRAL INFIRMARY; CANNOT SEE IN THE CUBICLES AS FAR AS THE
24 INMATES, IF THERE'S ONE MISBEHAVING. IT'S EXTREMELY CROWDED.
25 IT'S DANGEROUS WHEN WE HAVE TO WALK THE TIERS OR WALK THE

1 FLOOR. AND, USUALLY, WE WALK IN TWOS BECAUSE IT'S JUST HARD TO
2 SEE. THERE'S TOO MANY CORNERS. THE BUNKS FILL THE CUBICLE
3 WHERE YOU CAN'T SEE INTO THEM AT ALL.

4 **Q** DO YOU -- DOES OVERCROWDING LEAD TO A GREATER INCIDENCE OF
5 INMATE VIOLENCE?

6 **A** YES.

7 **Q** INMATE-TO-INMATE VIOLENCE?

8 **A** YES.

9 **Q** HOW ABOUT INMATE-TO-STAFF VIOLENCE?

10 **A** WE'VE HAD A FEW INCIDENTS THIS YEAR.

11 **Q** AND, IN YOUR OPINION, DO YOU CONSIDER OVERCROWDING TO BE
12 THE PRIMARY CAUSE FOR PROBLEMS WITH MENTAL HEALTHCARE DELIVERED
13 TO INMATES AT CS -- AT THE CHUCKAWALLA FACILITY?

14 **A** YES.

15 **MR. MELLO:** OBJECT. PAUL MELLO FOR DEFENDANTS.
16 OBJECTION. IT LACKS FOUNDATION. IT'S AN IMPROPER EXPERT
17 OPINION.

18 **MR. HENDERSON:** I THINK IT GOES TO WEIGHT, YOUR
19 HONOR, BUT I'LL --

20 **MR. MELLO:** AND HE HASN'T BEEN QUALIFIED AS AN
21 EXPERT IN THE CASE. THANK YOU.

22 **JUDGE HENDERSON:** I'LL OVERRULE THE OBJECTION. YOU
23 MAY ANSWER THAT.

24 **THE WITNESS:** YES.
25

1 **BY MR. HENDERSON**

2 **Q** IS THE OVERCROWDING -- DO YOU HAVE -- HOW ARE THE -- IN
3 TERMS OF THE CONDITIONS OF THE TOILETS AND THE SHOWERS, WHAT DO
4 YOU NOTE IN D10 ABOUT THE OPERATION OF THE SHOWERS AND THE
5 TOILETS, ARE THERE BREAKDOWNS?

6 **A** YES.

7 **Q** HOW FREQUENTLY DO THEY OCCUR?

8 **A** QUITE FREQUENTLY.

9 **Q** AND HOW ARE THEY DEALT WITH? LET'S TALK FIRST ABOUT THE
10 TOILETS.

11 **A** USUALLY, THE TOILETS, THEY'RE FIXED RIGHT AWAY. BUT IF
12 IT'S A SHOWER HEAD OR A SINK, IT MAY TAKE A FEW DAYS, MAYBE UP
13 TO A WEEK.

14 **Q** SO THE NUMBER OF -- STRIKE THAT.

15 **MR. HENDERSON:** I THINK THAT'S ALL I HAVE. THANK
16 YOU, YOUR HONOR.

17 **JUDGE HENDERSON:** MR. BIEN?

18 **DIRECT EXAMINATION BY MR. BIEN**

19 **BY MR. BIEN**

20 **Q** GOOD MORNING, SIR. MY NAME IS MICHAEL BIEN. I'M
21 REPRESENTATIVE OF PLAINTIFF COLEMAN CLASS.

22 **A** GOOD MORNING.

23 **Q** WERE YOU TRAINED AS A CORRECTIONAL OFFICER AT CHUCKAWALLA
24 STATE PRISON IN THE COLEMAN COURT ORDERS DEALING WITH HEAT
25 EMERGENCIES?

1 **A** YES.

2 **Q** AND CAN YOU EXPLAIN WHAT YOU WERE TRAINED TO DO IN
3 CONNECTION WITH A HEAT EMERGENCY?

4 **A** IN A HEAT EMERGENCY CALL FOR A MEDICAL STAFF.

5 **Q** AS PART OF THIS PROCEDURE, IS THERE TRACKING OF
6 TEMPERATURE, BOTH INSIDE AND OUTSIDE OF CHUCKAWALLA HOUSING
7 UNITS?

8 **A** YES.

9 **Q** HAVE YOU EVER PARTICIPATED IN THAT PROCESS?

10 **A** YES, WHEN I WORKED OVERTIME.

11 **Q** WHEN THE TEMPERATURE REACHES A CERTAIN LEVEL, ARE THERE
12 CERTAIN PROCEDURES THAT GO INTO EFFECT?

13 **A** YES, AT 90 DEGREES.

14 **Q** WHAT HAPPENS TO -- WHAT HAPPENS AT THAT POINT? WHAT DO YOU
15 DO WHEN THE TEMPERATURE REACHES 90 DEGREES?

16 **A** WE'LL MAKE AN ANNOUNCEMENT THAT THE TEMPERATURE HAS REACHED
17 90 DEGREES. THAT LETS THE INMATES KNOW THEY'RE AT HEAT RISK,
18 COME INSIDE THE BUILDING, AND THEY HAVE ACCESS TO ICE.

19 **Q** OKAY. AND WHO DO YOU UNDERSTAND THESE INMATES WHO ARE AT
20 HEAT RISK ARE?

21 **A** YES.

22 **Q** WHO ARE THEY? DO YOU KNOW WHO THEY ARE?

23 **A** EXACTLY EACH INDIVIDUAL?

24 **JUDGE KARLTON:** NO. HE MEANS WHAT KIND.

25

1 **BY MR. BIEN**

2 **Q** AS A GROUP. AS A GROUP, DO YOU UNDERSTAND WHO THEY ARE?

3 **A** AS A GROUP, HOT MEDS ARE AT HEAT RISK.

4 **Q** YOU UNDERSTAND THESE ARE INMATES WHO HAVE BEEN PRESCRIBED
5 MEDICATIONS THAT MAKE THEM VULNERABLE TO HEAT?

6 **A** YES.

7 **Q** DO THEY GET SPECIFIC ID CARDS ISSUED TO THEM?

8 **A** YES.

9 **Q** AND WERE YOU TOLD IN YOUR TRAINING WHY IT IS THAT THESE
10 INMATES ARE SPECIALLY TRACKED TO CHUCKAWALLA?

11 **A** JUST BECAUSE OF THE MEDICATION THAT THEY'RE TAKING.

12 **Q** DO YOU UNDERSTAND THAT THEY'RE VULNERABLE TO SIDE EFFECTS
13 FROM THE COMBINATION OF THEIR MEDICATIONS AND EXTREME HEAT?

14 **MR. LEWIS:** OBJECTION, YOUR HONOR. LEADING.

15 **JUDGE HENDERSON:** IT IS LEADING, COUNSEL.

16 **BY MR. BIEN**

17 **Q** DID YOU RECEIVE TRAINING CONCERNING THAT, SIR?

18 **A** YES.

19 **Q** WHAT WERE YOU TOLD IN YOUR TRAINING?

20 **A** THEY DESCRIBED THE DRUGS. I CAN'T REMEMBER EXACTLY EACH
21 ONE, BUT THAT THEY DO HAVE AN EFFECT ON THE INMATE, ESPECIALLY
22 DURING THE SUMMER.

23 **Q** OKAY. AND HAVE YOU BEEN -- YOU HAVE BEEN AT CHUCKAWALLA
24 WHEN THERE HAVE BEEN HEAT EMERGENCIES?

25 **A** YES.

1 Q LET'S JUST LOOK AT THIS LAST SUMMER. HAD THERE BEEN HEAT
2 EMERGENCIES DURING THIS LAST SUMMER?

3 A YES.

4 Q YOU MENTION THAT THERE ARE INMATES ON HEAT MEDS, HEAT --
5 INMATES IN THE UNIT THAT YOU WORK; IS THAT CORRECT?

6 A YES.

7 Q OKAY. HAVE YOU WORKED IN YOUR UNIT AT A TIME WHEN THERE
8 WERE NOT INMATES ON HEAT RISK MEDICATIONS?

9 A NO.

10 Q OKAY. THERE HAS ALWAYS BEEN SOMEONE THERE?

11 A YES.

12 Q WERE YOU TRAINED AT ANY TIME CONCERNING WHETHER OR NOT
13 CHUCKAWALLA STATE PRISON IS A PRISON THAT IS EXCLUDED FROM
14 HOUSING INMATES ON HEAT RISK?

15 MS. TILLMAN: OBJECTION.

16 THE WITNESS: CAN YOU CLARIFY?

17 BY MR. BIEN

18 Q WERE YOU EVER TOLD THAT PEOPLE WHO ARE TAKING HOT MEDS
19 SHOULD NOT BE AT CHUCKAWALLA?

20 A YES.

21 Q CAN YOU EXPLAIN WHO TOLD YOU THAT?

22 A MEDICAL HAVE SOMETIMES MENTIONED IT, AND MY SUPERVISORS.

23 Q DO YOU HAVE ANY INSTRUCTIONS OF WHAT TO DO WHEN YOU FIND
24 THAT AN INMATE IS TAKING HOT MEDS?

25 A NO.

1 Q OKAY. ARE YOU AWARE OF ANY PROCEDURE FOR REMOVING INMATES
2 ON HOT MEDS FROM CHUCKAWALLA STATE PRISON?

3 A THE ONLY PROCEDURE I KNOW IS THAT THEY HAVE DESIGNATED
4 BUILDINGS, WHICH THERE ARE TWO ON EACH COMPLEX, AND THAT'S D11,
5 WHICH IS THE BUILDING NEXT TO MINE, AND THEN ON ANOTHER
6 FACILITY, WHICH IS A2, AND THE INMATES WILL MOVE FROM MY
7 BUILDING TO A DESIGNATED CUBICLE IN D11.

8 Q SO THERE ARE OTHER UNITS AT CHUCKAWALLA STATE PRISON
9 WHERE -- IS THAT CORRECT? THERE ARE OTHER UNITS WHERE INMATES
10 ON HOT MEDS ARE HOUSED REGULARLY?

11 A YES.

12 Q SO THERE WOULD BE MORE IN THOSE UNITS THAN IN YOUR UNIT?

13 A YES.

14 Q HAVE THERE EVER BEEN LOCKDOWNS AT CHUCKAWALLA STATE PRISON
15 WHILE YOU WERE WORKING THERE?

16 A YES.

17 Q HAVE ANY HAPPENED IN THE LAST SIX MONTHS?

18 A YES.

19 Q DURING A LOCKDOWN, HOW ARE MEDICATIONS DISTRIBUTED ON YOUR
20 UNIT?

21 A THE NURSE WILL COME UP TO THE OFFICER STATION AND SHE'LL
22 MAKE AN ANNOUNCEMENT FOR HOT MEDS, OR SHE'LL CALL EACH PERSON
23 INDIVIDUALLY TO COME UP. THEY STAND IN LINE, AND THEN SHE
24 GIVES THE MEDICATION ONE BY ONE.

25 Q HOW IS THAT DIFFERENT WHEN THERE IS NOT A LOCKDOWN?

1 **A** THEY WILL REPORT TO MEDICAL ON THE FACILITY AND PRETTY MUCH
2 THE SAME THING.

3 **Q** ARE THERE ANY OTHER -- DURING A LOCKDOWN, DO INMATES GET
4 YARD?

5 **A** NO.

6 **Q** ARE THERE ANY OTHER RESTRICTIONS ON PROGRAMS DURING A
7 LOCKDOWN?

8 **A** NO.

9 **Q** HAVE YOU EVER HEARD THE TERM "EOP" OR "ENHANCED
10 OUTPATIENT"?

11 **A** OUTPATIENT?

12 **Q** HAVE YOU EVER HEARD OF THE TERM "ENHANCED OUTPATIENT" OR
13 "EOP"?

14 **A** NO.

15 **Q** OKAY. ARE YOU AWARE OF ANY REQUIREMENTS TO TRANSFER
16 MENTALLY ILL PRISONERS WHO ARE IDENTIFIED AT CHUCKAWALLA AWAY
17 FROM CHUCKAWALLA?

18 **A** I JUST KNOW THAT THEY SAY -- THEY TRANSFER THEM TO DONOVAN
19 STATE PRISON IN SAN DIEGO.

20 **Q** HOW DO YOU KNOW THAT?

21 **A** THE INMATES TELL ME, OR MEDICAL STAFF WILL SAY THAT.

22 **Q** AND ARE YOU AWARE OF ANY -- HAVE YOU EVER BEEN INFORMED OF
23 ANY PROCEDURES FOR ACHIEVING THOSE TRANSFERS?

24 **A** NO.

25 **Q** HAS ANYONE EVER TOLD YOU THERE HAVE BEEN DELAYS IN SUCH

1 TRANSFERS?

2 **A** YES.

3 **Q** WHO TOLD YOU THAT?

4 **A** MEDICAL STAFF AND THE INMATES THEMSELVES.

5 **Q** WHAT DID THEY TELL YOU?

6 **A** THAT I'M NOT SUPPOSED TO BE HERE BECAUSE OF MY MEDICATION,
7 IT'S HOT. AND THEY COMPLAIN ABOUT THEIR TRANSFERS, OR THEY
8 FILE A 602 APPEAL TO MEDICAL, AND THERE'S DELAYS.

9 **Q** HAVE YOU EVER BEEN INFORMED ABOUT THE LENGTH OF ANY OF
10 THESE DELAYS?

11 **A** I AM AWARE OF THREE MONTHS ON A CERTAIN INDIVIDUAL.

12 **Q** CAN YOU DESCRIBE THAT INDIVIDUAL?

13 **A** HE HAD NUMEROUS SEIZURES, AND HE WAS ON MEDICATION. HE WAS
14 HOUSED IN D11. I HAD BEEN WORKING OVERTIME AND SHIFTS IN
15 THERE, AND HE WOULD ALWAYS COME UP AND COMPLAIN.

16 **Q** OKAY. DID YOU RECOMMEND TO HIM THAT HE FILE A 602?

17 **A** YES, AND SENT HIM TO MEDICAL DEPARTMENT, TALK TO THEM.

18 **Q** DID YOU HELP HIM DO THAT?

19 **A** YES.

20 **Q** OKAY. AND WAS HE TRANSFERRED, TO YOUR KNOWLEDGE?

21 **A** WHEN I TALKED TO HIM, IT WAS LIKE A MONTH LATER, SO HE HAD
22 BEEN IN THERE FOR LIKE THREE MONTHS.

23 **Q** TO YOUR KNOWLEDGE, HAS HE BEEN TRANSFERRED?

24 **A** YES, HE WAS TRANSFERRED.

25 **Q** AND HOW LONG DID IT TAKE?

1 **A** TOTAL OF THREE MONTHS, I GUESS.

2 **MR. BIEN:** I HAVE NO FURTHER QUESTIONS.

3 **JUDGE HENDERSON:** CROSS-EXAMINATION. GOOD MORNING.

4 **MR. LEWIS:** YOUR HONORS, KYLE LEWIS FOR THE STATE
5 DEFENDANTS.

6 **CROSS-EXAMINATION BY MR. LEWIS**

7 **BY MR. LEWIS**

8 **Q** GOOD MORNING, OFFICER LEIJA.

9 **A** GOOD MORNING.

10 **Q** YOU HAVE BEEN A CORRECTIONAL OFFICER FOR CDCR SINCE LATE
11 1996, CORRECT?

12 **A** YES.

13 **Q** AND DURING THAT TIME, THE ONLY PRISON YOU HAVE WORKED AT
14 HAS BEEN CHUCKAWALLA VALLEY STATE PRISON?

15 **A** YES.

16 **Q** HAVE YOU EVER RECEIVED ANY FORMAL EDUCATION IN THE MEDICAL
17 FIELD?

18 **A** NO.

19 **Q** HAVE YOU EVER RECEIVED ANY FORMAL EDUCATION IN THE MENTAL
20 HEALTH FIELD?

21 **A** NO.

22 **Q** AS A CORRECTIONAL OFFICER, YOU ARE RESPONSIBLE FOR
23 MAINTAINING SECURITY IN YOUR HOUSING UNIT, CORRECT?

24 **A** YES.

25 **Q** YOU HAVE TESTIFIED THAT YOU OBSERVED INMATES OR OBSERVED

1 INCIDENTS OF INMATES WITH GASTROINTESTINAL AILMENTS AND THE
2 FLU, CORRECT?

3 **A** YES.

4 **Q** YOU ALSO TESTIFIED REGARDING CONTAGIOUS STAPH INFECTIONS,
5 CORRECT?

6 **A** YES.

7 **Q** YOU HAVE TESTIFIED THAT THERE'S NO MEANS TO SPREAD -- OR
8 THERE'S NO MEANS TO PREVENT SPREAD OF GASTROINTESTINAL AILMENTS
9 AND FLU TO OTHERS IN YOUR HOUSING UNIT, CORRECT?

10 **A** YES.

11 **Q** AND WHEN YOU REPORT TO DUTY EACH DAY, YOU WORK IN THAT
12 HOUSING UNIT FOR MANY HOURS, CORRECT?

13 **A** YES.

14 **Q** YET, DESPITE ALL YOUR TIME IN THAT HOUSING UNIT, YOU HAVE
15 NEVER CONTRACTED A GASTROINTESTINAL DISEASE, HAVE YOU?

16 **A** NO.

17 **Q** ISN'T IT TRUE YOU DON'T KNOW THE CAUSE OF GASTROINTESTINAL
18 DISEASE?

19 **A** CAN YOU CLARIFY?

20 **Q** ISN'T IT TRUE THAT YOU DON'T KNOW WHAT CAUSES
21 GASTROINTESTINAL DISEASES?

22 **A** NO.

23 **Q** AND YOU CAN'T IDENTIFY ANY SPECIFIC -- ANY SPECIFIC
24 INCIDENTS WHERE AN INMATE WAS DENIED MEDICAL CARE DUE TO THE
25 SIZE OF THE PRISON POPULATION AT CHUCKAWALLA VALLEY STATE

1 PRISON, CAN YOU?

2 **A** NO.

3 **Q** YOU TESTIFIED THAT PROBLEMS EXIST REGARDING THE DELIVERY OF
4 MEDICAL SERVICES TO TREAT AILMENTS YOU OBSERVED, CORRECT?

5 **A** YES.

6 **Q** BUT YOU DON'T HAVE AN IDEA OR AN IN-DEPTH KNOWLEDGE OF THE
7 MEDICAL CARE SERVICES PROVIDED AT CHUCKAWALLA VALLEY STATE
8 PRISON, DO YOU?

9 **A** NO.

10 **Q** ISN'T IT TRUE THAT YOU CAN'T TELL THE DIFFERENCE BETWEEN
11 THE AILMENTS YOU DESCRIBED, FLU AND GASTROINTESTINAL AILMENTS
12 THAT YOU TESTIFIED ABOUT?

13 **A** NO.

14 **JUDGE REINHARDT:** NO, IT'S NOT TRUE, OR NO --

15 **THE WITNESS:** NO, I CAN'T TELL THE DIFFERENCE.

16 **BY MR. LEWIS**

17 **Q** IN FACT, YOU CAN'T IDENTIFY THESE AILMENTS BASED ON
18 PERSONAL OBSERVATION ALONE, CAN YOU?

19 **A** NO.

20 **Q** AND THAT'S BECAUSE YOU SAY THEY HAVE MANY OF THE SAME
21 SYMPTOMS, DON'T THEY?

22 **A** YES.

23 **Q** INDEED, YOUR UNDERSTANDING OF THESE AILMENTS IS BASED
24 PRIMARILY ON WHAT THE INMATES TELL YOU, CORRECT?

25 **A** AND MEMOS THAT HAVE BEEN SUBMITTED BY SUPERVISORS.

1 Q YOU'VE NEVER HAD A GASTROINTESTINAL DISEASE, CORRECT?

2 A NO.

3 Q AND YOU TESTIFIED THAT THERE WERE SITUATIONS WHERE INMATES
4 DID NOT RECEIVE MEDICAL CARE, CORRECT?

5 A YES.

6 Q AND THE BASIS FOR THIS IS WHAT THE INMATES HAVE TOLD YOU?

7 A YES.

8 Q AND, IN FACT, YOU HAVE NO SCIENTIFIC OR MEDICAL BACKGROUND
9 WHICH ENABLES YOU TO SAY THAT OVERCROWDING CAUSES INFECTIONS,
10 FLU OR GASTROINTESTINAL AILMENTS, DO YOU?

11 A NO.

12 Q I WANT TO ASK YOU SOME QUESTIONS ABOUT THE EOP PROGRAMS AND
13 SOME OF THOSE OTHER ISSUES YOU HEARD ABOUT IN REFERENCE TO
14 COLEMAN.

15 JUDGE KARLTON: HE ALREADY SAID HE DOESN'T KNOW.

16 JUDGE HENDERSON: HE DOESN'T KNOW EOP.

17 BY MR. LEWIS

18 Q YOU TESTIFIED REGARDING YOUR KNOWLEDGE OF DELAYS IN
19 TRANSFERRING INMATES AWAY FROM CHUCKAWALLA VALLEY STATE PRISON,
20 CORRECT?

21 A YES.

22 Q ARE YOU AWARE THAT IT HAS BEEN DETERMINED THAT MANY INMATES
23 WITH THOSE KINDS OF NEEDS, WITH EOP-TYPE NEEDS, WERE
24 TRANSFERRED TO APPROPRIATE INSTITUTIONS WITHIN THE REQUIRED
25 TIMEFRAMES?

1 **JUDGE KARLTON:** THAT ASSUMES SOMETHING NOT IN
2 EVIDENCE. YOU CAN CERTAINLY ASK HIM WHETHER THAT'S TRUE. HE
3 CAN'T SAY IT'S ESTABLISHED BECAUSE THERE'S NO EVIDENCE OF THAT
4 BEFORE THE COURT AT THE MOMENT.

5 **MR. LEWIS:** THANK YOU, YOUR HONOR. NO FURTHER
6 QUESTIONS, YOUR HONOR.

7 **JUDGE HENDERSON:** I DIDN'T MEAN TO CUT YOU OFF, IF
8 THAT WAS THE LAST QUESTION.

9 **MR. LEWIS:** THANK YOU VERY MUCH.

10 **JUDGE HENDERSON:** LET'S SEE. DEFENDANT INTERVENORS
11 HAVE ANY CROSS?

12 **MR. MITCHELL:** NO FURTHER CROSS, YOUR HONOR.

13 **JUDGE HENDERSON:** OKAY. REDIRECT?

14 **MR. HENDERSON:** JUST BRIEFLY, YOUR HONOR.

15 **REDIRECT EXAMINATION BY MR. HENDERSON**

16 **BY MR. HENDERSON**

17 **Q** NOW, YOU WERE ASKED ABOUT DELAYS IN MEDICAL TREATMENT
18 DURING LOCKDOWNS?

19 **A** YES.

20 **Q** OKAY. DURING A LOCKDOWN, IF AN INMATE HAS A -- WHEN THERE
21 ISN'T A LOCKDOWN AND AN INMATE SAYS THAT HE HAS A PROBLEM THAT
22 NEEDS MEDICAL ATTENTION, WHAT IS DONE FOR HIM?

23 **A** I CALL MEDICAL, THE MEDICAL FACILITY ON THE YARD. I LET
24 THEM KNOW HE'LL BE COMING OVER FOR WHATEVER ISSUE HE HAS AND
25 I'LL JUST SEND HIM.

1 Q WHERE DO YOU SEND HIM TO?

2 A I SEND HIM ACROSS THE YARD. THERE'S A SMALL SATELLITE
3 MEDICAL FACILITY THERE ON THE YARD.

4 Q OKAY. AND IS THAT THE PROCEDURE YOU FOLLOW ON THE WEEKENDS
5 AS WELL?

6 A NO. ON THE WEEKENDS IT'S DIFFERENT. THEY DON'T HAVE --
7 MEDICAL IS NOT OPEN ON THE YARDS SATURDAY AND SUNDAY AND
8 HOLIDAYS, SO WE HAVE TO CALL CENTRAL INFIRMARY AND ASK THEM
9 WHETHER IT'S APPROPRIATE FOR THEM TO COME UP AND BE TREATED.

10 Q OKAY. ARE THERE ANY SITUATIONS THAT CAN DELAY THE INMATE
11 GETTING TO THE CENTRAL CLINIC FOR TREATMENT?

12 A THE MAIN DELAY IS THE SNY, SENSITIVE NEEDS YARDS, INMATES.
13 WHEN THEY'RE UP THERE, THEY CAN'T INTERACT WITH THE GENERAL
14 POPULATION INMATES.

15 Q THE PATH THAT THE INMATES FROM YOUR UNIT HAVE TO TAKE TO
16 THE CLINIC, DOES THAT GO THROUGH THE SNY, THE SENSITIVE NEEDS,
17 YARD?

18 A THEY ALL SHARE THE SAME WALKWAY, SO WE HAVE TO MAKE SURE
19 THE WALKWAY IS CLEAR AND NO SENSITIVE NEEDS INMATES ARE IN
20 CENTRAL INFIRMARY BEFORE A GENERAL POPULATION INMATE GOES FOR A
21 TREATMENT.

22 Q AND THEN IN A LOCKDOWN WHAT GOES -- WHAT IS THE PROCEDURE?

23 A IF SOMEBODY NEEDS MEDICAL TREATMENT, THEY'LL LET US KNOW,
24 AND WE'LL CALL UP THE CENTRAL INFIRMARY, AND THEY'LL EITHER
25 WALK DOWN TO THE YARD OR DEPENDING ON THE SEVERITY, THEY'LL

1 SEND A MEDICAL TRANSPORT.

2 Q NOW, YOU WERE ASKED QUESTIONS ABOUT THE GASTROINTESTINAL
3 AND FLU ISSUES. I AM GOING TO BE VERY BRIEF ON THAT, BUT I
4 WANTED TO ASK YOU, WHEN WAS THE MOST RECENT OUTBREAK OF EITHER
5 A GASTROINTESTINAL DISORDER OR A FLU ON A UNIT WHERE YOU WERE
6 LOCATED?

7 A MARCH, MARCH OR FEBRUARY OF THIS YEAR.

8 Q OKAY. AND ON THAT OCCASION DID A NUMBER OF INMATES BECOME
9 SICK AT ONCE, OR WAS IT ONE OR TWO OR THREE AND THEN IT
10 INCREASED? WHAT WAS THE SITUATION?

11 A FROM MY HOUSING UNIT IT STARTED WITH TWO OR THREE.

12 Q OKAY. WHAT DID YOU DO WITH THOSE INMATES?

13 A THEY WERE SENT IN CENTRAL INFIRMARY. THEY WERE ISOLATED.

14 Q HOW MANY BEDS ARE IN THE CENTRAL INFIRMARY?

15 A AVAILABLE, I BELIEVE THERE'S EIGHT.

16 Q OKAY. AND DID OTHER INMATES BECOME SICK BEYOND THOSE FIRST
17 TWO OR THREE?

18 A YES.

19 Q DID YOU SEND THEM DOWN CENTRAL INFIRMARY?

20 A NO.

21 Q WERE THEY -- YOU DID NOT?

22 A NO, I CALLED TO LET THEM KNOW I GOT A FEW MORE GETTING
23 SICK, AND THEY SAID, WE ARE GOING TO BE SENDING THE REST OF
24 THEM BACK TO THE YARD BECAUSE WE DON'T HAVE THE BEDS.

25 Q SO THE SICK ONES THAT WERE ALREADY THERE WERE SENT BACK?

1 **A** YES.

2 **Q** AND THE SICK ONES YOU HAD REMAINED IN YOUR FACILITY?

3 **A** YES.

4 **Q** AND APPROXIMATELY WHAT WAS THE TOTAL NUMBER OF INMATES THAT
5 EITHER YOU OBSERVED TO BE SICK OR COMPLAINED TO YOU THAT THEY
6 WERE SICK WITH A GI OR THE FLU IN THIS SITUATION? BEST
7 ESTIMATE.

8 **A** I WOULD SAY MORE THAN HALF OF THE HOUSING UNIT.

9 **Q** MORE THAN HALF OF THE 340?

10 **A** YES.

11 **Q** AND WHEN THE INMATES WERE SENT BACK, WHAT WAS DONE WITH THE
12 D10 FACILITY?

13 **A** WE WERE GIVEN BLEACH TO WIPE DOWN STUFF. THE INMATES HAD
14 ACCESS TO IT, TOO.

15 **Q** WAS THE FACILITY PUT ON LOCKDOWN?

16 **A** YES.

17 **Q** HOW LONG DID THE LOCKDOWN LAST?

18 **A** THE LOCKDOWN LASTED A WEEK, AND VISITING ON THE WEEKENDS
19 WAS CANCELED FOR ALMOST A MONTH.

20 **Q** NOW, YOU WERE ASKED ABOUT YOUR OBSERVATIONS OR WHAT YOU
21 KNOW ABOUT THE MANIFESTATIONS OF GI, GASTROINTESTINAL,
22 DISORDERS OR THE FLU. DID YOU SEE ANY PHYSICAL MANIFESTATION
23 OF SICKNESS AMONG THE INMATES?

24 **A** THERE WAS A LOT OF INMATES VOMITING IN THE HOUSING UNIT.

25 **MR. HENDERSON:** OKAY. THANK YOU, SIR. THAT'S ALL I

1 HAVE.

2 JUDGE HENDERSON: OKAY.

3 MR. LEWIS: NOTHING, YOUR HONOR.

4 MR. SPECTER: ACTUALLY, I HAVE ONE QUESTION. DON
5 SPECTER FOR PLAINTIFFS.

6 DIRECT EXAMINATION BY MR. SPECTER

7 BY MR. SPECTER

8 Q DID YOU OBSERVE THAT OTHER PRISONERS IN OTHER HOUSING UNITS
9 WERE SICK, TOO, OR WAS THIS ONLY CONFINED TO YOUR HOUSING UNIT,
10 THIS GASTROINTESTINAL OUTBREAK?

11 JUDGE REINHARDT: OR THE FLU OR WHATEVER IT WAS?

12 MR. SPECTER: YES, THANK YOU.

13 THE WITNESS: YES.

14 BY MR. SPECTER

15 Q YES, WHAT?

16 A I WITNESSED IT IN OTHER HOUSING UNITS.

17 Q WAS IT INSTITUTION-WIDE?

18 A YES.

19 MR. SPECTER: NO FURTHER QUESTIONS.

20 JUDGE HENDERSON: OKAY. THANK YOU, MR. LEIJA, FOR
21 TESTIFYING. YOU'RE EXCUSED.

22 THE WITNESS: THANK YOU.

23 MR. HENDERSON: AT THIS TIME, YOUR HONOR, THE
24 PLAINTIFF INTERVENORS WILL REST.

25 JUDGE KARLTON: PHASE ONE.

1 **JUDGE HENDERSON:** PHASE ONE, RIGHT. I ASSUME
2 PLAINTIFFS HAVE RESTED?

3 **MR. SPECTER:** WELL, WE DON'T HAVE ANY MORE
4 WITNESSES, BUT WE'D PREFER NOT TO REST UNTIL ALL THE EXHIBITS
5 AND THE DEPOSITIONS --

6 **JUDGE HENDERSON:** SUBJECT TO THAT, YES.

7 **MR. SPECTER:** YES, WE HAVE -- YEAH, RIGHT.

8 **MR. BIEN:** THERE IS THIS MATTER LEFT OVER FROM
9 YESTERDAY CONCERNING THE AUTHENTICITY OF SOME CHARTS, AND WE
10 ARE PREPARED TO PUT ON A WITNESS, IF NECESSARY. HAS THAT BEEN
11 WORKED OUT?

12 **MR. MELLO:** I BELIEVE THE COURT GAVE US AN ORDER
13 WITH RESPECT TO EXHIBITS AND THOSE THINGS.

14 **JUDGE KARLTON:** THIS PARTICULAR EXHIBIT.

15 **JUDGE HENDERSON:** THIS ONE WE HAD HANGING AT THE END
16 OF THE DAY LAST NIGHT.

17 **MR. BIEN:** YES. HAS THAT BEEN WORKED OUT?

18 **MR. MELLO:** I GUESS WE'LL HAVE TO --

19 **MR. HENDERSON:** IF I COULD JUMP IN WHILE THEY'RE
20 TALKING, YOUR HONOR? WITH RESPECT TO THE PLAINTIFF
21 INTERVENORS, I BELIEVE THERE'S STILL SOME ISSUES ON THE
22 EVIDENTIARY CHALLENGES TO OUR DECLARATIONS. SO I GUESS I WOULD
23 REST WITH THAT QUALIFICATION BECAUSE THAT'S STILL UNDER
24 SUBMISSION TO THE COURT. THANK YOU.

25 **MR. BIEN:** YOUR HONOR, AS TO THOSE CHARTS, THERE'S

1 STILL SOME CLARIFICATION WHICH MAY AVOID THE NEED FOR A
2 WITNESS.

3 **JUDGE KARLTON:** WHY DON'T WE TAKE OUR BREAK?

4 **MR. BIEN:** IF YOU COULD INDULGE US TO HAVE THAT
5 WITNESS LATER IN THE TRIAL IF WE CAN'T WORK IT OUT.

6 **JUDGE HENDERSON:** OKAY. THAT'S FINE.

7 **MR. BIEN:** THANK YOU.

8 **JUDGE HENDERSON:** THEN WE ARE GOING TO GET TO
9 DEFENDANTS' CASE, BUT LET'S TAKE A RECESS, 15 MINUTES FOR THAT
10 TRANSITION.

11 **JUDGE KARLTON:** THERE WAS SOMETHING THE PLAINTIFFS
12 WANTED TO PUT ON.

13 **JUDGE HENDERSON:** PLAINTIFFS HAVE RESTED, RIGHT?

14 **MR. BIEN:** YOUR HONOR, I THINK AS LONG AS IF THERE'S
15 ANY PROBLEM ON THE FOUNDATION FOR THESE CHARTS, WE CAN DO IT
16 LATER IN THE TRIAL?

17 **JUDGE KARLTON:** OKAY.

18 **JUDGE HENDERSON:** OKAY.

19 OKAY. LET'S PROCEED. THE PRELIMINARY STATEMENT
20 THAT THE COURT REMAINS OF THE OPINION THAT THE WITNESSES LISTED
21 FOR TODAY ARE MORE PROPERLY PHASE TWO, BUT WE'RE NOT GOING TO
22 TELL YOU YOU CANNOT PUT THEM ON TODAY.

23 **MR. LEWIS:** GOOD MORNING, YOUR HONORS. KYLE LEWIS
24 FOR THE DEFENSE. THE STATE DEFENDANTS NOW CALL TODD JERUE.

25 **TODD JERUE**

1 HAVING BEEN CALLED AS A WITNESS BY THE DEFENDANTS WAS FIRST
2 DULY SWORN AND EXAMINED AS FOLLOWS:

3 **THE WITNESS:** YES.

4 **THE CLERK:** STATE AND SPELL YOUR FULL NAME FOR THE
5 RECORD.

6 **THE WITNESS:** MY NAME IS TODD JERUE. SPELLING IS
7 T-O-D-D J-E-R-U-E.

8 **MR. LEWIS:** YOUR HONORS, DEFENDANTS HAVE SUBMITTED A
9 TRIAL AFFIDAVIT FOR MR. JERUE. SPECIFICALLY, IT'S IDENTIFIED
10 AS EXHIBIT 1008. WE ASK THE COURT TO TAKE IT UNDER SUBMISSION
11 AT THIS TIME.

12 **JUDGE HENDERSON:** WE WILL DO THAT.

13 **DIRECT EXAMINATION BY MR. LEWIS**

14 **BY MR. LEWIS**

15 **Q** GOOD MORNING, MR. JERUE.

16 **A** GOOD MORNING.

17 **Q** WHAT IS YOUR CURRENT JOB TITLE?

18 **A** PROGRAM BUDGET MANAGER FOR THE DEPARTMENT OF FINANCE FOR
19 THE STATE OF CALIFORNIA.

20 **Q** HOW LONG HAVE YOU WORKED FOR THE STATE OF CALIFORNIA?

21 **A** TWELVE YEARS IN FEBRUARY.

22 **Q** COULD YOU PLEASE PROVIDE THE COURT WITH A BRIEF DESCRIPTION
23 OF YOUR EMPLOYMENT WITH CALIFORNIA?

24 **A** SURE. I BEGAN IN FEBRUARY OF 1997 AS AN ANALYST FOR THE
25 DEPARTMENT OF FINANCE. I WORKED IN THAT CAPACITY FOR ABOUT

1 3-1/2 YEARS ON VARIOUS BUDGETING ASSIGNMENTS. IN THE SUMMER OF
2 2000, I WAS PROMOTED TO SUPERVISOR, WHICH IS CALLED A PRINCIPAL
3 PROGRAM BUDGET ANALYST. THAT WAS ON A GENERAL GOVERNMENT
4 ASSIGNMENT.

5 ABOUT EIGHT MONTHS LATER I ROTATED TO A NEW
6 ASSIGNMENT, WHICH WAS DEPARTMENT OF JUSTICE JUDICIARY
7 ASSIGNMENT. IN 2002 I ROTATED TO THE DEPARTMENT OF CORRECTIONS
8 ASSIGNMENT. IN OCTOBER OF 2004 I WAS PROMOTED TO ASSISTANT
9 PROGRAM BUDGET MANAGER OVER HALF OF OUR UNIT THAT HANDLES
10 PUBLIC SAFETY PROGRAMS, CORRECTIONS, JUDICIARY DEPARTMENT OF
11 JUSTICE. IN JUNE OF 2006, PROMOTED TO MY CURRENT POSITION.

12 **Q** AND AS PROGRAM BUDGET MANAGER FOR THE DEPARTMENT OF
13 FINANCE, WHAT ARE YOUR RESPONSIBILITIES?

14 **A** I MANAGE A UNIT OF 22 PEOPLE. OUR RESPONSIBILITY IS THAT
15 WE REVIEW AND OVERSEE THE SUPPORT AND OPERATING BUDGETS FOR
16 ABOUT 50 STATE DEPARTMENTS.

17 **Q** AND WHEN YOU SAY THE PREPARATION AND SUBMISSION OF THE
18 SUPPORT BUDGETS, WHAT EXACTLY DOES THAT MEAN?

19 **A** WELL, THE MAIN FUNCTION OF THAT IS STARTING WITH THE
20 CURRENT BUDGET ACT AS A STARTING POINT, THE MAIN ROLE WE DO IS
21 THAT WE REVIEW AND ANALYZE BUDGET CHANGE PROPOSALS SUBMITTED BY
22 THOSE DEPARTMENTS.

23 **Q** AND YOU MENTION THAT YOU OVERSEE THE PREPARATION OF THOSE
24 BUDGETS FOR ABOUT 50 STATE AGENCIES AND DEPARTMENTS. IS ONE OF
25 THEM THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND

1 REHABILITATIONS?

2 **A** YES, IT IS.

3 **JUDGE KARLTON:** BEFORE YOU GO ON, I'M CONFUSED. THE
4 BUDGET, DO YOU, FOR EXAMPLE, DO THE BUDGET, OR DO YOU REVIEW
5 THE BUDGET THAT COMES UP FROM THE AGENCY?

6 **THE WITNESS:** WE REVIEW THE AGENCY'S PROPOSALS FOR
7 NEW SPENDING, AND THEN WE PHYSICALLY PUBLIC A BOOK -- OR NOW ON
8 THE INTERNET -- THAT ACTUALLY HAS ALL OF THOSE DEPARTMENTS IN
9 ONE PLACE.

10 **JUDGE KARLTON:** I'M AFRAID I HAVEN'T ASKED THE
11 QUESTION APPROPRIATELY.

12 DO YOU PUT THE BUDGET TOGETHER FOR AN AGENCY, OR DO
13 THEY SEND YOU A PROPOSED BUDGET?

14 **THE WITNESS:** THEY SEND US A PROPOSAL BUDGET.

15 **JUDGE KARLTON:** OKAY.

16 **JUDGE REINHARDT:** DO YOU THEN CHANGE IT? YOU REVIEW
17 IT? YOU CUT IT? YOU GIVE THEM MORE MONEY THAN THEY ASK FOR?

18 **THE WITNESS:** WE HAVE GIVEN THEM MORE THAN THEY'VE
19 ASKED FOR BEFORE, BUT, FOR THE MOST PART, WE BUDGET ON THE
20 MARGIN. SO WE HAVE A BASE BUDGET. MOST OF OUR CHANGES ARE
21 WHEN THEY REQUEST NEW MONEY, BUT IN ORDER TO BALANCE THE
22 BUDGET, THERE ARE TIMES WE HAVE TO MAKE BUDGET REDUCTIONS,
23 ALSO.

24 **JUDGE KARLTON:** MY FAULT, NOT YOURS. THE END OF THE
25 YEAR OR WHENEVER THE LEGISLATURE GETS AROUND TO IT, YOU GET,

1 "THIS IS HOW MUCH MONEY YOU GOT." DOES THAT "THIS IS HOW MUCH
2 MONEY YOU GOT" INCLUDE SO MUCH FOR THIS DEPARTMENT, SO MUCH FOR
3 THAT DEPARTMENT AND SO FORTH?

4 **THE WITNESS:** THAT'S CORRECT. THE TOTAL STATE
5 BUDGET IS APPROXIMATELY \$104 BILLION, AND WITHIN THAT
6 \$104 BILLION, EVERY AGENCY HAS THEIR OWN APPROPRIATION.

7 **JUDGE KARLTON:** OKAY. AND THEN THE -- BUT THE
8 APPROPRIATION IS KNOCKED DOWN TO HOW MANY BUCKS YOU SPEND FOR
9 PENS OR WHAT HAVE YOU, THAT'S DONE BY THE AGENCY?

10 **THE WITNESS:** THAT'S CORRECT.

11 **JUDGE KARLTON:** OKAY. NOW I'M WITH YOU.

12 **BY MR. LEWIS**

13 **Q** WHAT PROGRAMS OR SERVICES ARE ENCOMPASSED WITHIN THE
14 OPERATION SUPPORT BUDGET THAT YOUR SECTION HANDLES FOR CDCR?

15 **A** IT ENCOMPASSES THE ADULT INSTITUTIONS, WHICH INCLUDES THE
16 INMATE PROGRAMS AND HEALTHCARE SERVICES, ADULT PAROLE. IT ALSO
17 INCLUDES THE DIVISION OF JUVENILE JUSTICE, THE BOARD OF PAROLE
18 HEARINGS, AND THE CORRECTION OF STANDARD AUTHORITIES.

19 **Q** SO THEN THE DEPARTMENT COSTS FOR MEDICAL AND MENTAL HEALTH
20 PROGRAMS ARE INCLUDED WITHIN THE BUDGET THAT YOUR SECTION HELPS
21 PREPARE?

22 **A** THAT'S CORRECT.

23 **JUDGE REINHARDT:** YOU WERE TALKING TO JUDGE KARLTON
24 WHAT HAPPENS AFTER THE LEGISLATURE ACTS. I ASSUME YOU FIRST
25 REVIEW THE AGENCY'S BUDGET AS THEY PREPARED IT AND DECIDE WHAT

1 THEY CAN SEND IN TO THE LEGISLATURE AS THE GOVERNOR'S BUDGET?

2 **THE WITNESS:** THAT'S CORRECT.

3 **JUDGE KARLTON:** SO THERE'S TWO STAGES. FIRST, YOU
4 REVIEW AND APPROVE WHAT THEY ARE GOING TO SUGGEST TO THE
5 LEGISLATURE, AND THEN AFTER THE LEGISLATURE GIVES THEM THE
6 MONEY AND THEY PARCEL IT OUT TO WHATEVER THEY DO, THEN IT COMES
7 BACK TO YOU?

8 **THE WITNESS:** YES. IT'S AN ONGOING PROCESS. ONE
9 YEAR WHERE YOU FINISH IS THE BEGINNING POINT FOR THE NEXT YEAR.

10 **JUDGE REINHARDT:** THAT'S NOT QUITE THE QUESTION.
11 QUESTION IS, YOU ARE INVOLVED IN THE PREPARATION OF THE BUDGET
12 THAT'S SUBMITTED TO THE LEGISLATURE?

13 **THE WITNESS:** THAT'S CORRECT.

14 **JUDGE REINHARDT:** THEN AFTER IT COMES BACK, THE
15 LEGISLATURE GIVES YOU A BUDGET. SO DO YOU THEN PARTICIPATE IN
16 ALLOCATING IT AMONG -- WHAT IT WILL BE USED FOR BY THE
17 DEPARTMENT -- VARIOUS DEPARTMENTS UNDER YOUR CONTROL?

18 **THE WITNESS:** ACTUALLY, THAT DETERMINATION OF HOW IT
19 WILL BE ALLOCATED IS DONE THROUGH THE PROPOSAL PROCESS. ONCE
20 THE LEGISLATURE APPROPRIATES, THAT HAS ALREADY BEEN DETERMINED.

21 **JUDGE KARLTON:** NOT NECESSARILY. THE LEGISLATURE
22 MIGHT GIVE YOU MORE OR LESS THAN WHAT YOU ASK FOR.

23 **THE WITNESS:** THAT'S CORRECT. AND SO THOSE CHANGES
24 ARE MADE THROUGHOUT THE PROCESS WHENEVER THE LEGISLATURE ACTS
25 ON THOSE CHANGES.

1 **JUDGE KARLTON:** I BELIEVE YOU. I'M TRYING TO FIND
2 OUT WHO DOES IT.

3 **JUDGE REINHARDT:** IF THEY COME BACK WITH LESS MONEY
4 THAN YOU WANTED, THEY DON'T, OR DO THEY, TELL YOU WHAT WILL BE
5 DONE WITHIN THE DEPARTMENT WITH THAT MONEY?

6 **THE WITNESS:** TYPICALLY, WHEN THE LEGISLATURE
7 REDUCES THE AMOUNT WE PROPOSE, THEY IDENTIFY EXACTLY WHERE
8 THEY'VE REDUCED IT.

9 **JUDGE REINHARDT:** SO YOU DON'T HAVE ANYTHING TO DO
10 WITH THAT THEN? YOUR FUNCTION IS BASICALLY IN THE PREPARATION
11 OF THE BUDGET?

12 **THE WITNESS:** YEAH. ONLY TO THE EXTENT THAT WE, ON
13 BEHALF OF THE GOVERNOR, ARE WORKING TO DEFEND HIS PROPOSALS.

14 **JUDGE REINHARDT:** OKAY. SO AFTER THE LEGISLATURE
15 REJECTS THEM, THEN YOU DON'T DO MUCH MORE?

16 **THE WITNESS:** RIGHT. AT THAT POINT IT'S THE
17 DEPARTMENTS RESPONSIBILITY TO SPEND WITHIN THAT BUDGET.

18 **JUDGE REINHARDT:** OKAY. NOW WE'VE LEARNED A LOT OF
19 ABOUT WHAT HE DOES, FOR WHATEVER THAT'S WORTH.

20 **MR. LEWIS:** THANK YOU. YOUR HONOR.

21 **JUDGE KARLTON:** BUT IT WAS INTERESTING.

22 **MR. LEWIS:** WE'RE ALL BETTER FOR IT.

23 **BY MR. LEWIS**

24 **Q** DO YOU OR YOUR STAFF OVERSEE THE PREPARATION AND SUBMISSION
25 OF THE ANNUAL INFRASTRUCTURE OR FACILITIES CONSTRUCTION BUDGET

1 FOR CDCR?

2 **A** NO, A DIFFERENT UNIT WITHIN THE DEPARTMENT OF FINANCE DOES
3 THAT.

4 **Q** AND NOW I'D LIKE TO CALL YOUR ATTENTION TO CDCR OVERALL
5 MEDICAL AND MENTAL HEALTH SERVICES EXPENDITURES AND BUDGET.
6 DID YOU AND YOUR STAFF ANALYZE DATA OR STATISTICS REGARDING THE
7 AMOUNT OF EXPENDITURES DIRECTED TOWARD THE PROVISION OF CDCR
8 HEALTHCARE OVER A PERIOD OF YEARS?

9 **A** YES, WE DID.

10 **Q** IN PERFORMING THAT ANALYSIS, WHAT DID YOUR STAFF CONSIDER
11 IN TOTALING THAT AMOUNT OF MONEY DIRECTED TOWARD THE PROVISION
12 OF CDCR HEALTHCARE?

13 **A** WHAT WE CONSIDERED IN THAT ANALYSIS, THAT'S IN THE
14 AFFIDAVIT, WAS THE DIRECT SERVICES FOR MENTAL HEALTH, SERVICES
15 FOR MEDICAL. WE LOOKED AT -- WE KIND OF LOOKED AT ANCILLARY
16 COSTS, WHICH ARE RELATED COSTS LIKE PHARMACEUTICALS AND
17 EQUIPMENT THAT'S USED BY ALL DISCIPLINES BUT CURRENTLY ARE
18 BEING MANAGED BY THE RECEIVERSHIP. WE ALSO LOOKED AT
19 HEALTHCARE ADMINISTRATION, AND WE LOOKED AT THE COST TO
20 TRANSPORT AND GUARD INMATES FOR PURPOSES OF RECEIVING
21 TREATMENT.

22 **Q** ALL RIGHT. DID YOUR ANALYSIS EXAMINE MONIES ACTUALLY
23 SPENT?

24 **A** IT DID FOR ANY YEAR EXCEPT FOR THE '8/'9 FISCAL YEAR WHICH
25 WE'RE CURRENTLY IN.

1 Q THEN IS THIS ANALYSIS OF THOSE EXPENDITURES CONTAINED IN
2 YOUR AFFIDAVIT?

3 A IT IS.

4 Q IT'S THE BASIS FOR THE NUMBERS IN YOUR AFFIDAVIT?

5 A THAT'S CORRECT.

6 Q ARE THE DATA THAT YOU AND YOUR STAFF STUDIED AND THE
7 INFORMATION THAT IS THE BASE OF THAT DATA, IS THAT MAINTAINED
8 BY THE DEPARTMENT AS PART OF ITS REGULARLY CONDUCTED BUSINESS?

9 A THAT'S CORRECT.

10 Q IS IT ROUTINE PRACTICE FOR THE DEPARTMENT OF FINANCE TO
11 ANALYZE BUDGET DATA?

12 A THAT'S CORRECT.

13 MR. LEWIS: MAY IT PLEASE THE COURT, I'M NOW GOING
14 TO SHOW WHAT HAS PREVIOUSLY BEEN IDENTIFIED AS EXHIBIT 1244.
15 IT'S A HEALTHCARE FUNDING CHART. SPECIFICALLY, THERE ARE TWO
16 CHARTS WITHIN THIS, AND WITH THE COURT'S PERMISSIONS I WILL LAY
17 THE FOUNDATION FOR THESE CHARTS.

18 (DOCUMENT DISPLAYED.)

19 BY MR. LEWIS

20 Q MR. JERUE, CAN YOU PLEASE DESCRIBE THIS FIRST CHART?

21 A YES. THIS FIRST CHART IS EXPENDITURE DATA FOR CORRECTIONS
22 HEALTHCARE FOR FIVE DIFFERENT POINTS IN TIME.

23 Q AND ARE THOSE NUMBERS CONTAINED WITHIN YOUR DECLARATION?

24 A YES, THEY ARE.

25 Q SHOWING YOU THE SECOND CHART, COULD YOU PLEASE DESCRIBE THE

1 SECOND CHART UP THERE?

2 **A** YES. THE SECOND CHART, USING THE EXPENDITURE DATA FROM THE
3 FIRST CHART AND USING POPULATION FIGURES FOR ADULT
4 INSTITUTIONS, THE SECOND CHART IS THE PER-INMATE COST FOR
5 HEALTHCARE SERVICES FOR THE SAME FIVE YEARS.

6 **Q** ARE THOSE NUMBERS ALSO CONTAINED WITHIN YOUR AFFIDAVIT?

7 **A** YES, THEY ARE.

8 **Q** AND WILL THESE CHARTS ASSIST YOU IN TESTIFYING HERE TODAY?

9 **A** YES, THEY WILL.

10 **MR. LEWIS:** YOUR HONORS, WE ASK THIS EXHIBIT BE
11 MOVED INTO EVIDENCE.

12 **MS. MORRIS:** YOUR HONOR, WE OBJECT ON LACK OF
13 FOUNDATION, AND WE WOULD LIKE TO CROSS-EXAMINE THE WITNESS ON
14 IT BEFORE THIS IS ADMITTED INTO EVIDENCE.

15 **JUDGE HENDERSON:** WE WILL TAKE THE OFFER PENDING
16 THAT. WE'LL WAIT UNTIL CROSS-EXAMINATION.

17 **MR. LEWIS:** IF YOUR HONORS COULD POSSIBLY DIRECT ME?
18 I THOUGHT I LAID THE FOUNDATION FOR THIS.

19 **JUDGE HENDERSON:** I UNDERSTAND.

20 **MR. LEWIS:** IN BRIEF, WHAT DID YOUR ANALYSIS
21 REGARDING THE AMOUNT OF BUDGET EXPENDITURES --

22 **JUDGE KARLTON:** BEFORE YOU DO THAT, WHEN YOU SAY
23 "HEALTHCARE," THAT INCLUDES BOTH PHYSICAL AND MENTAL, THAT'S IN
24 THIS CHART?

25 **THE WITNESS:** RIGHT. THE NUMBERS USED WERE MEDICAL

1 AND MENTAL. IT DID NOT INCLUDE DENTAL.

2 JUDGE KARLTON: ALL RIGHT.

3 BY MR. LEWIS

4 Q MR. JERUE, IN BRIEF, WHAT DID YOUR ANALYSIS SHOW REGARDING
5 THE AMOUNT OF BUDGET EXPENDITURES FOR CDCR HEALTHCARE SERVICES?

6 A IN GENERAL OR FOR SPECIFIC YEARS?

7 Q JUST IN TERMS OF RAW NUMBERS.

8 A IN TERMS OF RAW NUMBERS? CAN I REFER TO MY AFFIDAVIT?

9 Q PLEASE.

10 A IF YOU GO BACK TO THE OTHER CHART, I CAN SHOW YOU ON THE
11 FIRST CHART -- IT SHOWS IN '94/'95 FISCAL YEAR THE DEPARTMENT
12 SPENT \$344 MILLION FOR THESE SERVICES.

13 Q THEN MOVING FORWARD APPROXIMATELY TEN YEARS, CAN YOU TELL
14 WHAT THE NUMBER -- WHAT THE AMOUNT OF EXPENDITURES IN 2005/2006
15 WAS?

16 A YES. IT GREW TO 1.252 BILLION.

17 Q WHAT WAS THE AMOUNT FOR 2006, 2007?

18 A 1.365 BILLION.

19 Q WHAT WAS THE AMOUNT FOR 2007, 2008?

20 A 2.249 BILLION.

21 Q SO, OVER A PERIOD OF YEARS, HOW MUCH HAS THE AMOUNT OF
22 FUNDING GROWN FOR CDCR'S HEALTHCARE SERVICES?

23 A FROM WHERE WE STARTED '94/'95 THROUGH THE MOST RECENT
24 ACTUAL DATA FROM '7/'8, IT GREW FROM 344 MILLION TO 2.249
25 BILLION, WHICH IS AN INCREASE OF 554 PERCENT.

1 Q THANK YOU.

2 NOW, DID YOU AND YOUR STAFF ALSO ANALYZE THE TREND
3 OF THE CALIFORNIA STATE INMATE POPULATION AT THAT TIME BETWEEN
4 1995 AND 2006?

5 A YES, WE DID.

6 Q AND BASED ON YOUR ANALYSIS HOW MUCH DID THE CDCR POPULATION
7 GROW BETWEEN 1995 AND 1996 (SIC)?

8 A THE POPULATION FOR THE YEARS '94/'95 THROUGH '7/'8 GREW
9 APPROXIMATELY 30 PERCENT. I HAVE THE ACTUAL NUMBERS IF I CAN
10 REFER TO MY AFFIDAVIT.

11 Q I THINK THE COURT HAS THAT. IT'S ALL RIGHT. THANK YOU,
12 THOUGH.

13 SO BETWEEN 1995 AND PRESENT, HOW MUCH DID THE CDCR
14 ANNUAL BUDGET EXPENDITURES FOR HEALTHCARE GROW?

15 A FIVE HUNDRED FIFTY-FOUR PERCENT.

16 Q DURING THAT SAME PERIOD, HOW MUCH DID THE POPULATION GROW?

17 A APPROXIMATELY 30 PERCENT.

18 Q DID YOU AND YOUR STAFF ALSO PERFORM AN ANALYSIS OF THE COST
19 PER INMATE EXPENDED BY CDCR ON ITS HEALTHCARE NEEDS FOR THE
20 POPULATION OVER THE COURSE OF YEARS?

21 A YES, WE DID.

22 THE CLERK: FIVE MINUTES, COUNSEL.

23 MR. LEWIS: THANK YOU.

24 BY MR. LEWIS

25 Q WHAT DID YOUR ANALYSIS SHOW?

1 **A** OUR ANALYSIS SHOWED THAT IN '94/'95, THE PER-INMATE COST
2 WAS \$2,714 GROWING TO \$13,778 IN '07/'08, WHICH IS AN INCREASE
3 OF 408 PERCENT.

4 **Q** AND SO LOOKING AT THE CHART FROM THE YEAR 2006 TO 2008,
5 WHAT WAS THE PERCENTAGE OF GROWTH IN JUST THOSE TWO YEARS?

6 **A** THAT WAS APPROXIMATELY 80 PERCENT.

7 **Q** AND LOOKING AHEAD, WHAT IS THE TOTAL ANTICIPATED
8 EXPENDITURE FOR CDCR HEALTHCARE SERVICES, TO INCLUDE MENTAL AND
9 MEDICAL HEALTH, FOR FISCAL YEAR 2008/2009?

10 **A** CURRENTLY, 2.193 BILLION.

11 **Q** I NOTICE THERE'S A SLIGHT DECREASE IN THE FY, FISCAL YEAR,
12 2008/'9 VERSUS THE PREVIOUS YEAR 2007/'8. CAN YOU EXPLAIN
13 THAT?

14 **A** YES, I CAN. FOR THE PRIOR TWO FISCAL YEARS, THE BUDGET ACT
15 CONTAINED AN UNALLOCATED POT THAT WAS THEN USED FOR THE
16 RECEIVER WITHIN ANY GIVEN YEAR WITHIN THAT CURRENT YEAR FOR
17 REMEDIATION EFFORTS. IN THE '7/'8 FISCAL YEAR, THAT WAS \$125
18 MILLION. THAT WAS NOT INCLUDED IN THE '8/'9 BUDGET ACT.

19 **Q** BASED ON YOUR ANALYSIS OF THE FIGURES FOR BUDGET
20 EXPENDITURES, WHAT HAVE YOU LEARNED ABOUT THE AMOUNT OF FUNDING
21 APPROPRIATED TO CDCR BETWEEN 1994 AND 2008?

22 **A** WHAT I HAVE LEARNED IS THAT THE EXPENDITURES HAVE GROWN
23 OVER 550 PERCENT WITH AN ACCOMPANYING INCREASE IN PER INMATE
24 SPENDING OF OVER 400 PERCENT, WHILE, AT THE SAME TIME, THE
25 POPULATION HAS ONLY GROWN APPROXIMATELY 30 PERCENT.

1 **MR. LEWIS:** YOUR HONORS, DEFENDANTS REQUEST
2 MR. JERUE'S AFFIDAVIT BE MOVED INTO EVIDENCE AT THIS TIME.

3 **MS. WHELAN:** YOUR HONOR, SAME OBJECTION.

4 **JUDGE REINHARDT:** CAN YOU TELL ME, PERHAPS, WHAT
5 THIS TESTIMONY DOES TO HELP US DETERMINE WHAT THE PRIMARY CAUSE
6 OF THE CONSTITUTIONAL VIOLATION IS?

7 **MR. LEWIS:** YES, YOUR HONOR.

8 THERE ARE MANY FACTORS THAT WE BELIEVE ARE
9 INDICATIVE OR ARE THE CAUSES OF THE ALLEGED UNCONSTITUTIONAL
10 VIOLATIONS. WE BELIEVE THAT OVERCROWDING CANNOT BE OR IS NOT
11 THE PRIMARY CAUSE, AND THAT SOME OF THE OTHER FACTORS TO
12 INCLUDE FUNDING STAFFING, ET CETERA -- TO INCLUDE FUNDING
13 STAFF, ET CETERA --

14 **JUDGE REINHARDT:** THE FUNDING IS THE PRIMARY CAUSE?

15 **MR. LEWIS:** THAT THERE ARE POTENTIAL OTHER CAUSES
16 THAT INDICATE --

17 **JUDGE REINHARDT:** WHAT DOES THIS SHOW? THAT YOU'VE
18 INCREASED THE FUNDING AND IT HASN'T SOLVED THE CONSTITUTIONAL
19 VIOLATION? HAVE YOU ELIMINATED FUNDING AS A POSSIBLE CAUSE?

20 **MR. LEWIS:** YOUR HONOR, IT IS DEFENDANTS' CONTENTION
21 THAT THERE ARE MANY CAUSES, POTENTIAL CAUSES, AND THAT
22 OVERCROWDING IS NOT THE PRIMARY CAUSE.

23 **JUDGE REINHARDT:** I UNDERSTAND THAT, BUT WHAT DOES
24 THIS EVIDENCE SHOW US AS TO WHAT IS THE PRIMARY CAUSE? IS IT
25 SUPPOSED TO SHOW US IT'S NOT FUNDING BECAUSE YOU ARE SPENDING

1 SO MUCH MONEY NOW?

2 **MR. LEWIS:** IT'S ONE OF THE CAUSES OUT THERE, BUT
3 THE FACT IS THAT --

4 **JUDGE REINHARDT:** HOW DOES IT SHOW US THAT FUNDING
5 IS PERHAPS THE PRIMARY CAUSE?

6 **JUDGE KARLTON:** THIS IS THE WHOLE PROBLEM ABOUT OUR
7 SAYING THIS IS PHASE TWO STUFF, NOT PHASE ONE.

8 **JUDGE REINHARDT:** I'M JUST TRYING TO UNDERSTAND WHAT
9 THEY'RE ARGUING. TO SHOW US YOU ARE SPENDING MORE AND MORE
10 MONEY, DOES THAT MEAN THAT FUNDING IS NOT ONE OF THE PRINCIPAL
11 CAUSES BECAUSE YOU ARE SPENDING SO MUCH NOW?

12 **MR. MELLO:** IF I MAY, YOUR HONOR? I BELIEVE THAT IT
13 DEMONSTRATES THE GOOD FAITH EFFORTS BY THE STATE, AND IT
14 ALSO --

15 **JUDGE REINHARDT:** THE GOOD FAITH EFFORTS BY THE
16 STATE IS NOT PHASE ONE.

17 **MR. MELLO:** I'M SORRY. AND IT DEMONSTRATES THE
18 SPENDING THAT HAS CAUSED MANY OF THE OTHER IMPROVEMENTS WHICH
19 WERE BARRIERS, AND ARE BARRIERS, TO THE DELIVERY OF HEALTHCARE,
20 AND WHICH DEMONSTRATE THAT OVERCROWDING IS NOT THE PRIMARY
21 BARRIER. IT GOES TO PROVING THAT -- I AGREE THAT THE PHASE ONE
22 ISSUE AND THE PHASE TWO ISSUE ARE CLOSELY RELATED.

23 **JUDGE KARLTON:** THEY ARE NOT CLOSELY -- THE WAY YOU
24 PUT IT THEY ARE NOT CLOSELY RELATED AT ALL. OKAY. SO --

25 **MR. MELLO:** I UNDERSTOOD.

1 **JUDGE KARLTON:** -- IT'S HOPELESS.

2 **JUDGE REINHARDT:** I JUST WONDERED WHY I WAS
3 LISTENING TO THIS TO PROVE THE STATE'S CASE OR THE DEFENSES' --
4 THE PLAINTIFFS' CASE.

5 **MR. MELLO:** WE UNDERSTAND YOUR POSITION.

6 **JUDGE KARLTON:** THAT'S WHY WE SAID WE'D LET IT IN,
7 BUT WE DON'T AGREE IT'S PROPERLY PHASE ONE.

8 **JUDGE REINHARDT:** I MEAN, YOU WERE THE ONE WHO
9 OBJECTED TO COMBINING THIS PART OF THE PHASE ABOUT WHAT HAS
10 HAPPENED SINCE THE VIOLATION. THE PLAINTIFFS WANTED TO COMBINE
11 THE QUESTION OF WHAT REMEDIES HAVE BEEN TRIED, AND YOU DID NOT
12 WANT TO DO THAT. YOU SAID JUST KEEP IT TO THE PRIMARY CAUSE,
13 AND I'M JUST TRYING TO UNDERSTAND WHAT I'M SUPPOSED TO -- WHAT
14 SIGNIFICANCE I'M SUPPOSED TO GIVE TO THIS.

15 IT SEEMS TO ME IF IT HAS ANY SIGNIFICANCE IT SHOWS
16 THAT, EVEN THOUGH YOU SPENT TREMENDOUS AMOUNT OF MONEY, THE
17 VIOLATION HASN'T BEEN CURED; THEREFORE, IT MUST BE THE
18 OVERCROWDING.

19 **MR. MELLO:** WELL, I THINK WE HAVE A DIFFERENT
20 POSITION AS TO WHETHER THE VIOLATION HAS BEEN CURED OR NOT.

21 **JUDGE REINHARDT:** WELL, I KNOW WE ARE NOT DOING THAT
22 IN PHASE ONE.

23 **MR. MELLO:** WE UNDERSTAND YOUR POSITION. AND OUR
24 NEXT WITNESS, I DON'T THINK YOU WILL HAVE SIMILAR FEELINGS
25 ABOUT.

1 **JUDGE KARLTON:** MR. MELLO, I'M GLAD THAT YOU
2 UNDERSTAND OUR POSITION. I THINK WE SHARE IT. BUT, HONEST TO
3 GOODNESS, I'M TRYING TO UNDERSTAND WHAT YOUR POSITION IS.
4 WELL, MAYBE IT'S JUST -- TAKE IT ONE MORE -- DO YOU MIND IF
5 I -- TAKE ONE MORE SHOT AT EXPLAINING TO ME HOW THIS HAS
6 ANYTHING TO DO WITH PHASE ONE. I DON'T MEAN TO CUT YOU OUT,
7 BUT MR. MELLO HAS APPARENTLY TAKEN OVER THE ARGUMENT.

8 **MR. MELLO:** NO. I MEAN, PLAINTIFFS MUST SHOW THE
9 APPROPRIATE NEXUS BETWEEN OVERCROWDING AND THE ALLEGED
10 UNCONSTITUTIONAL DELIVERY OF MEDICAL CARE AND MENTAL
11 HEALTHCARE, CORRECT?

12 **JUDGE KARLTON:** I AGREE WITH THAT.

13 **MR. MELLO:** AND THE EVIDENCE TO DATE HAS SHOWN, EVEN
14 THROUGH PLAINTIFFS' OWN EXPERTS, THAT MEDICAL CARE DELIVERY
15 AND --

16 **JUDGE KARLTON:** OF --

17 **MR. MELLO:** PLEASE.

18 -- AND MENTAL HEALTHCARE DELIVERY INVOLVES MANY
19 INTERRELATED COMPONENTS, CORRECT?

20 **JUDGE REINHARDT:** AND WHAT DOES THIS SHOW, THAT NO
21 MATTER HOW MUCH MONEY YOU SPEND, IT'S NOT CURED?

22 **MR. MELLO:** IN LIGHT OF THE COURT'S RULINGS, WE
23 CAN'T PROVE WHETHER IT'S BEEN CURED OR NOT CURED, I UNDERSTAND
24 THAT. I DON'T THINK WE ARE ACCOMPLISHING ANYTHING.

25 **JUDGE REINHARDT:** YOU ARE ALMOST DONE WITH THIS, I

1 HOPE.

2 **MR. MELLO:** WE ARE DONE WITH THIS WITNESS. I
3 BELIEVE YOU WERE DONE, CORRECT?

4 **JUDGE REINHARDT:** I WAS JUST TRYING TO FIND OUT IF I
5 COULD TAKE ANYTHING FROM THE EVIDENCE THAT WOULD BE HELPFUL TO
6 YOUR CASE.

7 **MR. LEWIS:** I HAVE NO FURTHER QUESTIONS. THANK YOU,
8 MR. JERUE.

9 **JUDGE HENDERSON:** LET ME -- BEFORE WE HAVE CROSS,
10 DOES THIS CHART SHOW US -- WE KNOW THERE'S BEEN A 554 PERCENT
11 INCREASE OVER THE YEARS OF THIS CHART WITH AN ATTENDANT
12 30 PERCENT POPULATION INCREASE. DOES THIS SHOW US -- DOES IT
13 BREAK DOWN AS TO, WHEN WE REACH THE HIGH POINT, WHAT THIS MONEY
14 WAS USED FOR?

15 AND WHAT I HAVE IN MIND IS, AS RECENTLY AS THREE
16 YEARS AGO, PERHAPS, I TOOK A TOUR OF A PRISON IN WHICH THE
17 MEDICAL PEOPLE DIDN'T EVEN HAVE A WASH BOWL TO WASH THEIR
18 HANDS. IS THIS -- WOULD IT BE FAIR TO CONCLUDE THAT SOME OF
19 THAT INCREASE WAS JUST TO GET THINGS THAT JUST HAD NOT BEEN
20 FURNISHED, OR DO YOU KNOW?

21 **THE WITNESS:** THE DEPARTMENT WOULD HAVE THE EXACT
22 WAYS THAT THE MONEY WAS SPENT. I WOULD HAVE GENERAL WAYS THAT
23 THE MONEY WAS SPENT, OR HAVE SOME KNOWLEDGE OF, FOR EXAMPLE,
24 WHAT THE RECEIVER HAS DONE SINCE HIS INCEPTION.

25 **JUDGE HENDERSON:** BUT THERE ARE FIGURES SOMEPLACE TO

1 TELL YOU EXACTLY HOW THE TWO BILLION --

2 **THE WITNESS:** THAT'S CORRECT, ESPECIALLY THE GROWTH
3 IN THE LAST COUPLE OF YEARS. THERE WOULD BE SPECIFIC PROPOSALS
4 THAT THE ADMINISTRATION HAS PUT FORWARD, WHETHER IT BE FOR
5 MENTAL HEALTH CARE OR FROM THE RECEIVERSHIP, TO GROW THESE
6 BUDGETS.

7 **JUDGE KARLTON:** I TAKE IT NO -- I DON'T KNOW WHETHER
8 I -- I TAKE IT THAT THERE'S NO CASE ON THESE CHARTS, OR EVEN IN
9 YOUR DOCUMENTS, WHETHER OR NOT THE INITIAL AMOUNT OF
10 \$344 MILLION WAS AN APPROPRIATE SUM. ALL THIS CHART MAY PROVE
11 IS THAT THERE WAS DESPERATE UNDERSPENDING UNTIL NOW; IS THAT
12 RIGHT OR WRONG?

13 **THE WITNESS:** I DON'T THINK I COULD SPECULATE ON
14 EITHER SIDE, BUT I CAN'T SIT HERE AND TELL YOU I CAN SAY EITHER
15 WAY WHETHER \$344 MILLION WAS THE CORRECT NUMBER IN '94/'95.

16 **MR. LEWIS:** THANK YOU, YOUR HONOR.

17 THANK YOU, MR. JERUE.

18 **JUDGE HENDERSON:** THANK YOU, COUNSEL.

19 CROSS?

20 **MS. MORRIS:** MARIA MORRIS ON BEHALF OF COLEMAN
21 PLAINTIFFS.

22 **CROSS-EXAMINATION BY MS. MORRIS**

23 **BY MS. MORRIS**

24 **Q** MR. JERUE, I WOULD LIKE TO TAKE A MOMENT TO LOOK AT YOUR
25 TRIAL AFFIDAVIT, WHICH IS DOCUMENT 346.

1 **JUDGE REINHARDT:** I ASSUME -- MAYBE MY COLLEAGUES
2 HAVE SOME COMMENT -- THAT WE ARE GOING TO ALLOW YOU TO GO INTO
3 PHASE TWO IN YOUR CROSS-EXAMINATION OF THIS WITNESS.

4 **JUDGE KARLTON:** THE WAY IT IS, THAT'S THE WAY IT'S
5 GOT TO BE.

6 **JUDGE REINHARDT:** SO WE DON'T HAVE TO GO THROUGH
7 THIS AGAIN IN PHASE TWO ONCE HE'S HERE.

8 **JUDGE KARLTON:** YOU DON'T HAVE TO CALL HIM BACK,
9 WHICH IS MAYBE WHAT WE SHOULD HAVE DONE.

10 **JUDGE REINHARDT:** YOUR QUESTIONS, I ASSUME, RELATE
11 ONLY THE PHASE TWO.

12 **MR. LEWIS:** YOUR HONOR, WE ARE HAPPY TO CALL THIS
13 WITNESS BACK AND PUT HIM IN THE APPROPRIATE ORDER FOR PHASE TWO
14 IF THE COURT SO WISHES, IF WE DETERMINE HE IS RELATIVE TO PHASE
15 TWO.

16 **JUDGE REINHARDT:** I THOUGHT WE TOLD YOU BEFORE HE
17 WAS RELEVANT TO ONLY PHASE TWO. I MEAN, I TRIED THREE TIMES TO
18 FIND OUT WHAT THE RELEVANCE WAS TO PHASE ONE AND I DON'T FIND
19 ANY. SO I SUPPOSE -- I CAN'T IMAGINE THEY HAVE ANY QUESTIONS
20 WHAT HE TALKED ABOUT THAT WOULD BE RELEVANT TO PHASE ONE AND
21 NOT PHASE TWO.

22 **MS. MORRIS:** WE HAVE QUESTIONS THAT ARE DEFINITELY
23 RELEVANT TO PHASE TWO.

24 **JUDGE REINHARDT:** I ASSUME YOU DON'T HAVE ANY
25 RELEVANT TO PHASE ONE.

1 **MS. MORRIS:** WE ALSO HAVE QUESTIONS THAT WE THINK
2 ARE RELEVANT TO THE VALIDITY OF HIS TRIAL AFFIDAVIT AND THE
3 CHART HE PUT IN AND THEY'RE PUTTING FORWARD IN PHASE ONE.

4 **JUDGE REINHARDT:** I UNDERSTAND. I THINK WE'VE TAKEN
5 TOO MUCH TIME WITH OUR PROBLEMS AND TOO LITTLE WITH YOURS. SO
6 GO AHEAD.

7 **BY MS. MORRIS**

8 **Q** MR. JERUE, IS THIS YOUR TRIAL AFFIDAVIT, THE EXHIBIT THAT'S
9 UP ON THE SCREEN RIGHT NOW?

10 **A** YES, IT IS.

11 **Q** AND IF YOU TURN TO THE FINAL PAGE OF IT, IS THAT YOUR
12 SIGNATURE?

13 **A** THAT'S CORRECT.

14 **Q** LOOKING AT PARAGRAPH THREE -- PARAGRAPH FOUR ON PAGE THREE?
15 AND IN YOUR TESTIMONY TODAY, YOU INDICATED THAT THERE HAS BEEN
16 GROWTH OF MORE THAN 550 PERCENT IN THE SPENDING ON HEALTHCARE
17 SINCE 1994/'95?

18 **A** THAT'S CORRECT.

19 **Q** GOING DOWN TO THE BOTTOM OF PAGE THREE, YOU INDICATE IN
20 PARAGRAPH SIX THAT, DUE TO CHANGES IN CATEGORIZATION OF BUDGET
21 EXPENDITURES, YOU ARE NOT ABLE TO DETERMINE IF THE TOTAL FROM
22 '95 -- '94/'95 INCLUDES EXPENDITURES FOR HEALTHCARE
23 ADMINISTRATION COSTS AND/OR CUSTODY-RELATED COSTS OR HOW MUCH
24 WAS SPENT ON THOSE ITEMS DURING THAT PERIOD; IS THAT CORRECT?

25 **A** THAT IS CORRECT.

1 Q OKAY. SO WHEN YOU'RE COMPARING COSTS FROM 1994/1995 TO
2 2007/2008, YOU'RE NOT ACTUALLY COMPARING NECESSARILY THE SAME
3 SET OF COSTS; IS THAT CORRECT?

4 A IT'S POSSIBLE.

5 Q YOU JUST DON'T KNOW?

6 A CORRECT.

7 Q OKAY. DO YOU KNOW HOW MUCH OF THE CURRENT COSTS OF MEDICAL
8 CARE IN 2007/2008, HOW MUCH OF THOSE WERE FOR ADMINISTRATION
9 COSTS?

10 A IT WAS FACTORED INTO THE NUMBER. I DON'T HAVE THAT WITH ME
11 TODAY.

12 Q DO YOU KNOW HOW MUCH OF THOSE -- OF THE COSTS CURRENTLY ARE
13 CUSTODY-RELATED COSTS?

14 A ONCE AGAIN I COULD GUESS AT A NUMBER. I DON'T HAVE THE
15 EXACT NUMBER WITH ME TODAY.

16 Q OKAY. SO AGAIN, YOU DON'T KNOW -- THAT IS THE PORTION THAT
17 YOU DON'T KNOW ABOUT FOR 1994 AND '95, WHETHER THAT WAS
18 INCLUDED?

19 A THAT'S CORRECT.

20 JUDGE KARLTON: CAN YOU GIVE ME A ROUGH ESTIMATE AS
21 TO THOSE -- ROUGH, AS TO THOSE COMPONENTS?

22 THE WITNESS: AS OF TODAY?

23 JUDGE KARLTON: YES.

24 THE WITNESS: I WOULD SAY ROUGHLY FOR BOTH
25 COMPONENTS IT WOULD BE APPROXIMATELY 250 TO 300 MILLION IN

1 TODAY'S DOLLARS.

2 **BY MS. MORRIS**

3 **Q** SO ABOUT A FIFTH TO A SIXTH OF THE TOTAL COSTS?

4 **A** THAT'S CORRECT.

5 **Q** IN THIS CHART AS FAR AS -- RATHER, IN YOUR -- IN YOUR TRIAL
6 AFFIDAVIT, AS FAR AS I CAN TELL, YOU DID NOT FACTOR IN
7 INFLATION; IS THAT ACCURATE?

8 **A** THAT'S CORRECT.

9 **Q** AND YOU DIDN'T FACTOR IN MEDICAL CARE INFLATION
10 SPECIFICALLY EITHER, DID YOU?

11 **A** NO. WE JUST COMPARED THE ACTUAL COSTS OF THE DEPARTMENT.

12 **Q** OKAY. DO YOU KNOW HOW MUCH INFLATION THERE HAS BEEN IN
13 MEDICAL CARE SINCE 1994?

14 **A** NO, I DON'T.

15 **Q** HAVE YOU EVER USED THE CONSUMER PRICE INDEX?

16 **A** FOR SOME APPLICATIONS, YES.

17 **Q** SO YOU USE IT IN YOUR WORK?

18 **A** RARELY. RARELY IN WHAT WE DO IN BUDGETING, BUT EVERY NOW
19 AND THEN.

20 **Q** I RAN SOME NUMBERS ON THE CONSUMER PRICE INDEX TO SEE HOW
21 MUCH GROWTH THERE HAS BEEN IN TODAY'S DOLLARS, AND I'D LIKE TO
22 JUST PUT UP FOR THE COURT THE CPI CALCULATOR.

23 **MR. LEWIS:** OBJECTION, YOUR HONOR. THIS LACKS
24 FOUNDATION, AND ALSO THE WITNESS OR THE -- I'M SORRY -- COUNSEL
25 IS TESTIFYING NOW, IT WOULD SEEM.

1 **JUDGE KARLTON:** SHE'S ASKING US TO TAKE JUDICIAL
2 NOTICE OF THE U.S. BUREAU OF LABOR STATISTICS CPI INFLATION
3 CALCULATOR, WHICH I ASSUME COMES OFF OF A WEBSITE NOWADAYS.

4 **MS. MORRIS:** THANK YOU. IT COMES OFF OF THE BLS,
5 THE BUREAU OF LABOR STATISTICS WEBSITE.

6 **JUDGE KARLTON:** WOULD YOU LIKE US TO TAKE JUDICIAL
7 NOTICE OF THAT?

8 **MS. MORRIS:** I WOULD LIKE YOU TO TAKE JUDICIAL
9 NOTICE OF THAT. THANK YOU.

10 **JUDGE KARLTON:** PRESIDING JUDGE, WILL YOU TAKE --

11 **JUDGE HENDERSON:** I WILL TAKE IT.

12 **BY MS. MORRIS**

13 **Q** I RAN A CALCULATION. IT DOESN'T DO MILLIONS. I RAN IT FOR
14 344,000 IN 1995, CALCULATING IT TO TODAY, 344,000 WOULD HAVE
15 \$488,852.44 WORTH OF BUYING POWER IN TODAY'S DOLLARS. DO YOU
16 SEE THAT?

17 **A** I DO.

18 **Q** DOES THAT SEEM REASONABLE TO YOU?

19 **MR. LEWIS:** OBJECTION, YOUR HONOR. THIS ASSUMES
20 FACTS NOT WITHIN THE WITNESS'S KNOWLEDGE. HE TESTIFIED HE
21 DOESN'T KNOW ABOUT THE CONSUMER PRICE INDEX.

22 **JUDGE KARLTON:** HE SAYS HE OCCASIONALLY USES IT.
23 IF YOU CAN ANSWER IT, FINE. IF YOU CAN'T, JUST TELL
24 US.

25 **THE WITNESS:** WITHOUT SEEING THE ANNUAL RATE FOR

1 EACH OF THOSE YEARS, I DON'T KNOW. IT DOESN'T SEEM
2 UNREASONABLE.

3 **BY MS. MORRIS**

4 **Q** OKAY. IF YOU HAD RUN YOUR PERCENTAGE INCREASE CALCULATION
5 BASED OFF TODAY'S DOLLARS, SO THE SPENDING IN 1994/1995
6 ADJUSTED FOR TODAY'S DOLLARS, COMPARED TO THE SPENDING TODAY,
7 THAT WOULD HAVE BEEN A SMALLER PERCENTAGE INCREASE, WOULDN'T
8 IT?

9 **A** I'M SORRY. I MISSED PART OF THE END THERE.

10 **Q** IF YOU HAD RUN YOUR COMPARISON OF THE 1994/'95 SPENDING TO
11 THE 2007/2008 SPENDING USING ALL TODAY'S DOLLARS, THAT WOULD
12 HAVE RESULTED IN A DIFFERENT AMOUNT OF INCREASE, WOULDN'T IT?

13 **A** IF I UNDERSTAND, IS -- I'M NOT SURE IF I UNDERSTAND YOUR
14 QUESTION STILL. WHAT YOU ARE SHOWING ME HERE IS THE
15 EXPENDITURES WOULD HAVE BEEN \$489 MILLION JUST THROUGH CPI. IS
16 THAT WHAT YOU'RE ASKING?

17 **Q** IN 1994, IF YOU ADJUSTED BACK FOR TODAY'S DOLLARS BACK TO
18 1994. IF YOU CALCULATED THE INCREASE IN A CONSTANT DOLLAR,
19 RATHER THAN INCLUDING INFLATION, THAT WOULD BE A SMALLER
20 PERCENTAGE INCREASE IN SPENDING, WOULDN'T IT?

21 **A** I'M STILL NOT SURE I UNDERSTAND YOUR QUESTION.

22 **Q** OKAY.

23 **JUDGE KARLTON:** THE FACT OF THE MATTER IS YOU DIDN'T
24 RUN THE INFLATION RATE IN WHEN YOU MADE THE CHART?

25 **THE WITNESS:** THAT'S CORRECT.

1 **JUDGE KARLTON:** AND, THEREFORE, IF YOU HAD RUN THE
2 INFLATION RATE IN, IT WOULD HAVE RESULTED IN A DIFFERENT
3 CALCULATION?

4 **THE WITNESS:** RIGHT. SO IF WE HAD CONVERTED 344
5 INTO THE 49, THEN THE PERCENT AVERAGE GROWTH WOULD HAVE BEEN
6 SOMEWHAT LESS. THAT'S CORRECT.

7 **MS. MORRIS:** THANK YOU.

8 **BY MS. MORRIS**

9 **Q** I ALSO -- I ALSO USED THE BUREAU OF LABOR STATISTICS TO RUN
10 MEDICAL CARE INFLATION AND SEE WHAT THE CHANGE IN COST OF
11 MEDICAL CARE IS SINCE 1995.

12 AND COULD WE PUT THAT UP?

13 (DOCUMENT DISPLAYED.)

14 **JUDGE KARLTON:** WOULD YOU LIKE US TO TAKE JUDICIAL
15 NOTICE OF THAT?

16 **MS. MORRIS:** AND I WOULD LIKE YOU TO TAKE JUDICIAL
17 NOTICE OF THIS AS WELL.

18 **JUDGE HENDERSON:** TAKEN.

19 **BY MS. MORRIS**

20 **Q** SO LOOKING AT THE PERIOD -- LOOKING AT 1995, HALF ONE, SO
21 THE TOP COLUMN, THE SECOND TO LAST ENTRY, DO YOU SEE THAT, 218?

22 **A** I DO.

23 **Q** AND THEN COMPARING THAT TO 2008, WHICH IS THE BOTTOM ROW,
24 SECOND TO LAST COLUMN, LAST COLUMN THAT'S FILLED IN, SO THAT'S
25 COMPARED FOR WESTERN URBAN AREAS FROM 19 -- FROM JANUARY --

1 FROM JUNE 30TH, 1995 THROUGH JUNE 30TH, 2008, THAT'S COMPARING
2 HEALTHCARE COSTS; IS THAT HOW YOU UNDERSTAND THIS AS WELL?

3 **A** I NEVER LOOKED AT THE CHART.

4 **Q** YOU'VE NEVER LOOKED AT THE MEDICAL CARE INFLATER CHART?

5 **A** NO.

6 **Q** OKAY. SO YOU HAVE NO KNOWLEDGE, WHEN YOU TALK ABOUT HOW
7 MUCH THE COST HAS INCREASED, WHAT PERCENTAGE OF THAT IS DUE TO
8 INFLATION?

9 **A** NO, BECAUSE WE DIDN'T DO OUR ANALYSIS BASED ON THAT.

10 **THE CLERK:** FIVE MINUTES, COUNSEL.

11 **MS. MORRIS:** OKAY.

12 **JUDGE HENDERSON:** COUNSEL YOU SAID WESTERN URBAN.

13 THIS SAYS ALL URBAN.

14 **MS. MORRIS:** LET'S SEE -- CAN YOU BLOW UP THE PLACE
15 IN THE TOP RIGHT ABOVE THE CHART WHERE IT SAYS -- DOWN LOWER,
16 THE -- INSIDE THE CHART, THAT PORTION.

17 **JUDGE HENDERSON:** THERE'S SOME BLURRED READING. I
18 CAN'T SEE.

19 **MS. MORRIS:** I DO HAVE A COPY OF IT I CAN PROVIDE
20 FOR THE COURT -- AND I CAN PROVIDE --

21 **JUDGE HENDERSON:** JUST GIVE IT TO THE DEPUTY. OKAY.

22 **JUDGE REINHARDT:** WE SEE IT. WE SEE IT.

23 **JUDGE HENDERSON:** IT'S JUST NOT CLEAR ON THAT CHART.

24 **BY MS. MORRIS**

25 **Q** ALSO, YOU DON'T GIVE ANY INFORMATION IN YOUR AFFIDAVIT

1 REGARDING THE COST OR THE SPENDING ON HEALTHCARE BETWEEN
2 1994/'95 AND 2005/2006, CORRECT?

3 **A** THAT'S CORRECT.

4 **Q** DID YOU DO THOSE CALCULATIONS?

5 **A** NO, WE DID NOT.

6 **Q** SO YOU DON'T ACTUALLY HAVE ANY KNOWLEDGE ABOUT THE LEVEL OF
7 SPENDING DURING THE TEN -- DURING THAT TEN-YEAR PERIOD,
8 CORRECT?

9 **A** THAT'S CORRECT.

10 **Q** DO YOU KNOW WHAT THE IMPACT OF OVERCROWDING IS ON
11 HEALTHCARE SPENDING FOR CDCR?

12 **A** NO, I'VE NEVER TAKEN A LOOK AT THAT.

13 **Q** DO YOU KNOW HOW MUCH OF THE GROWTH AND EXPENDITURES
14 ACTUALLY REPRESENTS GROWTH IN THE AMOUNT OF HEALTHCARE
15 PROVIDED?

16 **MR. LEWIS:** OBJECTION, YOUR HONOR. THAT'S A VAGUE
17 QUESTION.

18 **JUDGE HENDERSON:** OVERRULED.

19 **THE WITNESS:** NO, THE DEPARTMENT WOULD KNOW THAT. I
20 WOULDN'T KNOW THAT.

21 **BY MS. MORRIS**

22 **Q** DO YOU KNOW HOW MUCH OF THE ADDITIONAL SPENDING IS USED
23 EFFICIENTLY?

24 **A** NO.

25 **Q** DO YOU KNOW HOW MUCH OF THE INCREASED SPENDING IS GOING FOR

1 INCREASING THE QUALITY OF HEALTHCARE?

2 **MR. LEWIS:** OBJECTION, YOUR HONOR. VAGUE, AND THIS
3 WITNESS IS NOT BEING PROFFERED FOR ANY OF THIS EVIDENCE.

4 **JUDGE HENDERSON:** I THINK IT'S A FAIR
5 CROSS-EXAMINATION QUESTION, AND I'LL ALLOW IT.

6 **THE WITNESS:** NO, I WOULDN'T HAVE THE EXPERTISE TO
7 KNOW HOW IT'S AFFECTING THE QUALITY OF THE CARE.

8 **BY MS. MORRIS**

9 **Q** SO YOU DID NOT CONSIDER INFLATION, YOU DID NOT CONSIDER
10 QUALITY OF HEALTHCARE, QUANTITY OF HEALTHCARE, FOR ANY OF THE
11 YEARS BETWEEN 1994 AND 2005, AND YOU DON'T ACTUALLY KNOW WHAT
12 THE STARTING POINT INCLUDED IN YOUR CATEGORIES OF HEALTHCARE
13 SPENDING, CORRECT?

14 **A** THAT'S CORRECT.

15 **MS. MORRIS:** YOUR HONORS, WE WOULD MOVE TO STRIKE
16 THE TESTIMONY OF THIS WITNESS AS LACKING FOUNDATION, AND AS
17 BEING IRRELEVANT AND NOT PROBATIVE TO ANY MATTER IN THIS CASE,
18 AND WE WOULD LIKE ALSO TO STRIKE THE CHART WHICH IS BASED
19 ENTIRELY ON HIS TESTIMONY.

20 **MR. LEWIS:** YOUR HONOR, IF I MAY ADDRESS THAT VIA
21 REDIRECT?

22 **JUDGE HENDERSON:** YOU MAY. WE'LL TAKE IT UNDER --

23 **REDIRECT EXAMINATION BY MR. LEWIS**

24 **BY MR. LEWIS**

25 **Q** MR. JERUE, WHEN THE CHART COMES UP, I WOULD LIKE YOU TO

1 LOOK AT TWO SPECIFIC NUMBERS, 2006 TO 2008. BASED ON YOUR
2 KNOWLEDGE OF INFLATION MATTERS, JUST IN THE VERY BASIC SENSE,
3 HAS INFLATION GONE UP DRAMATICALLY SINCE 2006 TO 2008?

4 **A** NO, IT HAS NOT.

5 **Q** SO THEN IS IT SAFE TO SAY THAT BETWEEN 2006 AND 2008, THERE
6 HASN'T BEEN MUCH OF A CHANGE IN INFLATIONARY RATES IN TERMS OF
7 ACTUAL DOLLAR VALUE?

8 **JUDGE KARLTON:** THAT'S A DIFFERENT QUESTION. HAS
9 THERE BEEN A CHANGE?

10 **THE WITNESS:** HAS THERE BEEN ANY CHANGE IN
11 INFLATION? I WOULD ASSUME THERE'S BEEN SOME.

12 **JUDGE KARLTON:** DO YOU KNOW HOW MUCH?

13 **THE WITNESS:** I KNOW IT RUNS TYPICALLY IN THE RANGE
14 OF TWO TO THREE PERCENT A YEAR.

15 **BY MR. LEWIS**

16 **Q** BETWEEN 2006 AND 2008, A TWO-YEAR PERIOD, WHAT WAS THE
17 PERCENTAGE INCREASE IN HEALTHCARE SPENDING AT CDCR FOR MEDICAL
18 AND MENTAL HEALTH CARE SERVICES THAT ALSO INCLUDES CUSTODY AND
19 TRANSPORTATION AND THE ADMINISTRATIVE COST YOU REFERRED TO?

20 **A** OVER THE TWO-YEAR PERIOD, IT WAS APPROXIMATELY 80 PERCENT
21 INCREASE.

22 **Q** AND THAT'S WITHIN A SHORT TWO-YEAR PERIOD?

23 **A** THAT'S CORRECT.

24 **Q** AND IN THE ACCOUNTING FOR THE NEXT YEAR, FISCAL YEAR
25 2008/2009, THAT'S A ONE-YEAR CHANGE AS WELL, RIGHT?

1 **A** THAT'S CORRECT.

2 **Q** FOR A SHORT DURATION OF THAT, FOR A THREE OR TWO-YEAR
3 PERIOD, WOULD YOU EXPECT THAT THE INFLATION WOULD CHANGE AS
4 MUCH AS, SAY, THE 344 MILLION FIGURE CHANGED AS MUCH AS WHEN
5 YOU SAW THAT VALUE RATIO THING?

6 **A** I'M SORRY. ONE MORE TIME.

7 **Q** IN A THREE-YEAR PERIOD OF TIME, WOULD THE INFLATION RATE --
8 AND THANK YOU. PARDON MY QUESTION.

9 IN A THREE-YEAR PERIOD OF TIME, WOULD THAT FIGURE BE
10 AFFECTED MUCH IN TERMS OF BETWEEN 2006 AND 2009 BY AN INFLATION
11 RATE OF TWO OR THREE PERCENT?

12 **JUDGE KARLTON:** AFFECTED BY A RATE OF TWO OR
13 THREE PERCENT.

14 **MR. LEWIS:** YES.

15 **THE WITNESS:** RIGHT. IT WOULD BE MUCH SMALLER
16 GROWTH IF IT WAS CONSISTENT WITH INFLATION.

17 **BY MR. LEWIS**

18 **Q** YET, STILL IT'S IN THE RANGE OF 80 PERCENT?

19 **A** THAT'S CORRECT.

20 **MR. LEWIS:** NO FURTHER QUESTIONS, YOUR HONOR. THANK
21 YOU.

22 **JUDGE HENDERSON:** REDIRECT?

23 **MS. MORRIS:** NO FURTHER QUESTIONS.

24 **JUDGE KARLTON:** THERE MAY BE OTHER DEFENDANTS.

25 **MR. LEWIS:** IF YOUR HONOR WOULD HAVE ANY QUESTIONS

1 REGARDING FOUNDATION OR ANYTHING LIKE THAT, I COULD ADDRESS
2 THAT. I TRIED TO ESTABLISH THESE ARE RECORDS AND THEY ARE
3 BASED ON NUMBERS HIS UNIT IS RESPONSIBLE FOR KEEPING.

4 **JUDGE HENDERSON:** NO FURTHER QUESTIONS FOR ANYONE?
5 I'M GOING TO DENY THE MOTION AND RULE IT GOES THE WEIGHT OF
6 THIS TESTIMONY AND NOT ITS ADMISSIBILITY, COUNSEL.

7 THANK YOU, MR. JERUE.

8 YOU MAY CALL YOUR NEXT WITNESS.

9 **MS. TILLMAN:** THE WITNESS IS RIGHT IN THE HALLWAY,
10 YOUR HONOR.

11 **JUDGE HENDERSON:** STEP FORWARD, MA'AM, AND BE SWORN
12 IN.

13 **MS. TILLMAN:** YOUR HONOR, THIS IS MS. CYNTHIA
14 RADAUSKY FROM THE DEPARTMENT OF MEDICAL HEALTH. MY NAME IS
15 LISA TILLMAN ON BEHALF OF THE COLEMAN DEFENDANTS.

16 **CYNTHIA ANNE RADAUSKY**
17 HAVING BEEN CALLED AS A WITNESS BY THE DEFENDANTS WAS FIRST
18 DULY SWORN AND EXAMINED AS FOLLOWS:

19 **THE CLERK:** STATE AND SPELL YOUR FULL NAME FOR THE
20 RECORD.

21 **THE WITNESS:** MY NAME IS CYNTHIA ANNE RADAUSKY,
22 R-A-D-A-V, AS IN VICTOR, -S-K-Y.

23 **MS. TILLMAN:** GOOD MORNING, YOUR HONOR. LISA
24 TILLMAN ON BEHALF OF THE DEFENDANTS. WE'VE PRESENTED THE COURT
25 WITH A TRIAL AFFIDAVIT OF CYNTHIA RADAUSKY. I THINK IT WAS

1 TAGGED AS EXHIBIT NO. 1106. WE RESPECTFULLY REQUEST THIS COURT
2 ADMIT THAT TRIAL AFFIDAVIT INTO EVIDENCE TODAY.

3 JUDGE HENDERSON: 1106?

4 MS. TILLMAN: I BELIEVE IT IS 1106.

5 JUDGE HENDERSON: IT SAYS 1006.

6 MS. TILLMAN: I'M SORRY. IS IT 1006? MY TYPO.

7 THANK YOU.

8 JUDGE HENDERSON: IT WILL BE ADMITTED.

9 (DEFENDANTS' EXHIBIT 1006 RECEIVED IN EVIDENCE.)

10 DIRECT EXAMINATION BY MS. TILLMAN

11 BY MS. TILLMAN

12 Q MS. RADAUSKY, WHO ARE YOU EMPLOYED BY?

13 A THE STATE DEPARTMENT OF MENTAL HEALTH.

14 Q AND CAN YOU INFORM THE COURT, PLEASE, OF THE NATURE OF YOUR
15 POSITION WITH THE DEPARTMENT OF MENTAL HEALTH BY JOB TITLE AND
16 YOUR RESPONSIBILITIES?

17 A I'M THE DEPUTY DIRECTOR OF LONG-TERM CARE SERVICES, WHICH
18 IS RESPONSIBLE FOR THE OVERSIGHT AND MANAGEMENT OF THE FIVE
19 STATE MENTAL HOSPITALS, TWO PSYCHIATRIC PROGRAMS. I'M
20 RESPONSIBLE FOR THE CONDITIONAL RELEASE, AND MENTALLY
21 DISORDERED OFFENDER PROGRAM, AND THE SEXUALLY VIOLENT PREDATOR
22 PROGRAM.

23 Q MS. RADAUSKY, WHEN DID YOU FIRST BEGIN WORKING WITH THE
24 FEDERAL COURT IN THE COLEMAN CASE ON COMPLIANCE ISSUES?

25 A IN 1998 WHEN I BECAME THE ASSISTANT DEPUTY DIRECTOR, ONE OF

1 MY FIRST RESPONSIBILITIES WAS ATTENDING AND PARTICIPATING AS
2 GATES WAS BEING MERGED INTO COLEMAN.

3 Q AND GATES, GATES WAS A CLASS ACTION SUIT, OF COURSE,
4 INVOLVING JUST THE CALIFORNIA MEDICAL FACILITY, FOR THE RECORD.

5 AT THE TIME DID THE DEPARTMENT OF MENTAL HEALTH
6 PROVIDE INPATIENT SERVICES TO THE CALIFORNIA DEPARTMENT OF
7 CORRECTIONS AND REHABILITATION INMATES?

8 A YES, THEY DID.

9 Q AND SINCE THAT TIME OF 1998 THROUGH TODAY, HAS DMH PROVIDED
10 INPATIENT MENTAL HEALTHCARE SERVICES TO DEPARTMENT OF
11 CORRECTION INMATES?

12 A YES, THEY DO.

13 Q TO YOUR KNOWLEDGE, DOES ANY OTHER ENTITY PROVIDE INPATIENT
14 MENTAL HEALTHCARE SERVICES TO THESE CDCR INMATES?

15 A NO, THEY DON'T.

16 Q SO DMH IS THE SOLE PROVIDER OF MENTAL HEALTHCARE SERVICES
17 REQUIRED BY CDCR INMATES WHO NEED INPATIENT CARE?

18 A THAT'S CORRECT.

19 Q DOES THE DEPARTMENT OF MENTAL HEALTH RECEIVE PATIENTS FROM
20 ANY OTHER AGENCIES OTHER THAN THE DEPARTMENT OF CORRECTIONS AND
21 REHABILITATION?

22 A YES, WE DO. THE MISSION OF THE DEPARTMENT OF MENTAL HEALTH
23 IS OUTLINED IN THE STATE CONSTITUTION, AND WE'RE REQUIRED TO
24 PROVIDE SERVICES FOR MENTALLY ILL THAT COME IN THROUGH EITHER A
25 VOLUNTARY OR INVOLUNTARY SHORT COMMITMENT. WE'RE RESPONSIBLE

1 UNDER PENAL CODE 1370, INCOMPETENT TO STAND TRIAL; PENAL CODE
2 26, NOT GUILTY BY REASON OF IN SANITY; WELFARE AND INSTITUTIONS
3 CODE 6600, SEXUALLY VIOLENT PREDATORS; AND VARIOUS PENAL CODES,
4 2962, 2972, AND 2974, MENTALLY DISORDERED OFFENDERS.

5 SO WE RECEIVE MULTIPLICITY OF PATIENTS FROM THE
6 VARIOUS SUPERIOR COURTS WITHIN THE COUNTIES OF CALIFORNIA, THE
7 BOARD OF PRISON HEARINGS. I SERVICE THE POPULATION FROM THE
8 DEPARTMENT OF JUVENILE JUSTICE WITHIN THE CALIFORNIA DEPARTMENT
9 OF CORRECTIONS AND REHABILITATION, AS WELL AS PROVIDING
10 SERVICES TO THE COUNTIES.

11 (DOCUMENT DISPLAYED.)

12 **BY MS. TILLMAN**

13 **Q** WOULD YOU LOOK AT EXHIBIT 1243, PLEASE, THAT WE PUT UP ON
14 THE SCREEN? WAS YOUR STAFF RESPONSIBLE FOR CREATING THIS
15 EXHIBIT?

16 **A** YES, THEY WERE.

17 **Q** AND, TO YOUR KNOWLEDGE, WHEN WAS IT PREPARED BY YOUR STAFF?

18 **A** WITHIN THE LAST 30 TO 60 DAYS.

19 **Q** WHAT DOES THIS EXHIBIT SHOW?

20 **A** THIS EXHIBIT SHOWS THE LOCATIONS THROUGHOUT THE STATE OF
21 CALIFORNIA OF OUR FIVE STATE MENTAL HOSPITALS AND THE TWO
22 PSYCHIATRIC PROGRAMS.

23 **Q** DOES IT ALSO SHOW THE NUMBER OF INPATIENT MENTAL HEALTHCARE
24 BEDS PROVIDED BY THE DEPARTMENT OF MENTAL HEALTH TO CDCR IN
25 STATES?

1 **A** YES, IT NOT ONLY SHOWS THE NUMBER, BUT IT SHOWS THE
2 BREAKDOWN BETWEEN GENDER AND BETWEEN ACUTE LEVEL OF CARE, WHICH
3 IS ESSENTIALLY FOR THOSE PATIENTS THAT REQUIRE IMMEDIATE
4 TREATMENT TO STABILIZE A PSYCHOTIC CRISIS OR THOSE, FOR
5 EXAMPLE, IN INTERMEDIATE CARE, WHICH IS FOR LONGER TERM AND
6 CHRONIC MENTAL ILLNESS.

7 **Q** WILL THIS MAP ASSIST IN YOUR TESTIMONY TODAY?

8 **A** YES.

9 **Q** LOOKING AT THE MAP, WOULD YOU DESCRIBE TO THE COURT WHERE
10 THE DEPARTMENT OF MENTAL HEALTH PROVIDES INPATIENT MENTAL
11 HEALTHCARE TO CDCR INMATES WITHIN CDCR PREMISES?

12 **A** OKAY. LET'S START WITH THE STATE HOSPITALS. AT THE TOP OF
13 THE BOX ON THE SIDE WHERE IT SAYS "ATASCADERO," ATASCADERO HAS
14 25 BEDS SET ASIDE FOR THE DEPARTMENT OF CORRECTIONS AND
15 REHABILITATION INMATES. SO WE HAVE 25 ACUTE CARE BEDS AND 231
16 INTERMEDIATE CARE BEDS, WHICH ARE BEDS FOR INMATES THAT HAVE A
17 LOWER RISK OF VIOLENCE OR SECURITY. THAT HOSPITAL IS WITHIN
18 THE CITY OF ATASCADERO, CLOSE TO SUN LUIS OBISPO.

19 COALINGA STATE HOSPITAL IS IN COALINGA. IT HAS A
20 50-BED INTERMEDIATE CARE FOR THE CDCR INMATES. PATTON STATE
21 HOSPITAL IS IN SAN BERNADINO, AND WE HAVE 30 FEMALE
22 INTERMEDIATE CARE BEDS.

23 THEN THE TWO PSYCHIATRIC PROGRAMS ARE WITHIN TWO
24 PRISONS. SO THE VACAVILLE PSYCHIATRIC PROGRAM IS WITHIN THE
25 CALIFORNIA MEDICAL FACILITY, THERE'S 150 ACUTE BEDS, WHICH

1 RIGHT NOW HAS 20 BEDS DEDICATED FOR MENTAL HEALTH CRISIS BEDS,
2 AND 150 INTERMEDIATE CARE BEDS. THAT 150 INCLUDES A 44-BED DAY
3 TREATMENT PROGRAM. THEN THE SALINAS VALLEY PSYCHIATRIC PROGRAM
4 IS WITHIN SALINAS VALLEY STATE PRISON, AND CURRENTLY WE HAVE
5 176 MALE INTERMEDIATE CARE BEDS.

6 **Q** NOW, IN REGARDS TO THE PROGRAMS AT VACAVILLE PSYCHIATRIC
7 AND SALINAS VALLEY PSYCHIATRIC PROGRAM, ARE THOSE PARTICULAR
8 INPATIENT PROGRAMS WITHIN -- LET ME STRIKE THAT.

9 DO THOSE PARTICULAR PSYCHIATRIC PROGRAMS AT SALINAS
10 VALLEY AND VACAVILLE PSYCHIATRIC PROGRAM PROVIDE THEIR OWN
11 DINING FACILITIES FOR YOUR PATIENTS?

12 **A** YES, BECAUSE IT'S LICENSED CARE, THEY MUST HAVE SERVICES
13 PROVIDED THROUGH A LICENSED DINING AND THERAPEUTIC KITCHEN, SO
14 THEY ARE NOT ALLOWED TO COMMINGLE IN THE OTHER DINING ROOMS OR
15 HAVE FOOD SERVED TO THEM BY OTHER INMATES.

16 **JUDGE KARLTON:** MS. TILLMAN, MAY I INTERRUPT? I
17 HAVE THE SAME PROBLEM WITH THIS WITNESS AS I HAVE WITH THE
18 FIRST, ALTHOUGH IT'S NOT AS DRAMATIC. HOW DOES THIS BEAR UPON
19 THE QUESTION OF WHETHER OR NOT OVERCROWDING IS THE PRIMARY
20 CAUSE? WHERE ARE WE GOING?

21 **MS. TILLMAN:** I'M TRYING TO LAY A NECESSARY
22 FOUNDATION, YOUR HONOR, FOR THIS WITNESS TO TESTIFY THAT,
23 INDEED, THE MENTAL HEALTHCARE PATIENTS THAT ARE PROVIDED
24 INPATIENT SERVICES BY THE DEPARTMENT OF MENTAL HEALTH ARE NOT
25 IN OVERCROWDED CONDITIONS.

1 **JUDGE KARLTON:** I SEE. ALL RIGHT. NOW I UNDERSTAND
2 WHERE YOU ARE GOING.

3 **BY MS. TILLMAN**

4 **Q** MS. RADAUSKY, WHEN YOU MENTION THERE IS NO COMMINGLING IN
5 THE DINING FACILITIES, ARE YOU ALSO INDICATING THAT THERE'S NO
6 COMMINGLING IN TERMS OF THE HOUSING OF INMATES RECEIVING
7 INPATIENT MENTAL HEALTHCARE SERVICES BY THE DEPARTMENT OF
8 MENTAL HEALTH AT CDCR SITES WITH GENERAL POPULATION INMATES AT
9 CDCR SITES?

10 **A** THAT'S CORRECT. OUR PATIENTS, WHEN THEY ARE WITH US, NOT
11 ONLY DINE SEPARATELY THERE, THEY ARE IN SEPARATE THERAPEUTIC
12 ENVIRONMENTS, SEPARATE INDIVIDUAL AND THERAPEUTIC GROUPS, AND
13 THEY'RE NOT ALLOWED TO BE OUT FOR RECREATION OR YARD TIME AT
14 THE SAME TIME.

15 **Q** IS ANY OF YOUR PATIENTS -- ARE ANY OF YOUR PATIENTS TRIPLE
16 BUNKED AT ANY OF YOUR SITES WITHIN STATE HOSPITALS OR WITHIN
17 PREMISES --

18 **A** NO, THEY ARE NOT.

19 **Q** UNDER APPLICABLE STATE LICENSURE REQUIREMENTS OF TITLE 22,
20 ARE YOUR PATIENTS PERMITTED TO BE TRIPLE BUNK?

21 **MR. GALVAN:** OBJECTION. LEADING.

22 **JUDGE HENDERSON:** I WILL ALLOW IT.

23 **BY MS. TILLMAN**

24 **Q** ARE YOUR STATE HOSPITALS SUBJECT TO JOINT COMMISSION
25 ACCREDITATION OF HOSPITAL ORGANIZATION ACCREDITATION STANDARDS?

1 **MR. GALVAN:** OBJECTION. LEADING.

2 **JUDGE HENDERSON:** OVERRULED.

3 **THE WITNESS:** FOUR OF MY HOSPITALS ARE JOINT
4 COMMISSION ACCREDITED: ATASCADERO, PATTON, NAPA, AND
5 METROPOLITAN. AND WE DO HAVE STANDARDS FOR CARE IN THE LIVING
6 ENVIRONMENT.

7 **BY MS. TILLMAN**

8 **Q** IN THE COURSE OF WORKING WITH THE ACCREDITATION STANDARDS
9 OF THE JOINT COMMISSION, ARE YOU AWARE OF WHETHER OR NOT ANY OF
10 THOSE STANDARDS PERMIT TRIPLE BUNKING OF YOUR PATIENTS?

11 **A** NO, THEY DO NOT.

12 **Q** ARE YOU FAMILIAR WITH THE COURT ORDERS FROM THE COLEMAN
13 COURT CONCERNING CARE PROVIDED TO CALIFORNIA DEPARTMENT OF
14 CORRECTION PATIENTS BY THE DEPARTMENT OF MENTAL HEALTH?

15 **A** YES, I AM.

16 **Q** HAVE ANY OF THOSE COURT ORDERS ADDRESSED THE ADEQUACY OF
17 THE CARE RENDERED BY THE DEPARTMENT OF MENTAL HEALTH TO THESE
18 PARTICULAR PATIENTS?

19 **A** NO, THEY HAVE NOT.

20 **Q** WHAT HAVE THE ORDERS ADDRESSED?

21 **A** THE ORDERS HAVE PRIMARILY REQUESTED ADDITIONAL BEDS FROM
22 THE DEPARTMENT OF MENTAL HEALTH.

23 **Q** WHEN YOU MENTION THAT THE COURT HAS REQUESTED ADDITIONAL
24 BEDS BE PROVIDED BY THE DEPARTMENT OF MENTAL HEALTH FOR THE
25 CARE OF COLEMAN PATIENTS, ARE YOU FAMILIAR WITH THE COURT ORDER

1 OF MARCH 3, 2006, WHICH WE'VE LABELED AS EXHIBIT 1043? AND
2 LOOKING AT PAGE FOUR OF THAT COURT ORDER, ARE YOU FAMILIAR WITH
3 THE PARAGRAPH FOUR THAT REQUIRES DEFENDANTS TO BUILD 64 SINGLE
4 CELLS IN THE PRESENTLY PLANNED EXPANSION OF SALINAS VALLEY
5 PSYCHIATRIC PROGRAM OPERATED BY THE DEPARTMENT OF MENTAL HEALTH
6 FOR LEVEL FOUR VIOLENT INMATES AT SALINAS VALLEY STATE PRISON?

7 **A** YES, I AM. AND THAT PROGRAM, THE ADMINISTRATION BUILDING
8 HAS BEEN TURNED OVER TO ME, AND WE'RE ANTICIPATING THE HOUSING
9 PORTION TO BE COMPLETED AND TURNED OVER BY THE END OF DECEMBER,
10 EARLY JANUARY '09 SO THAT WE CAN START OCCUPANCY EITHER THE END
11 OF JANUARY '09 OR FEBRUARY '09.

12 **Q** AND ARE YOU ALSO FAMILIAR WITH A COURT ORDER OF MAY 2,
13 2006, DEFENDANT'S EXHIBIT 1296?

14 **THE CLERK:** YOU HAVE FIVE MINUTES, COUNSEL.

15 **BY MS. TILLMAN**

16 **Q** AGAIN, THAT COURT ORDER INDICATES NOT ONLY, IN PARAGRAPH
17 SEVEN, THE ADDITION OF 36 BEDS FOR INMATES AT SALINAS VALLEY
18 STATE PRISON, BUT ALSO THE ADDITION OF, IN PARAGRAPH TEN, 25
19 ADDITIONAL INPATIENT BEDS FOR INMATES AT COALINGA STATE
20 HOSPITAL, CORRECT?

21 **A** THAT'S CORRECT.

22 **Q** AND WERE THOSE BEDS MADE AVAILABLE AT COALINGA STATE
23 HOSPITAL?

24 **A** YES, THEY WERE.

25 **Q** LOOKING AT PARAGRAPH 11 OF THAT EXHIBIT, THAT PARAGRAPH

1 ALSO ADDRESSES THE NEED TO PROVIDE ADDITIONAL BEDS TO THOSE
2 INMATES OF THE DEPARTMENT OF CORRECTIONS WHO NOT ONLY NEED
3 INPATIENT SERVICES BUT HAVE LEVEL FOUR HIGH CUSTODY
4 CLASSIFICATION, CORRECT?

5 **A** THAT'S CORRECT.

6 **Q** IN THE COURSE OF YOUR WORK WITH THE DEPARTMENT OF MENTAL
7 HEALTH, HAVE YOU FOUND THAT THERE IS A WAIT LIST FOR BEDS
8 PROVIDED BY THE DEPARTMENT OF MENTAL HEALTH TO THESE CDCR
9 INMATES IN NEED OF INPATIENT SERVICES?

10 **A** THE WAIT LIST IS FOR THE HIGH SECURITY INMATES THAT HAVE A
11 RISK OF VIOLENCE.

12 **Q** WHERE DOES THAT WAIT LIST USUALLY OCCUR? IS IT AT YOUR
13 STATE HOSPITALS OR AT THE PSYCHIATRIC PROGRAMS WITHIN CDCR?

14 **A** THE WAIT LIST IS PREDOMINANTLY FOR SALINAS VALLEY
15 PSYCHIATRIC PROGRAM AND THE HIGH SECURITY UNITS THAT WE OPERATE
16 WITHIN THE VACAVILLE PSYCHIATRIC PROGRAM, P2 AND P3, WHICH WERE
17 OPENED WITHIN THE LAST THREE TO FOUR YEARS, SPECIFICALLY TO
18 ADDRESS THE WAIT LIST FOR THESE HIGH SECURITY INMATES.

19 **Q** WHY IS THERE NO WAIT LIST FOR THE BEDS, THE INPATIENT BEDS
20 PROVIDED BY THE DEPARTMENT OF MENTAL HEALTH AT PLACES WITHIN
21 THE STATE HOSPITALS LIKE ATASCADERO STATE HOSPITAL?

22 **MR. GALVAN:** OBJECTION. ASSUMES FACTS NOT IN
23 EVIDENCE.

24 **JUDGE HENDERSON:** WHY DON'T YOU REPHRASE, COUNSEL?

25 **MS. TILLMAN:** THANK YOU.

1 **BY MS. TILLMAN**

2 **Q** IN REGARDS TO THE INPATIENT BEDS AVAILABLE AT ATASCADERO
3 STATE HOSPITAL, IS THERE USUALLY A WAIT LIST FOR THOSE BEDS?

4 **A** NO, THERE IS NOT.

5 **Q** DO YOU HAVE AN UNDERSTANDING OR HAVE YOU FORMED AN OPINION
6 AS TO WHY THERE IS NO WAIT LIST FOR THE BEDS PROVIDED AT
7 ATASCADERO STATE HOSPITAL FOR THE CARE OF CDCR INMATES?

8 **A** WE HAVE NOT RECEIVED SUFFICIENT REFERRALS TO FILL THOSE
9 BEDS. I HAVE OPENINGS IN THE LOW SECURITY BEDS AT VACAVILLE,
10 ATASCADERO, AND EVEN FOR THE WOMEN AT PATTON. SO IT'S -- YOU
11 KNOW, THE LOWER SECURITY FOLKS ARE BEING TREATED OR NOT
12 REFERRED TO US.

13 IF WE GET A REFERRAL AND WE REJECT IT, THE
14 CLINICAL -- THE COORDINATED CLINICAL ASSESSMENT TEAM REVIEWS
15 THE REJECTION. IF THERE'S SUFFICIENT EVIDENCE AFTER A JOINT
16 DISCUSSION BY CDCR CLINICIANS AND DEPARTMENT OF MENTAL HEALTH
17 CLINICIANS, WE WILL ACCEPT THAT AND MAKE -- THE FINAL APPEAL
18 DECISION RESIDES WITH MYSELF AND MY COUNTERPART OVER AT
19 CORRECTIONS. IF THE REJECTION STANDS IN THE MONTHLY REPORT
20 THAT I SUBMIT TO THE SPECIAL MASTER IN THE COURT FOR BED
21 UTILIZATION, THAT REJECTION IS ATTACHED.

22 **Q** SO AT THE END OF THE DAY, ALL THE REJECTIONS THAT STAND ARE
23 ESSENTIALLY SUBMITTED TO THE SPECIAL MASTER'S TEAM FOR REVIEW;
24 IS THAT CORRECT?

25 **A** THAT IS CORRECT.

1 **Q** DO YOU FIND THAT MENTALLY ILL PATIENTS WITHIN THE COLEMAN
2 CASELOAD ARE SUBJECT TO PERIODIC EPISODES OF DECOMPENSATION?

3 **MR. BIEN:** OBJECTION. LEADING.

4 **JUDGE HENDERSON:** I'M GOING TO ALLOW IT. IT'S NOT
5 PREJUDICIAL IN ANY WAY. YOU MAY ANSWER THAT.

6 **THE WITNESS:** MENTAL ILLNESS BEING A METABOLIC AND A
7 BIOLOGICAL DISEASE HAS ITS EBBS AND FLOWS. IT'S NOT BLACK AND
8 WHITE. THERE ARE GRAY AREAS. AND IT'S BASED ON THE
9 STABILIZATION OF PATIENTS. SOMETIMES THERE ARE TRIGGERS THAT
10 ADD TO THE DECOMPENSATION, AND THAT'S WHY YOU HAVE VARYING
11 LEVELS OF CARE TO MEET THE INDIVIDUAL NEEDS OF PATIENTS AS THEY
12 STABILIZE OR THEY DECOMPENSATE TO HELP GET THEM BACK ON TRACK.

13 **BY MS. TILLMAN**

14 **Q** HOW WOULD YOU TERM THE MODEL OF CARE PROVIDED BY THE
15 DEPARTMENT OF MENTAL HEALTH?

16 **A** THE PHILOSOPHY OF THE DEPARTMENT OF MENTAL HEALTH IS TO USE
17 WHAT IS CALLED A RECOVERY MODEL. IT'S AN INCLUSION OF
18 BIOPSYCHOSOCIAL REHABILITATION AND RELAPSE PREVENTION. IT'S
19 VERY PERSON CENTERED. IT TREATS THE WHOLE PERSON, NOT JUST THE
20 SYMPTOMS THAT BRING THEM TO US FOR ADMISSION. SO IT TAKES US
21 APPROXIMATELY 60 DAYS TO DO A FULL ADMISSION SET OF EVALUATIONS
22 FROM AN ENTIRE INTERDISCIPLINARY TEAM.

23 **THE CLERK:** TIME'S UP, COUNSEL.

24 **JUDGE HENDERSON:** LET ME ASK, IS THE RECOVERY MODEL
25 THAT YOU JUST -- IS THAT A PRISON MODEL, OR IS THAT IN THE

1 BROADER WORLD OUTSIDE THE PRISON WORLD? IS THAT SOMETHING
2 YOU'VE DEvised WITHIN THE PRISON SYSTEM? JUST FOR MY
3 INFORMATION.

4 **THE WITNESS:** THAT'S A GOOD QUESTION. IT STARTED AS
5 A COMMUNITY BASIS OF SERVICES AND A MODEL WHERE TRADITIONALLY
6 MENTAL HEALTH WAS A -- WHAT WAS CALLED A MEDICAL MODEL. THE
7 DOCTOR TOLD THE TEAM HOW TO TREAT THE PATIENT. THIS MODEL WAS
8 STARTED BY THE CONSUMERS IN THE COMMUNITY AND HAS GROWN THROUGH
9 THE STATE MENTAL HEALTH HOSPITALS ACROSS THE COUNTRY, BECAUSE
10 IT'S BASED ON THE WANTS, THE NEEDS, AND THE DESIRES OF THE
11 PATIENT WITH THE FULL TEAM IN COLLABORATION BRINGING EVERY
12 CLINICIAN TO BEAR. YOU HAVE PSYCHOLOGISTS, REHABILITATION
13 THERAPISTS, SOCIAL WORKERS, PSYCHIATRISTS, CLINICAL DIETICIANS,
14 BECAUSE THEY ALL PLAY A ROLE.

15 **JUDGE HENDERSON:** THANK YOU.

16 **MS. TILLMAN:** MAY I HAVE JUST ONE LAST QUESTION?
17 THANK YOU.

18 **BY MS. TILLMAN**

19 **Q** WHAT WOULD ENABLE THE DEPARTMENT OF MENTAL HEALTH TO BETTER
20 SERVE THE MENTAL HEALTHCARE NEEDS OF THE DEPARTMENT OF
21 CORRECTION INMATES?

22 **A** ADDITIONAL HIGH SECURITY BEDS.

23 **MS. TILLMAN:** THANK YOU. NOTHING FURTHER.

24 **JUDGE HENDERSON:** ANY INTERVENORS HAVE ANY
25 QUESTIONS?

1 **MS. WANG:** NO, YOUR HONOR.

2 **MR. MITCHELL:** NO, YOUR HONOR.

3 **JUDGE HENDERSON:** CROSS-EXAMINATION.

4 **MR. GALVAN:** YES, YOUR HONOR. ERNEST GALVAN FOR THE
5 PLAINTIFF CLASS.

6 **CROSS-EXAMINATION BY MR. GALVAN**

7 **BY MR. GALVAN**

8 **Q** GOOD MORNING, MS. RADAVSKY.

9 **A** GOOD MORNING.

10 **Q** IT'S YOUR TESTIMONY THAT THE DMH PATIENTS, INMATE PATIENTS,
11 ARE NOT IMPACTED BY OVERCROWDING AT CDCR; IS THAT CORRECT?

12 **A** THAT'S CORRECT.

13 **Q** AND COULD WE LOOK AT 1243, D1243, PLEASE? OR D1295, THIS
14 IS THE MAP THAT YOU TESTIFIED ABOUT EARLIER.

15 **JUDGE HENDERSON:** EXCUSE ME, COUNSEL. HOW LONG DO
16 YOU THINK YOUR CROSS IS GOING TO TAKE? JUST GIVE US YOUR BEST
17 ESTIMATE.

18 **MR. GALVAN:** I'VE PLANNED FOR 75 MINUTES, ONE HOUR
19 15 MINUTES, YOUR HONOR.

20 **JUDGE HENDERSON:** OKAY. LET'S BREAK FOR LUNCH.

21 **MR. GALVAN:** THANK YOU.

22 (LUNCHEON RECESS TAKEN.)

23 **JUDGE HENDERSON:** OKAY. YOU MAY PROCEED WITH YOUR
24 CROSS WHEN YOU'RE READY, COUNSEL.

25 **MR. GALVAN:** THANK YOU, YOUR HONOR.

1 (DOCUMENT DISPLAYED.)

2 **BY MR. GALVAN**

3 **Q** GOOD AFTERNOON, MS. RADAVSKY. ERNEST GALVAN FOR THE
4 PLAINTIFFS.

5 THIS IS DEFENDANT'S 1243, YOUR MAP. I BELIEVE YOU
6 TESTIFIED YOU PREPARED THIS FOR THE TRIAL. IF WE COULD ZOOM IN
7 TO JUST THE TABLE OF THE BEDS FOR A MOMENT? THE LARGEST SET OF
8 BEDS ARE THE VACAVILLE PSYCHIATRIC PROGRAM; IS THAT RIGHT? THE
9 BEDS AT CMF CALIFORNIA MEDICAL FACILITY VACAVILLE.

10 **A** AT THIS TIME, CORRECT.

11 **Q** AND THOSE ARE THE BEDS THAT WERE AT ISSUE IN GATES, THOSE
12 BEDS WERE THERE DURING THE PERIOD OF THE GATES LITIGATION; IS
13 THAT RIGHT?

14 **MS. TILLMAN:** OBJECTION AS TO RELEVANCE.

15 **JUDGE HENDERSON:** OVERRULED.

16 WAS THERE AN ANSWER?

17 **THE WITNESS:** NOT ALL OF THEM WERE.

18 **BY MR. GALVAN**

19 **Q** THOSE BEDS INCLUDE A UNIT KNOWN AS THE Q UNIT; IS THAT
20 CORRECT? Q1, 2 AND 3?

21 **A** YES.

22 **Q** AND AT THE BEGINNING OF 2007, YOU HAD TWO SUICIDES THERE
23 TOWARD THE END OF JANUARY AMONG COLEMAN CLASS MEMBERS IN THE Q
24 UNITS; IS THAT CORRECT?

25 **A** YES.

1 Q OKAY. IF WE COULD PUT UP, PLEASE, THE APRIL 16TH, 2007,
2 MEMO?

3 (DOCUMENT DISPLAYED.)

4 MR. GALVAN: THANK YOU.

5 JUDGE KARLTON: WHAT EXHIBIT IS THIS, COUNSEL?

6 MR. GALVAN: THIS IS NOT AN EXHIBIT YET. WE ARE
7 GOING TO OFFER THIS AS A REBUTTAL IMPEACHMENT EXHIBIT. IT WILL
8 BE NUMBER P588. I HAVE COPIES FOR COUNSEL. MAY I PRESENT ONE
9 TO THE WITNESS?

10 JUDGE HENDERSON: YOU MAY.

11 BY MR. GALVAN

12 Q MS. RADAVSKY, ARE YOU FAMILIAR WITH THAT REPORT?

13 A YES, I AM.

14 Q THE DOCUMENT P588, DID YOU RECEIVE A COPY OF THAT REPORT
15 WHEN IT WAS ISSUED?

16 A I DIDN'T HEAR THE END OF YOUR QUESTION.

17 Q DID YOU RECEIVE A COPY OF THAT REPORT?

18 JUDGE HENDERSON: WHEN IT WAS ISSUED.

19 THE WITNESS: YES, I DID.

20 BY MR. GALVAN

21 Q FOR THE RECORD, THIS IS -- THE REPORT DESCRIBES ON THE
22 TITLE "THE SUICIDE REPORT OF INMATE," AND I'VE REDACTED THE
23 NAME. I'LL JUST REFER TO HIM AS D.M. THIS IS ONE OF MY
24 CLIENTS WHO DIED IN THE Q UNIT AT VACAVILLE, ACCORDING TO THIS
25 REPORT, JANUARY 27TH, 2007. I WOULD ASK YOU TO PLEASE TURN TO

1 PAGE -- THE PAGE AFTER THE CC IF YOU WOULD, PAGE THREE, THE ONE
2 THAT STARTS: "MEMORANDUM TO SUSAN HUBBARD" AT THE TOP. IT'S
3 PAGE ONE OF THE ACTUAL MEMORANDUM, ONE PAGE IN FROM HERE.

4 AND THE BODY OF TEXT THERE IN THE MEMORANDUM
5 DESCRIBES THE CIRCUMSTANCE UNDER WHICH D.M. DIED, YOU'LL SEE
6 THERE, THE FIRST SENTENCE:

7 "AN ORDER FOR ONE-TO-ONE DIRECT VISUAL
8 OBSERVATION FOR THE PURPOSES OF SUICIDE WATCH WAS IN
9 EFFECT."

10 AND IT SAYS THERE.

11 "HE HAS SMEARED FECES ON THE WINDOW, AND THEN
12 WHEN THEY CHECKED ON HIM -- "

13 DOWN AT THE BOTTOM, IF I CAN READ, IT SAYS:

14 "M WAS KNEELING IN FRONT OF HIS DESK WITH A NOOSE
15 AROUND HIS NECK, "

16 AND DESCRIBES THE LIFESAVING MEASURES.

17 IF YOU COULD TURN NOW TO THE RECOMMENDATIONS PAGE,
18 WHICH IS PAGE FOUR OF THIS SAME MEMO. AND THE -- ONE PAGE
19 BACK, PLEASE.

20 (DOCUMENT DISPLAYED.)

21 **BY MR. GALVAN**

22 **Q** IF I COULD ASK YOU, MS. RADAVSKY, TO LOOK AT THE VERY FIRST
23 CELL IN THE TABLE WHICH HAS SOME TEXT? IT'S A LITTLE BIT
24 OBSCURED BY THE WATERMARK. I WILL READ IT FOR THE RECORD.

25 "THE DEPARTMENT OF MENTAL HEALTH ADMINISTRATION

1 REQUESTED TO HAVE 124 CELLS RETROFITTED TO REMOVE THE
2 DESKS AND STOOLS, REPLACE THE BEDS, DOORS AND VENT
3 AND WINDOW SCREENS."

4 ARE YOU FAMILIAR WITH THAT RECOMMENDATION?

5 **A** YES, I AM.

6 **Q** AND, TO YOUR KNOWLEDGE, HAS THAT CELL BEEN RETROFITTED AS
7 DESCRIBED THERE?

8 **A** THERE'S A PLAN DEVELOPED TO COMPLETE ALL OF THE
9 RETROFITTING. SOME OF THE PIECES HAVE BEEN REMOVED, BUT NOT
10 ALL OF IT BECAUSE WE HAVE TO REMOVE INMATES FROM THE CELLS IN
11 ORDER TO DO THIS, AND WE'VE SUBMITTED A PLAN FOR THE RETROFIT,
12 BUT THAT HAS NOT BEEN APPROVED YET AT THIS TIME BECAUSE I WAS
13 ASKED FOR FURTHER CLARIFICATION ON IT.

14 **Q** AND IS IT CORRECT THAT YOU CAN'T REMOVE THE INMATES FROM
15 THOSE CELLS BECAUSE, IF YOU DO, YOU'LL PUT YOUR DEPARTMENT AND
16 THE CDCR TO THE HOBSON'S CHOICE OF DEPRIVING INMATES WHO ARE
17 WAITING FOR THOSE CELLS OF THE LEVEL OF CARE THEY NEED?

18 **MS. TILLMAN:** OBJECTION. ARGUMENTATIVE. MISSTATES
19 EVIDENCE.

20 **JUDGE HENDERSON:** I WILL ALLOW IT.

21 **THE WITNESS:** FROM MY POINT OF VIEW, I CAN'T REMOVE
22 THEM BECAUSE THE COURT HAS NOT ALLOWED ME, AND I HAVE BEEN
23 DIRECTED BY THE COURT THAT ALL PLANS AND CHANGES IN THE
24 VACAVILLE SITE PROGRAM MUST OCCUR UPON APPROVAL OF THE COURT.

25

1 **BY MR. GALVAN**

2 **Q** DIDN'T THE COURT MAKE THAT ORDER IN ORDER TO AVOID THE
3 DEPRIVATION OF LIFESAVING CARE TO PEOPLE WAITING FOR THOSE
4 BEDS?

5 **MS. TILLMAN:** OBJECTION. CALLS FOR SPECULATION.

6 **JUDGE HENDERSON:** SUSTAINED, UNLESS YOU CAN LAY A
7 FOUNDATION.

8 **JUDGE KARLTON:** I DON'T KNOW WHAT I SAID AT THE TIME
9 I DID IT SO --

10 **MR. GALVAN:** THANK YOU, YOUR HONOR. I'D LIKE AT
11 THIS TIME TO SWITCH THE DOCUMENT TO THE APRIL 20TH MEMO, THE
12 ONE THAT WAS UP BEFORE, THE REPORT OF R.M. THIS IS ALSO AN
13 IMPEACHMENT REBUTTAL EXHIBIT THAT WILL BE NUMBERED FOR THE
14 RECORD P589.

15 MAY I PRESENT THIS TO THE WITNESS?

16 FOR THE RECORD, WHAT I PRESENTED TO WITNESS WILL BE
17 NUMBERED P589, AND IT'S TITLED "SUICIDE REPORT OF INMATE," AND
18 AGAIN IT'S BEEN REDACTED TO PROTECT THE PRIVACY OF R.M. AND
19 SURVIVING FAMILY IN ACCORDANCE WITH THE PROTECTIVE ORDERS IN
20 THIS CASE.

21 R.M. WAS ANOTHER CLIENT OF MINE. IT SAYS HERE HE
22 COMMITTED SUICIDE IN THE DEPARTMENT OF MENTAL HEALTH IN
23 VACAVILLE JANUARY 28TH, 2007.

24 **JUDGE KARLTON:** JANUARY 29TH.

25 **MR. GALVAN:** I'M SORRY, YOUR HONOR. JANUARY 29TH,

1 2007.

2 **JUDGE HENDERSON:** THIS IS TWO DAYS OF AFTER THE
3 OTHER ONE; IS THAT CORRECT?

4 **MR. GALVAN:** YES, YOUR HONOR. THE REPORT INDICATES
5 IT IS TWO DAYS AFTER D.M. COMMITTED SUICIDE IN THE SAME UNIT.
6 I WOULD LIKE TO ASK THE WITNESS TO TURN TO PAGE NINE OF THE
7 REPORT.

8 **BY MR. GALVAN**

9 **Q** MS. RADAVSKY, DID YOU RECEIVE THIS REPORT AS WELL?

10 **A** YES, I DID.

11 **Q** WHEN IT WAS ISSUED?

12 **A** YES, I DID.

13 **Q** AND IF YOU COULD MOVE FORWARD TWO PAGES, PLEASE, IN THE
14 REPORT TO THE PAGE NUMBERED NINE THERE? IF I COULD DRAW YOUR
15 ATTENTION TO THE TABLE, THE SECOND ROW, FIRST COLUMN NUMBERED
16 ITEM TEN. AGAIN IT'S SOMEWHAT OBSCURED BY THE WATERMARK, SO I
17 WILL READ IT.

18 "TEN, THE DEPARTMENT OF MENTAL HEALTH HAS BEEN
19 ATTEMPTING TO HAVE THE VENTS RETROFITTED IN PATIENT
20 ROOMS SINCE THE LAST HANGING IN DECEMBER 2005. THE
21 CALIFORNIA DEPARTMENT OF CORRECTIONS AND
22 REHABILITATION MUST FACILITATE THE PHYSICAL PLANT
23 MODIFICATIONS REQUESTED."

24 MS. RADAVSKY, YOU'VE TESTIFIED YOU ARE THE PERSON
25 RESPONSIBLE FOR THESE PROGRAMS; IS THAT RIGHT?

1 **A** I'M RESPONSIBLE FOR THE OPERATIONS AND THE TREATMENT
2 PROVIDED IN THESE PROGRAMS, YES.

3 **Q** YOU ARE NOT ABLE TO, JUST AFTER YOU LEAVE THE COURTROOM
4 TODAY, CALL A CONTRACTOR AND HAVE THOSE VENTS REDONE, ARE YOU?

5 **A** NO, I AM NOT.

6 **Q** YOU ARE NOT ABLE TO DO THAT BECAUSE THESE SO-CALLED
7 SEPARATE AND APART DMH FACILITIES ACTUALLY ARE CONTROLLED BY
8 THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION,
9 AREN'T THEY?

10 **MS. TILLMAN:** OBJECTION. CALLS FOR A LEGAL
11 CONCLUSION BEYOND THE EXPERTISE OF THIS WITNESS.

12 **JUDGE HENDERSON:** SUSTAINED.

13 **JUDGE KARLTON:** WELL, SETTING ASIDE THE LEGAL
14 QUESTION, AS A PRACTICAL MATTER, IS THAT TRUE?

15 **THE WITNESS:** THE DEPARTMENT OF CORRECTIONS AND
16 REHABILITATION IS RESPONSIBLE FOR THE PHYSICAL PLANT
17 MODIFICATIONS.

18 **BY MR. GALVAN**

19 **Q** AND THE BEDS THAT WE ARE DISCUSSING HERE, THE BEDS IN THE Q
20 UNIT, THESE ARE PART OF WHAT'S KNOWN AS THE ACUTE PSYCHIATRIC
21 PROGRAM; IS THAT RIGHT?

22 **A** THAT'S CORRECT.

23 **Q** THEY USE THE ACRONYM APP?

24 **A** THAT'S CORRECT.

25 **Q** IS IT FAIR TO SAY THESE ARE THE HIGHEST LEVELS OF CARE IN

1 THE SYSTEM -- IN YOUR SYSTEM OF CARE FOR CDCR INMATE PATIENTS?

2 **A** IN MY SYSTEM OF CARE, THAT IS CORRECT.

3 **Q** AND AS THE HIGHEST LEVEL OF CARE, IS IT FAIR TO SAY THESE
4 ARE THE SCARCEST AND MOST AVAILABLE BEDS -- I'M SORRY -- BEDS
5 MOST IN DEMAND?

6 **MS. TILLMAN:** OBJECT. VAGUE AND AMBIGUOUS.

7 **JUDGE HENDERSON:** OVERRULED. ARE THESE THE BEDS
8 MOST IN DEMAND?

9 **THE WITNESS:** NOT ACCORDING TO MY WAITING LIST.

10 **BY MR. GALVAN**

11 **Q** ACCORDING TO YOUR WAITING LIST, WHAT ARE THE BEDS MOST IN
12 DEMAND?

13 **A** THE HIGH SECURITY BEDS AT SALINAS VALLEY PSYCHIATRIC
14 PROGRAM.

15 **Q** WOULD IT BE FAIR TO SAY THAT THESE APP BEDS ARE IN SUCH
16 HIGH DEMAND THAT YOU'RE FORCED TO OPERATE THEM IN THIS STATE
17 OF -- IN THE STATE THAT THEY ARE IN NOW, NOT RETROFITTED?

18 **MS. TILLMAN:** OBJECTION. MISSTATES EVIDENCE ALREADY
19 PROVIDED BY THIS WITNESS.

20 **JUDGE HENDERSON:** I WILL ALLOW IT AS A QUESTION --
21 AS AN APPROPRIATE CROSS-EXAMINATION. YOU MAY ANSWER THAT.

22 **THE WITNESS:** WELL, AS I STATED EARLIER, WE
23 SUBMITTED A PLAN TO THE COURT, AND I HAVE BEEN ASKED TO ADD
24 SOME CLARIFICATION, WHICH HAS SINCE BEEN ADDED TO THE PLAN. SO
25 I'M PENDING A RESPONSE.

1 **BY MR. GALVAN**

2 **Q** I'M SORRY. YOU ARE PENDING A RESPONSE FROM WHOM?

3 **A** I SUBMITTED A RETROFIT PLAN IN ORDER TO START THE
4 RETROFITTING OF THESE CELLS, WITH SO MANY CELLS AT A TIME
5 COMING OFF LINE, AND SPECIAL MASTER LOPES ASKED ME TO ADD SOME
6 CLARIFICATION AND ANSWER SOME QUESTIONS FOR HIM, WHICH HAS
7 RECENTLY BEEN PROVIDED.

8 **Q** DID YOU AT ANY TIME CALL SPECIAL MASTER LOPES AND ASK FOR
9 PERMISSION TO ACCELERATE THE RETROFITTING?

10 **A** IT WAS INCLUDED -- NOT ACCELERATING, BUT IN THE ORIGINAL
11 REQUEST. THAT'S WHY WE SUBMITTED THE PLAN.

12 **JUDGE HENDERSON:** A REQUEST FOR ACCELERATION WAS IN
13 THE ORIGINAL SUBMISSION?

14 **THE WITNESS:** NO, SIR. A REQUEST TO TAKE
15 APPROXIMATELY FOUR CELLS OFF LINE AT A TIME IN ORDER TO HAVE
16 FOUR CELLS RETROFITTED AT A TIME SO THERE WOULD BE FOUR LESS
17 BEDS AVAILABLE FOR AN ACUTE PSYCHE PATIENT.

18 **BY MR. GALVAN**

19 **Q** DO YOU KNOW WHAT THE CURRENT SIZE OF THE WAITING LIST IS
20 FOR THOSE BEDS?

21 **A** FOR THE ACUTE PSYCH PROGRAM?

22 **Q** YES, MA'AM.

23 **A** AS OF YESTERDAY, IT WAS THREE.

24 **Q** AT THIS POINT, I WOULD LIKE TO TURN TO DEFENDANT'S EXHIBIT
25 1175, WHICH IS THE -- TITLED, "JULY 16TH, 2008, MENTAL HEALTH

1 BED PLAN," AND IT HAS AN ATTACHMENT C AT PAGE 29 .

2 MS. RADAVSKY, ARE YOU FAMILIAR WITH THIS CHART, THIS
3 TABLE?

4 **A** I'M SORRY, COUNSEL. COULD YOU REPEAT THIS QUESTION?

5 **Q** MS. RADAVSKY, ARE YOU FAMILIAR WITH THIS CHART OR TABLE?

6 **A** I'M TRYING TO SEE THE BOTTOM TO SEE WHAT DOCUMENT THIS WAS
7 IN.

8 **MR. GALVAN:** MAY I PRESENT THIS TO THE WITNESS?

9 **JUDGE HENDERSON:** YOU MAY.

10 **THE WITNESS:** YES, I HAVE.

11 **BY MR. GALVAN**

12 **Q** IF I MAY DIRECT YOUR ATTENTION ON THIS CHART TO THE SECOND
13 ROW FROM THE TOP, WHICH I PRESUME WILL BE MUCH EASIER TO SEE, I
14 THINK --

15 **MR. GALVAN:** I APOLOGIZE, YOUR HONOR. THIS CHART IS
16 BURIED WITHIN THAT EXHIBIT. IT'S APPROXIMATELY -- IT'S ABOUT
17 29 PAGES IN, YOUR HONOR, AFTER THE TEXT, THE BODY OF THE TEXT.

18 **BY MR. GALVAN**

19 **Q** DOES THE SECOND ROW THERE, MS. RADAVSKY, REFER TO THIS
20 PROJECT OF THE Q1 THROUGH 3 AND S2 RENOVATIONS WE HAVE BEEN
21 DISCUSSING?

22 **A** YES, IT DOES.

23 **Q** AND UNDER "STATUS" DO YOU KNOW THE SIGNIFICANCE OF, "APRIL
24 '8 TO AUGUST 2009," DOES THAT MEAN THAT'S THE PERIOD DURING
25 WHICH THE PROJECT WILL BE BUILT?

1 **A** THAT'S MY UNDERSTANDING OF THE STATUS CHART, BECAUSE IT WAS
2 SUPPOSED TO BE COORDINATED AS THE ADDITIONAL CRISIS BEDS CAME
3 ON LINE AT CMF.

4 **Q** AND THE COMMENT THAT READS, "PROJECT PENDING FULL
5 ACTIVATION OF THE MHCB," MENTAL HEALTH CRISIS BED, "PER REQUEST
6 OF THE COLEMAN SPECIAL MASTER," DOES THAT REFLECT THE STATUS OF
7 THE PROJECT AT THE TIME THAT YOU PREPARED THIS BED PLAN REPORT?

8 **A** THAT WAS THE STATUS AT THE TIME.

9 **Q** AND ISN'T IT TRUE THAT THE PROJECT WAS PENDING ACTIVATION
10 OF THE MHCB BECAUSE THOSE BEDS, THE BEDS YOU WOULD HAVE TO TAKE
11 OFF IN ORDER TO RETROFIT THEM, WERE NEEDED FOR MENTAL HEALTH
12 CRISIS BED ACUTE PATIENTS?

13 **A** THAT'S CORRECT.

14 **Q** IF WE COULD GO BACK TO 1243, THE MAP, PLEASE -- I'M SORRY.
15 ACTUALLY, ONE -- IF WE COULD GO TO P159, EXHIBIT P159? P159,
16 PLEASE. THANK YOU.

17 (DOCUMENT DISPLAYED.)

18 **MR. GALVAN:** THIS IS, FOR THE RECORD, PLAINTIFF'S
19 EXHIBIT P159. IT HAS A BATES NUMBER E-PRIV 183396. AND IF WE
20 COULD GO BACK TO THE FULL DOCUMENT?

21 **BY MR. GALVAN**

22 **Q** MS. RADAVSKY, THIS IS A MEMO ON YOUR LETTERHEAD; IS THAT
23 CORRECT? I REALIZE THIS IS ANOTHER ONE THAT'S HARD TO READ.

24 **A** THAT'S CORRECT.

25 **Q** AND IT'S ADDRESSED TO J. MICHAEL KEATING, THE SPECIAL

1 MASTER IN THIS CASE?

2 JUDGE KARLTON: COLEMAN SPECIAL MASTER.

3 MR. GALVAN: COLEMAN SPECIAL MASTER.

4 IF WE COULD GO TO THE SECOND PAGE, PLEASE, OF P159?
5 IT'S ACTUALLY THE LAST PAGE, PAGE FOUR, THAT I WOULD LIKE TO
6 LOOK AT, OF P159. IF WE CAN GO TO THE LAST PAGE? IF WE COULD
7 MAKE THE TEXT BIG ENOUGH TO READ? MAY I PRESENT THE WITNESS A
8 PAPER COPY?

9 (DOCUMENT DISPLAYED.)

10 JUDGE HENDERSON: YOU MAY.

11 BY MR. GALVAN

12 Q IS IT CORRECT, MS. RADAVSKY, THAT -- WELL, FIRST, I WANT TO
13 ASK YOU, WHO IS VICTOR BREWER, THE PERSON WHO SIGNED THIS?

14 A VICTOR BREWER IS THE EXECUTIVE DIRECTOR OF BOTH THE
15 VACAVILLE PSYCHIATRIC PROGRAM AND THE SALINAS VALLEY
16 PSYCHIATRIC PROGRAM.

17 Q AND HE WORKS FOR YOU; IS THAT RIGHT?

18 A HE WORKS FOR ME.

19 Q TO SEND A MEMO LIKE THIS TO THE SPECIAL MASTER IN THE
20 COLEMAN CASE, HE WOULD NEED YOUR PERMISSION; IS THAT RIGHT?

21 A THAT IS CORRECT.

22 Q ISN'T IT TRUE THE PURPOSE OF THIS -- OF SENDING THIS MEMO
23 WAS TO SEEK ASSISTANCE FROM THE SPECIAL MASTER OVER A CONFLICT
24 IN THE USE OF THE BEDS IN THE S1 UNIT, A CONFLICT BETWEEN TWO
25 DEFINITIONS THAT THOSE BEDS COULD SERVE?

1 **A** THE PURPOSE OF SENDING THE MEMO WAS TO REQUEST SOME
2 GUIDANCE ABOUT -- YOU'RE CORRECT -- CONFLICT OVER THE VARIOUS
3 MISSION OF A MENTAL HEALTH CRISIS BED VERSUS THE MISSION OF AN
4 ACUTE PSYCH BED BECAUSE A MENTAL HEALTH CRISIS BED IS TEN DAYS
5 OR LESS.

6 **Q** AND TO BE CLEAR, WHEN WE TALK ABOUT THE S1 UNIT, THE BEDS
7 THAT ARE THE SUBJECT OF THIS LETTER, WE ARE TALKING ABOUT YOUR
8 BEDS, NOT THE CDCR'S BEDS? THE DMH BEDS?

9 **MS. TILLMAN:** OBJECTION. IT'S VAGUE AND AMBIGUOUS,
10 ARGUMENTATIVE, MISSTATES EVIDENCE.

11 **JUDGE HENDERSON:** OVERRULED.

12 **THE WITNESS:** THOSE ARE THE BEDS OPERATED BY THE
13 DEPARTMENT OF MENTAL HEALTH.

14 **BY MR. GALVAN**

15 **Q** AND I BELIEVE THE LETTER -- THE LETTER WILL HELP US EXPLAIN
16 TO THE COURT WHAT THE CONFLICT IS. IF WE COULD ZOOM INTO ABOUT
17 THE SIXTH LINE DOWN THAT HAS THE WORD "HOWEVER" TOWARD THE
18 MIDDLE. MR. BREWER WROTE:

19 "HOWEVER, IF IT IS DETERMINED THAT THE
20 APPROPRIATE LOC," LEVEL OF CARE, "IS TO TRANSFER THE
21 PATIENT FROM MENTAL HEALTH CRISIS BED TO AN APP BED,
22 THE QUESTION ARISES, IS MHC B PATIENT TO TAKE PRIORITY
23 OVER THE CURRENT PATIENTS ON THE APP WAIT LIST. IF
24 THIS IS THE DIRECTION OF THE SPECIAL MASTER, IF THIS
25 IS THE DIRECTION THE SPECIAL MASTER ELECTS TO TAKE,

1 THEN THE NEGATIVE ASPECT IS THAT ANY PATIENT IN THE
2 MHCB WITHIN VPP, " VACAVILLE PSYCHIATRIC PROGRAM,
3 "WILL TAKE PRIORITY OVER THE CURRENT WAIT LIST WHICH
4 WILL RESULT IN ADDITIONAL DAYS BEFORE THE
5 NON-VACAVILLE PSYCHIATRIC PATIENT MENTAL HEALTH IS
6 MANY CRISIS BED PATIENTS WILL BE ADMITTED TO THE
7 ACUTE PSYCHIATRIC PROGRAM."

8 NOW, THE CONFLICT THAT MR. BREWER IS TALKING ABOUT
9 THERE IS THAT YOU'VE GOT MORE THAN ONE PERSON CALLING ON ONE
10 BED; ISN'T THAT RIGHT?

11 **A** YES, WITH THE MISSION THAT WE WERE ASKED TO TAKE BY SETTING
12 ASIDE 20 OF THE APP BEDS FOR THE MENTAL HEALTH CRISIS BEDS, I
13 THINK PART OF THE QUESTION ALSO CALLED TO PROTOCOL BECAUSE,
14 BEING THE ACUTE BEDS THAT ARE THE PATIENTS WITH THE MOST SEVERE
15 MENTAL ILLNESS, THEY'RE THE FOLKS WE WANT TO EXPEDITE IN THE
16 QUICKEST.

17 THE QUESTION THAT WE WERE ASKING WAS, DID AN MHCB
18 PATIENT, IF YOU HAD A PATIENT GOING INTO ANOTHER BED, BUMP THE
19 ACUITY OF THE ACUTE PATIENT?

20 **JUDGE KARLTON:** THE POINT IS, YOU WOULDN'T HAVE ANY
21 BUMPING PROBLEM IF YOU HAD ENOUGH BEDS, RIGHT?

22 **THE WITNESS:** CORRECT.

23 **BY MR. GALVAN**

24 **Q** IF WE COULD JUST LOOK AT THE SECOND PARAGRAPH, WHAT
25 MR. BREWER WROTE, HIS FINAL SENTENCE:

1 "THE SIMPLE FACT IS THE BED SHORTAGE PLACES BOTH
2 CDCR," CALIFORNIA DEPARTMENT OF CORRECTIONS AND
3 REHABILITATION, "AND VPP," VACAVILLE PSYCHIATRIC
4 PROGRAM, "IN THE CURRENT OPERATIONAL DILEMMA."

5 I WOULD LIKE NOW TO SKIP BACK TO 12 -- SWITCH BACK
6 TO 1244 WHICH IS THE MAP 1243, I'M SORRY 1243, THE MAP IN
7 COLOR. D-1243. THANK YOU.

8 MS. RADAVSKY, WE'VE DISCUSSED VACAVILLE, AND JUST
9 NOW, JUST TALKING NOW ABOUT THE FACILITIES OPERATED, OR AS YOU
10 SAY IN THE CHART, CO-LOCATED IN THE CDCR FACILITIES, I WOULD
11 LIKE TO SWITCH NOW TO SALINAS VALLEY PSYCHIATRIC PROGRAM, THE
12 LAST CATEGORY. AND IS IT CORRECT TO SAY THAT THERE ARE 176
13 MALE INTERMEDIATE CARE FACILITY BEDS IN THAT PROGRAM?

14 **A** YES, THERE ARE.

15 **Q** AND IS IT YOUR TESTIMONY THAT EVERY SINGLE ONE OF THOSE
16 BEDS PROVIDES CARE THAT IS NOT IMPACTED BY OVERCROWDING IN
17 THIS -- ALLEGED OVERCROWDING IN THE CDCR?

18 **A** THEY'RE NOT IMPACTED BECAUSE THEY'RE SEPARATE FROM THE
19 GENERAL POPULATION, AND I PROVIDE LICENSED CARE IN THERE, SO I
20 CANNOT DOUBLE OR TRIPLE BUNK THOSE PATIENTS.

21 **Q** SO IT'S YOUR TESTIMONY THAT YOU OPERATE EVERY SINGLE ONE OF
22 THOSE 176 BEDS INDEPENDENTLY FROM THE CDCR?

23 **MS. TILLMAN:** OBJECTION. ARGUMENTATIVE, VAGUE.

24 **JUDGE HENDERSON:** IS THAT YOUR TESTIMONY, OR IS IT
25 NOT YOUR TESTIMONY?

1 **THE WITNESS:** WHEN YOU SAY "INDEPENDENT," IT'S
2 INDEPENDENT IN THE POLICIES. IT'S INDEPENDENT IN THE
3 TREATMENT, IN THE THERAPEUTIC MILIEU. IT'S INDEPENDENT IN THE
4 STAFFING THAT WE HIRE AND THAT WE'RE REQUIRED TO HIRE UNDER
5 LICENSURE. HOWEVER, WE ARE A CONSULTANT INSIDE THE PRISON. IT
6 IS THEIR PHYSICAL PLANT, AND WE ARE ON THEIR LICENSE.

7 **BY MR. GALVAN**

8 **Q** I'M SORRY. ON WHOSE LICENSE?

9 **A** CDCR'S LICENSE.

10 **Q** CDCR HAS A LICENSE TO OPERATE A MENTAL HEALTH FACILITY?

11 **A** CDCR HOLDS THE LICENSE FOR SALINAS VALLEY PSYCHIATRIC
12 PROGRAM. THAT'S THEIR CTC LICENSE, AND WE ARE A PART OF THAT
13 LICENSE.

14 **Q** THE 176 BEDS, THEY'RE NOT ALL IN ONE PLACE, RIGHT?

15 **A** THAT'S CORRECT.

16 **Q** IN FACT, 64 OF THEM ARE IN A STAND-ALONE UNIT OPERATED BY
17 THE DMH; IS THAT RIGHT?

18 **A** THAT'S CORRECT.

19 **Q** AND THAT LEAVES 112 THAT ARE INSIDE SALINAS VALLEY STATE
20 PRISON; IS THAT RIGHT?

21 **A** YES, WE ARE IN D5 AND D6.

22 **Q** D5 AND D6. AND IT'S YOUR TESTIMONY THAT THOSE MEN IN D5
23 AND D6, 112 OF THEM, ARE ALSO RECEIVING THE BENEFIT OF DMH
24 INPATIENT CARE INDEPENDENT OF THE CDCR?

25 **A** UNDER THE DEFINITION OF "INDEPENDENT" THAT I JUST STATED,

1 YES.

2 **Q** AND IT'S YOUR TESTIMONY THAT THOSE 112 MEN ENJOY CARE,
3 INPATIENT CARE FROM THE DMH, THAT IS NOT IMPACTED BY ALLEGED
4 OVERCROWDING IN THE CDCR?

5 **A** YES.

6 **Q** I'D LIKE TO SWITCH TO ANOTHER -- SHOW YOU ANOTHER DOCUMENT
7 P427, P427, WHICH, WHEN IT COMES UP, WILL BE THE APRIL 12, 2007
8 REPORT OF SPECIAL MASTER KEATING.

9 (DOCUMENT DISPLAYED.)

10 **BY MR. GALVAN**

11 **Q** IF WE COULD TURN -- I WILL GET HARD COPIES OF THOSE, BUT
12 WHILE WE HAVE THEM ON THE MONITOR IF WE COULD LOOK AT PAGE FOUR
13 OF THE REPORT? THIS IS AN EXCERPT OF THE REPORT. IT IS NOT
14 THE FULL REPORT. THE FULL REPORT IS IN OUR EXHIBITS AS P427.

15 IF I COULD DRAW YOUR ATTENTION TO THE TOP OF PAGE
16 FOUR?

17 **JUDGE KARLTON:** MR. GALVAN, THIS IS SPECIAL MASTER
18 LOPES' REPORT, NOT SPECIAL MASTER KEATING, WHO RETIRED.

19 **MR. GALVAN:** THANK YOU, YOUR HONOR. THIS IS THE
20 REPORT OF SPECIAL MASTER LOPES IN THE UNDERLYING COLEMAN CASE.

21 **BY MR. GALVAN**

22 **Q** IF WE COULD TURN TO THE TOP OF PAGE FOUR AND LOOK AT WHAT
23 YOU WROTE THERE AT THE TOP? YOU WROTE:

24 "THESE UNITS, AS INDICATED ALREADY, ARE NOT

25 INTENDED TO FORM A PERMANENT PART OF THE DMH

1 INTERMEDIATE INPATIENT PROGRAM AT SALINAS VALLEY
2 STATE PRISON. RATHER, THEY ARE TEMPORARY EXPEDIENTS,
3 COBBLED TOGETHER TO PROVIDE SOME INTERIM HOUSING TO
4 BRIDGE THE GAP BETWEEN CURRENTLY INADEQUATE RESOURCES
5 FOR HIGH SECURITY INMATES IN NEED OF INTERMEDIATE
6 INPATIENT TREATMENT AND THE ANTICIPATED FUTURE
7 DELIVERY OF PERMANENT BEDS CREATED SPECIFICALLY FOR
8 THE PROVISION OF INPATIENT MENTAL HEALTH TREATMENTS.
9 UNITS D5 AND D6 ARE BASICALLY HIGH SECURITY GENERAL
10 POPULATION EOP," ENHANCED OUTPATIENT PROGRAM, "UNITS,
11 WITH SOME PHYSICAL MODIFICATIONS AND ENHANCEMENTS
12 DESIGNED TO PROVIDE LIMITED ADDITIONAL PROGRAMMING
13 SPACE."

14 DO YOU AGREE WITH THAT STATEMENT BY THE SPECIAL
15 MASTER IN THE COLEMAN CASE?

16 **MS. TILLMAN:** COUNSEL, JUST FOR THE RECORD, I
17 BELIEVE THE PAPER COPY YOU PROVIDED WAS FROM THE 20TH ROUND
18 MONITORING REPORT.

19 **JUDGE KARLTON:** IT'S THE WRONG DOCUMENT.

20 **MR. GALVAN:** I'M READING FROM THE WRONG DOCUMENT.
21 I'M SORRY.

22 **JUDGE HENDERSON:** YOU READ FROM UP THERE, BUT YOU
23 GAVE US SOMETHING THAT DOESN'T MATCH.

24 **JUDGE KARLTON:** WE CAN READ IT. IT'S OKAY.

25 **MR. GALVAN:** I'M SORRY.

1 **BY MR. GALVAN**

2 **Q** I BELIEVE THE QUESTION WAS, DO YOU AGREE WITH THAT
3 STATEMENT BY SPECIAL MASTER KEATING?

4 **A** I WOULD HAVE ISSUE WITH THE STATEMENT WHERE IT'S BASICALLY
5 A HIGH SECURITY GENERAL POPULATION EOP, BECAUSE SINCE I'M
6 OPERATING ICF WITHIN D5 AND D6, AND IN ORDER TO MEET THE
7 LICENSING STANDARDS, I'M PROVIDING THE SAME HOURS OF
8 THERAPEUTIC TREATMENT THAT I AM PROVIDING IN THE STAND-ALONE 64
9 HOUR (SIC) BUILDING WITHIN SALINAS VALLEY, AS WELL AS THE OTHER
10 ICF'S THAT I OPERATE.

11 **Q** SO IT'S YOUR TESTIMONY THAT YOU'RE OPERATING THE D5 AND D6
12 UNITS TO THE SAME STANDARDS THAT YOU OPERATE YOUR STATE
13 HOSPITALS?

14 **A** THERAPEUTIC ENVIRONMENT AND TREATMENT, ABSOLUTELY.

15 **Q** AND IS IT YOUR TESTIMONY THAT YOU ARE PROVIDING THE
16 RECOVERY MODEL OF CARE IN THOSE UNITS?

17 **A** WE ARE PROVIDING AS MUCH TREATMENT, TREATMENT HOURS,
18 TREATMENT SERVICES, BEHAVIOR MANAGEMENT, MEDICATION MANAGEMENT.
19 IT'S NOT THE FULL ARRAY. WE HAVE NOT ROLLED OUT THE ENTIRE
20 ARRAY THAT WE'VE ROLLED OUT IN THE STATE HOSPITALS, BUT THE
21 BASIC FUNDAMENTALS, WE'VE ROLLED THEM INTO THE NEW TREATMENT
22 PLAN. SO, YES, WE'VE STARTED.

23 **Q** IF WE COULD MOVE ONE PAGE FORWARD, PLEASE, IN SPECIAL
24 MASTER LOPES' REPORT? I'D LIKE TO DRAW YOUR ATTENTION TO THE
25 FIRST FULL PARAGRAPH, THE FIRST SENTENCE.

1 "THE D5 AND D6 UNITS MUST FUNCTION IN A DIFFERENT
2 WORLD, SITUATED AS THEY ARE WITHIN A LARGER GENERAL
3 POPULATION YARD, UNATTUNED TO THE SPECIAL NEEDS OF
4 DELIVERING INTERMEDIATE IN PATIENT CARE."

5 IS IT YOUR TESTIMONY THAT THE INPATIENT -- THE CDCR
6 PATIENTS IN THAT UNIT ARE NOT COMMINGLED WITH THE GENERAL
7 POPULATION IN ANY WAY?

8 **A** THAT'S CORRECT.

9 **Q** NOW, AT THIS POINT, I WOULD LIKE TO LOOK AT THE 20TH ROUND
10 REPORT PART A, WHICH IS P57, PLAINTIFF'S EXHIBIT 57, WHICH THE
11 COURT ALREADY HAS PAPER COPIES OF. IF WE COULD TURN TO PAGE
12 189? MOVE FORWARD TO 189.

13 (DOCUMENT DISPLAYED.)

14 **BY MR. GALVAN**

15 **Q** I'D LIKE TO DRAW YOUR ATTENTION TO THE MIDDLE PARAGRAPH
16 THAT STARTS WITH, "INMATES HOUSED IN UNITS D5, D6," SPECIAL
17 MASTER WRITES, SPECIAL MASTER LOPES IN THIS CASE WRITES, THE
18 LAST SENTENCE:

19 "TAKING TOGETHER THESE CUSTODY AND SECURITY
20 RELATED POLICIES AND PRACTICES, RESTRICTED ACCESS TO
21 PATIENTS AND COMPROMISED THE PROGRAM'S THERAPEUTIC
22 MILIEU AND MENTAL HEALTH MISSION."

23 DO YOU AGREE WITH WHAT SPECIAL MASTER LOPES OBSERVED
24 THERE?

25 **A** I AGREED WITH IT AT THE TIME IT WAS WRITTEN, AND SINCE THEN

1 I'VE TAKEN SEVERAL TRIPS DOWN THERE WITH THE DEPUTY OF THE
2 INSTITUTION'S DIVISION. WE'VE MET WITH THE WARDEN AND THE
3 CUSTODY STAFF AT SALINAS VALLEY, AND WE'VE ADDED ADDITIONAL
4 TIME OUT IN THE YARD FOR THE PATIENTS WE SERVE.

5 **Q** I'D LIKE TO MOVE TO DEFENDANT'S EXHIBIT 1019, PLEASE, THE
6 REPORT OF DR. IRA PACKER, D1019. AND IF WE COULD LOOK AT PAGE
7 10 OF DR. PACKER'S REPORT.

8 YOU ARE AWARE THAT DR. PACKER, DR. IRA PACKER,
9 TOURED YOUR FACILITIES TOWARD THE END OF LAST YEAR; IS THAT
10 CORRECT?

11 **A** THAT'S CORRECT.

12 **MS. TILLMAN:** MISSTATES THE EVIDENCE. I DON'T THINK
13 HE TOURED ALL THE DMH FACILITIES.

14 **BY MR. GALVAN**

15 **Q** ARE YOU AWARE THAT HE, DR. PACKER, TOURED SOME OF YOUR
16 FACILITIES TOWARDS THE END OF LAST YEAR?

17 **A** YES. IT'S CORRECT. I KNOW HE WENT TO SALINAS VALLEY.

18 **Q** AND YOU ACCOMPANIED HIM ON THE TOURS, DIDN'T YOU?

19 **A** NO, I DID NOT.

20 **Q** I SEE. ARE YOU AWARE THAT HE WENT TO D5 AND D6?

21 **A** I WOULD ASSUME HE DID.

22 **Q** OKAY. AND HAVE YOU BEEN PROVIDED BEFORE WITH A COPY OF HIS
23 REPORT ABOUT CONDITIONS THERE?

24 **A** NO, I HAVE NOT.

25 **Q** OKAY. PERHAPS YOU WOULD LIKE TO READ IT. LET'S LOOK UP AT

1 THE TOP OF IT, AND IF WE CAN BLOW IT UP LARGE ENOUGH?

2 "IN THE INTERIM, ONE OF THE STRATEGIES MAY BE TO
3 CONVERT EXISTING SPACE FOR USE WITH THESE POPULATION
4 RETROFITTING. HOWEVER, THE EFFECTIVENESS OF THIS
5 STRATEGY IS LIMITED BY THE FACT THAT EXISTING SPACE
6 WAS NOT DESIGNED TO SERVE THE FUNCTIONS REQUIRED FOR
7 THESE UNITS. A GOOD EXAMPLE OF THIS PROBLEM WAS
8 NOTED AT SALINAS VALLEY, SVSP, WHERE THERE IS BOTH A
9 FREESTANDING DMH BUILDING, AS WELL AS AN INTERMEDIATE
10 CARE DMH UNIT IN THE D BUILDING OF THE PRISONS. THE
11 DIFFERENCES IN THE UNITS IS QUITE STRIKING AS THE
12 FREESTANDING BUILDING HAS A THERAPEUTIC FEEL TO IT,
13 APPEARS DESIGNED TO PROVIDE THERAPEUTIC SERVICES AND
14 HAS REASONABLY ADEQUATE SPACE TO PROVIDE THOSE
15 SERVICES. BY CONTRAST, THE UNIT IN THE D BUILDING,
16 WHICH HAS BEEN DESIGNATED AS TEMPORARY SPACE IS
17 STANDARD PRISON UNIT, WITHOUT ADEQUATE SPACE FOR
18 TREATMENT AND DIFFICULTIES IN PROVIDING CONFIDENTIAL
19 ONE-TO-ONE TREATMENT ENVIRONMENTS. THE PROBLEM IS
20 NOT WITH THE CENSUS IN THE UNIT, BUT, RATHER, THAT
21 THE SPACE IS NOT APPROPRIATE FOR THE PURPOSES OF
22 PROVIDING INTERMEDIATE CARE TREATMENT TO MENTALLY ILL
23 INMATES."

24 DO YOU AGREE WITH THAT STATEMENT BY DR. PACKER?

25 **A** I WOULD SAY DR. PACKER RAISED THE SAME ISSUES THAT I RAISED

1 WHEN I WAS ASKED TO OPEN THAT SPACE.

2 **Q** AND SINCE YOU AGREE WITH DR. PACKER, I PRESUME YOU HAVE
3 PLANS TO IMMEDIATELY TAKE THOSE UNITS DOWN, TO MOVE THOSE 112
4 MEN; IS THAT CORRECT?

5 **A** I HAVE NOT SUBMITTED A REQUEST TO THE COURT TO TAKE THOSE
6 UNITS DOWN.

7 **Q** YOU ARE SATISFIED THOSE 112 MEN ARE WELL CARED FOR IN THOSE
8 UNITS AS THEY ARE NOW?

9 **A** I'M SORRY. I DIDN'T HEAR YOUR QUESTION.

10 **Q** I'LL WITHDRAW IT.

11 ISN'T IT TRUE THAT YOU, THE OFFICIALS AT THE
12 DEPARTMENT OF MENTAL HEALTH, HAVE BEEN ORDERED TO REMEDIATE
13 LACK OF TREATMENT SPACE IN THE D5 AND D6 UNITS?

14 **A** THERE IS AN ORDER TO REMEDIATE THE LACK OF TREATMENT SPACE,
15 AND WE'VE BEEN WORKING DILIGENTLY WITH OUR PARTNERS ON THAT.

16 **Q** I'D LIKE TO LOOK AT THE PROGRESS REPORT ON THAT THAT'S
17 CONTAINED IN THE LATEST, ONLY, AS FAR AS I KNOW, PENDING MENTAL
18 HEALTH BED PLAN, D1175, EXHIBIT D1175 IN THIS CASE, AND, AGAIN,
19 THE CHART, APPENDIX C AT PAGE 29. WE'VE LOOKED AT THIS BEFORE.
20 IN FACT, I TOOK IT AWAY FROM THE WITNESS. I WOULD LIKE TO GIVE
21 IT BACK.

22 ONCE AGAIN, WE ARE LOOKING AT THE ATTACHMENT, THE
23 CHART TO THE BED PLAN, D1175, APPENDIX C, COLEMAN CONSTRUCTION
24 ORDERS. IF I READ THIS CORRECTLY, ONE, TWO, THREE, FOUR, FIVE
25 ROWS DOWN IS CONSTRUCTION FOR D5 AND D6?

1 **A** THAT'S CORRECT.

2 **Q** IT SAYS -- THE FIRST COLUMN, THE SIGNIFICANCE OF DAY COURT
3 ORDERED -- I THINK THAT'S AN ODDLY FORMATTED DATE -- BUT I READ
4 IT TO BE OCTOBER 18TH, 2007; IS THAT RIGHT?

5 **A** YES.

6 **Q** AND STATUS, FISCAL YEAR 2010/11, DOES THAT MEAN THAT YOU
7 WILL HAVE THE TREATMENT SPACE SOMETIME IN FISCAL 2010/11?

8 **A** THAT WAS THE PLAN AT THE TIME.

9 **Q** THAT WAS THE PLAN AT THE TIME?

10 AND THIS COMMENT:

11 "FUNDING FOR PRELIMINARY PLANS AND WORKING
12 DRAWINGS ARE INCLUDED IN THE 2008/2009 GOVERNOR'S
13 BUDGET."

14 OF COURSE, AT THE TIME THIS WAS WRITTEN IN JULY,
15 THERE WAS NO BUDGET YET, AND I PRESUME IT'S YOUR TESTIMONY
16 TODAY THAT THE FUNDING FOR THOSE PLANS AND DRAWINGS WERE
17 APPROVED IN THE BUDGET?

18 **MS. TILLMAN:** OBJECTION. COUNSEL IS TESTIFYING. IS
19 THAT A QUESTION?

20 **JUDGE KARLTON:** YES, IT IS. I'M SORRY. EXCUSE ME.
21 IS THAT RIGHT, MA'AM?

22 **THE WITNESS:** I'M NOT SURE IF IT'S STILL IN THE
23 GOVERNOR'S BUDGET OR NOT. I KNOW WE HAVE BEEN LOOKING AT
24 OPTIONS, AND THERE IS SOME FUNDING, AND WE MET THE OTHER DAY TO
25 TALK ABOUT HOW TO BEST PROCEED.

1 **BY MR. GALVAN**

2 **Q** THE GOVERNOR'S BUDGET WAS SIGNED SEPTEMBER 23RD, 2008;
3 ISN'T THAT RIGHT?

4 **A** I BELIEVE SO.

5 **Q** THAT'S ABOUT -- COMING ON TWO MONTHS AGO.

6 **JUDGE KARLTON:** WHAT'S YOUR QUESTION, SIR? AND SHE
7 DOESN'T KNOW. AND YOU STILL DON'T KNOW WHETHER IT'S IN THE
8 BUDGET OR NOT; IS THAT RIGHT, MA'AM?

9 **THE WITNESS:** THAT'S CORRECT.

10 **JUDGE KARLTON:** THAT WAS THE QUESTION YOU WANTED TO
11 ASK, WASN'T IT, MR. GALVAN?

12 **MR. GALVAN:** THANK YOU, YOUR HONOR.

13 **BY MR. GALVAN**

14 **Q** AND IT'S TRUE THAT IF YOU DO, IN FACT, GET THAT FUNDING,
15 WHAT YOU'LL HAVE AS A RESULT OF THAT FUNDING ARE PLANS AND
16 DRAWINGS; IS THAT RIGHT?

17 **A** IF THAT'S THE WAY WE PROCEED, YES.

18 **Q** YOU WON'T HAVE ANY TREATMENT SPACE? AFTER YOU SPEND THE
19 LAST DIME OF THAT FUNDING, YOU'LL HAVE PLANS AND DRAWINGS; IS
20 THAT RIGHT?

21 **A** IF THAT'S THE WAY WE PROCEED, YES.

22 **Q** YOU ALSO HAVE PLANS FOR A NEW STAND-ALONE -- ANOTHER 64 BED
23 STAND-ALONE AT SALINAS VALLEY PSYCHIATRIC PROGRAM; ISN'T THAT
24 TRUE?

25 **A** THAT'S CORRECT.

1 Q OKAY. I BELIEVE THE CURRENT STATUS OF THAT PLAN WOULD ALSO
2 BE CONTAINED IN THIS CHART DOWN AT THE THIRD ROW FROM THE
3 BOTTOM. I BELIEVE YOU TESTIFIED THIS MORNING ACTUALLY THAT
4 YOU -- THE ADMINISTRATIVE SPACE HAS BEEN TURNED OVER TO YOU?

5 A THAT'S CORRECT.

6 Q AND THAT THERE'S OCCUPANCY. THAT WOULD BE OCCUPANCY BY
7 PATIENTS; IS THAT RIGHT?

8 A THAT'S -- THE ADMINISTRATION THAT'S BEEN TURNED OVER TO US
9 IS OCCUPIED BY STAFF.

10 Q BY STAFF. OKAY. AND THE CLINICAL STAFFING, IS THAT
11 COMPLETE?

12 A I MISSED THE END. I'M SORRY.

13 Q I'LL JUST CUT TO THE CHASE.

14 WHEN WILL THAT FACILITY RECEIVE ITS FIRST PATIENTS?

15 A FEBRUARY OF '09.

16 Q AND HOW MANY -- ABOUT HOW MANY PATIENT BEDS WILL BE
17 ACTIVATED THEN?

18 A WE HAVE A PLAN TO GEAR UP AND BE AT FULL OCCUPANCY, SHOULD
19 ALL GO WELL, BY THE END OF MARCH.

20 JUDGE KARLTON: THE QUESTION IS HOW MANY BEDS.

21 THE WITNESS: SIXTY-FOUR BEDS.

22 BY MR. GALVAN

23 Q THE CURRENT WAITING LIST FOR THE SVPP PROGRAM, IS IT 176
24 NOW?

25 A I KNOW IT'S OVER A HUNDRED, AND IT VARIES.

1 Q HAS IT EVER BEEN UNDER A HUNDRED, TO YOUR KNOWLEDGE?

2 A IN THE VERY EARLY DAYS OF ACTIVATION.

3 Q ISN'T IT TRUE THAT SOME MEN STAY ON THAT LIST ALL THE WAY
4 TO THEIR PAROLE DATE AND PAROLE TO THE STATE WITHOUT EVER
5 GETTING INTO INPATIENT CARE?

6 A I DON'T KNOW ABOUT PAROLE DATES.

7 Q IT WOULDN'T BE A MATTER OF CONCERN FOR YOU IF PEOPLE STAY
8 ON THAT LIST THE ENTIRE TIME OF THEIR SENTENCE AND THEN ARE
9 RELEASED WHILE THEY'RE STILL WAITING TO GET INTO YOUR HOSPITAL?

10 MS. TILLMAN: OBJECTION. RELEVANCE. WE ARE GETTING
11 INTO ANOTHER CASE ENTIRELY CALLED VALDIVIA, I BELIEVE.

12 JUDGE HENDERSON: THE QUESTION IS, IS THAT A MATTER
13 OF CONCERN? I'M GOING TO SUSTAIN THE OBJECTION.

14 BY MR. GALVAN

15 Q DO YOU HAVE ANY KNOWLEDGE ABOUT WHAT KIND OF CARE THOSE MEN
16 RECEIVED WHILE THEY ARE ON THE WAITING LIST?

17 MS. TILLMAN: OBJECTION AS TO RELEVANCE. THIS IS
18 PHASE ONE, NOT PHASE TWO.

19 JUDGE KARLTON: THAT'S THE WHOLE POINT, ACTUALLY.
20 IT IS PHASE ONE. YOU MAY ANSWER. DO YOU KNOW WHAT KIND OF
21 CARE?

22 THE WITNESS: I HAVE PERIPHERY KNOWLEDGE HAVING
23 WALKED THROUGH AND TOURED VARIOUS EOPS.

24 MS. TILLMAN: I'M SORRY. I MISHEARD PLAINTIFF'S
25 QUESTION, SO I WITHDRAW THAT OBJECTION, THANK YOU.

1 **JUDGE HENDERSON:** IT WAS RULED ON ANYWAY. DON'T
2 WORRY ABOUT IT.

3 **BY MR. GALVAN**

4 **Q** YOU ARE NOT RESPONSIBLE FOR THE ADMINISTRATION OF THE CARE
5 THEY RECEIVE WHILE THEY ARE ON THE WAITING LIST, ARE YOU?

6 **A** NO, SIR, I'M NOT.

7 **Q** HAS ANYONE EVER SHOWN YOU THE LISTS THAT SOME OF THE
8 INSTITUTIONS KEEP OF THE STATUS OF THOSE MEN ON THE WAITING
9 LISTS?

10 **A** I'VE REVIEWED THEM, AND MY STAFF REVIEW THEM WEEKLY -- WITH
11 MY STAFF AT SALINAS VALLEY. MY HEADQUARTERS STAFF REVIEW THEM
12 WITH MY STAFF AT THE PRISON, AND THEY MAKE CALLS ON THOSE
13 GENTLEMAN THAT ARE THERE.

14 **MR. GALVAN:** P583, PLEASE.

15 (DOCUMENT DISPLAYED.)

16 **BY MR. GALVAN**

17 **Q** GOING TO LOOK AT AN EXHIBIT THAT WE HAVE OFFERED AS P583.
18 THIS IS A REDACTED LIST. OKAY.

19 LET ME TURN BACK TO ASH, ATASCADERO STATE HOSPITAL,
20 THAT IS, I THINK YOU'VE TESTIFIED, A TRULY STAND-ALONE STATE
21 HOSPITAL, NEAR BUT NOT ON THE GROUNDS OF A PRISON?

22 **A** THAT'S CORRECT.

23 **Q** ISN'T IT TRUE THAT THE DEPARTMENT OF JUSTICE MONITORS FOUND
24 IN 2006 THAT YOU ENGAGE IN A PRACTICE CALLED OVERBEDDING AT
25 ATASCADERO?

1 **MS. TILLMAN:** I'M GOING TO OBJECT. IT'S VAGUE AND
2 AMBIGUOUS AS TO DEPARTMENT OF JUSTICE MONITORS. IF YOU COULD
3 IDENTIFY WHICH AGENCY? I BELIEVE IT'S DEPARTMENT -- UNITED
4 STATES DEPARTMENT OF JUSTICE.

5 **MR. GALVAN:** I'M SORRY. I MEANT TO SAY UNITED
6 STATES. I'M SORRY.

7 **JUDGE KARLTON:** IS THAT TRUE, MA'AM?

8 **THE WITNESS:** THEY ESSENTIALLY HAVE INDICATED THAT
9 THERE WAS SOME OVERBEDDING IN THE STATE HOSPITALS.

10 **BY MR. GALVAN**

11 **Q** ISN'T OVERBEDDING THE PRACTICE OF ATTEMPTING TO CARE FOR
12 MORE PATIENTS THAN YOU HAVE STAFF FOR?

13 **A** IT'S NOT CARE FOR MORE PATIENTS THAN YOU HAVE STAFF FOR.
14 IT'S PUTTING, YOU KNOW, MORE PEOPLE IN THAN LICENSED CAPACITY.

15 **Q** ISN'T IT TRUE IN JANUARY 2007, YOU SENT A LETTER TO THEN
16 SPECIAL MASTER KEATING SAYING YOU HAD TO RESTRICT ADMISSIONS TO
17 ASH, TO ATASCADERO STATE HOSPITAL?

18 **A** THAT IS CORRECT.

19 **Q** AND ISN'T IT TRUE IN THE LETTER YOU REPORTED TO SPECIAL
20 MASTER KEATING THAT, AS A RESULT OF THE RESTRICTION OF
21 ADMISSIONS, THERE WERE THREE MEN WHO HAD BEEN CLEARED FOR CARE,
22 IN TRANSIT, ALREADY ON THE WAY THERE, AND HAD TO BE TURNED
23 BACK?

24 **A** I DON'T HAVE THE LETTER IN FRONT OF ME, AND THAT'S
25 POSSIBLE.

1 **MR. GALVAN:** IF WE COULD LOOK AT P257, PLEASE?

2 (DOCUMENT DISPLAYED.)

3 **MR. GALVAN:** MIGHT I PRESENT THE WITNESS WITH THIS?

4 P257.

5 **THE WITNESS:** THANK YOU.

6 **BY MR. GALVAN**

7 **Q** P257, IS IT CORRECT, IS YOUR DECLARATION OF CYNTHIA A.
8 RADAVSKY IN SUPPORT OF DEFENDANT'S RESPONSE TO PLAINTIFF'S
9 MOTION FOR EMERGENCY RELIEF REGARDING DEFENDANTS' DENIAL OF
10 ACCESS TO INPATIENT PSYCHIATRIC BEDS IN DMH STATE HOSPITALS?

11 **A** THAT'S CORRECT.

12 **Q** IF YOU TURN TO -- IT ONLY HAS ONE EXHIBIT, EXHIBIT A. THIS
13 IS A COPY OF YOUR LETTER TO J. MICHAEL KEATING; ISN'T THAT
14 RIGHT?

15 **A** THAT IS CORRECT.

16 **Q** YOU WROTE HERE:

17 "THIS LETTER IS TO OFFICIALLY NOTIFY YOU THAT THE
18 DEPARTMENT OF MENTAL HEALTH LONG-TERM CARE SERVICES
19 HAS RECEIVED INFORMATION FROM ATASCADERO STATE
20 HOSPITAL THAT NECESSITATES IMMEDIATE RESTRICTION OF
21 ADMISSIONS DUE TO STAFFING LIMITATIONS."

22 **A** THAT IS CORRECT.

23 **Q** IF WE SKIP DOWN TO THE SECOND PARAGRAPH, ABOUT ONE, TWO,
24 THREE, FOUR, FIVE, SIX, SEVEN, EIGHT, NINE LINES, NINE LINES
25 FROM THE BOTTOM: "AN EXAMPLE OF THIS OCCURRED JANUARY 18TH,

1 2007," ABOUT FIVE DAYS BEFORE YOU WROTE THE LETTER, "WHEN THREE
2 INMATES WERE DENIED ADMISSION TO ASH," ATASCADERO STATE
3 HOSPITAL, "ALTHOUGH THE SENDING INSTITUTION WAS INFORMED OF THE
4 ADMISSION RESTRICTION EARLY IN THE A.M., THESE INMATES WERE
5 ALREADY IN TRANSIT, RECOGNIZABLY AN UNFORTUNATE SITUATION FOR
6 ALL PARTIES." IS THAT CORRECT?

7 **A** THAT'S CORRECT.

8 **Q** IF WE COULD GO BACK TO THE MAP, WHICH IS DEFENDANT'S D1243?
9 THIS IS THE COLOR MAP, STATE OF CALIFORNIA. SO ATASCADERO
10 STATE HOSPITAL, YOU WENT THROUGH THE NUMBERS IN YOUR DIRECT
11 TESTIMONY, MALE ACUTE BEDS, 25; MAIL ICF BEDS, 231; TOTAL OF
12 256. IS IT YOUR TESTIMONY THAT YOU ARE CARING FOR 256 CDCR
13 INMATE PATIENTS THERE?

14 **A** NO. THOSE ARE THE BEDS THAT ARE DEDICATED. IF WE RECEIVE
15 THE REFERRALS, THOSE ARE THE BEDS THAT I HAVE COMMITTED WE
16 WOULD PROVIDE SERVICES FOR.

17 **Q** IF I REPRESENTED THAT THE LAST MONTHLY REPORT I SAW HAD 147
18 MEN IN THOSE BEDS, WOULD THAT SEEM RIGHT?

19 **A** THAT WOULD PROBABLY BE ACCURATE.

20 **Q** OKAY. AND SO THE BALANCE, MORE THAN A HUNDRED BEDS, 109
21 BEDS, THOSE ARE EMPTY, JUST WAITING FOR PATIENTS?

22 **A** NO, THEY ARE NOT.

23 **Q** I'M SORRY. THOSE BEDS ARE NOT AVAILABLE FOR THE COLEMAN
24 CLASS MEMBERS?

25 **A** THOSE ARE VERY VALUABLE RESOURCES WITHIN THE STATE OF

1 CALIFORNIA, AND IF I DON'T HAVE AN APPROPRIATE REFERRAL FROM
2 CDCR AND A PATIENT WAITING TO GET INTO THOSE BEDS, I WILL PUT
3 1370, INCOMPETENT TO STAND TRIAL, AND NOT GUILTY BY REASON OF
4 INSANITY, WITH A MENTALLY DISORDERED OFFENDER COMMITTED TO ME
5 FROM ANOTHER COURT INTO ONE OF THOSE BEDS. I CAN'T JUST LEAVE
6 THEM SITTING EMPTY WHEN I HAVE WAIT LISTS FOR OTHER PATIENTS TO
7 COME IN IF I DON'T HAVE REFERRALS FROM CDCR.

8 **Q** YOU TESTIFIED THIS MORNING THAT THERE'S NO WAIT LIST TODAY
9 FOR THOSE BEDS?

10 **A** THAT'S CORRECT.

11 **Q** NO WAIT LIST FOR CDCR INMATE PATIENTS?

12 **A** NO.

13 **Q** DO YOU REMEMBER WHEN YOU WERE AT MY OFFICE AND YOU SAT FOR
14 YOUR DEPOSITION WITH MS. WHELAN IN AUGUST 2008?

15 **A** YES, I DO.

16 **Q** THAT DAY, ON THE DAY YOU TESTIFIED, THERE WAS A WAITING
17 LIST OF 15 INMATE PATIENTS FOR ATASCADERO; ISN'T THAT RIGHT?

18 **A** I DON'T REMEMBER THE EXACT NUMBER, BUT THERE WAS A
19 QUESTION, YES.

20 **Q** IF WE CAN GO BACK TO THE BED PLAN CHART, WHICH IS D1157,
21 AND IT'S PAGE -- THE 29TH PAGE IN, AND I BELIEVE I'VE LEFT A
22 COPY ON THE WITNESS STAND, D1175, 29TH PAGE, THE JULY 2008
23 MENTAL HEALTH BED PLAN. THIS MORNING IN YOUR DIRECT TESTIMONY,
24 MS. TILLMAN TOOK YOU THROUGH SEVERAL COURT ORDERS, ORDERS TO
25 PROVIDE BEDS, BUILD BEDS, ADD BED SPACE, AND I BELIEVE THOSE

1 ORDERS HAVE LEFT THEIR TRACE IN THIS CHART AS WELL, AND I
2 WANTED TO ASK YOU ABOUT THAT.

3 IF WE LOOK AT THE -- RIGHT AROUND THE MIDDLE THERE
4 IS A -- ONE, TWO, THREE, FOUR, FIVE, SIX, SEVEN ROWS DOWN,
5 THERE IS A CATEGORY OF BEDS THERE CALLED CIW, CALIFORNIA
6 INSTITUTION FOR WOMEN, 45-BED ACUTE CARE INTERMEDIATE CARE
7 FACILITY. IS THAT ONE OF YOUR PROJECTS?

8 **A** NO, IT IS NOT.

9 **Q** I SEE. THAT WOULD BE CDCR WOULD HAVE THAT PROJECT?

10 **A** THAT WOULD BE MY SUPPOSITION.

11 **Q** SO THE DEPARTMENT OF MENTAL HEALTH WILL NOT BE PROVIDING
12 ANY CARE IN THOSE FACILITIES?

13 **A** NO.

14 **Q** OKAY. AND THE ONE BELOW IT, CMF, CALIFORNIA MEDICAL
15 FACILITY, 64 BED ICF, NEW STAND-ALONE, WILL THE DEPARTMENT OF
16 MENTAL HEALTH BE PROVIDING ANY CARE IN THAT FACILITY?

17 **A** THAT'S ONE I BELIEVE WE'RE WORKING ON WORKING DRAWINGS FOR
18 RIGHT NOW.

19 **Q** I'M SORRY, MA'AM. I COULDN'T UNDERSTAND YOU.

20 **A** WE'RE WORKING ON WORKING DRAWINGS FOR THOSE ADDITIONAL
21 BEDS.

22 **Q** SO IT IS YOUR TESTIMONY THOSE ARE YOUR BEDS, THOSE 64 BEDS?

23 **A** AT CMF, YES.

24 **Q** OKAY. AND CAN YOU TELL ME WHAT THE SIGNIFICANCE OF THE
25 YELLOW SHADING -- I DIDN'T PUT THAT THERE. THAT'S PART OF THE

1 EXHIBIT. WHAT'S THE SIGNIFICANCE OF YELLOW SHADING ON THAT
2 PART?

3 **MS. TILLMAN:** LACK OF FOUNDATION.

4 **BY MR. GALVAN**

5 **Q** DO YOU KNOW WHAT THE SIGNIFICANCE IS OF THE YELLOW SHADING
6 ON THE CHART?

7 **A** NO, I DO NOT.

8 **Q** IF WE LOOK AT THOSE TOGETHER, IT SEEMS EVERY ONE OF THOSE
9 HAVE THE SAME ENTRY IN COMMON. "THIS BED NEED IS PROPOSED TO
10 BE INCORPORATED INTO THE CDCR/RECEIVER CHCF," WHICH I WILL
11 REPRESENT IS COMPREHENSIVE HEALTHCARE FACILITY, "PROJECT."

12 SO IS IT YOUR TESTIMONY TODAY THAT AS TO THE 64 BED
13 INTERMEDIATE CARE FACILITY AT CMF ORDERED BY THE COURT,
14 ACCORDING TO THIS CHART, OCTOBER 18TH, 2007, YOUR PLAN UNDER
15 THE CURRENT BED PLAN, THE ONLY PLAN PENDING, IS THAT THOSE WILL
16 BE PROVIDED AS PART OF THE RECEIVER'S PROJECT?

17 **MS. TILLMAN:** OBJECT. VAGUE AND AMBIGUOUS, ALSO I
18 THINK IT'S CONSOLIDATED HEALTHCARE FACILITIES.

19 **MR. GALVAN:** I STAND CORRECTED. CONSOLIDATED
20 HEALTHCARE FACILITIES.

21 **BY MR. GALVAN**

22 **Q** IS IT YOUR TESTIMONY YOU'LL MEET THAT BED NEED USING THE
23 CONSOLIDATED HEALTHCARE FACILITIES?

24 **A** WHEN THE BED PLAN WAS AMENDED AND WE WERE ADVISED THAT
25 MENTAL HEALTH WOULD BE PART OF THE RECEIVER'S CONSTRUCTION,

1 PART OF THE AMENDMENT OF THE BED PLAN WAS TO ROLL THOSE NEW
2 BEDS INTO THE RECEIVER'S PLAN.

3 **Q** ISN'T IT TRUE WHEN YOU MADE YOUR SWORN AFFIDAVIT,
4 OCTOBER 30TH, 2008, WHERE YOU CITED THIS BED PLAN AS -- IN YOUR
5 AFFIDAVIT AS EVIDENCE OF YOUR EFFORTS TO FULFILL THE COURT'S
6 ORDERS, THAT YOU KNEW ON OCTOBER 30TH, 2008, WHEN YOU SWORE
7 THAT AFFIDAVIT, THAT THE STATE OF CALIFORNIA HAD CHANGED ITS
8 MIND AND WAS DENYING FUNDING TO THE RECEIVER TO TAKE EVEN THE
9 INITIAL STEPS FOR THE CHCF HEALTHCARE FACILITY?

10 **MS. TILLMAN:** OBJECTION. CALLS FOR SPECULATION.

11 **JUDGE KARLTON:** OVERRULED. BEFORE YOU SAY
12 ANYTHING --

13 **JUDGE HENDERSON:** IS THAT TRUE YOU KNEW THAT?

14 **JUDGE KARLTON:** LET'S START, IS IT TRUE THAT YOU ARE
15 AWARE THAT THE STATE OF CALIFORNIA HAS DENIED ANY FUNDING FOR
16 THE RECEIVER'S PLAN; ARE YOU AWARE OF THAT?

17 **MS. TILLMAN:** YOUR HONOR, WITH ALL DUE RESPECT, I
18 MAY NEED TO INTERJECT OBJECTIONS TO SOME OF THE QUESTIONS IN
19 THIS VEIN OF QUESTIONING, IF I MAY DO SO. I WANT TO SHOW
20 RESPECT FOR THE COURT.

21 **JUDGE KARLTON:** THAT'S FINE. YOU GO AHEAD AND
22 OBJECT.

23 MA'AM, DO YOU KNOW THAT?

24 **MS. TILLMAN:** AGAIN, I'LL OBJECT AS TO RELEVANCE.

25 **JUDGE KARLTON:** TERRIFIC.

1 MA'AM, YOU SHALL ANSWER THE QUESTION.

2 THE WITNESS: OKAY. THE DIRECTION I HAVE BEEN GIVEN
3 IS TO CONTINUE ON WITH PLANNING. I'M NOT SURE OF ALL OF THE
4 DECISIONS MADE TO FUNDING BECAUSE THOSE ARE NOT ALWAYS IN MY
5 PURVIEW.

6 JUDGE HENDERSON: WELL, ON THIS ONE, DID YOU KNOW
7 THAT THE RECEIVER HAD BEEN DENIED FUNDING ON THE DATE THAT YOU
8 WROTE THIS AFFIDAVIT, OCTOBER 30TH, 2008?

9 MS. TILLMAN: AGAIN, WITH ALL DUE RESPECT, I BELIEVE
10 I NEED TO INTERJECT THE RELEVANCE OBJECTION, YOUR HONOR.

11 JUDGE HENDERSON: WE'LL CONSIDER THAT A CONTINUING
12 OBJECTION, COUNSEL.

13 MS. TILLMAN: THANK YOU.

14 JUDGE HENDERSON: WHAT'S YOUR ANSWER? YOU READ THE
15 NEWSPAPERS?

16 THE WITNESS: RIGHT. I READ THE PAPER, AND I READ
17 IT IN THE PAPER, BUT I DON'T HAVE THE EXACT, FROM THE
18 GOVERNOR'S OFFICE OR FROM SOMEONE ELSE, THAT THAT FUNDING IS
19 DENIED.

20 BY MR. GALVAN

21 Q YOU'RE THE DEPUTY DIRECTOR OF LONG-TERM CARE SERVICES FOR
22 THE CALIFORNIA DEPARTMENT OF MENTAL HEALTH; IS THAT RIGHT?

23 A CORRECT.

24 Q WHO'S HIGHER YOU THAN YOU IN THE DEPARTMENT OF MENTAL
25 HEALTH?

1 **A** CHIEF DEPUTY DIRECTOR, THE DIRECTOR.

2 **Q** DO YOU MEET WITH THEM EVER?

3 **A** YES, I DO.

4 **Q** DO THEY MEET WITH THE GOVERNOR?

5 **A** THEY MEET WITH THE AGENCY SECRETARY.

6 **JUDGE KARLTON:** LET'S BE CLEAR. WHEN YOU RECEIVED
7 AN OFFICIAL -- WELL, REPORT THAT THE MONEY HAD NOT BEEN
8 ALLOCATED, YOU KNEW FROM READING THE NEWSPAPERS THAT THE MONEY
9 HAD NOT BEEN ALLOCATED, RIGHT?

10 **THE WITNESS:** CORRECT.

11 **JUDGE KARLTON:** DID YOU GO TALK TO YOUR BOSSES AND
12 SAY, WHAT DO WE DO NOW?

13 **THE WITNESS:** THE DIRECTION WAS TO CONTINUE WORKING
14 TOWARDS THE PLAN.

15 **JUDGE KARLTON:** HOW COULD YOU WORK THROUGH A PLAN
16 WHERE THEY'VE -- THE STATE HAS SAID, WE ARE NOT GOING TO GIVE
17 YOU THE MONEY? I MEAN, JUST COMMON SENSE. WHAT'S THE ANSWER
18 TO THAT?

19 **THE WITNESS:** WELL, WE WERE CONTINUING TO WORK ON
20 THE 64 BEDS, BECAUSE ORIGINALLY IT WAS IN THE CONSOLIDATED
21 CENTERS AND THEN POTENTIALLY ROLLED INTO THE RECEIVER'S.

22 **BY MR. GALVAN**

23 **Q** NOW THAT YOU KNOW THAT, THE STATUS OF THE RECEIVER'S
24 PROJECT, WILL THERE BE ANOTHER BED PLAN?

25 **JUDGE REINHARDT:** ANOTHER WHAT?

1 **MR. GALVAN:** ANOTHER COLEMAN BED PLAN.

2 **THE WITNESS:** I DON'T KNOW AT THIS POINT.

3 **MR. GALVAN:** NO FURTHER QUESTIONS.

4 **CROSS-EXAMINATION BY MR. HENDERSON**

5 **BY MR. HENDERSON**

6 **Q** MS. RADAVSKY, MY NAME IS JIM HENDERSON. I'M FOR THE
7 PLAINTIFF INTERVENORS. I'M PRETTY SURE I ONLY HAVE TWO
8 QUESTIONS FOR YOU.

9 IN DIRECT TESTIMONY THIS MORNING YOU INDICATED YOU
10 HAD A COUNTERPART AT THE CDCR.

11 **A** YES, SIR.

12 **Q** OKAY. WHOM DO YOU CONSIDER TO BE YOUR COUNTERPART AT THE
13 CDCR?

14 **A** MENTAL HEALTHCARE, ROBIN DEZEMBER.

15 **Q** I'M SORRY. DID YOU GIVE HER TITLE?

16 **JUDGE KARLTON:** HIS.

17 **MR. HENDERSON:** HIS. I'M SORRY.

18 **THE WITNESS:** I'M NOT SURE WHAT HIS TITLE IS. HE'S
19 DEPUTY OVER CORRECTIONAL HEALTHCARE SERVICES.

20 **MR. HENDERSON:** THANK YOU VERY MUCH.

21 **THE WITNESS:** OKAY.

22 **JUDGE HENDERSON:** REDIRECT.

23 **REDIRECT EXAMINATION BY MS. TILLMAN**

24 **BY MS. TILLMAN**

25 **Q** MS. RADAVSKY, YOU'VE MENTIONED EARLIER THAT YOU HAVE

1 ESSENTIALLY A RELATIONSHIP WITH THE DEPARTMENT OF CORRECTIONS
2 AND REHABILITATION IN REGARDS TO THE REFERRAL OF DEPARTMENT OF
3 CORRECTION INMATE PATIENTS TO THE DEPARTMENT OF MENTAL HEALTH
4 FOR INPATIENT PSYCHIATRIC SERVICES, CORRECT?

5 **A** THAT'S CORRECT.

6 **Q** AND THAT WORKING RELATIONSHIP HAS BEEN AN ONGOING
7 RELATIONSHIP FOR HOW MANY YEARS?

8 **MR. GALVAN:** OBJECTION. LEADING.

9 **JUDGE HENDERSON:** OVERRULED.

10 **THE WITNESS:** IT'S BEEN A WORK IN PROGRESS FOR OVER
11 TEN YEARS.

12 **BY MS. TILLMAN**

13 **Q** AND AS MUCH AS IT IS A RELATIONSHIP, HOW WOULD YOU DESCRIBE
14 WHAT HAS OCCURRED IN TERMS OF YOUR RELATIONSHIP WITH THE
15 DEPARTMENT OF CORRECTIONS STAFF AT THE SALINAS VALLEY STATE
16 PRISON AS DISCUSSED IN THE SPECIAL MASTERS 20TH ROUND REPORT?

17 **A** I THINK WE'VE MADE SOME PROGRESS. THE DEPUTY FROM
18 INSTITUTIONS, AS I MENTIONED, WENT DOWN WITH ME EARLIER THIS
19 YEAR. WE SAT DOWN. WE SPENT ABOUT FOUR HOURS IDENTIFYING
20 ISSUES ON THE DEPARTMENT OF MENTAL HEALTH SIDE ISSUES, ON THE
21 DEPARTMENT OF CORRECTIONS SIDE, AND CAME UP WITH A PLAN OF
22 ACTION, WHICH ACTUALLY ON MONDAY WE SAT DOWN TO REVIEW THE
23 STATUS AND THE PROGRESS, AND OUR PLAN IS TO GO BACK DOWN IN
24 FEBRUARY TO MAKE SURE THINGS ARE STILL MOVING ALONG.

25 **Q** WAS IT SCOTT KERNAN OF THE DEPARTMENT OF CORRECTIONS YOU

1 MET WITH ON THESE ISSUES?

2 **A** YES, IT WAS.

3 **Q** WERE YOU SATISFIED WITH THE OUTCOME OF THOSE DISCUSSIONS?

4 **A** VERY.

5 **Q** THERE'S ALSO BEEN MENTION MADE OF SOME OF THE WAIT LISTS.

6 HAS THE DEPARTMENT OF MENTAL HEALTH ENGAGED IN ANY ACTIVITY

7 WITH OR EVEN WITHOUT THE DEPARTMENT OF CORRECTIONS STAFF TO

8 ADDRESS THE WAIT LIST ISSUE?

9 **A** WE'VE MADE NUMEROUS ATTEMPTS AT ENSURING THE FORMS ARE
10 STREAMLINED, THAT CLINICIANS HAVE BEEN TRAINED ON BOTH SIDES OF
11 THE HOUSE, THAT WE'VE MADE JOINT VISITS SO THAT THE MENTAL
12 HEALTH CLINICIANS COULD SEE THE ENVIRONMENT THAT THE PATIENTS
13 WERE COMING FROM, AND THAT THE CORRECTIONS CLINICIANS COULD SEE
14 THE ENVIRONMENT AND THE MILIEU THAT THE PATIENTS ARE IN WHEN
15 THEY'RE WITH US SO WE COULD SHARE TREATMENT MODALITIES AND TRY
16 TO MAINTAIN STABILIZATION ONCE PATIENTS ARE MOVED BACK TO
17 DEPARTMENT OF CORRECTIONS.

18 **Q** WOULD IT BE CORRECT TO SAY THAT -- LET ME STRIKE THAT.

19 DO YOU ALSO HAVE A WORKING RELATIONSHIP WITH THE
20 COLEMAN SPECIAL MASTER?

21 **A** YES, I DO.

22 **Q** AND HOW WOULD YOU DESCRIBE HOW THAT WORKING RELATIONSHIP IS
23 CONDUCTED?

24 **A** WELL, I THINK THE COLEMAN SPECIAL MASTER AND HIS EXPERTS
25 RAISE ISSUES TO US THAT WE TAKE VERY SERIOUSLY. WE DO

1 POPULATION MANAGEMENT FOR THE STATE HOSPITALS, AND IN A RECENT
2 DISCUSSION HE MENTIONED TO US THAT WE MIGHT WANT TO SEPARATE
3 AND DO POPULATION MANAGEMENT FOR THE DEPARTMENT OF CORRECTIONS
4 INMATES, WHICH WE STARTED.

5 WE MET WITH HIM AND THEN ON TUESDAY AFTERNOON
6 IDENTIFIED THE GROUP OF FORENSIC LIAISONS THAT DEAL WITH THE
7 POPULATION AND STARTED THEM WITH WEEKLY MEETINGS SO WE COULD
8 TRACK THE WAITING LISTS WHEN THERE ARE WAITING LISTS AND MAKE
9 SURE REFERRALS ARE MOVING TO THE APPROPRIATE PLACE.

10 Q IN ADDITION TO THAT OUTREACH, IN REGARDS TO THE WAIT LIST,
11 THE DEPARTMENT OF CORRECTIONS AND REHABILITATIONS, HAVE YOU
12 ALSO WORKED WITH THE COLEMAN SPECIAL MASTER IN REGARDS TO THE
13 ACTIVATION OF APPROPRIATE MENTAL HEALTHCARE BEDS FOR THE
14 CALIFORNIA DEPARTMENT OF CORRECTIONS INMATES?

15 A YES, I THINK WHEN THE INITIAL ACTIVATION OF THE 64
16 STAND-ALONE AT SALINAS VALLEY, THE ACTIVATION OF P2, THE
17 ACTIVATION OF P3.

18 Q AND WHERE ARE P2 AND P3?

19 A I'M SORRY. P2 AND P3 ARE AT THE VACAVILLE PSYCHIATRIC
20 UNIT, AND THOSE WERE IDENTIFIED AND OPENED FOR HIGH RISK
21 INMATES THAT WERE ON THE WAITING LIST. IT WAS A WAY TO HELP
22 WHITTLE DOWN THE WAITING LIST FOR SALINAS VALLEY.

23 Q HAVE YOU EXAMINED THE FEASIBILITY OF CONVERTING SPACE AT
24 EXISTING STATE HOSPITALS FOR USE BY COLEMAN INMATES?

25 A WE DID TWO STUDIES REGARDING COALINGA STATE HOSPITAL.

1 Q I BELIEVE THIS IS IN EXHIBIT 1158, CORRECT? WE CAN PUT
2 THAT UP HERE IF YOU LIKE.

3 MR. GALVAN: OBJECTION TO THIS AREA. I DON'T SEE
4 HOW IT'S WITHIN THE SCOPE OF CROSS.

5 MS. TILLMAN: I BELIEVE THERE WAS A LENGTHY
6 DISCUSSION ON CROSS ABOUT THE AVAILABILITY OF BEDS.

7 JUDGE HENDERSON: PROCEED.

8 BY MS. TILLMAN

9 Q IS THAT THE COALINGA FEASIBILITY STUDY YOU WERE REFERRING
10 TO, MS. RADAVSKY, IN EXHIBIT 1158?

11 A YES, IT IS.

12 Q AND YOU HAVE PLACED COLEMAN CASELOAD PATIENTS INTO BEDS AT
13 COALINGA STATE HOSPITAL; IS THAT CORRECT?

14 A LOWER CUSTODY INMATES, YES.

15 Q IN TERMS OF THE BED PLANS THAT HAVE BEEN PREPARED IN
16 RESPONSE TO THE NEEDS OF THE MENTALLY ILL INMATES OF THE
17 DEPARTMENT OF CORRECTIONS, WERE THOSE BED PLANS SUBMITTED FOR
18 APPROVAL BY THE SPECIAL MASTER IN THE COLEMAN CASE?

19 A YES, THEY WERE.

20 Q ON CROSS-EXAMINATION PLAINTIFFS' COUNSEL ASKED YOU
21 QUESTIONS ABOUT THE CLOSURE OF THE ATASCADERO STATE HOSPITAL
22 FACILITY IN JANUARY 2007; DO YOU RECALL THAT?

23 A IT WAS NOT CLOSURE. IT WAS A REDUCTION OF ADMISSIONS.
24 YES, I DO.

25 Q AND WHEN YOU SAY "REDUCTION OF ADMISSIONS," WHAT DOES THAT

1 MEAN?

2 **A** IT MEANS I HAD TO LIMIT ADMISSIONS DUE TO HEALTH AND SAFETY
3 CONCERNS, AND IN ORDER TO MAINTAIN THE LICENSURE OF THE
4 HOSPITAL UNTIL I COULD STAFF UP THROUGH EMERGENCY CONTRACTS
5 ADEQUATE STAFF TO START ADMISSIONS AGAIN.

6 **Q** AND DID ATASCADERO STATE HOSPITAL -- LET ME STRIKE THAT.

7 IS THAT REDUCTION IN ADMISSIONS POLICY STILL IN
8 EFFECT AT ATASCADERO STATE HOSPITAL?

9 **A** NO, IT IS NOT.

10 **Q** DO YOU RECALL APPROXIMATELY WHEN THAT REDUCTION IN
11 ADMISSIONS POLICY WAS ELIMINATED?

12 **A** THE MEMO WENT IN JANUARY, AND I BELIEVE MARCH OR APRIL OF
13 THAT SAME YEAR, '07, WE WERE ABLE TO START ADMISHING (SIC) AT
14 OUR REGULAR RATE.

15 **Q** HAVE YOU UNDERTAKEN ANY EFFORTS TO ENSURE THAT THE
16 DEPARTMENT OF MENTAL HEALTH HAS ADEQUATE STAFFING TO OPERATE
17 ITS INSTITUTIONS WITHOUT HAVING TO DO A REDUCED ADMISSIONS
18 POLICY?

19 **A** YES. THE INITIAL REASON FOR THE REDUCTION IN ADMISSIONS
20 WAS A PAY INCREASE UNDER A COLEMAN COURT ORDER FOR THE
21 DEPARTMENT OF CORRECTIONS AND REHABILITATION.

22 **Q** WAS THAT -- I'M SORRY. GO AHEAD.

23 **A** I'M SORRY. WE PURSUED PAY PARITY WHICH HELPS DRAW OUR
24 CLINICIANS BACK AND KEEP US VIABLE.

25 **Q** WAS THAT UNDER YOUR MAY 2007 PAY PARITY PLAN? I THINK IT

1 WAS ADMITTED AS DEFENDANT'S EXHIBIT 1040. WE CAN BRING THAT UP
2 ON THE SCREEN IF YOU LIKE. JUST PAGING DOWN THERE -- YOU HAVE
3 IT?

4 **A** YES, IT IS.

5 **Q** AND IS IT CORRECT THAT THE PAY PARITY PLAN WAS SUBMITTED TO
6 THE COLEMAN SPECIAL MASTER AND THE COLEMAN COURT FOR APPROVAL
7 IN MAY 2007?

8 **A** THAT'S CORRECT.

9 **Q** AND WAS THAT APPROVED BY THE COLEMAN COURT?

10 **A** YES, IT WAS.

11 **Q** HAVE YOU FOUND THAT THE INCREASE IN PAY SCALES FOR THE
12 DEPARTMENT OF MENTAL HEALTH, MENTAL HEALTH CLINICIANS, HAS
13 ENABLED ANY REDUCTION IN STAFF VACANCIES?

14 **A** YES, IT HELPED. ALTHOUGH WE STILL HAVE SOME CONTRACTS IN
15 PLACE, IT HAS HELPED US WITH RECRUITMENT OF CLINICIANS.

16 **Q** HAS THE DEPARTMENT OF MENTAL HEALTH ENGAGED IN ANY OTHER
17 EFFORTS BESIDES OBTAINING PAY PARITY WITH DEPARTMENT OF MENTAL
18 HEALTH CLINICIANS TO ENSURE ADEQUATE STAFFING FOR ITS
19 FACILITIES?

20 **A** YES, WE CONTINUE TO REACH OUTSIDE OF THE STATE OF
21 CALIFORNIA, BECAUSE IT'S VERY COMPETITIVE WITHIN THE STATE.
22 THERE'S A NATIONAL SHORTAGE ON CLINICIANS, SO WE MAKE SURE WE
23 HAVE LICENSED INTERNSHIPS FOR ALL OF OUR CLINICAL CLASSES, AS
24 WELL AS FELLOWSHIPS FOR OUR PSYCHIATRISTS. THAT'S A VERY
25 STRONG RECRUITING BASE FROM US ACROSS THE COUNTRY, AND WE DON'T

1 WANT TO KEEP COMPETING AS MUCH WITHIN THE STATE, WE WANT TO
2 DRAW FROM OUTSIDE OF THE STATE AND FROM FOREIGN NATIONALS AS
3 POSSIBLE.

4 **Q** DID THE DEPARTMENT OF MENTAL HEALTH PROVIDE THE SPECIAL
5 MASTER IN THE COLEMAN CASE WITH A RECRUITMENT PLAN?

6 **A** YES, WE DID.

7 **Q** AND I BELIEVE THAT'S EXHIBIT 1145-2. WE CAN PAGE DOWN,
8 AND -- THERE IS THE RECRUITMENT PLAN.

9 (DOCUMENT DISPLAYED.)

10 **BY MS. TILLMAN**

11 **Q** IS THAT THE PLAN YOU DRAFTED AND SUBMITTED TO THE COLEMAN
12 SPECIAL MASTER AND THE COLEMAN COURT?

13 **A** YES, IT IS.

14 **Q** THANK YOU. SINCE THE INCREASE IN PAY FOR THE DEPARTMENT OF
15 MENTAL HEALTH CLINICIANS AND WITH THE IMPLEMENTATION OF THESE
16 RECRUITMENT STRATEGIES, HAS ATASCADERO STATE HOSPITAL -- HAS
17 ATASCADERO STATE HOSPITAL IMPLEMENTED ANY REDUCTION IN ITS
18 ADMISSIONS?

19 **A** NO, IT HAS NOT.

20 **Q** HAS COALINGA STATE HOSPITAL IMPLEMENTED ANY REDUCTION IN
21 ITS ADMISSIONS?

22 **A** NO, IT HAS NOT.

23 **Q** DO YOU REPORT TO THE COLEMAN SPECIAL MASTER IN REGARDS TO
24 THE STATUS OF YOUR RECRUITMENT STRATEGIES AND THE SUCCESS OF
25 THOSE STRATEGIES ON ANY PERIODIC BASIS?

1 **A** I'M REQUIRED TO PROVIDE A VACANCY REPORT MONTHLY, AND IT
2 INCLUDES CIVIL SERVICE CLASS CLINICIANS, AS WELL AS ANY
3 CONTRACTORS.

4 **Q** WE'VE HEARD ABOUT NATIONAL SHORTAGE OF PSYCHIATRISTS. DO
5 YOU BELIEVE THAT TO BE TRUE, THAT THERE'S A NATIONAL SHORTAGE
6 OF PSYCHIATRISTS?

7 **A** I BELIEVE SO.

8 **Q** HAVE YOU BEEN ABLE TO OBTAIN SUFFICIENT PSYCHIATRISTS TO
9 OPERATE YOUR FACILITIES WITHIN THE DEPARTMENT OF MENTAL HEALTH?

10 **A** YES.

11 **Q** IN TERMS OF YOUR WORKING RELATIONSHIP WITH THE COLEMAN
12 SPECIAL MASTER, DO YOU MAKE CONTACT WITH THE COLEMAN SPECIAL
13 MASTER REGARDING THE ACTIVATION OR THE DEACTIVATION OF MENTAL
14 HEALTHCARE BEDS FOR COLEMAN CASELOAD PATIENTS?

15 **A** YES, I DO NOT MAKE MOVES WITHOUT REQUESTING AND THEN MAKING
16 FORMAL REQUESTS TO THE COURT, WHETHER IT'S CLOSURE, A REQUEST
17 TO SWAP, OR IDEAS THAT WE HAVE.

18 **Q** AND SO IF THE SPECIAL MASTER IN THE COLEMAN CASE IS
19 REVIEWING A REQUEST TO, SAY, DEACTIVATE BEDS TO RETROFIT CELLS
20 SUCH AS THOSE AT THE SALINAS VALLEY -- I'M SORRY -- CALIFORNIA
21 MEDICAL FACILITY IN S1, S2, DO YOU WAIT FOR HIS APPROVAL BEFORE
22 MOVING FORWARD ON THAT PLAN?

23 **A** YES, I DO.

24 **Q** HAVE YOU DONE SO IN THAT REGARD IN TERMS OF RETROFITTING
25 THE S1, S2 UNITS AT CALIFORNIA MEDICAL FACILITY?

1 **A** WE ARE WAITING FOR APPROVAL.

2 **MS. TILLMAN:** THANK YOU. NOTHING FURTHER.

3 **JUDGE HENDERSON:** ANYTHING FROM INTERVENORS?

4 **MR. MITCHELL:** NO QUESTIONS FROM THE INTERVENORS.

5 **JUDGE HENDERSON:** OKAY. RECROSS?

6 **RECROSS-EXAMINATION BY MR. GALVAN**

7 **MR. GALVAN:** ERNEST GALVAN FOR THE PLAINTIFFS.

8 **BY MR. GALVAN**

9 **Q** YOU TESTIFIED YOU HAVE A GOOD WORKING RELATIONSHIP WITH THE
10 COLEMAN SPECIAL MASTER; IS THAT RIGHT?

11 **A** YES.

12 **Q** SO IF YOU HAD A NEED TO CHANGE THE MISSION OF SOME BEDS,
13 YOU COULD JUST PICK UP THE PHONE AND CALL HIM; IS THAT RIGHT?

14 **A** NO. I GO THROUGH MY ATTORNEY.

15 **Q** OKAY. YOUR ATTORNEY SITTING WITH YOU COULD PICK UP THE
16 PHONE AND CALL HIM; IS THAT RIGHT?

17 **MS. TILLMAN:** OBJECTION. CALLS FOR SPECULATION.

18 **BY MR. GALVAN**

19 **Q** ON REDIRECT YOU DISCUSSED THE COALINGA STATE HOSPITAL STATE
20 FEASIBILITY STUDY AND COALINGA IN GENERAL. I BELIEVE WE SAW ON
21 THE MAP YOU HAD 50 BEDS THERE, AND THE CAPACITY OF COALINGA IS
22 ABOUT 1,500; IS THAT RIGHT?

23 **A** THE CAPACITY OF COALINGA IS 1,500.

24 **Q** ONE THOUSAND FIVE HUNDRED. AND THE CENSUS IS ABOUT?

25 **A** IT'S CLOSE TO 800 RIGHT NOW.

1 Q CLOSE TO 800. SO ABOUT 700 EMPTY BEDS THERE?

2 A THAT IS CORRECT.

3 Q AND THEY'RE EMPTY BECAUSE YOU CAN'T STAFF THE FACILITY; IS
4 THAT RIGHT?

5 A THEY ARE EMPTY BECAUSE WE ARE STAFFING UP AND BECAUSE I
6 ADMIT SEXUALLY VIOLENT PREDATORS INTO THAT FACILITY.

7 Q DO YOU REMEMBER AROUND DECEMBER 2006 GETTING AN E-MAIL FROM
8 THE PAROLE DEPARTMENT ASKING YOU ABOUT COALINGA?

9 A NOT OFF THE TOP OF MY HEAD.

10 MR. GALVAN: COULD WE LOOK AT E-PRIV 85851? THIS IS
11 A DOCUMENT RECEIVED IN DISCOVERY FROM THE DEFENDANTS. IT'S NOT
12 BEEN MADE AN EXHIBIT YET.

13 JUDGE KARLTON: WELL, DO YOU PROPOSE TO MAKE IT AN
14 EXHIBIT AND MOVE IT INTO EVIDENCE?

15 MR. GALVAN: I'M NOT CERTAIN, YOUR HONOR.

16 JUDGE KARLTON: YOU CAN'T SHOW IT IF IT'S NOT IN
17 EVIDENCE.

18 MR. GALVAN: IN THAT CASE, YOUR HONOR, I PROPOSE TO
19 MAKE IT AN EXHIBIT AND MOVE IT INTO EVIDENCE, AND IT WILL BE
20 DESIGNATED AS P590.

21 JUDGE HENDERSON: AND SEEING AT THIS POINT THERE'S A
22 TIMELINESS ISSUE, WHY SHOULD WE ADMIT THIS?

23 MR. GALVAN: YOUR HONOR, I WILL APPEAL TO THE
24 NORTHERN DISTRICT LOCAL RULE 1610.

25 JUDGE HENDERSON: WHICH IS THE THREE-JUDGE COURT --

1 **MR. GALVAN:** I WILL APPEAL TO THE GENERAL PRINCIPAL
2 THAT IMPEACHMENT AND REBUTTAL EVIDENCE DOES NOT HAVE TO BE
3 EXCHANGED --

4 **JUDGE HENDERSON:** I WAS ASKING YOU, IS THIS
5 IMPEACHMENT OR REBUTTAL?

6 **MR. GALVAN:** I'M SORRY, YOUR HONOR. IT IS
7 IMPEACHMENT OR REBUTTAL.

8 IF WE COULD ZOOM IN ON THE PART THAT STARTED WITH
9 STORMS ROBERT AND SAYS "CINDY" AT THE BOTTOM -- ACTUALLY THE
10 PART -- NO, THAT WAS TOO MUCH. RIGHT THERE. PERFECT. AND
11 MAKE THAT BIGGER?

12 DO YOU KNOW WHO ROBERT STORMS IS?

13 **A** YES, I DO.

14 **Q** DO YOU REMEMBER GETTING AN E-MAIL WHERE HE WROTE:

15 "CINDY: CDCR IS CURRENTLY PLANNING TO END THE
16 PSYCH RETURN PROCESS EFFECTIVE 1/8/07. WE WILL NO
17 LONGER RETURN PAROLEES TO PRISON SOLELY FOR
18 PSYCHIATRIC SERVICES. CAN YOU FREE UP MORE BEDS FOR
19 MORE MONEY FOR CONSERVED PAROLEES? THANKS."

20 DO YOU REMEMBER GETTING THAT E-MAIL?

21 **A** I DO NOW THAT I SEE IT.

22 **Q** OKAY. IF WE CAN GO UP AND SEE THE RESPONSE? THERE'S A
23 RESPONSE THERE. AND IT SAYS AS A HEADER, IT SAYS, DECEMBER 11,
24 2006 FROM CINDY RADAVSKY.

25 "DMH DOES NOT HAVE BED SPACE FOR THESE PAROLEES

1 AND, IN FACT, HAS ASKED CDCR TO DO BED PLANNING TO
2 REMOVE ALL OF THEIR INMATES FROM THE STATE HOSPITALS
3 DUE TO OUR POPULATION ISSUES AND THE NEW PRESSURES
4 UNDER JESSICA'S LAW."

5 DO YOU REMEMBER WRITING THAT BACK TO ROBERT STORMS?

6 **A** I REMEMBER NOW THAT I SEE IT.

7 **Q** DO YOU REMEMBER THERE WAS SOME DISCUSSION WITH THE PAROLE
8 DEPARTMENT ABOUT THE EMPTY BEDS AT COALINGA AND COULD THEY USE
9 THOSE FOR PSYCH --

10 **MS. TILLMAN:** COULD I HAVE THAT BACK AGAIN?

11 **MR. GALVAN:** I CAN ASK IT AGAIN.

12 **BY MR. GALVAN**

13 **Q** DO YOU REMEMBER THAT THERE WAS DISCUSSION WITH THE PAROLE
14 DEPARTMENT IN DMH AT THAT TIME ABOUT USING THE EMPTY BEDS IN
15 COALINGA FOR THE PSYCH RETURN POPULATION?

16 **MS. TILLMAN:** OBJECTION. RELEVANCE THIS IS A
17 VALDIVIA MATTER.

18 **JUDGE HENDERSON:** I AM GOING TO ALLOW IT.

19 **THE WITNESS:** I DON'T REMEMBER THE CONVERSATION
20 BEING SPECIFIC TO COALINGA. THE REQUEST WAS FOR STATE HOSPITAL
21 BEDS.

22 **BY MR. GALVAN**

23 **Q** AND YOUR RESPONSE WAS TO DENY THE REQUEST; IS THAT RIGHT?

24 **A** MY RESPONSE WAS THAT I HAD POPULATION PRESSURES RELATED TO
25 THE DEPARTMENT OF MENTAL HEALTH AND SPECIFICALLY NOT KNOWING,

1 SINCE JESSICA'S LAW HAD RECENTLY PASSED IN NOVEMBER OF '06 AS A
2 NEW INITIATIVE WHAT THAT POPULATION INCREASE WAS OR POTENTIALLY
3 COULD LOOK LIKE.

4 **Q** YOU TESTIFIED YOU HAD POPULATION PRESSURES ON THE STATE
5 HOSPITALS?

6 **A** YES.

7 **Q** YOU ALSO TESTIFIED ON REDIRECT ABOUT PAY PARITY. YOU
8 SUBMITTED A PLAN TO ACHIEVE PAY PARITY WITH THE CDCR
9 CLINICIANS; IS THAT RIGHT?

10 **A** CORRECT.

11 **Q** YOU SUBMITTED THAT PLAN VOLUNTARILY; IS THAT RIGHT?

12 **A** CORRECT.

13 **Q** YOU WEREN'T ORDERED BY THE COURT TO SUBMIT A PLAN ON PAY
14 PARITY?

15 **A** WE HAD PAPER FROM THE COURT, YES.

16 **Q** I'M SORRY. YOU HAD A PAPER FROM THE COURT?

17 **A** I DON'T HAVE THE ORDER IN FRONT OF ME TO DETERMINE WAS IT
18 AN ORDER.

19 **JUDGE KARLTON:** YOU MISUNDERSTOOD THE QUESTION. YOU
20 ULTIMATELY GOT AN ORDER FROM THE COURT PERMITTING YOU -- THE
21 QUESTION WAS, DID THE COURT ORDER YOU TO SUBMIT A PAY PARITY
22 PLAN?

23 **MS. TILLMAN:** I'LL OBJECT. CALLS FOR A LEGAL
24 CONCLUSION. I THINK THE COURT DOCKET SPEAKS FOR ITSELF. THAT
25 COURT ORDER IS IN THE DOCKET.

1 **JUDGE KARLTON:** YOU ARE SAYING I ORDERED HER TO
2 SUBMIT A PAY PLAN?

3 **MS. TILLMAN:** I BELIEVE THERE WAS A COURT ORDER.
4 THERE WAS CERTAINLY A SPECIAL MASTER'S PLAN ABOUT THAT.

5 **JUDGE KARLTON:** A DIFFERENT QUESTION.

6 MA'AM, AS FAR AS YOU CAN RECALL, DID THE PROPOSAL TO
7 INCREASE -- TO REACH PAY PARITY ORIGINATE WITH THE DEPARTMENT
8 OF MENTAL HEALTH, THE SPECIAL MASTER OR ANYBODY ELSE?

9 **THE WITNESS:** OFF THE TOP OF MY HEAD, I DON'T RECALL
10 WHERE IT WAS STARTED.

11 **BY MR. GALVAN**

12 **Q** DO YOU RECALL AFTER THE COLEMAN COURT ISSUED ITS PAY ORDERS
13 REGARDING THE CDCR CLINICIANS A MEETING WITH PLAINTIFFS'
14 COUNSEL AT WHICH MR. BIEN ASKED YOU, "AND YOU'RE ALSO GOING TO
15 INCREASE THE PAY FOR THE DEPARTMENT OF MENTAL HEALTH
16 CLINICIANS, AREN'T YOU?"

17 **A** YES, I RECALL THE MEETING.

18 **Q** DO YOU RECALL THE ANSWER MR. BIEN RECEIVED?

19 **A** NO, I DON'T.

20 **Q** IF I SAID IT WAS "NO," WOULD THAT SEEM FAR OFF?

21 **A** AT THAT POINT IN TIME, PROBABLY NOT.

22 **MR. GALVAN:** THANK YOU. NO FURTHER QUESTIONS.

23 **JUDGE HENDERSON:** OKAY. 590 WILL BE ADMITTED AT
24 THIS TIME.

25 (PLAINTIFFS' EXHIBIT 590 RECEIVED IN EVIDENCE.)

1 **JUDGE KARLTON:** MAY I ASK A QUESTION, WHICH I'M
2 SORRY TO SAY, MAY INVITE MORE TO DO?

3 HAVE YOU HEARD -- I'M NOT SAYING IT'S TRUE, BUT HAVE
4 YOU HEARD THAT THERE ARE CLINICIANS IN THE DEPARTMENT OF
5 CORRECTIONS AND REHABILITATION WHO HAVE CEASED REFERRING TO THE
6 DEPARTMENT OF MENTAL HEALTH BECAUSE THEY BELIEVE THAT THE
7 STANDARDS ARE SUCH THAT THEIR PATIENTS WILL NOT BE ADMITTED?
8 HAVE YOU HEARD THAT?

9 **THE WITNESS:** I HAVE HEARD THAT AT VARIOUS ALL PARTY
10 MEETINGS, YES, SIR.

11 **JUDGE KARLTON:** AND IS THERE ANY TRUTH TO THAT?
12 OBVIOUSLY, TRUTH ISN'T THE POINT. ALL RIGHT. THANK YOU.

13 DOES THAT INVITE ANOTHER LONG CONVERSATION FROM
14 COUNSEL? IT'S YOUR CLIENT.

15 **MS. TILLMAN:** I DON'T HAVE ANY RESPONSE TO THE
16 COURT'S INQUIRY. I HAVE ONE OR TWO QUESTIONS TO CLARIFY THE
17 RECORD ABOUT THE COURT ORDERS.

18 **MR. GALVAN:** I DO HAVE QUESTIONS. ARE YOU INVITING
19 FURTHER QUESTIONS?

20 **JUDGE KARLTON:** I'M NOT INVITING. I'M TERRIFIED
21 I'VE DONE IT.

22 **JUDGE HENDERSON:** IN FACT, WE WILL OVERRULE HIM IF
23 HE INVITES IT.

24 **MR. GALVAN:** NO FURTHER QUESTIONS, YOUR HONOR.

25 **JUDGE HENDERSON:** IS THAT IT?

1 **MS. TILLMAN:** IF I MIGHT, YOUR HONOR?

2 **JUDGE HENDERSON:** YES, PLEASE.

3 **FURTHER REDIRECT BY MS. TILLMAN**

4 **BY MS. TILLMAN**

5 **Q** MS. RADAVSKY, THE COURT ASKED IN REGARDS TO THE PAY PARITY
6 PLAN OF DMH WHETHER OR NOT IT WAS ORDERED. LET ME PUT UP ON
7 THE SCREEN WHAT APPEARS TO BE EXHIBIT 1305. I BELIEVE IT'S A
8 SPECIAL MASTER'S REPORT OF JANUARY 2007.

9 AND IF YOU COULD PAGE DOWN TO THE LAST PAGE WHERE
10 THE SIGNATURE APPEARS FROM THE SPECIAL MASTER? THERE IT IS.

11 (DOCUMENT DISPLAYED.)

12 **BY MS. TILLMAN**

13 **Q** AND THIS -- I BELIEVE THIS STATES AT THE FIRST PARAGRAPH:

14 "THE DEFENDANT SHOULD BE DIRECTED TO SUBMIT TO
15 THE COURT THE PRODUCT OF SUCH AN ASSESSMENT AND
16 CORRESPONDING PLAN WITHIN 60 DAYS OF THE ADOPTION OF
17 THE RECOMMENDED ORDER."

18 IF WE COULD JUST GO UP ONE PAGE TO THE BOTTOM
19 PARAGRAPH OF THE PRECEDING PAGE?

20 AND HERE IT SAYS:

21 "ALL OF THIS SUGGESTS THAT THAT PORTION OF
22 PLAINTIFFS' REQUEST SEEKING AN ORDER THAT DEFENDANTS
23 ASSESS AND DEVELOP A PLAN TO MEET THE ISSUES CREATED
24 BY THE DISPARITY IN PAY FOR DMH CLINICIANS PROVIDING
25 MENTAL HEALTH SERVICES TO CDCR INMATES IN CDCR

1 INSTITUTIONS AND THOSE PROVIDING SERVICES TO CDCR
2 INMATES IN ALL OTHER DMH INSTITUTIONS HAS MERITS."

3 AND I WOULD ASK THE WITNESS IF SHE RECALLS REVIEWING
4 THAT REPORT FROM THE SPECIAL MASTER?

5 **A** YES, I DO.

6 **Q** AND DID YOU ENGAGE YOUR OFFICE TO CREATE SUCH A PLAN?

7 **A** YES, I DID.

8 **Q** AND DID YOU RECEIVE -- LET ME STRIKE THAT.

9 **MS. TILLMAN:** I WOULD ASK THE COURT TO TAKE JUDICIAL
10 NOTICE OF THE COLEMAN COURT ORDER, I BELIEVE DATED FEBRUARY 7,
11 2007.

12 **JUDGE KARLTON:** THERE'S NO QUESTION THAT THE COURT
13 ISSUED AN ORDER. THE QUESTION IS WHAT THE SOURCE OF THE
14 APPLICATION WAS. ALL RIGHT.

15 **MS. TILLMAN:** THANK YOU, NOTHING FURTHER.

16 **JUDGE HENDERSON:** ANYTHING FURTHER, MR. GALVAN?

17 **MR. GALVAN:** NOTHING FURTHER FROM PLAINTIFFS.

18 **JUDGE HENDERSON:** THANK YOU FOR TESTIFYING,

19 MS. RADAVSKY. YOU MAY STEP DOWN. YOU'RE EXCUSED.

20 **THE WITNESS:** THANK YOU.

21 **JUDGE HENDERSON:** AND THAT ENDS OUR SESSION FOR
22 TODAY. WE WILL CONTINUE ON TUESDAY, DECEMBER 2ND, AND, AS I
23 UNDERSTAND IT, WE WILL GO DECEMBER 2ND AND DECEMBER 3RD.

24 I WILL REPEAT THE ORDER THAT DEFENDANTS SHOULD BE
25 READY TO GO INTO PHASE ONE-PLUS, WHETHER WE'RE INTO NOW

1 ONE-PLUS, OR SOMETHING, ON DECEMBER 4TH, AND BE REMINDED ALSO,
2 THAT ON DECEMBER 5TH, WHICH IS A FRIDAY, THAT WE'RE SCHEDULED
3 TO END AT 1:30 ON THAT DAY.

4 **MR. MELLO:** YOUR HONOR, JUST FOR CLARIFICATION, YOU
5 SAID -- I BELIEVE YOU SAID DEFENDANTS SHOULD BE PREPARED TO GO
6 ON TO PHASE ONE-A OR PHASE TWO. DID YOU MEAN PLAINTIFFS? YOU
7 MEANT PLAINTIFFS?

8 **JUDGE HENDERSON:** I MEANT PLAINTIFFS. EXCUSE ME.

9 **MR. MELLO:** THANK YOU, YOUR HONOR.

10 **MR. BIEN:** YOUR HONOR, JUST FOR CLARIFICATION, THERE
11 ARE A FEW THINGS WE THINK, BASED ON OUR INFORMAL DISCUSSION
12 YESTERDAY AFTERNOON, SHOULD BE CLARIFIED.

13 FIRST, WE WANT TO MAKE SURE ON THE RECORD THAT ALL
14 PARTIES, INCLUDING THE INTERVENORS, HAVE NOTICE OF WHAT THE
15 COURT STATED ON THE RECORD AND THE FACT THAT THERE'S BEEN SOME
16 CHANGE IN TERMS OF THE TRIAL, YOU KNOW, THERE HAS BEEN AN
17 ENDING OF THE PHASE ONE TRIAL AND A GAP. I THINK IT'S
18 IMPORTANT THAT ALL PARTIES BE FORMALLY NOTICED OF THAT, AND
19 MAYBE -- I DON'T KNOW WHETHER THE INTERVENORS ARE HERE TODAY,
20 BUT HAVE ALL INTERVENORS RECEIVED THAT NOTICE?

21 **JUDGE KARLTON:** INTERVENORS ARE PRESENT, OF COURSE,
22 OR AT LEAST SOME OF THE INTERVENORS ARE PRESENT, AND LET --
23 THOSE WHO HAVE NOT ARE ON THEIR OWN RISK.

24 **MR. BIEN:** AND, AGAIN, IN TERMS OF EFFICIENCY AND
25 PRACTICALITY, WE WOULD REQUEST THAT ANY WITNESS THAT TESTIFIES

1 FROM HERE FORWARD TESTIFY TO ANYTHING THEY'RE GOING TO TESTIFY
2 ABOUT ON ALL SUBJECTS. WE, OF COURSE, WILL BRING BACK ANY
3 WITNESSES THAT NEED TO BE BROUGHT BACK. BUT IF THE DEFENDANTS
4 ARE GOING TO PUT A WITNESS ON AND WE CAN -- IN A COUPLE OF
5 DAYS, THEY SHOULD PUT THAT WITNESS ON FOR ALL PURPOSES.

6 **JUDGE REINHARDT:** THERE'S NO OTHER ALTERNATIVE. WE
7 ARE GOING TO THE REST OF THE TRIAL WHEN WE START AGAIN ON THAT
8 THURSDAY, WHATEVER IT IS THE 4TH OR --

9 **MR. BIEN:** TUESDAY.

10 **JUDGE REINHARDT:** NO, NO. WE'RE GOING TO CLOSE
11 PHASE ONE AFTER TWO MORE WITNESSES, RIGHT? YOU ARE SUGGESTING
12 THOSE TWO WITNESSES SHOULD TALK ABOUT EVERYTHING?

13 **MR. BIEN:** WELL, I GUESS THE QUESTION IS, WHEN THE
14 WITNESSES PREPARED THEIR WITNESS STATEMENTS, IT WAS BEFORE
15 BIFURCATION. SO THE WITNESS STATEMENTS DEALT WITH BOTH PHASE
16 ONE AND PHASE TWO ISSUES. WE ARE PREPARED TO CROSS-EXAMINE
17 THEM ON ALL ISSUES. THEY HAVE SUBMITTED THEIR WITNESS
18 STATEMENT ON ALL ISSUES.

19 **JUDGE REINHARDT:** ARE YOU TALKING ABOUT THE NEXT TWO
20 WITNESSES?

21 **MR. BIEN:** YES. AND THERE'S ONLY -- THERE'S ONLY --
22 AND THERE'S TWO PERCIPIENT WITNESSES FROM DEFENDANTS. THEN,
23 THERE ARE TWO EXPERT WITNESSES. FOR EXAMPLE, THE EXPERT
24 PSYCHIATRIC WITNESS HAS SEVERAL REPORTS THAT ARE, QUOTE, PHASE
25 ONE, THEN HE'S, QUOTE, ONE REPORT THAT'S PHASE TWO. WHY WOULD

1 HE GO TWICE? WHY DON'T WE JUST DO IT IN ONE SESSION?

2 **JUDGE HENDERSON:** I DON'T HAVE ANY PROBLEM WITH
3 THAT. I THINK IT'S --

4 **JUDGE REINHARDT:** YOU'RE TALKING -- DOES THE DEFENSE
5 HAVE ANY PROBLEM WITH THAT?

6 **MR. MELLO:** I DON'T BELIEVE SO. BUT I BELIEVE IT
7 DOES OPEN MANY QUESTIONS WITH RESPECT TO -- I'M SORRY. PAUL
8 MELLO FOR DEFENDANTS. FIRST OF ALL, TAKING YOUR HONORS'
9 STATEMENTS EARLIER ABOUT PHASE ONE, PHASE TWO, PHASE ONE-A, I
10 DON'T BELIEVE WE WERE GOING TO HAVE MR. KERNAN TESTIFY IN PHASE
11 ONE, OR MAYBE IT'S NOW OLD PHASE ONE. AND COUNSEL, MR. FAMA,
12 AND I SPOKE ABOUT THAT. SO THAT'S ONE ISSUE. SO WE WOULD
13 ACTUALLY HAVE LESS WITNESSES IF WE WERE STILL IN A PHASE ONE
14 TRIAL, WHICH I'M NOT SURE IF WE ARE OR ARE NOT.

15 SECONDLY, I THINK IT OPENS UP ISSUES WITH RESPECT TO
16 DEPOSITION EXCERPTS AND COUNTERDESIGNATIONS AND OBJECTIONS,
17 BECAUSE I BELIEVE OBJECTIONS WERE TONED THE DOWN IN LIGHT OF
18 THE BIFURCATED TRIAL. IT ALSO RAISES ISSUES WITH RESPECT TO
19 OBJECTIONS WITH RESPECT TO TRIAL AFFIDAVITS AND EXPERTS'
20 REPORTS, BECAUSE I BELIEVE THOSE WERE DONE WITH PHASE ONE
21 ISSUES. I DON'T MEAN TO MAKE IT DIFFICULT.

22 **JUDGE KARLTON:** WE HAVE GREAT CONFIDENCE IN COUNSEL.
23 YOU HAVE BEEN DIRECTED TO MEET WITH PLAINTIFFS TO STOP ALL
24 THIS -- I WAS ABOUT TO USE A VERY BAD WORD, WHICH I DON'T MEAN.
25 BUT TO, IN A SPIRIT OF COOPERATION AND EFFORT TO GET THIS TRIAL

1 DONE WITHIN ALL OF OUR LIFETIMES, THAT YOU ARE GOING TO MEET
2 WITH COUNSEL AND DEAL WITH WHETHER OR NOT YOU REALLY MEAN THOSE
3 OBJECTIONS, AND IF YOU DON'T, GIVE US A NEW DESIGNATION OF
4 OBJECTIONS WHICH HAVE MERIT.

5 **MR. MELLO:** UNDERSTOOD. AND I BELIEVE THAT WAS WITH
6 RESPECT TO EXHIBITS. I DON'T BELIEVE IT ADDRESSED TRIAL
7 AFFIDAVITS AND EXPERTS' REPORTS.

8 **JUDGE KARLTON:** YOU ARE RIGHT. THAT WAS RESERVED
9 OUT.

10 **MR. MELLO:** AND I BELIEVE OBJECTIONS WERE DONE WITH
11 AN EYE ON A BIFURCATED PROCEEDING.

12 **JUDGE KARLTON:** HANG ON.

13 (PAUSE IN PROCEEDINGS.)

14 **JUDGE HENDERSON:** OKAY. WITH RESPECT TO THE POINT
15 MR. BIEN RAISED, THE COURT HAS DECIDED THAT THE WITNESSES WHO
16 WILL TESTIFY NEXT TUESDAY, AND PERHAPS WEDNESDAY, QUESTION THEM
17 FOR ALL PURPOSES, FOR ALL -- MAKE UP A PHASE FIVE, AND GET IT
18 ALL OUT OF THE WAY AT THAT ONE TIME. AS TO THE OBJECTIONS, WE
19 WILL TAKE WHAT YOU GIVE US. WE HOPE YOU'LL OPERATE IN GOOD
20 FAITH AFTER YOU MEET AND CONFER, AND WE'LL TAKE IT UNDER
21 ADVISEMENT AND ACT APPROPRIATELY.

22 **JUDGE KARLTON:** I SUPPOSE TO THE EXTENT THAT YOU DID
23 NOT FILE OBJECTIONS TO EXCERPTS OF DEPOSITIONS AND
24 DECLARATIONS, YOU KNOW, BE PREPARED TO DO THAT NEXT TIME WE
25 MEET BUT, FOR EXAMPLE, WE EXPECT YOU TO BE SERIOUS. I WILL

1 TELL YOU THAT AT LEAST SOME OF THE OBJECTIONS BY BOTH SIDES
2 AMAZED ME. SERIOUS LAWYERS SHOULDN'T BE DOING THINGS LIKE
3 THAT. IT JUST WASTES EVERYBODY'S TIME, BUT IF YOU FEEL
4 COMPELLED TO DO IT, WE'LL DO THE BEST WE CAN.

5 **JUDGE HENDERSON:** OKAY. COURT IS ADJOURNED.

6 **MR. HENDERSON:** EXCUSE ME, YOUR HONOR. JIM
7 HENDERSON FOR PLAINTIFF INTERVENORS. ONE OTHER HOUSEKEEPING
8 ITEM.

9 THIS MORNING THE DEFENSE ATTORNEY MOVED INTO
10 EVIDENCE DIRECT TESTIMONY AFFIDAVITS OF THEIR WITNESSES. I
11 WANTED TO GET A CLARIFICATION ON THAT.

12 **JUDGE KARLTON:** ALL THE THINGS THAT HAVE BEEN FILED
13 AS DIRECT TESTIMONY ARE IN, SUBJECT TO THE OBJECTIONS THAT THE
14 PARTIES HAVE LODGED.

15 **MR. HENDERSON:** THANK YOU, YOUR HONOR.

16 **JUDGE KARLTON:** THEY WERE JUST BEING SUPER CAUTIOUS.

17 **MR. HENDERSON:** I WAS BEING THAT, TOO, ALSO, YOUR
18 HONOR.

19 **JUDGE KARLTON:** I UNDERSTAND.

20 **MR. MELLO:** THE LAST ISSUE WAS WE'RE SUPPOSED TO GO
21 ON THE 2ND AND THE 3RD, AND OUR WITNESS ORDER IS CHANGING A
22 LITTLE BIT. WE STILL HAVE THE TWO EXPERTS BY VIDEO.

23 **JUDGE KARLTON:** OKAY.

24 **MR. MELLO:** I'M BEING HONEST WITH YOU. I'M NOT SURE
25 WE'LL USE A FULL DAY THE 2ND AND THE 3RD BECAUSE OF THE CHANGED

1 CIRCUMSTANCES. I DON'T WANT TO SURPRISE YOU FOLKS ON THE 2ND
2 OR 3RD.

3 **JUDGE KARLTON:** IF YOUR PEOPLE ARE SICK AND YOU
4 CAN'T MEET, WE'LL DO WHATEVER YOU THINK IS APPROPRIATE TO DO.

5 **MR. SPECTER:** IF THEY CAN'T -- DONALD SPECTER. IF
6 THEY CAN'T USE ALL OF THE 2ND OR 3RD, WE'LL SEE IF SOME OF OUR
7 WITNESSES ARE AVAILABLE AT THAT TIME. IF YOU WOULDN'T MIND,
8 WE'LL JUST START PHASE TWO EARLIER.

9 **JUDGE HENDERSON:** THAT'S FINE.

10 **JUDGE KARLTON:** GOOD.

11 **MR. HENDERSON:** ONE LAST POINT, YOUR HONOR. JIM
12 HENDERSON. WE SUBMITTED SIX DECLARATIONS OF IMMINENTLY
13 REASONABLE LENGTH. WE SUBMITTED THEM IN HARD COPY. THERE WERE
14 NO EXHIBITS. I WOULD LIKE TO FIND OUT WOULD THE COURT
15 APPRECIATE -- WE DID NOT SUBMIT THEM ON CD'S. DO YOU WANT US
16 TO SUBMIT THEM ON CD'S?

17 **JUDGE KARLTON:** I THINK. SO WE ARE GOING TO HAVE
18 TO, I'M SORRY TO SAY, IT WILL BE REALLY CONVENIENT FOR ALL OF
19 US.

20 **MR. HENDERSON:** NOT A PROBLEM. WE WILL DO THAT.

21 **JUDGE HENDERSON:** PLEASE DO. THANK YOU.

22 COUNSEL, ONE FURTHER HOUSEKEEPING MATTER, TO REMIND
23 YOU THAT WE'LL BE WANTING ARGUMENT AFTER PHASE ONE, AFTER THE
24 DEFENSE PUTS ON THE REST OF ITS WITNESSES.

25 **JUDGE REINHARDT:** BEFORE YOU START YOUR SECOND PART

1 OF THE CASE.

2 **MR. SPECTER:** WELL, ACTUALLY, THAT WAS WHAT I JUST
3 WAS TRYING -- TO SUGGEST THE COURT, AND YOU SEEMED HAPPY WITH
4 IT, WAS THAT IF THEY DON'T USE THE REST OF THEIR TIME ON PHASE
5 ONE, LIKE ON TUESDAY AFTERNOON, AND WE CAN FIT A WITNESS IN ON
6 PHASE TWO, IS THAT STILL OKAY?

7 **JUDGE KARLTON:** YES. OF COURSE, IT'S A QUESTION OF
8 WHEN WE FINALLY FINISH, GOD KNOWS WHEN, PHASE ONE, WE WANT TO
9 HEAR FROM -- I THINK WE STILL DO, DON'T WE?

10 **JUDGE REINHARDT:** YES. FROM BOTH SIDES.

11 **JUDGE KARLTON:** WE'D LIKE TO HEAR FROM, I GUESS IT'S
12 ALL SIDES, AT LEAST, YOU KNOW, SOME ARGUMENT ABOUT WHERE WE ARE
13 AS TO PHASE ONE.

14 **MR. SPECTER:** AND WE LOOK FORWARD TO THAT.

15 **JUDGE REINHARDT:** IF WE DECIDE THAT YOU HAVEN'T
16 ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE WHAT THE PRIMARY
17 CAUSE OF THE CONSTITUTIONAL VIOLATION IS, THEN YOU WON'T HAVE
18 TO WORRY ABOUT THE WITNESSES FOR PHASE TWO.

19 **MR. SPECTER:** YES, YOUR HONOR.

20 **JUDGE KARLTON:** EVEN THOUGH YOU PUT A COUPLE IN
21 ALREADY, IT'S ALL RIGHT.

22 **MR. SPECTER:** YOU JUST SHOULD KNOW THE END OF PHASE
23 ONE MAY STRETCH A LITTLE BIT BECAUSE THE VIDEOTAPE OF SOME OF
24 THE DOCTORS. YOU KNOW, HE'S SICK, IT MIGHT NOT GO UNTIL AFTER
25 THE --

1 **JUDGE HENDERSON:** YES.

2 **JUDGE KARLTON:** I WOULD LIKE SAY, I WOULD LIKE TO BE
3 ON THE SUPREME COURT AND LOOK AT THIS RECORD AND WONDER, WHAT
4 IS THE MATTER WITH THOSE JUDGES AND THOSE LAWYERS THAT THEY ARE
5 SPENDING ALL THIS TIME ON HOW TO TAKE THE NEXT STEP?

6 **JUDGE REINHARDT:** I'D LIKE TO SEE YOU ON THE SUPREME
7 COURT, ALSO.

8 **MR. SPECTER:** ME, TOO.

9 **JUDGE HENDERSON:** OKAY. OKAY. COURT IS ADJOURNED.
10 HAVE A NICE THANKSGIVING.

11 (PROCEEDINGS ADJOURNED.)

12

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I N D E XPLAINTIFF'S WITNESSESPAGEVOL.DEBBRA ROWLETT

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CERTIFICATE OF REPORTER

I, JOAN MARIE COLUMBINI, OFFICIAL REPORTER FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN CIV S-90-0520 LKK JPM P, RALPH COLEMAN, ET AL V. ARNOLD SCHWARZENEGGER AND C 01-1351 TEH, MARCIANO PLATA V. ARNOLD SCHWARZENEGGER, WERE REPORTED BY ME, CERTIFIED SHORTHAND REPORTER, AND WERE THEREAFTER TRANSCRIBED UNDER MY DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY ME AT THE TIME OF FILING.

THE VALIDITY OF THE REPORTER'S CERTIFICATION OF SAID TRANSCRIPT MAY BE VOID UPON DISASSEMBLY AND/OR REMOVAL FROM THE COURT FILE.

/S/ JOAN MARIE COLUMBINI

JOAN MARIE COLUMBINI, CSR 5435, RPR

FRIDAY, NOVEMBER 21, 2008

**JOAN MARIE COLUMBINI, CSR, RPR
OFFICIAL COURT REPORTER, USDC
415-255-6842**

VOL 5

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UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF CALIFORNIA
 AND FOR THE NORTHERN DISTRICT OF CALIFORNIA
 UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES PURSUANT
 TO SECTION 2284, TITLE 28 UNITED STATES CODE

RALPH COLEMAN, ET AL.,	)	
	)	
PLAINTIFFS,	)	
	)	
VS.	)	NO. CIV S-90-0520 LKK JFM P
	)	
ARNOLD SCHWARZENEGGER, ET AL.	)	
	)	THREE-JUDGE COURT
DEFENDANTS.	)	
	)	

MARCIANO PLATA, ET AL.,	)	
	)	
PLAINTIFFS,	)	
	)	
VS.	)	NO. C 01-1351 TEH
	)	
ARNOLD SCHWARZENEGGER, ET AL.	)	
	)	
DEFENDANTS.	)	
	)	

TRANSCRIPT OF PROCEEDINGS

SAN FRANCISCO, CALIFORNIA
 TUESDAY, DECEMBER 2, 2008

(APPEARANCES ON FOLLOWING PAGES)

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1 DECEMBER 2, 2008

9:15 O'CLOCK A.M.

3 P R O C E E D I N G S

4 JUDGE HENDERSON: OKAY. GOOD MORNING. ARE WE READY
5 TO PROCEED?

6 MR. BIEN: YES, YOUR HONOR.

7 MS. TILLMAN: YES, YOUR HONOR.

8 JUDGE HENDERSON: YOU MAY PROCEED.

9 MS. TILLMAN: GOOD MORNING, YOUR HONORS. WE CALL
10 ROBIN DEZEMBER.

11 (THEREUPON, THE WITNESS WAS SWORN.)

12 THE WITNESS: YES.

13 THE CLERK: PLEASE HAVE A SEAT.

14 STATE YOUR FULL NAME FOR THE RECORD.

15 JUDGE HENDERSON: OKAY. BEFORE WE BEGIN, I WANT TO
16 MAKE SOMETHING CLEAR ON THE RECORD -- AND PROCEED AS YOU
17 PLANNED, COUNSEL -- BUT I'VE READ MR. DEZEMBER'S DECLARATION,
18 AND IT WILL NOT BE RECEIVED TO THE EXTENT THAT IT SEEMED TO SAY
19 THAT THE STATE IS IN COMPLIANCE. WE'VE RULED ON THAT, AND IT
20 WILL NOT BE RECEIVED FOR THAT PURPOSE.

21 MS. TILLMAN: THANK YOU FOR INFORMING ME OF THAT,
22 YOUR HONORS. I APOLOGIZE TO THE COURT. I MUST HAVE LEFT MY
23 CELL PHONE ON.

24 MAY I JUST STEP AWAY AND TURN THAT THING OFF?

25 JUDGE HENDERSON: CERTAINLY.

1 **MS. TILLMAN:** THANK YOU.

2 IN REGARDS TO MR. DEZEMBER'S AFFIDAVIT, MAY I SPEAK
3 VERY QUICKLY TO THE COURT'S COMMENTS?

4 **JUDGE HENDERSON:** YES.

5 **MS. TILLMAN:** THAT DECLARATION WAS SUBMITTED TO
6 INFORM THE COURT OF EXACTLY THE IMPACT OF OVERCROWDING ON THE
7 MENTAL HEALTH SERVICES DELIVERY SYSTEM AND WHETHER OR NOT THE
8 PRIMARY CAUSE OF ANY DEFICIENCIES WAS, INDEED, OVERCROWDING.

9 AND SO WE WANTED TO ILLUMINATE FOR THE COURT WHERE
10 WE WERE IN THE PAST AS THE POPULATION EXISTED THEN AND WHERE WE
11 ARE TODAY AS THE POPULATION EXISTS TODAY. SO IT'S PROFFERED
12 WITH THAT CONCEPT IN MIND.

13 **JUDGE KARLTON:** MS. TILLMAN, WE'VE SAID -- AND
14 EVERYBODY KNOWS IT, I HOPE -- THAT ALL OF THE OBJECTIONS WILL
15 BE RESERVED TO THE END. AND WE'RE RECEIVING EVERYTHING PENDING
16 THOSE DECISIONS. BUT IT IS IMPORTANT BECAUSE CERTAINLY I READ,
17 AND PERHAPS UNFAIRLY, THE DEZEMBER DIRECT TESTIMONY -- AND
18 CERTAINLY THE PLAINTIFFS READ IT THAT WAY, AS WELL -- AS GOING
19 TO THE QUESTION OF WHETHER OR NOT THERE'S A CONTINUING
20 CONSTITUTIONAL VIOLATION.

21 AND IT IS ONLY IN THAT CONTEXT THAT WE HAVE
22 INDICATED THAT THE DIRECT TESTIMONY WILL NOT BE RECEIVED FOR
23 THAT PURPOSE. TO THE EXTENT THAT IT ILLUMINATES QUESTIONS THAT
24 ARE PROPERLY BEFORE THE COURT, OF COURSE IT WILL BE.

25 **MS. TILLMAN:** THANK YOU, YOUR HONOR.

1 IF THERE'S NOTHING FURTHER, MAY I PROCEED WITH THE
2 EXAMINATION?

3 JUDGE HENDERSON: YOU MAY.

4 MS. TILLMAN: THANK YOU.

5 I'D LIKE TO APPROACH THE WITNESS AND PROVIDE HIM
6 WITH A COPY OF THAT TRIAL AFFIDAVIT. WE'VE MARKED IT AS TRIAL
7 EXHIBIT 1007.

8 JUDGE HENDERSON: YOU MAY DO SO.

9 THEREUPON --

10 ROBIN DEZEMBER

11 WAS CALLED AS A WITNESS ON BEHALF OF THE DEFENDANTS, AND AFTER
12 HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS
13 FOLLOWS:

14 DIRECT EXAMINATION

15 BY MS. TILLMAN:

16 Q. GOOD MORNING, MR. DEZEMBER.

17 A. GOOD MORNING.

18 Q. WOULD YOU PLEASE INFORM THE COURT OF YOUR PRESENT
19 EMPLOYMENT IN TERMS OF ITS JOB TITLE AND JOB RESPONSIBILITIES?

20 A. YES. AND MY NAME IS ROBIN DEZEMBER, R-O-B-I-N,
21 D-E-Z-E-M-B-E-R.

22 MY PRESENT TITLE IS CHIEF DEPUTY SECRETARY
23 CORRECTIONAL HEALTHCARE SERVICES DIVISION OF THE DEPARTMENT OF
24 CORRECTIONS AND REHABILITATION.

25 Q. IS IT CORRECT THAT YOU SERVED PREVIOUSLY AS AN

1 UNDERSECRETARY OF THE YOUTH AND ADULT CORRECTIONAL AGENCY FROM
2 1982 TO 1986?

3 **A.** YES, THAT'S CORRECT.

4 **Q.** AND DURING THAT TIME HOW MANY PRISONS WERE BUILT?

5 **A.** YES, SOME WERE BUILT. WE BEGAN A PROGRAM THAT BUILT A LOT
6 OF PRISONS EVEN THEREAFTER.

7 **Q.** AND TO THE EXTENT THAT PRISONS WERE BUILT DURING YOUR
8 TENURE AS UNDERSECRETARY OF THE YOUTH AND ADULT CORRECTIONAL
9 AGENCY, DID STAFF PAY ATTENTION TO CREATING SPACES TO HOUSE
10 SEPARATELY, TO SEPARATE HOUSE AND TREAT THE MENTALLY ILL
11 INMATES?

12 **A.** AT THAT TIME, NO.

13 **Q.** AS WE SIT HERE TODAY HAVE THERE BEEN CHANGES IN HOW THE
14 MENTALLY ILL INMATES ARE HOUSED AND TREATED?

15 **A.** WELL, OVER THE YEARS SINCE THIS CASE BEGAN, WHICH I THINK
16 WAS 1995 WHEN THE ORDER CAME OUT, THERE HAVE BEEN A LOT OF
17 CHANGES NOT ONLY IN PROCESS AND PROCEDURES, BUT IN RETROFITTING
18 THE INTERIOR SPACES OF THE PRISONS TO ACCOMMODATE THE NECESSARY
19 ELEMENTS OF MENTAL HEALTH TREATMENT FOR THE POPULATION. THAT
20 HAS GONE ON FOR YEARS AS THE POPULATION GREW.

21 **Q.** AND HAS THE COLEMAN SPECIAL MASTER HAD A ROLE IN THOSE
22 CHANGES TO THE PRISONS TO ENABLE SPACE TO BE PROVIDED TO THE
23 MENTALLY ILL INMATES FOR TREATMENT AND HOUSING PURPOSES?

24 **A.** YES, HE'S ALWAYS HAD A ROLE.

25 **Q.** AND HOW WOULD YOU DESCRIBE THAT ROLE?

1 A. WELL, IN THE BEGINNING IT WAS MORE OF A MONITORING ROLE.
2 IT BECAME MUCH MORE OF A COLLABORATION THEREAFTER. FOR MOST OF
3 THE PERIOD OF THE SPECIAL MASTERSHIP TODAY IT'S BEEN A
4 COLLABORATIVE PROCESS.

5 Q. AND WHEN YOU TALK ABOUT COLLABORATION, WHAT EXACTLY DOES
6 THAT MEAN?

7 A. WELL, WE PROPOSE PLANS, THE SPECIAL MASTER REVIEWS THEM.
8 HIS MONITORS REVIEW THE OPERATION OF THE MENTAL HEALTH PROGRAM
9 IN THE PRISONS THEMSELVES. THEY PROVIDE US WITH INFORMATION.
10 THEY PROVIDE REPORTS TO THE COURT, WHICH WE TAKE VERY
11 SERIOUSLY.

12 AND TO THAT DEGREE I BELIEVE WE'VE HAD WHAT YOU
13 MIGHT CALL AN EFFECTIVE PARTNERSHIP UNDER DIFFICULT CONDITIONS.

14 Q. LOOKING AT EXHIBIT 1247, WHICH WE WILL PUT ON THE SCREEN
15 FOR YOU, AND YOU CAN SEE IT ON YOUR MONITOR, AS WELL, IS THAT
16 AN EXHIBIT THAT YOU'RE FAMILIAR WITH?

17 A. YES.

18 Q. AND HOW WOULD YOU DESCRIBE THAT EXHIBIT?

19 A. IT'S A MAP OF CALIFORNIA INDICATING WHERE THE STATE PRISONS
20 ARE LOCATED, AND IN THOSE PRISONS WHICH MENTAL HEALTH PROGRAMS
21 THEY HAVE.

22 Q. DO EACH OF THE PRISONS STATEWIDE HAVE A MENTAL HEALTH
23 PROGRAM?

24 A. THEY DO TO VARYING DEGREES.

25 Q. SOME MIGHT OFFER A FULL RANGE OF MENTAL HEALTH SERVICES,

1 OTHERS MAY NOT?

2 **A.** YES. THE DESERT PRISONS THEY ARE THERE TO IDENTIFY NEED,
3 TREAT FOR SHORT-TERM, IF NECESSARY, BUT TRANSFER AN INMATE TO A
4 PLACE WHERE THEY CAN GET THE SERVICES THEY REQUIRE. AND THEN,
5 SOME OF THE PRISONS HAVE A FAIRLY EXTENSIVE MENTAL HEALTH
6 PROGRAM.

7 **Q.** WHERE THE MAP INDICATES INPATIENT BEDS, LIKE INTERMEDIATE
8 CARE AND ACUTE CARE ENHANCED OUTPATIENT PROGRAM BEDS, ARE THOSE
9 MENTAL HEALTHCARE BEDS IN HOUSING UNITS SEPARATE AND APART FROM
10 GENERAL POPULATION BEDS, HOUSING GENERAL POPULATION UNITS?

11 **A.** YES. THE HIGHER LEVELS OF CARE ARE ANYTHING WE WOULD CALL
12 ENHANCED OUTPATIENT AND ABOVE.

13 **Q.** NOW, WHEN YOU MENTIONED THAT MANY OF THE PRESENT HOUSING
14 SPACES AND CLINICAL TREATMENT AREAS PROVIDED FOR THE TREATMENT
15 OF MENTALLY ILL INMATES WERE FROM RETROFITTED INTERIOR SPACES,
16 DOES THAT MEAN THAT CELLS THAT MIGHT HAVE BEEN USED PREVIOUSLY
17 BY THE GENERAL POPULATION MAY HAVE BEEN SOMEHOW RETROFITTED?

18 **A.** YES.

19 **Q.** ARE CLINICIANS' OFFICES SOMETIMES PLACED INSIDE RETROFITTED
20 CELLS?

21 **MR. BIEN:** OBJECTION, LEADING.

22 **MS. TILLMAN:** PARDON ME?

23 **JUDGE HENDERSON:** OVERRULED.

24 **THE WITNESS:** TREATMENT SPACES AND CLINICAL OFFICE
25 SPACES, AS WE LUMP TOGETHER TREATMENT AND OFFICE SPACE, THOSE

1 ARE ALWAYS PROVIDED IN -- SUBJECT TO THE CONDITIONS AVAILABLE.

2 WE HAVE IN SOME CASES CONSTRUCTED NEW FACILITIES. IN
3 MANY OF THE RETROFITTED FACILITIES, THE CLINICAL SPACES ARE
4 ACQUIRED WHERE THEY CAN BE ACQUIRED, AND PEOPLE OPERATE OUT OF
5 THOSE.

6 **BY MS. TILLMAN:**

7 **Q.** IS IT YOUR UNDERSTANDING THAT ADEQUATE CARE CAN BE RENDERED
8 IN THESE KIND OF MAKE-DO ARRANGEMENTS?

9 **A.** IN MY OPINION, YES.

10 **JUDGE KARLTON:** THE OBJECTION THAT IT'S BEYOND THE
11 SCOPE OF HIS EXPERTISE IS WELL-TAKEN. I KNOW THAT'S JUST WHAT
12 YOU WERE GOING TO SAY, MR. BIEN.

13 **BY MS. TILLMAN:**

14 **Q.** HAVE YOU EVER RECEIVED ANY REPORT FROM THE SPECIAL MASTER
15 IN THE COLEMAN CASE INDICATING THAT THIS RETROFITTED SPACE FOR
16 EITHER OFFICES FOR THE CLINICIANS OR FOR HOUSING THE MENTALLY
17 ILL INMATES WAS SOMEHOW NOT APPROPRIATE FOR THE PURPOSES?

18 **A.** YES.

19 **Q.** AND IN TERMS OF THE COLEMAN SPECIAL MASTER, HAS THE COLEMAN
20 SPECIAL MASTER EVER INDICATED THAT ANY LICENSURE STANDARDS
21 WOULD BE WAIVED SO THAT CLINICAL SPACE AND HOUSING SPACE COULD
22 BE PROVIDED TO THE MENTALLY ILL?

23 **A.** THAT HAS OCCURRED IN ONE INSTANCE THAT I'M AWARE OF.

24 **Q.** AND WHERE WAS THAT?

25 **A.** THAT WAS AT CALIFORNIA MEN'S COLONY IN WHAT IS CALLED THE

1 LOCKED OBSERVATION UNIT. IT'S ALMOST A EUPHEMISM. IT'S A
2 HOUSING UNIT FOR TREATING MENTALLY ILL PATIENTS.

3 Q. AND HAS THE COLEMAN SPECIAL MASTER ALLOWED CARE TO PROCEED
4 IN THAT FACILITY NOTWITHSTANDING THE LICENSURE ISSUES?

5 A. YES.

6 Q. HAS THE COLEMAN COURT ORDERED THE DEFENDANTS TO CREATE MORE
7 MENTAL HEALTH BEDS?

8 A. YES.

9 Q. AND LOOKING AT EXHIBIT 1044, ARE YOU FAMILIAR WITH THAT
10 MAY, 2006 ORDER TO CREATE ADDITIONAL BEDS?

11 A. YES, I AM.

12 Q. AND HAVE THE DEFENDANTS RESPONDED WITH A PLAN TO CREATE
13 ADDITIONAL BEDS?

14 A. YES, WE HAVE. WE SUBMITTED MORE THAN ONE PLAN.

15 Q. AND IN TERMS OF THE PLANS THAT HAVE BEEN SUBMITTED, CAN YOU
16 INFORM THE COURT OF ESSENTIALLY THE PRESENT PLAN TO CREATE MORE
17 BEDS FOR THE MENTALLY ILL?

18 A. THE PRESENT CONTROLLING PLAN WAS REALLY BASED ON A
19 DECEMBER, 2006 -- WHAT WE CALL THE DECEMBER, 2006 PLAN,
20 ALTHOUGH IT WAS UPDATED IN APRIL, I THINK, OF 2007. AND WHAT
21 IT IS IS AN EFFORT BY THE DEPARTMENT TO CONSOLIDATE HIGHER
22 LEVELS OF CARE FOR MENTAL HEALTH AND TO BUILD SPACES THAT WERE
23 APPROPRIATE FOR THE TREATMENT FOR THE INMATES THAT ARE GOING TO
24 BE TREATED.

25 THAT IS -- IT'S AN EXTENSIVE REVISION OF THE WAY

1 MENTAL HEALTH TREATMENT CAN BE PROVIDED NOW BECAUSE OF THE
2 SPACE IMPROVEMENTS THAT IT CONTAINS. THAT PLAN HAS BEEN
3 APPROVED BY THE COURT.

4 **Q.** AND THAT IS THE AUGUST, 2007 PLAN, CORRECT?

5 **A.** IT'S AUGUST, 2007. YES. I'M SORRY. I FORGOT THAT MONTH.

6 **Q.** AND WAS THERE ALSO A PLAN SUBMITTED IN JULY, 2008 TO CREATE
7 MORE BEDS?

8 **A.** WE CREATED A PLAN IN CONJUNCTION WITH THE PLATA
9 RECEIVERSHIP IN RESPONSE TO ONE OF THE COORDINATED COURT ORDERS
10 WHICH GAVE THE RECEIVER LEAD RESPONSE -- PROJECT RESPONSIBILITY
11 ON CONSTRUCTING HEALTHCARE FACILITIES, INCLUDING MEDICAL AND
12 MENTAL HEALTH.

13 SO WE JOINED IN THAT EFFORT AND HAVE BEEN WORKING
14 FOR PROBABLY THE LAST 16 TO 18 MONTHS ON THAT WITH THE RECEIVER
15 SO THAT IT TRANSFORMS THE AUGUST, 2007 BED PLAN INTO ONE THAT
16 WOULD BE CONSISTENT WITH THE FACILITIES THAT THE RECEIVER HAD
17 PLANNED TO BUILD. AND THAT'S -- I CONSIDER THAT A VERY
18 EFFECTIVE, COOPERATIVE PLANNING EFFORT THAT THE RECEIVER'S
19 STAFF AND MY STAFF HAVE ENGAGED IN TO PRODUCE THAT.

20 THAT HAS NOT TO MY KNOWLEDGE BEEN SUBMITTED TO THE
21 COURT, ALTHOUGH IT HAS BEEN SUBMITTED TO THE SPECIAL MASTER.

22 **Q.** WITH THESE BED PLANS IS THE AIM TO PROVIDE CARE TO THE
23 MENTALLY ILL INMATES AT SEPARATE CONSOLIDATED CENTERS WHERE
24 THEY NEED INPATIENT CARE?

25 **A.** IN THE FIRST PLAN THAT IS THE CONCEPT TO THE DEGREE

1 FEASIBLE. AND IT DOES RECOMMEND CLOSING DOWN SOME OF OUR
2 EXISTING FACILITIES.

3 IN THE PLAN WITH THE RECEIVER, IT TAKES ANOTHER STEP
4 IN THAT DIRECTION AND PRETTY MUCH CONSOLIDATES MOST OF THE
5 HIGHER LEVEL OF CARE -- I DON'T KNOW THE EXACT NUMBERS -- BUT
6 MOST OF THE HIGHER LEVELS OF CARE IN THOSE NEW FACILITIES THAT
7 WERE CONCEIVED BY THE PLATA RECEIVERSHIP.

8 **Q.** WOULD THERE BE ALSO BEDS FOR THE -- NOT ONLY THE PATIENTS
9 WHO NEED HOSPITAL SETTING CARE, LIKE ACUTE INPATIENT OR
10 INTERMEDIATE INPATIENT, BUT WOULD THERE ALSO BE NEW BEDS
11 CREATED FOR THE PATIENTS IN THE ENHANCED OUTPATIENT PROGRAM?

12 **A.** YES.

13 **Q.** AND WOULD THAT PROVIDE ANY RELIEF FOR THE PRESENT NUMBER OF
14 PATIENTS RECEIVING ENHANCED OUTPATIENT CARE AT THE RECEPTION
15 CENTERS?

16 **A.** YES, IT WOULD.

17 **Q.** WOULD IT BE CORRECT TO SAY THAT THE DEPARTMENT OF
18 CORRECTIONS HAS ESSENTIALLY MADE DOE WITH THE SPACE AVAILABLE
19 IN THE PRESENT PRISON SETTINGS TO PROVIDE MENTAL HEALTHCARE TO
20 THE MENTAL HEALTH POPULATION?

21 **A.** TO THE LARGEST DEGREE, THAT'S CORRECT. IN MORE RECENT
22 TIMES THERE HAS BEEN NEW CONSTRUCTION.

23 **Q.** AND EVEN WITH THAT SPACE AND WITH THE PRESENT POPULATION OF
24 CDCR, HAS CDCR BEEN ABLE TO IMPLEMENT THE REVISED PROGRAM GUIDE
25 STANDARDS SYSTEM-WIDE?

1 **A.** I'M SORRY. I DIDN'T CATCH THAT ENTIRELY.

2 **Q.** EVEN WITH THE PRESENT SPACE ISSUES CONFRONTING THE
3 DEPARTMENT OF CORRECTIONS AND THE PRESENT POPULATION OF THE
4 DEPARTMENT OF CORRECTIONS, HAS THE DEPARTMENT OF CORRECTIONS
5 AND REHABILITATION BEEN ABLE TO IMPLEMENT THE REVISED PROGRAM
6 GUIDE STANDARDS FOR MENTAL HEALTHCARE?

7 **A.** YES, WE HAVE IMPLEMENTED THEM STATEWIDE.

8 **Q.** HAVE YOU BEEN ABLE TO INCREASE MENTAL HEALTH CLINICAL
9 STAFFING SYSTEM-WIDE?

10 **A.** YES.

11 **Q.** AND LOOKING AT EXHIBIT 1235, HAVE YOU SEEN THAT EXHIBIT
12 BEFORE?

13 **A.** YES, I HAVE.

14 **Q.** AND WHAT DOES THAT SHOW?

15 **A.** THAT'S A BAR GRAPH DEPICTION OF MENTAL HEALTH PROGRAM
16 POSITIONS, THE CLINICAL POSITIONS THAT WE UTILIZE IN THE PRISON
17 SYSTEM.

18 **Q.** AND COMPARED TO 1994, HOW ARE -- HOW IS STAFFING OF THE
19 PSYCHOLOGISTS TODAY?

20 **A.** WELL, STAFFING IS VERY MUCH HIGHER TODAY THAN IT WAS IN
21 1994, AS DEMONSTRATED IN THIS CHART.

22 **Q.** AND LOOKING AT EXHIBIT 1246 --

23 **MR. BIEN:** YOUR HONOR, WE HAVE A RELEVANCE OBJECTION
24 TO THIS CHART.

25 **JUDGE HENDERSON:** I'M GOING TO OVERRULE IT, AND LET

1 HIM PROCEED.

2 **BY MS. TILLMAN:**

3 **Q.** DOES 1246 ALSO SHOW THE PRESENT STATUS OF THE MENTAL HEALTH
4 PROGRAM'S ABILITY TO PROVIDE STAFFING IN TERMS OF
5 PSYCHIATRISTS?

6 **A.** YES, THIS IS A CHART OF PSYCHIATRIST POSITIONS IN THE
7 DEPARTMENT.

8 **Q.** AND CAN YOU INFORM THE COURT OF WHETHER OR NOT THE
9 DEPARTMENT OF CORRECTIONS HAS BEEN SUCCESSFUL IN RECRUITING
10 PSYCHIATRISTS OVER THE PAST FEW MONTHS?

11 **A.** WE HAVE BEEN INCREASINGLY SUCCESSFUL IN THE LAST EIGHT OR
12 NINE MONTHS.

13 **Q.** AND LOOKING AT THE NEXT PAGE OF 1246 --

14 **JUDGE KARLTON:** BEFORE YOU GO ON, I JUST WANT TO BE
15 SURE I UNDERSTAND WHAT I'M LOOKING AT.

16 CAN WE GO BACK?

17 YES, I'M SORRY.

18 THE RED LINES INDICATE WHAT IS NEEDED AND THE BLUE
19 LINES INDICATE THE NUMBERS FILLED; IS THAT RIGHT OR WRONG,
20 MR. DEZEMBER?

21 **THE WITNESS:** THAT'S CORRECT.

22 **JUDGE KARLTON:** ALL RIGHT.

23 **THE WITNESS:** THE PURPLE IS WHAT IS ESTABLISHED.
24 THAT'S WHAT WE HAVE. THE BLUE SHOWS THOSE POSITIONS. AS WE
25 HIRE PEOPLE, THEY FILL THOSE.

1 **JUDGE KARLTON:** OKAY.

2 **BY MS. TILLMAN:**

3 **Q.** AND MOVING TO THE NEXT PAGE OF 1246, WE HAVE A BAR GRAPH
4 SHOWING THE STATUS OF FILLED AND AVAILABLE POSITIONS FOR
5 PSYCHOLOGISTS. HAVE THERE ALSO BEEN INCREASED, NOT ONLY
6 AVAILABLE POSITIONS, BUT FILLED POSITIONS FOR PSYCHOLOGISTS
7 WITHIN CDCR?

8 **A.** YES, BOTH HAVE BEEN INCREASED.

9 **Q.** YOU MENTIONED EARLIER THAT THERE HAVE BEEN SOME ADDITIONAL
10 TREATMENT SPACES CREATED WITH THE HELP OF FACILITIES MANAGEMENT
11 OF THE DEPARTMENT OF CORRECTIONS. DOES THAT INCLUDE THE 50-BED
12 MENTAL HEALTH CRISIS BED UNITS AT CALIFORNIA MEDICAL FACILITY
13 AT VACAVILLE?

14 **A.** YES, IT DOES.

15 **Q.** CAN YOU RECALL ANY OTHER NEW ACTIVATIONS OF MENTAL HEALTH
16 TREATMENT FOR OFFICE SPACE OR HOUSING SPACE?

17 **A.** WELL, SOME YEARS AGO WE OPENED 64-BED INTERMEDIATE CARE
18 FACILITY AT SALINAS VALLEY STATE PRISON. AND SOMETIME THIS
19 MONTH WE'RE EXPECTING TO OPEN ANOTHER 64-BED INTERMEDIATE CARE
20 FACILITY AT SALINAS VALLEY.

21 WE HAVE PLANS UNDERWAY THROUGH THE STATE'S CAPITAL
22 OUTLAY PROCESS TO BUILD 64 INTERMEDIATE CARE FACILITY BEDS AT
23 THE CALIFORNIA MEDICAL FACILITY, AND ALSO A 50-BED MENTAL
24 HEALTH CRISIS FACILITY AT THE CALIFORNIA MEN'S COLONY.

25 **Q.** HAVE YOU ANY OPINION ON WHETHER OR NOT THE PRIMARY CAUSE OF

1 THE CONSTITUTIONAL DEFICIENCIES IN THE MENTAL HEALTHCARE SYSTEM
2 OF THE DEPARTMENT OF CORRECTIONS AND REHABILITATION IS
3 OVERCROWDING?

4 **A.** I DO HAVE AN OPINION ON THAT.

5 **Q.** AND WHAT IS YOUR OPINION?

6 **A.** WELL, I DON'T THINK IT'S OVERCROWDING AS A PRIMARY CAUSE.

7 **Q.** HAVE YOU --

8 **A.** WOULD YOU LIKE ME TO EXPLAIN?

9 **Q.** YES, PLEASE.

10 **A.** OKAY. IT'S CONNECTED TO POTENTIAL RESOLUTION OF THE ISSUE,
11 BECAUSE I AM OF THE BELIEF THAT THE FACILITIES WE'RE TRYING TO
12 CREATE IN THE NEW PLAN ARE GOING TO BE ADDRESSING THOSE HIGHER
13 LEVELS OF CARE IN THE MENTAL HEALTH POPULATION. AND ALTHOUGH I
14 HAVE NOT DONE SPECIFIC RESEARCH ON THIS, MY SENSE OF THE
15 DEMOGRAPHICS OF THE MENTAL HEALTH POPULATION AT LARGE IS THAT A
16 RELEASE ORDER OR A CAPPING OF THE POPULATION WOULD HAVE LITTLE
17 EFFECT ON THOSE HIGHER LEVELS OF CARE.

18 AND SO WE WOULD STILL NEED TO HAVE THOSE FACILITIES
19 CONSTRUCTED. AND IF THOSE FACILITIES ARE CONSTRUCTED, WE
20 BELIEVE WE CAN PROVIDE THE CARE IN THOSE FACILITIES THAT IS
21 REQUIRED.

22 SO A REDUCTION OF POPULATION WILL IMPACT OUR GENERAL
23 POPULATION MENTAL HEALTH POPULATION, WHAT'S CALLED THE CLINICAL
24 CASE MANAGEMENT POPULATION, TO A MUCH LARGER DEGREE THAN ANY OF
25 THE OTHER SEGMENTS.

1 AS I SAID, I DON'T HAVE A BREAKDOWN OF ALL THAT
2 DATA, BUT THESE ARE CONVERSATIONS THAT I'VE HAD IN THE PAST
3 WITH FORMER SPECIAL MASTER MICHAEL KEATING, WHO CONCURRED IN
4 THAT ASSESSMENT.

5 MR. BIEN: OBJECTION, HEARSAY.

6 JUDGE HENDERSON: SUSTAINED.

7 BY MS. TILLMAN:

8 Q. IN REGARDS TO --

9 JUDGE KARLTON: UNLESS IT WAS PUT INTO A REPORT. I
10 KNOW OF NO REPORT FROM SPECIAL MASTER KEATING THAT DEALT WITH
11 OVERCROWDING. I MAY BE WRONG.

12 DO YOU THINK THERE IS SUCH A REPORT THAT I CAN TAKE
13 JUDICIAL NOTICE OF?

14 MS. TILLMAN: I BELIEVE YOU CAN TAKE JUDICIAL NOTICE
15 OF THE SPECIAL MASTER'S REPORT OF MAY 31, 2007, YOUR HONOR, IN
16 WHICH THERE WAS AN DISCUSSION --

17 JUDGE KARLTON: THAT ONE I READ, AND I DON'T
18 AGREE -- WELL, IT SAYS WHAT IT SAYS.

19 BY MS. TILLMAN:

20 Q. HAS THE COLEMAN COURT EVER DIRECTED THE DEPARTMENT OF
21 CORRECTIONS AND REHABILITATION TO REDUCE ANY PORTION OF ITS
22 MENTAL HEALTH POPULATION?

23 A. OF THE MENTAL HEALTH POPULATION? NO. NO, OUR ROLE IS NOT
24 TO CURTAIL THE POPULATION THAT WE'RE REQUIRED TO TREAT. I MEAN,
25 THOSE OF YOU WHO HAVE BEEN HERE A LONG TIME WILL RECALL THAT

1 WHEN THIS PROGRAM BEGAN WE HAD AN ESTIMATE OF ROUGHLY 7 PERCENT
2 OF THE PRISONER POPULATION WOULD BE CATEGORIZED REQUIRING
3 TREATMENT FOR SEVERE MENTAL ILLNESS. AND TODAY IT IS AT
4 20 PERCENT.

5 THE PROGRAM IS INTENTIONALLY DESIGNED AS AN
6 INCLUSIVE PROGRAM. IT IS NOT AN EXCLUSIVE PROGRAM. THERE ARE
7 MECHANISMS TO ALLOW TREATMENT WHEN IT IS DETERMINED BY A
8 CLINICIAN TO BE REQUIRED. AND THERE CAN BE REFERRALS FROM ANY
9 OF THE STAFF IN ANY INSTITUTION.

10 Q. WOULD IT BE CORRECT TO SAY TO APPROPRIATELY -- YOUR PLAN IS
11 TO CREATE MORE BEDS AND ENABLE MORE STAFFING?

12 A. WELL, I THINK OVER THE YEARS WE HAVE ADDRESSED AND ARE
13 CONTINUING TO ADDRESS THE STAFFING ISSUE, WHICH IS HUGE. WE
14 HAVE POLICIES AND PROCEDURES IN PLACE NOW THAT ARE, I BELIEVE,
15 EFFECTIVE AND COMPREHENSIVE, AND THEY HAVE THE CONCURRENCE OF
16 THE COURT.

17 WE HAVE NOW A CENTRAL OFFICE ORGANIZATION THAT IS
18 EVOLVING THAT, ONCE AGAIN -- FOR THE SECOND TIME, I SHOULD
19 SAY -- IT'S EVOLVING A MONITORING FUNCTION OF ITS OWN SO THAT
20 WE CAN BEGIN TO INFORM OURSELVES OF THE CONDITIONS OF THE
21 DELIVERY OF HEALTHCARE IN THE FIELD.

22 AND UTILIZATION, WE HAVE AN UTILIZATION MANAGEMENT
23 FUNCTION THAT IS BEGINNING TO EVOLVE, AS WELL. SO ONCE WE GET
24 THOSE IN PLACE WE'RE GOING TO HAVE A PRETTY GOOD SYSTEM. BUT
25 WE DON'T HAVE THE FACILITIES WE REQUIRE. SO I THINK THAT'S THE

1 LAST BIG PIECE.

2 AND IF WE COULD CONTINUE THE MOMENTUM THAT WE HAVE
3 NOW AND HAVE THE FACILITIES TO OPERATE IN, THEN I THINK WE
4 WOULD HAVE A SOUND SYSTEM.

5 Q. THANK YOU.

6 MS. TILLMAN: NOTHING FURTHER.

7 JUDGE KARLTON: IS THERE ANYBODY ELSE?

8 MS. WANG: NO FURTHER QUESTIONS, YOUR HONOR.

9 CROSS-EXAMINATION

10 BY MR. BIEN:

11 Q. GOOD MORNING, MR. DEZEMBER.

12 A. GOOD MORNING.

13 Q. YOU JUST EXPLAINED TO THE COURT WHAT YOU EXPLAINED TO MY
14 ASSOCIATE IN YOUR DEPOSITION, THAT YOU DON'T BELIEVE THAT
15 OVERCROWDING IS THE PRIMARY CAUSE OF THE ONGOING CONSTITUTIONAL
16 VIOLATIONS IN MEDICAL AND MENTAL HEALTHCARE; IS THAT CORRECT?

17 A. IN MENTAL HEALTHCARE.

18 Q. YOU'RE NOT EXPRESSING ANY OPINION ABOUT MEDICAL CARE?

19 A. I'M NOT.

20 Q. IN YOUR WITNESS STATEMENT IN PARAGRAPH ONE, YOU REFERRED TO
21 THE ALLEGED OVERCROWDING OF THE CDCR POPULATION. DO YOU AGREE
22 WITH THE GOVERNOR, WHO HAS DECLARED A STATE OF EMERGENCY BASED
23 ON OVERCROWDING, THAT THE CDCR PRISONS AS THEY CURRENTLY EXIST
24 ARE EXTREMELY OVERCROWDED?

25 A. YES. I DON'T KNOW ABOUT THE ALLEGED, IF IT'S THERE, I'M

1 NOT SURE. BUT I DON'T KNOW ANYONE WHO DENIES THAT OUR PRISONS
2 ARE OVERCROWDED, AND CERTAINLY NOT ME.

3 Q. SO IF YOU PUT THAT IN A STATEMENT IT SHOULD BE REMOVED,
4 PARAGRAPH ONE? YOU AGREE IT'S OVERCROWDED, RIGHT?

5 A. I WOULD HAVE TO LOOK AT PARAGRAPH ONE. IS IT IN HERE?

6 Q. IT IS.

7 A. WOULD YOU LIKE ME TO GO THERE? ALL I'M SAYING IS MY
8 TESTIMONY IS THAT I CONCUR THAT THE PRISON SYSTEM IS
9 OVERCROWDED.

10 Q. AND YOU AGREE WITH THE GOVERNOR'S PROCLAMATION THAT
11 THERE'S AN EXTREME LEVEL OF OVERCROWDING THAT JUSTIFIES A
12 DECLARATION OF A STATE OF EMERGENCY DUE TO OVERCROWDING.

13 A. WELL, I DON'T ASSESS STATES OF EMERGENCY. BUT I CAN'T STATE
14 MORE CLEARLY MY BELIEF THAT WE ARE TERRIBLY OVERCROWDED IN OUR
15 PRISON SYSTEM.

16 Q. IN PARAGRAPH 7 OF YOUR DECLARATION OF YOUR WITNESS
17 STATEMENT, YOU SAY THAT YOU UNDERSTAND THAT THIS THREE-JUDGE
18 COURT IS CONVENED TO ADDRESS THE ISSUE OF CDCR'S OVERCROWDING
19 AND ITS IMPACT, IF ANY, ON THE DELIVERY OF MENTAL HEALTH
20 SERVICES TO CDCR INMATES.

21 DO YOU AGREE, MR. DEZEMBER, THAT OVERCROWDING IS
22 HAVING AN IMPACT ON THE DELIVERY OF MENTAL HEALTH SERVICES TO
23 CDCR'S MENTALLY ILL POPULATION TODAY?

24 A. IT HAS TO HAVE AN IMPACT. WHAT I'M SAYING IS I DON'T THINK
25 IT'S A PRIMARY CAUSE OF THE DIFFICULTY IN DELIVERING SERVICE.

1 Q. SO YOU AGREE THAT OVERCROWDING DOES IMPACT THE DELIVERY OF
2 MENTAL HEALTH SERVICES ON CDCR'S INMATES POPULATION TODAY?

3 A. IN SOME CASES, YES.

4 Q. IN WHAT CASES?

5 A. WELL, IN AN OVERCROWDED SYSTEM YOU MAY HAVE MORE DIFFICULTY
6 WITH TRANSPORTATION FROM ONE LOCATION TO ANOTHER. WE DON'T HAVE
7 A -- YOU KNOW, I CAN'T THINK OF VERY MANY OTHERS. BUT I WOULD
8 SIMPLY SAY AS A REASONABLE HUMAN BEING IF YOU FILLED THIS
9 COURTROOM WITH 500 PEOPLE, WE WOULD ALL BE A LOT MORE
10 UNCOMFORTABLE. AND IT MAY BE EVEN WORSE THAN THAT.

11 SO I'M NOT OFFERING AN EXPERT VIEW HERE. I'M
12 OFFERING MY VIEW AS A GOVERNMENT OFFICIAL FOR ALL THESE YEARS.

13 Q. AND IS IT YOUR VIEW -- I JUST WANT TO MAKE IT CLEAR WHAT
14 YOUR VIEW IS.

15 IS IT YOUR VIEW AS A GOVERNMENT OFFICIAL THAT
16 OVERCROWDING DOES NOT HAVE AN IMPACT TODAY ON THE MENTALLY ILL?

17 MS. TILLMAN: OBJECTION, ASKED AND ANSWERED.

18 THE WITNESS: I'M NOT SAYING --

19 JUDGE HENDERSON: I'LL ALLOW IT.
20 PROCEED.

21 JUDGE KARLTON: YOU MAY ANSWER, SIR.

22 THE WITNESS: I'M NOT SAYING IT DOESN'T HAVE AN
23 IMPACT. I'M SAYING IT'S NOT THE PRIMARY CAUSE OF THE PROBLEMS.
24 AND I ALSO CONNECT THAT TO THE LOGIC OF A POTENTIAL SOLUTION,
25 BECAUSE IN MY VIEW IF YOU LOOK AT OVERCROWDING AND YOU SAY:

1 "WELL, HOW DO WE SOLVE OVERCROWDING?"

2 WELL, ONE WAY IS TO CUT THE AMOUNT OF PEOPLE IN THE
3 PRISON SYSTEM. AND IF YOU DO THAT, IS THAT GOING TO
4 HAVE AN AMELIORATIVE EFFECT ON OUR ABILITY TO
5 DELIVER

6 HEALTHCARE, MENTAL HEALTHCARE TO THE INMATE
7 POPULATION?"

8 AND TO THE DEGREE WE LOOK AT THE HIGHER LEVELS OF
9 CARE WHERE WE HAVE FOCUSSED MOST OF THE ATTENTION OF THIS CASE
10 OVER THE YEARS, I DON'T THINK IT HAS AN APPRECIABLE EFFECT ON
11 THAT.

12 WE'RE STILL GOING TO NEED TO PROVIDE CARE TO A LARGE
13 NUMBER OF THOSE IN THE CASELOAD POPULATION OF EOP ENHANCED
14 OUTPATIENT CARE AND ABOVE.

15 IF AN ORDER OF THIS COURT, FOR EXAMPLE, WERE CRAFTED
16 TO SAY THOSE PEOPLE ARE RELEASED, WELL, THEN, OBVIOUSLY IT
17 WOULD HAVE A SIGNIFICANT IMPACT ON OUR DEMAND FOR SERVICES.

18 BUT I DON'T THINK THAT'S THE KIND OF ORDER THAT IS
19 RESPONSIBLE IN A SITUATION LIKE THIS.

20 **BY MR. BIEN:**

21 **Q.** CAN YOU SEPARATE -- ARE YOU UNABLE TO SEPARATE WHETHER OR
22 NOT OVERCROWDING IS THE PRIMARILY CAUSE FROM YOUR CONCERN ABOUT
23 THE TYPE OF ORDER THE COURT SHOULD ISSUE?

24 IN OTHER WORDS, FOCUSING SIMPLY ON THE QUESTION: IS
25 OVERCROWDING HARMING MENTALLY ILL PRISONERS OF ALL TYPES IN

1 TODAYS PRISON SYSTEM, YOU AGREE THAT THAT'S THE CASE?

2 **A.** OVERCROWDING HAS NEGATIVE EFFECTS ON EVERYBODY IN THE
3 PRISON SYSTEM: INMATES AND STAFF, MENTALLY ILL NOT MENTALLY
4 ILL, MEDICAL, ALL OF THEM. THOSE I COULD CERTAINLY SAY YES,
5 THAT'S CORRECT. THAT HAS A NEGATIVE IMPACT.

6 I THINK THERE'S A GREAT DISTINCTION BETWEEN WHETHER
7 IT HAS A NEGATIVE IMPACT AND WHETHER IT IS THE PRIMARY ELEMENT
8 OF THE PROBLEM.

9 **Q.** YOU'VE TESTIFIED THAT OVERCROWDING IS NOT THE PRIMARY
10 CAUSE, AND IT'S YOUR CONTENTION, ISN'T IT, THAT THE CAUSE IS
11 POOR PLANNING AND FORECASTING BY THE STATE OF CALIFORNIA FOR
12 THE NEEDS OF THE MENTALLY ILL POPULATION; IS THAT CORRECT?
13 THAT'S ONE OF THE CAUSES THAT YOU BELIEVE?

14 **A.** I CAN ELUCIDATE THOSE, IF YOU LIKE. I HAVE INDICATED BEFORE
15 THAT I THINK THERE HAS BEEN A PERIOD OF TIME WHEN THERE HAS
16 BEEN POOR MANAGEMENT OF THE MENTAL HEALTH SYSTEM IN CALIFORNIA
17 PRISONS, AND THAT THAT HAS LED TO A SITUATION THAT WE'RE FACED
18 WITH TODAY.

19 **Q.** SO, IN OTHER WORDS, CALIFORNIA AUTHORITIES, WHOEVER THEY
20 MAY BE, DID NOT DO A GOOD JOB OF PLANNING SUFFICIENT RESOURCES
21 TO ADDRESS THE CURRENT NEEDS FOR MENTAL HEALTHCARE AND
22 TREATMENT SPACE FOR THE CURRENT POPULATION.

23 **A.** GOOD PLANNING -- GOOD MANAGEMENT WOULD HAVE INVOLVED GOOD
24 PLANNING, WHICH WOULD HAVE PRODUCED ON A MORE GRADUAL BASIS THE
25 BED PLANS THAT WE HAVE TODAY. AS THE DEMAND WAS RECOGNIZED AS

1 OVER A, WHAT, RESPONSIBLE FIVE-YEAR PLANNING PERIOD. AS FAR AS
2 I CAN TELL IN RECENT TIMES THAT WAS ONLY INITIATED IN ABOUT
3 2006.

4 SO FOR SOME PERIOD OF TIME THERE WAS A LACK OF
5 ATTENTION TO SOLVING THE PROBLEM OF TREATING THE HIGHER LEVELS
6 OF MENTALLY ILL.

7 Q. WELL, WHEN THE PRISONS WERE BUILT -- AND YOU PERSONALLY
8 WERE INVOLVED IN THE EFFORT OF THIS MASSIVE PRISON CONSTRUCTION
9 IN CALIFORNIA IN THE '80'S; ISN'T THAT CORRECT?

10 A. THAT'S CORRECT.

11 Q. YOU WERE FIRST PART OF THE ADMINISTRATION THAT AUTHORIZED
12 THE BUILDING, RIGHT?

13 A. YES.

14 Q. OKAY. AND THEN, YOU MOVED OVER TO KITCHELL, THE COMPANY
15 FOR SEVEN YEARS THAT WAS IN CHARGE, WAS THE GENERAL CONTRACTOR
16 THAT ACTUALLY BUILT THOSE PRISONS.

17 A. WELL, KITCHELL WASN'T A GENERAL CONTRACTOR. IT WAS A
18 MANAGEMENT -- CAPITAL EXPENDITURE MANAGEMENT COMPANY THAT I WAS
19 ASSOCIATED WITH FOR SEVEN YEARS.

20 Q. AND DURING THAT TIME ISN'T THAT WHAT THEY WERE -- ONE OF
21 THE THINGS YOU DID WITH KITCHELL WAS TO HELP THEM WORK ON THE
22 PROJECT OF BUILDING THIS MASSIVE CALIFORNIA PRISON
23 CONSTRUCTION.

24 A. BY THE TIME I WAS THERE, THE PRISON CONSTRUCTION PROGRAM
25 WAS PRETTY WELL UNDERWAY. AND KITCHELL DOES A LOT OF DIFFERENT

1 KINDS OF WORK. SO, I WAS IN CHARGE OF THE OFFICE, AND WE WERE
2 RESPONSIBLE FOR SCHOOL CONSTRUCTION, OTHER PUBLIC BUILDING
3 CONSTRUCTION. AND CERTAINLY KITCHELL WAS A PROGRAM MANAGER OF
4 THE DEPARTMENT OF CORRECTIONS IN THE PRISON BUSINESS.

5 Q. AND YOU HAD SOME RESPONSIBILITY FOR THAT, TOO?

6 A. YES, OF COURSE.

7 Q. AND THOSE ARE THE PRISONS THAT WERE BUILT WITHOUT ADEQUATE
8 MEDICAL TREATMENT SPACE AND MENTAL HEALTH TREATMENT SPACE; IS
9 THAT CORRECT?

10 A. WE HAD -- THEY HAD TREATMENT SPACE. THEY HAD ADEQUATE
11 TREATMENT SPACE. THERE WAS NO FORECAST AT THAT TIME OF THIS
12 DEMAND WE'RE DEALING WITH TODAY.

13 Q. SO IT'S CORRECT THAT THEY WERE BUILT FOR TREATMENT SPACE
14 FOR MEDICAL CARE BASED ON DESIGN CAPACITY OF A HUNDRED PERCENT
15 AND NOT BASED ON THE CURRENT USE OF THOSE PRISONS AT CLOSE TO
16 200 PERCENT?

17 A. WELL, THEY WERE DESIGNED -- LET ME PUT IT THIS WAY: THEY
18 WERE DESIGNED SPECIFICALLY FOR PRISON POPULATION. IT WAS A
19 LEGISLATIVE DECLARATION THAT REQUIRED THEM TO BE OVERCROWDED
20 INDIVIDUALLY, AS INDIVIDUAL PRISONS WERE AUTHORIZED BY THE
21 LEGISLATURE.

22 WHAT WE ATTEMPTED WAS TO DESIGN PRISONS WITH A
23 DESIGN CAPACITY. WE HAD NOT STARTED OUT SAYING:

24 "WE WANT TO PUT 200 PERCENT POPULATION IN
25 HERE."

1 THAT EVOLVED OVER TIME AND LARGELY CAME OUT OF
2 LEGISLATIVE ENACTMENTS.

3 **Q.** BE THAT AS IT MAY, TODAY WE HAVE CLOSE TO 200 PERCENT
4 CAPACITY IN PRISONS THAT WERE DESIGNED FOR A POPULATION OF A
5 HUNDRED PERCENT.

6 **A.** THAT'S CORRECT.

7 **Q.** AND AS A RESULT, YOU AGREE THAT THERE IS A SHORTAGE OF
8 TREATMENT AND OFFICE SPACE FOR MEDICAL AND MENTAL HEALTH
9 CLINICIANS WHO NEED TO DO THEIR WORK TO PROVIDE CARE TO THE
10 PRISONERS IN THE PRISON TODAY?

11 **A.** WELL, THERE IS A SHORTAGE OF WHAT YOU MIGHT CALL
12 "APPROPRIATE SPACE" FOR THEM. WE CERTAINLY HAVE THEM. WE
13 HAVE -- IT HAS NOT PREVENTED US FROM INCREASING THE RANKS OF
14 OUR TREATING CLINICIANS. THEY ARE OPERATING IN CONDITIONS THAT
15 I WOULD PREFER BE IMPROVED. AND DEFINITELY WE WOULD PLAN TO DO
16 THAT AS PART OF THIS BUILDING PROGRAM THAT WE HAVE.

17 **Q.** AS OF TODAY, MR. DEZEMBER, YOU AGREE THAT IT'S
18 INAPPROPRIATE TO PLACE CLINICIANS IN CONVERTED TOILETS AS THEIR
19 OFFICES.

20 **A.** I'VE AGREED TO THAT ALREADY IN MY DEPOSITION --

21 **Q.** OKAY.

22 **A.** -- MORE THAN ONCE.

23 **Q.** OKAY. WE SHOWED YOU PICTURES, AND THE COURT HAS SEEN THESE
24 PICTURES.

25 YOU AGREE THAT IS INAPPROPRIATE OFFICE SPACE.

1 **A.** YES.

2 **Q.** AND YOU AGREE IT'S ALSO INAPPROPRIATE TO BE PROVIDING
3 MENTAL HEALTHCARE TO PRISONERS IN NONCONFIDENTIAL SPACES.

4 **A.** YES.

5 **Q.** YET THAT IS WHAT IS GOING ON TODAY IN MANY OF YOUR PRISONS;
6 IS THAT CORRECT?

7 **A.** THAT'S EXACTLY RIGHT. IT'S PART AND PARCEL OF DELIVERING A
8 MAJOR MENTAL HEALTH PROGRAM, PROBABLY THE LARGEST MENTAL HEALTH
9 PROGRAM IN A SINGLE LOCATION IN THE WORLD, AND DELIVERING THAT
10 INSIDE A PRISON SYSTEM.

11 **Q.** AND YOU HAVE SAID THAT ONE REASON -- OVERCROWDING IS NOT
12 THE CAUSE. THE OTHER CAUSE IS THAT THERE'S BEEN INSUFFICIENT
13 MANAGEMENT RECOGNITION OF THE GROWING PROBLEM, THE INCREASING
14 PREVALENCE RATE OF MENTALLY ILL.

15 IS THAT ONE OF YOUR ALTERNATIVE EXPLANATIONS FOR THE
16 PROBLEMS WE HAVE TODAY?

17 **A.** WELL, IT'S CERTAINLY -- IN THIS SITUATION THERE ARE
18 CUMULATIVE CAUSES, AND THAT'S ONE OF THEM.

19 AND WHEN I TALK ABOUT MANAGEMENT, NOW, I DON'T TALK
20 ABOUT LOCAL MANAGEMENT. YOU HAVE TO HAVE THAT. YOU HAVE TO
21 HAVE LOCAL MANAGEMENT IN THE PRISONS. YOU HAVE TO HAVE A
22 CENTRAL OFFICE HEADQUARTERS MANAGEMENT STRUCTURE. THERE WERE
23 DEFICIENCIES THERE.

24 BUT WE ALSO -- THE RESOURCES NEED TO COME FROM WHERE
25 THE RESOURCES ARE GENERATED, AND THAT'S THE LEGISLATURE. SO

1 THAT ALL HAS TO BE IN A CONCERTED EFFORT TO PRODUCE THE FINAL
2 RESULT. AND I HAVE SAID THAT FOR SOME PERIOD OF TIME I DIDN'T
3 SEE THAT HAPPENING.

4 Q. OKAY. SO FOR A PERIOD OF TIME THE PEOPLE IN CHARGE OF THE
5 PRISON SYSTEM IN YOUR ROLE -- YOU WERE THERE FOR AWHILE, AND
6 OTHER PEOPLE DIDN'T CORRECTLY FORECAST THE MENTAL HEALTH
7 POPULATION -- THE PREVALENCE OF MENTAL ILLNESS --

8 A. WELL --

9 Q. -- ACUTELY; IS THAT CORRECT?

10 A. OVER WHAT PERIOD OF TIME? I MEAN --

11 Q. THERE ARE TIMES --

12 A. -- YOU'VE GIVEN ME MY ANSWER, AND ASKING ME IF IT'S "YES."
13 SO IF YOU WANT ME TO ANSWER, I'LL BE HAPPY TO DO THAT.

14 Q. WELL, AT THE BEGINNING -- AT THE BEGINNING WHEN YOU WENT TO
15 TRIAL -- AND I WAS THERE -- YOU GUYS HAD CONSULTANTS THAT WERE
16 TELLING YOU WHAT YOU NEEDED TO DO. AND THE COURT FOUND THAT
17 YOU HAD IGNORED THOSE CONSULTANTS, AND YOU WERE DELIBERATELY
18 INDIFFERENT.

19 SO AT THAT POINT THE CONSULTANTS DIDN'T HAVE A LOT
20 OF IMPACT; ISN'T THAT CORRECT?

21 A. WELL, I WASN'T THERE AT THE BEGINNING.

22 Q. SO YOU DON'T KNOW?

23 MS. TILLMAN: OBJECTION, LACK OF FOUNDATION.

24 THE WITNESS: IN ABOUT 1993 WE BEGAN TO CREATE THE
25 MENTAL HEALTH SYSTEM THAT WE HAVE NOW FROM PRETTY MUCH NOTHING.

1 WE HAD MENTAL HEALTH FOCUSSED IN THREE INSTITUTIONS ONLY. AND
2 WE DID FOLLOW CONSULTANT ADVICE IN SETTING UP THE DISBURSED
3 MENTAL HEALTH SYSTEM THAT WAS THE RESULT OF OUR -- WHAT WE
4 CALLED OUR MENTAL HEALTH SERVICE DELIVERY SYSTEM --

5 **BY MR. BIEN:**

6 **Q.** BUT DESPITE --

7 **A.** -- PUT IN IT EVERY PRISON.

8 **Q.** DESPITE LISTENING TO THOSE CONSULTANTS THEN, SOMETHING
9 HAPPENED BETWEEN, RIGHT? BETWEEN 1995 AND TODAY, YOU LOST
10 TRACK OF FORECASTING FOR THE GROWING POPULATION; IS THAT
11 CORRECT?

12 **A.** I'M LOOKING AT A PERIOD OF TIME MAYBE FOR EIGHT OR NINE
13 YEARS PRIOR TO 2006, MAYBE SEVEN OR EIGHT YEARS WHERE THERE
14 SEEMED TO BE A LACK OF CONTINUOUS ATTENTION TO THIS PROGRAM.

15 **Q.** AND THAT WAS THE TIME WHEN YOU WERE NOT THERE.

16 **A.** AND I WAS NOT THERE AS A RESPONSIBLE OFFICIAL, BUT I WAS
17 CALLED BACK FROM TIME TO TIME AS A CONSULTANT MYSELF.

18 **Q.** WHATEVER -- MY POINT IS, YOU KNOW, SOMETHING HAPPENED IN
19 THE PAST THAT'S RESULTED IN TODAY'S PROBLEMS, RIGHT? RIGHT NOW
20 YOU AGREE THAT WE NEED A MASSIVE CONSTRUCTION PROGRAM OF NEW
21 HIGH-LEVEL INTENSE BEDS TO MEET THE NEEDS OF THE POPULATION; IS
22 THAT CORRECT?

23 **A.** YES.

24 **Q.** AND YOU AGREE WE NEED A PROGRAM TO GO PRISON BY PRISON AND
25 BUILD ADEQUATE TREATMENT AND OFFICE SPACE TO PROVIDE CARE FOR

1 THE PRISONERS WHO ARE STILL IN THE PRISONS?

2 **A.** YES, FOR THOSE PRISONERS WHO ARE STILL THERE WHO ARE
3 MENTALLY ILL PATIENTS.

4 **Q.** AND THE REASON IS THAT RIGHT NOW TODAY THE DEPARTMENT HAS
5 INSUFFICIENT TREATMENT AND OFFICE SPACE TO PROVIDE FOR THE
6 NEEDS OF THE CURRENT MENTALLY ILL POPULATION?

7 **A.** I'M NOT SAYING THAT. I'M SAYING THAT --

8 **JUDGE KARLTON:** LET ME JUST DROP THE WORD
9 "APPROPRIATE" IN THERE, AND I THINK IT ENDS THIS DEBATE.

10 THE DEPARTMENT PRESENTLY DOESN'T HAVE SUFFICIENT
11 APPROPRIATE OFFICE AND TREATMENT SPACE.

12 **THE WITNESS:** THAT I COULD SAY IS CORRECT.

13 **BY MR. BIEN:**

14 **Q.** ISN'T IT CORRECT, MR. DEZEMBER, THAT HISTORICAL PERSPECTIVE
15 THAT YOU HAVE GIVEN YOUR TESTIMONY HERE, SOMEONE WHO WAS THERE
16 FOR A LONG TIME, YOU'VE GONE IN AND OUT OF GOVERNMENT, IS
17 REALLY AN EXPLANATION FOR WHY WE'RE IN THE CURRENT STATE OF
18 AFFAIRS WE'RE IN TODAY, BUT NOT AN ALTERNATIVE CAUSE OF THE
19 PROBLEMS?

20 **MS. TILLMAN:** I'LL OBJECT. VAGUE AND AMBIGUOUS.

21 **JUDGE KARLTON:** I DIDN'T UNDERSTAND THE QUESTION,
22 EITHER. I AGREE WITH MS. TILLMAN. I DON'T KNOW WHETHER YOU
23 GUYS DID.

24 **JUDGE HENDERSON:** I AGREE WITH YOU.

25 **MR. BIEN:** I'LL TAKE YOUR GUIDANCE AND TRY AGAIN,

1 YOUR HONOR.

2 **BY MR. BIEN:**

3 **Q.** MR. DEZEMBER, YOUR EXPLANATION FOR OUR CURRENT SITUATION IS
4 NOT INCONSISTENT WITH THE FACT THAT TODAY OVERCROWDING IS A
5 PRIMARY CAUSE OF THE ONGOING CONSTITUTIONAL VIOLATIONS. IN
6 OTHER WORDS, AREN'T YOU JUST EXPLAINING HOW WE GOT TO THE MESS
7 WE'RE IN TODAY, RATHER THAN AN ALTERNATIVE CAUSE OF THE
8 PROBLEMS?

9 **MS. TILLMAN:** SAME OBJECTION.

10 **JUDGE REINHARDT:** WELL, LET ME ASK A QUESTION. AS I
11 UNDERSTAND YOUR TESTIMONY, THERE AREN'T ADEQUATE FACILITIES FOR
12 THE NUMBER OF PEOPLE WHO ARE THERE; IS THAT RIGHT?

13 **THE WITNESS:** THERE ARE NOT ADEQUATE FACILITIES FOR
14 THE -- MY TESTIMONY IS THERE ARE NOT ADEQUATE FACILITIES FOR
15 THE HIGHER LEVELS OF CARE, THE ENHANCED OUTPATIENT CARE AND
16 ABOVE, WHICH IS WHAT WE HAVE PROPOSED TO BUILD, THAT'S CORRECT.

17 BUT YOU CAN'T JUST LEAVE IT AT THAT. WHAT I CONCLUDE
18 IS THAT IF THE POPULATION WERE REDUCED WE WOULD STILL HAVE THAT
19 NEED.

20 **JUDGE KARLTON:** WELL, LET'S DO IT ONE AT A TIME.

21 **THE WITNESS:** I'M SORRY TO CONNECT IT THAT WAY, BUT
22 THAT'S THE WAY I THINK.

23 **JUDGE REINHARDT:** WELL, IF THERE WERE -- IF THE
24 POPULATION WERE REDUCED, WOULD THERE NOT BE ADEQUATE FACILITIES
25 FOR THE REDUCED POPULATION?

1 **THE WITNESS:** THERE WOULD NOT.

2 **JUDGE REINHARDT:** WHY IS THAT?

3 **THE WITNESS:** BECAUSE WHAT WE REQUIRE FOR THE HIGHER
4 LEVEL OF CARE IS SPACE THAT IS DESIGNED FOR THE TREATMENT OF
5 MENTAL ILLNESS AMONG PRISONERS. AND WHAT WE'VE BEEN DOING ALL
6 OF THESE YEARS IS RETROFITTING PRISON ENVIRONMENTS FOR THESE
7 PRISONERS.

8 **JUDGE KARLTON:** USING ONE EXAMPLE -- I MEAN, IT IS
9 EXTREME, BUT STILL, YOU GOT ENOUGH FOLKS OUT OF THAT PARTICULAR
10 PRISON. YOU COULD TAKE THE OFFICE SPACE OUT OF THE TOILET AND
11 PUT IT IN MORE -- I'M ASKING, NOT TELLING. I RECOGNIZE I WAS
12 TELLING YOU, AND I DIDN'T MEAN TO.

13 IS IT NOT TRUE THAT YOU COULD MOVE THE OFFICE SPACE
14 OUT OF THE TOILET -- I MEAN, THIS IS SO SERIOUS. NOTHING FUNNY
15 ABOUT IT, BUT IT'S JUST BIZARRE -- AND PROVIDE MORE ADEQUATE,
16 MORE APPROPRIATE TREATMENT SPACE AND OFFICE SPACE. JUST --

17 **THE WITNESS:** THERE ARE CERTAINLY OTHER PLANS THAT
18 WE COULD UNDERTAKE IF -- YOU KNOW, IF WE WANTED TO STILL
19 CONVERT PRISONS INTO MENTAL HEALTH TREATMENT PLACES, WE COULD
20 STILL DO THAT.

21 I DON'T THINK THAT'S THE BEST THING TO DO, BUT I
22 THINK WE COULD STILL DO IT. WE WOULD PROVIDE BETTER OFFICES.
23 WE WOULD STILL BE OPERATING WITHIN A PRISON. THE INMATES WOULD
24 STILL BE IN LOCATIONS THAT WERE DESIGNED TO HOUSE NONMENTALLY
25 ILL PRISONERS.

1 SO IF YOU LOOK AT IT THAT WAY AND SAY:

2 "WELL, WE CAN STOP THE PROJECTION THAT WE'VE
3 BEEN ON FOR THE LAST TWO YEARS WITH THE BED PLAN AND
4 RECONFIGURE OUR PRISON SYSTEM," THAT'S SOMETHING TO
5 BE CONSIDERED, CERTAINLY.

6 **JUDGE KARLTON:** LET ME ASK YOU ABOUT ALL OF THAT. I
7 DON'T WANT TO INTERFERE WITH MR. BIEN'S EXAMINATION, BUT THE
8 POINT THAT JUDGE REINHARDT WAS MAKING SEEMS TO ME IS OF GREAT
9 SIGNIFICANCE.

10 THE PRESENT GOD-WILLING-AND-THE-RIVER-DON'T-RISE BED
11 PLAN REQUIRES LEGISLATIVE APPROPRIATION. YOU ARE AWARE, OF
12 COURSE, THAT RIGHT NOW THE RECEIVER IS NOT GETTING THE MONEY
13 THAT HE NEEDS TO KEEP GOING.

14 THERE'S NO PRESENT INDICATION -- IS IT NOT CORRECT
15 THAT THERE'S NO PRESENT INDICATION THAT THE LEGISLATURE IS
16 GOING TO PROVIDE THE FUNDS FOR THE 10,000 BEDS, WHICH IS WHAT
17 ULTIMATELY YOU'RE TALKING ABOUT; IS THAT NOT RIGHT?

18 **MS. TILLMAN:** YOUR HONOR, IF I MIGHT VERY
19 RESPECTFULLY INTERPOSE AN OBJECTION, AS I HAVE IN THE PAST, TO
20 THIS LINE OF QUESTIONING. I THINK IT CALLS FOR A LEGAL
21 CONCLUSION ON THE PART OF THIS WITNESS AND LACKS RELEVANCE.

22 **JUDGE KARLTON:** OKAY. EXCUSE ME. I'M JUST GOING TO
23 OVERRULE IT.

24 THAT'S TRUE, ISN'T IT, SIR, AS WE SIT HERE TODAY?

25 **THE WITNESS:** WELL, FROM MY OBSERVATION POINT, NOT

1 BEING AN PART OF THE BIG FIVE CONVERSATIONS OR THE LEGISLATIVE
2 ACTIVITY --

3 **JUDGE KARLTON:** NOR ARE WE.

4 **THE WITNESS:** YES. I DON'T SEE A PRESENT VEHICLE
5 FOR THAT.

6 **JUDGE KARLTON:** OKAY. ASSUMING THAT THAT MEANS THAT
7 IT IS DIFFICULT TO BELIEVE -- NO, I DON'T MEAN THAT.

8 THAT THERE'S AN ENORMOUS UNCERTAINTY AS TO WHETHER
9 OR NOT THAT WILL BE ACCOMPLISHED EVER. IF THIS COURT IS
10 CONVINCED THAT SOMETHING HAS TO BE DONE FORTHWITH, PARTICULARLY
11 FORTHWITH, IS THE ALTERNATIVE -- IS THE ONLY ALTERNATIVE
12 PRESENTLY AVAILABLE TO THE COURT -- I'M ASKING YOU BECAUSE
13 YOU'RE AN EXPERT. YOU KNOW THE ANSWERS -- IS THAT THAT WE GOT
14 TO CLEAR PEOPLE OUT SO WE CAN PROVIDE AT LEAST ADEQUATE SPACE?

15 YOU SEE WHAT I'M ASKING YOU?

16 **THE WITNESS:** I THINK I FOLLOW YOUR REASONING. THE
17 FLY IN THE OINTMENT IS LEGISLATIVE APPROPRIATION FOR THAT,
18 BECAUSE YOU CAN'T SIMPLY SAY:

19 "WELL, WE'VE EMPTIED OUT THIS SPACE, SO YOU
20 GUYS

21 CAN HAVE THAT."

22 IT'S REALLY A RETROFITTING THERE.

23 **JUDGE KARLTON:** I UNDERSTAND THAT. BUT AT LEAST WE
24 COULD STOP -- I'M SOUNDING LIKE I'M TELLING YOU, AND I DON'T
25 MEAN TO BE.

1 **THE WITNESS:** I UNDERSTAND.

2 **JUDGE KARLTON:** IT WOULD PROVIDE US WITH AT LEAST
3 SPACE THAT WAS MORE APPROPRIATE, EVEN IF NOT FULLY APPROPRIATE,
4 RIGHT OR WRONG?

5 **THE WITNESS:** I'M SORRY. I HAVE TO HEDGE MY BET A
6 LITTLE BIT AND SAY THAT THAT IS POSSIBLE. BUT AS I SAID, IT
7 WOULD REQUIRE -- AND I SAY THIS A LOT IN MY PRESENT WORK
8 ENVIRONMENT -- THIS REQUIRES ADDITIONAL PLANNING.

9 I'VE BEEN ASKED THAT QUESTION INSIDE THE
10 ORGANIZATION:

11 "WHAT ARE THE ALTERNATIVES TO WHAT WE'RE FACED
12 WITH HERE?"

13 WELL, THE ALTERNATIVES CAN BE DEVELOPED, BUT YOU
14 HAVE TO BRING THE RIGHT PEOPLE IN THE ROOM, AND IT'S A VERY
15 CONCENTRATED EFFORT. I PARTICIPATED IN PART OF THE 2006 BED
16 PLAN EFFORT. AND THAT TOOK MONTHS. I LEFT MY CONSULTANCY IN
17 JUNE OF '06. THE PLAN DIDN'T REALLY COME TOGETHER UNTIL
18 DECEMBER, AND WE STARTED IT IN APRIL.

19 SO WHEN YOU'RE GOING TO UNDERTAKE SOMETHING LIKE
20 THAT, THERE IS AN POSSIBILITY, BUT CERTAINLY NO ONE CAN DECLARE
21 THAT YES, THAT WILL FIX IT.

22 THAT'S ALL I CAN SAY.

23 **JUDGE KARLTON:** BUT YOU SEE IT'S SOMETHING LIKE --
24 WHATEVER IT IS -- 64 BEDS THAT I ORDERED. I'M THE COLEMAN
25 JUDGE.

1 **THE WITNESS:** YES.

2 **JUDGE KARLTON:** THAT I ORDERED TO BE OPEN, REOPENED
3 DESPITE ITS ABSENCE OF LICENSING. SOMETHING IS BETTER THAN
4 NOTHING, IF YOU'RE DESPERATE. DO YOU SEE WHAT I MEAN?

5 **THE WITNESS:** I UNDERSTAND. I ALSO UNDERSTOOD THAT
6 ORDER WAS BASED ON ASSESSMENT OF THE SPECIAL MASTER THAT THE
7 CARE WAS BEING ACTUALLY PROVIDED.

8 **JUDGE KARLTON:** YES.

9 **THE WITNESS:** NOTWITHSTANDING THE FACILITY COULDN'T
10 BE LICENSED.

11 **JUDGE KARLTON:** RIGHT.

12 **THE WITNESS:** AND, YES, THAT IS AN EXAMPLE.

13 **JUDGE KARLTON:** I'M SORRY. I DIDN'T MEAN TO
14 INTERRUPT, MR. BIEN, BUT MR. DEZEMBER'S OPINIONS ARE IMPORTANT,
15 AT LEAST TO THIS JUDGE. I'M NOT QUITE SURE I UNDERSTAND.

16 YOU TALK ABOUT ALTERNATIVES, AND I THINK THE
17 APPROPRIATE QUESTION IS: IS THERE ANY ALTERNATIVE?

18 GO AHEAD.

19 **BY MR. BIEN:**

20 **Q.** I'M GOING TO JUMP RIGHT THERE, ROBIN -- EXCUSE ME -- MR.
21 DEZEMBER.

22 **A.** YES.

23 **Q.** WE'VE BEEN WORKING TOGETHER FOR MORE THAN 20 YEARS. I
24 APOLOGIZE.

25 **A.** A LONG TIME.

1 Q. LET'S ASSUME THAT THE POPULATION WAS REDUCED BY 40,000.
2 OKAY? FOR EXAMPLE, THE GOVERNOR PROPOSED IN HIS BUDGET IN
3 JANUARY OF 2008 REDUCING THE POPULATION BY 22,000. DO YOU
4 RECALL THAT?

5 A. I DO.

6 Q. OKAY. AND THAT WAS A GENERAL REDUCTION THROUGH ADJUSTMENTS
7 AND VARIOUS CREDITS AND SENTENCING AND PAROLE IDEAS, RIGHT?

8 A. YES.

9 Q. OKAY. AND IF THE POPULATION WAS GENERALLY REDUCED BY
10 40,000, WITHOUT ANY DISCRIMINATION AGAINST THE MENTALLY ILL, DO
11 YOU AGREE THAT APPROXIMATELY 20 PERCENT OF THAT 40,000 WOULD BE
12 COLEMAN CLASS MEMBERS?

13 MS. TILLMAN: OBJECTION, INCOMPLETE HYPOTHETICAL. I
14 THINK ALSO IT'S COUNSEL'S DUTY TO FRAME THE HYPOTHETICAL, NOT
15 THE WITNESS'S. HE'S ASKING THE WITNESS TO INSERT AN ELEMENT OF
16 THE HYPOTHETICAL.

17 JUDGE KARLTON: NO.

18 BY MR. BIEN:

19 Q. YOU'VE RUN THESE NUMBERS, BECAUSE THEY WERE PRESENTED,
20 ROBIN -- EXCUSE ME, AGAIN I APOLOGIZE.

21 MR. DEZEMBER, THEY WERE PRESENTED TO THE LEGISLATURE
22 HOW MANY EOP'S WOULD BE RELEASED, HOW MANY TRIPLE C'S WOULD BE
23 RELEASED. THAT WAS PRESENTED TO THE LEGISLATURE IN THE SPRING,
24 RIGHT?

25 A. IT WOULD HAVE A LARGE IMPACT ON THE TRIPLE CMS POPULATION,

1 WHICH I'VE ALREADY STATED. IT WOULD HAVE LESS IMPACT ON THE
2 EOP, AND VERY LITTLE IMPACT ON ACUTE AND INTERMEDIATE CARE AND
3 THE HIGH CUSTODY CASES INVOLVING THE PSYCHIATRIC SERVICES UNIT,
4 THE ADMINISTRATION SEGREGATION, THE EOP'S AND THE LIKE.

5 Q. LET ME GO BACK. SO IF YOU RELEASED -- IF 40,000 PEOPLE
6 WERE REDUCED OVER TIME THROUGH JUST ADJUSTMENTS TO VARIOUS
7 CREDITS, OR PAROLE POLICIES, APPROXIMATELY 20 PERCENT OF THAT
8 WOULD BE COLEMAN CLASS MEMBERS. THAT WOULD BE 8,000 COLEMAN
9 CLASS MEMBERS.

10 A. I'M NOT SURE OF THAT PERCENTAGE OR THE NUMBER. I DO KNOW
11 THAT WHEN YOU LOOK AT OUR -- WHEN YOU LOOK AT THE -- SAY YOU
12 LOOK AT CUSTODY LEVELS, WHICH IS ABOUT -- IT'S KIND OF A GROSS
13 NUMBER, BUT IT'S ABOUT THE ONLY THING WE HAVE READILY AVAILABLE
14 WITHOUT DOING A RESEARCH PROJECT. YOUR LEVEL ONE AND TWO
15 POPULATIONS ARE LARGELY FOCUSSED IN THE TRIPLE CMS POPULATION,
16 WHICH IS THE GENERAL POPULATION OF THE MENTAL HEALTH CASELOAD.
17 AND BY "LARGELY," I MEAN A GREAT PERCENTAGE. THERE'S A SMALLER
18 PERCENTAGE IN EOP, AND AS YOU GO UP, STILL SMALLER.

19 OUR CONCERN IN TERMS OF THE STATEMENT I'M MAKING
20 ABOUT REQUIRING SPACE IS NOT WITH REGARD TO TRIPLE CMS, NOT TO
21 DOWNGRADE THEIR IMPORTANCE. BUT THEY ARE GENERAL POPULATION
22 INMATES, AND WE ARE HERE FOCUSING ON THE CREATION OF FACILITIES
23 IS WITH THAT HIGHER LEVEL.

24 SO I DON'T KNOW HOW AN ORDER WOULD BE -- IF THAT'S
25 ALL THAT WAS GOING TO HAPPEN IS AN ORDER TO RELEASE, I DON'T

1 SEE HOW AN ORDER COULD BE CRAFTED TO EFFECT THESE HIGHER LEVEL
2 CASES IN A RESPONSIBLE WAY.

3 Q. LET ME HELP YOU OUT.

4 A. OKAY.

5 Q. I'M GOING TO ASK YOU A SERIES OF QUESTIONS. YOU GOT THE
6 40,000. 20 PERCENT OF THEM ARE GOING TO BE COLEMAN CLASS
7 MEMBERS. OF THE COLEMAN CLASS APPROXIMATELY 13 PERCENT, 10 TO
8 13 PERCENT ARE EOP; IS THAT CORRECT?

9 A. I DON'T KNOW WHERE YOU'RE GETTING YOUR NUMBERS.

10 Q. I CAN SHOW YOU YOUR OWN -- I'LL SHOW YOU LOTS OF THINGS.
11 WHAT DO YOU THINK THAT -- YOU DON'T KNOW? YOU'RE IN CHARGE OF
12 THIS PROGRAM. YOU DON'T KNOW WHAT PERCENTAGE OF THE MENTALLY
13 ILL ARE EOP?

14 A. NO, I DON'T HAVE THAT OFF THE TOP OF MY HEAD.

15 Q. YOU DON'T THINK TEN PERCENT?

16 A. I DON'T EVEN KNOW WHAT 40,000 YOU'RE TALKING ABOUT IN THE
17 INMATE POPULATION.

18 Q. ANY 40,000. IN OTHER WORDS, LET'S SAY THE RELEASE -- LET'S
19 SAY THE PLAN WAS TO DIVERT SHORT-TERM PAROLE VIOLATORS GOING TO
20 PRISON, OKAY? PEOPLE WHO HAVE THREE MONTHS OR LESS WON'T GO TO
21 PRISON. YOU'VE SEEN THOSE PLANS, MR. DEZEMBER? THOSE ARE
22 PLANS THAT THE ADMINISTRATION ITSELF HAS STUDIED; ISN'T THAT
23 CORRECT?

24 A. AND HOW DO YOU KNOW I'VE SEEN THEM?

25 Q. HOW DO I KNOW YOU'VE SEEN THEM? BECAUSE I LOOKED THROUGH

1 YOUR E-MAIL.

2 **MS. TILLMAN:** OBJECTION. COUNSEL'S TESTIFYING.

3 **JUDGE KARLTON:** WELL, HE'S RESPONDING TO THE
4 WITNESS, WHICH HE SHOULDN'T HAVE DONE. BUT THE WITNESS
5 SHOULDN'T HAVE ASKED, EITHER.

6 **THE WITNESS:** I'M SORRY.

7 **BY MR. BIEN:**

8 **Q.** OKAY. I ASSUME, MR. DEZEMBER, THAT YOU AGREE THAT PAROLE
9 VIOLATORS INCLUDE PEOPLE WHO ARE BOTH -- AS THEY COME BACK TO
10 PRISON, INCLUDE PEOPLE THAT ARE BOTH EOP'S AND TRIPLE C'S IN
11 THE MENTAL HEALTH POPULATION?

12 **A.** YES.

13 **Q.** OKAY. THERE IS NO POLICY THAT EXCLUDES SOMEONE WHO IS EOP
14 FROM BEING VIOLATED ON PAROLE.

15 **A.** YES, THAT'S CORRECT.

16 **Q.** OKAY. SO LET'S SAY IF THERE'S A PLAN TO STOP SHORT-TERM
17 PAROLE VIOLATORS FROM BEING SENT BACK TO PRISON, THAT WOULD
18 INCLUDE EOP'S AND TRIPLE C'S, ALONG WITH EVERYTHING ELSE,
19 RIGHT?

20 **A.** IT COULD, YES.

21 **Q.** AND DR. PACKER -- DO YOU KNOW WHO DR. PACKER IS?

22 **A.** I'VE HEARD OF HIM. I HAVEN'T MET HIM.

23 **Q.** HAVE YOU READ HIS REPORTS?

24 **A.** NO, I HAVEN'T.

25 **Q.** HE'S THE EXPERT THE STATE HAS HIRED TO REPRESENT THEM IN

1 THIS CASE. HE'S THE MENTAL HEALTH EXPERT.

2 HE'S RECOMMENDED THAT THE STATE DO THAT, THAT THEY
3 DIVERT MENTALLY ILL PAROLE VIOLATORS FROM GOING BACK TO PRISON
4 AS A WAY OF SOLVING SOME OF THE OVERCROWDING PROBLEMS IN THE
5 RECEPTION CENTERS. HAVE YOU CONSIDERED THAT RECOMMENDATION?

6 **A.** I HAVE NOT.

7 **Q.** ALL RIGHT. HAVE YOU STUDIED THE WAIT LISTS OF PEOPLE FOR
8 HIGHER LEVELS OF CARE TO DETERMINE HOW MANY OF THEM ARE LEVEL
9 ONES OR LEVEL TWOS OR LEVEL THREES OR LEVEL FOURS?

10 **A.** NO.

11 **Q.** HAVE YOU STUDIED THOSE WAIT LISTS TO SEE HOW MANY PEOPLE
12 PAROLE DIRECTLY FROM THOSE WAIT LISTS TO THE COMMUNITY?

13 **A.** I KNOW THAT THAT HAPPENS, BUT I DON'T KNOW THE NUMBERS OR
14 PERCENTAGE.

15 **Q.** SO IF SOMEONE IS SERVING A TERM IN PRISON AND THEY HAPPEN
16 TO BE ON A WAIT LIST, THEY STILL GET OUT ON THEIR DAY THAT THEY
17 ARE READY TO BE RELEASED, RIGHT?

18 **JUDGE KARLTON:** NOT THAT THEY ARE READY TO BE
19 RELEASED; THAT THE STATE IS GOING TO RELEASE THEM.

20 **THE WITNESS:** THAT THEY ARE REQUIRED TO BE RELEASED,
21 YES.

22 **BY MR. BIEN:**

23 **Q.** YES. YOU DO HAVE THIS MENTALLY DISORDERED OFFENDER PROCESS,
24 SO IF SOMEONE IS READY FOR PAROLE, BUT THERE'S A REASON THAT
25 THEY QUALIFY UNDER THE MENTALLY DISORDERED OFFENDER STATUTE

1 THEY WILL BE EVALUATED FOR THAT; IS THAT CORRECT?

2 **A.** YES.

3 **Q.** AND IF THEY QUALIFY THEY THEN ARE COMMITTED TO A STATE
4 MENTAL HOSPITAL; IS THAT CORRECT?

5 **A.** THEY CAN BE, YES.

6 **Q.** SO IF A PROGRAM DEVELOPED THROUGH A PRISONER RELEASE
7 REDUCTION POPULATION REDUCTION PLAN THAT THIS COURT ORDERED TO
8 REMEDY THE CONSTITUTIONAL VIOLATIONS IN THE PRISONS TODAY SAID
9 THAT PEOPLE WERE GOING TO EARN MORE CREDITS THAN THEY CURRENTLY
10 DO, SO EVERYONE IS GOING TO GET OUT A WEEK EARLIER, SOME OF
11 THOSE PEOPLE WHO GET OUT WOULD BE PEOPLE ON THOSE WAIT LISTS;
12 ISN'T THAT CORRECT?

13 **A.** IT COULD BE.

14 **Q.** WELL, IF THEY WERE ELIGIBLE, THEY WOULD BE JUST LIKE
15 EVERYONE ELSE?

16 **MS. TILLMAN:** OBJECTION.

17 **THE WITNESS:** THAT'S RIGHT.

18 **MS. TILLMAN:** INCOMPLETE HYPOTHETICAL.

19 **JUDGE HENDERSON:** OVERRULED.

20 **BY MR. BIEN:**

21 **Q.** SO YOU REALLY HAVE NO BASIS -- YOU HAVEN'T STUDIED THE
22 ISSUE ABOUT WHETHER GENERAL POPULATION REDUCTION WOULD BENEFIT
23 THE COLEMAN CLASS ONE WAY OR THE OTHER, HAVE YOU? HAVE YOU
24 DONE ANY STUDY TO SEE HOW MANY PEOPLE WOULD COME OFF THE
25 WAITING LISTS FOR EOP, FOR EXAMPLE?

1 **A.** TO THE DEGREE THAT WE HAVE INFORMATION AVAILABLE ON THOSE
2 QUESTIONS, I HAVE ASKED AND I HAVE LOOKED AT IT. IT'S VERY
3 GENERAL. I HAVE TO SAY THE DEPARTMENT HAS -- DOES NOT HAVE A
4 SOPHISTICATED INFORMATION SYSTEM.

5 THAT'S WHY I MENTIONED EARLIER IN MY TESTIMONY THAT
6 IT WOULD REQUIRE A RESEARCH PROJECT TO GENERATE THAT
7 INFORMATION.

8 **Q.** OKAY. AND YOU HAVE HAD A NOTICE OF THIS PROCESS, OF THIS
9 CASE SINCE NOVEMBER OF 2006 WHEN PLAINTIFFS FILED THEIR MOTION
10 TO ESTABLISH A POPULATION REDUCTION IN THE PRISON SYSTEM,
11 RIGHT?

12 **A.** I KNEW ABOUT THAT, YES.

13 **Q.** AND BETWEEN DECEMBER OF 2006 AND TODAY, YOU HAVEN'T
14 UNDERTAKEN ANY STUDY TO BACK UP THIS THEORY THAT SOMEHOW A
15 GENERAL POPULATION REDUCTION WILL NOT ASSIST THE COLEMAN CLASS?

16 **A.** WOULD YOU ASK A QUESTION, THEN, BECAUSE I JUST HEARD YOU
17 MAKING A BUNCH OF STATEMENTS, AND I DON'T KNOW WHAT I WOULD BE
18 SAYING "YES" OR "NO" TO.

19 **Q.** HAVE YOU UNDERTAKEN A STUDY, OR DIRECTED ANYONE TO
20 UNDERTAKE A STUDY, TO DETERMINE WHETHER OR NOT A GENERAL
21 POPULATION REDUCTION OF THE CALIFORNIA PRISON POPULATION WOULD
22 BENEFIT OR NOT BENEFIT THE COLEMAN CLASS?

23 **MS. TILLMAN:** OBJECTION, VAGUE AND AMBIGUOUS AS TO
24 "BENEFIT."

25 **JUDGE HENDERSON:** I'M GOING TO ALLOW IT.

1 DO YOU UNDERSTAND THE QUESTION?

2 **THE WITNESS:** YES, I UNDERSTAND THAT QUESTION.

3 NOW --

4 **BY MR. BIEN:**

5 **Q.** CAN YOU JUST ANSWER IT "YES" OR "NO"?

6 **A.** NO, I'M NOT GOING TO ANSWER IT "YES" OR "NO." THIS IS A
7 QUALIFYING ANSWER.

8 **Q.** WELL, CAN YOU ANSWER "YES" OR "NO": HAVE YOU UNDERTAKEN A
9 STUDY?

10 **A.** YES.

11 **Q.** OKAY. AND WHAT STUDY DID YOU UNDERTAKE?

12 **A.** AS I INDICATED ALREADY, I HAVE LOOKED AT THE DEMOGRAPHIC
13 DATA THAT WAS AVAILABLE WITH RESPECT TO THE COLEMAN CLASS AND
14 THEIR LEVELS OF CUSTODY THAT ARE APPLIED TO THEM TO GET
15 UNDERNEATH THAT. AGAIN, I SAID IT REQUIRES A RESEARCH PROJECT
16 WHICH I HAVE NOT UNDERTAKEN.

17 **Q.** WHAT DID YOU FIND OUT IN THIS STUDY? WHEN DID YOU DO THIS
18 STUDY, MR. DEZEMBER?

19 **A.** I'VE LOOKED AT IT SEVERAL TIMES OVER THE LAST FEW MONTHS.

20 **Q.** CAN YOU POINT TO A PIECE OF PAPER THAT SHOWS THAT?

21 **A.** A PIECE OF PAPER?

22 **Q.** YOU KNOW, YOU HAVE SOMETHING YOU WANT TO SUBMIT TO THE
23 COURT AS SUPPORT OF THIS STUDY?

24 **A.** OF MY STUDY?

25 **Q.** YES.

1 **A.** NO, I READ MANAGEMENT REPORTS TO THE DEGREE WE HAVE THEM
2 ALL THE TIME.

3 **Q.** SO YOU HAVE NOTHING TO SUBMIT TO THE COURT ABOUT THIS
4 STUDY?

5 **A.** NO.

6 **Q.** OKAY. AND WHO DID YOU WORK WITH TO DO THE STUDY?

7 **A.** I DO THEM MYSELF. I READ THE INFORMATION MYSELF. THAT'S
8 WHAT A MANAGER DOES, MR. BIEN.

9 **Q.** OKAY. AND HOW MANY EOP'S WOULD BE RELEASED IN THE
10 POPULATION REDUCTION THAT YOU STUDIED?

11 **A.** DEPENDS ON HOW THE POPULATION REDUCTION IS CRAFTED.

12 **Q.** SO WHICH ONE DID YOU STUDY?

13 **A.** WHAT I DETERMINED WAS THAT LOWER CUSTODY INMATES WOULD BE
14 RELEASED, WHICH IS CONSISTENT WITH WHAT THE GOVERNOR HAD
15 PROPOSED WHEN HE PUT THAT FORTH LAST YEAR.

16 AND WHEN YOU LOOK AT IT THAT WAY, YOU HAVE A MORE
17 SUBSTANTIAL RELEASE. I DON'T KNOW THE EXACT NUMBERS OFFHAND
18 FROM THE C3MS (SIC) POPULATION THAN YOU DO. ANYTHING ABOVE
19 THAT.

20 **Q.** AND WHAT'S YOUR BASIS FOR STATING THAT THE TRIPLE CMS --
21 THE LOWER CUSTODY LEVEL ONES AND TWOS ARE NOT ON THOSE WAITING
22 LISTS FOR MHCBS BEDS, FOR EOP BEDS, FOR ACUTE CARE BEDS?

23 **A.** WELL, THEY CERTAINLY AREN'T GOING TO MAKE UP A MAJORITY OF
24 THEM OR THEY WOULDN'T BE IN 3CMS, BECAUSE THOSE WAITING LISTS
25 ARE FOR HIGHER LEVELS OF CARE. AND OFTEN SOME OF THEM ARE FOR

1 CRISIS CARE.

2 SO, YOU KNOW, I DON'T INTEND TO BE ARGUMENTATIVE
3 HERE. I ONLY INTEND HERE TO DESCRIBE THE CIRCUMSTANCES WHEREIN
4 TO THE BEST OF MY ABILITY AND TO DESCRIBE MY VIEW POINT ABOUT
5 IT. THAT'S REALLY THE EXTENT OF IT.

6 Q. SO YOU THINK THAT PRISONER REDUCTION PERHAPS TO 30 OR
7 40,000 FROM THE CURRENT POPULATION WOULD NOT PROVIDE THE MEANS
8 FOR THIS DEPARTMENT TO IMPROVE ON THE DELIVERY OF MENTAL
9 HEALTHCARE IN THE PRISONS?

10 A. I DIDN'T SAY THAT. I'M TALKING ABOUT PRIMARY CAUSATION AND
11 IMPACT. AND I'VE ALREADY SAID THE IMPACT OF CROWDING A PLACE IS
12 SOMEWHAT -- CAN BE SOMEWHAT NEGATIVE. AND, CERTAINLY, IF YOU
13 CRAFTED AN ORDER THAT SAID:

14 "THIS MUCH OF WHATEVER THE PERCENTAGE IS OF THE
15 CASELOAD INMATES WOULD BE RELEASED EARLY," IT WOULD
16 HAVE A POSITIVE IMPACT.

17 A GENERAL ORDER THAT THE DEPARTMENT WOULD CARRY OUT
18 WOULD BE MORE CONSISTENT WITH WHAT THE GOVERNOR HAD PROPOSED IN
19 TERMS OF DIFINING WHO IS RELEASED. AND THAT'S GOING TO BE
20 LOWER LEVEL POPULATION. AND SO FAR THAT'S ALL I KNOW ABOUT IT.

21 I'VE NOT UNDERTAKEN A RESEARCH PROJECT SPECIFICALLY
22 ON AN ALTERNATE SET OF POTENTIAL ORDERS THAT MIGHT COME FROM
23 THIS COURT. I HAVEN'T DONE THAT.

24 Q. SO YOU DON'T KNOW THE WHOLE RANGE OF POSSIBLE SOLUTIONS TO
25 THE POPULATION PROBLEM THAT MAY EMERGE FROM AN ORDER TO REDUCE

1 THE POPULATION, DO YOU?

2 **A.** NO, I DON'T.

3 **Q.** OKAY. AND SO YOU DON'T KNOW WHETHER OR NOT THOSE ORDERS
4 MAY INCLUDE MECHANISMS THAT WOULD BENEFIT ALL PARTS OF THE
5 COLEMAN CLASS?

6 **A.** WELL, DEPENDS ON WHAT YOU MEAN BY "BENEFIT" AT THAT POINT.

7 **Q.** WELL, YOU AGREE THAT OVERCROWDING IS IMPACTING THE PRISON
8 SYSTEM, RIGHT?

9 **A.** I DO.

10 **Q.** OKAY. AND ONE WAY OVERCROWDING IMPACTS THE PRISON SYSTEM
11 IS THROUGH INCREASED STRESS, VIOLENCE, WHICH RESULTS IN
12 LOCKDOWNS IN THE PRISON SYSTEM; ISN'T THAT CORRECT?

13 **A.** IT CAN, YES.

14 **Q.** AND THOSE LOCKDOWNS AND STRESS IMPACT ALL PRISONERS IN THE
15 SYSTEM.

16 **MS. TILLMAN:** OBJECTION, VAGUE AND AMBIGUOUS AS TO
17 "STRESS"; CALLS FOR A POSSIBLE CLINICAL CONCLUSION ON PEOPLE'S
18 CARE AND CONDITION?

19 **JUDGE HENDERSON:** CLARIFY WHAT YOU MEAN BY "STRESS."

20 **BY MR. BIEN:**

21 **Q.** YOU AGREE THAT THE --

22 **MR. BIEN:** I'LL REPHRASE, YOUR HONOR.

23 **BY MR. BIEN:**

24 **Q.** YOU AGREE THAT THE IMPACT OF OVERCROWDING AFFECTS PRISONERS
25 THROUGHOUT THE PRISON SYSTEM?

1 **A.** UM-HUM.

2 **Q.** IS THAT RIGHT?

3 **A.** YES.

4 **Q.** OKAY. SO, FOR EXAMPLE, IF YOU'RE A TRIPLE C IN A PROGRAM
5 AND THE PROGRAM IS LOCKED DOWN, THAT'S GOING TO AFFECT YOUR
6 LIFE. YOU MAY NOT BE ABLE TO GO TO PROGRAM.

7 **A.** YES, IF THERE'S A LOCKDOWN, THAT'S CORRECT.

8 **Q.** AND YOU MAY NOT BE ABLE TO GET ACCESS TO A GROUP, A MENTAL
9 HEALTH GROUP THAT YOU MIGHT HAVE BEEN IN?

10 **A.** YES.

11 **Q.** SO TRIPLE C'S ARE ALSO AFFECTED BY OVERCROWDING.

12 **A.** YES, THEY ARE.

13 **Q.** AND IF THERE'S A REDUCTION IN OVERCROWDING TRIPLE C'S WOULD
14 BENEFIT, JUST LIKE EVERYONE ELSE.

15 **MS. TILLMAN:** OBJECTION, CALLS FOR SPECULATION AS TO
16 WHAT REDUCTION.

17 **JUDGE HENDERSON:** I'M GOING TO ALLOW IT.
18 YOU MAY ANSWER THAT.

19 **THE WITNESS:** WELL, TO THE DEGREE THAT RELEASING
20 FROM PRISON IS A BENEFIT -- AND I WOULD ASSUME IN MOST CASES IT
21 IS -- THEN, YES, THEY WOULD.

22 **JUDGE KARLTON:** NOT JUST THAT. THE PROBLEM IS -- THE
23 QUESTION IS: EVEN AS TO THOSE WHO REMAIN IN PRISON, IF YOU
24 REDUCED THE LEVEL OF STRESS -- AND I KNOW MS. TILLMAN WILL
25 OBJECT, BUT I'M GOING DO USE IT ANYHOW -- BY VIRTUE OF

1 REDUCING THE OVERCROWDING, THAT WILL HAVE A BENEFICIAL EFFECT
2 UPON ALL PRISONERS, INCLUDING THOSE SUFFERING FROM MENTAL
3 ILLNESS. YES? NO? MAYBE?

4 **THE WITNESS:** YES. NOW, I THINK IT WOULD. THERE IS
5 A CAVEAT, BECAUSE THE HIGHER LEVELS OF CARE THAT WE HAVE NOW,
6 EVEN UNDER THE CONDITIONS THAT WE'VE HAD OVER -- SINCE WE BEGAN
7 THIS PROGRAM, THEY ARE SEGREGATED INTO HOUSING UNITS THERE.

8 IT'S A RESIDENTIAL CARE PROGRAM FOR MENTALLY ILL.
9 AND THEY ARE NOT MIXING WITH THE GENERAL POPULATION TO A LARGE
10 DEGREE.

11 C3MS IS. THEY ARE GENERAL POPULATION. SO I HAD
12 FOCUSED MOST OF MY ATTENTION ON A RELEASE ORDER OF THE TYPE
13 THAT'S BEING DESCRIBED HERE WOULD STILL LEAVE THE REQUIREMENT
14 THAT WE ESTABLISH THE MEANS FOR HOUSING AND TREATING THE HIGHER
15 LEVEL OF CARE INMATES. AND SO, THEREFORE, OVERPOPULATION HAS
16 AN IMPACT. AND I DON'T THINK IT'S THE PRIMARY CAUSE OF OUR
17 DIFFICULTY TO DELIVERING MENTAL HEALTHCARE.

18 **JUDGE KARLTON:** BUT EVEN AS TO THOSE PEOPLE IF
19 THERE'S A LOCKDOWN, THEY'RE NOT GOING TO BE RECEIVING THE KIND
20 OF TREATMENT AND PROGRAMMING THAT THEY ARE SUPPOSED TO. I'M
21 ASKING YOU, NOT TELLING YOU; ISN'T THAT RIGHT?

22 **THE WITNESS:** OF THE C3MS INMATES, YES.

23 **JUDGE KARLTON:** NO, I'M TALKING EVEN OF THE HIGHER
24 LEVEL.

25 **THE WITNESS:** IF THEY'RE IN A INTERMEDIATE CARE

1 PROGRAM, ACUTE CARE PROGRAM OR A MENTAL HEALTH CRISIS BED
2 PROGRAM, YOU'RE STILL RECEIVING THE CARE YOU MAY REQUIRE. EOP
3 MAY BE STILL IN A LOCKDOWN, BUT THEY'RE STILL IN A SEGREGATED
4 HOUSING AREA WHERE THE CLINICIANS HAVE ACCESS TO THEM.

5 **JUDGE KARLTON:** SO IT'S YOUR -- AS I UNDERSTAND YOUR
6 TESTIMONY -- ASKING NOT TELLING YOU -- YOUR VIEW IS EVEN A
7 SIGNIFICANT RELEASE ORDER WOULD HAVE NO EFFECT UPON HIGHER
8 LEVELS OF CARE REQUIRED OF EOP AND ABOVE.

9 **THE WITNESS:** IT WOULD HAVE MUCH LESS EFFECT, YES.
10 IT WOULD HAVE A SMALL EFFECT.

11 **JUDGE KARLTON:** I'M GOING TO ASK A QUESTION, AND THE
12 ANSWER IS: WHO KNOWS?

13 TELL ME WHAT YOU MEAN BY "A SMALL EFFECT."

14 **THE WITNESS:** WELL, A RELEASE ORDER -- A GENERAL
15 RELEASE ORDER WILL IMPACT SOME SMALL PART OF THAT POPULATION IN
16 TERMS OF THEIR BEING RELEASED. WHERE WE HAVE --

17 **JUDGE KARLTON:** THAT WOULD BE INDEPENDENT OF WHAT
18 TREATMENT PROGRAMS AND TREATMENTS THAT THEY WOULD BE RECEIVING
19 IF THEY WEREN'T RELEASED.

20 **THE WITNESS:** YES. IF YOU RELEASED LEVEL ONES AND
21 LEVELS TWO --

22 **JUDGE KARLTON:** OKAY.

23 **THE WITNESS:** -- AND YOU DIDN'T EXCLUDE FROM RELEASE
24 A SEVERELY MENTALLY ILL INMATE WHO WAS IN THAT INTERMEDIATE
25 CARE FACILITY OR AN ACUTE FACILITY, THEN THAT PERSON WOULD BE

1 RELEASED, AS WELL. IT WOULD BE A SMALL PERCENTAGE OF THAT
2 POPULATION.

3 **JUDGE KARLTON:** LET ME ASK A QUESTION. I THINK I
4 KNOW THE ANSWER, BUT MAYBE I DON'T. YOU'VE GOT A SEVERELY ILL
5 PRISONER WHO IS -- WHO REACHES ELIGIBILITY FOR PAROLE. IS HE
6 GOING TO BE PAROLED DESPITE HIS MENTAL ILLNESS?

7 **THE WITNESS:** YES.

8 **JUDGE KARLTON:** I DIDN'T MEAN TO INTERRUPT.
9 GO AHEAD.

10 **BY MR. BIEN:**

11 **Q.** MR. DEZEMBER, YOU HAVE TOLD THE COURT ABOUT A SERIES OF
12 PLANS THAT THE DEPARTMENT NOW HAS IN PLACE THAT YOU BELIEVE ARE
13 MORE APPROPRIATE, BETTER THAN PRIOR PLANS; IS THAT CORRECT?

14 **A.** WELL, THE PLAN WE HAVE NOW THAT I'VE BEEN REFERRING TO IS
15 ONE THAT THE ADMINISTRATION -- MY DEPARTMENT, THE
16 ADMINISTRATION APPROVED AND THE COURT APPROVED, THE COLEMAN
17 COURT APPROVED IT.

18 **Q.** THE COLEMAN COURT HAS APPROVED LOTS OF PLANS BEFORE THIS
19 ONE, MR. DEZEMBER; ISN'T THAT CORRECT?

20 **A.** ON A MUCH SMALLER SCALE, YES.

21 **Q.** BUT YOU BELIEVE THAT THE COURT CAN RELY ON CURRENT PLANS
22 THAT YOU TALKED ABOUT IN YOUR WITNESS STATEMENT AND YOUR
23 TESTIMONY TODAY?

24 **A.** RELY ON IN WHAT WAY?

25 **JUDGE KARLTON:** THAT'S GOING TO HAPPEN.

1 **BY MR. BIEN:**

2 **Q.** THEY ARE GOING TO HAPPEN. THEY ARE GOING TO COME TO
3 FRUITION.

4 **A.** WELL, YOU KNOW, WE'VE ALREADY TALKED ABOUT THE RECEIVER'S
5 DIFFICULTY GETTING FUNDING. THIS IS AN APPROVED PLAN AND IT IS
6 PROGRESSING IN STEPS AND STAGES. AND MY ASSUMPTION IS THAT IT
7 WILL CONTINUE THAT WAY.

8 I CAN'T GUARANTEE WHAT IS GOING TO BE FUNDED OR WHAT
9 ISN'T GOING TO BE FUNDED.

10 **Q.** YOU CLAIM THAT YOU NOW HAVE A GOOD SYSTEM OF PROJECTING
11 FUTURE NEEDS FOR MENTAL HEALTHCARE. YOU HAVE VALIDATED -- YOU
12 CALLED IT A VALIDATED SYSTEM NOW; IS THAT CORRECT?

13 **A.** YES.

14 **Q.** AND THAT'S THE NAVIGANT CONSULTANT?

15 **A.** RIGHT.

16 **Q.** THAT'S JOHN RIZNER?

17 **A.** THAT IS CORRECT, YES.

18 **Q.** JOHN RIZNER IS THE INDIVIDUAL THAT DOES THE WORK FOR THE
19 STATE?

20 **A.** HE DOES WHAT?

21 **Q.** HE'S THE INDIVIDUAL THAT YOU RELY ON WHO IS EMPLOYED AS A
22 CONSULTANT?

23 **A.** HE'S EMPLOYED BY NAVIGANT UNDER THEIR CONTRACT WITH THE
24 STATE, AND HE PROVIDES THIS FUNCTION OF FORECASTING POPULATION
25 AND BED DEMAND.

1 Q. AND BASED ON HIS -- ON THESE FORECASTS YOU HAVE DEVELOPED
2 THESE BED PLANS WHICH SHOW CURRENT NEED AND FUTURE NEED?

3 A. YES.

4 Q. OKAY. AND YOU RELY ON THOSE IN YOUR WORK AND YOU'VE GONE TO
5 THE GOVERNOR AND TO THIS COURT AND SAID:

6 "THIS IS WHAT WE NEED"; IS THAT CORRECT?

7 A. YES.

8 Q. AND ISN'T IT CORRECT THAT THE MOST OPTIMISTIC PROJECTIONS
9 OF WHEN THE DEPARTMENT WILL HAVE CONSTRUCTED SUFFICIENT BEDS TO
10 MEET THE NEEDS OF THE MENTAL HEALTH POPULATION BASED ON THESE
11 PROJECTIONS IS 2014.

12 A. I THINK IN THE BED PLAN THAT WE'RE REFERRING TO IT WAS
13 2013, BUT IT ALSO IS ADDRESSING THE POPULATION DEMAND OF THAT
14 TIME. SO THIS IS A FIVE-YEAR FORECAST AND A FIVE-YEAR PLAN
15 THAT'S UPDATED ANNUALLY SO THAT YOU WOULD STILL -- YOU WOULD
16 ALWAYS HAVE A FIVE-YEAR LOOK.

17 IF YOU CUT IT OFF AT THE CURRENT BED PLAN, IT'S OUT
18 AT YEAR 2013. CONSTRUCTION PROCESSES ORDINARILY SOMEWHERE IN
19 THE THREE TO FIVE YEAR RANGE. BUT THE FOCAL POINT IS TO HAVE
20 BEDS AT 2013 THAT MEET THE POPULATION EXPECTED FOR 2013. AND
21 ALL THAT IS CHANGEABLE ON AN ANNUAL BASIS.

22 Q. WHEN YOU DID THAT PLAN, THE 2007 PLAN THAT YOU SAY WAS
23 APPROVED BY THIS COURT, THINGS HAVE GOTTEN DELAYED SINCE THEN;
24 ISN'T THAT CORRECT?

25 A. DELAYED?

1 Q. IN OTHER WORDS, SINCE THAT PLAN WAS APPROVED BY THE COURT,
2 DEPARTMENT MADE A DECISION TO JOIN IN WITH THE RECEIVER IN THE
3 10,000 BED PLAN; IS THAT CORRECT?

4 A. WELL, THAT'S PARTIALLY CORRECT. THERE IS AN ORDER OF FOUR
5 JUDGES IN A COORDINATED ORDER THAT INDICATED THAT THE RECEIVER
6 HAS THE LEAD RESPONSIBILITY FOR BUILDING THE 10,000 BEDS, WHICH
7 IS MEDICAL AND MENTAL HEALTH.

8 SO WHILE WE DECIDED TO DO THAT, BECAUSE IT'S A GOOD
9 THING TO DO, AND IT WILL FULFILL THE BED PLAN, THERE WAS ALSO
10 AN ORDER THAT SAID:

11 "THIS IS HOW YOU SHOULD DO IT."

12 AND SO WE FOLLOWED THAT.

13 Q. I WON'T GO OVER WHAT THE ORDER SAYS, BUT I UNDERSTOOD THE
14 ORDER TO ASK THE DEPARTMENT TO COOPERATE AND WORK WITH THE
15 RECEIVER; ISN'T THAT CORRECT?

16 A. WELL, THERE ARE THOSE ORDERS, AS WELL.

17 Q. RIGHT.

18 A. BUT THIS ONE IS SPECIFIC IN GIVING THE RECEIVER THE
19 LEAD -- I DON'T REMEMBER THE EXACT -- LEAD PROJECT AUTHORITY
20 FOR THE 10,000 BEDS.

21 Q. RIGHT. AND YOU WERE THE REPRESENTATIVE OF THE STATE OF
22 CALIFORNIA IN MANY MEETINGS WHERE THE DECISION ABOUT WHETHER TO
23 THROW THE MENTAL HEALTH BEDS INTO THE RECEIVER'S PROJECTS WERE
24 DISCUSSED.

25 A. I HAVE BEEN, YES. I'VE BEEN IN MEETINGS LIKE THAT.

1 Q. OKAY. AND YOU'VE DISCUSSED THESE ISSUES WITH
2 REPRESENTATIVES OF THE GOVERNOR'S OFFICE, HAVEN'T YOU?

3 A. YES.

4 Q. AND ARE YOU AWARE OF ANY -- PRIOR TO JUNE OF 2008, ARE YOU
5 AWARE OF ANY OBJECTION THE STATE OF CALIFORNIA HAS RAISED TO
6 ANY COURT ORDER DEALING WITH MENTAL HEALTH PROJECTS, JOINING
7 INTO THE RECEIVER'S 10,000 BED PROJECT?

8 A. NO, I'M NOT.

9 Q. AND, IN FACT, YOU WERE -- YOU PERSONALLY TESTIFIED IN
10 DEPOSITION, MR. DEZEMBER, THAT YOU THOUGHT THAT WAS A GOOD
11 THING TO DO TO MERGE THESE PROJECTS AND LET THE RECEIVER TAKE
12 THE LEAD.

13 A. YES.

14 Q. AND YOU SAID THAT WAS A GOOD THING TO DO BECAUSE BY
15 COOPERATING YOU COULD USE THE SPACE MORE EFFECTIVELY. THAT WAS
16 ONE OF THE REASONS; ISN'T THAT CORRECT?

17 A. THAT'S ONE OF THE REASONS.

18 Q. THERE'S ONLY A CERTAIN AMOUNT OF SPACE AVAILABLE AT THESE
19 SITES TO BUILD. AND IT'S BETTER TO BUILD IN AN UNIFIED
20 STRUCTURE THAN IN TWO SEPARATE PROJECTS.

21 A. YES.

22 Q. OKAY. AND YOU ALSO SUPPORTED THE PROJECT BECAUSE YOU FELT
23 THE RECEIVER MIGHT HAVE THE ABILITY TO CUT THROUGH SOME OF THE
24 GOVERNMENTAL RED TAPE AND GET THESE THINGS BUILT MORE RAPIDLY.

25 A. IT APPEARED THAT WAY, YES.

1 Q. AND IN YOUR DEPOSITION IN DECEMBER OF 2007, YOU UNDERSTOOD
2 THAT THE RECEIVER WAS GOING TO BREAK GROUND FOR ITS FIRST
3 PROJECT BY JUNE OF 2008; ISN'T THAT CORRECT?

4 JUDGE KARLTON: ORIGINALLY IT WAS FEBRUARY.

5 THE WITNESS: YES, I WAS GOING TO SAY I THINK IT WAS
6 EARLIER THAN THAT.

7 JUDGE KARLTON: IT GOT DELAYED.

8 THE WITNESS: YES. BUT I DID -- I WAS RELYING ON THE
9 SCHEDULES THAT I HAD SEEN, YES.

10 BY MR. BIEN:

11 Q. AND IT'S CORRECT THAT AS OF NOW THE STATE OF CALIFORNIA HAS
12 MADE A DECISION NOT TO SUPPORT THE RECEIVER'S TEN THOUSAND BED
13 PROJECT?

14 A. WELL, I DON'T KNOW THAT THAT'S TRUE, BECAUSE I DON'T KNOW
15 THAT. I HAVE NOT BEEN GIVEN THAT INSTRUCTION FROM THE -- FROM
16 PEOPLE WHO ARE MY SUPERIORS IN GOVERNMENT.

17 Q. YOU'VE HAD MEMBERS OF YOUR STAFF WHO HAVE BEEN ASSIGNED TO
18 WHAT'S CALLED "THE CORE TEAM" OF THE RECEIVER'S PLANNING AND
19 ARCHITECTURE AND OTHER PROFESSIONALS WHO ARE DESIGNING THESE
20 HEALTHCARE FACILITIES.

21 AND WHAT ARE THEY CALLED NOW? I FORGOT THE CURRENT
22 TERMINOLOGY. CONSOLIDATED -- NO. WHAT'S THE NAME OF THE
23 RECEIVER'S 10,000 BED --

24 A. OH, CALIFORNIA HEALTHCARE FACILITIES.

25 Q. CALIFORNIA HEALTHCARE FACILITIES.

1 **A.** CHCF.

2 **Q.** RIGHT. AND ISN'T IT CORRECT THAT YOUR STAFF HAS BEEN ON
3 THE CORE PLANNING TEAM FOR THOSE PROJECTS?

4 **A.** YES.

5 **Q.** AND THAT THEY REPORT TO YOU CONCERNING WHAT IS GOING ON IN
6 THE DEVELOPMENT OF THESE PROJECTS?

7 **A.** YES.

8 **Q.** AND THEY, IN FACT, HAVE JOINED THE RECEIVER AND HIS STAFF
9 AT TRAVELING AROUND THE COUNTRY AND VISITING MODEL HEALTHCARE
10 FACILITIES AT OTHER PRISONS AND SYSTEMS AROUND THE COUNTRY?

11 **A.** YES.

12 **Q.** AND THEY CAME BACK AND WORKED WITH THE CORE TEAM. AND THIS
13 CORE TEAM WORKED ON DEVELOPING WHAT THE MODEL FOR THESE
14 FACILITIES WOULD BE THAT WOULD BE MOST APPROPRIATE TO DELIVER
15 THE HEALTHCARE AND MENTAL HEALTH NEEDS OF THE CALIFORNIA PRISON
16 SYSTEM GIVEN THE SAFETY AND SECURITY REQUIREMENTS?

17 **A.** YES.

18 **Q.** IS YOUR STAFF TODAY STILL WORKING ON THESE PROJECTS,
19 MR. DEZEMBER?

20 **A.** YES.

21 **Q.** AND THERE ARE ALSO REPRESENTATIVES OF THE DEPARTMENT OF
22 MENTAL HEALTH THAT ARE WORKING ON THESE PROJECTS; ISN'T THAT
23 CORRECT?

24 **A.** YES.

25 **Q.** MR. BREWER HAS BEEN ASSIGNED TO THE RECEIVER FOR THIS

1 PURPOSE?

2 **A.** YES. FROM THE DEPARTMENT OF MENTAL HEALTH, YES.

3 **Q.** RIGHT. AND HE IS A SENIOR OFFICIAL AT DEPARTMENT OF MENTAL
4 HEALTH THAT REPORTS TO MS. TOBASKY (PHONETIC)?

5 **A.** IN THIS CAPACITY I DON'T KNOW WHETHER HE REPORTS TO HER OR
6 NOT.

7 **Q.** HE'S THE PERSON WHO IS THE DIRECTOR OF THE DEPARTMENT OF
8 MENTAL HEALTH PROGRAMS AT THE CALIFORNIA MEDICAL FACILITY AND
9 THE SALINAS VALLEY PRISON.

10 **A.** YES.

11 **Q.** SO HE UNDERSTANDS A LOT ABOUT WHAT HAS BEEN GOING ON IN
12 THESE MENTAL HEALTH FACILITIES THAT ARE OPERATING INSIDE OF
13 PRISONS.

14 **MS. TILLMAN:** OBJECTION, VAGUE, CALLS FOR
15 SPECULATION.

16 **JUDGE HENDERSON:** OVERRULED.

17 **THE WITNESS:** I CAN ASSUME HE DOES, YES.

18 **BY MR. BIEN:**

19 **Q.** OKAY. HAVE YOU REPORTED TO THE GOVERNOR AT ANY TIME THAT
20 YOU THINK THESE FACILITIES THAT ARE BEING DESIGNED ARE
21 INAPPROPRIATE OR WASTEFUL?

22 **A.** I HAVE NOT.

23 **Q.** YOU DO REGULARLY REPORT TO REPRESENTATIVES OF THE
24 GOVERNOR'S OFFICE ABOUT MENTAL HEALTH AND MEDICAL ISSUES, DON'T
25 YOU?

1 **A.** I DON'T REGULARLY, NO.

2 **Q.** HOW OFTEN?

3 **A.** WHEN I'M ASKED. I DO TAKE THIS UP INSIDE THE DEPARTMENT OF
4 CORRECTIONS AND REHABILITATION WITH THE SECRETARY, ET CETERA,
5 BUT NOT DIRECTLY WITH THE GOVERNOR'S OFFICE.

6 **Q.** WOULD YOU LIKE ME TO SHOW YOU E-MAILS WHERE YOU'RE
7 COMMUNICATING WITH MR. GORE OF THE GOVERNOR'S OFFICE OR MR. --

8 **A.** WELL --

9 **Q.** -- BRYCE (PHONETIC) OF THE GOVERNOR'S OFFICE?

10 **A.** -- YOUR QUESTION WAS "REGULARLY REPORT." I DO COMMUNICATE
11 WITH THEM, CERTAINLY.

12 **Q.** AND ONE OF THE TOPICS YOU COMMUNICATE WITH THEM ABOUT IS
13 HOW THIS CONSTRUCTION PROGRAM, WHICH IS A MAJOR FINANCIAL ISSUE
14 FOR THE STATE, ISN'T IT?

15 **A.** YES.

16 **Q.** AND IT'S ALSO A MAJOR ISSUE IN TERMS OF RESOLVING THE
17 COLEMAN AND PLATA CASES ALSO.

18 **A.** I BELIEVE SO.

19 **Q.** AND AS PART OF YOUR RESPONSIBILITIES YOU REPORT TO BOTH THE
20 SECRETARY OF THE DEPARTMENT AND ALSO REPRESENTATIVES OF THE
21 GOVERNOR'S OFFICE ABOUT THESE PROJECTS.

22 **A.** IT DEPENDS ON HOW YOU'RE ASKING THE QUESTION. I REPORT MUCH
23 MORE REGULARLY TO THE SECRETARY THAN I DO THE GOVERNOR, BUT I
24 MEAN THERE IS A COMMUNICATION LINK BACK AND FORTH. I'M NOT
25 SAYING THERE ISN'T.

1 Q. AND YOU'VE NEVER REPORTED TO ANYONE THAT YOU BELIEVE THAT
2 THESE PROJECTS WERE WASTEFUL OR INAPPROPRIATE AS HEALTHCARE
3 FACILITIES TO TAKE CARE OF PRISONERS IN CALIFORNIA.

4 MS. TILLMAN: I'LL OBJECT ON RELEVANCE GROUNDS TO
5 THE EXTENT WE'RE GETTING INTO ANOTHER PROCEEDING.

6 JUDGE HENDERSON: OVERRULED.

7 THE WITNESS: I HAVE NOT REPORTED THAT, NO.

8 JUDGE KARLTON: AND YOU DON'T BELIEVE THAT.

9 THE WITNESS: WELL, I DON'T BELIEVE THAT BECAUSE OF
10 THE IMPACT OF MY OWN PRESENCE THROUGH MY STAFF HAS ON THE
11 PROGRAM. AND --

12 JUDGE KARLTON: BUT YOU ARE AWARE, AS AN EXAMPLE,
13 THAT THERE'S CONCERN THAT THE PROGRAM IS NOT BEING FUNDED
14 PRESENTLY BY THE STATE OF CALIFORNIA. ARE YOU AWARE OF THAT,
15 SIR?

16 THE WITNESS: YES.

17 MS. TILLMAN: I'LL OBJECT, YOUR HONOR, TO THE EXTENT
18 THAT IT ASSUMES FACTS NOT IN EVIDENCE AS TO WHO IS SUPPOSED TO
19 FUND THOSE PROGRAMS, WHETHER IT'S THE STATE OR THE LEGISLATURE.

20 JUDGE KARLTON: STATE AND THE LEGISLATURE ARE THE
21 SAME FOLKS. YOU KNOW, THERE'S ONLY ONE STATE. IT'S GOT THREE
22 BRANCHES OF GOVERNMENT.

23 THE ANSWER IS: YES?

24 THE WITNESS: YES.

25 JUDGE KARLTON: OKAY.

1 THERE'S SOME CONCERN THAT THE PROGRAM MAY FOLD JUST
2 BECAUSE AT SOME POINT PEOPLE ARE NOT GOING TO WORK FOR FREE.

3 **THE WITNESS:** I UNDERSTAND THAT.

4 **BY MR. BIEN:**

5 **Q.** LET'S GO OVER WHAT JUDGE KARLTON JUST BROUGHT TO YOU,
6 MR. DEZEMBER. LET'S ASSUME THAT A DECISION IS MADE NOT TO
7 PROCEED WITH THE RECEIVER'S CONSTRUCTION PROGRAM. WE ASKED YOU
8 THAT QUESTION IN YOUR DEPOSITION.

9 AND YOU SAID -- WHAT WOULD YOU DO IF THE RECEIVER'S
10 10,000 BED PROGRAM IS TAKEN OFF THE TABLE TO COMPLY WITH THIS,
11 THIS COURT, JUDGE KARLTON'S ORDERS TO BUILD MENTAL HEALTH BEDS?

12 **A.** WELL, THE ORDER WE STILL HAVE, NOTWITHSTANDING THE
13 RECEIVER'S EFFORTS, IS TO BUILD THE AUGUST, 2007 BED PLAN.
14 THAT'S WHERE WE WOULD BE.

15 **Q.** AND HOW MANY OF YOUR STAFF ARE WORKING ON DEVELOPING THE
16 AUGUST, 2007 PROJECTS?

17 **A.** WELL, THEY ARE NOT AT THIS POINT, EXCEPT ON INDIVIDUAL
18 PROJECTS, SUCH AS THE PRELIMINARY PLANNING FOR THE 64-BED AT
19 CMF AND THE PRELIMINARY PLANNING FOR THE 50-BED AT CMC AND
20 OTHER VARIOUS SMALL PROJECTS.

21 WHAT WOULD REQUIRE -- WHAT THAT WOULD REQUIRE IF
22 THIS IS THE RESULT THAT THE RECEIVER IS NOT GOING TO BUILD HIS
23 FACILITIES, THE CHCF, IS A SHIFT TO THE AUGUST, '07 BED PLAN.
24 AND THE PROJECTS WOULD THEN HAVE TO PROCEED THROUGH THE CAPITAL
25 OUTLAY PROCESS OF THE STATE.

1 Q. OKAY. AND THAT PROCESS -- WE'RE TALKING ABOUT THESE
2 CONSOLIDATED CARE CENTERS. I THINK THAT'S WHAT THEY ARE
3 CALLED, RIGHT, AT THAT POINT?

4 A. YES. YES.

5 Q. AND THESE WERE SIMILAR TO THE RECEIVER PROJECTS IN THAT
6 THEY WERE EFFORTS TO CONCENTRATE IN CERTAIN LOCATIONS A LARGE
7 NUMBER OF THE HIGH-LEVEL MENTAL HEALTH BEDS?

8 A. YES.

9 Q. OKAY. AND ONE OF THE REASONS YOU WANTED TO DO THAT WAS TO
10 IMPROVE YOUR ABILITY TO RECRUIT AND RETAIN CLINICIANS BY
11 CONCENTRATING THEM IN PLACES WHERE YOU MIGHT HAVE A BETTER
12 CHANCE OF HIRING THEM?

13 A. YES.

14 Q. IS IT CORRECT THAT THOSE PROJECTS, IF WE HAVE TO GO BACK
15 THERE, WE'VE LOST AT LEAST A YEAR ON THOSE PROJECTS?

16 A. PERHAPS MORE.

17 Q. WHEN ARE YOU GOING TO DECIDE WHICH PROJECT YOU'RE DOING,
18 MR. DEZEMBER? YOU HAVE A COURT ORDER TO BUILD THESE MENTAL
19 HEALTH BEDS. WHEN ARE YOU GOING TO DECIDE WHETHER YOU'RE GOING
20 TO BUILD THE AUGUST, 2007 PLAN OR GO ALONG WITH THE RECEIVER'S
21 BEDS?

22 A. WELL, ON A GRADUAL BASIS WE HAVE BEEN ON BOTH TRACKS. AND
23 BELIEVE ME, IN GOVERNMENT THAT'S A DIFFICULT THING TO SUSTAIN,
24 BECAUSE THE ATTENTION OVER THE PAST, SAY, 15 MONTHS HAS BEEN ON
25 THE RECEIVER'S BUILDING PROGRAM.

1 I DON'T KNOW ANYONE WHO DIDN'T THINK THAT WAS GOING
2 TO MATERIALIZE.

3 SO THE PROJECTS THAT I'VE MENTIONED ARE PART -- PART
4 OF THE AUGUST, 2007 PLAN. AND THEY ARE PROCEEDING. THEY ARE
5 NOT NUMEROUS PROJECTS FROM THAT PLAN THAT HAVE BEEN PROCEEDING.
6 AND IF THAT WAS THE ONLY THING LEFT, THEN WE WOULD HAVE TO
7 PROCEED WITH THAT.

8 Q. HAVE YOU DISCUSSED WITH THE GOVERNOR'S OFFICE WHEN THE
9 DECISION IS GOING TO BE MADE ABOUT GOING BACK TO THE AUGUST
10 PLAN OR PROCEEDING WITH THE 10,000 BED PLAN?

11 A. I HAVE NOT TALKED DIRECTLY WITH THE GOVERNOR'S OFFICE ON
12 THAT. I HAVE TALKED WITH THE NEW SECRETARY OF OUR DEPARTMENT ON
13 A NUMBER OF THOSE ISSUES.

14 Q. AND WHAT'S THE SCHEDULE FOR MAKING THAT DECISION, MR.
15 DEZEMBER?

16 A. I DON'T KNOW.

17 Q. SO AS YOU SIT HERE TODAY, YOU CAN'T REPRESENT A DATE
18 CERTAIN IN THE FUTURE WHEN THESE MENTAL HEALTH BEDS THAT YOU
19 AGREE ARE NECESSARY TO PROVIDE TREATMENT WILL BE AVAILABLE?

20 A. THAT'S CORRECT.

21 Q. NOW, YOU'VE TESTIFIED THAT AN APPROPRIATE VACANCY RATE FOR
22 CLINICIANS IN YOUR AREA, THE MENTAL HEALTHCARE, IS EIGHT TO TEN
23 PERCENT; IS THAT CORRECT?

24 A. YES.

25 Q. AND TODAY THE VACANCY RATE IS CLOSER TO 20 PERCENT; ISN'T

1 THAT CORRECT?

2 **A.** WELL, IT'S TODAY BETWEEN 17 AND 19 PERCENT.

3 **Q.** AND FOR PSYCHIATRISTS IT'S FAR WORSE; ISN'T THAT CORRECT?

4 **A.** IT'S HIGHER, YES.

5 **Q.** FORTY, 50 PERCENT?

6 **A.** NO, IT'S ROUGHLY 30 PERCENT, 32 PERCENT.

7 **Q.** IS THAT AFTER YOU COUNT YOUR USE OF REGISTRY OR BEFORE?

8 **A.** BEFORE. WHEN WE COUNT USE OF REGISTRY OUR VACANCY IS ABOUT
9 11 PERCENT.

10 **Q.** NOW, WHEN YOU'RE TALKING ABOUT YOUR VACANCIES -- AND YOU
11 SHOWED A CHART EARLIER TO THE COURT -- YOU'RE TALKING ABOUT
12 POSITIONS THAT HAVE BEEN ALLOCATED TO THE DEPARTMENT AS OF THE
13 DATE THAT YOU PROJECTED THAT INFORMATION; IS THAT CORRECT?

14 **A.** YES.

15 **Q.** OKAY. AND ISN'T IT CORRECT THAT THE DEPARTMENT HAS
16 UNDERTAKEN, AS A DIRECTION OF LEGISLATURE AND OF THIS COURT, A
17 WORKLOAD STUDY TO EVALUATE THE APPROPRIATENESS OF THE POSITIONS
18 IT HAS ALLOCATED FOR MENTAL HEALTHCARE?

19 **A.** WELL, THE WORKLOAD STUDY ASSESSES THE WORK REQUIRED AND
20 DETERMINES THE NUMBER AND TYPE OF STAFF REQUIRED TO PERFORM IT.
21 IT'S A TRUE WORKLOAD STUDY.

22 **Q.** AND YOU PERFORMED THAT WORKLOAD STUDY. THE DEPARTMENT
23 PERFORMED THAT STUDY?

24 **A.** IT DID, YES.

25 **Q.** AND THAT WAS SOMETHING THAT IS PART OF CALIFORNIA

1 LEGISLATION, WASN'T IT?

2 **A.** IT WAS APPROVED, AND THEY PASSED THE BUDGET ACT.

3 **Q.** AND IT WAS ALSO SOMETHING THIS COURT ORDERED THE DEPARTMENT
4 TO DO.

5 **A.** YES, CORRECT.

6 **Q.** AND THAT STUDY WAS FINISHED IN THE SUMMER OF 2007; IS THAT
7 CORRECT?

8 **A.** YES, AS I RECALL. I ONLY REJOINED THE DEPARTMENT IN THE
9 SUMMER OF 2007. AND I THINK IT WAS BEING COMPLETED AT THAT
10 TIME.

11 **Q.** OKAY. YET THE DEPARTMENT COULDN'T FIND SUFFICIENT RESOURCES
12 TO EVALUATE THE STUDY UNTIL DECEMBER OF 2007.

13 **A.** NO, I THINK THE EVALUATION WAS DONE BY MORE THAN THE
14 DEPARTMENT. IT WAS DONE ALSO BY DEPARTMENT OF FINANCE AND THE
15 LEGISLATIVE STAFF THAT ARE ASSIGNED TO THESE BUDGET MATTERS.
16 AND IT WAS ALSO EVALUATED BY THE COLEMAN SPECIAL MASTER AND HIS
17 STAFF.

18 **Q.** BUT FOR SIX MONTHS THE DEPARTMENT SAT ON THE STUDY.

19 **A.** WELL, IT DIDN'T SIT ON IT. THIS IS THE NORMAL BUDGET
20 PROCESS.

21 **Q.** WELL, IT WASN'T --

22 **A.** BUDGET PROCESSES ARE LENGTHY.

23 **Q.** IT WASN'T PROVIDED TO THE COLEMAN SPECIAL MASTER UNTIL
24 FEBRUARY OF 2008; IS THAT CORRECT?

25 **A.** I DON'T KNOW THE DATES. I DON'T KNOW THOSE EXACTLY.

1 Q. OKAY. IT WASN'T PROVIDED TO THE LEGISLATURE UNTIL ALSO
2 EARLY IN 2008; ISN'T THAT CORRECT?

3 A. DEPENDS ON WHAT DATE -- WHAT YOU'RE DETERMINING IS THE
4 PROVISION DATE. THERE WERE LOTS OF BRIEFINGS OF THIS DOCUMENT
5 GOING ON. IT'S A COMPLICATED DOCUMENT, AND IT TOOK A LOT OF
6 PEOPLE'S ATTENTION TO UNDERSTAND IT.

7 Q. THE WORKLOAD STUDY INDICATED 0WHEN YOU FINALLY DID PROVIDE
8 IT TO THE LEGISLATURE AND TO THE SPECIAL MASTER, THE WORKLOAD
9 STUDY INDICATED THAT THE DEPARTMENT NEEDED 400 ADDITIONAL
10 POSITIONS; ISN'T THAT CORRECT?

11 A. YES, I THINK IT WAS 407.

12 Q. OKAY. AND THE SPECIAL MASTER EVALUATED THE WORKLOAD STUDY
13 SUBSEQUENT TO YOU SUBMITTING IT TO THE LEGISLATURE; ISN'T THAT
14 CORRECT?

15 A. WELL, I THINK IT WAS DURING AND SUBSEQUENT.

16 Q. DURING THE SUMMER OF 2008 WHILE THE BUDGET WAS NOT BEING
17 PASSED, THE SPECIAL MASTER WROTE A REPORT TO YOU AND TO THE
18 PLAINTIFFS' COUNSEL ABOUT THE WORKLOAD STUDY; ISN'T THAT
19 CORRECT?

20 A. YES.

21 Q. AND THE SPECIAL MASTER ENDORSED THE PROCESS OF THE WORKLOAD
22 STUDY. THAT'S CORRECT, ISN'T IT?

23 A. YES.

24 Q. THOUGHT IT WAS IMPORTANT THAT YOU STUDY THE ACTUAL
25 WORKLOADS TO DETERMINE HOW MANY CLINICIANS, OF WHICH TYPE THE

1 DEPARTMENT WILL NEED TO IMPLEMENT THE PROGRAM GUIDE STANDARDS;
2 ISN'T THAT CORRECT?

3 **A.** I'M NOT SURE I UNDERSTAND THE QUESTION THERE.

4 **Q.** OKAY. HE ENDORSED THE PROCESS OF STUDYING WORKLOAD, AND HE
5 THOUGHT THAT THE CONSULTANTS YOU HAD ENGAGED HAD DONE A GOOD
6 JOB; ISN'T THAT CORRECT?

7 **A.** YES.

8 **Q.** BUT HE ALSO FOUND THAT THE -- THERE WAS SOME PROBLEMS WITH
9 THE ASSUMPTIONS THAT THEY HAD USED IN THEIR WORKLOAD STUDY.

10 **A.** THERE WERE SOME PROBLEMS WITH SOME OF THE ASSUMPTIONS, YES.

11 **Q.** FOR EXAMPLE, THEY WERE TOLD BY THE DEPARTMENT OF
12 CORRECTIONS STAFF TO ASSUME THAT 30 PERCENT OF THE TRIPLE CMS
13 POPULATION WAS ON PSYCHOTROPIC MEDICATIONS; ISN'T THAT CORRECT?

14 **A.** THAT I DON'T KNOW. I KNOW THAT WAS THEIR ASSUMPTION, BUT I
15 DON'T KNOW HOW THEY ARRIVED AT IT.

16 **Q.** THAT'S THE ASSUMPTION THAT THEY ENDED UP USING.

17 **A.** YES.

18 **Q.** AND THEY USED THAT ASSUMPTION TO ESTIMATE HOW MANY PEOPLE
19 WOULD BE NEEDED TO DISTRIBUTE MEDICATION AND HOW MANY
20 PSYCHIATRISTS WOULD BE NEEDED TO EVALUATE; ISN'T THAT CORRECT?

21 **A.** YES.

22 **Q.** AND THE TRIPLE CMS POPULATION IS WHAT, APPROXIMATELY 28,000
23 RIGHT NOW? 29,000?

24 **A.** CLOSE, 26,000 TRIPLE CMS, PROBABLY.

25 **Q.** AND THE COLEMAN SPECIAL MASTER POINTED OUT THAT THE

1 INFORMATION THAT THEY HAD FROM MONITORING THE PRISONS AND
2 LOOKING AT YOUR OWN DATA WAS THAT THE APPROPRIATE PERCENTAGE
3 WAS CLOSER TO 80 PERCENT, NOT 30 PERCENT; ISN'T THAT CORRECT?

4 **A.** THAT WAS THEIR OPINION, YES.

5 **Q.** OKAY. AND THAT WHEN THEY APPLIED THE DIFFERENCE BETWEEN
6 30 PERCENT AND 80 PERCENT TO A SINGLE INSTITUTION THEY FOUND --
7 AND THEY USED THE WORKLOAD AS CALCULATIONS -- THEY FOUND THAT
8 11 MORE CLINICIANS WERE REQUIRED FOR THAT SINGLE INSTITUTION;
9 ISN'T THAT CORRECT?

10 **A.** I DON'T KNOW THAT.

11 **Q.** AND THEY ALSO FOUND THAT THE WORKLOAD STUDY HAD OTHER
12 PROBLEMS IN ITS ASSUMPTIONS. FOR EXAMPLE, IT LEFT OUT MANY NEW
13 REQUIREMENTS THAT THE DEPARTMENT HAD AGREED NEEDED TO BE DONE
14 IN THE MENTAL HEALTH DELIVERY SYSTEM; ISN'T THAT CORRECT?

15 **A.** I'M NOT ABLE TO TESTIFY TO THE CONTENT OF THE REPORT. I CAN
16 ONLY TESTIFY TO THE RESPONSE TO THE REPORT.

17 **Q.** DO YOU RECALL THAT THE WORKLOAD STUDY DID NOT INCLUDE, FOR
18 EXAMPLE, THE RECEPTION CENTER EOP PROGRAM?

19 **A.** AS I SAID, I DON'T HAVE -- I DON'T HAVE THOSE DETAILS. I'M
20 NOT --

21 **Q.** WE WILL GET IT OUT FOR YOU.

22 THE OTHER THING THAT YOU AGREED TO DO, THE
23 DEPARTMENT AGREED TO DO IN THE WORKLOAD STUDY WAS TO USE IT
24 TWICE A YEAR TO RERUN THE WORKLOAD STUDY TO IMPROVE THE
25 ASSUMPTIONS, TO MAKE IT MORE ACCURATE OVER TIME AS A TOOL FOR

1 THE DEPARTMENT TO MAKE SURE IT HAD THE RIGHT STAFF IN PLACE; IS
2 THAT CORRECT?

3 **A.** YES.

4 **Q.** AND THE SPECIAL MASTER AND HIS TEAM HAVE WORKED WITH THE
5 DEPARTMENT IN THE LAST FEW MONTHS TO FIX THOSE INCORRECT
6 ASSUMPTIONS AND TO RERUN THE WORKLOAD STUDY; ISN'T THAT
7 CORRECT?

8 **A.** YES, WE HAD A SPECIAL PROJECT TO ADDRESS THE PROBLEMS WITH
9 THE ASSUMPTION THAT BEGAN SHORTLY AFTER THE BUDGET HEARINGS, I
10 THINK IN THE SPRING OF THIS YEAR.

11 **Q.** WERE THE 400 POSITIONS THAT THE WORKLOAD STUDY ORIGINALLY,
12 YOU REQUESTED, BASED ON THE WORKLOAD STUDY, WERE THOSE INCLUDED
13 IN THIS BUDGET THAT WAS JUST PASSED IN SEPTEMBER?

14 **A.** THE 400? YES.

15 **Q.** AND ARE THOSE POSITIONS REFLECTED ON THE CHARTS THAT YOU
16 JUST SHOWED THE COURT?

17 **A.** YOU KNOW, I DON'T KNOW IF THEY ARE OR NOT. I'D HAVE TO LOOK
18 AT THE CHARTS IN MORE DETAIL. I CAN'T TELL.

19 THE INTENT OF THE CHART IS NOT NECESSARILY TO SAY
20 THE EXTENT OF THE STAFF THAT WE REQUIRE. THE CHARTS WERE
21 INTENDED TO DEMONSTRATE PROGRESS IN ACQUIRING CLINICIANS, WHICH
22 HAS BEEN A MAJOR PROBLEM IN THIS PROGRAM.

23 AND AS WE ADD MORE VACANT POSITIONS, OF COURSE WE
24 KEEP SETTING THE GOALPOSTS OUT, AND WE STILL HAVE TO RECRUIT
25 MORE. AND SO THAT'S WHY WE HAVE A FOCUSED RECRUITING AND

1 HIRING EFFORT.

2 SO I DON'T THINK THE CHARTS -- I DON'T KNOW THAT
3 THEY INCLUDED THOSE POSITIONS OR NOT.

4 Q. YOUR CHARTS INCLUDED -- SHOWED POSITIONS THAT THE -- THEY
5 SHOW ACTUAL STAFF THAT WERE IN THE FIELD, OR ARE THEY DESIGNED
6 TO SHOW POSITIONS THAT WERE -- LET ME START THAT AGAIN.

7 WHO PREPARED THE CHARTS, MR. DEZEMBER?

8 A. WELL, THE CHARTS ARE PREPARED BY OUR MENTAL HEALTH
9 HEADQUARTERS STAFF BASED UPON DATA THAT THEY RECEIVE FROM THE
10 STATE CONTROLLER'S OFFICE AND FROM THE INSTITUTIONS IN THE
11 FIELD.

12 Q. BASED ON YOUR MEETINGS WITH THE SPECIAL MASTER AND HIS
13 EXPERTS THAT HE ASSIGNED TO WORK WITH THE DEPARTMENT TO APPLY
14 THE WORKLOAD STUDY IN THE FALL, THERE'S BEEN A DETERMINATION
15 THAT YOU NEED ADDITIONAL POSITIONS BEYOND THE 400; ISN'T THAT
16 CORRECT?

17 A. YES.

18 Q. OKAY. AND HAVE THOSE ADDITIONAL POSITIONS BEEN APPROVED BY
19 LEGISLATURE?

20 A. NO, NOT YET.

21 Q. SO WHATEVER INFORMATION YOU'RE SHOWING TO THE COURT IS
22 NOT -- DOESN'T SHOW THE POSITIONS THAT YOU CURRENTLY BELIEVE
23 ARE NECESSARY TO DELIVER MENTAL HEALTHCARE TO THIS POPULATION.

24 A. WE HADN'T INCORPORATED THEM BECAUSE WHAT WE'RE SHOWING IN
25 THE CHART ARE ESTABLISHED POSITIONS, NOT WHAT WE'RE PROJECTING.

1 WE CAN ONLY SHOW ESTABLISHED POSITIONS THAT THE LEGISLATURE HAS
2 APPROVED.

3 Q. LET ME SHOW YOU --

4 MR. BIEN: CAN YOU PUT UP, MR. JONES, CHART --
5 PLAINTIFFS' 245? DO YOU HAVE THAT?

6 LET ME -- MAY I APPROACH THE WITNESS AND GIVE HIM
7 THAT?

8 JUDGE HENDERSON: YOU MAY.

9 BY MR. BIEN:

10 Q. IT'S A LITTLE HARD TO READ, AND I APOLOGIZE FOR THAT,
11 MR. DEZEMBER. THIS INFORMATION IS A LITTLE DIFFERENT FROM THE
12 INFORMATION THAT YOU SHOWED THE COURT EARLIER, BECAUSE IT'S
13 BASED ON THE INFORMATION THAT THE DEPARTMENT REGULARLY PROVIDES
14 THE SPECIAL MASTER AND PLAINTIFFS' COUNSEL IN THIS CASE ABOUT
15 YOUR HIRING AND VACANCIES.

16 SO THIS IS THE ONLY INFORMATION THAT WE HAVE ACCESS
17 TO, AND THE SPECIAL MASTER.

18 YOU'LL SEE THAT THIS IS TAKEN FROM THE MONTHLY
19 INFORMATION THAT YOU PROVIDE, THE DEPARTMENT OF CORRECTIONS
20 PROVIDES.

21 ISN'T IT CORRECT THAT AS OF AUGUST OF 2008 THERE'S A
22 40 PERCENT VACANCY FOR PSYCHIATRISTS?

23 A. ACCORDING TO THIS REPORT, YES.

24 Q. AND YOU HAD 955 VACANT POSITIONS IN AUGUST OF 2008?

25 A. 155 WHAT?

1 Q. 955 TOTAL POSITIONS?

2 A. OH, TOTAL. TOTAL, YES.

3 Q. YES.

4 A. VACANT.

5 Q. AND SO IF YOU ADD IN THE ADDITIONAL POSITIONS THAT YOU'VE
6 BEEN AUTHORIZED --

7 JUDGE KARLTON: NOT POSITIONS; PROPOSED.

8 BY MR. BIEN:

9 Q. PROPOSED POSITIONS -- EXCUSE ME -- YOUR VACANCY RATE WOULD
10 CURRENTLY BE HIGHER. IN OTHER WORDS, YOU'VE ADDED 400 MORE
11 POSITIONS THAN WHAT IS SHOWN HERE?

12 A. I BELIEVE IT WOULD BE THAT MUCH HIGHER. I'M TRYING TO THINK
13 OF WHEN THE BUDGET WAS APPROVED.

14 Q. LATE SEPTEMBER.

15 A. SEPTEMBER.

16 Q. RIGHT.

17 A. SO IT WOULD JACK THIS NUMBER UP, YES.

18 Q. OKAY. AND IN ADDITION TO THE 400 POSITIONS, WE ALSO HAVE
19 THESE ADDITIONAL POSITIONS THAT YOU AND THE SPECIAL MASTER HAVE
20 DECIDED ARE NECESSARY UNDER THE WORKLOAD STUDY BASED ON THE
21 CHANGED ASSUMPTIONS WE HAVE DISCUSSED. AND YOU HAVEN'T EVEN
22 ASKED THE LEGISLATURE FOR THOSE POSITIONS YET, HAVE YOU?

23 A. THAT'S CORRECT. THEY ARE NOT YET ESTABLISHED.

24 Q. AND BEFORE YOU CAN START ACTUALLY HIRING FOR A POSITION,
25 YOU HAVE TO GO TO THE LEGISLATURE AND GET THEM ESTABLISHED; IS

1 THAT CORRECT?

2 **A.** WELL, WE GET THEM APPROVED IN THE BUDGET, THEN WE ESTABLISH
3 THEM, WHICH IS A PAPERWORK PROCESS.

4 **Q.** AND THEN, AFTER THAT HAPPENS, YOU HAVE TO GO TO A DIFFERENT
5 AGENCY, DEPARTMENT OF PERSONNEL ADMINISTRATION, TO GET THEM
6 APPROVED?

7 **A.** NO.

8 **Q.** DOESN'T IT TAKE A CERTAIN AMOUNT OF MONTHS FROM THE TIME
9 THE LEGISLATURE --

10 **JUDGE KARLTON:** WHY DON'T YOU DESCRIBE THE PROCESS
11 INSTEAD OF THIS BEING QUESTION AND ANSWER? TELL US WHAT IT
12 MEANS.

13 **THE WITNESS:** OKAY.

14 **JUDGE KARLTON:** YOU'VE BEEN TOLD BY THE SPECIAL
15 MASTER THAT YOU NEED SOME ADDITIONAL FOLKS. WHAT DO YOU DO?

16 **THE WITNESS:** WE WOULD SUBMIT THAT REQUEST INTO THE
17 BUDGET PROCESS WHICH RUNS THROUGH THE DEPARTMENT OF FINANCE,
18 THROUGH THE SENATE AND ASSEMBLY FINANCE STAFF TO THE BUDGET
19 COMMITTEES.

20 THEY REVIEW THEM, ARGUE ABOUT THEM. IF EVERYTHING
21 WORKS WELL, THEY APPROVE THEM. THEY ORDINARILY THEN, AS WE HAVE
22 IN CALIFORNIA, THEY GO TO A CONFERENCE COMMITTEE BECAUSE WE
23 DON'T HAVE A SOLUTION TO THE BUDGET.

24 BUT ULTIMATELY THE LEGISLATURE HAS TO SAY "YES" OR
25 WE DON'T HAVE THE POSITIONS. WHEN WE HAVE THE POSITIONS IT

1 WOULD PROBABLY TAKE US A MONTH OR MAYBE SIX TO EIGHT WEEKS TO
2 ESTABLISH THOSE POSITIONS.

3 WE WOULD -- OUR RECRUITMENT AND HIRING PROGRAM IS
4 ONGOING, SO WE WOULD CONTINUE THE RECRUITMENT PROCESS WHILE
5 WE'RE DOING THAT.

6 THEN, THERE'S SOME DELAY IN WHEN THEY SHOW UP IN THE
7 STATE CONTROLLER'S OFFICE INFORMATION. BUT WE DO KNOW WHAT WE
8 HAVE AT THAT POINT, AND WE CAN BEGIN TO TRACK IT. BUT WE USE
9 THE STATE CONTROLLER'S OFFICE INFORMATION CONVENIENTLY WHEN
10 IT'S AVAILABLE, BECAUSE IT'S SOMETHING EVERYBODY CAN HAVE
11 ACCESS TO. AND IT IS THE OFFICIAL INFORMATION FOR THE STATE ON
12 WHAT STATE EMPLOYEES EXIST.

13 **JUDGE KARLTON:** IS IT CORRECT, THEN, THAT IF THE
14 LEGISLATURE ESTABLISHES IT THAT'S THE END? YOU DON'T HAVE TO
15 GO THROUGH ANY OTHER BUREAUCRACY TO DO ANYTHING?

16 **THE WITNESS:** NO, WE DON'T.

17 **JUDGE KARLTON:** ALL RIGHT.

18 **BY MR. BIEN:**

19 **Q.** IS THE PROCESS ONCE THE LEGISLATURE ESTABLISHES THE
20 POSITION -- AS I UNDERSTAND, BECAUSE DEFENDANTS HAVE EXPLAINED
21 THAT TO US IN NUMEROUS MEETINGS, YOU GET NEW POSITIONS, AND YET
22 A CMO AT A PRISON ISN'T ALLOWED TO HIRE FOR THEM YET. ISN'T
23 THERE A PROCESS OF ALLOCATING THE POSITIONS TO EACH PRISON?

24 **A.** SURE. BUT THAT'S WHAT WE DO.

25 **Q.** THAT TAKES SOME TIME?

1 **A.** IT TAKES A LITTLE BIT OF TIME, BUT NOT A WHOLE LOT,
2 PARTICULARLY WHEN NOW YOU HAVE THE WORKLOAD STUDY BECAUSE YOU
3 CAN DETERMINE FAIRLY WELL WHAT THE INSTITUTIONS REQUIRE.

4 **Q.** AND YOU'VE CONTINUED TO HAVE -- ONCE YOU GET THESE
5 POSITIONS, YOU'VE CONTINUED TO HAVE DIFFICULTIES IN RECRUITING
6 AND RETAINING CLINICIANS; ISN'T THAT CORRECT?

7 **A.** WELL, IT --

8 **Q.** IS THAT TOO BROAD? LET ME --

9 **A.** IT MAY BE TOO BROAD. I DON'T KNOW THAT WE HAVE DIFFICULTY
10 IN DOING THAT. WE HAVE NOT HAD A HUNDRED PERCENT SUCCESS IN
11 FILLING ALL OF OUR POSITIONS. THERE ARE LOTS OF REASONS FOR
12 THAT.

13 BUT WE DO HAVE AN ACTIVE RECRUITMENT AND HIRING
14 PROGRAM THAT IS MAKING HEADWAY. THERE ARE MORE RECENT REPORTS
15 THAN THE ONE YOU'VE GIVEN ME HERE.

16 **Q.** THERE ARE CERTAIN PARTS OF THE STATE THAT ARE PARTICULAR
17 CHALLENGES FOR THE DEPARTMENT TO HIRE CLINICIANS; ISN'T THAT
18 CORRECT?

19 **A.** YES.

20 **Q.** AND THERE ARE CERTAIN CATEGORIES OF CLINICIANS, SUCH AS
21 PSYCHIATRISTS, THAT ARE PARTICULARLY DIFFICULT FOR THE
22 DEPARTMENT TO RETAIN AND HIRE.

23 **A.** YES, THAT'S TRUE.

24 **Q.** YOU TESTIFIED THAT COLEMAN CLASS MEMBERS ARE NOT IMPACTED
25 BY OVERCROWDING AS MUCH AS OTHER PRISONERS; IS THAT CORRECT?

1 **JUDGE KARLTON:** ACTUALLY, HE'S TALKING ABOUT HIGHER
2 LEVELS OF CARE.

3 **THE WITNESS:** ONLY THOSE IN THE -- WHAT I WOULD CALL
4 THE RESIDENTIAL TREATMENT PROGRAMS WHERE THEY ARE SEGREGATED
5 FROM GENERAL POPULATION.

6 **BY MR. BIEN:**

7 **Q.** SO YOU AGREE THAT THE VAST MAJORITY OF THE COLEMAN CLASS,
8 85 PERCENT THE TRIPLE CMS PRISONERS ARE IMPACTED BY THE
9 OVERCROWDING TO THE SAME EXTENT AS EVERYONE ELSE?

10 **A.** TO SOMEWHAT LESSER DEGREE, BECAUSE WE DON'T -- YOU KNOW, IN
11 THIS SITUATION OF OVERCROWDING IT'S HARD TO CONTROL ENTIRELY.
12 BUT WE DON'T WANT OUR TRIPLE CMS POPULATION TO GO INTO A TRIPLE
13 BUNKED GYM, FOR EXAMPLE.

14 SO WE ATTEMPT TO CONTROL THAT. SO A SMALLER
15 PERCENTAGE OF OUR TRIPLE CMS WOULD BE IN THAT KIND OF HOUSING
16 AS OPPOSED TO SOMEONE WHO IS NOT PART OF THE CASELOAD. BUT
17 THERE ARE TRIPLE CMS HOUSED, NEVERTHELESS, IN WHAT YOU CALL
18 "ALTERNATIVE HOUSING SPACES" THAT ARE RETROFITTED FOR HOUSING
19 THAT WERE NOT DESIGNED FOR IT.

20 **Q.** IN PARAGRAPH 78 OF YOUR WITNESS STATEMENT YOU STATE THAT
21 SOME 80 -- SOME 20 -- YOU SAY 80 PERCENT OF THE TRIPLE CMS
22 CLASS ARE NOT IN THESE NONTRADITIONAL BEDS; IS THAT CORRECT?

23 **A.** ROUGHLY. WE THINK ABOUT 20 PERCENT ARE AT ANY GIVEN TIME.

24 **Q.** SO 20 PERCENT ARE?

25 **A.** RIGHT.

1 Q. AND WOULD YOU AGREE THAT 20 PERCENT OF THE TRIPLE CMS CLASS
2 TODAY IS MORE THAN 5,000 PRISONERS?

3 A. YES.

4 Q. SO YOU AGREE THAT AS OF TODAY, AS YOU SIT HERE TODAY,
5 NOVEMBER OF 2008, 5,000 --

6 JUDGE KARLTON: DECEMBER, BUT WHO'S COUNTING?

7 MR. BIEN: IT'S DECEMBER NOW. EXCUSE ME.

8 BY MR. BIEN:

9 Q. IN DECEMBER OF 2008, 5,000 COLEMAN CLASS MEMBERS ARE HOUSED
10 IN WHAT YOU WOULD CALL "BAD BEDS" OR "NONTRADITIONAL BEDS."

11 A. YES.

12 Q. YOU'VE, IN FACT, CALLED THEM "UGLY BEDS" IN A REPORT THAT
13 YOU WROTE -- HELPED WRITE TO GOVERNOR SCHWARZENEGGER; ISN'T
14 THAT CORRECT?

15 A. WHICH REPORT?

16 Q. THE DEUKMEJIAN REPORT?

17 A. OH, THE INDEPENDENT REVIEW PANEL.

18 Q. INDEPENDENT REVIEW PANEL.

19 A. YES, THERE ARE EUPHEMISTIC TERMS FOR THEM. THEY ARE BAD
20 BEDS. THEY ARE UGLY BEDS. THEY ARE ALTERNATIVE BEDS. THEY
21 ARE PLACES WHERE HOUSING AN INMATE WAS NOT DESIGNED OR INTENDED
22 WHEN THE PLACE WAS BUILT. AND SO THEY ARE GYMNASIUMS. THEY ARE
23 DAYROOMS, THINGS LIKE THAT.

24 Q. ARE YOU AWARE OF ANY PROGRAM POLICY WRITTEN STATEMENT THAT
25 EXCLUDES TRIPLE CMS INMATES FROM THESE BAD BEDS?

1 **A.** I DON'T THINK WE HAVE A WRITTEN POLICY ON THAT. IT'S A
2 MATTER OF COOPERATION BETWEEN OUR MENTAL HEALTH FOLKS AND THE
3 CLASSIFICATION AND HOUSING PEOPLE IN THE DIVISION OF ADULT
4 INSTITUTIONS.

5 **Q.** NOW, I'M TALKING ABOUT THE TRIPLE C RIGHT NOW. YOU SAY
6 THERE'S SOME POLICY?

7 **A.** NO, I SAID I DON'T THINK THERE'S A WRITTEN POLICY DIRECTIVE
8 ON THAT, AS FAR AS I KNOW. I COULD BE WRONG, BUT I DO KNOW AS A
9 MATTER OF COOPERATIVE RELATIONSHIP, IF YOU WILL, BETWEEN THE
10 MENTAL HEALTH ORGANIZATION AND THE DIVISION OF ADULT
11 INSTITUTIONS THAT IF -- THAT A CASELOAD INMATE IS NOT
12 NECESSARILY TREATED BY A NONCASELOAD INMATE IN THIS REGARD.

13 **Q.** BUT 5,000 OF THEM ARE THERE RIGHT NOW.

14 **A.** WELL, YEAH. WE'RE 200 PERCENT OVERCROWDED.

15 **Q.** AND I'LL REPRESENT TO YOU, AND YOU CAN LOOK AT THE -- HAVE
16 YOU LOOKED AT THE DECLARATIONS OF DR. HANEY OR DR. STEWART?

17 **A.** NO.

18 **Q.** YOU UNDERSTAND THAT THOSE ARE EXPERTS WORKING FOR THE
19 PLAINTIFFS IN THIS CASE?

20 **A.** I UNDERSTAND THAT, YES.

21 **Q.** AND THEY TOURED THE PRISONS AND STUDIED THE PRISONS AND
22 EXAMINED MEDICAL RECORDS AND LOOKED AT THESE ISSUES, AND THEY
23 FIRST ISSUED THEIR REPORTS IN NOVEMBER OF 2007?

24 DO YOU KNOW THAT?

25 **A.** I DON DON'T KNOW THAT, NO.

1 Q. YOU STILL HAVEN'T READ THEM?

2 A. I DON'T KNOW HOW THEY QUALIFY AS CONSULTANTS, AND I HAVEN'T
3 READ THEIR REPORTS.

4 Q. AND YOU HAVEN'T READ DR. PACKER'S REPORTS, EITHER?

5 A. NO.

6 Q. AND HE WORKS FOR YOU?

7 A. HE WORKS FOR THE DEPARTMENT.

8 Q. IN YOUR DEPOSITION THAT WAS TAKEN IN AUGUST, YOU STATED
9 YOU'D BE SURPRISED IF OVER 2000 COLEMAN CLASS MEMBERS WERE IN
10 BAD BEDS.

11 A. UM-HUM.

12 MS. TILLMAN: OBJECTION, MISSTATES THE TESTIMONY.

13 JUDGE HENDERSON: HE JUST AGREED WITH YOU.

14 JUDGE KARLTON: I DON'T THINK YOU HAVE TO GO ANY
15 FURTHER. THE WITNESS HAS AGREED THAT'S WHAT HE SAID.

16 MR. BIEN: OKAY.

17 JUDGE KARLTON: I'M SORRY.

18 IS THAT WHAT YOU SAID, SIR?

19 THE WITNESS: YES. YES.

20 BY MR. BIEN:

21 Q. YOU ALSO SAID IF IT WAS MORE THAN THAT YOU'D INVESTIGATE
22 THE ISSUE, HAVE YOUR STAFF INVESTIGATE THE ISSUE.

23 A. WELL, WE HAVE ADDRESSED THE ISSUE IN THE DIALOGUE THAT I
24 HAVE MENTIONED. AND WITH THAT PARTICULAR GROUP OF CASELOAD
25 INMATES C3MS, THERE ARE VERY FEW OPTIONS, IF ANY.

1 Q. WE'RE HOPING THE COURT WILL COME UP WITH AN OPTION.

2 YOU'RE AWARE, MR. DEZEMBER, THAT NOT ONLY ARE THERE
3 TRIPLE CMS INMATES HOUSED IN THOSE BAD BEDS, BUT THERE ARE ALSO
4 EOP INMATES HOUSED IN THOSE BAD BEDS.

5 A. I'M NOT AWARE OF THAT.

6 Q. IF YOU'D READ THE EXPERT REPORTS YOU'D SEE TESTIMONY ABOUT
7 THOSE SUBJECTS.

8 I'M GOING TO READ TO YOU FROM DR. HANEY'S REPORT,
9 PARAGRAPH 110, ABOUT CIM. YOU'VE BEEN TO THE CIM PRISON IN THE
10 LAST YEAR?

11 A. NO, I HAVE NOT.

12 Q. THIS IS PARAGRAPH 110:

13 "MANY OF THE HOUSING UNITS THAT HAVE BEEN
14 DEvised AT CIM TO ACCOMMODATE SEVERE OVERCROWDING
15 THAT PLAGUES THE FACILITY ARE SHOCKING TO SEE. FOR
16 EXAMPLE, THE UNITS I SAW AT CIM WERE BUNKS THAT HAVE
17 BEEN INSTALLED IN THE DAYROOMS ARE VERY TROUBLING IN
18 TERMS OF THE INADEQUATE SPACE AFFORDED THE

19 PRISONERS,

20 THE DEGRADING AND DEGRADED NATURE OF A NUMBER OF THE
21 HOUSING UNITS THEMSELVES AND THE WAY THE PRISONERS
22 ARE ENCLOSED INSIDE THE DAYROOMS OF SOME OF THEM. IN
23 FACT, THE DAYROOM DORMITORIES IN THE CALOOSA UNIT

24 ARE

25 UNLIKE ANYTHING I'VE SEEN IN ANY OTHER PRISON SYSTEM

1 I HAVE VISITED. THE MAKESHIFT DAYROOM DORMITORY
2 HOLDS SOME 38 BEDS AND HOUSES TRIPLE CMS AND EOP
3 PRISONERS TOGETHER. HOWEVER, THE DAYROOM ITSELF IS
4 ACTUALLY FENCED IN GIVING THE VERY DISTINCT
5 IMPRESSION THAT THE ENTIRE DORMITORY IS A LARGE
6 CAGE,

7 A CAGED IN DORMITORY WITHIN A PRISON HOUSING UNIT.
8 DURING THE TOUR WE WERE TOLD THAT THE UNIT WAS CAGED
9 BECAUSE OF A RIOT THAT OCCURRED SEVERAL YEARS AGO AT
10 CIM THAT RESULTED IN INJURIES TO THE STAFF AND
11 PRISONERS. THE UNIT, WHICH IS A GENERAL POPULATION
12 UNIT WITHIN THE RECEPTION CENTER FELT VERY MUCH LIKE
13 AN ADMINISTRATIVE SEGREGATION UNIT."

14 **MS. TILLMAN:** OBJECTION, NO PENDING QUESTION.

15 **JUDGE KARLTON:** I DON'T KNOW WHAT THAT WAS.

16 NOW THAT YOU'VE READ SOMETHING THAT WE'VE ALL READ,
17 WHAT IS IT THAT YOU WANT TO ASK HIM?

18 **BY MR. BIEN:**

19 **Q.** THE QUESTION IS: HAVE YOU BEEN INFORMED BY ANYONE THAT EOP
20 PRISONERS ARE CURRENTLY BEING HOUSED IN WHAT YOU CALL "BAD" OR
21 "NONTRADITIONAL BEDS"?

22 **A.** NO.

23 **Q.** ARE YOU AWARE OF ANY POLICY --

24 **JUDGE HENDERSON:** HOW MUCH LONGER ARE YOU GOING WITH
25 YOUR -- JUST GIVE ME AN ESTIMATE. WE'RE THINKING OF TAKING A

1 BREAK.

2 **MR. BIEN:** I CAN PROBABLY DO ANOTHER HALF HOUR IF
3 THE COURT WOULD PERMIT.

4 **JUDGE HENDERSON:** WELL, YOUR OWN ESTIMATE WAS AN
5 HOUR AND 20 MINUTES.

6 **MR. BIEN:** AM I OVER?

7 **JUDGE HENDERSON:** WE'RE BEYOND THAT NOW. BUT LET'S
8 TAKE A 15-MINUTE RECESS.

9 **MR. BIEN:** OKAY.

10 (THEREUPON, A RECESS WAS TAKEN.)

11 **JUDGE HENDERSON:** I CONFUSED 120 MINUTES WITH AN
12 HOUR AND 20 MINUTES, MR. BIEN, SO YOUR ESTIMATE OF ANOTHER 30
13 MINUTES OR SO IS CORRECT. I APOLOGIZE.

14 **JUDGE REINHARDT:** THAT DOESN'T MEAN YOU HAVE TO TAKE
15 IT.

16 **JUDGE HENDERSON:** RIGHT. YOU ARE NOT OBLIGED TO
17 TAKE IT.

18 **BY MR. BIEN**

19 **Q** MR. DEZEMBER, YOU TALKED ABOUT COLEMAN CLASS MEMBERS WHO
20 ACTUALLY ACCESS HIGHER LEVELS OF CARE, LIKE EOP PROGRAMS OR DMH
21 PROGRAMS, NOT BEING IMPACTED BY OVERCROWDING; IS THAT CORRECT?

22 **A** I DIDN'T SAY THEY WEREN'T IMPACTED. I SAID THEY WERE
23 IMPACTED LESS THAN PEOPLE LIVING IN GENERAL POPULATION.

24 **Q** YOU'D AGREE THEY'RE IMPACTED TO THE EXTENT THERE'S A
25 SHORTAGE OF THOSE BEDS AND THEY HAVE TO WAIT LONGER THAN

1 PROGRAM GUIDE STANDARDS TO ACCESS THOSE BEDS?

2 **A** YES.

3 **Q** AND YOU AGREE THAT WHEN PRISONERS TODAY IN OUR SYSTEM ARE

4 WAITING FOR THESE HIGHER LEVELS OF CARE, SOME OF THEM ARE

5 HOUSED IN WHAT'S CALLED ALTERNATIVE SETTINGS, SETTINGS THAT ARE

6 NOT APPROVED BY THE PROGRAM GUIDE?

7 **A** YES.

8 **Q** MR. DEZEMBER, HAVE YOU EVER WORKED IN A PRISON?

9 **A** DO YOU MEAN AS A CORRECTIONAL OFFICER OR --

10 **Q** YES.

11 **A** NOT AS A CORRECTIONAL OFFICER, NO.

12 **Q** HAVE YOU EVER WORKED AS A WARDEN?

13 **A** NOT AS A WARDEN.

14 **JUDGE REINHARDT:** WHAT HAVE YOU WORKED AS IN THE
15 PRISONS?

16 **THE WITNESS:** IN THE PRISONS I HAVE SPENT, I THINK,
17 IF I RECALL CORRECTLY, SIX YEARS AS THE CHIEF HEARING OFFICER,
18 AND ALSO THE EXECUTIVE OFFICER OF THE STATE PAROLE BOARD, AND I
19 WAS IN THE PRISONS ALMOST ALL THE TIME.

20 **BY MR. BIEN**

21 **Q** AND WHEN WAS THAT?

22 **A** THAT WAS 1977 OR 1976 TO 1982.

23 **Q** SINCE THEN HAVE YOU HAD WORK EXPERIENCE WHERE YOUR WORK
24 RESPONSIBILITY WAS PRIMARILY INSIDE OF PRISONS?

25 **A** NO, NOT PRIMARILY.

1 Q OKAY. IN THE LAST YEAR, HOW MANY PRISONS HAVE YOU
2 PERSONALLY VISITED?

3 A THREE.

4 Q WHICH ONES?

5 A CSP SACRAMENTO, CALIFORNIA MEDICAL FACILITY, AND THE CSP
6 LANCASTER IN SOUTHERN CALIFORNIA.

7 Q SO YOU HAVEN'T SEEN CURRENT CONDITIONS AT THE OTHER 30?

8 A THAT'S CORRECT.

9 Q WHEN YOU TOURED THE PRISONS, YOU TOURED, YOU WENT THERE FOR
10 MEETINGS. WERE YOU DOING AN INSPECTION OF THE PRISONS?

11 A I WAS DOING A NUMBER OF THINGS WHEN I WENT TO THE PRISONS.
12 MEETING WITH STAFF, MEETING WITH THE MANAGEMENT, LOOKING AT THE
13 SPACE WITHIN WHICH THEY CONDUCT THE PROGRAMS.

14 Q AND EACH ONE OF THOSE -- CMF, FOR EXAMPLE, HAS A REQUEST
15 FOR TREMENDOUS INCREASE IN ITS TREATMENT SPACE THAT IS NOW
16 PENDING; IS THAT CORRECT?

17 A WHAT SPACE?

18 Q ISN'T THERE A PROJECT THAT YOU HAVE --

19 A OH, FOR TREATMENT SPACE? YES, THERE IS A PROJECT FOR
20 PROVIDING OFFICE AND TREATMENT SPACE.

21 Q AND YOU AGREE THAT PROJECT IS A GOOD PROJECT?

22 A YES.

23 Q IT'S NECESSARY IN ORDER TO DELIVER THE CARE AT THAT
24 INSTITUTION THAT THE PROGRAM GUIDE REQUIRES?

25 A WELL, I THINK IT'S NECESSARY TO DELIVER A SOUND MENTAL

1 HEALTH PROGRAM CONSISTENT WITH OUR PROGRAM GUIDE. I DON'T
2 FAULT THE STAFF THERE AT ALL. I BELIEVE THEY ARE WORKING
3 DILIGENTLY TO PROVIDE CARE TO THESE INMATES AND CONSISTENT WITH
4 THE REQUIREMENTS THAT WE'VE SET FORTH.

5 **Q** WHEN YOU SAID IN YOUR TESTIMONY THAT YOU HAVE IMPLEMENTED
6 THE PROGRAM GUIDES, IS IT YOUR -- IS IT YOUR TESTIMONY THAT THE
7 PRISON SYSTEM AS IT'S CURRENTLY OPERATING IS OPERATING IN
8 COMPLIANCE WITH EACH AND EVERY ONE OF THE PROGRAM GUIDE
9 STANDARDS?

10 **A** I DON'T -- I DON'T THINK SO, CERTAINLY NOT IN ALL THE
11 PRISONS, BUT TO A CERTAIN DEGREE THEY ARE, AND MORE SO IN SOME
12 PRISONS THAN OTHERS. THERE ARE SOME BETTER OPERATING PRISONS
13 WITHIN THE SYSTEM.

14 **Q** YOU GET -- DO YOU RELY ON THE SPECIAL MASTER'S REPORTS AS
15 ONE OF YOUR MAJOR SOURCES OF INFORMATION CONCERNING COMPLIANCE
16 WITH PROGRAM GUIDE STANDARDS?

17 **A** THAT, AND THE EXIT CONFERENCES THAT HIS MONITORS CONDUCT
18 AFTER THEY VISITED A PRISON. THEY ARE THE MOST CONSISTENT
19 MONITORING THAT'S HAPPENING NOW IN OUR PRISON SYSTEM FOR MENTAL
20 HEALTH.

21 **Q** WOULD YOU AGREE THAT INFORMATION IS BETTER FOR YOU TO RELY
22 ON THAN THE INFORMATION YOU'RE GETTING FROM YOUR NORMAL
23 REPORTING AS A PRISON HEALTHCARE ADMINISTRATOR?

24 **A** IT DEPENDS ON WHAT THE INFORMATION IS. USUALLY THE EXIT
25 CONFERENCES ARE FOCUSED ON PARTICULAR ELEMENTS THAT WERE

1 EVALUATED OR REVIEWED OR DISCOVERED AT THAT -- FROM THAT SITE.
2 THE REPORTS OF THE SPECIAL MASTER ARE OFTEN -- THEY TAKE PLACE
3 MONTHS, SOMETIMES A YEAR LATER THAN THE ACTUAL VISITS. SO --
4 BUT SUFFICE TO SAY I RELY ON THEM A LOT.

5 **Q** YOU ARE AWARE THE SPECIAL MASTER IN HIS MOST RECENT REPORT,
6 THE 20A REPORT -- HAVE YOU READ THAT REPORT?

7 **A** THE 20TH REPORT? I HAVE READ IT, YES.

8 **Q** AND YOU ARE AWARE THAT THE SPECIAL MASTER HAS FOUND
9 SIGNIFICANT DEFICIENCIES IN THE DEPARTMENT'S ABILITY TO ACCESS
10 HIGHER LEVELS OF CARE FOR PRISONERS WHO NEED THAT?

11 **A** YES, THAT'S IN THE REPORT THAT THAT'S A CONTINUING ISSUE.

12 **Q** AND HAS DOCUMENTED THE INADEQUACIES OF OFFICE AND TREATMENT
13 SPACE THAT YOU HAVE TALKED ABOUT HERE TODAY?

14 **A** YES.

15 **Q** AND YOU ALSO FOUND THAT THE DEPARTMENT CONTINUES TO USE
16 THESE ALTERNATIVE SITES IN PRISONS, HOLDING CELLS, OHU, OTHER
17 SITES THAT ARE NOT APPROVED FOR THE PURPOSE THE DEPARTMENT IS
18 USING THEM, AND THAT USE IS CONTINUING?

19 **A** YES, THAT IS THE CASE.

20 **Q** OKAY. OKAY. AND HE FOUND THAT, FOR EXAMPLE, SUICIDE WATCH
21 IS TAKING PLACE IN SOME PRISONS IN HOLDING CELLS, RATHER THAN
22 IN MENTAL HEALTH CRISIS BEDS?

23 **A** YOU KNOW, I'D HAVE TO KNOW WHAT THE HOLDING CELL IS, AND
24 I'M NOT SURE WHAT THAT IS, BUT IT CAN OCCUR WHERE IT NEEDS TO
25 OCCUR. I DON'T THINK I'VE TESTIFIED THAT OUR SPACE IS ADEQUATE

1 FOR THESE HIGHER LEVELS OF CARE. I'VE TESTIFIED TO THE
2 CONTRARY. YET THE DEMAND FOR SERVICE IS STILL THERE, AND
3 THAT'S WHY I COMMEND THE STAFF THAT WE HAVE FOR THEIR ABILITY
4 TO PROVIDE THAT UNDER THOSE CONDITIONS.

5 **Q** THE SPECIAL MASTER ALSO FOUND THAT THE STAFF, IN ATTEMPTING
6 TO DO THEIR JOB, HAS BEEN FORCED TO HAVE NUMEROUS MENTAL HEALTH
7 CONTACTS WITH PATIENTS IN NON-CONFIDENTIAL SETTINGS; ARE YOU
8 AWARE OF THAT?

9 **A** THAT'S ALSO A PROBLEM, YES.

10 **Q** OKAY. AND THE SPECIAL MASTER'S MADE A RECOMMENDATION TO
11 THE DEPARTMENT AS PART OF THE 20A REPORT TO -- FOR THE
12 DEPARTMENT TO TRACK USE OF THESE ALTERNATIVE SITES TO MAKE SURE
13 THE DEPARTMENT KNOWS HOW MANY PRISONERS ARE FORCED TO BE HELD
14 IN HOLDING CELLS AND FOR HOW LONG. ARE YOU AWARE OF THAT
15 RECOMMENDATION?

16 **A** YES.

17 **Q** ISN'T IT CORRECT THAT THE SPECIAL MASTER IN THE PAST, THE
18 PRIOR SPECIAL MASTER, MR. KEATING, HAS MADE SIMILAR
19 RECOMMENDATIONS TO THE DEPARTMENT THAT HAVE NOT BEEN FOLLOWED?

20 **A** THAT I'M NOT SURE OF.

21 **MR. BIEN:** I HAVE NO FURTHER QUESTIONS.

22 **JUDGE HENDERSON:** DOES CCPOA HAVE ANY QUESTIONING OF
23 THIS WITNESS?

24 **MS. LEONARD:** NO FURTHER QUESTIONS, YOUR HONOR.

25 **JUDGE HENDERSON:** REDIRECT?

1 **MS. TILLMAN:** THANK YOU, YOUR HONOR.

2 **REDIRECT EXAMINATION BY MS. TILLMAN**

3 **BY MS. TILLMAN**

4 **Q** MR. DEZEMBER, IN THE COURSE OF PROVIDING HOUSING FOR THE
5 MENTALLY ILL WITHIN THE DEPARTMENT OF CORRECTIONS AND
6 REHABILITATION, ARE THESE MENTALLY ILL PATIENTS ALSO PROVIDED
7 WITH FOOD?

8 **A** YES.

9 **Q** AND THEY ARE PROVIDED WITH MENTAL HEALTHCARE?

10 **A** YES.

11 **Q** AND IN THE COURSE OF PROVIDING FOOD AND SHELTER AND CARE TO
12 THE MENTALLY ILL, ARE YOU AWARE THAT SOMETIMES THE LOWEST LEVEL
13 OF THE MENTALLY ILL, THE 3CMS, OR THOSE PATIENTS WHO NEED THE
14 LEAST AMOUNT OF CARE ARE HOUSED IN TRIPLE BUNK AREAS?

15 **A** I KNOW THAT, YES, SOME OF THEM ARE.

16 **Q** HAVE YOU EVER RECEIVED ANY REPORT FROM THE COLEMAN SPECIAL
17 MASTER CRITICIZING THE PLACEMENT OF THESE PATIENTS, THESE
18 PATIENTS AT THE LOWEST LEVEL OF MENTAL HEALTHCARE, INTO TRIPLE
19 BUNK AREAS?

20 **A** NOT -- I'M NOT AWARE OF ANY SPECIFICALLY, NO.

21 **Q** HAVE YOU EVER RECEIVED ANY ORDER FROM THE COLEMAN COURT
22 DIRECTING THE DEPARTMENT OF CORRECTIONS AND REHABILITATION TO
23 REMOVE THESE PATIENTS OF THE MENTAL HEALTHCARE SYSTEM, THE 3CMS
24 OR ESSENTIALLY SPECIFIC CARE TO REMOVE THEM FROM THE TRIPLE
25 BUNK AREAS?

1 **A** NO.

2 **Q** DO YOU --

3 **JUDGE KARLTON:** YOU REALIZE TECHNICALLY THERE ISN'T
4 ANY WAY YOU COULD COMPLY WITH SUCH AN ORDER IN ANY EVENT; ISN'T
5 THAT TRUE, MR. DEZEMBER?

6 **THE WITNESS:** WELL, YOU KNOW, YOUR HONOR, I HAVEN'T
7 REALLY THOUGHT ABOUT IT, BUT I'D HAVE TO SAY THAT WAS VERY
8 LOGICALLY TRUE.

9 **BY MS. TILLMAN**

10 **Q** IN YOUR OPINION, HAS THE DEPARTMENT OF CORRECTIONS AND
11 REHABILITATION BEEN ABLE TO DELIVER ADEQUATE CARE TO THESE
12 INMATES AT THE 3CMS LEVEL WHO ARE HOUSED IN THE TRIPLE BUNK
13 AREAS?

14 **MR. BIEN:** OBJECTION. BEYOND HIS EXPERTISE.

15 **JUDGE HENDERSON:** I WILL ALLOW IT, COUNSEL.

16 **THE WITNESS:** WOULD YOU ASK IT AGAIN, PLEASE.

17 **BY MS. TILLMAN**

18 **Q** IN YOUR OPINION, AS THE ADMINISTRATOR OF THE HEALTHCARE
19 PROGRAM FOR THE DEPARTMENT OF CORRECTIONS AND REHABILITATION,
20 HAVE YOU BEEN ABLE TO DELIVER ADEQUATE MENTAL HEALTHCARE TO
21 THOSE 3CMS INMATES IN TRIPLE BUNK AREAS?

22 **A** ARE THEY ABLE TO, IS THAT WHAT YOU SAID?

23 **Q** YES.

24 **A** YES.

25 **Q** WE'VE ALSO HEARD ABOUT WAIT LISTS FOR MENTAL HEALTH CRISIS

1 BEDS. CAN YOU TAKE A LOOK AT EXHIBIT 1164-2? WE'LL PUT IT ON
2 THE SCREEN FOR YOU.

3 **MS. TILLMAN:** I'M SORRY. IF I COULD HAVE A MOMENT,
4 YOUR HONOR, WITH THE CHART? LET ME CORRECT MYSELF. THAT'S
5 EXHIBIT 1290. IF WE COULD HAVE 1290 PUT UP ON THE SCREEN?

6 (DOCUMENT DISPLAYED.)

7 **BY MS. TILLMAN**

8 **Q** LOOKING AT EXHIBIT 1290, WE CAN SEE THE WAIT LISTS FOR
9 MENTAL HEALTH CRISIS BEDS, CORRECT?

10 **MR. BIEN:** YOUR HONOR, THAT'S NOT WHAT THIS EXHIBIT
11 IS.

12 **THE WITNESS:** THIS LOOKS LIKE EOP PSU CRISIS BED.
13 IT LOOKS LIKE ALL OF THE --

14 **BY MS. TILLMAN**

15 **Q** MOVING TO PAGE 4 OF THAT EXHIBIT, WE SEE THE MENTAL HEALTH
16 CRISIS BED WAIT LIST?

17 **A** THIS IS THE MENTAL HEALTH CRISIS BED WAIT LIST, YES.

18 **Q** LOOKING AT THAT CHART, DO YOU HAVE ANY OPINION AS TO
19 WHETHER OR NOT THE MENTAL HEALTH CRISIS BED WAIT LIST HAS
20 IMPROVED?

21 **JUDGE KARLTON:** IS THAT ACCURATE?

22 **THE WITNESS:** THIS?

23 **JUDGE KARLTON:** YES.

24 **THE WITNESS:** YES, SIR.

25 **JUDGE KARLTON:** IF WE GO BACK TO THE WAIT LIST

1 REPORT -- WELL, GO AHEAD. I DON'T WANT TO -- GO AHEAD,
2 MS. TILLMAN.

3 **THE WITNESS:** THIS IS -- THIS CHART DEMONSTRATES
4 IMPROVEMENT COINCIDING, I THINK, WITH THE OPENING OF OUR
5 CALIFORNIA MEDICAL FACILITY MENTAL HEALTH CRISIS BED.

6 **BY MS. TILLMAN**

7 **Q** AND THAT OPENED IN JUNE 2008; IS THAT CORRECT?

8 **A** EXCUSE ME?

9 **Q** DID THAT OPEN IN JUNE 2008?

10 **A** YES.

11 **Q** EVEN WITH THE OPENING OF THE MENTAL HEALTH CRISIS BED UNIT
12 AT CALIFORNIA MEDICAL FACILITY, THERE APPEARS TO STILL BE A
13 WAIT LIST FOR MENTAL HEALTH CRISIS BEDS, CORRECT?

14 **A** YES.

15 **Q** AND ARE THERE REASONS THAT THERE STILL REMAIN A WAIT LIST
16 FOR MENTAL HEALTH CRISIS BEDS?

17 **A** WELL, THE DEMAND -- ALL I CAN SAY IS DEMAND EXCEEDS THE
18 SUPPLY OF THOSE BEDS.

19 **Q** AND WE MOVE TO PAGE 5 OF EXHIBIT 1290. WE SEE THE ASH WAIT
20 LIST, CORRECT?

21 **A** YES.

22 **Q** AND ASH PROVIDES INTERMEDIATE CARE BEDS?

23 **A** EXCUSE ME?

24 **Q** DOES ASH PROVIDE INTERMEDIATE CARE BEDS?

25 **A** YES.

1 Q AND, AGAIN, WE SEE A MARKED DECREASE IN THAT WAIT LIST,
2 CORRECT?

3 A YES, CORRECT.

4 Q MOVING TO PAGE 7, THE SALINAS VALLEY PSYCHIATRIC PROGRAM
5 WAIT LIST, DO WE SEE ANY CHANGE IN THE WAIT LIST FOR THE
6 INPATIENT BEDS PROVIDED BY SALINAS VALLEY PSYCHIATRIC PROGRAM
7 OVER THE PAST FOUR MONTHS?

8 A VERY LITTLE.

9 Q WHY IS THAT?

10 A AGAIN, THERE'S A LARGE DEMAND THERE THAT EXCEEDS THE
11 AVAILABLE BEDS.

12 Q WHAT IS THE DEMAND FOR, EXACTLY?

13 A IT'S FOR HIGH CUSTODY INTERMEDIATE CARE FOR SEVERELY
14 MENTALLY ILL INMATES.

15 Q AND THOSE INMATES ARE AMENABLE TO PLACEMENT ONLY AT SALINAS
16 VALLEY PSYCHIATRIC PROGRAM BECAUSE OF THEIR HIGH CUSTODY
17 STATUS?

18 A FOR THE MOST PART.

19 Q IN TERMS OF THE TREATMENT AND CARE OF HIGH CUSTODY INMATES
20 WITH MENTAL ILLNESS ISSUES, ARE YOU FAMILIAR WITH THE USE OF
21 THERAPEUTIC MODULES?

22 A YES.

23 MR. BIEN: BEYOND THE SCOPE OF THE DIRECT -- CROSS.
24 EXCUSE ME.

25 MS. TILLMAN: YOUR HONOR, I WANTED TO GET INTO THE

1 CONTRAST BETWEEN HOLDING CELLS AND THERAPEUTIC MODULES, IF I
2 MIGHT PROCEED ON THAT BASIS? HOLDING CELLS WERE DISCUSSED ON
3 CROSS-EXAM.

4 **JUDGE HENDERSON:** DISCUSSING AND OPENING -- GO ON.
5 GO ON.

6 **BY MS. TILLMAN**

7 **Q** MR. DEZEMBER, ARE YOU FAMILIAR WITH ANY DIFFERENCES OR
8 SIMILARITIES -- LET ME STRIKE THAT.

9 MR. DEZEMBER, CAN YOU EXPLAIN TO THE COURT WHAT A
10 HOLDING CELL IS VERSUS WHAT A THERAPEUTIC MODULE IS?

11 **A** WELL, HOLDING CELLS MAY VARY FROM PRISON TO PRISON. IT'S A
12 PLACE WHERE THEY'RE KEEPING AN INMATE WHILE MOVING FROM ONE
13 LOCATION TO ANOTHER, AND IT'S A TEMPORARY LOCATION.

14 A THERAPEUTIC TREATMENT MODULE IS A DESIGNED -- I
15 DON'T KNOW -- PHONE BOOTH SORT OF THING WITH A MESH -- WIRE
16 MESH AROUND IT. IT'S FOR THE PURPOSE OF PERMITTING ONE-ON-ONE
17 OR GROUP THERAPY WITH A CLINICAL PSYCHOLOGIST OR SOCIAL WORKER
18 IN A SETTING IN WHICH THEY WOULD BE AT RISK OTHERWISE IF THE
19 INMATES WERE NOT SO CONTAINED.

20 **Q** WHEN YOU SAY "AT RISK," AT RISK FOR WHAT?

21 **A** ATTACK. WE DO HAVE STAFF THAT ARE ATTACKED FROM TIME TO
22 TIME.

23 **Q** AND WHEN YOU PREVIOUSLY TESTIFIED THAT YOU RELY UPON THE
24 MONITORING TOURS OF THE SPECIAL MASTER'S TEAM OF EXPERTS TO
25 OBTAIN INFORMATION ABOUT THE OPERATIONS OF THE WHOLE RANGE OF

1 CDCR INSTITUTIONS PROVIDING MENTAL HEALTHCARE, HAVE YOU
2 RECEIVED ANY INFORMATION CRITICAL OF THE USE OF HOLDING CELLS
3 FROM THE SPECIAL MASTER'S TEAM?

4 **A** HOLDING CELLS?

5 **Q** CORRECT.

6 **A** I THINK -- YOU KNOW, I CAN'T REMEMBER SPECIFIC, BUT MY
7 GENERAL SENSE IS IF THEY'RE USED FOR ANYTHING MORE THAN A VERY
8 SHORT STAY, THEY'RE INAPPROPRIATE.

9 **JUDGE KARLTON:** AND YOU HAVE BEEN TOLD THAT BY THE
10 SPECIAL MASTER THAT'S GOING ON?

11 **THE WITNESS:** YES.

12 **BY MS. TILLMAN**

13 **Q** AND HAVE YOU RECEIVED ANY REPORTS FROM THE SPECIAL MASTER'S
14 TEAM CRITICAL OF THE USE OF THERAPEUTIC MODULES?

15 **A** INITIALLY, YES. ALTHOUGH, THERE'S BEEN -- THERE WAS A
16 RECOGNITION THAT AT LEAST UNDER THE CONDITIONS WE'RE USING THEM
17 THEY WERE NECESSARY, AND SO THE SPECIAL MASTER ALLOWED HIS
18 MONITORING STAFF TO ASSIST US WITH PUTTING TOGETHER AN
19 APPROPRIATE DESIGN THAT WOULD SUIT BOTH THE PURPOSES OF THE
20 COMMUNICATION WITH THE INMATE THAT'S NECESSARY FOR THE THERAPY
21 AND ALSO THE SAFETY OF THE CLINICIAN.

22 **Q** WHEN YOU SAY "AN APPROPRIATE DESIGN," WHAT ARE YOU
23 REFERRING TO?

24 **A** WELL, WE NOW HAVE A STANDARD DESIGN THAT WE HAVE GIVEN THE
25 PRISON INDUSTRY AUTHORITY WHEN THEY BUILD THESE. THAT IS A

1 DESIGN THAT WAS CONCURRED IN BY AT LEAST ONE OR MORE OF THE
2 SPECIAL MASTER'S MONITORS.

3 **JUDGE KARLTON:** DR. METZNER APPROVED THE PRESENT
4 DESIGN?

5 **THE WITNESS:** YES, DR. METZNER WAS INVOLVED IN THAT.

6 **BY MS. TILLMAN**

7 **Q** IS THE PRESENT DESIGN ALL THAT DIFFERENT FROM THE PREVIOUS
8 DESIGN?

9 **A** IT'S SOMEWHAT DIFFERENT. I DON'T KNOW. I CAN'T TELL YOU
10 EXACTLY WHAT THE DIFFERENCES ARE. I THINK IT'S A LITTLE
11 ROOMIER, MORE SPACE IN IT.

12 **Q** TO THE EXTENT THAT YOU REVIEW THE SPECIAL MASTER'S
13 MONITORING REPORTS THAT ARE FILED WITH THE COLEMAN COURT, ARE
14 YOU AWARE OF THE SPECIAL MASTER'S LATEST 20TH ROUND REPORT'S
15 FINDINGS AS TO THE DECREASED VACANCIES AT CERTAIN INSTITUTIONS?

16 **A** WELL, I THINK AS -- YES, IN THAT REPORT, HE SUMMARIZES
17 EVERY INSTITUTION, AND SOME DISCUSSIONS ARE FARING QUITE WELL
18 IN ALL OF THE CATEGORIES WE'RE CONCERNED ABOUT, AND SOME
19 INSTITUTIONS ARE NOT, AND THAT INCLUDES THE VACANCY RATES AT
20 THE INDIVIDUAL FACILITY.

21 **Q** SO, FOR INSTANCE, THE CALIFORNIA INSTITUTE FOR WOMEN, THE
22 REPORT INDICATED, QUOTE, "ACHIEVED NEARLY FULL STAFFING WITH A
23 VACANCY RATE OF .018." THAT'S AT PAGE 306 OF THE REPORT. WAS
24 THAT A FINDING THAT YOU AGREED WITH?

25 **A** I ACCEPT IT. I DID NOT GO AND MAKE MY OWN SURVEY. I WAS

1 VERY HAPPY TO SEE THAT RESULT.

2 **Q** AND, LIKEWISE, THE REPORT INDICATED THAT AT FOLSOM STATE
3 PRISON THEY WERE ABLE TO ACHIEVE FULL MENTAL HEALTH CLINICAL
4 STAFFING WITH THE EXCEPTION OF .75 RECREATIONAL THERAPIST.
5 AND, AGAIN THAT WAS SOMETHING YOU WERE HAPPY TO SEE?

6 **A** YES, YES, OF COURSE.

7 **Q** LIKEWISE, HIGH DESERT STATE PRISON WAS FOUND TO HAVE
8 CONSISTENT COMPLIANCE WITH QUARTERLY CASE MANAGER CONTACTS AND
9 ANNUAL INTERDISCIPLINARY TREATMENT TEAM REVIEW OF THE CLIENTS,
10 PATIENTS, WITH RECEPTION SERVICES APPEARING TO BE SUBSTANTIALLY
11 IN COMPLIANCE WITH PROGRAM GUIDE REQUIREMENTS. WAS THAT A
12 FINDING THAT YOU ALSO ACCEPTED?

13 **A** YES.

14 **Q** AND THE CALIFORNIA INSTITUTE FOR MEN, THE REPORT INDICATED
15 THAT ALL SUPERVISING CLINICAL POSITIONS WERE FILLED. AGAIN A
16 FINDING THAT YOU ACCEPTED?

17 **A** YES.

18 **Q** SIERRA CONSERVATION CENTER WAS REPORTED HAD NO MENTAL
19 HEALTH VACANCIES AND REMAINED RICHLY STAFFED AS TO
20 INMATE/CLINICIAN RATIOS. WAS THAT A REPORT FINDING THAT YOU
21 ACCEPTED?

22 **A** YES.

23 **Q** IN DISCUSSING THE POTENTIAL IMPACT OF A PRISONER RELEASE
24 ORDER, YOU WERE POSED VARIOUS HYPOTHETICALS BY PLAINTIFF
25 COUNSEL. IT WAS INDICATED IN PLAINTIFF COUNSEL'S HYPOTHETICALS

1 THAT THERE MIGHT BE A PRISONER RELEASE ORDER, SAY, OF A
2 MAGNITUDE REQUIRING THE REDUCTION OF THE 3CMS POPULATION.
3 PUTTING IT IN THE FRAMEWORK THAT WAS DISCUSSED IN THE SPECIAL
4 MASTER'S MAY 31, 2000 REPORT, AND THAT'S EXHIBIT 1292, WOULD
5 YOU AGREE THAT EVEN THE RELEASE OF A HUNDRED THOUSAND INMATES
6 WOULD LIKELY LEAVE THE DEFENDANTS WITH A LARGELY UNMITIGATED
7 NEED TO PROVIDE INTENSIVE MENTAL HEALTH SERVICES TO PROGRAM
8 POPULATIONS THAT WOULD REMAIN UNDIMINISHED BY A REDUCTION OF
9 SOME 19,000 3CMS INMATES?

10 **JUDGE KARLTON:** WERE YOU FAMILIAR WITH THESE
11 FIGURES? WAS THIS SOMETHING NEW TO YOU, TOO?

12 **THE WITNESS:** THIS WAS NOT NEW. I SAW THIS REPORT
13 AT THE TIME. IN MY EARLIER TESTIMONY HERE I REFERENCED
14 CONVERSATIONS WITH SPECIAL MASTER KEATING ON THIS POINT.

15 **BY MS. TILLMAN**

16 **Q** IS IT A STATEMENT THAT YOU AGREE WITH?

17 **A** WELL, LET ME SAY I AGREE WITH IT, AND IT INFLUENCES THAT I
18 AGREE WITH IT, BECAUSE I BELIEVE HE IS VERY THOROUGHLY FAMILIAR
19 WITH OUR PRISON SYSTEM AND OUR MENTAL HEALTH PROGRAM. AND I
20 THINK AT THAT TIME THAT THIS REPORT CAME OUT, I WAS NOT
21 EMPLOYED BY THE DEPARTMENT OF CORRECTIONS AND REHABILITATION.
22 NEVERTHELESS, I, OVER THE YEARS, HAVE MAINTAINED CONTACT WITH
23 MR. KEATING, AS WELL AS WITH MR. LOPES, AND ON A COUPLE OF
24 OCCASIONS I WAS HIRED BY THE DEPARTMENT AS A CONSULTANT.

25 **Q** AND WOULD YOU AGREE WITH THE OTHER HYPOTHETICAL POSED IN

1 THE SPECIAL MASTER'S MAY 31, 2007 REPORT, THAT EVEN A PRISONER
2 RELEASE ORDER ASKING FOR HALF THAT AMOUNT, SAY A POPULATION
3 DECREASE OF 50,000 INMATES, WITH A REDUCTION OF THE CASELOAD BY
4 9,500 PATIENTS, WOULD STILL NOT RAISE STAFFING RESOURCES INTO
5 EQUILIBRIUM WITH THE MENTAL HEALTH CASELOAD?

6 **A** WELL, I AM AWARE OF THAT, AND I CERTAINLY THINK AT THE TIME
7 IT WAS SPOKEN IT WAS TRUE. IT PROBABLY IS NOW AS WELL SINCE
8 THE STAFFING REQUIREMENTS ARE INCREASING AND WE'RE STILL
9 RECRUITING WITHIN A RELATIVELY FIXED POOL OF AVAILABLE
10 CLINICIANS.

11 **Q** AND ALSO BECAUSE CLINICIANS CAN'T BE MOVED AROUND OR SPREAD
12 OUT LIKE BUTTER, AS MR. KEATING SAID?

13 **A** THAT'S CORRECT. AND THERE WAS SOME PLACES IN THE STATE
14 WHERE WE HAVE MUCH MORE DIFFICULTY FINDING THEM.

15 **Q** EVEN IF YOU WERE DIRECTED TO ENGAGE IN A RETROFIT OF
16 EXISTING CALIFORNIA DEPARTMENT OF CORRECTIONS AND
17 REHABILITATION SPACE TO ENABLE ADDITIONAL TREATMENT SPACE AND
18 OFFICE SPACE, PERHAPS LEFT VACANT BY A PRISONER RELEASE ORDER,
19 WOULDN'T THAT TAKE SOME AMOUNT OF TIME TO DO, TO ACCOMPLISH?

20 **A** IT SHOULD BE CLEAR TO EVEN THOSE WHO'VE BEEN INVOLVED HERE
21 THAT THE STATE'S CAPITAL OUTLAY PROCESS IS SLOW. IT HAS
22 MULTIPLE STEPS, AND I WOULD -- YOU KNOW, IF I EXPECT A BUILDING
23 TO BE DONE THREE YEARS AFTER IT'S AUTHORIZED BY THE
24 LEGISLATURE, THAT WOULD BE FAIRLY REASONABLE EXPECTATION. A
25 SHORTER TIME PERIOD WOULD NOT.

1 Q AND SO WHEN YOU TALK ABOUT THE CAPITAL OUTLAY PROCESS,
2 THERE FIRST MUST BE AUTHORIZATION TO ENGAGE IN THE EFFORT TO
3 RETROFIT A BUILDING?

4 A THERE'S AUTHORIZATION TO BEGIN THE PROCESS. THERE'S
5 AUTHORIZATION AT THE END OF EACH STEP AND THE BEGINNING OF THE
6 NEXT.

7 Q WHAT ARE THOSE STEPS?

8 A WELL, THERE'S A DESIGN, AND THIS -- ALL OF THESE
9 APPROVAL -- AUTHORIZATIONS REQUIRE FUNDING. SO THERE'S A
10 DESIGN THAT'S FUNDED WHICH PRODUCES A PRELIMINARY PLAN. IT
11 GOES THROUGH A PROCESS OF BEING APPROVED FOR THE WORKING
12 DRAWINGS. THEN IT GOES INTO BID PACKAGES. THEN IT GOES OUT ON
13 THE STREET, AND BIDS ARE ACCEPTED, AND THEN CONSTRUCTION
14 BEGINS. YOU CAN HAVE A COUPLE OF YEARS PASS DURING THAT
15 PROCESS THE WAY THAT SYSTEM IS STRUCTURED NOW.

16 Q AND SO AT EVERY STEP OF THE WAY, FROM THE DESIGN STEP, TO
17 THE PRELIMINARY DRAWING STEP, TO THE WORKING DRAWING STEP, MUST
18 THE DEPARTMENT RETURN TO THE LEGISLATURE FOR FUNDING UNDER A
19 CAPITAL OUTLAY BUDGET CHANGE PROPOSAL?

20 A ORDINARILY. IF THE LEGISLATURE AUTHORIZES A LEASE REVENUE
21 BOND FINANCING FOR THAT, THEN IT'S GOING TO BE CONTROLLED
22 THROUGH THE PUBLIC WORKS BOARD WITH ONLY REPORTS TO THE
23 LEGISLATURE, BUT IT STILL HAS THAT SAME STEP-BY-STEP PROCESS.

24 Q AND SO THE OUTCOME IS IT CAN TAKE A MINIMUM OF WHAT LENGTH
25 OF TIME TO ENGAGE IN THIS PROCESS OF GOING FROM THE DESIGN TO

1 THE ACTUAL CONSTRUCTION STAGE?

2 **A** IT'S GOING TO BE SEVERAL YEARS.

3 **Q** AND DURING THAT TIME YOU'LL MAKE DO WITH WHAT YOU HAVE?

4 **A** I CAN'T HEAR.

5 **Q** DURING THAT TIME YOU'LL MAKE DO WITH WHAT YOU HAVE?

6 **A** THAT'S ALL THAT IS AVAILABLE.

7 **MS. TILLMAN:** THANK YOU. NOTHING FURTHER.

8 **MR. BIEN:** CAN YOU SHOW PLAINTIFF EXHIBIT 585,
9 PLEASE? FIRST PAGE?

10 MAY I APPROACH THE WITNESS?

11 **JUDGE HENDERSON:** YOU MAY.

12 **RECROSS EXAMINATION BY MR. BIEN**

13 **BY MR. BIEN**

14 **Q** IS PLAINTIFF'S EXHIBIT 585 A DOCUMENT THAT YOU RECEIVE IN
15 THE COURSE OF YOUR WORK AS CHIEF DEPUTY SECRETARY?

16 **A** YES.

17 **Q** OKAY. AND THIS IS A REPORT PREPARED BY THE HEALTHCARE
18 PLACEMENT OVERSIGHT PROGRAM RUN BY MR. RICK JOHNSON?

19 **A** YES.

20 **Q** AND YOU'VE TESTIFIED THIS IS SOME OF THE MOST ACCURATE
21 INFORMATION YOU RECEIVE?

22 **MS. TILLMAN:** I OBJECT TO THE EXTENT THIS PARTICULAR
23 EXHIBIT IS AFTER THE AUGUST 30, 2008 DEADLINE. IT REFERS TO
24 INFORMATION GATHERED IN SEPTEMBER 2008, I BELIEVE.

25 **MR. BIEN:** THE CHART THEY PUT UP COVERED SEPTEMBER A

1 MINUTE AGO.

2 JUDGE HENDERSON: PROCEED.

3 THE WITNESS: WHAT WAS THE QUESTION AGAIN?

4 BY MR. BIEN

5 Q YOU'VE TESTIFIED THAT MR. JOHNSON'S DEPARTMENT PROVIDES
6 GOOD, ACCURATE INFORMATION THAT YOU RELY ON; ISN'T THAT
7 CORRECT?

8 A YES.

9 Q OKAY. AND THIS IS A REPORT ON PRISONERS WHO ARE REFERRED
10 FOR MENTAL HEALTH CRISIS BEDS AND NEED ASSISTANCE IN GETTING
11 THERE BY THE -- BY HEADQUARTERS BECAUSE THEY CAN'T GET TO THEM
12 IN THEIR OWN PRISON; IS THAT CORRECT?

13 A WELL, THIS REPORT DOES THAT, AND OTHER THINGS.

14 Q OKAY. SO IS IT CORRECT THAT IN THE MONTH OF SEPTEMBER --
15 I'M LOOKING AT THE FIRST PARAGRAPH -- MR. JOHNSON REPORTS TO
16 YOU THERE WERE 359 REFERRALS FOR MENTAL HEALTH CRISIS BEDS,
17 RIGHT?

18 A YES.

19 Q AND OF THE 359, 100 GOT TO A MENTAL HEALTH CRISIS BED; IS
20 THAT RIGHT?

21 A IT SAYS A HUNDRED WERE PLACED.

22 JUDGE KARLTON: THAT MEANS THEY GOT TO A MENTAL
23 HEALTH CRISIS BED, RIGHT?

24 THE WITNESS: WELL, I CERTAINLY ASSUME SO. IT
25 DOESN'T SAY THAT. I'M JUST TRYING TO BE ACCURATE.

1 **BY MR. BIEN**

2 **Q** OKAY. THEN IF YOU GO DOWN TWO PARAGRAPHS BELOW, IT SAYS OF
3 THE HUNDRED TRANSFERRED, 27 CASES WERE TRANSFERRED WITHIN THE
4 REQUIRED 24 HOURS?

5 **A** YES.

6 **Q** OKAY. SO OF THE 359 REFERRALS IN SEPTEMBER 2008, 27 OF THE
7 PATIENTS WERE PLACED IN A MENTAL HEALTH CRISIS BED WITHIN THE
8 REQUIRED 24 HOURS, RIGHT?

9 **A** YES.

10 **Q** FOR THE HUNDRED RIGHT BEFORE THAT, FOR THE HUNDRED THAT DID
11 GET TO MENTAL HEALTH CRISIS BEDS, THE AVERAGE NUMBER OF DAYS
12 WAITING WAS 2.45, RIGHT?

13 **A** YES.

14 **Q** AND THE PROGRAM GUIDE STANDARD IS 24 HOURS OR LESS, RIGHT?

15 **A** YES.

16 **Q** OKAY.

17 **MR. BIEN:** CAN YOU SHOW 263, PLEASE? I THINK I'M
18 GOING TO GIVE YOU A COPY, ALSO.

19 **JUDGE KARLTON:** I THINK WE'VE GOT A COPY. MAYBE WE
20 DON'T.

21 (DOCUMENT DISPLAYED.)

22 **BY MR. BIEN**

23 **Q** MR. DEZEMBER, THIS IS PLAINTIFF'S EXHIBIT 263 THAT WAS
24 CREATED BASED ON DATA THAT WE RECEIVE AND THE SPECIAL MASTER
25 RECEIVES FROM YOU. THIS VERY CHART -- THIS VERY DOCUMENT WE

1 GET FROM MR. JOHNSON. IT'S ALSO PROVIDED TO US, AS YOU KNOW.
2 AND ON THE TOP LINE YOU'LL SEE ARE THE -- IS THE REFERRAL
3 NUMBER, THE SAME NUMBER I SHOWED YOU HERE, THE 359. AND THE
4 BOTTOM LINE IS THE -- AND THE BOTTOM LINE IS THE TRANSFER
5 NUMBER, THE SAME NUMBER WE JUST DISCUSSED, THE HUNDRED
6 TRANSFERRED.

7 YOU'LL NOTE THAT BETWEEN JUNE AND JULY AND AUGUST
8 THERE WAS SOME IMPROVEMENT, WASN'T THERE, IN TERMS OF THE
9 NUMBER OF PRISONERS THAT ACTUALLY WERE ABLE TO BE TRANSFER TO A
10 MENTAL HEALTH CRISIS BED?

11 **A** YES.

12 **Q** OKAY. AND DO YOU ATTRIBUTE THAT TO THE OPENING OF A 50-BED
13 MENTAL HEALTH CRISIS BED FACILITY AT CMF?

14 **A** IT AT LEAST HAD A POSITIVE IMPACT ON THAT.

15 **Q** AND YOU HAVE BEEN SUBJECT TO A COURT ORDER TO BUILD AN
16 ADDITIONAL 50-BED MENTAL HEALTH CRISIS BED UNIT AT CMC PRISON;
17 ISN'T THAT CORRECT?

18 **A** THAT'S CORRECT.

19 **Q** AND AS OF TODAY, IS THAT PROGRAM UNDER CONSTRUCTION? IS
20 THERE ANY --

21 **A** NOT UNDER CONSTRUCTION. IT IS IN THAT CAPITAL OUTLAY
22 PROCESS I DESCRIBED A FEW MINUTES AGO.

23 **Q** SEVERAL YEARS AWAY STILL?

24 **A** PROBABLY.

25 **Q** ARE THERE ANY OTHER CRISIS BED CONSTRUCTION PROJECTS THAT

1 YOU CAN TELL THE COURT ABOUT THAT ARE --

2 **A** NOT INDIVIDUAL. THEY ARE ALL PART OF THE PLAN, EITHER IN
3 THE AUGUST '08 PLAN OR THE PLAN PENDING WITH THE RECEIVER.

4 **Q** YOU TESTIFIED THAT THE SPECIAL MASTER HASN'T CRITICIZED THE
5 DEPARTMENT'S USE OF THERAPEUTIC MODULES AND HOLDING CELLS.
6 ISN'T IT CORRECT THAT THE SPECIAL MASTER IN HIS 20A REPORT
7 REPEATEDLY CRITICIZED THE DEPARTMENT'S USE OF THERAPEUTIC
8 MODULES AND HOLDING CELLS?

9 **A** I DON'T THINK THAT'S TRUE. MAYBE THE HOLDING CELLS, BUT I
10 DON'T THINK THE THERAPEUTIC MODULES.

11 **Q** READING FROM PAGE 105 OF THE SPECIAL MASTER'S 20A REPORT
12 ABOUT SAN QUENTIN:

13
14 "AVAILABLE GROUP ROOMS CONTAINED THERAPEUTIC
15 MODULES; HOWEVER, STAFF ACKNOWLEDGED THAT THESE
16 THERAPEUTIC MODULES DID NOT MEET THE COLEMAN
17 STANDARD. STAFF ALSO REPORTED ENVIRONMENTAL ISSUES
18 OF VENTILATION NOISE FROM COOLING FANS IMPACTED ON
19 THE ACOUSTICAL QUALITY OF THE SESSIONS AND WAS
20 DISTRACTING TO THE PARTICIPANTS."

21 YOU ARE AWARE THAT SPECIAL MASTER HAS CRITICIZED THE
22 DEPARTMENT FOR -- WHEN IT USED THERAPEUTIC MODULES, SETTING
23 THEM UP IN LOCATIONS THAT WERE NOT APPROPRIATE; IS THAT
24 CORRECT?

25 **A** THAT'S CORRECT.

1 Q SUCH AS LAUNDRY ROOMS THAT WERE NOISY OR OTHER PLACES?

2 A YES.

3 Q IS THAT CORRECT?

4 A YES.

5 Q HE'S ALSO CRITICIZED THE DEPARTMENT FOR USING THE
6 THERAPEUTIC MODULES FOR GROUP THERAPY WHEN THEY ARE SET UP IN A
7 STRAIGHT LINE SO THE PRISONERS CAN'T SEE EACH OTHER; ISN'T THAT
8 CORRECT?

9 A THAT'S CORRECT.

10 Q AND HE'S ALSO CRITICIZED THE DEPARTMENT FOR SETTING UP
11 THERAPEUTIC MODULES FOR USE IN GROUP THERAPY IN
12 NON-CONFIDENTIAL SETTINGS WHERE EVERYONE COULD BE OBSERVING THE
13 GROUP THERAPY OR HEARING OR SEEING IT?

14 A I'M NOT SURE WHAT YOU'RE REFERRING TO. I WOULD THINK THAT
15 WOULD BE AN APPROPRIATE CRITICISM.

16 Q YOU ARE AWARE THE THERAPEUTIC MODULES HAVE BEEN SET UP BY
17 THE DEPARTMENT IN NON-CONFIDENTIAL SETTINGS?

18 A YES, I AM.

19 Q YOU ALSO TESTIFIED ABOUT THE WAITING LIST FOR DMH CARE AND
20 HOW THOSE -- SOME OF THEM HAVE IMPROVED AND SOME OF THEM ARE
21 PERSISTENT. ISN'T IT CORRECT THAT THE SPECIAL HAS FOUND THAT
22 CLINICIANS HAVE -- IN MANY PLACES HAVE STOPPED REFERRING
23 PATIENTS FOR DMH CARE BECAUSE IT'S SO DIFFICULT FOR THEM TO
24 ACCESS DMH CARE?

25 A WELL, IN FACT, WE HAVE -- WE'RE RESPONDING TO AN ORDER OF

1 THE COURT TO DEVELOP A PLAN FOR DEALING WITH ATASCADERO STATE
2 HOSPITAL WHICH HAS BEDS AVAILABLE THAT ARE NOT BEING USED, AND
3 WE HAVE A MAJOR PROJECT UNDERWAY FOR THAT THAT HAS IMPLICATIONS
4 FOR SALINAS VALLEY'S INTERMEDIATE CARE FACILITY AS WELL.

5 SO WE ARE APPROACHING THAT IN A VERY VIGOROUS AND
6 INTENSE MANNER, AND IT'S -- IT'S -- IT'S A COMPLICATED
7 SITUATION, BUT I BELIEVE WE'RE ON THE TRACK TO WORKING THAT
8 OUT.

9 Q YOU AGREE, THOUGH, THAT THE -- RIGHT NOW THE WAITING LISTS
10 ARE NOT AN ACCURATE INDICATER OF THE NEED FOR THE LEVEL OF CARE
11 BECAUSE CLINICIANS ARE NOT NECESSARILY REFERRING EVERYONE WHO
12 SHOULD BE REFERRED --

13 A WELL, I DON'T NECESSARILY AGREE THAT CLINICIANS ARE NOT
14 REFERRING. THAT IS SUGGESTED AS A POSSIBLE CAUSE, BUT I
15 HAVEN'T ESTABLISHED THAT.

16 I THINK THE WAITING LISTS ARE A GOOD INDICATION.
17 WHEN YOU SEE A LONG WAITING LIST AT SALINAS VALLEY, FOR
18 EXAMPLE, FOR INTERMEDIATE CARE AND A SPACE AVAILABLE AT
19 CALIFORNIA MEDICAL FACILITY OR ATASCADERO STATE HOSPITAL, THAT
20 RAISES TO ME THE ISSUE OF WHETHER OR NOT THOSE INMATES WAITING
21 FOR SALINAS VALLEY SHOULD MORE APPROPRIATELY BE SENT TO THOSE
22 OTHER LOCATIONS BUT -- FOR THEIR CUSTODY DETERMINATION. AND SO
23 WE ARE FOCUSING ON THE REVIEW OF CUSTODY DETERMINATIONS TO SEE
24 IF, IN FACT, THESE ARE HIGH CUSTODY INMATES OR REQUIRE HIGH
25 CUSTODY TREATMENT AND, SO, THEREFORE, HAVE TO STAY AT SALINAS

1 VALLEY OR OTHERWISE COULD THEY BE REFERRED TO INTERMEDIATE CARE
2 AT OTHER LOCATIONS.

3 THAT'S A PROBLEMATIC SITUATION CAUSED BY, AS I
4 INDICATED BEFORE, OPERATING A MENTAL HEALTH PROGRAM IN A HIGHLY
5 SECURE PRISON ENVIRONMENT.

6 **JUDGE KARLTON:** YOU'RE SAYING THAT YOU ARE UNAWARE
7 THAT THERE IS, IN FACT, A PROBLEM WITH CLINICIANS FINALLY
8 GIVING UP AND NOT REFERRING PEOPLE FOR MENTAL HEALTH CRISIS
9 BEDS BECAUSE OF THE DIFFICULTY IN GETTING THEM PLACED?

10 **THE WITNESS:** I KNOW THAT WE HAD THAT PROBLEM IN
11 MORE CASES THAN WE SHOULD. I AM NOT AWARE THAT THAT'S A
12 CURRENT CAUSE OF THIS.

13 **BY MR. BIEN**

14 **Q** LET ME REFER YOU TO 20A AGAIN, PLEASANT VALLEY STATE
15 PRISON, PAGE 162 REFERS TO:

16 "DMH ACUTE AND INTERMEDIATE LEVELS OF CARE
17 DECREASED DURING THE MONITORING PERIOD, INDICATING
18 UNDERUTILIZATION OF THE PROCESS. MENTAL HEALTH
19 CRISIS BED STAFF APPEAR TO FOCUS ON ONLY REFERRING TO
20 THE DMH ACUTE PSYCHIATRIC PROGRAM AND MADE ONLY TWO
21 REFERRALS THERE, ONE OF WHICH WAS RESCINDED WHEN THE
22 INMATE IMPROVED. IT TOOK ALMOST THREE MONTHS FOR THE
23 SECOND INMATE TO RECEIVE A BED ASSIGNMENT. HE WAS
24 TRANSFERRED TWO DAYS AFTER THE BED WAS ASSIGNED."

25 AVENAL PRISON, PAGE 174:

1 "AS REPORTED IN PREVIOUS MONITORING REPORTS
2 AVENAL DID NOT APPEAR TO CONSISTENTLY CONSIDER
3 REFERRALS TO ACUTE OR INTERMEDIATE DMH ADMISSION
4 PROGRAMS AS TREATMENT OPTIONS, NOTWITHSTANDING THAT
5 HALF OF ALL INMATES PLACED IN THE OHU REMAINED FOR
6 LONGER PERIODS THAN 72 HOURS OR HAD SIGNIFICANT
7 MULTIPLE ADMISSIONS."

8 SALINAS VALLEY STATE PRISON, PAGE 182:

9 "SALINAS VALLEY STATE PRISON DID NOT MOVE INMATES
10 WHEN TRANSFERS WERE WARRANTED. HIGHER LEVELS OF CARE
11 WERE RARELY USED. DESPITE HAVING A BUSY MHCB AND
12 MAKING REGULAR USE OF HOLDING CELLS, SALINAS VALLEY
13 STATE PRISON MADE ONLY ONE REFERRAL TO ACUTE CARE IN
14 SIX MONTHS. FIVE INMATES WERE REFERRED TO
15 INTERMEDIATE CARE, STAFF TOOK TOO LONG TO COMPLETE
16 NECESSARY PAPERWORK. WAITING TIMES FOR INTERMEDIATE
17 CARE BEDS RANGE FROM A FEW DAYS TO OVER FOUR MONTHS.
18 SALINAS VALLEY STATE PRISON EXPLAINED THAT NO
19 REFERRALS TO ASH WERE MADE BECAUSE LEVEL 4 INMATES
20 WERE INELIGIBLE FOR ADMISSION DUE TO THEIR SECURITY
21 LEVEL."

22 **MS. TILLMAN:** OBJECTION. NO PENDING QUESTION, AND
23 THIS IS 2007 DATA, SO NOT RELEVANT.

24 **MR. BIEN:** THIS IS THE 20A REPORT THAT WAS ISSUED
25 SEPTEMBER 2008, THE MOST RECENT REPORT OF THE SPECIAL MASTER.

1 **JUDGE HENDERSON:** I WILL ADDRESS THE OBJECTION.
2 IT'S NOT CLEAR TO ME WHETHER YOU ARE IMPEACHING HIM, YOU'RE
3 REFRESHING HIS RECOLLECTION, YOU'RE POSING A QUESTION OR JUST
4 PUTTING SOMETHING IN THE RECORD.

5 **BY MR. BIEN**

6 **Q** THE QUESTION, MR. DEZEMBER, IS, IT IS CORRECT THAT YOU HAVE
7 BEEN INFORMED BY THE SPECIAL MASTER ON MORE THAN ONE OCCASION
8 THAT CLINICIANS FOR GOOD REASON HAVE STOPPED MAKING REFERRALS
9 TO ATASCADERO AND OTHER PRISONS BECAUSE THERE HASN'T BEEN AN
10 AVAILABLE RESOURCE FOR THEM?

11 **JUDGE KARLTON:** OTHER HOSPITALS -- GO AHEAD.

12 **THE WITNESS:** YOU KNOW, EVERY TIME THERE'S A
13 NEGATIVE FACTOR IN THE SPECIAL MASTER'S REPORT IT TRIGGERS OUR
14 INQUIRY INTO THOSE SITUATIONS. IT DOESN'T ALWAYS RISE TO THE
15 OCCASION OF A -- OF AN ESTABLISHED ADMONITION. SOMETIMES IT'S
16 AN OBSERVATION OF WHAT THE POTENTIAL CAUSES COULD BE. THOSE
17 ARE THE CONVERSATIONS I HAVE BEEN REFERRING TO.

18 I HAVEN'T SAID THAT I HAVE IDENTIFIED, OR ANYBODY
19 HAS IDENTIFIED AS A MATTER OF FACT, THE CLINICIANS ARE NOT
20 REFERRING AS A PROBLEM THAT CAUSES OUR WAIT LIST PROBLEMS. IT
21 CAN BE THAT AN OCCASIONAL CLINICIAN WILL NOT MAKE THAT
22 REFERRAL, AND THAT'S ONE REASON I HAVE ESTABLISHED AND
23 ORGANIZED AND BEGINNING UTILIZATION MANAGEMENT PROGRAM FOR THAT
24 VERY PURPOSE. BUT I STILL AM NOT CONVINCED THAT THE REFERRAL
25 BY CLINICIANS IS THE SOLUTION TO THIS PROBLEM.

1 I STILL BELIEVE THE SOLUTION TO THE PROBLEM IS
2 UTILIZING AVAILABLE BEDS THAT WE HAVE AT ATASCADERO AND
3 CALIFORNIA MEDICAL FACILITY FOR INTERMEDIATE CARE,
4 NOTWITHSTANDING CUSTODY DETERMINATIONS, WHICH ARE NOW BEING
5 REVIEWED VERY CAREFULLY BY THE DIVISION OF ADULT INSTITUTIONS
6 WHO MAKE THOSE DETERMINATIONS.

7 **BY MR. BIEN**

8 **Q** DO YOU KNOW THAT DR. PACKER LOOKED AT THE ISSUE OF
9 UTILIZATION MANAGEMENT FOR THESE HIGHER LEVEL OF CARE BEDS?

10 **MS. TILLMAN:** LACK OF FOUNDATION. I THINK HE
11 TESTIFIED PREVIOUSLY HE HASN'T READ MR. PACKER'S REPORT.

12 **JUDGE HENDERSON:** HE HAS NOT READ DR. PACKER'S
13 REPORT.

14 **THE WITNESS:** I HAVE NOT, AND I HAVEN'T MET HIM
15 EITHER.

16 **BY MR. BIEN**

17 **Q** OKAY. YOU AGREE WITH THE NAVIGANT STUDY THAT SHOWS THAT
18 THERE IS A CURRENT DEFICIT IN INPATIENT CARE BEDS THE
19 DEPARTMENT NEEDS? IN OTHER WORDS, YOU AGREE THAT THERE IS A
20 NEED TO BUILD MORE BEDS?

21 **A** LET ME JUST SAY THIS: I AGREE -- I UNDERSTAND AND AGREE
22 WITH THE NAVIGANT INFORMATION, THE STUDY, THE REPORT. I'D HAVE
23 TO LOOK AT IT TO IDENTIFY ANY DETAILS IN IT. BUT I CONCUR IN
24 THAT REPORT. IT'S WHY WE HIRE THEM.

25 **Q** AND YOU AGREE THAT THE BEDS THAT YOU HAVE RECOMMENDED TO

1 THIS COURT AND THE GOVERNOR THAT NEED TO BE BUILT SHOULD BE
2 BUILT?

3 **A** YES, I DO.

4 **MR. BIEN:** THANKS.

5 **JUDGE HENDERSON:** DO YOU HAVE SOMETHING FURTHER,
6 COUNSEL?

7 **MS. TILLMAN:** ONE QUESTION.

8 **JUDGE HENDERSON:** DO YOU HAVE SOMETHING?

9 **JUDGE KARLTON:** NO, I DIDN'T KNOW WHAT WAS GOING ON.

10 **FURTHER REDIRECT EXAMINATION BY MS. TILLMAN**

11 **BY MS. TILLMAN**

12 **Q** WOULD IT BE CORRECT TO SAY, MR. DEZEMBER, THAT EVEN IF
13 THERE IS A POPULATION REDUCTION, YOU'LL STILL HAVE TO CREATE
14 BEDS, WHETHER OUT OF EXISTING SPACE OR HOPEFULLY OUT OF NEW
15 SPACE?

16 **A** THAT'S MY CONVICTION, YES, THAT WE WILL STILL NEED TO BUILD
17 MOST, IF NOT ALL, OF THE BEDS WE'RE PLANNING IN THE PLAN NOW.

18 **MS. TILLMAN:** THANK YOU, NOTHING FURTHER.

19 **JUDGE HENDERSON:** OKAY. ANY OTHER DEFENDANTS OR
20 INTERVENORS? CCPOA?

21 **MS. LEONARD:** NO FURTHER QUESTIONS.

22 **JUDGE HENDERSON:** OKAY. THANK YOU FOR TESTIFYING,
23 MR. DEZEMBER. YOU MAY STEP DOWN. YOU'RE EXCUSED.

24 LET'S TAKE OUR LUNCH RECESS FOR AN HOUR. COURT'S
25 ADJOURNED.

1 (LUNCHEON RECESS TAKEN.)

2 JUDGE HENDERSON: OKAY. LET'S GET GOING. YOU MAY
3 CALL YOUR NEXT WITNESS.

4 MS. KAHN: GOOD AFTERNOON. JANE KAHN FOR
5 PLAINTIFFS, AND WE WOULD LIKE TO CALL BACK DR. HANEY.

6 JUDGE HENDERSON: WELCOME BACK, DR. HANEY. YOU ARE
7 STILL UNDER OATH FROM YOUR PREVIOUS SWEARING IN.

8 JUDGE KARLTON: YOU'RE STILL UNDER OATH.

9 CRAIG WILLIAM HANEY,
10 HAVING BEEN CALLED AS A WITNESS BY THE PLAINTIFFS WAS
11 PREVIOUSLY DULY SWORN AND EXAMINED AS FOLLOWS:

12 DIRECT EXAMINATION BY MS. KAHN

13 BY MS. KAHN

14 Q DR. HANEY, IN YOUR AUGUST 2008 REPORT, YOU EXPRESSED THE
15 OPINION THAT NO RELIEF OTHER THAN A POPULATION REDUCTION ORDER
16 WILL REMEDY THE CONSTITUTIONAL VIOLATIONS IN MENTAL HEALTH AND
17 MEDICAL CARE. CAN YOU BRIEFLY EXPLAIN THE BASIS OF YOUR
18 OPINION?

19 A YES, I CAN. THERE ARE REALLY THREE OR FOUR REASONS WHY I
20 REACHED THAT CONCLUSION. THE FIRST ONE IS THAT THE ALTERNATIVE
21 APPROACHES TO ADDRESSING THE PROBLEMS ARE ONES THAT ARE VERY
22 TIME CONSUMING IN NATURE. THE KINDS OF PROBLEMS THAT I
23 IDENTIFIED IN MY REPORT, THE THINGS THAT I SAW WHEN I TOURED
24 THE PRISONS, THE THINGS THAT ARE REFLECTED IN THE DOCUMENTS
25 THAT I REVIEWED SPEAK TO REALLY EMERGENCY-LIKE CONDITIONS.

1 THERE ARE PEOPLE, PRISONERS, SUFFERING THROUGHOUT
2 THE ENTIRE PRISON SYSTEM, MENTALLY ILL AND MEDICALLY ILL
3 PRISONERS WHO ARE NOT ABLE TO GET THE LEVEL OF CARE THEY NEED.
4 THEY ARE NOT ABLE TO PARTICIPATE IN PROGRAMS BECAUSE OF
5 SHORTAGES OF STAFF AND SPACE AND SO ON AND SO FORTH. THOSE
6 THINGS ARE URGENT PROBLEMS, AND ONLY A SOLUTION WHICH CAN BE
7 BROUGHT TO FRUITION QUICKLY CAN ADDRESS THE KIND OF IMMEDIATE
8 SUFFERING WHICH IS TAKING PLACE THROUGHOUT THE SYSTEM WHICH I
9 SAW AND OTHER EXPERTS SAW AS WELL.

10 THE PROPOSAL -- THE PROPOSALS THAT I'VE LOOKED AT
11 THAT IDENTIFY POTENTIAL SOLUTIONS TO THIS PROBLEM WHICH INVOLVE
12 CONSTRUCTION OF ADDITIONAL MENTAL HEALTH FACILITIES AND
13 HEALTHCARE FACILITIES AND SO ON, AS WELL AS CONSTRUCTION AT THE
14 PRESENT SITES OF THE PRISON PROJECT TIMETABLES OUT TO 2013,
15 2014, BEFORE THESE PLANS ARE FINALIZED. THE PRISONERS WHO WERE
16 IN THE SITUATIONS THAT I SAW CAN'T WAIT THAT LONG.

17 IN ADDITION, HOWEVER, UNFORTUNATELY, IT APPEARS TO
18 ME, AGAIN BASED ON EVERYTHING THAT I'VE READ IN THIS CASE, THAT
19 EVEN THOSE PROJECTIONS ARE UNREALISTIC. SO 2013 AND 2014 IS
20 NOT ONLY A BEST CASE SCENARIO. IT APPEARS TO BE AN IMPOSSIBLE
21 SCENARIO FOR THE STATE TO BE ABLE TO MEET.

22 THERE HAVE ALREADY BEEN A SERIES OF DELAYS IN THE
23 CASE, NOT CONTEMPLATED IN THE PLANS THAT I REVIEWED THAT
24 PROJECT TO 2014 OR SO, DELAYS WHICH INVOLVE EXPENDITURE OF
25 FUNDS IN THE EARLY STAGES OF PLANNING SO THAT THINGS HAVE BEEN

1 PLACED ON HOLD. THE RECEIVER'S BEDS, FOR EXAMPLE, WHICH ARE
2 SUCH AN INTEGRAL PART OF THE STATE'S PROPOSED SOLUTION TO THESE
3 PROBLEMS. THAT PLAN IS AT ABOUT STEP TWO OR THREE OR FOUR IN
4 WHAT MAY END UP BEING A HUNDRED-STEP PROCESS AND IT'S ON HOLD.

5 I'VE LOOKED AT OTHER DOCUMENTS WHICH SPEAK TO
6 RELATIVELY, ONE WOULD THINK, SEEMINGLY STRAIGHTFORWARD KINDS OF
7 SMALL-SCALE REMEDIES TO IMMEDIATE PROBLEMS, THINGS LIKE
8 CREATING SMALL MANAGEMENT YARDS THAT PRISONERS IN THE
9 ADMINISTRATIVE SEGREGATION UNITS NEED BECAUSE THEY ARE NOT
10 GETTING ADEQUATE ACCESS TO EXERCISE. AND EVEN SOMETHING LIKE
11 THAT HAS TAKEN A LONG PERIOD OF TIME TO BE COMPLETED.

12 SO A SEVERAL-YEAR PROCESS, REQUEST FOR THE COURT TO
13 STAY OR EXTEND THE DEADLINE IN ORDER TO FINISH A PROJECT PALES
14 IN COMPARISON TO THE LARGE-SCALE ISSUES AND PROBLEMS THAT HAVE
15 BEEN IDENTIFIED BY MYSELF AND OTHER EXPERTS.

16 THE OTHER REASON REALLY HAS TO DO WITH A FRANK
17 RECOGNITION ON MY PART THAT EVEN IF THESE PLANS DID COME TO
18 FRUITION AND EVEN IF THEY WERE SOMEHOW MIRACULOUSLY DONE ON
19 TIME, OR EVEN AHEAD OF TIME, THEY WOULD NOT ADEQUATELY ADDRESS
20 ALL OF THE OVERCROWDING RELATED CONSTITUTIONAL PROBLEMS THAT I
21 SAW IN THE SYSTEM. THERE ARE PLANS FOR INCREASING SPACE FOR
22 ONLY A SMALL PERCENTAGE OF THE COLEMAN CLASS MEMBERS. THEY
23 DON'T ADDRESS THE WAY IN WHICH OVERCROWDING IS AFFECTING 29-,
24 OR, WHAT MAY BE BY 2013 OR '14, 30,000 3C CLASS MEMBERS.

25 IN FACT, THE PLANS THAT I'VE SEEN, THE RECEIVER'S

1 BEDS CONTEMPLATE ONLY THE CREATION OF ADEQUATE SPACE FOR ABOUT
2 5,300 EOP PRISONERS, 2,000 OF WHOM WILL BE LEFT IN THE PRISON
3 SYSTEM UNLESS STEPS ARE TAKEN TO ADDRESS THE OVERCROWDING WHICH
4 PLAGUES THAT SYSTEM AND ALL ASPECTS OF THAT SYSTEM.

5 THOSE 3C PRISONERS, ALL OF WHOM WILL REMAIN IN THOSE
6 FACILITIES, AND THE 2,000 REMAINING EOP PRISONERS WILL STILL BE
7 SUBJECTED TO MANY OF THE KINDS OF CONDITIONS THAT I HAVE BEEN
8 DESCRIBING AND OTHER EXPERTS HAVE TALKED ABOUT AS WELL.

9 THOSE PLANS ALSO, IN MY OPINION, DON'T REALISTICALLY
10 ADDRESS THE KINDS OF MASSIVE INCREASES IN STAFFING THAT WOULD
11 NEED TO BE INTRODUCED INTO THE SYSTEM IN ORDER TO RESPOND TO
12 THE KIND OF OVERCROWDING-RELATED CONSTITUTIONAL VIOLATIONS THAT
13 I ADDRESSED IN MY REPORT AND THAT I TESTIFIED ABOUT A FEW WEEKS
14 AGO.

15 I GUESS THE FINAL ISSUE IS THAT I -- THIS IS A
16 PROBLEM THAT I HAVE BEEN LOOKING AT FOR A LONG TIME IN THE
17 STATE OF CALIFORNIA, SOMEBODY WHO STUDIES OVERCROWDING AND HOW
18 PRISON SYSTEMS OPERATE AND FUNCTION, THE DEPARTMENT OF
19 CORRECTIONS HAS BEEN TALKING ABOUT ADDRESSING THE ISSUE OF
20 OVERCROWDING AND THE WAY IN WHICH OVERCROWDING IMPACTS MENTAL
21 HEALTH AND MEDICAL CARE AND OTHER ASPECTS OF THE CONDITIONS
22 THAT PRISONERS IN THE SYSTEM CONFRONT IN PRETTY MUCH THE SAME
23 WAY FOR ALMOST 28 YEARS.

24 THE VERY FIRST OVERCROWDING CASE I PARTICIPATED IN
25 WAS IN 1980 AND THERE, AND IN EACH SUBSEQUENT CASE, INCLUDING A

1 CASE THAT INVOLVES A FAIR NUMBER OF MENTALLY ILL PRISONERS IN
2 THE CALIFORNIA MEN'S COLONY IN SAN LUIS OBISPO, A CASE CALLED
3 DONNER VERSUS MCCARTHY. EACH TIME THE PROPOSED SOLUTION IS TO
4 ADDRESS AN UNEXPECTED INFLUX OF PRISONERS WHOSE PRESENCE IN THE
5 SYSTEM HAS CREATED OVERCROWDING WHICH IS UNDERMINING THE
6 DELIVERY OF SERVICES AND CARE THROUGH A LITTLE BIT BETTER
7 PLANNING AND MORE CONSTRUCTION, AND OVER THAT 28-YEAR PERIOD OF
8 TIME, THE SYSTEM HAS GOTTEN WORSE NOT BETTER. IT HAS GOTTEN
9 MORE AND MORE OVERCROWDED.

10 THE DELIVERY OF SERVICES, WITH SOME PEAKS AS A
11 RESULT OF THE INTERVENTION OF THE COURT AND SOME INJECTION OF
12 ENERGY AND RESOURCES, THINGS HAVE IMPROVED FROM TIME TO TIME,
13 BUT THE OVERWHELMING PRESS OF THE NUMBERS IN THE SYSTEM IS NOW
14 WEIGHTING IT DOWN IN SUCH A WAY THAT THIS PROPOSED SOLUTION, I
15 THINK, HAS FINALLY RUN ITS COURSE, AND IT IS TIME, IN MY
16 OPINION, TO ADDRESS THE ISSUE AT ITS CAUSE, AND THE CAUSE OF IT
17 IS OVERCROWDING. AND UNTIL AND UNLESS OVERCROWDING IS DEALT
18 WITH IN A DIRECT AND SIGNIFICANT WAY, ALL OF THESE OTHER
19 APPROACHES TO THE DELIVERY OF SERVICES IN A CONSTITUTIONAL
20 MANNER, FRANKLY, MISS POINT.

21 Q IN YOUR REPORT, WHEN YOU WERE DISCUSSING A POPULATION
22 REDUCTION ORDER, YOUR OPINION WAS THE CDCR POPULATION SHOULD BE
23 REDUCED TO A LEVEL OF CAPACITY 145 PERCENT OR LOWER?

24 A YES.

25 Q CAN YOU EXPLAIN HOW YOU CAME TO THAT NUMBER?

1 **A** YES. WELL, I WOULD BE MISLEADING THE COURT IF I SUGGESTED
2 THIS WAS AN EXACT SCIENCE. SO THIS WAS AN APPROXIMATION ON MY
3 PART, AND I SPECIFIED A RANGE WITHIN WHICH I THOUGHT A TARGET
4 RANGE, WITHIN WHICH I THOUGHT THE POPULATION -- OR TO WHICH I
5 THOUGHT THE POPULATION SHOULD BE REDUCED, AND I BEGAN THAT
6 RANGE WITH A HUNDRED PERCENT OF THE POPULATION, A HUNDRED
7 PERCENT OF THE RATED CAPACITY OF THE SYSTEM.

8 **JUDGE KARLTON:** LET ME INTERRUPT YOU BEFORE YOU GO
9 ON. I THINK I READ IN YOUR DIRECT TESTIMONY THAT MOST EXPERTS
10 THOUGHT THAT 93 TO 95 PERCENT OF CAPACITY WAS APPROACHING
11 OVERCROWDING.

12 **THE WITNESS:** YES, YOUR HONOR.

13 **JUDGE KARLTON:** HOW DO YOU GET TO 145?

14 **THE WITNESS:** YOU GET TO 145, FRANKLY, BY MAKING A
15 CONCESSION TO WHAT'S PRACTICAL IN THE IMMEDIATE CIRCUMSTANCE,
16 AND THAT'S WHY I DID NOT WANT TO TAKE A HUNDRED PERCENT OF
17 CAPACITY OFF THE TABLE. THERE WAS A TIME IN CORRECTIONS WHEN
18 95 PERCENT WAS REGARDED AS A SYSTEM THAT WAS BEGINNING TO GET
19 DANGEROUSLY OVERCROWDED. DESIGN CAPACITIES ARE ESTABLISHED FOR
20 A REASON. THEY'RE ESTABLISHED NOT ONLY BASED ON THE NUMBER OF
21 CELLS, BUT ALSO BASED ON THE AMOUNT OF RESOURCES, THE
22 PROGRAMMING SPACE AND SO ON THAT A FACILITY HAS. SO THESE ARE
23 MEANINGFUL LIMITS.

24 WE HAVE BEEN OPERATING ROUGHLY FOR TEN OR SO YEARS
25 IN THIS SYSTEM AT ALMOST TWICE WHAT THOSE RATED CAPACITIES ARE

1 AT. SO I CERTAINLY DID NOT WANT TO EXCLUDE THE POSSIBILITY
2 THAT WE WOULD MOVE BACK TO A POINT IN TIME AT SOME POINT IN THE
3 FUTURE WHERE A HUNDRED PERCENT OF CAPACITY OR EVEN LESS,
4 ASSUMING THE SYSTEM BEGINS TO FUNCTION AS IT SHOULD, COULD BE
5 ATTAINED.

6 NOW, THE 145, I SAID, IS THE OUTSIDE LIMIT, THE
7 OUTSIDE LIMIT OF A TARGET, AND THAT WAS BASED ON AN ANALYSIS
8 THAT WAS DONE ACTUALLY BY ANOTHER GROUP OF EXPERTS WHO RELIED
9 ON THE INPUT OF A GROUP OF EXPERIENCED CALIFORNIA WARDENS. THE
10 COURT MAY BE AWARE THAT IN 2004 A GROUP CALLED THE CORRECTIONS
11 INDEPENDENT REVIEW BOARD MET. IT WAS HEADED BY FORMER GOVERNOR
12 GEORGE DEUKMEJIAN. THERE WERE A GROUP OF EXPERTS, MANY OF WHOM
13 EMPLOYEES OF THE DEPARTMENTS OF CORRECTIONS AND OTHER EXPERTS.
14 MR. DEZEMBER, WHO I UNDERSTAND WAS HERE THIS MORNING, WAS THE
15 CHIEF CONSULTANT TO THAT GROUP.

16 THEY FASHIONED AN ESTIMATE OF WHAT THEY BELIEVED TO
17 BE, BASED ON THEIR KNOWLEDGE OF THE CALIFORNIA PRISON SYSTEM,
18 WHAT THEY CALLED A MAXIMUM OPERABLE CAPACITY. THIS WAS THE
19 CAPACITY THAT, IN THEIR OPINION, THE PRISONS COULD OPERATE AT
20 SAFELY BUT ALSO COULD DELIVER PROGRAMMING SERVICES IN AN
21 EFFECTIVE WAY.

22 I HASTEN TO ADD THEY WERE EXPLICIT IN THAT
23 CALCULATION, AND MR. DEZEMBER HAS ACKNOWLEDGED THEY WERE
24 EXPLICIT IN THAT CALCULATION, AS EXCLUDING FROM THAT NUMBER THE
25 KIND OF TREATMENT SPACE THAT WOULD BE REQUIRED TO DELIVER

1 CONSTITUTIONALLY ADEQUATE HEALTH AND MENTAL HEALTHCARE.

2 SO WHEN THEY TALKED ABOUT MAXIMUM OPERABLE CAPACITY,
3 THEY WERE TALKING ABOUT ROUTINE PROGRAMMING ACTIVITIES,
4 VOCATIONAL TRAINING, EDUCATIONAL TRAINING AND SO ON. THEY DID
5 NOT TAKE INTO ACCOUNT THE ADDITIONAL SPACE THAT WOULD BE
6 REQUIRED, AND, THEREFORE, VERY LIKELY, A REDUCTION IN THAT
7 NUMBER OF MAXIMAL OPERABLE CAPACITY, IF YOU TOOK INTO ACCOUNT
8 THE KINDS OF SPACE THAT WOULD BE NEEDED IN ORDER TO DELIVER
9 CONSTITUTIONALLY ADEQUATE MENTAL HEALTH AND MEDICAL CARE.

10 SO THAT SEEMED TO ME TO BE THE MOST GENEROUS
11 POSSIBLE UPPER LIMIT TO A REDUCTION IN THE SIZE OF THE PRISON
12 POPULATION. CERTAINLY CLOSER TO A HUNDRED PERCENT WOULD BE
13 MUCH MORE DESIRABLE. ONE HUNDRED FORTY-FIVE PERCENT SEEMED TO
14 ME TO BE THE ABSOLUTE MOST GENEROUS ESTIMATE OF HOW THIS SYSTEM
15 COULD BEGIN TO OPERATE AND DELIVER SERVICES, OPERATE SAFELY,
16 AND ALSO ADDRESS THE CONSTITUTIONAL INADEQUACIES THE COURT IS
17 CONCERNED WITH.

18 **BY MS. KAHN**

19 **Q** DR. HANEY, IN YOUR OPINION, WHY WILL REDUCING THE
20 CALIFORNIA PRISON POPULATION TO THAT PERCENTAGE OF DESIGN -- OF
21 CAPACITY ALLOW THE DEPARTMENT TO PROVIDE CONSTITUTIONALLY
22 ADEQUATE CARE TO THE COLEMAN CLASS, EVEN THE HIGHER LEVELS OF
23 CARE?

24 **A** IT IS MY OPINION THAT UNLESS AND UNTIL OVERCROWDING IN THE
25 SYSTEM, WHICH IS CONGESTING AND CHOKING THE SYSTEM IN THE

1 DELIVERY OF ALL OF THE SERVICES, WITHIN THE SYSTEM IS ADDRESSED
2 IN A DIRECT AND SYSTEMATIC WAY AND IN A SUBSTANTIAL WAY, THEN
3 THE DELIVERY OF MENTAL HEALTH SERVICES SIMPLY CANNOT PROGRESS
4 TO A CONSTITUTIONALLY ADEQUATE LEVEL OR PLATEAU.

5 THE REDUCTION OF POPULATION, EVEN AN
6 ACROSS-THE-BOARD REDUCTION OF POPULATION, ONE THAT COULD BE
7 DONE IN A VARIETY OF WAYS THAT I KNOW OTHER PEOPLE ARE GOING TO
8 TESTIFY SPECIFICALLY ABOUT, WOULD REDUCE THE CONGESTION IN THE
9 SYSTEM, AND IT WOULD ADDRESS MANY OF THE WAYS IN WHICH THE
10 COLEMAN CLASS MEMBERS ARE BEING ADVERSELY AFFECTED BY THE
11 CONDITIONS OF CONFINEMENT THAT EXIST IN THE PRISON.

12 WE'RE TALKING ABOUT CLASS MEMBERS WHO ARE ENTERING
13 THE SYSTEM IN RECEPTION CENTERS AND BEING HOUSED UNDER TOXIC,
14 NOXIOUS, PSYCHOLOGICALLY AND MEDICALLY UNHEALTHY CONDITIONS,
15 AND THEY ARE CLASS MEMBERS. BOTH PLATA AND COLEMAN CLASS
16 MEMBERS ARE IN THOSE RECEPTION CENTERS. THEY ALL COME INTO THE
17 SAME PLACES.

18 AS YOU KNOW, I TESTIFIED TWO WEEKS AGO ABOUT THE
19 FACT THAT THEY'RE BACKED UP IN THESE ENVIRONMENTS. THEY DON'T
20 COME THROUGH AND ARE NOT EXPEDITIOUSLY PROCESSED THROUGH THE
21 SYSTEMS, BUT, RATHER, BECAUSE OF THE OVERCROWDING IN THE SYSTEM
22 COLEMAN CLASS MEMBERS, EVEN AT THE HIGHER LEVELS OF ACUITY, SIT
23 IN THESE ENVIRONMENTS WAITING FOR AN EOP BED SOMEWHERE ELSE IN
24 THE SYSTEM WHICH THEY CAN'T GET TO BECAUSE THERE AREN'T ANY
25 AVAILABLE.

1 **Q** IS IT ALSO YOUR TESTIMONY AND OPINION THAT REMAINING IN THE
2 RECEPTION CENTERS FOR LONG PERIODS OF TIME CAN ACTUALLY CAUSE
3 DECOMPENSATION AND CAUSE PATIENTS TO MOVE TO HIGHER LEVELS OF
4 CARE?

5 **A** YES.

6 **MS. TILLMAN:** OBJECTION TO RELEVANCE. WE ALREADY
7 DISCUSSED IT. IT'S BEEN ASKED AND ANSWERED IN THE COURSE OF
8 PHASE ONE TESTIMONY.

9 **JUDGE HENDERSON:** OVERRULED.

10 **THE WITNESS:** IT IS ABSOLUTELY MY TESTIMONY -- IN
11 PHASE ONE TESTIMONY, JUDGE KARLTON ASKED ME WHETHER BEING IN
12 PRISON IN AND OF ITSELF ADVERSELY AFFECTED PEOPLE'S MENTAL
13 HEALTH. I ANSWERED UNDER IDEAL CONDITIONS, OF COURSE IT
14 DIDN'T. WE ARE TALKING ABOUT IN THIS SYSTEM, FAR FROM IDEAL
15 PRISON CONDITIONS. WE ARE TALKING ABOUT PRISONERS, MANY OF
16 WHOM ARE MENTALLY ILL, WHO COME INTO THIS SYSTEM AND WHO SIT IN
17 SOME OF THE WORST CONDITIONS OF CONFINEMENT THAT I HAVE SEEN
18 ANYWHERE IN THE UNITED STATES, AND THEY SIT THERE NOT FOR SHORT
19 PERIODS OF TIME, BUT MORE FOR MONTHS ON END, WAITING FOR
20 TRANSFER TO APPROPRIATE BEDS ELSEWHERE IN THE SYSTEM.

21 MANY OF THEM ARE TRANSFERRED OUT OF THESE HOUSING
22 UNITS INTO ENVIRONMENTS WHERE -- THE 3C'S CAN GO ANYWHERE IN
23 THE SYSTEM, INCLUDING BEING HOUSED IN WHAT, AGAIN, ARE BAD
24 BEDS, PSYCHOLOGICALLY AND MEDICALLY UNHEALTHY ENVIRONMENTS FOR
25 THEM TO LIVE IN.

1 REDUCING THE OVERCROWDING IN THE SYSTEM BY REDUCING,
2 AMONG OTHER THINGS, THE EXISTENCE OF THESE BAD BEDS TAKES CLASS
3 MEMBERS OUT OF THESE ENVIRONMENTS AND PREVENTS THEIR EXPOSURE
4 TO THOSE ENVIRONMENTS FROM ADVERSELY AFFECTING THEIR MENTAL
5 HEALTH AND FROM LEADING SOME OF THEM, SOME PERCENTAGE OF THEM,
6 TO DECOMPENSATE OR DETERIORATE IN THE FACE OF THESE CONDITIONS.

7 REDUCING THE OVERCROWDING DOES MANY OTHER THINGS AS
8 WELL. MANY OF THE PROBLEMS THAT AFFECT THE COLEMAN CLASS
9 MEMBERS ARE PROBLEMS THAT HAVE TO DO WITH SPACE AND ACCESS TO
10 TREATMENT. THAT INVOLVES SPACE FOR TREATMENT, SPACE WHICH IS
11 INADEQUATE IN PART BECAUSE IT'S BEING USED FOR OTHER THINGS, IN
12 PART BECAUSE IT IS NOT ENOUGH SPACE TO ACCOMMODATE THE NUMBERS
13 OF PEOPLE WHO NEED TO USE IT. A REDUCTION IN OVERCROWDING WILL
14 DIRECTLY -- WILL DIRECTLY BEGIN TO RESOLVE THAT PROBLEM.

15 MANY OF THE ACCESS TO TREATMENT AND ACCESS TO
16 APPROPRIATE LEVEL OF CARE ISSUES HAVE TO DO WITH THE
17 UNDERSTAFFING THAT PLAGUES THE SYSTEM. MUCH OF THIS
18 UNDERSTAFFING CAN ONLY BE UNDERSTOOD IN TERMS OF OVERCROWDING.
19 UNDERSTAFFING IS ALSO IN RELATIONSHIP TO THE NUMBER OF PEOPLE
20 THAT THE STAFF NEEDS ARE INTENDED TO ADDRESS.

21 SO, OBVIOUSLY, IF YOU REDUCE THE AMOUNT OF
22 OVERCROWDING IN THE SYSTEM, YOU REDUCE THE LEVEL OR PERCENTAGES
23 OF UNDERSTAFFING THAT CURRENTLY PLAGUES THE SYSTEM, AND THAT
24 DIRECTLY AFFECTS COLEMAN CLASS MEMBERS.

25 IT ALLOWS THEM TO GET ACCESS TO BETTER CARE. IT

1 ALLOWS THEM TO MOVE THROUGH THE SYSTEM MORE QUICKLY BECAUSE
2 THEY HAVE BETTER AND MORE CLINICAL CONTACT. IT GIVES
3 CLINICIANS OPPORTUNITIES TO MAKE RECOMMENDATIONS ABOUT HOUSING
4 THAT ARE CLINICALLY MANDATED, THE KINDS OF RECOMMENDATIONS THAT
5 THEY'RE NOT IN A POSITION TO MAKE NOW, SIMPLY BECAUSE THERE ARE
6 NO BEDS AVAILABLE.

7 THE FEWER PEOPLE THERE ARE IN THE SYSTEM, THE FEWER
8 PEOPLE THERE WILL BE ON THE WAITING LISTS IN THE SYSTEM. ONCE
9 THE SYSTEM BEGINS TO OPERATE AND FUNCTIONS MORE EFFECTIVE AS A
10 MENTAL HEALTHCARE DELIVERY SYSTEM, THEN THE LEVEL OF ACUITY YOU
11 WOULD EXPECT TO GO DOWN, RATHER THAN GOING UP WE'RE LOOKING AT.

12 AND I SHOWED CHARTS IN MY TESTIMONY IN THE FIRST
13 PHASE OF THE TRIAL ABOUT THE INCREASE IN, NOT ONLY THE SIZE OF
14 THE COLEMAN CLASS POPULATION IN GENERAL, BUT ALSO WHAT APPEARS
15 TO BE AN INCREASING LEVEL OF ACUITY, A LARGER NUMBER OF
16 MENTALLY ILL PRISONERS IN THE SYSTEM AND A LARGER NUMBER OF
17 MORE SERIOUSLY MENTALLY ILL PRISONERS. I BELIEVE THAT IS, IN
18 PART, THE RESULT OF THE OVERCROWDING WHICH PLAGUES THE ENTIRE
19 SYSTEM.

20 **BY MS. KAHN**

21 **Q** THANK YOU. ONE LAST QUESTION.

22 ARE YOU AWARE OF ANY OTHER PRISON SYSTEMS THAT WERE
23 ABLE TO COME INTO CONSTITUTIONAL COMPLIANCE AFTER THEY REDUCED
24 THE LEVEL OF OVERCROWDING IN THEIR SYSTEM?

25 **A** YES. THERE ARE A NUMBER OF INSTANCES OF THIS. I KNOW THE

1 NATIONAL COUNCIL ON CRIME AND DELINQUENCY HAS DONE A VERY
2 EFFECTIVE PAPER ON PRISONER RELEASE ORDERS AND CATEGORING
3 PRISONER RELEASE ORDERS DONE AROUND THE UNITED STATES. AND I
4 BELIEVE BARRY KRISBERG IS GOING TO TESTIFY DIRECTLY ABOUT THAT
5 ISSUE. BUT I HAVE BEEN INVOLVED IN THREE SUCH CASES DIRECTLY
6 INVOLVED, FIRST OF ALL, AS AN EXPERT WHO ANALYZED THE NATURE OF
7 THE CONSTITUTIONAL VIOLATIONS, PARTICIPATED IN TRIALS IN WHICH,
8 AT LEAST IN TWO OF THOSE THREE CASES, CONSTITUTIONAL VIOLATIONS
9 WERE FOUND BY A COURT, AND THEN IN ALL THREE INSTANCES WHERE
10 THE REDUCTION IN THE POPULATION IN THE PRISON SYSTEM WAS
11 INSTRUMENTAL TO THAT -- THOSE SYSTEMS COMING INTO
12 CONSTITUTIONAL COMPLIANCE.

13 THE FIRST ONE WAS IN WASHINGTON STATE WAY BACK IN
14 1980 IN A CASE CALLED HOPTOWIT VERSUS RAY. IT INVOLVED A
15 SINGLE PRISON IN WASHINGTON STATE, BUT OVERCROWDING WAS AN
16 IMPORTANT ISSUE IN THE CASE. AND THE WASHINGTON STATE SYSTEM,
17 AFTER THAT CASE, DEALT WITH OVERCROWDING-RELATED PROBLEMS FOR A
18 PERIOD OF A DECADE OR MORE, AND THEY IMPLEMENTED A NUMBER OF
19 EMERGENCY ORDERS. THEY SET UP A SENTENCING COMMISSION, THEY
20 DID PRISONER RELEASES FROM THE SYSTEM IN ORDER TO MANAGE THE
21 SIZE OF THE POPULATION AND BRING THAT PARTICULAR PRISON AND THE
22 LARGER SYSTEM INTO CONSTITUTIONAL COMPLIANCE.

23 THE SECOND CASE WAS IN NEW MEXICO, AND THE NEW
24 MEXICO CASE DID NOT ACTUALLY GO TO TRIAL, BUT THERE WAS A
25 CONSENT DECREE ENTERED INTO BY THE PARTIES TO AVOID A TRIAL.

1 AND THIS LITIGATION WAS BROUGHT ABOUT AFTER THE 1980 NEW MEXICO
2 PRISON RIOT. I WAS ASKED TO DO AN INDEPENDENT EVALUATION OF
3 THE CAUSES OF THAT RIOT, AND ONE OF THE MAJOR CAUSES OF THAT
4 RIOT WAS THE OVERCROWDING THAT PLAGUED THE SYSTEM IN NEW
5 MEXICO.

6 AND SO WHEN THE CONSENT DECREE WAS ENTERED INTO IN
7 NEW MEXICO, ONE OF THE FIRST THINGS THEY DID WAS TO ENTER A
8 POPULATION CONTROL ORDER WHICH PROHIBITED DOUBLE CELLING IN ANY
9 OF THE OLDER INSTITUTIONS AND PERMITTED DOUBLE CELLING ONLY IN
10 CELLS THAT HAD BEEN SPECIFICALLY DESIGNED TO HOLD TWO
11 PRISONERS. AND THERE WERE A NUMBER OF OTHER POPULATION CAPS
12 THAT WERE ALSO BUILT INTO THAT CONSENT DECREE.

13 WHEN THE COURT FINALLY RELINQUISHED JURISDICTION IN
14 THE CASE IN 1999, THEY DID SO ONLY ON THE PRECONDITION THAT THE
15 STATE PASS A LAW WHICH ESSENTIALLY CAPPED THE POPULATION IN --
16 OF THE PRISONER POPULATION IN NEW MEXICO, AND AT THAT POINT THE
17 COURT RELINQUISHED JURISDICTION, THE LEGISLATURE PASSED THE
18 LAW. NEW MEXICO WAS ABLE TO DELIVER CONSTITUTIONALLY ADEQUATE
19 MENTAL HEALTH AND MEDICAL CARE THROUGHOUT ITS ENTIRE SYSTEM.
20 IT'S OPERATING AT UNDER A HUNDRED PERCENT OF CAPACITY, AND IT
21 IS -- I THINK MOST EXPERTS AGREE THAT IT IS PROVIDING SOME OF
22 THE MOST EFFECTIVE MENTAL HEALTHCARE IN THE UNITED STATES.

23 THE THIRD EXAMPLE IS IN MANY WAYS THE MOST DRAMATIC.
24 IT'S THE STATE OF TEXAS. I WAS INVOLVED IN THE RUIZ VERSUS
25 ESTELLE LITIGATION STARTING IN THE EARLY 1980'S. IT WOULD BE

1 HARD FOR ME TO DESCRIBE TO YOU WHAT EXACTLY THE TEXAS SYSTEM
2 LOOKED LIKE IN THE EARLY 1980'S AFTER IT HAD ALREADY BEEN
3 DECLARED UNCONSTITUTIONAL BY JUDGE JUSTICE IN THE RUIZ CASE.

4 BUT MY FOCUS -- MY ROLE IN THAT CASE WAS TO ANALYZE
5 OVERCROWDING AND THE EFFECTS OF OVERCROWDING AND THE DELIVERY
6 OF ALL KINDS OF SERVICES IN THE SYSTEM.

7 AND JUDGE JUSTICE HAD ORDERED A POPULATION CAP, BUT
8 THE STATE WAS HAVING A DIFFICULT TIME COMING INTO COMPLIANCE,
9 AND SO WE WERE ABLE TO -- I WAS ABLE TO SEE FIRSTHAND THE
10 EFFECTS OF OVERCROWDING IN THAT SYSTEM, WHAT IT LOOKED LIKE,
11 HOW DIFFICULT IT WAS FOR ANY OF THE OTHER PARTS OF THAT SYSTEM
12 TO BE FIXED UNLESS AND UNTIL THE OVERCROWDING THAT PLAGUED THE
13 SYSTEM WAS BROUGHT UNDER CONTROL.

14 JUDGE JUSTICE, AS I SAID, CAPPED POPULATION AT 95
15 PERCENT OF CAPACITY, AND EVENTUALLY THE SYSTEM CAME INTO
16 COMPLIANCE, AND THEY WERE ABLE TO BRING THE MENTAL HEALTHCARE
17 DELIVERY SYSTEM, THE MEDICAL CARE DELIVERY SYSTEM INTO
18 COMPLIANCE.

19 THE COURT RELINQUISHED JURISDICTION IN THE CASE
20 IN -- I BELIEVE IT WAS THE YEAR 2000. THERE WERE A FEW
21 REMAINING ISSUES WHICH -- WHICH I ALSO IDENTIFIED. I HAD AN
22 OPPORTUNITY TO COME BACK AND LOOK AT THE SYSTEM, INSPECT SOME
23 OF THE SAME PLACES AT THE END OF 1999. IT WAS AN ENTIRELY
24 DIFFERENT PRISON SYSTEM.

25 I DON'T THINK ANYBODY INVOLVED WITH THAT CASE

1 BELIEVES THEY COULD HAVE DONE WHAT THEY DID IN TEXAS IN THE
2 ABSENCE OF A CAP ON THE POPULATION SO THAT THE SYSTEM WAS ABLE
3 TO HANDLE THE POPULATION, HOLD THE POPULATION AT A MANAGEABLE
4 LEVEL AT THE SAME TIME THAT THEY WERE TRYING TO INTRODUCE
5 CONSTITUTIONALLY ADEQUATE MENTAL HEALTH AND MEDICAL CARE AS
6 WELL AS MANY OTHER THINGS THEY WERE DOING IN TEXAS.

7 **MS. KAHN:** THANK YOU. THANK YOU VERY MUCH.

8 **JUDGE HENDERSON:** DOES CCPOA HAVE ANYTHING?

9 **MS. LEONARD:** NO FURTHER QUESTIONS.

10 **JUDGE HENDERSON:** OKAY. DEFENDANTS?

11 **CROSS-EXAMINATION BY MS. TILLMAN**

12 **BY MS. TILLMAN**

13 **Q** GOOD AFTERNOON, DR. HANEY.

14 **A** GOOD AFTERNOON.

15 **Q** I UNDERSTAND YOU HAVE TESTIFIED AS AN EXPERT WITNESS IN A
16 VARIETY OF MATTERS INVOLVING PRISON SYSTEMS, CORRECT?

17 **A** I HAVE, YES.

18 **Q** MANY OF THOSE CASES HAVE INVOLVED INDIVIDUAL INMATES?

19 **A** SOME HAVE, YES.

20 **Q** AND MANY OF THE CASES HAVE ALSO INVOLVED THE EFFECTS OF THE
21 CORRECTIONAL ENVIRONMENT UPON THE PSYCHOLOGICAL CONDITION OF
22 INMATES?

23 **A** SOMETIMES, YES.

24 **Q** FOR INSTANCE, IN THE LOWER COURT MATTER OF COLEMAN, YOU
25 TESTIFIED ABOUT THE PSYCHOLOGICAL EFFECTS OF THE PRISON

1 ENVIRONMENT OF THE SECURED HOUSING UNIT, CORRECT?

2 **A** YES.

3 **Q** NOW, YOU'VE WRITTEN A LOT OF ARTICLES ABOUT THE PRISON
4 ENVIRONMENT, CORRECT?

5 **A** I HAVE.

6 **Q** AND YOU'VE TESTIFIED IN COURTS ABOUT THE PRISON
7 ENVIRONMENT, CORRECT?

8 **A** YES.

9 **Q** BUT YOU'VE NEVER ACTUALLY BEEN RESPONSIBLE AS AN
10 ADMINISTRATOR FOR AN --

11 **MS. KAHN:** OBJECTION, YOUR HONOR. THIS WAS COVERED
12 IN THE FIRST TESTIMONY. IT'S BEYOND THE SCOPE OF HIS TESTIMONY
13 NOW.

14 **JUDGE HENDERSON:** I AM GOING TO ALLOW IT.

15 **THE WITNESS:** NO, I'VE NEVER WORKED IN A PRISON
16 SYSTEM. I STUDY PRISON SYSTEMS AND WRITE ABOUT THEM, BUT I
17 HAVE NEVER WORKED IN ONE.

18 **BY MS. TILLMAN**

19 **Q** NOW, WHEN YOU TESTIFIED AT THE TRIAL OF THE COLEMAN CASE IN
20 1994, YOU INDICATED AT THAT TIME, DIDN'T YOU, THAT THE
21 DEPARTMENT OF CORRECTIONS WAS OVER THE 100 PERCENT CAPACITY
22 MARK?

23 **A** I DON'T REMEMBER MY TESTIMONY SPECIFICALLY. IT'S BEEN 15
24 OR SO YEARS, BUT I WOULDN'T BE SURPRISED TO FIND THAT WAS THE
25 CASE. BY 1993, THE DEPARTMENT OF CORRECTIONS WAS GETTING

1 OVERCROWDED. YES, IT HAD BEEN FOR A BIT OF TIME. NOWHERE NEAR
2 AS OVERCROWDED AS IT IS NOW.

3 Q LOOKING AT YOUR DEPOSITION, I THINK AT PAGE 36, IF WE CAN
4 GET THIS UP ON THE SCREEN --

5 (DOCUMENT DISPLAYED.)

6 BY MS. TILLMAN

7 Q YOU WERE ASKED IN YOUR DEPOSITION IN SEPTEMBER 2008:

8 "QUESTION: AT THE TIME OF YOUR TESTIMONY IN THE
9 COLEMAN TRIAL, HAD YOU FORMED ANY OPINION AS TO
10 WHETHER OR NOT THE CDCR POPULATION EXCEEDED THE
11 DESIGN CAPACITY OF THE FACILITIES?

12 "ANSWER: YES, I BELIEVE I DID.

13 "QUESTION: BY HOW MUCH?

14 "I DON'T RECALL.

15 "QUESTION: WAS IT OVER THE ONE HUNDRED PERCENT
16 CAPACITY MARK?

17 "ANSWER: YES, IT WAS. I THINK IT VARIED BY
18 FACILITY. I THINK -- MY RECOLLECTION IS IT VARIED
19 WIDELY BY FACILITY, BUT I THINK IN GENERAL IT WAS
20 OVER THE ONE HUNDRED CAPACITY MARK."

21 DOES THAT REFRESH YOUR RECOLLECTION?

22 A YES, THAT'S HOW I RECALL IT. I THINK THAT'S WHAT I SAID.

23 Q SO YOUR TESTIMONY IS, IN ESSENCE, THAT OVERCROWDING THAT
24 YOU TALKED ABOUT AT THE TIME OF THE COLEMAN TRIAL IN 1993, 1994
25 HAS CONTINUED TO THIS DAY?

1 **A** IT HAS CONTINUED TO THIS DAY, YES, IT HAS.

2 **Q** AND NOW IT'S YOUR TESTIMONY -- IS IT NOT CORRECT THAT YOUR
3 TESTIMONY IS THAT CDCR IS AT 190 PERCENT CAPACITY, CORRECT?

4 **A** YES.

5 **Q** YES.

6 **A** GIVE OR TAKE A FEW PERCENTAGE POINTS. IT CHANGES. THAT'S
7 ROUGHLY WHAT IT'S AT AND ROUGHLY WHAT IT'S BEEN AT FOR A WHILE.

8 **Q** I'M SORRY. I DIDN'T QUITE HEAR THAT.

9 **A** I SAID, YES, IT CHANGES A FEW PERCENTAGE POINTS FROM TIME
10 TO TIME. THAT IS THE LEVEL IT'S AT, AND THAT'S THE LEVEL IT'S
11 BEEN AT FOR SOME TIME.

12 **Q** AND THAT CAPACITY LEVEL HAS -- LET ME STRIKE THAT.

13 AND THE OVERCROWDING THAT YOU'VE SEEN WITHIN THE
14 DEPARTMENT OF CORRECTIONS SYSTEM HAS OCCURRED EVEN AS NEW
15 PRISONS HAVE BEEN ACTIVATED, CORRECT?

16 **A** YES, THAT'S RIGHT. THAT'S REALLY WHAT LEADS TO THE
17 PROPOSITION THAT IT IS ALMOST IMPOSSIBLE TO BUILD YOUR WAY OUT
18 OF A PROBLEM THAT HAS GOTTEN THIS LARGE AND IS THIS ENDEMIC.

19 **Q** AND YET YOUR OPINION ALSO THEN IS THAT THE PRIMARY CAUSE OF
20 ANY DEFICIENCIES IN THE MENTAL HEALTHCARE SERVICES DELIVERY
21 SYSTEM IS OVERCROWDING?

22 **A** YES, THAT WAS THE OPINION I EXPRESSED TWO WEEKS AGO. IT'S
23 STILL MY OPINION.

24 **Q** AND THE ONLY WAY, IN YOUR OPINION, TO ADDRESS THESE
25 DEFICIENCIES IN THE MENTAL HEALTH SERVICES DELIVERY SYSTEM THEN

1 IS TO ENGAGE IN, AT LEAST AS A FIRST STEP, A PRISONER RELEASE
2 ORDER, CORRECT?

3 **A** YES. AS A FIRST STEP. I'VE NEVER SUGGESTED THAT WAS THE
4 ONLY THING THAT NEEDED TO BE DONE OR THAT A CONSTITUTIONALLY
5 ADEQUATE SYSTEM WOULD MAGICALLY APPEAR ONCE THE POPULATION WAS
6 REDUCED. THERE ARE MANY OTHER THINGS THAT NEED TO CONTINUE TO
7 BE DONE, BUT THAT IS A NECESSARY BUT NOT SUFFICIENT CONDITION.

8 **Q** AND THE REMAINING TASKS THAT WOULD HAVE TO BE DONE BY THE
9 DEPARTMENT OF CORRECTIONS AND REHABILITATION WOULD BE TO BUILD
10 MORE MENTAL HEALTH TREATMENT AND PROGRAMMING AND HOUSING SPACE,
11 CORRECT?

12 **A** THAT WOULD BE ONLY ONE COMPONENT OF IT. ONLY ONE PART OF
13 THE CONSTITUTIONAL VIOLATION INVOLVES THE INADEQUACY OF
14 TREATMENT SPACE, BUT THAT WOULD CERTAINLY BE PART OF IT, YES.

15 **Q** OBVIOUSLY, THE NEXT PART WOULD BE ADD CLINICIANS TO STAFF
16 THAT SPACE ONCE IT'S BUILT, CORRECT?

17 **A** YES, THERE ARE GROSS UNDERSTAFFING PROBLEMS THAT PLAGUE THE
18 ENTIRE SYSTEM. IN SOME -- IN SOME OF THE FACILITIES THAT I
19 LOOKED AT AS MANY AS 50 OR 60 PERCENT OF THE CLINICAL STAFF
20 POSITIONS ARE UNFILLED.

21 **Q** SO EVEN IN THE STATES WHERE YOU'VE SEEN VARIOUS PRISONER
22 RELEASE ORDERS IN THE FORM OF CAPS, THE CORRECTIONAL SYSTEM
23 STILL HAD TO DO WORK TO INCREASE THEIR BEDS, INCREASE THEIR
24 STAFF, TO OBTAIN CONSTITUTIONAL COMPLIANCE, CORRECT?

25 **A** YES, YOU COULD HAVE A SYSTEM THAT WAS OPERATING AT LESS

1 THAN ITS RATED CAPACITY, BUT IF IT DIDN'T HAVE ADEQUATE MENTAL
2 HEALTH RESOURCES, ALL THE THINGS WE ARE TALKING ABOUT, THEN IT
3 COULD WELL NOT BE DELIVERING, AND I WOULD EXPECT IT NOT TO BE
4 DELIVERING CONSTITUTIONALLY ADEQUATE CARE.

5 **Q** NOW, YOU ARE FAMILIAR WITH THE INDEPENDENT REVIEW PANEL'S
6 REPORT OF 2004, CORRECT?

7 **A** YES.

8 **Q** IT'S BEEN A FEW YEARS SINCE IT CAME OUT. AND YOU RELIED
9 UPON THAT REPORT IN FORMING YOUR OPINION THAT THE DEPARTMENT OF
10 CORRECTIONS SHOULD REACH 145 PERCENT CAPACITY, CORRECT?

11 **A** YES. I USED THE NUMBER THAT WAS CALCULATED BY THE WARDENS
12 IN CHAPTER SIX IN THE REPORT, AND IT PROVIDES A CALCULATION OF
13 WHAT THEY CALL MAXIMUM OPERABLE CAPACITY, THE CAPACITY AT WHICH
14 THE SYSTEM CANNOT ONLY BE SAFELY RUN, BUT CAN BE RUN IN SUCH A
15 WAY IT DELIVERS PROGRAMMING SERVICES, NOT INCLUDING THE MEDICAL
16 AND MENTAL HEALTH SERVICES, AT A CONSTITUTIONALLY ADEQUATE
17 LEVEL.

18 **Q** IN FACT, THE RECOMMENDATION OF THE INDEPENDENT REVIEW PANEL
19 WAS FOR THE DEPARTMENT OF CORRECTIONS AND REHABILITATION TO
20 LITERALLY DEFINE WHAT IS THE OPERABLE CAPACITY FOR THEIR
21 INSTITUTIONS, CORRECT?

22 **A** WELL, FOR INDIVIDUAL INSTITUTIONS, YES, CORRECT, FOR THE
23 SYSTEM. THAT DEFINITION IS CONTAINED IN THE REPORT. I MEAN,
24 THAT 145 PERCENT FIGURE IS THEIR FIGURE, AND THAT IS THEIR
25 CALCULATION.

1 Q AND I THINK WHAT YOU'RE REALLY SAYING, ISN'T IT, AS THE
2 REPORT STATED, QUOTE:

3 "A GROUP OF EXPERIENCED CALIFORNIA PRISON WARDENS
4 TOLD THE PANEL AT A RECENT FORUM THAT THE OPERABLE
5 CAPACITY OF THE STATE'S PRISONS TO SUPPORT FULL
6 INMATE PROGRAMMING IN A SAFE AND SECURE ENVIRONMENT
7 IS 111,309 INMATES, OR 145 PERCENT OF DESIGN
8 CAPACITY."

9 CORRECT?

10 A YES. ONE HUNDRED FORTY-FIVE PERCENT OF CAPACITY IS HOW
11 THEY DEFINED MAXIMAL OPERABLE CAPACITY.

12 Q AT LEAST HOW THAT SET OF WARDENS DEFINED IT, CORRECT?

13 A HOW THAT SET OF WARDENS DEFINED IT AND THAT FIGURE BEING
14 ENDORSED BY THE CORRECTIONS INDEPENDENT REVIEW PANEL.

15 Q IN YOUR MIND, RIGHT?

16 AND SO WOULDN'T YOU SAY THAT THE 145 PERCENT NUMBER
17 IS AT BEST A RANGE OF APPROPRIATE CAPACITY?

18 A WELL, I'M NOT SURE IT'S A RANGE. IT'S A NUMBER. IT'S NOT
19 A RANGE, SO I DIDN'T SEE ANYTHING IN THE -- IN THAT REPORT OR
20 IN THE LOGIC BY WHICH THAT NUMBER WAS ARRIVED AT THAT SUGGESTED
21 IT WAS A -- IT WAS A RANGE OF NUMBERS AROUND WHICH IT MIGHT BE
22 POSSIBLE TO OPERATE AT MAXIMAL OPERABLE CAPACITY. I SUGGESTED
23 IT TO YOU AS A RANGE. I ARTICULATED A RANGE FROM 100 TO
24 145 PERCENT, AND ALSO ARTICULATED WHY I THOUGHT 145 PERCENT WAS
25 THE MOST GENEROUS POSSIBLE ESTIMATE THAT WAS DEFENSIBLE, GIVEN

1 THE FACT THAT THOSE WARDENS AND THE CORRECTIONS INDEPENDENT
2 REVIEW BOARD DID NOT TAKE INTO ACCOUNT MANY OF THE ISSUES THAT
3 WE'RE GRAPPLING WITH HERE, WHICH IS WHAT KIND OF SPACE IS
4 NEEDED FOR A CONSTITUTIONALLY ADEQUATE MENTAL AND MEDICAL
5 HEALTHCARE DELIVERY SYSTEM.

6 **JUDGE KARLTON:** HANG ON A SECOND, DR. HANEY. NOW
7 I'M EVEN MORE CONFUSED THAN I WAS WHEN I CAME IN, WHICH IS VERY
8 CONFUSED.

9 IF 145 PERCENT IS INADEQUATE BECAUSE IT DOESN'T
10 REPRESENT THE OPERABLE LEVEL INCLUDING MENTAL HEALTH AND
11 PHYSICAL HEALTH PROVISION, HOW CAN WE -- HOW COULD ANYBODY FIND
12 145 PERCENT ADEQUATE, APPROPRIATE?

13 **THE WITNESS:** WELL, THAT'S A VERY GOOD QUESTION.
14 WHAT I'M ASSUMING IS WE WOULD BE DOING OTHER THINGS AS WELL, SO
15 IN ADDITION TO THAT, ARRIVING AT THAT PERCENT OF THE
16 POPULATION, THAT THERE WOULD BE OTHER THINGS THAT WOULD BE
17 BEING DONE AS WELL SO THAT WE WOULD BEGIN TO APPROXIMATE A MUCH
18 MORE VIABLE OVERALL SYSTEM OF MEDICAL AND MENTAL HEALTHCARE
19 DELIVERY.

20 ADMITTEDLY, A BETTER NUMBER WOULD BE A HUNDRED
21 PERCENT, BUT GIVEN THE FACT THIS IS A SYSTEM THAT'S OPERATED AT
22 190 PERCENT FOR A DECADE OR SO, IT SEEMED TO ME IT WAS
23 APPROPRIATE TO ARTICULATE A RANGE THAT WAS REACHABLE, A RANGE
24 AT WHICH WE COULD BEGIN TO -- WE COULD BEGIN TO PERCEIVE THE
25 BENEFITS OF SOME OF THE MODIFICATIONS THAT HAD BEEN MADE IN THE

1 MEDICAL AND MENTAL HEALTHCARE DELIVERY SYSTEM.

2 IT'S CONCEIVABLE THAT A SYSTEM OPERATING AT
3 145 PERCENT OF CAPACITY IN CALIFORNIA, GIVEN THE SIZE OF THE
4 POPULATION AND SO ON, WOULD, IN FACT, HAVE TO BE FURTHER
5 REDUCED, BUT IT SEEMED TO ME IT WAS A GOOD PLACE TO BEGIN.

6 **BY MS. TILLMAN**

7 **Q** YOU DIDN'T PARTICIPATE IN THE DISCUSSIONS WITH THE WARDENS
8 THAT WERE A PART OF THIS INDEPENDENT REVIEW PANEL REPORT, DID
9 YOU?

10 **A** NO, I SIMPLY READ THE CHAPTER THAT WAS DEVOTED TO IT. I
11 READ MR. DEZEMBER'S DEPOSITION TESTIMONY IN WHICH HE DISCUSSED
12 THAT MEETING.

13 **Q** AND YOU DON'T KNOW WHAT METHODOLOGY OR FORMULA THE WARDENS
14 MAY OR MAY NOT HAVE USED IN COMING TO THIS 145 PERCENT FIGURE,
15 DO YOU?

16 **A** AS IT'S REFLECTED IN THE CHAPTER IN THE DISCUSSION OF HOW
17 THEY CAME TO THAT CONCLUSION.

18 **Q** IT SIMPLY SAYS, "A GROUP OF EXPERIENCED WARDENS TOLD THE
19 INDEPENDENT REVIEW PANEL." THERE'S NO DISCUSSION OF FORMULA,
20 IS THERE?

21 **A** I THINK THERE'S MORE DISCUSSION ABOUT WHAT WAS DISCUSSED,
22 WHERE IT WAS DISCUSSED, HOW IT WAS DISCUSSED. AND I THINK MR.
23 DEZEMBER DISCUSSED THESE IN HIS DEPOSITION TESTIMONY AS WELL.

24 **Q** YOU DON'T KNOW WHAT THAT FORMULA WAS, DO YOU?

25 **A** I DON'T KNOW THE SPECIFIC FORMULA, NO.

1 Q IN YOUR REVIEW OF THE INDEPENDENT REVIEW PANEL'S -- I'M
2 SORRY.

3 IN YOUR READING OF THIS INDEPENDENT REVIEW PANEL'S
4 REPORT, YOU NOTICED, DIDN'T YOU, THAT THE PANEL RECOMMENDED
5 THAT THE DEPARTMENT OF CORRECTIONS AND REHABILITATION ENGAGE IN
6 CERTAIN POPULATION REDUCTION MEASURES?

7 A YES. THERE WERE A WHOLE SERIES OF THOSE RECOMMENDATIONS,
8 YES.

9 Q AND ONE POPULATION REDUCTION MEASURE WAS TO INCREASE
10 PROGRAM SPACE AND TO INCREASE STAFFING FOR EFFECTIVE
11 PROGRAMMING OF PRISONERS, WASN'T IT?

12 A YES.

13 Q NOW, YOU'VE TESTIFIED THAT THE MENTALLY ILL ARE MORE
14 SUSCEPTIBLE TO MENTAL HEALTH CONDITIONS IN OVERCROWDED
15 CIRCUMSTANCES, CORRECT?

16 A YES. I DON'T THINK THERE'S ANY QUESTION ABOUT THAT.

17 Q AND YOU'VE ALSO TESTIFIED THAT MENTALLY ILL INMATES, EVEN
18 THOSE AT THE HIGHEST LEVELS OF CARE LIKE INPATIENT MENTAL
19 HEALTHCARE, SHOULD BE SUBJECT TO A RELEASE ORDER, CORRECT?

20 A YES. AS THEY CURRENTLY ARE RELEASED IN PROPORTION TO THEIR
21 NUMBERS IN THE POPULATION OF THE PRISON SYSTEM. THEY ARE
22 CURRENTLY RELEASED WHEN THEIR SENTENCES ARE UP IRRESPECTIVE OF
23 THEIR MENTAL HEALTH STATUS OR LEVEL OF ACUITY OF MENTAL
24 ILLNESS.

25 Q YOU WOULD DEFER TO SPECIAL MASTER KEATING'S FINDINGS IN HIS

1 MAY 31, 2000 REPORT, REPORT ON POPULATION THAT AT LEAST SOME 60
2 TO -- 60 PERCENT OF THE MENTALLY ILL INMATES WITHIN THE
3 DEPARTMENT OF CORRECTIONS AND REHABILITATION ARE HAVING THEIR
4 MENTAL HEALTH NEEDS MET BY THE PRESENT STAFF OF THE DEPARTMENT
5 OF CORRECTIONS AND REHABILITATION?

6 **A** I BELIEVE THE REPORT SAYS THAT CONSTITUTIONALLY ADEQUATE
7 MENTAL HEALTHCARE IS BEING PROVIDED. THAT'S SLIGHTLY DIFFERENT
8 FROM WHETHER ALL THEIR MENTAL HEALTH NEEDS ARE BEING MET.
9 THEY'RE RELATED, BUT THEY'RE NOT EXACTLY THE SAME THING.

10 **Q** YOU WOULD AGREE THAT AT LEAST SOME PORTION OF THE MENTAL
11 HEALTH CASELOAD WITHIN THE DEPARTMENT OF CORRECTIONS AND
12 REHABILITATION IS RECEIVING SOME FORM OF MENTAL HEALTHCARE?

13 **A** YES, OF COURSE.

14 **Q** AND YOU WOULD AGREE THAT THOSE WITHIN THE COLEMAN MENTAL
15 HEALTH CASELOAD, PARTICULARLY THE ONES WITHIN THE ENHANCED
16 OUTPATIENT PROGRAM, THE ONES WHO REQUIRE INTERMEDIATE AND ACUTE
17 INPATIENT HOSPITAL CARE, NEED ONGOING MENTAL HEALTH MEDICATION,
18 MENTAL HEALTH CLINICAL SUPPORT?

19 **A** YES, MANY OF THEM DO, AND, UNFORTUNATELY, MANY OF THEM ARE
20 NOT GETTING IT IN THE SYSTEM AS IT'S PRESENTLY CONSTITUTED FOR,
21 IN MY OPINION, OVERCROWDING-RELATED REASONS.

22 **Q** AND, IN FACT, EVEN THOSE MENTALLY ILL INMATES AT THE LOWEST
23 LEVEL OF CARE, THOSE AT THE 3CMS OUTPATIENT LEVEL OF CARE, ALSO
24 NEED APPROPRIATE MENTAL HEALTHCARE AND APPROPRIATE MENTAL
25 HEALTHCARE FROM CLINICIANS, CORRECT?

1 **A** YES, THEY DO, IN MANY RESPECTS. THIS IS NOT ONLY THE
2 LARGEST GROUP IN THE SYSTEM, BUT IT'S ALSO THE LEAST WELL
3 SERVED. THEY ARE THE MOST IMPACTED IN MANY WAYS BY THE
4 OVERCROWDING THAT'S PLAGUED THE SYSTEM.

5 **Q** YOU HAVE NO OPINION, DO YOU, AS TO WHETHER OR NOT THE
6 EXISTING PAROLE OUTPATIENT CLINICS FOR THE MENTALLY ILL THAT
7 ARE RELEASED ARE SUFFICIENT TO SERVE THE MENTAL HEALTH NEEDS OF
8 THE RELEASED MENTALLY ILL INMATES, DO YOU?

9 **A** I DON'T HAVE ANY REASON TO BELIEVE THEY ARE NOT. I AM WELL
10 AWARE THERE ARE TRANSITIONAL BRIDGE PROGRAMS, AND THERE ARE
11 PAROLE OUTPATIENT CLINICS THAT ARE SET UP TO SERVE THE NEEDS OF
12 ALL OF THE MENTAL HEALTH PATIENTS WHO COME OUT OF THE SYSTEM,
13 MANY OF THEM WHO COME OUT IN ALL LEVELS OF ACUITY.

14 **Q** AND LOOKING BACK AT YOUR DEPOSITION, I BELIEVE YOU
15 TESTIFIED OTHERWISE AT PAGE 56. YOU WERE ASKED AT LINE 19:

16 "ARE YOU AWARE WHETHER OR NOT THE PRESENT SYSTEM
17 OF PAROLE OUTPATIENT CLINICS IS ADEQUATE TO SUPPORT
18 THE MENTAL HEALTH NEEDS OF THOSE PAROLEES WITH MENTAL
19 HEALTHCARE ISSUES?"

20 THERE WAS AN OBJECTION, BEYOND THE SCOPE OF HIS
21 EXPERT REPORT. A RESPONSE ALONG THE LINES OF THERE'S ALSO BEEN
22 A DISCUSSION BY THIS WITNESS OF PRE-PAROLE PLANNING AND AGAIN
23 ANOTHER OBJECTION. THE QUESTION AT LINE 8, PAGE 66 WAS:

24 "DO YOU HAVE ANY OPINION ON THAT?"

25 "ANSWER: I DON'T. I WASN'T ASKED TO LOOK INTO

1 IT, AND I HAVEN'T LOOKED AT IT."

2 ON THAT BASIS WE ASK HIS LAST RESPONSE BE STRUCK,
3 YOUR HONOR.

4 **JUDGE KARLTON:** THAT'S NOT WHAT HAPPENS. THE RECORD
5 IS WHAT THE RECORD IS.

6 **BY MS. TILLMAN**

7 **Q** DO YOU HAVE ANY OPINION AS TO WHETHER OR NOT ANY OF THE
8 RELEASED INMATES, PARTICULARLY RELEASE INVOLVING SOME 40,000
9 INMATES, WOULD ACTUALLY RECEIVE CONSTITUTIONALLY ADEQUATE CARE
10 IN THE COMMUNITIES THEY'RE RELEASED TO?

11 **A** WELL, YES, I DO. I THINK IT WOULD DEPEND ENTIRELY ON HOW
12 THEY WERE RELEASED, THE TIME PERIOD OVER WHICH THEY WERE
13 RELEASED, WHAT KINDS OF CHANGES WERE DETERMINED TO BE
14 NECESSARY, IF ANY, IN THE RESOURCES THAT WERE AVAILABLE TO
15 COMMUNITIES WHERE THE PRISONERS WERE BEING RELEASED TO, WHETHER
16 THERE NEEDED TO BE ENHANCEMENT, IF ANY, TO THE PAROLE
17 OUTPATIENT CLINICS. I THINK ALL OF THOSE THINGS WOULD NEED TO
18 BE DETERMINED.

19 **JUDGE KARLTON:** HANG ON A SECOND, MS. TILLMAN.

20 WE HAVE AN OBLIGATION, IN THE EVENT WE REACH THE
21 POINT WHERE WE THINK -- THE POINT THAT SOMETHING HAS TO BE DONE
22 IN CONSIDERING WHAT HAS TO BE DONE TO CONSIDER PUBLIC SAFETY.
23 UNLIKE YOU, I'M NOT AN EXPERT, BUT IT SEEMS TO ME THAT IT AT
24 LEAST RAISES A SERIOUS QUESTION IF YOU WERE TO TAKE 40,000, FOR
25 EXAMPLE, SOME 20 PERCENT OF WHICH WERE SERIOUSLY ILL, AND MOVE

1 THEM INTO THE COMMUNITY -- LET ME ASK INSTEAD OF TELLING YOU.
2 DOES THAT REPRESENT A THREAT TO PUBLIC SAFETY?

3 **THE WITNESS:** IF IT WAS DONE THOUGHTLESSLY WITHOUT
4 PLANNING, WITHOUT A PROCESS, THEN IT MIGHT, NOT ONLY BECAUSE
5 SOME PERCENTAGE OF THEM WERE MENTALLY ILL, BUT BECAUSE THAT
6 KIND OF OUTPOURING INTO COMMUNITIES THAT WEREN'T PREPARED TO
7 RECEIVE A VERY LARGE INFUX OF PRISONERS MIGHT BE PROBLEMATIC
8 IN A VARIETY OF DIFFERENT WAYS. SO I DID NOT IN MY REPORT, AND
9 I DON'T KNOW ANYBODY TO BE SUGGESTING, THAT AN IMMEDIATE
10 RELEASE OF 40,000 PRISONERS IS WHAT IS CALLED FOR.

11 WHAT I RECOMMENDED HERE, AND MS. TILLMAN AND I
12 DISCUSSED THIS IN MY DEPOSITION, IS A PROCESS BY WHICH
13 PRISONERS WERE RELEASED -- A PROCESS BY WHICH AT THE VERY LEAST
14 PRISONERS WHO ARE ALREADY SCHEDULED TO BE RELEASED SIMPLY BE
15 RELEASED AT AN ACCELERATED PACE, AN ACCELERATED PACE CONSISTENT
16 WITH THE RESOURCES AVAILABLE IN THE COMMUNITY, INCLUDING
17 RESOURCES FOR THE MENTALLY ILL, AND THAT, IN ADDITION, OTHER
18 KINDS OF POPULATION CONTROL MECHANISMS BE ADDRESSED.

19 FOR EXAMPLE, THE ISSUE OF WHETHER OR NOT TECHNICAL
20 PAROLE VIOLATORS NEEDED TO BE RETURNED TO PRISON OR COULD BE
21 HANDLED IN SOME OTHER WAY THROUGH SOME OTHER SET OF SANCTIONS;
22 WHETHER OR NOT IN A LONGER-TERM, SOME KIND OF SENTENCING
23 RESTRUCTURING NEEDED TO BE REDONE SO THE POPULATION OF
24 PRISONERS BEGAN TO BE REDUCED OVER TIME IN A WAY THAT COULD BE
25 STABILIZED RATHER THAN A ONE TIME ONLY RELEASE OF PRISONERS.

1 SO I THINK THERE ARE A VARIETY OF WAYS THIS COULD BE
2 DONE. PUBLIC SAFETY WOULD BE ONE CONSIDERATION. BUT I WOULD
3 CONTINUE TO UNDERSCORE FOR THE COURT WE ARE TALKING ABOUT
4 PRISONERS WHO COME OUT OF THIS SYSTEM ANYWAY. SOME 130,000 OR
5 10 -- PLUS OR MINUS 10,000 EACH YEAR COME OUT OF THE SYSTEM.
6 IF THE DEPARTMENT OF CORRECTIONS HAD STARTED A YEAR AGO SIMPLY
7 ACCELERATING THE RELEASES BY TEN PERCENT, THAT WOULD MEAN IN AN
8 AVERAGE YEAR INSTEAD OF 130,000 COMING OUT, 143,000 CAME OUT.
9 THAT SINGLE STEP WOULD HAVE IN A YEAR ELIMINATED MOST, IF NOT
10 ALL, THE BAD BEDS IN THE SYSTEM, WHICH ARE ABOUT 13,000 WORTH.

11 SO THERE ARE -- THERE ARE SMALL BUT DIRECTED STEPS
12 THAT CAN BE TAKEN THAT MINIMIZE OR ELIMINATE ANY PUBLIC SAFETY
13 CONCERN BUT WHICH HAVE SIGNIFICANT IMPACT ON A SERIOUSLY
14 OVERCROWDED SYSTEM. NOT TAKING ANY OF THEM, IT SEEMS TO ME, IS
15 ALSO A PUBLIC SAFETY-RELATED ISSUE, BECAUSE THE PRISONERS WHO
16 WE'RE TALKING ABOUT COMING OUT, 130,000 OF THEM EVERY YEAR,
17 BEING SUBJECTED TO EXACTLY THE KIND OF NOXIOUS AND UNHEALTHY
18 CONDITIONS THAT WE HAVE BEEN TALKING ABOUT. I DON'T THINK -- I
19 DON'T THINK THAT BENEFITS PUBLIC SAFETY EITHER. NOT TO BE ABLE
20 TO ADDRESS THE MENTAL HEALTH NEEDS AND ISSUES OF A SIGNIFICANT
21 PERCENTAGE OF PEOPLE WHO ARE GOING TO BE RELEASED IN THE LONG
22 RUN IT SEEMS TO ME PLACES PUBLIC SAFETY AT RISK NOT AT BENEFIT.

23 **MS. TILLMAN:** JUST FOR THE RECORD, YOUR HONOR, THIS
24 EXPERT WAS NOT DESIGNATED ON THE PUBLIC SAFETY IMPLICATIONS OF
25 THE RELEASE.

1 **JUDGE KARLTON:** I UNDERSTAND.

2 **MS. TILLMAN:** THAT WAS NOT BROUGHT UP IN HIS
3 DEPOSITION, AND HE WAS NOT PERMITTED TO TESTIFY ABOUT IT.

4 **JUDGE KARLTON:** THANK YOU, MA'AM. YOU MAY PROCEED.

5 **BY MS. TILLMAN**

6 **Q** YOU WOULD AGREE THAT MENTALLY ILL INMATES WHO ARE RELEASED,
7 WHETHER ON PAROLE OR OTHERWISE, CAN DECOMPENSATE WHEN THEY ARE
8 NOT GIVEN SUFFICIENT MEDICATION MANAGEMENT AND PSYCHIATRIC
9 SUPPORT?

10 **A** PERSONS WHO ARE MENTALLY ILL DO SOMETIMES DECOMPENSATE FOR
11 A VARIETY REASONS.

12 **Q** UNDER THE BEST OF CIRCUMSTANCES AND UNDER THE WORST OF
13 CIRCUMSTANCES, CORRECT?

14 **A** YES. AND AS I THINK I SAID THE LAST TIME, I TESTIFIED MUCH
15 MORE OFTEN UNDER THE WORST OF CIRCUMSTANCES, WHICH IS WHY THE
16 CIRCUMSTANCES UNDER WHICH THEY'RE LIVING IN THE PRISON IS OF
17 SUCH CONCERN.

18 **Q** WOULDN'T THE WORST CIRCUMSTANCE BE AN INMATE WHO NEEDS
19 MENTAL HEALTH ASSISTANCE WHO'S NOT ABLE TO GET IT WHILE ON THE
20 STREETS?

21 **A** NO. NO, NOT NECESSARILY. FIRST OF ALL, YOU ARE ASSUMING
22 THAT THEY'RE GETTING MENTAL HEALTH ASSISTANCE IN THE SYSTEM,
23 AND FOR A VERY, VERY LARGE NUMBER OF THEM THEY ARE NOT.

24 **Q** CAN YOU STATE TO ANY DEGREE OF CERTAINTY THAT, WITH
25 140 PERCENT CAPACITY OR 145 PERCENT CAPACITY, THE DEPARTMENT OF

1 CORRECTIONS WILL BE ABLE TO OPERATE A CONSTITUTIONALLY ADEQUATE
2 MENTAL HEALTHCARE SYSTEM?

3 **A** NO. I SAID AT THE OUTSET OF THAT ESTIMATE, THAT IT WAS NOT
4 AN EXACT SCIENCE. THAT'S WHY I PROVIDED A RANGE. I TRIED TO
5 DEFEND BOTH THE BOTTOM AND UPPER LIMIT TO THE RANGE.

6 I ALSO SAID REPEATEDLY THAT OTHER THINGS NEED TO BE
7 DONE, THAT THIS IS -- THERE'S NOTHING MAGICAL ABOUT 145 PERCENT
8 OR EVEN A HUNDRED PERCENT, BUT THAT AT 190 PERCENT, IN MY
9 OPINION, IT DOESN'T MATTER WHAT YOU DO, YOU CANNOT ACHIEVE A
10 CONSTITUTIONALLY ADEQUATE SYSTEM.

11 AND THE CLOSER TO A HUNDRED PERCENT WE GET, THE
12 BETTER WE WILL BE, AND THE GREATER THE LIKELIHOOD THAT THE
13 OTHER THINGS THE COURTS HAVE BEEN ORDERING IN THESE TWO CASES
14 WILL, IN FACT, SIGNIFICANTLY AFFECT THE DELIVERY OF THE SYSTEM
15 AND BRING IT INTO CONSTITUTIONAL COMPLIANCE.

16 **Q** ISN'T IT TRUE YOU SAID IN DEPOSITION THAT, QUOTE:

17 "I AM NOT JUDGE OF WHETHER OR NOT A SYSTEM AT THE
18 TIME WE ARRIVE AT THAT POINT OF 145 PERCENT CAPACITY
19 (145 PERCENT CAPACITY) IS OPERATING AT A
20 CONSTITUTIONALLY ADEQUATE LEVEL"?

21 **A** OF COURSE, IT GOES WITHOUT SAYING I WOULDN'T BE THE JUDGE
22 OF WHETHER OR NOT A SYSTEM IS CONSTITUTIONALLY ADEQUATE.

23 **MS. TILLMAN:** THANK YOU. NOTHING FURTHER.

24 **MS. KAHN:** NOTHING FURTHER.

25 **JUDGE HENDERSON:** NOTHING FURTHER? THANK YOU FOR

1 COMING, DR. HANEY. YOU'RE EXCUSED AGAIN.

2 YOU MAY CALL YOUR NEXT WITNESS.

3 **MR. BIEN:** YOUR HONOR, PLAINTIFFS DO NOT HAVE
4 ADDITIONAL WITNESSES TODAY. WE WILL HAVE PHASE TWO WITNESSES
5 LATER IN THE WEEK, BUT THE INTERVENORS WERE KIND ENOUGH TO GET
6 SOME WITNESSES FOR THIS AFTERNOON.

7 **JUDGE HENDERSON:** BEFORE WE DO THAT, I LOOKED AT
8 VARIOUS PIECES OF PAPER THAT PEOPLE ARE FILING. I CAN'T FIGURE
9 OUT WHAT'S GOING ON. I KNOW JUDGE REINHARDT RAISES THE SAME
10 QUESTION. ARE WE STILL IN PHASE ONE?

11 **MR. BIEN:** WE ARE -- WE HAVE BEEN --

12 **JUDGE HENDERSON:** THAT WAS PHASE TWO, I UNDERSTAND.

13 **MR. BIEN:** YES, THAT WAS PHASE TWO. WE HAVE
14 TOMORROW TWO DEFENSE EXPERTS ON PHASE ONE, DR. PACKER AND
15 DR. THOMAS.

16 **JUDGE KARLTON:** OKAY.

17 **MR. BIEN:** AND THAT WILL BE -- FROM NOW IT'S GOING
18 TO BE PHASE TWO TODAY.

19 **MR. MELLO:** PAUL MELLO FOR DEFENDANTS.

20 IN ADDITION TO THE TWO PHASE ONE MEDICAL AND MENTAL
21 HEALTHCARE EXPERTS, THERE'S ALSO THE READING INTO THE
22 TRANSCRIPT OF DEPOSITIONS FROM MR. MUMOLA, WHICH I BELIEVE IS
23 PHASE ONE, AS WELL AS TWO CLASS REPS, ONE FROM COLEMAN AND ONE
24 FROM PLATA, WHICH I BELIEVE ARE LARGELY PHASE ONE ISSUES AS
25 WELL, BUT I THINK THE REST IS DEFINITELY PHASE TWO.

1 **JUDGE REINHARDT:** AND YOU HAVE -- THE REST OF TODAY
2 YOU HAVE PHASE TWO OR PHASE ONE?

3 **JUDGE KARLTON:** THEY'RE FINISHED FOR TODAY, THESE
4 FOLKS.

5 **JUDGE REINHARDT:** SO YOU'RE GOING TO CONTINUE WITH
6 PHASE ONE?

7 **MR. MELLO:** I BELIEVE THE PARTIES TALKED ABOUT WHAT
8 WAS NEXT GOING TO HAPPEN WAS WE WERE GOING TO READ INTO THE
9 RECORD DEPOSITION TESTIMONY; HOWEVER, BECAUSE THE INTERVENORS
10 BROUGHT WITNESSES, AND THEY'RE HERE, RATHER THAN INCONVENIENCE
11 THEM, WE WOULD PUT -- THOSE LIVE WITNESSES WERE GOING TO GO ON,
12 CORRECT?

13 **JUDGE REINHARDT:** OKAY. THEY ARE GOING TO BE PHASE
14 TWO?

15 **MR. MELLO:** YES. THANK YOU.

16 **JUDGE HENDERSON:** YOU MAY CALL YOUR WITNESS,
17 COUNSEL.

18 **MR. MITCHELL:** BILL MITCHELL FOR THE DA INTERVENORS.
19 WE'RE CALLING LISA RODRIGUEZ. I BELIEVE SHE'S OUT IN THE
20 HALLWAY.

21 **JUDGE HENDERSON:** STEP TO THE FRONT AND BE SWORN IN,
22 MA'AM.

23 **LISA RODRIGUEZ,**
24 HAVING BEEN CALLED AS A WITNESS BY THE INTERVENORS WAS FIRST
25 DULY SWORN AND EXAMINED AS FOLLOWS:

1 **THE CLERK:** STATE AND SPELL YOUR FULL NAME FOR THE
2 RECORD.

3 **THE WITNESS:** LISA RODRIGUEZ, R-O-D-R-I-G-U-E-Z.

4 **MR. MITCHELL:** LET ME -- THE DA INTERVENORS HAVE
5 FILED A DECLARATION IN LIEU OF DIRECT TESTIMONY WITH THE COURT.
6 I HAVE EXTRA COPIES FOR THE COURT AT THIS TIME.

7 **JUDGE HENDERSON:** HAND IT UP.

8 **MR. SANGSTER:** YOUR HONOR, ED SANGSTER FOR THE
9 PLAINTIFFS. THAT DOES NOT APPEAR TO BE THE DECLARATION. THE
10 DECLARATION I SAW HAD EXHIBITS.

11 **MR. MITCHELL:** THE EXHIBITS ARE FORTHCOMING.

12 **MR. SANGSTER:** I DON'T WANT TO SLOW US DOWN ON
13 ADMINISTRATIVE --

14 **JUDGE KARLTON:** COUNSEL, I DON'T EVEN KNOW WHO YOU
15 ARE.

16 **MR. SANGSTER:** I'M SORRY, YOUR HONOR. I'M ED
17 SANGSTER. I REPRESENT PLAINTIFFS.

18 **JUDGE KARLTON:** ALL RIGHT. AND WHAT'S THE PROBLEM
19 NOW?

20 **JUDGE HENDERSON:** THE DECLARATION HE SAW HAD
21 EXHIBITS ON IT, AND THIS ONE DOESN'T. IS THAT THE CONCERN?

22 **MR. SANGSTER:** YES, YOUR HONOR.

23 **MR. MITCHELL:** THEY'RE HERE AND THEY'RE COMING.

24 **JUDGE KARLTON:** GOOD.

25 ///

DIRECT EXAMINATION BY MR. MITCHELL**BY MR. MITCHELL****Q** CAN YOU TELL US YOUR OCCUPATION, PLEASE?**A** I'M A DEPUTY DISTRICT ATTORNEY IN SAN DIEGO COUNTY.**Q** HOW LONG HAVE YOU BEEN WORKING THERE AS A DEPUTY DISTRICT ATTORNEY?**A** I HAVE BEEN WITH THE DA'S OFFICE A LITTLE OVER TEN YEARS.**Q** ARE YOU FAMILIAR WITH THE PROGRAM CALLED THE SB 618, COMMUNITY RE-ENTRY PROGRAM?**A** I AM.**Q** HOW ARE YOU FAMILIAR WITH THAT?**A** I HAVE BEEN ASSIGNED TO WORK ON THAT PROGRAM SINCE ABOUT MAY OF 2006.**Q** IN YOUR DECLARATION YOU DESCRIBE THAT PROGRAM AS A EXAMPLE OR -- EXCUSE ME -- AS A COMPREHENSIVE MULTI-AGENCY PROGRAM DESIGNED TO TRANSITION NONVIOLENT OFFENDERS BACK INTO THEIR COMMUNITIES; IS THAT CORRECT?**A** THAT'S CORRECT.**Q** AND IS THIS PROGRAM INTENDED TO REDUCE HIGH RECIDIVISM RATES AMONG THAT TARGET POPULATION OF NONVIOLENT OFFENDERS?**A** THAT'S EXACTLY WHAT IT'S TARGETED TO DO.**Q** COULD YOU BRIEFLY DESCRIBE FOR US HOW THE PROGRAM WAS DESIGNED TO WORK AND HOW IT DOES WORK?**A** IT WAS WRITTEN -- ACTUALLY THE LEGISLATION, WHICH IS NOW PENAL CODE SECTION 1203.8, WAS WRITTEN BY MY BOSS, BONNIE

1 DUMANIS AND VAUGHN JEFFREY. IT WAS SPONSORED, THE LEGISLATION,
2 BY JACKIE SPEIER AND PASSED INTO LAW BY GOVERNOR SCHWARZENEGGER
3 IN 2005.

4 THE INTENT OF THE PROGRAM WAS TO STOP THE SILO
5 EFFECT OF PEOPLE GOING THROUGH THE PRISON SYSTEM AND PROVIDE A
6 COMPREHENSIVE PROGRAM THAT STARTS AT THE TIME OF THE CHANGE OF
7 PLEA, GOES ALL THE WAY WHILE SOMEBODY IS IN PRISON AND 18
8 MONTHS AFTER RELEASE. IT INVOLVES EVERYTHING FROM TESTING, TO
9 PUTTING TOGETHER A LIFE PLAN, PROGRAMMING, PROGRAMMING WHILE
10 THEY'RE IN PRISON, AND THEN RESOURCES WHILE THEY ARE OUT ON
11 PAROLE.

12 Q ATTACHED TO YOUR DECLARATION WAS EXHIBIT A, WHICH IS NOW
13 MARKED AS DEFENDANT INTERVENOR EXHIBIT 507, SYMPOSIUM SB 618
14 COMMUNITY REENTRY PROGRAM. DO YOU HAVE A COPY OF THIS?

15 A I DO.

16 Q CAN YOU EXPLAIN WHAT THIS IS, PLEASE?

17 A THAT WAS A HANDOUT THAT I ACTUALLY PUT TOGETHER WHEN I DID
18 AN EDUCATIONAL SEMINAR FOR THE SUPERIOR COURT BENCH IN SAN
19 DIEGO. IT INCLUDES AN OVERVIEW OF THE PROGRAM, A POWERPOINT
20 PRESENTATION THAT I PUT TOGETHER AND SOME OF THE DIFFERENT
21 ELEMENTS OF THE PROGRAM.

22 Q DOES IT OUTLINE HOW THE PROGRAM IS DESIGNED, HOW IT WORKS,
23 AND ALL THE DIFFERENT STEPS FROM THE TIME OF THE ENTRY OF THE
24 PLEA TO PERSON GETTING OUT OF PRISON AND --

25 A IT DOES GENERALLY.

1 Q COULD YOU EXPLAIN FOR US, PLEASE, THE TARGET POPULATION WHO
2 THIS PROGRAM APPLIES TO?

3 A ABSOLUTELY.

4 Q AND THE CLASS OF OFFENDERS THAT IT APPLIES TO?

5 A IT APPLIES TO NONVIOLENT OFFENDERS WHO ARE GOING TO BE
6 SERVING A SENTENCE OF BETWEEN EIGHT YEARS -- EXCUSE ME -- EIGHT
7 MONTHS AND SIX YEARS, WITH NO LESS THAN FOUR MONTHS TO SERVE
8 AND NO MORE THAN THIRTY-SIX MONTHS TO SERVE.

9 MOST OF THE PEOPLE THAT ARE IN OUR PROGRAM ARE GOING
10 TO PRISON BECAUSE OF AUTO THEFT, DRUG OFFENSES, LOW LEVEL
11 OFFENSES. THEY CAN HAVE CERTAIN PRIOR FELONIES OR EVEN SERIOUS
12 FELONIES, BUT NO VIOLENT FELONIES WITHIN THE LAST FIVE YEARS.
13 THE CURRENT OFFENSE CANNOT BE A VIOLENT FELONY. OTHER
14 EXCLUSIONARY FACTORS WOULD BE AN ARSON REGISTRANT, A 290
15 REGISTRANT, HAVING INFLICTED GREAT BODILY INJURY OR DEATH UPON
16 ANOTHER PERSON AT ANY TIME, IN THEIR CRIMINAL HISTORY. SO IT'S
17 GENERALLY GEARED TOWARDS PEOPLE WHO ARE KIND OF ON THAT
18 REVOLVING DOOR OF THE PRISON SYSTEM; THEY GO IN, COME OUT, THEY
19 REOFFEND, THEY GO BACK AGAIN.

20 Q THE TARGET POPULATION FOR THIS PROGRAM IN SAN DIEGO COUNTY,
21 THE INDIVIDUALS THAT GET ENROLLED IN THIS PROGRAM, ARE THEY
22 GOING TO PRISON ANYWAY DESPITE THE FACT THIS PROGRAM EXISTS?

23 A ABSOLUTELY. IT'S ONLY OFFERED TO PEOPLE WHO ARE GOING TO
24 PRISON. WE DON'T OFFER IT TO ANYBODY WHO MIGHT BE ON THE CUSP
25 BETWEEN PROBATION AND PRISON. THAT WAS VERY IMPORTANT WHEN WE

1 WERE PUTTING THE PROGRAM TOGETHER. WE DISCUSSED THAT WITH THE
2 PUBLIC DEFENDER REPRESENTATIVES AND THE DEFENSE BAR
3 REPRESENTATIVES ON OUR OPERATIONS COMMITTEE.

4 WE DID THAT BECAUSE WE DIDN'T WANT ANYBODY TO CHOOSE
5 TO GO INTO THIS PROGRAM THAT WASN'T GOING TO PRISON ANYWAY. WE
6 DON'T WANT PEOPLE GOING TO PRISON THAT DON'T NEED TO BE THERE,
7 SO WE HAVE VERY FEW FIRST TIMERS, AND WE DON'T MAKE IT PART OF
8 OUR NEGOTIATION PROCESS. IT'S ONLY OFFERED TO THE POTENTIAL
9 CANDIDATES AFTER THEY HAVE AGREED TO A STIPULATED PRISON TERM.

10 **Q** SO YOU HAVE REPEAT OFFENDERS, PAROLEES WHO ARE ACTUALLY IN
11 THE PROGRAM?

12 **A** YES, THEY HAVE TO BE GETTING A NEW PRISON TERM FOR A NEW
13 OFFENSE, BUT IT IS ALMOST ENTIRELY, WITH VERY FEW EXCEPTIONS,
14 PEOPLE WHO HAVE BEEN TO PRISON BEFORE.

15 **Q** PARAGRAPH 11 OF YOUR DECLARATION, YOU LIST OUT THE NUMBER
16 OF OFFENSES AND THE NUMBER OF INDIVIDUALS FOR A CERTAIN NUMBER
17 OF THOSE OFFENSES. IS THAT ACCURATE THAT THERE ARE
18 APPROXIMATELY 204 THAT HAVE BEEN CONVICTED OF VEHICLE CODE
19 SECTION 10A 51, OR AUTO THEFT, AND ANOTHER, EXCUSE ME, 121 --
20 EXCUSE ME -- 204 FOR VEHICLE THEFT, BURGLARY, POSSESSION OF
21 STOLEN PROPERTY, GRAND THEFT, IDENTITY THEFT, AND FORGERY?

22 **A** I WOULD SAY THOSE NUMBERS ARE PROBABLY STILL
23 PERCENTAGE-WISE ABOUT RIGHT. WE HAVE MORE PEOPLE ENROLLED,
24 BECAUSE WE ENROLL SIX PEOPLE EVERY WEEK, BUT IT SHOULD BREAK
25 DOWN PRETTY CONSISTENTLY ALONG THOSE LINES.

1 Q THEN ANOTHER 121 FOR DRUG OFFENSES?

2 A YES. MOST OF OUR PEOPLE WHO GO IN THE PROGRAM, EVEN IF
3 THEY'RE NOT GOING IN FOR A DRUG OFFENSE, USUALLY HAVE SOME DRUG
4 CONNECTION.

5 Q SO THE GREAT MAJORITY OF THE INDIVIDUALS IN THE PROGRAM ARE
6 PROPERTY CRIME OFFENDERS AND DRUG OFFENDERS?

7 A ABSOLUTELY.

8 Q AND THEY'RE REPEAT OFFENDERS. APPROXIMATELY HOW MANY PRIOR
9 CONVICTIONS DO EACH OF THESE INDIVIDUALS HAVE?

10 A I WOULD BE WAGERING A GUESS, BUT I WOULD SAY A MINIMUM OF
11 THREE OR FOUR TIMES THEY HAVE BEEN TO PRISON BEFORE. WE HAVE,
12 LIKE I SAID, VERY FEW PEOPLE WHO ARE GOING ON THEIR FIRST TIME
13 TO PRISON.

14 IN FACT, YOU KNOW, A LOT OF OUR GUYS WHO GO THE
15 FIRST TIME TO PRISON TURN DOWN SB 618. THEY'RE YOUNG. THEY
16 THINK, I CAN DO IT; I'LL DO MY PRISON SENTENCE.

17 IT'S PEOPLE WHO HAVE BEEN TIME AND TIME AGAIN WHO
18 WANT TO TAKE ADVANTAGE OF THIS. THEY DON'T WANT TO GO BACK TO
19 PRISON. THEY WANT TO DO SOMETHING DIFFERENT, SO THEY DON'T GET
20 BACK AGAIN. VERY OFTEN IT'S OUR MIDDLE-AGE GUYS WHO HAVE BEEN
21 A NUMBER OF TIMES TO PRISON WHO DECIDE TO PARTICIPATE. THIS IS
22 AN ENTIRELY VOLUNTARILY PROGRAM.

23 Q VOLUNTARY ON THE OFFENDER'S PART?

24 A ABSOLUTELY.

25 Q HOW DID THIS PROGRAM COME TO BE IMPLEMENTED IN SAN DIEGO

1 COUNTY?

2 **A** WELL, AS I SAID, BONNIE DUMANIS WROTE THE LEGISLATION. WE
3 HAD A COMMUNITY ROUNDTABLE THAT STARTED GETTING TOGETHER BEFORE
4 THE LEGISLATION WAS EVEN ENACTED, TRYING TO FIGURE OUT WHO CAN
5 BE INVOLVED IN THIS, WHAT DO THEY NEED. THEY START DOING
6 RESEARCH AND LOOKING AT THE PRACTICES THAT WERE WORKING ACROSS
7 THE NATION, AND THEY PUT TOGETHER THIS MODEL.

8 IT'S REALLY THE FIRST OF ITS KIND THAT STARTS AT THE
9 VERY BEGINNING OF THE PROCESS AND GOES FOR 18 MONTHS AFTER. IT
10 THEN INVOLVED FOR THE OPERATIONS COMMITTEE GETTING PROBATION
11 TOGETHER, THE DEPARTMENT OF CORRECTIONS, PAROLE, THE SHERIFF'S
12 DEPARTMENT, MY OFFICE, THE DEFENSE BAR AND THE BENCH, AND
13 EVERYBODY IS INVOLVED AND MEETS WEEKLY STILL KEEPING THIS
14 PROGRAM GOING, CHANGING THINGS, ADDRESSING PROBLEMS AS THEY
15 ARISE. IT'S LIKE A WORK IN PROGRESS. WE'RE CONSTANTLY TRYING
16 TO IMPROVE IT.

17 **Q** THE GOAL OF THE PROGRAM IS TO REDUCE RECIDIVISM; IS THAT
18 CORRECT?

19 **A** THAT'S CORRECT. WHEN WE HAVE 70 PERCENT OF THE PEOPLE THAT
20 COME OUT OF PRISON GOING BACK TO PRISON, THERE'S A PROBLEM. WE
21 HAVE TO DO SOMETHING BETTER, AND THAT'S WHAT THIS PROGRAM WAS
22 DESIGNED TO DO.

23 WE KNOW THAT PEOPLE ARE GOING TO COME BACK TO SAN
24 DIEGO COUNTY, AND IF THEY ARE COMING BACK TO SAN DIEGO COUNTY,
25 WE WANT TO MAKE SO IT WE ARE PROTECTING THE COMMUNITY ON THE

1 BACK END. WE DON'T WANT THEM COMING BACK TO OUR OFFICE AND
2 COMING BACK TO COURT AND COMMITTING NEW OFFENSES. THE PROGRAM
3 IS DESIGNED TO GIVE THEM TOOLS IN ORDER TO KEEP THEM FROM
4 COMMITTING CRIMES IN THE FUTURE.

5 I WAS TALKING TO ONE OF OUR PAROLEES, A LADY WHO HAD
6 BEEN IN PRISON A NUMBER OF TIMES, AND SHE SAID SB 618 DOESN'T
7 DO ANYTHING FOR YOU BUT OPEN THE DOORS THAT YOU NEED TO GO
8 THROUGH, AND THAT WAS A PERFECT WAY OF PUTTING IT. WE ARE
9 GIVING PEOPLE TOOLS SO THEY CAN CHOOSE TO MAKE BETTER
10 DECISIONS.

11 **JUDGE REINHARDT:** THESE FIGURES YOU GAVE US IN
12 PARAGRAPH 11, ARE THEY THE TOTAL NUMBER OF PARTICIPANTS IN THIS
13 PROGRAM, ABOUT 330 OR SO?

14 **THE WITNESS:** THEY WERE AS OF THE TIME THIS WAS
15 WRITTEN. AS I SAID, WE ADD SIX EVERY WEEK, SO WE ARE ACTUALLY
16 UP TO 389 PARTICIPANTS AT THIS TIME WITH 107 THAT HAVE BEEN
17 RELEASED ON PAROLE.

18 **BY MR. MITCHELL**

19 **Q** LET'S TALK ABOUT THOSE NUMBERS FOR A MOMENT. THE PROGRAM
20 HAS BEEN UP AND RUNNING FOR HOW LONG?

21 **A** WE PUT OUR FIRST PARTICIPANTS IN IN FEBRUARY OF 2007.

22 **Q** YOU HAVE HOW MANY IN THE PROGRAM RIGHT NOW?

23 **A** THREE HUNDRED EIGHTY-NINE AT VARIOUS STAGES OF THE PROGRAM.

24 **Q** NOW, THE TERMS OF IMPRISONMENT ARE FROM EIGHT MONTHS TO SIX
25 YEARS, CORRECT?

1 **A** YES.

2 **Q** HOW MANY PEOPLE HAVE GOTTEN OUT OF PRISON AND INTO THE
3 SB 618 PROGRAM OUT OF PRISON?

4 **A** THAT ARE ACTUALLY ON PAROLE NOW? WE HAVE 107 ACTIVE SB 618
5 PARTICIPANTS ON PAROLE.

6 **Q** WHEN DID THE FIRST PARTICIPANTS COME OUT ON PAROLE, HOW
7 LONG AGO?

8 **JUDGE KARLTON:** NOW I'M UTTERLY CONFUSED, PLEASE
9 FORGIVE ME. YOU HAVE 380 ROUGHLY PEOPLE IN THE PROGRAM?

10 **THE WITNESS:** YES.

11 **JUDGE KARLTON:** ONLY 160 OF THEM ARE ON PAROLE?

12 **THE WITNESS:** I'M SORRY. WE HAVE 389 AS OF
13 YESTERDAY, BECAUSE WE KEEP ADDING NEW PEOPLE EVERY DAY. SO 389
14 PEOPLE THAT ARE IN VARIOUS STAGES OF THE PROGRAM. THEY MAY BE
15 PRESENTENCING. THEY MAY BE ON THEIR WAY TO PRISON. THEY MAY
16 BE IN PRISON.

17 **JUDGE KARLTON:** I UNDERSTAND NOW.

18 **THE WITNESS:** THEN WE HAVE 107 THAT HAVE BEEN
19 RELEASED OUT INTO THE COMMUNITY.

20 **BY MR. MITCHELL**

21 **Q** WHAT HAPPENS WHEN SOMEBODY WHO IS IN THE SB 618 PROGRAM
22 LEAVES COUNTY JAIL AND GOES TO PRISON?

23 **A** WELL, IF I COULD TAKE A STEP BACK? BEFORE THEY GO TO
24 PRISON, WE HAVE THE 20 COURT DAYS WHERE THEY ARE BEING ASSESSED
25 TO MAKE SURE THEY ARE ELIGIBLE FOR THE PROGRAM. THEY ARE

1 GETTING TESTING DONE, LITERACY, VOCATIONAL. A PLAN IS BEING
2 PUT TOGETHER FOR THEM; WHAT DO WE NEED TO DO TO HELP YOU BE
3 SUCCESSFUL.

4 THEY GET SENTENCED. AT SENTENCING THEY SIGN A
5 CONTRACT SAYING THEY WOULD LIKE TO PARTICIPATE IN THE PROGRAM.
6 WITHIN 48 HOURS, BECAUSE THEY'RE IN THE SB 618 PROGRAM, THE
7 MINUTE ORDERS, ABSTRACT OF JUDGMENT, AND PRISON PACK IS PUT
8 TOGETHER, SO WE CAN GET THEM TO PRISON AS QUICKLY AS POSSIBLE.

9 FOR OUR MEN THEY GO TO R.J.D., RICHARD J. DONOVAN,
10 FACILITY, WHICH IS ACTUALLY DOWN THE STREET FROM THE JAIL. THE
11 WOMEN GO TO THE CALIFORNIA INSTITUTE FOR WOMEN. WHEN THEY GET
12 TO PRISON, THEY HAVE A SHORTER TIME IN RECEPTION THAN OTHER
13 INMATES BECAUSE MOST OF THEIR ASSESSMENTS HAVE BEEN DONE ON THE
14 LOCAL LEVEL. THEY'RE PAID FOR BY THE PRISON.

15 WE INTEND TO HAVE ALL OF THEIR ASSESSMENTS DONE,
16 INCLUDING MEDICAL, SO THAT THEY COULD SPEND AS MINIMAL OF TIME
17 IN RECEPTION AS POSSIBLE, BECAUSE THAT'S WHERE A LOT OF THE
18 PROBLEMS OCCUR, BUT BECAUSE OF THE RECEIVER, WE HAVE NOT BEEN
19 ABLE TO WORK THAT OUT. THEY STILL NEED TO GET THEIR MEDICAL
20 CHRONOS AND THINGS DONE WHEN THEY GET TO PRISON.

21 ONCE THEY GET TO DONOVAN OR CIW, THEY ACTUALLY MEET
22 THEIR PRISON CASE MANAGER WHO STARTS WORKING WITH THEM AND
23 TELLING THEM WHAT THEY CAN EXPECT WHILE THEY'RE IN PRISON.
24 THEN THEY'RE PUT INTO GENERAL POPULATION. THEY'RE ESSENTIALLY
25 PRECLASSIFIED BEFORE THEY GET TO PRISON. THEY ARE GIVEN THEIR

1 PRISON NUMBER AT THE LOCAL LEVEL, WHICH IS UNHEARD OF. THAT
2 DOESN'T HAPPEN USUALLY. THEY ALREADY HAVE A PRISON NUMBER,
3 THEY'RE IDENTIFIED, AND THEY CAN GET INTO THE PROGRAMMING AND
4 GENERAL POPULATION IN A SHORTER TIME THAN ANYONE ELSE CAN.

5 **Q** ARE THEY ACTUALLY DOING PROGRAMMING WHILE IN PRISON?

6 **A** YES. AS A DIRECT RESULT OF 618, THERE'S ENHANCED
7 PROGRAMMING, VOCATION PROGRAMMING, PARTICULARLY AT DONOVAN AND
8 CIW. AT DONOVAN WE NOW HAVE C-TECH, WHICH IS CABLE TECHNOLOGY,
9 WELDING. MILL AND CABINETRY SHOULD BE UP WITHIN DAYS. AND I'M
10 FORGETTING ONE. THERE'S A FOURTH PROGRAM.

11 THEY ARE ALL UP AND RUNNING SPECIFICALLY AS A RESULT
12 OF SB 618. MOST OF THOSE PROGRAMS ARE ON OUR LEVEL ONE
13 FACILITY WHICH HAS NEVER HAD VOCATIONAL PROGRAMMING BEFORE AND
14 SOME ARE ON OUR LEVEL THREE FACILITIES.

15 **Q** ONCE A PARTICIPANT COMPLETES THEIR TIME IN PRISON, WHAT
16 HAPPENS DIFFERENT WITH AN SB 618 PARTICIPANT THAN THE REGULAR
17 PAROLEE LEAVING PRISON?

18 **A** ACTUALLY, SIX MONTHS BEFORE THEIR RELEASE DATE, THE
19 COMMUNITY CASE MANAGER STARTS MEETING WITH THEM. AND THEY HAVE
20 ONE COMMUNITY CASE MANAGER, SO THEY DEVELOP A RELATIONSHIP WITH
21 THEM, MUCH LIKE WITH THE PRISON CASE MANAGER.

22 OUR COMMUNITY CASE MANAGERS ACTUALLY GO TO THE MDT
23 AT THE BEGINNING OF THE PROCESS, SO THEY GET TO KNOW THEM FROM
24 THE GET-GO. THEY CAN SEE THERE'S GOING TO BE SOME CONSISTENCY.
25 SO THE COMMUNITY CASE MANAGER STARTS MEETING WITH THEM,

1 PLANNING WHERE WILL YOU GO, WHERE ARE YOU GOING TO LIVE, DO YOU
2 NEED IDENTIFICATION, BECAUSE MOST PEOPLE DON'T HAVE ID'S OR
3 DRIVER'S LICENSES; ARE THERE GOING TO BE ISSUES WITH YOUR
4 FAMILY COURT? DO YOU NEED A JOB? ARE YOU GOING TO NEED REHAB?

5 THEY PLAN FOR WHERE THEY'RE GOING TO GO AND WHAT
6 THEY'RE GOING TO DO, SO WHEN THEY GET RELEASED, THEY'RE MET AT
7 THE DOOR BY THEIR COMMUNITY CASE MANAGER, INSTEAD OF BEING
8 GIVEN \$200 AND SAYING CHECK IN WITH YOUR PAROLE AGENT WITHIN 48
9 HOURS. THEY HAVE AN EXACT PLAN OF WHERE THEY'RE GOING AND WHAT
10 THEY'RE GOING TO DO. THE COMMUNITY CASE MANAGER THEN WORKS
11 WITH THEM UPON RELEASE FROM PRISON AS WELL, MEETING WITH THEM,
12 WORKING AS AN ADVOCATE PAROLE AGENT. THEY ALL WORK TOGETHER
13 LIKE COMMUNITY PEOPLE TO BE INVOLVED IN THEIR PROCESS AND THEY
14 FOLLOW THEM EVEN AFTER THEY GET OFF PAROLE.

15 Q WHO PAYS FOR THE COMMUNITY CASE MANAGERS?

16 A IT'S OUT OF THE CDCR BUDGET.

17 Q THE NUMBER THAT YOU HAVE THAT HAVE BEEN RELEASED FROM
18 PRISON ON THE SB 618 PROGRAM, 107 YOU SAID?

19 A AS OF FRIDAY.

20 Q WHAT'S GOING ON WITH THEM? HOW MANY OF THEM HAVE GONE BACK
21 TO PRISON? HOW MANY HAVE RECIDIVATED?

22 A WE HAVE FOUR PEOPLE THAT HAVE COMMITTED OFFENSES THAT HAVE
23 GOTTEN NEW PRISON TERMS, WHICH IS NOT BAD, OUT OF 107. WE ALL
24 KNOW THERE'S GOING TO BE RECIDIVISM NO MATTER WHAT WE DO. SO
25 FAR ONLY FOUR HAVE NEW OFFENSES THAT HAVE RESULTED IN NEW

1 PRISON TERMS. WE HAVE ONE PERSON THAT GOT PROP 36'D, SO THEY
2 ARE ON PROBATION LOCALLY BUT RETAINED IN THE PROGRAM, DID NOT
3 GO BACK TO PRISON. ONE PERSON GOT ANOTHER PROBATIONARY GRANT,
4 DID NOT GO BACK TO PRISON. AND WE HAVE FOUR OTHERS THAT ARE
5 PENDING CASES.

6 **Q** DO YOU MEET AND DISCUSS THE SB 618 PROGRAM WITH THESE
7 OFFENDERS THEMSELVES?

8 **A** I DO, YES. JUST LAST WEEK -- THE WEEK BEFORE, ACTUALLY.
9 THE WEEK BEFORE THANKSGIVING I SPENT THE DAY AT DONOVAN STATE
10 PRISON MEETING WITH THE INMATES THERE BECAUSE WE LIKE, ONE, TO
11 LET THEM KNOW THE DA IS STILL INTERESTED IN THEM AND THAT WE'RE
12 FOLLOWING ALONG TO SEE WHAT'S GOING ON. WE ALSO LIKE TO GET
13 THEIR INPUT, WHAT COULD WE DO BETTER, WHAT ARE SOME OF THE
14 PROBLEMS WITH THE PROGRAM, WHAT'S GOING ON WITH THEM?

15 I ALSO WENT TO CIW THE WEEK BEFORE THANKSGIVING AND
16 MET WITH THE LADIES, AND THE WOMEN ARE DOING PHENOMENALLY. WE
17 HAVE NOT HAD ONE SINGLE WOMAN THAT HAS BEEN RELEASED ON PAROLE
18 RECIDIVATE.

19 **Q** EXHIBIT B IN YOUR DECLARATION, WHICH IS NOW MARKED AS
20 DI 508, DETAILS TWO SUCCESS STORIES. DO YOU RECALL -- DO YOU
21 HAVE A COPY OF THAT?

22 **A** YES.

23 **Q** AND IS IT -- DOES IT REFLECT THE OVERALL SUCCESS OF THE
24 SB 618 PROGRAM, IN YOUR OPINION, AS IT APPLIES GENERALLY TO THE
25 OVERALL NUMBER OF PARTICIPANTS?

1 **A** I THINK IT REFLECTS -- ONE OF THE THINGS ABOUT SB 618 IS IT
2 IS TAILORED TO EACH INDIVIDUAL. INSTEAD OF A
3 ONE-SIZE-FITS-ALL, WE TRY TO FIT THE INDIVIDUAL'S NEEDS. SO
4 SOME OF THE PEOPLE THAT ARE REFERRED TO IN THERE HAVE HAD
5 DIFFERENT NEEDS THAN OTHERS. BUT ON THE WHOLE, I THINK IT
6 REFLECTS THE IDEA THAT PEOPLE ARE TAKING RESPONSIBILITY FOR
7 THEMSELVES, GETTING JOBS, STAYING IN REHAB.

8 ONE OF THE THINGS THAT'S REALLY INTERESTING IS WE'VE
9 HAD A NUMBER OF OUR PEOPLE SUCCESSFULLY COMPLETE REHAB UPON
10 RELEASE, AND WE HAVE PEOPLE THAT ARE ACTUALLY OFF PAROLE NOW,
11 AND I BELIEVE TWO OF THE INDIVIDUALS THAT WE PUT IN THAT LIST
12 HAVE ALREADY BEEN RELEASED FROM PAROLE THROUGH 1453. SO WE ARE
13 WORKING IN CONJUNCTION WITH DRUG TREATMENT AS WELL, 1453. THAT
14 WAY, EVEN AFTER PEOPLE ARE OFF PAROLE, THEY ARE STILL GETTING
15 THE SB 618 SERVICES.

16 **Q** EVEN THOUGH THEY ARE NOT REQUIRED AS A CONDITION OF PAROLE
17 TO PARTICIPATE IN SB 618 PROGRAMMING, THEY ARE STILL
18 PROGRAMMING?

19 **A** YES.

20 **Q** DO YOU FIND THE PARTICIPANTS IN SB 618, THE CRIMINAL
21 OFFENDERS ARE ACTUALLY EAGER TO PARTICIPATE IN THIS TYPE OF A
22 PROGRAM?

23 **A** THEY ARE MORE THAN EAGER TO PARTICIPATE, THE ONES WHO
24 VOLUNTEER FOR THIS PROGRAM, THE VAST MAJORITY. AND THERE'S A
25 FEW THAT THINK THEY ARE GOING TO GET A BETTER DEAL ALONG THE

1 WAY, BUT THE VAST MAJORITY ARE DOING IT BECAUSE THEY ARE SICK
2 OF GOING BACK TO PRISON. THEY DON'T WANT TO LIVE THAT WAY.
3 THEY JUST DON'T KNOW HOW TO DO IT BETTER.

4 SO WHEN I TALK TO THEM, THEY ARE VERY EAGER TO
5 PARTICIPATE. I GET CALLS EVERY SINGLE DAY FROM THE OUTLYING
6 AREAS BECAUSE WE OFFER THIS IN TWO OF THE BRANCHES FOR SAN
7 DIEGO. WE HAVE NORTH COUNTY AND SOUTH BAY THAT DON'T HAVE
8 SB 618 YET. DEFENSE ATTORNEYS CALL ME. I HAVE DEFENDANTS CALL
9 ME FROM JAIL. I THINK MY PHONE NUMBER MUST BE UP AT GEORGE
10 BAILEY. I GET COLLECT CALLS FROM DEFENDANTS ASKING IF THEY CAN
11 GET INTO SB 618. IT IS VERY MUCH WANTED, AND IT'S VERY
12 FRUSTRATING, IF ANYTHING, THAT WE DON'T HAVE MORE SPACES
13 AVAILABLE BECAUSE WE HAVE MORE PEOPLE THAT WOULD LIKE TO TAKE
14 ADVANTAGE OF IT.

15 Q YOU PREVIOUSLY MENTIONED A 70 PERCENT ESTIMATE OF A
16 RECIDIVISM RATE FOR THIS CLASS OF OFFENDER. HOW DO YOUR
17 NUMBERS --

18 JUDGE HENDERSON: IS THIS FOR THIS CLASS OF
19 OFFENDER?

20 MR. MITCHELL: NON-VIOLENT OFFENDERS.

21 JUDGE KARLTON: HE DOESN'T MEAN PEOPLE IN THE
22 PROGRAM; HE MEANS OVERALL.

23 BY MR. MITCHELL

24 Q HOW DO YOUR RESULTS WITH THE SB 618 PROGRAM COMPARE WITH
25 CDCR STATISTICS FOR RETURNS TO PRISON IN A 30 TO 90-DAY PERIOD?

1 **A** WE ARE JUST STARTING TO GET OUR NUMBERS BECAUSE WE HAVE A
2 SMALLER NUMBER OUT, AND WE WILL GET BETTER STATISTICS AS WE GO
3 ON, BUT I WENT THROUGH AND I LOOKED AT, OUT OF OUR FIRST SIX
4 MONTHS THAT WE HAD PEOPLE OUT, SO PEOPLE THAT HAVE BEEN OUT SIX
5 MONTHS OR LONGER, SINCE THEN, NOT OUT SOMETIME BETWEEN NOVEMBER
6 AND MAY.

7 OUT OF ALL THOSE PEOPLE, THERE WERE 38 THAT WERE
8 RELEASED ON PAROLE. ONLY ONE HAD GONE BACK WITH A NEW PRISON
9 TERM. WE HAVE HAD A COUPLE OTHERS SINCE THEN, BUT FOR THAT
10 FIRST SIX MONTHS, COMPARED TO CDCR, I LOOKED AT THEIR NUMBERS,
11 AND -- THEY ACTUALLY GAVE US NUMBERS FOR 2007, AND IN THE FIRST
12 90 DAYS THAT THEY HAD NONVIOLENT OFFENDERS OUT IN SAN DIEGO,
13 THERE WERE 95 PEOPLE THAT HAD GONE BACK TO PRISON WITH A NEW
14 PRISON TERM.

15 **Q** OUT OF HOW MANY?

16 **A** WELL, I KNOW THERE WERE 4,000 TOTAL RELEASED IN 2007 BACK
17 TO SAN DIEGO. SO THAT'S JUST THE FIRST 90. I KNOW THERE WERE
18 771 OUT OF THAT 4,000 THAT WERE ACTUALLY UNDER REVIEW. SO THEY
19 MAY END UP GOING BACK FOR A VIOLATION OR FOR A NEW PRISON TERM.

20 **Q** IN YOUR OPINION, WILL THE PARTICIPANTS IN THE SB 618
21 PROGRAM REALIZE LOWER RECIDIVISM RATES BECAUSE OF SB 618?

22 **A** WE CERTAINLY HOPE SO. I MEAN, WE'RE DOING EVERYTHING WE
23 CAN. THE EDUCATION THAT THEY'RE GETTING, THE SUBSTANCE ABUSE
24 PROGRAMMING, THE VOCATIONAL TRAINING AND HELPING THEM GET JOBS.
25 THEY HAVE MORE EYES WATCHING THEM, SO THEY ACTUALLY STAND A

1 BETTER CHANCE OF RECIDIVATING BECAUSE SOMEONE IS ALWAYS KEEPING
2 AN EYE ON THEM. BUT SO FAR OUR NUMBERS ARE BEARING OUT TO BE
3 CONSIDERABLY BETTER THAN CDCR'S.

4 **Q** YOU INDICATED THAT ONLY SIX PER WEEK ARE ALLOWED INTO THIS
5 PROGRAM. WHY IS THAT?

6 **A** THAT WAS ALL THE FUNDING THAT WE WERE PROVIDED. WE WANTED
7 TO KEEP IT SMALL INITIALLY JUST TO MAKE SURE WE WERE DOING
8 EVERYTHING RIGHT. IT'S A MORE MANAGEABLE GROUP. IT'S MORE
9 MANAGEABLE FOR US TO PROCESS. IT'S MORE MANAGEABLE FOR SANDAG
10 TO OVERSEE.

11 IT'S ALSO A MATTER OF FUNDING. WE HAD FUNDING TO
12 HIRE PROBATION OFFICERS, CASE MANAGER, COMMUNITY CASE MANAGER.
13 CERTAIN NUMBER OF PAROLE AGENTS HAVE TO BE ASSIGNED TO THIS.
14 IT'S TWO-FOLD; ONE, ECONOMICS, AND, TWO, MANAGEABILITY. BUT
15 OUR HOPE IS WE WILL BE ABLE TO OFFER IT TO EVERYBODY. AND WE
16 HAVE ACTUALLY PUT IN FOR AN INCREASE IN BUDGET SO WE CAN START
17 RAMPING IT UP AND MAKE IT THE -- IT AVAILABLE TO MORE PEOPLE IN
18 SAN DIEGO.

19 **Q** HOW LONG DID IT TAKE THE PROGRAM TO BE IMPLEMENTED IN SAN
20 DIEGO FROM THE GROUND UP?

21 **A** THEY STARTED BEFORE THE LAW PASSED, STARTED PUTTING THINGS
22 TOGETHER. ONCE THE LAW PASSED IN OCTOBER OF 2005, IT WAS JUST
23 ABOUT 16, 17 MONTHS BEFORE OUR FIRST PEOPLE WENT INTO THE
24 PROGRAM. BUT WE WERE THE FIRST OF OUR KIND. IT TOOK A LONG
25 TIME TO GET ALL THOSE DIFFERENT AGENCIES TOGETHER.

1 JUST GETTING US TO TALK ABOUT THE INDIVIDUAL IN THE
2 SAME TERMS WAS A BIG DEAL. WE TALK ABOUT THEM -- AT THE DA'S
3 OFFICE, THEY'RE DEFENDANTS. TO THE SHERIFF, THEY'RE INMATES.
4 TO CDCR THEY'RE INMATES OR PAROLEES. SO WE ALL HAD TO COME UP
5 WITH A COMMON TERM JUST TO DISCUSS THEM, BUT WE PUT TOGETHER A
6 PROGRAM THAT SEES THROUGH, IT'S TRANSPARENT.

7 WE'VE DOCUMENTED EVERYTHING WE'VE DONE RIGHT DOWN TO
8 HOW WE PUT TOGETHER A COMPUTER PROGRAM FOR TRACKING THEM SO
9 THAT IT CAN BE TAKEN AND COPIED, HOPEFULLY, IN A MUCH QUICKER
10 WAY IN OTHER COUNTIES.

11 **Q** IS THE SB 618 PROGRAM BEING INDEPENDENTLY EVALUATED?

12 **A** IT IS -- THE SAN DIEGO ASSOCIATION OF GOVERNMENTS HAS THE
13 CONTRACT TO INDEPENDENTLY EVALUATE IT. THEY HAVE BEEN INVOLVED
14 SINCE THE BEGINNING. THEY COME TO OUR OPERATIONS MEETINGS.
15 THEY MEET WITH OUR STAFF. THEY MEET WITH THE INMATES
16 THEMSELVES. THEY ACTUALLY DO EVALUATIONS WITH THEM. THEY ARE
17 FOLLOWING EVERY STEP OF THE PROCESS TO DETERMINE WHAT WORKS,
18 WHAT DOESN'T WORK, HOW COST EFFECTIVE IS IT.

19 AND THEY ALSO ARE FOLLOWING A CONTROL GROUP PEOPLE
20 THAT ARE SIMILARLY SITUATED WHO, FOR WHATEVER REASON, WEREN'T
21 OFFERED THE OPPORTUNITY TO PARTICIPATE IN SB 618 SO THEY CAN
22 SEE HOW WELL THEY DO WITH THE PROGRAMMING COMPARED TO HOW WELL
23 OUR PARTICIPANTS DID.

24 **Q** YOU REFERENCED THE FIRST ANNUAL EVALUATION PART IN YOUR
25 DECLARATION AS EXHIBIT C THAT'S NOW MARKED AS DI 509. DO YOU

1 RECOGNIZE THAT?

2 **A** I DO.

3 **Q** CAN YOU TELL US WHAT THAT EVALUATION REPORT CONSISTS OF?

4 **A** THAT IS SANDAG'S INDEPENDENT EVALUATION, NOT ONLY OF THE
5 PROGRAM, BUT THE NEED FOR THE PROGRAM, WHY THEY BELIEVE THERE
6 IS SO MUCH RECIDIVISM, AND THEN THEIR ANALYSIS OF HOW THE
7 PROGRAM IS WORKING SO FAR. THEY DIDN'T HAVE MUCH STATISTICAL
8 DATA YET BECAUSE OUR PROGRAM WAS SO NEW. THEY WILL BE PUTTING
9 OUT A NEW REPORT IN MARCH OF THIS YEAR, AND ANOTHER ONE THE
10 NEXT YEAR, AND THAT SHOULD HAVE MORE STATISTICAL INFORMATION IN
11 IT.

12 **JUDGE KARLTON:** WHEN YOU SAY "MARCH OF THIS YEAR,"
13 YOU MEAN '09?

14 **THE WITNESS:** YES, THANK YOU.

15 **BY MR. MITCHELL**

16 **Q** YOU ARE AWARE THESE PROCEEDINGS ARE TO DETERMINE WHETHER OR
17 NOT A PRISONER RELEASE ORDER SHOULD ISSUE, CORRECT?

18 **A** YES.

19 **Q** IN YOUR OPINION, FROM WORKING WITH THE SB 618 PROGRAM, HOW
20 WOULD THAT IMPACT THE SB 618 PROGRAM? WOULD IT BE ADVERSE OR
21 POSITIVE IMPACT?

22 **A** IT WOULD BE AN ADVERSE IMPACT TO OUR PARTICIPANTS,
23 PARTICULARLY BECAUSE WE DON'T HAVE ANYTHING SET IN PLAN FOR
24 THEM. ONE, THEY WOULDN'T BE GETTING THE PROGRAMMING THAT
25 THEY'RE SUPPOSED TO BE GETTING IN PRISON, WHICH IS A BIG PART

1 OF SHORTENING THAT TIME IN RECEPTION. WE WANT TO GET THEM IN,
2 GET THEM PROGRAMMING, GET THEM TO START THINKING ABOUT HOW TO
3 TRANSITION BETTER IN THE COMMUNITY; TWO, THEY WOULDN'T HAVE
4 TIME FOR THEIR COMMUNITY CASE MANAGER TO START BUILDING THAT
5 RELATIONSHIP WITH THEM. IF THEY ARE RELEASED WHOLESALE, THEY
6 DON'T HAVE ANYTHING SET UP WITH THE COMMUNITY CASE MANAGER;
7 THREE, WE ALREADY KNOW OUR COMMUNITY RESOURCES ARE TAXED.

8 OUR PAROLE AGENTS DON'T HAVE ENOUGH TIME TO TAKE
9 CARE OF THESE PEOPLE, WHICH IS A HUGE PART OF WHY THERE'S SO
10 MUCH RECIDIVISM.

11 THERE'S A VERY SMALL AMOUNT OF REHABS OUT THERE,
12 HOUSING OUT THERE, SOBER LIVING FACILITIES, EMPLOYMENT
13 POSSIBILITIES. SO THIS SMALL POOL OF RESOURCES THAT WE WOULD
14 TRY TO GET OUR SB 618 PARTICIPANTS WOULD BE WAY OVERTAXED, AND
15 THEY WOULD NOT GET THE SERVICES WE HAVE PROMISED TO PROVIDE
16 THEM.

17 ADDITIONALLY, THEY WOULD NOT BE PREPARED FOR THE
18 COMMUNITY IN THE WAY THAT WE INTENDED TO HAVE THEM PREPARED,
19 NOR WOULD THE COMMUNITY BE READY FOR THEM. SO IT WOULD
20 DEFINITELY HAVE AN ADVERSE IMPACT ON OUR POPULATION
21 SPECIFICALLY.

22 **Q** WORKING WITH THE PROGRAM AS LONG AS YOU HAVE, IS THERE IN
23 ANY REASON IN YOUR MIND THAT THIS PROGRAM COULDN'T BE
24 IMPLEMENTED IN OTHER COUNTIES IN CALIFORNIA?

25 **A** IT'S JUST A MATTER OF THE WILL, GETTING EVERYBODY SITTING

1 DOWN TOGETHER, WORKING TOGETHER. I KNOW CDCR IS WATCHING US
2 VERY CAREFULLY BECAUSE THEY KNOW WE ARE KIND OF THE WAVE OF THE
3 FUTURE. THIS IS THE BEST THING THEY'VE GOT GOING RIGHT NOW.
4 SO I THINK IT CAN EASILY BE COPIED AND TAKEN TO OTHER
5 COMMUNITIES.

6 **Q** AND CDCR IS FUNDING THIS PROGRAM, CORRECT?

7 **A** YES. SOME OF IT IS IN KIND. LIKE MY SERVICES, THERE'S NOT
8 A GRANT FOR ME TO BE SPENDING THE TIME AND ENERGY I DO WORKING
9 ON THIS PROGRAM. MY OFFICE JUST OFFERS ME UP TO ASSIST WITH
10 THE PROGRAM.

11 BUT PROBATION HAS EXTRA PROBATION OFFICERS THAT WERE
12 HIRED THAT ARE PAID FOR BY CDCR. OUR PRISON CASE MANAGERS ARE
13 PAID FOR BY CDCR. THE COMMUNITY CASE MANAGERS, THE PAROLE
14 AGENTS ARE TAKEN OUT OF A GENERAL ASSIGNMENT, AND THEY WORK
15 SPECIFICALLY WITH A SMALLER GROUP, SO THEY HAVE FIFTY TO ONE,
16 INSTEAD OF NINETY TO ONE. ALL OF THAT IS PAID FOR BY CDCR, AS
17 WELL AS OUR CONTRACTS WITH THE COMMUNITY FOR THE TESTING FOR
18 THE VOCATIONAL SERVICES FOR THE HOUSING MANAGER. THAT IS ALL
19 COVERED BY CDCR.

20 **MR. MITCHELL:** I SUBMIT HER SIGNED DECLARATION INTO
21 EVIDENCE AT THIS TIME, AS WELL AS THE THREE EXHIBITS, AND I
22 HAVE NO FURTHER QUESTIONS.

23 **JUDGE HENDERSON:** THEY WILL BE ADMITTED AT THIS
24 TIME.

25 (EXHIBITS DI 507-509 RECEIVED IN EVIDENCE.)

1 **JUDGE HENDERSON:** OTHER DEFENDANTS HAVE ANY
2 QUESTIONS? OKAY.

3 **CROSS-EXAMINATION BY MR. SANGSTER**

4 **BY MR. SANGSTER**

5 **Q** GOOD AFTERNOON, MS. RODRIGUEZ. MY NAME IS ED SANGSTER.

6 YOU BELIEVE THAT THE PROGRAMS THAT YOU HAVE BEEN
7 DESCRIBING WILL REDUCE RECIDIVISM; IS THAT CORRECT?

8 **A** YES.

9 **Q** AND BY REDUCING RECIDIVISM, THEY WILL IMPROVE PUBLIC
10 SAFETY; IS THAT CORRECT?

11 **A** ABSOLUTELY.

12 **Q** AND, IN ADDITION TO REDUCING RECIDIVISM WILL IMPACT -- LET
13 ME REPHRASE IT.

14 REDUCING RECIDIVISM WILL REDUCE THE STATE PRISON
15 POPULATION, CORRECT?

16 **A** ULTIMATELY, YES.

17 **Q** IF THE -- YOU BELIEVE THAT IF THE PROGRAM AS ADOPTED BY SAN
18 DIEGO WERE ADOPTED THROUGHOUT THE STATE, THE STATE PRISON
19 POPULATION AS A WHOLE WOULD DECREASE, CORRECT?

20 **A** ULTIMATELY, YES.

21 **Q** NOW, WAS SOME LEGISLATION REQUIRED BEFORE SAN DIEGO COUNTY
22 COULD START IMPLEMENTING THESE PROGRAMS?

23 **A** PENAL CODE SECTION 1203.8 WAS IMPLEMENTED AND ACTUALLY
24 PROVIDED FOR FUNDING FOR THREE COUNTIES OFF THE BAT TO START UP
25 THE PROGRAM. WE ARE JUST FIRST TO GET IT GOING.

1 Q WOULD OTHER LEGISLATION BE REQUIRED IN ORDER FOR THIS
2 PROGRAM TO BE APPLIED STATEWIDE?

3 A I DON'T THINK OTHER LEGISLATION. YOU WOULD JUST NEED TO
4 EXPAND THE FUNDING FOR IT.

5 Q SO THE --

6 JUDGE KARLTON: NOW I'M CONFUSED. THE INITIAL
7 LEGISLATION AUTHORIZED THREE COUNTIES. YOU WOULD HAVE TO HAVE
8 NEW LEGISLATION TO EXPAND THAT; IS THAT RIGHT?

9 THE WITNESS: YES. I'M SORRY. I KIND OF
10 MISUNDERSTOOD THE QUESTION. YOU WOULD NEED TO AMEND THAT TO
11 INCLUDE ALL OF THE COUNTIES OF SAN DIEGO -- OR OF CALIFORNIA.

12 BY MR. SANGSTER

13 Q SO THIS COURT WOULD NEED TO DEPEND ON ACTION BY THE
14 CALIFORNIA LEGISLATURE IN ORDER TO EXPAND THIS PROGRAM,
15 CORRECT?

16 A PAST THE THREE COUNTIES, ALTHOUGH I'M SURE THERE'S
17 SOMETHING THAT COULD BE EMERGENCY, YOU KNOW, LEGISLATION
18 ENACTED, YES.

19 JUDGE HENDERSON: ARE THE OTHER TWO COUNTIES
20 UNDERWAY? DO YOU KNOW WHERE THEY ARE IN THIS PROCESS?

21 THE WITNESS: I KNOW THERE'S ONE COUNTY THAT'S BEEN
22 COMING DOWN TO SEE US. I WANT TO SAY IT'S SAN BERNADINO, AND
23 OTHER COUNTIES HAVE EXPRESSED INTEREST IN IT.

24 JUDGE KARLTON: NOTHING IS ACTUALLY GOING OUT?

25 THE WITNESS: NOT THAT I AM AWARE OF ANYTHING IN

1 SPECIFIC.

2 **BY MR. SANGSTER**

3 **Q** SO AS OF TODAY, SAN DIEGO COUNTY IS THE ONLY COUNTY THAT IS
4 FOLLOWING THIS PROGRAM EVEN THOUGH THE LEGISLATION AUTHORIZES
5 THREE; IS THAT CORRECT?

6 **A** THAT'S CORRECT.

7 **Q** NOW, THE DESIGN OF THE PROGRAM REQUIRED COLLABORATION
8 BETWEEN VARIOUS AGENTS WITHIN SAN DIEGO COUNTY AND THE
9 CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION,
10 CORRECT?

11 **A** CORRECT.

12 **Q** YOUR EXHIBIT C TO YOUR DECLARATION DESCRIBES THAT AMOUNT OF
13 COLLABORATION OF BEING UNPRECEDENTED. WOULD YOU AGREE WITH
14 THAT?

15 **A** YES, I WOULD.

16 **Q** SO YOU WOULD AGREE THAT UNPRECEDENTED COLLABORATION WAS
17 REQUIRED IN ORDER TO GET THIS PROGRAM OFF THE GROUND?

18 **A** I WOULD AGREE THAT IT DID TAKE MANY DIFFERENT AGENCIES
19 GETTING TOGETHER, BUT IT'S NOT SOMETHING THAT CAN'T BE DONE,
20 SINCE WE WERE ABLE TO ACCOMPLISH IT.

21 **Q** YOU'VE ACCOMPLISHED IT FOR 389 INMATES?

22 **A** SO FAR, YES.

23 **Q** SO THE FIRST PARTICIPANT WAS ENROLLED IN FEBRUARY OF '97,
24 BUT, ACTUALLY, THOSE WERE JUST TWO PEOPLE, RIGHT?

25 **A** THOSE WERE LIKE OUR TEST RUN TO KIND OF GET THE KINKS OUT,

1 SO, YES, THE FIRST TWO -- I WANT TO SAY IT WAS FEBRUARY 17TH.

2 Q AND THE PROGRAM DIDN'T GET UP AND RUNNING UNTIL NOVEMBER OF
3 '97 -- EXCUSE ME -- NOVEMBER OF 2007?

4 A NO, NO. MARCH WAS WHEN WE STARTED ENROLLING PARTICIPANTS
5 ON A REGULAR BASIS OF 2007.

6 Q SO YOU HAVE ABOUT 18 MONTHS OF EXPERIENCE WITH THIS
7 PROGRAM?

8 A OF IT UP AND RUNNING, YES.

9 Q AND WE'RE UP TO HOW MANY PEOPLE NOW THAT HAVE BEEN RELEASED
10 UNDER THIS PROGRAM?

11 A ONE HUNDRED SEVEN.

12 Q I COULDN'T HEAR YOU. I'M SORRY.

13 A ONE HUNDRED SEVEN.

14 Q ONE HUNDRED SEVEN. AND OF THE 107 RELEASED FROM PRISON,
15 HOW MANY HAVE SO FAR BEEN RELEASED FROM PAROLE?

16 A TEN.

17 Q NOW, YOU TESTIFIED ON DIRECT THAT YOU FEEL THE PROGRAM WILL
18 BE ADVERSELY AFFECTED IF THERE'S A PRISONER RELEASE ORDER. SO
19 I WANT TO EXPLORE THAT FOR A LITTLE BIT. WE ARE TALKING ABOUT
20 ADVERSELY AFFECTING THE PROGRAM. WE ARE TALKING ABOUT
21 ADVERSELY AFFECTING THE 389 PEOPLE IN THE PROGRAM, CORRECT?

22 A YES.

23 Q SO AS AGAINST THE PRISON POPULATION OF 190-SOME-THOUSAND,
24 WE ARE TALKING ABOUT THE ADVERSE IMPACT TO 389 PEOPLE?

25 A WELL, FOR THIS PARTICULAR SB 618 POPULATION, YES, ALTHOUGH

1 I THINK THERE'S ADVERSE IMPACTS GENERALLY TO RELEASE.

2 **Q** YOU ARE JUST TALKING ABOUT THE 389 PEOPLE?

3 **A** YES.

4 **Q** SO OF THE 389 PEOPLE IN THE PROGRAM, HOW MANY OF THOSE
5 WOULD BE RELEASED EARLY IF THERE WERE A PRISONER RELEASE ORDER?

6 **A** WELL, THEY'RE ALL NONVIOLENT OFFENDERS, SO IT WOULD DEPEND
7 UPON HOW THAT WAS STRUCTURED, BUT IT COULD BE -- YOU KNOW, ALL
8 OF THEM, THEY'RE ALL LOW LEVEL, LOW PRISON SENTENCE OFFENDERS.
9 YOU KNOW, YOU SAY 389, BUT WE HAVE SIX NEW GOING IN EVERY
10 SINGLE WEEK.

11 **Q** MY QUESTION IS HOW MANY? IS YOUR ANSWER "I DON'T KNOW"?

12 **A** I DON'T HAVE AN EXACT NUMBER. NO, I DON'T KNOW HOW IT WILL
13 BE STRUCTURED FOR THE RELEASE.

14 **Q** SO ARE YOU ABLE TO APPROXIMATE HOW MANY PEOPLE WOULD BE
15 ADVERSELY IMPACTED WITHOUT KNOWING WHAT THE PARAMETERS ARE OF A
16 PRISONER RELEASE ORDER?

17 **A** NO, I DON'T.

18 **Q** NOW, YOU TALKED ABOUT PEOPLE BEING RELEASED. HOW MUCH OR
19 HOW EARLY WOULD PEOPLE BE RELEASED FROM PRISON? A MONTH EARLY,
20 FIFTEEN DAYS EARLY, TWO MONTHS EARLY?

21 **A** AGAIN, EACH PERSON HAS A DIFFERENT SENTENCE, SO I CAN'T
22 TELL YOU EXACTLY HOW MANY ARE AT WHICH POINT. SOME PEOPLE HAVE
23 ONE MONTH LEFT TO SERVE. NORMALLY -- SOME PEOPLE HAVE 2-1/2
24 YEARS TO SERVE. ANYWAY, IT VARIES. THEY'RE ALL AT DIFFERENT
25 STAGES OF THE PROCESS.

1 Q WHAT I WAS TALKING ABOUT IS THE PRISONER RELEASE ORDER.
2 YOU SAID THERE WOULD BE AN ADVERSE IMPACT BECAUSE PEOPLE IN
3 THIS PROGRAM WOULD BE RELEASED. IS IT CORRECT YOU DON'T KNOW
4 HOW MUCH EARLIER THEY WOULD BE RELEASED?

5 A NO, BECAUSE, AGAIN, I DON'T KNOW HOW THE COURT WOULD
6 STRUCTURE IT ULTIMATELY.

7 Q IS IT CORRECT THE FUNDING FOR THIS PROGRAM COMES FROM THE
8 STATE?

9 A THE MAJORITY OF IT, YES.

10 Q HOW MUCH MONEY DO YOU GET FROM THE STATE FOR THIS PROGRAM
11 FOR THE 389 PEOPLE?

12 A WELL, THE DA'S OFFICE DOESN'T GET MONEY FOR IT. IT GOES TO
13 A PUBLIC ENTITY AGREEMENT, AND THE INITIAL CONTRACT WAS FOR
14 \$4 MILLION. IT'S AN ECONOMIES OF SCALE KIND OF THING. YOU
15 SPEND THE MONEY UP FRONT SO YOU ARE NOT SPENDING \$35,000 PER
16 PERSON ON THE BACK END WHEN THEY GO BACK TO PRISON.

17 Q HOW MUCH OF THE \$4 MILLION HAS BEEN SPENT ON THE 39
18 INDIVIDUALS?

19 A I'M NOT SURE I UNDERSTAND THE QUESTION.

20 Q I'M JUST TRYING TO GET A SENSE OF HOW MUCH THIS PROGRAM IS
21 COSTING. IN OTHER WORDS, YOU ARE TALKING ABOUT A PROGRAM YOU
22 BELIEVE IS VERY SUCCESSFUL IN REDUCING RECIDIVISM, RIGHT?

23 A YES.

24 Q SO WHAT I'M TRYING TO GET A SENSE OF IS HOW MUCH MONEY IS
25 BEING SPENT BY THE STATE TO ACHIEVE THAT RESULT?

1 **A** AND THE INITIAL CONTRACT, AS I SAID, WAS ABOUT \$4 MILLION.
2 WE BUDGETED FOR \$4 MILLION THIS YEAR. EVERY YEAR WE WILL
3 BUDGET FOR THE AMOUNT WE NEED.

4 **Q** SO IS IT \$4 MILLION PER YEAR?

5 **JUDGE KARLTON:** HAVE YOU DEEMED A SET OF CRITERIA
6 WHICH TELLS YOU AT LEAST APPROXIMATELY HOW MUCH PER MEMBER OF
7 THE PROGRAM IS COSTING?

8 **THE WITNESS:** WE ARE WAITING FOR THE SANDAG. IN
9 THEIR NEXT ANALYSIS, THEY SHOULD BE ABLE TO HAVE A BREAKDOWN
10 BETTER FOR US. WE JUST DON'T HAVE THAT NUMBER.

11 **BY MR. SANGSTER**

12 **Q** SANDAG IS SAN DIEGO ASSOCIATION OF COUNTY GOVERNMENT'S OR
13 SOMETHING LIKE THAT?

14 **A** YES.

15 **Q** AND THEY ARE DOING A STUDY OF THIS PROGRAM TO DETERMINE
16 WHETHER IT'S COST EFFECTIVE; IS THAT CORRECT?

17 **A** EXACTLY.

18 **Q** AS OF TODAY, HAS THERE BEEN A DECISION WHETHER THIS PROGRAM
19 IS COST EFFECTIVE?

20 **A** WELL, WE DON'T HAVE ANY KIND OF RESULTS, STATISTICAL
21 RESULTS, YET BECAUSE IT IS STILL SO NEW. BUT IF WE HAVE 107
22 PEOPLE OUT ON PAROLE THAT WE ARE NOT SPENDING \$35,000 A YEAR
23 FOR, SO FAR IT'S DOING PRETTY WELL. THE EXPECTATION IS THE
24 ECONOMIES OF SCALE, AS YOU SAVE THAT MONEY ON THE BACK END,
25 THEN YOU ARE NOT SPENDING IT. DO YOU SEE WHAT I'M KIND OF

1 SAYING? YOU START OFF -- YOU GOT TO PUT MONEY INTO IT IN ORDER
2 TO SAVE MONEY LATER.

3 **Q** I SEE EXACTLY WHAT YOU'RE SAYING, I THINK. YOU'RE SAYING
4 THIS IS A TOOL BY WHICH THE STATE PRISON POPULATION COULD BE
5 EFFECTIVELY REDUCED WITHOUT JEOPARDIZING PUBLIC SAFETY; IS THAT
6 CORRECT?

7 **A** YES.

8 **Q** SO IF THIS COURT IMPOSES AN ORDER THAT LIMITS CALIFORNIA
9 STATE PRISON POPULATION, YOU BELIEVE THE MEANS EXIST TODAY TO
10 REDUCE THE PRISON POPULATION WITHOUT ADVERSELY IMPACTING PUBLIC
11 SAFETY; IS THAT TRUE?

12 **A** I'M NOT SURE I UNDERSTAND YOUR QUESTION. IT GOT A LITTLE
13 LOST.

14 **Q** DO YOU THINK THE MEANS EXIST TODAY TO APPLY THIS PROGRAM
15 STATEWIDE?

16 **A** I THINK IT WOULD TAKE SOME TIME. IT COULDN'T BE DONE
17 TOMORROW, BUT IT'S CERTAINLY SOMETHING THAT CAN BE IMPLEMENTED.
18 THIS WAS NOT SOMETHING THAT HAPPENED OVERNIGHT. YOU HAVE TO
19 GET THE PRISONS INVOLVED. YOU HAVE TO GET THE PROGRAMMING, AND
20 SOME OF THAT BUDGET GOES TOWARDS THE PROGRAMMING.

21 **Q** ONCE ALL THAT HAPPENS, THIS IS A TOOL BY WHICH THE PRISON
22 POPULATION CAN BE CONTROLLED WITHOUT ADVERSELY IMPACTING PUBLIC
23 SAFETY, TRUE OR CORRECT -- TRUE OR FALSE? I LIKE MY FIRST
24 QUESTION BETTER.

25 **A** I WOULD SAY AND TRUE AND CORRECT. IF WE CAN BENEFIT THE

1 COMMUNITY BY HAVING LESS RECIDIVISM, THEN WE ARE PROTECTING
2 COMMUNITY SAFETY.

3 **Q** SO THIS IS A MODEL FOR REDUCING THE PRISON POPULATION?

4 **A** I BELIEVE IT WILL BE.

5 **MR. SANGSTER:** NO FURTHER QUESTIONS, YOUR HONOR.

6 **JUDGE HENDERSON:** LET ME ASK YOU, MS. RODRIGUEZ, YOU
7 SAID AT SOME POINT A WHILE BACK, AS A MATTER OF WILL, COUNTY
8 WILL. IS THAT WHY SAN DIEGO IS HERE AND THE OTHER TWO
9 AUTHORIZED COUNTIES ARE NOT? IS IT WILL AND --

10 **THE WITNESS:** I THINK SO. IT'S A CULTURE CHANGE.
11 YOU KNOW, IN THE PAST -- AND I CAN SAY AS A DEPUTY DA, I
12 THOUGHT MY JOB ENDED WHEN I PUT SOMEBODY IN PRISON, I'M DONE,
13 I'VE CLEARED UP THE PROBLEM. AND WE, AS A COMMUNITY, WE AS A
14 DA'S OFFICE, CDCR, THE SHERIFF DEPARTMENT, WE ALL LOOKED AT
15 EACH OF OUR INDIVIDUAL JOBS AND DIDN'T THINK ABOUT WHAT HAPPENS
16 WHEN THEY GET OUT BECAUSE EVERYBODY IS GOING TO GET OUT AT SOME
17 POINT.

18 **JUDGE KARLTON:** THAT TURNS OUT NOT TO BE TRUE.

19 **THE WITNESS:** THE 90 PERCENT OF THE PEOPLE WHO GO TO
20 PRISON ARE GOING TO GET OUT AT SOME POINT. IT TOOK MY BOSS
21 SAYING, HEY, WAIT A MINUTE, YOU KNOW, AS THE DA, I CAN BETTER
22 PROTECT MY COMMUNITY BY PREVENTING CRIME, NOT JUST REACTING TO
23 CRIME, BUT PREVENTING IT, BY GIVING PEOPLE TOOLS TO DO
24 SOMETHING OTHER THAN COMMIT CRIME. SO IT IS A MATTER OF WILL.
25 IT'S A MATTER OF CHANGING PERCEPTION AND CHANGING THE CULTURE

1 OF CDCR, THE PAROLE DEPARTMENT, THE DA'S OFFICE. EVEN THE
2 PUBLIC DEFENDERS, YOU HAVE TO CHANGE THEIR THINKING, TOO,
3 BECAUSE THEY LOOKED AT MY OFFICE AS, WELL, WHAT DO YOU GET OUT
4 OF IT, HOW ARE YOU GOING TO TRICK THESE GUYS INTO GIVING UP
5 MORE OF THEIR TIME? I THINKS IT IS A MATTER OF WILL, BUT IT IS
6 SOMETHING -- IT REALLY IS THE WAY OF THE FUTURE.

7 YOU ARE SEEING THIS HAPPEN ACROSS THE UNITED STATES,
8 THAT WE ARE RECOGNIZING THAT WE, AS A COMMUNITY, HAVE TO DO
9 SOMETHING BETTER TO PROTECT OUR COMMUNITIES AND NOT JUST
10 RELEASING PEOPLE, BUT RELEASING THEM WITH TOOLS SO THEY DON'T
11 COME BACK AGAIN.

12 **JUDGE REINHARDT:** I THINK IT'S A WONDERFUL THOUGHT
13 THAT YOU DON'T SEND PEOPLE TO PRISON AND KEEP THEM THERE,
14 WAREHOUSE THEM FOREVER, BUT, INSTEAD, YOU HAVE PROGRAMS IN THE
15 LOCAL COMMUNITIES, AND YOU CAN SEND THEM HOME, AND THEY CAN BE
16 TRAINED SO THAT THEY WON'T GO BACK TO PRISON. BUT THAT'S A
17 WONDERFUL CONCEPT, MUCH BETTER THAN KEEPING PEOPLE IN PRISON
18 TOO LONG.

19 THE QUESTION I HAVE, THOUGH, IS YOU DON'T REALLY
20 HAVE ANY IDEA HOW MUCH SHORTER THE TERM WOULD BE BEFORE PEOPLE
21 WERE LET OUT IF YOU REDUCE THE PRISON POPULATION. ONE OF THE
22 WITNESSES SAID SOMETHING ABOUT YOU REDUCE IT BY A VERY SMALL
23 AMOUNT, YOU LET THEM OUT A LITTLE BIT EARLIER. WHY DO YOU
24 THINK THAT IT WOULD HURT YOUR PROGRAM IF PEOPLE WHO WERE IN
25 PRISON FOR, SAY, FIVE YEARS WERE LET OUT AFTER FOUR YEARS AND

1 NINE MONTHS? HOW WOULD THAT HURT YOUR PROGRAM?

2 **THE WITNESS:** WELL, THE MAJORITY OF OUR PEOPLE IN
3 THE PROGRAM HAVE A SENTENCE BETWEEN SIXTEEN MONTHS AND FOUR
4 YEARS, SO THE MAXIMUM THEY'RE ACTUALLY GOING TO SERVE FOR MOST
5 OF THEM IS TWO YEARS, AND A LOT OF THEM, THEY'RE ONLY SERVING
6 EIGHT MONTHS. SO IF YOU LET SOMEBODY OUT --

7 **JUDGE REINHARDT:** SIX MONTHS.

8 **THE WITNESS:** WE JUST DON'T HAVE THINGS IN PLACE FOR
9 THEM. THE COMMUNITY IS NOT PREPARED FOR THEM. OUR PROGRAM
10 ISN'T PREPARED FOR THEM. WE HAVE ONE PAROLE AGENT FOR 50
11 PEOPLE. WE HAVE COMMUNITY CASE MANAGERS THAT WON'T HAVE HAD
12 TIME TO DEVELOP THE PLAN FOR THEM, THE PROCESS FOR THEM, THE
13 RESOURCES ON THE OUTSIDE, AND WE WON'T HAVE HIRED ENOUGH PEOPLE
14 TO TAKE CARE OF THEM.

15 **JUDGE KARLTON:** LET'S ASSUME ALL OF THAT; YOU
16 CONTINUE WITH YOUR PROGRAM AS IT IS DOING THE BEST YOU CAN, AND
17 ALL THESE PEOPLE ARE BEING LET OUT, NOT ALL OF THEM ARE BEING
18 LET OUT A MONTH EARLY, A MONTH AND A HALF, TWO MONTHS, WHATEVER
19 IT IS. THAT'S GOING TO BE A BURDEN ON EVERYBODY ELSE, BUT IT'S
20 NOT GOING TO AFFECT YOUR PROGRAM AT ALL, RIGHT?

21 **THE WITNESS:** IT DOES AFFECT THE RESOURCES THAT ARE
22 AVAILABLE TO THEM.

23 **JUDGE KARLTON:** THAT'S A QUESTION OF COST BENEFIT.
24 AGAIN, CDCR IS LETTING OUT PEOPLE AND NOT SPENDING THE MONEY
25 KEEPING THEM IN PRISON; THEY'RE SAVING THIS MONEY AND THEY CAN

1 USE THAT MONEY.

2 **JUDGE REINHARDT:** THEY CAN GIVE IT TO YOU.

3 **JUDGE KARLTON:** THEY CAN GIVE IT TO YOU OR OTHERS'
4 COMMUNITY PROGRAMS. IT SEEMS TO ME, MAYBE I'M MISSING THE
5 POINT, PLEASE DON'T FEEL SHY, IT SEEMS TO ME THE SUCCESS OR
6 FAILURE OF YOUR PARTICULAR PROGRAM IS NOT AFFECTED BY WHETHER
7 OR NOT THIS COURT ISSUES A PRISON -- I'M NOT SUGGESTING WE ARE
8 GOING TO. I'M JUST SAYING HE'S NOT AFFECTED BY OUR ISSUING A
9 PRISON RELEASE ORDER IF THAT BECOMES NECESSARY.

10 **THE WITNESS:** WELL, AGAIN, I THINK IT DOES, IN THE
11 SENSE THAT RESOURCES ARE ALREADY TAXED IN THE COMMUNITY. WE
12 HAVE VERY FEW RESOURCES FOR ALL THE PEOPLE, LET ALONE OUR
13 SB 618. THAT'S NOT INCLUDING ALL THE PEOPLE THAT HAVE TO BE
14 INVOLVED AND PAID FOR BY THE PROGRAM --

15 **JUDGE KARLTON:** THERE'S NOTHING INHERENT IN A PRISON
16 RELEASE ORDER THAT WOULD REDUCE ANY AMOUNT THAT THE CDCR IS
17 FUNDING THROUGH YOUR PROGRAM; THAT'S A JUDGMENT THEY HAVE TO
18 MAKE ON ANOTHER BASIS. BUT, YOU KNOW, THEY START ASKING
19 THEMSELVES HOW MUCH THEY'RE SAVING BY RELEASING PEOPLE, NO
20 DISRESPECT, BUT YOUR \$4 MILLION ISN'T A REALLY SIGNIFICANT
21 NUMBER. WELL, OKAY. I UNDERSTAND WHAT I'M SAYING. I THINK I
22 UNDERSTAND WHAT YOU'RE SAYING.

23 **THE WITNESS:** I THINK JUST IN GENERAL, YOU KNOW, THE
24 IDEA OF RECIDIVISM IS INCREASED, AND FOR OUR PEOPLE WHO WE HAVE
25 PROMISED SO MUCH TO, IF WE DON'T SUPPLY TO THEM WHAT WE HAVE

1 PROMISED, IT CAUSES A LACK OF TRUST, AND IT CAUSES, YOU KNOW, A
2 GREATER CHANCE -- AND WE ARE TALKING ABOUT A POPULATION THAT
3 WALKS A PRETTY THIN LINE AS IT IS.

4 THESE ARE PEOPLE THAT HAVE TROUBLE FOLLOWING RULES.
5 THESE ARE PEOPLE THAT CAN, YOU KNOW, REOFFEND VERY EASILY
6 BECAUSE IT'S JUST WHAT THEY DO. THAT'S THE LIFE THEY KNOW, AND
7 IF YOU DON'T FOLLOW THROUGH ON WHAT YOU'VE PROMISED THEM,
8 THAT'S JUST AN EXCUSE FOR THEM TO RECIDIVATE. I THINK, IN
9 GENERAL, IF WE HAVE 70 PERCENT OF THE PEOPLE ARE RECIDIVATING
10 AND WE LET OUT A LARGE PROPORTION OF THEM OUT, A GREAT NUMBER
11 OF THAT IS GOING TO COME RIGHT BACK.

12 **JUDGE KARLTON:** THAT ALSO DEPENDS ON WHAT THE PRISON
13 RELEASE ORDER SAYS. IF IT SAYS THAT YOU'RE NOT GOING TO SEND
14 TECHNICAL VIOLATORS BACK THE WAY WE DO, THAT PROBLEM DOESN'T
15 EXIST, BUT I UNDERSTAND WHAT YOU'RE SAYING.

16 **MR. SANGSTER:** YOUR HONOR, I REALIZE I SAID I WAS
17 COMPLETED, BUT MAY I HAVE ONE OR TWO FOLLOWS UPS TO CLEAR UP
18 SOMETHING THAT CAME UP.

19 **JUDGE HENDERSON:** YOU MAY.

20 **CROSS-EXAMINATION BY MR. SANGSTER (RESUMED)**

21 **BY MR. SANGSTER**

22 **Q** I WANT TO CLEAR UP AN ANSWER YOU GAVE TO BOTH JUDGE
23 HENDERSON AND JUDGE KARLTON. IT HAS TO DO WITH COUNTIES
24 PARTICIPATING IN THE PROGRAM. AS FAR AS YOU KNOW, THERE'S ONLY
25 ONE COUNTY PARTICIPATING IN THIS PROGRAM, AND THAT'S SAN DIEGO;

1 IS THAT CORRECT?

2 **A** ONE THAT IS UP AND GOING, YES. I DO KNOW THAT ANOTHER
3 COUNTY HAS BEEN VISITING US VERY REGULARLY AND IS PUTTING
4 TOGETHER A PROGRAM. I DON'T KNOW WHEN THEY WILL HAVE IT UP AND
5 RUNNING. I KNOW OTHER COUNTIES CONTACT OUR OFFICE AND HAVE
6 EXPRESSED INTEREST IN TRYING TO PUT SOMETHING TOGETHER AS WELL.
7 I'M SURE YOU ALL KNOW THAT BONNIE DUMANIS IS THE PRESIDENT OF
8 THE CALIFORNIA DISTRICT ATTORNEY'S ASSOCIATION. SHE HAS MADE
9 IT ONE OF HER GOALS TO GET THIS MOVING ALONG THROUGH THE STATE.
10 THEY'D LIKE TO HAVE OTHER COUNTIES GET IT UP AND RUNNING.

11 **Q** I'M TRYING NAIL DOWN PROGRESS. SHE'S MAKING THE PROGRESS
12 SHE'S MADE IN TWO YEARS IN HER OWN COUNTY, AND ONE OTHER COUNTY
13 THAT'S TALKED TO YOU A NUMBER OF TIMES, IS THAT WHAT YOU KNOW?

14 **A** TO THE BEST OF MY KNOWLEDGE, BUT I WILL SAY THERE IS A
15 PROGRAM MANAGER WHO IS OUR PUBLIC SPOKESPERSON WHO DOES A LOT
16 OF TALKING TO OTHER COUNTIES. YOU WOULD HAVE TO ASK HIM THAT.

17 **Q** MS. DUMANIS MAY KNOW?

18 **A** YES.

19 **JUDGE REINHARDT:** LET ME SEE IF I UNDERSTAND YOUR
20 FIGURES. YOU PUT APPROXIMATELY SIX PEOPLE PER WEEK INTO THIS
21 PROGRAM, AND ABOUT 85 PER WEEK COME BACK TO SAN DIEGO?

22 **THE WITNESS:** I'M NOT SURE --

23 **JUDGE KARLTON:** HOW MANY COME BACK PER WEEK?

24 **THE WITNESS:** I KNOW LAST YEAR --

25 **JUDGE REINHARDT:** THIS BREAKS DOWN TO APPROXIMATELY

1 SEVENTY-FIVE MEN AND TEN WOMEN EACH WEEK THAT YOU SEND TO STATE
2 PRISON?

3 **THE WITNESS:** THAT WE SEND TO STATE PRISON THROUGH
4 THE ENTIRE COUNTY OF SAN DIEGO, YES. AND BASED ON OUR NUMBERS,
5 OUR KIND OF CRUNCHING WHAT WE HAVE AND KNOWING OR POPULATION,
6 WE THINK THAT ABOUT 20 PEOPLE WOULD BE ELIGIBLE FOR THE
7 PROGRAM. OF THOSE 80 PEOPLE THAT GO EVERY WEEK TO PRISON, WE
8 THINK WE'VE GOT ABOUT 25 PERCENT THAT ARE ELIGIBLE, BUT WE JUST
9 CAN'T OFFER IT TO THEM. WE DON'T HAVE THE FINANCES FOR IT.

10 **JUDGE HENDERSON:** LOOKING DOWN THE ROAD, DID YOU
11 HAVE ANY SENSE -- YOU'RE ADMITTING SIX A WEEK NOW, AND I THINK
12 THAT'S WHILE YOU SEE WHAT YOU CAN DO AND DELIVER. DO YOU HAVE
13 ANY SENSE IN AN IDEAL WORLD FOR YOU OR, YOU KNOW, WHAT YOU
14 WOULD LIKE TO SEE HAPPEN FOR THIS PROGRAM TO HOW MANY YOU COULD
15 ADMIT ONCE YOU GET GOING AND THERE'S MONEY AND ALL THESE THINGS
16 ONE WOULD HOPE FOR?

17 **THE WITNESS:** WELL, JUST ON OUR POPULATION ON THE
18 NONVIOLENT OFFENDERS THAT WE'RE LOOKING AT RIGHT NOW, WE WOULD
19 LIKE TO BE PUTTING IN 20 PEOPLE. WE TRIED TO GET THE BUDGET
20 INCREASE, BUT, AS YOU KNOW, THERE WAS A BUDGET CRISIS THIS
21 YEAR, AND SO WE HAD FULLY ANTICIPATED RAMPING UP, STARTING
22 OCTOBER OF THIS YEAR, BUT THEN BECAUSE OF THE BUDGET PROBLEMS,
23 WE WEREN'T GIVEN THAT OPPORTUNITY. WE ARE HOPEFUL IN JULY
24 THERE WILL BE A NEW BUDGET SIGNED AND WE CAN START RAMPING UP
25 AND ADDING MORE PEOPLE TO THE PROGRAM.

1 WHEN I HAVE SPOKEN WITH OUR DA, HER HOPE IS THAT NOT
2 ONLY WILL WE BE ABLE TO OFFER IT TO ALL THESE NONVIOLENT
3 OFFENDERS THAT FIT WITHIN THE PARAMETERS WE HAVE CURRENTLY, BUT
4 WE WOULD BE ABLE TO IS EXPAND IT TO INCLUDE MORE PEOPLE AS TIME
5 PROGRESSES.

6 I KNOW THE DEFENSE BAR IS EAGER TO HAVE US GETTING
7 PEOPLE WHO ARE PROBATION VIOLATERS THAT ARE GOING TO GO TO
8 PRISON TO BE A PART OF THIS PROGRAM, AS WELL THOSE ARE PEOPLE
9 WHO ARE GOING TO HAVE A SHORT TIME BUT THEY NEED SERVICES. WE
10 HAVE GRAND PLANS, ALL FINANCIAL.

11 **JUDGE REINHARDT:** DO YOU THINK IF THE PEOPLE THAT
12 WERE BEING SENT TO PRISON NOW WERE GIVEN SENTENCES TWO MONTHS
13 SHORTER, THAT THAT WOULD HAVE AN ADVERSE EFFECT ON YOUR
14 PROGRAM?

15 **THE WITNESS:** I PERSONALLY BELIEVE IT WOULD,
16 BECAUSE --

17 **JUDGE REINHARDT:** WOULD SENDING THEM TO PRISON FOR
18 EXACTLY THE RIGHT TIME NOW, NOT TOO LONG, NOT TOO SHORT, TWO
19 MONTHS LESS ON THEIR SENTENCE WOULD HAVE AN ADVERSE EFFECT ON
20 YOUR PROGRAM?

21 **THE WITNESS:** NO. ONE OF THE QUESTIONS THAT HAD
22 BEEN ASKED OF ME AT THE DEPOSITION WAS ABOUT RELEASING PEOPLE
23 EARLY. THAT USED TO BE THE WAY WE DID IT. WE DIDN'T HAVE
24 DETERMINATE SENTENCES, AND PEOPLE COULD ACTUALLY EARN TIME OFF
25 THEIR CREDITS. I THINK THAT'S A BETTER WAY OF DOING IT, WHERE

1 YOU EARN IT, AS OPPOSED TO YOU GOT A BONUS, YOU GET TO GET OUT
2 TWO MONTHS EARLY.

3 I THINK IT HAS CERTAINLY AN EFFECT ON OUR COMMUNITY.
4 IT HAS A RECIDIVISM EFFECT ON OUR COMMUNITY, MORE PEOPLE GOING
5 BACK TO THE COMMUNITY, FOR OUR COMMUNITY MORE PEOPLE
6 REOFFENDING. I THINK IT HAS EFFECTS ON OUR PEOPLE WHO WE ARE
7 PARTICULARLY TRYING TO TEACH TO TAKE RESPONSIBILITY. SO
8 LETTING THEM OUT EARLY DOES SEND A NEGATIVE MESSAGE.

9 JUDGE KARLTON: I WANT TO TELL YOU I AM OLD ENOUGH,
10 THERE IS NOBODY ELSE IN THIS COURTROOM OLDER.

11 JUDGE REINHARDT: I DON'T KNOW ABOUT THAT.

12 JUDGE KARLTON: TAKE IT BACK. SOMEBODY ELSE IS
13 OLDER. DETERMINATE SENTENCING CAME IN, AND EVERYBODY WAS
14 CONVINCED THAT WAS GOING TO SAVE THE WORLD, AND I COULDN'T GET
15 ANYBODY TO SAY WITH ME, LOOK, EARN YOUR WAY OUT IS THE BEST WAY
16 OF ENSURING THAT THERE'S SOME DEVELOPING SENSE OF
17 RESPONSIBILITY. WE'RE WELL PAST GETTING PEOPLE TO ASK
18 QUESTIONS ABOUT PRISON THAT ARE RATIONALE. THAT HAS NOTHING TO
19 DO WITH YOUR TESTIMONY. I'M JUST MUMBLING. I'M SORRY.

20 JUDGE HENDERSON: REDIRECT?

21 MR. MITCHELL: NO REDIRECT.

22 JUDGE HENDERSON: OKAY. THANK YOU, MS. RODRIGUEZ.
23 COURT REPORTER NEEDS A BREAK. LET'S TAKE A
24 15-MINUTE RECESS.

25 (RECESS TAKEN.)

1 **THE CLERK:** PLEASE BE SEATED.

2 **JUDGE HENDERSON:** OKAY. YOU MAY CALL YOUR NEXT
3 WITNESS WHEN YOU'RE READY, COUNSEL.

4 **MS. BARLOW:** GOOD AFTERNOON, YOUR HONORS. KIMBERLY
5 HILL BARLOW JONES & MAYER ON BEHALF OF THE LAW ENFORCEMENT
6 INTERVENORS, CALLING JERRY POWERS, CHIEF PROBATION OFFICER
7 STANISLAUS COUNTY.

8 **THE CLERK:** PLEASE STEP UP, AND RAISE YOUR RIGHT
9 HAND.

10 (THEREUPON, THE WITNESS WAS SWORN.)

11 **MS. BARLOW:** IF IT PLEASE THE COURT, I HAVE COPIES
12 OF MR. POWERS' EXPERT REPORT FOR THE COURT.

13 **THE CLERK:** STATE AND SPELL YOUR FULL NAME.

14 **THE WITNESS:** JERRY POWERS, J-E-R-R-Y P-O-W-E-R-S.

15 **MS. BARLOW:** THANK YOU, MR. POWERS.

16 THEREUPON --

17 **JERRY POWERS**

18 WAS CALLED ON BEHALF OF THE DEFENDANT LAW ENFORCEMENT
19 INTERVENORS, AND AFTER HAVING BEEN FIRST DULY SWORN WAS
20 EXAMINED AND TESTIFIED AS FOLLOWS:

21 **DIRECT EXAMINATION**

22 **BY MS. BARLOW:**

23 **Q.** COULD YOU STATE YOUR POSITION, PLEASE?

24 **A.** I'M THE CHIEF PROBATION OFFICER FOR STANISLAUS COUNTY.

25 **Q.** AND IN YOUR CAPACITY AS CHIEF PROBATION OFFICER, WHAT ARE

1 YOUR DUTIES?

2 **A.** ESSENTIALLY OVERSIGHT OF THE ENTIRE DEPARTMENT, POLICY
3 SETTING, BUDGET CONTROL, BUDGET SETTING, PERSONNEL DECISIONS,
4 THE ENTIRE FUNCTIONING OF THE PROBATION DEPARTMENT IN THE
5 COUNTY.

6 **Q.** AND HOW MANY PROBATIONERS ARE YOU RESPONSIBLE FOR
7 ULTIMATELY SUPERVISING?

8 **A.** RIGHT IN THE NEIGHBORHOOD OF ABOUT 8,000 BETWEEN JUVENILES
9 AND ADULTS.

10 **Q.** AND ABOUT HOW MANY OF THOSE ARE ADULTS?

11 **A.** LITTLE OVER 7,000.

12 **JUDGE REINHARDT:** EXCUSE ME. YOUR DECLARATION SAYS
13 YOU'RE RESPONSIBLE FOR OVERSEEING APPROXIMATELY 8,000, BOTH
14 STANISLAUS COUNTY AND OTHER COUNTIES WITHIN THE STATE OF
15 CALIFORNIA.

16 WHAT DOES THAT MEAN?

17 **THE WITNESS:** WELL, SOME OF THE PROBATIONERS FROM
18 STANISLAUS COUNTY ARE ACTUALLY RESIDING IN OTHER COUNTIES STILL
19 UNDER THE JURISDICTION OF OUR COUNTY.

20 **JUDGE REINHARDT:** THANK YOU.

21 **THE WITNESS:** OKAY.

22 **BY MS. BARLOW:**

23 **Q.** IN ADDITION, ARE YOU RESPONSIBLE FOR OPERATING ANY
24 DETENTION FACILITIES?

25 **A.** YES, I AM.

1 Q. WHAT ARE THOSE?

2 A. WE HAVE 158 BED JUVENILE HALL.

3 Q. PRIOR TO YOUR EMPLOYMENT WITH THE STANISLAUS -- COUNTY OF
4 STANISLAUS, HAVE YOU SERVED AS PROBATION CHIEF OR PROBATION
5 OFFICER ANYWHERE ELSE?

6 A. YES, I SPENT A LITTLE OVER FIVE YEARS IN SAN DIEGO COUNTY.
7 NOT AS CHIEF, BUT AS A PROBATION OFFICER.

8 Q. HOW LONG HAVE YOU BEEN WITH STANISLAUS COUNTY?

9 A. A LITTLE OVER EIGHT YEARS.

10 Q. AND WHAT ROLES HAVE YOU PLAYED FOR STANISLAUS COUNTY
11 BESIDES CHIEF, IF ANY?

12 A. WHEN I FIRST CAME TO THE COUNTY I WAS THE SUPERINTENDENT OF
13 THE JUVENILE DETENTION FACILITY. THEN, I WAS PROMOTED TO CHIEF
14 DEPUTY OVER FIELD SERVICES. AND THEN, I WAS PROMOTED TO CHIEF
15 A LITTLE OVER SIX YEARS AGO.

16 Q. NOW, COULD YOU JUST DESCRIBE BRIEFLY YOUR EDUCATIONAL
17 BACKGROUND FOR THE COURT?

18 A. SURE. I HAVE A B.A. IN PSYCHOLOGY FROM THE UNIVERSITY OF
19 CALIFORNIA AT SAN DIEGO.

20 Q. DO YOU HAVE ANY SPECIAL CERTIFICATIONS THAT YOU NEED TO
21 PERFORM THE SERVICES THAT YOU DO?

22 A. YES, I HAVE CERTIFICATIONS IN -- AS A CORRECTIONS OFFICER,
23 AS A DEPUTY PROBATION OFFICER. THOSE WERE TO FULFILL MY DUTIES
24 AS LINE STAFF.

25 I HAVE A CERTIFICATION AS A SUPERVISING PROBATION

1 OFFICER AND ALSO A MANAGEMENT CERTIFICATION FOR MANAGEMENT
2 LEVEL POSITIONS IN PROBATION.

3 Q. OKAY. SO IF I'M DOING MY MATH CORRECTLY THAT'S 24 YEARS OF
4 PROBATION EXPERIENCE?

5 A. CORRECT. ACTUALLY BE 24 YEARS ON SUNDAY.

6 Q. CONGRATULATIONS.

7 A. THANK YOU.

8 Q. NOW, IN ADDITION TO YOUR JOB RESPONSIBILITIES, ARE YOU
9 AFFILIATED WITH ANY PROFESSIONAL ORGANIZATIONS IN YOUR CAPACITY
10 AS PROBATION CHIEF?

11 A. YES. I'M A MEMBER OF THE CHIEF PROBATION OFFICERS OF
12 CALIFORNIA. ACTUALLY, I'M THE CURRENT PRESIDENT OF CHIEF
13 PROBATION OFFICERS OF CALIFORNIA.

14 Q. WHAT DO THE CHIEF PROBATION OFFICERS OF CALIFORNIA DO?

15 A. IT'S A PROFESSIONAL ASSOCIATION THAT CONSISTS OF THE 59
16 CHIEF PROBATION OFFICERS IN THE STATE OF CALIFORNIA. WE CALL
17 IT CPOC. IT'S THE ACRONYM FOR IT. IT IS ESSENTIALLY AN
18 ORGANIZATION THAT PROVIDES A VENUE FOR THE VOICE OF PROBATION
19 IN THE STATE OF CALIFORNIA.

20 THEY WORK LEGISLATIVELY ON PROBATION ISSUES AT THE
21 STATE LEVEL, AS WELL AS SOMETIMES AT LOCAL LEVELS AND
22 SOMETIMES, AS YOU SEE, AT THE FEDERAL LEVEL, AS WELL.

23 Q. NOW, DOES CPOC UNDERTAKE TO GATHER -- COLLECT DATA ON
24 BEHALF OF THE CHIEF PROBATION OFFICERS?

25 A. YES. CPOC TENDS TO BE THE CENTRAL REPOSITORY FOR COUNTY

1 LEVEL STATISTICS. THEY THEN AGGREGATE THE STATISTICS TO COME UP
2 WITH A STATEWIDE PICTURE OF POPULATION NUMBERS, TYPES OF
3 OFFENDERS, THOSE TYPES OF THINGS.

4 **Q.** SO IN COLLECTING THAT DATA, WHAT ARE THEY LOOKING FOR?
5 ARE THEY LOOKING FOR THE NUMBER OF PROBATION OFFICERS, THE
6 NUMBER OF OFFENDERS, BREAKDOWN OF CRIMES, ET CETERA?

7 **A.** YES. WHAT WE WILL DO, TYPICALLY -- AND THEN, THIS IS QUITE
8 FRANKLY IN RESPONSE TO QUESTIONS OVER THE YEARS -- WE WILL HAVE
9 STATISTICS RELATED TO THE TYPES OF CASELOADS THAT PROBATION
10 OFFICERS CARRY; THE OVERALL NUMBERS OF OFFENDERS UNDER
11 SUPERVISION; ANY SPECIALIZED CASELOAD, SUCH AS DOMESTIC
12 VIOLENCE CASELOADS, SEX OFFENDER CASELOADS, THE NUMBERS ON
13 THOSE CASELOADS AND THINGS RELATED TO THE ACTUAL MONITORING OF
14 OFFENDERS IN THE STATE.

15 **Q.** AND IN ADDITION TO YOUR AFFILIATION WITH CPOC, ARE YOU ALSO
16 ASSOCIATED WITH ANY OTHER ORGANIZATIONS?

17 **A.** I AM. I'VE BEEN APPOINTED BY THE GOVERNOR TO TWO STATE
18 LEVEL BOARDS: THE CALIFORNIA COUNCIL ON CRIMINAL JUSTICE.
19 I'VE BEEN A MEMBER THERE FOR ABOUT TWO-AND-A-HALF YEARS. AND
20 I'M ALSO A GOVERNOR APPOINTEE TO THE SEX OFFENDER MANAGEMENT
21 BOARD FOR THE STATE. AND THAT'S BEEN A LITTLE BIT OVER A YEAR,
22 YEAR AND A HALF.

23 **Q.** AND WHAT IS CALIFORNIA COUNCIL ON CRIMINAL JUSTICE?

24 **A.** IT'S A -- IT'S AN ADVISORY BODY THAT IS DESIGNED TO ADVISE
25 THE LEGISLATURE AND THE ADMINISTRATION WITH RESPECT TO OVERALL

1 STATE POLICIES WHEN IT COMES TO DEALING WITH CRIMINAL JUSTICE
2 ISSUES. IT'S CONSISTING OF SOMEWHERE IN THE NEIGHBORHOOD OF
3 ABOUT 15 PRACTITIONERS AND PEOPLE INVOLVED IN THE CRIMINAL
4 JUSTICE SYSTEM.

5 Q. OKAY. NOW, YOU TALKED ABOUT THE CHIEF PROBATION OFFICERS
6 AND THE REPORTS THAT THEY PREPARE. YOU HAVE THE SET OF EXHIBITS
7 IN FRONT OF YOU?

8 A. YES.

9 Q. OKAY. IF YOU WOULD PLEASE REFER TO EXHIBIT 604 THROUGH 607,
10 AND TELL ME IF YOU RECOGNIZE THOSE DOCUMENTS?

11 A. THEY APPEAR TO BE OUR ANNUAL SURVEY DATA ON ESSENTIALLY
12 NUMBERS THAT I PREVIOUSLY DISCUSSED: THE TYPES OF OFFENDERS,
13 ADULTS, MISDEMEANOR FELON, NUMBERS FOR INDIVIDUAL COUNTIES
14 ACROSS THE STATE.

15 Q. AND FOR WHAT PERIOD OF TIME WOULD THE EXHIBIT 604 THROUGH
16 607 COVER?

17 A. IT LOOKS LIKE 2006, 2007.

18 Q. NOW, THIS ISN'T ALL THE DATA THAT IS COMPILED BY CPOC,
19 CORRECT?

20 A. ACTUALLY, THERE'S 2007, 2008 ALSO AS PART OF THE EXHIBITS
21 WHEN YOU GO FARTHER IN.

22 NO. CPOC ACTUALLY COLLECTS QUITE A BIT OF DATA --

23 Q. OKAY.

24 A. -- ON JUVENILES AND ADULTS. THIS WOULD BE PART OF IT, YES.

25 Q. SO THIS IS KIND OF A SUMMARY --

1 **A.** YES.

2 **Q.** -- BY COUNTY?

3 IF YOU WOULD TAKE A LOOK AT 608 THROUGH 611, I
4 BELIEVE THOSE WERE THE 2007, 2008 YOU WERE --

5 **JUDGE KARLTON:** I THINK THERE'S CONFUSION. I HAVE
6 JUST 2008. DOWN AT THE BOTTOM HERE, THAT'S WHAT IT SAYS.

7 **JUDGE HENDERSON:** YES, THAT'S WHAT I HAVE.

8 **THE WITNESS:** IF YOU LOOK AT THE TOP --

9 **JUDGE KARLTON:** OH, I SEE.

10 **THE WITNESS:** -- IT SAYS:

11 "CPOC ANNUAL SURVEY 2006, 2007 DATA."

12 **JUDGE KARLTON:** GOT IT.

13 **THE WITNESS:** YES. 2007 AND 2008 IS IN THE BACK.

14 **BY MS. BARLOW:**

15 **Q.** SO TO THE BEST OF YOUR KNOWLEDGE THOSE ARE THE TRUE AND
16 CORRECT COPIES OF THE CPOC COMPILED STATISTICS FOR THOSE TWO
17 CALENDAR OR FISCAL YEARS, RATHER?

18 **A.** YES.

19 **Q.** OKAY. THANK YOU.

20 COULD YOU DESCRIBE FOR US HOW THE PROBATION
21 DEPARTMENT WORKS WITH OTHER DEPARTMENTS IN THE COMMUNITY TO
22 SERVE OFFENDERS?

23 **A.** WELL, PROBATION ACTS AS -- WE REFER TO IT AS "A BROKER FOR
24 SERVICES."

25 PROBATION ACTUALLY SHORT OF THE SUPERVISION OF

1 OFFENDERS DOES NOT REALLY PROVIDE DIRECT SERVICES, TREATMENT
2 SERVICES TO OFFENDERS. QUITE FRANKLY, WE DON'T HAVE THE
3 RESOURCES OR THE EXPERTISE TO DO THAT.

4 WE DO PROVIDE, AS I SAID, ON A BROKER-TYPE MODEL
5 REFERRALS TO OFFENDERS FOR WHETHER IT BE DRUG TREATMENT OR
6 DOMESTIC VIOLENCE CLASSES OR THINGS LIKE THAT. WE REFER THEM
7 TO THE LOCAL AGENCIES THAT CAN PROVIDE THEM THE SERVICES.

8 **Q.** SO YOU WORK WITH THE COMMUNITY AGENCIES AND OTHER AGENCIES
9 IN THE COUNTY THAT PROVIDE WHAT KIND OF SERVICES?

10 **A.** WELL, WE WORK WITH PUBLIC AND PRIVATE. MENTAL HEALTH IS A
11 GOOD EXAMPLE OF PUBLIC AND PRIVATE. WE WILL USE OUR COUNTY
12 MENTAL HEALTH SERVICES FOR SOME SERVICES FOR PROBATIONERS.

13 IN SOME INSTANCES, WE WILL USE PRIVATE PROVIDERS FOR
14 MENTAL HEALTH SERVICES, AS WELL. SUBSTANCE ABUSE COUNSELLING
15 IS THE SAME SORT OF THING. WE HAVE COUNTY ALCOHOL AND DRUG
16 PROGRAMS THAT PROVIDE SOME SERVICES. BUT THERE ARE ALSO AA AND
17 NA PROGRAMS AND OTHER PROGRAMS THAT ARE PROVIDED AT THE
18 COMMUNITY LEVEL THAT WE WILL ALSO USE.

19 DOMESTIC VIOLENCE PROGRAMS ARE THE SAME SORT OF
20 THING. SEX OFFENDER PROGRAMS ARE TYPICALLY PROVIDED BY PRIVATE
21 PROVIDERS BECAUSE OF THE SPECIALIZED NATURE OF THAT TYPE OF
22 SERVICE.

23 **Q.** SO IS IT FAIR TO SAY THAT IN SUPERVISING YOUR 8,000
24 PROBATIONERS YOU WORK CLOSELY WITH BOTH PRIVATE AND PUBLIC
25 COMMUNITY RESOURCES TO PROVIDE THOSE SERVICES TO THEM?

1 **A.** ABSOLUTELY, YES.

2 **Q.** NOW, DO YOU -- ARE YOU ALSO FAMILIAR WITH THE JAIL AND HOW
3 THE JAIL PROCESSES YOUR PROBATIONERS, HOW YOU WORK WITH THE
4 SHERIFF'S OFFICE?

5 **A.** YES.

6 **Q.** WHAT DO YOU DO, EXACTLY?

7 **A.** WHAT DO WE DO WITH THE JAIL?

8 **Q.** HOW DO YOU WORK WITH THE SHERIFF'S OFFICE IN TERMS OF YOUR
9 PROBATIONERS?

10 **A.** WELL, OUR PROBATIONERS MANY TIMES TYPICALLY SERVE A
11 CUSTODIAL SENTENCE BEFORE THEY COME INTO THE COMMUNITY AND
12 BEGIN SUPERVISION ON OUR PART. WE WILL MANY TIMES START TO
13 PROVIDE SERVICES, OR AT LEAST MAKE CONTACT WITH THE OFFENDER
14 BEFORE THEY ARE RELEASED SO WE CAN MAKE THAT CONNECTION SO WHEN
15 THEY GO OUT INTO THE COMMUNITY THEY WILL UNDERSTAND WHAT THEIR
16 CONDITIONS OF PROBATION ARE AND THINGS LIKE THAT?

17 OUR SHERIFF'S DEPARTMENT ALSO PROVIDES SOME IN
18 CUSTODY SUBSTANCE ABUSE TREATMENT PROGRAMS AND THINGS LIKE
19 THAT, SO SOME OFFENDERS WILL ACTUALLY HAVE THE ABILITY TO START
20 THEIR TREATMENT WHILE THEY ARE IN CUSTODY AND TRANSITION OUT
21 INTO THE COMMUNITY.

22 **Q.** SO IN ADDITION TO YOUR FAMILIARITY WITH THE COMMUNITY
23 PROGRAMS AND SHERIFF'S DEPARTMENT PROGRAMS, ARE THERE OTHER
24 THINGS THAT YOU HAVE DONE TO PREPARE FOR YOUR TESTIMONY IN THIS
25 CASE?

1 **A.** WELL, I'VE REVIEWED SOME OF THE DOCUMENTS THAT HAVE -- WERE
2 PROVIDED: MR. AUSTIN'S REPORT, CDCR RECIDIVISM REPORTS, THINGS
3 LIKE THAT, YES.

4 **Q.** AND HAVE YOU AS A RESULT OF THOSE REVIEWS AND YOUR WORK
5 FORMED ANY OPINIONS IN THIS MATTER?

6 **A.** YES.

7 **Q.** OKAY. AND ARE THOSE OPINIONS BASED UPON JUST THOSE
8 DOCUMENTS, OR WHAT ARE THEY BASED ON?

9 **A.** WELL, THEY ARE BASED ON THE DOCUMENTS AS WELL AS MY 24
10 YEARS WORKING IN THE CRIMINAL JUSTICE SYSTEM AND THE KNOWLEDGE
11 THAT I'VE GARNERED THROUGH THAT, AS WELL AS MY TIME IN CPOC.
12 AND AT THE STATE LEVEL MY OPPORTUNITIES TO DEAL WITH THESE
13 ISSUES AT THE STATE LEVEL.

14 **Q.** SO AS PRESIDENT OF CPOC YOU WOULD HAVE FAMILIARITY WITH
15 SIMILAR ISSUES, NOT JUST IN STANISLAUS COUNTY, BUT IN OTHER
16 COUNTIES, AS WELL?

17 **A.** CORRECT, YES.

18 **Q.** NOW, DO YOU HAVE AN OPINION ABOUT WHETHER A PRISONER
19 RELEASE ORDER WOULD ENDANGER PUBLIC SAFETY IN THIS CASE?

20 **A.** YES.

21 **Q.** WHAT PLAINTIFFS HAVE PROPOSED IN THEIR TRIAL BRIEF IS THAT
22 THERE BE A RELEASE OVER A PERIOD OF TWO YEARS OF APPROXIMATELY
23 52,000 TO GET TO 130 PERCENT OF THE CAPACITY.

24 **MS. NORMAN:** OBJECTION. I BELIEVE THAT MISSTATES
25 OUR MOTION.

1 **MS. BARLOW:** TRIAL BRIEF SAYS 130 PERCENT, I
2 BELIEVE.

3 **MR. SPECTER:** REDUCTION OF POPULATION.

4 **MS. NORMAN:** WE HAVEN'T SUGGESTED THAT FIFTY SOME
5 THOUSAND PRISONERS BE RELEASED, BUT POPULATION BE REDUCED BY A
6 SIMILAR NUMBER.

7 **MS. BARLOW:** WITH RESPECT, YOUR HONOR, I'M NOT SURE
8 HOW THEY ARE GOING TO GET THERE IF THEY DON'T LET ANYBODY GO.

9 **JUDGE KARLTON:** WELL, IT'S OBVIOUS. THE PROBATION
10 OFFICER WILL NOT SEND PEOPLE TO ANY PRISON FOR THREE MONTHS AS
11 AN EXAMPLE. JUST AS ONE EXAMPLE.

12 **MS. BARLOW:** WELL, OKAY.

13 **JUDGE KARLTON:** I'M SORRY THAT YOU DON'T UNDERSTAND
14 THAT, BUT IT'S FAIRLY STRAIGHTFORWARD.

15 **MS. BARLOW:** WELL, A REDUCTION OF 52,000. IF I'M
16 MAY, I'M TRYING TO ESTABLISH THE FOUNDATION FOR HIS OPINION.

17 **JUDGE HENDERSON:** PROCEED.

18 **BY MS. BARLOW:**

19 **Q.** IF THERE'S A REDUCTION IN THE PRISON POPULATION FROM ITS
20 CURRENT LEVELS BY 52,000 PRISONERS, HOWEVER IT OCCURS, MR.
21 AUSTIN HAS OPINED THAT IT SHOULD OCCUR SIMPLY BY RELEASING
22 PEOPLE A FEW MONTHS EARLY.

23 **MS. NORMAN:** OBJECTION. I BELIEVE THAT MISSTATES
24 MR. AUSTIN'S REPORT, WHICH SPEAKS FOR ITSELF.

25 **JUDGE HENDERSON:** THE REPORT SPEAKS FOR ITSELF.

1 PROCEED.

2 MS. BARLOW: YES.

3 BY JUDGE REINHARDT:

4 Q. IF THAT WERE TO HAPPEN, MR. POWERS, DO YOU HAVE AN OPINION
5 ABOUT HOW THAT WOULD IMPACT PUBLIC SAFETY IN THE STATE OF
6 CALIFORNIA?

7 A. WELL, I BELIEVE IT WOULD HAVE A DETRIMENTAL IMPACT FROM
8 MULTIPLE PERSPECTIVES: OPERATIONALLY, CERTAINLY WITH RESPECT
9 TO CRIME IN THE COMMUNITY; INCREASED WORKLOAD; INCREASED
10 RESOURCES TO DEAL WITH THE ADDITIONAL OFFENDERS.

11 Q. NOW, LET'S JUST TALK A LITTLE BIT ABOUT HOW PEOPLE GET TO
12 THE CDCR, AND THEY COME THROUGH PROBATION. IS IT TYPICAL FOR
13 SOMEONE TO SERVE A PROBATIONARY SENTENCE BEFORE THEY EVER GET
14 SENT TO PRISON?

15 A. I'M NOT SURE THAT I WOULD SAY "TYPICAL." MANY OR MOST
16 OFFENDERS WHO END UP GOING TO PRISON HAVE SERVED SOME SORT OF A
17 LOCAL PROBATION TERM AND MANY TIMES A CUSTODIAL TERM IN LOCAL
18 CUSTODY, YES.

19 Q. OKAY. NOW, YOU DON'T SEND PEOPLE TO PRISON, RIGHT? COURTS
20 DO THAT.

21 A. COURTS COMMIT TO PRISON, CORRECT.

22 Q. OKAY. SO WHEN YOU GET SOMEBODY ON PROBATION, WHAT ARE
23 THE -- YOU TALKED A LITTLE BIT ABOUT THE SERVICES YOU PROVIDED
24 TO THEM. BUT WHAT'S YOUR GOAL IN PROVIDING THOSE SERVICES TO
25 THEM?

1 **A.** WELL, OUR PRIMARY GOAL IS PUBLIC SAFETY TO ENSURE THAT THE
2 COMMUNITY IS KEPT SAFE. THERE'S MULTIPLE WAYS TO DO THAT.

3 PROBATION'S PHILOSOPHY IS THAT IF WE CAN PROVIDE
4 SERVICES TO THE OFFENDER THAT REHABILITATES THEM PUBLIC SAFETY
5 IS SERVED BEST.

6 IF OFFENDERS ARE NOT ABLE TO BE REHABILITATED THEN
7 CERTAINLY PUBLIC SAFETY CAN BE SERVED BY INCAPACITATING THE
8 OFFENDER BY PLACING THEM IN CUSTODY.

9 SO HAVING IN MIND THAT THE CENTER PHILOSOPHY IS
10 PUBLIC SAFETY, YOU HAVE TO LOOK AT THE INDIVIDUAL OFFENDER OR
11 LOOK AT YOUR SYSTEM AND SAY:

12 "HOW IS IT THAT YOU MOST EFFECTIVELY AND
13 APPROPRIATELY ENSURE THAT THE COMMUNITY IS KEPT SAFE
14 FROM THE OFFENDERS FROM REOFFENDING OR FROM FURTHER
15 OFFENDING?"

16 **Q.** SO INCAPACITATION MIGHT BE ONE WAY TO DO THAT?

17 **A.** YOU CERTAINLY COULD ARGUE THAT LOCKING SOMEONE AWAY,
18 ALTHOUGH THERE ARE CRIMES COMMITTED INSIDE FACILITIES, SO --

19 **Q.** WITH YOUR PROBATION -- ADULT PROBATIONERS THAT HAVE NEVER
20 BEEN TO PRISON, YOU TRY TO HELP THEM OBTAIN PROGRAMS IN ORDER
21 TO KEEP THEM GOING, CORRECT?

22 **A.** TO THE EXTENT THAT WE CAN. WE'RE NOT A COUNTY THAT HAS A
23 TREMENDOUS AMOUNT OF LOCAL RESOURCES, OR QUITE FRANKLY, MONEY
24 TO PROVIDE THOSE RESOURCES FOR OFFENDERS. SO WE DO THE BEST WE
25 CAN. WE TRY AND FIND PROGRAMS THAT ARE LOW COST OR HAVE SLIDING

1 SCALE FEES. BUT IT'S NOT ALWAYS POSSIBLE TO GET A PROGRAM FOR
2 EVERY OFFENDER.

3 Q. ARE YOU SATISFIED AT THE LEVEL OF SERVICES THAT YOU'RE ABLE
4 TO PROVIDE TO YOUR CURRENT PROBATIONERS?

5 A. ABSOLUTELY NOT.

6 Q. AND WHY IS THAT?

7 A. IT'S WOEFULLY INADEQUATE. TAKING MY DEPARTMENT AS AN
8 EXAMPLE, WE'VE GOT SOMEWHERE IN THE NEIGHBORHOOD OF 7,000 ADULT
9 OFFENDERS THAT ARE RESPONSIBLE TO MY DEPARTMENT FOR THEIR
10 PROBATION TERMS.

11 I HAVE SOMEWHERE IN THE NEIGHBORHOOD OF ABOUT 40
12 OFFICERS TO SUPERVISE THEM. AND THAT INCLUDES PROVIDING COURT
13 SERVICES ON TOP OF THE SUPERVISION. IT'S RIDICULOUS TO THINK
14 THAT A PROBATION OFFICER CAN PROVIDE ANY MEANINGFUL SUPERVISION
15 OR SERVICE TO A POPULATION WITH THAT KIND OF RATIO OUT THERE.

16 SO WE DO THE BEST WE CAN. WE TRIAGE. WE TRY AND
17 FIND THOSE THAT EITHER ARE AT THE HIGHEST RISK TO THE COMMUNITY
18 FROM A PUBLIC SAFETY PERSPECTIVE OR HAVE THE HIGHEST NEED, OR
19 BOTH, FOR TREATMENT SERVICES. AND WE SORT OF -- BY TRIAGE WE
20 FOCUS ON THOSE, AND WE IGNORE THE REST UNTIL THEY GET
21 REARRESTED OR IF THEY GET REARRESTED.

22 Q. WHEN YOU SAY "IGNORE THE REST," ARE YOU TALKING ABOUT THE
23 BANKED CASES?

24 A. WELL, THERE'S A -- YES, PARTIALLY. BUT THERE WILL BE SOME
25 WHERE WE WILL SUPERVISE AT A RATIO OF, SAY, FIFTY OFFENDERS TO

1 ONE OFFICER. THAT WE CONSIDER THAT INTENSIVE CASELOAD. THEY
2 WILL GET THE MAJORITY OF THE SERVICES.

3 WE WILL HAVE SOME THAT WE WILL SUPERVISE AT
4 APPROXIMATELY 150 OR 200 OFFENDERS TO ONE OFFICER. AND THAT IS
5 KIND OF JUST A CURSORY MONITORING. AND THEN, WE HAVE OTHERS
6 THAT FRANKLY SIT IN A FILE CABINET AND WILL NOT SEE A PROBATION
7 OFFICER UNLESS THEY REOFFEND. SO --

8 **JUDGE KARLTON:** WHAT'S A BENT -- A BENT CASE?

9 **THE WITNESS:** BANKED, B-A-N-K-E-D.

10 **JUDGE KARLTON:** I'M SORRY.

11 **THE WITNESS:** IT'S A COLLOQUIAL TERM THAT'S USED UP
12 AND DOWN THE STATE. IT JUST MEANS "FILE CABINET." THEY ARE
13 NEGLECTED.

14 **BY MS. BARLOW:**

15 **Q.** IF YOU HAD THE RESOURCES WOULD YOU BE SUPERVISING ALL THOSE
16 BANKED CASES?

17 **A.** WITH THE INFORMATION THAT WE HAVE NOW AND THE SCIENCE
18 THAT'S AVAILABLE NOW WITH RESPECT TO BEING ABLE TO DO RISK
19 ASSESSMENT, VALIDATED RISK ASSESSMENT, RESEARCH TELLS US
20 THERE'S SOME PEOPLE THAT YOU DON'T NEED TO WASTE RESOURCES ON.

21 THEY ARE NOT GOING TO PRESENT A SIGNIFICANT THREAT
22 TO THE COMMUNITY. SO I CAN'T TELL YOU THAT WE WOULD SUPERVISE
23 EVERY ONE OF THOSE, BUT THERE ARE SOME IN THERE THAT, YES, WE
24 WOULD SUPERVISE IF WE HAD THE RESOURCES.

25 **Q.** AND DO YOU FEEL IF YOU WERE ABLE TO SUPERVISE MORE OF THE

1 PROBATIONERS THAT YOU DO HAVE THAT YOU BELIEVE NEED IT, THAT
2 YOU WOULD BE ABLE TO KEEP MORE OF THEM OUT OF PRISON?

3 **A.** ABSOLUTELY.

4 **Q.** YOU TALK IN YOUR REPORT ABOUT SOME PRISONERS WHO GO TO CDCR
5 ON PROBATION VIOLATIONS. AND I THINK YOU MENTIONED THAT THERE
6 WERE ABOUT 14,000 A YEAR; IS THAT CORRECT?

7 **A.** THAT WAS AN ESTIMATE, YES.

8 **Q.** ABOUT TEN PERCENT ARE FROM TECHNICAL PROBATION VIOLATIONS?

9 **A.** YES.

10 **Q.** WHAT DO YOU MEAN BY "TECHNICAL PROBATION VIOLATIONS"?

11 **A.** A TECHNICAL VIOLATION WOULD BE WHAT'S NOT TERMED A NEW LAW
12 VIOLATION. IN OTHER WORDS, THEY WOULD HAVE A DIRTY DRUG TEST.
13 THEY TEST POSITIVE FOR DRUGS. THEY WOULD FAIL TO REPORT TO
14 THEIR PROBATION OFFICER WHEN DIRECTED. THEY REFUSE TO ENROLL
15 IN OR COMPLETE A COUNSELING PROGRAM, SUCH AS LIKE A DV PROGRAM.
16 SOMETHING THAT IN AND OF ITSELF WOULD NOT BE COSIDERED A NEW
17 LAW VIOLATION, BUT IS A VIOLATION OF A PROBATION CONDITION.

18 **Q.** IS THERE A REASON THAT THOSE PEOPLE GO TO CDCR, IN YOUR
19 OPINION?

20 **A.** IS THERE A REASON?

21 **Q.** WHAT'S THE ALTERNATIVE?

22 **A.** THE ALTERNATIVE IS WE PROVIDE THEM SOME SERVICES, AND WE
23 DON'T LET THEM GET THERE.

24 I'VE STATED PREVIOUSLY THAT IN MY OPINION THAT'S
25 LOW-HANGING FRUIT OUT THERE; THAT WITH A MINIMAL AMOUNT OF

1 ADDITIONAL RESOURCES YOU CAN DIVERT FROM RECEIVING PRISON
2 SENTENCES.

3 **JUDGE REINHARDT:** COULD I -- ARE YOU SAYING THAT AS
4 TO THOSE 14,000 PEOPLE THAT THEY SHOULD NOT BE SENT TO PRISON?

5 **THE WITNESS:** I -- I'M SORRY.

6 **JUDGE REINHARDT:** OR THAT YOU SHOULD BE GIVEN MORE
7 MONEY TO MAKE SURE THAT THEY DON'T COMMIT TECHNICAL VIOLATIONS.

8 **THE WITNESS:** THAT'S WHAT I'M SAYING IS THAT BECAUSE
9 OF THE MODEL THAT WE HAVE MANY OF THOSE INDIVIDUALS ARE NOT
10 BEING SUPERVISED OR PROVIDED SERVICES AT THE LOCAL LEVEL. AND
11 BECAUSE OF THE BENIGN NEGLECT THEY ARE ALLOWED TO COMMIT THESE
12 TECHNICAL VIOLATIONS THAT IF WE WERE PROVIDING SERVICES AND
13 SUPERVISING THEM THEY WOULD NEVER COMMIT.

14 **JUDGE REINHARDT:** BUT IF YOU DON'T PROVIDE THOSE
15 SERVICES, THEN YOU WOULD SEND THEM TO PRISON FOR TECHNICAL
16 VIOLATIONS.

17 **THE WITNESS:** WHAT HAPPENS IS THEY AMASS MULTIPLE
18 VIOLATIONS AND ESSENTIALLY EXHAUST THEIR LOCAL CUSTODIAL TIME.

19 WE HAVE A LIMIT OF 365 DAYS IN LOCAL CUSTODY THAT
20 THEY CAN GET. SO AS THEY ACCRUE THESE TECHNICAL VIOLATIONS AND
21 ADDITIONAL CUSTODIAL TIME RELATED TO IT, AT SOME POINT THEY RUN
22 OUT OF LOCAL JURISDICTION. AND BECAUSE OF THE NATURE OF THEIR
23 SENTENCE, THEY ARE COMMITTED TO THE STATE PRISON SYSTEM.

24 **JUDGE KARLTON:** WHY IS IT THAT YOU'RE LIMITED TO 365
25 DAYS LOCAL? IS IT A STATUTE?

1 **THE WITNESS:** THAT'S STATUTORY.

2 **BY MS. BARLOW:**

3 **Q.** NOW, WE'VE HAD A LOT OF CONVERSATIONS THROUGHOUT THIS CASE
4 ABOUT TECHNICAL -- PAROLE VIOLATIONS AND TECHNICAL PROBATION
5 VIOLATIONS. AND THERE HAVE BEEN SOME OPINIONS EXPRESSED THAT
6 THEY ARE NOT IMPORTANT.

7 DO YOU AGREE WITH THAT OPINION?

8 **A.** WELL, I GUESS IT DEPENDS ON THE NATURE OF THE TECHNICAL
9 VIOLATION. I THINK THAT SOMEBODY WHO IS TESTING POSITIVE FOR
10 DRUGS IN THEIR SYSTEM IS TELLING YOU THAT THEY ARE DOING
11 SOMETHING ILLEGAL.

12 THEY ARE TAKING DRUGS. IT DOESN'T GET IN THERE
13 WITHOUT INGESTING AN ILLEGAL SUBSTANCE. SO AT SOME POINT THAT
14 MEANS THEY COULD HAVE BEEN ARRESTED AT SOME POINT IN TIME FOR
15 POSSESSING THOSE ILLEGAL SUBSTANCES. THE FACT THAT WE GOT A
16 DIRTY DRUG TEST IS INDICATIVE OF THAT.

17 DOES THAT MEAN THAT THEY SHOULD GO TO PRISON? YOU
18 KNOW, THAT'S -- I GUESS THAT'S A DEBATE THAT WE COULD HAVE AND
19 WE HAVE HAD AT THE BALLOT BOXES AS WELL AS OTHER PLACES.

20 SO I GUESS I WOULDN'T NECESSARILY AGREE THAT A
21 TECHNICAL VIOLATION IS NOT A BIG DEAL. SOMEBODY WHO IS ORDERED
22 TO ATTEND A DOMESTIC VIOLENCE CLASS, FOR INSTANCE, AND WHO IS
23 ORDERED TO ATTEND A DOMESTIC VIOLENCE CLASS AND REFUSES TO DO
24 THAT, I THINK THAT THE VICTIM WOULD TELL YOU THAT THEY DON'T
25 SEE THAT AS A TECHNICAL VIOLATION; THAT THAT MAKES THEM FEEL

1 LIKE THEY ARE AT SIGNIFICANT RISK FOR FUTURE REOFFENDING SO --
2 **Q.** IN YOUR VIEW, DO PROBATIONERS WHO FAIL TO COMPLY WITH THE
3 TERMS OF THEIR PROBATION BY FAILING TO ATTEND A REQUIRED CLASS
4 OR FAILING TO MEET WITH A PROBATION OFFICER OR GETTING DIRTY
5 DRUG TESTS, ARE THEY AT HIGHER RISK TO REOFFEND?

6 **A.** WELL, I THINK THEY HAVE ALREADY IN SOME INSTANCES
7 REOFFENDED. THEY JUST HAVEN'T BEEN ARRESTED. SUCH AS THE
8 DIRTY DRUG TEST, THAT INDIVIDUAL POSSESSED DRUGS, WHICH IS
9 TECHNICALLY A NEW OFFENSE. THEY JUST WEREN'T CAUGHT. SO I
10 GUESS I WOULD HAVE TO SAY, YES, IN SOME INSTANCES.

11 **Q.** NOW, IN YOUR REPORT YOU INDICATE THAT YOU BELIEVE THAT
12 THERE WOULD BE MORE CRIME AS A RESULT OF A RELEASE ORDER WHERE
13 PEOPLE ARE LET OUT EARLY FROM THEIR SENTENCES, WHICH HAS BEEN
14 PROPOSED AT LEAST AS ONE ALTERNATIVE.

15 DO YOU BELIEVE -- CAN YOU EXPLAIN WHY YOU BELIEVE
16 THAT THAT WOULD RESULT IN MORE CRIME?

17 **A.** I THINK IN JUST LOOKING AT THE MECHANISM FOR REDUCING
18 POPULATION, IF IT IS, IN FACT, AN EARLY RELEASE, IT GOES BACK
19 TO WHAT I TALKED ABOUT EARLIER, WHICH IS INCAPACITATION.
20 SOMEBODY WHO IS INCAPACITATED IS MUCH LESS LIKELY TO CREATE OR
21 TO COMMIT AN OFFENSE IN THE COMMUNITY THAN SOMEONE WHO IS NOT.

22 SO IF WE ALLOW THEM TO COME OUT TWO MONTHS EARLIER,
23 THEY HAVE 60 DAYS OF ADDITIONAL OPPORTUNITY TO REOFFEND.

24 WE HAVE STATISTICS OR DEPARTMENT OF CORRECTIONS HAS
25 STATISTICS THAT SHOWS THAT MANY OF THESE PEOPLE HAVE RECIDIVISM

1 RATES 60 PERCENT OR GREATER. SO IF YOU ALLOW THEM MORE
2 OPPORTUNITY OR A GREATER WINDOW OF OPPORTUNITY BY BEING OUT OF
3 CUSTODY, YOU'VE ESSENTIALLY EXPOSED THE COMMUNITY TO A 60
4 ADDITIONAL DAYS OF REOFFENDING, ESPECIALLY GIVEN THE FACT THAT
5 IT'S ACKNOWLEDGED THAT THERE'S VERY LITTLE REHABILITATIVE
6 TREATMENT GOING ON WITHIN CDCR. SO THEY ARE COMING OUT WITHOUT
7 ANY TREATMENT OR VIRTUALLY NO TREATMENT.

8 AND TO THINK THAT RELEASING THEM 60 DAYS EARLY OR 90
9 DAYS EARLY IS NOT GOING TO CREATE CRIME, ANY ADDITIONAL CRIME,
10 I GUESS ASSUMING THAT WE CATCH THEM THE FIRST TIME THEY COMMIT
11 THE OFFENSE, YOU COULD PROBABLY ARGUE THAT. BUT WE DON'T DO
12 THAT.

13 Q. WHAT DO YOU MEAN?

14 A. WELL, IF THE FIRST TIME -- JUST DOING THE SCENARIO, IF THE
15 FIRST TIME YOU COMMIT AN OFFENSE YOU'RE ARRESTED FOR IT, THEN
16 YOU COULD -- YOU COULD SAY THAT:

17 "WELL, THEN, IT DOESN'T MATTER IF THEY ARE OUT
18 60

19 DAYS EARLY, BECAUSE IF THEY COMMIT THE OFFENSE THREE
20 DAYS AFTER THEY ARE OUT, WHETHER IT'S 60 DAYS FROM
21 NOW OR NOW, AND THEY ARE ARRESTED FOR IT, THEN, YES,
22 THERE'S NO ADDITIONAL CRIME."

23 BUT IF THEY ARE NOT ARRESTED FOR THE OFFENSE WHICH
24 MANY, MANY OFFENSES RESULT IN NO ARREST, YOU'VE GIVEN THEM 60
25 ADDITIONAL DAYS OR OPPORTUNITY OF 60 ADDITIONAL DAYS TO COMMIT

1 ADDITIONAL CRIMES.

2 SO, YOU KNOW --

3 Q. I JUST WANT TO ASK YOU ABOUT AN OPINION THAT DR. AUSTIN
4 EXPRESSED IN HIS LAST SUPPLEMENTAL REPORT AND IN HIS
5 DEPOSITION. HE INDICATED THAT HE BELIEVED THAT THERE MIGHT BE A
6 VERY SMALL -- "INSIGNIFICANT" I THINK WAS HOW HE TERMED IT --
7 BUMP IN CRIME AS A RESULT OF THE EARLY RELEASE OF PRISONERS,
8 SAY THREE TO FOUR MONTHS PRIOR TO THE END OF THEIR TERM OVER
9 SOME PERIOD OF TIME. BUT THAT THAT WOULD LEVEL OUT BY THE
10 SECOND OR THIRD YEAR.

11 DO YOU AGREE WITH THAT?

12 A. NO. AND I HEARD MR. AUSTIN'S PRESENTATION. AND I GUESS
13 THE BEST WAY I COULD PUT IT IS IF WE HAVE A BATHTUB, AND THE
14 SPIGOT IS ON AND ALL OF A SUDDEN WE SAY:

15 "YOU CAN ONLY FILL THAT BATHTUB UP TWO-THIRDS
16 FULL. YOU HAVE TO TAKE A THIRD OF THE WATER OUT,"
17 BUT YOU DO NOTHING TO THE SPIGOT, TWO YEARS FROM NOW YOU'VE
18 STILL GOT TO DO SOMETHING WITH ALL THAT WATER THAT IS FLOWING
19 IN.

20 WHAT DO YOU DO? IN OTHER WORDS, IF WE'RE STILL
21 GOING TO HAVE 140,000 PEOPLE COMING INTO THE STATE PRISON
22 SYSTEM, IF THERE'S A CAP OF AN 110,000 AND WE'RE AT 160 NOW,
23 WHERE DO WE PUT THOSE 140,000 PEOPLE THAT ARE COMING INTO THE
24 STATE PRISON SYSTEM IN YEAR TWO, IN YEAR THREE, IN YEAR FOUR?

25 I CAN'T -- THE CONCEPT OF A ONE-YEAR BLIP DOESN'T

1 MAKE -- IT DOESN'T -- IT DOESN'T MAKE SENSE TO ME HOW WE'VE GOT
2 TO FIND A PLACE TO PUT THOSE OTHER PEOPLE.

3 DO WE PUT THEM BACK IN LOCAL CUSTODY? DO WE HOLD
4 THEM? I THINK ONE OF THE JUSTICES SAID THAT, YOU KNOW, DO WE
5 KEEP THEM LOCALLY?

6 WE HOLD THEM TWO MONTHS LONGER IN LOCAL CUSTODY, AND
7 WE JUST LET THEM OUT LOCALLY. WELL, THERE'S AN IMPACT THERE.

8 DO WE NOT SENTENCE THEM TO PRISON? THERE'S AN
9 IMPACT TO PROBATION THERE SO --

10 Q. COULD YOU DESCRIBE A LITTLE BIT MORE ABOUT WHAT THAT IMPACT
11 IS, IN YOUR VIEW?

12 A. WELL, OUR CONCERN IS THAT WHEN WE LOOK AT -- SO FAR IT
13 APPEARS THAT WE'VE JUST LOOKED AT THE STATE END OF THE SYSTEM.
14 WE HAVEN'T LOOKED AT THE IMPACTS BECAUSE IT IS A SYSTEM FROM
15 DAY ONE ALL THE WAY THROUGH THE END OF THEIR PAROLE PERIOD.
16 IT'S NOT JUST A STATE SYSTEM. IT'S AN ENTIRE SYSTEM.

17 AND SO IF WE'RE REQUIRED TO KEEP MORE PEOPLE
18 LOCALLY, WHICH TO MAINTAIN 110,000 IF YOU DON'T MAKE SOME
19 DRASTIC SENTENCE STRUCTURE CHANGES, WHICH IN THIS STATE THERE
20 HAS BEEN NO WILL TO THIS POINT TO DO, YOU'RE GOING TO HAVE
21 140,000 PEOPLE BEING COMMITTED. WE'RE GOING TO HAVE TO KEEP
22 SOME OF THOSE.

23 DO WE KEEP THEM? DO WE CHANGE THE STATUTORY
24 REQUIREMENT THAT WE CAN ONLY HOLD THEM FOR 365 DAYS TO MAKE IT,
25 YOU KNOW, 365 PLUS AN ADDITIONAL SIX MONTHS?

1 WE DON'T HAVE THE CAPACITY LOCALLY TO DO THAT.

2 DO WE PUT MORE INDIVIDUALS, BACK THEM OUT OF THE
3 SYSTEM AND PUT THEM ON PROBATION INSTEAD OF REFERRING? ON THE
4 NATURAL, WILL COURTS NOT SEND PEOPLE TO PRISON? WILL THEY NOT
5 MAKE THE COMMITMENT TO THE STATE PRISON SYSTEM, IF IT MEANS
6 THEY ARE GOING TO BE PUT ON PROBATION?

7 IT MEANS THAT THE PROSECUTION IS GOING TO HAVE TO
8 HAVE MORE ATTORNEYS TO DEAL WITH IT. IT MEANS THE PUBLIC
9 DEFENDER IS GOING TO HAVE TO HAVE MORE RESOURCES. MEANS
10 PROBATION, MEANS MENTAL HEALTH. MEANS PUBLIC HEALTH AS WE KEEP
11 THESE PEOPLE LOCAL. IT REALLY TURNS INTO A SHIFT FROM USING
12 STATE RESOURCES. AND IF THERE IS NO SHIFT OF THE STATE
13 RESOURCES TO THE LOCALS, WE END UP WITH WHAT WE CALL "AN
14 UNFUNDED MANDATE," WHICH IS WE HAVE TO DEAL WITH THESE PEOPLE.
15 WE DON'T HAVE THE RESOURCES TO DEAL WITH WHAT WE HAVE RIGHT
16 NOW.

17 HOW ARE WE GOING TO DEAL WITH THIS ADDITIONAL
18 POPULATION THAT EITHER BACKS OUT OF THE SYSTEM OR COMES OUT THE
19 BACK DOOR AND GETS DUMPED INTO THE LOCAL SYSTEM WITH NO
20 REHABILITATION?

21 Q. SO, IS IT -- IS IT YOUR TESTIMONY THAT YOU DON'T HAVE
22 ENOUGH RESOURCES IN STANISLAUS COUNTY NOW TO DEAL WITH THE
23 PEOPLE YOU ALREADY HAVE ON PROBATION? SO IF YOU RETAINED MORE
24 PEOPLE ON PROBATION, WHERE WOULD THEY GO?

25 A. GOOD QUESTION. THEY WOULD GO -- PROBABLY WHAT WOULD HAPPEN

1 IN OUR SYSTEM THE INDIVIDUALS WHO GO TO STATE PRISON ARE THE
2 HIGHER ENDS OF THE SYSTEM.

3 SO WE WOULD KEEP THOSE INDIVIDUALS, MONITOR THEM.
4 BUT WE WOULD HAVE TO CARVE OUT SOME ON THE LOWER ENDS OF OUR
5 SUPERVISION AND BANK MORE CASES, PUT MORE CASES INTO THE FILE
6 CABINET.

7 Q. NOW, IN TERMS OF LOCAL CUSTODIAL OPPORTUNITIES, LET'S SAY
8 THE COUNTY JAIL, STANISLAUS COUNTY JAIL IS OPERATING UNDER A
9 CAP, CORRECT?

10 A. YES, THEY HAVE A CONSENT DECREE.

11 Q. NOW, ARE YOU FAMILIAR WITH THE FACT THAT THEY ARE ALREADY
12 RELEASING PEOPLE BOTH PRESENTENCE AND POSTSENTENCE EARLY FROM
13 THE COUNTY JAIL?

14 A. THAT'S MY UNDERSTANDING, YES.

15 Q. SO HOW WOULD IT AFFECT YOUR ABILITY TO KEEP SOMEBODY IN A
16 CUSTODIAL SETTING IF WE HAVE A CAP AT THE STATE LEVEL AND A CAP
17 AT THE COUNTY LEVEL?

18 A. AND I CAN GIVE YOU A PRACTICAL EXAMPLE FROM OUR
19 PERSPECTIVE. WE HAVE INDIVIDUALS NOW WHO ARE BOOKED BY MY
20 DEPARTMENT FOR VIOLATIONS OF PROBATION FOR SOME OF THOSE
21 TECHNICAL VIOLATIONS THAT WE TALKED ABOUT, SUCH AS A DIRTY DRUG
22 TEST. WE BOOK THEM INTO OUR COUNTY JAIL. NOW, THEY ARE
23 RELEASED. SO WE DON'T HAVE THE ABILITIES -- WHEN WE BOOKED THEM
24 IN PART OF THE REASONING BEHIND BOOKING THEM IN IS TO DRY THEM
25 OUT, CLEAN THEM UP SO THAT WE CAN GET THEM BACK INTO A PROGRAM.

1 BUT IF THEY ARE RELEASED BECAUSE OF A POPULATION CAP
2 THEY GO RIGHT BACK ONTO THE STREET. AND BELIEVE ME, THEIR NEXT
3 DRUG TEST WILL BE DIRTY, AS WELL. SO THEN WE START GETTING
4 MULTIPLE VIOLATIONS OF PROBATION.

5 AND THAT'S WHERE I SAID I BELIEVE IN MY REPORT THAT
6 THEY GET INTO THIS STREAM, THE WATERFALL, THE PRISON SYSTEM
7 RIGHT THERE, AND THEY ARE JUST SWEEPED RIGHT INTO IT.

8 Q. AND YOU BELIEVE THAT WITH APPROPRIATE LEVEL OF FUNDING OF
9 PROBATION SERVICES THAT YOU COULD STOP THAT STREAM?

10 A. WELL --

11 Q. AT LEAST TRICKLE IT DOWN?

12 A. ALL RIGHT. I DON'T KNOW ABOUT STOP. I THINK WE COULD
13 DIVERT SOME PEOPLE INTO SOME EDDIES IN THAT STREAM, TO USE THAT
14 ANALOGY, AND HOLD THEM LOCALLY.

15 AND I'M NOT SO NAIVE TO THINK THAT IT CAN BE DONE ON
16 EVERY PERSON OUT THERE. BUT IF YOU LOOK AT THE AMOUNT OF MONEY
17 THAT IS SPENT, WHICH I THINK THE ARGUMENT IS IT'S NOT ENOUGH,
18 ON A STATE PRISONER -- I'VE HEARD ESTIMATES OF \$40,000 -- YOU
19 DIVERT THIS PERSON, DON'T LET THEM EVER GET TO THE FRONT DOOR.
20 YOU TAKE SOME OF THAT MONEY AND PUT IT INTO A MODEL WHERE YOU
21 FRONT LOAD THE SYSTEM, YOU SAVE MONEY. THE STATE SAVES MONEY,
22 QUITE FRANKLY.

23 GIVE COUNTY SOME OF THE MONEY. THE STATE SAVES THE
24 MONEY BECAUSE THEY DON'T HAVE TO PAY \$40,000 TO LOCK THEM UP.
25 THEY DON'T HAVE TO BUILD AS MANY FACILITIES.

1 WE HAD AN MODEL IN CALIFORNIA THAT DID EXACTLY THAT.
2 IT WAS THE SUBSIDY MODEL STARTED IN 1963. I WAS THREE, SO I
3 DON'T REMEMBER. BUT IT WAS EXACTLY THAT MODEL.

4 AND IT WAS A LITTLE OVER A DECADE LONG. AND
5 INFORMATION THAT I HAVE IS THAT DURING THE COURSE OF THAT
6 MODEL -- AND BASICALLY WHAT IT WAS WAS THE STATE INCENTIVIZED
7 COUNTIES FOR NOT SENDING OFFENDERS TO STATE PRISON. YOU GOT
8 MONEY IF YOU WERE ABLE TO REDUCE YOUR PRISON COMMITMENT RATE.

9 COUNTIES TOOK THAT MONEY AND SPENT IT ON PROBATION,
10 ON COUNSELLING PROGRAMS, PREVENTION PROGRAMS. THAT WAS BACK
11 BEFORE WE KNEW WHAT ACTUALLY WORKED.

12 AND YOU SAW A 30 PERCENT REDUCTION IN THE STATE
13 PRISON POPULATION. THE STATE ACTUALLY CLOSED, THEY SHUTTERED
14 EIGHT PRISONS USING THAT MODEL.

15 AND THAT, LIKE I SAID, WAS BEFORE WE EVEN KNEW WHAT
16 EVIDENCE-BASED PROGRAMS WERE AND WHAT REALLY WORKED.

17 **Q.** COULD YOU DESCRIBE FOR THE COURT WHAT "EVIDENCE-BASED
18 PROGRAMMING" IS?

19 **A.** WELL, THERE'S A LOT OF RESEARCH OUT THERE REGARDING THE
20 TYPES OF PROGRAMS THAT WORK WITH OFFENDERS. THERE'S A LOT OF
21 RESEARCH THAT TALKS ABOUT THE TYPES OF PROGRAMS THAT DON'T WORK
22 WITH OFFENDERS. WE KNOW MUCH MORE TODAY ABOUT WHAT DOESN'T
23 WORK WITH OFFENDERS. BOOT CAMPS, FOR INSTANCE, ARE NOT
24 EFFECTIVE WITH OFFENDERS AS FAR AS REHABILITATING THEM.

25 WE KNOW THAT PROGRAMS LIKE FUNCTIONAL FAMILY

1 THERAPY, WE KNOW THAT COGNITIVE BEHAVIORAL-BASED PROGRAMS ARE
2 VERY EFFECTIVE AT REDUCING RECIDIVISM.

3 THERE'S RESEARCH OUT THERE THAT SHOWS SOME PROGRAMS
4 ARE EFFECTIVE TO OVER 30 PERCENT REDUCTIONS IN RECIDIVISM. AND
5 YOU CAN DO IT FOR PENNIES ON THE DOLLAR COMPARED TO WHAT IT
6 COSTS US TO LOCK ONE OF THESE GUYS IN THE STATE FACILITY.

7 YOU PROVIDE THEM MENTAL HEALTH PROGRAMMING. IT'S
8 MUCH CHEAPER TO PROVIDE THEM MENTAL HEALTH PROGRAMMING LOCALLY
9 THAN IT IS TO GO BUILD, AS THE RECEIVER HAS TALKED ABOUT, \$8
10 BILLION WORTH OF NEW FACILITIES.

11 DO IT EARLIER. IT'S LIKE A VACCINE. YOU GIVE THEM
12 THE VACCINE, OR YOU WAIT UNTIL THEY GET THE FULL-BLOWN DISEASE.
13 WE CAN COME UP WITH SIGNIFICANT POPULATION REDUCTION BY FRONT
14 LOADING THE SYSTEM, NOT --

15 **JUDGE KARLTON:** NOBODY'S EVER GOING PAY FOR IT.

16 **THE WITNESS:** THAT IS THE BILLION-DOLLAR QUESTION.

17 **JUDGE KARLTON:** SO THE REALITY IS WE CAN ALL DO
18 THESE THINGS IF SOMEBODY WOULD JUST GIVE YOU THE MONEY, AND
19 NOBODY IS GOING TO GIVE YOU THE MONEY. AND THEN, THE QUESTION
20 IS: WHAT DO WE DO NEXT?

21 **THE WITNESS:** WELL, WE WILL BE BACK HERE, YOUR
22 HONOR, WOULD BE MY GUESS.

23 **JUDGE REINHARDT:** IF THERE WERE A POPULATION CAP ON
24 PRISONS, WOULDN'T IT BE TO THE STATE'S ADVANTAGE TO GIVE YOU
25 THAT MONEY?

1 **THE WITNESS:** WELL, WITH AN \$11 BILLION DEFICIT I
2 DON'T SEE THE STATE THROWING A LOT OF MONEY TOWARDS COUNTIES,
3 EVEN IF THEY SAFE MONEY ON A POPULATION CAP.

4 **JUDGE REINHARDT:** THEN THEY ARE NOT GOING TO BUILD
5 PRISONS, EITHER.

6 **THE WITNESS:** THAT WOULD BE WHAT IT SEEMS TO BE.

7 **JUDGE REINHARDT:** SO WE SHOULD START FROM THE
8 PREMISE THAT THERE'S NOT GOING TO BE ANYMORE MONEY SPENT ON
9 THIS PROBLEM. AND THEN, WHAT DO YOU DO IF THERE ARE
10 UNCONSTITUTIONAL CONDITIONS IN THE PRISON BECAUSE OF
11 OVERCROWDING? IF THAT WERE THE CASE, AND THERE'S NOT GOING TO
12 BE ANYMORE MONEY SPENT TO SOLVE THE PROBLEM, IF YOU WERE A
13 JUDGE, WHAT WOULD YOU DO?

14 **THE WITNESS:** I'D LOVE TO BE A JUDGE, BUT --

15 **JUDGE REINHARDT:** WELL, MAYBE DEPENDING ON YOUR
16 ANSWER WE CAN --

17 **THE WITNESS:** YOU KNOW, QUITE FRANKLY, I THINK YOUR
18 THREE-COURT PANEL HAS A TREMENDOUS AMOUNT OF INFLUENCE ON
19 POLICYMAKERS AND ON INDIVIDUALS IN POINTS OF POWER WHO CAN MAKE
20 DECISIONS TO DIVERT MONEY.

21 **JUDGE REINHARDT:** WELL, THESE TWO GENTLEMEN HERE
22 HAVE FOR YEARS NOW TOLD THEM THAT THE CONDITIONS ARE
23 UNCONSTITUTIONAL. AND YOU'VE SAID, I THINK QUITE ACCURATELY, IT
24 DOESN'T LOOK LIKE ANYBODY'S GOING TO SPEND ANY MONEY TO CORRECT
25 THOSE CONDITIONS.

1 SO ASSUMING THAT NOBODY IS GOING TO SPEND ANY MONEY,
2 BECAUSE WE DON'T HAVE AS MUCH INFLUENCE AS YOU THINK, WHAT'S
3 THE NEXT STEP?

4 **THE WITNESS:** WELL, QUITE FRANKLY -- MAYBE I'M JUST
5 A FOOLISH OPTIMIST -- I THINK THAT REASONED MINDS CAN COME TO A
6 POINT WHERE THEY FINALLY REALIZE THAT, YOU KNOW, WE CAN PUT
7 MONEY IN THE FRONT END AND RESOLVE THIS THING MOVING FORWARD IN
8 A RESPONSIBLE WAY THAT DOES NOT NEGATIVELY IMPACT PUBLIC
9 SAFETY, OR WE CAN CONTINUE THROWING MONEY DOWN A HOLE AND BE
10 BACK HERE LITIGATING, RELITIGATING THIS THING PROBABLY AFTER
11 THE THREE OF YOU ARE RETIRED AND IN ANOTHER THREE JUDGE PANEL.

12 **JUDGE REINHARDT:** YOU MIGHT GET A BETTER ONE NEXT
13 TIME.

14 **JUDGE KARLTON:** THE QUESTION -- AT LEAST SMARTER.
15 THE QUESTION THAT IS BEING ASKED IS TERRIFICALLY SERIOUS.

16 **THE WITNESS:** YES.

17 **JUDGE KARLTON:** WE HAVE AN OBLIGATION UNDER THE
18 CONSTITUTION TO ENSURE CONSTITUTIONALLY ADEQUATE MEDICAL AND
19 MENTAL HEALTHCARE. JUDGE HENDERSON AND I HAVE BOTH DECIDED IN
20 OUR INDIVIDUAL CASES THAT IS NOT THE CASE.

21 YOU'RE TELLING US THAT -- AND I THINK QUITE
22 ACCURATELY -- THAT IT IS VERY UNLIKELY THAT ANYBODY IS GOING TO
23 FIND ANYMORE MONEY EITHER TO BUILD MORE PRISONS OR TO PROVIDE
24 FRONT LOADING MONEY.

25 IF THE STATE WANTS TO PROTECT ITS CITIZENS, WHICH IS

1 ITS FUNDAMENTAL OBLIGATION, AND IS UNWILLING TO PAY FOR IT,
2 WHAT DO WE DO?

3 **THE WITNESS:** AND I THINK YOU GUYS ARE WADING
4 THROUGH THAT AS WE SPEAK, AND IN SOME OF YOUR HEARINGS. AND I
5 DON'T MEAN TO BE FLIPPANT. AND I DID NOT MEAN TO MINIMIZE.
6 AND I HAVE TO GIVE CREDIT. WE HAVE BEEN SUCCESSFUL ON THE
7 JUVENILE SIDE OF CONVINCING THE POLICYMAKERS AT THE STATE TO DO
8 EXACTLY THIS SYSTEM.

9 12, 15 YEARS AGO THE ADULT OR THE JUVENILE STATE
10 SYSTEM HAD 10,000 KIDS IN IT. AND IT WAS BUSTING AT THE SEAMS.
11 THE EXACT SAME SCENARIO THAT WE HAVE HERE IN THE ADULT SYSTEM.

12 THE STATE GAVE US MONEY AT THE FRONT END. TODAY
13 THERE'S ABOUT 20, 21, 2200 KIDS -- LOWER THAN THAT -- FEWER
14 THAN 2000 KIDS IN THE STATE SYSTEM, BECAUSE WE WERE ABLE TO GO
15 AND DO EFFECTIVE PROGRAMS WITH JUVENILES.

16 IT'S THE SAME MODEL YOU JUST TRANSITION IT TO. NOW,
17 TO GIVE CREDIT, WE WERE ABLE TO GET A HUNDRED MILLION DOLLARS
18 PUT INTO THE GOVERNOR'S BUDGET PROPOSAL TWO YEARS AGO FOR
19 EXACTLY THIS KIND OF PROPOSAL, THIS MODEL THAT I JUST PORTRAYED
20 TO YOU. IT DIDN'T MAKE IT THROUGH THE BUDGET PROCESS. SO WE'VE
21 GOT SOME INDIVIDUALS LISTENING.

22 WE JUST CAN'T PUSH IT UP THE FINAL PART OF THE HILL.
23 AND, FRANKLY, I THINK IF IT COMES DOWN TO YOU CAN SPEND
24 8 BILLION AND GET FURTHER LITIGATION, OR YOU CAN SPEND WHATEVER
25 AND REALLY SOLVE THIS PROBLEM AND MOVE FORWARD. I HAVE TO --

1 AND MAYBE LIKE I SAID I'M BEING A -- I HAVE TO BELIEVE THAT
2 REASONED MINDS WILL SAY:

3 "WELL, THIS IS THE WAY WE NEED TO GO."

4 WHEN BACKED INTO A CORNER, LET'S LOOK AT WHAT IT
5 REALLY TAKES TO RESOLVE THIS. ARE WE IN THE CORNER YET? I'VE
6 TOLD THE LEGISLATURE ON MULTIPLE OCCASIONS THE DAY OF RECKONING
7 IS HERE. I TOLD THEM THAT TWO YEARS AGO WHEN WE WERE TALKING
8 ABOUT EXACTLY THIS MODEL:

9 "THE DAY OF RECKONING IS HERE. YOU HAVE
10 FEDERAL

11 JUDGES WHO ARE GOING TO DO THINGS TO YOU YOU'RE NOT
12 GOING TO LIKE."

13 **JUDGE REINHARDT:** WELL, IT SEEMS NOT TO HAVE
14 FRIGHTENED THEM.

15 **THE WITNESS:** THEY DON'T LISTEN TO ME. MAYBE THEY
16 WILL LISTEN TO YOU.

17 **JUDGE KARLTON:** THE ARGUMENT IS THEY DON'T LISTEN TO
18 ANYBODY. THEIR REPRESENTATIVE IS GOING TO EXPLAIN TO ME THAT'S
19 NOT TRUE.

20 **THE WITNESS:** AND I DON'T MEAN TO BASH THE PROCESS.
21 IT'S PART OF THE PROCESS IN SACRAMENTO, AND I'M FAMILIAR WITH
22 IT. BUT, YOU KNOW --

23 **JUDGE KARLTON:** HE'S NOT EVEN HERE.

24 **MS. WANG:** WE'RE HERE.

25 **JUDGE KARLTON:** OH, THAT'S WHO YOU ARE. OKAY.

1 **MR. MITCHELL:** THERE'S HOPE. I DON'T MEAN TO BE
2 GLOOM AND DOOM. I THINK THERE IS A WAY TO GET IT DONE.

3 **JUDGE KARLTON:** I THINK YOU HAVE -- MORE POWER TO
4 YOU -- YOUR HOPE. BUT WE ARE FACED WITH A MOTION SOME PEOPLE
5 MIGHT THINK WAS -- NEVER MIND THAT. I'M ABOUT TO -- ANYWAY,
6 THE QUESTION IS TODAY, NOT NEXT YEAR, NOT THE YEAR AFTER.

7 WE HAVE A MOTION TODAY TO EXERCISE A VERY PROFOUND
8 AND SERIOUS ORDER WHICH INTERFERES IN A PROFOUND WAY WITH THE
9 STATE'S RIGHT TO RUN ITS OWN AFFAIRS.

10 AND ON THE OTHER HAND, WE HAVE A SERIOUS FAILURE OF
11 THE STATE TO PROVIDE ADEQUATE CARE. TODAY, WITHOUT THE PROGRAM
12 BEING ACCEPTED, WHAT DO WE DO?

13 **THE WITNESS:** YOUR HONOR, IF I COULD RESPOND.

14 **JUDGE KARLTON:** PLEASE.

15 **THE WITNESS:** WHAT I WOULD SAY, MY FEAR IS -- AND MY
16 ORGANIZATION, MY 59 CHIEFS UP AND DOWN THE STATE, AS WELL AS I
17 THINK THE REST OF LAW ENFORCEMENT -- OUR FEAR IS THAT IF
18 THERE'S A CAP PUT ON AND THE STATE IS LEFT OR THE SYSTEM IS
19 LEFT TO ITS OWN DEVICES TO GET TO IT. AND GIVEN OUR EXPERIENCE
20 THOSE DEVICES TEND TO BE SHOVED DOWN OUR THROATS LOCALLY --

21 **JUDGE KARLTON:** LET ME ASK IT: WE HAD TESTIMONY
22 EARLIER TODAY, I THINK -- YOU KNOW, SOME OF IT BLENDS INTO
23 ITSELF. IT'S IMPOSSIBLE -- THAT NEW MEXICO, I THINK, THE
24 FEDERAL COURT SURRENDERED JURISDICTION UPON A PASSAGE OF A
25 STATUTE BY THE STATE LEGISLATURE OF SOME KIND. IT WASN'T

1 EXPLAINED PRECISELY WHAT.

2 IN LIGHT OF WHAT YOU'RE SAYING, DO YOU THINK, IF YOU
3 HAVE AN OPINION -- AND IF YOU DON'T, THAT'S OKAY, TOO -- DO YOU
4 THINK THAT THIS COURT COULD ISSUE A CONDITIONAL ORDER SAYING:

5 "VERY BAD THINGS ARE GOING TO HAPPEN. WE'RE
6 GOING TO DUMP GOD KNOWS HOW MANY PEOPLE OUT ON THE
7 STREET UNLESS YOU GIVE COUNTIES ENOUGH MONEY TO
8 SUPERVISE THEM IN AN APPROPRIATE WAY," TO WHICH THEY
9 SAY:

10 "DUMP THEM OUT ON THE STREET."

11 NO, I DON'T KNOW. MAYBE THEY DO. IS THAT, IN YOUR
12 VIEW, A POSSIBILITY AS TO SOLVE WHAT APPEARS TO THIS JUDGE TO
13 BE CLOSE TO AN INSOLVABLE PROBLEM?

14 **THE WITNESS:** WELL, YOUR HONOR, QUITE FRANKLY, WE
15 HAVE THE STATUTE ON THE BOOKS THAT THOSE OTHER STATES ARE
16 USING. WE WERE ACTUALLY ONE OF THE FIRST STATES TO PUT THE
17 STATUTE ON THE BOOKS. IT'S JUST NEVER BEEN FUNDED.

18 **JUDGE KARLTON:** DO YOU KNOW WHAT THAT STATUTE IS?

19 **THE WITNESS:** NO, BUT I CAN GET IT TO YOU. IT WAS
20 ACTUALLY SPONSORED THROUGH MY ASSOCIATION.

21 **JUDGE KARLTON:** WOULD YOU GIVE IT TO YOUR LAWYER?

22 **THE WITNESS:** YES. IT NEVER GOT THE FUNDING. IF
23 YOU READ IT -- AND MAYBE MR. SPECTER KNOWS THE NUMBER. IF YOU
24 READ IT, IT'S A VERY COMPREHENSIVE -- AND TALKS MUCH ABOUT WHAT
25 WE'RE TALKING ABOUT HERE TODAY.

1 AS TO WHAT THE STATE WOULD DO IF YOU MADE THAT
2 OFFER, YOU KNOW -- AND I WOULD SAY IT'S NOT JUST ABOUT FUNDING
3 FOR PROBATION. I MEAN, AS MUCH AS I WOULD LOVE TO SEE
4 ADDITIONAL FUNDING, IT'S ALSO FUNDING FOR MENTAL HEALTH
5 PROGRAMS AND THE KINDS OF THERAPEUTIC AND REHABILITATIVE
6 PROGRAMS THAT THEY NEED THAT THEY ARE NOT CURRENTLY GETTING
7 NOW.

8 **JUDGE REINHARDT:** WELL, YOUR DECLARATION OR
9 AFFIDAVIT STATES AS AN ALTERNATIVE TO RELEASING PRISONERS THAT
10 THAT COULD BE ACCOMPLISHED. THE PROGRAM WOULD RESULT IN A
11 DESIRED POPULATION REDUCTION, AND THAT YOU COULD EXPECT 20 TO
12 25,000 -- REDUCTION OF 20 TO 25,000 PER YEAR IF THE PROGRAM
13 THAT YOU DESCRIBE WERE PUT INTO EFFECT.

14 DO YOU KNOW WHAT THE COST OF THAT PROGRAM WOULD BE?

15 **THE WITNESS:** WE SPENT A LOT OF TIME WORKING ON THAT
16 PREVIOUSLY. I CAN TELL YOU THAT IT WOULD BE MUCH LESS THAN IF
17 WE SPENT THE \$40,000 PER OFFENDER THAT THOSE 20 TO 25,000 WOULD
18 COST AT THE STATE LEVEL. THAT WOULD BE -- I CAN'T DO THE MATH
19 RIGHT NOW.

20 **JUDGE REINHARDT:** WELL, IF WE WERE TO AGREE WITH
21 WHAT YOU DESCRIBE IN YOUR AFFIDAVIT, THEN JUDGE KARLTON'S
22 QUESTION, IF THE STATE WERE TOLD YOU HAVE A CHOICE BETWEEN
23 FUNDING THIS PROGRAM, WHICH WILL, IN EFFECT, CONSTITUTE A CAP,
24 BECAUSE YOUR PROGRAM WOULD SERVE TO REDUCE IT, YOU COULD OR --

25 **JUDGE KARLTON:** JUST GOING TO LET THEM OUT.

1 **JUDGE REINHARDT:** OR LET THEM OUT, WE DON'T KNOW
2 WHAT THE LEGISLATURE WOULD SAY.

3 **THE WITNESS:** AND I THINK THAT GOES BACK TO MY
4 STATEMENT ABOUT YOU GOT TO -- WHEN THEY GET BACKED INTO A
5 CORNER, I THINK AT SOME POINT, YOU KNOW -- ARE THEY THERE YET.
6 I CAN'T TELL YOU THAT.

7 **JUDGE REINHARDT:** BUT THAT WOULD ALSO REQUIRE
8 ACCEPTING YOUR THEORY THAT IF THAT PROGRAM WERE FUNDED IT WOULD
9 ACHIEVE THE POPULATION CAP.

10 **THE WITNESS:** WELL, AND I THINK -- AND I REFERRED IN
11 SOME OF MY DEPOSITION TESTIMONY -- IT REALLY COMES DOWN TO
12 DOING THE MATH. IF THERE ARE 140,000 ADMISSIONS, WHICH THE
13 NUMBER 141,000, WHICH IS THE NUMBER I'VE HEARD, 50,000 ARE NEW
14 COMMITMENTS OUT OF THE COURT; 90,000 ARE THE CHURNERS, THE
15 PAROLE VIOLATOR CHURNERS.

16 IF YOU TAKE IN YOUR ONE -- LET'S SAY WE ARE ABLE TO
17 TAKE 10,000 OUT OF THAT SYSTEM, 10 OF THE 50,000, YOU REDUCE
18 THAT NUMBER. BUT THEY ALSO DON'T GET A CHANCE TO BECOME THAT
19 90,000 IN YEAR TWO THAT ARE CHURNERS THAT CLOG THE SYSTEM, YOU
20 KNOW, TO THE POINT OF OVERLOAD.

21 AND IF YOU ARE ABLE TO DO THAT FOR TWO YEARS OR
22 THREE YEARS, PRETTY SOON -- BECAUSE IT MAGNIFIES OR MULTIPLIES
23 -- YOU'RE DOING EXACTLY WHAT HAPPENED FROM 1965 TO 1978 OR
24 1979.

25 YOU HAVE A DRAMATIC REDUCTION IN YOUR POPULATION.

1 THE EXACT SAME THING IS WHAT HAPPENED ON THE JUVENILE SIDE WITH
2 RESPECT TO THE STATE JUVENILE INMATE POPULATION. YOU ARE
3 20 PERCENT OF WHAT IT WAS A DECADE AGO.

4 **JUDGE REINHARDT:** SO YOU COULD ORDER A CAP, THEN,
5 AND SAY THE WAY TO MEET THIS CAP, HERE'S ONE ALTERNATIVE THAT
6 YOU MIGHT TRY TO IMPLEMENT. BUT IT WOULDN'T DO ANY HARM TO
7 HAVE A CAP IF IT COULD FORCE YOUR PROGRAM.

8 **THE WITNESS:** IF THE RESOURCES ARE APPROPRIATELY PUT
9 IN, AND YOU'RE GIVEN THE TIME TO GET VERSUS -- I THINK THAT
10 ALTERNATIVE VERSUS "LET'S THROW THE DOOR OPEN, AND IN SIX
11 MONTHS FROM NOW WE WILL BE THERE," YOU KNOW, WE CAN -- YEAH.
12 I'D PREFER THAT ALTERNATIVE TO "LET'S JUST GET THERE TOMORROW."

13 NOT THAT IT'S MY CHOICE, QUITE FRANKLY, BUT --

14 **MS. BARLOW:** MAY I RESUME? THANK YOU, YOUR HONORS.

15 **BY MS. BARLOW:**

16 **Q.** COULD YOU JUST EXPLAIN WHY YOU THINK IT WOULD BE MORE
17 EFFECTIVE AT THE FRONT END THAN THE BACKEND IN TERMS OF PUBLIC
18 SAFETY?

19 **A.** WELL, ONE OF OUR CONCERNS OR ONE OF THE CONCERNS THAT I
20 HAVE IS THAT WHEN YOU PUT SOMEONE INTO THE STATE PRISON SYSTEM,
21 THEY DON'T GET BETTER. AND IN MANY INSTANCES THEY GET WORSE. SO
22 WHEN THEY COME OUT -- SO YOU PUT SOMEONE WHO IS A LOW RISK, LOW
23 LEVEL PERSON INTO AN ENVIRONMENTS WITH HIGH RISK INDIVIDUALS,
24 THEY DON'T NATURALLY GET BETTER. THEY GRAVITATE UP. SO WHEN
25 THEY COME OUT, THEY ARE WORSE OFF.

1 SO FROM OUR PERSPECTIVE WE'D MUCH RATHER KEEP THE
2 DEVIL WE KNOW, WORK WITH THEM. WE KNOW THEM. WE HAVEN'T LOST
3 TRACK. AND "THE DEVIL" IS PROBABLY NOT THE BEST WORD. BUT
4 KEEP THE INDIVIDUAL WE KNOW. WE'VE ALREADY STARTED WORKING WITH
5 THEM, AS OPPOSED TO 18 MONTHS DOWN THE LINE WHEN THEY HAVE BEEN
6 PUT INTO A SYSTEM THAT MAKES THEM WORSE, GETTING THEM BACK AND
7 TRYING TO MAKE SOMETHING BETTER. IT GOES BACK TO MY COMMENT
8 ABOUT LET'S VACCINATE THEM HERE AND NOT LET THEM GET THE
9 DISEASE THERE.

10 WE CAN DO IT MUCH CHEAPER.

11 **JUDGE REINHARDT:** CAN I JUST PUT MY QUESTION YOU TO
12 SOMEWHAT DIFFERENTLY? I DON'T THINK IT WAS REALLY PUT
13 ADEQUATELY.

14 IF WE TAKE YOUR AFFIDAVIT SERIOUSLY, WHICH IS IF YOU
15 CAN MEET A CAP WITH YOUR ASSISTANCE, THEN THERE REALLY SHOULD
16 BE NO OBJECTION TO A CAP, BECAUSE YOU BELIEVE THAT THE STATE
17 CAN MEET THE CAP IF IT ACTS PROPERLY. IT DOESN'T HAVE TO
18 RELEASE ANYBODY TO MEET THE CAP. ALL IT HAS TO DO IS HELP THE
19 COUNTIES PROPERLY.

20 **THE WITNESS:** LET'S NOT GET THEM --

21 **JUDGE REINHARDT:** SO IF THE COURT JUST SIMPLY
22 ORDERED A CAP, IT'S UP TO THE STATE TO DECIDE WHETHER TO OPEN
23 THE DOORS OR WHETHER TO FUND YOUR SYSTEM.

24 **THE WITNESS:** WELL --

25 **JUDGE KARLTON:** I'M NOT PREPARED TO SAY THAT YET.

1 JUDGE REINHARDT: NO. NO. THAT'S A QUESTION.

2 JUDGE KARLTON: YES.

3 THE WITNESS: BUT I GUESS WHAT I WOULD SAY IS IF WE
4 DID THIS --

5 JUDGE REINHARDT: YES.

6 THE WITNESS: MY PROFESSIONAL JUDGMENT WOULD BE YOU
7 WOULDN'T NEED A CAP. IT WOULD ON THE NATURAL REDUCE
8 SIGNIFICANTLY.

9 JUDGE REINHARDT: WELL, IT WOULD --

10 THE WITNESS: NOT THAT YOU WOULDN'T WANT TO IMPOSE
11 ONE JUST TO MAKE SURE AND KEEP US ON TRACK.

12 JUDGE REINHARDT: WELL, THE PURPOSE OF THE CAP WOULD
13 BE TO GIVE THE STATE A CHOICE OF HOW TO GET THERE. WITHOUT THE
14 CAP, AS YOU SAY, THE STATE'S NOT GOING TO FUND YOU.

15 THE WITNESS: AND I GUESS OUR FEAR IS IF YOU GIVE
16 THE STATE A CHOICE --

17 JUDGE KARLTON: THEY ARE GOING TO DO WHAT THEY HAVE
18 ALWAYS DONE, BECAUSE THAT'S WHAT THEY KNOW HOW TO DO.

19 THE WITNESS: YOU COULD ARGUE THAT.

20 JUDGE KARLTON: YES.

21 MS. BARLOW: THANK YOU, YOUR HONORS.

22 BY MS. BARLOW:

23 Q. MR. POWERS, IF WE HAVE FOLKS -- WE HAVE A CHOICE BETWEEN
24 SAYING FOLKS THAT ARE IN PRISON ALREADY, YOU'VE INDICATED THEY
25 GET WORSE, NOT BETTER. WE'RE GOING TO LET THEM OUT EARLY.

1 THREE, FOUR MONTHS EARLY, LET'S SAY, AS DR. AUSTIN PROPOSES, OR
2 WE'RE GOING TO DO SOMETHING DIFFERENT AT THE FRONT END. WE'RE
3 GOING TO TRY TO KEEP THEM FROM GETTING THERE. AND WE CAN DO
4 THAT BETTER AND CHEAPER. YOU WOULD PREFER THE FORMER. OR THE
5 LATTER, RATHER.

6 **A.** THE LATTER.

7 **Q.** THE KEEPING THEM OUT, THE FRONT END, RIGHT?

8 **A.** THE FRONT END, YES, MA'AM.

9 **Q.** AND YOU'VE INDICATED IN RESPONSE TO ONE OF THE JUDGES'
10 QUESTIONS EARLIER THAT THAT HAS SORT OF A DOUBLE BONUS EFFECT.
11 NOT ONLY DO YOU KEEP THEM OUT IN THE FIRST PLACE, BUT YOU KEEP
12 THEM OUT OF THAT POOL OF CHURNERS, RIGHT?

13 **A.** CORRECT.

14 **Q.** DOES DR. AUSTIN'S PROPOSAL DO THAT, IF YOU JUST LET PEOPLE
15 OUT THREE MONTHS EARLY WITH NO PROGRAM AND NO RISK ASSESSMENT?

16 **MS. NORMAN:** OBJECTION. I BELIEVE THAT IS
17 MISCHARACTERIZING DR. AUSTIN'S TESTIMONY.

18 **MS. BARLOW:** THAT'S EXACTLY WHAT HE TESTIFIED.

19 **JUDGE KARLTON:** JUST TAKE OUT DR. AUSTIN. WE WILL
20 ARGUE ABOUT THAT IF WE EVER GET THIS CASE OVER WITH, WHICH I
21 DOUBT. THE QUESTION IS --

22 **THE WITNESS:** NO, THEY STILL BECOME CHURNERS.

23 **JUDGE KARLTON:** THERE YOU GO.

24 **THE WITNESS:** THEY WILL STILL BE CHURNERS. THEY
25 WILL STILL BE PART OF THAT 90,000. THEY JUST GOT RELEASED TWO

1 MONTHS EARLY. NOW, IF YOU THROW IN EARLY DISCHARGE FROM
2 PAROLE, THEN THEY ARE NOT CHURNERS. THEY ARE BACK IN MY COUNTY
3 WITH THE 60 PLUS PERCENT RECIDIVISM RATE COMING BACK THROUGH
4 OUR COURT SYSTEM, BACK THROUGH THE JAIL SYSTEM, AND BACK
5 THROUGH PROBATION. AND WE DO THIS ALL OVER AGAIN.

6 SO YOU HAVE NOT ACCOMPLISHED ANYTHING THERE EXCEPT
7 TO GET THEM BACK ON THE STREETS 60 DAYS EARLY.

8 **BY MS. BARLOW:**

9 **Q.** AND IN YOUR VIEW THAT WOULD HAVE A NEGATIVE IMPACT ON
10 PUBLIC SAFETY?

11 **A.** THAT'S MY OPINION, YES.

12 **Q.** JUST A COUPLE OF QUICK FOLLOW-UP QUESTIONS. IN TERMS OF
13 THE PROBATIONERS THAT YOU HAVE OR THE PAROLEES COMING OUT OR
14 ANYBODY THAT MIGHT BE GETTING RELEASED, IN YOUR VIEW ARE THERE
15 ADEQUATE MENTAL HEALTH AND MEDICAL RESOURCES TO SERVICE THOSE
16 FOLKS?

17 **A.** NO, NOT EVEN CLOSE.

18 **Q.** SO IF -- AND WE'RE TALKING ABOUT THE PEOPLE THAT ARE
19 ALREADY --

20 **A.** CORRECT.

21 **Q.** -- THERE. SO IF MORE PEOPLE COME INTO THE COMMUNITY WITH
22 MEDICAL AND MENTAL HEALTHCARE NEEDS, THAT PROBLEM IS ONLY GOING
23 TO GET WORSE?

24 **A.** CORRECT.

25 **Q.** AND YOU'VE INDICATED, TOO, THAT YOU HAVE A CONCERN ABOUT

1 INTRODUCING ADDITIONAL PAROLEES INTO THIS COMMUNITY BECAUSE OF
2 FAMILY RELATIONSHIPS? CAN YOU EXPLAIN THAT?

3 **A.** WELL, MANY TIMES VICTIMS OF CRIME ARE FAMILY MEMBERS. SO
4 YOU HAVE ADDITIONAL VICTIMS WITHIN THE FAMILY. IT FRAGMENTS
5 THE FAMILY. THEY END UP NEEDING TO REQUIRE ADDITIONAL SOCIAL
6 SERVICE INTERVENTION AND THINGS LIKE THAT.

7 ADDITIONALLY, RESEARCH SHOWS IN A JUVENILE
8 PERSPECTIVE -- AND WE ARE RESPONSIBLE FOR ALL JUVENILES ON
9 PROBATION IN OUR COUNTY -- THAT A RISK FACTOR FOR DELINQUENCY
10 IS HAVING A FAMILY MEMBER ON PROBATION OR PAROLE IN THE FAMILY,
11 IN THE HOUSEHOLD.

12 SO IF YOU BRING SOMEBODY BACK ON PROBATION OR
13 PAROLE, DOESN'T MATTER IF YOU PUT THEM IN THE HOUSEHOLD, AND
14 THEY HAVEN'T BEEN OFFERED TREATMENT OR REHABILITATION, AND THEY
15 ARE STILL CONTINUING TO DO THE THINGS THAT GOT THEM IN THERE IN
16 THE FIRST PLACE, YOU'RE EXPOSING THE CHILDREN OF THAT FAMILY TO
17 ADDITIONAL RISK FACTORS, WHICH JUST PERPETUATES THE CYCLE.

18 THEN THEY COME INTO MY SYSTEM AS JUVENILES. THEY
19 GRADUATE INTO IT AS AN ADULT, AND THEN WE DO THIS ALL OVER
20 AGAIN.

21 **Q.** ALL RIGHT. NOW, WAS THE STATUTE YOU'RE REFERRING TO
22 EARLIER THE COMMUNITY CORRECTIONS ACT?

23 **A.** YES.

24 **Q.** OKAY.

25 **MS. BARLOW:** DOES THAT HELP THE COURT, THE COMMUNITY

1 CORRECTIONS ACT?

2 JUDGE KARLTON: NO, I NEED THE CITATION.

3 MS. BARLOW: WE WILL GET IT FOR YOUR HONOR.

4 JUDGE KARLTON: ALL RIGHT.

5 MS. BARLOW: JUST WANTED TO MAKE SURE.

6 BY MS. BARLOW:

7 Q. JUST A COUPLE OF QUESTIONS. YOU TALKED ABOUT 18 TO 25 YEAR
8 OLDS --

9 JUDGE KARLTON: LET ME INTERRUPT FOR A MOMENT. WE
10 HAD "A COUPLE OF QUESTIONS" JUST A SHORT WHILE AGO. IT'S AFTER
11 OUR ORDINARY TIME. ARE YOU SERIOUS ABOUT A COUPLE OF QUESTIONS?

12 MS. BARLOW: YES, YOUR HONOR.

13 BY MS. BARLOW:

14 Q. THE 18 TO 25 YEAR OLD GROUP, WHY IS THAT GROUP OF
15 PARTICULAR IMPORTANCE TO YOU?

16 A. WELL, WHAT RESEARCH SHOWS US IS THE 18 TO 25 YEAR OLD GROUP
17 IS A SIGNIFICANT PORTION OF THE AT RISK POPULATION. THEY STILL
18 FUNCTION IN MANY WAYS AS JUVENILES.

19 IF YOU'VE GOT KIDS WHO ARE 18 TO 25 YOU KNOW THAT.
20 THEY ARE ALSO IN MANY WAYS THE MOST AMENABLE TO REHABILITATION
21 AND TO PROGRAMMING AND CAN BE DIVERTED BEFORE THEY BECOME THAT
22 CAREER CRIMINAL THAT WE ALL HAVE IN OUR MIND.

23 SO THAT'S THE POPULATION, QUITE FRANKLY, THAT WE CAN
24 GET THE BIGGEST IMPACT IN. AND YOU SAVE MONEY FOR THE
25 LONG-TERM IF YOU'RE ABLE TO DIVERT THEM OUT OF THE SYSTEM.

1 Q. IS THAT ALSO THE GROUP THAT'S CURRENTLY THE HIGHEST -- HAS
2 THE HIGHEST RATE OF INCARCERATION?

3 A. YES.

4 Q. DO YOU THINK THE JUVENILE MODEL THAT YOU DESCRIBED EARLIER
5 TO THE COURT WOULD WORK EFFECTIVELY WITH THE 18 TO 25 YEAR OLD
6 GROUP?

7 A. I THINK IT CAN BE VERY EFFECTIVE WITH THEM, YES.

8 Q. GREAT. THANK YOU.

9 MS. BARLOW: I HAVE NOTHING FURTHER.

10 JUDGE HENDERSON: BECAUSE OF THE TIME, WE'RE GOING
11 TO HAVE TO ASK YOU TO RETURN TOMORROW MORNING, MR. POWERS.

12 THE WITNESS: OKAY.

13 JUDGE HENDERSON: I'M VERY SORRY.

14 THE WITNESS: THAT'S OKAY.

15 JUDGE HENDERSON: WE WILL BEGIN AT 9:15 TOMORROW.

16 NOW, LET'S -- BEFORE WE RECESS FOR THE EVENING, AT
17 LEAST THE THREE OF US UP HERE ARE CONFUSED ABOUT OUR REMAINING
18 SCHEDULE. WE WENT INTO A BIT ABOUT PHASE I, PHASE II, PHASE
19 III, BUT --

20 MS. BARLOW: I COULD PROBABLY HELP CLARIFY THAT FOR
21 THE COURT.

22 JUDGE HENDERSON: OKAY.

23 MS. BARLOW: WE WERE NOT INTENDING TO BEGIN THE CASE
24 ON BEHALF OF THE DEFENDANT INTERVENORS UNTIL AT LEAST THE 10TH
25 AND PROBABLY THE 11TH, BUT ESSENTIALLY PLAINTIFFS INDICATED

1 THEY HAD NO WITNESSES AVAILABLE TODAY FOR THE AFTERNOON AND
2 THAT IF WE DIDN'T BRING WITNESSES IN THEY WOULD OBJECT TO US
3 PRESENTING THEM LATER.

4 SO WE WERE TRYING TO ACCOMMODATE THE COURT.

5 **JUDGE HENDERSON:** WE APPRECIATE THAT.

6 **JUDGE KARLTON:** THAT'S OKAY. WE'RE JUST TRYING TO
7 FIGURE OUT WHAT WE'RE DOING. WE DON'T WANT TO POINT FINGERS AT
8 ANYBODY.

9 **JUDGE HENDERSON:** WE'RE NOT COMPLAINING.

10 **JUDGE KARLTON:** VERY PLEASED THAT YOU DID.

11 **JUDGE HENDERSON:** OUT OF ORDER IS OKAY. AND ONCE WE
12 START ON THE 10TH OR THE 11TH OR THEREABOUTS AND CHRISTMAS SORT
13 OF DOWN THE ROAD, WHEN DO YOU THINK WE WOULD END? JUST YOUR
14 BEST ESTIMATE.

15 **MS. BARLOW:** WELL, YOUR HONOR, WE DO HAVE A NUMBER
16 OF WITNESSES ON THESE PHASE II ISSUES. AT THIS POINT BECAUSE OF
17 THE BIFURCATION ORDER, AND THEN THE CHANGES IN THAT, IF YOU
18 WILL, I DON'T THINK -- WE HAVEN'T EXCHANGED OR RECEIVED FROM
19 PLAINTIFFS ESTIMATES ON CROSS. I'VE ASKED PLAINTIFFS TO ADVISE
20 ME WHO THEY NEED TO HAVE HERE LIVE TO CROSS-EXAMINE. I HAVEN'T
21 RECEIVED A RESPONSE TO THAT.

22 WE'D CERTAINLY LIKE TO TRY AND LIMIT THE TIME, BUT I
23 HAVE TO SAY WE --

24 **JUDGE KARLTON:** LET'S STOP. WHAT DO YOU HAVE? HOW
25 MANY WITNESSES DO YOU HAVE ON PHASE I?

1 MS. BARLOW: ME?

2 JUDGE KARLTON: NO.

3 MR. SPECTER: ARE YOU LOOKING AT ME?

4 JUDGE KARLTON: YES.

5 HE CAN GO HOME, CAN'T HE?

6 JUDGE HENDERSON: YES.

7 MR. MELLO: ONE POINT BEFORE HE LEAVES, YOUR HONOR.

8 PAUL MELLO, AGAIN, FOR DEFENDANTS. WE'RE CALLING HIM BACK BUT
9 WE HAVE TWO WITNESSES WHO ARE SET FOR TOMORROW MORNING BY VIDEO
10 CONFERENCING, WHICH CREATES A PROBLEM FOR MR. POWERS COMING IN
11 RIGHT AT 9:15, BECAUSE I DON'T THINK WE CAN HOLD UP THE VIDEO
12 PEOPLE.

13 JUDGE KARLTON: VIDEO PEOPLE ARE GOING TO TAKE HOW
14 LONG? ROUGH.

15 MR. MELLO: I THINK MORNING.

16 JUDGE KARLTON: THE WHOLE MORNING.

17 CAN YOU BE HERE TOMORROW AFTERNOON?

18 JUDGE HENDERSON: 9:15.

19 JUDGE REINHARDT: HE SAID "YES" HE CAN BE HERE IN
20 THE AFTERNOON.

21 JUDGE HENDERSON: OKAY. GOOD.

22 THE WITNESS: 1:30?

23 MR. SPECTER: I'M SORRY. COULD WE MEET AND CONFER
24 ABOUT THAT, AND THEN LET MR. POWERS KNOW?

25 JUDGE KARLTON: NO.

1 **MR. SPECTER:** OKAY.

2 **JUDGE KARLTON:** IF HE'S GOT TWO PEOPLE BY VIDEO --

3 **MR. SPECTER:** I WOULDN'T INCONVENIENCE HIM BY THAT.

4 I JUST WANTED TO CONFER WITH HIM. THAT'S ALL.

5 **MR. MELLO:** WITH ME?

6 **MR. SPECTER:** YES. WE WILL WORK IT OUT.

7 **JUDGE REINHARDT:** WHAT ABOUT WORKING OUT THE REST OF
8 THE SCHEDULE SO THAT WE CAN HAVE AN IDEA WHAT'S GOING TO HAPPEN
9 THE REST OF THIS WEEK, AND THEN WHAT'S GOING TO HAPPEN BETWEEN
10 NOW AND THE END OF THE TRIAL?

11 CAN YOU ALL GET TOGETHER AND DO WHAT YOU DID WITH
12 PHASE I?

13 **JUDGE KARLTON:** NO, DO BETTER THAN PHASE I.

14 **MR. SPECTER:** YOU SHOULD BE -- WE DID PHASE I FAST
15 SO --

16 **MR. MELLO:** AND WE DID FILE OUR WITNESS LIST TODAY.

17 **JUDGE REINHARDT:** BUT THE WITNESS LIST --

18 **MR. MELLO:** WE WITHDREW A COUPLE OF WITNESSES, WHICH
19 I THINK MAKES IT FASTER.

20 **JUDGE REINHARDT:** I KNOW. BUT THE WITNESS LIST
21 DOESN'T REALLY TELL US WHAT YOU'RE GOING TO DO WITH THE REST OF
22 THE TRIAL: HOW LONG EACH WITNESS IS GOING TO TAKE, HOW MANY
23 WITNESSES THERE ARE REALLY GOING TO BE.

24 **MR. SPECTER:** WELL, I THINK I CAN GIVE YOU A GENERAL
25 SKETCH. DO YOU WANT THAT, OR WOULD YOU LIKE US TO COME BACK

1 WITH DETAILS?

2 **JUDGE REINHARDT:** WE WOULD LIKE YOU TO AGREE TO --

3 **MR. SPECTER:** NO. WE'VE AGREED BASICALLY FOR THIS
4 COMING WEEK WE KNOW.

5 **JUDGE REINHARDT:** NOW THEN, FOR THE REST OF THE
6 TRIAL.

7 **MR. SPECTER:** THE REST OF THE TRIAL ON THE 9TH AND
8 THE 10TH, MR. MELLO IS GOING TO BE PRESENTING THE STATE'S
9 WITNESSES. WE'RE GOING TO HAVE ONE OF OUR WITNESSES COME OUT
10 OF ORDER, MR. LEHMAN, ON THE 11TH AND THE 12TH.

11 THEN, THE INTERVENORS -- 10TH, 11TH AND 12TH.

12 THE INTERVENORS ARE GOING TO START PRESENTING THEIR
13 WITNESSES. NOW, MS. BARLOW IS CORRECT. WE HAVEN'T REACHED ANY
14 AGREEMENTS ABOUT HOW LONG THOSE ARE GOING TO TAKE, AND WE DON'T
15 KNOW HOW MANY THEY ARE GOING TO CALL. AND WE'RE ALSO TRYING TO
16 NEGOTIATE WITH THE COUNTY WITNESSES TO SEE IF THEIR TESTIMONY
17 CAN COME IN IN A WRITTEN FORM BY STIPULATION.

18 WE HAVEN'T QUITE GOTTEN THERE YET, BUT WE'RE WORKING
19 ON IT.

20 WE'RE ALSO GOING TO APPROACH MS. BARLOW TO SEE IF WE
21 CAN CUT DOWN ON THAT PURSUANT TO SOME AGREEMENT. SO THE REASON
22 WE CAN'T TELL YOU TODAY EXACTLY WHAT IS GOING TO HAPPEN IS WE
23 HAVEN'T FINISHED THE NEGOTIATIONS, WHICH WE ARE TRYING TO
24 SHORTEN IT AS MUCH AS POSSIBLE.

25 **JUDGE REINHARDT:** I DIDN'T SUGGEST YOU SHOULD TELL

1 US TODAY. I SAID CAN YOU GET TOGETHER AND EVEN TELL US TOMORROW
2 MORNING WHEN YOU ARE GOING TO REACH AN AGREEMENT AS TO WHAT IS
3 LEFT OF THE TRIAL?

4 **MR. SPECTER:** I CAN'T PROMISE THAT.

5 **JUDGE REINHARDT:** YOU CAN'T TELL US WHEN YOU WILL
6 AGREE?

7 **MR. SPECTER:** THE REASON WHY IS BECAUSE WE'RE TRYING
8 TO REACH FACTUAL STIPULATIONS ON WITNESSES. AND UNTIL WE
9 EXCHANGE THEM AND SEE WHETHER WE HAVE AGREEMENTS ON THEM, WE
10 CAN'T SAY WHETHER THE WITNESS IS GOING TO BE CALLED OR NOT. SO
11 I CAN'T TELL YOU TOMORROW WHETHER WE'RE GOING TO HAVE AN
12 AGREEMENT OR EXACTLY WHEN. WE'RE WORKING OUR HARDEST.

13 **JUDGE KARLTON:** IS IT CORRECT THAT THE LEGISLATORS
14 ARE NOT TENDERING ANY EVIDENCE AT ALL?

15 **MS. WANG:** NO, YOUR HONOR. THE LEGISLATORS WILL BE
16 PRESENTING TWO WITNESSES FOR PHASE II.

17 **JUDGE KARLTON:** OKAY.

18 **JUDGE HENDERSON:** AND LET'S ME ASK MS. BARLOW: DID
19 THE TWO WITNESSES YOU PRESENTED TODAY --

20 **MS. BARLOW:** ACTUALLY, ONE OF THEM WAS MINE, YOUR
21 HONOR. THE OTHER WAS THE DISTRICT ATTORNEY'S WITNESS.

22 **JUDGE HENDERSON:** THAT'S CORRECT. LET ME ADD THE
23 DISTRICT ATTORNEY. ARE THOSE FAIRLY TYPICAL OF WHAT WE WILL BE
24 GETTING IN TERMS OF THE LENGTH, OR WILL THERE BE A COUPLE OF
25 SUPER WITNESSES WHO WILL TAKE ALL DAY OR --

1 **MS. BARLOW:** MR. POWERS WAS ONE OF THE ONLY TWO
2 WITNESSES OF MINE WHO ACTUALLY PREPARED AN EXPERT REPORT AS
3 OPPOSED TO A DECLARATION. AND IT WAS ONE OF THE LONGER
4 CROSS-EXAM ESTIMATES THAT I HAVE RECEIVED THUS FAR. HOWEVER, I
5 DO HAVE CONCERN ABOUT THE AMOUNT OF TIME THAT MIGHT BE
6 CONSUMED, BECAUSE, FOR EXAMPLE, I'VE PROPOSED I THINK FIFTY
7 STIPULATED FACTS THAT DEAL WITH JAIL CAPS AND THE NUMBER OF
8 PEOPLE RELEASED AT THE COUNTY LEVEL OVER THE LAST YEAR. AND
9 PLAINTIFFS HAVEN'T STIPULATED TO ANY OF THOSE FACTS. SO I MAY
10 BE COMPELLED TO BRING IN WITNESSES, OR AT LEAST SUBMIT
11 DECLARATIONS TO ESTABLISH THOSE FACTS IF I CAN'T GET IT DONE BY
12 STIPULATION.

13 SO WE ARE WORKING ON IT. BUT I THINK MR. POWERS
14 PERHAPS WAS A LITTLE LONGER THAN MOST OF MY WITNESSES, IN PART
15 BECAUSE OF HIS STATEWIDE BREADTH OF EXPERIENCE.

16 **JUDGE KARLTON:** WHAT ABOUT THE D.A.'S? HOW MANY
17 MORE WITNESSES ARE YOU GOING TO BE?

18 **MR. MITCHELL:** I HAVE TWO ADDITIONAL WITNESSES: THE
19 D.A. FROM RIVERSIDE AND THE D.A. FROM SAN DIEGO. I ESTIMATE
20 THEY TAKE ABOUT 45 MINUTES TO AN HOUR EACH.

21 **MR. SPECTER:** EXCUSE ME. OH, YOU MEAN WITH CROSS?
22 YES, OKAY.

23 **JUDGE KARLTON:** ALL RIGHT.

24 **JUDGE HENDERSON:** OKAY. COURT'S ADJOURNED UNTIL 9:15
25 TOMORROW.

1 **MR. SPECTER:** OH, DID YOU -- MR. MELLO REMINDED ME,
2 DID YOU ALSO CONTINUE TO WANT US TO DO CLOSING ARGUMENTS
3 TOMORROW ON PHASE I?

4 **JUDGE KARLTON:** YOU KNOW WHAT? IF WE CAN GET
5 TESTIMONY, I'D RATHER JUST WAIT UNTIL THE END. NO?

6 **MR. SPECTER:** I'M NOT DYING TO DO IT BUT --

7 **MR. MELLO:** IF YOU'RE WILLING TO RULE FOR US NOW ON
8 PHASE I, THAT WOULD MAKE ME MOST HAPPY. BUT IF YOUR DESIRE IS
9 TO HAVE ONE CLOSING AT THE END, I WOULD THINK DEFENDANTS ARE --

10 **MR. SPECTER:** NEITHER ARE WE.

11 **MR. MELLO:** I MEAN --

12 **JUDGE KARLTON:** I THINK WE'RE AT A PLACE NOW, THAT'S
13 WHERE WE ARE GOING TO DO. WE ARE HALFWAY --

14 **MR. MELLO:** SO THERE WILL BE NO PHASE I CLOSING
15 TOMORROW.

16 **JUDGE HENDERSON:** YES.

17 **MR. MELLO:** OKAY.

18 **JUDGE KARLTON:** THANK YOU VERY MUCH.

19 **MR. SPECTER:** WE APPRECIATE THAT.

20 (THEREUPON, THIS TRIAL WAS CONTINUED UNTIL WEDNESDAY,
21 DECEMBER 3, 2008, AT 9:15 O'CLOCK A.M.)

22

23

24

25

I N D E XDEFENSE WITNESSESPAGEVOL.ROBIN DEZEMBER

DIRECT EXAMINATION BY MS. TILLMAN	838	5
CROSS-EXAMINATION BY MR. BIEN	852	5
REDIRECT EXAMINATION BY MS. TILLMAN	921	5
RECROSS-EXAMINATION BY MR. BIEN	933	5
FURTHER REDIRECT EXAMINATION BY MS. TILLMAN	944	5

CRAIG WILLIAM HANEY

DIRECT EXAMINATION BY MS. KAHN	945	5
CROSS-EXAMINATION BY MS. TILLMAN	960	5

LISA RODRIGUEZ

DIRECT EXAMINATION BY MR. MITCHELL	980	5
CROSS-EXAMINATION BY MR. SANGSTER	1000	5

JERRY POWERS

DIRECT EXAMINATION BY MS. BARLOW	1017	5

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DEFENDANT INTERVENOR EXHIBITSIDENVOL.EVIDVOL.

507-509		999	5

CERTIFICATE OF REPORTER

WE, JOAN MARIE COLUMBINI AND KATHERINE WYATT, OFFICIAL REPORTERS FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN CIV S-90-0520 LKK, RALPH COLEMAN, ET AL V. ARNOLD SCHWARZENEGGER, AND C 01-1351 TEH, MARCIANO PLATA V. ARNOLD SCHWARZENEGGER, WERE REPORTED BY US, CERTIFIED SHORTHAND REPORTERS, AND WERE THEREAFTER TRANSCRIBED UNDER OUR DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY US AT THE TIME OF FILING.

THE VALIDITY OF THE REPORTER'S CERTIFICATION OF SAID TRANSCRIPT MAY BE VOID UPON DISASSEMBLY AND/OR REMOVAL FROM THE COURT FILE.

/S/ JOAN MARIE COLUMBINI

JOAN MARIE COLUMBINI, CSR 5435, RPR

S/ KATHERINE WYATT

KATHERINE WYATT, CSR 9866, RMR

TUESDAY, DECEMBER 2, 2008

**JOAN MARIE COLUMBINI, CSR, RPR
KATHERINE WYATT, CSR, RMR
OFFICIAL COURT REPORTERS, USDC, 415-255-6842**

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
AND FOR THE NORTHERN DISTRICT OF CALIFORNIA
UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES PURSUANT
TO SECTION 2284, TITLE 28 UNITED STATES CODE

RALPH COLEMAN, ET AL.,)
)
PLAINTIFFS,)
)
VS.) NO. CIV S-90-0520 LKK JFM
)
ARNOLD SCHWARZENEGGER, ET AL.)
) THREE-JUDGE COURT
DEFENDANTS.)
)

MARCIANO PLATA, ET AL.,)
)
PLAINTIFFS,)
)
VS.) NO. C 01-1351 TEH
)
ARNOLD SCHWARZENEGGER, ET AL.)
)
DEFENDANTS.)
)

TRANSCRIPT OF PROCEEDINGS

SAN FRANCISCO, CALIFORNIA
WEDNESDAY, DECEMBER 3, 2008

(APPEARANCES ON FOLLOWING PAGES)

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BY: CAROL LYNNE WOODWARD, ESQUIRE

1 **DECEMBER 3, 2008**

9:15 O'CLOCK A.M.

2
3 **P R O C E E D I N G S**

4 **JUDGE HENDERSON:** OKAY. LET'S GET GOING. I
5 UNDERSTAND THAT WITH THIS SETUP THE JUDICIAL HEADPHONES CAN'T
6 BE USED. SO I'M GOING TO ASK EVERYONE TO SPEAK IN A LOUD AND
7 CLEAR VOICE AND INTO THE MICROPHONES SO WE CAN HEAR.

8 YOU MAY PROCEED WHEN YOU'RE READY.

9 **MS. TILLMAN:** GOOD MORNING. CAN EVERYONE HEAR ME?

10 **JUDGE HENDERSON:** YES.

11 **THE WITNESS:** YES.

12 **MS. TILLMAN:** GOOD MORNING, DR. PACKER. HOW ARE YOU
13 THIS MORNING?

14 **THE WITNESS:** FINE.

15 **MS. TILLMAN:** JUST WANT TO MAKE SURE EVERYONE CAN
16 HEAR EACH OTHER. WE'RE GOING TO SWEAR YOU IN.

17 **THE CLERK:** PLEASE RAISE YOUR RIGHT HAND.

18 (THEREUPON, THE WITNESS WAS SWORN.)

19 **THE WITNESS:** I DO.

20 **THE CLERK:** PLEASE HAVE A SEAT.

21 **THE WITNESS:** I DO.

22 **THE CLERK:** PLEASE HAVE A SEAT.

23 PLEASE HAVE A SEAT.

24 PLEASE STATE AND SPELL YOUR FULL NAME FOR THE
25 RECORD.

1 **THE WITNESS:** IRA K. PACKER, P-A-C-K-E-R.

2 **MS. TILLMAN:** GOOD MORNING, YOUR HONORS. WE ARE
3 CALLING DR. PACKER THIS MORNING, WHO OBVIOUSLY IS TESTIFYING
4 FROM BOSTON, MASSACHUSETTS, VIA VARIOUS VIDEO TELECONFERENCING
5 TECHNOLOGY.

6 DR. PACKER'S EXPERTS REPORTS IN THIS CASE ARE MARKED
7 AS DEFENDANTS' TRIAL EXHIBITS NUMBER 1018, 1019, 1020 AND 1021,
8 AND THEY ARE HEREBY OFFERED INTO EVIDENCE.

9 DR. PACKER'S QUALIFICATIONS TODAY ARE SET FORTH ON
10 HIS CURRICULUM VITAE, AND THAT IS ATTACHED TO HIS REPORT OF
11 NOVEMBER, 2008, WHICH IS MARKED AS EXHIBIT 1018. THERE'S ALSO
12 A SUMMATION OF HIS QUALIFICATIONS ON PAGES TWO AND THREE OF
13 THAT REPORT.

14 THEREUPON --

15 **DR. IRA K. PACKER**
16 WAS CALLED ON BEHALF OF THE DEFENDANTS, AND AFTER HAVING BEEN
17 FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

18 **DIRECT EXAMINATION**

19 **BY MS. TILLMAN:**

20 **Q.** GOOD MORNING, DR. PACKER.

21 **A.** GOOD MORNING.

22 **Q.** SINCE YOU ARE TESTIFYING REMOTELY, PLEASE LET US KNOW IF AT
23 ANY TIME YOU ARE HAVING DIFFICULTY HEARING US OR SEEING ANY
24 DOCUMENT THAT IS BEING PRESENTED.

25 **A.** OKAY.

1 Q. DR. PACKER, I UNDERSTAND THAT YOU HAVE RECEIVED A COPY OF
2 YOUR REPORTS FROM THE COURT REPORTER. AND WITH THE COURT'S
3 PERMISSION --

4 A. NOT QUITE YET. NOT QUITE YET. COULD YOU GIVE US THE
5 EXHIBIT NUMBER SO SHE CAN HAND TO IT ME?

6 Q. YES. THAT WOULD BE TRIAL EXHIBIT NUMBERS 1018, 1019, 1020
7 AND 1021.

8 A. YES, I HAVE THEM ALL.

9 MR. BIEN: YOUR HONORS, WE HAVE AN OBJECTION AS TO
10 1018, WHICH IS THE FIRST DR. PACKER REPORT. THE EXHIBIT THAT'S
11 MARKED AS 1018 IS NOT SIGNED, AND IT IS DIFFERENT FROM THE
12 EXHIBIT THAT WAS PROVIDED TO THE COURT AND TO PLAINTIFFS'
13 COUNSEL.

14 I MIGHT BE ABLE TO, IN OUR SET OF EXHIBITS, GIVE HIM
15 THE ACTUAL SIGNED ONE, LISA.

16 JUDGE HENDERSON: CAN YOU RECONCILE THAT, MS.
17 TILLMAN?

18 MS. TILLMAN: YES.

19 OKAY. MAY WE PROCEED?

20 JUDGE HENDERSON: PROCEED.

21 MS. TILLMAN: THANK YOU.

22 BY MS. TILLMAN:

23 Q. DR. PACKER, I'M GOING TO START FIRST, OF COURSE, WITH YOUR
24 QUALIFICATIONS.

25 A. EXCUSE ME. I COULD NOT HEAR YOU WHEN YOU'RE AWAY FROM THE

1 MICROPHONE.

2 Q. DR. PACKER, I'LL RAISE MY VOICE, AND IF YOU COULD JUST
3 LOWER YOUR VOICE ENOUGH, I THINK THAT WOULD HELP.

4 A. OKAY.

5 Q. THANK YOU.

6 DR. PACKER, ARE YOU A PRACTICING PSYCHOLOGIST?

7 A. YES, I AM.

8 Q. AND HOW MANY YEARS HAVE YOU BEEN A PSYCHOLOGIST?

9 A. I'VE BEEN PRACTICING FOR 29 YEARS.

10 Q. ARE YOU A LICENSED PSYCHOLOGIST BY THE COMMONWEALTH OF
11 MASSACHUSETTS?

12 A. YES, I AM.

13 Q. AND PLEASE INFORM THE COURT OF YOUR EDUCATIONAL BACKGROUND.

14 A. I RECEIVED MY B.A. IN PSYCHOLOGY FROM COLUMBIA UNIVERSITY
15 IN 1974.

16 I RECEIVED MY M.A. IN PSYCHOLOGY FROM UNIVERSITY OF
17 PENNSYLVANIA IN 1976.

18 AND I RECEIVED MY PH.D. IN PSYCHOLOGY FROM THE
19 UNIVERSITY OF PENNSYLVANIA IN 1979.

20 IN 1987, I BECAME A DIPLOMATE, WHICH MEANS BOARD
21 CERTIFIED, IN FORENSIC PSYCHOLOGY BY THE AMERICAN BOARD OF
22 PROFESSIONAL PSYCHOLOGY.

23 Q. ARE YOU CURRENTLY EMPLOYED?

24 A. YES, I AM.

25 Q. AND WHAT IS YOUR CURRENT POSITION?

1 **A.** MY FULL-TIME POSITION IS AS CLINICAL PROFESSOR OF
2 PSYCHIATRY AT THE UNIVERSITY OF MASSACHUSETTS MEDICAL SCHOOL.

3 **Q.** AND ARE YOU PRESENTLY ON ANY PARTICULAR PROFESSIONAL BOARDS
4 OR --

5 **A.** YES, I AM.

6 **Q.** AND WHAT ARE THEY?

7 **A.** I AM CURRENTLY THE CHAIR OF THE FORENSIC SPECIALTY COUNCIL,
8 WHICH IS BASICALLY THE GROUP THAT REPRESENTS FORENSIC
9 PSYCHOLOGY TO THE BROAD GROUP OF PSYCHOLOGY ORGANIZATIONS.

10 AND I'M ALSO THE CURRENT PRESIDENT OF THE COUNCIL OF
11 SPECIALTY IN PROFESSIONAL PSYCHOLOGY.

12 **Q.** HAVE YOU HELD ANY EMPLOYMENT POSITION WITHIN ANY
13 CORRECTIONAL SETTINGS?

14 **A.** I LOST THE WORD. HAVE I HELD ANY?

15 **Q.** EMPLOYMENT POSITIONS WITHIN ANY CORRECTIONAL SETTINGS?

16 **A.** OH, EMPLOYMENT. YES, I HAVE.

17 **Q.** AND CAN YOU PROVIDE INFORMATION TO THE COURT ON THAT, ON
18 THOSE EMPLOYMENT POSITIONS?

19 **A.** YES.

20 **JUDGE KARLTON:** MS. TILLMAN, I DON'T WANT TO
21 DISCOURAGE YOU, BUT THAT'S ALL IN HIS REPORTS, WHICH TOTALLY WE
22 HAVE READ. IF YOU WANT TO WASTE -- I DON'T MEAN "WASTE TIME,"
23 BUT IT SEEMS UNNECESSARY. IT'S YOUR TIME. IT'S YOUR RIGHT TO
24 USE.

25 **MS. TILLMAN:** THANK YOU, YOUR HONOR.

1 **BY MS. TILLMAN:**

2 **Q.** IF YOU COULD JUST ANSWER THAT LAST QUESTION, I'LL MOVE ON.

3 **A.** YES. THE EMPLOYMENT POSITIONS, YES. I WAS IN CHARGE OF
4 BOTH PROVIDING CLINICAL SERVICES AND BEING THE DIRECTOR OF A
5 PROGRAM THAT PROVIDED MENTAL HEALTH SERVICES TO THREE
6 CORRECTIONAL FACILITIES OF WESTERN MASSACHUSETTS.

7 I WAS ALSO THE DIRECTOR OF THE MENTAL HEALTH PROGRAM
8 FOR ALL THE PRISONS IN MASSACHUSETTS. AND I ALSO WORKED
9 DIRECTLY IN PRISON PSYCHIATRIC HOSPITALS IN BRIDGEWATER STATE
10 HOSPITAL.

11 **Q.** HAVE YOU WORKED IN ANY SETTINGS WHERE OVERCROWDING WAS AN
12 ISSUE?

13 **A.** YES, I DID.

14 **Q.** AND WHEN WAS THAT?

15 **A.** THAT WAS FROM THE LATE EIGHTIES, EARLY NINETIES, WHEN I WAS
16 RUNNING THE MENTAL HEALTH PROGRAM IN HAMPDEN COUNTY, WHICH IS
17 IN WESTERN MASSACHUSETTS.

18 **Q.** AND DID YOU HAVE ANY --

19 **MS. TILLMAN:** LET ME STRIKE THAT.

20 **BY MS. TILLMAN:**

21 **Q.** WAS THERE ANY REMEDY PROVIDED TO ADDRESS THE OVERCROWDING
22 ISSUES AT THAT PARTICULAR CORRECTIONAL FACILITY?

23 **A.** YES.

24 **Q.** AND WHAT WAS THAT?

25 **A.** THE REMEDY AT THAT POINT WAS THAT THERE WAS A CAP PLACED ON

1 THE NUMBER OF INMATES. AND SO EACH DAY THAT THE COURT WANTED
2 TO SEND SOMEBODY IN, THEY WOULD HAVE A SPECIAL PROCESS BY WHICH
3 THEY WOULD HAVE A DOUBLE REVIEW OF THE BAIL STATUS, AND IN THAT
4 WAY LIMIT IT TO WHO COULD GO INTO THE JAIL. IF THEY DECIDED
5 THEY WERE GOING TO SEND THAT INMATE IN, SOMEBODY ELSE HAD TO BE
6 RELEASED ON THE OTHER END.

7 Q. DR. PACKER, IS IT CORRECT THAT YOUR REPORTS INDICATE THAT
8 YOU TOURED PRISON FACILITIES WITHIN THE STATE OF CALIFORNIA IN
9 PREPARING YOUR OPINION IN THIS CASE?

10 A. I'M SORRY. I COULD NOT HEAR THE LAST PART OF YOUR SENTENCE.

11 Q. DID YOU TOUR SOME 11 PRISONS WITHIN THE STATE OF CALIFORNIA
12 IN PREPARING YOUR OPINION IN THIS CASE?

13 A. YES, I DID.

14 Q. AND THOSE TOURS OCCURRED IN NOVEMBER '07 AND AUGUST '08,
15 CORRECT?

16 A. JULY, THE END OF JULY, 2008, AND NOVEMBER, 2007.

17 Q. AND, IN GENERAL, WHAT DID YOU DO DURING THESE TOURS?

18 A. DURING THESE TOURS I MET WITH THE LEADERSHIP OF EACH
19 PRISON, INCLUDING THE CORRECTIONAL, AS WELL AS THE HEALTH AND
20 MENTAL HEALTH ADMINISTRATORS. I TOURED THE VARIOUS SETTINGS
21 WHERE INMATES WERE BEING HOUSED, PARTICULARLY FOCUSING ON THOSE
22 IN THE COLEMAN CLASS.

23 I LOOKED AT ADSEG UNITS, EOP UNITS WHEN THEY WERE
24 AVAILABLE, MENTAL HEALTH CRISIS BEDS. I ALSO SPECIFICALLY
25 LOOKED AT GYM HOUSING, GYMS THAT HAD BEEN CONVERTED TO

1 HOUSING.

2 I INTERVIEWED CORRECTIONAL OFFICERS, MENTAL HEALTH
3 PROFESSIONALS, AS WELL AS INMATES.

4 Q. DID PLAINTIFFS' COUNSEL ATTEND ANY OF THESE TOURS?

5 A. ON EVERY SINGLE TOUR THERE WAS AT LEAST ONE PLAINTIFFS'
6 COUNSEL PRESENT DURING THE ENTIRE TOUR.

7 Q. WERE YOU ASKED IN THIS CASE TO FORM AN OPINION ON WHETHER
8 OVERCROWDING WAS THE PRIMARY CAUSE OF THE ALLEGED DEFICIENCIES
9 IN THE MENTAL HEALTHCARE SYSTEM?

10 A. YES, I WAS.

11 Q. AND WHEN YOU FORMED YOUR OPINION IN THIS CASE ON THAT
12 ISSUE, WHAT FACTORS DID YOU CONSIDER?

13 A. WHAT FACTORS DID I CONSIDER?

14 Q. YES.

15 A. I CONSIDERED ALL THE INFORMATION THAT I OBTAINED FROM MY
16 TOURS, AS WELL AS VOLUMINOUS DOCUMENTS AND RECORDS THAT I
17 REVIEWED, INCLUDING AFFIDAVITS, SPECIAL MASTER'S REPORTS, OTHER
18 EXPERT REPORTS, REPORTS FROM PAROLE, ET CETERA. AND LOOKING AT
19 ALL OF THOSE MATERIALS I ARRIVED AT CONCLUSIONS ABOUT WHAT
20 FACTORS WITHIN THE CURRENT SYSTEM WERE CONTRIBUTING MOST
21 HEAVILY TOWARDS DEFICIENCIES IN DELIVERY OF MENTAL HEALTH
22 SERVICES.

23 Q. AND WHAT WERE THOSE FACTORS?

24 A. OBVIOUSLY, ONE THING I WAS LOOKING AT WAS THE IMPACT OF
25 OVERCROWDING OR TOO MANY INDIVIDUALS IN THE SYSTEM. BUT THERE

1 WERE MANY OTHER FACTORS, AS WELL, INCLUDING ISSUES SUCH AS LACK
2 OF ELECTRONIC MEDICAL RECORDS, LACK OF APPROPRIATE TYPE OF
3 PLACEMENTS, BOTH CONCERNED WITH PHYSICAL ENVIRONMENTS AS WELL
4 AS PROGRAMMATIC ELEMENTS FOR THE MOST SEVERELY MENTALLY ILL
5 PEOPLE WHO ARE IN THE SYSTEM.

6 I ALSO TOOK INTO ACCOUNT THE FACTORS SUCH AS ABILITY
7 TO ATTRACT AND RETAIN APPROPRIATELY TRAINED MENTAL HEALTH
8 STAFF, AND, AGAIN, THE PHYSICAL CONDITIONS IN TERMS OF SPACE
9 AVAILABLE BOTH FOR HOUSING, TREATMENT AND ALSO SPACE FOR THE
10 CLINICIANS.

11 **Q.** BASED ON YOUR REVIEW OF THE DOCUMENTS AND YOUR TOURS OF THE
12 PRISON AND YOU'RE INTERVIEWS WITH VARIOUS PERSONNEL WITHIN THE
13 PRISONS, WHAT OPINION DID YOU FORM TO AS TO WHETHER
14 OVERCROWDING WAS THE PRIMARY CAUSE?

15 **A.** AS I INDICATED IN MY REPORT, ALTHOUGH I -- EXCUSE ME --
16 ALTHOUGH I CONCLUDED THAT OVERCROWDING WAS CONTRIBUTING AND
17 EXACERBATING MANY OF THE OTHER PROBLEMS, IN MY OPINION THE
18 MOST -- THE PRIMARY CAUSE IS THAT THE PRISON SYSTEM IN
19 CALIFORNIA AND MANY OTHER STATES, NOW HAS MANY MORE ACUTELY
20 MENTALLY ILL INDIVIDUALS AND AT A LEVEL OF MORE SEVERITY THAN
21 HAD BEEN ANTICIPATED WHEN THE PRISONS WERE BUILT.

22 AND AS A RESULT, THE EXISTING SPACE AND EXISTING
23 PROGRAMS REALLY WERE NOT DESIGNED TO MEET THE NEEDS OF THIS
24 TYPE OF POPULATION. AND THIS HAS RESULTED IN A MISMATCH IN
25 THAT INDIVIDUALS WHO ARE MUCH MORE MENTALLY ILL ARE NOW PLACED

1 IN PRISONS THAT WERE NOT DESIGNED FOR THAT PURPOSE. AND AS A
2 RESULT, IT'S DIFFICULT IN THAT ENVIRONMENT TO PROVIDE ADEQUATE
3 SERVICES ABSENT DEVELOPMENT OF NEW FACILITIES, AS WELL AS NEW
4 PROGRAMS WITHIN THE NEW FACILITIES.

5 Q. BASED -- I'M SORRY. GO AHEAD.

6 A. YES, THAT WAS THE MAIN FACTORS. THERE WERE OTHER FACTORS,
7 AS WELL. AS I INDICATED IN MY REPORT, THE MEDICAL RECORD
8 SYSTEM IS A PAPER SYSTEM, AND THE PRISON IS SIMPLY NOT ABLE TO
9 KEEP UP WITH THE AMOUNT OF WORK AND VOLUME THAT'S REQUIRED IN
10 ORDER TO MAINTAIN AN APPROPRIATE MEDICAL RECORD SYSTEM WITHOUT
11 GOING TO AN ELECTRONIC PROCESS, WHICH IS NOT YET IN PLACE.

12 Q. BASED UPON YOUR EXPERIENCE AND EDUCATIONAL BACKGROUND AND
13 EMPLOYMENT BACKGROUND, DO YOU HAVE AN OPINION REGARDING WHETHER
14 CONSTITUTIONAL LEVEL OF CARE CAN BE ACHIEVED IN OVERCROWDING
15 CONDITIONS WITHIN A CORRECTIONAL SETTING?

16 A. YES, I DO.

17 Q. AND WHAT IS THAT OPINION?

18 A. MY OPINION IS THAT ALTHOUGH OVERCROWDING EXACERBATES THE
19 PROBLEMS IN PROVIDING SUCH APPROPRIATE CARE, IF OTHER CHANGES
20 ARE MADE IN THE SYSTEM PARTICULARLY BASED ON MY EXPERIENCE,
21 VERY PARTICULARLY IN HAMPDEN, BUT OTHER POSITIONS, AS WELL,
22 THAT IF APPROPRIATE FACILITIES AND PROGRAMS ARE DEVELOPED THAT
23 THE NEEDS OF THE MOST SEVERELY MENTALLY ILL PEOPLE CAN MANAGE
24 WITHIN A CORRECTIONAL FACILITY.

25 JUDGE HENDERSON: CAN YOU GIVE US SOME EXAMPLES OF

1 THE KINDS OF PROGRAMS THAT WOULD BE DEVELOPED TO MEET THESE
2 NEEDS? WHAT DO YOU HAVE IN MIND?

3 **THE WITNESS:** YES. WELL, FOR EXAMPLE, IF SOME OF THE
4 MANY PROGRAMS THAT MAY BE THERE NOW, BUT JUST DON'T HAVE ENOUGH
5 OF THEM. TO ME, THE MOST BLATANT EXAMPLES THAT I CAME ACROSS IN
6 ALL OF MY TOURS AND READING ALL OF THE MATERIALS WERE THE
7 INTERMEDIATE CARE FACILITIES.

8 THESE ARE FACILITIES THAT ARE DESIGNED TO PROVIDE
9 MENTAL HEALTH SERVICE TO PROBABLY THE MOST SEVERELY IMPAIRED
10 INDIVIDUALS IN THE PRISON SYSTEM. AND AT SALINAS VALLEY, FOR
11 EXAMPLE, THERE ARE TWO SUCH UNITS.

12 **BY MS. TILLMAN:**

13 **Q.** DR. PACKER, COULD YOU JUST MOVE BACK A LITTLE BIT FROM THE
14 MICROPHONE?

15 **A.** EXCUSE ME?

16 **Q.** JUST MOVE BACK A LITTLE BIT FROM THE MICROPHONE.

17 THANK YOU.

18 **A.** OKAY. ALL RIGHT. I THINK I WAS SAYING THE MOST BLATANT
19 EXAMPLE I SAW WAS AT SALINAS VALLEY WHERE -- IS THAT STILL TOO
20 LOUD?

21 **Q.** WE WILL MAKE SOME ADJUSTMENTS OVER HERE, AS WELL.

22 **A.** SORRY. THE MOST BLATANT EXAMPLE I CAME ACROSS WAS AT
23 SALINAS VALLEY. SALINAS VALLEY HAS TWO INTERMEDIATE CARE
24 FACILITIES UNITS, ICF UNITS. ONE OF THEM IS A FREESTANDING
25 UNIT THAT WAS BUILT SPECIFICALLY FOR THE PURPOSE OF PROVIDING

1 SERVICES TO INMATES IN THE FACILITY. AND THAT SEEMS TO BE WELL
2 DESIGNED AND PLENTY OF SPACE FOR TREATMENT, HAD A THERAPEUTIC
3 FEEL TO IT AND SEEMED TO BE A VERY APPROPRIATE WAY OF DEALING
4 WITH SEVERELY MENTALLY ILL INDIVIDUALS.

5 ON THE OTHER HAND, ANOTHER STANDARD TREATMENT UNIT
6 HAD BEEN RETROFITTED. AND THAT WAS ALSO CALLED AN ICF. THAT
7 WAS WITHIN THE WALLS OF THE PRISON. AND THAT FACILITY WAS
8 CLEARLY NOT. WASN'T ENOUGH ROOM, WASN'T AN APPROPRIATE MILIEU
9 THAT WAS REALLY THERAPEUTIC. AND I BELIEVE IT DEMONSTRATES
10 WHAT HAPPENS WHEN YOU JUST TRY TO TAKE EXISTING PRISON SPACES
11 AND RETROFIT THEM AND CLAIM YOU HAVE A PROGRAM VERSUS
12 DEVELOPING A PROGRAM THAT IS SUFFICIENT.

13 ANOTHER VERY SPECIFIC EXAMPLE --

14 **JUDGE HENDERSON:** WAIT.

15 **JUDGE KARLTON:** WAIT. YOU TURNED IT DOWN TOO LOW
16 NOW.

17 **THE WITNESS:** HOW ABOUT NOW?

18 **JUDGE KARLTON:** GOOD.

19 **BY MS. TILLMAN:**

20 **Q.** THAT'S JUST RIGHT. THANK YOU SO MUCH.

21 COULD YOU JUST RESTATE YOUR LAST SENTENCE, PLEASE?

22 **A.** I BELIEVE I WAS SAYING THAT AN ADDITIONAL EXAMPLE WAS I
23 WENT TO VACAVILLE. I WAS THERE TWICE. THE SECOND TIME -- THE
24 REASON I RETURNED WAS BECAUSE IN THE INTERIM THEY HAD BUILT A
25 SPECIAL 50 BED MENTAL HEALTH CRISIS CENTER, AND THAT ALSO

1 SEEMED TO HAVE ADEQUATE SPACE.

2 Q. DID YOU SAY A 50-BED MENTAL HEALTH CRISIS BED?

3 A. FIVE-OH. FIVE-OH, 50 BED MENTAL HEALTH CRISIS BED UNIT AT
4 VACAVILLE. AND THAT UNIT WAS SPECIFICALLY DESIGNED WITH THE
5 INTENTION OF SERVING AS A FACILITY THAT PROVIDES THESE KINDS OF
6 SERVICES.

7 AND I BELIEVE THAT THAT IS -- AGAIN, IN MY OPINION
8 ONE OF THE BIGGEST DIFFICULTIES IS THAT THESE PRISONS WERE NOT
9 DESIGNED FOR THIS POPULATION. THAT ALL THESE OTHER MEASURES
10 THAT ARE BEING DONE ARE INADEQUATE.

11 THAT'S EXACTLY WHAT HAPPENED WHEN I WAS IN HAMPDEN
12 COUNTY. THEY DID BUILD A NEW FACILITY, AND THEY BUILT A SPECIAL
13 UNIT FOR THE INMATES WHO WERE MOST IN NEED. THEY WERE SEPARATED
14 OUT.

15 THERE WAS PLENTY OF ROOM. THERE WERE TREATMENT ROOMS
16 AVAILABLE, OFFICE SPACE FOR THE STAFF.

17 Q. AND SO TO ADDRESS PROVIDING CONSTITUTIONAL LEVEL OF
18 HEALTHCARE WITHIN THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND
19 REHABILITATION FACILITIES, YOU WOULD RECOMMEND THE CONSTRUCTION
20 OF BUILDINGS DESIGNED FOR THE MENTALLY ILL?

21 A. YES. I MEAN, THERE'S SOME OF THAT GOING ON. AND OBVIOUSLY
22 THERE'S ANOTHER BUILDING I SAW AT SALINAS VALLEY, WHICH IS
23 BEING BUILT. AND I SAW PLANS FOR ADDITIONAL FACILITIES, BOTH
24 IN SUPPLEMENTAL BED PLANS AS WELL AS CONSOLIDATED CARE CENTERS.
25 AND I BELIEVE UNTIL YOU BUILD AND STAFF AND DEVELOP

1 PROGRAMMING THAT'S DESIGNED PARTICULARLY TO PROVIDE MENTAL
2 HEALTH SERVICES, PROVIDING THEM IN THE EXISTING ENVIRONMENT IS
3 ALWAYS GOING TO BE INADEQUATE.

4 **JUDGE KARLTON:** SO THAT IS IT YOUR OPINION, DOCTOR,
5 THAT UNTIL WE GET ADEQUATE SPACE WE'VE GOT TO LET PEOPLE OUT
6 BECAUSE WE CAN'T TREAT THEM PROPERLY?

7 **THE WITNESS:** ALL I'M SAYING IS UNTIL THESE SPACES
8 IMPROVE, I THINK YOU'RE GOING TO CONTINUE TO HAVE PROBLEMS.
9 IT'S A CONTINUUM, NOT A CATEGORICAL "YES" OR "NO."

10 IN OTHER WORDS, THERE'S THINGS THAT YOU CAN DO THAT
11 MAKE IT A LITTLE BIT BETTER. I SAW EXAMPLES OF THAT WHEN I WENT
12 TO THE RECEPTION CENTER, AND THEY DEVELOPED A NEW RECEPTION
13 CENTER EOP. THAT WAS A BIG IMPROVEMENT OVER WHAT WAS THERE
14 EARLIER. I THINK IT'S JUST SORT OF MOVING YOU IN THE RIGHT
15 DIRECTION.

16 SO THERE ARE THINGS THAT CAN BE DONE INCREMENTALLY.
17 BUT I THINK TO GET TO THE LEVEL THAT REALLY NEEDS TO BE DONE
18 NEEDS TO HAVE NEW CONSTRUCTION. AND AT WHICH POINT IT BECOMES
19 CONSTITUTIONALLY INADEQUATE VERSUS JUST, YOU KNOW, STILL
20 PROBLEMATIC IS SOMETHING THAT A PSYCHOLOGIST CAN'T REALLY --

21 **JUDGE KARLTON:** RIGHT.

22 **THE WITNESS:** -- DECIDE.

23 **JUDGE KARLTON:** WE WILL TAKE CARE OF THAT. I'M
24 GOING TO ASK YOU AGAIN, SIR. WHAT I HEAR YOU SAY IS THAT WE'VE
25 GOT TO BUILD ALL THESE NEW FACILITIES.

1 I ASSUME YOU ARE AWARE THAT, FOR INSTANCE, THE
2 CONSOLIDATED CARE CENTERS, THE STATE HAS DECLINED TO FUND. SO
3 THAT'S AT THE MOMENT AT LEAST OFF THE TABLE. DO YOU UNDERSTAND
4 THAT?

5 **THE WITNESS:** I WAS NOT AWARE OF THAT UNTIL THIS
6 MOMENT, YOUR HONOR.

7 **JUDGE KARLTON:** ALL RIGHT. IN ADDITION TO WHICH WE
8 WERE TOLD YESTERDAY THAT IT'S ABOUT A THREE-YEAR -- TAKES ABOUT
9 THREE YEARS TO GET ANYTHING BUILT IN THE STATE OF CALIFORNIA
10 PRISON SYSTEM, THAT IS GOD WILLING AND THE RIVER DON'T RISE.

11 THE QUESTION IS: IN LIGHT OF THE LACK OF FUNDING
12 FOR THE CONSOLIDATED CONSTRUCTION PROGRAM, THE LENGTH OF TIME
13 FOR GETTING ANYTHING BUILT AND THE FACT THAT RETROFITTING WILL
14 TAKE ABOUT -- WHICH I DON'T UNDERSTAND, BUT THAT WAS THE
15 TESTIMONY -- WILL TAKE ABOUT AS MUCH TIME AS BUILDING NEW
16 FACILITIES, IS THERE ANY SOLUTION TO THE ABSENCE OF ADEQUATE
17 CARE OTHER THAN A CAP?

18 **THE WITNESS:** AGAIN, IN THE INFORMATION I WAS
19 PROVIDED THERE WAS SOME INTERIM SOLUTIONS BEING SUGGESTED, SUCH
20 AS BUILDING SOME TRAILERS OR BRINGING IN TRAILERS. I AM NOT
21 UP-TO-DATE ON THE SPECIFICS. APPARENTLY, SOME NEW INFORMATION
22 HAS BEEN PROVIDED SINCE I WAS INVOLVED. BUT SOME OF THOSE
23 INTERIM MEASURES WILL MAKE THINGS BETTER.

24 I THINK THEY WON'T GET TO THE POINT WHERE I THINK
25 THEY NEED TO BE UNTIL THESE OTHER FACILITIES ARE BUILT. BUT

1 THEY CAN BECOME INCREMENTALLY BETTER. AND I GUESS I HAVEN'T
2 GOTTEN THAT FAR IN THE TESTIMONY, BUT I'M NOT ALSO NECESSARILY
3 SAYING THAT JUST RELEASING PRISONERS WOULD IMPROVE THE
4 SITUATION, ANYWAY.

5 **BY MS. TILLMAN:**

6 **Q.** DR. PACKER, IS IT YOUR TESTIMONY THAT HAMPDEN COUNTY JAIL
7 AND THE OVERCROWDING CONDITIONS THERE YOU WERE ABLE TO DELIVER
8 CONSTITUTIONALLY-ADEQUATE MENTAL HEALTHCARE?

9 **A.** AGAIN, I CAN'T SPEAK TO THE WORD
10 "CONSTITUTIONALLY-ADEQUATE," BUT I WILL SAY THAT WE WERE ABLE
11 TO PROVIDE WHAT I CONSIDERED AND WHAT OTHERS CONSIDERED AN
12 APPROPRIATE LEVEL OF MENTAL HEALTHCARE.

13 **Q.** AND WERE YOU ABLE TO DO THAT WITH THE USE OF CERTAIN
14 STAFFING RESOURCES, PROGRAMMING RESOURCES?

15 **A.** YES, BUT PART OF IT WAS OUR PROCESS OF HOW WE EMPLOY OUR
16 STAFF AND PROGRAMS WE HAD. THE OTHER PART I BELIEVE I ALREADY
17 TESTIFIED TO IS THAT THERE WAS SOME EFFORT ON THE PART OF THE
18 COURTS TO NOT SEND IN SOME OF THE MENTALLY ILL INMATES INTO THE
19 SYSTEM.

20 AND, FRANKLY, IN MY OPINION THE MOST EFFECTIVE
21 PROCEDURE WE HAD WAS THAT WE PROVIDED MENTAL HEALTH SERVICES AT
22 THE COURTS, AND WE DIVERTED MENTALLY ILL PEOPLE AWAY FROM THE
23 JAIL. SO THAT THAT HAD A VERY GOOD IMPACT ON OUR ABILITY TO
24 PROVIDE THE SERVICES, EVEN THOUGH THE JAIL WAS OVERCROWDED.

25 **JUDGE KARLTON:** SIR, THAT WOULD BE UNDER THE VERY

1 BROAD DEFINITION OF A PRISON RELEASE PROGRAM, A PRISON RELEASE
2 ORDER. WHAT I'M ASKING YOU -- I THINK I WHAT I HEARD YOU SAY --
3 AND IT'S VERY -- YOU KNOW, THIS IS NOT THE BEST WAY TO HAVE A
4 CONVERSATION. BUT WHAT I THINK I HEARD YOU SAY WAS THAT
5 PERHAPS THE MOST EFFECTIVE THING TO DO IN THE INTERIM IS TO IN
6 SOME WAY DIVERT MENTALLY ILL PRISONERS AWAY FROM THE PRISON.

7 IS THAT CORRECT?

8 **THE WITNESS:** THAT IS WHAT I'M SAYING NOW, AND I
9 ALSO INCLUDED IN MY REPORTS.

10 **JUDGE KARLTON:** OKAY. SO THAT TO THE EXTENT THAT
11 THAT WOULD BE UNDER THE LAW A PRISON RELEASE ORDER, YOU WOULD
12 THINK NONETHELESS THAT WOULD BE THE APPROPRIATE THING TO DO?
13 AM I UNDERSTANDING WHAT YOU'RE SAYING?

14 **THE WITNESS:** YES. YES.

15 **JUDGE KARLTON:** OKAY.

16 **THE WITNESS:** I APOLOGIZE. WHEN THEY SAID "PRISON
17 RELEASE," I THOUGHT THEY WERE LITERALLY RELEASING PEOPLE FROM
18 THE PRISON.

19 I DID RECOMMEND IN MY REPORT, AND I'M SAYING THAT
20 NOW, THAT EFFORTS TO DIVERT MENTALLY ILL PEOPLE FROM THE PRISON
21 IN THE FIRST PLACE I DO THINK WOULD BE A VERY REASONABLE
22 STRATEGY.

23 **JUDGE KARLTON:** THANK YOU, SIR.

24 **BY MS. TILLMAN:**

25 **Q.** DR. PACKER, TAKING A NARROWER DEFINITION OF A PRISON

1 RELEASE ORDER TO SIMPLY ADDRESS THE RELEASE OF PRISONERS, HAVE
2 YOU FORMED ANY OPINION ON THE IMPACT OF RELEASE OF PRISONERS ON
3 THE HEALTH AND SAFETY OF THE GENERAL PUBLIC, AS WELL AS ON
4 THOSE PRISONERS WHO ARE MENTALLY ILL?

5 **A.** YES, I HAVE.

6 **Q.** AND WHAT IS THAT OPINION?

7 **A.** IT'S MY OPINION THAT SIMPLY RELEASING PRISONERS FROM THE
8 SYSTEM IS UNLIKELY TO ADD A SIGNIFICANT ENOUGH IMPACT ON THE
9 MOST SEVERELY MENTALLY ILL PEOPLE IN THE SYSTEM FOR A COUPLE OF
10 REASONS.

11 NUMBER ONE, JUST LOOKING AT THE DATA THAT I WAS
12 GIVEN, FOR EXAMPLE, BY NAVIGANT, IF YOU LOOK AT THE MOST
13 SEVERELY MENTALLY ILL PEOPLE IN THE SYSTEM, THE EOP'S AND THOSE
14 NEEDING HIGHER LEVEL OF SERVICES, THEY REPRESENT MAYBE
15 3 PERCENT OF THE POPULATION. SO YOU NEED AT LEAST 33 INMATES
16 JUST TO GET REDUCTION IN ONE PERSON NEEDING THAT HIGHER LEVEL
17 OF CARE. THAT'S ONE ISSUE.

18 THE SECOND ISSUE IS THE EXTREMELY HIGH RATE OF
19 RECIDIVISM THAT WAS SHOWN TO ME IN THE DOCUMENTS. AND MOST
20 CONCERNING WAS THE HIGH RATE OF RECIDIVISM FOR MENTALLY ILL
21 INDIVIDUALS, WHICH WAS SOMEWHERE BETWEEN 75 AND 77 PERCENT,
22 WHICH MEANS YOU RELEASE THEM OUT OF ONE DOOR AND THEY ARE
23 COMING RIGHT BACK IN THE OTHER DOOR.

24 AND MY CONCERN THERE IS THAT THEY ARE BEING RELEASED
25 FROM ALL OF THE DIFFERENT FACILITIES, BUT THEY ARE COMING BACK

1 IN ONLY TO THE RECEPTION CENTERS, WHICH ARE THE PLACE LEAST
2 EQUIPPED TO DEAL WITH THE INFLUX OF MORE INMATES, PARTICULARLY
3 MENTALLY ILL INMATES.

4 SO THAT'S ONE ASPECT OF THE ANSWER.

5 Q. AND IN TERMS OF THE MENTAL HEALTH CONDITIONS OF THESE
6 MENTALLY ILL INMATES WHO WOULD BE RELEASED, HAVE YOU FORMED ANY
7 OPINIONS AS TO WHAT WOULD HAPPEN IF THEY ARE RELEASED WITHOUT
8 ADEQUATE MENTAL HEALTH SUPPORT IN THE COMMUNITY?

9 A. YES, I HAVE.

10 Q. AND WHAT IS THAT OPINION?

11 A. MY OPINION IS SIMPLY RELEASING MENTALLY ILL INMATES INTO
12 THE COMMUNITY, WHICH IS NOT EQUIPPED TO PROVIDE THE APPROPRIATE
13 SERVICES TO THEM, IS UNLIKELY TO BE PRODUCTIVE. THESE PEOPLE
14 WILL VERY QUICKLY DECOMPENSATE, WHICH IS HAPPENING JUST TO BE
15 CLEAR RIGHT NOW, WITH A CURRENT NUMBER OF INDIVIDUALS BEING
16 RELEASED.

17 YOU EXPECT THIS PATTERN TO ACCELERATE, PARTICULARLY
18 IF THERE'S NOT ENOUGH TIME TO PROVIDE ADEQUATE PLANNING AND NO
19 ADDITIONAL RESOURCES ARE PLACED INTO THE COMMUNITY. WHAT
20 HAPPENS AT THAT POINT IN TIME IS THEY DECOMPENSATE.

21 IF EVERYONE IS LUCKY, THEY GET BACK IN ON A
22 RELATIVELY MINOR SITUATION. BUT, OTHERWISE, UNFORTUNATELY
23 SOMETHING -- THEY MAY GET BACK IN BY DOING A MORE SERIOUS ACT.

24 SO IF THEY ARE RELEASED IN THEIR COMMUNITY WITHOUT
25 ADEQUATE DISCHARGE PLANNING AHEAD OF TIME AND WITHOUT SOME

1 INFUSION OF RESOURCES INTO THE COMMUNITY TO PROVIDE THEM WITH
2 THE SERVICES THEY NEED THERE, THAT MAY BE DOABLE. BUT SHORT OF
3 THAT I THINK THEY ARE JUST GOING TO COME RIGHT BACK IN ANOTHER
4 DOOR AND CREATE, FRANKLY, EVEN MORE PROBLEMS FOR THE RECEPTION
5 CENTERS.

6 **JUDGE REINHARDT:** DR. PACKER, IS THERE ANY REAL
7 DIFFERENCE BETWEEN WHAT YOU SUGGESTED WITH RESPECT TO -- CAN
8 YOU HEAR ME?

9 **THE WITNESS:** I'M SORRY. I CANNOT HEAR YOU AT ALL.

10 **JUDGE REINHARDT:** LET ME TRY AGAIN. HOW'S THAT?

11 **THE WITNESS:** THAT'S BETTER.

12 **JUDGE REINHARDT:** HOW ABOUT THIS?

13 **THE WITNESS:** ONE MORE TIME?

14 **JUDGE REINHARDT:** HOW ABOUT THIS?

15 **THE WITNESS:** YES, THAT'S BETTER.

16 **JUDGE REINHARDT:** OKAY. IS THERE ANY REAL
17 DIFFERENCE BETWEEN WHAT YOU SUGGESTED WITH RESPECT TO DIVERTING
18 THE MENTALLY ILL AND GIVING THEM PROPER TREATMENT AND RELEASING
19 THE MENTALLY ILL AND GIVING THEM PROPER TREATMENT?

20 **THE WITNESS:** YOU ARE ASKING IF THERE'S A DIFFERENCE
21 BETWEEN DIVERTING THE MENTALLY ILL AND RELEASING THEM AND
22 PROVIDING THEM WITH ADEQUATE TREATMENT?

23 OKAY. BUT THE COMMUNITY -- THE COMMONALITY WITH BOTH
24 OF THOSE IS THERE NEEDS TO BE AN INFUSION OF RESOURCES INTO THE
25 COMMUNITY TO PROVIDE COMMUNITY RESOURCES.

1 SO IN THAT PART, I THINK THEY ARE BOTH THE SAME. THE
2 ONLY OTHER ISSUE IS THAT IF CURRENTLY MENTALLY ILL INDIVIDUALS
3 ARE RELEASED, THERE NEEDS TO BE AN ADEQUATE TIME FROM THE TIME
4 THE DECISION IS MADE TO RELEASE THEM TO DEVELOP A PLAN FOR
5 THEM.

6 THEY CAN'T JUST SIMPLY BE RELEASED AND ASSUME THAT
7 SOMEBODY WILL PICK THEM UP IN THE COMMUNITY. EVEN IF THERE ARE
8 SOME IMPROVED SERVICES, IF I REMEMBER CORRECTLY THE CPMP OR
9 CMTP, THE TRANSITIONAL PROGRAM, I BELIEVE IN YOUR STATE IT WAS
10 90 DAYS PRIOR TO DISCHARGE.

11 ON THE DISCHARGE PLAN IN MASSACHUSETTS --

12 **JUDGE KARLTON:** FOR SOME REASON YOU ARE FADING.

13 **BY MS. TILLMAN:**

14 **Q.** I THINK YOUR MICROPHONE GOT PUSHED.

15 **A.** HOW'S THAT NOW?

16 **JUDGE HENDERSON:** BETTER.

17 **JUDGE KARLTON:** OKAY.

18 **THE WITNESS:** SORRY. WHEN I WAS THE ASSISTANT
19 COMMISSIONER IN MASSACHUSETTS, WE DEVELOPED SOMETHING CALLED "A
20 TRANSITION TEAM."

21 AND BASICALLY WHAT THAT MEANT WAS THAT INMATES
22 WITHIN SIX MONTHS, SOMETIMES OF A YEAR OF DISCHARGE OF PRISON
23 BEGAN A DISCHARGE PLANNING PROCESS SO THAT BY THE TIME THEY
24 LEFT THE SERVICES WERE IN PLACE. AND SO LONG AS THAT --
25 THERE'S ENOUGH TIME TO DEVELOP A PLAN, AND WHEN THEY GET OUT

1 SOMEBODY ACTUALLY IS PROVIDING THE SERVICES, I THINK THAT'S
2 DOABLE.

3 BUT IN THE ABSENCE OF THOSE TWO ELEMENTS, RELEASING
4 THEM WITHOUT ADEQUATE TIME TO PLAN AND WITHOUT APPROPRIATE
5 RESOURCES IN THE COMMUNITY, IT'S NOT LIKELY TO BE VERY
6 EFFECTIVE. I THINK THEY WILL DECOMPENSATE AND GO RIGHT BACK IN
7 AGAIN, AND THEN VERY LITTLE HAS BEEN ACCOMPLISHED.

8 JUDGE HENDERSON: THANK YOU.

9 MS. TILLMAN: THANK YOU. NOTHING FURTHER.

10 JUDGE HENDERSON: THANK YOU, COUNSEL.

11 ANY OTHERS FROM DEFENSE TABLE HAVE ANYTHING OF THIS
12 WITNESS?

13 MS. WANG: NOTHING FURTHER, YOUR HONOR.

14 MR. MITCHELL: NO QUESTIONS.

15 JUDGE HENDERSON: OKAY. CROSS-EXAMINATION.

16 CROSS-EXAMINATION

17 BY MR. BIEN:

18 Q. GOOD MORNING, DR. PACKER.

19 A. GOOD MORNING.

20 Q. DR. PACKER, IF YOU ASSUME THAT CROWDING MEANS THAT THE
21 SUPPLY FOR MENTAL HEALTH SERVICES AND SPACE EXCEEDS
22 THE EXISTING -- I'M SORRY. I'M GOING TO START THAT AGAIN.

23 IF YOU ASSUME THAT OVERCROWDING MEANS THAT THE
24 DEMAND FOR MENTAL HEALTH SPACE AND SERVICES EXCEEDS THE
25 EXISTING SUPPLY FOR MENTAL HEALTH SPACE AND SERVICES, WOULD YOU

1 AGREE THAT CROWDING IS THE PRIMARY CAUSE OF THE ONGOING
2 PROBLEMS IN CALIFORNIA?

3 **MS. TILLMAN:** OBJECTION, MISSTATES THE LAW.
4 MISSTATES THE PLRA. I THINK THAT'S A LEGAL DEFINITION USED IN
5 THIS PROCEEDING.

6 **JUDGE HENDERSON:** I'M GOING TO ALLOW THAT.
7 YOU MAY ANSWER THAT, DOCTOR. DID YOU HEAR THE
8 QUESTION?

9 **THE WITNESS:** YES, I DID. LET ME MAKE SURE I
10 UNDERSTOOD THE QUESTION.

11 YOU'RE ASKING ME TO REDEFINE "CROWDING" TO SAY --
12 AND SAY THE EXISTING RESOURCES, MEANING THE NUMBER OF ICF'S AND
13 CRISIS BEDS AND ET CETERA IS NOT ENOUGH RELATIVE TO THE NUMBER
14 OF INMATES WHO NEED THOSE SERVICES. THAT IF I CALL THAT
15 "CROWDING," WOULD I SAY THAT'S THE MAIN CAUSE?

16 **JUDGE KARLTON:** OVERCROWDING.

17 **JUDGE HENDERSON:** WOULD YOU CALL THAT
18 "OVERCROWDING"?

19 **BY MR. BIEN:**

20 **Q.** IF YOU CALLED THAT "OVERCROWDING" WOULD YOU AGREE THAT
21 THAT'S THE PRIMARY CAUSE OF THE PROBLEMS YOU OBSERVED RIGHT
22 NOW?

23 **MS. TILLMAN:** SAME OBJECTIONS.

24 **JUDGE HENDERSON:** SAME RULING.

25 **THE WITNESS:** YES. BUT LET ME JUST BE CLEAR. I

1 WANT TO MAKE SURE I'M SAYING THIS RIGHT. I BELIEVE YOU ARE
2 REDEFINING IT AS BEING THAT THE FACT THAT THERE AREN'T ENOUGH
3 ICF BEDS, CRISIS BEDS, ACUTE CARE BEDS, EOP BEDS, GIVEN THE
4 CURRENT POPULATION, THAT IS IF THAT IS EQUAL TO OVERCROWDING,
5 YES. THEN, I WOULD SAY THAT IS WHAT CAUSES IT, THE PRIMARY
6 CAUSE.

7 **BY MR. BIEN:**

8 **Q.** THERE ALSO AREN'T ENOUGH TREATMENT SPACES IN PRISONS.
9 THERE AREN'T ENOUGH CONFIDENTIAL SPACES IN THE PRISONS YOU SAW
10 ALSO, CORRECT?

11 **A.** THAT'S CORRECT.

12 **JUDGE KARLTON:** AND THERE WASN'T ENOUGH STAFF; IS
13 THAT CORRECT?

14 **THE WITNESS:** YES, THE STAFFING THING WAS MUCH MORE
15 VARIABLE. I HAVE TO BE FRANK. AT SOME PLACES THE STAFFING WAS
16 BETTER THAN OTHERS. AND CERTAINLY THERE HAD BEEN SOME
17 IMPROVEMENT IN THE STAFFING OVER AT LEAST THE TIME PERIOD THAT
18 I SAW THE DOCUMENTATION, AND EVEN FROM ONE PLACE TO ANOTHER.

19 SO THAT WAS A CONTRIBUTORY FACTOR.

20 **BY MR. BIEN:**

21 **Q.** DR. PACKER, JUST TO BE CLEAR, IN THE ONE SYSTEM THAT YOU
22 PERSONALLY WORKED IN THAT EXPERIENCED OVERCROWDING, THE HAMPDEN
23 COUNTY, MASSACHUSETTS -- IT'S CALLED THE HOUSE OF CORRECTIONS.
24 IT'S TYPICALLY WHAT WE CALL A JAIL; IS THAT RIGHT?

25 **A.** IT ACTUALLY WAS BOTH CALLED A JAIL AND A COUNTY

1 CORRECTIONAL FACILITY. IT'S BOTH INDIVIDUALS WHO ARE -- HALF
2 THE PEOPLE ARE AWAITING TRIAL AND HALF HAVE BEEN SENTENCED TO
3 TWO-AND-A-HALF YEARS OR LESS.

4 SO IT'S SOME OF THE SAME PEOPLE YOU HAVE IN YOUR
5 PRISON, BUT THEY ARE JUST HOUSED IN MASSACHUSETTS, IN THE
6 COUNTY.

7 Q. AND THAT WAS FOUND BY A COURT TO BE OVERCROWDING?

8 A. YES. WELL, NOTHING TO DO WITH HEALTH AND MENTAL HEALTH.
9 IT WAS JUST THAT THERE WERE -- I DON'T REMEMBER THE NUMBER, BUT
10 THEY WERE HOUSING, LET'S SAY, 800 MEN IN A FACILITY THAT THEY
11 ONLY HAD SPACE FOR, YOU KNOW, MUCH LESS THAN THAT.

12 Q. AND YOU FELT THEY WERE ABLE TO DELIVER APPROPRIATE
13 HEALTHCARE IN THAT FACILITY?

14 A. LET ME BE CLEAR. I ONLY PROVIDED MENTAL HEALTHCARE, HAD
15 NOTHING TO DO WITH THE HEALTHCARE IN THAT FACILITY. BUT WE
16 WERE ABLE TO PROVIDE ADEQUATE MENTAL HEALTHCARE. AND THAT WAS
17 NEVER A FOCUS OF ANY OF THE LEGAL ACTION OR ANY OF THE
18 COMPLAINTS ABOUT WHAT WAS HAPPENING AT THAT FACILITY.

19 Q. AND THERE WAS A CAP. THE COURT HAD IMPOSED A POPULATION CAP
20 ON THAT FACILITY WHILE YOU WERE WORKING THERE.

21 A. THAT'S CORRECT.

22 Q. SO EACH TIME AN INMATE CAME IN YOU HAD TO DISCHARGE AN
23 INMATE OUT THE BACK DOOR, RIGHT?

24 A. I DIDN'T. THE COUNTY FACILITY DID, YES. BUT THEY HAD
25 SOMETHING -- I DON'T KNOW THE MECHANISM FOR HOW THEY DID THAT,

1 BUT THAT IS WHAT THEY DID.

2 **Q.** AND PART OF THE SERVICES THAT YOU PROVIDED TO THAT COUNTY
3 ASSISTED THE PROCESS OF REDUCING THE POPULATION IN THAT COUNTY;
4 IS THAT CORRECT?

5 **A.** I'M NOT QUITE SURE. ARE YOU TALKING ABOUT THE SERVICES WE
6 PROVIDED AT THE COURTHOUSE?

7 **Q.** YES. YOU PROVIDED -- LET ME REPHRASE THE QUESTION, DR.
8 PACKER.

9 ISN'T IT CORRECT THAT THE MENTAL HEALTH SERVICES YOU
10 PROVIDED AT HAMPDEN COUNTY INCLUDED SERVICES NOT ONLY IN THE
11 CORRECTIONAL FACILITY, BUT IN THE COMMUNITY AND IN THE
12 COURTHOUSE?

13 **A.** YES, THAT'S EXACTLY RIGHT.

14 **Q.** AND YOU PROVIDED THOSE SERVICES TO PROVIDE APPROPRIATE
15 CONTINUITY OF CARE FOR PATIENTS AS A ACCESS TO CRIMINAL JUSTICE
16 SYSTEM. AND YOU HELPED THE COURT DIVERT PARTICULAR PATIENTS
17 WHO REQUIRED, FOR EXAMPLE, PSYCHIATRIC HOSPITALIZATION FROM THE
18 HOUSE OF CORRECTIONS TO AN APPROPRIATE MENTAL HEALTH FACILITY?

19 **A.** YES. JUST TO BE CLEAR, WE DID BOTH. HELP THEM TO DIVERT TO
20 A PSYCHIATRIC HOSPITAL, BUT WE ALSO HELPED DIVERT THEM TO
21 EXISTING COMMUNITY RESOURCES. AND THAT WAS ACCOMPLISHED ONLY
22 BY A VERY SIGNIFICANT INFLUX OF RESOURCES INTO THE COMMUNITY.

23 WE HAD AN EXTREMELY WELL-DEVELOPED COMMUNITY MENTAL
24 HEALTH SYSTEM THAT WAS ABLE TO HANDLE MANY OF THESE INDIVIDUALS
25 IN THE COMMUNITY SO THEY DID NOT HAVE TO BE HOSPITALIZED OR IN

1 THE JAIL.

2 Q. AND THAT HELPED REDUCE THE NUMBER OF MENTALLY ILL WHO WERE
3 COMING INTO THE HOUSE OF CORRECTIONS; IS THAT CORRECT?

4 A. YES, IT DID.

5 Q. AND YOU ALSO HELPED PEOPLE ON THE WAY OUT. IN OTHER WORDS,
6 PEOPLE BEING DISCHARGED FROM THE HOUSE OF CORRECTIONS, YOUR
7 PROGRAM HELPED PROVIDE THEM WITH DISCHARGE PLANNING, CONTINUITY
8 OF CARE AS THEY WERE DISCHARGED BACK TO THE COMMUNITY?

9 A. YES. I NEED TO QUALIFY THAT, BECAUSE OBVIOUSLY THE PLACE
10 WE HAD THE TROUBLE IS SOMEBODY WAS BEING DISCHARGED
11 PRECIPITOUSLY DUE TO THIS ONE-IN-ONE-OUT, THEN YOU ARE STRUCK
12 BECAUSE YOU WOULDN'T HAVE ENOUGH TIME TO DEAL WITH THE
13 DISCHARGE THING.

14 Q. BUT YOUR PROGRAM IS DESIGNED TO IMPROVE CONTINUITY OF CARE
15 FOR PEOPLE COMING OUT OF PRISON GOING TO THE COMMUNITY WITH
16 MENTAL ILLNESS.

17 A. NO, JUST TO BE CLEAR, OUR PROGRAM WAS DEVELOPED BEFORE THE
18 CAP CAME IN PLACE. OUR PROGRAM HAD BEEN THERE FOR SEVERAL
19 YEARS, AND THEN, THE CAP CAME IN PLACE. OUR PROGRAM DEVELOPED.

20 ONE DIFFICULTY WE HAD, OF COURSE, IS WHEN SOMEBODY
21 GOT PRECIPITOUSLY DISCHARGED, WE WEREN'T ABLE TO, WHEN WE GOT A
22 CALL -- JUST TO BE CLEAR -- AT 2:00 O'CLOCK IN THE AFTERNOON
23 SAYING SOMEBODY IS GOING TO BE RELEASED BY THE END OF THE DAY
24 AT FIVE.

25 SO IN THOSE CASES THERE WAS NOTHING WE COULD REALLY

1 DO IN THOSE CASES TO PROVIDE CONTINUITY OF CARE.

2 Q. YOU COULD CALL UP YOUR COHORTS IN THE COMMUNITY AND SEE IF
3 THEY KNEW THIS GUY, RIGHT?

4 A. I GUESS THAT WAS POSSIBLE. I'M JUST TELLING YOU THAT WAS
5 THE ONE AREA WE FELT WE WERE VERY CONCERNED ABOUT HOW THE CAP
6 PROCESS WAS REALLY IMPACTED. AND THAT WAS ONE AREA THAT
7 CREATED DIFFICULTY FOR US.

8 Q. YOU'VE OFFERED THE OPINION THAT SUICIDES IN THE CALIFORNIA
9 PRISON SYSTEM ARE NOT AFFECTED BY OVERCROWDING; IS THAT
10 CORRECT?

11 A. NO, THAT'S NOT CORRECT.

12 Q. I'M LOOKING AT YOUR DECEMBER 10TH, '07 REPORT, PAGE 22.

13 A. I'M LOOKING AT THAT, TOO. WHICH SENTENCE ARE YOU REFERRING
14 TO?

15 Q. THE FIRST SENTENCE:

16 "IT'S MY PROFESSIONAL OPINION THAT THE
17 INCREASE

18 IN SUICIDES IN THE CALIFORNIA PRISON SYSTEM IS NOT
19 PRIMARILY A FUNCTION OF CENSUS AND OVERCROWDING."

20 A. THAT'S WHAT I SAID. YOUR QUESTION SAID IT DIDN'T AFFECT
21 IT. I DIDN'T SAY THAT. I SAID IT'S NOT PRIMARILY A FUNCTION OF
22 THAT. I DIDN'T SAY THERE'S NO IMPACT THAT ONE CAN IMAGINE OR
23 ONE COULD ARGUE IT HAD. I'M SAYING IT'S NOT -- IT WASN'T THE
24 PRIMARY ONE. AND I DON'T PERSONALLY SAY IT WOULD BE ONE OF THE
25 MOST SIGNIFICANT FACTORS.

1 Q. YOU AGREE THAT THE RATE OF SUICIDE IN CALIFORNIA PRISONS IS
2 ABOVE THE NATIONAL AVERAGE?

3 A. YES, I AM AWARE OF THE DATA THAT WAS PROVIDED COMPARING THE
4 RATE TO WHAT'S AVAILABLE IN NATIONAL DATA.

5 Q. OKAY. AND IT'S SIGNIFICANTLY ABOVE THE NATIONAL AVERAGE.
6 IT'S ABOVE 20 PER 100,000, WHILE THE NATIONAL AVERAGE IN
7 PRISONS IS 14; ISN'T THAT CORRECT?

8 A. AGAIN, I DON'T KNOW EXACT NUMBERS. I JUST WANT TO BE CLEAR
9 THAT I BELIEVE SOME OF THOSE NUMBERS WERE BASED ON SEVERAL
10 YEARS AGO. SO I DON'T KNOW. I HAVEN'T SEEN ANYTHING FOR 2007,
11 2008. BUT I WOULD CERTAINLY AGREE IT'S ABOVE. IN ALL THE DATA
12 I HAD SEEN, IT WAS ABOVE THE NATIONAL AVERAGE.

13 Q. DO YOU HAVE ANY INFORMATION THAT WOULD LEAD YOU TO BELIEVE
14 THAT THE SUICIDE RATE IN 2007 HAS DECLINED IN ANY WAY?

15 A. IN CALIFORNIA OR ACROSS THE COUNTRY?

16 Q. IN CALIFORNIA.

17 A. NO, I THINK WHAT I WAS SAYING IS THAT THE DATA THAT I'D
18 SEEN COMPARING CALIFORNIA TO THE NATIONAL NUMBER 14, AT LEAST
19 THE NUMBER I'VE SEEN IS NOT THE YEAR 2007. THE YEAR 14 I JUST
20 DON'T REMEMBER THAT FROM THE DOCUMENTS. I THOUGHT IT WAS A
21 COUPLE YEARS OLD.

22 I SIMPLY DON'T KNOW IF 14 IS STILL THE NUMBER FOR
23 THE NATIONAL AVERAGE.

24 JUDGE KARLTON: THE QUESTION WAS, DOCTOR, DIFFERENT.

25 HE SAYS: DO YOU HAVE ANY REASON TO BELIEVE THAT THE RATIO WAS

1 LOWERED IN 2007.

2 **THE WITNESS:** NO. I'M SORRY. I DIDN'T HEAR THAT,
3 YOUR HONOR.

4 **JUDGE KARLTON:** THIS IS VERY DIFFICULT.

5 DO YOU HAVE ANY REASON TO BELIEVE THAT THERE WAS ANY
6 SIGNIFICANT CHANGE IN THE RATIO OF CALIFORNIA TO THE REST OF
7 THE PRISON POPULATION IN 2007?

8 **THE WITNESS:** NO, I DO NOT.

9 **JUDGE KARLTON:** ALL RIGHT.

10 **BY MR. BIEN:**

11 **Q.** YOU ENDORSE THE VARIOUS ORDERS OF THE COURT THAT REQUIRE
12 THE CALIFORNIA PRISON SYSTEM TO ADDRESS THE PARTICULAR RISK OF
13 SUICIDE IN ADMINISTRATION SEGREGATION UNITS; ISN'T THAT
14 CORRECT?

15 **A.** I'M NOT SURE WHAT YOU MEAN WHEN YOU SAY I "ENDORSE."

16 **Q.** WELL, YOU REFER TO THE VARIOUS PLANS THAT THE STATE IS
17 IMPLEMENTING IN AN ATTEMPT TO REDUCE THE HIGH RATE OF SUICIDE
18 IN THE ADSEG UNITS.

19 YOU'RE AWARE OF THOSE PLANS, AREN'T YOU?

20 **A.** OFF THE TOP OF MY HEAD, I'M NOT PARTICULARLY FINDING WHAT
21 YOU'RE SAYING. I DON'T KNOW WHAT PAGE YOU'RE REFERRING TO IN MY
22 REPORT TO KNOW SPECIFICALLY WHAT YOU'RE TALKING ABOUT.

23 **Q.** ARE YOU AWARE OF ANY PLANS BY THE STATE OF CALIFORNIA TO
24 ADDRESS THE HIGH RATE OF SUICIDE IN ADSEG UNITS?

25 **A.** I DID REVIEW BOTH THE REPORTS BY DR. PATTERSON AND THE

1 RESPONSE FROM THE STATE THAT INCLUDED THOSE PLANS, BUT OFF THE
2 TOP OF MY HEAD I COULDN'T AGREE TO THEM AT THIS POINT.

3 **Q.** OKAY. YOU AGREE THAT OVERCROWDING CAN CONTRIBUTE TO RISKS
4 THAT MIGHT LEAD TO SUICIDE.

5 **A.** IN AND OF ITSELF, THAT COULD BE ONE OF THE FACTORS THAT
6 COULD CONTRIBUTE.

7 **Q.** SO, FOR EXAMPLE, IF SOMEONE WAS IN -- A MENTALLY ILL PERSON
8 WAS HOUSED IN AN ADSEG UNIT THAT WAS IMPACTED BY OVERCROWDING,
9 THAT MIGHT INCREASE THE RISK OF SUICIDE FOR THAT INDIVIDUAL.

10 **MS. TILLMAN:** OBJECTION, VAGUE AND AMBIGUOUS.

11 **THE WITNESS:** I'M NOT SURE WHAT YOU MEAN WHEN YOU'RE
12 SAYING "ADSEG UNITS IMPACTED BY OVERCROWDING."

13 **BY MR. BIEN:**

14 **Q.** WELL, FOR EXAMPLE, AN ADSEG UNIT LIKE THE ONES WE VISITED
15 WHERE THEY WERE UNABLE TO PROVIDE OUTDOOR EXERCISE TO THE
16 MENTALLY ILL INMATES THAT WERE HOUSE IN THAT UNIT.

17 DO YOU AGREE THAT IF THEY COULDN'T PROVIDE OUTDOOR
18 EXERCISE AS A RESULT OF OVERCROWDING, THAT THAT MENTALLY ILL
19 INMATE IN THAT UNIT WAS AT RISK AS A RESULT OF OVERCROWDING?

20 **MS. TILLMAN:** SAME OBJECTIONS.

21 **JUDGE HENDERSON:** OVERRULED.

22 YOU MAY ANSWER THAT.

23 **THE WITNESS:** YES. IF YOU'RE ASKING ME IF, INDEED,
24 SOMEONE IS IN AN ADSEG UNIT, AND AS A RESULT OF OVERCROWDING
25 THEIR ABILITY TO GET OUT OF THAT CELL AND HAVE OTHER TYPES OF

1 INTERACTION IS LIMITED, COULD THAT INCREASE THAT PERSON'S RISK
2 OF SUICIDE? MY ANSWER IS: YES.

3 **BY MR. BIEN:**

4 **Q.** AND IF THEY ARE IN AN ADSEG UNIT THAT AS A RESULT OF
5 OVERCROWDING THERE'S LIMITED ACCESS TO MENTAL HEALTHCARE, THE
6 CLINICIANS CAN'T SEE THE PATIENTS IN A CONFIDENTIAL SETTING,
7 WOULD YOU AGREE THAT ALSO MIGHT INCREASE THE RISK OF SUICIDE?

8 **A.** YES, IN THAT HYPOTHETICAL, AGAIN, THAT COULD LEAD TO AN
9 INCREASED RISK OF SUICIDE.

10 **Q.** AND YOU'RE AWARE, THEN, THAT AS PART OF THE PROGRAM GUIDE,
11 THE MENTAL HEALTH DELIVERY SYSTEM, PRISONERS AT THE ENHANCED
12 OUTPATIENT LEVEL OF MENTAL HEALTHCARE, PEOPLE WHO ARE AT THE
13 HIGHER LEVEL OF CARE ARE SUPPOSED TO BE REMOVED FROM REGULAR
14 ADSEG UNITS TO SPECIALIZED ADSEG UNITS WHERE THEY CAN RECEIVE
15 10 HOURS A WEEK OF EOP CARE.

16 YOU'RE AWARE OF THAT REQUIREMENT?

17 **A.** YES, I AM AWARE OF THAT.

18 **Q.** AND IN THE COURSE OF YOUR TOURS, DID YOU LEARN THAT THE
19 SYSTEM AS IT CURRENTLY EXISTS IS UNABLE TO MEET THAT TRANSFER
20 REQUIREMENT, AND SO YOU FOUND MANY EOP'S HOUSED IN NORMAL ADSEG
21 UNITS THAT HAD NOT BEEN ABLE TO BE TRANSFERRED TO THESE
22 SPECIALIZED UNITS?

23 **A.** OVER THE COURSE OF MY TOURS, I DID COME ACROSS SOME EOP
24 INMATES WHO WERE AWAITING TRANSFER TO AN EOP ADSEG AND WERE AT
25 THIS TIME BEING HOUSED IN REGULAR ADSEG AWAITING A BED SPACE,

1 YES.

2 **Q.** AND ISN'T IT CORRECT THAT WE FOUND -- I'M SAYING "WE"
3 BECAUSE YOU AND I WERE TOGETHER ON SEVERAL OF THESE TOURS -- WE
4 FOUND SOME OF THESE EOP PRISONERS WHO HAD BEEN REFERRED FOR
5 TRANSFER AND HAD BEEN WAITING FOR MONTHS AND MONTHS AND MONTHS.

6 **MS. TILLMAN:** OBJECTION.

7 **THE WITNESS:** I DEFINITELY REMEMBER COMING ACROSS A
8 NUMBER OF INMATES WHO HAD BEEN WAITING FOR A LONG PERIOD OF
9 TIME.

10 **BY MR. BIEN:**

11 **Q.** AND, IN FACT, WASN'T IT CORRECT THAT, FOR EXAMPLE, AT
12 TEHACHAPI PRISON YOU DISCOVERED SEVERAL INMATES WHO HAD BEEN
13 WAITING FOR TRANSFER NOT ONLY TO AN EOP PROGRAM, BUT TO AN ICF
14 OR APP PROGRAM, THE HIGHEST LEVEL OF CARE, THE ACUTE
15 PSYCHIATRIC PROGRAM, HAD BEEN WAITING FOR MONTHS AND MONTHS AND
16 MONTHS FOR THAT TRANSFER?

17 **MS. TILLMAN:** OBJECTION, VAGUE AND AMBIGUOUS,
18 ARGUMENTATIVE.

19 **JUDGE HENDERSON:** OVERRULED.

20 YOU MAY ANSWER THAT, DR. PACKER.

21 **THE WITNESS:** YES, ALTHOUGH LET ME PUT A QUALIFIER.
22 I BELIEVE YOU SAID THE WORD "ACUTE." THE ICF WAS INTERMEDIATE
23 CARE. AND THAT WAS MUCH MORE PROBLEMATIC THAN THE ACUTE.
24 THERE WERE INDIVIDUALS WAITING TO GET INTO ACUTE. MUCH MORE
25 SIGNIFICANT WAS THE WAITING FOR THE PEOPLE WAITING TO GET INTO

1 THIS INTERMEDIATE CARE FACILITY.

2 AND AS I INDICATED IN MY REPORT, THE NUMBER THAT
3 THEY GAVE ME WHEN I WAS LAST THERE WAS 160 SOMETHING PEOPLE ON
4 THE WAITING LIST TO GET INTO THE INTERMEDIATE CARE. AND THAT'S
5 WHAT I SAW WAS THE BIGGEST PROBLEM THAT THEY JUST WEREN'T --
6 DIDN'T HAVE ENOUGH INTERMEDIATE CARE BEDS TO BE ABLE TO
7 ACCOMMODATE THE INDIVIDUALS THAT NEEDED TO BE TRANSFERRED
8 THERE.

9 **BY MR. BIEN:**

10 **Q.** DO YOU RECALL YOUR TOUR OF TEHACHAPI PRISON WHICH
11 OCCURRED -- I THINK IT WAS ON JULY 31ST OR AUGUST 1ST, 2008?

12 **A.** I WOULD LIKE TO LOOK AT MY REPORT IN FRONT OF ME. I'D BE
13 ABLE TO TELL YOU WHAT DATE THAT WAS.

14 TEHACHAPI, JULY 29TH, 2008.

15 **Q.** AND ISN'T IT CORRECT THAT ON THAT TOUR YOU WERE ACCOMPANIED
16 BY DR. CRAIG HANEY, PLAINTIFFS' EXPERT, ALONG WITH OTHER
17 PEOPLE, INCLUDING ME?

18 **A.** THAT'S CORRECT.

19 **Q.** AND ISN'T IT CORRECT THAT DURING THE COURSE OF THAT TOUR
20 WE -- AT THE END OF THE DAY, WE VISITED A UNIT CALLED "4A." DO
21 YOU RECALL THAT? AND WE VISITED SEVERAL MEN WHO WERE ON THE
22 WAITING LIST FOR TRANSFER FOR DMH CARE?

23 **A.** TO BE FRANK, I DON'T REMEMBER SPECIFICALLY THE UNIT. I
24 CERTAINLY DO REMEMBER COMING ACROSS SOME MEN WHO WERE WAITING
25 TO GET IN --

1 **MR. BIEN:** IF THE COURT REPORTER COULD PROVIDE DR.
2 PACKER WITH EXHIBITS WE PREMARKED AS P800. THESE ARE DR.
3 PACKER'S HANDWRITTEN NOTES OF HIS TOURS.

4 **BY MR. BIEN:**

5 **Q.** MAYBE THAT WILL HELP REFRESH YOUR RECOLLECTION.

6 AND, DR. PACKER, IF YOU COULD TURN TO PAGE -- YOU
7 SEE THE PAGE NUMBERS ON THE BOTTOM RIGHT? THEY ARE PRODUCTION
8 NUMBERS, START WITH "PAC"?

9 **A.** YES.

10 **Q.** IF YOU TURN TO PAGE -- TAKE A LOOK AT 2274 AND 2275,
11 PLEASE.

12 **A.** EXCUSE ME. 2274?

13 **Q.** AND 2275. AND I WOULD LIKE YOU TO FIRST CONFIRM THAT THOSE
14 ARE YOUR NOTES FOR THIS TOUR.

15 **A.** YES, THEY ARE.

16 **Q.** OKAY. AND ON 2275, DO YOU RECALL THAT WE VISITED UNIT 4A
17 TOWARDS THE END OF THE DAY?

18 **A.** YES, I DO. I'M LOOKING AT THAT RIGHT NOW.

19 **Q.** AND IF I COULD JUST -- IF I COULD INDULGE THE COURT AND DR.
20 PACKER -- ON YOUR NOTES THERE ARE SOME NAMES OF PARTICULAR
21 PRISONERS THAT WE INTERVIEWED THAT WERE IN THE MENTAL HEALTH
22 CASELOAD.

23 **MR. BIEN:** AND IF IT IS OKAY WITH THE COURT, WE
24 WOULD PREFER NOT TO REFER TO THEM BY NAME.

25 **JUDGE HENDERSON:** THAT'S FINE.

1 **BY MR. BIEN:**

2 **Q.** SO IF WE CAN REFER TO THE FIRST INMATE AS INMATE M, DR.
3 PACKER.

4 **A.** YES, I UNDERSTAND.

5 **Q.** AND THE SECOND ONE IS INMATE L; IS THAT OKAY?

6 **A.** YES. YES.

7 **Q.** OKAY. SO IS IT CORRECT THAT -- IF YOU REMEMBER -- THAT,
8 FIRST OF ALL, THAT UNIT 4A WAS LOCKED DOWN WHEN WE VISITED IT;
9 IS THAT CORRECT?

10 **A.** I HAVE TO SAY I DON'T RECALL EXACTLY WHICH UNIT WAS LOCKED
11 DOWN, BUT I CERTAINLY VISITED SOME UNITS THAT WERE LOCKED DOWN.
12 I DON'T RECALL THIS PARTICULAR ONE.

13 **Q.** WELL, TURN ONE PAGE BEFORE TO 2274. DID YOU RECALL THAT WE
14 WERE INFORMED THAT THAT UNIT HAD NOT BEEN GIVEN ANY YARD SINCE
15 APRIL OF 2008?

16 **A.** YES, I'M LOOKING AT THAT NOW, AND IT DOES REFRESH MY
17 MEMORY. THAT UNIT HAD BEEN LOCKED DOWN FOR QUITE A LONG TIME.

18 **Q.** AND DO YOU RECALL WHAT WE WERE TOLD BY THE CUSTODIAL
19 OFFICER AS TO WHY THE UNIT WAS LOCKED DOWN?

20 **A.** YES. THERE HAD BEEN A SERIOUS ASSAULT ON A COUPLE OF
21 OFFICERS, AND THAT UNIT HAD BEEN LOCKED DOWN.

22 **Q.** AND WE WERE ALSO INFORMED THAT -- ISN'T IT CORRECT THAT YOU
23 WERE INFORMED BY THE OFFICERS THAT NO YARD WHATSOEVER WAS BEING
24 PROVIDED TO THE INMATES ON THAT UNIT SINCE APRIL OF '08?

25 **A.** THAT'S CORRECT.

1 Q. SO THEY HAD NOT BEEN ALLOWED OUTDOORS FOR MONTHS.

2 JUDGE HENDERSON: THAT'S WHAT "NO YARD" MEANS.

3 THE WITNESS: THEY HAD NOT BEEN ALLOWED INTO THE
4 YARD, IT SAYS, SINCE APRIL. AND IT WAS IN JULY.

5 BY MR. BIEN:

6 Q. NOW, DO YOU RECALL THAT INMATE M HAD BEEN REFERRED FOR
7 INPATIENT PSYCHIATRIC CARE AND HAD BEEN ACCEPTED BY THE APP
8 UNIT IN FEBRUARY OF '08?

9 A. YES, THAT'S CORRECT.

10 Q. SO HE'D BEEN ACCEPTED IN FEBRUARY OF '08, BUT IN LATE JULY
11 HE WAS STILL HERE IN TEHACHAPI?

12 A. YES. THE ONLY THING MY NOTES DON'T SAY IS IT WAS ACUTE
13 UNIT. SAYS HE WAS REFERRED TO DMH, AND THEN SAYS HE WAS ON THE
14 WAITING LIST FOR ICF, WHICH IS INTERMEDIATE CARE UNITS. BUT HE
15 WAS SO FAR DOWN ON THE WAIT LIST THAT HE WASN'T GOING TO GET
16 IN, AND SO THEY DROPPED HIM FROM THE LIST.

17 Q. OKAY. AND IS IT CORRECT THAT THE ADSEG UNIT AT 4A WAS NOT
18 AN EOP ADSEG UNIT. IN OTHER WORDS, DIDN'T PROVIDE 10 HOURS A
19 WEEK OF SERVICES?

20 A. THAT'S CORRECT.

21 Q. AND I THINK YOUR NOTE, IF YOU LOOK DOWN A LITTLE BIT, ABOUT
22 A QUARTER OF THE WAY DOWN THE PAGE, WERE YOU TOLD BY THE
23 CLINICIANS THAT IT WAS EVEN -- IT TOOK EVEN LONGER TO TRANSFER
24 A PRISONER TO AN EOP ADSEG UNIT THAN IT DID TO GET THEM TO A
25 DMHICF UNIT?

1 **A.** I THOUGHT THEY WERE TALKING ABOUT THIS PARTICULAR
2 INDIVIDUAL. BUT, YES, I THINK WHAT THEY TOLD ME, BASED ON MY
3 NOTES, IS THAT THERE WAS A LONG WAITING LIST TO GET INTO THE
4 ICF, BUT MIGHT BE LONGER TO GET THEM INTO THE EOP ADSEG.

5 **Q.** AND ONE OF THE TWO MEN THAT YOU AND DR. HANEY INTERVIEWED
6 WHOSE FIRST NAME BEGINS WITH M REFUSED TO COME OUT OF HIS CELL;
7 ISN'T THAT CORRECT?

8 **A.** THAT'S CORRECT.

9 **Q.** AND YOU ATTEMPTED TO INTERVIEW HIM THROUGH THE CELL DOOR.
10 WHAT WAS THAT LIKE, DR. PACKER?

11 **A.** TO BE HONEST, I CANNOT OFF THE TOP OF MY HEAD RECALL
12 WHETHER IT WAS THIS PARTICULAR INTERVIEW OR NOT. BUT I DID
13 SEVERAL INTERVIEWS OVER THE COURSE OF MY VISIT, SO I TRIED TO
14 INTERVIEW PEOPLE THROUGH THE CELL DOORS. I CAN'T REMEMBER
15 SPECIFICALLY THIS CASE.

16 **Q.** WHAT WAS YOUR EXPERIENCE IN GENERAL IN TERMS OF YOUR
17 SUCCESS AS A CLINICIAN IN OBTAINING INFORMATION FROM AN INMATE
18 TALKING THROUGH A CELL DOOR?

19 **A.** I CAN TELL YOU BOTH BASED ON THESE TOURS AND HAVING BEEN IN
20 OTHER SYSTEMS THAT IT IS SIMPLY NOT THE WAY TO CONDUCT A
21 CLINICAL INTERVIEW. ONE CANNOT ASK AS MUCH DETAILED
22 INFORMATION, CANNOT INTERACT AS LONG. AND THE ENVIRONMENT
23 DOESN'T LEND ITSELF TO ANYTHING OTHER THAN A BRIEF MENTAL
24 STATUS ASSESSMENT TO GIVE A SENSE OF WHETHER THE PERSON IS IN
25 ACUTE CRISIS OR HAS SOME IMMEDIATE NEEDS.

1 Q. THE OTHER INMATE THAT YOU INTERVIEWED AGREED TO COME OUT.
2 AND WHERE DID YOU INTERVIEW HIM?

3 A. I DON'T RECALL.

4 Q. IF YOU GO A LITTLE FURTHER DOWN, DO YOU RECALL THAT THERE
5 WERE SOME -- I'LL USE THE EUPHEMISM -- "HOLDING MODULES" SET UP
6 IN AN AREA SO YOU COULD INTERVIEW PEOPLE?

7 A. AGAIN, I CERTAINLY REMEMBER THAT. I DON'T REMEMBER THIS
8 PARTICULAR INDIVIDUAL. OVER THE COURSE OF MY VISITS ON A
9 NUMBER OF OCCASIONS THEY BROUGHT SOMEBODY OUT, PUT HIM IN ONE
10 OF THESE HOLDING CELLS OR MODULES, AND I WOULD SIT RIGHT NEXT
11 TO THEM AND INTERVIEW THEM.

12 Q. HAVE YOU MADE A RECOMMENDATION -- LOOKING BACK ON YOUR
13 REPORT ABOUT -- YOUR DECEMBER REPORT ABOUT SUICIDE, YOU MADE A
14 RECOMMENDATION TO THE DEPARTMENT OF CORRECTIONS THAT THEY
15 SHOULD REEXAMINE THEIR POLICY OF HOUSING IN THE SAME ADSEG UNIT
16 PEOPLE WHO ARE THERE FOR NONDISCIPLINARY REASONS AND
17 DISCIPLINARY REASONS; IS THAT CORRECT?

18 THAT'S ON PAGE --

19 A. TO BE MORE PRECISE -- YES, I KNOW. BUT TO BE MORE PRECISE
20 I RECOMMENDED REEXAMINING THE POLICY OF PLACING SOMEBODY IN
21 ADSEG SIMPLY BECAUSE THEY HAD BEEN THE VICTIM, RATHER THAN THE
22 PERPETRATOR.

23 Q. IT'S YOUR UNDERSTANDING THAT THAT IS THE POLICY IN
24 CALIFORNIA RIGHT NOW, ISN'T IT?

25 A. I ACTUALLY USED THE WORD "POLICY." I DON'T KNOW IF IT'S A

1 POLICY OR A PROCEDURE, BUT THEY WERE DOING IT. I FOUND INMATES
2 LIKE THIS ONE WHO HAD BEEN INVOLVED IN A FIGHT, AND HAD BEEN
3 NOT THE INSTIGATOR, BUT THE VICTIM, AND FOR THEIR OWN SAFETY
4 HAD BEEN PLACED IN AN ADSEG UNIT.

5 AND JUST TO BE CLEAR, MY RECOMMENDATION WAS --
6 READING THIS REPORT, WAS EITHER NOT TO PUT THEM IN SUCH A UNIT,
7 OR AT LEAST SINCE THEY WERE -- THEY NEEDED TO FOR SAFETY
8 REASONS, FOR ENHANCED SERVICES PROVIDED FOR THOSE INDIVIDUALS
9 AS OPPOSED TO THE INSTIGATOR, THE ONE WHO STARTED THE FIGHT.

10 Q. ARE YOU AWARE THAT IN RESPONSE TO AN ORDER OF JUDGE
11 KARLTON, THAT THE STATE BROUGHT TOGETHER EXPERTS FROM ALL OVER
12 THE COUNTRY ABOUT SUICIDE PREVENTION, AND THESE EXPERTS MADE A
13 SERIES OF RECOMMENDATIONS TO CALIFORNIA AS TO WHAT IT CAN DO TO
14 ADDRESS THE PROBLEM OF SUICIDE IN ADSEG UNITS?

15 A. YES, I CAME ACROSS THAT IN THE COURSE OF MY WORK ON THIS
16 CASE.

17 Q. AND ARE YOU AWARE THAT ONE OF THE RECOMMENDATIONS THAT
18 THOSE EXPERTS MADE TO CALIFORNIA IN 2006 WAS THE SAME
19 RECOMMENDATION THAT YOU JUST MADE TO CALIFORNIA IN DECEMBER OF
20 2007?

21 A. I DON'T HAVE AN INDEPENDENT RECALL OF THAT, BUT THAT
22 DOESN'T SURPRISE ME.

23 Q. AND YOU ALSO ARE AWARE THAT IN RESPONSE TO THAT
24 RECOMMENDATION THE STATE SAID THAT DUE TO OVERCROWDING IT WAS
25 UNABLE TO IMPLEMENT THIS IDEA OF SEPARATING PEOPLE IN ADSEG WHO

1 ARE THERE FOR THEIR OWN SAFETY FROM PEOPLE WHO ARE THERE FOR
2 RULES VIOLATIONS?

3 **MS. TILLMAN:** OBJECTION, ASSUMES FACTS NOT IN
4 EVIDENCE.

5 **JUDGE HENDERSON:** OVERRULED.

6 **THE WITNESS:** I DON'T RECALL THAT PARTICULAR
7 DOCUMENT THAT MAKES THAT STATEMENT.

8 **BY MR. BIEN:**

9 **Q.** WE WILL COME BACK TO THAT, DOCTOR. THANK YOU.

10 I'LL REPRESENT TO YOU THAT THAT IS WHAT HAPPENED,
11 AND WE WILL BE ABLE TO SHOW THAT TO YOU IN A MINUTE.

12 DO YOU RECALL TOURING THE CALIFORNIA INSTITUTE FOR
13 MEN?

14 **A.** YES, I DO.

15 **Q.** AND DO YOU RECALL MEETING DR. JORDAN WHO TOOK US ON A TOUR
16 OF THE ADSEG UNITS AT CALIFORNIA INSTITUTE FOR MEN?

17 **A.** I DO RECALL THE NAME, BUT I CAN'T QUITE VERIFY THAT THAT
18 WAS THE DOCTOR WHO GAVE US THAT PARTICULAR TOUR. BUT I DID GET
19 A TOUR OF THAT FACILITY, YES. AND I DID COME ACROSS A DR.
20 JORDAN.

21 **Q.** ARE YOU AWARE THAT DR. JORDAN WAS VERY CONCERNED ABOUT THE
22 RISK OF SUICIDE IN THE CIM AND ADSEG UNITS?

23 **MS. TILLMAN:** CALLS FOR SPECULATION ON THE PART OF
24 THE WITNESS.

25 **JUDGE KARLTON:** HE'S JUST ASKING HIM IF HE'S AWARE

1 OF IT. EITHER HE'S AWARE OF IT OR NOT.

2 **JUDGE HENDERSON:** YOU MAY ANSWER THAT QUESTION, DR.
3 PACKER.

4 **THE WITNESS:** I DON'T HAVE AN INDEPENDENT RECALL AT
5 THIS POINT, NO.

6 **BY MR. BIEN:**

7 **Q.** DO YOU RECALL THAT THERE HAD BEEN SEVERAL SUICIDES IN THE
8 ADSEG UNITS AT CIM IN THE RECENT YEARS PRIOR TO YOUR TOUR?

9 **A.** IN THE YEARS PRIOR TO, YES. I DO RECALL THAT.

10 **Q.** AND ARE YOU AWARE THAT VARIOUS RECOMMENDATIONS WERE MADE TO
11 CIM AS TO WHAT MEASURES IT COULD TAKE TO LESSEN THE RISK OF
12 SUICIDES IN ITS ADSEG UNITS?

13 **JUDGE KARLTON:** RECOMMENDATIONS BY WHOM?

14 **MR. BIEN:** BY THE SPECIAL MASTER AND HIS TEAM.

15 **JUDGE KARLTON:** ALL RIGHT.

16 **THE WITNESS:** AGAIN, I THINK I HAVE AN INDEPENDENT
17 RECALL OF THAT SPECIFICALLY WITHOUT BEING REFERRED TO A
18 DOCUMENT.

19 **BY MR. BIEN:**

20 **Q.** DO YOU RECALL THAT AS PART OF THE ADSEG SUICIDE PLAN, ONE
21 OF THE RECOMMENDATIONS THAT THE STATE SAID THEY WOULD ATTEMPT
22 TO ADDRESS WAS THE LACK OF OUTDOOR EXERCISE?

23 **A.** AGAIN, I DON'T RECALL SPECIFICALLY AT CIM. I DO RECALL
24 OVER THE COURSE OF MY READING MATERIALS THAT THAT WAS ONE OF
25 THE ISSUES THAT HAD BEEN DISCUSSED ABOUT ADSEG UNITS. I DON'T

1 RECALL IF IT WAS SPECIFIC TO CIM OR PARTICULAR TO THIS
2 SITUATION.

3 Q. YOU KNOW THAT THE COURT HAS ORDERED THE STATE TO INCREASE
4 THE NUMBER OF SMALL MANAGEMENT YARDS. YOU'RE AWARE OF THAT
5 ORDER?

6 A. YES, I AM.

7 Q. AND WHAT IS A SMALL MANAGEMENT YARD, DR. JORDAN? I'M
8 SORRY, DR. PACKER. WHAT IS A SMALL MANAGEMENT YARD?

9 A. THESE ARE BASICALLY YARDS WHERE INMATES IN HIGH SECURITY
10 SITUATIONS HAVE ROOM TO GO OUTSIDE, BUT EACH ONE OF THEM IS
11 KIND OF IN A CAGED AREA SO THAT THEY ARE NOT IN WITH A LOT OF
12 OTHER INMATES.

13 Q. AND YOU SAW SOME OF THESE SMALL MANAGEMENT YARDS ON YOUR
14 TOURS?

15 A. YES, I DID.

16 Q. AND DO YOU UNDERSTAND THAT THERE ARE INSUFFICIENT SMALL
17 MANAGEMENT YARDS TODAY FOR CALIFORNIA TO BE ABLE TO PROVIDE 10
18 HOURS A WEEK OF OUTDOOR EXERCISE FOR THE INMATES IN ADSEG?

19 A. I'M NOT PARTICULARLY FAMILIAR EXACTLY WHAT THE SITUATION IS
20 TODAY. ALL I CAN SAY IS OVER THE COURSE OF MY TOURS THERE WAS
21 VARIABILITY. SOME SITES WERE BETTER EQUIPPED THAN OTHERS.

22 Q. AND YOU ARE AWARE THAT MANY OF THE ADSEG UNITS WERE UNABLE
23 TO PROVIDE THIS 10 HOURS A WEEK UNLESS AND UNTIL ADDITIONAL
24 SMALL MANAGEMENT YARDS WERE CONSTRUCTED?

25 A. I'M AWARE THAT AT LEAST SOME FACILITIES HAD THAT PROBLEM. I

1 DON'T HAVE A QUANTIFIED NUMBER ON THAT. BUT I KNOW THAT THAT
2 WAS STILL AN ONGOING ISSUE, THAT MORE YARDS NEEDED TO BE
3 CONSTRUCTED.

4 Q. DID YOU REVIEW TO EXPERT REPORT OF DR. CRAIG HANEY?

5 A. THERE WERE TWO REPORTS THAT I BELIEVE I REVIEWED BOTH OF
6 THEM.

7 Q. AT PARAGRAPH 123 OF DR. HANEY'S FINAL REPORT HE TALKS ABOUT
8 THE TOUR OF CIM THAT YOU AND HE TOOK. AND HE TALKS ABOUT DR.
9 JORDAN STATING HIS CONCERNS ABOUT THE RISK OF SUICIDE IN THE
10 ADSEG UNITS AT CIM.

11 A. WELL, FIRST OF ALL, I NEED TO CORRECT YOU ON SOMETHING. I
12 NEVER TOURED CIM WITH DR. HANEY. AND, SECONDLY, I DON'T HAVE
13 THAT DOCUMENT IN FRONT OF ME. BUT I CAN ASSURE YOU WE DIDN'T
14 TOUR CIM TOGETHER.

15 Q. YOU ARE CORRECT, AND I APOLOGIZE. YOU TOURED A COUPLE OF
16 WEEKS AFTER DR. HANEY AT CIM; IS THAT CORRECT?

17 A. WELL, I DON'T KNOW WHEN DR. HANEY TOURED, BUT I TOURED CIM
18 IN NOVEMBER OF 2007.

19 Q. DR. PACKER, WHEN YOU WORKED AT THE MASSACHUSETTS PRISON
20 SYSTEM IT WAS NOT OVERCROWDED; IS THAT CORRECT?

21 A. THAT'S CORRECT.

22 Q. IN FACT --

23 A. NO, I NEED TO CORRECT MYSELF ON THAT. I BELIEVE AT THE VERY
24 BEGINNING OF OUR WORK IN THE MASSACHUSETTS SYSTEM THERE STILL
25 WAS AN ISSUE OF OVERCROWDING, AND SOME INMATES HAD BEEN SENT

1 OUT TO TEXAS TO RELIEVE THAT PROBLEM. THAT WAS JUST FOR A SMALL
2 PART OF THE TIME I WORKED THERE.

3 SHORTLY AFTER THAT, WITHIN A COUPLE OF YEARS AT
4 MOST, THE SYSTEM WAS NO LONGER CONSIDERED OVERCROWDED, AND THE
5 INMATES IN TEXAS WERE RETURNED.

6 THE COURT REPORTER: CAN HE REPEAT THE LAST
7 SENTENCE?

8 **BY MR. BIEN:**

9 **Q.** CAN YOU REPEAT THE LAST SENTENCE?

10 **JUDGE KARLTON:** THE INMATES FROM TEXAS WERE
11 RETURNED.

12 **THE WITNESS:** WHAT I'M SAYING IS WHEN I FIRST
13 STARTED WORKING IN THAT SYSTEM IN MASSACHUSETTS IN '98, THE
14 SYSTEM WAS CONSIDERED OVERCROWDED, AND SEVERAL HUNDRED INMATES
15 HAD BEEN SENT OUT OF STATE, I BELIEVE TO TEXAS. I DON'T
16 REMEMBER EXACTLY AT WHAT POINT, BUT CERTAINLY WITHIN TWO TO
17 THREE YEARS THE POPULATION IN THE PRISON SYSTEM IN
18 MASSACHUSETTS DECLINED. THE INDIVIDUALS WERE BROUGHT BACK, AND
19 THE SYSTEM WAS NO LONGER CONSIDERED OVERCROWDED BY THE
20 DEPARTMENT OF CORRECTIONS.

21 **BY MR. BIEN:**

22 **Q.** OKAY. AND, IN FACT, WHILE YOU WERE WORKING IN MASSACHUSETTS
23 THEY WERE CONSIDERING CLOSING DOWN SOME OF THE PRISONS; IS THAT
24 CORRECT?

25 **A.** WELL, THEY HAD TO CLOSE ONE DOWN, YES. THEY ALSO BUILT A

1 NEW ONE, BUT THEY CLOSED ONE DOWN.

2 Q. AND YOU HAVE NEVER PUBLISHED ANY ARTICLES CONCERNING PRISON
3 OR JAIL OVERCROWDING; IS THAT CORRECT?

4 A. THAT'S CORRECT.

5 Q. AND YOU'VE NEVER DONE ANY SCIENTIFIC STUDIES ABOUT THE
6 EFFECTS OF OVERCROWDING ON A CORRECTIONAL SYSTEM?

7 A. NO, I HAVE NOT.

8 Q. AND YOU MENTIONED OVERCROWDING IN ONE ARTICLE YOU PUBLISHED
9 IN 2001, AND THAT'S PLAINTIFFS' 806. COULD I --

10 A. YES, I HAVE THAT IN FRONT OF ME.

11 Q. AND IN THAT ARTICLE, I'M LOOKING AT THE BOTTOM OF THE FIRST
12 PAGE, BOTTOM OF PAGE 1343. THIS WAS PUBLISHED IN 2001; IS THAT
13 CORRECT?

14 A. THAT'S CORRECT.

15 Q. AND I'M READING FROM THE BOTTOM OF THE ARTICLE. IT SAYS:

16 "REGARDLESS OF THE CRITERIA USED TO DEFINE A
17 MENTAL DISORDER, PRISONS IN THE UNITED STATES FACE
18 SERIOUS PROBLEMS IN DEALING WITH INMATES WHO HAVE
19 MENTAL DISORDERS. SYMPTOMATIC INMATES CAN IMPAIR

20 THE

21 SAFE AND EFFICIENT OPERATION OF A CORRECTIONAL
22 FACILITY, AND THE CORRECTIONAL ENVIRONMENT CAN
23 EXACERBATE SYMPTOMS OF MENTAL ILLNESS. INCARCERATED
24 PERSONS, EVEN THOSE WHO DO NOT HAVE A MENTAL
25 DISORDER, EXPERIENCE SIGNIFICANT STRESS, SEPARATION

1 FROM FAMILY AND SOCIAL SUPPORTS, SIGNIFICANT
2 LIMITATIONS ON PRIVACY. FEAR OF ASSAULT AND BOREDOM
3 ARE SOME OF THE COMMON STRESSORS IN PRISON.
4 OVERCROWDING, WHICH OCCURS COMMONLY IN STATE AND
5 FEDERAL PRISONS, CAN EXACERBATE THESE PROBLEMS.

6 THESE

7 CHALLENGES OFTEN OVERWHELM THE LIMITED COPING SKILLS
8 OF INMATES WHO HAVE MENTAL DISORDERS RESULTING IN
9 FUNCTIONAL DETERIORATION."

10 YOU STILL AGREE WITH THAT STATEMENT THAT YOU WROTE
11 IN THIS ARTICLE, DR. PACKER?

12 **A.** THAT WHOLE PARAGRAPH YOU READ? THE WHOLE PARAGRAPH.

13 **Q.** DR. PACKER, YOU HAVE NEVER WORKED AS A SPECIAL MASTER OR
14 MONITOR AS PART OF A REMEDIAL PROCESS IN A PRISON OR JAIL CASE,
15 HAVE YOU?

16 **A.** NO, I HAVE NOT.

17 **Q.** AND YOU'VE NEVER BEEN RETAINED BY A SPECIAL MASTER OR
18 MONITOR TO WORK IN A PRISON OR JAIL TO HELP WITH THE REMEDIAL
19 PROCESS?

20 **A.** THAT'S CORRECT.

21 **Q.** AND YOU'VE NEVER BEEN RETAINED BY THE U.S. DEPARTMENT OF
22 JUSTICE TO ASSIST AS AN EXPERT IN A PRISON OR JAIL CASE, HAVE
23 YOU?

24 **A.** I BELIEVE I HAD ONE SMALL OPPORTUNITY TO WORK IN A JUVENILE
25 SYSTEM FOR A VERY CIRCUMSCRIBED ISSUE, BUT NOT THE ISSUE WE'RE

1 TALKING ABOUT TODAY.

2 Q. AND YOU'VE NEVER TESTIFIED AS AN EXPERT WITNESS IN A CLASS
3 ACTION, HAVE YOU?

4 JUDGE KARLTON: WELL, HE IS NOW.

5 BY MR. BIEN:

6 Q. PRIOR TO TODAY. EXCUSE ME.

7 A. NO, I DON'T BELIEVE I HAVE.

8 Q. YOU'VE TESTIFIED IN SEVERAL CASES AS AN EXPERT WITNESS,
9 THAT'S CORRECT. YOU'VE TESTIFIED --

10 A. I'VE WHAT?

11 Q. YOU'VE TESTIFIED AS AN EXPERT WITNESS BEFORE, RIGHT?

12 A. YES, HUNDREDS OF TIMES.

13 Q. OKAY. AND THOSE CASES HAVE INVOLVED ISSUES SUCH AS
14 COMPETENCY TO STAND TRIAL; IS THAT RIGHT?

15 A. SOME OF THE CASES, YES.

16 Q. MEDICAL MALPRACTICE?

17 A. YES.

18 Q. INSANITY DEFENSE?

19 A. YES. THOSE ARE NOT ALL OF THEM, THOUGH.

20 Q. DR. PACKER, HAVE YOU FOUND SIGNIFICANT PROBLEMS WITH
21 MEDICAL RECORDS THAT YOU SAW IN THE CALIFORNIA PRISON SYSTEM,
22 DIDN'T YOU?

23 A. YES, BOTH IN SOME OF THE SITES THAT I VISITED, AND AS WELL
24 AS IN THE DOCUMENTATION I WAS GIVEN.

25 Q. AND IT'S YOUR OPINION THAT OVERCROWDING IS THE PRIMARY

1 CAUSE OF THE PROBLEMS WITH MEDICAL RECORDS?

2 **A.** AGAIN, JUST TO BE CLEAR ABOUT THE TERMINOLOGY, IT WAS MY
3 OPINION THAT THE SHEER NUMBER OF INMATES IN THE SYSTEM IS THE
4 MOST DIRECT CAUSE RESULTING IN THE DIFFICULTY OF CDCR TO MANAGE
5 THEIR MEDICAL RECORDS APPROPRIATELY.

6 **Q.** AND YOU FOUND THAT MEDICAL RECORDS WERE NOT ALWAYS
7 AVAILABLE TO CLINICIANS WHO NEEDED THEM WHEN THEY WERE SEEING
8 PATIENTS?

9 **A.** RIGHT. IN SOME INSTITUTIONS THE PROBLEM WAS THAT FOR
10 CERTAIN PERIODS OF TIME AND IN CERTAIN SETTINGS THE CLINICIANS
11 COULD NOT ACCESS THE RECORDS AT THE TIME THEY WERE EVALUATING
12 OR TREATING AN INDIVIDUAL.

13 **Q.** AND YOU ALSO SAW THAT THERE WERE DELAYS IN UPDATING CHARTS
14 IN MEDICAL RECORDS AS A RESULT OF THESE PROBLEMS.

15 **A.** THERE WERE, YES.

16 **Q.** AND THERE WERE DELAYS IN FILING THE RECORDS. YOU HEARD
17 ABOUT STACKS OF UNFILED RECORDS AT VARIOUS PRISONS YOU VISITED,
18 RIGHT?

19 **A.** AGAIN, THERE WERE VARIABLES. SOME PRISONS PEOPLE WERE DOING
20 A VERY GOOD JOB, UP-TO-DATE. OTHERS WERE DOING A MUCH POORER
21 JOB. AND ALL PRISONS IN THE DOCUMENTATION I REVIEWED, THERE
22 WERE ALSO INSTANCES IN THE SPECIAL MASTER'S REPORT, OTHER
23 INSTITUTIONS HAVING SIGNIFICANT DIFFICULTY KEEPING UP WITH
24 THEIR FILING.

25 **Q.** AND DO YOU RECALL THAT THERE WAS A MEDICAL RECORD THAT YOU

1 AND DR. HANEY HAD REVIEWED DURING YOUR TOUR OF SATIF, THE
2 SUBSTANCE ABUSE TREATMENT FACILITY. THERE WAS AN INMATE THAT
3 YOU BOTH INTERVIEWED, AND THEN YOU WENT AND REVIEWED HIS
4 MEDICAL RECORD, AND INSIDE THE MEDICAL RECORD WERE MANY PAGES
5 FROM OTHER INMATES THAT WERE JUST SORT OF STUCK INTO HIS
6 MEDICAL RECORD.

7 **A.** I DO RECALL THAT.

8 **Q.** AND IT'S ALSO YOUR OPINION, DR. PACKER, THAT CROWDING IS
9 THE PRIMARY CAUSE OF THE PARTICULAR DIFFICULTIES IN PROVIDING
10 SERVICES TO THE COLEMAN CLASS IN RECEPTION CENTERS?

11 **A.** THAT IS RIGHT. THAT IS MY OPINION, ALTHOUGH I THINK LIKE
12 THE DEFINITION OF CROWDING, OVERCROWDING IS A LITTLE AMORPHOUS.
13 BUT I DO HAVE AN OPINION THAT THE NUMBER OF MENTALLY ILL
14 INMATES WITH ACUTE DISORDERS WHO ARE AT THE RECEPTION CENTERS
15 CREATING THE MOST SIGNIFICANT DIFFICULTY PROVIDING THE PROPER
16 LEVEL OF SERVICE.

17 **JUDGE KARLTON:** DOCTOR, JUST SO WE CAN BE CLEAR,
18 YOU'RE DEFINING "OVERCROWDING" IN TERMS OF THE DESIGN CAPACITY
19 OF AN INDIVIDUAL PRISON; IS THAT CORRECT?

20 **THE WITNESS:** YES. WELL, MAYBE I CAN BE A LITTLE
21 MORE CLEAR. IF THERE WERE TOO MANY INMATES IN THE PRISON
22 RELATIVE TO THE CAPACITY OF THE PRISON, SO YOU HAVE TO DEFINE
23 "DESIGN CAPACITY."

24 **JUDGE KARLTON:** THAT THEN BECOMES MORE AMORPHOUS,
25 BECAUSE WE HAVE HEARD AS A DEFINITION OF "OVERCROWDING" THAT IT

1 NOT ONLY RELATES TO THE -- I'M SORRY. YOU'RE NOT HEARING ME --
2 THAT IT RELATES NOT ONLY TO THE DESIGN CAPACITY OF THE PRISON,
3 BUT INCLUDES THE CAPACITY OF THE PRISON TO PROVIDE APPROPRIATE
4 REHABILITATIVE SERVICES, ET CETERA, PROGRAMS.

5 IN YOUR DEFINITION THAT IS NOT A RELEVANT FACTOR; IS
6 THAT CORRECT OR IS THAT WRONG?

7 **THE WITNESS:** I NEED TO GIVE A LITTLE MORE NUANCE TO
8 THAT. I THINK I'LL DEFINE IT IF THAT'S THE DEFINITION YOU'RE
9 ASKING FOR ANY INDIVIDUAL PRISON. I THINK THAT I WOULD -- I
10 THINK THAT IS CONSISTENT WITH WHAT I'M SAYING.

11 I THINK THE REASON IT MAY HAVE GOTTEN A LITTLE MORE
12 COMPLICATED IS SOME OF THESE ISSUES HAVE LESS TO DO WITH ANY
13 PARTICULAR PRISON THAN THE OVERALL LACK OF, FOR EXAMPLE,
14 ADEQUATE NUMBER OF ICF BEDS IN THE SYSTEM, PER SE, NOT JUST IN
15 THAT ONE FACILITY.

16 THAT'S WHAT I WAS REFERRING TO. IN TERMS OF THE
17 RECEPTION CENTERS, I BELIEVE THE DEFINITION IS THE SAME, IS
18 THAT THE NUMBER AND TYPE OF INMATES IN THAT FACILITY OVERWHELMS
19 THAT FACILITY'S CAPACITY TO PROVIDE ADEQUATE SERVICES.

20 SO I THINK FOR THE RECEPTION CENTERS WE MAY BE USING
21 THE VERY SAME DEFINITION.

22 **JUDGE KARLTON:** WELL, THE PROBLEM IS THAT I'M NOT AT
23 ALL CLEAR THAT MR. BIEN AND YOU ARE USING THE SAME DEFINITION.
24 YOU'RE USING THE WORD "OVERCROWDING," AND IT IS NOT CLEAR TO ME
25 WHAT IT IS YOU MEAN WHEN YOU SAY THERE'S OVERCROWDING.

1 YOU INDICATED THAT THE RECEPTION CENTERS ARE
2 OVERCROWDED FOR TWO REASONS. ONE: THE NUMBER OF PRISONERS
3 RELATIVE TO DESIGN CAPACITY IS OVERWHELMED; AND, TWO: BY
4 VIRTUE THEREOF, THEY ARE UNABLE TO PROVIDE SERVICES THAT ARE
5 REQUIRED.

6 IS THAT CORRECT AS FAR AS THE RECEPTION CENTERS ARE
7 CONCERNED?

8 **THE WITNESS:** NO, I'M SAYING IT'S MORE THE SECOND
9 PART, BECAUSE THE RECEPTION FACILITIES AREN'T NECESSARILY MORE
10 OVERCROWDED RELATIVE TO CAPACITY THAN SOME OF THE OTHER PRISONS
11 I SAW.

12 THE ISSUE THAT I HAVE WITH THE RECEPTION CENTERS AND
13 WHY I THOUGHT THEY WERE MORE PROBLEMATIC IN TERMS OF USING THE
14 TERM "OVERCROWDING" IS THE NATURE OF THE POPULATION THAT THEY
15 HAVE OVERWHELMS THEIR ABILITY TO PROVIDE ADEQUATE SERVICES.
16 AND BECAUSE THE INDIVIDUALS WHO COME IN, THERE'S SO MANY OF
17 THEM WITH ACUTE MENTAL HEALTH NEEDS THAT IN THOSE FACILITIES
18 THE ABILITIES OF THE FACILITY TO PROVIDE ADEQUATE SERVICES IS
19 OVERWHELMED, EVEN THOUGH THE OTHER FACILITIES THAT I SAW THEY
20 MAY HAVE THE SAME NUMBER OF PERCENTAGE, WHOLE PERCENTAGE, AND
21 YET THEY CAN MANAGE IT BETTER.

22 BUT THE RECEPTION CENTER, IT'S NOT JUST THE NUMBERS
23 BUT THE COMMUNITY AND THE TYPE OF POPULATION THAT IS MAKING
24 THEM SO INCAPABLE OF PROVIDING AN ADEQUATE LEVEL OF SERVICE.

25 **JUDGE KARLTON:** USING TEHACHAPI AS AN EXAMPLE, I'M

1 JUST TRYING TO UNDERSTAND WHAT YOU'RE SAYING. WHEN YOU SAY
2 OVERCROWDING IN TEHACHAPI, ARE YOU REFERRING TO SIMPLY THE
3 NUMBER OF PRISONERS VERSUS ITS DESIGN CAPACITY? OR ARE YOU
4 INCLUDING WITHIN THAT DEFINITION WHETHER OR NOT IT CAN PROVIDE
5 APPROPRIATE SERVICES?

6 **THE WITNESS:** I AM INCLUDING WHETHER IT CAN PROVIDE
7 APPROPRIATE SERVICES. AND IF THIS ANSWERS YOUR QUESTION, YOUR
8 HONOR, WHAT I WOULD SAY IS THAT IF THEY HAVE THE SAME NUMBER OF
9 INMATES THERE, BUT THE PARTICULAR INMATES WERE NOT AS ACUTELY
10 MENTALLY ILL, THEN I BELIEVE IT WOULD BE A DIFFERENT SITUATION.

11 I THINK THEY WOULD ARE WOULD BE MUCH MORE CAPABLE OF
12 PROVIDING SERVICES BECAUSE THESE INDIVIDUALS ARE SO MENTALLY
13 ILL THAT THEY CANNOT PROVIDE THE LEVEL OF SERVICE THEY NEED IN
14 THE CONTEXT OF BOTH THE PRISONERS' NEEDS AND THE NUMBER OF
15 INMATES IN THE FACILITY.

16 **JUDGE KARLTON:** ALL RIGHT. YOU MAY PROCEED. I'M
17 SORRY TO INTERRUPT.

18 **BY MR. BIEN:**

19 **Q.** DR. PACKER, PERHAPS TO HELP THE COURT OUT IN UNDERSTANDING
20 WHERE YOU COME FROM ABOUT OVERCROWDING, YOU WERE TOLD FOR
21 PURPOSES OF YOUR WORK ON THIS CASE TO ASSUME THAT THE
22 CALIFORNIA PRISON SYSTEM IS OVERCROWDED; IS THAT CORRECT?

23 **A.** THAT'S CORRECT.

24 **Q.** YOU MADE NO INDEPENDENT DETERMINATION OF WHETHER OR NOT THE
25 CALIFORNIA PRISON SYSTEM WAS OVERCROWDED YOURSELF?

1 **JUDGE KARLTON:** THAT QUESTION MEANS THE SYSTEM AS A
2 WHOLE. YOU OBVIOUSLY HAVE MADE A DETERMINATION THAT THE
3 PARTICULAR PRISONS WERE OVERCROWDED BY WHATEVER DEFINITION YOU
4 WERE USING, CORRECT, SIR?

5 **THE WITNESS:** YES. IN INDIVIDUAL PRISONS I WAS USING
6 THE CONCEPT THAT YOUR HONOR MENTIONED, THAT I WAS LOOKING AT
7 THE CAPACITY TO DEAL WITH THE INDIVIDUALS WITHIN THAT PRISON.
8 BUT WHAT I WAS ASKING, GENERALLY, BECAUSE THE ISSUE WAS: IS
9 THE OVERCROWDING CAUSING THE DEFICIENCIES IN THE SYSTEM ITSELF?
10 190 PERCENT, OR WHATEVER THE NUMBER I WAS GIVEN ABOVE DESIGN
11 CAPACITY, EVERYBODY LOOKED AT THE SYSTEM AND AGREED IT WAS
12 OVERCROWDED. THE GOVERNOR ACKNOWLEDGES IT'S OVERCROWDED.

13 SO, YES, THE SYSTEM AS A WHOLE IS OVERCROWDED. I
14 DID LOOK AT INDIVIDUAL INSTITUTIONS IN TERMS OF USING THOSE
15 OTHER CONTEXTS OF GIVING PARTICULAR INDIVIDUALS IN THAT
16 INSTITUTION THE ABILITY TO MEET THE NEEDS IN THAT INSTITUTION
17 THAT I WAS ASSESSING.

18 **BY MR. BIEN:**

19 **Q.** YOU DID NOT USE ANY PARTICULAR MEASURE OR LEVEL OF STANDARD
20 OF OVERCROWDING IN DEVELOPING YOUR OPINION IN THIS CASE.

21 **A.** NO, I DID NOT.

22 **Q.** AND YOU AGREE THAT THE CALIFORNIA SYSTEM WAS -- I QUOTE YOU
23 -- "VERY OVERCROWDED"; IS THAT RIGHT?

24 **A.** YES. YES.

25 **Q.** YOU DIDN'T COMPARE THE LEVEL OF OVERCROWDING IN CALIFORNIA

1 WITH ANY LEVEL OF OVERCROWDING IN OTHER SYSTEMS IN DEVELOPING
2 YOUR OPINION; IS THAT CORRECT?

3 **A.** THAT'S CORRECT.

4 **Q.** AND YOU'RE ALSO NOT EXPRESSING ANY OPINION TO THIS COURT AS
5 TO WHAT THE TARGET LEVEL OF OVERCROWDING FOR THE CALIFORNIA
6 PRISON SYSTEM SHOULD BE?

7 **A.** I AM NOT.

8 **Q.** IT'S YOUR OPINION THAT THE DEFICIENCIES IN MENTAL
9 HEALTHCARE THAT YOU OBSERVED IN YOUR TOURS OF CALIFORNIA
10 PRISONS AND IN READING SPECIAL MASTER REPORT AND THE OTHER
11 DOCUMENTS CAN BE REMEDIED WITHOUT REGARD TO ANY POPULATION
12 REDUCTION PLAN OR ORDERS.

13 **A.** WITHIN THE CONTEXT OF SOME OF THE PLANS THAT WERE OFFERED,
14 YES.

15 **Q.** IT COULD HAPPEN WITHOUT ANY CONTROL OF THE POPULATION IS
16 YOUR OPINION.

17 **A.** NO, I ACTUALLY DIDN'T SAY THAT, BECAUSE IF YOU READ MY
18 REPORT AGAIN, THE ONE EXCEPTION I MADE OVER THERE WAS THAT
19 RECEPTION CENTERS WHERE I WANT TO SAY THERE NEEDED TO BE SOME
20 REDUCTION IN THE NUMBER OF MENTALLY ILL PEOPLE COMING INTO THE
21 RECEPTION CENTERS.

22 BUT WITH THAT CAVEAT, THAT'S WHAT I WAS SAYING.
23 THAT'S WHAT I AM SAYING.

24 **Q.** SO YOU AGREE THAT IN ORDER TO REMEDY THE
25 OVERCROWDING-RELATED PROBLEMS THAT YOU OBSERVED IN THE

1 CALIFORNIA RECEPTION CENTERS YOU VISITED, THERE NEEDS TO BE
2 SOME MEASURE OF CONTROL ON THOSE PRISONERS COMING INTO THOSE
3 RECEPTION CENTERS.

4 **A.** ON THE MENTALLY ILL PRISONERS COMING INTO THE RECEPTION
5 CENTERS.

6 **Q.** NOW, YOU'RE NOT EXPRESSING ANY OPINION IN THIS CASE
7 CONCERNING MEDICAL CARE IN THE CALIFORNIA PRISON SYSTEM; IS
8 THAT CORRECT?

9 **A.** THAT'S CORRECT.

10 **Q.** NOW, YOU'VE TALKED ABOUT THESE OTHER PLANS AND PROGRAMS
11 THAT CALIFORNIA SHOWED YOU THAT ARE THE ALTERNATIVES TO FIXING
12 THE PROBLEMS WITHOUT CONTROLLING POPULATION; IS THAT CORRECT?

13 I MEAN, YOU SAW, FOR EXAMPLE, THE RECEIVER'S PLANS
14 TO CONSTRUCT THESE 1500 BED HEALTHCARE FACILITIES DEDICATED TO
15 MEDICAL AND MENTAL HEALTH. YOU REVIEWED THOSE.

16 **A.** I DON'T KNOW ABOUT 1500. YES, I DID SEE THOSE PLANS.

17 **Q.** AND IN YOUR REPORT THAT YOU FILED IN AUGUST, AUGUST 15TH,
18 ON THE LAST PAGE, PAGE NINE, YOU QUOTED FROM ONE OF THE
19 RECEIVER'S CONSULTANTS ABOUT THOSE HEALTHCARE FACILITIES THAT
20 THEY WERE BUILDING, RIGHT?

21 **A.** THAT'S CORRECT.

22 **JUDGE KARLTON:** THEY AREN'T BUILDING THEM. THEY
23 HOPE TO BUILD THEM, AND THEY ARE NOT PRESENTLY FINANCED.

24 **BY MR. BIEN:**

25 **Q.** IN YOUR OPINION, DR. PACKER, YOU THOUGHT THAT THE BUILDING

1 OF THOSE FACILITIES, THE PLANS FOR WHICH YOU REVIEWED IN
2 CONNECTION WITH YOUR OPINION, WAS A NECESSARY PART OF THE
3 REMEDY FOR THE DEFICIENCIES IN MENTAL HEALTHCARE THAT YOU
4 OBSERVED.

5 **A.** WELL, THAT'S NOT EXACTLY PRECISE. SOME ADDITIONAL
6 FACILITIES WAS NECESSARY. THIS SEEMS TO BE THE GOLD STANDARD
7 PLAN, WHICH WOULD BE THE IDEAL ONE.

8 BEFORE I'D SEEN THIS, AS YOU RECALL IN THE PREVIOUS
9 REPORT, THEY HAD A MORE -- A DIFFERENT SUPPLEMENTAL BED PLAN
10 THAT WASN'T QUITE AS ELABORATE. SO MY OPINION WAS THAT SOME
11 ADDITIONAL SPECIALIZED PROGRAM FACILITY NEEDS TO BE IN PLACE TO
12 ACCOMMODATE THIS POPULATION. IDEALLY IT WILL BE THESE
13 CONSOLIDATED CARE CENTERS. BUT IF THAT'S NOT IN PLACE, SOME
14 OTHER MECHANISM, SUCH AS THE ICF AND THE CRISIS THAT I
15 OBSERVED, SOMETHING ALONG THOSE LINES NEEDS TO BE IN PLACE.

16 **Q.** AND YOU THINK THAT'S -- ONE WAY OR THE OTHER ONE OF THOSE
17 BED PLANS, EITHER THE 2007 BED PLAN THAT DIDN'T INVOLVE THE
18 RECEIVER, OR THE 2008 BED PLAN THAT DID INVOLVE THE RECEIVER,
19 THEY BOTH INCLUDED PLANS TO CONSTRUCT MORE EOP BEDS, MORE,
20 MENTAL HEALTH CRISIS BEDS AND MORE DMH BEDS; IS THAT CORRECT?

21 **A.** THAT'S CORRECT.

22 **Q.** AND YOU THINK THAT'S A NECESSARY ELEMENT TO DELIVER
23 APPROPRIATE MENTAL HEALTHCARE TO THE POPULATION THAT YOU
24 OBSERVED.

25 **A.** YES, WHETHER OR NOT THOSE SPECIFIC PLANS, BUT CONSTRUCTION

1 OF THOSE KINDS OF PROGRAMS, FACILITIES IN MY OPINION ARE
2 NECESSARY IN ORDER TO ALLOW THE MENTAL HEALTH SERVICE DELIVERY
3 TO BE MORE ADEQUATE.

4 **Q.** AN AS YOU SIT HERE TODAY, CAN YOU TELL THIS COURT WHEN IN
5 YOUR OPINION THESE FACILITIES, EITHER ONE OF THEM WILL BE
6 BUILT? HOW MANY YEARS FROM NOW?

7 HOW MANY YEARS FROM NOW?

8 **A.** I HAVE NO IDEA.

9 **Q.** YOU HAVE NO IDEA?

10 **A.** I HAVE NO IDEA.

11 **Q.** YOU UNDERSTAND THAT BOTH PLANS HAVE BEEN SEVERELY DELAYED?

12 **A.** I LEARNED THAT SINCE I STARTED TESTIFYING.

13 **Q.** THE ATTORNEY GENERAL'S OFFICE WHEN YOU CAME TO YOUR
14 DEPOSITION, HADN'T TOLD YOU THAT THE RECEIVER'S PLANS WERE
15 DELAYED. I HAD TO TELL YOU THAT; ISN'T THAT CORRECT?

16 **MS. TILLMAN:** OBJECTION, RELEVANCE, ARGUMENTATIVE.

17 **JUDGE HENDERSON:** OVERRULED.

18 IS THAT CORRECT?

19 **THE WITNESS:** I DON'T BELIEVE THEY HAD. MY
20 RECOLLECTION IS THE FIRST I HEARD ABOUT IT WAS SOME QUESTIONING
21 FROM MR. BIEN AT THE DEPOSITION.

22 **BY MR. BIEN:**

23 **Q.** AND, DR. PACKER, IN YOUR REPORTS YOU FOUND THAT THE
24 PREVALENCE OF MENTAL ILLNESS IN THE CALIFORNIA PRISON SYSTEM TO
25 BE A SIGNIFICANT FACTOR; ISN'T THAT CORRECT?

1 **A.** I DON'T UNDERSTAND THAT QUESTION.

2 **JUDGE KARLTON:** THAT MAKES TWO OF US, DOCTOR.

3 **BY MR. BIEN:**

4 **Q.** OKAY. DO YOU UNDERSTAND WHAT THE WORD "PREVALENCE" MEANS
5 IN RELATIONSHIP TO A MENTAL HEALTH POPULATION? I MEAN, IN
6 OTHER WORDS, THE NUMBER OF MENTALLY ILL AS A PROPORTION OF THE
7 TOTAL POPULATION, YOU FOUND THAT TO BE SIGNIFICANT.

8 **A.** NO, I UNDERSTAND THE WORD "PREVALENCE."

9 **Q.** OH.

10 **A.** I DON'T UNDERSTAND WHAT YOU'RE ASKING ME, WHETHER IT'S
11 RELEVANT. I'M NOT SURE WHAT YOU WANT ME TO REFER TO IT AS.

12 **Q.** WELL, DIDN'T YOU TESTIFY THAT YOU FOUND THAT THE FACT THAT
13 THE PREVALENCE OF MENTAL ILLNESS IN THE CALIFORNIA PRISON
14 SYSTEM OF 20 PERCENT WAS BOTH SIGNIFICANT AND STRIKING?

15 **A.** IF YOU CAN REFER ME TO A PAGE.

16 **JUDGE KARLTON:** WELL, FORGET THAT. DO YOU FIND IT
17 PRESENTLY SIGNIFICANT AND STRIKING?

18 **THE WITNESS:** NO, THAT'S FRANKLY ABOUT AVERAGE FOR A
19 PRISON SYSTEM. SO IT'S NOT CALIFORNIA 20 PERCENT. IN
20 MASSACHUSETTS THAT'S ABOUT THE FIGURE WE HAVE. THE NATIONAL
21 REPORTS OF DATA FROM DIFFERENT STATES AND FEDERAL SYSTEMS
22 USUALLY GIVE AN AVERAGE OF SOMEWHERE IN THAT RANGE.

23 **BY MR. BIEN:**

24 **Q.** AND I THOUGHT YOU TESTIFIED THAT THE AVERAGE WAS BETWEEN 15
25 AND 20 PERCENT.

1 **A.** I'M NOT SURE IF I TESTIFIED TO THAT; IN THAT BALLPARK.

2 **Q.** ISN'T IT CORRECT THAT CALIFORNIA IS AT THE HIGH END OF
3 PREVALENCE OF MENTAL ILLNESS IN YOUR OPINION IN CALIFORNIA IN
4 THE PRISON SYSTEMS THAT YOU'VE STUDIED OR READ ABOUT?

5 **A.** AGAIN, THE LITERATURE IS SOMEWHERE IN THAT 15. I DON'T
6 KNOW IF I SAID 20 -- SOME PLACES HAD A LITTLE HIGHER -- IN THE
7 BALLPARK OF WHAT THE PREVALENCE RATE IS.

8 I DON'T KNOW IF I SAID ANYTHING ABOUT "STRIKING,"
9 BUT FOR ONE THING THAT'S DIFFERENT THAT I TESTIFIED TO IS THE
10 ACUITY LEVEL OF THE PEOPLE COMING INTO YOUR RECEPTION CENTERS,
11 WHICH IS MUCH HIGHER THAN OTHER -- AT LEAST THAT I'VE BEEN
12 INVOLVED.

13 **MR. BIEN:** I'M GOING TO REFER TO DR. PACKER'S
14 DEPOSITION TAKEN ON OCTOBER 3, 2008 AT PAGE 79.

15 **THE WITNESS:** IS THERE AN EXHIBIT NUMBER FOR THAT?

16 **BY MR. BIEN:**

17 **Q.** NO. I ASSUME YOUR COUNSEL PROVIDED YOU WITH YOUR
18 DEPOSITION. YOU DON'T HAVE IT THERE?

19 **A.** I DIDN'T BRING IT.

20 **JUDGE KARLTON:** JUST READ IT. LET'S GET ON WITH IT.

21 **BY MR. BIEN:**

22 **Q.** DOESN'T MATTER. LET ME START READING AT PAGE 78, LINE 16.

23 "HOW DID YOU USE THE DATA CONCERNING THE
24 PERCENTAGE OF COLEMAN CLASS MEMBERS IN THE TOTAL
25 PERCENTAGE OF THE PRISON POPULATION? HOW THAT IS

1 RELEVANT TO YOUR ANALYSIS?"

2 THERE WAS AN OBJECTION.

3 "I'M SORRY. I DIDN'T QUITE HEAR ALL THAT. CAN
4 I HAVE IT READ BACK?

5 "SURE."

6 REPORTS READS IT AGAIN.

7 "THE WITNESS: ONE OF THE THINGS THAT SORT OF
8 IS

9 VERY STRIKING IS THE PERCENTAGE IS, I BELIEVE,
10 AROUND

11 20 PERCENT OR SO, OR MAYBE EVEN A LITTLE MORE. SO
12 THE FIRST THING I THOUGHT IT WAS A FAIRLY

13 SIGNIFICANT

14 PERCENTAGE. SECONDLY, I WAS VERY STRUCK BY GOING TO
15 RECEPTION CENTERS WHERE IT BECAME QUITE CLEAR THAT
16 THE PERCENTAGES WERE EVEN HIGHER.

17 "QUESTION: WHEN YOU SAY 'A SIGNIFICANT
18 PERCENTAGE' IN THE COLEMAN -- THE PERCENTAGE OF THE
19 POPULATION THAT WAS IN THE MENTAL HEALTH COLEMAN
20 CLASS WAS SIGNIFICANT, MAYBE OVER 20 PERCENT, DID

21 YOU

22 FIND THAT HIGH IN YOUR EXPERIENCE?"

23 THERE'S AN OBJECTION:

24 "VAGUE AND AMBIGUOUS, INCOMPLETE HYPOTHETICAL.

25 "QUESTION: WHY DID YOU THINK THAT WAS

1 SIGNIFICANT?

2 "ANSWER: WELL, FIRST OF ALL, THAT NUMBER IS
3 NOT

4 THAT OUT OF KEEPING WITH SOME OF THE LITERATURE
5 ABOUT

6 THE NUMBERS OF PERCENTAGE OF MENTALLY ILL WITHIN
7 THE PRISON SYSTEMS. THEY TEND TO BE IN THE 10 TO
8 20 PERCENT RANGE. THIS WAS ON THE HIGH END. SO
9 THAT

10 WAS THE FIRST ISSUE IS THAT THERE SEEMED TO BE QUITE
11 A LOT OF MENTALLY ILL PEOPLE IN THE SYSTEM."

12 **JUDGE KARLTON:** MR. BIEN, DO YOU THINK YOU'RE
13 IMPEACHING?

14 **MR. BIEN:** I THOUGHT SO, BUT --

15 **JUDGE KARLTON:** ALL RIGHT.

16 **BY MR. BIEN:**

17 **Q.** DR. PACKER, ONE OF YOUR ASSUMPTIONS IN YOUR STUDY WAS THAT
18 YOU FOUND THAT THE PREVALENCE OF SERIOUS MENTAL ILLNESS IN THE
19 RECEPTION CENTERS WAS HIGHER THAN THE PREVALENCE RATE IN THE
20 REST OF THE PRISON SYSTEM; ISN'T THAT CORRECT?

21 **A.** YES. I'M NOT SAYING IT FOUND IT. THAT WAS SOME OF THE DATA
22 THAT I WAS PROVIDED.

23 **Q.** YOU DIDN'T MAKE ANY EMPIRICAL STUDY TO SEE WHETHER OR NOT
24 THAT WAS CORRECT, DID YOU?

25 **A.** NO. AGAIN, THAT WAS BASED REVIEWING THE DOCUMENTS AND

1 TALKING TO THE CLINICAL STAFF AT THE RECEPTION FACILITY.

2 Q. AND ONE OF THE THINGS YOU RELIED ON TO DETERMINE THAT
3 INFORMATION WAS THE DECLARATION OF DR. MCALOON, WHO IS A
4 PSYCHOLOGIST WITH THE CDCR; IS THAT CORRECT?

5 A. THAT'S ONE OF THE ELEMENTS, YES.

6 Q. AND THAT IS P807, IF THE COURT REPORTER CAN PROVIDE IT TO
7 YOU.

8 A. I HAVE IT. THANK YOU.

9 Q. AND AT PARAGRAPH SEVEN OF HER DECLARATION, MS. MCALOON
10 SAYS THAT:

11 "IN THE OVERALL INMATE POPULATION,
12 APPROXIMATELY

13 18 PERCENT OF INMATES ARE IN THE MENTAL HEALTH
14 CASELOAD. IN THE RECEPTION CENTER POPULATION, AN
15 EVEN HIGHER PERCENTAGE OF INMATES ARE IN NEED OF
16 IMMEDIATE MENTAL HEALTH SERVICES AT THE TIME OF
17 ARRIVAL."

18 IS THAT CORRECT?

19 IS THAT CORRECT?

20 A. YES, BUT SHE GOES ON TO MAKE AN EVEN MORE SIGNIFICANT POINT
21 IN THE NEXT SENTENCE.

22 Q. AND WHAT IS THAT?

23 A. THE NEXT SENTENCE -- CAN I READ FROM THIS DOCUMENT?

24 Q. PLEASE.

25 A. IT SAYS:

1 "UPON ENTRY, INMATES WITH MENTAL HEALTH NEEDS
2 ARE OFTEN SEVERELY DECOMPENSATED BECAUSE THEY HAVE
3 NOT HAD ACCESS TO MENTAL HEALTHCARE RESOURCES,
4 PARTICULARLY MEDICATION MANAGEMENT, IN THE
5 COMMUNITY."

6 **Q.** AND DO YOU CONSIDER THIS TO BE AN EMPIRICAL STUDY?

7 **A.** NO.

8 **Q.** AND DID YOU EVER SPEAK TO DR. MCALOON ABOUT WHERE SHE
9 OBTAINED THIS INFORMATION?

10 **A.** NO, I DID NOT.

11 **Q.** HAVE YOU EVER SPOKEN TO HER AT ALL?

12 **A.** NO.

13 **Q.** AND YOU YOURSELF DIDN'T DO ANY STUDY BEYOND INTERVIEWING
14 CLINICIANS AT VARIOUS RECEPTION CENTERS TO DETERMINE WHETHER OR
15 NOT IT WAS, IN FACT, TRUE THAT INMATES IN RECEPTION CENTERS
16 HAVE A HIGHER PREVALENCE OF MENTAL ILLNESS THAN INMATES OTHER
17 PLACES IN THE SYSTEM.

18 **A.** AGAIN, IN EACH FACILITY I WENT TO THAT WAS A RECEPTION
19 CENTER, I SPECIFICALLY ASKED THEM NOT SO MUCH HOW IT COMPARES
20 TO THE GENERAL POPULATION. I DON'T HAVE ANY REASON TO THINK
21 THEY WOULD KNOW THAT. I ASKED THEM ABOUT THE POPULATION COMING
22 INTO THEIR FACILITY. AND UNIFORMLY THEY CONFIRMED -- NOT SO
23 MUCH EVEN THE NUMBER, BUT THE ACUITY LEVEL -- THAT PEOPLE WERE
24 COMING IN VERY MENTALLY ILL, VERY SEVERELY DECOMPENSATED.

25 AND THAT'S WHAT WE CALL "ACUITY" OR "ACUTENESS."

1 AND THAT IS EVEN MORE ESSENTIAL TO UNDERSTANDING THE
2 POLICY IN THE RECEPTION CENTERS THAN SIMPLY THE NUMBER OF
3 INDIVIDUALS THERE.

4 **Q.** BUT YOU DIDN'T DO ANY STUDY OR ASK CDCR TO DO ANY STUDY TO
5 DETERMINE WHETHER OR NOT THERE'S BEEN ANY CHANGE IN THE ACUITY
6 OF MENTALLY ILL PRISONERS ARRIVING IN THE RECEPTION CENTERS.

7 **A.** ANY CHANGE? OVER WHAT PERIOD ARE YOU REFERRING TO?

8 **Q.** ANY PERIOD OF TIME. HAVE YOU SEEN ANY STUDY THAT SAYS THAT
9 IN THE LAST FIVE YEARS PRISONERS OR PAROLEES COMING INTO THE
10 PRISON SYSTEM ARE NOW MORE MENTALLY ILL THAN THEY WERE FIVE
11 YEARS AGO?

12 **A.** I HAVE SEEN NO STUDIES TO THAT EFFECT.

13 **Q.** ARE YOU AWARE OF ANY INFORMATION THAT MENTAL HEALTHCARE
14 PROVIDED IN THE COMMUNITIES IN CALIFORNIA HAS CHANGED IN THE
15 LAST THREE YEARS?

16 **A.** I HAVE NO DATA ON THAT.

17 **Q.** YOU DID NO STUDY OF CALIFORNIA'S COMMUNITY MENTAL HEALTH
18 SYSTEM ON YOUR OWN, DID YOU, DR. PACKER?

19 **JUDGE KARLTON:** YOU'VE ASKED THAT QUESTION SEVERAL
20 TIMES, MR. BIEN.

21 I'M SORRY. I DIDN'T MEAN TO RAISE MY VOICE. EXCUSE
22 ME.

23 **BY MR. BIEN:**

24 **Q.** ARE YOU AWARE OF ANY CHANGES IN CALIFORNIA CRIMINAL LAW
25 THAT WOULD RESULT IN AN INCREASE IN THE NUMBER OF MENTALLY ILL

1 PRISONERS OR PAROLEES BEING -- ARRIVING IN RECEPTION CENTERS IN
2 CALIFORNIA?

3 **A.** I DON'T KNOW SPECIFICALLY ABOUT THE LEVEL. I SUPPOSE THE
4 REPORT FROM MARCH, 2008 FROM THE PAROLE DEPARTMENT INDICATING
5 PAROLEES RETURNING AT A RATE OF ABOUT 75 PERCENT.

6 **Q.** WE CUT OFF THE LAST PART OF YOUR ANSWER. IF YOU COULD TRY
7 THAT AGAIN.

8 **A.** I SAY THE ONLY EMPIRICAL DATA I HAVE RELATIVE TO THIS ISSUE
9 IS THE REPORT FROM THE PAROLE DEPARTMENT MARCH, 2008 INDICATING
10 THAT APPROXIMATELY 75 TO 77 PERCENT OF THE MENTALLY ILL INMATES
11 WHO WERE PAROLED ARE RECIDIVATING WITHIN ONE YEAR.

12 **Q.** AND YOU DON'T KNOW IF THAT WAS THE SAME OR DIFFERENT THAN
13 THE RATES FOUR YEARS AGO, DO YOU?

14 **A.** I DO NOT.

15 **Q.** NOW, IN YOUR DECEMBER REPORT, DR. PACKER, YOU SAID
16 OVERCROWDING SIGNIFICANTLY CONTRIBUTES TO THE DIFFICULTIES IN
17 PROVIDING ADEQUATE MENTAL HEALTH SERVICES, BUT IS NOT THE
18 PRIMARY CAUSE OF THE PROBLEMS. THAT'S AT PAGE EIGHT.

19 **JUDGE HENDERSON:** AND THAT'S WHAT HE SAID, ACCORDING
20 TO MY NOTES. WHAT ARE WE ADDING HERE?

21 **MR. BIEN:** I'M JUST ORIENTING HIM. I APOLOGIZE,
22 YOUR HONOR.

23 **JUDGE HENDERSON:** LET ME -- WE'RE SUFFERING UP HERE.
24 IN JUDGES' SCHOOL I REMEMBER A WISE OLD JUDGE TOLD MY CLIENTS:

25 "YOU KNOW, THERE WILL BE TIMES YOU FEEL LIKE

1 YOU'RE BEING PUNISHED FOR LISTENING CAREFULLY."

2 AND WE'VE BEEN LISTENING CAREFULLY AND --

3 **JUDGE KARLTON:** I CAN'T IMAGINE WHAT YOU'RE DOING.

4 **JUDGE HENDERSON:** -- MY DEPUTY HAS JUST GIVEN ME A
5 NOTE THAT YOU HAVE ABOUT AN HOUR LEFT.

6 **JUDGE KARLTON:** OH, MY GOODNESS.

7 **JUDGE HENDERSON:** AND I HONESTLY CAN'T UNDERSTAND
8 WHAT YOU'RE GOING TO GIVE US. BUT YOU SHOULD KNOW THAT. YOU PUT
9 ON YOUR OWN CASE, BUT YOU SHOULD KNOW.

10 **MR. BIEN:** I WILL WRAP UP.

11 **JUDGE HENDERSON:** WELL, WHY DON'T WE TAKE A RECESS
12 NOW?

13 **JUDGE KARLTON:** GOOD IDEA.

14 **JUDGE HENDERSON:** ACTUALLY, I THINK ALL THREE OF US
15 NEED A RECESS, WHETHER YOU DO OR NOT.

16 (RECESS WAS TAKEN.)

17 **JUDGE HENDERSON:** WELCOME BACK. YOU MAY PROCEED
18 WHEN YOU'RE READY, COUNSEL.

19 **MR. BIEN:** YOUR HONOR, I DIDN'T GO TO JUDGE'S
20 SCHOOL, BUT I'M GOING TO SIT DOWN NOW.

21 **JUDGE HENDERSON:** OKAY. THANK YOU, COUNSEL.
22 REDIRECT? DOES CCPOA HAVE ANY QUESTIONS OF THIS WITNESS?

23 **MS. LEONARD:** NO FURTHER QUESTIONS, YOUR HONOR.

24 **JUDGE HENDERSON:** THANK YOU. REDIRECT? LET'S -- WE
25 HAVE A WITNESS SCHEDULED FOR 12:00, AND I'M NOT QUITE SURE WHAT

1 THAT DOES TO LUNCH. IT'S 11:30 NOW. HOW LONG WILL THE NEXT
2 WITNESS TAKE, YOUR BEST ESTIMATE?

3 **MS. TILLMAN:** DR. THOMAS? IF YOU'RE TALKING ABOUT
4 MR. POWERS, THE CROSS-EXAMINATION, ABOUT 15 MINUTES.

5 **JUDGE HENDERSON:** OKAY. OKAY. PROCEED.

6 **REDIRECT EXAMINATION BY MS. TILLMAN**

7 **BY MS. TILLMAN**

8 **Q** DR. PACKER, YOU'VE SPOKEN A BIT ABOUT THE FACT THAT THE
9 DEPARTMENT OF CORRECTIONS AND REHABILITATION RELIES UPON PAPER
10 RECORDS ON PATIENT CARE; IS THAT CORRECT?

11 **A** YES, THAT'S CORRECT.

12 **Q** HAVE YOU FORMED ANY OPINION AS TO WHETHER A TRANSITION AWAY
13 FROM PAPER RECORDS AND UP TO TOWARDS COMPUTER-ASSISTED
14 TECHNOLOGY FOR RECORDKEEPING WOULD ASSIST IN MAINTAINING THE
15 PATIENT RECORDS IN A TIMELY FASHION?

16 **A** YES, I HAVE.

17 **Q** AND WHAT IS THAT OPINION?

18 **A** A MOVING TO AN ELECTRONIC MEDICAL RECORD SYSTEM WOULD
19 GREATLY ENHANCE THE ABILITY TO HAVE THOSE RECORDS AVAILABLE TO
20 CLINICIANS IN A TIMELY MANNER AND TO ALLOW THOSE RECORDS TO BE
21 USED IN CONTINUITY OF CARE.

22 **Q** DOCTOR, AT PAGE 22 OF YOUR DECEMBER 2007 REPORT?

23 **A** YES.

24 **Q** LOOKING AT PARAGRAPH 6, YOU MENTION THAT DATA WAS REVIEWED,
25 INCLUDING SUICIDE REPORTS FROM 2005 AND 2006. CAN YOU INFORM

1 THE COURT WHAT SUICIDE REPORTS YOU REVIEWED IN PREPARING YOUR
2 OPINION IN THAT PORTION OF YOUR REPORT?

3 **A** YES. IN EACH YEAR A VERY THOROUGH REPORT WAS COMPLETED BY
4 DR. RAYMOND PATTERSON, AND THIS INCLUDED A SPECIFIC DISCUSSION
5 OF EACH AND EVERY SUICIDE IN THE SYSTEM, WHETHER IT WAS
6 PREVENTABLE, WHAT FACTORS WERE THAT SEEMED TO BE IMPACTING ON
7 EACH OF THOSE SUICIDES.

8 **Q** ARE YOU AWARE THAT DR. PATTERSON IS A COURT-APPOINTED
9 MONITOR IN THE COLEMAN CASE?

10 **A** YES, I AM.

11 **Q** AND SO AT THAT PART OF YOUR REPORT WHERE YOU MENTION THAT
12 THE DATA DOES NOT SUGGEST THAT A HIGHER STAFF-INMATE RATIO
13 WOULD SIGNIFICANTLY IMPACT ON THE NUMBER OF SUICIDES, ARE YOU
14 REFERRING AGAIN TO THE DATA IN DR. PATTERSON'S ANNUAL SUICIDE
15 REPORTS?

16 **A** YES.

17 **Q** AND WHEN YOU MENTION IN THE NEXT LINE THAT DEFICIENCIES
18 WERE NOTED IN ROOM DESIGN, THAT IS FAILURE TO MAKE THE ROOMS
19 MORE SUICIDE RESISTANT BY REMOVING GRATES, FOR EXAMPLE, FAILURE
20 TO FOLLOW POLICY AND LACK OF FOLLOW THROUGH ON THE
21 INSTITUTIONAL LEVEL TO PREVIOUS RECOMMENDATIONS, AGAIN, ARE YOU
22 CITING TO AND RELYING UPON DR. PATTERSON'S FINDINGS AT THAT
23 PORTION OF YOUR REPORT?

24 **A** YES, I AM.

25 **Q** AND SO YOUR STATEMENT IN YOUR REPORT, QUOTE:

1 "THESE ARE ISSUES THAT NEED TO BE ADDRESSED TO
2 REDUCE SUCCESSFUL SUICIDES IN THE PRISON AND ARE
3 INDEPENDENT OF THE SIZE OF THE PRISON AND COLEMAN
4 CLASS POPULATION."

5 END QUOTE.

6 IS THAT STATEMENT BASED UPON THE FINDINGS MADE BY
7 DR. PATTERSON IN HIS ANNUAL SUICIDE REPORT?

8 **A** YES. MY STATEMENT NOW --

9 **JUDGE KARLTON:** THANK YOU. I WAS ABOUT TO SAY THAT.
10 THIS IS YOUR CONCLUSION BASED UPON YOUR REVIEW OF ALL THE
11 RECORDS, CORRECT, SIR?

12 **THE WITNESS:** THAT'S CORRECT. THE PREVIOUS SENTENCE
13 I THINK THAT QUOTED -- WAS DR. PATTERSON'S QUOTE. THIS
14 SENTENCE IS MY QUOTE THAT I ARRIVED AT BASED ON THE DATA.

15 **MS. TILLMAN:** THANK YOU. WE ARE GETTING A BIT OF
16 FEEDBACK. IS IT SOMETHING --

17 **THE CLERK:** DOES ANYONE HAVE PDA'S WITH YOU? CELL
18 PHONES WILL TRIGGER THAT. NOTHING?

19 **BY MS. TILLMAN**

20 **Q** DOCTOR, LOOKING AT YOUR AUGUST 2008 REPORT AT PAGE 3?

21 **A** YES.

22 **Q** THERE IS AN ANALYSIS OF THE RECEPTION CENTER ENHANCED
23 OUTPATIENT PROGRAMS AT TWO OF THE FACILITIES THAT YOU VISITED,
24 I BELIEVE IT WAS NORTH KERN STATE PRISON AND WASCO STATE
25 PRISON, CORRECT?

1 **A** YOU ARE TALKING ABOUT THE PARAGRAPH THAT IS HEADLINED
2 "DISCHARGE PLANNING"?

3 **Q** I'M LOOKING AT YOUR AUGUST 15TH, 2008 REPORT.

4 **A** PAGE 8, DISCHARGE PLANNING?

5 **Q** PAGE 3.

6 **A** OKAY. SORRY. YES, I HAVE PAGE 3.

7 **Q** IN REGARDS TO THE CARE FOR THE ENHANCED OUTPATIENT PROGRAM
8 INMATES AT THOSE RECEPTION CENTERS, WHAT WERE YOUR FINDINGS?

9 **A** IN AUGUST OF 2008 I LOOKED -- I VISITED THESE FUNCTIONING
10 RC EOP PROGRAMS, AND I COMMENTED THOUGH I HAD SEEN THEM IN A
11 DIFFERENT FACILITY IN MY FIRST TOUR, THEY HAD BEEN BETTER
12 DEVELOPED BY THE TIME I GOT TO THESE FACILITIES, AND THEY
13 SEEMED TO BE FUNCTIONING WELL, AT LEAST AS DESIGNED. THE
14 OFFICERS WERE AVAILABLE TO ESCORT SERVICES. THE INMATES WERE
15 GETTING THE LEVEL OF SERVICE THEY WERE SUPPOSED TO BE GETTING
16 IN THE EOP PROGRAMS.

17 **Q** WERE YOU AWARE THAT AT THE TIME OF THE WRITING OF YOUR
18 REPORT, THAT THE DEFENDANT CALIFORNIA DEPARTMENT OF CORRECTIONS
19 REHABILITATION HAD LAUNCHED A STRATEGY TO ENHANCE AND IMPROVE
20 THE QUALITY OF --

21 **JUDGE KARLTON:** MS. TILLMAN, EVEN I THINK THAT'S
22 LEADING.

23 **MS. TILLMAN:** THANK YOU, YOUR HONOR.

24 **BY MS. TILLMAN**

25 **Q** DID YOU REVIEW ANY PLANS TO IMPROVE THE CARE AT RECEPTION

1 CENTERS?

2 **A** I'M SORRY. I LOST THAT SENTENCE.

3 **Q** DID YOU REVIEW ANY PLANS TO IMPROVE THE CARE AT RECEPTION
4 CENTERS?

5 **A** I'M NOT SPECIFICALLY CLEAR. THERE WAS EARLY ON SOME
6 DOCUMENTATION ABOUT THE DEVELOPMENT OF THE RC EOP IN RESPONSE
7 TO EARLIER PROBLEMS, AND I BELIEVE THAT WAS BEFORE MY FIRST
8 VISIT. SO MY FIRST VISIT I'D ALREADY SEEN AT LEAST ONE EXAMPLE
9 OF THAT, AND BY THE TIME I CAME BACK THERE, I'D SEEN THESE
10 EXAMPLES.

11 **Q** GOING AGAIN TO YOUR DECEMBER 2007 REPORT AT PAGE 23?

12 **A** YES.

13 **Q** IN THE SUMMARY AND CONCLUSION PORTION OF THAT REPORT YOU
14 INDICATE THAT THE PRIMARY ISSUE IMPACTING SERVICE DELIVERY TO
15 THE COLEMAN CLASS IS A LACK OF SUFFICIENT RESOURCES AT THE
16 HIGHER INTENSITY LEVELS. WHAT DO YOU MEAN BY "THE HIGHER
17 INTENSITY LEVELS"?

18 **A** I WAS REFERRING SPECIFICALLY TO HIGH INTENSITY, MEANING THE
19 MOST SEVERELY DISTURBED INMATES AND THE SERVICES THAT NEEDED TO
20 BE PROVIDED TO THEM. THOSE INCLUDE THINGS SUCH AS THE
21 INTERMEDIATE CARE FACILITY, ICF, THE ACUTE TREATMENT PROGRAM,
22 INCLUDING DMH PROGRAMS. THE MENTAL HEALTH CRISIS BEDS AND THE
23 EOP -- SPECIAL EOP PROGRAMMING.

24 **Q** THOSE INDIVIDUALS ARE -- LET ME STRIKE THAT.

25 IS IT YOUR OPINION THAT THOSE INDIVIDUALS WHO NEED

1 THAT TYPE OF WHAT YOU CALL HIGHER INTENSITY CARE WITHIN A
2 CORRECTIONAL SETTING WOULD ALSO NEED THAT HIGHER INTENSITY
3 LEVEL OF CARE IN A COMMUNITY SETTING IF RELEASED?

4 **A** YES.

5 **MS. TILLMAN:** THANK YOU. NOTHING FURTHER.

6 **JUDGE HENDERSON:** ANYTHING ELSE FROM DEFENDANTS?

7 MR. BIEN?

8 **MR. BIEN:** NO REDIRECT, YOUR HONOR.

9 **JUDGE HENDERSON:** OKAY. THANK YOU VERY MUCH FOR
10 BEING WITH US TODAY, DR. PACKER. YOU'RE EXCUSED AT THIS POINT,
11 AND WE'LL DISASSEMBLE THE EQUIPMENT THAT BROUGHT YOU TO US
12 HERE.

13 **THE WITNESS:** THANK YOU VERY MUCH.

14 **MS. NORMAN:** PLAINTIFFS CALL MR. POWERS FOR
15 CROSS-EXAMINATION.

16 **MS. JOHNSON:** YOUR HONORS, BRIEFLY, TO CLARIFY I
17 THINK A QUESTION YOU HAD EARLIER, MR. POWERS IS BEING BROUGHT
18 BACK TODAY FOR, I THINK, A BRIEF CROSS-EXAMINATION. WE DID
19 HAVE SCHEDULED DR. THOMAS AT NOON.

20 **JUDGE HENDERSON:** WE UNDERSTAND.

21 **JUDGE KARLTON:** WE UNDERSTAND. HOW LONG DO YOU
22 THINK YOUR CROSS-EXAMINATION IS GOING TO TAKE?

23 **MS. NORMAN:** ABOUT 15 MINUTES.

24 **JUDGE KARLTON:** WE ARE NOT TRYING TO CUT YOU OFF.

25 WE ARE TRYING TO UNDERSTAND.

1 **MS. NORMAN:** ABOUT 15 MINUTES.

2 **JUDGE KARLTON:** I HAVE ABOUT FIVE MINUTES.

3 **JUDGE REINHARDT:** AFTER THAT, IS THAT WHEN WE HAVE
4 THE WITNESS AT 12:00?

5 **JUDGE HENDERSON:** HOW LONG WILL THAT TAKE?

6 **JUDGE REINHARDT:** HOW LONG ABOUT WILL THAT WITNESS
7 TAKE?

8 **MS. JOHNSON:** HE'S GOING TO TAKE APPROXIMATELY 20,
9 30 MINUTES ON DIRECT. I'M NOT SURE, I THINK THE PLAINTIFFS
10 HAVE ABOUT AN HOUR AND A HALF FOR CROSS.

11 **MS. HARDY:** I BELIEVE, ACTUALLY, YOUR HONOR, IT WILL
12 BE 45 MINUTES TO AN HOUR.

13 **JUDGE REINHARDT:** WHAT DO WE DO ABOUT LUNCH?

14 **JUDGE HENDERSON:** LET'S START THINKING ABOUT IT
15 AFTER DIRECT. WE MAY TAKE A BREAK AFTER DIRECT.

16 **JUDGE KARLTON:** SIR, YESTERDAY I THINK I WAS SO
17 ENTHUSIASTIC ABOUT THE POSSIBILITY THAT THERE MIGHT BE SOME
18 SOLUTION TO WHAT APPEARS TO BE AN INSOLUBLE PROBLEM THAT I
19 STOPPED THINKING. AND WHEN I WENT BACK TO MY ROOM YESTERDAY A
20 COUPLE OF QUESTIONS --

21 **JUDGE REINHARDT:** CAN YOU SPEAK UP?

22 **JUDGE KARLTON:** I'M SORRY. A COUPLE OF QUESTIONS
23 OCCURRED TO ME.

24 ESTABLISHING FUNDING FOR A PROGRAM THAT WOULD
25 PREVENT PEOPLE FROM GETTING INTO PRISONS, FROM YOUR POINT OF

1 VIEW, APPEARS TO BE DIRECTED TO THE PROBATION DEPARTMENTS OF
2 THE VARIOUS COUNTIES; IS THAT CORRECT?

3 **THE WITNESS:** NOT JUST PROBATION DEPARTMENTS BUT TO
4 COUNTIES IN GENERAL FOR PROBATION SUPERVISION, TREATMENT
5 PROGRAMS, THINGS LIKE THAT, YES, SIR.

6 **JUDGE KARLTON:** BUT PROBATION DEPARTMENTS INITIALLY
7 DON'T DECIDE WHETHER OR NOT PEOPLE GO TO PRISON. JUDGES DO.

8 **THE WITNESS:** CORRECT, SIR.

9 **JUDGE KARLTON:** AND YOU CAN RECOMMEND AND SAY, WE'VE
10 GOT ALL THESE OTHER PROGRAMS, BUT THE JUDGES WILL ULTIMATELY
11 DECIDE WHETHER OR NOT THEY'RE SENDING PEOPLE TO PRISON OR NOT,
12 AND THAT'S INDEPENDENT OF ANYTHING THAT THE PROBATION
13 DEPARTMENTS HAVE?

14 **THE WITNESS:** I THINK THAT'S ACCURATE UNTIL THEY'RE
15 PLACED ON PROBATION.

16 **JUDGE KARLTON:** I UNDERSTAND, BUT WHETHER THEY GET
17 PLACED ON PROBATION IS OUT OF YOUR HANDS?

18 **THE WITNESS:** ABSOLUTELY, YES.

19 **JUDGE KARLTON:** SO YOUR PROGRAM PRESUPPOSES A LEVEL
20 OF COOPERATION WITH A STRATA OF INDEPENDENT JUDICIAL OFFICERS
21 WHICH WE COULDN'T POSSIBLY CONTROL?

22 **THE WITNESS:** WELL, I WOULDN'T SAY IT PRESUPPOSES.
23 I THINK WHAT WE'RE DISCUSSING, OR THE MODEL THAT HAS BEEN USED
24 PREVIOUSLY AND WE BELIEVE COULD BE USED IN THE FUTURE,
25 PRESUPPOSES THE EXISTING STRUCTURE THAT WE HAVE NOW, THE

1 EXISTING PROBATIONERS THAT WE HAVE NOW. OBVIOUSLY, IF COURTS
2 REFUSE TO PUT ANYONE ON PROBATION, WE COULDN'T HAVE ANY
3 CLIENTS.

4 **JUDGE KARLTON:** WE ARE NOT TALKING ABOUT ANY. WE
5 ARE TALKING ABOUT VERY SUBSTANTIAL NUMBERS OF PEOPLE.

6 **THE WITNESS:** WE HAVE 300,000 PEOPLE ON PROBATION
7 RIGHT NOW, YOUR HONOR, IN THE STATE. SO THERE IS A SIGNIFICANT
8 POPULATION CURRENTLY EXISTING.

9 **JUDGE KARLTON:** THE QUESTION FROM OUR POINT OF VIEW
10 IS DEVELOPING AN EFFECTIVE SET OF ORDERS THAT WILL, ON THE ONE
11 HAND, PROTECT SOCIETY AND, ON THE OTHER, ENSURE THAT THERE'S
12 CONSTITUTIONALLY SUFFICIENT PROVISION OF CARE. AGAIN, I'M -- I
13 JUST WANT TO BE CLEAR. JUDGES SENTENCE, PROBATION OFFICERS
14 ONLY RECOMMEND.

15 **THE WITNESS:** CORRECT.

16 **JUDGE KARLTON:** AND WE WOULDN'T HAVE ANY POWER OVER
17 WHAT THE JUDGES DO.

18 **THE WITNESS:** ABSOLUTELY.

19 **JUDGE KARLTON:** AND LET ME ASK, I DON'T KNOW ABOUT
20 THE STATE SYSTEM. I HAVEN'T BEEN A STATE JUDGE FOR OVER 30
21 YEARS. BUT AT LEAST IN THE FEDERAL SYSTEM THERE ARE MANDATORY
22 SENTENCES. DOES THE STATE HAVE A SIMILAR SET OF --

23 **THE WITNESS:** YES AND NO. MOST SENTENCES HAVE --
24 VIRTUALLY ANY PENAL CODE VIOLATION WITH THE EXCEPTION OF A FEW,
25 THERE IS AN ELIGIBILITY PROVISION FOR PROBATION. SOME YOU ARE

1 PRESUMPTIVELY ELIGIBLE. SOME YOU ARE PRESUMPTIVELY INELIGIBLE
2 WITHOUT A FINDING OF THE JUDGE THAT THERE'S SOME SPECIAL
3 CIRCUMSTANCES. THERE ARE SOME YOU ARE NOT ELIGIBLE FOR
4 PROBATION ON -- IT'S, DEPENDING ON THE CIRCUMSTANCES, FIRST
5 OFFENSE, SECOND OFFENSE, THINGS LIKE THAT.

6 SO MANY CASES, YES, THERE IS ELIGIBILITY FOR
7 PROBATION.

8 **JUDGE KARLTON:** AND IN ADDITION TO THAT PROBLEM, IS
9 THERE, AS THERE IS IN THE FEDERAL SYSTEM, CERTAIN CRIMES WHICH
10 THERE ARE MANDATORY MINIMUM SENTENCES WHICH MUST BE SERVED?

11 **THE WITNESS:** YES.

12 **JUDGE KARLTON:** OKAY. ALL OF THAT WOULD SEEM TO
13 ME -- AS ENTHUSIASTIC AS I WAS YESTERDAY WHEN I WALKED AWAY --
14 TO CREATE A SIGNIFICANT PROBLEM IN IMPLEMENTING AN ORDER THAT
15 WOULD EFFICIENTLY MEET OUR ENDS.

16 **THE WITNESS:** I GUESS IF YOU WERE TO LOOK AT YOUR
17 CURRENT STATE PRISON POPULATION, YOUR HONOR, AND PARCEL THEM
18 OUT AS TO THOSE WHO HAVE BEEN ON PROBATION VERSUS THOSE WHO ARE
19 OR WERE INELIGIBLE FOR PROBATION, THE NUMBERS THAT ARE
20 INELIGIBLE OR WHO WERE NEVER TOUCHED BY PROBATION ARE VERY,
21 VERY SMALL IN THE STATE POPULATION OF PRISONERS.

22 AND I GUESS WHAT I WAS TRYING TO PORTRAY YESTERDAY
23 IS THAT WE TOUCH VIRTUALLY ALL OF THOSE PRISONERS WHO THE STATE
24 CURRENTLY HAVE AT ONE TIME OR ANOTHER WERE TOUCHED BY
25 PROBATION, BY PROBATION SYSTEM, BY THE LOCAL CRIMINAL JUSTICE

1 SYSTEM.

2 WE HAVE OFFENDERS WHO -- I'LL GIVE YOU AN EXAMPLE.
3 OUR PROPOSITION 36 PROGRAM WHICH IS A SUBSTANCE ABUSE PROGRAM,
4 A DIVERSION PROGRAM FROM CUSTODY, THE AVERAGE OFFENDER IN MY
5 COUNTY HAS BEEN ARRESTED IN THAT, PRIOR TO ENTERING THE PROGRAM
6 13 TIMES, HAS MULTIPLE GRANTS OF PROBATION WHEN THEY COME
7 THROUGH OUR PROGRAM. SO THIS IS NOT A FIRST TIME TOUCHING OF
8 THE PERSON. MANY INDIVIDUALS WHO END UP IN THE STATE PRISON
9 SYSTEM HAVE MULTIPLE GRANTS OF PROBATION WHEN THEY'RE FINALLY
10 SENTENCED AND ACTUALLY DO GO TO STATE PRISON.

11 **JUDGE KARLTON:** THE NEXT PROBLEM THAT OCCURRED TO ME
12 IS THE QUESTION OF COST. OBVIOUSLY, THIS PROGRAM WILL BE
13 EXPENSIVE AND, AT THE SAME TIME, BECAUSE UNDER THE PROPOSAL WE
14 WOULDN'T BE RELEASING ANYBODY, THE STATE STILL HAS THE
15 MANDATORY DUTY OF PROVIDING SUPPORT FOR THE PRISONERS THAT ARE
16 THERE AT 40,000 BUCKS A CLIP. REALISTICALLY, THEN A STATE IS
17 GOING TO HAVE TO SAY, WE'RE GOING TO CONTINUE TO FUND THE
18 PRISONS, AT LEAST FOR THE FIRST COUPLE OF YEARS, AT A LEVEL
19 THAT MANY PEOPLE FIND DIFFICULT TO JUSTIFY NOW, AND, AT THE
20 SAME TIME, CREATE A PROGRAM WHICH HOPEFULLY SOMEDAY, GOD
21 WILLING AND THE RIVER DON'T RISE, IS GOING TO REDUCE THAT
22 POPULATION. IS THAT A FAIR ASSESSMENT?

23 **THE WITNESS:** I WOULDN'T DISAGREE WITH THE COMMENTS
24 GENERALLY IN THAT YOU PROBABLY ARE GOING TO HAVE TO FRONTLOAD
25 FOR A YEAR BEFORE YOU SEE REDUCTIONS. BUT MANY OF THE PROGRAMS

1 CAN BE BROUGHT IN FAIRLY QUICKLY LOCALLY AND IMPLEMENTED FAIRLY
2 QUICKLY, SO I THINK YOU'LL START TO SEE REDUCTIONS AFTER YEAR
3 ONE.

4 NOW, YOU WON'T GET COMPLETE, BUT YOU WILL START TO
5 SEE A REDUCTION IN COST SAVINGS AFTER 12 MONTHS. AT 18 MONTHS
6 IT WILL PROBABLY START TO GET CLOSE TO BREAKING EVEN. I'D SAY
7 TWO YEARS OUT YOU ARE -- I WOULD BE PRETTY CONFIDENT IN SAYING
8 THE STATE WILL BEGIN TO SEE SOME COST SAVINGS THERE.

9 JUDGE KARLTON: AND, AT THE SAME TIME, THE PEOPLE
10 WHO ARE STILL IN PRISON ARE SUFFERING AN UNCONSTITUTIONAL
11 STANDARD OF CARE. THAT'S PART OF THE PROBLEM.

12 THE WITNESS: THAT'S NOT MY -- THAT IS NOT MY CALL.

13 JUDGE KARLTON: BUT THAT'S OUR PROBLEM.

14 THE WITNESS: RIGHT, RIGHT. I UNDERSTAND THAT.

15 CROSS-EXAMINATION BY MS. NORMAN

16 BY MS. NORMAN

17 Q GOOD MORNING, MR. POWERS.

18 A GOOD MORNING.

19 Q AS YOU KNOW, I'M SARA NORMAN FROM THE PRISON LAW OFFICE.

20 A YES, MA'AM.

21 Q JUST TO FOLLOW UP WITH A FEW QUESTIONS TO FOLLOW UP WHAT
22 JUDGE KARLTON WAS ASKING ABOUT, YOU SAID YOU ALREADY HAVE ABOUT
23 300,000 PEOPLE UNDER YOUR JURISDICTION IN THE PROBATION
24 DEPARTMENT IN STANISLAUS -- STATEWIDE. I'M SORRY.

25 A IN THE STATE.

1 Q THREE HUNDRED THOUSAND PEOPLE STATEWIDE, AND A LOT OF THOSE
2 PEOPLE, MANY, MANY, MANY THOUSANDS OF THOSE PEOPLE, WILL GO
3 BACK TO STATE PRISON; IS THAT RIGHT?

4 A I DON'T KNOW ABOUT GO BACK. MANY OF THEM HAVEN'T GONE YET.

5 Q MANY OF THEM WILL END UP IN STATE PRISON?

6 A MANY OF THEM AT SOME POINT WILL END UP IN THE STATE PRISON
7 SYSTEM, YES.

8 Q THAT'S -- THAT'S OFTEN REFERRED TO AS GRADUATING UP, ISN'T
9 IT?

10 A THAT'S WHAT I REFER TO IT AS, YES.

11 Q AND IF YOU HAD MORE RESOURCES TO FUND PROGRAMS AT THE
12 COUNTY LEVEL, FEWER OF THOSE PRISONERS -- I'M SORRY -- FEWER OF
13 THOSE PROBATIONERS WOULD GRADUATE UP TO THE STATE PRISON
14 SYSTEM; ISN'T THAT RIGHT?

15 A CORRECT.

16 Q YOUR ESTIMATE IS THAT ACROSS THE STATE, IF YOU HAD MORE
17 PROGRAMS, YOU'D HAVE 20- TO 25,000 FEWER PRISON COMMITMENTS A
18 YEAR; IS THAT RIGHT?

19 A YES. I GUESS I WOULD QUALIFY THAT BY SAYING ONCE YOU GET
20 EVERYTHING IN PLACE -- KIND OF MY CONVERSATION WITH THE JUDGE
21 HERE. ON DAY ONE, NO. BUT WHEN WE GET UP TO DOING THIS THE
22 WAY WE BELIEVE IT CAN BE DONE, YES, THAT WOULD BE MY
23 PROFESSIONAL ESTIMATE.

24 Q OKAY. SHIFTING GEARS, AB 900, THE STATE'S PRISON BUILDING
25 BILL?

1 **A** YES, MA'AM.

2 **Q** IT'S NOT PROVING TO BE A GOOD SOLUTION TO THE OVERCROWDING
3 CRISIS, IS IT?

4 **A** I CAN'T ANSWER IT. I MEAN, IT HASN'T DONE ANYTHING YET, SO
5 I CAN'T TELL YOU WHETHER IT'S A GOOD SOLUTION AT THIS POINT OR
6 NOT BECAUSE WE DON'T HAVE ANYTHING BUILT.

7 **Q** SO THERE'S NOTHING BUILT, THERE'S BROWN -- GROUND HAS NOT
8 BEEN BROKEN ON A SINGLE PRISON BED, HAS IT?

9 **A** NOT TO MY KNOWLEDGE, NO.

10 **JUDGE KARLTON:** NOR, AS FAR AS YOU KNOW, HAS ANY
11 PLANNING BEEN DONE?

12 **THE WITNESS:** I HAVEN'T BEEN INTIMATELY INVOLVED IN
13 AB 900. TO MY KNOWLEDGE, I'M NOT AWARE OF ANY NEW BEDS BEING
14 BROUGHT ON LINE.

15 **BY MS. NORMAN**

16 **Q** AND THE STATE DOESN'T EVEN HAVE ANY MONEY TO START
17 BUILDING, DO THEY?

18 **A** AGAIN, THE FUNDING MECHANISM, YOU WOULD HAVE TO WORK THAT
19 OUT WITH THE STATE. THEY HAVE SOME MECHANISM FOR IT, AND I
20 DON'T KNOW WHERE THAT MONEY IS IN THE PROCESS. I KNOW THERE'S
21 BEEN DISCUSSION ABOUT LEGISLATIVE AUTHORITY AND THINGS LIKE
22 THAT, AND THERE'S SOME ISSUES AROUND THAT.

23 **Q** BUT, FROM YOUR PERSPECTIVE, IN LOOKING AT THE PRISON
24 OVERCROWDING AND THE SITUATION IN THE COUNTIES, YOU DON'T HOLD
25 OUT MUCH HOPE THAT THE STATE CAN BUILD ITS WAY OUT OF THE

1 OVERCROWDING CRISIS, DO YOU?

2 **A** I DON'T SEE BUILDING AS A TOTAL SOLUTION TO THIS ISSUE, NO.

3 **Q** ARE YOU FAMILIAR WITH THE BRIDGING PROGRAM IN CDCR?

4 **A** I'VE HEARD OF IT, BUT JUST -- HAVE TO REFRESH MY MEMORY.

5 **Q** SO IT'S A PROGRAM THAT SPEEDS UP CREDIT EARNING FOR
6 PRISONERS IN RECEPTION CENTERS; DOES THAT SOUND FAMILIAR?

7 **A** I'VE HEARD SOME DISCUSSIONS OF IT IN SOME MEETINGS. I'M
8 NOT INTIMATELY FAMILIAR WITH IT, THOUGH.

9 **MS. BARLOW:** THIS IS BEYOND THE SCOPE OF DIRECT
10 TESTIMONY.

11 **MS. NORMAN:** THIS IS ABOUT EARLY RELEASE AND CREDIT
12 EARNING POTENTIAL WITHIN THE DEPARTMENT OF CORRECTIONS, AND
13 MR. POWERS TALKED ABOUT DR. AUSTIN'S PROPOSALS TO HAVE CREDIT
14 REFORM IN THE PRISON SYSTEM WHICH WOULD DECREASE LENGTH OF
15 STAY.

16 **JUDGE HENDERSON:** PROCEED.

17 **BY MS. NORMAN**

18 **Q** SO ARE YOU AWARE -- YOU SAID YOU ARE SOMEWHAT FAMILIAR WITH
19 THE BRIDGING PROGRAM. ARE YOU AWARE IT IS CURRENTLY IN
20 EXISTENCE?

21 **A** I'VE HEARD IT IS IN EXISTENCE, YES.

22 **Q** AND YOU'VE HEARD IT ALLOWS PRISONERS IN RECEPTION CENTERS
23 TO EARN INCREASED TIME CREDITS AGAINST THEIR RELEASE?

24 **A** FRANKLY, I WAS NOT -- I WAS NOT -- I'M NOT AWARE OF THE
25 MECHANISM THAT THEY USE TO AWARD THE CREDITS OR HOW THEY'RE

1 COMPUTED OR ANYTHING LIKE THAT. I JUST KNOW GENERALLY IT'S A
2 CREDIT-BASED PROGRAM.

3 Q ARE YOU AWARE THAT IT INVOLVES INCREASED CREDIT EARNING AT
4 THE RECEPTION CENTER STAGE?

5 A I GUESS, YEAH, THAT WOULD BE A FAIR STATEMENT.

6 Q OKAY. DO YOU KNOW HOW LONG THE BRIDGING PROGRAM HAS BEEN
7 IN EXISTENCE?

8 A NOT A CLUE, MA'AM.

9 Q OKAY. DO YOU KNOW WHAT IMPACT THE BRIDGING PROGRAM
10 ENHANCED CREDIT EARNING ABILITY FOR SOME PRISONERS -- DO YOU
11 KNOW WHAT IMPACT THAT HAS HAD ON PUBLIC SAFETY?

12 A NO, I DO NOT, MA'AM.

13 Q OR ON THE ADMINISTRATION OF LOCAL CRIMINAL JUSTICE SYSTEMS?

14 A NO, I DO NOT.

15 Q AND HAVE YOU -- I THINK I KNOW THE ANSWER TO THIS. HAVE
16 YOU REQUESTED ANY ADDITIONAL RESOURCES TO DEAL WITH THE EFFECTS
17 OF THE BRIDGING PROGRAM ON YOUR COUNTY?

18 A BECAUSE OF THE BRIDGING PROGRAM. NO.

19 Q OKAY. AND CPOC, THAT'S THE STATEWIDE CHIEF PROBATION
20 OFFICERS ASSOCIATION, OF WHICH YOU ARE THE PRESIDENT, RIGHT?

21 A YES, MA'AM.

22 Q HAS CPOC TAKEN ANY STEPS TO STUDY THE EFFECTS OF THE
23 BRIDGING PROGRAM?

24 A NO, MA'AM.

25 Q OR ADVOCATE ANY CHANGES IN THE PROGRAM?

1 **A** NO, NOT TO MY KNOWLEDGE.

2 **Q** YOU'VE READ DR. AUSTIN'S REPORTS, RIGHT?

3 **A** YES, I HAVE.

4 **Q** AND DR. AUSTIN CONCLUDES THAT LENGTH OF STAY IN PRISON DOES
5 NOT AFFECT RECIDIVISM RATES, DOESN'T HE?

6 **A** THAT'S ONE OF HIS STATEMENTS, YES.

7 **Q** DO YOU HAVE ANY BASIS TO DISAGREE WITH THAT CONCLUSION?

8 **A** NO. NOT STRICTLY THAT STATEMENT, NO.

9 **Q** OKAY. SO THEN IF LENGTH OF STAY IN PRISON DOES NOT AFFECT
10 RECIDIVISM RATES, THEN RELEASING PRISONERS A FEW MONTHS EARLY
11 WOULDN'T HAVE ANY EFFECT ON THEIR RATE OF REARREST OR
12 REOFFENSE, WOULDN'T IT?

13 **A** REPEAT THAT.

14 **JUDGE HENDERSON:** BEYOND HIS TESTIMONY THAT IT GIVES
15 HIM 60 MORE DAYS TO DO SOMETHING THAT THEY MIGHT BE INCLINED TO
16 DO. YOU MEAN BEYOND THAT?

17 **BY MS. NORMAN**

18 **Q** WHAT I'M TRYING TO GET AT IS IF THE RECIDIVISM RATE REMAINS
19 THE SAME, THEN THE RATE OF REOFFENSE REMAINS THE SAME. SO
20 PEOPLE ARE AS LIKELY TO REOFFEND IF THEY'RE RELEASED A FEW
21 MONTHS EARLIER THAN IF THEY ARE RELEASED A FEW MONTHS LATER?

22 **A** ASSUMING ALL THINGS BEING EQUAL WITH RESPECT TO LACK OF
23 PROGRAMMING AND STUFF LIKE THAT, IF WE'RE JUST TALKING ABOUT
24 LENGTH OF STAY, YEAH, YOU COULD MAKE THAT ASSUMPTION.

25 **Q** OKAY. SO WE'RE TALKING ABOUT THE SAME POPULATION OF

1 PEOPLE, RIGHT, JUST A QUESTION OF WHETHER THEY GET OUT IN
2 JANUARY OR IN MARCH, RIGHT?

3 **A** YES, MA'AM.

4 **Q** SO RELEASING THEM EARLY MIGHT CHANGE THE TIME AND THE
5 CIRCUMSTANCE OF ANY REOFFENSES, BUT IT WOULDN'T CHANGE THE
6 LIKELIHOOD THAT THEY ARE GOING TO REOFFEND, WOULD IT?

7 **A** STATISTICALLY SPEAKING, PROBABLY NOT.

8 **Q** YOU'RE AWARE THAT CDCR HAS BEEN WORKING TO REFORM THE
9 PAROLE VIOLATION PROCESS, RIGHT?

10 **A** YES.

11 **Q** AND THAT INCLUDES PROVIDING A RISK ASSESSMENT TO DETERMINE
12 A PAROLEE'S RISK FOR REOFFENDING TO THEN DETERMINE HOW TO
13 PROPERLY DIRECT PAROLE RESOURCES, RIGHT?

14 **A** CORRECT.

15 **Q** AND THAT WOULD ALLOW CDCR TO DIRECT ENHANCED PAROLE
16 RESOURCES TOWARDS THE PEOPLE WHO NEED IT MOST, RIGHT?

17 **A** THAT'S THE CONCEPT, YES.

18 **JUDGE KARLTON:** BUT THERE HAVE GOT TO BE ENHANCED
19 RESOURCES, RIGHT?

20 **THE WITNESS:** THE RESOURCES HAVE TO BE APPLIED IF
21 YOU HAVE THEM.

22 **BY MS. NORMAN**

23 **Q** THAT'S THE GENERAL IDEA?

24 **A** THAT'S THE CONCEPT.

25 **JUDGE KARLTON:** THAT'S LIKE THEY'RE PLANNING BEDS.

1 YOU KNOW, GOD WILLING AND THE RIVER DON'T RISE.

2 **BY MS. NORMAN**

3 **Q** WE'LL TALK THEORETICALLY HERE. CDCR'S PAROLE VIOLATION
4 REFORM PLANS INCLUDE A PAROLE VIOLATION MATRIX TO PROVIDE THE
5 APPROPRIATE CONSEQUENCE FOR PAROLE VIOLATORS, RIGHT?

6 **A** TO PROVIDE A CONSEQUENCE, YEAH. I THINK SOME WOULD DISPUTE
7 WHETHER IT IS AN APPROPRIATE CONSEQUENCE OR NOT.

8 **Q** SO THE MATRIX LOOKS AT A DIFFERENT RANGE OF BEHAVIORS, A
9 RANGE OF CONSEQUENCES, AND TRIES TO MATCH UP THE RIGHT --

10 **A** A DECISION MAKING TOOL, YES.

11 **Q** YOU SUPPORT REFORMS LIKE THIS, DON'T YOU?

12 **A** I SUPPORT EVIDENCE-BASED PRACTICES, YES.

13 **Q** AND SO IF THESE REFORMS ARE DONE CONSISTENT WITH
14 EVIDENCE-BASED PRACTICES, THEN YOU WOULD THINK THAT THEY SHOULD
15 BE EFFECTIVE, RIGHT?

16 **A** AS LONG AS THEY'RE BASED ON GOOD RESEARCH, YES.

17 **Q** OKAY. AND IF SUCH PAROLE VIOLATION REFORMS ARE DONE
18 CONSISTENT WITH THE RESEARCH, IF THEY ARE DONE RIGHT, THEY KEEP
19 PEOPLE OUT OF PRISON WHO DON'T NEED TO BE THERE, DON'T THEY?

20 **A** I THINK THE QUESTION -- AND YOU'RE PROBABLY GOING TO TELL
21 ME I'M NOT BEING RESPONSIVE, THE QUESTION IS DOES IT HAVE A
22 NEGATIVE OR POSITIVE IMPACT ON PUBLIC SAFETY. THAT'S REALLY
23 WHAT YOU NEED TO USE TO GUIDE YOUR DECISION MAKING. IF IT ALSO
24 HAS A BENEFICIAL IMPACT ON PAROLE REVOCATIONS, THE NUMBER, THE
25 SEVERITY, HOW MANY END UP GOING BACK INTO CUSTODY, THEN THAT'S

1 WONDERFUL, TOO. I GUESS THAT WOULD BE MY RESPONSE TO THE
2 QUESTION.

3 **Q** SO, IN YOUR OPINION, IF THESE REFORMS ARE DONE RIGHT,
4 CONSISTENT WITH EVIDENCE-BASED PRACTICES, SHOULD THEY HAVE BOTH
5 EFFECTS, IMPROVED PUBLIC SAFETY AND REDUCE THE PRISON
6 POPULATION?

7 **A** NOT NECESSARILY. SOMETIMES IMPROVING PUBLIC SAFETY MEANS
8 INCAPACITATION. THEY CAN BE MUTUALLY EXCLUSIVE, BUT THEY CAN
9 ALSO RESULT IN REDUCTIONS AS WELL. SO YOU CAN HAVE ONE WITHOUT
10 THE OTHER. YOU DON'T HAVE TO HAVE BOTH. BUT YOU CAN CERTAINLY
11 IMPROVE PUBLIC SAFETY BY LOCKING SOMEBODY UP SOMETIMES. THAT'S
12 AN APPROPRIATE RESPONSE FROM A PUBLIC SAFETY PERSPECTIVE.

13 **Q** LET'S TAKE THIS A LITTLE OUT OF THE REALM OF THEORY AND
14 INTO THE CURRENT SITUATION. CURRENTLY CDCR LOCKS UP A LOT OF
15 TECHNICAL PAROLE VIOLATORS; ISN'T THAT RIGHT?

16 **A** THAT'S THE STATISTICS I'VE SEEN, YES.

17 **Q** THEY LOCK UP PAROLE VIOLATORS, TECHNICAL PAROLE VIOLATORS
18 AT A TREMENDOUS RATE, DON'T THEY?

19 **A** WELL, THE STATISTICS SAY YES, THERE ARE A LOT. NINETY
20 THOUSAND A YEAR, I BELIEVE, PAROLE VIOLATORS ARE ADMITTED BACK
21 INTO THE FACILITY, OUT OF THE 140,000D ADMISSION. SO, OFF THE
22 TOP OF MY HEAD, I CAN'T RECALL HOW MANY OF THEM ARE FOR -- I
23 GUESS THEY ARE ALL TECHNICAL VIOLATORS, BUT MANY -- YOU CAN
24 ARGUE WHETHER THEY COMMITTED NEW CRIMES AND THEY ARE BEING
25 RECOMMITTED ON VIOLATIONS FOR EXPEDIENCE AND OTHER ISSUES

1 REASONS.

2 **JUDGE HENDERSON:** I'M SORRY. DID YOU SAY OF 140,000
3 ADMITTED EACH YEAR, 90,000 OR SO ARE TECHNICAL, WHATEVER THAT
4 MEANS?

5 **THE WITNESS:** WELL, THEY'RE PAROLE. THEY'RE IN
6 FOR -- THEY GET PLACED BACK IN FOR PAROLE VIOLATIONS.

7 **JUDGE HENDERSON:** PAROLE VIOLATIONS?

8 **BY MS. NORMAN**

9 **Q** YOU DON'T THINK THAT ALL TECHNICAL PAROLE VIOLATIONS SHOULD
10 BE -- ALL TECHNICAL PAROLE VIOLATORS SHOULD AUTOMATICALLY BE
11 PUT IN PRISON, DO YOU?

12 **A** WELL, NO. NO, I WOULDN'T SAY THAT'S THE CASE.

13 **Q** SO, IN FACT, PUTTING SOME -- FOR SOME TECHNICAL PAROLE
14 VIOLATORS, PUTTING THEM BACK IN PRISON CAN ACTUALLY BE VERY
15 DISRUPTIVE TO THEIR LIVES AND THE COMMUNITIES IN WHICH THEY'RE
16 LIVING; ISN'T THAT RIGHT?

17 **A** CORRECT. IF I STATED -- I DIDN'T MEAN TO MISSTATE THAT
18 EVERYBODY WHO IS A TECHNICAL PAROLE VIOLATER GOES TO PRISON,
19 BECAUSE THAT'S CERTAINLY NOT THE CASE. THERE ARE 90,000 WHO
20 DO, BUT THERE ARE CERTAINLY MANY MORE TECHNICAL PAROLE
21 VIOLATIONS WHO DON'T GO TO PRISON.

22 **Q** SO PAROLE VIOLATION REFORM THAT WOULD HAVE THE EFFECT OF
23 REDUCING THE NUMBER OF TECHNICAL PAROLE VIOLATORS WHO RETURN TO
24 PRISON WHO WOULD NOT BE BENEFITED BY A RETURN TO PRISON, IF
25 THOSE NUMBERS ARE REDUCED, WOULD THAT BE -- WOULD YOU SUPPORT

1 THAT KIND OF REFORM?

2 **A** I APOLOGIZE. YOU ARE GOING TO HAVE TO REPEAT THAT
3 QUESTION.

4 **Q** YOU KNOW, I THINK I'M NOT.

5 **A** I LOST TRACK.

6 **Q** I LOST IT, TOO.

7 **A** OKAY.

8 **Q** YOU SPOKE YESTERDAY ABOUT PROVIDING SERVICES AT THE FRONT
9 END TO KEEP PEOPLE OUT OF PRISON, RIGHT?

10 **A** YES.

11 **Q** WE TALKED A LITTLE BIT ABOUT THAT WITH JUDGE KARLTON AT THE
12 BEGINNING OF THIS SESSION?

13 **A** YES.

14 **Q** SO, IN YOUR OPINION, PROVIDING EVIDENCE-BASED PROGRAMS IN
15 THE COMMUNITY CAN BOTH REDUCE THE PRISON POPULATION AND
16 INCREASE PUBLIC SAFETY, RIGHT?

17 **A** WELL, IT WON'T -- IN SOME INSTANCES, PUBLIC SAFETY IS
18 IMPROVED, BUT I GUESS WORST CASE, IT WOULDN'T MAKE IT ANY
19 WORSE.

20 **Q** OKAY.

21 **A** SO THAT WOULD BE THE FLOOR THAT I WOULD PUT THERE. I
22 WOULD -- I WOULD BE COMFORTABLE TO SAY WE WOULD NOT WANT TO
23 MAKE PUBLIC SAFETY WORSE, AND I WOULD BE COMFORTABLE WITH THAT
24 STATEMENT.

25 **Q** SO WOULDN'T YOU AGREE THAT PROVIDING SERVICES -- SO THAT'S

1 AT THE FRONT END?

2 **A** YES.

3 **Q** WOULDN'T YOU AGREE THAT PROVIDING SERVICES AT THE BACK END
4 AFTER SOMEONE HAS BEEN SENTENCED TO PRISON, PROVIDING THEM
5 SERVICES WHILE THEY'RE IN PRISON OR ON THEIR RELEASE FROM
6 PRISON, THAT CAN ALSO BE EFFECTIVE AT REDUCING RECIDIVISM?

7 **A** I'VE NEVER, NEVER ARGUED AGAINST THAT, MA'AM.

8 **Q** OKAY. SO THAT MEANS THAT SUCH MEASURES, LIKE PROVIDING
9 PROGRAMS AT THE FRONT END, PROVIDING PROGRAMS AT THE BACK END
10 WOULD ALSO SERVE TO REDUCE THE PRISON POPULATION AND IMPROVE
11 PUBLIC SAFETY?

12 **A** WELL, YEAH. I THINK IT'S INEFFICIENT USE OF RESOURCES TO
13 WAIT UNTIL THEY GET THROUGH THE SYSTEM AS OPPOSED TO PUTTING
14 THEM BEFORE THEY GET INTO THE SYSTEM. PHILOSOPHICALLY, WHAT
15 YOU'RE SAYING, OR TECHNICALLY WHAT YOU'RE SAYING, YES, I WOULD
16 HAVE TO AGREE WITH, BUT I THINK IT'S A HORRIBLE AND INEFFICIENT
17 WAY TO USE THE TAXPAYER MONEY.

18 **JUDGE KARLTON:** BUT WE HAVE A WHOLE BUNCH OF PEOPLE
19 IN WHICH AT LEAST THIS MOTION SUGGESTS HAVE TO BE LEFT OUT --
20 LET OUT ONE WAY OR ANOTHER IN ORDER TO COMPLY WITH THE
21 CONSTITUTION. GIVEN THAT FACT, YOUR JUDGMENT IS THAT OVER THE
22 LONG RUN, WE WOULD BE WAY BETTER OFF PUTTING IT ON THE FRONT
23 END, BUT, REALISTICALLY, THE IMPLICATION IS IF WE FIND THAT
24 IT'S THE PRIMARY CAUSE, WE ARE GOING TO HAVE TO LET PEOPLE OUT,
25 WE OUGHT TO BE MAKING SURE THAT THERE'S ENOUGH RESOURCES TO

1 PROVIDE THEM WITH A KIND OF PROGRAMS THAT YOU THINK ARE
2 APPROPRIATE FOR THE FRONT END?

3 **THE WITNESS:** WELL, I GUESS, YOUR HONOR, I HAVEN'T
4 CONCEDED YET, AND I'M NOT WILLING TO CONCEDE AT THIS POINT,
5 THAT WE HAVE TO LET PEOPLE OUT.

6 **JUDGE KARLTON:** I UNDERSTAND.

7 **THE WITNESS:** I THINK WE CAN DO IT BY INTAKE.

8 **JUDGE KARLTON:** ASSUMING THAT WE WERE TO FIND THAT
9 THAT WAS NECESSARY -- I'M NOT SAYING WE WILL -- I'M SAYING
10 ASSUMING THAT, YOU WOULD SAY THAT WOULD NOT BE APPROPRIATE
11 WITHOUT SIGNIFICANT INCREASE IN RESOURCES TO PROGRAM THOSE
12 PEOPLE?

13 **THE WITNESS:** I WOULD SAY THAT LACKING THAT, YOU
14 HAVE A SIGNIFICANT PUBLIC SAFETY PROBLEM.

15 **JUDGE KARLTON:** FAIR ENOUGH.

16 **BY MS. NORMAN**

17 **Q** AND JUST ONE FOLLOW-UP TO THAT. FOR THE PEOPLE WHO ARE
18 ALREADY OUT OF PRISON BUT STILL UNDER THE JURISDICTION OF
19 PROBATION, PROVIDING PROGRAMS -- IT WOULD HAVE BEEN PREFERABLE
20 IF THEY HAD MORE PROGRAMS EARLIER, BUT PROVIDING THEM PROGRAMS
21 AT THIS POINT IS SOMETHING THAT COULD BE BENEFICIAL; IS THAT
22 RIGHT?

23 **MS. BARLOW:** OBJECTION, YOUR HONOR. THE PEOPLE
24 COMING OUT OF PRISON AREN'T UNDER THE JURISDICTION OF
25 PROBATION. THEY ARE UNDER THE JURISDICTION OF PAROLE.

1 **JUDGE KARLTON:** I WAS ABOUT TO SAY THIS IS SOMEWHAT
2 DIFFERENT. IS IT CORRECT THAT PAROLE IS SEPARATE FROM THE
3 PROBATION DEPARTMENT?

4 **THE WITNESS:** YES. YOU CAN BE ON PAROLE AND
5 PROBATION AT THE SAME TIME, BUT YOU WOULD BE SERVED BY
6 ESSENTIALLY TWO SEPARATE DEPARTMENTS AND AGENTS.

7 **JUDGE KARLTON:** UNLIKE THE FEDERAL SYSTEM, THERE'S A
8 PAROLE SYSTEM WITH PAROLE OFFICERS AND A WHOLE SYSTEM SET UP
9 OVER THERE?

10 **THE WITNESS:** RIGHT. CORRECT, YOUR HONOR.

11 **MS. NORMAN:** NO FURTHER QUESTIONS.

12 **THE WITNESS:** OKAY.

13 **JUDGE HENDERSON:** ANYTHING FROM CCPOA?

14 **MS. LEONARD:** NO, YOUR HONOR.

15 **JUDGE HENDERSON:** OKAY. REDIRECT?

16 **JUDGE REINHARDT:** WHILE WE ARE WAITING, I HAVE ONE.

17 **THE WITNESS:** SURE.

18 **JUDGE REINHARDT:** YOU ARE NOT SUGGESTING, ARE YOU,
19 THE PEOPLE WHO -- FORGET RELEASING THEM NOW. PEOPLE COME OUT
20 ALL THE TIME FROM PRISON. YOU ARE NOT SUGGESTING THAT THE KIND
21 OF PROGRAMS YOU'RE TALKING ABOUT WOULDN'T HELP REDUCE CRIME AND
22 INCREASE THE WELFARE OF THE COMMUNITY IF THEY WERE INSTITUTED
23 FOR ALL THOSE PEOPLE WHO JUST COME OUT ORDINARILY?

24 **THE WITNESS:** I CERTAINLY ADVOCATE YOU HAVE TO
25 PROVIDE PROGRAMS TO THOSE INDIVIDUALS AS WELL; OTHERWISE, IT IS

1 THE REVOLVING DOOR THAT WE HAVE RIGHT NOW. WHAT I WOULD SAY,
2 RESEARCH TELLS US, YOU WANT TO HAVE SEPARATE PROGRAMS FOR THEM,
3 SEPARATE AND APART FROM THE FRONT END, BECAUSE WHAT I TALKED
4 ABOUT YESTERDAY, ABOUT INTERMINGLING LOWER RISK WITH HIGHER
5 RISK. SO WHEN WE HAVE PAROLEE PROGRAMS, THOSE NEED TO BE
6 STAND-ALONE PROGRAMS FROM COUNTY LEVEL PROGRAMS.

7 **JUDGE REINHARDT:** WHETHER THEY CAME OUT PURSUANT TO
8 A RELEASE ORDER OR THEY --

9 **JUDGE KARLTON:** USE THE MICROPHONE.

10 **JUDGE REINHARDT:** I WOULD IF I COULD FIGURE IT OUT.

11 WHETHER THEY COME OUT PURSUANT TO A PRISON RELEASE
12 ORDER OR WHETHER THEY JUST COME OUT ORDINARILY AS THEY DO EVERY
13 YEAR, IT WOULD BE BENEFICIAL TO HAVE THESE PROGRAMS, AND THEY
14 WOULD REDUCE RECIDIVISM?

15 **THE WITNESS:** CERTAINLY, THEY'RE COMING OUT ONE WAY
16 OR ANOTHER. THE VAST MAJORITY ARE COMING OUT. WE KNOW THAT.
17 AND THE QUESTION IS HOW DO THEY COME OUT? DO THEY COME OUT
18 WORSE? DO THEY COME OUT THE SAME? IDEALLY, THEY COME OUT
19 BETTER.

20 **JUDGE KARLTON:** NOBODY THINKS THAT'S GOING ON.

21 **THE WITNESS:** NOT CURRENTLY, YOUR HONOR, I WOULD
22 AGREE.

23 **MS. BARLOW:** THANK YOU VERY MUCH, YOUR HONORS.

24 FIRST, I WANTED TO ADVISE THE COURT, AT ITS REQUEST,
25 WE'VE GOT COPIES OF THE PENAL CODE SECTION THAT SET FORTH THE

1 COMMUNITY CORRECTIONS ACT PROVISIONS.

2 JUDGE HENDERSON: THANK YOU, COUNSEL.

3 MS. BARLOW: JUST A HOUSEKEEPING MATTER SO THE COURT
4 HAS THOSE PROVISIONS.

5 REDIRECT EXAMINATION BY MS. BARLOW

6 BY MS. BARLOW

7 Q MR. POWERS, JUDGE KARLTON WAS ASKING YOU AT THE BEGINNING
8 OF OUR SESSION TODAY ABOUT THE FACT THAT IT'S JUDGES WHO ARE
9 SENDING PEOPLE TO PRISON, AS OPPOSED TO SENTENCING THEM TO
10 PROBATIONARY PERIODS WHEN THAT CHOICE IS MADE, AND YOU
11 INDICATED THAT THERE'S SORT OF AN OVERWHELMING SENSE THAT MOST
12 OF THOSE CASES REALLY START OUT AS PROBATIONERS; IS THAT
13 CORRECT?

14 A YES, MA'AM.

15 Q IF THE COURTS, AT LEAST IN YOUR COMMUNITY, BASED UPON
16 RECOMMENDATIONS OF PROBATION OFFICERS AND AVAILABILITY OF
17 RESOURCES, WERE AWARE THAT THERE WERE, IN FACT, BETTER
18 RESOURCES AVAILABLE TO PROBATION AND WE WERE HAVING SUCCESS AT
19 KEEPING THOSE PROBATIONERS FROM GRADUATING UP, WOULD THAT
20 AFFECT THEIR SENTENCING DECISIONS, IN YOUR VIEW?

21 A WELL, I CAN TELL YOU IT WOULD BE A TWO-PRONG ANSWER TO THE
22 QUESTION.

23 NUMBER ONE IS IF WE WERE AWARE, "WE" BEING THE
24 PROBATION OFFICER WERE AWARE THAT THERE WERE SUFFICIENT
25 RESOURCES, OUR RECOMMENDATIONS MANY TIMES WOULD BE FOR

1 PROBATION VERSUS SENDING THEM TO PRISON, AND I WILL SAY THAT
2 CERTAINLY A RECOMMENDATION FROM A PROBATION OFFICER -- FROM THE
3 PROBATION OFFICER CARRIES SIGNIFICANT WEIGHT, TYPICALLY, IN THE
4 SENTENCING DECISIONS THAT ARE MADE BY COURTS.

5 SO IF YOU END UP HAVING MORE RECOMMENDATIONS FOR
6 PROBATION BECAUSE YOU HAVE RESOURCES THAT ALLOW YOU TO WORK
7 WITH OFFENDERS MAYBE MORE INTENSELY AND FOR A LONGER PERIOD
8 THAN WHAT WE CURRENTLY HAVE, MY EXPERIENCE TELLS ME THAT YOU
9 WOULD SEE MORE PEOPLE, MORE INDIVIDUALS BEING PLACED ON
10 PROBATION IF YOU WERE BEING SENT TO PRISON.

11 **Q** BUT IF A PRISON RELEASE ORDER THAT WAS ENTERED THAT IMPOSED
12 A CAP ON THE PRISON POPULATION, YOU TESTIFIED PREVIOUSLY THAT
13 WOULD SORT OF PUSH DOWN AND HAVE THE EFFECT OF HAVING MORE
14 PROBATIONERS, CORRECT?

15 **JUDGE KARLTON:** NOT MORE PROBATIONERS, BUT MORE
16 PEOPLE THAT YOU'RE SERVING BECAUSE THEY CAN'T GET INTO PRISON.

17 **THE WITNESS:** YEAH. AND IT COULD BE EITHER/OR
18 PRACTICALLY SPEAKING. THE COURTS COULD MODIFY THEIR
19 RECOMMENDATIONS BECAUSE THEY KNOW THAT INDIVIDUALS ARE NOT
20 GOING TO GO TO PRISON -- IF THEY GIVE THEM, SAY, A 16-MONTH
21 PRISON ORDER, THEY ARE NOT GOING TO GO TO PRISON, THEY ARE NOT
22 GOING TO BE PLACED ON PAROLE. THEY MAY ON THE NATURAL BE MORE
23 INCLINED TO PLACE THEM UNDER PROBATION SUPERVISION BECAUSE AT
24 LEAST THEY WILL GET SOME SUPERVISION.

25 YOU ALSO MIGHT SEE INSTANCES WHERE THEY ARE GOING TO

1 GO AHEAD AND MAKE THE RECOMMENDATIONS, BUT THAT INDIVIDUAL,
2 BECAUSE OF THE POPULATION CAP, WILL NEVER GO TO PRISON.
3 THEY'LL SPEND THEIR TIME IN LOCAL CUSTODY AND, ESSENTIALLY, GET
4 THEIR CUSTODY CREDITS AND BE RETURNED TO COMMUNITY.

5 I'VE RUN SCENARIOS WHERE YOU COULD CONCEIVABLY HAVE
6 A SITUATION WHERE SOMEBODY GETS A LOWER TERM PRISON SENTENCE, A
7 16-MONTH PRISON SENTENCE WHO ENDS UP CONCEIVABLY DOING LESS
8 TIME THAN SOMEBODY WHO GETS A LOCAL JAIL SENTENCE. IF SOMEBODY
9 GETS A 365-DAY JAIL SENTENCE, THEY MAY ACTUALLY END UP DOING
10 MORE TIME IN CUSTODY THAN SOMEBODY WHO GETS COMMITTED TO THE
11 STATE PRISON WHEN YOU FACTOR IN THE THINGS THAT HAVE BEEN
12 PROPOSED, SUCH AS ADDITIONAL GOOD TIME CREDITS AND STUFF LIKE
13 THAT.

14 SO, IN THAT INSTANCE, YOU ACTUALLY MAY HAVE
15 INDIVIDUALS WHO WOULD BE MORE LIKELY TO PLEAD TO A PRISON
16 SENTENCE SO THEY CAN GET OUT OF CUSTODY, WHICH IN SOME WAYS
17 TURNS INTO A DOWNWARD CYCLE BECAUSE IT MAY BE A STRIKE, AND
18 THEN THE NEXT TIME THEY COME IN, YOU HAVE A CIRCUMSTANCE WHERE
19 THEY'VE ALREADY GOT A PRIOR PRISON WHICH ADDS AN ENHANCEMENT OR
20 A STRIKE. SO IN SOME WAYS IT MIGHT BE DETRIMENTAL, THE
21 ADDITIONS OF CREDITS, BECAUSE COUNTIES DON'T COMPUTE CREDITS AT
22 THE LOCAL LEVEL IN THE SAME WAY.

23 **JUDGE KARLTON:** BUT, OF COURSE, THE JUDGE, I
24 GATHER -- AND I MAY BE SPEAKING OUT OF PURE IGNORANCE -- PART
25 OF THE PLEA PROCESS IN THE STATE COURTS, AS I UNDERSTAND IT,

1 INCLUDES THE PROCESS OF STRIKING STRIKES BECAUSE A STRIKE MAY
2 COMPEL PEOPLE TO GO TO PRISON; IS THAT RIGHT?

3 **THE WITNESS:** IT MAY. AND, QUITE FRANKLY, THE
4 DISTRICT ATTORNEYS WOULD GIVE YOU MUCH BETTER INFORMATION ON
5 THAT THAN MYSELF.

6 **BY MS. BARLOW**

7 **Q** IN YOUR EXPERIENCE, IS SENDING SOMEONE TO PRISON REALLY A
8 LAST RESORT FOR MOST JUDGES FOR MOST DEFENDANTS?

9 **A** IN MY EXPERIENCE IN PROBATION, I CAN TELL YOU FROM A
10 PROBATION PERSPECTIVE IT'S THE LAST THING WE WANT TO DO, QUITE
11 FRANKLY, BECAUSE WE KNOW WHAT'S GOING TO HAPPEN WHEN THEY GO.
12 SO IT'S NOT SOMETHING THAT WE TAKE LIGHTLY, BUT WE DO IT. WE
13 HAVE NO RESOURCES FOR THE INDIVIDUAL. THEY'RE A PUBLIC SAFETY
14 THREAT. THEY'VE EXHAUSTED THEIR TIME WITH US LOCALLY. THE
15 ALTERNATIVE, THE ONLY ALTERNATIVE, QUITE FRANKLY, IS TO SEND
16 THEM TO STATE PRISON.

17 **JUDGE REINHARDT:** I WAS CURIOUS. YOU SAY, WE KNOW
18 WHAT'S GOING TO HAPPEN WHEN THEY GO. WHAT IS THAT?

19 **THE WITNESS:** THEY'RE GOING TO GET WORSE. AND I
20 PROBABLY SHOULD SAY MANY OF THEM ARE GOING TO GET WORSE, NOT
21 ALL. THAT'S NOT A FAIR STATEMENT TO MAKE, BUT MANY ARE GOING
22 TO GET WORSE.

23 **JUDGE KARLTON:** PRISONS ARE VIOLENT PLACES WHERE
24 THEY'RE ASSOCIATING WITH PEOPLE WITH MUCH HIGHER DEGREES OF
25 CRIMINALITY?

1 **THE WITNESS:** CORRECT.

2 **BY MS. BARLOW**

3 **Q** IF YOU HAVE A SITUATION WHERE YOU HAVE, AS YOU DO IN
4 STANISLAUS COUNTY, A JAIL POPULATION CAP AND THERE IS A PRISON
5 CAP, IF YOU ASSUME THAT BOTH THE CAP AT THE PRISON LEVEL IS
6 FULL AND NOBODY CAN GO THERE AND THAT THE JAIL CAP IS ALSO
7 FULL, WHAT -- DOES THAT IMPACT YOUR ABILITY TO USE LOCAL
8 CUSTODY TIME AS AN INCENTIVE TO HELP KEEP YOUR PROBATIONERS IN
9 LINE?

10 **A** WELL, CERTAINLY IF YOU DON'T HAVE THE ABILITY TO -- OR IF
11 THE COURT DOESN'T HAVE THE ABILITY TO IMPOSE SANCTIONS FOR
12 NONCOMPLIANCE, I BELIEVE THAT HAS AN IMPACT IN THE ABILITY TO
13 COMPEL PEOPLE TO ENGAGE IN TREATMENT, AND I THINK WE SEE A
14 NEGATIVE IMPACT WITH THAT, GENERALLY SPEAKING.

15 **Q** WELL, LET ME ASK IT TO YOU IN KIND OF A DIFFERENT WAY, NOT
16 THAT YOU DIDN'T ANSWER MY QUESTION, BUT AS A WAY OF GIVING A
17 SPECIFIC EXAMPLE. YOU TALKED ON CROSS ABOUT PROPOSITION 36.
18 NOW, THERE'S AN ALTERNATIVE CALLED DRUG COURT TO PROP 36,
19 RIGHT?

20 **A** YES.

21 **Q** AND, IN YOUR VIEW, YOU TESTIFIED IN YOUR DEPOSITION THAT
22 PROPOSITION 36 HAS A MUCH LOWER SUCCESS RATE THAN THE DRUG
23 COURT DOES. WHY IS THAT?

24 **A** BECAUSE THERE ARE NO SANCTIONS AVAILABLE FOR NONCOMPLIANCE
25 IN PROP 36, WHEREAS DRUG COURT HAS SANCTIONS AVAILABLE TO THE

1 COURT TO, AS I SAID, TO COMPEL COMPLIANCE AND COMPEL PEOPLE TO
2 ENGAGE IN TREATMENT.

3 **Q** AND I THINK YOU TESTIFIED IT'S ABOUT TEN TIMES MORE
4 SUCCESSFUL THAN PROP 36 IS?

5 **A** YEAH. WE HAVE ABOUT A THREE PERCENT POSITIVE DRUG TEST
6 RATE IN DRUG COURT AND ABOUT A 20 TO 25 PERCENT POSITIVE DRUG
7 TEST RATE IN PROP 36, AND IF YOU LOOK AT THE NUMBERS WHO
8 COMPLETE SUCCESSFULLY, IT'S DRAMATICALLY DIFFERENT.

9 **Q** SO WITH A CAP AT BOTH THE STATE AND THE COUNTY, DO YOU
10 THINK YOU WOULD SEE A COMPARABLE IMPACT TO THE OTHER KINDS OF
11 TREATMENT PROGRAMS YOU WANT YOUR PROBATIONERS TO DO TO BECOME
12 SUCCESSFUL, DOMESTIC VIOLENCE, ANGER MANAGEMENT AND SO ON;
13 WOULD YOU EXPECT A NEGATIVE IMPACT TO THOSE KINDS OF OUTCOMES?

14 **A** WELL, IF THERE'S MORE BODIES THAN THERE ARE TREATMENT
15 SLOTS, THEN CERTAINLY, WHICH IS WHAT WE HAVE NOW. IF THERE'S A
16 LOT MORE BODIES BECAUSE OF A BACKUP FROM THE SYSTEM, THEN
17 THERE'S MORE PEOPLE WHO AREN'T GOING TO GET TREATMENT.

18 **JUDGE REINHARDT:** ISN'T IT TRUE, ALSO, IN LIGHT OF
19 YOUR EARLIER ANSWER, IF YOU SEND THEM TO PRISON AND THEY'RE
20 GOING TO COME OUT WORSE, DOESN'T THAT ALSO INCREASE THE DANGER
21 AND THE CRIME IN THE LOCAL COMMUNITIES?

22 **THE WITNESS:** YES, IT DOES, YOUR HONOR.

23 **JUDGE KARLTON:** BACK TO BEING INSOLUBLE. GO AHEAD.

24 **BY MS. BARLOW**

25 **Q** AND MS. NORMAN ASKED YOU A QUESTION ABOUT THE REDUCTION YOU

1 THOUGHT COULD OCCUR THROUGH THE FRONT LOADING SYSTEM, AND THAT
2 WAS 20 TO 25 FEWER PRISONERS?

3 **JUDGE KARLTON:** TWENTY-FIVE PERCENT.

4 **THE WITNESS:** THOUSAND.

5 **MS. BARLOW:** HE ACTUALLY SAID 20,000 TO 25,000 FEWER
6 COMMITMENTS PER YEAR.

7 **BY MS. BARLOW**

8 **Q** THAT'S NEW COMMITMENTS, CORRECT, ULTIMATELY?

9 **A** IT'S -- ULTIMATELY, WHAT IT COMES DOWN TO, A COMMITMENT IS
10 A COMMITMENT IS A COMMITMENT. IT WOULD BE A COMBINATION OF NEW
11 COMMITMENTS, AND BECAUSE YOU'VE REDUCED NEW COMMITMENTS -- I
12 THINK I DESCRIBED IT YESTERDAY. BECAUSE YOU REDUCED NEW
13 COMMITMENTS, THEY DON'T GET A CHANCE TO BECOME THOSE PAROLE
14 VIOLATORS WHO ARE THE CHURNERS, THOSE OTHER 90,000. SO SOME
15 WILL BE NEW COMMITMENTS, AND SOME WILL BE A REDUCTION IN PAROLE
16 VIOLATIONS BECAUSE YOU ARE GOING TO HAVE FEWER PEOPLE ON
17 PAROLE, QUITE FRANKLY.

18 **Q** WITH RESPECT TO AB 900, OBVIOUSLY, THAT HASN'T BEEN FUNDED
19 YET, BUT THE CONCEPT OF THE COMMUNITY REENTRY FACILITY, DO YOU
20 THINK THAT COULD PROVIDE BENEFITS TO PUBLIC SAFETY?

21 **A** IT MAKES SENSE, YES, ANY TYPE OF AFTERCARE OR TRANSITION
22 FROM CUSTODY BACK INTO THE COMMUNITY IS GOING TO HELP FROM A
23 PUBLIC SAFETY STANDPOINT. IT'S JUST A FUNCTION OF GETTING
24 THEM.

25 **Q** SO THERE WAS A DISCUSSION ABOUT THE DIFFERENCE BETWEEN THE

1 RATES OF RECIDIVISM AND THE EARLY RELEASE AND WHAT IMPACTS THAT
2 HAS. I WANT TO ASK YOU A QUESTION ABOUT THE RATES OF
3 RECIDIVISM AND HOW THEY DIFFER BETWEEN HIGH LEVEL AND LOW LEVEL
4 OFFENDERS. WE KEEP HEARING ABOUT LOW RISK OFFENDERS, AND IF WE
5 LET LOW RISK OFFENDERS OUT, WHAT DOES LOW RISK VERSUS LOW LEVEL
6 OFFENDERS MEAN TO YOU?

7 **A** WELL, IT'S DIFFICULT TO EXPLAIN HOW AN OFFENDER WHO COMES
8 OUT OF OUR STATE PRISON SYSTEM OR OFFENDERS IN THE POPULATION
9 WITH 60 PLUS RECIDIVISM RATES WOULD BE LABELED LOW RISK. THAT
10 DOESN'T MAKE SENSE. IT DOESN'T LOGICALLY MAKE SENSE, HOW YOU
11 CAN CALL SOMEBODY A LOW RISK TYPE WHO HAS A 60 PERCENT
12 POTENTIAL TO REOFFEND WITHIN THREE YEARS.

13 NOW, LOW LEVEL, THAT SORT OF MAKES SENSE TO ME, IN
14 THAT IF YOU TAKE THE MOST SERIOUS CRIMES TO THE LESS SERIOUS
15 CRIMES, YOU CAN TALK LOW LEVEL AND TALK ABOUT PROPERTY CRIMES
16 AND THINGS LIKE THAT. I UNDERSTAND THAT. BUT IF YOU LOOK AT
17 THE RECIDIVISM RATES THAT CDCR REPORTS, THE HIGHEST RECIDIVISM
18 RATES TEND TO BE IN THOSE LOWER LEVEL OFFENDERS. SO YOU'VE GOT
19 ESSENTIALLY HIGH RISK FOR REOFFENDING IN THE LOWER LEVEL
20 POPULATION, WHICH WOULD -- WE WOULD THINK WOULD BE THE
21 POPULATION YOU WOULD LOOK AT IF YOU HAD TO RELEASE, TO
22 RELEASE --

23 **JUDGE KARLTON:** WHAT THAT SAYS IS THAT SENDING
24 PEOPLE TO PRISON IS NOT AFFECTING ANY SIGNIFICANT SAFETY
25 PROVISION FOR THE PUBLIC?

1 **THE WITNESS:** NO, NO. YES, I WOULD AGREE WITH THAT.

2 **JUDGE KARLTON:** HERE WE ARE.

3 **THE WITNESS:** WE CAN'T -- WE HAVE TO BE CAREFUL WHEN
4 WE TALK ABOUT WHO WOULD BE ELIGIBLE FOR RELEASE BECAUSE REALLY
5 IN --

6 **JUDGE KARLTON:** WHAT WE OUGHT TO BE DOING IS
7 RELEASING ALL THE SECOND DEGREE MURDERERS.

8 **THE WITNESS:** IF YOU LOOK AT RECIDIVISM RATES,
9 MANSLAUGHTER, THINGS LIKE THAT, ARE LESS THAN AUTO THEFT.
10 TO BE FAIR, YOU HAVE TO ASK WHAT THEY DO TO
11 RECIDIVATE. DOES THE AUTO THIEF GO OUT AND RECIDIVATE BY
12 STEALING CANDY BARS? DOES THE MANSLAUGHTER PERSON GO OUT AND
13 RECIDIVATE BY STEALING CANDY BARS OR COMMITTING NEW
14 MANSLAUGHTER? I DON'T WANT PEOPLE TO THINK MANSLAUGHTER
15 RECIDIVATES BY DOING ANOTHER MANSLAUGHTER. THAT'S NOT WHAT
16 WE'RE TALKING ABOUT. SOME OF THEM ARE JUST PAROLE VIOLATIONS,
17 IF YOU LOOK AT CDCR STATISTICS.

18 SO WE HAVE TO -- THIS CONCEPT OF LOW RISK IS NOT
19 REALLY AN ACCURATE DESCRIPTION OF THE CDCR POPULATION.

20 **BY MS. BARLOW**

21 **Q** SO LET'S TALK ABOUT THEM IN TERMS OF BEING LOW OFFENSE --

22 **A** LOW LEVEL.

23 **Q** LOW LEVEL OFFENDERS.

24 **A** YES.

25 **Q** OKAY. SO THEY'RE DOING PROPERTY CRIMES, FOR EXAMPLE.

1 THOSE ARE THE ONES YOU SAID THAT HAVE THE HIGHEST RECIDIVISM
2 RISK?

3 **A** TEND TO, YES.

4 **Q** DO THEY ALSO TEND TO COMMIT CRIMES AT A HIGHER RATE THAN,
5 SAY, THE SECOND DEGREE MURDERERS?

6 **A** THERE'S RESEARCH OUT THERE, AND I CAN'T GIVE IT TO YOU, BUT
7 THERE'S RESEARCH THAT HAVE LOOKED AT THE NUMBER OF OFFENSES
8 COMMITTED PRIOR TO FINALLY BEING CAUGHT AND THINGS LIKE THAT.
9 I'M NOT COMFORTABLE QUOTING ANY OF THOSE NUMBERS. IT JUST IT'S
10 HARD TO PROVE SOMETHING THAT YOU WERE NEVER CAUGHT DOING. SO
11 I'LL LEAVE THAT TO OTHER EXPERTS.

12 **Q** WELL, DR. AUSTIN HAS OPINED THAT YOU HAVE ABOUT A TEN
13 PERCENT CHANCE OF GETTING ARRESTED FOR EACH CRIME YOU COMMIT,
14 SO IF ASSUMING THAT'S TRUE AND HE ACKNOWLEDGES 13,000 CRIMES
15 FROM A RELEASE ORDER OR ARREST, RATHER, WHAT DOES THAT
16 TRANSLATE INTO IN TERMS OF THE NUMBERS OF CRIMES --

17 **MS. NORMAN:** OBJECTION. MISCHARACTERIZES THE
18 EVIDENCE.

19 **JUDGE KARLTON:** JUST ASSUME THAT WHETHER DR. AUSTIN
20 SAID THAT OR NOT.

21 **THE WITNESS:** WELL, TEN PERCENT WOULD MEAN THEY ARE
22 GOING TO COMMIT TEN CRIMES BEFORE THEY GET CAUGHT, BUT, REALLY,
23 WHAT IT MEANS IS SOME WILL COMMIT 20 CRIMES AND SOME MIGHT ONLY
24 COMMIT ONE BEFORE THEY GET CAUGHT. IT'S AN AVERAGE. SO, YOU
25 KNOW, WE KNOW THAT WE DON'T CATCH EVERYBODY WHO COMMITS A

1 CRIME. THERE ARE MANY UNSOLVED CRIMES.

2 ANECDOTALLY, IF YOU TALK TO OFFENDERS, THEY WILL
3 TELL YOU I STOLE SIX CARS BEFORE YOU CAUGHT ME, OR I HAVE BEEN
4 STEALING EIGHT CARS.

5 MY COUNTY, UNFORTUNATELY, IS THE AUTO THEFT CAPITAL
6 OF THE COUNTRY, SO AUTO THEFT IS A NEAR AND DEAR ISSUE FOR US.
7 WHEN WE TALK TO OFFENDERS ABOUT WHY THEY'RE STEALING, HOW
8 THEY'RE STEALING, HOW MANY THEY'RE STEALING, THEY TALK ABOUT
9 THINGS LIKE THAT, SO WE KNOW WE ARE NOT CATCHING EVERYBODY. WE
10 KNOW MANY ARE COMMITTING MULTIPLE, MULTIPLE CRIMES BEFORE
11 THEY'RE ARRESTED.

12 **JUDGE HENDERSON:** EXCUSE ME, COUNSEL. WE ARE
13 WORRIED ABOUT SCHEDULING AT THIS POINT. WHAT'S HAPPENING WITH
14 OUR 12:00 O'CLOCK WITNESS?

15 **MS. BARLOW:** I JUST HAVE A COUPLE MORE, YOUR HONOR.

16 **JUDGE HENDERSON:** DO YOU HAVE FURTHER RECROSS?

17 **MS. NORMAN:** JUST A FEW QUESTIONS.

18 **JUDGE HENDERSON:** THEN WHAT HAPPENS?

19 **MR. MELLO:** WE ARE OUT ON THE PHONE WITH THAT
20 WITNESS RIGHT NOW.

21 **JUDGE HENDERSON:** HE'S ON STANDBY?

22 **MR. MELLO:** YES.

23 **JUDGE REINHARDT:** I GATHER IT WOULD NOT BE A TRAGEDY
24 IF WE HAD LUNCH BEFORE WE GOT TO HIM?

25 **MR. MELLO:** I DON'T KNOW. I CAN WALK OUT AND SEE IF

1 IT'S A TRAGEDY TO DR. THOMAS OR NOT.

2 **JUDGE HENDERSON:** WOULD YOU DO THAT?

3 PROCEED.

4 **MS. BARLOW:** SO -- THANK YOU, YOUR HONOR.

5 **BY MS. BARLOW**

6 **Q** SO, IN YOUR DIRECT TESTIMONY, YOU INDICATED THAT WE WOULD
7 HAVE A GREATER WINDOW OF OPPORTUNITY FOR PEOPLE TO COMMIT THESE
8 CRIMES, MANY OF WHICH GO UNSOLVED, AND SO INSTEAD OF -- IF
9 THEY'RE OUT IN JANUARY INSTEAD OF MARCH, THERE MIGHT BE 60
10 ADDITIONAL DAYS WHERE THEY COULD BE COMMITTING HOWEVER MANY
11 AUTO THEFTS THEY MIGHT COMMIT, RIGHT?

12 **JUDGE REINHARDT:** I DON'T UNDERSTAND WHY IT'S 60
13 ADDITIONAL DAYS. MAYBE YOU CAN EXPLAIN IT TO ME. IF IT TAKES
14 THEM THREE MONTHS TO GET CAUGHT OR SIX MONTHS TO GET CAUGHT,
15 THEY'RE GOING TO GET CAUGHT 60 DAYS EARLIER, AS WELL AS START
16 60 DAYS EARLIER. SO WHAT'S THE DIFFERENCE?

17 **MS. BARLOW:** IT'S NECESSARILY TRUE, YOUR HONOR, I
18 THINK. I ONLY USE 60 DAYS BECAUSE THAT WAS THE EXAMPLE
19 MS. NORMAN GAVE.

20 **JUDGE REINHARDT:** I'M TAKING YOUR EXAMPLE. IF THESE
21 PEOPLE ARE GOING TO KEEP COMMITTING CRIMES AND THEY ARE GOING
22 TO GET CAUGHT, ONE OF OUT OF SIX TIMES -- SAY THEY START
23 COMMITTING THEM SIX MONTHS EARLIER --

24 **JUDGE KARLTON:** SIXTY DAYS, TWO MONTHS EARLIER,
25 THEY'LL GET CAUGHT TWO MONTHS EARLIER. IT'S NOT GOING TO

1 CHANGE ANYTHING. IT'S GOING TO MOVE THE CRIMES UP BY TWO
2 MONTHS.

3 **MS. BARLOW:** THAT'S NOT NECESSARILY TRUE, YOUR
4 HONOR.

5 **JUDGE REINHARDT:** I JUST SAID THAT BECAUSE I WOULD
6 LIKE SOMEBODY TO EXPLAIN WHY THAT'S NOT TRUE.

7 **THE WITNESS:** BECAUSE NOT EVERYBODY GETS CAUGHT.
8 SOME YOU WERE RIGHT, WILL GET CAUGHT 60 DAYS SOONER. SOME
9 WON'T GET CAUGHT 60 DAYS SOONER. THEY MIGHT BE BETTER THAN
10 OTHERS.

11 **JUDGE KARLTON:** BUT THAT'S TRUE WITH WHAT WE'RE
12 DOING TODAY.

13 **THE WITNESS:** I UNDERSTAND.

14 **JUDGE KARLTON:** JUDGE REINHARDT'S QUESTION IS REALLY
15 CRITICAL TO WHAT WE'RE TRYING TO UNDERSTAND. WE CAN DEAL WITH
16 AVERAGES BECAUSE THAT'S ALL WE CAN DEAL WITH. IS THERE ANY
17 SIGNIFICANCE THAT YOU CAN SEE BY VIRTUE OF AN EARLY RELEASE,
18 THEY GET CAUGHT OR THEY DON'T GET CAUGHT, JUST THE WAY THEY GET
19 CAUGHT OR DON'T GET CAUGHT, IF WE RELEASE THEM 60 DAYS LATER?

20 **THE WITNESS:** WHEN YOU SAY "ANY SIGNIFICANCE," I'M
21 NOT SURE I UNDERSTAND THE QUESTION, YOUR HONOR.

22 **JUDGE KARLTON:** I DON'T KNOW HOW ELSE TO PUT IT. IN
23 THE LONG RUN, DOES IT MAKE ANY DIFFERENCE TO PUBLIC SAFETY IF
24 WE RELEASE THEM 60 DAYS EARLIER BECAUSE EITHER THEY'LL GET
25 CAUGHT OR THEY WON'T GET CAUGHT JUST AS IF THEY WERE RELEASED

1 WHEN THEY WERE DUE? IS THAT WRONG OR IS THAT RIGHT?

2 **THE WITNESS:** THERE IS -- I GUESS THERE'S TWO PARTS
3 HERE. NUMBER ONE IS YOU'VE ALLOWED THEM TO COMMIT A CRIME 60
4 DAYS EARLIER, ON AVERAGE 60 DAYS EARLIER THAN THEY WOULD HAVE.
5 THAT GOES BACK TO THE INCAPACITATION PART OF THIS. THE LONGER
6 YOU INCAPACITATE, THE LONGER THEY DON'T COMMIT A CRIME. THE
7 SECOND PART OF IT IS, IF WE HAVE A CAP AND THE WAY WE GET TO
8 THE CAP IS THROUGH A RELEASE, YOU ARE GOING TO HAVE MORE
9 INDIVIDUALS OUT IN THE COMMUNITY 60 DAYS EARLIER.

10 IN ORDER TO GET TO THE CAP AND TO MAINTAIN THE CAP,
11 IT'S WHAT I TALKED YESTERDAY. IF THE WATERSPOUT ISN'T TURNED
12 OFF, THE SAME NUMBER OF PEOPLE ARE HEADING INTO THAT SYSTEM,
13 AND THEY'RE GETTING OUT, THEY'RE GETTING OUT FASTER, AND
14 THERE'S MORE OF THEM COMING OUT THAT ARE NEVER ENTERING THROUGH
15 THAT SYSTEM THE WAY THEY DO NOW. SO IF WE HAVE 140,000 PEOPLE
16 CONTINUE TO BE COMMITTED INTO THAT SYSTEM, AND OUR POPULATION
17 CAP IS LOWERED FROM -- OR THE CAP IS PLACED AT 110,000, FOR
18 INSTANCE, YOU'VE STILL GOT THIS FLOOD OF PEOPLE COMING IN,
19 THEY'RE GOING TO GO RIGHT BACK OUT. SO THERE IS NO
20 INCAPACITATION COMPONENT. AND FROM A PUBLIC SAFETY PERSPECTIVE
21 YOU LOSE THAT TIME THEY WOULD HAVE BEEN INCAPACITATED SO THEY
22 ARE BACK IN THE COMMUNITY.

23 **JUDGE KARLTON:** I UNDERSTAND WHAT YOU'RE SAYING.

24 **JUDGE HENDERSON:** IT SEEMS TO ME -- AND I'M PROBABLY
25 NOT ASKING YOU A QUESTION AS MUCH AS THINKING ALOUD. I BELIEVE

1 IT WAS YOU YESTERDAY WHO TESTIFIED ABOUT A GOLDEN PERIOD OF
2 1965?

3 **THE WITNESS:** YES, SIR.

4 **JUDGE HENDERSON:** AND UP UNTIL THE LATE '70'S, I
5 BELIEVE YOU SAID. I'M ALL TOO AWARE OF A STATISTIC THAT I'VE
6 USED THAT IN 1980 THE PRISON POPULATION WAS 30,000 --

7 **THE WITNESS:** YES.

8 **JUDGE HENDERSON:** -- IN CALIFORNIA. IT WAS ABOUT
9 THAT TIME THAT, IT SEEMS TO ME, FLIPPING YOUR ARGUMENT OVER,
10 THAT THE LONGER WE KEEP THEM IN, THE SAFER THE STREETS ARE.
11 AND SO HERE WE ARE IN THIS MASSIVE ALMOST -- HOW DO YOU GET OUT
12 OF THAT? IT SEEMS THAT'S THE --

13 **JUDGE KARLTON:** HE HAS A PROPOSAL TO GET OUT OF IT.
14 THAT I WAS VERY ENTHUSIASTIC ABOUT YESTERDAY.

15 **THE WITNESS:** STAY ENTHUSIASTIC.

16 **JUDGE KARLTON:** IT TURNS OUT IT'S MUCH MORE COMPLEX.

17 **THE WITNESS:** I GUESS I WOULD GIVE YOU AN EXAMPLE.

18 IN CALIFORNIA, THE JUVENILE SYSTEM IS AN ABSOLUTE MODEL FOR
19 WHAT WE'RE TALKING ABOUT. THE JUVENILE POPULATION IS THE
20 LARGEST IT'S EVER BEEN IN THE STATE OF CALIFORNIA. WE HAVE
21 FEWER -- WE HAVE FEWER JUVENILES IN CUSTODY. FORGET ABOUT JUST
22 THE STATE PERIOD -- STATE OR LOCAL -- THAN WE'VE EVER HAD IN
23 THE LAST 15 PLUS YEARS. THERE ARE FEWER JUVENILE IN CUSTODY,
24 BUT THERE ARE MORE JUVENILES OUT THERE. JUVENILE CRIME IS DOWN
25 DESPITE WHAT YOU MIGHT READ IN NEWSPAPERS. JUVENILE CRIME IS

1 DOWN. I GUESS THAT'S MORE OF THE SAME THAT I HAVE BEEN TALKING
2 FOR THE LAST TWO DAYS THAT YOU ARE SO ENTHUSIASTIC ABOUT.

3 **MS. BARLOW:** THANK YOU, YOUR HONOR.

4 **BY MS. BARLOW**

5 **Q** I JUST WANT TO FOLLOW UP TO JUDGE KARLTON'S QUESTION. THAT
6 IS, IF YOU ADD THESE FOLKS TO THE ALREADY EXISTING PEOPLE BEING
7 RELEASED, THAT IS BECAUSE THEY'RE COMING OUT EARLIER, DOES THAT
8 REDUCE THE LIKELIHOOD THAT THEY'RE ACTUALLY GOING TO GET CAUGHT
9 FOR THOSE CRIMES BECAUSE WE ONLY HAVE LIMITED POLICE RESOURCES?

10 **A** THAT'S A GOOD QUESTION. GIVEN BUDGETS NOW, PROBABLY, YEAH,
11 BECAUSE WE'RE -- WE'VE GOT -- WE'RE GOING TO HAVE AND WE HAVE
12 FEWER ENFORCEMENT OFFICERS OUT THERE, SO THERE ARE GOING TO BE
13 MORE UNSOLVED CRIMES. THAT WOULD BE MY BEST GUESS ON THAT,
14 YES.

15 **Q** AND IS IT FAIR TO SAY THAT ALSO WE ARE GOING TO HAVE
16 VICTIMS THAT WOULDN'T HAVE BEEN VICTIMS BUT FOR THAT RELEASE?

17 **A** I THINK THAT'S A FAIR STATEMENT, YES.

18 **Q** OKAY. NOW, IF THERE'S A CAP AND WE HAVE NO INCREASE IN THE
19 AMOUNT OF POLICE SERVICES AVAILABLE OR PROGRAMMING AVAILABLE
20 AND THE FOLKS THAT DO GET CAUGHT FOR THESE CRIMES AND WOULD
21 OTHERWISE GO TO PRISON CAN'T GO, THAT ALSO ELIMINATES THE
22 INCAPACITATION EFFECT YOU WERE TALKING ABOUT, RIGHT?

23 **A** YES. AND WE SEE THAT LOCALLY ALREADY. WE ARE ALREADY
24 FUNCTIONING UNDER A POPULATION CAP LOCALLY IN OUR JAILS. WE
25 DISCUSSED IT EARLIER. WE HAVE INDIVIDUALS WHO, WHILE THEY'RE

1 ON ELECTRONIC MONITORING PROGRAMS OR ALTERNATIVE PROGRAMS,
2 COMMIT CRIMES THAT, HAD THERE BEEN INCAPACITY, THEY WOULD NOT
3 HAVE BEEN AVAILABLE TO COMMIT THAT CRIME.

4 **JUDGE REINHARDT:** IN YOUR VIEW, THE ONLY REASON THAT
5 WE'RE NOT REDUCING CRIME, WHICH YOUR PROGRAM WOULD DO
6 SUBSTANTIALLY, BECAUSE WE WOULD SEND FAR FEWER PRISONERS TO
7 PRISON, THE ONLY REASON WE ARE NOT REDUCING CRIME IN THIS STATE
8 IS THAT THE STATE IS NOT WILLING TO SPEND THE MONEY TO FUND
9 YOUR PROGRAM?

10 **THE WITNESS:** WELL, IT'S NOT JUST MY PROGRAM.

11 **JUDGE REINHARDT:** I KNOW.

12 **THE WITNESS:** LOCAL PROGRAMS.

13 **JUDGE REINHARDT:** THE PROGRAM YOU DESCRIBED.

14 **THE WITNESS:** YES.

15 **JUDGE REINHARDT:** SO THE ONLY REASON WE HAVE THIS
16 HIGH CRIME RATE IS BECAUSE THE STATE ISN'T SPENDING THE
17 NECESSARY MONEY TO REDUCE CRIME?

18 **THE WITNESS:** I WOULDN'T SAY THE ONLY REASON, BUT A
19 SIGNIFICANT REASON, YES.

20 **JUDGE REINHARDT:** IF WE REDUCED JUVENILE CRIME AS
21 YOU DESCRIBED, WE COULD REDUCE ADULT CRIME THE SAME WAY IF THE
22 STATE WERE WILLING TO SPEND THE MONEY TO FUND YOUR PROGRAM?

23 **THE WITNESS:** THAT'S OUR POSITION, YES, SIR.

24 **JUDGE REINHARDT:** WHO DO WE BLAME FOR THAT?

25 **JUDGE KARLTON:** BLAME IS NOT THE POINT. HOW DO WE

1 SOLVE THE PROBLEM? AND THE ANSWER IS I DON'T KNOW.

2 **MS. BARLOW:** I JUST HAVE ONE MORE QUESTION FOR THE
3 WITNESS.

4 **BY MS. BARLOW**

5 **Q** IF WE HAVE A CAP AND WE ARE STILL ABLE FOR SOME REASON TO
6 SEND SOME OF THESE OFFENDERS TO PRISON, BUT THEY ARE
7 CONTINUALLY LET OUT 60 TO 120 DAYS EARLIER THAN THEY OTHERWISE
8 WOULD HAVE BEEN THE RESULT, DOES THAT HAVE A LONG-TERM
9 CUMULATIVE NEGATIVE IMPACT ON PUBLIC SAFETY?

10 **A** I BELIEVE SO, YES.

11 **Q** AND THAT'S JUST BECAUSE YOU'VE GOT THIS PERSON
12 INCAPACITATED FOR A MUCH SHORTER TOTAL PERIOD OF TIME, CORRECT?

13 **A** YES.

14 **MS. BARLOW:** I HAVE NOTHING FURTHER.

15 **JUDGE HENDERSON:** I'M NOT SURE WHAT YOU MEANT IN
16 THAT QUESTION BY CUMULATIVE.

17 **MS. BARLOW:** WE KNOW THEY ARE GOING TO REOFFEND,
18 CORRECT, MR. POWERS? WE KNOW THEY ARE GOING TO REOFFEND AT A
19 RATE OF SOMEWHERE BETWEEN 60 AND 70 PERCENT DEPENDING ON THE
20 CRIME?

21 **JUDGE KARLTON:** WE KNOW THAT NOW.

22 **MS. BARLOW:** YES.

23 **JUDGE HENDERSON:** BECAUSE WE DON'T HAVE ANY
24 PROGRAMS. ONE OF THE MAIN REASONS THEY'RE REOFFENDING IS
25 BECAUSE WE'RE DOING SOMETHING PROFOUNDLY STUPID. IT ISN'T

1 NECESSARILY TRUE THAT EVERY OFFENDER WOULD REOFFEND AT A RATE
2 OF 60 PERCENT IF WE WERE DOING THINGS SMARTER.

3 **THE WITNESS:** CORRECT.

4 **MS. BARLOW:** I DON'T DISPUTE THAT AT ALL, YOUR
5 HONOR, BUT WE'RE TALKING ABOUT --

6 **JUDGE KARLTON:** SO THE POINT IS, THE QUESTION
7 PRESUMES THAT WE'LL CONTINUE TO BE AS STUPID AS WE HAVE BEEN.
8 THAT MAY BE THE CASE.

9 **MS. BARLOW:** I WISH I COULD NOT PRESUME THAT, YOUR
10 HONOR, BUT AT THIS POINT, ASSUMING THAT WHAT WE HAVE IS A CAP
11 AND NOTHING MORE, THAT'S REALLY WHAT I'M ASKING THE WITNESS.

12 **Q** IF WE HAVE A CAP AND NOTHING MORE, WILL AN OFFENDER WHO IS
13 ALLOWED TO BE RELEASED EARLY OVER AND OVER AGAIN BECAUSE THEY
14 HAVE RELATIVELY SHORT SENTENCES, RIGHT? TWENTY-FOUR MONTHS,
15 FOUR YEARS, TWO YEARS, FOR THESE CRIMES? EACH TIME THEY ARE
16 GOING TO GET OUT EARLIER, CORRECT?

17 **A** WELL, THE AVERAGE LENGTH OF STAY IN THE DEPARTMENT OF
18 CORRECTIONS IS 11.34 MONTHS, I BELIEVE IS THE STATISTIC THAT'S
19 BEEN CITED. SO THEY'RE SPENDING ON AVERAGE LESS THAN A YEAR IN
20 CUSTODY.

21 **Q** SO IF THEY REOFFEND AND GO BACK AND WE HAVE TO RELEASE THEM
22 EARLY AGAIN IN ORDER TO MAINTAIN THAT CAP, WE'RE GOING TO JUST
23 KEEP CHURNING THEM?

24 **A** AT THAT POINT, WE ESSENTIALLY HAVE THE COUNTY MODEL, WHICH
25 IS WHAT MANY COUNTIES DO. IF YOU'RE BOOKED ON A MISDEMEANOR,

1 IN MANY COUNTIES YOU NEVER SEE THE INSIDE OF A JAIL. YOU ARE
2 BACK ON THE STREET BEFORE THE OFFICER HAS AN OPPORTUNITY TO
3 FINISH HIS REPORT. AND WE SEE THESE PERPETUAL MULTIPLE ARRESTS
4 OVER AND OVER AND OVER, AND THAT'S THAT STREAM TOWARDS THE
5 WATERFALL THAT I WAS TALKING ABOUT.

6 UNLESS WE BREAK THE CYCLE, THOSE MISDEMEANORS WILL
7 TURN TO FELONIES AND FROM PROBATION GRANTS TO PRISON GRANTS TO
8 PAROLE VIOLATIONS. IT'S JUST THE CYCLE THAT CALIFORNIA HAS AT
9 THIS POINT.

10 **MS. BARLOW:** ALL RIGHT. THANK YOU. I HAVE NOTHING
11 FURTHER.

12 **JUDGE REINHARDT:** IS IT YOUR SUGGESTION WE MAKE YOUR
13 ASSUMPTION WHEN WE DETERMINE THIS CASE THAT THERE WILL NOT BE
14 ANY MORE MONEY SPENT ON TRYING TO REDUCE CRIME, BUILD PRISONS;
15 WE SHOULD JUST ASSUME WE WILL BE SPENDING THE SAME AMOUNT OF
16 MONEY AS WE NOW ARE? IS THAT THE WAY THE ASSUMPTION --
17 BECAUSE, OTHERWISE, WE COULD ASSUME THE MONEY WOULD BE SPENT ON
18 HIS PROGRAM, BUT IF YOU PRESUME THERE'S NO MORE MONEY TO BE
19 SPENT --

20 **MS. BARLOW:** WELL, WITH THE \$11 BILLION DEFICIT,
21 YOUR HONOR, THAT'S THE PRESUMPTION I AM ASKING THE WITNESS TO
22 MAKE AT THIS POINT.

23 **JUDGE REINHARDT:** SO WE SHOULD PRESUME THEY WOULD
24 NOT IMPROVE HEALTHCARE IN THE PRISON?

25 **MS. BARLOW:** I AM NOT PRESUMING THAT AT ALL.

1 **JUDGE REINHARDT:** YOU ARE PRESUMING THEY ARE WILLING
2 TO SPEND MONEY ON THAT --

3 **MS. BARLOW:** THE PIE IS ONLY SO BIG, YOUR HONOR,
4 THAT'S ALL.

5 **JUDGE REINHARDT:** I'M NOT DISAGREEING WITH YOU. I'M
6 SAYING YOUR SUGGESTION IS, AS WE LOOK AT THIS CASE, WE PRESUME
7 THAT MONEY WILL NOT BE SPENT TO RESOLVE THIS PROBLEM, AND,
8 THEREFORE, WHAT WE SHOULD DO IS ALLOW THE UNCONSTITUTIONAL
9 CONDITIONS TO INCREASE AND HAVE MORE AND MORE INADEQUATE
10 HEALTHCARE AS MORE AND MORE PEOPLE ARE SENT TO PRISON?

11 **MS. BARLOW:** WELL, I'M CERTAINLY NOT SUGGESTING
12 THAT, YOUR HONOR. MY CONCERN IS THAT, TO THE EXTENT THAT WHAT
13 IS BEING REQUESTED IS A CAP AND NOT WHAT IS BEING REQUESTED IS
14 PROVIDE FUNDING AND PROVIDE PROGRAMMING AND DO ALL THESE OTHER
15 THINGS, TO THE EXTENT THEY'RE REQUESTING A CAP --

16 **JUDGE REINHARDT:** I THOUGHT YOU JUST SAID WE SHOULD
17 ASSUME THERE WASN'T GOING TO BE ANY MORE MONEY AVAILABLE.

18 **JUDGE KARLTON:** AND THERE'S A QUESTION ABOUT WHAT WE
19 CAN PROPERLY ORDER.

20 **MS. BARLOW:** WELL, THAT'S --

21 **JUDGE KARLTON:** YOU KNOW, IF THE STATE WERE TO WAKE
22 UP AND START BEHAVING IN A RATIONAL WAY, WE ALL WOULDN'T BE
23 HERE. WE'RE HERE BECAUSE WE ALL AGREE THAT WHAT'S GOING ON NOW
24 IS COUNTERPRODUCTIVE, AND THE QUESTION THEN BECOMES WHAT CAN
25 THE FEDERAL COURTS DO CONSISTENT WITH OUR FEDERAL SYSTEM THAT

1 WILL HAVE ANY EFFECT UPON ANYTHING, AND IF WE CAN'T AFFECT --
2 IF WE CAN'T AFFECT PUBLIC SAFETY AND WE MUST ADDRESS THE
3 QUESTION OF UNCONSTITUTIONAL CONDITIONS, WHAT HAPPENS NEXT?
4 BUT --

5 **MS. BARLOW:** THE SHIFTING OF MONEY IS UP TO THE
6 COURT TO DETERMINE WHETHER IT CAN DO THAT. BUT I'M SIMPLY
7 TRYING TO --

8 **JUDGE KARLTON:** THANK YOU, MA'AM.

9 **JUDGE REINHARDT:** WE CAN LEAVE THIS QUESTION FOR
10 BRIEFING AT THE END OF THE PROGRAM.

11 **JUDGE KARLTON:** INDEED.

12 **JUDGE REINHARDT:** SOMEBODY SHOULD SUGGEST TO US HOW
13 UNCONSTITUTIONAL CONDITIONS CAN BE CURED, IF IT'S THROUGH THE
14 EXPENDITURE OF SUMS. I ASSUME THE STATE WILL ADVISE US OF HOW
15 THAT MONEY WILL BE OBTAINED AND WHAT GUARANTEES THERE ARE. I
16 GUESS THAT'S NOT --

17 **JUDGE KARLTON:** RIGHT NOW WHAT WE KNOW IS THEY'RE
18 NOT FUNDING PROGRAMS THAT HAVE ALREADY BEEN -- GO AHEAD.

19 **MR. MELLO:** CAN I BE HEARD FOR ONE MOMENT? I
20 BELIEVE THE EVIDENCE IN THE CASE SO FAR IS THAT THE STATE IN
21 THE LAST TWO YEARS WENT FROM SPENDING 1.2 BILLION DOLLARS ON
22 MEDICAL CARE TO 2.193, OR ABOUT THAT; I DON'T RECALL EXACTLY.
23 SO I THINK IT'S A MISCHARACTERIZATION OF THE EVIDENCE TO SAY
24 THAT SIGNIFICANT SUMS OF MONEY AREN'T BEING SPENT ON MEDICAL
25 AND MENTAL HEALTHCARE.

1 **JUDGE KARLTON:** THEY ARE ABSOLUTELY INADEQUATE TO
2 MEET THE PROBLEM. THAT'S THE FACT. NEVER MIND, MR. MELLO.

3 **JUDGE REINHARDT:** AS I SAID, WE CAN HAVE IT BRIEFED
4 IN BRIEFING. HOW ABOUT THE QUESTION OF THE NEXT WITNESS WHICH
5 IS MORE IMMEDIATE?

6 **MS. JOHNSON:** I HAVE INFORMED DR. THOMAS IN FORT
7 LAUDERDALE THAT HE SHOULD EXPECT TO START TESTIFYING AROUND
8 1:30. IT SEEMS MS. NORMAN MAY HAVE SOME ADDITIONAL QUESTIONS.

9 **JUDGE HENDERSON:** LET'S FINISH WITH MS. NORMAN, AND
10 WE'LL TAKE A LUNCH BREAK.

11 **RE CROSS-EXAMINATION BY MS. NORMAN**

12 **BY MS. NORMAN**

13 **Q** MR. POWERS, I WANTED TO TALK ABOUT THIS QUESTION OF THE
14 LONG-TERM EFFECTS OF A POPULATION CAP. MS. BARLOW ASKED YOU
15 SOME QUESTIONS ABOUT THAT. SO TODAY THERE'S SOMETHING LIKE 160
16 TO 170,000 PEOPLE IN STATE PRISON AND SOMETHING LIKE 140,000 GO
17 IN, AND ABOUT 140,000 COME OUT, RIGHT? SO THERE ARE SOME
18 ADJUSTMENTS IN THE PRISON POPULATION. BUT AS LONG AS THE SAME
19 NUMBER GOES IN, THE SAME NUMBER COMES OUT, YOU KEEP THE SAME
20 LEVEL; IS THAT RIGHT?

21 **A** ASSUMING LENGTH OF STAY IS FOR -- YEAH, YEAH.

22 **Q** THOSE NUMBERS ARE ABOUT RIGHT?

23 **A** IT APPEARS THAT OVER THE PAST 12 MONTHS OR SO THAT THE
24 POPULATION HAS KIND OF PLATEAUED.

25 **Q** IT'S KIND OF PLATEAUED, AND THEY ESTIMATE IT IS GOING TO

1 START GOING UP AGAIN?

2 **A** I HAVEN'T SEEN THAT ESTIMATION.

3 **Q** BUT, IN GENERAL, THOSE NUMBERS ARE WHAT YOU KNOW; ISN'T
4 THAT RIGHT?

5 **A** THE POPULATION NUMBERS YOU QUOTED?

6 **Q** RIGHT.

7 **A** YES, 155, 160, SOMEWHERE IN THAT NEIGHBORHOOD, YES.

8 **Q** SO IMAGINE A SYSTEM WHERE THE POPULATION HAS BEEN
9 REDUCED -- AND WE'RE GOING TO GET INTO HOW RIGHT NOW. SO THE
10 POPULATION IS BETWEEN 110, 120,000. THAT'S THE PRISON
11 POPULATION, OKAY? IMAGINE YOU STILL HAVE 140,000 GOING IN,
12 140,000 PEOPLE A YEAR COMING OUT, YOU REACHED EQUILLIBRUM ON
13 THAT POPULATION CAP. SAME NUMBER GO IN, SAME NUMBER COME OUT,
14 RIGHT?

15 **A** WELL, IN ORDER TO DO THAT, YOU ARE GOING TO HAVE TO HAVE
16 SHORTER LENGTH OF STAY. IS THAT THE ASSUMPTION THAT YOU'RE
17 MAKING?

18 **Q** ACTUALLY, MR. POWERS, I'M NOT TALKING ABOUT WHAT IT TAKES
19 TO GET TO A LOWER POPULATION. I'M TALKING ABOUT IMAGINE WE ARE
20 AT A REDUCED POPULATION RIGHT NOW.

21 **A** OKAY.

22 **JUDGE REINHARDT:** HOW COULD 140 COME OUT IF YOU'VE
23 ONLY GOT 110 IN?

24 **MS. NORMAN:** I'M SORRY IF I MISSPOKE. I APOLOGIZE.
25 YOU HAVE 110 TO 120,000 CURRENTLY EXISTING IN THE -- THAT'S

1 YOUR POPULATION.

2 JUDGE KARLTON: YOU HAVE 140?

3 MS. NORMAN: ONE FORTY COME IN EVERY YEAR. ONE
4 FORTY GO OUT EVERY YEAR.

5 BY MS. NORMAN

6 Q THAT'S WHERE WE WERE NOW, RIGHT, MR. POWERS?

7 JUDGE KARLTON: AND THERE'S 120,000 LEFT YOU'RE
8 SAYING?

9 MS. NORMAN: RIGHT.

10 BY MS. NORMAN

11 Q LET'S IMAGINE 200,000 CAME IN EVERY YEAR AND 200,000 CAME
12 OUT EVERY YEAR, TO MAKE THE NUMBER A LITTLE DIFFERENT. AS LONG
13 AS THE SAME NUMBER COME IN AND THE SAME NUMBER COME OUT, YOU
14 ARE MAINTAINING THE SAME POPULATION LEVEL; ISN'T THAT RIGHT?

15 A YES.

16 Q SO IF YOU HAD A PRISON POPULATION OF 110,000 IN THE STATE
17 OF CALIFORNIA, SIGNIFICANTLY REDUCED POPULATION, YOU AND THE
18 COUNTIES STILL COULD BE SENDING THE SAME LEVEL PEOPLE INTO
19 PRISON EVERY YEAR AS LONG AS THE SAME NUMBER OF PEOPLE WERE
20 COMING OUT AND THIS POPULATION WOULD BE MAINTAINED; ISN'T THAT
21 RIGHT?

22 A YEAH, I GUESS THE KEY WOULD BE HOW ARE YOU GETTING THAT
23 SAME NUMBER OUT.

24 Q OKAY. SLIGHTLY DIFFERENT TOPIC. MS. BARLOW ASKED YOU
25 ABOUT LOW RISK/HIGH RISK OFFENDERS?

1 **A** YES.

2 **Q** PRISON PLACEMENTS ARE A SCARCE RESOURCE IN OUR SOCIETY,
3 RIGHT? WE AS A SOCIETY DECIDE WHO SHOULD BE SENT TO PRISON?

4 **A** WELL, JUDGES DECIDE THAT.

5 **Q** RIGHT. WE'VE SET UP CRIMINAL JUSTICE SYSTEMS --

6 **A** YES.

7 **Q** -- TO DETERMINE WHICH OFFENDERS SHOULD BE INCAPACITATED,
8 RIGHT?

9 **A** YES.

10 **Q** AND WHICH ARE THE HIGHEST RISK OF REOFFENDING, RIGHT?

11 **A** NOT NECESSARILY. I MEAN, THERE IS A PUNITIVE ASPECT TO
12 PLACEMENT IN CUSTODY. THE SYSTEM TAKES THAT INTO ACCOUNT AS
13 WELL, BECAUSE, QUITE FRANKLY, IF YOU LOOK, SOME OF YOUR HIGH
14 END CRIMES HAVE THE LOWEST RECIDIVISM RATES.

15 **Q** RIGHT.

16 **A** AS FAR AS A THREAT TO SAFETY --

17 **Q** BUT PART OF THE DECISION MAKING IN THE CRIMINAL JUSTICE
18 SYSTEM IS FIGURING OUT WHICH PEOPLE BEST FIT THIS SCARCE
19 RESOURCE OF PRISON BEDS, RIGHT?

20 **A** YES.

21 **Q** AND WE HAVE THINGS LIKE VALID RISK NEEDS ASSESSMENT TOOLS
22 TO HELP MAKE THOSE DETERMINATIONS, DON'T WE?

23 **A** SOME DO, YEAH.

24 **Q** OKAY. SO IF WE MAKE THOSE DETERMINATIONS AND THOSE TOOLS
25 EXIST TO DECIDE WHO SHOULD GO INTO PRISON IN THE FIRST PLACE,

1 WOULDNT IT BE APPROPRIATE TO APPLY SIMILAR TOOLS TO MAKE A
2 DETERMINATION AS TO WHOSE LENGTH OF STAY COULD BE REDUCED WITH
3 THE MOST SAFETY FOR THE PUBLIC?

4 **A** NOW YOU'RE TALKING ABOUT SENTENCING. I DONT KNOW THAT YOU
5 CAN USE A RISK ASSESSMENT TOOL TO DETERMINE LENGTH OF SENTENCE.
6 I HAVEN'T SEEN THAT SCIENCE YET.

7 **Q** I'M ACTUALLY NOT TALKING ABOUT SENTENCE. I AM TALKING
8 ABOUT THINGS LIKE CREDIT REFORM ONCE YOU'RE IN AN INSTITUTION.
9 WE TALKED ABOUT THE BRIDGING PROGRAM, OTHER PROGRAMS THAT WOULD
10 APPLY ENHANCED CREDITS OR REDUCE THE LENGTH OF STAY ONCE A
11 PERSON HAS BEEN SENTENCED TO PRISON.

12 **MS. BARLOW:** AGAIN, YOUR HONORS, THIS IS BEYOND THE
13 SCOPE OF THE REDIRECT. WE DIDN'T TALK ABOUT PRISON PROGRAMS AT
14 ALL.

15 **JUDGE HENDERSON:** I'M GOING TO SUSTAIN THAT, I
16 THINK, UNLESS YOU CAN TELL ME HOW THIS CONNECTS TO THE
17 REDIRECT.

18 **MS. NORMAN:** WHAT I WANT TO TALK ABOUT IS THE
19 ABILITY TO MAKE ASSESSMENTS AS TO WHAT PRISONERS MR. POWERS
20 TALKED ABOUT, RELEASING LOW LEVEL OFFENDERS EARLY FROM PRISON,
21 AND HE TALKED ABOUT THE DANGERS OF THAT BECAUSE THEY MIGHT BE
22 HIGH RISK. WHAT I WANT TO GET AT IS WHETHER IT'S NOT POSSIBLE
23 TO FIGURE OUT WHO'S HIGH RISK AND MAKE DETERMINATIONS ABOUT
24 EARLY RELEASE, AS YOU WERE PUTTING IT, BASED ON SCIENTIFIC
25 METHODS.

1 Q IS THAT POSSIBLE?

2 A IT'S CERTAINLY POSSIBLE. I BELIEVE IT WOULD BE POSSIBLE TO
3 DO THE ASSESSMENTS ON THE INDIVIDUALS IN PRISON WHETHER -- I'M
4 NOT SURE I WOULD BE COMFORTABLE AS A PRACTITIONER MAKING
5 REDUCTIONS IN SENTENCES BASED ON EVEN A VALIDATED RISK
6 ASSESSMENT TOOL.

7 Q BUT THINGS LIKE CREDIT EARNING POTENTIAL AND REDUCING
8 LENGTH OF STAY BASED ON IN-PRISON BEHAVIOR, THAT HAPPENS EVERY
9 DAY IN THE PRISON ENVIRONMENT?

10 A YES, IT DOES.

11 MS. NORMAN: OKAY. NO FURTHER QUESTIONS.

12 MS. BARLOW: I HAVE NOTHING FURTHER, YOUR HONOR.

13 JUDGE HENDERSON: OKAY. OKAY. COURT IS IN RECESS.
14 WE'LL COME BACK AT 1:45 AND BEGIN WITH MR. THOMAS.

15 (LUNCHEON RECESS.)

16 JUDGE HENDERSON: OKAY. YOU MAY PROCEED WHEN YOU'RE
17 READY, COUNSEL.

18 MS. JOHNSON: GOOD AFTERNOON, YOUR HONOR. ANNE
19 JOHNSON FOR THE DEFENDANTS. WE ARE CALLING DR. DAVID THOMAS.
20 I HAVE BEEN ASKED TO SPEAK A LITTLE LOUDER. SORRY ABOUT THAT.
21 THAT'S A RARE, RARE REQUEST.

22 JUDGE KARLTON: DR. THOMAS, CAN YOU HEAR US NOW?

23 THE WITNESS: YES, SIR, I CAN.

24 JUDGE HENDERSON: YOU ARE GOING TO BE SWORN IN,
25 DR. THOMAS.

1 **DAVID L. THOMAS,**
2 HAVING BEEN CALLED AS A WITNESS BY THE GOVERNMENT WAS FIRST
3 DULY SWORN AND EXAMINED AS FOLLOWS:

4 **THE CLERK:** PLEASE STATE AND SPELL YOUR FULL NAME
5 FOR THE RECORD.

6 **THE WITNESS:** DAVID L. THOMAS, D-A-V-I-D L.
7 T-H-O-M-A-S.

8 (DR. THOMAS APPEARED REMOTELY THROUGH VIDEO
9 CONFERENCING.)

10 **MS. JOHNSON:** DR. THOMAS'S EXPERT REPORTS IN THIS
11 CASE ARE MARKED AS DEFENDANT'S TRIAL EXHIBITS NUMBERS 1015,
12 1016, AND 1017, AND ARE HEREBY OFFERED INTO EVIDENCE.

13 ALSO, TO THE COURT REPORTER IN FLORIDA, WE DID MAIL
14 COPIES OF DR. THOMAS'S EXPERT REPORTS TO YOU, AS WELL AS A COPY
15 OF HIS DEPOSITION TRANSCRIPT. IF YOU COULD MAKE THOSE
16 AVAILABLE TO HIM AT THIS TIME?

17 DR. THOMAS'S QUALIFICATIONS ARE SET FORTH ON PAGES 1
18 THROUGH 3 OF HIS FIRST REPORT, DEFENDANT'S EXHIBIT 1015, AND
19 HIS CURRICULUM VITAE, WHICH IS ATTACHED AS EXHIBIT A TO THAT
20 REPORT. WE'RE GOING TO SUMMARIZE, HIGHLIGHT SOME OF HIS
21 SALIENT QUALIFICATIONS.

22 **JUDGE HENDERSON:** OKAY.

23 **DIRECT EXAMINATION BY MS. JOHNSON**

24 **BY MS. JOHNSON**

25 **Q** GOOD AFTERNOON, DR. THOMAS.

1 **A** GOOD AFTERNOON.

2 **Q** SINCE YOU'RE TESTIFYING REMOTELY, PLEASE LET ME KNOW IF AT
3 ANY TIME YOU HAVE DIFFICULTY HEARING ME OR SEEING A DOCUMENT
4 THAT'S BEING PRESENTED. OKAY?

5 **A** OKAY. YES.

6 **Q** DR. THOMAS ARE YOU A PRACTICING PHYSICIAN?

7 **A** YES, MA'AM, I AM.

8 **Q** FOR HOW MANY YEARS TOTAL HAVE YOU PRACTICED MEDICINE?

9 **A** JUST UNDER 40.

10 **Q** ARE YOU BOARD CERTIFIED IN ANY SPECIALTY?

11 **A** YES, MA'AM. I AM BOARD CERTIFIED BY THE AMERICAN BOARD OF
12 OPHTHALMOLOGY.

13 **Q** DO YOU HAVE ANY FORMAL TRAINING OR EXPERIENCE IN ANY OTHER
14 MEDICAL SPECIALTIES?

15 **A** YES, MA'AM. I WAS PARTIALLY TRAINED IN GENERAL AND CHEST
16 SURGERY AND SERVED AS A GENERAL AND CHEST SURGEON IN VIETNAM.
17 AND I ALSO AT ONE TIME WAS CERTIFIED BY THE AMERICAN BOARD OF
18 AMERICAN FORENSIC EXAMINERS AS A DIPLOMATE IN FORENSIC
19 MEDICINE.

20 **Q** WHEN DID YOU RECEIVE YOUR MEDICAL DEGREE AND FROM WHERE?

21 **A** FROM UNIVERSITY OF MIAMI IN 1970.

22 **Q** DO YOU HAVE ANY OTHER ADVANCED DEGREES?

23 **A** YES, MA'AM. I HAVE A J.D. FROM STETSON UNIVERSITY LAW
24 SCHOOL, AND I AM CURRENTLY WORKING ON A DOCTORATE IN HEALTH
25 EDUCATION.

1 Q ARE YOU CURRENTLY EMPLOYED?

2 A YES, MA'AM, I AM.

3 Q WHAT ARE YOUR CURRENT POSITIONS?

4 A I AM PROFESSOR AND CHAIRMAN OF THE DEPARTMENT OF SURGERY,
5 PROFESSOR AND CHAIRMAN OF THE DIVISION OF CORRECTIONAL MEDICINE
6 AND PROFESSOR OF PUBLIC HEALTH, ALL AT NOVA SOUTHEASTERN
7 UNIVERSITY.

8 Q YOU MENTIONED YOU SERVED AS A PHYSICIAN IN THE MILITARY?

9 A YES, MA'AM.

10 Q AND WHAT POSITIONS DO YOU HAVE -- OR WHAT WERE YOUR
11 RESPONSIBILITIES AT THAT TIME?

12 A I WAS DRAFTED AND WENT TO VIETNAM, AND IN VIETNAM I SERVED
13 AS COMMANDING OFFICER OF A 30-BED HOSPITAL WITH THREE OR FOUR,
14 DEPENDING ON THE TIME, OTHER PHYSICIANS WORKING FOR ME. IT WAS
15 A GENERAL MEDICAL AND SURGICAL HOSPITAL.

16 Q DID YOU ALSO SERVE IN THE FLORIDA HOUSE OF REPRESENTATIVES?

17 A YES, MA'AM, FROM 1984 TO 1994.

18 Q WHAT COMMITTEES DID YOU SERVE ON WHILE YOU WERE A
19 REPRESENTATIVE IN FLORIDA?

20 A COULD YOU RESTATE THAT QUESTION, PLEASE?

21 Q WHAT WERE THE COMMITTEES THAT YOU SERVED ON WHEN YOU WERE A
22 REPRESENTATIVE IN FLORIDA?

23 A OKAY. I SERVED ON A VARIETY OF COMMITTEES, PROBABLY TOO
24 MANY TO REMEMBER ACCURATELY AS WE SIT HERE. BUT I SERVED ON
25 APPROPRIATION. I ALWAYS SERVED ON HEALTHCARE. I SERVED ON

1 CORRECTIONS. I SERVED ON REAPPORTIONMENT AND A VARIETY OF
2 OTHER COMMIT -- NATURAL RESOURCES. THOSE WERE ONES THAT COME
3 TO -- JUDICIARY. THOSE WERE THE ONES THAT COME TO THE TOP OF
4 MY HEAD AS WE SPEAK.

5 **Q** AFTER SERVING IN THE FLORIDA HOUSE OF REPRESENTATIVES, DID
6 YOU WORK AS A CORRECTIONAL HEALTHCARE ADMINISTRATOR FOR THE
7 FLORIDA DEPARTMENT OF CORRECTIONS?

8 **A** YES, MA'AM. IN 1994 I WORKED AS THE EXECUTIVE DIRECTOR
9 OF -- THE EXECUTIVE MEDICAL DIRECTOR OF ZEPHER HILLS
10 CORRECTIONAL INSTITUTION. IN THAT CAPACITY, I SERVED AS A
11 PHYSICIAN AND AN ADMINISTRATOR, AND I HAD ABOUT NINE DOCTORS
12 WORKING FOR ME.

13 **Q** FOR HOW MANY YEARS TOTAL DID YOU WORK FOR THE FLORIDA
14 DEPARTMENT OF CORRECTIONS?

15 **A** NINE YEARS TOTAL.

16 **Q** AND YOU SAID THE FIRST POSITION WAS AS EXECUTIVE DIRECTOR
17 OF THE ZEPHER HILLS FACILITY?

18 **A** YES, MA'AM.

19 **Q** CAN YOU JUST SUMMARIZE BRIEFLY FROM THAT POSITION UNTIL
20 YOUR LAST POSITION WHAT POSITIONS YOU HELD IN THE FLORIDA
21 DEPARTMENT OF CORRECTIONS?

22 **A** YES, MA'AM. AFTER BEING AT ZEPHER HILLS FOR A LITTLE LESS
23 THAN A YEAR, I BECAME THE REGIONAL MEDICAL DIRECTOR FOR REGION
24 FIVE AND HAD ABOUT 12 OR SO INSTITUTIONS THAT I WAS RESPONSIBLE
25 FOR THE MEDICAL CARE.

1 AFTER DOING THAT FOR ABOUT A YEAR, I BECAME THE
2 CHIEF OF CLINICAL SERVICES, WHICH WAS LATER RENAMED DEPUTY
3 ASSISTANT SECRETARY FOR CLINICAL SERVICES, AND I WAS
4 RESPONSIBLE FOR THE CLINICAL CARE TO THE ENTIRE POPULATION.

5 AFTER THAT I BECAME ASSISTANT SECRETARY FOR HEALTH
6 SERVICES, WHICH WAS ALSO CALLED DIRECTOR OF HEALTH SERVICES,
7 AND AT THAT TIME I HAD THE RESPONSIBILITY FOR THE CLINICAL AND
8 ADMINISTRATIVE CARE OF THE ENTIRE 75,000 INMATES IN THE FLORIDA
9 DEPARTMENT OF CORRECTIONS.

10 Q WHEN YOU WERE THE ASSISTANT SECRETARY DIRECTOR FOR HEALTH
11 SERVICES FOR THE FLORIDA DEPARTMENT OF CORRECTIONS, DID YOU
12 REORGANIZE THERE THE PRISONS WITH RESPECT TO MEDICAL CARE?

13 A YES, MA'AM, I DID.

14 Q COULD YOU EXPLAIN BRIEFLY WHAT YOU DID?

15 A I'LL TRY TO BE BRIEF. TYPICAL PRISON SYSTEM HAS A
16 PHYSICIAN AND INMATE SIDE OF THAT PRISON, AND THAT PHYSICIAN IS
17 EXPECTED TO HANDLE ANY PROBLEM THAT COMES UP, ANY MEDICAL
18 PROBLEM THAT COMES UP WITH THAT PATIENT. I FELT THAT WAS AN
19 INEFFICIENT AND INAPPROPRIATE WAY TO USE RESOURCES, SO WE
20 CREATED A LEVEL SYSTEM, AND THAT IS RELATIVELY HEALTHY INMATES
21 WERE ASSIGNED TO SPECIAL, TO CERTAIN INSTITUTIONS. PATIENTS
22 WHO HAD CHRONIC ILLNESSES BUT THEY WERE STABLE WERE ASSIGNED TO
23 OTHER INSTITUTIONS. HEALTHY PATIENTS WERE ASSIGNED TO LEVEL
24 ONE. CHRONIC ILLNESS, MANY PATIENTS THAT WERE STABLE WERE
25 ASSIGNED TO LEVEL TWO INSTITUTIONS.

1 LEVEL THREE INSTITUTIONS WERE PATIENTS WITH CHRONIC
2 ILLNESSES BUT WERE NOT STABLE, AND LEVEL FOUR INSTITUTIONS WERE
3 CENTERS OF EXCELLENCE, WHICH INCLUDED A HOSPITAL AND A 152-BED
4 LICENSED HOSPITAL AND AN HIV CARE FACILITY.

5 **Q** WAS THERE ANY PARTICULAR ADVANTAGE THAT YOU BELIEVE WAS
6 GAINED BY USING THE LEVEL SYSTEM YOU JUST DESCRIBED?

7 **A** SURE. ONE, ECONOMIES OF SCALE, ECONOMIES OF PURCHASING,
8 BETTER USE OF EMPLOYEES, FAR LESS OUTSIDE SPECIALTY
9 CONSULTATIONS, BECAUSE AT THE LEVEL 3 AND LEVEL 4 INSTITUTIONS
10 YOU WOULD HAVE A VARIETY OF PHYSICIANS WITH VARYING SKILLS, AND
11 THEY COULD HANDLE THE PROBLEMS OF THE PATIENTS RATHER THAN
12 SENDING THEM OUT. FEWER HOSPITALIZATIONS, BETTER PRIMARY CARE
13 AND BETTER SECONDARY CARE.

14 **Q** DID YOU HAVE SPECIFIC STAFFING RATIOS FOR THE NUMBER OF
15 PHYSICIANS AND NUMBER OF PRISONERS AT THE INSTITUTIONS IN
16 FLORIDA?

17 **A** NO, MA'AM.

18 **Q** WHY DID FLORIDA NOT USE STAFFING RATIOS, PHYSICIAN/INMATE
19 STAFFING RATIOS?

20 **A** IT WAS MY STRONG FEELING THAT ARBITRARY STAFFING NUMBERS DO
21 NOT ACTUALLY ACCOUNT FOR THE PROBLEMS OF THE PATIENTS AND THE
22 DISTRIBUTION OF PERSONNEL. I FELT THAT -- I FELT AND STILL
23 FEEL THERE ARE BETTER WAYS TO DO THAT.

24 FOR INSTANCE, LADIES, IT'S WELL RECORDED IN THE
25 LITERATURE THAT LADY PATIENTS REQUIRE THREE TO FOUR TIMES THE

1 AMOUNT OF TIME WITH A PHYSICIAN THAN GENTLEMEN PATIENTS DO. SO
2 TO USE AN ARBITRARY STAFFING IN THAT SITUATION WOULD UNDERATE
3 THE NUMBER OF PHYSICIANS NEEDED COMPLETELY.

4 PATIENTS REQUIRE MORE TIME GENERALLY THAN SIMPLE
5 PATIENTS. SO, IN MY MIND, A MUCH BETTER WAY TO DO IT WAS WITH
6 OUTCOME MEASUREMENTS OF WORK STUDY PROGRAMS.

7 **Q** WHY DID -- WHY DID YOU LEAVE YOUR POSITION AS ASSISTANT
8 SECRETARY DIRECTOR FOR HEALTH SERVICES FOR THE FLORIDA
9 DEPARTMENT OF CORRECTIONS?

10 **A** YOU'RE GOING TO HAVE TO REPEAT THAT QUESTION AGAIN,
11 MS. JOHNSON, INTO THE OTHER MICROPHONE.

12 **Q** WHY DID YOU LEAVE YOUR POSITION AS ASSISTANT SECRETARY
13 DIRECTOR FOR HEALTH SERVICES FOR THE FLORIDA DEPARTMENT OF
14 CORRECTIONS?

15 **A** I WAS CALLED TO SECRETARY CROSBY'S OFFICE, WHO WAS MY
16 IMMEDIATE SUPERIOR, AND HE WANTED ME TO PRIVATIZE THE SYSTEM
17 WITHIN A TWO-MONTH PERIOD OF TIME. THAT WAS A DIRECT DIRECTIVE
18 FROM SECRETARY CROSBY. THAT'S IN VIOLATION OF STATE LAW, AND
19 THE ONLY WAY YOU COULD DO THAT WOULD BE TO DECLARE AN EMERGENCY
20 SITUATION. HE ASKED ME TO DECLARE AN EMERGENCY SITUATION. IT
21 WAS MY STRONG FEELING THAT THERE WAS NO EMERGENCY IN THE
22 HEALTHCARE, AND SO WE HAD NO MEETING OF THE MINDS. I OFFERED
23 TO RESIGN. HE REFUSED TO ACCEPT MY RESIGNATION AND TERMINATED
24 ME.

25 **Q** DO YOU CURRENTLY HAVE ANY ROLE IN THE PROVISION OF

1 HEALTHCARE FOR THE FLORIDA DEPARTMENT OF CORRECTIONS PRISONERS?

2 **A** THE UNIVERSITY THAT I WORK WITH, NOVA SOUTHEASTERN
3 UNIVERSITY AND COLLEGE OF MEDICINE, HAS A VARIETY OF PROGRAMS
4 IN THE FLORIDA DEPARTMENT OF CORRECTIONS. WE HAVE MEDICAL
5 STUDENTS THAT ROTATE THROUGH THE HOSPITAL AND OTHER SITES. WE
6 HAVE A CORRECTIONAL FELLOWSHIP THAT IS INTIMATELY RELATED TO
7 THE FLORIDA DEPARTMENT OF CORRECTIONS, AND WE ARE DEVELOPING A
8 CORRECTIONALLY-BASED PSYCHIATRY RESIDENCY. I AM RESPONSIBLE
9 FOR THOSE PROGRAMS, THE SUPERVISION OF BOTH OUR FACULTY AND THE
10 VOLUNTARY FACULTY FROM THE DEPARTMENT OF CORRECTIONS.

11 **Q** HAVE YOU PARTICIPATED IN ANY CORRECTIONAL HEALTHCARE
12 ORGANIZATIONS?

13 **A** YES, MA'AM. I HAVE BEEN A SURVEYOR FOR THE NATIONAL
14 COMMISSION OF CORRECTIONAL HEALTHCARE, AND I HAVE, ON MULTIPLE
15 OCCASIONS, PRESENTED TO THAT ORGANIZATION. I HAVE ALSO BEEN A
16 THE CHAIRMAN AND A MEMBER OF THE COMMISSION ON ACCREDITATION IN
17 CORRECTIONS, WHICH IS AN ACCREDITING BODY FOR PRISONS AND
18 JAILS. I HAVE BEEN WITH THAT GROUP FOR EIGHT YEARS AND WAS
19 CHAIRMAN FOR TWO. AND I'M CURRENTLY ON THE BOARD OF GOVERNORS
20 OF THE AMERICAN CORRECTIONAL ASSOCIATION, THE LARGEST
21 CORRECTION -- LARGEST AND OLDEST CORRECTIONAL ASSOCIATION IN
22 THE COUNTRY.

23 **Q** DID YOU --

24 **A** ACTUALLY, IN THE WORLD.

25 **Q** DID YOU TOUR PRISONS UNDER THE AUSPICES THE AMERICAN

1 CORRECTIONAL ASSOCIATION AND THE NATIONAL COMMISSION OF
2 CORRECTIONAL HEALTHCARE IN THE UNITED STATES?

3 **A** YES, MA'AM, I DID.

4 **Q** YOU TOURED PRISONS IN APPROXIMATELY HOW MANY STATES?

5 **A** I WOULD ESTIMATE BETWEEN 20 AND 30. NOT AS MANY AS 30, BUT
6 PROBABLY MORE THAN 20.

7 **Q** HAVE YOU EVER TESTIFIED AS AN EXPERT IN ANY OTHER CASES
8 REGARDING PRISON CONDITIONS?

9 **A** YES, MA'AM.

10 **Q** DID YOU ACT AS A CONSULTANT IN THE RUIZ VERSUS ESTELLE
11 CASE?

12 **A** YES, MA'AM, I DID.

13 **Q** WHAT WAS THE RUIZ VERSUS ESTELLE CASE ABOUT?

14 **A** IT WAS SPECIFICALLY ABOUT A LACK OF CARE TO THE IN -- LACK
15 OF MEDICAL CARE TO THE INMATES IN THE TEXAS DEPARTMENT OF
16 CRIMINAL JUSTICE.

17 **Q** AND YOU WERE A CONSULTANT FOR WHICH SIDE IN THAT CASE,
18 DR. THOMAS?

19 **A** PLEASE REPEAT THAT AGAIN, MS. JOHNSON.

20 **Q** THIS MIC IS CUTTING OUT.

21 YOU WERE A CONSULTANT FOR WHICH SIDE IN THE RUIZ
22 VERSUS ESTELLE CASE?

23 **A** I WAS A PLAINTIFFS' CONSULTANT IN THAT CASE.

24 **Q** HAVE YOU EVER BEEN ASKED BY THE MEDICAL DIRECTOR OF A STATE
25 DEPARTMENT OF CORRECTIONS TO EVALUATE THEIR SYSTEM OUTSIDE THE

1 CONTEXT OF LITIGATION?

2 **A** YES, MA'AM.

3 **Q** WHO ASKED YOU TO DO THAT?

4 **A** DR. FRED MAUE, M-A-U-E, WHO WAS MEDICAL DIRECTOR OF
5 PENNSYLVANIA AT THAT TIME. THAT WAS ABOUT '98 OR '99, MAYBE AS
6 EARLY AS '97.

7 **Q** WHAT DID YOU DO TO EVALUATE THE PENNSYLVANIA DEPARTMENT OF
8 CORRECTIONS HEALTHCARE SYSTEM AT DR. MAUE'S REQUEST?

9 **A** SOMEBODY COUGHED AND TOOK AWAY TWO OF YOUR WORDS. COULD
10 YOU PLEASE REPEAT THAT AGAIN?

11 **Q** WHAT DID YOU DO TO EVALUATE THE PENNSYLVANIA DEPARTMENT OF
12 CORRECTION'S HEALTHCARE SYSTEM AT DR. MAUE'S REQUEST?

13 **A** THE SAME THING YOU DO ON ANY EVALUATION. YOU TAKE A LOOK
14 AT THE FACILITIES, THEIR FUNCTIONING. YOU TALK TO THE STAFF.
15 YOU INSPECT MEDICAL RECORDS. YOU INTERACT WITH PHYSICIANS AND
16 NURSING PROVIDERS, CORRECTIONAL OFFICERS. YOU WITNESS THE
17 PHARMACEUTICAL FUNCTIONING. YOU WATCH DIRECT CARE, INCLUDING
18 TRIAGE. YOU LOOK AT THE CHRONIC ILLNESS CLINICS. YOU LOOK AT
19 ACUTE CARE RESPONSES. YOU LOOK AT INDIVIDUAL PROVIDER
20 INTERACTIONS AND SYSTEM FUNCTIONING, AND I DID ALL OF THAT.

21 **Q** AT THE TIME THAT YOU EVALUATED THE PENNSYLVANIA DEPARTMENT
22 OF CORRECTIONS HEALTHCARE SYSTEM, DID YOU OBSERVE THAT THE
23 SYSTEM WAS SEVERELY OVERCROWDED?

24 **A** YES, MA'AM. IT WAS MY IMPRESSION IT WAS SIGNIFICANTLY
25 OVERCROWDED.

1 Q WHAT DID YOU SPECIFICALLY OBSERVE THAT LED YOU TO THAT
2 CONCLUSION?

3 A THAT MANY CELLS WERE DESIGNED FOR SINGLE CELL -- SINGLE
4 INMATE USE BUT HAD BUNK BEDS, AND MANY OF THEM HAD WHAT ARE
5 KNOWN AS A TERM OF ART CALLED A BOAT. A BOAT IS A FIBERGLASS
6 BED, FOR WANT OF A BETTER TERM, THAT RESEMBLES A LARGE CANOE
7 THAT'S PLACED ON THE FLOOR, AND AN INMATE SLEEPS IN THAT BOAT.

8 Q SO DID THE USE OF BOATS AND THOSE BEDS PROVIDE FOR THREE
9 INMATES IN A CELL THAT HAD BEEN DESIGNED FOR ONE?

10 A THAT'S CORRECT.

11 AND THEN THERE WAS ANOTHER ISSUE IN SEVERAL OF THE
12 PRISONS, WHICH WAS HOT BUNKING. THAT'S A SITUATION WHERE A
13 PERSON GETS TO USE A BUNK ONLY FOR A CERTAIN PERIOD OF TIME AND
14 THEN HAS TO RELINQUISH THAT TO ANOTHER PERSON.

15 Q DID YOU PERSONALLY OBSERVE THE PRACTICES OF HOT BUNKING AND
16 BOATS IN THE PENNSYLVANIA DEPARTMENT OF CORRECTIONS?

17 A I DID NOT WITNESS ANY INMATE BEING RELIEVED OF THE BUNK BY
18 ANOTHER INMATE, BUT I WAS TOLD BY A CORRECTIONAL OFFICER THAT
19 WAS ACCOMPANYING ME AND -- ME AND DR. MAUE THAT ONE INMATE
20 WOULD HAVE TO LEAVE AT, LIKE, 3:00 O'CLOCK BECAUSE THAT WAS
21 THEN ASSIGNED TO ANOTHER INMATE.

22 Q DID YOU PERSONALLY SEE THE BOATS?

23 A DID I PERSONALLY WHAT?

24 Q SEE THE BOATS?

25 A YES, I PERSONALLY WITNESSED THE BOATS, YES, MA'AM.

1 Q BASED ON YOUR REVIEW OF PENNSYLVANIA'S HEALTHCARE SYSTEM
2 WITH DR. MAUE, DID YOU REACH ANY CONCLUSIONS REGARDING THE
3 ADEQUACY OF THAT HEALTHCARE SYSTEM?

4 A YES, MA'AM. I WAS RELATIVELY -- I WAS CONVINCED THEY WERE
5 PROVIDING ADEQUATE CARE, THAT IS THE INMATES HAD ACCESS TO CARE
6 WITHOUT REAL BARRIERS. THEY HAD ACCESS TO A PROFESSIONAL
7 MEDICAL OPINION. THAT OPINION SEEMED TO BE CARRIED OUT. THERE
8 DIDN'T SEEM TO BE ANY BARRIERS TO THAT, AND THERE SEEMED TO BE
9 REASONABLE DOCUMENTATION THAT THIS OCCURRED.

10 Q IN BRIEF, WHAT DOCUMENTS DID YOU REVIEW IN PREPARING FOR
11 YOUR OPINIONS IN THIS CASE REGARDING CALIFORNIA'S CORRECTIONAL
12 MEDICAL CARE SYSTEM?

13 A WELL, IN BRIEF IS DIFFICULT. I CERTAINLY HAD A COMPLETE
14 SET OF THE PLATA POLICIES AND PROCEDURES, THE REPORTS OF THE
15 RECEIVER, ALL THE REPORTS OF THE RECEIVER, THE PLAINTIFF
16 COUNSEL'S LETTERS OF SITE VISIT REPORTS, COURT ORDERS, AND A
17 VARIETY OF OTHER THINGS.

18 Q DR. THOMAS, IN PREPARING YOUR OPINIONS FOR THIS CASE, DID
19 YOU TOUR ANY PRISONS IN CALIFORNIA?

20 A YES, MA'AM, I DID.

21 Q HOW MANY?

22 A A TOTAL OF EIGHT.

23 Q WHICH PRISONS DID YOU TOUR IN PREPARING YOUR OPINIONS FOR
24 THIS CASE AND WHEN?

25 A IN DECEMBER OF 2007 I TOURED SAN QUENTIN, THE CALIFORNIA

1 MEDICAL FACILITY, AND THE CALIFORNIA INSTITUTE FOR MEN. IN
2 SEPTEMBER OF '08, I TOURED NORTH KERN, THE SUBSTANCE ABUSE
3 TREATMENT FACILITY, PLEASANT VALLEY, SALINA (SIC) AND HIGH
4 DESERT.

5 Q WHEN YOU "SALINA" DID YOU MEAN SOLANO?

6 A YES, MA'AM. SOLANO. I'M SORRY.

7 Q IN GENERAL WHAT DID YOU DO DURING YOUR TOURS OF THESE EIGHT
8 PRISONS IN CALIFORNIA?

9 A IN GENERAL? THAT'S ALL I GOT, IN GENERAL.

10 Q WHAT DID YOU DO DURING YOUR TOURS OF THESE EIGHT PRISONS IN
11 CALIFORNIA?

12 A THE SAME THINGS THAT I DID WHENEVER I WAS ASKED TO EVALUATE
13 A PRISON SYSTEM. I TOOK A LOOK AT DAILY, AND IN SOME CASES
14 WEEKEND, FUNCTIONING OF THE PRISON, THE MEDICAL FACILITIES AND
15 THEIR FUNCTIONING. I TALKED TO STAFF. I INSPECTED MEDICAL
16 RECORDS. I INTERACTED WITH PHYSICIANS, PHYSICIAN PROVIDERS,
17 NURSING STAFF, CORRECTIONAL OFFICERS, INMATES; WITNESSED
18 PHARMACEUTICAL FUNCTIONING; LOOKED AT THE CHRONIC ILLNESS
19 CLINICS; LOOKED AT ACUTE CARE RESPONSES; LOOKED AT INDIVIDUAL
20 PROVIDER INTERACTIONS AND SYSTEM FUNCTIONING.

21 Q DOES PLAINTIFFS' COUNSEL ATTEND THESE TOURS WITH YOU?

22 A YES, MA'AM.

23 Q ARE YOU FAMILIAR WITH THE CONCEPT OF PREVENTABLE DEATH IN
24 THE CONCEPT OF MEDICAL CARE?

25 A YES, MA'AM.

1 Q WHAT IS YOUR UNDERSTANDING OF THE MEANING OF PREVENTABLE
2 DEATH IN THE CONTEXT OF MEDICAL CARE?

3 A THAT'S ANY DEATH THAT OCCURRED -- THAT OCCURRED BECAUSE OF
4 A FAILURE OF THE MEDICAL SYSTEM OR AN INDIVIDUAL PROVIDER.
5 IT'S A DEATH THAT SHOULD NOT HAVE HAPPENED.

6 Q DR. THOMAS, BASED ON YOUR EXPERIENCE AS A PRACTITIONER IN
7 THE COMMUNITY AND CHAIR OF THE DEPARTMENT OF SURGERY FOR SCHOOL
8 OF MEDICAL AND A PROFESSOR OF PUBLIC HEALTH, IS IT YOUR
9 UNDERSTANDING THAT PREVENTIBLE DEATHS HAPPEN IN THE COMMUNITY
10 AT LARGE?

11 A YES, MA'AM.

12 Q ARE YOU FAMILIAR WITH ANY STUDIES ESTIMATING THE NUMBER OF
13 PREVENTIBLE DEATHS THAT OCCUR ANNUALLY IN U.S. HOSPITALS DUE TO
14 MEDICAL ERROR?

15 A YES, MA'AM. THERE ARE A WHOLE VARIETY OF STUDIES. THE ONE
16 THAT'S QUOTED MOST WAS -- THE DATA WAS GATHERED 1999, IT WAS
17 RELEASED IN 2000, BY THE INSTITUTE OF MEDICINE. IT'S CALLED,
18 "TO ERR IS HUMAN," BUT THERE HAVE BEEN A VARIETY OF OTHER
19 STUDIES INDICATING THAT PEOPLE DIE UNNECESSARILY IN THE
20 AMERICAN HEALTHCARE SYSTEM.

21 Q CAN YOU TELL ME WHAT RATE -- OR INCIDENCE, ACTUALLY, IS THE
22 PROPER TERM -- INCIDENCE OF PREVENTIBLE DEATH IN U.S. HOSPITALS
23 THAT "TO ERR IS HUMAN" REFERRED TO?

24 A YES, MA'AM. IT WAS SOMETHING BETWEEN 44,000 AND 98,000
25 DEATHS ANNUALLY THAT THE INSTITUTE OF MEDICINE FELT WERE

1 PREVENTIBLE.

2 **Q** IS IT ACCURATE TO SAY "TO ERR IS HUMAN" EXPRESSED THAT
3 PREVENTIBLE DEATHS IN U.S. HOSPITALS WERE A SIGNIFICANT PROBLEM
4 THAT NEEDED TO BE ADDRESSED BY THE MEDICAL COMMUNITY?

5 **A** YES, MA'AM.

6 **Q** BASED ON YOUR EXPERIENCE, ARE INFECTIOUS DISEASES A PROBLEM
7 AT U.S. HOSPITALS?

8 **A** BASED ON MY EXPERIENCE -- AND THEN YOU DROPPED YOUR VOICE.
9 BASED ON MY EXPERIENCE?

10 **Q** ARE INFECTIOUS DISEASES A PROBLEM AT U.S. HOSPITALS?

11 **A** YES, MA'AM, THEY CERTAINLY ARE.

12 **Q** SPECIFICALLY, DO YOU KNOW WHETHER U.S. HOSPITALS HAVE BEEN
13 EXPERIENCING OUTBREAKS OF METHICILLIN-RESISTANT STAPHYLOCOCCUS
14 AUERUS?

15 **A** YES, MA'AM. THAT'S CALLED MRSA, AND THAT'S A SIGNIFICANT
16 PROBLEM.

17 **Q** ARE THERE ANY PARTICULAR CONCERNS REGARDING THE MRSA
18 OUTBREAKS AT U.S. HOSPITALS AT THIS TIME?

19 **A** YES, MA'AM. OUR ONE DRUG AVAILABLE FOR THE TREATMENT OF
20 MRSA IS CALLED VANCOMYCIN, AND VANCOMYCIN IS -- MRSA IS SHOWING
21 SOME RESISTANCE TO VANCOMYCIN, AND THAT'S A MAJOR CONCERN OF
22 THE MEDICAL COMMUNITY.

23 **Q** DR. THOMAS, BASED ON YOUR EXPERIENCE, IS THE TRANSPORT OF
24 INMATES BETWEEN FACILITIES A REALITY OF PRISONS THAT IMPACTS
25 CORRECTIONAL HEALTHCARE?

1 **A** YES, MA'AM.

2 **Q** IN YOUR EXPERIENCE, WHAT ARE SOME OF THE REASONS THAT
3 INMATES ARE MOVED BETWEEN FACILITIES?

4 **A** THERE ARE A WHOLE VARIETY OF REASONS. MOST COMMONLY CITED
5 ONE IS FOR AN OUTSIDE COURT APPOINTMENT, THAT IS, THE COURT
6 DEMANDS AN INMATE BE TRANSPORTED TO A LOCAL JAIL FOR AN
7 APPEARANCE, BUT THERE ARE HUNDREDS OF OTHERS.

8 ONES THAT COME TO THE TOP OF MY MIND ARE TO PROTECT
9 THE INMATE BECAUSE THE INMATE'S CUSTODY HAS CHANGED, BECAUSE
10 THE MISSION OF THE INSTITUTION HAS CHANGED, BECAUSE THERE WAS A
11 FIGHT AND THEY HAVE TO GET SOME OF THE INMATES OUT OF THE AREA,
12 BECAUSE OF A SECURED THREAT GROUP OR A GANG, FOR PROTECTIVE
13 CUSTODY. THERE ARE A WHOLE VARIETY OF REASONS THAT INMATES ARE
14 MOVED AND MOVED CONSTANTLY.

15 **Q** IN YOUR EXPERIENCE, DOES THE DAILY NEED TO TRANSFER INMATES
16 IN A CORRECTIONAL SETTING IMPACT CONTINUITY OF CARE WITH THE
17 SAME MEDICAL CARE PROVIDER OR TEAM OF PROVIDERS EVEN IN PRISONS
18 OR SYSTEMS THAT ARE NOT OVERCROWDED?

19 **A** OH, YES, MA'AM.

20 **Q** IN YOUR EXPERIENCE, HOW DO CORRECTIONAL SYSTEMS ADDRESS THE
21 STRAIN OF ONGOING INMATE MOVEMENT BETWEEN FACILITIES?

22 **A** WELL, THE RECEIVER HAS ALREADY ADDRESSED SOME OF THE
23 ISSUES. IT IS UNREALISTIC IN A CORRECTIONAL SYSTEM TO EXPECT
24 TREMENDOUS CONTINUITY OF CARE WITH AN INDIVIDUAL PROVIDER, SO
25 YOU ESTABLISH CHRONIC ILLNESS CLINICS WITH DEFINED INTERVALS

1 AND TIMES FOR REGULAR APPOINTMENTS. YOU ASSIGN APPROPRIATE
2 INMATES TO APPROPRIATE CHRONIC ILLNESS CLINICS.

3 YOU ASSURE THAT HEALTHCARE IS A HIGH PRIORITY ISSUE
4 AND CONSCIOUSNESS OF ALL SECURITY PERSONNEL. YOU HAVE AN
5 INTEGRATED PHARMACY SYSTEM. YOU CREATE A SYSTEM OF LOGS TO
6 ENSURE FOLLOW UP. YOU HAVE A VARIETY OF OTHER PRACTICES TO
7 ENSURE THE DELIVERY OF CONSTITUTIONAL HEALTHCARE IN THE
8 REALITIES OF PRISON LIFE.

9 Q IN YOUR EXPERIENCE, ARE THERE FACTORS OTHER THAN
10 OVERCROWDING THAT IMPACT WHETHER HEALTHCARE IS BEING ADEQUATELY
11 DELIVERED IN A CORRECTIONAL SETTING?

12 A COULD YOU REPEAT THAT, MS. JOHNSON?

13 Q IN YOUR EXPERIENCE, ARE THERE OTHER FACTORS BESIDES
14 OVERCROWDING THAT IMPACT WHETHER HEALTHCARE IS BEING ADEQUATELY
15 DELIVERED IN CORRECTION SETTINGS?

16 A OH, SURE. THERE'S A TREMENDOUS NUMBER OF OTHER ISSUES.
17 WHILE OVERCROWDING MAY MAKE AN IMPACT, LACK OF RESOURCES, LACK
18 OF QUALITY STAFF, DISORGANIZED PHARMACEUTICAL DISTRIBUTION
19 SYSTEM, A NONFUNCTIONING SUPPLY SYSTEM, A LABORATORY REPORT
20 SYSTEM THAT'S FRAUGHT WITH DELAY, A WHOLE HOST OF OTHER THINGS.

21 Q BASED ON YOUR REVIEW OF DOCUMENTS AND TOURS OF PRISONS IN
22 CALIFORNIA, HAVE THESE FACTORS BEEN PRESENT IN THE MEDICAL
23 DELIVERY SYSTEM IN CALIFORNIA'S PRISONS?

24 A ALL OF THEM HAVE BEEN PRESENT, AND THE RECEIVER IS
25 ADDRESSING ALL OF THEM.

1 Q ARE THESE FACTORS UNIQUE TO CALIFORNIA?

2 A ARE THESE FACTORS WHAT?

3 Q UNIQUE TO CALIFORNIA.

4 JUDGE HENDERSON: UNIQUE TO CALIFORNIA.

5 THE WITNESS: I'M SORRY. THANK YOU, YOUR HONOR.

6 NO, THEY'RE CERTAINLY NOT UNIQUE TO CALIFORNIA.

7 BY MS. JOHNSON

8 Q BASED ON YOUR REVIEW OF DOCUMENTS AND TOURS OF PRISONS IN
9 CALIFORNIA, ARE THERE FACTORS IMPACTING THE DELIVERY OF
10 HEALTHCARE THAT ARE UNRELATED TO THE SIZE OF THE PATIENT
11 POPULATION?

12 A YES, MA'AM.

13 Q WHAT ARE THOSE FACTORS?

14 A WELL, WE JUST ENUMERATED MANY OF THEM. I CAN DO IT AGAIN
15 IF YOU'D LIKE, IF I CAN RECALL.

16 JUDGE KARLTON: PLEASE DON'T.

17 JUDGE HENDERSON: THAT'S OKAY.

18 THE WITNESS: THANK YOU, YOUR HONOR.

19 BY MS. JOHNSON

20 Q TO YOUR KNOWLEDGE -- AND I THINK YOU PERHAPS ALREADY
21 ANSWERED THIS -- IS THE RECEIVER BEGINNING TO ADDRESS THOSE
22 FACTORS?

23 A YES, MA'AM.

24 Q BASED ON YOUR REVIEW OF DOCUMENTS AND TOURS OF PRISONS,
25 HAVE THOSE FACTORS IMPROVED EVEN IN LIGHT OF THE SIZE OF

1 CALIFORNIA'S PRISON POPULATION?

2 **A** YES, MA'AM. IN FACT, THE COUNSEL SITE VISIT REPORTS
3 INDICATE THEY ARE IMPROVING.

4 **Q** IN YOUR OPINION, IS THERE A SINGLE MOST IMPORTANT FACTOR IN
5 THE DELIVERY OF ADEQUATE HEALTHCARE IN A CORRECTIONAL
6 ENVIRONMENT?

7 **A** YES, MA'AM.

8 **Q** AND WHAT IS THAT FACTOR?

9 **A** THE CULTURE OF THE SYSTEM. THE CULTURE MUST FOSTER
10 PROVIDING CARE AT A CONSTITUTIONAL LEVEL. IN THIS CASE THE
11 COURT RECOGNIZED OVER AND OVER AGAIN THAT THE MEDICAL CARE
12 STAFF HAD LEARNED A -- WHAT THE COURT CALLED A TRAINED
13 INCAPACITATION. THE RECEIVER HAS ALSO RECOGNIZED THIS.

14 **Q** DID YOU REVIEW --

15 **JUDGE REINHARDT:** CAN YOU TELL ME WHAT TRAINED
16 INCAPACITATION IS?

17 **JUDGE KARLTON:** YOU MIGHT ASK JUDGE HENDERSON. IT'S
18 HIS PHRASE.

19 **JUDGE REINHARDT:** I HAVEN'T HAD THE OPPORTUNITY TO
20 READ ALL HIS DECISIONS.

21 **JUDGE HENDERSON:** I CAN TELL YOU. I WAS HAVING
22 DINNER WITH TWO FRIENDS WHO ARE DISTINGUISHED SOCIOLOGISTS, AND
23 I WAS DESCRIBING THE CASE. AND THEY SAID, OH, THAT'S TRAINED
24 INCAPACITY, WHICH IS CAPACITY OF AN INSTITUTION TO TRAIN ITSELF
25 OVER A PERIOD OF TIME TO SAY, OH, WE CAN'T DO THAT, EVEN THOUGH

1 IT IS DOABLE.

2 THAT'S THE WAY I HAVE BEEN USING THE TERM, AND THAT
3 CAME AS A RESULT OF MEETINGS BEFORE I APPOINTED A RECEIVER,
4 SAYING, WELL, WHY DON'T WE DO THIS AS A SOLUTION, AND WE'D GO
5 AWAY FOR 45 DAYS, AND THEY'D COME BACK AND SAY, WE COULDN'T DO
6 IT. IT WAS CLEARLY, IN MY VIEW, DOABLE.

7 **JUDGE REINHARDT:** IS THAT LIKE POLY -- WHAT WAS IT?

8 **JUDGE HENDERSON:** POLYCENTRIC. I'LL NEVER WRITE
9 ANYTHING AGAIN. NO, THOSE ARE DIFFERENT.

10 **BY MS. JOHNSON**

11 **Q** DR. THOMAS, DID YOU REVIEW PLAINTIFFS' COUNSEL'S POST-TOUR
12 LETTER REGARDING A SITE VISIT ON JULY 17TH -- REGARDING A SITE
13 VISIT ON JULY 17 AND 18, 2007, TO KERN VALLEY STATE PRISON,
14 WHICH IS MARKED AS DEFENDANT'S TRIAL EXHIBIT 1081?

15 **A** YES, I DID.

16 **Q** THAT'S SUPPOSED TO APPEAR ON THE SCREEN IN A MOMENT.

17 **JUDGE HENDERSON:** WHILE WE ARE DOING THAT, I SHOULD
18 MENTION, JUDGE REINHARDT, THAT TERM WAS COINED BY THORSTEIN
19 VEBLEN, NOT MY FRIENDS, A WELL-KNOWN TERM IN SOCIOLOGY.

20 **BY MS. JOHNSON**

21 **Q** I'M GOING TO START READING. WE'LL TRY TO FIGURE OUT WHERE
22 IT IS IN THE LETTER HERE. THE LETTER NOTES -- AND I'M TRYING
23 TO SEE WHERE IT IS. "I WAS IMPRESSED -- " HERE WE GO. IN THE
24 FIRST PARAGRAPH:

25 "I WAS IMPRESSED BY MANAGEMENT STAFF'S KNOWLEDGE

1 OF AND COMPETENCE IN THE PLATA POLICIES AND
2 PROCEDURES. THIS LETTER ..." ET CETERA.

3 IF YOU GO TO THE NEXT PARAGRAPH?

4 "WHILE THERE WERE -- " OKAY.

5 "WHILE THERE WERE A NUMBER OF REQUIREMENTS OF THE
6 POLICIES AND PROCEDURES THAT HAD NOT YET BEEN PUT
7 INTO PLACE ON THIS TOUR, I AM OPTIMISTIC THAT KVSP
8 WILL CONTINUE TO SPEEDILY IMPROVE ITS PLATA
9 COMPLIANCE."

10 **JUDGE KARLTON:** MS. JOHNSON, I'M SORRY. WHO WROTE
11 THIS LETTER?

12 **MS. JOHNSON:** PLAINTIFFS' COUNSEL. I'M NOT SURE
13 WHICH ONE, YOUR HONOR.

14 **JUDGE KARLTON:** OKAY. ALL RIGHT.

15 **MS. JOHNSON:** OKAY. THE NEXT -- OKAY.

16 **JUDGE REINHARDT:** HE DIDN'T FIND TRAINED
17 INCAPACITATION?

18 **MS. JOHNSON:** NO.

19 **JUDGE REINHARDT:** HE FOUND THEY WERE QUITE WILLING
20 TO IMPROVE.

21 **MS. JOHNSON:** WE'RE GOING TO GET THERE.

22 "WHILE THERE WERE A NUMBER OF REQUIREMENTS OF THE
23 POLICIES AND PROCEDURES THAT HAD NOT YET BEEN PUT
24 INTO PLACE ON THIS TOUR, I AM OPTIMISTIC THAT KVSP
25 WILL CONTINUE TO SPEEDILY IMPROVE ITS PLATA

1 COMPLIANCE. THE DEDICATION AND COMPETENCE OF STAFF
2 AT KVSP WAS VISIBLE IN THE FOLLOWING AREAS:

3 "UTILIZATION MANAGEMENT, WHERE THERE WAS NO
4 BACKLOG, AND A NURSE WHO WAS VERY KNOWLEDGEABLE ABOUT
5 THE INDIVIDUAL PATIENTS WHOSE MEDICAL ISSUES I
6 RAISED. PHARMACY, WHICH WAS CLEARLY RUNNING VERY
7 SMOOTHLY UNDER THE SUPERVISION OF TWO SKILLED PHARMS
8 ONES. APPEALS, WHICH HAVE MADE SIGNIFICANT
9 IMPROVEMENTS AND HAD BEEN MUCH HELPED BY FREQUENT
10 VISITS BY HCSD. MEDICAL RECORDS, WHERE THE LOOSE
11 FILINGS AND OLSEN REQUESTS WERE CAREFULLY MONITORED
12 AND CONTROLLED. AND SPECIALTY, WHICH IS TRACKING THE
13 RELATIVELY SMALL NUMBER OF PENDING APPOINTMENTS
14 PROPERLY DESPITE LACKING THE SPECIALTY ACKNOWLEDGING
15 REPORT SYSTEM USED IN OTHER INSTITUTIONS."

16 **BY MS. JOHNSON**

17 **Q** ARE THE COMMENTS IN THIS POST-TOUR LETTER BY PLAINTIFFS'
18 COUNSEL THE TYPE OF COMMENTS YOU RELIED ON TO DRAW YOUR
19 CONCLUSION THAT THE CULTURE OF THE CALIFORNIA DEPARTMENT OF
20 CORRECTIONS AND REHABILITATION WITH RESPECT TO HEALTHCARE IS
21 CHANGING?

22 **A** YES, MA'AM.

23 **Q** IN YOUR OPINION, IS A SEPARATION BETWEEN THE SECURITY AND
24 HEALTHCARE MISSIONS IMPORTANT IN A CORRECTIONAL MEDICAL CARE
25 SYSTEM?

1 **A** YES, MA'AM.

2 **Q** LOOKING AGAIN AT DEFENDANT'S EXHIBIT 1081, IF YOU GO TO THE
3 NEXT PAGE, AT THE SECOND -- THE SECOND FULL PARAGRAPH, THE
4 SECOND FULL PARAGRAPH? THE SECOND FULL PARAGRAPH.

5 **JUDGE KARLTON:** THAT IS THE SECOND FULL PARAGRAPH.

6 **MS. JOHNSON:** THAT'S NOT A FULL PARAGRAPH. THE
7 THIRD PARAGRAPH DOWN. OKAY.

8 **BY MS. JOHNSON**

9 **Q** CONTINUING, PLAINTIFFS' COUNSEL ALSO NOTED:

10 "ALSO, IN THE ASU2 CLINIC, WE NOTED A SIGNIFICANT
11 PROBLEM WITH CUSTODY MAKING DECISIONS AFFECTING
12 ACCESS TO MEDICAL CARE. IN THIS ASU, PATIENTS WERE
13 NOT BEING SEEN IN FTF TRIAGE WITHIN THE TIMEFRAMES
14 REQUIRED BY THE POLICIES AND PROCEDURES BECAUSE
15 CUSTODY WAS DICTATING WHAT DAYS PATIENTS CAN COME TO
16 THE CLINIC. CUSTODY WAS ALSO INAPPROPRIATELY MAKING
17 DETERMINATIONS ABOUT WHEN PATIENTS CAN BE SEEN IN A
18 AND B CLINICS. THERE PRISONERS WITH EITHER LOWER
19 CUSTODY DESIGNATIONS OR GANG AFFILIATIONS ARE
20 ASSIGNED LIMITED CLINIC DAYS BY CUSTODY. AS A
21 RESULT, MANY PATIENTS WERE NOT BEING SEEN FOR FTF
22 NURSING TRIAGE WITHIN THE TIMEFRAMES REQUIRED BY
23 PLATA AND WERE BEING DENIED TIMELY ACCESS TO NEEDED
24 MEDICAL CARE. THIS ISSUE WAS RAISED DURING THE TOUR
25 AND WAS ACKNOWLEDGED AS PROBLEMATIC BY THE AW OF

1 HEALTHCARE AND BY THE SERGEANT WHO ACCOMPANIED US."

2 IS THAT THE TYPE OF ISSUE YOU ARE REFERRING TO WHEN
3 YOU STATE THAT A SEPARATION BETWEEN THE CUSTODY AND HEALTHCARE
4 MISSION IS IMPORTANT?

5 **A** YES, MA'AM.

6 **JUDGE KARLTON:** SIR, WHAT IS THE AW?

7 **THE WITNESS:** ASSOCIATE WARDEN OR ASSISTANT WARDEN.

8 **JUDGE KARLTON:** THANK YOU, SIR.

9 **THE WITNESS:** YES, SIR.

10 **BY MS. JOHNSON**

11 **Q** IN YOUR OPINION, HAS THE CALIFORNIA PRISON SYSTEM OVERALL
12 SHOWN A SHIFT IN THE RELATIONSHIP BETWEEN THE SECURITY AND THE
13 HEALTHCARE FUNCTIONS?

14 **A** AGAIN, IN MY OPINION, HAS THE CALIFORNIA DEPARTMENT OF
15 CORRECTIONS?

16 **Q** OVERALL SHOWN A SHIFT IN THE RELATIONSHIP BETWEEN THE
17 SECURITY AND THE HEALTHCARE FUNCTIONS?

18 **A** YES, MA'AM, SINCE THE RECEIVER WAS APPOINTED, THERE
19 CERTAINLY HAS BEEN.

20 **Q** CAN YOU DESCRIBE THAT SHIFT AS YOU UNDERSTAND IT?

21 **A** YES, MA'AM. THE CULTURE WAS SUCH PRIOR TO APPOINTING OF
22 THE RECEIVER THAT THIS WAS A SECURITY-DRIVEN SYSTEM WITHOUT
23 REGARD FOR ANY OTHER PROGRAMS OR ANY OTHER CONSTITUTIONAL
24 REQUIREMENTS. SINCE THE RECEIVER HAS BEEN APPOINTED, POSSIBLY
25 BECAUSE OF THE MANAGEMENT STYLE OF THE FIRST RECEIVER, BUT

1 THERE IS CLEAR INDICATION THAT THE CULTURE IS SHIFTING IN THE
2 DEPARTMENT TO UNDERSTAND THE NEED FOR A CORRECTIONAL HEALTHCARE
3 SYSTEM THAT WORKS ON A CONSTITUTIONAL LEVEL OF HEALTHCARE.

4 **Q** IN YOUR OPINION, HAS THE ATTITUDE OF THE ACTUAL MEDICAL
5 STAFF -- MEDICAL CARE STAFF IN CALIFORNIA'S PRISONS CHANGED
6 SINCE THE RECEIVER WAS APPOINTED?

7 **A** ABSOLUTELY. FROM MY COMMUNICATION WITH OTHER CORRECTIONAL
8 SYSTEMS, PEOPLE ARE VERY ENVIOUS OF THE STAFF PATTERN AND THE
9 SALARY STRUCTURE AND THINGS LIKE THAT IN THE CALIFORNIA SYSTEM.

10 **Q** BUT WITH RESPECT TO ATTITUDE OF MEDICAL CARE STAFF, DID YOU
11 HAVE AN OPINION REGARDING WHETHER THE ATTITUDE OF THE MEDICAL
12 CARE STAFF IN CALIFORNIA'S PRISONS HAS CHANGED SINCE THE
13 RECEIVER WAS APPOINTED?

14 **A** YES, MA'AM. I'M SORRY. I INTERPRETED YOUR WORD "ATTITUDE"
15 TO BE "ADEQUATE." I'M SORRY.

16 IN TERMS OF ATTITUDE, THERE CLEARLY HAS BEEN A
17 SHIFT. AT ALMOST EVERY INSTITUTION I VISITED, PEOPLE IN THE
18 MEDICAL CARE SERVICE AREA FELT EMPOWERED TO DO THEIR JOB FOR
19 THE FIRST TIME, AND SOME OF THESE WERE LONG-TERM EMPLOYEES WHO
20 HAD NEVER FELT EMPOWERED.

21 **Q** BASED ON YOUR EXPERIENCE, DO YOU HAVE AN OPINION REGARDING
22 WHETHER A CONSTITUTIONAL LEVEL OF HEALTHCARE CAN BE ACHIEVED IN
23 SEVERELY OVERCROWDED CONDITIONS?

24 **A** SURE. I'VE SEEN -- PERSONALLY WITNESSED HEALTHCARE
25 SERVICES DELIVERED IN EXTREMELY OVERCROWDED CONDITIONS AND THE

1 HEALTHCARE COMPORTS TO ALL STANDARD CONSTITUTIONAL CARE IN
2 SPITE OF OVERCROWDING. TIMELY QUALITY APPROPRIATE SERVICES
3 WERE PROVIDED.

4 **Q** BASED ON YOUR EXPERIENCE, YOUR REVIEW OF DOCUMENTS AND YOUR
5 TOURS OF PRISONS IN CALIFORNIA, DO YOU HAVE AN OPINION
6 REGARDING WHETHER OVERCROWDING IS THE PRIMARY CAUSE OF THE
7 ALLEGED DEFICIENCIES IN THE DELIVERY OF MEDICAL CARE IN
8 CALIFORNIA'S PRISONS?

9 **A** YES, MA'AM.

10 **Q** WHAT IS YOUR OPINION?

11 **A** OVERCROWDING -- IN MY OPINION, OVERCROWDING IS NOT THE
12 PRIMARY CAUSE OF THE ALLEGED PROBLEMS IN THE DEPARTMENT OF
13 CORRECTIONS.

14 **Q** BASED ON YOUR EXPERIENCE, YOUR REVIEW OF DOCUMENTS, AND
15 YOUR TOURS OF PRISONS IN CALIFORNIA, DO YOU HAVE AN OPINION
16 REGARDING WHETHER REMOVING OVERCROWDING WILL EFFECTUATE A
17 CONSTITUTIONAL LEVEL OF MEDICAL CARE DELIVERY IN CALIFORNIA'S
18 PRISONS?

19 **A** YES, MA'AM, I DO.

20 **Q** WHAT IS THAT -- WHAT IS THAT OPINION?

21 **A** THAT THERE'S NO REAL NEXUS BETWEEN OVERCROWDING AND A
22 CONSTITUTIONAL DELIVERY OF HEALTHCARE. IF YOU OBLIGED PEOPLE
23 TO LEAVE, THERE MAY NOT BE A NEXUS IN THEIR MEDICAL CARE NEEDS
24 TO RELIEVING THE ISSUES OF OVERCROWDING, PLUS YOU HAVE ALL OF
25 THE OTHER ISSUES THAT WE'VE TALKED ABOUT THAT THE RECEIVER IS

1 ADDRESSING.

2 **JUDGE KARLTON:** MS. JOHNSON, CAN YOU --

3 I'M SORRY, DR. THOMAS. I DON'T UNDERSTAND YOUR
4 ANSWER. WOULD YOU ELABORATE AS TO WHAT IT IS YOU'RE SAYING?

5 **THE WITNESS:** YES, YOUR HONOR. IT IS MY STRONG
6 FEELING THAT OVERCROWDING IS NOT THE PRIMARY CAUSE OF THE
7 ALLEGED PROBLEMS OF THE DEPARTMENT OF CORRECTIONS. THIS IS A
8 MULTIFACETED PROBLEM, AND SIMPLY REMOVING ONE ISSUE, WHILE IT
9 MAY OR MAY NOT MAKE THE RECEIVER'S JOB EASIER, WON'T GET RID OF
10 THE PROBLEM. THE RECEIVER HAS DONE A WONDERFUL JOB IN MANY,
11 MANY AREAS. IT IS MY STRONG FEELING, AND I'VE OPINED, THAT IF
12 THE CULTURE HAD NOT CHANGED, YOU CAN HAVE A SITUATION OF ONE
13 INMATE IN A PRISON AND THAT INMATE MAY NOT GET A CONSTITUTIONAL
14 LEVEL OF CARE BECAUSE OF A SECURITY-DRIVEN SYSTEM. THAT IS
15 CLEARLY CHANGING, AND THAT CHANGE IN CULTURE IS THE FUNDAMENTAL
16 REASON THAT THE RECEIVERSHIP IS GOING TO SUCCEED.

17 **MS. JOHNSON:** NO FURTHER QUESTIONS.

18 **JUDGE HENDERSON:** DO INTERVENORS HAVE ANY QUESTIONS
19 OF THIS WITNESS?

20 **MR. MITCHELL:** I HAVE NO QUESTIONS, YOUR HONOR.

21 **JUDGE HENDERSON:** CROSS-EXAMINATION.

22 **CROSS-EXAMINATION BY MS. HARDY**

23 **BY MS. HARDY**

24 **Q** GOOD AFTERNOON, DR. THOMAS. THIS IS ALISON HARDY FOR THE
25 PLAINTIFFS.

1 **A** HI, MS. HARDY.

2 **Q** HELLO.

3 YOU TESTIFIED THAT YOU HAD REVIEWED THIS REPORT FROM
4 KVSP, AND THIS REPORT FROM KVSP DRAFTED BY PLAINTIFFS' COUNSEL
5 REFLECTED THERE WAS A CHANGE IN THE CUSTODY VERSE CULTURE,
6 CORRECT?

7 **A** YES, MA'AM.

8 **Q** EXCUSE ME. I'M SORRY. I MISSPOKE. WHAT IT SAID WAS THAT
9 THE -- THERE WERE CUSTODY-MAKING DECISIONS THAT THEY SHOULD NOT
10 BE MAKING, CORRECT?

11 **A** THAT'S CORRECT.

12 **Q** YOU'VE ALSO TESTIFIED THAT THE RECEIVER HAS -- HAD CHANGED
13 THAT, THAT PROBLEM, HAD ADDRESSED THAT PROBLEM SO THAT THAT IS
14 NO LONGER THE CASE THAT CUSTODY IS MAKING MEDICAL DECISIONS; IS
15 THAT RIGHT?

16 **JUDGE KARLTON:** AT THAT PRISON.

17 **THE WITNESS:** NO, MA'AM. THAT -- EXCUSE ME. NO
18 MA'AM. THAT MISCHARACTERIZES WHAT I SAID. THE RECEIVER IS
19 ADDRESSING THE CULTURE. THAT'S GOING TO BE AN ONGOING ISSUE.
20 I WAS SHOCKED AT THE SHORT LENGTH OF TIME THE RECEIVER HAS BEEN
21 IN PLACE COMPARED TO THE AMOUNT OF CHANGE THAT I HAVE SEEN
22 BETWEEN '07 AND '08.

23 **BY MS. HARDY**

24 **Q** WHEN WAS THE RECEIVER APPOINTED?

25 **A** I DON'T REMEMBER OFF THE TOP OF MY HEAD, BUT I'M CERTAIN

1 THAT DATA IS READILY AVAILABLE.

2 Q THANK YOU.

3 DOCTOR, YOU DRAFTED THREE REPORTS IN THIS CASE,
4 CORRECT?

5 A YES, MA'AM.

6 Q FOR CONVENIENCE I'M GOING TO REFER TO THOSE AS YOUR FIRST,
7 SECOND, AND THIRD REPORTS, OKAY?

8 A YES, MA'AM.

9 Q YOUR FIRST REPORT IS DATED NOVEMBER 2007, CORRECT?

10 A I BELIEVE I HAVE IT IN FRONT OF ME, AND I'M NOT ENTIRELY
11 CERTAIN I SEE THE DATE. LET ME JUST LOOK. YES. THE NINTH DAY
12 OF NOVEMBER 2007.

13 Q YOU DON'T RECALL WHETHER YOU VISITED ANY CALIFORNIA PRISONS
14 BEFORE DRAFTING THAT FIRST REPORT, DO YOU?

15 A I DO NOT. I MAY HAVE VISITED CALIFORNIA PRISONS PREVIOUSLY
16 WHEN THE ACA, THE CORRECTIONAL ASSOCIATION, HAD MEETINGS OUT
17 THERE, AND ALWAYS THERE ARE TOURS OF PRISONS, BUT I DON'T
18 RECALL WHETHER I VISITED ANY PRISONS DURING ANY OF THOSE
19 MEETINGS.

20 Q SO FOR THE PURPOSES OF DRAFTING YOUR FIRST REPORT, YOU DID
21 NOT TOUR ANY CALIFORNIA PRISONS, CORRECT?

22 A THAT'S ESSENTIALLY CORRECT, YES.

23 Q AND FOR THE SECOND REPORT YOU VISITED THREE PRISONS,
24 CORRECT?

25 A THAT'S CORRECT.

1 Q AND THE THIRD YOU VISITED FIVE PRISONS, CORRECT?

2 A THAT'S CORRECT.

3 Q AND THE OPINIONS THAT YOU DEVELOPED IN THIS CASE ARE
4 RELATED SOLELY TO THE IMPACT OF OVERCROWDING ON MEDICAL CARE,
5 NOT ON MENTAL HEALTHCARE; IS THAT CORRECT?

6 A I WAS NOT ASKED TO LOOK AT MENTAL HEALTHCARE.

7 Q AND DO YOU CONSIDER YOURSELF AN EXPERT IN MENTAL
8 HEALTHCARE?

9 A NO, MA'AM, I DO NOT.

10 Q YOU TESTIFIED THAT WHEN YOU VISITED THE PRISONS IN
11 PENNSYLVANIA, THAT A CUSTODY OFFICER TOLD YOU THAT THEY HOT
12 BUNK BEDS IN THE PENNSYLVANIA PRISON SYSTEM; IS THAT CORRECT?

13 A YES, MA'AM.

14 Q DID YOU ASK ANYONE BESIDES THAT CUSTODY OFFICER WHETHER
15 THAT WAS, IN FACT, TRUE?

16 A NO, MA'AM, I DIDN'T THINK TO. HE TOLD ME THAT THAT INMATE
17 HAD TO GET OUT OF THE BUNK WITHIN SEVERAL HOURS SO ANOTHER
18 INMATE COULD GET IN, AND THAT WAS MY CONCEPT AND HIS CONCEPT OF
19 HOT BUNKING. I DID NOT ASK HIS SUPERVISOR OR ANYBODY ELSE. HE
20 WAS THE PERSON RESPONSIBLE FOR THE INMATES.

21 Q ARE YOU AWARE THAT THE FORMER AND THE CURRENT DIRECTORS OF
22 THE PENNSYLVANIA DEPARTMENT OF CORRECTIONS HAVE BOTH TESTIFIED
23 IN THIS PROCEEDING ALREADY?

24 A I HAVE NO KNOWLEDGE OF THAT.

25 Q WOULD IT CHANGE YOUR TESTIMONY ABOUT WHETHER YOU SHOULD

1 HAVE VERIFIED THAT INFORMATION IF YOU KNEW THAT BOTH OF THE
2 FORMER AND THE CURRENT DIRECTORS OF THE PENNSYLVANIA DEPARTMENT
3 OF CORRECTIONS HAVE BOTH TESTIFIED THAT PENNSYLVANIA DOES NOT
4 NOW AND NEVER HAS HOT BUNKED?

5 **MS. JOHNSON:** YOUR HONORS, I WANT TO POINT OUT THAT
6 PLAINTIFFS' COUNSEL HAS NOT ESTABLISHED THAT EITHER OF THOSE
7 WITNESSES WAS THE DIRECTOR IN CHARGE AT THE TIME THAT
8 DR. THOMAS REVIEWED THE PENNSYLVANIA DEPARTMENT OF CORRECTIONS
9 HEALTHCARE SYSTEM.

10 **JUDGE KARLTON:** YOU CAN MAKE THAT ARGUMENT WHEN WE
11 GET TO THE APPROPRIATE PLACE. I'M SORRY.

12 **JUDGE HENDERSON:** GO ON. YOU CAN EXPLORE THAT ON
13 REDIRECT.

14 GO ON, MS. HARDY.

15 **THE WITNESS:** TO ANSWER YOUR QUESTION THEN, IT WOULD
16 NOT ALTER WHAT I WITNESSED, IT WOULD NOT ALTER WHAT I HEARD,
17 AND IT WOULD NOT ALTER WHAT I BELIEVE.

18 **BY MS. HARDY**

19 **Q** DOCTOR, YOU BELIEVE THAT SOME PATIENT ENCOUNTERS WITH A
20 PHYSICIAN SHOULD TAKE PLACE IN A CONFIDENTIAL SETTING, CORRECT?

21 **A** YES, I BELIEVE THERE ARE SOME PATIENT CARE INTERACTIONS
22 THAT SHOULD BE CONFIDENTIAL.

23 **Q** AND IF A SETTING IS NOT CONFIDENTIAL, SOME PATIENTS MAY BE
24 UNWILLING TO DIVULGE INTIMATE PERSONAL INFORMATION TO THEIR
25 PROVIDER, CORRECT?

1 **A** YES, THAT VARIES, BUT THERE ARE MANY PATIENTS WHO HAVE
2 LITTLE CONCERN ABOUT CONFIDENTIALITY, BUT SOME WHO DO, MAY HAVE
3 CONCERNS, AND I HAVE TAKEN IN -- WHEN I WAS AT JACKSON MEMORIAL
4 HOSPITAL BOTH AS A RESIDENT AND AS FACULTY MEMBER TAKEN
5 PATIENTS THAT WERE UNFORTUNATELY HOUSED IN THE HALL INTO THE
6 BATHROOMS TO ACHIEVE CONFIDENTIAL LEVEL, YES.

7 **Q** AND SO IT'S YOUR TESTIMONY THAT IT'S AN APPROPRIATE
8 ACCOMMODATION TO SPACE SHORTAGES TO PROVIDE TREATMENT TO
9 PATIENTS IN THE MEN'S ROOM?

10 **A** IT'S -- IT'S NOT NECESSARILY THE BEST WAY TO DO THINGS, BUT
11 CERTAINLY ONE HAS TO BE CREATIVE IN ACADEMIC MEDICAL CENTERS
12 AND IN TRAINING PROGRAMS AND IN CORRECTIONS.

13 **Q** DOCTOR, DURING YOUR CALIFORNIA PRISON TOURS, YOU OBSERVED
14 HEALTHCARE BEING DELIVERED IN AN ENVIRONMENT THAT WAS NOT
15 CONDUCIVE TO CONFIDENTIALITY AT SOME PRISONS, CORRECT?

16 **A** YES.

17 **Q** AND YOU AGREE THAT EVEN THE NEWEST OF CALIFORNIA'S PRISONS
18 HAVE INADEQUATE SPACE FOR PATIENT CARE, CORRECT?

19 **A** I'M NOT ENTIRELY CERTAIN I HAVE SEEN OR WITNESSED THE
20 NEWEST. YOU WOULD HAVE TO GIVE ME THE DATES OF THE NEWEST
21 ONES. I DID SEE FACILITIES THAT WERE NOT PURPOSE FILLED FOR
22 MEDICAL CARE BEING USED.

23 **Q** DOCTOR, I WOULD DIRECT YOU TO PAGE 17 OF YOUR THIRD REPORT
24 AT PARAGRAPH 33.

25 **A** YES.

1 Q THE SECOND SENTENCE -- ACTUALLY, STARTING AT THE BEGINNING:

2 "NOTE MUST BE MADE OF THE SPACE FOR MEDICAL
3 FACILITIES IN THE CALIFORNIA DEPARTMENT OF
4 CORRECTIONS AND REHABILITATION. BECAUSE OF THE
5 AFOREMENTIONED CULTURE OF CUSTODY DOMINANCE, EVEN THE
6 NEWEST OF CALIFORNIA PRISONS HAVE INADEQUATE SPACE
7 FOR CARE."

8 A YES, MA'AM.

9 Q THAT WAS YOUR TESTIMONY?

10 A YES, MA'AM. THAT'S NOT A TERM OF ART. THAT'S A TERM OF
11 COMMON LANGUAGE. THAT IMPLIES THAT THE NEWEST ONES I HAVE
12 SEEN. I AM NOT CERTAIN IF THERE ARE OTHER FACILITIES THAT I
13 HAVE NOT SEEN THAT ARE NEWER. BUT, CLEARLY, YOU KNOW, FROM
14 YEARS OF HAVING CUSTODY DOMINANCE, THE FACILITIES THAT I HAVE
15 SEEN DID NOT HAVE ADEQUATE SPACE FOR PATIENT CARE.

16 Q YOU AGREE THE LACK OF ADEQUATE SPACE REFLECTS A MINDSET
17 WHERE THERE'S SIMPLY NOT MUCH THOUGHT GIVEN THE NEEDS OF
18 MEDICAL CARE FOR INMATES WHEN THESE SPACES WERE CONSTRUCTED,
19 CORRECT?

20 A THAT'S CORRECT.

21 Q YOU ARE AWARE THAT THE RECEIVER HAS WRITTEN THAT THE
22 FACILITIES AVAILABLE FOR PROVIDING HEALTHCARE WITHIN THE CDCR
23 ARE WOEFULLY INADEQUATE, CORRECT?

24 A YES, MA'AM.

25 Q AND YOU ARE AWARE THAT THE RECEIVER'S TURNAROUND PLAN OF

1 ACTION INCLUDES A BUILDING PLAN TO ADD MEDICAL BEDS TO THE
2 SYSTEM, CORRECT?

3 **A** YES, MA'AM.

4 **Q** AND THAT BUILDING PLAN ALSO INCLUDES UPGRADES TO EXISTING
5 MEDICAL CLINICS, CORRECT?

6 **A** YES, MA'AM.

7 **Q** AND YOU BELIEVE THE RECEIVER'S BUILDING PLAN IS NOT
8 NECESSARY TO ACHIEVE CONSTITUTIONAL LEVEL OF HEALTHCARE IN
9 CALIFORNIA, CORRECT?

10 **A** THAT'S CORRECT.

11 **Q** AND YOU DISAGREE WITH THE RECEIVER'S POSITIONS THAT
12 HEALTHCARE WILL DETERIORATE UNLESS MONEY IS ALLOCATED TO FUND A
13 BUILDING PROJECT, CORRECT?

14 **A** THAT'S CORRECT.

15 **Q** AND, IN FACT, YOU'VE DESCRIBED THE RECEIVER'S POSITION THAT
16 HEALTHCARE WILL DETERIORATE UNLESS MONEY IS ALLOCATED TO THE
17 BUILDING PROJECT AS LUDICROUS, CORRECT?

18 **A** THE EIGHT BILLION DOLLARS, MA'AM.

19 **Q** AND YOU BELIEVE THAT THE SHORTAGE OF CLINICAL SPACE IN
20 CALIFORNIA PRISONS DOES NOT CREATE A BARRIER TO THE DELIVERY OF
21 UNCONSTITUTIONAL MEDICAL CARE, CORRECT?

22 **JUDGE KARLTON:** NO. THE DELIVERY OF CONSTITUTIONAL.

23 **MS. HARDY:** I'M SORRY. THANK YOU. I'LL SAY IT FOR
24 A CLEAR RECORD.

25

1 **BY MS. HARDY**

2 **Q** YOU BELIEVE THE SHORTAGE OF CLINICAL SPACE IN CALIFORNIA
3 PRISONS DOES NOT NECESSARILY CREATE A BARRIER TO THE DELIVERY
4 OF CONSTITUTIONAL MEDICAL CARE, CORRECT?

5 **A** THAT'S CORRECT, NOT NECESSARILY. THERE ARE A VARIETY OF
6 THINGS THAT COULD BE DONE TO USE THE EXISTING SPACE MUCH
7 BETTER.

8 **Q** AND THAT WOULD INCLUDE PROVIDING TREATMENT IN CLOSETS,
9 CORRECT?

10 **A** NO, YOU WOULDN'T NECESSARILY PROVIDE IT IN A CLOSET,
11 ALTHOUGH YOU COULD DO THAT, BUT YOU COULD USE IT DURING -- MORE
12 FREQUENTLY THAN THE AVERAGE SHIFTS THAT ARE BEING USED. YOU
13 COULD USE IT ON THE WEEKENDS WHEN IT'S NOT AS DEMANDED. THERE
14 ARE A VARIETY OF ALTERNATIVES THAT COULD BE DONE, INCLUDING
15 MODULAR BUILDINGS AND THINGS LIKE THAT.

16 **Q** THIS WOULD ALSO INCLUDE TREATING PEOPLE IN THE MEN'S ROOM
17 AS YOU ALREADY TESTIFIED?

18 **A** THAT WOULD NOT NECESSARILY DO THAT, BUT I USE THAT AS AN
19 EXAMPLE FOR THE COURT, BECAUSE IN MY RESIDENCY AT JACKSON
20 MEMORIAL HOSPITAL, THE UNIVERSITY OF MIAMI, I HAVE HAD TO DO
21 THAT, AND, UNFORTUNATELY, EVEN IN THIS MODERN DAY WE HAVE
22 PATIENTS IN HALLS AND THINGS LIKE THAT THAT YOU HAVE TO ACHIEVE
23 CONFIDENTIALITY BY REMOVING THEM FROM THEIR LOCATION.

24 **Q** DOCTOR, MEDICAL RECORDS PLAY AN IMPORTANT PART IN THE
25 PROVISION OF HEALTHCARE, CORRECT?

1 **A** YES, MA'AM.

2 **Q** AND ONE REASON THEY ARE IMPORTANT IS THEY MAY CONTAIN
3 INFORMATION THAT IMPACTS THE CLINICIAN'S TREATMENT DECISIONS,
4 CORRECT?

5 **A** YES, MA'AM.

6 **Q** AND THAT INFORMATION MIGHT INCLUDE DRUG ALLERGIES, CORRECT?

7 **A** YES, MA'AM.

8 **Q** CURRENT MEDICATION REGIMES?

9 **A** YES, MA'AM.

10 **Q** AND REPORTS FROM SPECIALTY PROVIDERS?

11 **A** YES, MA'AM.

12 **Q** YOU HAVE SEEN PRISON MEDICAL SYSTEMS THAT YOU BELIEVE
13 PRACTICE CONSTITUTIONAL LEVELS OF CARE WHERE MEDICAL RECORDS
14 ARE NOT TIMELY MAINTAINED, CORRECT?

15 **A** THAT'S CORRECT.

16 **Q** AND YOU HAVE SEEN PRISON MEDICAL SYSTEMS THAT YOU BELIEVE
17 PRACTICE CONSTITUTIONAL LEVELS OF CARE WHERE MEDICAL RECORDS
18 ARE NOT COMPLETE, CORRECT?

19 **A** THAT'S CORRECT.

20 **Q** AND YOU HAVE SEEN MEDICAL -- PRISON MEDICAL SYSTEMS THAT
21 YOU BELIEVE PRACTICE CONSTITUTIONAL LEVELS OF CARE WHERE
22 MEDICAL RECORDS ARE NOT AVAILABLE TO THE CLINICIAN AT THE TIME
23 OF SERVICE TO THE PATIENT, CORRECT?

24 **A** CORRECT.

25 **Q** SO, IN YOUR OPINION, MEDICAL RECORDS ARE NOT AN ESSENTIAL

1 ELEMENT OF A CONSTITUTIONAL PRISON MEDICAL CARE SYSTEM,
2 CORRECT?

3 **A** THAT DOES NOT FOLLOW, MS. HARDY. THAT OVERSTATES WHAT I'M
4 SAYING. ALL PROVIDERS, WHETHER THEY'RE IN A CORRECTIONAL
5 SYSTEM OR A FREE SYSTEM, OCCASIONALLY SOMETIMES, UNFORTUNATELY,
6 REGULARLY HAVE TO SEE PATIENTS WITHOUT A MEDICAL RECORD, OR THE
7 MEDICAL RECORD IS INCOMPLETE BECAUSE OF LAB RESULTS OR OTHER
8 THINGS. THAT DOESN'T MEAN THE CARE PROVIDED IS POOR. IT DOES
9 MEAN THAT THERE ARE SOME DIFFICULTIES IN EVALUATING THE
10 PATIENT. THE PATIENT HAS TO BE MORE COGNIZANT OF THEIR
11 HISTORY. IT TAKES LONGER FOR THE DOCTOR TO ANALYZE THE PATIENT
12 AND MAKE A DIFFERENTIAL DIAGNOSIS.

13 **Q** YOUR SECOND AND THIRD REPORTS ARE BASED IN PART OF YOUR
14 TOURS OF CALIFORNIA STATE PRISON IN DECEMBER 2007 AND
15 SEPTEMBER 2008, CORRECT?

16 **A** YES, MA'AM.

17 **Q** YOU TOOK NO NOTES AT ANY OF THE EIGHT PRISONS YOU TOURED,
18 CORRECT?

19 **A** PLEASE SAY THAT AGAIN.

20 **Q** YOU TOOK NO NOTES AT ANY OF 28 PRISONS YOU TOURED, CORRECT?

21 **A** THAT'S CORRECT. I MADE ONE PIECE OF NOTE AT ONE OF THE
22 PRISONS AND THEN THREW IT AWAY.

23 **Q** AND YOU PREPARED NO NOTES FOR YOUR OWN USE AFTER DOING ANY
24 OF THE TOURS, CORRECT?

25 **A** THAT'S CORRECT.

1 Q AND YOU DID NOT MAKE ANY AUDIO OR VIDEO RECORDINGS DURING
2 THE TOURS, CORRECT?

3 A THAT'S CORRECT.

4 Q THE THREE PRISONS THAT YOU VISITED IN DECEMBER 2007, YOU'VE
5 ALREADY TESTIFIED WERE SAN QUENTIN, CALIFORNIA MEDICAL
6 FACILITY, AND CALIFORNIA INSTITUTION FOR MEN, RIGHT?

7 A YES, MA'AM.

8 Q HOW SOON AFTER THE TOURS DID YOU DRAFT YOUR REPORT?

9 A AS WE SIT HERE, I DON'T REMEMBER. I MEAN, I HAD MY
10 COMPUTER WITH ME AND PROBABLY STARTED THAT NIGHT, BUT I
11 HONESTLY DON'T RECALL.

12 Q REGARDING YOUR FIRST ROUND OF TOURS, YOU SPENT ABOUT FOUR
13 HOURS AT SAN QUENTIN, CORRECT?

14 A HAVE NO RECOLLECTION OR KNOWLEDGE, BUT THAT SOUNDS ABOUT
15 RIGHT.

16 Q AND ABOUT THREE HOURS AT CMF?

17 A I WOULD -- YOUR RECORDS ARE -- I'M CERTAIN THERE ARE LOGS
18 THAT CAN DOCUMENT THAT. THAT SOUNDS ROUGHLY CORRECT.

19 Q AND YOU VISITED CIM ON A SATURDAY FOR A FEW HOURS, CORRECT?

20 A THAT'S CORRECT.

21 Q FOR EACH PRISON YOU DON'T RECALL WHO YOU SPOKE TO, CORRECT?

22 A FOR EACH PRISON I DON'T RECALL WHAT?

23 Q WHO YOU SPOKE TO.

24 A THAT'S CORRECT.

25 Q AND YOU REVIEWED UNIT HEALTH RECORDS FOR PRISONERS AT EACH

1 OF THE PRISONS, CORRECT?

2 **A** THAT'S CORRECT.

3 **Q** AND YOU DON'T RECALL HOW MANY YOU REVIEWED, CORRECT?

4 **A** THAT'S CORRECT.

5 **Q** BUT IT WAS FEWER THAN TEN AT EACH OF THE PRISONS, CORRECT?

6 **A** THAT'S ABOUT RIGHT.

7 **Q** AND YOU DON'T RECALL HOW LONG YOU SPENT WITH EACH OF THE
8 RECORDS, CORRECT?

9 **A** THAT'S CORRECT.

10 **Q** BASED ON YOUR FIRST THREE TOURS, YOU WROTE THAT ONE HUNDRED
11 PERCENT OF THE PEOPLE YOU ELICITED COMMENTS FROM FELT POSITIVE
12 AND EMPOWERED TO DO THEIR JOBS, CORRECT?

13 **A** THAT'S CORRECT.

14 **Q** YOU DON'T KNOW WHAT PROPORTION OF THE PEOPLE YOU SPOKE TO
15 WERE MEDICAL STAFF, CORRECT?

16 **A** THAT'S NOT CORRECT. WHEN I SAID THAT, YOU'D HAVE TO POINT
17 TO MY REPORT EXACTLY, BUT FOR THE FIRST TOUR, I AM COMMENTING
18 BASICALLY ON THE MEDICAL STAFF.

19 **Q** FOR EACH OF THE THREE PRISONS YOU VISITED, YOU DON'T RECALL
20 HOW MANY PHYSICIANS, NURSES OR CUSTODY OFFICERS YOU SPOKE TO,
21 CORRECT?

22 **A** YOU WOULD HAVE TO REPEAT THAT, MS. HARDY. YOUR VOICE
23 DROPPED. FOR EACH OF THE THREE PRISONS?

24 **Q** YOU DO NOT RECALL HOW MANY PHYSICIANS, NURSES OR CUSTODY
25 OFFICERS YOU SPOKE TO, CORRECT?

1 **A** THAT'S CORRECT.

2 **Q** OTHER THAN ONE PSYCHIATRIST AT THE CALIFORNIA INSTITUTION
3 FOR MEN, YOU SPOKE TO NO PHYSICIANS AT THAT PRISON, CORRECT?

4 **A** THAT'S CORRECT. THAT WAS A SATURDAY. THE PSYCHIATRIST WAS
5 THE ONLY PHYSICIAN THERE.

6 **Q** YOU DO NOT RECALL WHAT QUESTIONS YOU ASKED THE STAFF AT
7 THESE PRISONS, CORRECT?

8 **A** I DON'T RECALL A SPECIFIC INDIVIDUAL QUESTION; THAT'S
9 CORRECT.

10 **Q** YOU DO RECALL SPEAKING, HOWEVER, TO A YOUNG FEMALE
11 DOCTOR IN THE SAN QUENTIN GYMNASIUM CLINIC, CORRECT?

12 **A** THAT IS CORRECT.

13 **Q** AND SHE TOLD YOU SHE WAS OFTEN UNABLE TO SEE ALL THE
14 PATIENTS THAT HAD APPOINTMENTS WITH HER ON A GIVEN DAY,
15 CORRECT?

16 **A** I DON'T REMEMBER SPECIFICALLY HER WORDS. SHE WAS CONCERNED
17 ABOUT VOLUME OF PATIENTS, YES.

18 **Q** DOCTOR, I'LL DIRECT YOU TO YOUR DEPOSITION TESTIMONY,
19 PAGE 84, STARTING ON LINE 6.

20 **A** WHAT PAGE ARE YOU ON, MS. HARDY?

21 **Q** PAGE 84.

22 **A** PAGE 84. GIVE ME JUST A SECOND, PLEASE. PAGE 84, LINE 6.

23 **Q** PAGE 84, LINE 6.

24 "QUESTION: AND SHE SAID SHE WAS OFTEN UNABLE TO
25 SEE ALL OF THE PATIENTS THAT HAD APPOINTMENTS WITH

1 HER ON A GIVEN DAY AT THE SAME TIME, CORRECT?

2 "ANSWER: SHE DID SAY THAT."

3 **A** THANK YOU FOR REFRESHING MY MEMORY ON THAT.

4 **Q** YOU RECALL MEETING THE CHIEF MEDICAL DOCTOR AT SAN QUENTIN,
5 CORRECT?

6 **A** YES.

7 **Q** YOU DON'T RECALL HOW LONG THAT MEETING LASTED, CORRECT?

8 **A** THAT'S CORRECT.

9 **Q** AND YOU DO NOT RECALL ASKING HER ANY QUESTIONS, CORRECT?

10 **A** I DON'T RECALL A SPECIFIC QUESTION. I DO RECALL THAT SHE
11 HAD SOME FUNCTION THAT SHE HAD TO BE TO.

12 **Q** DOCTOR, YOUR THIRD REPORT IS BASED ON TOURS OF NORTH KERN
13 STATE PRISON, SUBSTANCE ABUSE TREATMENT FACILITY, PLEASANT
14 VALLEY STATE PRISON, SOLANO, AND HIGH DESERT, CORRECT?

15 **A** THAT'S CORRECT.

16 **Q** AND EACH OF THOSE TOURS TOOK LESS THAN FIVE HOURS, CORRECT?

17 **A** THAT'S PROBABLY CORRECT.

18 **Q** AND ON THIS ROUND OF TOURS, ALMOST ALL PERSONNEL UNIFORMLY
19 CITED THE NEED FOR MORE SPACE AND MORE STAFF, CORRECT?

20 **A** THAT'S CORRECT.

21 **Q** AND THE PLEASANT VALLEY STATE PRISON HEALTHCARE MANAGER
22 TOLD YOU THE PRISON WAS VERY HARD TO STAFF, CORRECT?

23 **A** THE PLEASANT VALLEY HEALTHCARE ADMINISTRATOR SAID WHAT,
24 PLEASE?

25 **Q** THAT THE PRISON WAS VERY HARD TO STAFF.

1 **A** YES, IT WAS VERY HARD TO STAFF, YES.

2 **Q** AND THE PLEASANT VALLEY WARDEN TOLD YOU THAT POPULATION
3 REDUCTION WOULD ENHANCE THEIR ABILITY TO DELIVER HEALTHCARE,
4 CORRECT?

5 **A** CERTAINLY MANY OF THE EMPLOYEES FELT THAT REDUCING THEIR
6 WORKLOAD WOULD MAKE IT EASIER, YES.

7 **Q** AND AT HIGH DESERT, THE CHIEF MEDICAL OFFICER TOLD YOU SHE
8 HAD NO DOUBT THAT OVERCROWDING AFFECTED HER ABILITY TO PROVIDE
9 SERVICES IN A TIMELY FASHION, CORRECT?

10 **A** NOT ENTIRELY. SHE INITIALLY SAID THAT. THEN WE DISCUSSED
11 THAT A LITTLE FURTHER, WHEN I ASKED HER ROUGHLY HOW MANY
12 PATIENTS DID SHE SAY WHEN SHE WAS PRACTICING IN -- HOW MANY
13 PATIENTS DID SHE SEE WHEN SHE WAS PRACTICING IN THE ADJACENT
14 COMMUNITY, SHE DID INDICATE THAT PRODUCTIVITY NEEDED TO BE
15 IMPROVED AT HER INSTITUTION.

16 **Q** SHE TOLD YOU THAT THE RESOURCES SHE HAD WERE SUFFICIENT FOR
17 A POPULATION OF ABOUT HALF THE NUMBER THEY WERE TREATING,
18 CORRECT?

19 **A** THAT WAS HER FEELING INITIALLY AT THE TIME. THEN WE HAD
20 SEVERAL DISCUSSIONS.

21 **Q** SHE TOLD YOU THAT THE PRESCRIPTIONS WERE OFTEN DELIVERED
22 LATE TO PRISONERS, CORRECT?

23 **A** YES. THERE WAS MEDICATION DELIVERY ISSUES, YES.

24 **Q** AND SHE TOLD YOU --

25 **A** I DON'T REMEMBER ANY MENTION OF PRESCRIPTIONS, PER SE, BUT,

1 CLEARLY, THERE WERE MEDICATION DELIVERY ISSUES.

2 **Q** SHE TOLD YOU THAT SEVERAL OF THE PHYSICIANS ON STAFF AT
3 HIGH DESERT STATE PRISON WERE NOT PROVIDING MEDICAL CARE,
4 CORRECT?

5 **A** NO, SHE TOLD ME THAT ONE WAS FORBIDDEN TO SEE PATIENTS
6 BECAUSE OF HER FEARS AND SOME ADMINISTRATION, ADMINISTRATIVE
7 ISSUES. THAT'S NOT TERRIBLY UNCOMMON IN A CORRECTIONAL SYSTEM.

8 **Q** DOCTOR, I'LL REMIND YOU, PAGE 182 OF YOUR DEPOSITION,
9 PLEASE.

10 **A** OKAY. GIVE ME A SECOND, PLEASE. WHAT LINE ARE WE AT,
11 MS. HARDY?

12 **Q** LINE 9.

13 **A** LINE 9.

14 **Q** "QUESTION: DO YOU RECALL BEING TOLD THAT
15 THREE OF THE PHYSICIANS WHO WERE ON STAFF AT
16 THE PRISON EITHER WERE ON LEAVE OR HAD THEIR
17 CLINICAL PRIVILEGES TAKEN AWAY?

18 "ANSWER: AS I MENTIONED, SHE SAID THAT ONE HAD
19 HIS CLINICAL PRIVILEGES TAKEN AWAY, AND THAT WAS
20 UNDER REVIEW. ONE OR TWO OTHERS WERE AWAY FOR ONE
21 REASON OR ANOTHER, AND I DON'T REMEMBER."

22 **A** YES, MA'AM, AND THAT'S CONSISTENT WITH WHAT I JUST SAID.

23 **Q** YOU SAID THAT ONE PERSON WAS NOT PROVIDING CLINICAL CARE.
24 IT WAS MORE THAN ONE PERSON, CORRECT?

25 **JUDGE KARLTON:** NEITHER YOU NOR THE WITNESS OUGHT TO

1 BE ARGUING.

2 **THE WITNESS:** I'M SORRY. YOUR HONOR.

3 **BY MS. HARDY**

4 **Q** AT EACH OF THE FIVE PRISONS YOU REVIEWED MEDICAL FILES,
5 CORRECT?

6 **A** YES, MA'AM.

7 **Q** AND AT SATF, DURING THE FILE REVIEWS YOU DON'T RECALL HOW
8 MANY OF THE FILES REFLECTED THAT PRISONERS HAD REQUESTED A
9 MEDICAL CARE APPOINTMENT, CORRECT?

10 **A** AT SATF? AND THEN YOU HAVE TO REPEAT THAT, PLEASE.

11 **Q** I'LL GO FOR ALL OF THEM.

12 AT ANY OF THE PRISONS DO YOU RECALL WHETHER THE
13 PRISONER'S FILES REFLECTED THAT THE PRISONERS HAD REQUESTED A
14 MEDICAL APPOINTMENT IN THE LAST TWO MONTHS?

15 **A** AT ANY OF THE PRISONS DID I NOTE WHETHER PATIENTS HAD
16 REQUESTED MEDICAL APPOINTMENTS IN THE LAST FEW MONTHS; IS THAT
17 WHAT YOU'RE ASKING?

18 **Q** YES.

19 **A** YES.

20 **Q** AND DO YOU RECALL WHAT THEY ASKED FOR -- ASKED FOR CARE
21 FOR?

22 **A** I REMEMBER TALKING TO ONE INMATE WHO WAS BITTERLY
23 COMPLAINING ABOUT THE WAIT AND HAD WAITED FOR TWO HOURS.

24 **Q** DOCTOR, I'M ASKING ABOUT YOUR REVIEW.

25 **A** THAT'S THE ONLY THING THAT JUMPS INTO MY MIND RIGHT NOW.

1 **Q** IN YOUR REVIEW OF MEDICAL FILES, DOCTOR, DO YOU RECALL ANY
2 SPECIFIC DETAILS ABOUT ANY OF THE MEDICAL FILES YOU REVIEWED ON
3 THE FIVE PRISON TOURS YOU DID?

4 **A** NOT AS WE SIT HERE RIGHT NOW, NO.

5 **Q** YOU DO NOT RECALL HOW LONG IT TOOK FOR PATIENTS TO SEE A
6 PRIMARY CARE PROVIDER FOR ROUTINE CARE AT ANY OF THE PRISONS
7 YOU VISITED, DO YOU?

8 **A** AS WE SIT HERE RIGHT NOW, IT VARIES. IT VARIED BETWEEN
9 FOUR WEEKS AT ONE INSTITUTION AND ABOUT EIGHT AT THE OTHERS,
10 AND THE ONES THAT WERE OUTSIDE OF GENERAL PARAMETERS, I WAS
11 IMPRESSED THAT EACH OF THOSE INSTITUTIONS HAD SOME KIND OF A
12 MECHANISM TO BRING IT UP TO DATE.

13 ONE OF THE DOCTORS WAS GOING TO HAVE HIS PEOPLE WORK
14 WEEKENDS. ANOTHER WAS GOING TO HAVE THEM DO STAGGERED SHIFTS
15 AND THINGS LIKE THAT. BUT EACH OF THEM HAD ADDRESSED A
16 MECHANISM TO BRING THE REQUESTS INTO A TIMELY FASHION.

17 **JUDGE KARLTON:** MOVE TO STRIKE AS NON-RESPONSIVE.

18 **MS. HARDY:** MOVE TO STRIKE AS NON-RESPONSIVE.

19 **JUDGE KARLTON:** WHAT'S YOUR QUESTION AGAIN, MA'AM?
20 DOCTOR, LISTEN TO THE QUESTION AND ANSWER THE QUESTION, IF YOU
21 WILL.

22 **MS. HARDY:** I'M SORRY, COULD YOU READ BACK THE
23 QUESTION?

24 **JUDGE KARLTON:** I'M SORRY.

25 **MS. HARDY:** I'M ASKING THE REPORTER TO READ BACK THE

1 QUESTION.

2 **JUDGE KARLTON:** THE QUESTION IS, ON YOUR REVIEW OF
3 MEDICAL FILES, DOCTOR, DO YOU RECALL ANY SPECIFIC DETAILS ABOUT
4 ANY OF THE MEDICAL FILES YOU REVIEWED OF THE FIVE PRISON TOURS
5 YOU DID.

6 **THE WITNESS:** AS WE SIT HERE RIGHT NOW, I DON'T
7 RECALL SPECIFIC DETAILS, THAT'S CORRECT, YOUR HONOR.

8 **JUDGE KARLTON:** AND THE NEXT QUESTION WAS, DO YOU
9 RECALL HOW LONG IT TOOK FOR PATIENTS TO SEE A PRIMARY CARE
10 PROVIDER FOR ROUTINE CARE AT ANY OF THE PRISONS YOU VISITED?

11 **THE WITNESS:** YES, SIR.

12 **MS. HARDY:** HE DID ANSWER THAT QUESTION, ACTUALLY.

13 **JUDGE KARLTON:** I'M SORRY?

14 **MS. HARDY:** I BELIEVE HE DID ANSWER THAT QUESTION.

15 **JUDGE KARLTON:** I'M SORRY.

16 **MS. HARDY:** I THINK THERE'S ANOTHER QUESTION THAT
17 MIGHT HAVE HAPPENED AFTER THAT. PERHAPS NOT. OKAY.

18 **BY MS. HARDY**

19 **Q** YOU DO NOT RECALL WHETHER YOU ASKED SCHEDULERS AT THE FIVE
20 PRISONS HOW LONG IT TOOK FOR THEM TO SCHEDULE A ROUTINE PRIMARY
21 CARE APPOINTMENT, DO YOU?

22 **A** I SPOKE TO SOME SCHEDULERS. MOST OF THEM WERE CONCERNED
23 WITH OUTSIDE APPOINTMENTS RATHER THAN INTERNAL PRIMARY CARE
24 PROVIDERS. BUT AS WE SIT HERE NOW, I DON'T RECALL WHICH WAS
25 WHICH.

1 Q YOU TESTIFIED THAT YOU WERE IMPRESSED THAT AT EACH OF THE
2 PRISONS THAT YOU VISITED THE STAFF HAD PLANS FOR ADDRESSING
3 BACKLOGS OF APPOINTMENTS, CORRECT?

4 A THAT'S CORRECT, YES, MA'AM.

5 Q WHICH PRISONS -- AT WHICH PRISONS WERE YOU TOLD THAT THEY
6 HAD A PLAN TO ADDRESS THE BACKLOG FOR OLD APPOINTMENTS?

7 A AS WE SIT HERE RIGHT NOW, I DON'T RECALL. BUT, AS I
8 MENTIONED TO YOU, IN SPEAKING TO THE CHIEF HEALTH OFFICERS AND
9 OTHER PEOPLE, EACH OF THEM SEEMED TO HAVE CONCERNS AND PLANS TO
10 ADDRESS BACKLOGS IF THEY HAD BACKLOGS.

11 Q AND DID YOU ASK THEM HOW LONG THEIR BACKLOGS HAD EXISTED?

12 A SOME IN SOME PLACES I DID, YES.

13 Q AND WHAT DID THEY TELL YOU?

14 A THE LONGEST ONE -- WELL, ONE OF THE SHORTEST ONES WAS FOUR
15 WEEKS. THE LONGEST ONE WAS 16 WEEKS.

16 Q DOCTOR, I DON'T THINK YOU UNDERSTOOD MY QUESTION. THEY HAD
17 HAD A BACKLOG FOR ONLY FOUR WEEKS, BEFORE THAT THEY HAD BEEN
18 CAUGHT UP; IS THAT YOUR TESTIMONY?

19 A NO. THE BACKLOG WAS FOUR WEEKS.

20 Q SO THE BACKLOGS EXTENDED FROM FOUR WEEKS TO SIXTEEN WEEKS,
21 BUT YOU DON'T KNOW HOW LONG THEY HAD BEEN IN THAT SITUATION,
22 CORRECT?

23 A AS WE SIT HERE NOW, I DON'T RECALL.

24 Q AND DO YOU RECALL WHAT THE DETAILS WERE OF THEIR PLANS TO
25 ADDRESS THE BACKLOG?

1 **A** AS I MENTIONED PREVIOUSLY, SEVERAL OF THE INSTITUTIONS WERE
2 GOING TO DO NON-TRADITIONAL HOURS. ONE OF THEM WAS GOING TO DO
3 WEEKENDS. THERE WERE OTHER MECHANISMS, BUT I DON'T RECALL WHAT
4 THEY ARE NOW, BUT YES, EACH OF THE PEOPLE THAT I SPOKE TO FELT
5 EMPOWERED TO BRING ABOUT CORRECTION IN THE BACKLOG.

6 **Q** AND DID YOU ASK THEM WHETHER THEY HAD THE CUSTODY COVERAGE
7 TO PERMIT THEM TO RUN THE NON-TRADITIONAL LINES?

8 **A** I DID NOT.

9 **Q** FOLLOWING YOUR TOUR OF THE FIVE PRISONS, YOU WROTE:

10 "ONE HUNDRED PERCENT OF ALL PERSONNEL FELT THERE
11 WAS ADEQUATE COMMITMENT, ADEQUATE RESOURCES, AND
12 ADEQUATE ABILITY TO PROVIDE A CONSTITUTIONAL LEVEL OF
13 CARE," CORRECT?

14 **A** COULD YOU INDICATE WHERE THAT IS?

15 **Q** THAT'S IN YOUR THIRD REPORT, PAGE 3, PARAGRAPH 5, JUST
16 BELOW HALFWAY DOWN. THAT IS:

17 "ONE HUNDRED PERCENT OF ALL PERSONNEL FELT THERE
18 WAS ADEQUATE COMMITMENT, ADEQUATE RESOURCES, AND
19 ADEQUATE ABILITY TO PROVIDE A CONSTITUTIONAL LEVEL OF
20 HEALTHCARE."

21 **A** YES, MA'AM. THAT'S EXACTLY WHAT IT SAYS.

22 **Q** YOU DID NOT SPEAK TO A HUNDRED PERCENT OF THE STAFF AT EACH
23 OF THE PRISONS YOU VISITED, DID YOU?

24 **A** NO, MA'AM. THAT STATEMENT IS NOT A TERM OF ART; IT'S A
25 TERM OF COMMON USE. A HUNDRED PERCENT OF THE PEOPLE I TALKED

1 TO INDICATED THAT.

2 Q AND YOU DON'T RECALL HOW MANY PEOPLE YOU SPOKE TO AT EACH
3 OF THE FIVE PRISONS, CORRECT?

4 A AS WE SIT HERE NOW, I HAVE NO RECOLLECTION HOW MANY.

5 Q AND YOU DO NOT RECALL WHAT SPECIFIC QUESTIONS YOU ASKED
6 THEM, CORRECT?

7 A PLEASE, CAN I HAVE THAT QUESTION AGAIN, MS. HARDY?

8 Q YOU DON'T RECALL WHAT SPECIFIC QUESTIONS YOU ASKED THEM,
9 CORRECT?

10 A THAT'S CORRECT. THAT WAS -- THAT WOULD BE PART OF A
11 DIALOGUE, YES, MA'AM.

12 Q YOU DON'T RECALL WHETHER YOU ASKED THE SAME QUESTION OF
13 EACH PERSON, CORRECT?

14 A THAT'S CORRECT.

15 Q YOU WROTE THAT:

16 "WHEN PHYSICIAN'S POSITIONS WERE FILLED WITH
17 REGISTRY PROVIDERS, THOSE PROVIDERS GENERALLY HAD A
18 LONG-TERM COMMITMENT TO THE INSTITUTION."

19 THAT'S ON PAGE 2 OF YOUR THIRD REPORT, CORRECT?

20 A YES, MA'AM.

21 Q AND YOU TESTIFIED THAT AT EACH OF THE FIVE PRISONS VISITED,
22 YOU THOUGHT MOST OF THE PHYSICIANS WERE CONTRACT PROVIDERS
23 RATHER THAN STATE EMPLOYEES, CORRECT?

24 A YES, MA'AM.

25 Q AND YOU BELIEVE THAT THIS IS BECAUSE OF THE RICHNESS OF THE

1 REGISTRY CONTRACT COMPARED TO THE STATE CONTRACT?

2 **A** SEVERAL PHYSICIANS EXPLAINED THAT TO ME, YES, MA'AM.

3 **Q** BUT YOU DID NOT REVIEW THE REGISTRY CONTRACTS, CORRECT?

4 **A** YES, MA'AM, THAT'S CORRECT.

5 **Q** AND YOU DO NOT KNOW HOW MANY OF THE REGISTRY PHYSICIANS AT
6 EACH OF THE PRISONS YOU WENT TO HAD BEEN THERE FOR MORE THAN 12
7 MONTHS, CORRECT?

8 **A** AS WE SIT HERE NOW, I DON'T KNOW THAT, BUT CLEARLY AT EACH
9 OF THE INSTITUTIONS WE WENT TO, THAT WAS SOMETHING THAT WAS
10 GENERALLY DELVED INTO, AND I REMEMBER MANY OF THEM HAD BEEN
11 THERE FOR A YEAR OR MORE.

12 **Q** YOU WROTE ON PAGE --

13 **A** IN FACT -- EXCUSE ME. IN FACT, THE CHIEF HEALTH OFFICER AT
14 ONE HAD BEEN A REGISTRY PHYSICIAN FOR MANY YEARS AND WAS
15 UNCOMFORTABLE GIVING IT UP TO BECOME A STATE PHYSICIAN BECAUSE
16 HIS EXPENSES WOULDN'T BE REIMBURSED, BUT HE DID IT.

17 **Q** ON PAGE 4 OF YOUR THIRD REPORT YOU WROTE:

18 "EACH AND EVERY OFFICER IN ALL HOUSING UNITS OF
19 EVERY INSTITUTION VISITED KNEW IMMEDIATELY WHERE THE
20 REQUESTS WERE, HOW INMATES ACCESSED THEM, AND WHERE
21 THEY WERE DISTRIBUTED," CORRECT?

22 **A** I DON'T SEE THAT, BUT THAT CHARACTERIZES CORRECTLY WHAT I
23 SAID, YES.

24 **Q** AND YOU DID NOT SPEAK TO EVERY CUSTODY OFFICER AT ALL FIVE
25 PRISONS YOU VISITED, DID YOU?

1 **A** NO, MA'AM. ONCE AGAIN, THIS IS A TERM OF COMMON USAGE.
2 EVERY OFFICER I TALKED TO. IT WOULD BE IMPOSSIBLE TO TALK TO
3 EVERY OFFICER.

4 **Q** BUT YOU DID NOT ASK EVERY CUSTODY OFFICER YOU ENCOUNTERED
5 IN THE PRISONS ABOUT THEIR KNOWLEDGE OF HEALTHCARE REQUESTS,
6 DID YOU?

7 **A** NO, MA'AM, JUST THE ONES THAT WERE INSIDE OF FACILITIES.

8 **Q** AND YOU DON'T KNOW HOW MANY CO'S, CUSTODY OFFICERS, YOU
9 SPOKE TO AT EACH PRISON ABOUT HEALTHCARE REQUESTS, CORRECT?

10 **A** I DON'T KNOW WHAT, MS. HARDY?

11 **Q** YOU DO NOT KNOW HOW MANY CUSTODY OFFICERS YOU SPOKE TO AT
12 EACH PRISON ABOUT HEALTHCARE REQUESTS, CORRECT?

13 **A** THAT'S CORRECT.

14 **Q** AND YOU DO NOT RECALL WHETHER YOU ASKED EACH OF THEM THE
15 SAME QUESTION ABOUT HEALTHCARE REQUESTS, CORRECT?

16 **A** THAT'S CORRECT. CORRECT.

17 **Q** AGAIN, YOU WROTE ON PAGE 20 OF YOUR THIRD REPORT:

18 "ALL PROVIDERS FELT THEIR INTERACTIONS WITH
19 INMATES WERE AS GOOD OR BETTER THAN IN THE
20 COMMUNITY."

21 THAT'S ON PAGE 20 OF YOUR THIRD REPORT, AND, AGAIN,
22 YOU WERE USING THAT AS A TERM OF ART; YOU DID NOT TALK TO EVERY
23 PROVIDER AT ANY OF THE PRISONS YOU VISITED, CORRECT?

24 **A** THAT'S CORRECT.

25 **Q** ON PAGE 6 OF YOUR REPORT YOU WROTE:

1 "ON THIS VISIT MOST ALL PHYSICIANS I SPOKE TO
2 INDICATED THEY WOULD LIKE TO SPEND ABOUT AN HOUR WITH
3 EACH INMATE AT EACH VISIT BECAUSE OF THE COMPLEXITY
4 OF MEDICAL CONDITIONS."

5 **A** THAT'S CORRECT.

6 **Q** AND YOU DO NOT REMEMBER WHICH PHYSICIANS TOLD YOU, AT ANY
7 OF THE PRISONS THAT YOU WENT TO TOLD YOU THIS, CORRECT?

8 **A** AS WE SIT HERE NOW, I DON'T RECALL ANY SPECIFIC INDIVIDUAL
9 SAYING THAT.

10 **Q** OKAY.

11 **A** BUT MOST INDICATED THAT, YES.

12 **Q** YOU WROTE IN YOUR REPORT THAT A STAFFING RATIO FOR PRIMARY
13 CARE PROVIDER TO PRISONER OF ONE TO 500 EXCEEDS TYPICAL
14 STAFFING PATTERNS THROUGHOUT THE COUNTRY, CORRECT?

15 **A** THAT'S CORRECT.

16 **Q** AND YOU COMPARED CALIFORNIA TO FLORIDA PRISONS WHERE YOU
17 SAID, QUOTE:

18 "ONE PHYSICIAN LEVEL PROVIDER WAS GENERALLY
19 AVAILABLE FOR EVERY 12 TO 1500 PRISONERS, EXCEPT IN
20 SPECIALIZED FACILITIES," CORRECT?

21 **A** YES, MA'AM.

22 **Q** AND YOU BELIEVE THAT THAT LEVEL OF STAFFING IS SUFFICIENT
23 TO PROVIDE AN ADEQUATE LEVEL OF MEDICAL CARE IN FLORIDA,
24 CORRECT?

25 **A** I THINK THAT MISCHARACTERIZES WHAT I SAID. AS I MENTIONED

1 EARLIER, A STAFFING PATTERN IS BEST WORKED OUT WITH WORK STUDY
2 AND OUTCOMES RATHER THAN ARBITRARY NUMBERS.

3 IF YOU TAKE THE TOTAL NUMBER OF INMATES AND DIVIDE
4 IT BY THE TOTAL NUMBER OF PROVIDERS, THAT MAY WORK OUT TO THAT
5 NUMBER. HOWEVER, THERE ARE CERTAINLY INMATES AT INSTITUTIONS
6 THAT REQUIRE FAR MORE THAN ONE PROVIDER FOR 1,250, AND THERE
7 ARE OTHER INSTITUTIONS THAT REQUIRE LESS THAN THAT.

8 **Q** AND, DOCTOR, HOW WOULD YOU DO ONE OF THOSE WORK STUDY AND
9 OUTCOME TESTS THAT YOU JUST DESCRIBED?

10 **A** IN THE FLORIDA DEPARTMENT OF CORRECTIONS EVERY TIME YOU SEE
11 AN INMATE, A PROVIDER SEES AN INMATE, YOU NOTE THE TIME THAT
12 YOU STARTED SEEING THEM AND THE TIME YOU STOPPED SEEING THEM.
13 THAT GIVES YOU SOME INDICATION OF THE DURATION OF EACH
14 ENCOUNTER. THEN YOU CAN ADD TO THAT THE OUTCOME. FOR
15 INSTANCE, IF YOU HAVE A HYPERTENSIVE PATIENT, YOU KNOW WHAT
16 PERCENTAGE HAVE CONTROLLED HYPERTENSION, AND SO YOU KNOW HOW
17 EFFECTIVE OR INEFFECTIVE YOUR STAFF RESOURCES ARE, AND YOU CAN
18 MODULATE THE STAFF RESOURCES PREDICATED ON THAT.

19 **Q** DOCTOR, YOU ARE FAMILIAR WITH THE CORRECTIONAL MEDICAL
20 AUTHORITY IN FLORIDA, CORRECT?

21 **A** YES, MA'AM.

22 **Q** AND THE CORRECTIONAL MEDICAL AUTHORITY WAS CREATED IN THE
23 MID 1980'S TO GIVE INDEPENDENT ADVICE TO THE GOVERNOR, THE
24 LEGISLATURE, AND THE DEPARTMENT OF CORRECTIONS ON THE CONDUCT
25 OF HEALTHCARE AND MANAGEMENT OF COSTS CONSISTENT WITH QUALITY

1 CARE, CORRECT?

2 **A** THAT'S CORRECT.

3 **Q** AND BY STATUTE THE CORRECTIONAL MEDICAL AUTHORITY IS
4 REQUIRED TO REPORT AT LEAST ANNUALLY TO THE GOVERNOR AND THE
5 LEGISLATURE ON THE STATUS OF THE FLORIDA DEPARTMENT OF
6 CORRECTIONS HEALTHCARE DELIVERY SYSTEM, CORRECT?

7 **A** THAT'S CORRECT.

8 **Q** AND THOSE REPORTS WERE REQUIRED TO INCLUDE RECOMMENDATIONS
9 REGARDING PERFORMANCE AND FINANCIAL AUDITS OF THE DEPARTMENT OF
10 CORRECTIONS OFFICE OF HEALTHCARE SERVICES, RIGHT?

11 **A** YES.

12 **Q** AND YOU WERE THE ASSISTANT SECRETARY FOR HEALTH SERVICES
13 AND DIRECTOR OF HEALTH SERVICES FOR THE DEPARTMENT OF
14 CORRECTIONS FROM 1998 TO 2003, CORRECT?

15 **A** THAT'S CORRECT.

16 **Q** AND DID YOU REVIEW THE CORRECTIONAL MEDICAL AUTHORITY
17 ANNUAL REPORTS WHEN YOU WERE THE DIRECTOR OF HEALTH SERVICES?

18 **A** SAY THAT AGAIN, MS. HARDY.

19 **Q** DID YOU REVIEW THE CORRECTIONAL MEDICAL AUTHORITY ANNUAL
20 REPORTS WHEN YOU WERE THE DIRECTOR OF HEALTH SERVICES?

21 **A** FREQUENTLY I DID.

22 **Q** WERE YOU AWARE THAT THE CORRECTIONAL MEDICAL AUTHORITY'S
23 REPORT ON HEALTHCARE DELIVERY OF THE FLORIDA DEPARTMENT OF
24 CORRECTIONS FOR FISCAL YEAR 2002/2003 FOUND THAT THE OFFICE OF
25 HEALTH SERVICES HAD NOT PUBLISHED STAFFING STANDARDS SINCE

1 1992?

2 **MS. JOHNSON:** THAT ASSUMES FACTS THAT AREN'T IN
3 EVIDENCE, YOUR HONOR.

4 **MS. HARDY:** IF I COULD ASK THE COURT REPORTER TO
5 HAND DR. THOMAS A COPY OF "INSIDE COVER," WHICH WILL BE THE
6 REPORT, THE NEXT IN ORDER EXHIBIT.

7 **JUDGE KARLTON:** DO YOU WANT THEM MARKED? ARE THEY
8 PRESENTLY MARKED AS EXHIBITS?

9 **MS. HARDY:** THEY ARE NOT, YOUR HONOR.

10 **JUDGE KARLTON:** DO YOU INTEND TO --

11 **MS. HARDY:** I WOULD LIKE TO MAKE THEM PLAINTIFFS'
12 NEXT IN ORDER, AND I HAVE A COPY FOR THE BENCH.

13 **JUDGE HENDERSON:** WHAT WOULD THAT NUMBER BE?

14 **JUDGE KARLTON:** DO WE KNOW WHAT NUMBER THAT WILL BE?

15 **JUDGE HENDERSON:** ROWENA, ARE YOU KEEP THE NUMBERS?

16 **THE CLERK:** WE DON'T HAVE THE LIST, NO.

17 **MS. HARDY:** THIS IS PLAINTIFFS' 825.

18 **JUDGE HENDERSON:** EIGHT TWENTY-FIVE. OKAY. THIS
19 WILL BE MARKED AS PLAINTIFFS' NUMBER 825 FOR IDENTIFICATION.

20 (PLAINTIFFS' EXHIBIT 825 MARKED FOR
21 IDENTIFICATION.)

22 **BY MS. HARDY**

23 **Q** DR. THOMAS, DO YOU RECOGNIZE THIS AS A CORRECTIONAL MEDICAL
24 AUTHORITY REPORT?

25 **A** I DON'T RECALL AS WE SIT HERE, NO, MA'AM.

1 Q IS IT A CORRECTIONAL MEDICAL AUTHORITY REPORT, DR. THOMAS?

2 A I DON'T REMEMBER SEEING ONE THAT SAID "INSIDE COVER" ON THE
3 NEXT PAGE. IT DOES TALK ABOUT THE CORRECTIONAL MEDICAL
4 AUTHORITY, BUT I JUST DON'T RECALL THIS ONE AT ALL, AND IT
5 COULD BE BECAUSE IT TALKS ABOUT 2002, 2003. SO IT PROBABLY
6 WOULDN'T BE PREPARED UNTIL AFTER I LEFT THE DEPARTMENT.

7 Q BUT IT WOULD HAVE COVERED THE TIME DURING WHICH YOU WERE AT
8 THE DEPARTMENT, CORRECT, BECAUSE YOU WERE THERE IN 2003,
9 CORRECT?

10 A POSSIBLY, YES.

11 Q OKAY. AND I DIRECT YOUR ATTENTION TO PAGE 5.

12 MIDWAY DOWN THE PAGE IT SAYS:

13 "AUTHORITY SURVEYORS OVER THE PAST TWO FISCAL
14 YEARS MORE FREQUENTLY IDENTIFIED AREAS WHERE
15 INSUFFICIENT STAFFING APPEARED TO AFFECT THE
16 PROVISION OF ADEQUATE CARE AND/OR THE DOCUMENTATION
17 OF THAT CARE IN SUFFICIENT DETAIL."

18 DOCTOR, IS THIS -- DO YOU RECALL RECEIVING SURVEYS
19 THAT TOLD YOU THAT THERE WERE FREQUENTLY IDENTIFIED AREAS WHERE
20 INSUFFICIENT STAFFING APPEARED TO AFFECT THE PROVISION OF
21 ADEQUATE CARE?

22 A I DON'T SEE WHERE YOU'RE READING, BUT I DO RECALL RECEIVING
23 COMMENTS, DOCUMENTS FROM THE CORRECTIONAL MEDICAL AUTHORITY
24 SAYING WE WERE UNDERSTAFFED.

25 Q OKAY. DOCTOR, YOU ARE AWARE THAT THE FLORIDA'S DEPARTMENT

1 OF CORRECTIONS PRISON POPULATION IS STATUTORILY CAPPED,
2 CORRECT?

3 **A** THAT'S CORRECT.

4 **Q** AND THAT POPULATION CAP WAS THE PRODUCT OF A NEGOTIATED
5 SETTLEMENT IN THE SUIT COSTELLO VERSUS WAINWRIGHT, CORRECT?

6 **A** THAT'S CORRECT.

7 **Q** AND BECAUSE OF COSTELLO, THE FLORIDA STATE PRISON
8 POPULATION WAS REDUCED IN ORDER TO RECEIVE A CONSTITUTIONAL
9 LEVEL OF MEDICAL CARE, CORRECT?

10 **A** THAT'S CORRECT.

11 **Q** AND PURSUANT TO STATUTE, FLORIDA HAS A CONTROL RELEASE
12 AUTHORITY, CORRECT?

13 **A** THAT'S CORRECT.

14 **Q** AND THE AUTHORITY IS CHARGED WITH IMPLEMENTING A SYSTEM FOR
15 DETERMINING THE NUMBER AND TYPE OF INMATES WHO MUST BE RELEASED
16 INTO THE COMMUNITY UNDER CONTROL RELEASE TO MAINTAIN THE PRISON
17 SYSTEM BETWEEN 99 PERCENT AND A HUNDRED PERCENT OF TOTAL
18 CAPACITY, CORRECT?

19 **A** MY RECOLLECTION IS DIFFERENT THAN THAT, MS. HARDY. THAT
20 SUIT WAS THREE SEPARATE SUITS, AND ONE WAS MEDICAL CARE. THE
21 OTHER WAS OVERCROWDING IN GENERAL. I FORGET THE THIRD. I
22 THINK IT WAS FOOD.

23 MY RECOLLECTION IS THAT IT'S 150 PERCENT OF DESIGN
24 CAPACITY. IF YOU HAVE INFORMATION DIFFERENT THAN THAT, THAT'S
25 MORE CURRENT, I MIGHT CERTAINLY BE WILLING TO YIELD TO THAT.

1 BUT MY RECOLLECTION IS IT'S 150 PERCENT OF DESIGN CAPACITY.

2 **Q** I BELIEVE THAT TOTAL CAPACITY IS DEFINED AT 150 PERCENT OF
3 DESIGN CAPACITY, EXCEPT THAT CERTAIN BEDS, INCLUDING MEDICAL
4 AND MENTAL HEALTH BEDS, MUST REMAIN AT DESIGN CAPACITY. IS
5 THAT YOUR UNDERSTANDING?

6 **A** I DON'T RECALL NOW AS WE SIT HERE.

7 **Q** OKAY. I'D ASK THAT THE COURT REPORTER HAND TO YOU FLORIDA
8 STATUTE 944.023.

9 **A** WE'RE HAVING A LITTLE DIFFICULTY. IF IT'S ACCEPTABLE TO
10 YOUR HONOR, IF YOU COULD READ THAT TO ME, IT MAY REFRESH MY
11 RECOLLECTION.

12 **Q** I'M SORRY. I WOULD LIKE TO MAKE THAT EXHIBIT NO. 826,
13 PLAINTIFFS' 826.

14 **JUDGE HENDERSON:** HE ASKED IF YOU COULD READ THAT TO
15 HIM.

16 **THE WITNESS:** WE DON'T SEEM TO HAVE THAT, MS. HARDY.

17 **BY MS. HARDY**

18 **Q** YOU DO NOT HAVE 944.023?

19 **A** NO, MA'AM. THAT'S CORRECT. MICHELLE IS INDICATING WE
20 ONLY HAVE 945 STATUTES AND 1947.

21 **Q** I APOLOGIZE.

22 YOU ARE AN ATTORNEY, CORRECT, DOCTOR?

23 **A** YES, MA'AM.

24 **Q** AND YOU ARE FAMILIAR WITH THE FLORIDA STATUTES, CORRECT?

25 **A** SAY AGAIN, PLEASE.

1 Q SO YOU DO HAVE SOME FAMILIARITY WITH FLORIDA STATUTES,
2 CORRECT?

3 A YES, MA'AM. I HELPED CREATE MANY OF THEM.

4 Q THE STATUTE NUMBER 944.023, COMPREHENSIVE CORRECTIONAL
5 MASTER PLAN, SUB-ONE:

6 "AS USED IN THIS SECTION, THE TERM,"

7 AND THEN JUMPING DOWN TO SUB-B.

8 "TOTAL CAPACITY OF THE STATE CORRECTIONAL SYSTEM
9 MEANS THE TOTAL DESIGN CAPACITY OF ALL INSTITUTIONS
10 AND FACILITIES IN THE STATE CORRECTIONAL SYSTEM,
11 WHICH MAY INCLUDE THOSE FACILITIES AUTHORIZED AND
12 FUNDED UNDER CHAPTER 957, INCREASED BY ONE-HALF WITH
13 THE FOLLOWING EXCEPTIONS,"

14 AND INCLUDED AMONG THOSE EXCEPTIONS ARE MEDICAL AND
15 MENTAL HEALTH BEDS WHICH MUST REMAIN AT DESIGN CAPACITY.

16 SO THAT'S WHAT THE STATUTE SAYS. THAT IS THE
17 STATUTE UNDER WHICH YOU OPERATED.

18 A THANK YOU FOR REFRESHING MY MEMORY. AND THE WAY THAT WAS
19 INTERPRETED, OF COURSE, WAS THE HOSPITAL AND THE INFIRMARIES
20 CAN'T EXCEED DESIGN CAPACITY, BUT THE FACILITIES THAT THEY'RE
21 ASSOCIATED WITH CAN EXCEED DESIGN CAPACITIES BY 50 PERCENT.

22 Q CORRECT. SO DURING YOUR TENURE AS A PHYSICIAN WITH THE
23 FLORIDA DEPARTMENT OF CORRECTIONS, THE SYSTEMS POPULATION WAS
24 NOT PERMITTED TO EXCEED 150 PERCENT OF DESIGN CAPACITY,
25 CORRECT?

1 **A** THAT'S CORRECT.

2 **Q** YOU TESTIFIED THAT A WORK STUDY AND OUTCOMES STUDY WOULD
3 NOTE THE TIME AT EACH ENCOUNTER, THE TIME OF EACH ENCOUNTER
4 WITH A PHYSICIAN, AND ANALYZE THE OUTCOME. DID YOU DO SUCH A
5 STUDY WHEN YOU TOURED THE CALIFORNIA STATE PRISON SYSTEM?

6 **A** NO, MA'AM. I SAW NO SUCH DOCUMENTATION. WERE I TO BE
7 CONSULTED BY THE SYSTEM, I FEEL THERE COULD BE SEVERAL
8 IMPROVEMENTS ADMINISTRATIVELY, YES, MA'AM.

9 **Q** YOU TESTIFIED THAT YOU EVALUATED THE ADEQUACY OF THE
10 WORKLOADS OF THE HEALTHCARE STAFF, INCLUDING THE PHYSICIANS AND
11 NURSES AT ALL EIGHT OF THE PRISONS YOU VISITED, CORRECT?

12 **A** THAT'S -- YES, MA'AM.

13 **Q** AND YOU DETERMINED THAT AT EACH PRISON, AND PARTICULARLY
14 THE LAST FIVE YOU TOURED, SEEMED TO HAVE AN ADEQUATE NUMBER OF
15 STAFF TO PERFORM THE FUNCTIONS REQUIRED OF THEM, CORRECT?

16 **A** YES, MA'AM, COMPARED TO OTHER CORRECTIONAL INSTITUTIONS, MY
17 FEELING WAS THEY WERE RICHLY STAFFED, YES.

18 **Q** BUT YOU HAVE NO WRITTEN DATA FROM THESE TOURS, CORRECT?

19 **A** BUT I HAVE NO WHAT DATA?

20 **Q** WRITTEN DATA THAT YOU PERSONALLY COMPILED FROM THESE TOURS,
21 CORRECT?

22 **A** NO WRITTEN DATA, THAT IS CORRECT.

23 **Q** AND YOU HAVE NO STATISTICS FROM ANY OF THE PRISONS THAT YOU
24 VISITED SHOWING HOW MUCH TIME EACH OF THE REQUIRED MEDICAL
25 FUNCTIONS TAKE, CORRECT?

1 **A** THAT'S CORRECT.

2 **Q** AND YOU HAVE NO STATISTICS FROM ANY OF THE PRISONS SHOWING
3 HOW MANY STAFF ARE ALLOCATED TO EACH OF THESE FUNCTIONS,
4 CORRECT?

5 **A** THAT'S NOT NECESSARILY CORRECT. AT EACH INSTITUTION WE HAD
6 SOME INDICATION OF THE NUMBER OF INMATES AND THE NUMBER OF
7 PROVIDERS AND THE NUMBER OF HEALTHCARE STAFF.

8 **Q** DO YOU RECALL HOW MANY PROVIDERS THERE WERE FOR THE NUMBER
9 OF PRISONS AT PLEASANT VALLEY STATE PRISON?

10 **A** NOT OFF THE TOP OF MY HEAD, I DON'T.

11 **Q** DO YOU RECALL THE RATIO FOR ANY OF THE PRISONS YOU VISITED?

12 **A** I DO RECALL AT ONE I WAS VERY IMPRESSED WITH THE FACT THAT
13 THERE WERE NO NURSING VACANCIES, AND THE NURSE -- THE CHIEF
14 NURSE HAD BEEN CREATIVE ENOUGH TO NOT ONLY HAVE 40 OF HER
15 ALLOCATED NURSES, BUT TO HAVE 41 NURSES BECAUSE SHE SWUNG, WITH
16 THE WARDEN'S PERMISSION, ANOTHER POSITION.

17 **Q** WHAT PRISON WAS THAT?

18 **A** I DON'T RECALL.

19 **MS. HARDY:** I HAVE NOTHING FURTHER.

20 **JUDGE HENDERSON:** OKAY. DOES CCPOA HAVE ANY
21 QUESTIONS FOR THIS WITNESS?

22 **MR. HENDERSON:** NOT AT THIS TIME, YOUR HONOR.

23 **JUDGE HENDERSON:** OKAY, COUNSEL.

24 **MS. JOHNSON:** WE HAVE NO FURTHER QUESTIONS, YOUR
25 HONOR.

1 **JUDGE HENDERSON:** OKAY. THANK YOU VERY MUCH FOR
2 TESTIFYING, DOCTOR. YOU'RE EXCUSED AT THIS TIME.

3 **THE WITNESS:** THANK YOU, YOUR HONOR. I WANT TO
4 INDICATE THAT I APPRECIATE THE COURT PERMITTING ME TO DO THIS
5 BECAUSE OF PERSONAL REASONS.

6 **JUDGE HENDERSON:** ALWAYS WILLING TO ACCOMMODATE. I
7 HOPE IT WORKED OUT FOR YOU. THANK YOU, SIR. I DON'T KNOW HOW
8 TO TURN YOU OFF. THERE WE GO.

9 **THE WITNESS:** MY WIFE DOES THAT ALL THE TIME, YOUR
10 HONOR.

11 **JUDGE HENDERSON:** OKAY. YOU MAY CALL YOUR NEXT
12 WITNESS, COUNSEL. OKAY. WE ARE GOING TO TAKE A BREAK, A COURT
13 REPORTER BREAK. FIFTEEN MINUTES.

14 LET'S TALK BEFORE WE DO. WHAT'S THE REST OF THE
15 DAY? WHAT DO WE HAVE AT THIS POINT?

16 **MS. JOHNSON:** THE DEPOSITIONS WE WERE GOING TO READ
17 INTO THE --

18 **JUDGE HENDERSON:** OKAY.

19 **MS. JOHNSON:** WE HAVE THE DEPOSITIONS WE ARE GOING
20 TO READ INTO THE TRANSCRIPT.

21 **JUDGE KARLTON:** ASSUMING THAT HAPPENS, WHAT HAPPENS
22 AFTER THAT? THAT'S IT FOR THE DAY?

23 **MS. JOHNSON:** THAT'S IT FOR THE DAY.

24 **JUDGE HENDERSON:** TO GIVE YOU A LITTLE WARNING, WE
25 ARE GOING TO ASK YOU TO MAKE AN OFFER OF PROOF. IT'S NOT CLEAR

1 TO US THE RELEVANCE OF THE TWO NAMED PLAINTIFFS.

2 **MR. MELLO:** OKAY. YOU ARE NOT DISCUSSING
3 MR. MUMOLA'S TESTIMONY; YOU ARE DISCUSSING THE NAMED
4 PLAINTIFFS' TESTIMONY? OKAY.

5 **JUDGE REINHARDT:** HOW LONG WILL IT TAKE TO READ THE
6 DEPOSITIONS?

7 **JUDGE HENDERSON:** THEY'RE ESTIMATING 15 MINUTES.

8 **MS. JOHNSON:** ACTUALLY, MUMOLA'S TESTIMONY WE ARE
9 ESTIMATING MIGHT TAKE 45, YOUR HONOR.

10 (RECESS TAKEN.)

11 **MS. JOHNSON:** YOUR HONORS, YOU ASKED US TO ADDRESS
12 AN OFFER OF PROOF WITH RESPECT TO --

13 **JUDGE HENDERSON:** ALL RIGHT. WITH RESPECT TO THE
14 READING OF DEPOSITIONS OF THE TWO -- MR. COLEMAN AND MUMOLA.

15 **MS. JOHNSON:** MR. STODDARD, I BELIEVE. MUMOLA IS --

16 **JUDGE HENDERSON:** OH, MR. STODDARD, YES.

17 **MS. JOHNSON:** DO YOU NEED ME TO STATE MY NAME?

18 ANNE JOHNSON FOR THE RECORD.

19 SO WE'VE OFFERED PORTIONS OF THE DEPOSITION
20 TRANSCRIPTS OF TWO -- WELL, A NAMED PLAINTIFF IN EACH OF THE
21 CASES HERE. WE BELIEVE THOSE -- THEIR TESTIMONY IS RELEVANT AND
22 CERTAINLY IS AS RELEVANT AS THE TESTIMONY OF AN INDIVIDUAL
23 CCPOA OFFICER IN ORDER TO DESCRIBE THEIR INDIVIDUAL PERSONALLY
24 OBSERVED EXPERIENCE WITH RESPECT TO THE DELIVERY OF MEDICAL
25 CARE IN THE CASE OF MR. STODDARD, AND MENTAL HEALTHCARE IN THE

1 CASE OF MR. COLEMAN.

2 **JUDGE KARLTON:** YOU'RE SUGGESTING THAT IF YOU WERE
3 TO SELECT THE PEOPLE WHO WERE NAMED AS PLAINTIFFS AND PROVIDE
4 THEM WITH A SPECIALLY ADEQUATE CARE THAT WOULD SOMEHOW OR
5 ANOTHER BEAR UPON THE TOTALITY OF THE CIRCUMSTANCES AS WE'VE
6 JUST BEEN LISTENING FOR THE LAST COUPLE OF WEEKS. IS THAT WHAT
7 YOU'RE SAYING?

8 **MS. JOHNSON:** NOT AT ALL, YOUR HONOR. I DON'T THINK
9 WE'VE IN ANY WAY SUGGESTED THAT WE SELECT --

10 **JUDGE KARLTON:** OH, I KNOW YOU HAVEN'T SUGGESTED
11 THAT.

12 **MS. JOHNSON:** -- SPECIALIZED CARE. WE'RE SUGGESTING
13 THAT THE INDIVIDUALIZED EXPERIENCES OF MR. COLEMAN AND
14 MR. STODDARD, WHO ARE THE NAMED PLAINTIFFS AND ARE PRESUMABLY
15 REPRESENTATIVE OF THE NAMED PLAINTIFFS IN THIS CASE --

16 **JUDGE KARLTON:** WERE AT THE TIME. WERE AT THE TIME
17 THE JUDGMENT WAS ENTERED.

18 **MS. JOHNSON:** -- ARE CERTAINLY, BY THE BROAD
19 STANDARD OF RELEVANCE, RELEVANT TO THIS PROCEEDING.

20 **JUDGE KARLTON:** I'M SATISFIED WITH THE ANSWERS. YOU
21 GUYS DO WHAT YOU WANT.

22 **JUDGE REINHARDT:** IS THE PURPOSE TO TESTIFY TO THEIR
23 OWN EXPERIENCE? WHAT I THOUGHT YOU WERE SAYING IS WHAT HE
24 OBSERVED WITH RESPECT TO OTHERS OR WITH RESPECT TO HIMSELF.

25 **MS. JOHNSON:** NO, I BELIEVE IT'S THEIR PERSONAL

1 OBSERVATIONS, MOST CERTAINLY WITH MOST DIRECTLY WITH
2 THEMSELVES.

3 I HAVEN'T -- YES, IT'S ABOUT THEIR OWN PERSONAL
4 OBSERVATIONS ABOUT THE STATUS OF MEDICAL CARE AND MENTAL
5 HEALTHCARE THEY ARE RECEIVING.

6 **MR. SPECTER:** MAY I BE HEARD ON THIS, YOUR HONOR?
7 THIS IS DONALD SPECTER. I WOULD SUGGEST A COMPROMISE. WE DON'T
8 REALLY MIND. WE DON'T THINK IF THEY ARE RELEVANT, THEY ARE
9 marginally relevant. AND IF THEY ARE RELEVANT, THE WEIGHT THAT
10 YOU SHOULD GIVE IT IS VERY LITTLE BECAUSE OF THE -- I THINK
11 WHAT'S IMPLIED IN YOUR REMARKS JUST NOW.

12 SO MY SUGGESTION IS THAT WE ALLOW THE STATE TO PUT
13 THEM INTO THE RECORD. I DON'T NECESSARILY THINK WE NEED TO
14 SPEND THE COURT'S TIME HAVING IT READ OUT LOUD, BUT WE DON'T --

15 **JUDGE KARLTON:** WELL, IF YOU DON'T CARE, I MEAN --

16 **MR. SPECTER:** I'D RATHER HAVE THAT THAN HAVE A LEGAL
17 ISSUE HANGING OVER --

18 **MS. JOHNSON:** WE WILL ACCEPT THAT COMPROMISE, YOUR
19 HONOR.

20 **JUDGE HENDERSON:** FINE BY ME. THAT'S AT LEAST TWO TO
21 ONE, SO WHATEVER YOU DO.

22 **JUDGE KARLTON:** THAT'S FINE, TWO TO ONE.

23 **MS. JOHNSON:** WE WILL NOW PROCEED WITH THE READING
24 OF THE DEPOSITION TESTIMONY OF CHRISTOPHER MUMOLA INTO THE
25 RECORD.

1 **MR. SPECTER:** BEFORE WE GET TO THAT, COULD WE
2 ADDRESS A COUPLE OF HOUSEKEEPING ISSUES? OR DO YOU WANT TO
3 WAIT? IT'S UP TO YOU.

4 THIS IS FINE. THE FIRST, WE'RE TRYING TO SCHEDULE
5 THE REST OF THE TRIAL. AND ONE OF THE QUESTIONS I HAD WAS
6 TALKING ABOUT RELEVANCE OF WITNESS TESTIMONY. COULD WE ADDRESS
7 THE RELEVANCE OF THE LEGISTATOR INTERVENOR WITNESSES? I
8 THOUGHT ABOUT THIS, AND I'VE TRIED TO FIGURE OUT HOW THEIR
9 TESTIMONY COULD BE RELEVANT.

10 AND I CAN'T REALLY -- I CAN'T REALLY SEE IT. AND ONE
11 OF THE PEOPLE, MR. SPITZER, WHO APPEARED HERE IN ONE OF THE
12 PROCEEDINGS, IS NO LONGER A LEGISTATOR. HE WAS TERMED OUT. SO
13 AS OF MONDAY HE'S NOT A LEGISTATOR. HE STILL COULD BE A
14 WITNESS, OF COURSE, BUT HE'S NOT A PROPER PARTY.

15 BUT EVEN IF HE WAS A WITNESS I DON'T KNOW WHAT
16 EITHER OF THEM COULD SAY WHICH COULD BEAR ON THE MATTERS THAT
17 ARE UNDER CONSIDERATION FROM YOUR COURT.

18 SO A RULING ON THAT WOULD HELP US FIGURE IT OUT.

19 **JUDGE REINHARDT:** ARE THE LEGISLATOR'S LAWYERS HERE
20 TODAY?

21 **MR. SPECTER:** PARDON ME?

22 **JUDGE REINHARDT:** ARE THE LEGISLATOR'S LAWYERS HERE
23 TODAY?

24 **MS. WANG:** YES.

25 **JUDGE REINHARDT:** YES.

1 **MS. WANG:** YOUR HONOR, IT'S TRUE THAT ASSEMBLYMAN
2 SPITZER --

3 **JUDGE KARLTON:** NAME, FIRST.

4 **MS. WANG:** TERESA WANG, ATTORNEY FOR THE LEGISTATOR
5 INTERVENORS.

6 ASSEMBLYMAN SPITZER WAS TERMED OUT THIS PAST
7 SESSION, BUT BECAUSE OF HIS ACTIVITY AS -- SORRY -- HEAD OF THE
8 SELECT COMMITTEE ON PRISON CONSTRUCTION AND OPERATIONS AND
9 VARIOUS ACTIVITIES DURING HIS TIME AS LEGISTATOR, WE BELIEVE
10 THAT HIS EXPERIENCE DURING THE, I BELIEVE, SIX YEARS AS HE WAS
11 SERVING AS ASSEMBLY MEMBER ARE PERTINENT TO SOME OF THE
12 ALTERNATIVES THAT HAVE BEEN RAISED IN THIS CASE. AND THE SAME
13 GOES FOR SENATOR RUNNER.

14 **JUDGE REINHARDT:** THEY ARE GOING TO TESTIFY THAT
15 THERE ARE ALTERNATIVES?

16 **MS. WANG:** RIGHT. THEY ARE BOTH TESTIFYING AS TO THE
17 EXISTENCE OF LESSER ALTERNATIVES. THEY ARE ALSO TESTIFYING AS
18 TO THE PERTINENCE OF AB900, OUT-OF-STATE TRANSFERS, AND OTHER
19 POTENTIAL ALTERNATIVES TO PRISONER RELEASE ORDER.

20 **JUDGE HENDERSON:** OKAY.

21 **MR. SPECTER:** OKAY. SO IS THAT OKAY? AND YOU'RE
22 GOING TO LISTEN TO THE TESTIMONY?

23 **JUDGE HENDERSON:** THAT MEANS WE'VE HEARD, BUT YOU
24 KNOW, ONE OF THE PROBLEMS I'M HAVING -- I DON'T KNOW ABOUT
25 JUDGE KARLTON -- IS THAT IF THIS WERE A TRIAL IN MY COURT WE

1 WOULD HAVE DECIDED THIS UNDER MOTIONS IN LIMINE. AND WE'RE
2 SORT OF STAGGERING THROUGH THIS CASE.

3 THIS IS JUST A VERY IMPORTANT EXAMPLE OF IT.

4 **JUDGE KARLTON:** YES.

5 **MR. SPECTER:** YES, YOUR HONOR.

6 **JUDGE KARLTON:** I MEAN, I AGREE WITH YOU THAT -- I
7 MEAN, IN MY COURT, OF COURSE -- THOSE OF YOU WHO HAVE BEEN
8 THERE -- WE WOULD HAVE HAD PRETRIAL THREE MONTHS BEFORE TRIAL.
9 AND WE WOULD HAVE ORDERED ALL OF THESE THINGS TO BE RESOLVED
10 BEFORE WE EVER GOT THERE. AND THE TRIAL WOULD BE ABOUT HALF OF
11 WHAT WE'VE SEEN SO FAR.

12 BUT THAT DIDN'T HAPPEN, AND HERE WE ARE. SO --

13 **MR. SPECTER:** OKAY.

14 **JUDGE REINHARDT:** SO WHY IS IT NOT RELEVANT? WE DO
15 HAVE TO EXPLORE ALTERNATIVES.

16 **MR. SPECTER:** YEAH, RIGHT. I THINK THAT'S VERY TRUE.
17 I DON'T KNOW. THEY ARE NOT EXPERTS. THEY ARE POLICYMAKERS.

18 **JUDGE KARLTON:** NO, BUT THEY MAY BE EXPERTS ON WHAT
19 CAN BE DONE.

20 **MR. SPECTER:** OR WHAT THEY HAVEN'T DONE, MAYBE.

21 **JUDGE KARLTON:** MAYBE.

22 **JUDGE REINHARDT:** OR EVEN MORE IMPORTANT THAN WHAT
23 THE EXPERTS SAY. THIS MAY REALLY TELL US WHAT THERE IS TO BE
24 DONE. MAYBE THEY CAN TELL US THEY ARE GOING TO GIVE \$9 BILLION,
25 \$20 BILLION TO SOLVE THIS PROBLEM.

1 **MR. SPECTER:** WELL, ONE LEGISLATOR CAN'T DO THAT.
2 THAT'S WHY EVEN IF THEY SAID THEY WANTED TO, IT WOULDN'T MATTER
3 BECAUSE THEY HAVE A LOT OF OTHER PEOPLE WHO HAVE TO VOTE.

4 **JUDGE KARLTON:** WELL, I AGREE WITH THAT. BUT THEY
5 COULD CONCEIVABLY GIVE US TESTIMONY AS TO WHAT THEY THINK THE
6 LIKELIHOOD OF ANY OF THESE THINGS HAPPENING. I AGREE WITH YOU
7 THAT ONE GUY SAYING:

8 "YEAH. OH, YEAH, WE WILL JUST WRITE A CHECK."

9 OF COURSE, NOBODY IS GOING TO SAY THAT BECAUSE WE'RE
10 11 -- RIGHT NOW 11 BILLION OR 11 MILLION, WHATEVER THE NUMBERS.

11 **JUDGE HENDERSON:** BILLION.

12 **JUDGE KARLTON:** IT'S TOO MUCH FOR ME TO PUT --

13 **JUDGE REINHARDT:** SENATOR RUNNER CAN PUT A MEASURE
14 ON THE BALLOT, AND THAT CAN SOLVE EVERYTHING.

15 **MR. SPECTER:** OKAY. SINCE THAT'S CLEAR, I HAVE ONE
16 OTHER ISSUE THAT I THOUGHT I WOULD RAISE BEFORE WE START
17 TOMORROW. AND THAT IS TO SORT OF CLEAR UP WHAT -- USUALLY, I'M
18 HERE TELLING WHAT YOU WE WANT. AND I WANTED TO TELL YOU WHAT
19 WE'RE NOT SEEKING IN THIS PROCEEDING, BECAUSE A LOT OF THE
20 QUESTIONS YOU'VE BEEN ASKING ARE RELEVANT TO THAT ISSUE.

21 AND SO I WANTED TO MAKE IT A LITTLE CLEARER ABOUT
22 WHAT WE WANT YOU TO DO, IF YOU FIND THE LEGAL REQUIREMENTS HAVE
23 BEEN MET.

24 AND WHAT WE'RE NOT ASKING YOU TO DO IS CRAFT A PLAN
25 FOR -- AND ORDER THE STATE TO DEVELOP -- TO FIGURE OUT WHICH OF

1 THE VARIOUS PRISON REDUCTION MEASURES SHOULD BE ISSUED AND
2 APPLIED TO WHICH TYPE OR SPECIFIC PRISONERS.

3 ALL WE ARE ASKING FOR IS FOR YOU TO ORDER THE STATE
4 TO COME UP WITH A PLAN TO REDUCE THE POPULATION TO A CERTAIN
5 LEVEL.

6 NOW, THAT MUCH IS CERTAIN. THE NEXT QUESTION WHICH
7 YOU'VE BEEN DEALING WITH A LOT, WHICH RELATES TO THE
8 \$11 BILLION ISSUE, IS WHETHER YOU HAVE THE AUTHORITY TO ORDER
9 THE STATE TO FUND SUCH A PLAN.

10 I'M NOT SURE THAT YOU HAVE TO EVEN CONSIDER THAT,
11 BECAUSE I THINK IF YOU LOOK AT THE PLRA'S SECTIONS, WHAT THE --
12 THE TWO RELEVANT SECTIONS ARE BROKEN DOWN INTO TWO SUBPARTS.

13 THE FIRST SUBPART DEALS WITH PRIMARY THE COST.

14 **JUDGE KARLTON:** NO. I'M SORRY. I'M GOING TO
15 INTERRUPT. IT APPEARS TO ME THIS IS FINAL ARGUMENT.

16 **MR. SPECTER:** IT'S MORE OF A KIND OF AN ANALYSIS OF
17 THE EVIDENCE WE'RE GOING TO SHOW THAN WE'RE GOING TO HAVE --

18 **JUDGE KARLTON:** THAT'S WHAT OPENING STATEMENTS WERE
19 ABOUT.

20 **MR. SPECTER:** WELL --

21 **JUDGE KARLTON:** WHICH WE DIDN'T -- NEVER MIND.

22 **JUDGE HENDERSON:** IS THERE A SUGGESTION WE'RE
23 SPENDING TIME ASKING THINGS THAT YOU'RE NOT INTERESTED IN?

24 **MR. SPECTER:** WELL, I AM INTERESTED IN EVERYTHING
25 YOU ASK, OF COURSE.

1 **JUDGE HENDERSON:** NO, YOU DON'T HAVE TO BE.

2 **MR. SPECTER:** BUT I GUESS WHAT I'M SAYING IS I GUESS
3 I WANT TO MAKE CLEAR THAT YOU DON'T HAVE TO ISSUE -- YOU DON'T
4 HAVE TO FIGURE OUT WHICH OF THESE ALTERNATIVES SHOULD BE DONE
5 IF YOU ORDER A POPULATION CAP. THAT WOULD BE SOMETHING WE WOULD
6 ASK YOU TO ASK THE STATE TO FIGURE OUT.

7 AND THEY'RE POLICY CHOICES THAT THE STATE HAS TO
8 MAKE, LIKE MR. DYER WAS TALKING ABOUT. AND THE SAME THING
9 WITH THE MONEY. WHETHER YOU ORDER THEM OR NOT TO MAKE IT DONE
10 SO THAT IT'S SAFE, YOU DON'T HAVE TO GO ANYWHERE NEAR THE
11 MONEY.

12 **JUDGE HENDERSON:** JUST A MINUTE, THOUGH. BUT IT
13 SEEMS TO ME I THINK OUR THINKING IS GOING WAY BEYOND THAT.

14 AS AN EXAMPLE, WE WERE INTRIGGERED WITH MR. POWERS'
15 TESTIMONY AND THINKING:

16 "BOY, THAT'S INTERESTING. WHAT MIGHT WE DO?"

17 **MR. SPECTER:** RIGHT.

18 **JUDGE HENDERSON:** SO THAT'S WHY WE'RE PARTICIPATING.

19 **MR. SPECTER:** WE WANT YOU -- WE WILL BE ASKING YOU
20 WHEN WE GET TO THE --

21 **JUDGE KARLTON:** WE'RE NEVER GOING TO GET THERE, MR.
22 SPECTER.

23 **MR. SPECTER:** I'M SOMEWHAT OF AN OPTIMIST.

24 **JUDGE REINHARDT:** YOU'RE NOT ASKING US TO DEVELOP A
25 PLAN. YOU'RE ASKING US TO ASK THE STATE TO --

1 **MR. SPECTER:** BUT WE ARE ASKING YOU TO MAKE FINDINGS
2 THAT THERE ARE SAFE METHODS BY WHICH A PLAN COULD BE DEVELOPED
3 AND ORDER THE STATE TO DEVELOP A PLAN THAT IS SAFE. THAT'S ALL.

4 **JUDGE HENDERSON:** OKAY.

5 **JUDGE REINHARDT:** I THINK SOMEONE IS SHAKING HIS
6 HEAD.

7 **MR. MELLO:** NO, I THINK THIS IS CLOSING ARGUMENTS. I
8 BELIEVE THESE ARE ALL ISSUES FOR BRIEFING. I BELIEVE THAT THE
9 PLRA SAID THAT WE HAVE TO ADDRESS PRIMARY CAUSE, OTHER REMEDIES
10 AND WHETHER THERE'S AN ADVERSE IMPACT ON PUBLIC SAFETY.

11 **JUDGE KARLTON:** WE WILL HEAR THAT FINAL ARGUMENT.

12 **MR. MELLO:** AND WE WOULD LIKE TO CALL MR. MUMOLA TO
13 THE STAND BY WAY OF SOMEBODY ELSE.

14 **JUDGE KARLTON:** TERRIFIC. PLEASE DO.

15 **JUDGE HENDERSON:** LET'S MOVE THERE RIGHT NOW.

16 **MS. JOHNSON:** THANK YOU, YOUR HONORS. SAMATHA TAMA
17 WITH DEFENSE COUNSEL IS GOING TO PLAY THE ROLE OF MR. MUMOLA.

18 WE'RE GOING TO BE READING FROM THE DEPOSITION
19 TRANSCRIPT OF CHRISTOPHER MUMOLA, WHICH WAS TAKEN ON -- I MAY
20 NOT HAVE THE DATE HERE -- AUGUST 25, 2008 IN THIS CASE.

21 AS AN EXPLANATORY NOTE, THE REFERENCES TO THE
22 DEPOSITION EXHIBITS USE DIFFERENT IDENTIFIERS THAN THE TRIAL
23 EXHIBITS.

24 SO, FOR EXAMPLE, THE DEPOSITION EXHIBITS ARE
25 NUMBERED EXHIBIT A, B AND C. WE HAVE AGREED WITH PLAINTIFFS'

1 COUNSEL THAT WE'RE GOING TO SUBSTITUTE THE TRIAL EXHIBIT NUMBER
2 WHEN READING THE DEPOSITION TO MAKE IT MUCH MORE
3 COMPREHENSIBLE.

4 JUDGE KARLTON: GOOD.

5 JUDGE HENDERSON: FINE.

6 (THEREUPON, THE DEPOSITION OF CHRISTOPHER

7 MUMOLA WAS READ AS FOLLOWS, WITH MS.

8 JOHNSON READING THE QUESTIONS AND MS. TAMA

9 READING THE ANSWERS:)

10 Q. PLEASE STATE AND SPELL YOUR FULL NAME FOR THE RECORD.

11 A. CHRISTOPHER JOHN MUMOLA, C-H-R-I-S-T-O-P-H-E-R, J-O-H-N,
12 M-U-N-O-L-A.

13 Q. DO YOU UNDERSTAND THAT YOU HAVE AN OBLIGATION TO TESTIFY
14 TRUTHFULLY UNDER PENALTY OF PERJURY?

15 A. YES.

16 Q. WHERE DO YOU CURRENTLY WORK?

17 A. I CURRENTLY WORK FOR THE U.S. DEPARTMENT OF JUSTICE'S
18 BUREAU OF JUSTICE STATISTICS OR BJS.

19 Q. WHAT IS THE PARTICULAR DIVISION THAT YOU WORK FOR FOR YOUR
20 EMPLOYER?

21 A. I WORK IN THE CORRECTIONS STATISTICS UNIT OF BJS.

22 Q. DESCRIBE WHAT YOUR UNIT IS RESPONSIBLE FOR.

23 A. THE CORRECTIONS STATISTICS UNITS IS RESPONSIBLE FOR
24 COLLECTING DATA ON THE NATION'S CORRECTIONAL POPULATIONS
25 RANGING FROM INSTITUTIONAL POPULATIONS, SUCH AS STATE AND

1 FEDERAL PRISONERS AND LOCAL JAIL INMATES, TO COMMUNITY
2 SUPERVISION POPULATIONS LIKE PROBATION AND PAROLE OFFENDERS.

3 **Q.** WHAT IS YOUR JOB TITLE?

4 **A.** I AM A POLICY ANALYST AND PROGRAM MANAGER FOR THE BUREAU'S
5 DEATH IN CUSTODY REPORTING PROGRAM.

6 **Q.** DESCRIBE YOUR JOB DUTIES AND RESPONSIBILITIES.

7 **A.** AS MANAGER OF THE DEATHS IN CUSTODY REPORTING PROGRAM, I AM
8 RESPONSIBLE FOR THE BUREAU'S DATA COLLECTIONS PERTAINING TO
9 MORTALITY IN THE CRIMINAL JUSTICE SYSTEM. THIS PROGRAM INVOLVES
10 COLLECTING INDIVIDUAL REPORTS OF ALL DEATHS THAT TAKE PLACE IN
11 ANY OF THE 1,300 PLUS STATE PRISONS AND 3,000 PLUS LOCAL JAILS
12 NATIONWIDE, AS WELL AS COLLECTING SIMILAR REPORTS OF ALL DEATHS
13 THAT OCCUR IN THE PROCESS OF ARRESTS BY THE NEARLY 17,000 STATE
14 AND LOCAL LAW ENFORCEMENT AGENCIES IN THE UNITED STATES. MY
15 DUTIES INCLUDE DAY-TO-DAY SUPERVISION OF THE WORK OF ONE BJS
16 STAFFER, AS WELL AS SEVERAL U.S. CENSUS BUREAU STAFF WORKING ON
17 THE PROGRAM UNDER AN INTERAGENCY AGREEMENT.

18 **Q.** WHAT ARE YOUR QUALIFICATIONS TO PERFORM YOUR CURRENT
19 DUTIES?

20 **A.** I HAVE OVER A DECADE OF EXPERIENCE WORKING WITH AND
21 MANAGING NATIONAL CRIMINAL JUSTICE DATA COLLECTIONS FOR BJS. I
22 HAVE WORKED ON A WIDE VARIETY OF PROGRAMS FOR THE CORRECTIONS
23 UNITS OVER THE YEARS. I HELPED TO ESTABLISH OUR DATA
24 COLLECTIONS MEASURING INCARCERATED POPULATIONS HELD BY U.S.
25 TERRITORIES, THE U.S. DEPARTMENT OF DEFENSE MILITARY JUSTICE

1 SYSTEM AS WELL AS PERSONS HELD UNDER THE AUTHORITY OF U.S.
2 IMMIGRATION AND CUSTOMS ENFORCEMENT I HAVE ALSO DONE EXTENSIVE
3 ANALYSIS ON NATIONAL PRISONER SURVEY DATABASES, AS WELL AS
4 TAKING A ROLE IN DESIGNING OUR SURVEY QUESTIONNAIRES ON TOPICS
5 RANGING FROM SUBSTANCE ABUSE TO PRISON SEXUAL VICTIMIZATION.

6 **Q.** WHAT IS THE BUREAU OF JUSTICE STATISTICS?

7 **A.** BJS IS THE STATISTICAL ARM OF THE U.S. DEPARTMENT OF
8 JUSTICE.

9 **Q.** HOW MANY PUBLISHED REPORTS HAVE YOU AUTHORED WHILE WORKING
10 FOR THE BUREAU OF JUSTICE STATISTICS?

11 **A.** 11.

12 **Q.** WHAT ARE THEIR TITLES?

13 **A.** ARREST-RELATED DEATHS IN THE UNITED STATES, 2003 TO 2005,
14 PUBLISHED IN OCTOBER OF 2007. VETERANS IN STATE AND FEDERAL
15 PRISONS, 2004, WITH MARGARET NOONAN, PUBLISHED MAY 2007.
16 MEDICAL CAUSES OF DEATH IN STATE PRISONS, 2001 TO 2004,
17 PUBLISHED JANUARY OF 2007. DRUG USE AND DEPENDENCE, STATE AND
18 FEDERAL PRISONERS, 2004, WITH JENNIFER KARBERG, PUBLISHED
19 OCTOBER 2006. SUICIDE AND HOMICIDE IN STATE PRISONS AND LOCAL
20 JAILS, PUBLISHED AUGUST 2005. INCARCERATED PARENTS AND THEIR
21 CHILDREN, PUBLISHED AUGUST 2000. VETERANS IN PRISON OR JAIL,
22 PUBLISHED JANUARY OF 2000. PRISONERS IN 1998, PUBLISHED AUGUST
23 1999. SUBSTANCE ABUSE AND TREATMENT, STATE AND FEDERAL
24 PRISONERS, 1997, PUBLISHED JANUARY 1999. SUBSTANCE ABUSE AND
25 TREATMENT OF ADULTS ON PROBATION, 1995, WITH THOMAS BONCZAR,

1 PUBLISHED MARCH 1998. PRISONERS IN 1996, WITH ALLEN BECK,
2 PH.D., PUBLISHED JUNE 1997.

3 **Q.** I'M HANDING YOU WHAT HAS BEEN MARKED AS DEFENDANTS' TRIAL
4 EXHIBIT 1011, A DOCUMENT ENTITLED "MEDICAL CAUSES OF DEATH IN
5 STATE PRISONS, 2001 TO 2004."

6 PLEASE REVIEW EXHIBIT 1011 AND LET ME KNOW WHEN YOU
7 ARE DONE.

8 ARE YOU FAMILIAR WITH EXHIBIT 1011?

9 **A.** YES.

10 **Q.** WERE YOU THE AUTHOR OF EXHIBIT 1011?

11 **A.** YES.

12 **Q.** IS EXHIBIT 1011 A TRUE AND ACCURATE COPY OF THE ORIGINAL?

13 **A.** YES.

14 **Q.** WHAT IS DEATHS IN CUSTODY REPORTING ACT OF 2000?

15 **A.** THIS FEDERAL LEGISLATION, PUBLIC LAW 106-297, REQUIRED
16 STATES TO REPORT ON A QUARTERLY BASIS ALL DEATHS IN STATE
17 PRISONS, LOCAL JAILS, JUVENILE FACILITIES AND PERSONS IN THE
18 PROCESS OF ARREST TO THE U.S. ATTORNEY GENERAL IN ORDER TO
19 QUALIFY FOR A SERIES OF FEDERAL CORRECTIONAL GRANTS.

20 **Q.** WHAT IS THE DEATHS IN CUSTODY REPORTING PROGRAM?

21 **A.** BJS ESTABLISHED THE DEATHS IN CUSTODY REPORTING PROGRAM TO
22 COLLECT THE CUSTODIAL DEATH REPORTS REQUIRED BY THE DEATH IN
23 CUSTODY REPORTING ACT OF 2000. UNDER THE NEW PROGRAM BJS PHASED
24 IN A SERIES OF NEW QUARTERLY DATA COLLECTIONS TO IMPLEMENT THE
25 ACT.

1 IN 2000, COLLECTION OF LOCAL JAIL DEATH RECORDS
2 BEGAN, STATE PRISON SYSTEMS WERE ADDED TO THE PROGRAM IN 2001,
3 STATE JUVENILE CORRECTIONAL AGENCIES WERE ADDED IN 2002, AND
4 STATES BEGAN REPORTING ARREST RELATED DEATHS IN 2003.

5 **Q.** WHAT IS YOUR CONNECTION TO THE DEATHS IN CUSTODY REPORTING
6 PROGRAM, IF ANY?

7 **JUDGE HENDERSON:** LET'S REMEMBER TO TALK A LITTLE
8 SLOWER.

9 **A.** I HAVE MANAGED THE PROGRAM SINCE ITS INCEPTION IN 2000.

10 **Q.** FROM WHERE DID THE BUREAU OF JUSTICE STATISTICS OBTAIN THE
11 DATA THAT IS ANALYZED IN EXHIBIT 1011?

12 **A.** THE DATA ANALYZED AND PRESENTED IN DEFENDANTS' TRIAL
13 EXHIBIT 1011 WAS ALL SUBMITTED TO BJS BY STATE DEPARTMENTS OF
14 CORRECTIONS. FOR THE PERIOD COVERED BY THE REPORT, 2001 TO
15 2004, ALL 50 STATE DEPARTMENTS OF CORRECTION PARTICIPATED IN
16 THE PROGRAM.

17 **Q.** AS THE AUTHOR OF EXHIBIT 1011, WHAT ROLE DID YOU PLAY IN
18 ITS PREPARATION?

19 **A.** I WAS INVOLVED IN ALL ASPECTS OF THE REPORT'S PREPARATION.
20 I DIRECTLY OVERSAW THE WORK OF COLLECTING THE DATA AND THE WORK
21 OF A CLINICAL DATA SPECIALIST IN APPLYING CLINICAL CODES TO
22 EACH CAUSE OF DEATH. I PERFORMED ALL OF THE DATA ANALYSIS
23 PRESENTED IN THE REPORT AND WROTE THE TEXT.

24 **Q.** IN GENERAL, WHAT WAS THE METHODOLOGY --

25 **JUDGE KARLTON:** HOLD ON A SECONDS.

1 I'M NOT SURE I KNOW WHAT IT MEANS, BUT THAT'S OKAY.
2 GO AHEAD.

3 **Q.** IN GENERAL, WHAT WAS THE METHODOLOGY USED TO PREPARE
4 EXHIBIT 1011?

5 **A.** THE METHODOLOGY IS EXPLAINED IN THE REPORT. THE DATA
6 COLLECTED FROM STATE DEPARTMENTS OF CORRECTIONS WAS ANALYZED
7 USING SPSS SOFTWARE, AND TEXT AND TABLES WERE DEVELOPED IN
8 CONSULTATION WITH THE CHIEF OF CORRECTIONS STATISTICS AND THE
9 CHIEF EDITOR.

10 **Q.** IS THE STATEMENT OF THE METHODOLOGY ON PAGE FOUR OF EXHIBIT
11 1011 ACCURATE?

12 **A.** YES.

13 **Q.** PAGE FOUR OF EXHIBIT 1011 STATES THAT MARGARET E. NOONAN
14 VERIFIED THE REPORT. ARE YOU FAMILIAR WITH WHAT MS. NOONAN DID
15 TO VERIFY THE REPORT?

16 **A.** YES.

17 **Q.** PLEASE DESCRIBE HOW THE REPORT WAS VERIFIED.

18 **A.** MS. NOONAN IS A BJS STATISTICIAN WHO WORKS ON THE DEATHS IN
19 CUSTODY REPORTING PROGRAM, SO SHE IS VERY FAMILIAR WITH ALL OF
20 THE DATA INVOLVED IN THIS REPORT. SHE REVIEWED ALL SPSS
21 ANALYSIS CODING TO DETECT ERRORS, AND REVIEWED ALL DATA OUTPUT
22 TO ENSURE THAT IT WAS ACCURATELY REFLECTED IN THE REPORT'S DATA
23 TABLES AND TEXT.

24 MS. NOONAN ALSO REVIEWED ALL SPREADSHEETS INVOLVED
25 IN GENERATING THE DATA PRESENTED IN THE REPORT TO ENSURE THAT

1 ALL FORMULAS WERE ACCURATE AND CONSISTENT. CONSISTENT WITH BJS
2 VERIFICATION PRACTICES, MS. NOONAN RED DOTTED ALL DATA CITED IN
3 THE REPORT BY MATCHING IT UP WITH DATA OUTPUT IN SPSS AND OTHER
4 TOOS SUCH AS MICROSOFT EXCEL.

5 **Q.** IS EXHIBIT 1011 AN OFFICIAL PUBLICATION OF THE BUREAU OF
6 JUSTICE STATISTICS?

7 **A.** YES.

8 **Q.** PLEASE TURN TO APPENDIX TABLE NINE OF EXHIBIT 1011.

9 **MS. JOHNSON:** IS THERE ANY WAY TO GET THAT A LITTLE
10 BIT LARGER?

11 **Q.** WHAT DOES THIS TABLE REPRESENT?

12 **A.** THIS TABLE PRESENTS THE AVERAGE ANNUAL MORTALITY RATE OF
13 STATE PRISON INMATES PER 100,000 INMATES FROM LEADING CAUSES OF
14 ILLNESS DEATHS FOR THE PERIOD 2001 TO 2004. THESE FINDINGS ARE
15 PRESENTED FOR EACH STATE AND BROKEN DOWN SPECIFICALLY FOR THE
16 FIVE LEADING CAUSES OF ILLNESS DEATHS, AS WELL AS FOR ILLNESS
17 DEATHS OVERALL.

18 **Q.** WHAT WAS THE PARTICULAR METHODOLOGY USED TO CREATE APPENDIX
19 TABLE NINE?

20 **A.** FOR EACH YEAR THE NUMBER OF INMATE ILLNESS DEATHS IN EACH
21 STATE WAS DIVIDED BY THE CUSTODY POPULATION OF THAT STATE'S
22 PRISON SYSTEM ON JUNE 30TH. THEN MULTIPLIED BY 100,000 TO
23 OBTAIN A STATE-SPECIFIC RATE OF ILLNESS DEATH IN EACH STATE'S
24 PRISON POPULATION.

25 THE RESULTING ILLNESS MORTALITY RATES FOR EACH YEAR

1 WERE THEN SUMMED UP FOR EACH STATE AND DIVIDED BY FOUR TO
2 OBTAIN AN AVERAGE ANNUAL RATE OF ILLNESS DEATH IN EACH STATE'S
3 PRISON SYSTEM FOR THE ENTIRE FOUR-YEAR PERIOD.

4 THE SAME PROCEDURES WERE REPEATED FOR EACH OF THE
5 FIVE LEADING CAUSES OF ILLNESS DEATHS. THESE FIVE LEADING
6 CAUSES OF ILLNESS DEATHS WERE DETERMINED BY NATIONAL TOTALS OF
7 ILLNESS DEATH OVER THE FOUR YEARS AND ARE NOT NECESSARILY THE
8 FIVE LEADING CAUSES OF ILLNESS DEATHS IN EACH STATE.

9 **Q.** WHAT WAS THE AVERAGE ANNUAL MORTALITY RATE FOR ALL
10 ILLNESSES PER 100,000 STATE PRISON INMATES FROM 2001 TO 2004
11 FOR THE ENTIRE UNITED STATES?

12 **A.** THE RATE WAS 223 ILLNESS DEATHS PER 100,000 STATE PRISONERS
13 NATIONWIDE.

14 **Q.** WHAT WAS THE AVERAGE ANNUAL MORTALITY FOR ALL ILLNESSES PER
15 100,000 STATE PRISON INMATES FROM 2001 TO 2004 FOR THE WEST
16 REGION.

17 **A.** FOR THE 13 STATES INCLUDED IN THE WEST REGION, THE AVERAGE
18 ANNUAL MORTALITY RATE FROM ALL ILLNESSES WAS 181 DEATHS PER
19 100,000 STATE PRISONERS.

20 **Q.** WHAT WAS THE AVERAGE ANNUAL MORTALITY RATE FOR ALL
21 ILLNESSES PER 100,000 STATE PRISON INMATES FROM 2001 TO 2004
22 FOR INMATES FOR CALIFORNIA?

23 **A.** THE RATE WAS 170 ILLNESS DEATHS PER 100,000 PRISONERS HELD
24 IN CALIFORNIA STATE PRISONS.

25 **Q.** WAS THE AVERAGE ANNUAL MORTALITY RATE FOR ALL ILLNESSES PER

1 100,000 STATE PRISON INMATES FROM 2001 TO 2004 IN CALIFORNIA
2 LOWER THAN THE SAME RATE FOR THE ENTIRE UNITED STATES?

3 **A.** YES.

4 **Q.** WAS THE AVERAGE ANNUAL MORTALITY RATE FOR ALL ILLNESSES PER
5 100,000 STATE PRISON INMATES FROM 2001 TO 2004 IN CALIFORNIA
6 LOWER THAN THE SAME RATE FOR THE WEST REGION?

7 **A.** YES.

8 **Q.** PAGE THREE OF THE BODY OF EXHIBIT 1011 IDENTIFIES THE
9 STATES WITH THE FIVE HIGHEST MORTALITY RATES PER 100,000 STATE
10 INMATES FROM 2001 TO 2004. IS CALIFORNIA AMONG THEM?

11 **A.** NO.

12 **Q.** HOW MANY STATES HAD A HIGHER AVERAGE ANNUAL MORTALITY RATE
13 FOR ALL ILLNESSES PER 100,000 STATE PRISON INMATES FROM 2001 TO
14 2004 THAN CALIFORNIA?

15 **A.** 36.

16 **Q.** IS CALIFORNIA AMONG THE 15 STATES WITH THE LOWEST AVERAGE
17 ANNUAL MORTALITY RATE PER 100,000 STATE INMATES FROM 2001 TO
18 2004?

19 **A.** YES. CALIFORNIA RANKED 14TH LOWEST AMONG ALL STATES IN
20 TERMS OF AVERAGE ANNUAL ILLNESS MORTALITY PER 100,000 STATE
21 PRISONERS FROM 2001 TO 2004.

22 **Q.** PAGE THREE OF THE BODY OF EXHIBIT 1011 IDENTIFIES
23 CALIFORNIA AS AMONG THE FIVE STATES WITH THE HIGHEST NUMBER OF
24 PRISON DEATHS. PLEASE EXPLAIN THE DIFFERENCE BETWEEN THE NUMBER
25 OF DEATHS AND THE MORTALITY RATE FROM ILLNESS.

1 **A.** PRESENTING THE DATA IN TERMS OF A STANDARD RATE OF DEATH
2 PER 100,000 INMATES IN A TABLE LIKE THIS FACILITATES
3 COMPARISONS ACROSS STATE SYSTEMS. GIVEN THE HUGE DISPARITY IN
4 THE SIZES OF DIFFERENT STATES' PRISON POPULATIONS. SOME STATES
5 HAD PRISON POPULATIONS AS SMALL AS 1,200 PERSONS DURING THIS
6 PERIOD, WHILE OTHERS HELD OVER 160,000 PRISONERS.

7 GIVEN SUCH WIDE VARIATION IN THE SIZES OF THE
8 POPULATIONS INVOLVED, LARGE STATE PRISON SYSTEMS CAN HAVE BELOW
9 AVERAGE MORTALITY RATES YET STILL HAVE A GREATER NUMBER OF
10 DEATHS THAN MANY SMALLER STATES. RATES ALLOW FOR THE
11 COMPARISON OF THE PREVALENCE OF SUCH DEATHS ACROSS STATES AS
12 OPPOSED TO MEASURING THEIR INCIDENCE OR SIMPLE FREQUENCY.

13 FOR EXAMPLE, CALIFORNIA, TEXAS, NEW YORK AND FLORIDA
14 ROUTINELY HAVE THE FOUR BIGGEST STATE PRISONER POPULATIONS IN
15 THE NATION, AND THESE SAME FOUR STATES HAD THE FOUR HIGHEST
16 COUNTS OF PRISONER DEATHS DURING THIS PERIOD.

17 LIKewise, THE OTHER STATE LISTED ON PAGE THREE AMONG
18 THE FIVE STATES WITH THE HIGHEST NUMBER OF DEATHS,
19 PENNSYLVANIA, ROUTINELY HAS ONE OF THE NATION'S 10 LARGEST
20 PRISON POPULATIONS. LARGER POPULATIONS INCREASE THE POOL OF
21 PRISONERS WHO COULD POTENTIALLY DIE IN CUSTODY DURING THE YEAR,
22 BUT ONLY ONE OF THESE FIVE STATES, PENNSYLVANIA, APPEARS AMONG
23 THE FIVE STATES WITH THE HIGHEST RATE OF ILLNESS DEATHS.

24 CONVERSELY, A SMALL STATE LIKE WEST VIRGINIA, WITH A
25 PRISON POPULATION OF LESS THAN 5,000 INMATES DURING THIS

1 PERIOD, MAY HAVE A SMALL NUMBER OF DEATHS, ONLY 53 OVER THESE
2 FOUR YEARS, BUT THEIR RATE OF ILLNESS DEATH IN WEST VIRGINIA
3 WAS NEARLY DOUBLE THAT OF CALIFORNIA, WHICH HAD OVER 1300 TOTAL
4 DEATHS OVER THE SAME TIME PERIOD.

5 **Q.** HAVE YOU MADE THE DETERMINATION OF WHETHER CALIFORNIA'S
6 AVERAGE ANNUAL MORTALITY RATE FOR STATE PRISONERS FROM 2001 TO
7 2004 WAS LOWER THAN THE SAME RATE FOR U.S. RESIDENTS AGES 15 TO
8 64 FROM 2001 TO 2003?

9 **A.** YES.

10 **Q.** HOW DID YOU MAKE THAT DETERMINATION?

11 **A.** LOOKING AT THE DATA PRESENTED IN STATE PRISON TABLE EIGHT
12 OF DEFENDANTS' TRIAL EXHIBIT 1013, "DEATHS IN CUSTODY
13 STATISTICAL TABLES," YOU CAN FIND THE MORTALITY RATE FROM ALL
14 CAUSES FOR CALIFORNIA STATE PRISONERS FOR EACH YEAR, 2001 TO
15 2004. THE TABLE ALSO INCLUDES DATA, BUT THAT DATA IS OUTSIDE
16 THE SCOPE OF THE QUESTION POSED HERE. ADDING TOGETHER THESE
17 FOUR CALIFORNIA PRISONER MORTALITY RATES FOR THE FOUR YEARS,
18 AND DIVIDING THE SUM BY FOUR, YIELDS AN AVERAGE ANNUAL RATE OF
19 MORTALITY FROM ALL CAUSES FOR CALIFORNIA PRISONERS DURING 2001
20 TO 2003 OF 203 PER 100,000 INMATES.

21 **Q.** WHAT WAS YOUR CONCLUSION?

22 **JUDGE KARLTON:** CAN YOU HELP ME? WHAT IT POINTS OUT
23 WAS 207, AND THE WITNESS READ 203?

24 IS THAT JUST A MISREADING?

25 **MS. JOHNSON:** YOUR HONORS, THIS TABLE ACTUALLY

1 COVERS MORE DATA. THIS HAS 2005 IN AVERAGE. THOSE INCLUDE
2 THAT 2005 DATA.

3 Q. WHAT WAS YOUR CONCLUSION?

4 A. MY CONCLUSION IS THAT THE AVERAGE ANNUAL RATE OF MORTALITY
5 FROM ALL CAUSES FOR CALIFORNIA PRISONERS, DURING 2001 TO 2004,
6 WAS 34 PERCENT LOWER THAN THE AVERAGE ANNUAL RATE OF DEATH FROM
7 ALL CAUSES FOR U.S. RESIDENTS AGE 15 TO 64, DURING 2001 TO
8 2003.

9 WHEN DEATHS FROM TRANSPORTATION ACCIDENTS ARE
10 EXCLUDED, THE DIFFERENCE BETWEEN THE TWO RATES IS REDUCED, WITH
11 THE CALIFORNIA PRISONER RATE 30 PERCENT LOWER THAN THE U.S.
12 RESIDENT RATE.

13 EXCLUDING TRANSPORTATION ACCIDENT DEATHS FROM THE
14 RESIDENT POPULATION DATA OFFERS A MORE REALISTIC COMPARISON,
15 BECAUSE STATE PRISONERS ARE NOT ALLOWED TO DRIVE AND ONLY
16 RARELY TRAVEL BY VEHICLE. COMPARED TO MOST U.S. ADULT
17 RESIDENTS THEY EXPERIENCE FAR LOWER EXPOSURE TO ANY RISK OF
18 FATAL TRANSPORTATION ACCIDENTS.

19 Q. IS THERE ANY DOCUMENT EVIDENCING THIS CONCLUSION?

20 A. THE CALCULATIONS WERE NOT EXPLICITLY DOCUMENTED IN THE
21 PUBLISHED DOCUMENTS, BUT THE DATA NECESSARY TO MAKE THE
22 CALCULATIONS ARE AVAILABLE IN APPENDIX TABLE 11 OF DEFENDANTS'
23 TRIAL EXHIBIT 1011 AND STATE PRISON TABLE EIGHT OF DEFENDANTS'
24 TRIAL EXHIBIT 1013, AS NOTED EARLIER.

25 Q. I'M HANDING YOU WHAT HAS BEEN MARKED AS DEFENDANTS' TRIAL

1 EXHIBITS 1012, WHICH IS A LETTER DATED DECEMBER 18, 2007, FROM
2 JEFFREY L. SEDGWICK, DIRECTOR OF THE OFFICE OF JUSTICE PROGRAMS
3 BUREAU OF JUSTICE STATISTICS TO S. ANNE JOHNSON, COUNSEL FOR
4 DEFENDANTS IN THE MATTER, WHICH CONTAINS TWO ATTACHMENTS.

5 ARE YOU FAMILIAR WITH EXHIBIT 1013, INCLUDING THE
6 ATTACHMENTS?

7 **A.** YES.

8 **Q.** IS EXHIBIT 1013 A TRUE AND ACCURATE COPY OF THE ORIGINAL?

9 **A.** YES.

10 **Q.** DO YOU HAVE ANY -- DID YOU HAVE ANY ROLE IN CREATING
11 EXHIBIT 1013, INCLUDING THE ATTACHMENTS?

12 **A.** YES, I PERFORMED THE DATA ANALYSIS, PREPARED THE DATA
13 TABLES AND HIGHLIGHTS, AS WELL AS DRAFTED THE LETTER FOR DR.
14 SEDGWICK'S SIGNATURE.

15 **Q.** WHAT DOES ATTACHMENT ONE REPRESENT?

16 **A.** THIS TABLE PRESENTS THE ILLNESS MORTALITY RATE PER 100,000
17 STATE PRISONERS FOR EACH STATE'S PRISON SYSTEM WITH GROUPINGS
18 OF ALL STATES, EXCLUDING CALIFORNIA, AND ALL WESTERN STATES,
19 EXCLUDING CALIFORNIA, FOR THE YEARS 2001 TO 2005.

20 **Q.** DOES ATTACHMENT ONE TO EXHIBIT 1012 PRESENT SIMILAR
21 INFORMATION TO APPENDIX TABLE NINE OF EXHIBIT 1011 EXCEPT THAT
22 IT ALSO INCLUDES THE YEAR 2005?

23 **A.** YES, THE DATA FOR 2005 WERE NOT AVAILABLE AT THE TIME
24 DEFENDANTS' TRIAL EXHIBIT 1011 WAS BEING PREPARED FOR
25 PUBLICATION.

1 Q. WHAT WAS THE SOURCE OF THE DATA FOR THE YEAR 2005?

2 A. THE SOURCE OF THE DATA FOR 2005 IS THE SAME AS THAT USED
3 FOR 2001 TO 2004 IN BOTH DEFENDANTS' TRIAL EXHIBIT 1011 AND
4 EXHIBIT 1013. ALL DATA ARE FROM THE BJS DEATH IN CUSTODY
5 REPORTING PROGRAM.

6 Q. WHAT WAS THE AVERAGE ANNUAL MORTALITY RATE FOR ALL
7 ILLNESSES PER 100,000 STATE PRISON INMATES FROM 2001 TO 2005
8 FOR THE ENTIRE UNITED STATES?

9 A. THE AVERAGE ANNUAL MORTALITY RATE FOR ALL ILLNESSES WAS 224
10 DEATHS PER 100,000 STATE PRISON INMATES NATIONWIDE DURING 2001
11 TO 2005.

12 Q. WHAT WAS THE AVERAGE ANNUAL MORTALITY RATE FOR ALL
13 ILLNESSES PER 100,000 STATE PRISON INMATES FROM 2001 TO 2005
14 FOR THE WEST REGION?

15 A. THE AVERAGE ANNUAL MORTALITY RATE FOR ALL ILLNESSES FOR
16 STATE PRISONERS IN THE WEST REGION WAS 184 DEATHS PER 100,000
17 STATE PRISONERS HELD BY THESE 13 STATES.

18 Q. WHAT WAS THE AVERAGE ANNUAL MORTALITY RATE FOR ALL
19 ILLNESSES PER 100,000 STATE PRISON INMATES FROM 2001 TO 2005
20 FOR INMATES FOR CALIFORNIA?

21 A. THE AVERAGE ANNUAL MORTALITY RATE FOR ALL ILLNESSES FOR
22 CALIFORNIA STATE PRISONERS IS 172 DEATHS PER 100,000 PRISONERS
23 DURING THE PERIOD 2001 TO 2005.

24 Q. WHAT WAS THE AVERAGE ANNUAL MORTALITY RATE FOR ALL
25 ILLNESSES PER 100,000 STATE PRISON INMATES FROM 2001 TO 2005 IN

1 CALIFORNIA LOWER THAN THE SAME RATE FOR THE ENTIRE UNITED
2 STATES?

3 **A.** YES.

4 **Q.** WAS THE AVERAGE ANNUAL MORTALITY RATE FOR ALL ILLNESSES PER
5 100,000 STATE PRISON INMATES FROM 2001 TO 2005 IN CALIFORNIA
6 LOWER THAN THE SAME RATE FOR THE WEST REGION?

7 **A.** YES.

8 **Q.** HOW MANY STATES HAD A HIGHER AVERAGE ANNUAL MORTALITY RATE
9 FOR ALL ILLNESSES PER 100,000 STATE PRISON INMATES FROM 2001 TO
10 2005 IN CALIFORNIA?

11 **A.** 36.

12 **Q.** IS CALIFORNIA AMONG THE 15 STATES WITH THE LOWEST AVERAGE
13 ANNUAL MORTALITY RATES PER 100,000 STATE INMATES FROM 2001 TO
14 2005?

15 **A.** YES. CALIFORNIA PRISONERS HAD THE 14TH LOWEST AVERAGE
16 ANNUAL MORTALITY RATE FROM ALL ILLNESSES. IN TERMS OF DEATHS
17 FROM ALL CAUSES, I WOULD REFER YOU TO STATE PRISON TABLE EIGHT
18 OF DEFENDANTS' TRIAL EXHIBIT 1013, WHICH SHOWS THAT CALIFORNIA
19 PRISONERS HAD THE 12TH LOWEST MORTALITY RATE.

20 **Q.** ATTACHMENT ONE ALSO CONTAINS HIGHLIGHTS AT THE BOTTOM.
21 NUMBER ONE SAYS, "FOR EACH YEAR IN THE PERIOD 2001 TO 2005,
22 CALIFORNIA PRISONERS HAD A LOWER RATE OF ILLNESS DEATHS THAN
23 THE TOTAL OF ALL OTHER WESTERN STATES RANGING FROM THE
24 5 PERCENT LOWER IN 2004, 182 ILLNESS DEATHS PER 100,000
25 INMATES, VERSUS 191 PER 100,000 FOR ALL OTHER WESTERN STATES,

1 TO 27 PERCENT LOWER IN 2001."

2 IS THIS CONCLUSION ACCURATE?

3 **A.** YES.

4 **Q.** TO YOUR KNOWLEDGE, HOW WAS THE CONCLUSION REACHED?

5 **A.** THE CONCLUSION WAS REACHED BY COMPARING THE ILLNESS
6 MORTALITY RATES SHOWN FOR CALIFORNIA FOR EACH YEAR WITH THE
7 RATES PRESENTED FOR THE WESTERN STATES, EXCLUDING CALIFORNIA IN
8 THE SAME TABLE. EACH YEAR THE CALIFORNIA RATE WAS LOWER. THE
9 PERCENTAGE DIFFERENCE WAS CALCULATED BY DIVIDING THE DIFFERENCE
10 BETWEEN THE TWO RATES BY THE HIGHER RATE.

11 FOR INSTANCE, THE 5 PERCENT LOWER IN 2004 FINDING
12 WAS CALCULATED BY DIVIDING THE DIFFERENCE IN THE TWO RATES, 191
13 MINUS 182 EQUALS NINE BY THE HIGHER RATE, 191. NINE DIVIDED BY
14 191 EQUALS .047, OR A DIFFERENCE OF 5 PERCENT.

15 CALCULATION OF THESE RATES FOR ALL WESTERN STATES,
16 EXCLUDING CALIFORNIA, INVOLVES SUMMING ALL OF THE ILLNESS
17 DEATHS IN THE REMAINING 12 WESTERN STATES, AND DIVIDING THE SUM
18 OF ILLNESS DEATHS BY THE SUM OF JUNE 30TH CUSTODY POPULATIONS
19 IN EACH OF THESE 12 STATES' PRISON SYSTEMS FOR EACH YEAR. THE
20 RESULTS WERE MULTIPLIED BY 100,000 TO CALCULATE AN ILLNESS
21 MORTALITY RATE FOR THESE 12 WESTERN STATES FOR EACH YEAR.

22 **Q.** ATTACHMENT ONE, HIGHLIGHT NUMBER ONE ALSO SAYS OVER THE
23 ENTIRE FIVE-YEAR PERIOD, CALIFORNIA'S AVERAGE ANNUAL DEATH RATE
24 FROM ILLNESS, 172 PER 100,000, WAS 14 PERCENT LOWER THAN THAT
25 OF ALL OTHER WESTERN STATES, 201 PER 100,000.

1 IS THIS CONCLUSION ACCURATE?

2 **A.** YES.

3 **Q.** ATTACHMENT ONE, HIGHLIGHT NUMBER TWO SAYS, "FOR EACH YEAR
4 IN THIS PERIOD THE CALIFORNIA PRISONER DEATH RATE FROM ILLNESS
5 WAS LOWER THAN THE TOTAL FOR ALL OTHER STATES NATIONWIDE
6 RANGING FROM 16 PERCENT LOWER IN 2002, 187 PER 100,000,
7 COMPARED TO 223 PER 100,000, TO 38 PERCENT LOWER IN 2001, 141
8 PER 100,000 COMPARED TO 229 PER 100,000.

9 IS THIS CONCLUSION ACCURATE?

10 **A.** YES.

11 **Q.** ATTACHMENT ONE, HIGHLIGHT NUMBER ONE -- I'M SORRY.
12 ATTACHMENT ONE, HIGHLIGHT NUMBER TWO ALSO SAYS, "OVER THE
13 ENTIRE FIVE-YEAR PERIOD, CALIFORNIA'S AVERAGE ANNUAL ILLNESS
14 MORTALITY RATE, 172 PER 100,000, WAS 26 PERCENT LOWER THAN THAT
15 OF ALL OTHER STATES, 232 PER 100,000."

16 IS THIS CONCLUSION ACCURATE?

17 **A.** YES.

18 **Q.** ATTACHMENT ONE, HIGHLIGHT NUMBER THREE, STATES,
19 "CALIFORNIA'S PRISONER DEATH RATE FROM ILLNESS WAS LOWEST IN
20 2001, 141 PER 100,000, THEN PEAKED THE FOLLOWING YEAR IN 2002,
21 187 PER 100,000."

22 IS THIS CONCLUSION ACCURATE?

23 **A.** YES.

24 **Q.** TO YOUR CONCLUSION, HOW THIS -- TO YOUR KNOWLEDGE, HOW IS
25 THIS CONCLUSION REACHED?

1 **A.** IN COMPARING THE CALIFORNIA ILLNESS MORTALITY RATES FOR
2 EACH OF THE FIVE YEARS COVERED BY THESE DATA, THE RATE FOR 2001
3 WAS FOUND TO BE THE LOWEST, AND THE RATE FOR 2002 WAS FOUND TO
4 BE THE HIGHEST.

5 **Q.** ATTACHMENT ONE, HIGHLIGHT NUMBER THREE ALSO STATES, "IN THE
6 MOST RECENT YEARS FOR WHICH DATA WERE AVAILABLE THE ILLNESS
7 DEATH RATE IN CALIFORNIA PRISONS WAS VIRTUALLY UNCHANGED, 182
8 PER 100,000 IN 2004, 181 PER 100,000 IN 2005?

9 IS THIS CONCLUSION ACCURATE?

10 **A.** YES.

11 **Q.** TO YOUR KNOWLEDGE, HOW WAS THIS CONCLUSION REACHED?

12 **A.** THE DIFFERENCE BETWEEN THESE ILLNESS DEATH RATES IN
13 CALIFORNIA PRISONS OVER THESE TWO YEARS WAS ONE DEATH PER
14 100,000, OR A DECLINE OF ONE HALF OF 1 PERCENT. GIVEN THIS
15 VERY SMALL PERCENTAGE CHANGE, I CHARACTERIZED THE RATE AS
16 VIRTUALLY UNCHANGED.

17 **Q.** WHAT DOES ATTACHMENT TWO TO EXHIBIT 1012 REPRESENT?

18 **A.** ATTACHMENT TWO PRESENTS COMPARATIVE COUNTS AND RATES OF
19 STATE PRISONER DEATHS FOR CALIFORNIA AND ALL OTHER 49 STATES
20 COMBINED BY CAUSE OF DEATH FOR THE PERIOD 2001 TO 2005.

21 **Q.** TO YOUR KNOWLEDGE, WHO PREPARED ATTACHMENT TWO?

22 **A.** I PREPARED BOTH ATTACHMENTS TO DEFENDANTS' TRIAL EXHIBIT
23 1012.

24 **Q.** TO YOUR KNOWLEDGE, WHAT METHODOLOGY WAS USED TO PREPARE
25 ATTACHMENT TWO?

1 **A.** THE METHODOLOGY BEHIND THESE TABLES IS QUITE SIMPLE. FOR
2 THE TOP TWO TABLES PRESENTING COUNTS OF DEATH BY CAUSE I SUMMED
3 UP THE COUNTS OF DEATH IN CALIFORNIA, AND IN THE REMAINING 49
4 STATES, RESPECTIVELY. FOR THE LOWER TWO TABLES PRESENTING
5 RATES OF DEATH BY CAUSE, I FOLLOWED THE METHODOLOGY DESCRIBED
6 EARLIER, DIVIDING THE COUNT OF DEATHS FOR A GIVEN YEAR BY THE
7 JUNE 30TH CUSTODY POPULATIONS FOR THAT YEAR, AND MULTIPLYING
8 THE RESULT BY 100,000 TO OBTAIN A RATE OF DEATH PER 100,000
9 INMATES.

10 **Q.** ATTACHMENT TWO ALSO CONTAINS HIGHLIGHTS. NUMBER ONE STATES,
11 "THE TABLES ABOVE PROVIDES A COMPARISON OF CALIFORNIA AND ALL
12 OTHER STATES FOR THE DATA PRESENTED IN TABLES ONE AND THREE OF
13 OUR ONLINE TABLES OF STATE MORTALITY DATA."

14 WHAT IS THE STATEMENT REFERRING TO?

15 **A.** THE ONLINE TABLES OF STATE PRISONER MORTALITY DATA ARE
16 PRESENTED IN DEFENDANTS' TRIAL EXHIBIT 1013. THESE TABLES ARE
17 UPDATED EACH YEAR WITH THE LATEST FINALIZED DATA FROM THE DEATH
18 IN CUSTODY REPORTING PROGRAM WHICH IS THE SAME DATA SERIES USED
19 TO PRODUCE OUR PUBLISHED REPORTS.

20 THE ONLINE TABLES ALLOW US TO UPDATE A NUMBER OF OUR
21 BASIC FINDINGS ON STATE PRISONER MORTALITY WITHOUT HAVING TO
22 PRODUCE AN IN-DEPTH REPORT EACH AND EVERY YEAR. FOR THE PURPOSE
23 OF COMPARING CALIFORNIA TO THE REST OF THE COUNTRY, I TOOK THE
24 PUBLISHED ONLINE TABLES ONE AND THREE AND ADAPTED THEM TO
25 REMOVE CALIFORNIA FROM THE CALCULATIONS OF NATIONAL STATE

1 PRISONER FINDINGS. BY DOING SO, CALIFORNIA COULD BE PROPERLY
2 COMPARED TO A GROUPING OF ALL OTHER STATES.

3 Q. I'M HANDING YOU A DOCUMENT MARKED AS EXHIBIT -- MARKED AS
4 DEFENDANTS' TRIAL EXHIBIT 1013, WHICH IS ENTITLED "DEATHS IN
5 CUSTODY STATISTICAL TABLES."

6 ARE YOU FAMILIAR WITH EXHIBIT 1013?

7 A. YES.

8 Q. IS EXHIBIT 1013 A TRUE AND ACCURATE COPY OF THE INFORMATION
9 AVAILABLE ON THE WEBSITE?

10 A. YES.

11 Q. THE FIRST PAGE, WHICH I THINK IS ACTUALLY THE NEXT PAGE, OF
12 EXHIBIT 1013 REFERENCES DATA TABLES FOR STATE PRISONS, STATE
13 PRISON DEATHS FROM 2001 TO 2005. ARE THESE THE TABLES YOU
14 REFERRED TO IN HIGHLIGHT NUMBER ONE OF ATTACHMENT TWO TO
15 EXHIBIT 1012?

16 A. YES.

17 Q. EXHIBIT 1012, ATTACHMENT TWO, HIGHLIGHT NUMBER TWO, SAYS,
18 "AS THESE DATA SHOW, THE ILLNESS DEATH RATE IN CALIFORNIA
19 PRISONS WAS BELOW THAT OF THE RATE FOR ALL OTHER STATES IN EACH
20 YEAR AVERAGING 23 PERCENT LOWER FOR THE ENTIRE FIVE-YEAR
21 PERIOD, 161 ILLNESS DEATHS PER 100,000 INMATES VERSUS 208
22 ILLNESS DEATHS PER 100,000 INMATES."

23 IS THIS CONCLUSION ACCURATE?

24 A. YES.

25 Q. EXHIBIT 1012, ATTACHMENT TWO, HIGHLIGHT NUMBER THREE,

1 STATES, "THE RATE OF DEATH FROM AIDS IN CALIFORNIA PRISONS WAS
2 LOWER THAN THAT OF ALL OTHER STATES COMBINED EACH YEAR, AS
3 WELL, AVERAGING ABOUT ONE-THIRD LOWER OVER THE ENTIRE PERIOD,
4 11 AIDS DEATHS PER 100,000 INMATES VERSUS 10 (SIC) AIDS DEATHS
5 PER 100,000 INMATES."

6 IS THIS CONCLUSION ACCURATE?

7 **A.** YES.

8 **Q.** IN THE LETTER WHICH IS THE FIRST PAGE OF EXHIBIT 1012,
9 MR. SEDGWICK WRITES, "IN NOVEMBER YOU REQUESTED THAT BUREAU OF
10 JUSTICE STATISTICS BJS STAFF PRODUCE STATISTICAL TABLES OF
11 STATE PRISONER DEATH RECORDS THAT WOULD ALLOW FOR COMPARISONS
12 BETWEEN CALIFORNIA AND OTHER STATES. ATTACHED YOU WILL FIND
13 THE DATA REQUESTED. THESE DATA ARE UNPUBLISHED BUT HAVE BEEN
14 VERIFIED BY BJS STAFF AS ACCURATE."

15 DO YOU KNOW WHAT WAS DONE TO VERIFY THE DATA ON
16 ATTACHMENTS ONE AND TWO TO EXHIBIT 1012 AS ACCURATE?

17 **A.** YES.

18 **Q.** PLEASE EXPLAIN WHAT WAS DONE TO VERIFY THE DATA ON
19 ATTACHMENTS ONE AND TWO TO EXHIBIT 1012 AS ACCURATE.

20 **A.** MUCH OF THE DATA PRESENTED HERE IN THIS ATTACHMENT WAS
21 ALREADY PUBLISHED IN OUR ONLINE DATA TABLES, ALL OF WHICH WAS
22 VERIFIED FOLLOWING BJS PUBLICATION STANDARDS. ANY NEW FINDINGS
23 WHICH WERE NOT ALREADY PRESENTED IN THE BJS ONLINE TABLES WERE
24 PUT THROUGH THE SAME PROCEDURES, WITH SPSS DATA OUTPUT AND
25 EXCEL SPREADSHEET FORMULAS CHECKED BY MS. NOONAN FOR ACCURACY.

1 Q. ALTHOUGH IT IS NOT PUBLISHED, DOES EXHIBIT 1012 REFLECT THE
2 OFFICIAL ANALYSIS OF THE BUREAU OF JUSTICE STATISTICS PERFORMED
3 IN THE COURSE OF ITS DUTIES?

4 A. YES. AS NOTED IN THE PREVIOUS RESPONSE, THE DATA WERE
5 VERIFIED IN THE SAME MANNER AS FORMALLY PUBLISHED FINDINGS.
6 FULFILLING DATA REQUESTS SUCH AS THESE IS PART OF ROUTINE BJS
7 ACTIVITIES, AND ALL WORK PERFORMED BY MYSELF IN PREPARING THESE
8 DATA WAS DONE AS PART OF MY NORMAL WORK DUTIES.

9 Q. I'M HANDING YOU WHAT HAS BEEN MARKED AS DEFENDANTS' TRIAL
10 EXHIBIT 1014, TITLED "SUICIDE AND HOMICIDE IN STATE PRISONS AND
11 LOCAL JAILS."

12 ARE YOU FAMILIAR WITH EXHIBIT 1014?

13 A. YES.

14 Q. WERE YOU THE AUTHOR OF EXHIBIT 1014?

15 A. YES.

16 Q. IS EXHIBIT 1014 A TRUE AND ACCURATE COPY OF THE ORIGINAL?

17 A. YES.

18 Q. IS IT CORRECT THAT EXHIBIT 1014 WAS PUBLISHED IN AUGUST OF
19 2005 IN THE BUREAU OF JUSTICE STATISTICS SPECIAL REPORT?

20 A. YES.

21 Q. IS IT CORRECT THAT EXHIBIT 1014 ANALYZES THE SUICIDE AND
22 HOMICIDE RATES OF COUNTY JAILS AND STATE PRISONS FROM 2000 TO
23 2002 FROM DATA SUBMITTED BY THOSE ENTITIES?

24 A. YES. HOWEVER, I SHOULD NOTE THAT THE STATE PRISON DATA
25 ONLY COVERED 2001 AND 2002 BECAUSE THAT DATA COLLECTION BEGAN A

1 YEAR LATER THAN THE LOCAL JAIL COLLECTION.

2 **Q.** SINCE THE PREPARATION OF EXHIBIT 1014, HAVE YOU PREPARED
3 ANY ARTICLE ANALYZING THE SUICIDE AND HOMICIDE RATES OF STATE
4 PRISONS FROM 2003 TO PRESENT?

5 **A.** NO. I HAVE PREPARED DATA TABLES FOR THE BJS WEBSITE THAT
6 HAVE INCLUDED STATE PRISON SUICIDE RATES FROM 2003 THROUGH
7 2006, BUT NONE OF THESE ONLINE PRODUCTS HAS INCLUDED ANY TEXT
8 OR COMMENTARY. I HAVE NOT PREPARED ANY ARTICLES OR OTHER
9 PUBLICATIONS ANALYZING SUICIDE RATES SINCE THE PUBLICATION OF
10 THE REPORT INCLUDED AS DEFENDANTS' TRIAL EXHIBIT 1014.

11 **Q.** ON PAGE THREE OF EXHIBIT 1014, YOU REPORT THAT FOR THE TIME
12 PERIOD OF 2000 TO 2002, 42 PERCENT OF ALL SUICIDES TOOK PLACE
13 IN FOUR STATES: CALIFORNIA, 52; TEXAS, 49; NEW YORK, 21; AND
14 ILLINOIS 20.

15 IS THAT CORRECT?

16 **A.** YES.

17 **Q.** SINCE YOUR ARTICLE, EXHIBIT 1014, STATES AT PAGE 11 THAT
18 "THE DEMOGRAPHIC COMPOSITIONS OF THE INMATE POPULATIONS DO NOT
19 REFLECT THOSE OF THE U.S. RESIDENT POPULATION," WOULD YOU AGREE
20 THAT THE DEMOGRAPHIC COMPOSITION OF THE CALIFORNIA INMATE
21 POPULATION DOES NOT REFLECT THOSE OF THE U.S. RESIDENT
22 POPULATION?

23 **A.** YES.

24 **Q.** IS IT CORRECT THAT YOUR ARTICLE, EXHIBIT 1014, ALSO STATES
25 AT PAGE 11 THAT "STATE PRISONERS HAD A HIGHER RATE OF SUICIDE,

1 14 PER 100,000, THAN THE OVERALL RESIDENT POPULATION, 11, AND
2 THAT ONCE STANDARDIZED BY AGE, RACE AND GENDER TO MATCH THE
3 STATE PRISONER POPULATION, THE U.S. RESIDENT RATE OF SUICIDE,
4 18, EXCEEDED THAT OF STATE PRISONERS IN 2002"?

5 **A.** YES.

6 **Q.** WOULD YOU AGREE THAT ONCE STANDARDIZED BY AGE, RACE AND
7 GENDER TO MATCH THE CALIFORNIA STATE PRISON POPULATION, THE
8 U.S. RATE OF SUICIDE WOULD EXCEED THAT OF CALIFORNIA PRISONERS
9 IN 2002?

10 **A.** WITHOUT KNOWING THE EXACT AGE, RACE AND GENDER
11 DISTRIBUTIONS OF THE CALIFORNIA STATE PRISONER POPULATION, IT
12 IS NOT POSSIBLE FOR ME TO AGREE WITH CERTAINTY. IF I HAD TO
13 OFFER MY BEST GUESS, I WOULD SAY THAT I AM LIKELY TO AGREE,
14 GIVEN THE FACT THAT STANDARDIZED U.S. POPULATION RATE OF
15 SUICIDE IS 55 PERCENT HIGHER THAN THE NATIONWIDE STATE PRISONER
16 RATE.

17 **Q.** HAVE YOU DISCUSSED THE CALIFORNIA PRISON POPULATION SUICIDE
18 RATES WITH DR. RAY PATTERSON?

19 **A.** NO.

20 **Q.** HAVE YOU REVIEWED AN ARTICLE PUBLISHED IN PSYCHIATRIC
21 SERVICES, JUNE 2008 EDITION, AUTHORED BY RAYMOND PATTERSON,
22 M.D. AND DR. KERRY HUGHES, M.D. ENTITLED, "REVIEW OF COMPLETED
23 SUICIDES IN CALIFORNIA DEPARTMENT OF CORRECTIONS AND
24 REHABILITATION 1999 TO 2004"?

25 **A.** NO.

1 Q. DID YOU PROVIDE ANY DATA TO DR. PATTERSON AND DR. HUGHES
2 REGARDING SUICIDE RATES WITH THE CALIFORNIA DEPARTMENT OF
3 CORRECTIONS AND REHABILITATION AT ANY TIME?

4 A. NO.

5 Q. HAS ANYONE AT ANY TIME INFORMED YOU OF ANY ERRORS IN THE
6 DATA FINDINGS AND CONCLUSIONS YOU REPORTED IN EXHIBIT 1014?

7 A. NO.

8 Q. IS IT TRUE THAT EXHIBIT 1014 REFLECTS THE OFFICIAL ANALYSIS
9 OF THE BUREAU OF JUSTICE STATISTICS PERFORMED IN THE COURSE OF
10 ITS DUTIES?

11 A. YES.

12 MS. JOHNSON: YOUR HONORS, WE'RE GOING TO DO A
13 SERIES OF QUESTIONS TO WHICH DEFENDANTS HAD SOME OBJECTIONS
14 THAT WERE RAISED IN THE TRANSCRIPT.

15 WE HAVE NOTED THOSE OBJECTIONS. WE HAVE NOTED THOSE,
16 AND PERHAPS OTHERS. WE HAVE NOTED OBJECTIONS TO PORTIONS OF
17 THIS TRANSCRIPT IN A DOCUMENT THAT WE FILED ON NOVEMBER 16 WITH
18 THE COURT.

19 WE'RE GOING TO READ -- I UNDERSTAND THE COURT IS
20 KIND OF LEAVING A STANDARD OBJECTION WITHOUT WAIVING THEM. SO
21 WE'RE GOING TO READ THEM WITHOUT THE OBJECTIONS, BUT WITH THE
22 NOTATION WE'RE NOT WAIVING ANY OBJECTIONS.

23 JUDGE HENDERSON: FINE.

24 Q. A STATE PRISON SYSTEM'S MORTALITY RATE WILL BE HIGHLY
25 DEPENDENT ON THE COMPOSITION OF THE PRISON POPULATION,

1 INCLUDING THE AGE, GENDER, RACE AND LENGTH OF TIME SERVED OF
2 THE STATE PRISONERS IN A GIVEN STATE'S PRISON SYSTEM, CORRECT?

3 **A.** A STATE PRISON SYSTEM'S MORTALITY RATE WILL CERTAINLY BE
4 IMPACTED BY THESE FACTORS AS WELL AS OTHERS. FOR EXAMPLE,
5 QUALITY OF MEDICAL CARE, USE OF COMPASSIONATE RELEASE POLICIES.
6 HOWEVER, IT IS VERY DIFFICULT TO DISCERN THE LEVEL OF IMPACT
7 EACH OF THESE FACTORS MAY HAVE SIMPLY BECAUSE MANY OF THEM ARE
8 INTERTWINED.

9 FOR EXAMPLE, AGE AND LENGTH OF TIME SERVED ARE
10 CLOSELY LINKED BECAUSE INMATES AGE AS THEY SERVE TIME. CAREFUL
11 ANALYSIS WOULD BE REQUIRED TO DETERMINE JUST HOW MUCH THE
12 LENGTH OF TIME SERVED IN PRISON IMPACTS MORTALITY RATES, APART
13 FROM THE AGING OF THE INMATES INVOLVED.

14 LIKewise, VARIATIONS IN THE GENDER MAKEUP OF A STATE
15 PRISON SYSTEM'S POPULATION LIKELY WILL BRING WITH IT VARIATIONS
16 IN THE CRIMINAL OFFENDERS HOUSED.

17 AS WE SAW IN DEFENDANTS' TRIAL EXHIBITS 1014,
18 VIOLENT OFFENDERS IN STATE PRISON WERE THREE TIMES MORE LIKELY
19 THAN DRUG OFFENDERS TO COMMIT SUICIDE AND TWICE AS LIKELY TO BE
20 KILLED IN HOMICIDE. OFFENSE DISTRIBUTIONS OF MALE AND FEMALE
21 PRISONERS VARY DRAMATICALLY, WHICH MAKES IT DIFFICULT TO
22 ISOLATE IMPACT OF EACH FACTOR, GENDER AND CRIMINAL OFFENSE ON
23 OVERALL MORTALITY RATES.

24 TWO STATES WITH LARGE DIFFERENCES IN THESE
25 POPULATION CHARACTERISTICS COULD HAVE VERY SIMILAR RATES OF

1 MORTALITY IN THEIR SYSTEMS BECAUSE SOME OF THESE DIFFERENCES
2 CANCEL EACH OTHER OUT. OTHER FACTORS SUCH AS THE QUALITY OF
3 MEDICAL CARE AND THE USE OF COMPASSIONATE RELEASE POLICIES FOR
4 TERMINALLY ILL PRISONERS COULD ALSO HAVE IMPACT ON MORTALITY
5 RATES.

6 BASICALLY, THE OVERALL MORTALITY RATE FOR ANY STATE
7 PRISON SYSTEM IS THE RESULT OF MANY FACTORS INTERACTING
8 TOGETHER. IT IS NOT SIMPLY A DIRECT RESULT OF A FEW DEMOGRAPHIC
9 FACTORS.

10 Q. PLEASE REVIEW EXHIBIT 1012, DEFENDANTS' TRIAL EXHIBIT 1012.

11 THE SECOND PAGE OF EXHIBIT 1012 IS A CHART ENTITLED
12 "ATTACHMENT ONE: ILLNESS MORTALITY RATE PER 100,000 STATE
13 PRISONERS BY STATE, 2001 TO 2005," CORRECT?

14 A. YES.

15 Q. THE YEARLY AND FIVE-YEAR MORTALITY RATES ON THIS CHART DO
16 NOT TAKE INTO ACCOUNT THE PROPORTION OF STATE PRISONERS IN
17 DIFFERENT AGE COHORTS IN THE DIFFERENT STATE PRISONS, CORRECT?

18 A. CORRECT. THESE ILLNESS MORTALITY RATES ARE NOT ADJUSTED TO
19 ACCOUNT FOR VARIATIONS IN PRISONER AGE ACROSS STATE SYSTEMS.

20 Q. THE YEARLY AND FIVE-YEAR MORTALITY RATES ON THIS CHART DO
21 NOT TAKE INTO ACCOUNT THE PROPORTION OF MALE AND FEMALE
22 PRISONERS IN THE DIFFERENT STATE PRISONS, CORRECT?

23 A. CORRECT. THESE ILLNESS MORTALITY RATES ARE NOT ADJUSTED TO
24 ACCOUNT FOR VARIATIONS IN PRISONER GENDER ACROSS STATE SYSTEMS.

25 Q. THE YEARLY AND FIVE-YEAR MORTALITY RATES ON THIS CHART DO

1 NOT TAKE INTO ACCOUNT THE RACIAL MAKEUP OF THE DIFFERENT STATE
2 PRISONS, CORRECT?

3 **A.** CORRECT. THESE ILLNESS MORTALITY RATES ARE NOT ADJUSTED TO
4 ACCOUNT FOR VARIATIONS IN PRISONER RACE OR HISPANIC ORIGIN
5 ACROSS STATE SYSTEMS.

6 **Q.** THE YEARLY AND FIVE-YEAR MORTALITY RATES ON THIS CHART DO
7 NOT TAKE INTO ACCOUNT THE PROPORTION OF PRISONERS SERVING
8 DIFFERENT LENGTHS OF TIME IN THE DIFFERENT STATE PRISONS,
9 CORRECT?

10 **A.** CORRECT. THESE ILLNESS MORTALITY RATES ARE NOT ADJUSTED TO
11 ACCOUNT FOR VARIATIONS IN TIME SERVED ACROSS STATE SYSTEMS.

12 **Q.** SO FOR PEOPLE IN THE U.S. AGED 15 TO 64 UNINTENTIONAL
13 INJURY IS A VERY SIGNIFICANT CONTRIBUTING FACTOR TO THE OVERALL
14 MORTALITY RATE, CORRECT?

15 **A.** FROM THE DATA PRESENTED IN THIS CHART, IT APPEARS THAT THE
16 CONTRIBUTION OF UNINTENTIONAL INJURY TO THE OVERALL MORALITY
17 RATE OF U.S. RESIDENTS DROPS SUBSTANTIALLY AS AGE INCREASES.
18 FOR EXAMPLE, UNINTENTIONAL INJURY ACCOUNTED FOR 46 PERCENT OF
19 THE OVERALL MORTALITY RATE OF PERSONS AGE 15 TO 24, BUT THIS
20 PERCENTAGE DROPPED TO 20 PERCENT OF THE OVERALL MORTALITY AMONG
21 PERSONS 35 TO 44, TEN PERCENT OF PERSONS 45 TO 54, AND FINALLY
22 DOWN TO ONLY 4 PERCENT OF MORTALITY AMONG PERSONS 55 TO 64
23 YEARS OLD.

24 ACCORDING TO THIS CHART, AMONG PERSONS AGE 55 TO 64,
25 THE COMBINED RATE OF MORTALITY FROM JUST TWO MEDICAL

1 CONDITIONS, HEART DISEASE AND CANCER, 541.7 PER 100,000 IS 15
2 TIMES GREATER THAN THE RATE OF DEATH FROM UNINTENTIONAL INJURY
3 35.8 PER 100,000.

4 SO I WOULD SAY THAT UNINTENTIONAL INJURY IS A VERY
5 SIGNIFICANT FACTOR IN THE OVERALL MORTALITY RATE OF THOSE
6 PERSONS AGE 15 TO 34, BUT A MUCH SMALLER CONTRIBUTOR TOWARDS
7 THE OVERALL MORTALITY OF ADULTS OVER THE AGE OF 35.

8 **Q.** THE FACT THAT THE MORTALITY RATE FOR 2001 TO 2004 IS LOWER
9 IN STATE PRISONS THAN IN THE U.S. RESIDENT POPULATION IS LIKELY
10 RELATED TO THE VERY LOW RATE OF DEATH FROM UNINTENTIONAL INJURY
11 FOR STATE PRISONERS AGED 15 TO 64 YEARS OLD, CORRECT?

12 **A.** WHILE I AGREE THAT THE LOWER RATE OF UNINTENTIONAL INJURY
13 DEATHS IN STATE PRISON WAS A FACTOR IN THE LOWER OVERALL
14 MORTALITY RATES OF STATE PRISONERS 15 TO 64, I WOULD DISAGREE
15 THAT IT WAS THE PRIMARY FACTOR IN THE OVERALL DIFFERENCE.

16 **Q.** PLEASE EXPLAIN WHY.

17 **A.** IF YOU LOOK AT APPENDIX TABLE 11 OF THE DATA BRIEF, WHICH
18 IS DEFENDANTS' TRIAL EXHIBIT 1011, YOU CAN SEE THAT WE
19 PRESENTED TWO AVERAGE ANNUAL MORTALITY RATES FOR THE U.S.
20 RESIDENT POPULATION AGE 15 TO 64 FOR THE YEARS 2001 THROUGH
21 2003. ONE RATE INCLUDED ALL CAUSES OF DEATH, AND THE OTHER RATE
22 EXCLUDED ALL TRANSPORTATION DEATHS.

23 TRANSPORTATION DEATHS TYPICALLY ACCOUNT FOR CLOSE TO
24 HALF OF ALL ACCIDENTAL DEATHS IN THE U.S. POPULATION. HOWEVER,
25 STATE PRISONERS ARE EXPOSED TO DRASTICALLY LOWER RATES OF

1 TRANSPORTATION DEATHS THAN OTHER U.S. RESIDENTS BECAUSE THEY
2 ARE NOT ALLOWED TO DRIVE AND ONLY RARELY TRANSPORTED BY
3 VEHICLES DRIVEN BY OTHERS FOR PURPOSES SUCH AS COURT
4 APPEARANCES, TRANSFERS OR WORK DETAILS.

5 FOR THE MOST PART, STATE PRISONERS SPEND MOST OF
6 THEIR DAYS IN CONFINEMENT AND ARE REMOVED FROM ANY RISK OF
7 DYING IN MOTOR VEHICLE ACCIDENTS. AS A RESULT, I FELT IT WOULD
8 BE APPROPRIATE TO REFLECT THIS DIFFERING EXPOSURE TO RISK IN
9 THE DATA BRIEF'S COMPARISON OF STATE PRISON AND U.S. RESIDENT
10 MORTALITY RATES, BUT THE REMOVAL OF ALL TRANSPORT DEATHS FROM
11 THE CALCULATION OF U.S. RESIDENT MORTALITY RATES DID NOT CHANGE
12 THE FACT THAT STATE PRISONER MORTALITY RATES WERE STILL LOWER
13 FOR PERSONS AGE 15 TO 64.

14 WITH TRANSPORTATION DEATHS INCLUDED, THE U.S.
15 RESIDENT MORTALITY RATE AMONG PERSONS AGE 15 TO 64 WAS 58
16 DEATHS HIGHER PER 100,000 PEOPLE, 308 COMPARED TO 250.

17 WITH TRANSPORT DEATHS EXCLUDED, THE U.S. RESIDENT
18 MORTALITY RATE REMAINED 39 DEATHS HIGHER PER 100,000 PEOPLE,
19 289 COMPARED TO 250.

20 EXPRESSED ANOTHER WAY, THE HIGHER PREVALENCE OF
21 TRANSPORT DEATHS IN THE U.S. POPULATION ONLY ACCOUNTED FOR
22 ONE-THIRD OF THE DIFFERENCE IN THESE OVERALL MORTALITY RATES.
23 THE REMAINING TWO-THIRDS OF THE DIFFERENCE IN THESE MORTALITY
24 RATES MUST BE EXPLAINED BY OTHER FACTORS.

25 MY FURTHER RESEARCH ON THIS SUBJECT HAS LED ME TO

1 BELIEVE THAT THE CONSISTENTLY LOWER MORTALITY RATES OF BLACK
2 MALES IN STATE PRISON IS A MAJOR FACTOR IN THE DIFFERENCE IN
3 THESE OVERALL MORTALITY RATES. FOLLOWING THE RELEASE OF THE
4 DATA BRIEF, I HAD A NUMBER OF REQUESTS FROM EPIDEMIOLOGISTS TO
5 TAKE A CLOSER LOOK AT THESE DIFFERING MORTALITY RATES WITHIN
6 RACE AND GENDER GROUPS. SPECIFICALLY, THESE RESEARCHERS WERE
7 INTRIGUED BY THE FACT THAT WHITE AND HISPANIC PRISONERS BOTH
8 HAD HIGHER MORTALITY RATES IN PRISON, BUT THE MORTALITY RATE OF
9 BLACK PRISONERS WAS LESS THAN HALF THAT OF OTHER BLACK U.S.
10 RESIDENTS.

11 ORIGINALLY, OUR DISCUSSIONS FOCUSSED ON HOMICIDE
12 DEATHS AMONG YOUNG BLACK MALES AS THE REASON FOR THIS
13 DISPARITY.

14 AS YOU CAN SEE IN DEFENDANTS' TRIAL EXHIBIT 1014,
15 PAGE 11, BJS DATA FROM THE DEATHS IN CUSTODY REPORTING PROGRAM
16 INDICATE THAT U.S. RESIDENTS ARE NINE TIMES MORE LIKELY TO DIE
17 FROM HOMICIDE THAN STATE PRISONERS ONCE RATES ARE STANDARDIZED
18 TO MATCH THE AGE, RATE AND GENDER COMBINATIONS OF STATE
19 PRISONS.

20 ON PAGE FIVE OF THAT SAME REPORT, YOU CAN SEE THAT
21 BLACK STATE PRISONERS HAD THE LOWEST HOMICIDE RATE, TWO
22 HOMICIDES PER 100,000 INMATES, MAKING THEM THE LEAST LIKELY
23 RACIAL GROUP TO EXPERIENCE A HOMICIDE WITHIN A LARGER
24 POPULATION THAT WAS ALREADY FAR LESS LIKELY TO BE KILLED IN A
25 HOMICIDE THAN OTHER U.S. RESIDENTS.

1 THIS DIFFERENCE WAS EVEN MORE NOTABLE BECAUSE YOUNG
2 BLACK MALES TYPICALLY HAVE THE HIGHEST HOMICIDE MORTALITY RATES
3 IN THE U.S. RESIDENT POPULATION, AND YOUNG BLACK MALES
4 ROUTINELY HAVE THE HIGHEST PRISON INCARCERATION RATES OF ANY
5 GROUP IN THE U.S. RESIDENT POPULATION. BUT WHEN I PERFORMED A
6 CLOSER ANALYSIS OF THE DATA PRESENTED IN THE DATA BRIEF WITH
7 MORE SPECIFIC BREAKDOWNS BY GENDER, RACE AND AGE, I FOUND THAT
8 THE LOWER PRISON MORTALITY RATES FOR BLACK MALES WERE NOT
9 CONFINED TO YOUNG ADULTS WITH MUCH HIGHER RATES OF HOMICIDE
10 DEATH OUTSIDE OF PRISON.

11 IN FACT, THE PRISON MORTALITY RATES OF BLACK MALES
12 WERE LOWER FOR ALL AGE GROUPS BETWEEN 15 AND 64, AS OPPOSED TO
13 WHITES AND HISPANICS WHO HAD LOWER MORTALITY RATES IN PRISON
14 FOR YOUNG ADULTS, BUT MUCH HIGHER RATES OF DEATHS FOR PRISONERS
15 AMONG MALES AGE 45 TO 64.

16 THIS FINDING SEEMS TO INDICATE THAT LOWER MORTALITY
17 RATES FOR BLACK STATE PRISONERS ARE THE RESULT OF BOTH LOWER
18 RISK OF HOMICIDE FOR YOUNG MALES, AS WELL AS LOWER RISK OF
19 FATAL ILLNESS AMONG OLDER MALES.

20 GIVEN THAT BLACK MALES ROUTINELY MAKE UP 40 PERCENT
21 OR MORE OF THE STATE PRISON POPULATION, THESE LOWER DEATH RATES
22 FOR BLACK MALES IN PRISON ARE LIKELY A MAJOR CONTRIBUTING
23 FACTOR IN THE OVERALL LOWER DEATH RATE FOR STATE PRISONERS AGE
24 15 TO 64.

25 Q. DIRECTING YOUR ATTENTION BACK TO DEFENDANTS' EXHIBIT 1012,

1 ON THE FOURTH PAGE, THE BUREAU OF JUSTICE STATISTICS REPORTED
2 THAT THE MORTALITY RATE FOR CALIFORNIA STATE PRISONERS FROM
3 AIDS FOR 2005 WAS NINE PER 100,000, CORRECT?

4 **A.** YES. HOWEVER, IT SHOULD BE NOTED THAT THIS QUESTION
5 IMMEDIATELY FOLLOWING THE PREVIOUS ITEM IMPLIES AN
6 INAPPROPRIATE COMPARISON BETWEEN THE AIDS MORTALITY RATE IN
7 CALIFORNIA PRISONS, NINE PER 100,000 INMATES, AND THE AIDS
8 MORTALITY RATE IN THE RESIDENT POPULATIONS OF THE INDIVIDUAL
9 STATES AND THE DISTRICT OF COLUMBIA, I.E. THE STATEMENT THAT
10 JUST TWO STATES IN THE DISTRICT OF COLUMBIA HAD A MORTALITY
11 RATE FROM HIV GREATER THAN NINE PER 100,000.

12 AS HAS BEEN NOTED AT LENGTH EARLIER IN THIS
13 DEPOSITION, STATE PRISON POPULATIONS DIFFER QUITE SHARPLY FROM
14 RESIDENT POPULATIONS BY AGE, RACE AND GENDER, AMONG SEVERAL
15 OTHER MEASURES.

16 WHILE CALIFORNIA STATE PRISONER RATE OF HIV DEATHS
17 WAS HIGHER THAN THAT FOR 48 STATES' RESIDENT POPULATIONS, A
18 MORE APPROPRIATE BASIS OF COMPARISON WOULD BE THE STATE PRISON
19 POPULATIONS OF THESE OTHER STATES.

20 ACCORDING TO APPENDIX TABLE NINE OF DEFENDANTS'
21 TRIAL EXHIBIT 1011, YOU CAN SEE THAT THE PRISON POPULATIONS OF
22 21 STATES HAD HIGHER RATES OF AIDS DEATHS THAN THE CALIFORNIA
23 PRISON POPULATION.

24 **Q.** HAVE YOU PERFORMED ANY STUDIES TO DETERMINE ON A
25 STATE-BY-STATE BASIS THE RELATIONSHIP BETWEEN EACH STATE'S

1 OVERALL MORTALITY RATE AND THE MORTALITY RATE FOR THE STATE'S
2 PRISONER POPULATION?

3 **A.** NO. ALL OF THE STATE-SPECIFIC DATA I HAVE ANALYZED HAVE
4 REFERRED TO THE COMPARISONS OF STATE PRISONER DEATH RATES
5 ACROSS STATES. I HAVE NOT FOCUSED RELATING STATE-SPECIFIC
6 RESIDENT POPULATION MORTALITY RATES TO PRISON DEATH RATES IN
7 THOSE SAME STATES.

8 **Q.** ARE YOU FAMILIAR WITH ANY STUDIES PERFORMED TO DETERMINE A
9 STATE-BY-STATE BASIS THE RELATIONSHIP BETWEEN EACH STATE'S
10 OVERALL MORTALITY RATE AND THE MORTALITY RATE FOR THAT STATE'S
11 PRISONER POPULATION?

12 **A.** NO.

13 **Q.** WHO MADE THE DECISION AS TO WHAT INFORMATION TO HIGHLIGHT
14 IN THE NOTES TO THE STATISTICAL CHARTS TO DEFENDANTS' EXHIBIT
15 1012?

16 **A.** AS STATED PREVIOUSLY, I WROTE THE HIGHLIGHTS INCLUDED WITH
17 THESE DATA ATTACHMENTS. MY DECISIONS WERE GUIDED BY THE
18 RESEARCH INTERESTS OF THE DATA REQUESTER, NAMELY THEIR INTEREST
19 IN COMPARING CALIFORNIA'S PRISON MORTALITY RATES WITH THOSE OF
20 OTHER STATES WITH PARTICULAR EMPHASIS ON DEATHS ARISING FROM
21 MEDICAL PROBLEMS.

22 **Q.** WHO DECIDED THAT THE HIGHLIGHTS IN DEFENDANTS' TRIAL
23 EXHIBIT 1012 WOULD TEND TO INCLUDE COMPARISONS THAT PORTRAYED
24 CALIFORNIA'S RATES AS LOWER THAN THE RATES OF OTHER GROUPS OF
25 STATES?

1 **A.** NO SUCH DECISION WAS MADE BY ANYONE. AS STATED IN MY
2 RESPONSE TO THE PREVIOUS QUESTION, THE COMPARISONS CHOSEN FOR
3 THE HIGHLIGHTS WERE GUIDED BY THE TOPICAL INTERESTS OF THE
4 PARTY REQUESTING THE DATA.

5 THE COMPARISONS THEY WERE INTERESTED IN FOCUSED ON
6 COMPARING MORTALITY RATES, PARTICULARLY ILLNESS AND AIDS DEATH
7 RATES IN CALIFORNIA WITH OTHER STATE PRISON SYSTEMS. WHEN
8 THOSE COMPARISONS WERE MADE, CALIFORNIA'S RATES WERE
9 CONSISTENTLY LOWER. AND THAT WAS WHAT WAS REPORTED IN THE
10 HIGHLIGHTS.

11 IF CALIFORNIA'S RATES ON SUCH DEATHS WERE FOUND TO
12 BE HIGHER THAN OTHER STATES ON ALL OF THE SAME MEASURES, THE
13 SAME COMPARISONS WOULD HAVE BEEN SELECTED FOR HIGHLIGHTS.

14 SIMPLY PUT, THE COMPARISONS IN THE HIGHLIGHTS WERE
15 CHOSEN BASED ON QUESTIONS POSED AND NOT ON THE ANSWERS THAT I
16 FOUND WHEN ANALYZING THE DATA.

17 **Q.** IS IT CORRECT THAT ATTACHMENT TWO TO DEFENDANTS' TRIAL
18 EXHIBIT 1012 SHOWS THAT THE SUICIDE DEATH RATE FOR CALIFORNIA
19 PRISONS WAS EQUAL TO OR ABOVE THE AVERAGE RATE FOR ALL OTHER
20 STATES IN EACH YEAR AVERAGING 17 PERCENT HIGHER FOR THE ENTIRE
21 FIVE-YEAR PERIOD, 18 SUICIDE DEATHS PER 100,000 INMATES VERSUS
22 15 SUICIDE DEATHS PER 100,000 INMATES?

23 **A.** THE SUICIDE MORTALITY RATE FOR THE CALIFORNIA PRISONS WAS
24 EQUAL TO OR ABOVE THE RATE OF SUICIDE DEATHS IN ALL OTHER
25 STATES COMBINED IN EACH YEAR FROM 2001 TO 2005. THE AVERAGE

1 ANNUAL SUICIDE RATES REFERENCED IN THIS QUESTION WERE ACCURATE
2 FOR TWO GROUPS, BUT THE CALIFORNIA SUICIDE RATE WAS ACTUALLY
3 20 PERCENT HIGHER FOR THIS PERIOD, A DIFFERENCE OF THREE
4 DIVIDED BY A BASE OF 15 COMES TO A DIFFERENCE OF .2 OR
5 20 PERCENT.

6 **Q.** IS IT CORRECT ATTACHMENT TWO TO DEFENDANTS' TRIAL EXHIBIT
7 1012 SHOWS THAT HOMICIDE DEATH RATES FOR CALIFORNIA PRISONS --
8 SORRY -- THAT THE HOMICIDE DEATH RATE FOR CALIFORNIA'S PRISONS
9 WAS ABOVE THE AVERAGE RATE FOR ALL OTHER STATES IN EACH YEAR
10 AVERAGING MORE THAN DOUBLE THE AVERAGE RATE FOR THE OTHER
11 STATES FOR THE ENTIRE FIVE-YEAR PERIOD, EIGHT HOMICIDE DEATHS
12 PER 100,000 INMATES VERSUS THREE HOMICIDE DEATHS PER 100,000?

13 **A.** YES, THAT IS CORRECT.

14 **Q.** WHO DECIDED NOT TO INCLUDE THIS INFORMATION AS A HIGHLIGHT?

15 **A.** MY ROLE IN WRITING ALL OF THE HIGHLIGHTS HAS ALREADY BEEN
16 DESCRIBED IN RESPONSES TO EARLIER QUESTIONS. THE DEFENDANTS DID
17 NOT REQUEST ANY COMPARISONS ON MORTALITY ISSUES BEYOND ILLNESS
18 AND AIDS. IN MY CONVERSATIONS WITH THEM, THEY ONLY MENTIONED
19 THEY WERE DEALING WITH ALLEGATIONS REGARDING THE QUALITY OF
20 MEDICAL CARE PROVIDED IN THEIR PRISONS. THEY MADE NO MENTION
21 OF SECURITY CONCERNS BEING PART OF THE COMPLAINTS.

22 HAD THEY COMMUNICATED ANY INDICATION THAT MORTALITY
23 RELATED TO SECURITY WAS A TOPIC OF CONCERN, I WOULD HAVE
24 CERTAINLY INCLUDED THESE RATES IN THE HIGHLIGHTS. BUT AS I
25 UNDERSTOOD THEIR QUESTIONS, SUCH COMPARISONS WERE OUTSIDE THE

1 SCOPE OF THEIR REQUEST.

2 FURTHERMORE, THE SCALE OF THE DIFFERENCE BETWEEN
3 CALIFORNIA AND ALL OTHER STATES COMBINED WAS QUITE SMALL
4 COMPARED TO THE DIFFERENCE IN ILLNESS AND AIDS MORTALITY RATES.
5 THE DIFFERENCE IN HOMICIDE RATES AMOUNTED TO FIVE HOMICIDES PER
6 100,000 INMATES EACH YEAR COMPARED TO A DIFFERENCE OF 53
7 ILLNESS OR AIDS DEATHS PER 100,000 INMATES EACH YEAR.

8 **Q.** IS IT CORRECT THAT ATTACHMENT TWO TO DEFENDANTS' TRIAL
9 EXHIBIT 1012 SHOWS THAT THE DRUG ALCOHOL INTOXICATION DEATH
10 RATE FOR CALIFORNIA PRISONS WAS ABOVE THE RATE FOR ALL OTHER
11 STATES IN EACH YEAR AVERAGING TRIPLE THE AVERAGE RATES FOR ALL
12 OTHER STATES FOR THE ENTIRE FIVE-YEAR PERIOD, SIX DRUG ALCOHOL
13 INTOXICATION DEATHS PER 100,000 INMATES VERSUS TWO DRUG ALCOHOL
14 INTOXICATION DEATHS PER 100,000 INMATES?

15 **A.** YES, THAT'S CORRECT.

16 **Q.** WHO DECIDED NOT TO INCLUDE THIS INFORMATION AS A HIGHLIGHT?

17 **A.** I MADE THIS DECISION CONSISTENT WITH THE REASONS ALREADY
18 STATED SEVERAL TIMES FOR HOW I SELECTED FINDINGS FOR THESE
19 HIGHLIGHTS. DRUG AND ALCOHOL INTOXICATION DEATHS WERE NOT A
20 TOPIC OF INTEREST FOR THE DATA REQUESTER, AND THE SCALE OF
21 DIFFERENCE BETWEEN THE RATES WAS QUITE SMALL, FOUR DEATHS PER
22 100,000 INMATES PER YEAR COMPARED TO THE DIFFERENCE IN ILLNESS,
23 AIDS MORTALITY RATES, 53 ILLNESS OR AIDS DEATHS PER 100,000
24 INMATES EACH YEAR.

25 **Q.** IS IT CORRECT THAT ATTACHMENT TWO TO DEFENDANTS' EXHIBIT

1 EXHIBIT 1012 SHOWS THAT CALIFORNIA PRISONS MORTALITY RATE FROM
2 ALL CAUSES HAS INCREASED FROM 2001, 178 PER 100,000 INMATES, TO
3 2005, 223 PER 100,000 INMATES, AN INCREASE OF ABOUT 25 PERCENT?

4 **A.** YES, THAT IS CORRECT.

5 **Q.** WHO DECIDED NOT TO INCLUDE THIS INFORMATION AS A HIGHLIGHT?

6 **A.** IN AN INDIRECT WAY THIS TREND WAS ALREADY DISCUSSED IN
7 ATTACHMENT ONE, HIGHLIGHT NUMBER THREE. I NOTED THAT
8 CALIFORNIA'S ILLNESS MORTALITY RATE SPIKED FROM A LOW OF 141
9 PER 100,000 IN 2001 TO A HIGH OF 187 IN 2002. I ALSO OBSERVED
10 THAT THE RATE REMAINED STABLE IN THE YEARS SINCE.

11 GIVEN THAT ILLNESS DEATHS ACCOUNTED FOR OVER 1,300
12 OF THE 1,672 CALIFORNIA PRISON DEATHS DURING THIS PERIOD, IT IS
13 NOT SURPRISING THAT THE OVERALL DEATH RATE FOR THE STATE
14 FOLLOWED THE SAME TREND AS THE ILLNESS DEATH RATE.

15 THE OVERALL CALIFORNIA PRISON MORTALITY RATE SPIKED
16 FROM A LOW OF 178 PER 100,000 IN 2001, TO 213 PER 100,000 IN
17 2002.

18 OVER THE ENSUING THREE YEARS, 2003 TO 2005, THE
19 TOTAL MORTALITY RATE REMAINED VERY STABLE, INCREASING BY 10
20 DEATHS PER 100,000 INMATES, AN INCREASE OF 5 PERCENT OVER THREE
21 YEARS?

22 IN MY VIEW, IT WAS THE STABILITY OF THE RATES OVER
23 FOUR CONSECUTIVE YEARS OF THE FIVE-YEAR PERIOD THAT
24 CHARACTERIZED THE PERIOD. BECAUSE THE TREND IN OVERALL
25 MORTALITY RATES SIMPLY REFLECTED WHAT I HAD ALREADY DISCUSSED

1 IN ATTACHMENT ONE, HIGHLIGHT NUMBER THREE, I DIDN'T THINK IT
2 WAS IMPORTANT TO REPEAT THE POINT WHEN COMPOSING HIGHLIGHTS FOR
3 ATTACHMENT TWO.

4 **Q.** IS IT CORRECT THAT ATTACHMENT TWO TO DEFENDANTS' EXHIBIT
5 1012 ALSO SHOWS THAT THE MORTALITY RATE FOR ALL OTHER STATES
6 FOR ALL CAUSES HAS DECLINED FROM 2001, 252 PER 100,000 INMATES,
7 TO 2005, 225 PER 100,000 INMATES, A DECLINE OF ABOUT
8 11 PERCENT?

9 **A.** YES, THAT'S CORRECT.

10 **Q.** WHO DECIDED NOT TO INCLUDE THIS INFORMATION AS A HIGHLIGHT?

11 **A.** MY PROCESS FOR SELECTING AND WRITING THESE HIGHLIGHTS HAS
12 ALREADY BEEN DISCUSSED IN MY RESPONSE TO NUMEROUS ITEMS. IN
13 TERMS OF THIS PARTICULAR QUESTION, I WOULD POINT OUT THAT THE
14 11 PERCENT DECLINE OVER THIS FIVE-YEAR PERIOD WAS NEITHER A
15 VERY DRAMATIC TREND NOR A STABLE ONE.

16 THE 2005 OVERALL MORTALITY RATE FOR ALL OTHER STATES
17 COMBINED WAS THE LOWEST OF THE FIVE-YEAR PERIOD, 225 DEATHS PER
18 100,000 INMATES. BUT IT WAS PRECEDED BY THE TWO HIGHEST RATES
19 OF THE PERIOD, AS WELL.

20 IN 2003 AND 2004, THE OVERALL MORTALITY RATE WAS 266
21 AND 259 DEATHS, RESPECTIVELY PER 100,000 INMATES. COMPARING
22 2001 TO EITHER OF THESE YEARS WOULD HAVE INDICATED THE OPPOSITE
23 TREND IN THE PRISON MORTALITY OF OTHER STATES.

24 IT WAS IMPOSSIBLE TO JUDGE WHETHER THE 2005 DECLINE
25 IN OTHER STATES' PRISON MORTALITY RATE WAS A ONE-YEAR EXCEPTION

1 TO THIS EARLIER INCREASE OR THE BEGINNING OF A SUSTAINED
2 DOWNWARD TREND.

3 IN CONTRAST, THE TREND THAT I DID HIGHLIGHT, THAT OF
4 CALIFORNIA'S STABLE RATE OF ILLNESS DEATHS FOLLOWING THE 2002
5 INCREASE, WAS A MORE ESTABLISHED PATTERN OVER FOUR YEARS.

6 Q. PLEASE TURN YOUR ATTENTION TO DEFENDANTS' TRIAL EXHIBIT
7 1014, ENTITLED "SUICIDE AND HOMICIDE IN STATE PRISONS AND LOCAL
8 JAILS."

9 YOU WERE THE AUTHOR OF THIS REPORT, CORRECT?

10 A. YES, THAT'S CORRECT.

11 Q. ON PAGE THREE OF THAT REPORT YOU REPORTED THAT DURING 2001,
12 31 STATES REPORTED NO PRISON HOMICIDES, CORRECT?

13 A. YES, THAT'S CORRECT.

14 Q. AND IN 2002, 29 STATES REPORTED NO PRISON HOMICIDES,
15 CORRECT?

16 A. YES, THAT'S CORRECT.

17 Q. ON THAT SAME PAGE YOU WROTE THAT JUST THREE STATES REPORTED
18 MORE THAN FIVE HOMICIDES IN 2001 TO 2002, CORRECT?

19 A. YES. BUT GIVEN THE WIDE RANGE OF PRISON POPULATIONS ACROSS
20 THE FIFTY STATES IT'S REALLY NOT ADVISABLE TO COMPARE
21 INDIVIDUAL STATES, PARTICULARLY FOR SUCH A RARE PHENOMENON AS
22 PRISON HOMICIDE ON PURELY NUMERICAL GROUNDS. COMPARING RATES
23 OF HOMICIDE ACROSS STATES WOULD BE MORE APPROPRIATE.

24 Q. ON THE SAME PAGE YOU STATED THAT THERE WERE 87 PRISON
25 HOMICIDES DURING 2001 TO 2002, CORRECT?

1 **A.** YES, THAT'S CORRECT.

2 **Q.** AND THAT 21 OF THOSE HOMICIDES OCCURRED IN CALIFORNIA,
3 CORRECT?

4 **A.** YES. BUT, AGAIN, COMPARISONS OF RATES RATHER THAN COUNTS
5 OF HOMICIDES WOULD BE MORE APPROPRIATE GIVEN HOW MUCH LARGER
6 CALIFORNIA'S PRISON POPULATION IS THAN MOST STATES. BASED ON
7 HOMICIDES PER 100,000 INMATES, CALIFORNIA TIED FOR TEN HIGHEST
8 WITH SOUTH CAROLINA.

9 THE STATES THAT HAD THE FOUR HIGHEST RATES OF
10 HOMICIDE, SOUTH DAKOTA, NEW MEXICO, MARYLAND AND UTAH HAD
11 DECEPTIVELY LOW NUMBERS OF HOMICIDES. ONLY 11 COMBINED
12 COMPARED TO 21 IN CALIFORNIA ALONE.

13 HOWEVER, THE COMBINED PRISON POPULATION OF THESE
14 FOUR STATES IS ONLY ROUGHLY A QUARTER OF CALIFORNIA'S PRISON
15 POPULATION. THEREFORE, A MUCH SMALLER NUMBER OF HOMICIDES IN
16 THESE MUCH SMALLER PRISON SYSTEMS RESULTED IN HIGHER RATES OF
17 HOMICIDE.

18 **Q.** TURNING TO PAGE 11 OF THE SAME REPORT, THE REPORT STATES
19 THAT THE RATE OF SUICIDES FOR STATE PRISONERS IS 14 PER 100,000
20 AND FOR THE OVERALL POPULATION IS 11 PER 100,000, CORRECT?

21 **A.** TO BE CLEAR, THE REPORT INCLUDED THESE RESPECTIVE RATES FOR
22 A SINGLE YEAR, 2002.

23 **Q.** WHEN THE BUREAU OF JUSTICE STATISTICS STANDARDIZED THE U.S.
24 RESIDENT POPULATION TO REFLECT THE AGE, RACE AND GENDER OF THE
25 STATE PRISONER POPULATION, WHICH STATE PRISON SYSTEM'S

1 DEMOGRAPHIC DATA DID YOU USE?

2 **A.** IT AGE, RACE AND GENDER CHARACTERISTICS OF THE TOTAL
3 POPULATION OF ALL STATE PRISON SYSTEMS WAS USED TO STANDARDIZE
4 THE U.S. RESIDENT POPULATION RATES. IN BJS PUBLICATIONS, ALL
5 REFERENCES TO THE STATE PRISONER POPULATION ARE USED
6 COLLECTIVELY IN THIS FASHION, AND THEY DO NOT REFER TO A SINGLE
7 STATE'S PRISON POPULATION.

8 **Q.** ARE THE DEMOGRAPHICS OF THE CALIFORNIA PRISON POPULATION
9 THE SAME AS THE DEMOGRAPHIC DATA YOU USED TO STANDARDIZE THE
10 U.S. RESIDENT POPULATION WHEN YOU MADE THESE CALCULATIONS?

11 **A.** NO, THE DATA REFLECTS THE DEMOGRAPHIC COMPOSITION OF THE
12 OVERALL STATE PRISONER POPULATION ACROSS ALL FIFTY STATES. IT
13 IS LIKELY THAT THE DEMOGRAPHIC COMPOSITION OF ANY SINGLE
14 STATE'S PRISON SYSTEM DURING 2002 DIFFERED IN SOME FASHION FROM
15 THESE ACCUMULATED NATIONWIDE CHARACTERISTICS.

16 **Q.** PLEASE EXPLAIN HOW THE DEMOGRAPHICS OF THE CALIFORNIA
17 PRISON POPULATION DIFFER FROM THE DEMOGRAPHIC DATA YOU USED TO
18 STANDARDIZE THE U.S. RESIDENT POPULATION WHEN YOU MADE THESE
19 CALCULATIONS.

20 **A.** I DO NOT HAVE A DEMOGRAPHIC BREAKDOWN OF THE CALIFORNIA
21 PRISONER POPULATION FOR 2002 TO WHICH I CAN REFER. AS FAR AS I
22 KNOW FROM WORKING WITH OTHER CORRECTIONAL POPULATION DATA
23 SERIES, THE PERCENTAGE OF HISPANIC PRISONERS IN THE CALIFORNIA
24 SYSTEM IS HIGHER THAN THE NATIONAL STATE PRISON POPULATION
25 AVERAGE. AND WOMEN MAKE UP A SLIGHTLY LOWER PERCENT OF THE

1 CALIFORNIA PRISONERS THAN THE NATIONAL AVERAGE AMONG STATE
2 PRISON SYSTEM.

3 I DON'T KNOW HOW THE AGE DISTRIBUTION OF CALIFORNIA
4 PRISONERS COMPARES TO THE NATIONAL AVERAGE FOR STATE PRISONERS.

5 **Q.** CALIFORNIA REPORTED MORE SUICIDES THAN ANY OTHER STATE,
6 CORRECT?

7 **A.** NUMERICALLY, YES. BUT PLEASE BEAR IN MIND THE POINTS I MADE
8 EARLIER ABOUT COMPARING HOMICIDES ACROSS STATE SYSTEMS ON A
9 PURELY NUMERICAL BASIS. GIVEN THE VAST DIFFERENCES IN PRISON
10 POPULATION SIZE ACROSS STATES, YOU CAN SEE STATES WITH
11 RELATIVELY SMALL NUMBERS OF SUCH DEATHS HAVE THE HIGH RATES OF
12 HOMICIDE. THE POINT IS THE SAME WHEN DISCUSSING PRISON SUICIDE
13 COMPARISONS.

14 WHILE CALIFORNIA AND TEXAS EACH HAD FAR MORE
15 SUICIDES THAN ANY OTHER STATE DURING THIS PERIOD, THEY HAD 52
16 AND 49, RESPECTIVELY, WHILE NO OTHER STATE HAD MORE THAN 21,
17 NEITHER STATE WAS AMONG THE TOP 20 HIGHEST SUICIDE RATES PER
18 100,000 INMATES.

19 THIS IS BECAUSE THESE TWO STATES ALSO HAVE BY FAR
20 THE LARGEST PRISON POPULATIONS IN THE NATION.

21 AS WITH HOMICIDES, MOST OF THE STATES WITH THE
22 HIGHEST SUICIDE RATES HAD RELATIVELY SMALL PRISON POPULATIONS
23 AND RELATIVELY SMALL NUMBERS OF SUICIDES.

24 **Q.** NOTHING FURTHER.

25 **JUDGE HENDERSON:** OKAY. THANK YOU, COUNSEL. WE WILL

1 RECESS FOR THE DAY, AND I ASSUME READ THE OTHER TWO DEPOSITIONS
2 BEGINNING TOMORROW.

3 **JUDGE KARLTON:** NO. THEY ARE JUST SUBMITTING THEM
4 FOR US TO READ, IN OUR COPIOUS FREE TIME.

5 **MS. HARDY:** MY NAME IS ALISON HARDY FOR THE
6 PLAINTIFFS. I ALSO HAVE ONE THING.

7 THE PARTIES HAVE BOTH STIPULATED THAT PLAINTIFFS'
8 REBUTTAL WITNESS TO MR. MUMOLA, DR. REINGOLD, WILL NOT BE
9 TESTIFYING. INSTEAD, HIS REPORT WILL COME IN, AS WILL HIS
10 DEPOSITION DESIGNATIONS, WHICH ARE MUCH, MUCH SHORTER THAN
11 MR. MUMOLA'S. IT'S ABOUT 10 PAGES AS OPPOSED TO ABOUT -- I
12 THINK THAT WAS ABOUT 60 OR 70.

13 AT SOME POINT DURING THE NEXT TWO WEEKS WHEN THERE'S
14 A SPARE MOMENT WE WOULD LIKE TO BE ABLE TO ALSO READ IN DR.
15 REINGOLD'S DEPOSITION.

16 **JUDGE HENDERSON:** OKAY.

17 **MS. HARDY:** THANK YOU.

18 **JUDGE KARLTON:** SO WE HAVE THE SAME TIME, RIGHT?

19 **MR. BIEN:** YOUR HONOR, I UNDERSTAND THAT YESTERDAY
20 AT THE CLOSE OF THE SESSION THE COURT EXPRESSED AN INTEREST IN
21 THE NEW MEXICO STATUTE DR. HANEY REFERRED TO. WE HAVE A COPY OF
22 IT FOR THE COURT. AND HERE'S -- WE MARKED IT JUST FOR THE
23 RECORD AS PLAINTIFFS' EXHIBIT 827.

24 **JUDGE KARLTON:** MR. BIEN, JUST TO REMIND YOU BECAUSE
25 WE'RE GETTING TOO MUCH INFORMATION TOO QUICKLY, THIS IS THE

1 NEGOTIATED STATUTE WHICH GAVE RISE AT THE END OF ITS PASSAGE TO
2 THE COURT RELINQUISHING JURISDICTION.

3 **MR. BIEN:** YES. WE SPENT SOME TIME ONLINE AND
4 LOOKING. WE DID SEE THAT THERE IS A STIPULATED INJUNCTION AND
5 CONSENT DECREE THAT DOES REFER TO A STATUTE. THIS IS THE MOST
6 CURRENT VERSION OF THE STATUTE THAT IS IN EXISTENCE, AND WE CAN
7 GIVE YOU MORE INFORMATION, IF YOU WISH.

8 **JUDGE HENDERSON:** OKAY. WE WILL ADJOURN.

9 I CERTAINLY DON'T SPEAK FOR MY COLLEAGUES. OF
10 MR. MUMOLA'S TESTIMONY I WAS MOST INTERESTED IN THAT THAT
11 INDICATES THAT UNINTENTIONAL INJURY RATES GO DOWN TO 4 PERCENT
12 FOR THOSE OVER 65.

13 COURT'S ADJOURNED UNTIL 9:15.

14 (THEREUPON, THIS TRIAL WAS CONTINUED UNTIL
15 THURSDAY, DECEMBER 4, 2008 AT 9:15 O'CLOCK
16 A.M.)

I N D E XDEFENSE WITNESSESPAGEVOL.IRA PACKER

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CROSS-EXAMINATION BY MS. NORMAN	1149	6
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DR. DAVID L. THOMAS

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CERTIFICATE OF REPORTER

WE, JOAN MARIE COLUMBINI AND KATHERINE WYATT, OFFICIAL REPORTERS FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN CIV S-90-0520 LKK JPM, RALPH COLEMAN, ET AL V. ARNOLD SCHWARZENEGGER AND C 01-1351 TEH, MARCIANO PLATA V. ARNOLD SCHWARZENEGGER, WERE REPORTED BY US, CERTIFIED SHORTHAND REPORTERS, AND WERE THEREAFTER TRANSCRIBED UNDER OUR DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY US AT THE TIME OF FILING.

THE VALIDITY OF THE REPORTER'S CERTIFICATION OF SAID TRANSCRIPT MAY BE VOID UPON DISASSEMBLY AND/OR REMOVAL FROM THE COURT FILE.

/S/ JOAN MARIE COLUMBINI

JOAN MARIE COLUMBINI, CSR 5435, RPR

S/ KATHERINE WYATT

KATHERINE WYATT, CSR 9866, RMR

WEDNESDAY, DECEMBER 2, 2008

**JOAN MARIE COLUMBINI, CSR, RPR
KATHERINE WYATT, CSR, RMR
OFFICIAL COURT REPORTERS, USDC, 415-255-6842**

VOL 7

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
AND FOR THE NORTHERN DISTRICT OF CALIFORNIA
UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES PURSUANT
TO SECTION 2284, TITLE 28 UNITED STATES CODE

RALPH COLEMAN, ET AL.,	)	
	)	
PLAINTIFFS,	)	
	)	
VS.	)	NO. CIV S-90-0520 LKK JFM
	)	
ARNOLD SCHWARZENEGGER, ET AL.	)	
	)	THREE-JUDGE COURT
DEFENDANTS.	)	
	)	

MARCIANO PLATA, ET AL.,	)	
	)	
PLAINTIFFS,	)	
	)	
VS.	)	NO. C 01-1351 TEH
	)	
ARNOLD SCHWARZENEGGER, ET AL.	)	
	)	
DEFENDANTS.	)	
	)	

TRANSCRIPT OF PROCEEDINGS

SAN FRANCISCO, CALIFORNIA
THURSDAY, DECEMBER 4, 2008

(APPEARANCES ON FOLLOWING PAGES)

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1 **DECEMBER 4, 2008**

9:15 O'CLOCK A.M.

2
3 **P R O C E E D I N G S**

4 **THE CLERK:** PLEASE BE SEATED.

5 **JUDGE HENDERSON:** OKAY. YOU MAY PROCEED WHEN YOU'RE
6 READY, COUNSEL.

7 **MR. SPECTER:** GOOD MORNING. PLAINTIFFS CALL JEANNE
8 WOODFORD BACK TO THE STAND TO TESTIFY, YOUR HONOR.

9 **JUDGE HENDERSON:** GOOD MORNING, MS. WOODFORD. YOU'RE
10 STILL UNDER OATH FROM YOUR PREVIOUS SWEARING IN.

11 **THE WITNESS:** THANK YOU. GOOD MORNING.

12 THEREUPON --

13 **JEANNE WOODFORD**

14 RESUMED THE STAND AND HAVING BEEN PREVIOUSLY DULY SWORN,
15 TESTIFIED FURTHER FOR PLAINTIFFS AS FOLLOWS:

16 **DIRECT EXAMINATION**

17 **BY MR. SPECTER:**

18 **Q.** GOOD MORNING MS. WOODFORD.

19 **A.** GOOD MORNING.

20 **Q.** LAST TIME YOU TESTIFIED HERE YOU EXPLAINED THAT YOU HELD

21 VARIOUS POSITIONS WITHIN THE DEPARTMENT OF CORRECTIONS,

22 INCLUDING WARDEN AT SAN QUENTIN AND THE ACTING SECRETARY OF THE
23 AGENCY; IS THAT CORRECT?

24 **A.** THAT IS CORRECT.

25 **Q.** AND WHILE YOU WERE THE WARDEN AT SAN QUENTIN, DIDN'T SAN

1 QUENTIN HAVE A RECEPTION CENTER?

2 **A.** YES, IT HAD A VERY LARGE RECEPTION CENTER, ACTUALLY.

3 **Q.** AND MANY OF THE OFFENDERS WHO OCCUPIED THAT RECEPTION CENTER
4 WERE PAROLE VIOLATORS, WERE THEY NOT?

5 **A.** THAT'S CORRECT.

6 **Q.** AND APPROXIMATELY HOW MANY PRISONERS DID YOU PAROLE A WEEK
7 AT THE RECEPTION CENTER?

8 **A.** FROM JUST THE RECEPTION CENTER WE WERE PAROLING ABOUT 200 A
9 WEEK.

10 **Q.** AND HOW MANY PEOPLE DID YOU HAVE COMING IN; DO YOU REMEMBER
11 THAT?

12 **A.** WELL, IT VARIED. WHEN I FIRST BECAME WARDEN OUR INTAKE COULD
13 BE AS HIGH AS ABOUT 200 A DAY. BUT THEY DIVERTED SOME OF THE
14 RECEPTION CENTER OVER TO DVI, SO OUR INTAKE COULD AVERAGE ABOUT
15 A HUNDRED A DAY.

16 **Q.** OKAY. AND YOU ARE AWARE OF THE AVERAGE LENGTH OF STAY OF
17 PAROLE VIOLATORS IN THE DEPARTMENT OF CORRECTIONS?

18 **JUDGE KARLTON:** NOW OR THEN?

19 **MR. SPECTER:** THEN, YOUR HONOR.

20 **THE WITNESS:** YES, THE AVERAGE LENGTH OF STAY WAS A
21 LITTLE OVER FOUR MONTHS.

22 **BY MR. SPECTER:**

23 **Q.** ALL RIGHT. AND THAT WAS CONSISTENT WITH YOUR EXPERIENCE AT
24 SAN QUENTIN?

25 **A.** YES, IT WAS.

1 Q. OKAY. DURING THOSE FOUR MONTHS WERE YOU ABLE TO PROVIDE
2 THOSE PAROLE VIOLATORS WITH ANY MEANINGFUL REHABILITATIVE
3 SERVICES THAT WOULD AFFECT PUBLIC SAFETY?

4 A. NO, NOT IN THE RECEPTION CENTER. THERE JUST WASN'T THE
5 SPACE, AND THAT REALLY ISN'T THE MISSION OF THE RECEPTION
6 CENTER.

7 Q. AND SO WHAT EFFECT, IF ANY, DID YOU THINK -- WHAT EFFECT, IF
8 ANY, ON PUBLIC SAFETY DO YOU THINK RETURNING PAROLE VIOLATORS TO
9 PRISON FOR FOUR-AND-A-HALF --

10 JUDGE KARLTON: THAT ASSUMES SOMETHING THAT YOU
11 HAVEN'T ESTABLISHED.

12 AS BEST YOU KNOW, THAT AVERAGE LENGTH OF FOUR MONTHS
13 CONTINUES TO BE WHAT WE DO WITH -- NOT "WE" -- WHAT YOU DO WITH
14 PAROLE VIOLATORS TODAY.

15 THE WITNESS: ACTUALLY, I RECENTLY LISTENED TO A TALK
16 GIVEN BY JOAN PETERSILIA. AND THE AVERAGE LENGTH OF STAY
17 CURRENTLY, ACCORDING TO HER TALK, WAS 4.2 MONTHS.

18 JUDGE KARLTON: OKAY. NOW, YOU CAN ASK HER.

19 MR. SPECTER: THANK YOU VERY MUCH.

20 BY MR. SPECTER:

21 Q. SO WHAT EFFECT, IF ANY, DO YOU THINK THE POLICY OF RETURNING
22 PRISONERS TO PRISON FOR 4.2 TO 4.5 MONTHS HAS ON PUBLIC SAFETY?

23 A. I ACTUALLY THINK THAT IT HURTS PUBLIC SAFETY.

24 Q. EXPLAIN THAT, PLEASE.

25 A. YOU KNOW, I BASE THAT ON MY OWN OBSERVATIONS. AND I ALSO

1 BASE IT ON READING MANY OF THE REPORTS THAT HAVE BEEN WRITTEN BY
2 JOAN PETERSILIA. SHE REFERS TO THIS CATCH AND RELEASE PROGRAM.
3 THAT REALLY IS WHAT IT IS. WE CATCH PEOPLE AND WE RELEASE THEM.
4 WE DON'T DO ANYTHING FOR THEM WHILE THEY ARE INCARCERATED. AND
5 WE'RE JUST REALLY DISRUPTING THEIR LIVES OVER AND OVER AGAIN.
6 AND IT REALLY DOESN'T ADD TO PUBLIC SAFETY.

7 IT ACTUALLY CAN ADD TO GANG ACTIVITY, ACCORDING TO
8 JOAN PETERSILIA, BECAUSE INDIVIDUALS ARE COMING INTO THE PRISON
9 SYSTEM, RETURNING TO THE STREETS, AND IT IS CAUSING GANG
10 ACTIVITY BOTH INSIDE THE PRISON AND OUTSIDE ON THE STREETS TO
11 GROW AND BECOME A GREATER PROBLEM.

12 **JUDGE REINHARDT:** YOU WANT TO TELL US WHO JOAN
13 PETERSILIA IS?

14 **MR. SPECTER:** YES. SHE'S AN ACADEMIC. SHE'S A
15 PROFESSOR OF CRIMINOLOGY OR SOCIOLOGY OR SOMETHING LIKE THAT AT
16 THE UNIVERSITY OF CALIFORNIA AT IRVINE. AND SHE HAS WRITTEN
17 PAPERS ON PAROLE.

18 **JUDGE KARLTON:** SHE'S BEEN HIRED BY THE STATE
19 PARTICULARLY TO STUDY VARIOUS ASPECTS OF THE PROBLEM FOR THE
20 STATE.

21 **MR. SPECTER:** THAT'S CORRECT.

22 **BY MR. SPECTER:**

23 **Q.** AND MS. PETERSILIA WAS ON A RADIO SHOW, YOU SAID?

24 **A.** I'M SORRY. I COULDN'T HEAR YOU.

25 **Q.** WHERE DID YOU HEAR MS. PETERSILIA?

1 **JUDGE KARLTON:** SHE WAS READING PAPERS WRITTEN BY
2 MS. PETERSILIA.

3 **MR. SPECTER:** OKAY. FINE. THANK YOU.

4 **BY MR. SPECTER:**

5 **Q.** YOU MENTIONED THAT THERE WAS A DISRUPTION IN THE -- OF THE
6 PAROLE VIOLATORS' LIVES IN THE COMMUNITY. CAN YOU EXPLAIN THAT A
7 LITTLE MORE, PLEASE?

8 **A.** WELL, IT BECAME IMPOSSIBLE FOR THEM TO FIND PERMANENT
9 HOUSING AND EMPLOYMENT AND TO GET SITUATED BACK IN THEIR
10 COMMUNITIES, BECAUSE THEY WOULD BE RETURNED TO PRISON FOR
11 TECHNICAL VIOLATIONS. AND THEN, THERE IS VERY LITTLE
12 ASSISTANCE, IF ANY, INSIDE THE PRISON SYSTEM, PARTICULARLY FOR
13 THOSE WHO ARE PAROLED RIGHT OUT OF THE RECEPTION CENTER.

14 SO THEY ARE JUST RETURNING BACK TO THE SAME PROBLEMS.
15 AND SO IT'S VERY DISRUPTIVE TO THEIR LIVES. IT DOESN'T ENHANCE
16 PUBLIC SAFETY AND, IN FACT, MAY ACTUALLY BE ADDING TO SOME OF
17 OUR CRIME PROBLEMS AND GANG PROBLEMS OUT IN OUR SOCIETY.

18 **Q.** AND DO YOU MEAN TO SUGGEST BY THAT ANSWER THAT YOU DON'T
19 THINK THAT PAROLE VIOLATORS SHOULD BE SANCTIONED FOR VIOLATING
20 PAROLE?

21 **A.** OH, NO. I THINK THERE'S MANY SANCTIONS THAT COULD BE PUT IN
22 PLACE THAT COULD OCCUR OUT WHILE THEY ARE OUT IN THEIR
23 COMMUNITIES. THEY COULD BE PLACED IN DRUG TREATMENT PROGRAMS.
24 THEY COULD BE HOUSED IN THE COUNTY JAIL.

25 THERE'S A VARIETY OF OTHER OPTIONS THAT COULD BE PUT

1 IN PLACE: GPS MONITORING. THERE'S MANY OTHER ALTERNATIVES TO
2 RETURNING PEOPLE TO PRISON.

3 Q. AND IN YOUR EXPERIENCE DO YOU BELIEVE THAT WOULD BE MORE OR
4 LESS EXPENSIVE THAN SENDING THEM BACK TO PRISON?

5 A. I THINK IT WOULD BE MUCH LESS EXPENSIVE THAN SENDING THEM
6 BACK TO PRISON. IT'S QUITE EXPENSIVE TO HAVE THE PAROLE
7 VIOLATORS SENT TO THE COUNTY JAIL WHERE THEY UNDERGO ALL KINDS
8 OF MEDICAL EVALUATIONS, THEN SENT TO THE STATE PRISON.

9 YOU HAVE BUS TRANSPORTATION AT STATE PRISON. MANY OF
10 THOSE MEDICAL PROCEDURES AND THINGS ARE REPEATED. IT'S VERY
11 COSTLY.

12 IF WE KEPT PEOPLE IN THEIR COMMUNITY, IT WOULD BE A
13 GREATER USE OF OUR TAX DOLLARS.

14 Q. NOW, AFTER YOU LEFT THE CDC, WHERE DID YOU WORK?

15 A. I WORKED FOR ADULT PROBATION HERE IN SAN FRANCISCO.

16 Q. AND WHAT WAS YOUR POSITION AT ADULT PROBATION?

17 A. I WAS THE CHIEF OF ADULT PROBATION IN SAN FRANCISCO.

18 Q. AND HOW LONG DID YOU WORK THERE?

19 A. ABOUT A YEAR-AND-A-HALF.

20 Q. OKAY. AND WHAT WAS YOUR GOAL AS CHIEF PROBATION OFFICER?

21 A. MY GOAL AS CHIEF PROBATION OFFICER WAS TO HELP INDIVIDUALS
22 BE SUCCESSFUL ON PROBATION, AND TO BRING THE SCIENCE OF
23 COMMUNITY CORRECTIONS TO THE ADULT PROBATION DEPARTMENT HERE IN
24 SAN FRANCISCO.

25 AND SO WE DID THAT BY BRINGING IN A RISK AND NEEDS

1 ASSESSMENT TOOL SO THAT WE WERE ASSESSING PEOPLE ON PROBATION TO
2 IDENTIFY THEIR RISK FOR REOFFENDING, IDENTIFYING THEIR NEEDS,
3 AND THEN MATCHING THEM UP TO THE RIGHT KINDS OF PROGRAMS TO
4 ADDRESS THOSE NEEDS.

5 IT WAS ALSO MY GOAL TO REDUCE THE CASELOAD OF PEOPLE,
6 OF OUR PROBATION OFFICERS BECAUSE UNFORTUNATELY THE CASELOADS
7 ARE INCREDIBLY HIGH WITH CASELOADS LIKE 400 TO 1 FOR SOME VERY
8 HIGH RISK OFFENDERS. SO MY GOAL WAS TO BRING DOWN THE CASELOADS
9 SO WE COULD BE MUCH MORE SUCCESSFUL IN CASE MANAGEMENT, SO THAT
10 WE WEREN'T SENDING PEOPLE TO STATE PRISON.

11 **Q.** AND DO YOU BELIEVE THAT PROVIDING FOR THE NEEDS OF THE
12 PROBATIONERS WOULD HAVE ANY EFFECT ON REDUCING CRIME?

13 **A.** OH, I THINK IT ABSOLUTELY WOULD HAVE AN EFFECT ON REDUCING
14 CRIME AND IN REDUCING THE NUMBER OF PEOPLE THAT END UP IN STATE
15 PRISON. IT'S JUST AN INCREDIBLE OPPORTUNITY TO HELP PEOPLE
16 CHANGE THEIR LIVES AND MEET THEIR NEEDS.

17 AND MANY OF THE PEOPLE THAT ARE ON PROBATION ARE VERY
18 YOUNG PEOPLE, AND IT REALLY IS AN OPPORTUNITY TO CHANGE THEIR
19 LIVES AT THAT POINT.

20 **Q.** TURNING TO THE PRISON POPULATION FOR A MINUTE OR FOR AWHILE,
21 DO YOU BELIEVE THAT THE CALIFORNIA PRISON POPULATION CAN BE
22 REDUCED WITHOUT ADVERSELY AFFECTING PUBLIC SAFETY?

23 **A.** ABSOLUTELY.

24 **Q.** AND CAN YOU EXPLAIN WHY YOU BELIEVE THAT TO BE TRUE?

25 **A.** WELL, BECAUSE I UNDERSTAND THE PRISON POPULATION AND WHO IS

1 COMING INTO THE SYSTEM. 30 PERCENT OF THE INDIVIDUALS IN THE
2 PRISON POPULATION ARE IN FOR NONSERIOUS, NONVIOLENT OFFENSES.

3 WE ALSO HAVE A LARGE NUMBER, ABOUT 70,000 REVOCATIONS
4 A YEAR, PAROLE VIOLATORS THAT MANY OF THEM COMING IN FOR
5 TECHNICAL VIOLATIONS THAT COULD BE MANAGED OUT IN THE COMMUNITY.

6 AND WHEN YOU UNDERSTAND THE PRISON POPULATION YOU
7 KNOW THAT THERE ARE NOW BETTER METHODS FOR HANDLING THOSE KIND
8 OF ISSUES. LOW END OFFENDERS NEED TO BE KEEP IN THEIR
9 COMMUNITIES. SENDING SHORT SENTENCES TO STATE PRISON JUST
10 REALLY ISN'T THE DETERRENT THAT PEOPLE THINK THAT IT IS.

11 KEEPING PEOPLE LOCALLY AND PROVIDING SERVICES, USING
12 RISK AND NEEDS ASSESSMENT TOOLS, MEETING THEIR NEEDS CAN REDUCE
13 THE PRISON POPULATION, REDUCE CRIME AND JUST BRING ABOUT BETTER
14 OUTCOMES, AND WE CAN DO IT MORE EFFECTIVELY AND MORE
15 EFFICIENTLY.

16 Q. AND BY "EFFICIENTLY" DO YOU MEAN LESS COSTLY?

17 A. LESS COSTLY. IT'S ALWAYS CHEAPER TO DO COMMUNITY CORRECTIONS
18 AS OPPOSED TO INCARCERATION.

19 Q. NOW, THE RELIEF THAT THE PLAINTIFFS ARE SEEKING IN THIS CASE
20 IS TO REDUCE THE PRISON POPULATION TO 130 PERCENT OF DESIGN
21 CAPACITY OVER TWO YEARS. YOU UNDERSTAND THAT, CORRECT?

22 A. YES.

23 Q. AND THAT WOULD MEAN A REDUCTION OF ABOUT 50,000 PRISONERS
24 WITHIN THOSE TWO-YEAR PERIODS. YOU UNDERSTAND THAT, TOO?

25 A. YES, I DO.

1 Q. AND DO YOU BELIEVE THAT CAN BE ACCOMPLISHED WITHOUT AN
2 ADVERSE IMPACT ON PUBLIC SAFETY?

3 A. YES, I ABSOLUTELY DO THINK IT CAN BE ACCOMPLISHED WITHOUT
4 ADVERSELY IMPACTING PUBLIC SAFETY. I BELIEVE THAT WE ACTUALLY
5 CAN IMPROVE PUBLIC SAFETY IF WE DO IT CORRECTLY.

6 MS. KECK: MR. SPECTER, I'M HAVING DIFFICULTY HEARING
7 YOU. CAN YOU SPEAK UP?

8 MR. SPECTER: SURE. SURE.

9 BY MR. SPECTER:

10 Q. AND WOULD THAT BE FOR THE SAME REASONS THAT YOU DISCUSSED
11 JUST A MINUTE AGO?

12 A. YES.

13 Q. OKAY. WOULD THE FACT THAT -- YOU ARE AWARE THAT CALIFORNIA
14 HAS BETWEEN A 60 AND 70 PERCENT RECIDIVISM OVER THREE YEARS,
15 RIGHT?

16 A. THAT'S CORRECT.

17 Q. WOULD THE FACT THAT CALIFORNIA HAS THAT HIGH OF A PAROLE
18 FAILURE RATE AFFECT YOUR OPINION ABOUT REDUCING THE PRISON
19 POPULATION WITHOUT ADVERSELY AFFECTING PUBLIC SAFETY?

20 A. COULD YOU REPEAT THAT?

21 Q. YES.

22 WOULD THE FACT THAT CALIFORNIA HAS SUCH A HIGH --

23 JUDGE KARLTON: RECIDIVISM.

24 BY MR. SPECTER:

25 Q. -- RECIDIVISM RATE AFFECT YOUR OPINION THAT THE POPULATION

1 COULD BE REDUCED WITHOUT ADVERSELY AFFECTING PUBLIC SAFETY?

2 **A.** WELL, BECAUSE WE HAVE SUCH A HIGH RECIDIVISM RATE IT REALLY
3 IS TIME TO DO SOMETHING DIFFERENT. I THINK WE COULD LOWER THE
4 RECIDIVISM RATE AND IMPROVE PUBLIC SAFETY BY REDUCING THE PRISON
5 POPULATION AND DOING VERY EFFECTIVE PROGRAMS IN THE COMMUNITY.

6 **Q.** AND WOULD ONE OF THE WAYS WE CAN DO THAT INVOLVE THE
7 DECISION OR THE DECISION TO DETERMINE WHO TO PUT ON PAROLE
8 INSTEAD OF DETERMINING TO PUT EVERYBODY ON PAROLE?

9 **A.** ABSOLUTELY. WE ARE JUST ONE OF TWO STATES THAT PUTS EVERYONE
10 ON PAROLE LEAVING THE PRISON SYSTEM, AND WE COULD MAKE MUCH
11 BETTER DECISIONS ABOUT THAT. LOW RISK, NONSERIOUS, NONVIOLENT
12 OFFENDERS CERTAINLY COULD LEAVE THE PRISON SYSTEM WITHOUT BEING
13 ON PAROLE.

14 THERE ARE ACTUALLY STUDIES THAT SHOW THAT THERE'S
15 WORSE OUTCOMES WHEN YOU PUT THOSE KINDS OF INDIVIDUALS UNDER
16 SUPERVISION. THE MODEL ACROSS THE UNITED STATES IS TO IDENTIFY
17 YOUR HIGH RISK OFFENDERS AND PUT YOU'RE RESOURCES TOWARDS THOSE
18 OFFENDERS. AND BY DOING THAT YOU ACTUALLY CAN REDUCE RECIDIVISM
19 AND CRIME AND VICTIMIZATION IN OUR COMMUNITIES.

20 AND I BELIEVE VERY STRONGLY THAT THAT'S TRUE. I
21 THINK, YOU KNOW, THERE'S MODELS OUT ALREADY. NEW YORK, FOR
22 EXAMPLE, HAS REDUCED THEIR CRIME RATE AND THEIR PRISON
23 POPULATION ALL AT THE SAME TIME. SO THERE CERTAINLY ARE SUCCESS
24 STORIES THAT CALIFORNIA CAN FOLLOW.

25 **Q.** YOU ARE AWARE THAT MANY OF THE COUNTY JAILS ARE -- HAVE

1 COURT-ORDERED OR SOMEWHAT VOLUNTARY CAPS? IN OTHER WORDS, ARE
2 FULL, ARE YOU NOT?

3 **A.** YES, I AM.

4 **Q.** WHAT, IF ANY, EFFECT DOES THAT HAVE ON YOUR OPINION ABOUT
5 REDUCING THE PRISON POPULATION?

6 **A.** I STILL BELIEVE THAT WE NEED TO REDUCE THE PRISON
7 POPULATION.

8 **Q.** AND CAN THAT BE DONE EVEN THOUGH THE COUNTY JAILS ARE AT OR
9 NEAR -- OR SOME OF THE COUNTY JAILS ARE AT OR NEAR THEIR
10 CAPACITY?

11 **A.** I THINK I ABSOLUTELY BELIEVE THAT IT CAN BE DONE. AGAIN, IT
12 REQUIRES USING THE SCIENCE OF CORRECTIONS. AND MANY OF THE
13 COUNTY JAILS OR PROBATION DEPARTMENTS ARE JUST BEGINNING TO USE
14 RISK AND NEEDS ASSESSMENT TOOLS. SO THERE'S MANY TOOLS OUT
15 THERE THAT COULD ASSIST COUNTY JAILS IN DECIDING WHO SHOULD
16 REMAIN IN THEIR COUNTY JAIL AND WHO COULD BE RELEASED SAFELY
17 INTO THE COMMUNITY.

18 SO, YES, I THINK IN A VERY INTEGRATED SYSTEM WHERE
19 WE'RE WORKING TOGETHER TO SOLVE THIS PROBLEM THAT IT COULD BE
20 DONE.

21 **Q.** GREAT.

22 MANY LAW ENFORCEMENT OFFICIALS, INCLUDING SOME OF
23 YOUR COLLEAGUE CHIEF PROBATION OFFICERS HAVE INTERVENED IN THIS
24 CASE TO OPPOSE A CAP ON THE PRISON POPULATION. THEY ARGUE THAT A
25 REDUCTION IN THE PRISON POPULATION WOULD PRODUCE MORE CRIME.

1 WHAT DO YOU SAY TO THAT POINT?

2 **A.** I DON'T THINK THAT IT WILL PRODUCE MORE CRIME. THE REDUCTION
3 IN THE PRISON POPULATION, THESE ARE INDIVIDUALS THAT ARE COMING
4 HOME, ANYWAY. AND SO HOW WE APPROACH IT, ACTUALLY, COULD REDUCE
5 CRIME. I JUST DON'T THINK IT WILL INCREASE CRIME, AND I DON'T
6 THINK THAT'S THE EXPERIENCE OF OTHER STATES WHO HAVE HAD SIMILAR
7 REDUCTIONS IN PRISON POPULATIONS.

8 **Q.** AND WHAT DO YOU SAY TO THE ARGUMENT THAT RELEASING PRISONERS
9 EARLY OR A FEW MONTHS EARLY WOULD RESULT IN MORE CRIME BECAUSE
10 THEY ARE OUT 60 DAYS BEFORE THEY WERE SUPPOSED TO GET OUT?

11 **A.** THERE JUST ISN'T A CORRELATION BETWEEN THE LENGTH OF TIME
12 SOMEONE IS INCARCERATED AND CRIME. THESE ARE INDIVIDUALS THAT
13 ARE COMING HOME ANYWAY. AND SO IT WILL NOT INCREASE CRIME.

14 AND, AGAIN, DEPENDING ON WHAT MODEL WE PUT IN PLACE,
15 WE ACTUALLY COULD LEAD TO A REDUCTION IN CRIME AND A REDUCTION
16 IN GANG AND OTHER KINDS OF VIOLENCE IN OUR COMMUNITIES.

17 **JUDGE KARLTON:** MS. WOODFORD, YOU KNOW, YOU ARE
18 OBVIOUSLY AN EXPERT, AND THE COURT VALUES YOUR OPINIONS. BUT
19 THE SUGGESTION HAS BEEN MADE BY ONE OF YOUR COLLEAGUES,
20 PARTICULARLY, THAT SO-CALLED LOW RISK CRIMES ARE SIMPLY WHAT
21 PEOPLE ARE CAUGHT FOR. AND IN ANY EVENT, THOSE ARE THE PEOPLE
22 WHO ARE MOST LIKELY TO REOFFEND, THAT IS PROPERTY CRIMES, AND I
23 GATHER DRUGS MAY BE THE SAME.

24 AND THAT IN REALITY, THE PEOPLE LESS LIKELY ARE
25 SECOND DEGREE MURDERERS AND SO FORTH THAT NOBODY IS GOING TO LET

1 OUT BECAUSE IT'S POLITICALLY IMPOSSIBLE.

2 WHAT DO YOU SAY TO THE IDEA THAT YOU LET PEOPLE OUT
3 60 DAYS EARLIER AND ALL THEY ARE GOING TO DO IS COMMITTING MORE
4 CRIMES THAT THEY ARE NOT CAUGHT FOR UNTIL THEY ARE ACTUALLY
5 CAUGHT?

6 THAT'S THE ARGUMENT THAT'S BEEN MADE TO US.

7 **THE WITNESS:** I'M JUST HAVING TROUBLE UNDERSTANDING
8 THAT ARGUMENT, BECAUSE THEY WERE GOING TO COME HOME ANYWAY. AND
9 IF THEY WERE GOING TO INVOLVE THEMSELF IN CRIME AGAIN --

10 **JUDGE KARLTON:** YES, BUT THE ARGUMENT WAS IT GIVES
11 THEM 60 MORE DAYS OF COMMITTING CRIMES -- YES. THEY WILL BE
12 CAUGHT EVENTUALLY, BUT THERE'S THAT MUCH MORE OPPORTUNITY.

13 **JUDGE HENDERSON:** IT DOESN'T INCREASE CRIME, BUT IT
14 ACCELERATES CRIME. WE GET OUR BURGLARIES 60 DAYS BEFORE WE
15 WOULD OTHERWISE, IS WHAT I UNDERSTAND.

16 **THE WITNESS:** I'M JUST -- I GUESS I'M STILL HAVING
17 DIFFICULTY UNDERSTANDING THAT, BECAUSE THEY WERE GOING TO GET
18 OUT. AND IT WAS GOING TO TAKE THE SAME AMOUNT OF TIME TO CATCH
19 THEM WHETHER THEY GET OUT TODAY OR TWO WEEKS AGO. IT JUST
20 DOESN'T MAKE SENSE TO ME.

21 AND, IN FACT, THERE ARE STUDIES THAT SHOW THAT THAT
22 ISN'T THE CASE WHEN THEY HAVE HAD RELEASED INMATES EARLY. AND
23 YOU CERTAINLY CAN HAVE MODELS WHERE YOU'RE BUILDING INCENTIVES
24 INTO THE SYSTEM, BOTH INSIDE THE PRISON FOR INDIVIDUALS TO GO
25 HOME EARLY, AND OUTSIDE, SUCH AS EARNED DISCHARGE WHILE THEY ARE

1 ON PAROLE, SO THAT THERE ARE INCENTIVES TO FOLLOW THE DIRECTIONS
2 AND RULES THAT THEY ARE SUPPOSED TO FOLLOW.

3 SO IT REALLY DEPENDS ON THE MODEL. YOU REALLY CAN
4 REDUCE YOUR PRISON POPULATION, AS NEW YORK HAS DONE, AND REDUCE
5 CRIME AT THE SAME TIME IF YOU'RE BUILDING THE RIGHT MODEL AND
6 HAVE THE ATTITUDE THAT YOU CAN BE SUCCESSFUL.

7 **JUDGE KARLTON:** I'M SORRY, MR. SPECTER, BUT --

8 **MR. SPECTER:** GO AHEAD.

9 **JUDGE KARLTON:** I THINK AT LEAST PART OF WHAT YOU'RE
10 SAYING SUGGESTS THAT AN EXPENDITURE OF SIGNIFICANT FUNDS, BOTH
11 IN PRISON AND OUTSIDE, AS A WAY OF DIRECTING PEOPLE AWAY FROM
12 THEIR CRIMINAL BEHAVIOR TOWARDS A MORE LAW-ABIDING BEHAVIOR,
13 THAT TAKES APPARENTLY A LOT OF MONEY.

14 AND IS THERE ANY -- IN YOUR VIEW, ANY REASON TO THINK
15 THAT WE'RE GOING TO SEE THAT KIND OF MONEY?

16 **THE WITNESS:** WELL, I GUESS I WOULD ANSWER IT THIS
17 WAY: IT COSTS ALMOST \$46,000 PER YEAR PER INMATE NOW. AND
18 BUILDING INCENTIVES SUCH AS WORK TIME CREDITS OR MORE
19 PARTICIPATION CREDITS DOESN'T HAVE TO COST MORE MONEY. I MEAN,
20 THERE ARE CERTAINLY PROGRAMS AVAILABLE TO INMATES INSIDE THE
21 PRISON SYSTEM.

22 AND IF YOU'RE SENDING THEM OUT AND KEEPING THEM IN
23 THE COMMUNITIES, THAT'S MUCH CHEAPER. I BELIEVE THAT THE CHIEF
24 PROBATION OFFICERS' ASSOCIATION OF CALIFORNIA HAS SAID THAT IT
25 WOULD COST ABOUT \$10,000 PER YEAR PER INDIVIDUAL TO PROVIDE

1 APPROPRIATE CASE MANAGEMENT. THAT'S FAR CHEAPER THAN WHAT WE'RE
2 DOING NOW.

3 I ALSO THINK THAT IT'S IMPORTANT TO NOTE THAT
4 CALIFORNIA HAS THE HIGHEST RECIDIVISM RATE IN THE NATION, AND
5 WE'RE ONE OF -- WE'RE ONLY ONE OF TWO STATES THAT PUTS EVERYBODY
6 ON PAROLE AND SENDS ALL THEIR VIOLATIONS BACK TO STATE PRISON.
7 SO IT ISN'T WORKING. AND TO CONTINUE DOWN THE SAME ROAD IS JUST
8 GOING TO INCREASE THE NUMBER OF PEOPLE WHO ARE INCARCERATED.

9 WE'RE GOING TO HAVE TO BUILD MORE PRISONS THAT WE
10 CAN'T AFFORD AND STAFF THOSE PRISONS WE CAN'T AFFORD THAT. THE
11 CHEAPER OPTION IS TO INVEST OUR RESOURCES IN OUR COMMUNITIES FOR
12 COMMUNITY CORRECTIONS.

13 IT'S WORKING ELSEWHERE, AND IT CAN WORK IN
14 CALIFORNIA.

15 **JUDGE HENDERSON:** IS THE MATH THAT -- COMING FROM
16 WHAT YOU JUST SAID IS OBVIOUS AS IT SEEMS? THAT 40,000 OR MORE
17 INSIDE, 10,000 TO DO IT THE WAY YOU'RE SUGGESTING; 30,000 PROFIT
18 OR CLEARANCE PER PRISONER? IS IT AS OBVIOUS AS THAT?

19 **THE WITNESS:** I THINK THE MATH IS THAT SIMPLE. I
20 MEAN, IF YOU GO TO WASHINGTON STATE INSTITUTE OF PUBLIC POLICY
21 -- AND ONE OF THE THINGS THAT I NOTED RECENTLY IN LOOKING AT
22 SOME OF THEIR JUVENILE STATS, JUST FOR EXAMPLE, IS EVER DOLLAR
23 SPENT ON FUNCTIONAL FAMILY THERAPY SAVES THAT STATE \$32,000 IN
24 INCARCERATION AND OTHER COSTS.

25 SO THERE'S LOTS OF EVIDENCE OUT THERE THAT WE CAN

1 LOOK AT THAT SAYS THAT MONEY THAT IS SPENT ON TREATMENT REDUCES
2 INCARCERATION.

3 EVEN KAISER SAYS EVERY DOLLAR SPENT ON DRUG TREATMENT
4 THEY SEE A RETURN FOR THAT KIND OF MONEY. SO THERE'S SO MANY
5 STUDIES THAT SAY THE MORE WE PROVIDE TREATMENT FOR PEOPLE, THE
6 LOWER OUR INCARCERATION RATE IS. AND THAT'S CHEAPER.

7 **BY MR. SPECTER:**

8 **Q.** SO YOU'RE REFERRING TO THE NUMBER OF CRIMES THAT PEOPLE
9 WOULD COMMIT IF THEY WERE RELEASED EARLY. YOU'RE AWARE OF
10 STUDIES THAT SUGGEST THAT THE RECIDIVISM RATE OR THE LENGTH OF
11 STAY HAS AN EFFECT --

12 **JUDGE KARLTON:** HAS NO EFFECT.

13 **BY MR. SPECTER:**

14 **Q.** -- HAS NO EFFECT ON THE RECIDIVISM RATE, ARE YOU NOT?

15 **A.** YES, I'M AWARE OF STUDIES THAT SAY THAT.

16 **Q.** SO WOULD IT BE FAIR TO SAY THAT WITH THAT FACT IN MIND, THE
17 NUMBER OF CRIMES WOULDN'T BE INCREASED. IT WOULD JUST BE THE
18 TIME AND CIRCUMSTANCES OF THE CRIME; IS THAT CORRECT?

19 **A.** YES, THAT'S CORRECT.

20 **Q.** OKAY. WOULD IT BE FAIR TO SAY THAT DURING MOST OF YOUR
21 CAREER IN THE DEPARTMENT OF CORRECTIONS YOU WERE RESPONSIBLE IN
22 ONE WAY OR ANOTHER FOR COMPLYING WITH COURT ORDERS?

23 **A.** I THINK THAT'S VERY FAIR TO SAY.

24 **Q.** AND, IN FACT, FOR VIRTUALLY ALL OF YOUR CAREER YOU WERE
25 DOING THAT IN ONE WAY OR ANOTHER; ISN'T THAT RIGHT?

1 **A.** YES, THAT'S CORRECT.

2 **Q.** CAN YOU THINK OF ANY TYPE OF COURT ORDER OTHER THAN A
3 REDUCTION IN THE PRISON POPULATION THAT WOULD ENABLE THE STATE
4 TO PROVIDE ADEQUATE HEALTHCARE TO PRISONERS?

5 **A.** NO, I CANNOT.

6 **Q.** OKAY. AND COULD THE STATE, IF ORDERED TO DO SO BY THE COURT,
7 COME UP WITH A PLAN TO REDUCE THE PRISON POPULATION WITHOUT AN
8 ADVERSE AFFECT ON PUBLIC SAFETY?

9 **A.** YES, I ABSOLUTELY BELIEVE THE STATE CAN DO THAT.

10 **Q.** AND HOW WOULD YOU ENVISION THAT HAPPENING IF IT WAS -- WERE
11 ORDERED TO DO SO?

12 **A.** WELL, I THINK THE WAY THAT THAT SHOULD HAPPEN IS THAT A TEAM
13 OF EXPERTS, BOTH AT THE COUNT AND STATE LEVEL, SHOULD BE PUT
14 TOGETHER, AND THAT SHOULD BE THEIR SOLE RESPONSIBILITY TO COME
15 UP WITH A PLAN.

16 AND I THINK IT'S IMPORTANT TO KEEP IN MIND THAT THIS
17 ISSUE HAS BEEN STUDIED BY MANY, MANY PEOPLE. LITTLE HOOVER HAS
18 PUT OUT SEVERAL REPORTS. THE DEUKMEJIAN COMMISSION, THE
19 GOVERNOR'S OWN PANEL OF EXPERTS. MANY OF THE REMEDIES HAVE
20 ALREADY BEEN LOOKED AT AND BEEN OUTLINED. AND IT'S REALLY A
21 MATTER OF MAKING DECISIONS ABOUT WHAT THE STATE WANTS TO DO TO
22 ADDRESS THIS ISSUE.

23 SO PUTTING TOGETHER A TEAM OF PEOPLE WITH THE SOLE
24 RESPONSIBILITY OF DESIGNING THE FINAL PLAN AND HAVING
25 DECISION-MAKERS AVAILABLE TO THEM TO AGREE TO THE PLAN, IT

1 SHOULD BE DONE VERY QUICKLY.

2 **JUDGE KARLTON:** WHAT DOES "VERY QUICKLY" MEAN?

3 **THE WITNESS:** I PERSONALLY BELIEVE IT COULD BE DONE
4 IN 60 DAYS.

5 **JUDGE HENDERSON:** AND WHEN YOU SAY "THE
6 DECISION-MAKERS," IS THAT ANYTHING OTHER THAN THE LEGISLATURE,
7 OR WHO ARE THE DECISION-MAKERS?

8 **THE WITNESS:** THE ADMINISTRATION AND THE LEGISLATURE.

9 **JUDGE KARLTON:** YOU GET A PLAN -- I WANT TO
10 UNDERSTAND WHAT YOU'RE SAYING. IF THIS COURT WERE TO DO
11 SOMETHING AS RADICAL AS ORDERING THE STATE TO COME UP WITH A
12 PLAN TO REDUCE POPULATIONS BY THE FIGURES THAT HAVE BEEN
13 SUGGESTED, YOU THINK IT WOULD TAKE 60 DAYS FOR THE PLANNERS TO
14 GET THE PLAN TO THE GOVERNOR AND THE LEGISLATURE.

15 HOW LONG AFTER THAT, IF YOU HAVE ANY IDEA -- AND IF
16 YOU DON'T, YOU DON'T. I UNDERSTAND.

17 **THE WITNESS:** YES. I REALLY DON'T KNOW HOW LONG IT
18 WOULD TAKE THEM TO LOOK AT IT. I THINK THAT HAVING A TIME FRAME
19 THAT THEY MUST MAKE SOME DECISION ABOUT IT WOULD BE HELPFUL TO
20 MAKE THAT HAPPEN.

21 **JUDGE KARLTON:** SIX MONTHS? SIX MONTHS? A YEAR?
22 WHAT DOES THAT MEAN?

23 **THE WITNESS:** WELL --

24 **JUDGE KARLTON:** I DON'T KNOW. I'M ASKING.

25 **THE WITNESS:** YES. I CERTAINLY THINK IT'S REASONABLE

1 THAT DESIGNING THE PLAN AND HAVING THE LEGISLATURE AND THE
2 ADMINISTRATION WEIGH IN ON IT WITHIN SIX MONTHS IS A REASONABLE
3 TIME FRAME.

4 **BY MR. SPECTER:**

5 **Q.** AND --

6 **MR. SPECTER:** I'M SORRY.

7 **JUDGE KARLTON:** THAT'S ALL RIGHT.

8 **MR. SPECTER:** OKAY.

9 **BY MR. SPECTER:**

10 **Q.** AS SOMEONE WHO IS INTERACTING WITH THE ADMINISTRATION, DID
11 YOU SEE THOSE DECISIONS MADE QUICKLY WHEN DEADLINES WERE -- WHEN
12 THERE WERE DEADLINES?

13 **A.** I THINK YOU ABSOLUTELY HAVE TO HAVE DEADLINES. AND THEY ARE
14 MADE MORE QUICKLY WITH DEADLINES, YES.

15 **Q.** OKAY.

16 **MR. SPECTER:** NO FURTHER QUESTIONS.

17 THANK YOU.

18 **JUDGE HENDERSON:** OKAY. AM I THINKING SIMPLISTICALLY,
19 IF WE WERE TO DO WHAT JUDGE KARLTON SUGGESTED? IT SEEMS TO ME
20 WE'VE GOT A GOOD START WITH THE DEUKMEJIAN REPORT, AND I GUESS
21 THE GOVERNOR'S COMMITTEE, WOULD YOU SAY, AND LITTLE HOOVER?
22 WOULD YOU START THERE, OR WOULD YOU END THERE? WOULD IT BE
23 SOMETHING BEYOND LOOKING AT THAT, OR DO YOU KNOW?

24 DO YOU HAVE ANY IDEA?

25 **THE WITNESS:** I THINK IT REALLY -- THE MANY

1 INITIATIVES THAT COULD BE PUT IN PLACE HAVE BEEN DISCUSSED BY
2 ALL OF THOSE PANELS. SO IT'S REALLY A MATTER OF DECIDING: ARE
3 WE GOING TO DO ALL OF THEM? ARE WE GOING TO DO THREE OF THEM?
4 MAKING DECISIONS ABOUT WHICH OF THOSE PLANS TO FOLLOW. AND THEN,
5 YOU KNOW, FOLLOWING UP WITH THE DOLLARS AND ANY LEGISLATION THAT
6 WOULD BE NECESSARY TO PUT THEM IN PLACE.

7 **JUDGE HENDERSON:** THANK YOU.

8 **BY MR. SPECTER:**

9 **Q.** I JUST HAVE A COUPLE OF FOLLOW-UP QUESTIONS TO JUDGE
10 HENDERSON'S QUESTIONS.

11 YOU'RE FAMILIAR WITH THE EXPERT PANEL REPORT WHICH
12 CAME OUT ABOUT A YEAR-AND-A-HALF AGO; IS THAT RIGHT?

13 **A.** YES, I AM.

14 **Q.** AND THAT WAS THE LATEST OF THESE GROUPS TO STUDY THE
15 CALIFORNIA PRISON SYSTEM; IS THAT CORRECT?

16 **A.** AS FAR AS I KNOW, YES.

17 **Q.** AND YOU RECALL THAT THAT PANEL MADE ITS FIRST RECOMMENDATION
18 WHICH WAS TO REDUCE OVERCROWDING, CORRECT?

19 **A.** YES. THAT'S CORRECT.

20 **Q.** AND YOU ALSO RECALL THAT WHAT THAT PANEL SAID WAS THAT THAT
21 PANEL HAD GONE THROUGH ALL THE PREVIOUS STUDIES AND LISTED ABOUT
22 10 FACTORS THAT ALL THE PREVIOUS STUDIES HAD RECOMMENDED,
23 CORRECT?

24 **A.** YES, IT HAD REVIEWED ALL THE PREVIOUS STUDIES.

25 **Q.** AND THAT PANEL'S CONCLUSION WAS THERE'S NO NEED TO STUDY THE

1 PROBLEM FURTHER. THAT PANEL CONCLUDED THAT THERE'S JUST THE TIME
2 TO PICK THE RECOMMENDED SOLUTIONS AND IMPLEMENT THEM; IS THAT
3 RIGHT?

4 **A.** THAT IS CORRECT. IT'S TIME TO MAKE DECISIONS.

5 **MR. SPECTER:** THANK YOU, YOUR HONOR.

6 **JUDGE HENDERSON:** THANK YOU.

7 **MR. SPECTER:** THAT'S WHAT IS IN WHAT IS CALLED THE
8 EXPERT PANEL THAT VARIOUS WITNESSES HAVE BEEN MEMBERS.

9 THANK YOU.

10 **JUDGE HENDERSON:** THANK YOU.

11 CCPOA HAVE ANY QUESTIONS OF THIS WITNESS?

12 **MS. LEONARD:** NO QUESTIONS, YOUR HONOR.

13 **JUDGE HENDERSON:** OKAY. MR. MELLO?

14 **MR. MELLO:** GOOD MORNING, YOUR HONORS.

15 **CROSS-EXAMINATION**

16 **BY MR. MELLO:**

17 **Q.** GOOD MORNING, AGAIN, MS. WOODFORD.

18 **A.** GOOD MORNING.

19 **Q.** WHEN WERE YOU THE WARDEN AT SAN QUENTIN PRISON?

20 **A.** I WAS THE WARDEN FROM 1999 UNTIL 2004.

21 **Q.** AND DO YOU KNOW HOW MANY COUNTIES IN CALIFORNIA CURRENTLY
22 OPERATE UNDER SOME FORM OF A POPULATION CAP?

23 **A.** I DID KNOW THAT NUMBER. I THINK IT'S AROUND 26.

24 **Q.** COULD IT BE POSSIBLY OVER 30?

25 **A.** IT COULD BE. BUT I'M REMEMBERING 26 FOR SOME REASON.

1 Q. DO YOU KNOW WHETHER CALIFORNIA IS CURRENTLY PILOTING AND
2 USING A RISK ASSESSMENT TOOL IN THE CDCR SYSTEM?

3 A. I KNOW THAT THEY ARE ATTEMPTING TO USE A COUPLE OF RISK AND
4 NEEDS ASSESSMENT TOOLS.

5 Q. AND MR. SPECTER WAS ASKING YOU ABOUT THE EXPERT PANEL
6 REPORT, CORRECT?

7 A. YES.

8 Q. AND THAT REPORT WAS RELATING TO REHABILITATIVE PROGRAMMING,
9 CORRECT?

10 A. I THINK IT WAS BEYOND THAT. IT WAS REALLY LOOKING AT HOW TO
11 REDUCE RECIDIVISM, WHICH REALLY GOES INTO ALL AREAS OF PUBLIC
12 SAFETY, QUITE FRANKLY.

13 Q. THAT REPORT DID NOT ANALYZE MEDICAL OR MENTAL HEALTHCARE
14 PROGRAMMING IN CDCR INSTITUTIONS, DID IT?

15 A. NOT THAT I RECALL.

16 Q. AND THAT PROGRAM DID NOT PROVIDE A POPULATION NUMBER THAT
17 WAS NECESSARY TO PROVIDE CONSTITUTIONALLY-ADEQUATE MEDICAL AND
18 MENTAL HEALTHCARE, DID IT?

19 A. I DON'T THINK IT USED THAT LANGUAGE, NO. IT DID RECOMMEND
20 REDUCING THE PRISON POPULATION TO MAKE IT OPERATIONAL.

21 Q. OKAY. ARE YOU AWARE OF ANY STUDY THAT SETS FORTH THE
22 APPROPRIATE POPULATION OR NECESSARY POPULATION TO PROVIDE
23 CONSTITUTIONALLY-ADEQUATE MEDICAL AND MENTAL HEALTHCARE IN
24 CALIFORNIA'S PRISONS?

25 A. I DON'T KNOW THAT THOSE WORDS WERE USED. I KNOW THAT THE

1 STATE ITSELF HAS LOOKED AT WHAT IT CONSIDERS TO BE APPROPRIATE
2 LEVEL OF POPULATION TO BE OPERATIONAL.

3 **Q.** OKAY. BUT ARE YOU AWARE OF ANY STUDY THAT SPECIFICALLY
4 ANALYZED THE POPULATION LEVEL NECESSARY IN ORDER TO OBTAIN
5 APPROPRIATE MEDICAL AND MENTAL HEALTHCARE?

6 **A.** WELL, I'M NOT AWARE OF A STUDY THAT JUST DEALT WITH THAT.
7 BUT IF YOU'RE USING THE TERM "OPERATIONAL," IT INCLUDES
8 PROVIDING THE SERVICES TO INMATES THAT INCLUDE MEDICAL AND
9 MENTAL HEALTHCARE.

10 **Q.** I TOOK YOUR DEPOSITION TWICE IN THIS CASE, CORRECT?

11 **A.** YES, THAT'S CORRECT.

12 **Q.** MS. WOODFORD, YOU DO NOT BELIEVE THAT THE ONLY WAY TO
13 PROVIDE CONSTITUTIONALLY-ADEQUATE MEDICAL AND MENTAL HEALTHCARE
14 IN CDCR PRISONS IS TO RELEASE PRISONERS, DO YOU?

15 **A.** COULD YOU REPEAT THAT ONE MORE TIME?

16 **Q.** SURE.

17 **MR. SPECTER:** PAUL, CAN YOU SPEAK A LITTLE LOUDER?

18 **MR. MELLO:** OKAY.

19 **BY MR. MELLO:**

20 **Q.** MS. WOODFORD, YOU DO NOT BELIEVE THAT THE ONLY WAY TO
21 PROVIDE CONSTITUTIONALLY-ADEQUATE MEDICAL AND MENTAL HEALTHCARE
22 IN CDCR PRISONS IS TO RELEASE PRISONERS, DO YOU?

23 **A.** I BELIEVE THAT WE CAN ONLY DO THAT BY REDUCING OVERCROWDING.

24 **Q.** OKAY. BUT YOU DO NOT ADVOCATE THE IMMEDIATE RELEASE OF
25 PRISONERS, CORRECT?

1 **A.** I DON'T KNOW THAT THAT'S A FAIR STATEMENT. I THINK THAT
2 THERE'S OTHER WAYS TO REDUCE OVERCROWDING OTHER THAN RELEASING
3 INMATES. BUT YOU ABSOLUTELY HAVE TO REDUCE OVERCROWDING.

4 **Q.** DO YOU KNOW WHAT THE "RATE OF INCARCERATION PER CONVICTION"
5 MEANS?

6 **A.** COULD YOU REPEAT THAT ONE MORE TIME?

7 **Q.** YES. DO YOU KNOW WHAT THE "RATE OF INCARCERATION PER
8 CONVICTION" MEANS?

9 **A.** PERHAPS YOU SHOULD GIVE ME YOUR DEFINITION OF THAT.

10 **Q.** OKAY. I ASKED YOU AT YOUR DEPOSITION IN SEPTEMBER OF 2008:
11 "WHAT IS CALIFORNIA'S RATE OF INCARCERATION PER
12 CONVICTION?"

13 I ASKED YOU:

14 "DO YOU KNOW?"

15 AND YOU SAID AT -- I'M SORRY -- PAGE 110, LINES 20
16 THROUGH 21 -- JUST PULL IT UP.

17 YOU SAID:

18 "I DON'T KNOW."

19 DO YOU KNOW WHAT I MEANT BY "RATE OF INCARCERATION
20 PER CONVICTION" WHEN YOU ANSWERED THAT QUESTION?

21 **A.** I MIGHT KNOW, BUT IF YOU WOULD EXPLAIN WHAT YOU MEAN, THEN I
22 WOULD HAVE A BETTER UNDERSTANDING IF I KNOW OR NOT.

23 **Q.** OKAY. LET'S GO TO THE NEXT QUESTION. MAYBE THAT WILL ANSWER
24 THE QUESTION.

25 LINES 23 TO 25, I SAY:

1 "DO YOU KNOW OUR RATE OF INCARCERATION PER --
2 HOW OUR RATE OF INCARCERATION PER CONVICTION COMPARES
3 TO OTHER STATES?"

4 AND YOU SAID:

5 "WE'RE SOMEWHERE IN THE MID-RANGE."

6 **A.** OKAY. SO IF YOU'RE SPEAKING OF PRISON INCARCERATION AS
7 OPPOSED TO JAIL --

8 **Q.** CORRECT.

9 **A.** -- WE ARE SOMEWHERE IN THE MID-RANGE, ACCORDING TO REPORTS
10 BY JOAN PETERSILIA.

11 **Q.** AND WHAT DOES THAT MEAN?

12 **A.** IT MEANS THE RATE OF FELONY CONVICTIONS THAT ENDS UP IN
13 STATE PRISON.

14 **Q.** OKAY. AND MUCH --

15 **A.** BUT THAT DOESN'T INTO ACCOUNT -- I MEAN, CALIFORNIA IS
16 UNIQUE IN THAT WE SEND PAROLE VIOLATORS BACK TO STATE PRISON.

17 **Q.** OKAY. IT DOESN'T ACCOUNT FOR THAT?

18 **A.** NO, NOT MY UNDERSTANDING OF THE RATE OF INCARCERATION.

19 **Q.** IS CALIFORNIA INCARCERATING PEOPLE AT A MUCH HIGHER RATE
20 THAN OTHER JURISDICTIONS AROUND THE COUNTRY?

21 **A.** FOR NEW ADMISSIONS WE'RE IN THE MID-RANGE. I THINK WE ARE
22 INCARCERATING PAROLE VIOLATORS AT A MUCH HIGHER RATE BECAUSE WE
23 SEND EVERYBODY OUT ON PAROLE, AND OUR TECHNICAL VIOLATIONS COME
24 BACK TO STATE PRISON.

25 OTHER STATES' TECHNICAL VIOLATIONS -- SOME STATES NO

1 TECHNICAL VIOLATIONS COME BACK TO STATE PRISON. AND OTHER
2 STATES, TECHNICAL VIOLATIONS ARE HANDLED WITH OTHER KINDS OF
3 SANCTIONS BEFORE STATE PRISON IS IMPOSED.

4 SO I THINK OUR RATE IS MUCH HIGHER WHEN IT COMES TO
5 PAROLE VIOLATORS.

6 Q. DO YOU -- MS. WOODFORD, YOU BELIEVE THAT APPROPRIATE CASE
7 MANAGEMENT OF PROBATIONERS AND PAROLEES BY PROBATION AND PAROLE
8 OFFICERS CAN REDUCE RECIDIVISM, CORRECT?

9 A. YES, I DO BELIEVE THAT.

10 Q. AND YOU BELIEVE THAT THERE IS A LACK OF APPROPRIATE CASE
11 MANAGEMENT OF PROBATION OR RESOURCES FOR APPROPRIATE CASE
12 MANAGEMENT OF PROBATIONERS AND PAROLEES CURRENTLY IN CALIFORNIA,
13 CORRECT?

14 A. WELL, I CERTAINLY AGREE WITH THAT STATEMENT AS IT PERTAINS
15 TO PROBATIONERS. ON THE PAROLE SIDE, I DON'T KNOW THAT IT'S
16 REALLY A LACK OF PAROLE AGENTS. IT'S REALLY THE FACT THAT WE'RE
17 PUTTING EVERYBODY ON PAROLE WHEN THAT ISN'T NECESSARY. SO THE
18 RESOURCES COULD BE ALIGNED UP WITH APPROPRIATE POLICY.

19 Q. AND YOU BELIEVE THAT THERE AREN'T -- WELL, LET ME ASK IT
20 THIS WAY. YOU TALKED ABOUT DIVERSIONARY PROGRAMS DURING YOUR
21 DIRECT TESTIMONY WITH MR. SPECTER, CORRECT?

22 A. YES.

23 Q. AND THOSE INCLUDE DRUG PROGRAMS?

24 A. DRUG PROGRAMS, YES.

25 Q. CAN YOU TELL ME SOME OF THE OTHER PROGRAMS?

1 **A.** THAT YOU COULD HAVE IN THE COMMUNITY?

2 **Q.** CORRECT.

3 **A.** WELL, SOME OF THEM ARE THE KINDS OF PROGRAMS THAT ARE RUN
4 HERE IN SAN FRANCISCO, SUCH AS THE CHARTER HIGH SCHOOL THAT
5 CONTINUES OUTSIDE IN THE COMMUNITY.

6 YOU COULD HAVE DAY REPORTING CENTERS WHERE
7 PROBATIONERS AND PAROLEES REPORT ON A DAILY BASIS TO RECEIVE
8 SERVICES.

9 THE GENDER-RESPONSIVE PROGRAM, SUCH AS THE WOMEN'S
10 PROGRAM HERE IN SAN FRANCISCO WHERE FEMALE OFFENDERS COULD BE
11 SENT TO TO RECEIVE SERVICES FOR THEMSELVES AND THEIR CHILDREN.

12 YOU COULD HAVE FAMILY SERVICES THAT DIRECT RESOURCES
13 TO THE ENTIRE FAMILY, BECAUSE IT REALLY IS A FAMILY ISSUE.

14 PROVIDING HEALTHCARE IS ANOTHER SERVICE. MENTAL
15 HEALTHCARE IN THE COMMUNITY FOR INDIVIDUALS WHO ARE IN NEED OF
16 THAT.

17 IT'S REALLY PROVIDING HOUSING, APPROPRIATE HOUSING
18 FOR INDIVIDUALS.

19 IT'S -- IT REALLY SHOULD BE BASED ON USING GOOD RISK
20 AND NEEDS ASSESSMENT TOOLS, AND THEN PROVIDING THE PROGRAMS THAT
21 ARE IDENTIFIED BY THE NEEDS OF THE INDIVIDUAL.

22 **JUDGE KARLTON:** AND YOU THINK THAT WE CAN DO ALL THAT
23 FOR \$10,000 A PAROLEE INSTEAD OF 40 OR 45,000? I DON'T MEAN
24 "PAROLEE." I MEAN "OFFENDER."

25 **THE WITNESS:** I BELIEVE THAT IS THE NUMBER FROM THE

1 CHIEF PROBATION OFFICERS OF CALIFORNIA. AND I PERSONALLY DO
2 BELIEVE THAT'S TRUE. YOU CAN DO THAT MUCH CHEAPER IN THE
3 COMMUNITY.

4 **JUDGE REINHARDT:** ARE YOU TALKING, THEN, JUST
5 PROBATION IS IN NEED OF THAT FIGURE OR PROBATION AND PAROLEES?

6 **THE WITNESS:** I'M NOT SURE WHAT THE COST IS PER
7 PERSON FOR PAROLE, BUT IT WOULD REFER TO BOTH, BECAUSE ONE OF
8 THE THINGS THAT I DID FIND OUT AS THE CHIEF PROBATION OFFICER IS
9 MANY, MANY PEOPLE ARE ON PROBATION AND PAROLE AT THE SAME TIME.
10 SO THE COST OF PROVIDING THAT KIND OF COMMUNITY CORRECTION
11 SHOULD BE THE SAME FOR BOTH INDIVIDUALS.

12 **BY MR. MELLO:**

13 **Q.** OKAY. DO YOU BELIEVE THE LACK OF APPROPRIATE CASE
14 MANAGEMENT OF PROBATIONERS AND PAROLEES CAN INCREASE RECIDIVISM?

15 **A.** THAT THE LACK OF CASE MANAGEMENT CAN INCREASE RECIDIVISM?

16 WELL, IT IS THE FEEDER TO THE STATE PRISON SYSTEM. SO IF YOU
17 DON'T -- IF YOU'RE NOT PROVIDING APPROPRIATE CASE MANAGEMENT ON
18 PROBATION, YOU HAVE LESS PEOPLE BEING SUCCESSFUL ON PROBATION.

19 **Q.** SO THE ANSWER IS: YES?

20 **A.** I THINK FOR PEOPLE ON PROBATION THE ANSWER IS YES, THEY CAN
21 END UP IN STATE PRISON IF THEY ARE NOT SUCCESSFUL ON PROBATION.

22 **Q.** AND MANY OF THOSE -- I CALL THEM "DIVERSIONARY PROGRAMS"
23 THAT YOU'VE TESTIFIED ABOUT A FEW MOMENTS AGO. DO YOU UNDERSTAND
24 WHAT I MEAN?

25 **A.** YES.

1 Q. OKAY. MANY OF THOSE DIVERSIONARY PROGRAMS, DO YOU KNOW IF
2 THE STATE -- IF THERE ARE SUFFICIENT NUMBERS OF THOSE
3 DIVERSIONARY PROGRAMS IN THE LOCAL COMMUNITIES FOR THE CURRENT
4 POPULATION OF PROBATIONERS AND PAROLEES?

5 A. I KNOW THAT THERE IS NOT SUFFICIENT NUMBERS OF THOSE
6 PROGRAMS.

7 Q. AND WOULD IT ALSO BE TRUE THAT IF THE 52,000 ADDITIONAL
8 PAROLEES WERE ADDED TO THE SYSTEM OVER A TWO-YEAR PERIOD THAT
9 THERE ARE WOULD STILL NOT BE ENOUGH OF THOSE RESOURCES
10 AVAILABLE?

11 A. YOU'RE TALKING ABOUT TWO DIFFERENT SYSTEMS. SO IT'S THE SAME
12 RESOURCES THAT ARE THERE FOR PAROLE. THESE ARE THE SAME PEOPLE
13 COMING OUT. SO, AGAIN, IT'S TWO SYSTEMS. PROBATION CAN BE A
14 PREVENTION FOR PEOPLE EVER GETTING INTO THE STATE PRISON SYSTEM.

15 Q. RIGHT.

16 A. PEOPLE ON PAROLE ARE ALREADY ON PAROLE.

17 Q. RIGHT. AND THERE ARE --

18 JUDGE KARLTON: BUT YOU'RE ADVOCATING, AMONG OTHER
19 THINGS, REDUCING THE NUMBER OF PAROLEES THAT WE -- I KEEP SAYING
20 "WE" -- THAT THE STATE SENDS BACK TO PRISON WHILE THEY ARE ON
21 PAROLE FOR WHAT IS DESCRIBED AS "TECHNICAL PAROLE VIOLATIONS."

22 THE WITNESS: RIGHT.

23 JUDGE KARLTON: AND MR. MELLO'S QUESTION IS: ARE
24 THERE SUFFICIENT RESOURCES PRESENTLY, MUCH LESS IF WE RELEASED
25 20 -- 52,000, TO PROPERLY PROGRAM THE PAROLEES NOW, MUCH LESS

1 LATER?

2 **THE WITNESS:** UM-HUM.

3 **JUDGE KARLTON:** THAT'S HIS QUESTION.

4 **THE WITNESS:** WELL, IF YOU'RE KEEPING PEOPLE ON -- IF
5 YOU'RE SENDING PAROLEES, KEEPING THEM FROM COMING BACK TO STATE
6 PRISON FOR TECHNICAL VIOLATIONS, THE PAROLE OFFICERS HAVE SET
7 CASELOAD STANDARDS, SO THERE WOULD BE ADDITIONAL PAROLE OFFICERS
8 ADDED TO HANDLE THE CASELOAD. SO THERE WOULD BE GREATER
9 SUPERVISION OF THOSE INDIVIDUALS.

10 **JUDGE KARLTON:** BUT THE QUESTION THAT MR. MELLO IS
11 TRYING TO EXPLORE WITH YOU IS, AS YOU VIEW -- IF YOU ARE ABLE TO
12 ANSWER.

13 **THE WITNESS:** RIGHT.

14 **JUDGE KARLTON:** AS YOU VIEW THE PAROLE SYSTEM TODAY,
15 IS IT -- DOES IT HAVE ADEQUATE PROGRAMMING FOR THE PEOPLE BEING
16 RELEASED TODAY?

17 **THE WITNESS:** NO, IT DOES NOT HAVE ADEQUATE
18 PROGRAMMING.

19 **JUDGE KARLTON:** AND IF WE INCREASE THAT NUMBER BY
20 52,000, EVEN IF WE WERE ADDING PAROLE OFFICERS, WE STILL
21 WOULDN'T HAVE ENOUGH PROGRAMS TO PROGRAM THOSE -- I'M NOT
22 SPEAKING ENGLISH -- TO ACHIEVE APPROPRIATE PROGRAMMING FOR THE
23 PAROLEES.

24 **THE WITNESS:** WELL, MY ANSWER TO THAT WOULD BE THIS:
25 THE GOAL OF THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND

1 REHABILITATION IS REHABILITATION. SO YOU HAVE TO SPEND THE
2 DOLLARS TO REHABILITATE PEOPLE, WHETHER THEY ARE IN PRISON OR
3 OUTSIDE OF PRISON. IT'S MUCH MORE EXPENSIVE IN PRISON.

4 SO THOSE DOLLARS CAN BE SENT TO THE COMMUNITY TO
5 PROVIDE THE KINDS OF PROGRAMS THAT PAROLE IS WORKING ON NOW. AND
6 THAT'S WHERE THE MONEY SHOULD BE SPENT.

7 I THINK IT'S ALSO IMPORTANT TO REMEMBER THAT THE
8 STATE OF CALIFORNIA'S CURRENTLY PAROLING 10,000 PEOPLE A MONTH.
9 AND SO WHEN YOU TALK ABOUT 50,000 PEOPLE OVER TWO YEARS, THE
10 INCREASE ISN'T AS DRAMATIC AS SAYING "50,000 PEOPLE."

11 IT'S ADDING A COUPLE OF THOUSAND MORE PER MONTH AND
12 BRINGING UP THE RESOURCES TO ADDRESS THEIR NEEDS, WHICH IS WHAT
13 PAROLE IS SUPPOSED TO DO. THAT'S THE MISSION OF PAROLE.

14 **BY MR. MELLO:**

15 **Q.** SO THE STATE WOULD GO FROM PAROLING 10 TO 12,000
16 INDIVIDUALS PER MONTH, CORRECT? THAT'S WHAT YOU JUST TESTIFIED
17 TO?

18 **A.** WELL, IF YOU'RE REDUCING -- DEPENDING ON THE MODEL. I MEAN,
19 YOU KNOW, IF YOU'RE REDUCING THE POPULATION BY 50,000, YOU HAVE
20 TWO YEARS TO DO IT, IT DEPENDS ON WHAT MODEL YOU USE. I WOULD
21 HOPE THAT SOME OF THE MODEL IS PREVENTION DOLLARS SO THAT THEY
22 ARE NOT COMING IN THE FRONT DOOR, WHICH MEANS THAT YOU'RE NOT
23 REALLY REDUCING THAT MANY MORE. YOU'RE STOPPING THE INFLOW.

24 AND THEN, SOME OF THE MODEL IS PUTTING IN INCENTIVES
25 INSIDE THE PRISON SYSTEM SO PEOPLE ARE LEAVING PRISON EARLIER

1 BECAUSE THEY ARE PARTICIPATING IN THE KINDS OF PROGRAMS THAT
2 THEY NEED TO PARTICIPATE IN.

3 SO, AGAIN, IT'S REALLY HARD TO ANSWER YOUR QUESTION
4 WITHOUT KNOWING WHAT DECISIONS ARE GOING TO BE MADE ABOUT HOW TO
5 DO THIS. IT CERTAINLY CAN BE DONE SAFELY WITHOUT IMPACTING
6 PUBLIC SAFETY AND PROBABLY IMPROVING PUBLIC SAFETY IF IT'S DONE
7 CORRECTLY AND AS HAS BEEN RECOMMENDED BY THE MANY EXPERTS WHO
8 HAVE REVIEWED THIS ISSUE.

9 **Q.** UNDERSTOOD.

10 YOUR TESTIMONY EARLIER WAS THAT CALIFORNIA'S
11 RECIDIVISM RATE WAS IN THE 60 TO 70 PERCENT RANGE, CORRECT?

12 **A.** YES.

13 **Q.** SO DOES THAT MEANING THAT 60 TO 70 PERCENT OF THOSE 52,000
14 INDIVIDUALS THAT PLAINTIFFS ARE ASKING THE COURT TO REDUCE THE
15 PRISON POPULATION BY WILL RECIDIVATE?

16 **A.** THAT'S A RECIDIVISM RATE OVER THREE YEARS, AND THAT
17 CERTAINLY IS POSSIBLE IF WE DON'T PUT THE INVESTMENT INTO THE
18 KINDS OF PROGRAMS THAT KEEP PEOPLE FROM RECIDIVATING.

19 **MR. MELLO:** NOTHING FURTHER.

20 **JUDGE REINHARDT:** IS THERE ANY WAY TO ESTIMATE HOW
21 MUCH OF THE REDUCTION OF THE PRISON POPULATION WOULD BE
22 ACCOMPLISHED IF YOUR PROGRAMS WERE INSTITUTED AND FEWER PEOPLE
23 WERE THEN SENT TO PRISON? HOW MUCH OF THE REDUCTION WOULD BE
24 ACCOMPLISHED?

25 **JUDGE KARLTON:** DO YOU KNOW THE ANSWER TO THAT

1 QUESTION?

2 **THE WITNESS:** I PERSONALLY DO NOT HAVE THE ANSWER TO
3 THAT QUESTION. I UNDERSTAND THAT OTHER PEOPLE HAVE ESTIMATED
4 THAT IF YOU PUT MORE MONEY IN THE PROBATION THAT YOU WOULD HAVE
5 A GREATER SUCCESS RATE AND ACTUALLY REDUCE THE NUMBER OF PEOPLE
6 WHO COME INTO THE PRISON SYSTEM BY ABOUT 20,000.

7 **JUDGE REINHARDT:** WOULD IT ALSO REDUCE IT BY THE
8 NUMBER OF PAROLEES WHO DO NOT RETURN TO PRISON?

9 **THE WITNESS:** YES, THAT'S CORRECT.

10 **JUDGE REINHARDT:** AND IS THERE ANY ESTIMATE FOR THAT
11 NUMBER?

12 **THE WITNESS:** NOT THAT I CAN RECALL OFF THE TOP OF MY
13 HEAD. I'M SURE THAT PEOPLE HAVE DONE THAT STUDY BECAUSE THEY
14 HAVE LOOKED AT EVERY ASPECT OF THIS, BUT I'M NOT RECALLING THAT
15 NUMBER.

16 **JUDGE REINHARDT:** WELL, MY QUESTION REALLY IS WE'RE
17 NOT TALKING, THEN, ABOUT RELEASING 52,000. WE'RE TALKING ABOUT
18 REDUCING THE NUMBER THAT WILL BE GOING IN, AND WE DON'T KNOW
19 QUITE -- WHERE DO WE GET AN ESTIMATE OF THAT NUMBER?

20 **THE WITNESS:** I'M SURE SOME OF THE EXPERTS WHO ARE
21 GOING TO TESTIFY CAN ANSWER THAT. BUT REALLY IT IS THE BEST PLAN
22 IS TO LOOK AT REDUCING THE NUMBER OF PEOPLE COMING IN IN THE
23 FIRST PLACE, AND ASSISTING THOSE THAT ARE EXITING THE PRISON
24 SYSTEM SO YOU CAN HAVE AN IMPACT ON BOTH ENDS.

25 **JUDGE REINHARDT:** OKAY.

1 **MR. MITCHELL:** GOOD MORNING.

2 **JUDGE HENDERSON:** YOU MAY PROCEED, COUNSEL.

3 **MR. MITCHELL:** BILL MITCHELL FOR THE DEFENDANT
4 INTERVENORS.

5 **CROSS-EXAMINATION**

6 **BY MR. MITCHELL:**

7 **Q.** GOOD MORNING, MS. WOODFORD.

8 **A.** GOOD MORNING.

9 **Q.** I JUST HAVE A FEW QUESTIONS FOR YOU.

10 I BELIEVE YOU INDICATED IN YOUR PREVIOUS TESTIMONY
11 THAT YOU STARTED YOUR CAREER AS A CORRECTIONAL OFFICER AT SAN
12 QUENTIN IN EITHER THE LATE '70'S OR EARLY '80'S; IS THAT
13 CORRECT?

14 **A.** THAT'S CORRECT.

15 **Q.** WHEN WAS IT THAT YOU BEGAN?

16 **A.** 1978.

17 **Q.** AS A CORRECTIONAL OFFICER; IS THAT CORRECT?

18 **A.** AS A CORRECTIONAL OFFICER.

19 **Q.** AND YOU REMAINED AT SAN QUENTIN MOVING UP THROUGH THE RANKS
20 ALL THE WAY TO WARDEN THROUGH THE '90'S, CORRECT?

21 **A.** UNTIL 2004, UM-HUM.

22 **Q.** I BELIEVE THAT AT ONE POINT IN YOUR TESTIMONY YOU LIKENED
23 THE YARD AT SAN QUENTIN TO ALMOST LIKE A COLLEGE CAMPUS IN THE
24 EARLY YEARS WHILE YOU WERE THERE AS A CORRECTIONAL OFFICER WITH
25 PEOPLE GOING TO -- INMATES GOING TO PROGRAMMING, CLASSES, THINGS

1 OF THAT SORT?

2 **A.** I TALKED ABOUT INMATES. I DON'T KNOW THAT I USED THE WORD
3 "YARD," BUT THE ATMOSPHERE BEING LIKE A COLLEGE CAMPUS.

4 **Q.** AND DURING THE COURSE OF YOUR CAREER THERE YOU SAW IT CHANGE
5 DRAMATICALLY, DIDN'T YOU?

6 **A.** THAT IS CORRECT.

7 **Q.** INCARCERATION RATES TRIPLED, IF NOT QUADRUPLLED, AT SAN
8 QUENTIN DURING THAT TIME PERIOD.

9 **A.** I'M NOT SURE WHAT THE ACTUAL RATES WERE, BUT, YES, WE BEGAN
10 RECEIVING LARGE NUMBER OF INMATES FOR LONGER PERIODS OF TIME.

11 **Q.** AND THAT WAS DURING THE TIME IN CALIFORNIA WHEN THE STATE
12 LEGISLATURE WAS INCREASING PENALTIES FOR SERIOUS VIOLENT
13 OFFENDERS, CORRECT?

14 **A.** NOT JUST FOR SERIOUS VIOLENT OFFENDERS, BUT INCREASING
15 PENALTIES OVERALL, INCLUDING DRUG OFFENSES AND OTHER KINDS OF
16 CRIMES, YES.

17 **Q.** INCARCERATION RATES WERE INCREASING, THEREFORE THE
18 POPULATION IN THE PRISON AT SAN QUENTIN WAS INCREASING, AND YOU
19 WITNESSED THAT, CORRECT?

20 **A.** YES, THAT'S TRUE.

21 **Q.** YOU'RE AWARE BACK IN 1982 THAT THE BUREAU OF JUSTICE
22 STATISTICS INDICATED THAT THE CALIFORNIA NUMBER OF VICTIMS OF
23 SERIOUS CRIMES WERE APPROXIMATELY 4,771 PER 100,000 OF
24 POPULATION, CORRECT?

25 **A.** NO, I'M NOT AWARE OF THAT.

1 Q. ARE YOU AWARE THAT DURING THAT TIME PERIOD WHILE YOU WERE AT
2 SAN QUENTIN WHILE INCARCERATION RATES WERE TRIPLING, IF NOT
3 QUADRUPLING, THAT THE NUMBER OF CALIFORNIA VICTIMS OF SERIOUS
4 CRIMES DROPPED FROM 4,777 PER 100,000 DOWN TO 2381 PER 100,000?

5 A. WHAT I AM AWARE OF IS THAT VIOLENT CRIME WENT DOWN AROUND
6 THE NATION, AND INCLUDING STATES WHERE INCARCERATION RATES DID
7 NOT INCREASE, IN FACT DECREASED. SO I'M QUITE AWARE OF THAT
8 STATISTIC.

9 AND EXPERTS SAY THAT REDUCTIONS IN CRIME RATES HAVE
10 VERY LITTLE TO DO WITH INCARCERATION.

11 Q. IS IT YOUR OPINION THAT THE LENGTH OF TERMS OR THE LENGTH OF
12 STAY IN PRISON DOES NOT DETER CRIME?

13 A. I THINK THAT IT IS ONE ASPECT OF DETERRING CRIME. IT CAN BE.

14 Q. WHAT STATES AND WHAT STUDIES ARE YOU REFERRING TO WHEN YOU
15 INDICATE THAT THE INCARCERATION RATES DO NOT LEAD TO A REDUCTION
16 IN CRIME RATES?

17 A. I'VE READ SO MANY STUDIES. BUT I WOULD REFER YOU TO JOAN
18 PETERSILIA, MUCH OF HER WORK. SOME OF THE WORK OF JIM AUSTIN,
19 BARRY KRISBERG, NATIONAL COUNCIL ON CRIME AND DELINQUENCY,
20 STUDIES OUT OF JOHN JAY COLLEGE.

21 THERE IS SO MUCH WORK IN THIS AREA THAT TALKS ABOUT
22 THE FACT THAT INCARCERATION RATES REALLY HAVE NOT BEEN
23 PROVIDED -- BEEN THE REASON FOR THE REDUCTION IN CRIME RATES.
24 IT'S BEEN LOTS OF OTHER STRATEGIES.

25 Q. HAVE YOU REVIEWED -- ARE YOU AWARE OF THE STUDY DONE BY THE

1 STANFORD UNIVERSITY BOARD OF TRUSTEES, THE SOCIAL BENEFITS OF
2 CONFINING HABITUAL CRIMINALS?

3 **A.** NO, I'M NOT AWARE OF THAT STUDY.

4 **Q.** WOULD YOU AGREE WITH THE PROPOSITION THAT A LAW HAS NO
5 PENALTY, IT HAS NO DETERRENT EFFECT?

6 **A.** COULD YOU REPEAT THE STATEMENT AGAIN?

7 **Q.** IF A LAW HAS NO PENALTY, IT HAS NO DETERRENT EFFECT.

8 **JUDGE KARLTON:** YOU OUGHT TO BE CAREFUL ABOUT WHAT
9 YOU'RE SAYING. WE HAVE A LOT OF FEDERAL LAWS THAT ARE PREDATORY
10 IN NATURE.

11 **MR. MITCHELL:** I'M SORRY. I COULDN'T HEAR YOU, YOUR
12 HONOR.

13 **JUDGE KARLTON:** NEVER MIND. GO AHEAD.

14 YOUR ASSUMPTION THAT THAT IS NOT THE CONDITION OF THE
15 LAW IS CERTAINLY NOT TRUE OF FEDERAL LAW, BUT GO RIGHT AHEAD.

16 **BY MR. MITCHELL:**

17 **Q.** LET ME REPEAT IT.

18 **A.** THANK YOU.

19 **Q.** IF A LAW HAS NO PENALTY, THERE IS NO DETERRENT EFFECT TO ITS
20 VIOLATION.

21 WOULD YOU AGREE WITH THAT STATEMENT?

22 **A.** YES, I THINK THAT'S TRUE.

23 **JUDGE KARLTON:** TELL THAT TO THE UNITED STATES
24 CONGRESS.

25 GO AHEAD.

1 **THE WITNESS:** BUT THAT ALSO DOESN'T SAY THAT THE
2 PENALTY HAS TO BE INCARCERATION, EITHER. THERE'S OBVIOUSLY A
3 NEED FOR PRISONS, AND OBVIOUSLY THEY PROVIDE SOME DETERRENCE.

4 BUT IN AND OF ITSELF, IT DOES NOT REDUCE CRIME RATES
5 AND DOES NOT MAKE OUR SOCIETY SAFER. THERE'S LOTS OF OTHER
6 ELEMENTS OF THIS VERY COMPLICATED ISSUE. CRIME IS A VERY
7 COMPLICATED ISSUE, AND THERE'S LOTS OF OTHER ELEMENTS THAT NEED
8 TO COME INTO PLAY.

9 **BY MR. MITCHELL:**

10 **Q.** YOU WOULD AGREE THAT AN HABITUAL CRIMINAL WHO IS IN PRISON
11 IS GOING TO BE DETERRED AND PREVENTED FROM COMMITTING ADDITIONAL
12 CRIMES, CORRECT?

13 **MR. SPECTER:** OBJECTION.

14 **THE WITNESS:** I'M NOT SURE I UNDERSTAND THE QUESTION.

15 **JUDGE KARLTON:** A GUY WHO IS IN PRISON CAN'T COMMIT
16 CRIMES TO SOCIETY, AT LARGE. HE MAY COMMIT CRIMES RELATIVE TO
17 OTHER PRISONERS, BUT AT LEAST HE ISN'T DOING HARM TO SOCIETY, AT
18 LARGE.

19 **THE WITNESS:** AT LEAST WHILE HE'S INCARCERATED. BUT
20 EVERYBODY COMES HOME, AND SO -- OR MOST INDIVIDUALS COME HOME.
21 AND SO IT'S REALLY HAVING APPROPRIATE STRATEGIES TO MAKE A
22 SOCIETY SAFER ARE MUCH MORE COMPLICATED THAN JUST SAYING
23 INCARCERATION.

24 **BY MR. MITCHELL:**

25 **Q.** DURING THE 1990'S AND THE THREE STRIKES LEGISLATION AND

1 OTHER CRIME LEGISLATION THAT INCREASED PENALTIES, THE NUMBER OF
2 SERIOUS CRIMES IN CALIFORNIA HAS DECREASED, HAS IT NOT?

3 **A.** VIOLENT CRIME ACROSS THE NATION HAS DECREASED. THAT'S TRUE.

4 **Q.** ARE YOU AWARE THAT IN 1993 THERE WERE 126,000 ROBBERIES IN
5 THE STATE OF CALIFORNIA?

6 **A.** NO, I WAS NOT AWARE OF THAT.

7 **Q.** ARE YOU AWARE THAT IN 1999 IT WAS DOWN TO 60,000 ROBBERIES?

8 **A.** NO, I WAS NOT AWARE OF THAT.

9 **Q.** ARE YOU AWARE THAT IN 1993 CALIFORNIA HAD THE FOURTH WORST
10 CRIME INDEX IN THE COUNTRY AT 6,456 PER 100,000 OF POPULATION?

11 **A.** NO, I'M NOT AWARE OF THAT. BUT I AM AWARE THAT NEW YORK IS
12 CONSIDERED THE SAFEST CITY IN AMERICA, AND THEY ARE LOCKING UP
13 FEWER AND FEWER PEOPLE IN NEW YORK.

14 SO INCARCERATION IS NOT THE ONLY STRATEGY THAT CAN BE
15 UTILIZED TO REDUCE A CRIME RATE. CRIME RATES ARE GOING DOWN
16 ACROSS THE UNITED STATES, VIOLENT CRIME, EVEN IN AREAS WHERE
17 THEY ARE KEEPING MORE PEOPLE OUT OF PRISON.

18 **Q.** ARE YOU AWARE OF THE FACT THAT IN 1999, CALIFORNIA HAD
19 IMPROVED TO NOW BEING THE 29TH WORSE CRIME INDEX STATE AT 3,804
20 PER 100,000 OF POPULATION?

21 **A.** NO, I'M NOT AWARE OF THOSE STATISTICS.

22 **Q.** ARE YOU AWARE THAT DURING THAT TIME PERIOD THE NUMBER OF
23 MURDERS DROPPED 54 PERCENT IN CALIFORNIA, WHILE INCARCERATION
24 RATES WERE INCREASING?

25 **A.** AGAIN, I'M AWARE THAT VIOLENT CRIME ACROSS THE NATION HAS

1 GONE DOWN, INCLUDING STATES WHERE INCARCERATION HAS BEEN
2 DECREASED.

3 **Q.** NOW, YOU'VE INDICATED THAT THE WAY IN WHICH CALIFORNIA
4 TREATS TECHNICAL PAROLE VIOLATORS IS DIFFERENT FROM HOW OTHER
5 STATES TREAT PAROLE VIOLATORS, CORRECT?

6 **A.** WE'RE ONE OF TWO STATES WHERE EVERYBODY LEAVES ON PAROLE,
7 YES.

8 **Q.** YOU WOULD AGREE THAT CERTAIN TECHNICAL PAROLE VIOLATORS
9 SHOULD BE SENT BACK TO PRISON. NOT ALL OF THEM SHOULD BE
10 TREATED IN THE COMMUNITY, CORRECT?

11 **A.** YES, I THINK THAT CERTAIN TECHNICAL VIOLATIONS WOULD NEED TO
12 BE SENT BACK TO PRISON.

13 **Q.** I THINK, AS I UNDERSTOOD FROM YOUR TESTIMONY, YOU WOULD
14 INDICATE OR YOU WOULD RECOMMEND OR SUPPORT THE IDEA OF USING
15 SOME TYPE OF A RISK ASSESSMENT TOOL TO DETERMINE WHICH TECHNICAL
16 PAROLE VIOLATORS ARE ACTUALLY RETURNED TO CUSTODY?

17 **A.** THE USE OF A RISK AND NEEDS ASSESSMENT TOOL IS REALLY A TOOL
18 TO BE UTILIZED TO KNOW HOW TO CASE MANAGE A CASE.

19 SO IT'S ONE ELEMENT OF MAKING A DECISION ABOUT HOW
20 PEOPLE SHOULD BE MANAGED, YES, THAT'S TRUE. I AGREE WITH THAT
21 STATEMENT.

22 **JUDGE KARLTON:** NO, BUT THE QUESTION WAS SOMEWHAT
23 DIFFERENT. THE QUESTION RAISED WAS WHETHER A RISK AND NEED
24 ASSESSMENT TOOL WOULD, AMONG OTHER THINGS, IDENTIFY PEOPLE WHO
25 OUGHT TO BE RETURNED TO PRISON DESPITE THE FACT THAT THERE'S A

1 TECHNICAL VIOLATION.

2 **THE WITNESS:** NO, I DON'T AGREE WITH THAT STATEMENT.

3 THANK YOU. I MISUNDERSTOOD THE QUESTION.

4 THE RISK AND NEEDS ASSESSMENT TOOL IS BETTER UTILIZED
5 TO DECIDE WHAT INDIVIDUALS NEED TO BE ON PAROLE AT ALL, AND THEN
6 WHAT KIND OF SUPERVISION SHOULD BE UTILIZED FOR THE REMAINING
7 PEOPLE WHO ARE ON PAROLE.

8 THE BEHAVIOR OF THE INDIVIDUAL WILL DETERMINE WHETHER
9 THEY SHOULD BE SENT BACK TO PRISON. AFTER USING INTERMEDIATE
10 SANCTIONS IN THE COMMUNITY, IF THOSE FAIL THEN YOU HAVE THE
11 OPTION OF SENDING PEOPLE EITHER BACK TO JAIL OR PRISON.

12 I THINK THE BETTER OPTION, QUITE FRANKLY, IS JAIL,
13 BECAUSE THE LONGEST AMOUNT OF TIME YOU CAN SEND A PAROLE
14 VIOLATOR BACK TO PRISON IS 12 MONTHS. AND IT'S MUCH BETTER TO
15 KEEP THAT INDIVIDUAL IN THE COMMUNITY WHERE THEY ARE GOING TO BE
16 PAROLED INTO, ANYWAY.

17 SO IN MY MIND I NEED TO CORRECT MY EARLIER STATEMENT.
18 YOU NEED TO HAVE JAIL OR PRISON SANCTIONS. THE BETTER
19 ALTERNATIVE IS JAIL SANCTIONS.

20 **BY MR. MITCHELL:**

21 **Q.** AND WOULD THAT APPLY TO EVEN YOUR SERIOUS VIOLENT AND SEX
22 OFFENDERS WHO ARE ON PAROLE, OR ARE YOU QUALIFYING IT TO
23 NONVIOLENT PAROLE VIOLATORS?

24 **A.** YOU'RE ASKING MY PERSONAL OPINION. AND, AGAIN, SENDING
25 SOMEBODY BACK TO STATE PRISON FOR AN AVERAGE OF 4.2 MONTHS ISN'T

1 HELPING.

2 KEEPING THE INDIVIDUAL IN THE LOCAL COMMUNITY, EVEN
3 IF THAT'S COUNTY -- IN THE LOCAL JAIL WHERE YOU CAN BEGIN TO
4 DESIGN HOW YOU'RE GOING TO MANAGE THAT PERSON OUT IN THAT
5 COMMUNITY IS A BETTER OPTION.

6 **Q.** YOU'RE AWARE THAT CALIFORNIA PRISONS HOUSE APPROXIMATELY
7 30,000 OR MORE ILLEGAL ALIENS IN CUSTODY, CORRECT?

8 **A.** I THINK THAT NUMBER IS A LITTLE HIGH FROM MY -- MY
9 INFORMATION ABOUT THAT PARTICULAR TOPIC IS ABOUT TWO YEARS OLD.
10 IT SEEMS A LITTLE HIGH TO ME.

11 **Q.** ARE YOU AWARE THAT CALIFORNIA HAS MORE THAN DOUBLED THE NEXT
12 FOUR STATES -- LET ME REPHRASE THAT.

13 ARE YOU AWARE THAT CALIFORNIA HAS MORE ILLEGAL ALIENS
14 IN CUSTODY MORE THAN TWICE AS MANY AS THE NEXT FOUR STATES
15 COMBINED?

16 **A.** NO, I'M NOT AWARE OF THAT.

17 **Q.** WOULD YOU AGREE WITH THE PROPOSITION THAT FEDERAL -- THAT
18 THE ILLEGAL ALIENS SHOULD BE PLACED IN FEDERAL CUSTODY TO
19 RELIEVE OVERCROWDING IN CALIFORNIA PRISONS?

20 **A.** YOU KNOW, I HONESTLY DON'T HAVE ENOUGH INFORMATION TO ANSWER
21 THAT QUESTION. IT REALLY DEPENDS ON HOW MANY PEOPLE WOULD END UP
22 BEING DEPORTED. NOT EVERYONE ENDS UP BEING DEPORTED.

23 THERE'S JUST A LOT OF VARIABLES I WOULD HAVE TO
24 UNDERSTAND BEFORE I COULD EVEN GIVE AN INTELLIGENT ANSWER TO
25 THAT QUESTION.

1 **Q.** IF THE FEDERAL PRISON SYSTEM WAS ABLE AND WILLING TO TAKE
2 THE ILLEGAL ALIENS OUT OF THE CALIFORNIA SYSTEM AND HOUSE THEM
3 FOR THEIR TERMS WHILE THEY WERE -- BEFORE THEY WERE DEPORTED,
4 WOULD YOU AGREE WITH THAT PROPOSITION?

5 **A.** AGAIN, I REALLY DON'T HAVE ENOUGH INFORMATION TO ANSWER THAT
6 QUESTION. THERE'S A LOT OF QUESTIONS THAT HAVE TO BE ANSWERED TO
7 SAY THEY ARE BETTER SENT TO THE FEDERAL SYSTEM OR BEING KEPT
8 LOCALLY.

9 **JUDGE HENDERSON:** DO YOU KNOW, MR. MITCHELL, IF WE
10 GOT TO THAT POINT WHETHER THE THREE OF US COULD ORDER THAT?

11 **MR. MITCHELL:** I DON'T. BUT BEING FEDERAL JUDGES, I
12 WOULD THINK THAT THERE MIGHT BE SOME AUTHORITY THERE.

13 **JUDGE KARLTON:** THAT'S A TERRIBLY EXAGGERATED VIEW OF
14 WHAT WE -- THAT'S PART OF THE PROBLEM IN THE INSTANT CASE.

15 GO AHEAD.

16 **MR. MITCHELL:** THANK YOU.

17 **BY MR. MITCHELL:**

18 **Q.** THERE ARE A NUMBER OF DIFFERENT WAYS AND MEANS BY WHICH THE
19 PRISON POPULATION CAN BE REDUCED. WE'VE TALKED ABOUT TECHNICAL
20 PAROLE VIOLATORS. ARE YOU AWARE OF TO WHAT EXTENT OR WHAT NUMBER
21 OF BEDS COULD BE SAVED IN OUR STATE PRISON SYSTEM PER YEAR BY
22 DIVERTING TECHNICAL PAROLE VIOLATORS OUT OF THE SYSTEM?

23 **A.** IT'S INCLUDED IN SOME OF THE REPORTS THAT HAVE BEEN DONE,
24 AND I BELIEVE IT WAS AROUND 20,000 A YEAR.

25 **Q.** 20,000 PER YEAR?

1 **A.** YES. YES, I BELIEVE THAT WAS THE NUMBER.

2 IT MAY HAVE BEEN HIGHER THAN THAT, BUT THAT'S WHAT
3 I'M RECALLING.

4 **Q.** AND IF THEIR AVERAGE LENGTHS OF STAY IS FOUR MONTHS, IF THAT
5 WAS IMPLEMENTED IN COMMUNITIES OR IN THE LOCAL JURISDICTIONS,
6 YOU WOULDN'T ACTUALLY HAVE TO RELEASE ANYONE FROM PRISON TO SAVE
7 20,000 BEDS PER YEAR, BECAUSE THEY ARE GOING TO BE GETTING OUT
8 IN FOUR MONTHS, ANYWAY, RIGHT?

9 **A.** SOMEHOW I GOT LOST IN THAT QUESTION. IF YOU COULD REPEAT IT
10 AGAIN?

11 **Q.** I'LL REPHRASE IT. IN FACT, I'LL GO ON TO SOMETHING
12 DIFFERENT.

13 LET ME ASK YOU THIS: YOU INDICATED THAT NONVIOLENT
14 OFFENDERS ARE THE POPULATION THAT WE SHOULD BE LOOKING AT FOR
15 EARLY RELEASE; IS THAT CORRECT?

16 **A.** YES, THAT'S CORRECT.

17 **Q.** YOU'RE AWARE OF THE FACT THAT THE GREAT MAJORITY OF THE
18 NONVIOLENT OFFENDERS, THE PROPERTY AND DRUG OFFENDERS THAT ARE
19 IN PRISON ARE HABITUAL PROPERTY AND DRUG OFFENDERS, CORRECT?

20 **JUDGE KARLTON:** THAT ASSUMES SOMETHING -- WELL, I
21 DON'T KNOW. THAT MAY BE MR. STORY'S (SIC) TESTIMONY.

22 YOU MAY ANSWER THAT QUESTION.

23 **THE WITNESS:** YES. I'M NOT SURE THAT I AGREE TOTALLY.
24 I DON'T THINK I AGREE WITH THAT STATEMENT.

25

1 **BY MR. MITCHELL:**

2 **Q.** MOST OF THE PEOPLE THAT GO TO PRISON FOR PROPERTY AND DRUG
3 CRIMES, IT'S NOT THEIR FIRST OFFENSE, CORRECT?

4 **A.** GENERALLY, THAT'S TRUE, YES.

5 **Q.** IN FACT, ARE YOU AWARE THAT -- EXCUSE ME ONE MOMENT.

6 **A.** YOU KNOW, BACK TO YOUR LAST STATEMENT, I'M NOT SURE. IT
7 USUALLY ISN'T THEIR FIRST OFFENSE WHEN THEY END UP WITH THEIR
8 FIRST CONVICTION TO STATE PRISON. BUT I DON'T KNOW THAT THAT
9 TRANSLATES THAT WHEN THEY ARE OUT ON PAROLE THAT THEY ARE THE
10 PRIMARY CAUSE OF PROPERTY AND DRUG CRIMES.

11 AND I THINK THE STATISTICS ACTUALLY DON'T BEAR THAT
12 OUT.

13 **Q.** MAYBE WE'RE TALKING ABOUT DIFFERENT THINGS HERE.

14 INDIVIDUALS WHO GET SENTENCED TO PRISON FOR A
15 NONVIOLENT PROPERTY OR DRUG OFFENSE, ARE YOU AWARE OF THE NUMBER
16 OF PRIOR FELONY CONVICTIONS, ON AVERAGE, THAT THOSE INDIVIDUALS
17 HAVE?

18 **A.** NO, I'M NOT.

19 **Q.** WOULD IT SURPRISE YOU TO LEARN THAT THE MAJORITY OF THOSE IN
20 PRISON HAVE, ON AVERAGE, THREE OR MORE PRIOR FELONY CONVICTIONS
21 BEFORE THEY WENT TO PRISON FOR THEIR FIRST TIME, SECOND TIME OR
22 THIRD TIME?

23 **A.** NO, IT WOULD NOT SURPRISE ME. IT'S REALLY A FAILURE OF OUR
24 PROBATION SYSTEM IN CALIFORNIA. WE'VE NOT FUNDED IT
25 APPROPRIATELY TO ASSIST -- TO REDUCE THE NUMBER OF PEOPLE WHO

1 END UP IN STATE PRISON FOR THOSE LOW END OFFENSES. AND IT
2 CERTAINLY IS AN AREA THAT WE CAN IMPROVE UPON TO REDUCE THE
3 PRISON POPULATION.

4 I WOULD AGREE WITH THAT.

5 Q. AND THE HIGH RECIDIVISM RATES INDICATE, I THINK YOU
6 INDICATED 70 PERCENT, WHEN THESE NONVIOLENT, HABITUAL PROPERTY
7 AND DRUG OFFENDERS GET OUT OF PRISON, EVEN THOUGH PRISON
8 CONDITIONS ARE AS TERRIBLE AS WE ALL KNOW THEY ARE, THEY END UP
9 GOING BACK AT A RATE OF 70 PERCENT, DON'T THEY?

10 JUDGE HENDERSON: LOW END? YOU'RE TREATING THE
11 RECIDIVISM RATE AS ALL, CONSISTING ONLY OF THESE LOW END
12 OFFENDERS? THAT SEEMS TO BE --

13 MR. MITCHELL: CORRECT, YOUR HONOR. I BELIEVE THAT'S
14 BEEN SOME OF THE TESTIMONY HERE. AND SOME OF THE STATISTICS WE
15 HAVE IS THAT THE NONVIOLENT OFFENDERS HAVE A RECIDIVISM RATE
16 APPROACHING 70 PERCENT.

17 JUDGE KARLTON: BUT I DON'T THINK THAT'S WHAT THE
18 TESTIMONY IS. THE AVERAGE IS, OF ALL OFFENDERS WHO ARE RELEASED
19 ON PROBATION, THE RECIDIVISM RATE IS 70 PERCENT. I THINK THAT'S
20 WHAT THE EVIDENCE IS.

21 DO YOU KNOW, MA'AM?

22 THE WITNESS: YES. IT'S THE OVERALL RATE OF WHETHER
23 THEY ARE SERIOUS OR NONSERIOUS OFFENDERS. IT'S ALL INCLUDED
24 INTO ONE RATE.

25

1 **BY MR. MITCHELL:**

2 **Q.** YOU'VE BEEN FAMILIAR WITH -- I'M SURE YOU'VE REVIEWED BEFORE
3 THE CDCR TABLES ON RECIDIVISM RATES WITH ONE AND TWO YEAR
4 FOLLOW-UP PERIODS?

5 **A.** I HAVE SEEN THEM IN THE PAST, YES.

6 **Q.** TABLES THAT LIST OUT THE VARIOUS TYPES OF CRIMES FROM
7 BURGLARY TO PETTY THEFT OR PRIOR VEHICLE THEFT, AND THEN HAVE
8 RECIDIVISM RATES FOR ONE AND TWO-YEAR PERIODS?

9 **A.** I HAVE SEEN THOSE IN THE PAST, YES.

10 **Q.** AND JUST, FOR EXAMPLE, FOR A BURGLARY SECOND DEGREE, A
11 TWO-YEAR RECIDIVISM RATE OF 60.49 PERCENT FOR VEHICLE THEFT, A
12 RECIDIVISM RATE OF 69.08 PERCENT. YOU'RE AWARE OF THOSE HIGH
13 RECIDIVISM RATES FOR PEOPLE CONVICTED, RELEASED, AND THEN SENT
14 BACK TO PRISON WITH NEW TERMS, CORRECT?

15 **A.** BECAUSE YOU'VE JUST TOLD ME. I'VE NOT REVIEWED THOSE FOR A
16 VERY LONG TIME, RIGHT.

17 **Q.** NOW, THESE OFFENDERS ARE ALREADY ONLY SERVING HALF OF THEIR
18 TERMS, CORRECT?

19 **A.** SOME ARE SERVING HALF OF THEIR TERMS. SOME HAVE DIFFERENT
20 CREDIT EARNING STATUSES, YES.

21 **JUDGE KARLTON:** IF YOU'RE ON ONE STRIKES AND TWO
22 STRIKES, YOU'RE REDUCING IT FURTHER, BECAUSE -- I DON'T REMEMBER
23 THE NUMBERS, BUT 80 PERCENT.

24 **THE WITNESS:** 80 PERCENT, RIGHT.

25

1 **BY MR. MITCHELL:**

2 **Q.** BUT FOR THOSE WHO DON'T HAVE VIOLENT OR STRIKE PRIORS THAT
3 ARE SERVING TERMS OF 16 MONTHS TO THREE YEARS TO FOUR-YEAR
4 TERMS, THEY ARE GETTING CREDITS NOW FOR HALF OF THEIR TOTAL
5 TERM, CORRECT?

6 **A.** THAT'S CORRECT.

7 **Q.** AND YOU'VE INDICATED IN ADVOCATING FOR EARLY RELEASE THAT
8 THOSE TERMS SHOULD BE FURTHER REDUCED TO ALLOW FOR POPULATION
9 REDUCTION IN THE PRISON, CORRECT?

10 **A.** WITH INCENTIVES, YES.

11 **Q.** NOW, YOU'VE INDICATED IN YOUR OPINION EARLY RELEASE CAN BE
12 IMPLEMENTED WITHOUT ADVERSE EFFECTS ON PUBLIC SAFETY.

13 **A.** YES.

14 **Q.** ARE YOU AWARE OF STUDIES THAT HAVE INDICATED THAT EARLY
15 RELEASE INCREASED THE AMOUNTS OF CRIMES SUFFERED BY THE PUBLIC
16 AND FURTHER DISCREDITS AN ALREADY TROUBLED CRIMINAL JUSTICE
17 SYSTEM?

18 **A.** NO, I'M NOT AWARE. YOU ARE OBVIOUSLY REFERRING TO A SPECIFIC
19 STUDY I'M NOT AWARE OF.

20 **Q.** A STUDY WRITTEN BY A MAN NAMED JAMES AUSTIN. ARE YOU AWARE
21 OF THAT?

22 **A.** I'VE READ SOME OF JIM AUSTIN'S WORK, BUT I DON'T RECALL
23 READING THAT.

24 **Q.** ARE YOU AWARE OF A STUDY WRITTEN BY A STEVEN LEVITT OF THE
25 UNIVERSITY OF CHICAGO ENTITLED: "THE EFFECT OF PRISON

1 POPULATION SIZE ON CRIME RATES: EVIDENCE FROM PRISON
2 OVERCROWDING LITIGATION," PUBLISHED IN 1996?

3 **A.** I RECALL READING THAT A LONG TIME AGO, YES.

4 **Q.** SO YOU'RE AWARE, THEN, THAT THAT STUDY COMPARED STATES WITH
5 PRISON POPULATION CAPS TO STATES WITHOUT PRISON POPULATION CAPS
6 AND SHOWED THAT THERE WAS AN INCREASE IN VIOLENT CRIME OF
7 7.9-8.3 PERCENT.

8 **A.** IT'S BEEN SO LONG AGO THAT I READ THAT THAT I'M NOT -- I
9 DON'T RECALL READING THAT. I DO KNOW THAT MANY PEOPLE DISAGREED
10 WITH THAT STUDY.

11 **Q.** AND THAT STUDY ALSO INDICATED THERE WAS AN INCREASE IN
12 PROPERTY CRIME OF 5.7 TO 6.2 PERCENT IN STATES WITH POPULATION
13 CAPS, CORRECT?

14 **A.** I DON'T KNOW.

15 **Q.** ARE YOU AWARE OF THE EARLY RELEASE PROGRAM THAT TOOK PLACE
16 IN ILLINOIS?

17 **A.** NO, I DON'T HAVE SPECIFIC INFORMATION ABOUT ILLINOIS.

18 **Q.** HAVE YOU STUDIED OR LOOKED AT ANY OF THE OTHER STATES THAT
19 HAVE ACTUALLY EMPLOYED EARLY RELEASE PROGRAMS AND EXAMINED WHAT
20 THE EFFECTS OF THE EARLY RELEASE WAS IN THOSE STATES?

21 **A.** I'VE NOT LOOKED AT SPECIFIC STATES. I'VE READ STUDIES THAT
22 HAVE BEEN DONE ABOUT EARLY RELEASE PROGRAMS, YES.

23 **Q.** WHAT ABOUT THE RELEASE OF PRISONERS EARLY IN PHILADELPHIA IN
24 THE STATE OF PENNSYLVANIA? WERE YOU AWARE OF WHAT THE IMPACTS
25 ON THE PUBLIC SAFETY WERE THERE?

1 **A.** WHEN DID THAT OCCUR?

2 **Q.** PARDON?

3 **A.** WHEN DID THAT OCCUR?

4 **Q.** 1986.

5 **A.** NO, I'M NOT AWARE OF THAT.

6 **Q.** WOULD IT SURPRISE YOU TO LEARN THAT OUT OF 9,000 --

7 **JUDGE KARLTON:** THAT'S GOING TO ASSUME FACTS NOT IN
8 EVIDENCE UNLESS YOU'VE GOT SOMEBODY WHO IS GOING -- IF YOU TELL
9 ME THAT YOU'LL HAVE SOMEBODY COMING IN TO VERIFY THESE STUDIES,
10 THEN -- I'M SORRY. I DIDN'T MEAN TO INTERRUPT -- THEN, OF
11 COURSE, YOU CAN PROCEED. BUT OTHERWISE, IT'S NOT IN EVIDENCE.

12 **THE WITNESS:** AND IF I CAN SAY --

13 **MR. MITCHELL:** I CAN BRING IT UP AT A LATER TIME.

14 **THE WITNESS:** OKAY.

15 **BY MR. MITCHELL:**

16 **Q.** ARE YOU AWARE OF THE EARLY RELEASE PROGRAM THAT TOOK PLACE
17 IN ILLINOIS BETWEEN 1980 AND 1983?

18 **A.** NO, I'M NOT.

19 BUT I REALLY WOULD LIKE TO SAY THAT WE HAVE LEARNED A
20 LOT ABOUT THE SCIENCE OF CORRECTIONS AND COMMUNITY CORRECTIONS
21 SINCE THE '80'S. AND SO I'M NOT SURE THAT ANYTHING THAT
22 OCCURRED IN THE '80'S IS REALLY RELEVANT TO THE DISCUSSION OF
23 CORRECTIONS TODAY, BECAUSE SINCE THAT TIME MANY STATES ARE USING
24 RISK AND NEEDS ASSESSMENT TOOLS AND USING EVIDENCE-BASED
25 PROGRAMS THAT HAVE PROVEN TO BE SUCCESSFUL TO REDUCE THEIR

1 RECIDIVISM RATES.

2 **Q.** ARE YOU AWARE OF THE INCREASE IN CRIME THAT TOOK PLACE WITH
3 THE INDIVIDUALS WHO WERE RELEASED EARLY IN THE ILLINOIS SYSTEM?

4 **JUDGE KARLTON:** SAME OBJECTION. SAME RULING.

5 SIR, TELL ME, ARE YOU GOING TO HAVE SOMEBODY COMING
6 IN TO VERIFY THAT -- THESE QUESTIONS? IF YOU ARE, YOU MAY
7 PROCEED. OTHERWISE, IT'S JUST -- I MEAN, I WILL ACCEPT YOUR
8 REPRESENTATION THAT SOMEBODY IS COMING IN. BUT OUTSIDE OF THAT,
9 YOU'RE NOT PERMITTED TO DO WHAT YOU'RE DOING.

10 **MR. MITCHELL:** I BELIEVE THAT THE NEXT WITNESS CALLED
11 BY THE PLAINTIFFS, ACTUALLY, CONDUCTED STUDIES, MR. AUSTIN AND
12 MR. KRISBERG.

13 **JUDGE KARLTON:** OKAY. DO YOU KNOW WHETHER THEY DID
14 OR NOT? YOU MAY PROCEED ON THAT BASIS.

15 IT IS REPRESENTED THAT SOMETIME THERE WAS A STUDY
16 WHICH DEALT WITH RECIDIVISM RATE OF EARLY RELEASEES IN ILLINOIS?

17 **MR. MITCHELL:** CORRECT.

18 **JUDGE KARLTON:** ARE YOU AWARE OF THAT STUDY?

19 **THE WITNESS:** NO, I'M NOT.

20 **MR. MITCHELL:** EXCUSE ME ONE MOMENT.

21 ON SECOND THOUGHT, YOUR HONOR, I'M NOT GOING TO GO
22 INTO THAT AT THIS TIME WITH THIS WITNESS.

23 I HAVE NO FURTHER QUESTIONS.

24 **JUDGE HENDERSON:** THANK YOU, COUNSEL.

25 REDIRECT, MR. SPECTER?

1 **MR. SPECTER:** YES, YOUR HONOR.

2 **REDIRECT EXAMINATION**

3 **BY MR. SPECTER:**

4 **Q.** WHILE YOU WERE WORKING FOR THE DEPARTMENT OF CORRECTIONS WAS
5 THE BRIDGING PROGRAM, WHAT'S CALLED "THE BRIDGING PROGRAM"
6 OPERATING?

7 **A.** YES.

8 **MR. MELLO:** OBJECTION, OUTSIDE THE SCOPE OF CROSS.

9 **JUDGE KARLTON:** IT IS.

10 **MR. SPECTER:** OH, WELL, MR. MITCHELL JUST SPENT A LOT
11 OF TIME TALKING TO MS. WOODFORD ABOUT CREDITS. THIS IS A
12 CREDIT-EARNING PROGRAM.

13 **JUDGE HENDERSON:** PROCEED.

14 **BY MR. SPECTER:**

15 **Q.** SO THE BRIDGING PROGRAM ALLOWS PRISONERS WHO ARE IN THE
16 RECEPTION CENTER TO EARN CREDITS, CORRECT? HALFTIME CREDITS;
17 IS THAT CORRECT?

18 **A.** THE BRIDGING PROGRAM ALLOWED INMATES TO BEGIN EARNING
19 HALFTIME CREDITS WHILE THEY WERE IN THE RECEPTION CENTER
20 PROCESSING, YES.

21 **Q.** AND THAT BRIDGING PROGRAM WAS ENACTED SO THAT WHEN PRISONERS
22 ENGAGED IN CERTAIN ACTIVITIES THEY WOULD BE GIVEN THOSE CREDITS;
23 IS THAT RIGHT?

24 **A.** THAT IS CORRECT.

25 **Q.** THOSE WEREN'T EVIDENCE-BASED ACTIVITIES, WERE THEY?

1 **A.** NO, THEY WERE NOT.

2 **Q.** AND THE EFFECT OF THE BRIDGING PROGRAM WAS THAT SINCE THEY
3 EARN THE CREDITS DURING RECEPTION CENTER, WHEN THEY WENT TO
4 THE -- THEIR NEXT INSTITUTION, THEY WOULD CONTINUE TO EARN
5 CREDITS EVEN THOUGH THEY DIDN'T HAVE A JOB; IS THAT CORRECT?

6 **A.** THAT IS CORRECT.

7 **Q.** AND PRIOR TO THE BRIDGING PROGRAM, PRISONERS WOULDN'T START
8 EARNING HALFTIME CREDITS UNTIL THEY WERE IN AND
9 CREDIT-QUALIFYING PROGRAM, CORRECT?

10 **A.** THAT IS CORRECT.

11 **Q.** SO THE NET EFFECT OF THE BRIDGING PROGRAM WAS TO ALLOW
12 PRISONERS TO EARN CREDITS AGAINST THEIR SENTENCE WITHOUT
13 ENGAGING IN A CREDIT-QUALIFYING PROGRAM; IS THAT RIGHT?

14 **A.** THAT IS CORRECT.

15 **Q.** AND THAT RESULT -- AND WHEN YOU EARN CREDITS YOU GET OUT OF
16 PRISON SOONER; IS THAT CORRECT?

17 **A.** YOU GET OUT OF PRISON SOONER, THAT IS CORRECT.

18 **Q.** SO IT WOULD BE ESSENTIALLY AN EARLY RELEASE PROGRAM; ISN'T
19 THAT RIGHT?

20 **A.** THAT IS CORRECT.

21 **MS. JOHNSON:** A LEADING LINE OF QUESTIONING, YOUR
22 HONORS.

23 **JUDGE KARLTON:** ONE LAWYER. MR. MELLO IS THE PERSON.

24 **MR. MELLO:** OBJECTION, LEADING.

25 **MR. SPECTER:** I THOUGHT YOU WERE ALLOWED TO LEAD

1 EXPERTS, BUT I CAN DO IT THE OTHER WAY IF YOU WANT TO GO SLOWER.

2 **JUDGE HENDERSON:** YOU ARE RIGHT. PROCEED.

3 **BY MR. SPECTER:**

4 **Q.** OKAY. DURING THE TIME WHEN THE BRIDGING PROGRAM WAS
5 IMPLEMENTED, DID YOU -- YOU WERE STILL WORKING IN THE DEPARTMENT
6 OF CORRECTIONS, CORRECT?

7 **A.** YES, I WAS.

8 **Q.** AND THAT RESULTED IN MORE PRISONERS GETTING RELEASED A DATE
9 EARLIER THAN THEY WOULD HAVE OTHERWISE, CORRECT?

10 **A.** THAT'S CORRECT. IT ACTUALLY INCREASED THE NUMBER OF
11 INDIVIDUALS PAROLING OUT OF RECEPTION CENTERS.

12 **Q.** WERE AWARE OF ANY PUBLIC OUTCRY ABOUT THIS PROGRAM?

13 **JUDGE KARLTON:** LET'S START BY SAYING: WERE YOU
14 AWARE OF ANY PUBLIC KNOWLEDGE OF THE PROGRAM?

15 **BY MR. SPECTER:**

16 **Q.** YES.

17 **A.** I THINK IT REALLY STAYED UNDER THE RADAR. I DIDN'T HEAR
18 MUCH ABOUT IT IN THE PUBLIC, IN THE NEWS OR ANYTHING, REALLY.

19 **Q.** SO LAW ENFORCEMENT OFFICIALS WEREN'T CONTACTING YOU
20 COMPLAINING ABOUT THIS PROGRAM?

21 **A.** I DON'T RECALL EVER RECEIVING ONE CONTACT.

22 **Q.** AND YOU'RE AWARE OF THE FACT THAT THERE WAS -- YOU'RE AWARE
23 OF THE FACT THAT THERE ARE CONSERVATION CAMPS IN THE DEPARTMENT
24 OF CORRECTIONS, CORRECT?

25 **A.** IT IS A WONDERFUL PROGRAM, YES. I'M QUITE AWARE OF THAT.

1 Q. AND THEY FIGHT FOREST FIRES ESSENTIALLY, RIGHT?

2 A. THEY ARE OUT THERE FIGHTING FIRES ALL THE TIME SAVING THE
3 TAXPAYERS LOTS OF MONEY, YES.

4 Q. AND AT A CERTAIN POINT WHILE YOU WERE IN THE DEPARTMENT OR A
5 CERTAIN POINT THESE PRISONERS' CREDIT-EARNING STATUS INCREASED.
6 THEY WENT FROM A DAY-FOR-DAY CREDIT TO TWO DAYS FOR ONE DAY
7 CREDIT; IS THAT RIGHT?

8 A. THAT IS CORRECT.

9 MR. MELLO: OBJECTION, LEADING TO THE WHOLE LINE OF
10 QUESTIONS.

11 JUDGE HENDERSON: OVERRULED.

12 BY MR. SPECTER:

13 Q. AND WERE YOU AWARE OF ANY PUBLIC OUTCRY ABOUT THE FACT THAT
14 THOSE PRISONERS WERE GETTING OUT OF PRISON EARLY?

15 A. I DIDN'T HEAR ANYTHING, ANY PUBLIC OUTCRY ABOUT THAT. THE
16 PUBLIC IS GENERALLY VERY HAPPY WITH THE FIREFIGHTERS.

17 Q. OKAY. NOW, MR. MELLO ASKED YOU -- MR. MELLO ASKED YOU ABOUT
18 A QUESTION ABOUT THE FACT THAT THERE AREN'T ENOUGH SERVICES TO
19 BE PROVIDED -- THE KIND OF SERVICES THAT YOU WOULD LIKE TO BE --
20 SEE PROVIDED IN THE COMMUNITY, BOTH FOR PROBATION AND CERTAINLY
21 PROBATION AND POSSIBLY PAROLE, DEPENDING ON HOW THEY ALLOCATE
22 THEIR RESOURCES.

23 REMEMBER THAT LINE OF QUESTIONING?

24 A. YES, I DO.

25 Q. KNOWING THAT, IS IT STILL YOUR OPINION THAT IF

1 PRISONERS -- IF THE POPULATION WAS REDUCED, THAT THE PUBLIC
2 SAFETY WOULDN'T BE ADVERSELY EFFECTED?

3 **A.** IT IS STILL MY OPINION.

4 **Q.** THANK YOU.

5 **JUDGE KARLTON:** WAIT. WAIT. WAIT. THIS IS NOT AN
6 UNIMPORTANT POINT, NOT THAT I'M SUGGESTING EVERYTHING ELSE YOU
7 SAID WAS.

8 DO I UNDERSTAND YOU TO BE SAYING -- I MISUNDERSTOOD.
9 IT IS NOT YOUR -- I DON'T KNOW HOW TO FORMULATE THIS. IS IT YOUR
10 VIEW THAT EVEN GIVEN THE LACK OF PROGRAM -- RESOURCES FOR
11 ADEQUATE PROGRAMMING TODAY, A RELEASE OF PRISONERS WITH THE
12 PRESENT SYSTEM WOULD NOT INCREASE PUBLIC DANGER?

13 MIGHT NOT BE A GOOD QUESTION.

14 **THE WITNESS:** IT IS MY OPINION THAT IT WOULD NOT
15 INCREASE PUBLIC DANGER FOR SOME OF THE REASONS THAT WE JUST
16 DISCUSSED.

17 WE'VE BEEN GIVING CREDITS TO PEOPLE IN THE RECEPTION
18 CENTER, RELEASING THEM EARLIER, AND WE HAVEN'T SEEN A RISE IN
19 CRIME AS A RESULT OF THAT.

20 WE'RE GIVING -- LETTING OUT OUR FIREFIGHTERS EARLIER,
21 AND WE HAVEN'T SEEN A RISE IN CRIME AS A RESULT OF THAT. SO
22 BASED ON MY EXPERIENCE I DON'T THINK THAT IT WOULD INCREASE
23 CRIME.

24 I THINK IT GIVES US AN OPPORTUNITY TO ACTUALLY REDUCE
25 CRIME IF WE TAKE THE RESOURCES THAT WE'RE USING TO INCARCERATE

1 PEOPLE AND PUT IT IN THE COMMUNITY.

2 EXCUSE ME.

3 **JUDGE KARLTON:** BUT YOUR VIEW IS THAT'S NOT A
4 NECESSARY PREREQUISITE TO RELEASING PEOPLE TODAY.

5 **THE WITNESS:** THAT IS MY VIEW.

6 **JUDGE KARLTON:** ALL RIGHT. I'M SORRY. IT TURNED OUT
7 THOSE QUESTIONS DID HAVE MEANING. I JUST DIDN'T UNDERSTAND
8 THEM.

9 **MR. SPECTER:** OKAY. WELL, I ACCEPT YOUR APOLOGY.
10 THANK YOU.

11 **JUDGE HENDERSON:** MR. MELLO WOULD BE FIRST.

12 **MR. MELLO:** I HAVE NOTHING FURTHER.

13 **JUDGE HENDERSON:** OKAY. MR. MITCHELL, BEFORE YOU
14 BEGIN, YOU ASKED MS. WOODFORD SOME QUESTIONS ABOUT THE CRIME
15 LEVEL IN 1996, AND THEN IT WENT DOWN IN 1999. AND YOU SEEM TO
16 STOP THERE. THAT WAS 10 YEARS AGO.

17 ARE THERE ANY MORE CURRENT? DID IT KEEP GOING DOWN,
18 AND IS IT DOWN NOW? OR DID IT -- WHAT HAPPENED AFTER 19 -- I
19 DON'T HAVE A SENSE.

20 **MR. MITCHELL:** I BELIEVE CRIME RATES HAVE CONTINUED
21 TO GO DOWN.

22 **JUDGE HENDERSON:** FROM 1999.

23 **MR. MITCHELL:** I BELIEVE THAT'S CORRECT.

24 **JUDGE HENDERSON:** OKAY.

25 **JUDGE KARLTON:** THAT'S TRUE NATIONWIDE.

1 **THE WITNESS:** IT'S TRUE ACROSS THE NATION, YES.

2 **RECROSS-EXAMINATION**

3 **BY MR. MITCHELL:**

4 **Q.** I JUST WANTED TO FOLLOW-UP A LITTLE BIT ON WHAT JUSTICE
5 CARLTON JUST ASKED YOU ABOUT.

6 **JUDGE KARLTON:** JUDGE.

7 **MR. MITCHELL:** JUDGE, EXCUSE ME.

8 **JUDGE KARLTON:** MUCH MORE MODEST IN THE FEDERAL
9 SYSTEM.

10 **JUDGE HENDERSON:** HE'S A JUSTICE.

11 **JUDGE REINHARDT:** NO, NO.

12 **JUDGE HENDERSON:** NO JUSTICES UP HERE.

13 **JUDGE REINHARDT:** NO JUSTICES.

14 **BY MR. MITCHELL:**

15 **Q.** IF I UNDERSTOOD THE QUESTION, COMMUNITY RESOURCES ARE WHAT
16 THEY ARE NOW. YOU'VE INDICATED THAT EARLY RELEASE OR A PRISONER
17 RELEASE ORDER WILL NOT ADVERSE LY IMPACT PUBLIC SAFETY SO -- IS
18 THAT YOUR OPINION?

19 **A.** THAT IS MY OPINION, YES.

20 **Q.** IF WE ARE TO RELEASE EARLY SOME OF THE NONVIOLENT PROPERTY
21 AND DRUG OFFENDERS THAT HAVE THAT 60 TO 70 PERCENT RECIDIVISM
22 RATE, THAT THEY HAVE SHOWN US IN THE PAST THAT THEY ARE GOING TO
23 CONTINUE TO COMMIT CRIMES WHEN THEY GET OUT, WHAT'S GOING TO
24 STOP THEM?

25 **A.** THESE ARE INDIVIDUALS THAT ARE GOING HOME, ANYWAY. SO

1 HAVING THEM GO HOME 30, 60, 90 DAYS EARLIER, WE HAVE SEEN WITH
2 THE BRIDGING PROGRAM IN THE RECEPTION CENTER AND THE CAMPS
3 CREDIT PROGRAM AND WITH THE OTHER -- THE DRUG PROGRAM THAT --
4 THE JACKIE SPEAR BILL HASN'T IMPACTED THE CRIME RATE. IN FACT,
5 YOU'VE SAID IT CONTINUES TO GO DOWN.

6 Q. BUT THE NUMBER OF CRIMES THAT THEY COMMIT CONTINUE TO TAKE
7 PLACE WHILE THEY ARE IN THE COMMUNITY.

8 JUDGE HENDERSON: AREN'T YOU JUST ARGUING?

9 MR. MITCHELL: NO, I'M ASKING.

10 BY MR. MITCHELL:

11 Q. CORRECT?

12 A. I'M NOT SURE THAT -- COULD YOU REPEAT IT AGAIN, THE
13 QUESTION?

14 Q. IF THEY ARE NOT IN PRISON -- REGARDLESS OF WHEN THEY ARE
15 GETTING OUT, IF THEY ARE NOT IN PRISON THEY ARE IN THE
16 COMMUNITY, AND THEY ARE COMMITTING CRIMES AT A RATE OF 60 TO
17 70 PERCENT?

18 JUDGE KARLTON: OVER 30 --

19 MR. SPECTER: THAT MISSTATES THE EVIDENCE, PAROLE
20 VIOLATION, NOT COMMITTING CRIME.

21 MR. MITCHELL: THANK YOU.

22 JUDGE HENDERSON: ANYTHING FURTHER?

23 MR. SPECTER: NOTHING FURTHER.

24 JUDGE HENDERSON: THANK YOU FOR RETURNING, MS.

25 WOODFORD. YOU'RE EXCUSED.

1 LET'S TAKE A 15 MINUTE RECESS.

2 (THEREUPON RECESS WAS TAKEN.)

3 **JUDGE KARLTON:** BEFORE WE BEGIN, SOMETHING THAT
4 HAPPENED LAST SESSION HAS NOW CAUSED SOME CONFUSION AMONG THE
5 JUDGES. WE'RE NOT SURE WHETHER THE WORD "RECIDIVISM" HAS THE
6 SAME MEANING TO BOTH SIDES OF THE TWO TABLES. WHAT DO THE
7 PLAINTIFFS UNDERSTAND THE WORD "RECIDIVISM" IN THE --

8 **MS. EVENSON:** YOUR HONOR, REBEKAH EVENSON FOR
9 PLAINTIFFS.

10 **JUDGE KARLTON:** THANK YOU.

11 **MS. EVENSON:** OUR UNDERSTANDING OF THE RECIDIVISM
12 STATISTICS THAT EXIST FOR CDCR IS THAT THEY SHOW RETURN TO
13 PRISON RATES WITHIN THREE YEARS.

14 **JUDGE KARLTON:** IN OTHER WORDS, THAT INCLUDES
15 TECHNICAL VIOLATIONS?

16 **MS. EVENSON:** YES, YOUR HONOR.

17 **JUDGE HENDERSON:** DO THE DEFENDANTS AGREE WITH THAT
18 DEFINITION?

19 **MS. JOHNSON:** WE AGREE THAT'S HOW THE STATISTICS ARE
20 CALCULATED BY THE CDCR.

21 **JUDGE KARLTON:** THANK YOU VERY MUCH. THAT MAKES A
22 BIG DIFFERENCE.

23 **MR. SPECTER:** BEFORE WE CALL DR. AUSTIN, THERE'S AN
24 EVIDENTIARY POINT THAT IT WOULD BE NICE TO CLEAR UP. THE
25 DEFENDANTS HAVE MADE A MOTION TO STRIKE CERTAIN -- DR. AUSTIN

1 WROTE HOW MANY REPORTS?

2 **MS. EVENSON:** FOUR.

3 **MR. SPECTER:** FOUR REPORTS. THEY'VE MADE A MOTION TO
4 STRIKE PORTIONS OF THAT REPORT BECAUSE THIS IS NOW CALLED SORT
5 OF PHASE TWO AND WE'RE DONE WITH PHASE ONE. WE HAVE NOT
6 OBJECTED TO THAT MOTION BECAUSE WE DIDN'T CALL MR. -- OR
7 DR. AUSTIN IN PHASE ONE. I JUST WANT TO MAKE -- IF THE COURT
8 ACCEPTS THAT RULING, I JUST WANT TO MAKE IT CLEAR THAT THAT GOES
9 FOR OTHER WITNESSES AS WELL.

10 THERE ARE WITNESSES THAT ORIGINALLY TESTIFIED OR
11 SUBMITTED DECLARATIONS WHICH HAVE PHASE ONE EVIDENCE IN THEM,
12 AND THEY WEREN'T CALLED AS PHASE ONE. SO IF YOUR COURT IS GOING
13 TO GRANT THAT MOTION, THEN I JUST WANT TO KNOW ABOUT IT BEFORE
14 WE GO FORWARD SO WE CAN FIGURE OUT OUR CROSS FOR THE REST OF THE
15 TRIAL. DOES THAT MAKE SENSE?

16 **JUDGE KARLTON:** I UNDERSTAND WHAT YOU'RE SAYING. YOU
17 KNOW, I HAVE NOT LOOKED AT THE MOTIONS TO STRIKE BECAUSE MY VIEW
18 WAS THAT WE WOULD WORRY ABOUT THAT AT THE END OF THE TRIAL. NOW
19 YOU'RE SAYING IT MAKES A DIFFERENCE AS TO HOW YOU CROSS-EXAMINE,
20 WHICH MAKES SENSE. I HADN'T THOUGHT OF THAT. I DON'T KNOW WHAT
21 THE HECK TO DO, TO TELL YOU THE TRUTH.

22 **JUDGE REINHARDT:** I DON'T UNDERSTAND THE MOTION.
23 WHAT IS THE MOTION --

24 **MS. JOHNSON:** THE MOTION IS VERY SIMPLE, YOUR HONORS.
25 IT WAS WITH RESPECT TO DR. AUSTIN'S FIRST EXPERT REPORT WHERE HE

1 DREW CONCLUSIONS REGARDING WHETHER OVERCROWDING WAS THE PRIMARY
2 CAUSE. HE WAS NOT CALLED TO TESTIFY AND SO WE'D MOVE TO STRIKE
3 THOSE PORTIONS THAT RELATED TO THE PRIMARY CAUSE QUESTION. WE
4 ARE NOT AWARE OF ANY SIMILAR MOTIONS HAVING BEEN MADE BY
5 PLAINTIFFS, AND I DON'T THINK IT'S POSSIBLE TO ADDRESS ANY
6 ISSUES THEY HAVE EXCEPT ON A CASE-BY-CASE BASIS.

7 **JUDGE HENDERSON:** THAT'S MY POINT. I ASSUME AT THIS
8 POINT THAT'S AN UNOPPOSED MOTION.

9 **JUDGE KARLTON:** ARE YOU SAYING -- I'M ASKING YOU, NOT
10 TELLING YOU, MR. SPECTER. ARE YOU SAYING THAT THERE WILL BE
11 WITNESSES FOR THE DEFENSE WHICH HAVE FILED AFFIDAVITS OR DIRECT
12 TESTIMONY WHICH REALLY GOES TO PART ONE AND THEN THEY WERE NOT
13 CALLED IN PART ONE?

14 **MR. SPECTER:** YES, YOUR HONOR, I'M SAYING THAT, AND
15 IT WILL MAKE A DIFFERENCE WHEN THEY PUT ON THEIR CASE.

16 **JUDGE KARLTON:** I SUPPOSE WE ARE JUST GOING TO HAVE
17 TO WAIT UNTIL WE GET TO THOSE PEOPLE AND YOU TELL US WHAT YOU
18 THINK OUGHT TO BE STRICKEN. I DON'T KNOW WHAT WE COULD DO
19 OTHERWISE TODAY.

20 **JUDGE REINHARDT:** THE QUESTION IS, ARE WE GOING TO
21 EXCLUDE THE PART OF DR. AUSTIN'S THAT RELATES TO PHASE ONE?

22 **JUDGE KARLTON:** THEY'VE STIPULATED TO THAT.

23 **MR. SPECTER:** WELL, THEY'VE MADE THE MOTION. IF YOU
24 GRANT THEIR MOTION --

25 **JUDGE REINHARDT:** IT'S AN UNOPPOSED MOTION?

1 **MR. SPECTER:** RIGHT.

2 **JUDGE HENDERSON:** LET'S SEE IF WE HAVE --

3 **JUDGE REINHARDT:** WHY IS THAT A PART OF --

4 **MR. SPECTER:** BECAUSE THE REASON IS WE'VE MADE
5 OBJECTIONS TO SOME OF THEIR PHASE TWO WITNESSES, AND THE
6 RESPONSE HAS COME BACK FROM THE STATE THAT IT'S A PHASE -- IT IS
7 RELEVANT BECAUSE IT'S PHASE ONE TESTIMONY. AND SO NOW I'M
8 CONFUSED BECAUSE THE DEFENDANTS' POSITIONS SEEMS INCONSISTENT,
9 AND I WOULD -- EXCUSE ME -- AND I WOULD LIKE A RULING BEFORE WE
10 GET TO THEIR WITNESSES SO WE KNOW WHAT THE SCHEDULE IS GOING TO
11 BE AND HOW MUCH CROSS THEY SHOULD --

12 **MS. JOHNSON:** YOUR HONORS, WE HAVE BROUGHT A SPECIFIC
13 MOTION TO STRIKE TWO SPECIFICS PORTIONS.

14 **JUDGE KARLTON:** NO, NO.

15 **MS. JOHNSON:** WE CANNOT ADDRESS -- WE DON'T EVEN KNOW
16 WHAT HE'S REFERRING TO IN TERMS OF WHAT PORTIONS OF WHOSE
17 DECLARATIONS OR EXPERT REPORTS HE BELIEVES ARE ONLY ADDRESSED TO
18 PHASE ONE AND SHOULD NOT BE OFFERED INTO EVIDENCE BECAUSE THAT
19 WITNESS WASN'T OFFERED IN PHASE ONE. IF PLAINTIFFS HAVE AN
20 ISSUE, I RECOMMEND THEY TELL US EXPLICITLY WHAT IT IS OR MAKE A
21 MOTION TO THE COURT. WE DON'T KNOW WHAT THEY ARE TALKING ABOUT.

22 **JUDGE KARLTON:** JUST A MINUTE.

23 MR. SPECTER, HAVE YOU MADE FORMAL MOTIONS BEFORE THE
24 COURT, WHICH I'M NOT AWARE OF, CONCERNING DEFENDANTS' WITNESSES
25 THAT YOU PERCEIVE ARE TESTIFYING AS TO PHASE ONE MATERIAL?

1 **MR. SPECTER:** WELL, WE ARE GOING TO FILE OUR
2 FORMAL --

3 **JUDGE KARLTON:** PLEASE ANSWER ME. HAVE YOU DONE SO
4 SO FAR?

5 **MR. SPECTER:** NO.

6 **JUDGE KARLTON:** THANK YOU. WHEN WOULD YOU LIKE TO DO
7 THAT?

8 **MR. SPECTER:** I COULD DO IT TOMORROW.

9 **JUDGE KARLTON:** ALL RIGHT. WE'LL WORRY ABOUT IT
10 THEN.

11 **MR. SPECTER:** THANK YOU.

12 **JUDGE KARLTON:** LET THE DEFENDANTS LOOK AT --

13 **MR. SPECTER:** I ALREADY SPOKE TO MR. MELLO ABOUT THIS
14 PROBLEM. HE'S NOT HERE RIGHT NOW, SO I DON'T WANT HIM TO TAKE
15 ADVANTAGE OF THAT.

16 **JUDGE KARLTON:** HERE HE IS. HE'S ABOUT TO POP UP.
17 WE DON'T NEED A SPEECH --

18 **MR. MELLO:** THEY CAN FILE A MOTION AND WE'LL OPPOSE
19 THE MOTION OR NOT OPPOSE THE MOTION, LIKE THEY CHOSE NOT TO DO.

20 **JUDGE KARLTON:** FINE.

21 **JUDGE HENDERSON:** AND WE'LL DO OUR BEST TO BE
22 CONSISTENT IF WE RULE ON THE PRESENT MOTION.

23 **JUDGE KARLTON:** THE PRESENT MOTION IS UNOPPOSED.

24 **JUDGE HENDERSON:** THAT'S TRUE. OKAY.

25 **MR. SPECTER:** THANK YOU.

1 **JUDGE HENDERSON:** YOU MAY CALL YOUR NEXT WITNESS.

2 **MS. EVENSON:** THANK YOU, YOUR HONOR. REBEKAH EVENSON
3 FOR PLAINTIFFS.

4 PLAINTIFFS CALL DR. JAMES AUSTIN --

5 **JAMES AUSTIN, PH.D.**

6 HAVING BEEN CALLED AS A WITNESS BY THE GOVERNMENT WAS FIRST
7 DULY SWORN AND EXAMINED AS FOLLOWS:

8 **THE CLERK:** STATE AND SPELL YOUR FULL NAME.

9 **THE WITNESS:** MY NAME IS JAMES AUSTIN. LAST NAME IS
10 SPELLED A-U-S-T-I-N.

11 **MS. EVENSON:** DR. AUSTIN, AS WE JUST INDICATED, FILED
12 FOUR SEPARATE EXPERT REPORTS, AND WE PROVIDED COURTESY COPIES OF
13 THOSE REPORTS TO THE COURT. I WON'T PROVIDE ANOTHER SET OF
14 COPIES NOW, BUT FOR THE COURT'S CONVENIENCE I HAVE REPRODUCED
15 COPIES OF KEY GRAPHS THAT APPEAR IN HIS REPORTS.

16 I ALSO HAVE A CORRECTION TO ONE REPORT. TABLE 8 IN
17 THE AUGUST 15, 2008 REPORT HAD AN ARITHMETICAL ERROR WHICH WE
18 HAVE CORRECTED. I HAVE REVISED VERSIONS OF TABLE 8, WHICH WE
19 MARKED AS PLAINTIFF'S EXHIBIT NUMBER 829.

20 DR. AUSTIN'S QUALIFICATIONS ARE SET FORTH IN
21 PARAGRAPHS ONE THROUGH TWELVE OF HIS FIRST REPORT WHICH WAS
22 SUBMITTED IN NOVEMBER OF 2007. SO I'M NOT GOING TO SPEND TOO
23 MUCH TIME ON THAT HERE.

24 I'D LIKE TO TURN NOW TO DR. AUSTIN.

25 ///

DIRECT EXAMINATION BY MS. EVENSON

BY MS. EVENSON

Q GOOD MORNING.

A GOOD MORNING.

Q CAN YOU BRIEFLY DESCRIBE YOUR EDUCATIONAL AND EMPLOYMENT HISTORY?

A BRIEFLY, I HAVE A BACHELOR'S, MASTER'S DEGREE AND PH.D. IN SOCIOLOGY. GOT MY PH.D. FROM THE UNIVERSITY OF CALIFORNIA AT DAVIS.

I FIRST STARTED WORKING IN CORRECTIONS IN 1970 WHERE I TOOK A JOB WORKING FOR THE ILLINOIS DEPARTMENT OF CORRECTIONS AND THEN MOVED TO CALIFORNIA AND TOOK A JOB WITH THE NATIONAL COUNCIL ON CRIME AND DELINQUENCY. I WORKED THERE FOR APPROXIMATELY 20 YEARS AND THEN ASSUMED THE POSITION AT GEORGE WASHINGTON UNIVERSITY FOR APPROXIMATELY THREE OR FOUR YEARS, AND THEN STARTED MY OWN NOT FOR PROFIT INSTITUTE WHICH IS CALLED THE JFA INSTITUTE, WHICH I PRESENTLY AM THE PRESIDENT OF.

Q NOW, IN THE COURSE OF YOUR WORK WITH THE JFA INSTITUTE, HAVE YOU HAD THE OPPORTUNITY TO WORK WITH STATE AND LOCAL GOVERNMENTS SEEKING TO REDUCE THEIR PRISON OR JAIL POPULATIONS?

A YES, I HAVE.

Q CAN YOU DESCRIBE THAT WORK?

A BRIEFLY, I'M PRESENTLY WORKING IN APPROXIMATELY TEN STATES. THAT WOULD INCLUDE, VERY BRIEFLY, MICHIGAN, OHIO, MARYLAND, LOUISIANA, MISSISSIPPI, KENTUCKY, SOME MORE I CAN NAME.

1 BASICALLY, I'M WORKING WITH THOSE STATES' STATE LEGISLATORS TO
2 CRAFT POLICIES THAT THEY CAN DEVELOP AND IMPLEMENT TO EITHER
3 REDUCE THEIR PRISON POPULATION OR STOP IT FROM GROWING. A LOT
4 OF THAT WORK IS DONE THROUGH THE COUNCIL STATE GOVERNMENTS,
5 WHICH GETS FINANCIAL GRANTS. THEN THEY SUBCONTRACT WITH ME TO
6 COME IN AND DO THE ANALYSIS FOR THE STATES.

7 **Q** WHO ARE YOU WORKING WITH IN THOSE VARIOUS STATES, WHAT
8 ACTORS?

9 **A** THE PRINCIPAL PEOPLE I INTERACT WITH WOULD BE GOVERNORS,
10 STAFF, LEGISLATORS, AND DEPARTMENT OF CORRECTIONS OFFICIALS.

11 **Q** AND IN ADDITION TO THE TEN STATES YOU JUST NAMED, OR
12 REFERENCED, HAVE YOU WORKED WITH OTHER STATES IN THE PAST TO DO
13 THE SAME TYPE OF WORK?

14 **A** YES. IN MY CAREER I'VE PROBABLY WORKED WITH PROBABLY 30
15 SOME STATES IN THIS AREA.

16 **Q** IN THE AREA OF POP -- OF ADDRESSING POPULATION?

17 **A** IT'S POPULATION REDUCTION, AND IT IS ALSO JUST ANALYZING THE
18 PRISON POPULATION. A LOT OF OUR WORK IS DOING POPULATION
19 PROJECTIONS, WE DO THAT FOR 20 STATES NOW, WHERE WE FORECAST FOR
20 THEM WHERE THEIR PRISON POPULATION IS GOING SO THEY CAN BUDGET
21 APPROPRIATELY. THAT ALSO TELLS THEM WHICH OPTIONS THEY HAVE
22 WHICH CAN CHANGE THAT POPULATION TREND.

23 **Q** NOW, HAS THE U.S. DEPARTMENT OF JUSTICE RECENTLY ASKED YOU
24 TO CONDUCT A SIMILAR ANALYSIS?

25 **A** RECENTLY, YES, THE U.S. DEPARTMENT OF JUSTICE THROUGH ITS

1 NATIONAL INSTITUTE OF CORRECTIONS HAS ASKED ME TO DRAFT A WHITE
2 PAPER FOR THEM ON HOW THE NATION AND STATES COULD REDUCE ITS
3 PRISON POPULATION BY AS MUCH AS 50 PERCENT OVER THE NEXT EIGHT
4 YEARS.

5 **Q** IN ADDITION TO THE WORK YOU JUST DESCRIBED, CALIFORNIA CHOSE
6 YOU TO BE A MEMBER OF ITS EXPERT PANEL, ALONG WITH OTHER EXPERTS
7 AND HEADS OF OTHER CORRECTIONAL INSTITUTIONS; IS THAT RIGHT?

8 **A** THAT'S CORRECT.

9 **Q** AND THE NUMBER ONE RECOMMENDATION THAT CAME OUT OF THIS
10 EXPERT PANEL WAS TO REDUCE OVERCROWDING. DO YOU AGREE WITH THAT
11 RECOMMENDATION?

12 **A** I DO AGREE WITH THAT RECOMMENDATION.

13 **Q** I WANT TO TURN YOUR ATTENTION TO WHAT'S BEEN MARKED AS
14 EXHIBIT 830, WHICH IS ON THE EASEL HERE. I HAVE ADDITIONAL
15 COURTESY COPIES.

16 CAN YOU BRIEFLY EXPLAIN WHAT THIS CHART SHOWS?

17 **A** YES. I'M GOING TO STEP OVER TO IT AND KIND OF POINT TO SOME
18 THINGS.

19 **JUDGE KARLTON:** YOU ARE GOING TO NEED A MICROPHONE.
20 DO WE HAVE A -- ROWENA?

21 **MS. EVENSON:** CAN WE MOVE THIS AND SEE IF THIS WORKS?

22 **THE WITNESS:** CAN YOU HEAR ME?

23 **JUDGE HENDERSON:** YES.

24 **THE WITNESS:** THIS IS AN IMPORTANT CHART BECAUSE WHEN
25 I'M ASKED TO COME INTO A STATE AND LOOK AT THEIR PRISON

1 POPULATION, YOU HAVE TO START UNDERSTANDING WHAT'S PRODUCING
2 THAT POPULATION. SO THIS IS CALIFORNIA. I'M GOING TO POINT OUT
3 THE BASIC KEY FACTORS AND THEN ALSO GIVE SOME INDICATION OF HOW
4 CALIFORNIA IS DIFFERENT THAN OTHER STATES. THIS INFORMATION IS
5 COMING FROM THEIR MOST RECENT POPULATION FORECAST WHICH JUST WAS
6 RELEASED.

7 THE TWO BIG POPULATIONS ARE THE PRISON POPULATION,
8 WHICH, IN THE REPORT, IT INDICATED APPROXIMATELY 170-, 171,000.
9 THAT'S NOT THE INSTITUTIONAL, THAT'S THE ENTIRE JURISDICTIONAL
10 POPULATION. THEN YOU HAVE A PAROLE POPULATION OF ABOUT 125,000.
11 THIS POPULATION HERE IS PRODUCED BY THREE FLOWS OF PEOPLE COMING
12 IN AT A RATHER LARGE RATE.

13 THE BIGGEST GROUP THAT'S COMING IN ARE THE TECHNICAL
14 PAROLE VIOLATORS, WHICH IS 66,000 COMING IN. THOSE 66,000 ARE
15 ACTUALLY COMING OFF OF THE PAROLE POPULATION. SO THEY ARE BEING
16 RECYCLED IN THROUGH THE SYSTEM. THEY WILL SPEND APPROXIMATELY
17 30 DAYS IN THE COUNTY JAIL AS PART OF THEIR REVOCATION, AND THEN
18 WHEN THEY COME BACK INTO THE PRISON SYSTEM, THEY'LL SPEND ABOUT
19 FOUR MONTHS BEFORE THEY'RE KICKED BACK OUT.

20 THIS IS VERY UNUSUAL. YOU DON'T SEE THIS IN ANY
21 OTHER STATES, THE VOLUME OF THESE PEOPLE THAT ARE BEING
22 RECYCLED, NOR THAT RELATIVELY SHORT LENGTH OF STAY. IT'S
23 IMPORTANT, THOUGH, BECAUSE OF WHERE THESE PEOPLE GO. THEY SIT
24 PRIMARILY IN THE RECEPTION CENTERS AND CLOG THOSE RECEPTION
25 CENTERS AND PRETTY MUCH ARE IDLE.

1 THESE TWO STREAMS ARE MORE TYPICAL WHAT YOU'LL SEE IN
2 A STATE. THE FIRST MIDDLE GROUP IS PEOPLE THAT COME FROM THE
3 COURT. THEY HAVE BEEN ARRESTED, SENTENCED. THEY ARE NOT ON
4 PAROLE. THEY MAY HAVE BEEN ON PROBATION, BUT THEY HAVE NOW BEEN
5 SENTENCED TO THE DEPARTMENT OF CORRECTIONS. THEIR AVERAGE
6 SENTENCE IS ABOUT 49, MONTHS AND THEY'LL DO ANYWHERE FROM 50 TO
7 80, 85 PERCENT OF THAT SENTENCE. IT'S ALSO IMPORTANT TO NOTE
8 THAT THEY WILL SPEND ABOUT SEVEN MONTHS IN THE COUNTY JAILS
9 BEFORE THEY COME.

10 IN THE LAST GROUP THERE'S ANOTHER RECYCLING GROUP.
11 THEY'RE COMING OFF THE PAROLE POPULATION, ABOUT 19,000, ABOUT
12 THE SAME SENTENCES. THEY ALSO SPEND ABOUT SEVEN MONTHS BEFORE
13 THEY COME BACK IN.

14 NOW, WHAT IS IMPORTANT FROM MY PERSPECTIVE IS THAT
15 THIS IS THE CURRENT FLOW. SO WE ARE BRINGING IN ABOUT 135-,
16 140,000 PEOPLE A YEAR, AND WE ARE RELEASING ABOUT THE SAME
17 NUMBER OUT TO THE COUNTIES EACH YEAR. SO THAT'S THE OVERALL
18 FLOW, AND THEN THIS PROPORTION IS PRETTY NORMAL. THIS
19 PROPORTION IS VERY ABNORMAL COMPARED TO OTHER STATES.
20 (INDICATING.)

21 **JUDGE KARLTON:** FOR THE RECORD, DR. AUSTIN WAS
22 POINTING TO NEW COURT COMMITMENT AND NEW COURT PAROLE VIOLATORS
23 AS BEING RELATIVELY NORMAL AND THE TECHNICAL PAROLE VIOLATORS
24 BEING VERY UNUSUAL; IS THAT CORRECT, DOCTOR?

25 **THE WITNESS:** THAT'S CORRECT.

1 **MS. EVENSON:** THANK YOU, YOUR HONOR.

2 BY MS. EVENSON

3 **Q** DR. AUSTIN, YOU UNDERSTAND THAT THE PLAINTIFFS IN THIS CASE
4 ARE SEEKING AN ORDER THAT WOULD REQUIRE THE STATE TO REDUCE ITS
5 PRISON POPULATION TO 130 PERCENT OF DESIGN CAPACITY OVER TWO
6 YEARS, WHICH AMOUNTS TO APPROXIMATELY 50,000 INDIVIDUALS, AND
7 THAT WE'LL BE ASKING THE COURT TO ORDER DEFENDANTS TO COME UP
8 WITH A PLAN TO ACCOMPLISH THAT POPULATION REDUCTION SAFETY. IN
9 YOUR OPINION, IS IT POSSIBLE TO PUT TOGETHER A PLAN TO REDUCE
10 CALIFORNIA'S PRISON POPULATION BY THAT MAGNITUDE IN THAT
11 TIMEFRAME WITHOUT ADVERSELY IMPACTING PUBLIC SAFETY?

12 **A** YES, IN MY OPINION, THE STATE COULD DO THAT.

13 **Q** DR. AUSTIN, I NOW WANT TO TURN YOUR ATTENTION TO WHAT'S BEEN
14 MARKED AS EXHIBIT 828, AND IT'S ANOTHER CHART WHICH I'LL JUST
15 SHOW YOU NOW. EXHIBIT 828 LISTS FOUR POPULATION REDUCTION
16 METHODS WHICH ARE OUTLINED IN YOUR REPORT. CAN YOU PLEASE
17 EXPLAIN EACH OF THOSE METHODS?

18 **A** YES, BEFORE I DO THAT, THOUGH, I JUST AGAIN WANT TO
19 EMPHASIZE SOMETHING. A PRISON POPULATION OR PAROLE POPULATION
20 IS THE FUNCTION OF TWO VARIABLES, HOW MANY PEOPLE COME IN AND
21 HOW LONG DO THEY STAY. SO TO LOWER A PRISON POPULATION, YOU
22 HAVE TO ATTACK THOSE TWO CHARACTERISTICS, THE NUMBER COMING IN
23 AND HOW LONG THEY ARE STAYING. SO THESE FOUR RECOMMENDATIONS
24 ARE VERY COMMON RECOMMENDATIONS THAT WE APPLY TO OTHER STATES,
25 AND THESE ARE BEING ADOPTED THROUGHOUT THE COUNTRY.

1 THE FIRST ONE WOULD BE TO REDUCE THE NUMBER OF
2 TECHNICAL PAROLE VIOLATORS. THERE ARE -- AND WHAT WE'RE TRYING
3 TO DO HERE IS TWO THINGS. ONE IS WE ARE GOING TO LOWER THE
4 POPULATION, AND THEY DON'T OCCUPY A HUGE NUMBER OF BEDS BECAUSE
5 THEIR LENGTH OF STAY IS NOT THAT LARGE, BUT IT'S A CONSIDERABLE
6 NUMBER. BUT, MORE IMPORTANT, THEY'RE CLOGGING THOSE RECEPTION
7 CENTERS, WHICH, FROM A CORRECTIONS' POINT OF VIEW, IS THE BRAIN
8 OF YOUR SYSTEM. IF YOU HAVE PROBLEMS IN YOUR RECEPTION CENTERS,
9 YOU CANNOT PROPERLY DIAGNOSE AND REVIEW PEOPLE FOR PROGRAMS AND
10 RISK ASSESSMENT, THOSE KINDS OF THINGS.

11 THE DEPARTMENT IS ALREADY DOING THAT. THAT'S IN
12 PROGRESS. THEY HAVE ADOPTED A VIOLATION MATRIX WHICH BASICALLY
13 IS LOOKING AT THE NATURE OF THAT VIOLATION AND MAKING A
14 DETERMINATION, DOES IT WARRANT A RETURN TO THE PRISON SYSTEM OR
15 CAN WE HANDLE THIS PERSON IN THE COMMUNITY WITH INTERMEDIATE
16 SANCTIONS OR ALTERNATIVE PROGRAMS?

17 THE EXPERT PANEL, WHICH I WAS A MEMBER OF, ALSO MADE
18 THE SAME RECOMMENDATION. THIS IS A VERY COMMON REFORM. IT'S
19 BEING USED IN MANY STATES. THE PRINCIPAL QUESTION IS, WHAT TYPE
20 OF BEHAVIOR IS GOING TO WARRANT SOME COMING BACK TO THE PRISON
21 SYSTEM FOR A TECHNICAL VIOLATION?

22 THE SECOND MAJOR RECOMMENDATION IS THAT WE WOULD
23 DIVERT LOW RISK PRISONERS WITH SHORT SENTENCES. THERE'S AN
24 EXHIBIT -- I DON'T KNOW IF YOU WANT -- IF I COULD SHOW IT, WHICH
25 SHOWS -- TABLE FIVE, I DON'T KNOW IF YOU HAVE TABLE FIVE IN YOUR

1 HANDOUT.

2 MOST PEOPLE DON'T REALIZE, BUT THERE IS A VERY LARGE
3 NUMBER OF PEOPLE COMING INTO THE CALIFORNIA PRISON WITH
4 RELATIVELY SHORT SENTENCES, BY THAT, UNDER 24 MONTHS. THE
5 BIGGEST GROUP IS THIS GROUP COMING IN WITH A 16-MONTH SENTENCE.

6 NOW, YOU HAVE TO UNDERSTAND WHAT 16 MONTHS MEANS.
7 THEY WILL HAVE SPENT, LIKE I SAID, SEVEN MONTHS IN THE COUNTY
8 JAIL ALREADY BEFORE THEY COME TO THE DEPARTMENT OF CORRECTIONS.
9 SO YOU SUBTRACT THAT SEVEN MONTHS, AND YOU'VE GOT NINE MONTHS
10 LEFT IF THEY GET THE WORK INCENTIVE CREDITS, THAT'S GOING TO GET
11 SLASHED IN HALF. SO THEY'RE COMING IN AND OUT OF THE SYSTEM
12 VERY QUICKLY, ALMOST LIKE TECHNICAL PAROLE VIOLATORS.

13 SO THE RECOMMENDATION HERE IS TO IDENTIFY THOSE
14 PRISONERS WHO ARE COMING IN FOR THOSE SHORT SENTENCES WHO ARE
15 NOT HIGH RISK, USING RISK ASSESSMENT, AND RETURN THEM TO THE
16 COMMUNITY IMMEDIATELY, AND THERE'S DIFFERENT WAYS YOU CAN DO
17 THAT. SOME CALIFORNIA COUNTIES ARE ALREADY DOING THAT. I THINK
18 SAN DIEGO IS ALREADY DOING THAT. AND THE GOVERNOR'S SPECIAL
19 SESSION BUDGET PROPOSAL TALKED ABOUT NOT ALLOWING PEOPLE TO COME
20 INTO THE PRISON SYSTEM WITH SENTENCE LENGTHS OF 24 MONTHS OR
21 LESS.

22 SO THAT WOULD BE THE SECOND MAJOR THING.

23 THE THIRD RECOMMENDATION IS VERY CRITICAL TO THE
24 CALIFORNIA SITUATION, AND I JUST WANT TO SHOW A COUPLE OTHER
25 THINGS IN MY EXHIBITS. FIGURE 2 AND TABLES 6 AND 7.

1 COLLECTIVELY, WHAT THESE FIGURES ARE SHOWING -- AND
2 THIS HAS BEEN KNOWN BY CRIMINOLOGISTS FOR MANY, MANY, MANY
3 YEARS -- THERE IS NO DIFFERENCE IN RECIDIVISM RATES BY LENGTH OF
4 STAY. SO IT DOESN'T MATTER IF SOMEONE COMES OUT IN SIX MONTHS,
5 TWELVE MONTHS, TWENTY-FOUR MONTHS, YOU ARE GOING TO GET THE SAME
6 RECIDIVISM RATE.

7 IF YOU START CHANGING THE LENGTH OF STAY BY A VERY
8 MODERATE PERIOD OF TIME -- AND BY "MODERATE" IN THE NEIGHBORHOOD
9 OF FOUR, FIVE OR SIX MONTHS, YOU CAN DO THAT WITHOUT CHANGING
10 THE RISK TO PUBLIC SAFETY, BECAUSE THAT RECIDIVISM RATE IS NOT
11 MOVING ON YOU.

12 NOW, THE EXPERT PANEL NOTED THAT ONE OF THE PROBLEMS
13 WITH THE CALIFORNIA SYSTEM, IT DOES NOT HAVE GOOD TIME CREDITS
14 THAT CAN SERVE AS AN INCENTIVE FOR PRISONERS TO PARTICIPATE IN
15 WHAT WE CALL RISK REDUCTION PROGRAMS. SO WHAT WE'RE
16 RECOMMENDING HERE IS THAT THE DEPARTMENT AND THE STATE INCREASE
17 THE NUMBER OF CREDITS THAT PRISONERS CAN EARN FOR PARTICIPATION
18 IN PROGRAMS, OR BEING IN COMPLIANCE WITH A CASE MANAGEMENT PLAN,
19 OR WHAT'S REQUIRED OF THEM, AND REWARD THEM FOR THAT BY ALLOWING
20 THEM TO BE RELEASED SOONER THAN THEY WOULD IF THEY HAD NOT
21 PARTICIPATED. AGAIN, THERE'S EXISTING PENAL CODE THAT ALLOWS
22 FOR THAT TO HAPPEN.

23 THE GOVERNOR'S JANUARY 2008 BUDGET PROPOSAL HAS NOW
24 SAID THEY ARE GOING TO RECOMMEND THAT AS PART OF THEIR BUDGET,
25 GIVING INMATES UP TO FOUR MONTHS FOR COMPLETION OF THE PROGRAM.

1 SPECIAL SESSION BUDGET PROPOSAL TALKED ABOUT IT, AND, OF COURSE,
2 THE EXPERT PANEL ALSO RECOMMENDED THIS. IT WAS PROBABLY THE
3 NUMBER ONE RECOMMENDATION, IN ADDITION TO REDUCING THE CROWDING,
4 WAS TO GET GOOD TIME CREDITS INTO THIS SYSTEM WHICH WOULD ALLOW
5 PRISONERS WHO ARE SO MOTIVATED TO PARTICIPATE AND, THUS, REDUCE
6 THEIR RISK WHEN THEY GET OUT.

7 THE LAST RECOMMENDATION IS CRITICAL BECAUSE IF YOU
8 START DIVERTING THESE PEOPLE IN PARTICULAR, YOU START CHANGING
9 THE LENGTH OF STAY AS I'VE SUGGESTED, THAT MEANS YOU ARE GOING
10 TO GET MORE PEOPLE COMING OUT ONTO THE PAROLE SYSTEM. SO TO
11 ADJUST FOR THAT, WE WOULD DO THE SAME THING THAT OTHER STATES
12 ARE DOING, WHICH IS CHANGING THE LENGTH OF TIME SPENT ON PAROLE,
13 BECAUSE THE SAME THING IS KNOWN WITH PAROLE, IT DOES NOT MATTER
14 HOW LONG SOMEONE SPENDS ON PAROLE SUPERVISION.

15 TYPICALLY, MOST OF THE PAROLEES ENCOUNTER PROBLEMS IN
16 THE FIRST 12 MONTHS. AFTER THAT IT DOESN'T MAKE MUCH DIFFERENCE
17 IF THEY ARE STAYING ON FOR 24 OR 36 MONTHS. SO THE SUGGESTION
18 HERE IS WE WOULD PUT IN PLACE MECHANISMS BY WHICH PEOPLE WOULD
19 BE PLACED ON PAROLE SUPERVISION FOR A LIMITED PERIOD OF TIME.
20 THAT WOULD REDUCE THE PAROLE POPULATION. AND WE'VE ALSO FOUND
21 IN A COUPLE OF STATES ALREADY WHEN WE DO THAT, WE GET A LOWER
22 REVOCATION RATE BECAUSE WE'VE CREATED AN INCENTIVE FOR THE
23 PAROLEE TO CONFORM AND BEHAVE. IN OTHER WORDS, THEY CAN SEE, IF
24 I BEHAVE, I'LL GET OFF THIS SUPERVISION FASTER THAN IF I DIDN'T
25 BEHAVE.

1 THOSE ARE THE FOUR MAJOR RECOMMENDATIONS THAT WOULD
2 DO TWO THINGS. IT WOULD SLOW THE ADMISSIONS, IT WOULD ALTER THE
3 LENGTH OF STAY MODESTLY, AND -- FOR SELECTED PRISONERS, AND THAT
4 WOULD DROP THE POPULATION DOWN OVER A REASONABLE PERIOD OF TIME.

5 **Q** TO BE CLEAR, DR. AUSTIN, NONE OF THESE FOUR PROPOSALS
6 CONTEMPLATE EITHER REDUCING THE SENTENCE OR DIVERTING
7 INDIVIDUALS WHO WOULDN'T ALREADY BE GETTING OUT IN A COUPLE
8 SHORT MONTHS ANYWAY; IS THAT RIGHT?

9 **A** RIGHT. IF YOU GO BACK TO THE ORIGINAL FLOW CHART, I AM NOT
10 CHANGING ANYTHING ABOUT THE FLOW OF PEOPLE NUMERICALLY. IT'S
11 THE SAME NUMBER ARE COMING IN AND SAME NUMBERS ARE COMING OUT,
12 EXCEPT FOR THE TECHNICAL. WE ARE GOING TO BE DIVERTING THEM OUT
13 OF THE PRISON SYSTEM.

14 BUT THE PEOPLE COMING IN FOR THE NEW COURT
15 COMMITMENTS, THEY CONTINUE TO COME IN, AND THEY CONTINUE TO BE
16 RELEASED IN EXACTLY THE SAME NUMBERS. SO THERE'S NO FLOODING OF
17 ANY COUNTIES OR ANYTHING LIKE THAT. WHAT WE'RE CHANGING IS
18 THEIR PERIOD OF THE EXPERIENCE IN THE PRISON SYSTEM. THAT'S ALL
19 WE'RE DOING.

20 **Q** AND THE CHANGE YOU ARE CONTEMPLATING IN THE LENGTH OF STAY
21 HAS NO IMPACT ON RECIDIVISM, RIGHT?

22 **A** HAS NO IMPACT ON RECIDIVISM WHATSOEVER.

23 **Q** DR. AUSTIN, I'D LIKE TO SHOW YOU WHAT'S BEEN MARKED AS
24 EXHIBIT 328.

25 MAY I APPROACH?

1 EXHIBIT 328 IS THE GOVERNOR'S JANUARY 2008 BUDGET
2 PROPOSAL. I'D LIKE TO TURN YOUR ATTENTION TO PAGE 178 OF THAT
3 PROPOSAL.

4 **A** OKAY, I HAVE IT.

5 **Q** AT THE BOTTOM OF THE -- THE FINAL TWO BULLET POINTS ON THAT
6 PAGE DESCRIBES PRISON POPULATION REDUCTION MEASURES PROPOSED BY
7 THE GOVERNOR. CAN YOU BRIEFLY DESCRIBE THOSE MEASURES?

8 **A** THE FIRST ONE, IT APPEARS THAT THEY ARE RECOMMENDING THAT
9 NONVIOLENT, NON-SERIOUS, NON-SEX OFFENDERS WITHOUT PRIOR SERIOUS
10 OR VIOLENT OFFENSES WOULD BE RELEASED 20 MONTHS EARLIER THAN
11 THEIR ORIGINAL RELEASE DATE.

12 THEN THE SECOND RECOMMENDATION WOULD BE SUMMARY
13 PAROLE, WHICH WOULD BE REDUCING THE NUMBER OF PEOPLE WHO ARE
14 SUBJECT TO PAROLE SUPERVISION.

15 **Q** I'D NOW LIKE TO SHOW YOU WHAT'S BEEN MARKED AS --

16 **A** COULD I COMMENT ON ONE OF THOSE?

17 **Q** CERTAINLY.

18 **A** IF YOU DON'T MIND?

19 THE FIRST ONE IS I WOULD CONSIDER TO BE VERY
20 IRRESPONSIBLE BECAUSE THE REDUCTION IN THE LENGTH OF STAY IS
21 HUGE. I'M NOT PROPOSING THAT AT ALL. WE'RE TALKING ABOUT A
22 MUCH MORE MODEST REDUCTION IN LENGTH OF STAY. SO I WAS KIND OF
23 PUZZLED WHEN I SAW THE 20 MONTHS. THAT WOULD BE -- WELL, PUT
24 FRANKLY, THE AVERAGE LENGTH OF STAY FOR PEOPLE COMING IN FOR NEW
25 COURT SENTENCE IS ABOUT THAT. SO THERE WOULD BE ALMOST NO ONE

1 IN PRISON IF YOU HAD A 20-MONTH EARLY RELEASE PROGRAM LIKE THAT.
2 SO THAT'S THE ONLY COMMENT I MAKE ON THAT.

3 **Q** DR. AUSTIN, I WANT TO NOW SHOW YOU WHAT'S BEEN MARKED AS
4 EXHIBIT P780, WHICH IS THE GOVERNOR'S MOST RECENT BUDGET
5 PROPOSAL FOR THE SPECIAL SESSION FOR 2008/2009. I'D LIKE TO
6 TURN YOUR ATTENTION TO PAGE 18 OF THAT DOCUMENT.

7 **MS. JOHNSON:** WHAT PAGE?

8 **MS. EVENSON:** EIGHTEEN.

9 **THE WITNESS:** OKAY. I HAVE IT.

10 BY MS. EVENSON

11 **Q** AGAIN, THE BOTTOM THREE BULLET POINTS HERE REPRESENT THE
12 GOVERNOR'S PROPOSALS FOR REDUCING THE PRISON POPULATION AND THE
13 BUDGET OF THE DEPARTMENT OF CORRECTIONS.

14 CAN YOU BRIEFLY DESCRIBE THOSE THREE PROPOSALS?

15 **A** YES. THE THREE PROPOSALS WOULD BE TO, AGAIN, LIMIT PAROLE
16 SUPERVISION TO A SELECT GROUP OF PEOPLE BEING RELEASED FROM
17 PRISON, SO AN UNKNOWN, BUT SOME SUBSTANTIAL NUMBER OF PEOPLE
18 RELEASED FROM PRISON WOULD NOT HAVE ANY PAROLE SUPERVISION.

19 THE SECOND ONE WOULD ENACT STATUTORY CHANGE WHICH
20 WOULD ALLOW THEM TO PROVIDE PROGRAM CREDITS UP TO FOUR MONTHS
21 FOR EACH PROGRAM THAT THEY'VE COMPLETED.

22 THE LAST RECOMMENDATION WOULD CHANGE THE THRESHOLD
23 FOR DETERMINING WHETHER A PROPERTY CRIME IS PROSECUTED AS A
24 FELONY AS OPPOSED TO A MISDEMEANOR.

25 **Q** IN OTHER WORDS, THE GOVERNOR'S SPECIAL BUDGET PROPOSAL

1 INCLUDES PROPOSALS THAT WOULD DIVERT CERTAIN PRISONERS FROM
2 PRISON, CORRECT?

3 **A** RIGHT.

4 **Q** WOULD REDUCE THE LENGTH OF STAY FOR CERTAIN PRISONERS?

5 **A** CORRECT.

6 **Q** AND WOULD DO AN EARLY DISCHARGE FROM PAROLE?

7 **A** RIGHT. I SHOULD ALSO ADD THE DEPARTMENT ALREADY IS CHANGING
8 THE LENGTH OF STAY. IT'S ALREADY RELEASING PEOPLE SOONER
9 BECAUSE OF THE PARTICIPATION IN THE BRIDGE PROGRAM, THE WORK
10 INCENTIVE PROGRAM, EDUCATION CREDITS. THERE'S WAYS --
11 CONSERVATION CAMP. THEY ARE ENGAGED IN THOSE KIND OF CREDIT
12 SYSTEMS. WHAT THIS WOULD DO WOULD EXPAND THE CREDIT ARSENAL SO
13 WE COULD GET MORE BANG OUT OF THE BUCK OF THE PROGRAM CREDITS.

14 **Q** RETURNING BACK TO THE FOUR POPULATION REDUCTION METHODS THAT
15 YOU'VE LAID OUT, HAVE ANY OTHER JURISDICTIONS OTHER THAN
16 CALIFORNIA TRIED REDUCING PRISON POPULATIONS USING THOSE METHODS
17 THAT YOU'VE LAID OUT?

18 **A** YES, THEY HAVE.

19 **Q** AND CAN YOU DESCRIBE WHAT THOSE JURISDICTIONS ARE AND WHAT
20 THEY FOUND?

21 **A** WELL, I'LL JUST NAME A FEW, BUT ON THE TECHNICAL PAROLE
22 VIOLATER, KANSAS IS PROBABLY THE MOST FAMOUS. THEY HAVE PUT --
23 IN THE LAST COUPLE OF YEARS THEY'VE PUT IN A MATRIX WHICH HAS
24 DIVERTED A VAST MAJORITY OF THEIR TECHNICAL PAROLE VIOLATERS
25 INTO THE COMMUNITY.

1 WASHINGTON STATE BACK IN 19 -- I BELIEVE IT'S ABOUT
2 1982 OR 1993 (SIC) BY STATUTE FORBIDS PAROLE VIOLATORS WHO ARE
3 TECHNICAL VIOLATORS TO BE SENT TO PRISON, BECAUSE THEY FELT THAT
4 PRISONS WERE FOR PEOPLE THAT COMMIT FELONY CRIMES, NOT PEOPLE
5 THAT VIOLATE THE TERMS OF PAROLE.

6 THOSE ARE TWO RECENT STATES -- NOT RECENT, BUT TWO
7 STATES THAT COME TO MIND. THERE'S QUITE A FEW MORE OUT THERE
8 THAT ARE DOING THAT.

9 Q DR. AUSTIN, DID EITHER OF THOSE STATES EXPERIENCE AN
10 INCREASE IN CRIME AFTER IMPLEMENTING THAT PROGRAM?

11 A NO. THERE'S ANOTHER CHART I HAVE HERE, WHICH IS LOOKING AT
12 CALIFORNIA, MICHIGAN AND NEW YORK, JUST AS EXAMPLES ON THEIR
13 REPORTED CRIME RATES.

14 THE THING ABOUT CRIME RATES IS THAT CRIME RATES HAVE
15 DROPPED DRAMATICALLY IN THE COUNTRY. EVERY STATE HAS DROPPED
16 DRAMATICALLY IN THE COUNTRY REGARDLESS OF WHAT THEY'VE DONE WITH
17 THEIR PRISON SYSTEM. SO THIS CRIME RATE DROP HAS BEEN
18 OCCURRING.

19 SO THE STATES THAT I MENTION, YES, THEIR CRIME RATES
20 HAVE DROPPED. STATES THAT HAVE INCREASED THEIR PRISON
21 POPULATIONS, THEIR CRIME RATES HAVE DROPPED. NEW YORK, WHICH IS
22 PROBABLY THE GOLD STANDARD OUT THERE NOW, HAS DROPPED ITS PRISON
23 POPULATION BY ABOUT 15 TO 20 PERCENT AND HAS THE BIGGEST DROP IN
24 CRIME THAT THE COUNTRY HAS SEEN.

25 TO GO BACK TO CALIFORNIA, CALIFORNIA TODAY HAS THE

1 LOWEST CRIME RATE IT'S HAD SINCE 1962, 1963. CALIFORNIA IS MUCH
2 SAFER TODAY THAN IT'S EVER BEEN. BACK IN 1962, '63 WE HAD ABOUT
3 22,000 PEOPLE IN OUR PRISON SYSTEM. INCARCERATION RATE WAS
4 ABOUT ONE-FOURTH WHAT IT IS TODAY. SO KIND OF LIKE THE BIG
5 PICTURE. CRIME RATES KIND OF MOVE AT THEIR OWN SPEED, YOU KNOW.
6 WHAT PRODUCES CRIME IS MUCH MORE COMPLEX, MUCH MORE DEFINITIVE
7 THAN HOW MANY PEOPLE YOU INCARCERATE.

8 SO, YES, THESE STATES THAT HAVE DIVERTED TECHNICAL
9 VIOLATORS, STATES THAT HAVE REDUCED THE LENGTH OF STAY, LIKE NEW
10 YORK HAS REDUCED ITS LENGTH OF STAY BY PROGRAM CREDITS AND
11 DIVERSION, THEY HAVE SEEN LARGE DROPS IN THEIR CRIME RATES.

12 **JUDGE KARLTON:** EXCUSE ME, SIR. CALIFORNIA HAS HAD A
13 SIGNIFICANT DROP IN THE CRIME RATE, YOU SAY, YET WE HAVE THIS
14 OVERCROWDING WHICH APPARENTLY IS EQUALLY UNPRECEDENTED. HOW DO
15 YOU ACCOUNT FOR THE FACT THAT THERE ARE FEWER CRIMES BEING
16 COMMITTED, AT LEAST THAT WE CAN RECORD, AND THE FACT THAT WE'VE
17 GOT SO MANY MORE PEOPLE IN PRISON?

18 **THE WITNESS:** WELL, THE FACT THAT YOU HAVE SO MANY
19 PEOPLE IN PRISON IS AN ARTIFACT OF THE POLICY DECISIONS MADE BY
20 THE STATE LEGISLATURE ON PASSING VARIOUS BILLS.

21 FOR EXAMPLE, IN YOUR STATE, AGAIN GOING BACK TO THE
22 PAROLE VIOLATION, THAT'S PURPOSEFUL POLICY DECISION MAKING. THE
23 OTHER PART IS LAWS THAT HAVE BEEN PASSED. IN PARTICULAR, IN
24 YOUR STATE, IT WOULD BE THE SECOND STRIKE LAW. THAT'S A BIG
25 POPULATION THAT'S STACKING UP. AND ALSO YOUR LIFER POPULATION

1 WHICH IS STACKING UP.

2 YOU DON'T SEE THOSE KINDS OF POPULATIONS IN OTHER
3 STATES. THAT'S STRICTLY, IN MY OPINION, AN ARTIFACT OF
4 LEGISLATIVE ACTION DESIGNED TO PUT CERTAIN PEOPLE IN PRISON FOR
5 A VERY LONG PERIOD OF TIME.

6 **JUDGE KARLTON:** I'M SORRY. LET ME UNDERSTAND. I
7 THINK I UNDERSTAND WHAT YOU'RE SAYING, BUT I'VE GOT TO PUT IT IN
8 MY OWN -- YOU'RE SAYING THAT DESPITE THE REDUCTION IN THE NUMBER
9 OF CRIMES BEING RECORDED IN CALIFORNIA, THE PRISON POPULATION IS
10 INCREASING, NOT ONLY BECAUSE OF THE PAROLE VIOLATORS GOING BACK,
11 BUT ALSO BECAUSE OF THE INCREASE IN THE LENGTH OF INTERNMENT?

12 **THE WITNESS:** YES, SIR.

13 **JUDGE KARLTON:** ALL RIGHT.

14 BY MS. EVENSON

15 **Q** YOU DESCRIBED A COUPLE OF --

16 **A** LET ME JUST ADD, EMPHASIZE, AGAIN, THIS IS WHY YOU LOOK AT
17 STATES, WHICH I HAVE HAD THE BENEFIT, I WORK WITH A LOT OF
18 STATES. YOUR LENGTH OF STAY IS, YOU KNOW, FOR THOSE THAT COME
19 IN FOR THE REGULAR SENTENCES -- I'LL EXCLUDE THE LIFERS -- IS IN
20 THE NEIGHBORHOOD OF TWO YEARS, SOMETHING LIKE THAT. YOU GO TO A
21 STATE LIKE ILLINOIS, THEIR LENGTH OF STAY IS 14 MONTHS.
22 ILLINOIS HAS A MUCH LOWER INCARCERATION RATE THAN CALIFORNIA.
23 BOTH STATES HAVE EXACTLY THE SAME CRIME RATE. BOTH STATES HAVE
24 DROPPED DRAMATICALLY IN THEIR CRIME RATES. PRISON POPULATIONS
25 GO ON THEIR OWN KIND OF SEPARATE TRACK INDEPENDENT OF THE CRIME

1 RATES. THERE'S VERY LITTLE RELATIONSHIP THERE.

2 **JUDGE HENDERSON:** EXCUSE ME. ARE YOU ABLE TO ACCOUNT
3 FOR THIS DROP IN THE CRIME RATE YOU JUST DESCRIBED? I BELIEVE
4 IT WOULD BE ACCURATE TO SAY THERE'S BEEN PREVIOUS TESTIMONY THAT
5 SUGGESTS IT'S BECAUSE MORE PEOPLE ARE IN JAIL SO THEY CAN'T
6 CREATE CRIMES.

7 **THE WITNESS:** THIS OBVIOUSLY IS A VERY INTERESTING
8 TOPIC. RECENTLY A BOOK WAS ISSUED BY, I GUESS, PROBABLY THE
9 BEST CRIMINOLOGIST WE HAVE. IT'S A BOOK DEDICATED TO WHY CRIME
10 DROPPED IN THE UNITED STATES.

11 THE CONSENSUS OF THOSE PEOPLE, THE VAST MAJORITY OF
12 REASONS THE CRIME DROPPED IN THE UNITED STATES WERE DEMOGRAPHIC
13 FACTORS, CHANGES IN THE DRUG TRADE AND SOCIOECONOMIC CONDITIONS.
14 THEY DO ASCRIBE SOME EFFECT TO INCREASED NUMBER OF
15 INCARCERATION, BUT THAT'S NOT THE MAJORITY. THAT'S NOT THE
16 MAJOR REASON WHY CRIME HAS DROPPED.

17 THEY HAVE TO SAY THAT BECAUSE THEY SEE STATES THAT
18 HAVE DROPPED THEIR PRISON POPULATIONS AND THE CRIME RATE IS
19 DROPPING EVEN FASTER IN THOSE STATES. YOU HAVE COUNTIES IN
20 CALIFORNIA THAT HAVE LOWERED THEIR PRISON ADMISSIONS TO CDCR AND
21 HAVE EXPERIENCED THE SAME OR GREATER DROPS IN CRIME RATE THAN
22 COUNTIES THAT HAVE INCREASED THEIR NUMBERS.

23 SO THIS IS THE -- THE THING I TRY TO COMMUNICATE, YOU
24 KNOW, THE CRIME RATE -- CRIME IS A MUCH MORE IMPORTANT THING.
25 IT'S A FUNCTION OF, IN MY OPINION, HOW WE RAISE, IN PARTICULAR,

1 YOUNG MEN IN OUR SOCIETY. WHEN WE DO A FORECAST OF A PRISON
2 POPULATION FOR TEN YEARS OUT, I'M BASICALLY FORECASTING HOW MANY
3 TEENAGE BOYS ARE GOING TO GO INTO YOUR PRISON SYSTEM.

4 SO IF YOU WANT TO ADDRESS THE CRIME PROBLEM, START
5 DEALING WITH THOSE FOLKS AT AN EARLY AGE. ONCE THEY HAVE --
6 THEY GET TO A CERTAIN AGE, YOU'VE LOST YOUR ABILITY TO DO MUCH.

7 BUT THE GENERAL CONSENSUS OF ALL CRIMINOLOGISTS IS IF
8 YOU WANT TO REDUCE CRIME, DON'T INCREASE YOUR INCARCERATION
9 RATE.

10 I LIVE IN WASHINGTON, D.C. HALF THE TIME. WE HAVE
11 ONE OF THE HIGHEST INCARCERATION RATES. WE ALSO HAVE ONE OF THE
12 HIGHEST CRIME RATES. WE SHOULD BE AS SAFE AS CAN BE. WE'RE
13 NOT.

14 **JUDGE KARLTON:** YOU INDICATED THIS GROUP OF
15 CRIMINOLOGISTS ATTRIBUTED AT LEAST SOME SIGNIFICANT PERCENTAGE
16 OF CRIME RATE REDUCTION TO SOCIOECONOMIC FACTORS. DOES THAT
17 SUGGEST IF THE PRESENT ECONOMIC CRISIS DEEPENS AND BECOMES
18 GREATER, WE ARE GOING TO FACE YET MORE PEOPLE FACING PRISON?

19 **THE WITNESS:** IT WOULD DEPEND ON THE LENGTH OF THE
20 RECESSION AND/OR DEPRESSION IF WE GO INTO THAT. YOU KNOW,
21 PEOPLE THAT HAVE BEEN RAISED, EDUCATED, HAD JOBS, IF THEY LOSE
22 THEIR JOB, THEY DON'T ALL OF A SUDDEN START BECOMING CRIMINALS.
23 IT WOULD TAKE SOME TIME FOR AN ECONOMIC DOWNTURN TO HAVE AN
24 ECONOMIC EFFECT.

25 THERE ARE STUDIES SHOWING A RELATIONSHIP BETWEEN

1 POVERTY AND THINGS LIKE THAT AND CRIME RATES, BUT THAT -- IT
2 TAKES ALMOST LIKE A GENERATION OF SOMEONE EXPERIENCING THAT.
3 SO, HOPEFULLY, IF THE ECONOMIC THING TURNS AROUND, WE SHOULDN'T
4 SEE A SIDE EFFECT OF THAT.

5 BY MS. EVENSON

6 **Q** YOU DESCRIBED A COUPLE OF JURISDICTIONS THAT IMPLEMENTED A
7 REDUCTION IN THE NUMBER OF TECHNICAL PAROLE VIOLATORS, AND YOU
8 ALLUDED TO OTHER STATES THAT HAVE SHORTENED THE LENGTH OF STAY
9 THROUGH GOOD TIME CREDIT PROGRAMS. CAN YOU ELABORATE ON THAT
10 EXAMPLE IN OTHER STATES?

11 **A** JUST ABOUT ALL THE STATES HAVE THIS, BUT SOME RECENT
12 EXAMPLES WOULD -- WELL, LIKE THE FEDERAL GOVERNMENT, FOR
13 EXAMPLE, IF YOU GET SENTENCED TO THE BUREAU OF PRISONS, YOU GET
14 A 12-MONTH REDUCTION IF YOU PARTICIPATE AND COMPLETE A DRUG
15 PROGRAM.

16 IN NEVADA WHERE I'M WORKING CURRENTLY, WE INCREASED
17 THE NUMBER OF PROGRAM CREDITS THAT PRISONERS COULD GET, DOUBLING
18 THAT AMOUNT. IN MARYLAND WE'RE INCREASING THE PROGRAM CREDITS.
19 I CAN GO ON AND ON. THERE'S A NUMBER OF STATES THAT ARE
20 CHANGING THE PROGRAM CREDITS SCHEDULE.

21 IN INDIANA, AN INTERESTING STATE, IF YOU GET YOUR
22 HIGH SCHOOL DEGREE, YOU GET 12 MONTHS OFF. YOU GET A COLLEGE
23 DEGREE, YOU GET TWO YEARS OFF. THE WHOLE ARGUMENT HERE IS TO
24 PROVIDE THAT CARROT FOR PRISONERS TO PARTICIPATE IN PROGRAMS
25 THAT LOWER THEIR RISK. SO IT'S A WIN-WIN. YOU LOWER THE RISK,

1 YOU LOWER THE LENGTH OF STAY, YOU LOWER THE COST OF THAT SYSTEM.

2 **Q** NOW, YOU MENTION THAT SOME COUNTIES IN CALIFORNIA ALREADY
3 IMPLEMENT DIVERSION PROGRAMS. ARE YOU AWARE OF OTHER STATES
4 THAT HAVE IMPLEMENTED DIVERSION PROGRAMS?

5 **A** OHIO HAS A VERY LARGE COMMUNITY CORRECTIONS PROGRAM.
6 MICHIGAN HAS A VERY LARGE COMMUNITY CORRECTIONS PROGRAM, WHERE
7 THE STATE BASICALLY IS PAYING THE COUNTIES TO HOLD PEOPLE AT THE
8 COUNTY LEVEL WHO OTHERWISE WOULD GO TO PRISON. SO THOSE ARE TWO
9 STATES THAT COME TO MIND THAT HAVE VERY LARGE COMMUNITY
10 CORRECTIONS PROGRAMS.

11 **Q** NOW, IN THE STATES THAT YOU'VE DESCRIBED THAT HAVE
12 IMPLEMENTED GOOD TIME CREDITS, SHORTENED LENGTH OF STAY, OR
13 DIVERSION PROGRAMS, HAVE THOSE PROGRAMS AGAIN BEEN ATTRIBUTED TO
14 ANY INCREASE IN CRIME?

15 **A** NO, NO.

16 **Q** DR. AUSTIN, YOU'VE SEEN SOME OF THE REPORTS FROM DEFENSE
17 EXPERTS AND INTERVENOR EXPERTS, MANY OF WHOM ARE EXPERIENCED LAW
18 ENFORCEMENT OFFICIALS, HAVE YOU NOT?

19 **A** YES, I HAVE.

20 **Q** AND SOME OF THOSE REPORTS SAY THAT REDUCING THE PRISON
21 POPULATION WILL SEND MORE OFFENDERS BACK INTO THE COMMUNITY
22 WHICH WILL NECESSARILY INCREASE CRIME. WHY AREN'T THEY RIGHT?

23 **A** WELL, AGAIN, YOU HAVE TO LOOK AT THE BIG PICTURE. IN
24 CALIFORNIA -- LET'S TAKE CALIFORNIA. CALIFORNIA HAS
25 APPROXIMATELY 1.5, 1.6 ARRESTS A YEAR. THAT'S HOW MANY PEOPLE

1 ARE ARRESTED IN THE STATE OF CALIFORNIA.

2 **Q** EXCUSE ME, DR. AUSTIN. DO YOU MEAN 1.5 MILLION?

3 **A** 1.6, I SAID 1.6 MILLION ARRESTS.

4 **JUDGE KARLTON:** YOU SAID 1.6 ARRESTS.

5 **THE WITNESS:** I'M SORRY. 1.6 MILLION ARRESTS A YEAR.

6 THIS IS SOMETHING THAT PEOPLE DON'T QUITE COMPREHEND,
7 BUT A VERY SMALL PERCENT OF THOSE ARRESTS ARE PEOPLE RELEASED
8 FROM PRISON. THE FEDERAL GOVERNMENT HAS DONE TWO STUDIES ON
9 THIS. CALIFORNIA IS ONE OF THE STATES IN THESE TWO STUDIES, AND
10 THEY LOOKED AT PEOPLE COMING OUT OF THE PRISON SYSTEMS
11 NATIONALLY, INCLUDING CALIFORNIA, AND THEY TRIED TO FIGURE OUT
12 WHAT PERCENT OF ALL THE ARRESTS THAT OCCURRED IN THOSE STATES
13 AND NATIONALLY WERE ARRESTS OF PEOPLE RELEASED FROM PRISON.
14 THEIR ESTIMATES ARE ALWAYS IN THE THREE TO FIVE PERCENT RANGE,
15 MEANING THAT THE OVERWHELMING NUMBER OF ARRESTS THAT OCCUR IN A
16 STATE ARE NOT PEOPLE COMING OUT OF THE PRISON SYSTEM. THAT'S
17 NOT TO SAY PEOPLE WHO DON'T COME OUT OF THE PRISON SYSTEM DON'T
18 HAVE HIGH ARREST RATES, THEY DO, BUT THEY ARE NOT THE ONES THAT
19 CONTRIBUTE TO THE ARREST POOL IN A STATE.

20 SO GOING BACK TO CALIFORNIA, WE HAVE 1.6 MILLION
21 ARRESTS. THAT'S JUVENILE AND ADULT, FELONY AND MISDEMEANORS.
22 IF YOU LOOK AT HOW MANY PRISONERS ARE RELEASED FROM THAT OTHER
23 CHART, WHICH IS ABOUT 125,000 -- I'M SORRY -- ABOUT --

24 **JUDGE KARLTON:** 145,000.

25 **THE WITNESS:** 139,000 PEOPLE. JUST BACK OF THE

1 ENVELOPE, WE KNOW FROM THE RECIDIVISM DATA THEY'VE GIVEN ME,
2 ABOUT 50 PERCENT OF THOSE PEOPLE GET ARRESTED AGAIN IN 12
3 MONTHS. SO 50 PERCENT OF 130-, 140,000 IS GOING TO BE 60-
4 65,000. THE VAST MAJORITY OF THOSE ARRESTS ARE MISDEMEANOR
5 LEVEL ARREST. THE NUMBER ONE IS OBSTRUCTING JUSTICE, RESISTING
6 ARREST, POSSESSION OF DRUGS. ONLY FIVE PERCENT WE FOUND TO BE
7 VIOLENT ARRESTS.

8 SO, ANYWAY, TAKE THAT 60,000 OR SO AS OPPOSED TO
9 1.6 MILLION, YOU CAN SEE IN THE LAKE OF ARRESTS, PEOPLE COMING
10 OUT OF THE PRISON SYSTEM IS NOT THE BIG GROUP THAT WE SHOULD BE
11 WORRIED ABOUT. THEY ARE NOT THE ONES CONTRIBUTING, THEY ARE NOT
12 THE ONES TAXING THE COUNTIES. IT IS OTHER PEOPLE WHO ARE BEING
13 ARRESTED THAT IS CAUSING THAT KIND OF PHENOMENON.

14 **Q** BUT, DR. AUSTIN, IF WE KNOW THERE IS A REARREST RATE OF SAY
15 50 PERCENT WITHIN THE FIRST YEAR, WHY WON'T IT INCREASE CRIME TO
16 SHIFT THE DATE OF RELEASE BACK A COUPLE OF MONTHS?

17 **A** WELL, AGAIN, YOU HAVE TO KIND OF LOOK AT THESE CASES --

18 **MS. BARLOW:** YOUR HONORS, I JUST WANT TO OBJECT THAT
19 THE PROPOSAL WAS FOUR MONTHS, NOT A COUPLE OF MONTHS. SO I
20 THINK IT'S MISSTATING THE REPORT.

21 **MS. EVENSON:** WE CAN USE THAT EXAMPLE, TOO. ANY
22 EXAMPLE WORKS.

23 **THE WITNESS:** YEAH, ANY MONTH WOULD BE FINE. SO
24 LET'S TAKE FOUR MONTHS.

25 UNDER CURRENT PRACTICES, JOHN DOE GETS OUT IN APRIL.

1 IF YOU HAD A FOUR-MONTH PROGRAM CREDIT HE GOT, HE GOT OUT IN
2 JANUARY. YOU HAVE NOT CHANGED JOHN DOE'S PROBABILITY OF BEING
3 INVOLVED IN A CRIME. YOU'VE SIMPLY CHANGED THE DATE AND
4 LOCATION.

5 ONE COULD ACTUALLY ARGUE THAT BY CHANGING
6 CIRCUMSTANCES, YOU MAY HAVE PREVENTED HIM -- BY COMING OUT
7 SOONER HE ENGAGED IN CERTAIN INTERACTIONS THAT DID NOT ALLOW HIM
8 TO PARTICIPATE IN A CRIME. KEEPING HIM IN LONGER COULD HAVE
9 GONE THE OTHER WAY.

10 BUT, BASICALLY, IT'S NOT CHANGING THE RATE OF
11 RECIDIVISM. THE NUMBERS ARE SO SMALL THEY'RE INSIGNIFICANT, AND
12 SO IT DOESN'T HAVE ANY IMPACT ON THE OVERALL CRIME PICTURE IN A
13 STATE.

14 **JUDGE KARLTON:** BUT IT DOES HAVE AN IMPACT. THE
15 PERSON WHO IS THE VICTIM OF THE CRIME DOESN'T THINK IT'S
16 INSIGNIFICANT AS FAR AS HE OR SHE IS CONCERNED.

17 **THE WITNESS:** RIGHT. BUT --

18 **JUDGE KARLTON:** AND AS TO THAT PERSON -- I MEAN, IT
19 FOLLOWS TO THAT PERSON THAT'S A VERY SERIOUS EVENT WHICH IS
20 CAUSED BY THE EARLY RELEASE.

21 **THE WITNESS:** CORRECT, BUT THE WAY YOU ALSO HAVE TO
22 LOOK AT THAT, YOUR HONOR, IS THAT -- LET'S SAY IT WAS YOU.

23 **JUDGE KARLTON:** YOU BET. I'VE LIVED IN FOUR HOUSES
24 AND HAD FOUR BURGLARIES.

25 **THE WITNESS:** I'VE HAD FOUR MYSELF AND TWO AGGRAVATED

1 ASSAULTS MYSELF. I'M WITH YOU. IT'S NEVER BEEN A PAROLEE, I
2 CAN TELL YOU THAT. ON EARLY RELEASE YOU GET VICTIMIZED, I
3 DON'T. IF WE DON'T EARLY RELEASE, YOU DON'T, I DO GET
4 VICTIMIZED. SO WE CAN HAVE KIND OF A MEETING HERE AND SEE WHO'S
5 MORE VICTIMIZED. BUT THAT'S THE WAY IT IS.

6 IT'S KIND OF LIKE A RANDOM PROCESS GOING ON. IF YOU
7 KEPT PEOPLE IN FOR YEARS, THEN YOU GET SOME INCAPACITATION
8 EFFECT, BUT BY MOVING THIS LENGTH OF STAY AROUND, YOU KNOW, IN
9 THESE VERY MODEST LEVELS -- AND, AGAIN, THERE'S A NUMBER OF
10 STUDIES SHOWING THIS -- BY CHANGING THE LENGTH OF STAY, YOU
11 DON'T CHANGE THE RECIDIVISM RATES, YOU DON'T CHANGE THE OVERALL
12 CRIME RATE IN A STATE. THAT'S GOING TO BE FAIRLY CONSTANT.

13 BY MS. EVENSON

14 **Q** WHEN YOU SAY IT DOESN'T CHANGE THE OVERALL CRIME RATE, DOES
15 IT HAVE ANY IMPACT ON THE LIKELIHOOD THAT ANY OF US IN
16 CALIFORNIA WILL BE A VICTIM OF CRIME?

17 **A** YOUR LIKELIHOOD IS EXACTLY THE SAME. YOU HAVE THE SAME
18 PROBABILITY OF BEING VICTIMIZED BY JOHN DOE. IT'S JUST WHEN HE
19 GETS OUT OR DOESN'T GET OUT.

20 THE OTHER THING PEOPLE NEED TO REMEMBER, A LARGE
21 NUMBER, A LARGE PERCENTAGE OF THESE PEOPLE ARE NOT GETTING
22 ARRESTED. CRIMINAL CAREERS BEGIN AND THEY END.

23 AND THE RESEARCH DONE IN CALIFORNIA BY THE RAND
24 CORPORATION AND OTHER PEOPLE ON CAREER CRIMINALS FOUND THAT THE
25 VAST MAJORITY OF PRISONERS COMING IN AND COMING OUT ARE INVOLVED

1 IN RELATIVELY LOW EPISODIC CRIMINAL ACTIVITY. THERE'S A SMALL
2 GROUP, THEY THINK, THAT'S VERY ACTIVE IN THEIR CRIMINAL
3 ACTIVITY. THAT'S THE GROUP YOU WANT TO INCAPACITATE AS LONG AS
4 YOU CAN. IF YOU CAN IDENTIFY THEM AND KEEP THEM LOCKED UP, YES,
5 YOU HAVE A POSITIVE IMPACT.

6 BUT THE OTHER GROUP, WHICH IS THE MAJORITY, ARE JUST
7 KIND OF RANDOMLY INVOLVED IN THESE LOW LEVEL KINDS OF
8 ACTIVITIES, THEY ARE NOT BEING AFFECTED -- THEY ARE NOT
9 AFFECTING US IN TERMS OF PROBABILITIES OF COMMITTING CRIMES
10 AGAINST US. THEY HAVE THE SAME PROBABILITIES WHETHER YOU KEEP
11 THEM IN SIX MONTHS, TWELVE MONTHS, EIGHTEEN MONTHS, BUT YOU HAVE
12 A HUGE IMPACT ON THE PRISON POPULATION AND THE COST OF THAT
13 PRISON SYSTEM. YOU MOVE THAT PRISON POPULATION DOWN 30 DAYS ANY
14 DIRECTION, YOU ARE TALKING TENS OF MILLIONS OF DOLLARS. THAT'S
15 WHAT YOU ARE TALKING ABOUT.

16 Q NOW, DR. AUSTIN, YOUR MODELS IN YOUR REPORT LOOK AT ARREST
17 RATES, BUT CHIEF DYER, WHO SUBMITTED A REPORT FOR THE
18 INTERVENORS IN THIS CASE, ASSUMES THAT FOR EVERY ARREST, A
19 PAROLEE WOULD HAVE ALREADY COMMITTED 12 CRIMES FOR WHICH THEY
20 ARE NOT ARRESTED. YOU JUST ALLUDED TO THE PORTION OF POPULATION
21 THAT'S A CAREER CRIMINAL. CAN YOU EXPLAIN WHETHER YOU AGREE
22 WITH DR. DYER'S CONCLUSIONS?

23 JUDGE KARLTON: CHIEF DYER.

24 MS. EVENSON: CHIEF DYER, THANK YOU.

25 THE WITNESS: I READ CHIEF DYER'S -- I HAVE TO

1 CONGRATULATE CHIEF BECAUSE HIS CITY AND COUNTY HAS ONE OF THE
2 LARGEST DROPS IN CRIME RATES IN CALIFORNIA, JUST AN EXTREMELY
3 LARGE DROP IN CRIME. EVEN THOUGH THEY ARE GETTING MORE PAROLEES
4 EACH YEAR, HE HAS BEEN ABLE TO DO THAT. SO I CONGRATULATE HIM
5 ON THAT.

6 BUT, BASICALLY, WHAT'S GOING ON THERE IS -- LET ME
7 PUT IT THIS WAY: HE MENTIONS THE 12 CRIMES FOR EVERY ARREST.
8 NOW, HE DOESN'T CITE ANY STUDIES, SO I HAVE TO SPECULATE WHAT
9 STUDY HE'S TALKING ABOUT, BUT I THINK HE'S TALKING ABOUT A STUDY
10 DONE BY AL BLOOMSTEIN IN THE DISTRICT OF COLUMBIA 30 YEARS AGO,
11 WHERE MR. BLOOMSTEIN IDENTIFIED PEOPLE THAT HE CALLS PERSISTERS.
12 THESE ARE PEOPLE THAT ARE CAREER CRIMINALS. HE FOUND OF THE
13 PEOPLE BEING ARRESTED, THIS IS A VERY, VERY SMALL PERCENT OF THE
14 POPULATION THAT'S BEING ARRESTED.

15 SO MY NUMBER ONE RESPONSE TO CHIEF DYER IS THAT YOU
16 CANNOT APPLY THE 12-TO-1 TO EVERY PERSON COMING OUT. THAT WOULD
17 ONLY PERTAIN TO THESE CAREER CRIMINALS WHO ARE VERY ACTIVE AND
18 REPRESENT A VERY SMALL PORTION OF THE POPULATION AS BEING
19 RELEASED FROM PRISON TO HIS COUNTY. SO THAT PRODUCES A
20 STATISTIC THAT JUST EXAGGERATES THE POTENTIAL DANGER.

21 BY MS. EVENSON

22 Q NOW, YOU MENTION THAT APPROXIMATELY TEN PERCENT -- OR I
23 DON'T KNOW IF YOU PUT A PERCENT TO IT, BUT A SMALL PERCENTAGE OF
24 THEM ARE ACTUALLY -- OF THE ARRESTS ARE ACTUALLY CAREER
25 CRIMINALS?

1 **A** THAT'S CORRECT, A SMALL PERCENTAGE.

2 **Q** AND IN CONJUNCTION WITH THE DIVERSION PROGRAMS OR REDUCTION
3 IN LENGTH OF STAY THAT YOU HAVE SET FORTH, IS IT POSSIBLE TO USE
4 A RISK ASSESSMENT INSTRUMENT THAT WOULD IDENTIFY THOSE
5 INDIVIDUALS AND CULL THEM OUT?

6 **A** YES, AND THEY SHOULD BE -- THEY SHOULD BE USING RISK
7 ASSESSMENT INSTRUMENTS. CALIFORNIA IS A LITTLE BIT HAMSTRUNG
8 BECAUSE IT HAS DETERMINATE SENTENCING, AND THAT REDUCES YOUR
9 ABILITY TO DISCRETIONARILY RELEASE PEOPLE.

10 BUT EVEN IF YOU HAVE TO RELEASE PEOPLE, YOU CAN APPLY
11 A RISK ASSESSMENT THAT WOULD THEN TELL THE POLICE OFFICIALS, WE
12 ARE RELEASING JOHN DOE, AND HE IS A HIGH RISK PERSON, WE NEED TO
13 WATCH HIM.

14 I'LL GIVE YOU AN EXAMPLE OF A STATE THAT'S DOING THAT
15 VERY SUCCESSFULLY THAT I'M WORKING WITH, WHICH IS MARYLAND.
16 MARYLAND DOES THAT RISK ASSESSMENT, BECAUSE WE DISCOVERED IN
17 BALTIMORE CITY A LARGE PROPORTION OF THE HOMICIDES AND ATTEMPTED
18 HOMICIDES, EITHER AS A VICTIM OR PERPETRATOR, WERE PEOPLE ON
19 PROBATION, NOT PAROLEES, BUT PROBATIONERS.

20 SO WE EQUIPPED THE PROBATION DEPARTMENT WITH A RISK
21 ASSESSMENT TOOL, AND THEY ARE AGGRESSIVELY SUPERVISING THOSE
22 PEOPLE. AGGRESSIVE MEANS FIVE CONTACTS A WEEK AND ZERO
23 TOLERANCE. SO IF THEY GET OFF -- ANY KIND OF INDICATION THEY
24 ARE NOT IN COMPLIANCE, THEY ARE BROUGHT BACK INTO CUSTODY.
25 SINCE WE HAVE BEEN DOING THAT, THE HOMICIDE RATE HAS DROPPED

1 ABOUT 30 PERCENT IN BALTIMORE CITY.

2 SO THIS IS AN EXAMPLE OF NOT RESTRICTING RELEASES TO
3 EVERYONE, BECAUSE ALSO THE PAROLE BOARD IS PAROLING MORE PEOPLE
4 IN MARYLAND, BECAUSE THEY HAVE TO REDUCE THEIR PRISON
5 POPULATION. SO THEY ARE RELEASING MORE PEOPLE, BUT THOSE
6 THEY'RE RELEASING OR SUPERVISING, THEY'RE TARGETING THEM USING
7 RISK ASSESSMENT.

8 SO IF YOU DO THIS PROPERLY, YOU CAN ACCOMPLISH ALL
9 OUR OBJECTIVES WHICH IS LOWER YOUR COST, LOWER THE POPULATION,
10 MAKE IT A SAFER PLACE FOR PEOPLE TO LIVE.

11 **Q** DR. AUSTIN, SOME OF THE PARTIES IN THIS LITIGATION HAVE
12 GIVEN THE OPINION THAT LOCAL RESOURCES FOR PROVIDING
13 REHABILITATIVE PROGRAMS, LIKE DRUG TREATMENT OR MENTAL HEALTH
14 TREATMENT, ARE OVERTAXED. DON'T THOSE PROGRAMS NEED TO BE IN
15 PLACE BEFORE YOU CAN IMPLEMENT ANY OF THESE POPULATION REDUCING
16 METHODS?

17 **A** NO, THEY DON'T. WHAT THIS WILL DO, THIS WOULD, BASICALLY --
18 AGAIN, GOING BACK TO THE ORIGINAL FLOW DIAGRAM, WHICH IS
19 PRODUCING -- THIS IS WHAT WE'RE DOING NOW IN CALIFORNIA, WHICH
20 HAS THIS HIGH RECIDIVISM RATE, WE CAN TALK ABOUT THAT IF YOU
21 WANT -- THIS WILL LOWER THE PRISON POPULATION AT A LEVEL THAT IT
22 WILL GENERATE, THE EXPERT PANEL ESTIMATED AND I'M ESTIMATING,
23 APPROXIMATELY A BILLION DOLLARS IN SAVINGS A YEAR.

24 MY PROPOSAL WOULD BE TO TAKE A CHUNK OF THAT MONEY
25 AND GIVE THAT TO THE COUNTIES SO THAT THEY CAN MAKE THIS RELEASE

1 PROCESS EVEN SAFER. IT'S NOT GOING TO JEOPARDIZE PUBLIC SAFETY
2 IF YOU DO IT WITHOUT THE PROGRAMS. THERE ARE SOME PROGRAMS OUT
3 THERE, AND THEY ARE BEING UTILIZED. BUT YOU DON'T HAVE TO WAIT
4 FOR THE PROGRAMS TO BE IN PLACE.

5 YOU CAN START THIS PROCESS. THAT GENERATES --
6 BECAUSE OVER TIME -- THIS IS GOING TO TAKE SOME TIME TO GENERATE
7 THIS REDUCTION. MONEY WILL START BEING GENERATED. YOU START
8 FEEDING THAT MONEY TO THE COUNTIES TO PROVIDE SERVICES OR TO
9 INCREASE LAW ENFORCEMENT, WHATEVER IT IS.

10 I'M SURE THE COUNTIES WOULD LIKE TO GET \$500 MILLION
11 A YEAR TO DO WHAT THEY WANT WITH THE KINDS OF PEOPLE THAT ARE
12 COMING TO THEIR COMMUNITIES.

13 REMEMBER, ALSO, I'M NOT CHANGING THE NUMBER OF PEOPLE
14 COMING TO THE COUNTIES. WHEN YOU DO THIS CHANGE IN THE LENGTH
15 OF STAY, THERE IS A PERIOD OF TIME, SHORT PERIOD OF TIME, WHERE
16 YOU HAVE DOUBLE RELEASES, BECAUSE YOU HAVE A GROUP -- GROUP
17 COMING OUT OF THE OLD SYSTEM, THEN A GROUP COMING OUT UNDER THE
18 NEW SYSTEM. THEY COME OUT SIMULTANEOUSLY. THAT IS DONE
19 RELATIVELY QUICKLY, THEN THE SYSTEM GOES BACK INTO EQUILLIBRIUM.
20 THEN THERE IS NO CHANGE FROM THE FLOW OF PEOPLE FROM WHAT IT IS
21 TODAY COMING INTO THE PRISON.

22 IN FACT, IF WE DIVERT THOSE PAROLE VIOLATORS, THERE
23 WILL BE FEWER COMING OUT OF PRISON BACK TO THE COUNTIES. THEY
24 WON'T BE GOING THROUGH THAT LOOP-DE-LOOP THING.

25 Q SO IN YOUR OPINION, THESE PROGRAMS CAN ALL BE IMPLEMENTED

1 EVEN BEFORE THE -- STRIKE THAT.

2 IN YOUR OPINION, THE REDUCTION IN THE LENGTH OF STAY
3 OR THE DIVERSION OF INDIVIDUALS WHO MIGHT OTHERWISE SPEND TIME
4 IN PRISON WOULDN'T CHANGE THE STATUS QUO IN TERMS OF CRIME --
5 LIKELIHOOD OF VICTIMIZATION --

6 **A** IT'S --

7 **Q** -- REGARDLESS OF -- I'M SORRY.

8 -- REGARDLESS OF WHETHER THE PROGRAMS, MORE PROGRAMS
9 ARE DEVELOPED AT THE OUTSET?

10 **A** RIGHT. WELL, I DID SOME MODELS, AND THE MODELS THAT I WAS
11 USING SHOWED THAT -- I WAS LOOKING AT THE EXTENT TO WHICH THESE
12 PEOPLE GET ARRESTED. THEY WOULD OTHERWISE HAVE BEEN IN PRISON,
13 NOW THEY'RE OUT, SO YOU CAN CALCULATE AN ARREST RATE THERE, LIKE
14 IN THE FIRST FOUR MONTHS, IF THEY DID FOUR MONTHS SOONER, ET
15 CETERA. IT'S AN INSIGNIFICANT CHANGE IN THE NUMBER OF PEOPLE
16 BEING ARRESTED IN THOSE COUNTIES. IT'S AN INSIGNIFICANT CHANGE
17 IN PEOPLE BEING BOOKED INTO THE COUNTY JAILS.

18 IT'S NOT GOING TO HAVE ANY IMPACT AT ALL ON THOSE
19 COUNTIES. IN FACT, YOU MIGHT SEE -- AND THIS HAS HAPPENED IN
20 EARLY RELEASE STUDIES IN OTHER JURISDICTIONS I'VE DONE, AND
21 OTHER PEOPLE HAVE DONE, CRIME RATES GO DOWN AND ARREST RATES
22 GOING DOWN EVEN AS YOU ARE LOWERING THAT POPULATION, LIKE NEW
23 YORK.

24 SO, YES, THERE WOULD BE NO CHANGE. YOU DON'T NEED
25 THE PROGRAMS. BUT MY POSITION WOULD BE TAKE THAT MONEY THAT

1 YOU'RE SAVING AND REINVEST IT IN THE COUNTIES, BECAUSE THAT'S
2 WHERE YOU COULD MAKE IT EVEN A SAFER SITUATION.

3 I MEAN, I UNDERSTAND CHIEF DYER'S STATEMENTS, WHICH
4 ARE WELL NOTED, THAT HE NEEDS SUBSTANCE ABUSE. HE'S GOT A METH
5 PROGRAM GOING ON. HE'S NOT GOING TO GET THAT MONEY UNDER THE
6 CURRENT SITUATION. IT'S ALL GOING TO STATE. SO UNDER THIS
7 PLAN, WE REINVEST THAT MONEY INTO THE COUNTIES AND ACTUALLY
8 START DEALING WITH THE CRIME PROBLEM IN A MUCH MORE CONSTRUCTIVE
9 MANNER.

10 **MS. EVENSON:** THANK YOU, DR. AUSTIN.

11 **JUDGE HENDERSON:** DOES CCPOA HAVE ANY QUESTIONS OF
12 THIS WITNESS?

13 **MS. LEONARD:** NO, YOUR HONOR.

14 **JUDGE HENDERSON:** OKAY. CROSS-EXAMINATION.

15 **MS. JOHNSON:** DID YOU WANT TO START THAT NOW OR TAKE
16 OUR LUNCH BREAK, YOUR HONORS?

17 **JUDGE HENDERSON:** OKAY. LET'S TAKE A LUNCH BREAK.
18 THIS IS A GOOD TIME. COURT IS IN RECESS FOR AN HOUR.

19 (LUNCHEON RECESS TAKEN.)

20 **THE CLERK:** PLEASE BE SEATED.

21 **JUDGE HENDERSON:** OKAY. YOU MAY BEGIN YOUR
22 CROSS-EXAMINATION WHEN YOU'RE READY, COUNSEL.

23 **MS. JOHNSON:** GOOD AFTERNOON, YOUR HONORS.

24 ///

25 ///

CROSS-EXAMINATION

BY MS. JOHNSON:

Q. GOOD AFTERNOON, DR. AUSTIN.

IN YOUR DIRECT TESTIMONY, THE TOPIC YOU DISCUSSED WERE
POPULATION REDUCTION METHODS THAT COULD BE IMPLEMENTED IN YOUR
OPINION WITHOUT AN ADVERSE IMPACT ON PUBLIC SAFETY, CORRECT?

A. YES.

Q. IN YOUR EXPERT REPORTS, YOUR FIRST EXPERT REPORT IN
PARTICULAR, YOU DIDN'T DISCUSS THAT. YOU DISCUSSED ANOTHER
TOPIC, IF YOU RECALL?

A. YES.

Q. OKAY. WE'RE GOING TO START WITH THAT TOPIC.

MS. JOHNSON: I JUST WANTED TO INFORM EVERYBODY OF
KIND OF TOPIC SHIFT?

JUDGE REINHARDT: THIS ISN'T PHASE I, IS IT?

MS. JOHNSON: I DON'T BELIEVE IT IS PHASE I.

JUDGE REINHARDT: I HAVE NO IDEA WHAT THE TOPIC IS,
SO --

MS. JOHNSON: I JUST WANTED TO INFORM YOU --

JUDGE REINHARDT: THAT'S FINE.

MS. JOHNSON: I'M WANTED TO INFORM YOU. I JUST
WANTED TO LET EVERYONE KNOW IF I START ASKING QUESTIONS ON A
DIFFERENT SUBJECT, THAT'S WHY I'M DOING THAT.

JUDGE KARLTON: IT'S NOT CLEAR TO ME THAT'S PROPER
CROSS-EXAMINATION. IF YOU ARE SHIFTING TO A TOPIC THAT HE

1 HASN'T TESTIFIED TO, HE BECOMES YOUR WITNESS.

2 **MS. JOHNSON:** HIS AFFIDAVIT, HIS EXPERT REPORTS ARE
3 IN EVIDENCE.

4 **JUDGE KARLTON:** I SEE.

5 **MS. JOHNSON:** HE SIMPLY DIDN'T ADDRESS IT ON DIRECT
6 EXAMINATION IN THIS COURTROOM.

7 **JUDGE KARLTON:** I GOT YOU. I UNDERSTAND NOW.
8 GO AHEAD.

9 **BY MS. JOHNSON:**

10 **Q.** DR. AUSTIN, YOU OPINED IN YOUR NOVEMBER, 2007 REPORT THAT
11 THE ONLY REMEDY THAT WILL FULFILL THE REQUIREMENTS SET FORTH BY
12 THE COLEMAN AND PLATA COURTS IS A PROMPT REDUCTION OF THE
13 CALIFORNIA PRISON POPULATION, CORRECT?

14 **A.** WHAT PAGE ARE YOU --

15 **Q.** PAGE 21, PARAGRAPH 54.

16 **A.** YES.

17 **Q.** AS APPENDIX B TO YOUR NOVEMBER, 2007 REPORT YOU ATTACHED A
18 TWO-AND-A-HALF PAGE LIST OF DOCUMENTS, QUOTE:

19 "PROVIDED TO YOU BY PLAINTIFFS' COUNSEL."

20 CORRECT?

21 **A.** YES.

22 **Q.** APPENDIX B IS A LIST OF DOCUMENTS PROVIDED YOU TO AS
23 DISTINCT FROM A LIST OF DOCUMENTS THAT YOU KNOW THAT YOU READ,
24 CORRECT?

25 **A.** YES.

1 Q. I'M SORRY. I COULDN'T HEAR YOU.

2 A. YES.

3 Q. WITHOUT LOOKING AT EACH OF THE DOCUMENTS ON THE
4 TWO-AND-A-HALF PAGE LIST, YOU CANNOT TELL ME WHICH OF THE
5 DOCUMENTS YOU ACTUALLY REVIEWED IN FORMING YOUR OPINION, CAN
6 YOU?

7 A. CAN I TELL YOU WHICH DOCUMENTS I REVIEWED?

8 Q. YOU REVIEWED ON THAT LIST, THAT APPENDIX B.

9 A. I'D HAVE TO STUDY THEM, SO I DON'T KNOW.

10 Q. YOU HAVE A PH.D. IN SOCIOLOGY, CORRECT?

11 A. YES, I DO.

12 Q. YOU DO NOT HAVE ANY MEDICAL TRAINING, EDUCATION OR
13 EXPERIENCE, DO YOU?

14 A. NO, I HAVE NO MEDICAL DEGREE.

15 Q. YOU DO NOT HAVE ANY MENTAL HEALTHCARE TRAINING, EDUCATION OR
16 EXPERIENCE DO YOU?

17 A. NO, I DO NOT.

18 Q. I'M SORRY. I'M HAVING A HARD TIME HEARING. COULD YOU SPEAK
19 --

20 A. NO, I DO NOT. SORRY.

21 Q. YOU SERVED AS A SPECIAL MONITOR IN TWO JUVENILE CORRECTIONAL
22 SYSTEMS WHICH WERE SUBJECT TO AGREEMENTS WITH THE U.S.
23 DEPARTMENT OF JUSTICE REGARDING MEDICAL AND MENTAL HEALTHCARE,
24 CORRECT?

25 A. THAT WAS PART OF THE AGREEMENT. THE AGREEMENTS WERE BROADER

1 THAN THAT, BUT MEDICAL AND MENTAL HEALTH AREAS WERE PART OF THE
2 AGREEMENT.

3 Q. THOSE SYSTEMS WERE IN GEORGIA AND LOUISIANA, CORRECT?

4 A. THAT'S CORRECT.

5 Q. WHEN YOU WORKED AS A SPECIAL MONITOR FOR GEORGIA AND
6 LOUISIANA, YOU HIRED MEDICAL AND MENTAL HEALTH EXPERTS IN BOTH
7 STATES TO DO THEIR OWN ASSESSMENTS OF WHETHER THE STATES WERE IN
8 COMPLIANCE WITH THE AGREED-TO MEDICAL AND MENTAL HEALTHCARE
9 STANDARDS, CORRECT?

10 A. WELL, THEY WERE -- THE WAY IT WORKED IN BOTH THE STATES --
11 LET ME GO BACK.

12 IN GEORGIA, I SUBMITTED NAMES OF PEOPLE TO BE MEDICAL
13 EXPERTS. AND THEY HAD TO BE AGREED TO BY BOTH PARTIES. AND
14 THEIR JOB WAS TO DO ANALYSIS FOR ME. AND THEN, THEY WOULD REPORT
15 THEIR FINDINGS TO ME. AND THEN, I WOULD -- I WAS ULTIMATELY
16 RESPONSIBLE FOR THE PRODUCTION OF THE FINAL DETERMINATION OF
17 WHETHER OR NOT, YOU KNOW, THE STATE WAS IN COMPLIANCE WITH THE
18 MOA AGREEMENTS.

19 Q. THEY DID THEIR OWN INDEPENDENT ASSESSMENT OF WHETHER OR NOT
20 THE STATES WERE IN COMPLIANCE, CORRECT?

21 A. THEY DID THEIR OWN INDEPENDENT ASSESSMENTS, BUT I WAS
22 INVOLVED IN THOSE ASSESSMENTS.

23 Q. YOU WERE INVOLVED IN OVERSEEING, OVERVIEWING THE WORK THEY
24 DID AS MENTAL AND MEDICAL HEALTH EXPERTS.

25 A. NO, I WOULD -- OKAY. GEORGIA, FOR EXAMPLE, WAS DR. PABLO

1 STEWART. AND DR. STEWART AND I WOULD JOINTLY VISIT FACILITIES
2 AND JOINTLY LOOK AT RECORDS, JOINTLY DO INTERVIEWS.

3 I WOULD DEPEND UPON HIS OPINION AS TO WHAT HE WAS
4 SEEING AS TO WHETHER OR NOT THEY WERE IN COMPLIANCE. BUT IT
5 WASN'T LIKE THEY WERE COMPLETELY ISOLATED FROM ME. I WAS
6 USUALLY WITH HIM, IN PARTICULAR, ON THE MEDICAL AND MENTAL
7 HEALTH AREAS.

8 Q. YOU HIRED MEDICAL AND MENTAL HEALTH EXPERTS TO WORK UNDER
9 YOU, RATHER THAN JUST DOING THE ASSESSMENTS DIRECTLY YOURSELF
10 BECAUSE YOU'RE NOT A DOCTOR OR PSYCHIATRIST. SO YOU FELT YOU
11 NEEDED TO GET PEOPLE WITH EXPERTISE IN THOSE AREAS, DIDN'T YOU?

12 A. IN PART, YES. IT WAS ALSO A REQUIREMENT OF THE MOA.

13 Q. PRIOR TO THIS CASE, OTHER THAN MEDICAL AND MENTAL HEALTH
14 SCREENING AS A COMPONENT OF INMATE CLASSIFICATION AND YOUR WORK
15 AS A SPECIAL MONITOR IN GEORGIA AND LOUISIANA, YOU HAVE NOT DONE
16 ANY WORK THAT RELATES TO MEDICAL AND MENTAL HEALTHCARE IN
17 PRISONS, HAVE YOU?

18 A. WELL, I WOULDN'T SAY THAT. I MEAN, FOR EXAMPLE, I'M ALSO
19 CALLED UPON TO PUT IN PLACE WHAT THEY CALL "A CLASSIFICATION
20 SYSTEM." AND THOSE CLASSIFICATION SYSTEMS HAVE SCREENING
21 COMPONENTS IN THEM THAT ARE DESIGNED TO LOOK AT MEDICAL MENTAL
22 HEALTH INDICATORS. AND I DO DESIGN THOSE, BUT I DO THAT IN
23 CONSULTATION WITH PROFESSIONALS LIKE YOU'RE SUGGESTING I RELY
24 UPON, HELPFUL TO TELL ME WHAT'S THE PROPER QUESTIONS TO ASK.

25 Q. OKAY. SO LET ME REPEAT MY QUESTION BECAUSE I THINK YOU

1 MISSED IT.

2 OTHER THAN THIS CASE AND OTHER THAN MEDICAL AND
3 MENTAL HEALTH SCREENING AS A COMPONENT OF INMATE CLASSIFICATION,
4 AND YOUR WORK AS SPECIAL MONITOR IN GEORGIA AND LOUISIANA, YOU
5 HAVE NOT DONE ANY WORK THAT RELATES TO MEDICAL OR MENTAL
6 HEALTHCARE IN PRISONS, HAVE YOU?

7 **A.** THAT'S CORRECT, YES.

8 **Q.** YOU SERVED ON CDCR'S EXPERT PANEL ON ADULT OFFENDER REENTRY
9 AND RECIDIVISM REDUCTION PROGRAMMING, CORRECT?

10 **A.** CORRECT.

11 **Q.** YOU WERE A MEMBER OF THE MODEL PROGRAM SUBCOMMITTEE OF THE
12 EXPERT PANEL, CORRECT?

13 **A.** YES. I WAS IN THAT PARTICULAR COMMITTEE, YES.

14 **Q.** I'M SORRY?

15 **A.** I WAS PART OF THAT COMMITTEE. BUT LET ME ALSO ADD THAT MR.
16 JACOBSEN, DR. JACOBSEN AND I WERE DESIGNATED TO AUTHOR THE
17 SECTION -- I THINK IT'S CALLED "APPENDIX E," WHICH IS DEVELOPING
18 THE COST ESTIMATES AND THE POPULATION REDUCTION ESTIMATES. I
19 BELIEVE IT'S APPENDIX E TO THE EXPERT PANEL REPORT.

20 THERE WAS A SEPARATE GROUP. WE HAD ANOTHER TASK WE
21 WERE ASKED TO DO. AND I WAS ALSO ASKED TO AUTHOR THE
22 RECOMMENDED 24-MONTH IMPLEMENTATION PLAN THAT WOULD REDUCE THE
23 POPULATION AND ALSO PROVIDE THE PROGRAMS.

24 SO I ALSO DID THAT, AS WELL.

25 **Q.** AS A MEMBER OF THE EXPERT PANEL, YOU DID NOT STUDY THE

1 MEDICAL OR MENTAL HEALTHCARE DELIVERY SYSTEMS IN CALIFORNIA'S
2 PRISONS, DID YOU?

3 **A.** NO, WE DID NOT.

4 **Q.** YOU TOURED CALIFORNIA MEN'S COLONY IN APRIL, 2007 IN YOUR
5 CAPACITY AS A MEMBER OF THE EXPERT PANEL, CORRECT?

6 **A.** I DID.

7 **Q.** AS A MEMBER OF THE EXPERT PANEL, YOU ALSO TOURED LANCASTER
8 PRISON IN LOS ANGELES IN 2005, CORRECT?

9 **A.** I DON'T BELIEVE I TOURED -- NO, I DID NOT TOUR -- I DID TOUR
10 LANCASTER, BUT NOT -- I DON'T BELIEVE I DID THAT AS PART OF THE
11 EXPERT PANEL GROUP. I THINK THAT WAS PART OF A -- IF IT WAS
12 2005, MY RECOLLECTION THAT WAS PART OF AN EFFORT THAT THE CDCR
13 WANTED ME TO LOOK AT FUNDING FROM THE OPEN SOCIETY INSTITUTE TO
14 LOOK AT A MODEL REENTRY PROGRAM AT LANCASTER.

15 I BELIEVE THAT WAS THE REASON FOR IT IN 2005.

16 **Q.** THE PURPOSE OF YOUR TOURS OF CALIFORNIA MEN'S COLONY AND
17 LANCASTER WAS TO -- WAS NOT TO EVALUATE MEDICAL OR MENTAL
18 HEALTHCARE, CORRECT?

19 **A.** THAT'S CORRECT.

20 **Q.** WHEN YOU WROTE YOUR NOVEMBER, 2007 REPORT IN WHICH YOU
21 OPINED THAT THERE'S -- THE ONLY REMEDY THAT WILL FULFILL THE
22 REQUIREMENTS SET FORTH BY THE COLEMAN AND PLATA COURTS IS A
23 PROMPT REDUCTION OF THE CALIFORNIA PRISON POPULATION, YOU WERE
24 NOT AWARE OF THE STATUS OF MEDICAL OR MENTAL HEALTHCARE DELIVERY
25 AT CALIFORNIA MEN'S COLONY, WERE YOU?

1 A. NO, I DID NOT STUDY THE CMC MEDICAL SYSTEM.

2 Q. APPENDIX B OF YOUR NOVEMBER, 2007 REPORT INDICATES THAT
3 PLAINTIFFS' COUNSEL PROVIDED YOU WITH A SELECTION OF DOCUMENTS
4 FROM THE CSP LANCASTER COLEMAN TOUR BINDER, MAY 15TH THROUGH
5 18TH, 2007 MONITORING TOUR.

6 APPENDIX B DOES NOT INDICATE THAT PLAINTIFFS' COUNSEL
7 PROVIDED YOU WITH ANY OF THEIR OTHER MONITORING TOUR DOCUMENTS,
8 DOES IT?

9 A. I'M SORRY. WHAT'S YOUR QUESTION, AGAIN?

10 Q. APPENDIX B --

11 A. GO BACK TO THE FIRST QUESTION.

12 Q. OKAY. SOMEWHERE IN THAT APPENDIX --

13 A. OKAY.

14 Q. -- INDICATES THAT PLAINTIFFS' COUNSEL PROVIDED YOU WITH A
15 SELECTION OF DOCUMENTS FROM THE CSP LANCASTER COLEMAN TOUR
16 BINDER.

17 A. ON THE TOUR THAT I TOOK AT LANCASTER?

18 Q. NO. THIS IS THEIR OWN TOUR. I DON'T ACTUALLY KNOW.

19 A. BECAUSE I --

20 Q. DID YOU TOUR LANCASTER?

21 A. YES, I TOURED IT. I TOURED IT IN THE COMPANY OF MICHAEL
22 BIEN AND HIS COUNSEL.

23 Q. DO YOU RECALL WHEN YOU TOURED IT?

24 A. NOT OFF THE TOP OF MY HEAD, BUT IT WAS --

25 Q. I THINK YOU TOURED THAT IN NOVEMBER OF 2007.

1 THAT'S WHAT IT SAYS IN YOUR EXPERT REPORT.

2 **A.** YES, IF THAT'S THE CASE.

3 **Q.** THIS IS FROM MAY OF 2007, SO I BELIEVE THIS IS ACTUALLY ONE
4 OF THEIR OWN TOURS THAT THE PLAINTIFFS DID.

5 **A.** OKAY. I'LL TAKE YOU AT YOUR WORD.

6 **Q.** OTHER THAN THAT TOUR, YOU WEREN'T PROVIDED WITH ANY OF
7 PLAINTIFFS' COUNSEL'S OTHER MONITORING TOUR OF DOCUMENTS, WERE
8 YOU?

9 **A.** CAN YOU REPEAT THAT, AGAIN? I WAS NOT PROVIDED WITH WHAT?

10 **Q.** OTHER THAN THAT TOUR -- THOSE TOUR DOCUMENTS --

11 **A.** YES.

12 **Q.** -- PLAINTIFFS' COUNSEL DID NOT PROVIDE YOU WITH ANY OF THEIR
13 OTHER MONITORING TOUR DOCUMENTS, DID THEY?

14 **A.** ON LANCASTER?

15 **Q.** NO, OF ANY OF THEIR OTHER PRISON TOURS.

16 **A.** I DON'T KNOW. I'D HAVE TO -- I'M NOT PREPARED TO SAY "YES"
17 OR "NO" TO THAT. YOU MAY BE CORRECT. I'M NOT SURE.

18 **Q.** OKAY. SO YOU'RE NOT SURE WHAT DOCUMENTS YOU REVIEWED IN
19 PREPARING YOUR NOVEMBER, 2007 REPORT?

20 **A.** WELL, QUITE FRANKLY, I WASN'T PREPARED TO GO OVER THIS
21 TESTIMONY, SO -- I WAS PREPARED TO TALK ABOUT THE ISSUES THAT I
22 WAS ASKED TO APPEAR TODAY. SO I HAVEN'T STUDIED THIS IN ABOUT A
23 YEAR, YEAR-AND-A-HALF. SO FOR ME TO SAY "YES" OR "NO" -- AND
24 I'D LIKE TO RESPOND, BUT I WOULD LIKE TO HAVE SOME TIME TO STUDY
25 IT, BUT I DON'T THINK THE COURT WANTS TO SEE THAT TIME.

1 Q. SO PLAINTIFF'S COUNSEL PREPARED A MONITORING TOUR REPORT
2 OF THEIR VISIT.

3 JUDGE KARLTON: MA'AM, I WANT TO TELL YOU IT'S THE
4 JUDGMENT -- I KNOW OF ALL THREE JUDGES -- THAT CROSS-EXAMINATION
5 OF THIS WITNESS IS TERRIFICALLY IMPORTANT FOR YOUR CASE.

6 WHAT YOU ARE DOING NOW AS BEST I CAN TELL IS NOT
7 HELPFUL. NOW, YOU CAN CONTINUE, IF YOU WANT TO. BUT IF YOU CAN
8 GET TO MATERIAL THAT HE TESTIFIED ABOUT, THAT WOULD BE VERY
9 HELPFUL.

10 MS. JOHNSON: WE'RE GOING TO GET THERE, YOUR HONOR.

11 JUDGE KARLTON: I KNOW? AND SOMEDAY I'LL HAVE
12 GRANDCHILDREN.

13 GO AHEAD. GO AHEAD.

14 I'VE TOLD YOU SOMETHING THAT I WOULD HAVE HOPED WOULD
15 BE HELPFUL TO YOU, BUT IF YOU DON'T THINK SO, PROCEED AS YOU
16 CHOOSE.

17 BY MS. JOHNSON:

18 Q. PLAINTIFFS' COUNSEL PREPARED A MONITORING TOUR REPORT OF
19 THEIR VISIT TO CALIFORNIA'S MEN'S COLONY ON JULY 10TH AND 11TH,
20 2007, WHICH WAS JUST A FEW MONTHS AFTER YOUR OWN VISIT FOR THE
21 EXPERT PANEL, WHICH IS MARKED AS DEFENDANTS' TRIAL EXHIBIT 1080.

22 THE MONITORING LETTER STATES:

23 "DURING THE YEAR SINCE MY JULY, 2006 VISIT, CMC
24 MADE CONSIDERABLE STRIDES TOWARD IMPLEMENTING THE
25 INMATE MEDICAL SERVICES PROGRAM POLICIES AND

1 PROCEDURES, AND THE RESULTS ARE IMPRESSIVE. THE
2 PRISON HAS MADE THE TRANSITION FROM A PCP-FOCUSSED
3 SICK CALL SYSTEM INITIATED BY PATIENT SIGNUPS TO ONE
4 THAT INCORPORATES THE RN FACE-TO-FACE TRIAGE PROCESS
5 WITH PATIENTS SUBMITTING SICK CALL SLIPS. PROPERLY
6 EQUIPPED, CLEAN AND PRIVATE EXAM ROOMS HAVE BEEN
7 CREATED ON EACH OF THE YARDS ON BOTH EAST AND WEST.
8 AS DETAILED BELOW, BASED UPON REVIEW OF THE
9 SCHEDULING DATA AND RECENTLY SUBMITTED SICK CALL
10 SLIPS, IT APPEARS THAT THE PATIENTS ARE USUALLY SEEN
11 BY AN RN CERTIFIED IN PROTOCOLS WITHIN ONE BUSINESS
12 DAY OF RECEIPT OF THE SICK CALL SLIPS. AND THAT THE
13 PATIENTS REQUIRING FOLLOW-UP WITH A PCP ON A ROUTINE
14 BASIS ARE SEEN WITHIN 14 DAYS."

15 THE LETTER CONTINUES:

16 "THERE ARE SIGNIFICANT AREAS OF IMPROVEMENT, AS
17 WELL -- OTHER SIGNIFICANT AREAS OF IMPROVEMENT, AS
18 WELL. THE PRISON HAS ACQUIRED ADDITIONAL
19 TRANSPORTATION VEHICLES TO FACILITATE OFFSITE MEDICAL
20 ENCOUNTERS AND FOR TRANSFERS BETWEEN EAST AND WEST
21 FACILITIES. MEDICAL STAFF HAVE IDENTIFIED ADDITIONAL
22 ORTHOPEDIC PROVIDERS, AND THE BACKLOG COMPRISING
23 HUNDREDS OF PRISONERS THAT EXISTED DURING MY LAST
24 VISIT HAS BEEN ELIMINATED. INDEED, WITH THE NOTABLE
25 EXCEPTION OF PHYSICAL THERAPY, ROUTINE ON-SITE AND

1 OFFSITE SPECIALTY APPOINTMENTS ARE GENERALLY
2 SCHEDULED TO OCCUR WELL WITHIN THE 90-DAY TIME LINE.
3 WITH ITS LOW MEDICAL STAFFING VACANCIES, CMC APPEARS
4 TO BE DOING A GOOD JOB ENSURING THAT PATIENTS RECEIVE
5 TIMELY, PRIMARY AND TERTIARY CARE IN MOST AREAS.
6 CONCERNS RAISED DURING MY LAST VISIT REGARDING THE
7 TRANSFER OF 200 TRIPLE CMS PATIENTS TO WEST WERE
8 ALLAYED AS THE TRANSFER DID NOT MATERIALIZE."

9 WHEN YOU CONCLUDED IN YOUR NOVEMBER, 2007 REPORT THAT
10 THE ONLY REMEDY WHICH WILL FULL-TIME THE REQUIREMENTS SET FORTH
11 BY THE COLEMAN AND PLATA COURTS IS A PROMPT REDUCTION OF THE
12 CALIFORNIA PRISON POPULATION, YOU WERE NOT AWARE OF THIS
13 ASSESSMENT BY PLAINTIFFS' COUNSELS OF IMPROVEMENTS IN MEDICAL
14 CARE DELIVERY AT CALIFORNIA MEN'S COLONY, WERE YOU?

15 **A.** NO, BUT LET ME ADD SOMETHING. THE REASON THAT I WENT TO CMC
16 ALONG WITH JOAN PETERSILIA AS ART OF THE EXPERT PANEL GROUP WAS
17 BECAUSE CMC HAS ALWAYS BEEN VIEWED IN THE DEPARTMENT AS ONE OF
18 THEIR BEST FACILITIES. IT IS A FACILITY THAT IS RICH WITH
19 PROGRAMS. IT'S NOT CROWDED. IT'S NOT CROWDED BECAUSE OF THE
20 LIMIT ON ITS POPULATION BECAUSE OF ITS INFRASTRUCTURE.

21 SO WE WANTED TO GO TO CMC TO SEE WHAT WOULD BE
22 POSSIBLE WITHIN THE DEPARTMENT OF CORRECTIONS. AND WE KNEW THAT
23 -- EVERYONE SHOULD KNOW THAT CMC IS PROBABLY ONE OF THE BETTER
24 RUN FACILITIES.

25 SO I TAKE IT THIS IS AN ACCURATE DESCRIPTION, BUT IT

1 WOULD NOT AFFECT MY OPINION ABOUT THE CDCR SYSTEM AS A WHOLE,
2 BECAUSE OBVIOUSLY AS EVERYONE KNOWS WHEN YOU DO MONITORING WORK
3 YOU CAN HAVE FACILITIES THAT ARE IN COMPLIANCE, BUT IF A
4 MAJORITY OF THE FACILITIES ARE NOT IN COMPLIANCE, THEN YOU STILL
5 HAVE ISSUES.

6 SO THAT'S THE ONLY COMMENT THERE. I DON'T WANT TO
7 ARGUE WITH YOU THAT THEY WERE MAKING GREAT IMPROVEMENTS. BUT I
8 DO THINK IT IS IMPORTANT TO NOTE THAT CMC HAS ALWAYS BEEN VIEWED
9 AS ONE OF THE BEST RUN FACILITIES IN THE SYSTEM.

10 Q. YOU WERE NOT AWARE OF ANY STUDIES THAT TIE THE PERCENTAGE
11 OVER DESIGN CAPACITY TO THE INABILITY TO MEET THE BASIC MEDICAL
12 NEEDS OF PRISONERS, ARE YOU?

13 A. WELL, YEAH. WHEN YOU -- WHEN YOU -- LET ME PUT IT THIS WAY.
14 WHEN YOU TRY TO FIGURE OUT IS A FACILITY OR SYSTEM CAPABLE OF
15 MANAGING ITS PRISON POPULATION PROPERLY, LIKE AS A MONITOR I
16 WOULD SET PERCENTAGES, BUT I WOULD SET THOSE PERCENTAGES BASED
17 ON WHAT I WAS SEEING THE CIRCUMSTANCES TO BE.

18 SO, YES, PERCENTAGES ARE SET WHEN YOU TRY TO
19 EVALUATE -- YOU NEED TO GIVE A MARK TO THE DEPARTMENT WHAT THEY
20 NEED TO ACHIEVE. SO I WOULD SAY YES, PERCENTAGES ARE BEING USED.

21 ARE THERE STUDIES THAT SAY WHEN YOU HIT A CERTAIN
22 PERCENTAGE OR TIPPING POINT IT FALLS INTO DISARRAY? I'M NOT
23 AWARE OF ANY STUDIES THAT SAID THIS IS THE DEFINITIVE PERCENTAGE
24 YOU HAVE TO HIT.

25 LET ME JUST ADD REAL QUICKLY THAT'S BECAUSE PEOPLE

1 START TALKING ABOUT CAPACITY IN ALL SORTS OF WAYS. THERE'S
2 DESIGN CAPACITY. THERE'S OPERATING CAPACITY. IT REALLY GETS
3 DOWN TO THE FUNCTIONALITY OF THAT PRISON AND THAT PRISON SYSTEM:
4 IS IT ABLE TO PROVIDE THE BASIC CARE IT NEEDS TO, REGARDLESS OF
5 THE LEVEL OF CROWDING THAT MAY BE GOING ON?

6 YOU COULD HAVE A PRISON SYSTEM THAT IS UNDERCROWDED
7 AND STILL NOT BE MEETING MEDICAL MENTAL HEALTHCARE.

8 Q. AND YOU CAN HAVE A SYSTEM THAT WAS OVERCROWDED AND STILL
9 COULD BE MEETING MEDICAL AND MENTAL HEALTHCARE, CORRECT?

10 A. ABSOLUTELY. ABSOLUTELY.

11 Q. YOU TOURED LANCASTER, AGAIN, IN NOVEMBER, 2007 IN YOUR
12 CAPACITY AS AN EXPERT IN THIS CASE; IS THAT CORRECT?

13 A. THAT'S CORRECT.

14 Q. OTHER THAN THAT ONE TOUR OF LANCASTER IN NOVEMBER, 2007 YOU
15 HAVE NOT TOURED ANY OTHER OF CALIFORNIA'S 33 PRISONS IN YOUR
16 CAPACITY AS AN EXPERT IN THIS CASE, HAVE YOU?

17 A. THAT'S CORRECT.

18 Q. ON PAGE FIVE, PARAGRAPH 39 OF YOUR NOVEMBER 2007 REPORT, YOU
19 NOTE THAT:

20 "CALIFORNIA PRISONS HAVE AN ASSAULT RATE OF
21 APPROXIMATELY 5.6 PER 100, OR 5600 PER 100,000 INMATE
22 POPULATION," WHICH YOU STATE IS 20 TIMES THE
23 AGGRAVATED ASSAULT RATE REPORTED BY THE FBI FOR THE NATION,
24 WHICH IS 288 PER 100,000 POPULATION.

25 YOU GO ON TO NOTE THAT:

1 "THE CDCR POPULATION IS NOT COMPARABLE TO THE
2 U.S. RESIDENT POPULATION."

3 YOU DO NOT KNOW HOW THE RATE OF ASSAULTS IN
4 CALIFORNIA'S PRISONS COMPARES TO THAT OF OTHER STATES' PRISONS,
5 DO YOU?

6 **A.** NO, THE REASON BEING IS THAT THEY ALL REPORT THEM IN
7 DIFFERENT STANDARDS. THERE IS NO SOURCE YOU CAN GO TO THAT SHOWS
8 THE RATES BY EVERY STATE IN THE COUNTRY.

9 **Q.** SO YOU DO NOT KNOW WHETHER CALIFORNIA PRISONS HAVE AN
10 EXTREMELY HIGH RATE OF ASSAULTS AS COMPARED TO OTHER STATE
11 PRISONS, DO YOU?

12 **A.** THAT'S CORRECT. I CAN MAKE COMPARISONS, BUT IT'S HARD TO
13 SAY, YOU KNOW, THE EXTENT TO WHICH -- HOW COMPARABLE THOSE RATES
14 ARE TO OTHER PRISON SYSTEMS.

15 **Q.** WHEN YOU INCLUDED IN YOUR NOVEMBER, 2007 REPORT THAT:

16 "THE ONLY REMEDY WHICH WILL FULFILL THE
17 REQUIREMENTS SET FORTH BY THE COLEMAN AND PLATA
18 COURTS IS A PROMPT REDUCTION OF THE CALIFORNIA PRISON
19 POPULATION," WERE YOU AWARE THAT IN HIS MAY 31ST,
20 2007 REPORT, WHICH IS DEFENDANTS' TRIAL EXHIBIT 1292, ON PAGE
21 15, BEFORE THE SPECIAL MASTER IN THE COLEMAN CASE HAD STATED
22 THAT:

23 "REDUCTION OF THE CASELOAD BY 9500
24 INMATE-PATIENTS WOULD REQUIRE AN OVERALL POPULATION
25 DROP OF 50,000 INMATES. BUT EVEN SUCH A DECLINE IN

1 THE OVERALL POPULATION WOULD PROBABLY NOT RAISE
2 STAFFING RESOURCES INTO EQUILLIBRIUM WITH THE MENTAL
3 HEALTHCARE CASELOAD. CLINICIANS CANNOT BE SPREAD OUT
4 EVENLY LIKE BUTTER OVER THE MDHS CASELOAD."

5 GOING DOWN, HE SAYS:

6 "THE IMPACT OF A POPULATION CUT ON MENTAL HEALTH
7 STAFFING DEPENDS MORE ON THE NATURE OF THE PROGRAM
8 CUT THAN THE OVERALL NUMBERS OF INMATES DIVERTED.
9 EVEN THE RELEASE OF 100,000 INMATES WOULD LIKELY
10 LEAVE THE DEFENDANTS WITH A LARGELY UNMITIGATED NEED
11 TO PROVIDE INTENSE MENTAL HEALTH SERVICES TO PROGRAM
12 POPULATIONS THAT WOULD REMAIN UNDIMINISHED BY A
13 REDUCTION I OF SOME 19,000 3CMS INMATES.

14 "THIS WOULD SUFFICE TO COVER JUST THE FUNCTIONAL
15 VACANCY RATE AMONG CASE MANAGERS. ONLY A TARGETED
16 RELEASE OF SERIOUSLY MENTAL ILL INMATES WILL SERVE
17 QUICKLY TO REVERSE CURRENT DEFICIENCIES, ESPECIALLY
18 BED AND SPACE PROGRAM SPACE."

19 WERE YOU AWARE OF THAT?

20 **A.** I BELIEVE I READ THAT, YES.

21 **Q.** THAT DIDN'T IMPACT YOUR CONCLUSION IN ANY WAY?

22 **A.** NO, BECAUSE HE'S NOT PROPERLY MODELING THIS ISSUE. WHEN HE
23 USES THE PHRASE:

24 "EVEN THE RELEASE OF 100,000 INMATES," AND
25 THIS IS -- YOU SEE THIS KIND OF -- THEY CALL IT KIND OF "SLOPPY

1 LANGUAGE."

2 AS I ALREADY POINTED OUT, WE RELEASE OVER 140,000
3 EVERY YEAR, SO I THINK HE MAY BE TALKING ABOUT A REDUCTION IN
4 THE AVERAGE DAILY POPULATION. BUT I DON'T THINK I NECESSARILY
5 AGREE WITH HIS CONCLUSIONS THERE.

6 YOU'D HAVE TO MODEL THE REDUCTION, WHO IS BEING
7 TARGETED, AND THEN SEE WHAT THE RESIDUAL POPULATION IS.

8 I DID FEEL PRETTY STRONGLY THAT ONE OF THE -- YOU
9 KNOW, BECAUSE ORIGINALLY I WENT TO LANCASTER BECAUSE IT'S A
10 RECEPTION CENTER. AND ONE OF THE MAJOR ISSUES THAT I SAW THERE
11 WAS BECAUSE OF THE CLOGGING OF INMATES THERE IT WAS VERY
12 DIFFICULT TO DO A PROPER ASSESSMENT AND SERVICE DELIVERY WITH
13 THE CROWDING FACTOR.

14 AND SO IN MY OPINION THE DIVERSION OF THE TECHNICAL
15 VIOLATORS AND THE DIVERSION OF THE SHORT-TERMERS BASICALLY WILL
16 CLEAN UP THIS PROBLEM IN THE RECEPTION CENTERS BY THEMSELVES.

17 AND THEN, WE'D HAVE TO SEE WHAT'S LEFT IN THE
18 RESIDUAL POPULATION; IS THERE ENOUGH SERVICES THERE.

19 SO I RECALL READING THIS, BUT I DON'T BELIEVE I
20 NECESSARILY AGREE WITH HIS CONCLUSIONS.

21 Q. SITTING HERE TODAY DO YOU KNOW WHAT PERCENTAGE OF THE CDCR
22 PRISON POPULATION HAS MENTAL ILLNESS?

23 A. WELL, THERE'S TWO TYPES. AND I CAN'T OFF THE TOP OF MY
24 HEAD -- THERE'S A RELATIVELY SMALL GROUP THAT HAS THE INTENSIVE
25 MENTAL HEALTH NEEDS. AND THEN, THERE'S A LARGER GROUP THAT HAS

1 MENTAL HEALTH ISSUES, BUT THEY ARE ON MEDICATION GETTING
2 TREATMENT.

3 AS YOU LOWER THAT POPULATION, UNLESS THEY ARE NOT
4 BEING TARGETED PROPERLY, THEY WILL BE DROPPING, ALSO. THAT'S WHY
5 I THINK IT'S IMPORTANT YOU'D HAVE TO MODEL THE WHOLE SYSTEM TO
6 SEE WHAT'S LEFT IN TERMS OF MEDICAL AND MENTAL HEALTH INMATES,
7 AND THEN SEE WHERE THEY ARE HOUSED AND SEE WHAT THE SERVICES
8 ARE.

9 BUT, AGAIN, I THINK THIS IS KIND OF SPECULATIVE. I
10 DON'T NECESSARILY AGREE WITH IT.

11 Q. YOU DISAGREE WITH THE COLEMAN SPECIAL MASTER.

12 A. ON THIS MATTER.

13 Q. YOU FEEL THAT YOU'RE MORE QUALIFIED THAN THE COLEMAN SPECIAL
14 MASTER TO OPINE ON THIS TOPIC?

15 A. ON THIS THIS TOPIC, YEAH.

16 Q. IN YOUR AUGUST 15, 2008 REPORT, YOU RENDERED AN OPINION ON
17 WHETHER A PRISONER RELEASE ORDER WOULD HAVE AN ADVERSE IMPACT ON
18 PUBLIC SAFETY OR THE OPERATION OF A LOCAL CRIMINAL JUSTICE
19 SYSTEM, CORRECT?

20 YOUR AUGUST --

21 A. YES.

22 Q. -- 15, 2008 REPORT.

23 A. YES, I SEE IT.

24 Q. YOU DID NOT OFFER AN OPINION ON WHETHER A REDUCTION OF THE
25 PRISON POPULATION IS THE ONLY REMEDY THAT WILL FULFILL THE PLATA

1 AND COLEMAN REQUIREMENTS IN THAT REPORT, DID YOU?

2 **A.** I'M SORRY. CAN YOU REPEAT THAT? I APOLOGIZE.

3 **Q.** IN YOUR AUGUST 15, 2008 REPORT, AND YOUR TWO LATER REPORTS

4 --

5 **A.** OH, 2008.

6 **Q.** -- IN 2008, YOU DID NOT OFFER AN OPINION ON WHETHER A

7 REDUCTION OF THE PRISON POPULATION IS THE ONLY REMEDY THAT WILL

8 FULFILL THE PLATA AND COLEMAN REQUIREMENTS, DID YOU?

9 **A.** THAT'S CORRECT.

10 **Q.** YOU DO NOT KNOW THE STATUS OF MEDICAL OR MENTAL HEALTHCARE

11 DELIVERY IN CALIFORNIA'S PRISONS ANY TIME IN 2008, DO YOU?

12 **A.** I BELIEVE THAT'S CORRECT, YES.

13 **Q.** IT'S NOT YOUR OPINION THAT NO MATTER WHAT RESOURCES HE HAS

14 OR WHAT ACTIONS HE TAKES THE RECEIVER CANNOT PROVIDE

15 CONSTITUTIONAL LEVELS OF MEDICAL CARE AT CURRENT POPULATION

16 LEVELS, IS IT?

17 **A.** WELL, MY OPINION IN READING THE VARIOUS REPORTS IS THAT THEY

18 ARE TRYING VERY HARD, AND THEY ARE BEING UNABLE TO REACH THOSE

19 LEVELS OF CARE, SIMPLY BY THROWING AS MUCH STAFF AND RESOURCES

20 THEY CAN INTO THE EXISTING SYSTEM.

21 IT IS MY OPINION THAT THE ONLY WAY TO REALLY SOLVE

22 THE PROBLEM IS TO REDUCE THAT POPULATION AT SOME LEVEL. IT HAS

23 TO BE REDUCED FOR THE REASONS I'VE STATED ALREADY.

24 **Q.** OKAY. I'M GOING TO LOOK AT YOUR FIRST DEPOSITION OF

25 SEPTEMBER 19, 2008, PAGE 26, LINE 22 -- PAGE 126.

1 READING:

2 "IS IT YOUR OPINION THAT NO MATTER WHAT
3 RESOURCES HE HAS OR WHAT ACTIONS HE TAKES, THE
4 RECEIVER CANNOT PROVIDE FOR CONSTITUTIONAL LEVELS OF
5 MEDICAL CARE AT CURRENT POPULATION LEVELS?

6 "ANSWER: NO."

7 **A.** RIGHT.

8 **Q.** YOU WROTE IN YOUR AUGUST 15, 2008 REPORT ON PAGE EIGHT,
9 PARAGRAPH 19 --

10 **MS. JOHNSON:** AUGUST 15, 2008.

11 THIS IS NOT THE RIGHT PAGE. PAGE EIGHT, PARAGRAPH 19.
12 UP.

13 THAT'S THE WRONG ONE.

14 HOLD ON A SECOND. WAS THAT IT?

15 OH, YES. THERE WE GO. THE LAST SENTENCE IN THE
16 FIRST -- TAKE THE LAST SENTENCE OF THE PARAGRAPH, ACTUALLY.

17 "AND AS WILL BE SHOWN BELOW, COMMA, MODERATELY
18 LOWERING THE PRISON POPULATION AND INCARCERATION RATE
19 WHILE USING EVIDENCE-BASED MODELS FOR REHABILITATION
20 DOES NOT RESULT IN HIGHER CRIME."

21 **BY MS. JOHNSON:**

22 **Q.** DO YOU SEE THAT?

23 **A.** YES.

24 **Q.** ONE OF THE STATES THAT YOU USE AS AN EXAMPLE OF THE IMPACT
25 OF A REDUCTION IN THE PRISON POPULATION ON THE CRIME RATE IS NEW

1 YORK, CORRECT?

2 A. CORRECT.

3 Q. THE PRISON POPULATION REDUCTION IN NEW YORK INVOLVED THE
4 RELEASE OF 24,000 PRISONERS FROM 1997 THROUGH 2006, A NINE-YEAR
5 PERIOD, CORRECT?

6 A. ARE YOU REFERRING TO A REPORT?

7 Q. YOU DON'T RECALL?

8 A. I'M ASKING YOU. ARE YOU REFERRING TO -- WHEN YOU SAY THOSE
9 STATISTICS --

10 Q. I'M ASKING YOU IF YOU RECALL SITTING HERE TODAY WHAT THE
11 PRISON POPULATION REDUCTION IN NEW YORK INVOLVED --

12 A. WELL --

13 Q. -- IN TERMS OF THE NUMBER OF PRISONERS OVER THE NUMBER OF
14 YEARS.

15 A. THEY HAVE A REPORT OUT ABOUT THEIR EFFORTS TO DO THAT. I
16 THINK IT'S REFERENCED IN MY REPORT.

17 Q. IS WHAT I SAID INCORRECT?

18 A. WELL, I NEED TO KNOW THE REPORT THAT YOU'RE REFERRING TO,
19 BECAUSE NEW YORK PUTS OUT A LOT OF REPORTS.

20 Q. I'M REFERRING TO YOUR REPORT, SIR.

21 A. AND THE ONE THAT I CITED IN THE NEW YORK REPORT.

22 Q. I'VE REFERRED TO YOUR SECOND REPORT ON PAGE 11, PARAGRAPH
23 28. I'M SORRY. PAGE -- YES, THAT IS -- YES, PAGE 11, PARAGRAPH
24 28.

25 A. PAGE 11? OKAY. JUST A SECOND.

1 Q. A REPORT RELEASED BY THE NEW YORK STATE DEPARTMENT OF
2 CORRECTIONS ESTIMATES THAT OVER 24,000 PRISONERS WERE RELEASED
3 AN ESTIMATED SIX MONTHS EARLIER FROM 1997 THROUGH 2006.

4 A. CORRECT.

5 Q. SO THAT'S 24,000 PRISONERS OVER A NINE-YEAR PERIOD.

6 A. CORRECT. OVER A LONG PERIOD OF TIME, YES.

7 Q. SO THE PRISON POPULATION REDUCTION IN NEW YORK AVERAGED
8 ABOUT 2600 PRISONERS PER YEAR, CORRECT?

9 A. NO. I DON'T THINK THAT'S --

10 Q. 24,000 DIVIDED BY NINE IS NOT 2600?

11 A. RIGHT. AGAIN, THE PROBLEM HERE IS THAT NEW YORK'S PRISON
12 POPULATION DROPPED FOR A NUMBER OF REASONS. THIS IS PART OF IT.

13 BUT THE OTHER PART IS THE CRIME RATE WAS GOING DOWN.
14 I DON'T WANT TO GO INTO TOO MUCH DETAIL. THERE'S A REPORT
15 WRITTEN ABOUT THIS.

16 AND IT WAS BECAUSE OF ACTIONS BEING TAKEN LARGELY IN
17 NEW YORK CITY WHERE THEY CHANGED ARREST POLICIES. THEY STARTED
18 ARRESTING MORE PEOPLE FOR MISDEMEANORS AS OPPOSED TO FELONIES.
19 AND, THEREFORE, THE PRISON ADMISSION INTAKE STARTED TO GO DOWN.
20 THAT WAS ONE PART.

21 THE OTHER PART IS THIS PROGRAM WHERE THEY WERE
22 RELEASING THEM EARLY THROUGH A CREDIT REDUCTION PROGRAM. BUT YOU
23 CAN'T JUST TAKE THE SEVEN YEARS AND DIVIDE IT, YOU KNOW, BY THAT
24 NUMBER AND SAY THAT'S WHAT IS CAUSING -- IT WENT DOWN BY THAT
25 AMOUNT. IF YOU ACTUALLY LOOKED AT NEW YORK, IT'S NOT GOING TO

1 BE AT THAT LEVEL SO --

2 **Q.** DO YOU CONSIDER A REDUCTION IN CALIFORNIA'S PRISON
3 POPULATION OF APPROXIMATELY 52,000 OVER A TWO-YEAR PERIOD A
4 MODERATE REDUCTION IN THE PRISON POPULATION?

5 **A.** WELL, THE WAY I LOOK AT IT IS YOU HAVE TO LOOK AT WHERE
6 CALIFORNIA IS COMPARED TO THE REST OF THE STATES. THAT WOULD BE
7 A SIGNIFICANT -- NO QUESTION ABOUT IT. THAT'S A VERY
8 SIGNIFICANT DROP.

9 AND IT MAY SOUND VERY AMBITIOUS TO A LOT OF FOLKS.
10 BUT CALIFORNIA'S INCARCERATION RATE NOW IS APPROXIMATELY -- IT'S
11 ABOVE THE NATIONAL AVERAGE.

12 WHEN I SAY "RATE" THAT'S THE RATE PER CAPITA. IT'S
13 ABOUT 470, 480 PER 100,000 POPULATION.

14 AND IF YOU DROPPED IT TO THE 50,000 BY 50,000
15 PRISONERS OVER SOME PERIOD OF TIME -- THAT WOULD DEPEND ON HOW
16 YOU DO THAT AND THE STRATEGY FOR DOING IT -- ITS INCARCERATION
17 RATE WOULD THEN DROP TO APPROXIMATELY 350 PER 100,000.

18 NOW THAT'S -- THERE'S 25 STATES IN THE COUNTRY THAT
19 HAVE RATES AT THAT LEVEL OR LOWER, INCLUDING NEW YORK.

20 SO MY -- I GUESS I WOULD SAY TO YOUR QUESTION: YES,
21 THAT'S A LARGE DROP. NO QUESTION ABOUT IT.

22 IS IT DOABLE? ABSOLUTELY YES.

23 IS IT TYPICAL OF OTHER STATES? YES, AT LEAST HALF OF
24 THE STATES HAVE INCARCERATION RATES AT THAT LEVEL.

25 SO I DON'T SEE IT AS SOMETHING THAT'S NOT DOABLE,

1 UNREASONABLE, BECAUSE HALF THE COUNTRY IS ABLE TO DO IT.

2 Q. OKAY. SO LET ME -- LET'S TRY THIS AGAIN.

3 ON PAGE EIGHT, JPARAGRAPH 19 OF YOUR REPORT, YOU
4 WROTE:

5 "MODERATELY LOWERING THE PRISON POPULATION AND
6 INCARCERATION RATE WHILE USING EVIDENCED-BASED MODELS
7 FOR REHABILITATION DOES NOT RESULT IN HIGHER CRIME."

8 A. CORRECT.

9 Q. SO MY QUESTION TO YOU IS: DO YOU CONSIDER A REDUCTION IN
10 CALIFORNIA'S PRISON POPULATION OF APPROXIMATELY 52,000 OVER A
11 TWO-YEAR PERIOD A MODERATE REDUCTION IN THE PRISON POPULATION?

12 A. ABSOLUTELY. BECAUSE, AGAIN, GOING BACK TO MY CHART, YOU
13 HAVE THIS VERY ABNORMAL PRACTICE GOING ON IN THE STATE OF
14 CALIFORNIA OF THE TECHNICAL PAROLE VIOLATORS.

15 AND THAT PUTS CALIFORNIA IN KIND OF AN ABNORMAL
16 SITUATION. IT'S LIKE SAYING TO SOMEONE WHO IS REALLY
17 OVERWEIGHT, YOU KNOW:

18 "LISTEN, CAN I GET YOU TO LOSE FIFTY POUNDS," AS
19 OPPOSED TO SOMEONE WHO WEIGHS 200 POUNDS:

20 "CAN YOU LOSE FIFTY POUNDS," AS OPPOSED TO
21 SOMEONE WHO WEIGHS 125 POUNDS:

22 "CAN YOU LOSE FIFTY POUNDS?"

23 SO A STATE THAT HAS GOT THIS BIG BULGE IN IT, IT'S AN
24 EASIER TARGET. IT'S MUCH MORE REASONABLE TO GET THEM TO A LOWER
25 LEVEL.

1 SO I CALL IT "MODERATE" BECAUSE WHAT I'M PROPOSING IS
2 REALLY WHAT WE'VE DONE IN OTHER STATES. AND IT WILL PRODUCE A
3 LARGE DECLINE, BUT IT'S NOT ANYTHING THAT'S -- THAT A DOCTOR
4 WOULDN'T PRESCRIBE TO A PATIENT IN THAT SITUATION.

5 **JUDGE KARLTON:** EXCUSE ME, DOCTOR. WHATEVER THE
6 REASON, THERE IS THIS VERY LARGE NUMBER OF PEOPLE IN THE
7 CALIFORNIA SYSTEM. AND THE QUESTION IS WHETHER A REDUCTION OF
8 SOME 52,000 OVER A COUPLE OF YEARS, OR WHATEVER, IS -- I'M
9 SORRY. I'VE LOST THE -- A MODERATE -- A MODERATE LOWERING OF
10 THE PRISON POPULATION.

11 **THE WITNESS:** WELL, STATISTICALLY IT'S ABOUT A
12 30 PERCENT OR SO DECLINE. SO THAT'S SUBSTANTIAL. THAT'S LARGE.

13 FOR EXAMPLE, I'M WORKING IN THE STATE OF LOUISIANA
14 WHICH HAS THE HIGHEST INCARCERATION RATE IN THE WORLD.

15 **JUDGE HENDERSON:** I THOUGHT D.C. DID, BUT THAT'S ALL
16 RIGHT.

17 **THE WITNESS:** WELL, FOR CITIES. IT'S A LOT EASIER TO
18 REDUCE THAT POPULATION THAN IF I GO TO RHODE ISLAND, WHICH HAS
19 AN INCARCERATION RATE OF 185 PER 100,000.

20 SO THAT'S MY POINT, I GUESS. YES, IT'S SIGNIFICANT.
21 IT'S LARGE.

22 IF YOU'RE ASKING -- AND WHEN I SAY "MODERATE," THE
23 NUMBER ONE THING THAT WILL WORK HERE -- I MEAN, THE TECHNICAL
24 VIOLATION THING TO ME IS -- THAT BUYS YOU, DEPENDING ON HOW YOU
25 DO IT, 10 TO 15,000 INMATES RIGHT THERE.

1 AND THOSE ARE PEOPLE THAT ARE INVOLVED IN ACTIVITIES
2 THAT IN MOST STATES CAN'T GO TO PRISON FOR. BUT IN CALIFORNIA
3 YOU BRING THEM TO THE PRISON SYSTEM.

4 THAT'S AN EASY ONE TO DO. AND WE CAN DROP IT PRETTY
5 QUICKLY IF WE DO SOME THINGS THAT OTHER STATES HAVE DONE.

6 THE REAL TOUGH ONE IS GOING TO BE THE LENGTH OF STAY
7 ISSUE. YOU HAVE TO GO AFTER THE LENGTH OF STAY ISSUE.

8 AND BY "MODERATE" THAT'S WHAT I'M TALKING ABOUT. IN
9 MY REPORT I TALK ABOUT FOUR MONTHS. YOU COULD MAKE IT FIVE
10 MONTHS, WHATEVER YOU WANT TO USE SO WE CAN GET TO THAT NUMBER.

11 THE EXPERT PANEL ALSO ESTIMATED IN OUR APPENDIX --
12 AND I'LL SAY THIS BECAUSE THIS IS SOMETHING THE STATE WOULD HAVE
13 TO DEAL WITH -- YOU WOULD HAVE TO GO AFTER A CERTAIN GROUP THAT
14 THUS FAR PEOPLE DON'T WANT TO GO AFTER, BUT THEY ARE VERY
15 SUITABLE CANDIDATES. IN PARTICULAR, THE TWO STRIKERS. YOU
16 WOULD HAVE TO GO AFTER THE TWO STRIKERS AND GET THEIR SENTENCE
17 TIMES SERVED DOWN MODERATELY.

18 IF YOU DON'T GO AFTER THE TWO STRIKERS, YOU CANNOT
19 HIT THE 50,000 MARK. IF THEY ARE OFF THE TABLE, THEN YOU CAN'T
20 DO IT. IF THEY ARE ON THE TABLE, THEN YOU CAN DO IT.

21 SO IT ALL DEPENDS WHAT THE STATE SAYS IS ON THE
22 TABLE, IS OFF THE TABLE, YOU KNOW.

23 **JUDGE KARLTON:** WE WOULD NOT HAVE THE POWER -- AT
24 LEAST I DON'T THINK WE WOULD. I SUPPOSE WE WILL FIND OUT WHEN
25 WE GET BRIEFING FROM PEOPLE. BUT IT DOES NOT APPEAR TO ME THAT

1 WE WOULD HAVE THE POWER TO ALTER THE SENTENCING DECISIONS MADE
2 BY THE CALIFORNIA LEGISLATURE.

3 THUS, PEOPLE WOULD BE LET OUT -- IF WE ORDERED A CAP,
4 WOULD BE LET OUT WHO WERE UNDER THE PRESENT LAW CAPABLE OF BEING
5 LET OUT.

6 **THE WITNESS:** RIGHT.

7 **JUDGE KARLTON:** SO THESE TWO STRIKERS, IF THEY AREN'T
8 CAPABLE OF BEING LET OUT, WOULDN'T BE LET OUT?

9 **THE WITNESS:** AND I WOULD SAY THERE'S NO STATE THAT
10 I'VE WORKED WITH WHERE YOU'RE TALKING ABOUT THIS KIND OF A
11 DECLINE THAT YOU ARE NOT GOING TO HAVE TO GO AFTER LEGISLATION.

12 THAT'S WHY I THINK IN THE GOVERNOR'S NEW BUDGET, WHEN
13 HE TALKS ABOUT FOUR MONTHS, HE'S TALKING ABOUT GIVING INMATES
14 NOW FOUR MONTHS OFF FOR EACH PROGRAM THEY COMPLETE.

15 HE WAS SILENT ON: DOES THAT INCLUDE TWO STRIKERS OR
16 NOT? YOU KNOW, HE DOESN'T TALK ABOUT THE CATEGORY. HE'S JUST
17 KIND OF PUTTING THAT OUT THERE.

18 BUT YOU WOULD HAVE TO. YOU WOULD HAVE TO GET
19 LEGISLATIVE REFORM, BECAUSE LEGISLATIVE REFORM GOT YOU INTO THIS
20 SITUATION. IT'S THE ONLY WAY IT'S GOING TO GET YOU OUT OF THIS
21 SITUATION.

22 **JUDGE KARLTON:** ARE YOU SAYING -- I'M SORRY, MS.
23 JOHNSON.

24 ARE YOU SAYING THAT GIVEN WHAT I BELIEVE TO BE THE
25 LIMITATIONS ON OUR POWER, A CAP WHICH DOESN'T REACH PEOPLE THAT

1 WE CAN'T REACH BECAUSE OF LEGISLATION WOULD NOT -- WOULD NOT
2 RESULT IN THE LOWERING OF THE POPULATION THAT DID NOT ENDANGER
3 THE PUBLIC?

4 **THE WITNESS:** REPEAT -- I'M SORRY.

5 **JUDGE KARLTON:** IT'S VERY COMPLICATED.

6 **THE WITNESS:** NO, I WANT TO BE CLEAR BEFORE I ANSWER.

7 **JUDGE KARLTON:** ALL RIGHT. LET'S START ALL OVER
8 AGAIN.

9 I UNDERSTAND YOU NOW TO BE SAYING THAT IN ORDER FOR
10 THERE TO BE AN EFFECTIVE PRISON LIMITATION ORDER, IT WOULD HAVE
11 TO REACH PEOPLE WHO ARE NOW LEGISLATIVELY BARRED FROM BEING
12 RELEASED.

13 **THE WITNESS:** WELL, THEY ARE NOT BARRED FROM BEING
14 RELEASED. THEY ARE BEING RELEASED. THE QUESTION IS --

15 **JUDGE KARLTON:** I MEAN --

16 **THE WITNESS:** -- HOW LONG? HOW LONG ARE THEY
17 STAYING?

18 **JUDGE KARLTON:** RIGHT.

19 **THE WITNESS:** AND THE ISSUES THAT THE STATE WOULD
20 HAVE TO ADDRESS ARE WHAT THEY CALL THEIR GOOD TIME CREDIT
21 EARNING CLASSES, WHICH ARE 50 PERCENT, 80 PERCENT, 85 PERCENT
22 CLASSES.

23 **JUDGE KARLTON:** WHATEVER GOOD TIME CLASSES THAT THERE
24 ARE, PERSONS WHO ARE SUBJECT TO TWO STRIKES INCARCERATION ARE
25 NOT ELIGIBLE TO BE RELEASED BEFORE THEIR TERM IS ACTIVELY --

1 ACTUALLY EXPERIENCED, RIGHT?

2 **THE WITNESS:** THEY HAVE TO SERVE 80 PERCENT.

3 **JUDGE KARLTON:** OKAY. SO, I THINK WHAT YOU SAID A FEW
4 MOMENTS AGO WAS FOR THERE TO BE AN EFFECTIVE PROGRAM WHICH
5 MODERATELY LOWERS THE PRISON POPULATION, DOES NOT RESULT IN
6 HIGHER CRIME RATE, CRIMES.

7 **THE WITNESS:** RIGHT.

8 **JUDGE KARLTON:** BUT IF YOU CANNOT REACH THE TWO
9 STRIKERS, THE QUESTION IS: CAN YOU HAVE A MODERATE REDUCTION IN
10 THE PRISON POPULATION WHICH DOES NOT --

11 **THE WITNESS:** YES. WELL, YOU CAN. I THINK MY
12 ESTIMATE AND THE ESTIMATE BY THE EXPERT PANEL IS IF YOU EXCLUDE
13 THE TWO STRIKERS -- AND LET ME JUST THROW THIS ON THE TABLE,
14 BECAUSE PEOPLE NEED TO HEAR THIS -- LIFERS. LIFERS ARE ELIGIBLE
15 TO BE RELEASED NOW. THERE'S A LARGE NUMBER OF LIFERS ELIGIBLE
16 TO BE RELEASED RIGHT NOW UNDER CURRENT LAW.

17 BUT EXCLUDING THAT GROUP AND OTHER
18 POLITICALLY-SENSITIVE GROUPS, YOU CAN STILL ACHIEVE A 30, 35,000
19 POPULATION REDUCTION. THAT'S ACHIEVABLE NOW.

20 BUT TO GO FURTHER, UP TO 50,000 OR SO, YOU WOULD HAVE
21 TO GET SOME LEGISLATIVE REFORM.

22 I'M NOT AN EXPERT IN THE STATUTES, AND A LOT OF
23 STATES HAVE THESE. I BELIEVE THERE IS A CLAUSE. I MAY BE
24 WRONG, BUT MAYBE COUNSEL CAN CORRECT ME ON THIS.

25 BUT THE DEPARTMENT OF CORRECTIONS HAS THE POWER TO

1 RELEASE PEOPLE UNDER CERTAIN SITUATIONS, AND IT'S PRETTY BROAD.
2 AND A LOT OF STATES HAVE USED THAT IN THE PAST, BUT I'M NOT
3 RECOMMENDING YOU DO THAT. I WOULD RECOMMEND THE LEGISLATURE
4 DEAL WITH THIS AND MAKE THE CORRECTIONS THEY NEED TO MAKE.

5 BUT TO ANSWER YOUR QUESTION I WANT TO BE CLEAR. YOU
6 CAN MAKE STILL A SUBSTANTIAL REDUCTION IF YOU GO UP TO THE
7 50,000. IN MY OPINION, YOU'RE GOING TO HAVE TO CHANGE THE
8 LENGTH OF STAYS ON THE TWO STRIKERS, AND TO GO BEYOND THAT YOU
9 WOULD HAVE TO START ALLOWING PEOPLE WITH LIFE SENTENCES WHO ARE
10 PAST THEIR PAROLE ELIGIBILITY DATES AND HAVE BEEN SCREENED AND
11 ARE SUITABLE FOR RELEASE TO BE RELEASED.

12 **BY MS. JOHNSON:**

13 **Q.** ANOTHER STATE YOU USE AS AN EXAMPLE IN YOUR AUGUST 15, 2008
14 REPORT IS NEVADA, CORRECT?

15 **A.** YES, MA'AM.

16 **Q.** NEVADA JUST INSTITUTED PRISON POPULATION REDUCTION MEASURES
17 IN 2007, CORRECT?

18 **A.** YES, THEY DID.

19 **Q.** AND ACCORDING TO YOUR REPORT ON PAGE 16, PARAGRAPH 36, IF
20 YOU WANT TO -- WE'RE STILL IN THE SECOND REPORT.

21 THE LAST SENTENCE THERE:

22 "TO DATE, THERE HAS BEEN NO INCREASES IN CRIME,
23 ARRESTS OR EVEN COURT FILINGS," CORRECT?

24 **A.** THAT'S CORRECT.

25 **Q.** IF WE LOOK AT THE GRAPH ON PAGE 17 OF YOUR REPORT, YOU'VE

1 REPRESENTED ON THAT GRAPH, I BELIEVE, THE ACTUAL PRISON
2 POPULATION OF NEVADA BETWEEN JULY, 2007 AND JULY, 2008.

3 A. CORRECT.

4 Q. DO YOU SEE THAT?

5 A. YES.

6 Q. CAN YOU TELL ME WHAT THE ACTUAL NUMERIC DIFFERENCE, IF ANY,
7 IN THE NEVADA POPULATION BETWEEN JULY, 2007 AND JULY, 2008 IS?

8 A. WELL, THE IMPORTANT LINE, WHICH I'M AFRAID YOU CAN'T SEE,
9 THE TOP LINE. THE TOP LINE --

10 Q. YES, BUT JUST -- I'M SORRY TO INTERRUPT. BUT WHAT I'M
11 ASKING ABOUT IS THE MIDDLE LINE. SO WE CAN TALK ABOUT THE TOP
12 LINE LATER. BUT RIGHT NOW I'M ASKING ABOUT THE MIDDLE LINE,
13 WHICH IS THE ACTUAL PRISON POPULATION.

14 A. RIGHT.

15 Q. DO YOU SEE THAT?

16 A. YES.

17 Q. AND YOU'RE SAYING THERE HAVE BEEN PRISON POPULATION MEASURES
18 INTRODUCED IN JULY '07 -- I'M SORRY -- PRISON POPULATION
19 REDUCTION MEASURES IN JULY '07.

20 A. CORRECT.

21 Q. AND WE'RE LOOKING A YEAR LATER IN JULY, 2008. AND YOU SAY:

22 "TO DATE, THERE HAVE BEEN NO NEW CRIMES OR
23 ARRESTS REPORTED."

24 A. NO, I'M SAYING --

25 Q. THERE'S BEEN NO -- I'M SORRY -- INCREASE IN CRIME, ARRESTS

1 OR COURT FILINGS, RIGHT, IN THAT ONE YEAR THAT'S REPRESENTED
2 THERE?

3 **A.** NO, WE'VE BEEN -- YEAH. FROM JULY TO -- YEAH.

4 **Q.** OKAY. SO CAN YOU TELL ME LOOKING AT THAT MIDDLE LINE, WHICH
5 IS THE ACTUAL PRISON POPULATION IN NEVADA OVER THAT ONE YEAR,
6 WHAT IS THE NUMERIC DIFFERENCE IN THE PRISON POPULATION?

7 **A.** IT'S FLAT; HASN'T CHANGED.

8 **Q.** DOES THAT MEAN THERE'S NO DIFFERENCE?

9 **A.** NO.

10 **Q.** YOU SAID "IT'S FLAT."

11 **A.** LET ME ANSWER. THE REASON THEY INSTITUTE THESE POLICIES,
12 WHICH THE TOP LINE YOU'RE NOT SHOWING FOR SOME REASON OR YOU
13 CAN'T SEE IT, BUT THAT IS THE LINE THAT THEY WERE HEADED ON.

14 AND THEY WENT INTO SPECIAL SESSION. NEVADA HAS HAD
15 ONE OF THE FASTEST GOING PRISON POPULATIONS THERE IS. SO THEY
16 HIRED ME TO COME IN AND SAY:

17 "WE HAVE TO STOP THIS GROWTH FROM HAPPENING."

18 SO THEY ASKED ME TO LOOK -- THAT'S WHAT THEY ASKED.

19 THEY SAID:

20 "STOP THE GROWTH."

21 THEY DIDN'T SAY TO BRING IT DOWN. THEY SAID:

22 "STOP IT."

23 SO I SAID:

24 "OKAY. HERE'S HOW YOU'RE GOING TO STOP IT."

25 AND SO THEY HAVE STOPPED IT. AND, IN FACT, YOU DON'T

1 HAVE IT. IT'S IN MY REPORT. IF YOU GO TO NOVEMBER NOW, IT'S
2 DROPPED BELOW THE BUDGET LINE.

3 Q. OKAY.

4 A. SO IT'S WORKING EXACTLY AS WE INTENDED. I DID EXACTLY WHAT
5 THE STATE WANTED. THAT'S WHAT I DO.

6 YOU KNOW, I COME TO A STATE AND THEY TELL ME:

7 "HERE'S WHAT WE WANT TO PAY FOR PRISONS. HERE'S
8 OUR POPULATION."

9 AND I SET MY METHODOLOGY TO THAT MARK.

10 Q. RIGHT. BUT WHAT I'M ASKING YOU, LOOKING AT YOUR GRAPH AND
11 BECAUSE THERE IS NOT A NUMBER REPRESENTED IN YOUR REPORT, I'M
12 ASKING YOU DO YOU KNOW THE NUMERIC DIFFERENCE IN THE ACTUAL
13 PRISON POPULATION IN THAT ONE YEAR?

14 A. NO, IT'S RELATIVELY FLAT.

15 Q. OKAY.

16 A. BUT I WILL ALSO SAY IF YOU HAD NOVEMBER, WHICH YOU DON'T,
17 IT'S BELOW THAT NOW.

18 Q. ANOTHER STATE YOU USE AS AN EXAMPLE IN YOUR AUGUST 15, 2008
19 REPORT IS MISSISSIPPI, CORRECT?

20 A. CORRECT.

21 Q. ACCORDING TO YOUR REPORT, MISSISSIPPI ENACTED PRISON
22 POPULATION REDUCTION MEASURES JUST THIS YEAR, 2008, CORRECT?

23 A. CORRECT.

24 Q. WHEN YOU WROTE YOUR AUGUST 15, 2008 REPORT, MISSISSIPPI HAD
25 NOT YET RELEASED A SINGLE PRISONER UNDER THE MEASURES ENACTED

1 EARLIER THIS YEAR, HAD IT?

2 **A.** I DON'T BELIEVE THEY HAD.

3 **Q.** SO WHEN YOU WROTE YOUR AUGUST 15, 2008 REPORT IN WHICH YOU
4 USED MISSISSIPPI AS AN EXAMPLE, YOU DID NOT HAVE ANY DATA
5 REGARDING THE IMPACT OF THE PRISON POPULATION REDUCTION MEASURES
6 ON THE INCIDENCE OF CRIME IN MISSISSIPPI, DID YOU?

7 **A.** I DON'T KNOW WHERE I SAID IN THE PARAGRAPH YOU'RE REFERRING
8 TO -- THAT I THINK I STAND BY WHAT I SAY THERE, BUT --

9 **Q.** WELL, WE CAN LOOK AT PAGE 18, PARAGRAPH 38.

10 **A.** OKAY. I'M LOOKING AT IT.

11 **Q.** YOU CAN EVEN PUT THE WHOLE PAGE UP THERE.

12 WHAT I'M SAYING TO YOU IS THAT MISSISSIPPI HADN'T
13 RELEASED A PRISONER WHEN YOU WROTE YOUR AUGUST 15, 2008 REPORT,
14 SO YOU HAD NO DATA TO EVALUATE THE IMPACT ON THE INCIDENCE OF
15 CRIME BASED ON THE POPULATION REDUCTION MEASURES ESTABLISHED IN
16 MISSISSIPPI JUST THIS YEAR, DID YOU?

17 **A.** WELL, THAT'S CORRECT.

18 BUT MY INTENTION OF PUTTING THAT IN THE REPORT WAS
19 JUST AN EXAMPLE OF A STATE, FAIRLY CONSERVATIVE STATE, THAT HAD
20 REACHED A LEVEL SIMILAR TO NEVADA THAT THEY FELT THAT THEY COULD
21 NO LONGER AFFORD THE PRISON POPULATION THAT THEY HAD.

22 SO, LIKE NEVADA, THEY -- WHAT THEY DID, THEY MADE A
23 LARGE NUMBER OF PRISONERS ELIGIBLE FOR PAROLE WHO PREVIOUSLY
24 WERE NOT ELIGIBLE FOR PAROLE. IT'S A LEGISLATIVE ACTION.

25 GOVERNOR BARBOUR ENDORSED IT. AND SO IT'S NOW

1 STARTING TO UNFOLD.

2 AND I GUESS MY POINT HERE IS THAT I'M WORKING WITH
3 THE STATE NOW, BECAUSE WE NOW HAVE ABOUT 3,000 PRISONERS THAT
4 ARE ELIGIBLE FOR PAROLE. WE'RE PROCESSING THEM FOR THE PAROLE
5 BOARD.

6 WE HAVE RISK ASSESSMENT THAT WE NOW ARE USING TO
7 SCREEN THE PEOPLE TO MAKE SURE WE'RE NOT RELEASING A HIGH RISK
8 PERSON.

9 SO, YES, WE DON'T HAVE ANY RESULTS. BUT THIS IS
10 SIMPLY AN EXAMPLE OF A STATE THAT HAS TAKEN LEGISLATIVE ACTION
11 TO ALLOW PRISONERS WHO PREVIOUSLY COULD NOT BE PAROLED TO BE
12 CONSIDERED BY THE PAROLE BOARD. AND SOME PORTION OF THEM CAN BE
13 PAROLED. BUT WE DO NOT KNOW THE RESULTS OF THAT AS YET.

14 Q. YOU DON'T KNOW THE RESULTS ON THE INCIDENCE OF CRIME IN
15 MISSISSIPPI, CORRECT?

16 A. OBVIOUSLY NOT.

17 Q. IN YOUR AUGUST 15, 2008 REPORT ON PAGE 20, YOU HAVE A TABLE
18 SHOWING THE CRIME RATE AND PRISON DISPOSITION RATES FOR 13 OF
19 CALIFORNIA'S 58 COUNTIES.

20 A. THAT'S CORRECT.

21 Q. BASED ON 2005 DATA.

22 A. THAT'S CORRECT.

23 Q. IN PARAGRAPH 42 ON THAT SAME PAGE, YOU WRITE:

24 "MANY COUNTIES ARE MAINTAINING LOW PRISON
25 COMMITMENT RATES, MEANING THAT THEY ARE KEEPING

1 OFFENDERS IN THE COMMUNITY WITHOUT JEOPARDIZING
2 PUBLIC SAFETY."
3 SEE THAT?

4 **A.** YES.

5 **Q.** SO LET'S LOOK AT THE TABLE. AND LET'S LOOK AT ALAMEDA
6 COUNTY, THE COUNTY CLOSE TO MY OWN HEART.

7 OF THE 13 COUNTIES FOR WHICH YOU PRESENTED
8 INFORMATION, IT HAS THE LOWEST PRISON DISPOSITION RATE,
9 9 PERCENT, CORRECT?

10 **A.** CORRECT.

11 **Q.** THAT MEANS ALAMEDA COUNTY SENDS A LOWER PERCENTAGE OF THE
12 PEOPLE IT CONVICTS OF FELONIES TO PRISON THAN ANY OTHER OF THE
13 12 COUNTIES ON THIS TABLE TWO THAT YOU CREATED, CORRECT?

14 **A.** YES. THEY HAVE THE LOWEST DISPOSITION RATE, CORRECT.

15 **Q.** ACCORDING TO TABLE TWO --

16 **JUDGE KARLTON:** THE LOWEST PRISON DISPOSITION.

17 **THE WITNESS:** YES, PRISON DISPOSITION RATE.

18 **BY MS. JOHNSON:**

19 **Q.** WHICH I WAS TRYING EXPLAIN TO THE COURT MEANS -- WHAT THAT
20 MEANS -- "PRISON DISPOSITION" MEANS THAT THE NUMBER OF PEOPLE
21 BEING CONVICTED OF FELONIES WHO ACTUALLY GO TO PRISON, RATHER
22 THAN ON PROBATION OR SOME OTHER SENTENCE, CORRECT? THAT'S WHAT
23 YOU MEAN?

24 **A.** YEAH, THAT'S THE --
25

1 Q. NUMBER OF PEOPLE SENT TO PRISON FROM THAT COUNTY?

2 A. FOR PEOPLE THAT ARE CONVICTED OF A FELONY, THIS IS THE
3 PERCENT OF THOSE THAT WE SEE THE PRISON DISPOSITION.

4 Q. ACCORDING TO TABLE TWO, AT THE SAME TIME THAT ALAMEDA COUNTY
5 HAS THE LOWEST PRISON DISPOSITION RATE, IT ALSO HAS THE SECOND
6 HIGHEST CRIME RATE OF THESE 13 COUNTIES, CORRECT?

7 A. RIGHT. SACRAMENTO HAS THE HIGHEST.

8 JUDGE HENDERSON: 12 COUNTIES IN THE STATEWIDE THERE,
9 COUNSEL.

10 MS. JOHNSON: DID I MISCOUNT?

11 THE WITNESS: 12 IN THE "STATEWIDE" COLUMN.

12 MS. JOHNSON: OH, I'M SORRY. I APOLOGIZE. I
13 MISUNDERSTOOD THAT BOTTOM LINE. SO THIS IS ONE OF THE 12
14 COUNTIES, AND THEN A STATEWIDE FIGURE.

15 OKAY. THANK YOU FOR CATCHING THAT, YOUR HONOR. I
16 COUNTED THE LAST BAR AS A STATE -- I MEAN, AS A COUNTY.

17 BY MS. JOHNSON:

18 Q. YOU WROTE ON PAGE NINE, PARAGRAPH 20 OF YOUR AUGUST 15, 2008
19 REPORT -- PARAGRAPH 20, LAST SENTENCE THERE:

20 "RESEARCH ON CRIME AND INCARCERATION DOES NOT
21 CONSISTENTLY INDICATE THAT THE MASSIVE USE OF
22 INCARCERATION HAS REDUCED CRIME RATES."

23 AND I THINK AS YOU INDICATED IN YOUR DIRECT TESTIMONY
24 SOME RESEARCH HAS INDICATED THAT MASSIVE INCARCERATION RATE HAS
25 REDUCED OR AT LEAST CONTRIBUTED TO THE REDUCTION OF CRIME RATES,

1 HASN'T IT?

2 **A.** SOME RESEARCH HAS INDICATED THAT.

3 **Q.** "AUTHORS OF RESEARCH INDICATING THAT MASSIVE INCARCERATION
4 HAS REDUCED CRIME RATES INCLUDE JAMES Q. WILSON AND
5 WILLIAM SPELLMAN," CORRECT?

6 **A.** YES, THOSE ARE TWO AUTHORS THAT HAVE INDICATED THAT.

7 **Q.** IN FACT, MR. SPELLMAN CLAIMS THAT 25 PERCENT OF THE
8 REDUCTION IN CRIME THAT'S OCCURRED IN THE LAST 20 YEARS IS THE
9 RESULT OF INCREASED INCARCERATION, CORRECT?

10 **A.** NO, NOT PARTICULARLY. WHAT HE FOUND WAS THAT -- TECHNICALLY
11 WHAT HE FOUND WAS -- I BELIEVE IT WAS BETWEEN 1972 AND 1999, OR
12 THE YEAR 2000 -- THAT'S THE PERIOD HE LOOKED AT -- HE LOOKED AT
13 ALL THE STATES, AND HE CONCLUDED THAT 25 PERCENT IN THE
14 REDUCTION IN VIOLENT CRIME -- NOT ALL CRIME, BUT VIOLENT
15 CRIME -- COULD BE ATTRIBUTED TO THE INCREASE IN THE PRISON
16 POPULATION.

17 **Q.** THE ANALYSIS REGARDING THE -- WELL, LET ME STEP BACK.

18 YOU'VE PUBLISHED PEER REVIEW ARTICLES BEFORE, HAVEN'T
19 YOU, DR. AUSTIN?

20 **A.** A FEW OF THEM, YES, I HAVE.

21 **Q.** YOU DO NOT CONSIDER THE ANALYSIS THAT YOU HAVE DONE
22 REGARDING THE RELATIONSHIP BETWEEN CRIME RATES AND IMPRISONMENT
23 RATES IN YOUR EXPERT REPORTS APPROPRIATE FOR PUBLICATION IN A
24 PEER REVIEW JOURNAL IN YOUR FIELD, DO YOU?

25 **A.** WELL, IT'S NOT APPROPRIATE BECAUSE THE STYLE OF WRITING. I

1 WOULD WRITE A VERY DIFFERENT KIND OF REPORT. I WOULD USE THE
2 SAME ANALYSIS, BUT IT WOULD BE A DIFFERENT STYLE OF WRITING AND
3 DIFFERENT FORMATTING, THINGS LIKE THAT.

4 CAN I ADD SOMETHING ELSE, SINCE YOU HAVE GOT THAT UP?
5 I GUESS THE ANSWER WOULD BE IT DOES NOT CONSISTENTLY INDICATE.
6 I THINK THERE ARE A COUPLE OF OTHER THINGS THAT ARE INSTRUCTIVE.

7 ONE OF THE ISSUES IN THE FIELD NOW IS:

8 "OKAY. WE'VE RAMPED UP OUR INCARCERATION RATE.
9 AND NOW THE QUESTION IS: AND WE'VE RAMPED IT UP
10 PRETTY GOOD."

11 THIS IS WHAT JAMES Q. WILSON SAYS, SINCE YOU QUOTED
12 HIM. HE RAISES THIS ISSUE OF DIMINISHING RETURNS.

13 YOU REACH A SATURATION POINT WHERE WHATEVER CRIME
14 EFFECT YOU WANT TO CITE, YOU LOSE THAT EFFECT AT SOME POINT,
15 BECAUSE YOU'RE NOW GOING FOR PEOPLE THAT DON'T HAVE MUCH TO DO
16 WITH THE CRIME RATE OR YOUR INCARCERATION EFFECTS ARE BEING
17 DIMINISHED, LIKE YOU'VE OVERSATURATED THE SITUATION.

18 THAT'S WHAT JAMES Q. WILSON SAID. HE SAID WE HAVE
19 REACHED A PERIOD OF DIMINISHING RETURNS BECAUSE WE'VE GONE TOO
20 DEEP INTO THE INCARCERATION BIN.

21 AND THERE'S A COUPLE OF STUDIES THAT HAVE COME OUT
22 REAL POST-SPELLMAN WHICH LOOK AT A VARIATION, LIKE WITHIN STATES
23 BY COUNTY. AND WHEN YOU GET DOWN TO THE COUNTY -- AND THIS WAS
24 IN FLORIDA -- THEY FOUND NO CRIME REDUCTION EFFECTS IN THE
25 LAST -- THIS WOULD BE IN THE LAST 15 YEARS OR SO IN FLORIDA,

1 WHICH IS A HIGH INCARCERATION RATE STATE.

2 SO, IN MY OPINION, YES. AND OBVIOUSLY, IF WE --
3 OBVIOUSLY, WHAT WE DID WHEN I FIRST STARTED WE WERE AT 190,000
4 PEOPLE IN PRISON IN 1970. NOW WE HAVE 1.7 MILLION.

5 THAT'S GOING TO HAVE SOME EFFECT. BUT AT SOME POINT
6 IT'S A DIMINISHING RETURN. AND THAT IS WHAT WILSON HAS CITED.

7 SPELLMAN IN HIS ARTICLE RAISES THE SAME THING. YOU
8 KNOW, AT WHAT EXPENSE ARE WE DOING THIS REDUCTION?

9 AND HE'S THE ONE THAT SAID 75 PERCENT OF THE
10 REDUCTION IN VIOLENT CRIME IS BEING CAUSED BY THESE OTHER
11 FACTORS, WHICH IS THE DEMOGRAPHIC, SOCIOECONOMIC FACTORS THAT HE
12 FOUND IN THE STATE.

13 SO I JUST WANTED TO CLARIFY THAT.

14 Q. I'M SORRY. YOU SAID 75 PERCENT OF VIOLENT CRIME?

15 A. YES, IS EXPLAINED NOT BY INCARCERATION INCREASES, BUT BY
16 DEMOGRAPHICS SOCIOECONOMIC CHANGES IN OUR SOCIETY.

17 Q. SO THE REMAINING PERCENTAGE, THAT OTHER 25 PERCENT OF
18 VIOLENT CRIME HAD BEEN DECREASED BECAUSE OF INCREASE IN
19 INCARCERATION RATES.

20 A. THAT'S HIS ESTIMATE. AND, REMEMBER, THESE ARE FAIRLY
21 COMPLICATED STATISTICAL MODELS. AND THEY HAVE A LOT OF
22 ASSUMPTIONS. AND THERE ARE PEOPLE THAT DISAGREE WITH HIM, SO
23 THAT'S NOT THE FINAL WORD ON THIS ISSUE.

24 Q. ON PAGE 20, AT PARAGRAPH 43 OF YOUR AUGUST 15, 2008 REPORT
25 YOU WROTE:

1 "CALIFORNIA CAN REDUCE PRISON ADMISSIONS AND
2 REDUCE LENGTH OF STAY IN A SAFE AND PRACTICAL MANNER
3 IN FOUR WAYS. ONE: PROVIDE EVIDENCE-BASED
4 PROGRAMMING AND SUPERVISION TO TECHNICAL PAROLE
5 VIOLATORS INSTEAD OF RETURNING THEM TO PRISON. TWO:
6 DIVERT LOW LEVEL OFFENDERS TO PROBATION AND PAROLE
7 INSTEAD OF PRISON. THREE: PROVIDE MORE AVENUES FOR
8 PRISONERS TO EARN GOOD TIME CREDITS TOWARD RELEASE
9 FOR GOOD BEHAVIOR. AND FOUR: PROVIDE MORE AVENUES
10 FOR EARLY DISCHARGE FROM PAROLE."

11 **A.** CORRECT.

12 **Q.** WE'RE GOING TO TAKE A LOOK AT THESE ONE AT A TIME, NOT
13 NECESSARILY IN THE ORDER YOU HAVE ENUMERATED THEM.

14 SO LET'S LOOK AT THE FIRST -- WELL, THE FIRST ONE
15 WE'RE GOING TO LOOK AT FIRST:

16 "PROVIDE EVIDENCE-BASED PROGRAMMING TO TECHNICAL
17 PAROLE VIOLATORS INSTEAD OF RETURNING THEM TO
18 PRISON."

19 TECHNICAL PAROLE VIOLATORS INCLUDE PAROLEES WHO HAVE
20 BEEN REARRESTED FOR THE ALLEGED COMMISSION OF A NEW CRIME,
21 CORRECT?

22 **A.** CORRECT.

23 **Q.** IN FACT, A SUBSTANTIAL PORTION OF TECHNICAL PAROLE VIOLATORS
24 WHO ARE RETURNED TO PRISON ARE RETURNED FOR ALLEGED COMMISSION
25 OF A NEW CRIME, CORRECT?

1 **A.** THEY HAVE BEEN ARRESTED. THAT'S THE WAY I WOULD PHRASE IT.

2 AS EVERYONE KNOWS, THERE ARE PEOPLE THAT ARE ARRESTED
3 WHO HAVE NOT COMMITTED ANY CRIME. SO JUST TO BE TECHNICALLY
4 CORRECT, THESE ARE PEOPLE WHO HAVE BEEN REARRESTED, HAVE NOT
5 BEEN CONVICTED OF A NEW FELONY.

6 **Q.** SO THEY ARE BEING RETURNED --

7 **A.** SOME PORTION OF THE TECHNICAL --

8 **JUDGE KARLTON:** EVERYBODY STOP FOR A MINUTE.

9 OKAY. GO AHEAD.

10 **BY MS. JOHNSON:**

11 **Q.** SO MY QUESTION WAS THAT A SUBSTANTIAL PORTION OF TECHNICAL
12 PAROLE VIOLATORS ARE RETURNED TO PRISON FOR ALLEGED COMMISSION
13 OF A NEW CRIME, CORRECT?

14 **A.** WELL, I JUST DON'T LIKE THAT WORD "ALLEGED COMMISSION."

15 I GUESS, WHAT DO YOU MEAN BY "ALLEGED"? ALL I CAN
16 TELL YOU IS THEY HAVE BEEN ARRESTED. AND THEY HAVE BEEN ARRESTED
17 FOR A VARIETY OF THINGS. SOME PORTION OF THOSE PEOPLE DO HAVE AN
18 ARREST FOR A CRIMINAL CONDUCT.

19 YES. THAT'S THE WAY I PREFER TO SAY IT.

20 **Q.** LOOKING AT YOUR CHART -- AND I THINK THE FIGURES YOU USE IN
21 YOUR REPORT MIGHT BE A LITTLE DIFFERENT BY ABOUT 3,000, BUT I
22 THINK IN YOUR REPORT WE WERE LOOKING AT A FIGURE OF 69,000
23 REVOCATIONS FOR TECHNICAL PAROLE VIOLATORS. AND HERE ON YOUR
24 CHART, WHICH I DON'T REMEMBER -- LET ME SEE IF I CAN FIND THE
25 NUMBER.

1 **A.** THE CHART IS LOWER BECAUSE IT'S MORE CURRENT, AND IT'S
2 REPRESENTING SOME OF THE REFORMS THAT THE DEPARTMENT IS
3 UNDERTAKING NOW.

4 **Q.** THAT'S PLAINTIFFS' EXHIBIT 830, WHICH IS STILL DISPLAYED.
5 IT'S NOT ON THE EASEL, BUT IT'S THE BOTTOM.

6 **MS. JOHNSON:** CAN YOUR HONORS SEE THAT?

7 **JUDGE KARLTON:** I'M SURPRISED YOU CARE ABOUT WHETHER
8 OR NOT WE'RE PAYING ANY ATTENTION, GIVEN YOUR RESPONSE TO MY
9 PREVIOUS COMMENT. BUT, YES, WE CAN SEE IT.

10 **BY MS. JOHNSON:**

11 **Q.** YOUR CHART SAYS "66,000 TECHNICAL PAROLE VIOLATORS." AND
12 THAT'S AN ANNUAL FIGURE?

13 **A.** THAT'S CORRECT.

14 **Q.** IN YOUR REPORT THE FIGURE MIGHT HAVE BEEN 69. AND I'M NOT
15 SUGGESTING THAT THAT WAS A DIFFERENCE IN YOUR NUMBERS. I'M JUST
16 SAYING THAT WE'RE DEALING WITH SLIGHTLY DIFFERENT NUMBERS.

17 **A.** OKAY.

18 **Q.** SO ACCORDING TO YOUR FIGURES, ABOUT 66 TO 69,000 REVOCATIONS
19 FOR TECHNICAL PAROLE VIOLATIONS OCCUR WITHIN A YEAR IN
20 CALIFORNIA, CORRECT?

21 **A.** YES.

22 **Q.** ACCORDING TO YOUR FIGURES OF THESE APPROXIMATELY 69,000
23 REVOCATIONS FOR TECHNICAL PAROLE VIOLATIONS, ONLY APPROXIMATELY
24 14,500 ARE RETURNED FOR PURELY TECHNICAL VIOLATIONS.

25 **A.** I BELIEVE THAT'S CORRECT.

1 Q. AND THE PURELY TECHNICAL VIOLATION COULD INCLUDE SOMETHING
2 LIKE A FAILED DRUG TEST, RIGHT?

3 A. IT COULD INCLUDE THAT.

4 Q. YOU STATE ON PAGE 22, AT PARAGRAPH 49 OF YOUR AUGUST 15,
5 2008 REPORT --

6 JUDGE KARLTON: MAY I INTERRUPT FOR A MOMENT, BECAUSE
7 I WANTED TO GO BACK TO WHAT YOU JUST SAID.

8 SIR, IT IS MY IMPRESSION -- AND MAYBE YOU KNOW --
9 THAT WHAT HAPPENS IS PEOPLE GET ARRESTED WHO ARE ON PAROLE AND
10 GET ARRESTED FOR SOME NEW CRIME. AND THE DISTRICT ATTORNEY AND
11 THE DEFENSE COUNSEL, PUBLIC DEFENDER, USUALLY, IN THESE KINDS OF
12 CASES -- SAY:

13 "LOOK. IT ISN'T WORTH GOING THROUGH THE WHOLE
14 PROCESS OF TRIAL AND CONVICTION. WE WILL JUST
15 STIPULATE TO A PAROLE VIOLATION."

16 DO YOU KNOW WHETHER THAT'S A COMMON OCCURRENCE IN
17 CALIFORNIA COURTS?

18 THE WITNESS: I WOULD SAY IT'S COMMON. I MEAN, LET
19 ME GIVE YOU AN EXAMPLE, THOUGH. WHEN WE LOOKED AT DATA THAT CDCR
20 GAVE ME TO LOOK AT, THE NUMBER ONE CRIME THAT THEY ARE BEING
21 ARRESTED FOR IS OBSTRUCTION OF JUSTICE. AND WHAT IS ENTAILED IN
22 THAT I DON'T KNOW, BUT YOU CAN'T EVEN FIND IT ON THE ATTORNEY
23 GENERAL'S ARREST CHARTS AS A CATEGORY IN TERMS OF THE GENERAL
24 POPULATION.

25 BUT THIS IS, YOU KNOW -- AND I THINK A GOOD ANALYSIS

1 NEEDS TO BE DONE OF WHAT IS REALLY GOING ON HERE WITH THESE
2 PAROLEES.

3 THE BIG CATEGORIES ARE ABSCONDING FROM SUPERVISION,
4 ASSOCIATING WITH PEOPLE THAT ARE PROHIBITED, OBSTRUCTION OF
5 JUSTICE, THE DRUG TESTING, AND ON AND ON.

6 AND THERE'S A WHOLE ENUMERATION OF THESE INCIDENTS.
7 AND I GUESS MY POINT -- I'M NOT TRYING TO ROMANCE THIS
8 SITUATION. AND SHE'S RIGHT, YOU KNOW, IN THAT THERE IS IN MANY
9 CASES CRIMINAL CONDUCT THAT THE DISTRICT ATTORNEY IS SAYING:

10 "IT'S NOT WORTH MY EFFORTS TO PROSECUTE THIS
11 PERSON."

12 SO WHAT THEY DO, THEY HAVE BEEN ARRESTED. THEY ARE
13 IN THE JAIL. THEY GO THROUGH THEIR HEARING. THEY GET REVOKED.
14 GO TO THE CDCR RECEPTION CENTER AND COME RIGHT BACK OUT. AND --

15 **JUDGE KARLTON:** WE UNDERSTAND ALL ABOUT THAT.

16 I'M TRYING TO UNDERSTAND WHETHER IT IS SAFE FOR THIS
17 COURT TO ASSUME THAT THE TECHNICAL VIOLATORS ARE NOT REALLY
18 COMMITTING CRIMES THAT IN A MORE -- IN A SYSTEM THAT WOULD
19 PERMIT PEOPLE TO DO SO WOULDN'T RESULT IN NEW CONVICTIONS RATHER
20 THAN PAROLE VIOLATIONS.

21 YOU SEE WHAT I'M ASKING?

22 **THE WITNESS:** YEAH, I UNDERSTAND. SOME ARE AND SOME
23 ARE NOT. BUT LET ME GIVE YOU SOME EXAMPLE HERE TO KIND OF RAISE
24 QUESTIONS ABOUT WHAT THESE ARRESTS REPRESENT.

25 IN 2007, THEY HAD 138 PEOPLE ARRESTED FOR RAPE THAT

1 THEY CHARGED -- THEY PROCESS AS A TECHNICAL PAROLE VIOLATOR.
2 OVER A HUNDRED PEOPLE ARRESTED FOR A HOMICIDE THAT THEY PROCESS
3 AS A TECHNICAL PAROLE VIOLATOR.

4 NOW, YOU CAN'T TELL ME THAT IF YOU HAVE BEEN ARRESTED
5 FOR RAPE OR HOMICIDE, THAT'S NOT WORTHY -- I HOPE THAT'S WORTHY
6 OF PROSECUTION BY THE DISTRICT ATTORNEY.

7 SO THERE'S SOME NOISE IN THIS DATA. SO I'M CONCEDED
8 YOUR POINT, BUT NOT A HUNDRED PERCENT THE POINT. THERE'S SOME
9 STUFF GOING ON HERE, TOO, THAT IS NOT SERIOUS THAT CAN BE
10 HANDLED IN A DIFFERENT MANNER.

11 **JUDGE KARLTON:** YOU DON'T HAVE TO CONCEDE MY POINT
12 BECAUSE I DON'T KNOW THAT I HAVE A POINT. I'M TRYING TO
13 UNDERSTAND.

14 TO SAY THAT "THERE'S NOISE IN THE SYSTEM" DOESN'T
15 EVEN BEGIN TO -- DOESN'T EVEN BEGIN TO ADDRESS QUESTIONS LIKE A
16 HUNDRED PEOPLE CONVICTED -- I MEAN, NOT CONVICTED -- ARRESTED
17 FOR HOMICIDE WHO WERE THEN PROCESSED AS PAROLE VIOLATORS GO TO
18 PRISON.

19 **THE WITNESS:** AS A TECHNICAL, TECHNICAL PAROLE
20 VIOLATOR.

21 **JUDGE HENDERSON:** RIGHT.

22 **THE WITNESS:** THERE'S 282 PEOPLE WHO WERE ARRESTED
23 FOR HOMICIDE WHO WERE PROCESSED AS A TECHNICAL PAROLE VIOLATOR.
24 THAT'S THE CDCR DATA.

25 **JUDGE KARLTON:** AND THOSE PEOPLE GO FOR AN AVERAGE OF

1 FOUR MONTHS?

2 **THE WITNESS:** FOUR MONTHS AND THEY ARE BACK ON THE
3 STREET. SO THERE'S A LOT OF NOISE IN THIS DATA. AND I WOULD SAY
4 FROM WHAT I'VE SEEN MOST OF THIS STUFF IS MISDEMEANOR LEVEL
5 STUFF FOR WHICH YOU CAN'T GO TO PRISON FOR.

6 BUT YOU CAN GO TO PRISON IF YOU'RE A PAROLEE. AND
7 THAT -- I DID A STUDY -- IT'S REFERENCED IN MY REPORT -- BACK IN
8 1982. THIS WAS DONE PURPOSELY. CALIFORNIA USED TO HAVE A VERY
9 LOW RECIDIVISM RATE. AND WHAT RAISED IT WAY UP HERE WAS THIS
10 TECHNICAL VIOLATION. IN PART IT WAS DONE TO, AS I UNDERSTAND
11 IT -- IT WAS TOLD TO ME -- SALVAGE SOME OF THE JAIL ISSUES, YOU
12 KNOW, PEOPLE STAYING IN THE JAIL THAT THEY WOULD CLUTTER UP, AND
13 THEN THEY WOULD PROCESS THE CASE AND KICK THEM BACK OUT ON THE
14 STREET.

15 NOW THEY GO TO CDCR 90 DAYS, AND THEN THEY ARE KICKED
16 BACK ON THE STREET. AND A LOT OF THESE PEOPLE ARE BEING
17 ARRESTED FOR SERIOUS CRIMES. OTHERS FOR VERY SERIOUS OR NOT
18 EVEN A CRIME.

19 SO IT'S ALL OVER THE MAP. AND I'M NOT SAYING ALL
20 THESE PEOPLE GET DIVERTED. IN MY RECOMMENDATION SOME PORTION OF
21 THEM GET DIVERTED BASED ON RISK ASSESSMENT. AND THIS IS NOT
22 JUST MY IDEA. THIS IS THE EXPERT PANEL.

23 YOU KNOW, THIS IS LIKE 15 PEOPLE AROUND THE COUNTRY
24 WHO LOOKED AT THIS ISSUE AND SAID:

25 "YOU ARE BRINGING IN WAY TOO MANY PEOPLE FOR

1 RELATIVELY MINOR STUFF AND HANDLING THEM IN A VERY
2 EXPENSIVE WAY THAT IS CAUSING YOUR PRISON SYSTEM IN
3 PARTICULAR RECEPTION CENTERS TO BE CROWDED. AND
4 THERE'S OTHER WAYS YOU CAN DO THIS, WHICH OTHER
5 STATES HAVE DONE."

6 **JUDGE REINHARDT:** WHEN YOU --

7 **JUDGE KARLTON:** GIVEN --

8 **JUDGE REINHARDT:** GO AHEAD.

9 **JUDGE KARLTON:** GIVEN THE AMOUNT OF NOISE THAT YOU
10 HAVE JUST BEEN POINTING TO, CAN WE SAFELY RELY ON ANY OF THE
11 STATISTICAL EVIDENCE THAT UNDERLIE A LOT OF YOUR CONTENTIONS
12 ABOUT WHAT CAN BE DONE AND CAN'T BE DONE?

13 I AM NOW CONCERNED WITH THE GREATEST OF RESPECT, SIR,
14 THAT THE DATA THAT YOU'RE OPERATING WITH DOESN'T FAIRLY REFLECT
15 WHAT IS GOING ON. I DON'T KNOW. I'M ASKING.

16 **THE WITNESS:** WELL, ALL I CAN DO IS RELY ON THE DATA
17 THAT IS GIVEN TO US. AND I THINK THE PROPER WAY TO LOOK AT THIS
18 WOULD HAVE BEEN -- YOU KNOW, I DON'T HAVE ALL THE TIME IN THE
19 WORLD. BUT WHAT YOU DO, YOU GO IN AND YOU LOOK AT WHAT IS GOING
20 ON HERE IN TERMS OF THE SO-CALLED CONDUCT OF THE PAROLEE.

21 BUT I DIDN'T LOOK AT THAT. BUT PEOPLE ON THE EXPERT
22 PANEL DID. AND THEY WERE CONVINCED THAT WHAT THEY SAW WAS -- I
23 THINK THEY ESTIMATED ABOUT HALF OF THE PEOPLE DIDN'T NEED TO GO
24 BACK.

25 SHE MENTIONED THE TECHNICALS, WHICH IS -- WHAT DID WE

1 SAY THAT NUMBER WAS -- 15,000 OR SOMETHING. THEY ARE PURE
2 TECHNICAL VIOLATORS.

3 AND THEN, THERE'S OTHER KINDS OF PEOPLE BEING
4 ARRESTED FOR BEHAVIOR. IT'S A MISDEMEANOR CHARGE. NO ONE WOULD
5 BE HANDLING THIS CASE BECAUSE IT IS SUCH A LOW LEVEL MISDEMEANOR
6 CHARGE. AND THEN, YOU ALSO LOOK AT THE RISK LEVEL OF THE PERSON
7 THAT IS BEING CHARGED.

8 AND YOU MAKE DECISIONS BASED ON THAT INFORMATION:
9 NATURE OF THE CRIME, THE RISK LEVEL OF THAT PERSON. AND THEN
10 YOU DECIDE: DO THEY NEED TO GO BACK INTO THE PRISON SYSTEM? OR
11 CAN WE HANDLE THEM IN A DIFFERENT MANNER THAN THE WAY WE ARE
12 DOING NOW?

13 AGAIN, I WOULD HAVE TO SAY THIS IS SUCH AN ABNORMAL
14 PROCESS YOU HAVE. IT IS COMPLETELY DIFFERENT THAN ANY OTHER
15 STATE; THAT YOU BRING IN SUCH A LARGE NUMBER OF PEOPLE FOR SUCH
16 A SHORT PERIOD OF TIME FOR ALL THIS -- I WOULD CALL IT
17 "TECHNICAL MISDEMEANOR ARREST ACTIVITY."

18 **JUDGE REINHARDT:** WHEN YOU TALK ABOUT THE AVERAGE
19 INCARCERATION FOR THE TECHNICAL VIOLATOR BEING FOUR MONTHS, WHAT
20 IS THE MAXIMUM THAT A TECHNICAL VIOLATOR MAY BE HELD FOR?

21 **THE WITNESS:** WELL, THE BOARD OF -- IS IT THE BOARD
22 OF PRISON TERMS? BOARD OF PRISON TERMS. I'M NOT SURE WHAT
23 THEIR LIMIT IS. IT MAY BE 12 MONTHS.

24 **JUDGE KARLTON:** I THOUGHT WE WERE TOLD 365 DAYS.

25 **THE WITNESS:** RIGHT. I THINK IT'S THAT.

1 BEAR IN MIND THE AVERAGE IS SKEWED, SO IT'S REALLY
2 MOST PEOPLE DO LESS THAN FOUR MONTHS. THE TYPICAL PAROLE
3 VIOLATOR WILL HAVE -- HE'LL BE ARRESTED, SHE'LL BE ARRESTED.
4 THEY WILL GO TO THE COUNTY JAIL. TAKES ABOUT 30 DAYS TO GO
5 THROUGH THEIR HEARING PROCESS.

6 THEY WILL GO BACK TO CDCR. AND THEY WILL BE
7 RERELEASED IN TWO TO THREE MONTHS -- THAT'S THE TYPICAL
8 PROCESS -- BACK TO THE STREETS, BACK TO THE SAME PAROLE
9 SUPERVISION.

10 AND IT'S ALSO TRUE THAT THEY LOSE THAT TIME, THE TIME
11 THAT THE BOARD TAKES. SO THEIR TIME IS BEING ADDED NOW TO --
12 YOU KNOW, IN CALIFORNIA YOU DO YOUR SENTENCE, AND THEN BOARD
13 GIVES YOU -- APPARENTLY NOW IT'S THREE YEARS OF PAROLE
14 SUPERVISION. THAT'S LIKE ANOTHER SENTENCE YOU HAVE TO DO. AND
15 YOU DO NOT GET CREDIT FOR THAT TIME THAT YOU'RE IN CUSTODY.

16 SO SOME PEOPLE ARE SPENDING MANY, MANY YEARS ON
17 PAROLE SUPERVISION. THEY ARE CHURNING BACK AND FORTH. THEY
18 CALL THEM "CHURNERS."

19 THERE'S A STUDY DONE BY THE DEPARTMENT OF JUSTICE
20 CALLED "THE CALIFORNIA CHURNERS." AND THAT'S WHAT YOU'VE GOT,
21 AND IT'S UNIQUE.

22 I THINK, YOU KNOW, WITH PROPER PROGRAMS -- THAT'S WHY
23 I SAID THE EVIDENCE-BASED PROGRAMS -- YOU KNOW, WE CAN DO A LOT
24 BETTER. THERE'S A BETTER WAY TO HANDLE THESE KINDS OF PEOPLE,
25 THESE KINDS OF INCIDENTS. THAT'S MY OPINION.

1 **BY MS. JOHNSON:**

2 **Q.** YOU STATE ON PAGE 22, AT PARAGRAPH 49 OF YOUR AUGUST 15TH,
3 2008 REPORT, THAT ONE OF THE FACTORS THAT INCREASE THE NUMBER OF
4 TECHNICAL PAROLE VIOLATORS BEING ADMITTED TO PRISON WAS, QUOTE:

5 "THE DECISION BY THE BUREAU OF PRISON TERMS TO
6 ACCOMMODATE LOCAL COUNTY OFFICIALS BY ADMITTING
7 PAROLE VIOLATORS WHO OTHERWISE WOULD HAVE REMAINED IN
8 THE LOCAL JAIL PENDING THEIR REVOCATION HEARING. THIS
9 WAS DONE TO HELP REDUCE THE JAIL POPULATION AND JAIL
10 CROWDING."

11 **A.** CORRECT.

12 **Q.** ARE YOU AWARE OF HOW MANY COUNTIES IN CALIFORNIA TODAY HAVE
13 COURT ORDERED JAIL POPULATION CAPS IN PLACE OR HAVE ADOPTED JAIL
14 POPULATION CONTROL MEASURES?

15 **A.** I ASSUME QUITE A NUMBER HAVE. LET ME ADD THAT THERE'S MANY
16 JAILS WITH SURPLUS CAPACITY NOW IN CALIFORNIA. AND MY REFERENCE
17 HERE IS TO THE STUDY THAT I DID, WHICH IS REFERENCED THERE. YES.

18 AND WHERE IS THE RECIDIVISM CHART? CAN WE PUT THAT
19 UP, MY RECIDIVISM CHART OF CALIFORNIA?

20 **Q.** I DON'T KNOW WHAT THAT IS, SIR. I DON'T THINK WE HAVE THAT
21 IN OUR -- I DON'T KNOW WHAT IT IS.

22 **A.** IT'S IN MY REPORT.

23 **Q.** IF YOU CAN TELL ME WHICH PAGE, I CAN TRY TO ASSIST THAT.
24 BUT I DON'T KNOW WHICH ONE YOU'RE TALKING ABOUT OFF THE TOP OF
25 MY HEAD.

1 A. IT'S FIGURE 1.

2 Q. I'M SORRY?

3 A. FIGURE 1.

4 Q. FIGURE 1?

5 A. IN MY REPORT.

6 Q. THAT'S IN YOUR AUGUST 15 REPORT?

7 A. AUGUST, AUGUST 2008.

8 Q. AUGUST 27? I THINK IT'S AUGUST --

9 A. NO. IT'S LABELED "AUGUST, 2008."

10 Q. BUT YOU REDID FIGURE 1 AT SOME POINT. DID YOU WANT TO LOOK
11 AT THE --

12 A. NOT THAT FIGURE 1.

13 Q. NOT THAT FIGURE 1? OKAY.

14 A. YOU'RE IN THE SUPPLEMENTAL.

15 Q. DO YOU KNOW WHAT --

16 A. MY POINT IS THAT THE RECIDIVISM RATE, WHICH IS THE RETURN TO
17 PRISON RATES IN CALIFORNIA WERE EXTREMELY LOW PRIOR TO 1975,
18 '76. THEN, IT STARTED TO GO UP.

19 AND SO I WAS COMMISSIONED BY THE BOARD OF PRISON
20 TERMS TO DO A STUDY OF WHAT WAS GOING ON. AND THE OFFICIALS TOLD
21 ME THAT WHAT THEY WERE DOING WAS PURPOSEFUL. THEY WERE TAKING
22 PEOPLE THAT WERE BEING -- PAROLEES THAT WERE BEING VIOLATED, AND
23 RATHER THAN STAYING IN THE COUNTY JAILS FOR MORE THAN 30 DAYS OR
24 SO, THEY AGREED TO PROCESS THEM QUICKLY AND BRING THEM TO THE
25 PRISON SYSTEM BECAUSE THEY WOULD RELIEVE THE PROSECUTORS OF

1 HAVING TO DEAL WITH THEM, AND IT WOULD REDUCE THE JAIL
2 POPULATION.

3 NOW, THAT WAS BACK IN THE MID-1970'S, EARLY 1980'S.
4 SO THAT'S WHAT THIS IS REFERRING TO, THAT STATEMENT.

5 BUT I CAN COUNT IN LOS ANGELES, LOS ANGELES COUNTY
6 JAIL NOW HAS ABOUT 2500 OF EMPTY JAIL BEDS.

7 **JUDGE REINHARDT:** WHAT?

8 **THE WITNESS:** 2500 EMPTY JAIL BEDS.

9 **JUDGE REINHARDT:** THAT'S HARD TO BELIEVE, BECAUSE THE
10 SHERIFF'S BEEN RELEASING PEOPLE IN LOS ANGELES COUNTY BECAUSE HE
11 DOESN'T HAVE ENOUGH JAIL CELLS TO --

12 **THE WITNESS:** NO, HE CAN'T STAFF THEM. HE'S GOT THE
13 BEDS.

14 **JUDGE REINHARDT:** WELL, HE ALWAYS SAYS THE
15 EXPLANATION IS THE COURT ORDER.

16 **THE WITNESS:** I'LL BE GLAD TO SHOW YOU. I GET THEIR
17 WEEKLY POPULATION COUNT. THEY HAVE ABOUT 2100 BEDS. THEY HAVE
18 ABOUT 18,000 INMATES.

19 THE OTHER THING THAT IS GOING ON BECAUSE OF THE
20 POLICE PRACTICES WITH CHIEF BRATTON DOWN THERE, CRIME IS GOING
21 DOWN DRAMATICALLY. ARRESTS, THEREFORE, ARE GOING DOWN. SO THEY
22 ARE EASING THAT WHOLE JAIL POPULATION.

23 FRESNO HAS A SURPLUS. THERE'S PLENTY OF JAILS THAT
24 HAVE SURPLUSES NOW. WHAT THEY ARE REALLY TALKING ABOUT PROBABLY
25 IS THAT THEY DON'T HAVE THE BUDGET TO OPEN THOSE JAIL BEDS AND

1 STAFF THEM.

2 LET ME SAY SOMETHING ELSE. THE JAILS MAKE MONEY ON
3 THIS.

4 **JUDGE KARLTON:** WELL, I WAS ABOUT TO SAY IN
5 SACRAMENTO COUNTY WE ARE BEING ASKED -- "WE", THE FEDERAL
6 COURTS -- WE SEND A LOT OF PEOPLE TO PRISON, TOO -- ARE BEING
7 ASKED TO GET OUR PRISONERS OUT OF THE JAILS BECAUSE EVEN THOUGH
8 THEY MAKE A PROFIT, THEY NEED THE BEDS. AND WE'RE NOW TRYING TO
9 FIND PLACES TO PUT PRISONERS THAT ARE OURS AWAY FROM THE COURT.

10 SO, I MEAN, I DON'T KNOW ABOUT LOS ANGELES COUNTY,
11 BUT IT'S CERTAINLY NOT TRUE IN OTHER PLACES.

12 **THE WITNESS:** WELL, IT VARIES FROM COUNTY TO COUNTY,
13 YES.

14 **BY MS. JOHNSON:**

15 **Q.** ON THE TOP OF PAGE 23, YOU ALSO NOTE THAT PAROLE REVOCATIONS
16 INCREASED BECAUSE OF THE WILLINGNESS OF PROSECUTORS TO ACCEPT A
17 PAROLE REVOCATION IN LIEU OF FURTHER PROSECUTION.

18 **A.** CORRECT.

19 **Q.** ARE YOU AWARE OF WHETHER THE COUNTIES ACROSS THE STATE HAVE
20 THE RESOURCES TODAY TO HANDLE MORE PROSECUTIONS IN LIEU OF
21 PAROLE REVOCATION?

22 **A.** I CAN'T ANSWER THAT QUESTION.

23 **Q.** ON PAGE 25, AT PARAGRAPH 57, YOU WRITE:

24 "IF EFFECTIVE EVIDENCE-BASED PROGRAMMING WERE
25 PROVIDED TO THE TECHNICAL PAROLE VIOLATORS, THE

1 DIVERSION PROGRAM WOULD LIKELY HAVE NO IMPACT ON
2 CRIME RATES."

3 DO YOU KNOW WHETHER TODAY THERE ARE SUFFICIENT PAROLE
4 AGENTS AND EVIDENCE-BASED PROGRAMMING IN PLACE TO HANDLE THE
5 DIVERSION OF TECHNICAL PAROLE VIOLATORS YOU PROPOSE?

6 **A.** YES, I DO. I THINK THERE ARE, BECAUSE WHAT "EVIDENCE-BASED
7 PROGRAMMING" MEANS IS KIND OF A FADISH KIND OF TERM NOW. BUT
8 ONE OF THE FADISH IS THAT NEXT SENTENCE:

9 "THERE IS A SIGNIFICANT NUMBER OF PEOPLE BEING
10 RELEASED FROM PRISON WHO ARE LOW RISK AND THEIR
11 CRIMINAL CAREERS ARE DONE, AND YOU DON'T NEED TO
12 SUPERVISE THEM."

13 THIS IS WHY THE GOVERNOR, I THINK, HAS RECOMMENDED
14 THAT CERTAIN PEOPLE NOT RECEIVE ANY PAROLE SUPERVISION.

15 EVIDENCE-BASED PROGRAMMING MEANS THAT LOW RISK PEOPLE
16 GET NO SUPERVISION. YOU LEAVE THEM ALONE. BECAUSE THERE'S A LOT
17 OF EVIDENCE THAT PAROLE SUPERVISION IS CRIMINOGENIC TO CERTAIN
18 PEOPLE. IT GETS IN THEIR WAY OF GETTING REUNITED AND GETTING
19 REASSIMILATED INTO SOCIETY.

20 SO WHAT DOESN'T HAPPEN IN CALIFORNIA IS THAT. THEY
21 GIVE IT TO EVERYONE REGARDLESS OF THEIR RISK. PART OF THE
22 REASON: THEY DON'T HAVE A GOOD RISK INSTRUMENT, ALTHOUGH THEY
23 ARE WORKING ON THAT NOW, WHICH IS, AGAIN, UNIQUE.

24 SO WHAT SHOULD BE GOING ON IS AN ASSESSMENT OF
25 EVERYONE GOING OUT ON PAROLE. IF YOU'RE LOW RISK, WHICH MOST

1 PLACES WE WILL FIND THAT'S IN THE NEIGHBORHOOD OF 15 TO 30
2 PERCENT OF THE RELEASES ARE ASSESSED LOW RISK, DON'T NEED ANY
3 SUPERVISION.

4 THEN, YOU TAKE THOSE ADDITIONAL RESOURCES OR THE
5 RESOURCES YOU HAVE AND FOCUS THEM ON THE HIGH RISK PEOPLE. THAT
6 IS WHERE YOU GET REDUCTIONS. AND I THINK YOU HAVE ENOUGH
7 PROGRAMMING AND SUPERVISION TO HANDLE THE HIGH RISK PEOPLE.

8 I ALSO AGREE, THOUGH, THAT MORE COULD BE DONE IN THIS
9 AREA, BUT YOU DON'T NEED TO HAVE PROGRAMS TO LAUNCH THIS
10 RECOMMENDATION. WHAT YOU NEED TO DO IS REALIGN THE RESOURCES YOU
11 HAVE NOW AND DO BETTER SELECTION, BETTER SORTING, AND YOU'LL BE
12 ABLE TO LOWER THE POPULATION WITHOUT HAVING AN ADVERSE AFFECT ON
13 PUBLIC SAFETY.

14 Q. DO YOU HAVE ANY NUMBERS YOU COULD TELL US TO SUPPORT THAT?

15 A. WHICH? ON THE --

16 Q. THE NUMBERS OF SLOTS AVAILABLE IN EVIDENCE-BASED PROGRAMMING
17 VERSUS THE NUMBER OF HIGH RISK TECHNICAL PAROLE VIOLATORS THAT
18 WOULD NEED IT UNDER YOUR PROPOSAL AS THEY ARE NOT BEING -- SINCE
19 THEY ARE BEING DIVERTED? DO YOU HAVE ANY NUMBERS TO SUPPORT
20 THAT THAT YOU CAN TELL ME?

21 A. THERE ARE SOME NUMBERS THAT ARE COMING OUT, BUT THEY ARE ALL
22 IN DRAFT FORM. AND, AGAIN, WHEN WE'RE AS PART OF THE EXPERT
23 PANEL ALL I MEANT WAS THERE WAS NO RISK ASSESSMENT BEING DONE OF
24 PEOPLE COMING OUT ON PAROLE SUPERVISION.

25 WE WERE TRYING TO FIGURE OUT WHAT IS THE NUMBER OF

1 LOW RISK PEOPLE. NOW, WE DO KNOW STATISTICALLY THAT OF THE
2 PEOPLE RELEASED FROM PRISON, ABOUT 30 PERCENT, MAYBE 34 PERCENT,
3 DO NOT GET ARRESTED AGAIN.

4 SO THAT'S YOUR LOW RISK GROUP. SO THEY ARE NOT
5 GETTING ARRESTED AGAIN.

6 THERE'S ANOTHER GROUP THAT GETS ARRESTED OR VIOLATED
7 EITHER FOR PURE TECHNICALS OR FOR MINOR MISDEMEANOR LEVEL
8 CRIMES. THAT'S GOING TO BE YOUR MODERATE RISK GROUP.

9 AND THEN, YOU HAVE A SMALL GROUP GETTING INVOLVED IN
10 VERY SERIOUS CRIMES. GENERALLY, THAT'S GOING TO BE MOST STATES
11 IN THE 10 TO 15 PERCENT RANGE.

12 SO I THINK -- PERSONALLY, I THINK CDCR HAS ENOUGH
13 RESOURCES TO, IF THEY REALIGNED THEIR PAROLE SUPERVISION
14 SERVICES PROPERLY -- AND ALSO BEAR IN MIND THAT IF YOU START
15 DOING THIS DEPOPULATION, MONEY STARTS APPEARING IMMEDIATELY.

16 CDCR HAS AN ESTIMATE OF WHAT THEY CALL THEIR
17 "CROWDING COSTS." I THINK IT'S IN THE 21, 22,000 PER INMATE
18 REDUCTION. THAT'S HOW MUCH MONEY THEY ACTUALLY SAVE IN THEIR
19 BUDGETS IF YOU START THIS PROCESS.

20 MONEY SHOULD BECOME AVAILABLE QUICKLY, WHICH COULD
21 THEN BE DIVERTED TO KEY COUNTIES OR LOCATIONS FOR SERVICES THAT
22 DO NEED TO BE DONE.

23 YOU KNOW, I THINK IT'S TRUE. NOT ENOUGH ASSESSMENT
24 HAS BEEN DONE ON WHAT IS NEEDED. BUT I WOULD NOT AGREE THAT YOU
25 NEED TO WAIT FOR THE PROGRAMS TO GET PUT IN PLACE. THERE'S

1 PLENTY OF PROGRAMS. THERE'S PLENTY OF PAROLE OFFICERS. THEY
2 JUST NEED TO BE REALIGNED MORE APPROPRIATELY.

3 **Q.** ON PAGE FIVE AT FOOTNOTE SIX OF YOUR AUGUST 15, 2008 REPORT,
4 YOU CITE AN ARTICLE BY RYAN FISHER, ENTITLED: "ARE CALIFORNIA'S
5 RECIDIVISM RATES REALLY THE HIGHEST IN THE NATION?"

6 IT COMMENTS ON WHAT MEASURE OF RECIDIVISM YOU USE.

7 **A.** CORRECT.

8 **Q.** ACCORDING TO THE ARTICLE BY MR. FISHER, WHICH YOU CITED:

9 "A HIGHER PERCENTAGE OF INMATES IN CALIFORNIA

10 AND FLORIDA HAD 10 OR MORE PRIOR ARRESTS. CALIFORNIA

11 MAY BE DEALING WITH MORE HARDENED OFFENDERS WHO ARE

12 MORE SUSCEPTIBLE TO PAROLE FAILURE, IN GENERAL.

13 SINCE ALL OF THESE INMATES GO TO PAROLE SUPERVISION

14 IN CALIFORNIA, WHEREAS IN FLORIDA LESS THAN

15 40 PERCENT DO, CALIFORNIA PAROLEES ARE MORE LIKELY TO

16 HAVE THEIR MINOR AND MAJOR CRIMINAL MISDEEDS

17 DETECTED."

18 **A.** RIGHT.

19 **Q.** YOU HAVE NO REASON TO DISAGREE WITH MR. FISHER'S STATEMENTS
20 THAT A HIGHER PERCENTAGE OF INMATES IN CALIFORNIA AND FLORIDA
21 HAD 10 OR MORE PRIOR ARRESTS, DO YOU?

22 **A.** WHAT MR. FISHER -- MR. FISHER SAID SOME THINGS THERE THAT
23 YOU DIDN'T CITE. ONE IS THAT HE LOOKED AT THE REARREST RATES.
24 AND THAT'S WHERE HE FOUND THE REARREST RATE WAS SIMILAR IN
25 CALIFORNIA AS IT IS TO OTHER STATES. WHEN YOU OPENED YOUR

1 SESSION I HEARD YOU TALK ABOUT THE RECIDIVISM DEFINITION.

2 AND ONE IS RETURN TO PRISON, WHICH INCLUDES THE
3 PAROLE VIOLATORS. IF YOU LOOK AT REARREST RATES, IT'S A
4 DIFFERENT MEASURE. CALIFORNIA WHICH IS -- THEY ARE IN THAT 65,
5 I THINK, 69 PERCENT RANGE, WHICH MOST STATES ARE IN THAT RANGE.

6 WHAT HE'S SAYING, ALSO, THOUGH, IS THAT IF EVERYONE
7 GOES ON PAROLE SUPERVISION IN CALIFORNIA, WHICH IS NOT LIKE
8 OTHER STATES, OTHER STATES YOU DON'T HAVE THAT KIND OF --
9 EVERYONE HAS TO GO FOR THIS PERIOD OF THREE YEARS.

10 AND IF YOU'RE ON PAROLE SUPERVISION YOU CAN BE
11 DETECTED AND BROUGHT IN FOR MISDEEDS, AS SHE SAID, AND MINOR
12 KINDS OF CRIMES.

13 EVERYONE KNOWS THAT THE BEST WAY TO STAY OUT OF
14 PRISON IS NOT TO GO ON PAROLE SUPERVISION. PEOPLE THAT DISCHARGE
15 HAVE THE LOWEST RECIDIVISM RATES BECAUSE THEY CAN'T BE BROUGHT
16 IN FOR THESE TECHNICAL VIOLATIONS.

17 SO I DON'T DISAGREE WITH WHAT MR. FISHER IS SAYING AT
18 ALL. I THINK HE'S SAID A LOT OF THINGS THAT WERE VERY USEFUL.

19 Q. I JUST WANTED TO CLARIFY, BECAUSE I HEARD YOU REFER TO MINOR
20 MISDEEDS, JUST IN CASE I MISSPOKE, THAT MR. FISHER SAID:

21 "CALIFORNIA PAROLEES ARE MORE LIKELY TO HAVE
22 THEIR MINOR AND MAJOR CRIMINAL MISDEEDS DETECTED."

23 SO I JUST WANTED TO MAKE SURE THAT WAS CLEAR.

24 A. THAT WOULD BE FAIR.

25 Q. THE NEXT RECOMMENDATION THAT I WANTED TO TALK TO YOU ABOUT

1 IS PROVIDING MORE AVENUES -- IF WE GO BACK TO -- YES, PAGE 20,
2 AT PARAGRAPH 43, THE NUMBER THREE.

3 YOU ARE RIGHT. I WAS WRONG.

4 THE NUMBER FOUR. AND I'VE GROUPED IN THIS WAY
5 BECAUSE WE'RE STILL TALKING ABOUT PAROLE. PROVIDING MORE AVENUES
6 FOR EARLY DISCHARGE FROM PAROLE.

7 **A.** OKAY. YES.

8 **Q.** ON PAGE FOUR AT PARAGRAPH 12 OF YOUR AUGUST 27TH, 2008
9 REPORT, YOU RECOMMEND DISCHARGING PAROLEES WHO REMAIN ARREST
10 FREE FOR 12 MONTHS FROM PAROLE -- I'M SORRY. LET ME RESTATE
11 THAT.

12 YOU RECOMMEND DISCHARGING FROM PAROLE SUPERVISION
13 PAROLEES WHO REMAIN ARREST FREE FOR 12 MONTHS, CORRECT?

14 **A.** YES, BUT JUST TO CLARIFY THIS WAS THE ORIGINAL INTENTION OF
15 THE DETERMINATE SENTENCING WHEN IT WAS PASSED IN 1977, THE
16 ORIGINAL LAW. THAT WAS THE IDEA THAT IF YOU WERE ARREST FREE
17 YOU WOULD BE DISCHARGE FROM PAROLE.

18 **Q.** OKAY. AND THAT'S A RECOMMENDATION IN YOUR REPORT?

19 **A.** IT'S A FURTHER RECOMMENDATION IN MY REPORT.

20 **Q.** PAROLEES WHO HAVE BEEN ARREST FREE FOR 12 MONTHS STILL HAVE
21 A RISK OF COMMITTING CRIMES IN THE FUTURE, CORRECT?

22 **A.** YES, THEY DO.

23 **Q.** THE PURPOSE OF RELEASING THE PAROLEES IS SO THEY CANNOT BE
24 SENT BACK TO PRISON ON A TECHNICAL PAROLE VIOLATION LATER DURING
25 THE PAROLE PERIOD THAT THEY WOULD OTHERWISE HAVE SERVED,

1 CORRECT?

2 **A.** IS THE FIFTY PERCENT THE DISCHARGE AT 12 MONTHS, ARE YOU
3 SAYING?

4 **Q.** YES.

5 **A.** THAT WOULD BE ONE. BUT THE OTHER PART IS TO PROVIDE AN
6 INCENTIVE FOR THE PAROLEE TO CONFORM WITH THE CONDITIONS OF
7 PAROLE. KIND OF GIVES THEM A CARROT, LIKE YOU GET ADMITTED TO
8 COLLEGE.

9 "HOW DO I GET OUT OF COLLEGE?

10 "WELL, YOU HAVE TO GO TO CLASS. AND IF YOU DO
11 THIS, YOU'RE DONE IN FOUR YEARS."

12 SO THAT'S THE OTHER PART OF IT IS TO PRODUCE AN
13 INCENTIVE. AND I NEED TO KEEP SAYING THIS. IN THE EXPERT PANEL
14 REPORT WE KEPT ON NOTING THAT THERE ARE NO INCENTIVES HERE FOR
15 PEOPLE TO DO THINGS THAT WOULD BE MORE CONFORMING.

16 BUT, YES, WHAT THAT DOES IS -- AND THIS IS WHAT
17 HAPPENED IN NEVADA. THE REVOCATION RATE HAS DROPPED IN NEVADA.

18 IN NEVADA NOW APPROXIMATELY 15 PERCENT OF PAROLEES
19 ARE REVOKED. 15 PERCENT. IT USED TO BE 50 PERCENT. AND WHAT WE
20 DID, WE PUT IN -- THEY PASSED A LAW THAT ALLOWS PRISONERS TO GET
21 OFF PAROLE SUPERVISION THROUGH GOOD CONDUCT. THE PAROLE
22 POPULATION DID NOT GROW, AND THE NUMBER OF TECHNICAL PAROLE
23 VIOLATORS COMING INTO THE SYSTEM HAS DROPPED.

24 SO IT'S BEEN AS FAR AS THE STATE OF NEVADA IS
25 CONCERNED A GOOD EXPERIMENT. BUT THAT'S WHAT THIS WOULD DO, THE

1 SAME THING HERE.

2 **Q.** FOLLOWING EARLY DISCHARGE FROM PAROLE, AS YOU PROPOSE, A
3 FORMER PAROLEE WHO WAS INVOLVED IN ILLEGAL DRUG USE WILL NOT
4 COME TO THE ATTENTION OF THE AUTHORITIES UNTIL REARRESTED,
5 CORRECT?

6 **A.** THAT'S CORRECT.

7 **JUDGE REINHARDT:** YOU'RE SAYING THAT IF YOU REDUCE
8 THE PERIOD OF PAROLE FROM THREE TO ONE YEARS THAT YOU WILL HAVE
9 LESS REVOCATION, FEWER REVOCATIONS?

10 **THE WITNESS:** ABSOLUTELY.

11 **JUDGE REINHARDT:** WELL, ISN'T THAT NATURAL IN EVERY
12 CASE, IF THE ONLY TIME DURING WHICH YOU CAN REVOKE IT IS ONE
13 YEAR INSTEAD OF THREE? AND YOU ELIMINATE ALL THE ACTS IN THE
14 SECOND AND THIRD YEARS? OF COURSE YOU'LL HAVE FEWER.

15 **THE WITNESS:** ABSOLUTELY. OF COURSE YOU WILL.

16 **JUDGE REINHARDT:** WELL, IF YOU ELIMINATED PAROLE
17 ENTIRELY YOU WOULD HAVE NO PAROLE REVOCATIONS.

18 **THE WITNESS:** ABSOLUTELY. AND THERE ARE STATES THAT
19 HAVE DONE THAT.

20 **JUDGE REINHARDT:** OKAY.

21 **THE WITNESS:** I MEAN, I MENTIONED WASHINGTON STATE.
22 WASHINGTON STATE YOU CANNOT FIND A PAROLE VIOLATOR IN THEIR
23 PRISON SYSTEM, BECAUSE THEY BANNED PAROLE VIOLATORS FROM COMING
24 TO PRISON LEGISLATIVELY. THEY HAVE A CRIME RATE AND
25 INCARCERATION RATE WELL BELOW CALIFORNIA.

1 MY POINT, JUDGE, IS WHAT ARE YOUR PRISONS FOR? I
2 MEAN, THE QUESTION -- I DON'T HAVE THE ANSWER -- BUT STATES HAVE
3 TO ASK THIS QUESTION AND ANSWER IT.

4 WHO IS GOING TO GO TO YOUR PRISON? WHO IS GOING TO
5 GO TO YOUR JAILS? WHO IS GOING TO GO TO PROBATION? WHAT DO YOU
6 RESERVE THOSE BED SPACE -- AND DO YOU HAVE ENOUGH MONEY TO PAY
7 FOR YOUR POLICY? IT'S KIND OF A PRETTY BASIC -- TO ME, IT'S A
8 PRETTY BASIC KIND OF A SERIES OF QUESTIONS.

9 JUDGE REINHARDT: THEN WHY ARE YOU ONLY RECOMMENDING
10 CUTTING IT TO ONE YEAR? WHY DON'T YOU RECOMMEND THE ELIMINATION
11 OF PAROLE?

12 THE WITNESS: WELL, PERSONALLY IN THE ARTICLES I'VE
13 WRITTEN WHAT I HAVE RECOMMENDED THAT IF YOU'RE LOW RISK YOU
14 DON'T HAVE ANY SUPERVISION. SO I WOULD AGREE WITH THE GOVERNOR.
15 IF YOU'RE LOW RISK, THERE'S NO PAROLE.

16 I DO THINK --

17 JUDGE REINHARDT: BUT IF YOU'RE HIGH RISK YOU CUT
18 FROM IT THREE TO ONE.

19 THE WITNESS: NOW, WITH THE HIGH RISK CANDIDATE --
20 AGAIN, IF THEY ARE HIGH RISK, THEY ARE GOING TO -- IF THEY ARE
21 REALLY HIGH RISK THEY ARE GOING TO DO SOMETHING IN THAT FIRST 12
22 MONTHS.

23 THERE'S ANOTHER THING ABOUT RISK, OKAY? THERE ARE
24 PEOPLE THAT WE THINK ARE HIGH RISK, BUT THEY ARE NOT. FALSE
25 POSITIVES. WE DO A LOT OF THE FALSE POSITIVES.

1 EVERYONE NEEDS TO UNDERSTAND THAT CRIMINALS COMING
2 OUT OF THE PRISON SYSTEM ARE NOT GETTING WORSE IN TERMS OF THEIR
3 CRIMINAL CONDUCT. THEY ARE SLOWING DOWN.

4 ONE OF THE BIG PROJECTORS OF THESE RISK INSTRUMENTS
5 IS AGE. AND PRISONERS AS A CLASS OF PEOPLE ARE HEADED TOWARD
6 THEIR GOLDEN PONDS. THEY ARE LIKE THE ROGER CLEMENS OF
7 BASEBALL. THEY THREW A GOOD BASEBALL, GOOD FASTBALL IN THEIR
8 YOUTH, BUT THEY CAN'T THROW IT NOW.

9 AND TO WASTE -- AND THIS IS WHY THE LENGTH OF STAY
10 THING SHOWS UP THE WAY IT DOES. AND THIS IS WHY PRISONERS
11 AREN'T THE BIGGEST SOURCE OF YOUR CRIME PROBLEM. IT'S THE NEXT
12 GENERATION OF YOUNG FOLKS COMING UP.

13 SO THE WAY I LOOK AT IT IS RISK. YOU KNOW, WHAT'S
14 THE RISK? WHAT'S YOUR INVESTMENT STRATEGY?

15 AND, YES, YOU COULD GET RID OF PAROLE SUPERVISION
16 COMPLETELY. BUT I DO KNOW THERE ARE PEOPLE COMING OUT OF THE
17 PRISON SYSTEM THAT ARE PRETTY DANGEROUS AND NEED TO BE WATCHED.

18 YOU COULD DO THAT THROUGH SOME OTHER MEANS. BUT MOST
19 PEOPLE WOULD SAY WE NEED TO WATCH SOME OF THESE PEOPLE FOR SOME
20 PERIOD OF TIME. IF THEY DO FINE, THEN THEY WOULD COME OFF.

21 BUT IN MY WORLD, YES, NO ONE WOULD DO MORE THAN 12
22 MONTHS OF PAROLE SUPERVISION. LOW RISK PEOPLE WOULD BE NO
23 PAROLE SUPERVISION. THEY HAVE DONE THEIR PRISON TERM. THEY PAID
24 THEIR DEBT TO SOCIETY. LET THEM GET BACK ON WITH THEIR LIVES.

25 IF THEY GET BACK IN TROUBLE AGAIN AND ARRESTED FOR A

1 NEW FELONY, YOU'RE COMING BACK TO PRISON.

2 THAT'S RELATIVELY RARE. MOST PEOPLE THAT GO TO
3 PRISON DON'T COME BACK TO PRISON AGAIN, UNLESS THEY ARE THESE
4 VIOLATORS. BUT IN ANY STATE YOU'LL SEE THAT. ONE SHOT IS ALL
5 THEY NEED. THEY ARE DONE. THANK YOU VERY MUCH.

6 THERE'S A FEW THAT KEEP COMING BACK FOR A VARIETY OF
7 REASONS.

8 **JUDGE REINHARDT:** HOW DO YOU HAVE SUCH A HIGH
9 RECIDIVISM RATE?

10 **JUDGE KARLTON:** BECAUSE IT'S THE PAROLE VIOLATORS.

11 **THE WITNESS:** THE PAROLE VIOLATORS.

12 **JUDGE REINHARDT:** IF YOU ELIMINATED PAROLE VIOLATIONS
13 YOU WOULD HAVE A VERY LOW RECIDIVISM RATE.

14 **THE WITNESS:** YOU'D HAVE A NORMAL RECIDIVISM RATE.

15 **JUDGE REINHARDT:** WHICH WOULD BE WHAT?

16 **THE WITNESS:** ABOUT 40 PERCENT COMING BACK TO PRISON.

17 **JUDGE KARLTON:** FOUR-OH?

18 **THE WITNESS:** FOUR-OH. IT'S INTERESTING. IF YOU LOOK
19 AT THE BUREAU OF JUSTICE STATISTICS, THEY PUBLISH THIS. AND
20 THEY HAVE A FOOTNOTE IN IT. THEY HAVE TWO FIGURES, 40 PERCENT
21 AND 52. 52 IS WHEN THEY PUT CALIFORNIA IN THE MIX.

22 40 IS THE NATIONAL AVERAGE. AND THERE'S PROBABLY 15,
23 20 STATES WITH RECIDIVISM RATES BELOW 30 PERCENT.

24 SO -- AND CALIFORNIA WAS THERE. CALIFORNIA HAD ONE OF
25 THE LOWEST RECIDIVISM RATES IN THE '60'S AND '70'S. SO A LOT OF

1 THIS IS MANUFACTURED AND CAN BE BROUGHT UNDER CONTROL, I
2 BELIEVE, WITH PROPER PROGRAMMING, PROPER STRATEGY, PROPER
3 THINKING ABOUT HOW TO MANAGE THE RESOURCES, BECAUSE I DON'T JUST
4 THINK IT. I'VE SEEN IT. I'VE SEEN IT DONE IN TEXAS.

5 TEXAS HAS REDUCED ITS PRISON RATES SUBSTANTIALLY.
6 HOW? BY BASICALLY NOT ALLOWING TECHNICAL VIOLATORS TO COME IN
7 BACK TO THE INSTITUTION PRISON DIVISION. THEY DON'T ALLOW IT TO
8 HAPPEN. THEY GO THROUGH A REVIEW PROCESS. THEY PUT THEM BACK
9 ON THE STREET. THEY WORK WITH THEM. HANDLE THEM. MANAGE THEM.

10 WHY? BECAUSE IT'S CHEAPER? CALIFORNIA IN 1994 THEY
11 HAD AN EXPERIMENT WHICH WAS VERY SUCCESSFUL. THEY LOWERED THEIR
12 REVOCATION RATE BY ABOUT 25 PERCENT BY GIVING THE PAROLE REGIONS
13 MONEY. THEY GAVE THEM -- BASICALLY SAID:

14 "YOU CAN OCCUPY SO MANY BED CELLS IN CALIFORNIA
15 FOR TECHNICALS. IF YOU GO OVER THAT, WE'RE GOING TO
16 FINE YOU. WE'RE GOING TO TAKE MONEY AWAY FROM YOU.
17 IF YOU BEAT THAT, WE'RE GOING TO GIVE THE PAROLE
18 DIVISION MORE MONEY AND RESOURCES."

19 WHEN THEY DID IT, THE REVOCATION RATE WENT DOWN.
20 WENT DOWN.

21 AND SO CALIFORNIA HAS DONE THIS BEFORE. IT COULD
22 OBVIOUSLY DO IT AGAIN. OTHER STATES ARE DOING THIS. SOME
23 STATES FORBID PAROLE VIOLATORS COMING IN THEIR SYSTEM. AND
24 THEIR CRIME RATE IS LOWER THAN YOUR CRIME RATE. THEIR
25 INCARCERATION RATE IS LOWER THAN YOUR RATE.

1 SO JUST LOOKING AT DIFFERENT CULTURES OR COUNTRIES OR
2 STATES YOU CAN SEE THERE ARE WAYS TO DO THIS AND ARE BEING DONE.

3
4 **BY MS. JOHNSON:**

5 **Q.** LET'S GO BACK TO THE FOUR RECOMMENDATIONS. PAGE -- THERE WE
6 GO. PARAGRAPH 43. WE'RE GOING TO TALK ABOUT NUMBER THREE.

7 HE KNOWS WHAT I'M GOING TO TALK ABOUT BEFORE I DO.

8 "PROVIDE MORE AVENUES FOR PRISONERS TO EARN GOOD
9 TIME CREDITS TOWARD RELEASE FOR GOOD BEHAVIOR."

10 **A.** RIGHT.

11 **Q.** ON PAGE 41, AT PARAGRAPH 94 OF YOUR AUGUST 15, 2008 REPORT
12 YOU INDICATED THAT YOUR PROPOSAL OF ADDITIONAL OPPORTUNITIES FOR
13 GOOD TIME CREDITS WOULD CREATE A FOUR-MONTH SURGE OF EXTRA
14 INMATES BEING RELEASED IN ADDITION TO THOSE ORDINARILY BEING
15 RELEASED, CORRECT?

16 **A.** CORRECT.

17 **Q.** ON PAGE 45, AT PARAGRAPH 95, YOU WROTE:

18 "DURING THIS FOUR-MONTH WINDOW (A TIME DURING
19 WHICH THE INMATE WOULD HAVE BEEN INCARCERATED
20 ABSENT THE GOOD TIME RELEASE PROGRAM) APPROXIMATELY
21 5 PERCENT OF THE RELEASED PRISONERS WILL BE
22 REARRESTED WILL RETURN TO PRISON FOR TECHNICAL
23 VIOLATION. THE GOOD TIME CREDIT RELEASES WOULD
24 ACCOUNT FOR A TEMPORARY INCREASE IN ARRESTS OF LESS
25 THAN 1 PERCENT OF ALL ARRESTS OCCURRING IN THE

1 COUNTIES."

2 YOU REPRESENTED THIS ESTIMATED IMPACT IN TABLE 11 ON
3 THAT SAME PAGE, CORRECT?

4 **A.** YES.

5 **Q.** YOU REVISED TABLE 11 BECAUSE YOUR ESTIMATE THAT 5 PERCENT OF
6 THE RELEASED PRISONERS WOULD BE REARRESTED OR RETURNED TO PRISON
7 FOR A TECHNICAL VIOLATION WAS TOO LOW, CORRECT?

8 **A.** I CALCULATED THAT MYSELF, YES. FOUND THAT OUT, YES.

9 **Q.** LOOKING AT THE REVISED TABLE 11, WHICH IS ON PAGE 10 OF YOUR
10 AUGUST 27, 2008 REPORT --

11 **A.** YES.

12 **Q.** -- YOU USED AN ESTIMATE OF ADDITIONAL ARRESTS AT A
13 26 PERCENT RATE, CORRECT?

14 **A.** TABLE?

15 **Q.** TABLE 11.

16 **A.** 11, NOT 10. YES.

17 **Q.** YOU DID NOT PROVIDE AN ESTIMATE OF THE POSSIBLE STATEWIDE
18 IMPACT OF THOSE REARRESTS, DID YOU?

19 **A.** NO, BUT THAT COULD BE DONE.

20 **Q.** YOU ONLY PROVIDED AN ESTIMATE OF THE POSSIBLE IMPACT ON
21 THREE COUNTIES, INCLUDING LOS ANGELES COUNTY, CORRECT?

22 **A.** CORRECT.

23 **Q.** YOU INDICATED IN TABLE 11 THAT A FOUR-MONTH SHORTENED LENGTH
24 OF SENTENCE FOR ELIGIBLE OFFENDERS MAY CORRELATE WITH 1,398
25 ADDITIONAL ARRESTS IN LOS ANGELES COUNTY ALONE IN THAT

1 FOUR-MONTH SURGE PERIOD, CORRECT?

2 **A.** WELL, THE WAY YOU SHOULD INTERPRET THIS, IF YOU LOOK AT THE
3 TOP LINE YOU'LL SEE THE TOTAL ARRESTS IN THOSE COUNTIES. AMADOR,
4 FRESNO AND LOS ANGELES. AND THEN, I'M BASICALLY WORKING MY WAY
5 DOWN BY LOOKING AT HOW MANY PEOPLE WOULD BE RELEASED EARLIER IN
6 THOSE COUNTIES.

7 SO, FOR EXAMPLE, RIGHT NOW WE'RE RELEASING ABOUT 22
8 TO 24,000 INMATES INTO L.A. COUNTY. AND IF WE TARGETED THE
9 GROUP I TARGETED, WHICH IS THESE NONCONTROVERSIAL FIFTY PERCENT
10 EARNING CLASS PEOPLE, THAT WOULD BE 5,375 ADDITIONAL RELEASES
11 -- AND I'LL GET TO A COUPLE OF POINTS ABOUT THAT -- WHICH IS
12 24 PERCENT.

13 IF THEY GET ARRESTED AT THAT RATE DURING THAT
14 FOUR-MONTH WINDOW IT PRODUCES ABOUT 1400 ARRESTS. THAT
15 TECHNICALLY WHAT THAT IS IN THAT FOUR-MONTH WINDOW HOW MANY OF
16 THOSE FOLKS GOT ARRESTED IN THAT FOUR-MONTH WINDOW, WHICH IS THE
17 LESS THAN 1 PERCENT FIGURE.

18 NOW, THE WAY YOU SHOULD INTERPRET THIS IS THAT DOES
19 THAT MEAN THAT ARRESTS IN LOS ANGELES COUNTY ARE GOING TO GO UP
20 OR DOWN?

21 NO, IT DOESN'T MEAN THAT. IT MEANS THAT THAT POOL,
22 WHATEVER THAT POOL OF ARRESTS ARE, THE POOL IS GOING TO BE
23 INCREASED IN TERMS OF -- THE POOL THAT IS BEING CONTRIBUTED BY
24 THE PEOPLE GETTING THESE CREDITS IS INCREASING BY LESS THAN
25 1 PERCENT.

1 SO THAT'S TECHNICALLY WHAT THAT IS DOING IS LOOKING
2 AT THAT. NOW, I THINK YOU ALSO MENTIONED ABOUT THE TEMPORARY.
3 AND IF YOU CAN LOOK AT MY -- IF YOU CAN REFER TO MY CHART AGAIN,
4 I HAVE A CHART IN THERE NO ONE CAN UNDERSTAND, SO I'LL JUST TRY
5 AND EXPLAIN IT TO YOU.

6 BUT WHEN YOU START TO EARLY RELEASE -- I DON'T WANT
7 TO USE THAT WORD. WHEN YOU START THE DIFFERENT RELEASES, LET'S
8 SAY PEOPLE GETTING OUT AT 24 MONTHS, THERE'S A GROUP THAT'S
9 GOING TO FOLLOW THEM, A COHORT IN THE MONTH THAT FOLLOWS THAT
10 GETS TO 20 MONTHS.

11 THAT'S WHERE YOU HAVE THIS DOUBLE. AND YOU HAVE THAT
12 FOR FOUR MONTHS.

13 ONCE THAT IS OVER, THE NUMBER OF PEOPLE GOING INTO
14 THESE COUNTIES IS EXACTLY THE SAME. IT'S NOT CHANGING. SO WE
15 HAVE THIS -- AS I KEEP MENTIONS, FOLKS -- IT'S A TEMPORARY SURGE
16 THAT LASTS JUST FOR THE PERIOD OF THE IMPLEMENTATION. AND THEN,
17 THE STREAM RETURNS ITSELF TO ITS NORMAL PATH.

18 IT'S KIND OF LIKE YOU HAVE A STREAM. YOU HAVE A DAM.
19 YOUR DAM IS YOUR LENGTH OF STAY. YOU'RE GOING TO LOWER THAT DAM
20 FOR A PERIOD OF TIME. AT A POINT IN TIME YOU'RE GOING TO LOWER
21 THAT DAM, WHICH MEANS MORE WATER IS GOING TO COME OUT.

22 IT COMES OUT, BUT THEN THAT WATER COMING IN IS THE
23 SAME. THE WATER GOING DOWN RETURNS AT THE SAME RATE. SO THERE
24 IS ULTIMATELY NO CHANGE IN THE NUMBER OF PEOPLE GOING OUT OF THE
25 PRISON SYSTEMS INTO THESE COUNTIES. BUT THERE IS A TEMPORARY

1 SURGE THAT DOES OCCUR. AND THAT'S THE ISSUE THAT EVERYONE NEEDS
2 TO BE AWARE OF.

3 BUT I'VE SEEN COMMENTS SAYING:

4 "WE'RE GOING TO RELEASE 40,000 PEOPLE" ALL OF A
5 SUDDEN. THAT DOESN'T HAPPEN THAT WAY AT ALL. IT'S A VERY
6 GRADUAL, VERY MINOR INCREASE IN THE RIVER, AND THEN IT DROPS
7 BACK DOWN.

8 **Q.** THAT TEMPORARY SURGE MAY ALSO RESULT IN A TEMPORARY INCREASE
9 IN THE NUMBER OF ARRESTS ACROSS THE STATE, CORRECT?

10 **A.** IT MAY OR IT MAY NOT. THERE HAVE BEEN STUDIES OF STATES THAT
11 DO THIS WHERE THE NUMBER OF ARRESTS HAVE GONE DOWN AND CRIME HAS
12 GONE DOWN. SO THEY KIND OF GO ALSO ON -- AGAIN, GOING BACK TO --
13 YOU HAVE TO UNDERSTAND THAT THE TOTAL ARREST POOL IS NOT BEING
14 DRIVEN BY PRISONERS COMING OUT OF THE PRISON SYSTEM. THAT'S NOT
15 WHERE THE ACTION IS.

16 **JUDGE REINHARDT:** I DON'T QUITE UNDERSTAND WHAT
17 YOU'RE SAYING. THERE AREN'T GOING TO BE ROUGHLY IN LOS ANGELES
18 AN ADDITIONAL 1400 ARRESTS DURING THAT FOUR-MONTH PERIOD.

19 **THE WITNESS:** NO.

20 **JUDGE REINHARDT:** WELL --

21 **THE WITNESS:** WELL --

22 **JUDGE REINHARDT:** ISN'T --

23 **THE WITNESS:** BECAUSE YOU COULD HAVE OTHER THINGS.

24 LIKE WHAT IS GOING ON NOW IN LOS ANGELES, ARRESTS ARE GOING

25 DOWN. AND THIS IS AT A TIME, YOUR HONOR, AT A TIME WHEN CDCR IS

1 EARLY RELEASING PEOPLE. THEY ARE EARLY RELEASING PEOPLE NOW
2 BECAUSE THEY ARE GIVING OUT MORE CREDITS. THEY ARE EARLY
3 RELEASING PEOPLE IN LOS ANGELES.

4 THEY ARE ALSO RESTRICTING PAROLE VIOLATORS. THEY GOT
5 A MAJOR -- THAT'S WHY THE DIFFERENCE IN OUR NUMBER. AND CRIME
6 AND ARRESTS ARE GOING DOWN.

7 JAIL POPULATION HAS GONE DOWN. SO THIS IS HOW THIS
8 CAN HAPPEN.

9 **JUDGE REINHARDT:** CRIME MAY GO DOWN, BUT THERE WILL
10 BE A CERTAIN AMOUNT OF CRIME MORE THAN THERE WOULD OTHERWISE BE
11 DURING THAT BRIEF SURGE.

12 **THE WITNESS:** NOT NECESSARILY.

13 LET ME TRY TO EXPLAIN IT THIS WAY. OF YOUR POOL OF
14 CRIME, WHATEVER THAT POOL OF CRIME IS, THAT POOL WILL HAVE A
15 SLIGHT GREATER REPRESENTATION OF CRIME THAT'S BEING CAUSED BY
16 THE RELEASED PRISONERS WOULD OTHERWISE WOULD HAVE BEEN
17 INCARCERATED. BUT THAT POOL OF CRIME COULD HAVE ALSO SHRUNK.

18 **JUDGE REINHARDT:** WELL, I THINK THAT'S WHAT I SAID,
19 ALSO. BUT I THINK I UNDERSTAND THAT CRIME ITSELF MAY GO DOWN,
20 BUT THERE WILL BE SLIGHTLY MORE CRIME. DEPENDS ON WHAT YOU
21 CONSIDER "SLIGHTLY."

22 **THE WITNESS:** THERE COULD BE, BECAUSE LET ME GIVE YOU
23 ANOTHER EXAMPLE OF AN ESTIMATE BY DR. JOAN PETERSILIA.

24 **JUDGE REINHARDT:** SLIGHTLY MORE THAN THERE WOULD
25 OTHERWISE BE IF THERE WASN'T THIS SURGE OF RELEASES.

1 **THE WITNESS:** PERHAPS. WE DON'T KNOW THIS. AND LET
2 ME AGAIN GIVE YOU --

3 **JUDGE REINHARDT:** WE REALLY DON'T KNOW ANYTHING.

4 **THE WITNESS:** WELL, I GUESS I LOOK AT THE RISK LEVEL.
5 AND ME, AS A CITIZEN OF LOS ANGELES COUNTY, I DON'T FEEL
6 THREATENED AT ALL, IF YOU ADOPTED MY RECOMMENDATIONS. I KNOW I
7 HAVE THE SAME PROBABILITY OF BEING VICTIMIZED IN LOS ANGELES
8 COUNTY WHETHER YOU FOLKS DO NOTHING OR WHETHER YOU LOWER THE
9 PRISON POPULATION OR YOU JACK IT UP.

10 IT'S NOT GOING TO CHANGE SIGNIFICANTLY MY
11 PROBABILITIES OF BEING MURDERED, ASSAULTED, WHATEVER. YOU KNOW
12 THAT'S NOT CHANGING. IT HASN'T CHANGED IN, QUITE FRANKLY, THE
13 30 YEARS THAT I'VE LIVED, IN MY PROBABILITY OF WHO I AM AND MY
14 SOCIAL STANDING AND STUFF LIKE THAT.

15 WE IN THIS ROOM ARE NOT THAT AT RISK TO THIS KIND OF
16 STUFF. THERE'S CERTAIN SEGMENTS, CERTAIN LOCATIONS IN OUR
17 SOCIETY THAT HAVE A MUCH HIGHER RISK OF BEING VICTIMIZED. WE'RE
18 PRETTY FORTUNATE.

19 **JUDGE REINHARDT:** WELL, THAT'S REALLY, UNFORTUNATELY,
20 NOT THE ISSUE. THE ISSUE IS WHETHER CRIME, IN GENERAL, WILL GO
21 UP AND WHETHER THE COMMUNITY AS A WHOLE, WHETHER THERE WILL BE A
22 LAW ENFORCEMENT DANGER.

23 **THE WITNESS:** I THINK YOU WOULD HAVE A BETTER CHANCE
24 OF REDUCING CRIME IF YOU, IN MY OPINION, LOWER THE PRISON
25 POPULATION, TAKE THAT BILLION DOLLARS A YEAR AND INVEST IT IN

1 THE COMMUNITIES.

2 THAT'S WHERE I'D RATHER WE PUT OUR MONEY.

3 **JUDGE KARLTON:** SIR, I WANT TO FOLLOW-UP ON WHAT
4 JUDGE REINHARDT JUST SAID. I AM CONCERNED. OBVIOUSLY, THESE
5 FIGURES ARE THE BEST FIGURES THAT YOU CAN COME UP WITH.

6 BUT WHAT HAS HAPPENED -- AND MAYBE I'M
7 MISUNDERSTANDING -- IS THAT THERE'S A REASON TO DOUBT THE
8 RELIABILITY OF THESE FIGURES BECAUSE WE REALLY CAN'T UNDERSTAND
9 WHAT'S REALLY HAPPENING.

10 THE FIGURES DON'T NECESSARILY TELL US WHO'S WHO AND
11 WHAT'S WHAT. I MEAN, I'M GOING BACK TO THE 400 HOMICIDES WHO
12 WERE SENTENCED FOR FOUR MONTHS.

13 HOW CONFIDENT -- THAT MAY BE THE WRONG WORD. BUT HOW
14 CONFIDENT CAN WE, AS JUDGES, BE THAT THE FIGURE THAT YOU'RE
15 GIVING US, WHILE CONTAINING NOISE, BASICALLY REFLECT THE
16 REALITIES OUT THERE IN THE WORLD?

17 **THE WITNESS:** I THINK YOU SHOULD BE CONFIDENT. I
18 THOUGHT YOU WERE GOING SOME OTHER DIRECTION. I'M EXTREMELY
19 CONFIDENT THAT IF YOU DID THE RECOMMENDATIONS -- OKAY.

20 **JUDGE KARLTON:** THE RECOMMENDATIONS DEPEND UPON THE
21 ANALYSIS. AND THE QUESTION IS: CAN WE BE CONFIDENT IN THE
22 ANALYSIS GIVEN THE AMOUNT OF NOISE THAT IS PROBABLY IN THE
23 FIGURE, IN THE UNDERLYING DATA?

24 **THE WITNESS:** I GUESS I WOULD ASK YOU, JUDGE, WHAT
25 LEVEL -- I GUESS, THE DATA YOU'RE CONCERNED ABOUT, WHAT DATA ARE

1 YOU CONCERNED ABOUT?

2 **JUDGE KARLTON:** IT'S NOT CLEAR TO ME THAT ANY OF IT
3 IS RELIABLE. IT'S NOT CLEAR TO ME HOW MUCH OF IT HAS WHAT YOU
4 CALL "NOISE" AND HOW MUCH OF IT IS HARD FIGURES.

5 **THE WITNESS:** WITHIN THE REVOCATIONS, YOU MEAN?

6 **JUDGE KARLTON:** YES.

7 **THE WITNESS:** WELL, THE REVOCATIONS, I'M PRETTY
8 CONFIDENT. I WOULD HOPE WE HAVE CONFIDENCE THAT PROSECUTORS ARE
9 GOING AFTER PEOPLE WHO HAVE BEEN RELEASED FROM THE PRISON AND
10 THERE'S A FAIR SENSE THAT THEY HAVE COMMITTED A CRIME ARE GOING
11 TO PROSECUTE THOSE PEOPLE.

12 I CAN'T SPEAK FOR THE PROSECUTORS, BUT I WOULD FEEL
13 PRETTY CONFIDENT THAT THEY WOULD GO AFTER SOMEONE IF THEY FELT
14 THEY HAVE A GOOD CASE.

15 **JUDGE KARLTON:** WHEN WE TALK ABOUT THE FACT THAT
16 CRIMES -- THAT THE NUMBER OF CRIMES BEING COMMITTED BY PAROLEES
17 IS A RELATIVELY SMALL PORTION OF THE NUMBER OF CRIMES -- THAT
18 THAT'S NOT WHERE THE ACTION IS, I THINK YOU SAID -- HOW
19 CONFIDENT CAN WE BE THAT THOSE FIGURES ARE NOT CONTAINED WITH SO
20 MUCH NOISE AS TO BE UNRELIABLE?

21 **THE WITNESS:** I DON'T WORRY ABOUT THOSE AT ALL.
22 THOSE ARE VERY CONFIDENT. THAT'S A CONSTANT FINDING IN STATE
23 AFTER STATE, AND IN YOUR STATE. THERE'S NO QUESTION ABOUT THAT.
24 I DON'T THINK ANYONE WOULD --

25

1 **BY MS. JOHNSON:**

2 **Q.** IF WE CAN LOOK BACK AT TABLE 11, AGAIN. YOU ESTIMATED THAT
3 THOSE 1398 ADDITIONAL ARRESTS THAT MIGHT OCCUR IN LOS ANGELES
4 COUNTY ARE LESS THAN 1 PERCENT OF THE TOTAL ARRESTS ONE WOULD
5 EXPECT DURING THE SAME TIME PERIOD.

6 IS THAT THE SAME TIME PERIOD THAT FOUR MONTHS, OR IS
7 THAT THE WHOLE YEAR NUMBER OF ARRESTS IN LOS ANGELES COUNTY?

8 **A.** THAT WOULD BE, YOU KNOW, DURING THE TIME THAT YOU IMPLEMENT
9 THE REFORM, SO AS THESE PEOPLE COME OUT WITH A DIFFERENT LENGTH
10 OF STAY. AND, AGAIN, TECHNICALLY -- TECHNICALLY WHAT I DID, I
11 LOOKED AT ALL THE PEOPLE THAT WOULD BE AFFECTED. AND I ASKED:

12 "DID YOU GET ARRESTED DURING THAT FOUR-MONTH

13 WINDOW?"

14 THAT'S TECHNICALLY WHAT I'M DOING THERE.

15 **Q.** SORRY TO INTERRUPT.

16 **A.** ALL RIGHT.

17 **Q.** IF YOU LOOK AT THE TOP NUMBER, YOU'RE DOING THAT AS A
18 PERCENTAGE OF 720,959, CORRECT?

19 **A.** RIGHT.

20 **Q.** AND IS THAT 720,959 A FOUR-MONTH FIGURE OR AN ANNUAL FIGURE?

21 **A.** ANNUAL.

22 **Q.** SO YOU'RE COMPARING A FOUR-MONTH PERIOD TO AN ANNUAL FIGURE?

23 **A.** WELL, THAT'S -- THE FOUR-MONTH IS -- THE 720 REPRESENTS
24 CURRENT POLICY IN THE STATE. SO THE ONLY THING YOU'RE DOING IS
25 GETTING SOME PEOPLE OUT, LIKE I SAID, SOONER THAN THEY WOULD

1 OTHERWISE.

2 I'M LOOKING AT THAT WINDOW. AND THAT'S THE RELATIVE
3 CONTRIBUTION TO THE 720,959.

4 **JUDGE KARLTON:** THE FACT OF THE MATTER IS THAT PEOPLE
5 WERE LET OUT AND COMMITTING CRIMES GO INTO THE 720,000 FIGURE.

6 **THE WITNESS:** RIGHT. THEY ARE ALREADY DOING THAT.

7 **JUDGE KARLTON:** RIGHT.

8 **THE WITNESS:** THAT 720 IS BEING PRODUCED BY YOUR
9 CURRENT POLICY.

10 **JUDGE KARLTON:** RIGHT.

11 **BY MS. JOHNSON:**

12 **Q.** BUT YOU'RE SHOWING THAT SURGE NOT COMPARED TO THE FOUR-MONTH
13 PERIOD. YOU'RE SHOWING THAT SURGE COMPARED TO THE ANNUAL
14 PERIOD.

15 **A.** I AM.

16 **Q.** OKAY. YOU PRESENTED A REVISED TABLE EIGHT.

17 **A.** RIGHT.

18 **Q.** I THINK IT'S PLAINTIFFS' 829. I CANNOT PUT THAT UP ON THE
19 SCREEN, BECAUSE WE JUST RECEIVED THAT.

20 **MS. JOHNSON:** YOUR HONORS, I THINK, RECEIVED COURTESY
21 COPIES OF THEM THIS MORNING.

22 OH, I CAN PUT IT UP ON THE SCREEN.

23 **BY MS. JOHNSON:**

24 **Q.** ONE OF THE NUMBERS YOU REVISED WAS THE NUMBER OF GRAND TOTAL
25 ARRESTS FOR A YEAR IN LOS ANGELES COUNTY. AND YOU REVISED THAT

1 DOWN BY ABOUT ONE HALF?

2 **A.** THAT'S RIGHT.

3 **Q.** YES. SO NOW INSTEAD OF -- WHAT WAS IT? LET ME LOOK AT
4 THAT -- TABLE 11, INSTEAD OF 720,959 BEING THE TOTAL NUMBER OF
5 ARRESTS, YOU'VE DETERMINED THAT THIS NUMBER WAS TWICE AS LARGE
6 AS IT SHOULD HAVE BEEN, AND THAT NUMBER SHOULD HAVE BEEN
7 390,829, CORRECT?

8 **A.** THE TOTAL, YES.

9 **Q.** OKAY. BUT YOU DIDN'T REVISE TABLES 10 AND 11, DID YOU?

10 **A.** NO, I DIDN'T HAVE TIME TO DO THAT.

11 **Q.** DID YOU RECALCULATE WHAT PERCENTAGE THOSE 1398 ARRESTS ARE
12 OF YOUR NEW TOTAL ARREST NUMBER?

13 **A.** I THINK I DID. I DON'T HAVE THEM WITH ME, THOUGH.

14 **Q.** YOU CAN'T TELL ME?

15 **A.** I CAN. DO YOU HAVE A PEN?

16 THANKS.

17 THAT COMES TO 3 PERCENT.

18 **Q.** NO LONGER LESS THAN 1 PERCENT?

19 **A.** THAT'S CORRECT.

20 **JUDGE KARLTON:** MAY I HAVE MY PEN BACK?

21 **THE WITNESS:** OH.

22 **BY MS. JOHNSON:**

23 **Q.** DOES THAT CHANGE YOUR OPINION WHETHER THOSE 1398 ADDITIONAL
24 ARRESTS ARE MORE SIGNIFICANT?

25 **A.** WHAT I'M TRYING -- THEY FALL WITHIN THE BASIC -- NO, MY

1 CONCLUSION THAT THEY DO NOT HAVE A SIGNIFICANT IMPACT, NO, ON
2 THE CRIME RATE OR THE ARREST RATE IN LOS ANGELES COUNTY OR THE
3 OTHER COUNTIES.

4 Q. BUT THEY ARE NOT LESS THAN 1 PERCENT?

5 A. I'LL DOUBLE-CHECK MY MATH.

6 Q. ARE YOU SAYING --

7 A. BUT IT'S EITHER THREE OR THREE-TENTHS OF 1 PERCENT.

8 Q. PARDON ME? THREE AND THREE-TENTHS PERCENT?

9 A. IT'S EITHER THREE OR THREE-TENTHS OF ONE PERCENT.

10 Q. THREE OR THREE --

11 A. THREE OR THREE-TENTHS OF 1 PERCENT, EITHER ONE. I HAVE TO
12 DOUBLE-CHECK THE MATH.

13 JUDGE KARLTON: I'M SORRY?

14 BY MS. JOHNSON:

15 Q. THREE OR THREE AND THREE-TENTHS?

16 A. NO. EITHER THREE OR THREE-TENTHS, THREE-TENTHS OF
17 1 PERCENT. .3

18 JUDGE REINHARDT: IT'S EITHER 3 PERCENT OR
19 THREE-TENTHS OF 1 PERCENT?

20 THE WITNESS: YES, I NEED A CALCULATOR.

21 JUDGE REINHARDT: I'M NOW --

22 JUDGE KARLTON: WE KNEW BEFORE THAT IT WAS ABOUT
23 1 PERCENT, IF YOU DROP A HALF IT'S NOT GOING TO BE LESS THAN
24 1 PERCENT.

25 THE WITNESS: IT DEPENDS WHAT THAT "LESS THAN

1 1 PERCENT" WAS SO --

2 JUDGE REINHARDT: I SEE. SO WHEN YOU HAD LESS THAN
3 1 PERCENT, THAT COULD HAVE BEEN ONE-TENTH OF 1 PERCENT.

4 JUDGE HENDERSON: THERE'S A CALCULATOR.

5 THE WITNESS: FINE. THANK YOU.

6 JUDGE REINHARDT: WHILE WE'RE WAITING, JUDGE KARLTON
7 FOR A DIFFERENT REASON, I THINK -- I DON'T THINK ANYONE KNOWS
8 WHAT CAUSES CRIME, WHAT CAUSES OUR ECONOMIC CRISIS TODAY. AND
9 ALL THESE FIGURES ARE REALLY NICE TO PLAY WITH, BUT WHAT WILL
10 CAUSE CRIME TO GO UP OR DOWN IS SOMETHING NOBODY HAS EVER BEEN
11 ABLE TO FIGURE OUT.

12 AND HOW MUCH IT REALLY RISES OR FALLS, OR WHETHER YOU
13 PUT PEOPLE IN JAIL OR LET THEM OUT OF JAIL IS -- IT'S WONDERFUL
14 FOR EVERYONE TO HAVE FIGURES FOR IT, BUT I DON'T KNOW HOW MUCH
15 THAT HAS TO DO WITH THE REALITY OF WHAT WE'RE REALLY -- WHAT IS
16 REALLY OCCURRING.

17 THE WITNESS: WELL, THESE -- THESE ARE, AGAIN,
18 ESTIMATES. I'LL GIVE YOU AN ANSWER NOW.

19 THESE ARE WAYS THAT I'M TRYING TO SHOW THE MAGNITUDE
20 OF THE CHANGE. IT'S THREE-TENTHS OF 1 PERCENT, SO IT'S STILL
21 LESS THAN 1 PERCENT, BECAUSE IF YOU TOOK THE 39,000, TEN PERCENT
22 IS 39,000, 1 PERCENT IS 3,900. SO I'M AT 1398. SO IT'S LESS
23 THAN 1 PERCENT. SO --

24 JUDGE REINHARDT: SO IT WAS REALLY ONE-TENTH OF
25 1 PERCENT.

1 **THE WITNESS:** IT WAS VERY LOW, YEAH. BUT WHAT SHE'S
2 POINTING TO, WE HAD A SPREADSHEET THING. IT WAS DOUBLE-COUNTING
3 SOMETHING SO --

4 **JUDGE REINHARDT:** WELL, NOW --

5 **THE WITNESS:** BUT 39,000. TEN PERCENT IS 39,000. ONE
6 PERCENT IS 3,900. SO IF THE NUMBER IS 139, IT'S ABOUT
7 THREE-TENTHS OF ONE PERCENT. IT'S STILL WELL BELOW THE
8 1 PERCENT THRESHOLD.

9 I THOUGHT I HAD CALCULATED THAT RIGHT.

10 BUT I THINK YOUR POINT -- I MEAN, SOMETIMES PEOPLE --
11 WHAT I'M TRYING TO DO IS ILLUSTRATE THE MAGNITUDE OF THE EFFECTS
12 ON SOCIETY, PUBLIC SAFETY. AND THIS IS THE ONLY WAY I KNOW TO
13 DO IT.

14 THERE'S SO MANY COMPLEX THINGS. I GIVE THIS EXAMPLE
15 OF, AND THIS IS TRUE. YOU KNOW, IF I GOT OUT EARLY I MAY HAVE
16 MET SOMEONE WHO LURES ME INTO A CRIMINAL CONDUCT, OR MAY NOT
17 HAVE LURED ME INTO A CRIMINAL CONDUCT. I MET SOMEONE WHO WAS A
18 POSITIVE THING IN MY LIFE. I WOULDN'T HAVE MET THAT PERSON IF I
19 DIDN'T COME OUT THREE MONTHS EARLY.

20 IF I STAYED IN LATER, I RUN INTO A BAD INFLUENCE.
21 YOU'VE ALL SEEN THOSE FILMS WHERE YOU JUST CHANGE THE SCENARIO
22 AND YOU HAVE A VERY DIFFERENT OUTCOME.

23 SO THAT'S WHY THIS STUFF IS VERY TENUOUS IN TERMS OF
24 SAYING IT'S GOING TO INCREASE IT OR DECREASE IT. BUT I DO THINK
25 THE MAGNITUDE OF THE RISK IS VERY, VERY LOW.

1 I WOULD BE RECOMMENDING -- I WOULD NEVER RECOMMEND
2 ANYTHING THAT I THOUGHT PERSONALLY WOULD JEOPARDIZE THE PUBLIC
3 SAFETY OF PEOPLE IN THE STATE OF CALIFORNIA. SO --

4 **BY MS. JOHNSON:**

5 **Q.** YOUR LAST RECOMMENDATION, IF WE GO BACK TO PARAGRAPH 43 --
6 NO, I'M SORRY. WELL, THE LAST ONE WE'RE GOING TO DO, IT'S
7 ACTUALLY NUMBER SEVEN, WHICH IS THE LAST ONE WE'RE GOING TO
8 DISCUSS.

9 THIS WILL BE THE FOURTH ONE, SO WE WILL HAVE COVERED
10 THEM ALL. IS DIVERT LOW LEVEL OFFENDERS TO PROBATION AND PAROLE
11 INSTEAD OF PRISON.

12 **A.** CORRECT.

13 **Q.** ACCORDING TO TABLE FIVE --

14 **A.** RIGHT.

15 **Q.** -- ON PAGE 27 OF YOUR AUGUST -- I'M SORRY -- AUGUST 15, 2008
16 REPORT, THERE ARE APPROXIMATELY 16,300 PERSONS SENTENCED TO CDCR
17 WHO WERE SENTENCED FOR A NONVIOLENT OFFENSE, DO NOT HAVE A
18 SECOND OR THIRD STRIKE AGAINST THEM, AND HAVE RECEIVED A
19 SENTENCE FOR 16 MONTHS OR LESS.

20 **A.** CORRECT.

21 **Q.** YOUR PREFERENCE IS TO DIVERT THESE OFFENDERS TO PROBATION OR
22 PAROLE SO THAT THEY NEVER SERVE ANY TIME IN PRISON, CORRECT?

23 **A.** NO. WHAT THEY WOULD DO -- AND, AGAIN, A COUPLE OF
24 CLARIFICATIONS. ONLY -- I KNOCKED OUT ABOUT A QUARTER OF THESE
25 PEOPLE, ASSUMING THEY ARE HIGH RISK. SO I WANT THEM TO COME IN

1 AND DO TIME.

2 SO THAT THE GROUP THAT'S LEFT, THEIR DEAL -- I MEAN,
3 YOU HAVE TO WORK THROUGH THE TECHNIQUES HERE. BUT THEY HAVE
4 SPENT SEVEN MONTHS IN THE JAIL. AND NOW THEY ARE COMING INTO
5 THE PRISON SYSTEM.

6 AND IF YOU LOOK AT THEIR -- THE 16 MONTH GROUP, IT'S
7 KIND OF AN INTERESTING GROUP. I DON'T KNOW WHY THE COURTS GIVE
8 16-MONTH SENTENCES AS OPPOSED TO 12, BUT THEY DO.

9 AND IF THEY DO SEVEN MONTHS IN THE JAIL, THEY HAVE
10 NINE MONTHS LEFT. THEY ARE ELIGIBLE FOR THE FIFTY PERCENT
11 DAY-FOR-DAY, AND THEY ARE GETTING THAT BECAUSE OF THE BRIDGE
12 PROGRAM.

13 SO YOU TAKE THAT NINE AND DIVIDE THAT BY HALF
14 ROUGHLY. AND IN SOME JAILS THEY GIVE THEM DAY-FOR-DAY WHILE
15 THEY ARE IN THE JAIL. SO THEY ARE GOING TO DO ABOUT THREE OR
16 FOUR MONTHS.

17 AND THEY ARE GOING TO COME IN. THEY ARE GOING TO SIT
18 IN THE RECEPTION CENTERS, DO NOTHING, AND COME OUT.

19 SO MY SUGGESTION AND MY COLLEAGUES AT THE EXPERT
20 PANEL WERE TO TAKE THESE PEOPLE, KEEP SOME PORTION OF THEM IN
21 THE COMMUNITY, PAY THE COUNTY TO KEEP THEM IN THE COMMUNITY.
22 OFFER MONEY TO THE COUNTIES TO KEEP THEM THERE THROUGH THE
23 SAVINGS THAT WOULD BE GENERATED BY THE POPULATION REDUCTION.

24 SO THAT'S WHAT THIS IS DOING. THE OTHER BIG GROUP ARE
25 THE 24-MONTH GROUPS. AND IT'S ALSO INTERESTING THAT YOU SHOULD

1 BE AWARE OF, THE 27,765, THAT RELATES BACK TO THE 65,000 NEW
2 COURT COMMISSIONS. YOU CAN SEE THAT A BIG CHUNK OF THESE PEOPLE
3 COMING INTO THE CALIFORNIA PRISON SYSTEM HAVE VERY SHORT PERIODS
4 OF LENGTH OF STAY NOW.

5 THEY HAVE THESE RELATIVELY SHORT SENTENCES FOR THESE
6 CRIMES.

7 **Q.** ON PAGE 26 AT PARAGRAPH 61, YOU STATE --

8 **JUDGE KARLTON:** MAY I INTERRUPT FOR A MOMENT?
9 SOMETIMES IT'S HARD TO FORGET WHY WE'RE HERE. BUT THE QUESTION
10 ULTIMATELY WILL BE WHETHER OR NOT -- AND I KNOW THIS IS NOT THE
11 SUBJECT OF YOUR TESTIMONY. BUT WHAT YOU'VE JUST SAID RAISES IT.
12 THE QUESTION IS WHETHER OR NOT THIS WILL EFFECTIVELY PERMIT THE
13 CDCR TO PROVIDE ADEQUATE MEDICAL AND MENTAL HEALTHCARE.

14 NOW, WHAT YOU'RE TELLING ME IS THAT A HUGE NUMBER OF
15 THESE PEOPLE ARE STUCK IN RECEPTION CENTERS AND NEVER GO
16 ANYWHERE.

17 **THE WITNESS:** CORRECT.

18 **JUDGE KARLTON:** SO THE HUGE IMPACT THAT WE HAVE IN
19 THE PRISON SYSTEM OUTSIDE OF THE RECEPTION CENTERS WON'T BE
20 AFFECTED BY LETTING THESE PEOPLE OUT AT ALL; IS THAT RIGHT? YOU
21 SEE WHAT I'M ASKING HERE?

22 **THE WITNESS:** I THINK I DO. CAN YOU RESTATE IT TO
23 MAKE SURE I GOT IT RIGHT?

24 **JUDGE KARLTON:** LET ME START ALL OVER AGAIN.

25 OUR CONCERN IS WITH PEOPLE WHO ARE NOT GETTING

1 ADEQUATE MEDICAL AND MENTAL HEALTH SERVICES.

2 **THE WITNESS:** CORRECT.

3 **JUDGE KARLTON:** THOSE ARE -- AND RIGHT NOW AT LEAST
4 FOR COLEMAN PRISONERS, AND I ASSUME FOR PLATA, AS WELL, THOSE
5 ARE THE PEOPLE WHO ARE ALREADY IN PRISON AND ARE NOT RECEIVING
6 ADEQUATE CARE, MUCH LESS THOSE -- BECAUSE IT'S ALL SCREWED UP --
7 CAN'T BE DETERMINED TO REQUIRE IT. BUT THOSE ARE THE PEOPLE IN
8 PRISON.

9 NOW, IF WE LET OUT ALL OF THESE PEOPLE THAT YOU'RE
10 TALKING ABOUT, THAT RELIEVES THE BURDEN IN THE RECEPTION CENTER.
11 IT DOESN'T DO ANYTHING FOR THE PEOPLE WHO ARE ALREADY IN PRISON
12 INSTITUTIONS.

13 **THE WITNESS:** YEAH, THIS ONE PARTICULARLY IS GOING TO
14 GO AFTER THE RECEPTION CENTER PROBLEM, AS WELL AS THE TECHNICAL
15 PAROLE VIOLATOR. THAT KIND OF SOLVES YOUR RECEPTION CENTER
16 PROBLEM.

17 THE FOUR MONTHS IN CREDIT TIME, THAT GOES AFTER WHAT
18 I WOULD CALL "THE GENERAL POPULATION." IT'S GONE THROUGH THE
19 RECEPTION PROCESS, AND THAT SHOULD LOWER THAT GROUP.

20 **JUDGE KARLTON:** CAN YOU DEFERENTIATE BETWEEN OR TELL
21 ME HOW MANY PRISONERS WILL BE RELEASED FROM GENERAL POPULATION
22 AS CONTRASTED FROM -- AS CONTRASTED WITH THE RECEPTION CENTER?

23 **THE WITNESS:** I COULD DO THAT, YES.

24 **JUDGE KARLTON:** CAN YOU DO IT NOW?

25 **THE WITNESS:** NO.

1 **JUDGE KARLTON:** ALL RIGHT.

2 **THE WITNESS:** IF YOU PAID ME, I WOULD.

3 **JUDGE KARLTON:** WHAT?

4 **THE WITNESS:** IF YOU PAID ME I WOULD. I CAME HERE --

5 **JUDGE KARLTON:** WELL, YOU ARE PAID.

6 **THE WITNESS:** YOU HAVE TO KIND OF DO IT CAREFULLY.

7 BUT IT CAN BE DONE. AND IF YOU WANTED ME TO GET BACK TO YOU IN
8 A DAY OR TWO, I COULD GIVE YOU AN ESTIMATE, IF YOU'RE
9 INTERESTED.

10 **BY MS. JOHNSON:**

11 **Q.** ON PAGE 26, AT PARAGRAPH 61 OF YOUR AUGUST 15, 2008 REPORT
12 YOU STATE:

13 "MOREOVER, IF THE STATE PROVIDED APPROPRIATE
14 COMMUNITY-BASED TREATMENT FOR INDIVIDUALS DIVERTED
15 FROM PRISON, THE DIVERSION PROGRAM WOULD LIKELY HAVE
16 A NEUTRAL OR POSITIVE IMPACT ON PUBLIC SAFETY."

17 **A.** RIGHT.

18 **Q.** DO YOU KNOW WHETHER TODAY SUFFICIENT RESOURCES EXIST IN THE
19 COMMUNITY TO PROVIDE APPROPRIATE COMMUNITY-BASED TREATMENT FOR
20 THESE INDIVIDUALS YOU PROPOSE TO DIVERT?

21 **A.** I DON'T PERSONALLY, NO. I HAVEN'T DONE AN ANALYSIS OF THAT.

22 **JUDGE KARLTON:** ARE YOU AWARE OF ANY STUDIES THAT
23 WOULD HELP US ANSWER THAT QUESTION?

24 **THE WITNESS:** THE ONLY STUDY -- I DID DO A STUDY AT
25 LANCASTER AS PART OF THE DEVELOPMENT OF THE REENTRY PROGRAM. WE

1 LOOKED AT SERVICES THAT WERE AVAILABLE IN LOS ANGELES COUNTY.
2 AND I WAS IMPRESSED BY THE LARGE NUMBER OF SERVICES THAT ARE
3 THERE.

4 BUT I HAVE TO TELL YOU I CAN'T TELL YOU WITH A REAL
5 RIGOROUS SCIENTIFIC STUDY. MY SENSE, YOUR HONOR, IS THERE'S
6 MORE OUT THERE THAN PEOPLE THINK. I THINK YOU CAN RAMP UP
7 SERVICES PRETTY QUICKLY TO NONPROFITS DUE TO THE CONTRACTUAL
8 PROCESS, ESPECIALLY IN THESE ECONOMIC TIMES.

9 SO IF THEY ARE NOT THERE, I THINK SERVICES CAN BE
10 RAMPED UP PRETTY QUICKLY.

11 **JUDGE KARLTON:** WE HAD TESTIMONY FROM THE CHIEF
12 PROBATION OFFICER OF STANISLAUS COUNTY WHO TOLD US THAT A VERY
13 SIGNIFICANT NUMBER -- AND I'M SORRY. I'VE FORGOTTEN WHAT IT IS
14 NOW -- OF PEOPLE WERE BEING BANKED, I THINK WAS THE TERM.

15 **THE WITNESS:** ON PROBATION SUPERVISION?

16 **JUDGE KARLTON:** YES, THEY WERE JUST SIMPLY STUCK IN A
17 BOX, AND NOBODY PAID ANY ATTENTION UNTIL THEY COMMITTED ANOTHER
18 CRIME OR DID SOMETHING THAT CALLED THEIR ATTENTION.

19 DO WE HAVE A SIMILAR SITUATION -- DO YOU KNOW IF WE
20 HAVE A SIMILAR SITUATION IN THE PAROLE PROCESS TODAY?

21 **THE WITNESS:** YES, I THINK THEY HAVE A PORTION OF
22 THEIR POPULATION THAT IS NOT BEING AGGRESSIVELY SUPERVISER.

23 BY THE WAY, THAT'S THE GROUP I GET RID OF.

24 **JUDGE KARLTON:** I UNDERSTAND.

25 ALL RIGHT. GO AHEAD.

1 **BY MS. JOHNSON:**

2 **Q.** I WOULD LIKE TO LOOK AGAIN AT PLAINTIFFS' 830, WHICH I HAVE
3 JUST MOVED UP FOR YOUR HONORS TO BE ABLE TO SEE.

4 THE BIG MIDDLE BAR THERE SAYS:

5 "PRISON POPULATION: 171,000."

6 DO YOU SEE THAT?

7 **A.** YES.

8 **Q.** THAT'S NOT ACTUALLY THE PRISON POPULATION IN THE STATE OF
9 CALIFORNIA, IS IT?

10 **A.** IT'S NOT THE INSTITUTIONAL POPULATION. IT'S -- IT IS THE
11 POPULATION THAT'S PUBLISHED IN THE CDCR POPULATION FORECAST,
12 WHICH I UNDERSTAND INCLUDES THE OUT-OF-STATE PRISONERS, THE
13 CONSERVATION CAMPS, I THINK.

14 **Q.** THERE ARE NOT 171,000 PEOPLE TODAY IN CALIFORNIA'S PRISONS,
15 ARE THERE?

16 **A.** WELL --

17 **JUDGE REINHARDT:** I DON'T THINK THAT'S --

18 **MS. JOHNSON:** YOUR HONORS, IT'S OVER HERE ON THE
19 EASEL.

20 **JUDGE REINHARDT:** OH.

21 **MS. JOHNSON:** IT'S THE CHART THEY USED THIS MORNING.

22 **JUDGE REINHARDT:** THANK YOU.

23 **THE WITNESS:** THE DEPARTMENT PUBLISHED --

24 **BY MS. JOHNSON:**

25 **Q.** YES, I HAVE THE STATISTICS.

1 **A.** I'M JUST TELLING YOU WHERE IT CAME FROM. IT'S IN THE REPORT.
2 2000 -- AS OF JUNE 30, 2008, ACTUAL INSTITUTIONAL POPULATION AS
3 OF JUNE, 2008, 171,000 INMATES.

4 **Q.** OKAY. BUT THAT FIGURE IS THE TOTAL INSTITUTIONAL POPULATION,
5 INCLUDING CAMPS, COMMUNITY CORRECTIONAL CENTERS, AND INCLUDING
6 THE 8,000 HOWEVER MANY OUT-OF-STATE TRANSFERS, CORRECT?

7 **A.** I BELIEVE SO, YES.

8 **Q.** IF YOU PULL UP DEFENDANTS' 1203, WHICH IS THE WEEKLY
9 POPULATION REPORT FOR AUGUST 27, 2008 --

10 **JUDGE HENDERSON:** AFTER YOU FINISH THIS PORTION,
11 COUNSEL, WE'RE GOING TO TAKE A BREAK. MY REPORTER NEEDS ONE.

12 **MS. JOHNSON:** YOUR HONOR, THIS PORTION PROBABLY HAS
13 10 MORE QUESTIONS, BUT I'M PERFECTLY WILLING -- I DON'T HAVE
14 ANYTHING AFTER THE NEXT 10 QUESTIONS. THERE'S NO OTHER PORTION.

15 **JUDGE HENDERSON:** LET'S ASK THE REPORTER, THEN. CAN
16 YOU HOLD OUT FOR TEN?

17 **THE COURT REPORTER:** SURE.

18 **BY MS. JOHNSON:**

19 **Q.** IF YOU LOOK AT SUB (1) (A) (1 (1), INSTITUTIONS, CAMPS,
20 NUMBER OF INSTITUTIONS, WHICH ON THIS DOCUMENT IS THE PRISONS.

21 **MS. JOHNSON:** AND THIS NUMBER HAS ACTUALLY BEEN
22 STIPULATED TO BY THE PARTIES, YOUR HONOR.

23 **BY MS. JOHNSON:**

24 **Q.** THIS 156,352, THERE ARE 400 AND -- 4,386 IN CAMPS. AND
25 THERE ARE ANOTHER 6,312 IN COMMUNITY CORRECTIONAL FACILITIES.

1 **MS. EVENSON:** COUNSEL, FOR PURPOSES OF COMPLETENESS,
2 COULD YOU ALSO READ THE TOP LINE ON THIS DOCUMENT? YOU
3 SKIPPED -- THIS IS THE SECTION ON DOWN. COULD YOU JUST READ THE
4 TOP?

5 **MS. JOHNSON:** YES, THE TOP LINE IS --

6 **MS. EVENSON:** NO. NO. THAT'S NOT THE TOP LINE.
7 THAT'S WHAT YOU PULLED OUT.

8 **BY MS. JOHNSON:**

9 **Q.** THE TOP LINE IS ABOUT 171,000. BUT WHAT I'M TRYING TO POINT
10 OUT IS THAT'S NOT THE PRISON POPULATION. THE PRISON POPULATION
11 IS 156,352.

12 CALIFORNIA -- AND YOU'RE AWARE, ARE YOU NOT, DR.
13 AUSTIN, CALIFORNIA HAS A VARIETY OF DIFFERENT INSTITUTIONS TO
14 WHICH THEY SEND PEOPLE WHO ARE INCARCERATED?

15 **A.** I AM AWARE OF THAT, YES.

16 **Q.** OKAY.

17 **A.** BUT LET ME --

18 **Q.** PLEASE LET ME FINISH.

19 **A.** OKAY.

20 **Q.** OKAY. THOSE INCLUDE PRISONS, CORRECT?

21 **A.** PRISONS, YES.

22 **Q.** THOSE INCLUDE CAMPS?

23 **A.** YES.

24 **Q.** THOSE INCLUDE COMMUNITY CORRECTIONAL FACILITIES?

25 **A.** YES.

1 Q. AND THERE'S I THINK SOME DMH FACILITIES WE SEND PRISONERS
2 TO, AS WELL.

3 A. YES.

4 Q. THERE'S ALSO, AS YOU POINTED OUT, A CERTAIN NUMBER OF
5 INMATES WE HAVE TRANSFERRED TO OUT-OF-STATE FACILITIES, CORRECT?

6 A. YES.

7 Q. SO YOU ARE AWARE THE 171,000 NUMBER IS THE TOTAL POPULATION
8 AMONG ALL THOSE FACILITIES, NOT THE 33 PRISONS, CORRECT?

9 A. RIGHT.

10 Q. OKAY.

11 A. CAN I SAY SOMETHING?

12 Q. SURE.

13 A. SO BUT, AGAIN, THESE FLOW NUMBERS ARE PRODUCING THAT 171.
14 AND I KNOW YOU'RE TALKING ABOUT REDUCING THE INSTITUTION
15 POPULATION FOR PURPOSES OF THIS LITIGATION.

16 Q. BY "INSTITUTION" YOU MEAN PRISON?

17 A. YEAH. YEAH. PRISON. BUT YOU WOULD HAVE THESE CHANGES IN
18 PAROLE VIOLATIONS AND LENGTH OF STAY, ALL WORK TOGETHER, IF YOU
19 GET WHAT I'M SAYING. EVEN THOUGH THEY ARE HOUSED IN DIFFERENT
20 LOCATIONS, YOU'RE AFFECTING THESE PEOPLE. THEY ARE UNDER THE
21 JURISDICTION. SO WHATEVER THE REDUCTIONS ARE, IT'S THE
22 REDUCTION IN THE 171,000 POPULATION.

23 THE DEPARTMENT COULD CHOOSE WHERE IT ACTUALLY HOUSES
24 THESE PEOPLE, BUT IT'S THE REDUCTION IN THAT POPULATION,
25 171,000.

1 **JUDGE KARLTON:** WHAT YOU'RE SAYING IS THERE WOULD
2 STILL BE THE CAMPS.

3 **THE WITNESS:** THAT'S RIGHT.

4 **JUDGE KARLTON:** THERE WOULD STILL BE THE COMMUNITY?

5 **THE WITNESS:** STILL BE ALABAMA.

6 **JUDGE KARLTON:** RIGHT.

7 **BY MS. JOHNSON:**

8 **Q.** NOW, YOU'RE RECOMMENDING DIVERTING LOW LEVEL OFFENDERS,
9 CORRECT?

10 **A.** YES.

11 **Q.** AREN'T MANY LOW LEVEL OFFENDERS ACTUALLY HOUSED AT THE CAMPS
12 IN THE COMMUNITY CORRECTIONAL FACILITIES?

13 **A.** ABSOLUTELY THERE ARE. THERE'S ALSO, THOUGH -- ONE OF THE
14 CAMPS IS NEAR MY HOUSE IN LOS ANGELES -- FEMALE INMATES. AND IT
15 HAS A LARGE NUMBER OF SERIOUS VIOLENT FEMALE OFFENDERS IN IT.

16 KIND OF INTERESTING. THEY DON'T LOOK THAT VIOLENT,
17 THOUGH, TO ME.

18 **Q.** I'M SORRY. ARE YOU STATING TO ME THAT THE REQUIREMENTS FOR A
19 COMMUNITY CORRECTIONAL FACILITY INCLUDE HIGH LEVEL OFFENDERS?

20 **JUDGE KARLTON:** HE SAID "CAMPS."

21 **THE WITNESS:** CAMPS.

22 **BY MS. JOHNSON:**

23 **Q.** CAMPS.

24 **A.** CONSERVATION CAMPS. YES. THEY HAVE SO-CALLED DANGEROUS
25 PEOPLE IN THE CAMPS.

1 THE CAMPS ARE BASICALLY OPERATED ON A CLASSIFICATION
2 SYSTEM. RISK ASSESSMENT IS RISK TO RECIDIVATE, COMMIT A CRIME.
3 CLASSIFICATION IS: CAN WE MANAGE THEM IN A CAMP?

4 BUT THERE'S A LARGE NUMBER OF -- THERE'S TWO
5 STRIKERS. THERE'S SERIOUS VIOLENT OFFENDERS IN THE CONSERVATION
6 CAMPS. THEY ALL GO OUT AND FIGHT FIRES FOR US.

7 Q. ARE YOU AWARE THAT THE INMATES IN THE COMMUNITY CORRECTIONAL
8 FACILITIES ARE SERVING 18 TO 24 MONTHS OR LESS, AND THEY TO MEET
9 ELIGIBILITY CRITERIA FOR MINIMUM TO MEDIUM SECURITY HOUSING?
10 AND THAT'S THE COMMUNITY CORRECTIONAL FACILITY.

11 A. YES, YOU'RE RIGHT.

12 Q. AND ARE YOU AWARE THAT THERE ARE APPROXIMATELY 6,312 OF
13 THOSE 18 TO 24 MONTH OR LESS MINIMUM TO MEDIUM SECURITY
14 OFFENDERS PER WEEK IN COMMUNITY CORRECTIONAL FACILITIES?

15 A. YES.

16 Q. ARE YOU AWARE WHETHER OR NOT THE COMMUNITY CORRECTIONAL
17 FACILITIES ARE OVERCROWDED?

18 A. I'M NOT AWARE OF THAT.

19 Q. THEY ARE NOT OVERCROWDED, ARE THEY?

20 A. WELL, THEY ARE AT THEIR CAPACITY, I BELIEVE. THEY ARE RIGHT
21 AT THEIR CAPACITY.

22 Q. THEY ARE AT THEIR DESIGN CAPACITY?

23 A. RIGHT.

24 Q. AND THAT'S TRUE FOR THE CAMPS, AS WELL. THE CAMPS ARE AT
25 THEIR DESIGN CAPACITY, CORRECT?

1 **A.** THAT'S CORRECT.

2 **Q.** DR. AUSTIN, THOSE ADDITIONAL OFFENDERS YOU PROPOSE TO DIVERT
3 FROM PRISON TO PROBATION OR PAROLE WHO WOULD OTHERWISE BE
4 SENTENCED TO 24 MONTHS OR LESS IN PRISON WILL NOT EXPERIENCE THE
5 INCAPACITATION EFFECT OF SERVING A PRISON SENTENCE WHICH THEY
6 WOULD HAVE OTHERWISE EXPERIENCED, CORRECT?

7 **A.** THEY WILL HAVE EXPERIENCED THE SEVEN MONTHS IN THE COUNTY
8 JAIL, BUT NOT THE ADDITIONAL FOUR MONTHS.

9 **Q.** YOU'RE SAYING --

10 **A.** I'M SORRY. IT WOULD BE FOUR TO SEVEN MONTHS, NOT JUST FOUR
11 MONTHS. IT WOULD BE MORE THAN THAT.

12 **Q.** ON TABLE 10 OR IN TABLE 10 ON PAGE 40 OF YOUR AUGUST 15,
13 2008 REPORT --

14 **A.** OKAY.

15 **Q.** -- YOU ESTIMATED THE IMPACT ON ARRESTS OF THE DIVERSION OF
16 ADDITIONAL OFFENDERS FROM PRISON TO PROBATION OR PAROLE,
17 CORRECT?

18 **A.** CORRECT.

19 **Q.** YOU INITIALLY ESTIMATED THAT OF THOSE ADDITIONAL OFFENDERS
20 DIVERTED FROM PRISON TO PROBATION OR PAROLE 35 PERCENT WOULD BE
21 REARRESTED WITHIN 12 MONTHS, CORRECT?

22 **A.** CORRECT. CORRECT.

23 **Q.** BUT THAT ESTIMATE WAS TOO LOW?

24 **A.** CORRECT.

25 **Q.** IN YOUR AUGUST 27, 2008 REPORT, YOU REVISED THAT ESTIMATE

1 UPWARD TO FIFTY PERCENT --

2 **A.** CORRECT.

3 **Q.** -- OF THOSE ADDITIONAL OFFENDERS DIVERTED FROM PRISON TO
4 PROBATION OR PAROLE WOULD BE REARRESTED WITHIN 12 MONTHS,
5 CORRECT?

6 **A.** CORRECT.

7 **Q.** SO CAN WE GET THE REVISED TABLE, PLEASE? REVISED TABLE 10.

8 OKAY. ACCORDING TO TABLE 10, YOU ESTIMATE THAT
9 DIVERSION OF THESE ADDITIONAL OFFENDERS FROM PRISON TO PROBATION
10 OR PAROLE WOULD RESULT IN A REDUCTION OF THE CDCR INSTITUTIONAL
11 POPULATION OF 12,147, CORRECT?

12 **A.** CORRECT.

13 **Q.** THAT SAME TABLE 10 INDICATES THAT THE DIVERSION OF THOSE
14 ADDITIONAL OFFENDERS FROM PRISON TO PROBATION OR PAROLE MAY
15 CORRELATE WITH 10,412 ARRESTS, REARRESTS STATEWIDE WITHIN ONE
16 YEAR, CORRECT?

17 **A.** KIND OF. BUT I'LL LET YOU GET TO YOUR NEXT QUESTION AND
18 I'LL CLARIFY IT. SO I'LL SAY TENTATIVELY "YES."

19 **Q.** AND YOU INDICATED THAT WAS LESS THAN 1 PERCENT OF TOTAL
20 ARRESTS. BUT JUST AS WITH TABLE 11, YOU'VE REVISED --

21 **A.** RIGHT.

22 **Q.** -- THE NUMBER.

23 **A.** RIGHT.

24 **Q.** SO THAT PERCENTAGE HAS ACTUALLY GONE UP?

25 **A.** TO THE NAKED EYE IT APPEARS, BUT WHAT HAPPENED IS THAT THE

1 12 -- 24 -- I'M SORRY. THE 12 MONTHS SHOULD HAVE BEEN RATCHETED
2 DOWN TO SEVEN MONTH REARREST RATE. SO I FACTORED IN THERE --

3 Q. NO, I THINK WE'RE TALKING APPLES AND ORANGES.

4 A. NO. NO. I'M BEING VERY -- SEE, THERE'S FIFTY PERCENT, 12
5 MONTHS, OKAY? THAT SHOULD HAVE BEEN SET TO SEVEN MONTHS BECAUSE
6 THAT'S HOW MUCH TIME THEY ARE NOT SPENDING IN PRISON, NOT 12
7 MONTHS.

8 SO IT'S NOT FIFTY PERCENT. IT'S MORE LIKE THE 30
9 SOME PERCENT RATE, NOT 30. SOMEWHERE ABOUT 35 --

10 Q. NO --

11 A. IT STAYS BELOW 1 PERCENT. LET ME PUT IT THAT WAY. IT STAYS
12 BELOW 1 PERCENT.

13 Q. WITH THE NEW PERCENTAGE OF TOTAL ARRESTS IN THE BINDER TABLE
14 --

15 A. STAYS BELOW 1 PERCENT.

16 Q. NOT "NEW PERCENTAGE." THE NEW NUMBER OF TOTAL ARRESTS
17 INDICATED ON YOUR TABLE EIGHT.

18 A. STAYS BELOW 1 PERCENT.

19 Q. OKAY. BUT IT'S HIGHER.

20 A. IT'S HIGHER, BUT IT'S STILL BELOW 1 PERCENT.

21 Q. OKAY. IT IS TRUE, ISN'T IT, THAT ACCORDING TO THE
22 VICTIMIZATION STUDIES, THE NUMBER OF CRIMES COMMITTED EXCEEDS
23 THE NUMBER OF CRIMES REPORTED TO THE AUTHORITIES, CORRECT?

24 A. YES.

25 Q. IT'S ALSO TRUE, ISN'T IT, THAT THE NUMBER OF CRIMES REPORTED

1 IN THE COMMUNITY EXCEEDS THE NUMBER OF ARRESTS MADE.

2 **JUDGE KARLTON:** THAT'S THE SAME QUESTION.

3 **BY MS. JOHNSON:**

4 **Q.** NO. ONE IS THE CRIMES THAT PEOPLE SUFFER VERSUS THE CRIMES
5 THEY REPORT. AND THE OTHER IS THE CRIMES THAT THEY REPORT
6 VERSUS THE NUMBER OF ARRESTS THAT ARE MADE.

7 **A.** YES. THERE'S TWO MEASURES OF CRIME. THE VICTIMIZATION
8 SURVEY, WHICH IS CENSUS GOES OUT AND INTERVIEWS HOUSEHOLDS AND
9 ASKS THEM:

10 "HAVE YOU BEEN VICTIMIZED?"

11 SO YOU WOULD BE ANSWERING "YES" IN THE SURVEY. AND
12 IF YOU DIDN'T REPORT THAT TO THE POLICE, IT WOULD BE PICKED UP
13 BY THE POLICE, WHICH IS THE UCR. AND WHAT SHE'S REFERRING TO IS
14 THE VICTIMIZATION REPORTS ARE HIGHER THAN THE REPORTS TO THE
15 POLICE, BECAUSE NOT EVERYONE REPORTS A CRIME TO THE POLICE.

16 **Q.** AND NOT FOR EVERY CRIME THAT IS REPORTED IS AN ARREST MADE,
17 CORRECT?

18 **A.** OH, ABSOLUTELY.

19 **Q.** SO THERE ARE MORE CRIMES THAT OCCUR THAN THERE ARE ARRESTS?

20 **A.** YES.

21 **MS. JOHNSON:** NO FURTHER QUESTIONS, YOUR HONOR.

22 **JUDGE HENDERSON:** OKAY. WE WILL TAKE A 15-MINUTE
23 RECESS.

24 (THEREUPON, A RECESS WAS TAKEN.)

25 **JUDGE HENDERSON:** OKAY. YOU MAY BEGIN YOUR CROSS

1 WHEN YOU'RE READY, COUNSEL.

2 **MS. BARLOW:** THANK YOU, VERY MUCH, YOUR HONOR.
3 KIMBERLY HALL BARLOW, JONES & MAYER ON BEHALF OF DEFENDANT
4 INTERVENORS.

5 **CROSS-EXAMINATION BY MS. BARLOW**

6 BY MS. BARLOW

7 **Q** DOCTOR, I WOULD LIKE TO START WITH WHERE WE LEFT OFF IN THE
8 PRIOR SESSION, THAT IS THE FACT THAT THE AMOUNT OF CRIME EXCEEDS
9 THE NUMBER OF ARRESTS. CAN WE AGREE ON THAT?

10 **A** IN THE AGGREGATE, YES.

11 **Q** IN FACT, SOME STUDIES HAVE INDICATED THAT SOME CRIMES OCCUR
12 20 TIMES MORE OFTEN THAN THEY ARE ACTUALLY REPORTED TO POLICE;
13 IS THAT CORRECT?

14 **A** THAT MAY WELL BE THE CASE. I HAVE TO LOOK AT THE STUDY YOU
15 ARE TALKING ABOUT.

16 **Q** IT'S IN YOUR OWN REPORT FROM, "CRIME AND DELINQUENCY USING
17 EARLY RELEASE TO RELIEVE PRISON CROWDING AND DILEMMA IN PUBLIC
18 POLICY" FROM 1986?

19 **A** YES.

20 **Q** NOW, WHEN WE WERE TALKING ABOUT THE TABLES THAT YOU PREPARED
21 AND YOUR TESTIMONY THAT THE AMOUNT OF CRIME THAT WOULD BE CAUSED
22 BY EARLY RELEASE WOULD BE MINIMAL AND, ALSO, THE AMOUNT OF
23 ADDITIONAL ARRESTS FOR CRIME THAT MIGHT BE GENERATED AS A RESULT
24 OF THE DIVERSION THAT YOU TALK ABOUT WOULD BE LESS THAN ONE
25 PERCENT?

1 **A** I JUST WANT TO SAY I DON'T USE THAT WORD "EARLY RELEASE." I
2 THINK IT IS IMPORTANT IN THE DISCUSSION THAT WE NOT USE THAT
3 WORD "EARLY RELEASE," BECAUSE EARLY RELEASE SUGGESTS THERE'S
4 SOME KIND OF NATIONAL STANDARD OUT THERE THAT SAYS THIS IS THE
5 PROPER TIME TO RELEASE SOMEONE. I DON'T WANT TO CHARACTERIZE IN
6 ANY WAY, SHAPE OR FORM MY RECOMMENDATIONS AS EARLY RELEASE.
7 THEY HAVE NOTHING TO DO WITH EARLY RELEASE.

8 **Q** WITH RESPECT, SIR, YOU USED THE PHRASE "EARLY RELEASE" IN
9 YOUR 1986 STUDY OF ILLINOIS PRISONS, AND WHAT THAT WAS WAS A
10 REDUCTION IN THE LENGTH OF SENTENCE TIME SERVED, CORRECT?

11 **A** I WAS EVALUATING A PROGRAM THAT WAS CALLED AN EARLY RELEASE
12 PROGRAM.

13 **JUDGE KARLTON:** HE'S LEARNED SOMETHING IN 20 YEARS.
14 HE NO LONGER USES THE SAME TERM.

15 **MS. BARLOW:** I'M TRYING TO USE THE SAME TERM, BECAUSE
16 HE USES IT REPEATEDLY IN A STUDY I WILL BE ASKING HIM ABOUT.
17 BY MS. BARLOW

18 **Q** LET'S TALK ABOUT TABLES 10 AND TABLE 11. IN TABLE 10,
19 YOU'RE ESTIMATING EFFECTS OF DIVERSION, CORRECT? AND YOU JUST
20 TESTIFIED A MOMENT AGO THAT YOU SHOULD HAVE USED A SEVEN-MONTH
21 REARREST RATE AT 50 PERCENT RATHER THAN A 50 PERCENT REARREST
22 RATE AT 12 MONTHS, CORRECT?

23 **A** CORRECT.

24 **Q** SHOULD YOU ALSO NOT HAVE USED THE FOUR MONTHS THEN FOR THE
25 GOOD TIME FOR SELECTED PRISONERS? REDUCTION IN LEVEL OF TIME

1 SERVED?

2 **A** NO. WHY WOULD I NOT USE THE FOUR MONTHS?

3 **Q** WELL, IF YOU SHOULD HAVE USED THE ACTUAL ARREST RATE OVER
4 THE PERIOD OF EARLY RELEASE IN ONE --

5 **A** THE 12 -- WHAT I'M SAYING IN THE OTHER -- THE 12 MONTH IS
6 NOT THE PERIOD OF TIME THAT THEY OTHERWISE WOULD HAVE BEEN
7 INCARCERATED. IT'S SEVEN MONTHS FOR THE REASON WHY I WENT
8 THROUGH THAT 16-MONTH SENTENCE.

9 **Q** RIGHT. AND, LIKEWISE, TABLE 11 TALKS ABOUT ADDITIONAL
10 ARRESTS AT THE 26 PERCENT RATE OF THOSE RELEASED 120 DAYS EARLY
11 FROM THEIR SENTENCES, CORRECT?

12 **A** THAT'S CORRECT.

13 **Q** SO SHOULDN'T THAT ALSO BE A RATE FOR THE FOUR MONTHS, NOT
14 TWELVE MONTHS?

15 **A** THE TWENTY-SIX PERCENT IS AT THE FOUR-MONTH LEVEL.

16 **Q** BUT YOU ARE COMPARING THAT TO 12-MONTH ARREST RATE?

17 **A** NO.

18 **Q** WHAT WOULD HAPPEN, SIR, IF YOU COMPARED THE 26 PERCENT
19 ADDITIONAL ARRESTS DURING THAT 120-DAY EARLY RELEASE OR
20 REDUCTION IN SENTENCE TIME PERIOD TO THE SAME -- THE ARREST RATE
21 DURING THAT SAME FOUR MONTHS? IT WOULD CHANGE, WOULD IT NOT?

22 **A** YOU MEAN THE TOTAL ARRESTS --

23 **Q** THE TOTAL ARRESTS --

24 **A** -- FOR AMADOR, FRESNO, LOS ANGELES?

25 **Q** YES.

1 **A** WELL, YEAH, YOU'D HAVE TO -- IT WOULD LOWER THOSE NUMBERS.
2 BUT THE POINT IS, IS THAT IN THIS TIME OF IMPLEMENTATION, YOU
3 ARE GOING TO HAVE -- THAT'S BASICALLY YOUR HISTORICAL NUMBER OF
4 ARREST THAT ARE OCCURRING NOW. WHAT I'M TRYING TO DEMONSTRATE,
5 IF YOU DO A FOUR-MONTH CHANGE IN LENGTH OF STAY, THIS IS THE
6 MAGNITUDE OF CHANGE IN THAT TOTAL ARREST PICTURE, AND THAT'S --
7 I THINK THAT'S A FAIR WAY TO DO IT.

8 **Q** WELL, SIR, IF WE WERE MEASURING THE IMPACT OF THE ADDITIONAL
9 ARRESTS DURING THAT SHORTENED LENGTH OF STAY AND COMPARING IT TO
10 THE ARRESTS THE TOTAL NUMBER OF ARRESTS FOR THAT SAME PERIOD OF
11 TIME, IN FACT, IT WOULD BE MUCH GREATER THAN 3/10 OF ONE
12 PERCENT, CORRECT?

13 **A** YES, BUT THAT'S NOT THE APPROPRIATE WAY TO DO IT.

14 **Q** IN ADDITION TO THAT, IS IT FAIR TO SAY THAT WHEN YOU
15 MEASURED TOTAL ARRESTS AND COMPARED THE NUMBER OF NEW ARRESTS
16 FOR BOTH THE DIVERSION AND THE LENGTH OF SENTENCE SHORTENING,
17 THAT YOU INCLUDED JUVENILE ARRESTS IN THOSE TOTAL NUMBERS?

18 **A** NO. I THINK IT'S APPROPRIATE. WHAT I'M TRYING TO SHOW --

19 **JUDGE KARLTON:** SHE JUST ASKED WERE YOU INCLUDING.

20 **THE WITNESS:** I'M SORRY. YES.

21 BY MS. BARLOW

22 **Q** YOU WERE, IN FACT, INCLUDING JUVENILE ARRESTS?

23 **A** YES.

24 **Q** BUT, IN FACT, NONE OF THE PEOPLE THAT WOULD BE DIVERTED
25 UNDER YOUR DIVERSION PROGRAM THAT YOU -- IS REFLECTED IN

1 TABLE 10 WOULD BE JUVENILES, CORRECT?

2 **A** THAT'S CORRECT.

3 **Q** AND NONE OF THE PEOPLE THAT WOULD BE RELEASED FROM STATE
4 PRISON HAVE THEIR TERMS ON AVERAGE SHORTENED BY FOUR MONTHS
5 WOULD BE JUVENILES, CORRECT?

6 **A** THAT'S CORRECT.

7 **Q** SO IF YOU TOOK THE JUVENILE ARRESTS OUT, IN FACT, THE
8 PERCENTAGE OF ADULT ARRESTS IN BOTH OF THOSE CATEGORIES WOULD BE
9 SUBSTANTIALLY HIGHER, WOULD THEY NOT?

10 **A** THEY WOULD BE HIGHER, BUT IT IS INAPPROPRIATE TO DO IT THAT
11 WAY.

12 **JUDGE KARLTON:** WHY IS IT INAPPROPRIATE?

13 **THE WITNESS:** BECAUSE I'M TRYING TO EXAMINE THE
14 OVERALL EFFECT ON PUBLIC SAFETY IN THE STATE. SO IF I'M IN LOS
15 ANGELES COUNTY, THERE ARE CRIMES BEING COMMITTED BY JUVENILES
16 AND ADULTS. AND IN ALL THESE SYSTEMS, THINGS ARE BEING DONE
17 THAT AFFECT, YOU KNOW, THAT LEVEL OF CRIME THAT GOES ON IN THOSE
18 PLACES. SO I'M TRYING TO ISOLATE THE EFFECT IF YOU CHANGE THIS
19 LENGTH OF STAY, WHAT'S THE MAGNITUDE OF CHANGE --

20 **JUDGE KARLTON:** OF TOTAL CRIMES?

21 **THE WITNESS:** -- OF TOTAL CRIMES FOR THAT GIVEN TIME
22 PERIOD.

23 **JUDGE KARLTON:** I SEE.

24 BY MS. BARLOW

25 **Q** NOW, YOU DO SHOW THE NUMBER OF JUVENILE ARRESTS IN ONE OF

1 YOUR TABLES, CORRECT?

2 **A** YES.

3 **Q** SO IF WE DID THAT MATH, WE WOULD COME UP WITH A MUCH HIGHER
4 PERCENTAGE OF PERSONS RELEASED ON A SHORTENED SENTENCE FROM
5 PRISON COMPARED TO THE TOTAL NUMBER OF ARRESTS, CORRECT?

6 **A** THAT WOULD HAPPEN MATHEMATICALLY, YES.

7 **Q** IS IT ALSO FAIR TO SAY IF WE DID A STATEWIDE NUMBER --
8 BECAUSE YOU DIDN'T DO THAT FOR THIS ONE?

9 **A** CORRECT.

10 **Q** IF WE DID A STATEWIDE NUMBER, THAT WOULD REPRESENT AN
11 ABSOLUTE NUMBER OF ADDITIONAL ARRESTS WHICH WOULD BE FAIRLY
12 SUBSTANTIAL IN SIZE, CORRECT?

13 **A** WELL, IT WOULD BE WHAT IT IS. AGAIN, IT'S NOT APPROPRIATE
14 TO DO THAT.

15 **Q** IT'S NOT APPROPRIATE TO MEASURE HOW MANY ADDITIONAL ARRESTS
16 THERE MIGHT BE ON A STATEWIDE BASE?

17 **A** I DIDN'T SAY THAT. YOU WERE TALKING ABOUT TAKING JUVENILE
18 ARRESTS?

19 **Q** NO, SIR. WHAT I'M ASKING YOU IS, YOU CALCULATED THE
20 DIVERSION FOR AMADOR, FRESNO, LOS ANGELES AND STATEWIDE, THE
21 ADDITIONAL ARRESTS.

22 **A** OH, OKAY.

23 **Q** BUT YOU DIDN'T DO THAT FOR THE GOOD TIME CREDIT PROGRAM THAT
24 YOU'RE RECOMMENDING ON A STATEWIDE BASIS?

25 **A** OKAY.

1 Q CORRECT?

2 A THAT'S CORRECT.

3 Q IS THERE A REASON YOU DIDN'T INCLUDE THE STATEWIDE NUMBERS?
4 IT'S A PRETTY HIGH NUMBER, ISN'T IT?

5 A NO, THERE IS NO PARTICULAR REASON WHY I DIDN'T INCLUDE THEM.
6 IT WOULD BE THE SAME LESS THAN ONE PERCENT CALCULATION.

7 Q WELL, HOW MANY TOTAL ARRESTS ARE THERE OF ADULTS IN THE
8 STATE?

9 A ABOUT 1.6 MILLION.

10 Q SO ONE PERCENT OF THAT WOULD BE 160,000 ADDITIONAL ARRESTS?

11 A NO, IT WOULD BE OF THE PEOPLE ARRESTED -- AGAIN, I HAVE TO
12 TAKE -- EVERYONE IS TRYING TO -- YOU ARE MISUNDERSTANDING WHAT
13 I'M SAYING HERE, BECAUSE EVERYONE KEEPS ON SAYING IF YOU DO
14 THIS, ARRESTS ARE GOING TO GO UP, AND CRIME IS GOING TO GO UP.
15 AND THAT'S JUST FACTUALLY, YOU KNOW, NOT THE CASE.

16 SO I HOPE THAT'S GETTING CLEAR TO FOLKS THAT THIS --
17 YOU KNOW, MY OPINION, WILL HAVE NO IMPACT ON THE CHANCES OF
18 BEING VICTIMIZED BY A CRIME IN THE STATE OF CALIFORNIA.

19 JUDGE REINHARDT: IT IS GOING UP SLIGHTLY. IT'S LESS
20 THAN ONE PERCENT, RIGHT?

21 THE WITNESS: WELL, JUDGE, LET'S GO BACK TO WHAT
22 PRODUCES -- I'M TRYING NOT TO CONFUSE PEOPLE HERE. AND THIS IS
23 BECAUSE OF WHAT WE SEE STATE AFTER STATE AFTER STATE. THERE ARE
24 STATES THAT ARE DOING THESE THINGS NOW, AND THEIR CRIME RATES
25 ARE DROPPING DRAMATICALLY. SO YOU CAN CHANGE THE SIZE OF YOUR

1 PRISON POPULATION.

2 **JUDGE REINHARDT:** YOU SAY THE CRIME RATES ARE
3 DROPPING EVERYWHERE NO MATTER WHAT YOU DO.

4 **THE WITNESS:** YES.

5 **JUDGE REINHARDT:** PUT PEOPLE IN JAIL, PUT PEOPLE NOT
6 IN JAIL, MORE POLICE ON THE STREET, LESS POLICE ON THE STREET.
7 WHATEVER YOU DO, FOR WHATEVER REASONS NOBODY KNOWS, CRIME RATES
8 ARE GOING DOWN, AND SOME OTHER TIME THEY WILL GO UP. I DON'T
9 THINK ANYONE KNOWS THE REASON.

10 **THE WITNESS:** THERE ARE SOME REASONS WE KNOW.

11 **JUDGE REINHARDT:** SOME POLICE CHIEFS I HAVE HAD HEARD
12 ACROSS THE COUNTRY ALL SAY IT'S BECAUSE THEY ARE GOOD POLICE
13 CHIEFS, THEY HAVE GOOD POLICIES. YOU CAN GET ANY EXPLANATION
14 YOU WANT.

15 **JUDGE KARLTON:** IF IT GOES UP, IT'S NOT BECAUSE THEY
16 ARE --

17 **JUDGE REINHARDT:** IT'S NOT THEIR FAULT.

18 **JUDGE KARLTON:** RIGHT.

19 **JUDGE REINHARDT:** BUT WHAT YOU -- EVEN UNDER YOUR
20 THEORY, THE CRIME DROPS, IT'S STILL ONCE YOU HAVE A CERTAIN
21 NUMBER OF ADDITIONAL ARRESTS, THERE MUST BE A CERTAIN NUMBER OF
22 ADDITIONAL CRIMES. AND AS I UNDERSTOOD YOUR TESTIMONY, YOU ARE
23 SAYING THERE IS SOME INCREASE IN ARRESTS OVER WHAT THEY WOULD
24 OTHERWISE BE, BUT IT'S LESS THAN ONE PERCENT. AM I
25 MISUNDERSTANDING YOUR TESTIMONY?

1 **THE WITNESS:** TECHNICALLY, ALL I'M SAYING IS THAT
2 WHATEVER THAT ARREST POOL IS GOING TO BE, IF IT IS HIGHER OR
3 LOWER, THE PERCENT OF THAT THAT CAN BE ATTRIBUTED TO RELEASED
4 PRISONERS IS GOING TO BE AT NO MORE THAN LESS THAN ONE PERCENT
5 HIGHER.

6 **JUDGE REINHARDT:** THAT'S WHAT I SAID.

7 **THE WITNESS:** RIGHT.

8 **JUDGE REINHARDT:** WHATEVER THE CRIME WOULD OTHERWISE
9 BE --

10 **THE WITNESS:** RIGHT.

11 **JUDGE REINHARDT:** AND THAT MAY BE LOWER THAN IT IS
12 TODAY --

13 **THE WITNESS:** RIGHT.

14 **JUDGE REINHARDT:** -- WHATEVER IT WOULD OTHERWISE BE.
15 IT'S GOING TO BE SLIGHTLY HIGHER BY LESS THAN ONE PERCENT.

16 **THE WITNESS:** I'LL GO ALONG WITH THAT.

17 **JUDGE REINHARDT:** OKAY.

18 BY MS. BARLOW

19 **Q** CAN WE AGREE, DR. AUSTIN, THAT 1.6 MILLION ARRESTS IN THE
20 STATE OF CALIFORNIA TRANSLATES INTO SUBSTANTIALLY MORE CRIMES
21 THAN THAT?

22 **A** WELL, IT'S INTERESTING. THE ACTUAL NUMBER OF REPORTED
23 SERIOUS CRIMES IN CALIFORNIA IS WELL BELOW THAT NUMBER. IT'S
24 ABOUT -- I THINK THE 2007 DATA SHOW ABOUT 7- TO 800,000 SERIOUS
25 CRIMES. SO THAT WOULD BE CRIMES OF VIOLENCE, THEFT, PROPERTY,

1 MOTOR VEHICLE THEFT, ARSON, 800,000. AND THAT'S WELL BELOW WHAT
2 IT WAS 15, 20 YEARS AGO.

3 A NUMBER OF ARRESTS IS 1.5 MILLION. SO WE ARREST A
4 LOT OF PEOPLE FOR STUFF THAT IS NOT BEING REPORTED TO POLICE; IN
5 PARTICULAR, THE DRUG USE AND TRAFFIC VIOLATIONS, DWI, THINGS
6 LIKE THAT, VICTIMLESS CRIMES, PROSTITUTION. MOST OF THESE
7 ARRESTS IN THE STATE OF CALIFORNIA ARE MISDEMEANOR CRIMES FOR
8 WHICH YOU CAN'T GO TO PRISON.

9 JUDGE REINHARDT: SO YOU ARE SAYING THERE ARE REALLY
10 MORE ARRESTS THAN THERE ARE CRIMES?

11 THE WITNESS: ABOUT REPORTED SERIOUS CRIMES, YES.
12 THAT'S CALLED SERIOUS CRIMES. CRIMES-TO-POLICE THE NUMBER OF
13 ARRESTS IS TWO-TO-ONE.

14 JUDGE REINHARDT: AND THEN SOME CRIMES HAVE MORE THAN
15 ONE PERSON WHO COMMITTED THEM, THEY MAY ARREST A NUMBER OF
16 PEOPLE FOR ONE CRIME?

17 THE WITNESS: TRUE. ONE INCIDENT, YES.

18 JUDGE REINHARDT: OKAY.

19 THE WITNESS: I'M NOT TRYING TO CONFUSE YOU AT ALL,
20 BUT ON THE REPORTED CRIMES, IT LIMITS IT TO CRIMES REPORTED TO
21 POLICE. SO IF SOMEONE USES DRUGS, THAT PERSON DOESN'T REPORT
22 HIMSELF TO THE POLICE, I JUST SAW SOMEONE USING DRUGS. YOU HAVE
23 TO BE ARRESTED FOR THAT. YOU HAVE TO BE ARRESTED FOR A DWI.
24 THE PEOPLE DON'T TURN THEMSELVES IN FOR DWI'S.

25 SO THERE'S A BUNCH OF BEHAVIORS THAT PEOPLE GET

1 ARRESTED FOR THAT WILL NOT FALL INTO THIS CATEGORY OF CRIMES
2 BEING REPORTED TO POLICE.

3 BY MS. BARLOW

4 **Q** BUT, AGAIN, YOU TESTIFIED A FEW MOMENTS AGO THAT THE AMOUNT
5 OF CRIME EXCEEDS THE AMOUNT OF REPORTED CRIME, AND THE AMOUNT OF
6 REPORTED CRIME EXCEEDS THE AMOUNT OF ARRESTS FOR CRIME?

7 **A** RIGHT.

8 **Q** THAT'S WHAT YOU TESTIFIED TO?

9 **A** IF YOU CONTROL FOR THE CRIMES THAT UCR CAPTURES, AND --
10 WELL, I'M JUST TRYING TO BE FACTUAL HERE. IF YOU LOOK AT JUST
11 THOSE CRIMES, THERE IS FEWER ARRESTS THAN REPORTED TO THE
12 POLICE.

13 **Q** WHICH WAS THE POINT, I THINK. THANK YOU.

14 **A** YES, BUT IT'S ALSO USEFUL TO POINT OUT THAT TOTAL NUMBER
15 OF REPORTED CRIMES IS MUCH LESS THAN THE TOTAL NUMBER OF PEOPLE
16 BEING ARRESTED. I'M USING ARRESTS. WHEN YOU START USING
17 ARRESTS, YOU BRING IN A LOT OF LOW LEVEL, MISDEMEANOR KINDS OF
18 ACTIVITIES THAT ARE NEVER REPORTED TO THE POLICE AND WILL NEVER
19 BE REPORTED TO THE POLICE BECAUSE THEY ARE VICTIMLESS CRIMES, OR
20 THEY ARE CRIMES OF SUCH LOW STATURE THE UCR DOESN'T CAPTURE
21 THEM.

22 **JUDGE KARLTON:** WHAT IS UCR, SIR?

23 **THE WITNESS:** UNIFORM CRIME REPORTS.

24 BY MS. BARLOW

25 **Q** YOU INCLUDE IN THAT, FOR INSTANCE, DRIVING UNDER THE

1 INFLUENCE, A VICTIMLESS CRIME, THAT'S NOT INCLUDED IN THE
2 INDEXED CRIMES, CORRECT?

3 **A** IT'S NOT IN THE INDEXED CRIMES.

4 **Q** LET'S TALK FOR A MOMENT ABOUT YOUR TESTIMONY CONCERNING THE
5 FACT THAT, I THINK IN RESPONSE TO THE COURT'S QUESTION, WHETHER
6 IT WAS SAFE FOR THE COURT TO ASSUME THAT THE TECHNICAL PAROLE
7 VIOLATORS WERE NOT COMMITTING CRIMES.

8 YOU ACKNOWLEDGED PREVIOUSLY THAT THERE WAS SOME
9 INDICATION THAT DISTRICT ATTORNEYS WERE, QUOTE, "CHOOSING TO USE
10 PAROLE REVOCATION INSTEAD OF PROSECUTION FOR A NEW CRIME," AND
11 YOU TOOK THAT TO MEAN THAT THE NEW CRIME WASN'T SERIOUS. YOU
12 GAVE AN EXAMPLE, I THINK, OF RAPE AND MURDER, AND INDICATED THAT
13 YOU WERE SURPRISED THAT THE DISTRICT ATTORNEY WOULD USE A PAROLE
14 REVOCATION INSTEAD OF REPROSECUTION OR PROSECUTION FOR THOSE
15 CRIMES.

16 WHAT EVIDENCE DO YOU HAVE, SIR, THAT THOSE CRIMES
17 AREN'T BEING PROSECUTED AFTER THE PAROLE REVOCATION PROCESS HAS
18 OCCURRED?

19 **A** THE CDCR DATA.

20 **Q** AND WHERE DOES THE CDCR DATA TELL YOU THAT -- LET'S SAY AN
21 ARREST FOR RAPE THAT ENDED UP IN A TECHNICAL PAROLE VIOLATION,
22 AS YOU PHRASE IT, DIDN'T ULTIMATELY GET PROSECUTED AS A RAPE?

23 **A** SOME MAY HAVE, BUT IF YOU LOOK AT THE RELEASES OF TECHNICAL
24 VIOLATORS, YOU SEE THE SAME NUMBERS. PEOPLE WHO WERE BROUGHT IN
25 FOR A HOMICIDE WERE RELEASED TWO MONTHS LATER.

1 **Q** FROM PRISON. MIGHT THEY HAVE BEEN RETURNED TO LOCAL CUSTODY
2 TO BE TRIED FOR THOSE VERY CRIMES THEY WERE ARRESTED FOR?

3 **A** MY RECOLLECTION, THEY WERE BEING RETURNED TO SUPERVISION.

4 **Q** THAT SHOWS IN THE DATA THAT YOU HAVE? WHERE IS THAT, SIR?

5 **A** ON DATA TAPES.

6 **Q** IS IT POSSIBLE, SIR --

7 **JUDGE KARLTON:** ANYTHING IS POSSIBLE. ANYTHING IS
8 POSSIBLE.

9 **MS. BARLOW:** I UNDERSTAND THAT, YOUR HONOR, BUT HE'S
10 ATTRIBUTING --

11 **JUDGE HENDERSON:** IT GOES TO MEANINGFUL QUESTIONS.

12 **MS. BARLOW:** I'M TRYING TO --

13 **JUDGE HENDERSON:** MA'AM, YOU'RE NOT LISTENING.
14 YOU JUST SAY IS IT POSSIBLE.

15 **JUDGE KARLTON:** I'M SORRY. I DIDN'T MEAN TO SAY
16 THAT.

17 BY MS. BARLOW

18 **Q** WITH RESPECT TO THE ONE HUNDRED SOME MURDERS YOU CITED?

19 **A** TWO HUNDRED -- IT'S ACTUALLY --

20 **JUDGE KARLTON:** I THOUGHT IT WAS 400.

21 **THE WITNESS:** ONE HUNDRED FORTY-SIX MURDERS, EIGHT
22 VOLUNTARY MANSLAUGHTERS, 282 ATTEMPTED MURDERS, EIGHT CONSPIRACY
23 TO COMMIT MURDER, EIGHT ACCESSORIES TO MURDERS. IT GETS ABOUT
24 OVER 400.

25

1 BY MS. BARLOW

2 **Q** LET'S JUST TALK ABOUT THE 146 MURDERS. DO YOU HAVE DATA,
3 SIR, THAT TELLS YOU THAT NONE OF THOSE MURDERS WAS ULTIMATELY
4 PROSECUTED AFTER THE PAROLE REVOCATION PROCESS?

5 **A** I HAVE DATA. I HAVE NOT ANALYZED THAT. I HAVE DATA THAT
6 COULD DETERMINE THAT.

7 **Q** ARE YOU AWARE THAT SOMETIMES PEOPLE ARE ARRESTED FOR CRIMES
8 THAT THEY MAY HAVE ACTUALLY COMMITTED BUT THERE IS INADEQUATE
9 EVIDENCE TO PROSECUTE THEM FOR THOSE CRIMES?

10 **A** I DON'T HAVE A PARTICULAR CASE IN FRONT OF ME.

11 **Q** ARE YOU AWARE THAT HAPPENS SOMETIMES, DR. AUSTIN?

12 **A** I DON'T HAVE ANY PARTICULAR CASES IN FRONT OF ME.

13 **Q** ARE YOU SAYING IT DOESN'T HAPPEN?

14 **A** I JUST TOLD YOU WHAT I TOLD YOU.

15 **Q** LET'S TALK A MINUTE ABOUT THE PROGRAMMING THAT YOU HAVE
16 INDICATED IN YOUR REPORTS AT LEAST IS ESSENTIAL TO HAVE THESE
17 POPULATION REDUCTION MEASURES SUCCEED.

18 **JUDGE KARLTON:** THAT IS SOMETHING THAT WE TALKED
19 ABOUT, THE ASSUMPTION IS, AND I'M NOT SURE THAT THAT'S WHAT YOU
20 SAID.

21 **THE WITNESS:** I DIDN'T SAY THAT.

22 **JUDGE KARLTON:** I DIDN'T THINK YOU DID.

23 IS IT YOUR POSITION THAT THIS RELEASE AND THE
24 BENEFITS OF IT CAN BE ACHIEVED WITHOUT ENDANGERING THE PUBLIC
25 WITHOUT THE PROGRAMS THAT YOU THINK WOULD ENHANCE THEM?

1 **THE WITNESS:** ABSOLUTELY.

2 **JUDGE KARLTON:** ALL RIGHT.

3 BY MS. BARLOW

4 **Q** WELL, IF I MAY REFER YOU TO YOUR AUGUST 15TH REPORT, PAGES 8
5 AND 9? STARTING AT THE LAST SENTENCE OF -- ON PAGE 8, IN
6 PARAGRAPH 19:

7 "AS WILL BE SHOWN BELOW, MODERATELY
8 LOWERING THE PRISON POPULATION AND INCARCERATION
9 RATE WHILE USING EVIDENCE BASED MODELS FOR
10 REHABILITATION DOES NOT RESULT IN HIGHER CRIME."

11 **A** RIGHT. AND, AGAIN, AS I TESTIFIED, EVIDENCE-BASED MODELS --
12 THE PRINCIPLE OF EVIDENCE-BASED MODELS, WHICH I THINK I
13 TESTIFIED BEFORE, IS THAT REQUIRES -- THAT WOULD REQUIRE THE
14 STATE OF CALIFORNIA TO STOP SUPERVISING LOW RISK PEOPLE AND TO
15 REALLOCATE THEIR RESOURCES TO THE HIGH RISK PEOPLE ONLY. THAT'S
16 WHAT EVIDENCE-BASED PROGRAMS DO. SO THAT'S WHAT I MEAN BY
17 EVIDENCE-BASED SCIENCE. THAT'S HOW YOU DO IT?

18 THE RESEARCH IS CLEAR THAT WHEN YOU GIVE A LOT OF
19 SUPERVISION OR SERVICES TO PEOPLE THAT ARE LOW RISK, YOU
20 INCREASE THEIR RECIDIVISM RATE. YOU MAKE THEM WORSE. THAT'S
21 BEEN PUBLISHED OVER AND OVER AGAIN. THAT'S PART OF THE PROBLEM
22 WITH THE HIGH RECIDIVISM RATE. THEY'RE SUPERVISING TOO CLOSELY
23 LOW RISK PEOPLE WHICH CAUSES A NEGATIVE REACTION.

24 **JUDGE KARLTON:** THAT IS NOT, IN YOUR VIEW, THE KIND
25 OF PROGRAMMING YOU WOULD LIKE TO SEE WHICH WOULD ENHANCE PUBLIC

1 SAFETY?

2 **THE WITNESS:** RIGHT.

3 **JUDGE KARLTON:** THAT'S A SEPARATE ISSUE?

4 **THE WITNESS:** THAT'S CORRECT.

5 BY MS. BARLOW

6 **Q** AGAIN, LET ME REFER YOU TO PAGE 20 OF YOUR AUGUST 15TH
7 REPORT. WHEN YOU -- SO WHEN YOU SAID IN PAGE -- IN PARAGRAPH
8 43, "PROVIDE EVIDENCED-BASED PROGRAMMING AND SUPERVISION TO
9 TECHNICAL PAROLE VIOLATORS INSTEAD OF RETURNING THEM TO PRISON,"
10 YOU REALLY MEANT NO PROGRAM AND NO SUPERVISION?

11 **A** NO. YOU TARGET THE PROGRAMMING AND SUPERVISION THAT YOU
12 HAVE BASED ON RISK. THAT'S WHAT I'M SAYING.

13 **Q** BUT THAT REQUIRES PROGRAMMING, DOES IT NOT, SIR?

14 **A** YOU HAVE PAROLE AGENTS. YOU HAVE PROGRAMS NOW. YOU TARGET
15 THEM THE WAY THEY'RE SUPPOSED TO BE TARGETED. THEY ARE NOT
16 TARGETED PROPERLY NOW.

17 **Q** OKAY. BUT YOU DIDN'T ASSESS THE AVAILABILITY OF COUNTY
18 MENTAL HEALTH PROGRAMS, FOR EXAMPLE, TO DETERMINE WHETHER THEY
19 WOULD BE IMPACTED BY THE NEW ARRESTS YOU TALKED ABOUT?

20 **A** I'M NOT SURE I UNDERSTAND YOUR QUESTION, BUT I DID NOT
21 ASSESS THE MENTAL HEALTH PROGRAMS IN THE COUNTIES.

22 **Q** DID YOU ASSESS THE COSTS OF PROCESSING THE ADDITIONAL
23 ARRESTEES THROUGH THE CRIMINAL JUSTICE SYSTEM?

24 **JUDGE KARLTON:** WHAT ADDITIONAL ARRESTEES?

25 **MS. BARLOW:** THE ADDITIONAL ARRESTEES FROM THE TWO

1 PROGRAMS HE ACKNOWLEDGED WOULD OCCUR.

2 JUDGE KARLTON: AGAIN, IF YOU LOOK BACK AT THAT
3 TABLE.

4 THE WITNESS: LET'S GO TO THE LESS THAN ONE PERCENT.
5 LESS THAN ONE PERCENT MEANS, IN MY MIND MEANS NO IMPACT ON
6 OPERATING COSTS. ANYONE KNOWS ANYTHING ABOUT A JAIL AND THE
7 BOOKINGS KNOWS THOSE BOOKINGS FLUCTUATE. IF THEY MOVE LESS THAN
8 ONE PERCENT, THERE'S NO ADDITIONAL COST TO THAT JAIL SYSTEM.
9 YOU NEED TO GET BIG CHANGES TO AFFECT THE COST OF A JAIL SYSTEM.
10 YOU NEED TO GET BIG CHANGES TO AFFECT THE COST OF POLICE
11 DEPARTMENTS.

12 SO MOVING -- IF I SAID THE ARRESTS -- THE BOOKINGS
13 INCREASED BY 3/10 OF ONE PERCENT, THAT DOES NOT TRANSLATE INTO
14 COST AT ALL. THERE ARE NO COSTS THERE.
15 BY MS. BARLOW

16 Q DR. AUSTIN, WHEN YOU WERE DETERMINING THAT YOU DIDN'T NEED
17 TO HAVE ANY PROGRAMMING AVAILABLE FOR THESE NEW PAROLEES THAT
18 WOULD BE COMING OUT EARLIER --

19 A THESE ARE NOT NEW PAROLEES. THEY ARE THE SAME PEOPLE THAT
20 ARE COMING OUT NOW.

21 Q FOR THE PAROLEES THAT WOULD BE COMING OUT EARLIER AND FOR
22 THE DIVERTED PEOPLE, RIGHT? THOSE ARE NEW PAROLEES, ARE THEY
23 NOT?

24 A NO. THEY WENT TO PRISON. THEY DID THEIR TIME. THAT'S THE
25 LOOP. SO THEY DID TWO OR THREE YEARS. THEY CAME OUT ON PAROLE.

1 SO THEY GOT TO THE COUNTY ON PAROLE SUPERVISION. THEN THEY
2 VIOLATED. THEY SAT IN THE JAIL FOR 30 DAYS, THEY WENT TO CDCR
3 RECEPTION CENTER FOR TWO MONTHS, AND THEY GOT KICKED BACK THE
4 COUNTY. THAT'S THE LOOP.

5 **Q** SIR, I'M NOT ASKING YOU ABOUT THE TECHNICAL PAROLE VIOLATORS
6 RIGHT NOW. I'M ASKING YOU ABOUT THE DIVERSION PROGRAM. THOSE
7 ARE NEW PAROLEES, ARE THEY NOT?

8 **JUDGE KARLTON:** THEY AREN'T PAROLEES AT ALL. THEY
9 ARE NEW PROBATIONERS.

10 BY MS. BARLOW

11 **Q** THEY ARE PEOPLE STAYING IN THE COUNTIES THAT WOULDN'T
12 OTHERWISE BE THERE, CORRECT?

13 **A** YOU COULD EITHER PUT THEM ON PROBATION OR PUT THEM ON
14 PAROLE. YOU COULD DO WHAT YOU WANT.

15 **Q** THEY WOULD BE NEW PAROLES IF YOU PUT THEM ON PAROLE OR THEY
16 WOULD BE ADDITIONAL PROBATIONERS IF YOU PUT THEM ON PROBATION,
17 CORRECT?

18 **A** THEY --

19 (INTERRUPTION BY THE COURT REPORTER)

20 BY MS. BARLOW

21 **Q** WITH RESPECT TO THE DIVERTED POPULATION THAT YOU HAVE BEEN
22 TALKING ABOUT --

23 **A** SHORT SENTENCES.

24 **Q** IT WOULD HELP THE REPORTER IF YOU WOULD WAIT UNTIL I'M
25 FINISHED. SHE'S HAVING TROUBLE GETTING US BOTH AT THE SAME

1 TIME.

2 WITH RESPECT TO THE DIVERTED POPULATION, YOU JUST
3 SAID A MINUTE AGO YOU COULD EITHER PLACE THEM ON PAROLE OR YOU
4 COULD PLACE THEM ON PROBATION, CORRECT?

5 **A** CORRECT.

6 **Q** BUT EITHER WAY THEY WOULD BE IN ADDITION TO THE EXISTING
7 PAROLE LOAD AND THE EXISTING PROBATION LOAD, CORRECT?

8 **A** LET ME CORRECT YOU. IF PUT THEM ON PAROLE, THEY ARE NOT NEW
9 PAROLEES. THEY WERE GOING TO GO TO PAROLE ANYWAY. THEY WERE
10 GOING TO GET THERE IN ABOUT FOUR, FIVE, SIX MONTHS. THEY ARE
11 NOT NEW PAROLEES. IT'S THE SAME STREAM OF PEOPLE BEING RELEASED
12 FROM PRISON?

13 IF THEY DECIDE -- AND IT DEPENDS WHAT THE PLAN IS --
14 TO PUT THEM ON PROBATION, NOW YOU HAVE A NEW PROBATIONER. BUT
15 YOU HAVE -- YOU'VE STOPPED THEM FROM GOING ONTO PAROLE. SO
16 THERE'S A SAVINGS. IN OTHER WORDS, THERE'S NOT AS MANY PEOPLE
17 ON PAROLE AS THERE WOULD HAVE BEEN. THERE'S MORE PEOPLE ON
18 PROBATION. AND YOU'VE SAVED QUITE A BIT OF MONEY IN DOING THAT.

19 DO YOU UNDERSTAND, I DON'T WANT TO BE --

20 **Q** I DO UNDERSTAND, SIR.

21 **A** OKAY.

22 **Q** WHAT I'M TRYING TO GET AT IS THAT IN YOUR ANALYSIS, IN
23 SAYING THERE WOULD BE NO IMPACT, YOU DIDN'T DO ANY ASSESSMENT OF
24 WHAT RESOURCES WERE AVAILABLE TO PAROLE OFFICERS IN THE COUNTIES
25 THAT YOU MEASURED, CORRECT?

1 **A** WELL, I DID. THAT'S WHY ON RECOMMENDATION 4, IF WE PUT THEM
2 ON PAROLE THEN AND THEY'RE GETTING THERE SOONER, THEN WE HAVE TO
3 TO DO SOMETHING WITH THE LENGTH OF TIME ON PAROLE SUPERVISION.
4 THAT'S WHY I HAD EARLY DISCHARGE WHICH REDUCES THAT.

5 IF YOU DECIDE TO SHIP THEM TO PROBATION, YOU KNOW, MY
6 RECOMMENDATION IS TO TAKE -- NOW IT'S NO LONGER A COST TO THE
7 STATE PAROLE SYSTEM OR STATE DEPARTMENT OF CORRECTIONS. SO
8 THERE ARE SAVINGS THERE. THOSE SAVINGS WOULD GET TRANSFERRED
9 OVER TO THE COUNTY, SO THEY WOULD HAVE THE MONEY TO SUPERVISE
10 THEM AT THE COUNTY. WE ARE NOT REALLY ADDING COSTS HERE. WE
11 ARE MOVING THE MONEY AROUND, MOVING THE BODIES AROUND INTO A
12 MORE EFFECTIVE SYSTEM OF SUPERVISION AND CONTROL WITH GREATER
13 PUBLIC SAFETY.

14 I WANT TO BE CLEAR ON THAT. IT'S NOT AN INCREASE IN
15 ANYTHING. IT'S MOVING THE BODIES INTO DIFFERENT DIRECTIONS THAT
16 ARE MORE EFFECTIVELY REPRESENTING WHAT WE NEED TO DO.

17 **Q** I WOULD LIKE TO READ FROM THE DEPOSITION, IF I MAY. THIS IS
18 FROM THE SECOND DEPOSITION, VOLUME TWO, PAGE 450 -- I'M SORRY,
19 451, LINES 10 THROUGH 452, LINE 6.

20 "QUESTION: DID YOU DO ANY ASSESSMENT OF
21 AVAILABLE PROGRAMS FOR PAROLEES IN FRESNO
22 COUNTY?

23 "NO.

24 "QUESTION: DID YOU DO ANY ASSESSMENT OR
25 STUDY OF THE RATIO OF PAROLEES TO PAROLE AGENTS

1 IN FRESNO COUNTY?

2 "NO.

3 "QUESTION: HOW ABOUT LOS ANGELES COUNTY?

4 "NO.

5 "QUESTION: AMADOR COUNTY?

6 "NO.

7 "QUESTION: DID YOU MAKE ANY ASSESSMENT OR
8 DETERMINATION OF HOW THAT ADDITIONAL WAVE, IF
9 YOU WANT TO CALL IT, OF PAROLEES WHO ACCEPT DRUG
10 TREATMENT PROGRAMS IN THE COUNTY?

11 "ANSWER: NO.

12 "QUESTION: DOMESTIC VIOLENCE TREATMENT
13 PROGRAMS?

14 "ANSWER: NO.

15 "QUESTION: ANGER MANAGEMENT TREATMENT
16 PROGRAMS?

17 "ANSWER: NO.

18 "QUESTION: DID YOU DO ANY KIND OF
19 ASSESSMENT ABOUT THE AVAILABILITY OF HOUSING FOR
20 THOSE ADDITIONAL RELEASEES OR THOSE EARLY
21 RELEASEES?

22 "ANSWER: NO."

23 **A** DO YOU WANT ME TO RESPOND TO THAT?

24 **JUDGE KARLTON:** NO. SHE THINKS SHE'S IMPEACHED YOU.
25

1 BY MS. BARLOW

2 Q NOW, SIR, WHEN YOU WERE DETERMINING THAT WE COULD DIVERT
3 SOME OF THESE FOLKS TO THE LOCAL SYSTEM, DID YOU CONSIDER THE
4 NUMBER OF PEOPLE THAT ARE ALREADY BEING RELEASED EARLY FROM THE
5 LOCAL COUNTY JAILS DUE TO OVERCROWDING?

6 A YES.

7 Q YOU DID?

8 A YES.

9 Q DO YOU KNOW HOW MANY THAT IS?

10 A YEAH, THERE'S A REPORT THAT THE STATE PUTS OUT OF PEOPLE
11 THAT ARE SERVING LESS THAN THEIR FULL TERMS.

12 Q AT THE COUNTY LEVEL?

13 A AT THE COUNTY LEVEL.

14 Q AND THEY'RE SERVING LESS THAN THEIR FULL TERMS BECAUSE
15 THERE'S NO SPACE FOR THEM, CORRECT?

16 A THEY LACK SPACE OR A COURT ORDER. THEY CAN'T BUDGET THE
17 BEDS THEY HAVE.

18 Q SO YOUR RECOMMENDATION ISN'T THAT WE DIVERT THESE
19 DIVERSIONARY PEOPLE TO COUNTY CUSTODY, BUT THAT WE DIVERT THEM
20 TO COMMUNITIES, CORRECT, TO LIVE IN THE COMMUNITIES?

21 A YES, LIKE -- YES. THAT THEY WOULD LIVE IN THE COMMUNITIES?

22 Q YES.

23 A YES.

24 Q AND YOU ARE AWARE THAT THERE WERE ALMOST 200,000 PEOPLE
25 RELEASED EARLY FROM COUNTY FACILITIES IN 2007?

1 **A** I LOOKED AT THAT.

2 **Q** FOR LACK OF CAPACITY?

3 **A** I LOOKED AT THAT, AND THE CRIME RATES WERE GOING DOWN. I
4 WANT YOU TO KNOW I DID LOOK AT THAT, BECAUSE THE REPORT CAME OUT
5 AND --

6 **Q** YOU ATTRIBUTE THAT TO RELEASING INMATES FROM COUNTY CUSTODY?

7 **A** PARDON?

8 **Q** DO YOU ATTRIBUTE THAT PRIMARY --

9 (INTERRUPTION BY THE COURT REPORTER.)

10 **JUDGE HENDERSON:** PLEASE STOP INTERRUPTING HER,
11 DOCTOR.

12 **THE WITNESS:** SORRY.

13 BY MS. BARLOW

14 **Q** YOU ATTRIBUTE THAT CRIME REDUCTION IN COUNTIES TO THE EARLY
15 RELEASE OF PEOPLE FROM COUNTY FACILITIES?

16 **A** I DON'T ATTRIBUTE THAT.

17 **Q** OKAY. THANK YOU.

18 NOW, YOU TESTIFIED THAT YOUR PROPOSAL TO DIVERT IS
19 FOR LOW RISK INMATES, CORRECT?

20 **A** YES.

21 **Q** OR LOW RISK OFFENDERS, SHALL WE SAY?

22 **A** YES.

23 **Q** BUT YOU ALSO SAID WE DON'T KNOW WHO THE LOW RISK PEOPLE ARE,
24 WE DON'T HAVE AN EFFECTIVE WAY OF ASSESSING WHO THEY ARE,
25 CORRECT?

1 **A** WELL, I MAY HAVE SAID THAT AT THE TIME THAT I WAS DOING MY
2 ANALYSIS. I GOT, YOU KNOW, DATA TAPES FROM THE DEPARTMENT OF
3 CORRECTIONS. THEY DID NOT HAVE IN PLACE A RISK ASSESSMENT TOOL,
4 ALTHOUGH I HAVE ONE, AND I DEVELOPED ONE FOR THEM, SO IT EXISTS.

5 **Q** SO WOULD YOU AGREE, SIR, THAT YOU'D HAVE TO HAVE IN PLACE A
6 VALID RISK ASSESSMENT TOOL IN ORDER TO DETERMINE WHO THE LOW
7 RISK PEOPLE ARE THAT WOULD BE DIVERTED?

8 **A** I DO, AND THEY HAVE ONE.

9 **Q** THEY HAVE ONE?

10 **A** YEAH.

11 **Q** NOW, DOES YOUR OPINION CHANGE ABOUT THE IMPACT TO PUBLIC
12 SAFETY, IN OTHER WORDS, THAT THERE ISN'T ONE, EVEN THOUGH WE
13 KNOW THAT 70 PERCENT OF THOSE COMING OUT OF PRISON HAVE
14 SUBSTANCE ABUSE PROBLEMS OF SOME KIND?

15 **A** YES.

16 **Q** THAT CHANGES YOUR OPINION?

17 **A** NO, IT DOESN'T CHANGE MY OPINION. I KNOW THEY HAVE -- I
18 KNOW 70 PERCENT OF SUBSTANCE ABUSE PROBLEMS COMING OUT, YES, I
19 KNOW THAT PART.

20 **Q** AND DOES YOUR OPINION CHANGE IF I TELL YOU THAT THE
21 TESTIMONY HAS BEEN THAT THERE ARE NOT ENOUGH SUBSTANCE ABUSE
22 PROGRAMS AVAILABLE IN ANY COUNTY IN THIS STATE?

23 **A** DOES NOT CHANGE MY OPINION.

24 **Q** DOES YOUR OPINION CHANGE AT ALL IF YOU TAKE INTO ACCOUNT
25 THAT 20 PERCENT OF THOSE RELEASED FROM PRISON HAVE MENTAL HEALTH

1 NEEDS?

2 **A** NO.

3 **Q** DOES YOUR OPINION CHANGE IF YOU ARE AWARE THAT THE TESTIMONY
4 IS OR WILL BE THAT THERE ARE INADEQUATE MENTAL HEALTHCARE
5 TREATMENT FACILITIES IN ALL OF THE COUNTIES?

6 **A** NO.

7 **Q** I WANT TO TALK FOR JUST A MOMENT ABOUT YOUR TESTIMONY
8 CONCERNING THE OPINIONS OF CHIEF JERRY DYER FROM FRESNO. I
9 BELIEVE I HEARD YOU SAY YOU DIDN'T KNOW WHAT STUDY OR DATA
10 MR. DYER WAS USING WITH RESPECT TO THE NUMBER OF CRIMES THAT
11 WERE BEING COMMITTED BY THOSE ARRESTED, BUT YOU WERE SPECULATING
12 ABOUT THE STUDIES THAT HE WAS USING?

13 **A** HE DIDN'T CITE A STUDY.

14 **Q** YOU WEREN'T PROVIDED WITH THE STUDY OR THE DATA THAT WAS
15 PROVIDED TO PLAINTIFFS' COUNSEL, CORRECT, SO YOU DON'T KNOW WHAT
16 STUDY OR DATA HE USED?

17 **JUDGE KARLTON:** HE DOESN'T KNOW WHETHER YOU PROVIDED
18 SOMETHING TO THE PLAINTIFFS' COUNSEL THEY DIDN'T PROVIDE HIM.

19 **MS. BARLOW:** ACTUALLY, YOUR HONOR, HE TESTIFIED HE
20 DIDN'T RECEIVE DOCUMENTS THAT WERE PRODUCED, AND THAT WAS THE
21 SUBJECT OF A MOTION IN LIMINE TO PRECLUDE HIM FROM TESTIFYING ON
22 THAT ISSUE. FOR THAT REASON --

23 **JUDGE KARLTON:** MA'AM, HE DOESN'T KNOW WHAT HE DIDN'T
24 GET. EVERYBODY AGREES TO THAT.

25 WOULD YOU AGREE TO THAT?

1 **THE WITNESS:** I WOULD AGREE TO THAT, YOUR HONOR.

2 BY MS. BARLOW

3 **Q** IS IT FAIR TO SAY, DR. AUSTIN, YOU WERE SPECULATING ABOUT
4 WHAT DATA MR. DYER RELIED ON?

5 **A** ALL I AM OBSERVING IN A REPORT WHEN I WROTE MY REPORTS, I
6 CITED THE STUDY. SO WHEN HE GIVES STATISTICS, THERE'S NO
7 FOOTNOTE SAYING THIS IS WHAT THIS IS BASED UPON. THAT'S ALL I'M
8 SAYING.

9 **Q** SO YOU DON'T HAVE ANY IDEA, DO YOU, ABOUT IF THE STUDY YOU
10 THINK HE MIGHT HAVE REFERRED TO IS, IN FACT, THE STUDY?

11 **A** I DON'T KNOW WHAT IT IS.

12 **MS. BARLOW:** SO FOR THAT REASON I WOULD MOVE THE
13 TESTIMONY HE GAVE EARLIER ABOUT MR. DYER'S OPINIONS BE STRICKEN.

14 **JUDGE HENDERSON:** GOES TO THE WEIGHT.

15 **JUDGE KARLTON:** DENIED. AND LET'S MOVE ON.

16 **MS. BARLOW:** THANK YOU, YOUR HONOR.

17 BY MS. BARLOW

18 **Q** ONE OF THE STUDIES YOU TALKED ABOUT HAVING DEALT WITH EARLY
19 RELEASE IS FROM ILLINOIS, CORRECT?

20 **A** YES.

21 **Q** AND YOU CONDUCTED A STUDY THERE IN 1986?

22 **A** I THINK IT WAS PUBLISHED -- WAS IT PUBLISHED IN 1986?

23 **Q** IT WAS PUBLISHED IN 1986, YOU ARE CORRECT.

24 DO YOU KNOW WHAT PERIOD OF TIME WAS COVERED BY THAT
25 STUDY?

1 **A** I CAN'T -- I THINK IT'S, OFF THE TOP OF MY HEAD,
2 1980-SOMETHING TO 1984. I'D HAVE TO LOOK AT THE STUDY AND SEE
3 THE TIME. IT'S ABOUT 20 SOME YEARS AGO.

4 **Q** JUST 1984?

5 **JUDGE KARLTON:** HE SAID 1980-SOMETHING.

6 **THE WITNESS:** 1980 TO 1984, SOMETHING LIKE THAT. I
7 REALLY DON'T KNOW WITHOUT LOOKING AT THE REPORT. IT'S BEEN 20
8 SOME YEARS SINCE I HAVE SEEN IT.

9 BY MS. BARLOW

10 **Q** I UNDERSTAND THAT. IT'S THE SECOND DOCUMENT CITED IN YOUR
11 CURRICULUM VITAE AS A PUBLICATION BY YOU.

12 **A** I KNOW I WROTE IT. I'M SAYING I HAVEN'T LOOKED AT IT FOR
13 ABOUT 20 YEARS.

14 **Q** OKAY. WOULD YOU AGREE, DR. AUSTIN, THAT -- I'M SORRY. I
15 CANNOT GET USED TO THESE GLASSES -- EARLY RELEASE SUBSTANTIALLY
16 ACCELERATED THE AMOUNT OF CRIME SUFFERED BY THE PUBLIC?

17 **A** I HAVE TO SEE THE PAGE YOU ARE QUOTING FROM.

18 **Q** IT'S ACTUALLY FROM THE SUMMARY ON PAGE 1.

19 **A** CAN YOU SHOW IT TO ME?

20 **Q** I ONLY HAVE ONE COPY OF YOUR STUDY.

21 **A** WELL, AS SOON AS YOU SHOW IT TO ME, I'LL COMMENT ON IT.

22 **MS. BARLOW:** MAY I APPROACH, YOUR HONOR?

23 **JUDGE HENDERSON:** YOU MAY.

24 **THE WITNESS:** WHAT SECTION ARE YOU -- EARLY RELEASE
25 DID NOT INCREASE THE PROBABILITY OF AN INMATE WOULD COMMIT

1 ADDITIONAL CRIMES ONCE RELEASED.

2 **MS. BARLOW:** THAT'S NOT THE PARAGRAPH --

3 **THE WITNESS:** "ALSO EARLY RELEASE SUBSTANTIALLY
4 ACCELERATED THE AMOUNT OF CRIME SUFFERED BY THE PUBLIC BUT
5 CONTRIBUTED TO LESS THAN ONE PERCENT OF ALL CRIMES REPORTED -- "

6 **MS. JOHNSON:** I DON'T THINK ANYONE HEARD WHAT HE
7 SAID, YOUR HONOR.

8 **JUDGE REINHARDT:** NOTHING'S CHANGED. LESS THAN ONE
9 PERCENT HE SAID.

10 **JUDGE KARLTON:** AFTER 20 YEARS NOTHING'S CHANGED.
11 BY MS. BARLOW

12 **Q** LET'S TALK ABOUT WHAT THAT MEANS, SIR. ISN'T IT TRUE IN
13 THAT STUDY, YOU CONCLUDED THAT OUT OF THE 21,000 PEOPLE THAT
14 WERE ARRESTED EARLY, THERE WERE APPROXIMATELY 4,500 ARRESTS
15 DURING THE EARLY RELEASE PERIOD?

16 **A** USING THE SAME TABLES YOU'VE ALL SEEN HERE, I WAS DOING THE
17 SAME THING.

18 I WANT TO ADD, BY THE WAY, THAT WHAT YOU READ IS THE
19 ABSTRACT WRITTEN BY THE PUBLISHER.

20 **Q** WELL, I'LL BE HAPPY TO GET INTO THE TEXT WRITTEN BY YOU.

21 **A** THAT'S FINE.

22 **Q** OKAY. I'M JUST STARTING.

23 **JUDGE REINHARDT:** OH, NO, DON'T SAY THAT.

24 **MS. BARLOW:** ACTUALLY, IF HE REMEMBERS THE STUDY AT
25 ALL, YOUR HONOR, IT SHOULDN'T TAKE VERY LONG.

1 BY MS. BARLOW

2 Q FORTY-FIVE HUNDRED ARRESTS OUT OF THE 21,000 EARLY RELEASE,
3 CORRECT?

4 A RIGHT.

5 Q AND THAT REFLECTED 14,396 REPORTED CRIMES, CORRECT?

6 A WELL, THAT WAS BASED ON THE CALCULATION THERE OF ARRESTS TO
7 REPORTED CRIMES USING THE AL BLOOMSTEIN METHOD, RIGHT. THERE
8 SHOULD BE A TABLE IN THERE.

9 Q THAT WAS YOUR CONCLUSION, WAS IT NOT, THAT THOSE 4,500
10 ARRESTS EQUAL 14,396 REPORTED CRIMES?

11 A RIGHT.

12 Q AND THAT, IN FACT, THERE WERE ACTUALLY 30,610 CRIMES
13 COMMITTED BY THAT EARLY RELEASE GROUP OF 4,500?

14 A IF THAT'S WHAT YOU ARE READING, IF IT'S ACCURATE, I'LL TAKE
15 YOU AT YOUR POINT.

16 Q LET'S TALK A MOMENT ABOUT WHAT HIGH RISK OFFENDERS -- YOU
17 SAID ONLY TEN PERCENT OF OFFENDERS ARE HIGH RISK; DO YOU
18 REMEMBER THAT?

19 A IN THAT NEIGHBORHOOD, 10, 10, 15. IT DEPENDS ON THE STATE.
20 TEN, MAYBE AS MANY AS TWENTY.

21 Q OKAY. IN THIS STUDY AT LEAST, YOU INDICATE THAT FOR HIGH
22 RISK OFFENDERS, THAT COULD EQUATE TO 250 CRIMES PER YEAR?

23 A I'D HAVE TO SEE THAT, WHERE YOU'RE READING FROM AGAIN.

24 MS. BARLOW: MAY I APPROACH, YOUR HONOR?

25 JUDGE HENDERSON: YOU MAY.

1 CAN YOU GIVE US SOME IDEA OF HOW MUCH MORE YOU HAVE
2 WITH THAT REPORT THAT HE HASN'T SEEN?

3 MS. BARLOW: IT SUBSTANTIALLY UNDERMINES HIS
4 TESTIMONY.

5 JUDGE HENDERSON: I WANT AN ESTIMATE. GIVE ME YOUR
6 BEST ESTIMATE.

7 MS. BARLOW: I'M GOING TO SAY ABOUT A HALF AN HOUR,
8 YOUR HONOR.

9 JUDGE HENDERSON: I'M GOING TO SUGGEST TO MY
10 COLLEAGUES THAT WE RECESS AND YOU MAKE THIS AVAILABLE TO HIM SO
11 HE WILL BE READY TO ANSWER TOMORROW WITHOUT HAVING TO DO THIS.

12 MS. BARLOW: I'D BE HAPPY TO DO THAT, YOUR HONOR. I
13 THOUGHT SINCE HE WROTE IT HE MIGHT REMEMBER IT. I'D BE HAPPY TO
14 DO THAT.

15 JUDGE REINHARDT: THAT'S FINE. WHEN WE GO OVER THESE
16 FIGURES, YOU'RE NOT DIFFERENTIATING BETWEEN THE NUMBER THEY
17 WOULD HAVE COMMITTED HAD THEY BEEN RELEASED A FEW MONTHS LATER
18 AND THE NUMBER THEY COMMITTED AS A RESULT OF BEING RELEASED?

19 MS. BARLOW: ACTUALLY, YOU'LL SEE, YOUR HONOR, THAT
20 THE CONCLUSIONS ARE THAT THEY'RE ADDITIONAL CRIMES, NOT JUST
21 EARLIER.

22 JUDGE REINHARDT: OKAY. THANK YOU.

23 MS. BARLOW: THANK YOU.

24 JUDGE HENDERSON: MR. SPECTER.

25 MR. SPECTER: YES, YOUR HONOR. I DON'T THINK --

1 MR. AUSTIN IS FLYING OUT TO SOMEWHERE ELSE TOMORROW.

2 JUDGE HENDERSON: WELL, I'M NOT -- I'LL TELL YOU, I'M
3 A TEAM PLAYER, BUT I'M NOT GOING TO SIT UP HERE WITH YOU GUYS
4 FOR HALF AN HOUR FOR THIS AND THEN DIRECT --

5 MR. SPECTER: I HAVE A SUGGESTION FOR THAT, YOUR
6 HONOR, BECAUSE IT SEEMS TO ME THE REPORT SPEAKS FOR ITSELF, THAT
7 IF SHE WANTS TO MAKE IT AN EXHIBIT, SHE CAN MAKE IT AN EXHIBIT
8 AND ARGUE FROM IT.

9 JUDGE KARLTON: THAT'S NOT EFFECTIVE.
10 SIR, YOU'RE FLYING OUT TOMORROW?

11 THE WITNESS: TOMORROW MORNING.

12 JUDGE KARLTON: WHEN DO YOU COME BACK?

13 THE WITNESS: I COULD BE BACK THE WEEK OF
14 DECEMBER 15TH.

15 MS. BARLOW: I COULD CERTAINLY FINISH IT THEN, YOUR
16 HONOR.

17 JUDGE HENDERSON: LET'S GO INTO ONE OF THE QUESTIONS.
18 WHAT IS OUR REMAINING SCHEDULE? CAN YOU TELL US WHAT THAT IS AT
19 THIS POINT?

20 JUDGE KARLTON: NOBODY EVER EXPECTED THIS, DID YOU?

21 MR. SPECTER: NO. WE HAVE TO -- WE JUST HAD TWO
22 WITNESSES -- WE JUST HAD TWO WITNESSES WHO LEFT WHO HAD BEEN
23 HERE ALL DAY.

24 JUDGE KARLTON: I TELL YOU THE OTHER THING YOU ARE
25 GOING TO DO TONIGHT. I WANT TO KNOW THE NAMES OF THE WITNESSES,

1 AND I WANT A SCHEDULE, BECAUSE, OTHERWISE, WE WILL IMPOSE TIME
2 LIMITS THAT NOBODY CAN LIVE WITH. THIS IS INAPPROPRIATE.

3 **MR. SPECTER:** YES, YOUR HONOR.

4 **JUDGE REINHARDT:** I THINK WE'D LIKE TO KNOW WHAT THEY
5 CAN AGREE ON BY TOMORROW, BUT THEN I THINK WE WANT FINAL
6 SCHEDULE FOR WITNESSES, HOURS, TIMES FROM NOW UNTIL THE END OF
7 THIS PROCEEDING.

8 **MR. SPECTER:** YES, YOUR HONOR.

9 **JUDGE REINHARDT:** IF YOU CAN DO IT BY TOMORROW
10 MORNING, THAT WOULD BE FINE, BUT CERTAINLY BY MONDAY.

11 **THE WITNESS:** COULD I --

12 **JUDGE REINHARDT:** I THINK WE NEED A FINAL SCHEDULE OF
13 WHO THE WITNESSES WILL BE, HOW MUCH TIME EACH WILL TAKE, HOW YOU
14 ARE GOING TO DIVIDE THAT TIME, AND THEN WE CAN WORK FROM THAT
15 AND CUT IT TO A REASONABLE SCHEDULE. SO WE DO NOT HAVE TO HAVE
16 WITNESSES WHO DUPLICATE THE TESTIMONY OF OTHERS, SO WE DON'T
17 HAVE TO HAVE WITNESSES WHOSE TESTIMONY WILL RUN FOR A FULL DAY,
18 UNLESS THEY'RE CRITICAL. I THINK WE CAN DO THAT IF YOU WILL
19 GIVE US YOUR FINAL SCHEDULE THAT YOU CAN AGREE ON, OR IF YOU
20 DON'T AGREE ON IT ENTIRELY, JUST TELL US WHAT YOU DISPUTE, AND
21 WE CAN RESOLVE THE DISPUTE.

22 **MR. SPECTER:** I THINK WE CAN DO THAT BY MONDAY, YOUR
23 HONOR.

24 **JUDGE REINHARDT:** OKAY.

25 **JUDGE HENDERSON:** SO WE'RE AGREED THAT THIS WITNESS

1 WILL COME BACK AROUND THE 15TH, IS THAT --

2 **MS. BARLOW:** IF IT WOULD PLEASE THE COURT, I COULD DO
3 SOME QUESTIONS ON ANOTHER TOPIC THAT SHOULDN'T TAKE VERY LONG,
4 IF YOU WOULD LIKE TO USE SOME OF THE TIME AVAILABLE TODAY.

5 **JUDGE HENDERSON:** WE'VE BEEN ENDING AT 4:15.

6 **MS. BARLOW:** OH, OKAY. WELL, IT IS 4:15. I
7 APOLOGIZE, YOUR HONOR.

8 **JUDGE HENDERSON:** OKAY. COURT IS ADJOURNED UNTIL --
9 AND REMEMBER THAT WE'RE ENDING AT 1:30 TOMORROW.

10 **MR. SPECTER:** WILL WE BE GOING THROUGH UNTIL --

11 **JUDGE HENDERSON:** PROBABLY WITH A COUPLE OF 15-MINUTE
12 BREAKS, YES. NO LUNCH BREAK.

13 (PROCEEDINGS ADJOURNED.)

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I N D E X**PLAINTIFF'S WITNESSES****PAGE****VOL.****JEANNE WOODFORD**

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JAMES AUSTIN, PH.D.

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CERTIFICATE OF REPORTER

WE, JOAN MARIE COLUMBINI AND KATHERINE WYATT, OFFICIAL REPORTERS FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN CIV S-90-0520 LKK JPM P, RALPH COLEMAN, ET AL V. ARNOLD SCHWARZENEGGER AND C 01-1351 TEH, MARCIANO PLATA V. ARNOLD SCHWARZENEGGER, WERE REPORTED BY US, CERTIFIED SHORTHAND REPORTERS, AND WERE THEREAFTER TRANSCRIBED UNDER OUR DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY US AT THE TIME OF FILING.

THE VALIDITY OF THE REPORTER'S CERTIFICATION OF SAID TRANSCRIPT MAY BE VOID UPON DISASSEMBLY AND/OR REMOVAL FROM THE COURT FILE.

/S/ JOAN MARIE COLUMBINI

JOAN MARIE COLUMBINI, CSR 5435, RPR

S/ KATHERINE WYATT

KATHERINE WYATT, CSR 9866, RMR

THURSDAY, DECEMBER 4, 2008

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
AND FOR THE NORTHERN DISTRICT OF CALIFORNIA
UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES PURSUANT
TO SECTION 2284, TITLE 28 UNITED STATES CODE

RALPH COLEMAN, ET AL.,)
)
 PLAINTIFFS,)
)
 VS.) NO. CIV S-90-0520 LKK JFM
)
 ARNOLD SCHWARZENEGGER, ET AL.)
) THREE-JUDGE COURT
 DEFENDANTS.)
)

MARCIANO PLATA, ET AL.,)
)
 PLAINTIFFS,)
)
 VS.) NO. C 01-1351 TEH
)
 ARNOLD SCHWARZENEGGER, ET AL.)
)
 DEFENDANTS.)
)

TRANSCRIPT OF PROCEEDINGS

SAN FRANCISCO, CALIFORNIA
FRIDAY, DECEMBER 5, 2008

(APPEARANCES ON FOLLOWING PAGES)

REPORTED BY: JOAN MARIE COLUMBINI, CSR 5435, RPR
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BY: ANNE L. KECK, ESQUIRE

1 **FRIDAY, DECEMBER 5, 2008**

9:15 O'CLOCK A.M.

2
3 **P R O C E E D I N G S**
4

5 **JUDGE HENDERSON:** OKAY. YOU MAY CALL YOUR FIRST
6 WITNESS WHEN YOU'RE READY, COUNSEL.

7 **MR. SPECTER:** PLAINTIFFS CALL JEFFREY BEARD BACK TO
8 TESTIFY.

9 **JUDGE REINHARDT:** WHILE WE'RE WAITING, I NOTE THAT
10 THERE'S NO TIME ALLOTMENT FOR THE WITNESSES HERE, WHICH MAY NOT
11 BE VERY HELPFUL TODAY, ALTHOUGH IT WILL NOT AFFECT THE AMOUNT OF
12 TIME ALLOCATED TO THEM BY THE COURT, BUT THAT WILL NOT COMPLY
13 WITH WHAT WE REQUESTED FOR MONDAY WHEN WE ASKED FOR THE LIST.

14 **JUDGE KARLTON:** TUESDAY. WE ARE NOT HERE MONDAY.

15 **JUDGE REINHARDT:** WE ASKED FOR MONDAY AFTERNOON IT BE
16 SUBMITTED, WE BE SUPPLIED WITH YOUR LIST OF, WE HOPE, AGREED
17 WITNESSES AND TIMES FOR THE REST OF THE TRIAL. THAT MEANS NOT
18 BLANK MINUTES. IT MEANS ACTUAL TIMES ON THE LIST WE EXPECT FROM
19 TWO OF YOU JOINTLY, OR IF THERE ARE BLANKS, AS I SAID WE'LL FILL
20 THEM IN FOR YOU BY TUESDAY OR WEDNESDAY.

21 **JUDGE KARLTON:** THAT'S --

22 **MR. SPECTER:** WE UNDERSTAND, YOUR HONOR, AND WHEN WE
23 SUBMIT OUR TRIAL SCHEDULE ON MONDAY, WE WON'T HAVE THAT SAME
24 OMISSION. TODAY SHOULDN'T BE A PROBLEM. THERE ARE ONLY TWO
25 WITNESSES, RIGHT? ONLY TWO WITNESSES. WE MIGHT EVEN GET DONE

1 EARLY, I HOPE.

2 JUDGE REINHARDT: OKAY. THANK YOU.

3 JUDGE HENDERSON: YOU MAY PROCEED.

4 JUDGE KARLTON: YOU ARE STILL UNDER OATH.

5 THE WITNESS: YES.

6 JEFFREY BEARD

7 HAVING BEEN CALLED AS A WITNESS BY THE PLAINTIFFS WAS
8 PREVIOUSLY DULY SWORN AND EXAMINED AS FOLLOWS:

9 DIRECT EXAMINATION BY MR. SPECTER

10 BY MR. SPECTER

11 Q DR. BEARD, YOU'RE STILL THE SECRETARY OF THE PENNSYLVANIA
12 DEPARTMENT OF CORRECTIONS?

13 A YES, I AM.

14 Q AND I THINK YOU ALLUDED LAST TIME YOU WERE HERE BRIEFLY TO
15 THE FACT THAT THE PENNSYLVANIA PRISON SYSTEM WAS SOMEWHAT
16 OVERCROWDED; IS THAT RIGHT?

17 A YES, WE ARE CURRENTLY SOMEWHAT OVERCROWDED.

18 Q AT WHAT PERCENTAGE OF OPERABLE CAPACITY ARE YOU?

19 A WE ARE AT 113 OR -14 PERCENT OF OPERABLE CAPACITY, MAYBE
20 115 PERCENT RIGHT NOW, WHICH IS ABOUT 6,500 INMATES MORE THAN WE
21 WOULD LIKE TO HAVE IN OUR SYSTEM.

22 Q AND --

23 JUDGE REINHARDT: WHAT DOES THAT TRANSLATE INTO IN
24 DESIGN CAPACITY?

25 THE WITNESS: THAT'S VERY DIFFICULT TO DO, YOUR

1 HONOR, BECAUSE WE REALLY -- THEY'RE APPLES AND ORANGES. IT HAS
2 TO DO WITH HOW MANY INMATES WE FEEL WE CAN HOLD AND TAKE CARE OF
3 IN A PARTICULAR INSTITUTION, TAKE CARE OF THEIR MEDICAL MENTAL
4 HEALTH, FOOD SERVICES, ALL THE VARIOUS NEEDS WE HAVE TO. AND IT
5 REALLY DOESN'T RELATE THEN TO THE DESIGN CAPACITY, BECAUSE MANY
6 OF OUR OLDER FACILITIES WE PUT MILLIONS AND MILLIONS OF DOLLARS
7 IN UPGRADING THE INFRASTRUCTURE, YOU KNOW, ADDING BIGGER
8 KITCHENS AND BIGGER DINING ROOMS AND BIGGER LAUNDRIES AND
9 TREATMENT SERVICE BUILDINGS, AND THINGS LIKE THAT, BIGGER
10 INFIRMARIES SO THAT WE COULD HANDLE THE LARGER POPULATION THERE.

11 **JUDGE KARLTON:** AND YOU'RE TELLING US YOU HAVEN'T
12 ACTUALLY SAT DOWN AND CALCULATED WHAT THE DESIGN CAPACITY,
13 INCLUDING THE UPGRADES ARE; IS THAT WHAT YOU'RE SAYING, YOU JUST
14 HAVEN'T DONE THAT?

15 **THE WITNESS:** NO, BECAUSE WE DON'T LOOK AT THAT
16 ANYMORE. WE LOOK AT -- BECAUSE, YOU KNOW, I HAVE A FACILITY I
17 USED TO WORK IN, I STARTED IN FCI ROCKVIEW BACK MANY YEARS AGO
18 BACK IN 1972, AND THAT FACILITY WAS BUILT TO HOUSE A THOUSAND
19 INMATES. TODAY WE HAVE 2,000 INMATES THERE. BUT WE'VE EXPANDED
20 THE KITCHEN. WE HAVE EXPANDED THE DINING ROOMS IN THAT
21 INSTITUTION. WE BUILT A LARGE THREE-STORY TREATMENT BUILDING,
22 LARGE INFIRMARY, EXPANDED DENTAL CARE, MENTAL HEALTH UNIT. WE
23 BUILT A BRAND NEW RESTRICTED HOUSING UNIT. WE PUT OTHER HOUSING
24 UNITS, WHAT THEY CALL IN-FILL BEDS IN THERE.

25 TODAY THAT FACILITY HAS ABOUT IS 2,100 INMATES IT,

1 AND WE SAY THE OPERABLE CAPACITY OF THAT FACILITY IS ABOUT 1,700
2 INMATES. SO WE ARE ABOUT 400 OVER THE OPERABLE CAPACITY.
3 THAT'S WHY IT'S DIFFICULT TO TRANSLATE, BECAUSE THAT WAS A
4 FACILITY WE BUILT FOR A THOUSAND, BUT WE UPGRADED IT, SO WE NOW
5 CAN HANDLE 1,700, AND WE HAVE 2,100 AND WE'RE OKAY. WE'D LIKE
6 JUST TO HAVE LESS. WE COULD DO A BETTER JOB IF WE HAD A FEW
7 LESS HUNDRED INMATES THERE.

8 DOES THAT HELP EXPLAIN AT ALL, YOUR HONOR?

9 JUDGE REINHARDT: YES, THANK YOU.

10 BY MR. SPECTER

11 Q PENNSYLVANIA RECENTLY ENACTED LEGISLATION AIMED AT
12 CONTROLLING THE PRISON POPULATION; IS THAT RIGHT?

13 A YES.

14 Q AND YOU WERE INSTRUMENTAL IN GETTING THAT LEGISLATION
15 PASSED; IS THAT RIGHT?

16 A THAT'S CORRECT.

17 Q CAN YOU EXPLAIN WHAT THAT LEGISLATION IS, PLEASE?

18 A WELL, THE LEGISLATION INCLUDES A COUPLE COMPONENTS.

19 FIRST OF ALL, A NUMBER OF YEARS AGO, ABOUT THREE OR
20 FOUR YEARS AGO, I WORKED ON LEGISLATION ON A PROGRAM CALLED
21 STATE INTERMEDIATE PUNISHMENT, AND THAT WAS A PROGRAM THAT WOULD
22 ALLOW JUDGES, WITH THE DA'S AUTHORIZATION, TO SENTENCE PEOPLE TO
23 A FLAT TWO YEARS TO MY DEPARTMENT, INSTEAD OF GETTING, MAYBE A
24 TWO TO FOUR OR A THREE TO SIX-YEAR SENTENCE.

25 THEY WOULD THEN COME TO MY FACILITY. I WOULD GIVE

1 THEM A HIGH QUALITY THERAPEUTIC COMMUNITY FOR ABOUT THE FIRST
2 NINE OR TEN MONTHS. THEY WOULD THEN GO OUT INTO THE COMMUNITY,
3 GET SOME ADDITIONAL DRUG AND ALCOHOL TREATMENT, TRANSITIONAL
4 SERVICES. AND, EVENTUALLY, IF THEY WERE SUCCESSFUL, AT THE END
5 OF THAT TWO YEARS THEY WERE DONE. THERE WAS NO PAROLE OR
6 ANYTHING ELSE. THEY COMPLETED THE PROGRAM. AND THE INCENTIVE
7 FOR THEM WAS INSTEAD OF SERVING TWO YEARS IN JAIL AND THEN TWO
8 YEARS ON PAROLE, THEY ONLY HAD A TWO YEARS, HALF OF WHICH WAS IN
9 JAIL.

10 SO WHAT WE TRIED TO DO -- ONE OF THE THINGS WE TRIED
11 TO DO WAS BUILD ON THAT PROGRAM. ONE OF THE THINGS WE FOUND IS
12 A LOT OF INMATES THAT ARE COMING TO US SHOULD BE ELIGIBLE FOR
13 THAT STATE INTERMEDIATE PUNISHMENT, BUT THEY'RE NOT GETTING IT.

14 ONE OF THE THINGS THE NEW LEGISLATION ALLOWS US TO DO
15 WHEN WE SEE SOMEONE COME IN WHO SHOULD GET STATE INTERMEDIATE
16 PUNISHMENT, WE COULD GO BACK TO THE JUDGE AND DA, GET THEIR
17 AUTHORIZATIONS, AND CONVERT THAT TO THE STATE INTERMEDIATE
18 PUNISHMENT CASE.

19 THAT'S ONE OF THE THINGS WE ARE DOING. SO, YOU KNOW,
20 IT'S BUILDING ON A PREVIOUS POPULATION MANAGEMENT PROGRAM WHICH
21 ALSO GREATLY ENHANCES THE PUBLIC SAFETY BECAUSE IT GIVES THESE
22 PEOPLE WHAT THEY NEED TO KEEP THEM OUT OF PRISON IN THE FUTURE.

23 THE OTHER PART OF THE LEGISLATION WAS A RISK
24 REDUCTION INITIATIVE, AND, BASICALLY, WHAT WE'RE DOING IS
25 INMATES IN CERTAIN NONVIOLENT OR LESS SERIOUS CLASSIFICATIONS,

1 AND THIS IS FOR NONVIOLENT OFFENDERS, ESSENTIALLY, PRIMARILY
2 YOUR PROPERTY AND DRUG OFFENDERS, INSTEAD OF GETTING A TWO TO
3 FOUR-YEAR SENTENCE, THEY WOULD GET TWO MINIMUM SENTENCES. THEY
4 WOULD GET AN 18 MONTHS -- IF IT WAS TWO TO FOUR, THEY WOULD GET
5 AN 18-MONTH RISK REDUCTION SENTENCE AND A TWO-YEAR MINIMUM.

6 THEY WOULD THEN COME TO US, IF THEY GET INVOLVED IN
7 THE PROGRAMS THAT WE SAY THAT THEY SHOULD -- NEED TO BE INVOLVED
8 IN TO MAKE IT LESS LIKELY THAT THEY COME BACK TO PRISON, THEN
9 THEY'RE ELIGIBLE FOR THEIR RELEASE, IF THEY COMPLETE THEIR
10 PROGRAMS AT 18 MONTHS INSTEAD OF 24 MONTHS. SO THE INCENTIVE
11 FOR THE INMATE, YOU ARE TRYING TO GIVE THEM AN INCENTIVE -- THE
12 KEY IS TO INCENTIVIZE PEOPLE TO GET IN PROGRAMS AND COMPLETE
13 PROGRAMS, BECAUSE YOU GET THE BIGGEST BANG FOR THE BUCK WHEN
14 PEOPLE COMPLETE THE PROGRAMS.

15 AND SO THAT'S WHAT THAT PROGRAM IS TRYING TO DO, GET
16 THEM THERE, GET THEM IN THE PROGRAM. AND I THINK PEOPLE
17 UNDERSTAND THAT IT'S NOT HOW LONG SOMEBODY SERVES TIME IN PRISON
18 THAT'S IMPORTANT; WHAT'S IMPORTANT IS THAT YOU ADDRESS THE
19 CRIMINOGENIC FACTORS, AT LEAST WHEN YOU ARE DEALING WITH THESE
20 PROPERTY AND DRUG OFFENDERS.

21 **Q** WHEN YOU SAID IT'S IMPORTANT, DO YOU MEAN IMPORTANT FOR WHAT
22 PURPOSE?

23 **A** IT'S IMPORTANT TO LOWER THEIR RECIDIVISM. IF WE WANT TO
24 IMPROVE PUBLIC SAFETY AND HAVE PEOPLE LESS LIKELY TO COME BACK
25 TO PRISON, THEN WE HAVE TO ADDRESS WHAT WE CALL THE CRIMINOGENIC

1 FACTORS THAT BRING THEM TO PRISON. THOSE FACTORS ARE THINGS
2 LIKE SUBSTANCE ABUSE PROBLEMS, EDUCATION DEFICITS, LACK OF
3 VOCATIONAL SKILLS, CRIMINAL THINKING ISSUES, IMPULSIVITY AND
4 AGGRESSION-TYPE ISSUES. THOSE ARE WHAT WE CALL CRIMINOGENIC
5 FACTORS.

6 SO THE KEY TO THIS WHOLE THING IS WHAT WE CALL
7 EVIDENCE-BASED PROGRAMMING, AND THE BASIS OF EVIDENCE-BASED
8 PROGRAMMING IS WHEN SOMEBODY COMES INTO YOUR SYSTEM, YOU GIVE
9 THEM AN ASSESSMENT, YOU DECIDE WHAT THEIR DEFICITS ARE, YOU
10 KNOW, WHAT'S THEIR EDUCATIONAL, VOCATIONAL LEVELS, WHAT'S THEIR
11 DRUG AND ALCOHOL PROBLEM? DO THEY HAVE A PROBLEM WITH CRIMINAL
12 THINKING? DO THEY HAVE A PROBLEM WITH VIOLENCE? AND THOSE
13 KINDS OF THINGS.

14 THEN YOU DEVELOP A PROGRAM FOR THAT INDIVIDUAL. YOU
15 PUT THE PERSON THROUGH THAT PROGRAM, AND IF THEY SUCCESSFULLY
16 COMPLETE THE PROGRAM, THEN THEY'RE ELIGIBLE TO GET THIS CREDIT
17 WE ARE TALKING ABOUT, AND THEY'RE ALSO MORE LIKELY TO NOT COME
18 BACK TO PRISON IN THE FUTURE BECAUSE YOU'VE ADDRESSED THE
19 REASONS THAT BROUGHT THEM THERE.

20 **Q** SO, ESSENTIALLY, YOU'RE CUTTING THEIR PRISON -- THEIR PRISON
21 SENTENCE. IN SOME SENSE YOU'RE RELEASING THEM EARLY, BUT YOU
22 ARE MORE CONFIDENT THEY WOULD BE LESS LIKELY TO COMMIT NEW
23 CRIMES; IS THAT CORRECT?

24 **A** THAT'S CORRECT.

25 **Q** WERE THERE ANY OTHER COMPONENTS OF THE LEGISLATION --

1 **A** YEAH, THERE WERE TWO OTHER COMPONENTS. THE ONE COMPONENT
2 WAS FOR THIS SAME GROUP OF LESS SERIOUS OFFENDERS WHO WERE
3 ELIGIBLE FOR THE RISK REDUCTION INITIATIVE. THEY ALSO WOULD GET
4 WHAT MIGHT BE TERMED A PRESUMPTIVE PAROLE. IN OTHER WORDS,
5 WHILE PAROLE WAS STILL -- LOOK AT THE CASE. THEY'RE PRETTY WELL
6 PRESUMED TO BE GONE. UNLESS THERE'S SOMETHING VERY ODD ABOUT A
7 PARTICULAR CASE, THEY'RE ALMOST AUTOMATICALLY GOING TO BE
8 PAROLED. SO THAT'S ANOTHER THING. IT'S A LESS OF A THRESHOLD
9 THERE TO GET OUT ON PAROLE.

10 IN THE THIRD COMPONENT OF THIS WAS THAT IF THEY DO
11 WELL WHILE THEY'RE ON PAROLE, THESE LESS SERIOUS OFFENDERS,
12 AGAIN, THEY CAN GET OFF PAROLE AND BE PUT ON WHAT WE CALL
13 ADMINISTRATIVE PAROLE, SO THEY ARE NOT SUPERVISED ANYMORE ON A
14 REGULAR BASIS. IT'S SET AFTER ONE YEAR. IF THEY BEHAVED
15 THEMSELVES, FOLLOWED WHAT THEY'RE SUPPOSED TO DO ON PAROLE.
16 AND, AGAIN, THE INCENTIVE IS FOR THEM TO DO THAT, YOU ARE TRYING
17 TO INCENTIVIZE THE INDIVIDUAL, BECAUSE IF THEY COMPLETE THE
18 PROGRAM, THEY GET OFF OF PAROLE AFTER -- AFTER ONE YEAR.

19 LET ME ADD THAT WE DIDN'T JUST GO PULL THIS OUT OF
20 THE AIR. I'VE SPENT A LOT OF TIME IN THE LAST SEVEN YEARS
21 STUDYING WHAT OTHER STATES HAVE DONE AND LOOKING FOR WAYS THAT
22 WE CAN BETTER MANAGE OUR POPULATION FROM A PUBLIC SAFETY
23 PERSPECTIVE, FROM A POPULATION CONTROL PERSPECTIVE, AND FROM A
24 COST PERSPECTIVE, AND THE KIND OF THINGS THAT WE'RE DOING
25 ACTUALLY IMPROVE ON PUBLIC SAFETY BECAUSE THEY ADDRESS THE

1 PROBLEMS THAT BROUGHT PEOPLE TO JAIL. THEY HELP LOWER YOUR
2 POPULATION, AND THEY SAVE YOU MONEY. THOSE ARE LIKE THE SIDE
3 BENEFITS OF DEALING APPROPRIATELY WITH THESE PEOPLE.

4 SO WHEN WE WERE OUT THERE LOOKING AROUND, ONE OF THE
5 STATES THAT WE SAW WAS NEW YORK, AND NEW YORK HAD DONE A VERY
6 SIMILAR THING BACK ABOUT 11 YEARS AGO IN 1997. THEY CAME OUT
7 WITH A PROGRAM CALLED MERIT TIME, WHERE, ESSENTIALLY, THEY GAVE
8 CREDIT OFF THE SENTENCE FOR INMATES WHO COMPLETED PROGRAMS, AND
9 THEY HAD A PRESUMPTIVE RELEASE FOR THOSE INMATES, AND THEY LET
10 THOSE PEOPLE OFF OF PAROLE AFTER ONE YEAR IF THEY DID WELL.
11 THEY HAVE BEEN DOING THIS, LIKE I SAID, FOR 11 YEARS.

12 THEY DID A STUDY IN 2004, AND WHAT THEY FOUND WAS
13 THAT THE INMATES WHO WENT THROUGH THE MERIT TIME PROGRAM WHO GOT
14 OUT OF JAIL EARLIER BUT WHO COMPLETED THEIR PROGRAMS HAD LOWER
15 RECIDIVISM RATES THAN THE PEOPLE WHO SERVED THEIR WHOLE
16 SENTENCE, THEY ACTUALLY DID BETTER, AND THEY ALSO FOUND THAT
17 THEY SAVED MILLIONS OF DOLLARS, SOMETHING LIKE A QUARTER OF A
18 BILLION DOLLARS DURING THAT TIME PERIOD WITH THAT PROGRAM.

19 ALL DURING THAT TIME PERIOD THE CRIME RATE IN NEW
20 YORK WAS GOING DOWN, AND IT CONTINUED TO GO DOWN. IT WAS NOT AT
21 ALL ADVERSELY AFFECTED. SO I HAD A PROGRAM THAT DIDN'T
22 ADVERSELY AFFECT CRIME RATE, INCENTIVIZED THE INMATES TO
23 COMPLETE PROGRAMS, AND THOSE INMATES WHO DID THAT WENT OUT AND
24 DID BETTER AND WERE LESS LIKELY TO GO BACK TO PRISON. THAT'S
25 HOW WE SORT OF DESIGNED OUR PROGRAM, AND WE TOOK SOME DIFFERENT

1 SLANTS TO IT LIKE ACTUALLY DOING IT AT SENTENCING SO THE
2 VICTIMS -- IT'S TRANSPARENT AT SENTENCING, EVERYBODY KNOWS WHAT
3 THE MINIMUM DATE IS AND SOME OF THOSE THINGS.

4 SOME OF THOSE WERE BUILT INTO IT BECAUSE WHEN WE
5 BUILT OUR -- WENT TO DO THIS LEGISLATION, WE JUST DIDN'T GO OUT
6 AND DO IT ON OUR OWN. WE WENT OUT AND ENGAGED THE VARIOUS
7 INTEREST GROUPS. WE ENGAGED THE DA ASSOCIATION AND VICTIMS, AND
8 PEOPLE LIKE THIS, AND SAID, WOULD YOU WORK WITH US ON THIS, AND
9 BASICALLY GOT AGREEMENT FROM THOSE ORGANIZATIONS, AND THAT'S HOW
10 WE WERE ABLE TO GET IT THROUGH THE LEGISLATION, BECAUSE THERE
11 WASN'T ANYBODY OUT THERE GOING TO THE LEGISLATURE SAYING, WE
12 DON'T WANT YOU TO DO THIS.

13 THAT'S ANOTHER IMPORTANT THING. YOU DO HAVE TO WORK
14 WITH THE VARIOUS COMMUNITY GROUPS OUT THERE, THE STAKEHOLDERS,
15 WHEN YOU ARE TRYING TO DO THESE KIND OF THINGS, WHEN YOU ARE
16 TRYING TO BUILD THESE KIND OF PROGRAMS.

17 **Q** DOES PENNSYLVANIA USE DIVERSION IN ANY WAY?

18 **A** PARDON? DIVERSION?

19 **Q** YES.

20 **A** YES, WE DO. IT'S ONE OF THE POPULATION MANAGEMENT THINGS
21 THAT WE STARTED BACK IN 1997. WE HAVE A PROGRAM THAT'S CALLED
22 RESTRICTIVE INTERMEDIATE PUNISHMENT, AND WHAT THIS PROGRAM
23 ALLOWS IS IT ALLOWS FOR COUNTIES TO GET GRANTS TO DIVERT INMATES
24 FROM BOTH COUNTY JAILS AND FROM STATE PRISONS AND PUT THOSE
25 INMATES -- INSTEAD OF SEND THEM TO THE COUNTY JAILS OR STATE

1 PRISONS, TO PUT THEM IN SUBSTANCE ABUSE TREATMENT PROGRAMS. AND
2 THERE WAS A STUDY DONE ON THAT PROGRAM, WHICH BASICALLY FOUND
3 THAT INMATES WHO WENT THROUGH THE RESTRICTIVE INTERMEDIATE
4 PUNISHMENT PROGRAM HAD LOWER RECIDIVISM RATES THAN PEOPLE WHO
5 WERE SENT TO COUNTY JAILS OR STATE PRISONS.

6 THE OTHER THING THAT WE FOUND WITH THAT PROGRAM IS, I
7 THINK WHEN THEY STARTED, THEY WERE FUNDING AT ABOUT \$15 MILLION
8 A YEAR. I THINK NOW IT'S UP, THOUGH, 18- OR 19 MILLION. I KEEP
9 TRYING TO PUSH IT UP EVEN MORE.

10 WHEN THEY STARTED IT, THAT \$15 MILLION, BECAUSE THEY
11 ONLY SPEND ABOUT \$10,000 A YEAR ON EACH INMATE, WHICH IS FAR
12 CHEAPER THAN PUTTING THEM IN JAIL OR PRISON, THAT 15 MILLION WAS
13 A COST AVOIDANCE OF 30 MILLION IF YOU HAD PUT THEM IN JAIL, AND
14 IT WOULD HAVE BEEN A COST AVOIDANCE OF 45 MILLION IF ALL OF THE
15 PEOPLE HAD GONE TO PRISON. SO THERE WAS SIGNIFICANT COST
16 AVOIDANCE IN THE PROGRAM, AS WELL AS THE FACT THAT THE PEOPLE
17 DID BETTER AND DIDN'T COME BACK.

18 AND, YOU KNOW, I SHOULD SAY THAT PART OF THE REASON
19 THAT DIVERTING PEOPLE IN THE FRONT END, IF THEY ARE LESS SERIOUS
20 OFFENDERS, AND GETTING THEM INTO PROGRAMMING MAKES A WHOLE BUNCH
21 OF SENSE IS THE RESEARCH IS REALLY CLEAR OUT THERE THAT
22 COMMUNITY-BASED PROGRAMMING IS ACTUALLY MORE EFFECTIVE THAN
23 PRISON-BASED PROGRAMMING. YOU CAN STILL -- PRISON-BASED
24 PROGRAMMING CAN BE EFFECTIVE, BUT IT'S MORE EFFECTIVE IF YOU DO
25 IT IN A COMMUNITY.

1 THE OTHER THING THAT YOU ACHIEVE BY DIVERTING THE
2 PERSON ON THE FRONT END IS YOU DON'T TAKE THEM AWAY FROM THEIR
3 COMMUNITY AND THEN CREATE THIS WHOLE PROBLEM THAT WE TALK ABOUT,
4 REENTRY, AND THAT'S THE BIG THING EVERYBODY'S TALKING ABOUT AND
5 HAS BEEN FOR THE PAST FEW YEARS. THESE MILLIONS AND MILLIONS OF
6 PEOPLE THAT ARE GOING BACK, REENTERING INTO THE COMMUNITIES, AND
7 IT'S A VERY DIFFICULT PROCESS, BECAUSE IF THEY HAD A JOB, YOU'VE
8 TAKEN THEM AWAY FROM THEIR JOB. IF THEY HAVE A FAMILY, YOU'VE
9 TAKEN THEM AWAY FROM THEIR FAMILY. YOU'VE TAKEN THEM AWAY FROM
10 THEIR HOUSING. YOU'VE GOT TO NOW NOT ONLY GET THEM BACK OUT,
11 YOU HAVE GOT TO GET THEM A PLACE TO LIVE, GET THEM A JOB, SEE
12 THEY GET THEIR AFTERCARE. WHEREAS, IF YOU COULD HAVE DIVERTED
13 THEM IN THE FIRST PLACE, YOU COULD HAVE AVOIDED ALL THOSE
14 PROBLEMS YOU CREATE.

15 I MIGHT ADD THAT I'M HOPING THIS YEAR TO DO A
16 FORMULA-BASED DIVERSION. IN OTHER WORDS, WHERE WE WILL TELL
17 COUNTIES, IF YOU DIVERT PEOPLE, WE'LL COME UP WITH A NUMBER; IF
18 YOU DIVERT PEOPLE BELOW THIS NUMBER BELOW THE STATE PRISON
19 SYSTEM, I'LL PAY THEM OUT OF MY BUDGET, BECAUSE IT WILL BE
20 CHEAPER FOR ME TO DO IT THAN TO SEND THEM TO ME.

21 **JUDGE KARLTON:** EXCUSE ME, SIR. ONE CONSEQUENCE OF
22 THESE PROGRAMS -- I'M NOT SURE IT MATTERS FOR WHAT WE DO FOR A
23 LIVING, BUT I'M JUST CURIOUS. ONE CONSEQUENCE OF THIS PROGRAM
24 IS THAT YOU WIND UP IN THE PRISONS WITH MANY MORE DANGEROUS
25 PEOPLE, VIOLENT AND SO FORTH. HAS YOUR -- HAS THE COST OF

1 IMPRISONMENT, BECAUSE OF THE NEED TO REGULATE THOSE PEOPLE, GONE
2 UP, OR IS IT ESSENTIALLY THE SAME PER PERSON? DO YOU UNDERSTAND
3 WHAT I'M ASKING?

4 **THE WITNESS:** IT IS MORE COSTLY TO HOUSE THE MORE
5 DANGEROUS -- MORE DANGEROUS PEOPLE, NOT NECESSARILY PEOPLE WHO
6 COMMIT VIOLENT CRIMES, BECAUSE, YOU KNOW, FOR INSTANCE, IN
7 PENNSYLVANIA LIFE IS LIFE, AND WE HAVE 4,000 LIFERS IN OUR
8 STATE. THEY ARE SOME OF OUR BETTER INMATES BECAUSE THEY KNOW
9 THAT'S THEIR HOME. SO JUST BECAUSE THEY'VE COMMITTED A VIOLENT
10 OFFENSE DOESN'T NECESSARILY MAKE THEM MORE DIFFICULT TO MANAGE.

11 BUT THERE ARE CERTAIN VIOLENT OFFENDERS WHO NOT ONLY
12 ARE VIOLENT IN THE COMMUNITY, BUT ARE VIOLENT WITHIN THE PRISON
13 SYSTEM. THOSE PEOPLE ARE MOST COSTLY. THEY ARE MORE DIFFICULT.
14 BUT AS A WHOLE CLASS THERE'S A LOT OF VIOLENT OFFENDERS WHO ARE
15 NOT NECESSARILY MORE COSTLY WHILE IN PRISON. IT'S WHILE THEY
16 ARE IN THE COMMUNITY THAT WE HAVE TO BE CONCERNED ABOUT THEM.

17 **BY MR. SPECTER**

18 **Q** ISN'T IT TRUE THAT WHETHER OR NOT YOU DIVERT THE LOW RISK
19 OFFENDERS, YOU STILL HAVE TO CARE FOR THE -- CARE AND
20 INCARCERATE --

21 **A** ABSOLUTELY. YOU KNOW, I THINK EVERYTHING THAT I'VE EVER
22 TRIED TO DO IN MY STATE, I KNOW THAT WORKING WITH THE EXPERT
23 PANEL, THE STUFF THAT WE DID, THE FOCUS WAS ALWAYS ON THESE LESS
24 SERIOUS OFFENDERS, NOT ON VIOLENT OFFENDERS. THAT IS WHAT I
25 THINK OUR PRISONS ARE FOR. OUR PRISONS ARE TO HOLD AND MANAGE

1 THOSE VIOLENT OFFENDERS TO PROTECT OUR COMMUNITIES.

2 **Q** AND IN ADDITION TO THE SAVING ON THE OPERATING COSTS, WERE
3 YOU ABLE TO SAVE ON CAPITAL CONSTRUCTION COSTS?

4 **A** WELL, CERTAINLY. CERTAINLY, IF YOU CAN EFFECTIVELY CONTROL
5 YOUR POPULATION, YOU NOT ONLY SAVE MONEY BY HAVING A LOWER
6 POPULATION, BUT YOU HAVE THE COST AVOIDANCE OF NOT HAVING TO
7 CONSTRUCT.

8 NEW YORK, FOR EXAMPLE, DID THIS PROGRAM, YOU KNOW, AS
9 I SAID, FOR ABOUT 11 YEARS. THEIR POPULATION IS GOING DOWN AND
10 THEY'RE ACTUALLY TALKING ABOUT CLOSING PRISONS, WHILE MANY OTHER
11 STATES ARE TALKING ABOUT BUILDING PRISONS.

12 **Q** WHAT'S THE PAROLE VIOLATION RATE IN PENNSYLVANIA?

13 **A** THE PAROLE VIOLATION RATE?

14 **Q** THE RATE AT WHICH PAROLE VIOLATORS COME BACK TO PRISON. IN
15 CALIFORNIA YOU'VE HEARD THE FIGURES THAT IT'S BETWEEN 60 AND
16 70 PERCENT OVER THREE YEARS?

17 **A** OUR RECIDIVISM RATE, THE WAY WE MEASURE IT, IS AT ABOUT
18 47 PERCENT. BUT IF WE MEASURED IT MORE THE WAY I THINK
19 CALIFORNIA DOES -- AND THIS IS -- IT'S VERY DIFFICULT TO COMPARE
20 RECIDIVISM RATES BECAUSE EVERYBODY MEASURES IT DIFFERENTLY. I'M
21 VERY FAMILIAR WITH THIS BECAUSE I'M A MEMBER OF THE ASSOCIATION
22 OF STATE CORRECTIONAL ADMINISTRATORS, AND WE HAVE A
23 PERFORMANCE-BASED MEASURES PROJECT WHERE WE'RE TRYING TO GET ALL
24 OF THE STATES TO MEASURE EVERYTHING THE SAME WAY, BECAUSE
25 USUALLY IT'S APPLES AND ORANGES.

1 FOR INSTANCE, WHEN I SAY 47 PERCENT, WE INCLUDE
2 EVERYBODY THAT WALKS THROUGH OUR FRONT DOOR, EVEN PEOPLE WHO
3 AREN'T EVENTUALLY RECOMMITTED BY THE PAROLE BOARD AND EVEN
4 PEOPLE WHO MAY COME BACK TWICE IN ONE YEAR. WHEREAS, SOME
5 STATES WILL ONLY -- IF YOU FAIL, YOU CAN ONLY FAIL ONCE OUT OF
6 THAT COHORT, AND THEY DON'T COUNT PEOPLE UNTIL THEY'RE ACTUALLY
7 ADJUDICATED AS BEING RETURNED. THEY'RE GOING TO SHOW A LOWER
8 RATE BECAUSE OF THAT.

9 WHEN WE APPLY OUR INFORMATION TO THE NATIONAL MODEL,
10 WHICH AS ALASKA HAS, OUR RATE IS 31 PERCENT. I CAN'T TELL YOU
11 WHAT CALIFORNIA'S WOULD BE BECAUSE I WOULD HAVE TO WORK WITH
12 THEIR STATISTICAL PEOPLE TO FIGURE OUT AND GET THEM TO
13 BASICALLY, OKAY, DO IT ACCORDING TO THE NATIONAL RATE AND THEN
14 WHAT WOULD THEY COME OUT TO BE.

15 **Q** I SEE.

16 **A** I DON'T KNOW WHAT IT WOULD BE.

17 **Q** OKAY. HAVE YOU TAKEN EFFORTS TO BRING THAT RATE TO WHERE IT
18 IS NOW; IN OTHER WORDS, TO MAKE IT AS LOW AS POSSIBLE?

19 **A** YES, I HAVE. I MEAN, ONE OF THE THINGS THAT I WAS VERY
20 FORTUNATE TO TAKE OVER THE DEPARTMENT AFTER WE HAD TWO
21 COMMISSIONERS, ONE WHO CAME IN AND DEALT WITH THE SEVERE
22 OVERCROWDING THAT WE HAD, ANOTHER WHO CAME IN AND DEALT WITH
23 SOME OF THE PROBLEMS WE HAD WITH DRUGS AND SAFETY IN OUR
24 PRISONS. SO I HAD ESSENTIALLY IN 2001 WHEN I TOOK OVER A SAFE
25 PRISON SYSTEM TO OPERATE WITH, AND OVER THE LAST SEVEN YEARS I

1 WORKED VERY HARD TO IMPLEMENT EVIDENCE-BASED PROGRAMS TO GET THE
2 PROPER ASSESSMENT INSTRUMENTS IN PLACE SO WE CAN PROPERLY
3 IDENTIFY WHAT INMATES SHOULD GET WHAT TREATMENT, WHAT INMATES
4 DON'T NEED ANY TREATMENT.

5 BEFORE THIS, THE WAY WE USED TO GET PEOPLE IN
6 TREATMENT IS, YOU KNOW, SOMEBODY SAYS, OKAY, I THINK THIS
7 PROGRAM IS GOOD, OR THAT PROGRAM IS GOOD. AND WHEN YOU PUT LOW
8 RISK PEOPLE, FOR INSTANCE, IN TREATMENT, YOU'RE WASTING YOUR
9 MONEY, BECAUSE THEY'RE PROBABLY GOING TO SUCCEED NO MATTER WHAT
10 YOU DO. AND, IN FACT, IF YOU MIX THEM IN WITH HIGHER RISK
11 PEOPLE, YOU CAN ACTUALLY MAKE LOWER RISK PEOPLE WORSE. SO IT'S
12 HUGE IMPORTANT THAT YOU DO PROPER ASSESSMENTS UP FRONT SO YOU
13 NOT ONLY GET THE RIGHT PEOPLE IN PROGRAMS BUT THE RIGHT PEOPLE
14 IN THE RIGHT PROGRAMS. THAT'S WHAT I HAVE BEEN WORKING ON.

15 IT'S A HARD PROCESS, BECAUSE YOU NOT ONLY HAVE TO GET
16 THE ASSESSMENT PEOPLE PART IN PLACE AND THE PROGRAM PIECE IN
17 PLACE, BUT THEN YOU HAVE TO HAVE A QUALITY CONTROL PIECE BECAUSE
18 THINGS DON'T STAY STAGNANT. WHAT LOOKS GOOD TODAY MAY NOT LOOK
19 GOOD TOMORROW. THERE'S A LOT INVOLVED IN IT. WE HAVE BEEN
20 WORKING VERY HARD OVER THE LAST SIX OR SEVEN YEARS TO GET THAT
21 IN PLACE, AND WE STILL -- WE'RE STILL DEVELOPING AND WORKING ON
22 IT.

23 Q YOU PROVIDE -- INSTEAD OF SENDING PAROLE VIOLATORS BACK TO
24 PRISON, DO YOU PUT THEM IN SUBSTANCE ABUSE TREATMENT IF THAT'S
25 CALLED FOR?

1 **A** YES, WE -- ONE OF THE THINGS THAT -- OUR PAROLE BOARD ABOUT
2 TWO OR THREE YEARS AGO ADOPTED A MATRIX BASICALLY, A RISK-BASED
3 MATRIX THAT THEY WOULD LOOK AT THE RISK OF THE INDIVIDUAL, AND
4 THEY WOULD LOOK AT THE OFFENSE THAT THE INDIVIDUAL COMMITTED,
5 THE TECHNICAL OFFENSE THAT THEY COMMITTED THEN LOOK AT THEIR
6 CRIME, AND MAKE A DECISION WHAT TO DO WITH THAT INDIVIDUAL.
7 RATHER THAN JUST SENDING THEM BACK TO JAIL, THEY TRIED TO DIVERT
8 MORE OF THESE TECHNICAL PAROLE VIOLATERS.

9 IN A TWO-YEAR PERIOD FROM 2005 TO 2007, THEY REDUCED
10 OUR TECHNICAL PAROLE VIOLATER RATE, WHICH IS FAR LOWER THAN
11 CALIFORNIA'S TO START WITH. WE ONLY HAD 3,800 TWO YEARS PRIOR,
12 DOWN TO 2,800. SO WE REDUCED ABOUT A THOUSAND TECHNICAL PAROLE
13 VIOLATERS. IT WAS AROUND 900 AND SOME ACTUALLY, OVER THAT
14 TWO-YEAR PERIOD AND DIVERTED THEM INTO PROGRAMS THAT WE
15 OPERATED. IN OTHER WORDS, PAROLE IN PENNSYLVANIA IS SEPARATE
16 FROM CORRECTIONS.

17 SO WE DIVERTED THEM INTO PROGRAMS THAT WE OPERATED,
18 THINGS THAT WE CALL LIKE "HALFWAY BACK" WHERE THEY WOULD GET
19 INTO SUBSTANCE ABUSE, BECAUSE MANY OF THESE PEOPLE WERE
20 VIOLATING -- THEY WERE COMING UP WITH HOT URINES AND THINGS LIKE
21 THAT. THEY WERE HAVING SUBSTANCE ABUSE RELAPSE ISSUES. SO WE
22 WERE GETTING THEM INTO SUBSTANCE ABUSE TREATMENT PROGRAMS RATHER
23 THAN SENDING THEM BACK TO PRISON.

24 WE DEVELOPED A SERIES OF PROGRAMS IN CONJUNCTION WITH
25 PAROLE AND FIND THAT'S BEEN VERY SUCCESSFUL IN REDUCING THE

1 TECHNICAL PAROLE VIOLATER RATE AND FIND A GOOD PERCENTAGE OF
2 THOSE PEOPLE WHO COMPLETE THOSE PROGRAMS STAY OUT. SO, YOU
3 KNOW, WE'RE PLEASED WITH THE DIRECTION THAT WE'VE TAKEN THERE.

4 **Q** NOW, WE'VE JUST DISCUSSED THE FACT THAT THE CALIFORNIA
5 PAROLE VIOLATION RATE IS MUCH HIGHER THAN THE NATIONAL AVERAGE
6 AND IN YOUR STATE, DO YOU BELIEVE IT'S NECESSARY TO REVOKE THAT
7 MANY PAROLEES FOR PUBLIC SAFETY?

8 **A** NO. AND, IN FACT, I THINK THERE'S A POSSIBILITY THAT YOU
9 COULD ADVERSELY AFFECT PUBLIC SAFETY BY REVOKING SO MANY PEOPLE.
10 SOME OF THE RESEARCH I'VE SEEN, SOME OF WHAT WE'VE DONE IN OUR
11 STATE, SHOWS WHEN YOU REVOKE AN INDIVIDUAL THE FIRST TIME,
12 THEY'RE MORE LIKELY TO FAIL THE SECOND TIME; THEN THEY'RE EVEN
13 MORE LIKELY TO FAIL THE THIRD TIME. AND IF YOU ARE REVOKING
14 PEOPLE AND SENDING THEM BACK TO PRISON FOR AN AVERAGE OF FOUR
15 MONTHS AND THEY'RE NOT REALLY ABLE TO GET ANY PROGRAMMING TO
16 ADDRESS WHATEVER THE PROBLEM WAS THAT CAUSED THE REVOCATION,
17 THEN THEY'RE UNLIKELY TO SUCCEED WHEN THEY GO BACK OUT. THE
18 IMPORTANT THING IS YOU FIGURE OUT WHAT THE PROBLEM IS AND
19 INTERVENE WITH THE PROBLEM.

20 NOW, SOME OF THOSE TECHNICAL VIOLATERS SHOULD COME
21 BACK TO PRISON. THEY MAY BE HIGH RISK INDIVIDUALS. THEY MAY
22 HAVE COMMITTED SERIOUS-TYPE OFFENSES, OR THEY MAY BE VIOLENT
23 OFFENDERS THAT YOU ARE VERY CONCERNED ABOUT, AND THEY SHOULD GO
24 BACK TO PRISON.

25 BUT IT DOESN'T SEEM TO ME, LOOKING AROUND THE

1 COUNTRY, LOOKING AT OTHER PEOPLE'S VIOLATION RATE AND SEEING HOW
2 FAR ABOVE THE NATIONAL AVERAGE THAT CALIFORNIA IS, IT WOULD TELL
3 ME THAT THAT MIGHT ACTUALLY BE HINDERING PUBLIC SAFETY BECAUSE
4 YOU ARE GOING TO GET SOME OF THESE INDIVIDUALS THAT ARE JUST
5 GOING TO CHURN THROUGH THE SYSTEM, AND THEY'RE NEVER GOING TO
6 GET BETTER, AND THEY'RE JUST GOING TO KEEP GOING THROUGH AND
7 GOING THROUGH. SO I THINK THE BETTER WAY IS TRY TO FIND SOME
8 WAY TO INTERVENE WITH AT LEAST SOME OF THOSE PEOPLE AND PREVENT
9 THEM FROM GOING BACK IN THE FIRST PLACE.

10 Q FROM YOUR RESEARCH DID YOU DISCOVER A METHOD THAT CALIFORNIA
11 WAS USING EARLIER IN THE LAST DECADE ABOUT HOW -- THAT HAD THE
12 EFFECT OF --

13 A YEAH, I HAPPENED TO NOTICE, IN LOOKING AT THEIR WEBSITE,
14 THAT IN 1993 THEIR VIOLATION RATE -- THEY WERE VIOLATING, I
15 THINK, 40 PERCENT OF THE AT-RISK POPULATION. I THINK TODAY THEY
16 ARE DOING 50 PERCENT OF THE AT-RISK POPULATION. IF THEY WERE
17 VIOLATING IT TODAY AT THE SAME RATE THEY WERE VIOLATING IN 1993,
18 THEY WOULD HAVE 17,000 LESS VIOLATORS.

19 WHAT THEY APPARENTLY WERE DOING BACK THEN, AND I
20 DON'T KNOW EVERYTHING ABOUT IT, BUT THEY SET TARGETS FOR THE
21 VARIOUS DISTRICTS ON VIOLATIONS, AND AS THE DISTRICTS REDUCED
22 THE NUMBER OF PEOPLE THAT THEY SENT BACK, THEY PROVIDED MORE
23 RESOURCES TO THOSE DISTRICTS SO THEY COULD PROVIDE THE
24 PROGRAMMING AND THE RESOURCES THAT THOSE PEOPLE NEEDED. SO EVEN
25 IF THEY WOULD GO BACK AND DOING WHAT THEY WERE DOING HERE IN

1 1993, PROVIDE THOSE RESOURCES TO INTERDICT, WHICH IS ESSENTIALLY
2 WHAT I SAY WE'RE DOING IN OUR STATE, RIGHT THERE THEY COULD
3 ALMOST DROP 17,000 VIOLATERS JUST WITH THAT ALONE.

4 **Q** NOW, YOU HAVE REVIEWED DOCUMENTS ABOUT THE CDCR'S PLAN TO
5 REFORM PAROLE, CORRECT?

6 **A** YES.

7 **Q** AND THAT INVOLVED THE PILOT PROJECT, CORRECT?

8 **A** I THINK THEY HAVE A PAROLE VIOLATER'S DECISION-MAKING
9 INSTRUMENT THAT THEY'RE LOOKING TO PUT IN PLACE, SOMETHING
10 SIMILAR TO THE INSTRUMENT WE PUT IN PLACE IN PENNSYLVANIA A FEW
11 YEARS AGO.

12 **Q** RIGHT. AND YOU ARE FAMILIAR WITH THE LENGTH OF TIME THEY
13 WANT TO STUDY OR THE LENGTH OF TIME THAT THEY WANT THE PILOT
14 PROJECT TO RUN?

15 **A** FROM WHAT I SAW, DOCUMENTS THAT I SAW, INDICATED THAT THE
16 PILOT PROGRAM WAS TO RUN FOR TWO YEARS.

17 **Q** WHAT DO YOU THINK ABOUT THAT LENGTH OF TIME?

18 **A** I THINK THAT THAT IS PROBABLY LONGER THAN IS NEEDED. WE
19 DIDN'T DO THAT IN PENNSYLVANIA. WE CAME UP WITH A MATRIX AND
20 PILOTED IT OVER -- THE PAROLE DID, PAROLE IS A SEPARATE
21 AGENCY -- OVER A FEW MONTHS, MADE SOME ADJUSTMENTS, AND THEN GOT
22 IT OUT THERE AND GOT IT RUNNING.

23 THIS ISN'T SOMETHING NEW OR DIFFERENT. MANY, MANY
24 STATES HAVE DONE THIS. AS LONG AS CALIFORNIA HAS DEVELOPED
25 THEIR INSTRUMENT ALONG THE LINES OF WHAT OTHER STATES HAVE DONE,

1 I DOUBT A TWO-YEAR STUDY IS GOING TO TEACH THEM A WHOLE BUNCH.
2 IF THEY WANT TO DO ANY KIND OF A THING, WHAT I WOULD SUGGEST
3 THEY DO IS DO A PILOT OVER THREE TO SIX MONTHS, AND WHILE
4 THEY'RE DOING THAT, TRAIN THE OTHER STAFF SO THAT AT THE END OF
5 SIX MONTHS, LET'S SAY, THEY COULD MAKE ANY ADJUSTMENTS THEY
6 WANTED AS A RESULT OF THE PILOT AND THEN BEGIN ROLLING IT OUT ON
7 A MORE STATEWIDE BASIS. I CAN'T IMAGINE WHY THEY WOULD NEED TWO
8 YEARS TO STANDARDIZE IT.

9 Q THE EXPERT PANEL ESSENTIALLY MADE THIS RECOMMENDATION FOR
10 THE PAROLE VIOLATION MATRIX, RIGHT?

11 A YES.

12 Q AND THE EXPERT PANEL MADE THAT RECOMMENDATION ABOUT A YEAR
13 AND A HALF AGO NOW, RIGHT?

14 A I THINK IT'S SOMETIME, YEAH, ABOUT A YEAR AND A HALF AGO,
15 BACK EARLY 2007, I THINK.

16 Q JUNE OF 2007?

17 A JUNE OF 2007.

18 Q RIGHT.

19 SO, ESSENTIALLY, IN YOUR OPINION, IT SHOULD HAVE BEEN
20 UP AND RUNNING BY NOW; IS THAT RIGHT?

21 A WELL, IF THAT'S WHAT THEY -- YOU KNOW, IF CALIFORNIA HAD
22 CHOSE TO FOLLOW THROUGH WITH THAT RECOMMENDATION, CERTAINLY THEY
23 COULD HAVE DEVELOPED IT, THEY COULD HAVE PILOTED IT, AND THEY
24 COULD BE A YEAR INTO IT BY NOW.

25 Q NOW?

1 **A** OR ALMOST A YEAR INTO IT BY NOW.

2 **Q** RIGHT. YOU UNDERSTAND THAT IF YOU REDUCE THE NUMBER OF
3 PAROLE VIOLATERS WHO ARE SENT BACK TO PRISON, THAT WOULD REDUCE
4 THE IMPACT OF CROWDING ON THE RECEPTION CENTERS, CORRECT?

5 **A** YES.

6 **Q** YESTERDAY JUDGE KARLTON ASKED THE WITNESS BEFORE YOU,
7 DR. AUSTIN, WHETHER THAT WOULD HAVE ANY IMPACT ON THE DELIVERY
8 OF HEALTHCARE SERVICES TO PRISONERS IN THE GENERAL POPULATION,
9 AND AS A CORRECTIONAL PRACTITIONER WHO RUNS A LARGE SYSTEM, I
10 WOULD LIKE YOU TO ALSO ANSWER THAT QUESTION.

11 **A** WELL, I THINK THE ANSWER IS THAT ABSOLUTELY WOULD HAVE A
12 HUGE IMPACT. WHEN I LOOK AT THE CROWDING PROBLEM IN CALIFORNIA,
13 I SEE, REALLY, TWO CROWDING PROBLEMS THAT ARE IMPACTING ON THE
14 MENTAL HEALTHCARE, THE MEDICAL CARE AND EVERYTHING, THE ONE
15 BEING THE GROSS POPULATION, THE OTHER BEING THE HUGE AMOUNT OF
16 PEOPLE COMING INTO THE SYSTEM EVERY YEAR.

17 IF YOU HAVE 140,000 PEOPLE COMING THROUGH -- AND WE
18 ONLY IN OUR STATE HAVE 15,000, ABOUT 15, 16,000 -- YOU HAVE
19 140,000 COMING IN, IT TAKES A HUGE AMOUNT OF RESOURCES, AND FROM
20 EVERYTHING THAT I'VE SEEN WITH THE TRIPLE BUNKING AND THE WELL
21 OVER 200 PERCENT OF CAPACITY OF THEIR RECEPTION CENTERS AND
22 EVERYTHING ELSE, THE IMPACT IS THAT YOU'RE WASTING A HUGE AMOUNT
23 OF RESOURCES ON ALL THESE PEOPLE. IF YOU REDUCE IT, SAY, BY
24 40,000 TO 100,000, YOU NOW, FIRST OF ALL, CAN REDISTRIBUTE SOME
25 OF THOSE RESOURCES TO YOUR POPULATION INSTITUTIONS. AND,

1 SECONDLY, YOU CAN DO A BETTER JOB AT IDENTIFYING THE PEOPLE WITH
2 THE MENTAL HEALTH AND MEDICAL PROBLEMS THAT ARE COMING IN IN THE
3 FIRST PLACE. THERE'S A MUCH GREATER CHANCE YOU ARE GOING TO
4 MISS PEOPLE WHEN YOU HAVE SO MANY PEOPLE COMING IN. SO I THINK
5 FROM THOSE TWO PERSPECTIVES, YOU CAN DO THAT.

6 THEN IF THE RECEPTION NUMBERS ARE COMING DOWN, THE
7 OTHER THING THAT HAPPENS IS YOUR POPULATION SHOULD BE COMING
8 DOWN, TOO, AND AS THAT COMES DOWN, THEN YOU ARE BETTER ABLE TO
9 MOVE PEOPLE TO THE PROPER FACILITIES, WHICH IS A HUGE PROBLEM
10 RIGHT NOW BECAUSE EVERYTHING IS SO CROWDED.

11 SO IT ALL WORKS TOGETHER, AND THAT'S WHY, YOU KNOW,
12 IF I WERE DOING SOMETHING, I WOULD FOCUS ON THE FRONT END AND
13 THE BACK END DIVERSION ALMOST FIRST BECAUSE THEY NOT ONLY IMPACT
14 ON YOUR POPULATION, BUT THEY IMPACT ON THE RECEPTION NUMBERS,
15 AND YOU CAN JUST START GETTING HUGE BENEFITS OPERATIONAL BY
16 REDUCING THOSE NUMBERS.

17 **Q** AND THAT WOULD MEAN THAT PRISONERS WHO NEEDED CLINICAL
18 SERVICES AT PARTICULAR INSTITUTIONS WOULD HAVE A GREATER CHANCE
19 OF GETTING TO THOSE SERVICES IN A TIMELY MANNER; IS THAT RIGHT?

20 **A** CERTAINLY, IF THERE'S LESS POPULATION THERE AND MORE
21 RESOURCES, BECAUSE YOU ARE SAVING YOUR RESOURCES, YES, IT WOULD
22 MEAN THOSE PEOPLE WOULD MORE LIKELY GET THE SERVICES THEY SHOULD
23 GET.

24 **Q** OKAY. NOW, YOU'VE READ DR. AUSTIN'S AUGUST 15TH, 2008
25 REPORT; IS THAT RIGHT?

1 **A** YES.

2 **Q** AND DO YOU THINK THAT THE RECOMMENDATIONS CONTAINED IN THAT
3 REPORT ARE AS AGGRESSIVE AS THE ONES THAT THE EXPERT PANEL MADE?

4 **A** NO. I THINK DR. AUSTIN WAS -- TOOK A MORE CONSERVATIVE
5 APPROACH, WHICH I DON'T DISAGREE WITH, BECAUSE IN THE EXPERT
6 PANEL I BELIEVE IN AT LEAST ONE OF THE RECOMMENDATIONS IT WAS
7 DEALING WITH SOME SECOND STRIKERS WOULD HAVE BEEN DEALT WITH,
8 AND I THINK IN WHAT DR. AUSTIN DID IN HIS IS HE PRETTY MUCH
9 LIMITED ALL HIS NUMBERS TO THE 50 PERCENT CLASS, WHICH IS THIS
10 LESS SERIOUS GROUP, AND IT'S A GROUP I THINK SHOULD BE FOCUSED
11 ON.

12 **Q** AND, IN GENERAL, DO YOU AGREE WITH HIS RECOMMENDATIONS?

13 **A** YES.

14 **Q** OKAY. NOW, THERE'S BEEN A LOT OF DISCUSSION IN THE TRIAL --
15 IN THIS TRIAL ABOUT RELEASING PRISONERS BEFORE THEIR SENTENCES
16 ARE OVER WHEN YOU FIGURE IN THE CREDITS THAT THEY WOULD HAVE HAD
17 BEFOREHAND. WHAT'S YOUR OPINION ABOUT WHAT'S BEEN CALLED
18 ACCELERATED RELEASE OF PRISONERS BEFORE THEIR SENTENCE IS OVER?
19 DO YOU THINK THAT WOULD HAVE AN ADVERSE IMPACT ON PUBLIC SAFETY?

20 **A** WELL, FIRST OF ALL, WHAT KIND OF AN ACCELERATED RELEASE ARE
21 WE TALKING ABOUT? ARE WE TALKING ABOUT AN ACCELERATED RELEASE
22 WHERE PEOPLE GET CREDITS FOR COMPLETING PROGRAMS OR ARE WE
23 TALKING ABOUT A FLAT OUT ACCELERATED RELEASE?

24 **Q** LET'S TALK ABOUT THEM EACH IN TURN.

25 **A** OKAY. LET'S FOCUS ON THE ONE WHERE YOU JUST COME UP AND SAY

1 WE ARE GOING TO CUT FOUR MONTHS OFF THE SENTENCE, AND YOU ARE
2 GOING TO GO HOME FOUR MONTHS EARLY.

3 Q RIGHT.

4 A THOSE PEOPLE HAVEN'T DONE ANYTHING TO GET THAT. THEY
5 HAVEN'T GOT ANY SPECIAL PROGRAMMING OR ANYTHING ELSE, THEY ARE
6 GOING TO GO HOME FOUR MONTHS EARLY. ESSENTIALLY, THEY ARE GOING
7 TO GET A BUS TICKET AND THE TWO HUNDRED DOLLARS, OR WHATEVER
8 THEY GIVE THEM, AND THEY ARE GOING TO SEND THEM HOME THE SAME AS
9 THEY DO BUT FOUR MONTHS EARLIER.

10 Q RIGHT.

11 A FROM ALL OF THE RESEARCH THAT I HAVE SEEN OUT THERE, OTHER
12 STATES, AND THERE'S BEEN MANY OTHER STATES THAT HAVE DONE THIS
13 KIND OF THING, CALIFORNIA DID IT, I THINK, THEMSELVES BACK 20
14 SOME YEARS OR SO AGO. SOME BIG CITIES HAVE DONE THESE KINDS OF
15 THINGS. IT DOES NOT HAVE AN ADVERSE EFFECT ON RECIDIVISM, AND
16 IT DOES NOT HAVE AN ADVERSE EFFECT ON THE CRIME RATE. THAT'S
17 WHAT THOSE STUDIES SHOW YOU. YOU RELEASE THESE PEOPLE -- THE
18 BASIC REASON IS, IS BECAUSE ALL YOU ARE DOING IS LETTING
19 SOMEBODY GET OUT OF JAIL FOUR MONTHS EARLIER. THAT'S ALL YOU
20 ARE DOING, SO IT DOESN'T HAVE AN ADVERSE EFFECT.

21 NOW, THAT BEING SAID, IT ALSO DOESN'T FIX YOUR
22 OVERALL STRUCTURAL PROBLEM BECAUSE YOU HAVE TO CONSTANTLY BE
23 LEAVING PEOPLE OUT EARLY, AND IF YOU DO NOTHING ELSE, IT ALSO
24 PROBABLY DOESN'T ENHANCE PUBLIC SAFETY. SO WHAT I WOULD PREFER
25 TO SEE, IF YOU WERE GOING TO GO AND SAY WE ARE GOING TO TAKE

1 FOUR MONTHS OFF OF SOMEBODY'S SENTENCE AND LET THEM OUT, I WOULD
2 PREFER TO SEE THAT THERE BE FUNDING PROVIDED TO THE COUNTIES OR
3 TO STATE PAROLE TO PROVIDE RESOURCES SO THAT THE PERSON ISN'T
4 JUST COMING BACK WITH THE \$200, BUT SO YOU CAN FOCUS ON GETTING
5 THEM A PLACE TO LIVE, GETTING A JOB, GETTING INTO ANY AFTERCARE
6 LIKE SUBSTANCE ABUSE PROGRAMMING THEY NEED TO GET INTO. IF YOU
7 DO THAT KIND OF THING, COUPLED WITH LEAVING THEM OUT FOUR MONTHS
8 EARLY, THE RESEARCH WOULD SAY THAT YOU ARE GOING TO GET BETTER
9 RECIDIVISM RATES. YOU ARE GOING TO HAVE LESS CRIME AND LESS
10 VICTIMIZATION. SO THAT'S IF YOU DO THAT.

11 Q RIGHT.

12 A AND, LIKE I SAID, IF YOU DON'T GIVE THE SERVICES, IT
13 PROBABLY ISN'T GOING TO HURT ANYTHING, BUT IT ISN'T GOING TO
14 HELP ANYTHING OR FIX THE LONG TERM PROBLEM.

15 NOW, LEAVING SOMEBODY OUT EARLY THAT YOU'RE GIVING
16 CREDIT TO BECAUSE THEY'VE DONE SOMETHING THAT I THINK WOULD HELP
17 THE PUBLIC SAFETY, AND THAT WOULD HELP THE PUBLIC SAFETY
18 BECAUSE, NUMBER ONE, YOU ARE GETTING THEM INTO THE PROGRAMS THEY
19 NEED TO GET INTO TO MAKE IT LESS LIKELY THEY ARE GOING TO COME
20 BACK TO PRISON, SO YOU ARE GOING TO LOWER RECIDIVISM RATES.

21 SO, BY JUST GIVING SOMEBODY A CREDIT -- I THINK IN
22 THE ONE BUDGET DOCUMENT I SAW THERE'S A PROPOSAL TO GIVE CREDIT
23 FOR FOUR MONTHS FOR EVERY PROGRAM A PERSON COMPLETES, BUT IT HAS
24 TO BE A SUBSTANTIAL EVIDENCE-BASED PROGRAM, RIGHT. IT CAN'T
25 JUST BE ANY PROGRAM.

1 YOU PUT THEM IN A SUBSTANTIAL PROGRAM, GIVE THEM THAT
2 FOUR MONTHS, THEN LET THEM OUT FOUR MONTHS EARLY FOR DOING THAT,
3 THAT PERSON IS GOING TO HAVE A LOWER RECIDIVISM RATE BASED ON
4 WHAT WE'VE SEEN, LIKE WITH THE MERIT TIME PROGRAM I TALKED ABOUT
5 IN OTHER STUDIES AROUND THE COUNTRY.

6 **Q** NOW, AS YOU KNOW, WITH CALIFORNIA'S OVERCROWDING, THE
7 GOVERNOR, THE SECRETARY AND MANY PEOPLE HAVE MENTIONED THAT WITH
8 THIS KIND OF OVERCROWDING, IT'S DIFFICULT TO DEVELOP PROGRAMS
9 THAT ARE NECESSARY BECAUSE THERE'S NO SPACE AND ALL THE OTHER
10 PROBLEMS ASSOCIATED WITH OVERCROWDING. IT'S BEEN DESCRIBED AS A
11 CATCH-22 SITUATION. WHAT'S YOUR REACTION TO THAT?

12 **A** WELL, MY REACTION IS, YOU KNOW, YOU'RE RIGHT THAT YOU CAN'T
13 START OFF AND DO MEANINGFUL PROGRAMMING TODAY. IT'S GOING TO BE
14 VERY DIFFICULT TO DO IN ANY LARGE AMOUNT OF WAYS BECAUSE OF THE
15 LOCKDOWNS, BECAUSE OF THE LACK OF SPACE, AND THE SEVERE
16 OVERCROWDING AND EVERYTHING LIKE THAT.

17 SO IT'S GOING TO BE DIFFICULT TO GET THAT UP AND
18 RUNNING, BUT THERE'S OTHER THINGS YOU CAN DO. I MEAN, YOU CAN
19 CERTAINLY GET THAT PAROLE VIOLATION INSTRUMENT IN PLACE AND TRY
20 TO REDUCE ON THE BACK END THE PAROLE VIOLATORS THAT ARE COMING
21 BACK INTO THE SYSTEM. YOU CERTAINLY CAN LIMIT PAROLE
22 SUPERVISION FOR LESS SERIOUS OFFENDERS. YOU CERTAINLY CAN COME
23 UP WITH SOME KIND OF A PROGRAM TO FUND COUNTIES ON A FORMULA
24 BASIS TO DIVERT PEOPLE ON THE FRONT END, AND JUST DOING THOSE
25 TWO THINGS ALONE WILL HAVE A HUGE REDUCTION IN THE RECEPTION

1 CENTERS AND WILL BEGIN BRINGING THE POPULATION DOWN.

2 AND THE OTHER THING IS -- AND I SAW THIS IN ANOTHER
3 BUDGET DOCUMENT THAT I THINK THAT WE'RE PROPOSING, AND IT'S
4 SOMETHING THE EXPERT PANEL HAD RECOMMENDED. YOU CAN ALSO MAKE
5 SOME CHANGES IN HOW THEY AWARD THAT RIP CREDIT THEY HAVE RIGHT
6 NOW SO IT'S AWARDED MORE DIRECTLY ACROSS THE BOARD, THAT SORT OF
7 GOOD TIME CREDIT THAT YOU CAN DO WITHOUT HAVING THE PROGRAMS.

8 SO THOSE PIECES CAN ALL BE DONE RIGHT NOW AND THEN
9 CAN BEGIN GENERATING SPACE WITHIN THE SYSTEM SO YOU CAN GET THE
10 PROGRAMS UP AND RUNNING, AND THEN YOU CAN GIVE THE CREDITS FOR
11 THE PEOPLE THAT COMPLETE THE PROGRAMS. SO THAT'S HOW YOU WOULD
12 BUILD ON THAT. IT WOULD BE VERY DIFFICULT TO, OBVIOUSLY, GIVE A
13 WHOLE BUNCH OF CREDITS FOR PROGRAMS RIGHT NOW WHEN YOU REALLY
14 CAN'T DO MEANINGFUL PROGRAMS RIGHT NOW, OR AT LEAST A LOT OF
15 THEM.

16 Q RIGHT.

17 NOW, DR. AUSTIN HAD TESTIFIED THAT A MODEST
18 ACCELERATION -- ACCELERATED RELEASE OF PRISONERS COULD CAUSE A
19 .3 PERCENT INCREASE IN ARRESTS. YOU ARE FAMILIAR WITH THAT?

20 A YES.

21 Q ASSUMING FOR THE MOMENT THAT SUCH A RELEASE WOULD CAUSE SUCH
22 AN INCREASE IN ARRESTS, IS THERE A WAY THE STATE COULD ELIMINATE
23 EVEN THAT SMALL INCREASE?

24 A YES.

25 Q HOW?

1 **A** BY PROVIDING SERVICES TO THOSE PEOPLE WHO ARE COMING OUT IN
2 THE FORM OF EDUCATION, VOCATIONAL TRAINING, JOB, HOUSING,
3 SUBSTANCE ABUSE, THOSE THINGS I SAID.

4 THE WAY YOU WOULD ADDRESS THAT, YOU KNOW, ASSUMING
5 THERE WOULD BE AN ADVERSE IMPACT AND THAT IMPACT ONLY OCCURS IF
6 IT DOES BECAUSE THE AT-RISK GROUP IS BIGGER, YOU KNOW, YOU'VE
7 JUST SHIFTED IT. IT REALLY ISN'T MORE CRIME, IT'S JUST MORE
8 CRIME HAPPENING HERE INSTEAD OF HAPPENING DOWN THE ROAD WHEN THE
9 PERSON WOULD HAVE GOT OUT ANYWAY. BUT YOU COULD ELIMINATE THE
10 POTENTIAL FOR THAT BY SEEING THAT PROPER SERVICES ARE PROVIDED
11 TO PEOPLE. ALL THE RESEARCH WOULD SAY IF YOU DO THAT, THOSE
12 PEOPLE ARE GOING TO BE LESS LIKELY TO FAIL IF YOU PROVIDE THOSE
13 SERVICES.

14 **Q** AND IF YOU PROVIDED THE SERVICES, IN YOUR OPINION, WOULD
15 THAT DO MORE THAN COMPENSATE FOR THE .3 PERCENT INCREASE?

16 **A** I THINK IT WOULD. I HAVE NO DOUBT THAT THE INCREASE IS
17 REALLY GOING TO BE QUITE SMALL WHEN YOU LOOK AT THE TOTAL AMOUNT
18 OF ARRESTS THAT YOU ARE DEALING WITH IF YOU ONLY HAVE A .3. THE
19 EXAMPLE WOULD BE EVEN IF YOU HAD A .5, A HALF A PERCENT, IF A
20 PARTICULAR JURISDICTION HAD 200 ARRESTS IN A MONTH AND IT'S A
21 HALF A PERCENT MORE, WHICH IS A LITTLE MORE THAN WHAT AUSTIN
22 SAID IN HIS THING, NOW YOU HAVE 201 ARRESTS. SO THE NUMBER IS
23 RELATIVELY SMALL, BUT IF YOU PROVIDE THE SERVICES, IF THAT EVEN
24 OCCURS, BUT THE NUMBERS -- IF YOU PROVIDE THE SERVICES, THEN
25 THAT -- YOU WOULD TAKE IT, AND YOU WOULD HAVE LESS THAN THE 200

1 THAT YOU WERE HAVING IN THE FIRST PLACE, BECAUSE YOU ARE
2 PROVIDING SERVICES TO THE PEOPLE THAT ARE COMING OUT WHICH YOU
3 AREN'T PROVIDING NOW.

4 **Q** SO IF THIS COURT WERE TO ORDER THE STATE TO REDUCE ITS
5 PRISON POPULATION AND THEY CHOSE A METHOD SUCH AS RELEASING
6 PRISONERS BEFORE THEIR SENTENCES WERE OVER, THEY WOULD -- THE
7 STATE WOULD HAVE THE CHOICE ABOUT WHETHER TO FUND THE SERVICES
8 THAT YOU ARE TALKING ABOUT OR NOT. IT'S ESSENTIALLY A POLITICAL
9 DECISION, WOULD YOU AGREE?

10 **A** I GUESS THAT'S CORRECT, THEY WOULD, YES.

11 **Q** OKAY. YOU SAW THE GOVERNOR'S NOVEMBER SPECIAL SESSION
12 BUDGET PROPOSAL?

13 **A** YES.

14 **Q** AND DO YOU AGREE THAT THE POPULATION-REDUCING MEASURES IN
15 THAT BUDGET PROPOSAL ARE SOMETHING THAT'S APPROPRIATE FOR THE
16 STATE TO DO?

17 **A** ABSOLUTELY. THEY ARE THINGS THAT WE HAVE BEEN TALKING ABOUT
18 IN -- AT LEAST THREE OF THE PROPOSALS THERE COME RIGHT DIRECTLY
19 PRETTY MUCH FROM THE EXPERT PANEL, THE ONE BEING TO LIMIT THE
20 SUPERVISION, PAROLE SUPERVISION OF THE LESS SERIOUS OFFENDERS,
21 THE OTHER BEING TO PROVIDE THE FOUR MONTHS CREDIT FOR PEOPLE WHO
22 COMPLETE EVIDENCED-BASED PROGRAMS, THE OTHER BEING TO MAKE SOME
23 ADJUSTMENTS TO THE -- THAT GOOD TIME CREDIT THAT'S BEING AWARDED
24 NOW SO YOU CAN PROVIDE THE FULL CREDIT TO PEOPLE IN JAILS AND
25 THINGS LIKE THAT. THOSE ARE THREE OF THE THINGS MENTIONED IN

1 THERE. THEY'RE RIGHT FROM THE EXPERT PANEL.

2 THE FOURTH THING WAS TO REDEFINE IN PROPERTY CRIMES
3 THE AMOUNT. APPARENTLY, THE AMOUNT TO BECOME A FELONY FOR A
4 PROPERTY CRIME HASN'T BEEN ADJUSTED SINCE 1982, AND, OBVIOUSLY,
5 YOU KNOW, THERE'S BEEN HUGE INFLATION SINCE 1982, SO YOU ARE
6 PROBABLY GETTING A WHOLE BUNCH MORE PEOPLE TODAY THAT ARE BEING
7 CALLED FELONY OFFENDERS SIMPLY BECAUSE THAT HASN'T BEEN
8 ADJUSTED. I THINK THAT MAKES A LOT OF SENSE.

9 THAT GETS TO LOOKING AT THE WHOLE SENTENCING ISSUE,
10 WHICH IS ANOTHER THING WE HAVEN'T REALLY TOUCHED ON. THAT'S
11 ANOTHER AREA THAT COULD BE LOOKED AT, AND THOSE KINDS OF
12 THOUGHTFUL THINGS COULD BE DONE AND PROBABLY MAKE SOME
13 ADDITIONAL THINGS.

14 SO I THINK ALL OF THOSE RECOMMENDATIONS SEEM LIKE
15 REALLY, REALLY GOOD, FINE RECOMMENDATIONS THAT THEY HAVE THERE.
16 HOPEFULLY, THAT WILL GET DONE.

17 Q WELL, THE SPECIAL SESSION ENDED -- NEVER MIND. I DON'T WANT
18 TO TESTIFY HERE.

19 YOU KNOW ABOUT AB 900, CORRECT?

20 A YES.

21 Q THAT'S A PRISON CONSTRUCTION AUTHORIZATION BILL?

22 A YES, I THINK IT CALLS FOR 8,000 IN-FILL BEDS AND 8,000
23 REENTRY BEDS ESSENTIALLY.

24 Q RIGHT. DO YOU THINK THAT EVEN IF THE LEGISLATURE DECIDED TO
25 FUND IT, WHICH IT HASN'T SO FAR, DO YOU THINK THAT WOULD SOLVE

1 CALIFORNIA'S OVERCROWDING CRISIS?

2 **A** I DON'T THINK SO, NO. I DON'T THINK IT WOULD FOR A NUMBER
3 OF REASONS.

4 FIRST OF ALL, CALIFORNIA, OVER THE PAST TEN YEARS OR
5 MORE, 20 YEARS, HAS BEEN SPENDING BILLIONS OF DOLLARS ON
6 CONSTRUCTION AND NEVER HAVE GOTTEN THERE. THEY'RE IN WORSE
7 SHAPE TODAY THAN WHEN THEY STARTED DOING THAT. YOU KNOW, IT
8 TAKES SO LONG TO BUILD IN THE FIRST PLACE, YOU KNOW, YOU ARE NOT
9 GOING TO SEE ANY IMPACT FOR THREE OR FOUR YEARS AND GOSH KNOWS
10 HOW LONG IT'S GOING TO TAKE TO GET ALL 16,000 OF THOSE BEDS IF
11 YOU DID IT. IT'S GOING TO BE HUGEY COSTLY TO THE SYSTEM IF YOU
12 DO THAT. SO THE TIME YOU HAVE IS ALSO A PROBLEM.

13 THE OTHER PROBLEM I HAVE WITH AB 900 IS WITH THE
14 IN-FILL BEDS, AS I'VE THINK TESTIFIED LAST TIME. I THINK THESE
15 BIG MEGA INSTITUTIONS ARE VERY DIFFICULT TO MANAGE. I REALIZE
16 THEY HAVE THEM, AND THEY ARE GOING TO HAVE TO OPERATE WITH THEM,
17 HOPEFULLY WITH LOWER POPULATIONS, BUT THE IN-FILL BEDS, ALL
18 YOU'RE DOING IS YOU'RE PUTTING A NEW HOUSING UNIT IN THIS
19 MASSIVELY OVERCROWDED INSTITUTION, AND MOVING INMATES FROM UGLY
20 BEDS TO NOW A NICER BED, BUT YOU HAVEN'T DONE ANYTHING WITH THE
21 INFRASTRUCTURE'S ABILITY TO HANDLE THOSE EXTRA INMATES.

22 I THINK PERSONALLY THAT CALIFORNIA SHOULD BE LOOKING
23 AT BUILDING NEW INSTITUTIONS IN THE 2- TO 3,000 MAN RANGE.
24 THAT'S WHERE THE MONEY SHOULD BE SPENT RATHER THAN ON IN-FILL
25 BEDS.

1 THEN IF THEY GET CONTROL OF THEIR POPULATION DOWN THE
2 ROAD AND THEY BUILD SOME OF THESE NEWER INSTITUTIONS, WHICH ARE
3 GOING TO BE MORE COST EFFECTIVE TO RUN, THEN MAYBE THEY COULD
4 LOOK AT CLOSING SOME OF THE OLDER FACILITIES. THEY HAVE SOME
5 SIGNIFICANT PROBLEMS, TOO.

6 THE OTHER PROBLEM WITH AB 900 WITH THE REENTRY BEDS,
7 THEY'RE TALKING ABOUT 8,000 REENTRY BEDS. I THINK THE CONCEPT
8 IS A GREAT CONCEPT TO HAVE THESE REENTRY FACILITIES IN THE
9 COUNTIES FOR THESE PEOPLE TO GO BACK TO. I THINK IT'S A GREAT
10 CONCEPT.

11 BUT THEY'RE GOING TO HAVE A HECK OF A HARD TIME
12 SITING THESE PLACES. I'M GOING TO BE VERY SURPRISED IF THEY ARE
13 ABLE TO SITE ALL 8,000 BEDS AND APPROPRIATELY SITE THEM. FOR
14 INSTANCE, MANY OF THEM ARE GOING TO NEED TO BE CITED TO THE LOS
15 ANGELES AREA BECAUSE THAT'S WHERE MOST OF THE INMATES ARE GOING
16 BACK TO. I THINK THAT'S A HUGE PROBLEM FINDING SITING. I KNOW
17 WE HAVE THOSE PROBLEMS IN PENNSYLVANIA.

18 THOSE ARE SOME OF THE PROBLEMS I SEE WITH AB 900 THE
19 WAY IT'S CURRENTLY CONSTRUCTED.

20 **Q** SO YOU'VE TESTIFIED ABOUT A LOT OF DIFFERENT THINGS THAT
21 YOUR STATE IS DOING AND THAT OTHER STATES HAVE DONE TO CONTROL
22 OR REDUCE THEIR POPULATION. IS THE PROBLEM FIGURING OUT -- IS
23 THE PROBLEM WITH CALIFORNIA'S OVERCROWDING CRISIS THE FACT THAT
24 THERE AREN'T SAFE WAYS TO REDUCE THE POPULATION?

25 **A** NO. IN MY OPINION, IT IS NOT -- YOU KNOW, THAT'S NOT THE

1 PROBLEM OUT HERE IN CALIFORNIA. THERE ARE MANY SAFE WAYS TO DO
2 IT, MANY WAYS THAT OTHER PEOPLE HAVE BEEN DOING IT.

3 YOU KNOW, THERE'S A LOT OF RESEARCH OUT THERE. THE
4 CALIFORNIA DEPARTMENT OF CORRECTIONS HAS THEMSELVES TRIED TO DO
5 IT. I KNOW SOME OF THEIR PRIOR SECRETARIES WERE TRYING TO PUT
6 INTO PLACE CERTAIN PROGRAMS TO REDUCE THEIR POPULATIONS. I
7 THINK THEY TRIED TO PUT A PAROLE VIOLATION MATRIX IN PLACE WHEN
8 SECRETARY HICKMAN WAS HERE AT ONE TIME.

9 TO ME IT SEEMS THAT THIS IS ALL ABOUT THE POLITICAL
10 WILL, THAT WHEN IT COMES UP TO GETTING IT DONE, GETTING THE
11 LEGISLATURE TO PASS THIS, THAT'S WHERE IT STOPS, AND THAT'S
12 WHERE IT DOESN'T HAPPEN. AND THAT'S REALLY UNFORTUNATE BECAUSE
13 NOT ONLY ARE THEY CAUSING HUGE PROBLEMS WITHIN THEIR
14 INSTITUTIONS, BUT THEY'RE COSTING THE TAXPAYERS, AND THEY'RE
15 GOING TO COST THE TAXPAYERS MUCH, MUCH MORE MONEY THAN THEY HAVE
16 TO, AND THIS IS AT A TIME WHEN NONE OF US CAN REALLY AFFORD
17 THESE ADDITIONAL COSTS ANYWHERE IN THE COUNTRY.

18 **Q** AND BY "COSTS," DO YOU INCLUDE THE FACT THAT IT COULD BE
19 SAFER THAN IT IS NOW?

20 **A** ABSOLUTELY. I REALLY BELIEVE IF THEY WOULD ADOPT SOME OF
21 THESE THINGS, THEY WOULD NOT ONLY REDUCE THEIR POPULATION, BUT
22 THEY WOULD SEE THEIR RECIDIVISM RATES COMING DOWN, PARTICULARLY
23 AS THEY GOT THEIR PROGRAMS GOING, PARTICULARLY AS THEY GOT MORE
24 RESOURCES OUT THERE IN THE COMMUNITY AND IN THE LONG RUN. THE
25 STATE WOULD BECOME SAFER FOR THE PUBLIC, AND THE CONSEQUENCE IS

1 YOU WOULD ALSO SAVE MONEY, AND, YOU KNOW, THAT'S A WIN-WIN
2 SITUATION AS FAR AS I'M CONCERNED FOR EVERYBODY.

3 **Q** AND PRISONERS WOULD RECEIVE ADEQUATE HEALTHCARE?

4 **A** IF YOU GET THE POPULATION DOWN TO THE POINTS IN THESE
5 FACILITIES WHERE THEY CAN MANAGE THAT, YES, THEY SHOULD GET
6 ADEQUATE HEALTHCARE, MENTAL HEALTHCARE, WHATEVER CARE, PROPER
7 PROGRAMMING, EVERYTHING SHOULD BE ABLE TO BE HANDLED AND YOU CAN
8 GET THE POPULATION DOWN TO A MANAGEABLE LEVEL.

9 **MR. SPECTER:** THANK YOU. NO FURTHER QUESTIONS.

10 **JUDGE REINHARDT:** DR. BEARD, I ASK YOU A MORE
11 SPECIFIC QUESTION. THE POLITICAL WILL IS SOMEWHAT OUT OF OUR
12 FIELD, BUT WE'VE HAD TESTIMONY IN PHASE ONE THAT OVERCROWDING IS
13 THE CAUSE OF INADEQUATE, UNCONSTITUTIONAL HEALTHCARE AND MEDICAL
14 CARE. I'M NOT SUGGESTING EVERYBODY AGREES ON THAT, BUT WE'VE
15 HAD SOME TESTIMONY TO THAT EFFECT.

16 I LISTENED TO YOUR TESTIMONY ABOUT THE FACT THAT WE
17 COULD IMPROVE SAFETY WITH THESE REFORMS. MY QUESTION IS: IS
18 WHAT YOU WERE SAYING -- AND I WASN'T CLEAR ON THIS -- THAT IF WE
19 JUST LEFT THE CONDITIONS AS THEY ARE, THAT THE OVERCROWDING
20 ITSELF WOULD MAKE SOCIETY LESS SAFE BECAUSE THE PEOPLE WHO COME
21 OUT OF THE PRISONS ULTIMATELY, HAVING BEEN SUBJECTED TO
22 OVERCROWDING, THAT THEY ARE MORE LIKELY TO COMMIT CRIMES AS A
23 RESULT OF THE CONDITIONS THEY EXPERIENCE IN PRISON? IS THAT IN
24 ITSELF A CAUSE OF MORE CRIME WHEN THEY COME OUT? AND IF THEY
25 HAD THEIR PRISON EXPERIENCE IN A MORE CONSTRUCTIVE ENVIRONMENT,

1 THEY WOULD BE LESS LIKELY TO COMMIT CRIMES WHEN THEY COME OUT?
2 IS THAT A PART OF WHAT YOU'RE SAYING OR NOT?

3 **THE WITNESS:** I THINK HOW I WOULD ANSWER THAT, YOUR
4 HONOR, IS THAT, FIRST OF ALL, WITH THE LOWER RISK INMATES THAT
5 ARE IN PRISON, THEY ARE PROBABLY BEING HARMED. THEY ARE
6 PROBABLY GETTING WORSE WITH THE ENVIRONMENT THAT THEY'RE IN,
7 ASSOCIATING WITH THE HIGHER RISK PEOPLE AND WITH THE
8 OVERCROWDING, WITH THE VIOLENCE, THOSE LOWER RISK PEOPLE ARE
9 PROBABLY GOING TO BE MORE LIKELY TO REOFFEND.

10 THERE'S A LOT OF RESEARCH WHICH SHOWS IF YOU MIX
11 LOWER RISK PEOPLE WITH HIGHER RISK PEOPLE, THEY GET WORSE. THE
12 OTHER THING THE RESEARCH SHOWS IS THAT WHILE THE HIGHER RISK
13 PEOPLE MAY NOT GET WORSE, THEY DON'T GET BETTER, AND SO BY NOT
14 PROVIDING THE APPROPRIATE PROGRAMMING TO INDIVIDUALS WHILE
15 THEY'RE IN PRISON, YOU DO NOT REDUCE THEIR LIKELIHOOD OF
16 COMMITTING OFFENSES. SO I GUESS THAT'S WHAT I'M SAYING. I
17 MEAN, YES, I'M SAYING THE PUBLIC IS ADVERSELY AFFECTED BECAUSE
18 SOME PEOPLE ARE GETTING WORSE AND THEN ANOTHER GROUP OF PEOPLE
19 AREN'T GETTING ANY BETTER.

20 **JUDGE REINHARDT:** THANK YOU.

21 **JUDGE HENDERSON:** DOES CCPOA COUNSEL HAVE ANY
22 QUESTIONS?

23 **MS. LEONARD:** NO, YOUR HONOR.

24 **CROSS-EXAMINATION BY MR. MELLO**

25 **MR. MELLO:** GOOD MORNING, YOUR HONORS.

1 **BY MR. MELLO**

2 **Q** GOOD MORNING, SECRETARY BEARD.

3 **A** GOOD MORNING.

4 **Q** HAS THERE BEEN A SPIKE IN THE PENNSYLVANIA POPULATION SINCE
5 I TOOK YOUR DEPOSITION IN SEPTEMBER OF 2008?

6 **A** HAS THERE BEEN A SPIKE?

7 **Q** UH-HUH.

8 **A** YES.

9 **Q** DO YOU KNOW THE REASONS FOR THAT SPIKE?

10 **A** WELL, FIRST OF ALL, OUR POPULATION HAS BEEN GROWING, LIKE
11 EVERYBODY'S POPULATION, FOR -- SINCE, YOU KNOW, THE LATE 1970'S,
12 THE EARLY 1980'S, AND WHAT WE HAVE BEEN DOING IS WORKING ON THE
13 THINGS THAT WE CAN CONTROL THAT GROWTH, AND WE HAVE BEEN
14 BRINGING DOWN THE RATE OF GROWTH BY SOME OF THE THINGS THAT
15 WE'VE TALKED ABOUT; WORKING WITH PAROLE TO REDUCE PAROLE
16 VIOLATORS, THE RESTRICTIVE INTERMEDIATE PUNISHMENT PROGRAMS THAT
17 DIVERT PEOPLE. WE HAVE BEEN BRINGING DOWN THE RATE OF GROWTH.
18 WE STILL HAVEN'T GOT IT WHERE IT IS FLAT OR GOING DOWN, BUT
19 WE'VE GOT THE RATE OF GROWTH DOWN.

20 **Q** AND, SECRETARY BEARD, IS INCAPACITATION ONE OF THE THINGS
21 ACCOMPLISHED -- I MEAN, IT'S ONE OF THE MEANS THAT AFFECTS CRIME
22 RATES, CORRECT?

23 **A** INCAPACITATION?

24 **Q** YES.

25 **A** WELL, A CERTAIN AMOUNT OF INCAPACITATION CAN AFFECT CRIME

1 RATES, YES. THERE'S BEEN SOME STUDIES OUT THERE THAT INDICATE
2 FOR EVERY TEN PERCENT INCREASE IN INCARCERATION RATE, YOU CAN
3 GET A TWO TO FOUR PERCENT DECREASE IN CRIME RATE, BUT THAT SAME
4 RESEARCH SAYS THAT ONCE YOU REACH A CERTAIN POINT OF INCAR --
5 YOUR INCARCERATION RATE GETS TO A CERTAIN POINT, AND THAT POINT
6 IS BETWEEN LIKE ABOUT 360 AND 470 PER HUNDRED THOUSAND, IT'S
7 WHAT THEY CALL AN INFLEXION POINT, THAT ACTUALLY INCARCERATING
8 MORE PEOPLE CAN BE COUNTERPRODUCTIVE.

9 AND, OF COURSE, CALIFORNIA SITS AT THE HIGH END OF
10 THAT INFLEXION RATE. I THINK THEIR LATEST NUMBERS I SAW ON
11 THEM, THEY'RE LIKE 473 OR 475 PER HUNDRED THOUSAND, SOMETHING IN
12 THAT RANGE. SO THEY ARE RIGHT AT THE VERY TOP OF THE INFLECTION
13 POINT.

14 SO IF YOU MEAN CAN CALIFORNIA LOCK UP MORE PEOPLE AND
15 MAKE IT SAFER? IT DOESN'T APPEAR THEY CAN, BASED ON OTHER
16 STUDIES THAT HAVE BEEN DONE OUT THERE. IT APPEARS THERE'S OTHER
17 THINGS THEY COULD DO THAT WOULD HAVE MUCH MORE IMPACT FOR THE
18 SAME COSTS, AND JUST LOCKING UP MORE PEOPLE PROBABLY ISN'T GOING
19 TO HAVE MORE IMPACT. IN FACT, IT MAY BE HURTING THE CRIME RATE
20 BECAUSE OF THOSE PEOPLE THAT YOU HAVE CHURNING THAT I TALKED
21 ABOUT ON THE BACK END, THAT MAY ACTUALLY BE MAKING THE CRIME
22 RATE WORSE.

23 Q SO AS I UNDERSTAND IT, THE TOP OF THAT INFLEXION RATE OR
24 POINT IS ABOUT 470 --

25 A SOMEWHERE IN THAT RATE.

1 **Q** AND CALIFORNIA --

2 **A** RIGHT ABOUT AT THE TOP OF THAT RATE.

3 **Q** SECRETARY BEARD, YOU NEVER EVALUATED WHETHER CALIFORNIA CAN
4 PROVIDE ADEQUATE MEDICAL AND MENTAL HEALTH CARE WITHOUT A
5 REDUCTION IN THE PRISON POPULATION, DID YOU?

6 **A** NO, I NEVER WENT AND VISITED ALL -- I ONLY VISITED ONE
7 INSTITUTION AS I TESTIFIED TO.

8 **Q** YOU NEVER EVALUATED WHETHER CALIFORNIA CAN PROVIDE ADEQUATE
9 MEDICAL AND MENTAL HEALTHCARE ABSENT A REDUCTION IN ITS
10 POPULATION, CORRECT?

11 **JUDGE KARLTON:** THAT'S WHAT YOU JUST ASKED.

12 **MR. MELLO:** OH, REALLY? IT'S BEEN A LONG WEEK. I
13 APOLOGIZE.

14 **JUDGE REINHARDT:** I'M NOT SURE HE ANSWERED.

15 **THE WITNESS:** MY ANSWER WOULD BE I HAVEN'T PERSONALLY
16 EVALUATED IT, BUT I REVIEWED A LOT OF INFORMATION, AND I THINK
17 WE TALKED ABOUT THIS IN MY TESTIMONY BEFORE THE LAST TIME, THAT
18 I REVIEWED A LOT OF REPORTS BY A LOT OF EXPERTS, AND THAT'S WHAT
19 I DO IN MY JOB NOW TO RUN MY SYSTEM. SO FROM REVIEWING THOSE
20 REPORTS, I WOULD CONCLUDE THAT OVERCROWDING IS THE PRIME CAUSE
21 FOR THE MENTAL HEALTH AND MEDICAL PROBLEMS, AND THE ONLY WAY TO
22 REALLY ADDRESS THAT IS TO LOWER THE POPULATION.

23 **MR. MELLO:** I DIDN'T MEAN TO GO BACK TO PHASE ONE, SO
24 I APOLOGIZE.

25 **JUDGE REINHARDT:** IT'S NOT PHASE ONE. PHASE TWO IS

1 ARE THERE ALTERNATIVE METHODS OF SOLVING THE PROBLEM.

2 MR. MELLO: CORRECT. THAT'S MY NEXT QUESTION.

3 BY MR. MELLO

4 Q MY NEXT QUESTION IS: HAVE YOU -- YOU'VE NEVER EVALUATED
5 WHETHER CALIFORNIA CAN FIX THE DELIVERY OF MEDICAL AND MENTAL
6 HEALTHCARE BY MEANS OTHER THAN REDUCING THE POPULATION, CORRECT?

7 A FROM WHAT I KNOW ABOUT THE WAYS THAT YOU CAN ADDRESS THIS
8 PROBLEM, AND, LIKE I SAID, OVER THE LAST SEVEN YEARS I HAVE BEEN
9 INTIMATELY LOOKING AT ALL OF THIS, BECAUSE I HAVE BEEN TRYING TO
10 GET A HANDLE AND CONTROL OUR OWN POPULATION, THERE IS ONLY A FEW
11 THINGS THAT YOU CAN DO TO GET THE POPULATION DOWN. ONE IS YOU
12 BUILD MORE FACILITIES, AND WE'VE TALKED ABOUT THE PROBLEMS
13 INVOLVED WITH THAT. AND THE OTHER THING IS TO DO SOMETHING TO
14 LOWER THE ACTUAL POPULATION ITSELF, EITHER DIVERT OR REDUCE
15 LENGTH OF STAY.

16 Q DURING YOUR DEPOSITION ON SEPTEMBER 26TH AT PAGE 166, LINES
17 14 THROUGH 20, I ASKED YOU, SECRETARY BEARD -- PARDON ME. I
18 ASKED YOU:

19 "HAVE YOU EVER EVALUATED WHETHER CALIFORNIA
20 MUST TAKE STEPS TO FIX THE DELIVERY OF MEDICAL
21 CARE AND MENTAL HEALTHCARE IN ITS PRISONS BY
22 MEANS OTHER THAN REDUCING POPULATION?

23 "ANSWER: I HAVEN'T PERSONALLY EVALUATED
24 THAT, NO."

25 SECRETARY BEARD, DO YOU RECALL THE CALIFORNIA'S

1 THREE-YEAR RECIDIVISM RATE FOR ALL FELONS RELEASED TO PAROLE?

2 **A** NOT EXACTLY, NO. I LOOKED AT THAT SOME TIME AGO, AND I
3 DON'T RECOLLECT WHAT IT IS.

4 **Q** I BELIEVE MR. SPECTER DISCUSSED THE THREE-YEAR RECIDIVISM
5 RATES FOR PAROLE VIOLATORS BEING IN THE 60 TO 70 PERCENT RANGE.
6 DO YOU BELIEVE THAT TO BE TRUE?

7 **A** FROM WHAT I'VE HEARD, IT SOUNDS LIKE THAT'S FAIRLY ACCURATE.

8 **Q** AND SECRETARY BEARD, DO YOU BELIEVE THAT THE APPROPRIATE
9 SUPERVISION OF PAROLEES BY PAROLE OFFICERS CAN REDUCE RECIDIVISM
10 RATES?

11 **A** WHEN YOU SAY "APPROPRIATE," IT DEPENDS HOW YOU DEFINE
12 "APPROPRIATE" BECAUSE SUPERVISION ALONE DOES NOT NECESSARILY
13 HELP REDUCE THE LIKELIHOOD OF PAROLE VIOLATIONS. YOU REALLY
14 NEED TO HAVE SUPERVISION WITH PROGRAMMING, WITH EVIDENCE-BASED
15 PROGRAMMING, TO DO IT. SO WHEN YOU SAY -- IF YOU MEAN, YOU
16 KNOW, BY GETTING PEOPLE THE PROPER PROGRAMS AND STUFF, THE
17 ANSWER IS YES.

18 **Q** SO, SECRETARY BEARD, YOU DO BELIEVE THAT APPROPRIATE
19 SUPERVISION AND PROGRAMMING OF PAROLEES CAN REDUCE RECIDIVISM,
20 CORRECT?

21 **A** IF IT'S DONE APPROPRIATELY, YES.

22 **Q** AND YOU BELIEVE THAT PROGRAMS THAT DIVERT OFFENDERS FROM
23 PRISON, LIKE DRUG TREATMENT PROGRAMS, CAN REDUCE RECIDIVISM,
24 CORRECT?

25 **A** YES.

1 Q AND, SECRETARY BEARD, DO YOU KNOW WHETHER THERE ARE ENOUGH
2 PAROLE OFFICERS IN CALIFORNIA TO SUPERVISE CURRENT LEVELS OF
3 PAROLEES IN CALIFORNIA?

4 A I DID NOT LOOK AT WHAT THE ACTUAL PERCENTAGE AND CASELOADS
5 ARE OF PAROLE OFFICERS, NO.

6 Q SECRETARY BEARD, YOU TESTIFIED THAT PENNSYLVANIA INCREASED
7 THE CAPACITY, THE OPERABLE CAPACITY, OF ITS PRISONS BY
8 INCREASING INFRASTRUCTURE, SPACE GENERALLY, TREATMENT SPACE, AND
9 THE LIKE, CORRECT?

10 A YES.

11 Q DO YOU KNOW WHETHER OTHER STATES HAVE INCREASED CAPACITY IN
12 A SIMILAR MANNER?

13 A NOT SPECIFICALLY, NO. I HAVEN'T REALLY LOOKED AT WHAT OTHER
14 STATES HAVE DONE DIRECTLY IN THAT, THE WHOLE INFRASTRUCTURE
15 THING. I WOULD ASSUME MANY STATES HAVE DONE THAT, BUT I DON'T
16 KNOW.

17 Q DO YOU BELIEVE THAT CALIFORNIA COULD INCREASE ITS OPERABLE
18 CAPACITY IN A SIMILAR MANNER AS PENNSYLVANIA DID?

19 A I THINK THE PROBLEM THAT I -- OR THE CONCERN I WOULD HAVE IS
20 THE FACT THAT YOU ARE DEALING WITH THESE MEGA PRISONS. IN THE
21 FIRST PLACE, THE PRISONS ARE SO LARGE THAT, YOU KNOW, EVEN IF
22 YOU WERE TO PUT IN THE INFRASTRUCTURE AND EVERYTHING SO YOU CAN
23 HANDLE THINGS, IT'S STILL VERY, VERY DIFFICULT TO MANAGE, AND
24 THAT IN AND OF ITSELF CAN BE A PROBLEM.

25 JUDGE KARLTON: IN THAT REGARD, WHEN YOU INCREASE

1 CAPACITY, SPACE, THAT IS HAVE BETTER BEDS, YOU'VE GOT TO HAVE --
2 I WAS ABOUT TO TELL YOU INSTEAD OF ASK YOU. DO YOU ALSO TO HAVE
3 TO HAVE AN INCREASE IN ALL OF THE SUPPORT FACILITIES, MEDICAL,
4 MENTAL, GUARDS FIRST OF ALL AND AS YOU SAY FOOD SERVICES,
5 LAUNDRY, ET CETERA?

6 **THE WITNESS:** YES, ABSOLUTELY, YOUR HONOR. I MEAN,
7 YOU KNOW, WHILE WE HAVE PUT IN-FILL BEDS IN SOME OF OUR OLDER
8 INSTITUTIONS, AS I TESTIFIED TO, WE ALSO BUILT OTHER FACILITIES
9 TO TAKE CARE OF THESE OTHER -- THESE OTHER THINGS SO WE COULD
10 PROPERLY DEAL WITH THE INMATES AND SO CALIFORNIA COULD DO THAT,
11 THEY COULD BUILD IN-FILL BEDS. THEY COULD ALSO BUILD LARGE
12 TREATMENT BUILDINGS AND BIGGER KITCHENS AND BIGGER DINING ROOMS.

13 THAT'S NOT THE WAY I WOULD GO ABOUT IT, SIMPLY
14 BECAUSE THEY'RE SO LARGE THAT IT'S VERY DIFFICULT TO MANAGE A
15 FACILITY OF THAT SIZE, AND THAT IN AND OF ITSELF COULD CAUSE
16 PROBLEMS, BUT BEING THAT THEY HAVE THOSE LARGE FACILITIES,
17 CERTAINLY THEY COULD DO THAT. CERTAINLY, IF THEY WANT TO SPEND
18 MILLIONS OF DOLLARS TO UPGRADE THESE OLDER FACILITIES, THEY
19 COULD DO THAT.

20 **JUDGE KARLTON:** SIR, THE --

21 **JUDGE REINHARDT:** I'M SORRY. GO AHEAD.

22 **JUDGE KARLTON:** WE'VE HAD TESTIMONY ABOUT SHORTFALL
23 IN PRISON GUARDS PRESENTLY. I'VE NOT UNDERSTOOD WHY THAT IS SO,
24 BUT I WANT YOU TO ASSUME FOR A MOMENT THAT THAT IS THE CASE.
25 HOW DOES THAT RELATE TO THE NEEDS IF YOU IN-FILL? VERY BAD

1 QUESTION. DO YOU UNDERSTAND WHAT I'M ASKING YOU?

2 **MR. MELLO:** YOUR HONOR, MAY I, JUST FOR THE RECORD
3 AND RESPECTFULLY, INTERPOSE AN OBJECTION THAT I BELIEVE THAT MAY
4 MISSTATE THE RECORD IN THE CASE.

5 **JUDGE KARLTON:** OKAY. THAT'S NOTED.

6 ASSUME THAT FOR A MOMENT, SIR.

7 **THE WITNESS:** WELL, IF YOU PUT A NEW HOUSING UNIT IN,
8 IT DEPENDS HOW YOU'RE SUPERVISING THOSE OTHER INMATES, YOU MAY
9 BE ABLE TO MOVE THE STAFF JUST OVER TO THAT OTHER PLACE BECAUSE
10 NOW THIS IS GOING TO BE PROGRAM SPACE. SO IT DOESN'T
11 NECESSARILY INCREASE YOUR STAFFING NEEDS. YOU'D HAVE TO TAKE A
12 LOOK AT THE FACILITY.

13 WHAT I WOULD SAY IS GENERALLY, THOUGH, ONE OF THE
14 REASONS WHY I LIKE THE IDEA OF BUILDING NEWER INSTITUTIONS AND
15 SEPARATE ONES IS BECAUSE YOU CAN BUILD THEM MUCH CHEAPER. THEY
16 CAN BE MUCH MORE COST EFFICIENT. THE OLDER FACILITIES REQUIRE
17 MORE STAFF TO OPERATE THEM.

18 **JUDGE KARLTON:** AT LEAST SOME OF THE TESTIMONY THAT
19 WE'VE HEARD, DESPITE MR. MELLO'S OBJECTIONS, TALKS ABOUT TWO
20 GUARDS IN HUGE GYMNASIUMS WITH THREE-LEVEL BUNKS AND SO FORTH.
21 YOU COULDN'T JUST MOVE THAT BECAUSE IT'S INADEQUATE, NOW YOU'D
22 STILL HAVE TO STAFF UP EVEN IF YOU BUILT THESE NEW FACILITIES?

23 **THE WITNESS:** YES, IF YOU BUILT NEW HOUSING UNITS,
24 YOU WOULD PROBABLY NEED MORE THAN TWO OFFICERS TO REPLACE, TO DO
25 THE SUPERVISION OF WHAT'S BEING DONE IN THOSE LARGE -- LARGE

1 GYMS. I'VE READ SOME OF THAT, TOO. I'VE ALSO HEARD THEY HAVE
2 DONE A BETTER JOB AT FILLING SOME OF THEIR CORRECTION OFFICER
3 POSITIONS MORE RECENTLY.

4 **JUDGE KARLTON:** IS THERE -- I JUST REALIZED I DON'T
5 THINK ANYBODY HAS EVER TOLD US: IS THERE A FORMULA FOR HOW MANY
6 GUARDS YOU NEED PER PRISONER, OR IS THAT SORT OF AS BEST YOU CAN
7 DO OR WHAT --

8 **THE WITNESS:** NO, THERE'S NOT A SPECIFIC FORMULA.
9 THERE'S A NUMBER OF THINGS THAT YOU HAVE TO TAKE INTO ACCOUNT.
10 NUMBER ONE, WHAT'S THE SECURITY LEVEL OF THE INSTITUTION? THE
11 HIGHER THE SECURITY LEVEL, THE MORE STAFF YOU NEED; THE LOWER
12 THE SECURITY LEVEL, THE LESS STAFF YOU NEED.

13 THE OTHER THING IS WHAT IS THE DESIGN, HOW IS THE
14 FACILITY DESIGNED? WHAT IS THE LAYOUT OF THE FACILITY? SOME
15 FACILITIES, PARTICULARLY OLDER FACILITIES, ARE SO CHOPPED UP, OR
16 THEY HAVE MULTIPLE TIERS, THESE HIGH FOUR, FIVE-TIER HIGH CELL
17 BLOCKS, THEY REQUIRE A LOT MORE STAFF THAN THE NEWER HOUSING
18 UNITS THAT ARE MORE A BUTTERFLY-SHAPED UNIT WHERE AN OFFICER CAN
19 STAND IN THE MIDDLE AND BASICALLY SEE EVERYTHING, WHERE YOU
20 CAN'T IN THESE OLDER HOUSING UNITS.

21 WHAT YOU HAVE TO DO IS DECIDE WHAT A PARTICULAR
22 FACILITY NEEDS. YOU HAVE TO GO INTO THAT FACILITY AND EVALUATE
23 EACH LOCATION IN THAT FACILITY BASED ON THE CONSTRUCTION OF THE
24 FACILITY AND BASED ON THE SECURITY LEVEL OF THAT FACILITY, AND
25 THEN YOU DECIDE WHAT THE MANPOWER -- WE DO THAT IN OUR

1 INSTITUTIONS, AND EVERY THREE YEARS GO BACK AND REEVALUATE THAT
2 AND COME UP WITH A MANPOWER FOR THAT FACILITY BASED ON JUST WHAT
3 I SAID, BY LOOKING AT THOSE THINGS.

4 AND IF PROGRAMS -- YOU KNOW, PROGRAMS THEY COULD
5 DRIVE IT AS WELL. YOU KNOW, YOU HAVE MORE PROGRAMS, YOU MAY
6 NEED MORE STAFF TO SUPERVISE SOME OF THE PROGRAMS. SO ALL OF
7 THAT HAS TO BE TAKEN INTO ACCOUNT TO DECIDE WHAT THE STAFFING OF
8 A GIVEN FACILITY IS.

9 **BY MR. MELLO**

10 **Q** SECRETARY BEARD, ARE YOU AWARE OF CALIFORNIA'S PROGRAMS --
11 PROGRAM TO TRANSFER INMATES OUT OF STATE TO REDUCE SOME OF THOSE
12 NON-TRADITIONAL BEDS?

13 **A** I AM, YES.

14 **Q** AND ARE YOU AWARE THAT THEY'RE ON TRACK TO TRANSFER
15 APPROXIMATELY 8,000 INMATES OUT OF STATE?

16 **A** EIGHT THOUSAND, YES. I THINK THEY'RE UP TO 6,000 OR SO THE
17 LAST I LOOKED.

18 **Q** OKAY. SECRETARY BEARD, I BELIEVE YOU TESTIFIED THAT
19 PENNSYLVANIA SYSTEM IS OPERATING AT 114 TO 115 OF OPERABLE --
20 PERCENT OF OPERABLE CAPACITY, CORRECT?

21 **A** YES, YES.

22 **Q** SECRETARY BEARD, DO YOU KNOW WHAT PERCENTAGE OVER OPERABLE
23 CAPACITY CALIFORNIA PRISONS ARE OPERATING AT?

24 **A** I DON'T BECAUSE I'VE NEVER GONE OUT AND EVALUATED WHAT THEIR
25 OPERABLE CAPACITY IS, AND I AM NOT AWARE THAT I'VE READ ANYTHING

1 THAT ANYBODY HAS EVER DONE THAT.

2 MR. MELLO: THANK YOU. NOTHING FURTHER.

3 JUDGE HENDERSON: INTERVENORS?

4 MR. MITCHELL: YES, THANK YOU.

5 CROSS-EXAMINATION BY MR. MITCHELL

6 BY MR. MITCHELL

7 Q GOOD MORNING.

8 A GOOD MORNING.

9 Q BILL MITCHELL FOR THE DEFENDANT INTERVENORS, SECRETARY.

10 A HI.

11 Q THE LEGISLATION YOU SPOKE ABOUT ON DIRECT EXAMINATION WITH
12 MR. SPECTER, HAS THAT ALREADY PASSED, OR IS THAT PENDING?

13 A IT HAS PASSED.

14 Q DO YOU HAVE OTHER LEGISLATION THAT'S ALSO PENDING IN THE
15 STATE OF PENNSYLVANIA?

16 A NOT RIGHT NOW, NOT POPULATION REDUCTION KIND OF LEGISLATION,
17 NO. WE JUST PASSED -- THE PACKAGE JUST WAS SIGNED INTO LAW,
18 AND, ACTUALLY, SOME OF IT STARTED TO TAKE EFFECT. IT WAS ABOUT
19 60 -- A LITTLE OVER 60 DAYS AGO.

20 Q DO YOU HAVE ANY PENDING LEGISLATION THAT HOUSE SPEAKER
21 O'BRIEN IS PREPARING THAT WOULD CONTAIN ANY EARLY RELEASE
22 PROVISIONS?

23 A ANY WHAT?

24 Q EARLY RELEASE PROVISIONS.

25 A WELL, WHAT YOU'RE TALKING ABOUT, SPEAKER O'BRIEN, IS HOUSE

1 BILL 4, WHICH I WORKED WITH HIM ON THAT. THAT'S PART OF THE
2 PACKAGE OF BILLS THAT HAS PASSED AND BEEN SIGNED INTO LAW.

3 Q YOUR PRISON POPULATION IS GOING IN PENNSYLVANIA RIGHT NOW,
4 CORRECT?

5 A YES.

6 Q MR. MELLO ASKED YOU A QUESTION ABOUT A SPIKE IN THE PRISON
7 POPULATION. IN FACT, IN OCTOBER, IS IT TRUE THAT THERE WAS AN
8 INCREASE IN THE PRISON POPULATION IN PENNSYLVANIA OF OVER A
9 THOUSAND INMATES?

10 A YES.

11 Q MR. MELLO ASKED YOU WHAT THE CAUSE OR THE REASON FOR THE
12 SPIKE WAS, IN YOUR OPINION. DO YOU HAVE AN EXPLANATION AS TO
13 WHY YOU'RE SEEING A SPIKE?

14 A WELL, THE SPIKE THAT OCCURRED OCCURRED BEFORE THE GOVERNOR
15 PUT A PAROLE MORATORIUM ON FOR TWO MONTHS. IT'S BEEN TAKEN OFF
16 AT THAT PARTICULAR POINT, AND HE DID THAT BECAUSE TWO PAROLEES
17 IN A TWO-MONTH PERIOD OF TIME -- AND THESE WERE VIOLENT
18 OFFENDERS, NOW; THEY HAD BEEN IN PRISON FOR VIOLENT OFFENSES AND
19 HAD BEEN RELEASED ON PAROLE -- SHOT TWO PHILADELPHIA POLICE
20 OFFICERS IN A TWO-MONTH PERIOD OF TIME, AND THE PEOPLE IN
21 PHILADELPHIA FROM WHERE THE GOVERNOR CAME FROM WERE CONCERNED,
22 AND HE'S RESPONSIBLE FOR PUBLIC SAFETY. I THINK HE FELT HE
23 NEEDED TO PUT A MORATORIUM ON UNTIL HE COULD HAVE AN EXPERT,
24 DR. GOLDCAMP FROM TEMPLE UNIVERSITY, TAKE A LOOK AT THE PAROLE
25 SYSTEM AND THE CORRECTION SYSTEM AND SEE IF WE WERE DOING WHAT

1 WE SHOULD BE DOING. AND DR. GOLDCAMP HAS RELEASED HIS SECOND
2 REPORT AND BASICALLY FOUND BOTH THE CORRECTIONS AND PAROLE
3 SYSTEM ARE FOLLOWING BEST PRACTICES AND STATE OF THE ART IN
4 DEALING WITH PAROLEES, AND HE RECOMMENDED THE RESTORATION OF
5 PAROLE IN PENNSYLVANIA. HE MADE SOME OTHER RECOMMENDATIONS THAT
6 COULD MAYBE HELP IMPROVE THINGS.

7 YOU KNOW THAT'S SOMETHING WE ARE ALWAYS TRYING TO DO.
8 AS I SAID ON THE DIRECT EXAMINATION, WE'RE NOT THERE AND WE'RE
9 NEVER GOING TO BE THERE PERFECTLY. THIS IS A MOVING THING. YOU
10 GOT TO CONSTANTLY KEEP WORKING TO GET BETTER, AND WE DO THAT.
11 WE'RE OUT THERE LOOKING AT THE RESEARCH, SEEING WHAT OTHER
12 PEOPLE ARE DOING. WE'RE RESEARCHING OUR OWN STUFF VERY CLOSELY
13 TO MAKE SURE WE HAVE THE IMPACTS WE WANT TO HAVE. I THINK
14 DR. GOLDCAMP SAW THAT, AND THAT'S WHY HE WAS NOT CONCERNED WITH
15 THE SYSTEM THAT WE HAVE IN PLACE.

16 I'M HOPING OVER THE NEXT TWO OR THREE MONTHS THAT THE
17 SPIKE THAT WE HAD, THAT LITTLE BUBBLE OF EXTRA INMATES, WILL
18 COME BACK DOWN, AND, YOU KNOW, WE'LL STILL KEEP GROWING BECAUSE
19 WE WERE GROWING, BUT, HOPEFULLY, NOW THIS NEW LEGISLATION THAT
20 WE HAVE WILL HELP MODERATE THAT SOME AS WELL AS THAT STARTS
21 TAKING EFFECT.

22 **Q** ASIDE FROM THE SPIKE DUE TO THE MORATORIUM, PRISON
23 POPULATION HAS BEEN GROWING BY ABOUT 200 INMATES PER MONTH?

24 **A** NO, IT -- THAT'S NOT TRUE. IT DEPENDS WHAT PERIOD OF TIME
25 YOU LOOK AT. THESE THINGS VARY. OUR LATEST LOOK, IF YOU LOOK

1 OVER THE LAST YEAR OR SO, HAS BEEN ABOUT 150 A MONTH, IF YOU
2 DON'T TAKE THAT SPIKE INTO ACCOUNT.

3 THE GROWTH RATE WAS ABOUT 150 A MONTH, AND PART OF
4 THAT -- LET ME SAY PRIOR TO THAT IT WAS 120 A MONTH. THE YEAR
5 PRIOR TO THAT IT WENT TO ABOUT 150 A MONTH AFTER THE SHOOTING OF
6 THE FIRST POLICE OFFICER, BECAUSE PAROLE, WHICH IS A SEPARATE
7 AGENCY, SLIGHTLY CHANGED THEIR PRACTICES AS A RESULT OF THE
8 FIRST SHOOTING, AND WERE RELEASING LESS PEOPLE.

9 BUT, AGAIN, THE PEOPLE THAT WE'RE TALKING ABOUT HERE
10 ARE VIOLENT OFFENDERS AND NOT THE PEOPLE THAT WE'RE TALKING
11 ABOUT DIVERTING, NOT THESE LESS SERIOUS PROPERTY AND DRUG
12 OFFENDERS.

13 Q YOU HAVE RECENTLY ASKED FOR MONEY FROM THE LEGISLATURE TO
14 BUILD THREE NEW PRISONS, CORRECT?

15 A YES.

16 Q AND EXPAND OTHERS?

17 A YES. THAT'S PART OF OUR WHOLE STRATEGY TO DEAL WITH THE
18 CONTINUING GROWTH IN THE POPULATION. BUT, ACTUALLY, I'M
19 HOPEFUL, AND I'VE TOLD THE LEGISLATURE IF THEY PASS THAT
20 LEGISLATION -- WHAT I TOLD THE LEGISLATURE, IF THEY DIDN'T PASS
21 THE LEGISLATION, I NEEDED THREE NEW PRISONS, AND THEN IN 2012 I
22 NEEDED ONE NEW PRISON A YEAR EACH YEAR THEREON; AND IF THEY DID
23 PASS THE LEGISLATION, I COULD PROBABLY GET AWAY WITH ONE OR TWO
24 NEW PRISONS AND PUT OFF THE OUT YEAR CONSTRUCTION OF PRISONS.

25 THAT'S WHAT I TOLD THEM. IT WAS PART OF WHAT I USED

1 TO HELP GET THE LEGISLATION THROUGH, THAT THEY COULD HELP
2 MODERATE GROWTH ENOUGH, AND PERHAPS EVEN FLATTEN THE GROWTH OUT,
3 BY PASSING THAT LEGISLATION, AND WE'RE STILL ON TRACK TO DO
4 THIS. THIS PAROLE MORATORIUM PUT A LITTLE BUBBLE THERE AS SOON
5 AS WE GET THAT OUT. WE'RE STILL ON TRACK TO, HOPEFULLY, NOT
6 HAVE TO BUILD MORE THAN TWO NEW PRISONS.

7 **Q** BUT WITH THE OPENING OF SCI PITTSBURGH IN 2005, YOU HAVE A
8 TOTAL OF 27 PRISONS RIGHT NOW IN PENNSYLVANIA, CORRECT?

9 **A** YES.

10 **Q** NOW, YOU'VE EMBARKED ON PLANS AND HAVE NEW LEGISLATION
11 LOOKING FOR ALTERNATIVE PUNISHMENT FOR LOW-LEVEL NONVIOLENT
12 OFFENDERS, CORRECT?

13 **A** ARE YOU TALKING ABOUT THE LEGISLATION?

14 **Q** YES.

15 **A** THE RISK REDUCTION INITIATIVE AND STUFF?

16 **Q** THAT'S HOW YOU ARE SEEKING TO CONTROL YOUR PRISON
17 POPULATION, IS TO COME UP WITH INTERMEDIATE SANCTIONS, LESSER --

18 **A** YES.

19 **Q** -- ALTERNATIVES TO PRISON FOR YOUR LOW-LEVEL VIOLATORS,
20 CORRECT?

21 **A** RIGHT. WE ARE LOOKING AT A NUMBER OF THINGS. INCREASING
22 FRONT END DIVERSION, WHICH I TALKED ABOUT, TRYING TO DO SOME
23 FORMULA-BASED THINGS.

24 WE ARE LOOKING AT LEGISLATION, LOOKING AT THE STOCK
25 POPULATION, REDUCING LENGTH OF STAY WITHIN THE SYSTEM, AT THE

1 BACK END. WE'RE WORKING WITH THE PAROLE BOARD ON THE TECHNICAL
2 PAROLE VIOLATORS. IT WAS A MULTI-FACETED THING WE WERE LOOKING
3 AT.

4 **Q** WHAT PERCENTAGE OF YOUR PRISON POPULATION IN PENNSYLVANIA IS
5 VIOLENT OFFENDERS?

6 **A** PROBABLY -- PROBABLY ABOUT 60 PERCENT, I THINK.

7 **JUDGE KARLTON:** MAY I INTERRUPT FOR JUST A MOMENT?
8 I'M REALLY PUZZLED. EXPERTS KEEP COMING IN AND TELLING US THAT
9 THE CRIME RATE IS REDUCING ALL OVER THE COUNTRY, GOING DOWN
10 EVERYWHERE, YET, AT THE SAME TIME, THE PRISON POPULATIONS ARE
11 INCREASING. I MEAN, I GATHER IT'S MOSTLY JUDGES' FAULT, BUT I
12 DON'T KNOW. HOW IS THAT POSSIBLE?

13 **THE WITNESS:** WELL, THE REASON THAT THE PRISON
14 POPULATIONS ARE GOING UP IS BECAUSE OF THE LAWS THAT WE'VE
15 PASSED OVER THE YEARS. WE DID IT IN PENNSYLVANIA. WE HAVE
16 MANDATORY SENTENCES. SO FOR CERTAIN CRIMES, YOU HAVE THESE
17 MANDATORY SENTENCES.

18 WE JUST PASSED A LAW THAT IF YOU POINT -- IF YOU
19 SHOOT A GUN AT A POLICE OFFICER, IT'S A MANDATORY TEN YEARS,
20 JUST THAT ALONE. AND BEFORE IT WAS A MANDATORY FIVE YEARS. SO
21 THAT'S NOT GOING TO AFFECT OUR POPULATION FOR THE FIRST FIVE
22 YEARS, BECAUSE THAT ALREADY EXISTED, BUT AS WE GET IN THE OUT
23 YEARS, WE ARE GOING TO SEE MORE OF A PROBLEM. SO IT'S THESE
24 SENTENCES THAT ARE PUTTING PEOPLE IN JAIL FOR LONGER AND LONGER
25 PERIODS OF TIME, YOUR HONOR.

1 **JUDGE KARLTON:** I'M HAPPY TO SAY IT'S NOT THE JUDGES;
2 IT'S THE LEGISLATORS.

3 **BY MR. MITCHELL**

4 **Q** YOU ARE FAMILIAR WITH SOME OF THE STUDIES THAT JOHN
5 PETERSILIA HAS PRODUCED, CORRECT?

6 **A** I'VE READ SOME OF DR. PETERSILIA'S STUDIES, YES.

7 **Q** ONE OF THOSE WAS, I BELIEVE, "UNDERSTANDING CALIFORNIA
8 CORRECTIONS"?

9 **A** I DON'T KNOW IF I READ THAT SPECIFIC ONE. IF I DID, IT WAS
10 SOME TIME AGO.

11 **Q** GENERALLY SPEAKING, PRISON POPULATION INCREASES ARE
12 ATTRIBUTABLE TO INCREASES IN THE POPULATION OF THE COMMUNITIES
13 THAT HAVE THE PRISONS, CORRECT? AS POPULATION GOES UP,
14 CRIMINALS -- THE NUMBER OF CRIMINALS GO UP, AND PRISON
15 POPULATION GOES UP, CORRECT?

16 **A** AS YOU EXPAND THE AT-RISK POPULATION, YOU KNOW, YES, YOU
17 WOULD GET MORE PEOPLE THAT WOULD GO TO JAIL.

18 **Q** NOW, YOU INDICATED THAT YOU'RE TRYING TO MODEL SOME OF YOUR
19 PROGRAMS AFTER WHAT WAS DONE IN NEW YORK?

20 **A** YES.

21 **Q** TO LOWER THEIR PRISON POPULATION?

22 **A** YES.

23 **Q** PRIOR TO NEW YORK LOWERING THEIR PRISON POPULATION, THEY HAD
24 THE STRICTEST, OR PERHAPS ONE OF THE STRICTEST, LAWS OR SERIES
25 OF LAWS DEALING WITH DRUG OFFENDERS, CORRECT?

1 **A** THE ROCKEFELLER LAWS.

2 **Q** SO THEY HAD A HUGE PRISON POPULATION OF DRUG OFFENDERS?

3 **A** YES.

4 **Q** THAT THEY COULD INSTITUTE NEW POLICIES AND PROCEDURES AND
5 PROGRAMS FOR AND REDUCE THAT POPULATION, BOTH FROM THE PRISON
6 AND AT THE FRONT END DIVERTING THEM?

7 **A** THAT'S CORRECT.

8 **Q** DOES PENNSYLVANIA HAVE A SIMILAR POPULATION THAT IT CAN WORK
9 WITH THAT ARE DRUG OFFENDERS?

10 **A** ABOUT 33 PERCENT OF THE PEOPLE THAT WE RECEIVE IN OUR SYSTEM
11 EVERY YEAR COMES IN WITH 12 MONTHS OR LESS TO SERVE, AND THE
12 VAST MAJORITY OF THOSE PEOPLE WOULD BE LESS SERIOUS OFFENDERS.
13 SO WHILE THE STOCK POPULATION HAS MORE VIOLENT OFFENDERS BECAUSE
14 THEY STAY FOR LONGER PERIODS OF TIME, WE HAVE A HUGE AMOUNT OF
15 THESE SHORTER SENTENCED PEOPLE, THESE PROPERTY AND DRUG
16 OFFENDERS, THAT ARE CHURNING THROUGH OUR SYSTEM, WHICH IS WHY
17 WE'RE FOCUSING ON TRYING TO DEAL WITH THOSE PEOPLE AND TRYING TO
18 REDUCE THE RECIDIVISM RATES AMONG THOSE PEOPLE.

19 **Q** DID PENNSYLVANIA HAVE SIMILAR STRICT DRUG LAWS?

20 **A** NOT AS STRICT AS WHAT NEW YORK HAD, NO, NOTHING NEAR WHAT
21 THE ROCKEFELLER LAWS DID. I CAN'T SIT AND TELL YOU A
22 COMPARISON. I JUST KNOW WE DO HAVE MANDATORY SENTENCES, AND
23 THEY HAVE BEEN APPLIED TO SOME DRUG OFFENSES, AND THAT DOES
24 DRIVE SOME OF THE POPULATION, BUT NOT AS SERIOUS AS WHAT NEW
25 YORK'S WAS.

1 Q NOW, IN PENNSYLVANIA YOU HAVE A SEPARATE BOARD OF PROBATION
2 AND PAROLE SEPARATE FROM THE DEPARTMENT OF CORRECTIONS?

3 A YES.

4 Q AND INMATES MUST SEEK PAROLE; THEY DON'T HAVE AUTOMATIC
5 PAROLE LIKE WE HAVE IN CALIFORNIA, CORRECT?

6 A THAT'S CORRECT. IT'S A DISCRETIONARY RELEASE.

7 Q INMATES HAVE TO APPLY FOR PAROLE AND COME UP WITH AN
8 EMPLOYMENT AND HOUSING PLAN TO GET PERMISSION TO BE RELEASED
9 FROM PRISON, CORRECT?

10 A THEY'RE SUPPOSED TO HAVE A HOME PLAN. MANY OF THEM GET
11 RELEASED, AND THEY DON'T HAVE JOBS, BUT YES.

12 Q YOU'RE SEEKING TO CHANGE THAT TO SOME DEGREE WITH SOME OF
13 YOUR NEW PROPOSALS TO GIVE PAROLEES A MORE DEFINITE LESSER TERM,
14 KNOWING THAT THEY WILL GET OUT AT A CERTAIN POINT IN THE EVENT
15 THAT THEY --

16 A THOSE PEOPLE DEFINED IN THAT LESS SERIOUS GROUP, YES.

17 Q SO YOU ARE SEEKING TO BECOME MORE OF A DETERMINATE
18 SENTENCING TYPE OF PROGRAMMING RATHER THAN THE INDETERMINATE
19 THAT YOU HAVE NOW?

20 A IT STILL ISN'T GOING LIKE YOUR DETERMINATE. THEY'RE STILL
21 GOING TO HAVE A MINIMUM AND A MAXIMUM SENTENCE, WITH THE
22 EXCEPTION OF THAT STATE INTERMEDIATE PUNISHMENT PROGRAM THAT I
23 TOLD YOU ABOUT, WHICH IS A FLAT TWO YEARS.

24 Q GOING BACK TO THE PRISON POPULATION IN PENNSYLVANIA, I SAW
25 ONE STATISTIC THAT SAID YOU WERE THE THIRD FASTEST PRISON

1 POPULATION RISING STATE BEHIND FLORIDA AND NORTH CAROLINA AMONG
2 THE TEN LARGEST POPULATION STATES. DO YOU REMEMBER SEEING A
3 STATISTICAL LIKE THAT?

4 **A** NO, NO. I KNOW AT ONE TIME WE DID HAVE SOME FAIRLY DRAMATIC
5 GROWTH AT SOME PERIODS ALONG THE WAY. YOU KNOW, THESE GROWTH
6 PATTERNS DO SEEM TO FLUCTUATE. SOMETIMES IT LOOKS LIKE YOU ARE
7 GOING TO FLATTEN OUT, AND ALL OF A SUDDEN IT TAKES OFF AGAIN.
8 IT REALLY DEPENDS WHAT TIME PERIOD YOU ARE TALKING ABOUT. THAT
9 MAY HAVE BEEN ACCURATE DURING THAT PARTICULAR TIME PERIOD.
10 PROBABLY WOULDN'T BE ACCURATE TODAY. BUT IT WAS PROBABLY
11 ACCURATE AT WHATEVER TIME PERIOD THAT WAS.

12 **Q** STATISTICS SHOW FROM THE DEPARTMENT OF CORRECTIONS THAT OF
13 5,434 PAROLEES THAT WERE RECOMMITTED IN 2006, 70 PERCENT OF
14 THOSE WERE SENT BACK TO TECHNICAL PAROLE VIOLATIONS.

15 **A** THAT'S --

16 **Q** IS THAT ABOUT CORRECT?

17 **A** BACK BEFORE THEY GOT THE MATRIX RUNNING AND EVERYTHING, YES,
18 THEY WERE, PROBABLY AROUND 70 PERCENT WERE TECHNICAL VIOLATORS.
19 ABOUT 3,800 OR SO OF THOSE PEOPLE IT SEEMS TO ME WERE PROBABLY
20 TECHNICAL VIOLATORS.

21 **Q** SO YOUR PAROLE MATRIX HAS BEEN IMPLEMENTED FOR ABOUT TWO
22 YEARS?

23 **A** PAROLE'S PAROLE MATRIX HAS BEEN IN PLACE FOR ABOUT TWO OR
24 THREE YEARS.

25 **Q** DOES PENNSYLVANIA HAVE THE SAME OR SIMILAR PROBLEMS WITH

1 PRISON GANGS THAT CALIFORNIA HAS?

2 **A** NO.

3 **Q** DOES PENNSYLVANIA USE DORMITORY-STYLE HOUSING FOR ITS
4 INMATES?

5 **A** VERY LITTLE. WE HAVE DORMITORIES, YES, BUT WE ARE MOSTLY
6 CELLS, AND THE INSTITUTIONS -- THERE'S MAYBE A DORMITORY IN EACH
7 OF OUR FACILITIES, A SMALLER DORMITORY OR TWO, TO HANDLE THE
8 MINIMUM SECURITY INMATES. BUT SHORT OF THAT, WE -- EVERYTHING
9 ELSE IS CELLS.

10 **Q** WHAT ARE THE SIZE OF YOUR DORMITORY FOR MINIMUM SECURITY IN
11 THIS CASE?

12 **A** PROBABLY THE BIGGEST WE HAVE RUNS ABOUT 190, 200, I THINK.

13 **Q** WE'VE BRIEFLY DISCUSSED PREVIOUSLY THE SB 618 PROGRAM THAT'S
14 BEING IMPLEMENTED DOWN IN SAN DIEGO. YOU ARE FAMILIAR WITH
15 THAT, SIR?

16 **A** I AM FAMILIAR WITH THAT, YES.

17 **Q** DO YOU AGREE THAT IS A -- THAT TYPE OF PROGRAM HAS GREAT
18 POTENTIAL FOR REDUCING RECIDIVISM?

19 **A** ABSOLUTELY. I WOULD FULLY SUPPORT A PROGRAM LIKE THAT 618
20 IN SAN DIEGO. IT'S AN EXCELLENT PROGRAM. I MEAN, THEY'RE DOING
21 THE RISK AND NEEDS RIGHT UP FRONT IN THE COUNTY. I'M HOPING --
22 THEY EVEN HAVE THAT AVAILABLE FOR THE JUDGE. IT'S GREAT IF YOU
23 CAN DO THAT KIND OF ASSESSMENT SO THE JUDGE HAS IT AT
24 SENTENCING.

25 AND THEY'RE WORKING CLOSELY WITH THE CALIFORNIA

1 DEPARTMENT OF CORRECTIONS, GETTING THESE PEOPLE AND DEVELOPING A
2 REENTRY PROGRAM RIGHT UP FRONT, GETTING THEM THROUGH THEIR
3 PROGRAMS IN THE PRISON, GETTING THEM BACK OUT, KEEPING THEM
4 LOCALLY. THEY DON'T EVEN GO TO THE RECEPTION CENTERS. I THINK
5 THEY GO AND DO THE RECEPTION CENTER WORK IN COUNTY JAIL. THEN
6 THEY SEND THEM TO THE PRISON THAT'S A LOCAL PRISON. THEN THEY
7 KEEP IN CLOSE CONTACT WITH THEM. THEY ACTUALLY TRANSPORT BACK
8 OUT. THEY GIVE THEM THESE SERVICES WE TALKED ABOUT. I'M FULLY
9 SUPPORTIVE OF A PROGRAM LIKE THAT.

10 Q YOU WOULD AGREE THEN THAT THAT IS A WAY TO ENSURE PUBLIC
11 SAFETY WHILE REDUCING THE PRISON POPULATION?

12 A THAT IS CERTAINLY ONE WAY THAT CAN IMPROVE PUBLIC SAFETY AND
13 REDUCE THE PRISON POPULATION, NO QUESTION THAT FITS IN WITH THE
14 KINDS OF THINGS THE EXPERT PANEL TALKED ABOUT, THE KINDS OF
15 THINGS DR. AUSTIN TALKED ABOUT, AND THE KINDS OF THINGS THAT I
16 WOULD SUPPORT.

17 Q ONE OF THE THINGS YOU WOULD NOT SUPPORT IS SIMPLE EARLY
18 RELEASE WITHOUT ANY PROGRAMMING OR WITHOUT ANY INCREASE IN
19 RESOURCES TO PROVIDE FOR THE INDIVIDUALS BEING RELEASED TO THE
20 COMMUNITY CORRECT?

21 A I WOULD SAY THAT'S GENERALLY SOMETHING THAT I DON'T CARE FOR
22 THAT AS MUCH, BECAUSE IT DOESN'T IMPROVE PUBLIC SAFETY. BUT AS
23 WE TALKED ABOUT, I THINK ADDRESSING MY DIRECT, THE RESEARCH SAYS
24 IT DOESN'T REALLY HURT PUBLIC SAFETY. IT DOESN'T INCREASE THE
25 CRIME RATE, DOESN'T INCREASE RECIDIVISM. BUT I REALLY PREFER

1 PROGRAMS THAT ARE DOING THINGS TO HELP IMPROVE THINGS RATHER
2 THAN JUST KEEP THE STATUS QUO. SO I WOULD BE MORE SUPPORTIVE OF
3 THESE OTHER PROGRAMS THAT WE TALKED ABOUT THAN JUST EARLY OR
4 JUST DIRECT RELEASE OF INMATES, YES.

5 Q AT YOUR DEPOSITION AT PAGE 70, YOU STATED -- I WANT TO KNOW
6 IF YOU STILL AGREE WITH THIS, SPEAKING ABOUT EARLY RELEASE
7 PROGRAMS, OR SIMPLE EARLY RELEASE TO LOWER THE PRISON
8 POPULATION, AT LINE NINE:

9 "I DON'T AGREE WITH THOSE KIND OF PROGRAMS,
10 YOU KNOW. I THINK IT SENDS A HORRIBLE MESSAGE
11 TO THE PUBLIC THAT WE CAN'T, YOU KNOW, MEET OUR
12 NEEDS OF WHAT WE'RE DOING."

13 A RIGHT. I STILL AGREE WITH THAT. I THINK IT SENDS A BAD
14 MESSAGE TO THE PUBLIC. I THINK IT SENDS A BAD MESSAGE TO THE
15 VICTIM. BUT ON THE OTHER SIDE, IT DOESN'T HURT THE CRIME RATE
16 OR THE RECIDIVISM RATE BECAUSE YOU ARE ONLY LETTING SOMEBODY OUT
17 A FEW MONTHS EARLY. BUT I WOULD PREFER, AS I SAID ON DIRECT, TO
18 DO THIS WITH SERVICES, IF YOU ARE GOING TO DO IT, OR DO IT IN
19 SOME OTHER DIFFERENT WAY.

20 Q AS YOU SAID ON DIRECT, AND I THINK YOU SAID ALSO AT YOUR
21 DEPOSITION, IT CERTAINLY DOESN'T ENHANCE PUBLIC SAFETY, CORRECT?

22 A NO, IT DOESN'T TO DO THAT. I AGREE WITH THAT.

23 Q IN FACT, WHILE IT DOES NOT INCREASE THE RECIDIVISM RATES OR
24 THE CRIME RATE, YOU ARE AWARE THAT THERE HAVE BEEN STUDIES THAT
25 INDIVIDUALS WHO ARE RELEASED EARLY WILL COMMIT MORE CRIMES

1 DURING THAT WINDOW PERIOD THAN THEY WOULD HAVE BEEN IN CUSTODY
2 HAD THEY NOT BEEN RELEASED EARLY, CORRECT?

3 **A** NO, I'M NOT FAMILIAR WITH PROGRAMS -- WITH THINGS THAT SAY
4 THAT. WHAT I THINK I'M FAMILIAR WITH IS WHAT DR. AUSTIN WAS
5 PROPOSING OR SAYING WAS A POSSIBILITY IN HIS REPORT WHERE, IF
6 YOU LET MORE PEOPLE OUT, YOU INCREASE THE AT-RISK POPULATION
7 EVEN IF THE CRIME RATE DOESN'T GO UP AND THE RECIDIVISM RATES
8 DOESN'T GO UP; YOU MIGHT HAVE A SLIGHT INCREASE IN THE OVERALL
9 NUMBERS CRIME BECAUSE YOU HAVE MORE PEOPLE THAT ARE POTENTIALLY
10 AT RISK. THAT'S WHAT I WOULD SAY IS A POSSIBILITY, WHICH CAN BE
11 MITIGATED BY PROVIDING SERVICES AND RESOURCES.

12 **Q** HAVE YOU SEEN AN ARTICLE ENTITLED, "RELEASING INMATES EARLY
13 HAS A COSTLY HUMAN TOLL," DEALING WITH EARLY RELEASE FROM L.A.
14 COUNTY JAIL AND THE ADDITIONAL CRIMES COMMITTED?

15 **A** NO.

16 **Q** FOR THE RECORD, THAT'S DEFENDANT'S EXHIBIT 1212.

17 SIR, WERE YOU AWARE OF THE EARLY PAROLE OF JAIL
18 INMATES IN PHILADELPHIA THAT SHOWED SUBSTANTIAL NUMBER OF CRIMES
19 COMMITTED BY THAT POPULATION BACK IN 1986 WHEN THEY WERE EARLY
20 RELEASED?

21 **A** NO, I'M NOT FAMILIAR WITH THAT STUDY.

22 **Q** WOULD IT CHANGE YOUR OPINION IF YOU WERE TO KNOW THAT WHEN
23 9,732 INMATES IN PHILADELPHIA WERE RELEASED EARLY DUE TO
24 OVERCROWDING, THAT THEY COMMITTED 79 MURDERS, 90 RAPES, 701
25 BURGLARIES, 959 ROBBERIES AND 2,215 DRUG CRIMES DURING THE TIME

1 THAT THEY SHOULD HAVE BEEN REMAINED IN CUSTODY? WOULD THAT
2 CHANGE YOUR OPINION?

3 **A** I WOULD HAVE TO LOOK AT THE STUDY AND SEE WHAT IT
4 SPECIFICALLY SAYS AND LOOK AT THE WHOLE THING AND WHAT THEY WERE
5 COMPARING IT AGAINST TO KNOW WHETHER IT WOULD HAVE ANY IMPACT ON
6 MY OPINION.

7 **MR. MITCHELL:** THANK YOU. I HAVE NO FURTHER
8 QUESTIONS.

9 **JUDGE HENDERSON:** REDIRECT.

10 **REDIRECT EXAMINATION BY MR. SPECTER**

11 **BY MR. SPECTER**

12 **Q** FIRST QUESTION ABOUT THE PAROLEES WHO SHOT TWO POLICE
13 OFFICERS THAT YOU TESTIFIED ABOUT. DID THAT HAVE ANYTHING TO DO
14 WITH OVERCROWDING OR EARLY RELEASE OR ANYTHING ASSOCIATED WITH
15 SOMETHING OTHER THAN THE NORMAL PAROLE SYSTEM?

16 **A** NO. IN FACT, THE ONE OFFENDER WAS SERVING A SIX TO
17 TWELVE-YEAR SENTENCE AND HAD SERVED TEN OF THE TWELVE YEARS WHEN
18 HE HAD BEEN RELEASED. SO HE CERTAINLY WASN'T RELEASED EARLY.
19 HE WAS RELEASED FAR OVER HIS MINIMUM SENTENCE, AND I THINK THE
20 CONCERN IN THE COMMUNITY WAS, WAS PAROLE PROPERLY SUPERVISING
21 THIS PERSON WHEN HE WAS RELEASED. THAT WAS THE CONCERN.

22 **Q** YOU ARE AWARE FROM YOUR PARTICIPATION IN THE EXPERT PANEL OF
23 THE -- WELL, FROM -- ARE YOU AWARE FROM YOUR PARTICIPATION AS A
24 MEMBER OF THE EXPERT PANEL ABOUT WHETHER OR NOT CALIFORNIA
25 PRISONERS HAVE -- THERE ARE ENOUGH CALIFORNIA PRISONERS WITH

1 SUBSTANCE ABUSE NEEDS TO BENEFIT FROM SUBSTANCE ABUSE
2 PROGRAMMING THAT WOULD HAVE AN EFFECT ON REDUCING THE
3 POPULATION?

4 **A** ABSOLUTELY. YOU KNOW, TYPICALLY, WHAT YOU FIND IS CLOSE TO
5 70 PERCENT OF THE INMATES IN A PRISON SYSTEM, AND I DON'T THINK
6 CALIFORNIA IS ALL THAT DIFFERENT, HAVE SUBSTANCE ABUSE NEEDS.
7 AND WE'VE DONE STUDIES ON SOME OF OUR THERAPEUTIC COMMUNITIES,
8 AND ACTUALLY NOT US, BUT WE WORKED IN PARTNERSHIP WITH
9 PROFESSORS WHO HAVE DONE STUDIES FROM UNIVERSITIES AND FOUND
10 THAT OUR SUBSTANCE ABUSE PROGRAMS SUBSTANTIALLY REDUCED THE
11 RECIDIVISM RATES FOR PEOPLE WHO GOT INVOLVED IN THOSE PROGRAMS.

12 SO VERY HIGH PERCENTAGE OF INMATES HAVE A NEED FOR
13 SUBSTANCE ABUSE PROGRAMS. THOSE PROGRAMS HAVE SHOWN TO BE
14 EFFECTIVE IN REDUCING RECIDIVISM.

15 **MR. SPECTER:** NO FURTHER QUESTIONS.

16 **MR. MELLO:** NOTHING FURTHER HERE.

17 **MR. MITCHELL:** AND NOTHING FURTHER.

18 **JUDGE HENDERSON:** THANK YOU FOR REAPPEARING,

19 DR. BEARD. YOU'RE EXCUSED.

20 **THE WITNESS:** THANK YOU. THANK YOU.

21 **JUDGE HENDERSON:** OKAY. WE'LL TAKE OUR MORNING
22 RECESS FOR 15 MINUTES. COURT'S ADJOURNED.

23 (RECESS TAKEN.)

24 **JUDGE HENDERSON:** YOU MAY CALL YOUR NEXT WITNESS,
25 COUNSEL.

1 **MR. GALVAN:** THANK YOU. PLAINTIFFS CALL JAMES
2 GILLIGAN, M.D.

3 **JAMES GILLIGAN**
4 HAVING BEEN CALLED AS A WITNESS BY THE PLAINTIFFS WAS FIRST
5 DULY SWORN AND EXAMINED AS FOLLOWS:

6 **THE CLERK:** PLEASE HAVE A SEAT AND STATE AND SPELL
7 YOUR FULL NAME FOR THE RECORD.

8 **THE WITNESS:** MY NAME IS JAMES GILLIGAN, SPELLED
9 G-I-L-L-I-G-A-N.

10 **MR. GALVAN:** YOUR HONOR, DR. GILLIGAN'S
11 QUALIFICATIONS ARE SET FORTH IN HIS REPORT, WHICH IS COLEMAN
12 DOCUMENT NUMBER 3170, WHICH WE OFFER INTO EVIDENCE AT THIS TIME.
13 WE ALSO OFFER HIS REBUTTAL REPORT, WHICH IS COLEMAN DOCUMENT
14 3172.

15 IF I MAY QUICKLY LAY THE FOUNDATION FOR HIS
16 EXPERTISE?

17 DR. GILLIGAN IS A BOARD CERTIFIED PSYCHIATRIST AND
18 PROFESSOR AT NEW YORK UNIVERSITY. HE HAS 40 YEARS OF EXPERIENCE
19 IN MENTAL HEALTH TREATMENT IN PRISON, JAILS, MENTAL HOSPITALS,
20 CIVIL MENTAL HOSPITALS, COURT CLINICS, AND COMMUNITY MENTAL
21 HEALTH, AND HIS EXPERIENCE IN ESTABLISHING AND RUNNING THE
22 MASSACHUSETTS PRISON MENTAL HEALTH SERVICES UNDER FEDERAL COURT
23 SUPERVISION AND SERVING AS MEDICAL DIRECTOR OF THE MENTAL HEALTH
24 IN MASSACHUSETTS. HIS SCIENTIFIC RESEARCH FOCUSES ON THE CAUSES
25 AND PREVENTION OF VIOLENCE, INCLUDING IN CALIFORNIA AND

1 INTERNATIONALLY. HE HAS BEEN QUALIFIED AS AN EXPERT IN NUMEROUS
2 PROCEEDINGS REGARDING CORRECTIONAL MENTAL HEALTH AND FORENSIC
3 PSYCHIATRY.

4 AT THIS TIME, THE PLAINTIFFS ASK THE COURT FIND THAT
5 DR. GILLIGAN IS AN EXPERT IN PRISON PSYCHIATRY AND THE PROVISION
6 OF MENTAL HEALTHCARE IN PRISONS, THE CAUSES AND PREVENTION OF
7 VIOLENCE AND THE RELATIONSHIP BETWEEN MENTAL ILLNESS AND
8 VIOLENCE.

9 JUDGE HENDERSON: WE FIND HE IS SO QUALIFIED.

10 DIRECT EXAMINATION BY MR. GALVAN

11 BY MR. GALVAN

12 Q DR. GILLIGAN, YOU WERE ASKED TO FORM AN OPINION ABOUT THE
13 IMPACT ON PUBLIC SAFETY OF A PRISON POPULATION REDUCTION THAT
14 COULD INCLUDE PRISONERS WITH MENTAL ILLNESS. WHAT DID YOU
15 CONCLUDE?

16 A CONCLUDED THAT INCLUDING MENTALLY ILL PRISONERS IN THAT
17 GROUP WOULD POSE NO INCREASED RISK TO PUBLIC SAFETY. THIS IS
18 BASED ON RESEARCH DONE THROUGHOUT THE UNITED STATES AND OTHER
19 COUNTRIES, AS WELL AS SPECIFICALLY IN CALIFORNIA. THERE ARE
20 MANY STUDIES ABOUT RECIDIVISM AMONG MENTALLY ILL AND
21 NON-MENTALLY ILL PAROLEES, AND THE CONSENSUS FROM THESE STUDIES
22 CONSISTENTLY IS THAT THE MENTALLY ILL ARE EITHER NO MORE LIKELY
23 TO COMMIT VIOLENT CRIMES AFTER DISCHARGE, OR ARE SIGNIFICANTLY
24 LESS LIKELY TO COMMIT VIOLENT ACTS WHEN THEY RETURN TO THE
25 COMMUNITY, AS COMPARED WITH NON-MENTALLY ILL PAROLEES.

1 Q WHEN YOU USE THE WORD "RECIDIVISM," HOW DO YOU USE THAT
2 WORD? WHAT DO YOU MEAN BY THAT?

3 A "RECIDIVISM" IS A TERM THAT COULD REFER TO A HUGE VARIETY OF
4 DIFFERENT OUTCOMES. I THINK A DISTINCTION NEEDS TO BE MADE
5 BETWEEN A REVOCATION OF PAROLE FOR, QUOTE, TECHNICAL VIOLATIONS
6 OF PAROLE CONDITIONS, SUCH AS A MENTALLY ILL PAROLEE MISSING AN
7 APPOINTMENT WITH A PSYCHIATRIST, AS COMPARED WITH REVOCATION OF
8 PAROLE BECAUSE THE PAROLEE HAS COMMITTED A NEW CRIME, EITHER A
9 VIOLENT CRIME OR PROPERTY CRIME OR WHATEVER. SO IT'S A TERM
10 THAT'S AMBIGUOUS AND IS OFTEN, I THINK, MISUSED AS IF IT ALWAYS
11 REFERRED TO THE SAME THING.

12 ONE DISTINCTION BETWEEN THE MENTALLY ILL PAROLEES AND
13 THE NON-MENTALLY ILL IN CALIFORNIA SPECIFICALLY, IS THAT THE
14 MENTALLY ILL PAROLEES ARE SIGNIFICANTLY -- THAT'S STATISTICALLY
15 SIGNIFICANTLY LESS LIKELY TO RETURN TO PRISON BECAUSE OF A NEW
16 OFFENSE, THAT IS OF COMMITTING AN ACT THAT COULD BE REGARDED AS
17 A CRIME OR PROSECUTED AS A CRIME, AS COMPARED THE NON-MENTALLY
18 ILL PAROLEES. WHEN THEY DO COMMIT A CRIME, THEY ARE NO MORE
19 LIKELY THAN THE NON-MENTALLY ILL TO COMMIT A VIOLENT CRIME.

20 Q IN THE MATERIAL YOU LOOKED AT REGARDING CALIFORNIA MENTALLY
21 ILL PAROLEES, WERE THERE PARTICULAR TYPES OF REASONS THEY TENDED
22 TO RETURN TO PRISON?

23 A YES. THE MENTALLY ILL PAROLEES WERE SIGNIFICANTLY MORE
24 LIKELY THAN THOSE NON-MENTALLY ILL TO BE RETURNED FOR PURELY
25 TECHNICAL VIOLATIONS, RATHER THAN BEHAVIOR THAT, UNDER OTHER

1 CONDITIONS, WOULD BE IN ANY WAY CONSIDERED CRIMINAL.

2 **Q** ARE THERE ANY EXAMPLES OF TECHNICAL VIOLATIONS WHICH ARE
3 PARTICULARLY SUSCEPTIBLE?

4 **A** I'M SORRY. COULD YOU REPEAT?

5 **Q** ARE THERE ANY EXAMPLES OF TECHNICAL VIOLATIONS TO WHICH
6 PAROLEES WITH MENTAL ILLNESS ARE PARTICULARLY SUSCEPTIBLE OR
7 MORE LIKELY TO COMMIT?

8 **A** YES. WHEN I MENTIONED JUST SIMPLY MISSING AN APPOINTMENT OR
9 IN SOME OTHER WAY NOT COMPLYING WITH TREATMENT, WHICH IS -- BY
10 THE WAY, THAT'S A CONDITION WHICH HAS BEEN REPEATEDLY DESCRIBED
11 BY OFFICIALS WITHIN THE PAROLE DEPARTMENT IN CALIFORNIA AS VERY
12 FREQUENTLY A PRODUCT OF THE MENTAL ILLNESS ITSELF, THAT IS, THE
13 MENTALLY ILL PAROLEE IS TOO DISORGANIZED OR TOO PARANOID,
14 WHATEVER IT MIGHT BE, TO PARTICIPATE IN THE TREATMENT, YOU KNOW,
15 EXACTLY AS REQUIRED.

16 **Q** WERE YOU ALSO ASKED TO LOOK AT THE LINKS BETWEEN MENTAL
17 ILLNESS AND VALID PREDICTERS OF FUTURE VIOLENCE?

18 **A** YES. AS I SAID, WITHIN THE PAROLE POPULATION, THE MENTALLY
19 ILL ARE NO MORE LIKELY THAN THE NON-MENTALLY ILL TO COMMIT
20 FUTURE VIOLENCE. THERE'S ACTUALLY SOME EVIDENCE THAT THE MORE
21 SEVERELY MENTALLY ILL PAROLEES ARE ACTUALLY LESS LIKELY THAN THE
22 NON-MENTALLY ILL, THEY'RE JUST TOO DISORGANIZED OR SOCIALLY
23 WITHDRAWN.

24 THE MORE IMPORTANT POINT, THOUGH, I THINK IN RESPONSE
25 TO YOUR QUESTION, IS THAT THE PREDICTERS OF FUTURE VIOLENCE,

1 THAT IS, THE RISK FACTORS THAT PREDICT VIOLENCE IN THE FUTURE,
2 ARE THE SAME BOTH FOR THE MENTALLY ILL AND NON-MENTALLY ILL
3 PAROLEES.

4 FOR EXAMPLE, FUTURE RISK FACTORS THAT PREDICT
5 VIOLENCE ARE AGE, SEX, SUBSTANCE ABUSE, ACCESS TO WEAPONS, PRIOR
6 CRIMINAL HISTORY, CERTAIN KINDS OF PERSONALITY DISORDERS, WHICH
7 ARE NOT AXIS I MENTAL DISORDERS, AND I WOULD SAY THE GENERAL
8 CATEGORY OF SOCIOECONOMIC HARDSHIP, POVERTY, HOMELESSNESS,
9 THINGS OF THAT SORT.

10 Q YOU WERE ALSO ASKED FOR AN OPINION ABOUT HOW CALIFORNIA
11 COULD IMPROVE UPON THE STATUS QUO REGARDING PUBLIC SAFETY AND
12 THE CURRENT FLOW OF MENTALLY ILL PAROLEES FROM THE PRISON
13 SYSTEM. WHAT DID YOU CONCLUDE WITH REGARD TO THAT?

14 A THAT ONE OF THE MOST IMPORTANT THINGS THE STATE OF
15 CALIFORNIA COULD DO WOULD BE TO REDUCE THE CHURNING OF PAROLEES
16 AND DISPROPORTIONATELY, THAT MEANS MENTALLY ILL ONES, FROM THE
17 COMMUNITY AND INTO THE PRISON AND BACK AGAIN, SORT OF SHORT
18 PERIODS IN EACH PLACE, WHICH DISRUPTS EVERY KIND OF
19 REINTEGRATION INTO THE THERAPEUTIC OR REHABILITATIVE ACTIVITY
20 AND SO ON.

21 THE MAIN THINGS I'D EMPHASIZE, THOUGH, IN TERMS OF
22 PRACTICES THAT WOULD IMPROVE PUBLIC SAFETY WOULD BE TO MAKE SURE
23 THAT EVERY PAROLEE LEAVING THE PRISON, THERE WAS A SIGNIFICANT
24 PRERELEASE PLANNING, STARTING, HOPEFULLY, MONTHS BEFORE THEY
25 LEAVE; SECONDLY, ASSURING THEY HAVE ACCESS TO CARE WHEN THEY

1 RETURN TO THE COMMUNITY; THIRDLY, MAKING SURE THEY HAD ACCESS TO
2 TREATMENT FOR DUAL DIAGNOSIS PROBLEMS, THAT IS, PEOPLE WHO ARE
3 BOTH MENTALLY ILL AND HAVE SUBSTANCE ABUSE PROBLEMS, TO MAKE
4 SURE THEY CAN ACTUALLY GET THAT TREATMENT, AND, FOURTHLY, TO
5 INCREASE, I'D SAY, COORDINATION WITH COMMUNITY MENTAL HEALTH
6 PROVIDERS TO GET THEM INVOLVED IN THE TREATMENT PROCESS WITH A
7 RETURNED PAROLEE.

8 **Q** YOU REFERRED EARLIER TO STATEMENTS OF CALIFORNIA OFFICIALS
9 REGARDING THE CHURNING PHENOMENON. WERE THERE ANY PARTICULAR
10 STATEMENTS FROM HIGH LEVEL OFFICIALS?

11 **A** ABSOLUTELY. I COULD MENTION THE -- WELL, MR. KERNAN'S
12 COMMENTS THAT WE HAVE ON VIDEO.

13 **Q** WHAT WERE --

14 **A** AND MR. TILTON.

15 **Q** WHEN YOU MENTION MR. TILTON'S COMMENTS, WE CAN PLAY THAT FOR
16 THE COURT. IF YOU LOOK -- OR YOU CAN TELL ME, ALSO. WHAT IS
17 THE SIGNIFICANCE, BEFORE WE DO THAT, OF WHAT YOU SAW FROM
18 MR. TILTON?

19 **A** WELL, THE SIGNIFICANCE IS THAT THE MENTALLY ILL WHO ARE IN
20 PRISON ARE, IN MANY CASES, THERE SIMPLY BECAUSE ACCESS TO MENTAL
21 HEALTH HAS NOT BEEN MADE -- MENTAL HEALTHCARE HAS NOT BEEN MADE
22 AVAILABLE IN THE COMMUNITY. IN OTHER WORDS, THE PRISONS IN
23 CALIFORNIA, AS IN MANY OTHER STATES, HAVE A SIGNIFICANT NUMBER
24 OF PRISONERS WHO ARE IN PRISON PRIMARILY BECAUSE THEY ARE
25 MENTALLY ILL AND THEY CAN'T GET TREATMENT ELSEWHERE. SO THE

1 PRISONS ARE BEING TREATED AS THE DE FACTO MENTAL HOSPITAL
2 SYSTEM.

3 **Q** I'D LIKE TO SHOW YOU THAT STATEMENT AND ASK YOU IF IT'S THE
4 ONE YOU WERE REFERRING TO. COULD WE LOOK AT, ROLL, PLAINTIFF'S
5 EXHIBIT 361, 361? PLAINTIFF'S EXHIBIT 361? IT WILL NEED SOUND.

6 (VIDEO PLAYED.)

7 **BY MR. GALVAN**

8 **Q** IS THAT THE VIDEO YOU WERE REFERRING TO?

9 **A** YES.

10 **Q** YOU MENTIONED A STATEMENT BY SCOTT KERNAN, MR. KERNAN. I'D
11 LIKE TO SHOW YOU THAT AND ASK YOU IF THAT'S THE ONE YOU ARE
12 REFERRING TO. THAT IS P 360.

13 WE CAN COME BACK TO THAT. I'M GOING TO MOVE FORWARD
14 TO ONE OF THE OTHER THINGS THAT YOU WERE ASKED TO OPINE ABOUT.

15 YOU WERE ALSO ASKED TO WRITE A -- I'M SORRY -- YOU
16 WERE ALSO ASKED TO WRITE A SECOND REPORT, A REBUTTAL REPORT,
17 REGARDING THE IMPACTS OF A POPULATION REDUCTION ON COMMUNITY
18 MENTAL HEALTH SERVICES IN CALIFORNIA. HOW DID YOU GO ABOUT
19 FORMING YOUR OPINIONS IN THAT AREA?

20 **A** WELL, FIRST OF ALL, I REVIEWED THE ACTUAL CLASSIFICATION OF
21 PRISONERS AS TO THEIR MENTAL HEALTH STATUS AND THE NUMBERS
22 INVOLVED, AND IT APPEARED TO ME THAT IT WOULD BE VERY EASY TO
23 EXAGGERATE THE IMPACT OF DISCHARGING MENTALLY ILL PRISONERS ON
24 THE COUNTY AND MENTAL HEALTH SYSTEM IF THE ONE DOESN'T ACTUALLY
25 LOOK AT THE RELATIVELY SMALL NUMBERS INVOLVED.

1 COULD WE LOOK AT FIGURE ONE, WHICH SHOWS THE NUMBER
2 OF PAROLEES DISCHARGED IN RECENT YEAR, 2006, I BELIEVE?

3 (DOCUMENT DISPLAYED.)

4 **THE WITNESS:** WHAT THAT SHOWS IS THAT IN 2006 THERE
5 WERE ROUGHLY 135,000 RELEASES TO PAROLE, OF WHICH ABOUT
6 20 PERCENT, OR ROUGHLY 27,000, WERE OF PEOPLE WHO HAD BEEN
7 CLASSIFIED IN NEED OF MENTAL HEALTH SERVICES WITHIN THE CDCR.
8 OF THOSE, THE VAST MAJORITY, ALMOST 24,000, WERE AT THE LOWEST
9 LEVEL OF MENTAL ILLNESS OF A 3CMS GROUP, WHICH IS CLASSIFIED AS
10 REALLY NOT NEEDING ANY INPATIENT TREATMENT, OR EVEN PARTICULARLY
11 INTENSIVE OUTPATIENT TREATMENT. THESE ARE PEOPLE THAT COULD
12 EASILY BE HANDLED IN A COMMUNITY MENTAL HEALTH SYSTEM WITH
13 APPOINTMENTS, YOU KNOW, FROM EVERY ONE TO THREE MONTHS, MAYBE
14 ONE APPOINTMENT. MANY OF THEM WON'T EVEN NEED CONTINUING
15 TREATMENT.

16 THE NEXT MORE SEVERELY DISTURBED ARE THE EOP, OR
17 ENHANCED OUTPATIENT POPULATION, WHICH IS ABOUT 2,400 OF THIS
18 GROUP. BUT THESE ARE ALSO CLASSIFIED AS PEOPLE WHO DO NOT NEED
19 INPATIENT TREATMENT. THEY DON'T NEED MENTAL HOSPITALIZATION.
20 THEY SPECIFICALLY ARE PEOPLE WHO ARE MANAGEABLE ON AN OUTPATIENT
21 BASIS. SO THESE ARE PEOPLE THAT MIGHT BE PATIENTS IN A
22 COMMUNITY MENTAL HEALTH CLINIC.

23 THERE'S A MUCH SMALLER NUMBER OF THAT, A LITTLE OVER
24 600, WHO NEED EITHER A CRISIS BED OR A DMH HOSPITALIZATION.
25 THAT'S OF THE ENTIRE 135,000 WHO WERE DISCHARGED UNDER THE

1 STATUS QUO IN 2006.

2 IF WE LOOKED AT A SPECIFIC -- IF WE COULD LOOK AT
3 FIGURE TWO, WE COULD SEE WHAT THIS WOULD AMOUNT TO IF WE WERE
4 TALKING ABOUT, SAY A RELEASE OF 30,000 PEOPLE INTO PAROLE TO
5 JUST TO DECREASE THE PRISON POPULATION BY THAT MUCH.

6 WHAT YOU CAN SEE IS THAT THE NUMBER OF PEOPLE WHO
7 WOULD NEED INPATIENT TREATMENT IN THIS GROUP, THE CRISIS BED AND
8 DMH, AT THE TOP WOULD BE ABOUT 143 PEOPLE, AND ONLY A LITTLE
9 OVER 500 WOULD NEED EVEN REGULAR OUTPATIENT TREATMENT OF THE EOP
10 GROUP.

11 NOW, I WOULD MENTION THAT THE COUNTY MENTAL HEALTH
12 SYSTEM IN CALIFORNIA AS IT IS NOW OPERATING HAS APPROXIMATELY
13 658,000 PATIENTS. THAT'S 658,000. OF THOSE OVER 43,000 NEED
14 24-HOUR-A-DAY CARE. SO WHAT WE'RE TALKING ABOUT IS ADDING TO
15 THAT POPULATION OF 24,000 MAYBE 140 WHO WOULD NEED OUTPATIENT
16 CARE, AND OF THE 658,000, WE'RE TALKING ABOUT, MAYBE 6,000 THAT
17 WOULD BE, YOU KNOW, AN INCREASED POPULATION, AGAIN, THE VAST
18 MAJORITY OF WHOM WOULD NEED ONLY MINIMAL MENTAL HEALTH CARE.

19 SO I EMPHASIZE THAT BECAUSE I THINK IT'S IMPORTANT
20 NOT TO EXAGGERATE THE IMPACT OR THE STRESS THE DIFFICULTY THAT
21 THE COUNTY AND STATE MENTAL HEALTH SYSTEMS WOULD HAVE IF THESE
22 MENTALLY ILL PAROLEES WERE ACTUALLY BEING TAKEN CARE OF BY THE
23 MENTAL HEALTH SYSTEM RATHER THAN BEING PLACED IN PRISON, WHICH
24 ARE, OF COURSE, THE WORST POSSIBLE LOCATION FOR SOMEONE WHO'S
25 MENTALLY ILL.

1 Q IN DOING IN THE ANALYSIS, DID YOU CONDUCT A COUNTY-BY-COUNTY
2 REVIEW?

3 A NO, I LOOKED JUST AT THE STATE -- STATE FIGURES AS A WHOLE.

4 Q ARE YOU SAYING THAT, IN YOUR OPINION, THE CALIFORNIA
5 COMMUNITY MENTAL HEALTH SYSTEM HAS ALL THE FUNDING THAT IT
6 NEEDS?

7 A NO. I MEAN, I DON'T PRETEND TO BE AN EXPERT ON THAT
8 SUBJECT, BUT FROM WHAT I HAVE BEEN TOLD, WHAT I'VE READ, I
9 CONTINUALLY HEAR THAT THE COUNTY MENTAL HEALTH SYSTEM IS
10 UNDERFUNDED AND UNDERSTAFFED, ACCORDING AT LEAST TO THE JUDGMENT
11 OF THE PEOPLE WHO WORK IN THAT SYSTEM.

12 Q AND IN LOOKING AT THE STATEMENTS IN THE DEFENSE EXPERT
13 REPORTS ON COMMUNITY MENTAL HEALTH, DID YOU FORM ANY OPINIONS
14 ABOUT THEIR DISCUSSION OF THE RESOURCE PROBLEMS?

15 A THE REPRESENTATIVES FROM THE COUNTY MENTAL HEALTH SYSTEM.

16 Q I'M THINKING PARTICULARLY OF THE DEFENSE EXPERTS.

17 A YES.

18 Q MS. BATAILLE AND THE COUNTY EXPERTS?

19 A THEY WERE MAKING THE POINT REPEATEDLY THAT THEY FELT THE
20 COUNTIES' MENTAL HEALTH SYSTEM, SINCE IT IS UNDERFUNDED, COULD
21 NOT AFFORD TO TREAT MORE PATIENTS. WHAT I WOULD -- WHAT I THINK
22 IS WORTH NOTICING, THOUGH, IS THAT ACTUALLY WHAT THE STATE OF
23 CALIFORNIA IS DOING NOW WITH THIS POPULATION OF MENTALLY ILL
24 PAROLEES IS VASTLY MORE EXPENSIVE THAN TAKING CARE OF THEM
25 WITHIN THE MENTAL HEALTH SYSTEM WOULD BE.

1 FOR EXAMPLE, A CRUDE ESTIMATE OF THE COST TO THE
2 STATE OF EACH INMATE IN A PRISON, THE COST OF HAVING THAT PERSON
3 IN PRISON IS AT LEAST \$43,000 A YEAR. NOW MY UNDERSTANDING IS
4 THAT INPATIENT HOSPITAL IN A MENTAL HOSPITAL, THE HIGHEST LEVEL,
5 THE MOST INTENSIVE LEVEL OF INPATIENT CARE IN THIS STATE IS MORE
6 ON THE ORDER OF \$30,000. I MEAN, IN OTHER WORDS, IT'S NOT JUST
7 THAT TREATING THE MENTALLY ILL IN PRISONS IS NOT JUST -- IT'S
8 INEFFECTIVE AND INAPPROPRIATE AS A MENTAL HEALTH SETTING.
9 PRISONS ARE NOT MENTAL HEALTH HOSPITALS. THESE ARE THE WORST
10 POSSIBLE ENVIRONMENTS FOR THE MENTALLY ILL.

11 IT'S ALSO TRUE IT COSTS MORE MONEY TO HAVE THEM
12 THERE. THE STATE IS SPENDING MUCH MORE MONEY TO HAVE PEOPLE IN
13 A MUCH WORSE ENVIRONMENT. AS FAR AS THE EXPENSE PART OF IT
14 GOES, IT SEEMS TO ME THE QUESTION IS NOT WHETHER THE STATE CAN
15 AFFORD TO TREAT THE MENTALLY ILL WITHIN THE MENTAL HEALTH
16 SYSTEM, RATHER THAN THE PRISONS, IT'S CAN THE STATE AFFORD NOT
17 TO DO THAT. I MEAN, THIS IS A HUGE DRAIN ON PUBLIC RESOURCES
18 WHICH IS TOTALLY COUNTERPRODUCTIVE.

19 **Q** WHAT DID YOU FIND IN THE DEFENSE REPORTS TO TAKE ACCOUNT OF
20 THE STATUS QUO IN YOUR FIGURE ONE, THAT THESE COUNTIES ARE NOW
21 RECEIVING THIS FLOW OF 26-, 27,000 MENTALLY ILL PAROLEES EACH
22 YEAR?

23 **A** THESE ARE PEOPLE WHO WIND UP IN THE COMMUNITY, I MEAN,
24 PRESUMABLY, THE COUNTY MENTAL HEALTH SYSTEMS ARE ALREADY HAVING
25 TO DEAL WITH.

1 BUT LET ME QUALIFY THAT. THAT'S THE WAY IT SHOULD
2 BE.

3 WHAT IS HAPPENING IS THAT THE MENTALLY ILL PAROLEES
4 ARE BEING DENIED ACCESS, AS I UNDERSTAND IT, ARE BEING DENIED
5 ACCESS TO MENTAL HEALTH TREATMENT IN THE COUNTY SYSTEM PRECISELY
6 BECAUSE THEY'RE PAROLEES.

7 SO THE PAROLE DEPARTMENT, OF COURSE, HAS PAROLE
8 OUTPATIENT CLINICS, BUT I'VE SEEN MANY REPORTS FROM WITHIN THE
9 PAROLE DEPARTMENT ITSELF STATING THAT PAROLE OFFICERS CANNOT GET
10 THEIR PAROLEES PLACED FOR INPATIENT TREATMENT IN THE MENTAL
11 HEALTH SYSTEM AND, THEREFORE, HAVE TO RETURN THEM TO PRISON FOR
12 TREATMENT, FOR MENTAL HEALTH TREATMENT; IN OTHER WORDS, THEY ARE
13 FORCED INTO A POSITION OF USING THE PRISONS AS IF THEY WERE
14 MENTAL HOSPITALS, WHICH I CAN'T REPEAT TOO OFTEN THEY ARE NOT.

15 MR. GALVAN: THANK YOU. NO FURTHER QUESTIONS UNTIL
16 REDIRECT.

17 JUDGE HENDERSON: ANYTHING FROM CCPOA? I ASSUME YOU
18 HAVE NO QUESTIONS OF THIS WITNESS?

19 MS. LEONARD: NO, YOUR HONOR.

20 JUDGE HENDERSON: OKAY. CROSS?

21 MR. LEWIS: GOOD MORNING, YOUR HONORS. KYLE LEWIS
22 FOR THE STATE DEFENDANTS.

23 CROSS-EXAMINATION BY MR. LEWIS

24 BY MR. LEWIS

25 Q GOOD MORNING, DR. GILLIGAN.

1 **A** GOOD MORNING.

2 **Q** REGARDING YOUR QUALIFICATIONS, YOU WERE LAST EMPLOYED AS --
3 IN TERMS OF IN WORKING IN A CORRECTIONAL SYSTEM, YOU WERE LAST
4 EMPLOYED IN 1992 AS THE MEDICAL DIRECTOR OF RIDGEWATER STATE
5 HOSPITAL IN MASSACHUSETTS; IS THAT CORRECT?

6 **A** THAT'S THE LAST TIME I WORKED IN AN ADMINISTRATIVE POSITION.
7 I HAVE, HOWEVER, WORKED AS A RESEARCHER, AS A CONSULTANT, AS A
8 SUPERVISOR, TEACHER, YOU KNOW, MANY DIFFERENT ROLES IN PRISON
9 SYSTEMS SINCE THEN.

10 **Q** PARDON ME. HAVE YOU EVER SINCE 1992 BEEN EMPLOYED BY A
11 STATE AGENCY OR A STATE CORRECTIONS DEPARTMENT TO WORK IN A
12 PRISON HOSPITAL OR IN AN ADMINISTRATIVE SETTING FOR PRISON
13 MENTAL HEALTH CARE?

14 **A** NO, NO.

15 **Q** HAVE YOU EVER TOURED A CDCR FACILITY?

16 **A** NO, I HAVE NOT TOURED THEM.

17 **Q** AND HAVE YOU EVER BEEN IN ANY OF THE STATE MENTAL HOSPITALS
18 IN THE STATE OF CALIFORNIA OPERATED BY THE DEPARTMENT OF MENTAL
19 HEALTH?

20 **A** NO, I HAVE NOT.

21 **Q** AT YOUR DEPOSITION IT WAS YOUR TESTIMONY THAT YOU UNDERSTOOD
22 PLAINTIFFS WERE PROPOSING TO HAVE THE COURT ORDER AN IMMEDIATE
23 RELEASE OF 15,000 OFFENDERS, CORRECT?

24 **MR. GALVAN:** OBJECTION. IT MISSTATES THE TESTIMONY.
25 THE DEPOSITION IS 300 PAGES LONG.

1 **MR. LEWIS:** VERY WELL. COULD WE PLEASE PULL UP PAGE
2 42?

3 **BY MR. LEWIS**

4 **Q** DOCTOR, IF YOU COULD LOOK AT YOUR SCENE TO YOUR RIGHT?

5 **JUDGE KARLTON:** THERE'S NOTHING GOING ON AT THE
6 MOMENT, BUT SOMEDAY THERE WILL BE.

7 **BY MR. LEWIS**

8 **Q** IF YOU COULD -- I'LL READ THAT LINE.

9 "I THINK WHAT I'M TRYING TO GET AT IS, DID
10 ANYONE EVER INFORM YOU THAT PLAINTIFFS HAVE
11 INDICATED IN INTERROGATORY RESPONSES THE
12 PROPOSAL TO HAVE THE COURT ORDER AN IMMEDIATE
13 RELEASE OF 15,000 OFFENDERS?

14 "ANSWER: WELL, I'VE CERTAINLY HEARD THAT
15 FIGURE."

16 DO YOU RECALL BEING TOLD ABOUT A 15,000 PERSON
17 RELEASE POSSIBLY?

18 **JUDGE KARLTON:** IMMEDIATE RELEASE.

19 **THE WITNESS:** PARDON ME?

20 **JUDGE KARLTON:** IMMEDIATE RELEASE. THE QUESTION IS
21 WHETHER YOU RECALL NOW.

22 **THE WITNESS:** YEAH, I DON'T RECALL THE DISTINCTION,
23 FOR EXAMPLE, BETWEEN IMMEDIATE OR SPREAD OVER A CERTAIN PERIOD
24 OF TIME.

25 **MR. LEWIS:** VERY WELL.

1 **THE WITNESS:** BUT I'VE HEARD FIGURES OF 15,000. I
2 DON'T REMEMBER EXACTLY WHERE, BUT MY UNDERSTANDING IS WE'RE
3 TALKING ABOUT SOMETHING ON THAT ORDER.

4 **BY MR. LEWIS**

5 **Q** AND DO YOU REMEMBER OR DO YOU RECALL TESTIFYING THAT THERE
6 WOULD BE A PROPORTIONAL NUMBER OF COLEMAN CLASS MEMBERS WITHIN
7 THAT 15,000 OFFENDER RELEASE?

8 **A** YEAH, I MEAN, THAT'S BEEN MY ASSUMPTION. THAT'S BEEN MY
9 UNDERSTANDING.

10 **Q** ARE YOU AWARE THAT PLAINTIFFS ARE NOW SEEKING A PRISONER
11 RELEASE ORDER TO ENCOMPASS A RELEASE OF OVER 50,000 INMATES?

12 **MR. GALVAN:** OBJECTION. MISSTATES THE EVIDENCE.

13 **MR. LEWIS:** IT'S STATED IN THEIR OPENING TRIAL BRIEF,
14 YOUR HONOR.

15 **JUDGE KARLTON:** OVER A PERIOD OF TIME.

16 **MR. LEWIS:** OVER A PERIOD OF TIME, BUT IT IS STILL
17 50,000, YOUR HONOR.

18 **MR. GALVAN:** FURTHER, IT MISCHARACTERIZES WHAT WE'RE
19 SEEKING. IT'S NOT A RELEASE. IT'S A POPULATION REDUCTION,
20 WHICH COULD BE ACHIEVED MANY DIFFERENT WAYS SHORT OF RELEASE.

21 **JUDGE HENDERSON:** AND THE QUESTION IS DOES
22 DR. GILLIGAN RECALL THAT?

23 **MR. LEWIS:** IS HE AWARE THAT THE PLAINTIFFS ARE NOW
24 SEEKING OR HAVE ASKED FOR A RELEASE OR POPULATION REDUCTION THAT
25 WILL RESULT IN THE RELEASE OR REDUCTION OF 50,000 PEOPLE AS

1 OPPOSED TO 15,000.

2 JUDGE HENDERSON: I AM GOING TO ALLOW IT. ARE YOU
3 AWARE OF THAT?

4 BY MR. LEWIS

5 Q ARE YOU AWARE OF THAT, DOCTOR?

6 A I HAVEN'T HEARD THAT PARTICULAR FIGURE, BUT I WILL TAKE IT
7 INTO ACCOUNT AS WE TALK.

8 Q SO IF THE PLAINTIFFS WERE SEEKING A RELEASE OF 50,000, WOULD
9 SUCH RELEASE ALSO INCLUDE A PROPORTIONAL NUMBER OF COLEMAN CLASS
10 MEMBERS?

11 A THAT'S NOT FOR ME TO DECIDE. THAT'S FOR OTHER PEOPLE TO
12 DECIDE. WHAT I WAS TRYING TO SHOW WITH THE FIGURES I SHOWED WAS
13 SIMPLY WHAT THE EFFECT WOULD BE IF IT WERE PROPORTIONAL.

14 Q VERY WELL. THEREFORE, A PROPOSED RELEASE ORDER OF OVER
15 50,000 OFFENDERS WOULD POTENTIALLY PLACE MORE MENTALLY ILL
16 INMATES IN CALIFORNIA COMMUNITIES THAN YOU ACCOUNTED FOR IN
17 EITHER YOUR AUGUST 15TH OR AUGUST 27TH, 2008 REPORTS; ISN'T THAT
18 CORRECT?

19 A IF YOU ARE TALKING ABOUT 50,000, THAT WOULD BE MORE THAN I
20 HAD TALKED ABOUT. IT STILL COULD BE DISCUSSED.

21 Q THAT WOULD BE MORE THAN THE 140 YOU WERE TALKING ABOUT IN
22 YOUR DIRECT TESTIMONY A FEW MINUTES AGO?

23 A SURE. THE 140 WAS BASED ON 30,000, SO MAYBE THAT WOULD
24 RAISE IT TO, OH, MAYBE 240.

25 Q THANK YOU.

1 YOU ACKNOWLEDGE THAT THERE ARE SOME OFFENDERS WITHIN
2 CALIFORNIA -- WITHIN THE -- I'M SORRY -- THE CALIFORNIA PRISON
3 SYSTEM WHO HAVE MENTAL ILLNESS AND DO POSE A RISK OF DANGER TO
4 THEMSELVES AND OTHERS IN THE COMMUNITY BASED ON THEIR CONDUCT,
5 CORRECT?

6 **A** I WOULD ASSUME THAT WOULD BE THE CASE, SURE.

7 **Q** IF THESE MENTALLY ILL OFFENDERS DO POSE THAT RISK, YOU
8 RECOMMEND THEY DO NOT BE RELEASED INTO THE COMMUNITY, CORRECT?

9 **A** IT DEPENDS WHAT YOU MEAN BY "THE COMMUNITY." IF WE'RE
10 REGARDING THE MENTAL HEALTH SYSTEM AS PART OF THE COMMUNITY, THE
11 MENTAL HEALTH SYSTEM AS IT EXISTS OUTSIDE OF PRISON, THEN I
12 WOULD EXPECT THAT MANY OF THESE INDIVIDUALS COULD BE PERFECTLY
13 APPROPRIATELY AND SAFELY MANAGED, INDEED, IN, SAY, THE MENTAL
14 HEALTH SYSTEM.

15 **Q** SO IF YOU KNEW OF INMATES THAT POSED A RISK OF DANGER TO
16 THEMSELVES OR OTHERS IN THE COMMUNITY, YOU WOULD RECOMMEND
17 THEY'D BE RELEASED INTO, SAY, COMMUNITY MENTAL HEALTH CARE?

18 **A** WELL, YES, IN THE SENSE THAT I WOULD -- WHEN I TALKED ABOUT
19 PRERELEASE PLANNING, THAT'S PART OF WHAT I HAD IN MIND.

20 I MEAN, I WOULD THINK THAT ANY WELL-RUN PRISON MENTAL
21 HEALTH SYSTEM WOULD HAVE AS PART OF ITS JOB THE TASK OF
22 EVALUATING DEPARTING INMATES OR PEOPLE SCHEDULED FOR RELEASE
23 INTO THE COMMUNITY AS TO WHETHER OR NOT THEY WERE DANGEROUS TO
24 OTHERS OR THEMSELVES BY REASON OF MENTAL ILLNESS AND TO THEN
25 MAKE APPROPRIATE TREATMENT REFERRAL PLANS. I MEAN, THAT'S WHAT

1 I DID IN MASSACHUSETTS. I WOULD ASSUME PEOPLE WOULD DO THAT IN
2 CALIFORNIA.

3 **Q** AND YOU TESTIFIED AT YOUR DEPOSITION THAT 70 PERCENT OF THE
4 MENTALLY ILL AND NON-MENTALLY ILL PRISONERS IN CDCR HAVE SOME
5 KIND OF SUBSTANCE ABUSE DISORDER, CORRECT?

6 **A** IT'S VERY HIGH WITH BOTH GROUPS, SURE.

7 **Q** DID YOU TESTIFY TO THAT? DO YOU RECALL THAT FIGURE?

8 **A** I DON'T RECALL TESTIFYING TO IT, BUT I WOULD AGREE WITH THAT
9 ASSUMPTION. IT'S A HIGH LEVEL OF SUBSTANCE ABUSE, BOTH WITHIN
10 THE NON-MENTALLY ILL PRISONERS AND THE MENTALLY ILL PRISONERS.
11 SUBSTANCE ABUSE ITSELF, AS I SAID, IS A RISK FACTOR IN AND OF
12 ITSELF.

13 **Q** THANK YOU.

14 YOU ALSO TESTIFIED THAT PRISONERS, BOTH MENTALLY ILL
15 AND NON-MENTALLY ILL, WHO HAVE BEEN CONVICTED OF A CRIME
16 INVOLVING GREAT BODILY HARM TO ANOTHER PERSON DEMONSTRATE
17 GREATER RISK THAT THEY WILL BE VIOLENT TOWARDS THEMSELVES OR
18 OTHERS IN THE FUTURE, CORRECT?

19 **A** YES.

20 **Q** AND YOU ALSO TESTIFIED THAT PRISONERS WHO HAVE A HISTORY OF
21 VIOLENCE OR SUBSTANCE ABUSE REGARDLESS OF THEIR MENTAL ILLNESS
22 OR LACK THEREOF ARE MORE LIKELY TO COMMIT VIOLENCE, CORRECT?

23 **A** YES, THEY ARE MORE LIKELY THAN PEOPLE IN THE SAME CLASS THAT
24 ARE NOT SUBSTANCE ABUSERS.

25 **Q** BASED ON YOUR TESTIMONY, AT LEAST 70 PERCENT OF THE MENTALLY

1 ILL OFFENDERS WHO MAY BE RELEASED FROM CDCR FACILITIES ARE
2 LIKELY TO COMMIT VIOLENCE, CORRECT?

3 **A** NO. I'M SAYING THEY ARE SIMPLY MORE LIKELY TO DO SO THAN
4 THE MENTALLY ILL WHO ARE NOT SUBSTANCE ABUSERS, BUT THE ACTUAL
5 OCCURRENCE OF VIOLENCE, YOU COULD EXPECT, WOULD BE QUITE LOW IN
6 BOTH GROUPS. I'M TALKING ABOUT A RELATIVE DIFFERENCE BETWEEN
7 SUBSTANCE-ABUSING MENTALLY ILL AND NON-SUBSTANCE-ABUSING
8 MENTALLY ILL. THE VAST MAJORITY OF THEM NEVER COMMIT ANY
9 VIOLENCE.

10 **Q** REGARDLESS, IT'S STILL 70 PERCENT OF THE BOTH MENTALLY ILL
11 AND NON-MENTALLY ILL HAVE A SUBSTANCE ABUSE DISORDER, WHICH YOU
12 TESTIFIED WILL INDICATE A GREATER RISK OF VIOLENCE?

13 **A** YEAH, BUT THE QUESTION IS GREATER RISK THAN WHO? I'D SAY,
14 YES, THEY ARE MORE LIKELY TO COMMIT ACTS OF VIOLENCE THAN PEOPLE
15 WHO ARE NOT SUBSTANCE ABUSERS. BUT IN AND OF ITSELF, THIS IS
16 ONE RISK FACTOR AMONG MANY. MY POINT IS IT'S THE SUBSTANCE
17 ABUSE THAT'S THE RISK FACTOR, NOT THE MENTAL ILLNESS.

18 **Q** NOW, ACCORDING TO THE DIAGNOSTIC AND STATISTICAL MANUAL OF
19 MENTAL ILLNESS, FOURTH EDITION, ALSO KNOWN AS DSM-IV, I BELIEVE,
20 COMMON AXIS II DISORDERS INCLUDE PERSONALITY DISORDERS THAT
21 MIGHT ENCOMPASS ANTI-SOCIAL PERSONALITY DISORDERS, NARCISSISTIC
22 PERSONALITY DISORDERS, AVOIDANT PERSONALITY DISORDERS, TO NAME A
23 FEW, CORRECT?

24 **A** YES.

25 **Q** IN FACT, AN AXIS II PERSONALITY DISORDER IS THE MOST COMMON

1 PSYCHIATRIC DIAGNOSIS IN PRISONS AND JAILS, CORRECT?

2 **A** AXIS II, I WOULD AGREE.

3 **Q** AND YOU ALSO TESTIFIED THAT A SUBSTANTIAL PORTION OF THE
4 PRISON POPULATION HAVE AN AXIS II PERSONALITY DISORDER, CORRECT?

5 **A** NOW, THERE I'M TALKING ABOUT PRIMARILY THE NON-MENTALLY ILL
6 PRISONERS. TO BE CLEAR WITH YOU ABOUT THIS, WHAT I'M SAYING
7 ABOUT THE MENTALLY ILL PRISONERS, PEOPLE IN PRISON AND ARE
8 MENTALLY ILL.

9 THOSE WHO ARE DANGEROUS TO THEMSELVES OR OTHERS BY
10 REASON OF THEIR MENTAL ILLNESS, IN MY EXPERIENCE, HAVE GENERALLY
11 HAD AN AXIS II DISORDER IN ADDITION TO THEIR PSYCHOTIC DISORDER;
12 HOWEVER, THERE ARE MENTALLY ILL PEOPLE IN THE PRISONS -- I MEAN,
13 I HAVE CERTAINLY ABUNDANT EVIDENCE FROM CALIFORNIA FIGURES, AND
14 I KNOW THIS FROM MY OWN EXPERIENCE IN THE MASSACHUSETTS PRISON
15 SYSTEM, MENTALLY ILL PEOPLE WIND UP IN PRISON WHO ARE NOT
16 NECESSARILY PARTICULARLY DANGEROUS TO OTHERS, BUT WIND UP IN
17 PRISON BECAUSE OF THE FAILINGS OF THE MENTAL HEALTH SYSTEM. IN
18 OTHER WORDS, THE PRISONS HAVE BECOME THE DE FACTO MENTAL HEALTH
19 CARE SYSTEM IN CALIFORNIA AND THROUGHOUT THE UNITED STATES.

20 **Q** DO THE ANTI-SOCIAL PERSONALITY DISORDERS THAT WE TALKED
21 ABOUT, DO THEY DIMINISH THE CAPACITY OF A PERSON TO HOLD DOWN A
22 JOB OR DO A STEADY JOB, DO A STEADY WORK?

23 **A** YEAH, THEY OFTEN INTERFERE WITH PEOPLE'S BEHAVING IN SUCH A
24 WAY AS TO MAINTAIN REGULAR EMPLOYMENT.

25 **Q** SO DOES EITHER HAVING AN AXIS II PERSONALITY DISORDER OR NOT

1 BEING ABLE TO HOLD A JOB CONSTITUTE AN INDEPENDENT RISK FACTOR
2 FOR VIOLENT BEHAVIOR?

3 **A** I WOULD SAY SO, YES.

4 **Q** IS IT EITHER-OR OR BOTH?

5 **A** BOTH. I MEAN, THEY COULD BE -- THEY FUNCTION INDEPENDENTLY
6 OF EACH OTHER AS RISK FACTORS. I WOULD ADD ALL OF THOSE RISK
7 FACTORS ARE ACTUALLY MORE PREDICTIVE OF VIOLENCE THAN MENTAL
8 ILLNESS AS SUCH.

9 **Q** TURNING TO AXIS I DISORDERS, WOULD YOU AGREE THOSE ARE
10 SERIOUS MENTAL DISORDERS, LIKE SCHIZOPHRENIA, THAT REQUIRE
11 ONGOING MEDICATION AND TREATMENT AND A WHOLE HOST OF REMEDIES?

12 **A** WELL, THEY CERTAINLY REQUIRE ONGOING TREATMENT. NOW THE
13 QUESTION OF HOW INTENSIVE THAT TREATMENT NEEDS TO BE CAN VARY
14 ENORMOUSLY.

15 I MEAN, FOR EXAMPLE -- I MEAN I MYSELF, YOU KNOW,
16 CURRENTLY STILL MANAGE THE TREATMENT OF PEOPLE I'VE SEEN SINCE I
17 WAS A FIRST YEAR RESIDENT. I MIGHT SEE THEM ONCE EVERY THREE
18 MONTHS. THEY ARE STABLE IN THE COMMUNITY. THE ONGOING
19 RELATIONSHIP STABILIZES THEM. BUT, IN OTHER WORDS, THIS IS NOT
20 NECESSARILY EXTREMELY LABOR INTENSIVE.

21 **Q** SO SCHIZOPHRENIA IS A MORE SERIOUS LIFELONG ILLNESS?

22 **A** YES. IN THAT SENSE IT'S COMPARABLE TO HIGH BLOOD PRESSURE,
23 DIABETES OR OTHER MEDICAL CONDITIONS THAT REQUIRE LIFELONG
24 TREATMENT.

25 **Q** AND SCHIZOPHRENIA CAN ALSO AFFECT THE ABILITY OF A PERSON TO

1 HOLD DOWN A JOB OR HAVE STEADY EMPLOYMENT?

2 **A** YES. IT OFTEN INTERFERES WITH THE CAPACITY TO HOLD DOWN A
3 JOB.

4 **Q** AND IF A SCHIZOPHRENIC OFFENDER IS RELEASED ON PAROLE
5 WITHOUT A JOB WAITING FOR THEM, WITHOUT SUPPORT STRUCTURE,
6 FAMILY, OR PLACE TO STAY, THEY COULD WIND UP ON THE STREET,
7 CAN'T THEY?

8 **A** EXACTLY. I MEAN, THAT'S PRECISELY WHY I THINK PRERELEASE
9 PLANNING IS SO IMPORTANT, INCLUDING, FOR EXAMPLE, GETTING SOCIAL
10 SECURITY PAYMENTS. IF SOMEBODY CAN'T HOLD DOWN A JOB, THEY MAY
11 NEED SOCIAL SECURITY INCOME SUPPLEMENTS.

12 **Q** AND THESE KINDS OF SCHIZOPHRENIC OFFENDERS CAN UNFORTUNATELY
13 ALSO END UP DECEASED, CAN'T THEY?

14 **A** YES.

15 **Q** BECAUSE THEY EITHER GET PREYED UPON BY OTHERS, THEY COMMIT
16 SUICIDE, OR SOMETIMES DON'T TAKE CARE OF THERE OWN SELVES?

17 **A** THOSE ARE CERTAINLY THE RISKS ONE WOULD BE MOST CONCERNED
18 ABOUT IN TREATING THIS POPULATION.

19 **Q** AND SCHIZOPHRENIC OFFENDERS SUCH AS THESE CAN ALSO
20 MATRICULATE IN LOCAL HOSPITALS FOR A VARIETY OF EMERGENCY
21 MEDICAL CARE NEEDS, CORRECT?

22 **A** YES.

23 **Q** AND BECAUSE SCHIZOPHRENIA IS A CHRONIC CONDITION, ANY
24 COMMUNITY SUPPORT FOR OFFENDERS RELEASED WITH THIS ILLNESS WOULD
25 HAVE TO BE A VERY LONG COMMITMENT, WOULDN'T IT?

1 **A** YES. AS I SAID, MOST PEOPLE WITH THAT PARTICULAR ILLNESS
2 ARE GOING TO NEED TREATMENT PROBABLY THROUGHOUT THEIR LIFETIME,
3 BUT THE INTENSITY OF IT CAN VARY ENORMOUSLY. AS I SAID, I SEE
4 PEOPLE NOW THAT, YOU KNOW, I MAY SPEND A SHORT AMOUNT OF TIME
5 ONCE EVERY THREE MONTHS, AND THEY'RE PERFECTLY STABLE.

6 **Q** AND YOU TESTIFIED THAT MENTALLY ILL OFFENDERS SHOULD BE
7 DIVERTED AWAY FROM PRISON AND TOWARDS MENTAL HEALTH CARE AND
8 MENTAL HEALTH DEPARTMENTS SUCH AS THE ONES IN LOCAL COUNTIES OR
9 DEPARTMENT OF MENTAL HEALTH FOR CARE, CORRECT?

10 **A** I THINK THAT WOULD BE A GOOD IDEA. I THINK IT WOULD IMPROVE
11 THE QUALITY OF CARE AND THE SAFETY OF THE PUBLIC.

12 **Q** YET YOU ARE -- YOU ARE NOT AWARE IF THERE IS ANY COUNTY IN
13 THE STATE OF CALIFORNIA THAT PROVIDES SUCH DIVERSIONARY MEDICAL
14 CARE TO MENTALLY ILL OFFENDERS, ARE YOU?

15 **A** WELL, MY UNDERSTANDING IS THEY SPECIFICALLY EXCLUDE
16 PAROLEES.

17 **JUDGE KARLTON:** WE ARE TALKING ABOUT DIVERTING THEM,
18 SO THEY NEVER GO INTO PRISON, I THINK THAT WAS THE QUESTION.

19 **MR. LEWIS:** YES, YOUR HONOR. THANK YOU.

20 **THE WITNESS:** I SEE. ASK THE QUESTION AGAIN, PLEASE.

21 **BY MR. LEWIS**

22 **Q** YOU ARE NOT AWARE IF THERE'S ANY COUNTY IN THE STATE THAT
23 PROVIDES SUCH DIVERSIONARY MENTAL HEALTH CARE TO MENTALLY ILL
24 OFFENDERS, ARE YOU?

25 **A** NO, I'M NOT.

1 **Q** AND YOU ARE NOT AWARE OF THE AVAILABILITY OF FUNDING OR
2 RESOURCES TO HANDLE THE INCREASED STRAIN OF THESE DIVERSION
3 PROGRAMS OR GREATER LOCAL MENTAL HEALTH PROGRAMS ON THE LOCAL
4 COMMUNITIES, ARE YOU?

5 **A** NO.

6 **Q** DO YOU AGREE THAT SOMETIMES PEOPLE COME INTO PRISON BECAUSE
7 THEY MAY BE TOO DISORGANIZED TO EVER MAKE AN APPOINTMENT WITH A
8 PAROLE AGENT TO GET THEIR CARE?

9 **JUDGE KARLTON:** NOW YOU ARE CONFUSING ME, EVEN IF YOU
10 DON'T CONFUSE THE DOCTOR. YOU ARE NOW TALKING ABOUT PAROLEES,
11 NOT DIVERSIONARY --

12 **MR. LEWIS:** YES, YOUR HONOR.

13 **JUDGE KARLTON:** ALL RIGHT.

14 **BY MR. LEWIS**

15 **Q** WOULD YOU AGREE THAT SOMETIMES THERE MIGHT BE SOME PAROLEES
16 WHO ARE TOO DISORGANIZED BECAUSE OF SOME OF THEIR AXIS DISORDERS
17 TO MAKE AN APPOINTMENT WITH A PAROLE AGENT SO THEY CAN'T EVEN
18 GET CARE?

19 **A** SURE.

20 **Q** AND THEY'RE OFTEN SICK WHEN THEY COME IN BECAUSE THEY CAN'T
21 GET ACCESS TO CARE IN THE COMMUNITY?

22 **A** YEAH, I WOULD EXPECT THAT.

23 **Q** AND SO EVEN IF THE CARE IS AVAILABLE, THERE'S NO GUARANTEE
24 THAT THESE MENTALLY ILL OFFENDERS WHO HAVE BEEN RELEASED FROM
25 PRISON WILL CHOOSE TO OBTAIN THE MENTAL HEALTH CARE FROM THEIR

1 LOCAL COMMUNITY PROVIDERS, IS THERE?

2 **A** NO, SOMETIMES THEY DO NOT.

3 **Q** SO A PERSON COULD SIMPLY CHOOSE NOT TO GET MEDICAL CARE --
4 OR MENTAL CARE -- I'M SORRY -- MENTAL HEALTH CARE?

5 **A** YES, BUT IF THEY WERE MAKING THAT CHOICE BECAUSE OF THEIR
6 MENTAL HEALTHNESS, IT MIGHT BE APPROPRIATE FOR A PSYCHIATRIST TO
7 EVALUATE THEM AS TO WHETHER OR NOT THEY MIGHT NEED INVOLUNTARY
8 TREATMENT, THAT IS, TREATMENT TO BE COMMITTED TO A HOSPITAL
9 BECAUSE THEY'RE MENTAL ILLNESS PRECLUDED THEM OF BEING AWARE OF
10 THEIR NEED FOR TREATMENT.

11 **JUDGE KARLTON:** IN ANY EVENT, DOCTOR, I THINK YOU
12 HAVE SAID SEVERAL TIMES -- WELL, I KNOW YOU HAVE -- SEVERAL
13 TIMES THAT PRISONS ARE THE WORST PLACE FOR SERIOUSLY MENTALLY --
14 MENTAL ILLNESS. YOU'VE GOT A GUY WHO'S BEEN PAROLED. HE'S BEEN
15 IN PRISON FOR HOWEVER LONG, HE'S PAROLED, HE'S REACHED THE PLACE
16 WHERE THEY HAVE GOT TO LET HIM GO OR WHATEVER. HE'S OUT ON THE
17 STREET. HE'S AS ILL AS THE QUESTION SUGGESTS. YOUR VIEW IS
18 SENDING HIM BACK TO PRISON IS NOT AN APPROPRIATE THING TO DO?

19 **THE WITNESS:** YES, YOUR HONOR.

20 **JUDGE KARLTON:** IS IT APPROPRIATE FROM SOCIETY'S
21 POINT OF VIEW BECAUSE IT REDUCES THE RISK OF CRIME, VIOLENT --
22 LET'S START WITH VIOLENT -- VIOLENT CRIME?

23 **THE WITNESS:** WELL, LET ME SAY I DON'T THINK IT WOULD
24 BE APPROPRIATE COMPARED WITH A BETTER SOLUTION, WHICH WOULD
25 BE -- I MEAN, I DON'T KNOW WHAT MIGHT BE COMPARABLE IN

1 CALIFORNIA.

2 FOR EXAMPLE, IN MASSACHUSETTS WE SET UP A COURT
3 CLINIC SYSTEM WHERE EACH OF THE STATE DISTRICT COURTS WOULD HAVE
4 A COURT CLINIC SO THE COURT COULD REFER SOMEBODY WHO WAS
5 ARRAIGNED FOR -- BECAUSE OF BEING CHARGED WITH A CRIME FOR
6 PSYCHIATRIC EVALUATION AND COULD BE DIVERTED IMMEDIATELY OUT OF
7 THE CRIMINAL JUSTICE SYSTEM INTO THE MENTAL HEALTH SYSTEM,
8 DEPENDING ON THE -- YOU KNOW, THE OUTCOME OF THE EVALUATION.

9 **BY MR. LEWIS**

10 **Q** ARE YOU AWARE OF ANY SIMILAR COURTS LIKE THE ONE YOU ARE
11 DESCRIBING HERE IN CALIFORNIA?

12 **A** NO, NO, I'M NOT. THAT'S WHY I SAY I'M SPEAKING OF WHAT MY
13 OWN EXPERIENCE WAS AND WHAT WOULD STRIKE ME AS AT LEAST A
14 PERFECTLY FEASIBLE ALTERNATIVE. I THINK IT WOULD BE PREFERABLE
15 IN TERMS OF BOTH THE NEEDS OF THE MENTALLY ILL AND PROTECTING
16 THE PUBLIC.

17 **Q** SO IF YOU'RE AWARE THAT SOME OF THOSE COURTS OR COURTS
18 SIMILAR TO THAT OPERATE IN THE STATE OF CALIFORNIA IN SOME
19 COUNTIES, YOU WOULD SEE THAT AS A POSITIVE DEVELOPMENT OR A GOOD
20 THING?

21 **A** YES.

22 **Q** HAVE YOU EVER VISITED A PAROLE OUTPATIENT CLINIC?

23 **A** NO, I HAVE NOT. I JUST READ ABOUT THEM.

24 **Q** HAVE YOU EVER PERFORMED AN INDEPENDENT ANALYSIS OF THE
25 SERVICES PROVIDED BY A CDCR PAROLE OUTPATIENT CLINIC?

1 **A** NO.

2 **Q** YOU HAVEN'T PERFORMED AN INDEPENDENT ANALYSIS OF CDCR'S
3 PRERELEASE PLANNING PROGRAMS, HAVE YOU?

4 **A** NOT MY OWN INDEPENDENT ONE, NO, JUST REVIEWED WHAT'S BEEN
5 REPORTED.

6 **Q** AND YOU'VE NEVER PERFORMED ANY INDEPENDENT ANALYSIS OF THE
7 MENTAL HEALTH STAFFING NEEDED TO PROVIDE TIMELY MEDICAL -- OR
8 TIMELY COMPETENT MENTAL HEALTH SERVICES TO THE PRESENT
9 POPULATION OF MENTALLY ILL PAROLEES IN CALIFORNIA, HAVE YOU?

10 **A** I'M NOT QUITE SURE WHAT YOU'RE REFERRING TO EXACTLY. SAY IT
11 AGAIN.

12 **Q** HAVE YOU EVER PERFORMED AN INDEPENDENT ANALYSIS OF THE
13 STAFFING NEEDED TO PROVIDE COMPETENT MENTAL HEALTH CARE TO THE
14 CURRENT MENTALLY ILL PAROLEE POPULATION IN CALIFORNIA?

15 **A** NO, NOT SPECIFICALLY LIMITED TO CALIFORNIA. I MEAN, I'M
16 JUST RELYING ON MY LIFELONG EXPERIENCE OF HAVING TO ARRANGE, YOU
17 KNOW, FOR APPROPRIATE STAFFING FOR TREATMENT OF MENTALLY ILL
18 POPULATION WHO GET INTO TROUBLE WITH THE LAW.

19 **Q** BUT YOU HAVEN'T DONE IT SPECIFICALLY?

20 **A** I HAVEN'T DONE IT SPECIFICALLY WITH RESPECT TO CALIFORNIA.

21 **Q** THANK YOU.

22 **A** NO.

23 **Q** YOU'VE TESTIFIED THAT THERE IS PROBLEMS WITH ACCESS TO
24 MENTAL HEALTHCARE IN VERY RURAL OR VERY POOR COMMUNITIES,
25 CORRECT?

1 **A** AGAIN? SAY IT --

2 **Q** I'M SORRY.

3 YOU'VE TESTIFIED THAT THERE ARE PROBLEMS WITH ACCESS
4 TO MENTAL HEALTH CARE IN RURAL OR VERY POOR COMMUNITIES,
5 CORRECT?

6 **A** I DON'T RECALL REFERRING SPECIFICALLY TO POOR COMMUNITIES.
7 I UNDERSTAND THAT IN RURAL COMMUNITIES IT CAN OFTEN BE DIFFICULT
8 FOR MENTAL HEALTH INSTITUTIONS, WHETHER INPATIENT OR OUTPATIENT,
9 TO HIRE SUFFICIENT NUMBERS OF MENTAL HEALTH PROFESSIONALS. THE
10 DIFFICULTIES IN THE POOR COMMUNITY MIGHT BE DUE MORE TO WHETHER
11 THE POOR HAVE ENOUGH MONEY TO PAY FOR WHATEVER TREATMENT THEY
12 NEED THAT THEY NEED TO PAY FOR OUT OF THEIR OWN POCKET.

13 **Q** VERY WELL. COULD YOU PLEASE PULL UP PAGE 72, LINE 14?
14 WE'LL CONTINUE ON TO PAGE 73, LINE 6.

15 DOCTOR, I'M GOING TO READ THIS, AND I'D LIKE YOU TO
16 READ ALONG WITH ME, IF POSSIBLE.

17 "NOW, IS YOUR UNDERSTANDING AS A
18 PSYCHIATRIST AND AS AN EXPERT IN THIS CASE THAT
19 THERE IS ANY SORT OF SHORTAGE OF PSYCHIATRISTS
20 WITHIN THE UNITED STATES TO SERVE MENTALLY ILL
21 PATIENTS OF ANY SORT?

22 "ANSWER: YOU MEAN WITHIN THE PRISONS OR JUST
23 IN THE COMMUNITY IN GENERAL?

24 "IN GENERAL.

25 "ANSWER: WITHIN THE COMMUNITY IN GENERAL, I

1 DO NOT BELIEVE THAT -- I WANT TO SAY THAT
2 WHATEVER SHORTAGES OF ACCESS TO MENTAL
3 HEALTHCARE EXIST, AND THEY DO EXIST IN SOME
4 COMMUNITIES, ARE DUE TO AFTER AN OVERALL
5 NATIONAL SHORTAGE OF PSYCHIATRISTS. I MEAN, I
6 THINK THERE ARE MARKED DISCREPANCIES IN ACCESS
7 TO THE MENTAL HEALTHCARE IN SOME COMMUNITIES,
8 EITHER VERY RURAL COMMUNITIES OR VERY POOR
9 COMMUNITIES. IT'S PART OF A LARGER PROBLEM, I
10 THINK, IN AMERICA, SORT THE FINANCING OF
11 HEALTHCARE IN GENERAL."

12 DOCTOR, DO YOU REMEMBER MAKING THAT STATEMENT AT YOUR
13 DEPOSITION REGARDING THE POOR COMMUNITIES?

14 **A** NOT SPECIFICALLY, BUT IT CERTAINLY SEEMS CONSISTENT WITH
15 WHAT I REMEMBER. WHAT I WAS TRYING TO SAY JUST NOW, AS TO BE A
16 LITTLE BIT CLEAR, WHAT I MEANT ABOUT THE DISTINCTION BETWEEN
17 RURAL AND POOR --

18 **JUDGE KARLTON:** COUNSEL, I DON'T UNDERSTAND WHAT YOU
19 HAVE JUST DONE. PLAINTIFFS DON'T OBJECT. NOBODY OBJECTS. THIS
20 HAPPENS ALL THE TIME, BUT AT SOME POINT I'M GOING TO GET
21 FRUSTRATED. DO YOU THINK THAT WAS IMPEACHING, OR WHAT WAS IT
22 THAT YOU WERE READING?

23 **MR. LEWIS:** NO, YOUR HONOR. I WAS TRYING TO REFRESH
24 HIS RECOLLECTION, AND MY QUESTIONS WILL DEVELOP IT.

25 **THE WITNESS:** I WAS JUST SAYING IN EITHER OF THOSE

1 SETTINGS, YOU MIGHT HAVE MORE TROUBLE THAN USUAL IN HIRING
2 PEOPLE. PARTICULARLY POOR COMMUNITIES WOULD HAVE AN ADDITIONAL
3 PROBLEM. GETTING ACCESS EVEN TO, QUOTE, FREE CARE SOMETIMES
4 COSTS MONEY, JUST TO GET TO THE CLINIC, AND POOR PEOPLE
5 SOMETIMES JUST CAN'T AFFORD IT.

6 **BY MR. LEWIS**

7 **Q** ARE THESE PROBLEMS SOMETIMES THE RESULT OF A GAP OF
8 DISTRIBUTION OF PSYCHIATRISTS WHO PREFER TO WORK IN LARGE CITIES
9 OR AFFLUENT NEIGHBORHOODS, AS OPPOSED TO DISADVANTAGED OR
10 IMPOVERISHED NEIGHBORHOODS?

11 **A** ABSOLUTELY. I THINK THAT CAN BE ONE FACTOR THAT CONTRIBUTES
12 TO THE MALDISTRIBUTION OF MENTAL HEALTH CARE IN AMERICA AND IN
13 CALIFORNIA.

14 **Q** ISN'T IT TRUE THAT A LARGE PORTION OF THE CDCR POPULATION
15 AND, THUS, A CORRESPONDINGLY LARGE PORTION OF THE MENTALLY ILL
16 POPULATION IS ALSO DRAWN FROM IMPOVERISHED AREAS?

17 **A** I WOULD SAY.

18 **Q** ARE YOU AWARE THAT CALIFORNIA OFFENDERS MUST BE PAROLED TO
19 THEIR COUNTY OF COMMITMENT UPON RELEASE FROM PRISON?

20 **A** THAT WOULDN'T SURPRISE ME. I KIND OF WOULD ASSUME THAT.

21 **Q** SO IF A MENTALLY ILL PERSON COMMITS A CRIME IN AN
22 IMPOVERISHED AREA, HE OR SHE WILL BE RETURNED TO AN AREA LACKING
23 MENTAL HEALTH CARE SERVICES?

24 **JUDGE REINHARDT:** YOU ARE TALKING ABOUT IMPOVERISHED
25 COUNTIES.

1 **MR. LEWIS:** IMPOVERISHED COUNTIES, YES, SIR.

2 **THE WITNESS:** NOT NECESSARILY TOTALLY LACKING, BUT
3 LET'S SAY IN RELATIVE TERMS, PRESUMABLY -- IT WOULDN'T SURPRISE
4 ME IF THEY HAD A LESS RICH ARRAY OF RESOURCES.

5 **BY MR. LEWIS**

6 **Q** SO SOME OF THE IMPOVERISHED AREAS FROM WHICH CDCR DRAWS ITS
7 POPULATION MAY NOT HAVE VERY GOOD ACCESS TO MENTAL HEALTHCARE,
8 CORRECT?

9 **A** AS COMPARED WITH THOSE WHO ARE MORE AFFLUENT, MORE CENTRALLY
10 LOCATED IN MORE POPULAR LOCATIONS.

11 **Q** IF THEY DON'T HAVE MENTAL HEALTHCARE, I GUESS, ON THE
12 OUTSIDE, THEY COULD POSSIBLY COME IN THEN WITH SOME MENTAL
13 HEALTH ISSUES?

14 **A** YOU MEAN COME INTO THE PRISON?

15 **Q** YES.

16 **A** OH, ABSOLUTELY.

17 **Q** AT YOUR DEPOSITION PAGE 38, LINE 6 THROUGH 12 YOU WERE ASKED
18 THE FOLLOWING:

19 **JUDGE KARLTON:** NOW, I'M GOING TO STOP THIS. I WANT
20 TO KNOW WHY YOU ARE READING IT BEFORE YOU DO IT. WE'RE JUST
21 SPENDING A LOT OF TIME, IT SEEMS TO ME. JUST TELL ME WHAT
22 YOU'RE DOING.

23 **MR. LEWIS:** YOUR HONOR, I'M GOING TO ASK HIM ABOUT --
24 NOW I'M GOING TO ASK ABOUT THE 15,000 PERSON RELEASE HE WAS
25 INFORMED ABOUT EARLIER THAT WAS SUPPOSED TO BE PART OF HIS

1 DEPOSITION TESTIMONY, AND, OBVIOUSLY, AS WE'VE TALKED ABOUT
2 BEFORE, HE TESTIFIED HE DIDN'T KNOW ABOUT 50,000, SO WE ARE
3 TRYING TO EXTRAPOLATE OUT THE NUMBERS NOW, YOUR HONOR.

4 **JUDGE KARLTON:** WHAT IS THIS ABOUT? WHY DON'T YOU
5 ASK HIM FIRST AND FIND OUT WHETHER HE AGREES WITH YOU. WE DON'T
6 NEED TO DO THIS YET.

7 **MR. LEWIS:** THANK YOU, YOUR HONOR.

8 **JUDGE HENDERSON:** AS BEST I CAN TELL.

9 **MR. LEWIS:** THANK YOU, YOUR HONOR.

10 **BY MR. LEWIS**

11 **Q** DOCTOR, DO YOU RECALL TESTIFYING THAT THERE WAS --

12 **JUDGE KARLTON:** IT'S HOPELESS. DO WHAT YOU WANT.

13 **MR. LEWIS:** THANK YOU, YOUR HONOR.

14 **JUDGE KARLTON:** ASK THE QUESTION. DON'T ASK ABOUT
15 WHAT HE TESTIFIED. ASK THE QUESTION, AND SEE WHAT HIS ANSWER
16 IS, AND SEE WHETHER YOU HAVE TO GO THROUGH ALL OF THIS.

17 **JUDGE REINHARDT:** WHAT IS IT YOU WANT TO KNOW?

18 **JUDGE KARLTON:** WHAT DO YOU WANT TO KNOW?

19 **MR. LEWIS:** YOUR HONOR, I'M GOING TO RESTRUCTURE MY
20 QUESTION TO COMPLY WITH YOU. THANK YOU.

21 **BY MR. LEWIS**

22 **Q** DOCTOR, DO YOU KNOW OF ANY GOOD EVIDENCE THAT DEMONSTRATES A
23 LIKELY INCREASE IN THE RISK OF DANGER TO THE PUBLIC RESULTING
24 FROM A PRISONER RELEASE ORDER OF 15,000 PEOPLE?

25 **A** NO.

1 Q WHAT ARE SOME OF THE FACTORS THAT WOULD INDICATE A GREATER
2 RISK OF VIOLENCE AMONG PEOPLE RELEASED FROM PRISON; COULD IT BE
3 ATTACHED TO ECONOMIC FACTORS?

4 A WELL, ABSOLUTELY, BUT LET ME PUT IT IN CONTEXT. WHAT WE
5 HAVE BEEN TALKING ABOUT SO FAR, WE HAVE BEEN FOCUSING MOSTLY ON,
6 YOU KNOW, INDIVIDUALS, AS TO WHETHER THEY AS INDIVIDUALS WOULD
7 BE LIKELY TO BE INCREASED RISK OF DANGER TO THE PUBLIC, BUT THE
8 FACT IS THE INCREASES AND DECREASES IF WE TAKE, SAY, THE MURDER
9 RATE AS AN INDEX OF DANGER TO THE PUBLIC, INCREASES AND
10 DECREASES IN THE MURDER RATE HAVE LITTLE OR NOTHING TO DO IN
11 AMERICA -- I'M LOOKING BACK OVER THE LAST CENTURY AND MORE --
12 WITH THE NUMBERS OF PEOPLE IN PRISONS. THEY ARE MUCH MORE
13 AFFECTED BY LARGE SOCIAL CONDITIONS OFTEN OF AN ECONOMIC NATURE.

14 FOR EXAMPLE, DURING THE GREAT DEPRESSION, THE MURDER
15 RATE IN AMERICA SKYROCKETED TO THE HIGHEST LEVEL IT HAD EVER
16 BEEN UP TO THAT POINT. THE MURDER RATE THEN WENT DOWN ONCE
17 ROOSEVELT GOT ELECTED AND THE NEW DEAL GOT STARTED AND PEOPLE
18 STARTED GETTING EMPLOYED AND MORE HOPE.

19 ACTUALLY, I SHOULD MENTION BOTH SUICIDE AND HOMICIDE.
20 THEY BOTH SKYROCKETED AND CAME DOWN JUST AS ABRUPTLY. THAT HAD
21 NOTHING TO DO WITH THE NUMBER OF PEOPLE IN EITHER PRISONS OR
22 MENTAL HEALTH HOSPITALS, NOR WITH THE RATE OF MENTAL ILLNESS, OR
23 THE PERCENT OF THE POPULATION THAT WAS MENTALLY ILL.

24 THE MAIN FACTORS THAT AFFECT PUBLIC SAFETY ARE NOT
25 THIS POPULATION OR WHETHER WE PUT THEM IN PRISON OR IN MENTAL

1 HOSPITALS OR SOME OTHER TREATMENT. THE MAIN FACTORS THAT AFFECT
2 PUBLIC SAFETY ARE MUCH LARGER SORT OF POLITICAL AND ECONOMIC
3 FACTORS THAT COULD BE UNDERSTOOD HISTORICALLY.

4 **Q** SO THEY COULD BE RELATED TO ECONOMIC FACTORS, AGE
5 DISTRIBUTION IN THE POPULATION, LEVEL OF RACIAL DISCRIMINATION
6 PRESENCE IN THE SOCIETY?

7 **A** SURE, ALL THOSE THINGS. MANY OF THEM ARE MUCH MORE
8 IMPORTANT THAN WHETHER OR NOT A SPECIFIC INDIVIDUAL IS MENTALLY
9 ILL. I MEAN, THAT'S A POOR PREDICTER OF VIOLENCE. THESE OTHER
10 THINGS CAN BE POWERFUL PREDICTERS OF VIOLENCE.

11 **Q** IN REACHING YOUR CONCLUSION ABOUT THE LEVEL OF VIOLENCE THAT
12 MAY RESULT FROM THE RELEASE OF 15,000 OR 50,000 OFFENDERS FROM
13 CDCR FACILITIES, DID YOU EVER PERFORM AN ANALYSIS OF THE
14 ECONOMIC FACTORS, AGE DISTRIBUTION IN THE POPULATION, OR LEVEL
15 OF DISCRIMINATION SPECIFIC TO CALIFORNIA?

16 **A** NOT SPECIFIC TO CALIFORNIA. I KNOW A LOT ABOUT THIS ON A
17 NATIONAL LEVEL, AND I CERTAINLY KNOW IT IN MASSACHUSETTS.

18 **Q** BUT YOU DIDN'T DO IT SPECIFICALLY FOR CALIFORNIA?

19 **A** NO. I MEAN, FOR EXAMPLE, ASSESSING THE SOCIOECONOMIC STATUS
20 OF CALIFORNIA PRISON INMATES, NO, I DID NOT DO AN INDEPENDENT
21 ANALYSIS OF THAT SORT OF THING.

22 **Q** YOU ASSUME THAT THERE ARE PUBLIC MENTAL HEALTH HOSPITALS,
23 MENTAL HEALTH CENTERS AND MENTAL HEALTH CLINICS IN CALIFORNIA
24 COMMUNITIES WHERE PAROLEES CAN ACCESS MENTAL HEALTH CARE, DON'T
25 YOU?

1 **A** NO. MY UNDERSTANDING IS PAROLEES WERE EXCLUDED FROM ACCESS
2 TO THE COUNTY MENTAL HEALTH SYSTEM, AND THAT WAS PART OF THE
3 PROBLEM.

4 **Q** DO YOU KNOW HOW MANY PUBLIC MENTAL HEALTH HOSPITALS THERE
5 ARE IN CALIFORNIA?

6 **A** I HAVE A MAP THAT SHOWS SEVERAL RIGHT HERE, BUT I'VE SEEN
7 ATASCADERO AND ALL THE OTHERS.

8 **Q** DO YOU KNOW THE TOTAL CAPACITY OF CALIFORNIA'S PUBLIC MENTAL
9 HEALTH HOSPITALS?

10 **A** I DON'T KNOW WHAT IT IS CURRENTLY. I COULD LOOK IT UP. I
11 JUST DON'T KNOW IT OFF THE TOP OF MY HEAD.

12 **Q** DID YOU CONSIDER THAT IN REACHING YOUR OPINIONS TODAY?

13 **A** NO.

14 **Q** DID YOU CONSIDER THE AMOUNT OF SERVICES AVAILABLE TO
15 MENTALLY ILL PERSONS IN GENERAL FROM THE CALIFORNIA MENTAL
16 HEALTH SYSTEM?

17 **A** NO. WHAT I'M TRYING TO GET AT IS, THAT IF THE EXISTING
18 RESOURCES ARE INADEQUATE TO TREAT THE MENTALLY ILL IN
19 CALIFORNIA, THEN IT WOULD BE BOTH MORE EFFECTIVE FROM A CLINICAL
20 STANDPOINT AND MORE ECONOMICAL FROM A FINANCIAL STANDPOINT FOR
21 THE STATE OF CALIFORNIA TO DIVERT SOME OF ITS FINANCE RESOURCES
22 FROM THE PRISON TO THE MENTAL HEALTH AND PERHAPS ADDING
23 RESOURCES TO BOTH THE COUNTY AND THE STATE MENTAL HEALTH
24 PROVIDING SYSTEM.

25 **Q** WOULD YOU AGREE THERE'S A RISK OF RECIDIVISM THAT EXISTS

1 WITH THE RELEASE OF 15,000 OR 50,000 INMATES?

2 **A** WELL, I MEAN, ANY TIME AN INMATE IS RELEASED, THERE'S A RISK
3 OF RECIDIVISM, SURE.

4 **Q** WOULD YOU ALSO AGREE THERE'S A RISK THAT A RELEASED OFFENDER
5 MAY COMMIT AN ACT OF BODILY HARM ON ANOTHER PERSON WHILE ON
6 PAROLE?

7 **A** THERE IS ALSO THAT RISK.

8 **MR. LEWIS:** THANK YOU, DR. GILLIGAN.

9 I HAVE NO FURTHER QUESTIONS, YOUR HONORS.

10 **JUDGE HENDERSON:** THANK YOU, COUNSEL.

11 ANYTHING FROM INTERVENORS?

12 **MS. FUENTES:** GOOD MORNING, I'M THERESA FUENTES FROM
13 SANTA CLARA COUNTY ON BEHALF OF DEFENDANT INTERVENORS.

14 **CROSS-EXAMINATION BY MS. FUENTES**

15 **BY MS. FUENTES**

16 **Q** DR. GILLIGAN, DO YOU AGREE THAT MENTALLY ILL PRISONERS WHO
17 WILL BE RELEASED OR DIVERTED FROM PRISON UNDER A POPULATION
18 REDUCTION WILL NEED ACCESS TO SOME SORT OF MENTAL HEALTH
19 TREATMENT IN THE COMMUNITY?

20 **A** I WOULD THINK SO, AND I WOULD CERTAINLY RECOMMEND IT.

21 **Q** THAT WOULD BE WHETHER THEY'RE 3CMS OR EOP; IT WOULD JUST
22 DEPEND ON THE LEVEL OF TREATMENT THAT THEY NEED?

23 **A** YES. THE IMPORTANT THING I WANT TO EMPHASIZE IS SIMPLY HOW
24 HIGHLY VARIABLE THAT IS, AS I WAS TRYING TO SAY, FROM THE MOST
25 INTENSIVE TO THE LEAST INTENSIVE.

1 Q I THINK YOU SAID, IN YOUR OPINION, THE 3CMS WOULD NEED MAYBE
2 SOME APPOINTMENTS WITH MENTAL HEALTH PROFESSIONALS AND ACCESS TO
3 MEDICATIONS?

4 A I WOULD ASSUME THAT MOST OR ALL OF THEM WOULD NEED THAT AT
5 SOME POINT, BUT I WOULD ALSO NOT BE SURPRISED IF MANY OF THEM
6 DID NOT NEED IT ON -- ON AN ONGOING BASIS.

7 Q BUT YOU DON'T HAVE ANY IDEA WHAT THE ACTUAL NUMBERS WOULD BE
8 OF WHO WOULD NEED MEDICATIONS IN THE COMMUNITY?

9 A I DON'T THINK ANYBODY COULD PREDICT THAT IN ADVANCE. I JUST
10 THINK THE APPROPRIATE THING THE MENTAL HEALTH SYSTEM COULD DO IS
11 TO RESPOND TO WHATEVER THE NEED WOULD TURN OUT TO BE.

12 Q IT WOULD DEPEND ON WHAT THEIR NEEDS ARE OUT IN THE
13 COMMUNITY?

14 A THESE COULD VARY FROM ONE TIME TO ANOTHER EVEN WITHIN THE
15 SAME PERSON, OF COURSE.

16 Q AND DO YOU AGREE THAT THE MENTALLY ILL RELEASED PRISONERS
17 WOULD NEED SOME SORT OF HOUSING, ACCESS TO HOUSING?

18 A I WOULD -- WELL, I WOULD CERTAINLY RECOMMEND IT. I DON'T
19 RECOMMEND HOMELESSNESS FOR ANYBODY.

20 Q AND SOME SORT OF SUPPORT STRUCTURE AS PART OF THEIR
21 TREATMENT REGIMEN?

22 A AGAIN, THE NEED FOR THIS WOULD VARY ENORMOUSLY. I THINK ALL
23 INMATES LEAVING PRISONS, WHETHER THEY'RE MENTALLY ILL OR NOT,
24 REALLY, THEY BENEFIT, AND PUBLIC SAFETY BENEFITS FROM THEIR
25 HAVING A LOT OF HELP IN GETTING REINTEGRATED INTO THE COMMUNITY

1 WITH ADEQUATE HOUSING, EMPLOYMENT, OR AT LEAST INCOME, A BASE,
2 AND SO FORTH.

3 **Q** OKAY. AND DO YOU AGREE THAT CALIFORNIA COUNTIES DO NOT
4 CURRENTLY HAVE FUNDS OR RESOURCES TO PROVIDE ANY OF THOSE TYPE
5 OF SERVICES TO PRISONERS WHO WOULD BE DIVERTED OR RELEASED UNDER
6 A POPULATION REDUCTION?

7 **A** I DON'T KNOW HOW THIS RELATES TO THEIR RESOURCES. MY
8 UNDERSTANDING, THOUGH, IS THAT THEY, THE PAROLEES, ARE SIMPLY
9 EXCLUDED FROM ACCESS TO THE COUNTY MENTAL HEALTH SYSTEMS.
10 THAT'S WHY THE PAROLE OFFICERS OFTEN HAVE TO SEND THEM BACK TO
11 PRISON.

12 **Q** SO THEY ARE NOT RECEIVING TREATMENT IN THE COMMUNITY, IS
13 THAT WHAT YOU'RE SAYING?

14 **A** THAT'S MY UNDERSTANDING.

15 **Q** SO WHAT ABOUT MENTALLY ILL INDIVIDUALS WHO ARE DIVERTED OR
16 ARE NOT ABLE TO BE SENT TO PRISON BECAUSE OF A POPULATION CAP,
17 WHAT ABOUT THOSE?

18 **A** WELL, IF THE COUNTY MENTAL HEALTH SYSTEM WOULD THEN AGREE TO
19 PROVIDE THEM TREATMENT, I WOULD THINK THAT WOULD BE THE
20 APPROPRIATE RESPONSE.

21 **Q** WHAT IF THE COUNTIES DON'T HAVE ANY FUNDS OR RESOURCES TO
22 PROVIDE THE TREATMENT?

23 **A** WELL, I WOULD SAY THAT WOULD CREATE A SITUATION THAT THE
24 CITIZENS OF CALIFORNIA WOULD HAVE TO DEAL WITH. I MEAN, THAT'S
25 WHY CALIFORNIA HAS A GOVERNMENT AND A LEGISLATURE AND AN

1 EXECUTIVE BRANCH AND SO ON. THAT'S WHAT THEY EXIST FOR.

2 **Q** WELL, DO YOU AGREE IT WOULD IMPACT PUBLIC SAFETY IF THERE
3 WERE MENTALLY ILL INDIVIDUALS, OFFENDERS WHO WERE UNABLE TO
4 ACCESS ANY SORT OF MENTAL HEALTH TREATMENT IN THE COMMUNITY?

5 **A** WELL, I THINK IT -- THERE WOULD BE AN ADVERSE EFFECT ON
6 PUBLIC SAFETY IF ANY RELEASED PRISON INMATE DID NOT HAVE ACCESS
7 TO THE SERVICES THEY NEEDED IN THE COMMUNITY. THAT WOULD
8 INCLUDE THE MENTALLY ILL AND THE NON-MENTALLY ILL, ALL OF WHOM
9 NEED ONE KIND OF SERVICE OR ANOTHER.

10 BUT WHAT I'M TRYING TO GET AT IS RIGHT NOW THE
11 RESOURCES OF THE STATE -- AND, OBVIOUSLY, THEY'RE ALWAYS FINITE,
12 THEY'RE LIMITED RESOURCES -- ARE DISPROPORTIONATELY PUT AT THE
13 SERVICE OF THE PRISON SYSTEM, IN PART BECAUSE THE PRISON SYSTEM
14 IS TAKING CARE OF PEOPLE THAT THE MENTAL HEALTH SYSTEM 50 YEARS
15 AGO WOULD HAVE TAKEN CARE OF DIRECTLY.

16 IF WE ARE GOING TO -- IF THE PRISON POPULATION IS
17 GOING TO DECREASE AND A CERTAIN NUMBER OF MENTALLY ILL PEOPLE
18 WILL BE IN THE COMMUNITY, THIS MIGHT BE AN HISTORICAL TIME FOR
19 THE STATE AND OTHER STATES IN THIS COUNTRY TO THINK OF
20 REDISTRIBUTING RESOURCES FROM THE PRISON SYSTEM BACK INTO THE
21 MENTAL HEALTH SYSTEM.

22 **JUDGE REINHARDT:** DOCTOR, ARE YOU SAYING IT'S MORE
23 DANGEROUS FOR THE SAFETY OF THE COMMUNITY TO CONTINUE THE PRISON
24 SYSTEM THE WAY IT IS THAN TO RELEASE THESE PEOPLE WITH ADEQUATE
25 TREATMENT?

1 **THE WITNESS:** ABSOLUTELY. I REALLY THINK -- I THINK
2 THE STATUS QUO IS MORE DANGEROUS THAN RELEASING PEOPLE, ASSUMING
3 THAT, YOU KNOW, THE CITIZENS OF THIS STATE AND THE MENTAL HEALTH
4 PROFESSIONALS AND SO ON ARE WILLING TO RESPOND TO THIS, YOU
5 KNOW, IN WAYS THAT ARE APPROPRIATE AND NECESSARY. AGAIN, I'VE
6 INDICATED FROM THE FIGURES THAT I PROJECTED ONTO THE SCREEN WHAT
7 A RELATIVELY SMALL NUMBER OF PEOPLE WE'RE TALKING ABOUT IN A
8 MENTAL HEALTH SYSTEM THAT IS ALREADY TAKING CARE OF AT LEAST
9 658,000 PATIENTS.

10 **JUDGE KARLTON:** LET ME FOLLOW UP FROM JUDGE
11 REINHARDT'S QUESTION. WHAT WE'RE DOING NOW, IN YOUR VIEW, IS
12 DANGEROUS FOR PUBLIC SAFETY, IN YOUR VIEW?

13 **THE WITNESS:** YES, THAT'S WHAT I'M TALKING ABOUT.

14 **JUDGE KARLTON:** AND YOUR VIEW, AS I UNDERSTAND IT, IS
15 EVEN A RELEASE OF AS MANY AS 50,000 PEOPLE, GIVEN THE RELATIVELY
16 SMALL NUMBER OF MENTAL HEALTH PEOPLE WHO WOULD BE RELEASED JUST
17 IF YOU JUST FOLLOW THE AVERAGE, WILL NOT HAVE A SUBSTANTIAL
18 INCREASE IN THE DANGER TO THE PUBLIC WHICH EXISTS TODAY?

19 **THE WITNESS:** YES, YOUR HONOR.

20 **JUDGE KARLTON:** BUT THAT IF THE STATE WERE TO DIVERT
21 FUNDS FROM THE PRISONS TO THE COMMUNITY, AMONG OTHER REASONS
22 BECAUSE THEY WOULD NOT NEED AS MUCH FUNDS FOR MENTAL HEALTH IN
23 THE COMMUNITY IN THE PRISONS, THAT WOULD, IN YOUR VIEW, HAVE A
24 SUBSTANTIAL BENEFICIAL -- I DON'T KNOW SUBSTANTIAL -- A
25 BENEFICIAL EFFECT ON PUBLIC SAFETY?

1 **THE WITNESS:** YES.

2 **JUDGE KARLTON:** IS THERE ANY WAY FOR YOU TO
3 QUANTIFY -- AND THE ANSWER MAY BE NO, I UNDERSTAND THAT. IS
4 THERE ANY WAY FOR YOU TO QUANTIFY THE BENEFIT IN TERMS OF COST?

5 **THE WITNESS:** YES, I MEAN, I COULD AT LEAST REFER TO
6 SOME FIGURES THAT I THINK WOULD BE RELEVANT IN MAKING SUCH AN
7 ASSESSMENT. I ALSO MENTIONED A CRUDE ESTIMATE OF THE COST TO
8 THE STATE FOR EACH PRISONER IN THE PRISON SYSTEM IS COSTING
9 ROUGHLY \$43,000 PER YEAR. THAT MAY ACTUALLY BE AN
10 UNDERESTIMATE.

11 THE FIGURES THAT I'VE HEARD WITH RESPECT TO REALLY
12 FULL SCALE INPATIENT MENTAL HOSPITAL TREATMENT ARE MORE ON THE
13 ORDER OF \$30,000. AND FOR OUTPATIENT TREATMENT I'VE HEARD
14 FIGURES -- AGAIN, I'M TALKING ABOUT IN CALIFORNIA -- ARE FIGURES
15 OF AVERAGES OF MAYBE \$4,500 A YEAR, WHICH IS ROUGHLY ONE-TENTH
16 AS MUCH AS IT COST TO KEEP SOMEBODY IN PRISON.

17 SO WHAT I'M SAYING IS I'M VERY AWARE AND VERY
18 SENSITIVE TO THE FACT THAT ANY STATE'S RESOURCES FINANCIALLY ARE
19 LIMITED. THEY'RE FINITE. WHAT I'M TRYING TO SAY IS I THINK THE
20 KIND OF CHANGE THAT WE'RE TALKING ABOUT HERE, NOT ONLY WOULD BE
21 BETTER FOR THE MENTALLY ILL, WOULD NOT ONLY BE, I THINK, AN
22 IMPROVEMENT IN PUBLIC SAFETY, IT WOULD ACTUALLY SAVE THE
23 TAXPAYERS MONEY.

24 **BY MS. FUENTES**

25 **Q** WELL, DO YOU AGREE THERE'S NO GUARANTEE THAT THE COUNTIES

1 WILL RECEIVE THE FUNDINGS TO PROVIDE THOSE SERVICES?

2 **A** I UNDERSTAND THAT. THAT'S ALWAYS THE RISK IN A DEMOCRACY.

3 **Q** SO THE RESULT MAY VERY WELL BE THAT THERE ARE JUST MORE
4 UNTREATED OFFENDERS IN THE COMMUNITY?

5 **A** IF THE STATE DECIDED THAT'S WHAT THE STATE WANTED, THAT'S
6 WHAT THE STATE WOULD GET.

7 **MS. FUENTES:** THANK YOU.

8 **JUDGE HENDERSON:** REDIRECT.

9 **REDIRECT EXAMINATION BY MR. GALVAN**

10 **BY MR. GALVAN**

11 **Q** ON CROSS THERE WAS A LOT OF DISCUSSION OF RISK IN VARIOUS
12 WAYS. ARE MENTALLY ILL OFFENDERS MORE RISKY THAN OTHER
13 OFFENDERS WHEN THEY'RE RELEASED?

14 **A** NO.

15 **Q** WHY NOT?

16 **A** THE LIKELIEST EXPLANATION IS THAT PEOPLE SUFFERING FROM THE
17 SEVERE MENTAL DISORDERS, THE AXIS I DISORDERS, WHICH IS WHAT
18 WE'RE PRIMARILY TALKING ABOUT HERE, ARE MORE LIKELY TO BE
19 SOCIALLY WITHDRAWN THAN THEY ARE TO BE SOCIALLY AGGRESSIVE.
20 THEY'RE MORE LIKELY TO BE DISORGANIZED THAN THEY ARE TO BE
21 CAPABLE OF CARRYING OUT A -- YOU KNOW, A COMPLEX CRIME, YOU
22 KNOW, LIKE ROBBING A BANK OR WHATEVER, AND I MEAN, EVEN PEOPLE
23 WHO ARE VERY PARANOID ARE MORE LIKELY TO RESPOND WITH FEAR AND
24 WITHDRAWAL THAN THEY ARE WITH ATTACK.

25 SO I THINK IT'S -- I REALIZE IT'S SOMEWHAT

1 COUNTERINTUITIVE. MOST PEOPLE ARE SURPRISED WHEN THEY HEAR WHAT
2 THE RESEARCH HAS SHOWN, IS THAT MENTALLY ILL OFFENDERS ARE
3 ACTUALLY EITHER NO MORE DANGEROUS OR IN MANY CONTEXTS
4 SIGNIFICANTLY LESS DANGEROUS THAN THE NON-MENTALLY ILL PAROLEES
5 OR DISCHARGED PRISONERS, BUT THE FACT IS I THINK THERE ARE
6 UNDERSTANDABLE REASONS WHY THAT'S THE CASE.

7 **Q** THERE WAS ALSO DISCUSSION ON CROSS REGARDING DIAGNOSTIC
8 CATEGORIES IN THE DSM-IV AND THE DISTRIBUTION BETWEEN AXIS I AND
9 AXIS II. AND I KNOW IN WORKING ON YOUR REPORT YOU LOOKED AT THE
10 COLEMAN PROGRAM GUIDE WHICH HAS THE CLASS DEFINITION. DOES THE
11 COLEMAN -- THE LIST OF DIAGNOSES YOU SAW FOR THE COLEMAN CLASS
12 DEFINITION, DOES IT INCLUDE AXIS II DISORDERS?

13 **A** NO, IT SPECIFICALLY DOES NOT. IT IS LIMITED TO AXIS I.

14 **Q** AND AXIS II DISORDERS, I THINK YOU'VE WRITTEN, ARE VERY
15 COMMONLY -- OR THEY ARE MODAL -- THEY'RE MODAL IN PRISON. WHAT
16 DOES THAT WORD "MODAL" MEAN?

17 **JUDGE KARLTON:** FIRST OF ALL, DO YOU AGREE THEY ARE
18 MODAL?

19 **THE WITNESS:** YES, I DO.

20 **BY MR. GALVAN**

21 **Q** WHAT DOES MODAL MEAN?

22 **A** IT'S THE -- IF YOU WERE DRAWING A NORMAL DISTRIBUTION CURVE,
23 IT WOULD BE THE TOP OF THE CURVE. THAT PRISONERS ARE -- THE
24 AVERAGE PRISONER YOU SEE IN PRISONS IS LIKELY TO HAVE A
25 PERSONALITY DISORDER.

1 NOW, LET ME BE CLEAR ABOUT THIS DIAGNOSTIC CATEGORY.
2 IT'S A DESCRIPTION OF PERSONALITY PATTERNS, OR YOU MIGHT SAY
3 CHARACTER PATTERNS. IT'S SOMETIMES CALLED A PERSONALITY
4 DISORDER, SOMETIMES A CHARACTER DISORDER.

5 CHARACTER -- YOU KNOW, THE GREEK WORD FOR CHARACTER
6 IS ETHOS. OUR WORD IS ETHICS. CHARACTER DISORDERS IS FAILURE
7 OF CHARACTER. THESE ARE PEOPLE DEFINED IN TERMS OF, YOU MIGHT
8 SAY, A FAILURE OF MORAL DEVELOPMENT AND ARE ALMOST BY DEFINITION
9 PEOPLE WHO ENGAGE IN CRIMINAL BEHAVIOR.

10 I MEAN, THE WAY DSM-IV DEFINES ANTI-SOCIAL
11 PERSONALITY DISORDER IS ESSENTIALLY A DESCRIPTION OF A CAREER
12 CRIMINAL, SO IT'S HARDLY SURPRISING THAT MOST OF THE PEOPLE IN
13 PRISONS WOULD -- COULD BE DESCRIBED ACCORDING TO THAT CONCEPT OF
14 CHARACTER.

15 **Q** SO IF THIS WERE A VERY BIG ROOM AND I TOOK THE WHOLE PRISON
16 POPULATION, 172,000, AND I PUT THE COLEMAN CLASS MEMBERS ON THAT
17 SIDE AND I PUT THE NON-COLEMAN CLASS MEMBERS ON THAT SIDE --

18 **JUDGE KARLTON:** IT WOULD BE VERY CROWDED.

19 **MR. GALVAN:** THAT'S THE POINT.

20 **BY MR. GALVAN**

21 **Q** AND I PUT A WALL BETWEEN THEM. IF WE WERE ON -- I DON'T
22 REMEMBER WHAT SIDE I PUT THE NON-COLEMAN CLASS MEMBERS ON.
23 LET'S SAY THAT SIDE, THE RIGHT SIDE FROM WHERE YOU ARE -- WE
24 WENT INTO THAT GROUP AND WE MEASURED THE PREVALENCE OF AXIS II
25 DISORDERS IN THE NON-MENTALLY ILL, NON-COLEMAN CLASS MEMBERS,

1 WHAT WOULD WE FIND?

2 **A** I WOULD THINK, I MEAN, BASED ON 40 YEARS OF EXPERIENCE
3 WORKING WITH PEOPLE IN THESE POPULATIONS, THAT THE VAST MAJORITY
4 OF THEM COULD BE -- HOW DO I SAY? THEY WOULD MEET THE CRITERIA
5 FOR THE DIAGNOSIS OF AXIS II DISORDER AND OFTEN WOULD BE MORE
6 THAN ONE.

7 **Q** WE'RE TALKING ABOUT NON-COLEMAN SIDE OF THE ROOM?

8 **A** YES.

9 **Q** IF THEN WE WENT TO THE COLEMAN SIDE OF THE ROOM WHERE THE
10 MENTALLY ILL PEOPLE ARE, WOULD WE FIND ANY DIFFERENT INCIDENCE
11 OF AXIS II THERE?

12 **A** YES, I THINK IT WOULD BE MUCH LOWER. THE TWO KINDS OF
13 DIAGNOSIS CAN COEXIST. I WOULD SAY, WHEN THEY DO, YOU ARE
14 LIKELY TO BE DEALING WITH A MORE DANGEROUS PERSON, BUT MANY
15 MENTALLY ILL PEOPLE DON'T MEET THE --

16 **Q** SO IF I UNDERSTAND YOUR TESTIMONY, THE NON-MENTALLY ILL,
17 NON-COLEMAN SIDE OF THE ROOM, WE WERE GOING TO FIND MORE
18 AXIS II?

19 **A** YES.

20 **Q** AND WE ARE GOING TO FIND LESS AXIS II ON THE MENTALLY ILL
21 SIDE?

22 **A** YES. I THINK MOST PSYCHIATRISTS WOULD AGREE WITH THAT. I
23 DON'T THINK I'M FAR OUT IN SAYING THAT.

24 **Q** SO IF YOU WERE DESIGNING A DIVERSION PROGRAM TO MAXIMIZE
25 PUBLIC SAFETY AND YOU CONSIDERED AXIS II A RISK FACTOR, YOU

1 WOULDND'T GET ANY BENEFIT BY ADDING A FILTER FOR COLEMAN CLASS
2 MEMBERSHIP?

3 **A** NO.

4 **Q** THERE'S ALSO SOME TESTIMONY ABOUT SCHIZOPHRENIA ON
5 CROSS-EXAMINATION, AND, YOU KNOW, THE VARIOUS PROBLEMS THAT GO
6 WITH THAT IN TERMS OF EMPLOYABILITY. IS SCHIZOPHRENIA A COMMON
7 DIAGNOSIS AMONG THE AXIS I, OR IS IT UNCOMMON?

8 **A** NO. THE LIFETIME PREVALENCE OF SCHIZOPHRENIA IN THE
9 POPULATION AS A WHOLE IS GENERALLY CONSIDERED TO BE ABOUT ONE
10 PERCENT, AND THE -- IN PRISONS THE PERCENTAGE OF PEOPLE WITH
11 AXIS I DISORDERS, THAT WOULD INCLUDE MORE THAN JUST
12 SCHIZOPHRENIA, ALSO MOOD DISORDERS AND SO FORTH, IS PROBABLY
13 ABOUT FOUR PERCENT. THERE'S A HIGHER AVERAGE, BUT STILL WE ARE
14 TALKING ABOUT FOUR PERCENT VERSUS THE REMAINING 96 PERCENT.

15 **JUDGE KARLTON:** SIR, I DON'T UNDERSTAND. I HAVE BEEN
16 TOLD, AND I HAVE BEEN BEHAVING ACCORDINGLY, THAT THE COLEMAN
17 CLASS CONSTITUTES ABOUT 20 OR GREATER, 20 TO 30, PERCENT OF THE
18 PRISON POPULATION. NOW YOU ARE TELLING ME IT'S FOUR PERCENT.

19 **THE WITNESS:** OKAY, NO, NO. I'M SORRY I WAS
20 CONFUSING YOU BY NOT BEING SPECIFIC ENOUGH -- OR ALL OF THE
21 WHOLE COURT.

22 SCHIZOPHRENIA ALONE IS CERTAINLY THE -- IT IS
23 RELATIVELY RARE AMONG MENTAL ILLNESSES. IF YOU ARE CONSIDERING
24 ALL THE AXIS I DIAGNOSES, THEY CERTAINLY WOULD BE MORE THAN ONE
25 PERCENT. IF YOU ADD THEM ALL TOGETHER IN THE POPULATION, YOU

1 WOULD BE TALKING ABOUT NOT ONE PERCENT AS SCHIZOPHRENIA, BUT
2 PROBABLY SOMEWHERE BETWEEN FOUR AND FIVE PERCENT. IF YOU
3 MULTIPLY THAT BY FOUR, YOU GET THE -- ROUGHLY THE PERCENTAGE OF
4 THE PRISON POPULATION THAT'S MENTALLY ILL, WHICH WOULD -- YOU
5 KNOW, IT'S GENERALLY CONSIDERED AS SOMEWHERE BETWEEN 15 AND
6 20 PERCENT.

7 **BY MR. GALVAN**

8 **Q** SO IF WE TOOK THAT 15 TO 20 PERCENT, THAT'S THE COLEMAN
9 POPULATION IN THE PRISON, THE PORTION THAT ARE DIAGNOSED WITH
10 SCHIZOPHRENIA WOULD BE FAIRLY SMALL?

11 **A** YES. THAT'S RIGHT.

12 **Q** WHEN YOU -- IN YOUR CAPACITIES IN MASSACHUSETTS AS A
13 PRACTITIONER OF CORRECTIONAL MENTAL HEALTH, DID YOU HAVE
14 OCCASION TO TESTIFY IN PROCEEDINGS TO PREVENT RELEASE OF PERSONS
15 BASED ON MENTAL HEALTHNESS?

16 **A** OH, FREQUENTLY.

17 **Q** THESE WERE INDIVIDUAL PEOPLE?

18 **A** YES.

19 **Q** IN YOUR SYSTEM YOU HAD A MEANS OF GETTING SOMEONE CIVILLY
20 COMMITTED ON THE WAY OUT THE DOOR FROM PRISON?

21 **A** ABSOLUTELY.

22 **Q** AND IN FORMING YOUR OPINIONS IN THIS CASE, HAVE YOU REVIEWED
23 THE PROVISIONS OF THE CALIFORNIA MENTALLY DISORDERED OFFENDERS
24 ACT?

25 **A** YES.

1 Q WHAT'S YOUR UNDERSTANDING OF THE POWERS THAT IT GIVES THE
2 CORRECTIONS DEPARTMENT?

3 A WELL, THE CORRECTIONS DEPARTMENT DOES HAVE WAYS UNDER THE
4 LAW OF ASSESSING PRISONERS WHO ARE SCHEDULED FOR RELEASE FROM
5 PRISON AS TO WHETHER OR NOT THEY SHOULD BE CONSIDERED DANGEROUS
6 TO THEMSELVES OR OTHERS BY REASON OF MENTAL ILLNESS. IF THAT IS
7 THE DETERMINATION, THERE ARE MEANS AVAILABLE TO HAVE THEM --
8 WELL, I'LL SAY TO PETITION THE COURT TO COMMIT THEM FOR
9 TREATMENT INVOLUNTARILY IF THEY DON'T AGREE TO DO IT VOLUNTARILY
10 FOR INPATIENT MENTAL HOSPITALIZATION, BOTH FOR THEIR TREATMENT
11 AND FOR THE SAFETY OF THE PUBLIC.

12 Q AND I KNOW IN YOUR DEPOSITION THERE WAS SOME QUESTIONS ABOUT
13 DID YOU KNOW THE EXACT NAME OF THE LANTERMAN-PETRIS-SHORT ACT.
14 ARE YOU GENERALLY AWARE THAT THE 50 STATES ADOPTED CIVIL
15 COMMITMENTS STATUTES?

16 A OH, YES.

17 Q AND CALIFORNIA HAS ONE?

18 A YES.

19 Q ARE YOU AWARE THAT THE DEPARTMENT CAN, ON A SHOWING OF
20 PROBABLE CAUSE, TAKE AN ABOUT-TO-BE-RELEASED PERSON AND SEND
21 THEM TO THE CIVIL COMMITMENT PROCESS?

22 A YES.

23 Q REGARDING THE KNOWN RISK FACTORS THAT YOU'VE TESTIFIED
24 ABOUT, SUCH AS PRIOR VIOLENCE AND SUBSTANCE ABUSE, DO YOU HAVE
25 OPINIONS ABOUT THE USE OF ANY KINDS OF RISK AND NEEDS TOOLS WHEN

1 CONTEMPLATING EITHER DIVERSIONARY STRATEGIES OR RELEASE
2 STRATEGIES?

3 **MR. LEWIS:** OBJECTION, YOUR HONOR. IT'S BEYOND THE
4 SCOPE OF THE CROSS. RISK NEEDS WERE NEVER ADDRESSED.

5 **MR. GALVAN:** THE CROSS SPENT A LOT OF TIME ON RISK
6 FACTORS, SUBSTANCE ABUSE, PRIOR HISTORY OF VIOLENT FELONIES.

7 **MR. LEWIS:** BUT NOT RISK AND NEEDS ANALYSIS, NOT THE
8 TOOLS.

9 **JUDGE HENDERSON:** I WILL ALLOW IT, COUNSEL. REPEAT
10 THE QUESTION.

11 **MR. GALVAN:** YES. THANK YOU.

12 **BY MR. GALVAN**

13 **Q** IN YOUR WORK IN GENERAL, DO YOU HAVE AN OPINION ABOUT THE
14 USE OF TOOLS, ACTUARIAL TOOLS, TO MEASURE RISK AND NEEDS IN
15 PREDICTING -- DEALING WITH CORRECTIONAL POPULATIONS?

16 **A** YES. I KNOW THESE TOOLS ARE AVAILABLE. THEY'RE, I MEAN,
17 CONTINUALLY BEING CREATED AND PERFECTED, AND IN MANY CASES THEY
18 ARE -- AND AN ATTEMPT, I THINK, TO KIND OF SYSTEMATIZE, THE KIND
19 OF THING WE USED TO DO JUST CLINICALLY IN ASSESSING PEOPLE
20 FOR -- YOU KNOW, PRIOR TO THEIR DISCHARGE FROM PRISON. BUT
21 DOING IT ON AN ACTUARIAL BASIS CAN ALSO IMPROVE THE PREDICTIVE
22 POWER OF THE PRERELEASE, YOU KNOW, PLANNING WHICH IS WHAT I
23 RECOMMENDED EARLIER IN MY TESTIMONY.

24 **Q** THERE WAS SOME CROSS-EXAMINATION ABOUT DID YOU KNOW THE
25 TOTAL CAPACITY OF THE DEPARTMENT OF MENTAL HEALTH STATE HOSPITAL

1 SYSTEM AND IN FORMING YOUR OPINION, EVEN IF YOU DIDN'T CONSIDER
2 THE TOTAL CAPACITY, DID YOU CONSIDER THE 800 EMPTY BEDS AT
3 COALINGA STATE HOSPITAL?

4 **A** AT COALINGA, YES, ABSOLUTELY.

5 **Q** AND HOW DID THE PRESENTATION OF THOSE BEDS AFFECT YOUR
6 OPINION?

7 **A** WELL, IT SEEMS TO ME THAT THERE CLEARLY ARE MORE THAN ENOUGH
8 BEDS AVAILABLE FOR WHAT THE PROJECTED NEED FOR THEM WOULD BE
9 BASED ON THE CHARTS THAT I SHOWED ON THE SCREEN.

10 **Q** THEN THERE WAS ALSO CROSS-EXAMINATION REGARDING WHETHER YOU
11 DID AN INDEPENDENT STUDY OF THE STAFFING NEEDS FOR THE PAROLE
12 OUTPATIENT CLINIC SYSTEM, AND YOU TESTIFIED YOU DIDN'T. DID YOU
13 REVIEW DOCUMENTS FROM THE CORRECTIONS DEPARTMENT OF THEIR OWN
14 ANALYSES?

15 **A** YES.

16 **Q** OKAY. I'D LIKE TO SHOW ONE OF THOSE IF I COULD, P 715,
17 P 715.

18 (DOCUMENT DISPLAYED.)

19 **BY MR. GALVAN**

20 **Q** AND IN YOUR SCIENTIFIC WORK, DO YOU FIND THAT EXPERTS LIKE
21 YOURSELF GENERALLY FIND IT A USEFUL THING TO REVIEW THE
22 DOCUMENTS BY WHICH AN AGENCY OR CORRECTIONS DEPARTMENT HAS
23 QUANTIFIED ITS NEEDS AND RESOURCES?

24 **A** YES, THAT'S A GOOD PLACE TO BEGIN.

25 **Q** DO YOU REMEMBER LOOKING AT THE DOCUMENT THAT'S ON THE SCREEN

1 NOW, WHICH IS PLAINTIFF'S EXHIBIT 715, WITH THE TITLE "DIVISION
2 OF ADULT PAROLE OPERATIONS"?

3 (INTERRUPTION BY THE COURT REPORTER.)

4 **THE WITNESS:** YES, I DO.

5 **BY MR. GALVAN**

6 **Q** JUST FOR THE COURT REPORTER, DO YOU REMEMBER LOOKING AT THIS
7 DOCUMENT ON THE SCREEN RIGHT NOW, P 715, DIVISION OF ADULT
8 PAROLE OPERATIONS?

9 **A** MM-HMM. YES, I DO.

10 **Q** IF WE COULD TURN IN A FEW PAGES IN THIS DOCUMENT, PLEASE, TO
11 PAGE 4?

12 IF WE COULD ZOOM INTO THE CHART, PLEASE?

13 DO YOU REMEMBER REVIEWING THAT, HOW THE MENTALLY ILL
14 PAROLE POPULATION BROKE DOWN IN CALIFORNIA PAROLE --

15 **A** YES.

16 **Q** IF WE GO TO THE CHART ON THE NEXT PAGE, PLEASE, PAGE 5? DO
17 YOU REMEMBER LOOKING AT THESE STAFFING RATIOS FOR THE PAROLE
18 OUTPATIENT CLINIC?

19 **A** YES, I DO.

20 **Q** IN YOUR OPINION, DO THEY NEED MORE HELP?

21 **A** I'M SORRY? WHAT?

22 **Q** DO THEY NEED MORE HELP?

23 **MR. LEWIS:** LACK OF FOUNDATION, OBJECTION.

24 **MR. GALVAN:** I WITHDRAW THE QUESTION.

25

1 **BY MR. GALVAN**

2 **Q** IN YOUR OPINION, ARE THEY ADEQUATELY STAFFED?

3 **MR. LEWIS:** SAME OBJECTION.

4 **JUDGE HENDERSON:** OVERRULED.

5 IS THE QUESTION WHETHER, AFTER REVIEWING THIS
6 DOCUMENT AND THESE CHARTS, IS IT HIS OPINION THAT THEY'RE
7 ADEQUATELY STAFFED OR INADEQUATELY STAFFED; IS THAT YOUR
8 QUESTION?

9 **MR. GALVAN:** YES, YOUR HONOR.

10 **THE WITNESS:** MY OPINION, LOOKING AT THESE NUMBERS,
11 WOULD BE THAT THEY ARE INADEQUATE CURRENTLY. I WOULD LIKE TO
12 SEE THEM BEEFED UP.

13 **MR. GALVAN:** IF WE COULD LOOK -- IF WE COULD ZOOM OUT
14 ON THAT PAGE AND ZOOM BACK IN THREE PARAGRAPHS DOWN, PLEASE?
15 THE PARAGRAPH THAT STARTS "EACH YEAR," JUST THAT EACH YEAR
16 PARAGRAPH?

17 **THE WITNESS:** YEAH.

18 **BY MR. GALVAN**

19 **Q** THIS PARAGRAPH, FOR THE RECORD, SAYS:

20 "EACH YEAR OVER 6,000 PAROLEES SUFFERING
21 FROM SERIOUS MENTAL ILLNESS ARE RETURNED TO
22 PRISON FOR PERIODS RANGING FROM A FEW MONTHS UP
23 TO ONE FULL YEAR OR LONGER IF THEY RECEIVE A NEW
24 TERM. THIS IS PRIMARILY DUE TO TECHNICAL
25 VIOLATIONS OR OTHER CRIMINAL BEHAVIOR, BUT CAN

1 RESULT FROM THEIR MENTAL ILLNESS. MANY OF THE
2 PROBLEMS EXHIBITED BY THESE INDIVIDUALS, WHEN
3 NON-COMPLIANT WITH THEIR PAROLE CONDITIONS, ARE
4 RELATED TO THE DISORGANIZATION PRODUCED BY THEIR
5 MENTAL ILLNESS."

6 DID YOU CONSIDER THAT STATEMENT BY THE CDCR IN
7 REACHING YOUR OPINIONS?

8 **A** ABSOLUTELY. I WOULD GIVE A LOT OF WEIGHT TO THAT.

9 **Q** IF WE COULD LOOK AT P 757 AS WELL? DO YOU RECALL LOOKING AT
10 THESE TYPES OF BUDGET PLANNING DOCUMENTS LIKE THIS BUDGET CHANGE
11 PROPOSAL?

12 **A** YOU KNOW, I'M -- I CAN'T SAY I'M AS FAMILIAR -- I
13 REVIEWED -- I REVIEWED DOZENS, IF NOT HUNDREDS, OF DOCUMENTS
14 OVER THE PAST FEW MONTHS. THIS I'M VERY FAMILIAR WITH WHAT YOU
15 WERE JUST SHOWING. THIS I DON'T RECALL AS SPECIFICALLY.

16 **Q** IF WE --

17 **A** I MAY WELL HAVE REVIEWED IT THIS SUMMER, BUT I -- YOU KNOW.

18 **Q** IF WE MOVE FORWARD IN THAT DOCUMENT TO THE -- JUST,
19 ACTUALLY, THE NEXT PAGE THAT HAS TEXT? AND THE FIRST PARAGRAPH,
20 JUST BY WAY OF REFRESHING YOUR RECOLLECTION, DO YOU RECALL THIS
21 MATERIAL ABOUT THE -- THE SENTENCE HERE, "THE CALIFORNIA
22 DEPARTMENT OF CORRECTIONS AND REHABILITATION IS REQUESTING FOUR
23 PERMANENT FULL-TIME POSITIONS AND NO FUNDS FOR FISCAL YEAR
24 '07/'08, AND \$6,000,037 FOR FY '08/'09, ONGOING TO ENHANCE
25 MENTAL HEALTH REHABILITATIVE AND STABILIZATION SERVICES FOR THE

1 MENTALLY ILL OFFENDER ADULT POPULATION. AND FOR FY '08/'09,
2 FUNDING WILL BE PROVIDED OUT OF THE \$50 MILLION APPROPRIATED FOR
3 INMATE AND PAROLE PROGRAMS IN AB 900.

4 **THE WITNESS:** OKAY. I WOULD THINK --

5 **JUDGE KARLTON:** WELL, YOU READ IT. APPARENTLY, HE
6 WANTS TO KNOW WHETHER YOU READ IT BEFORE.

7 **BY MR. GALVAN**

8 **Q** OR WHETHER YOU HAVE A PRESENT RECOLLECTION NOW AS --

9 **JUDGE REINHARDT:** HE'S READ IT NOW. SO WHY DON'T YOU
10 ASK HIM SOMETHING ABOUT IT.

11 **MR. GALVAN:** I'LL SHIFT TO A WHOLE OTHER AREA, YOUR
12 HONOR.

13 **BY MR. GALVAN**

14 **Q** DO YOU RECALL IN GENERAL THE TOPIC OF AB 900, ASSEMBLY BILL
15 900?

16 **A** YES, THAT WE --

17 **JUDGE REINHARDT:** PRISON REFORM, IS THAT THE TOPIC
18 YOU ARE INTERESTED IN, THE GENERAL TOPICS?

19 **MR. GALVAN:** NO, MORE SPECIFICALLY, THE STRATEGIES IN
20 AB 900 TO ENHANCE SERVICES FOR MENTALLY ILL PAROLEES.

21 **THE WITNESS:** THAT THEY'RE ALREADY STEPS INCLUDED IN
22 AB 900 TO SOLVE SOME OF THESE PROBLEMS.

23 **BY MR. GALVAN**

24 **Q** REGARDING THE CROSS-EXAMINATION ON -- OF IMPOVERISHED AREAS
25 AND THE DIFFICULTIES IN RECRUITMENT, IN YOUR PROFESSIONAL

1 EXPERIENCE, ARE THERE DIFFICULTIES IN RECRUITING CLINICIANS TO
2 WORK IN PRISONS?

3 **A** YES.

4 **Q** HOW WOULD YOU COMPARE THOSE DIFFICULTIES TO THE DIFFICULTIES
5 EXPERIENCED IN GETTING PEOPLE TO WORK IN IMPOVERISHED AREAS?

6 **A** I WOULD SAY THEY'RE MUCH GREATER. THEY'RE MUCH GREATER. AS
7 HARD AS IT IS TO GET PEOPLE WORKING IN IMPOVERISHED AREAS, I
8 WOULD SAY IT'S STILL MUCH EASIER THAN TO GET PEOPLE TO WORK IN
9 PRISONS.

10 I MEAN, I SAY -- AGAIN, I SAY THAT ON THE BASIS OF
11 HAVING BEEN -- WHERE MY JOB WAS TO, YOU KNOW, HIRE AND FIRE AND
12 RECRUIT MENTAL HEALTH PROFESSIONALS IN A VARIETY OF SETTINGS,
13 AND WE HAD NOT NEARLY AS MUCH TROUBLE IN EVEN -- SOME OF THE
14 POORER AREAS OF BOSTON THAN WE DID GETTING PEOPLE TO WORK IN THE
15 PRISONS.

16 **Q** WHY?

17 **A** PRISONS ARE SCARY TO MOST PEOPLE.

18 **JUDGE KARLTON:** AND THE POPULATION AREN'T REALLY NICE
19 FOLKS, AND YOU GOT CUSTODY TO DEAL WITH AND --

20 **THE WITNESS:** AND THE LIST IS ENDLESS. I MEAN, THEY
21 ARE IN MANY PLACES DEGRADING TO WALK INTO. STAFF ARE
22 HUMILIATED. I HAD STAFF MEMBERS OF MINE WHO WOULD BE STRIP
23 SEARCHED. THE DIFFICULTIES ARE TREMENDOUS. THERE ARE REAL
24 DANGERS. I HAD STAFF MEMBERS WHO, YOU KNOW, GOT BROKEN JAWS AND
25 BROKEN NOSES, ATTEMPTED RAPES.

1 **MR. LEWIS:** OBJECTION. WE ARE GETTING IRRELEVANT
2 HERE, YOUR HONOR.

3 **JUDGE REINHARDT:** TEDIOUS.

4 **MR. LEWIS:** THANK YOU.

5 **MR. GALVAN:** ONE FINAL AREA.

6 **BY MR. GALVAN**

7 **Q** JUDGE KARLTON ASKED YOU SOME QUESTIONS ABOUT THE
8 COST/BENEFIT ANALYSIS. DO YOU RECALL REVIEWING THE UCLA REPORTS
9 ON THE TRANSITIONAL CASE MANAGEMENT PROGRAM AND PRERELEASE
10 PLANNING?

11 **MR. LEWIS:** OBJECTION. BEYOND SCOPE. TRANSITIONAL
12 CASE MANAGEMENT WAS NEVER RAISED, YOUR HONORS.

13 **BY MR. GALVAN**

14 **Q** DO YOU RECALL READING THE STUDY ABOUT THE TRANSITIONAL CASE
15 MANAGEMENT PROGRAM THAT SPECIFICALLY FOUND THAT EVERY DOLLAR
16 SPENT ON THAT PROGRAM --

17 **MR. LEWIS:** PARDON ME, COUNSEL. I BELIEVE THERE'S AN
18 OBJECTION. I'M SORRY IF I DIDN'T HEAR A RESPONSE, YOUR HONOR.

19 **JUDGE HENDERSON:** HE'S POSING ANOTHER QUESTION NOW.

20 **JUDGE KARLTON:** I RAISED THE QUESTION OF
21 COST/BENEFIT. IT'S NOT CLEAR TO ME IT INVITES OTHER QUESTIONS
22 OF COUNSEL, I SUPPOSE.

23 **JUDGE REINHARDT:** WHAT'S THE NEW QUESTION?

24 **JUDGE HENDERSON:** THAT'S THE NEW QUESTION.
25

1 **BY MR. GALVAN**

2 **Q** DO YOU RECALL REVIEWING THE UCLA STUDY OF THE PRERELEASE
3 PLANNING PROGRAM, KNOWN AS TRANSITIONAL CASE MANAGEMENT, THAT
4 FOUND THAT EVERY DOLLAR SPENT ON THAT PROGRAM SAVED MORE MONEY
5 IN REDUCING THE DAYS IN PRISON BY GETTING MENTALLY ILL PAROLEES
6 HOOKED UP WITH THEIR APPOINTMENTS?

7 **A** YES. PARTICIPATING IN MENTAL HEALTH TREATMENT INCREASES THE
8 LIKELIHOOD THAT PAROLEES WILL SUCCESSFULLY ADJUST IN THE
9 COMMUNITY AND NOT HAVE TO BE RETURNED TO PRISON. IN FACT, THERE
10 ARE MANY DIFFERENT STUDIES SHOWING THE LONG RUN BENEFIT TO THE
11 TAXPAYER FAR OUTWEIGHS THE COST OF ANY NUMBER OF PROGRAMS THAT
12 ENHANCE THE TREATMENT OF PRISONERS, WHETHER THEY'RE MENTALLY ILL
13 OR NON-MENTALLY ILL.

14 **MR. GALVAN:** NO FURTHER QUESTIONS. THANK YOU.

15 **JUDGE HENDERSON:** RE CROSS.

16 **MR. LEWIS:** NONE, YOUR HONOR.

17 **MS. FUENTES:** NO, YOUR HONOR.

18 **JUDGE HENDERSON:** THANK YOU VERY MUCH FOR APPEARING,
19 DR. GILLIGAN, AND WE ARE RECESSED FOR THE DAY UNTIL NEXT TUESDAY
20 AT 9:15. I'LL REMIND COUNSEL TO GET US THE WITNESS LISTS AND
21 ACCURATE ESTIMATES OF TIME NEXT MONDAY.

22 (PROCEEDINGS ADJOURNED.)
23
24
25

I N D E X**PLAINTIFF'S WITNESSES****PAGE****VOL.****JEFFREY BEARD**

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JAMES GILLIGAN, M.D.

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- - - -

CERTIFICATE OF REPORTER

I, JOAN MARIE COLUMBINI, OFFICIAL REPORTER FOR THE
UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY
CERTIFY THAT THE FOREGOING PROCEEDINGS IN CIV S-90-0520 LKK
JPM, RALPH COLEMAN, ET AL V. ARNOLD SCHWARZENEGGER, AND
C 01-1351 TEH, MARCIANO PLATA V. ARNOLD SCHWARZENEGGER, WERE
REPORTED BY ME, CERTIFIED SHORTHAND REPORTER, AND WERE
THEREAFTER TRANSCRIBED UNDER MY DIRECTION INTO TYPEWRITING;
THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID
PROCEEDINGS AS BOUND BY ME AT THE TIME OF FILING.

THE VALIDITY OF THE REPORTER'S CERTIFICATION OF SAID
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/S/ JOAN MARIE COLUMBINI

JOAN MARIE COLUMBINI, CSR 5435, RPR

FRIDAY, DECEMBER 5, 2008

VOL 9

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
AND FOR THE NORTHERN DISTRICT OF CALIFORNIA
UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES PURSUANT
TO SECTION 2284, TITLE 28 UNITED STATES CODE

RALPH COLEMAN, ET AL.,)
)
PLAINTIFFS,)
)
VS.) NO. CIV S-90-0520 LKK JFM
)
ARNOLD SCHWARZENEGGER, ET AL.)
) THREE-JUDGE COURT
DEFENDANTS.)
)

MARCIANO PLATA, ET AL.,)
)
PLAINTIFFS,)
)
VS.) NO. C 01-1351 TEH
)
ARNOLD SCHWARZENEGGER, ET AL.)
)
DEFENDANTS.)
)

TRANSCRIPT OF PROCEEDINGS

SAN FRANCISCO, CALIFORNIA
TUESDAY, DECEMBER 9, 2008

(APPEARANCES ON FOLLOWING PAGES)

REPORTED BY: JOAN MARIE COLUMBINI, CSR 5435, RPR
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OFFICIAL COURT REPORTERS, U.S. DISTRICT COURT

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1 **TUESDAY, DECEMBER 9, 2008**

9:20 O'CLOCK A.M.

2 **P R O C E E D I N G S**

3
4 **JUDGE HENDERSON:** OKAY. LET'S GET GOING. CALL YOUR
5 NEXT WITNESS.

6 **MR. MELLO:** GOOD MORNING, YOUR HONORS. PAUL MELLO
7 FOR DEFENDANTS. DEFENDANTS ARE CALLING MATTHEW CATE, THE
8 SECRETARY FOR THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND
9 REHABILITATION, AND HE'S IN THE HALLWAY. WE ARE GETTING HIM.

10 **MR. SPECTER:** HE FLED THE JURISDICTION.

11 **MATTHEW L. CATE,**
12 HAVING BEEN CALLED AS A WITNESS BY THE DEFENDANTS WAS FIRST
13 DULY SWORN AND EXAMINED AS FOLLOWS:

14 **THE CLERK:** STATE AND SPELL YOUR FULL NAME FOR THE
15 RECORD.

16 **THE WITNESS:** MATTHEW L. CATE. M-A-T-T-H-E-W, LAST
17 NAME IS C-A-T-E.

18 **MR. MELLO:** YOUR HONORS, SECRETARY CATE HAS SUBMITTED
19 A TRIAL AFFIDAVIT IN THIS MATTER. IT'S MARKED AS DEFENDANT'S
20 EXHIBIT 1000. ON NOVEMBER 17TH, DEFENDANTS SUBMITTED MINOR
21 REVISIONS TO THAT TRIAL AFFIDAVIT TO CORRECT A FEW EXHIBIT
22 NUMBERS. SECRETARY CATE'S EDUCATIONAL AND PROFESSIONAL
23 BACKGROUND ARE SUMMARIZED IN PARAGRAPHS 2 TO 4 OF THAT TRIAL
24 AFFIDAVIT.

25 ///

DIRECT EXAMINATION BY MR. MELLO

BY MR. MELLO

Q GOOD MORNING, SECRETARY CATE.

A GOOD MORNING.

Q WHEN WERE YOU APPOINTED AS THE SECRETARY OF THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION?

A MAY 16TH OF THIS YEAR.

Q OKAY. IMMEDIATELY PRIOR TO THAT POINT, WHAT POSITION DID YOU HOLD?

A I WAS THE INSPECTOR GENERAL FOR THE STATE OF CALIFORNIA.

Q AND CAN YOU GENERALLY DESCRIBE WHAT YOUR RESPONSIBILITIES WERE IN THAT POSITION?

A I WAS -- AS INSPECTOR GENERAL, I WAS RESPONSIBLE FOR THE OVERSIGHT OF THE DEPARTMENT OF CORRECTIONS AND REHABILITATION, INCLUDING AUDITING ITS SYSTEMS, INVESTIGATING MISCONDUCT BY SENIOR PERSONNEL, AND OVERSEEING THE OFFICER DISCIPLINE PROCESS.

Q AND YOU SERVED ON THE CALIFORNIA REHABILITATION OVERSIGHT BOARD, ALSO REFERRED TO AS CROB, FROM 2007 UNTIL YOUR APPOINTMENT, CORRECT?

A I'M ACTUALLY STILL A MEMBER OF THE REHABILITATION OVERSIGHT BOARD. I SERVED AS ITS CHAIR IN MY CAPACITY AS THE INSPECTOR GENERAL, AND I'M CURRENTLY A MEMBER OF THE BOARD IN MY CAPACITY AS SECRETARY.

Q WHAT WERE YOUR RESPONSIBILITIES AS CHAIRMAN OF CROB?

A I LEAD THE BOARD, AND ITS RESPONSIBILITIES WERE TO OVERSEE

1 THE REHABILITATIVE EFFORTS THAT WERE UNDERWAY AT CDCR AND THEN
2 TO REPORT ON THE QUALITY OF THOSE EFFORTS TO THE LEGISLATURE
3 BIANNUALLY.

4 **Q** AND HOW, IF AT ALL, HAS YOUR, OTHER THAN YOUR POSITION AS
5 CHAIRMAN OF THAT BOARD, HAS YOUR ROLE CHANGED WITH RESPECT TO
6 CROB NOW AS SECRETARY OF THE DEPARTMENT?

7 **A** I'M SIMPLY ONE OF THE MEMBERS OF THE BOARD AS OPPOSED TO
8 BEING ITS CHAIR.

9 **Q** AS PART OF YOUR DUTIES SINCE MAY OF 2006, YOU'VE BECOME
10 FAMILIAR WITH THE ACTIVITIES OF THE DEPARTMENT BEFORE YOUR
11 APPOINTMENT, CORRECT?

12 **A** YES, OF COURSE.

13 **Q** AND AS PART OF YOUR DUTIES AS BOTH THE INSPECTOR GENERAL AND
14 SINCE BECOMING SECRETARY OF THE DEPARTMENT, YOU WERE AND BECAME
15 FAMILIAR WITH THE ACTIVITIES OF THE PLATA RECEIVER?

16 **A** THAT'S TRUE, YES.

17 **Q** AS WELL AS THE COLEMAN SPECIAL MASTERS?

18 **A** YES.

19 **Q** OKAY. CDCR PUBLISHES WEEKLY POPULATION REPORTS, CORRECT?

20 **A** WE DO.

21 **Q** OKAY. LET'S PULL UP DEFENDANTS' 1203.

22 (DOCUMENT DISPLAYED.)

23 **BY MR. MELLO**

24 **Q** SECRETARY CATE, DOES THIS APPEAR TO BE PORTIONS OF THE
25 AUGUST 27, 2008 POPULATION REPORT?

1 **A** IT DOES.

2 **Q** OKAY. AND THE REPORT SHOWS THAT AS OF AUGUST 27TH, 2008,
3 CDCR'S TOTAL INMATE POPULATION WAS 172,057, CORRECT?

4 **A** THAT'S CORRECT.

5 **Q** ARE ALL OF THOSE 172,057 INMATES HOUSED IN CDCR PRISONS?

6 **A** NO.

7 **Q** OKAY. HOW MANY AS OF AUGUST 27TH, 2008 WERE HOUSED IN CDCR
8 PRISONS?

9 **A** AS YOU CAN SEE FROM THE REPORT, 156,352 AT THAT TIME.

10 **Q** OKAY. AND WHERE ARE THE OTHER ALMOST 16,000 INMATES IN
11 CDCR'S CUSTODY HOUSED?

12 **A** CDCR ALSO RUNS A CAMP PROGRAM, WHICH ARE UNLOCKED PROGRAMS,
13 COMMUNITY CORRECTIONAL FACILITIES, AND WE HAVE A NUMBER OF
14 INMATES THAT ARE IN OUT-OF-STATE FACILITIES. DMH HOLDS A SMALL
15 NUMBER OF -- DEPARTMENT OF MENTAL HEALTH HAS A NUMBER OF OUR
16 INMATES, AND THERE'S A SMATTERING OF INMATES IN LOCKED COMMUNITY
17 PROGRAMS.

18 **Q** WHAT ARE COMMUNITY CORRECTIONAL CENTERS OR FACILITIES?

19 **A** THEY'RE LOW CUSTODY FACILITIES, TYPICALLY FOR INMATES
20 SERVING NO MORE THAN 18 TO 24 MONTHS WHO HAVE COMMITTED AN
21 OFFENSE THAT ALLOWS THEIR CUSTODY LEVEL TO BE SUCH THAT THEY CAN
22 BE APPROPRIATELY HOUSED IN THAT LESS SECURE FACILITY. THEY'RE
23 RUN BY EITHER TYPICALLY A PRIVATE PRISON OR A COMMUNITY
24 CONTRACTING WITH A -- DOING THE -- I'M SORRY -- A
25 COMMUNITY-LIKE, CITY OR COUNTY, OR PRIVATE PRISON RUNNING THOSE

1 FACILITIES.

2 Q AND I BELIEVE YOU TESTIFIED THOSE ARE LOW LEVEL, LOW RISK
3 OFFENDERS, CORRECT?

4 A THAT'S RIGHT.

5 Q AND ARE THOSE FACILITIES OVERPOPULATED OR OVERCROWDED?

6 A NO.

7 Q OKAY. AND YOU BRIEFLY MENTIONED THE CAMPS. WHAT ARE THE
8 CAMPS?

9 A THE CAMPS ARE, AS I SAID, THEY'RE A PROGRAM THAT CDCR RUNS
10 TO TRAIN INMATES FOR FIREFIGHTING AND TO HANDLE OTHER
11 EMERGENCIES IN CALIFORNIA, AND AS THE NAME IMPLIES, THEY'RE
12 CAMPS WITH DORM SETTINGS, AND INMATES ARE TRAINED AND EXERCISED
13 IN THESE VOCATIONS, AND IN SOME CAMPS THEY ALSO RECEIVE DRUG AND
14 ALCOHOL TREATMENT.

15 Q DO THE CAMPS ALSO HOUSE LOW LEVEL, LOW RISK OFFENDERS?

16 A THEY DO.

17 Q AND ARE INDIVIDUALS WHO HAVE BEEN CONVICTED OF SEX CRIMES OR
18 ARSON OR KIDNAPPING OR CRIMES OF THAT SORT ALLOWED IN CAMPS?

19 A NO, THEY WOULD BE INELIGIBLE.

20 Q AND DO YOU HAVE ANY IDEA WHAT IMPACT, IF ANY, A PRISON
21 RELEASE ORDER THAT TARGETED LOW LEVEL, LOW RISK OFFENDERS WOULD
22 HAVE ON THE POPULATIONS OF COMMUNITY CORRECTION CENTERS?

23 A IN GENERAL, WE HAVE DIFFICULTY FILLING THE AVAILABLE SLOTS
24 IN CAMPS AND IN THE COMMUNITY CORRECTIONAL FACILITIES AND
25 MODIFIED COMMUNITY CORRECTIONAL FACILITIES. SO I GUESS IT WOULD

1 EXACERBATE THAT ISSUE.

2 **Q** DO YOU HAVE ANY IDEA WHAT, IF ANY, IMPACT A PRISON RELEASE
3 ORDER THAT TARGETED LOW LEVEL, LOW RISK OFFENDERS WOULD HAVE ON
4 YOUR FIRE CAMPS?

5 **A** SAME IMPACT.

6 **Q** ARE YOU FAMILIAR WITH CDCR PRISON CENSUS DATA REPORT AS OF
7 JUNE 30TH, 2008, WHICH I'LL PUT UP, WHICH IS DEFENDANT'S TRIAL
8 EXHIBIT 1255?

9 **A** YES.

10 (DOCUMENT DISPLAYED.)

11 **BY MR. MELLO**

12 **Q** I'LL TAKE YOU TO TABLE ONE OF THAT REPORT. WHAT DOES TABLE
13 ONE TELL US ABOUT THE COMPOSITION OF CDCR'S INMATE POPULATION?

14 **A** WELL, IT SETS OUT THE VARIOUS PERCENTAGES OF INMATES WHO ARE
15 RETURNED FOR ONE OF FOUR REASONS AS OF JUNE 30TH, 2008. AND
16 IT -- AT THAT TIME 63.5 PERCENT OF CDCR INMATES WERE THERE AS A
17 RESULT OF A NEW ADMISSION. ANOTHER 25.2 PERCENT WERE PAROLE
18 VIOLATORS. AND "WNT" STANDS FOR WITH NEW TERM. IT MEANS THEY
19 HAVE BEEN CONVICTED OF A NEW OFFENSE. AND THEN 9.2 PERCENT
20 WOULD BE PAROLE VIOLATORS WHO WERE RETURNED TO CUSTODY WITHOUT A
21 NEW OFFENSE. AND THEN, AGAIN, THE SMALL 2.1 PERCENT WERE THOSE
22 WHO WERE STILL PENDING REVOCATION.

23 **Q** SECRETARY CATE, THERE'S BEEN TESTIMONY -- A LOT OF TESTIMONY
24 WITH RESPECT TO THE TERM TECHNICAL PAROLE VIOLATORS. DOES THAT
25 11.3 OR -- PARDON ME -- 11.3 PERCENT, IS THAT THE PERCENT OF

1 TECHNICAL PAROLE VIOLATORS ON THAT CHART?

2 **A** WELL, I HAVEN'T BEEN PRIVY TO ALL THE TESTIMONY.

3 **Q** RIGHT.

4 **A** BUT I CAN TELL YOU THAT NATIONWIDE THE GENERAL UNDERSTANDING
5 OF A TECHNICAL VIOLATION IS CONDUCT COMMITTED BY A PAROLEE
6 THAT'S MISCONDUCT BECAUSE OF THEIR PAROLE STATUS BUT THAT WOULD
7 BE LEGAL FOR -- OR AT LEAST NOT A CRIMINAL VIOLATION FOR SOMEONE
8 WHO WAS NOT ON PAROLE.

9 SO FOR EXAMPLE, ASSOCIATING WITH A KNOWN GANG MEMBER
10 OR BEING UNDER THE INFLUENCE OF ALCOHOL, SOMETHING LIKE THAT, IS
11 TYPICALLY -- MISSING AN APPOINTMENT WITH YOUR PAROLE AGENT.
12 THOSE ARE THINGS THAT WITH -- FROM WHICH ONE COULD BE REVOKED
13 BUT A CITIZEN WHO'S NOT ON PAROLE COULD NOT. THAT'S MY
14 UNDERSTANDING OF A TECHNICAL PAROLE VIOLATION.

15 OF THE PERCENTAGES YOU SEE HERE, THERE WILL BE A
16 BLEND OF THOSE WHO ARE RETURNED FOR TECHNICAL VIOLATIONS AS I'VE
17 JUST DEFINED THEM, AND THOSE WHO ARE RETURNED FOR -- BASED UPON
18 A DETERMINATION BY THE PAROLE AGENT OR DETERMINATION BY THE
19 BOARD THAT THEY HAVE COMMITTED A FELONY OR MISDEMEANOR OFFENSE
20 BUT THEY DIDN'T GO THROUGH TRIAL. SO I GUESS THE ANSWER IS --
21 SHORT ANSWER IS IT'S A MIX OF BOTH PROBABLY.

22 **Q** BUT THE VAST MAJORITY OF THOSE INDIVIDUALS WHO ARE RETURNED
23 ARE NOT FOR TECHNICAL VIOLATIONS, CORRECT?

24 **A** THAT'S TRUE.

25 **THE CLERK:** TEN MINUTES, COUNSEL.

1 **MR. MELLO:** THANK YOU.

2 **THE CLERK:** FIVE MINUTES.

3 **MR. MELLO:** FIVE MINUTES?

4 **BY MR. MELLO**

5 **Q** DOES CDCR'S PRISON CENSUS DATA REPORTS REPORT OR KEEP
6 INFORMATION REGARDING THE OFFENSES FOR WHICH INMATES ARE SERVING
7 TIME IN CDCR INSTITUTIONS?

8 **A** YES.

9 **Q** OKAY. WE'LL LOOK AT TABLE 3 OF 1255. AS OF JUNE 30TH,
10 2008, WHAT PERCENTAGE OF CDCR'S INMATES WERE IN CUSTODY FOR
11 CRIMES AGAINST PERSONS?

12 **A** 52.6 PERCENT.

13 **Q** WHAT PERCENTAGE OF INMATES ARE IN CUSTODY FOR EITHER
14 HOMICIDE, ROBBERY, OR BURGLARY?

15 **A** MY RECOLLECTION IS IT'S ABOUT A THIRD.

16 **Q** OKAY. WHAT CATEGORY OF OFFENSES -- WHAT'S THE SINGLE MOST
17 SIGNIFICANT SOURCE OF INCREASE IN POPULATION BETWEEN '97 AND
18 2007?

19 **A** CRIMES AGAINST PERSON SHOWED THE GREATEST INCREASE DURING
20 THAT TIME PERIOD.

21 **Q** OKAY. DO YOU KNOW WHAT ROLE CONVICTIONS FOR DRUG OFFENSES
22 PLAYED IN THE INCREASE IN THE PRISON POPULATION BETWEEN 1997 AND
23 2007?

24 **A** FROM MY RECOLLECTION LOOKING AT THE DATA IS, AS OUR
25 POPULATION WENT UP, THE PERCENTAGE OF INMATES SENT TO PRISON FOR

1 DRUG CRIMES DECREASED.

2 **Q** DO YOU KNOW ANY OF THE REASONS FOR THAT?

3 **A** I WOULD IMAGINE THAT --

4 **JUDGE KARLTON:** NO, YOU CAN'T IMAGINE. GIVE US YOUR
5 BEST JUDGMENT.

6 **THE WITNESS:** RIGHT. POOR USE OF TERM THERE.

7 MY BEST JUDGMENT IS THAT DRUG COURTS, PROP 36, THOSE
8 KIND OF ACTIVITIES HAVE MADE THE DIFFERENCE.

9 **BY MR. MELLO**

10 **Q** DO YOU HAVE AN UNDERSTANDING OF WHAT PERCENTAGE OF FELONY
11 CONVICTIONS IN CALIFORNIA RESULT IN A PRISON SENTENCE?

12 **A** I'M SORRY. COULD YOU REPEAT THAT?

13 **Q** DO YOU KNOW WHAT PERCENTAGE OF FELONY CONVICTIONS IN
14 CALIFORNIA RESULT IN A PRISON SENTENCE?

15 **A** ABOUT 20 PERCENT.

16 **Q** AND DO YOU KNOW WHAT PERCENTAGE OF FELONS ARE SENTENCED TO
17 PRISON BY STATE COURTS NATIONWIDE, HOW WE COMPARE NATIONALLY?

18 **A** I KNOW WE ARE FAR LESS. I DON'T RECALL THE EXACT NUMBER
19 NATIONWIDE. BETWEEN 40 AND 50 PERCENT, AS I RECALL, BUT, AGAIN,
20 I'M NOT QUITE SURE.

21 **Q** DO YOU KNOW WHETHER CALIFORNIA'S AVERAGE PRISON SENTENCE IS
22 BELOW NATIONAL AVERAGE AS WELL?

23 **A** IT IS.

24 **Q** AND I'VE HEARD THAT -- OR, STRIKE THAT.

25 DOES IT SOUND RIGHT TO YOU THAT THE AVERAGE PRISON

1 SENTENCE IS APPROXIMATELY 47 MONTHS IN CALIFORNIA?

2 **A** YES.

3 **Q** AND DOES IT SOUND RIGHT TO YOU THAT THE AVERAGE PRISON
4 SENTENCE NATIONALLY IS ABOUT 57 MONTHS?

5 **A** YES.

6 **Q** OKAY. IT'S ALSO TRUE -- OR IS IT TRUE THAT CALIFORNIA
7 INMATES ALSO SERVED LESS TIME IN PRISON THAN PRISONERS
8 NATIONALLY, CORRECT?

9 **A** THAT'S TRUE.

10 **Q** AND THEY SERVE APPROXIMATELY EIGHT MONTHS ON AVERAGE LESS
11 THAN THE NATIONAL AVERAGE, CORRECT?

12 **A** CORRECT.

13 **Q** SECRETARY CATE, TO YOUR UNDERSTANDING, WHAT IS THE SINGLE
14 MOST SIGNIFICANT FACTOR THAT ACCOUNTS FOR CALIFORNIA'S LARGE
15 PRISON POPULATION?

16 **A** I THINK CALIFORNIA'S LARGE POPULATION OF CITIZENS, OF
17 RESIDENTS IS PROBABLY THE LARGEST FACTOR.

18 **Q** AND, AGAIN, THERE'S BEEN TESTIMONY IN THIS CASE THAT CRIME
19 RATES HAVE GONE DOWN NATIONALLY. DO YOU BELIEVE THAT TO BE TRUE
20 AS WELL?

21 **A** THAT'S MY UNDERSTANDING.

22 **Q** DESPITE THAT FACT THE CALIFORNIA PRISON POPULATION HAS
23 INCREASED OVER TIME, CORRECT?

24 **A** IT HAS.

25 **Q** OKAY. AND IS THAT INCREASE IN PRISON POPULATION DUE MOSTLY

1 TO INCREASE IN POPULATION IN THE STATE OF CALIFORNIA?

2 **MR. SPECTER:** OBJECTION. LACKS FOUNDATION, CALLS FOR
3 EXPERT OPINION AND BEYOND COMPETENCE OF THIS WITNESS.

4 **JUDGE HENDERSON:** IT'S CONSISTENT WITH THE TESTIMONY
5 HE'S GIVEN. HE MAY GIVE HIS BEST UNDERSTANDING.

6 **THE WITNESS:** I KNOW CALIFORNIA'S POPULATION HAS BEEN
7 GROWING ABOUT TWO PERCENT A YEAR, AND THE PRISON POPULATION OVER
8 THE LAST TEN YEARS HAS GROWN AT ABOUT ONE PERCENT.

9 **BY MR. MELLO**

10 **Q** AND, SECRETARY CATE, HAS THE DEPARTMENT UNDER YOUR
11 LEADERSHIP BEGAN TAKING STEPS, OR ALREADY BEGUN TAKING STEPS
12 WHEN YOU CAME ON BOARD, TO ADDRESS THE CROWDING PROBLEM?

13 **A** YES.

14 **Q** WHAT MEASURES HAVE YOU TAKEN AND ARE YOU TAKING?

15 **A** WELL, AS YOU SAID, I THINK THE DEPARTMENT UNDERTOOK MANY OF
16 THESE BEFORE I WAS APPOINTED. I THINK THE MOST SIGNIFICANT ARE
17 THE PAROLE REFORM. WE NOW HAVE A VALIDATED RISK ASSESSMENT
18 TOOL, MEANING WE CAN ASSESS THE RISK OF PAROLEES WHO ARE
19 RETURNING TO THE COMMUNITY, AND WITH THAT WE'VE ESTABLISHED A
20 PAROLE VIOLATION DECISION MAKING INSTRUMENT, WHICH ALLOWS AGENTS
21 AND THE BOARD OF PAROLE HEARING DEPUTY COMMISSIONERS TO MAKE
22 BETTER INFORMED DECISIONS ABOUT WHICH PAROLEES SHOULD BE
23 RETURNED TO THE COMMUNITY FOR PROGRAM AND WHICH SHOULD BE
24 RETURNED TO CUSTODY. I THINK THAT'S GOING TO HELP OUR
25 POPULATION.

1 WE ARE INCREASING OUR EFFORTS TOWARDS UTILIZING OUR
2 PROGRAMS IN PRISONS, OUR REHABILITATIVE PROGRAMS, AND HAVE SHOWN
3 GREAT SUCCESS, AT LEAST IN THE LAST SIX MONTHS OF INCREASING THE
4 UTILIZATION OF THOSE PROGRAMS. AND WE'RE ADDING DRUG TREATMENT
5 BEDS AS WELL FOR THAT PURPOSE. AND, FINALLY, WE ARE SENDING, AT
6 THIS POINT, ABOUT 5,600 -- WE'VE SENT 5,600 INMATES OUT OF STATE
7 WHICH HAS RESULTED IN CLEARING ABOUT 17 GYMS AND SIX DAYROOMS.

8 **THE CLERK:** TIME'S UP, COUNSEL.

9 **MR. MELLO:** COUPLE MORE?

10 **BY MR. MELLO**

11 **Q** HAVE THERE ALSO BEEN EFFORTS TOWARD -- DIRECTED TOWARDS
12 CONSTRUCTION?

13 **A** OH, YES. WE HAVE SUBMITTED FOUR WHAT WE CALL IN-FILL
14 PROJECTS, BUT THEY'RE BASICALLY PRISON EXPANSION PROJECTS, TO
15 THE DEPARTMENT OF FINANCE. DEPARTMENT OF FINANCE HAS FORWARDED
16 THREE OF THOSE TO THE JOINT LEGISLATIVE BUDGET COMMITTEE FOR
17 REVIEWED AS WELL.

18 THE NORTHERN CALIFORNIA REENTRY FACILITY HAS BEEN
19 SUBMITTED TO THE LEGISLATURE FOR THEIR REVIEW. WE'RE WAITING
20 FOR EITHER A -- THE GO-AHEAD FROM THE ATTORNEY GENERAL'S OFFICE
21 THAT WE CAN GET A CLEAN BOND OPINION OR A FIX FROM THE
22 LEGISLATURE TO ASSEMBLY BILL 900, WHICH WOULD ALLOW US TO BEGIN
23 THOSE CONSTRUCTION PROJECTS.

24 WE'RE ALSO WORKING WITH COMMUNITIES TO GET AN OPTION
25 OR PURCHASE LAND ON WHICH WE CAN BUILD APPROXIMATELY 3,000

1 REENTRY BEDS. THAT PROCESS IS GOING ON THROUGH -- I THINK IT'S
2 SIX DIFFERENT -- EXCUSE ME -- 12 DIFFERENT COMMUNITIES AT THIS
3 TIME. SO I THINK THOSE ARE THE PRIMARY EFFORTS.

4 **Q** AND ARE YOUR -- ARE CDCR'S EFFORTS TO REDUCE ITS INMATE
5 POPULATION DRIVEN BY THE EFFORT TO REACH A PARTICULAR POPULATION
6 NUMBER?

7 **A** NO. WE'RE TRYING TO USE THE BEST CORRECTIONAL PRACTICE AND
8 SCIENCE TO REDUCE OUR POPULATION SAFELY, BUT THERE'S NO
9 PARTICULAR NUMBER THAT WE'RE TRYING TO REACH. I MEAN, I THINK
10 THAT THE ADMINISTRATION'S GOAL AND MY GOAL IS TO GET RID OF WHAT
11 WE CALL NON-TRADITIONAL BEDS OR BAD BEDS, MEANING BEDS IN GYMS
12 OR BEDS IN DAYROOMS. THEY MAKE OUR BUSINESS MORE DIFFICULT.

13 **Q** HAVE YOU BEEN SUCCESSFUL IN ELIMINATING SOME OF THOSE
14 NON-TRADITIONAL BEDS?

15 **A** LARGELY THROUGH OUR OUT-OF-STATE PROGRAM, WE HAVE BEEN ABLE
16 TO REDUCE OUR NUMBER FROM APPROXIMATELY 20,000 TO JUST UNDER
17 14,000 NOW.

18 **Q** AND ARE YOU FAMILIAR WITH THE JANUARY BUDGET PROPOSAL WHICH
19 AGAIN HAPPENED BEFORE YOU WERE EVEN SECRETARY WITH RESPECT TO
20 CDCR?

21 **A** YES.

22 **Q** AND WHAT WAS THAT BUDGET PROPOSAL, TO YOUR UNDERSTANDING?

23 **A** AS IT RELATED TO CDCR, THERE WAS -- WELL, THE GOVERNOR
24 PROPOSED A TEN PERCENT ACROSS-THE-BOARD CUT TO DEAL WITH THE
25 BUDGET PROBLEMS IN CALIFORNIA, AND THE SOLUTION FROM CDCR AT

1 THAT TIME WAS THE RELEASE OF 22,000 NON-SERIOUS, NONVIOLENT
2 INMATES BEFORE THEIR TERMS EXPIRED.

3 Q WAS THAT BUDGET PROPOSAL ADOPTED?

4 A NO, IT WAS TAKEN OUT IN WHAT'S KNOWN AS THE MAY REVISION TO
5 THE BUDGET.

6 Q MR. SECRETARY, TO YOUR KNOWLEDGE, HAS THE PROJECTED BUDGET
7 DEFICIT FOR THE STATE OF CALIFORNIA INCREASED SINCE
8 JANUARY 2008?

9 A IT HAS.

10 Q AND DID THE GOVERNOR RECENTLY CONVENE A SPECIAL SESSION OF
11 THE LEGISLATURE TO ADDRESS THIS INCREASED BUDGET DEFICIT OR
12 PROJECTED DEFICIT?

13 A HE CONVENED A SPECIAL SESSION OF THE LAST LEGISLATURE WHICH
14 ENDED NOVEMBER 30TH, AND THERE'S BEEN TALK OF ANOTHER SPECIAL
15 SESSION. I'M NOT SURE IF IT'S BEEN OFFICIALLY CONVENED, THOUGH.

16 Q OKAY. ARE YOU FAMILIAR THAT THERE WAS A BUDGET PROPOSAL --
17 STRIKE THAT.

18 WHAT WAS THE FOCUS OF THAT LAST SESSION, TO YOUR
19 KNOWLEDGE, ECONOMICALLY?

20 A WELL, THE FOCUS WAS TO CUT THE BUDGET OR RAISE REVENUE, DO
21 SOMETHING TO BALANCE CALIFORNIA'S FISCAL SITUATION, AND, I MEAN,
22 SO ALL DEPARTMENTS TOOK PART.

23 Q OKAY. IS IT YOUR UNDERSTANDING THAT THE PROJECTED DEFICIT
24 FOR '07/'08, '08/'09 AND '09/'10 IS BIGGER THAN EVEN
25 ANTICIPATED?

1 **A** YES, THAT'S TRUE.

2 **MR. MELLO:** THANK YOU. NOTHING FURTHER.

3 **JUDGE HENDERSON:** ANYTHING FROM INTERVENORS WITH THIS
4 WITNESS?

5 **MR. MITCHELL:** NO, YOUR HONOR. NO QUESTIONS.

6 **JUDGE HENDERSON:** OKAY. CROSS-EXAMINATION.

7 **CROSS-EXAMINATION BY MR. SPECTER**

8 **BY MR. SPECTER**

9 **Q** GOOD MORNING.

10 **A** GOOD MORNING.

11 **Q** SHORTLY AFTER YOU BECAME SECRETARY, YOU GAVE AN INTERVIEW TO
12 THE RADIO STATION KQED; DO YOU RECALL THAT?

13 **A** I DO.

14 **Q** AND I ASKED YOU ABOUT THIS AT YOUR DEPOSITION. YOU SAID:

15 "WHEN YOU ARE INCARCERATING 10,000 A MONTH
16 AND RELEASING 10,000 A MONTH, 120,000 A YEAR,
17 WHICH IS JUST AN EXTRAORDINARY NUMBER, IT IS A
18 BURDEN ON OUR STAFF, AND MISTAKES GET MADE, AND
19 THAT'S JUST ANOTHER REASON FOR TRYING TO HANDLE
20 OUR OVERCROWDING."

21 THAT'S WHAT YOU SAID, RIGHT?

22 **A** I DID.

23 **Q** AND YOU BELIEVE THAT TO BE TRUE?

24 **A** I DO.

25 **Q** AND WHEN YOU WERE INSPECTOR GENERAL, YOU WOULD PUT OUT PRESS

1 RELEASES, CORRECT?

2 **A** CORRECT.

3 **Q** AND IN APRIL OF 2006, YOU PUT OUT A PRESS RELEASE ABOUT AN
4 AUDIT THAT YOU HAD DONE; IS THAT CORRECT?

5 **A** I'M SURE IT IS. I DON'T KNOW WHICH ONE YOU ARE REFERRING
6 TO.

7 **Q** IT'S THE AUDIT YOU DID OF ALL THE OTHER AUDITS TO DETERMINE
8 WHAT PERCENTAGE OF RECOMMENDATIONS THE CDCR HAD COMPLIED WITH;
9 DO YOU RECALL THAT?

10 **A** YES, WE CALLED IT THE ACCOUNTABILITY AUDIT.

11 **Q** RIGHT. IN THAT PRESS RELEASE YOU SAID:

12 "SEVERELY HAMPERING THE DEPARTMENT'S ABILITY
13 TO ADDRESS ITS PROBLEM, THE INSPECTOR GENERAL
14 NOTED, IS AN INMATE POPULATION THAT HAS PRISONS
15 STRAINING AT ALMOST DOUBLE THE DESIGN CAPACITY."

16 DO YOU RECALL THAT?

17 **A** YES.

18 **Q** AND THAT STATEMENT IS TRUE NOW AS WELL, ISN'T IT?

19 **A** IT IS. OVERPOPULATION MAKES EVERYTHING WE DO MORE
20 DIFFICULT.

21 **Q** AND YOU ALSO SAID IN THAT SAME PRESS RELEASE:

22 "AS THE INMATE POPULATION INCREASES,
23 CONTROLLING VIOLENCE, OFFERING EDUCATION,
24 DELIVERING HEALTHCARE, MANAGING OVERCROWDING,
25 AND CONTROLLING COSTS BECOME MORE DIFFICULT."

1 DO YOU RECALL SAYING THAT?

2 **A** YES.

3 **Q** THAT'S TRUE NOW AS WELL, CORRECT?

4 **A** IT IS.

5 **Q** AND IT'S YOUR POSITION THAT OVERCROWDING NEEDS TO BE REDUCED
6 BECAUSE IT MAKES EVERYTHING EASIER TO DO IN A PRISON, CORRECT?

7 **A** YES.

8 **Q** AND BECAUSE IT MAKES EVERYTHING EASIER, IT WILL HAVE AN
9 IMPACT ON THE RECEIVER'S ABILITY TO PROVIDE HEALTHCARE TO
10 PRISONERS, CORRECT?

11 **A** I THINK IT WILL BE. OBVIOUSLY, THAT'S FEWER DOCTORS THAT
12 NEED TO BE RECRUITED, FOR EXAMPLE, AND LESS CLINICAL SPACE THAT
13 WOULD HAVE TO BE BUILT, LESS MONEY THAT WOULD NEED TO BE SPENT
14 ON THOSE EXAMINATIONS, ET CETERA.

15 **Q** SO THE ANSWER TO MY QUESTION IS YES?

16 **A** YES.

17 **Q** OKAY. NOW, YOU BELIEVE YOUR CHARGE AS SECRETARY IS TO
18 ENSURE THAT ANY STRATEGY THE CDCR EMPLOYS TO REDUCE THE PRISON
19 POPULATION DOES NOT CAUSE MORE VICTIMIZATION IN SOCIETY; IS THAT
20 ACCURATE?

21 **A** THAT'S ONE OF THEM, YES.

22 **Q** AND YOU BELIEVE THAT THE MEASURE THAT YOU USE IN EVALUATING
23 WHETHER CDCR'S STRATEGIES ARE SAFE IS THEIR EFFECT ON THE
24 OVERALL CRIME RATE, TRUE?

25 **A** I THINK THAT'S PROBABLY PART OF THE CALCULUS.

1 Q IT'S THE MAIN CALCULUS, ISN'T IT?

2 A IT'S DEFINITELY A VERY IMPORTANT CALCULUS, YES.

3 Q AND WHEN YOU RECOMMEND MEASURES TO REDUCE THE POPULATION TO
4 THE GOVERNOR, YOU DO THAT BELIEVING THAT IT WOULDN'T HAVE AN
5 ADVERSE EFFECT ON THE CRIME RATE; ISN'T THAT TRUE?

6 A TAKEN AS -- YES, TAKEN AS A WHOLE, TO THE EXTENT YOU CAN
7 REDUCE PRISON POPULATION, PROVIDE ADDITIONAL PROGRAMMING, AND
8 HOPEFULLY REDUCE RECIDIVISM THAT WAY, AND RELEASE THOSE INMATES
9 WHO YOU BELIEVE ARE AT LEAST RISK, OR NOT INCARCERATE THOSE
10 INMATES YOU BELIEVE ARE AT LEAST RISK TO THE COMMUNITY, THOSE
11 ARE THE KINDS OF CONSIDERATIONS YOU WANT TO THINK ABOUT, YEAH.

12 Q WHEN YOU MAKE A RECOMMENDATION TO THE GOVERNOR, DO YOU MAKE
13 A RECOMMENDATION TO THE GOVERNOR BELIEVING THAT IT WOULD MAKE
14 THE COMMUNITY MORE DANGEROUS?

15 A NO.

16 Q SO WHEN YOU MAKE RECOMMENDATIONS TO THE GOVERNOR, YOU
17 BELIEVE IT WOULD MAKE THE COMMUNITY JUST AS SAFE OR SAFER,
18 CORRECT?

19 A WELL, IT DEPENDS ON THE CIRCUMSTANCES. WE'RE ALSO
20 CONSTRAINED RIGHT NOW BY OUR BUDGET, AND WE HAVE BEEN FOR THE
21 LAST TWO YEARS, AND SO YOU WANT TO DO THE BEST YOU CAN WITH THE
22 MONEY THAT YOU HAVE TO SPEND. SO I MEAN, OBVIOUSLY, THE SAFEST
23 THING IS INCARCERATE EVERYONE. STATE WOULD NEVER BE ABLE TO
24 AFFORD THAT, NOR SHOULD IT.

25 Q OKAY. NOW, AS YOU TESTIFIED BEFORE, DEPARTMENT RELEASES

1 OVER 10,000 PRISONERS A MONTH, CORRECT?

2 **A** CORRECT.

3 **Q** AND AT THE TIME OF YOUR DEPOSITION, WHICH WAS IN LATE
4 AUGUST, SOME PRISONERS WERE OVERDUE FOR RELEASE BECAUSE THERE
5 WASN'T SUFFICIENT STAFF TO PROCESS THEIR PAPERWORK, CORRECT?

6 **A** THAT'S TRUE.

7 **Q** RIGHT. ABOUT 50 PERCENT OF THE PRISONERS HAVE WALKED OUT OF
8 PRISON HAVING DONE NOTHING BUT LIE ON THEIR BUNK AND WALK ON THE
9 YARD, TRUE?

10 **A** TRUE.

11 **Q** IT'S UNREASONABLE TO BELIEVE YOU EXPECT THESE PRISONERS ARE
12 GOING TO COME OUT ANY DIFFERENT THAN HOW THEY CAME IN, EXCEPT
13 FOR PERHAPS HAVING LEARNED HOW TO BE A BETTER CRIMINAL, CORRECT?

14 **A** THAT'S TRUE.

15 **Q** SOME OF THE PRISONERS RELEASED ARE RELEASED DIRECTLY FROM
16 SEGREGATION UNITS, CORRECT?

17 **A** CORRECT.

18 **Q** THOSE PRISONERS, WHILE THEY ARE IN THE SEGREGATION UNITS,
19 WHEN THEY'RE OUT OF THEIR CELL, THEY'RE IN SHACKLES AND ESCORTED
20 EVERYWHERE THEY GO BECAUSE YOU BELIEVE THEY'RE CONSIDERED
21 DANGEROUS, RIGHT?

22 **A** CORRECT.

23 **Q** AND SO WHEN THEY GET RELEASED, THEY'RE TAKEN TO THE GATE IN
24 THOSE SHACKLES AND ESCORTS, CORRECT?

25 **A** CORRECT.

1 Q AND THE NEXT -- AND WHEN THEY'RE -- WHEN THEY'RE RELEASED,
2 THEY GET \$200 MINUS THE COST OF THE BUS FARE, AND THEY'RE
3 DROPPED OFF AT THE BUS STATION, CORRECT?

4 A THEY'RE GIVEN FUNDS. SOME INMATES WHO ARE SERIOUS AND
5 VIOLENT ARE ACTUALLY PICKED UP BY A PAROLE AGENT AND TAKEN TO
6 THEIR COMMUNITY, BUT OTHERWISE YOUR STATEMENT IS CORRECT.

7 Q AND YOU DON'T BELIEVE THAT IT'S SAFE -- THAT THAT SITUATION
8 IS SAFE FOR THE COMMUNITY, DO YOU?

9 A THAT'S WHY WE HAVE BEEN ASKING COMMUNITIES TO PARTNER WITH
10 US ON OUR REENTRY PROGRAMS.

11 JUDGE KARLTON: SO THE ANSWER IS YES, THAT THAT
12 PRESENT SYSTEM IS NOT AS SAFE AS YOU COULD MAKE IT?

13 THE WITNESS: THAT'S RIGHT. RIGHT.

14 MR. SPECTER: THANK YOU.

15 BY MR. SPECTER

16 Q AND YOU BELIEVE THAT THE STATE HAS AN OBLIGATION TO MAKE
17 SURE THAT PRISONERS ARE REINTEGRATED SAFELY INTO THEIR
18 COMMUNITIES, CORRECT?

19 A TO THE EXTENT POSSIBLE, YES.

20 Q BUT AT THE PRESENT TIME, YOU CAN'T SATISFY THAT OBLIGATION,
21 CAN YOU?

22 A NOT TO THE EXTENT THAT WE WOULD LIKE, NO.

23 Q AND YOU BELIEVE THAT THE STATE HAS AN OBLIGATION TO DO THAT
24 IN A HURRY, DON'T YOU, YOUR WORD?

25 A I DO.

1 Q BUT YOU DON'T HAVE ANY PARTICULAR TIMEFRAME IN MIND, DO YOU?

2 A AS FAST AS POSSIBLE IS THE TIMEFRAME.

3 Q RIGHT. OKAY.

4 NOW, WHEN YOU TOOK OVER AS SECRETARY, YOU HAD WHAT'S
5 CALLED AN INTEGRATED STRATEGY TO REDUCE OVERCROWDING, CORRECT?

6 A THAT'S TRUE.

7 Q AND THAT WAS IN THE -- THAT WAS DEVELOPED IN THE SPRING OR
8 EARLY SUMMER OF THIS YEAR, RIGHT?

9 A RIGHT.

10 Q AND YOU PRESENTED THAT STRATEGY TO THE GOVERNOR, AND HE
11 APPROVED IT, CORRECT?

12 A CORRECT. WELL, TO THE GOVERNOR'S OFFICE.

13 Q GOVERNOR'S OFFICE. AND IT WAS ONE OF YOUR TOP PRIORITIES
14 WHEN YOU BECAME SECRETARY, RIGHT?

15 A RIGHT.

16 Q BECAUSE THAT -- BECAUSE IT WAS A TOP PRIORITY OF YOURS TO
17 REDUCE CROWDING, CORRECT?

18 A CORRECT.

19 Q AND AT YOUR DEPOSITION IN AUGUST OF THIS YEAR, YOU TESTIFIED
20 THAT THIS INTEGRATED STRATEGY WAS THE DEPARTMENT'S PRIMARY
21 RESPONSE TO THE OVERCROWDING CRISIS; DO YOU RECALL THAT?

22 A YES.

23 Q IS IT STILL THE DEPARTMENT'S PRIMARY RESPONSE TO REDUCING
24 THE OVERCROWDING?

25 A I'M NOT SURE WHAT YOU MEANT OR I MEANT BY THAT BACK THEN,

1 BUT THAT'S OUR PLAN. IT IS STILL OUR PLAN.

2 Q OKAY.

3 A IT'S BEEN CHANGED BY CIRCUMSTANCES OVER THE COURSE OF SIX
4 MONTHS A LITTLE BIT, BUT ON THE WHOLE IT'S STILL OUR PLAN.

5 Q OKAY. BUT THE PLAN DOESN'T HAVE ANY LEVEL TO MEET, ANY
6 POPULATION LEVEL TO MEET, DOES IT?

7 A YOU MEAN A POPULATION GOAL?

8 Q YES.

9 A TO REACH TO? NO.

10 Q OKAY. SO PART OF THE PLAN -- THERE ARE SEVERAL COMPONENTS
11 TO THE PLAN. YOU OUTLINED THEM IN RESPONSE TO MR. MELLO'S
12 QUESTIONS. PART OF THE PLAN WAS THE CONSTRUCTION OF NEW PRISON
13 BEDS, RIGHT?

14 A RIGHT.

15 Q THAT HAD TWO OR AT LEAST TWO MAJOR SUBPARTS. ONE IS THE
16 RECEIVER'S TEN THOUSAND BEDS, RIGHT?

17 A THREE SUBPARTS, IF YOU INCLUDE THE RECEIVER, THE IN-FILL
18 PROJECTS, OR THE PRISON EXPANSION AND REENTRY.

19 Q RIGHT. I WON'T ARGUE WITH YOU ABOUT THE CLASSIFICATION OF
20 MY SUBPARTS, BUT THAT'S RIGHT.

21 SO THE RECEIVER'S TEN THOUSAND BEDS, CORRECT, WAS ONE
22 OF THE COMPONENTS OF THE PLAN?

23 A WE WERE -- WE ADDED THE RECEIVER'S TEN THOUSAND, ASSUMING
24 THAT HE WOULD BE GIVEN THE AUTHORITY TO BUILD THEM.

25 Q AND HE HAS NOT BEEN GIVEN THAT AUTHORITY, THE FUNDS TO BUILD

1 THOSE BEDS, CORRECT?

2 **A** THAT'S CORRECT.

3 **Q** AND YOU, THROUGH -- YOU'RE A DEFENDANT IN THE PLATA CASE,
4 YOU KNOW THAT, RIGHT?

5 **A** YES.

6 **Q** AND THROUGH -- YOU, THROUGH YOUR ATTORNEY, HAVE GONE TO
7 JUDGE -- THE COURT --

8 **JUDGE KARLTON:** JUDGE HENDERSON.

9 **BY MR. SPECTER**

10 **Q** THE SINGLE JUDGE COURT IN PLATA AND OPPOSED THE
11 AUTHORIZATION FOR THE RECEIVER TO RECEIVE \$250 MILLION TO
12 CONTINUE HIS WORK ON THOSE FUNDS, CORRECT?

13 **A** THAT'S TRUE.

14 **Q** OKAY. YOU ARE AWARE THAT JUDGE HENDERSON ISSUED AN ORDER
15 FOR THAT 250 -- FOR THE STATE TO PROVIDE THAT \$250 MILLION,
16 CORRECT?

17 **A** YES.

18 **Q** AND YOU, THROUGH YOUR ATTORNEYS, PETITIONED THE NINTH
19 CIRCUIT FOR A STAY OF THAT ORDER?

20 **A** THAT'S TRUE.

21 **Q** AND THE NINTH CIRCUIT GRANTED THAT STAY, CORRECT?

22 **A** THAT'S TRUE.

23 **Q** OKAY. THE OTHER PART OF THE CONSTRUCTION PROJECTS WERE THE
24 IN-FILL AND REENTRY BEDS, CORRECT?

25 **A** THAT'S RIGHT.

1 Q AND BECAUSE THE LEGISLATURE REFUSED, THERE'S WHAT WE CALL --
2 OR WHAT YOU CALL CLEAN-UP LEGISLATION, CORRECT, THAT WAS BEING
3 PROPOSED IN THE LEGISLATURE?

4 A THAT'S RIGHT.

5 Q AND THAT WAS TO FIX CERTAIN TECHNICAL PROBLEMS THAT HAVE
6 PREVENTED THE MONEY FROM BEING ACTUALLY USED FOR THE PURPOSE BY
7 WHICH IT WAS INTENDED TO BE --

8 JUDGE KARLTON: I THINK HE MEANS AB 900. IS THAT
9 WHAT YOU MEAN, SIR?

10 MR. SPECTER: YES. THANK YOU, YOUR HONOR.

11 BY MR. SPECTER

12 Q IS THAT RIGHT?

13 A I'M SORRY. THE QUESTION ABOUT AB 900?

14 Q THE CLEAN-UP LEGISLATION WAS TO ALLOW THE FUNDS THAT WERE
15 APPROPRIATED IN AB 900 TO ACTUALLY BE SPENT, CORRECT?

16 A CORRECT.

17 JUDGE KARLTON: WAIT A MINUTE. I THOUGHT AB 900 WAS
18 THE BOND MEASURE; IS THAT RIGHT?

19 THE WITNESS: THAT'S RIGHT.

20 JUDGE KARLTON: SO IT WASN'T A QUESTION OF MONEY THAT
21 HAD BEEN ALLOCATED; IT WAS AN AUTHORIZATION TO SELL BONDS.

22 THE WITNESS: CORRECT, AND --

23 BY MR. SPECTER

24 Q BUT THEY CAN'T SELL THE BONDS BECAUSE OF TECHNICAL PROBLEMS;
25 IS THAT CORRECT, MR. CATE?

1 **A** CORRECT.

2 **Q** AND THE CLEAN-UP LEGISLATION WAS TO, QUOTE, FIX THOSE
3 TECHNICAL PROBLEMS, CORRECT?

4 **A** THAT'S RIGHT.

5 **Q** AND BECAUSE THE CLEAN-UP LEGISLATION FAILED, THE STATE
6 CANNOT PAY FOR THE CONSTRUCTION OF THE ADDITIONAL COUNTY JAILS
7 REENTRY FACILITIES AND IN-FILL PROJECTS; ISN'T THAT RIGHT?

8 **A** NO.

9 **Q** CAN YOU PULL UP --

10 **JUDGE KARLTON:** I DON'T KNOW WHETHER THAT MEANS NO,
11 IT'S NOT CORRECT, OR NO, YOU CAN'T PAY FOR IT.

12 **THE WITNESS:** IT ACTUALLY MEANS NO IN PART TO YOUR
13 QUESTION. YOU NAMED A NUMBER OF DIFFERENT FACILITIES, AND THE
14 ATTORNEY GENERAL -- IF I COULD JUST CLARIFY. THE ATTORNEY
15 GENERAL HAS INDICATED THAT THE JAIL FACILITIES CAN BE BUILT BY
16 THE SHERIFF. HE ISSUED THAT CLEAN BOND -- HE INDICATED THAT A
17 CLEAN BOND OPINION COULD BE ISSUED IN THIS LAST MONTH OR SO.
18 WE'RE STILL WAITING FOR A RESPONSE ON THE REST.

19 **BY MR. SPECTER**

20 **Q** OKAY. AND YOU DESCRIBED THE FAILURE OF THE LEGISLATURE TO
21 PASS THE CLEAN-UP LEGISLATION AS A MAJOR SETBACK TO YOUR
22 STRATEGY TO REDUCE OVERCROWDING; DID YOU NOT?

23 **A** I PROBABLY DID, AND IT WAS -- AND THAT'S WHY WE'RE
24 CONTINUING TO SEEK THOSE FIXES.

25 **Q** NOW, IN YOUR VIEW, PAROLE REFORM IS ANOTHER PART OF THE

1 INTEGRATED STRATEGY, CORRECT?

2 **A** CORRECT.

3 **Q** AND YOU BELIEVE IT CAN BE DONE SAFELY AND REDUCE THE PRISON
4 POPULATION AT THE SAME TIME, CORRECT?

5 **A** IF DONE CORRECTLY, YES.

6 **Q** RIGHT. BUT YOU DON'T KNOW HOW MUCH THE PRISON POPULATION
7 WILL BE REDUCED BY THE PAROLE REFORMS, DO YOU?

8 **A** I THINK WE ESTIMATED 8,000 AVERAGE DAILY POPULATION IN OUR
9 PRISON OVERCROWDING PLAN, BUT MY BELIEF IS YOU NEED TO DO THE
10 CORRECT REFORMS AND LET THE POPULATION LEVEL WHERE IT WILL AS A
11 RESULT OF DOING THE RIGHT THING AND PAROLE.

12 **Q** AND THE RIGHT THING, ACCORDING TO YOUR DEPARTMENT, IS TO DO
13 A TWO-YEAR PILOT PROJECT ON THIS PAROLE REFORM, CORRECT?

14 **A** WE'RE ACTUALLY DOING A 90-DAY PILOT PROJECT IN FOUR
15 DISTRICTS, THEN WE ARE GOING TO ROLL OUT TO THE REMAINDER AT
16 THAT TIME. WE'LL CONTINUE TO STUDY IT OVER THE REMAINING TWO
17 YEARS, BUT WE'RE GOING FORWARD IN LESS THAN 90.

18 **Q** CAN YOU PULL UP DEFENDANT'S EXHIBIT 1198, PLEASE, AND GO TO
19 THE SECOND PAGE?

20 (DOCUMENT DISPLAYED.)

21 **BY MR. SPECTER**

22 **Q** THIS IS A MEMO DATED SEPTEMBER 30TH, 2008, FROM THOMAS
23 HOFFMAN. WHO IS THOMAS HOFFMAN?

24 **A** HE'S OUR DIRECTOR OF PAROLE.

25 **Q** OKAY. AND YOU SEE THE -- RIGHT UNDER THE LITTLE CHART

1 THERE, IT SAYS "THIS PILOT PROGRAM"?

2 **A** CORRECT.

3 **Q** COULD YOU READ THAT FIRST SENTENCE, PLEASE?

4 **A** "THIS PILOT PROGRAM WILL REMAIN IN EFFECT
5 FOR A 24-MONTH PERIOD FROM NOVEMBER 3, 2008
6 THROUGH NOVEMBER 3, 2010, AT WHICH TIME IT WILL
7 LAPSE BY OPERATION OF LAW OR WILL BE PROMULGATED
8 THROUGH THE ADMINISTRATIVE PROCEDURE ACT."

9 **Q** THANK YOU.

10 **A** BUT I THINK THAT'S JUST A MATTER OF SEMANTICS. THE POINT IS
11 IS THAT WE'RE GOING TO BE ROLLING OUT THE ENTIRE THING AT 90
12 DAYS AND THEN STUDYING IT AND MAKING CHANGES ALONG THE WAY
13 DURING THE COURSE OF THE TWO-YEAR PERIOD.

14 **Q** OKAY. AS OF THE END OF AUGUST, WHICH IS WHEN THE COURT HAS
15 HELD THAT WE STOP TALKING ABOUT THE CONDITIONS, THERE WAS ABOUT
16 4,788 OUT-OF-STATE TRANSFER BEDS -- PEOPLE IN OUT-OF-STATE BEDS,
17 CORRECT?

18 **A** THAT'S RIGHT.

19 **Q** NOW, IN THE GOVERNOR'S SPECIAL SESSION FOR THE NOVEMBER 2008
20 LEGISLATIVE SPECIAL SESSION, HE RECOMMENDED VARIOUS PRISON
21 POPULATION REDUCING MEASURES, CORRECT?

22 **A** CORRECT.

23 **Q** AND THOSE -- DID YOU RECOMMEND THAT HE MAKE THOSE PROPOSALS?

24 **A** I DEFINITELY WAS CONSULTED AND TOOK PART IN THAT
25 DECISION-MAKING PROCESS. I BROUGHT SOME OF THOSE IDEAS FORWARD.

1 SOME WERE IDEAS THAT OTHER STAKEHOLDERS HAD BROUGHT FORWARD THAT
2 WE ADOPTED. SOME WERE IDEAS THAT HAD BEEN BANDIED AROUND
3 BEFORE.

4 **Q** DID YOU BELIEVE THAT -- DID YOU TELL THE GOVERNOR THAT ANY
5 OF THOSE PROPOSALS SHOULDN'T BE PUT FORWARD BECAUSE YOU DIDN'T
6 BELIEVE THEY WERE SAFE FOR THE COMMUNITY?

7 **A** I'M SORRY. CAN YOU REMIND ME WHICH PROPOSALS WE'RE TALKING
8 ABOUT AGAIN?

9 **Q** THE NOVEMBER 2008 BUDGET PROPOSALS.

10 **A** OKAY.

11 **JUDGE KARLTON:** DID YOU RECOMMEND HE NOT ADOPT ANY OF
12 THEM BECAUSE THEY ADVERSELY AFFECTED PUBLIC SAFETY?

13 **THE WITNESS:** NO. I RECOMMENDED, IN LIGHT OF THE
14 BUDGET CRISIS WE WERE IN, THIS WAS THE BEST WE COULD DO.

15 **BY MR. SPECTER**

16 **Q** THOSE RECOMMENDATIONS INCLUDED NO PAROLE SUPERVISION FOR
17 OFFENDERS WITHOUT A CONVICTION FOR A NON-SERIOUS, NONVIOLENT, OR
18 SEXUAL CRIME, CORRECT?

19 **A** AND THOSE WHO HAD -- IT WAS THOSE WHO WERE NOT CONVICTED FOR
20 NON-SERIOUS, NONVIOLENT, NON-SEX, BUT YOU ALSO HAVE TO HAVE
21 NEVER BEEN CONVICTED OF A SERIOUS, VIOLENT OR SEX CRIME IN YOUR
22 PAST.

23 **Q** CORRECT. AND IT ALSO INCLUDED UP TO FOUR MONTHS FOR EACH
24 PROGRAM SUCCESSFULLY COMPLETED BY A PRISONER, CORRECT?

25 **A** CORRECT.

1 Q AND SO IF A PRISONER COMPLETED FOUR PROGRAMS, HE COULD GET A
2 YEAR OFF OF HIS SENTENCE UNDER THAT SCHEME IF IT WAS ENACTED,
3 CORRECT?

4 A WELL, THE DETAILS OF WHETHER THERE WOULD BE A CAP ON THE
5 AMOUNT OF CREDITS YOU COULD EARN WERE TO BE DETERMINED AT A
6 LATER DATE, BUT YOU COULD EARN UP TO THREE MONTHS CREDIT FOR AS
7 YOU DESCRIBED.

8 Q FOUR MONTHS, I THINK.

9 A OR FOUR MONTHS, RIGHT.

10 Q IT WOULD ALSO PROVIDE THAT PRISONERS WOULD GET DAY-FOR-DAY
11 CREDIT, THOSE WHO WERE ELIGIBLE FOR IT, FOR OBEYING THE PRISON
12 RULES, CORRECT?

13 A CORRECT.

14 Q THIS WOULD RESULT IN EARLIER RELEASE OF SOME PRISONERS,
15 RIGHT?

16 A NO. IT WOULD RESULT IN THEM SERVING LESS TIME, BUT THEY
17 WOULD SERVE THE TIME PRESCRIBED BY LAW.

18 Q THEY WOULD GET OUT OF PRISON LESS -- THEY WOULD GET OUT OF
19 PRISON EARLIER, WOULDN'T THEY?

20 A EARLIER THAN THEY WOULD HAVE BEEN, YES.

21 Q OKAY. AND YOU ALSO -- THE GOVERNOR ALSO PROPOSED
22 DAY-FOR-DAY CREDIT FOR PRISONERS WHO ARE IN JAIL AWAITING THEIR
23 TRANSFER TO STATE PRISON, CORRECT?

24 A CORRECT.

25 Q AND THIS WOULD RESULT IN PRISONERS GETTING OUT OF PRISON

1 EARLIER THAN THEY OTHERWISE WOULD HAVE, RIGHT?

2 **A** THAT'S RIGHT.

3 **Q** AND IT ALSO WOULD HAVE PROVIDED ADDITIONAL CREDIT FOR
4 PRISONERS WHO ARE WAITING FOR AN ASSIGNMENT TO A CONSERVATION
5 CAMP, CORRECT?

6 **A** CORRECT.

7 **Q** AND THIS WOULD RESULT IN EARLIER RELEASE OF SOME PRISONERS,
8 CORRECT?

9 **A** EARLIER RELEASE, YES.

10 **Q** AND HOW MANY CREDITS -- WHAT'S THE RATIO OF CREDITS THAT
11 PRISONERS IN CONSERVATION CAMPS GET NOW?

12 **A** TWO FOR ONE.

13 **Q** SO THIS WOULD GIVE THEM POSSIBLY -- THOSE WHO ARE WAITING TO
14 GET INTO CONSERVATION CAMPS, WAS YOUR INTENT TO GIVE THOSE
15 PRISONERS TWO-FOR-ONE CREDITS?

16 **A** YES.

17 **Q** SO THEY WOULD GET TWO-FOR-ONE CREDITS EVEN THOUGH THEY
18 WEREN'T WORKING IN THE CAMP; IS THAT RIGHT?

19 **A** BECAUSE THEY ARE IN THE PROCESS OF BEING TRAINED AND GOING
20 TO THE CAMPS, YES.

21 **Q** AND YOU ALSO -- OR, I'M SORRY, THE GOVERNOR ALSO PROPOSED
22 INCREASING THE STATUTORY MONETARY THRESHOLD FOR DETERMINING
23 WHETHER PROPERTY CRIMES COULD BE PROSECUTED AS GRAND THEFT,
24 CORRECT?

25 **A** CORRECT.

1 Q THAT'S BECAUSE THE STATUTORY LIMIT HASN'T BEEN RAISED
2 SOMEWHERE IN THE 20 YEARS, CORRECT?

3 A I'M NOT SURE OF THE NUMBER OF YEARS, BUT FOR MANY YEARS,
4 YES.

5 Q IT HASN'T CAUGHT UP WITH INFLATION, IN OTHER WORDS, RIGHT?

6 A THAT'S RIGHT.

7 Q AND THIS WOULD RESULT IN LESS OFFENDERS COMING TO STATE
8 PRISON; ISN'T THAT RIGHT?

9 A IT WOULD.

10 Q AND THE NOVEMBER SPECIAL SESSION ENDED WITHOUT ANY
11 LEGISLATIVE ACTION ON THESE PROPOSALS; ISN'T THAT CORRECT?

12 A THAT'S RIGHT.

13 Q NOW, BEFORE THE SPECIAL SESSION, YOU MENTIONED, WHEN YOU
14 WERE ON DIRECT EXAMINATION WHEN YOU WERE ASKED, THAT THERE WAS A
15 MAY REVISION TO THE GOVERNOR'S BUDGET IN 2008, CORRECT?

16 A CORRECT.

17 Q AND YOU WERE CONSULTING THE GOVERNOR ABOUT THAT MAY REVISION
18 WHEN IT WAS ANNOUNCED, CORRECT, OR BEFORE IT WAS ANNOUNCED,
19 CORRECT?

20 A YES.

21 Q AND THAT INCLUDED --

22 A YEAH. I WAS GOING TO SAY NOT AS THE SECRETARY, BUT I DID IN
23 MY ROLE AS THE INSPECTOR GENERAL, I DID CONSULT, I THINK, ONCE.

24 Q AND THAT BUDGET PROPOSAL CONTAINED A PROPOSAL TO PROVIDE FOR
25 SUMMARY PAROLE, CORRECT?

1 **A** THAT'S RIGHT.

2 **Q** TELL THE COURT WHAT THAT IS.

3 **A** IN ESSENCE, THAT PROVIDES THAT SOME PAROLEES WOULD BE PUT ON
4 A BANKED CASELOAD; IN OTHER WORDS, THEY WOULD NOT BE ACTIVELY
5 SUPERVISED BY AN AGENT AND, AS A RESULT, COULDN'T BE RETURNED
6 FOR A TECHNICAL VIOLATION.

7 **Q** AND THAT WOULD HAVE ALLOWED THE DEPARTMENT TO ALLOCATE ITS
8 RESOURCE -- PAROLE RESOURCES IN A DIFFERENT MANNER, CORRECT?

9 **A** THAT'S TRUE.

10 **JUDGE KARLTON:** HOPEFULLY, IN A MORE RATIONAL MANNER.

11 **THE WITNESS:** I THINK THAT PAROLE RESOURCES COULD BE
12 BETTER ALLOCATED, YES.

13 **BY MR. SPECTER**

14 **Q** AND IN A MORE EFFECTIVE MANNER AS WELL.

15 **A** YES.

16 **Q** OKAY. AND THE LEGISLATURE DIDN'T ENACT THAT MEASURE EITHER,
17 DID IT?

18 **A** THEY DID NOT.

19 **Q** NOW, YOU SUBMITTED A TRIAL AFFIDAVIT IN THIS CASE, RIGHT?

20 **A** I DID.

21 **Q** AND AS A LAWYER, YOU UNDERSTOOD THAT IT WAS GOING TO BE YOUR
22 DIRECT TESTIMONY IN THIS COURT?

23 **A** I THINK AS A LAYMAN I WOULD HAVE UNDERSTOOD THAT.

24 **Q** OKAY. AS A LAWYER AND A FORMER INSPECTOR GENERAL, YOU
25 UNDERSTAND HOW IMPORTANT IT IS TO PRESENT THE COURT WITH ALL THE

1 RELEVANT FACTS SO IT CAN MAKE AN APPROPRIATE DECISION?

2 **A** I THINK ALL THE RELEVANT FACTS THAT SHOULD COME FROM SOMEONE
3 IN MY POSITION, YES.

4 **Q** OKAY. SO IN YOUR AFFIDAVIT YOU SAID -- JUST GIVE ME A
5 SECOND HERE. ONE NUMBER I DIDN'T WRITE DOWN.

6 ON PARAGRAPH 29 OF THAT RE- -- YOU WERE RELYING ON
7 THE SPRING -- I'LL GIVE IT TO YOU A SECOND. IT'S ON PAGE 12.

8 **A** OKAY.

9 **Q** YOU WERE RELYING ON SPRING POPULATION, SPRING 2008
10 POPULATION, PROJECTIONS, AND YOU SAID THAT THE FACTORS BEHIND
11 THE SPRING POPULATION PROJECTIONS WHICH WOULD LEAD TO A
12 REDUCTION; IS THAT RIGHT?

13 **A** CORRECT.

14 **Q** YOU SAID THAT IT WOULD RESULT IN A DRAMATIC REVERSAL IN THE
15 PROJECTED POPULATION TREND, RIGHT?

16 **A** THAT'S TRUE.

17 **Q** AND THE REVERSAL WAS THAT -- WAS FROM GOING UP; IN OTHER
18 WORDS, YOU WERE SUGGESTING THAT THE TREND WAS GOING DOWN
19 DRAMATICALLY, CORRECT?

20 **A** THE FALL 2007 PROJECTION HAD THE POPULATION OF THE PRISONS
21 GOING UP DRAMATICALLY, AND THE SPRING PROJECTIONS HAD THEM GOING
22 DOWN, AND THE DIFFERENCE WAS THE DRAMATIC REVERSAL I WAS
23 REFERRING TO HERE.

24 **Q** OKAY. NOW I'D LIKE YOU TO PULL UP PLAINTIFF'S 781, PLEASE.
25 CAN YOU GO TO PAGE 12? AND BLOW THE CHART UP, PLEASE? CAN YOU

1 MAKE -- OKAY. MAYBE WE HAVE DIFFERENT PAGE NUMBERS. GO TO
2 CHART C, PLEASE, I THINK IT WOULD BE ON ONE OF THE NEXT PAGES.
3 YEAH, THERE YOU GO.

4 (DOCUMENT DISPLAYED.)

5 **BY MR. SPECTER**

6 **Q** SO THIS IS A CHART THAT COMPARES THE SPRING 2008 PROJECTIONS
7 TO THE FALL 2008 PROJECTIONS; DO YOU SEE THAT?

8 **A** I DO.

9 **Q** AND YOU SEE THAT ALL OF THE -- WHILE THE SPRING POPULATION
10 PROJECTIONS HAVE THE NUMBERS GOING DOWN, THE FALL PROJECTIONS
11 HAVE THE POPULATION GOING UP, RIGHT?

12 **A** WELL, IT DEPENDS WHAT YOU'RE REFERRING TO. BETWEEN 2009 AND
13 2013, THEY WOULD GO DOWN SLIGHTLY. 2014 THEY'D BLIP BACK UP A
14 LITTLE BIT.

15 **Q** SO, IN OTHER WORDS, IT'S NOT GOING DOWN. THERE'S NO
16 DRAMATIC REDUCTION IN THE POPULATION UNDER THE FALL PROJECTIONS,
17 RIGHT?

18 **A** THEY'RE SLIGHTLY HIGHER THAN THE SPRING'S PROJECTION, BUT
19 STILL DRAMATICALLY LOWER THAN THE FALL OF THE PREVIOUS YEAR.

20 **Q** NOW, YOU MENTIONED IN RESPONSE TO MR. MELLO'S QUESTIONS THAT
21 A NUMBER OF -- A NUMBER OF CRIMES AGAINST THE PERSON WERE
22 HOMICIDE, BURGLARY, AND WHAT WAS THE OTHER CRIME THAT YOU HAD?

23 **A** I THINK MR. MELLO'S QUESTION WAS THE PERCENTAGE OF
24 CALIFORNIA INMATES WHO WERE SERVING TIME FOR MURDER, ROBBERY OR
25 BURGLARY.

1 Q OKAY. AND BURGLARY MAKES UP THE GREATEST PERCENTAGE OF
2 CRIMES IN THAT CATEGORY, CORRECT?

3 A I'M SORRY.

4 Q BURGLARY MAKES UP THE GREATEST PERCENTAGE OF CRIMES IN THE
5 PRISON SYSTEM -- IN THAT CATEGORY WITHIN THE PRISON SYSTEM,
6 CORRECT?

7 A I'M NOT SURE ABOUT THAT. I KNOW THAT WE HAVE A LOT OF
8 INMATES DOING LIFE FOR MURDER ALSO.

9 Q SO YOU ALSO MENTIONED THAT THERE WERE PART OF THE -- PART OF
10 YOUR STRATEGY TO REDUCE THE POPULATION IS THROUGH REHABILITATIVE
11 PROGRAMS IN PRISON, CORRECT?

12 A THAT'S RIGHT.

13 Q BUT YOU ARE HAVING TROUBLE DOING THAT BECAUSE OF THE
14 OVERCROWDING; ISN'T THAT RIGHT?

15 A AS I SAID EARLIER, THE OVERCROWDING MAKES EVERYTHING MORE
16 CHALLENGING FOR THE CORRECTIONAL ADMINISTRATOR, YOU KNOW, THE
17 EXAMPLE BEING THAT THE RECEIVER NEEDS A CERTAIN SPACE TO DO
18 CLINICAL WORK, AND OUR PROGRAM, FOR EXAMPLE, WANTS THAT SAME
19 SPACE FOR VOCATIONAL EDUCATION PROGRAM. THEN YOU'VE GOT TO TRY
20 TO FIND SPACE FOR BOTH SOMEWHERE. THAT'S A CHALLENGE.

21 Q IN TERMS OF THAT PART OF YOUR PLAN TO REDUCE OVERCROWDING,
22 YOU CAN'T TELL ME -- YOU DO NOT KNOW HOW MANY PRISON -- HOW
23 MANY -- HOW MUCH OF THE POPULATION CAN BE REDUCED BY WHAT DATE,
24 DO YOU?

25 A I CAN TELL YOU THAT WHAT OUR PLANS ARE IN EACH OF THOSE

1 CATEGORIES. I CAN'T TELL YOU EXACTLY WHAT THE RESULT WOULD BE
2 IN THE RECIDIVISM CATEGORY, BUT I CAN TELL YOU THAT WE KNOW
3 ACADEMIC PROGRAMS REDUCE RECIDIVISM WHEN -- BY FIVE PERCENT AND
4 VOCATIONAL BY TWELVE PERCENT, AND YOU CAN EXTRAPOLATE FROM THERE
5 YOU MIGHT SEE SOME RESULT AS A RESULT OF THOSE PROGRAMS. I
6 DON'T HAVE THOSE NUMBERS IN FRONT OF ME.

7 **Q** AS YOU SIT HERE TODAY, YOU CAN'T TELL THE COURT, BECAUSE OF
8 THOSE PROGRAMS, HOW MUCH THE PRISON POPULATION WILL BE REDUCED
9 AND BY WHEN?

10 **A** I DON'T KNOW HOW MANY PEOPLE ARE GOING TO COMMIT CRIMES AND
11 HOW MANY OF THOSE CRIMES THE PROSECUTORS ARE GOING TO PROSECUTE
12 AND HOW MANY OF THOSE SUCCESSFUL PROSECUTIONS WILL RESULT IN A
13 PRISON SENTENCE. I JUST DON'T RECALL THE INTAKE.

14 **MR. SPECTER:** NO FURTHER QUESTIONS. MAYBE I DO. I'M
15 DONE, YOUR HONOR.

16 **JUDGE HENDERSON:** DOES CCPOA HAVE ANY QUESTIONS?

17 **MS. LEONARD:** NO, YOUR HONOR.

18 **JUDGE HENDERSON:** OKAY. REDIRECT?

19 **MR. MELLO:** NO, YOUR HONOR.

20 **JUDGE HENDERSON:** OKAY. THANK YOU.

21 **JUDGE KARLTON:** SIR, MAYBE I MISUNDERSTOOD, BUT FROM
22 YOUR ANSWERS TO MR. MELLO, YOU HAD INDICATED THAT REDUCING THE
23 NUMBER OF PRISONERS WITH LOW LEVEL OR LOW RISK WOULDN'T AFFECT
24 IN ANY SIGNIFICANT WAY THE POPULATION IN THE PRISON INSTITUTIONS
25 BECAUSE THOSE PEOPLE WERE ALREADY IN CAMPS OR COMMUNITY

1 INSTITUTIONS OR OTHERWISE. DID I UNDERSTAND THAT CORRECTLY OR
2 INCORRECTLY?

3 **THE WITNESS:** THERE'S A NUANCE THERE THAT I DON'T
4 THINK I EXPRESSED. WE KNOW THAT OUR CAMPS, OUR COMMUNITY
5 PROGRAMS ARE ALL LEVEL ONE AND TWO INMATES. SO THEY'RE GOING TO
6 GET -- THEY'RE GOING TO BE HIT THE GREATEST -- THE GREATER
7 PERCENTAGE WOULD COME FROM THOSE AREAS. THERE ARE STILL INMATES
8 IN THE PRISONS WHO MIGHT BE ELIGIBLE WHO ARE LOW LEVEL AND WHO
9 ALSO HAPPEN TO BE IN THE PRISON, UNFORTUNATELY -- FOR EXAMPLE,
10 MANY OF OUR LEVEL TWO INMATES ARE ACTUALLY SERVING LIFE, SO
11 WOULD PROBABLY NOT BE SUITED FOR THAT KIND OF PROGRAM. SO THERE
12 WOULD BE A BLENDED REDUCTION, PERHAPS, FROM THE PRISONS, BUT
13 PRIMARILY I THINK FROM THE CAMPS AND THE CCF'S.

14 **JUDGE KARLTON:** IS IT CORRECT OR INCORRECT THAT YOUR
15 BEST JUDGMENT, AS YOU SIT HERE TODAY -- YOU KNOW, I UNDERSTAND
16 AN AWFUL LOT OF WHAT WE'RE DOING IS AS BEST WE CAN -- IS IT YOUR
17 UNDERSTANDING THAT IF THIS COURT WERE TO ISSUE AN ORDER LIMITING
18 THE NUMBER OF PERSONS IN THE PRISON SYSTEM, AND THE STATE'S
19 APPROACH WAS TO ATTEMPT TO ACHIEVE THAT BY REDUCING THE LOW
20 LEVEL AND LOW RISK, THAT STILL WOULD NOT HAVE AN EFFECT IN THE
21 PRISON SYSTEM BECAUSE MOST OF THOSE PEOPLE ARE NOT IN THE PRISON
22 SYSTEM TO BEGIN WITH -- NOT ALL, BUT MOST ARE NOT IN THE PRISON
23 SYSTEM TO BEGIN WITH?

24 **THE WITNESS:** I THINK THAT'S -- THE OTHER -- THAT'S
25 TRUE, AND THE OTHER PART THAT I THINK -- BUT IT'S NOT -- THAT'S

1 NOT THE ONLY PLACE WE WOULD SEE REDUCTIONS.

2 I THINK THROUGH PAROLE REFORM, WHICH I'M MOST
3 INTERESTED IN, FRANKLY, BECAUSE I THINK IT'S AN AREA THAT WE CAN
4 REALLY DO A LOT OF GOOD IN, WE WOULD SEE A SIGNIFICANT REDUCTION
5 IN THE CHURNING OF OUR INMATES AT OUR RECEPTION CENTERS.

6 **JUDGE KARLTON:** OKAY. I DON'T KNOW WHETHER MY
7 QUESTION INVITES QUESTIONS FROM COUNSEL. MR. MELLO?

8 **MR. MELLO:** NO.

9 **JUDGE KARLTON:** MR. SPECTER? NOT ONLY, THAT HE
10 DOESN'T EVEN CARE.

11 **MR. SPECTER:** PARDON ME?

12 **JUDGE HENDERSON:** WE WERE WONDERING IF JUDGE
13 KARLTON'S QUESTIONS PROMPTED FURTHER QUESTIONS FROM YOU?

14 **MR. SPECTER:** ACTUALLY, I WAS JUST LOOKING AT ONE OF
15 THE EXHIBITS TO SEE WHETHER THAT IS TRUE OR NOT, AND IF I COULD
16 HAVE JUST A SECOND, I WILL LET YOU KNOW.

17 **JUDGE HENDERSON:** LET US KNOW WHEN YOU FINISH.

18 **JUDGE REINHARDT:** WHILE YOU ARE WAITING, MAYBE I
19 CAN -- YOUR TESTIMONY BASICALLY IS YOU COULD SAFELY REDUCE THE
20 POPULATION THROUGH PAROLE REFORMS?

21 **THE WITNESS:** WE BELIEVE THAT THROUGH EFFECTIVE
22 PAROLE REFORMS WE COULD SAFELY REDUCE THE POPULATION OF THE
23 ENTIRE SYSTEM, WHICH WOULD INCLUDE THE CAMPS AND COMMUNITY
24 CORRECTIONAL FACILITIES, AS WELL AS MARGINALLY IN THE PRISONS,
25 ESPECIALLY IN THE RECEPTION CENTERS, BY AN AMOUNT -- I THINK IN

1 OUR PLAN WE SAID WE ESTIMATED ABOUT 8,000 OVER THE ENTIRE
2 SYSTEM, RECOGNIZING THAT THAT'S ACTUALLY A REDUCTION OF ABOUT
3 PROBABLY 20,000 INDIVIDUALS, BECAUSE EACH OF THE PAROLEES ONLY
4 SERVES ON AVERAGE ABOUT FOUR MONTHS. SO YOU'D CYCLE -- TO GET
5 AN AVERAGE REDUCTION OF 8,000, YOU'VE GOT TO REDUCE YOUR PAROLE
6 INTAKE BY, YOU KNOW, 24,000 OR SO.

7 **JUDGE REINHARDT:** AND ARE THOSE PAROLE REFORMS
8 PRESENTLY BEING INSTITUTED?

9 **THE WITNESS:** YES. THOSE ARE THE REFORMS THAT I
10 MENTIONED. USING THE RISK ASSESSMENT TOOL AND THE PAROLE
11 VIOLATION DECISION MAKING INSTRUMENT, I THINK ARE KIND OF BEST
12 PRACTICES IN THIS AREA. WE'VE ALSO PROPOSED MORE SWEEPING
13 CHANGES, AS A RESULT OF THE BUDGET CRISIS, WHICH HAVE NOT BEEN
14 ADOPTED.

15 **JUDGE REINHARDT:** AND WOULD THOSE MORE SWEEPING
16 CHANGES -- WOULD REDUCE THE PRISON POPULATION FURTHER?

17 **THE WITNESS:** IN THE SAME KIND OF CALCULUS. AGAIN,
18 YOU WOULD HAVE TO NOT REVOKE THREE FOR EVERY ONE PERSON, THAT
19 WOULD BE NOT -- THAT WOULD REDUCE OUR PRISON POPULATION, BUT
20 THERE WOULD BE SOME ADDITIONAL PERCENTAGE OF REDUCTION IN THE
21 PRISON POPULATION. I JUST DON'T KNOW EXACTLY WHAT THAT WOULD BE
22 AS I SIT HERE.

23 **JUDGE REINHARDT:** THANK YOU.

24 **JUDGE HENDERSON:** MR. SPECTER?
25

1 **BY MR. SPECTER**

2 **Q** WELL, JUST TO LET THE COURT KNOW BACKGROUND INFORMATION, THE
3 CLASSIFICATION OF PRISONERS IS DIVIDED INTO LEVELS ONE THROUGH
4 FOUR, CORRECT?

5 **A** THAT'S RIGHT.

6 **Q** WITH ONE BEING THE LOWEST AND FOUR BEING THE HIGHEST, RIGHT?

7 **A** THAT'S RIGHT.

8 **Q** THERE ARE THOUSANDS OF LEVEL ONE PRISONERS IN THE CALIFORNIA
9 PRISON SYSTEM, AREN'T THERE?

10 **A** ON ANY GIVEN DAY THERE ARE, YES.

11 **Q** AND THERE'S ANOTHER 6,000 OR SO IN COMMUNITY CORRECTIONAL
12 CENTERS, RIGHT?

13 **A** THAT'S RIGHT.

14 **Q** AND THOSE ARE LEVEL ONE CRIMINAL CUSTODY, TOO, RIGHT?

15 **A** THEY ARE.

16 **Q** AND YOU MENTIONED IN RESPONSE TO MR. MELLO'S QUESTIONS ABOUT
17 THE CONSERVATION CAMPS THAT -- YOU IMPLIED THAT YOU ARE HAVING
18 TROUBLE FILLING THOSE SPOTS?

19 **MR. MELLO:** OBJECTION. MISSTATES HIS TESTIMONY.

20 **MR. SPECTER:** THAT'S WHAT I WAS ASKING.

21 **JUDGE HENDERSON:** YES, YOU CAN ANSWER THAT. IS
22 THAT -- WAS THAT YOUR TESTIMONY?

23 **THE WITNESS:** I THINK MY TESTIMONY WAS IN THOSE AREAS
24 THERE ARE LOW LEVEL INMATES WHERE -- OUR LOW LEVEL INMATES, OUR
25 COMMUNITY CORRECTIONAL CENTERS, WHICH YOU'VE DISCUSSED, AS WELL

1 AS CAMPS, MY OPERATIONAL PEOPLE HAVE INFORMED ME THAT THERE'S A
2 DIFFICULTY IN FILLING THOSE POSITIONS AT SOME TIMES.

3 THOSE INMATES ARE KIND OF WANTED EVERYWHERE BECAUSE
4 THEY ALSO SERVE IN THE MINIMUM SUPPORT FACILITIES, WHICH ARE --
5 WHICH ARE OUTSIDE THE WALLS OF EVERY PRISON AND PROVIDE, AS YOU
6 KNOW, THE CLEAN-UP CREW AND DO ALL THE YARD WORK AND LANDSCAPING
7 AND THOSE KINDS OF THINGS. SO THERE'S A NEED FOR LEVEL ONE
8 INMATES IN THOSE FACILITIES AS WELL.

9 **BY MR. SPECTER**

10 **Q** SO EVEN THOUGH YOU HAVE THE NEED, THE GOVERNOR PROPOSED
11 INCREASING THE CREDIT FOR PEOPLE WHO ARE ON THE WAITING LIST TO
12 GET INTO THE CONSERVATION CAMPS, RIGHT?

13 **A** THAT'S TRUE.

14 **Q** AND THAT WOULD REDUCE THEIR LENGTH OF STAY WHEN THEY GOT
15 INTO THE CAMP, RIGHT?

16 **A** THAT'S RIGHT.

17 **Q** AND ALSO -- YOU KNOW, WE TALKED ABOUT LEVEL ONES, BUT THERE
18 ARE LEVEL TWO PRISONERS AS WELL, AND THAT'S SORT OF THOUGHT OF
19 NOT AS LOW AS ONE, BUT MEDIUM IS THOUGHT OF AS LEVEL THREE,
20 CORRECT?

21 **A** THEY ARE HIGHER THAN ONE AND LESS THAN THREE, YES.

22 **Q** WHAT DOES THAT MAKE THEM, LOW OR LOW HIGH?

23 **JUDGE KARLTON:** IT MAKES THEM TWO.

24 **MR. SPECTER:** WELL, GOOD POINT.

25

1 **BY MR. SPECTER**

2 **Q** THERE ARE THOUSANDS MORE LEVEL TWO PRISONERS IN THE SYSTEM
3 AS WELL; ISN'T THAT RIGHT, MR. CATE?

4 **A** THAT'S RIGHT. THERE'S THOUSANDS OF INMATES SERVING LIFE
5 FOR -- WITH THE POSSIBILITY OF PAROLE WHO ARE LEVEL TWO INMATES
6 AND ARE IN PRISONS. THERE ARE OTHERS WHO ARE LEVEL TWO
7 INMATES -- THE REST OF THE LEVEL TWO INMATES ARE SPREAD
8 THROUGHOUT THE SYSTEM IN THE CAMPS AND IN CCF'S OR IN
9 CORRECTIONAL FACILITIES THEMSELVES.

10 **Q** RIGHT. AND, TYPICALLY, THE NON-LIFE PRISONERS HAVE A
11 RELATIVELY SHORT TIME BEFORE THEY'RE RELEASED, RIGHT?

12 **A** THAT'S RIGHT.

13 **MR. SPECTER:** OKAY. NO FURTHER QUESTIONS. THANK
14 YOU.

15 **MR. MELLO:** NOTHING, YOUR HONOR. THANK YOU.

16 **JUDGE HENDERSON:** OKAY. THANK YOU VERY MUCH FOR
17 TESTIFYING TODAY, SIR.

18 **THE WITNESS:** THANK YOU.

19 **JUDGE HENDERSON:** CALL YOUR NEXT WITNESS.

20 **MR. MELLO:** WE'RE RETRIEVING THE WITNESS. IT'S KATHY
21 JETT.

22 **KATHRYN JETT,**
23 HAVING BEEN CALLED AS A WITNESS BY THE DEFENDANTS WAS FIRST
24 DULY SWORN AND EXAMINED AS FOLLOWS:

25 **THE WITNESS:** KATHRYN JETT, AND I'M THE

1 UNDERSECRETARY OF --

2 **THE CLERK:** SPELL IT, PLEASE.

3 **THE WITNESS:** K-A-T-H-R-Y-N, JETT, J-E-T-T.

4 **MS. JOHNSON:** UNDERSECRETARY JETT HAS SUBMITTED A
5 TRIAL AFFIDAVIT IN THIS MATTER WHICH IS DEFENDANT'S EXHIBIT
6 1004. HER EDUCATIONAL AND PROFESSIONAL BACKGROUND IS SUMMARIZED
7 IN PARAGRAPHS 2 THROUGH 5 OF THAT AFFIDAVIT.

8 **DIRECT EXAMINATION BY MS. JOHNSON**

9 **BY MS. JOHNSON**

10 **Q** GOOD MORNING, MS. JETT.

11 **A** GOOD MORNING.

12 **Q** YOU ARE THE UNDERSECRETARY OF PROGRAMS FOR THE CALIFORNIA
13 DEPARTMENT OF CORRECTIONS AND REHABILITATION, CORRECT?

14 **A** YES, I AM.

15 **Q** WHEN WERE YOU APPOINTED UNDERSECRETARY OF PROGRAMS FOR CDCR?

16 **A** SEPTEMBER '07.

17 **Q** IMMEDIATELY PRIOR TO YOUR APPOINTMENT AS UNDERSECRETARY OF
18 PROGRAMS, WHAT WAS YOUR POSITION?

19 **A** I WAS CHAIRING THE GOVERNOR'S STRIKE TEAM ON REHABILITATION.

20 **Q** WHAT IS YOUR PRINCIPAL TASK AS UNDERSECRETARY OF PROGRAMS?

21 **A** YES. MY PRINCIPAL TASK IS IMPLEMENTING AN EVIDENCE-BASED
22 REHABILITATION SYSTEM THAT'S BASED ON THREE SOURCE DOCUMENTS:
23 GOVERNOR'S STRIKE TEAM, THE DECEMBER REPORT; THE EXPERT PANEL
24 THAT WAS RELEASED IN JUNE OF '07; AND THE PROVISIONS OF ASSEMBLY
25 BILL AB 900.

1 Q AND USING THOSE THREE DOCUMENTS, HAS THE CDCR DEVELOPED ITS
2 OWN PLAN?

3 A YES, WE HAVE.

4 Q OKAY. LOOKING AT DEFENDANT'S TRIAL EXHIBIT 1184, IS THAT
5 THE CDCR'S ADULT PROGRAMS REHABILITATIVE PROGRAMMING REFORM
6 PROJECT WORK PLAN?

7 A YES, IT IS.

8 Q AND IS THAT THE WORK PLAN THAT YOU ARE WORKING AS
9 UNDERSECRETARY OF PROGRAMS TO IMPLEMENT?

10 A YES, IT IS.

11 Q WHAT DOES THE WORK PLAN PROVIDE FOR?

12 A THE WORK PLAN INTEGRATES OVER 200 TASKS THAT WERE
13 RECOMMENDED TO THE DEPARTMENT THROUGH VARIOUS SOURCES. IT
14 DEVELOPS A CASE MANAGEMENT SYSTEM THAT WAS RECOMMENDED BY THE
15 EXPERT PANEL THAT IS DESIGNED TO ASSESS THE RISK AND NEEDS OF
16 EACH OFFENDER AS THEY COME INTO OUR INSTITUTIONS, DEVELOP CASE
17 MANAGEMENT PLANS FOR EACH OFFENDER; ALSO DELIVER PROGRAMS,
18 MEASURE INDIVIDUAL PROGRESS, AND PREPARE THE OFFENDERS FOR
19 REENTRY AND EVENTUALLY REINTEGRATING BACK INTO THE COMMUNITY.

20 Q ONE OF THE ELEMENTS THAT YOU IDENTIFIED WAS A RISK AND NEEDS
21 ASSESSMENT?

22 A CORRECT.

23 Q CAN YOU EXPLAIN THAT FIRST ELEMENT, RISK AND NEEDS
24 ASSESSMENT?

25 A SURE. THE RISK AND NEEDS ASSESSMENT IS BEING DELIVERED

1 THROUGH AN INSTRUMENT THAT'S EVIDENCE BASED CALLED COMPAS. IT'S
2 A CORRECTIONAL OFFENDER PLACEMENT MANAGEMENT AND ASSESSMENT
3 INSTRUMENT THAT HELPS US LOOK AT THE INDIVIDUAL'S CRIMINOGENIC
4 NEEDS AS WELL AS THEIR RISK TO REOFFEND. THAT ASSISTS US IN
5 GUIDING THEM THROUGH OUR INSTITUTIONAL SETTINGS TO DELIVER
6 PROGRAMS THAT MEET THEIR NEEDS AND FOLLOW THEM ON OUT TO PAROLE
7 TO MAKE CERTAIN THAT THEY'RE CONTINUING TO ADDRESS THEIR
8 CRIMINOGENIC NEEDS.

9 **Q** YOU'VE USED THE TERM "CRIMINOGENIC NEED." COULD YOU EXPLAIN
10 FOR THE COURT WHAT THAT MEANS?

11 **A** SURE. CRIMINOGENIC NEED WOULD BE THE DEFICITS THAT THE
12 INDIVIDUAL HAS THAT IS CONTRIBUTING TO THEIR CRIMINAL ACTIVITY.
13 COULD BE SUBSTANCE ABUSE. IT COULD BE A LEARNING PROBLEM,
14 MENTAL HEALTH PROBLEM, PROBLEMS WITH EMPLOYMENT OR EDUCATION.

15 **Q** WHAT IS THE STATUS OF THE IMPLEMENTATION OF THIS COMPASS
16 INSTRUMENT?

17 **A** WE CURRENTLY HAVE PLACED THE COMPASS INSTRUMENT IN ALL OF
18 OUR RECEPTION CENTERS, AND WE'RE ALSO COMPASSING EVERY
19 INDIVIDUAL AS THEY'RE EXITING OUR INSTITUTIONS.

20 **Q** CAN YOU EXPLAIN THE SECOND ELEMENT YOU MENTIONED, A CASE
21 MANAGEMENT PLAN?

22 **A** CERTAINLY. A CASE MANAGEMENT PLAN IS ACTUALLY AN INSTRUMENT
23 THAT IS AUTOMATED AND ACCOMPANIES THE COMPASS RISK ASSESSMENT.
24 IT'S A PLAN THAT WE WOULD IDENTIFY THE PRIORITIES OF PROBLEMS
25 THAT THE OFFENDER HAS AND MOVE THEM THROUGH OUR INSTITUTIONS AND

1 PLACE THEM INTO PROGRAMS THAT ARE EVIDENCE BASED AND DESIGNED TO
2 ADDRESS THAT PROBLEM OR THAT CRIMINOGENIC NEED.

3 **Q** WHAT STAGES IS THE CDCR'S EFFORT TO IMPLEMENT CASE
4 MANAGEMENT AT?

5 **A** I WOULD SAY AT ITS INFANCY. IN THE PAST YEAR WE'VE
6 DEVELOPED THE PLAN. WE'VE BEEN ABLE TO UTILIZE A PLAN THAT IS
7 AUTOMATED WITHIN THE COMPASS. WE ARE CURRENTLY IN A RECEPTION
8 CENTER, DEI, AND WE'VE COMPLETED A PILOT THERE IN TRAINING, AND,
9 FOR THE FIRST TIME, CC1'S TO ADMINISTER THOSE PLANS. BY
10 FEBRUARY '09 WE WILL HAVE CC1'S TRAINED IN ALL 12 OF OUR
11 RECEPTION CENTERS.

12 **JUDGE KARLTON:** TELL ME WHAT A CC1 IS, PLEASE.

13 **THE WITNESS:** I'M SORRY. CORRECTIONAL COUNSELOR ONE.

14 **BY MS. JOHNSON**

15 **Q** WHAT IS THE FUNCTION OF A CC1?

16 **A** THEY WILL BE THE CASE MANAGER FOR THE OFFENDERS. THIS IS A
17 BRAND NEW TASK FOR THAT CLASSIFICATION.

18 **Q** WHAT IS THE PROOF PROJECT?

19 **A** THE PROOF PROJECT IS AN ACTUAL -- IT'S A SERIES OF SITES
20 THAT ARE BOTH RECEPTION CENTERS, AN INSTITUTION REENTRY
21 ENVIRONMENT, AND A PAROLE ENVIRONMENT, AND IT'S A TEST SITE THAT
22 WE'RE USING TO TEST WHAT INDIVIDUALS WITHIN THE CORRECTIONAL
23 SYSTEM SHOULD BE DELIVERED WHAT SERVICES TO THE INMATE WITH A
24 PARTICULAR FOCUS ON CASE MANAGEMENT.

25 **Q** WHAT IS YOUR ROLE IN THE THIRD ELEMENT YOU TALKED ABOUT,

1 WHICH IS DELIVERY OF THE PROGRAMS?

2 **A** YEAH. OUR INTEGRATED MASTER PLAN, ACTUALLY, HAS DESIGNED
3 AND IDENTIFIED SIX PROGRAMS THAT WERE RECOMMENDED THROUGH THE
4 EXPERT PANEL REPORT. SO OUR RESPONSIBILITY IS TO DELIVER THOSE
5 PROGRAMS WITHIN A PRISON SETTING IN ALL 33 INSTITUTIONS.

6 WE'RE RIGHT NOW AT OUR PROOF SITE, WHICH IS SOLANO
7 STATE PRISON. IN THAT PRISON WE WILL HAVE FULL CASE MANAGEMENT.
8 WE WILL BE ASSIGNING INMATES TO PROGRAMS THAT MEET THEIR
9 CRIMINOGENIC RISKS. AND WE'LL ALSO BE STARTING UP NEW PROGRAMS
10 AT SOLANO, WHICH IS CRIMINAL THINKING AND ANGER MANAGEMENT.

11 **Q** CDCR CURRENTLY HAS REHABILITATIVE PROGRAMS IN PLACE,
12 CORRECT?

13 **A** CORRECT, CORRECT.

14 **Q** AND HAS IT MADE EFFORTS TO IMPROVE THE UTILIZATION -- WELL,
15 FIRST OF ALL, HAS IT MADE EFFORTS TO ASSESS THE UTILIZATION OF
16 EXISTING PROGRAMS THAT ARE IN PLACE?

17 **A** YEAH. OUR PLAN -- AS WE MOVE FORWARD TO IMPLEMENT THE PLAN,
18 IT BECAME VERY APPARENT THAT WE WERE NOT UTILIZING THE EXISTING
19 PROGRAMS WE HAVE. THE CORRECTIONAL SYSTEM CURRENTLY HAS
20 EDUCATION, VOCATIONAL, AND SUBSTANCE ABUSE PROGRAMS. WHEN WE
21 LOOKED AT THE UTILIZATION OF THOSE PROGRAMS IT WAS VERY, VERY
22 POOR. PROBABLY ABOUT 40 PERCENT WAS ON AVERAGE THAT A PROGRAM
23 WAS BEING USED.

24 SO IN OUR PHASE ONE -- WE HAVE SEVERAL PHASES OF
25 IMPLEMENTATION -- WE'VE REQUIRED ALL INSTITUTIONS TO IMPROVE

1 THEIR UTILIZATION OF EXISTING PROGRAMS.

2 AS OF APRIL WE BEGAN TO DO SOME BASELINE MEASURES.

3 WE HAVE BEEN ABLE TO INCREASE THE UTILIZATION OF ACADEMIC

4 PROGRAMS BY ABOUT 34 PERCENT, AND FOR VOCATIONAL PROGRAMS ABOUT

5 40 PERCENT.

6 **Q** WHAT IMPEDIMENTS TO UTILIZATION DID YOU IDENTIFY THROUGH THE
7 ASSESSMENT PHASE?

8 **A** IT WAS RATHER BALANCED. THERE WAS ABOUT 50 PERCENT OF THE
9 PROBLEMS HAD TO DO WITH CUSTODY, AND THESE WOULD BE
10 GANG-INVOLVED ISSUES. AND THE OTHER 50 PERCENT TENDED TO BE
11 ADMINISTRATIVE OR ACADEMIC, THINGS SUCH AS NOT BUDGETING FOR
12 SUBSTITUTE TEACHERS OR DELIVERING PROGRAMS FOUR DAYS A WEEK
13 WHERE WE COULD EASILY EXPAND THAT TO FIVE DAYS A WEEK.

14 ON THE CUSTODY SIDE, IT WAS GANG ISSUES, WHERE THE
15 GANGS WERE REALLY INTIMIDATING OTHER INMATES AND TRYING TO
16 CONTROL WHO WAS GETTING INTO THE ACTUAL PROGRAMS.

17 **Q** WHAT DID CDCR DO TO IMPROVE THE UTILIZATION OF EXISTING
18 PROGRAMS IN THE FACE OF GANG ACTIVITY?

19 **A** WE CONDUCTED A PROJECT THAT WAS -- ON THE CUSTODY SIDE THAT
20 WAS CALLED OPERATION CHANGING TIDES THAT WENT INTO AN
21 INSTITUTION, IDENTIFIED WHO WERE THE GANG -- THE GANG CALLERS,
22 THE SHOT CALLERS, IF YOU WILL, AND WENT IN, IDENTIFIED THOSE
23 INDIVIDUALS, REMOVED THEM FROM THE YARDS SO THAT INMATES WERE
24 MORE FREE THEN TO VOLUNTEER AND GO INTO PROGRAMS.

25 **Q** WERE LOCKDOWNS HAVING AN IMPACT ON PROGRAMMING?

1 **A** ABSOLUTELY. LOCKDOWNS, I THINK I'VE LEARNED, IS JUST A
2 CONDITION OF THE ENVIRONMENT. THEY OCCUR BECAUSE OF TB, BUT
3 THEY ALSO OCCUR BECAUSE THE GANGS WERE CONTROLLING YARDS. SO
4 THEY KNEW HOW TO CREATE A SITUATION THAT WOULD LOCK AN
5 INSTITUTION DOWN.

6 THOSE HAVE SEEMED TO BE LESS, OR AT LEAST MY
7 EXPERIENCE IS LESS. I DON'T HAVE DATA TO SUPPORT THAT, BUT WHAT
8 I DO HAVE ARE THE PROVIDERS THAT ARE SERVING OUR INMATES THAT
9 THERE'S LESS COMPLAINTS. THEY FEEL THE WARDEN IS DOING A BETTER
10 JOB AT GETTING, YOU KNOW, LOWER LEVEL PROGRAMS OPENED, ISOLATING
11 THE REAL TROUBLEMAKERS VERSUS CLOSING THE ENTIRE INSTITUTION
12 DOWN.

13 SO THERE'S MUCH MORE OF AN EFFORT TO -- WHEN THERE IS
14 A LOCKDOWN, TO GET THE PROGRAMMING INMATES BACK TO PROGRAM.

15 **Q** YOU MENTION --

16 **JUDGE KARLTON:** I'M SORRY. DURING A LOCKDOWN, YOU
17 ARE NOW SENDING PEOPLE TO PROGRAMMING; IS THAT WHAT YOU'RE
18 SAYING?

19 **THE WITNESS:** NO SIR. WHAT THEY'RE DOING IS -- WHAT
20 THEY'RE DOING IS JUST IDENTIFYING AND ISOLATING THE PROBLEM, AND
21 THEN GOING INTO OTHER INSTITUTIONS OR LOWER LEVEL YARDS AND
22 OPENING UP THE YARDS SO INMATES COULD GO TO PROGRAM.

23 **BY MS. JOHNSON**

24 **Q** YOU MENTION WARDENS. DO THE WARDENS HAVE A ROLE IN INMATE
25 PARTICIPATION IN PROGRAMS?

1 **A** THEY DO. I THINK THIS IS SOMETHING THAT WE'RE TRYING TO
2 REALLY EDUCATE THE WARDENS ON. IT'S ANOTHER SECOND PHASE OF
3 WHAT WE CALL TRACK ONE WHERE WE'RE SETTING UP WHAT ARE
4 PERFORMANCE MEASURES FOR WARDENS.

5 WE GO OUT TO THE INSTITUTION WITH OUR EDUCATIONAL
6 VOCATIONAL STAFF, AND USUALLY CHIEF DEPUTY SECRETARY OF
7 PROGRAMS, AND IDENTIFY FOR THEM WHAT MEASURES WE ARE GOING TO BE
8 LOOKING AT IN TERMS OF ATTENDANCE, AND HELP THEM OVERCOME AND
9 IDENTIFY BARRIERS THAT ARE IMPEDING INMATES' ATTENDANCE IN
10 PROGRAM.

11 **Q** ARE YOU WORKING WITH THEM TO BUILD A SYSTEM OF IN-CUSTODY
12 INCENTIVES?

13 **A** YEAH, THE WARDENS HAVE MET AND THEY'VE COME UP WITH A SERIES
14 OF RECOMMENDATIONS OF THINGS THAT ARE WITHIN OUR CURRENT
15 AUTHORITY TO INCENTIVIZE PROGRAMS, THINGS LIKE ALLOW INMATES
16 THAT ARE PROGRAMMING TO ACCESS NIGHT YARD, FIRST IN LINE FOR
17 CHOW, GETTING MORE, AS THEY CALL IT, ZOO-ZOOS AND WHAM-WHAMS,
18 WHICH ARE PACKAGES THAT THEY GET INTO THE INSTITUTION.

19 SO LOOKING AT HOW WE CAN REALLY SET UP SOME REWARDS
20 FOR INMATES THAT BEHAVE WELL AND PARTICIPATE IN THE PROGRAMS.

21 **THE CLERK:** FIVE MINUTES, COUNSEL.

22 **BY MS. JOHNSON**

23 **Q** HAS CDCR MADE ANY IMPROVEMENTS IN SUBSTANCE ABUSE PROGRAMS?

24 **A** VERY MUCH SO. WE HAVE BEEN ABLE TO RELOCATE SUBSTANCE ABUSE
25 PROGRAMS THAT WERE IN YARDS THAT WERE EXPERIENCING LOCKDOWNS

1 INTO LOWER LEVEL YARDS. WE HAVE BEEN ABLE TO EXPAND OUR
2 COMMUNITY SUBSTANCE ABUSE CAPACITY BY 1,800 DRUG TREATMENT
3 SLOTS.

4 WE'RE CURRENTLY -- BY THE END OF DECEMBER, WE WOULD
5 HAVE INCREASED OUR CAPACITY FOR PROGRAMS RIGHT AROUND, PROBABLY
6 ABOUT 60,000 SQUARE FOOT THROUGH MODULARS THAT HAVE BEEN
7 DEVELOPED AND THAT ARE BEING PLACED ON EIGHT DIFFERENT
8 INSTITUTIONS IN THE PRISON SYSTEM, AND WE'LL BE SERVING AN
9 ADDITIONAL 2,000 INMATES WITH THOSE TREATMENT SLOTS WITH THE
10 IN-CUSTODY ENVIRONMENT AND ABOUT AN ADDITIONAL 1,300 INMATES OR
11 PAROLEES IN THE COMMUNITY ---

12 Q THE 1,300, IS THAT AFTERCARE?

13 A THAT'S AFTERCARE, YES. THANK YOU.

14 Q WHAT DOES CDCR HAVE PLANNED FOR THE FIFTH ELEMENT YOU
15 MENTIONED, THE PREPARATION FOR REENTRY INTO THE COMMUNITY?

16 A THERE'S A COUPLE OF THINGS THAT WE'RE LOOKING -- ONE IS A
17 PROGRAM THAT'S A LIFE SKILLS PROGRAM THAT WILL BE GIVEN TO
18 ALL -- ALL OF THE INMATES THAT AREN'T PROGRAMMABLE; IN OTHER
19 WORDS, THEY'RE MEDIUM -- THERE'S HIGH, MEDIUM AND LOW RISK TO
20 REOFFEND. WE'LL BE FOCUSING OUR REHAB ON THE MEDIUM TO HIGH
21 RISK. THE LOW RISK TO REOFFEND WILL BE DELIVERED A LIFE SKILLS
22 TRACK THAT IS BASICALLY ADDRESSING FAMILY ISSUES, FINANCIAL
23 ISSUES, AND TRYING TO GET THEIR CRIMINAL PROBLEMS CLEARED UP ON
24 THE OUTSIDE.

25 WE'VE ALSO DEVELOPED A REENTRY CASE PLAN THAT'S

1 SPECIFIC TO ENGAGING THEM WITH THEIR PAROLE AGENT TO PLACE THEM
2 INTO AFTERCARE PROGRAMS ONCE THEY DEPART THE INSTITUTIONS.

3 **Q** DO YOU HAVE ANY PRISON-TO-EMPLOYMENT PROGRAMS IN THE WORKS?

4 **A** YES, THERE'S -- AB 900 REQUIRED A PRISON-TO-EMPLOYMENT
5 PROGRAM. WE'VE ADOPTED A TEXAS MODEL BASED ON WHAT THE REHAB
6 STRIKE TEAM RECOMMENDED. WE ARE CALLING THAT "NEW START." THAT
7 HAS BEEN FULLY APPROVED THROUGH BUDGET PROCESS, AND WE ARE
8 CURRENTLY HIRING POSITIONS TO FILL THAT PROGRAM.

9 WE ALSO HAVE AN INTERAGENCY AGREEMENT IN PROCESS WITH
10 THE CALIFORNIA WORKFORCE DEVELOPMENT, CWDS, THAT ARE LOCALLY
11 BASED, THAT WILL PRIORITIZE SERVICES TO GET OUR INMATES JOBS
12 WHEN THEY DEPART. THEY'LL BE ASSISTING US IN ASSESSING WHAT IS
13 THE ACTUAL JOB MARKET FOR WHERE THE OFFENDERS ARE RETURNING TO
14 MAKE CERTAIN THAT WE'RE DELIVERING THOSE VOCATIONAL AND TRAINING
15 PROGRAMS WITHIN OUR INSTITUTION.

16 **Q** WHAT IS YOUR ROLE WITH RESPECT TO PROPOSED REENTRY
17 FACILITIES?

18 **A** PREDOMINANTLY IN THE PROGRAMMATIC DESIGNS. WE'VE DESIGNED A
19 SERIES OF PROGRAMS THAT WOULD OPERATE WITHIN A REENTRY
20 ENVIRONMENT. I ALSO ASSIST IN TALKING WITH COMMUNITIES ABOUT
21 THE OFFENDER POPULATION, THE FACT THAT THEY ARE RETURNING TO
22 COMMUNITIES, TRY TO DEAL WITH SOME OF THE COMMUNITY RESISTANCE
23 TO THESE PROGRAMS, AND BY AND LARGE TO SECURE PROGRAMS FOR THE
24 OFFENDERS ONCE THEY GO OFF ON TO PAROLE.

25 **Q** YOU MENTIONED PAROLE. DO YOU HAVE ANY ROLE WITH RESPECT TO

1 PAROLE?

2 **A** I DON'T HAVE DIRECT AUTHORITY OVER THE PROGRAMS IN PAROLE,
3 BUT WE WORK COLLABORATIVELY WITH THE PAROLE DIVISION ON
4 PROCURING PROGRAMS FOR PAROLE.

5 WE'RE IN THE PROCESS NOW OF SORT OF OVERHAULING SOME
6 OF THE PAROLE PROGRAMS, TRYING TO GET PROCUREMENT TO BE MORE
7 EVIDENCE-BASED AND, IN THE SAME CASE MANAGEMENT FASHION, TRYING
8 TO GET THE RIGHT PAROLEE TO THE RIGHT PROGRAM THAT'S GOING TO
9 ADDRESS THEIR CRIMINOGENIC NEED.

10 **THE CLERK:** TIME'S UP, COUNSEL.

11 **MS. JOHNSON:** JUST A FEW MORE QUESTIONS.

12 **BY MS. JOHNSON**

13 **Q** DO YOU HAVE ANY ROLE WITH OFFENDERS AFTER THEY ARE
14 DISCHARGED FROM PAROLE?

15 **A** I DON'T HAVE A ROLE WITH THE OFFENDER ONCE THEY'RE
16 DISCHARGED, BUT I DO, IN MY CAPACITY, HAVE A ROLE IN TERMS OF
17 BUILDING SYSTEMS TO RELATE TO COMMUNITIES. BY AND LARGE THE
18 STATE HAS SORT OF PUT ASIDE PAROLEES AS A STATE PROBLEM, SO
19 THERE'S VERY FEW PROGRAMS OR PLANNING GROUPS IN A COMMUNITY THAT
20 WELCOMES PAROLEES INTO THE SYSTEM.

21 SO PART OF MY RESPONSIBILITY IS TO COMMUNICATE WITH
22 COMMUNITIES, AND IN THAT VEIN WE ARE SETTING UP SEVEN REGIONS.
23 WE WILL BE HIRING SEVEN REGIONAL ADMINISTRATORS IN THE COMING
24 MONTHS TO HOUSE THOSE REGIONS, TO BEGIN A DIALOGUE WITH
25 COMMUNITIES ON AN ONGOING BASIS ABOUT THE NEED FOR SERVICES FOR

1 PAROLEES, AND TO TRY AND DEAL WITH -- TRY TO OVERCOME
2 COMMUNITIES' PERCEPTION THAT EITHER INMATES NEVER RETURN TO
3 COMMUNITIES OR THAT'S NOT THEIR COMMUNITY THEY'RE RETURNING TO,
4 AND THAT WILL BE THE PRIMARY TASK OF THE REGIONAL
5 ADMINISTRATORS, WILL BE TO ENGAGE COMMUNITIES IN ACCEPTING
6 PAROLEES AND IN FINDING SERVICES FOR THE PAROLEES.

7 **Q** IS IT YOUR UNDERSTANDING THAT THERE ARE SUFFICIENT SERVICES
8 IN THE COMMUNITIES TODAY TO SERVE THE EXISTING PAROLE
9 POPULATION?

10 **A** NO. I MEAN, WE'RE DISCHARGING SOME 10,000 PAROLEES A MONTH,
11 AND IT'S -- THERE'S CLEARLY NOT ENOUGH THAT WE HAVE UNDER OUR
12 CONTRACTS TO SECURE PROGRAMS FOR THOSE OFFENDERS.

13 **Q** THESE EFFORTS THAT YOU'VE DESCRIBED RELATING TO
14 REHABILITATIVE PROGRAMMING, HOW DO THEY RELATE TO THE REDUCTION
15 OF THE PRISON POPULATION?

16 **A** THESE ARE PROGRAMS THAT HAVE BEEN RESEARCHED IN OTHER
17 STATES. THEY'RE EVIDENCE-BASED PROGRAMS THAT ARE DESIGNED TO
18 REDUCE RECIDIVISM. SO THROUGH DELIVERY OF PROGRAMS IN A CUSTODY
19 SETTING, INDIVIDUALLY TAILORING THOSE PROGRAMS TO THE OFFENDER
20 NEEDS, THEN OUTCOME OVER TIME WOULD BE THAT THE OFFENDERS --
21 THAT WE WOULD REDUCE THE RECIDIVISM AND THE CHURNING OF INMATES
22 COMING BACK INTO THE SYSTEM.

23 **Q** IS THERE A SPECIFIC POPULATION LEVEL YOU ARE ATTEMPTING TO
24 ACHIEVE THROUGH THESE REHABILITATIVE PROGRAMMING MEASURES?

25 **A** NO.

1 Q WOULD YOU RECOMMEND IMPLEMENTING THE REHABILITATIVE
2 PROGRAMMING MEASURES FOR THE PURPOSE OF ACHIEVING A PARTICULAR
3 POPULATION LEVEL WITH ANY PARTICULAR TIME PERIOD?

4 A IF I UNDERSTAND YOUR QUESTION, NO. I THINK MY FOCUS IS
5 REALLY IN GETTING EVIDENCE-BASED PROGRAMS IN PLACE IN THE
6 INSTITUTIONS WITH THE OVERALL GOAL OF REDUCING RECIDIVISM.

7 Q IS PROPER IMPLEMENTATION OF THE REHABILITATIVE MEASURES YOU
8 DESCRIBED IMPORTANT FOR A SAFE REDUCTION IN THE PRISON
9 POPULATION?

10 A YES, IT IS. I THINK MOST OF THE EVIDENCE POINTS TO IF
11 YOU -- JUST THROWING PROGRAMS AT AN INMATE ISN'T GOING TO REALLY
12 RESULT IN A REDUCTION OF RECIDIVISM. IT HAS TO BE THE RIGHT
13 PROGRAM AT THE RIGHT TIME FOR THAT INMATE FOR IT TO BE
14 EFFECTIVE.

15 MS. JOHNSON: NO FURTHER QUESTIONS.

16 JUDGE HENDERSON: ANYTHING FROM INTERVENORS?

17 MR. MITCHELL: NO QUESTIONS.

18 JUDGE HENDERSON: CROSS-EXAMINATION.

19 MS. EVENSON: GOOD MORNING, MS. JETT. GOOD MORNING,
20 YOUR HONORS.

21 JUDGE KARLTON: IDENTIFY YOUR NAME, COUNSEL.

22 MS. EVENSON: REBEKAH EVENSON FROM PRISON LAW OFFICE.

23 CROSS-EXAMINATION BY MS. EVENSON

24 BY MS. EVENSON

25 Q MS. JETT, HAVE YOU EVER WORKED IN A PRISON?

1 **A** NO, I HAVEN'T.

2 **Q** AND CAN YOU TELL ME WHAT'S YOUR EDUCATIONAL BACKGROUND?

3 **A** I HAVE A HIGH SCHOOL DIPLOMA, AND I HAVE -- I'M, IN FACT, A
4 RECOVERING ADDICT WHO WENT THROUGH TREATMENT IN THE '70'S, CAME
5 TO CALIFORNIA AFTER I WAS RECRUITED FOR ONE OF THE -- AN
6 EXEMPLARY PROGRAM IN PENNSYLVANIA, WHERE WE WERE ABLE TO DEAL
7 WITH A LOT OF ETHNIC MINORITIES. CALIFORNIA WAS HAVING
8 DIFFICULTY WITH THAT, RECRUITED A NUMBER OF US TO COME TO THE
9 STATE. WHEN I CAME HERE IN 1977, IN FACT, I WORKED FOR THE
10 DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS.

11 **Q** NOW, MS. JETT, YOUR RESPONSIBILITIES AS UNDERSECRETARY OF
12 PROGRAMS INCLUDE IMPLEMENTING THE RECOMMENDATIONS OF THE EXPERT
13 PANEL, RIGHT?

14 **A** CORRECT.

15 **Q** AND IT'S THE DEPARTMENT'S POSITION THAT THE EXPERT PANEL
16 RECOMMENDATIONS SHOULD BE FOLLOWED, RIGHT?

17 **A** IT WAS THE DEPARTMENT'S POSITION THAT THE EXPERT PANEL
18 PROVIDED US A BLUEPRINT FOR IMPLEMENTING PROGRAMS. WE ADOPTED
19 ALL BUT ONE RECOMMENDATION OF THE EXPERT PANEL.

20 **Q** I'D LIKE TO READ FROM YOUR DEPOSITION FROM AUGUST 28TH,
21 2008, PAGE 23, LINE 1.

22 "QUESTION: IT'S THE DEPARTMENT'S POSITION
23 THAT THE EXPERT PANEL RECOMMENDATION SHOULD BE
24 FOLLOWED?

25 "ANSWER: YES."

1 **A** MM-HMM.

2 **Q** NOW, ONE OF THE EXPERT PANEL'S RECOMMENDATIONS WAS THE
3 INCENTIVES TO CREATE -- TO PARTICIPATE IN PROGRAMS YOU
4 DISCUSSED, CORRECT?

5 **A** CORRECT.

6 **Q** AND THE DEPARTMENT CURRENTLY PROVIDES, IN ACCORDANCE WITH
7 STATE LAW, GOOD TIME CREDITS FOR INMATES WHO ENGAGE IN WORK
8 PROGRAMS AND EDUCATION PROGRAMS; ISN'T THAT RIGHT?

9 **A** CORRECT.

10 **Q** AND THE PURPOSE OF THAT GOOD TIME CREDIT IS TO PROVIDE AN
11 INCENTIVE TO PARTICIPATE IN THE EDUCATION AND WORK PROGRAMS,
12 RIGHT?

13 **A** CORRECT.

14 **Q** THAT'S BECAUSE EDUCATION AND WORK PROGRAMS, AS YOU JUST
15 TESTIFIED, CAN REDUCE RECIDIVISM AND REDUCE CRIME, RIGHT?

16 **A** YES. ARE YOU SPEAKING OF BRIDGING, THOUGH? I'M TRYING TO
17 GRASP WHAT YOU'RE REFERRING TO.

18 **Q** I'M SPEAKING OF IN GENERAL, THE GOOD TIME CREDITS THAT
19 EXIST. NOW, ONE OF THEM IS BRIDGING, AND CERTAINLY THERE ARE
20 OTHER CREDITS FOR WORK PROGRAMS, CORRECT?

21 **A** YES, I WAS JUST TRYING TO FOLLOW WHAT YOU'RE REFERRING TO.

22 **Q** OKAY. AND NOW, MS. JETT, YOU ARE NOT AWARE OF ANY INCREASE
23 IN CRIME RESULTING FROM ANY OF THE GOOD TIME CREDIT PROGRAMS IN
24 EXISTENCE IN CDCR; IS THAT RIGHT?

25 **MS. JOHNSON:** LACKS FOUNDATION.

1 **JUDGE HENDERSON:** OVERRULED. ARE YOU AWARE?

2 **THE WITNESS:** NO.

3 **BY MS. EVENSON**

4 **Q** NOW, MS. JETT, YOU'VE TESTIFIED THAT ONE OF YOUR
5 RESPONSIBILITIES ALSO INCLUDED OVERSEEING THE PROGRAMMING IN THE
6 REENTRY FACILITIES THAT WERE PLANNED AS A RESULT OF AB 900,
7 CORRECT?

8 **A** CORRECT.

9 **Q** IT'S YOUR POSITION THAT 130 PERCENT OF DESIGN CAPACITY IS
10 THE MAXIMUM LEVEL OF CROWDING AT WHICH YOU COULD PROVIDE DIRECT
11 SUPERVISION IN THE REENTRY FACILITIES, CORRECT?

12 **A** I HAVE NO OPINION ON THE DESIGN CAPACITY. MY FOCUS IN
13 REENTRY IS DELIVERY OF PROGRAMS IN THOSE SETTINGS. AND THE
14 MAXIMUM IS 500 IN SETTINGS. SO THOSE -- THAT'S SORT OF THE
15 METRIC I'M USING TO DESIGN THE PROGRAMMING.

16 **Q** SO IT'S YOUR OPINION THAT THE REENTRY FACILITY SHOULD BE AT
17 A HUNDRED PERCENT OF DESIGN CAPACITY?

18 **A** THAT'S NOT MY OPINION. IT'S HOW I'M APPROACHING THE DESIGN.
19 I DON'T HAVE AN OPINION IN TERMS OF DESIGN CAPACITY. THAT'S NOT
20 MY EXPERTISE.

21 **Q** OKAY. I'D LIKE TO TURN YOUR ATTENTION TO PAGE 41 OF YOUR
22 DEPOSITION, LINE 17.

23 "QUESTION: BUT 130 WOULD BE THE MAXIMUM
24 LEVEL OF OVERCROWDING --

25 "ANSWER: YEAH.

1 "QUESTION: -- UNDER WHICH YOU COULD PROVIDE
2 THE APPROPRIATE PROGRAMMING?

3 "ANSWER: THAT WE COULD PROVIDE DIRECT
4 SUPERVISION, WHICH DOESN'T REALLY HAVE ANYTHING
5 TO DO WITH PROGRAMMING, BUT IT HAS TO DO WITH
6 THE CUSTODY MODEL WITHIN A REENTRY."

7 **A** YES, I THINK THAT WAS A DIFFERENT DISCUSSION. BUT, YES, IT
8 WOULD LEND ITSELF -- OUR CURRENT INSTITUTIONS ARE NOT REALLY
9 DESIGNED FOR A DIRECT SUPERVISORY MODEL.

10 **Q** SO 130 PERCENT OF DESIGN CAPACITY IS THE MAXIMUM LEVEL OF
11 CROWDING UNDER WHICH YOU COULD PROVIDE THE APPROPRIATE LEVEL OF
12 SUPERVISION, CORRECT?

13 **A** YOU KNOW, I REALLY DON'T HAVE THAT OPINION. I DON'T HAVE A
14 PERSPECTIVE ON DESIGN CAPACITY.

15 **Q** OKAY. I'LL TURN YOUR ATTENTION TO THE NEXT PAGE, PAGE 42 OF
16 THE DEPOSITION, LINE 1:

17 "QUESTION: SO 130 PERCENT OF DESIGN
18 CAPACITY, IN YOUR VIEW, IS THE MAXIMUM LEVEL OF
19 OVERCROWDING AT WHICH YOU COULD PROVIDE
20 APPROPRIATE CUSTODY SUPERVISION?

21 "ANSWER: THAT IS DIRECT SUPERVISION, WHICH
22 IS A MODEL OF CUSTODY SUPERVISION. THAT'S THE
23 CONTEXT THAT WE'RE TALKING ABOUT THIS IN."

24 **A** RIGHT, WHICH IS A LITTLE DIFFERENT. THAT'S VERY DIFFERENT
25 THAN PROGRAMMING. IT'S A MODEL OF SUPERVISION WHERE THE

1 FACILITY IS DESIGNED FOR MORE INTERACTION BETWEEN THE STAFF AND
2 THE INMATES, LESS BARRIERS AND SO FORTH, BUT THAT'S NOT
3 NECESSARILY PROGRAM DESIGN. THAT'S SOMETHING SEPARATE.

4 **Q** YOU'VE TESTIFIED HERE TODAY THAT CDCR CAN REDUCE ITS PRISON
5 POPULATION BY PROVIDING EVIDENCE-BASED PROGRAMS THAT REDUCE
6 RECIDIVISM, CORRECT?

7 **A** CORRECT.

8 **Q** BUT AS OF AUGUST WHEN I TOOK YOUR DEPOSITION, CDCR HAD NO
9 SYSTEM TO PUT THE RIGHT INMATE IN THE RIGHT PROGRAM; ISN'T THAT
10 RIGHT?

11 **A** AS OF AUGUST WE WERE PROBABLY STILL IMPLEMENTING WITH
12 TEACHERS AT THAT POINT AND HAD NOT DONE OUR PILOT FIELD TEST AT
13 THAT STAGE, WHICH WAS AUGUST, CORRECT, IS THAT YOU'RE --

14 **Q** IF I COULD REFRESH YOUR RECOLLECTION, AT THAT TIME YOU
15 ACTUALLY DID HAVE A PROOF PROJECT --

16 **A** RIGHT.

17 **Q** -- IN PLACE AT SOLANO.

18 I'D LIKE TO TURN YOUR ATTENTION TO PAGE 174 OF YOUR
19 DEPOSITION, LINE 20.

20 "THE WITNESS: AGAIN, WHERE I'M AT WITH
21 PROGRAMS RIGHT NOW, IT WOULDN'T MATTER -- HOW AM
22 I GOING TO SAY? WE HAVE NO SYSTEM DESIGNED IN
23 INSTITUTIONS TO DELIVER THE RIGHT INMATE TO THE
24 RIGHT PROGRAM."

25 NOW, ONE THING THAT AB 900 WOULD HAVE DONE WAS TO

1 CLEAR UP PROGRAM SPACE THAT'S NOW BEING USED FOR HOUSING SO YOU
2 COULD DO PROGRAMMING, CORRECT?

3 **A** THAT'S -- I GUESS I'M NOT CLEAR WHAT YOUR QUESTION IS.

4 **Q** ONE THING THAT AB 900 WOULD HAVE DONE WOULD BE TO CLEAR
5 UP -- BUILD IN-FILL BEDS THAT WOULD CLEAR UP PROGRAM SPACE WHICH
6 IS NOW BEING USED FOR HOUSING SO YOU COULD DO PROGRAMMING IN
7 THAT SPACE; ISN'T THAT RIGHT?

8 **A** I THINK THAT WAS THE INTENT OF AB 900; HOWEVER, WE HAVE GONE
9 A SLIGHTLY DIFFERENT DIRECTION, COMBINED WITH, YOU KNOW, THE
10 5,000 CURRENTLY OUT-OF-STATE INMATES THAT WE HAVE, WHICH HAS
11 FREED UP SOME 17 GYMNASIUMS AND, YOU KNOW, NINE OR TEN DAYROOMS,
12 THAT IS PROVIDING SPACE.

13 BUT MORE SO WE HAVE MOVED INTO WHAT IS AN INTEGRATED
14 PROGRAM DESIGN WHEREBY WE'RE USING THE MODULARS, WHICH ARE ABOUT
15 EACH ONE ABOUT 6,700 SQUARE FOOT, DESIGNED WITH OFFICE SPACE AND
16 OPEN ROOMS TO DO CLASSROOMS, AS AN ENVIRONMENT WHERE WE COULD
17 BOTH PROVIDE THE DRUG TREATMENT, BUT WE COULD ALSO PROVIDE SOME
18 OF THE NEW PROGRAMS, THINKING FOR CHANGE, ANGER MANAGEMENT-TYPE
19 PROGRAMS. SO WE ARE NOT REALLY DEPENDENT ON OTHER SPACE AT THIS
20 STAGE.

21 **Q** AT THIS STAGE YOU HAVE ABOUT EIGHT MODULES, CORRECT?

22 **A** CORRECT.

23 **Q** AND THERE ARE STILL APPROXIMATELY 14,000 UGLY BEDS OR
24 NON-TRADITIONAL BEDS; ISN'T THAT RIGHT?

25 **A** I BELIEVE. I'M NOT SURE OF THE NUMBER, BUT I KNOW THAT

1 THERE'S STILL BEDS THAT WE'RE TAKING DOWN, YES.

2 **Q** THERE ARE STILL NON-TRADITIONAL BEDS THAT ARE BEING USED,
3 ISN'T THAT RIGHT, ABOUT 14,000?

4 **A** YES, I'M NOT SURE OF THE NUMBER. YOU ARE CORRECT IN THAT
5 THERE ARE NON-TRADITIONAL BEDS.

6 **Q** I WOULD LIKE TO PLAY A SHORT CLIP FOR YOU. THIS IS TAKEN
7 FROM THE GOVERNOR'S WEBSITE.

8 (VIDEO PLAYED.)

9 **BY MS. EVENSON**

10 **Q** WHY DON'T WE DO THAT WITH SOUND, THE FULL THING?

11 (VIDEO PLAYED.)

12 **JUDGE HENDERSON:** THIS REFORM MEASURE IS AB 900?

13 **MS. EVENSON:** THAT'S CORRECT. I MEAN, I CAN ASK THE
14 WITNESS BUT --

15 **THE WITNESS:** WELL, I THINK AT THE TIME THAT I HAD
16 JUST, I THINK, COME BACK FROM CCI OR CCW, ONE OF THE
17 INSTITUTIONS THAT HAD AND TOURED WITH THE GOVERNOR TRIPLE BUNK
18 ENVIRONMENTS. THIS IS BEFORE I WENT IN AS UNDERSECRETARY OF
19 PROGRAMS. ONCE I GOT INTO THE INSTITUTIONS, WE DID TAKE UP A
20 DIFFERENT TACT IN TERMS OF BUILDING ALTERNATIVE SPACE.

21 **Q** BUT TODAY, MS. JETT, THE DEPARTMENT HASN'T BROKEN GROUND ON
22 ANY NEW CONSTRUCTION UNDER AB 900, ANY NEW IN-FILL BEDS; ISN'T
23 THAT RIGHT?

24 **A** IN-FILL BEDS, YES.

25 **Q** OKAY.

1 **A** WE HAVE LAID EIGHT MODULARS DOWN. THAT GIVES US ROUGHLY AN
2 ADDITIONAL 6,000 SQUARE FOOT TO PROVIDE PROGRAMS IN THAT WE
3 HAVEN'T HAD IN THE PAST.

4 **Q** IN EIGHT INSTITUTIONS?

5 **A** CORRECT.

6 **Q** AND ARE ALL OF THOSE PRISON SETTINGS OR SOME OF THOSE CAMPS
7 AND OTHER CORRECTIONAL --

8 **A** THERE'S NO CAM- -- THERE IS ONE CAMP SETTING IN PHASE TWO.
9 I DON'T THINK THERE'S A CAMP SETTING IN PHASE ONE. THE FIRST
10 2,000 ARE ALL IN BEDS, WITH AN EXCEPTION OF ONE, WHICH IS IN LEO
11 CHESNEY, WHICH IS A COMMUNITY FACILITY.

12 **Q** SO OUT OF 33 OF YOUR PRISONS -- SORRY, YOUR HONOR.

13 OUT OF 33 OF YOUR PRISONS, THERE ARE NOW SEVEN
14 MODULES?

15 **A** NO. THAT'S -- LEO CHESNEY WAS ACTUALLY A NINTH, SO IT'S IN
16 EIGHT PRISON SETTINGS.

17 **Q** OUT OF 33 PRISON SITES THERE ARE EIGHT MODULES?

18 **A** RIGHT. THESE ARE ADDITIONAL. WE'RE IN 22 PRISONS.

19 **JUDGE KARLTON:** NOW I AM TOTALLY CONFUSED. WHEN YOU
20 SAY YOU ARE IN 22 PRISONS, TELL ME WHAT YOU MEAN.

21 **THE WITNESS:** WE CURRENTLY HAVE OVER 9,000 SLOTS TO
22 TREAT DRUG TREATMENT IN 22 PRISONS.

23 **JUDGE KARLTON:** OKAY. AND THAT -- I DON'T
24 UNDERSTAND. DOES THAT INCLUDE THE EIGHT OR PERHAPS NINE
25 MODULES, OR IN ADDITION TO THE EIGHT OR NINE MODULES?

1 **THE WITNESS:** IT DOES NOT INCLUDE THE EIGHT MODULARS,
2 THE EIGHT MODULARS BRING US UP TO OVER 12,000 SLOTS.

3 **BY MS. EVENSON**

4 **Q** AND YET STILL, AS OF AUGUST OF 2008, AT LEAST 50 PERCENT OF
5 ALL PRISONERS DON'T PARTICIPATE IN ANY REHABILITATIVE PROGRAM OR
6 WORK PROGRAMS OR WORK ASSIGNMENT DURING THEIR ENTIRE PRISON
7 TERM; ISN'T THAT RIGHT?

8 **A** I BELIEVE SO.

9 **THE CLERK:** FIVE MINUTES, COUNSEL.

10 **BY MS. EVENSON**

11 **Q** NOW, A KEY ELEMENT OF ENSURING THAT THE RIGHT INMATE GETS
12 INTO THE RIGHT PROGRAM IS ASSESSING THE PROGRAM NEEDS OF EACH
13 INMATE, RIGHT?

14 **A** CORRECT.

15 **Q** AND THE FIRST STEP IN ASSESSING NEEDS IS THE COMPASS
16 ASSESSMENT TOOL?

17 **A** CORRECT.

18 **Q** AND THE SECOND STEP IS ADMINISTERING A SECONDARY ASSESSMENT;
19 ISN'T THAT RIGHT?

20 **A** CORRECT.

21 **Q** AND THE REHABILITATIVE PROGRAMS THEMSELVES, THE SIX
22 EVIDENCE-BASED PROGRAMS THAT YOU DESCRIBED, THOSE PROGRAMS
23 AREN'T EVEN GOING TO BE ON LINE IN ALL THE CDCR INSTITUTIONS
24 UNTIL 2012; ISN'T THAT RIGHT?

25 **A** I THINK THAT'S THE DATE WHERE WE WOULD HAVE ALL 33

1 INSTITUTIONS ON LINE, YES.

2 **Q** AND WHEN I SPOKE WITH YOU IN AUGUST, YOU HADN'T EVEN
3 SELECTED SOME OF THE EVIDENCE-BASED PROGRAMS THAT YOU WERE
4 PLANNING TO ROLL OUT IN THE PRISONS, INCLUDING A SEX OFFENDER
5 PROGRAM; ISN'T THAT RIGHT?

6 **A** EXCLUSIVELY THE SEX OFFENDER PROGRAM. WE'VE SELECTED THE
7 OTHER PROGRAMS. SEX OFFENDERS, WE'RE WORKING WITH NIC RIGHT
8 NOW, TRYING TO GET SOME TECHNICAL ASSISTANCE IN DEVELOPING AND
9 LOCATING THE APPROPRIATE PRISONS TO SET FOR THOSE PROGRAMS.

10 **Q** SO THE OTHER PROGRAMS, ASIDE FROM SEX OFFENDERS, SHOULD ROLL
11 OUT BY 2012, BUT THERE ISN'T EVEN A SCHEDULE FOR ROLLING OUT THE
12 SEX OFFENDER PROGRAM IN ALL OF THE PRISONS; IS THAT RIGHT?

13 **A** AT THIS STAGE, THERE'S NOT.

14 **Q** NOW, YOU SAY THAT THE PROGRAMS, ONCE THEY'RE IMPLEMENTED,
15 WILL HAVE DRAMATIC RESULTS IN REDUCING THE PRISON POPULATION,
16 BUT SITTING HERE TODAY, YOU DON'T KNOW WHAT THAT REDUCTION WILL
17 BE, DO YOU?

18 **A** NO.

19 **MS. EVENSON:** NOTHING FURTHER.

20 **JUDGE HENDERSON:** REDIRECT?

21 **MS. JOHNSON:** DOES CCPOA --

22 **MS. LEONARD:** NO, YOUR HONOR.

23 **MS. JOHNSON:** WE HAVE NOTHING FURTHER, YOUR HONOR.

24 **JUDGE HENDERSON:** OKAY.

25 **JUDGE KARLTON:** ONE QUESTION. MY NOTES DON'T MAKE

1 SENSE TO ME, BUT I THINK I KNOW WHAT I MEANT.

2 THE COMPAS ASSESSMENT IS BEING DONE IN RECEPTION
3 CENTERS?

4 **THE WITNESS:** CORRECT.

5 **JUDGE KARLTON:** AND WE HAVE BEEN TOLD OVER AND OVER
6 AGAIN BY EVERY WITNESS, PLAINTIFF AND DEFENDANT, THAT THE
7 RECEPTION CENTERS ARE THE MOST OVERCROWDED AND THE LEAST ABLE TO
8 DO ANYTHING. ARE YOU TELLING US THAT DESPITE THAT FACT, SOMEHOW
9 OR OTHER THE COMPASS PROGRAM IS BEING ADMINISTERED TO EVERY
10 INCOMING INMATE?

11 **THE WITNESS:** AT THIS MOMENT IT'S NOT TO EVERY
12 INCOMING INMATE, BUT IT IS BEING ADMINISTERED IN RECEPTION
13 CENTER AS REQUIRED BY AB 900. AB 900 REQUIRED US TO ASSESS
14 EVERY INMATE UPON RECEPTION AND TO USE THAT ASSESSMENT TO PLACE
15 THEM INTO PROGRAM.

16 **JUDGE KARLTON:** THAT'S NOT BEING DONE BECAUSE OF THE
17 OVERCROWDING.

18 **THE WITNESS:** WELL, IN LARGE PART IT'S NOT BEING
19 DONE, SIR, BECAUSE WE'RE STILL TRAINING THAT CLASSIFICATION THAT
20 HERETOFORE HAS NOT DELIVERED THAT AS A PART OF THEIR JOB.

21 **JUDGE KARLTON:** I THINK YOU'VE ANSWERED MY QUESTION.

22 **THE WITNESS:** THANK YOU.

23 **JUDGE HENDERSON:** THANK YOU FOR TESTIFYING, MS. JETT.
24 YOU'RE EXCUSED.

25 WE'LL TAKE A 15-MINUTE RECESS AT THIS TIME.

1 (RECESS TAKEN.)

2 JUDGE HENDERSON: OKAY. YOU MAY CALL YOUR NEXT
3 WITNESS, COUNSEL.

4 MR. LEWIS: GOOD MORNING, YOUR HONOR. KYLE LEWIS FOR
5 THE STATE DEFENDANTS.

6 DEFENDANTS NOW CALL THOMAS HOFFMAN.

7 THOMAS HOFFMAN,
8 CALLED AS A WITNESS FOR THE DEFENDANT HEREIN, HAVING BEEN FIRST
9 DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

10 THE WITNESS: YES, I DO.

11 THE CLERK: STATE YOUR FULL NAME FOR THE RECORD.

12 THE WITNESS: THOMAS GEORGE HOFFMAN.
13 H-O-F-F-M-A-N.

14 DIRECT EXAMINATION

15 BY MR. LEWIS:

16 Q. GOOD MORNING, MR. HOFFMAN.

17 MR. LEWIS: YOUR HONOR, DEFENDANTS HAVE SUBMITTED A
18 TRIAL AFFIDAVIT FOR MR. HOFFMAN PREVIOUSLY IDENTIFIED AS EXHIBIT
19 1005, AND I ASK THE COURT TO TAKE IT UNDER SUBMISSION AT THIS
20 TIME.

21 JUDGE HENDERSON: IT WILL BE DONE.

22 BY MR. LEWIS:

23 Q. MR. HOFFMAN, ARE YOU CURRENTLY EMPLOYED BY THE STATE OF
24 CALIFORNIA?

25 A. YES, SIR.

1 Q. WHAT DEPARTMENT DO YOU WORK FOR?

2 A. CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION.

3 Q. WHAT IS YOUR CURRENT POSITION WITH CDCR?

4 A. I'M THE DIRECTOR OF THE DIVISION OF ADULT PAROLE OPERATIONS.

5 Q. PLEASE INFORM THE COURT OF YOUR PRIOR WORK BEFORE ASSUMING
6 THE ROLE AS DIRECTOR OF PAROLE OPERATIONS?

7 A. FROM 1975 TO 1994 I WORKED FOR THE CITY OF INGLEWOOD POLICE
8 DEPARTMENT. I WENT FROM OFFICER TO CAPTAIN THERE.

9 I LEFT INGLEWOOD P.D. IN APRIL OF 1994 TO JOIN THE
10 WEST SACRAMENTO P.D. AS THE THEN CAPTAIN. ULTIMATELY BECAME THE
11 DEPUTY CHIEF OF POLICE. I RETIRED IN APRIL OF 2004 AS AN
12 INTERIM CHIEF OF POLICE.

13 Q. AND HOW LONG HAVE YOU HELD THE POSITION AS DIRECTOR OF THE
14 DEPARTMENT -- OR THE DIVISION OF PAROLE OPERATIONS?

15 A. TWENTY-EIGHT MONTHS.

16 Q. HOW MANY PAROLEES ARE CURRENTLY UNDER THE SUPERVISION OF THE
17 DIVISION OF PAROLE OPERATIONS?

18 A. ABOUT 125,000.

19 Q. AND ARE THESE PAROLEES BROKEN DOWN INTO DIFFERENT
20 CLASSIFICATIONS OR SERVICE CLASSIFICATIONS?

21 A. THEY ARE BROKEN -- YES, THEY ARE BROKEN DOWN INTO GROUPS
22 BASED ON THEIR NEEDS. MENTAL ILLNESSES IS A GROUP. THERE'S
23 SEXUAL OFFENDERS THAT WE SUPERVISE SPECIFICALLY, GANGSTERS,
24 SECOND STRIKERS. YOU KNOW, I'LL SAY THE GENERIC POPULATION.
25 ALL OF THEM ARE ORGANIZED IN A WAY THAT REVOLVES AROUND FIRST

1 AND FOREMOST THEIR NEEDS AND THE RISKS THAT THEY REPRESENT TO
2 OUR SOCIETY.

3 AND THEN, SECONDARILY, THE FREQUENCY BY WHICH AGENTS
4 ARE REQUIRED TO CONTACT THEM AND/OR DRUG TEST THEM.

5 Q. THE COURT HAS HEARD THAT PAROLEES ARE SENT BACK TO PRISON
6 FOR VARIOUS REASONS. COULD YOU DESCRIBE VERY BRIEFLY HOW THE
7 PAROLE REVOCATION PROCESS WORKS? WHAT HAPPENS TO SEND A PAROLEE
8 BACK TO PRISON?

9 A. TWO THINGS PREDOMINANTLY RESULT IN PAROLEES GETTING INVOLVED
10 IN THE REVOCATION PROCESS: CONTACT WITH LOCAL LAW ENFORCEMENT
11 THAT BRINGS THEM TO THEIR ATTENTION AND THEN SUBSEQUENTLY TO
12 OURS AND/OR OBSERVED MISCONDUCT BY PAROL AGENTS FREQUENTLY
13 VIOLATING TERMS AND CONDITIONS OF PAROLE. LIKE, THEY THROW A
14 DIRTY DRUG TEST, OR THEY ARE FOUND IN POSSESSION OF SOMETHING
15 THEY ARE NOT SUPPOSED TO BE FOUND IN POSSESSION OF, OR ANY
16 NUMBER OF THINGS.

17 THEN THERE'S A REPORT THAT'S WRITTEN BY THE AGENT AND
18 FORWARDED TO THE SUPERVISOR. THEN BASED ON THE RECOMMENDATIONS
19 OF THE AGENT, WHETHER OR NOT IT'S FOR SOME SORT OF REMEDIAL OR
20 NON-CUSTODIAL RESPONSE, OR IT CAN ABOUT HALF OF THE TIME MOVE
21 TOWARDS THE REVOCATION PROCESS, WHICH IS CONTROLLED BY THE BOARD
22 OF PAROLE HEARINGS.

23 Q. AND DOES THE BOARD OF PAROLE HEARINGS FALL UNDERNEATH THE
24 DIVISION OF PAROLE OPERATIONS?

25 A. NO, SIR.

1 Q. SO IT'S A SEPARATE ENTITY WITHIN CDCR APART FROM YOUR
2 OPERATIONS?

3 A. YES, SIR.

4 Q. DO YOU KNOW HOW MANY PAROLE -- I'M SORRY, HOW MANY PAROLE
5 VIOLATIONS THERE ARE IN A GIVEN YEAR, ROUGHLY?

6 A. IN 2007 THERE WERE A LITTLE OVER 187,000. I THINK
7 HISTORICALLY 180,000 IS NOT -- WOULD NOT BE AN OVERSTATEMENT.

8 Q. AND OF THAT, SAY, 180,000, HOW MANY -- OR APPROXIMATELY HOW
9 MANY --

10 JUDGE KARLTON: I'M SORRY. MAY I INTERRUPT? I JUST
11 WANDERED. MY FAULT.

12 125,000 PAROLEES ROUGHLY?

13 THE WITNESS: YES, SIR.

14 JUDGE KARLTON: PRODUCING ABOUT 187,000 VIOLATIONS?

15 THE WITNESS: YES, SIR.

16 JUDGE KARLTON: YOU'RE DOING A GREAT JOB.

17 BY MR. LEWIS:

18 Q. OF THOSE APPROXIMATELY 180,000, HOW MANY ARE ACTUALLY
19 RETURNED OR HOW MANY PAROLEES ARE ACTUALLY RETURNED TO
20 INCARCERATION IN CDCR PER YEAR?

21 A. ABOUT 68,000 WOULD BE A PRETTY GOOD ESTIMATE.

22 Q. AND THERE HAS BEEN TESTIMONY REGARDING TECHNICAL; VIOLATIONS
23 OF PAROLE. WHAT ARE TECHNICAL VIOLATIONS?

24 A. THAT WOULD BE AN OFFENSE A NON-PAROLEE COULD NOT BE RETURNED
25 TO CUSTODY FOR. IT WOULD BE SOMETHING LIKE SOMEBODY WHO IS,

1 I'LL SAY, A FREE CITIZEN COULDN'T BE PLACED CUSTODY FOR
2 ABSCONDING, OR FOR SIMPLE POSSESSION OF ALCOHOL, OR FOR NOT
3 OBEYING THE DIRECTIVES OF A PAROLE AGENT. NOT A MISDEMEANOR AND
4 NOT A FELONY. TERMS AND CONDITIONS OF PAROLE PREDOMINANTLY.

5 **Q.** ARE THERE SOME TECHNICAL VIOLATIONS THAT MUST BE REFERRED TO
6 THE BOARD OF PAROLE HEARINGS?

7 **A.** TECHNICAL VIOLATIONS COMMITTED BY CERTAIN MEMBERS OF THE
8 PAROLEE POPULATION. 1192 OR 667 COMMITMENT OFFENSES, YES, THEY
9 ARE MANDATORILY REFERRED TO THE BOARD.

10 **Q.** WHICH YOU SAY 1192 OR 667 OFFENSES, COULD YOU DESCRIBE WHAT
11 THOSE ARE FOR THE COURT?

12 **A.** TWO SECTIONS IN THE PENAL CODE THAT DEFINE CRIMES THAT ARE
13 EITHER SERIOUS AND/OR SERIOUS AND VIOLENT.

14 **Q.** AND OF THE TECHNICAL VIOLATIONS THAT YOUR DIVISION SEES, DO
15 YOU HAVE ANY IDEA ABOUT WHAT THE APPROXIMATE PERCENTAGE OF THOSE
16 THAT MUST BE REFERRED TO THE BOARD IS?

17 **A.** WE MANDATORILY REFER ABOUT 50 PERCENT OF THE TOTAL
18 VIOLATIONS THAT COME TO OUR ATTENTION TO THE BOARD OF PAROLE
19 HEARINGS.

20 **JUDGE REINHARDT:** I THOUGHT TECHNICAL VIOLATIONS YOU
21 SAID WERE ACTIONS FOR WHICH ORDINARY CITIZENS NOT ON PAROLE
22 COULD NOT BE SENT TO PRISON FOR.

23 **THE WITNESS:** YES, SIR.

24 **JUDGE REINHARDT:** AND THESE TWO CATEGORIES ARE
25 SERIOUS CRIMES?

1 **THE WITNESS:** NO, SIR. IF A PAROLEE HAS A COMMITMENT
2 OFFENSE THAT FALLS UNDER THE DEFINITION OF 1192 AND/OR 667, 2616
3 OF THE CALIFORNIA REGS DEMAND THAT WE REFER THOSE VIOLATIONS TO
4 THE BOARD FOR CONSIDERATION.

5 **JUDGE REINHARDT:** WHATEVER VIOLATION IT IS, LIKE NOT
6 CALLING IN ON A PARTICULAR DAY?

7 **THE WITNESS:** I'M SORRY, YOUR HONOR.

8 **JUDGE KARLTON:** WHATEVER THE VIOLATION IS, YOU MUST
9 REFER TO THE PAROLE AGENCY.

10 **THE WITNESS:** PER 2616, YES.

11 **JUDGE REINHARDT:** IF HE DOESN'T SHOW UP FOR AN
12 APPOINTMENT?

13 **THE WITNESS:** THAT COULD BE.

14 **BY MR. LEWIS:**

15 **Q.** DO YOU HAVE AN IDEA ABOUT, APPROXIMATELY, HOW MANY TECHNICAL
16 VIOLATIONS OF PAROLE ARE REFERRED TO THE BOARD OF PAROLE
17 HEARINGS BY YOUR AGENTS EACH YEAR?

18 **A.** THERE'S A NUMBER -- PURE TECHNICAL, ONLY A TECHNICAL
19 VIOLATION. IN 2007 ABOUT 17,000 PURE TECHNICAL VIOLATIONS.

20 **Q.** AND DO YOUR PAROLE AGENTS HAVE THE ABILITY TO SIMPLY STOP
21 RESPONDING TO TECHNICAL PAROLE VIOLATIONS?

22 **A.** NO, SIR. WE RESPOND TO ANY VIOLATION THAT COMES TO OUR
23 ATTENTION, TECHNICAL OR CRIMINAL.

24 **Q.** DOES THE LARGE NUMBER OF PAROLEES SUPERVISED BY CDCR
25 SOMETIMES AFFECT YOUR DIVISION'S ABILITY TO MANAGE THE PAROLE

1 POPULATION?

2 **A.** I DON'T KNOW QUITE HOW TO ANSWER THAT. IF YOU COULD --

3 **Q.** DO YOU HAVE A HARD TIME MAKING SURE THAT ALL OF YOUR
4 PAROLEES GET THE SERVICES THEY NEED OR GET THE PROGRAMS THAT
5 THEY NEED BECAUSE OF THE HIGH NUMBER OF PAROLEES THAT YOU HAVE?

6 **A.** I DON'T KNOW THAT WE COULD EVER HAVE ENOUGH PROGRAMS FOR A
7 POPULATION OF THIS SIZE. WE ARE WORKING HARD TO EXPAND THE
8 PROGRAM LEVEL, BUT THERE ARE TIMES WHEN PAROLEES COULD MERIT
9 FROM TREATMENT AND TREATMENT IS NOT AVAILABLE.

10 **Q.** HAS THE DIVISION OF PAROLE OPERATIONS RECENTLY IMPLEMENTED A
11 RISK AND NEEDS ASSESSMENT TO ASSIST IN BETTER MANAGING ITS
12 PAROLEE POPULATION?

13 **A.** YES. OVER THE LAST TWO YEARS WE HAVE TAKEN A NUMBER OF
14 STEPS TO, MOST IMPORTANTLY, BRING OURSELVES INTO A POSITION
15 WHERE WE ARE BASING OUR DECISIONS ON RISKS AND NEEDS AND USING
16 EVIDENCE-BASED PRACTICES TO DRAW OUR CONCLUSIONS ABOUT WHAT'S
17 THE BEST OUTCOME FOR A GIVEN PAROLEE AND/OR A GIVEN PAROLEE
18 INVOLVED IN THE REVOCATION PROCESS.

19 THAT INCLUDES THE COMPASS REENTRY PROCESS, WHICH IS
20 ADMINISTERED TO ABOUT 60 PERCENT OF ALL PAROLEES THAT -- OR ALL
21 INMATES THAT ARE DISCHARGED FROM CDCR ON TO PAROLE.

22 **Q.** YOU MENTIONED THE COMPASS. SO HOW IS THE COMPASS TOOL USED
23 TO BENEFIT THE PAROLEE POPULATION?

24 **A.** IT'S EVIDENCE-BASED VALIDATED PROCESS BY WHICH WE ASSESS THE
25 RISK THAT THE PAROLEE REPRESENTS BASED ON THEIR CRIMINAL HISTORY

1 AND NEEDS OF THAT INDIVIDUAL; BE IT EDUCATION, DRUG, ANGER
2 MANAGEMENT, SOCIAL SKILLS, EDUCATION.

3 AND THIS RATHER EXTENSIVE DOCUMENT IS INCLUDED IN THE
4 PRE-PAROLE PLAN PACKAGE THAT GOES TO THE PAROLE AGENT AND HIS
5 SUPERVISOR PRIOR TO THE INMATE BEING RELEASED AND ON PAROLE. IT
6 PROVIDES US WITH AN OPPORTUNITY TO DEVELOP A PAROLE PLAN THAT IS
7 INDIVIDUAL SPECIFIC AND SENSITIVE TO THE NEEDS AND RISKS OF EACH
8 INDIVIDUAL.

9 Q. IS THERE A RISK THAT A PAROLEE WILL REOFFEND EVEN IF THEY
10 USE THIS TOOL, EVEN IF YOU USE THIS TOOL?

11 A. OH, ABSOLUTELY. YES.

12 Q. THE COURT HAS HEARD TESTIMONY FROM OTHER -- THAT OTHER
13 STATES USE A PAROLE VIOLATIONS TOOL. HAS CDCR IMPLEMENTED A
14 PAROLE VIOLATIONS TOOL?

15 A. YEAH. WE ARE REALLY EXCITED ABOUT IT. WE HAVE BEEN WORKING
16 ON OUR PAROLE VIOLATION INSTRUMENT WITH THE CENTER FOR EFFECTIVE
17 PUBLIC POLICY SINCE JULY OF 2007.

18 WE WENT THROUGH A VERY DETAILED, INVOLVED PROCESS TO
19 BUILD A TOOL THAT'S SENSITIVE TO THE UNIQUE ENVIRONMENT OF
20 CALIFORNIA PAROLE.

21 WE NOW HAVE THAT TOOL IN A PILOT -- IN A PILOT
22 CAPACITY IN FOUR UNITS, ONE IN EACH OF OUR FOUR REGIONS, AND WE
23 ARE ACTIVELY USING IT NOW.

24 AND A REAL GOOD ADVANTAGE TO THE TOOL IS WE HAVE ALSO
25 EMBEDDED THE CALIFORNIA STATIC RISK ASSESSMENT INTO THE PVDMI

1 PROCESS. SO WHEN WE ARE FACED WITH A DECISION ABOUT A RESPONSE
2 TO A VIOLATION OR COMMISSION OF A NEW CRIME, WE ARE CONSIDERING
3 THE RISKS THAT THE SPECIFIC PAROLEE REPRESENTS TO OUR
4 COMMUNITIES AND, ALSO, WE ARE -- WE HAVE DETERMINED THE RISK OF
5 THE INCIDENT VIOLATIONS.

6 SO IT'S A TWO-FOLD DECISION-MAKING PROCESS THAT LENDS
7 ITSELF TO GUIDING THE AGENTS TOWARDS CONSISTENT AND
8 PROPORTIONATE RESPONSES TO VIOLATIONS.

9 IT'S A PART OF AN OVERARCHING AGENDA THAT SAYS WE
10 WANT TO MOVE OURSELVES TOWARDS POLICY-DRIVEN RESPONSES TO
11 VIOLATIONS OF PAROLE AND COMMISSIONS OF NEW CRIMES SO THAT WE
12 CAN HAVE A CONSISTENT AND PREDICTABLE AND PROPORTIONATE RESPONSE
13 TO VIOLATIONS FROM ONE END OF OUR STATE TO THE NEXT.

14 Q. WILL THE PVDMI, OR PAROLE VIOLATIONS TOOL THAT YOU ARE
15 DESCRIBING, WILL IT HELP POSSIBLY PUSH PAROLEES TOWARDS
16 ALTERNATIVE SANCTIONS PROGRAMS OR REMEDIAL PROGRAMS RATHER THAN
17 SEND THEM BACK TO PRISON?

18 A. YES, BECAUSE WHAT IT DOES IS IT GUIDES OUR AGENTS. AS WE
19 SIT HERE TODAY, THERE'S ABOUT 2400 AGENTS MAKING THESE DECISIONS
20 THIS MORNING. IT GUIDES OUR AGENTS AND THEIR SUPERVISORS
21 THROUGH A VERY THOUGHTFUL STRUCTURED PROCESS SO THAT THE FULL
22 RANGE OF ALTERNATIVES AND APPROPRIATE RESPONSES TO VIOLATIONS
23 AND COMMISSIONS OF NEW CRIMES ARE CONSIDERED IN EACH INSTANCE.

24 Q. WHAT KINDS OF REMEDIAL PROGRAMS ARE AVAILABLE TO PAROLEES?

25 A. IT RUNS THE GAMUT. THERE'S ABOUT 100 MILLION IN PROGRAMS

1 FUNDED VIA CDCR IN PAROLE. THEY INCLUDE SUCH THINGS AS THE DAY
2 REPORTING CENTERS AND LITERACY LABS AND DRUG TREATMENT PROGRAMS
3 AND RESIDENTIAL MULTI-SERVICE CENTERS AND CARE FOR THE MENTALLY
4 ILL.

5 THEN WE ALSO WORK VERY CLOSELY -- SOMETIMES AN UPHILL
6 BATTLE, BUT VERY CLOSELY WITH LOCAL COMMUNITIES AND PRIVATE
7 SERVICE PROVIDERS TO EXPAND THE MENU OF SERVICE THAT WE CAN
8 OFFER THIS LARGE POPULATION OF PAROLEES.

9 **Q.** HAVE OTHER STATES DEMONSTRATED POSITIVE IMPACTS FROM THE USE
10 OF A PAROLE VIOLATIONS TOOL?

11 **A.** THE CENTER FOR EFFECTIVE PUBLIC POLICY, WHO ARE THE FOLKS
12 THAT HAVE HELPED US BUILD OURS, HAVE HELPED 33 STATES AND/OR
13 COUNTY PAROLE AND PROBATION OPERATIONS UNDERTAKE A PROCESS, AS I
14 SAID, MORE COMMONLY REFERRED TO AS POLICY-DRIVEN RESPONSES TO
15 VIOLATIONS. ONE OF THE OUTCOMES IS FREQUENTLY THE DEVELOPMENT
16 OF A DECISION-MAKING INSTRUMENT OF ONE KIND OR ANOTHER.

17 STATES LIKE TEXAS, NEW JERSEY, KANSAS, OHIO, FLORIDA
18 HAVE ALL ENGAGED IN THIS PROCESS AND ALL OF THEM HAVE SEEN A
19 REDUCTION IN THE USE OF THE REVOCATION PROCESS AND IN THE PAROLE
20 ENVIRONMENT, A REDUCTION IN PRISON POPULATIONS AND BETTER
21 OUTCOMES FROM THE PAROLEES.

22 **Q.** DO YOU BELIEVE THAT THE USE OF THE CALIFORNIA PAROLE TOOL
23 WILL EVENTUALLY RESULT IN LESS RECIDIVISM AND FEWER PAROLE
24 REVOCATIONS IN CALIFORNIA?

25 **A.** ABSOLUTELY, ABSOLUTELY.

1 Q. IN YOUR OPINION, WILL THE USE OF A RISK AND NEEDS ASSESSMENT
2 AND THE PAROLE TOOL RESULT IN A DIFFERENT KIND OF CDCR
3 POPULATION AFTER SOME TIME?

4 A. YES. IT WILL PROVIDE US WITH AN OPPORTUNITY TO BRING -- AND
5 THIS IS A HUGE STEP FORWARD FOR OUR STATE. WE WILL BRING
6 SCIENCE AND EVIDENCE-BASED PRACTICES TO WHAT HAS HISTORICALLY
7 BEEN A CLINICAL DECISION ABOUT RISK. THE RESEARCH VALIDATES
8 THAT THE CLINICAL DECISION OR CONCLUSION ABOUT RISK, YOU GET IT
9 RIGHT ABOUT 50/50, 50 PERCENT OF THE TIME.

10 WHEN YOU INTRODUCE A VALIDATED EVIDENCE BASED TOOL,
11 YOU BRING THAT THRESHOLD UP TO ABOUT 70 PERCENT. IF YOU ALSO
12 HAVE TALENTED PROFESSIONALS, YOU CAN CONTINUE TO BUMP THAT RATIO
13 UP WHERE THE DECISION CAN BE RIGHT IN EXCESS OF 70 PERCENT OF
14 THE TIME, RECOGNIZING YOU ARE NEVER GOING TO GET 100 PERCENT.

15 THE CLERK: TIME IS UP, COUNSEL.

16 MR. LEWIS: IF I MIGHT ASK A FEW MORE QUESTIONS, YOUR
17 HONORS?

18 JUDGE REINHARDT: LET ME ASK ONE BEFORE YOU CONTINUE,
19 COUNSEL.

20 IN ANSWERING THE LAST TWO QUESTIONS YOU USED THE WORD
21 "EVENTUALLY" AND THEN IN ANOTHER INSTANCE "AFTER SOME TIME."

22 IS THERE ANYTHING WITHIN YOUR OWN EXPERIENCE OR
23 LOOKING AT PROGRAMS FROM OTHER STATES THAT CAN TELL YOU
24 CONCRETELY OR SEMI-CONCRETELY WHEN THESE CHANGES -- WHEN YOU'LL
25 START SEEING THESE CHANGES?

1 **THE WITNESS:** OTHER STATES, YOU KNOW, LIKE KANSAS AND
2 TEXAS, ILLINOIS SEE THE CHANGES QUICKLY. THE CAVEAT FOR
3 CALIFORNIA IS, WE ARE THE GORILLA IN THE CROWD.

4 OHIO, AS AN EXAMPLE. OHIO HAS ABOUT 37,000 PAROLEES
5 THAT THEY SUPERVISE. THEY HAVE JUST RECENTLY COME OUT WITH,
6 JUST IN THE LAST WEEK, THE MOST EXTENSIVE REVIEW OF THE
7 DECISION-MAKING INSTRUMENT PROCESS EVER AND IT VALIDATED THAT
8 THEY'VE EXPERIENCED SIGNIFICANT REDUCTIONS IN REVOCATIONS AND
9 THE USE OF INCARCERATION IN THIS PROCESS VERY QUICKLY.

10 **JUDGE KARLTON:** WHAT DOES "VERY QUICKLY" MEAN? A
11 YEAR? SIX MONTHS? WHAT DOES IT MEAN? I UNDERSTAND THAT YOU
12 DON'T HAVE A PRECISE NUMBER, BUT ROUGH.

13 **THE WITNESS:** YOU ARE GOING TO SEE THE CHANGE
14 VIRTUALLY IMMEDIATELY, RECOGNIZING THAT IT WILL TAKE -- AND THIS
15 IS WHY -- I'M NOT TRYING TO AVOID THE QUESTION BUT, YOU KNOW,
16 WHEN YOU -- WHEN WE RUN THROUGH 70,000 OR 80,000 VIOLATIONS, THE
17 IMPACT OF HAVING A STRUCTURED DECISION-MAKING INSTRUMENT AND
18 ALTERNATIVE SANCTIONS WILL BE RECOGNIZED QUICKLY.

19 I GUESS ONE WAY TO ANSWER YOUR QUESTION, YOUR HONOR,
20 IS WE ARE USING THIS TOOL RIGHT NOW IN FOUR OF OUR UNITS. IN
21 THE FIRST COUPLE OF WEEKS WHEN WE -- OUR AGENTS USED THE TOOL,
22 THEY AGREED WITH THE TOOL -- AND THIS WAS ABOUT 113 CASES. THEY
23 AGREED WITH THE TOOL ALL BUT SIX TIMES, AND THEN THE OUTCOME
24 THAT THAT TOOL RECOMMENDED.

25 AND I THINK WHAT YOU WILL SEE -- I KNOW WHAT YOU WILL

1 SEE QUICKLY IS CONSISTENCY AND CONTINUITY IN THESE RESPONSES AND
2 A NEW FOCUS. THIS IS -- SOME OF THIS IS CULTURAL, BUT A NEW
3 FOCUS ON RECOGNIZING THAT WHAT PAROLE IS ABOUT IS HELPING FOLKS
4 TO SAFELY AND EFFECTIVELY TRANSITION BACK INTO SOCIETY WHENEVER
5 WE CAN MAKE THAT HAPPEN.

6 **JUDGE REINHARDT:** HOW LONG WILL IT TAKE BEFORE IT'S
7 IN EFFECT STATE WIDE?

8 **THE WITNESS:** WE WILL HAVE THIS -- THE PLAN IS TO
9 HAVE THE PVDMI STATE WIDE BEFORE THE END OF NEXT YEAR.

10 OUR STRATEGY AT THE MOMENT -- AND, OBVIOUSLY, ALL OF
11 THIS IS, WE COULD -- WE COULD ACCELERATE THIS, BUT THE PLAN
12 RIGHT NOW IS THAT BEGINNING IN FEBRUARY WE WILL BEGIN TO ROLL
13 THIS TOOL OUT IN FOUR DISTRICTS EVERY 30 TO 45 DAYS. THERE'S 25
14 DISTRICT IN OUR STATE SYSTEM. SO WE WOULD ROLL FOUR OUT EVERY
15 30 OR 45 DAYS. RIGHT NOW PROJECTING THAT BY OCTOBER, MAYBE
16 NOVEMBER -- OCTOBER SEEMS TO BE A PRETTY COMFORTABLE DATE FOR
17 US -- THAT WE WOULD HAVE THE TOOL UP AND OUR AGENTS TRAINED AND
18 EVERYBODY USING IT BY THEN.

19 **JUDGE KARLTON:** AND THE BUDGET CRISIS AND THE
20 APPARENT DETERMINATION THAT ONE WAY OR ANOTHER EVERY AGENCY IS
21 GOING TO HAVE TO TAKE A HIT WILL DELAY THAT TO SOME DEGREE, AND
22 YOU DON'T KNOW HOW MUCH THAT WILL BE BECAUSE IT DEPENDS ON HOW
23 BADLY YOU ARE HIT?

24 **THE WITNESS:** YOUR HONOR, I DON'T BELIEVE THAT IT
25 WILL -- IT WILL DELAY THE IMPLEMENTATION OF THE USE OF THE

1 PVDMI, THE PAROLE VIOLATION METRICS.

2 YOU KNOW, THERE COULD BE SOME IMPLICATIONS ON THE
3 AVAILABILITY OF PROGRAMMING. AND, OBVIOUSLY, ONE OF THE KEY
4 STRENGTHS OF A STRUCTURED DECISION-MAKING PROCESS IS THAT THERE
5 IS AN EFFECTIVE AND A ROBUST MENU OF PROGRAMS AVAILABLE,
6 SOMETHING WE ARE WORKING HARD TO ALSO BUILD EITHER BY OUR OWN
7 RESOURCES AND/OR WORKING CLOSELY WITH COMMUNITIES TO MAKE THE --
8 HELP US HAVE THAT AVAILABLE TO OUR PAROLEE POPULATION.

9 **JUDGE KARLTON:** IT SEEMS TO ME -- AND I'M NOT A
10 PROFESSIONAL AND YOU WILL HAVE TO TELL ME WHETHER I'M RIGHT --
11 THAT IMPLEMENTATION OF THIS PROGRAM AND THE REDUCTION OF SENDING
12 PEOPLE BACK TO PRISON AND ALL THE REST WOULD ULTIMATELY BE A
13 SIGNIFICANT SAVINGS TO THE STATE; IS THAT RIGHT OR WRONG?

14 **THE WITNESS:** YES, SIR. THAT ASSUMPTION WOULD BE
15 CORRECT. RETURNING OF -- FEWER PEOPLE GOING THROUGH THE
16 INSTITUTIONAL PROCESS WOULD SAVE MONEY.

17 **BY MR. LEWIS:**

18 **Q.** MR. HOFFMAN, WERE YOU SCHEDULED TO RETIRE FROM CDCR ON
19 NOVEMBER 1ST, 2008?

20 **A.** YES, SIR.

21 **Q.** WHY DID YOU CHOOSE TO STAY IN YOUR POSITION AS THE DIRECTOR
22 OF THE DIVISION OF PAROLE OPERATIONS?

23 **A.** THIS IS THE ULTIMATE HONOR OF A 35-YEAR CAREER. I BELIEVE
24 IN CDCR AND DAPO. I BELIEVE WE HAVE POSITIONED OURSELVES WELL,
25 REALLY WELL, TO REALLY MAKE A DIFFERENCE IN WHAT I SEE AS ONE OF

1 THE MOST COMPLICATED, INTERESTING SOCIAL DEBATES OF OUR TIME.

2 I BELIEVE WE CAN MAKE A DIFFERENCE AND THAT WE ARE
3 POSITIONED TO DO THAT NOW. AND I DIDN'T -- I DIDN'T WANT TO
4 LEAVE AND NOT BE PART OF THAT.

5 AND MY WIFE TOLD ME IF I RETIRED, SHE WOULD BE MAD AT
6 ME, SO...

7 MR. LEWIS: YOUR HONOR, IT IS DEFENDANTS' REQUEST
8 THAT MR. HOFFMAN'S AFFIDAVIT, EXHIBIT 1005, BE MOVED INTO
9 EVIDENCE AT THIS TIME.

10 JUDGE HENDERSON: IT WILL BE.

11 (DEFENDANTS' EXHIBIT 1005 RECEIVED IN
12 EVIDENCE)

13 MR. LEWIS: THANK YOU, YOUR HONOR. NO FURTHER
14 QUESTIONS.

15 JUDGE HENDERSON: INTERVENORS?

16 DIRECT EXAMINATION

17 MR. MITCHELL: BILL MITCHELL FOR THE DEFENDANT
18 INTERVENORS.

19 BY MR. MITCHELL:

20 Q. MR. HOFFMAN, GOOD MORNING.

21 A. GOOD MORNING.

22 Q. SIR, IN THE DEVELOPMENT OF THE RISK ASSESSMENT TOOL AND THE
23 DECISION-MAKING INSTRUMENT, YOU HAVE WORKED LONG, LONG HOURS AND
24 A LOT OF TIME IN DEVELOPING THAT INSTRUMENT, TAKING INTO
25 CONSIDERATION A NUMBER OF DIFFERENT FACTORS, INCLUDING RISK

1 ASSESSMENT THAT INVOLVES THE RECIDIVISM FACTOR OF THOSE WHO COME
2 OUT ON PAROLE?

3 **A.** YES, SIR.

4 **Q.** THERE HAS BEEN SOME TESTIMONY IN THIS CASE LOOKING TOWARDS
5 EARLY RELEASE OF A GROUP OF PRISON INMATES THAT ARE, LACK OF A
6 BETTER TERM, CALLED LOW RISK; MEANING THE NON-VIOLENT, NON-SEX
7 OFFENDERS. ARE YOU AWARE OF THOSE PROPOSALS?

8 **A.** YES, SIR.

9 **Q.** WHAT PERCENTAGE OF THE PRISON POPULATION ARE YOUR NON-SEX,
10 NON-VIOLENT OFFENDERS?

11 **A.** I DON'T KNOW THAT FIGURE OFF THE TOP MY HEAD. I'M SORRY.

12 **Q.** OKAY. ARE YOU AWARE OF THE RECIDIVISM RATES THAT ARE
13 ASSOCIATED WITH THAT GROUP OF NON-SEX, NON-VIOLENT OFFENDERS?

14 **A.** THE CALIFORNIA STATIC RISK ASSESSMENT TOOL SAYS THAT ABOUT
15 22 PERCENT OF THE POPULATION WOULD BE LOW RISK, 17 TO
16 22 PERCENT.

17 **Q.** TWENTY-TWO PERCENT OF THE PRISON POPULATION WOULD BE LOW
18 RISK?

19 **A.** YES.

20 **Q.** OKAY. AND THEN WOULD THAT BE YOUR CRIMINALS OR YOUR
21 OFFENDERS, YOUR INMATES WHO COMMITTED PROPERTY AND DRUG AND
22 NON-VIOLENT CRIMES?

23 **A.** CAN INCLUDE THAT, AND IT CAN INCLUDE SOME PEOPLE WITH A
24 VIOLENT PAST. THERE ARE PEOPLE WITH A VIOLENT HISTORY THAT WILL
25 SCORE LOW RISK IN THESE TOOLS.

1 Q. ARE YOU AWARE OF THE RECIDIVISM RATES THAT ARE MEASURED BY
2 CDCR FOR YOUR PROPERTY, DRUG AND NON-VIOLENT OFFENDERS?

3 A. IN THE LOW RISK POPULATION, ABOUT 17 PERCENT OF THEM WILL
4 RECIDIVATE.

5 Q. ABOUT 17 PERCENT?

6 A. YES, SIR.

7 Q. NOW, THERE'S BEEN SOME TESTIMONY IN THIS CASE THAT OF THE
8 GROUP THAT IS BEING LOOKED AT FOR EARLY RELEASE FROM PRISON,
9 THAT APPROXIMATELY 25 PERCENT OF THAT GROUP, OR THAT POPULATION,
10 WILL COMMIT NEW CRIMES WITHIN THE FIRST FOUR MONTHS OF RELEASE.

11 NOW, IF --

12 JUDGE KARLTON: DO YOU AGREE WITH THAT NUMBER?

13 THE WITNESS: I HAVE A NUMBER OF 17 PERCENT IN MY
14 MIND THAT WILL RECIDIVATE IN THE LOW RISK POPULATION.

15 JUDGE REINHARDT: IN THE FIRST FOUR MONTHS?

16 THE WITNESS: ACTUALLY, I THINK -- AND DR. CHAPMAN
17 COULD BE HELPFUL HERE, BUT I BELIEVE THAT'S A PREDICTIVE VALUE
18 OF THREE YEARS; THAT WITHIN THE SUBSEQUENT THREE YEARS, THEY
19 WOULD RECIDIVATE VIOLENTLY OR THEY WOULD RECIDIVATE AT ALL.
20 ABOUT 17 PERCENT OF THE TOTAL LOW RISK POPULATION WOULD
21 RECIDIVATE, ABOUT 4 PERCENT OF THAT GROUP VIOLENTLY.

22 Q. SO ABOUT 4 PERCENT OF THE LOW RISK POPULATION WILL COMMIT
23 VIOLENT CRIMES WHEN THEY RECIDIVATE?

24 A. ACTUALLY, IT'S A LITTLE LESS THAN THAT. IT'S 4 PERCENT.
25 17 PERCENT THAT WOULD RECIDIVATE.

1 WHAT WE ARE TRYING TO DO IS -- NOT TRYING TO. WHAT
2 WE ARE DOING IS MITIGATING RISK AND TRYING TO, THROUGH SCIENCE
3 AND RESEARCH, BREAK DOWN THE POPULATION TO A LOW, MODERATE, HIGH
4 VIOLENT, HIGH DRUG, HIGH PROPERTY CLASSIFICATIONS.

5 **JUDGE REINHARDT:** YOUR FIGURES COME TO LESS THAN
6 1 PERCENT, YOU SAY? YOU SAY 4 PERCENT OF 17?

7 **THE WITNESS:** YES, SIR.

8 **JUDGE REINHARDT:** SO THE ANSWER TO MR. MITCHELL'S
9 QUESTION WOULD BE 1 PERCENT, LESS THAN 1 PERCENT?

10 **THE WITNESS:** AND I'M DOING THOSE NUMBERS OFF THE TOP
11 OF MY HEAD. I'M PRETTY SURE THEY ARE ACCURATE.

12 **BY MR. MITCHELL:**

13 **Q.** IF I CAN CLARIFY JUST A MOMENT?

14 WHAT PERCENTAGE OF THE LOW RISK POPULATION WOULD BE
15 EXPECTED TO COMMIT VIOLENT CRIMES IF THEY WERE RELEASED?

16 **A.** ABOUT 4 PERCENT.

17 **JUDGE KARLTON:** FOUR PERCENT OF THE TOTAL POPULATION
18 OR 4 PERCENT OF THE 17 PERCENT THAT'S GOING TO RECIDIVATE IN ANY
19 EVENT?

20 **THE WITNESS:** FOUR PERCENT OF THE GROUP THAT WILL
21 RECIDIVATE WILL RECIDIVATE VIOLENTLY.

22 **JUDGE KARLTON:** THAT'S LESS THAN 1 PERCENT OF THE
23 TOTAL NUMBER.

24 **THE WITNESS:** ASSUMING I HAVE GOT IT RIGHT, THAT IT'S
25 THE 17 PERCENT -- I WOULD WANT TO CHECK THAT TO BE ENTIRELY

1 ACCURATE, BUT I DO KNOW THAT 4 PERCENT THAT GROUP WOULD
2 RECIDIVATE VIOLENTLY, OR THAT'S WHAT OUR RISK TOOL IS TELLING
3 US.

4 **BY MR. MITCHELL:**

5 **Q.** THERE HAS BEEN TESTIMONY THAT APPROXIMATELY 10,000 PAROLEES
6 ARE COMING OUT OF CDCR INSTITUTIONS AT THIS TIME, IS THAT
7 CORRECT?

8 **JUDGE KARLTON:** A MONTH.

9 **BY MR. MITCHELL:**

10 **Q.** A MONTH?

11 **A.** YES, SIR. YES, SIR.

12 **Q.** WHAT HAS THE EXPERIENCE BEEN IN THE FIELD IN PAROLE WITH
13 YOUR AGENTS IN FINDING SUITABLE TREATMENT, HOUSING AND
14 EMPLOYMENT FOR THIS 10,000 THAT ARE COMING OUT EACH MONTH?

15 **A.** IT IS A CHALLENGE AND IT REALLY IS COMMUNITY-TO-COMMUNITY.
16 SOME PLACES IT'S EASIER TO DO THAN OTHERS, BUT IT'S A
17 DAY-TO-DAY CHALLENGE.

18 **Q.** IF WE WERE TO INCREASE THE NUMBER COMING OUT BY 25 PERCENT,
19 ADDING ANOTHER 2500 TO THE 10,000 THAT ARE COMING OUT, DO YOU
20 HAVE AN OPINION AS TO THE ABILITY OF THE COMMUNITY RESOURCES TO
21 ABSORB FOR TREATMENT, HOUSING AND EMPLOYMENT CONSIDERATIONS THAT
22 ADDITIONAL PAROLEE POPULATION?

23 **A.** I DON'T THINK I WOULD BE ABLE TO PREDICT WHAT THE
24 COMMUNITIES WOULD DO. I COULD TELL YOU THAT THE DIVISION OF
25 ADULT PAROLE OPERATIONS WOULD NEED ADDITIONAL RESOURCES TO

1 HANDLE, SOUNDS LIKE ABOUT 2500 MORE PAROLEES A MONTH COMING INTO
2 OUR SYSTEM.

3 Q. ADDITIONAL RESOURCES IN WHAT REGARD? WHAT WOULD YOU NEED;
4 MORE PAROLE AGENTS, MORE HOUSING, MORE WHAT?

5 A. YEAH, WE WOULD NEED -- YES. OUR -- PAROLE IS FINANCED AT 70
6 TO 1. EVERY 70 PAROLEES THAT COME INTO PAROLE, WE GET AN AGENT
7 FOR THE -- YOU KNOW, NON-SPECIALIZED CASE LOADS.

8 BUT, YES, WE WOULD NEED ADDITIONAL AGENTS SO THAT WE
9 CAN MAINTAIN CASE LOADS WHERE WE ARE. WE NEED MORE SUPERVISORS.
10 I MEAN, YOU JUST RUN THROUGH THE WHOLE GAMUT OF PERSONNEL AND
11 LOGISTICS AND, OF COURSE, ADDING THAT NUMBER OF PAROLEES INTO
12 THE COMMUNITIES EACH MONTH WOULD FURTHER STRESS AN ALREADY
13 STRESSED INFRASTRUCTURE FOR PROGRAMMING.

14 Q. THANK YOU, MR. HOFFMAN. NO FURTHER QUESTIONS.

15 THE COURT: REDIRECT?

16 JUDGE KARLTON: CROSS.

17 JUDGE HENDERSON: I'M SORRY, IT WOULD BE CROSS.
18 THANK YOU, JUDGE.

19 MR. GALVAN: ERNEST GALVAN FOR THE PLAINTIFFS.

20 CROSS EXAMINATION

21 BY MR. GALVAN:

22 Q. GOOD MORNING, MR. HOFFMAN.

23 A. GOOD MORNING.

24 Q. MR. HOFFMAN, YOU WERE JUST TESTIFYING ABOUT THE RESOURCES
25 YOU WOULD NEED IF YOU HAD MORE PAROLEES TO CARE OF.

1 IN YOUR TRIAL AFFIDAVIT YOU CITED THAT THIS DOCUMENT,
2 THE FINAL REPORT OF THE U.C.L.A. EVALUATION OF THE MENTAL HEALTH
3 SERVICES CONTINUING PROGRAM -- AND IF I COULD ZOOM ON THE CHART
4 AT THE TOP THERE -- AND JUST ASK SOME FOUNDATIONAL QUESTIONS.

5 (DOCUMENT DISPLAYED)

6 THE MENTAL HEALTH SERVICES CONTINUUM PROGRAM IS THE
7 PROGRAM THAT DOES PRE-RELEASE APPOINTMENTS AND BENEFITS PLANNING
8 FOR THE MENTALLY ILL PEOPLE ABOUT TO BE RELEASED FROM PRISON; IS
9 THAT RIGHT?

10 **A.** YES.

11 **Q.** AND YOUR DEPARTMENT COMMISSIONED U.C.L.A. TO STUDY THE
12 EFFECTIVENESS OF THAT PROGRAM, IS THAT RIGHT?

13 **A.** YES, SIR.

14 **Q.** AND THEN WHAT WE HAVE UP IS PART OF ONE OF THEIR REPORTS
15 THAT THEY PROVIDED TO YOU, IS THAT RIGHT? JUST A PAGE FROM ONE
16 OF THEM.

17 **A.** YES, SIR.

18 **Q.** OKAY. AND THIS IS AN EXHIBIT NUMBER, DEFENDANTS' 1205.
19 IT'S ONE OF THE EXHIBITS TO YOUR AFFIDAVIT, SIR.

20 AND PART OF THEIR JOB WAS TO TELL YOU WHETHER OR NOT
21 IT WAS COST EFFECTIVE TO INVEST IN ALL THIS PRE-RELEASE PLANNING
22 FOR THE PEOPLE ABOUT TO PAROLE, IS THAT RIGHT?

23 AND SO AS PART OF THE BASIS, THEY MADE THIS CHART FOR
24 YOU. ESTIMATED DAILY PAROLE COST ON THE SIDE THERE, ABOUT \$10.
25 ESTIMATED DAILY INCARCERATION COST FOR A PERSON AT THE ENHANCED

1 OUTPATIENT LEVEL OF CARE AT THE B.O.P., ABOUT \$94?

2 **A.** YES, SIR.

3 **Q.** ABOUT TEN TIMES MORE TO KEEP SOMEBODY IN PRISON THAN TO TAKE
4 CARE OF THEM ON PAROLE, IS THAT RIGHT?

5 **A.** IN THIS INSTANCE, YES, SIR.

6 **Q.** YOU WERE TESTIFYING EARLIER ABOUT THE PROPORTION OF THE
7 VIOLATIONS THAT YOU HAVE TO REFER TO THE BOARD OF PAROLE
8 HEARINGS FOR FORMAL PROCEEDINGS UNDER A REGULATION THAT YOU
9 REFERRED TO AS 2616, TITLE 15?

10 **A.** YES, SIR.

11 **Q.** AND THAT'S ALSO KNOWN AS THE ROBIN REGAN REGULATION, IS THAT
12 RIGHT?

13 **A.** YES, SIR, IT IS.

14 **Q.** AND THAT'S ONE OF THOSE LAWS -- OR REGULATIONS THAT WE GOT
15 IN CALIFORNIA BECAUSE THERE WAS A HIGH PROFILE MURDER AND
16 SOMEONE DID A CAMPAIGN TO MAKE THAT REGULATION, IS THAT RIGHT?

17 **MR. LEWIS:** OBJECTION. LACKS FOUNDATION.

18 **JUDGE KARLTON:** CAN YOU TELL US IF THAT WAS THE
19 MOTIVATION?

20 **THE WITNESS:** THAT IS HOW IT'S BEEN CHARACTERIZED TO
21 ME. I WAS IN LAW ENFORCEMENT AT THE TIME. I WASN'T TRACKING
22 THE DISCUSSION, BUT THAT'S HOW IT'S BEEN TOLD TO ME.

23 **BY MR. GALVAN:**

24 **Q.** SO YOUR ANSWER IS YES?

25 **A.** YES.

1 Q. AND THAT'S JUST A REGULATION, CORRECT, ADMINISTRATIVE
2 REGULATION?

3 A. YES, SIR.

4 Q. AND YOUR ADMINISTRATIVE AGENCY CAN CHANGE REGULATIONS
5 THROUGH A FORMAL PROCESS, IS THAT RIGHT?

6 A. WE CAN CHANGE A REGULATION, THAT'S TRUE. THIS IS A
7 REGULATION BY THE BOARD -- OR OF THE BOARD, NOT OF DAPO.

8 Q. AND ARE YOU AWARE THAT SENATOR GEORGE RUNNER AUTHORED AN
9 INITIATIVE THAT WAS ON THE BALLOT THIS LAST NOVEMBER,
10 PROPOSITION 6, THE SO-CALLED SAVE NEIGHBORHOODS ACT, THAT WOULD
11 HAVE MADE 2616, THE ROBIN REGAN REGULATION A STATUTE?

12 A. YES, SIR.

13 Q. AND ARE YOU AWARE THAT THE VOTERS TURNED DOWN THAT
14 PROPOSITION? THEY VOTED IT DOWN?

15 A. YES, SIR.

16 Q. TO YOUR KNOWLEDGE, CALIFORNIA IS ONE OF TWO STATES, RIGHT,
17 THAT TRIES TO PUT EVERYBODY RELEASED FROM PRISON ON PAROLE?

18 A. CURRENTLY WE ARE THE ONLY STATE. WE WERE IN COMPANY WITH
19 THE STATE OF ILLINOIS AND ILLINOIS HAS NOW RATCHETED BACK.

20 I THINK AS WE SIT HERE TODAY, THERE ARE ABOUT
21 84 PERCENT OF THE PEOPLE THAT COME OUT OF AN ILLINOIS
22 INSTITUTION WOULD GO ON TO WHAT YOU AND I SEE AS FORMAL PAROLE.

23 Q. AND SHORTLY AFTER YOU WERE APPOINTED, YOU WENT TO ILLINOIS
24 TO STUDY WHAT THEY WERE DOING THERE IN PAROLE REFORM, IS THAT
25 RIGHT?

1 **A.** I WENT THERE WITH DR. PETERSILIA, YES, SIR.

2 **Q.** AND DR. PETERSILIA IS JOAN PETERSILIA, THE HEAD OF THE
3 CENTER FOR EVIDENCE BASED CORRECTIONS AT U.C. IRVINE, IS THAT
4 RIGHT?

5 **A.** YES, SIR.

6 **Q.** AND SHE HAS BEEN FREQUENTLY RETAINED BY THE DEPARTMENT OF
7 CORRECTIONS AS A CONSULTANT TO STUDY AND ADVISE THEM ON THEIR
8 PROGRAMS?

9 **A.** YES, SIR. AND I TALK TO HER FREQUENTLY.

10 **Q.** AND SHE ASSISTED YOU WITH THE DEVELOPMENT OF THE PAROLE
11 VIOLATIONS DECISION-MAKING INSTRUMENT, IS THAT RIGHT?

12 **A.** YES, SIR. SHE IS A VERY CLOSE CONFIDANTE.

13 **Q.** AND SO FOR THE -- THE STATUS QUO IN CALIFORNIA RIGHT NOW IS
14 THAT EVERY MONTH -- EVERY MONTH YOU GET ABOUT 10,000 NEW
15 PAROLEES, IS THAT RIGHT?

16 **A.** YES, SIR.

17 **Q.** AND YOU HAVE TO SUPERVISE THEM ALL FOR UP -- FOR ROUGHLY
18 THREE YEARS FOR EACH ONE, IS THAT RIGHT?

19 **A.** WELL, MINIMALLY 13 MONTHS. MANY OF THEM ARE ON PAROLE FOR
20 UP TO, YOU KNOW, 48 MONTHS, YES.

21 **JUDGE KARLTON:** EXCUSE ME, MR. GALVAN.

22 WE HEAR A LOT ABOUT PROBATION HAVING BANKED CASES.
23 DOES PAROLE HAVE BANKED CASES?

24 **THE WITNESS:** NO, YOUR HONOR, NOT AT THE MOMENT,
25 ALTHOUGH THERE ARE ONGOING DISCUSSIONS ABOUT ENGAGING IN THAT

1 CLASSIFICATION.

2 **BY MR. GALVAN:**

3 **Q.** AND IT'S YOUR VIEW THAT MAINTAINING SUPERVISION ON THE LOW
4 RISK END OF THAT 10,000 GROUP DOES NOT DO ANYTHING TO PROMOTE
5 PUBLIC SAFETY, IS THAT RIGHT?

6 **A.** NO, SIR. WHAT I WOULD SAY IS THAT THE SCIENCE AND EVIDENCE,
7 AND THERE'S LOTS OF IT ALL ACROSS THIS NATION, DOES SUPPORT A
8 CONCLUSION THAT THERE IS A PERCENTAGE OF THE PAROLE POPULATION
9 THAT SHOULDN'T BE SUPERVISED OR SUPERVISED VERY LITTLE; THAT AT
10 THE LOW END OF THE SPECTRUM SUPERVISION IS COUNTER PRODUCTIVE.

11 **Q.** WHY IS SUPERVISION COUNTER PRODUCTIVE AT THE LOW END OF THE
12 SPECTRUM?

13 **A.** I GUESS THE WAY TO DESCRIBE IT, YOU INTRODUCE LOW END
14 OFFENDERS TO HIGH RISK CAREER CRIMINALS AND GANGSTER TYPES, THE
15 TENDENCY IS THAT THE LOW END FOLKS ARE MORE -- I WILL SAY MORE
16 MOTIVATED -- NOT MOTIVATED, BUT MORE INFLUENCED BY THEM THAN THE
17 REVERSE. BASICALLY, YOU POISON THE POOL.

18 **Q.** WHAT DOES FRONT LOADING PAROLE MEAN?

19 **A.** IT'S A CONCEPT THAT SAYS -- AND THERE'S A LOTS OF RESEARCH
20 BEHIND THIS AS WELL, AND WE ARE VERY MUCH INTERESTED IN THIS;
21 THAT SAYS IF YOU CAN GET TO THE PAROLEE QUICKLY, AND IF YOU --
22 REALLY, IN THE FIRST WEEKS AFTER THEY ARE RELEASED AND GET THEM
23 STABILIZED, HOUSING, HOPEFULLY A JOB, EDUCATIONAL, INCOME,
24 SIMPLE THINGS LIKE DRIVERS LICENSE, SOCIAL SECURITY CARDS, AND
25 THEN YOU DO THAT WELL IN THE FIRST 90 DAYS, RECIDIVISM RATES ARE

1 IMPACTED IMMEDIATELY.

2 **Q.** AND IT'S YOUR VIEW, ISN'T IT, THAT THE DIVISION OF ADULT
3 PAROLE OPERATIONS, YOUR AGENCY, CANNOT ADOPT A FRONT LOADING
4 STRATEGY IF YOU KEEP SUPERVISING EVERYONE WHO IS RELEASED, IS
5 THAT CORRECT?

6 **A.** I DON'T KNOW THAT I WOULD WANT TO HAVE IT THAT BLACK AND
7 WHITE. I THINK THERE ARE OPPORTUNITIES TO FRONT LOAD CERTAIN
8 GROUPS OF PAROLEES IN THIS POPULATION AND BE MORE EFFECTIVE IN
9 THAT WAY.

10 I WOULDN'T WANT TO SAY THAT IT JUST CAN'T HAPPEN IN
11 ANY REGARD.

12 **JUDGE KARLTON:** IN ANY EVENT, IF YOU HAD 2500 MORE
13 PAROLEES A MONTH, IT WOULD MAKE IT THAT MUCH MORE DIFFICULT TO
14 ADOPT A FRONT LOADING PROGRAM.

15 **THE WITNESS:** YES, SIR. IT WOULD COMPROMISE OUR
16 CAPACITY, AND THIS IS ONE OF OUR LONG-TERM -- OUR ULTIMATE GOAL
17 IS TO REDUCE RECIDIVISM IN A SUSTAINABLE WAY.

18 AND, AGAIN, THE SCIENCE SAYS THAT REDUCING RECIDIVISM
19 IN A SUSTAINABLE WAY IS ALL ABOUT SUPERVISING THE MID AND HIGH
20 RANGE OFFENDERS EFFECTIVELY.

21 **BY MR. GALVAN:**

22 **Q.** AND WHAT DO YOU DO WITH THE LOW RANGE OFFENDERS?

23 **A.** WELL, AS WE HAVE DISCUSSED -- THERE ARE DISCUSSIONS ABOUT
24 THIS. YOU KNOW, THERE'S OPPORTUNITIES TO BANK CASES.

25 THERE'S -- OBVIOUSLY, THE VAST MAJORITY OF STATES IN OUR NATION

1 DON'T SUPERVISE THE LOWER RISK OFFENDERS AT ALL. SOME STATES
2 ARE AS LOW AS 40 OR 50 PERCENT.

3 OHIO, FOR EXAMPLE. THERE IS A REALLY CONTEMPORARY
4 THOUGHTFUL REPORT THAT'S OUT THAT I FOUND IT A LITTLE DIFFICULT
5 TO READ SOME OF IT BECAUSE IT WAS VERY TECHNICAL, BUT THEY
6 SUPERVISE ABOUT 50 PERCENT OF THE PEOPLE THAT COME OUT OF THEIR
7 INSTITUTIONS. THERE MAY BE SOME MERIT IN DISCUSSING THAT.

8 **JUDGE REINHARDT:** DO YOU KNOW WHETHER IN THAT STUDY
9 IF IT SAID ANYTHING ABOUT THE EFFECT ON THE CRIME RATE OF
10 SUPERVISING ONLY 50 PERCENT?

11 **THE WITNESS:** I WOULD -- I'D HATE TO QUOTE THAT.
12 WHAT I HAVE READ, AND THIS UNFORTUNATELY -- NOT THAT I'M ANY
13 EXPERT, BUT I REALLY DO LOVE THE ACADEMIC ASPECTS OF THE
14 DISCUSSION, THE SCIENCE ABOUT HUMAN BEHAVIOR.

15 SUPERVISING THE MID AND HIGH RANGE POPULATIONS
16 EFFECTIVELY HAS RESULTED IN A DECREASE IN PART ONE CRIMES.
17 STATES HAVE REPORTED THAT REPEATEDLY. AND TO INCLUDE STATES
18 THAT I THINK WE WOULD SEE AS COMPARATIVE IN SIZE AND SOCIAL
19 AGENDA, LIKE TEXAS. ILLINOIS ALSO IS CHANGING WHAT THEY ARE
20 DOING, TRYING TO REDUCE THE TOTAL POPULATION OF FOLKS THAT ARE
21 ON PAROLE.

22 SO IT'S -- THIS ISN'T -- THIS ISN'T SOMETHING THAT
23 WOULD BE ENTIRELY UNTESTED, IF DONE THOUGHTFULLY AND WITH THE
24 SCIENCE AND EVIDENCE THAT WE CAN USE.

25 (DOCUMENT DISPLAYED)

1 **BY MR. GALVAN:**

2 **Q.** GOING BACK TO THE STATUS QUO OF WHAT YOU CAN DO RIGHT NOW.
3 I HAVE PUT UP A PAGE OF YOUR DEPOSITION FROM AUGUST, AND IF WE
4 COULD -- IF I COULD DIRECT YOUR ATTENTION TO LINES 10 THROUGH
5 19. I ASKED YOU:

6 **"QUESTION:** IS THE RETENTION OF TOO MANY
7 PEOPLE UNDER SUPERVISION ONE OF THE OBSTACLES TO
8 FRONT LOADING SUPERVISION THE WAY YOU HAVE
9 DEFINED IT?

10 **"ANSWER:** I GUESS THE SHORT ANSWER WOULD BE
11 YES, IT IS. AGAIN, LOTS OF THINGS GO INTO THAT
12 ANSWER, BUT, OBVIOUSLY, IF YOU HAD A SMALLER
13 POPULATION AND THE CASE LOADS WERE SMALLER AND
14 THERE WERE MORE SERVICES, YOU KNOW, AT THE
15 COMMUNITY LEFT AND SO FORTH, YOU COULD FRONT
16 LOAD PEOPLE MORE EFFECTIVELY, YES, SIR."
17 YOUR FRONT RATIO OF --

18 **JUDGE REINHARDT:** IS THAT A QUESTION?

19 **MR. GALVAN:** NO, NO, SIR.

20 **JUDGE REINHARDT:** YOU DIDN'T ASK HIM WHETHER HE STILL
21 AGREES WITH THAT.

22 **JUDGE KARLTON:** I WOULD LIKE TO KNOW. DO YOU STILL
23 AGREE WITH THAT?

24 **THE WITNESS:** YES, SIR. THERE'S ALWAYS LOTS OF
25 CAVEATS BECAUSE IT'S SUCH A COMPLEX DISCUSSION AND THERE'S SO

1 MANY VARIABLES, BUT IN VERY SIMPLISTIC TERMS IF YOU HAD FEWER
2 PEOPLE, YOU KNOW, YOU COULD SUPERVISE THEM PERHAPS BETTER.

3 BUT THAT COUNTS ON LOTS OF THINGS. IT COUNTS ON
4 COMMUNITIES ALLOWING SERVICES TO BE PROVIDED IN THEIR TOWNS AND
5 THE NIMBIISM AND ALL THAT GOES WITH THIS.

6 THIS IS NOT A PROBLEM THAT CAN BE SOLVED SIMPLY BY
7 HAVING FEWER PAROLEES UNDER THE SUPERVISION OF THE STATE. IT'S
8 A STATE-WIDE SYSTEMATIC ISSUE ABOUT PROGRAMMING AND PAROLEES AND
9 REENTRY. AND WE HAVE A BIG, BIG PIECE OF THAT RESPONSIBILITY,
10 BUT WE CANNOT SOLVE IT ALONE. AND THAT'S WHAT I WAS TRYING TO
11 SAY IN THAT ANSWER.

12 **BY MR. GALVAN:**

13 **Q.** YOUR CURRENT AGENT-TO-PAROLEE RATIO FOR THE GENERAL
14 POPULATION PAROLEE IS 70 TO 1, CORRECT?

15 **A.** FOR PURPOSES OF FUNDING, YES. THE REALITY IS IT CAN BE --
16 IT CAN BE GREATER THAN THAT AT THE UNIT LEVEL.

17 **Q.** AND THE NATIONAL AVERAGE IS CLOSER TO 50 TO 1, IS THAT
18 CORRECT?

19 **A.** I DON'T KNOW WHAT THE NATIONAL AVERAGE IS. I DO KNOW THAT
20 THE ASSOCIATION OF PAROLE AND PROBATION AUTHORITIES IS CLOSE TO
21 PUBLISHING A STUDY THAT SAYS, I BELIEVE THE NUMBER IS 53 -- AT
22 53 TO 1. BEYOND THAT YOU START HAVING A BREAKDOWN IN THE
23 EFFECTIVENESS OF THE AGENT RELATIONSHIP.

24 **Q.** YOU WORKED WITH DR. PETERSILIA ON A PROGRAM CALLED "EARNED
25 DISCHARGE," IS THAT CORRECT?

1 A. YES, SIR.

2 Q. AND "EARNED DISCHARGE" IS AN INCENTIVE PROGRAM THAT REWARDS
3 A PAROLEE WHO MEETS CERTAIN GOALS WITH DISCHARGE AT SIX MONTHS,
4 IS THAT RIGHT?

5 A. YES. IT IS PART OF THAT -- WHAT WE HOPE TO BE A SHIFT
6 TOWARDS MORE INCENTIVE-BASED PHILOSOPHY WITH THE PAROLEE
7 POPULATION.

8 Q. AND IT'S YOUR VIEW THAT THE EVIDENCE SHOWS THAT WHEN YOU
9 PROVIDE INCENTIVES FOR PAROLEES, LIKE THE CHANCE TO GET OFF
10 PAROLE EARLIER, THEY BEHAVE BETTER AND REVOCATIONS GO DOWN; IS
11 THAT RIGHT?

12 A. THE SCIENCE SUPPORTS THAT CONCLUSION, YES.

13 Q. AND THE REVOCATIONS GO DOWN NOT BECAUSE YOU ARE NOT CATCHING
14 THEM, BUT BECAUSE THEY BEHAVE BETTER, RIGHT?

15 A. I WOULD SAY IT'S PROBABLY A LITTLE OF BOTH, BUT, YOU KNOW,
16 WE ARE, AFTER ALL, DEALING WITH HUMAN BEINGS AND I THINK
17 GENERALLY A POSITIVE RELATIONSHIP MOTIVATES PEOPLE MORE THAN
18 PURELY A NEGATIVE PUNITIVE ONE.

19 "EARNED DISCHARGE" WAS BASED IN PART ON THE PAROLEE
20 STEPPING UP AND DOING WHAT IT IS THEY NEED TO DO TO BE
21 LAW-ABIDING FOLKS IN OUR SOCIETY.

22 Q. AND YOU DID A PILOT IN ORANGE COUNTY LAST YEAR OF "EARNED
23 DISCHARGE," IS THAT RIGHT?

24 A. YES, SIR.

25 Q. AND YOU HAD DR. STEVE CHAPMAN, AT THE CDCR OFFICE OF

1 RESEARCH, STUDY THE POPULATION GROUP THAT YOU USED FOR THAT
2 "EARNED DISCHARGE" PILOT, IS THAT RIGHT?

3 **A.** I DON'T KNOW THAT I UNDERSTAND THE QUESTION, BUT OUR
4 RESEARCH TEAM, DR. CHAPMAN AND, ALSO, DR. PETERSILIA AND THE
5 CENTER FOR EVIDENCE BASED CORRECTIONS WAS INVOLVED IN THE
6 DEVELOPMENT OF AND IN THE SUBSEQUENT MONITORING OF THAT PROCESS.

7 **Q.** AND YOU GOT A REPORT BACK FROM DR. CHAPMAN THAT CONFIRMED
8 WHAT YOU EXPECTED AS TO THE VERY -- TO THE LOW RATES OF
9 RECIDIVISM, AND SPECIFICALLY VIOLENT RECIDIVISM, IN THE GROUP
10 THAT YOU HAD SELECTED FOR EARNED DISCHARGE, IS THAT RIGHT?

11 **A.** I DON'T RECALL THE REPORT COMING TO THAT CONCLUSION. THE
12 EARNED DISCHARGE PROGRAM WAS REALLY -- ULTIMATELY BECAME THE
13 BIRTH PLACE OF THE DISCUSSIONS ABOUT SUMMARY PAROLE. AND,
14 REALLY, NO PAROLEES WERE DISCHARGED VIA THE EARNED DISCHARGE
15 PROGRAM FOR THE COURSE OF THAT PILOT.

16 BUT INSTEAD -- AND I STILL THINK IT WAS A VERY
17 WORTHWHILE AND FASCINATING DISCUSSION. THAT PROJECT ENDED UP IN
18 A WIDESPREAD, STATE-WIDE REALLY, DISCUSSION ABOUT SUMMARY
19 PAROLE, A/K/A BANK CASES AND THEIR -- ITS ROLE IN THE PAROLE
20 MANAGEMENT IN OUR STATE.

21 **JUDGE KARLTON:** I'M SORRY. I DON'T QUITE UNDERSTAND.
22 THE CONCLUSIONS THAT YOU REACHED CONCERNING THIS
23 PILOT PROGRAM IN ORANGE COUNTY SUPPORTED THE NOTION OF SUMMARY
24 PROBATION FOR AT LEAST CERTAIN PERSONS, NO?

25 **THE WITNESS:** YOUR HONOR, AS I SIT HERE, I'M NOT --

1 OF COURSE, MAYBE BECAUSE I HAVE GOT SO MANY REPORTS IN MY MIND
2 I'M NOT TRACKING WHAT THE RECOMMENDATIONS WERE IN THAT
3 PARTICULAR REPORT. I THINK I WOULD BE MISLEADING THE COURT TO
4 SAY THAT.

5 WHAT I WAS SAYING TO THE COURT IS WE BEGAN THE PILOT
6 WITH A GOAL OF HAVING AN EARNED DISCHARGE PROCESS; THAT IF A
7 PAROLEE BEHAVED AND, YOU KNOW, HOUSING AND SO FORTH, AT 180 DAYS
8 WE WOULD REFER THEM TO THE BOARD AND THE BOARD WOULD DISCHARGE
9 THEM.

10 THAT CONCEPT WAS NOT WIDELY EMBRACED BY OUR STAKE
11 HOLDERS -- COUNTY SHERIFFS, D.A.S, POLICE CHIEFS -- AND IN
12 RESPONSE TO THAT, AND I THINK A VERY WORTHWHILE SOCIAL
13 DISCUSSION, THE -- AN ALTERNATIVE WAS SUGGESTED, THAT THE STATE
14 OF CALIFORNIA ENTERTAIN THE IDEA OF EITHER BANKING CASE LOADS OR
15 SUMMARY PAROLE, VERY SIMILAR PROCESSES. AND SO THAT, THAT
16 DISCUSSION SPARKED BY THIS PILOT CONTINUES TODAY.

17 Q. IF I COULD SHOW YOU PAGE 83 OF YOUR DEPOSITION. FOCUSING
18 YOUR ATTENTION TO LINES -- STARTING AT LINES 21 AND THEN WE WILL
19 MOVE TO THE NEXT PAGE.

20 I ASKED YOU REGARDING THAT STUDY:

21 "QUESTION: WHAT RESULT DID YOU GET?"

22 YOU ANSWERED:

23 "ANSWER: BASICALLY THAT OUR GENERAL

24 HYPOTHESIS IS TRUE. THE LOWER END OFFENDER

25 POPULATION WILL GENERALLY REOFFEND AT ABOUT

1 17 PERCENT OF THE POPULATION."

2 AND THEN MOVING TO THE NEXT PAGE, LINES 1 THROUGH 5.

3 I ASKED YOU:

4 "QUESTION: HOW MUCH OF THAT RECIDIVISM AT
5 17 PERCENT WOULD INVOLVE VIOLENT CRIME?"

6 YOU SAID:

7 "ANSWER: FLOATS. THREE TO FOUR PERCENT AND
8 THAT'S CONSISTENT WITH THE FINDINGS OF THE
9 WASHINGTON STUDY."

10 A. AND THIS IS BACK TO THE DISCUSSION WE HAD EARLIER ABOUT THE
11 STATIC RISK ASSESSMENT AND ITS VALIDITY IN OUR POPULATION.

12 AND WE -- WE NOW HAVE A STATIC RISK ASSESSMENT TOOL.
13 IT IS VALIDATED TO THE CALIFORNIA POPULATION, WHICH IS A HUGE
14 STEP FORWARD.

15 Q. IN 2007 YOU ISSUED -- YOU AND SECRETARY TILTON ISSUED A
16 MEMORANDUM TO STOP THE PRACTICE OF RETURNING PAROLEES TO CUSTODY
17 FOR PURPOSES OF PSYCHIATRIC TREATMENT, IS THAT RIGHT?

18 A. YES, SIR.

19 Q. AND IT'S YOUR VIEW THAT STOPPING THAT PRACTICE WAS
20 CONSISTENT WITH PUBLIC SAFETY, WASN'T IT?

21 A. YES, SIR. AND IT ALSO HAD TO DO WITH THE -- THERE WAS A
22 DISCUSSION ABOUT THE FACT WE DIDN'T WANT TO RETURN INMATES INTO
23 A FACILITY THAT WAS ALREADY BEEN DEEMED UNCONSTITUTIONALLY --
24 UNABLE TO PROVIDE A CONSTITUTIONAL LEVEL OF CARE. IT SEEMED
25 ALMOST COUNTER INTUITIVE.

1 Q. BUT IT'S TRUE THAT ONE OF YOUR STAFF HAS ESTIMATED THAT
2 ABOUT 6,000 PAROLEES ARE RETURNED TO PRISON EACH YEAR DUE TO
3 TECHNICAL VIOLATIONS OR OTHER CRIMINAL BEHAVIOR THAT CAN RESULT
4 FROM THEIR MENTAL ILLNESS, IS THAT RIGHT?

5 A. I DON'T HAVE THAT NUMBER ON MY RADAR, BUT IT DOESN'T SOUND
6 LIKE IT WOULD BE TOO WRONG.

7 Q. I'M SORRY. I MISSED THE LAST PART OF YOUR ANSWER.

8 A. IT DOESN'T SOUND LIKE IT WOULD BE WAY OFF. I MEAN, THERE'S
9 ABOUT 23,000 OR SO INMATES -- OR PAROLEES THAT ARE EITHER EOP OR
10 TRIPLE CMS. SO THAT FIGURE SOUNDS LIKE IT COULD BE ABOUT RIGHT.

11 Q. SO YOU AGREE THAT THERE ARE STILL MENTALLY ILL PAROLEES
12 RETURNED TO PRISON FOR TECHNICAL VIOLATIONS THAT COULD BE
13 PREVENTED WITH BETTER ACCESS TO SERVICES; HOUSING, DRUG
14 TREATMENT, MENTAL HEALTH CARE AND THINGS LIKE THAT?

15 A. I DON'T KNOW THAT I WOULD WANT TO JUMP TO THAT CONCLUSION.
16 THERE ARE FOLKS WHO PROGRAMS WOULD BE BENEFICIAL AND PROGRAMS
17 AREN'T AVAILABLE.

18 IT'S A STATE-WIDE STRUGGLE FOR US. WE WORK ON THAT
19 LITERALLY EVERY DAY, LITERALLY.

20 Q. IN YOUR WORK ON THE PROBLEM OF HOW TO DEAL WITH PAROLE
21 REVOCATIONS, YOU HAVE COME TO THE VIEW, HAVEN'T YOU, THAT A
22 LARGE PERCENTAGE OF YOUR POPULATION, PERHAPS 70 PERCENT, JUST
23 CHURNS THROUGH THE SYSTEM THROUGH REPEATED VIOLATIONS. THEY
24 CYCLE IN AND THEY CYCLE OUT FOR AN AVERAGE TERM OF FOUR MONTHS,
25 ISN'T THAT RIGHT?

1 **A.** THE AVERAGE TERM IS ABOUT 4.2 MONTHS FOR A REVOCATION AND
2 OUR RECIDIVISM RATES DO RUN ABOUT 70 PERCENT.

3 **Q.** AND THEN A PERSON WHO CHURNS THROUGH THAT FOR 36 MONTHS, OR
4 THREE YEARS -- OR FOUR YEARS BECAUSE THEY GET THE EXTRA YEAR
5 ADDED ON FOR THEIR VIOLATION TIME, THEN THEY DISCHARGE FROM ALL
6 SUPERVISION BY OPERATION OF LAW, IS THAT CORRECT?

7 **A.** THAT'S THE REALITY AT THE MOMENT.

8 **Q.** AND YOU DISCHARGE ABOUT 56,000 PEOPLE A YEAR, IS THAT RIGHT?

9 **A.** ON AVERAGE ABOUT THAT NUMBER, YES, SIR.

10 **Q.** AND IT'S YOUR VIEW, ISN'T IT, THAT IF YOU TAKE A PERSON
11 THROUGH THAT HISTORY, WHERE THEY CHURN THROUGH THEIR WHOLE TIME
12 ON PAROLE, THEY DO THE WHOLE TIME IN PRISON, OUT OF PRISON, THAT
13 ALL YOU ARE DOING IS POSTPONING FUTURE VICTIMIZATION AND CRIME?
14

15 **A.** THAT'S TRUE. AND I WOULD SAY THAT, YOU KNOW, IT'S IMPORTANT
16 TO UNDERSTAND THAT OUR CULTURE IS IN THE MIDST OF A HUGE CHANGE.
17 WE ARE PART OF A SYSTEM THAT WAS ABOUT -- ALL THROUGH THE
18 CRIMINAL JUSTICE SYSTEM IN CALIFORNIA FOR THE ALMOST 34 YEARS I
19 HAVE BEEN PART OF IT IS LARGELY PUNITIVE. CERTAINLY THE CDCR
20 AND DAPO SIDE OF THE EQUATION WAS LARGELY PUNITIVE. AND NOW WE
21 ARE.

22 IT'S A FASCINATING EXPERIENCE TO WATCH REBUILDING A
23 REHABILITATIVE SIDE OF OUR OBLIGATION, BOTH INSIDE AND OUT OF
24 THE INSTITUTIONS.

25 WITH THAT COMES THE STRUGGLE THAT WE HAVE AT THE

1 COMMUNITY LEVEL FOR COUNCILS AND BOARDS AND SO FORTH TO PROVIDE
2 USE PERMITS SO WE CAN PROVIDE REHABILITATIVE PROGRAMS FOR THIS
3 POPULATION, BUT IT -- THE MECHANISMS AND THE WILL AND THE TOOLS
4 TO DO IT ARE IN PLACE.

5 Q. AND SO YOUR ANSWER TO THE QUESTION ABOUT WHETHER IT'S YOUR
6 VIEW THAT THIS CHURNING PATTERN JUST POSTPONES VICTIMIZATION AND
7 CRIME IS YES, IS THAT RIGHT?

8 A. MY PERSONAL OPINION IS YES. WE KNOW IT'S NOT WORKING. I
9 MEAN, AT 70 PERCENT I THINK EVERYBODY UNDERSTANDS WE -- AND THIS
10 IS ONE OF THE REASONS I'M FLATTERED TO BE ANY PART OF THE
11 DISCUSSION. WE ALL KNOW WE NEED TO CHANGE THE WAY WE ARE
12 THINKING ABOUT THIS PROCESS AND WE ARE ALL ENGAGED IN THAT,
13 INCLUDING PAROLE.

14 Q. THANK YOU. NO FURTHER QUESTIONS.

15 JUDGE REINHARDT: DOES THE CCPOA HAVE ANY QUESTIONS
16 OF THIS WITNESS?

17 MS. LEONARD: NO, YOUR HONOR.

18 THE COURT: THANK YOU, COUNSEL.

19 REDIRECT?

20 MR. LEWIS: YES, YOUR HONOR. THANK YOU. VERY
21 BRIEFLY. THANK YOU.

22 REDIRECT EXAMINATION

23 BY MR. LEWIS:

24 Q. MR. HOFFMAN, THERE WAS TESTIMONY REGARDING THAT THERE WOULD
25 BE A POSSIBLE PRISONER RELEASE ORDER IN THIS CASE.

1 IF THIS PRISONER RELEASE ORDER INCLUDED MENTALLY ILL
2 PAROLEES, WHAT SERVICES DO MENTALLY ILL PAROLEES NEED THAT YOU
3 CURRENTLY ATTEMPT TO PROVIDE THROUGH DAPO RESOURCES?

4 **A.** IT RUNS THE GAMUT FROM CLINICAL PSYCHOLOGISTS INSIDE OUR
5 UNITS, TO COUNSELORS, TO PROVIDING MEDICATIONS, TO GETTING THEM
6 TO SERVICES OUTSIDE OF OUR UNITS, TO LOCAL SERVICES.

7 AS WE SPEAK, WE ARE WORKING HARD WITH LOCAL SERVICE
8 PROVIDERS IN CITIES AND COUNTIES ACROSS THE STATE TO PROVIDE
9 THESE SERVICES. WE HAVE GOT ABOUT \$9.6 MILLION THAT WE ARE
10 WORKING HARD TO GET VENDORS AND PROVIDERS LINED UP FOR.

11 **Q.** AND IF ADDITIONAL MENTALLY ILL PAROLEES WERE RELEASED IN THE
12 COMMUNITY AS A RESULT OF A PRISONER RELEASE ORDER, COULD CDCR
13 PROVIDE THE NEEDED SERVICES FOR THIS INCREASED POPULATION WITH
14 ITS CURRENT RESOURCES?

15 **A.** NO. THE SAME LOGIC WOULD HOLD TRUE; THAT THIS POPULATION,
16 WHICH IS, OBVIOUSLY AND UNDERSTANDABLY, WORK EXTENSIVE AND
17 SERVICE INTENSIVE WOULD NEED -- WE WOULD NEED ADDITIONAL AGENTS
18 AND, AGAIN, ADDITIONAL PROGRAMMING RESOURCES TO DO -- TO TAKE
19 CARE OF THEM, OR AT LEAST TRY TO.

20 **Q.** AND IF THESE ADDITIONAL MENTALLY ILL PAROLEES DO NOT RECEIVE
21 THE SERVICES, ARE YOU CONCERNED AND, IN YOUR OPINION, IS THERE A
22 RISK OF INCREASED RECIDIVISM AMONG THEM?

23 **A.** AGAIN, THE SCIENCE WOULD SUPPORT THAT CONCLUSION, YES.

24 **MR. LEWIS:** NO FURTHER QUESTIONS, YOUR HONOR. THANK
25 YOU.

1 **MR. MITCHELL:** NO ADDITIONAL QUESTIONS.

2 **THE COURT:** ANYTHING?

3 **MR. GALVAN:** YES, YOUR HONOR. THANK YOU.

4 **RECROSS EXAMINATION**

5 **BY MR. GALVAN:**

6 **Q.** IF A MENTALLY ILL PAROLEE IS PART OF THE GROUP THAT WE WERE
7 DISCUSSING AT THE END OF THE CROSS, THE GROUP OF 70 PERCENT OF
8 YOUR PAROLEES THAT JUST CHURNS THROUGH THE BACK AND FORTH INTO
9 THE SYSTEM AVERAGE OF FOUR MONTHS FOR THE ENTIRE THREE OR FOUR
10 YEARS ON PAROLE, IS IT YOUR OPINION THAT THAT FOUR-MONTH TERM IN
11 PRISON REPEATED OVER AND OVER AGAIN GETS THEM
12 RECIDIVISM-REDUCING TREATMENT?

13 **A.** IT DOESN'T SEEM LOGICAL TO ME, SIR.

14 **Q.** SO YOUR ANSWER IS NO, IT DOES NOT?

15 **A.** MY PERSONAL OPINION? NO.

16 **Q.** IS IT YOUR OPINION THAT THE STATUS QUO, THEN, AS TO THOSE
17 PEOPLE BREEDS RECIDIVISM?

18 **MR. LEWIS:** OBJECTION. VAGUE AND AMBIGUOUS AS TO THE
19 QUESTION. IF YOU COULD POSSIBLY REPHRASE?

20 **JUDGE HENDERSON:** YOU KNOW WHAT "BREED" MEANS. DOES
21 IT BREED?

22 **JUDGE KARLTON:** WHAT WE ARE DOING NOW IS THAT --
23 WELL, YOU'VE INDICATED EARLIER THAT YOU THINK IT DOES.

24 **THE WITNESS:** I THINK IF WE DON'T -- THE TREATMENT
25 REDUCES RECIDIVISM IN THIS POPULATION. THERE IS NO DISPUTING

1 THE SCIENCE, AS I READ IT.

2 MR. GALVAN: THANK YOU. NO FURTHER QUESTIONS.

3 MR. LEWIS: NOTHING, YOUR HONORS.

4 THE COURT: OKAY. THANK YOU FOR TESTIFYING, MR.
5 HOFFMAN, AND YOU ARE EXCUSED.

6 THE WITNESS: THANK YOU, SIR.

7 (WITNESS EXCUSED.)

8 THE COURT: AND WE WILL TAKE A ONE-HOUR RECESS FOR
9 LUNCH. COURT IS ADJOURNED.

10 (WHEREUPON AT 12:07 P.M. PROCEEDINGS
11 WERE ADJOURNED FOR NOON RECESS.)

12 JUDGE HENDERSON: OKAY, COUNSEL. YOU MAY CALL YOUR
13 NEXT WITNESS.

14 MS. WOODWARD: GOOD AFTERNOON, YOUR HONORS. I'M
15 CAROL WOODWARD, COUNTY COUNSEL FOR SAN MATEO COUNTY. I'LL CALL
16 AS MY NEXT WITNESS SAN MATEO COUNTY SHERIFF GREG MUNKS.

17 JUDGE HENDERSON: OKAY.

18 GREGORY MUNKS,
19 HAVING BEEN CALLED AS A WITNESS BY THE DEFENDANT INTERVENORS
20 WAS FIRST DULY SWORN AND EXAMINED AS FOLLOWS:

21 THE CLERK: PLEASE STATE AND SPELL YOUR FULL NAME FOR
22 THE RECORD.

23 THE WITNESS: MY NAME IS GREGORY MUNKS. SPELLED
24 G-R-E-G-O-R-Y. LAST NAME IS MUNKS, M-U-N-K-S.

25 MS. WOODWARD: GOOD AFTERNOON, SHERIFF MUNKS.

1 YOUR HONORS, WE HAVE PREVIOUSLY EXCHANGED WITH THE
2 PARTIES AN EXPERT REPORT FROM SHERIFF MUNKS AND ALSO AN EXPERT
3 DECLARATION AND SEVERAL EXHIBITS. I DO HAVE FOR THE COURT
4 COPIES OF THE REPORT, AND I'M SORRY TO TELL YOU THE DECLARATION
5 IS STILL ON ITS WAY. IT'S JUST BEING COPIED NOW.

6 **JUDGE KARLTON:** THAT'S ALL RIGHT. WE HAVE THE
7 DOCUMENTS.

8 **MS. WOODWARD:** WOULD THE COURT LIKE THE REPORT?

9 **JUDGE HENDERSON:** NO THANKS.

10 **MS. WOODWARD:** THANK YOU.

11 **DIRECT EXAMINATION BY MS. WOODWARD**

12 **BY MS. WOODWARD**

13 **Q** SHERIFF MUNKS, WOULD YOU TELL US HOW YOU'RE EMPLOYED?

14 **A** I'M SHERIFF OF SAN MATEO COUNTY.

15 **Q** HOW LONG HAVE YOU BEEN IN THAT POSITION?

16 **A** APPROXIMATELY TWO YEARS.

17 **Q** PRIOR TO THAT, WHAT WAS YOUR EMPLOYMENT?

18 **A** FOR THE PREVIOUS 13-1/2 YEARS TO THAT I WAS UNDERSHERIFF,
19 SAN MATEO COUNTY.

20 **Q** HAVE YOU WORKED ELSEWHERE IN LAW ENFORCEMENT?

21 **A** YES, I SPENT ABOUT TEN YEARS WITH THE CITY OF PALO ALTO
22 POLICE DEPARTMENT, AND PREVIOUS TO THAT I WAS A DEPUTY SHERIFF
23 WITH SAN MATEO COUNTY FOR THREE TO FOUR YEARS.

24 **Q** HOW LONG HAVE YOU WORKED IN LAW ENFORCEMENT ALTOGETHER?

25 **A** THIRTY-ONE YEARS.

1 Q LET ME TALK FOR A MOMENT ABOUT THE SAN MATEO COUNTY

2 SHERIFF'S DEPARTMENT. WHAT DOES YOUR SHERIFF'S DEPARTMENT DO?

3 A WE PROVIDE LAW ENFORCEMENT SERVICES TO THE UNINCORPORATED

4 PORTIONS OF SAN MATEO COUNTY. WE PROVIDE COURT SECURITY IN ALL

5 THE COURTS, SUPERIOR COURT FOR SAN MATEO COUNTY. I AM THE LEVY

6 AGENT FOR THE COUNTY, ENFORCING ALL THE COURT ORDERS OF THE

7 COUNTY. WE DO INVESTIGATIVE SERVICES AT SAN FRANCISCO AIRPORT

8 AND THROUGH A NUMBER OF TASK FORCES THAT WE WORK ON WITH FEDERAL

9 AND STATE PARTNERS. WE ALSO PROVIDE ALL THE CUSTODIAL SERVICES

10 FOR THE COUNTY. SO I OPERATE ALL THE ADULT CORRECTION

11 FACILITIES IN SAN MATEO COUNTY.

12 Q HOW MANY EMPLOYEES DOES THE SHERIFF'S OFFICE HAVE?

13 A APPROXIMATELY 640.

14 Q AND WHAT'S YOUR BUDGET THIS YEAR FOR THE SHERIFF'S OFFICE

15 OPERATIONS?

16 A IT'S AROUND \$140 MILLION.

17 Q AND YOU PREPARE AND OVERSEE THAT BUDGET?

18 A YES.

19 Q IN YOUR YEARS IN LAW ENFORCEMENT, HAVE YOU HAD AN

20 OPPORTUNITY TO SEE ALL AREAS OF POLICING IN THE LOCAL LEVEL?

21 A YES.

22 MS. WOODWARD: YOUR HONORS, I WOULD OFFER SHERIFF

23 MUNKS AS A NONRETAINED EXPERT IN LAW ENFORCEMENT.

24 JUDGE HENDERSON: WE FIND HIM SO QUALIFIED.

25

1 **BY MS. WOODWARD**

2 **Q** SHERIFF MUNKS, LET'S TALK FOR A MOMENT ABOUT THE SAN MATEO
3 COUNTY JAILS. WHAT JAILS DO YOU OPERATE?

4 **A** I OPERATE THE MAGUIRE CORRECTIONAL FACILITY, WHICH IS OUR
5 MAIN JAIL, PRIMARILY A MEN'S FACILITY, IN REDWOOD CITY; OUR
6 WOMEN'S CORRECTIONAL CENTER, WHICH IS OUR WOMEN'S FACILITY, ALSO
7 IN REDWOOD CITY. WE HAVE WHAT WE CALL THE MEDIUM SECURITY
8 TRANSITIONAL FACILITY, WHICH IS LOCATED -- COLOCATED WITH THE
9 WOMEN'S CORRECTIONAL CENTER ON MAPLE STREET IN REDWOOD CITY.
10 THAT'S ALSO WHERE WE OPERATE OUR ALTERNATIVE SENTENCING BUREAU,
11 AGAIN, AT THE MAPLE STREET COMPLEX.

12 **Q** AND HOW MANY BOOKINGS EACH YEAR DO YOU HAVE INTO YOUR JAILS?

13 **A** WE GET ABOUT 18,000 BOOKINGS PER YEAR.

14 **Q** NOW, THERE'S A -- WE'VE HEARD TESTIMONY ABOUT A TERM CALLED
15 "RATED CAPACITY." DO YOU UNDERSTAND WHAT THAT TERM MEANS?

16 **A** YES.

17 **Q** WHAT IS RATED CAPACITY?

18 **A** RATED CAPACITY IS THE NUMBER OF BEDS AUTHORIZED BY THE
19 CALIFORNIA STANDARDS AUTHORITY FOR OUR FACILITIES BASED ON A
20 NUMBER OF FACTORS, SOME OF WHICH INCLUDE THE SIZE OF THE
21 FACILITY, YOU KNOW, THE SQUARE FOOTAGE, THINGS LIKE THAT.

22 **Q** OKAY. DOES THIS TAKE INTO ACCOUNT TITLE 15 REQUIREMENTS FOR
23 INMATES?

24 **A** YES, TITLE 15, TITLE 24.

25 **Q** WHAT IS THE RATED CAPACITY FOR YOUR JAILS ALL COMBINED?

1 **A** COMBINED MY RATED CAPACITY IS 834.

2 **Q** OKAY. AND WHAT IS YOUR AVERAGE DAILY POPULATION IN YOUR
3 JAILS?

4 **A** RIGHT NOW, AS OF YESTERDAY, IT WAS 1131.

5 **Q** AND DOES IT STAY ABOUT THAT LEVEL MOST OF THE TIME?

6 **A** YES.

7 **Q** DO YOU KNOW OFFHAND WHAT PERCENTAGE OVER THE RATED CAPACITY
8 YOUR JAILS USUALLY OPERATE?

9 **A** WE HAVE BEEN IN THE -- RECENT TIMES BEEN AT APPROXIMATELY
10 140 PERCENT OF OUR RATED CAPACITY.

11 **Q** NOW, BESIDES THE CONCEPT OF RATED CAPACITY FOR JAILS, IS
12 THERE ALSO A CONCEPT CALLED FUNCTIONAL CAPACITY?

13 **A** YES.

14 **Q** HOW DO YOU UNDERSTAND THAT?

15 **A** MY UNDERSTANDING IS THAT THE FUNCTIONAL CAPACITY IS
16 GENERALLY FIVE TO TEN PERCENT BELOW THE RATED CAPACITY.

17 **Q** EXPLAIN TO ME WHY -- I'M SORRY. WHAT IS THE FUNCTIONAL
18 CAPACITY? WHAT'S THE --

19 **A** FUNCTIONAL CAPACITY IS WHERE THE JAILS SHOULD BE AT AT A
20 POPULATION LEVEL IN ORDER TO RUN PROPERLY. IT TAKES ACCOUNT
21 HAVING THE ROOM FOR CLASSIFICATION, BEING ABLE TO MOVE INMATES
22 AROUND, KEEP THEM SEPARATED BASED ON CLASSIFICATION, BASED ON
23 NEEDS, BASED ON GANG AFFILIATION.

24 IT ALSO PROVIDES FOR THE PROPER MAINTENANCE AND
25 UPKEEP OF THE FACILITY. WHEN IT'S ABOVE THAT NUMBER, IT'S

1 DIFFICULT TO EMPTY CELLS OUT IF YOU NEED TO PAINT, CHANGE
2 CARPET, DO THINGS LIKE THAT.

3 Q OKAY. NOW, IN YOUR OPINION, ARE YOUR JAILS CURRENTLY
4 OVERCROWDED?

5 A YES.

6 Q DO THEY EXCEED THE FUNCTIONAL CAPACITY THAT YOU JUST
7 DISCUSSED?

8 A YES.

9 Q DO THEY EXCEED THE RATED CAPACITY FROM THE STATE?

10 A YES.

11 Q NOW, WHAT PROBLEM IS THERE IN HAVING AN OVERCROWDED JAIL?

12 A THERE'S A NUMBER OF PROBLEMS. I'VE DESCRIBED SOME OF THEM.
13 THE INABILITY TO PROPERLY SEPARATE AND SEGREGATE INMATES BASED
14 ON CLASSIFICATION. HAVING TO KEEP INMATES IN AREAS THAT
15 AREN'T -- WEREN'T ORIGINALLY DESIGNED FOR HOUSING. THAT CREATES
16 PROBLEMS FOR US.

17 Q WILL YOU GIVE ME AN EXAMPLE OF THAT?

18 A WELL, IN SOME OF OUR HOUSING UNITS WE'VE HAD TO CONVERT
19 PROGRAM SPACE TO HOUSING SPACE, AND THAT PROGRAM SPACE WAS
20 DESIGNED FOR CLASSES, FOR TREATMENT, FOR THINGS LIKE THAT. THAT
21 CREATES A PROBLEM FOR US TWO WAYS, ONE OF WHICH WE'RE NOT ABLE
22 TO PROVIDE THOSE SERVICES BECAUSE THE AREA'S UTILIZED FOR
23 HOUSING, AND, SECONDLY, SINCE THEY WEREN'T DESIGNED FOR HOUSING
24 TO BEGIN WITH, THEY DON'T HAVE TOILET FACILITIES AND THINGS LIKE
25 THAT, SO WE ARE NOT ABLE TO LOCK THE DOORS OF THOSE FACILITIES,

1 SO IT CREATES A SAFETY PROBLEM.

2 WE HAVE AN INCREASING PERCENTAGE OF GANG MEMBERS THAT
3 ARE IN OUR FACILITIES. THAT CREATES SAFETY CONCERNS. IF YOU
4 HAVE RIVAL GANG MEMBERS IN THE SAME HOUSING UNIT, THEY HAVE A
5 TENDENCY TO FIGHT EACH OTHER.

6 **Q** SHERIFF, IF YOU COULD SLOW DOWN A LITTLE BIT? THE ACOUSTICS
7 ARE PRETTY DIFFICULT HERE. JUST SLOW DOWN A LITTLE BIT AND TELL
8 ME ABOUT THE GANGS.

9 **A** OKAY. I WAS DESCRIBING SOME OF THE PROBLEMS WITH OPERATING
10 THE JAIL WHEN IT IS OVERCROWDED, AND KEY TO THAT IS SAFETY. AND
11 AS OUR POPULATION OF GANG MEMBERS HAS INCREASED, AND AS OUR
12 POPULATION OR THE PERCENTAGE OF OUR POPULATION OF MENTALLY ILL
13 FOLKS INCREASES, IT CREATES INMATE MANAGEMENT PROBLEMS, SOME OF
14 WHICH ARE DUE TO THE FACT THAT RIVAL GANG MEMBERS NEED TO BE
15 SEPARATED, LIKE GANG MEMBERS CAN'T BE CONCENTRATED TOO MUCH IN
16 ONE HOUSING UNIT.

17 SO TO THE EXTENT WE CAN'T MOVE PEOPLE AROUND THE
18 FACILITY AS IT WAS DESIGNED TO BE RUN, THAT CREATES PROBLEMS FOR
19 US.

20 **Q** OKAY. NOW, WHAT IS THE SAN MATEO COUNTY SHERIFF'S OFFICE
21 DOING ABOUT OVERCROWDING IN THE JAILS?

22 **A** WELL, WE HAVE A PROCESS UNDERWAY NOW, WE ARE EMBARKED ON A
23 JAIL PLANNING PROCESS. WE PLAN TO BUILD A NEW FACILITY. ONE OF
24 THE PROBLEMS WITH OUR SYSTEM, WHICH IS DIFFERENT THAN SOME OTHER
25 SYSTEMS, WE'VE LOST CAPACITY OVER THE LAST 15 YEARS. WE'VE HAD

1 TO CLOSE SOME FACILITIES THAT WERE EITHER OUTDATED OR DUE TO
2 BUDGET CONSTRAINTS. SO WE'VE HAD A NET LOSS OF BEDS, SO OUR
3 SYSTEM HAS LOST CAPACITY.

4 OUR POPULATION HAS ACTUALLY STAYED FAIRLY CONSTANT
5 OVER THAT PERIOD OF TIME. WE HAVE A LOW INCARCERATION RATE IN
6 OUR COUNTY. WE ARE NOT -- OUR POPULATION HAS NOT SEEN A
7 INCREASE LIKE SOME OTHER SYSTEMS HAVE. SO, WE'RE PLANNING TO
8 BUILD A NEW FACILITY WHICH WILL HELP ALLEVIATE OVERCROWDING.

9 Q WHEN -- I'M SORRY.

10 A ABOUT A YEAR AGO WE FORMED A MULTIDISCIPLINARY REENTRY --

11 MR. SANGSTER: EXCUSE ME, YOUR HONOR. ED SANGSTER
12 FOR THE PLAINTIFFS. I THINK AT THIS POINT THE ANSWER IS
13 NON-RESPONSIVE TO THE QUESTION. THE QUESTION WAS ABOUT IMPACTS
14 ON OVERCROWDING.

15 JUDGE HENDERSON: POSE ANOTHER QUESTION.

16 BY MS. WOODWARD

17 Q LET ME ASK YOU, WHEN DO YOU EXPECT THE NEW JAIL TO BE
18 COMPLETED?

19 A I JUST CAME FROM A MEETING WHERE THEY TOLD ME 2014, BUT I'M
20 PUSHING REALLY HARD FOR SOMETIME IN 2011.

21 Q WHEN THE NEW JAIL IS COMPLETED, WILL YOU HAVE ENOUGH BEDS TO
22 TAKE CARE OF YOUR CURRENT OVERCROWDING SITUATION?

23 A YES.

24 Q OKAY. WILL YOU HAVE A LOT OF EXTRA BEDS BEYOND THE
25 POPULATION THAT YOU EXPECT?

1 **A** I ANTICIPATE THAT IF OUR POPULATION STAYS THE SAME, I WOULD
2 HAVE ABOUT A HUNDRED BEDS.

3 **Q** EXTRA?

4 **A** YES.

5 **Q** OKAY. NOW, IS THERE ANYTHING ELSE THAT THE COUNTY IS
6 DOING -- THAT THE SAN MATEO SHERIFF IS DOING TO ADDRESS THE
7 CURRENT OVERCROWDING SITUATION?

8 **A** YES.

9 **Q** WHAT IS THAT?

10 **A** WE ARE WORKING CLOSELY WITH OUR CRIMINAL JUSTICE PARTNERS TO
11 IDENTIFY INMATES THAT ARE SUITABLE AND ELIGIBLE FOR EARLY
12 RELEASE OR MODIFIABLE SENTENCES INTO COMMUNITY-BASED PROGRAMS.

13 **Q** DO YOU HAVE SOME ALTERNATIVES TO INCARCERATION GOING ON
14 RIGHT NOW?

15 **A** YES.

16 **Q** CAN YOU GIVE US SOME EXAMPLES OF THOSE ALTERNATIVES?

17 **A** SURE. STARTING FROM THE VERY BEGINNING OF THE PROCESS,
18 WE -- OUR COUNTY LAW ENFORCEMENT UTILIZED CITE AND RELEASE
19 WHENEVER POSSIBLE NONVIOLENT MISDEMEANORS. WE ARE HIGHLY
20 ENCOURAGED TO CITE AND RELEASE AND NOT COME TO JAIL TO BEGIN
21 WITH.

22 AS A MATTER OF FACT, I'VE INSTITUTED WHAT'S CALLED A
23 JAIL ACCESS FEE. SO I CHARGE LOCAL POLICE AGENCIES OR THOSE
24 MISDEMEANOR ARRESTS THAT EXCEED A THREE-YEAR AVERAGE AS A
25 DISINCENTIVE FOR BOOKING MISDEMEANORS.

1 Q OKAY. ANY OTHER PROGRAMS?

2 A YEAH. I HAVE A LIMIT ON WARRANT ARRESTS. I WON'T ACCEPT
3 WARRANT ARRESTS FOR SEVENTY-FIVE HUNDRED DOLLARS OR LESS.
4 THERE'S A PROGRAM CALLED FIRST CHANCE WHICH TAKES FIRST TIME
5 DRUNK DRIVERS, AND, RATHER THAN BOOKING THEM INTO JAIL, THEY GO
6 TO FIRST CHANCE. THAT PROGRAM GETS ABOUT 3,000 BOOKINGS PER
7 YEAR.

8 Q ALL RIGHT.

9 A I HAVE WHAT'S CALLED A SHERIFF'S WORK PROGRAM, WHICH IS A
10 OUT-OF-CUSTODY ALTERNATIVE TO JAIL FOR NONVIOLENT PEOPLE
11 SENTENCED TO COUNTY JAIL. SO RIGHT NOW I'VE GOT ABOUT 450
12 PEOPLE IN THAT PROGRAM.

13 SO ROUGHLY 50 PERCENT OF PEOPLE THAT ARE SENTENCED TO
14 COUNTY JAIL IN SAN MATEO COUNTY ACTUALLY DO THEIR TIME OUTSIDE
15 OF THE COUNTY JAIL.

16 Q FIFTY PERCENT?

17 A FIFTY PERCENT, YES.

18 Q ARE THERE A GOOD NUMBER OF INMATES IN YOUR JAIL RIGHT NOW
19 WHO COULD TAKE PART IN THESE ALTERNATIVE SENTENCING PROGRAMS
20 THAT ARE NOT TAKING ADVANTAGE OF THEM?

21 A WELL, WHAT WE'VE DONE SINCE LAST YEAR AT THIS TIME WHEN OUR
22 POPULATION WAS EVEN HIGHER THAN IT IS NOW, AND IT WAS AT A -- WE
23 WERE VERY CLOSE TO OUR MAXIMUM BED CAPACITY WHERE WE WOULD HAVE
24 TO START PUTTING PEOPLE ON THE FLOOR OR RELEASE THEM, WE HAVE
25 BEEN WORKING WITH THIS INTERDISCIPLINARY GROUP TO IDENTIFY EVERY

1 INMATE THAT'S ELIGIBLE FOR SOME SORT OF SENTENCE MODIFICATION
2 AND THAT WOULD BE ELIGIBLE AND AMENABLE TO SOME SORT OF
3 TREATMENT PROGRAM IN THE COMMUNITY.

4 WE WERE SUCCESSFUL IN IDENTIFYING A NUMBER OF PEOPLE,
5 GETTING THOSE FOLKS OUT OF CUSTODY. NOW WE ARE LEFT WITH A VERY
6 SMALL NUMBER OF PEOPLE. WE TRACK IT ON A MONTHLY BASIS THAT,
7 WERE THERE BEDS AVAILABLE IN THE COMMUNITY, WE COULD MOVE THEM
8 OUT AS WELL.

9 Q HOW MANY --

10 A THAT NUMBER HOVERS AROUND 15.

11 Q FIFTEEN?

12 A YES.

13 Q FIFTEEN INMATES COULD GO OUTSIDE OF THE JAIL, BUT THEY CAN'T
14 BE ACCOMMODATED?

15 A IF THERE WERE GREATER CAPACITY IN THE COMMUNITY.

16 Q RIGHT.

17 A TODAY THERE'S -- THAT NUMBER MIGHT VARY 10 TO 20, I MEAN
18 BETWEEN 10 AND 20. BUT, ROUGHLY, IT RUNS AROUND 15 THAT I COULD
19 GET OUT OF CUSTODY TODAY INTO PROGRAMS.

20 Q AND THAT'S ALL?

21 A THAT'S ALL.

22 Q OKAY. NOW, THERE'S BEEN -- THE PLAINTIFFS IN THIS CASE HAVE
23 ASKED THAT THE POPULATION OF THE STATE PRISONS BE REDUCED BY
24 SOME 50,000 INMATES. HAVE YOU BEEN ABLE TO FORM AN OPINION
25 ABOUT WHAT EFFECT ON PUBLIC SAFETY IN SAN MATEO COUNTY A

1 PRISONER RELEASE ORDER OF THAT MAGNITUDE WOULD HAVE?

2 **A** YES.

3 **Q** WHAT IS YOUR OPINION?

4 **A** MY OPINION IS THAT THAT WOULD HAVE A DETRIMENTAL EFFECT ON
5 PUBLIC SAFETY IN MY COMMUNITY.

6 **Q** WHY IS THAT?

7 **A** I BASE THAT OPINION ON THE FACT THAT OUR JAIL SYSTEM IS SO
8 SEVERELY OVERCROWDED THAT ANY INCREASE IN NUMBERS OF INMATES
9 INTO MY SYSTEM WOULD CREATE A -- A GREATER CRISIS FOR US.

10 **Q** IN YOUR OPINION, WOULD A PRISONER RELEASE ORDER OF THAT
11 MAGNITUDE HAVE ANY EFFECT ON THE ALTERNATIVE PROGRAMS YOU
12 MENTIONED?

13 **A** WELL, THE SYSTEM AS IT IS NOW OPERATES ON A VERY, WHAT I
14 WOULD CALL, THIN MARGIN. I MEAN, I AM LITERALLY BUMPING UP
15 AGAINST MY MAXIMUM CAPACITY OF BEDS. OUR SYSTEM IN THE
16 COMMUNITY OF PROVIDING OUTPATIENT, IF YOU WILL, OR
17 OUT-OF-CUSTODY PROGRAMS IS ALREADY AT A MAXIMUM POINT.

18 AS I STATED EARLIER, THERE ARE MORE PEOPLE CURRENTLY
19 IN MY SYSTEM THAT COULD BENEFIT FROM AN OUT-OF-CUSTODY PROGRAM
20 THAN THERE IS CAPACITY IN THOSE PROGRAMS. SO THAT FACT, COUPLED
21 WITH THE FACT THAT THE COUNTY JAIL IS AN INTEGRAL PART OF THE
22 TOTAL CRIMINAL JUSTICE SYSTEM IN OUR COUNTY, IT'S A NECESSARY
23 OPTION FOR JUDGES WHEN CONSIDERING SENTENCING, IT'S A NECESSARY
24 OPTION FOR LOCAL LAW ENFORCEMENT WHEN THEY ARREST SOMEONE AND
25 WANT TO GET THAT PERSON OFF THE STREET AND OUT OF THE COMMUNITY.

1 SO IT'S NECESSARY FOR ME TO HAVE CAPACITY IN ORDER TO ACCEPT
2 THOSE NEW COMMITMENTS AND THOSE NEW BOOKINGS.

3 **Q** OKAY.

4 **A** SO, AGAIN, ANY SIGNIFICANT INCREASE IN THE NUMBER OF PEOPLE
5 IN MY SYSTEM WOULD PRECLUDE ME FROM BEING ABLE TO PERFORM THOSE
6 TWO NECESSARY FUNCTIONS AS PART OF THE CRIMINAL JUSTICE SYSTEM.

7 **Q** WOULD IT MAKE ANY DIFFERENCE IF THE PRISONER RELEASE ORDER
8 TOOK PLACE OVER A LONG PERIOD OF TIME, SAY, TWO YEARS?

9 **A** WELL, CERTAINLY -- YES, I WOULD THINK SO. THE LONGER IT'S
10 SPREAD OUT, THE LESS DRAMATIC, IF YOU WILL, OR THE LESS
11 IMMEDIATE IT WOULD SEEM TO ME, THE IMPACT WOULD BE FELT.

12 **JUDGE HENDERSON:** EXCUSE ME, COUNSEL.

13 SHERIFF, HAVE YOU MADE ANY ASSUMPTIONS, IF THERE WERE
14 SUCH A RELEASE ORDER, AS TO THE NUMBER OF PEOPLE THAT WOULD COME
15 INTO YOUR COUNTY --

16 **THE WITNESS:** YES, YOUR HONOR. WE LOOKED AT THE
17 NUMBERS FIRST BASED ON A 70,000 AND THEN BASED ON 50,000, AND
18 OUR -- AGAIN, THEY'RE BROAD ASSUMPTIONS. WE ACCOUNT FOR ABOUT
19 1.5 PERCENT OF THE STATE PRISON POPULATION FROM OUR COUNTY. SO
20 WE WERE LOOKING AT -- IF IT WERE 70,000, WE WERE LOOKING AT
21 AROUND A THOUSAND WOULD BE SAN MATEO COUNTY BOUND, AND THEN
22 PROPORTIONATELY LESS BASED ON THE NUMBER OF RELEASES.

23 **BY MS. WOODWARD**

24 **Q** OKAY. AND HAVE YOU FORMED AN OPINION ABOUT WHETHER SOME OF
25 THOSE THOUSAND OR LESS PRISON RELEASEES WOULD END UP IN YOUR

1 JAILS AT SOME POINT?

2 **A** AGAIN, WE MADE ASSUMPTIONS BASED ON RECIDIVISM RATES FOR
3 INDIVIDUALS COMING OUT OF STATE PRISON WITH OUR OWN RECIDIVISM
4 RATES IN OUR SYSTEM, AND YES, WE DID.

5 **Q** SO YOU BELIEVE THAT SOME WOULD END UP IN YOUR JAIL?

6 **A** YES.

7 **Q** DO YOU HAVE A SENSE OF HOW MANY, SAY, OF THE ONE THOUSAND
8 INMATES INTO YOUR COMMUNITY, HOW MANY OF THOSE WOULD YOU EXPECT
9 TO SEE BACK IN YOUR JAIL?

10 **A** WELL, AGAIN, JUST APPLYING THOSE BROAD ASSUMPTIONS, IF THERE
11 WERE A THOUSAND WITH A 70 PERCENT RECIDIVISM RATE, AT SOME POINT
12 IN THE FUTURE 700 OF THOSE THOUSAND WOULD REOFFEND.

13 **Q** NOW, THERE'S ALSO BEEN TESTIMONY IN THIS CASE ABOUT POSSIBLY
14 CLOSING THE PRISON DOORS IN THAT THERE WOULD BE A CAP ON THE
15 PRISON POPULATION SO THAT, FOR INSTANCE, THERE WOULD NOT BE THE
16 ABILITY FOR YOU TO SEND YOUR STATE-SENTENCED INMATES UP TO THE
17 PRISON. HAVE YOU HAD A CHANCE TO FORM AN OPINION ABOUT WHAT
18 EFFECT THAT OPTION WOULD HAVE ON YOUR COUNTY?

19 **A** YES.

20 **Q** WHAT IS YOUR OPINION?

21 **A** THAT THAT, TOO, WOULD CREATE A SIGNIFICANT PROBLEM WITH OUR
22 SYSTEM. WE HAVE A NUMBER OF WAYS AND PLACES THROUGH WHICH
23 PEOPLE ENTER OUR SYSTEM, AND THERE'S A NUMBER OF WAYS THAT
24 PEOPLE LEAVE OUR SYSTEM, ONE OF WHICH IS TO STATE PRISON, AND WE
25 SEND ABOUT 30 TO 35 PEOPLE A WEEK TO STATE PRISON. AND, SO, IF

1 WE WEREN'T ABLE TO SEND THOSE PEOPLE, THAT NUMBER WOULD QUICKLY
2 BACK UP INTO OUR SYSTEM AND ADD TO OUR ALREADY OVERCROWDED
3 POPULATION.

4 **MS. WOODWARD:** YOUR HONORS, AT THIS TIME, I WOULD ASK
5 THAT THE COURT ACCEPT THE EXHIBITS THAT HAVE BEEN MARKED
6 DEFENDANT INTERVENOR 221, WHICH IS THE DECLARATION OF SHERIFF
7 MUNKS, AND 213, 214, 215 AND 216. THERE HAVE BEEN NO WRITTEN
8 OBJECTIONS. PERHAPS PLAINTIFFS MOVE TO OBJECT AT THIS TIME?

9 **MR. SANGSTER:** JUST A MOMENT. I'M SORRY. I DON'T
10 HAVE 216.

11 **JUDGE REINHARDT:** WHILE YOU'RE WAITING, SHERIFF, DO
12 YOU HAVE A CAP ON YOUR JAIL?

13 **THE WITNESS:** NO, SIR.

14 **JUDGE REINHARDT:** WHAT'S BEEN THE EFFECT OF A CAP?

15 **JUDGE KARLTON:** IF YOU KNOW.

16 **THE WITNESS:** WHAT WOULD BE THE EFFECT?

17 **JUDGE REINHARDT:** NO, WHAT HAS BEEN THE EFFECT?

18 **JUDGE KARLTON:** HE DOESN'T HAVE ONE.

19 **THE WITNESS:** I DON'T HAVE ONE, SIR.

20 **JUDGE REINHARDT:** OH, YOU DON'T HAVE ONE?

21 **THE WITNESS:** NO.

22 **JUDGE REINHARDT:** OKAY. THANK YOU.

23 **MR. SANGSTER:** YOUR HONORS, PLAINTIFFS HAVE NO
24 OBJECTIONS TO THE EXHIBITS.

25 **JUDGE HENDERSON:** THOSE EXHIBITS WILL BE ADMITTED AT

1 THIS TIME.

2 DEFENDANT INTERVENORS' EXHIBITS 213, 214,
3 215, 216, 221 RECEIVED IN EVIDENCE.)

4 MS. WOODWARD: THANK YOU, YOUR HONORS. THAT'S ALL I
5 HAVE.

6 JUDGE HENDERSON: ALL RIGHT. DOES THE STATE HAVE ANY
7 QUESTIONS?

8 MR. LEWIS: NO QUESTIONS, YOUR HONOR.

9 JUDGE HENDERSON: OKAY.

10 CROSS-EXAMINATION BY MR. SANGSTER

11 MR. SANGSTER: THANK YOU. ED SANGSTER FOR THE
12 PLAINTIFFS.

13 BY MR. SANGSTER

14 Q SHERIFF MUNKS, YOU WERE TALKING ABOUT THE IMPACT THIS WOULD
15 HAVE TO -- I WANT TO TRY TO PUT IN PERSPECTIVE THROUGH SOME OF
16 THESE QUESTIONS THE ACTUAL CONTENT OF YOUR PAROLEE POPULATION.
17 FIRST OF ALL, HOW MANY PAROLEES ARE THERE CURRENTLY IN SAN MATEO
18 COUNTY?

19 A YOU KNOW, I DO NOT HAVE THAT NUMBER.

20 Q OKAY. WELL, YOU SAID THAT THERE WERE 18,000 BOOKINGS INTO
21 YOUR JAIL. IS THAT JUST FOR MAGUIRE CORRECTIONAL CENTER, OR IS
22 THAT TOTAL?

23 A THAT'S TOTAL. WE HAVE ALL OF OUR BOOKINGS AT MAGUIRE, BOTH
24 MEN AND WOMEN.

25 Q IN A GIVEN YEAR, HOW MANY OF THOSE BOOKINGS ARE PAROLEES?

1 **A** I WOULD ESTIMATE, I BELIEVE WE GET AROUND 30 TO 50 A MONTH,
2 PAROLEES.

3 **Q** SO ABOUT 360 A YEAR?

4 **A** YEAH.

5 **Q** THREE HUNDRED SIXTY OUT OF EIGHTEEN THOUSAND ARE PAROLEES
6 THAT ARE BEING BOOKED BACK INTO PRISON -- INTO YOUR JAILS?

7 **A** YES.

8 **Q** OF THE 360 --

9 **JUDGE KARLTON:** NOW I'M -- THESE ARE PAROLEES FROM
10 THE STATE PRISON SYSTEM THAT ARE COMING BACK THROUGH YOU --

11 **THE WITNESS:** NO, SIR. THESE WOULD BE PAROLEES, NEW
12 ARRESTS COMING IN THROUGH THE BOOKING PROCESS EITHER FOR
13 TECHNICAL VIOLATIONS OR NEW VIOLATIONS.

14 **JUDGE KARLTON:** THAT'S WHAT I WAS ABOUT TO ASK YOU.
15 SO THAT IF WE WERE -- NOT WE, BUT IF THE STATE WERE TO ELIMINATE
16 TECHNICAL VIOLATIONS BEING RETURNED TO PRISON, DO YOU HAVE ANY
17 ESTIMATE OF WHAT PERCENTAGE OF THE 360 WOULD THEN NOT SHOW UP IN
18 YOUR JAIL?

19 **THE WITNESS:** I ACTUALLY HAVE A NUMBER IF YOU WOULD
20 LIKE TO ME TO READ IT FROM THIS.

21 **MR. SANGSTER:** I WOULD. THAT'S ACTUALLY MY NEXT
22 QUESTION, YOUR HONOR.

23 **THE WITNESS:** OKAY. THE AVERAGE IN '06 WAS 487, '07
24 WAS 481. THOSE ARE THE PAROLEES THAT WERE ARRESTED, AND MY
25 UNDERSTANDING IS ROUGHLY HALF OF THOSE ARE TECHNICAL VIOLATIONS.

1 **BY MR. SANGSTER**

2 **Q** SO APPROXIMATELY, LET'S CALL IT, 250 A YEAR ARE ARRESTS FOR
3 TECHNICAL VIOLATIONS?

4 **A** YES.

5 **Q** OKAY. THAT'S OUT OF THE 18,000 TOTAL BOOKINGS INTO YOUR
6 JAIL?

7 **A** CORRECT.

8 **Q** SO IT'S A FAIRLY SMALL PERCENTAGE OF THE TOTAL BOOKINGS INTO
9 YOUR JAIL, CORRECT?

10 **A** CORRECT.

11 **Q** HOW LONG DO THE PAROLEES WHO ARE ARRESTED FOR TECHNICAL
12 VIOLATIONS STAY IN YOUR JAILS?

13 **A** THEIR AVERAGE LENGTH OF STAY IS ABOUT FOUR DAYS.

14 **Q** RIGHT. SO OF THE 200, WHATEVER THE NUMBER IS, ROUGHLY HALF
15 OF YOUR 480 PAROLEES, ABOUT HALF OF THOSE STAY FOUR DAYS?

16 **A** YES.

17 **Q** HOW ABOUT THE LENGTH OF TIME FOR THE PAROLEES WHO ARE
18 ARRESTED AND STAY LONGER THAN FOUR DAYS?

19 **A** WELL, THEY WOULD BE BLENDED INTO OUR AVERAGE LENGTH OF STAY
20 WHICH IS AROUND 21 DAYS FOR OUR TOTAL POPULATION.

21 **JUDGE KARLTON:** THEY'RE JUST NEW -- THEY'VE JUST
22 COMMITTED NEW CRIMES?

23 **THE WITNESS:** YES, SIR.

24 **JUDGE KARLTON:** SO YOU JUST TREAT THEM THE WAY YOU
25 TREAT ANY OF YOUR PEOPLE?

1 **THE WITNESS:** YES, SIR. OTHER THAN THE FACT THEY
2 AREN'T ELIGIBLE FOR RELEASE LIKE OTHER PEOPLE.

3 **BY MR. SANGSTER**

4 **Q** SO MY NEXT QUESTION IS, WHAT'S THE AVERAGE LENGTH OF STAY
5 FOR YOUR GENERAL POPULATION?

6 **A** ABOUT 21 DAYS.

7 **Q** SO THESE 450, HALF OF THEM STAY IN YOUR JAILS FOR FOUR DAYS,
8 AND THE OTHER HALF STAY FOR ON AVERAGE ABOUT 21 DAYS?

9 **A** YES, BUT THEY BOTH CONTRIBUTE TO THAT 21-DAY NUMBER. SO THE
10 TECHNICAL VIOLATORS WHO STAY FOR FOUR DAYS, THEY GO RIGHT AWAY
11 BACK TO THE STATE. THEY CONTRIBUTE TO THE LOW END OF OUR LENGTH
12 OF STAY. THE OTHER ONES WHO TEND TO PICK UP THE NEW CHARGES AND
13 HAVE A PAROLE VIOLATION ARE THE ONES THAT CONTRIBUTE TO THE
14 OTHER SIDE OF THAT 21-DAY AVERAGE.

15 **Q** SO ALTHOUGH YOUR JAIL -- I'M SORRY. WERE YOU DONE?

16 ALTHOUGH YOUR JAIL IS OVERCROWDED, A VERY, VERY SMALL
17 PERCENTAGE OF THAT OVERCROWDING IS ATTRIBUTABLE TO PAROLEES WHO
18 HAVE BEEN ARRESTED AND RETURNED TO YOUR JAIL, CORRECT?

19 **A** YEAH.

20 **Q** YOU REFERRED TO A MAXIMUM BED CAPACITY, BUT I DON'T THINK
21 YOU SAID WHAT THAT CAPACITY IS.

22 **A** IN THE MAGUIRE CORRECTIONAL FACILITY I BELIEVE IT'S 107.

23 **Q** WHAT'S YOUR MAXIMUM BED CAPACITY FOR YOUR JAIL SYSTEM?

24 **A** I DON'T KNOW IF I HAVE THAT NUMBER. I COULD QUICKLY FIGURE
25 IT FOR YOU. IT'S 1107 FOR THE MEN. IT'S ABOUT 160 FOR THE

1 WOMEN, 46 FOR THE MEDIUM SECURITY TRANSITIONAL FACILITY, AND 16
2 FOR WEEKEND OR DORM. WHATEVER THAT EQUALS WOULD BE OUR MAXIMUM
3 BED.

4 Q A LITTLE OVER 1,300?

5 A THAT SOUNDS ABOUT RIGHT.

6 Q YOU FUNCTIONED DURING 2007 WITH AN ACTUAL AVERAGE DAILY
7 CAPACITY -- EXCUSE ME -- 2007, YOU FUNCTIONED WITH AN AVERAGE
8 DAILY POPULATION OF 1,200?

9 A THAT'S CORRECT.

10 Q ALL RIGHT. SO YOU TEND TO RUN ABOUT 170 INMATES BELOW YOUR
11 MAXIMUM CAPACITY?

12 A THAT SOUNDS ABOUT RIGHT.

13 Q ALL RIGHT. NOW, YOU PROVIDED TO THE COURT AN ESTIMATE OF
14 WHAT YOU THOUGHT IT WAS GOING TO COST SAN MATEO COUNTY IF THERE
15 WAS A PRISONER RELEASE ORDER, AND I WANT TO TALK TO YOU ABOUT
16 SOME OF THE ASSUMPTIONS THAT UNDERLIE THAT ESTIMATE.

17 FIRST OF ALL, YOU WERE ESTIMATING \$9 MILLION, RIGHT?

18 A I ESTIMATED THAT IF I HAD TO SEND 200 INMATES OUT OF COUNTY,
19 IT WOULD COST US ABOUT \$9 MILLION.

20 Q SO YOU WERE TALKING ABOUT SENDING 200 INMATES OUT OF THE
21 COUNTY?

22 A YES.

23 Q TWO HUNDRED INMATES ON AVERAGE EVERY DAY?

24 A YES.

25 Q ALL RIGHT. YOU CURRENTLY HAVE 480 ARRESTED PAROLEES IN AN

1 ENTIRE YEAR, BUT YOUR COST IMPACT ANALYSIS THAT YOU DID FOR THIS
2 COURT ASSUMES YOU ARE SENDING 200 PER DAY, AND THAT'S 200 PER
3 DAY OVER AN ENTIRE YEAR, CORRECT?

4 **A** IT IS 200 PER DAY EVERY DAY.

5 **Q** SO EVEN THOUGH THE PAROLEES ONLY STAY ON AVERAGE EITHER FOUR
6 DAYS FOR THE TECHNICAL VIOLATIONS OR 21 DAYS FOR OTHER KINDS OF
7 CRIMES, YOU'RE ASSUMING THAT YOU'RE GOING TO BE FACED WITH AN
8 INCREASE OF 200 INMATES PER DAY FOR 365 DAYS A YEAR?

9 **A** WELL, I WAS TALKING ABOUT THE NET COST OF OPERATING, YOU
10 KNOW, MY SYSTEM IN A SAFE WAY.

11 **Q** I'M JUST TRYING TO FOCUS ON --

12 **A** OKAY.

13 **Q** -- ON WHAT THE IMPACT OF PAROLEES IS GOING TO BE ON YOUR
14 JAIL SYSTEM. ALL RIGHT? AND I'M JUST TRYING TO DRILL DOWN ON
15 THAT A LITTLE BIT.

16 SO GIVEN THE FACT THAT YOU ONLY HAVE 480 PAROLEE
17 ARRESTS A YEAR RIGHT NOW, GIVEN THE FACT THAT HALF OF THOSE ARE
18 ONLY IN YOUR JAIL FOR FOUR DAYS ON AVERAGE, WOULD YOU TELL THE
19 COURT HOW YOU CAME UP WITH 200 AVERAGE DAILY POPULATION INCREASE
20 OF 200 OVER THE COURSE OF A YEAR?

21 **JUDGE KARLTON:** WELL, IT'S MORE THAN THAT, BECAUSE
22 IT'S FILLING ALL THE BEDS THAT HE'S GOT AND THEN SENDING 200
23 PEOPLE AWAY.

24 **MR. SANGSTER:** THAT'S MY NEXT QUESTION, YOUR HONOR.
25

1 **BY MR. SANGSTER**

2 **Q** WE ALREADY KNOW THERE'S 170 EMPTY BEDS ON AVERAGE, SO I'M
3 JUST TRYING TO -- I'M TRYING TO FIGURE OUT HOW WE GET TO THE --

4 **JUDGE KARLTON:** HOW DID YOU GET TO THE 200 A DAY?
5 MAYBE THAT'S THE SIMPLEST THING TO DO.

6 **THE WITNESS:** FIRST OF ALL, I THINK YOU ARE REFERRING
7 TO A MEMO THAT WAS PREPARED, CUMULATIVE MEMO FROM THE COUNTY.

8 **BY MR. SANGSTER**

9 **Q** I'M REFERRING TO YOUR DECLARATION THAT YOU SUBMITTED IN
10 CONNECTION WITH YOUR TESTIMONY HERE.

11 **A** IS IT OKAY IF I REFER TO THAT?

12 **Q** ABSOLUTELY. WOULD YOU LIKE A COPY OF IT?

13 **A** I THINK I HAVE MY -- MY DECLARATION HERE. WHAT PAGE IS IT?

14 **JUDGE REINHARDT:** HE ASKED WHAT --

15 **BY MR. SANGSTER**

16 **Q** PARAGRAPH 16 -- EXCUSE ME. I GAVE YOU THE WRONG PARAGRAPH.
17 NO, I DIDN'T. THAT'S THE ONE WHERE YOU REFER TO 200 INMATES.

18 **A** MM-HMM. AGAIN, THAT ESTIMATE WAS BASED ON THE ASSUMPTIONS
19 THAT I REFERRED TO EARLIER, THAT IF THERE WERE A THOUSAND EARLY
20 RELEASED INMATES TO OUR COUNTY. SO I WASN'T BASING IT ON OUR
21 CURRENT EXPERIENCE WITH THOSE PAROLEES THAT WE HAVE, AND
22 APPLYING THE 70 PERCENT RECIDIVISM RATE, SO IT WAS WHAT I WOULD
23 CHARACTERIZE AS A KIND OF A, YOU KNOW, ASSUMPTION BASED ON NOT
24 HARD FACTS THAT WE'RE DEALING WITH. IT WAS BASED ON WHAT WOULD
25 HAPPEN IF A THOUSAND PEOPLE WERE RELEASED FROM STATE PRISON WITH

1 A 70 PERCENT RECIDIVISM RATE WHEN YOU TALK ABOUT BOOKINGS VERSUS
2 INMATE POPULATION. IT'S TWO DIFFERENT THINGS.

3 YOU TAKE THOSE 480 OR WHATEVER PEOPLE THAT ARE BOOKED
4 OVER THE COURSE OF THE YEAR, HALF OF THEM ARE IN FOR FOUR DAYS.
5 THE OTHER HALF ARE IN FOR MANY MORE DAYS, SOME OF WHICH ARE IN
6 FOR OVER A YEAR. SO THAT IS SOMEWHAT OF A CUMULATIVE NUMBER
7 THAT GROWS UPON ITSELF. SO IT'S NOT AS THOUGH THOSE NUMBERS ARE
8 JUST COMING AND GOING. SOME COME, AND SOME GO, AND SOME STAY.

9 Q MY QUESTION IS --

10 A WHEN WE DID THIS CALCULATION WE DIDN'T DO IT BASED ON THE
11 NUMBERS THAT YOU ARE REFERRING TO NOW. WE DID IT BASED ON THOSE
12 GROSS NUMBERS OF THE WHAT-IF SCENARIO OF A THOUSAND RELEASED.

13 Q WHAT I'M DOING NOW IS TESTING WHETHER YOUR METHODOLOGY IS
14 CONSISTENT WITH YOUR CURRENT EXPERIENCE. DO YOU AGREE IT'S NOT
15 CONSISTENT WITH YOUR CURRENT EXPERIENCE?

16 A WELL --

17 Q THAT'S A YES OR NO QUESTION, SIR.

18 A COULD YOU REPEAT IT, PLEASE?

19 Q WOULD YOU AGREE THAT THE METHOD YOU USED TO CALCULATE 200
20 INMATES PER DAY FOR A WHOLE YEAR IS NOT CONSISTENT WITH YOUR
21 CURRENT EXPERIENCE WITH PAROLEES?

22 A YES.

23 Q SO YOU'VE CHANGED YOUR ASSUMPTIONS FOR THE PURPOSES OF THIS
24 DECLARATION?

25 A NO. I BASED MY ASSUMPTIONS FOR THE PURPOSES OF THE

1 DECLARATION ON THOSE KIND OF GROSS ASSUMPTIONS ON A THOUSAND
2 INMATES, 700 -- OR 70 PERCENT RECIDIVISM RATES, 700 NEW
3 OFFENDERS IN MY COMMUNITY, AND TRIED TO BE CONSERVATIVE. IF I
4 WERE TO DO THAT PROCESS AGAIN, UTILIZING THE NUMBERS THAT YOU'VE
5 TALKED ABOUT, I MAY COME UP WITH A DIFFERENT NUMBER.

6 **Q** I'M TRYING TO STICK WITH THE NUMBERS YOU USED, SIR.

7 **A** OKAY.

8 **Q** I THINK WE'LL MOVE ON.

9 **JUDGE KARLTON:** WELL, BEFORE YOU MOVE ON, YOU ARE
10 AWARE THAT THE 70 -- I'M SORRY -- THAT THE PAROLE VIOLATORS
11 REPRESENT A SIGNIFICANT NUMBER OF WHAT ARE CALLED TECHNICAL
12 VIOLATORS, DO YOU NOT?

13 **THE WITNESS:** YES, SIR.

14 **JUDGE KARLTON:** AND IF THE TECHNICAL VIOLATORS WERE
15 NOT REARRESTED AND NOT GOING BACK TO PRISON, THAT WOULD
16 SUBSTANTIALLY REDUCE THE 70 PERCENT RECIDIVISM RATES THAT YOU'RE
17 TALKING ABOUT, CORRECT?

18 **THE WITNESS:** YES, THAT WOULD.

19 **JUDGE KARLTON:** THE ANSWER IS YES. THAT'S NOT BRAIN
20 SURGERY.

21 **THE WITNESS:** I WANTED TO MAKE SURE I UNDERSTOOD THE
22 QUESTION.

23 **JUDGE KARLTON:** DO YOU HAVE -- NEVER MIND. GO AHEAD.

24 **BY MR. SANGSTER**

25 **Q** THE NUMBERS YOU SUBMITTED TO THE COURT WERE BASED ON 70,000

1 INMATES RELEASED ESSENTIALLY ALL AT ONCE, CORRECT?

2 **A** YES.

3 **Q** HAVE YOU ATTEMPTED TO CALCULATE WHAT THE IMPACT WOULD BE IF
4 THE RELEASE OF PRISONERS OR THE POPULATION REDUCTION, WHATEVER
5 IT WAS, OCCURRED OVER A PERIOD OF YEARS?

6 **A** WE HAVE NOT ATTEMPTED TO QUANTIFY THAT OR COST THAT. AS I
7 STATED EARLIER, I THINK THAT WOULD LESSEN THE IMPACT.

8 **Q** RIGHT. POTENTIALLY, IT COULD ELIMINATE THE IMPACT FOR YOU,
9 CORRECT, BECAUSE YOU DO HAVE CAPACITY IN YOUR JAILS?

10 **A** WELL, I WOULD ARGUE THAT I DON'T HAVE CAPACITY IN MY JAILS.

11 **Q** IT WOULD -- AT ANY RATE, IT WOULD LESSEN THE IMPACT ON YOUR
12 JAILS?

13 **A** YES.

14 **Q** IF YOU ADDED 200 INMATES TO YOUR AVERAGE DAILY POPULATION,
15 THAT WOULD BRING YOU BACK TO THE LEVEL THAT YOU EXPERIENCED IN
16 2007?

17 **A** WELL --

18 **Q** YES OR NO, SIR.

19 **A** NO.

20 **Q** HOW CLOSE --

21 **A** IF I HAD A HUNDRED --

22 **Q** HOW CLOSE WOULD IT COME?

23 **A** ABOUT HALF, HALFWAY THERE.

24 **Q** HALFWAY THERE, MEANING HALF THE -- YOU MEAN YOU'D HAVE ABOUT
25 A HUNDRED INMATES OVER YOUR LEVEL THAT YOU EXPERIENCED IN 2007?

1 **A** YEAH. LAST YEAR AT THIS TIME I WAS ROUGHLY A HUNDRED
2 INMATES MORE THAN I AM NOW.

3 **Q** SO NOW YOU GOT 1,130, AND YOU SAID THAT'S YOUR NORMAL,
4 1,130?

5 **A** RIGHT. NOW, THAT'S WHAT WE'RE OPERATING UNDER. YOU KNOW,
6 IF YOU LOOK AT IT ON AN ANNUAL BASIS, IT GOES UP AND DOWN.

7 **Q** OKAY.

8 **A** BUT IF YOU LOOK AT OUR SYSTEM OVER THE LAST 15 YEARS, IT --
9 I MEAN, WE'RE FAIRLY CONSTANT SYSTEM OF BETWEEN A THOUSAND
10 SOMETHING ON THE LOW END AND 12-SOMETHING ON THE HIGH END. NOT
11 TALKING ABOUT HUGE SWINGS.

12 **MR. SANGSTER:** THAT'S ALL THE QUESTIONS I HAVE, YOUR
13 HONOR.

14 **JUDGE HENDERSON:** DOES CCPOA COUNSEL HAVE ANYTHING?

15 **MS. LEONARD:** NO, YOUR HONOR.

16 **JUDGE HENDERSON:** OKAY. REDIRECT?

17 **MS. WOODWARD:** YES, YOUR HONORS. JUST BRIEFLY.

18 **REDIRECT EXAMINATION BY MS. WOODWARD**

19 **BY MS. WOODWARD**

20 **Q** SHERIFF MUNKS, WHEN MR. SANGSTER REFERRED TO THE MAXIMUM
21 CAPACITY OF YOUR JAIL AND INDICATED YOU HAD EXTRA BEDS, DO YOU
22 HAVE -- ARE YOU ABLE TO SAY THAT YOU ARE OPERATING PROPERLY AT
23 THAT LEVEL OF MAXIMUM CAPACITY?

24 **A** NO.

25 **Q** WOULD YOU EXPLAIN THAT?

1 **JUDGE KARLTON:** HE'S DONE IT SEVERAL TIMES, BECAUSE
2 IF YOU FILL THE BEDS, YOU CAN'T MOVE PEOPLE WHEN IT'S
3 APPROPRIATE TO DO SO.

4 **THE WITNESS:** YES, SIR.

5 **MS. WOODWARD:** OKAY. THAT'S ALL I HAVE. THANK YOU,
6 YOUR HONORS.

7 **JUDGE HENDERSON:** THANK YOU, COUNSEL.

8 OKAY. THANK YOU, SHERIFF MUNKS, FOR TESTIFYING.
9 YOU'RE EXCUSED.

10 YOU MAY CALL YOUR NEXT WITNESS.

11 **MS. BARLOW:** GOOD AFTERNOON, YOUR HONORS. KIMBERLY
12 HALL BARLOW, JONES & MAYER, ON BEHALF OF THE INTERVENORS, LAW
13 ENFORCEMENT INTERVENORS, CALLING LIEUTENANT STEPHEN M. SMITH.

14 **STEPHEN M. SMITH,**
15 HAVING BEEN CALLED AS A WITNESS BY THE DEFENDANT INTERVENORS
16 WAS FIRST DULY SWORN AND EXAMINED AS FOLLOWS:

17 **THE CLERK:** STATE AND SPELL YOUR FULL NAME FOR THE
18 RECORD.

19 **THE WITNESS:** STEPHEN MICHAEL SMITH, S-M-I-T-H.
20 S-T-E-P-H-E-N.

21 **MS. BARLOW:** IF IT'S CONVENIENT FOR THE COURT, I HAVE
22 COPIES OF LIEUTENANT SMITH'S DECLARATION.

23 **DIRECT EXAMINATION BY MS. BARLOW**

24 **BY MS. BARLOW**

25 **Q** GOOD AFTERNOON, LIEUTENANT SMITH.

1 **A** GOOD AFTERNOON.

2 **Q** COULD YOU PLEASE STATE YOUR TITLE AND DUTIES?

3 **A** I'M A LIEUTENANT WITH LOS ANGELES COUNTY SHERIFF'S
4 DEPARTMENT, AND I WORK IN THE CUSTODY SUPPORT SERVICES UNIT.

5 **Q** WHAT DO YOU DO IN THAT CAPACITY?

6 **A** I PROVIDE SUPPORT FOR THE TWO SITTING CHIEFS AND THE
7 ASSISTANT SHERIFF AND THE SHERIFF IN MATTERS RELATED TO CUSTODY.
8 WE DO DEATH REVIEWS. WE DO DATA ANALYSIS AND ANY OF THE OTHER
9 PROJECTS AS THEY COME UP, MAINLY INVOLVING POLICY.

10 **Q** JUST VERY BRIEFLY SUMMARIZE YOUR BACKGROUND AND EMPLOYMENT
11 AND EDUCATION, PLEASE.

12 **A** SURE. I HAVE AN AA DEGREE FROM COMMUNITY COLLEGE, AND I
13 TOOK SEVERAL BUSINESS COURSES TOWARD ACCOUNTING, AND THOSE TYPE
14 OF COURSES, TOWARDS A BUSINESS DEGREE. MY JOB TITLE? I'M
15 SORRY.

16 **Q** HOW LONG HAVE YOU BEEN WITH THE SHERIFF'S DEPARTMENT?

17 **A** I'M SORRY. I HAVE BEEN WITH THE SHERIFF'S DEPARTMENT FOR
18 JUST ABOUT 24 YEARS.

19 **Q** YOU'VE SERVED IN VARIOUS CAPACITIES IN THE SHERIFF'S
20 DEPARTMENT?

21 **A** YES, I'VE WORKED IN PAROLE, AND IN CUSTODY ENVIRONMENT, AND
22 IN DETECTIVE DIVISION AS WELL.

23 **Q** CAN YOU TELL US HOW MANY PRISONERS ARE PROCESSED THROUGH LOS
24 ANGELES COUNTY JAIL SYSTEM EVERY YEAR?

25 **A** BETWEEN 170,000 AND 180,000.

1 Q DOES LOS ANGELES COUNTY JAIL SYSTEM HAVE ANY COURT-IMPOSED
2 CAPS ON ITS POPULATION?

3 A YES, IT DOES.

4 Q CAN YOU EXPLAIN THOSE, PLEASE?

5 A THE MOST RECENT CAP SAYS WE WILL NOT HAVE ANY FLOOR
6 SLEEPERS. THERE'S ALSO A CAP AT MEN'S CENTRAL JAIL, A SPECIFIC
7 CAP THAT'S JUST OVER 5,000 INMATES, I BELIEVE, FOR THAT
8 FACILITY. BUT OUR WORKING CAPACITY, OR THE NUMBER WE TRY TO
9 MAINTAIN OUR INMATE POPULATION AT, IS ABOUT 19,600.

10 Q NOW, IS THERE A REASON THAT YOU MAINTAIN THAT CAPACITY,
11 19,600?

12 A YES, WE TRY TO KEEP THAT NUMBER BECAUSE IT ALLOWS US TO --
13 WITH THE BEDS THAT WE HAVE CURRENTLY, WE NEED ABOUT A TEN
14 PERCENT VACANCY FACTOR FOR THE NORTHPOINT SYSTEM TO WORK. THE
15 NORTHPOINT SYSTEM IS OUR CLASSIFICATION SYSTEM THAT WE USE.

16 Q AND HOW DOES THE VACANCY FACTOR HELP YOU USE THAT POINT
17 SYSTEM?

18 A YOU HAVE TO KEEP DISSIMILAR POPULATION APART, POPULATIONS
19 THAT WILL FIGHT, POPULATIONS THAT REQUIRE -- THAT HAVE SPECIFIC
20 NEEDS, AND ALSO KEEP VICTIM POPULATIONS AWAY FROM THE MORE
21 AGGRESSIVE POPULATION. IT ALSO ALLOWS YOU TO KEEP THEM
22 CLASSIFIED BASICALLY ALONG, YOU KNOW, THE MEDIUMS, HIGHS, AND
23 LOWS.

24 Q SO DO YOU USE THAT SYSTEM TO ALLOW YOU TO, SAY, SEGREGATE
25 MENTALLY ILL PATIENTS FROM -- OR MENTALLY ILL INMATES FROM OTHER

1 INMATES?

2 **A** THEY ARE ALSO PUT INTO THAT MATRIX AS WELL. THERE ARE
3 SEVERAL DIFFERENT POPULATIONS, INCLUDING THE MENTALLY ILL THAT
4 REQUIRE SPECIAL HOUSING. MEDICAL PATIENTS ARE COHORTED OFTEN TO
5 ALLOW FOR MEDICAL RESOURCES TO BE BROUGHT TO THOSE PATIENTS IN
6 AN EFFICIENT MANNER THAT PROTECTS THE PATIENT.

7 **Q** IN ADDITION TO USING ANY ADDITIONAL BEDS FOR THOSE REASONS,
8 DO YOU ALSO HAVE TO DO UPGRADES AND MAINTENANCE ON BEDS THAT
9 MIGHT OTHERWISE BE AVAILABLE?

10 **A** SURE. AT ANY GIVEN TIME, WE HAVE SEVERAL BEDS THAT ARE JUST
11 COMPLETELY UNAVAILABLE FOR ONE REASON OR ANOTHER. SOME OF THEM
12 ARE JUST -- IT CAN BE SOMETHING AS SIMPLE AS A BROKEN TOILET OR
13 DOOR THAT DOESN'T WORK, AND THEN YOUR ONGOING MAINTENANCE.
14 WE'RE RETROFITTING CERTAIN PARTS OF THE JAIL RIGHT NOW TO MAKE
15 THE JAIL ADA COMPLIANT. AND THEN JUST SIMPLE MAINTENANCE
16 PROJECTS, PAINTING, YOU KNOW, FIXING PIPES, THOSE TYPES OF
17 THINGS.

18 **Q** WE HEARD TESTIMONY FROM A WITNESS EARLIER IN THIS CASE THAT
19 INDICATED THAT LOS ANGELES COUNTY HAD 2,500 UNUSED BEDS THAT
20 COULD BE USED IF WE JUST HAD THE STAFF FOR THEM; IS THAT TRUE?

21 **A** NOT TO MY KNOWLEDGE, NO.

22 **Q** ARE ALL YOUR JAIL FACILITIES OPEN?

23 **A** ALL OF OUR JAIL FACILITIES ARE OPEN CURRENTLY, WITH THE
24 EXCEPTION OF CIVIL GRAND INSTITUTE, WHICH IS ACTUALLY CLOSED.

25 **Q** WHY IS IT CLOSED?

1 **A** IT IS NOT INHABITABLE AT THIS TIME. IT'S GOING TO BE --
2 ACTUALLY IT'S SLATED TO BE RAZED, I BELIEVE, AND A NEW FACILITY
3 PUT THERE.

4 **Q** WHY ISN'T IT INHABITABLE?

5 **A** LAST TIME I WAS THERE -- IT HAS ISSUES, EVERYTHING FROM
6 ASBESTOS, AND THE GATES SIMPLY DON'T WORK, THE TOILETS,
7 PLUMBING, THE -- I BELIEVE THE CHILLER DOESN'T WORK, THE AIR
8 CONDITIONING, THOSE TYPE OF THINGS. THE INFRASTRUCTURE IS JUST
9 NOT THERE.

10 **Q** IS IT SEISMICALLY SOUND?

11 **A** IT'S VERY QUESTIONABLE AS FAR AS THAT GOES.

12 **Q** NOW, IS THERE A PLAN PRESENTLY IN LOS ANGELES COUNTY TO
13 CONSTRUCT ADDITIONAL JAIL BEDS?

14 **A** YES, THERE IS.

15 **Q** COULD YOU DESCRIBE THE PLAN?

16 **A** THE PLAN IS STILL A WORK IN PROGRESS. THERE'S QUITE OF BIT
17 OF WORK TOWARD THAT. THERE'S ABOUT 170 -- I'M SORRY --
18 \$760 MILLION, ABOUT THREE-QUARTERS OF A BILLION DOLLARS, SET
19 ASIDE FOR BUILDING NEW FACILITIES WITHIN L.A. COUNTY JAIL. THEY
20 WILL MAINLY REPLACE EXISTING STRUCTURES. AND WE'RE HOPING TO
21 GET MODEST GAIN OF BETWEEN ONE AND TWO THOUSAND BEDS OUT OF THAT
22 CONSTRUCTION EFFORT.

23 **Q** WILL THAT BE ENOUGH BEDS TO MEET LOS ANGELES COUNTY'S
24 CURRENT JAIL NEEDS?

25 **A** NO.

1 Q HOW MANY WILL IT BE SHORT?

2 A APPROXIMATELY FIVE THOUSAND BEDS, A LITTLE OVER 5,000 BEDS,
3 I BELIEVE, MINIMUM.

4 Q NOW, AS A RESULT OF THE ORDER AND CAPACITY ISSUES, DOES THE
5 SHERIFF'S DEPARTMENT TAKE CERTAIN STEPS TO MAINTAIN ITS
6 POPULATION BELOW ITS CAP?

7 A YES, WE DO.

8 Q AND I KNOW THAT CHIEF YIM SUBMITTED IN HIS DECLARATION A
9 NUMBER OF THOSE. SO SETTING ASIDE THOSE THAT CHIEF YIM REFERRED
10 TO IN HIS DECLARATION, ARE THERE EARLY RELEASES THAT OCCUR AS A
11 RESULT OF THE CAPS?

12 A YES, THERE ARE.

13 Q COULD YOU DESCRIBE WHAT THOSE ARE?

14 A RIGHT NOW MEN DO ABOUT 70 PERCENT OF THEIR TIME, AND WOMEN
15 DO ABOUT 10 PERCENT OF THEIR TIME, AND THOSE INDIVIDUALS WHOSE
16 SENTENCES ARE AT THAT LEVEL FOR THE MOST PART ARE RELEASED.
17 THERE ARE SOME EXCEPTIONS TO THAT, BUT, FOR THE MOST PART,
18 SOMEONE WHO SERVES 70 PERCENT OF THEIR TIME, IF THEY'RE MALE, OR
19 10 PERCENT OF THEIR TIME IF THEY'RE FEMALE, ARE RELEASED.

20 Q SO THAT WOULD BE IN ADDITION TO ANY PROGRAMS LIKE CITE AND
21 RELEASE, AND DUI, DETOXIFICATION, AND SO ON, CORRECT?

22 A YES, ABSOLUTELY.

23 Q COULD YOU TELL THE COURT HOW MANY, IF ANY, PRETRIAL
24 DETAINEES WERE RELEASED EARLY IN 2007 AS A RESULT OF CAPACITY
25 LIMITATIONS?

1 **A** THERE WERE JUST UNDER 10,000 THAT WERE RELEASED; 9,959, I
2 BELIEVE.

3 **Q** HOW ABOUT SENTENCED INMATES IN THE COUNTY FACILITIES, HOW
4 MANY OF THOSE WERE RELEASED EARLY IN 2007 DUE TO CAPACITY
5 LIMITS?

6 **A** THERE WERE JUST UNDER 41,000, 40,830, IN THAT NEIGHBORHOOD.

7 **Q** SO JUST IN 2007, ABOUT 50,000 PEOPLE WERE RELEASED EARLY
8 FROM LOS ANGELES COUNTY JAILS?

9 **A** YES.

10 **Q** NOW, LIEUTENANT SMITH, HAVE THERE BEEN IMPACTS TO PUBLIC
11 SAFETY IN THE COMMUNITY AS A RESULT OF THE EXISTING EARLY
12 RELEASES IN LOS ANGELES COUNTY?

13 **A** YES.

14 **Q** COULD YOU DESCRIBE WHAT THOSE ARE?

15 **A** ANY TIME ANYONE IS RELEASED EARLY, YOU ARE GOING TO HAVE AN
16 IMPACT ON PUBLIC SAFETY, PEOPLE THAT ARE -- IF YOU ARE NOT
17 INCARCERATED, YOU HAVE THE ABILITY TO COMMIT CRIMES THAT YOU
18 WOULD NOT OTHERWISE HAVE, BECAUSE THOSE INDIVIDUALS WOULD NOT BE
19 IN THE COMMUNITY AVAILABLE. THE VICTIMS WOULD NOT BE AVAILABLE
20 TO THE SUSPECTS. IF FOR NO OTHER REASON THAT ONE IMPACT ALONE,
21 YOU ARE GOING TO HAVE AN IMPACT NO MATTER HOW WELL YOU TRY TO
22 MANAGE THAT.

23 **Q** ARE YOU FAMILIAR WITH A LOS ANGELES TIMES STORY ENTITLED,
24 "RELEASING INMATES EARLY HAS A COSTLY HUMAN TOLL"?

25 **MS. EVENSON:** OBJECTION. CALLS FOR HEARSAY. WE

1 PREVIOUSLY INFORMED COUNSEL WE HAVE OBJECTIONS TO THE
2 INTRODUCTION OF AN L.A. TIMES ARTICLE AS HEARSAY.

3 **MS. BARLOW:** I'M SIMPLY GOING TO ASK HIM TO CONFIRM
4 THE NUMBERS PUBLISHED IN THIS REPORT.

5 **JUDGE HENDERSON:** HAS THIS BEEN OFFERED INTO
6 EVIDENCE?

7 **MS. BARLOW:** NOT YET, YOUR HONOR.

8 **MS. EVENSON:** WE WOULD OBJECT TO ANY QUESTIONS ASKING
9 THIS WITNESS TO READ NUMBERS OUT OF AN L.A. TIMES ARTICLE.

10 **MS. BARLOW:** I'M NOT ASKING HIM TO DO THAT, YOUR
11 HONOR.

12 **JUDGE HENDERSON:** LET'S PROCEED.

13 **BY MS. BARLOW**

14 **Q** IF WE COULD -- THE REPORT INDICATES THAT 16,000 INMATES,
15 MORE THAN TEN PERCENT OF THOSE RELEASED EARLY, WERE REARRESTED
16 AND CHARGED WITH NEW CRIMES WHILE THEY WERE SUPPOSED TO BE
17 INCARCERATED; IS THAT ACCURATE?

18 **MS. EVENSON:** OBJECTION. CALLS FOR HEARSAY.

19 **JUDGE HENDERSON:** SUSTAINED. GO ON.

20 **BY MS. BARLOW**

21 **Q** TO YOUR KNOWLEDGE, LIEUTENANT SMITH, IS IT CORRECT THAT TEN
22 PERCENT --

23 **JUDGE HENDERSON:** WAIT. IF WE ARE DOING HIS
24 KNOWLEDGE, LET'S DO IT.

25 **MS. BARLOW:** THAT'S WHAT I'M DOING --

1 **JUDGE HENDERSON:** DON'T READ FROM OFF A PAPER.

2 **JUDGE KARLTON:** TAKE THIS OFF THE SCREEN. IF YOU
3 WANT TO ASK HIM A QUESTION ABOUT HOW MANY PEOPLE, YOU CAN ASK
4 HIM DIRECTLY, AND IF HE KNOWS, HE CAN SAY THAT, AND IF HE
5 DOESN'T KNOW, HE CAN SAY THAT.

6 **BY MS. BARLOW**

7 **Q** TO YOUR KNOWLEDGE, SIR, APPROXIMATELY HOW MANY OF THE EARLY
8 RELEASED INMATES WERE REARRESTED AND CHARGED WITH NEW CRIMES
9 DURING EARLY RELEASE PERIOD --

10 **MS. EVENSON:** OBJECTION. LACKS --

11 **BY MS. BARLOW**

12 **Q** -- FOR THE PERIOD OF TIME IN 2003 AND 2004?

13 **JUDGE KARLTON:** NOW.

14 **MS. EVENSON:** OBJECTION. LACKS FOUNDATION.

15 **JUDGE KARLTON:** LAY A FOUNDATION FIRST. I DON'T KNOW
16 HOW HE KNOWS.

17 **BY MS. BARLOW**

18 **Q** LIEUTENANT SMITH, DID YOU DO AN ANALYSIS OF THE NUMBERS OF
19 CRIMES THAT WERE COMMITTED BY EARLY RELEASEES?

20 **JUDGE KARLTON:** DID YOU PERSONALLY, APPARENTLY; IS
21 THAT WHAT YOU ARE SAYING?

22 **MS. BARLOW:** NO, DID THE DEPARTMENT DO AN ANALYSIS.

23 **THE WITNESS:** THE DEPARTMENT DID DO AN ANALYSIS.

24 **BY MS. BARLOW**

25 **Q** IS THAT PART OF YOUR JOB, TO DO DATA ANALYSIS?

1 **A** IT IS, BUT THIS WAS NOT OUR PROJECT. IT WAS DONE BY DATA
2 SYSTEMS BUREAU WHO WORKED FOR US.

3 **Q** DID YOU VERIFY THE ANALYSIS THAT WAS DONE BY DATA SYSTEMS
4 BUREAU?

5 **A** YES, WE DID.

6 **JUDGE KARLTON:** WHO IS DATA SYSTEMS BUREAU?

7 **THE WITNESS:** THEY WORK FOR US, YOUR HONOR. THEY ARE
8 THE INDIVIDUALS WHO DO DATA COLLECTION FOR THE SHERIFF'S
9 DEPARTMENT.

10 **JUDGE KARLTON:** I'M SORRY. GO AHEAD, SAY IT AGAIN.

11 **THE WITNESS:** I'M SORRY, SIR. THEY ARE THE
12 INDIVIDUALS, THEY WORK FOR THE SHERIFF'S DEPARTMENT, AND THEY DO
13 ALL DATA ANALYSIS FOR THE DEPARTMENT RELATING TO CRIME TRENDS --

14 **JUDGE KARLTON:** THEY ARE EMPLOYEES OF THE SHERIFF'S
15 DEPARTMENT?

16 **THE WITNESS:** YES, SIR, THEY ARE.

17 **JUDGE KARLTON:** OKAY. AND THEIR JOB IS TO DO
18 STATISTICAL ANALYSES?

19 **THE WITNESS:** YES, SIR.

20 **JUDGE KARLTON:** THANK YOU.

21 **MS. BARLOW:** THANK YOU, YOUR HONOR.

22 **BY MS. BARLOW**

23 **Q** TO YOUR KNOWLEDGE, CAN YOU ESTIMATE THE PERCENTAGE OF THOSE
24 RELEASED EARLY DURING THE PERIOD IN QUESTION?

25 **JUDGE KARLTON:** SHE DOESN'T MEAN THAT. WHAT IN DATA

1 SYSTEMS DETERMINED CONCERNING THE NUMBER OF REARRESTS OF PERSONS
2 WHO WERE RELEASED EARLY? THAT'S WHAT YOU WANT TO ASK, ISN'T IT?

3 **MS. BARLOW:** THANK YOU, YOUR HONOR.

4 **THE WITNESS:** THE ONLY THING THAT I REMEMBER ABOUT
5 THAT THING, YOUR HONOR, IS -- I HAVE TO COUCH IT THIS WAY, IS
6 THAT WE DID AN ANALYSIS, WE CONFIRMED THAT THE NUMBERS WERE
7 ACCURATE IN THE REPORT AS GIVEN, AND THAT SINCE WE HAD -- OUR
8 OWN DEPARTMENT HAD PROVIDED THOSE NUMBERS TO THE TIMES, OUR
9 BIG -- THE FOCUS OF WHAT WE DID WAS TO VALIDATE THE NUMBERS WERE
10 ACCURATE, BUT I DO NOT REMEMBER THE NUMBERS PERSONALLY.

11 **BY MS. BARLOW**

12 **Q** WOULD IT REFRESH YOUR RECOLLECTION, LIEUTENANT SMITH --

13 **JUDGE KARLTON:** JUST A MINUTE.

14 **MS. BARLOW:** I'M SORRY, SIR?

15 **JUDGE KARLTON:** JUST A MINUTE.

16 LET ME TRY AND UNDERSTAND WHAT YOU'RE SAYING. YOU'VE
17 GOT THESE FOLKS IN THE BUSINESS OF DOING STATISTICAL ANALYSES
18 FOR THE SHERIFF'S DEPARTMENT.

19 **THE WITNESS:** YES, SIR.

20 **JUDGE KARLTON:** AND YOU ASK THOSE FOLKS TO MAKE A
21 JUDGMENT CONCERNING HOW MANY PEOPLE WHO WERE EARLY RELEASED
22 COMMITTED OTHER CRIMES DURING THEIR EARLY RELEASE?

23 **THE WITNESS:** YES, SIR.

24 **JUDGE KARLTON:** NOT JUST OTHER CRIMES, BUT
25 SPECIFICALLY BY VIRTUE OF THEIR EARLY RELEASE?

1 **THE WITNESS:** YES, SIR.

2 **JUDGE KARLTON:** AS YOU SIT HERE NOW, YOU HAVE NO -- I
3 GATHER YOU HAVE NO RECOLLECTION ABOUT THE NUMBERS?

4 **THE WITNESS:** THAT'S CORRECT, YOUR HONOR.

5 **JUDGE KARLTON:** BUT THOSE NUMBERS WERE TURNED OVER TO
6 SOME REPORTER SOMEWHERE, AND IT APPEARED IN AN ARTICLE?

7 **THE WITNESS:** YES, SIR.

8 **JUDGE KARLTON:** AND YOU SOMEHOW OR OTHER CHECKED THAT
9 ARTICLE TO BE SURE THAT IT WAS ACCURATE?

10 **THE WITNESS:** YES, SIR, WE WERE ASKED TO LOOK INTO
11 THAT.

12 **JUDGE KARLTON:** YOU PERSONALLY OR SOMEBODY DID?

13 **THE WITNESS:** MY UNIT WAS ASKED TO LOOK INTO IT.
14 SERGEANT BLANKS WHO WORKS FOR ME --

15 **JUDGE KARLTON:** SO ALL YOU KNOW IS WHAT SERGEANT
16 BLANKS TOLD YOU?

17 **THE WITNESS:** AND WE WENT OVER THE TIMES AT THE TIME.

18 **JUDGE KARLTON:** THAT'S THE PROBLEM. I DON'T KNOW
19 WHAT "WE" MEANS. DID YOU PERSONALLY --

20 **THE WITNESS:** SERGEANT BLANKS AND I WENT OVER THE
21 NUMBERS.

22 **JUDGE KARLTON:** I DON'T KNOW WHY I'M DOING YOUR WORK.
23 I'M JUST TRYING TO GET THIS DONE SO WE CAN GET OUT OF HERE
24 BEFORE JULY THE 5TH. YOU WENT OVER THE NUMBERS WITH SERGEANT
25 BLANKS AND CONCLUDED WHAT?

1 **THE WITNESS:** THAT THE NUMBERS WERE ACCURATE AS
2 REPORTED.

3 **JUDGE KARLTON:** ALL RIGHT. YOU MAY PROCEED.

4 **MS. BARLOW:** THANK YOU, YOUR HONOR.

5 **BY MS. BARLOW**

6 **Q** DO YOU HAVE A COPY OF THE ARTICLE IN FRONT OF YOU,
7 LIEUTENANT SMITH?

8 **A** I DO NOT. I HAVE AN ARTICLE, BUT I DON'T HAVE IT WITH ME.

9 **MS. BARLOW:** MAY I APPROACH, YOUR HONOR?

10 **JUDGE HENDERSON:** YOU MAY.

11 **BY MS. BARLOW**

12 **Q** WOULD IT REFRESH YOUR RECOLLECTION TO REVIEW THE NUMBERS IN
13 THE REPORT?

14 **JUDGE HENDERSON:** ANY PARTICULAR PART OF THE REPORT?

15 **MS. BARLOW:** YES, ON PAGE 1.

16 **JUDGE KARLTON:** THE QUESTION IS WHETHER -- THAT'S
17 STILL NOT IN EVIDENCE, TAKE IT DOWN. IT'S REALLY VERY
18 IRRITATING.

19 SIR, WHEN YOU READ IT, DOES IT REFRESH YOUR
20 RECOLLECTION, THE ANSWER TO THAT QUESTION IS YES OR NO. DO YOU
21 NOW REMEMBER WHAT THE NUMBER IS, OR ARE YOU JUST READING IT OFF
22 OF THE PIECE OF PAPER?

23 **THE WITNESS:** TO BE HONEST, YOUR HONOR, AS I ALWAYS
24 AM, IT ONLY REFRESHES MY MEMORY ONLY WITH LOOKING AT THE
25 NUMBERS. I DON'T HAVE AN INDEPENDENT RECOLLECTION OF THE

1 NUMBERS.

2 JUDGE KARLTON: GO AHEAD. DO YOU THINK YOU CAN --

3 BY MS. BARLOW

4 Q TO THE BEST OF YOUR KNOWLEDGE, LIEUTENANT SMITH, IS IT TRUE
5 OUT OF 16,000 INMATES --

6 JUDGE KARLTON: MA'AM, HE JUST FINISHED SAYING HE
7 DOESN'T REMEMBER WHAT THE NUMBERS ARE; ALL HE KNOWS IS THAT THIS
8 IS WHAT WAS WRITTEN AND THAT WHAT WAS WRITTEN WAS, AT THE TIME,
9 SOMETHING THAT HE HAD VERIFIED.

10 THE WITNESS: YES, SIR. WE VALIDATED IT.

11 JUDGE KARLTON: NOW THE QUESTION IS WHETHER OR NOT
12 IT'S ADMISSIBLE AS PRIOR RECORDED RECOLLECTION, AND THE ANSWER
13 IS NO, BECAUSE IT'S NOT HIS RECORDED RECOLLECTION. IT'S -- I
14 DON'T BELIEVE -- WELL, I DON'T SEE HOW -- YOU MUST BE PREPARED
15 FOR THIS OBJECTION. NO?

16 MS. BARLOW: LET ME JUST TAKE A MINUTE, YOUR HONOR.

17 BY MS. BARLOW

18 Q DO YOU RECALL THE APPROXIMATE NUMBER OF PERSONS WHO WERE
19 REARRESTED DURING THE EARLY RELEASE PERIOD FOR SERIOUS OR
20 VIOLENT CRIMES?

21 JUDGE KARLTON: NOT WHAT'S WRITTEN. DO YOU RECALL?

22 THE WITNESS: I RECALL THERE WERE 16 MURDERS THAT
23 WERE ARRESTED DURING THAT PERIOD.

24 BY MS. BARLOW

25 Q OKAY. FROM JUST MURDERS?

1 **A** FOR MURDERS.

2 **Q** DO YOU RECALL THE APPROXIMATE PERCENTAGE OF THOSE WHO WERE
3 RELEASED EARLY WERE REARRESTED DURING THE EARLY RELEASE PERIOD?

4 **A** I BELIEVE IT WAS ABOUT TEN PERCENT.

5 **Q** AND OF THOSE DO YOU RECALL ABOUT WHAT PERCENTAGE WERE
6 ARRESTED FOR SERIOUS LIFE-THREATENING CRIMES?

7 **A** NO, MA'AM, I DON'T.

8 **Q** OKAY. AS A RESULT OF THE PUBLICATION OF THIS ARTICLE, DID
9 THE SHERIFF'S DEPARTMENT TAKE ANY STEPS TO REASSESS ITS EARLY
10 RELEASE PROGRAMS?

11 **JUDGE KARLTON:** NOT AS A RESULT OF THIS ARTICLE, BUT
12 AS A RESULT OF THE STUDY DID YOU DO ANYTHING?

13 **THE WITNESS:** YES, SIR. AS A RESULT OF THE STUDY WE
14 DID, WE WENT BACK AND LOOKED AT IT. IT PROVIDED A REAL FIRST
15 GLIMPSE OF WHAT WAS OCCURRING.

16 **BY MS. BARLOW**

17 **Q** WERE ADDITIONAL STEPS TAKEN TO TRY TO REDUCE THE IMPACTS TO
18 THE COMMUNITY?

19 **A** YES.

20 **Q** ALL RIGHT.

21 **A** SOME OF THESE WERE -- WE HAD LOOKED AT HOW WE WERE DEALING
22 WITH CERTAIN GANG MEMBERS AND HOW WE DEALT WITH THOSE. WE
23 LOOKED AT DOING SOME ADDITIONAL ASSESSMENTS THROUGH SOME OTHER
24 TOOLS. WE FOUND THAT ALL THE TOOLS THAT EXISTED WERE SIMPLY TOO
25 CUMBERSOME TO GET THROUGH GIVEN THE NUMBER OF RELEASES THAT WE

1 HAD ON AN ONGOING BASIS.

2 **Q** IS IT FAIR TO SAY THAT YOU DID AGREE, AFTER LOOKING AT THE
3 DATA, THAT THERE WAS, IN FACT, A NEGATIVE IMPACT TO PUBLIC
4 SAFETY FROM THE EARLY RELEASES?

5 **A** YES, EVERYONE IN THE DEPARTMENT IS WELL AWARE OF THAT.

6 **Q** AND SO YOU'RE ATTEMPTING TO REASSESS THAT IN TERMS OF HOW
7 YOU CHOOSE THOSE TO BE RELEASED?

8 **A** WE WERE TRYING TO MITIGATE TO THE LARGEST EXTENT POSSIBLE
9 THE DAMAGE TO THE COMMUNITY BY AN EARLY RELEASE.

10 **Q** IN YOUR OPINION, LIEUTENANT SMITH, ARE YOU ABLE TO
11 COMPLETELY MITIGATE IMPACTS TO THE COMMUNITY OF THOSE EARLY
12 RELEASE PROGRAMS?

13 **A** NO.

14 **Q** WHY NOT?

15 **A** THERE SIMPLY IS NOT ENOUGH MONEY AND ALTERNATIVES THAT EXIST
16 TO TAKE CARE OF THE PROBLEMS THAT ARE INHERENT. ALL ASSESSMENT
17 TOOLS, NO MATTER HOW GOOD THEY ARE, ARE VIEWED IN LARGE, YOU
18 KNOW, NUMBERS AND NEVER CAN REALLY TAKE INTO ACCOUNT ALL ASPECTS
19 OF THE PEOPLE THAT YOU'RE RELEASING.

20 **JUDGE REINHARDT:** MAY I ASK YOU A QUESTION? ARE
21 THESE PEOPLE WHO ARE EARLY RELEASED PEOPLE WHO HAVE BEEN
22 SENTENCED TO COUNTY JAIL?

23 **THE WITNESS:** YES, SIR.

24 **JUDGE REINHARDT:** AND THE MAXIMUM SENTENCE IS A YEAR?

25 **THE WITNESS:** YES, SIR, IT IS.

1 **JUDGE REINHARDT:** ARE THESE PEOPLE WHO COMMITTED
2 MISDEMEANORS?

3 **THE WITNESS:** YES, SIR, THEY WOULD BE, OR WOBBLERS
4 THAT WERE SENTENCED TO THE COUNTY JAIL.

5 **JUDGE REINHARDT:** SO THESE PEOPLE WHO ARE RELEASED
6 EARLY HAVE BEEN UP UNTIL THIS TIME MINOR CRIMINALS?

7 **THE WITNESS:** I WOULD NOT CHARACTERIZE THEM THAT WAY.

8 **JUDGE REINHARDT:** THE OFFENSE FOR WHICH THEY ARE --

9 **THE WITNESS:** EVEN THAT IS --

10 **JUDGE REINHARDT:** ARE MISDEMEANORS?

11 **THE WITNESS:** THEY A LOT OF TIMES PLED TO
12 MISDEMEANORS IN LIEU OF A FELONY CHARGE, AS WE'RE ALL AWARE OF.
13 SO A LOT OF THEM ARE NOT JUST YOUR -- YOU KNOW, IT'S NOT CANNERY
14 ROW. A LOT OF THESE ARE ACTUAL --

15 **JUDGE REINHARDT:** ALL THEY HAVE BEEN CONVICTED OF ARE
16 MISDEMEANORS?

17 **THE WITNESS:** YES, SIR, THAT'S TRUE.

18 **JUDGE REINHARDT:** AND THEN THEY GOT OUT OF COUNTY
19 JAIL?

20 **THE WITNESS:** YES, SIR.

21 **JUDGE REINHARDT:** AND A LARGE NUMBER OF THEM HAD
22 COMMITTED MURDERS?

23 **JUDGE KARLTON:** TEN PERCENT.

24 **THE WITNESS:** TEN PERCENT HAVE COMMITTED OTHER
25 CRIMES, YES, SIR. THE MURDERS, THERE'S BEEN 16 MURDERS. SOME

1 OF THOSE WERE, AND I'M NOT SURE OF THE EXACT NUMBER, BUT SOME OF
2 THOSE WERE PREEXISTING MURDER CONVICTIONS THAT THEY WERE
3 ARRESTED FOR AFTER THE FACT.

4 **JUDGE KARLTON:** SO THEY DIDN'T COMMIT THEM
5 AFTERWARDS; THEY JUST WERE DISCOVERED AFTERWARDS?

6 **THE WITNESS:** YES, SIR.

7 **JUDGE KARLTON:** DO YOU KNOW HOW MANY COMMITTED
8 CRIMES -- I'M NOT SURE IT MATTERS, BUT HOW MANY COMMITTED
9 CRIMES?

10 **THE WITNESS:** NO, SIR, I DON'T KNOW THE EXACT NUMBER.
11 WE KNOW THERE WERE SEVERAL.

12 **JUDGE KARLTON:** HOW LONG BEFORE THE YEAR, ASSUMING
13 THEY WERE ALL SENTENCED FOR A YEAR, WHICH IS PROBABLY NOT THE
14 CASE AS WELL, RIGHT?

15 **THE WITNESS:** RIGHT.

16 **JUDGE KARLTON:** HOW OFTEN -- HOW LONG BEFORE THEY ARE
17 SENTENCED WERE THEY RELEASED?

18 **THE WITNESS:** IT VARIED. THEY WERE DOING ABOUT TEN
19 PERCENT OF THEIR TIME AT THAT TIME, SO ON A YEAR, YOU DID ABOUT
20 24 DAYS.

21 **JUDGE REINHARDT:** I THOUGHT --

22 **THE WITNESS:** SO, IF YOU GOT SENTENCED TO ONE YEAR,
23 YOU COULD BE OUT AS MUCH AS 300 DAYS EARLY.

24 **JUDGE REINHARDT:** I THOUGHT YOU SAID THE MEN DID
25 70 PERCENT OF THEIR TIME AND THE WOMEN 10 PERCENT?

1 **THE WITNESS:** THAT'S WHAT WE'RE DOING NOW, YOUR
2 HONOR. AT THE TIME THE ARTICLE WAS WRITTEN, MEN WERE DOING TEN
3 PERCENT OF THEIR TIME. ONE OF THE THINGS WE WERE ABLE TO DO WAS
4 INCREASE THE LENGTH OF INCARCERATION TO THE 70 PERCENT MARK.

5 **JUDGE KARLTON:** SO THESE PEOPLE WERE GETTING OUT IN
6 24 DAYS AND COMMITTING ANOTHER CRIME, AND HAD THEY BEEN HELD 40
7 DAYS INSTEAD OF 24, THEY WOULD GET OUT, AND THEY'D PROBABLY
8 COMMIT ANOTHER CRIME.

9 **THE WITNESS:** THAT'S TRUE, YOUR HONOR. I MEAN,
10 THERE'S NOTHING THAT -- THE ONLY THING IS THEIR OPPORTUNITY HAS
11 JUST BEEN INCREASED BY US RELEASING THEM EARLY, BUT THEIR
12 NATURAL TENDENCY TO COMMIT CRIMES, ESPECIALLY DURING THEIR
13 YOUNGER YEARS, IS -- AS YOU KNOW, THE LONGER YOU KEEP THEM IN,
14 YOU JUST REDUCE THEIR CHANCE OF COMMITTING THE CRIME, BUT ONCE
15 THEY WERE OUT, THEY'RE GOING TO REOFFEND PROBABLY IN SIMILAR
16 NUMBERS. THERE'S SOME INDICATION, SOME OF THE STUDIES, THAT IF
17 THEY'RE IN FOR SLIGHTLY LONGER PERIODS OF TIME, THEY TEND TO NOT
18 REOFFEND AS QUICKLY.

19 **BY MS. BARLOW**

20 **Q** IN FACT, LIEUTENANT SMITH, DIDN'T YOUR ANALYSIS OF THIS DATA
21 DEMONSTRATE THAT THERE WERE -- THERE WAS A HIGHER PERCENTAGE OF
22 THOSE RELEASED EARLY THAT WERE REARRESTED WITHIN 90 DAYS THAN
23 THOSE THAT DIDN'T GET RELEASED EARLY?

24 **A** THAT WAS ACTUALLY THE DATA THAT WAS CRUNCHED BY THE L.A.
25 TIMES, NOT THE DEPARTMENT.

1 Q DID YOUR DEPARTMENT CONCUR WITH THAT DATA?

2 A THERE WAS NOTHING TO ARGUE IT, NO.

3 Q OKAY. NOW, LET'S TALK ABOUT MENTALLY ILL POPULATION IN LOS
4 ANGELES COUNTY JAIL. THERE ARE MENTALLY ILL PERSONS IN THE
5 JAIL, ARE THERE NOT?

6 A YES.

7 Q CAN YOU GIVE US ABOUT APPROXIMATELY WHAT PERCENTAGE OF THE
8 JAIL POPULATION HAS MENTAL HEALTH NEEDS?

9 A ABOUT 11 PERCENT ARE TREATED CURRENTLY. WE BELIEVE THE
10 NUMBER MAY BE 16 PERCENT.

11 Q WHAT DOES THAT WORK OUT IN AVERAGE DAILY POPULATION?

12 A BETWEEN 2- AND 3,000 INMATES.

13 Q ARE SERVICES PROVIDED TO THOSE INMATES IN THE LOS ANGELES
14 COUNTY JAIL?

15 A YES, THEY ARE.

16 Q WHAT KINDS OF SERVICES?

17 A THE DEPARTMENT OF MENTAL HEALTH PROVIDES A VARIETY OF
18 SERVICES, EVERYTHING FROM MEDICATION AND VERBAL, YOU KNOW, WORK
19 GROUPS, AND THOSE TYPE OF THINGS, ALL THE WAY THROUGH A FORENSIC
20 INPATIENT AREA FOR THOSE ACUTELY MENTALLY ILL.

21 Q IS MENTAL HEALTH ABLE TO PROVIDE ALL THE SERVICES THAT THE
22 MENTALLY ILL IN LOS ANGELES COUNTY JAILS NEED?

23 A NOT AT THIS TIME.

24 Q ARE THERE PROGRAMS THAT YOU TRY TO USE FOR THE MOST SEVERELY
25 MENTALLY ILL?

1 **A** YES.

2 **Q** WHAT ARE THOSE?

3 **A** ONE OF THE PROGRAMS THAT WE'RE WORKING ON RIGHT NOW IS
4 CALLED THE ARM PROGRAM, ALTERNATIVE RESOURCE MANAGEMENT, WHICH
5 IS TRYING TO GET INDIVIDUALS THAT REQUIRE A HIGH DEGREE OF
6 MEDICAL OR MENTAL HEALTHCARE, OR A COMBINATION OF THAT, INTO
7 COMMUNITY PROGRAMS WHERE THEY CAN BE BETTER TREATED.

8 **Q** AND IS THAT A HIGH PERCENTAGE, LOW PERCENTAGE? HOW MUCH OF
9 THAT, OF YOUR POPULATION --

10 **A** WE'VE ONLY GOTTEN ABOUT 400 PEOPLE THROUGH THAT PROGRAM
11 RIGHT NOW.

12 **Q** IS IT DIFFICULT TO PLACE PEOPLE IN THESE PROGRAMS?

13 **A** IT'S DIFFICULT TO GET THEM INTO THE COMMUNITY -- THE
14 COMMUNITY PROGRAMS. THEY'RE NOT AS MANY PROGRAMS AS ARE REALLY
15 NEEDED, SO THE PROGRAMS TEND TO CHERRY PICK INDIVIDUALS.
16 INDIVIDUALS WHO REQUIRE ASSISTANCE WITH ACTIVITIES OF DAILY
17 LIVING OR WHO REQUIRE MEDICATION, THOSE TYPE OF THINGS, ARE
18 PRECLUDED FROM A LOT OF THE PROGRAMS. SO PLACEMENT IS DIFFICULT
19 FOR THAT POPULATION.

20 **Q** NOW, LIEUTENANT SMITH, THE PLAINTIFFS HAVE ASKED THE COURT
21 TO ISSUE AN ORDER THAT WOULD REDUCE THE PRISON POPULATION BY
22 VARIOUS METHODS BY JUST UNDER 52,000 PRISONERS OVER TWO YEARS.
23 HAVE YOU DONE AN ASSESSMENT OF HOW MANY OF THOSE PRISONERS WOULD
24 BE DIVERTED, RELEASED, OR REMOVED FROM PAROLE IN LOS ANGELES
25 COUNTY?

1 **A** YES.

2 **Q** HOW MANY?

3 **A** WE BELIEVE THAT OUR POPULATION WOULD PROBABLY BE ABOUT

4 16,400 OF THOSE.

5 **Q** AND THAT'S BECAUSE LOS ANGELES COUNTY SENDS WHAT PERCENTAGE
6 OF PRISONERS TO CDCR?

7 **A** ABOUT 31 PERCENT. IT VARIES, BUT IT'S BETWEEN 31,
8 33 PERCENT.

9 **Q** AND IF LOS ANGELES COUNTY WERE TO TAKE ON, WHETHER THROUGH
10 RELEASE, OR DIVERSION, OR ENDING OF PAROLE, AN ADDITIONAL 16,400
11 FELONS, EX-FELONS, WOULD YOU EXPECT IMPACTS FROM THAT IN LOS
12 ANGELES COUNTY?

13 **A** YES, WE WOULD.

14 **Q** WHAT WOULD THOSE BE?

15 **A** JUST CONSERVATIVELY, LOOKING AT THE RETURN-TO-CUSTODY RATE,
16 THAT IN TWO YEARS 67-1/2 PERCENT, USING CDCR'S NUMBER, RETURN TO
17 CUSTODY. WE WOULD EXPECT TO SEE ABOUT 11,000 OF THOSE BACK
18 THROUGH THE COUNTY JAIL IN ONE FORM OR ANOTHER. THEY WOULD TEND
19 TO BE SECOND AND THIRD STRIKE INDIVIDUALS, WHICH TRADITIONALLY
20 SERVE OR HAVE LONGER AVERAGE LENGTH OF STAY BECAUSE THEY TEND TO
21 FIGHT THEIR CASES MORE AGGRESSIVELY, AND THAT WOULD HAVE A
22 PRETTY DEVASTATING IMPACT ON OUR SENTENCED POPULATION BECAUSE IT
23 WOULD IMPACT THE NUMBER OF BEDS AVAILABLE FOR THEM.

24 WE BELIEVE IT WOULD EXACERBATE AN ALREADY PROBLEMATIC
25 SITUATION IN L.A. COUNTY BECAUSE WE WOULD HAVE TO TAKE ON THE

1 BURDEN OF THE STATE. IT'S NOT THAT THESE PEOPLE WOULD GO AWAY
2 OR THAT THEY WOULD -- THAT THEY WOULD BE PICKED UP BY SOME
3 PROGRAM THAT EXISTS CURRENTLY. THEY WOULD MORE LIKELY END UP IN
4 THE COUNTY JAIL FOR NEW CRIMES.

5 **Q** SO YOU SAID THAT WOULD IMPACT YOUR SENTENCED POPULATION.
6 HOW SPECIFICALLY DO YOU BELIEVE IT WOULD IMPACT YOUR SENTENCED
7 POPULATION?

8 **A** WE BELIEVE WE WOULD PROBABLY EITHER GO DOWN -- WELL, WE
9 FIGURED THAT BEFORE, WHEN WE DID AN ANALYSIS, IT WOULD DROP US
10 DOWN TO THE TEN PERCENT MARK AGAIN. WITH THE NEW NUMBER AT
11 52,000, IT PROBABLY PUTS US AT A SENTENCE AS BASICALLY BEING
12 PRESENTENCED AT THAT POINT.

13 **Q** SO DOES THAT MEAN YOU DON'T THINK YOU WOULD HAVE ROOM FOR
14 INDIVIDUALS TO STAY IN CUSTODY THAT HAVE BEEN SENTENCED TO
15 COUNTY CUSTODY?

16 **A** THE SENTENCED INDIVIDUALS, FOR THE MOST PART, WOULD BE
17 RELEASED IF -- THERE WOULD BE CERTAIN THINGS THAT WE'VE SEEN THE
18 JUDGES DO, WHAT WE EUPHEMISTICALLY CALL A BACA SENTENCE. THE
19 JUDGES, BECAUSE THEY DON'T WANT THEIR SENTENCE TO BE OVERTURNED,
20 A LOT OF TIMES WILL SIMPLY DEFER SENTENCING SOMEONE UNTIL A
21 LATER DATE, UNTIL THE TIME THEY WANTED THEM TO SERVE. SO IF
22 THEY WANTED THEM TO DO 90 DAYS OR 180 DAYS IN CUSTODY, THEY
23 SIMPLY RESCHEDULE SENTENCING FOR THAT TIME.

24 **Q** BUT ASSUMING THAT THAT RELEASE ORDER, HOWEVER IT'S DONE,
25 RESULTS IN THAT IMPACT, WHERE ARE YOU GOING TO PUT THE PEOPLE?

1 **A** WE DON'T HAVE ANY ROOM FOR THEM. THERE'S SIMPLY NO ROOM IN
2 THE INN. I JUST MEAN THERE'S NO ROOM THERE TO PUT THEM.

3 **Q** IS THE INABILITY TO KEEP SENTENCED INDIVIDUALS IN COUNTY
4 CUSTODY, IN YOUR VIEW, WOULD THAT HAVE A NEGATIVE IMPACT ON
5 PUBLIC SAFETY, SEPARATE AND APART FROM EARLY RELEASES AND SO ON?

6 **A** ONE OF THE ADVANTAGES OF HAVING PEOPLE INCARCERATED AND
7 HAVING TO DO SENTENCES IS THEY TEND TO TAKE ON OTHER THINGS.
8 THEY WILL GO INTO PROGRAMS THAT HELP THEM. A LOT OF THE
9 PROGRAMS REQUIRE A CERTAIN PERIOD OF TIME TO BE EFFECTIVE. AND
10 SO WHEN YOU DON'T HAVE A SENTENCE HANGING OVER SOMEONE'S HEAD,
11 THEY SIMPLY WON'T GO INTO THE PROGRAMS. THEY WILL OPT TO DO THE
12 24 DAYS AND I'M OUT, VERSUS THE SIX MONTHS AND GETTING TREATMENT
13 AT THE COUNTY LEVEL FOR MY PROBLEMS, WITH DOMESTIC VIOLENCE AND
14 THOSE TYPE OF PROGRAMS.

15 **Q** CAN'T YOU JUST PUT THEM ON PROBATION INSTEAD?

16 **A** AGAIN, THE REALITY IS A LOT OF THOSE PROGRAMS ARE INTENSIVE
17 AND REALLY WORK BEST IN THE ENVIRONMENT WITH THE PERSON WHERE
18 THERE'S SOME REALISTIC MEANS OF KEEPING THE PERSON IN THE
19 PROGRAM.

20 **THE CLERK:** FIVE MINUTES, COUNSEL.

21 **MS. BARLOW:** THANK YOU.

22 **BY MS. BARLOW**

23 **Q** NOW, YOU'VE HEARD ABOUT THE FOUR METHODS THAT ARE PROPOSED
24 TO BRING ABOUT THAT 52,000 REDUCTION. LET ME JUST SUMMARIZE
25 THEM. A BETTER PAROLE INSTRUMENT TO REDUCE TECHNICAL VIOLATIONS

1 AND THOSE PRISONERS BEING SENT BACK TO PRISON; DIVERSION OF
2 NONVIOLENT LOW RISK OFFENDERS FROM PRISON BY KEEPING THEM IN
3 COMMUNITIES; REDUCING THE LENGTH OF SENTENCE FOR NONVIOLENT, LOW
4 RISK OFFENDERS BY AN AVERAGE OF FOUR MONTHS; AND REMOVE FROM
5 PAROLE OFFENDERS WITHOUT VIOLATIONS AFTER 12 MONTHS IF THEY'VE
6 SATISFIED THE TERMS OF THEIR PAROLE FOR THAT PERIOD.

7 NOW, THOSE FOUR OPTIONS ARE PROPOSED WITHOUT ANY
8 ADDITIONAL PROGRAMMING TO BE OFFERED IN THE COMMUNITIES OR IN
9 THE PRISONS, AND THE OPINION HAS BEEN OFFERED THAT'S NOT GOING
10 TO HAVE ANY SIGNIFICANT NEGATIVE IMPACT ON PUBLIC SAFETY; DO YOU
11 AGREE WITH THAT?

12 **A** NO.

13 **Q** WHY NOT?

14 **A** NUMBER ONE, I DON'T THINK THERE ARE EXISTING PROGRAMS IN THE
15 COMMUNITY THAT WILL BE ABLE TO ABSORB THESE INDIVIDUALS.
16 TRADITIONALLY, WHEN WE DO RELEASES, WE DO THEM FOR FINANCIAL
17 REASONS, BECAUSE WE'RE EITHER UNWILLING TO PAY THE FREIGHT, IF
18 YOU WILL, FOR THE INDIVIDUALS TO KEEP THEM INCARCERATED OR TO DO
19 THOSE THINGS.

20 THERE'S NO BELIEF ON MY PART THAT THE STATE WILL
21 PROVIDE ADDITIONAL MONIES IN ANY KIND OF MEANINGFUL WAY THAT
22 WILL CONTINUE THE PROGRAMS ON FOR ANYTHING OTHER THAN THE
23 IMMEDIATE -- THE NEAR FUTURE.

24 IT'S NOT DISSIMILAR TO SOME OF THE THINGS WE SAW WITH
25 THE MENTALLY ILL IN CALIFORNIA WHERE WE CLOSED A LOT OF THE

1 INSTITUTIONS YEARS AGO BECAUSE WE BELIEVED THAT MEDICATIONS AND
2 PROGRAMS IN THE COMMUNITY WOULD PICK THAT POPULATION UP AND
3 EVERYONE WHO'S BEEN AROUND THAT HAS SEEN THAT THAT'S NOT BEEN
4 THE CASE, AND NOW WE DON'T EVEN HAVE THE ABILITY TO HELP THOSE
5 INDIVIDUALS.

6 **MS. BARLOW:** I HAVE NOTHING FURTHER, THANK YOU.

7 **MR. LEWIS:** NO QUESTIONS, YOUR HONOR.

8 **JUDGE HENDERSON:** CROSS-EXAMINATION.

9 **CROSS-EXAMINATION BY MS. EVENSON**

10 **BY MS. EVENSON**

11 **Q** GOOD AFTERNOON, LIEUTENANT SMITH. I'M REBEKAH EVENSON.

12 **A** GOOD AFTERNOON.

13 **Q** I HAVE A COUPLE OF QUESTIONS FOR YOU. YOU MENTIONED BRIEFLY
14 THAT IN YOUR ROLE AT THE JAIL, YOU HAVE SOME RESPONSIBILITY FOR
15 DEALING WITH THE MENTALLY ILL; IS THAT RIGHT?

16 **A** YES.

17 **Q** AND YOU'D AGREE THAT INCARCERATION IS NOT THE APPROPRIATE
18 WAY TO DEAL WITH THE MENTALLY ILL; ISN'T THAT RIGHT?

19 **A** IN MOST CASES I BELIEVE THAT'S TRUE.

20 **Q** YOU TESTIFIED EARLIER THAT THERE WERE APPROXIMATELY 50,000
21 EARLY RELEASES, I BELIEVE IT'S IN THE PERIOD BETWEEN 2002 AND
22 2007; IS THAT RIGHT?

23 **A** NO, IT WAS FOR 2007.

24 **Q** JUST 2007 ALONE?

25 **A** YES.

1 Q AND DURING THAT TIME, THOSE EARLY RELEASES WERE DONE WITHOUT
2 ANY CLASSIFICATION SYSTEM OR RISK ASSESSMENT INSTRUMENT BEING
3 APPLIED TO DETERMINE WHO WAS EARLY RELEASED; IS THAT RIGHT?

4 A THAT'S CORRECT. THERE WAS A PROCESS IN PLACE, BUT THERE WAS
5 NOT AN ASSESSMENT TOOL THAT WAS USED.

6 Q SO YOU MENTIONED THAT DURING THAT TIMEFRAME THERE WERE 16
7 ARRESTS FOR MURDERS; IS THAT RIGHT?

8 A THAT WAS ACTUALLY THE PREVIOUS PERIOD. THAT GOES BACK TO
9 THE TIMEFRAME OF THE L.A. TIMES ARTICLE.

10 Q SO --

11 A GO AHEAD.

12 Q SO THE 16 ARRESTS FOR MURDER WASN'T FOR 2007 ALONE?

13 A NO, MA'AM. IT WASN'T FOR 2007 AT ALL.

14 Q THAT WAS FOR THE PRIOR FIVE YEARS; IS THAT RIGHT?

15 A YES.

16 Q AND OF THOSE ARRESTS, NOT ALL THOSE PEOPLE WERE CONVICTED;
17 IS THAT RIGHT?

18 A THAT IS TRUE.

19 Q DO YOU KNOW WHAT NUMBER WERE CONVICTED?

20 A NO, MA'AM, I DON'T KNOW THE EXACT NUMBER.

21 Q AND SOME OF THOSE MURDERS WERE ACTUALLY COMMITTED, YOU
22 TESTIFIED EARLIER, PRIOR TO THE TIME PERIOD DURING WHICH THEY
23 WERE EARLY RELEASED; IS THAT RIGHT?

24 A YES, THEY WERE DISCOVERED DURING THAT TIMEFRAME.

25 Q DO YOU KNOW HOW MANY THERE WERE THAT WERE COMMITTED PRIOR?

1 **A** I BELIEVE THE NUMBER WAS SEVEN, BUT I'M NOT POSITIVE.

2 **Q** OKAY. NOW, DURING THE TIMEFRAME -- THE L.A. TIMES ARTICLE
3 COVERED THAT TIMEFRAME FROM, I BELIEVE IT WAS 2002 TO 2007;
4 ISN'T THAT RIGHT?

5 **MS. BARLOW:** I'M SORRY. I DIDN'T HEAR THE QUESTION.

6 **BY MS. EVENSON**

7 **Q** THE TIMEFRAME WAS 2002 TO 2007; IS THAT RIGHT?

8 **A** NO. THE ARTICLE ACTUALLY CAME OUT IN 2006, IN MAY OF 2006.

9 **Q** SO IT WAS COVERING A PERIOD OF ABOUT FOUR YEARS?

10 **A** YES, APPROXIMATELY.

11 **Q** AND YOU TESTIFIED ABOUT 2007 THE NUMBER OF EARLY RELEASES
12 WAS 50,000?

13 **A** YES, IN 2007.

14 **Q** FOR THE ENTIRE LAST DECADE CRIME RATES HAVE BEEN CONTINUING
15 TO DROP, HAVEN'T THEY?

16 **A** WE'VE SEEN THEM DROPPING.

17 **Q** OKAY. NOW, THE ANALYSIS THAT YOU DID OF THE IMPACTS OF A
18 PRISONER RELEASE ORDER ON THE L.A. COUNTY SYSTEM WHERE YOU
19 INDICATED A CERTAIN PERCENTAGE WOULD BE COMING BACK -- OF
20 PAROLEES WOULD BE COMING BACK THROUGH THE JAIL, THAT ANALYSIS
21 ASSUMED THAT THE RECIDIVISM RATES FOR THE PEOPLE WHO WERE EARLY
22 RELEASED WOULD BE THE SAME, THAT 67.5 PERCENT FIGURE, AS THE
23 RECIDIVISM RATE WOULD BE FOR THE PRISONERS HAD THEY BEEN PAROLED
24 AT THE NORMAL PAROLE DATE; ISN'T THAT RIGHT?

25 **A** YES.

1 Q AND THAT'S BECAUSE WE KNOW THAT THE RECIDIVISM RATE IS GOING
2 TO REMAIN RELATIVELY CONSTANT REGARDLESS OF WHEN SOMEONE IS
3 RELEASED?

4 A I DON'T AGREE WITH THAT --

5 Q I'D LIKE TO --

6 A -- ANALYSIS.

7 Q DRAW YOUR ATTENTION TO YOUR DEPOSITION, PAGE 28, LINES THREE
8 THROUGH SEVEN. I CAN READ IT TO YOU.

9 A OKAY.

10 Q IT SAYS:

11 "WE KNOW THAT THE RECIDIVISM RATES OR THE
12 RETURN-TO-JAIL RATE, OR RETURN RATE, YOU KNOW,
13 HOWEVER YOU PARSE IT OUT, IS GOING TO REMAIN
14 RELATIVELY CONSTANT REGARDLESS OF WHEN SOMEONE
15 IS RELEASED."

16 DO YOU RECALL THAT TESTIMONY?

17 A SOMETHING ALONG THAT LINE, YES.

18 Q YOU ALSO TESTIFIED THAT SOME INDIVIDUALS -- SOME -- DO WE
19 HAVE THE RIGHT PAGE UP? PAGE 28, LINE THREE THROUGH SEVEN --
20 NO, THAT'S NOT.

21 YOU ALSO TESTIFIED DURING YOUR DEPOSITION THAT AND
22 TODAY, AGAIN, THAT DURING SOME TIMEFRAME WOMEN WERE BEING
23 RELEASED AFTER 10 PERCENT OF THEIR SENTENCE AND MEN WERE DOING
24 70 PERCENT OF THEIR SENTENCE, RIGHT?

25 JUDGE KARLTON: THAT'S WHAT THEY'RE DOING NOW?

1 **THE WITNESS:** THAT'S WHAT THEY'RE DOING NOW, YES,
2 SIR.

3 **BY MS. EVENSON**

4 **Q** AND YOU DON'T KNOW OF ANY DIFFERENCE IN THE RECIDIVISM RATES
5 FOR PEOPLE WHO DO 10 PERCENT VERSUS 70 PERCENT; ISN'T THAT
6 RIGHT?

7 **A** NO, WE DON'T TRACK THAT INFORMATION.

8 **Q** NOW, OF THE 67.5 PERCENT RECIDIVISM RATE, YOU DON'T KNOW
9 WHAT PROPORTION OF THOSE ARE TECHNICAL PAROLE VIOLATORS, DO YOU?

10 **A** I BELIEVE THE NUMBER IS ABOUT A THIRD AND TWO-THIRDS. IT'S
11 ABOUT TWO-THIRDS FOR TECHNICAL VIOLATIONS.

12 **Q** SO OF THE 67.5 PERCENT WHO WOULD RETURN TO YOUR CUSTODY, DID
13 YOU ASSUME THAT TWO-THIRDS ARE TECHNICAL VIOLATORS?

14 **A** YES.

15 **Q** AND WHAT PERCENTAGE OF THOSE WHO YOU ESTIMATE WOULD RETURN
16 TO YOUR CUSTODY WOULD BE SECOND OR THIRD STRIKERS?

17 **A** I'M NOT SURE.

18 **Q** YOU TESTIFIED EARLIER THAT YOUR CONCERN -- ONE OF YOUR MAJOR
19 CONCERNS ABOUT A POPULATION REDUCTION PLAN THAT COUNSEL
20 EXPLAINED TO YOU WOULD BE THAT THERE WOULDN'T BE ENOUGH MONEY TO
21 RUN THE MENTAL HEALTH PROGRAMS, THE DRUG TREATMENT PROGRAMS, AND
22 THE OTHER KIND OF PROGRAMS YOU WANT TO PROVIDE TO DETAINEES IN
23 L.A. COUNTY; IS THAT RIGHT?

24 **A** THAT'S TRUE.

25 **Q** AND THAT'S THE STATUS QUO TODAY; ISN'T THAT RIGHT?

1 **A** YES, I BELIEVE IT IS.

2 **Q** NOW, DO YOU UNDERSTAND -- HAS ANYONE TOLD YOU THAT REDUCING
3 THE PRISON POPULATION -- LET ME START OVER.

4 IF SOME OF THE SAVINGS THAT THE STATE WERE ABLE TO
5 REALIZE FROM REDUCING ITS PRISON POPULATION, SOME OF ONE BILLION
6 SAVINGS COULD BE REDIRECTED TO COUNTIES LIKE L.A. COUNTY, THAT
7 WOULD AMELIORATE YOUR CONCERNS, WOULDN'T IT?

8 **A** I DON'T BELIEVE THAT WOULD HAPPEN, SO I DON'T BELIEVE
9 THAT -- THE PROBLEM IS IF, IN FACT, YOU COULD FORCE THEM TO DO
10 IT, YES. IF YOU THINK THAT -- IF YOU ARE ASKING ME IF I THINK
11 THEY WOULD DO IT, I HAVE NO BELIEF THEY HAVE ANY INTENTION OF
12 DOING THAT IN THE LONG PERIOD BASED ON MY HISTORY WITHIN L.A.
13 COUNTY AND, IN PARTICULAR, WITH THE SHERIFF'S DEPARTMENT.

14 **Q** IF THEY WERE FORCED TO, THOUGH, YOUR ANSWER WAS YES,
15 CORRECT?

16 **A** IF IT WERE SUFFICIENT FUNDING FOR ALL THE PROGRAMS, I
17 BELIEVE THERE WOULD BE BENEFITS, YES.

18 **Q** IN FACT, IT WOULD IMPROVE PUBLIC SAFETY, WOULDN'T IT?

19 **A** IN SOME RESPECTS IT WOULD MAKE IT BETTER.

20 **Q** LIEUTENANT SMITH, I'D LIKE TO SHOW YOU WHAT'S BEEN MARKED AS
21 DEFENDANT INTERVENOR EXHIBIT NO. 613. CAN WE PULL THAT UP? FOR
22 YOUR CONVENIENCE, LET ME PROVIDE SOME COPIES TO THE COURT.

23 (DOCUMENT DISPLAYED.)

24 **THE WITNESS:** IT'S PRETTY SMALL.

25

1 **BY MS. EVENSON**

2 **Q** DO YOU HAVE A COPY OF THAT? WOULD YOU LIKE TO SEE A FULL
3 COPY AS WELL?

4 **A** EITHER WAY. IF YOU HAVE A FULL COPY OF THIS, THAT WOULD BE
5 FINE.

6 **MS. EVENSON:** MAY I APPROACH, YOUR HONOR?

7 **JUDGE HENDERSON:** YOU MAY.

8 **THE WITNESS:** THANK YOU.

9 **BY MS. EVENSON**

10 **Q** THIS DOCUMENT APPEARS TO BE A PROFILE OF THE INMATE
11 RECEPTION CENTER DAILY STATISTICS FROM AUGUST 22, 2008. DO YOU
12 RECOGNIZE THIS DOCUMENT?

13 **A** YES.

14 **Q** FROM L.A. COUNTY, CORRECT?

15 **A** YES, IT IS.

16 **Q** I'D LIKE JUST TO DRAW YOUR ATTENTION TO THE LINE THAT SAYS:
17 "GRAND TOTAL OF BEDS," IT'S ABOUT HALFWAY DOWN THE PAGE. AND IT
18 SHOWS THAT OF REGULAR BEDS, THE CAPACITY GRAND TOTAL IS 22,369,
19 THE FUNCTIONAL BEDS TOTAL IS 21,842, THE OCCUPIED TOTAL IS
20 19,774, AND THE AVAILABLE BEDS TOTAL IS 2,625.

21 **A** YES.

22 **Q** IS THIS AN ACCURATE DESCRIPTION OF THE SNAPSHOT OF THE
23 POPULATION ON THE DATE FOR WHICH IT'S LISTED?

24 **A** THE POPULATION ON THAT DATE, THE INMATE COUNT?

25 **Q** YES.

1 **A** YES, IT'S 19,774.

2 **Q** IT'S AN ACCURATE DESCRIPTION OF THE INMATE POPULATION?

3 **A** OF THE INMATE POPULATION, YES.

4 **Q** NOW, I'D LIKE TO DRAW YOUR ATTENTION TO A LINE ON THE TOP,
5 THE TOP CHART UP THERE. IT SHOWS THE NUMBER OF BOOKINGS. THE
6 TOTAL NUMBER OF BOOKINGS, I BELIEVE IT'S ON THAT DAY, IS 407; IS
7 THAT RIGHT?

8 **JUDGE KARLTON:** WHERE WOULD WE -- I SEE, YES.

9 **BY MS. EVENSON**

10 **Q** BOOKINGS TOTALS, DO YOU SEE THAT?

11 **A** YES, IT IS.

12 **Q** THAT'S THE DATE -- THAT'S THAT DAY'S BOOKING TOTAL; IS THAT
13 RIGHT?

14 **A** YES.

15 **Q** NOW, YOU TESTIFIED EARLIER THERE ARE IN THE RANGE OF 170- TO
16 180,000 BOOKINGS PER YEAR IN THE L.A. COUNTY JAILS; IS THAT
17 RIGHT?

18 **A** YES.

19 **Q** AND THAT AMOUNTS TO SOMEWHERE IN THE RANGE OF 450 TO 500
20 BOOKINGS PER DAY, RIGHT?

21 **A** THEY DON'T COME IN IN THAT FASHION. THEY WOULD AVERAGE
22 ABOUT THAT. THEY COME IN ANYWHERE FROM 300 TO 1,100 IN ONE
23 24-HOUR PERIOD OR ONE EVENING.

24 **Q** SO THE RANGE MIGHT BE AS MUCH AS 700 FROM THE LOW TO THE
25 HIGH?

1 **A** YES.

2 **Q** IN A GIVEN DAY?

3 NOW, YOU MENTIONED EARLIER THAT YOUR ESTIMATE OF THE
4 IMPACT FROM A PRISON POPULATION REDUCTION IS BASED ON THE
5 67.5 PERCENT RECIDIVISM RATES, RIGHT?

6 **A** YES, ON THE RETURN-TO-CUSTODY RATE.

7 **Q** AND DO YOU UNDERSTAND THAT THIS RETURN-TO-CUSTODY RATE IS --
8 ACTUALLY INVOLVES RETURNS TO PRISON OVER A THREE-YEAR PERIOD?

9 **A** IT'S A TWO-YEAR -- THE STUDY THAT I SAW IN THE CDCR
10 PUBLISHED QUARTERLY REPORT, IT SAYS RETURN TO CUSTODY WITHIN TWO
11 YEARS.

12 **Q** OKAY. THE PARTIES HAVE PREVIOUSLY IDENTIFIED THAT FIGURE AS
13 BEING A THREE-YEAR RETURN-TO-CUSTODY RATE, BUT FOR PURPOSES OF
14 THIS LINE OF QUESTIONING, LET ME JUST DO WITH THE TWO-YEAR RATE.

15 **A** OKAY.

16 **Q** ASSUMING YOU ARE CORRECT IT WAS TWO YEARS AND NOT THREE,
17 YOUR ASSUMPTION THEN ABOUT THE 11,000 INDIVIDUALS WHO WOULD COME
18 BACK TO CUSTODY IN L.A. COUNTY, THAT'S 11,000 OVER A TWO-YEAR
19 PERIOD, RIGHT?

20 **A** YES.

21 **Q** AND 11,000 PEOPLE OVER A TWO-YEAR PERIOD IS ABOUT 20 PEOPLE
22 A DAY; ISN'T THAT RIGHT?

23 **A** THAT'S CORRECT.

24 **THE CLERK:** FIVE MINUTES, COUNSEL.

25

1 **THE WITNESS:** THE ONLY THING IS THEY WON'T COME IN 20
2 IN A DAY, AS YOU RELEASE THEM. WE KNOW THEY RETURN TO
3 CUSTODY -- THEY TEND TO RETURN TO CUSTODY QUICKER RATHER THAN
4 LATER. THAT'S THE TIMEFRAME THAT'S USED, BUT THEY DON'T FALL
5 EVENLY ACROSS THAT SPECTRUM.

6 **BY MS. EVENSON**

7 **Q** NOR WILL THE POPULATION REDUCTION OCCUR ALL AT ONCE; ISN'T
8 THAT RIGHT? THE POPULATION REDUCTION BEING PROPOSED IS A
9 TWO-YEAR POPULATION REDUCTION, CORRECT?

10 **A** SO DEPENDING ON HOW THEY WERE RELEASED, THAT'S HOW WE WOULD
11 EXPECT TO SEE THEM COME BACK.

12 **Q** BUT ASSUMING THERE WAS A RELEASE OVER A PERIOD OF TWO YEARS,
13 YOU WOULD EXPECT IN THE FOLLOWING TWO YEARS AN AVERAGE RETURN OF
14 APPROXIMATELY 20 INMATES PER DAY?

15 **A** AN AVERAGE, YES.

16 **MS. EVENSON:** THANK YOU.

17 **JUDGE HENDERSON:** ANYTHING FROM CCPOA?

18 **MS. LEONARD:** NO, YOUR HONOR.

19 **JUDGE HENDERSON:** REDIRECT?

20 **MS. BARLOW:** THANK YOU, YOUR HONOR.

21 COULD WE PUT UP EXHIBIT DI 501?

22 (DOCUMENT DISPLAYED.)

23 **REDIRECT EXAMINATION BY MS. BARLOW**

24 **BY MS. BARLOW**

25 **Q** SIR, GOING BACK TO THE NUMBER OF TECHNICAL PAROLE VIOLATERS

1 VERSUS NEW OFFENDERS OR PAROLEES WHO ARE ARRESTED FOR NEW
2 OFFENSE, DID YOU REVIEW THE CDCR DATA FOR 2007?

3 **A** I DID REVIEW SOME OF THE DATA, YES, FOR THE -- OFF THEIR
4 WEBSITE.

5 **Q** DO YOU KNOW THE APPROXIMATE NUMBER OF TOTAL FELONS THAT WERE
6 SENT TO CDCR IN 2007?

7 **A** I DON'T REMEMBER THE EXACT NUMBER, NO.

8 **Q** DO YOU RECALL THE PERCENTAGE OF THE TOTAL FELONS SENT TO
9 CDCR THAT WERE PAROLE VIOLATORS WITH NEW TERMS?

10 **A** I'M TRYING TO REMEMBER THE DATA. I BELIEVE IT WAS -- THERE
11 WAS 14.7 AND 51.9 PERCENT, I BELIEVE, WAS THE BREAKDOWN.

12 **Q** I'M SORRY?

13 **A** I THOUGHT THAT THE BREAKDOWN OF THE 67.5 PERCENT, IS THAT
14 WHAT YOU'RE REFERRING TO?

15 **Q** NO. I'M ASKING ABOUT THE NUMBER OF FELONS COMMITTED TO CDCR
16 FROM LOS ANGELES COUNTY.

17 **A** NO, I DON'T KNOW.

18 **MS. BARLOW:** SINCE HE DOESN'T SEEM TO HAVE IT UP
19 THERE, YOUR HONOR, MAY I APPROACH THE WITNESS?

20 **JUDGE HENDERSON:** YOU MAY.

21 **JUDGE KARLTON:** COUNSEL HAS JUST SHOWN YOU A
22 DOCUMENT. HAVE YOU SEEN THAT DOCUMENT BEFORE, SIR?

23 **THE WITNESS:** IT WAS IN THE TABLE OF THE ANALYSIS,
24 YES.

25 **JUDGE KARLTON:** ALL RIGHT.

1 **MS. BARLOW:** ALL RIGHT.

2 **BY MS. BARLOW**

3 **Q** SO, LOOKING AT THAT TABLE, DOES THAT REFRESH YOUR
4 RECOLLECTION ABOUT THE TOTAL NUMBER OF FELONS COMMITTED TO CDCR
5 FROM LOS ANGELES COUNTY IN 2007?

6 **A** YES.

7 **Q** WHAT WAS THAT NUMBER?

8 **A** TWENTY-TWO THOUSAND.

9 **Q** I DON'T THINK WE ARE LOOKING AT THE SAME PAGE.

10 WHAT PAGE DO YOU HAVE UP? TRY NINE, BATES NINE.

11 SIR, ON PAGE 9, IS THAT THE PAGE THAT DEALS WITH
12 TOTAL FELON COMMISSIONS?

13 **JUDGE HENDERSON:** I THINK YOU ARE WAITING FOR THE
14 SCREEN. DO YOU HAVE THE DOCUMENTS?

15 **BY MS. BARLOW**

16 **Q** IT'S BATES NUMBER 9 AT THE BOTTOM, FROM LOS ANGELES COUNTY?

17 **A** PAGE 10, PAGE 11, PAGE 20?

18 **Q** I'M SORRY. YOU SAID IT WAS 22,000?

19 **A** YES.

20 **Q** ALL RIGHT.

21 **A** THAT'S WHAT I SAID.

22 **Q** NOW, TAKE A LOOK AT THE --

23 I'LL TRY ON THE ELMO, YOUR HONOR, IF YOU DON'T MIND,
24 SINCE WE'RE HAVING TROUBLE SEEING THIS.

25 SO THESE ARE TOTAL FELON ADMISSIONS CALENDAR YEAR

1 2007, LOS ANGELES?

2 JUDGE KARLTON: IF YOU'VE ASKED HIM SOMETHING THAT
3 YOU WANT ANSWERED, WE CAN'T HEAR YOU, MA'AM.

4 MS. BARLOW: I'M SORRY, YOUR HONOR.
5 IT'S TURNED THE WRONG WAY.

6 BY MS. BARLOW

7 Q SO THE TOTAL NEW FELON ADMISSIONS FOR 2007 FROM LOS ANGELES
8 COUNTY WAS 22,800, SO ON, CORRECT?

9 A RIGHT.

10 JUDGE KARLTON: TWENTY-TWO THOUSAND THREE HUNDRED
11 ELEVEN.

12 THE WITNESS: THREE HUNDRED ELEVEN.

13 BY MS. BARLOW

14 Q JUST SO YOU CAN SEE THE TOP OF THIS, THIS IS FELON NEW
15 ADMISSIONS. LOS ANGELES COUNTY WOULD HAVE HAD 14,843 NEW FELON
16 ADMISSIONS TO CDCR?

17 A YES.

18 Q AND THAT REPRESENTS WHAT PERCENTAGE OF THE TOTAL?

19 A ABOUT A THIRD, 31.6 PERCENT.

20 Q SO THEN THE PAROLE VIOLATERS WERE ONE-THIRD. THAT WAS
21 TWO-THIRDS; IS THAT CORRECT?

22 JUDGE KARLTON: I THOUGHT IT WAS VICE VERSA.

23 THE WITNESS: I THOUGHT IT WAS VICE VERSA.

24 JUDGE KARLTON: IT IS VICE VERSA.

25

1 **BY MS. BARLOW**

2 **Q** THESE ARE NEW FELON ADMISSIONS?

3 **JUDGE KARLTON:** RIGHT, 14,000.

4 **MS. BARLOW:** OUT OF 22?

5 **JUDGE KARLTON:** NO, IT SAYS THE PERCENTAGE IS 31.

6 **MS. BARLOW:** THAT'S THE PERCENTAGE OF PRISONERS
7 COMMITTED TO CDCR, NEW FELONS, FROM LOS ANGELES COUNTY. IT IS
8 NOT THE TOTAL FROM LOS ANGELES COUNTY.

9 **JUDGE KARLTON:** I'M SORRY. TELL ME AGAIN WHAT YOU
10 JUST SAID, BECAUSE I MISSED IT.

11 **MS. BARLOW:** THE PERCENTAGE THAT'S SHOWN THERE IS THE
12 PERCENTAGE OF NEW FELONS ADMISSIONS FROM LOS ANGELES COUNTY FROM
13 CDCR. IN OTHER WORDS, CDCR RECEIVED 31 PERCENT OF ITS NEW
14 ADMISSIONS FROM LOS ANGELES COUNTY?

15 **JUDGE KARLTON:** OKAY.

16 **BY MS. BARLOW**

17 **Q** NOW, REFERRING TO THIS TABLE WHICH IS THE PAROLE VIOLATERS
18 RETURNED WITH A NEW TERM?

19 **A** YES.

20 **Q** HOW MANY PAROLE VIOLATERS WERE RETURNED FROM A NEW TERM FROM
21 LOS ANGELES COUNTY TO CDCR IN 2007?

22 **A** 7463.

23 **Q** ARE THOSE TECHNICAL PAROLE VIOLATERS?

24 **A** YES, THOSE WOULD BE THE TECHNICAL.

25 **Q** ALL OF THEM?

1 **A** THAT'S MY UNDERSTANDING. THAT WAS A LITTLE BIT BACKWARDS
2 MYSELF.

3 **Q** YOU WERE ASKED ABOUT THE 21,841 FUNCTIONAL BEDS?

4 **A** YES.

5 **Q** WOULD LOS ANGELES COUNTY SHERIFF'S DEPARTMENT BE ABLE TO
6 OPERATE EFFECTIVELY IF YOU FILLED EVERY BED?

7 **A** NO.

8 **Q** WOULD YOU HAVE GREATER VIOLENCE IN THE JAIL?

9 **A** YES. AND WE HAVE HAD THAT VIOLENCE.

10 **Q** WHAT OTHER KINDS OF IMPACTS MIGHT YOU HAVE IF YOU FILLED
11 EVERY BED?

12 **A** WE WOULD EXPECT TO HAVE THE KIND OF VIOLENCE THAT WE'VE HAD
13 IN THE PAST WHERE WE EXCEEDED OUR ABILITY TO HAVE THE INMATES
14 HOUSED PROPERLY.

15 **Q** SO WOULD YOU EXPECT GREATER VICTIMIZATION OF AT-RISK
16 PRISONERS?

17 **A** YES, WE WOULD SEE MURDERS. WE WOULD SEE AN INCREASE IN THE
18 MURDERS, INCREASED INMATE-ON-INMATE VIOLENCE.

19 **Q** WOULD IT CREATE A GREATER RISK TO YOUR SECURITY SHERIFF'S
20 DEPARTMENT PERSONNEL?

21 **A** YES.

22 **Q** AND ALSO TO THE INMATES?

23 **A** YES. WHEN YOU PUT MORE AND MORE PEOPLE ON TOP OF EACH
24 OTHER, YOU HAVE INCREASED VIOLENCE.

25 **JUDGE REINHARDT:** WOULD YOU EXPECT THE SAME RESULTS

1 WITH OVERCROWDING IN A PRISON?

2 **THE WITNESS:** YES, SIR.

3 **JUDGE REINHARDT:** IT WOULD BE MORE DANGEROUS FOR THE
4 PRISONERS, THE STAFF, AND YOU WOULD HAVE MORE CRIME COMMITTED IN
5 THE PRISONS?

6 **THE WITNESS:** YES, SIR.

7 **THE CLERK:** FIVE MINUTES, COUNSEL.

8 **MS. BARLOW:** THANK YOU.

9 **BY MS. BARLOW**

10 **Q** SO MAY I ASK YOU, LIEUTENANT SMITH, IF YOU -- IF LOS ANGELES
11 COUNTY -- BECAUSE YOU ASKED ABOUT THE SPACING OUT OF THESE
12 RELEASES. IF LOS ANGELES COUNTY WERE TO RECEIVE AN ADDITIONAL
13 2,500 PAROLEES EITHER THROUGH EARLY RELEASE OR DIVERSION OR
14 BEING RELIEVED OF PAROLE PER MONTH -- I'M SORRY -- 2,500 PER
15 MONTH STATEWIDE -- THAT'S 750 LOS ANGELES COUNTY, CORRECT? WHAT
16 DOES THAT TRANSLATE TO YOU IN TERMS OF CRIME?

17 **A** WELL, THEY ARE GOING TO COMMIT ADDITIONAL CRIMES. I MEAN,
18 WHEN THEY'RE OUT, NO MATTER WHO YOU USE, THEY'RE GOING TO
19 CONTINUE THEIR CRIMINAL LIFESTYLE, AT LEAST A LARGE PORTION OF
20 THEM ARE. AND IF YOU REDUCE THE PENALTIES ASSOCIATED WITH
21 CERTAIN BEHAVIORS, IT'S NOT GOING TO REDUCE THE BEHAVIOR; IT'S
22 ONLY GOING TO -- IT'S -- LIKE IF YOU TELL YOUR KID THERE'S
23 SANCTIONS, AND THEN THE SANCTIONS ARE NEVER IMPOSED OR THEY'RE
24 ONLY PARTIALLY IMPOSED, EVEN CHILDREN UNDERSTAND THAT CONCEPT.

25 **Q** OKAY. AND IF YOU HAD -- YOU TOOK OUT THE TECHNICAL PAROLE

1 VIOLATORS, THE STATISTICS TELL US AT LEAST 50 PERCENT OF FELONS
2 ARE GOING TO REOFFEND, FORGETTING THE TECHNICAL VIOLATIONS,
3 PAROLE VIOLATIONS. WHAT DOES THAT MEAN TO YOU IN TERMS OF THE
4 NUMBER OF CRIMES?

5 **A** WELL, YOU CAN FIGURE THE MOST CONSERVATIVE NUMBER I'VE EVER
6 HEARD IS THAT FOR EVERY CRIME THAT SOMEBODY IS ARRESTED FOR,
7 THERE ARE PROBABLY EIGHT UNREPORTED, ON AVERAGE, CRIMES. THAT'S
8 NOT INCONSISTENT WITH THE DATA EVEN FOR PART ONE CRIMES WHERE
9 THE SOLVE RATE IS ABOUT 22 PERCENT. SO YOU ARE GOING TO HAVE
10 MULTIPLE CRIMES COMMITTED IN THE COMMUNITY BY THE PEOPLE SIMPLY
11 BY THE VIRTUE OF THE FACT THAT THEY'RE THERE AND ABLE TO
12 REOFFEND; WHEREAS, IF THEY WERE INCARCERATED --

13 **JUDGE REINHARDT:** ARE THESE CRIMES THAT WILL
14 OTHERWISE BE COMMITTED TWO OR THREE MONTHS LATER?

15 **THE WITNESS:** THEY WOULD BE, EXCEPT THEY ARE GOING TO
16 CONTINUALLY -- THIS IS ONE OF THE THINGS WE'VE SEEN, TOO, IS AS
17 WE -- BECAUSE THE SENTENCES ARE SHORTER, THEY'RE SIMPLY OUT FOR
18 LONGER PERIODS OF TIME DURING THEIR CRIME-PRONE YEARS. BUT,
19 YES, THEY'RE GOING TO TEND TO DO THE SAME THING. THERE'S A
20 QUESTION ABOUT WHETHER IT WOULD BE MORE OR THE SAME THERE.
21 CERTAINLY WOULDN'T BE LESS OF IT, THOUGH. IN OTHER WORDS, IF
22 YOU ONLY TAKE SOMEBODY OUT OF --

23 **JUDGE REINHARDT:** TAKE THESE 16 MURDERS YOU TOLD US
24 ABOUT. ASSUMING THEY DID OCCUR AND ASSUMING THEY OCCURRED
25 WITHIN THE PERIOD IN WHICH THEY WERE RELEASED, THEY WOULD HAVE

1 OCCURRED IN ANY EVENT?

2 **THE WITNESS:** WELL --

3 **JUDGE REINHARDT:** MAYBE MORE.

4 **THE WITNESS:** THE TYPE OF BEHAVIOR, THE VICTIM WOULD
5 HAVE BEEN CHANGED. A LOT OF CRIMES ARE CRIMES OF OPPORTUNITY,
6 SO THE SHOOTING OF THE INDIVIDUAL -- ONE OF THE INDIVIDUALS WAS
7 SHOT BECAUSE HE HAPPENED TO BE THERE. HE WAS AN AVAILABLE
8 VICTIM WHEN THE INDIVIDUAL HAD HIS OPPORTUNITY TO COMMIT THE
9 CRIME.

10 **JUDGE REINHARDT:** THAT INDIVIDUAL, YOU THINK, WOULD
11 NOT HAVE HAD AN OPPORTUNITY TO COMMIT A SIMILAR CRIME --

12 **THE WITNESS:** I THINK THE SUSPECT WOULD HAVE. THE
13 SUSPECT CERTAINLY WOULD HAVE. BUT IF HE WERE INCARCERATED FOR
14 LONGER PERIODS OF TIME, EACH TIME HE'S OUT WOULD BE LESS OF THE
15 AGGREGATE TIME. IN OTHER WORDS, IF HE'S ONLY OUT FOR -- LET'S
16 SAY THEY HAVE A FIVE-YEAR WINDOW TO COMMIT CRIMES, AND AS YOU
17 INCREASE THE WINDOW, IF YOU BELIEVE THAT THEY'RE GOING TO
18 CONTINUE TO ACT IN A CRIMINAL MANNER, YOU ARE GOING TO HAVE --
19 OVER A PERIOD OF TIME, YOU'RE GOING TO HAVE MORE INCIDENCES.
20 THEY'RE GOING TO TEND TO DO THE SAME THING. IT'S JUST THEY ARE
21 GOING TO BE OUT MORE TO DO THOSE THINGS DURING THOSE CRIME-PRONE
22 YEARS.

23 **JUDGE REINHARDT:** YOU ARE TALKING ABOUT TWO OR THREE
24 MONTHS EARLIER. NOW, YOU'RE ASSUMING THAT THE NEXT TIME HE'S
25 ARRESTED FOR MURDER AND SENT TO PRISON, THAT HE WILL GET OUT TWO

1 OR THREE MONTHS EARLIER THEN, TOO?

2 **THE WITNESS:** JUST DEPENDS ON THE WAY IT WORKS.
3 WHETHER OR NOT -- NOT FOR MURDER, BUT I'M SAYING FOR ALL TYPES
4 OF CRIMES. IF THAT'S THE SENTENCING GUIDELINES OR THE TERMS ARE
5 SMALLER, YOU ARE JUST GOING TO HAVE MORE OPPORTUNITY DURING
6 THOSE CRIME-PRONE YEARS.

7 **JUDGE KARLTON:** YOU ARE AWARE -- OR ARE YOU AWARE
8 THAT THE STATISTICAL STUDIES THAT WE'VE HEARD ABOUT SUGGEST THAT
9 WHILE THAT'S NOT AN UNLIKELY CLINICAL JUDGMENT, IT PROBABLY
10 DOESN'T ACCORD WITH WHAT HAPPENS IN THE REAL WORLD. ARE YOU
11 AWARE THAT WE'VE HEARD TESTIMONY OF THAT NATURE?

12 **THE WITNESS:** I'M AWARE YOU'VE HEARD TESTIMONY OF
13 THAT NATURE.

14 **JUDGE KARLTON:** YOU JUST DON'T BELIEVE IT.

15 **THE WITNESS:** I DON'T BELIEVE IT, AND SO OTHER PEOPLE
16 THAT WE'VE TALKED TO AS WELL ARE OF SIMILAR OPINION.

17 **JUDGE KARLTON:** HOPEFULLY, WE WILL HEAR FROM THOSE
18 FOLKS. BUT YOUR BASIS IS THIS IS WHAT I SEE, I THINK THIS IS
19 WHAT I SEE?

20 **THE WITNESS:** THIS IS WHAT WE SEE, YES, SIR.

21 **MS. BARLOW:** THANK YOU, YOUR HONOR. NOTHING FURTHER.

22 **JUDGE HENDERSON:** LET ME -- REALLY, THIS HAS COME UP
23 BEFORE, AND I'M HAVING TROUBLE GRASPING THE CONCEPT. I'M
24 LOOKING AT THE L.A. TIMES ARTICLE THAT MS. BARLOW --

25 **JUDGE REINHARDT:** WHICH IS NOT IN EVIDENCE.

1 **JUDGE HENDERSON:** OKAY. HYPOTHETICALLY.

2 **THE WITNESS:** YES, SIR.

3 **JUDGE HENDERSON:** JUST TO USE -- SOMEONE SAYS, OKAY,
4 WE GOT TO DO WHAT WE GOT TO DO, AND THEY HAVE BEEN RELEASED
5 EARLY AND WHAT THEY GOT TO DO IS GO TO RIVAL GANG'S TURF, AND
6 THEY DRIVE BY, AND THEY SHOOT SOMEONE.

7 **THE WITNESS:** YES.

8 **JUDGE HENDERSON:** YOU'RE SAYING THEY GOT OUT EARLY,
9 AND I DON'T UNDERSTAND IT. I'M ASSUMING IF THIS PERSON HAD
10 GOTTEN OUT FOUR MONTHS LATER, HE'D HAVE SAID, WE GOT TO DO WHAT
11 WE GOT TO DO, AND WOULD HAVE GOTTEN IN THE CAR AND WOULD HAVE
12 SHOT SOMEONE.

13 **JUDGE KARLTON:** OR IF IT WAS THAT DATE THEY GOT TO
14 DO, SOME OTHER GANG MEMBER WOULD HAVE GOTTEN IN THE CAR AND SHOT
15 SOMEBODY.

16 **THE WITNESS:** I WOULD AGREE WITH THAT. I THINK THERE
17 IS -- THEY ARE GOING TO CONTINUE TO COMMIT CRIME. THE ONLY
18 THING I'M SAYING IS, AS YOU INCREASE THEIR OPPORTUNITY TO DO
19 THAT BECAUSE YOU ARE SHORTENING THE SENTENCE, YOU ARE JUST
20 GIVING THEM MORE OPPORTUNITY TO COMMIT ADDITIONAL CRIMES.

21 **JUDGE REINHARDT:** YOU'RE WORRIED ABOUT THE CUMULATIVE
22 LENGTH OF TIME THEY WILL SPEND IN JAIL AS OPPOSED TO THE AMOUNT
23 OF TIME THEY ARE NOT IN JAIL OR IN PRISON, THAT OVER THEIR
24 LIFETIME, INSTEAD OF SPENDING 30 YEARS IN PRISON, THEY'RE ONLY
25 GOING TO SPEND 29, AND, THEREFORE, THEY MAY BE ABLE TO KILL ONE

1 MORE PERSON?

2 **THE WITNESS:** KIND OF. I MEAN, IN OUR PARLANCE, THEY
3 ARE DOING LIFE ON THE INSTALLMENT PLAN, YOU KNOW, SO A LOT OF
4 THE CRIMINALS ARE CAREER CRIMINALS. SO EVERY OPPORTUNITY THEY
5 ARE OUT, THEY ARE GOING TO COMMIT ADDITIONAL CRIMES. AND SO AS
6 THEY HAVE MORE AND MORE OPPORTUNITY OR TIME OUT, BECAUSE WE'VE
7 REDUCED THEIR SENTENCES --

8 **JUDGE REINHARDT:** BUT IT'S REALLY ONLY THE TIME OUT
9 YOU ARE CONCERNED ABOUT, HOW MUCH TIME ARE THEY IN, HOW MUCH
10 TIME ARE THEY OUT.

11 **THE WITNESS:** I THINK THE TWO ARE RELATED, BUT, YES,
12 I SEE WHAT YOU'RE SAYING.

13 **JUDGE REINHARDT:** AND THE ODDS ARE IF THEY GET OUT
14 FOUR MONTHS EARLY AND THEY ARE GOING TO COMMIT THAT NEXT CRIME,
15 THEY ARE GOING TO GO IN FOUR MONTHS -- THEY ARE GOING TO GO
16 IN --

17 **JUDGE KARLTON:** FOUR MONTHS EARLIER.

18 **THE WITNESS:** HOPEFULLY. THAT ASSUMES, REMEMBER,
19 22 PERCENT. SO THEY ARE GOING TO COMMIT A FEW CRIMES BEFORE WE
20 GET THEM.

21 **JUDGE REINHARDT:** THAT WOULD BE TRUE WHETHER THEY
22 COME OUT EARLY OR LATE.

23 **JUDGE KARLTON:** AND THE WHOLE NOTION ABOUT ALL OF
24 THESE UNREPORTED CRIMES, THERE'S NO WAY TO EVEN MEASURE THAT.
25 THAT'S AN ESTIMATE BASED UPON ONE'S GUTS AND GOLLY.

1 **JUDGE REINHARDT:** BUT, ALSO, IF YOU ASSUME THAT
2 THEY'RE GOING TO GO BACK WITHIN SIX MONTHS, THEY'RE GOING TO
3 COMMIT ONE OF THOSE -- SAY THEY ARE GOING TO COMMIT FIVE CRIMES
4 AND GET CAUGHT ONCE WITHIN THE FIRST SIX MONTHS THEY START, IT'S
5 REALLY NOT GOING TO MAKE A LOT OF DIFFERENCE WHETHER THEY START
6 FOUR MONTHS EARLIER OR FOUR MONTHS LATER, AS FAR AS THE AMOUNT
7 OF CRIMES THAT ARE COMMITTED.

8 **THE WITNESS:** I THINK THE ONLY DIFFERENCE IS, AGAIN,
9 IT'S THE CUMULATIVE --

10 **JUDGE REINHARDT:** IT'S THE CUMULATIVE EFFECT OVER A
11 LIFETIME?

12 **THE WITNESS:** YEAH. I WOULD NEVER ARGUE WITH YOU. I
13 AGREE WITH WHAT YOU'RE SAYING.

14 **JUDGE REINHARDT:** YOU CAN ARGUE WITH ME.

15 **THE WITNESS:** I WOULDN'T. I DON'T DISAGREE WITH YOU
16 ON THAT. THE ONLY THING IS AT THE END THEY ARE JUST GOING TO
17 HAVE MORE OPPORTUNITY BECAUSE WE'VE SHORTENED THE SENTENCE
18 LENGTH. I MEAN, THAT'S THE IDEA, REALLY, OF THREE STRIKES, IS
19 IF THEY ARE NOT OUT, THEY ARE NOT AVAILABLE TO COMMIT CRIMES.

20 **JUDGE REINHARDT:** WELL, THERE'S LOTS OF WAYS --

21 **JUDGE KARLTON:** THAT PERSON RIGHT THERE, MS. TILLMAN,
22 SHE'S VERY DANGEROUS.

23 **THE WITNESS:** WOULD YOU LIKE ME TO TAKE HER NOW, YOUR
24 HONOR?

25 **JUDGE HENDERSON:** OKAY. THANK YOU, COUNSEL.

1 **MS. BARLOW:** THANK YOU, COUNSEL.

2 STATE DEFENDANTS HAVE ANYTHING FURTHER?

3 **MR. LEWIS:** NO QUESTIONS, YOUR HONOR.

4 **JUDGE HENDERSON:** RE CROSS.

5 **RECROSS-EXAMINATION BY MS. EVENSON**

6 **BY MS. EVENSON**

7 **Q** LIEUTENANT SMITH, YOU TESTIFIED THAT YOU COULDN'T OPERATE
8 YOUR JAIL IF -- AT THE 21,800 MARK WHICH IS THE -- IF YOU HAD
9 ACTUALLY FILLED ALL 21,000 OF THOSE AVAILABLE BEDS; IS THAT
10 RIGHT?

11 **A** WE START TO HAVE PROBLEMS AT THAT LEVEL, YES, SIGNIFICANT
12 PROBLEMS. THE JAIL IS STILL GOING TO OPERATE. IT'S NOT LIKE WE
13 GET TO JUST STOP.

14 **Q** YOU WOULD HAVE SIGNIFICANT PROBLEMS EVEN IF YOU WERE AT A
15 HUNDRED PERCENT OF YOUR CAPACITY?

16 **A** ABSOLUTELY. A HUNDRED PERCENT OF YOUR CAPACITY IS REALLY A
17 MISNOMER. THE INDIVIDUALS THAT DID THE NORTH POINT
18 CLASSIFICATION SYSTEM SAID, YOU'RE AT A HUNDRED PERCENT CAPACITY
19 WHEN YOU ARE AT 90 PERCENT. YOU NEED A TEN PERCENT VACANCY
20 FACTOR TO JUST FACILITATE MOVEMENT, AND THOSE TYPE OF ISSUES
21 BECAUSE OF THE MARGINS.

22 **JUDGE KARLTON:** THAT WOULD BE TRUE, FOR INSTANCE, OF
23 THE STATE SYSTEM, BUT IT'S AT 200 PERCENT?

24 **THE WITNESS:** ABSOLUTELY TRUE, YOUR HONOR.

1 **BY MS. EVENSON**

2 **Q** YOU ANTICIPATED MY QUESTION, WHICH IS, IF YOU IMAGINE THAT
3 THE L.A. COUNTY JAIL WERE ACTUALLY AT 200 PERCENT OF CAPACITY,
4 IF YOU WERE AT THAT -- IF YOUR JAIL POPULATION WAS THAT HIGH,
5 YOU'D HAVE TO START RELEASING PEOPLE, WOULDN'T YOU?

6 **A** AND IF I HAD SOMEONE TO RELEASE THEM TO AT THE CITY LEVEL,
7 WE WOULD RELEASE THEM TO THE CITY LEVEL.

8 **Q** BUT IF YOU WERE -- YOU'RE RELEASING -- YOU'RE RELEASING
9 PEOPLE EARLY NOW WHEN YOU ARE JUST BELOW A HUNDRED PERCENT OF
10 CAPACITY, RIGHT?

11 **A** YES.

12 **Q** AND IF YOU WERE AT 200 PERCENT OF CAPACITY, YOU WOULD BE
13 EARLY RELEASING PEOPLE, WOULDN'T YOU?

14 **A** I WORKED IN THE JAILS WHEN WE WERE BEFORE THE CAP, SO I KNOW
15 WHAT THE SITUATION LOOKS LIKE WHEN YOU ARE AT THAT LEVEL.

16 **Q** AND YOU WOULD BE RELEASING PEOPLE IF YOU WERE AT THAT LEVEL
17 EVEN THOUGH YOU'D KNOW THAT THERE MIGHT BE CRIME COMMITTED BY
18 THOSE RELEASEES; ISN'T THAT RIGHT?

19 **MS. BARLOW:** BEYOND THE SCOPE OF REDIRECT.

20 **JUDGE HENDERSON:** OVERRULED, COUNSEL.

21 **THE WITNESS:** I'M SORRY, MA'AM?

22 **BY MS. EVENSON**

23 **Q** YOU'RE RELEASING PEOPLE NOW?

24 **A** YES.

25 **Q** EVEN THOUGH YOU KNOW THAT --

1 **A** THERE WOULD BE NEGATIVE IMPACTS, YES.

2 **Q** WE WERE BOTH TALKING AT THE SAME TIME, SO I DIDN'T EVEN HEAR
3 WHAT YOU SAID.

4 **A** I AGREED WITH YOU.

5 **Q** YOU AGREED WITH ME BEFORE MY SENTENCE WAS FINISHED.

6 YOU'RE RELEASING PEOPLE EARLY NOW EVEN THOUGH YOU
7 BELIEVE THAT MORE CRIME IS COMMITTED BY THOSE INDIVIDUALS WHO
8 ARE RELEASED EARLY?

9 **A** YES.

10 **MS. EVENSON:** NOTHING FURTHER.

11 **JUDGE HENDERSON:** OKAY. LET'S TAKE A 15-MINUTE
12 RECESS. COURT'S ADJOURNED.

13 THANK YOU FOR TESTIFYING.

14 (RECESS TAKEN.)

15 **JUDGE HENDERSON:** OKAY. YOU MAY CALL YOUR NEXT
16 WITNESS, COUNSEL.

17 **MS. WOODWARD:** YOUR HONOR, BEFORE THE NEXT WITNESS,
18 MAY I JUST CLARIFY ONE THING?

19 WITH THE WITNESS SHERIFF GREG MUNKS, WHO WAS EARLIER
20 THIS AFTERNOON, I HAD AN ADDITIONAL EXHIBIT, NO. 222, WHICH I
21 UNDERSTAND THERE IS NO -- NO OBJECTION TO ADMITTING, AND I WOULD
22 OFFER THAT NOW.

23 **JUDGE HENDERSON:** 222.

24 **MS. WOODWARD:** THIS IS THE REPORT OF SHERIFF MUNKS.

25 **JUDGE HENDERSON:** THAT WILL BE ADMITTED AT THIS TIME.

(DEFENDANTS' EXHIBIT222 RECEIVED IN
EVIDENCE)

MS. WOODWARD: THANK YOU, YOUR HONOR.

MS. BARLOW: THANK YOU, YOUR HONORS. GOOD AFTERNOON
AGAIN.

THE DEFENDANT INTERVENORS WOULD CALL RICHARD WORD TO
THE STAND, PLEASE.

RICHARD WORD,

CALLED AS A WITNESS FOR THE DEFENDANT HEREIN, HAVING BEEN FIRST
DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

THE CLERK: STATE YOUR FULL NAME FOR THE RECORD.

THE WITNESS: RICHARD LAWRENCE WORD, W-O-R-D.

MS. BARLOW: THANK YOU, MR. WORD -- CHIEF WORD.

DIRECT EXAMINATION

Q. COULD YOU STATE YOUR CURRENT JOB TITLE?

A. YES. POLICE CHIEF WITH THE CITY OF VACAVILLE, CALIFORNIA.

Q. AND YOU ARE AN INTERVENOR IN THIS CASE?

A. I'M SORRY?

Q. AN INTERVENOR IN THIS CASE?

A. YES. I'M SORRY.

Q. COULD YOU JUST FOR THE COURT VERY BRIEFLY SUMMARIZE YOUR
EDUCATIONAL AND WORK EXPERIENCE?

A. YES. I HAVE A BACHELOR OF SCIENCE DEGREE IN BUSINESS
ADMINISTRATION AND A MASTER OF PUBLIC ADMINISTRATION DEGREE FROM
GOLDEN GATE UNIVERSITY.

1 BEEN IN LAW ENFORCEMENT FOR 24 YEARS, 20 OF THOSE
2 YEARS WITH THE OAKLAND POLICE DEPARTMENT. I ROSE THROUGH THE
3 RANKS AND BECAME CHIEF THERE IN 1999 AND SERVED AS CHIEF FOR
4 FIVE YEARS UNTIL NOVEMBER OF 2004.

5 I THEN LEFT AND SINCE NOVEMBER OF 2004, I HAVE BEEN
6 CHIEF OF POLICE FOR THE CITY OF VACAVILLE.

7 **Q.** HOW BIG IS VACAVILLE?

8 **A.** WE HAVE ABOUT 96,000 POPULATION, GIVE OR TAKE. I HAVE 183,
9 I BELIEVE, STAFF, BOTH SWORN AND NON-SWORN, CIVILIAN.

10 **Q.** SO IT'S SMALLER THAN OAKLAND, IS THAT FAIR TO SAY?

11 **JUDGE KARLTON:** I'M SORRY. I MISSED THE FIRST --

12 **MS. BARLOW:** I WAS ASKING HOW BIG VACAVILLE WAS, YOUR
13 HONOR.

14 **BY MS. BARLOW:**

15 **Q.** NOW, HAVE YOU HAD ANY AFFILIATION WITH THE CALIFORNIA POLICE
16 CHIEFS ASSOCIATION?

17 **A.** YES, I HAVE.

18 **Q.** AND COULD YOU DESCRIBE THAT QUICKLY?

19 **A.** I HAVE BEEN ON THEIR BOARD, I BELIEVE, SINCE 2002. IN 2007
20 I WAS THE PRESIDENT OF THE CALIFORNIA POLICE CHIEFS ASSOCIATION.
21 I'M STILL AN EXECUTIVE BOARD MEMBER AS THE IMMEDIATE PAST
22 PRESIDENT.

23 **MS. BARLOW:** ALL RIGHT. NOW, WE HAVE PROVIDED THE
24 COURT WITH A -- WITH EXTRA COPIES OF CHIEF WORD'S DECLARATION.

25 I DO WANT TO ADVISE THE COURT THAT WE FILED AN ERRATA TODAY TO

1 CORRECT A TYPOGRAPHICAL ERROR ON PAGE FIVE, PARAGRAPH 13, WHERE
2 IT SAYS THERE WERE 2005 ARRESTS IN 2007. THAT SHOULD BE 205.
3 IT'S CORRECTLY REFLECTED IN PARAGRAPH 12.

4 **BY MS. BARLOW:**

5 **Q.** ALL RIGHT, CHIEF WORD. IN YOUR CAREER IN GENERAL AND YOUR
6 JOB, YOUR CURRENT JOB IN PARTICULAR, DO YOU STUDY, ASSESS AND
7 TRY TO ADDRESS PUBLIC REACTION TO CRIME AND CRIME RATES?

8 **A.** SURE. YES.

9 **Q.** OKAY. AND WHY DO YOU DO THAT?

10 **A.** WELL, IT'S IMPORTANT IN MY CAPACITY, I HAVE SEEN AS BOTH
11 CHIEF AND CAPTAIN, LIEUTENANT, SERGEANT, OFFICER, THAT YOU NEED
12 THE PUBLIC'S PARTICIPATION AND HELP AND ASSISTANCE TO SOLVE
13 CRIME. YOU NEED THEM TO REPORT CRIME, TO SERVE AS WITNESSES IN
14 SOME INSTANCES. AND WITHOUT THEM WE SIMPLY WOULD NOT BE
15 EFFECTIVE AS POLICE OFFICERS AND POLICE AGENCIES.

16 **Q.** AND IN ADDITION TO DOING THAT AS PART OF YOUR JOB, DO YOU
17 DISCUSS THAT WITH OTHER POLICE CHIEFS AND OTHER LAW ENFORCEMENT
18 OFFICIALS IN YOUR COMMUNITY?

19 **A.** YES.

20 **Q.** ARE YOU FAMILIAR AS THE CHIEF OF POLICE OF VACAVILLE WITH
21 THE COMMUNITY RESOURCES THAT ARE AVAILABLE IN SOLANO COUNTY FOR
22 MENTAL HEALTH CARE?

23 **A.** LARGELY. I AM KNOWLEDGEABLE OF THAT, YES.

24 **Q.** WHAT ABOUT DRUG TREATMENT?

25 **A.** YES.

1 Q. AND ALCOHOL ABUSE?

2 A. SOME, YES.

3 Q. ALL RIGHT. DOMESTIC VIOLENCE COUNSELING?

4 A. YES. WE PROVIDE SOME COUNSELING. THE POLICE DEPARTMENT
5 FUNDS THAT IN VACAVILLE.

6 Q. OKAY. AND SO AS PART OF THAT, YOU ARE FAMILIAR WITH WHAT
7 RESOURCES ARE AVAILABLE IN THE COMMUNITY TO AID PROBATIONERS,
8 PAROLEES, ET CETERA?

9 A. YES.

10 Q. NOW, WHILE YOU WERE THE CHIEF OF POLICE IN OAKLAND AND IN
11 YOUR VARIOUS CAPACITIES WITH THE OAKLAND POLICE DEPARTMENT
12 BEFORE THAT, DID YOU DO THE SAME THING THAT YOU DO IN VACAVILLE?
13 YOU STUDY, YOU TALK ABOUT, YOU ASSESS, YOU INVOLVE THE
14 COMMUNITY?

15 A. YES.

16 Q. AND JUST SO THE COURT IS CLEAR, WHERE IS VACAVILLE? WHAT
17 COUNTY IS IT LOCATED IN?

18 A. IT'S IN THE COUNTY OF SOLANO.

19 Q. NOW, DOES VACAVILLE HAVE ITS OWN JAIL?

20 A. IT DOES NOT.

21 Q. SO WHEN YOU MAKE ARRESTS OF SOMEONE WHO IS GOING TO STAY IN
22 CUSTODY FOR WHATEVER REASON, WHERE DO THEY GO?

23 A. THEY GO TO THE COUNTY JAIL, THE COUNTY OF SOLANO'S JAIL IN
24 FAIRFIELD, CALIFORNIA.

25 Q. AND DO YOU KNOW WHAT THE CAPACITY OF SOLANO COUNTY'S JAIL

1 FACILITIES IS?

2 **A.** I BELIEVE IT'S 1,084.

3 **Q.** NOW, ARE YOU AWARE OF WHETHER PRISONERS HAVE BEEN RELEASED
4 EARLY, WHETHER PRETRIAL OR POST SENTENCE, FROM SOLANO COUNTY
5 JAIL OVER THE PAST YEAR?

6 **A.** YES. THE SHERIFF, SHERIFF GARY STANTON TOLD ME THAT --

7 **MR. SANGSTER:** OBJECTION, YOUR HONOR. HEARSAY.

8 **JUDGE HENDERSON:** IT WOULD BE HEARSAY.

9 **MS. BARLOW:** I'M SORRY?

10 **JUDGE HENDERSON:** IT WOULD BE HEARSAY.

11 **MS. BARLOW:** YES, YOUR HONOR. HE, AS AN EXPERT
12 WITNESS, IS ENTITLED TO RELY ON HEARSAY. IT'S JUST LAYING A
13 FOUNDATION FOR HIS OPINIONS.

14 **THE COURT:** I WILL ALLOW IT AS FOUNDATIONAL.

15 **MS. BARLOW:** THANK YOU, YOUR HONOR.

16 **BY MS. BARLOW:**

17 **Q.** I'M SORRY. COULD YOU FINISH YOUR ANSWER, CHIEF?

18 **A.** SHERIFF GARY STANTON, THE SOLANO COUNTY SHERIFF, HAS TOLD ME
19 THAT THEY ROUTINELY ACCELERATE RELEASES OF INMATES.

20 **Q.** HAVE YOU ALSO SEEN THE CSA DATA THAT SHOW YOU THAT THOSE
21 RELEASES ARE OCCURRING FOR BOTH PRETRIAL AND POST TRIAL OR POST
22 SENTENCE DETAINEES?

23 **A.** YES.

24 **Q.** DO YOU HAVE AN APPROXIMATION OF THE NUMBER OF PEOPLE
25 RELEASED EARLY FROM SOLANO COUNTY JAIL IN 2007?

1 **MR. SANGSTER:** OBJECTION. HEARSAY.

2 **BY MS. BARLOW:**

3 **Q.** IF YOU KNOW.

4 **MR. SANGSTER:** OBJECTION. HEARSAY.

5 **JUDGE KARLTON:** HOW WOULD HE KNOW?

6 HOW WOULD YOU KNOW? DO YOU KNOW THE ANSWER TO THAT
7 QUESTION?

8 **THE WITNESS:** I HAVE SEEN THE DATA. I BELIEVE IT'S
9 OVER --

10 **MR. SANGSTER:** YOUR HONOR, I COULDN'T HEAR YOUR
11 RULING, IF THERE WAS ONE.

12 **JUDGE HENDERSON:** WELL, I ASSUME IT'S CONTINUING
13 FOUNDATIONAL. IF IT ISN'T --

14 **MR. SANGSTER:** I THINK IT'S GOING BEYOND FOUNDATIONAL
15 AS TO WHAT THE DETAILS ARE OF THE HEARSAY THAT'S BEEN PROVIDED
16 TO HIM.

17 **MS. BARLOW:** HE HAS SAID HE HAS SEEN THE DATA
18 HIMSELF, YOUR HONOR. IT'S NOT HEARSAY.

19 **JUDGE HENDERSON:** OVERRULED -- WELL, THAT DOES NOT
20 MAKE IT NOT HEARSAY.

21 **JUDGE KARLTON:** IT'S HEARSAY, BUT IT'S THE KIND OF
22 HEARSAY THAT AN EXPERT CAN RELY ON.

23 **MS. BARLOW:** YES. AND IT'S A PUBLIC RECORD AS WELL.

24 **JUDGE KARLTON:** THAT'S TRUE.

25 **A.** I BELIEVE WHEN I LOOKED AT THE DATA, IT WAS OVER 4,000 THAT

1 HAD THEIR SENTENCES -- THEY WERE RELEASED EARLY.

2 **BY MS. BARLOW:**

3 **Q.** THANK YOU, CHIEF.

4 NOW, HOW MANY PAROLEES ARE CURRENTLY AT SOLANO
5 COUNTY, DO YOU KNOW?

6 **A.** ABOUT 2000.

7 **Q.** AND HAVE YOU SEEN THE CDCR STATISTICS FOR 2007 THAT TELL YOU
8 HOW MANY PAROLEES WERE RELEASED INTO SOLANO COUNTY IN 2007?

9 **A.** I DID SEE THAT DATA.

10 **Q.** AND DO YOU RECALL THE APPROXIMATE NUMBER?

11 **A.** IT'S OVER A THOUSAND. I'M NOT SURE OF THE EXACT NUMBER.
12 I'M SORRY.

13 **Q.** NOW, IF YOU HAVE ABOUT 2,000 PAROLEES IN SOLANO COUNTY, CAN
14 YOU GIVE US AN ESTIMATE OF HOW MANY OF THEM LIVE OR WORK IN
15 VACAVILLE?

16 **A.** WE PROBABLY HAVE ABOUT A THIRD IN VACAVILLE.

17 **Q.** AND SO THAT WOULD BE ABOUT 666?

18 **A.** YES.

19 **Q.** NOW, IN 2007 YOUR DEPARTMENT MADE A NUMBER OF ARRESTS OF
20 PAROLEES FOR VIOLATIONS AND FOR NEW CRIMES, CORRECT?

21 **A.** YES.

22 **Q.** AND WHAT IS THAT NUMBER?

23 **A.** IT WAS 205.

24 **Q.** IN VACAVILLE?

25 **A.** YES.

1 Q. SO OUT OF PERHAPS 666 PAROLEES IN VACAVILLE IN THAT YEAR,
2 YOU MADE ARRESTS OF 205 OF THEM?

3 A. YES.

4 Q. ABOUT 30 PERCENT?

5 A. YES.

6 Q. NOW, YOU DISCUSS IN YOUR DECLARATION, SO I WON'T ASK YOU TO
7 REPEAT IT, THE FACT THAT YOUR DEPARTMENT DOES COMPLIANCE CHECKS
8 ON A QUARTERLY BASIS FOR PAROLEES AND PROBATIONERS AND YOU ARE
9 ALSO LOOKING AT GANG MEMBERS.

10 CAN YOU TELL ME WHY YOU DO THAT?

11 A. WELL, IN MY EXPERIENCE AND THE EXPERIENCE OF MY OFFICERS, WE
12 HAVE SEEN WHERE THEY ARE OFTEN RESPONSIBLE FOR A LOT OF CRIME
13 THAT'S OCCURRING IN THE CITY, BOTH PROPERTY CRIME AND CRIMES
14 AGAINST PEOPLE. AND THIS IS A -- AN EFFICIENT, TARGETED,
15 FOCUSED WAY OF KEEPING A LID ON CRIME.

16 Q. NOW, WHEN YOU TALK ABOUT TOTAL NUMBER OF ARRESTS, THE TOTAL
17 NUMBER OF ARRESTS WOULD INCLUDE EVERYTHING FROM A MINOR
18 FIRST-TIME PETTY THEFT TO A MURDER, CORRECT?

19 A. SURE.

20 Q. DO YOU HAVE OCCASION TO -- STRIKE THAT.

21 IS THE REASON THAT YOU TARGET PAROLEES, PROBATIONERS
22 AND GANG MEMBERS BECAUSE THEY COMMIT A HIGH VOLUME OF THE MORE
23 SERIOUS CRIMES?

24 A. YES.

25 Q. NOW, LET'S TALK ABOUT THE IMPACTS FROM A PRISONER RELEASE

1 ORDER.

2 THE PLAINTIFFS HAVE PROPOSED AN ORDER THAT WOULD
3 REDUCE THE PRISON POPULATION OVER THE NEXT TWO YEARS BY 52,000
4 PRISONERS AND PRESUMABLY KEEP IT CAPPED AT ABOUT TWO-THIRDS OF
5 ITS CURRENT POPULATION WITH NO ADDITIONAL RESOURCES OR
6 PROGRAMMING.

7 AND THE PLAINTIFFS -- OR SHOULD I SAY ONE OF THE
8 EXPERTS, AT LEAST, HAS OPINED THAT THAT WOULD HAVE NO
9 SIGNIFICANT IMPACT ON PUBLIC SAFETY.

10 DO YOU AGREE WITH THAT, CHIEF WORD?

11 **A.** ABSOLUTELY NOT.

12 **Q.** WHY NOT?

13 **A.** I CAN'T SEE HOW THAT'S GOOD PUBLIC POLICY OR GOOD FOR PUBLIC
14 SAFETY TO RELEASE THOUSANDS OF INMATES, ESPECIALLY NOW WHEN
15 POLICE DEPARTMENTS ACROSS THE STATE ARE LOSING OFFICERS.

16 I HAVE LOST SOME. I JUST SPOKE TO A SACRAMENTO
17 CAPTAIN WHO IS LOSING HUNDREDS.

18 THIS IS A HORRIBLE TIME TO DO THAT, TO INCREASE OUR
19 PAROLEE NUMBERS IN OUR COMMUNITIES WITH FEWER POLICE OFFICERS.
20 THERE IS AN EXISTING LACK OF SERVICES, AND WITH NO PROGRAMMING I
21 THINK THAT'S A RECIPE FOR DISASTER.

22 **Q.** IN YOUR DECLARATION YOU OFFERED AN OPINION THAT A 25 PERCENT
23 REDUCTION IN THE PRISON POPULATION STATE-WIDE WOULD RESULT IN
24 100 ADDITIONAL PAROLEES IN VACAVILLE.

25 WITH THE INCREASE TO 30 PERCENT, THAT WOULD BE ABOUT

1 168 PAROLEES ADDITIONAL IN VACAVILLE?

2 **A.** ROUGHLY, YES.

3 **Q.** NOW, IN YOUR OPINION AND BASED UPON YOUR KNOWLEDGE OF THE
4 COMMUNITY -- JAIL RESOURCES AND COMMUNITY RESOURCES, CAN
5 VACAVILLE ABSORB THAT LEVEL OF RELEASEES, WHETHER THEY ARE
6 DIVERTED OR RELEASED OR TAKEN OFF PAROLE?

7 **A.** I MEAN, I SUSPECT MANY WOULD BE HOMELESS. WE DON'T HAVE THE
8 SERVICES. I IMAGINE MANY ARE NOT EMPLOYABLE OR NOT JOB READY.

9 IN MY EXPERIENCE, MANY USE DRUGS IN PRISON.
10 SMUGGLING IS SOMETHING THAT OCCURS IN THE PRISONS AND SO YOU
11 WOULD HAVE SUBSTANCE ABUSE THAT WOULD CONTINUE UPON THEIR
12 RELEASE. ALCOHOLISM. I MEAN, THE WHOLE LIST OF ISSUES WOULD
13 CONTINUE.

14 AND I THINK THAT RECIDIVISM NOW, IF IT'S 70 PERCENT
15 OVER THREE YEARS, THAT WOULD CERTAINLY CONTINUE. I THINK YOU
16 WOULD STILL HAVE THIS LIFE SENTENCE THAT THEY WOULD SERVE,
17 QUOTE, ON THE INSTALLMENT PLAN. IT WOULD SIMPLY CONTINUE.

18 **Q.** NOW, YOU SAID THAT MANY OF THEM WOULDN'T BE JOB READY. IS
19 THERE A LOT OF JOBS AVAILABLE FOR PAROLEES AND EX-FELONS IN
20 VACAVILLE, TO YOUR KNOWLEDGE?

21 **A.** NO. I WISH THERE WERE MORE, BUT THERE AREN'T ENOUGH, NO.

22 **Q.** YOU WOULD LIKE TO SEE THEM GET EMPLOYED AND GET BACK INTO
23 THEIR COMMUNITIES, CORRECT?

24 **A.** SURE.

25 **Q.** BUT THAT'S NOT HAPPENING?

1 **A.** NO, IT'S NOT.

2 **Q.** AND WHAT IS THE -- YOU SAID SOME OF THEM ARE COMING OUT OF
3 PRISON USING DRUGS OR USING ALCOHOL. HOW DOES THAT IMPACT
4 THEIR -- THEIR RISK WHEN THEY COME OUT?

5 **A.** IT TENDS TO INCREASE THEIR RISK AND LIKELIHOOD OF
6 REOFFENDING.

7 **Q.** NOW, WHEN SOMEONE HAS GONE TO STATE PRISON, IN YOUR
8 EXPERIENCE FOR BOTH OAKLAND AND VACAVILLE, ABOUT HOW MANY TIMES
9 HAVE THEY BEEN CONVICTED OF A SERIOUS CRIME BEFORE THEY END UP
10 IN STATE PRISON?

11 **MR. SANGSTER:** LACKS FOUNDATION. PERSONAL KNOWLEDGE.

12 **MS. BARLOW:** BASED ON HIS EXPERIENCE. IF HE CAN'T
13 ANSWER IT, HE WILL TELL YOU THAT.

14 **JUDGE HENDERSON:** I WILL ALLOW IT.

15 **A.** IN MY EXPERIENCE PEOPLE THAT WIND UP IN STATE PRISON WORK
16 HARD TO GET THERE. THEY COMMIT MANY OFFENSES. THEY SPEND MANY
17 TIMES IN -- OR TIME, I SHOULD SAY, IN THE COUNTY JAIL BEFORE
18 THEY WIND UP IN STATE PRISON.

19 **BY MS. BARLOW:**

20 **Q.** NOW, THERE HAS BEEN SOME TESTIMONY THAT MANY OF THOSE FOLKS
21 IN STATE PRISON ARE LOW RISK, NON-VIOLENT MERE DRUG OFFENDERS.

22 DOES THAT CHANGE YOUR OPINIONS ABOUT THERE BEING
23 NEGATIVE IMPACTS TO PUBLIC SAFETY IF YOU RELEASE THEM?

24 **A.** NO.

25 **Q.** WHY?

1 **A.** MANY -- IN OUR STATE PRISONS THERE IS A DRUG CONNECTION TO
2 MANY. I HAVE SEEN THAT IN VACAVILLE AND IN OAKLAND.

3 AND TO SAY THAT THEY ARE LOWER RISK, THAT MIGHT
4 REFLECT THEIR COMMITMENT OFFENSE, BUT NOT THE OFFENSES THAT THEY
5 HAVE COMMITTED AND MAYBE THEY WEREN'T ARRESTED FOR THOSE.

6 I HAVE SEEN, QUOTE, LOW RISK OFFENDERS IN OAKLAND
7 THAT UPON THEIR RELEASE, THEY IMMEDIATELY ENGAGE IN THE DRUG
8 MARKET. AND IN ONE STUDY WE DID IN OAKLAND WE FOUND THAT
9 50 PERCENT OF OUR HOMICIDE VICTIMS OR SUSPECTS WERE ON PAROLE OR
10 PROBATION.

11 SO THEY MAY NOT BE VIOLENT OFFENDERS, BUT I CAN TELL
12 YOU, MANY ARE VICTIMIZED. MANY ARE VICTIMS OF VIOLENT CRIME
13 BECAUSE THEY ARE ENGAGING IN THE DRUG TRADE.

14 **Q.** SO DOES THE FACT THAT THERE ARE ILLICIT DRUGS INVOLVED RAISE
15 THE RISK OF VIOLENCE IN YOUR MIND?

16 **A.** SURE.

17 **Q.** OVER AND ABOVE JUST WHATEVER THEIR OFFENSE COMMITMENT WAS?

18 **A.** YES.

19 **Q.** OKAY. SO WOULD YOU CONSIDER -- OR DO YOU CONSIDER DRUG USE
20 A VICTIMLESS CRIME, CHIEF WORD?

21 **A.** NO.

22 **Q.** WHY NOT?

23 **A.** BECAUSE THERE ARE MANY, MANY PEOPLE IMPACTED BY DRUG USE,
24 NOT JUST THE USER, BUT FAMILIES, SPOUSES, NEIGHBORS; THAT MANY
25 OF THESE DRUG USERS STEAL TO SUPPORT THEIR CRIMES.

1 IT HAS THIS HORRIBLE EFFECT THAT EXTENDS BEYOND THE
2 DRUG USER INTO NEIGHBORHOODS WHERE PEOPLE ARE FEARFUL. THEY
3 HAVE SEEN THE DRUG USERS.

4 I HAVE SEEN THAT IN OAKLAND WHERE, UNFORTUNATELY,
5 THEY LEARN TO LIVE AROUND DRUG USERS. THERE IS THIS CODE THAT
6 EXISTS OFTEN WHERE THEY DON'T REPORT, BUT DRUG USERS ARE ALLOWED
7 TO OPERATE IN CERTAIN NEIGHBORHOODS.

8 IT'S NOT GOOD FOR A COMMUNITY, SUCH AS OAKLAND, WHEN
9 YOU NEED WITNESSES TO COME FORWARD AND TO REPORT CRIME. IT
10 TENDS TO GET WORSE AND THEY LOSE CONFIDENCE IN THE POLICE AND
11 THE POLICE OFFICERS OFTEN LOSE CONFIDENCE IN THEIR ABILITY TO
12 IMPACT CRIME.

13 **Q.** SO DOES AN INCREASE IN CRIME IN GENERAL, BUT VIOLENT CRIME
14 IN PARTICULAR, HAVE AN IMPACT, YOU SAID, ABOUT A FEAR OR LACK OF
15 CONFIDENCE IN THE COMMUNITY?

16 **A.** YEAH. I HAVE SEEN THAT IMPACT, WHERE THERE IS VIOLENT
17 CRIME. THERE IS CHRONIC CRIME, AND THE POLICE ARE STRUGGLING TO
18 ABATE THAT CRIME.

19 THE COMMUNITY WILL LOSE CONFIDENCE IN POLICE OFFICERS
20 AND THE POLICE DEPARTMENT'S ABILITY TO STEM THAT TIDE, IF YOU
21 WILL. AND OFFICERS DO, TOO, ALSO LOSE CONFIDENCE IN THEIR
22 ABILITY TO HAVE AN IMPACT.

23 **Q.** AND IS THE -- DOES THAT FEAR TRANSLATE INTO AN INCREASE IN
24 REPORTED CRIMES, A DECREASE IN REPORTED CRIMES? DOES IT CHANGE
25 PEOPLE'S BEHAVIOR ABOUT WHETHER OR NOT THEY REPORT CRIMES?

1 **A.** SURE. THERE IS A DECREASE WHEN THERE IS FEAR. WHEN THERE
2 IS A DECREASE IN REPORTING THEN, OF COURSE, CRIME IS LIKELY TO
3 CONTINUE.

4 **Q.** SO YOU MAY HAVE AN INCREASE IN CRIME, BUT THE REPORTED CRIME
5 GOES DOWN BECAUSE PEOPLE ARE AFRAID?

6 **A.** OF COURSE.

7 **Q.** NOW, I WOULD JUST LIKE TO TALK TO YOU BRIEFLY ABOUT WHETHER
8 THE INCREASE IN CRIME, AND PARTICULARLY VIOLENT CRIME, HAS AN
9 IMPACT BEYOND THE ECONOMICS AND THE FEAR THAT YOU TALKED ABOUT.

10 DOES IT HAVE AN IMPACT ON THE BUSINESSES AND OTHERS
11 IN THE COMMUNITY?

12 **A.** SURE.

13 **MR. SANGSTER:** OBJECTION. LACKS FOUNDATION, PERSONAL
14 KNOWLEDGE. LACKS FOUNDATION, EXPERTISE. IRRELEVANT.

15 **JUDGE HENDERSON:** OVERRULED.

16 **MS. BARLOW:** THANK YOU.

17 **A.** IT CERTAINLY HAS AN IMPACT ON THE BUSINESS COMMUNITY. I
18 HAVE TALKED TO BUSINESS OWNERS. I HAD ONE TELL ME -- HE OWNED A
19 DONUT SHOP AND THEY WOULD OVERRUN HIS DONUT SHOP IN EAST
20 OAKLAND. SO HE ASKED IF WE WOULD TAKE IT OVER AS A POLICE
21 RESOURCE CENTER, AND WE DID.

22 **BY MS. BARLOW:**

23 **Q.** NOW, JUST BRIEFLY, I UNDERSTAND THAT THE CITY OF VALLEJO IS
24 ALSO IN SOLANO COUNTY?

25 **A.** YES.

1 Q. AND VALLEJO HAS HAD SOME RECENT FINANCIAL TROUBLES, HAS IT
2 NOT?

3 A. EXTREME, YES.

4 Q. AND HOW HAS THAT IMPACTED THE POLICE FORCE IN VALLEJO, TO
5 YOUR KNOWLEDGE?

6 MR. SANGSTER: LACKS FOUNDATION. CALLS FOR HEARSAY.

7 JUDGE KARLTON: AT THIS POINT EVERYTHING THAT YOU
8 WOULD BE SAYING WOULD BE ANECDOTAL, WHAT PEOPLE HAD TOLD YOU AND
9 SO FORTH.

10 MS. BARLOW: WITH RESPECT, YOUR HONOR, AGAIN, IT'S A
11 PUBLIC RECORD, THAT THEY HAVE LAID OFF 30 PERCENT OF THEIR
12 POLICE FORCE.

13 JUDGE KARLTON: THAT'S TRUE, AND YOU CAN ASK US TO
14 TAKE JUDICIAL NOTICE OF THAT. YOU ARE ASKING THIS WITNESS TO DO
15 SOMETHING ELSE.

16 MS. BARLOW: THIS IS JUST FOUNDATIONAL, YOUR HONOR.
17 I WILL ASK HIM TO ASSUME IT, HOW IS THAT, AND WE WILL INTRODUCE
18 THAT EVIDENCE SEPARATELY.

19 BY MS. BARLOW:

20 Q. CHIEF WORD, IF THE FACTS SHOW AND WE INTRODUCE DOCUMENTS TO
21 SHOW THAT VALLEJO HAD LAID OFF 30 PERCENT OF ITS POLICE FORCE
22 DUE ITS BUDGET CRISIS, HOW DOES THAT AFFECT THE ENTIRE CRIME
23 PICTURE IN YOUR COUNTY, IN THE WHOLE COUNTY?

24 A. I THINK THAT 30 PERCENT NUMBER, BY THE WAY, IS HIGHER NOW.
25 I THINK THEY HAVE FEWER POLICE OFFICERS THAN WE DO AND THEY HAVE

1 THREE TIMES THE CRIME.

2 SO IT'S NOT GOOD FOR THE COUNTY IF RESOURCES -- FOR
3 EXAMPLE, THE COUNTY SHERIFF EXPENDS MORE OF HIS TIME NOW IN
4 VALLEJO THAN HE WOULD OTHERWISE IN OTHER CITIES IN THE COUNTY
5 ASSISTING OTHER AGENCIES. SO I THINK IT HAS A NEGATIVE IMPACT
6 ACROSS THE COUNTY BECAUSE THE SHERIFF'S RESOURCES ARE NOW MORE
7 SO FOCUSED IN VALLEJO.

8 Q. NOW, IF YOU HAVE ADDITIONAL CRIMES COMMITTED BECAUSE YOU
9 HAVE ADDITIONAL OFFENDERS IN THE COMMUNITY THAT AREN'T GETTING
10 APPROPRIATE TREATMENT AND SO ON, ARE THOSE ALL GOING TO RESULT
11 IN ARRESTS?

12 A. NO.

13 Q. WHY NOT?

14 A. MUCH -- THERE IS MANY CRIMES COMMITTED WHERE AN OFFENDER IS
15 NOT CAPTURED. MAYBE A REPORT IS NOT MADE. MAYBE A CRIME IS
16 COMMITTED, A REPORT IS MADE, BUT THE OFFENDER SIMPLY GETS AWAY.

17 Q. AND IF YOU INCREASE THE NUMBER OF CRIMINALS IN THE COMMUNITY
18 AND INCREASE THE NUMBER OF CRIMES, BUT YOU DON'T INCREASE THE
19 NUMBER OF OFFICERS, DOES THAT INCREASE THE RISK THAT YOU WON'T
20 CATCH THOSE CRIMINALS?

21 A. I THINK SO, YES.

22 Q. WOULD YOU MEASURE THE IMPACT TO SOCIETY OF A PRISONER
23 RELEASE ORDER BY THE NUMBER OF ARRESTS THAT RESULT OR BY THE
24 NUMBER OF CRIMES THAT ARE COMMITTED?

25 A. A BETTER MEASURE IS -- ONE MEASURE IS CRIME, BETTER THAN

1 ARREST.

2 POLICE DEPARTMENTS IN CALIFORNIA, THEIR NUMBERS ARE
3 DROPPING NOW. SO YOU PROBABLY HAVE FEWER ARRESTS TODAY AND WITH
4 MORE -- WITH THIS RELEASE, POTENTIAL RELEASE, I THINK YOU WILL
5 HAVE MORE CRIME AND EVEN FEWER ARRESTS.

6 Q. THANK YOU VERY MUCH, CHIEF. I HAVE NO FURTHER QUESTIONS --
7 OH, I TAKE THAT BACK. I APOLOGIZE. I MISSED ONE PAGE.

8 MS. BARLOW: HOW AM I DOING ON TIME?

9 THE CLERK: TEN MORE MINUTES.

10 MS. BARLOW: OKAY. TEN MORE MINUTES.

11 BY MS. BARLOW:

12 Q. JUST QUICKLY, I WANT TO SUMMARIZE FOR YOU THE PROPOSAL AND
13 ASK IF YOU YOU AGREE WITH THIS.

14 "CALIFORNIA CAN REDUCE PRISON ADMISSIONS AND
15 REDUCE LENGTH OF STAY IN A SAFE AND PRACTICAL
16 MANNER IN FOUR WAYS.

17 "ONE, PROVIDE EVIDENCE-BASED PROGRAMMING AND
18 SUPERVISION TO TECHNICAL PAROLE VIOLATORS
19 INSTEAD OF RETURNING THEM TO PRISON.

20 "TWO, DIVERT LOW LEVEL OFFENDERS TO
21 PROBATION AND PAROLE INSTEAD OF PRISON.

22 "THREE, PROVIDE MORE AVENUES FOR PRISONERS
23 TO EARN GOOD TIME CREDITS FOR RELEASE TOWARDS
24 GOOD BEHAVIOR.

25 "FOUR, PROVIDE MORE AVENUES FOR EARLY

1 DISCHARGE FROM PAROLE."

2 THAT'S THE MECHANISM BY WHICH THE PLAINTIFFS PROPOSE
3 TO REDUCE THE PRISON POPULATION BY 52,000 PEOPLE.

4 DO YOU AGREE THAT THAT CAN BE DONE SUCCESSFULLY
5 WITHOUT PROGRAMMING?

6 **MR. SANGSTER:** OBJECTION. LACKS FOUNDATION,
7 EXPERTISE. WITNESS HAS NOT BEEN QUALIFIED TO TESTIFY ON PRISON
8 MANAGEMENT ISSUES.

9 **MS. BARLOW:** IF I MAY, YOUR HONOR, IN HIS DECLARATION
10 HE MANAGED THE OAKLAND JAIL FOR A SIGNIFICANT PERIOD OF TIME. I
11 WOULD BE HAPPY TO GO BACK OVER THAT, IF YOU WOULD LIKE.

12 **JUDGE HENDERSON:** THIS QUESTION DOESN'T --

13 **MR. SANGSTER:** THIS HAS TO DO WITH THE STATE PRISON
14 SYSTEM.

15 **JUDGE HENDERSON:** THIS IS A STATE PRISON SYSTEM.

16 **MS. BARLOW:** NO, SIR. IT HAS TO DO WITH THE
17 PROGRAMMING IN THE COMMUNITIES.

18 **JUDGE KARLTON:** WELL, IT HAS TO DO WITH RELEASING
19 PEOPLE FROM PRISON, MA'AM.

20 **MS. BARLOW:** YES, YOUR HONOR. AND THE QUESTION I
21 ASKED HIM --

22 **JUDGE KARLTON:** THERE HAS BEEN A RULING. WE ARE NOT
23 ARGUING. THERE HAS BEEN A RULING.

24 **MS. BARLOW:** I HAVE NOTHING FURTHER.

25 **THE COURT:** DO THE STATE DEFENDANTS HAVE ANYTHING OF

1 THIS WITNESS?

2 **MR. LEWIS:** NOTHING, YOUR HONOR.

3 **THE COURT:** OKAY. CROSS-EXAMINATION.

4 **MR. SANGSTER:** THANK YOU, YOUR HONOR. ED SANGSTER
5 FOR THE PLAINTIFFS.

6 **CROSS EXAMINATION**

7 **BY MR. SANGSTER:**

8 **Q.** CHIEF WORD, I WANT TO GO BACK TO SOME OF YOUR TESTIMONY AND
9 TRY AND PUT IN PERSPECTIVE THE IMPACT THAT PAROLEES ARE HAVING
10 ON YOUR POLICE FORCE RIGHT NOW.

11 IS IT CORRECT THAT IN 2007 YOUR DEPARTMENT MADE 3700
12 ARRESTS?

13 **A.** THAT'S ABOUT RIGHT, YES, SIR.

14 **Q.** IS IT CORRECT THAT ONLY 205 OF THOSE ARRESTS WERE ARRESTS OF
15 PAROLEES?

16 **A.** THAT'S CORRECT.

17 **Q.** SO ABOUT FIVE TO SIX PERCENT OF ALL THE ARRESTS MADE BY YOUR
18 DEPARTMENT WERE ARRESTS OF PAROLEES?

19 **A.** I BELIEVE THAT'S CORRECT, YES, SIR.

20 **Q.** WERE SOME OF THOSE ARRESTS OF PAROLEES ARRESTS FOR TECHNICAL
21 VIOLATIONS?

22 **A.** YES.

23 **Q.** WHAT PERCENTAGE OF THEM WERE FOR TECHNICAL VIOLATIONS, CHIEF
24 WORD?

25 **A.** I DON'T HAVE THAT NUMBER.

1 Q. WELL, WOULD YOU AGREE SOMEWHERE AROUND 50 PERCENT?

2 A. IT'S APPROXIMATELY CORRECT, I BELIEVE, YES.

3 Q. ALL RIGHT. ARE YOU ABLE TO SAY HOW MANY OF THE 205 ARRESTS
4 WERE ARRESTS FOR NEW CRIMES?

5 A. NO.

6 Q. OKAY. YOU TALKED ABOUT DOING COMPLIANCE CHECKS IN
7 VACAVILLE?

8 A. YES.

9 Q. I WANT TO TURN YOUR ATTENTION TO THE COMPLIANCE CHECKS.
10 YOUR COMPLIANCE CHECKS INCLUDE, BUT ARE NOT
11 EXCLUSIVELY FOCUSED ON PAROLEES, IS THAT CORRECT?

12 A. YES.

13 Q. ABOUT 25 PERCENT OF THE WORK ASSOCIATED IN THESE COMPLIANCE
14 CHECKS IS DIRECTED TOWARDS PAROLEES?

15 A. WELL, WE TARGET PAROLEES, PROBATIONERS AND VALIDATED GANG
16 MEMBERS, SO MAYBE A THIRD.

17 Q. SO MAYBE A THIRD -- A THIRD OF THE PEOPLE TARGETED IN THE
18 COMPLIANCE CHECKS ARE PAROLEES?

19 A. YES.

20 Q. THESE COMPLIANCE CHECKS TAKE ABOUT ONE TO TWO DAYS OF TIME,
21 IS THAT CORRECT?

22 A. WHEN WE DO AN ORGANIZED, AS WE SAY, SWEEP OR COMPLIANCE
23 CHECK WITH AGENCIES FROM THROUGHOUT THE COUNTY AND FEDERAL
24 AGENCIES, WE USUALLY SPEND A DAY OR TWO, BUT THERE'S A COUPLE OF
25 WEEKS OF PLANNING AND PREPARATION BEFORE THAT.

1 Q. LET'S JUST BREAK IT DOWN A LITTLE BIT.

2 A. OKAY.

3 Q. THE ACTUAL TIME SPENT OUT DOING THE COMPLIANCE CHECKS IS
4 ABOUT ONE TO TWO DAYS, IS THAT ACCURATE?

5 A. WELL, LET ME BE CLEAR. WHEN WE DO AN ORGANIZED SWEEP, THERE
6 ARE DAY-TO-DAY CHECKS, STOPS, DETENTIONS, ARRESTS OF PAROLEES
7 MADE BY OFFICERS EVERY DAY IN VACAVILLE.

8 Q. YEAH, BUT I'M TALKING ABOUT THE COMPLIANCE CHECKS YOU
9 REFERRED TO.

10 A. THESE SWEEPS, YEAH. IT TAKES ONE OR TWO DAYS TO ACTUALLY GO
11 OUT AND DO THE CHECKS, BUT THERE'S PRIOR WORK DONE BEFORE YOU
12 CAN GO OUT AND DO THAT.

13 Q. AND WE ARE GOING DO GET TO THAT, CHIEF WORD. I JUST WANT TO
14 TAKE THINGS ONE STEP AT A TIME.

15 SO IN WORKING UP TO THIS, THE PREPARATION, HOW MANY
16 PEOPLE ARE INVOLVED IN PREPARATION FOR THE COMPLIANCE CHECKS?

17 A. ONE OR TWO OFFICERS.

18 Q. ALL RIGHT. HOW MUCH TIME DO THEY SPEND GETTING READY FOR
19 THESE QUARTERLY COMPLIANCE CHECKS?

20 A. THEY SPEND HOURS OVER A TWO-WEEK PERIOD GATHERING DATA.

21 Q. SO YOU HAVE GOT ONE TO TWO OFFICERS SPENDING HOURS GETTING
22 READY FOR THESE COMPLIANCE CHECKS?

23 A. YES.

24 Q. WHAT PERCENTAGE OF THE 205 ARRESTS THAT YOUR DEPARTMENT MADE
25 IN 2007 WERE MADE DURING THE COMPLIANCE CHECKS?

1 **A.** THAT -- I DIDN'T BREAK THAT DATA OUT, BUT I CAN GET THAT
2 RATHER EASILY.

3 **Q.** LET'S GO WITH YOUR BEST -- DO YOU HAVE SOME SENSE OF WHAT
4 PERCENTAGE IT WAS?

5 **A.** I BELIEVE WE MADE LAST YEAR 200 ARRESTS DURING OUR SWEEPS,
6 COMPLIANCE CHECKS. BUT THAT WOULD INCLUDE PAROLEES AND
7 PROBATIONERS, GANG MEMBERS AND OTHERS DURING THE COURSE OF THESE
8 COMPLIANCE CHECKS.

9 **Q.** MY QUESTION IS: DO YOU HAVE SOME SENSE OF WHAT PERCENT OF
10 YOUR 205 ANNUAL ARRESTS WERE MADE DURING THESE QUARTERLY
11 COMPLIANCE CHECKS?

12 **A.** NO, I'D HAVE TO RESEARCH THAT.

13 **Q.** DO YOU THINK IT'S AS HIGH AS A THIRD OF ALL THE ARRESTS YOU
14 MADE OF PAROLEES WERE MADE OCCURRING THE COMPLIANCE CHECKS?

15 **MS. BARLOW:** CALLS FOR SPECULATION.

16 **JUDGE HENDERSON:** DO YOU HAVE TO SPECULATE TO ANSWER
17 THAT QUESTION? WE DON'T WANT YOU TO SPECULATE.

18 **THE WITNESS:** YEAH, I DON'T HAVE AN EXACT ANSWER.
19 I'M SORRY.

20 **JUDGE KARLTON:** WELL, YOU WOULDN'T DO THE COMPLIANCE
21 CHECKS IF YOU DIDN'T THINK THEY WERE PRODUCTIVE.

22 **THE WITNESS:** THAT'S RIGHT, SIR.

23 **JUDGE KARLTON:** SO IT'S NOT UNREASONABLE FOR THE
24 COURT TO BELIEVE THAT A SIGNIFICANT -- STRIKE THAT.

25 IS IT UNREASONABLE FOR THE COURT TO INFER THAT AT

1 LEAST SOME SIGNIFICANT PORTION OF THE PAROLE OR ARREST WERE THE
2 RESULT OF THESE COMPLIANCE CHECKS?

3 **THE WITNESS:** THAT'S REASONABLE TO INFER.

4 **BY MR. SANGSTER:**

5 **Q.** SO A SIGNIFICANT PERCENTAGE OF THE 205 PAROLE ARRESTS MADE
6 BY YOUR DEPARTMENT WERE MADE OVER THE COURSE OF FOUR TO EIGHT
7 DAYS?

8 **A.** NO. I WOULDN'T -- I WOULDN'T SAY THAT, NO, SIR.

9 **Q.** YOUR DEPARTMENT IS NOT THE ONLY DEPARTMENT OR THE ONLY FORCE
10 THAT'S INVOLVED IN THESE COMPLIANCE CHECKS, CORRECT? YOU HAVE
11 PAROLE OFFICERS INVOLVED?

12 **A.** A FEW, TYPICALLY, YES.

13 **Q.** DID THE PAROLE OFFICERS MAKE ANY OF THE ARRESTS THAT YOU
14 HAVE COUNTED IN THE 205 ARRESTS?

15 **A.** THEY PARTICIPATE IN THE ARRESTS.

16 **Q.** WHAT PERCENTAGE OF THE ARRESTS WERE MADE BY PAROLE OFFICERS
17 PARTICIPATING IN THESE 205 ARRESTS?

18 **A.** NOT MANY. IT'S JUST A FEW OFFICERS, FEW PROBATION OFFICERS,
19 AND WE MAY HAVE AS MANY AS 70, 80 TOTAL OFFICERS PARTICIPATING.

20 **Q.** OKAY. NOW, I WOULD LIKE TO TURN YOUR ATTENTION TO THE
21 OPINIONS YOU GAVE ABOUT A HYPOTHETICAL RELEASE ORDER. YOU SAID
22 YOU CONCLUDED THAT THERE WERE ABOUT -- THERE WOULD BE ABOUT 100
23 ADDITIONAL PAROLEES IN VACAVILLE.

24 OKAY. DO YOU KNOW WHAT I'M TALKING ABOUT NOW?

25 **A.** I THOUGHT IT WAS HIGHER. MAYBE 168, I THOUGHT, WAS THE

1 FIGURE IF THE RELEASE WERE 52,000.

2 Q. YOU THOUGHT IT WOULD BE 168 ADDITIONAL PAROLEES?

3 A. YES.

4 MR. SANGSTER: YOUR HONOR, MAY I APPROACH?

5 JUDGE HENDERSON: YOU MAY.

6 BY MR. SANGSTER:

7 Q. CHIEF WORD, I WANT TO INVITE YOUR ATTENTION TO YOUR
8 DECLARATION AT PARAGRAPH 21.

9 (WHEREUPON, DOCUMENT WAS TENDERED
10 TO THE WITNESS.)

11 Q. DO YOU HAVE THAT IN FRONT OF YOU, SIR?

12 A. I DO, YES, SIR.

13 Q. SO IS THE CORRECT NUMBER 100?

14 A. IT ASSUMED THAT 25 PERCENT WOULD BE RELEASED EARLY, AND I
15 THOUGHT MISS BARLOW'S QUESTION ASSUMED A HIGHER RELEASE ORDER, A
16 HIGHER PERCENTAGE.

17 Q. WELL, THE DECLARATION THAT YOU HAVE GAVE TO THE COURT ABOUT
18 THE IMPACT ON YOUR DEPARTMENT, IN THAT DECLARATION YOU ESTIMATED
19 THAT IT WOULD BE 100 -- PERHAPS 100 ADDITIONAL PAROLEES IN
20 VACAVILLE, CORRECT?

21 MS. BARLOW: MISSTATES THE TESTIMONY, YOUR HONOR.
22 THAT'S IF 25 PERCENT.

23 JUDGE HENDERSON: IT CORRECTLY STATES PARAGRAPH 21.

24 MS. BARLOW: IT'S QUALIFIED, THOUGH, IS THE POINT.

25 JUDGE HENDERSON: I UNDERSTAND THAT.

1 **A.** THAT'S WHAT I TESTIFIED TO, ASSUMING 25 PERCENT WERE
2 RELEASED EARLY.

3 **BY MR. SANGSTER:**

4 **Q.** OKAY. SO IF I SPREAD THOSE 100 ADDITIONAL ARRESTS OVER TWO
5 YEARS, WE ARE TALKING ABOUT 50 PAROLE ARRESTS A YEAR? EITHER 50
6 OR 80, DEPENDING ON WHICH NUMBER YOU ARE PICKING?

7 **A.** WELL, YOU'RE SPEAKING OF ARRESTS, AND I -- THIS SPEAKS TO
8 PEOPLE RELEASED AND NOT ARRESTS NECESSARILY.

9 **Q.** OKAY. I MISSPOKE. SO YOU ARE TALKING ABOUT AN ADDITIONAL
10 50 PAROLEES A YEAR TO 80 PAROLEES A YEAR, CORRECT?

11 **A.** YES. ASSUMING THIS IS CORRECT, 25 PERCENT ARE RELEASED
12 EARLY.

13 **Q.** THANK YOU. AND YOU GOT 52 OFFICERS ASSIGNED TO PATROL,
14 CORRECT?

15 **A.** I DID. NOT ANY LONGER.

16 **Q.** HOW MANY DO YOU HAVE NOW?

17 **A.** FORTY-EIGHT.

18 **Q.** SO --

19 **A.** AND MY STAFFING IS FROZEN.

20 **Q.** SO IF YOU ASSUME A 25 PERCENT REDUCTION IN THE PRISON
21 POPULATION AND YOU ASSUME THAT THAT REDUCTION IS SPREAD OUT OVER
22 TWO YEARS, THOSE 48 OFFICERS WOULD HAVE TO DEAL WITH THE ISSUES
23 CREATED BY ABOUT FOUR ADDITIONAL PAROLEES A MONTH, IS THAT
24 RIGHT?

25 **A.** YOU ASSUME -- NO, IT'S NOT CORRECT.

1 Q. IN WHAT RESPECT IS IT INCORRECT, SIR?

2 A. THEY DO A LOT MORE AND I'M HAVING -- I HAVE FEWER PEOPLE
3 DOING MORE WORK, SIR.

4 Q. I'M NOT TALKING ABOUT ADJUSTING YOUR WORK FORCE DOWN. I'M
5 TRYING TO GET SOME SENSE OF HOW MANY OFFICERS YOU HAVE TO DEAL
6 WITH THE NUMBER OF PAROLEES IN YOUR TOWN?

7 A. I HAVE A DECLINING NUMBER.

8 Q. IT'S CURRENTLY AT 48?

9 A. AND DECLINING, YES, SIR.

10 Q. SO --

11 JUDGE HENDERSON: I THOUGHT YOU SAID IT'S FROZEN.

12 THE WITNESS: AS PEOPLE LEAVE, YOUR HONOR, I CANNOT
13 BACKFILL.

14 BY MR. SANGSTER:

15 Q. WELL, I DON'T KNOW WHAT IT'S GOING TO DECLINE TO, SO LET'S
16 JUST STICK WITH THE 48.

17 SO THOSE 48 OFFICERS WOULD HAVE TO DEAL WITH
18 APPROXIMATELY FOUR ADDITIONAL PAROLEES PER MONTH?

19 A. I DON'T UNDERSTAND FOUR PER MONTH. I'M SORRY.

20 Q. I'M TRYING TO BREAK DOWN YOUR -- YOUR CONCLUSION ABOUT THE
21 IMPACT ON YOUR POLICE FORCE.

22 JUDGE HENDERSON: I THINK THE MATH -- 48 ARE
23 RELEASED. YOU DIVIDE 12 MONTHS INTO THAT, THAT'S FOUR A MONTH.
24 IS THAT WHAT YOU DON'T UNDERSTAND?

25 THE WITNESS: OKAY.

1 **JUDGE KARLTON:** I THINK THAT'S -- THAT'S WHAT YOU ARE
2 SAYING?

3 **MR. SANGSTER:** YES.

4 **MS. BARLOW:** WITH RESPECT, YOUR HONOR, THE 48 DOESN'T
5 MATCH ANY NUMBER THAT IS IN EVIDENCE.

6 **JUDGE HENDERSON:** WELL, WE ARE ALONG THAT ROAD, SO
7 LET'S CONTINUE.

8 **BY MR. SANGSTER:**

9 **Q.** SO IS THAT ACCURATE, SIR, THAT YOUR --

10 **JUDGE KARLTON:** WELL, THE MATH IS ACCURATE.

11 **MR. SANGSTER:** WELL, I'M TRYING TO -- THE MATH -- THE
12 MATH IS WHAT IT IS, BUT I'M TRYING TO SEE IF THE WITNESS IS
13 GOING TO TELL ME THAT THE MATH SOMEHOW DOES NOT ACCURATELY
14 REFLECT THE IMPACT ON HIS FORCE.

15 **BY MR. SANGSTER:**

16 **Q.** DOES THE MATH ACCURATELY REFLECT THE IMPACT ON YOUR FORCE?

17 **A.** IT DOES NOT.

18 **Q.** IN WHAT RESPECT DOES IT NOT?

19 **A.** YOU ARE ASSUMING A PAROLEE -- I DON'T MATCH OFFICERS TO
20 PAROLEES IN SOME RATIO, SOME NEAT RATIO. I WISH IT WERE THAT
21 NEATLY DONE, BUT IT'S NOT DONE THAT WAY, AND IT CAN'T BE.

22 **Q.** BUT YOU ARE -- YOUR OFFICERS DEAL WITH MANY THINGS OTHER
23 THAN PAROLEES?

24 **A.** ABSOLUTELY.

25 **Q.** AND THE VAST MAJORITY OF THE ARRESTS THEY HAVE TO MAKE ARE

1 NOT OF PAROLEES?

2 **A.** BUT THE IMPACT OF A PAROLEE'S ACTIVITIES EXTEND FAR BEYOND
3 SIMPLY MAKING AN ARREST. THEY GO -- THEY DO A LOT TO GO TO
4 STATE PRISON. THEY COMMIT CRIMES FOR WHICH THEY ARE NOT
5 ARRESTED FOR.

6 SO THE IMPACT IS SIMPLY BEYOND ONE OFFICER, ONE
7 PAROLEE, AND ONE ARREST.

8 **Q.** AND THAT IMPACT IS GOING TO BE GENERATED BY ABOUT FOUR
9 ADDITIONAL PEOPLE A MONTH?

10 **A.** I THINK THE IMPACT GOES BEYOND FOUR ADDITIONAL PEOPLE PER
11 MONTH.

12 **Q.** IN EVALUATING THE IMPACT OF A PRISONER RELEASE ORDER OR
13 ANYTHING THAT WOULD RESULT IN POPULATION REDUCTION, ONE OF THE
14 THINGS YOU WOULD WANT TO KNOW IS THE CHARACTERISTICS OF THE
15 PEOPLE BEING RELEASED, IS THAT CORRECT?

16 **A.** YES, SIR.

17 **Q.** BECAUSE THE CHARACTERISTICS OF THE PEOPLE BEING RELEASED
18 WOULD HAVE A SUBSTANTIAL IMPACT ON THEIR LIKELIHOOD TO REOFFEND;
19 THAT'S YOUR EXPERIENCE?

20 **A.** YES, SIR.

21 **Q.** YOU'D WANT TO KNOW IF THEY WERE CLEAN AND SOBER?

22 **A.** YES.

23 **Q.** YOU'D WANT TO KNOW IF THEY HAD HOUSING?

24 **A.** YES.

25 **Q.** YOU'D WANT TO KNOW IF THEY HAD FAMILY SUPPORT?

1 A. YES.

2 Q. WHETHER THEY HAD THE ABILITY TO READ?

3 A. YES, SIR.

4 Q. YOU WOULD WANT TO KNOW WHAT THEIR JOB PROSPECTS WERE?

5 A. YES.

6 Q. AND UNTIL YOU KNOW THOSE THINGS, YOU CAN'T QUITE FULLY
7 ANALYZE WHAT THE IMPACT OF A RELEASE OF A GROUP OF PAROLEES IS
8 GOING TO BE, RIGHT?

9 A. I WOULD SAY SO, YES. AND THERE'S SOME OTHER FACTORS, BUT,
10 YES, YOU ARE RIGHT.

11 Q. ARE THERE THINGS THAT CAN BE DONE FOR PRISONERS AFTER THEY
12 HAVE BEEN RELEASED FROM PRISON TO MITIGATE THE IMPACT ON PUBLIC
13 SAFETY?

14 A. I THINK THERE ARE SOME THINGS THAT CAN BE DONE, YES, SIR.

15 Q. WHAT?

16 A. FOR THE LONGER TERM, IT MAY TAKE SOME SORT OF TRANSITION.
17 THEY USED TO CALL THEM HALFWAY HOUSES. I THINK SOME SORT OF
18 TRANSITION WOULD HELP.

19 IN OAKLAND, I MENTIONED THIS TO YOU BEFORE, WE
20 LAUNCHED A POLICE AND CORRECTIONS TEAM WHERE WE WOULD MEET WITH
21 PAROLEES UPON THEIR RELEASE TO MAKE SURE THEY WERE INFORMED OF
22 SOME LOCAL SERVICES AVAILABLE. WE ALSO MET WITH FAMILIES, BUT I
23 THINK HAVING -- PRIOR TO RELEASE, I THINK PRISONERS NEED A PLAN,
24 A PAROLE PLAN AND I THINK THAT'S LACKING, TOO.

25 Q. AND THAT HELPS THEM SUCCEED IN THE COMMUNITY?

1 **A.** I THINK SO. IT'S BEEN MY EXPERIENCE.

2 **MR. SANGSTER:** THAT'S ALL THE QUESTIONS I HAVE, YOUR
3 HONOR.

4 **JUDGE HENDERSON:** ANYTHING FROM CCPOA?

5 **MS. LEONARD:** NO, YOUR HONOR.

6 **REDIRECT EXAMINATION**

7 **BY MS. BARLOW:**

8 **Q.** OKAY. CHIEF, YOU INDICATE IF THE RELEASE ORDER IS 52,000
9 THERE WOULD BE 168 ADDITIONAL PAROLEES RELEASED TO YOUR SPECIFIC
10 COMMUNITY TO VACAVILLE -- NOT THE WHOLE COUNTY, JUST TO
11 VACAVILLE -- OVER THAT TWO-YEAR PERIOD?

12 **A.** YES.

13 **Q.** AND THAT'S SEVEN PER MONTH. BUT THAT DOESN'T MATTER. IT'S
14 THE CUMULATIVE IMPACT, CORRECT?

15 **JUDGE KARLTON:** MA'AM, ARE YOU TESTIFYING? I WILL
16 HAVE YOU SWORN.

17 **MS. BARLOW:** NO.

18 **BY MS. BARLOW:**

19 **Q.** IS IT THE CUMULATIVE IMPACT, CHIEF WORD, OR IS IT JUST THIS
20 PARTICULAR PAROLEE TODAY?

21 **A.** IT IS A CUMULATIVE IMPACT. IT'S BEYOND SIMPLY ONE PERSON
22 AND ONE CRIME OR ONE POLICE OFFICER, YES.

23 **Q.** IS IT ALSO THE CUMULATIVE IMPACT OF THE NUMBER OF CRIMES THE
24 PAROLEES --

25 **JUDGE KARLTON:** MA'AM, YOU HAVE GOT TO -- WELL, GO

1 AHEAD. JUST DO IT. LET'S GET IT OVER WITH.

2 MS. BARLOW: HE IS AN EXPERT, YOUR HONOR, BUT I'LL BE
3 HAPPY TO --

4 JUDGE KARLTON: LET'S GET IT OVER WITH. GO AHEAD.

5 BY MS. BARLOW:

6 Q. IN TERMS OF THE INFORMATION YOU WOULD WANT TO KNOW, THE
7 CHARACTER, THE STATUS AND SO ON, YOU HAVE A FAIR IDEA OF WHAT
8 YOU ARE DEALING WITH WHEN YOU HAVE PAROLEES COMING BACK INTO
9 VACAVILLE, CORRECT?

10 A. SURE.

11 Q. ARE A LARGE NUMBER OF THEM SUBSTANCE ABUSERS?

12 A. YES.

13 Q. ARE A LARGE NUMBER OF THEM GAINFULLY EMPLOYED?

14 A. NO.

15 Q. ARE A LARGE NUMBER OF THEM SAFELY HOUSED WITH LOVING
16 FAMILIES?

17 A. NO.

18 Q. SO YOU DON'T REALLY NEED A LOT OF SPECIFIC INFORMATION TO
19 KNOW THAT 168 OF THEM ARE GOING TO CAUSE A PROBLEM FOR YOUR
20 COMMUNITY, CORRECT?

21 A. THAT'S CORRECT.

22 MS. BARLOW: I HAVE NOTHING FURTHER, YOUR HONOR.

23 RECROSS EXAMINATION

24 BY MR. SANGSTER:

25 Q. CHIEF WORD, HOW MANY PAROLEES ARE RELEASED INTO VACAVILLE

1 EVERY MONTH?

2 **A.** I DON'T HAVE THE EXACT NUMBERS NOW. I'M NOT SURE.

3 **Q.** DO YOU HAVE AN APPROXIMATE NUMBER?

4 **A.** WOW, THERE ARE --

5 **Q.** I COULDN'T HEAR YOU, I'M SORRY.

6 **A.** I WOULD HAVE TO GUESS. I WON'T GUESS.

7 **Q.** I DON'T WANT YOU TO GUESS.

8 DO YOU HAVE ANY KNOWLEDGE ABOUT HOW MANY PEOPLE ON
9 PAROLE ARE RELEASED FROM PAROLE? IN OTHER WORDS, THEIR PAROLE
10 IS TERMINATED EVERY MONTH?

11 **A.** IT'S A -- I BELIEVE IT'S A HIGH PERCENTAGE OF THOSE ON
12 PAROLE, MORE THAN HALF.

13 **MR. SANGSTER:** THAT'S ALL THE QUESTIONS I HAVE, YOUR
14 HONOR.

15 **JUDGE HENDERSON:** OKAY. THANK YOU, CHIEF WORD. YOU
16 ARE EXCUSED.

17 **THE WITNESS:** THANK YOU.

18 (WITNESS EXCUSED.)

19 **JUDGE HENDERSON:** OKAY. THAT LOOKS LIKE WE HAVE OUR
20 WITNESSES FOR THE DAY. OKAY. WE WILL RESUME TOMORROW AT 9:15.

21 LET ME SHARE WITH YOU, AND MY COLLEAGUES SHOULD
22 SUPPLEMENT THIS, THE COURT'S THINKING AT THIS POINT. WE ARE
23 STILL HOPEFUL OF FINISHING BY DECEMBER 19TH, BUT IT'S NOT CLEAR
24 FOR A NUMBER OF REASONS, INCLUDING AT LEAST ONE OF THE DAYS YOU
25 PRESENTED CONTEMPLATES 11 HOURS OF TESTIMONY AND THAT AIN'T

1 GOING TO HAPPEN, AS WE KNOW.

2 SO AT THIS POINT WE ARE ASSUMING THAT WE ARE GOING TO
3 NEED SOME TIME, PERHAPS AS MUCH AS A WEEK, BEYOND DECEMBER 19TH.
4 IF THAT HAPPENS, I AM THE MOST FORTUNATE ONE UP HERE BECAUSE I
5 HAVE A HALF A CASELOAD. JUDGE REINHARDT HAS TO GET BACK TO LOS
6 ANGELES AND TAKE CARE OF HIS OTHER JOB, AS DOES JUDGE KARLTON.

7 WHAT WE WILL DO IS HAVE THEM CHECK THEIR CALENDAR AND
8 WE WILL CONSULT AND FIND A PERIOD OF TIME TO FINISH THE CASE.
9 AT THIS POINT WE SIMPLY DON'T KNOW WHEN THAT WILL BE, BUT YOU
10 SHOULD KNOW THAT WE EXPECT YOU TO BE AVAILABLE. WE ARE NOT
11 GOING TO NEGOTIATE THE TIME WE COME BACK. WE WANT TO MAKE THAT
12 CLEAR.

13 **JUDGE KARLTON:** AND YOU MUSTN'T ASSUME THAT WE WILL
14 BE ABLE TO GIVE YOU A WEEK. IT MAY BE A DAY HERE AND A DAY
15 THERE, AND YOU GUYS ARE JUST GOING TO HAVE TO BE READY TO GO.

16 **MR. SANGSTER:** YOUR HONOR, JUST TO ADVISE THE COURT,
17 I MEAN, WE -- I AM IN THE PROCESS OF WORKING ON STIPULATIONS AS
18 TO TESTIMONY OF A NUMBER OF WITNESSES. WE CURRENTLY HAVE, I
19 THINK, AGREEMENTS ON TWO WITNESSES. I EXPECT AGREEMENTS ON
20 PROBABLY SIX TO EIGHT TOTAL.

21 MY ESTIMATE IS IT'S GOING TO SHAVE A DAY OFF OF THE
22 TIME, AND --

23 **JUDGE KARLTON:** THE MORE, THE MERRIER.

24 **JUDGE HENDERSON:** WE CERTAINLY ENCOURAGE THAT.

25 **MR. SANGSTER:** I UNDERSTAND THAT, AND I KNOW YOU

1 CAN'T PLAN AROUND THAT.

2 I THINK IN TERMS OF THE THINKING, WHAT'S GOING TO
3 HAPPEN IS A NUMBER OF THESE WITNESSES ARE NOT GOING TO BE CALLED
4 AS SCHEDULED. AND THE 11-HOUR DAY IS NOT GOING TO BE 11 HOURS.
5 AND, OBVIOUSLY, WE WON'T KNOW UNTIL WE GET THAT --

6 **JUDGE KARLTON:** I PROMISE YOU IT WOULDN'T BE ANYHOW.

7 **MR. SANGSTER:** I UNDERSTAND, BUT I THINK WE ARE GOING
8 TO LOSE WITNESSES BY THE TIME WE GET THERE.

9 **JUDGE REINHARDT:** THE SOONER YOU CAN LET US KNOW THAT
10 YOU WILL BE IN A POSITION REASONABLY TO CONCLUDE ON THE 19TH,
11 THE BETTER IT WILL BE FOR EVERYONE.

12 TO ME, FROM LOOKING AT THE LIST, AS IF WHAT YOU ARE
13 DOING IS ABSOLUTELY CORRECT, THAT IT'S NOT -- SHOULDN'T BE
14 NECESSARY TO HEAR A LOT OF TESTIMONY FROM A FAIR NUMBER OF
15 PEOPLE ON THAT LIST.

16 SO I CERTAINLY, FOR ONE, AM STILL HOPEFUL THAT WE ARE
17 GOING TO CONCLUDE THIS ON THE 19TH AND THAT EVERYONE ELSE IS
18 GOING TO MAKE EVERY EFFORT TO SEE THAT WE CONCLUDE THIS ON THE
19 19TH.

20 THAT MAY NOT INCLUDE FINAL ARGUMENT, WHICH WE ARE
21 PLANNING ON HEARING THAT. WOULD BE EASY TO FIND A DAY TO DO. A
22 LOT EASIER THAN FINDING A TIME TO HAVE TRIAL DAYS.

23 SO I HOPE EVERYONE WILL CONTINUE TO MAKE EVERY EFFORT
24 TO CONCLUDE THIS BY THE 19TH, AND WE WILL BE HAPPY TO BE OF
25 WHATEVER ASSISTANCE WE CAN IN PERSUADING YOU TO DO THAT.

1 **JUDGE KARLTON:** LET ME ADD ABOUT THIS QUESTION. IT'S
2 CONTEMPLATED THAT WE ARE GOING TO HAVE FROM YOU FOLKS PROPOSED
3 FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND I WOULD LIKE AT
4 SOME POINT, DOESN'T HAVE TO BE TODAY OBVIOUSLY, SOME IDEA ABOUT
5 HOW LONG THAT'S GOING TO TAKE TO GATHER TOGETHER.

6 BUT I THINK JUDGE REINHARDT'S POINT IS QUITE SERIOUS.
7 YOU FOLKS OUGHT TO KNOW, AT LEAST FOR THIS JUDGE, FINAL ARGUMENT
8 MAY BE VERY IMPORTANT IN OUR DECIDING WHAT WE ARE GOING TO DO,
9 AND THAT SHOULD BE A -- AN IMPORTANT POINT IN YOUR PREPARATION.

10 **JUDGE REINHART:** THAT DOESN'T SEEM LIKELY THAT WON'T
11 BE BY THE 19TH, BUT THAT'S NOT A PROBLEM. WE CAN THEN FIND A
12 MUTUALLY CONVENIENT DATE FOR THAT KIND OF ARGUMENT.

13 **JUDGE KARLTON:** SURE.

14 **MR. SPECTER:** THAT'S FINE, YOUR HONORS.

15 I WOULD JUST ASK THAT IF YOU -- WHEN YOU DON'T
16 NEGOTIATE WITH US AND YOU JUST TELL US WHAT DAYS WE ARE GOING TO
17 HAVE IF WE HAVE TO GO PAST THE 19TH -- I AGREE WITH MY
18 CO-COUNSEL, BY THE WAY, THAT I THINK WE MIGHT BE ABLE TO MAKE
19 IT. I CERTAINLY HOPE WE DO -- THAT YOU LET US KNOW AS EARLY AS
20 POSSIBLE WHAT THE FINAL ARGUMENT DAY WOULD BE.

21 BECAUSE WE HAVE THOUGHT, JUDGE KARLTON, THAT YOU
22 MIGHT WANT PROPOSED FINDINGS AND CONCLUSIONS, WE HAVE ALREADY
23 STARTED THE PROCESS OF WORKING ON THEM AND WE -- THE MORE
24 ADVANCE -- THE MORE WE KNOW WHAT THE SCHEDULE IS, THE HARDER WE
25 WORK, OR WHAT.

1 **JUDGE KARLTON:** I HOPE THAT YOUR PROPOSED FINDINGS
2 WILL CITE TO THE APPROPRIATE EVIDENCE TO HELP US ORGANIZE WHAT
3 IS REALLY A VERY DIFFICULT BODY OF EVIDENCE.

4 **MR. SPECTER:** IF THEY DIDN'T, THEY WOULDN'T BE VERY
5 HELPFUL TO YOU.

6 **JUDGE KARLTON:** THEY WOULD NOT.

7 **JUDGE REINHART:** IF WE FINISH BY THE 19TH, WE CAN
8 AGREE UPON A TIME FOR CLOSING ARGUMENT THAT'S CONVENIENT TO
9 EVERYBODY. THAT MAY NOT BE SO EASY TO FIND A DATE THAT'S
10 CONVENIENT, BUT WE CAN WORK -- WORK SOMETHING OUT THAT EVERYONE
11 IS AGREEABLE TO FOR THE CLOSING ARGUMENT.

12 IF THERE IS MORE TESTIMONY, THAT'S GOING TO BE MUCH
13 MORE DIFFICULT. IT'S GOING TO BE VERY DIFFICULT FOR THE THREE
14 OF US TO FIND A DATE. WE WILL LET YOU KNOW AS SOON AS WE FIND
15 IT, BUT YOU MAY NOT LIKE IT.

16 **MR. SPECTER:** WELL, I WILL LIKE IT. I DON'T KNOW IF
17 ANYBODY ELSE WILL.

18 BUT IN THE BEGINNING OF THE TRIAL YOU MENTIONED THE
19 GLIMMER OF A POSSIBILITY OF GOING INTO THE NEXT WEEK. I WOULD
20 RATHER GET IT OVER WITH AND THEN --

21 **JUDGE KARLTON:** CAN'T PROMISE YOU THAT AT ALL.

22 **MR. SPECTER:** OKAY.

23 **JUDGE REINHART:** YOU MEAN, MORE DAYS THAN THE WEEK OF
24 THE 18TH OR 19TH?

25 **MR. SPECTER:** I DON'T THINK THAT'S POSSIBLE.

1 **JUDGE REINHART:** I DON'T THINK THAT'S VERY REALISTIC.
2 CHRISTMAS EVE IS, WHAT, WEDNESDAY NIGHT THE NEXT WEEK?

3 **MR. SPECTER:** CHRISTMAS EVE?

4 **JUDGE REINHARDT:** YES.

5 **MR. SPECTER:** YES.

6 **JUDGE REINHART:** I ASSUME YOU ARE NOT PROPOSING WE DO
7 THIS CHRISTMAS EVE.

8 **MR. SPECTER:** I'M JEWISH. I DON'T CARE.

9 **JUDGE REINHART:** OR HANUKKAH, THE SAME DAY OR THE DAY
10 BEFORE MAYBE.

11 **MR. SPECTER:** I WOULD RATHER BE HOME ON CHRISTMAS
12 EVE, BUT THERE IS NO PROHIBITION AGAINST WORKING ON HANUKKAH, AS
13 YOU PROBABLY KNOW.

14 **JUDGE REINHART:** YOU'RE ONLY TALKING ABOUT TWO DAYS.
15 WITH THE TRAVEL PROBLEMS --

16 **MR. SPECTER:** I UNDERSTAND. I'M JUST RAISING --

17 **JUDGE REINHARDT:** LET'S SEE WHAT WE CAN DO ON THE
18 19TH.

19 **JUDGE KARLTON:** LET'S ALL WORK VERY HARD TO GET IT
20 DONE BY THE 19TH.

21 **JUDGE HENDERSON:** WE WILL DO OUR BEST TO ACCOMMODATE
22 YOU. IF WE DON'T, THE REASON I SAID IT THE WAY I DID, IS THAT I
23 DON'T WANT ALL OF THESE PLAYERS TO GO OUT AND START MAKING
24 COMMITMENTS. THAT'S WHAT WON'T WORK.

25 SO I'M JUST SAYING BE AVAILABLE. WE WILL DO

1 EVERYTHING WE CAN TO MAKE IT WORK.

2 **MR. SPECTER:** THAT SOUNDS GOOD. THANK YOU VERY MUCH.

3 **JUDGE HENDERSON:** OKAY.

4 (WHEREUPON AT 4:07 P.M. FURTHER PROCEEDINGS
5 IN THE ABOVE-ENTITLED CAUSE WAS ADJOURNED
6 UNTIL WEDNESDAY, DECEMBER 10, 2008 AT 9:15
7 A.M.)

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9 - - - -

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CERTIFICATE OF REPORTER

WE, JOAN MARIE COLUMBINI AND DEBRA L. PAS, OFFICIAL REPORTERS FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN CIV S-90-0520 LKK JPM P, RALPH COLEMAN, ET AL V. ARNOLD SCHWARZENEGGER AND C 01-1351 TEH, MARCIANO PLATA V. ARNOLD SCHWARZENEGGER, WERE REPORTED BY US, CERTIFIED SHORTHAND REPORTERS, AND WERE THEREAFTER TRANSCRIBED UNDER OUR DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY US AT THE TIME OF FILING.

THE VALIDITY OF THE REPORTER'S CERTIFICATION OF SAID TRANSCRIPT MAY BE VOID UPON DISASSEMBLY AND/OR REMOVAL FROM THE COURT FILE.

/S/ JOAN MARIE COLUMBINI

JOAN MARIE COLUMBINI, CSR 5435, RPR

S/ DEBRA L. PAS

DEBRA L. PAS, CSR 11916, CRR, RMR, RPR

TUESDAY, DECEMBER 9, 2008

**JOAN MARIE COLUMBINI, CSR, RPR
DEBRA L. PAS, CSR, CRR, RMR, RPR
OFFICIAL COURT REPORTERS, USDC, 415-255-6842**

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
AND FOR THE NORTHERN DISTRICT OF CALIFORNIA
UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES PURSUANT
TO SECTION 2284, TITLE 28 UNITED STATES CODE

RALPH COLEMAN, ET AL.,)
)
 PLAINTIFFS,)
)
 VS.) NO. CIV S-90-0520 LKK JFM
)
 ARNOLD SCHWARZENEGGER, ET AL.)
) THREE-JUDGE COURT
 DEFENDANTS.)
)
)
)

MARCIANO PLATA, ET AL.,)
)
 PLAINTIFFS,)
)
 VS.) NO. C 01-1351 TEH
)
 ARNOLD SCHWARZENEGGER, ET AL.)
)
 DEFENDANTS.)
)
)
)

TRANSCRIPT OF PROCEEDINGS

SAN FRANCISCO, CALIFORNIA
TUESDAY, DECEMBER 10, 2008

REPORTED BY: JOAN MARIE COLUMBINI, CSR 5435, RPR
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P R O C E E D I N G S

DECEMBER 10, 2008

9:21 A.M.

JUDGE HENDERSON: OKAY. YOU MAY CALL YOUR NEXT WITNESS WHEN YOU ARE READY, COUNSEL.

MR. MELLO: THANK YOU, YOUR HONORS. PAUL MELLO FOR DEFENDANTS.

DEFENDANTS CALL SCOTT KERNAN, UNDERSECRETARY OF OPERATIONS FOR THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION.

SCOTT KERNAN,
CALLED AS A WITNESS FOR THE DEFENDANT HEREIN, HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

THE CLERK: STATE AND SPELL YOUR FULL NAME FOR THE RECORD.

THE WITNESS: MY NAME IS SCOTT KERNAN, K-E-R-N-A-N.

MR. MELLO: UNDERSECRETARY KERNAN HAS SUBMITTED A TRIAL AFFIDAVIT IN THIS MATTER, WHICH IS DEFENDANT'S EXHIBIT 1002, ON NOVEMBER 17TH. WE FILED MINOR REVISIONS TO CORRECT IN EXHIBIT NUMBERS IN THAT TRIAL AFFIDAVIT.

UNDERSECRETARY KERNAN'S EDUCATION AND PROFESSIONAL BACKGROUND IS SUMMARIZED IN PARAGRAPHS TWO AND THREE OF HIS TRIAL AFFIDAVIT.

DIRECT EXAMINATION

BY MR. MELLO:

Q. GOOD MORNING, MR. KERNAN.

A. GOOD MORNING.

Q. WHEN WERE YOU APPOINTED UNDERSECRETARY OF OPERATIONS FOR THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION?

A. ON OCTOBER 14, 2008.

Q. IMMEDIATELY PRIOR TO YOUR APPOINTMENT AS UNDERSECRETARY, WHAT WAS YOUR POSITION?

A. I WAS THE CHIEF DEPUTY SECRETARY OF ADULT OPERATIONS.

Q. AND HOW MANY YEARS HAVE YOU WORKED FOR THE DEPARTMENT OF CORRECTIONS?

A. 25 YEARS.

Q. OKAY. HAS THE CALIFORNIA -- HAS THE CALIFORNIA IN STATE PRISON POPULATION DECLINED IN THE LAST TWO YEARS?

A. YES, SIR.

Q. BY APPROXIMATELY HOW MUCH?

A. BY PROBABLY SOMEWHERE BETWEEN 5,000 AND 6,000.

Q. OKAY. IN THE PAST YEAR OR SO HAS CDCR REDUCED THE NUMBER OF NON-TRADITIONAL BEDS IN ITS INSTITUTIONS AS WELL?

A. YES, SIR.

Q. AND BY APPROXIMATELY HOW MUCH?

A. BY ABOUT 5,000.

JUDGE REINHARDT: WHILE MR. MELLO IS HAVING A DRINK. IS THE NUMBER OF PRISONERS REDUCED, IS THAT THE RESULT OF

1 SENDING THEM OUT OF STATE OR DOES THAT INCLUDE OTHER REASONS?

2 **THE WITNESS:** I'M SORRY, SIR. I DIDN'T UNDERSTAND
3 YOU.

4 **JUDGE REINHARDT:** I SAID, THE NUMBER OF PRISONERS
5 REDUCED, IS THAT THE RESULT ENTIRELY OR PRIMARILY OF SENDING
6 THEM OUT OF STATE?

7 **THE WITNESS:** NO, SIR.

8 **JUDGE KARLTON:** THERE'S 5,000 REAL REDUCTION.

9 **THE WITNESS:** YES, SIR.

10 **BY MR. MELLO:**

11 **Q.** MR. KERNAN, AT SOME POINT CDCR HAD A HIGH NUMBER, OR HIGHEST
12 LEVEL NUMBER OF NON-TRADITIONAL BEDS IN ITS INSTITUTIONS,
13 CORRECT?

14 **A.** YES, SIR.

15 **Q.** AND WHEN WAS THAT?

16 **A.** AUGUST, 2007.

17 **Q.** AND APPROXIMATELY, JUST APPROXIMATELY, HOW MANY
18 NON-TRADITIONAL BEDS WERE IN YOUR INSTITUTIONS AT THAT TIME?

19 **A.** ABOUT 19,600.

20 **Q.** AND DOES CDCR PROJECT TO FURTHER REDUCE ITS USE OF
21 NON-TRADITIONAL BEDS IN THE FUTURE?

22 **A.** YES, SIR.

23 **Q.** AND BY HOW MANY?

24 **A.** BY APPROXIMATELY 5,000 ON OUR CURRENT INMATE ACTIVITY
25 SCHEDULE. THAT'S THE PLANNING DOCUMENTS. SO 5,000 MORE BEDS

1 HAVE COME DOWN BETWEEN NOW AND JULY.

2 Q. OF 2009?

3 A. YES, SIR.

4 Q. AND JUDGE REINHARDT ASKED THIS QUESTION. AS OF AUGUST 29,
5 2008, CDCR HAD TRANSFERRED APPROXIMATELY 4800 INMATES TO
6 OUT-OF-STATE INSTITUTIONS, CORRECT?

7 A. YES, SIR.

8 Q. DOES CDCR PLAN TO TRANSFER ADDITIONAL INMATES TO
9 OUT-OF-STATE INSTITUTIONS?

10 A. YES, SIR.

11 Q. HOW MANY MORE ARE CURRENTLY PLANNED TO BE TRANSFERRED UNDER
12 CURRENT PLANS?

13 A. A TOTAL OF 8,000, APPROXIMATELY 8,000 WE CURRENTLY HAVE
14 CONTRACTED. WE ARE GOING TO HAVE 6,000 OUT BY TOMORROW.

15 JUDGE KARLTON: I'M SORRY. I JUST MISSED THE
16 QUESTION. MY FAULT, MR. MELLO.

17 8,000 MORE OR 8,000 TOTAL?

18 THE WITNESS: 8,000 TOTAL.

19 BY MR. MELLO:

20 Q. MR. KERNAN, HAS CDCR MADE EFFORTS IN THE LAST FEW YEARS TO
21 INCREASE CUSTODY STAFFING TO MEET ITS NEEDS?

22 A. YES, SIR.

23 Q. AND SPECIFICALLY WHAT HAVE YOU DONE AND WHAT HAVE YOU
24 ACCOMPLISHED IN THAT REGARD?

25 A. WELL, THE RECEIVER'S OFFICE ADDED 600 POSITIONS LAST YEAR

1 AND ARE GOING TO ADD 1800 THIS YEAR. SO ABOUT 2400 ADDITIONAL
2 CORRECTIONAL OFFICERS DEDICATED SOLELY FOR THE ACCESS TO CARE
3 UNITS, TO USE THE RECEIVER'S WORDS.

4 AND THAT'S TO PROVIDE SERVICES TO THE INMATES, TAKING
5 THEM OUT OF THE PRISON, GETTING THEM TO MEDICAL APPOINTMENTS AND
6 MENTAL HEALTH APPOINTMENTS WITHIN THE PRISON.

7 Q. IN ADDITION TO THE RECEIVER'S EFFORTS TO GET THE
8 CORRECTIONAL OFFICERS, AS FAR AS HEALTHCARE ACCESS TEAMS, HAS
9 CDCR ALSO INCREASED ITS -- ITS CORRECTIONAL OFFICER STAFF
10 SEPARATE AND APART FROM THE RECEIVER'S EFFORTS?

11 A. YES, SIR. I THINK IT WAS A LITTLE MORE THAN A YEAR AGO
12 WE -- OR I ANTICIPATED OR I PROJECTED WE HAVE ABOUT A 2,000
13 CORRECTIONAL OFFICER SHORTAGE, AND WE HAD WIDESPREAD OVERTIME
14 AND WE WERE DIFFICULTY AT ALMOST ALL OF OUR PRISONS.

15 TODAY WE HAVE LITERALLY FILLED UP ALL OF OUR PRISONS
16 WITH CORRECTIONAL STAFFING AND WE HAVE -- NORMALLY, THIS IS THE
17 SEASON FOR IT, AND WE ARE GOING TO CANCEL THE JANUARY ACADEMY
18 BECAUSE WE ARE ACTUALLY OVERFILLED AT THIS POINT.

19 Q. I'M GOING TO PULL UP DEFENDANT'S EXHIBIT 1235, PAGE EIGHT,
20 PLEASE.

21 (DOCUMENT DISPLAYED)

22 Q. AND THIS IS A CHART THAT WAS PREPARED AND IT DEMONSTRATES
23 CORRECTIONAL OFFICER NUMBERS, BOTH ESTABLISHED POSITIONS AND
24 FILLED POSITIONS OVER TIME; CORRECT, MR. KERNAN?

25 A. YES, SIR.

1 Q. AND YOUR OFFICE PROVIDED THE DATA FOR THAT CHART, CORRECT?

2 A. YES, SIR.

3 Q. AND IF YOU LOOK AT THE INFORMATION FOR AUGUST OF 2008, THERE
4 APPEARS TO BE A GAP IN THE NUMBER OF FILLED POSITIONS AND
5 ESTABLISHED POSITIONS; DO YOU SEE THAT?

6 A. YES, SIR.

7 Q. AND I BELIEVE YOU TESTIFIED A MOMENT AGO THAT THERE WAS
8 EFFECTIVELY NO VACANCIES IN YOUR -- IN YOUR FACILITIES.

9 CAN YOU EXPLAIN TO ME HOW THAT IS IN LIGHT OF THE
10 FACT THAT THERE APPEARS TO BE A GAP?

11 A. AT THE PRISON LEVEL THE CORRECTIONAL OFFICER VACANCIES ARE
12 SUPPLEMENTED WITH PIES, RETIRED ANNUITANTS AND THE SORT AND THE
13 USE OF OVER TIME. SO THE SMALL GAP THAT YOU SEE THERE IS
14 ADDRESSED THROUGH THOSE MEANS.

15 JUDGE KARLTON: WHAT'S A PIE, SIR?

16 THE WITNESS: PERMANENT INTERMITTENT EMPLOYEE, AN
17 EMPLOYEE THAT'S NOT FULL -- TIME STATUS. WE CAN CALL THEM IN
18 WHEN WE NEED THEM.

19 BY MR. MELLO:

20 Q. HAVE THERE BEEN IMPROVEMENTS IN THE PAST SEVERAL YEARS WITH
21 RESPECT TO MEDICAL AND CLINICAL POSITIONS?

22 A. YES, SIR.

23 Q. OKAY. LET'S LOOK AT, AGAIN, EXHIBIT 1235, PAGE TWO.

24 (DOCUMENT DISPLAYED)

25 Q. LOOKING AT EXHIBIT 1235, FROM OCTOBER OF 2003 TO JUNE 2008

1 THERE HAS BEEN AN INCREASE IN THE NUMBER OF CHIEF PHYSICIANS AND
2 SURGEONS, CORRECT?

3 **A.** YES, SIR.

4 **Q.** CAN YOU TELL US WHAT THE INCREASE HAS BEEN?

5 **A.** IN OCTOBER '03 THERE WAS 10 FILLED POSITIONS. IN JUNE OF
6 '08 THERE WAS 26.

7 **Q.** AND HAS SIMILAR INCREASES IN STAFFING OCCURRED WITH RESPECT
8 TO PHYSICIANS? GO TO THE NEXT PAGE.

9 **JUDGE KARLTON:** BEFORE YOU LEAVE THIS PAGE -- CAN YOU
10 GO BACK TO THAT FOR A MOMENT?

11 **MR. MELLO:** YES.

12 **JUDGE KARLTON:** SIR, I AM NOT -- I'M NOT SURE THAT I
13 KNOW WHAT I'M LOOKING AT.

14 THE CHIEF PHYSICIAN AND SURGEON STAFFING, I THINK
15 WHAT I'M READING IS THAT UNDER WHATEVER STANDARD YOU ARE USING
16 THERE SHOULD BE 35 AND THERE ARE 28; IS THAT RIGHT?

17 **THE WITNESS:** YES, SIR.

18 **JUDGE KARLTON:** OKAY. THANK YOU.

19 **BY MR. MELLO:**

20 **Q.** MR. KERNAN, GOING TO THAT, WHO WOULD BEST BE ABLE TO EXPLAIN
21 THE WAY THAT THE INSTITUTIONS ARE DEALING WITH THE GAP IN FILLED
22 POSITIONS AND ESTABLISHED POSITIONS?

23 **A.** IF I UNDERSTOOD YOUR QUESTION, THE GAP IN SERVICES ARE
24 ADDRESSED THROUGH CONTRACT DOCTORS. AND, TRULY, THIS IS
25 INDICATIVE OF THE RECEIVER'S EFFORTS.

1 I MEAN, CERTAINLY THE -- ALL THE CLINICAL STAFFING IS
2 NOT UNDER MY AUTHORITY. THIS WAS PREPARED BY MY STAFF AND I
3 UNDERSTAND IT, BUT THE RECEIVER HAS BEEN THE ONE THAT HAS MADE
4 THESE GREAT INCREASES IN MEDICAL STAFFING.

5 Q. AND WOULD THE RECEIVER BE ABLE TO EXPLAIN BETTER THAN YOU
6 THE DIFFERENCE BETWEEN THE ESTABLISHED POSITIONS AND THE FILLED
7 POSITIONS?

8 A. YES, SIR.

9 Q. I WANT TO TAKE YOU TO THE NEXT PAGE WITH RESPECT TO
10 PHYSICIAN STAFFING.

11 (DOCUMENT DISPLAYED)

12 Q. HAS THE NUMBER OF PHYSICIANS CHANGED AS A RESULT OF THE
13 EFFORTS OF THE RECEIVER, AS YOU TESTIFIED?

14 A. YES, SIR.

15 Q. AND DOES THAT CHART INDICATE THAT FROM A LOW OF NOVEMBER,
16 2007 WHERE THERE WERE 165 PHYSICIANS, THERE ARE NOW 228
17 PHYSICIANS IN NOVEMBER OF 2008?

18 A. YES, SIR.

19 Q. AND, AGAIN, YOU COULDN'T EXPLAIN THE DIP -- OR MAYBE YOU
20 CAN, MR. KERNAN.

21 DO YOU HAVE ANY UNDERSTANDING AS TO THE DIP IN THE
22 NUMBER OF PHYSICIANS AND SURGEONS IN THE DEPARTMENT SINCE
23 OCTOBER OF -- OR SINCE MAY OF 2005?

24 A. AGAIN, IT WOULD BE ANECDOTAL. THIS IS CLEARLY IN THE
25 RECEIVER'S AREA, BUT HAVING WORKED AROUND IT, IT WAS ABOUT THE

1 TIME THAT THE RECEIVER CAME IN. HE GOT RID OF SOME DOCTORS THAT
2 WEREN'T PROVIDING APPROPRIATE CARE. AGAIN, COMPLETELY OUT OF MY
3 EXPERTISE. AND THEN HAS BEEN HIRING STAFF AT A PROLIFIC RATE IN
4 FILLING THE POSITIONS IN THE PRISONS.

5 Q. ISN'T IT TRUE, MR. KERNAN, THAT THE RECEIVER'S OFFICE IS
6 ALSO PROVIDING PRIMARY CARE PROVIDERS BY WAY OF PHYSICIAN'S
7 ASSISTANTS AND NURSE PRACTITIONERS?

8 A. YES.

9 MR. FAMA: OBJECTION. LEADING.

10 JUDGE HENDERSON: OVERRULED.

11 BY MR. MELLO:

12 Q. SO LET'S GO THERE NEXT.

13 JUDGE HENDERSON: LET ME ASK, DOES THIS CHART MEAN
14 THAT IN OCTOBER OF 2003, THAT BOTTOM LINE, THERE WERE MORE
15 PHYSICIANS THAN AUGUST OF THIS YEAR?

16 MR. MELLO: IT DOES MEAN THAT, YOUR HONOR. IT MEANS
17 THERE WERE MORE FILLED INMATE -- MORE PHYSICIANS AND SURGEONS IN
18 THE DEPARTMENT IN OCTOBER OF 2004 THAN TODAY.

19 JUDGE KARLTON: 2003.

20 MR. MELLO: PARDON ME, 2003.

21 AND I BELIEVE THAT IN THE RECEIVER'S REPORTS, WHICH
22 ARE EVIDENCE IN THE CASE, HE EXPLAINS THE DIP AND MR. KERNAN
23 JUST ALLUDED TO IT. I THINK HE USED THE WORD -- ONE OF THE
24 RECEIVERS MAY HAVE USED THE WORD "CLEANING HOUSE."

25 JUDGE HENDERSON: OKAY, OKAY.

1 **MR. MELLO:** AND THEN I BELIEVE MR. KERNAN INDICATED
2 THAT THEY ARE USING OTHER PHYSICIAN EXTENDERS OR SUBSTITUTES BY
3 WAY OF PHYSICIAN'S ASSISTANTS AND NURSE PRACTITIONERS, WHICH ARE
4 THE NEXT CHART.

5 **BY MR. MELLO:**

6 **Q.** HAS THERE BEEN AN INCREASE IN THE NUMBER OF PHYSICIAN'S
7 ASSISTANTS FROM OCTOBER OF 2003 TILL THE END OF AUGUST, 2008?

8 **A.** YES, SIR.

9 **Q.** AND CAN YOU STATE THAT FOR THE RECORD, PLEASE?

10 **A.** IN APRIL THERE WAS ONE FILLED POSITION, AND IN AUGUST OF
11 2008 THERE'S 13.

12 **Q.** OKAY. LET'S GO TO THE NEXT CHART. IT'S WITH RESPECT TO
13 NURSE PRACTITIONERS.

14 (DOCUMENT DISPLAYED)

15 **Q.** AGAIN, HAVE THERE BEEN INCREASES IN THE NUMBER OF NURSE
16 PRACTITIONERS, FILLED THE NURSE PRACTITIONER POSITIONS IN THE
17 DEPARTMENT SINCE OCTOBER 2003?

18 **A.** YES, SIR.

19 **Q.** CAN YOU STATE WHAT THOSE IMPROVEMENTS HAVE BEEN?

20 **A.** IN OCTOBER 2003 THERE WERE SEVEN, AND IN AUGUST 2008 THERE
21 WAS 44.

22 **Q.** LET'S GO TO THE NEXT CHART, REGISTERED NURSES.

23 **JUDGE KARLTON:** WAIT. YOU GO TOO FAST, MR. MELLO.

24 PLEASE PUT THAT BACK UP. I JUST WANT TO MAKE SURE I UNDERSTAND
25 WHAT I'M LOOKING AT.

1 MR. KERNAN, AS I READ THIS, AND I'M NOT SURE IF I'M
2 READING IT RIGHT, SOMEHOW OR OTHER THE STAFFING NUMBERS -- LET
3 ME -- CAN I BACK OFF FOR A MINUTE?

4 DO YOU KNOW HOW THE STAFFING NUMBERS ARE ASCERTAINED;
5 THAT IS, HOW IS IT ESTABLISHED THAT YOU NEED THE 72.13 IN AUGUST
6 OF 08; DO YOU KNOW?

7 **THE WITNESS:** YES, SIR. THOSE NUMBERS WERE DERIVED
8 FROM THE RECEIVER'S STAFF. THEY IDENTIFIED THE POSITIONS THEY
9 NEEDED.

10 **JUDGE KARLTON:** AND YOU DON'T KNOW HOW THEY DECIDED
11 THAT. I MEAN, MAYBE WE SHOULD BECAUSE -- OH, NO. IT'S IN YOUR
12 REPORT. IT'S NOT MINE. IT'S -- I DON'T KNOW.

13 ANYHOW, THE ANSWER IS THEY -- THEY HAVE GOT A FORMULA
14 WHICH YOU ARE NOT FAMILIAR WITH.

15 **THE WITNESS:** I -- I THINK THERE ARE SPECIFIC RATIOS,
16 BUT I'M CERTAINLY NOT AN EXPERT.

17 **JUDGE KARLTON:** FAIR ENOUGH. FAIR ENOUGH.

18 AND DO YOU KNOW WHY, AGAIN, THERE'S THIS RATHER
19 DRAMATIC DECLINE TO MAY OF '07 AND THEN A SMALL DIP IN THE
20 FILLED POSITIONS? DO YOU HAVE ANY IDEA WHY THAT IS SO?

21 **THE WITNESS:** JUST FROM WORKING OUT AT THE PRISONS
22 DURING MUCH OF THIS TIME, THERE WAS AN EFFORT TO HIRE NURSE
23 PRACTITIONERS IN LIEU OF THE PHYSICIANS THAT WE WERE HAVING A
24 HARD TIME FILLING. AND SO THERE WAS INCREASED AUTHORIZED
25 POSITIONS TO OFFSET THE VACANCIES IN DOCTORS.

1 **JUDGE KARLTON:** THANK YOU.

2 **MR. MELLO:** THANK YOU.

3 **BY MR. MELLO:**

4 **Q.** THE NEXT CHART, RNS.

5 (DOCUMENT DISPLAYED)

6 **Q.** SAME QUESTION. HAS THERE BEEN AN INCREASE IN THE NUMBER OF
7 REGISTERED NURSES OVER THE YEARS?

8 **A.** YES, SIR. FROM OCTOBER '03 THERE WERE ABOUT 760, TO AUGUST
9 OF 2008 OF 1556.

10 **Q.** AND, MR. KERNAN, THE BOTTOM LEFT-HAND CORNER OF THAT
11 DOCUMENT, IT INDICATES THE SOURCE OF THE INFORMATION, CORRECT?

12 **A.** YES, SIR.

13 **Q.** AND THAT'S INFORMATION THAT WAS RECEIVED FROM THE STATE
14 CONTROLLER'S OFFICE, CORRECT?

15 **A.** YES, SIR.

16 **Q.** THE INFORMATION WAS THEN PROVIDED TO YOUR DEPARTMENT, WHO
17 ANALYZED IT AND PROVIDED THE INFORMATION FOR THESE CHARTS,
18 CORRECT?

19 **A.** CORRECT, SIR.

20 **Q.** AND THOSE WERE EFFORTS THAT YOUR DEPARTMENT DOES IN ITS
21 ORDINARY COURSE OF BUSINESS, CORRECT?

22 **A.** YES, SIR.

23 **Q.** LET'S GO TO LICENSED VOCATIONAL NURSES, WHICH IS THE NEXT
24 CHART.

25 (DOCUMENT DISPLAYED)

1 Q. HAS THE NUMBER OF LVNS GONE UP OVER TIME, TOO?

2 A. YES, SIR.

3 Q. AND WILL YOU EXPLAIN HOW -- IN TERMS OF NUMERICALLY HOW THEY
4 HAVE GONE UP OVER TIME?

5 A. IN MAY 2007 THERE WAS FOUR, AND IN AUGUST 2008 THERE WAS 937
6 APPROXIMATELY.

7 Q. MR. KERNAN, YOU ARE AWARE OF THE TERM OR KNOW WHAT THE TERM
8 MTA MEANS, CORRECT?

9 A. YES, SIR.

10 Q. AND WHAT DOES MTA MEAN FOR THE COURTS?

11 A. IT'S A MEDICAL TECHNICAL ASSISTANT. IT WAS A COMBINED
12 CLASS, IF YOU WILL, OF A CORRECTIONAL OFFICER AND AN LVN.

13 Q. AND DID THE RECEIVER MAKE ANY DECISIONS WITH RESPECT TO
14 MTAS?

15 A. HE ABOLISHED THE CLASS.

16 Q. OKAY. AND WERE MTAS SIMILAR TO LVNS IN SOME RESPECTS?

17 A. IN MANY RESPECTS, YES.

18 Q. AND DO YOU KNOW -- SO AT SOME POINT THE RECEIVER ABOLISHED
19 MTAS, CORRECT?

20 A. YES, SIR.

21 Q. AND DO YOU KNOW WHEN THAT WAS, APPROXIMATELY?

22 A. I WOULD SAY IT WOULD BE SOMEWHERE BETWEEN MAY 07 AND
23 AUGUST 08. I'M SORRY, I'M NOT SURE OF THE EXACT DATE.

24 Q. AND DO YOU KNOW THE NUMBER OF MTAS THAT TOOK LVN POSITIONS
25 WITH THE DEPARTMENT?

1 **A.** I REALLY -- I REALLY DON'T. I WAS INVOLVED IN THE PROCESS
2 AND THE TRANSITION. MANY DID GO TO LVNS. SOME TOOK
3 CORRECTIONAL OFFICER JOBS. OTHER LEFT STATE SERVICE, RETIRED.

4 **Q.** SO YOU DON'T KNOW HOW MANY OF THE INCREASES IN NUMBER OF
5 LVNS ARE THE RESULT OF THE ELIMINATION OF THE MTA POSITION, DO
6 YOU?

7 **A.** NO, SIR.

8 **THE CLERK:** FIVE MINUTES, COUNSEL.

9 **MR. MELLO:** THANK YOU.

10 **JUDGE KARLTON:** I NOTE, AS AN EXAMPLE -- I'M HAVING
11 TROUBLE TRYING TO UNDERSTAND WHAT THE CHART IS. AND I RECOGNIZE
12 THAT, YOU KNOW, YOU REALLY DON'T HAVE DIRECT INFORMATION BECAUSE
13 THIS IS RECEIVER'S JUDGMENTS.

14 BUT IN JULY OF '08 THE RECEIVER THOUGHT IT NECESSARY
15 TO HAVE ROUGHLY 1,150, AND THE NEXT FIGURE IN AUGUST IS DOWN
16 ONE. DO YOU HAVE ANY IDEA HOW THAT HAPPENED?

17 **THE WITNESS:** BECAUSE OF THE FRACTIONAL PYS. I THINK
18 IT'S JUST PROBABLY A TECHNICAL ADJUSTMENT.

19 **JUDGE KARLTON:** OKAY.

20 **BY MR. MELLO:**

21 **Q.** I BELIEVE YOU TESTIFIED TO THIS EARLIER, BUT THERE IS A GAP
22 IN MANY OF THESE CHARTS BETWEEN FILLED POSITIONS AND ESTABLISHED
23 POSITIONS, CORRECT?

24 **A.** YES, SIR.

25 **Q.** AND WHAT IS YOUR UNDERSTANDING AS TO HOW THOSE MEDICAL

1 PHYSICIANS ARE BEING -- OR THOSE GAPS ARE BEING FILLED FOR
2 MEDICAL PERSONNEL? WHAT'S YOUR UNDERSTANDING, IF AT ALL?

3 **A.** THEY ARE BEING FILLED BY USEFUL REGISTRY STAFF AND OVERTIME.

4 **Q.** AND YOU SPECIFICALLY COULDN'T TELL US HOW MUCH THAT GAP IS
5 FILLED FOR EACH CATEGORY OF CLINICIANS THAT WE TALKED ABOUT, CAN
6 YOU?

7 **A.** I COULDN'T SAY EXACTLY. I DO KNOW IF THERE IS AN RN
8 POSITION ON A HOUSING UNIT, FOR EXAMPLE, AND THERE IS NOT A
9 STAFF MEMBER TO BE THERE FOR THAT, THEY WILL USE OVERTIME OR A
10 REGISTRY STAFF MEMBER TO FILL IT. THE POSITIONS ARE NOT LEFT
11 UNFILLED.

12 THERE IS A GAP IN THE POSITIONS, BUT THERE IS NOT A
13 GAP IN THE WORKLOAD AT THE PRISONS. THOSE POSITIONS FILLED.

14 **Q.** BUT WITH SPECIFICITY -- THE RECEIVER WOULD KNOW WITH
15 SPECIFICITY THE LEVEL OF THE GAP IF ANY THAT REMAINS, CORRECT?

16 **A.** MUCH BETTER THAN I, YES, SIR.

17 **Q.** HAVE THERE ALSO BEEN INCREASES IN MENTAL HEALTH CARE
18 STAFFING IN THE LAST -- IN THE LAST 10 OR SO YEARS IN THE
19 DEPARTMENT?

20 **A.** YES, SIR.

21 **Q.** OKAY. AND WE HAVE HAD TESTIMONY FROM OTHER WITNESSES WHO
22 HAVE TALKED ABOUT SOME OF THOSE IMPROVEMENTS OR INCREASES IN
23 STAFFING, BUT I WANT TO TAKE YOU TO PAGE TWO OF THE EXHIBIT WITH
24 RESPECT TO PSYCH TECHS.

25 **MR. FAMA:** WHAT EXHIBIT?

1 **MR. MELLO:** THIS IS 12351, PAGE TWO, I BELIEVE.

2 **BY MR. MELLO:**

3 **Q.** HAS THERE BEEN AN INCREASE IN THE NUMBER OF PSYCH TECHS
4 BETWEEN JULY 1994 AND SEPTEMBER 2008?

5 **A.** YES, FROM 18 TO 492.

6 **Q.** IN ADDITION TO INCREASES IN MENTAL HEALTH STAFF, HAVE THERE
7 BEEN IMPROVEMENTS IN THE ROLE OF CUSTODY STAFF AND THE DELIVERY
8 OF MENTAL HEALTH CARE BY CDCR TO ITS INMATES AT CURRENT
9 POPULATION LEVELS?

10 **A.** I THINK SIGNIFICANT ENHANCEMENTS.

11 **Q.** CAN YOU DESCRIBE SOME OF THOSE?

12 **A.** I THINK THAT THERE IS INCREASED TRAINING FOR OUR
13 CORRECTIONAL OFFICERS. HAVING WORKED THE PRISONS FOR MANY OF
14 THE YEARS, I HAVE SEEN A SIGNIFICANT INCREASE IN THE STAFF
15 MEMBERS' UNDERSTANDING OF INMATES WITH MENTAL ILLNESS, REFERRALS
16 TO MENTAL HEALTH PROFESSIONALS, REVIEW OF DISCIPLINARY REPORTS
17 FOR INMATES THAT HAVE A MENTAL ILLNESS, TRAINING ON SUICIDE
18 PREVENTION, CPR, INCREASED REVIEW OF INCIDENTS AND, YOU KNOW,
19 EVALUATION OF HOW WE CAN BETTER EVALUATE OUR POLICIES AND
20 PRACTICES IN REGARDS TO THE MENTAL HEALTH POPULATION.

21 **Q.** YOU TESTIFIED ABOUT SUICIDE TRAINING. HAVE THERE BEEN ANY
22 SPECIFIC IMPROVEMENTS WITH RESPECT TO PREVENTION OF -- OR
23 EFFORTS TO REDUCE SUICIDES IN YOUR PRISONS?

24 **A.** THERE HAS BEEN POLICY CHANGES. FOR EXAMPLE, WHEN AN
25 OFFENDER IS PLACED IN THE AD SEG THERE IS A PLACARD PLACED ON HIS

1 CELL FRONT SO THAT STAFF IS AWARE THAT HE IS A NEW ARRIVAL INTO
2 THE AD SEG UNIT.

3 THERE'S INCREASED MONITORING BY CORRECTIONAL STAFF.
4 THEY DO 30-MINUTE CHECKS AND ARE TO DOCUMENT THOSE CHECKS.

5 THERE HAS BEEN SOME PHYSICAL PLANT MODIFICATIONS TO
6 BETTER PREVENT SUICIDE. BETTER ACCESS TO YARDS, GETTING INMATES
7 OUT FOR ACTIVITIES.

8 CERTAINLY, MORE PROGRAMMING WITHIN THE PRISON AND THE
9 MENTAL HEALTH PROFESSIONALS. GETTING THE OFFENDER TO GROUP AND
10 THOSE KIND OF THINGS HAS CERTAINLY INCREASED.

11 **Q.** YOU SPOKE ABOUT PHYSICAL PLANT CHANGES. HAVE THERE ALSO
12 BEEN SPECIFIC, TO YOUR KNOWLEDGE, SOME PHYSICAL PLANT OR SOME
13 BUILDING WITH RESPECT TO -- OR CONSTRUCTION EFFORTS WITH RESPECT
14 TO SUICIDE PREVENTION?

15 **A.** WELL, THERE'S A COURT-APPROVED PLAN. I THINK WE HAVE -- I
16 THINK LAST I LOOKED, IT'S BEEN SOME TIME, ABOUT 600 CELLS THAT
17 HAVE BEEN MODIFIED TO TAKE AWAY THE EXTRA BUNK AND REDUCE THE
18 AMOUNT OF HARDWARE THAT AN OFFENDER COULD HURT THEMSELF WITH.
19 SOME MESHING ON THE SCREENS, FROM LARGE MESHING TO SMALL
20 MESHING, TO PREVENT THEM FROM ATTACHING A SHEET OR OTHER ITEM TO
21 HURT THEMSELVES.

22 **JUDGE KARLTON:** EXCUSE ME.

23 (DISCUSSION HELD OFF THE RECORD.)

24 **BY MR. MELLO:**

25 **Q.** MR. KERNAN, HAS CDCR MADE IMPROVEMENTS IN CONNECTION WITH

1 THE CONSTRUCTION OF SMALL MANAGEMENT YARDS FOR ADMIN -- AD SEG
2 UNITS?

3 **A.** YES, SIR.

4 **Q.** GENERALLY, TO YOUR KNOWLEDGE, WHAT HAVE THEY DONE IN THAT
5 REGARD?

6 **A.** I THINK WE HAVE ABOUT 600 OF THEM CONSTRUCTED. THERE'S
7 SOME -- AN ADDITIONAL AMOUNT THAT CERTAINLY WILL BE CONSTRUCTED.
8 WHILE NOT IN MY COMPLETE PURVIEW, THE FACILITY MANAGEMENT STAFF
9 DIVISION OF OUR DEPARTMENT IS REALLY RESPONSIBLE FOR THAT, BUT I
10 -- I THINK THEY HAVE GOT ABOUT 600 OF THEM DONE SO FAR.

11 **Q.** ARE THERE PLANS TO BUILD MORE?

12 **A.** YES, SIR.

13 **Q.** DOES THE DIVISION OF ADULT INSTITUTIONS ALSO USE IN SOME
14 INSTANCES DOUBLE CELLING OF UNITS IN ADMINISTRATIVE SEGREGATION
15 UNITS AS A TECHNIQUE FOR REDUCING SUICIDE?

16 **A.** CERTAINLY. IT'S MY EXPERIENCE THAT INMATES THAT ARE DOUBLE
17 CELLED ARE LESS LIKELY TO DO IT. FINDING A COMPATIBLE CELL MATE
18 IS ABSOLUTELY A MEANS THAT WE ATTEMPT AND I HAVE ATTEMPTED TO
19 JOINT TWO INMATES UP SO THAT THEY KEEP AN EYE ON EACH OTHER.

20 **Q.** MR. KERNAN, WE ARE GOING TO PULL OUT DEFENDANT'S EXHIBIT
21 1092, WHICH I BELIEVE IS THE RECEIVER'S MAY '07 OVERCROWDING
22 REPORTS. SPECIFICALLY 42 AND 43.

23 FIRST OF ALL, HAVE YOU IN THE PAST REVIEWED THE
24 RECEIVER'S OVERCROWDING REPORT FROM MAY OF 2007?

25 **A.** YES, SIR.

1 Q. IN THAT REPORT ON PAGES 42 AND 43, THE RECEIVER WROTE:

2 "TO SUMMARIZE, THOSE WHO BELIEVE THE
3 CHALLENGES FACED BY THE PLAN OF ACTION ARE
4 UNCOMPLICATED AND WHO THINK THAT POPULATION
5 CONTROLS WILL SOLVE CALIFORNIA'S PRISONS
6 HEALTHCARE PROBLEMS ARE SIMPLY WRONG.
7 POPULATION LIMITS MAY HELP EFFECTUATE A MORE
8 TIMELY AND COST EFFECTIVE REMEDIAL PROCESS.
9 HOWEVER, THE CURE TO EXISTING HEALTHCARE
10 PROBLEMS WILL BE DIFFICULT AND COSTLY TO
11 IMPLEMENT REGARDLESS OF POPULATION CONTROL
12 EFFORTS."

13 MR. KERNAN, DO YOU AGREE THAT THE -- THAT
14 OVERCROWDING IS NOT THE BIGGEST IMPEDIMENT TO THE RECEIVER'S
15 DELIVERY OF QUALITY CORRECTIONAL MEDICAL CARE TO CALIFORNIA'S
16 INMATE PATIENTS?

17 MR. FAMA: OBJECTION. STEVE FAMA FOR THE PLAINTIFF
18 CLASS. THIS IS OUTSIDE MR. KERNAN'S EXPERTISE, OR IT HASN'T
19 BEEN ESTABLISHED.

20 LACK OF FOUNDATION. ALSO, HE WAS NOT DESIGNATED AS A
21 WITNESS REGARDING THESE PHASE ONE ISSUES.

22 MR. MELLO: I BELIEVE THIS IS A SECOND HALF PHASE ONE
23 ISSUE, WHETHER THERE IS ALTERNATIVE THINGS THAT CAN BE DONE.

24 I DON'T BELIEVE HE IS GOING DO PRIMARY CAUSE. I
25 BELIEVE HE IS SAYING WHETHER IT IS OR IT ISN'T. AND I BELIEVE

1 THAT --

2 JUDGE HENDERSON: WHAT IS OR ISN'T?

3 MR. MELLO: I BELIEVE THAT YOU CAN DO THINGS -- AND
4 HE HAS ALREADY TESTIFIED TODAY ABOUT MANY THINGS YOU CAN DO TO
5 IMPROVE MEDICAL CARE, INCLUDING STAFFING.

6 JUDGE KARLTON: THE QUESTION THAT WAS OBJECTED TO,
7 HOWEVER, MR. MELLO --

8 MR. MELLO: I CAN REASK THE QUESTION, IF YOU WOULD
9 LIKE.

10 JUDGE KARLTON: PERHAPS YOU SHOULD.

11 BY MR. MELLO:

12 Q. DO YOU BELIEVE THAT THE RECEIVER CAN CONTINUE TO IMPROVE
13 MEDICAL CARE IN THE FACE OF POPULATION PRESSURES?

14 MR. FAMA: OBJECTION. LACKS FOUNDATION.

15 JUDGE HENDERSON: I'M GOING TO LET HIM ANSWER THAT.

16 A. I DO NOT THINK HE OVERCROWDING IS THE PRIMARY MEANS. I
17 AGREE WITH THE DOCUMENT AND THE FACTS, TALKED TO MR. HAGAR AND
18 THE RECEIVER STAFF.

19 MR. FAMA: MOTION TO STRIKE THAT ANSWER.

20 JUDGE HENDERSON: GRANTED.

21 BY MR. MELLO:

22 Q. OKAY. DO YOU BELIEVE THAT MEDICAL CARE CAN BE IMPROVED
23 THROUGH THE MEANS THAT YOU HAVE TESTIFIED ABOUT TODAY --
24 STAFFING, CUSTODY, ET CETERA -- IN LIGHT OF THE POPULATION
25 PRESSURES?

1 **A.** ABSOLUTELY, YES.

2 **Q.** AND YOU HAVE BEEN WITH THE DEPARTMENT FOR MORE THAN 25
3 YEARS, CORRECT?

4 **A.** YES, SIR.

5 **Q.** FOR HOW MANY OF THOSE YEARS HAS THE DEPARTMENT USED
6 NON-TRADITIONAL BEDS?

7 **A.** I THINK FOR ALL 25 YEARS WE HAVE HAD SOME LEVEL OF
8 NON-TRADITIONAL BEDS.

9 **Q.** IN FACT, IN APRIL OF 2004 YOU HAD MORE THAN 14,000
10 NON-TRADITIONAL BEDS, CORRECT?

11 **A.** YES, SIR.

12 **Q.** AND HOW DOES THAT COMPARE TO THE NUMBER OF NON-TRADITIONAL
13 BEDS CURRENTLY IN THE DEPARTMENT?

14 **A.** IT'S VERY CLOSE. IN FACT, WE HAVE A LITTLE BIT LESS NOW.

15 **Q.** OKAY. AND DO YOU ALSO HAVE PLANS TO HAVE APPROXIMATELY
16 9,000 NON-TRADITIONAL BEDS BY THE END OF JUNE, 2009?

17 **A.** YES, SIR. WE HAVE 5,000 ON THE CURRENT SCHEDULE TO GO DOWN.

18 **Q.** DO YOU HAVE ANY REASON TO BELIEVE THAT THAT CURRENT SCHEDULE
19 WILL NOT BE MET?

20 **A.** NOT AT ALL.

21 **MR. MELLO:** NOTHING FURTHER, YOUR HONORS. THANK YOU.

22 **THE COURT:** INTERVENORS HAVE ANYTHING?

23 **MR. MITCHELL:** NO QUESTIONS.

24 **THE COURT:** CROSS?

25 **MR. FAMA:** THANK YOU, YOUR HONORS. STEVE FAMA FOR

1 THE PLAINTIFF CLASS. GOOD MORNING.

2 **CROSS EXAMINATION**

3 **BY MR. FAMA:**

4 **Q.** GOOD MORNING, MR. KERNAN.

5 **A.** GOOD MORNING, SIR.

6 **Q.** IF I COULD JUST A HALF SECOND TO STRAIGHTEN MY FILES.

7 (BRIEF PAUSE.)

8 **Q.** MR. KERNAN, ANOTHER TERM FOR NON-TRADITIONAL BEDS IS BAD
9 BEDS, RIGHT?

10 **A.** YES, SIR.

11 **Q.** AND YOU, YOURSELF, USE THE TERM BAD BEDS, CORRECT?

12 **A.** YES, SIR.

13 **Q.** AND SOME PEOPLE CALL BAD BEDS UGLY BEDS, RIGHT?

14 **A.** YES, SIR.

15 **Q.** BAD BEDS ARE BEDS IN AREAS NEVER INTENDED OR DESIGNED TO
16 HOUSE INMATES, RIGHT?

17 **A.** YES, SIR.

18 **Q.** AND HOUSING INMATES IN THESE NON-TRADITIONAL OR BAD BEDS
19 PRESENTS SERIOUS SAFETY CONCERNS FOR BOTH INMATES AND STAFF,
20 CORRECT?

21 **MR. MELLO:** OBJECTION. OUTSIDE THE SCOPE.

22 PAUL MELLO. OUTSIDE THE SCOPE OF HIS DIRECT
23 TESTIMONY AND HIS TRIAL AFFIDAVIT.

24 **JUDGE HENDERSON:** WELL, HE IS EXPANDING CONSIDERABLY
25 ON THE NOTION OF BEDS, WHICH WAS THE THING YOU CLOSED ON. I

1 WILL ALLOW IT.

2 **BY MR. FAMA:**

3 **Q.** AND AREAS NEVER INTENDED OR DESIGNED TO HOUSE INMATES THAT
4 HAVE BAD BEDS IN THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND
5 REHABILITATION INCLUDE GYMNASIUMS AND DAYROOMS, RIGHT?

6 **A.** YES, SIR.

7 **Q.** GOVERNOR SCHWARZENEGGER PROCLAIMED A STATE OF EMERGENCY
8 REGARDING CALIFORNIA PRISON CROWDING ON OCTOBER 4, 2006,
9 CORRECT?

10 **A.** YES, SIR.

11 **Q.** THE EMERGENCY OVERCROWDING PROCLAMATION, IN PART, WAS BASED
12 ON CDCR'S USE OF NON-TRADITIONAL BEDS, CORRECT?

13 **A.** YES, SIR.

14 **Q.** AT THE TIME THE GOVERNOR ISSUED THE EMERGENCY PROCLAMATION,
15 THERE WERE APPROXIMATELY 17,500 NON-TRADITIONAL BEDS BEING USED,
16 CORRECT?

17 **A.** I THINK THAT'S RIGHT.

18 **Q.** IN THE MONTHS AFTER THE GOVERNOR'S EMERGENCY PROCLAMATION,
19 THE CDCR INCREASED THEIR USE OF NON-TRADITIONAL BEDS, CORRECT?

20 **A.** NO, SIR.

21 **Q.** THAT'S NOT CORRECT, MR. KERNAN?

22 **A.** MAYBE I'M MISUNDERSTANDING THE QUESTION.

23 **Q.** IN THE MONTHS AFTER THE GOVERNOR ISSUED THE EMERGENCY
24 PROCLAMATION IN OCTOBER, 2006, THE NUMBER OF BAD BEDS,
25 NON-TRADITIONAL BEDS USED IN THE DEPARTMENT OF CORRECTIONS

1 INCREASED, CORRECT?

2 **A.** I'M NOT SURE -- THERE'S 5,000 LESS THAN DURING THAT PERIOD
3 OF TIME TODAY. SO I'M NOT SURE IF YOU SAY THAT THEY ARE
4 INCREASING, IF THERE WAS A --

5 **JUDGE KARLTON:** NO, NO, NO, NO. THERE WAS AN
6 INCREASE, IS WHAT HAD FAMA IS SAYING. WAS THERE AN INCREASE
7 WHICH HAS NOW BEEN REDUCED?

8 **JUDGE HENDERSON:** AFTER THE GOVERNOR ISSUED HIS
9 PROCLAMATION, DID BAD BEDS INCREASE IN THAT PERIOD THEREAFTER?

10 **THE WITNESS:** I WOULD HAVE TO TAKE A LOOK. IF THEY
11 DID -- IT WAS AT AN ALL-TIME HIGH OF 19,600 OR SO, AND TODAY IT
12 SITS AT BELOW FOURTEEN.

13 SO THERE MIGHT HAVE BEEN A MOMENTARY INCREASE, BUT
14 WITH A NUMBER OF EFFORTS, PAROLE REFORM, AB 900, OUT-OF-STATE
15 BEDS, WE HAVE BEEN ABLE TO REDUCE THAT DOWN TO ITS CURRENT
16 LEVEL.

17 **BY MR. FAMA:**

18 **Q.** AND, MR. KERNAN, THAT ALL-TIME HIGH OF 19,500-AND-SO BEDS
19 TOOK PLACE IN AUGUST, 2007, CORRECT?

20 **A.** I THINK SO, YES.

21 **Q.** THE DEPARTMENT OF CORRECTIONS' PLAN TO CONTINUE REDUCING THE
22 NUMBER OF BAD BEDS THAT ARE USED IS DEPENDENT UPON MANY THINGS,
23 CORRECT?

24 **JUDGE KARLTON:** ON WHAT?

25 **MR. FAMA:** MANY THINGS. EXCUSE ME, YOUR HONOR.

1 **BY MR. FAMA:**

2 **Q.** MR. KERNAN?

3 **A.** YES, SIR.

4 **Q.** AND THAT WOULD INCLUDE CONTINUING THE OUT-OF-STATE TRANSFERS
5 OF INMATES TO CONTRACTED PRIVATELY-RUN CORRECTIONAL FACILITIES,
6 CORRECT?

7 **A.** AMONG OTHER THINGS, YES.

8 **Q.** AND IT ALSO DEPENDS UPON THE NUMBER OF PEOPLE THAT THE
9 DEPARTMENT OF CORRECTIONS -- EXCUSE ME, THE NUMBER OF PEOPLE WHO
10 ARE INMATES THAT THE DEPARTMENT OF CORRECTIONS RECEIVES,
11 CORRECT?

12 **A.** YES, SIR.

13 **Q.** LINDA BARNETT IS THE CHIEF OF OPERATIONS SUPPORT FOR THE
14 CDCR DIVISION OF ADULT INSTITUTIONS, RIGHT?

15 **A.** YES.

16 **Q.** YOU SUPERVISE OR MANAGE HER WORK, CORRECT?

17 **A.** I'M SEVERAL LEVELS ABOVE, BUT YES.

18 **Q.** ON NOVEMBER 26, 2008, MS. BARNETT ISSUED A MEMORANDUM
19 ENTITLED "EMERGENCY REVISION OF NOVEMBER 2008 AND DECEMBER 2008
20 INSTITUTION ACTIVATION SCHEDULES AND ISSUANCE OF JANUARY 2009
21 INSTITUTION ACTIVATION SCHEDULES," CORRECT?

22 **A.** I DON'T KNOW.

23 **MR. FAMA:** YOUR HONOR, MAY I APPROACH THE WITNESS?

24 **JUDGE HENDERSON:** YOU MAY.

25

1 (WHEREUPON, DOCUMENT WAS TENDERED
2 TO THE WITNESS.)

3 JUDGE KARLTON: IS THIS PRESENTLY IN EVIDENCE, SIR?

4 MR. FAMA: IT IS NOT. IT HAS BEEN MARKED P-839.

5 BY MR. FAMA:

6 Q. MR. KERNAN, I HAVE HANDED YOU A DOCUMENT THAT'S ENTITLED
7 ACROSS THE TOP "MEMORANDUM" AND HAS THE DATE NOVEMBER 26, 2008.

8 IF YOU COULD TURN TO THE THIRD PAGE OF THAT --

9 JUDGE KARLTON: FIRST OF ALL, HAVE YOU EVER SEEN THIS
10 DOCUMENT?

11 THE WITNESS: I WAS CC'D ON IT, SIR. I DON'T RECALL
12 SEEING IT BEFORE.

13 JUDGE KARLTON: BUT YOU WERE CC'D ON IT?

14 THE WITNESS: YES.

15 JUDGE KARLTON: AND IN THE DEPARTMENT IF YOU'RE CC'D,
16 YOU WOULD GET IT.

17 THE WITNESS: AND THIS IS A DOCUMENT I WOULD
18 REGULARLY GET IN THE COURSE OF MY BUSINESS.

19 MR. FAMA: I WOULD MOVE THIS INTO EVIDENCE.

20 JUDGE HENDERSON: ADMITTED.

21 (PLAINTIFFS' EXHIBIT 839 RECEIVED IN
22 EVIDENCE)

23 BY MR. FAMA:

24 Q. AND AS YOU SAID, MR. KERNAN, YOU WERE SENT A COPY OF THIS
25 MEMO, CORRECT?

1 A. YES, SIR.

2 Q. IN FACT, YOU WERE THE FIRST CC LISTED, CORRECT?

3 A. YES, SIR.

4 Q. AND COPIES WERE ALSO SENT TO ALL CDCR PRISONS WARDENS,
5 RIGHT?

6 A. YES, SIR.

7 Q. AND TO ALL HEALTHCARE MANAGERS, TOO?

8 A. YES, SIR.

9 Q. AND A WHOLE LOT OF OTHER PEOPLE?

10 A. YES, SIR.

11 Q. IN THE MEMO ON THE FIRST PAGE IN THE FIRST PARAGRAPH
12 MS. BARNETT WROTE, QUOTE:

13 "DUE TO THE POPULATION BEING SIGNIFICANTLY
14 ABOVE FULL PROJECTIONS, MANY DEACTIVATIONS THAT
15 WERE PREVIOUSLY SCHEDULED HAVE BEEN POSTPONED AT
16 THIS TIME."

17 CORRECT?

18 A. YES, SIR.

19 Q. AND AMONG THE MATTERS POSTPONED AND LISTED IN MS. BARNETT'S
20 MEMO WERE DEACTIVATIONS OF HUNDREDS OF BAD BEDS AND DAYROOMS AND
21 GYMS, CORRECT?

22 A. YES, SIR.

23 Q. AND THAT WOULD INCLUDE, FOR EXAMPLE, UNDER JANUARY, 2009, ON
24 THE SECOND PAGE, 100 BEDS IN THE ASP, OR AVENAL STATE PRISON'S
25 FACILITY GYM, CORRECT?

1 A. YES, SIR.

2 Q. AND 175 BEDS IN THE CALIFORNIA CORRECTIONAL INSTITUTION, OR
3 CCI GYM, RIGHT?

4 A. YES, SIR.

5 Q. AND 180 BEDS IN THE CENTINELA, OR CEN, FACILITY B DAYROOM,
6 RIGHT?

7 A. YES, SIR.

8 Q. EARLIER THIS YEAR TRANSFERS TO THE OUT-OF-STATE
9 PRIVATELY-CONTRACTED-FOR PRISON FACILITY IN MISSISSIPPI FROM THE
10 CALIFORNIA DEPARTMENT OF CORRECTIONS WERE STOPPED, CORRECT?

11 A. YES.

12 Q. AND THEY WERE STOPPED FOLLOWING THE IDENTIFICATION OF
13 MEDICAL DEFICIENCIES AT THAT MISSISSIPPI PRISON, CORRECT?

14 A. YES, SIR.

15 Q. THAT MISSISSIPPI PRISON IS CALLED TALLAHATCHIE OR SOMETHING,
16 CORRECT?

17 A. YES, SIR.

18 Q. DO YOU KNOW THE NAME?

19 A. I JUST KNOW IT AS TALLAHATCHIE.

20 Q. TALLAHATCHIE, LIKE THE BRIDGE, RIGHT?

21 A. RIGHT.

22 Q. AND AMONG THE MEDICAL ISSUES OR DEFICIENCIES IDENTIFIED WERE
23 SOME INVOLVING A DEATH OF A CALIFORNIA DEPARTMENT OF CORRECTIONS
24 ASTHMA PATIENT, RIGHT?

25 A. I DON'T KNOW THAT I COULD SAY THAT. THE RECEIVER'S OFFICE

1 IS THE ONE WHO HAD SOME ISSUES, AND I DON'T KNOW IF THAT WAS THE
2 SINGULAR REASON.

3 WE HAVE WORKED THROUGH IT AND THE RECEIVER HAS SINCE
4 AUTHORIZED THE RETURN OF THAT FACILITY AND WE ARE SENDING
5 INMATES THERE TODAY.

6 Q. THERE WAS AN ASTHMA-RELATED DEATH OF A CALIFORNIA DEPARTMENT
7 OF CORRECTIONS PRISONER AT THE TALLAHATCHIE, MISSISSIPPI
8 FACILITY, CORRECT?

9 A. YES, SIR.

10 Q. AND YOU WERE ON THE PLANE THAT TOOK THE FIRST CDCR INMATES
11 TO THE MISSISSIPPI FACILITY, CORRECT?

12 A. YES, SIR.

13 Q. YOU WANTED TO SEE THE MISSISSIPPI FACILITY, RIGHT?

14 A. YES, SIR.

15 Q. AND YOU ACTUALLY WENT TO AND SAW IT, RIGHT?

16 A. CORRECT.

17 Q. AND YOU DIDN'T IDENTIFY ANY MEDICAL DEFICIENCIES WHILE YOU
18 WERE THERE, CORRECT?

19 A. NO, SIR.

20 Q. DEFICIENCIES REGARDING MEDICAL PROTOCOLS, DOCTORS
21 PRESCRIBING MEDICATION, AMBULANCE SERVICES, THINGS LIKE THAT ARE
22 COMPLETELY OUT OF YOUR EXPERTISE, CORRECT?

23 A. YES, SIR.

24 Q. IN MAY OF 2007, MR. KERNAN, YOU STATED UNDER OATH THAT THE
25 EMERGENCY CONDITIONS CAUSED BY NON-TRADITIONAL BEDS SHOULD BE

1 ELIMINATED IN 2009, CORRECT?

2 **A.** YES, SIR.

3 **Q.** AND ALTHOUGH YOU ARE HOPEFUL TO END THE USE OF ALL BAD BEDS
4 SOON, YOU CAN'T PUT A DATE ON SOON BECAUSE YOUR HOPE IS BASED ON
5 THE REFORMS OF AB 900, THE BUILDING OF REENTRY FACILITIES,
6 PAROLE REFORMS AND THE RECEIVER'S 10,000 BEDS; AND NONE OF THOSE
7 THINGS HAVE HAPPENED YET, CORRECT?

8 **A.** I THINK YOU SAID AB 900. CERTAINLY, SOME ASPECTS OF AB 900
9 HAVE, BUT I THINK GENERALLY THE ANSWER TO THAT QUESTION IS, YES,
10 THOSE THINGS ARE STILL BEING WORKED THROUGH.

11 **Q.** WHEN WILL ALL NON-TRADITIONAL BAD BEDS IN THE DEPARTMENT OF
12 CORRECTIONS BE PUT TO AN END, MR. KERNAN?

13 **A.** I HAVE NO WAY OF KNOWING THAT.

14 **Q.** THE DEPARTMENT OF CORRECTIONS HAS NOT SCHEDULED ANY
15 ADDITIONAL DEACTIVATION OF BAD BEDS BEYOND THE 5,000 THAT YOU
16 SAY ARE CURRENTLY SCHEDULED TO BE DEACTIVATED BY MID TO LATE
17 2009, CORRECT?

18 **A.** WE WILL SCHEDULE AS -- IT'S A VERY FLUID SITUATION, BUT AS
19 WE MOVE FORWARD, IT'S VERY LIKELY THAT WE WOULD INCLUDE
20 ADDITIONAL BAD BEDS COMING DOWN.

21 **Q.** MR. KERNAN, PERHAPS I WASN'T CLEAR WITH MY QUESTION.

22 THE DEPARTMENT OF CORRECTIONS HAS NOT SCHEDULED ANY
23 ADDITIONAL DEACTIVATIONS BEYOND THOSE THAT YOU TESTIFIED TO IN
24 ANSWER TO MR. MELLO'S QUESTIONS, CORRECT?

25 **A.** NO, SIR.

1 Q. MR. KERNAN, YOU DON'T KNOW THE AMOUNT OF BAD BEDS THAT WILL
2 BE DEACTIVATED IN THE NEXT YEAR AND THE PRISONER POPULATION THAT
3 CORRESPONDINGLY WOULD BE DECREASED DUE TO PAROLE REDUCTION
4 STRATEGIES, CORRECT?

5 A. I DON'T KNOW AN EXACT NUMBER, NO, SIR.

6 Q. AND YOU DO NOT KNOW HOW MANY FEWER INMATES WILL BE RECEIVED
7 BY CDCR ONCE THE DECISION-MAKING PAROLE MATRIX IS IMPLEMENTED
8 STATE WIDE, CORRECT?

9 A. NO, SIR.

10 Q. THE DEPARTMENT OF CORRECTIONS, AS PART OF THE BUDGET PROCESS
11 THIS PAST YEAR, EVALUATED REDUCING THE NUMBER OF LOW
12 NON-SERIOUS, NON-VIOLENT OFFENDERS, CORRECT?

13 A. YES, SIR.

14 Q. AND THE DEPARTMENT OF CORRECTIONS PUT FORWARD A PROPOSAL TO
15 RELEASE ABOUT 20,000 LOW RISK OFFENDERS 20 MONTHS BEFORE THE END
16 OF THEIR TERM, CORRECT?

17 A. YES, SIR.

18 Q. YOU WORKED ON THAT PROPOSAL, RIGHT?

19 A. YES, SIR.

20 Q. YOU DEVELOPED ESTIMATES, IDENTIFIED THE POPULATION, LOOKED
21 AT THE SPECIFIC CRIMES THAT WOULD MAKE UP THE NON-SERIOUS,
22 NON-VIOLENT OFFENSE GROUP, THINGS OF THAT NATURE, CORRECT?

23 A. YES, SIR.

24 Q. WHEN THE CDCR PROPOSED THIS EARLY RELEASE OF 20,000
25 PRISONERS, IT WASN'T TRYING TO ENDANGER PUBLIC SAFETY, RIGHT?

1 **A.** OF COURSE NOT, NO.

2 **Q.** HAVING MORE STAFF, CORRECTIONAL AND MEDICAL STAFF, WITHOUT A
3 REDUCTION IN THE NUMBER OF PRISONERS DOESN'T DO ANYTHING IF
4 THERE ARE PROBLEMS WITH SPACE FOR CLINICS AND THE STAFF TO WORK
5 THEM, RIGHT?

6 **A.** IF THERE'S NOT CORRESPONDING MODIFICATIONS TO THE PHYSICAL
7 PLAN, I THINK I WOULD AGREE WITH THAT, YES.

8 **Q.** THE RECEIVER'S PLAN FOR CONSTRUCTION HAS TWO PARTS; THE
9 CONSTRUCTION OF TREATMENT AND OFFICE SPACE AT EXISTING PRISONS,
10 AND THE BUILDING OF UP TO 10,000 BEDS AT NEW FACILITIES, RIGHT?

11 **A.** YES, SIR.

12 **Q.** THE RECEIVER HAS NOT RECEIVED THE FUNDING HE HAS REQUESTED
13 FOR HIS PLANS FOR THE CONSTRUCTION OF HEALTHCARE TREATMENT AND
14 OFFICE SPACE IN EXISTING PRISONS, RIGHT?

15 **A.** I DON'T BELIEVE HE HAS RECEIVED ALL OF THE FUNDING. I THINK
16 THAT THERE'S ALREADY BEEN A NUMBER OF PHYSICAL PLAN
17 MODIFICATIONS, MODIFICATIONS OF SPACE IN THE PRISONS AT THE
18 RECEIVER'S REQUEST INTENDING TO ENHANCE DELIVERY OF MEDICAL CARE
19 TO THE PRISONERS.

20 **Q.** IS IT YOUR TESTIMONY, MR. KERNAN, THAT THE RECEIVER CAN GO
21 FORWARD TODAY WITH ALL PLANS THAT HE HAS MADE AND SHARED WITH
22 THE DEPARTMENT OF CORRECTIONS FOR UPGRADING CLINIC AND MEDICAL
23 -- HEALTHCARE-RELATED SPACE AT THE INSTITUTIONS?

24 **A.** NO. MY TESTIMONY IS AS THEY HAVE WENT THROUGH THE PRISONS
25 AND IDENTIFIED JUST THOSE MODIFICATIONS, THAT THEY HAVE MADE

1 OTHER CHANGES. FOR EXAMPLE, TAKE SPACE WHERE CORRECTIONAL
2 OFFICERS ARE CURRENTLY -- HAVE THEIR OFFICES AND HE HAS ORDERED
3 THAT THAT BE A CLINIC AREA, OR -- JUST AS AN EXAMPLE. AND HE
4 HAS DONE THAT AND IT HASN'T COST ANY MONEY TO DO THOSE
5 MODIFICATIONS IN THE PRISONS. AND HE HAS WENT TO ALL 33, I
6 BELIEVE.

7 Q. BUT FOR THOSE PROJECTS THAT WOULD COST MONEY, THE RECEIVER
8 HAS NOT RECEIVED THE FUNDING THAT HE HAS REQUESTED, CORRECT?

9 A. YES.

10 Q. AND THE RECEIVER HAS NOT RECEIVED THE FUNDING FOR THE 10,000
11 -- UP TO 10,000 HEALTHCARE BEDS, FACILITIES THAT HE HAS
12 PROPOSED, CORRECT?

13 A. NOT YET, SIR, NO.

14 Q. AND YOU ARE AWARE THAT THE DEFENDANTS IN THE PLATA CASE HAVE
15 OPPOSED THE RECEIVER'S MOTION FOR AN ORDER THAT WOULD REQUIRE
16 THE DEFENDANTS TO PAY HIM AT LEAST SOME OF THE MONEY NEEDED FOR
17 THE 10,000 BED FACILITY PROJECT AND THE EXISTING PRISON
18 TREATMENT AND OFFICE SPACE UPGRADE PROGRAM, RIGHT?

19 A. I'M AWARE, YES.

20 Q. AND, MR. KERNAN, YOU ARE AWARE OF THE DEFICIENCIES IN SPACE,
21 MEDICAL AND HEALTHCARE SPACE AT PARTICULAR PRISONS, CORRECT?

22 JUDGE KARLTON: YOU MEAN, HIS PERSONAL OPINION?

23 MR. FAMA: NO --

24 JUDGE KARLTON: HIS UNDERSTANDING OF WHAT THE
25 RECEIVER SAYS OR WHAT?

1 **MR. FAMA:** I'M ASKING HIS PERSON.

2 **JUDGE KARLTON:** WELL --

3 **MR. FAMA:** WELL, THAT WAS --

4 **JUDGE KARLTON:** IF THAT'S THE QUESTION OF HIS
5 OPINION, I SUPPOSE IT'S APPROPRIATE. I'M -- I'M NOT SURE IT'S
6 APPROPRIATE, BUT LET'S GET OVER WITH IT.

7 DO YOU HAVE AN OPINION AS TO WHETHER THE SPACE IS
8 PRESENTLY ADEQUATE?

9 **THE WITNESS:** I MEAN, AT SOME PLACES IT MAY NOT BE
10 ADEQUATE. IT'S MY OPINION THAT AT MANY OF THE PRISONS, BOTH THE
11 MEDICAL AND MENTAL HEALTH AND CUSTODY STAFF HAVE WORKED TOGETHER
12 TO MAKE THE BEST OF THE CIRCUMSTANCES.

13 SO IT'S PRETTY HARD FOR ME TO SAY IF IT'S ADEQUATE OR
14 NOT.

15 **BY MR. FAMA:**

16 **Q.** DO YOU KNOW, MR. KERNAN, THAT THE RECEIVER HAS REPORTED THAT
17 AT THE RECEPTION CENTER WEST FACILITY AT THE CALIFORNIA
18 INSTITUTION FOR MEN, THAT THERE ARE THREE PHYSICIANS SEEING
19 PATIENTS IN A SINGLE ROOM?

20 **A.** I'M NOT AWARE OF THAT. IT DOESN'T SURPRISE ME THOUGH, SIR.

21 **Q.** AND ARE YOU AWARE THAT AT THAT SAME FACILITY, THE RECEPTION
22 CENTER WEST AT THE CALIFORNIA INSTITUTION FOR MEN IN CHINO, THAT
23 THE RECEIVER'S MASTER PLAN REPORTS THAT THERE IS A ROOM IN WHICH
24 FIVE REGISTERED NURSES SEE INMATE PATIENTS WITH NO VISUAL OR
25 AUDIO PRIVACY FOR ANYONE?

1 **A.** I'M NOT AWARE THAT SPECIFICALLY, NO.

2 **Q.** DO YOU HAVE ANY INFORMATION THAT WOULD CONTRADICT THAT?

3 **A.** NO.

4 **Q.** AND DO YOU HAVE A PLAN, MR. KERNAN, AS THE DIRECTOR OF ADULT
5 INSTITUTION OPERATIONS TO FIX THOSE TWO PROBLEMS AT THE
6 RECEPTION CENTER WEST AT CIM?

7 **A.** THE OLD DESIGN PRISONS, ESPECIALLY CIM, THEY ARE VERY OLD
8 FACILITIES. THERE ARE PLANS, FACILITY PLANS TO EFFECT -- IT
9 WOULDN'T BE UNDER MY DIRECT EXPERTISE OF FACILITY MANAGEMENT
10 STAFF, BUT, YES, I BELIEVE THERE'S PLANS BOTH FOR PLATA AND FOR
11 COLEMAN TO IMPROVE AND OPTIMIZE CLINICAL SPACE FOR STAFF AT ALL
12 OF OUR FACILITIES.

13 **Q.** AND THOSE ARE THE PLANS DEVELOPED BY THE RECEIVER AND SHARED
14 AND SIGNED OFF BY THE DEPARTMENT OF CORRECTIONS, CORRECT?

15 **A.** I THINK THAT THERE'S AN ANALYSIS GOING ON CURRENTLY TO
16 REVIEW THE EFFICACY OF THOSE IMPROVEMENTS.

17 SO WHEN YOU SAY SIGN OFF, I'M NOT SURE THAT THE
18 DEPARTMENT HAS SIGNED OFF ON ALL OF THE IMPROVEMENTS THAT THE
19 RECEIVERS PROPOSED.

20 **Q.**

21 **MR. FAMA:** ALL RIGHT. CAN I ASK MR. JONES TO BRING
22 UP THE SECOND -- THE FIRST AND SECOND PAGE OF DEFENDANTS' 1226,
23 PLEASE?

24 (DOCUMENT DISPLAYED)

25

1 **BY MR. FAMA:**

2 **Q.** AND THAT FIRST PAGE THERE SAYS: "HEALTHCARE FACILITY
3 IMPROVEMENT PROGRAM, CALIFORNIA STATE PRISON, CALIFORNIA
4 INSTITUTION FOR MEN, MASTER PLAN REPORT," MR. KERNAN?

5 **A.** YES, SIR.

6 **Q.** AND THAT SECOND PAGE, THERE IS A BUNCH OF -- WELL, THERE'S
7 ABOUT A HALF DOZEN SIGNATURES, CORRECT?

8 **A.** YES, SIR.

9 **Q.** AND SOME OF THOSE SIGNATURES YOU RECOGNIZE AS THE CALIFORNIA
10 DEPARTMENT OF CORRECTIONS, PARTICULARLY THERE ON THE LAST
11 SIGNATURE LINE, CORRECT?

12 **MR. MELLO:** JUST A BELATED OBJECTION. I BELIEVE THIS
13 DOCUMENT IS UNDER SEAL.

14 **JUDGE KARLTON:** I'M SORRY. WHAT?

15 **MR. MELLO:** I BELIEVE THIS DOCUMENT IS UNDER SEAL,
16 YOUR HONOR.

17 **JUDGE KARLTON:** WE ARE IN TRIAL. THERE'S NOTHING WE
18 CAN DO ABOUT IT.

19 **MR. MELLO:** I BELIEVE THERE IS AN ORDER IN THE PLATA
20 CASE THAT THIS PARTICULAR DOCUMENT IS UNDER SEAL.

21 **JUDGE REINHARDT:** DOES IT MATTER IF IT'S JUST A COVER
22 AND SIGNATURE PAGE?

23 **MR. MELLO:** I DON'T KNOW. I JUST KNOW THERE IS AN
24 ORDER THAT THE DOCUMENT IS UNDER SEAL.

25 **MS. JOHNSON:** THE FOOTER ACTUALLY NOTES THAT IT'S

1 UNDER PROTECTIVE ORDER.

2 JUDGE KARLTON: THERE IS A STIPULATION THAT THIS HAS
3 WAS TO BE UNDER SEAL?

4 MR. MELLO: I DON'T BELIEVE THAT THIS ISSUE HAS BEEN
5 RESOLVED.

6 THIS WAS DONE AT THE REQUEST OF THE RECEIVER'S
7 OFFICE, THAT THIS PARTICULAR DOCUMENT BE HELD UNDER SEAL AND I
8 BELIEVE ALL PARTIES SIGNED OFF ON THAT.

9 JUDGE HENDERSON: ARE YOU GOING INTO ANY OTHER
10 PORTIONS OF THIS?

11 MR. FAMA: I DON'T BELIEVE SO, YOUR HONOR. IT'S
12 SIMPLY TO ASK MR. KERNAN WHETHER THE DEPARTMENT HAS SIGNED OFF
13 ON THIS PARTICULAR FACILITY PLAN.

14 A. I WOULD SAY THE QUESTION TO THAT IS NO, NOT ON THE A
15 HEADQUARTERS LEVEL. YOU HAVE THE WARDEN AND SOME OF THE STAFF
16 AT THE PRISON THAT SIGNED OFF. THEN YOU HAVE A SERGEANT IN THE
17 FACILITIES MANAGEMENT DIVISION THAT SIGNED OFF, BUT THAT HAS NOT
18 BEEN APPROVED BY A DEPUTY DIRECTOR AT OUR FACILITY PLANNING
19 DIVISION, AND CERTAINLY HASN'T BEEN SIGNED OFF BY THE SECRETARY.

20 BY MR. FAMA:

21 Q. I UNDERSTAND WHAT YOU ARE SAYING.

22 THIS IS A RECEIVER AND AT LEAST SO FAR DEPARTMENT OF
23 CORRECTIONS PLAN FOR CIM?

24 A. THIS IS WHAT I WAS TALKING ABOUT, WHERE THE RECEIVER STAFF
25 WERE GOING INTO THE PRISONS, EVALUATING WHAT IMPROVEMENTS CAN BE

1 MADE, WORKING WITH THE CORRECTIONAL STAFF OR THE STAFF AT THE
2 PRISON AND COMING TO SOME UNDERSTANDING ON THE IMPROVEMENTS,
3 YES.

4 Q. AND THE RECEIVER -- DO YOU AS THE ADULT -- EXCUSE ME, THE
5 DIRECTOR FOR OPERATIONS -- DO I HAVE YOUR TITLE RIGHT
6 MR. KERNAN? I'M SORRY.

7 A. NO, SIR. I'M AN UNDERSECRETARY.

8 Q. UNDERSECRETARY FOR OPERATIONS FOR THE ADULT DIVISION OF THE
9 CALIFORNIA DEPARTMENT OF CORRECTIONS, IS THAT RIGHT?

10 A. ADULT AND JUVENILE.

11 Q. ADULT AND JUVENILE.

12 DO YOU HAVE A PLAN SEPARATE FROM THE RECEIVER'S
13 EFFORTS TO REMEDIATE; THAT IS, TO FIX THE LACK OF ADEQUATE SPACE
14 AT THE RECEPTION CENTER WEST HEALTHCARE CLINIC AT CIM?

15 A. I COULDN'T SAY THAT SPECIFICALLY. AGAIN, IT'S NOT UNDER MY
16 EXPERTISE, FACILITY MANAGEMENT. WE HAVE A MULTITUDE OF
17 IMPROVEMENTS, CAPITAL OUTLAY PLANS, THAT ARE APPROVED BY FINANCE
18 AND THEN PROCESSED FOR IMPROVEMENTS ALL OVER THE STATE.

19 SO I COULDN'T SAY SPECIFICALLY ABOUT CIM WITHOUT
20 REFERRING BACK TO SOME DOCUMENTS TO SEE WHAT SPECIFICALLY WE
21 WERE PLANNING FOR CIM.

22 Q. ALL RIGHT. SO AS YOU SIT HERE TODAY, YOU DON'T -- YOU CAN'T
23 TELL ME THAT YOU DO, CORRECT?

24 A. NO, SIR.

25 Q. WITH REGARDS TO THE --

1 **JUDGE KARLTON:** CAN WE TAKE THIS DOWN NOW?

2 **MR. FAMA:** YES, TAKE IT DOWN. I'M SORRY, YOUR HONOR.
3 MR. JONES?

4 (DOCUMENT REMOVED FROM DISPLAY.)

5 **MR. FAMA:** THANK YOU VERY MUCH.

6 **BY MR. FAMA:**

7 **Q.** MR. KERNAN, THERE WERE SOMEWHERE AROUND 900 TO 1,000 MTA
8 POSITIONS ELIMINATED BY THE RECEIVER, RIGHT?

9 **A.** THAT SOUNDS ABOUT RIGHT. IT'S BEEN SOME TIME SINCE I SAW
10 THE ACTUAL NUMBERS.

11 **Q.** IN YOUR TRIAL AFFIDAVIT, MR. KERNAN, YOU MENTIONED THAT
12 ADMINISTRATIVE SEGREGATION INMATES CAN USE TELEVISIONS AND
13 APPLIANCES FOR DIVERSION, CORRECT?

14 **A.** I WOULD SAY THAT -- YES. THE ANSWER TO THAT IS YES.

15 **Q.** YOU DON'T KNOW HOW MANY CDCR ADMINISTRATIVE SEGREGATION
16 UNITS HAVE THE INFRASTRUCTURE CAPABILITY THAT WOULD PERMIT
17 PRISONERS TO USE TVS AND OTHER APPLIANCES, CORRECT?

18 **A.** NO, SIR.

19 **Q.** THE DEPARTMENT OF CORRECTIONS NEWER PRISON ADMINISTRATIVE
20 SEGREGATION UNITS DO NOT HAVE THE ELECTRICAL CAPACITY TO PERMIT
21 PRISONERS TO USE ELECTRICAL APPLIANCES, CORRECT?

22 **A.** YES, SIR. AND I BELIEVE THAT DECISION WAS A RESULT OF
23 SUICIDE, THE ISSUES OF GETTING ELECTROCUTED AND THAT. SO THE
24 NEWER FACILITIES DO NOT HAVE THE OUTLETS.

25 **Q.** AND MANY OF THE OLDER PRISONS HAVE THE SAME ISSUES, RIGHT?

1 **A.** YES. MANY OF THE 270 DESIGNED PRISONS -- WHEN I WAS THE
2 WARDEN AT MULE CREEK, FOR EXAMPLE, WE HAD OUTLETS AND WE WERE
3 ABLE TO PERMIT TELEVISIONS. I THINK AT CSP SACRAMENTO I WAS
4 NOT.

5 **Q.** IN YOUR TRIAL AFFIDAVIT, MR. KERNAN, YOU DISCUSSED WHAT I
6 WOULD CHARACTERIZE AS A FOUR-POINT PROGRAM, REDUCTION PROGRAM
7 FOR CLASSIFICATION SCORES OF PRISONERS WHO HAVE MENTAL HEALTH
8 CONDITIONS, RIGHT?

9 **A.** YES, SIR.

10 **Q.** THAT FOUR-POINT PROGRAM IS NOT DESIGNED TO REDUCE THE
11 PRISONER POPULATION, CORRECT?

12 **A.** NO, SIR. THE --

13 **Q.** THANK YOU.

14 **A.** OKAY.

15 **Q.** THE DEPARTMENT OF CORRECTIONS HOUSES PRISONERS IN CAMPS IN
16 COMMUNITY CORRECTIONS FACILITIES, CORRECT?

17 **A.** YES.

18 **Q.** PRISONERS IN THOSE CDCR CAMPS AND COMMUNITY FACILITIES ARE
19 TRANSPORTED TO ONE -- TO ONE OR MORE OF THE 33 CDCR PRISONS FOR
20 THEIR NORMAL ROUTINE MEDICAL CARE NEEDS AND ARE PROVIDED THOSE
21 SERVICES AT THOSE PRISONS, CORRECT?

22 **A.** YES.

23 **Q.** AND THOSE PRISONS WHICH RECEIVE THOSE INMATES ONCE A WEEK,
24 THEY GET A BUS FROM THE COMMUNITY FACILITIES OR CAMPS WITH
25 PRISONERS THAT REQUIRE A CHECKUP FROM A NURSE OR DOCTOR, RIGHT?

1 A. YES.

2 Q. TRANSFERRING PRISONERS OUT OF STATE WILL IMPROVE ACCESS TO
3 MEDICAL CARE FOR PRISONERS WHO REMAIN IN THE CDCR PRISONS IN
4 STATE, CORRECT?

5 A. I THINK GENERALLY THAT'S PROBABLY FAIR TO SAY, ALTHOUGH I
6 DON'T THINK IT'S CONCLUSIVE.

7 Q. THE REDUCTION OF POPULATION AT CDCR INSTITUTIONS WILL PERMIT
8 MEDICAL STAFF TO FOCUS RESOURCES ON A SMALLER POPULATION, RIGHT?

9 JUDGE KARLTON: YES, AND THE COLOR BLUE IS BLUE.

10 A. YES.

11 BY MR. FAMA:

12 Q. AND, IN ADDITION, A REDUCED INMATE POPULATION WILL EASE
13 PRISON LIVING ENVIRONMENTS AND DECREASE VIOLENCE AND PERMIT
14 MEDICAL STAFF TO FOCUS ON NON-EMERGENT SERVICES IN EXISTING
15 PRISONS, RIGHT?

16 A. PRESUMABLY, YES.

17 Q. MR. KERNAN, IN ANSWER TO ONE OF MR. MELLO'S QUESTIONS, YOU
18 INDICATED THAT THE RECEIVER'S STAFF WOULD BE IN A BETTER
19 POSITION TO PROVIDE CERTAIN INFORMATION, RIGHT?

20 A. YES, SIR.

21 Q. YOU TALK REGULARLY WITH THE RECEIVER'S STAFF, CORRECT?

22 A. YES, SIR.

23 Q. AND YOU ASK QUESTIONS OF THE RECEIVER'S STAFF WHEN YOU TALK
24 TO THEM?

25 A. YES, SIR.

1 Q. HAVE YOU ASKED THE RECEIVER'S STAFF ABOUT THE GAPS IN
2 STAFFING, MEDICAL STAFFING?

3 A. NOT LATELY.

4 Q. WITH REGARD TO CORRECTIONAL OFFICER STAFFING IN THE
5 DEPARTMENT OF CORRECTIONS, MR. KERNAN, IT'S TRUE THAT THE
6 DEPARTMENT STAFFING PATTERNS PROVIDE FOR TWO CORRECTIONAL
7 OFFICER POSITIONS TO WATCH OVER 200 OR SO PRISONERS IN A DORM
8 SETTING, CORRECT?

9 A. ARE YOU TALKING ABOUT JUST THE STAFF ASSIGNED TO THE GYM OR
10 ALL THE ADDITIONAL STAFF THAT PROVIDE SERVICES AND EMERGENCY
11 RESPONSE AND THAT IN THERE?

12 LIKE MOST OF THE HOUSING UNITS, THERE'S ONE OR TWO
13 DEPENDENT ON THE TIME OF DAY OF THE SHIFT WHERE YOU WOULD HAVE A
14 CORRECTIONAL OFFICER SOLELY ASSIGNED TO THE HOUSING UNIT, BUT
15 THERE'S A BUNCH OF SUPPORT STAFF, OBVIOUSLY, THAT CAN RESPOND.

16 Q. THANK YOU, MR. KERNAN.

17 JUDGE REINHARDT: MR. KERNAN, YOU TESTIFIED ABOUT THE
18 20,000 PRISONERS YOU RECOMMENDED BE RELEASED.

19 THE WITNESS: YES, SIR.

20 JUDGE REINHARDT: DID YOU CONSIDER IN MAKING THAT
21 RECOMMENDATION THE EFFECT ON PUBLIC SAFETY?

22 THE WITNESS: YES, SIR.

23 JUDGE REINHARDT: AND DID YOU CONCLUDE THAT IT WOULD
24 OR WOULD NOT JEOPARDIZE PUBLIC SAFETY?

25 THE WITNESS: GIVEN THE EXTENT OF THE BUDGET

1 SITUATION, AND IT WAS A BUDGET PROPOSAL, IT WAS CERTAINLY BETTER
2 THAN LETTING MORE INMATES OUT THAT HAD SERIOUS OR VIOLENT
3 OFFENSES.

4 NOTHING IS FOR CERTAIN. CERTAINLY, EVEN A LOW LEVEL
5 OFFENDER CAN COMMIT A SERIOUS CRIME, BUT IT WAS THE BEST
6 SITUATION THAT WE HAD GIVEN THE BUDGET PROPOSAL.

7 **JUDGE REINHARDT:** I DON'T QUITE UNDERSTAND. WHY DID
8 THE BUDGET PROPOSAL REQUIRE YOU TO RELEASE PRISONERS?

9 **THE WITNESS:** THE DEPARTMENT AT THAT POINT IN TIME --
10 AND THIS WAS LAST YEAR'S PROPOSAL, NOT THIS YEAR'S PROPOSAL --
11 WAS IN A BUDGET DEFICIT AND WE WERE ASKED TO COME UP WITH A
12 SIGNIFICANT AMOUNT OF MONEY, AND THE ONLY WAY THAT YOU CAN COME
13 UP WITH A SIGNIFICANT AMOUNT OF MONEY IN A SYSTEM THAT HAD
14 RECEIVED STAFFING CUTS FOR SOME PERIOD OF TIME IS TO EITHER
15 RELEASE OFFENDERS OR QUIT SUPERVISING THEM ON PAROLE.

16 SO THAT PARTICULAR PROPOSAL, WHICH WAS SUMMARILY
17 DISMISSED BY THE LEGISLATURE, WAS TO RELEASE LOW END OFFENDERS.
18 THAT WOULD HAVE LET OUT CAMP INMATES AND CCF'S AND THE LOWER END
19 OFFENDERS AND NOT REALLY HELP ANYTHING IN THE PRISON PROPER.

20 BUT IN THAT SENSE, I THINK IT WAS A BETTER ANSWER
21 THAN LETTING OUT SOME OF THE MORE SERIOUS AND VIOLENT OFFENDERS
22 IN THE PRISONS.

23 **JUDGE REINHARDT:** IS IT YOUR TESTIMONY THAT IF YOU
24 DON'T RECEIVE AN ADEQUATE BUDGET, YOU HAVE NO ALTERNATIVE BUT TO
25 RELEASE SOME TYPE OF PRISONERS?

1 **THE WITNESS:** UNLESS YOU CAN REDUCE THE POPULATION,
2 THE OTHER MEANS THAT WE ARE ATTEMPTING TO NOW. THE CONSTRUCTION
3 OF ADDITIONAL CAPACITY OR THROUGH PAROLE REFORM, WHERE WE ARE
4 NOT SUPERVISING SOME PAROLEES AND LETTING THEM OFF SOONER IF
5 THEY SHOW POSITIVE BEHAVIOR.

6 WE CAN REDUCE THE AMOUNT OF PAROLE POPULATION THAT
7 WOULD STOP THE CHURNING INTO THE SYSTEM AND, IN FACT, I THINK
8 HAS LED TO THE DECREASE IN BAD BEDS THAT WE HAVE CURRENTLY TO
9 SOME DEGREE.

10 WE HAVE INCREASED 6,000 DISCHARGES OF OFFENDERS IN
11 THE LAST YEAR THAT -- BASED ON A POLICY DECISION TO HAVE
12 SUPERVISORS MAKE THE DECISION RATHER THAN INDEPENDENT PAROLE
13 STAFF.

14 SO THOSE ARE THE KIND OF MEANS THAT WE ARE CURRENTLY
15 REDUCING THE POPULATION TODAY.

16 **JUDGE REINHARDT:** AND ONE OF THOSE MEANS, YOU SAY, IS
17 EITHER DO THE PAROLE REFORM AND REDUCE THE NUMBER OF PRISONERS
18 THAT WAY OR BUILD MORE PRISONS, WHICH YOU ALSO CAN'T DO WITHOUT
19 INCREASING THE BUDGET.

20 **THE WITNESS:** YES, SIR.

21 **JUDGE HENDERSON:** LET'S MAKE SURE CCPOA DOESN'T HAVE
22 ANYTHING.

23 **MS. LEONARD:** NO, YOUR HONOR.

24 **MR. MELLO:** BRIEF REDIRECT.
25

REDIRECT EXAMINATION

BY MR. MELLO:

Q. MR. KERNAN, THE FUNDS FOR AB 900 HAVE BEEN ALLOCATED, BUT THE BONDS HAVEN'T BEEN SOLD, CORRECT?

A. THAT'S MY UNDERSTANDING, YES.

Q. SO IT WOULD NOT INCREASE THE BUDGET. IT REQUIRES A --

MR. FAMA: EXCUSE ME, YOUR HONORS AND MR. MELLO. I APOLOGIZE.

COULD YOU PLEASE SPEAK INTO THE MICROPHONE. I DIDN'T HEAR THAT FIRST QUESTION?

MR. MELLO: OKAY. I APOLOGIZE.

BY MR. MELLO:

Q. DID YOU HEAR MY QUESTION, MR. KERNAN?

A. YES.

MR. FAMA: CAN YOU SPEAK IN THE MIC?

MR. MELLO: STILL CAN'T HEAR ME? I THINK MY WHOLE TEAM WOULD SAY THAT'S NEVER A PROBLEM USUALLY. SO I APOLOGIZE.

BY MR. MELLO:

Q. MR. KERNAN, YOU TESTIFIED YOU WERE ASKED ABOUT THE FOUR POINTS MEMO, CORRECT?

A. YES, SIR.

Q. CAN YOU EXPLAIN FOR THE COURT WHAT FOUR POINTS WAS ABOUT?

A. IN OUR CLASSIFICATION PROCESS, INMATES THAT HAD A PRIOR MENTAL ILLNESS WERE ASSESSED FOUR ADDITIONAL POINTS ON THEIR CLASSIFICATION SYSTEM.

1 THE CLASSIFICATION SYSTEM IS WHAT WE USE TO DETERMINE
2 WHERE THE INMATE IS PLACED. SO INMATES THAT HAD A PRIOR MENTAL
3 HEALTH CONDITION WERE PLACED IN ARGUABLY HIGHER LEVELS OF
4 CUSTODY THAN SOME THOUGHT.

5 SO THROUGH SOME DISCUSSIONS WITH THE SPECIAL MASTER
6 AND ATTORNEYS, THE DEPARTMENT REMOVED THE FOUR POINTS AND NO
7 LONGER ASSESSES THE FOUR POINTS ON OFFENDERS FOR THE SOLE
8 PURPOSE OF HAVING A PRIOR MENTAL HEALTH CONDITION.

9 JUDGE KARLTON: YOU ARE AWARE, ARE YOU NOT, SIR, THAT
10 THE SPECIAL MASTER'S STRONG SUGGESTION TO YOU THAT THAT BE DONE
11 WAS THE RESULT OF THE COURT INDICATING TO THE SPECIAL MASTER
12 THAT THIS WAS BIZARRE AND SOMEBODY HAD TO DO SOMETHING OR I
13 WOULD.

14 THE WITNESS: IT WASN'T PUT JUST LIKE THAT TO ME, BUT
15 I CERTAINLY UNDERSTOOD FROM THE SPECIAL MASTER'S ROLE AND
16 PLAINTIFFS' COUNSEL THAT THERE WAS STRONG FEELINGS.

17 THIS HAD BEEN GOING ON FOR SOME TIME, BUT WE MADE
18 A -- I THINK A COMMON SENSE DECISION AS A DEPARTMENT AND WE'VE
19 REMOVED THE FOUR POINTS.

20 BY MR. MELLO:

21 Q. IT'S BEEN CHANGED AND IT'S NO LONGER OCCURRING, CORRECT?

22 A. THAT'S CORRECT.

23 Q. MR. KERNAN, THERE WAS TESTIMONY WITH RESPECT TO THE
24 RECEPTION CENTER AT CIM, CORRECT?

25 A. YES, SIR.

1 Q. AND ARE YOU AWARE OF ANY INMATES SUFFERING ADVERSE MENTAL
2 HEALTH CONSEQUENCE OR MEDICAL CONSEQUENCE AS A RESULT OF THE
3 RECEPTION CENTER SITUATION THAT WAS DESCRIBED DURING YOUR
4 CROSS-EXAMINATION?

5 MR. FAMA: OBJECTION. LACK OF FOUNDATION.

6 JUDGE KARLTON: HE ASKED HIM WHETHER HE KNOWS.

7 JUDGE HENDERSON: ARE YOU AWARE? ARE YOU AWARE OF

8 --

9 THE WITNESS: NO, SIR.

10 BY MR. MELLO:

11 Q. HIS HONOR, JUDGE REINHARDT, ASKED YOU ABOUT THE JANUARY
12 PROPOSAL THAT YOU TESTIFIED ABOUT, THE BUDGET PROPOSAL FROM LAST
13 YEAR, CORRECT?

14 A. YES, SIR.

15 Q. AND, TO YOUR KNOWLEDGE, WAS THAT JANUARY PROPOSAL IN THE MAY
16 REVISE?

17 JUDGE REINHARDT: WAS IT WHAT?

18 BY MR. MELLO:

19 Q. WAS THAT PROPOSAL TO RELEASE 22,000 INMATES 20 MONTHS EARLY,
20 DID IT MAKE IT INTO THE MAY REVISE?

21 A. NO, SIR.

22 Q. AND WHAT IS THE MAY REVISE? I BELIEVE TWO OF THE COURT KNOW
23 WHAT IT IS, BUT HIS HONOR MAY NOT.

24 A. AGAIN, A LITTLE OUT OF MY EXPERTISE BUDGET, BUT MAY REVISE
25 IS THE GOVERNOR'S APPROVED BUDGET MOVING FORWARD.

1 Q. SO IT NEVER EVEN MADE IT TO THE BUDGET THAT WENT TO THE
2 LEGISLATURE, CORRECT?

3 A. NO, SIR.

4 Q. AND YOU WERE ASKED ABOUT THE FACILITY IN MISSISSIPPI AND THE
5 TEMPORARY HOLD ON TRANSFERS OF INMATES TO THAT FACILITY,
6 CORRECT?

7 A. YES, SIR.

8 Q. AND WHAT'S THAT FACILITY AGAIN?

9 A. TALLAHATCHIE.

10 Q. TALLAHATCHIE. AND DID THE RECEIVERS'S OFFICE EVER EVALUATE
11 WHETHER INMATES COULD GO THERE SAFELY FROM A MEDICAL
12 PERSPECTIVE?

13 A. YES. THERE IS A MENTAL HEALTH AND MEDICAL SCREENING OF ALL
14 OFFENDERS THAT GO TO THE FACILITY. MR. HAGAR JUST REVISED THAT.

15 JUDGE KARLTON: THERE ISN'T A MENTAL HEALTH -- WELL,
16 THERE MAY BE, BUT CLASS MEMBERS IN COLEMAN DO NOT GO.

17 THE WITNESS: CORRECT, SIR. SO ANYBODY -- THOSE
18 OFFENDERS ARE BEING SCREENED FOR OUT OF STATE. IF THEY ARE PART
19 OF THE COLEMAN CLASS, THEY ARE NOT SENT. THAT'S WHAT I MEANT BY
20 SCREENING.

21 BUT ADDITIONALLY, THERE'S MEDICAL EVALUATION OF THE
22 OFFENDERS AND THEY MUST MEET A CRITERIA BEFORE THEY ARE
23 PERMITTED TO GO.

24 BY MR. MELLO:

25 Q. AND THE RECEIVER'S OFFICE, WHILE IT PLACED A HOLD ON SENDING

1 INMATES THERE, IT'S NOW LIFTED THAT HOLD, CORRECT?

2 **A.** YES, SIR.

3 **Q.** AND YOU CAN CONTINUE TO SEND INMATES THERE, CORRECT?

4 **A.** YES, SIR.

5 **Q.** AND IS THAT BECAUSE THE RECEIVER'S OFFICE DETERMINED THAT IT
6 WAS ACCEPTABLE TO SEND PRISONERS THERE?

7 **A.** YES, SIR.

8 **Q.** YOU WOULDN'T HAVE CONTINUED TO SEND PRISONERS TO THAT
9 INSTITUTION IF THE RECEIVER'S OFFICE CONTINUED TO HAVE A HOLD ON
10 IT, WOULD YOU?

11 **A.** NO, SIR.

12 **Q.** HOW MANY GYMS AND DAYROOMS HAVE BEEN OPENED UP AS A RESULT
13 OF THE DEPARTMENT'S EFFORTS TO REDUCE NON-TRADITIONAL BEDS IN
14 THE LAST SEVERAL YEARS?

15 **A.** YOU ARE STRETCHING MY MEMORY A LITTLE BIT, BUT I THINK
16 SOMEWHERE BETWEEN 16, 19 FULL GYMNASIUMS HAVE BEEN REDUCED, AND
17 I'M NOT SURE OF THE NUMBER OF DAYROOMS.

18 **Q.** SOME NUMBER OF DAYROOMS HAVE ALSO BEEN OPENED UP, CORRECT?

19 **A.** YES, SIR.

20 **Q.** AND PLAINTIFFS WERE ASKING FOR THE RELEASE OF 52,000
21 INMATES -- PARDON ME. A REDUCTION IN YOUR POPULATION BY 52,000
22 INMATES OVER A TWO-YEAR PERIOD OF TIME IN THIS CASE.

23 MR. KERNAN, HAS THAT PROPOSAL EVER BEEN MADE IN A
24 BUDGET PROPOSAL AND MAY REVISE BY THE DEPARTMENT OF CORRECTIONS
25 OR THE GOVERNOR'S OFFICE?

1 **A.** NO, SIR.

2 **Q.** THANK YOU, NOTHING FURTHER.

3 **MR. MITCHELL:** NO QUESTIONS.

4 **MR. FAMA:** NO FURTHER QUESTIONS.

5 **JUDGE KARLTON:** MAY I ASK ONE THAT MAY BE OUTSIDE OF
6 YOUR EXPERTISE, AND THAT'S PERFECTLY OKAY.

7 ONE OF THE CHARTS THAT YOU SHOWED US HAD -- AND I
8 SHOULD KNOW THE ANSWER TO THIS AND I DON'T -- HAD 23 CHIEF
9 PSYCHIATRISTS, BUT YOU'VE GOT 33 PRISONS. WHAT HAPPENED TO THE
10 OTHER 10?

11 **THE WITNESS:** I BELIEVE THEY ARE USING OTHER CLASSES
12 FOR THEM, AND THAT'S JUST THE -- THE TITLE THEY MAY BE USING.
13 AND IT IS OUTSIDE OF MY EXPERTISE, BUT THEY MAY BE USING A
14 PSYCHIATRIST THAT'S NOT ON THE LIST YET FOR CHIEF PSYCHIATRIST
15 OR SOMETHING OF THE LIKE?

16 **JUDGE KARLTON:** ALL RIGHT.

17 **JUDGE HENDERSON:** OKAY. THANK YOU FOR TESTIFYING,
18 MR. KERNAN. WE WILL TAKE A 15-MINUTE RECESS.

19 (BRIEF RECESS HELD IN THE PROCEEDINGS.)

20 **JUDGE HENDERSON:** YOU MAY CALL YOUR NEXT WITNESS WHEN
21 YOU'RE READY, COUNSEL.

22 **MS. JOHNSON:** GOOD MORNING, YOUR HONORS. DEFENDANTS
23 CALL JAMES MARQUART.

24 **JAMES MARQUART, PH.D.**

25 HAVING BEEN CALLED AS A WITNESS BY THE DEFENDANTS WAS FIRST

1 DULY SWORN AND EXAMINED AS FOLLOWS:

2 **JUDGE HENDERSON:** BEFORE WE BEGIN, WE ARE AWARE OF
3 THE OBJECTIONS TO CERTAIN PARTS OF THE DECLARATION HERE, AND
4 CONSISTENT WITH PREVIOUS RULINGS, WE'LL TAKE THAT UNDER
5 ADVISEMENT. SO PROCEED.

6 **THE CLERK:** PLEASE STATE AND SPELL YOUR NAME FOR THE
7 RECORD.

8 **THE WITNESS:** JAMES W. M-A-R-Q-U-A-R-T.

9 **MS. JOHNSON:** DEFENDANTS HAVE SUBMITTED THREE EXPERT
10 REPORTS BY DR. MARQUART WHICH ARE MARKED AS DEFENDANT'S EXHIBIT
11 1022, 1023 AND 1024. DEFENDANTS NOW OFFER THESE EXHIBITS INTO
12 EVIDENCE.

13 DR. MARQUART'S QUALIFICATIONS ARE DESCRIBED ON PAGES
14 ONE THROUGH THREE OF HIS FIRST REPORT, DEFENDANT'S EXHIBIT 1022,
15 AND HIS CURRICULUM VITAE WHICH IS ATTACHED AS EXHIBIT A TO THAT
16 REPORT.

17 **DIRECT EXAMINATION BY MS. JOHNSON**

18 BY MS. JOHNSON

19 **Q** GOOD MORNING, DR. MARQUART.

20 **A** GOOD MORNING.

21 **Q** YOU HAVE A PH.D., CORRECT?

22 **A** YES, MA'AM.

23 **Q** WHAT FIELD IS YOUR PH.D. IN?

24 **A** IT'S IN SOCIOLOGY.

25 **Q** YOU ARE A PROFESSOR AT THE UNIVERSITY OF TEXAS AT DALLAS?

1 **A** YES, MA'AM.

2 **Q** WHAT IS THE DEPARTMENT YOU ARE IN AT U.T. DALLAS?

3 **A** I'M ALSO THE CHAIR OF THE CRIMINOLOGY PROGRAM THERE.

4 **Q** FOR HOW MANY YEARS HAVE YOU BEEN A PROFESSOR?

5 **A** SINCE 1983, SO 25 YEARS.

6 **Q** BEFORE YOU BECAME A PROFESSOR, DID YOU WORK AT ONE POINT AS

7 A CORRECTIONAL OFFICER IN TEXAS?

8 **A** YES, MA'AM, I DID.

9 **Q** WHAT YEARS DID YOU DO THAT?

10 **A** 1981 THROUGH 1983.

11 **Q** WHAT TYPE OF FACILITY DID YOU WORK AS A CORRECTIONAL

12 OFFICER?

13 **A** IT WAS THE EASTHAM UNIT WITHIN THE TEXAS PRISON SYSTEM, AND

14 IT WAS A FACILITY FOR ABOUT 3,200 INMATES OVER THE AGE OF 25.

15 THEY HAD BEEN IN THE PENITENTIARY THREE OR MORE TIMES. THEY

16 WERE ALSO ESCAPE RISKS, AND, MOST NOTABLY, MALCONTENTS FROM

17 OTHER FACILITIES WITHIN THE PRISON SYSTEM.

18 **Q** WHAT DO YOU MEAN WHEN YOU SAY "MALCONTENT"?

19 **A** WELL, I GUESS IN PRISON PARLANCE THAT'S PEOPLE WHO COULD NOT

20 GET ALONG AT OTHER FACILITIES, HAD LENGTHY HISTORIES OF

21 DISCIPLINARY PROBLEMS, DISOBEDIENCE. BASICALLY, COULDN'T GET

22 ALONG AT ANOTHER TEXAS PRISON FACILITY.

23 **Q** WAS THE RUIZ VERSUS ESTELLE CASE GOING ON IN TEXAS WHEN YOU

24 WORKED AS A CORRECTIONAL OFFICER THERE?

25 **A** YES, MA'AM, IT WAS.

1 Q AS A CRIMINOLOGIST, HAVE YOU STUDIED A VARIETY OF
2 CORRECTIONAL ISSUES?

3 A YES, MA'AM.

4 Q COULD YOU NAME SOME OF AREAS OF RESEARCH?

5 A I'VE LOOKED AT CAPITAL PUNISHMENT WITHIN THE STATE. I HAVE
6 LOOKED AT HOW THE PRISON SYSTEM HAS CHANGED AS A RESULT OF LEGAL
7 INTERVENTION OR THE IMPACT OF LEGAL INTERVENTION ON THE PRISON
8 SYSTEM, PRISON PROGRAMMING; LOOKED AT SOME ISSUES PERTAINING TO
9 THE -- TO HEALTHCARE ISSUES OF INMATES, PRISON VIOLENCE, GANG
10 ACTIVITY, GANG BEHAVIOR, AND THEN PROBABLY MOST RECENTLY WE HAVE
11 BEEN INVOLVED IN LOOKING AT IN CELL -- IN-CELL INTEGRATION.

12 Q WHEN YOU SAY "IN-CELL INTEGRATION," ARE YOU REFERRING TO
13 RACIAL INTEGRATION?

14 A YES, MA'AM.

15 Q HAVE YOU DONE WORK ON THE PREDICTIONS OF FUTURE
16 DANGEROUSNESS OF OFFENDERS?

17 A YES, MA'AM.

18 Q IN CONNECTION WITH THE RUIZ VERSUS ESTELLE CASE, WAS A
19 PRISON CAP IMPOSED IN THE TEXAS STATE PRISON SYSTEM?

20 A YES, MA'AM, IT WAS.

21 Q DID YOU STUDY THE IMPACT OF THAT PRISON CAP ON HARRIS
22 COUNTY, TEXAS?

23 A YES, MA'AM.

24 Q CAN YOU EXPLAIN WHAT YOU DID?

25 A WELL, HARRIS COUNTY IS HOUSTON, AND WE WERE, MYSELF AND

1 SEVERAL OTHER COLLEAGUES, WERE ASKED TO, YOU KNOW, TAKE A LOOK
2 AT SOME GENERAL ISSUES PERTAINING TO THIS CAP, AS TO HOW IT
3 MIGHT IMPACT OR WOULD IMPACT IN THE HARRIS COUNTY CRIMINAL
4 JUSTICE SYSTEM, MOST NOTABLY THE JAIL ITSELF.

5 SO WHAT WE DID IS WE EXAMINED THE NUMBER OF PEOPLE ON
6 PROBATION, OR AT THAT TIME -- WELL, NOW IT'S CALLED COMMUNITY
7 SUPERVISION. BUT, BASICALLY, WE LOOKED AT, YOU KNOW, IF YOU PUT
8 A CAP IN OR IF YOU REDUCE THE FLOW INTO THE PRISON SYSTEM, WHAT
9 IS THAT GOING TO DO BACKSTREAM WITHIN THE SYSTEM, AND THAT IS
10 WHAT WOULD BE THE IMPACT OF SOMETHING LIKE THAT ON THE JAIL.

11 SO, LIKE I SAID, WE LOOKED AT CELL SPACE WITHIN THE
12 JAIL, WHAT THAT WOULD -- WHAT WOULD HAPPEN THERE IF YOU HAD A
13 BACKFLOW OF A NUMBER OF STATE INMATES WITHIN THE COUNTY JAIL
14 FACILITY ITSELF, WHAT WOULD HAPPEN THERE, WHAT ARE THE POTENTIAL
15 IMPACTS ON COMMUNITY SUPERVISION AND CORRECTIONS.

16 **Q** DID YOU HAVE AN OPPORTUNITY TO ASSESS THE ACTUAL IMPACTS FOR
17 HARRIS COUNTY?

18 **A** WE DID EXAMINE SOME OF THAT. LIKE I SAID, WE LOOKED AT --
19 WE ALSO EXAMINED THE CRIME RATES AT THE SAME TIME. SO IT WAS A
20 GENERAL STUDY ABOUT, YOU KNOW, POTENTIAL IMPACTS OF SOMETHING
21 LIKE THIS ON MORE BROADLY WITHIN THE CJ COMMUNITY IN HARRIS
22 COUNTY.

23 **JUDGE KARLTON:** HOW LONG AFTER THE IMPOSITION OF THE
24 CEILING DID YOU ENGAGE IN YOUR STUDY, DOCTOR, ROUGHLY? IT
25 DOESN'T HAVE TO BE EXACT.

1 **THE WITNESS:** PROBABLY WITHIN TWO YEARS.

2 BY MS. JOHNSON

3 **Q** DO YOU PRESENTLY HAVE A CONTRACT TO ASSIST THE CALIFORNIA
4 DEPARTMENT OF CORRECTIONS WITH THE JOHNSON CASE?

5 **A** YES, MA'AM.

6 **Q** CAN YOU BRIEFLY EXPLAIN THE JOHNSON CASE AND YOUR ROLE?

7 **A** WELL, THE JOHNSON CASE IMPACTED IN-CELL INTEGRATION WITHIN
8 THE DIAGNOSTIC FACILITIES OR THE INTAKE FACILITIES, AND WHAT
9 HAPPENED IN THAT CASE IS, YOU KNOW, YOU ARE GOING TO HAVE TO
10 CREATE A PLAN TO BEGIN TO INTEGRATE CELL SPACE WITHIN THOSE
11 INTAKE FACILITIES. WE HAD EXAMINED THAT IN THE STATE OF TEXAS
12 FOR MANY YEARS, AND SO WE WERE RETAINED BY THE PRISON SYSTEM TO
13 LOOK AT THEIR PLAN AND HELP THEM WITH WHAT MIGHT HAPPEN WHEN YOU
14 ROLL OUT OR YOU ENGAGE AND DEVELOP AN IN-CELL INTEGRATION PLAN,
15 WHAT ARE THE POTENTIAL IMPACTS AND THE CONSEQUENCES OF SOMETHING
16 LIKE THAT WITHIN THE PRISON SYSTEM.

17 WE DID -- SO WE'VE HELPED THEM BY REVIEWING THEIR
18 PLAN, PROVIDING THEM WITH INFORMATION ABOUT POTENTIAL IMPACTS
19 AND CONSEQUENCES OF THAT WITHIN CALIFORNIA. WE VISITED A NUMBER
20 OF FACILITIES HERE. AND WE ALSO WERE INVOLVED IN HELPING TO
21 TRAIN INTAKE OFFICERS AT SEVERAL FACILITIES IN TERMS OF COUNTING
22 AND BOOKKEEPING AND THINGS OF THAT NATURE ON AN ACTUAL IN-CELL
23 INTEGRATION PLAN.

24 **JUDGE REINHARDT:** SO ARE YOU SAYING YOUR ROLE WITH
25 CALIFORNIA WAS ADVISING THE STATE HOW TO IMPLEMENT THE DECISION?

1 **THE WITNESS:** WELL, YOU KNOW, WE ARE HELPING THEM TO
2 EVALUATE THE ULTIMATE OUTCOME OF THAT. THAT'S WHAT WE ARE
3 HELPING THEM WITH.

4 **JUDGE REINHARDT:** JUST OUT OF CURIOSITY, YOU
5 TESTIFIED IN OVER 20 DEATH PENALTY TRIALS?

6 **THE WITNESS:** YES, SIR.

7 **JUDGE REINHARDT:** WAS THAT ALWAYS FOR ONE SIDE OR THE
8 OTHER OR A MIXTURE?

9 **THE WITNESS:** ALL OF THOSE MY DEATH PENALTY ACTIVITY
10 HAS BEEN FOR THE DEFENSE.

11 **JUDGE REINHARDT:** FOR THE INDIVIDUAL DEFENDANT, YOU
12 MEAN, NOT FOR THE STATE?

13 **THE WITNESS:** I'VE TESTIFIED IN INDIVIDUAL CASES OF
14 PEOPLE WHO ARE GOING TO TRIAL FOR CAPITAL MURDER, AND THEN I
15 USUALLY ALWAYS HAVE TESTIFIED FOR THE DEFENDANT.

16 **JUDGE REINHARDT:** THANK YOU.

17 **THE WITNESS:** BOTH IN THE STATE OF TEXAS, IN
18 COLORADO, AND THEN ONE FEDERAL CASE.

19 **MS. JOHNSON:** INTERESTING. WE WERE JUST ABOUT TO
20 TOUCH ON THAT, YOUR HONOR.

21 **JUDGE REINHARDT:** I WAS JUST CURIOUS, NOT THAT IT HAS
22 ANYTHING TO DO WITH THIS CASE.

23 BY MS. JOHNSON

24 **Q** WITH RESPECT TO YOUR WORK ON THE PREDICTABLY OF FUTURE
25 DANGEROUSNESS OF OFFENDERS, WHAT HAVE YOU DONE?

1 **A** THAT LEADS TO, YOU KNOW, THESE CAPITAL CASES, BECAUSE IN THE
2 STATE OF TEXAS, THE KEY ISSUE IS WHETHER OR NOT SOMEBODY
3 CONSTITUTES A CONTINUING THREAT TO SOCIETY. SO THE JURY MUST
4 ANSWER THAT PARTICULAR QUESTION.

5 SO WHAT WE DID WAS TO LOOK AT PEOPLE WHO CAME TO --
6 WERE CONVICTED OF CAPITAL MURDER AND THEN THE JURY SAID YES, YOU
7 KNOW, THEY GOT THE DEATH SENTENCE, SO THEY WENT TO DEATH ROW.
8 SO A JURY SAID THEY WERE GOING TO BE A CONTINUING THREAT TO
9 SOCIETY. THEN WE FOUND ANOTHER GROUP OF INDIVIDUALS THAT WERE
10 CONVICTED OF CAPITAL MURDER BUT THE JURY SAID, NO, THAT THESE
11 PEOPLE WERE NOT -- WOULD NOT CONSTITUTE A CONTINUING THREAT TO
12 SOCIETY.

13 SO YOU GOT TWO GROUPS OF PEOPLE, ONE WHERE THE JURY
14 SAID YES, THEY ARE GOING TO BE A THREAT. THE SECOND BATCH IS
15 NO, THE JURY SAID, WE DON'T BELIEVE THEY ARE GOING TO BE A
16 THREAT. AND WE SIMPLY TRACKED THEIR BEHAVIOR BOTH IN PRISON ON
17 A VARIETY OF ISSUES, ASSAULTING STAFF, DOING SERIOUS THINGS IN
18 PRISON. SO WHEN WE LOOKED AT THE BEHAVIOR OF THOSE GROUPS OVER
19 TIME FOR ABOUT 12 OR 14 OR 15 YEARS --

20 **Q** WHAT DID YOU CONCLUDE?

21 **A** THAT ASSESSING -- YOU KNOW, THE ACCURACY OF THESE KINDS OF
22 PREDICTIONS ARE -- IT'S TOUGH. I MEAN, IT'S VERY DIFFICULT
23 TO -- YOU KNOW, THERE'S NO ONE HUNDRED PERCENT ACCURACY IN THESE
24 CASES.

25 MOST OF THE PEOPLE THAT WERE PREDICTED NOT TO BE

1 DANGEROUS -- AGAIN, ABOUT 70 TO 80 PERCENT OF THEM WERE NOT.
2 OKAY? SO THEY DID NOT CONSTITUTE A CONTINUING THREAT TO
3 SOCIETY. SO IN THOSE CASES THE JURY IS RIGHT. BUT THE POINT
4 IS, IF YOU LINE UP TEN PEOPLE AND YOU TRY TO PICK OUT OUT OF THE
5 TEN, YOU KNOW, WHICH ONES WILL NOT BE A -- FOR SURE BE A
6 CONTINUING THREAT, I DON'T BELIEVE THAT CAN BE DONE.

7 **JUDGE REINHARDT:** WHENEVER YOU TESTIFIED IN THOSE
8 DEATH PENALTY CASES, YOU TESTIFIED TO THE EFFECT THAT THE
9 DEFENDANT WOULD NOT BE A FUTURE DANGER?

10 **JUDGE KARLTON:** OR THAT YOU COULDN'T TELL.

11 **THE WITNESS:** THAT YOU CANNOT TELL. THEY TRY TO GET
12 ME TO DO HYPOTHETICALS BUT I DON'T ENGAGE IN HYPOTHETICALS.

13 **JUDGE REINHARDT:** NO. WHEN YOU TESTIFIED FOR THE
14 DEFENDANT, IT WAS TO PERSUADE THE JURY THAT HE WAS NOT A DANGER
15 OR THAT YOU COULDN'T TELL WHETHER HE WAS A DANGER?

16 **THE WITNESS:** THAT YOU CANNOT TELL THAT. IT'S VERY
17 DIFFICULT, BECAUSE IN SOME CASES WHERE THE JURY SAID, YES, THESE
18 PEOPLE ALL WERE GOING TO BE A CONTINUING THREAT, THAT THREAT DID
19 NOT MATERIALIZE.

20 **JUDGE REINHARDT:** NO, NO, BUT YOU DIDN'T TESTIFY
21 AFTER THE JURY VERDICT, DID YOU? YOU TESTIFIED TO TRY TO
22 PERSUADE THE JURY OF SOMETHING ABOUT THE DEFENDANT?

23 **THE WITNESS:** RIGHT. WHAT I TRY TO DO IS -- MY
24 NAIVETE WAS TO EDUCATE THE JURY TO THE IDEA THAT PREDICTIONS OF
25 FUTURE DANGEROUSNESS, WHETHER YES OR NO, IT'S A VERY DIFFICULT

1 THING TO DO, AND MORE LIKELY THAN NOT IF YOU SAY THEY'RE GOING
2 TO BE A DANGER, THAT THAT'S NOT GOING TO MATERIALIZE. THE VAST
3 MAJORITY OF PEOPLE THAT ARE PREDICTED TO BE DANGEROUS,
4 TYPICALLY, IT DOES NOT MATERIALIZE.

5 **JUDGE REINHARDT:** UNDER THAT THEORY, THEY WOULD NEVER
6 IMPOSE THE DEATH PENALTY IN TEXAS IF THEY BELIEVED YOU?

7 **THE WITNESS:** THAT'S RIGHT.

8 **JUDGE HENDERSON:** COULD YOU JUST CLARIFY, WHEN YOU
9 SAY "A DANGER TO SOCIETY," AS I HEARD YOU TALKING, I -- AND
10 PEOPLE BEING IMPOSED THE DEATH PENALTY, THE IMAGE FOR ME IS
11 THESE ARE PEOPLE WHO ARE GOING TO BE IN PRISON AT LEAST FOR THE
12 REST OF THEIR LIFE, SO THAT'S THE SOCIETY THEY WOULD HAVE. WHAT
13 DO YOU MEAN WHEN YOU SAY A DANGER TO SOCIETY? PRISON SOCIETY?
14 OUTSIDE, SHOULD THEY BE RELEASED? OR BOTH TOGETHER, OR
15 SOMETHING ELSE.

16 **THE WITNESS:** THAT'S AN INTERESTING ISSUE, AND THAT
17 ALWAYS COMES UP, THAT IT IS BOTH SOCIETIES. SO -- BECAUSE AT
18 THE TIME THAT I DID TESTIFY, THESE CAPITAL DEFENDANTS COULD BE
19 RELEASED AFTER 40 YEARS. SO IF THEY WERE -- THEY BEHAVE AND
20 THEY DID WELL, THERE WAS ALWAYS THE POTENTIAL THAT THEY COULD BE
21 PAROLED, AND I THINK THAT'S WHERE THE JURY WAS REALLY FRIGHTENED
22 OF THE FACT THAT WOULD HAPPEN. BUT WHAT I WOULD TRY TO, QUOTE,
23 EDUCATE THE JURY ABOUT WAS THE IDEA THAT IT'S BOTH IN PRISON, IN
24 THAT SOCIETY, BECAUSE INMATES ARE EXPOSED TO WEAPONS, THEY ARE
25 EXPOSED TO FREE WORLD PEOPLE, AND SECURITY STAFF, AND SHOULD

1 THEY EVER BE RELEASED, YOU KNOW, BACK OUT HERE AGAIN. BOTH
2 WORLDS.

3 **JUDGE KARLTON:** THIS SHOWS THE JUDGES ARE REALLY
4 INTERESTED IN -- HAS NOTHING TO DO WITH THIS CASE, BUT IT'S VERY
5 INTERESTING.

6 **THE WITNESS:** IT WAS ALL BY ACCIDENT, TOO.

7 **JUDGE REINHARDT:** DID YOU EVER HAVE ANY LUCK
8 PERSUADING THE JURIES THAT YOU CAN'T PREDICT, SO YOU SHOULDN'T
9 EXECUTE THEM?

10 **THE WITNESS:** YES, SIR. IT WAS VERY INTERESTING,
11 BECAUSE WHEN I TESTIFIED, IT WAS USUALLY -- ON THE OTHER SIDE,
12 THE PROSECUTION WOULD BRING IN A PSYCHIATRIST, JAMES GRIGSON.
13 HE WAS DR. DEATH. UNFORTUNATELY, I GOT THE MONIKER OF DR. LIFE.
14 I THINK SIX OR SEVEN OF THEM THE JURY SAID NO, BUT MOST OF THEM
15 THE JURY SAID THAT WE DON'T BELIEVE ANYTHING YOU HAD TO SAY, AND
16 I THINK THE VAST MAJORITY OF PEOPLE I TRIED TO HELP HAVE ALREADY
17 BEEN EXECUTED.

18 **JUDGE REINHARDT:** FORTUNATELY, FOR YOU, YOU DON'T
19 HAVE A JURY HERE; YOU HAVE JUDGES.

20 **THE WITNESS:** PARDON ME?

21 **JUDGE REINHARDT:** I SAID FORTUNATELY FOR YOU, YOU
22 DON'T HAVE A JURY HERE; YOU HAVE JUDGES.

23 **THE WITNESS:** THAT'S TRUE.

24 BY MS. JOHNSON

25 **Q** IS IT TRUE, DR. MARQUART, THAT EVEN WITHIN GROUPS OF

1 INDIVIDUALS WHO ARE IDENTIFIED AS LOW RISK, RECIDIVISM CAN BE
2 EXPECTED TO OCCUR?

3 **A** YES. YES, MA'AM.

4 **Q** SO THE ISSUE WE WERE JUST TALKING ABOUT IS NOT ABOUT THE
5 GROUP, IT'S ABOUT PICKING WHICH INDIVIDUAL WITHIN A GROUP MIGHT
6 BE EXPECTED TO RECIDIVATE?

7 **A** THAT IS EXACTLY RIGHT.

8 **Q** ARE YOU FAMILIAR WITH RESEARCH ON THE EFFECTS OF PRISON
9 CROWDING?

10 **A** YES, MA'AM.

11 **Q** IN YOUR OPINION, IS THERE A CLEAR -- IS THERE CLEAR EVIDENCE
12 THAT OVERCROWDING OF A PRISON BY ITSELF AUTOMATICALLY LEADS TO
13 VIOLENCE?

14 **A** IT HAS NOT BEEN ESTABLISHED THAT IS ONE HUNDRED PERCENT
15 TRUE, BUT A SEARCH IS STILL OPEN ON THAT POINT.

16 **JUDGE KARLTON:** IN YOUR VIEW, IS THERE A
17 PREPONDERANCE OF OPINION AS TO THAT MATTER, WHETHER CLEARLY
18 ESTABLISHED OR NOT?

19 **THE WITNESS:** IT DEPENDS. I'M NOT TRYING TO WAFFLE
20 ON IT. IT'S JUST AT THIS POINT IN TIME IT IS STILL A GRAY AREA
21 AS TO THAT POINT.

22 **JUDGE KARLTON:** SO THE ANSWER IS NO?

23 **THE WITNESS:** NO. AT THIS POINT I WOULD SAY NO.

24 **JUDGE REINHARDT:** YOU SAID IT'S NOT ESTABLISHED THAT
25 IT'S A HUNDRED PERCENT, TRUE?

1 **JUDGE KARLTON:** WE UNDERSTAND THAT. THAT'S WHY I
2 ASKED YOU WHETHER THERE WAS A PREPONDERANT OPINION.

3 **JUDGE REINHARDT:** NO, THAT'S NOT THE SAME QUESTION
4 I'M ASKING.

5 YOU DIDN'T SAY THERE'S A HUNDRED PERCENT VIEW ON --
6 SIMILARITY OF VIEW; YOU SAID IT'S NOT ESTABLISHED IT'S A HUNDRED
7 PERCENT TRUE.

8 **THE WITNESS:** THAT IS CORRECT.

9 **JUDGE REINHARDT:** IS ANYTHING ESTABLISHED THAT'S A
10 HUNDRED PERCENT TRUE?

11 **THE WITNESS:** NO, SIR. THAT IS HUMAN BEHAVIOR.

12 **JUDGE REINHARDT:** RIGHT.

13 **THE WITNESS:** AND THAT'S WHAT WE'RE DEALING WITH
14 HERE. A LOT OF IT IS ART, AND IT'S NOT SCIENCE.

15 **JUDGE REINHARDT:** BUT YOU COULDN'T SAY IN ALMOST ANY
16 QUESTION IN LIFE THAT IT'S A HUNDRED PERCENT TRUE, COULD YOU?

17 **THE WITNESS:** THAT IS CORRECT.

18 BY MS. JOHNSON

19 **Q** CAN YOU EXPLAIN SOME OF THE FACTORS FROM WHICH PRISON
20 VIOLENCE RESULTS?

21 **A** IT COULD BE THE SIZE OF THE SECURITY STAFF; THE TRAINING OF
22 SECURITY STAFF; THE TYPES AND CHARACTERISTICS OF THE OFFENDER
23 POPULATION; PRESENCE OR ABSENCE OF GANG ACTIVITY; PROGRAMMING;
24 SIMPLE ACTIVITIES; POTENTIALLY EVEN THE ARCHITECTURE OF THE
25 ENVIRONMENT.

1 SO ALL OF THESE THINGS CAN PLAY INTO IT, AND THEY'RE
2 PROBABLY ALL OF THEM RELATED IN SOME WAY, YOU KNOW, THAT LEAD TO
3 VIOLENCE. PRESENCE OR ABSENCE OF CONTRABAND, THESE SORTS OF
4 THINGS.

5 **Q** HAVE YOU ALSO IN YOUR RESEARCH LOOKED AT THE POSSIBLE LINK
6 BETWEEN CROWDING AND SUICIDE?

7 **A** I'VE REVIEWED THE LITERATURE.

8 **Q** IN YOUR OPINION, IS THERE A CLEAR LINK BETWEEN CROWDING AND
9 SUICIDE IN PRISON?

10 **A** IT'S STILL AN OPEN QUESTION. YOU CAN'T SAY ONE HUNDRED
11 PERCENT FOR SURE THAT THIS CAUSED, YOU KNOW, THIS PRISON
12 HOMICIDE, OR THIS ACTIVITY, OR A SUICIDE. IT'S -- THE DEBATE IS
13 ONGOING.

14 **Q** IN YOUR FIRST REPORT YOU REFER TO IMPOSITION OF A POPULATION
15 CAP AT 158 PERCENT OF DESIGN CAPACITY, OR A CAP OF APPROXIMATELY
16 132 -- 132,500 INMATES BY 2012. AND ACCORDING TO THE FIGURES
17 YOU USED, THAT WOULD CALL FOR THE RELEASE OF ROUGHLY 30,000
18 INMATES FROM PRISONS AND CAMPS IN CALIFORNIA?

19 **A** YES.

20 **Q** ARE YOU AWARE THAT PLAINTIFFS ARE CURRENTLY SEEKING TO SET
21 THE PRISON POPULATION AT 130 PERCENT DESIGN CAPACITY WITHIN TWO
22 YEARS, CALLING FOR A REDUCTION IN THE POPULATION OF ABOUT 52,000
23 WITHIN A TWO-YEAR PERIOD?

24 **A** YES, MA'AM.

25 **Q** IS THE PROPOSED POPULATION REDUCTION I DESCRIBED A MORE

1 EXTREME POPULATION REDUCTION THAN YOU CONTEMPLATED IN YOUR
2 REPORTS?

3 **A** YES, MA'AM, IT IS.

4 **Q** DO THE OPINIONS IN YOUR REPORTS REGARDING THE POSSIBLE
5 ADVERSE IMPACTS OF A POPULATION REDUCTION STILL HOLD TRUE IN
6 LIGHT OF THE EVEN LARGER POPULATION REDUCTION PLAINTIFFS NOW
7 SEEK?

8 **A** YES, MA'AM.

9 **Q** IN FORMING YOUR OPINIONS REGARDING THE POSSIBLE ADVERSE
10 IMPACTS OF A COURT-IMPOSED PRISON POPULATION REDUCTION IN
11 CALIFORNIA, DID YOU LOOK AT THE IMPACT OF POPULATION REDUCTION
12 MEASURES IN TEXAS IN THE 1980'S?

13 **A** YES, MA'AM.

14 **Q** DO YOU BELIEVE THAT TEXAS IS SIMILAR TO CALIFORNIA IN WAYS
15 THAT ARE RELEVANT TO ASSESSING THE LIKELY IMPACT OF A PRISON
16 POPULATION CAP IN CALIFORNIA?

17 **A** YES, MA'AM, I DO.

18 **Q** CAN YOU EXPLAIN THOSE RELEVANT FACTORS?

19 **A** WELL, I THINK BOTH ARE LARGE POPULATED STATES. BOTH OF THEM
20 ARE ETHNICALLY DIVERSE. LARGE PRISON POPULATIONS, PRISON
21 POPULATIONS IN FACILITIES THAT ARE DISTRIBUTED ACROSS THE STATE
22 PRESENCE OF GANG ACTIVITY, BUDGETS, SECURITY STAFF SIZE, THEY
23 ARE VERY COMPARABLE. AND BETWEEN THE FEDERAL BUREAU OF PRISONS
24 AND THE CALIFORNIA PRISON SYSTEM AND THE TEXAS PRISON SYSTEM,
25 THOSE ARE THE THREE LARGEST AND PROBABLY MOST COMPLEX PRISON

1 ORGANIZATIONS, WITHOUT A DOUBT, IN THE UNITED STATES.

2 **Q** WHEN YOU LOOKED AT THE IMPACT OF POPULATION REDUCTION
3 MEASURES IN TEXAS IN THE 1980'S, WHAT DID YOU FIND?

4 **A** WELL, IT IMPACTED THE STATE CRIMINAL JUSTICE SYSTEM IN A
5 VARIETY OF WAYS. WHEN THEY IMPLEMENTED THE CAP, IT BEGAN TO
6 MOVE PRISONERS, STATE FELONS, BACK INTO THE COUNTY JAILS. SO
7 THAT HAPPENED. SO THE STATE -- YOU KNOW, THE COUNTY JAIL
8 POPULATIONS INCREASED.

9 THAT LED TO INTENSE LITIGATION ON THE PART OF
10 COUNTIES AGAINST STATE TO GET THOSE PEOPLE OUT OF -- OUT OF THE
11 COUNTY FACILITIES BECAUSE THEY DID NOT HAVE RESOURCES TO DEAL
12 WITH ALL OF THOSE PEOPLE. SO, YOU KNOW, WE LOOKED AT THAT.

13 IT ALSO LED TO A -- AT THE BACK END, ON THE OTHER
14 SIDE OF THE PRISON, BECAUSE THAT'S THE WAY, YOU KNOW, I THINK
15 ABOUT IT -- IT'S A LOT LIKE HYDRAULICS. SO, YOU KNOW, ON THE
16 FRONT END, YOU ARE TALKING ABOUT MOVING PEOPLE BACK INTO THE
17 COUNTY UPSTREAM, AND ON THE BACK END OF THE PRISON, YOU KNOW, TO
18 DEAL WITH THE POPULATION WAS TO OPEN UP, YOU KNOW, LITERALLY
19 OPEN THE BACK DOOR AND ALLOW PEOPLE TO HAVE SPEED-UPS IN TERMS
20 OF PAROLE AND THOSE SORTS OF THINGS TO COME BACK INTO THE
21 COMMUNITIES. SO WE DID LOOK AT THAT.

22 AND THE OTHER INTERESTING THING THAT HAPPENED IS BY
23 SPEEDING UP THE RELEASE OF THE POPULATION, WE WERE ASKED TO
24 EXAMINE THE PROGRAMMING WITHIN THE SCHOOL DISTRICT WITHIN THE
25 PRISON SYSTEM AND FOR GEDS AND OTHER KINDS OF EDUCATIONAL

1 PROGRAMMING, AND THE LONG OF IT IS -- OR I GUESS THE SHORT OF IT
2 IS, TO GET A DEGREE, TO GET YOUR GED, IT TAKES -- LET'S JUST SAY
3 IT TAKES 12 MONTHS TO GET THAT GED. SO YOU HAVE TO BE EXPOSED
4 TO THAT PROGRAM FOR THAT PERIOD OF TIME. BUT BY SPEEDING UP THE
5 POPULATION TO GET THEM OUT TO MEET THAT CAP, THE EXPOSURE TO THE
6 PROGRAMMING LIKE THAT, PEOPLE WERE LITERALLY BEING PAROLED OUT
7 WITHIN THREE TO FOUR MONTHS. SO THEY SIMPLY WERE NOT SPENDING
8 ENOUGH TIME OR HAVING ACCESS OR BEING EXPOSED TO THE PROGRAMS TO
9 HAVE COMPLETION TIME.

10 SO THOSE PEOPLE WERE LITERALLY IN A QUEUE AND THEN
11 CHURNED OUT AND THEN ADDED TO THE PROBLEM ON THE BACK END.

12 **Q** DID TEXAS EXPERIENCE AN UPSURGE IN CRIME AT THE SAME TIME IT
13 WAS IMPLEMENTING THESE POPULATION REDUCTION MEASURES?

14 **A** WE LOOKED AT THAT IN THE HARRIS COUNTY AREA, AND THE CRIME
15 RATE DID GO UP. AND ANOTHER REASON WHY IT WENT UP IS BECAUSE OF
16 THE DENSITY OF HALFWAY HOUSES THAT WERE IN THAT PARTICULAR
17 COMMUNITY. MORE HALFWAY HOUSES WERE THERE; ERGO, IF YOU HAVE TO
18 PUT MORE PAROLEES INTO THAT COMMUNITY WITHOUT THE RESOURCES FOR
19 ADEQUATE SUPERVISION, AND THAT'S BASICALLY WHAT ENDED UP
20 HAPPENING.

21 **JUDGE HENDERSON:** CAN I JUST, WAS THIS CAP IMPOSED BY
22 JUDGE JUSTICE IN RUIZ?

23 **THE WITNESS:** IT WAS RELATED TO THAT, BUT THE
24 LEGISLATURE IMPOSED THE CAP, AND IT WAS SET AT 95 PERCENT.

1 BY MS. JOHNSON

2 Q DID ADDITIONAL ARRESTS, CONVICTIONS, AND PRISON COMMITMENTS
3 OCCUR AS A RESULT OF THE PRISON POPULATION CAP?

4 A PARDON ME?

5 Q DID ADDITIONAL ARRESTS, CONVICTIONS AND PRISON COMMITMENTS
6 OCCUR BECAUSE OF THE PRISON POPULATION CAP?

7 A RIGHT, BECAUSE THE PEOPLE KEEP GOING OUT THE BACK DOOR AND
8 CHURNING RIGHT INTO THE FRONT DOOR AGAIN.

9 Q DO YOU, BASED ON YOUR RESEARCH, ATTRIBUTE SOME OF THE
10 UPSURGE IN CRIME TO THE INCREASE IN THE NUMBER OF PAROLEES
11 RELEASED AS A RESULT OF THE PRISON POPULATION CAP?

12 A I DO. SOME PORTION OF IT WAS, THE EXACT UNKNOWN AT THIS
13 POINT IN TIME. BUT THE ISSUE IS, YOU KNOW, WHEN YOU RELEASE
14 THOSE PEOPLE BACK INTO THAT COMMUNITY WITHOUT PROPER
15 SUPERVISION, LIKE I SAID, AND THE DENSITY OF HALFWAY HOUSES AND
16 PLACES LIKE THAT IN HARRIS COUNTY, YOU HAD AN OVERAGE OF
17 OFFENDERS IN THAT COMMUNITY, AND THAT LED TO INCREASING CRIME ON
18 THE STREETS.

19 ONE OF THE THINGS WE DID DO FOR HARRIS COUNTY WAS TO
20 TAKE -- RELATED TO THE HALFWAY HOUSE ISSUE WAS TO TAKE A LOOK AT
21 THE KINDS OF EQUALITY OF THE OFFENDER THAT WENT INTO THE PRISON
22 SYSTEM AND THEN WHAT THEY GOT ON THE BACK END, OKAY, AS A RESULT
23 OF, YOU KNOW, THESE PEOPLE GOING IN AND COMING OUT AGAIN BECAUSE
24 OF THE PRESENCE OF THESE HALFWAY HOUSES.

25 AND THE CUSTODY LEVEL, OR THE CRIMINAL LEVEL, I

1 GUESS, IF YOU WANT TO CALL IT THAT, THEY SENT IN A QUALITY OF
2 INMATE, THEY WERE GETTING WORSE IN RETURN AS A RESULT OF THE
3 HALFWAY HOUSES THAT WERE IN THE COMMUNITY, WHICH POSED A PUBLIC
4 SAFETY ISSUE IN THAT PARTICULAR AREA.

5 Q ARE THERE ANY LESSONS YOU HAVE DRAWN FROM THE EXAMPLE OF
6 TEXAS IN THE 1980'S?

7 A YES, MA'AM.

8 Q COULD YOU IDENTIFY THOSE FOR US, PLEASE?

9 A WELL, AGAIN, IT'S -- THE IMPOSITION OF CAPS IS -- TO DEAL
10 WITH THE PRISON POPULATION ISSUE, IT'S EXTREMELY COMPLEX. AND,
11 YOU KNOW, IF YOU ARE GOING -- IF THAT'S GOING TO HAPPEN, THERE
12 ARE DOWNSTREAM AND UPSTREAM IMPACTS OF ALL THIS. IT'S ALL
13 INTERCONNECTED.

14 SO BY STOPPING THE -- PUTTING THE BRAKES ON THE FRONT
15 DOOR, THAT'S GOING TO CREATE UPSTREAM ISSUES IN TERMS OF
16 ACTIVITY WITHIN THE COUNTY JAILS. YOU KNOW, THE POLICE ARE NOT
17 GOING TO STOP ARRESTING PEOPLE. PEOPLE ARE NOT GOING TO STOP
18 COMMITTING CRIME. AND THE COURTS ARE GOING TO CONTINUE TO
19 CONVICT PEOPLE, AND THEY HAVE TO HAVE A PLACE TO GO IN THE JAIL.
20 SO ALL THAT'S GOING ON. BUT THEN WHEN THEY DO COME BACK IN, YOU
21 KNOW, THERE HAS TO BE EFFORTS TO MAINTAIN PROGRAMMING TO DEAL
22 WITH THEM SO THEY CAN GO BACK OUT AGAIN.

23 SO IT IS AN EXTREMELY COMPLEX ISSUE, AND IT LEADS TO
24 LOTS OF THINGS BACK OR UPSTREAM WITHIN LOCAL CRIMINAL JUSTICE
25 ENVIRONMENTS.

1 Q IN YOUR OPINION, WHEN A STATE IS CONSIDERING A PRISON
2 POPULATION REDUCTION, IS IT IMPORTANT TO HAVE SUFFICIENT LOCAL
3 CRIMINAL JUSTICE RESOURCES TO HANDLE ANY ADDITIONAL WORKLOAD?

4 A YES, MA'AM.

5 Q IS IT YOUR OPINION THAT IT'S ALSO IMPORTANT TO HAVE PROPER
6 COMMUNITY SUPPORT SYSTEMS IN PLACE BEFORE LARGE NUMBERS OF
7 ADDITIONAL PRISONERS ARE DIVERTED OR RELEASED?

8 A YES.

9 Q WHAT TYPE OF COMMUNITY SUPPORT SYSTEMS ARE YOU REFERRING TO?

10 A WELL, THE IDEA IS, YOU KNOW, WE DON'T WANT ANY OF THESE
11 PEOPLE TO COME BACK. THAT'S THE ULTIMATE GOAL, AND WHATEVER WE
12 CAN DO TO SLOW THAT DOWN, THAT'S THE BEST THING. SO HOUSING,
13 EMPLOYMENT, SUBSTANCE ABUSE TRAINING. AND, AGAIN, PROPER --
14 AND, YOU KNOW, SUPERVISION WHILE THEY ARE ON PAROLE.

15 I MEAN, THE GOAL SHOULD BE TO SET ALL THIS UP SO THEY
16 DO NOT RETURN, AND ANYTHING THAT WE CAN DO IN TERMS OF THOSE
17 SORTS OF THINGS, FINDING THEM A JOB, FINDING THEM ADEQUATE
18 HOUSING, SUBSTANCE ABUSE PROGRAMMING. ANY OF THESE KINDS OF
19 THINGS TO REDUCE THE OPPORTUNITY THAT THEY ARE GOING TO COME
20 BACK, THE BETTER OFF WE ARE GOING TO BE.

21 Q BASED ON YOUR UNDERSTANDING OF THE RESEARCH IN CALIFORNIA,
22 IS THE OPPORTUNITY FOR EMPLOYMENT PARTICULARLY IMPORTANT FOR THE
23 SUCCESS OF PAROLEES?

24 A YES.

25 Q YOU REFER TO SOME RESEARCH IN YOUR REPORT BY FRANK WILLIAMS

1 ON CALIFORNIA PAROLEES. ARE YOU FAMILIAR WITH THAT?

2 **A** YES, MA'AM.

3 **Q** CAN YOU EXPLAIN THAT, BRIEFLY?

4 **A** THEY LOOKED AT PAROLEES IN CALIFORNIA, PAROLEES AND THEIR
5 ACCESS OR THEIR ABILITY TO FIND HOUSING, ADEQUATE HOUSING, WHEN
6 THEY COME BACK TO THE COMMUNITY. AND, AGAIN, THEY FOUND THAT --
7 THAT THEY WENT BACK INTO THE COMMUNITIES, AND THEY FACED THE,
8 QUOTE, THE NORMAL HISTORICAL PROBLEMS THAT PAROLEES FACE, NOT
9 ONLY IN THIS STATE, BUT ACROSS THE COUNTRY, THROUGHOUT THE
10 WORLD, ACROSS TIME AND SPACE, THAT IT'S EXTREMELY DIFFICULT TO
11 FIND HOUSING, ADEQUATE HOUSING, AND IT'S ALSO DIFFICULT TO FIND
12 A DECENT JOB THAT YOU ARE GOING TO BE ABLE TO HAVE SO THEY WON'T
13 COME BACK.

14 SO, AT THE SAME TIME THEY ARE ALSO COMPETING WITH
15 PEOPLE, NON-CRIMINAL FOLKS OUT HERE IN THE COMMUNITY AS WELL, SO
16 THERE'S A LOT OF COMPETITION FOR JOBS, HOUSING, AND SO ON AND SO
17 FORTH. THAT'S WHAT THEY RAN INTO, YOU KNOW, WHEN THEY GOT
18 RELEASED.

19 **Q** WOULD YOU EXPECT THOSE BARRIERS TO EMPLOYMENT AND HOUSING TO
20 BE WORSE IN A DOWNTURNED ECONOMY?

21 **A** THAT'S A GOOD QUESTION AND SOMETHING WE COULD PROBABLY TAKE
22 A LOOK AT. BUT MY IDEA -- OR THE VIEW IS, YEAH, IT PROBABLY
23 WOULD, BECAUSE YOU'RE COMPETING WITH PEOPLE, YOU KNOW,
24 NON-CRIMINAL TYPES OUT HERE, AND THOSE THAT CHECK THE BOX THAT
25 THEY HAVE A CRIMINAL HISTORY, THEY'RE THE LAST TO GET HIRED.

1 Q IN YOUR OPINION, IS THE AVAILABILITY OF MENTAL HEALTHCARE TO
2 RELEASED MENTALLY ILL OFFENDERS IMPORTANT FOR THEIR SUCCESS IN
3 THE COMMUNITY?

4 A YES, IT IS.

5 Q IN THAT REGARD, DID YOU LOOK AT WHAT CDCR'S EXPERT PANEL HAD
6 TO SAY ABOUT MENTALLY ILL OFFENDERS?

7 A YES, MA'AM.

8 Q IF WE COULD PULL UP PAGE 13?

9 A I LEFT MY THING OVER THERE. COULD I GO BACK --

10 Q WE CAN PUT IT ON THE SCREEN.

11 JUDGE KARLTON: IT WILL BE ON THE SCREEN RIGHT THERE.

12 BY MS. JOHNSON

13 Q PAGE 13 OF YOUR THIRD REPORT.

14 YOU QUOTED --

15 A YES, MA'AM.

16 Q THE EXPERT PANEL. CAN YOU READ THAT FOR US? CAN YOU? DO
17 YOU HAVE YOUR GLASSES?

18 A I GOT IT NOW. YOU WANT ME TO READ THE WHOLE THING?

19 Q SURE.

20 A (AS READ) "ONCE THE OFFENDER LEAVES THE CORRECTIONAL

21 SYSTEM, THEN HE OR SHE MUST OBTAIN THESE

22 SERVICES -- "

23 YOU KNOW, MENTAL HEALTH SERVICES IN THE COMMUNITY.

24 " -- IF THEY EXIST. IN THE CASES WHERE THE

25 NEEDED SERVICES DO EXIST, RELEASED OFFENDERS

1 OFTEN DON'T HAVE THE RESOURCES REQUIRED TO
2 OBTAIN THEM. THIS LEADS TO THE OFFENDER
3 BECOMING PHYSICALLY OR MENTALLY DESTABILIZED AND
4 OFTEN RESULTS IN HIM OR HER BEING RETURNED TO
5 PRISON AFTER BEING CONVICTED OF COMMITTING A NEW
6 CRIME OR VIOLATING ONE OR MORE PAROLE
7 CONDITIONS. WE BELIEVE IT WOULD BE IN THE BEST
8 INTEREST OF CALIFORNIA TO ENSURE THAT RELEASED
9 OFFENDERS HAVE ACCESS TO THE MEDICATIONS THEY
10 NEED TO MANAGE THEIR MENTAL HEALTH DISORDERS
11 AND/OR PHYSICAL AILMENTS, AS WELL AS ACCESS TO
12 HOUSING AND JOB ASSISTANCE SERVICES."

13 **Q** WHAT IMPACT DID THIS HAVE ON YOUR OPINION? WHY DID YOU
14 QUOTE IT?

15 **A** YOU KNOW, I BELIEVE THAT, YOU KNOW, THERE'S A PERCENTAGE OF
16 INMATES THAT DO HAVE MENTAL HEALTH NEEDS, AND THOSE ONES ARE
17 PROBABLY GOING TO BUMP INTO THE CRIMINAL JUSTICE SYSTEM FAR MORE
18 FREQUENTLY THAN OTHER OFFENDERS. THOSE ARE THE ONES THAT ARE
19 GOING TO NEED THE KINDS OF SERVICES IN THE COMMUNITY.

20 AND, AGAIN, THE IDEA IS WE DON'T WANT THEM TO COME
21 BACK. SO IF YOU HAVE ADEQUATE SERVICES ON THE STREETS, THEY CAN
22 GET ACCESS TO THAT, THE GOAL IS THE LESS LIKELY, WE WOULD HOPE,
23 THAT THEY'RE GOING TO RETURN.

24 **Q** AND ABSENT THOSE SERVICES, WHAT IMPACT DOES THE PRISON
25 POPULATION REDUCTION MEASURES HAVE?

1 **A** WELL, IF THEY DON'T HAVE IT, THEY'RE MORE LIKELY, AGAIN, TO
2 BUMP INTO POLICE AGENCIES AND END UP IN JAILS.

3 **Q** DR. MARQUART, WHAT IS YOUR OPINION WITH RESPECT TO
4 PLAINTIFFS' PROPOSALS REGARDING TECHNICAL PAROLE VIOLATORS?

5 **MR. SPECTER:** OBJECTION. VAGUE IN TERMS OF WHAT
6 PLAINTIFFS' PROPOSALS ARE.

7 **JUDGE HENDERSON:** LET'S STATE WHAT IT IS OR WHAT HIS
8 UNDERSTANDING IS.

9 **THE WITNESS:** WOULD YOU --
10 BY MS. JOHNSON

11 **Q** YOU READ DR. AUSTIN'S REPORTS, CORRECT?

12 **A** YES, MA'AM.

13 **Q** AND YOU ARE AWARE THAT DR. AUSTIN MADE PROPOSALS WITH
14 RESPECT TO, I THINK, NOT REVOKING --

15 **JUDGE KARLTON:** NOT SENDING BACK TO PRISON.

16 BY MS. JOHNSON

17 **Q** NOT SENDING BACK TO PRISON -- WELL, VARIOUS PROPOSALS WITH
18 RESPECT TO THE CLASS OF PEOPLE WE REFER TO AS TECHNICAL PAROLE
19 VIOLATORS. ARE YOU FAMILIAR WITH THAT CONCEPT?

20 **A** YES, MA'AM.

21 **Q** OKAY. AND DID YOU HAVE -- I DON'T WANT TO SAY -- I DON'T
22 WANT TO BE ARGUMENTATIVE.

23 WHAT WAS YOUR TAKE ON DR. AUSTIN'S APPROACH TO THE
24 ISSUE OF TECHNICAL PAROLE VIOLATORS?

25 **A** THERE'S A SIZEABLE PORTION OF THEM THAT HAVE BEEN RETURNED

1 FOR CRIMINAL ACTIVITY, SO THAT NEEDS TO BE FACTORED INTO ANY
2 DECISION MAKING AS WELL. IT'S NOT AS IF, YOU KNOW, A TECHNICAL
3 VIOLATER IS -- YOU KNOW, THE TYPICAL STEREOTYPE IS MAYBE THEY
4 MISSED A CURFEW OR THEY FAILED TO CALL IN. BUT IN THIS
5 PARTICULAR POOL OF OFFENDERS, A LARGE PERCENTAGE OF THEM ARE
6 UNDER SOME KIND OF REVIEW FOR CRIMINAL ACTIVITY.

7 **THE CLERK:** FIVE MINUTES, COUNSEL.

8 BY MS. JOHNSON

9 **Q** IN YOUR OPINION, CAN THE NEED TO ADHERE TO SPECIFIC EXTERNAL
10 TIMELINES HAVE AN ADVERSE IMPACT ON A STATE'S ABILITY TO SAFELY
11 REDUCE ITS PRISONER POPULATION?

12 **A** YES, MA'AM.

13 **Q** CAN YOU EXPLAIN THAT?

14 **A** WELL, AGAIN, IT'S THE -- YOU KNOW, IF YOU PUT IN PLACE A
15 HARD AND FAST DEADLINE THAT SOMETHING LIKE THIS HAS TO HAPPEN,
16 YOU KNOW, I BELIEVE THAT HAVING A QUOTA LIKE THAT, OR A TIMELINE
17 YOU ARE DEALING WITH, A RUSH FACTOR, YOU KNOW, WE ARE GOING TO
18 HAVE TO GET THIS DONE NO MATTER WHAT, YOU KNOW, I BELIEVE
19 ERRORS -- THE POTENTIAL FOR ERRORS CAN BE MADE WHEN RUNNING UP A
20 HARD AND FAST DEADLINE IF THE RESOURCES AND THESE OTHER THINGS
21 ARE NOT PUT IN PLACE.

22 **Q** BASED ON THE DOCUMENTATION YOU REVIEWED IN FORMING YOUR
23 OPINIONS AND YOUR EXPERIENCE, DO YOU BELIEVE THAT CALIFORNIA HAS
24 SUFFICIENT LOCAL CRIMINAL JUSTICE RESOURCES TODAY TO SAFELY
25 HANDLE THE PRISON REDUCTION PLAINTIFFS PROPOSE?

1 **A** NO, MA'AM, I DON'T.

2 **Q** BASED ON THE DOCUMENTATION YOU REVIEWED IN FORMING YOUR
3 OPINIONS AND YOUR EXPERIENCE, DO YOU BELIEVE THAT CALIFORNIA HAS
4 SUFFICIENT LOCAL COMMUNITY RESOURCES AND SERVICES TODAY TO
5 SAFELY HANDLE THE PRISON REDUCTION PLAINTIFFS PROPOSE?

6 **A** BASED ON THE REPORTS THAT WERE PROVIDED TO ME AND THE
7 INFORMATION THAT I'VE READ, IT IS NOT IN PLACE.

8 **JUDGE REINHARDT:** DO YOU BELIEVE THAT THEY HAVE THE
9 FACILITIES -- WITH RESPECT TO THE LAST TWO QUESTIONS, YOU
10 ANSWERED IT WITH RESPECT TO INCREASING THE NUMBER OF PAROLEES.
11 DO YOU BELIEVE THOSE ITEMS ARE ADEQUATE FOR THE CURRENT NUMBER
12 OF PAROLEES?

13 **THE WITNESS:** FROM WHAT I READ AND THE INFORMATION
14 PROVIDED TO ME, IT DOESN'T APPEAR THAT IT IS ADEQUATE AT THIS
15 POINT IN TIME. I MEAN --

16 **JUDGE REINHARDT:** FOR THE ONES THAT ARE CURRENTLY
17 RELEASED.

18 **THE WITNESS:** THAT'S RIGHT. BECAUSE THEIR RECIDIVISM
19 RATE APPEARS TO BE 60 TO 70 PERCENT OF THESE PEOPLE ARE COMING
20 BACK, SO THEY'RE NOT GETTING SOMETHING ON THE STREETS TO HELP
21 THEM TO MAKE IT.

22 **JUDGE KARLTON:** THEY ARE NOT GETTING ANYTHING IN
23 PRISON TO HELP THEM MAKE IT EITHER.

24 **THE WITNESS:** THAT'S THE OTHER SIDE OF THE COIN, YOU
25 ARE EXACTLY RIGHT. THEY ARE NOT GETTING IT ON BOTH SIDES. THEY

1 ARE ILL EQUIPPED AND ILL PREPARED UPON RELEASE, AND THEY'RE
2 GOING TO --

3 **JUDGE KARLTON:** AND THAT WOULD BE TRUE --

4 **JUDGE REINHARDT:** WHETHER OR NOT YOU RELEASE
5 ADDITIONAL PAROLEES, IT'S TRUE.

6 **THE WITNESS:** PARDON ME.

7 **JUDGE REINHARDT:** WHETHER OR NOT YOU RELEASE
8 ADDITIONAL PAROLEES, IT'S TRUE.

9 **THE WITNESS:** THAT IS CORRECT.

10 **JUDGE REINHARDT:** AND THESE ARE ALL PEOPLE WHO ARE
11 GOING TO BE RELEASED A FEW MONTHS LATER UNDER THE PLAINTIFFS'
12 PROPOSAL.

13 **THE WITNESS:** THAT IS CORRECT.

14 **JUDGE REINHARDT:** SO YOU ARE GOING TO FACE THAT SAME
15 PROBLEM, ONLY A FEW MONTHS LATER.

16 **THE WITNESS:** RIGHT. AND, YOU KNOW, IF YOU GO
17 THROUGH WITH IT, THEN YOU ARE ADDING LITERALLY TENS OF THOUSANDS
18 OF MORE PEOPLE ON TOP OF THE EXISTING PROBLEM THAT WE HAVE RIGHT
19 NOW.

20 **JUDGE KARLTON:** THE QUESTION OF WHETHER OR NOT PUBLIC
21 SAFETY IS BEING SERVED TURNS ON THE FACT THAT IT DOESN'T MATTER
22 WHAT WE DO. AS LONG AS WE CONTINUE WITH A SYSTEM THAT HAS NO
23 SERVICES, MEANINGFUL SERVICES IN PRISON AND INSUFFICIENT
24 MEANINGFUL SERVICES OUT OF PRISON, WE'LL CONTINUE TO HAVE THIS
25 RECIDIVISM RATE?

1 **THE WITNESS:** YES, SIR.

2 **JUDGE KARLTON:** SO, IN EFFECT, IT DOESN'T MAKE ANY
3 DIFFERENCE?

4 **THE WITNESS:** WELL, I HATE TO ADMIT THAT, BUT THAT'S
5 THE CASE.

6 BY MS. JOHNSON

7 **Q** IN YOUR OPINION, WITHOUT THE NECESSARY PROGRAMS AND
8 COMMUNITY RESOURCES IN PLACE, WOULD THE POPULATION REDUCTION
9 MEASURES PLAINTIFFS PROPOSE ACTUALLY RESULT IN A REDUCTION OF
10 THE PRISON POPULATION?

11 **A** WELL, IT WILL REDUCE THEM ON THE FRONT END, BUT, ULTIMATELY,
12 YOU ARE GOING TO -- IT'S COMPOUND INTEREST ON THE BACK END.
13 THERE IS -- LIKE WE JUST GOT DONE TALKING ABOUT HERE, A LARGE
14 NUMBER OF THOSE PEOPLE ARE GOING TO COME BACK.

15 **Q** DR. MARQUART, ARE YOU FAMILIAR WITH THE LITERATURE ON THE
16 RELATIONSHIP BETWEEN INCARCERATION RATES AND CRIME RATES?

17 **A** YES, MA'AM.

18 **Q** IN YOUR OPINION, CAN IT BE CONCLUDED WITH CERTAINTY THAT
19 THERE IS NO RELATIONSHIP BETWEEN HIGHER INCARCERATION RATES AND
20 LOWER CRIME RATES?

21 **A** NO, MA'AM, IT CANNOT.

22 **Q** CAN YOU EXPLAIN THAT?

23 **A** YOU KNOW, IN MY VIEW, THERE IS SOME RELATIONSHIP BETWEEN
24 INCARCERATION AND CRIME AND CRIME RATES. THAT'S WHY WE BUILD
25 THESE INSTITUTIONS, TO KEEP THESE PEOPLE, THESE CRIMINALS, OFF

1 THE STREETS.

2 JUDGE KARLTON: WE DO ALL KINDS OF THINGS --

3 THE WITNESS: WE DO.

4 JUDGE KARLTON: -- THAT DON'T MAKE ANY SENSE. THE
5 FACT THAT WE DO THEM DOESN'T MAKE THEM -- ISN'T EVIDENCE THAT
6 WHAT WE'RE DOING MAKES SENSE; TRUE?

7 THE WITNESS: THAT'S CORRECT.

8 JUDGE KARLTON: GO AHEAD. I'M SORRY.

9 BY MS. JOHNSON

10 Q SO ARE YOU RELYING ON SOMETHING OTHER THAN THE EXISTENCE OF
11 THE INCARCERATION POLICIES TO CONCLUDE THAT THERE IS A
12 RELATIONSHIP BETWEEN HIGHER INCARCERATION RATES AND LOWER CRIME
13 RATES?

14 A IF YOU TAKE A LOOK AT WHAT'S HAPPENED IN MY OWN HOME STATE,
15 THERE HAS BEEN A DECLINE IN CRIME AT THE SAME TIME THAT, YOU
16 KNOW, WE ENGAGED IN EXPANSION OF THE PRISON POPULATION. THAT
17 DID HAPPEN, BUT TO WHAT EXTENT, YOU KNOW, THE CRIME RATE, THE
18 DROP IN THAT, CAN BE COMPLETELY ATTRIBUTED TO THE EXPANSION OF
19 THE PRISON SYSTEM IS STILL AN OPEN QUESTION, BUT THERE IS SOME
20 CONNECTION.

21 JUDGE KARLTON: WE'VE HEARD REPEATEDLY IN THIS TRIAL
22 THAT CRIME RATES, DESPITE WHAT THE PUBLIC BELIEVES, ARE BEING
23 REDUCED ALL OVER THE COUNTRY, WHETHER YOU INCREASE THE
24 POPULATION OR DECREASE, IT SEEMS TO HAVE NOTHING TO DO WITH THE
25 CRIME RATE. YOU DON'T BELIEVE THAT THAT'S TRUE?

1 **THE WITNESS:** I THINK THERE IS SOME RELATIONSHIP
2 BETWEEN INCARCERATION AND CRIME.

3 **JUDGE KARLTON:** ON WHAT BASIS DO YOU BELIEVE THAT,
4 DOCTOR?

5 **THE WITNESS:** ON THE THINGS THAT I'VE READ, AND BASED
6 ON MY OWN PERSONAL EXPERIENCE OF REVIEWING WHAT'S HAPPENED IN
7 OUR OWN PARTICULAR STATE.

8 **JUDGE REINHARDT:** DO YOU DISAGREE WITH THE TESTIMONY
9 WE'VE HEARD THAT THE CRIME RATE HAS GENERALLY DECREASED OVER
10 WHATEVER PERIOD OF TIME, NINE YEARS, TEN YEARS, THAT IT'S
11 DECREASED GENERALLY ACROSS THE COUNTRY?

12 **THE WITNESS:** IT HAS GONE DOWN GENERALLY, I WOULD
13 AGREE.

14 **JUDGE REINHARDT:** AND HAS IT GONE DOWN MORE, IN YOUR
15 EXPERIENCE, IN THE STATES THAT HAVE INCARCERATED A HIGHER
16 PERCENTAGE OF PEOPLE?

17 **THE WITNESS:** I CAN TELL YOU IN MY OWN STATE --

18 **JUDGE REINHARDT:** YES, THAT I UNDERSTAND.

19 **THE WITNESS:** -- IT'S GONE DOWN. BUT, AGAIN, I'M NOT
20 GOING TO SAY THAT I'M GOING TO ATTRIBUTE, YOU KNOW, ONE HUNDRED
21 PERCENT THAT THAT'S THE CASE.

22 **JUDGE KARLTON:** HOW ABOUT TEN? HOW ABOUT TEN
23 PERCENT? HOW ABOUT FIVE PERCENT?

24 **THE WITNESS:** IT MAY BE FIVE OR TEN PERCENT.

25 **JUDGE KARLTON:** WE DON'T KNOW?

1 **THE WITNESS:** THAT IS CORRECT. THAT IS CORRECT.

2 **JUDGE KARLTON:** IT'S ALL SPECULATION.

3 **THE WITNESS:** YES, SIR.

4 **JUDGE KARLTON:** BUT STATES THAT HAVE REDUCED THE
5 LENGTH OF INCARCERATION HAVE HAD THE SAME REDUCTIONS AT THE SAME
6 RATES AS TEXAS OR ANY OTHER STATE, ROUGHLY, I MEAN THERE MAY BE
7 MINOR DIFFERENCES.

8 **THE WITNESS:** YES, SIR.

9 **JUDGE KARLTON:** ALL RIGHT. OKAY. ALL RIGHT. GO
10 AHEAD, MA'AM.

11 **MS. JOHNSON:** I DON'T HAVE ANY FURTHER QUESTIONS.

12 **JUDGE HENDERSON:** THANK YOU. INTERVENORS?

13 **MR. MITCHELL:** YES, BRIEFLY.

14 **DIRECT EXAMINATION BY MR. MITCHELL**

15 **MR. MITCHELL:** BILL MITCHELL FOR THE DEFENDANT
16 INTERVENORS.

17 BY MR. MITCHELL

18 **Q** GOOD MORNING, DR. MARQUART.

19 **A** GOOD MORNING.

20 **Q** DR. MARQUART, IN YOUR REPORT, IN YOUR CONCLUSION PARAGRAPH
21 10 ON PAGE 19 --

22 **JUDGE REINHARDT:** IS THIS THE FIRST REPORT?

23 **MR. MITCHELL:** I'M SORRY, IT IS -- IT'S HIS -- I
24 BELIEVE IT IS HIS FIRST REPORT, THE ONE THAT'S DATED 9/22/08,
25 PARAGRAPH NUMBER 10.

1 **JUDGE REINHARDT:** THANK YOU.

2 **MS. JOHNSON:** THAT'S ACTUALLY HIS THIRD REPORT, YOUR
3 HONORS.

4 **MR. MITCHELL:** THANK YOU, COUNSEL.

5 **JUDGE REINHARDT:** LET ME FIND IT. YOU SAY IT'S
6 PARAGRAPH 10?

7 **MR. MITCHELL:** PARAGRAPH 10, PAGE 19.

8 (DOCUMENT DISPLAYED.)

9 BY MR. MITCHELL

10 **Q** YOU WRITE, DOCTOR, "IN CONCLUSION," I'LL PARAPHRASE PART OF
11 THAT, THAT THERE WILL BE CRIMINAL ACTIVITY AND THERE WILL BE
12 VICTIMS, RELATING TO A PRISONER REDUCTION OR PRISONER RELEASE
13 ORDER, CORRECT?

14 **A** YES, SIR.

15 **Q** YOU STATE THAT THE -- ONLY THE EXACT AMOUNT OF SUCH BEHAVIOR
16 REMAINS UNKNOWN. THERE'S BEEN SOME TESTIMONY HERE AND A
17 PROPOSAL HAS BEEN MADE THAT THIS COURT SHOULD IMPLEMENT A
18 POPULATION CAP SET AT 130 PERCENT OF DESIGN CAPACITY WHICH
19 WOULD, IN EFFECT, WARRANT A RELEASE OF 52,000 INMATES OVER A
20 TWO-YEAR PERIOD, AND IF THAT INVOLVES THE RELEASE OF
21 APPROXIMATELY 2,200 INMATES PER MONTH THAT WOULD BE RELEASED
22 EARLY, EARLIER THAN COMPLETING THEIR ENTIRE TERMS, WOULD YOU
23 EXPECT THAT A CERTAIN PERCENTAGE OF THOSE WOULD COMMIT CRIMES
24 DURING THAT EARLY RELEASE PERIOD?

25 **A** YES, SIR.

1 Q THERE'S BEEN TESTIMONY RANGING FROM 17 PERCENT TO 25 PERCENT
2 OF THIS EARLY RELEASE CLASS, IF IT INVOLVES LOW LEVEL OFFENDERS,
3 WOULD RECIDIVATE AND COMMIT CRIMES?

4 JUDGE KARLTON: WELL, THAT ISN'T QUITE THE SAME
5 THING, AS WE'VE LEARNED, TO OUR DISMAY. RECIDIVISM INCLUDES ALL
6 OF THE TECHNICAL VIOLATIONS AS WELL. SO THERE'S SOME SUGGESTION
7 THAT RECIDIVISM RATES WOULD BE INCREASED. THAT IS THE BEST WE
8 CAN SAY, RIGHT?

9 MR. MITCHELL: LET ME CLARIFY THEN.
10 BY MR. MITCHELL

11 Q EARLIER IN YOUR TESTIMONY YOU MENTIONED THE 70 PERCENT
12 RECIDIVISM RATE, AND IT'S BEEN TESTIFIED IN THIS COURTROOM THAT
13 THAT INVOLVES REOFFENSES, NEW CRIMES AND TECHNICAL PAROLE
14 VIOLATORS. IS THAT YOUR UNDERSTANDING OF THE 70 PERCENT
15 RECIDIVISM RATE THAT'S BEEN DOCUMENTED IN CALIFORNIA?

16 A YES, SIR.

17 Q HYPOTHETICALLY, AND I BELIEVE THERE HAS BEEN TESTIMONY FROM
18 DR. AUSTIN AND THOMAS HOFFMAN, THAT IF YOU HAVE REOFFENSE RATE
19 OF 17 PERCENT, AND A REOFFENSE RATE MEANING COMMITTING A NEW
20 CRIME, OF 25 PERCENT OF THIS GROUP THAT IS RELEASED EARLY, THOSE
21 WOULD EQUATE TO A CERTAIN NUMBER OF NEW CRIMES PER MONTH BY THIS
22 EARLY RELEASE CLASS, CORRECT?

23 A THAT IS CORRECT.

24 Q AND IF WE USE THE 17 PERCENT FIGURE APPLIED TO APPROXIMATELY
25 2,100 INMATES BEING RELEASED PER MONTH, WOULD YOU AGREE THAT

1 WOULD INVOLVE APPROXIMATELY 368 NEW CRIMES BEING COMMITTED BY
2 THAT GROUP?

3 **MR. SPECTER:** OBJECTION. THAT MISSTATES THE
4 TESTIMONY. IT'S -- IT'S NOT NEW CRIMES IN THE SENSE THAT THERE
5 WOULD BE CRIMES THAT WEREN'T GOING TO BE COMMITTED BEFORE. SO I
6 THINK THE HYPOTHETICAL, IF IT'S BASED ON THE PRIOR TESTIMONY, HE
7 NEEDS TO CLARIFY THAT THESE WOULD HAVE BEEN CRIMES THAT WOULD BE
8 COMMITTED ONCE THOSE PAROLEES WOULD BE RELEASED ANYWAY.

9 **JUDGE REINHARDT:** THE QUESTION, AS I UNDERSTAND IT,
10 IS, IN THIS PARTICULAR PERIOD THERE WOULD BE THESE CRIMES, WHICH
11 MIGHT OTHERWISE BE COMMITTED LATER. THAT'S A DIFFERENT THING.
12 BUT THE QUESTION IS ONLY WOULD THESE CRIMES BE COMMITTED IN THIS
13 PERIOD.

14 **MR. SPECTER:** WELL, IF THAT'S THE QUESTION -- IF
15 THAT'S HOW HE UNDERSTANDS THE QUESTION, I WILL WITHDRAW MY
16 OBJECTION, BUT THAT'S NOT HOW I UNDERSTOOD THE QUESTION.

17 **JUDGE REINHARDT:** DID I ACCURATELY STATE YOUR
18 QUESTION?

19 **MR. MITCHELL:** YES.

20 BY MR. MITCHELL

21 **Q** I BELIEVE I'M LOOKING AT CRIMES COMMITTED DURING THE EARLY
22 RELEASE PERIOD WHEN THE INDIVIDUAL WOULD HAVE BEEN IN CUSTODY
23 BUT FOR HIS EARLY RELEASE, CERTAIN NUMBER OF CRIMES WILL BE
24 COMMITTED DURING THAT EARLY RELEASE WINDOW. DR. AUSTIN PUT IT
25 AT 25 PERCENT. I BELIEVE MR. HOFFMAN PUT IT FOR A LOW LEVEL OR

1 LOW RISK OFFENDER AT 17 PERCENT. USING THE LESSER NUMBER OF
2 17 PERCENT, THAT EQUATES TO APPROXIMATELY 368 NEW CRIMES DURING
3 THE EARLY RELEASE WINDOW; WOULD YOU AGREE WITH THAT?

4 **JUDGE KARLTON:** "NEW CRIMES" IS WHAT CAUSES THE
5 OBJECTION. JUST CRIMES. LEAVE IT AT THAT FOR THE TIME BEING.

6 **MR. SPECTER:** I'M SORRY TO OBJECT AGAIN,
7 MR. MITCHELL.

8 **JUDGE KARLTON:** HE'S TAKEN BACK THE WORD "NEW."

9 **MR. SPECTER:** I'M NOT TALKING ABOUT THAT. NOW I
10 WOULD LIKE MR. MITCHELL TO EXPLAIN WHERE DR. AUSTIN SAID THAT
11 25 PERCENT WOULD --

12 **JUDGE KARLTON:** I DON'T REMEMBER THAT EITHER.

13 **MR. SPECTER:** SO I THINK IT'S NOT BASED ON THE
14 TESTIMONY.
15 BY MR. MITCHELL

16 **Q** GOING WITH THE 17 PERCENT FIGURE THAT I'M BASING THE
17 ESTIMATES FOR THE HYPOTHETICAL ON, IF 17 PERCENT OF THE EARLY
18 RELEASE CLASS COMMIT NEW CRIMES, THAT WOULD EQUATE, WOULD YOU
19 AGREE, TO APPROXIMATELY 368?

20 **JUDGE REINHARDT:** I DON'T KNOW THE DIFFERENCE BETWEEN
21 CRIMES AND NEW CRIMES. ANY CRIME THAT WASN'T COMMITTED BY THE
22 SAME PERSON PREVIOUSLY, THE IDENTICAL OFFENSE WOULD BE -- A NEW
23 CRIME IS A CRIME.

24 **MR. MITCHELL:** A NEW CRIME FOR WHICH THEY COULD BE
25 PROSECUTED FOR, YOUR HONOR.

1 **JUDGE REINHARDT:** IF THEY COMMIT A CRIME DURING THAT
2 PERIOD, THAT'S NOT AN OLD CRIME. IT'S A NEW CRIME.

3 **MR. MITCHELL:** CORRECT.

4 **JUDGE REINHARDT:** SO "NEW" DOESN'T ADD ANYTHING, AND
5 THIS WHOLE DISCUSSION ISN'T WORTH IT.

6 **MR. MITCHELL:** AGREE.

7 **JUDGE REINHARDT:** IF YOU CAN DO IT WITHOUT "NEW" --

8 **MR. MITCHELL:** I'M SORRY I ADDED THAT WORD THAT
9 CAUSED THAT CONFUSION.

10 **JUDGE KARLTON:** DO YOU HAVE ANY IDEA WHAT WE'RE
11 DOING?

12 **JUDGE REINHARDT:** WE'RE ENTERTAINING OURSELVES.

13 **JUDGE KARLTON:** YOU MAY BE.

14 **JUDGE REINHARDT:** I DON'T SEE THE DIFFERENCE BETWEEN
15 A NEW CRIME AND A CRIME.

16 BY MR. MITCHELL

17 **Q** IF 2,100 INDIVIDUALS ARE RELEASED EARLY BEFORE THE
18 COMPLETION OF THEIR TERMS, WE CAN EXPECT THAT A CERTAIN
19 PERCENTAGE OF THEM WILL REOFFEND AND COMMIT A CRIME DURING THAT
20 PERIOD, THAT WINDOW THAT THEY'RE RELEASED EARLY FROM PRISON,
21 CORRECT?

22 **A** YES, SIR.

23 **Q** IF 17 PERCENT OF THE 2,100 COMMIT A CRIME DURING THAT EARLY
24 RELEASE WINDOW, THAT EQUATES TO APPROXIMATELY 350 TO 360 CRIMES
25 DURING THAT EARLY RELEASE PERIOD?

1 **A** YES, SIR.

2 **Q** DO YOU AGREE THESE ARE CRIMES THAT WOULD NOT HAVE OCCURRED
3 BUT FOR THE FACT THAT THEY ARE NOW OUT OF CUSTODY --

4 **JUDGE REINHARDT:** THEY WOULD NOT HAVE OCCURRED DURING
5 THAT PERIOD.

6 **MR. MITCHELL:** CORRECT.

7 **THE WITNESS:** THAT IS CORRECT.

8 **JUDGE KARLTON:** BUT THEY WOULD HAVE OCCURRED, JUST A
9 COUPLE MONTHS LATER.

10 **THE WITNESS:** YES. THEY HAVE OCCURRED, YES.
11 BY MR. MITCHELL

12 **Q** AND THAT GOES TO TESTIMONY THAT WE'VE HAD HERE, THAT EARLY
13 RELEASE DOES NOT INCREASE THE RECIDIVISM RATE OF THE INDIVIDUALS
14 WHO ARE RELEASED. THEY'RE GOING TO REOFFEND WHEN THEY'RE OUT AT
15 A CERTAIN RATE, CORRECT?

16 **A** THEY ARE.

17 **Q** BUT THE CRIMES THAT THEY COMMIT, ADDRESSING THE EARLY
18 RELEASE WINDOW, WOULD YOU AGREE, WOULD NOT HAVE OCCURRED BUT FOR
19 THE EARLY RELEASE?

20 **A** THAT IS CORRECT.

21 **JUDGE REINHARDT:** YOU MEAN WOULD NOT HAVE OCCURRED AT
22 THAT PARTICULAR POINT IN TIME?

23 **MR. MITCHELL:** CORRECT.

24 **JUDGE KARLTON:** AT THAT POINT. BUT WOULD HAVE
25 OCCURRED SEVERAL MONTHS LATER.

1 **THE WITNESS:** DOWNSTREAM.

2 BY MR. MITCHELL

3 **Q** AND IF THEY ARE STILL OUT OF CUSTODY, THERE'S MORE CRIMES
4 BEING COMMITTED THEN?

5 **A** THAT'S RIGHT. CRIMES THAT ARE REPORTED, AND THEN THERE'S
6 ALSO THOSE WE MAY NOT EVEN BE AWARE OF.

7 **JUDGE REINHARDT:** WHICH WILL BE TRUE SEVERAL MONTHS
8 LATER ALSO THEN. SO THEY'LL COMMIT THE SAME NUMBER OF CRIMES
9 WHICHEVER TIME THEY'RE RELEASED.

10 BY MR. MITCHELL

11 **Q** NOW, THERE'S BEEN TESTIMONY --

12 **A** BUT WE ARE ARTIFICIALLY RELEASING THOSE PEOPLE. WE ARE
13 ACTING AS IF THAT ARTIFICIAL --

14 **JUDGE KARLTON:** ARTIFICIALLY DOESN'T MAKE -- SIR, I
15 MEAN, DR. AUSTIN HAS MADE THIS POINT WITH SOME FERVOR THAT THERE
16 ISN'T ANY PROPER IMPRISONMENT TERM THAT WE CAN SAY HE SHOULDN'T
17 HAVE BEEN RELEASED EARLIER THAN THAT, BECAUSE ALL OF THESE TERMS
18 ARE ESSENTIALLY ARBITRARY. DO YOU AGREE WITH THAT?

19 **THE WITNESS:** YES.

20 **JUDGE KARLTON:** ALL RIGHT.

21 BY MR. MITCHELL

22 **Q** THERE'S BEEN TESTIMONY THAT A CERTAIN PERCENTAGE, BETWEEN
23 THREE AND FOUR PERCENT OF THE CRIMES COMMITTED DURING THE EARLY
24 RELEASE WINDOW BY THE INDIVIDUALS WHO ARE EARLY RELEASED WILL BE
25 VIOLENT CRIMES. WOULD YOU AGREE WITH THE THREE TO FOUR PERCENT?

1 **A** SOME PORTION OF THEM WILL BE A VIOLENT CRIME, YES.

2 **JUDGE KARLTON:** YOU DON'T KNOW WHETHER IT'S THREE OR
3 FOUR PERCENT?

4 **THE WITNESS:** I DON'T KNOW, BUT SOME PERCENTAGE OF
5 THEM WILL. THERE WILL BE THE VICTIMS OF VIOLENT CRIME, YES.
6 BY MR. MITCHELL

7 **Q** WOULD YOU AGREE THAT THE HIGHER LEVEL RISK, THE MORE
8 DANGEROUS THE OFFENDERS ARE THAT ARE RELEASED EARLY, THE GREATER
9 THE NUMBER OF VIOLENT CRIMES THAT WILL BE OCCASIONED BY EARLY
10 RELEASE?

11 **A** I WOULD BE VERY CONCERNED ABOUT THAT. I WOULD BE.

12 **Q** YOU WOULD AGREE WITH -- THE NUMBERS WOULD GO UP?

13 **A** THE PROPENSITY IS THERE, YES.

14 **Q** THE NUMBER OF CRIMES COMMITTED DURING THAT EARLY RELEASE
15 WINDOW REPRESENT REAL IMPACT TO REAL VICTIMS, DO THEY NOT?

16 **A** THAT IS CORRECT.

17 **Q** REGARDLESS OF THE STATISTICAL SIGNIFICANCE IT HAS ON THE
18 RECIDIVISM RATE, REAL PEOPLE WILL SUFFER THE CONSEQUENCES OF
19 REAL CRIME?

20 **A** THAT'S RIGHT. I MEAN, BECAUSE YOU -- YOU KNOW, WE'RE ALWAYS
21 TALKING ABOUT THE AGGREGATE OR A TWO PERCENT HERE OR A
22 THREE PERCENT THERE, BUT, YOU KNOW, WHEN YOU'RE DEALING WITH
23 LITERALLY HUNDREDS OF THOUSANDS OF PEOPLE, YOU KNOW, THAT ONE
24 PERCENT TRANSLATES INTO REAL, REAL HUMAN BEINGS, OF WHICH THERE
25 WILL BE VICTIMS, YES.

1 Q AND DID YOU SEE THAT HAPPEN IN TEXAS?

2 A YES, WE DID.

3 MR. MITCHELL: I HAVE NOTHING FURTHER.

4 JUDGE HENDERSON: CROSS-EXAMINATION.

5 CROSS-EXAMINATION BY MR. SPECTER

6 BY MR. SPECTER

7 Q GOOD MORNING, DR. MARQUART.

8 A GOOD MORNING.

9 Q WE MET AT YOUR DEPOSITION, REMEMBER?

10 A PARDON ME?

11 Q WE MET -- I'M DONALD SPECTER. WE MET AT YOUR DEPOSITION?

12 A YES, SIR.

13 Q YOU AGREE THAT CROWDING CONTRIBUTES TO VIOLENCE, DON'T YOU?

14 A IT IS AN ELEMENT. IT'S A VARIABLE. IT'S A FACTOR.

15 Q YOU AGREE THAT CROWDING CONTRIBUTES TO VIOLENCE, DON'T YOU?

16 A IT'S A FACTOR THAT I WOULD LOOK AT. IT'S A VARIABLE IN THE
17 MIX.

18 JUDGE KARLTON: DOES THAT MEAN YES OR NO?

19 THE WITNESS: I'M NOT GOING TO SAY IT'S A VARIABLE.

20 AGAIN, I'M A SCIENTIST. IT'S A VARIABLE THAT'S IN THE MIX.

21 THAT'S WHAT I DO. I LOOK TO SEE THE CONTRIBUTION OF THAT TO
22 VIOLENCE.

23 JUDGE REINHARDT: ARE YOU SAYING IT CONTRIBUTES TO
24 VIOLENCE?

25 THE WITNESS: IT'S A FACTOR OR VARIABLE THAT I WOULD

1 LOOK AT. I'M NOT GOING TO SAY THAT IT AUTOMATICALLY LEADS TO
2 VIOLENCE. I'M NOT GOING TO SAY THAT.

3 BY MR. SPECTER

4 **Q** I'M GOING TO READ FROM YOUR DEPOSITION, DR. MARQUART, PAGE
5 142, LINES NINE THROUGH TEN.

6 "QUESTION: CROWDING CONTRIBUTES TO
7 VIOLENCE?

8 "ANSWER: YES, SIR."

9 **A** YES.

10 **Q** OKAY.

11 **A** IT'S SOMETHING THAT I WOULD LOOK AT, YES.

12 **JUDGE HENDERSON:** I THINK THAT'S CONFUSING. LET'S
13 ASSUME THAT YOU LOOK AT IT.

14 **THE WITNESS:** MM-HMM.

15 **JUDGE HENDERSON:** COULD YOU THEN REACH A CONCLUSION
16 ONE WAY OR ANOTHER IT DOES CONTRIBUTE OR IT DOESN'T?

17 **THE WITNESS:** IT -- IT'S A COMPLEX -- IT SOUNDS, YOU
18 KNOW, AGAINST COMMON SENSE. I UNDERSTAND THAT. BUT IT'S -- YOU
19 KNOW, IT IS A -- IT'S A VARIABLE AMONG MANY THAT I WOULD TAKE A
20 LOOK AT. THAT'S ALL I'M TRYING TO SAY. I'M NOT SAYING THAT IT
21 IS ONE HUNDRED PERCENT RELATED TO VIOLENCE. IT IS --

22 **JUDGE KARLTON:** SIR --

23 **THE WITNESS:** IT IS IN THE MIX.

24 **JUDGE KARLTON:** SIR, I DON'T KNOW THAT IT MATTERS,
25 BUT THIS SEEMS TO ME TO BE A FAIRLY STRAIGHTFORWARD QUESTION.

1 TO LOOK AT SOMETHING DOESN'T ANSWER THE QUESTION ABOUT AFTER
2 WHEN YOU LOOK AT IT, IT EITHER IS A CONTRIBUTING FACTOR OR IT
3 ISN'T.

4 **JUDGE REINHARDT:** OR YOU DON'T KNOW.

5 **JUDGE KARLTON:** OR YOU DON'T KNOW.

6 SO THE QUESTION IS, YES, YOU LOOK AT IT. WHEN YOU
7 LOOK AT IT, WHAT DO YOU DISCOVER? IS IT A FACTOR, OR IS IT NOT,
8 OR IS THE ANSWER I DON'T KNOW?

9 **THE WITNESS:** IT'S A FACTOR.

10 **JUDGE REINHARDT:** WHAT DOES A FACTOR MEAN? DOES A
11 FACTOR MEAN IF IT'S FACTOR, DOES IT CONTRIBUTE?

12 **THE WITNESS:** IT IS AN IMPORTANT VARIABLE TO EXAMINE.

13 **JUDGE REINHARDT:** I GUESS THE PROBLEM IS WE'RE NOT
14 SCIENTISTS.

15 **JUDGE KARLTON:** WE ARE NOT INTERESTED IN ABSTRACT
16 EXAMINATIONS. IT WOULD HELP US, CONCEIVABLY, MAYBE NOT, IT
17 WOULD HELP US TO KNOW WHETHER OR NOT CROWDING AND OVERCROWDING,
18 PARTICULARLY OVERCROWDING AT THE RATE IN CALIFORNIA, IS
19 CONTRIBUTING TO VIOLENCE WITHIN THE SYSTEM IS MAKING PEOPLE
20 DESENSITIZED TO VIOLENCE SO THEY ARE LIKELY TO COMMIT CRIME OF
21 VIOLENCE WHEN THEY GO OUT, THOSE SORTS OF THINGS.

22 **THE WITNESS:** THAT IS THE QUESTION -- THAT HAS --
23 WHAT YOU'RE SAYING THERE HAS NOT BEEN REACHED CONCLUSIVELY.
24 WHAT CROWDING DOES IN THAT ENVIRONMENT -- WHAT CROWDING DOES IN
25 AN ENVIRONMENT LIKE THAT, IN MY OPINION, IS THAT IT REDUCES --

1 IT CREATES THIS TREMENDOUS SENSE OF TRANSIENCY IN THAT
2 ENVIRONMENT. OKAY? PEOPLE COME IN. THEY GO OUT. AND INSIDE
3 THESE CELL BLOCKS WHERE YOU HAVE LOTS OF PEOPLE, IT IMPACTS THE
4 STAFF'S ABILITY TO REALLY KNOW WHO ALL THOSE INMATES ARE WITHIN
5 THAT PARTICULAR CELL BLOCK. SO IN THAT SENSE, YOU KNOW, YOU
6 BEGIN -- IT IMPACTS THE SOCIAL CONTROL SIDE, AND I'M NOT TRYING
7 TO BE ABSTRACT OR ACADEMIC ABOUT IT.

8 IT LEADS TO THE -- IT CREATES AN INABILITY ON THE
9 SIDE OF THE STAFF TO KNOW WHO'S IN THAT CELL BLOCK, WHO LIVES
10 THERE, WHO IS INVOLVED IN ACTIVITIES. IT IMPACTS ON YOUR
11 ABILITY TO KNOW WHO'S IN THERE, WHICH ALSO LEADS TO THE, ON THE
12 INMATE'S SIDE, TAKING MATTERS INTO THEIR OWN HANDS TO SOLVE
13 THEIR OWN DISPUTES. THAT'S WHAT IT DOES.

14 SO DOES IT LEAD TO, YOU KNOW, SUICIDE AND THOSE KINDS
15 OF THINGS, WE DON'T KNOW. WE DON'T KNOW THAT CONCLUSIVELY THAT
16 THAT'S THE CASE.

17 **JUDGE KARLTON:** WE DON'T KNOW IT CONCLUSIVELY, BUT WE
18 DON'T KNOW ANYTHING CONCLUSIVELY. WE ARE NOT EVEN SURE THAT I'M
19 NOT DREAMING. BUT WE'VE GOT TO MAKE SOME JUDGMENTS ABOUT WHAT
20 THE EVIDENCE SEEMS TO SUGGEST OR SEEMS TO DO MORE THAN SUGGEST,
21 AND I SUPPOSE -- I DON'T MEAN TO BE TAKING THIS AWAY FROM YOU,
22 MR. SPECTER, BUT I DON'T UNDERSTAND THE WITNESS'S TESTIMONY AT
23 ALL.

24 **MR. SPECTER:** THAT WOULD BE FINE, YOUR HONOR, AND I
25 CAN MOVE ON.

1 **JUDGE KARLTON:** YOU ANSWERED A QUESTION, APPARENTLY,
2 AT DEPOSITION FAIRLY STRAIGHTFORWARDLY. I DON'T KNOW WHETHER
3 YOU ARE RETREATING FROM THAT STRAIGHTFORWARD ANSWER OR NOT. LET
4 ME ASK THAT QUESTION.

5 AS YOU LOOK AT IT NOW, DO YOU THINK THAT WAS AN
6 ACCURATE PIECE OF TESTIMONY?

7 **THE WITNESS:** WHAT I WANT TO SAY IS THAT CROWDING IS
8 A FACTOR, THAT IT DOES CONTRIBUTE IN SOME SENSE TO VIOLENCE.
9 THE EXACT PERCENTAGE --

10 **JUDGE KARLTON:** WE UNDERSTAND THAT. WE UNDERSTAND
11 THAT WE WON'T BE ABLE TO TIE IT DOWN TO 17.4 PERCENT.

12 **THE WITNESS:** OKAY.

13 **JUDGE KARLTON:** EVERYBODY AGREES TO THAT. THE
14 QUESTION IS, IS IT A SIGNIFICANT CONTRIBUTING FACTOR?

15 **THE WITNESS:** IT IS A -- IT IS A CONTRIBUTING FACTOR.

16 **JUDGE KARLTON:** IS IT A SIGNIFICANT CONTRIBUTING --

17 **THE WITNESS:** THAT I DO NOT KNOW.

18 **JUDGE KARLTON:** FAIR ENOUGH.

19 BY MR. SPECTER

20 **Q** IN THAT VEIN, AND I HOPE THIS DOESN'T CONFUSE MATTERS MORE,
21 BUT YOU TALKED ABOUT THE RISE IN CRIME IN HARRIS COUNTY AS A
22 RESULT OF THE POPULATION CAP, CORRECT?

23 **A** YES, SIR.

24 **Q** AND THAT WAS A LEGISLATIVELY IMPOSED POPULATION CAP, IF I
25 UNDERSTAND YOUR TESTIMONY CORRECTLY?

1 **A** YES, SIR.

2 **JUDGE KARLTON:** AND YOU COULD ATTRIBUTE -- THIS IS
3 INTERESTING. YOU COULD ATTRIBUTE THE RISE IN CRIME TO THE
4 RELEASE OF THE PRISONERS. YOU DIDN'T HAVE ANY PROBLEM DOING
5 THAT? IS THAT RIGHT?

6 **THE WITNESS:** YES, SIR.

7 **JUDGE KARLTON:** AND WHY IS THAT DIFFERENT -- I MEAN,
8 THERE YOU ACTUALLY CAME TO A CONCLUSION, ASTONISHING AS THAT
9 SOUNDS. WHY WERE YOU UNABLE TO DO THE SAME WITH THE QUESTION OF
10 WHETHER CROWDING CONTRIBUTES TO VIOLENCE?

11 **THE WITNESS:** BECAUSE IT'S A COMPLEX ISSUE THAT I'M
12 STILL -- IN MY MIND, IT'S NOT RESOLVED.

13 **JUDGE KARLTON:** BUT IT'S A COMPLEX ISSUE AS TO WHY
14 PEOPLE COMMIT CRIMES AT ALL.

15 **THE WITNESS:** THAT'S TRUE.

16 **JUDGE KARLTON:** WE DON'T KNOW. MAYBE THE PAROLE
17 RELEASE HAD NOTHING TO DO WITH IT; IT HAD TO DO WITH ALL THESE
18 OTHER COMPLEX FACTORS.

19 **THE WITNESS:** YES, SIR, IT'S A POSSIBILITY, YES.
20 BY MR. SPECTER

21 **Q** SO YOU DON'T KNOW, DR. MARQUART, HOW MUCH, IF ANY, OF THE
22 RISE IN THE CRIME IN HARRIS COUNTY WAS ATTRIBUTABLE TO THE
23 POPULATION --

24 **JUDGE KARLTON:** IF ANY.
25

1 BY MR. SPECTER

2 Q IF ANY, WAS ATTRIBUTABLE TO THE POPULATION CAP AND THE
3 SUBSEQUENT RELEASE, DO YOU?

4 A AGAIN, LIKE I SAID, WHEN WE LOOKED AT IT, YOU KNOW, I
5 BELIEVE THAT PART OF IT IS ATTRIBUTABLE TO THAT.

6 Q YOU DON'T KNOW WHAT PART OF IT IS ATTRIBUTABLE --

7 A I CAN'T PUT A PERCENTAGE ON IT, NO, SIR.

8 Q BECAUSE IT'S A COMPLEX ISSUE, ISN'T THAT RIGHT?

9 A THAT'S RIGHT.

10 Q OKAY. YOU HAVE A CONTRACT TO WORK FOR THE DEPARTMENT OF
11 CORRECTIONS INDEPENDENT OF THE COMPENSATION YOU ARE RECEIVING
12 HERE FOR YOUR TESTIMONY TODAY, RIGHT?

13 A YES, SIR.

14 Q THAT'S ABOUT \$120,000?

15 A I BELIEVE SO.

16 Q NOW, YOU WORKED IN THE TEXAS PRISON SYSTEM FOR A COUPLE OF
17 YEARS AS CORRECTIONAL OFFICER; IS THAT RIGHT?

18 A YES, SIR.

19 Q YOU WERE AT EASTHAM? YOU WERE AT EASTHAM?

20 A YES, SIR.

21 Q AND YOU USED THE TERM "MALCONTENT" TO DESCRIBE PRISONERS IN
22 THAT UNIT. THEY CALL THEM -- THEY CALL PRISON UNITS IN TEXAS,
23 RIGHT?

24 A THAT'S TRUE.

25 Q AND YOU USED THE WORD "MALCONTENT" TO REFER TO THE PRISONERS

1 IN THAT UNIT?

2 **A** THAT WAS BY THE -- THAT'S THE SYSTEM'S OWN DESIGNATION FOR
3 THE --

4 **Q** THAT'S AN OFFICIAL DESIGNATION --

5 **A** YES.

6 **Q** -- BY THE TEXAS PROGRAM. OKAY.

7 YOU ALSO TESTIFIED THAT AT THE TIME YOU WERE WORKING
8 IN THE TEXAS PRISON SYSTEM, THE FEDERAL COURT IN THE RUIZ CASE
9 HAD FOUND THE CONDITIONS IN THOSE UNITS, INCLUDING EASTHAM,
10 UNCONSTITUTIONAL, CORRECT?

11 **A** YES, SIR.

12 **Q** THAT WAS IN PART JUDGE JUSTICE -- THAT WAS JUDGE JUSTICE'S
13 CASE, RIGHT?

14 **A** YES, SIR.

15 **Q** AND HE CONCLUDED THAT THE CONDITIONS WERE UNCONSTITUTIONAL
16 IN PART BECAUSE OF THE BRUTALITY THAT THE PRISONERS HAD TO
17 ENDURE IN THAT UNIT, CORRECT?

18 **A** YES, SIR.

19 **Q** YOU DISAGREED WITH THE COURT'S FINDINGS, DIDN'T YOU?

20 **A** PARDON ME?

21 **Q** YOU DISAGREED WITH THE JUDGE'S FINDINGS, DIDN'T YOU?

22 **A** IN SOME ISSUES I DID.

23 **Q** YEAH. BECAUSE AS FAR AS YOU WERE CONCERNED, IT WASN'T LIKE
24 DACHAU OR AUSCHWITZ; ISN'T THAT CORRECT?

25 **A** THAT'S CORRECT.

1 Q AND THEY WEREN'T -- NEVER MIND. I DON'T THINK I HAVE TO --
2 SO INSTEAD OF RELEASING PRISONERS THROUGH A CAP, YOU,
3 IN YOUR FIRST PRELIMINARY REPORT, RECOMMENDED THAT THE STATE'S
4 PLAN BE FOLLOWED; IS THAT CORRECT?

5 A YES, SIR.

6 Q AND ONE OF THE RECOMMENDATIONS FROM THE STATE'S PLAN WAS TO
7 IMPLEMENT THE PROVISIONS OF AB 900, REMEMBER THAT?

8 A I BELIEVE SO.

9 Q AT YOUR DEPOSITION YOU DIDN'T KNOW -- YOU COULDN'T RECALL
10 WHAT AB 900 WAS; DO YOU RECALL THAT?

11 A I BELIEVE IT WAS IN -- IN-FILL. BUT THE SPECIFICS, NO, SIR.

12 Q YOU ASKED ME TO SEE THE DOCUMENT, DIDN'T YOU? YOU DIDN'T
13 KNOW WHAT AB 900 WAS, RIGHT?

14 A IF THAT'S IN THE DEPOSITION, YES, SIR.

15 Q OKAY. IT ALSO TALKS ABOUT SAYING -- DO YOU KNOW WHAT AB 900
16 IS TODAY?

17 A I GUESS I'M STILL AT THE SAME STATE. NO, SIR.

18 Q IT ALSO SAYS THAT YOU RECOMMEND THAT THE STATE FOLLOW
19 THROUGH ON WHAT YOU CALL THE CONSTRUCTION AGREEMENT; DO YOU
20 RECALL THAT IN YOUR REPORT?

21 A YES, SIR.

22 Q WHAT CONSTRUCTION AGREEMENT WERE YOU REFERRING TO?

23 A DORMITORIES, IN-FILL, CREATION OF ADDITIONAL BED SPACE.

24 Q I SEE. DID THAT HAVE ANYTHING TO DO WITH THE RECEIVER'S
25 10,000 BEDS? DO YOU KNOW ABOUT THAT?

1 **A** PROBABLY.

2 **Q** DO YOU KNOW ABOUT THE RECEIVER'S 10,000 BEDS?

3 **A** I DO RECALL THAT.

4 **Q** IS THAT PART OF WHAT YOU CALLED THE CONSTRUCTION AGREEMENT
5 OR NOT?

6 **A** IT MAY HAVE BEEN.

7 **Q** IT'S YOUR WORD, IS IT OR NOT?

8 **A** I GUESS IT IS.

9 **Q** OKAY. DID YOU KNOW THAT THE DEFENDANT IN THIS CASE, MATTHEW
10 CATE -- DO YOU KNOW WHO MATTHEW CATE IS?

11 **A** NO, SIR.

12 **Q** HE'S A SECRETARY OF THE DEPARTMENT OF CORRECTIONS.

13 **A** OH, YEAH. OKAY.

14 **Q** DID YOU KNOW THAT THE DEFENDANT MATTHEW CATE CAME INTO
15 THIS -- JUDGE HENDERSON'S COURT TO OPPOSE THE COURT ORDER FOR
16 MONEY TO AUTHORIZE PART OF THE 10,000 BEDS?

17 **A** I DID NOT.

18 **Q** OKAY. DOES IT STRIKE YOU AS STRANGE THAT THE HEAD OF THE
19 DEPARTMENT OF CORRECTIONS WOULD COME INTO COURT TO OPPOSE PART
20 OF HIS OWN PLAN?

21 **MS. JOHNSON:** THIS IS ARGUMENTATIVE, YOUR HONORS.

22 **JUDGE HENDERSON:** SUSTAINED.

23 BY MR. SPECTER

24 **Q** YOUR REPORT ALSO SUGGESTS THAT THE PRISON POPULATION BE
25 REDUCED BY 30,000 ILLEGAL ALIENS; DO YOU RECALL THAT PART OF

1 YOUR REPORT?

2 **A** YES, SIR.

3 **Q** AND --

4 **JUDGE KARLTON:** WHY WOULD YOU DO THAT SINCE VIOLENCE
5 HAS -- SINCE OVERCROWDING HAS NO EFFECT UPON ANYTHING,
6 APPARENTLY?

7 **THE WITNESS:** WELL, IF WE'RE TRYING TO CREATE
8 ADDITIONAL BED SPACE, THAT MIGHT BE A POTENTIAL AVENUE.

9 **JUDGE KARLTON:** SO THAT YOU DON'T BELIEVE IT WOULD BE
10 NECESSARY, BUT IF THAT'S WHAT PEOPLE WANT TO DO, THAT'S A WAY TO
11 DO IT?

12 **THE WITNESS:** IT'S ONE WAY.

13 **JUDGE KARLTON:** RIGHT.

14 **THE WITNESS:** YES, SIR.

15 **JUDGE KARLTON:** OKAY.

16 BY MR. SPECTER

17 **Q** DO YOU KNOW OF ANY LEGAL AUTHORITY WHEREBY CALIFORNIA COULD
18 SHIP ITS 30,000 ILLEGAL ALIENS TO SOME OTHER JURISDICTION?

19 **MS. JOHNSON:** THAT CALLS FOR A LEGAL OPINION AND
20 CONCLUSION WHICH IS FAR BEYOND THE EXPERTISE OF THIS PERSON WITH
21 A PH.D.

22 **JUDGE HENDERSON:** THE QUESTION IS, DOES HE KNOW OF
23 ANY AUTHORITY.

24 **JUDGE KARLTON:** RIGHT. HE'S PERFECTLY FREE TO SAY
25 NO. IT'S ALL RIGHT.

1 **MS. JOHNSON:** HE'S NOT QUALIFIED TO DISCUSS LEGAL
2 AUTHORITIES, YOUR HONOR.

3 **JUDGE HENDERSON:** HE'S QUALIFIED TO TELL US WHAT HE'S
4 AWARE OF. THAT'S WHAT THE QUESTION IS.

5 **THE WITNESS:** CAN YOU REPEAT THE QUESTION, PLEASE?
6 BY MR. SPECTER

7 **Q** DO YOU KNOW OF ANY LEGAL AUTHORITY THAT WOULD ALLOW THE
8 DEPARTMENT OF CORRECTIONS TO SHIP 30,000 ILLEGAL ALIENS TO
9 ANOTHER JURISDICTION?

10 **A** WELL, AGAIN I'M BASING, YOU KNOW -- MY KNOWLEDGE AND OPINION
11 ON THAT IS BASED ON WHAT I'VE OBSERVED IN MY OWN HOME STATE, AND
12 IT WAS BASED ON THAT.

13 **Q** WELL, ACTUALLY --

14 **A** AND IF YOU DEPORT RIGHT OUT OF THE PRISON SYSTEM IN THE
15 STATE. ALL I DID WAS MENTION THAT AS ONE POTENTIAL WAY AS
16 FINDING, IDENTIFYING ADDITIONAL CELL SPACE.

17 **Q** OKAY. NOW, IN YOUR PRELIMINARY REPORT ON PAGE 24 IT SAYS:

18 "A PRISONER RELEASE ORDER WILL HAVE UNTOLD
19 PUBLIC SAFETY CONSEQUENCES."

20 DO YOU RECALL WRITING THAT?

21 **A** YES, SIR.

22 **Q** AND YOU MEANT THAT YOU DIDN'T KNOW WHAT THE CONSEQUENCES
23 WOULD BE, NOT THAT IT WOULD BE SOME DISASTER, CORRECT?

24 **A** YES, SIR.

25 **Q** OKAY. NOW, YOU UNDERSTAND THAT JUDGE KARLTON AND JUDGE

1 HENDERSON HAVE IN THEIR RESPECTIVE CASES FOUND CONDITIONS IN
2 CALIFORNIA'S PRISON UNCONSTITUTIONAL BECAUSE OF INADEQUATE
3 HEALTHCARE; DO YOU NOT?

4 **A** YES, SIR.

5 **Q** AND YOU KNOW THAT UNCONSTITUTIONAL PRISON CONDITIONS BECAUSE
6 OF A LACK OF HEALTHCARE WOULD POSE A SIGNIFICANT RISK OF HARM TO
7 PRISONERS, CORRECT?

8 **A** YES, SIR.

9 **Q** AND YOUR OPINION IS THAT THE STATE HAS TO PROTECT THE
10 PRISONERS FROM HARM AS MUCH AS IT DOES THE PUBLIC; ISN'T THAT
11 TRUE?

12 **A** THAT'S TRUE.

13 **Q** OKAY. NOW, IN YOUR OPINION, THE POPULATION REDUCTION IN
14 TEXAS THAT THE LEGISLATURE AUTHORIZED ACCELERATED THE STATE'S
15 ABILITY TO BRING THE SYSTEM UP TO CONSTITUTIONAL LEVELS; ISN'T
16 THAT CORRECT?

17 **A** IT HELPED, YES, SIR.

18 **Q** OKAY. AND IN TERMS OF POPULATION REDUCING METHODS, WE
19 DISCUSSED A LOT OF THOSE AT YOUR DEPOSITION; DO YOU RECALL THAT
20 TESTIMONY?

21 **A** MM-HMM. YES, SIR.

22 **Q** YOU ARE NOT OPPOSED TO ADVANCING GOOD TIME CREDITS TO
23 PRISONERS WHO CONFORM TO PRISON RULES AND REGULATIONS, CORRECT?

24 **A** THAT IS TRUE. SHOULD THEY DO WELL IN THE PRISON ENVIRONMENT
25 IT'S A POSSIBILITY THEY CAN BE GIVEN THAT, YES.

1 Q YOU ARE NOT OPPOSED TO USING RISK ASSESSMENT FOR PRISONERS
2 WHO ARE RELEASED, CORRECT?

3 A THAT'S CORRECT.

4 Q AND YOU KNOW THAT RIGHT NOW PRISONERS ARE RELEASED WITHOUT
5 ANY KIND OF RISK ASSESSMENT, RIGHT?

6 A THAT'S CORRECT.

7 Q AND SO IF THEY USE THE RISK ASSESSMENT TO DETERMINE THE
8 EARLY RELEASE, IT WOULD ACTUALLY BE SAFER THAN THE CURRENT
9 SYSTEM, RIGHT?

10 A IT'S A TOOL THAT ONE CAN USE, YES.

11 Q SO I WAS RIGHT; IT WOULD BE SAFER, RIGHT?

12 A IT'S A TOOL TO IDENTIFY POTENTIAL PEOPLE THAT CAN BE
13 RELEASED, RIGHT.

14 Q IT WOULD BE SAFER? YES OR NO.

15 JUDGE KARLTON: SAFER TO RELEASE PEOPLE AFTER HAVING
16 ANALYZED THEM UNDER A TOOL THAN JUST RELEASING THEM OUT ON THE
17 STREET WITHOUT IT.

18 THE WITNESS: THAT IS CORRECT.

19 MR. SPECTER: THANK YOU.

20 BY MR. SPECTER

21 Q AND YOU AGREE ALSO THAT PAROLE SUPERVISION CAN BE USED
22 SELECTIVELY FOR HIGH RISK OFFENDERS, RIGHT?

23 A THAT'S CORRECT.

24 Q AND YOU AGREE THAT CRIMES COMMITTED BY PAROLEES SHOULD BE
25 PROSECUTED RATHER THAN THROUGH THE ADMINISTRATIVE PAROLE

1 VIOLATION PROCESS, RIGHT?

2 **A** THAT IS CORRECT.

3 **Q** AND YOU AGREE THAT PAROLEES SHOULD RECEIVE SUBSTANCE ABUSE
4 EDUCATION AND JOB TRAINING, RIGHT?

5 **A** YES, SIR.

6 **Q** AND YOU AGREE THAT THE STATE SHOULD DIVERT TECHNICAL PAROLE
7 VIOLATORS AND LESS SERIOUS PROPERTY AND DRUG CRIMES, RIGHT?

8 **A** IT WOULD BE A GOOD THING, YES.

9 **Q** AND YOU SUPPORT REDUCING THE PRISON POPULATION THROUGH
10 PAROLE REFORM, CORRECT?

11 **A** CAN YOU REPEAT THE QUESTION, PLEASE?

12 **Q** YOU SUPPORT REDUCING THE PRISON POPULATION THROUGH PAROLE
13 REFORM, CORRECT?

14 **A** THAT'S ONE WAY TO MANAGE IT, YES.

15 **Q** SO IF YOU DID USE PAROLE REFORM -- YOU KNOW THAT BACK END
16 THING YOU WERE TALKING ABOUT WITH THE HYDRAULICS AND DIFFERENT
17 DOORS?

18 **A** YES, SIR.

19 **Q** SO IF THEY COMMITTED A CRIME AND YOU HAD PAROLE REFORM, IT
20 WOULD NOT HAVE THE -- IF YOU HAD PAROLE REFORM, EVEN THOUGH THEY
21 WERE COMMITTING CRIMES AT THE SAME RATE, IT WOULD RESULT IN LESS
22 PEOPLE COMING BACK INTO THE PRISON SYSTEM; ISN'T THAT TRUE?

23 **A** IT'S A POSSIBILITY.

24 **Q** ISN'T THAT TRUE?

25 **A** IT'S A POSSIBILITY.

1 Q EVERYTHING IN LIFE IS A POSSIBILITY, CORRECT?

2 A THAT IS CORRECT.

3 Q SO YOUR ANSWER DOESN'T HAVE VERY MUCH MEANING. SO I'M
4 ASKING YOU TO BE A LITTLE MORE DEFINITIVE IF YOU CAN.

5 A CAN YOU REPEAT THE QUESTION ONE MORE TIME?

6 Q SURELY.

7 THAT WOULD RESULT -- IF THE PRISONERS KEPT COMMITTING
8 CRIMES AT A CERTAIN RATE BUT YOU HAD PAROLE REFORM, IT WOULD
9 RESULT IN LESS PRISONERS COMING BACK INTO THE SYSTEM; ISN'T THAT
10 TRUE?

11 A ONE WOULD HOPE THAT THAT'S THE CASE.

12 Q AND IN YOUR ESTIMATION, IN YOUR OPINION, THE STATE SHOULD
13 USE MULTIPLE METHODS AT THE SAME TIME, SUCH AS REFORMING PAROLE,
14 EARLY RELEASES, AND EVEN CHANGING THE SENTENCING STRUCTURE IN
15 ORDER TO REDUCE THE POPULATION, RIGHT?

16 A THAT'S RIGHT.

17 Q AND AS A GENERAL MATTER, IT'S YOUR OPINION THAT THE
18 CALIFORNIA PRISON POPULATION CAN BE REDUCED WITHOUT ADVERSELY
19 AFFECTING PUBLIC SAFETY; IS THAT RIGHT?

20 A WE HAVE TO PUT IN THE PROPER TOOLS AND ASSESSMENT
21 TECHNIQUES, AS WELL AS WHAT I'VE TALKED ABOUT BEFORE IN MY
22 REPORTS AND HERE, THAT PROGRAMMING INSIDE, EVIDENCE-BASED
23 PROGRAMMING ON THE INSIDE, AS WELL AS HAVING THE PROPER
24 RESOURCES ON THE OUTSIDE IN TERMS OF HOUSING, JOBS, ACCESS TO
25 SUBSTANCE ABUSE, YOU KNOW, ALL THAT.

1 **JUDGE HENDERSON:** ACCESS TO SUBSTANCE --

2 **THE WITNESS:** -- ABUSE PROGRAMS. YEAH, WE DON'T WANT
3 TO HAVE THEM HAVE ACCESS TO SUBSTANCE ABUSE, RIGHT.

4 BUT ACCESS TO PROGRAMMING AND THE THINGS THAT ARE
5 GOING TO HELP THEM TRANSITION BACK TO THE COMMUNITY, ALL OF THAT
6 TOGETHER, ONE WOULD HOPE THAT WOULD HELP, YES.

7 BY MR. SPECTER

8 **Q** YOU HAVE CERTAIN QUESTIONS -- YOU BELIEVE CERTAIN QUESTIONS
9 HAVE TO BE ANSWERED ABOUT ANY POPULATION REDUCING PLAN, CORRECT?

10 **A** YES, SIR.

11 **Q** SUCH AS WHO WOULD BE RELEASED UNDER WHAT CONDITIONS AND THE
12 LIKE, RIGHT?

13 **A** YES, SIR.

14 **Q** YOU ARE CONFIDENT, THOUGH, THAT IF ALL THE KEY STAKEHOLDERS
15 GOT TOGETHER, RATIONAL EFFECTIVE DECISIONS CAN BE MADE SO A SAFE
16 PLAN CAN BE DEVELOPED; ISN'T THAT TRUE?

17 **A** IT WOULD HELP, YES, SIR.

18 **Q** IT WOULD MORE THAN HELP. YOU SAID IN YOUR DEPOSITION YOU
19 WERE CONFIDENT IT COULD BE DONE.

20 **A** YES, SIR.

21 **Q** YOU AGREE THAT THE LENGTH -- WE'VE TALKED A LITTLE BIT ABOUT
22 THIS. YOU AGREE THE LENGTH OF INCARCERATION IS NOT RELATED TO
23 RECIDIVISM; ISN'T THAT TRUE?

24 **A** I GUESS SO, YES.

25 **Q** SO THAT MEANS THAT REDUCING THE LENGTH OF STAY IN PRISON IS

1 NOT GOING TO RESULT IN ANY MORE CRIMES THAN IF THE PRISONER
2 STAYED IN PRISON AN ADDITIONAL PERIOD OF TIME, CORRECT?

3 **A** BUT THEY NEED TO GET -- MY POINT IS THAT YOU CAN RELEASE --
4 WE CAN SPEED UP THE TIME AT WHICH THEY ARE GOING TO BE RELEASED.
5 BUT, YOU KNOW, THEY NEED TO GET ACCESS TO PROGRAMS WHILE THEY'RE
6 INSIDE SO THAT THEY ARE EXPOSED TO THOSE PROGRAMS, AND ONCE
7 THEY'RE RELEASED, WE DON'T WANT THEM TO COME BACK.

8 **JUDGE REINHARDT:** IS IT ANY DIFFERENT IF THEY ARE
9 RELEASED A FEW MONTHS EARLIER OR LATER? THEY STILL NEED ALL
10 THOSE SAME THINGS EITHER WAY; IS THAT RIGHT?

11 **THE WITNESS:** IT'S THAT WHEN THEY -- THE TIME THAT
12 THEY WERE SPED UP, THEY DID NOT GET ACCESS, FULL ACCESS, TO THE
13 PROGRAMS THAT WERE IN PLACE WITHIN THE PRISON SYSTEM. SO BY
14 SPEEDING THEM UP, THEY ARE NOT GETTING EXPOSED TO THE COMPLETE
15 RUN OF PROGRAMS.

16 **JUDGE REINHARDT:** BUT YOUR TESTIMONY WAS THEY SHOULD
17 HAVE FULL ACCESS TO THESE PROGRAMS, AND I SAID, THAT'S TRUE
18 WHETHER THEY ARE RELEASED A FEW MONTHS EARLIER OR NOT UNLESS YOU
19 KNOW THAT THEY NOW GET FULL ACCESS.

20 **JUDGE KARLTON:** YOU KNOW THEY DON'T.

21 **THE WITNESS:** YES, SIR.

22 **JUDGE KARLTON:** AND YOU KNOW THAT AT LEAST ONE OF THE
23 REASONS THEY DON'T IS BECAUSE THE PRISONS ARE SO OVERCROWDED
24 THAT THEY DON'T HAVE SPACE TO PROVIDE PROGRAMS?

25 **THE WITNESS:** YES, SIR.

1 **JUDGE KARLTON:** WELL, OKAY. THE ANSWERS ARE OBVIOUS,
2 EXCEPT IF YOU CAN'T DECIDE ANYTHING. GO AHEAD.

3 BY MR. SPECTER

4 **Q** OKAY. I WOULD LIKE TO READ FROM YOUR DEPOSITION,
5 DR. MARQUART, PAGE 172, LINES THREE THROUGH EIGHT. YOU'LL SEE
6 IT ON YOUR SCREEN. DO YOU SEE IT?

7 **A** YES, SIR.

8 **Q** (AS READ) "SO IF THE LENGTH OF STAY IS NOT RELATED
9 TO RECIDIVISM, THAT MEANS THAT IF YOU REDUCE
10 THE LENGTH OF STAY, THE PRISONER IS NOT GOING
11 TO BE COMMITTING ANY MORE CRIMES THAN HE WOULD
12 IF HE STAYED IN ANOTHER YEAR OR SIX MONTHS,
13 WHATEVER IT IS, RIGHT?"

14 "ANSWER: YES, SIR."

15 THAT WAS YOUR TESTIMONY THEN, CORRECT?

16 **A** YES, SIR.

17 **Q** THAT'S YOUR OPINION NOW, RIGHT?

18 **A** YES, SIR, BASED ON MY DEPOSITION.

19 **Q** SO, YOU HAVEN'T EXAMINED THE PAROLE SYSTEM IN CALIFORNIA,
20 HAVE YOU?

21 **A** NO, SIR.

22 **Q** SO YOU DON'T KNOW WHETHER WHATEVER CALIFORNIA IS DOING IS
23 MAXIMIZING ITS USE OF ITS EXISTING RESOURCES; DO YOU?

24 **A** NO, SIR.

25 **Q** SO IT'S POSSIBLE -- WELL --

1 **JUDGE KARLTON:** ANYTHING IS POSSIBLE.

2 **MR. SPECTER:** ANYTHING IS POSSIBLE, SO I WITHDRAW
3 THAT QUESTION.

4 BY MR. SPECTER

5 **Q** SO YOU DON'T KNOW WHAT THE IMPACT OF AN EARLY RELEASE
6 PROPOSAL WOULD BE, DO YOU, DR. MARQUART?

7 **A** I THINK, BASED ON WHAT I HAVE SEEN IN MY OWN HOME STATE, I
8 THINK I HAVE SOME DEGREE OF INKLING INTO THAT.

9 **Q** OKAY.

10 **THE CLERK:** YOU HAVE FIVE MINUTES, COUNSEL.

11 BY MR. SPECTER

12 **Q** OKAY. I WOULD LIKE TO READ FROM YOUR DEPOSITION STARTING AT
13 PAGE 223, LINES 23, WE ARE GOING TO GO ON TO THE NEXT PAGE.

14 "WHY DO YOU DISAGREE -- "

15 "QUESTION: WHY DO YOU DISAGREE? WHAT'S THE
16 BASIS OF YOUR DISAGREEMENT?

17 "ANSWER: WELL, THE BASIS OF MY
18 DISAGREEMENT -- "

19 **JUDGE REINHARDT:** DISAGREEMENT WITH WHAT?

20 **JUDGE KARLTON:** RIGHT.

21 **MR. SPECTER:** OKAY. I'LL START AT LINE 16 OF
22 PAGE 223.

23 "I BELIEVE DR. AUSTIN TESTIFIED THAT HE
24 WOULD GUARANTEE THAT THERE WOULD BE NO
25 SIGNIFICANT IMPACT ON RECIDIVISM BY AN EARLY

1 RELEASE."

2 **JUDGE REINHARDT:** PRIOR RECIDIVISM.

3 **MR. SPECTER:** "PRIOR RECIDIVISM BY AN EARLY
4 RELEASE ORDER. IS THAT YOUR RECOLLECTION OF WHAT
5 HIS TESTIMONY IS?

6 "YES, SIR.

7 "DO YOU AGREE OR DISAGREE WITH THAT
8 STATEMENT?

9 I DISAGREE WITH THE STATEMENT.

10 "QUESTION: WHY DO YOU DISAGREE? WHAT'S THE
11 BASIS OF YOUR DISAGREEMENT?

12 "ANSWER: WELL, THE BASIS OF MY DISAGREEMENT
13 WITH THAT IS IF WE LOOK AT THE HISTORICAL LEVEL
14 OF RECIDIVISM AND RETURN AND THE LACK OF
15 PROGRAMMING IN THE COUNTIES, NO WAY ANYBODY CAN
16 STATE ONE HUNDRED PERCENT THAT THERE WILL BE NO
17 IMPACT; THAT IS SIMPLY AN IMPOSSIBILITY. THERE
18 WILL BE AN IMPACT. IT'S SIMPLY THE MAGNITUDE OF
19 THAT WE DON'T KNOW."

20 THAT WAS YOUR TESTIMONY, CORRECT?

21 **JUDGE KARLTON:** GOES ON TO SAY:

22 "SO THAT YOU CANNOT SAY IT IS BEYOND THE
23 REALM OF EXPERTISE TO SAY THAT THERE WILL BE, TO
24 SAY DECISIVELY, ANY CONCLUSION THAT THERE WILL
25 BE AN IMPACT?"

1 **MS. JOHNSON:** NO IMPACT.

2 **MR. SPECTER:** NO IMPACT.

3 **JUDGE KARLTON:** THAT THERE WILL BE NO IMPACT, EXCUSE
4 ME.

5 **MR. SPECTER:** THANK YOU, YOUR HONOR.

6 **JUDGE REINHARDT:** I'M REALLY NOT SURE WHERE YOU'RE
7 GOING WITH THIS. IT SEEMS TO ME ALL THESE QUESTIONS HAVE BEEN
8 ASKED AND ANSWERED ALREADY BY THIS WITNESS.

9 **MR. SPECTER:** OKAY, YOUR HONOR.

10 **JUDGE REINHARDT:** IF YOU HAVE SOMETHING YOU THINK
11 WILL BE HELPFUL, DON'T LET ME DISCOURAGE YOU. I'M HAVING
12 TROUBLE SEEING WHAT YOU ARE ADDING TO THIS DISCUSSION. IF YOU
13 ARE -- YOU KNOW MORE THAN I DO ABOUT WHAT YOU WANT TO ASK, SO
14 DON'T LET ME DISCOURAGE YOU.

15 **MR. SPECTER:** I'M ALMOST DONE ANYWAY. LET ME JUST
16 REVIEW MY NOTES FOR 30 SECONDS, AND I'LL SEE IF I CAN BE OF MORE
17 HELP.

18 BY MR. SPECTER

19 **Q** YOU COMMENTED ON THE AVAILABILITY OF SERVICES TO PAROLEES,
20 RIGHT?

21 **A** YES, SIR.

22 **Q** YOU DON'T KNOW WHETHER PAROLEES ARE EVEN ELIGIBLE FOR SOME
23 OF THE SERVICES YOU MENTIONED, DO YOU?

24 **A** THAT'S TRUE, TOO.

25 **Q** AGE IS AN IMPORTANT FACTOR IN DETERMINING WHETHER A PERSON

1 IS GOING TO BE -- IS AN IMPORTANT RISK FACTOR IN DETERMINING
2 PROPENSITY OF AN OFFENDER TO CONTINUE TO COMMIT CRIMES, ISN'T
3 IT?

4 **A** YES, SIR.

5 **Q** AND ONE OTHER POINT. YOU AGREE THAT THERE'S NO CORRELATION
6 BETWEEN THE RATE OF INCARCERATION IN CALIFORNIA AND THE RATE OF
7 VIOLENT CRIME IN CALIFORNIA, DO YOU NOT?

8 **A** PARDON ME?

9 **Q** YOU AGREE THAT THERE IS NO CORRELATION BETWEEN THE RATE OF
10 INCARCERATION IN CALIFORNIA AND THE RATE OF VIOLENT CRIME,
11 CORRECT?

12 **A** I DON'T UNDERSTAND THE QUESTION.

13 **Q** THERE'S THE RATE OF INCARCERATION, CORRECT?

14 **A** YES, SIR.

15 **Q** AND ONE OF YOUR CHARTS ALSO LOOKED AT THE RATE OF VIOLENT
16 CRIME. DO YOU REMEMBER THAT FROM YOUR REPORT?

17 **A** YES, SIR.

18 **Q** AND YOU AGREED IN YOUR DEPOSITION THAT THERE'S NO
19 CORRELATION BETWEEN THE RATE OF INCARCERATION AND THE RATE OF
20 VIOLENT CRIME. DO YOU AGREE WITH THAT STILL TODAY?

21 **A** IF I COULD CHECK MY REPORT, I WOULD LIKE TO SEE THAT.

22 **Q** PUT UP PAGE 213 OF THE DEPOSITION, PLEASE. LINES 11 THROUGH
23 13:

24 "QUESTION: SUGGESTING THAT THE RISE IN
25 INCARCERATION RATE DOESN'T CORRELATE WITH THE

1 VIOLENT CRIME RATE, RIGHT?

2 "ANSWER: YES, SIR."

3 DO YOU SEE THAT?

4 **A** IF IT'S IN MY DEPOSITION, YES, SIR.

5 **Q** AND YOU ALSO AGREED THAT CALIFORNIA'S CRIME RATE IS ROUGHLY
6 ON A PAR WITH THE NATIONAL AVERAGE, RIGHT?

7 **A** YES, SIR.

8 **Q** IT'S HIGHER THAN NEW YORK, RIGHT?

9 **A** I THINK SO.

10 **Q** AND SOMEWHAT HIGHER THAN ILLINOIS, RIGHT?

11 **A** IT MAY BE.

12 **Q** AND SINCE NEITHER OF THESE STATES HAS INCREASED ITS PRISON
13 POPULATION AS MUCH AS CALIFORNIA, IT WOULD BE A MISTAKE TO
14 CONCLUDE THAT THE DECLINE IN THE CALIFORNIA CRIME RATE IS A
15 RESULT OF ITS INCARCERATION POLICIES; ISN'T THAT TRUE?

16 **A** IT MIGHT BE.

17 **Q** YOU SAID, YES, IT WAS, AT YOUR DEPOSITION.

18 **A** I SAID IT WAS? OKAY. YES.

19 **MR. SPECTER:** OKAY. THAT'S ALL THE QUESTIONS I HAVE.

20 **JUDGE HENDERSON:** ANYTHING FROM CCPOA?

21 **MS. LEONARD:** NO, YOUR HONOR.

22 **JUDGE HENDERSON:** OKAY. REDIRECT?

23 **MS. JOHNSON:** NOTHING, YOUR HONOR.

24 **JUDGE HENDERSON:** INTERVENORS?

25 **MR. MITCHELL:** NO REDIRECT.

1 **JUDGE HENDERSON:** OKAY. WE'LL RECESS FOR LUNCH FOR
2 ONE HOUR.

3 **JUDGE KARLTON:** DR. MARQUART.

4 **JUDGE HENDERSON:** YOU'RE EXCUSED. THANK YOU FOR
5 TESTIFYING.

6 (LUNCHEON RECESS TAKEN.)

7 **JUDGE HENDERSON:** OKAY. YOU MAY CALL YOUR NEXT
8 WITNESS WHEN YOU ARE READY, COUNSEL.

9 **MR. SPECTER:** PLAINTIFFS RECALL TO THE STAND JOSEPH
10 LEHMAN.

11 **JOSEPH LEHMAN,**
12 CALLED AS A WITNESS FOR THE PLAINTIFF HEREIN, HAVING BEEN FIRST
13 DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

14 **THE WITNESS:** JOSEPH LEHMAN, L-E-H-M-A-N.

15 **DIRECT EXAMINATION**

16 **BY MR. SPECTER:**

17 **Q.** MR. LEHMAN, YOU TESTIFIED HERE BEFORE A FEW WEEKS AGO,
18 RIGHT?

19 **A.** YES, I DID.

20 **Q.** AND YOU WERE THE SECRETARY OF CORRECTIONS IN THREE STATES,
21 WASHINGTON, MAINE AND PENNSYLVANIA, IS THAT RIGHT?

22 **A.** YES, THAT'S CORRECT.

23 **Q.** AND YOU WERE ALSO A MEMBER OF THE EXPERT PANEL, CORRECT?

24 **A.** THAT IS CORRECT.

25 **Q.** AND CALIFORNIA ALSO ASKED YOU TO SERVE AS A MEMBER OF THE

1 STRIKE TEAM TO IMPLEMENT THE RECOMMENDATION OF THE EXPERT PANEL,
2 IS THAT RIGHT?

3 **A.** THAT'S RIGHT.

4 **Q.** IN WASHINGTON AND PENNSYLVANIA, DID THOSE STATES WHILE YOU
5 WERE THERE IMPLEMENT POPULATION REDUCING MEASURES OR CONTROLLING
6 MEASURES?

7 **A.** YES, THEY DID.

8 **Q.** IN WASHINGTON THAT MEANT CHANGE IN THE LAW REGARDING
9 TECHNICAL PAROLE VIOLATORS, ISN'T THAT RIGHT?

10 **A.** YES, IT DID. THE LAW WAS CHANGED TO PRECLUDING TECHNICAL
11 VIOLATORS FROM COMING BACK TO PRISONS.

12 **JUDGE REINHARDT:** CAN WE HAVE THE DEFINITION OF
13 TECHNICAL VIOLATORS, TECHNICAL VIOLATIONS AS FAR AS THOSE STATES
14 WERE CONSIDERED? I'M NOT SURE THAT THAT MEANS THE SAME THING TO
15 EVERYBODY.

16 **MR. SPECTER:** THAT'S A GOOD QUESTION.

17 **BY MR. SPECTER:**

18 **Q.** WHO WAS CONSIDERED A TECHNICAL -- WHO WAS CONSIDERED A
19 TECHNICAL VIOLATOR IN WASHINGTON OR WHAT TYPES OF --

20 **A.** THAT WOULD BE ANY INDIVIDUAL UNDER SUPERVISION WHO, IN FACT,
21 VIOLATED ONE OF THE CONDITIONS OF THEIR SUPERVISION.

22 **Q.** SO IT WOULD BE SOMEBODY WHO DIDN'T COMMIT A NEW CRIME, IS
23 THAT RIGHT?

24 **A.** THAT'S CORRECT. NON-CRIMINAL BEHAVIOR.

25 **Q.** AND THOSE INDIVIDUALS WOULD NOT BE SENT BACK TO PRISONS, IS

1 THAT --

2 **A.** THAT IS CORRECT.

3 **Q.** INSTEAD, WHAT WOULD HAPPEN TO THEM?

4 **A.** THEY WERE -- THEY WERE -- THERE WAS A MATRIX IN TERMS OF THE
5 VIOLATIONS, THE NATURE OF THE VIOLATIONS.

6 DEPENDING ON THE NATURE OF THE VIOLATION, THERE WAS
7 GRADUATED SANCTIONS THAT MIGHT BE IMPOSED. IF IT WAS A SERIOUS
8 VIOLATION RELATED TO THEIR PAST CRIMINAL BEHAVIOR THEY, IN FACT,
9 MIGHT DO SOME JAIL TIME.

10 **Q.** AND WOULD SOME OF THE OTHER SANCTIONS BE THAT THEY WOULD
11 PARTICIPATE IN SOME SORT OF PROGRAMS?

12 **A.** THEY MIGHT BE ORDERED TO BE INVOLVED IN A TREATMENT PROGRAM.
13 THEY MAY BE ORDERED TO REPORT TO A DAY REPORTING CENTER. THERE
14 ARE A NUMBER OF NON-CONFINEMENT SANCTIONS.

15 **Q.** OKAY. AND IN WASHINGTON WAS A RISK ASSESSMENT USED FOR
16 PAROLEES?

17 **A.** YES.

18 **Q.** AND WHAT WAS IT USED FOR?

19 **A.** WE USED AN ACTUARIAL BASED INSTRUMENT THAT WOULD DEFINE THE
20 LIKELIHOOD, RISK OF SOMEBODY REOFFENDING.

21 **Q.** AND ONCE THAT YOU HAD INFORMATION WHAT -- WHAT DID YOU DO
22 WITH IT?

23 **A.** WELL, WE WERE FACED, I THINK, IN WASHINGTON, LIKE ANY OTHER
24 SYSTEM, WITH THE RECOGNITION THAT NOT ALL OFFENDERS ARE THE
25 SAME, JUST LIKE NOT ALL PEOPLE ARE THE SAME.

1 AND THE CRITICAL ISSUE IN TERMS OF A LOT OF RESOURCES
2 TO ADDRESS THOSE OFFENDERS WAS TO -- TO ADDRESS -- USE THOSE
3 RESOURCES DILIGENTLY ON THOSE OFFENDERS WHO REPRESENT THE
4 HIGHEST RISK. SO WE WANTED TO ASSESS WHO THOSE OFFENDERS WERE.

5 **Q.** OKAY. SO THAT WHEN THEY GOT OUT ON PAROLE, YOU COULD
6 ALLOCATE YOUR RESOURCES ACCORDINGLY, IS THAT RIGHT?

7 **A.** YES. IN FACT, IN -- IN WASHINGTON THE ISSUE BECAME APPARENT
8 WHEN -- WE WERE, LIKE ANY STATE, HAD LIMITED RESOURCES.

9 SO THE QUESTION BECAME, HOW CAN WE BEST USE THE
10 LIMITED RESOURCES WE HAVE? WE GOT TOGETHER WITH PROSECUTORS,
11 WITH VICTIM COMMUNITY, WITH LAW ENFORCEMENT AND BASICALLY CAME
12 UP IN TERMS OF THE OFFENDER ACCOUNTABILITY ACT WITH A RISK BASED
13 SYSTEM.

14 **Q.** AND DID THIS RISK BASED SYSTEM -- WHEN DID THE RISK
15 ASSESSMENT, WHEN WAS IT DONE? IN WHAT STAGE OF THE OFFENDER'S
16 PROGRESS OF THE CRIMINAL JUSTICE SYSTEM?

17 **A.** WELL, AT THE VERY BEGINNING. WHEN THE INDIVIDUAL CAME --
18 FOR EXAMPLE, THE STATUTES IN WASHINGTON MANDATED THAT THE COURTS
19 TAKE INTO CONSIDERATION RISK IN SENTENCING.

20 IT CERTAINLY WAS DONE IN RELATION TO PEOPLE COMING
21 EITHER ON PAROLE OR PROBATION. IT WAS EVEN DONE IN THE PRISON
22 SYSTEM.

23 **Q.** AND IN THAT RESPECT WASHINGTON CHANGED ITS METHOD BY WHICH
24 IT AWARDED PRISONERS CREDITS, IS THAT RIGHT?

25 **A.** THAT IS CORRECT.

1 Q. AND HOW DID THE AWARDING OF CREDITS INTERACT WITH THE RISK
2 SYSTEM?

3 A. A STATUTE WAS PLACED WHERE WE WOULD BE AUTHORIZED TO
4 ALLOCATE A GREATER AMOUNT OF GOOD TIME AND EARNED TIME TO THOSE
5 OFFENDERS WHO WERE LOW RISK OFFENDERS, AND A LESS AMOUNT OF GOOD
6 TIME -- FOR EXAMPLE, 50 PERCENT, ON THOSE WHO WERE LOW RISK.
7 HIGH RISK OFFENDERS WOULD ONLY RECEIVE A THIRD OFF.

8 Q. I SEE. AND DID THE WASHINGTON CREDIT METHOD CHANGE FOR
9 PRISONERS WHO WERE PARTICIPATING -- WHO WERE CONFORMING THEIR
10 CONDUCT TO THE RULES AND PARTICIPATING IN PROGRAMS?

11 A. YES. ACTUALLY, WE HAD TWO FORMS OF CREDITS. ONE WAS GOOD
12 TIME, THAT WAS WHERE THEY WOULD BE ACTUALLY ABIDING BY THE RULE
13 OF THE PRISON AND BEHAVING THEMSELF. THE OTHER WAS AN EARNED
14 TIME CREDIT, AND THAT EARNED TIME WAS THOSE INDIVIDUALS WHO WERE
15 COMPLYING WITH THE PROGRAM REQUIREMENTS WITHIN PRISON.

16 Q. AND WERE THESE CREDIT -- CHANGES IN THE CREDIT STRUCTURE
17 MADE RETROACTIVE?

18 A. YES, THEY WERE. WHEN THEY WERE IMPLEMENTED.

19 Q. OKAY. NOW, PENNSYLVANIA, DID THEY MAKE ANY CHANGES TO THE
20 CRIMINAL SENTENCING STRUCTURE?

21 A. YES. IN FACT, PENNSYLVANIA, LIKE WASHINGTON AND LIKE
22 CALIFORNIA, WAS A DETERMINATIVE SYSTEM. THE SENTENCING
23 GUIDELINE STRUCTURE, THAT GUIDELINE STRUCTURE IN PENNSYLVANIA
24 INITIALLY PROVIDED FOR ONLY TOTAL CONFINEMENT.

25 SO IT WAS ALTERED. THE SENTENCING GUIDELINES

1 COMMISSION AND SUBSEQUENT LEGISLATURE ALTERED IT TO INCLUDE
2 INTERMEDIATE SANCTIONS AND GRADUATED SANCTIONS IN THE COMMUNITY.

3 Q. SO THAT MEANT THAT MORE OFFENDERS WERE DIVERTED TO THE
4 COMMUNITY, IS THAT RIGHT?

5 A. THAT'S RIGHT.

6 Q. AND DOES THE STATE DO ANYTHING TO ENCOURAGE COUNTIES TO
7 PROVIDE ALTERNATIVE SANCTIONS IN THE COMMUNITY?

8 A. YES. ACTUALLY, WE FUNDED -- WE GAVE RESOURCES TO THOSE
9 COUNTIES THAT WOULD CREATE PROGRAMS TO, IN FACT, DIVERT
10 OFFENDERS TO THE COUNTY SYSTEM.

11 Q. HOW WELL DID THAT WORK, IF IT WORKED AT ALL?

12 A. NO, IT DID WORK. IT DID WORK. IN FACT, THE COUNTIES WANTED
13 TO PARTICIPATE IN THE PROCESS BECAUSE THEY WANTED TO ENSURE THAT
14 THOSE OFFENDERS IN THE COMMUNITY WOULD HAVE VIABLE PROGRAMS THAT
15 WITH MAKE A DIFFERENCE.

16 Q. THE COUNTIES WERE SATISFIED WITH THE PROGRAM?

17 A. YES, THEY WERE.

18 Q. DID ANY OF THESE POPULATION REDUCING MEASURES THAT YOU HAVE
19 DESCRIBED IN BOTH STATES ENDANGER THE COMMUNITIES IN YOUR
20 OPINION?

21 A. NO, THEY DID NOT.

22 Q. DO YOU BELIEVE THERE WAS ANY MEASURABLE IMPACT ON PUBLIC
23 SAFETY, ADVERSE IMPACT?

24 A. NO ADVERSE IMPACT.

25 Q. DO YOU BELIEVE IT HAD A -- WHAT'S THE OPPOSITE OF ADVERSE?

1 **JUDGE KARLTON:** POSITIVE.

2 **A.** A POSITIVE EFFECT.

3 **BY MR. SPECTER:**

4 **Q.** THANK YOU. A POSITIVE EFFECT?

5 **A.** YES. IN WASHINGTON, THE WASHINGTON STATE INSTITUTE FOR
6 PUBLIC POLICY REVIEWED THE IMPACT ON AN ONGOING BASIS. THEY
7 ACTUALLY WERE MANDATED WHEN THE OFFENDER ACCOUNTABILITY ACT WAS
8 PASSED TO DO A FULL STUDY IN 2010. THEY DID INTERIM STUDIES AND
9 ALL THE INTERIM STUDIES HAVE INDICATED POSITIVE PROGRESS.

10 **Q.** NOW --

11 **JUDGE KARLTON:** PLEASE TELL ME WHAT "POSITIVE
12 PROGRESS" IS?

13 **THE WITNESS:** IN OTHER WORDS, IT WAS NOT HAVING A
14 DELETERIOUS EFFECT ON CRIME.

15 **JUDGE KARLTON:** ONE ARGUMENT THAT CAN BE MADE IS THAT
16 GIVEN CALIFORNIA'S PRESENT SYSTEM WITH ITS INABILITY TO PROVIDE
17 MEANINGFUL PROGRAMS IN THE PRISON SYSTEM, IF WE REDUCE THE
18 SIGNIFICANT WEIGHED POPULATION, WE MIGHT -- SO THAT WE COULD
19 PROVIDE PROGRAMS, WE MIGHT ACTUALLY BE IMPROVING PUBLIC SAFETY.

20 **THE WITNESS:** AND I AGREE EMPHATICALLY WITH THAT.
21 AND, IN FACT, THE RESEARCH INDICATES THAT IF YOU CAN PROVIDE
22 PROGRAMMING AND -- THERE'S EVIDENCE BASED PROGRAM YOU CAN
23 PROVIDE WITHIN THE INSTITUTIONAL ENVIRONMENT THAT WILL, IN FACT,
24 REDUCE THE LIKELIHOOD THAT THEY WILL REOFFEND. AND IT BECOMES
25 EVEN MORE POWERFUL IF THERE IS AFTER CARE PROGRAMS ONCE THEY ARE

1 IN THE COMMUNITY.

2 **BY MR. SPECTER:**

3 **Q.** THANK YOU.

4 NOW, AS A MEMBER OF THE EXPERT PANEL, YOU AND OTHERS
5 ON THE PANEL MADE VARIOUS RECOMMENDATIONS TO CHANGE THE WAY
6 CREDITS WERE AWARDED IN CALIFORNIA, CORRECT?

7 **A.** THAT IS CORRECT.

8 **Q.** AND THEY WOULD BE SIMILAR TO WHAT YOU DESCRIBED IN
9 WASHINGTON, RIGHT, ACROSS THE BOARD FOR GOOD BEHAVIOR?

10 **A.** A FLAT ACROSS THE BOARD IN TERMS OF THE PRISONER'S
11 WILLINGNESS TO ABIDE BY THE RULES OF THE INSTITUTION.

12 THE PURPOSE OF THE CREDITS WERE TO INFLUENCE THE
13 BEHAVIOR OF THE OFFENDER THAT WAS IN PRISON. ON THE ONE HAND,
14 IT WAS IN TERMS OF GOOD BEHAVIOR, AVOIDING BAD BEHAVIOR. ON THE
15 OTHER HAND, IT WAS EARNED TIME CREDITS, AND THAT WAS ACTUALLY
16 BEING INVOLVED IN THOSE REHABILITATIVE PROGRAMS THAT WERE LIKELY
17 TO REDUCE THE RECIDIVISM.

18 **Q.** AND THE PANEL ALSO MADE RECOMMENDATIONS ABOUT THE PAROLE
19 SYSTEM, CORRECT?

20 **A.** THAT'S CORRECT.

21 **Q.** AND ONE WAS TO HAVE A RISK ASSESSMENT INSTRUMENT, RIGHT?

22 **A.** YES, YES.

23 **Q.** AND ANOTHER WAS A SET OF ALTERNATIVE SANCTIONS FOR PAROLE
24 VIOLATORS, CORRECT?

25 **A.** THAT IS CORRECT.

1 Q. AND THAT'S ON A MATRIX, RIGHT?

2 A. ACTUALLY, WE RECOMMENDED IN THE EXPERT PANEL REPORT A
3 VIOLATION MATRIX THAT EXISTS IN VARIOUS JURISDICTIONS, INCLUDING
4 WASHINGTON, WHERE YOU MAKE A DISTINCTION BETWEEN THE NATURE OF
5 THE BEHAVIOR, THE VIOLATING BEHAVIOR.

6 THE VIOLATING BEHAVIOR THAT WAS NOT RELATED TO THEIR
7 PAST CRIMINAL BEHAVIOR WAS TREATED WITH GRADUATED SANCTIONS.
8 THOSE THAT WERE MORE SERIOUS IN TERMS OF THE MATRIX WAS TREATED
9 WITH SANCTIONS LIKE, FOR EXAMPLE, WITHIN THE JAIL.

10 Q. PARDON ME? I DIDN'T HEAR THAT LAST --

11 A. SANCTIONS OF TIME WITHIN THE JAIL, OR THE COUNTY SYSTEM.

12 Q. OKAY. ALL RIGHT.

13 AND THE PANEL ALSO MADE RECOMMENDATIONS ABOUT WHO
14 SHOULD BE PLACED ON PAROLE SUPERVISION, RIGHT?

15 A. THAT'S CORRECT. ONCE AGAIN, SIMILAR TO WASHINGTON. IN
16 WASHINGTON LOW AND MODERATE RISK -- LOW RISK OFFENDERS ARE NOT
17 SUPERVISED BY THE STATE. THEY JUST DON'T HAVE ANY SUPERVISION.

18
19 IN THE RESEARCH -- IT'S BASED ON RESEARCH, AND THE
20 RESEARCH SAYS THAT, IN FACT, IF YOU DON'T PROVIDE SUPERVISION,
21 THERE IS A MORE POSITIVE OUTCOME THAN IF YOU DO PROVIDE
22 SUPERVISION TO THOSE LOW RISK OFFENDERS.

23 Q. AND THE PANEL ALSO RECOMMENDED THE EARLY TERMINATION OF
24 PAROLE FOR CERTAIN UNDER -- UNDER CERTAIN CONDITIONS, CORRECT?

25 A. THAT'S CORRECT.

1 Q. AND DO YOU BELIEVE THAT'S AN APPROPRIATE POLICY?

2 A. THE PANEL WAS RECOGNIZING THAT SIMILAR TO CREDITS, WHEN YOU
3 DO PRISON AND YOU ARE TRYING TO INFLUENCE THEIR BEHAVIOR,
4 RELATIVE CONDUCT OR PROGRAMMING, THAT SAME SYSTEM SHOULD EXIST
5 IN THE COMMUNITY. WHEN YOU SUPERVISE THEM, IS TO PROVIDE SOME
6 ABILITY TO, IN FACT, INCENTIVIZE THEIR INVOLVEMENT IN PROGRAMS
7 IN THE COMMUNITY AND REWARD THEM FOR IT.

8 Q. AND YOU HAD EXPERIENCE WITH SIMILAR POLICIES IN WASHINGTON,
9 CORRECT?

10 A. THAT'S CORRECT.

11 Q. AND WHAT EFFECT DID THOSE HAVE?

12 A. BENEFICIAL EFFECTS. I MEAN, THE -- THE ROLE OF THE
13 CORRECTIONS DEPARTMENT IN ANY SYSTEM IS TO REDUCE THE LIKELIHOOD
14 THAT THEY WOULD REOFFEND. AND I THINK YOU NEED -- YOU NEED THE
15 CAPACITY TO, IN FACT, CONFINE THEM WHEN APPROPRIATE.

16 YOU NEED THE CAPACITY TO INTERVENE IN THEIR LIFESTYLE
17 AND THEIR THINKING IN TERMS OF REDUCING THE RISKS THAT THEY WILL
18 REOFFEND, AND YOU NEED TO HAVE A SYSTEM OF REWARDS AND SANCTIONS
19 RELATIVE TO THAT PROCESS.

20 Q. AND DID THE PANEL BELIEVE THAT THROUGH THE USE OF THESE
21 MEASURES, CALIFORNIA'S PRISON POPULATION COULD BE REDUCED
22 WITHOUT ADVERSELY AFFECTING PUBLIC SAFETY?

23 A. ABSOLUTELY.

24 Q. AND YOU AGREE WITH THAT?

25 A. I EMPHATICALLY AGREE WITH THAT.

1 Q. NOW, WE HAVE HEARD TESTIMONY FROM VARIOUS LAW ENFORCEMENT
2 OFFICIALS FROM THE COMMUNITY, AND I EXPECT WE WILL HEAR MORE OF
3 IT IN THE COMING DAYS, THAT PUTTING MORE PAROLEES IN THE
4 COMMUNITY WILL ENDANGER THE PUBLIC.

5 WHAT'S YOUR RESPONSE TO THAT?

6 A. MY RESPONSE TO THAT WOULD BE THAT WOULD ONLY BE TRUE IF YOU
7 SELECTED THOSE OFFENDERS ON A RANDOM BASIS AND YOU JUST LET
8 PEOPLE OUT WITHOUT REGARD TO AN ASSESSMENT OF THEIR RISK.

9 IF YOU, IN FACT, ASSESS PEOPLE OF THE RISK TO
10 REOFFEND AND YOU, IN FACT, LET PEOPLE OUT OF PRISON WHO ARE LOW
11 RISK OFFENDERS YOU AND PROVIDE A PROGRAM FOR THEM WITHIN THE
12 CONTEXT OF THE PRISON AND COMMUNITY, THEN I DON'T THINK THAT YOU
13 ARE GOING TO HAVE A DELETERIOUS EFFECT IN TERMS OF CRIME.

14 Q. DO YOU BELIEVE THAT THE CURRENT OVERCROWDING CONDITIONS IN
15 CALIFORNIA'S PRISONS HAVE ANY EFFECT ON PUBLIC SAFETY?

16 A. ABSOLUTELY.

17 Q. WHAT EFFECT?

18 A. WELL, THE SYSTEM IS SO OVERCROWDED THAT YOU -- THERE'S ONLY
19 ONE TERM YOU CAN USE. IT'S CRIMINOGENIC. IN THE SENSE THAT
20 WHAT IT DOES IS IT PRODUCES CRIME.

21 IT CROWDS PEOPLE INTO AN ENVIRONMENT. IT DOESN'T
22 HAVE THE CAPACITY TO SORT THEM, I THINK REALISTICALLY, IN TERMS
23 OF CLASSIFICATION, IN TERMS OF THEIR RISK, OR THE CAPACITY TO
24 PROVIDE TREATMENT PROGRAMS THAT WOULD REDUCE THE LIKELIHOOD.

25 SO WHAT THEY DO IS THEY JUST CRAM EVERYBODY TOGETHER

1 AND IT BECOMES CRIMINOGENIC. IT BECOMES A CRIME SCHOOL.

2 Q. AND YOU TESTIFIED A COUPLE WEEKS AGO THAT OVERCROWDING WAS
3 THE PRIMARY CAUSE OF THE CONSTITUTIONAL VIOLATIONS, AND WE ARE
4 NOT GOING TO REVISIT THAT HERE.

5 BUT CAN YOU THINK OF ANY TYPE OF COURT ORDER, OTHER
6 THAN ONE TO REDUCE THE POPULATION, THAT WOULD ALLOW FOR THE
7 RESOLUTION OF THE CONSTITUTIONAL VIOLATIONS THAT NOW EXIST?

8 A. THAT HAS TO BE A PREREQUISITE TO DOING ANYTHING ELSE. YOU
9 HAVE TO DO THAT FIRST.

10 Q. AND WHAT DO YOU SAY TO THE LOCAL LAW ENFORCEMENT OFFICIALS'
11 CLAIM THAT IF WE REDUCE THE POPULATION, IT WILL HARM THEIR
12 COMMUNITIES AND THE LOCAL CRIMINAL JUSTICE SYSTEM?

13 A. I THINK THAT WHAT YOU HAVE TO DEVELOP IN HERE, IN
14 CALIFORNIA, IS A MORE COLLABORATIVE APPROACH. I MEAN, WHEN WE
15 DID CHANGES, THE TYPE OF WHICH YOU HAVE BEEN ASKING ME ABOUT IN
16 WASHINGTON STATE, WE DIDN'T DO THEM INDEPENDENT OF THE REST OF
17 THE CRIMINAL JUSTICE SYSTEM.

18 WE -- WE WORKED WITH PROSECUTORS. WE WORKED WITH LAW
19 ENFORCEMENT. WE WORKED WITH THE VICTIM COMMUNITY, AND WE CAME
20 TOGETHER AND WE SAID, OKAY, WE CAN'T BE ALL THINGS TO ALL
21 OFFENDERS. EVERYBODY IN THE SYSTEM RECOGNIZE YOU HAVE LIMITED
22 RESOURCES IN TERMS OF YOUR CAPACITY TO DO THAT. AND WE BROUGHT
23 THEM TOGETHER. THERE WAS A CONSENSUS. LET'S PAY ATTENTION TO
24 THE HIGH RISK FOLKS. LET'S DO WHAT WE CAN IN TERMS OF
25 INFLUENCING THEIR BEHAVIOR AND MONITORING THEM AND IN TAKING

1 CARE OF THAT BUSINESS. TO THEM IT MADE SENSE.

2 Q. SO WOULD IT BE FAIR TO SAY THAT YOU WERE ABLE TO ALLAY THEIR
3 FEARS?

4 A. WELL, WE HAD TO BE IN PARTNERSHIP. WE USED COUNTY SPACE AND
5 WE PAID FOR IT. I THINK THAT'S A RESPONSIBLE THING TO DO.

6 Q. AND AFTER THOSE PROGRAMS WERE IMPLEMENTED, WAS THERE A HUE
7 AND CRY AGAINST THE PROGRAMS?

8 A. NO, THERE WAS NOT.

9 Q. SO THEY WERE RELATIVELY SATISFIED WITH THE SITUATION?

10 A. ONCE AGAIN, I CAN ONLY DESCRIBE IT AS IT WAS A PARTNERSHIP.
11 WE DIDN'T DO THIS INDEPENDENT OF THE REST OF THE CRIMINAL
12 JUSTICE SYSTEM.

13 Q. THANK YOU, MR. LEHMAN. NO FURTHER QUESTIONS.

14 JUDGE REINHARDT: MR. LEHMAN, WHAT DO YOU DO IF THE
15 COUNTIES SAY THEY DON'T HAVE SPACE IN THE JAILS AND THEY DON'T
16 HAVE FUNDS TO DEVELOP ADEQUATE PROGRAMS FOR EMPLOYMENT, FOR
17 HOUSING, FOR REHABILITATION, AND THEY CAN'T ABSORB THESE PEOPLE
18 INTO THE PROGRAMS THAT THEY HAVE, WHICH ARE NOT ADEQUATE AS OF
19 NOW ANYWAY?

20 THE WITNESS: YEAH. I THINK THERE'S -- IN
21 PENNSYLVANIA WE ACTUALLY PROVIDED FUNDING BECAUSE WE RECOGNIZE
22 --

23 JUDGE REINHARDT: IS THIS ALL DEPENDENT ON THE STATES
24 PROVIDING FUNDING TO THE COUNTIES?

25 THE WITNESS: NO. IN WASHINGTON WE DIDN'T PROVIDE

1 FUNDING TO THE COUNTIES.

2 **JUDGE REINHARDT:** BUT THE COUNTIES DIDN'T TELL YOU IN
3 WASHINGTON THAT THEY DIDN'T HAVE THE FUNDS TO DO ANY OF THIS.

4 **THE WITNESS:** BUT IN WASHINGTON -- IF, FOR EXAMPLE,
5 YOU HAD A -- WE HAD A MAJOR COUNTY THAT DIDN'T HAVE ANY SPACE IN
6 THEIR COUNTY JAIL, WE RECOGNIZED THAT. IN THAT INSTANCE WE
7 WOULD BRING THEM TO ONE OF OUR FACILITIES.

8 I MEAN, ONCE AGAIN, IT WASN'T -- WE DIDN'T ACT
9 INDEPENDENT OF THOSE ENTITIES. WE ACTED WITH THEM.

10 **JUDGE REINHARDT:** I UNDERSTAND THAT, BUT IF THE
11 COUNTIES DON'T HAVE ROOM IN THEIR FACILITIES, THEY DON'T HAVE
12 FUNDS FOR THE PROGRAMS THAT ARE NECESSARY FOR THE PEOPLE WHO
13 COME OUT OF PRISON, HOW DO YOU DO IT IF THE COUNTIES SAY, WE
14 CAN'T ABSORB THESE PAROLEES AND WE CAN'T PROVIDE THEM WITH
15 PROGRAMS THAT WOULD ASSURE PUBLIC SAFETY?

16 **THE WITNESS:** WELL, I WAS WORKING IN SEVERAL
17 DIFFERENT ENVIRONMENTS. LET ME DEAL WITH WASHINGTON.

18 IN WASHINGTON WE WERE A UNIFIED SYSTEM. WE HAD FRONT
19 END PROBATION. WE HAD PRISONS AND WE HAD PAROLE. SO IN THOSE
20 INSTANCES WE WERE THE RESOURCE. WE HAD TO PROVIDE THE PROGRAMS.

21 IN PENNSYLVANIA, WE -- WE WENT TO THE LEGISLATURE AND
22 WE ALLOCATED RESOURCES TO THE COUNTIES.

23 NOW, BACK TO YOUR QUESTION ON SPACE, WHICH IS A
24 SEPARATE ISSUE. IN WASHINGTON THERE WAS MUCH MORE OF A
25 PARTNERSHIP. IN FACT, THE FUNDING FOR CAPITAL EXPENDITURES IN

1 TERMS OF COUNTY JAILS WAS PROVIDED AT ONE PERIOD OF TIME BY THE
2 STATE.

3 BUT IN THOSE COUNTIES THAT DIDN'T HAVE THE SPACE TO
4 DEAL WITH TECHNICAL VIOLATORS THAT NEEDED TO BE INCARCERATED FOR
5 SHORT PERIODS OF TIME, WE BROUGHT THEM INTO OUR SYSTEM.

6 **JUDGE REINHARDT:** BUT HERE WE DON'T HAVE ROOM IN THE
7 STATE SYSTEM, AND THEY DON'T HAVE ROOM IN THE COUNTY SYSTEM.

8 AND I CAN THINK OF LOTS OF THINGS YOU CAN SAY, BUT AS
9 TO YOUR PROPOSAL THAT IF WE HAVE MORE PAROLEES, THAT WOULD HELP,
10 ASSUMING THAT THE COUNTIES CAN PROVIDE THESE PROGRAMS OR THAT
11 THE STATES -- THE STATE WILL GIVE THE COUNTY THE FUNDS TO DO
12 THAT.

13 WHAT IF NEITHER OF THOSE THINGS HAPPEN? IF THE
14 COUNTIES DON'T HAVE ADEQUATE PROGRAMS AND THE STATE IS NOT
15 WILLING TO GIVE THEM THE MONEY?

16 **JUDGE KARLTON:** BECAUSE THE STATE IS GOING BROKE.

17 **THE WITNESS:** WELL, I THINK THAT'S -- NOT ONLY
18 CALIFORNIA, THAT'S THE TIMES IN MANY STATES.

19 I HAVE TO GO BACK TO THE -- THE REALITY IS THE FIRST
20 STEP THAT HAS TO OCCUR IS YOU HAVE TO REDUCE THE POPULATION.
21 YOU HAVE TO REDUCE THE OVERCROWDING. THAT'S THE PREREQUISITE TO
22 DOING ANYTHING.

23 **JUDGE REINHARDT:** NOW, EVEN IF -- LET'S JUST STOP
24 THERE FOR A MOMENT.

25 LET'S SAY THAT YOUR CHOICE IS TO KEEP THE POPULATION

1 AS IT IS OR TO REDUCE THE POPULATION WHERE THE COUNTIES ARE
2 GOING TO BE UNABLE TO DO ANYTHING FOR THE PEOPLE. WHICH IS MORE
3 DANGEROUS?

4 **THE WITNESS:** WELL, IN THE FIRST RULE, IN TERM OF THE
5 COMMUNITY SIDE, I WOULD DO THAT ON A RISK BASED -- I WOULD NOT
6 -- FOR EXAMPLE, IN WASHINGTON AND IN CALIFORNIA I THINK YOU CAN
7 DO THAT.

8 IF YOU HAD AN ACTUARIAL RESEARCH BASED INSTRUMENT
9 THAT ASSESSED RISK, AND YOU WOULD TAKE THE LOW RISK PEOPLE AND
10 YOU WOULD OSTENSIBLY PUT THEM ASIDE. YOU DON'T SUPERVISE THEM.
11 YOU HAVE REDUCED THE COST OF THE PROGRAM SIGNIFICANTLY IN DOING
12 THAT.

13 IN WASHINGTON -- IF YOU LOOK AT THE PROPORTION OF
14 PEOPLE THAT WERE IN THOSE CATEGORIES THAT WEREN'T SUPERVISED,
15 YOU ARE TALKING ABOUT 36 PERCENT OF THE POPULATION.

16 IN WASHINGTON, IT WAS CONFRONTED WITH THE SAME
17 QUESTION I THINK CALIFORNIA HAS. YOU HAVE GOT LIMITED
18 RESOURCES. HOW ARE YOU GOING TO EXPEND THEM? AND ON WHAT
19 PRINCIPLES ARE YOU GOING TO EXPEND THEM? ON WHAT BASIS ARE YOU
20 GOING TO MAKE DECISIONS THAT THESE PEOPLE NEED TO BE ATTENDED
21 TO, AND THESE WE CAN AFFORD NOT TO.

22 **JUDGE REINHARDT:** I UNDERSTAND YOUR POINT THAT YOU
23 DON'T HAVE TO SUPERVISE THEM. BUT WE HAVE ALSO HAD TESTIMONY
24 THAT WHAT YOU NEED TO DO IS GIVE THEM PROGRAMS THAT WILL HELP
25 THEM ADJUST TO THE COMMUNITY, THAT WILL HELP THEM WITH

1 EMPLOYMENT, THAT WILL HELP THEM PSYCHOLOGICALLY, THAT WILL GIVE
2 THEM DRUG PROGRAMS.

3 WHAT YOU CAN'T -- WHAT IF THE COUNTIES CAN'T DO ANY
4 OF THAT AND THE STATE DOESN'T HAVE THE MONEY TO HELP THE
5 COUNTIES? THEN WHERE ARE WE?

6 **THE WITNESS:** WELL, I'M GOING ON -- I'M NOT GOING TO
7 OPERATE ON THE PRINCIPLE THAT THE STATE DOESN'T HAVE RESOURCES,
8 BECAUSE I THINK THE STATE CAN BE MORE LOGICAL IN THEIR USE OF
9 THEIR EXISTING RESOURCES.

10 SO IF I SAID TO THE STATE, YOU ARE GOING TO NO LONGER
11 SUPERVISE THESE PEOPLE, YOU HAVE COMMITTED RESOURCES, YOU WERE
12 COMMITTING TO THEM. YOU CAN TAKE THOSE RESOURCES AND DECIDE TO
13 SPEND THEM DIFFERENTLY AND MORE EFFECTIVELY.

14 IN FACT, THE RESEARCH SAYS, DON'T TREAT THOSE LOW
15 RISK; TREAT THE HIGH RISK. THAT'S WHAT THE RESEARCH SAYS.

16 **JUDGE REINHARDT:** SO YOU WOULD TAKE THE FUNDS THAT
17 YOU WOULD SAVE BY THE CHANGES YOU RECOMMEND --

18 **THE WITNESS:** ABSOLUTELY.

19 **JUDGE REINHARDT:** -- AND GIVE THOSE TO THE COUNTIES
20 TO PROVIDE SERVICES?

21 **THE WITNESS:** I THINK YOU CAN DO THAT. WELL --

22 **JUDGE KARLTON:** THERE IS A QUESTION ABOUT WHETHER WE
23 CAN ORDER THAT.

24 **THE WITNESS:** RIGHT, RIGHT.

25 **JUDGE KARLTON:** SOME DAY WHEN WE GET TO ORAL

1 ARGUMENT, THAT'S ONE OF THE THINGS WE ARE GOING TO HAVE TO TALK
2 ABOUT.

3 **MR. SPECTER:** OR WE WILL TRY AND ANSWER THAT FOR YOU,
4 OR IT'S A CHOICE THAT THE STATE COULD MAKE, ONE OR THE OTHER.

5 **JUDGE REINHARDT:** WELL, WE WON'T WORRY ABOUT IT NOW,
6 BUT I JUST WANTED TO UNDERSTAND WHAT THE TESTIMONY WAS BECAUSE
7 IT'S GENERALLY ON THE ASSUMPTION THAT THE COUNTIES WILL DO THIS.
8 AND CERTAINLY LISTENING TO THE COUNTY'S TESTIMONY, THEY FEEL
9 THAT THEY DON'T HAVE THE ABILITY TO DO THAT.

10 AND THE ANSWER YOU WOULD GIVE IS TO USE THE FUNDS
11 THAT THE STATE WOULD SAVE.

12 **JUDGE KARLTON:** AT LEAST SOME PORTION OF IT.

13 **JUDGE REINHARDT:** AND DIVERT THAT TO THESE PROGRAMS.

14 **THE WITNESS:** THAT'S CORRECT.

15 **MR. SPECTER:** I'M SORRY, JUDGE. ARE YOU FINISHED?

16 **JUDGE REINHARDT:** NO, NO. THANK YOU.

17 **BY MR. SPECTER:**

18 **Q.** SO YOU ESSENTIALLY WOULD REALLOCATE THE EXISTING RESOURCES,
19 CORRECT?

20 **A.** YES. AND YOU REALLOCATE THEM BASED ON THE POPULATION YOU
21 ARE GOING TO WORK WITH AND WHO HAS TO DO THE WORK.

22 **Q.** AND YOU HAVE READ DR. AUSTIN'S REPORT?

23 **A.** YES --

24 **Q.** OR REPORTS?

25 HE SAYS THAT YOU COULD SAVE ABOUT A BILLION DOLLARS

1 FROM REDUCING THE POPULATION.

2 ASSUMING THAT'S TRUE, WOULD YOU AGREE THAT THAT'S A
3 GOOD -- THAT WOULD BE MONEY WELL SPENT TO GIVING THE COUNTIES AT
4 LEAST A PORTION OF THAT MONEY?

5 **A.** YES, I DO. AND I AGREE WITH JIM -- JIM AUSTIN IS A
6 RESEARCHER. I HAVE WORKED WITH JIM IN ALL THREE JURISDICTIONS
7 THAT I HAVE BEEN SECRETARY FOR.

8 THE REALITY IS THAT YOU CAN DO THESE THINGS AND YOU
9 CAN DO THEM SAFELY.

10 **Q.** THANK YOU. NO FURTHER QUESTIONS.

11 **JUDGE HENDERSON:** OKAY. CROSS-EXAMINATION?

12 **CROSS EXAMINATION**

13 **BY MS. JOHNSON:**

14 **Q.** GOOD AFTERNOON, MR. LEHMAN.

15 **A.** GOOD AFTERNOON.

16 **Q.** YOU HAVE SERVED AS SECRETARY OR COMMISSIONER OF CORRECTIONS
17 FOR THREE STATES, IS THAT RIGHT?

18 **A.** THAT'S CORRECT.

19 **Q.** THOSE STATES ARE PENNSYLVANIA, MAINE AND WASHINGTON STATE?

20 **A.** THAT'S CORRECT.

21 **Q.** YOU ENDED YOUR TENURE AS SECRETARY IN PENNSYLVANIA IN 1995,
22 CORRECT?

23 **A.** SAY THAT AGAIN?

24 **Q.** YOU ENDED YOUR TENURE AS SECRETARY IN PENNSYLVANIA IN 1995?

25 **A.** THAT'S CORRECT.

1 Q. WHEN YOU WERE SECRETARY IN PENNSYLVANIA, THE LARGEST OVERALL
2 PRISON POPULATION FOR THE ENTIRE STATE WAS UNDER 20,000,
3 CORRECT?

4 A. I BELIEVE THAT'S CORRECT.

5 Q. YOU DO NOT RECALL WHAT PENNSYLVANIA'S INCARCERATION RATE WAS
6 WHEN YOU WERE SECRETARY, CORRECT?

7 A. I DON'T RECALL THAT RIGHT NOW, NO.

8 Q. ON PAGE NINE OF YOUR REPORT, PARAGRAPH 18 YOU WROTE:

9 "IN PENNSYLVANIA THE STATE MADE CHANGES TO
10 SENTENCING GUIDELINES TO ALLOW FOR RESTORATIVE
11 AND INTERMEDIATE SANCTIONS, SUCH AS FINES,
12 RESTITUTION, PROBATION, RESIDENTIAL TREATMENT
13 PROGRAMS AND HOUSE ARREST. PART OF THE INTENT
14 OF THESE CHANGES WAS TO REDUCE THE NUMBER OF
15 OFFENDERS WHO WERE SENT TO STATE PRISON. IN MY
16 OPINION AND EXPERIENCE, THESE CHANGES DID NOT
17 RESULT IN ANY INCREASED HARM TO THE PUBLIC. IN
18 FACT, IN GENERAL THEY BENEFITED BOTH THE
19 COMMUNITY AND THE OFFENDER."

20 DO YOU SEE THAT?

21 A. I SEE THAT.

22 Q. YOU DO NOT RECALL BY HOW MUCH THESE CHANGES REDUCED THE
23 PRISON POPULATION IN PENNSYLVANIA, DO YOU?

24 A. I DON'T KNOW THE -- I DON'T HAVE THE SPECIFICS, BUT I KNOW
25 IT DID.

1 Q. YOU DO NOT WHO HOW THE DEMOGRAPHICS OF PENNSYLVANIA'S PRISON
2 POPULATION WHEN YOU WERE SECRETARY COMPARED TO THE DEMOGRAPHICS
3 OF CALIFORNIA'S PRISON POPULATION TODAY, DO YOU?

4 A. I THINK -- IN GENERAL TERMS I THINK THERE ARE SOME
5 DIFFERENCES THAT WE COULD SPEAK TO.

6 Q. YOU WERE COMMISSIONER OF MAINE CORRECTIONS FROM 1995 TO
7 1997, CORRECT?

8 A. THAT'S CORRECT.

9 Q. WHEN YOU WERE COMMISSIONER IN MAINE, THE LARGEST OVERALL
10 PRISON POPULATION FOR THE ENTIRE STATE, THE STATE'S PRISON
11 POPULATION WAS 1400, CORRECT?

12 A. THAT'S CORRECT. UH-HUH.

13 Q. YOU WERE SECRETARY OF CORRECTIONS IN WASHINGTON STATE FROM
14 1997 TO 2005, CORRECT?

15 A. THAT'S CORRECT.

16 Q. THE STATE'S PRISON POPULATION WHEN YOU WERE SECRETARY IN
17 WASHINGTON WAS UNDER 14,000, CORRECT?

18 A. THAT'S CORRECT.

19 Q. ON PAGE EIGHT, PARAGRAPH 15 OF YOUR REPORT YOU WROTE:

20 "WHILE I WAS SECRETARY" -- AND THIS IS OF
21 WASHINGTON STATE, I BELIEVE -- "WE WERE DIRECTED
22 BY THE LEGISLATURE TO INSTITUTE A SYSTEM FOR
23 PAROLEES THAT ALLOCATED PAROLE RESOURCES BASED
24 ON RISK THAT AN OFFENDER WOULD COMMIT A NEW
25 CRIME AS MEASURED BY A RISK INSTRUMENT. IN THIS

1 SYSTEM LOW RISK PAROLEES AND PROBATIONERS WERE
2 NOT SUPERVISED AT ALL. THIS ALLOWED THE
3 DEPARTMENT OF CORRECTIONS TO CONCENTRATE ITS
4 RESOURCES ON THOSE PAROLEES MOST LIKELY TO
5 COMMIT SERIOUS CRIMES IN THE FUTURE."

6 YOU CANNOT SPECIFY WHICH CRIMES WERE IDENTIFIED AS
7 SERIOUS CRIMES, CAN YOU?

8 **A.** SERIOUS CRIMES ARE DEFINED LEGALLY WITHIN THE STATUTES OF
9 THE STATE OF WASHINGTON.

10 **Q.** YOU DON'T KNOW WHAT THOSE CRIMES ARE, CORRECT?

11 **A.** WELL, THEY ARE ESSENTIALLY THE VIOLENT CRIMES.

12 **Q.** I WOULD LIKE TO PULL UP PAGES -- YOUR DEPOSITION TRANSCRIPT,
13 PAGE 120, LINE 16 THROUGH 18.

14 **A.** OKAY.

15 (DOCUMENT DISPLAYED)

16 **"QUESTION:**CAN YOU SPECIFY FOR ME WHICH
17 CRIMES WERE IDENTIFIED AS SERIOUS CRIMES?

18 **"ANSWER:**NOT SPECIFICALLY."

19 **A.** THAT WAS CORRECT. I DON'T KNOW EACH CATEGORY OF CRIME OR
20 OFFENSE.

21 **Q.** IN THE NEXT SENTENCE YOU WROTE:

22 "IN MY EXPERIENCE ONLY A HANDFUL OF THE LOW
23 RISK OFFENDERS WHO WERE NOT SUPERVISED WERE
24 SUBSEQUENTLY CONVICTED OF VIOLENT CRIMES AND
25 THOSE WERE FOR ASSAULTS WITHOUT A MAJOR INJURY."

1 A. THAT'S CORRECT.

2 Q. THERE WASN'T JUST ONE REPORT THAT SUMMARIZED THE INCIDENTS
3 OF LOW OFFENDERS WHO WERE NOT SUPERVISED AND WHO WERE
4 SUBSEQUENTLY CONVICTED OF VIOLENT CRIMES DURING YOUR TENURE AS
5 SECRETARY, WAS THERE?

6 A. I'M SORRY. I DON'T UNDERSTAND THE QUESTION.

7 Q. THERE WASN'T A REPORT THAT YOU READ --

8 A. AN OFFICIAL REPORT? NO.

9 Q. WHEN YOU WRITE "ASSAULT WITHOUT A MAJOR INJURY," YOU DO NOT
10 KNOW THE DEFINITION OF "MAJOR INJURY," DO YOU?

11 A. NO. I ACTUALLY -- WELL, THERE WASN'T A REPORT. I DID
12 REVIEW DATA RELATIVE TO THOSE INDIVIDUALS THAT WERE LOW RISK,
13 THAT WERE NOT SUPERVISED, THAT WERE COMING BACK TO PRISON.

14 MY COMMENT THERE WAS IN RELATION TO THE DATA THAT WAS
15 GIVEN TO ME IN -- AND IN TERMS OF THE INITIAL HISTORY OF THOSE
16 OFFENDERS WHO WERE NOT SUPERVISED.

17 Q. OKAY. BUT MY QUESTION WAS: WHEN YOU USE THE TERM "ASSAULT
18 WITHOUT A MAJOR INJURY," THE TERM YOU USED IN YOUR REPORT,
19 CORRECT?

20 A. I WAS -- THE MOST SERIOUS -- WHEN I REVIEWED THAT DATA, THE
21 MOST SERIOUS OFFENSE WAS AN ASSAULT. IT WAS -- THIS WAS A
22 REPORT. AND THE ASSAULT INDICATED THERE WAS AN INJURY, BUT IT
23 WAS NOT A LIFE-THREATENING INJURY OR A DELETERIOUS INJURY.

24 Q. LIFE THREATENING.

25 A. RIGHT. IT WASN'T A PERMANENT -- IT DIDN'T PERMANENTLY

1 DISABLE THE PERSON.

2 Q. YOU DO NOT WHO HOW THE DEMOGRAPHICS OF CALIFORNIA'S ADULT
3 PAROLEE POPULATION COMPARED TO THE DEMOGRAPHICS OF WASHINGTON
4 STATE'S ADULT PAROLEE POPULATION WHILE YOU WERE SECRETARY THERE,
5 DO YOU?

6 A. I KNOW THAT THERE ARE SOME SIMILARITIES AND DIFFERENCES IN
7 GENERAL. I KNOW THAT CALIFORNIA IN TERMS OF QUANTITATIVELY
8 CERTAINLY HAS A LARGER NUMBER OF HISPANICS. ALTHOUGH WASHINGTON
9 STATE HAS A LARGE NUMBER OF HISPANICS.

10 I THINK WASHINGTON -- WASHINGTON HAS A MIXED ETHNIC
11 OFFENDER POPULATION IN TERMS OF ASIAN AND PACIFIC RIM, IN
12 ADDITION TO HISPANIC AND CAUCASIAN.

13 Q. DID YOU KNOW WHEN WE TOOK YOUR DEPOSITION IN THIS CASE HOW
14 CALIFORNIA'S PAROLEE POPULATION COMPARED TO WASHINGTON STATE'S
15 PAROLEE POPULATION, MR. LEHMAN?

16 A. SPECIFICALLY, NO, I DID NOT.

17 Q. OKAY. SO THAT WAS SOMETHING YOU DIDN'T KNOW WHEN YOU WROTE
18 YOUR REPORT EITHER, CORRECT?

19 A. IN TERMS OF THE SPECIFIC MAKEUPS OF THE POPULATION OR
20 DIFFERENCES, NO.

21 Q. SO THAT'S SOMETHING YOU HAVE EDUCATED YOURSELF ON SINCE THE
22 DEPOSITION, MR. LEHMAN?

23 A. I HAVE BECOME MORE INFORMED.

24 Q. IN THE NEXT SENTENCE YOU WROTE:

25 "IN ADDITION, ANOTHER LAW DIVERTED CERTAIN

1 CATEGORIES OF LOW RISK FELONS TO THE COUNTY BY
2 PROHIBITING THE COURTS FROM SENTENCING THEM TO
3 PRISON."

4 WHEN YOU WROTE THAT, YOU DID NOT KNOW HOW MANY SUCH
5 LOW RISK FELONS WERE CONVICTED IN WASHINGTON STATE IN ANY GIVEN
6 YEAR WHILE YOU WERE SECRETARY, DID YOU?

7 **A.** NO, I DID NOT RECALL THAT.

8 **Q.** YOU ALSO DID NOT KNOW WHAT PERCENTAGE OF CONVICTIONS IN
9 WASHINGTON STATE SUCH LOW RISK FELONS MADE UP, YOU DID?

10 **A.** NO, I DID NOT.

11 **Q.** AND WHEN YOU WROTE THAT, YOU DID NOT KNOW HOW MANY
12 EQUIVALENT LOW RISK FELONS CALIFORNIA HAS CONVICTED IN THE LAST
13 YEAR, DID YOU?

14 **A.** NO, I DID NOT.

15 **Q.** WHEN YOU WROTE YOUR REPORT, YOU DID NOT KNOW FOR THE PERIOD
16 OF TIME YOU WERE SECRETARY OF THE WASHINGTON STATE DEPARTMENT OF
17 CORRECTIONS WHAT PERCENTAGE OF PEOPLE CONVICTED OF FELONIES
18 WASHINGTON STATE INCARCERATED, DID YOU?

19 **A.** THE INCARCERATION RATE?

20 **Q.** THE PERCENTAGE OF PEOPLE CONVICTED OF FELONS THAT WERE
21 INCARCERATED?

22 **A.** SPECIFICALLY, NO.

23 **Q.** WHEN YOU WROTE YOUR REPORT, YOU ALSO DID NOT KNOW WHAT
24 PERCENTAGE OF PEOPLE CONVICTED OF FELONS -- FELONIES THAT
25 CALIFORNIA INCARCERATES?

1 **A.** NO, I DID NOT.

2 **Q.** AND DO YOU KNOW WHETHER CALIFORNIA'S COUNTIES CURRENTLY HAVE
3 THE RESOURCES TO DEAL WITH FELONS WHO ARE -- WHO MIGHT BE
4 DIVERTED TO THE COUNTIES RATHER THAN BEING SENTENCED TO PRISON?

5 **A.** SPECIFICALLY, NO, I DO NOT.

6 **Q.** ON PAGE EIGHT, PARAGRAPH 16 YOU WROTE THAT:

7 "THE POLICIES OF TECHNICAL PAROLE VIOLATORS
8 NOT GOING BACK TO PRISON AND DIVERSION OF
9 CERTAIN LOW RISK FELONS, QUOTE, CONTROLLED THE
10 PRISON POPULATION WHILE NOT HAVING ANY
11 SIGNIFICANT ADVERSE EFFECT ON PUBLIC SAFETY, END
12 QUOTE."

13 **A.** YES, I DID.

14 **Q.** THIS STATEMENT IS BASED ON THE CONCLUSION OF AN
15 INTERDISCIPLINARY GROUP THAT MET REGARDING THE IMPLEMENTATION OF
16 THOSE POLICIES, CORRECT?

17 **A.** THAT'S CORRECT.

18 **Q.** THAT INTERDISCIPLINARY GROUP DID NOT ISSUE A FORMAL REPORT,
19 DID IT?

20 **A.** NO. THAT WAS ACTUALLY A GROUP THAT MET MONTHLY WITH THE
21 SHERIFFS AND POLICE CHIEFS, THE PROSECUTORS, THE GOVERNOR'S
22 CRIMINAL JUSTICE DIVISION IN THE DEPARTMENT OF CORRECTIONS AND
23 THE ATTORNEY GENERAL'S OFFICE.

24 **Q.** THAT INTERDISCIPLINARY GROUP DID NOT PERFORM AN EMPIRICAL
25 STUDY, DID IT?

1 A. NO, IT DID NOT, BUT EVERYBODY -- EVERYBODY IN THAT GROUP
2 AGREED THAT THE SYSTEM WAS WORKING. WHICH, BY THE WAY, I THINK
3 WAS SUBSEQUENTLY BEARED OUT BY THE REPORTS OF THE WASHINGTON
4 STATE INSTITUTE FOR PUBLIC POLICY.

5 Q. ON PAGE EIGHT, PARAGRAPH 17 OF YOUR REPORT YOU CITE TO A
6 REPORT BY THE WASHINGTON STATE INSTITUTE FOR PUBLIC POLICY
7 ENTITLED "EVIDENCE BASED PUBLIC POLICY OPTIONS TO REDUCE FUTURE
8 PRISON CONSTRUCTION, CRIMINAL JUSTICE COSTS AND CRIME RATES,"
9 PUBLISHED IN OCTOBER, 2006?

10 A. THAT'S CORRECT.

11 Q. YOU WERE SECRETARY FOR WASHINGTON STATE WHEN THIS REPORT WAS
12 BEING PREPARED, CORRECT?

13 A. NO, I WAS NOT -- OH, WHEN IT WAS BEING PREPARED? YES, I'M
14 SORRY.

15 Q. IN YOUR REPORT YOU STATE THAT:

16 "THE REPORT NOTED MANY PROGRAMS THAT CAN BE
17 INSTITUTED IN THE COMMUNITY AND IN PRISON THAT
18 EFFECTIVELY REDUCE RECIDIVISM, SOME BY AS MUCH
19 AS 18 TO 20 PERCENT, THEREBY LOWERING THE PRISON
20 POPULATION AND THE COST OF PUNISHMENT."

21 BUT IN THIS REPORT THAT YOU CITE, THE OCTOBER 2006
22 REPORT, THE WASHINGTON STATE INSTITUTE FOR PUBLIC POLICY WAS
23 FOCUSED ON KEEPING THE WASHINGTON STATE PRISON POPULATION FROM
24 GROWING MORE, NOT REDUCING THE NUMBER OF PEOPLE INCARCERATED IN
25 WASHINGTON STATE AT THE TIME, CORRECT?

1 **A.** AT THAT TIME, YES.

2 **MS. JOHNSON:** WE HAVE A COPY OF THAT REPORT. I'M
3 GOING TO PROVIDE IT TO YOUR HONORS.

4 (WHEREUPON, DOCUMENT WAS TENDERED
5 TO THE COURTS.)

6 **MS. JOHNSON:** AND IF I MAY APPROACH THE WITNESS?

7 **JUDGE HENDERSON:** YOU MAY.

8 **JUDGE KARLTON:** IS THE REPORT IN EVIDENCE?

9 **MS. JOHNSON:** IT IS NOT YET.

10 **THE COURT:** DO YOU PROPOSE TO HAVE IT MARKED, MA'AM.

11 **MS. JOHNSON:** THIS IS TO BE DEFENDANT'S 1331. (

12 (DEFENDANTS' EXHIBIT 1331 MARKED FOR
13 IDENTIFICATION)

14 **JUDGE HENDERSON:** DEFENDANTS WHAT? 13--

15 **MS. JOHNSON:** 31.

16 **JUDGE HENDERSON:** FOR IDENTIFICATION.

17 **BY MS. JOHNSON:**

18 **Q.** I'M GOING TO TRY A NEW TECHNOLOGY HERE. OLD TECHNOLOGY, BUT
19 --

20 **JUDGE KARLTON:** BEFORE YOU DO THAT, IS THIS THE
21 DOCUMENT THAT YOU HAVE BEEN REFERRING TO IN YOUR REPORT?

22 **THE WITNESS:** THE ONE WHICH WAS REFERRED TO -- THAT
23 THE COUNSEL JUST REFERRED TO, YES.

24 **JUDGE KARLTON:** DO YOU WANT TO MOVE IT INTO EVIDENCE?

25 **MS. JOHNSON:** I DON'T WANT TO MOVE THE ENTIRE

1 DOCUMENT INTO EVIDENCE, YOUR HONOR. WE ARE GOING TO LOOK AT A
2 COUPLE OF ITEMS ON IT.

3 **JUDGE KARLTON:** THE RULE OF THE ENTIRETY SAYS THAT IF
4 YOU ARE GOING TO MOVE PARTS IN, YOU'RE GOING TO MOVE IT ALL IN.
5 NOW, WHAT DO YOU WANT TO DO? I DON'T CARE.

6 **MS. JOHNSON:** OKAY. I WILL MOVE THE WHOLE DOCUMENT
7 INTO EVIDENCE THEN, YOUR HONOR.

8 **JUDGE KARLTON:** RECEIVED.

9 **JUDGE HENDERSON:** OKAY. 31 WILL BE ADMITTED AT THIS
10 TIME.

11 (DEFENDANTS' EXHIBIT 1331 RECEIVED IN
12 EVIDENCE)

13 **JUDGE KARLTON:** FOR RULE OF COMPLETENESS, I'M SORRY.
14 (DOCUMENT DISPLAYED)

15 **BY MS. JOHNSON:**

16 **Q.** OKAY. IF YOU LOOK AT THE PARAGRAPH THERE IN THE SIDEBAR
17 THAT STARTS "TO GAUGE."

18 **A.** TO GAUGE, YES.

19 **Q.** IT STATES:

20 "TO GAUGE THE EFFECT PRISON HAS ON CRIME
21 RATES. WE UPDATED OUR ECONOMETRIC STUDY ON HOW
22 STATE INCARCERATION RATES AFFECT COUNTY CRIME
23 RATES IN WASHINGTON. WE ESTIMATED A FIXED
24 EFFECTS MODEL WITH COUNTY LEVEL PANEL DATA FROM
25 1982 TO 2004, CONTROLLING FOR CHANGES IN POLICE

1 LEVELS, LOCAL JAIL RATES, THE ECONOMY, AGE AND
2 ETHNIC DEMOGRAPHICS, POPULATION DENSITY, CRIME
3 REPORTING RATES, AND COUNTY FIXED EFFECTS.

4 "WE FOUND THAT A 10 PERCENT INCREASE OR
5 DECREASE IN THE INCARCERATION RATE LEADS TO A
6 STATISTICALLY SIGNIFICANT 3.3 PERCENT DECREASE
7 OR INCREASE IN CRIME RATES."

8 WHEN YOU FORMED YOUR OPINIONS REGARDING THE
9 POSSIBILITY OF A SAFE REDUCTION OF CALIFORNIA'S PRISON
10 POPULATION, WERE YOU AWARE OF THIS CONCLUSION BY THE WASHINGTON
11 STATE INSTITUTE FOR PUBLIC POLICY?

12 **A.** YES, I WAS.

13 **Q.** WERE YOU AWARE THAT THE WASHINGTON STATE INSTITUTE FOR
14 PUBLIC POLICY STATED THAT AS OF 2006, WASHINGTON'S PRISON
15 INCARCERATION RATE STANDS AT ABOUT SIX ADULT INCARCERATED PER
16 1,000?

17 **A.** THAT'S CORRECT. THE REPORT ALSO SAID THAT THEY HAD GONE
18 BEYOND THE POINT OF EFFECTIVENESS. THERE WERE DIMINISHING
19 RETURNS.

20 **JUDGE KARLTON:** I'M SORRY. WHAT?

21 **THE WITNESS:** IN FACT, THE INSTITUTE TESTIFIED IN
22 WASHINGTON BEFORE A LEGISLATURE BASICALLY SAYING, YES, THE
23 DEPARTMENT HAS, IN FACT, INCARCERATED MORE PEOPLE, BUT AS THIS
24 REPORT DEMONSTRATES, THERE IS A POINT IN WHICH YOU INCARCERATE
25 MORE AND MORE PEOPLE WHEN YOU ARE ACTUALLY GETTING DIMINISHING

1 RETURNS FROM THAT INVESTMENT. AND THAT WAS THE POINT OF THEIR
2 REPORT AND TESTIMONY IN WASHINGTON.

3 **JUDGE KARLTON:** SO THE -- YOU ARE SAYING THAT THE
4 STUDY FOUND THAT INCREASING INCARCERATION WAS HAVING AN ADVERSE
5 EFFECT -- AND I'M ASKING YOU. I'M NOT TELLING YOU. I'M NOT
6 SURE I KNOW WHAT YOU ARE --

7 **THE WITNESS:** ACTUALLY, THE RESEARCHER WAS SAYING
8 THAT AN INCREASE IN INCARCERATION OF 10 PERCENT ACTUALLY REDUCED
9 CRIME. BUT THEY SAID GOING BEYOND THAT, THERE IS DIMINISHING
10 RETURNS. YOU DON'T GET THE SAME RETURNS RELATIVE TO THAT
11 INVESTMENT.

12 **JUDGE KARLTON:** BUT YOU STILL GET SOME BENEFIT.

13 **THE WITNESS:** YOU GET SOME BENEFIT, BUT THE ACTUAL
14 TESTIMONY OF THE INSTITUTE BEFORE THE WASHINGTON STATE
15 LEGISLATURE IS THAT WASHINGTON HAD GONE BEYOND THAT POINT IN
16 THAT IT WAS NOT COST EFFECTIVE TO BE INCARCERATING MORE PEOPLE.
17 THAT'S WHAT THEIR TESTIMONY WAS.

18 **JUDGE KARLTON:** I RECOGNIZE THAT WE HAVE A PROBLEM,
19 WHICH IS DIFFERENT THAN WHAT YOU ARE TALKING ABOUT. WE HAVE AN
20 OBLIGATION TO TAKE INTO ACCOUNT PUBLIC SAFETY.

21 EVEN IF THERE IS A DIMINISHED RETURN, WAS THERE A
22 CONTINUED BENEFICIAL RETURN, HOWEVER DIMINISHED IT WAS, FROM
23 INCARCERATING PEOPLE?

24 **THE WITNESS:** YES, BUT THE OTHER -- THE POINT OF THE
25 REPORT, I THINK AS ITS TITLE SAYS, IS THAT EVIDENCE BASED PUBLIC

1 POLICY OPTIONS DO REDUCE THE NEEDS FOR FUTURE CONSTRUCTION.

2 SO THE POINT OF THE REPORT WAS TO LOOK AT THE
3 EVIDENCE BASED PROGRAMS ON A NATIONAL BASIS TO SEE WHICH REDUCED
4 RECIDIVISM, SUGGESTING TO CERTAINLY WASHINGTON AT THAT POINT IN
5 TIME, THAT IF THEY WERE TO USE THESE PROGRAMS, THEY WOULD LIKELY
6 REDUCE RECIDIVISM AND REDUCE INCARCERATION.

7 **BY MS. JOHNSON:**

8 **Q.** SO WASHINGTON PRISON'S INCARCERATION RATE WAS ABOUT SIX
9 ADULTS INCARCERATED PER 1,000. THAT'S THE SAME AS ABOUT 600 PER
10 100,000, CORRECT?

11 **A.** I'M NOT A STATISTICIAN, BUT GO AHEAD.

12 **Q.** IS THAT A YES?

13 **A.** I'M NOT SURE.

14 **Q.** SIX PER 1,000 IS THE SAME AS 600 PER 100,000.

15 **A.** OKAY.

16 **Q.** IF YOU SCALE IT UP, RIGHT?

17 **A.** OKAY.

18 **Q.** OKAY. ARE YOU AWARE THAT CALIFORNIA'S INCARCERATION RATE IS
19 ABOUT 475 PER 100,000 RESIDENTS OR EVEN LESS?

20 **A.** I THINK I WAS AWARE OF THAT, YES.

21 **Q.** ARE YOU AWARE THAT PLAINTIFFS' PROPOSE A REDUCTION OF
22 CALIFORNIA'S PRISON POPULATION OF ABOUT 52,000 OVER TWO YEARS?

23 **A.** YES.

24 **Q.** ARE YOU AWARE THAT SUCH A REDUCTION IN THE PRISON POPULATION
25 IN CALIFORNIA WOULD RESULT IN ABOUT A 30 PERCENT REDUCTION IN

1 CALIFORNIA'S INCARCERATION RATE?

2 **A.** I WOULD HOPE SO.

3 **Q.** ON PAGE SEVEN AT PARAGRAPH 14 OF YOUR REPORT YOU WROTE:

4 "IN WASHINGTON STATE PAROLE WAS ABOLISHED IN
5 1984 AND THE LAW WAS CHANGED SO THAT OFFENDERS
6 COULD NOT BE SENT TO PRISON FOR PROBATION
7 VIOLATIONS.

8 "AND THEN FROM 1984 TO 1986 THE COURT MADE
9 CERTAIN CHANGES TO THE SENTENCING LAWS
10 RETROACTIVE AND INCREASED THE AMOUNT OF CREDITS
11 THAT PRISONERS WERE ENTITLED TO, CREATING A
12 SITUATION THAT CAUSED PRISONERS TO BE RELEASED
13 EARLY IN A RELATIVELY SHORT PERIOD OF TIME.
14 THIS EARLY RELEASE DID NOT HAVE ANY SIGNIFICANT
15 IMPACT ON THE CRIME RATE OR THE RATE OF
16 RECIDIVISM."

17 **A.** THAT'S CORRECT.

18 **Q.** WHEN THESE REFORMS WERE IMPLEMENTED, YOU WERE A COMMAND
19 MANAGER FOR A CLUSTER OF PRISONS IN THE MONROE AREA OF
20 WASHINGTON STATE, IS THAT CORRECT?

21 **A.** THAT'S CORRECT.

22 **Q.** YOU WERE NOT RESPONSIBLE IN ANY WAY FOR STUDYING THE EFFECTS
23 OF THE POLICY CHANGES REFERRED TO IN PARAGRAPH 14 OF YOUR
24 REPORT, WERE YOU?

25 **A.** NO, I WAS NOT.

1 Q. WHEN YOU PREPARED YOUR REPORT, YOU HAD NOT REVIEWED ANY DATA
2 THAT SUPPORTS THE RESULTS OF THE 20-YEAR -- 20-YEAR-OLD POLICY
3 CHANGE YOU DESCRIBED IN WASHINGTON STATE, HAD YOU?

4 A. NO. BUT I WAS AWARE OF THE -- I GUESS I'M NOT UNDERSTANDING
5 YOUR QUESTION. I MEAN, I WAS AWARE OF WHAT HAPPENED.

6 Q. YOU WROTE YOUR REPORT 20 YEARS LATER, RIGHT?

7 A. RIGHT.

8 Q. AND YOU HADN'T REVIEWED ANY DATA TO SUPPORT WHAT YOU STATED
9 IN YOUR REPORT.

10 AROUND THE TIME YOU WROTE YOUR REPORT, YOU HADN'T
11 REVIEWED ANY DATA --

12 A. NO. OTHER THAN TALKING TO PEOPLE IN THE SYSTEM, YES.

13 Q. YOUR STATEMENT ABOUT THE RESULTS OF THE 20-YEAR-OLD POLICY
14 CHANGE IN WASHINGTON STATE WAS ALL FROM MEMORY, CORRECT?

15 A. AND DISCUSSIONS WITH PEOPLE, YES.

16 Q. YOU DO NOT KNOW -- LET ME REPHRASE THAT.

17 AT THE TIME YOU WROTE YOUR REPORT YOU DID NOT KNOW
18 HOW MANY ADULT PRISONERS THERE WERE IN THE WASHINGTON STATE
19 SYSTEM IN 1984, DID YOU?

20 A. SPECIFICALLY, NO.

21 Q. AT THE TIME YOU WROTE YOUR REPORT, YOU DID NOT KNOW, OF
22 THOSE PRISONERS, HOW MANY WERE RELEASED EARLY UNDER THE POLICIES
23 YOU DESCRIBE IN PARAGRAPH 14, DID YOU?

24 A. IN TERMS OF QUANTITATIVE TERMS, NO.

25 Q. AND AT THE TIME YOU WROTE YOUR REPORT, YOU DID NOT KNOW WHAT

1 DEMOGRAPHIC MAKEUP OF THE ADULT PRISON POPULATION OF WASHINGTON
2 STATE WAS IN 1984, DID YOU?

3 **A.** ONLY IN GENERAL TERMS.

4 **JUDGE REINHARDT:** I THINK HE ANSWERED THAT QUESTION
5 BEFORE, DIDN'T HE, ABOUT THE DEMOGRAPHIC POPULATION?

6 **MS. JOHNSON:** WE'RE DEALING WITH DIFFERENT TIME
7 PERIODS, YOUR HONOR. HE WAS SECRETARY OF WASHINGTON MUCH MORE
8 RECENTLY THAN AT THE TIME THAT THIS POLICY CHANGE THAT OCCURRED
9 20 YEARS BEFORE. SO.

10 PREVIOUSLY WE HAD ESTABLISHED THAT HE DOESN'T KNOW
11 DURING THE TIME PERIOD HE WAS SECRETARY HOW THAT COMPARES. THIS
12 IS 20 YEARS BEFORE.

13 **JUDGE REINHARDT:** OKAY.

14 **BY MS. JOHNSON:**

15 **Q.** OKAY.

16 **A.** IN THE 19 YEARS WHEN THAT WAS OCCURRING, IT WAS WHEN THE
17 STATE WENT FROM AN INDETERMINATE SENTENCING SYSTEM TO A
18 DETERMINATE SENTENCING SYSTEM.

19 THE INITIAL RESULT OF THAT WAS A SIGNIFICANT
20 REDUCTION IN PRISON COMMITMENTS.

21 **Q.** AT THE TIME YOU WROTE YOUR REPORT, YOU DID NOT KNOW IF THERE
22 WERE ANY DIFFERENCES IN THE MAKEUP OF THE CURRENT ADULT PRISON
23 POPULATION IN CALIFORNIA AND THE ADULT PRISON POPULATION OF
24 WASHINGTON STATE IN 1984, DID YOU?

25 **A.** NOT IN 1984.

1 Q. ON PAGE SEVEN, PARAGRAPH 13 OF YOUR REPORT YOU WROTE:

2 "THE EXPERT PANEL REPORT ALSO RECOMMENDED
3 THAT THE PRISON POPULATION BE REDUCED THROUGH
4 THE MORE AGGRESSIVE USE OF IN-PRISON CREDITS,
5 THE EARLY DISCHARGE OF SOME PAROLEES, AND THE
6 SELECTIVE USE OF PAROLE FOR ONLY CERTAIN
7 OFFENDERS. THE PANEL FOUND, AND I CONCUR, THAT
8 IF IMPLEMENTED PROPERLY, THESE MEASURES WOULD
9 REDUCE THE PRISON POPULATION WITHOUT ANY
10 SIGNIFICANT ADVERSE EFFECT ON CRIME IN THE
11 COMMUNITY."

12 WHEN YOU SAY THAT IF IMPLEMENTED PROPERLY IT IS NOT
13 GOING TO HAVE A SIGNIFICANT ADVERSE EFFECT, SUGGESTS THAT IT
14 COULD, IF IMPLEMENTED IMPROPERLY, HAVE A SIGNIFICANT ADVERSE
15 EFFECT, CORRECT?

16 A. WELL, THE ASSUMPTION "PROPERLY" ASSUMES THAT, IN FACT, YOU
17 HAVE A DEFINED POLICY AND PROCEDURES THAT IS IMPLEMENTED
18 APPROPRIATELY; THAT IS, IN FACT, MONITORED TO ASSURE THAT IT'S
19 IMPLEMENTED APPROPRIATELY.

20 I THINK THAT'S BASIC BUSINESS IN TERMS OF
21 CORRECTIONS. YES. AND I THINK IF PROPERLY IMPLEMENTED, IT HAS
22 THOSE POTENTIAL EFFECTS.

23 Q. AND IF NOT PROPERLY IMPLEMENTED, IT COULD HAVE ADVERSE
24 EFFECTS?

25 A. THAT'S TRUE IN LIFE. IN ANYTHING.

1 **JUDGE REINHARDT:** ANYTHING IS POSSIBLE.

2 **THE WITNESS:** YES. ANYTHING IS POSSIBLE.

3 **JUDGE KARLTON:** ALMOST ANYTHING IS POSSIBLE SEVERAL
4 TIMES.

5 **BY MS. JOHNSON:**

6 **Q.** WHEN YOU WROTE THAT, "IF IMPLEMENTED PROPERLY, THESE
7 MEASURES WOULD REDUCE THE PRISON POPULATION WITHOUT ANY
8 SIGNIFICANT ADVERSE EFFECT ON CRIME IN THE COMMUNITY," BY
9 "SIGNIFICANT," YOU MEANT STATISTICALLY SIGNIFICANT, CORRECT.

10 **A.** YES.

11 **Q.** WHEN YOU WROTE THAT STATEMENT, YOU COULD NOT DEFINE THE
12 MEANING OF "STATISTICAL SIGNIFICANCE," COULD YOU?

13 **A.** NO. AND, ACTUALLY, I WOULD TURN TO SOMEBODY LIKE JIM
14 AUSTIN, WHO IS A STATISTICIAN AND RESEARCHER AND ASK JIM, YOU
15 KNOW, HOW DO YOU DETERMINE THIS AND HOW DO WE MEASURE IT?

16 **Q.** YOU BELIEVE THAT THERE IS PROBABLY A DIFFERENCE BETWEEN
17 SAYING NO SIGNIFICANT ADVERSE EFFECT AND SAYING NO ADVERSE
18 EFFECT, CORRECT?

19 **A.** I DON'T KNOW WHAT NO ADVERSE EFFECT IS. THE FACT IS, WE
20 IMPLEMENTED THESE POLICIES. THEY WORKED. IT WAS THE CONSENSUS
21 OF THE PEOPLE THAT IMPLEMENTED THEM, INCLUDING PROSECUTORS AND
22 SHERIFFS.

23 I DON'T KNOW WHAT "ADVERSE" MEANS IN THAT CONTEXT.
24 IT WORKED. THAT'S ALL I CAN SAY.

25 **MS. JOHNSON:** CAN WE HAVE PAGE 110, LINES 3 THROUGH 6

1 OF HIS DEPOSITION TESTIMONY, PLEASE?

2 (DOCUMENT DISPLAYED)

3 Q. (READING)

4 "QUESTION: IS THERE A DIFFERENCE BETWEEN ANY
5 SIGNIFICANT ADVERSE EFFECT AND NO ADVERSE
6 EFFECT?

7 "ANSWER: THERE PROBABLY IS."

8 A. YEAH. I -- ONCE AGAIN, ALL I CAN SAY IS I DON'T KNOW WHAT
9 "NO ADVERSE EFFECT" MEANS. I KNOW WHAT I DID. I KNOW HOW WE
10 MEASURED. I KNOW WHAT THE CONSENSUS WAS OF THE PEOPLE IN THE
11 SYSTEM. AND IT WORKED. THAT'S ALL I CAN SAY.

12 Q. YOU DID NOT MAKE AN ASSESSMENT OF THE NUMBER OF PRISONERS BY
13 WHICH CALIFORNIA NEEDS TO REDUCE ITS PRISON POPULATION TO
14 RESOLVE THE OVERCROWDING CRISIS, DID YOU?

15 A. I DIDN'T PERSONALLY, BUT I KNOW OTHERS HAVE.

16 Q. YOU HAVE NEVER BEEN INVOLVED WITH A STATE PRISON SYSTEM THAT
17 ATTEMPTED TO REDUCE ITS PRISON POPULATION BY OVER 50,000
18 PRISONERS WITHIN A TWO-YEAR PERIOD, HAVE YOU?

19 A. NO, I HAVE NOT.

20 THE CLERK: FIVE MINUTES, COUNSEL.

21 BY MS. JOHNSON:

22 Q. WHEN CONCLUDING THAT THE SENTENCING GUIDELINES YOU WOULD
23 RECOMMEND CALIFORNIA IMPLEMENT WOULD NOT HAVE A NEGATIVE IMPACT
24 ON PUBLIC SAFETY, YOU CANNOT SPEAK IN TERMS OF A GUARANTEE, CAN
25 YOU?

1 **A.** NOBODY CAN SPEAK IN A GUARANTEE. I'M TALKING ABOUT IF YOU
2 IMPLEMENT IT IN A RATIONAL, THOUGHTFUL WAY USING RISK
3 ASSESSMENTS, THAT YOU WILL, IN FACT, HAVE THE POSITIVE EFFECTS
4 THAT YOU WANT TO HAVE. WHAT ELSE CAN I SAY?

5 **MS. JOHNSON:** NO FURTHER QUESTIONS.

6 **THE COURT:** INTERVENORS?

7 **MS. WANG:** TERESA WANG FOR THE DEFENDANT INTERVENORS.

8 **JUDGE KARLTON:** I'M SORRY. I DIDN'T GET THE NAME.

9 **MS. WANG:** TERESA WANG.

10 **DIRECT EXAMINATION**

11 **BY MS. WANG:**

12 **Q.** HOW ARE YOU, MR. LEHMAN? JUST A COUPLE QUESTIONS.

13 YOU MENTIONED THE REFORM ENACTED IN WASHINGTON STATE
14 AND PENNSYLVANIA STATE AND MAINE WHILE YOU WERE -- SORRY.

15 YOU DISCUSSED IN YOUR REPORT THE REFORMS ENACTED IN
16 WASHINGTON, PENNSYLVANIA AND MAINE, CORRECT?

17 **A.** PREDOMINANTLY PENNSYLVANIA AND WASHINGTON, YES.

18 **Q.** PREDOMINANTLY PENNSYLVANIA AND WASHING. AND NONE OF THE
19 REFORMS THAT WERE ENACTED IN THOSE STATES WERE ENACTED IN AN
20 ATTEMPT TO ADDRESS MEDICAL AND MENTAL HEALTHCARE DEFICIENCIES IN
21 THOSE SYSTEMS, WERE THEY?

22 **A.** THEY WEREN'T DONE SPECIFICALLY FOR THAT, BUT CERTAINLY IN
23 PENNSYLVANIA THERE WAS AN ATTEMPT TO ADDRESS ISSUES RELATIVE TO
24 MENTAL HEALTH AND MEDICAL TREATMENT IN THE PRISON SYSTEM, ALONG
25 WITH THE -- THE CHANGES WITHIN THE PRISON SYSTEM.

1 Q. AND IN PENNSYLVANIA, THERE WAS A LAWSUIT BROUGHT AGAINST
2 THAT SYSTEM FOR INADEQUACIES IN MENTAL HEALTH CARE?

3 A. THIS WAS A LAWSUIT, YES.

4 Q. I THINK YOU DISCUSSED THIS THE FIRST TIME AROUND IN PHASE
5 ONE.

6 A. RIGHT.

7 Q. AS A RESULT OF THE SETTLEMENT REACHED IN THAT LAWSUIT, NO
8 PRISONERS WERE RELEASED EARLY FROM THE PENNSYLVANIA SYSTEM OF
9 CORRECTIONS, IS THAT CORRECT?

10 A. YES. THAT WAS NOT -- THAT WAS NOT THE ISSUE THAT WAS BEING
11 ADDRESSED BY THE LAWSUIT.

12 Q. SO THE PENNSYLVANIA CORRECTIONAL SYSTEM WAS ABLE TO ADDRESS
13 THE INADEQUACIES IN MEDICAL AND MENTAL HEALTH CARE THROUGH, I
14 BELIEVE IT WAS --

15 JUDGE KARLTON: OTHER MEANS.

16 BY MS. WANG:

17 Q. OTHER MEANS, INCLUDING TRANSFER OF 800 PRISONERS TO THE
18 FEDERAL PRISON SYSTEM, REFORMING AND REBUILDING MEDICAL
19 BUILDINGS IN THE PENNSYLVANIA CORRECTION SYSTEM, IS THAT
20 CORRECT?

21 A. AND CREATING A CENTRALIZED MANAGEMENT SYSTEM FOR MENTAL
22 HEALTH AND HEALTHCARE.

23 Q. BUT NOT A PRISONER RELEASE ORDER?

24 A. RIGHT.

25 Q. OKAY. THANK YOU. NO FURTHER QUESTIONS.

1 **THE COURT:** REDIRECT?

2 **MR. SPECTER:** NO, YOUR HONOR.

3 **THE COURT:** OKAY. THANK YOU FOR TESTIFYING, DOCTOR.
4 YOU ARE EXCUSED.

5 (WITNESS EXCUSED.)

6 **JUDGE HENDERSON:** CALL YOUR NEXT WITNESS.

7 (BRIEF PAUSE.)

8 **MS. BARLOW:** DEFENDANT INTERVENORS CALL RICHARD
9 CONKLIN.

10 **RICHARD CONKLIN,**

11 CALLED AS A WITNESS FOR THE DEFENDANT HEREIN, HAVING BEEN FIRST
12 DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

13 **THE WITNESS:** RICHARD CONKLIN, CONKLIN.

14 **DIRECT EXAMINATION**

15 **BY MS. BARLOW:**

16 **Q.** GOOD AFTERNOON, MR. CONKLIN.

17 **MR. SANGSTER:** WOULD YOU PLEASE SPEAK INTO THE
18 MICROPHONE, PLEASE?

19 **THE WITNESS:** I WILL TRY.

20 **BY MS. BARLOW:**

21 **Q.** MR. CONKLIN, COULD YOU STATE YOUR JOB TITLE, PLEASE?

22 **A.** IT'S DETENTIONS CHIEF, LICENSED MENTAL HEALTH CLINICS FOR
23 THE SAN DIEGO SHERIFF'S DEPARTMENT.

24 **MS. BARLOW:** ALL RIGHT. FOR THE COURT'S EDIFICATION,
25 MR. CONKLIN'S BACKGROUND AND EDUCATION AND EXPERIENCE IS

1 DESCRIBED IN GREAT DETAIL IN HIS DECLARATION, PARAGRAPHS 1
2 THROUGH 14.

3 **BY MS. BARLOW:**

4 **Q.** COULD YOU JUST SUMMARIZE FOR THE COURT, MR. CONKLIN, THOSE,
5 YOUR BACKGROUND AND EXPERIENCE?

6 **A.** YES. I BEGAN MY CAREER IN THE MID-70'S AS A CHILD AND
7 ADOLESCENT PSYCHOTHERAPISTS AT CHILDREN'S HOSPITAL IN SAN DIEGO,
8 AND OVER THE YEARS MOVED INTO SUPERVISION AND ADMINISTRATION,
9 AND WHILE I WAS THERE DID A NUMBER OF CONTRACT MENTAL HEALTH
10 PROGRAMS WITH SAN DIEGO COUNTY AND EITHER WROTE OR WAS INVOLVED
11 IN WRITING AND IMPLEMENTING OF A NUMBER OF GRANTS, SCHOOL-BASED
12 PROGRAMS AND MULTI-DISCIPLINARY TREATMENT TEAMS AT SCHOOLS.

13 I LEFT CHILDREN'S HOSPITAL IN 1993 AND WAS A PROGRAM
14 ADMINISTRATOR FOR A PARTIAL HOSPITAL PROGRAM IN THE BAY AREA FOR
15 A YEAR.

16 I THEN RETURNED TO SAN DIEGO AS CHIEF OF SOCIAL WORK
17 FOR THE CHILD AND ADOLESCENT PSYCHIATRIC HOSPITAL AT U.C.S.D.

18 FOLLOWING A YEAR THERE, I MOVED TO SCRIPPS MEMORIAL
19 HOSPITAL, WHERE I WAS THE DIRECTOR OF THE BEHAVIORAL HEALTHCARE
20 CENTER, WHICH INVOLVED ADMINISTERING A 30 BED LPS PSYCHIATRIC
21 HOSPITAL, CO-DIRECTING THE MACDONALD RECOVERY CENTER,
22 SUPERVISING A CONTRACT FOR A PARTIAL HOSPITAL PROGRAM AND
23 DESIGNING AND IMPLEMENTING AN ADOLESCENT DRUG TREATMENT PROGRAM,
24 OUTPATIENT DRUG TREATMENT PROGRAM.

25 I LEFT THAT POSITION, JOINED COUNTY MENTAL HEALTH

1 WORKING IN THE JAILS SINCE 1996 AS A SENIOR PSYCHIATRIC SOCIAL
2 WORKER. AND IN 1999 WHEN THE SHERIFF'S DEPARTMENT TOOK OVER
3 RESPONSIBILITY FOR THOSE MENTAL HEALTH PROGRAMS, CAME TO WORK
4 FOR THE SHERIFF'S DEPARTMENT, WAS PROMOTED TO CHIEF SHORTLY
5 THEREAFTER.

6 DURING THAT TIME, I WAS A CLINICAL DIRECTOR FOR THE
7 MENTALLY ILL OFFENDER CRIME REDUCTION INITIALLY AND THEN PROGRAM
8 DIRECTOR FOR THAT, AND THEN LATER WROTE A GRANT FOR A FEDERAL
9 LIFE SKILLS PROGRAM IN THE JAIL.

10 FOR THREE YEARS I SUPERVISED THE CORRECTIONAL
11 COUNSELING PROGRAMS IN THE SEVEN JAIL SYSTEM, AS WELL AS THE
12 MENTAL HEALTH PROGRAMS.

13 AND THEN IN 2006 RETURNED TO THE MEDICAL SERVICES
14 DEPARTMENT, WHERE I WROTE ANOTHER GRANT FOR A MENTALLY ILL
15 OFFENDER CRIME REDUCTION PROGRAM, WHICH WE WERE AWARDED.
16 PARTICIPATED ON AN EXECUTIVE STEERING COMMITTEE TO DESIGN THE
17 SELECTION CRITERIA AND PARTICIPATED AS A MEMBER OF THE GRANT
18 READERS TO AWARD THE 21 WARDS THAT WERE AWARDED IN THAT YEAR,
19 AND PRESENTLY SERVE AS THE SUBJECT MATTER EXPERT AND STAFF
20 SUPPORT FOR SHERIFF COLANDER IN HIS ROLE AS A COMMISSIONER ON
21 THE OVERSIGHT AND ACCOUNTABILITY COMMISSION OVERSEEING THE
22 IMPLEMENTATION OF THE MENTAL HEALTH SERVICES ACT.

23 Q. THANK YOU.

24 I WOULD LIKE TO TALK ABOUT SOME OF THE ALTERNATIVES
25 YOU REFERRED TO IN YOUR DECLARATION. THE FIRST THAT YOU MENTION

1 IS IN PARAGRAPHS 15 AND 16, THE IMPORTANCE OF GETTING BENEFITS
2 IN PLACE PRIOR TO RELEASE FROM JAIL OR A PRISON FACILITY. WHAT
3 DOES THAT ENTAIL EXACTLY?

4 **A.** IT ENTAILS THE ABILITY TO GET PEOPLE WHO MEET THE CRITERIA,
5 THE ELIGIBILITY CRITERIA FOR SOCIAL SECURITY BENEFITS, SOCIAL
6 SECURITY DISABILITY BENEFITS AND SO ON, SO THEY CAN OBTAIN
7 FUNDING TO MAINTAIN BASICALLY THEIR ACTIVITIES OF DAILY LIVING,
8 FOOD, CLOTHING AND SHELTER ONCE THEY ARE RELEASED FROM CUSTODY.

9 IN ADDITION, ONE OF THE OTHER MAJOR CHALLENGES IS
10 GETTING IDENTIFICATION. IT'S VERY, VERY DIFFICULT AND ALMOST
11 IMPOSSIBLE FOR A RELEASED INMATE TO FIND LODGING OR DO ANY OTHER
12 KIND OF BUSINESS WITHOUT A VALID IDENTIFICATION.

13 BECAUSE THE FEDERAL SOCIAL SECURITY ADMINISTRATION
14 DOESN'T ACCEPT APPLICATIONS, EXCEPT VERY PRELIMINARY
15 APPLICATIONS WHEN SOMEONE IS IN JAIL, AND BECAUSE OF THE SHORT
16 DURATION OF TIME THAT PEOPLE ARE IN JAIL, WE ARE NOT SUCCESSFUL
17 AT ALL IN GETTING BENEFITS IN PLACE PRIOR TO SOMEONE LEAVING
18 JAIL.

19 SIMILARLY WITH THE DEPARTMENT OF MOTOR VEHICLES.
20 THEY HAVE DECLINED TO ACCEPT ANY VERIFICATION OF IDENTITY FROM
21 THE SHERIFF'S DEPARTMENT AND, THEREFORE, PEOPLE WHO LOSE THEIR
22 IDENTIFICATION -- WHICH HAPPENS FAIRLY FREQUENTLY WITH SERIOUSLY
23 AND PERSISTENTLY MENTALLY ILL WHO ARE HOMELESS, THEY LOSE THEIR
24 BELONGINGS -- THEN THEY, AGAIN, ARE OUT ON THE STREET WITHOUT
25 THE ABILITY TO BASICALLY DO BASIC DAILY LIVING BUSINESS.

1 Q. NOW, ARE YOU FAMILIAR WITH THE PROGRAMS THAT PROVIDE FOR
2 THAT VERY KIND OF SERVICE IN STATE PRISONS?

3 A. I HAVE SEEN SOME PILOT PROGRAMS. I WITNESSED A PILOT
4 PROGRAM AT THE DONOVAN PRISON A FEW YEARS AGO IN SAN DIEGO.
5 AND, OF COURSE, WE ARE DOING THAT WITH THE CENTRAL 618 REENTRY
6 PROGRAM THAT'S PART OF THE INITIATIVE IN SAN DIEGO COUNTY.

7 Q. IF IT'S NOT BEEN SUCCESSFUL FOR YOU AT THE COUNTY LEVEL, WHY
8 WOULD IT BE SUCCESSFUL FOR YOU AT THE STATE PRISON LEVEL?

9 A. WELL, THE MAIN ISSUE IS GETTING ENOUGH RECORDS AND HAVING
10 ENOUGH TIME TO TRANSACT BUSINESS WITH THOSE INSTITUTIONS.

11 AND IN ADDITION TO THAT, PROGRAMS SUCH AS THE ONES
12 THAT I WITNESSED AT THE STATE PRISON AND OUR 618 PROGRAM HAS
13 FUNDING AVAILABLE TO IT. SO THE FUNDS ARE NOT AVAILABLE IN A
14 LOCAL JAIL SYSTEM TO OBTAIN BIRTH CERTIFICATES. AND THE
15 DURATION OF TIME IS SO SHORT, THAT VERY SELDOM IS THERE TIME TO
16 CONTACT OTHER STATES, OBTAIN BIRTH RECORDS AND SO ON.

17 Q. TO YOUR KNOWLEDGE, WOULD THERE HAVE TO BE SIGNIFICANT
18 CHANGES IN INFRASTRUCTURE INFORMATION GATHERING TOOLS IN PRISON
19 TO IMPLEMENT A PROGRAM THAT COULD PROVIDE THAT SERVICE TO PRISON
20 INMATES LEAVING CUSTODY?

21 A. NOT TO MY KNOWLEDGE. I BELIEVE IT'S BEING DONE.

22 Q. AND YOU INDICATED YOU SAW THE PROGRAM IN R.J. DONOVAN. IN
23 THE PRISONS DO THEY HAVE IMMEDIATE ACCESS TO THE SOCIAL SECURITY
24 ADMINISTRATION, FOR EXAMPLE?

25 A. WHAT I OBSERVED SEVERAL YEARS AGO AT DONOVAN WAS A PROJECT

1 THAT WAS ESTABLISHED BETWEEN SAN DIEGO STATE UNIVERSITY AND
2 DONOVAN STATE PRISON, AND THEY HAD INTERNET ACCESS TO OBTAIN
3 RECORDS AND THAT SEEMED TO BE WORKING QUITE WELL.

4 Q. AND YOU SAID THAT THE BENEFIT OF DOING THAT IS YOU CAN --
5 YOU CAN GET SOMEBODY IMMEDIATELY ONTO BENEFITS WHEN THEY COME
6 OUT, IF THEY ARE ELIGIBLE?

7 A. BENEFITS ARE IN PLACE. I WOULD NEVER USE THE WORD
8 "IMMEDIATELY" WITH FEDERAL GOVERNMENT, AND SOCIAL SECURITY IN
9 PARTICULAR. BUT BENEFITS CAN BE ARRANGED.

10 THERE'S TIME WHEN PEOPLE ARE IN PRISON TO GATHER THE
11 FAIRLY EXTENSIVE DOCUMENTATION THAT'S REQUIRED TO PROVE THE
12 PERSON MEETS THOSE DISABILITY CRITERIA.

13 Q. AND THAT ALLOWS THEM TO GAIN HOUSING AND OTHER SERVICES MORE
14 SPEEDILY AFTER THEY --

15 A. YEAH, THEY ARE FUNDED. THEY HAVE THE ABILITY TO RENT
16 MOTELS, OR BOARD AND CARES, OR WHATEVER OTHER SERVICES THEY
17 NEED.

18 Q. ALL RIGHT. THANK YOU.

19 NOW, YOU MENTIONED THE MENTALLY ILL OFFENDER
20 PROGRAMS. COULD YOU BRIEFLY DESCRIBE THE MENTALLY ILL OFFENDER
21 PROGRAMS THAT YOU HAVE IMPLEMENTED IN SAN DIEGO COUNTY?

22 A. MENTALLY ILL OFFENDER CRIME REDUCTION PROGRAM WAS A PROGRAM
23 FUNDED BY THE STATE LEGISLATURE AND IT WAS -- IN SAN DIEGO IT
24 WAS A \$5 MILLION PROGRAM. I BELIEVE THERE WAS \$45 MILLION FOR
25 THE INITIAL PROGRAMS STATE WIDE.

1 THE INITIAL PROGRAMS BEGAN IN ABOUT 1999. THE
2 PROGRAM WAS FUNDED FROM 1998 THROUGH 2003. AND IT WAS DESIGNED
3 TO REDUCE CRIME, COST AND CROWDING IN COUNTY JAILS ASSOCIATED
4 WITH THE INCARCERATION OF MENTALLY ILL PEOPLE.

5 SO THERE WERE ABOUT, AS I SAID, 25 PROGRAMS FUNDED IN
6 CALIFORNIA INITIALLY. THERE WERE A VARIETY OF MODELS. THE MOST
7 COMMON ELEMENT WAS THE USE OF WHAT'S CALLED ASSERTIVE COMMUNITY
8 TREATMENT PROGRAMS. ABOUT HALF OF THEM, AS I RECALL, ALSO
9 IMPLEMENTED MENTAL HEALTH COURTS AS A PART OF THAT PROGRAM.

10 AND THIS WAS AN EXPERIMENTAL DESIGN. THE STATE
11 REQUIRED RESEARCH TO BE DONE. AND SO THERE WERE EXPERIMENTAL
12 AND CONTROL GROUPS IN ALL OF THE PROGRAMS, AND THEN THE STATE
13 BOARD OF CORRECTIONS THAT WAS ADMINISTERING THIS ALSO HAD THEIR
14 RESEARCH DEPARTMENT COMPILE AND COMBINE ALL OF THE RESEARCH THAT
15 WAS DONE IN THE 25 PROGRAMS TO PRODUCE A REPORT TO THE
16 LEGISLATURE.

17 Q. THE PROGRAM THAT YOU IMPLEMENTED IN SAN DIEGO COUNTY WAS
18 CALLED CONNECTIONS?

19 A. CORRECT.

20 Q. COULD YOU DESCRIBE FOR THE COURT KIND OF HOW THE PROGRAM
21 WORKED?

22 A. THE PROGRAM WORKED IN THAT WE IDENTIFIED PEOPLE WHO MET THE
23 PROGRAM CRITERIA WHILE THEY WERE IN CUSTODY. THAT WAS A
24 REQUIREMENT OF ALL OF THE PROGRAMS. IT HAD TO BE FOR PEOPLE WHO
25 ARE IN COUNTY JAILS.

1 SO OUR PROGRAM ELIGIBILITY CRITERIA WERE THEY HAD TO
2 BE IN JAIL. THE PERSON HAD TO HAVE COMMITTED A FELONY CRIME
3 AND, THEREFORE, BE ON FORMAL PROBATION. THEY HAD TO HAVE AXIS 1
4 DIAGNOSIS, A DSM MANUAL, WHICH MEANS THEY HAVE BEEN DIAGNOSED
5 WITH A SIGNIFICANT SERIOUS MENTAL ILLNESS, AND THEY HAD TO HAVE
6 WHAT'S CALLED A GAF SCORE, GLOBAL ASSESSMENT OF FUNCTIONING
7 SCORE OF 50 OR LESS, WHICH MEANS A PERSON'S DAILY FUNCTIONING IS
8 SEVERELY IMPAIRED.

9 **Q.** SO YOU ARE TALKING ABOUT SEVERAL MENTALLY ILL PEOPLE?

10 **A.** SEVERELY MENTALLY ILL, YEAH.

11 SO THE PROGRAM WOULD ENGAGE WITH THOSE PEOPLE WHILE
12 THEY WERE IN CUSTODY. IT WAS A TERM ON CONDITION OF THEIR
13 PROBATION THAT THEY WERE ASSIGNED TO A TEAM. THE TEAMS WERE
14 COMPRISED OF A SOCIAL WORKER THAT WORKED FOR OUR DEPARTMENT, A
15 DEPUTY PROBATION OFFICER AND A CORRECTIONAL DEPUTY PROBATION
16 OFFICER. AND THEY USED WHAT IS CALLED ASSERTIVE COMMUNITY
17 TREATMENT PRINCIPLES. IT WASN'T A FULL FIDELITY -- THEY CALL IT
18 ACT, A-C-T, PROGRAM, BUT IT WAS BASED ON THE PRINCIPLES OF
19 ASSERTIVE COMMUNITY TREATMENT, WHICH MEANS ESSENTIALLY PROVIDING
20 THE PERSON WHATEVER THEY NEED TO FUNCTION WELL.

21 SO, FOR EXAMPLE, SOMEONE MIGHT BE ARRESTED IN THE
22 SUMMERTIME AND BE IN A T-SHIRT AND SHORTS AND GET OUT IN JANUARY
23 AND NEED CLOTHING. SO THEY WOULD BE FURNISHED CLOTHING.

24 WE HAD FLEXIBLE FUNDING TO GET THEM IMMEDIATE HOUSING
25 WHILE WE WOULD THEN APPLY FOR SSI AND OTHER BENEFITS AND ONCE

1 THOSE WERE IN PLACE, THEN WE DIDN'T USE THE WRAP-AROUND FUNDING.
2 BUT BASICALLY, THESE TEAMS SUPERVISED AND
3 SUCCESSFULLY BROKERED THESE INDIVIDUALS IN TO COMMUNITY'S MENTAL
4 HEALTH AND OTHER PSYCHOSOCIAL SUPPORT SERVICES IN THE COMMUNITY
5 SO THAT THEY HAD THE TREATMENT.

6 THE TEAMS ALSO WERE SUPPLEMENTED BY PSYCHIATRISTS AND
7 EMPLOYMENT SPECIALISTS.

8 SO THERE WAS A HEAVY EMPHASIS ON PSYCHOSOCIAL
9 REHABILITATION AND GETTING PEOPLE BACK. IF THEY WERE AT ALL
10 ABLE TO WORK, GETTING THEM EMPLOYED AT LEAST ON A PART-TIME
11 BASIS.

12 Q. SO THESE FOLKS THAT WERE ELIGIBLE IN THE PROGRAM, YOU SAID
13 THEY WERE ALL ON FORMAL PROBATION. SO WAS THIS A CONDITION OF
14 THEIR PROBATION?

15 A. YES, IT WAS A CONDITION OF THEIR PROBATION. THEY WERE
16 ASSIGNED TO A PROBATION OFFICER WHO WAS PART OF THE CONNECTIONS
17 PROGRAM.

18 WE HAD FIVE SERVICE TEAMS, EACH SERVING 30 CLIENTS.
19 AND SO THE PROBATION OFFICER HAD CASE CARRYING RESPONSIBILITY
20 FOR THOSE 30 INDIVIDUALS THAT WERE ON HIS PARTICULAR TEAM.

21 Q. OKAY. AND WHAT KIND OF OUTCOMES DID YOU HAVE? YOU SAID YOU
22 HAD -- IT WAS A STUDY. SO I ASSUME THERE WAS A GROUP THAT
23 DIDN'T GET THE TREATMENT AND THERE WAS A GROUP THAT DID?

24 A. THAT'S CORRECT.

25 Q. WHAT HAPPENED?

1 **A.** WELL, THE TREATMENT-AS-USUAL GROUP WERE JUST REFERRED OUT
2 INTO COMMUNITY RESOURCES AS A NORMAL IN MENTAL HEALTH SERVICES
3 IN THE JAILS. THE OTHERS GOT THE HIGHER INTENSITY AND CLOSER
4 SUPERVISION.

5 PART OF THE STUDY WAS TO DEMONSTRATE -- AND THE
6 RESEARCH WAS DONE BY THE SAN DIEGO ASSOCIATION OF GOVERNMENTS
7 CRIMINAL JUSTICE RESEARCH DEPARTMENT. PART OF THE STUDY WAS TO
8 DEMONSTRATE THAT THE TWO POPULATIONS WERE ALIKE, AND IT DIDN'T
9 SHOW THAT THEY WERE VIRTUALLY ALIKE IN TERMS OF AGE, GENDER,
10 TYPE OF CRIME COMMITTED, SO ON AND SO FORTH.

11 WHAT WE FOUND WAS THAT THE OUTCOMES ACROSS THE BOARD
12 IN ALL OF THE --

13 **JUDGE KARLTON:** WAIT, WAIT. LET'S GO BACK.

14 PART OF THE STUDY WAS TO DEMONSTRATE, AND THE
15 RESEARCH WAS DONE BY THE SAN DIEGO, ET CETERA.

16 PART OF THE STUDY WAS TO DEMONSTRATE THAT THE TWO
17 POPULATIONS WERE ALIKE AND IT DIDN'T SHOW -- AND IT DIDN'T SHOW
18 THEY WERE VIRTUALLY ALIKE. YOU ACTUALLY SAID IT DID SHOW.

19 **THE WITNESS:** YES, I MAY HAVE MISSPOKE. THANK YOU.

20 **JUDGE KARLTON:** I DON'T THINK YOU DID. I THINK BOTH
21 THE REPORTER AND I MISCAUGHT YOU.

22 **BY MS. BARLOW:**

23 **Q.** SO THE POPULATIONS WERE ALIKE.

24 **A.** RIGHT. SO THAT WAS ONE OF THE THINGS WE WANTED TO
25 DEMONSTRATE TO SHOW THAT THE -- THAT THE PROGRAM COULD ACCOUNT

1 FOR THE DIFFERENCES IN OUTCOMES.

2 THERE WERE A LOT OF WHAT WERE CALLED COMMON DATA
3 ELEMENTS. AND I DON'T REMEMBER THEM ALL, BUT IN GENERAL WHAT WE
4 SAW WAS THAT PEOPLE WERE MORE COMPLIANT WITH OUTPATIENT
5 TREATMENT AND OTHER TREATMENT.

6 IN SOME CASES THEY HAD TO GO INTO CLOSED, LOCKED
7 PSYCHOSOCIAL REHABILITATION MENTAL HEALTH PROGRAMS. FOR THE
8 MOST PART THEY WERE ENGAGED IN COMMUNITY MENTAL HEALTH PROGRAMS.

9 THEY HAD GREATER SATISFACTION, THE CLIENTS. AND THE
10 REASON THAT'S IMPORTANT IS THAT THE MORE SATISFIED A PERSON IS
11 WITH THE TREATMENT THEY ARE RECEIVING, THE MORE LIKELY IT IS
12 THAT THEY ARE GOING TO CONTINUE THAT TREATMENT AND REMAIN
13 STABLE.

14 THERE WERE A LOWER NUMBER OF ARRESTS IN THE
15 EXPERIMENTAL GROUP AND WHEN A PERSON WAS ARRESTED, THEY SPENT
16 SIGNIFICANTLY LESS TIME IN CUSTODY.

17 Q. DID THEY ALSO GET ARRESTED FOR LESS SERIOUS CRIMES?

18 A. I BELIEVE THAT'S CORRECT. I DON'T REMEMBER EXACTLY, BUT I
19 -- I BELIEVE IT WAS A LOWER LEVEL OF OFFENSE AND LESS TIME IN
20 CUSTODY, IF MEMORY SERVES.

21 Q. YOU MENTIONED THAT THERE WAS A PAROLE -- PROBATION OFFICER
22 CARRYING THE CASELOAD OF 30 OF THESE FOLKS.

23 WAS THERE ANYTHING DIFFERENT ABOUT THE PROBATION
24 OFFICER'S ROLE IN THIS GROUP THAN THERE IS TYPICALLY?

25 A. YEAH. IT WAS A SIGNIFICANTLY DIFFERENT ROLE. AND ONE OF

1 THE PROGRAM DESIGN ELEMENTS WAS EXPRESSLY STATED IN BOTH OF OUR
2 GRANTS TO BEGIN TO TRANSFORM THE ROLE OF THE PROBATION OFFICER,
3 SO THAT HIS ROLE RATHER THAN BEING WHAT THEY OFTEN WOULD EXPRESS
4 AS SIMPLY BEING THE EYES AND EARS OF THE COURT, MEANING THEY
5 WOULD OBSERVE THEIR PROBATIONERS AND REPORT TO THE COURT ANY
6 PROBATION VIOLATIONS, WHICH WOULD THEN RESULT IN FURTHER
7 SANCTIONS.

8 THE DESIGN OF THE CONNECTIONS PROGRAM WAS TO HAVE AN
9 INTEGRATED TEAM AND BEGIN TO TRANSFORM THE ROLE OF THE PROBATION
10 OFFICER INTO ONE WHO WAS HELPFUL AND, IN PART, RESPONSIBLE FOR
11 ENSURING THE PROBATIONER BEING ABLE TO SUCCESSFULLY COMPLY WITH
12 THE TERMS OF PROBATION.

13 SO IT WAS KIND OF A CULTURE SHIFT PROFESSIONALLY AND
14 IT WAS TRUE IN MOST OF THE PROGRAMS THROUGHOUT THE STATE THAT
15 HAD PROBATION INVOLVEMENT.

16 Q. SO IF THIS TYPE OF PROGRAM WERE TO BE EXPANDED TO ALLOW FOR
17 THE SERIOUSLY MENTALLY ILL THAT IT WORKS WITH TO REDUCE THEIR
18 RATE OF RECIDIVISM AND REDUCE THEIR NON-COMPLIANCE WITH THEIR
19 PROGRAM, WOULD YOU NEED MORE PROBATION OFFICERS THAN WHAT WE
20 TYPICALLY HAVE NOW?

21 A. YES. ONE OF THE THINGS THAT HAPPENED IN SAN DIEGO IS THAT
22 BECAUSE THE FUNDING WAS LOST FROM THE STATE, THE SHERIFF'S
23 DEPARTMENT DIDN'T HAVE THE BUDGET TO CONTINUE THE MENTAL HEALTH
24 WORKERS AND THE PROGRAM.

25 HOWEVER, THE PROBATION DEPARTMENT WAS SO POSITIVELY

1 IMPRESSED WITH THE OUTCOME OF THIS, THAT THEY DID SUSTAIN WHAT
2 THEY CAME TO CALL THE MENTALLY ILL OFFENDER UNIT. AND THESE ARE
3 PROBATION OFFICERS WHO WE TRAINED IN THE CONNECTIONS PROGRAM WHO
4 REALLY SUCCESSFULLY TRANSFORMED THAT ROLE. AND THEY CARRY A
5 SMALLER CASELOAD. SO I BELIEVE THERE ARE THREE CASE LOADS,
6 CARRYING ONLY 40 EACH.

7 **Q.** FOR THE MENTALLY ILL PATIENTS?

8 **A.** FOR THE MENTALLY ILL OFFENDERS. THOSE WERE ONLY THE ONES
9 WHO GET INTO THE PROGRAM. THEY HAVE MANY MORE MENTALLY ILL
10 OFFENDERS IN THE PROBATION DEPARTMENT THAN THE SMALL UNIT CAN
11 ACCOMMODATE.

12 **Q.** NOW, YOU --

13 **JUDGE KARLTON:** WHEN WAS THE PROGRAM FULLY FUNDED AND
14 WHEN DID YOU LOSE THE FUNDING FROM THE STATE, IF YOU CAN RECALL?

15 **THE WITNESS:** FROM 1998 TO 2003 IT WAS FULLY FUNDED,
16 AND THEN THE SECOND GRANT WAS FUNDED IN 2007.

17 **JUDGE KARLTON:** AND WHEN WAS THE BALL LOST?

18 **THE WITNESS:** IN DECEMBER OF 2007 WE CLOSED THE
19 SECOND PROGRAM, BECAUSE THE STATE FUNDING WAS WITHDRAWN.

20 **BY MS. BARLOW:**

21 **Q.** WHEN YOU CLOSED THAT PROGRAM, WHERE DID THE PARTICIPANTS GO?

22 **A.** THE PARTICIPANTS WENT INTO A PROGRAM CALLED CENTER STAR ACT,
23 OR ASSERTIVE COMMUNITY TREATMENT. AND THIS IS ONE OF THE NEW
24 PROGRAMS THAT IS FUNDED UNDER THE MENTAL HEALTH SERVICES ACT.
25 IT'S A CRIMINAL JUSTICE PROGRAM.

1 IT'S LIMITED TO ONLY 111 CLIENTS AND IT'S WHAT'S
2 CALLED A FULL-SERVICE PARTNERSHIP. SO IT IS A HIGH FIDELITY ACT
3 OR ASSERTIVE COMMUNITY TREATMENT PROGRAM THAT IS FUNDED THROUGH
4 THE MENTAL HEALTH SERVICES ACT.

5 THEY DO HAVE A PROBATION OFFICER ASSIGNED TO THAT
6 PROGRAM, BUT HE IS NOT A CASE CARRYING OFFICER. HE IS MORE OR
7 LESS A LIAISON TO THE PROBATION DEPARTMENT FOR A SUBSET OF
8 CLIENTS IN THAT PROGRAM WHO ARE ON PROBATION.

9 THE DIFFERENCE BEING THAT NOT EVERYBODY IN THE NEW
10 CENTER STAR ACT PROGRAM IS ON PROBATION, ONLY SOME ARE. AND
11 IT'S NOT FOR PEOPLE WHO ARE IN JAIL. IT'S A MORE BROADLY
12 DEFINED TARGET POPULATION, WHICH IS PEOPLE WHO ARE EITHER
13 INVOLVED IN THE CRIMINAL JUSTICE SYSTEM OR WHO WERE AT RISK FOR
14 BECOMING INVOLVED IN THE CRIMINAL JUSTICE SYSTEM.

15 Q. AND IS THAT PROGRAM FULL?

16 A. YES. IT WAS FULL ALMOST IMMEDIATELY.

17 Q. OKAY. NOW, YOU INDICATE IN YOUR REPORT THAT THE NUMBER OF
18 MENTALLY ILL IN LOCAL AND STATE PRISON OR JAIL FACILITIES IS
19 INCREASING?

20 JUDGE KARLTON: IS IT PRISON OR JAIL, WHICH?

21 MS. BARLOW: BOTH.

22 JUDGE KARLTON: BOTH.

23 BY MS. BARLOW:

24 Q. DO YOU HAVE AN OPINION AS TO WHY.?

25 JUDGE REINHARDT: COULD I HEAR THE QUESTION AGAIN?

1 I'M SORRY.

2 **MS. BARLOW:** CERTAINLY. THE WITNESS'S EXPERT
3 DECLARATION INDICATES THAT BOTH PRISONS AND JAILS ARE INCREASING
4 IN THE NUMBER OF MENTALLY ILL WHO ARE IN THOSE FACILITIES. AND
5 I'M JUST ASKING HIM WHY THAT -- WHY THAT'S HAPPENING IN HIS
6 OPINION.

7 **JUDGE REINHARDT:** THANK YOU.

8 **A.** BROADLY IT'S CALLED TRANSINSTITUTIONALIZATION. AND WHAT
9 THAT MEANS IS THAT WITH THE DECLINE IN HOSPITAL BEDS FOR
10 MENTALLY ILL PEOPLE, THEY ARE GETTING FEWER SERVICES IN THE
11 COMMUNITY AND AS A RESULT, THEIR FUNCTIONING DECLINES TO WHERE
12 MANY OF THEM COMMIT CRIMES. AND THAT'S INCREASED PRISONS AND
13 JAIL POPULATIONS THROUGHOUT THE UNITED STATES, NOT JUST IN
14 CALIFORNIA.

15 **BY MS. BARLOW:**

16 **Q.** ALL RIGHT. NOW, MR. CONKLIN, IN YOUR OPINION, IF WE SIMPLY
17 LET OUT MENTALLY ILL INMATES FROM PRISON, WHICH WOULD BE PART OF
18 THE POPULATION PLAINTIFFS PROPOSE TO EITHER RELEASE OR DIVERT,
19 AND SIMPLY ASK THEM OR EXPECT THEM TO OBTAIN MENTAL HEALTHCARE
20 TREATMENT ON THEIR OWN, ARE THEY GOING TO DO THAT?

21 **A.** MY IMPRESSION WOULD BE NO, AND MY OPINION WOULD BE NO BASED
22 ON MY EXPERIENCE. I THINK THERE IS A QUALITATIVE DIFFERENCE
23 BETWEEN THE PEOPLE -- THE POPULATION OF MENTALLY ILL PEOPLE WHO
24 ARE LIKELY TO AND ABLE TO AVAIL THEMSELVES OF PUBLIC MENTAL
25 HEALTH SERVICES.

1 THOSE ARE PEOPLE WHO, IN MY EXPERIENCE, ARE NOT
2 NEARLY AS SEVERELY DISABLED AS THE MENTALLY ILL POPULATION WHO
3 RUNS AFOUL OF THE CRIMINAL JUSTICE SYSTEM AND ENDS UP IN EITHER
4 JAIL OR PRISON.

5 **JUDGE REINHARDT:** IS THAT WHAT'S HAPPENING NOW WHEN
6 PEOPLE ARE LET OUT OF PRISON?

7 **THE WITNESS:** I'M SORRY, YOUR HONOR. I DIDN'T HEAR
8 THAT.

9 **JUDGE REINHARDT:** IS THAT WHAT IS HAPPENING NOW WHEN
10 PEOPLE ARE LET OUT OF PRISON?

11 **THE WITNESS:** I CAN'T SPEAK FIRSTHAND TO PAROLEES OR
12 PEOPLE THAT ARE RELEASED FROM PRISON.

13 MY EXPERIENCE IS AT THE COUNTY JAIL LEVEL, AND WE SEE
14 A FAIR NUMBER OF WHAT WE TERM FREQUENT FLIERS, PEOPLE WHO ARE
15 RELEASED AND SOON BACK IN JAIL.

16 **JUDGE KARLTON:** BECAUSE OF MENTAL ILLNESS.

17 **THE WITNESS:** BECAUSE THEY COMMIT A CRIME, WHICH I
18 BELIEVE IS HIGHLY ASSOCIATED WITH THEIR MENTAL ILLNESS, AND
19 THEIR INABILITY TO FUNCTION, AND THEIR NON-COMPLIANCE WITH
20 MENTAL HEALTH CARE.

21 **BY MS. BARLOW:**

22 **Q.** SO IF MENTALLY ILL ARE SIMPLY LET OUT AND THEY ARE NOT GOING
23 TO SEEK CARE ON THEIR OWN, IS THIS GOING TO HAVE AN IMPACT ON
24 BOTH PUBLIC SAFETY AND ON THOSE MENTALLY ILL?

25 **JUDGE HENDERSON:** IS THAT A GIVEN, THAT THEY WON'T

1 SEEK HELP ON THEIR OWN?

2 MS. BARLOW: THE POPULATION THAT ENDS UP IN -- HE IS
3 SAYING --

4 JUDGE HENDERSON: OKAY.

5 MS. BARLOW: -- THAT POPULATION DOESN'T SEEK IT ON
6 THEIR OWN.

7 A. WOULD YOU RESTATE THE QUESTION, PLEASE?

8 BY MS. BARLOW:

9 Q. I CERTAINLY COULD.

10 IS THERE AN IMPACT TO BOTH PUBLIC SAFETY AND TO THE
11 MENTALLY ILL PEOPLE THEMSELVES FROM THEIR NON-PARTICIPATION IN
12 MENTAL HEALTH CARE TREATMENT?

13 A. YES. MY EXPERIENCE IS THAT THOSE PEOPLE HAVE VERY DIFFICULT
14 LIVES ON THE STREET. THEY ARE UNTREATED. THEY DO COMMIT
15 QUALITY OF LIFE CRIMES, YOU KNOW, LOW LEVEL FELONIES OR
16 MISDEMEANORS. SOMETIMES THEY ARE VICTIMS.

17 JUDGE REINHARDT: THAT'S WHAT I WAS ASKING YOU. IS
18 THAT WHAT HAPPENS NOW WITH PEOPLE WHO ARE LET OUT OF PRISON?

19 JUDGE KARLTON: HE DOESN'T KNOW ABOUT PRISON. HE
20 ONLY KNOWS ABOUT JAILS.

21 JUDGE REINHARDT: SO YOU DON'T KNOW WHAT WILL HAPPEN
22 WITH THE PEOPLE WHO ARE LET OUT OF PRISON IF THERE WERE MORE LET
23 OUT?

24 THE WITNESS: I WOULD FEEL FAIRLY COMFORTABLE
25 GENERALIZING MY EXPERIENCE IN A COUNTY JAIL ALSO TO THE PRISON,

1 AND THAT IS THAT IF A PERSON IS SEVERELY MENTALLY ILL, IS NOT
2 VERY FUNCTIONAL, THE PEOPLE THAT WE SEE IN THAT CONDITION THAT
3 LEAVE JAIL DON'T SEEK SERVICES AND FREQUENTLY END UP GETTING
4 REARRESTED.

5 AND I WOULD IMAGINE THE SAME COULD BE SAID OF THE
6 STATE PRISONERS. ALTHOUGH I DON'T DEAL WITH STATE PRISONERS, I
7 DEAL WITH COUNTY JAIL INMATES.

8 **JUDGE REINHARDT:** I'M TRYING TO SEE WHAT IS THE
9 DIFFERENCE IF PEOPLE ARE LET OUT FOUR MONTHS EARLIER OR FOUR
10 MONTHS LATER? YOU ARE STILL GOING TO HAVE THE IDENTICAL
11 PROBLEM, RIGHT?

12 **THE WITNESS:** I SUPPOSE ALL THINGS BEING EQUAL, IF --
13 IF THEY DIDN'T HAVE SUPPORT SERVICES AND TRANSITION, YEAH, THE
14 OCCURRENCE OF THEIR DETERIORATION WOULD PROBABLY BE SIMILAR.

15 **JUDGE KARLTON:** WE HAVE RECEIVED TESTIMONY THAT MANY
16 -- IT'S NOT CLEAR TO ME HOW MANY, BUT MANY OF THE SEVERELY
17 MENTALLY ILL FOLKS -- WHAT DO YOU CALL IT? NOT WITHDRAWN. THEY
18 WERE --

19 **JUDGE REINHARDT:** DECOMPENSATED?

20 **JUDGE KARLTON:** THEY WERE NOT OVERT. THEY WITHDREW.
21 THEY DIDN'T INVOLVE THEMSELVES IN SOCIETY THE WAY ORDINARY
22 PAROLEES WOULD. AND THAT THEY, IN EFFECT, BY VIRTUE OF THAT
23 CHARACTERISTIC MIGHT WELL NOT BE COMING INTO CONTACT WITH LAW
24 ENFORCEMENT AFTER THEY WERE RELEASED. IT WAS DESCRIBED AS
25 COUNTERINTUITIVE, BUT THAT WAS THE REALITY.

1 DO YOU HAVE A -- I UNDERSTAND YOU DON'T DO PRISONS,
2 BUT IN TERMS OF THE JAILS, DO YOU HAVE A RESPONSE TO THAT
3 CHARACTERIZATION?

4 **THE WITNESS:** CERTAINLY. WITHDRAWAL WOULD BE A
5 CLINICAL MANIFESTATION OF SEVERAL DIFFERENT TYPES OF MAJOR
6 MENTAL ILLNESS, AND I DON'T THINK THAT IN AND OF ITSELF, IN MY
7 VIEW, IS TERRIBLY SIGNIFICANT BECAUSE WHAT IT REPRESENTS IS IT
8 REPRESENTS A WORSENING OF A PERSON'S MENTAL HEALTH CONDITION.
9 AND, YOU KNOW, DEPENDING UPON THE DIAGNOSIS A PERSON CAN BECOME
10 WITHDRAWN AND THEN PSYCHOTIC AND THEN THE BEHAVIOR CHANGES.

11 SO CERTAINLY IF A PERSON IS IN THE PHASE OF THEIR
12 ILLNESS WHERE THEY ARE ISOLATING AND WITHDRAWING, THEY WOULD
13 PROBABLY SUFFER PERSONALLY, BUT THEY WOULDN'T BE ACTIVELY
14 SEEKING OUT OR COMMITTING CRIMES.

15 WE SEE IN OUR COMMUNITY POLICING OR PSYCHIATRIC
16 EMERGENCY RESPONSE TEAMS WHO RESPOND TO CITIZEN COMPLAINTS TO
17 INTERVENE WITH PEOPLE LIKE THAT WHO ARE ON THE STREET, WHO ARE
18 HOMELESS, WHO ARE WITHDRAWN, IN MANY CASES DELUSIONAL AND
19 REPRESENTING A CONCERN TO THE COMMUNITY, AND THEN THEY CALL THE
20 POLICE TO INTERVENE WITH THAT PERSON.

21 **BY MS. BARLOW:**

22 **Q.** THANK YOU.

23 MR. CONKLIN, ONE WITNESS TESTIFIED THAT IN THIS CASE
24 THAT SOME SEVERELY MENTALLY ILL PEOPLE COULD BE BETTER OFF ON
25 THE STREETS THAN IN PRISON; DO YOU AGREE WITH THAT?

1 **A.** NO, I DON'T AGREE WITH THAT AT ALL.

2 **Q.** WHY NOT?

3 **A.** BECAUSE THEIR QUALITY OF LIFE IS HORRIBLE ON THE STREETS.

4 THEY ARE VICTIMS OF CRIMES. THEY DON'T -- THEY DON'T HAVE THE

5 NORMAL SUPPORT AND LIVING ENVIRONMENT THAT THEY ARE ENTITLED TO

6 AS A CITIZEN. THEY DON'T RECEIVE THE CARE THAT THEY NEED.

7 YOU KNOW, MENTAL ILLNESS IS AN ILLNESS. IT'S LIKE

8 SAYING, YOU KNOW, WE JUST WON'T TREAT DIABETICS BECAUSE THEY

9 WILL BE FINE IF THEY DON'T GET THEIR INSULIN. IT'S A MEDICAL

10 CONDITION. THEY ARE CITIZENS OF OUR STATE AND THEY DESERVE

11 TREATMENT.

12 **JUDGE REINHARDT:** YOU KNOW, WE HAVE A LOT OF HOMELESS

13 PEOPLE EVERYWHERE. AT LEAST IN LOS ANGELES, WE HAVE A REALLY

14 HIGH NUMBER WHO ARE LIVING ON THE STREETS, WHO -- I THINK A

15 MAJORITY, IF NOT SUBSTANTIAL MAJORITY, ARE MENTALLY ILL.

16 WOULD YOU RECOMMEND THAT THEY BE PUT IN JAIL OR

17 PRISON RATHER THAN ALLOWED OUT BECAUSE THAT WOULD BE BETTER FOR

18 THEM?

19 **THE WITNESS:** NO. I THINK THAT THE ALTERNATIVE IS

20 EMBODIED IN THE MENTAL HEALTH SERVICES ACT, WHICH IS TRYING TO

21 -- AND, IN FACT, IS DEVELOPING PROGRAMS BASED ON WHAT WAS FOUND

22 WITH THE ASSERTIVE COMMUNITY TREATMENT PROGRAMS DEVELOPING WHAT

23 ARE CALLED FULL SERVICE PARTNERSHIPS WHERE HOUSING AND

24 WRAP-AROUND SERVICES AND PSYCHIATRIC CARE IS PROVIDED TO THEM.

25 **JUDGE REINHARDT:** ABSOLUTELY. I WISH WE COULD GET

1 THOSE PROGRAMS AND SERVICES FOR THE PEOPLE WHO ARE MENTALLY ILL
2 WHO ARE OUT ON THE STREETS NOW, BUT UNFORTUNATELY THEY ARE NOT
3 FORTHCOMING.

4 **THE WITNESS:** I THINK THEY ARE FORTHCOMING, WITH
5 RESPECT. I THINK THAT YOU SEE MORE OF THESE TYPES OF PROGRAMS
6 BEING DEVELOPED THROUGH THE MENTAL HEALTH SERVICES ACT.

7 I KNOW IN SAN DIEGO COUNTY WE ARE DEVELOPING PROGRAMS
8 THAT HAVE MORE OF A PARTNERSHIP BETWEEN OUR PUBLIC SAFETY GROUP,
9 OUR POLICE AGENCIES, OUR PROBATION DEPARTMENT, AND I THINK THAT
10 IS CERTAINLY ONE OF THE CHALLENGES AND OPPORTUNITIES.

11 BECAUSE WHAT WE FOUND WITH THE CONNECTIONS PROGRAM IS
12 WHEN YOU HAVE THE ACCOUNTABILITY AND THE AUTHORITY OF A
13 PROBATION OFFICER, YOU CAN INFLUENCE THAT PATIENT'S
14 PARTICIPATION IN MENTAL HEALTH CARE.

15 SO THAT'S ONE OF THE REASONS WHY WE HAVE RETAINED THE
16 MENTALLY ILL OFFENDER UNIT. YOU KNOW, THEY CAN'T MAKE SOMEBODY
17 TAKE MEDICATION AND COMPLY WITH MENTAL HEALTH TREATMENT, BUT
18 WITH THE SUPPORT AND THE ENCOURAGEMENT AND THE DIRECTION, THERE
19 IS A MUCH HIGHER COMPLIANCE.

20 YOU ALSO SEE THAT POSITIVE OUTCOME AND, IN FACT,
21 LOWER COSTS OVERALL ASSOCIATED WITH AREAS WHERE THEY HAVE MENTAL
22 HEALTH COURTS. THAT'S ANOTHER THING THAT WE ARE INVOLVED IN
23 PROPOSING TO OUR SUPERIOR COURT IN SAN DIEGO. WE ARE GOING TO
24 MAKE A PRESENTATION IN JANUARY PROPOSING THE IMPLEMENTATION OF A
25 MENTAL HEALTH COURT IN SAN DIEGO.

1 **JUDGE REINHARDT:** WOULDN'T THAT WORK JUST AS WELL FOR
2 PEOPLE COMING OUT OF PRISON?

3 **THE WITNESS:** THE WAY MENTAL HEALTH COURTS ARE
4 DESIGNED, THEY ARE PREDOMINANTLY COMMUNITY COURTS FOR PEOPLE WHO
5 ARE COMMITTING CRIMES AT THE LOCAL LEVEL. THE HIGHER LEVEL
6 FELONIES AND VIOLENT CRIMES TYPICALLY ARE NOT ACCEPTED BY MENTAL
7 HEALTH COURTS.

8 **JUDGE REINHARDT:** EVEN WHEN THEY COME OUT OF PRISON?

9 **THE WITNESS:** YES. THEY -- THEY -- THEY ENCOUNTER
10 PEOPLE AT THE BEGINNING OF THEIR CRIMINAL ACT RATHER THAN WHEN
11 THEY ARE REENTERING COMMUNITY FROM PRISON. THAT'S HOW THE
12 MENTAL HEALTH COURTS HAVE BEEN DESIGNED.

13 **JUDGE REINHARDT:** WELL, SHOULDN'T THEY BE CHANGED SO
14 THAT THEY WOULD PROVIDE THESE SERVICES TO PEOPLE COMING OUT OF
15 PRISON?

16 **THE WITNESS:** THAT WOULD PROBABLY BE A GOOD IDEA. I
17 HAVE BEEN WORKING SINCE 2004 JUST TO GET ONE STARTED TO CATCH
18 THEM ON THE WAY IN.

19 **BY MS. BARLOW:**

20 **Q.** ALL RIGHT. JUST BRIEFLY, THE MENTAL HEALTH SERVICES ACT
21 THAT YOU MENTIONED, DOES THAT PROVIDE SERVICES TO PAROLEES?

22 **A.** NO. PAROLEES ARE NOT ELIGIBLE FOR PROGRAMS FUNDED UNDER THE
23 MENTAL HEALTH SERVICES ACT.

24 **Q.** BUT YOU ALSO MENTIONED THAT YOU WERE IMPLEMENTING SOME
25 PROGRAMS UNDER THAT ACT, PARTICULARLY IN SAN DIEGO COUNTY?

1 A. I'M SORRY, MISS BARLOW. I COULDN'T HEAR THAT.

2 Q. YOU MENTIONED THERE WERE PROGRAMS BEING IMPLEMENTED AND, IN
3 FACT, THE OAC, WHICH IS THE COMMISSION THAT OVERSEES THE
4 IMPLEMENTATION OF THE MENTAL HEALTH SERVICES ACT, CORRECT?

5 A. YES.

6 Q. HAVE THEY JUST TAKEN STEPS TO DEVELOP PROGRAMS SPECIFICALLY
7 FOR PEOPLE WITH CO-OCCURRING DISORDERS?

8 A. THAT'S CORRECT. THE OVERSIGHT AND ACCOUNTABILITY COMMISSION
9 FUNCTIONS BY ESTABLISHING PARTICULAR WORK GROUPS UNDER THE
10 LEADERSHIP OF -- OR THE CHAIRMANSHIP, RATHER, OF ONE OR MORE OF
11 THE COMMISSIONERS.

12 AND COMMISSIONERS PATING AND GOULD CO-CHAired A WORK
13 GROUP ON CO-OCCURRING DISORDERS. WHAT THEY DID ABOUT OVER 18
14 MONTHS WAS TO INTERVIEW SUBJECT MATTER EXPERTS AND SURVEY THE
15 LITERATURE AND SO ON. AND THEY RECOMMENDED LAST MONTH TO THE
16 OVERSIGHT AND ACCOUNTABILITY COMMISSION THE ADOPTION OF THEIR
17 REPORT AND THE COMMISSION DID UNANIMOUSLY ACCEPT THOSE
18 RECOMMENDATIONS.

19 AND WHAT IT ESSENTIALLY ADDRESSED IS THE FACT THAT IN
20 CALIFORNIA THE CRIMINAL JUSTICE SYSTEM, THE ALCOHOL AND DRUG
21 SYSTEM, THE MENTAL HEALTH SYSTEM ARE NOT INTEGRATED IN SUCH A
22 WAY THAT THEY CAN EFFECTIVELY INTERVENE WITH PEOPLE WITH
23 CO-OCCURRING DISORDERS.

24 AND THE -- THE COIN OF THE REALM, IF YOU WILL, IS
25 THAT CO-OCCURRING DISORDERS, MEANING A SIGNIFICANT SUBSTANCE

1 ABUSE PROBLEM AND A SERIOUS MENTAL ILLNESS, ARE TO BE THE
2 EXPECTATION RATHER THAN THE EXCEPTION BECAUSE IT IS SO
3 PREVALENT.

4 **Q.** AND SO --

5 **A.** WHAT --

6 **Q.** I'M SORRY.

7 **A.** EXCUSE ME. SO WHAT WILL HAPPEN NEXT, SINCE THE COMMISSION
8 ADOPTED THAT, THEN COMMISSIONER PATING WILL CONVENE HIS NEW
9 SERVICE WORK GROUP, WHICH WILL DIRECT COUNTIES TO DEVELOP THESE
10 INTEGRATED PROGRAMS AS A PART OF THE PREVENTION AND EARLY
11 INTERVENTION PHASE OF THE PROGRAMS THEY DEVELOP FUNDED BY THE
12 MENTAL HEALTH SERVICES ACT.

13 **JUDGE KARLTON:** AND, AGAIN, THIS IS NOT RELEVANT TO
14 PAROLEES.

15 **THE WITNESS:** THAT'S CORRECT.

16 **JUDGE KARLTON:** CAN I ASK YOU: IS IT RELEVANT TO
17 PEOPLE WHO HAVE BEEN ARRESTED FOR FELONIES, TO DIVERT THEM FROM
18 THE CRIMINAL JUSTICE SYSTEM OR IS THAT -- THE FELONY SIMPLY
19 OUTSIDE OF THE PROGRAM?

20 **THE WITNESS:** NO. IT WOULD BE INCLUSIVE OF SOME
21 FELONIES, PROBABLY. AND THAT WOULD REALLY BE DEPENDING UPON --
22 EXCUSE ME, DEPENDENT UPON THE LOCAL COMMUNITY.

23 DIFFERENT COMMUNITIES HAVE DIFFERENT LEVELS OF
24 TOLERANCE FOR WHAT LEVEL OF CRIME THEY WILL ACCEPT IN THESE
25 DIVERSION PROGRAMS.

1 **BY MS. BARLOW:**

2 **Q.** AS A RESULT OF THE COMMISSION'S ACTION, COUNTIES ARE GOING
3 TO BE DIRECTED TO CREATE PROGRAMS TO DEAL WITH CO-OCCURRING
4 DISORDERS, MENTALLY ILL AND SUBSTANCE ABUSE, CORRECT?

5 **A.** YES, BUT MORE SPECIFICALLY TO PAY ATTENTION TO REENTRY FROM
6 JAILS AND PRISONS.

7 SO THERE IS YET A CHALLENGE THERE THAT IT'S NOT
8 CERTAIN HOW IT'S GOING TO BE MET SPECIFICALLY WITH PAROLEES,
9 BECAUSE BY DEFINITION THEY ARE NOT INCLUDED IN THE ACT, BUT THE
10 COMMISSIONERS RECOGNIZED THAT THIS HAS AN IMPACT ON LOCAL
11 COMMUNITIES WHEN YOU HAVE NUMBERS OF PEOPLE.

12 WHETHER THEY ARE RETURNING TO THE COMMUNITY FROM THE
13 JAIL, OR WHETHER THEY ARE RETURNING TO THE COMMITTEE FROM A
14 PRISON, YOU HAVE PEOPLE WHO ARE IMPAIRED COMING BACK TO LIVE IN
15 YOUR COMMUNITY WHO ARE IN NEED OF SERVICES AND ARE IN A SYSTEM
16 THAT IS NOT NECESSARILY INTEGRATED.

17 **Q.** SO IS IT FAIR TO SAY THAT YOU THINK THAT TYPE OF A PROGRAM
18 CAN RESULT IN A BETTER OUTCOME FOR THESE CO-OCCURRING DISORDERED
19 OFFENDERS?

20 **A.** YES, THAT'S BEEN MY EXPERIENCE WITH THE CONNECTIONS PROGRAM,
21 OUR CENTER STAR PROGRAM.

22 **Q.** SO THAT WOULD RESULT IN BOTH A DECREASE IN RISK TO PUBLIC
23 SAFETY AND AN IMPROVEMENT IN THE LIVES OF THESE PEOPLE?

24 **A.** YES.

25 **JUDGE REINHARDT:** I'M JUST A LITTLE CONFUSED. I

1 THOUGHT YOU FIRST SAID IN ANSWER TO COUNSEL'S QUESTION THAT THEY
2 ARE NOT -- PAROLEES ARE NOT ELIGIBLE. AND NOW I UNDERSTOOD YOU
3 TO SAY THEY ARE BEING TREATED ALONG WITH --

4 **JUDGE KARLTON:** NO, NOT ARE, BUT HOPEFULLY IN THE
5 FUTURE WILL BE.

6 **THE WITNESS:** THAT'S CORRECT. HOPEFULLY, IN THE
7 FUTURE.

8 WHAT THE COMMISSIONERS RECOGNIZED WAS THAT THERE IS
9 AN IMPACT ON THE COMMUNITY --

10 **JUDGE REINHARDT:** IS THERE A LEGAL BARRIER TO IT AT
11 THE MOMENT?

12 **THE WITNESS:** YES. THE LEGISLATION, PROPOSITION 63,
13 THE WAY IT WAS INITIALLY STRUCTURED AND WRITTEN EXPRESSLY
14 EXCLUDES PAROLEES. THOSE MENTAL HEALTH SERVICES ARE PROVIDED IN
15 WHAT ARE CALLED PAROLE OUTPATIENT CLINICS.

16 **JUDGE REINHARDT:** IT WOULD TAKE A STATUTORY CHANGE
17 THEN?

18 **THE WITNESS:** THAT'S MY UNDERSTANDING, YES.

19 **BY MS. BARLOW:**

20 **Q.** ONCE THOSE MODELS ARE DEVELOPED TO HAVE -- TO TREAT THE
21 CO-OCCURRING DISORDER OFFENDERS, EVEN IF THERE IS NO STATUTORY
22 CHANGE, SIMILAR PROGRAMS COULD BE DEVELOPED FOR PAROLEES THROUGH
23 PAROLE, CORRECT?

24 **JUDGE KARLTON:** SURE THAT COULD HAPPEN. EVERYBODY
25 COULD GET WELL AND WE'D NEVER BE HERE.

1 **MS. BARLOW:** I'M SORRY, YOUR HONOR. I'M NOT ASKING
2 HIM TO SPECULATE. I'M JUST ASKING IF THAT PROGRAM COULD WORK
3 WITH THAT TYPE OF PROBLEM.

4 **THE WITNESS:** I BELIEVE SO, YES.

5 **BY MS. BARLOW:**

6 **Q.** ALL RIGHT. THANK YOU.

7 NOW, YOU MENTIONED -- YOU GO INTO SOME DISCUSSION IN
8 YOUR DECLARATION REGARDING SB 618 BECAUSE YOU WERE INVOLVED IN
9 THE CREATION OF THE PROGRAM, BUT WE HAVE HEARD FROM ANOTHER
10 WITNESS ON THAT ISSUE. SO I JUST REALLY WANT TO ASK YOU ONE
11 QUESTION ABOUT IT.

12 IN YOUR PROFESSIONAL OPINION AS A MENTAL HEALTH
13 CLINICIAN AND DIRECTOR OF PROGRAMMING FOR THE JAILS, DO YOU
14 BELIEVE THAT REDUCING SENTENCES OF THOSE PARTICIPATING IN
15 SB 618 WOULD IMPACT THEIR SUCCESS?

16 **A.** I BELIEVE IT WOULD. THE 618 PROGRAM WAS DESIGNED SO THAT
17 THERE IS AN ASSESSMENT OF RISKS AND NEEDS. THERE'S THE
18 DEVELOPMENT OF A LIFE PLAN.

19 THEN THE DELAYS IN THE RECEPTION CENTER, PROCESS
20 CENTERS AT THE PRISONS ARE BYPASSED AND THOSE PEOPLE CAN GO
21 DIRECTLY INTO REHABILITATION PROGRAMMING. ONCE THEY COMPLETE
22 THEIR SENTENCE AND COMPLETE THOSE IN-PRISON REHABILITATION
23 PROGRAMS, THEN THERE'S A CONTINUATION, AN ALTERATION OR UPDATING
24 OF THE LIFE PLAN TO REFLECT THOSE SUCCESSES, AND THEN CASE
25 MANAGEMENT AND SUPPORT WHEN THEY COME INTO THE COMMUNITY.

1 SO IT'S MY BELIEF THAT THE INTEGRATION OF BOTH
2 INSTITUTIONAL PROGRAMMING AND THE CASE MANAGEMENT AND REENTRY
3 SUPPORT IS WHAT MAKES FOR THE SUCCESSES THAT ARE BEING SEEN IN
4 THE 618 PROGRAM.

5 **THE CLERK:** FIVE MINUTES, COUNSEL.

6 **MS. BARLOW:** THANK YOU.

7 **BY MS. BARLOW:**

8 **Q.** NOW, THE PRISON RELEASE ORDER THAT HAS BEEN PROPOSED BY
9 PLAINTIFFS AND THEIR EXPERTS INCLUDES SEVERAL WAYS OF REDUCING
10 THE PRISON POPULATION. ONE OF THOSE INVOLVES SHORTENING THE
11 LENGTH OF SENTENCES FOR CERTAIN LOW RISK OFFENDERS BY FOUR
12 MONTHS.

13 DO YOU HAVE AN OPINION AS TO WHETHER THAT WILL HAVE A
14 NEGATIVE IMPACT OR POSITIVE IMPACT ON PUBLIC SAFETY?

15 **JUDGE KARLTON:** I DIDN'T UNDERSTAND. THIS WITNESS
16 DOES NOT DEAL WITH PRISON -- WITH PRISONS. HE DEALS WITH JAILS.

17 **MS. BARLOW:** WE ARE TALKING ABOUT ADDING PEOPLE INTO
18 THE COMMUNITY, YOUR HONOR. THAT'S WHAT I'M ASKING HIM ABOUT.

19 **JUDGE KARLTON:** OH, I SEE. MAYBE YOU CAN ANSWER
20 THAT. I DON'T KNOW.

21 **A.** I'M SORRY WOULD YOU RESTATE THAT, PLEASE.

22 **BY MS. BARLOW:**

23 **Q.** PART OF THE PROPOSAL IS TO REDUCE LENGTH OF STAY FOR CERTAIN
24 PRISONERS BY FOUR MONTHS, AND THAT THOSE FOLKS WOULD COME BACK
25 INTO THE COMMUNITIES FOUR MONTHS EARLIER WITH NO PROGRAMMING.

1 DO YOU HAVE AN OPINION AS TO WHETHER THAT WILL HAVE
2 AN IMPACT ON PUBLIC SAFETY?

3 MR. SANGSTER: OBJECTION. NO FOUNDATION.

4 JUDGE HENDERSON: I WILL ALLOW IT.

5 BY MS. BARLOW:

6 Q. GO AHEAD.

7 A. I THINK IT WOULD NEGATIVELY IMPACT THE COMMUNITY BECAUSE I
8 THINK WITHOUT THE SUPPORTS AND WITHOUT THE TREATMENT AND SO ON,
9 WHAT WE SEE AT A LOCAL LEVEL -- AND I WOULD EXTRAPOLATE THAT TO
10 THE PRISON SYSTEM -- WE SEE A NUMBER OF PEOPLE WHO DON'T AVAIL
11 THEMSELVES OF SERVICES, WHO DO REPEAT OTHER OFFENSES AND COME
12 BACK INTO JAIL.

13 JUDGE REINHARDT: WHY DO YOU THINK THAT IF THEY CAME
14 FOUR MONTHS EARLIER, IT WOULD BE ANY DIFFERENT THAN IF THEY CAME
15 FOUR MONTHS LATER?

16 THE WITNESS: I TOOK THE QUESTION TO MEAN THEY WERE
17 GETTING OUT WITHOUT COMPLETING SUPPORTIVE TREATMENT IN THE
18 PRISON.

19 JUDGE KARLTON: AS IF THERE WERE SUPPORTIVE TREATMENT
20 IN THE PRISON.

21 THE WITNESS: YES, SIR.

22 JUDGE KARLTON: YOU ASSUME THAT.

23 THE WITNESS: I DO.

24 JUDGE KARLTON: IF IT TURNS OUT TO BE FANTASY, DOES
25 IT MAKE ANY DIFFERENCE?

1 **THE WITNESS:** I WOULDN'T KNOW HOW TO ANSWER THAT.

2 **JUDGE KARLTON:** FAIR ENOUGH. THAT'S THE POINT.

3 **BY MS. BARLOW:**

4 **Q.** MR. CONKLIN, ARE THERE SUFFICIENT RESOURCES FOR THE DRUG
5 TREATMENT FOR THOSE EXISTING IN SAN DIEGO COUNTY RIGHT NOW?

6 **MR. SANGSTER:** VAGUE AND AMBIGUOUS. PRISONERS OR
7 PAROLEES OR BOTH?

8 **BY MS. BARLOW:**

9 **Q.** EXISTING PEOPLE.

10 **MR. SANGSTER:** STILL VAGUE AND AMBIGUOUS, YOUR HONOR.

11 **JUDGE KARLTON:** I DON'T KNOW WHAT "EXISTING PEOPLE"
12 MEANS.

13 **BY MS. BARLOW:**

14 **Q.** FOR THOSE WHO NEED DRUG TREATMENT FOR THOSE WHO LIVE IN SAN
15 DIEGO COUNTY RIGHT NOW, ARE THERE SUFFICIENT RESOURCES TO
16 PROVIDE THAT TREATMENT TO THEM?

17 **MR. SANGSTER:** LACKS FOUNDATION. PERSONAL KNOWLEDGE
18 AND EXPERTISE.

19 **JUDGE HENDERSON:** YOU'RE SHIFTING TO DRUG OFFENDERS
20 NOW RATHER THAN MENTAL HEALTH.

21 **MS. BARLOW:** BOTH OF THOSE ARE WITHIN HIS AREA OF
22 EXPERTISE, YOUR HONOR, AS HE EXPLAINED AT LENGTH IN HIS
23 DECLARATION.

24 HE HAS DEVELOPED BOTH DRUG PROGRAMS. HE ALSO MOVES
25 PEOPLE OUT OF THE JAIL INTO THESE COMMUNITY DRUG PROGRAMS.

1 **MR. SANGSTER:** I THINK THE QUESTION WAS ASKED ABOUT
2 THE GENERAL POPULATION, NOT OFFENDERS, YOUR HONOR. AND THAT'S
3 MY OBJECTION.

4 MY CROSS-EXAMINATION IS GOING TO BE VERY DIFFERENT IF
5 HE STARTS TESTIFYING ABOUT THE GENERAL POPULATION.

6 **MS. BARLOW:** HE HAS ALREADY DONE THAT IN HIS
7 DEPOSITION, SO THEY ARE PREPARED FOR THIS.

8 **JUDGE KARLTON:** WHETHER HE DID IN HIS DEPOSITION OR
9 NOT IS NOT THE POINT.

10 THE QUESTION IS -- WHY DON'T YOU JUST REPHRASE IT TO
11 PRISONERS OF SOME KIND. I THINK YOU AVOID THE PROBLEM.

12 **MS. BARLOW:** THAT'S FINE.

13 **JUDGE KARLTON:** MAYBE NOT, I DON'T KNOW.

14 **BY MS. BARLOW:**

15 **Q.** MR. CONKLIN, TO YOUR KNOWLEDGE, ARE THERE SUFFICIENT DRUG
16 TREATMENT RESOURCES AVAILABLE FOR THOSE WHO NEED IT IN ORDER TO
17 AVOID COMMITTING CRIME IN SAN DIEGO COUNTY?

18 **MR. SANGSTER:** SAME OBJECTION.

19 **JUDGE HENDERSON:** OVERRULED. HE CAN ANSWER IT.

20 **A.** NO, THEY ARE NOT.

21 **BY MS. BARLOW:**

22 **Q.** AND ARE THERE SUFFICIENT RESOURCES FOR MENTAL HEALTH
23 TREATMENT IN SAN DIEGO COUNTY FOR THOSE WHO NEED MENTAL HEALTH
24 CARE?

25 **MR. SANGSTER:** SAME OBJECTION.

1 A. NO.

2 JUDGE KARLTON: TO AVOID COMMITTING CRIME.

3 BY MS. BARLOW:

4 Q. WHETHER IT'S TO AVOID COMMITTING A CRIME OR NOT, ARE THERE
5 SUFFICIENT RESOURCES IN THE COUNTY?

6 A. NO, THERE ARE NOT.

7 Q. NOW, WE HAVE HEARD FROM OTHER WITNESSES THAT THERE'S A
8 NATIONAL SHORTAGE OF MENTAL HEALTH PROFESSIONALS. IS THAT TRUE
9 IN SAN DIEGO COUNTY AS WELL?

10 A. YES.

11 Q. AND TO YOUR UNDERSTANDING, IS THERE A PARTICULAR SHORTAGE
12 FOR ANY CATEGORY OF MENTAL HEALTH CARE WORKER?

13 A. IT'S PRETTY MUCH ACROSS THE BOARD, AND IT'S TRUE THROUGHOUT
14 THE STATE OF CALIFORNIA, NOT JUST SAN DIEGO COUNTY.

15 ONE OF THE ELEMENTS OF THE MENTAL HEALTH SERVICES ACT
16 AND ONE OF THE GROUPS THAT FUNCTIONS IN THE OVERSIGHT AND
17 ACCOUNTABILITY COMMISSION IS A GROUP FOCUSED SPECIFICALLY ON
18 WORK FORCE DEVELOPMENT.

19 SO IN ORDER TRANSFORM THE MENTAL HEALTH SYSTEM, IT'S
20 RECOGNIZED AND VERY WELL DOCUMENTED THAT THERE'S A SHORTAGE,
21 PARTICULARLY OF PSYCHIATRISTS. AND WHEN YOU DEAL WITH SOMEONE
22 WHO HAS A SEVERE AND PERSISTENT MENTAL ILLNESS, THAT'S A
23 TREATABLE MENTAL -- EXCUSE ME, A TREATABLE MEDICAL DISORDER.
24 IT'S A BRAIN DYSFUNCTION. SO --

25 JUDGE REINHARDT: I THINK COUNSEL ASKED YOU WHETHER

1 IT WAS TRUE EVERYWHERE IN THE COUNTRY. MAYBE THAT WAS JUST
2 PRELIMINARY TO YOUR QUESTION, BUT IT IS TRUE THAT THERE IS A
3 SHORTAGE EVERYWHERE IN THE COUNTRY, ISN'T IT?

4 **THE WITNESS:** YES.

5 **MS. BARLOW:** I JUST -- THERE WAS A SUGGESTION THAT
6 SOME COMMUNITIES HAVE ENOUGH RESOURCES EVEN THOUGH THERE IS A
7 NATIONWIDE SHORTAGE, YOUR HONOR. I WAS JUST ADDRESSING THAT
8 POINT.

9 **JUDGE REINHARDT:** WELL, HE SAID THERE IS A SHORTAGE
10 IN SAN DIEGO AND THERE IS A SHORTAGE NATIONALLY.

11 **MS. BARLOW:** YES.

12 **JUDGE REINHARDT:** AND I DON'T KNOW WHY COUNSEL IS SO
13 DISTURBED BY THE QUESTION. THE ANSWER IS OBVIOUS.

14 **MS. BARLOW:** THANK YOU, YOUR HONOR.

15 **BY MS. BARLOW:**

16 **Q.** NOW, THERE IS A PROPOSAL TO RELEASE SOME PAROLEES FROM
17 PAROLE EARLIER THAN THEY WOULD OTHERWISE BE RELEASED. IN OTHER
18 WORDS, I THINK IT'S A SUGGESTION THAT IF THEY ARE SUCCESSFUL FOR
19 12 MONTHS, THAT THEY BE RELEASED FROM PAROLE.

20 DO YOU BELIEVE THAT WOULD HAVE A NEGATIVE IMPACT ON
21 PUBLIC SAFETY?

22 **JUDGE KARLTON:** THAT REALLY DOES APPEAR TO BE WELL
23 BEYOND HIS EXPERTISE. THAT'S A QUESTION OF PAROLE. I'M SORRY,
24 I SHOULDN'T OBJECTING.

25 **MR. SANGSTER:** YOU SPOKE BEFORE I COULD, YOUR HONOR.

1 AND YOU OBJECTED SO ELOQUENTLY.

2 OBJECTION, LACKS FOUNDATION.

3 **JUDGE KARLTON:** OVERRULED. WE WILL VOTE NOW.

4 **MR. SANGSTER:** I MUST NEED THESE THINGS FIXED, YOUR
5 HONOR (INDICATING).

6 **BY MS. BARLOW:**

7 **Q.** IN YOUR OPINION, DOES COMMUNITY SUPERVISION OF EX-FELONS,
8 WHETHER IT'S BY PAROLE OR PROBATION, HAVE AN IMPACT ON THEIR
9 SUCCESS IN THE COMMUNITY?

10 **MR. SANGSTER:** OBJECTION. LACKS FOUNDATION.
11 EXPERTISE.

12 **JUDGE KARLTON:** IT'S NOT WHAT HE DOES.

13 **MS. BARLOW:** HE IS VERY FAMILIAR WITH PROBATION, YOUR
14 HONOR.

15 **JUDGE HENDERSON:** LAY THE FOUNDATION THEN.

16 **JUDGE KARLTON:** THE QUESTION IS PAROLE.

17 **MS. BARLOW:** PAROLE AND PROBATION.

18 **JUDGE KARLTON:** YOU DON'T DO PAROLE AT ALL, IS WHAT I
19 BELIEVE YOU SAID, IS THAT RIGHT?

20 **THE WITNESS:** THAT'S CORRECT, YOUR HONOR.

21 **BY MS. BARLOW:**

22 **Q.** IN CONNECTION WITH SB 618, DO YOU PUT TOGETHER THAT PROGRAM,
23 AND THAT INVOLVES DOOR-TO-DOOR, RIGHT? FROM THE FRONT END OUT
24 THROUGH THE PRISON AND BACK INTO THE COMMUNITY?

25 **A.** YES.

1 Q. AND SO THE TEAMS THAT WORK ON THAT ARE PROBATION, PAROLE,
2 LAW ENFORCEMENT, MENTAL HEALTH, CORRECT?

3 A. YES, THAT'S CORRECT.

4 Q. ALL RIGHT. DO YOU HAVE, BASED UPON THAT EXPERIENCE, AN
5 OPINION ABOUT WHETHER SUPERVISION IN THE COMMUNITY IS AN
6 IMPORTANT COMPONENT, WHETHER IT'S BY A PROBATION OFFICER OR A
7 PAROLE OFFICER?

8 A. MY EXPERIENCE IN THE EFFICACY AND THE EFFECTIVENESS OF
9 COMMUNITY SUPERVISION WAS SPECIFICALLY WITH THE CONNECTIONS
10 PROGRAM. AND THAT REALLY WAS THE BASIS -- THE SUCCESS OF THAT
11 PROGRAM WAS THE BASIS FOR THE DESIGN THAT WE WENT INTO WITH THE
12 SB 618 WHEN WE DESIGNED THE PROGRAM, WAS TO TAKE THOSE SAME
13 ELEMENTS OF COMMUNITY SUPERVISION AND SUPPORT. IT'S SIMPLY
14 APPLIED TO A DIFFERENT POPULATION.

15 JUDGE KARLTON: IT ISN'T JUST A DIFFERENT POPULATION,
16 IS IT? I'M ASKING YOU, NOT TELLING YOU. I JUST REALIZED LIKE I
17 SOUNDED LIKE I WAS TELLING YOU.

18 THESE ARE PEOPLE WHO SPENT TIME IN PRISON. IF THEY
19 WERE LOW LEVEL OFFENDERS, THEY WERE MIXING WITH HIGH LEVEL
20 OFFENDERS. WE HAVE HAD TESTIMONY THAT THAT INEVITABLY CHANGES
21 THEIR CRIMINALISTIC SOMETHING-OR-OTHER.

22 SO IT'S REALLY -- I'M ASKING YOU, ISN'T THAT
23 SIGNIFICANTLY DIFFERENT THAN SOMEBODY WHO IS COMING OUT OF JAIL,
24 WHICH IS WHAT THE CONNECTIONS PROGRAM WAS ABOUT?

25 THE WITNESS: IF I UNDERSTAND THE QUESTION, YOUR

1 HONOR, THEN THE -- YOUR QUESTION GOES TO WHETHER OR NOT A PERSON
2 SPENDING A GREATER PERIOD OF TIME IN PRISON IS LIKELY TO ADAPT
3 TO A HIGHER LEVEL OF CRIMINALITY THAN SOMEONE IN A JAIL?

4 **JUDGE KARLTON:** AND, THEREFORE, TO ESSENTIALLY BE A
5 DIFFERENT PROBLEM THAN THE PROBLEM PRESENTED BY THE PEOPLE THAT
6 WERE DEALT WITH IN CONNECTIONS.

7 **THE WITNESS:** I DON'T KNOW THAT I COULD SAY THAT
8 STATEMENT, YOU KNOW, BECAUSE I THINK THERE ARE SO MANY ELEMENTS
9 THAT GOES INTO A PERSON'S LIFE DEVELOPMENT AND DEVELOPMENT OF
10 CRIMINALITY OR WHATEVER, YOU KNOW, PRIOR THEIR EVER GETTING
11 CAUGHT, WHETHER THEY GO TO JAIL OR PRISON. I DON'T KNOW THAT
12 PRISON IS THE INCUBATOR OF CRIMINALITY.

13 **JUDGE KARLTON:** I WANT YOU TO ASSUME FOR A MOMENT
14 THAT THE TESTIMONY THAT WE HAVE RECEIVED HERE BY ALMOST
15 EVERYBODY IS THAT PRISONS BREED CRIMINALITY.

16 DOES THAT -- I MEAN, I THINK I KNOW THE ANSWER, BUT
17 MAYBE YOU HAVE A DIFFERENT VIEW. DOES THAT MAKE THAT PERSON A
18 DIFFERENT PROBLEM THAN THE PROBLEM THAT YOU FACED WITHIN THE
19 CONNECTIONS PROGRAM?

20 **THE WITNESS:** I WOULD SAY YES. WHEN YOU LOOK AT THE
21 LITERATURE ABOUT RISK ASSESSMENT OF PEOPLE, CRIMINAL RISK AND
22 NEED ASSESSMENT, ONE OF THE FACTORS THAT NEGATIVELY INFLUENCES
23 CRIMINAL BEHAVIOR IS WHAT THEY CALL A DYNAMIC FACTOR, SOMETHING
24 THAT CAN BE CHANGED, AND THAT IS ASSOCIATION WITH CRIMINAL
25 PEERS.

1 **BY MS. BARLOW:**

2 **Q.** ALL RIGHT. I JUST HAVE A COUPLE QUICK FOLLOW-UP QUESTIONS
3 REGARDING THAT RISK ASSESSMENT ISSUE.

4 IT'S BEEN SUGGESTED THAT IF WE DO THE RIGHT KIND OF
5 RISK ASSESSMENT, WE CAN ELIMINATE ANY RISK TO PUBLIC SAFETY FROM
6 EITHER LETTING --

7 **JUDGE KARLTON:** YOU MEAN, SUBSTANTIAL RISK.

8 **MS. BARLOW:** YEAH.

9 **BY MS. BARLOW:**

10 **Q.** BY LETTING PEOPLE OUT OR SHORTENING THEIR SENTENCES OR --
11 YOU KNOW, BY FOUR MONTHS OR BY TAKING THEM OFF PAROLE EARLIER.

12 DO YOU HAVE AN OPINION ABOUT THE RISK ASSESSMENT
13 APPROACH?

14 **A.** I DO.

15 **Q.** AND WHAT IS THAT?

16 **A.** RISK ASSESSMENT IS QUITE LIMITED. THERE ARE MAYBE 20 TO 25
17 RISK ASSESSMENT INSTRUMENTS. VARIOUS PRIVATE COMPANIES PUBLISH
18 THESE THINGS. AND JOAN PETERSILIA, WHO HEADS THE CRIMINALITY --
19 I FORGOT THE TITLE OF HER INSTITUTE, IT'S AT U.C. IRVINE -- HAS
20 OPINED AND HAS STATED THAT THE HIGHEST LEVEL OF PREDICTABILITY
21 OF RISK INSTRUMENTS IS FOR THE LOWEST LEVEL OF CRIMINAL
22 BEHAVIOR.

23 SO THEY ARE HIGHLY PREDICTIVE OF THINGS THAT ARE
24 RELATIVELY UNIMPORTANT, SUCH AS THE LIKELIHOOD THAT A PERSON
25 WILL FAIL TO APPEAR FOR FUTURE COURT DATE. THEY ARE HIGHLY

1 PREDICTIVE.

2 THEY ARE VIRTUALLY USELESS, IN HER OPINION, FOR
3 THINGS LIKE SERIOUS FELONY CRIMES OR MURDERS. THERE'S NOT A
4 VERY STRONG CORRELATION WITH THOSE RISK ASSESSMENT INSTRUMENTS
5 FOR THOSE MORE SERIOUS TRANSGRESSIONS.

6 **Q.** AND YOUR UNDERSTANDING OF THE LITERATURE SUPPORTS THAT?

7 **A.** YES.

8 **Q.** THANK YOU. I HAVE NOTHING FURTHER, YOUR HONOR.

9 **MS. BARLOW:** I DO WANT TO ASK ONE CLARIFYING QUESTION
10 OF THE COURT, WHICH IS SOME OF THE FOLKS HAVE BEEN SORT OF
11 MOVING IN THE DECLARATIONS. I WAS UNDER THE IMPRESSION THAT
12 THEY WERE ALREADY IN AND I DON'T NEED TO DO THAT?

13 **JUDGE HENDERSON:** THAT'S TRUE.

14 **MS. BARLOW:** THANK YOU. I JUST WANTED TO CLARIFY
15 THAT.

16 **THE COURT:** LET'S TAKE A 15-MINUTE RECESS BEFORE WE
17 GO TO THE CROSS.

18 (BRIEF RECESS HELD IN THE PROCEEDINGS.)

19 **JUDGE HENDERSON:** OKAY. I GUESS STATE DEFENDANTS
20 DON'T HAVE ANYTHING OF THIS WITNESS?

21 **MS. TILLMAN:** NO QUESTIONS, YOUR HONOR. THANK YOU.

22 **JUDGE HENDERSON:** OKAY. MR. SANGSTER.

23 **MR. SANGSTER:** ED SANGSTER FOR THE PLAINTIFFS, YOUR
24 HONOR.

25 ///

CROSS-EXAMINATION BY MR. SANGSTER

BY MR. SANGSTER

Q MR. CONKLIN, WE FINISHED OFF YOUR EXAMINATION, I HEARD YOU TESTIFYING ABOUT RISK ASSESSMENT TOOLS. WHAT TRAINING HAVE YOU HAD IN THE USE OF RISK ASSESSMENT TOOLS?

A THROUGH THE PROBATION DEPARTMENT WE HAD SOME GENERAL TRAINING ABOUT RISK ASSESSMENT TOOLS.

Q WHAT DO YOU MEAN BY "GENERAL TRAINING"?

A BEING TAUGHT BY CONSULTANTS, EXPERIENCED PROBATION OFFICERS, USING LSI AND LSIR.

Q HOW MUCH GENERAL TRAINING HAVE YOU HAD IN RISK ASSESSMENT TOOLS?

A PROBABLY FOUR HOURS SPECIFICALLY. I WAS NOT SPECIFICALLY ADMINISTERING THEM.

Q SO BESIDES THAT FOUR HOURS OF GENERAL TRAINING IN RISK ASSESSMENT TOOLS, WHAT EXPERIENCE DID YOU HAVE THAT ALLOWED YOU TO COMMENT ON THE FACT THAT THE RISK ASSESSMENT TOOLS WERE USELESS IN PREDICTING CERTAIN BEHAVIORS?

A NO DIRECT EXPERIENCE.

Q WHAT DO YOU MEAN, "NO DIRECT EXPERIENCE"?

A I HAVEN'T USED --

Q YOU HAVE NO EXPERIENCE AT ALL?

A I HAVEN'T USED RISK ASSESSMENT TOOLS. I HAVE BEEN IN DISCUSSIONS WITH PEOPLE WHO ARE EXPERT IN THE AREA. THAT'S WHAT I WAS COMMENTING ON.

1 **Q** SO YOU WERE COMMENTING ON MS. PETERSILIA. YOU WERE JUST
2 TELLING US WHAT YOU READ IN HER REPORT?

3 **A** NO. I WAS RELATING A PERSONAL CONVERSATION I HAD WITH HER
4 LAST FRIDAY.

5 **Q** SO IT WASN'T EVEN A STUDY, IT'S JUST YOU TALKED TO HER, AND
6 NOW YOU ARE REPEATING FOR US WHAT SHE TOLD YOU?

7 **A** SHE WAS RELATING WHAT HER STUDIES HAVE FOUND.

8 **MR. SANGSTER:** YOUR HONOR, I'D MOVE TO STRIKE THE
9 TESTIMONY AS BEING HEARSAY, LACKING FOUNDATION. YOUR HONOR
10 PERMITTED IT OVER MY OBJECTION, BUT IT'S COMPLETE HEARSAY.

11 **JUDGE REINHARDT:** WHY CAN'T SOMEBODY INTRODUCE THE
12 STUDY IF THEY WANT US TO RELY ON --

13 **JUDGE KARLTON:** WHY CAN'T THEY CALL MS. PETERSILIA?

14 **MR. SANGSTER:** SHE'S THE MOST MENTIONED WITNESS IN
15 THE TRIAL.

16 **JUDGE REINHARDT:** IF YOU DON'T WANT TO CALL HER AND
17 YOU WANT US TO RELY ON WHAT HER STUDY SAYS, WOULDN'T YOU
18 INTRODUCE HER STUDY, RATHER THAN HAVE A WITNESS SAY HE TALKED TO
19 HER AND SHE SAID THIS IS WHAT'S IN THE STUDY?

20 **MR. SANGSTER:** BY SOMEBODY WHO HAD FOUR HOURS OF
21 TRAINING.

22 **MS. BARLOW:** IF I COULD RESPOND, YOUR HONOR? THE
23 WITNESS DID TESTIFY THAT'S ALSO REFLECTED IN THE OTHER
24 LITERATURE.

25 **JUDGE REINHARDT:** HE JUST ANSWERED THE REASON HE

1 REPEATED ABOUT MS. PETROSELLI, OR WHATEVER HER NAME IS, IS SHE
2 SAID TO HIM, THIS IS WHAT'S IN MY STUDY. I WAS SUGGESTING IF
3 YOU WANTED US TO CONSIDER WHAT'S IN HER STUDY, I THINK YOU WOULD
4 INTRODUCE THE STUDY INSTEAD OF HAVING THE WITNESS SAY THIS IS
5 WHAT SHE SAYS IS IN HER STUDY.

6 **JUDGE KARLTON:** ASSUMING SOMEBODY WOULD INTRODUCE IT.

7 ANYWAY, THERE'S A MOTION TO STRIKE, JUDGE HENDERSON.

8 **JUDGE HENDERSON:** GRANTED.

9 BY MR. SANGSTER

10 **Q** YOU TALKED ABOUT A SHORTAGE OF MENTAL HEALTH PRACTITIONERS
11 IN SAN DIEGO COUNTY. IS IT EASIER OR HARDER TO HIRE MENTAL
12 HEALTH PRACTITIONERS TO WORK IN INCARCERATION SETTINGS THAN IN
13 THE COMMUNITY HEALTH HOSPITALS?

14 **A** IN OUR DEPARTMENT IT'S BEEN QUITE DIFFICULT TO HIRE MENTAL
15 HEALTH PRACTITIONERS, AND PART OF THE REASON IS THAT WE HAVE A
16 VERY STRICT SECURITY BACKGROUND CHECK THAT DISALLOWS CERTAIN
17 APPLICANTS.

18 **Q** SO THE SHORTAGE OF MENTAL HEALTH PRACTITIONERS IS EVEN
19 GREATER FOR YOUR JAILS THAN IT IS IN THE COMMUNITY AT LARGE?

20 **A** NO. I'M FULLY STAFFED IN THE JAILS WITHIN MY BUDGET.

21 **Q** JUST MORE DIFFICULT TO HIRE?

22 **A** YES.

23 **Q** YOU TALKED ABOUT YOUR CONCERNS OF RELEASING PAROLEES WITHOUT
24 ANY SERVICES, AND I WANT TO FOLLOW UP ON THAT.

25 IS IT CORRECT YOU HAVE NO INFORMATION RIGHT NOW ABOUT

1 THE SERVICES THAT ARE BEING PROVIDED TO MENTALLY ILL PAROLEES AT
2 THE TIME OF THEIR RELEASE?

3 **A** NO, THAT'S NOT CORRECT.

4 **Q** OKAY. WELL, WHAT INFORMATION DO YOU HAVE ABOUT THE SERVICES
5 THAT ARE BEING PROVIDED RIGHT NOW?

6 **A** I PARTICIPATE IN A COMMITTEE THAT HAS ONE OF THE REGIONAL
7 PAROLE ADMINISTRATORS IN THAT, AND HE SHARES IN THOSE MEETINGS
8 WHAT'S GOING ON WITH HIS PAROLE CASELOAD.

9 **Q** SO YOUR INFORMATION IS BASED ON WHAT HE TELLS YOU IN THOSE
10 MEETINGS?

11 **A** THAT'S CORRECT.

12 **Q** WELL, ARE THERE SERVICES BEING PROVIDED TO PAROLEES --
13 MENTALLY ILL PAROLEES AT THIS TIME, SIR?

14 **A** YES.

15 **Q** SO YOUR OPINIONS ARE ASSUMING THAT THOSE SERVICES WILL
16 CONTINUE TO BE PROVIDED OR NOT BE PROVIDED?

17 **A** I ASSUME THE PAROLE OUTPATIENT CLINICS WILL CONTINUE TO
18 EXIST.

19 **Q** SO WHEN YOU WERE TALKING ABOUT THE PUBLIC SAFETY IMPACT OF
20 RELEASING MENTALLY ILL PAROLEES WITH NO SERVICES, WERE YOU
21 INCLUDING THE FACT THAT THEY WERE GOING TO BE TREATED BY THE
22 PAROLE OUTPATIENT CLINICS?

23 **A** I'M SORRY. I DON'T UNDERSTAND THE QUESTION.

24 **Q** WHEN YOU WERE TALKING ABOUT THE LACK OF SERVICES FOR
25 PAROLEES IF THIS COURT GRANTS A PRISONER RELEASE ORDER, WERE YOU

1 TAKING INTO ACCOUNT THE FACT THAT THERE ALREADY ARE SOME
2 SERVICES BEING PROVIDED TO PAROLEES?

3 **A** I BELIEVE I WAS, YES. I KNOW THAT THEY DO HAVE THOSE
4 CLINICS. I DON'T KNOW HOW MANY PAROLEES DO OR DON'T GO TO THEM.

5 **Q** DO YOU KNOW WHAT SERVICES THOSE CLINICS PROVIDE?

6 **A** YEAH, THEY PROVIDE MEDICATION MANAGEMENT AND SOME LIMITED
7 CASE MANAGEMENT. SOME OF THE CLINICS HAVE SOCIAL WORK STAFF.

8 **Q** ALL RIGHT. I WANT TO TALK TO YOU ABOUT WHAT YOU CALLED YOUR
9 FREQUENT FLIERS. THESE ARE THE PEOPLE THAT COME BACK TO YOUR
10 JAIL REPEATEDLY BECAUSE OF DIFFICULTIES WITH THEIR MENTAL
11 ILLNESS. DO YOU HAVE THAT IN MIND?

12 **A** THEY COME BACK TO JAIL BECAUSE OF CRIMES THEY COMMIT AND
13 THEY GET ARRESTED, AND THEY HAVE A MENTAL ILLNESS AND SUBSTANCE
14 ABUSE PROBLEMS.

15 **Q** I GUESS WHAT I WAS TRYING TO FIGURE OUT IS, SIR, ARE YOU
16 SAYING THEY'RE COMING BACK -- STRIKE THAT -- THE CRIMES THEY
17 WERE COMMITTING WERE CAUSED BY THEIR MENTAL ILLNESS, OR IS
18 THIS -- OR ARE YOU JUST SAYING THEY COME BACK AND THEY ARE
19 MENTALLY ILL?

20 **A** I WAS SAYING THE LATTER. I DON'T KNOW WHAT CAUSES THEIR
21 CRIME.

22 **Q** OKAY. I WANT TO TALK ABOUT WHAT YOU DESCRIBED IN YOUR
23 DECLARATION AS A VERY SIMPLE ALTERNATIVE TO A PRISONER RELEASE
24 ORDER, AND YOU REMEMBER YOUR VERY SIMPLE ALTERNATIVE?

25 **A** I'M AFRAID I DON'T RECALL THAT PART OF THE DECLARATION.

1 Q WELL, DO YOU REMEMBER DESCRIBING THAT YOU THOUGHT ONE
2 ALTERNATIVE WAS TO PROVIDE THESE TRANSITIONAL SERVICES FOR
3 MENTALLY ILL PAROLEES TO FIND THEM SERVICES BEFORE THEY WERE
4 RELEASED?

5 A YES, SIMILAR TO THE CONNECTIONS PROGRAM, I BELIEVE THAT'S
6 WHAT I HAD IN MIND.

7 Q YOU THINK THAT WOULD HAVE A SIGNIFICANT IMPACT ON THE
8 RECIDIVISM OF MENTALLY ILL PAROLEES?

9 A YES, SIR, I DO.

10 Q THAT'S JUST BASED ON WHAT YOU'VE OBSERVED IN JAILS, RIGHT?

11 A NO, SIR. IT'S BASED ON WHAT WE'VE OBSERVED WITH THE TWO
12 DIFFERENT CONNECTIONS PROGRAMS AND WITH OUR CENTER STAR ACT
13 PROGRAM, WHERE WE HAVE PEOPLE THAT ARE INVOLVED IN THE CRIMINAL
14 JUSTICE SYSTEM WHO DO GET COMPREHENSIVE WRAPAROUND SERVICES AND
15 CASE MANAGEMENT, AND THEY DON'T REOFFEND TO THAT HIGH DEGREE.

16 JUDGE KARLTON: I EXPECT NOW -- NOW THAT I HEAR THIS,
17 I AM CONFUSED. I THOUGHT YOU TOLD ME, MAYBE I'M WRONG, THAT THE
18 CONNECTION PROGRAM WAS NOT -- THAT PERSONS INVOLVED IN FELONIES
19 WERE NOT GOING TO BE SERVICED IN THE CONNECTION PROGRAM; IS THAT
20 WRONG?

21 THE WITNESS: I BELIEVE WHAT I WAS TALKING ABOUT,
22 YOUR HONOR, WAS THE MENTAL HEALTH COURT THAT WE HOPE TO
23 ESTABLISH AND THAT --

24 JUDGE KARLTON: OKAY. THEY'RE NOT GOING TO BE THERE.
25 AS TO THE CONNECTIONS PROGRAM, WERE YOU DEALING WITH FELONS

1 THEN?

2 **THE WITNESS:** YES.

3 **JUDGE KARLTON:** OKAY. PEOPLE WHO HAVE BEEN TO PRISON
4 OR WERE DIVERTED ONE WAY OR ANOTHER?

5 **THE WITNESS:** IN SOME CASES THEY HAD BEEN TO PRISON
6 AND THEY WERE BACK FROM PRISON; THEY WERE IN JAIL AS A RESULT OF
7 A NEW CRIME. IN OTHER CASES THEY WERE JUST COUNTY JAIL
8 PRISONERS.

9 **JUDGE KARLTON:** BUT THE PROGRAM WAS NOT AT ALL
10 DESIGNED TO DEAL WITH PAROLEES AS PAROLEES?

11 **THE WITNESS:** NO, IT WAS FOR PROBATIONERS
12 SPECIFICALLY.

13 **JUDGE KARLTON:** THAT'S WHAT I THOUGHT I HEARD YOU
14 SAY.
15 BY MR. SANGSTER

16 **Q** BUT ESSENTIALLY WHAT YOU'RE TALKING ABOUT IS JUST LINING UP
17 SERVICES FOR THESE PEOPLE BEFORE THEY'RE ACTUALLY RELEASED FROM
18 INCARCERATION, CORRECT?

19 **A** WHAT I'M TALKING ABOUT IS BEGINNING THE SERVICES WHILE
20 THEY'RE STILL INCARCERATED AND TRANSITIONING THEM INTO THE
21 COMMUNITY WITH THOSE SERVICES CONTINUING.

22 **Q** SO WHAT'S YOUR SENSE OF HOW LONG IT TAKES TO GET ALL THOSE
23 THINGS SET UP FOR A MENTALLY ILL PERSON?

24 **MS. BARLOW:** VAGUE AND AMBIGUOUS AS TO "ALL THOSE
25 THINGS."

1 BY MR. SANGSTER

2 **Q** WELL, THE TRANSITIONAL SERVICES YOU WERE TALKING ABOUT THAT
3 WOULD HELP A MENTALLY ILL INMATE SUCCEED IN THE COMMUNITY, IS
4 THIS SOMETHING THAT CAN BE SET UP IN A WEEK. DOES IT TAKE A
5 YEAR? HOW LONG DOES IT TAKE?

6 **A** I DON'T KNOW HOW LONG IT WOULD TAKE THE STATE TO PUT
7 SOMETHING LIKE THAT IN PLACE. THAT WOULD BE DEPENDENT UPON --
8 SOMEBODY WHO WORKS FOR CDCR COULD TELL YOU ABOUT THEIR TIME
9 LINES AND SO ON.

10 **Q** OKAY. WELL, IS THERE ANY REASON THAT THOSE SERVICES, THOSE
11 TRANSITIONAL SERVICES, CAN'T BE PROVIDED EVEN IF THIS COURT IS
12 GOING TO ORDER THAT SOME OF THESE PEOPLE BE RELEASED A LITTLE
13 BIT EARLY FROM THEIR SENTENCE?

14 **A** IS THERE A REASON THEY COULD NOT BE PROVIDED?

15 **Q** YEAH, YEAH.

16 **A** I DON'T KNOW WHETHER THE STATE COULD OR COULDN'T. I'M NOT
17 IN A POSITION TO COMMENT ON WHAT THEY COULD OR COULD NOT DO.

18 **Q** SO ARE YOU SAYING YOU DON'T FEEL AS THOUGH YOU'RE IN A
19 POSITION TO COMMENT ABOUT WHETHER YOUR ALTERNATIVE WOULD WORK
20 FOR PAROLEES?

21 **A** NO, I DIDN'T SAY THAT.

22 **JUDGE HENDERSON:** THE DIFFERENCE BETWEEN WOULD WORK
23 IF IMPLEMENTED AND CAN IT BE IMPLEMENTED --

24 **MR. SANGSTER:** I GUESS THAT'S WHAT I'M TRYING TO
25 GATHER IS --

1 **JUDGE REINHARDT:** THE QUESTION IS IF YOU SAY THAT'S
2 AN ALTERNATIVE, IS IT AN ALTERNATIVE THAT THE STATE CAN PROVIDE,
3 OR IS IT NOT AN ALTERNATIVE AT ALL?

4 **THE WITNESS:** I BELIEVE IF THE STATE WANTED TO DO
5 COMMUNITY REENTRY PROGRAMMING, THEY COULD DO IT. THERE ARE MANY
6 MODELS THROUGHOUT THE NATION THAT DEMONSTRATE THAT. OUR
7 CONNECTIONS PROGRAM WAS ONE EXAMPLE OF SUCH A REENTRY AND
8 TRANSITION PROGRAM.

9 **JUDGE REINHARDT:** DOES THAT ANSWER YOUR QUESTION, OR
10 ARE YOU ASKING HIM HOW MUCH TIME --

11 **MR. SANGSTER:** CLOSE ENOUGH.

12 **JUDGE KARLTON:** IT REALLY ISN'T BECAUSE I STILL DON'T
13 KNOW WHAT WE'RE DOING. YES, THE STATE, I THINK YOU'VE
14 TESTIFIED, THE STATE COULD; THERE'S NO PRESENT REASON TO BELIEVE
15 THAT THEY WOULD. IS THAT FAIR?

16 **THE WITNESS:** I THINK THAT'S A FAIR STATEMENT. I'M
17 NOT AWARE OF ANYTHING THAT THE STATE CDCR IS DOING, BUT THAT
18 DOESN'T MEAN THEY ARE NOT DOING IT. I JUST DON'T KNOW.
19 BY MR. SANGSTER

20 **Q** YOU THINK IT WOULD BE A GOOD THING, BUT YOU DO NOT KNOW IF
21 IT'S FEASIBLE; IS THAT CORRECT?

22 **A** I DON'T KNOW WHETHER IT'S FEASIBLE OR NOT. THAT'S UP TO THE
23 DEPARTMENT OF CORRECTIONS.

24 **MR. SANGSTER:** I DON'T HAVE ANY FURTHER QUESTIONS FOR
25 THE WITNESS, YOUR HONOR.

1 **MS. BARLOW:** I CAN'T SEE HER. DOES CCPOA HAVE ANY
2 QUESTIONS?

3 **MS. LEONARD:** NO FURTHER QUESTIONS, YOUR HONOR.

4 **JUDGE HENDERSON:** OKAY. I DIDN'T HAVE MY GLASSES ON.

5 **MS. BARLOW:** I DIDN'T SEE HER EITHER, YOUR HONOR.

6 **JUDGE REINHARDT:** SHE'S GETTING FARTHER AND FARTHER
7 AWAY WITH EACH WITNESS. I DON'T BLAME YOU.

8 **REDIRECT EXAMINATION BY MS. BARLOW**

9 BY MS. BARLOW

10 **Q** I THINK THERE MIGHT HAVE BEEN SOME CONFUSION, MR. CONKLIN,
11 BETWEEN TWO DIFFERENT ALTERNATIVES YOU TALKED ABOUT IN YOUR
12 REPORT. ONE WAS THE TYPE OF CONNECTIONS PROGRAM WHERE YOU GO
13 FROM BEGINNING TO END, AND THE OTHER ONE WAS A PROGRAM WHERE YOU
14 GET BENEFITS IN PLACE FOR FOLKS, AND YOU TALKED ABOUT THE FACT
15 THAT THERE ARE ALREADY SOME MODELS OF THAT, YOU'VE SEEN THAT
16 HAPPEN IN STATE PRISONS, CORRECT?

17 **A** I SAW ONE SUCH PROGRAM PROBABLY THREE OR FOUR YEARS AGO AT
18 DONOVAN PRISON IN SAN DIEGO.

19 **Q** SO JUST TO CLARIFY FOR THE COURT, THAT'S TWO DIFFERENT
20 ALTERNATIVES YOU TALKED ABOUT. ONE IS A STATE PRISON TYPE OF
21 IMPLEMENTATION OF YOUR CONNECTIONS PROGRAM. ANOTHER IS GETTING
22 FOLKS LINED UP FOR BENEFITS SO THAT THEY CAN LIVE APPROPRIATELY
23 IN THE COMMUNITY WHEN RELEASED, CORRECT?

24 **A** WE DID DISCUSS THOSE TWO THINGS SEPARATELY. OPTIMALLY THEY
25 WOULD BE PART OF THE SAME PROGRAM.

1 Q RIGHT.

2 NOW, IN TERMS OF THE NEED FOR ADDITIONAL MENTAL
3 HEALTH SERVICES, YOU WERE ASKED ABOUT THE SERVICES THAT PAROLEES
4 ARE GETTING, AND YOU INDICATED THAT THEY ARE GETTING SOME MENTAL
5 HEALTH SERVICES, THROUGH PAROLE, THROUGH OUTPATIENT CLINICS AND
6 SO ON. IF NO ADDITIONAL SERVICES WERE -- NO ADDITIONAL PAROLE
7 OFFICERS, NO ADDITIONAL MENTAL HEALTH SERVICES, WOULD YOU EXPECT
8 THAT THAT ADDITIONAL BURDEN OF MORE PAROLEES WOULD CAUSE THEM TO
9 GET LESS TREATMENT, NOT MORE?

10 MR. SANGSTER: OBJECTION. LACKS FOUNDATION, CALLS
11 FOR SPECULATION.

12 MS. BARLOW: THIS IS DIRECTLY IN RESPONSE TO
13 CROSS-EXAMINATION.

14 JUDGE HENDERSON: I'M GOING TO ALLOW IT.

15 THE WITNESS: I'M SORRY. WOULD YOU RESTATE THE
16 QUESTION?

17 BY MS. BARLOW

18 Q IF -- IN THE PAROLE CLINICS THAT YOU TALKED ABOUT WHERE
19 PAROLEES CAN COME IN AND GET MENTAL HEALTHCARE, THERE'S NO
20 PROPOSAL TO EXPAND THAT WHEN YOU LET THESE PAROLEES OUT. SO
21 WOULD YOU EXPECT THAT THERE MIGHT BE AN OVERALL REDUCTION IN THE
22 AMOUNT OF MENTAL HEALTHCARE THAT PAROLEES WOULD GET?

23 MR. SANGSTER: OBJECTION. ASSUMES FACTS NOT IN
24 EVIDENCE.

25 JUDGE HENDERSON: WHAT IT REALLY DOES IS IT ASKS HIM

1 THE SAME QUESTION THAT YOU CAN ARGUE TO US, BECAUSE --

2 JUDGE KARLTON: IT'S SILLY.

3 MS. BARLOW: ALL RIGHT.

4 JUDGE HENDERSON: IT'S NOT HIS EXPERTISE. YOU CAN
5 ARGUE THAT BASED ON THE EVIDENCE.

6 JUDGE KARLTON: IT MAY BE TRUE, BUT --

7 MS. BARLOW: THANK YOU, YOUR HONOR. I'LL MOVE ON.
8 BY MS. BARLOW

9 Q WITH RESPECT TO THE COMMUNITY MENTAL HEALTH PROGRAMS IN
10 GENERAL, WOULD THE COUNTY OF SAN DIEGO MENTAL HEALTH PROGRAMS BE
11 ABLE TO EXPAND IF ADEQUATE FUNDING AND STAFFING WOULD BE
12 PROVIDED?

13 MR. SANGSTER: OBJECTION. LACKS FOUNDATION, PERSONAL
14 KNOWLEDGE, EXPERTISE. GOES BEYOND THE WITNESS'S --

15 JUDGE KARLTON: IT MAY GO BEYOND THE
16 CROSS-EXAMINATION. DO YOU WANT TO TRY THAT ONE?

17 MR. SANGSTER: YES, YOUR HONOR. THAT'S WHAT I MEANT
18 TO SAY. IT GOES BEYOND THE SCOPE.

19 MS. BARLOW: I HAVE NOTHING FURTHER, YOUR HONOR.

20 MR. SANGSTER: NO RECROSS, YOUR HONOR.

21 JUDGE HENDERSON: OKAY. THANK YOU FOR TESTIFYING,
22 MR. CONKLIN. YOU'RE EXCUSED.

23 THE WITNESS: YOU'RE WELCOME.

24 JUDGE HENDERSON: AND THAT IS IT FOR TODAY.

25 JUDGE REINHARDT: WE HAVE AN EXTRA HOUR WE CAN KEEP

1 TALKING IF WE WANT.

2 **MR. BIEN:** YOUR HONOR, JUST FOR THE RECORD, JOAN
3 PETERSILIA HAS WRITTEN A REPORT FOR GOVERNOR SCHWARZENEGGER
4 DATED DECEMBER 2007. IT'S PLAINTIFF'S EXHIBIT 113, WHICH TALKS
5 ABOUT, AMONG OTHER THINGS, RISK ASSESSMENT INSTRUMENTS AND ...

6 **JUDGE KARLTON:** 113?

7 **MR. BIEN:** YES.

8 **JUDGE KARLTON:** THERE WE ARE.

9 **JUDGE HENDERSON:** OKAY. COURT IS ADJOURNED UNTIL
10 9:15 TOMORROW.

11 (PROCEEDINGS ADJOURNED.)

12

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I N D E XDEFENDANTS' WITNESSESPAGEVOL.SCOTT KERNAN

DIRECT EXAMINATION BY MR. MELLO	1892	10
CROSS-EXAMINATION BY MR. FAMA	1912	10
REDIRECT EXAMINATION BY MR. MELLO	1935	10

JAMES W. MARQUART, PH.D.

DIRECT EXAMINATION BY MS. JOHNSON	1941	10
DIRECT EXAMINATION BY MR. MITCHELL	1970	10
CROSS EXAMINATION BY MR. SPECTER	1979	20

RICHARD CONKLIN

DIRECT EXAMINATION BY MS. BARLOW	2043	10
CROSS-EXAMINATION BY MR. SANGSTER	2081	10
REDIRECT EXAMINATION BY MS. BARLOW	2090	10

PLAINTIFF'S WITNESSESJOSEPH LEHMAN

DIRECT EXAMINATION BY MR. SPECTER	2003	10
CROSS-EXAMINATION BY MS. JOHNSON	2021	10
DIRECT EXAMINATION BY MS. WANG	2041	10

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839			1916	10

DEFENDANTS' EXHIBITS

1331	2030	10	2031	10

CERTIFICATE OF REPORTER

WE, JOAN MARIE COLUMBINI AND DEBRA L. PAS, OFFICIAL REPORTERS FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN CIV S-90-0520 LKK JPM, RALPH COLEMAN, ET AL V. ARNOLD SCHWARZENEGGER AND C 01-1351 TEH, MARCIANO PLATA V. ARNOLD SCHWARZENEGGER, WERE REPORTED BY US, CERTIFIED SHORTHAND REPORTERS, AND WERE THEREAFTER TRANSCRIBED UNDER OUR DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY US AT THE TIME OF FILING.

THE VALIDITY OF THE REPORTER'S CERTIFICATION OF SAID TRANSCRIPT MAY BE VOID UPON DISASSEMBLY AND/OR REMOVAL FROM THE COURT FILE.

/S/ JOAN MARIE COLUMBINI

JOAN MARIE COLUMBINI, CSR 5435, RPR

S/ DEBRA L. PAS

DEBRA L. PAS, CSR 11916, CRR, RMR, RPR

WEDNESDAY, DECEMBER 10, 2008

**JOAN MARIE COLUMBINI, CSR, RPR
DEBRA L. PAS, CSR, CRR, RMR, RPR
OFFICIAL COURT REPORTERS
415-255-6842**

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
AND FOR THE NORTHERN DISTRICT OF CALIFORNIA
UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES PURSUANT
TO SECTION 2284, TITLE 28 UNITED STATES CODE

RALPH COLEMAN, ET AL.,	)	
	)	
PLAINTIFFS,	)	
	)	
VS.	)	NO. CIV S-90-0520 LKK JFM
	)	
ARNOLD SCHWARZENEGGER, ET AL.	)	
	)	THREE-JUDGE COURT
DEFENDANTS.	)	
	)	

MARCIANO PLATA, ET AL.,	)	
	)	
PLAINTIFFS,	)	
	)	
VS.	)	NO. C 01-1351 TEH
	)	
ARNOLD SCHWARZENEGGER, ET AL.	)	
	)	
DEFENDANTS.	)	
	)	

TRANSCRIPT OF PROCEEDINGS

SAN FRANCISCO, CALIFORNIA
THURSDAY, DECEMBER 112008

(APPEARANCES ON FOLLOWING PAGES)

REPORTED BY: JOAN MARIE COLUMBINI, CSR 5435, RPR
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BY: ANNE L. KECK, ESQUIRE

1 THURSDAY, DECEMBER 11, 2008

9:23 O'CLOCK A.M.

2
3 P R O C E E D I N G S
4

5 JUDGE HENDERSON: OKAY. YOU MAY CALL YOUR NEXT
6 WITNESS, COUNSEL.

7 MR. SANGSTER: GOOD MORNING, YOUR HONOR. ED SANGSTER
8 FOR THE PLAINTIFFS. THE PLAINTIFFS CALL DR. BARRY KRISBERG.

9 BARRY KRISBERG,
10 HAVING BEEN CALLED AS A WITNESS BY THE PLAINTIFFS WAS FIRST
11 DULY SWORN AND EXAMINED AS FOLLOWS:

12 THE CLERK: STATE AND SPELL YOUR FULL NAME FOR THE
13 RECORD.

14 THE WITNESS: MY NAME IS BARRY KRISBERG, B-A-R-R-Y,
15 K-R-I-S-B-E-R-G.

16 DIRECT EXAMINATION BY MR. SANGSTER

17 BY MR. SANGSTER

18 Q GOOD MORNING, DR. KRISBERG. WOULD YOU GIVE THE COURT A VERY
19 BRIEF SUMMARY OF YOUR EDUCATIONAL BACKGROUND?

20 A I RECEIVED A BACHELOR'S FROM THE UNIVERSITY OF PENNSYLVANIA,
21 GOT A MASTER'S FROM THE SAME SCHOOL IN CRIMINOLOGY, AND,
22 ULTIMATELY, A PH.D. IN SOCIOLOGY FROM PENN.

23 Q WOULD YOU GIVE THE COURT A VERY BRIEF SUMMARY OF YOUR CAREER
24 IN CRIMINOLOGY?

25 A AFTER GETTING MY DEGREE, I CAME OUT AND TAUGHT AT THE

1 UNIVERSITY OF CALIFORNIA BERKELEY IN WHAT WAS THEN THE SCHOOL OF
2 CRIMINOLOGY, WENT ON TO WORK FOR THE NATIONAL COUNCIL ON CRIME
3 AND DELINQUENCY WHERE I'M STILL EMPLOYED. THAT BEGAN IN 1976.

4 I'VE ALSO HAD A NUMBER OF ADJUNCT EDUCATIONAL
5 APPOINTMENTS DURING THAT PERIOD, MOST RECENT ONE AT THE LAW
6 SCHOOL AT U.C. BERKELEY.

7 **Q** WHAT IS THE NATIONAL CENTER ON CRIME AND DELINQUENCY?

8 **A** NATIONAL COUNCIL ON CRIME AND DELINQUENCY.

9 **Q** NATIONAL COUNCIL ON CRIME AND DELINQUENCY.

10 **A** IT IS THE NATION'S OLDEST CRIMINAL JUSTICE RESEARCH
11 ORGANIZATION.

12 **Q** HAVE YOU PUBLISHED ANY BOOKS ON THE SUBJECT OF CRIMINOLOGY?

13 **A** YES, I HAVE.

14 **Q** HOW MANY?

15 **A** FOUR BOOKS.

16 **Q** HAVE YOU AUTHORED ANY PEER-REVIEWED ARTICLES IN THE FIELD OF
17 CRIMINOLOGY?

18 **A** YES, QUITE A NUMBER OF OVER THE YEARS.

19 **Q** HAVE YOU RECEIVED ANY AWARDS FOR YOUR WORK IN THE FIELD OF
20 CRIMINOLOGY?

21 **A** YES, IN 1993 I WAS SELECTED BY THE AMERICAN SOCIETY OF
22 CRIMINOLOGY FOR THE AUGUST VOLLMER AWARD WHICH IS --

23 **Q** HOW SIGNIFICANT IS THAT AWARD?

24 **A** IT'S THEIR HIGHEST AWARD FOR CONTRIBUTIONS TO CRIMINAL

25 JUSTICE. I'VE ALSO BEEN SELECTED BY THE JESSIE BALL DUPONT FUND

1 AS THEIR GRANTEE OF THE YEAR, AND SOME OTHER AWARDS AS WELL.

2 **Q** HAVE YOU BEEN ASKED TO PROVIDE ANY TRAINING TO CALIFORNIA
3 COUNTIES IN THE FIELD OF CRIMINOLOGY?

4 **A** YES, I HAVE.

5 **Q** WOULD YOU BRIEFLY DESCRIBE THAT?

6 **A** PRINCIPALLY, MY RESEARCH, MY TRAINING HAS INVOLVED TRAINING
7 PROBATION STAFF, AND, IN SOME CASES, JAIL STAFF ON ISSUES
8 RELATED TO CLASSIFICATION AND EFFECTIVE SUPERVISION STRATEGIES.

9 **Q** WHAT STUDIES OF CALIFORNIA PRISONS HAVE YOU BEEN INVOLVED
10 WITH?

11 **A** I PROBABLY BEEN INVOLVED IN EVERY MAJOR LEGISLATIVELY
12 MANDATED STUDY OF THE CALIFORNIA PRISONS SINCE 1980. THE FIRST
13 ONE, I ACTUALLY DIRECTED A STUDY FOR THE LEGISLATURE ON
14 ALTERNATIVES TO THE PRISON SYSTEM. SUBSEQUENT TO THAT, I WAS
15 APPOINTED TO THE BLUE RIBBON COMMISSION ON INMATE POPULATION
16 MANAGEMENT, WHICH WAS DURING GOVERNOR DEUKMEJIAN'S
17 ADMINISTRATIONS. MORE RECENTLY I WAS APPOINTED TO BE PART OF AN
18 EXPERT PANEL ON PRISONER REHABILITATION IN CDCR. SO, AGAIN MOST
19 OF THE MAJOR EFFORTS I HAVE BEEN INVOLVED IN.

20 **Q** HAVE YOU FORMED ANY OPINIONS ABOUT THE IMPACT THAT PRISON
21 POPULATION REDUCTION IN CALIFORNIA WOULD HAVE ON PUBLIC SAFETY?

22 **A** YES, I HAVE.

23 **Q** WHAT IS YOUR OPINION?

24 **A** MY OPINION IS THAT, DONE PROPERLY, THERE IS NO REASON TO
25 THINK THAT THAT RELEASE OF PRISONERS FROM THE CALIFORNIA PRISONS

1 OUGHT TO HAVE ANY ADVERSE EFFECT ON PUBLIC SAFETY.

2 **Q** WHAT DID YOU DO IN ORDER TO FORM YOUR OPINION?

3 **A** MY OPINION IS BASED ON A COUPLE OF -- I GUESS THREE MAJOR
4 COMPONENTS. ONE IS I DID AN EXHAUSTIVE REVIEW OF RESEARCH
5 HAVING TO DO WITH EARLY ACCELERATED RELEASE FROM OTHER STATE
6 PRISON SYSTEMS OVER THE LAST 20 YEARS.

7 **Q** LET ME JUST STOP YOU THERE. THOSE WERE STUDIES OF WHAT
8 ACTUALLY HAPPENED, NOT WHAT PEOPLE WERE PREDICTING WOULD HAPPEN;
9 IS THAT CORRECT?

10 **A** THAT'S CORRECT.

11 **Q** GO ON. WHAT ELSE DID YOU DO?

12 **A** SECONDLY, I LOOKED AT DATA FROM APPROXIMATELY 22 CALIFORNIA
13 COUNTIES THAT OVER THE LAST TEN YEARS HAD RELEASED APPROXIMATELY
14 1.7 MILLION INMATES BASED ON COURT ORDERED RELEASES, AND I
15 LOOKED AT THAT AS IT WAS RELATED TO CRIME TRENDS IN THE STATE.

16 FINALLY, I HAVE BEEN REVIEWING A NUMBER OF STUDIES
17 AND REPORTS, INCLUDING THE REPORT OF THE EXPERT PANEL,
18 INDICATING THE MOST EFFECTIVE STRATEGIES TO BOTH SELECT PEOPLE
19 FOR RELEASE AND ALSO MANAGE THEM IN THE COMMUNITY.

20 **Q** NOW, I WANT TO TURN YOUR ATTENTION TO YOUR REVIEW OF THE
21 STUDIES OF WHAT ACTUALLY HAPPENED WHEN THERE WAS EFFORTS TO
22 REDUCE PRISON POPULATION. SO LET'S TALK ABOUT THE STUDIES OF
23 THE OTHER JURISDICTIONS. HOW MANY JURISDICTIONS DID YOU STUDY?

24 **A** I LOOKED AT NINE AMERICAN STATES, CITY OF PHILADELPHIA, AND
25 ALSO CANADA.

1 Q HOW DID YOU SELECT THOSE JURISDICTIONS?

2 A I LOOKED AT -- WELL, USING THE RESOURCES OF THE NATIONAL
3 CRIMINAL JUSTICE REFERENCE SERVICE, THE NATIONAL INSTITUTE OF
4 CORRECTIONS INFORMATION CENTER, THE BANCROFT LIBRARY AT U.C.
5 AND, ALSO, THE RUTGERS NCCD JAMES COTTON LIBRARY, WHICH ARE
6 PRETTY MUCH THE EXHAUSTIVE LITERARY SOURCES, I ATTEMPTED TO
7 ASSEMBLE EVERY ARTICLE THAT WAS DONE ON ACCELERATED EARLY
8 RELEASE FROM ROUGHLY THE 1980'S ON UP.

9 Q DID YOU FIND ANY ARTICLES ON THAT TOPIC THAT YOU DID NOT
10 CONSIDER?

11 A NO, NONE THAT WERE -- I MEAN, MY CRITERIA IS IT HAD TO BE
12 REAL RESEARCH, NOT OPINIONS, AND IT HAD TO HAVE SOME DATA THAT
13 YOU COULD ANALYZE.

14 Q DID YOU HAVE ANY PERSONAL INVOLVEMENT IN STUDYING POPULATION
15 REDUCTION IN ANY OF THOSE JURISDICTIONS?

16 A YES, I WAS INVOLVED AS WELL AS THE SUPERVISOR AND ALSO AS A
17 CO-WORKER IN A STUDY THAT I THINK YOU'VE HEARD ABOUT, THAT JIM
18 AUSTIN TALKED ABOUT, IN ILLINOIS, THE STUDY OF FORCED RELEASE IN
19 THE ILLINOIS DEPARTMENT OF CORRECTIONS.

20 Q WHAT WAS STUDIED IN CONNECTION WITH THE OTHER JURISDICTIONS
21 THAT YOU REVIEWED?

22 A ESSENTIALLY, I WAS LOOKING AT TWO THINGS. ONE WAS
23 SUMMARIZING THE INFORMATION ON WHETHER OR NOT THE RECIDIVISM
24 RATES OF PEOPLE RELEASED EARLY, HOW THAT COMPARED TO PEOPLE
25 RELEASED AT THE END OF THEIR REGULAR TERMS. I ALSO COLLECTED

1 SOME DATA FROM THE FBI TO SEE WHETHER OR NOT DURING THE PERIOD
2 IN WHICH THE RELEASE PRACTICES WERE TAKING PLACE, THERE WERE ANY
3 CRIME TREND PATTERNS.

4 **Q** WHAT CONCLUSIONS DID YOU REACH AS A RESULT OF YOUR STUDIES
5 OF THESE OTHER JURISDICTIONS?

6 **A** WITH RESPECT TO RECIDIVISM --

7 **JUDGE KARLTON:** WELL, BEFORE YOU GO THERE, WE'VE
8 HAD -- WE'VE NOW LEARNED THAT RECIDIVISM MEANS DIFFERENT THINGS
9 TO DIFFERENT PEOPLE. WHAT DO YOU MEAN BY IT WHEN YOU TALK ABOUT
10 RECIDIVISM?

11 **THE WITNESS:** WELL, IN THESE STUDIES, JUDGE, THEY
12 USED A VARIETY. TYPICALLY, THE MEASURE WAS PAROLE FAILURE,
13 RETURN TO PRISON. THAT WAS THE MOST TYPICAL MEASURE USED. IN A
14 COUPLE OF THEM THEY LOOKED AT ARRESTS, BUT IT WAS MOSTLY FAILURE
15 ON PAROLE.

16 **JUDGE KARLTON:** DOES THAT MEAN, WHEN YOU SAY "FAILURE
17 ON PAROLE," WHAT HAS BEEN REFERRED TO HERE AS TECHNICAL
18 VIOLATIONS OF PAROLE?

19 **THE WITNESS:** IN MOST OF THESE STUDIES, IT INCLUDED
20 BOTH MEASURES, NEW OFFENSES AND TECHNICAL VIOLATIONS.

21 **JUDGE KARLTON:** THANK YOU, SIR.

22 **BY MR. SANGSTER**

23 **Q** LET ME FOLLOW UP ON JUDGE KARLTON'S QUESTION.

24 WHY IS IT SIGNIFICANT TO LOOK AT THE RECIDIVISM RATES
25 WHEN YOU ARE TRYING TO EVALUATE THE IMPACT ON PUBLIC SAFETY?

1 **A** I THINK THE KEY ISSUE IS WHETHER OR NOT, BY RELEASING
2 INMATES EARLY, ONE SEES AN INCREASE IN THE CRIMINAL BEHAVIOR
3 THEY ENGAGE IN, AS COMPARED TO PERSONS WHO ARE RELEASED
4 NORMALLY.

5 **Q** DID YOU FIND ANY JURISDICTIONS DURING THE COURSE OF YOUR
6 REVIEW THAT ACTUALLY REDUCED RECIDIVISM RATES AS A RESULT OF
7 POPULATION REDUCTION?

8 **A** YES. MOST OF THE STUDIES FOUND NO DIFFERENCE, BUT WHAT WE
9 FOUND IN A STUDY OF THE PHILADELPHIA JAIL SYSTEM IN WHICH THEY
10 MADE PROVISIONS FOR DRUG TREATMENT RESOURCES, THAT, IN THAT
11 CASE, THOSE EARLY PAROLED PHILADELPHIA JAIL INMATES WHO
12 PARTICIPATED IN DRUG TREATMENT DID BETTER THAN THOSE THAT DID
13 NOT PARTICIPATE IN DRUG TREATMENT.

14 THE OTHER SIGNIFICANT STUDY WAS IN FLORIDA WHERE THE
15 STATE CREATED A PROGRAM CALLED COMMUNITY CONTROL, IN WHICH, IN
16 LIEU OF GOING TO PRISON, YOU WOULD HAVE INTENSIVE SUPERVISION
17 AND INTENSIVE SERVICES. AND ON THAT STUDY, WHICH WAS ACTUALLY
18 DONE BY NCCD STAFF, AGAIN UNDER MY GENERAL SUPERVISION, THE
19 STUDY SHOWED THAT THE INMATES UNDER THIS COMMUNITY CONTROL
20 PROGRAM HAVE MUCH LOWER RECIDIVISM RATES THAN THOSE THAT HAD
21 BEEN RELEASED FROM FLORIDA PRISONS NORMALLY.

22 **Q** NOW, I THINK THE COURT HAS HEARD, AND IS GOING TO HEAR, THE
23 OPINIONS OF SOME WITNESSES THAT RELEASING PRISONERS EARLY WILL
24 SOMEHOW REDUCE THE DETERRENT EFFECT OF PRISON. WHAT DOES YOUR
25 DATA FROM THE STUDIES SHOW ABOUT THE IMPACT OF EARLY RELEASE ON

1 RECIDIVISM?

2 **A** WELL, FIRST OF ALL, THE RESEARCH ON DETERRENCE SUGGESTS THAT
3 MARGINAL REDUCTIONS IN SANCTIONS ARE NOT GOING TO LIKELY HAVE AN
4 EFFECT. THAT IT IS THE CERTAINTY OF PUNISHMENT AND THE
5 QUICKNESS WITH WHICH PENALTIES ARE BROUGHT TO BEAR HAS A MUCH
6 BIGGER EFFECT. THERE'S A PRETTY LARGE CONSENSUS THAT MINOR
7 REDUCTIONS ARE NOT GOING TO MAKE A BIG DIFFERENCE.

8 **Q** BASED ON YOUR STUDIES OF THE RESULTS OF PRISON POPULATION IN
9 THESE 14 OTHER JURISDICTIONS, AS WELL AS YOUR OWN EXPERIENCE,
10 WOULD THERE BE AN ADVERSE IMPACT ON PUBLIC SAFETY IF THIS COURT
11 ORDERED THE STATE OF CALIFORNIA TO REDUCE ITS PRISON POPULATION?

12 **A** I DON'T BELIEVE SO, PROVIDED THAT THE PLAN THAT EMERGED WAS,
13 YOU KNOW, FOLLOWED, SENSIBLE SCREENING AND GOOD SUPERVISION
14 STRATEGIES, AND, WHERE POSSIBLE, RESOURCES WERE AVAILABLE, LIKE
15 DRUG TREATMENT SERVICES.

16 **Q** YOU SAID --

17 **JUDGE REINHARDT:** WHAT IF THERE WERE NO RESOURCES
18 AVAILABLE?

19 **THE WITNESS:** WELL, THERE'S RESEARCH INDICATING THAT
20 YOU CAN SLIGHTLY REDUCE RECIDIVISM RATES SIMPLY BY BETTER
21 SCREENING AND TEACHING PAROLE OFFICERS HOW TO BETTER SUPERVISE
22 OFFENDERS. THERE'S STUDIES FROM FLORIDA, WISCONSIN, AND SOUTH
23 CAROLINA INDICATING THAT SIMPLY TRAINING PAROLE OFFICERS ON HOW
24 TO DO A BETTER JOB WILL GET YOU A NET REDUCTION IN THOSE
25 RECIDIVISM RATES. YOU WILL GET ADDITIONAL REDUCTION IF, IN

1 ADDITION TO THAT, YOU WERE ABLE TO PROVIDE RESOURCES.

2 **MR. SANGSTER:** I WANT TO MAKE SURE, IF I COULD FOLLOW
3 UP ON YOUR QUESTION, JUDGE REINHARDT.

4 **BY MR. SANGSTER**

5 **Q** THE QUESTION, I THINK, IS IN ORDER TO AVOID AN ADVERSE
6 IMPACT ON PUBLIC SAFETY, DO THESE PROGRAMS HAVE TO BE IN PLACE
7 BEFORE THE COURT CAN REDUCE THE PRISON POPULATION?

8 **A** NO.

9 **Q** WHY NOT?

10 **A** AGAIN, IN A NUMBER OF THE JURISDICTIONS THAT I LOOKED AT,
11 WASHINGTON, WISCONSIN, AND OTHERS, THESE PROGRAMS DID NOT EXIST
12 AT THE TIME OF THE ACCELERATED RELEASE OF INMATES, AND, AGAIN,
13 THERE WAS -- THE RECIDIVISM RATES WERE ESSENTIALLY IDENTICAL
14 AND, AGAIN, NO DISCERNIBLE CHANGES IN CRIME PATTERNS.

15 **JUDGE KARLTON:** MAY I INTERRUPT FOR A MOMENT?
16 YESTERDAY WE HEARD SOME TESTIMONY WHICH, THE WITNESS, HAVING
17 REVIEWED APPARENTLY MUCH THE SAME MATERIAL, I GATHER, SAID YOU
18 COULDN'T MAKE ANY CONCLUSIVE JUDGMENT ABOUT ANYTHING, THAT THE
19 MATERIAL WAS TOO -- I'M NOT CLEAR EXACTLY WHY YOU COULDN'T, BUT,
20 IN ANY EVENT, HE WAS VERY FIRM ABOUT NOT BEING ABLE TO MAKE A
21 CONCLUSIVE DETERMINATION ABOUT ANYTHING.

22 IS YOUR REVIEW OF THE MATERIAL OF THE SAME JUDGMENT?
23 I MEAN, OBVIOUSLY IT'S NOT. YOU SEEM TO BELIEVE THAT THE
24 MATERIAL CLEARLY POINTS ONE WAY OR ANOTHER.

25 **THE WITNESS:** WELL, MY CONCLUSION IS BASED ON THE

1 FACT THAT, LOOKING AT THESE 14 SEPARATE AND DISTINCT ARTICLES,
2 DISSERTATION, AND STATE AGENCY REPORTS, THEY'RE ALL IN THE SAME
3 DIRECTION, AND IN SOME CASES SO -- IN SOCIAL SCIENCE, WE WOULD
4 CALL THIS A META ANALYSIS, WHEN YOU FIND 14 STUDIES AND THEY ARE
5 ALL REACHING THE SAME CONCLUSION.

6 THERE'S AT LEAST ONE STUDY WHICH, ALTHOUGH A BIT
7 DATED, I THINK IS INTERESTING.

8 CALIFORNIA IN THE 1970'S ENGAGED IN AN EXPERIMENT,
9 WHICH, AGAIN, IS SORT OF THE GOLD STANDARD OF RESEARCH, IN WHICH
10 RANDOM -- BASED ON A RANDOM SAMPLING BASIS SOME INMATES FROM THE
11 CALIFORNIA DEPARTMENT OF CORRECTIONS WERE RELEASED SIX MONTHS
12 EARLY. AND THE RESEARCH DONE BY THE CALIFORNIA DEPARTMENT OF
13 CORRECTIONS UNIT SHOWED NO DIFFERENCE BASED ON THAT.

14 NOW, IT'S PRETTY RARE TO GET RANDOMIZED EXPERIMENTS
15 LIKE THAT, BUT WHAT WE HAVE IN THESE 14 STUDIES IS A PRETTY
16 BROAD RANGE, DIFFERENT METHODS, DIFFERENT APPROACHES, BUT ALL
17 REACHING THE SAME CONCLUSION.

18 **BY MR. SANGSTER**

19 **Q** NOW I WANT TO TURN YOUR ATTENTION TO YOUR STUDY OF WHAT'S
20 ACTUALLY HAPPENED IN CALIFORNIA. YOU SAID YOU STUDIED THE
21 IMPACTS OF POPULATION CONTROL IN COUNTY JAILS IN CALIFORNIA.
22 HOW MANY COUNTIES DID YOU STUDY?

23 **A** THE NUMBER VARIED FROM 20 TO 24 DEPENDING ON TIME PERIODS.
24 I TRIED TO LOOK AT A TEN-YEAR TIME PERIOD, A FIVE-YEAR TIME
25 PERIOD, AND THE LAST THREE YEARS. SO SOMETIMES I DIDN'T HAVE

1 THE DATA FOR ALL THOSE YEARS.

2 **Q** WHAT WAS THE SOURCE OF THE INFORMATION THAT YOU STUDIED IN
3 CONNECTION WITH CALIFORNIA JAIL RELEASES?

4 **A** THE DATA ON COURT-ORDERED JAIL RELEASES CAME FROM WHAT'S NOW
5 CALLED THE CORRECTIONS STANDARDS AUTHORITY. IT WAS SUBMITTED BY
6 THE COUNTIES TO CSA, AND I PULLED IT RIGHT OFF THE WEBSITE OF
7 CSA.

8 **Q** DID YOU ALSO REVIEW ANY INTERROGATORY RESPONSES THAT WERE
9 PROVIDED BY PARTIES TO THIS LITIGATION?

10 **A** YES, I DID.

11 **Q** DID YOU REVIEW ANY INFORMATION ABOUT THE CRIME RATE IN THE
12 COUNTIES -- LET ME JUST END IT THERE. DID YOU REVIEW ANY
13 INFORMATION ABOUT THE CRIME RATES IN THE COUNTIES YOU STUDIED?

14 **A** YES, I DID. I CONTACTED THE CALIFORNIA DEPARTMENT OF
15 JUSTICE AND WAS ABLE TO ASSEMBLE DATA ON SERIOUS CRIMES THAT, AS
16 PART ONE OFFENSES, IN EACH OF THESE COUNTIES FOR ALL THOSE
17 YEARS.

18 AND BECAUSE THESE WERE JAIL INMATES, I ALSO WANTED TO
19 LOOK AT MISDEMEANOR CRIME TRENDS. MISDEMEANORS, AS YOU KNOW,
20 AREN'T REPORTED AS CONSISTENTLY. SO IN THE CASE OF
21 MISDEMEANORS, I LOOKED AT TRENDS IN MISDEMEANOR ARRESTS FOR THE
22 SAME PERIOD OF TIME.

23 **Q** NOW, DID YOU CONSIDER YOUR STUDY OF CALIFORNIA STUDY --
24 CALIFORNIA COUNTIES TO BE AS RIGOROUS AS THE OTHER STUDIES THAT
25 YOU REFERRED TO IN OTHER JURISDICTIONS?

1 **A** NO, IT WAS NOT AS RIGOROUS. THE OTHER STUDIES INVOLVED
2 INDIVIDUAL CASES RANDOMLY SAMPLED FROM RELEASES. IN THIS
3 INSTANCE, I WAS SIMPLY LOOKING AT AGGREGATE INFORMATION, TOTAL
4 NUMBERS, RELEASES EACH YEAR, AND LOOKING AT THAT IN RELATIONSHIP
5 TO TOTAL NUMBERS OF CRIMES.

6 **Q** IS THE INFORMATION THAT YOU GAIN FROM STUDYING CALIFORNIA
7 COUNTIES NONETHELESS HELPFUL IN ANALYZING THE IMPACT OF
8 COURT-ORDERED POPULATION REDUCTIONS IN JAILS?

9 **A** I BELIEVE IT IS, BECAUSE, FOR EXAMPLE, LOOKING AT THE
10 TEN-YEAR PERIOD, 21 COUNTIES, WHAT WE SEE IS OVER 1.7 MILLION
11 INMATES WERE RELEASED FROM CALIFORNIA JAILS DURING THIS PERIOD
12 OF TIME. AGAIN, THOSE COUNTIES, SPECIFICALLY DUE TO
13 OVERCROWDING ORDERS DURING THAT SAME PERIOD OF TIME, THE NUMBER
14 OF CRIMES IN CALIFORNIA WENT DOWN BY 18 -- IN THOSE COUNTIES
15 WENT DOWN BY 18 PERCENT, SERIOUS CRIMES. AND ALSO MISDEMEANOR
16 ARRESTS WENT DOWN BY 18 PERCENT IN THOSE SAME PLACES.

17 **JUDGE KARLTON:** BUT AT LEAST ONE ARGUMENT WE WILL
18 HEAR, APPARENTLY, IS THAT MISDEMEANOR ARRESTS WENT DOWN BECAUSE
19 THE SHERIFF AND POLICE HAD NO PLACE TO PUT THEM; THE JAILS WERE
20 SO OVERCROWDED. CAN YOU REALLY RELATE THE DOWNWARD TREND ON
21 CRIME AND THE REDUCTION IN MISDEMEANOR ARRESTS TO THE CAP THAT
22 HAD BEEN PLACED ON THE COUNTIES?

23 **THE WITNESS:** I WOULDN'T GO THERE. I WOULD BE FAR
24 MORE CONFIDENT THAT -- THAT JAIL CAPS WOULD NOT AFFECT CRIMES
25 REPORTED TO THE POLICE, THE MOST SERIOUS CRIMES, RAPE, ROBBERY,

1 AGGRAVATED ASSAULT, CAR THEFT, ET CETERA. THERE'S NO REASON
2 THAT PEOPLE STOP REPORTING CRIMES TO THE POLICE.

3 **JUDGE KARLTON:** THAT'S WHY I SAID MISDEMEANANTS.

4 **THE WITNESS:** YEAH. THE ONLY REASON I LOOKED AT
5 MISDEMEANANTS IS, I GUESS THE ARGUMENT IS SINCE MOST JAIL
6 RELEASEES ARE MOST LIKELY TO BE MISDEMEANANTS, I WANTED TO SEE
7 WHETHER OR NOT THERE WAS A SUDDEN INCREASE IN MISDEMEANANT CRIME
8 IN THE STATE, AND THERE WAS NOT.

9 **BY MR. SANGSTER**

10 **Q** YOU SAID YOU STUDIED 1.7 MILLION PEOPLE RELEASED OVER A
11 TEN-YEAR PERIOD. DID YOU ALSO STUDY THE NUMBER OF PEOPLE WHO
12 WERE RELEASED FROM CALIFORNIA COUNTIES DURING THE FIVE-YEAR
13 PERIOD BETWEEN 2001 AND 2006?

14 **A** YES, I DID, AND DURING THAT PERIOD, A LITTLE OVER
15 THREE-QUARTERS OF A MILLION INMATES WERE RELEASED FROM -- I HAVE
16 DATA ON 22 COUNTIES. AND DURING THAT PERIOD OF TIME REPORTED IN
17 THOSE COUNTIES WAS ESSENTIALLY UNCHANGED.

18 FOR THE LAST THREE YEARS, 2004 TO 2006, THERE WERE
19 OVER 400,000 INMATES RELEASED BASED ON COURT ORDERS FROM THESE
20 COUNTIES, AND DURING THAT PERIOD OF TIME THE NUMBER OF REPORTED
21 CRIMES DECLINED BY SEVEN PERCENT.

22 **Q** DID ALL OF THE COUNTIES SHOW CONSISTENT RESULTS?

23 **A** NO. ONE OF THE THINGS I DID WAS LOOK AT EACH ONE OF THESE
24 COUNTIES INDIVIDUALLY TO LOOK AT THESE TRENDS AND PUT THEM
25 TOGETHER.

1 Q WHAT DID YOU FIND AS A RESULT OF LOOKING AT THEM
2 INDIVIDUALLY?

3 A WHAT I FOUND IS THERE WERE SOME VARIATIONS, BUT THERE WAS NO
4 CONSISTENT PATTERN. RELEASE DIDN'T LEAD TO A CRIME REDUCTION,
5 BUT IT CERTAINLY DID NOT LEAD TO A CRIME INCREASE.

6 WHAT I FOUND, FOR EXAMPLE, WAS, YOU KNOW, LET'S TAKE
7 THE LAST THREE YEARS. I FOUND 13 COUNTIES WHERE RELEASES WERE
8 UP AND CRIME WAS DOWN. THERE WERE ANOTHER EIGHT COUNTIES IN
9 WHICH CRIME WAS DOWN AND RELEASES WERE DOWN. AND THEN THERE
10 WERE THREE WHERE RELEASES WERE ACTUALLY UP AND CRIME WENT UP.

11 WE ALSO -- I ALSO LOOKED SEPARATELY AT LOS ANGELES,
12 ORANGE, AND SAN DIEGO TO SEE WHETHER OR NOT THIS TREND HAD
13 ANYTHING TO DO WITH THE LARGER COUNTIES, AND, AGAIN, NO
14 CONSISTENT PATTERN. WHEN YOU PUT THIS ON A SCATTER DIAGRAM AND
15 YOU LOOK AT THESE THINGS FROM A STATISTICAL POINT OF VIEW,
16 THERE'S JUST NO DISCERNIBLE PATTERN.

17 Q WHAT OPINIONS DID YOU REACH AS A RESULT OF YOUR STUDY OF
18 COURT-ORDERED POPULATION REDUCTIONS IN CALIFORNIA COUNTIES?

19 A THAT IT DID NOT APPEAR TO HAVE ANY ADVERSE EFFECT ON CRIME
20 IN CALIFORNIA.

21 Q MY PRIOR QUESTIONS HAVE BEEN RETROSPECTIVE, IN OTHER WORDS,
22 DEALING WITH WHAT'S ACTUALLY HAPPENED IN THE PAST AND BEEN
23 OBSERVED. NOW I WANT TO TURN YOUR ATTENTION FOR A MOMENT TO
24 YOUR OPINIONS ABOUT WHAT WOULD HAPPEN IN THE FUTURE IN THIS
25 CASE.

1 **JUDGE REINHARDT:** MAY I ASK ONE QUESTION ABOUT THE
2 PAST?

3 DID THOSE FIGURES FROM THE PAST SHOW ANYTHING ABOUT
4 WHETHER PAROLE CONTINUED FOR A LENGTHY PERIOD OR WHETHER IT WAS
5 TERMINATED AFTER ONE YEAR OR WHETHER CERTAIN CRIMES WERE NOT
6 SUBJECTED TO PAROLE AT ALL?

7 **THE WITNESS:** IF YOU GO THROUGH THE 14 JURISDICTIONS,
8 THERE'S A VARIETY OF PATTERNS, NO CONSISTENT PATTERN. SOME
9 STATES, FOR EXAMPLE, LIKE ILLINOIS, HAD NO PAROLE DURING THE
10 PERIOD OF TIME. OTHERS WOULD INSTITUTE INTENSIVE PAROLE, LIKE
11 FLORIDA DID. OTHERS HAD MINIMAL PAROLE. SO I THINK THERE'S NO
12 CONSISTENT PATTERN IN TERMS OF WHAT THEY DID WITH --

13 **JUDGE REINHARDT:** COULD YOU TELL ANYTHING -- COULD
14 YOU OBSERVE ANY DIFFERENCE BETWEEN THE STATES THAT WENT TO
15 INTENSIVE PAROLE ON THE ONES THAT HAD NO PAROLE AT ALL? WERE
16 THERE ANY DIFFERENCES IN THE RATES?

17 **THE WITNESS:** WELL, AGAIN, THE LARGER FINDING IS THAT
18 THERE'S NO PARTICULAR DIFFERENCE. THE ONE STUDY WHICH I THINK
19 WOULD INDICATE THAT INTENSIVE SUPERVISION, THE FLORIDA EXAMPLE,
20 DID PRODUCE REDUCTIONS IN RECIDIVISM RATES FROM INMATES WHO
21 OTHERWISE WOULD HAVE SERVED OVER A YEAR IN FLORIDA PRISONS, BUT
22 DURING THIS PERIOD OF TIME WERE ACTUALLY SERVING ONLY ABOUT A
23 MONTH OR TWO IN JAIL AND THEN RELEASED UNDER INTENSIVE
24 SUPERVISION.

1 **BY MR. SANGSTER**

2 **Q** I WANT TO FOLLOW UP ON JUDGE REINHARDT'S QUESTION. DOES
3 PAROLE MAKE ANY DIFFERENCE IN IMPROVING PUBLIC SAFETY?

4 **A** YES.

5 **Q** HOW SO?

6 **A** IF DONE PROPERLY WITH PAROLE OFFICERS PROPERLY TRAINED IN
7 TERMS OF SUPERVISION, PAROLE OFFICERS ASSISTING INMATES IN
8 ADDRESSING ISSUES, LIKE HAVING ACCESS TO HOUSING AND WHAT HAVE
9 YOU, CAN MAKE A DIFFERENCE, YES.

10 **Q** ALL RIGHT. NOW, IS IT POSSIBLE FOR A COURT ORDER REDUCING
11 PRISON POPULATION TO ACTUALLY IMPROVE PUBLIC SAFETY?

12 **A** COULD YOU REPEAT THAT QUESTION?

13 **Q** IS IT POSSIBLE FOR A COURT ORDER EVER --

14 **JUDGE KARLTON:** ANYTHING IS POSSIBLE. WHAT IS YOUR
15 BEST JUDGMENT? ASK HIM THAT.

16 **MR. SANGSTER:** LET ME REPHRASE THE QUESTION.

17 **JUDGE KARLTON:** THAT'S WHAT WE HAD YESTERDAY.

18 **MR. SANGSTER:** I APOLOGIZE FOR THAT.

19 **BY MR. SANGSTER**

20 **Q** WHAT WOULD IT TAKE FOR A COURT-ORDERED POPULATION REDUCTION
21 TO IMPROVE PUBLIC SAFETY IN CALIFORNIA?

22 **A** I WOULD ANSWER THAT BY GOING BACK TO THE REPORT OF THE
23 EXPERT PANEL ON REDUCING INMATE RECIDIVISM RATES. IT WAS THE
24 OVERWHELMING CONSENSUS OF THAT PANEL THAT CALIFORNIA COULD MAKE
25 A SIGNIFICANT DIFFERENCE IN REDUCING ITS VERY HIGH RECIDIVISM

1 RATE, BUT THAT WAS REALLY DEPENDENT UPON A SIGNIFICANT REDUCTION
2 IN CROWDING THAT, UNDER THE EXISTING LEVELS OF CROWDING, THAT
3 PANEL DID NOT THINK IT WAS REALISTIC TO THINK THAT MUCH PROGRESS
4 COULD BE MADE IN TERMS OF REDUCING RECIDIVISM RATES.

5 **Q** I WANT TO ASK YOU A HYPOTHETICAL. I WANT YOU TO ASSUME THAT
6 THERE HAS BEEN TESTIMONY FROM A COUNTY SHERIFF WHO RUNS THE
7 JAIL. I WANT YOU TO ASSUME THAT THAT SHERIFF TESTIFIED
8 APPROXIMATELY FIVE PERCENT OF THE BOOKINGS INTO HIS JAIL
9 CONSISTED OF PAROLEES. I WANT YOU TO ASSUME THERE'S BEEN
10 TESTIMONY FROM A CHIEF OF POLICE THAT SOMEWHERE LESS THAN FIVE
11 PERCENT OF THE ARRESTS BY HIS DEPARTMENT CONSISTED OF PAROLEES.
12 HOW WOULD THOSE FACTS, IF TRUE, COMPARE TO NATIONAL NORMS?

13 **A** THOSE FACTS ARE PROBABLY A LITTLE BIT HIGHER OF WHAT I'M
14 AWARE OF, BUT THERE HAVE BEEN TWO STUDIES BY THE BUREAU OF
15 JUSTICE STATISTICS THAT LOOKED AT COHORTS OF RELEASED PRISONERS
16 AND THEN USED FBI DATA TO LOOK AT HOW MANY OF THEM WERE ARRESTED
17 IN THE SUBSEQUENT THREE-YEAR PERIOD, AND THOSE NUMBERS WERE
18 SOMETHING IN THE RANGE OF THREE PERCENT --

19 **Q** ALL RIGHT.

20 **A** -- OF THREE PERCENT OF THE ARRESTS IN THOSE STATES WERE
21 ATTRIBUTABLE TO PEOPLE WHO HAD BEEN RELEASED FROM PRISONS DURING
22 THAT --

23 **Q** WHAT DOES THE FACT THAT SUCH A LOW PERCENTAGE OF THE PEOPLE
24 BEING ARRESTED ARE PAROLEES TELL YOU ABOUT THE IMPACT OF COURT
25 ORDERED POPULATION REDUCTION ON PUBLIC SAFETY?

1 **A** THAT, IN GENERAL, A MODEST REDUCTION IN TIME SERVED WOULD
2 NOT HAVE A BIG EFFECT ON PUBLIC SAFETY.

3 **THE CLERK:** FIVE MINUTES, COUNSEL.

4 **BY MR. SANGSTER**

5 **Q** THERE HAS BEEN TESTIMONY FROM SOME LAW ENFORCEMENT WITNESSES
6 AND OTHER WITNESSES THAT COURT-ORDERED POPULATION REDUCTION OF
7 THE PRISONS WOULD HAVE A NEGATIVE IMPACT ON PUBLIC SAFETY.
8 YOU'VE JUST TESTIFIED THAT IT WOULD NOT HAVE A NEGATIVE IMPACT
9 ON --

10 **JUDGE REINHARDT:** HE TESTIFIED IT WOULD NOT HAVE A
11 BIG EFFECT.

12 **MR. SANGSTER:** LET ME CLARIFY THAT.

13 **BY MR. SANGSTER**

14 **Q** IS IT YOUR TESTIMONY THAT IT WOULD NOT HAVE A BIG EFFECT ON
15 PUBLIC SAFETY OR THAT IT WOULD HAVE NO EFFECT ON PUBLIC SAFETY?

16 **A** I BELIEVE DONE PROPERLY, IT WOULD HAVE NO EFFECT ON PUBLIC
17 SAFETY.

18 **JUDGE REINHARDT:** THAT WAS WHAT HE SAID.

19 **MR. SANGSTER:** NOW I CLARIFIED IT.

20 **BY MR. SANGSTER**

21 **Q** HOW DO YOU RECONCILE THE TWO POSITIONS? HOW DOES THIS COURT
22 FIGURE OUT WHICH IS THE MORE -- WHICH IS THE CORRECT OPINION?

23 **A** WELL, FIRST OF ALL, THE RESEARCH THAT I'M TALKING ABOUT
24 REFERS TO WHAT ACTUALLY HAPPENED IN A NUMBER OF JURISDICTIONS,
25 SO IT'S NOT HYPOTHETICAL, IT'S WHAT WE ACTUALLY OBSERVED, AS

1 WELL AS THE CALIFORNIA JAIL RELEASE EXAMPLE.

2 SECONDLY, I'M NOT SURPRISED THAT LAW ENFORCEMENT
3 OFFICIALS MIGHT HAVE THIS VIEW. FOR THE LAST 25 TO 30 YEARS IN
4 THE MEDIA AND VARIOUS POLITICAL CONTESTS, WE'VE HEARD THAT
5 RELEASING INMATES WOULD ENDANGER PUBLIC SAFETY, AND THE RESEARCH
6 I'M DESCRIBING IS NOT EASILY IN THE PUBLIC DOMAIN. I MEAN I HAD
7 TO WORK PRETTY HARD TO ASSEMBLE THIS.

8 I WAS STRUCK WHEN I PRESENTED SOME OF THIS RESEARCH
9 EARLIER UNDER THE AUSPICES OF THE CALIFORNIA LIBRARY, AND CHIEF
10 RICHARD WARD WHO IS NOW THE CHIEF OF VACAVILLE AND WAS THE
11 FORMER PRESIDENT.

12 **JUDGE KARLTON:** HE TESTIFIED HERE.

13 **THE WITNESS:** RIGHT. AND IT WAS INTERESTING THAT
14 CHIEF WARD DIDN'T DISPUTE THE DATA BUT JUST SAID HE WAS
15 SURPRISED BY IT.

16 SO I THINK MANY POLICE OFFICERS, POLICE CHIEFS
17 HAVEN'T BEEN NECESSARILY EXPOSED TO THIS DATA. THE NATURE OF
18 THEIR WORK IS THEY TEND TO RESPOND TO THE SPECIFIC INCIDENTS IN
19 THEIR JURISDICTIONS, ANECDOTES OF WHAT'S GOING ON. I WOULDN'T
20 EXPECT MANY OF THEM TO BE EMBROILED IN THE RESEARCH AND
21 STATISTICS OF THIS.

22 **MR. SANGSTER:** THAT'S ALL THE QUESTIONS I HAVE, YOUR
23 HONOR.

24 **JUDGE HENDERSON:** ANYTHING FROM CCPOA?

25 **MS. LEONARD:** NO, YOUR HONOR.

1 **JUDGE HENDERSON:** CROSS-EXAMINATION.

2 **CROSS-EXAMINATION BY MS. TILLMAN**

3 **BY MS. TILLMAN**

4 **Q** GOOD MORNING, DR. KRISBERG.

5 **A** GOOD MORNING.

6 **Q** I WANT TO BE SURE WE UNDERSTAND YOUR PROFESSIONAL
7 BACKGROUND. A GOOD PORTION OF YOUR PROFESSIONAL BACKGROUND HAS
8 BEEN DEDICATED TO THE JUVENILE CORRECTIONS AREA, CORRECT?

9 **A** THAT IS CORRECT.

10 **Q** AND AT LEAST 75 PERCENT OF YOUR PUBLISHED ARTICLES ADDRESS
11 JUVENILE OFFENDER ISSUES, CORRECT?

12 **A** YES.

13 **Q** YOU ARE A COURT-APPOINTED SUBJECT MATTER EXPERT IN THE
14 PENDING JUVENILE CLASS ACTION CASE CALLED FARRELL VERSUS
15 DEPARTMENT OF CORRECTIONS, CORRECT?

16 **A** YES.

17 **Q** AND THAT CASE SOLELY INVOLVES JUVENILE OFFENDERS, CORRECT?

18 **A** YES.

19 **Q** YOUR WORK IN THE FARRELL CASE DOES NOT ENCOMPASS THE MEDICAL
20 CARE PROVIDED TO JUVENILE OFFENDERS, DOES IT?

21 **A** NO.

22 **Q** NOR DOES IT INVOLVE THE MENTAL HEALTHCARE PROVIDED TO
23 JUVENILE OFFENDERS, DOES IT?

24 **A** NO.

25 **Q** AND YOU SPEND ABOUT A THIRD OF YOUR PROFESSIONAL TIME

1 WORKING ON THAT CASE, CORRECT?

2 **A** YES.

3 **Q** IN FACT, THE TIME SPENT CONSULTING ON THIS CASE HAS BEEN
4 PRETTY LIMITED, HASN'T IT?

5 **A** YES.

6 **Q** YOU HAVEN'T TOURED ANY DEPARTMENT OF CORRECTIONS AND
7 REHABILITATION FACILITIES IN PREPARING YOUR REPORT, HAVE YOU?

8 **A** NOT FOR PREPARING MY REPORT, BUT I CERTAINLY HAVE TOURED
9 FACILITIES, YES.

10 **Q** NOW, YOU SERVE AS THE PRESIDENT OF THE NATIONAL COUNCIL ON
11 CRIME AND DELINQUENCY, CORRECT?

12 **A** YES.

13 **Q** AND YOU'VE WORKED WITH THAT NATIONAL COUNCIL ON CRIME AND
14 DELINQUENCY SINCE 1977, CORRECT?

15 **A** SEVENTY-SIX, YES.

16 **Q** THANK YOU.

17 A GOOD PORTION OF WHAT THE NATIONAL COUNCIL ON CRIME
18 AND DELINQUENCY DOES IS PERFORM RESEARCH ON PRISON ISSUES,
19 RIGHT?

20 **A** YES.

21 **Q** AND SO WHEN MR. SPECTER OF PLAINTIFFS' COUNSEL ASKED YOU TO
22 LOOK AT THE IMPACT OF SENTENCING REFORMS, PAROLE REFORMS, AND
23 DIVERSION OF DEPARTMENT OF CORRECTION AND REHABILITATION INMATES
24 TO COUNTY PROGRAMS, YOU UNDERTOOK TO DO RESEARCH ON THAT ISSUE,
25 CORRECT?

1 **A** YES, BUT I'VE ALSO DONE EXTENSIVE RESEARCH ON ADULT
2 CORRECTIONS IN CALIFORNIA.

3 **Q** YOU ALSO HAD HELP, DIDN'T YOU, FROM A RESEARCH ASSOCIATE
4 WITHIN THE NATIONAL COUNCIL ON THIS MATTER?

5 **A** THAT'S CORRECT.

6 **Q** AND HER NAME WAS -- WAS IT CAROLINA GUZMAN?

7 **A** CAROLINA GUZMAN, YES.

8 **Q** SO YOU AND YOUR RESEARCH ASSOCIATE, CAROLINA GUZMAN, DID A
9 REVIEW OF THE LITERATURE CONCERNING VARIOUS EFFECTS OF THE
10 PRISON -- I'M SORRY.

11 YOU AND YOUR RESEARCH ASSOCIATE, CAROLINA GUZMAN, DID
12 A REVIEW OF THE LITERATURE CONCERNING VARIOUS EFFECTS, IF ANY,
13 OF EARLY RELEASE FROM PRISONS IN OTHER STATES AND OTHER
14 LOCALITIES, CORRECT?

15 **A** YES.

16 **Q** AND IN DOING THAT REVIEW OF THE PUBLISHED LITERATURE ON SUCH
17 PROGRAMS, THERE WAS NO INTENTION OF CHALLENGING ANY OF THE
18 UNDERLYING METHODOLOGY OF ANY OF THESE ARTICLES OR STUDIES THAT
19 WERE DONE, CORRECT?

20 **A** I REVIEWED EACH AND EVERY ARTICLE AND CERTAINLY COULD SPEAK
21 TO THE METHODOLOGY USED IN EACH ONE OF THESE ARTICLES, YES.

22 **JUDGE KARLTON:** THE QUESTION, I SUPPOSE, IS SOMEWHAT
23 DIFFERENT. WERE YOU SATISFIED THAT THE -- WELL, I DON'T KNOW.

24 IN YOUR REVIEW OF THE MATERIAL, WHAT OPINION DID YOU
25 HAVE, IF ANY, AS TO THE LEGITIMACY OF THE CRITERIA THAT WERE

1 BROUGHT TO BEAR AND THE METHODOLOGY USED?

2 **THE WITNESS:** OVERALL, I WOULD SAY THAT THE
3 METHODOLOGY WAS QUITE REASONABLE. MOST OF THESE STUDIES -- IN
4 THE CASE OF THREE OF THESE STUDIES WERE DONE BY MY ORGANIZATION
5 UNDER MY SUPERVISION. IN OTHER INSTANCES THEY WERE DONE BY
6 RESEARCH BUREAUS WITHIN THE STATES, AND THEY USED METHODS WHICH
7 I WOULD DESCRIBE AS QUITE CUSTOMARY TO DO THESE KINDS OF
8 ANALYSIS.

9 IN MOST CASES THESE STAFF WERE REQUESTED TO DO THIS
10 EITHER ON BEHALF OF THE LEGISLATURE OR ON BEHALF OF THE GOVERNOR
11 OF THOSE STATES.

12 **BY MS. TILLMAN**

13 **Q** YOU ASSUME THE DATA REPORTED IN THE STUDIES TO BE CORRECT;
14 IS THAT RIGHT?

15 **A** YES.

16 **Q** NOW, IN DOING THAT RESEARCH FOR PEER REVIEW-VIEWED ARTICLES,
17 YOU RECOGNIZE THAT THERE IS NO STATE THAT HAS AS LARGE A PRISON
18 POPULATION AS CALIFORNIA, CORRECT?

19 **A** THAT'S CORRECT.

20 **Q** IN FACT, YOU'VE CONSULTED WITH OTHER STATES ON PRISON
21 ISSUES, AND THE TWO STATES IN WHICH YOU PERFORMED THAT
22 CONSULTATION WORK, LET'S SEE, THEY'RE ILLINOIS AND NEW YORK,
23 CORRECT?

24 **A** ACTUALLY, I MADE A QUICK LIST. MY EXPERIENCE ON THE ADULT
25 SIDE IN TERMS OF CONSULTATION HAS INCLUDED ILLINOIS, THE

1 DISTRICT OF COLUMBIA, HAWAII. THE STATE OF FLORIDA, I WAS ASKED
2 BY GOVERNOR CHILDS TO ASSIST HIM WHEN HE TOOK OVER TO LOOK AT
3 THE FLORIDA SYSTEM.

4 I'VE DONE EXTENSIVE CONSULTATION FOR THE NATIONAL
5 INSTITUTE OF CORRECTIONS AND DID A MASTER PLAN FOR THE NEVADA
6 PRISON SYSTEM AS WELL. AGAIN, AS I'VE INDICATED, I'VE DONE A
7 NUMBER OF STUDIES OF THE CALIFORNIA PRISON SYSTEM.

8 **Q** WHEN YOU WERE A CONSULTANT FOR THE STATE OF ILLINOIS, THE
9 PRISON POPULATION AT THAT TIME WHEN YOU CONSULTED WAS, IN
10 ILLINOIS, 45,000, CORRECT?

11 **A** THAT'S CORRECT.

12 **Q** AND WHEN YOU WERE A CONSULTANT FOR NEW YORK CITY, THE JAIL
13 POPULATION WAS FAR LESS THAN WHAT YOU SAW IN THE STATE OF
14 ILLINOIS, CORRECT?

15 **A** THAT'S RIGHT.

16 **Q** NOW, THE SAMPLE GROUPS THAT WERE ADDRESSED IN THE 14 PEER
17 REVIEW-VIEWED ARTICLES THAT YOU AND YOUR RESEARCH ASSOCIATE
18 CULLED WERE VARYING SIZES, CORRECT?

19 **A** YES.

20 **Q** THEIR ARTICLE ON THE WASHINGTON PROGRAM ADDRESSED A SAMPLE
21 OF 1,674 INMATES, CORRECT?

22 **A** YES.

23 **Q** AND THE ARTICLE ON A CALIFORNIA PROGRAM ADDRESSED A SAMPLE
24 OF -- A SAMPLE OF 637 INMATES, CORRECT?

25 **A** YES.

1 **JUDGE KARLTON:** I DON'T KNOW WHAT IT'S DOING UP,
2 DOCTOR; DON'T WORRY ABOUT IT.

3 **THE WITNESS:** OKAY.

4 **BY MS. TILLMAN**

5 **Q** YOUR ARTICLE ON THE COLORADO RELEASE ADDRESSED A SAMPLE OF
6 126 INMATES, CORRECT?

7 **A** YES.

8 **Q** THE ARTICLE ON THE TEXAS RELEASE ADDRESSED A SAMPLE OF 2,072
9 INMATES, CORRECT?

10 **A** YES.

11 **Q** AND THE ARTICLE ON THE WISCONSIN RELEASE ADDRESSED A SAMPLE
12 OF 892 RELEASED INMATES?

13 **A** YES.

14 **Q** THE ARTICLE ON THE ILLINOIS RELEASE ADDRESSED 1,600 IN THE
15 SAMPLE SIZE, CORRECT?

16 **A** YES.

17 **Q** NONE OF THE IDENTIFIED 14 PEER-REVIEWED ARTICLES ADDRESSED A
18 RELEASE OF SOME 50,000 INMATES, DID THEY?

19 **A** FIRST OF ALL, IF I CAN CORRECT ONE THING? NOT EVERY ONE OF
20 THESE ARTICLES WAS PEER-REVIEWED. SOME OF THESE WERE PRODUCED
21 BY RESEARCH DIVISIONS WHICH AREN'T NECESSARILY SUBJECT -- I
22 MEAN, THERE WAS PROBABLY SOME PEER REVIEW, BUT NOT IN THE
23 ACADEMIC SENSE OF IT.

24 BUT IN MOST INSTANCES THOSE NUMBERS REPRESENT RANDOM
25 SAMPLES SO THAT YOU CAN ESTIMATE TO THE FULL RELEASE POPULATION

1 BASED ON THOSE RANDOM SAMPLES. IN OTHER CASES, THESE ARE
2 SMALLER STATES. ON THE OTHER HAND, WHAT I WOULD SAY IS THAT AS
3 PART OF THE EXPERT PANEL, ONE OF THE MOST SIGNIFICANT THINGS AS
4 PART OF THE EXPERT PANEL.

5 **MS. TILLMAN:** I'M GOING TO FILE -- THIS WITNESS IS
6 NON-RESPONSIVE TO THE QUESTIONS, YOUR HONORS. I'D LIKE TO
7 STRIKE THAT TESTIMONY. I THINK THE QUESTION WAS SIMPLE. NONE
8 OF THE IDENTIFIED 14 PEER-REVIEWED ARTICLES ADDRESSED A RELEASE
9 OF 50,000 INMATES.

10 **JUDGE KARLTON:** HE DOESN'T AGREE THEY WERE ALL
11 PEER-REVIEWED. WHY DON'T YOU JUST SAY THE 14 ARTICLES?

12 **MS. TILLMAN:** FAIR ENOUGH.

13 **BY MS. TILLMAN**

14 **Q** NONE OF THE IDENTIFIED ARTICLES ADDRESSED A RELEASE OF
15 50,000 INMATES, CORRECT?

16 **A** THAT'S CORRECT.

17 **Q** THANK YOU.

18 NOW, WHEN CONSIDERING THE IMPACT OF RELEASE OF
19 DEPARTMENT OF CORRECTIONS AND REHABILITATION INMATES ON PUBLIC
20 SAFETY, YOU WOULD LOOK AT WHETHER THE INMATE IS MENTALLY ILL,
21 WOULDN'T YOU, BECAUSE MENTAL ILLNESS CAN INCREASE THE LIKELIHOOD
22 OF RECIDIVISM?

23 **JUDGE KARLTON:** THAT'S AN ASSUMPTION. WE'VE HAD
24 TESTIMONY THAT'S NOT SO. I'M NOT SAYING IT IS TRUE OR ISN'T
25 TRUE, BUT WE'VE HAD AT LEAST THAT TESTIMONY INDICATING THAT'S

1 NOT SO.

2 **MS. TILLMAN:** LET ME BACKTRACK.

3 **JUDGE KARLTON:** BEFORE WE BACKTRACK, DO YOU HAVE AN
4 OPINION AS TO WHETHER THE RELEASE OF MENTALLY ILL INMATES ON A
5 LARGE SCALE BUT RELATIVELY EARLY WOULD HAVE AN EFFECT ON PUBLIC
6 SAFETY?

7 **THE WITNESS:** I DON'T HAVE AN OPINION ON THAT.

8 **JUDGE KARLTON:** FAIR ENOUGH.

9 **BY MS. TILLMAN**

10 **Q** YOU WOULD AGREE THAT MENTAL ILLNESS DOES CONSTITUTE A FACTOR
11 THAT CAN INCREASE THE LIKELIHOOD OF RECIDIVISM IN A PAROLEE,
12 CORRECT?

13 **A** MOST OF THE RESEARCH ON RISK FACTORS INCLUDES MENTAL HEALTH
14 BUT NOT AS A MAJOR FACTOR IN TERMS OF RECIDIVISM RATES.

15 **Q** BUT IT IS A FACTOR, ISN'T IT?

16 **A** YES.

17 **Q** AND YOU WOULD AGREE ALSO THAT DRUG DEPENDENCY INCREASES THE
18 LIKELIHOOD OF RECIDIVISM AMONGST PAROLEES, DOESN'T IT?

19 **A** YES.

20 **Q** AND WHEN A PAROLEE PRESENTS WITH BOTH MENTAL ILLNESS AND
21 DRUG DEPENDENCY, THERE IS AN EVEN HIGHER LIKELIHOOD OF
22 RECIDIVISM, ISN'T THERE?

23 **A** I DON'T KNOW THAT TO BE TRUE.

24 **Q** LOOKING AT PAGE 54 OF YOUR DEPOSITION THAT WAS TAKEN IN
25 SEPTEMBER, I BELIEVE, 2008, LINE 2?

1 **MR. SANGSTER:** YOUR HONOR, MAY I ASK THIS BE TAKEN
2 DOWN UNTIL I HAVE A CHANCE TO REVIEW THE TRANSCRIPT AND FIND OUT
3 IF IT'S PROPER?

4 **JUDGE KARLTON:** YES.

5 **MR. SANGSTER:** I'M SORRY. IT'S PAGE 54?

6 **MS. TILLMAN:** PAGE 54, LINE 2.

7 **MR. SANGSTER:** NO OBJECTION, YOUR HONOR.

8 **JUDGE HENDERSON:** PROCEED.

9 **MS. TILLMAN:** THANK YOU.

10 **BY MS. TILLMAN**

11 **Q** I BELIEVE IN YOUR DEPOSITION YOU WERE ASKED, QUOTE:

12 "IF THESE TWO FACTORS WERE CO-OCCURRING WHERE
13 A PERSON IS BOTH MENTALLY ILL AND DRUG
14 DEPENDENT, DO THEY HAVE AN EVEN HIGHER
15 LIKELIHOOD OF RECIDIVISM THAN IF THEY JUST HAD A
16 SINGLE FACTOR AT PLAY, WHETHER IT BE DRUG
17 DEPENDENCE OR MENTAL ILLNESS?

18 "ANSWER: YES."

19 **A** I DID SAY THAT, AND -- BUT THE CONTEXT WOULD BE THAT --

20 **Q** I DON'T THINK THERE'S A PENDING QUESTION.

21 **JUDGE HENDERSON:** HE CAN EXPLAIN.

22 **THE WITNESS:** DO YOU WANT ME TO EXPLAIN?

23 THERE'S BEEN A LOT OF RESEARCH ON RISK FACTORS
24 ASSOCIATED WITH RECIDIVISM, AND USUALLY THE MOST IMPORTANT RISK
25 FACTORS THAT EMERGE HAVE TO DO WITH THE PRIOR RECORD OF THE

1 PERSON WHO IS BEING RELEASED, WHETHER OR NOT -- THE AGE AT WHICH
2 THEY ENTERED THE SYSTEM INITIALLY, THE CRIMES THAT THEY
3 COMMITTED. SO WHILE IT IS CERTAINLY TRUE THAT RECIDIVISM AND
4 MENTAL HEALTH ADD TO THAT, WITHIN AN OVERALL RISK ASSESSMENT
5 THEY'RE NOT NECESSARILY THE MOST IMPORTANT FACTORS. THEY ARE A
6 FACTOR, AND MY ANSWER WAS YES BECAUSE THEY ARE A FACTOR, BUT
7 THEY WOULDN'T BE THE DRIVING RISK FACTOR.

8 **BY MS. TILLMAN**

9 **Q** YOU WOULD AGREE THEN THAT ANY RELEASE ORDER SHOULD HAVE A
10 COMPONENT OF EXAMINING THE RISK OF RECIDIVISM POSED BY EACH
11 INDIVIDUAL INMATE SUBJECT TO THAT RELEASE, WOULDN'T YOU?

12 **A** YES, I'D RECOMMEND THAT.

13 **Q** AND THAT KIND OF EXAMINATION WOULD BE NECESSARY TO ENSURE A
14 MINIMAL ADVERSE EFFECT ON PUBLIC SAFETY, WOULDN'T IT?

15 **A** YES.

16 **Q** I'M RECALLING YOUR DEPOSITION. I BELIEVE YOU INDICATED THAT
17 IN THE ILLINOIS PROGRAM THAT YOU STUDIED --

18 **MR. SANGSTER:** OBJECTION. IMPROPER IMPEACHMENT, YOUR
19 HONOR.

20 **JUDGE HENDERSON:** I'M NOT SURE IT'S IMPEACHMENT.

21 **MR. SANGSTER:** SHE'S READING HIM HIS PRIOR STATEMENT.

22 **MS. TILLMAN:** ACTUALLY I'M NOT READING.

23 **MR. SANGSTER:** DO YOU RECALL IN YOUR DEPOSITION YOU
24 TESTIFIED?

25 **JUDGE REINHARDT:** THAT'S NOT WHAT SHE SAID ON THIS

1 QUESTION.

2 **JUDGE KARLTON:** I KEEP ASKING PEOPLE WHY DON'T THEY
3 JUST ASK THE QUESTION? SEE WHAT THE GUY SAYS. IF HE SAYS THE
4 SAME THING, YOU DON'T HAVE TO READ THE DEPOSITION. IF HE
5 DOESN'T, YOU CAN READ IT. I DON'T UNDERSTAND WHAT EVERY -- I
6 MEAN, IT'S NOT JUST THE DEFENDANTS. THE PLAINTIFFS DO THE SAME
7 THING. NONE OF IT MAKES ANY SENSE. IT'S EASIER FOR US TO LET
8 YOU DO IT AND GET ON WITH YOUR LIFE. GO AHEAD.

9 **BY MS. TILLMAN**

10 **Q** ISN'T IT CORRECT THAT IN THE ILLINOIS PROGRAM YOU STUDIED
11 REGARDING THE RELEASE OF INMATES EARLY, AS THEY SAY, THE WARDENS
12 WERE SIMPLY ASKED TO FLAG THOSE INDIVIDUAL INMATES THAT THEY
13 THOUGHT POSED A RISK TO THE COMMUNITY?

14 **A** THE WAY THE ILLINOIS FORCED RELEASE PROGRAM WORKED WAS THAT
15 A LIST WAS GENERATED OF THOSE INMATES WHO WERE MOST LIKELY TO BE
16 RELEASED ANYWAY, AND SO A LIST WAS GENERATED OF THE NUMBER OF
17 INMATES POTENTIALLY TO BE RELEASED, AND THEN WARDENS WERE ASKED
18 TO LOOK AT THOSE NAMES AND BASICALLY COME UP WITH ANY REASONS
19 THAT THEY BELIEVED THAT THOSE INMATES SHOULD NOT BE RELEASED.

20 **Q** AND THIS PROGRAM OCCURRED BEFORE THE ONSET OF THE MORE
21 RECENT PHENOMENON OF THE TECHNOLOGY OF A SCIENTIFIC RISK
22 ASSESSMENT AND SCREENING TOOLS, CORRECT?

23 **A** THAT'S RIGHT.

24 **Q** SO YOU WOULD WANT TO GO BEYOND THE SIMPLE FLAGGING OF INMATE
25 CASES BY WARDENS AND USE A SCIENTIFIC TOOL TO MEASURE THE RISK

1 POSED BY EACH INDIVIDUAL CANDIDATE FOR RELEASE, WOULDN'T YOU?

2 **A** TEN YEARS AGO I DID A STUDY FOR THE CALIFORNIA DEPARTMENT OF
3 CORRECTIONS IN WHICH I RECOMMENDED THAT THE DEPARTMENT OF
4 CORRECTIONS ADOPT A RISK ASSESSMENT INSTRUMENT IN HELPING THEM
5 MAKE PAROLE DECISIONS AND IN ALLOCATING THEIR SUPERVISION
6 RESOURCES. SO, YES, I BELIEVE THAT.

7 **Q** THAT KIND OF RISK ASSESSMENT TOOL HAS BEEN DEVELOPED BY YOUR
8 ORGANIZATION, HASN'T IT?

9 **A** WE HAVE ONE. THERE ARE OTHERS OUT THERE. YES.

10 **Q** AND THE TOOL THAT WAS DEVELOPED BY YOUR ORGANIZATION IS
11 CALLED?

12 **A** THE CORRECTIONAL ASSESSMENT AND INTERVENTION SYSTEM.

13 **Q** AND EVEN WITH THAT TOOL, THERE IS ALWAYS SOME RISK OF
14 RECIDIVISM, ISN'T THERE?

15 **A** YES.

16 **Q** AND THE TOOL THAT'S BEEN DEVELOPED BY YOUR ORGANIZATION, THE
17 CORRECTIONAL ASSESSMENT INTERVENTION SYSTEM, IS SIMILAR TO THE
18 ONE DEVELOPED BY THE DEPARTMENT OF CORRECTIONS AND
19 REHABILITATION CALLED COMPAS, ISN'T IT?

20 **A** IT'S REASONABLY SIMILAR. THERE'S TWO BIG DIFFERENCES. THE
21 COMPAS INSTRUMENT HAS MANY MORE ITEMS ASSOCIATED WITH IT, AND,
22 AS I INDICATED EARLIER, THE INSTRUMENT I'M TALKING ABOUT HAS
23 ACTUALLY BEEN USED ON PAROLEES IN FLORIDA, SOUTH CAROLINA, AND
24 WISCONSIN. AND WE FOUND THAT WHEN PAROLE OFFICERS USE IT, THEY
25 GET BETTER RESULTS.

1 Q SO THE TOOL THAT WAS DEVELOPED BY YOUR ORGANIZATION, THE
2 CORRECTIONAL ASSESSMENT INTERVENTION TOOL, WAS NOT USED TO
3 DETERMINE WHETHER TO RELEASE AN INMATE EARLY, CORRECT?

4 A THAT'S CORRECT.

5 Q AND, IN FACT, FLORIDA AND SOUTH CAROLINA NO LONGER USE THAT
6 TOOL, DO THEY?

7 A THAT'S CORRECT.

8 Q AND THE TECHNOLOGY OF RISK AND SCREENING TOOLS IS SO RECENT
9 THAT IT WAS NOT PART OF ANY OF THE 14 STUDIES THAT WERE REVIEWED
10 AND CULLED BY YOU AND YOUR ASSOCIATE, CORRECT?

11 A IN SEVERAL OF THESE STUDIES THE RESEARCH STAFF ACTUALLY
12 LOOKED AT RISK FACTORS AND ATTEMPTED TO IDENTIFY WHAT WERE THE
13 FACTORS LIKELY TO IDENTIFY THE PEOPLE WHO SUCCEEDED IN EARLY
14 RELEASE VERSUS NOT, AND IN MANY OF THEM SUGGESTED THAT GOING
15 FORWARD THIS WOULD BE A GOOD ADDITION. AGAIN, MANY OF THESE
16 STUDIES WERE DONE BEFORE THIS TECHNOLOGY IS ANYWHERE NEAR IT IS
17 TODAY.

18 Q IT'S A RECENT PHENOMENON OVER THE PAST TWO YEARS THESE TYPE
19 OF TOOLS HAVE COME INTO BEING; IS THAT CORRECT?

20 A MAYBE FIVE YEARS, YES.

21 Q WHEN YOU WERE DEPOSED IN SEPTEMBER 2008, YOU HAD NO
22 INFORMATION ON THE NUMBER OF INMATES WITHIN THE DEPARTMENT OF
23 CORRECTIONS AND REHABILITATION THAT WOULD QUALIFY AS LOW RISK
24 OFFENDERS USING EVEN THE TOOL DEVELOPED BY YOUR ORGANIZATION,
25 THE CORRECTIONAL ASSESSMENT INTERVENTION SYSTEM TOOL, RIGHT?

1 **A** THAT'S CORRECT.

2 **Q** IN FACT, AT THE TIME OF YOUR DEPOSITION, YOU HAD NO
3 INFORMATION THAT EVEN JUST 15,000 INMATES WOULD QUALIFY AS LOW
4 RISK OFFENDERS UNDER THE CORRECTIONAL ASSESSMENT INTERVENTION
5 SYSTEM TOOL DEVELOPED BY YOUR ORGANIZATION, CORRECT?

6 **A** YES.

7 **Q** YOU HAVE NO INFORMATION THAT EVEN 15,000 INMATES WOULD
8 QUALIFY AS LOW RISK OFFENDERS UNDER THE COMPAS TOOL FOR PURPOSES
9 OF RELEASE, DO YOU?

10 **A** I KNOW THAT THE DEPARTMENT HAS BEEN ADMINISTERING COMPAS,
11 AND SO THE DATA IS PROBABLY KNOWABLE AT THIS POINT. I DON'T
12 HAVE IT.

13 **Q** WHEN IT COMES TO SELECTING INMATES FOR EARLY RELEASE, A
14 FACTOR IN THAT DETERMINATION SHOULD BE THE OFFENSE FOR WHICH
15 THEY WERE COMMITTED, CORRECT?

16 **A** YES.

17 **Q** AND SO YOU WOULD RECOMMEND FIRST EXCLUDING CERTAIN OFFENDERS
18 FROM ANY RELEASE BASED UPON THEIR CONVICTION OFFENSE, LIKE SEX
19 OFFENDERS, CORRECT?

20 **A** YES.

21 **Q** VIOLENT OFFENDERS, PEOPLE WHO HAVE COMMITTED HOMICIDE, RAPE,
22 THAT TYPE OF THING, CORRECT?

23 **A** YES.

24 **Q** AND YOU WOULD ALSO LOOK AT THE AMOUNT OF TIME LEFT ON A
25 PRISONER'S SENTENCE, WOULDN'T YOU?

1 **A** YES.

2 **Q** YOU WOULD THEN USE A RISK ASSESSMENT TOOL TO FURTHER INFORM
3 ANY DECISION ON WHICH INMATES SHOULD BE RELEASED, WOULDN'T YOU?

4 **A** IT WOULD BE ONE OF THE DECISIONS, ONE OF THE PARTS OF THAT
5 DECISION, YES.

6 **Q** NOW, YOU AGREE THAT A POTENTIAL CONSEQUENCE OF A PRISONER
7 RELEASE ORDER IS THAT SOME INMATES WHO ARE RELEASED WILL
8 RECIDIVATE?

9 **A** THAT'S CORRECT.

10 **Q** AND THAT RECIDIVISM RATE COULD BE AS HIGH AS 70 PERCENT,
11 COULDN'T IT, DEPENDING UPON THE AVAILABILITY OF COMMUNITY
12 RESOURCES, PAROLE SUPERVISION, HOW THE PERSON WAS SELECTED FOR
13 RELEASE, CORRECT?

14 **A** SEVENTY PERCENT IS THE CURRENT RECIDIVISM RATE OF PEOPLE
15 RELEASED FROM CALIFORNIA PRISONS.

16 **Q** AND ISN'T IT TRUE THAT EVEN IF YOU CAN SELECT A GROUP OF LOW
17 RISK OFFENDERS WITHIN THE DEPARTMENT OF CORRECTIONS AND
18 REHABILITATION FOR EARLY RELEASE, THE LIKELIHOOD OF RECIDIVISM
19 ABSENT ANY SUPPORT IN THE COMMUNITY AND ABSENT ANY SPECIAL
20 PAROLE SUPERVISION TECHNIQUES AND TRAINING, THE SAFEST BET WOULD
21 BE THAT THE RECIDIVISM RATE WOULD BE THE SAME?

22 **A** I DON'T ACCEPT THE PREMISE OF THAT QUESTION, BECAUSE I DON'T
23 THINK IT WOULD BE RESPONSIBLE PUBLIC POLICY TO HAVE NO
24 SELECTION, HAVE NO TRAINING OF PAROLE OFFICERS TO SUPERVISE
25 THEM, AND CERTAINLY EFFORT SHOULD BE MADE TO CREATE SOME

1 RESOURCES. I GUESS I DON'T FOLLOW THE LOGIC OF THAT QUESTION.

2 **Q** WHAT I'M SUGGESTING IS YOU MAKE SOME ASSUMPTIONS. IF YOU
3 SELECT A GROUP OF LOW RISK OFFENDERS FOR EARLY RELEASE, WHAT
4 REMAINS OF THEIR LIKELIHOOD OF RECIDIVISM ABSENT ANY SUPPORT IN
5 THE COMMUNITY, ABSENT ANY SPECIAL PAROLE SUPERVISION TECHNIQUES
6 IN THE COMMUNITY. YOU WOULD AGREE THAT THE SAFEST BET IS THE
7 RECIDIVISM RATE REMAINS THE SAME, WOULDN'T YOU?

8 **A** IF ONE IS SELECTING LOW RISK INMATES, YOU WOULD EXPECT THE
9 RECIDIVISM RATE WOULD BE LOWER BECAUSE THAT 70 PERCENT RATE
10 CONSISTS OF PEOPLE WITH MUCH HIGHER RISK AND PEOPLE WITH LOWER
11 RISK.

12 FOR EXAMPLE, IF WE WERE TO FOCUS IN ON WOMEN INMATES
13 WHO, BY AND LARGE, REPRESENT A LOWER RISK OF RECIDIVISM, YOU
14 WOULD GET A LOWER RECIDIVISM RATE.

15 **Q** IN LOOKING AT PAGE 85 OF YOUR DEPOSITION YOU WERE ASKED THAT
16 QUESTION AT LINE 10. I'LL GIVE PLAINTIFF COUNSEL AN OPPORTUNITY
17 TO TAKE A LOOK.

18 **MR. SANGSTER:** OKAY. NO OBJECTION.

19 **MS. TILLMAN:** YOU WERE ASKED:

20 "QUESTION: ACTUALLY, I'M JUST -- I'M TRYING
21 NOT TO GIVE YOU ANY VARIABLES. I'M JUST SAYING
22 THAT YOU CAN SELECT A GROUP OF LOW RISK
23 OFFENDERS WITHIN CDCR FOR EARLY RELEASE, WHAT
24 REMAINS OF THEIR LIKELIHOOD OF RECIDIVISM ABSENT
25 ANY SUPPORT IN THE COMMUNITY, ABSENT ANY SPECIAL

1 PAROLE SUPERVISION TECHNIQUES?

2 "ANSWER: BASED ON THE STUDIES THAT I
3 REVIEWED, SORT OF THE SAFEST BET WOULD BE THAT
4 THE RECIDIVISM RATE WOULD BE THE SAME."

5 **JUDGE KARLTON:** SIR, I'M NOT SURE WHAT THAT QUESTION
6 ASKS. IT APPEARS TO ASK WHETHER THE RECIDIVISM RATE AMONG LOW
7 RISK OFFENDERS WOULD REMAIN THE SAME, AND YOUR ANSWER TO THAT IS
8 YES?

9 **THE WITNESS:** YES.

10 **JUDGE KARLTON:** BUT IF THE QUESTION IS THE TOTAL
11 RECIDIVISM RATE, YOUR ANSWER IS PROBABLY NO, BECAUSE LOW RISK
12 OFFENDERS HAVE A LOWER RATE OF RECIDIVISM?

13 **THE WITNESS:** THAT'S CORRECT.

14 **JUDGE KARLTON:** SPEAK INTO THE MICROPHONE.

15 **THE WITNESS:** I'M SORRY. THAT IS CORRECT.

16 WHAT I BELIEVE WHAT I WAS REFERRING TO IN THAT
17 DEPOSITION WAS COMPARING LOW RISK OFFENDERS TO LOW RISK
18 OFFENDERS. IF THE ONLY VARIABLE IS THAT ONE GROUP WOULD GET OUT
19 OF PRISON A LITTLE BIT EARLIER -- WHICH, BY THE WAY, I POINT OUT
20 WE HAVE BEEN DOING IN THIS STATE FOR 25 YEARS. WE HAVE BEEN
21 CHANGING GOOD TIME CREDIT LAWS.

22 IT'S ACTUALLY TRUE THAT 30 -- OVER THE LAST 30 YEARS,
23 THE AMOUNT OF TIME SERVED IN THE CALIFORNIA PRISONS FOR BURGLARY
24 HAS ACTUALLY GONE DOWN FROM WHERE IT WAS WHEN DETERMINATE
25 SENTENCING WAS STARTED. SO WE HAVE BEEN RUNNING THAT EXPERIMENT

1 OVER THE LAST 30 YEARS, A NUMBER OF LAWS, CHANGING TIME SERVED.
2 AND, AGAIN, DURING THAT PERIOD OF TIME THE OVERALL TREND HAS
3 BEEN DOWNWARD PARTICULARLY. BURGLARY RATES HAVE BEEN VERY
4 SHARPLY DOWN IN THE STATE OF CALIFORNIA.

5 **BY MS. TILLMAN**

6 **Q** IF I MIGHT JUST CLARIFY THE RECORD AND GOING BACK A LITTLE
7 BIT?

8 IN YOUR DEPOSITION YOU WERE ASKED "IF THESE TOOLS,"
9 REFERRING TO THE SCREENING TOOLS.

10 "...WERE USED TO SELECT A GROUP OF CDCR
11 INMATES FOR EARLY RELEASE, WOULD THE TOOLS
12 RESULT IN A REDUCTION OF THE RECIDIVISM RATE
13 FROM 70 PERCENT TO A DIFFERENT NUMBER FOR THIS
14 PARTICULAR GROUP?"

15 AND YOU RESPONDED:

16 "IF THAT SELECTION WAS ALSO COMBINED WITH
17 RESPONDING TO THE SUPERVISION STRATEGIES."

18 SO THE RECIDIVISM RATE STAYS THE SAME, DOESN'T IT,
19 EVEN WITH A LOW RISK GROUP, UNLESS YOU HAVE PAROLE SUPERVISION
20 STRATEGIES AT PLAY, CORRECT?

21 **A** WHAT I WAS SUGGESTING THERE IS THAT IF YOUR -- I MEAN, FIRST
22 OF ALL, YOU'RE INCREASING YOUR CHANCES OF NOT AFFECTING PUBLIC
23 SAFETY BY SELECTING LOW RISK PEOPLE. BUT WHAT I WAS SUGGESTING
24 IS, IF THEN YOU TEACH PAROLE OFFICERS HOW TO DO A GOOD JOB IN
25 SUPERVISION, THE NUANCES OF SUPERVISING DIFFERENT KINDS OF

1 OFFENDERS, YOU ARE GOING TO GET EVEN BETTER RESULTS.

2 **Q** YOU WOULD AGREE THAT EVEN OFFENDERS WHO ARE CLASSIFIED AS
3 HAVING A LOW RISK OF REARREST REQUIRE SOME REENTRY PROGRAMMING,
4 SOME HEALTHCARE SUPPORT, SOME JOB SUPPORT TO SUCCESSFULLY
5 REINTEGRATE INTO THE COMMUNITY, CORRECT?

6 **A** YES.

7 **Q** AND YOU WOULD AGREE THAT POST-RELEASE OPPORTUNITIES LIKE
8 EMPLOYMENT, HOUSING, POSITIVE FAMILY SUPPORT, CAN ALSO REDUCE
9 RECIDIVISM RATES?

10 **A** YES.

11 **Q** YOU WOULD AGREE THAT IN THE PHILADELPHIA STUDY INVOLVING THE
12 EARLY PAROLE OF JAIL INMATES, IT WAS SHOWN THAT ADDING IN
13 COMMUNITY-BASED DRUG TREATMENT SERVICES INCREASED THE PROPORTION
14 OF SUCCESS ON PAROLE AMONGST THOSE INMATES FROM 66 TO
15 78 PERCENT, CORRECT?

16 **A** YES.

17 **Q** SO TO AVOID A 70 PERCENT RECIDIVISM RATE WITH DEPARTMENT OF
18 CORRECTION AND REHABILITATION INMATES, YOU WOULD RECOMMEND,
19 WOULDN'T YOU, THAT THERE EXISTS AND BE MADE AVAILABLE TO THIS
20 GROUP OF RELEASED INMATES DRUG TREATMENT CENTERS?

21 **A** WELL, AGAIN, I WANT TO REITERATE THAT I BELIEVE IMPROVED
22 SUPERVISION STRATEGIES ALONE WOULD PRODUCE SOME REDUCTION IN
23 RECIDIVISM RATES, AND IN THE CASE OF FLORIDA WE FOUND THAT TO BE
24 AS MUCH AS ONE-THIRD REDUCTION, EVEN WITH NO ADDITIONAL
25 RESOURCES PUT INTO IT.

1 I WOULD SAY THE ADDITION OF THOSE RESOURCES WOULD
2 DRIVE THOSE RECIDIVISM RATES DOWN EVEN MORE.

3 **Q** AND I THINK, AS YOU EXPLAINED IN YOUR DEPOSITION, IF YOU
4 WANTED TO ENSURE THAT THIS SELECT GROUP OF OFFENDERS DID NOT
5 HAVE A 70 PERCENT RECIDIVISM RATE, YOU WOULD RECOMMEND THAT
6 THERE BE DRUG TREATMENT CENTERS AVAILABLE TO THEM, WOULDN'T YOU?

7 **A** YES.

8 **Q** NOW, YOU DON'T KNOW THE PRESENT CAPACITY OF COMMUNITY DRUG
9 TREATMENT CENTERS FOR PAROLEES WITHIN CALIFORNIA, DO YOU?

10 **A** I DO NOT.

11 **Q** BUT YOU KNOW THAT THE TYPE OF DRUG TREATMENT NECESSARY TO
12 ENSURE A REDUCTION IN THE CRIMINALITY OF PAROLEES WOULD PROBABLY
13 BE A RANGE OF DIFFERENT THERAPIES, CORRECT?

14 **A** THAT'S RIGHT.

15 **JUDGE REINHARDT:** MAY I ASK YOU A QUESTION HERE,
16 DOCTOR?

17 THESE STRATEGIES YOU ARE RECOMMENDING, ARE THEY ANY
18 DIFFERENT THAN THE STRATEGIES YOU WOULD RECOMMEND IF THEY GOT
19 OUT A FEW MONTHS LATER?

20 **THE WITNESS:** NO, THEY WOULDN'T BE ANY DIFFERENT.

21 **JUDGE REINHARDT:** BUT YOU WOULD RECOMMEND THESE
22 STRATEGIES WHENEVER THEY GOT OUT?

23 **THE WITNESS:** THAT'S CORRECT. I MEAN --

24 **JUDGE REINHARDT:** AND THEY WOULD HAVE THE SAME EFFECT
25 ON THE RECIDIVISM RATE IF THEY GOT OUT THREE MONTHS LATER OR

1 FOUR MONTHS LATER THAN THEY WOULD HAVE NOW?

2 **THE WITNESS:** THIS WOULD BE MY OPINION, AND I THINK
3 IT WAS THE OPINION OF THE EXPERT PANEL AS WELL.

4 THE THING I WOULD SAY IS, IN LOOKING AT THIS ISSUE,
5 WE ALWAYS HAVE TO KEEP IN MIND THAT THE DEPARTMENT IS RELEASING
6 140,000 INMATES EVERY YEAR, AND SO WHATEVER ADDITIONAL RELEASES
7 HAVE TO BE PUT IN THE CONTEXT OF WHAT IS ALREADY HAPPENING AND
8 WHO IS ALREADY BEING RELEASED.

9 **JUDGE KARLTON:** THAT RAISES A VERY TROUBLING QUESTION
10 FOR ME. I DON'T WANT TO SPEAK FOR MY COLLEAGUES.

11 THE STATE OF CALIFORNIA HAS KNOWN FOR MANY YEARS THAT
12 WHAT IT IS DOING IS ESSENTIALLY FAILING. THE PAROLE RATE IS AT
13 70 PERCENT, AND NOBODY IN HIS RIGHT MIND THINKS THAT'S
14 SUCCESSFUL. BUT THE STATE HAS MAINTAINED THAT IN THE FACE OF
15 REPEATED STUDIES WHICH DEMONSTRATE THAT WHAT THEY'RE DOING
16 DOESN'T WORK AND SOMETHING ELSE MIGHT. BUT THAT'S A POLITICAL
17 OPINION -- I MEAN A POLITICAL JUDGMENT. THEY'VE MADE THE
18 JUDGMENT THAT DESPITE WHAT THE EXPERTS SAY, THEY'D RATHER JUST
19 HAVE PEOPLE COMMITTING CRIMES.

20 WHEN WE ARE ASKED TO CONSIDER PUBLIC SAFETY, I'M NOT
21 QUITE SURE WHAT THAT MEANS. THE STATUTE REQUIRES -- AND I HAVE
22 TO HONEST, LOOK FORWARD THE ORAL ARGUMENT, TO THE FINAL
23 ARGUMENTS, WHEN SOMEBODY WILL TELL ME WHAT IT MEANS. BUT WHAT
24 WE HAVE IS A STATE WHICH DOESN'T CARE. DOESN'T THAT SUGGEST --
25 WHEN I SAY IT DOESN'T CARE, I MEAN ITS PUBLIC POLICY IS THAT IT

1 DOESN'T CARE.

2 DOESN'T THAT SUGGEST THAT THE EFFECT ON PUBLIC SAFETY
3 IN THIS STATE BECAUSE OF ITS PUBLIC POLICY IS SIMPLY -- WELL,
4 THAT'S NOT A QUESTION FOR YOU AT ALL. EXCUSE ME. THAT'S A
5 QUESTION FOR US. I'M JUST THINKING OUT LOUD. EXCUSE ME.

6 PARDON ME, MS. TILLMAN.

7 **BY MS. TILLMAN**

8 **Q** WE WERE TALKING ABOUT DRUG TREATMENT CENTERS. IN TERMS OF
9 THE DRUG TREATMENT NEEDS OF THE PAROLEES, YOU WOULD RECOMMEND,
10 WOULDN'T YOU, SOME SORT OF A RANGE OF DRUG TREATMENT CENTERS
11 WITH EITHER CLASSROOM SESSIONS, POSSIBLY GROUP SESSIONS,
12 POSSIBLY EVEN INPATIENT INSTITUTIONAL PROGRAMS FOR SOME
13 PAROLEES, RIGHT?

14 **A** THAT'S CORRECT.

15 **JUDGE REINHARDT:** ARE YOU TALKING ABOUT ALL PAROLEES
16 WHENEVER THEY COME OUT OR JUST THIS GROUP AS OPPOSED TO THE
17 OTHER PAROLEES?

18 **MS. TILLMAN:** WE WERE TALKING GENERALLY ABOUT ANY
19 PAROLEES.

20 **JUDGE REINHARDT:** OKAY. THANK YOU.

21 **BY MS. TILLMAN**

22 **Q** YOU DON'T KNOW HOW MANY DRUG TREATMENT CENTERS SHOULD BE
23 ESTABLISHED TO EVEN SERVE THE PRESENT POPULATION OF PAROLEES
24 WITHIN THE STATE OF CALIFORNIA, DO YOU?

25 **A** I DON'T KNOW THAT, NO.

1 Q NOW, WHEN A PAROLEE COMES OUT OF PRISON, YOUR RECOMMENDATION
2 IS THAT THEY HAVE HOUSING SUPPORT, CORRECT?

3 A YES.

4 Q AND THAT WOULD BE NECESSARY TO HELP REDUCE THE 70 PERCENT
5 RECIDIVISM RATE, CORRECT?

6 A THE RESEARCH WOULD INDICATE THAT IT WOULD HELP, YES.

7 Q AND AT THIS TIME THE ONLY HOUSING PROGRAMS THAT YOU ARE
8 AWARE OF FOR ASSISTING PAROLEES IN OBTAINING HOUSING UPON THEIR
9 REENTRY INTO SOCIETY ARE IN SANTA BARBARA COUNTY, ALAMEDA
10 COUNTY, SAN DIEGO COUNTY, SAN MATEO, AND SAN FRANCISCO?

11 A AND ALAMEDA COUNTY. I DON'T KNOW IF YOU MENTIONED THAT.

12 Q I THINK I MENTIONED THAT, YES.

13 A YES.

14 THE OTHER THING I CAN TELL YOU, I KNOW THIS BECAUSE
15 MY SON WORKS FOR THEM, A NATIONAL ORGANIZATION CALLED THE
16 CORPORATION FOR SUPPORT OF HOUSING, WHICH IS AN ORGANIZATION
17 THAT DESIGNS -- THAT HELPS FUND HOUSING FOR VULNERABLE
18 POPULATIONS IS VERY EXTENSIVELY INVOLVED NOW IN LOS ANGELES IN
19 DEVELOPING HOUSING FOR PAROLEES; IN FACT. DEVELOPING HOUSING
20 FOR PAROLEES IS THE LEADING ACTIVITY OF THE CALIFORNIA BRANCH OF
21 THIS ORGANIZATION RIGHT NOW.

22 Q TO AVOID A 70 PERCENT RECIDIVISM RATE, YOU WOULD ALSO
23 RECOMMEND THAT OFFENDERS HAVE SOME SORT OF TRANSITIONAL REENTRY
24 PROGRAM TO HELP THEM HONE THEIR JOB SEEKING SKILLS, THEIR
25 INTERVIEW SKILLS, HELP THEM SOLVE ISSUES ABOUT ACCESSING JOBS

1 AND HOUSING AND MEDICAL CARE, CORRECT?

2 **A** YES.

3 **Q** YOU DON'T KNOW HOW MANY PAROLEES ARE GAINFULLY EMPLOYED
4 TODAY, DO YOU?

5 **A** I DO NOT.

6 **Q** AND YOU DON'T KNOW WHAT PROPORTION OF THE PRESENT PAROLE
7 POPULATION IS EVEN QUALIFIED FOR COMMON LABORER JOBS, DO YOU?

8 **A** I DO NOT.

9 **Q** YOU DON'T KNOW WHAT PROPORTION OF THE PRESENT PAROLE
10 POPULATION IS QUALIFIED TO WORK IN A SKILLED PROFESSION, DO YOU?

11 **A** NO.

12 **Q** YOU HAVE NO REASON THEN TO QUESTION THE STATEMENT MADE IN
13 DR. MARQUART'S REPORT THAT ONLY 20 PERCENT OF THE PAROLEES
14 SUPPORT THEMSELVES THROUGH EMPLOYMENT IN THE FIRST YEAR AFTER
15 RELEASE, CORRECT?

16 **A** I HAVE NO WAY OF EVALUATING THAT.

17 **JUDGE HENDERSON:** I'M WONDERING ABOUT THE CONTINUITY
18 OF THAT QUESTION. IT SEEMS TO ME THAT DR. MARQUART'S FINDING AS
19 TO HOW MANY SUPPORT THEMSELVES IS DIFFERENT FROM HOW MANY ARE
20 QUALIFIED FOR CERTAIN KINDS OF JOBS. I DON'T SEE THE
21 CONNECTIONS THERE.

22 **MS. TILLMAN:** I THINK THE QUESTION WAS ALONG THE
23 LINES OF HOW MANY PAROLEES WHO ARE EMPLOYED, GAINFULLY EMPLOYED,
24 SUPPORT THEMSELVES THROUGH --

25 **JUDGE HENDERSON:** YOU ASKED HOW MANY WERE QUALIFIED.

1 **THE WITNESS:** CAN I COMMENT ON THAT?

2 **MS. TILLMAN:** I RECOGNIZE THAT. I THINK I WAS TRYING
3 TO INDICATE, TO THE EXTENT THERE IS STATISTICS OUT THERE, WE
4 KNOW THAT, AT LEAST FROM DR. MARQUART, ONLY 20 PERCENT OF THE
5 PAROLEES ARE GAINFULLY EMPLOYED. WE DON'T HAVE ANY INFORMATION
6 ABOUT HOW MANY MIGHT NEED REENTRY PROGRAMS BECAUSE WE DON'T KNOW
7 HOW MANY ARE SKILLED OR UNSKILLED.

8 **JUDGE KARLTON:** DR. MARQUART INDICATED WE CAN'T KNOW
9 ANYTHING.

10 **JUDGE HENDERSON:** ALSO, I GUESS WHAT'S BOTHERING ME,
11 MS. TILLMAN, IS MANY PEOPLE DON'T SEEK JOBS. SO THIS
12 INFORMATION DOESN'T TELL US WHO THOSE ARE. WE JUST KNOW WHO
13 HAVE JOBS. WE DON'T KNOW HOW MANY GO UP TO BURGER KING AND SAY,
14 I'M READY TO FLIP BURGERS, AND THOSE WHO DON'T WANT TO DO THAT.

15 **JUDGE KARLTON:** THE WITNESS WANTED TO COMMENT FURTHER
16 ON HIS ANSWER.

17 **THE WITNESS:** WELL, I MEAN, FIRST OF ALL, THERE ARE
18 WELL-ESTABLISHED PROGRAMS THAT SERVE PEOPLE COMING OUT OF PRISON
19 THAT EQUIP THEM WITH THESE SKILLS. FOR EXAMPLE, THE DELANCEY
20 STREET PROGRAM IN SAN FRANCISCO IS ONE EXAMPLE.

21 SECONDLY, I HAPPEN TO KNOW BECAUSE I HAVE BEEN
22 PARTICIPATING IN A NUMBER OF MEETINGS THAT WITHIN CALIFORNIA,
23 THE PHILANTHROPIC COMMUNITY HAS BEEN EXTENSIVELY INVOLVED IN NOW
24 PROMOTING PROGRAMS SUPPORTING PAROLEES FOR EMPLOYMENT WITHIN THE
25 COMMUNITY.

1 AND, FINALLY, I WOULD LOOK AT SAN DIEGO COUNTY WHICH
2 REALLY HAS AN EXEMPLAR PROGRAM OF PROVIDING EMPLOYMENT SERVICES
3 IN SAN DIEGO FOR PEOPLE COMING OUT OF CALIFORNIA PRISONS. I
4 HAVE DONE THE RESEARCH MYSELF. BY THE ACCOUNTS OF THE
5 CALIFORNIA ENDOWMENT, THE RESULTS OF THIS SAN DIEGO COUNTY
6 EMPLOYMENT PROGRAM HAS BEEN VERY SUCCESSFUL.

7 **BY MS. TILLMAN**

8 **Q** YOU DON'T KNOW HOW MANY REENTRY PROGRAMS ARE NEEDED TO
9 SUPPORT THE PRESENT PAROLE POPULATION, DO YOU?

10 **A** I DON'T KNOW AT THIS POINT, BUT IT'S CERTAINLY KNOWABLE.

11 **Q** YOUR OPINION IS THAT A PRISONER RELEASE ORDER, IF DONE
12 PROPERLY, WILL NOT HAVE AN ADVERSE EFFECT ON THE PUBLIC SAFETY,
13 CORRECT?

14 **A** YES.

15 **Q** WHEN YOU SAY "DONE PROPERLY," WOULDN'T IT BE CORRECT THAT
16 YOU MEAN THAT THERE MUST BE PROPER SCREENING OF THE INDIVIDUALS
17 WHO ARE CANDIDATES FOR A RELEASE?

18 **A** YES.

19 **Q** AND WHEN YOU SAY "DONE PROPERLY," WOULDN'T YOU AGREE THAT
20 THERE MUST BE TRAINING OF THE PAROLE OFFICERS IN THE FIELD TO
21 ENABLE EFFECTIVE SUPERVISION OF THESE RELEASED PAROLEES?

22 **A** YES.

23 **Q** AND WHEN YOU SAY "DONE PROPERLY," YOU WOULD AGREE THAT THERE
24 MUST BE COMMUNITY PROGRAMS TO SUPPORT THE PAROLEES IN THEIR
25 MENTAL HEALTH NEEDS, THEIR MEDICAL NEEDS, THEIR JOB NEEDS, THEIR

1 HOUSING NEEDS?

2 **A** THE LAST ISSUE WOULD BE AN IDEAL, YES.

3 **MS. TILLMAN:** THANK YOU, NOTHING FURTHER.

4 **JUDGE HENDERSON:** INTERVENORS.

5 **MR. MITCHELL:** YES, YOUR HONOR.

6 **MR. SPECTER:** EXCUSE ME. WE DIDN'T HEAR HIS LAST
7 ANSWER.

8 **MR. SANGSTER:** COULD WE HAVE THE LAST QUESTION AND
9 ANSWER READ BACK? THE VOICES DROPPED.

10 (RECORD READ)

11 **CROSS-EXAMINATION BY MR. MITCHELL**

12 **MR. MITCHELL:** GOOD MORNING. BILL MITCHELL,
13 DEFENDANT INTERVENORS.

14 **BY MR. MITCHELL**

15 **Q** GOOD MORNING, DR. KRISBERG. IS IT DR. KRISBERG?

16 **A** DR. KRISBERG.

17 **Q** DOCTOR, YOU WERE HIRED OR RETAINED IN THIS CASE, I BELIEVE
18 IT WAS, IN JULY OR AUGUST OF THIS YEAR.

19 **A** IN JULY, YES.

20 **Q** AND YOU WERE TASKED OR ASKED TO GIVE AN OPINION WHETHER
21 ACCELERATED RELEASE WOULD ENDANGER PUBLIC SAFETY?

22 **A** YES.

23 **Q** THAT WAS YOUR SOLE ROLE OF -- THAT WAS A REQUEST THAT WAS
24 MADE OF YOU, WILL ACCELERATED RELEASE ENDANGER PUBLIC SAFETY?

25 **A** YES.

1 Q AND YOU HAD ALREADY, OVER THE COURSE OF YOUR CAREER, STUDIED
2 ACCELERATED RELEASE QUITE EXTENSIVELY AND PUBLISHED IN THAT
3 AREA, CORRECT?

4 A I HADN'T -- WELL, IN THE LAST COUPLE OF YEARS WE PUBLISHED A
5 LITERATURE REVIEW, BUT, YES, I'VE -- I WAS PERSONALLY INVOLVED
6 IN THE INITIAL RESEARCH IN ILLINOIS THAT DR. AUSTIN SPOKE ABOUT.

7 Q THIS IS A TOPIC THAT YOU HAVE BEEN INVOLVED IN GOING BACK
8 INTO THE 1980'S?

9 A THAT'S CORRECT.

10 Q WHEN WE TALK ABOUT THE TERM "ENDANGER PUBLIC SAFETY," CAN WE
11 DEFINE THAT AS INCREASING CRIME AND VICTIMIZATION?

12 A YES.

13 Q SO IF WE'RE LOOKING TO DETERMINE WHETHER ACCELERATED RELEASE
14 IS GOING TO ENDANGER PUBLIC SAFETY, WE WOULD LIKE TO KNOW
15 WHETHER THE ACCELERATED RELEASE PROPOSAL WILL INCREASE CRIME AND
16 VICTIMIZATION; IS THAT CORRECT?

17 A YES.

18 Q WHEN WE'RE LOOKING TO DETERMINE WHETHER OR NOT PUBLIC SAFETY
19 IS ENDANGERED BY AN EARLY RELEASE, IS IT TRUE THERE ARE A NUMBER
20 OF DIFFERENT MEASURES WE CAN LOOK AT, SUCH AS WHETHER OR NOT IT
21 INCREASES THE CRIME RATE?

22 A YES.

23 Q SUCH AS WHETHER OR NOT IT INCREASES THE RECIDIVISM RATE OF
24 THE INDIVIDUALS RELEASED?

25 A YES.

1 Q SUCH AS WHETHER OR NOT IT INCREASES THE OCCURRENCE OF CRIMES
2 IN THE COMMUNITY?

3 A YES.

4 Q DO YOU AGREE, DOCTOR, THAT STUDIES -- RESEARCH HAS SHOWN
5 THAT THE INCARCERATION OF HABITUAL CRIMINALS WILL REDUCE THE
6 CRIME RATE?

7 A CAN YOU REPEAT THAT QUESTION?

8 Q LET ME REPHRASE IT FOR YOU.

9 WOULD YOU AGREE THAT INCREASED INCARCERATION OF
10 HABITUAL CRIMINALS WILL AND HAS REDUCED CRIME RATES?

11 A THE RESEARCH ON THAT WOULD SUGGEST IT SORT OF DEPENDS UPON
12 THE POINT IN THEIR CAREERS; YOU KNOW, IN OTHER WORDS, IF YOU
13 CAN -- IF YOU ARE FORTUNATE ENOUGH TO GET A HABITUAL CRIMINAL
14 EARLY IN THEIR CARRIER, YES, IT WOULD. BUT IF YOU ARE LOCKING
15 SOMEBODY UP TOWARDS THE END WHEN THEY ARE SORT OF AGING OUT AND
16 NO LONGER COMMITTING AS MANY CRIMES, THAT RESULT IS MARGINAL.

17 CERTAINLY, THE RAND CORPORATION, WHICH HAS BEEN THE
18 LEADING GROUP ON THAT ISSUE, HAS RAISED SERIOUS QUESTIONS ABOUT
19 WHETHER OR NOT, PER SE, WE CAN IDENTIFY HABITUAL CRIMINALS, AND,
20 SECONDLY, WHETHER OR NOT INCARCERATING THEM WILL HAVE MUCH OF AN
21 EFFECT.

22 Q WOULD YOU AGREE THAT INDIVIDUALS WHO HAVE DEMONSTRATED A
23 PROCLIVITY FOR CRIME, AMASSING THREE OR MORE FELONY CONVICTIONS,
24 DEMONSTRATE THAT THEY MIGHT BE HABITUAL CRIMINALS?

25 JUDGE KARLTON: I SUPPOSE THAT DEPENDS ON HOW YOU

1 DEFINE HABITUAL CRIMINALS. IF YOU DEFINE THEM AS THREE OR MORE,
2 THE ANSWER IS YES. IF YOU DEFINE THEM AS FIVE OR MORE, THE
3 ANSWER IS NO.

4 **THE WITNESS:** YOU KNOW, THERE'S A WHOLE SCIENCE OF
5 CRIMINOLOGY THAT HAS BEEN TRYING TO LOOK AT THIS ISSUE. I SAY
6 IT'S INCONCLUSIVE IN TERMS OF HOW YOU DRAW THE LINE ON THIS.

7 **BY MR. MITCHELL**

8 **Q** GETTING TO THAT POINT THEN, HABITUAL CRIMINALS, HOW WOULD
9 YOU CLASSIFY -- HOW WOULD YOU DEFINE WHAT IS OR WHAT IS NOT A
10 HABITUAL CRIMINAL, WHETHER IT'S VIOLENT OR NONVIOLENT
11 PROPERTY-TYPE CRIMES?

12 **A** I WOULD USE BEHAVIOR AS THE INDICATER. IT IS EXCEEDINGLY
13 DIFFICULT TO LOOK OUT INTO THE FUTURE AND MAKE THESE
14 PREDICTIONS.

15 WE KNOW FROM MOST OF THE STUDIES OF WHAT ARE CALLED
16 CRIMINAL CAREERS, THAT MOST OFFENDERS ACTUALLY SLOW DOWN, AGE
17 OUT, ACTUALLY REDUCE THEIR CRIMINAL BEHAVIOR. THERE'S EXTENSIVE
18 RESEARCH INDICATING THAT MOST OFFENDERS ARE GOING TO BE
19 COMMITTING LESSER CRIMES, AND A LOT OF IT HAS TO DO WITH THE AGE
20 CYCLE.

21 CERTAINLY, IF WE WERE TALKING ABOUT YOUNG MEN IN
22 THEIR 20'S, I WOULD BE A LOT -- YOU KNOW, I THINK YOU WOULD BE
23 BETTING ON CONTINUED CRIME BEHAVIOR. IF WE WERE LOOKING AT
24 PEOPLE IN THEIR 50'S AND 60'S, YOU WOULD BE BETTING ON SOMETHING
25 ELSE.

1 Q WITH AGE AS A CONTROLLING FACTOR, WOULD YOU AGREE THAT PAST
2 BEHAVIOR IS A GOOD INDICATOR OF RISK TO REOFFEND?

3 A THE FACTORS -- NOT NECESSARILY. THE FACTORS THAT ARE MOST
4 PREDICTIVE HAVE TO DO WITH THE OFFENSE, THE SEVERITY OF THE
5 OFFENSE THE PERSON HAS COMMITTED, THE AGE AT WHICH THEY
6 INITIALLY ENTER THE SYSTEM. SO THOSE ARE MUCH MORE TELLING.
7 SOMEBODY'S ASSOCIATION WITH OTHER CRIMINALS, CRIMINAL PEERS, IS
8 A VERY POWERFUL PREDICTOR OF THIS.

9 Q LET ME SEE IF I CAN DEFINE THIS TERM "HABITUAL CRIMINAL" A
10 LITTLE CLEARER THEN.

11 WOULD YOU AGREE THAT SOMEONE WHO COMMITS THREE OR
12 MORE FELONY CRIMES WITHIN A TEN-YEAR PERIOD MIGHT BE A HABITUAL
13 CRIMINAL?

14 A THEY MIGHT BE, YES.

15 JUDGE REINHARDT: AND THEY MIGHT NOT BE. IS THAT
16 WHAT THAT MEANS? THEY MIGHT BE, THEY MIGHT NOT BE?

17 BY MR. MITCHELL

18 Q WOULD THEY BE, IN YOUR OPINION?

19 JUDGE KARLTON: NO, NO. THE QUESTION IS DIRECTED TO
20 DR. KRISBERG.

21 IS THREE YEARS -- I'M SORRY -- THREE CRIMES WITHIN
22 TEN YEARS A DEMONSTRATION OF HABITUAL -- I THINK IS THE WORD YOU
23 USED.

24 MR. MITCHELL: A HABITUAL CRIMINAL.

25 THE WITNESS: WE HAVE BEEN HAVING THAT DEBATE IN

1 CALIFORNIA OVER THE LAST TEN YEARS, AND I THINK IT'S REALLY
2 DRIVEN BY WHAT THOSE OFFENSES ARE. YOU KNOW, FOR EXAMPLE, IF
3 SOMEBODY -- YOU KNOW, WE THINK ABOUT THE THREE STRIKES
4 CONVERSATION. IF THE LAST STRIKE IS A VERY MINOR CRIME, I STOLE
5 A VIDEO FROM A VIDEO STORE, THEN I WOULD NOT NECESSARILY VIEW
6 THAT AS AN INDICATION OF A HABITUAL CRIMINAL. IF WE ARE TALKING
7 ABOUT THREE ARMED ROBBERIES, THAT'S WHOLE DIFFERENT STORIES.

8 **BY MR. MITCHELL**

9 **Q** SO WE CAN HAVE HABITUAL VIOLENT CRIMINALS, AND WE CAN HAVE
10 HABITUAL NONVIOLENT PROPERTY CRIMINALS, CORRECT?

11 **A** YES.

12 **Q** SO THREE VIOLENT CRIMES, YOU WOULD AGREE, WITHIN A TEN-YEAR
13 PERIOD WOULD QUALIFY SOMEONE AS A HABITUAL CRIMINAL?

14 **A** YES.

15 **Q** WHAT ABOUT THREE PROPERTY NONVIOLENT CRIMES WITHIN A
16 TEN-YEAR PERIOD, WOULD YOU CLASSIFY THAT PERSON AS AN HABITUAL
17 NONVIOLENT PROPERTY CRIMINAL?

18 **A** THAT TERM DOESN'T HAVE A LOT OF SCIENTIFIC MEANING TO ME. I
19 WOULD BE LOOKING AT OTHER RISK FACTORS. IF YOU ARE ASKING ME TO
20 MAKE A PROJECTION GOING FORWARD AS TO WHAT THAT BEHAVIOR WOULD
21 BE, I'D WANT TO KNOW A NUMBER OF OTHER THINGS ABOUT THAT
22 INDIVIDUAL IF I WERE SITTING ON A PAROLE BOARD OR I WAS MAKING A
23 DECISION ABOUT THAT PERSON.

24 **Q** IN LOOKING AT YOUR STUDIES AND YOUR OPINION, I BELIEVE IT'S
25 YOUR OPINION, CORRECT ME IF I'M WRONG, THAT EARLY RELEASE

1 LOWERED RECIDIVISM RATES WHEN LOW RISK OFFENDERS WERE TARGETED,
2 ESPECIALLY DRUG AND PROPERTY OFFENDERS?

3 **A** THAT'S CORRECT.

4 **Q** SO WHEN WE ARE LOOKING AT TARGETING LOWER RISK INDIVIDUALS,
5 WE WANT TO MAKE SURE THAT WE'RE NOT EARLY RELEASING HIGH RISK
6 INDIVIDUALS, CORRECT?

7 **A** YES.

8 **Q** AND WOULD YOU AGREE THAT THE COMMISSION OF THREE OR MORE
9 FELONY CRIMES WITHIN A TEN-YEAR PERIOD WOULD QUALIFY SOMEONE AS
10 HIGH RISK?

11 **A** I WOULD NOT AGREE WITH THAT. I DON'T THINK THERE'S A
12 SCIENTIFIC STANDARD THAT SAYS THREE OR MORE WITHIN TEN YEARS
13 LEADS TO HIGH RISK. AGAIN, I WOULD DEPEND UPON -- YOU KNOW,
14 THERE'S SUBSTANTIAL RESEARCH THAT'S DONE BY PETER GREENWOOD OF
15 THE RAND CORPORATION. ALFRED BLOOMSTEIN AT CARNEGIE-MELLON HAS
16 DONE EXTENSIVE RESEARCH ON THIS. SO I WOULD -- IN ORDER TO FORM
17 THOSE DEFINITIONS, I WOULD LOOK AT THE BEST RESEARCHERS IN THE
18 COUNTRY AND FIGURE OUT WHERE THEY WOULD MAKE THOSE CUTOFF
19 POINTS.

20 **Q** WHAT NUMBER OF FELONY CONVICTIONS WITHIN A TEN-YEAR PERIOD
21 WOULD DISQUALIFY SOMEONE FROM EARLY RELEASE, IN YOUR OPINION?

22 **A** I DON'T HAVE AN OPINION ON THAT.

23 **Q** TEN OR MORE?

24 **A** TEN OR MORE, I WOULD PROBABLY SAY YES.

25 **Q** WHAT ABOUT FIVE IN TEN YEARS?

1 **A** AGAIN, IN REACHING THAT DECISION, I WOULD WANT TO KNOW THE
2 NATURE OF THOSE OFFENSES, HOW SERIOUS THEY WERE. WE WANT TO
3 KNOW THE CIRCUMSTANCES. AND I'D ALSO WANT TO KNOW QUITE A BIT
4 ABOUT THAT INDIVIDUAL IN TERMS OF WHILE THEY WERE INCARCERATED,
5 WERE THEY PARTICIPATING IN PROGRAMS OR NOT? DID THEY HAVE A JOB
6 WHEN THEY WERE RELEASED?

7 I MEAN, THERE WOULD BE A WHOLE SERIES OF THINGS THAT
8 I WOULD I THINK REASONABLY WANT TO TAKE INTO CONSIDERATION IN
9 FORMING THIS ISSUE OF RISK OF FUTURE BEHAVIOR.

10 **Q** AS A BOTTOM LINE, WOULD YOU AGREE THAT SOMEONE WHO HAS THREE
11 OR MORE FELONY CONVICTIONS, HAS GREATER RISK OF REOFFENDING THAN
12 SOMEONE WHO DOES NOT HAVE THREE OR MORE FELONY CONVICTIONS?

13 **A** YES.

14 **Q** NOW, IN YOUR REVIEW OF THE LITERATURE AND THE STUDIES IN THE
15 ACCELERATED RELEASE AREA, YOU CITED IN YOUR REPORT, I BELIEVE
16 YOU SAID TEN DIFFERENT STUDIES, CORRECT?

17 **A** WHAT I SAID, THE TOTAL NUMBER OF STUDIES THAT I HAVE
18 COLLECTED HERE THERE ARE 14 STUDIES, SOME OF THEM ARE MULTIPLE
19 FOR JURISDICTIONS. IT'S NINE STATES, AND THE COUNTRY OF CANADA,
20 AND THERE'S ONE WHICH IS THE CITY OF PHILADELPHIA.

21 **Q** YOU SELECTED THOSE FROM A WIDE VARIETY OF DIFFERENT STUDIES,
22 DIFFERENT ARTICLES THAT COMMENT ON AND LOOKED AT ACCELERATED
23 RELEASE, CORRECT?

24 **A** OUR GOAL WAS TO ASSEMBLE EVERY ARTICLE ON ACCELERATED
25 RELEASE WHICH, IN FACT, CONSTITUTED RESEARCH AND CONTAINED DATA

1 ABOUT THAT. SO, FOR EXAMPLE, WE EXCLUDE OPINION PIECES OR
2 ARTICLES ON JURISPRUDENCE WHICH SPOKE TO THESE ISSUES.

3 SO, TO MY KNOWLEDGE, THOSE WERE THE 14 THAT EMERGED
4 FROM A PRETTY THOROUGH LITERATURE REVIEW ON ACTUAL EMPIRICAL
5 STUDIES OF WHAT HAPPENED IN THESE STATES.

6 **Q** IN ORDER TO INFORM YOUR OPINION, DID YOU TAKE INTO
7 CONSIDERATION, EVEN THOUGH YOU MAY HAVE REJECTED IT, ARTICLES
8 THAT EXAMINED THE EXPERIENCE OF EARLY RELEASE IN VARIOUS
9 JURISDICTIONS SUCH AS IN LOS ANGELES OR IN PHILADELPHIA?

10 **A** AGAIN, I'VE CERTAINLY READ SOME ARTICLES WRITTEN, BUT I
11 WAS -- THE STANDARD WE APPLIED WAS AN EMPIRICAL STUDY.

12 **Q** THERE'S BEEN TESTIMONY IN THIS CASE REGARDING A LOS ANGELES
13 TIMES STUDY OF RELEASING INMATES EARLY IN LOS ANGELES DURING

14 A --

15 **JUDGE HENDERSON:** LOS ANGELES TIMES STUDY?

16 **MR. MITCHELL:** LOS ANGELES TIMES STUDY. IT WAS
17 REFERENCED IN TESTIMONY I BELIEVE THE DAY BEFORE YESTERDAY.

18 **MR. SANGSTER:** THERE WAS AN OBJECTION SUSTAINED, AND
19 IT'S IMPROPER TO FORMULATE A HYPOTHETICAL BASED ON --

20 **JUDGE HENDERSON:** RIGHT. I WAS EVEN ADMONISHED FROM
21 REFERRING TO THAT STUDY, IF YOU'LL RECALL.

22 **MR. MITCHELL:** I AM NOT BRINGING OUT ANY DETAILS OF
23 THE STUDY. I AM ASKING IF HE LOOKED AT IT AND CONSIDERED IT.
24 I'M NOT GETTING INTO ANY OF THE DETAILS, IF I MAY.

25 **JUDGE HENDERSON:** QUESTION IS, DID YOU LOOK AT A

1 STUDY AND CONSIDER A STUDY THAT THE COURT HAS FOUND NOT RELEVANT
2 TO THIS PROCEEDING?

3 **THE WITNESS:** I DON'T BELIEVE I'VE DONE THAT, NO.

4 **BY MR. MITCHELL**

5 **Q** IN ORDER TO INFORM YOUR OPINION, YOU WANTED TO TAKE IN AS
6 MUCH INFORMATION AS POSSIBLE REGARDING THE ACTUAL EXPERIENCE OF
7 EARLY RELEASE PROCEDURES THROUGHOUT MOST JURISDICTIONS IN THE
8 UNITED STATES, CORRECT?

9 **A** WITH SPECIFIC REFERENCE TO RECIDIVISM RATES AND CRIME RATES,
10 YES.

11 **Q** LOOKING AT THE ILLINOIS STUDY THAT YOU ACTUALLY SUPERVISED
12 AND PARTICIPATED IN IN 1986, I BELIEVE THAT STUDY WAS PUBLISHED,
13 CORRECT?

14 **A** THAT'S CORRECT.

15 **Q** THAT WAS PUBLISHED BY YOUR ORGANIZATION THAT YOU ARE
16 PRESIDENT OF, THE NATIONAL COUNCIL ON --

17 **A** CRIME AND DELINQUENCY, YES. IT WAS DONE -- THE GRANT WAS
18 THE NATIONAL INSTITUTE OF JUSTICE, WHICH IS THE RESEARCH ARM OF
19 THE JUSTICE DEPARTMENT, FUNDED THE STUDY, AND, ULTIMATELY, WE
20 PUBLISHED IT IN A JOURNAL CALLED CRIME AND DELINQUENCY, WHICH IS
21 A PEER-REVIEWED AND HIGHLY REGARDED ACADEMIC JOURNAL.

22 **Q** EARLY RELEASE SUBSTANTIALLY ACCELERATED THE AMOUNT OF CRIME
23 SUFFERED BY THE PUBLIC, THAT WAS A STATEMENT FROM THAT STUDY.
24 YOU STILL AGREE WITH THAT?

25 **A** YES. IN THE SENSE THAT IT ADVANCED THE DATES AT WHICH

1 CRIMES WERE COMMITTED. IT DIDN'T CHANGE THE OVERALL VOLUME OF
2 CRIMES COMMITTED IN THE STATE OF ILLINOIS. QUITE THE OPPOSITE.
3 BUT IT DID MEAN THAT CRIMES THAT LIKELY WOULD HAVE BEEN
4 COMMITTED BY THOSE SAME PEOPLE JUST SIMPLY HAPPENED A MONTH OR
5 TWO EARLIER.

6 **Q** ALTHOUGH THE PRISON SYSTEM WOULD DIRECTLY BENEFIT FROM
7 LOWERED PRISON POPULATIONS, THE PUBLIC MUST ALSO SUFFER THE
8 INCREASED EFFECTS OF ACCELERATED PRISON RELEASES THAT IN TURN
9 CAN JEOPARDIZE PUBLIC SAFETY. DO YOU AGREE WITH THAT?

10 **A** WOULD YOU REPEAT THAT SENTENCE? I KNOW I DIDN'T WRITE THAT
11 SENTENCE. IS THAT A SENTENCE FROM THE ARTICLE YOU ARE REFERRING
12 TO?

13 **Q** AT PAGE 405.

14 "ALTHOUGH THE PRISON SYSTEM WOULD DIRECTLY
15 BENEFIT FROM LOWERED PRISON POPULATIONS, THE
16 PUBLIC MUST ALSO SUFFER THE INCREASED EFFECTS OF
17 ACCELERATED PRISON RELEASES THAT, IN TURN, CAN
18 JEOPARDIZE PUBLIC SAFETY."

19 **A** I'M NOT SURE I AGREE WITH THAT STATEMENT.

20 **Q** "ONE CAN ALSO QUESTION HOW A WELL-PUBLICIZED
21 EARLY RELEASE PROGRAM MIGHT ADVERSELY AFFECT
22 GENERAL DETERRENCE."

23 DO YOU AGREE WITH THAT STATEMENT FROM THE ARTICLE?

24 **A** NO, I DO NOT.

25 **Q** "IF IT BECOMES COMMON KNOWLEDGE AMONG THE

1 PUBLIC THAT THE STATE IS REDUCING PRISON TERMS,
2 THEN MARGINAL OFFENDERS MIGHT BE MORE INCLINED
3 TO ENGAGE IN CRIMINAL ACTIVITIES."

4 DO YOU AGREE WITH THAT STATEMENT FROM THE ARTICLE?

5 **A** NO. AGAIN, THAT'S A HYPOTHETICAL STATEMENT. I THINK MY
6 GOAL HAS BEEN TO FOCUS IN ON WHAT ACTUALLY HAPPENED. AGAIN, IN
7 CALIFORNIA, THERE HAVE BEEN REPEATED TIMES WHEN THE LEGISLATURE
8 HAS INCREASED GOOD TIME CREDITS, TO MAKE SOME EFFECT ON THE
9 PRISON OVERCROWDING. IT'S BEEN PUBLICIZED TO THE EXTENT THAT
10 THESE THINGS ARE PUBLICIZED, AND WE SAW NO EVIDENCE THAT THAT
11 ALONE CHANGED CRIME COMMITTING PATTERNS IN THE STATE.

12 **JUDGE KARLTON:** MR. MITCHELL, LET ME INTERRUPT FOR A
13 MINUTE.

14 THE QUOTATION IS --

15 **MR. SANGSTER:** JUDGE KARLTON, I CAN'T HEAR YOU. I
16 APOLOGIZE.

17 **JUDGE KARLTON:** MY APOLOGIES.

18 IF IT BECOMES COMMON KNOWLEDGE AMONG THE PUBLIC THAT
19 THE STATE IS REDUCING PRISON TERMS, THEN MARGINAL OFFENDERS
20 MIGHT BE MORE INCLINED TO ENGAGE IN CRIMINAL ACTIVITIES. YOU
21 SAID YOU DON'T AGREE WITH THAT. ANYTHING IS POSSIBLE. THIS IS
22 A "MIGHT" STATEMENT.

23 **THE WITNESS:** THAT'S CORRECT.

24 **JUDGE KARLTON:** AND THAT'S WHY YOU WERE SAYING YOU
25 DON'T AGREE WITH IT?

1 **THE WITNESS:** THAT'S RIGHT.

2 I MEAN, IT'S POSSIBLE THAT SOME PEOPLE MIGHT, BUT I
3 THINK, IN MY EXTENSIVE CAREER OF RESEARCHING AND INTERVIEWING
4 PERSONS WHO HAVE BEEN EXTENSIVELY INVOLVED IN CRIME, I DON'T
5 FIND THAT THEY SPEND A LOT OF TIME, YOU KNOW, LOOKING AT THE
6 PENAL CODE OR TRYING TO FIGURE OUT WHAT THE PENALTIES ARE. IN
7 FACT, MOST OF THEM THINK THEY ARE NEVER GOING TO GET CAUGHT.
8 SO, DETERRENCE, MINOR CHANGES IN PENALTIES, AGAIN, THERE'S NOT
9 MUCH EVIDENCE THAT THEY HAVE A BIG EFFECT.

10 **JUDGE REINHARDT:** THERE ARE TWO DIFFERENT QUESTIONS.

11 ONE IS WHAT YOU JUST ADDED IN YOUR ANSWER A MINOR
12 CHANGE. AND THE OTHER I THINK THE QUESTION THAT COUNSEL -- THE
13 QUOTATION THAT HE READ WAS NOT LIMITED TO A MINOR CHANGE, BUT IT
14 HAD TO DO WITH WHETHER, IF THE PUBLIC BECOMES AWARE THAT
15 PENALTIES ARE BEING REDUCED, SAY FROM 80 YEARS TO TEN YEARS, IT
16 MIGHT BE ONE ANSWER. IF IT'S FROM SIX MONTHS TO FIVE MONTHS, IT
17 MIGHT BE A DIFFERENT ANSWER. THE QUESTION SEEMED TO BE A
18 GENERAL QUESTION, NOT RELATED TO EITHER A SHORT REDUCTION OR A
19 LONG REDUCTION.

20 AS YOU SAY, THERE'S BEEN A DEBATE EVER SINCE I CAN
21 REMEMBER ABOUT WHETHER LONG SENTENCES HAVE -- HOW MUCH OF A
22 DETERRENT EFFECT LONG SENTENCES HAVE. THIS IS THE SAME DEBATE
23 IF YOU SHORTEN SENTENCES, WHAT EFFECT DOES THAT HAVE ON THE
24 COMMISSION OF CRIME. BUT I THINK WHAT'S RELEVANT TO US IS
25 WHETHER YOU SHORTEN SENTENCES FOR A VERY SHORT PERIOD, AND I

1 DON'T KNOW WHETHER YOUR ANSWER IS -- IT WOULD SEEM THE QUESTION
2 RELATED TO JUST THE GENERAL PHILOSOPHICAL ISSUE OF WHETHER
3 LENGTHY SENTENCES REDUCES CRIME, WHICH IS AN INTERESTING DEBATE,
4 LIKE WHETHER WE OUGHT TO HAVE THREE STRIKES LAWS.

5 I THINK WHAT'S MOST HELPFUL TO US IS WHETHER THESE
6 QUESTIONS COULD BE ANSWERED IN TERMS OF THE KIND OF ISSUE WE
7 FACE, WHICH IS SHORT REDUCTIONS.

8 I DON'T KNOW WHETHER THAT'S A SPEECH, OR A QUESTION,
9 OR MAYBE SOME DESIRE TO HAVE QUESTIONS RELATE -- I THINK THE
10 QUESTION WAS A FAIR QUESTION, WHETHER THE REPORT -- YOU AGREE
11 WITH THE PART OF THE REPORT THAT TELLS US THAT IF THE PUBLIC IS
12 AWARE YOU ARE ONLY GETTING A ONE-YEAR SENTENCE INSTEAD OF A
13 50-YEAR SENTENCE, DOES THAT HAVE AN EFFECT ON CRIME. BUT WHAT I
14 THINK -- TO HAVE SOME EFFECT ON US WOULD BE WHETHER A REDUCTION
15 OF A SENTENCE BY A COUPLE OF MONTHS WOULD HAVE AN EFFECT ON
16 CRIME.

17 **THE WITNESS:** WELL, I THINK THAT'S WHERE I AM --
18 THAT'S WHAT I'M TRYING TO COMMUNICATE. I DO NOT BELIEVE THAT
19 SMALL REDUCTIONS IN SENTENCES ARE GOING TO HAVE AN EFFECT ON
20 CRIME RATES. THEY HAVEN'T, IN FACT. THE EVIDENCE IS PRETTY
21 CLEAR THAT THEY HAVE NOT.

22 AND THE QUESTION, AGAIN, WHETHER BROAD PUBLIC
23 KNOWLEDGE OF THIS IS GOING TO HAVE AN EFFECT, YOU KNOW, AGAIN I
24 COME BACK TO THE FACT THAT EVERY YEAR THE LEGISLATURE MEETS,
25 EVERY YEAR THE LEGISLATURE CHANGES PENALTIES. THINGS THAT WERE

1 FELONIES BECOME WOBBLERS. WE SENTENCE PEOPLE TO JAIL THAT USED
2 TO GO TO STATE PRISON. THIS IS PUBLICIZED IN THE NEWSPAPERS.
3 THERE'S NO EVIDENCE THAT THOSE CHANGES HAVE INCREASED CRIME IN
4 THIS STATE.

5 **JUDGE REINHARDT:** YOU MIGHT ASK THE SAME QUESTION
6 ABOUT THREE STRIKES, HAS THAT INCREASED OR DECREASED CRIME, BUT
7 THAT'S NOT A PROBLEM IN THIS CASE.

8 **BY MR. MITCHELL**

9 **Q** DR. KRISBERG, WHEN THIS STUDY WAS SUPERVISED BY YOU BACK IN
10 1986 AND IT WAS PUBLISHED, DID YOU AGREE WITH IT THEN?

11 **A** THE GENERAL CONCLUSIONS OF THE STUDY, YES. ALTHOUGH THE
12 AUTHOR WAS JAMES AUSTIN AND I CERTAINLY DIDN'T SUBSCRIBE TO EACH
13 AND EVERY WORD THAT JIM WROTE IN THAT REPORT, THAT WAS HIS
14 ARTICLE.

15 **Q** AND YOU CITED THAT STUDY -- THIS STUDY IN THE MATERIALS YOU
16 PROVIDED IN YOUR REPORT TO THIS COURT, CORRECT?

17 **A** THAT'S CORRECT.

18 **Q** AND IN THAT REPORT YOU INDICATED THAT THIS EARLY RELEASE
19 PROCEDURE OPERATING BETWEEN 1980 TO 1983 INVOLVED THE EARLY
20 RELEASE OF OVER 21,000 INMATES FROM THE ILLINOIS DEPARTMENT OF
21 CORRECTIONS, CORRECT?

22 **A** THAT'S CORRECT.

23 **MR. SANGSTER:** MISSTATES -- HE SAID IT WAS
24 MR. AUSTIN'S STUDY, NOT HIS STUDY.

25 **JUDGE KARLTON:** HE SUPERVISED, APPARENTLY; IS THAT

1 RIGHT, SIR?

2 **THE WITNESS:** THAT'S RIGHT. JAMES AUSTIN WORKED FOR
3 ME AT THE TIME, YES.

4 **BY MR. MITCHELL**

5 **Q** AND THAT EARLY RELEASE PROCEDURE IN ILLINOIS INVOLVED THE
6 RELEASE OF THAT 21,000 INMATES 90 DAYS PRIOR TO THE EXPIRATION
7 OF THEIR TERMS. SO WE ARE TALKING ABOUT A 90-DAY REDUCTION IN
8 THEIR TERMS?

9 **A** YES.

10 **Q** AND THAT WAS EFFECTIVE IN REDUCING THE PRISON POPULATION BY
11 TEN PERCENT?

12 **A** YES.

13 **Q** TWENTY-FIVE HUNDRED INMATES?

14 **A** YES. IF I COULD ADD? PART OF THE REASON IT ONLY HAD THAT
15 EFFECT WAS THAT DURING THAT PERIOD OF TIME, THE LEGISLATURE WAS
16 ENACTING OTHER LAWS THAT WERE ACTUALLY INCREASING TIME SERVED,
17 AND SO THERE WERE COUNTERVAILING FORCES THAT LED TO AN INCREASE
18 IN THE ILLINOIS PRISON POPULATION DURING THAT PERIOD AND
19 THEREAFTER.

20 **Q** AND YOU CITED IN YOUR REPORT THAT THOSE WHO HAD BEEN
21 RELEASED EARLY AS A GROUP HAD A LOWER RECIDIVISM RATE,
22 42 PERCENT, COMPARED TO THE FULL TERMERS WHO HAD A 49 PERCENT
23 RECIDIVISM RATE?

24 **A** THAT'S CORRECT.

25 **Q** AND THAT IS OFFERED AS EVIDENCE THAT ACCELERATED RELEASE

1 DIDN'T ENDANGER PUBLIC SAFETY BECAUSE IT DIDN'T LEAD TO AN
2 INCREASE IN THEIR RECIDIVISM RATE; IT ACTUALLY LOWERED THEIR
3 RECIDIVISM RATE?

4 **A** WELL, IN THAT STUDY WE CONCLUDED, FIRST, THAT THE RECIDIVISM
5 RATES WERE EITHER THE SAME OR LOWER, WHICH IS WHAT THOSE NUMBERS
6 SUGGEST. SECONDLY, THAT, IN FACT, DURING THE YEARS THAT EARLY
7 RELEASE WAS OPERATING, ACCORDING TO THE FBI, THE CRIME RATE OF
8 ILLINOIS WAS DECLINING. SO THAT WAS ANOTHER KEY CASE OF THIS --

9 **JUDGE REINHARDT:** IS THAT CAUSE AND EFFECT?

10 **THE WITNESS:** NO. I WOULD NOT SAY IT'S CAUSE AND
11 EFFECT, BUT, CERTAINLY, IT'S HARD TO CONCLUDE THAT IF CRIME IS
12 GOING DOWN THAT THIS IS HAVING A --

13 **JUDGE REINHARDT:** MAYBE IT WOULD HAVE GONE DOWN
14 FARTHER. WE KEEP HEARING ABOUT CRIME GOING DOWN NO MATTER WHAT
15 YOU DO, OR CRIME GOING UP NO MATTER WHAT YOU DO, AND IT GOES
16 DOWN, APPARENTLY, NATIONALLY WHETHER STATES GET TOUGHER OR MORE
17 LENIENT AND THEN IT GOES UP.

18 **JUDGE KARLTON:** WE HAVEN'T HEARD ABOUT GOING UP.

19 **JUDGE REINHARDT:** WE HAVEN'T HEARD ABOUT IT YET.

20 **JUDGE KARLTON:** WE COULD INFER THAT -- JUST AS
21 SENSIBLE HUMAN BEINGS, THAT SOMEHOW THE CRIME RATE IS UNRELATED.
22 I MEAN, IS THAT REALLY TRUE, THE CRIME RATE IS UNRELATED?

23 **JUDGE REINHARDT:** TO ANYTHING?

24 **JUDGE KARLTON:** WELL, PARTICULARLY TO THE NUMBER OF
25 PEOPLE INCARCERATED AND THE LENGTH OF TIME THEY'RE INCARCERATED.

1 **THE WITNESS:** I WOULDN'T SAY IT'S UNRELATED. IF YOU
2 DID SOMETHING DRAMATIC LIKE OPENED THE DOORS AND LET EVERYBODY
3 OUT, IT MIGHT HAVE AN EFFECT; YOU KNOW, IF YOU DECLARED MASS
4 AMNESTY, THAT MIGHT HAVE AN EFFECT.

5 **JUDGE REINHARDT:** OR IF YOU LOCKED EVERYBODY UP.

6 **THE WITNESS:** RIGHT, WHICH WOULD BE ANOTHER EXAMPLE.
7 I MEAN, THERE CERTAINLY HAVE BEEN NATIONS LIKE THE FORMER SOVIET
8 UNION THAT LOCKED UP EXTRAORDINARY AMOUNTS OF PEOPLE BUT STILL
9 HAD VERY HIGH RATES OF CRIMINAL BEHAVIOR.

10 I'D REFER YOU TO PROFESSOR FRANKLIN ZIMRING'S
11 EXCELLENT BOOK, "THE GREAT AMERICAN CRIME DECLINE," WHERE HE
12 LOOKS EXHAUSTIVELY AT ALL KINDS OF THEORIES THAT MIGHT HAVE
13 ACCOUNTED FOR THIS DRAMATIC CRIME DROP AND CONCLUDES PRETTY
14 CONVINCINGLY THAT CORRECTIONS POLICIES DIDN'T HAVE A BIG EFFECT
15 ON IT, BUT, FOR EXAMPLE, EFFECTIVE LAW ENFORCEMENT CAN HAVE A
16 VERY -- DID HAVE A POSITIVE EFFECT ON THIS ISSUE.

17 ONE OF THE THINGS THAT I ALWAYS POINT TO IS THAT NEW
18 YORK CITY, WHICH HAS THE MOST DRAMATIC DECLINE IN CRIME OF ANY
19 CITY AND ABOVE ALL THE OTHER CITIES DURING THIS PERIOD OF TIME,
20 DURING THE PERIOD AT WHICH CRIME RATES WERE DROPPING
21 PRECIPITOUSLY IN NEW YORK, NEW YORK CITY WAS ACTUALLY SENDING
22 FEWER PEOPLE TO ITS JAILS AND COMMITTING FEWER PEOPLE TO STATE
23 PRISONS. IT SEEMS PRETTY CLEAR TO THE RESEARCHERS THAT HAVE
24 LOOKED AT IT THAT IT'S NOT ONLY BETTER POLICING, BUT LARGELY
25 BETTER POLICING HAD A MAJOR EFFECT ON THE CRIME DROP.

1 AND, SIMILARLY, SAN DIEGO, IN THIS STATE, SAN DIEGO
2 EXPERIENCED THE BIGGEST DROP OF ANY COUNTY DURING THIS LAST TEN
3 YEARS IN TERMS OF CRIME RATE. AGAIN, IF YOU LOOK AT THE
4 INCARCERATION PATTERNS OF SAN DIEGO, IT IS NOT THE HIGHEST
5 INCARCERATION PLACE IN THE STATE BY ANY MEANS, AND I THINK MOST
6 CRIMINOLOGISTS WOULD CONCLUDE IT WAS MORE EFFECTIVE POLICING
7 THAT HAD A BIGGER EFFECT.

8 **BY MR. MITCHELL**

9 **Q** YOU THINK HOW EXPENSIVE IT IS TO LIVE THERE MIGHT HAVE
10 SOMETHING TO DO WITH IT ALSO?

11 **A** ARE YOU REFERRING TO NEW YORK OR SAN DIEGO?

12 **Q** REFERRING TO SAN DIEGO.

13 DEMOGRAPHICS ALSO PLAY A FACTOR. INCOME LEVELS AND
14 SUCH CAN PLAY A FACTOR IN THE LEVEL OF CRIME. LOOK AT ORANGE
15 COUNTY, SAN MATEO. THEY ALL HAVE LOW CRIME RATES TOO, DON'T
16 THEY?

17 **JUDGE REINHARDT:** HOW ABOUT PARTY AFFILIATION?
18 REPUBLICANS IN ORANGE COUNTY, LESS CRIME?

19 **JUDGE KARLTON:** MY COLLEAGUE HAS SAID, THE THING THAT
20 COMES OUT OF THIS TRIAL IS WE DON'T KNOW ANYTHING ABOUT WHAT
21 CAUSES CRIME.

22 **JUDGE REINHARDT:** THAT AND THAT EVERYTHING IS
23 POSSIBLE.

24 **JUDGE KARLTON:** EVERYTHING IS POSSIBLE.

25 **THE WITNESS:** WELL, WHEN REPORTERS ASK ME ABOUT

1 CHANGING CRIME PATTERNS, I ALWAYS SAY IF I COULD RELIABLY ANSWER
2 THAT QUESTION, I WOULD TRY TO BE IN THE STOCK MARKET. WE ARE
3 TALKING ABOUT HUMAN BEHAVIOR WHICH, WITH ITS INHERENT
4 UNPREDICTABLY, I THINK GOOD PUBLIC POLICY IS YOU DO EVERYTHING
5 YOU CAN TO REDUCE RISK, BUT I DON'T THINK THERE'S ANY SUCH THING
6 AS ZERO RISK IN LIFE.

7 **BY MR. MITCHELL**

8 **Q** DR. KRISBERG, ONE THING WE CAN SAY FOR CERTAIN IS THAT
9 CRIMES COMMITTED BY INDIVIDUALS WHO ARE RELEASED EARLY WOULD NOT
10 HAVE OCCURRED BUT FOR THE FACT THAT THEY WERE RELEASED EARLY,
11 CORRECT?

12 **A** NO, I WOULDN'T SAY THAT. WHAT I WOULD SAY IS THE CRIME
13 COMMITTED BY SOMEBODY EARLY IS GOING TO HAVE A DIFFERENT VICTIM
14 THAN WHEN THEY ARE GOING TO BE RELEASED, LET'S SAY 90 DAYS
15 LATER. SO IT CHANGES TIME, PLACE AND POTENTIAL VICTIM, BUT IT
16 DOESN'T NECESSARILY ALTER WHETHER OR NOT THE CRIME WOULD OCCUR.

17 AND IF YOU PLAY THIS OUT OVER 12 MONTHS OR 18 MONTHS,
18 AS MANY OF THESE STUDIES HAVE DONE, THE ACTUAL NUMBER OF CRIMES
19 COMMITTED BY PEOPLE IS THE SAME.

20 **Q** WHEN WE LOOKED AT THE ILLINOIS STUDY DURING THE TIME PERIOD
21 1980 TO 1983 INVOLVING THE INDIVIDUALS WHO WERE RELEASED EARLY,
22 THERE WERE 4,504 CRIMES THAT OCCURRED WITHIN THE EARLY RELEASE
23 WINDOW; DO YOU RECALL THAT PART OF THE STUDY?

24 **A** YES, I DO.

25 **THE CLERK:** FIVE MINUTES, COUNSEL.

1 **BY MR. MITCHELL**

2 **Q** THOSE EARLY RELEASE CRIMES INCLUDED 23 HOMICIDES, 32 RAPES,
3 681 ROBBERIES, 2,571 ASSAULTS, 262 ARSONS, AND 2472 BURGLARIES;
4 IS THAT CORRECT?

5 **A** YES.

6 **Q** FROM THE REPORT?

7 **A** IF IT'S IN THE REPORT, I'D SAY YES. I'M SURE IT'S CORRECT.

8 **Q** NOW, EVEN THOUGH WE CAN -- I HATE TO USE THE WORD
9 "SPECULATE" -- THAT THOSE OR SIMILAR CRIMES WOULD HAVE OCCURRED
10 WHEN THESE INDIVIDUALS GOT OUT AFTER SERVING THEIR FULL TERM, WE
11 KNOW FOR A FACT THAT THESE CRIMES DID OCCUR DURING THE PERIOD
12 THAT THEY WOULD HAVE BEEN IN CUSTODY BUT FOR THE 90 DAYS CREDITS
13 THAT WERE GIVEN TO THEM TO GET OUT EARLY, CORRECT?

14 **A** YES. AND I THINK GOVERNOR JIM THOMPSON INSTITUTED THIS
15 POLICY BECAUSE THERE WERE ALSO DEATHS AND RIOTS THAT WERE TAKING
16 PLACE IN THE ILLINOIS PRISONS, AND HE WAS EQUALLY CONCERNED
17 ABOUT THE SAFETY OF STAFF AND THE SAFETY OF PEOPLE WHO WORKED
18 FOR HIM. SO EARLY RELEASE WAS -- ACTUALLY, IT WAS CALLED FORCED
19 RELEASE IN ILLINOIS -- WAS IMPLEMENTED AS AN EMERGENCY MEASURE
20 BECAUSE THE GOVERNOR WAS QUITE CONCERNED ABOUT THE SAFETY OF THE
21 PRISONS.

22 **Q** NOW, YOUR COLLEAGUE, DR. AUSTIN, REFERRED TO THIS UNDER THE
23 HEADING "THE DARK SIDE OF EARLY RELEASE" IN HIS STUDY THAT YOU
24 CITED IN YOUR EXPERT REPORT IN THIS CASE; DO YOU RECALL THAT
25 PORTION?

1 **A** YES.

2 **Q** IT STATED THERE THAT:

3 "EARLY RELEASE MEANS THAT CRIMES THAT WOULD
4 NOT HAVE BEEN COMMITTED BY RELEASED PRISONERS
5 HAD THEY SERVED THEIR FULL TERMS ARE NOW LIKELY
6 TO TAKE PLACE."

7 THAT'S A CORRECT STATEMENT, ISN'T IT?

8 **A** YES.

9 **Q** "ASSESSING THE COST OF EARLY RELEASE MUST GO BEYOND A
10 SIMPLISTIC CALCULATION OF RECIDIVISM RATES FOR RELEASED
11 PRISONERS"; DO YOU AGREE WITH THAT?

12 **A** YES, I DO.

13 **Q** THAT IS SOMETHING IMPORTANT FOR THIS COURT TO TAKE INTO
14 CONSIDERATION IN ITS DECISION IN THIS CASE, ISN'T IT?

15 **A** WELL, WHAT I'M HOPING IS THAT AS THE COURT CONSIDERS THE
16 URGENT NEED TO REDUCE THE POPULATION IN THE DEPARTMENT OF
17 CORRECTIONS -- AND, AGAIN, I REFER YOU TO THE EXPERT PANEL WHICH
18 INDICATED THAT SUBSTANTIAL REDUCTIONS IN RECIDIVISM ARE UNLIKELY
19 TO OCCUR WITHOUT REDUCING THE POPULATION -- I WOULD ASSUME THAT
20 YOU WOULD COME UP WITH A PLAN THAT WOULD -- OR AGREE TO A PLAN
21 THAT WOULD INCLUDE DIVERSION OF SOME LOW RISK PEOPLE FROM THE
22 PRISON SYSTEM, WOULD INCLUDE GOOD TIME CREDITS, NOT UNLIKE WHAT
23 THE GOVERNOR HAS RECENTLY PROPOSED IN HIS BUDGET MEASURE, AND
24 MAYBE SOME ACCELERATED RELEASE AS PART OF THAT.

25 SO I'M -- AT LEAST IN MY OWN MIND, I'M NOT ASSUMING

1 THAT ACCELERATED RELEASE BY ITSELF WOULD BE THE ONLY PART OF THE
2 PLAN. IT WOULD BE CERTAINLY SOMETHING I WOULD ADVISE FOR FOR
3 RELIEVING WHAT I WOULD DESCRIBE AS EMERGENCY CIRCUMSTANCES IN
4 SOME OF THE PRISONS.

5 **Q** SIR, IN THE STUDY THAT YOU SUPERVISED, IT STATES:

6 "ONE MUST ALSO ATTEMPT TO ACCOUNT FOR THE
7 REAL FINANCIAL LOSSES ATTRIBUTIVE TO EARLY
8 RELEASE RELATED CRIMES, SUCH AS PROPERTY LOSS
9 AND DAMAGE, AS WELL AS MEDICAL EXPENSES
10 RESULTING FROM CRIMES OF VIOLENCE. FINALLY,
11 NON-PECUNIARY COSTS, SUCH AS PSYCHOLOGICAL HARM
12 OR CHANGES IN THE VICTIM'S LIFESTYLE AS A RESULT
13 OF THE CRIMES INFLICTED, ARE EXAMPLES OF
14 DIFFICULT TO MEASURE BUT EQUALLY SIGNIFICANT
15 CONSEQUENCES OF AN EARLY RELEASE POLICY."

16 IS IT STILL YOUR OPINION THAT THESE FACTORS --

17 **JUDGE KARLTON:** THE QUESTION IS WHETHER IT EVER WAS
18 HIS OPINION. THAT'S DR. AUSTIN --

19 **MR. MITCHELL:** I'M SORRY FOR MISPHRASING THAT.

20 **BY MR. MITCHELL**

21 **Q** WOULD YOU AGREE WITH THAT STATEMENT STILL?

22 **A** I BELIEVE EFFECTIVE VICTIM ASSISTANCE PROGRAMMING CAN MORE
23 THAN BUFFER THOSE IMPACTS, AND WE KNOW THIS HAS BEEN A
24 DIFFICULTY IN THIS STATE, BUT CERTAINLY IF CALIFORNIA WERE TO
25 HAVE AN EFFECTIVE AND WELL-ADMINISTERED VICTIM ASSISTANCE

1 PROGRAM, I THINK THOSE MEASURABLE COSTS, WHICH BY AND LARGE FOR
2 MOST OFFENDERS ARE MINOR PROPERTY LOSSES, CAN BE HANDLED.

3 FOR THOSE EXPERIENCING MORE SIGNIFICANT PSYCHOLOGICAL
4 IMPACTS, THERE ARE KNOWN TECHNOLOGIES OF COUNSELING AND SUPPORT
5 FOR VICTIMS THAT CERTAINLY COULD BE PART OF THIS EQUATION.

6 Q YOUR EXPERT REPORT, SIR, WENT ON TO LIST, FURTHER,
7 ACCELERATED RELEASE PROVISION IN ILLINOIS IN 1990 WHERE THEY
8 INCREASED THE LENGTH OF TIME UP TO 180 DAYS, THEY LET PEOPLE OUT
9 180 DAYS EARLY STARTING IN 1990, CORRECT?

10 A THAT'S CORRECT.

11 Q AND THE STUDY THAT YOU NOTED IN YOUR REPORT EXAMINED 4,640
12 CASES AND SAW NO INCREASE IN THE RECIDIVISM RATE?

13 A THAT'S RIGHT.

14 Q AND YOU ALSO POINTED OUT THAT CRIME RATES DECLINED BETWEEN
15 '93 AND '96; IS THAT CORRECT?

16 A YES. THAT'S A MORE RECENT PERIOD. I MEAN, THE IMPORTANT
17 THING IS THAT ILLINOIS SUBSEQUENTLY TRANSFORMED THE FORCED
18 RELEASE PROGRAM INTO AN EXPANDED GOOD TIME CREDITS STATUTE, AND
19 EXTENDED THE AMOUNT OF GOOD TIME CREDIT THAT INMATES COULD GET,
20 AND EVEN TODAY HAS INSTITUTED THAT POLICY.

21 SO WHERE THEY'RE NO LONGER USING FORCED RELEASE,
22 THEY'RE USING A PROGRAM THAT INVOLVES ACTUALLY GREATER GRANTING
23 OF TIME, AND THAT'S BEEN GOING UP UNTIL THE PRESENT. AND,
24 AGAIN, ILLINOIS' OVERALL CRIME PATTERNS LOOK LIKE MOST OF THE
25 COUNTRY.

1 Q DR. KRISBERG, ISN'T IT TRUE THAT IN THE YEAR FOLLOWING THE
2 EARLY RELEASE INCREASE OF UP TO 180 DAYS, THAT THE CRIME RATE
3 ACTUALLY INCREASED TO 1,039 PER 100,000 OF POPULATION?

4 A THAT'S CORRECT, AND WE SEE YEAR-TO-YEAR INFLUXES IN THOSE
5 CRIME RATES. THAT'S NOT UNUSUAL.

6 Q SO YOU ARE NOT ATTRIBUTING THE REDUCTION OR DECLINE IN CRIME
7 BETWEEN '93 AND '96 THAT YOU CITED IN YOUR REPORT TO THE EARLY
8 RELEASES THAT TOOK PLACE IN 1990, ARE YOU?

9 A NO. I'M NOT ARGUING THAT EARLY RELEASE REDUCES THE CRIME
10 RATE, BUT I'M SUGGESTING THAT THERE'S NO EVIDENCE THAT IT'S
11 ACTUALLY INCREASED THE CRIME RATE.

12 Q BUT YOU CITED THAT DECLINE IN THE CRIME RATE IN YOUR EXPERT
13 REPORT REGARDING ACCELERATED RELEASE?

14 A WELL, AGAIN, IF ONE GOES ACROSS 14 STUDIES, ONE SEES A
15 CONSISTENT PATTERN OF EITHER NO CHANGE OR REDUCTIONS IN CRIME
16 RATES IN VIRTUALLY IN ALL OF THOSE JURISDICTIONS DURING THAT
17 PERIOD OF TIME.

18 Q IN LOOKING AT THE WASHINGTON STATE STUDY THAT YOU HAD IN
19 YOUR REPORT BETWEEN 1969 AND 1984, 1,674 PRISONERS WERE
20 RELEASED; IS THAT CORRECT?

21 A YES.

22 Q AND THEY STUDIED THE --

23 MR. SANGSTER: YOUR HONOR, EXCUSE ME. I UNDERSTOOD
24 WE WERE UNDER TIME LIMITS IN CONNECTION WITH OUR EXAMINATIONS,
25 AND BY MY CALCULATION WE ARE OVER THE TIME. I UNDERSTAND THE

1 COURT ASKED SOME QUESTIONS, BUT I THINK WE ARE WELL OVER THE
2 TIME.

3 **MR. MITCHELL:** I DON'T HAVE THAT MUCH MORE. I'D ASK
4 FOR ADDITIONAL TIME.

5 **JUDGE HENDERSON:** ARE WE UNDER TIME LIMITS?

6 **MR. SANGSTER:** MY UNDERSTANDING --

7 **JUDGE REINHARDT:** I THINK THEY'RE GENERAL AGREEMENTS
8 ON TIME, BUT WE'RE A GENERALLY VERY TOLERANT GROUP, AND WE'RE
9 NOT GOING TO ENFORCE ANYTHING STRICTLY.

10 **MR. MITCHELL:** THANK YOU, YOUR HONORS.

11 **JUDGE KARLTON:** SPEAK FOR YOURSELF.

12 **BY MR. MITCHELL**

13 **Q** AND THEY LOOKED AT, I BELIEVE, SIX EARLY RELEASE EFFORTS IN
14 THAT TIME PERIOD?

15 **A** THAT'S CORRECT.

16 **Q** AND ALTHOUGH, AS YOU NOTED IN YOUR STUDY OF THE FIRST TWO
17 RELEASE EFFORTS THAT OCCURRED, THAT THEIR RECIDIVISM RATE
18 DECLINED, WASN'T IT TRUE THAT THE OFFENDERS IN THE THIRD RELEASE
19 HAD SIGNIFICANTLY HIGHER RECIDIVISM RATES THAN THE COMPARISON
20 GROUP?

21 **A** THAT'S RIGHT. AND THE STATE OF WASHINGTON THEN TIGHTENED UP
22 THEIR CRITERIA, AND THE RATE WENT DOWN AGAIN IN SUBSEQUENT --

23 **Q** CORRECT, BECAUSE DIDN'T THEY ATTRIBUTE THAT HIGHER
24 RECIDIVISM RATE IN THE THIRD RELEASE WAS MOST LIKELY DUE TO A
25 HIGHER PERCENTAGE OF HABITUAL OFFENDERS BEING INCLUDED IN THE

1 EARLY RELEASE?

2 **A** IT'S WHAT THE AUTHOR INDICATED. YOU KNOW, I'D LIKE TO DO A
3 MORE IN-DEPTH ANALYSIS TO VERIFY THAT OPINION.

4 **Q** YOU DIDN'T DO AN IN-DEPTH ANALYSIS TO CITE IT IN YOUR EXPERT
5 REPORT?

6 **A** I RELIED ON THE PUBLISHED REPORT THAT YOU ARE REFERRING TO.

7 **Q** IN REFERRING TO THE CALIFORNIA STUDY THAT YOU CITED IN YOUR
8 REPORT FROM 1970, WAS A STUDY DONE BY THE -- CDC AT THAT TIME,
9 WASN'T IT?

10 **A** RIGHT, RESEARCH COMMISSION.

11 **Q** AND THAT INVOLVED EARLY RELEASE BETWEEN MARCH AND AUGUST OF
12 1970 WHERE HALF OF THE INDIVIDUALS WERE RELEASED 6.6 MONTHS
13 EARLY?

14 **A** YES.

15 **Q** YOU STATE IN YOUR REPORT THAT THERE WAS NO SIGNIFICANT
16 DIFFERENCE ON RETURN-TO-CUSTODY RATES?

17 **A** THAT'S CORRECT.

18 **Q** ISN'T IT TRUE THAT THE ACTUAL STUDY SHOWS THAT AT 12 MONTHS
19 OF FOLLOW-UP, THE EARLY RELEASE GROUP HAD A PAROLE FAILURE RATE
20 OF 34.4 PERCENT COMPARED TO 8.2 PERCENT FOR THE CONTROL GROUP?

21 **A** THAT'S RIGHT, BUT THE STATISTICAL TEST THAT WAS APPLIED BY
22 THE AUTHORS SUGGESTED THAT THAT DIFFERENCE WAS NOT A
23 STATISTICALLY SIGNIFICANT DIFFERENCE AND ACTUALLY WAS, YOU KNOW,
24 NOT UNLIKE WHEN WE LOOK AT ELECTION POLLS AND WE TALK ABOUT THE
25 MARGIN OF ERROR. IN OTHER WORDS, THAT DIFFERENCE WAS WITHIN THE

1 MARGIN OF ERROR.

2 **Q** DIDN'T THE STUDY ALSO INDICATE THAT AT 24 MONTHS AFTER
3 RELEASE -- EXCUSE ME -- THE PAROLE FAILURE RATE WAS 47.4 PERCENT
4 FOR THE EARLY RELEASE GROUP AND 39.5 PERCENT FOR THE CONTROL
5 GROUP?

6 **A** YES, AND I BELIEVE THAT THE DIFFERENCE WAS MOSTLY AN
7 INCREASE IN PAROLE FAILURE DUE TO TECHNICAL VIOLATIONS.

8 **Q** SO WHEN YOU INDICATE THAT THERE WAS NO SIGNIFICANT
9 DIFFERENCE ON RETURN-TO-CUSTODY RATES BETWEEN THE TWO GROUPS,
10 THERE WAS A SIX POINT DIFFERENCE IN THE FIRST 12 MONTHS AND
11 ALMOST AN 11 POINT DIFFERENCE IN THE 24 MONTHS, BUT THAT WAS
12 ATTRIBUTED TO BEING INSIGNIFICANT?

13 **A** THE STATISTICAL MEASURE APPLIED BY THE AUTHORS, WHICH WAS
14 APPROPRIATE, LOOKED AT THAT DIFFERENCE, AND CONCLUDED THAT,
15 BASED ON THAT SAMPLE, THAT DIFFERENCE COULD HAVE OCCURRED BY
16 CHANCE. SO, YES, AGAIN, JUST LIKE MARGIN OF ERROR, WE HAVE LOTS
17 OF POLITICAL POLLS, AND THEY VARY OVER TIME.

18 SO, THE AUTHORS OF THAT ARTICLE CONCLUDED, HAD THEY
19 PICKED A DIFFERENT SAMPLE AND MEASURED IT, THEY MIGHT HAVE COME
20 UP WITH OTHER RESULTS, BUT THERE WAS NOT A STATISTICAL
21 DIFFERENCE BETWEEN THOSE TWO GROUPS.

22 **Q** DR. KRISBERG, YOU PARTICIPATED IN A TASK FORCE ON CALIFORNIA
23 PRISON CROWDING BACK IN AUGUST OF 2006, CORRECT?

24 **A** EXCUSE ME?

25 **Q** DID YOU PARTICIPATE IN A TASK FORCE ON CALIFORNIA PRISON

1 CROWDING IN 2006?

2 **A** YES, I WAS ASKED BY THE CALIFORNIA SENATE TO ORGANIZE SUCH A
3 TASK FORCE AND TO PROVIDE RECOMMENDATIONS DURING AN EMERGENCY
4 SESSION CALLED BY THE GOVERNOR ON PRISON OVERCROWDING.

5 **Q** YOU RECALL YOUR PARTICIPATION IN THAT?

6 **A** OH, YES.

7 **Q** THAT WAS A PUBLISHED STUDY, CORRECT?

8 **A** YES.

9 **Q** THE PURPOSE OF THE STUDY WAS TO OFFER SOME POLICY AND
10 PROGRAM OPTIONS TO BE CONSIDERED IN A SPECIAL SESSION OF THE
11 LEGISLATURE ON SEVERE PROBLEMS IN CALIFORNIA PRISONS, CORRECT?

12 **A** THAT'S CORRECT.

13 **Q** AND THE GROUP THAT WAS ASSEMBLED, YOURSELF INCLUDED, PUT
14 TOGETHER PROPOSALS FOR REFORM TO ADDRESS THE CROWDING PROBLEM IN
15 CALIFORNIA PRISONS?

16 **A** YES.

17 **Q** THEY INVOLVED THE CALIFORNIA PAROLE SYSTEM AND RECOMMENDED
18 REFORMS TO THAT?

19 **A** YES.

20 **Q** THEY INVOLVED REDUCING WOMEN'S IMPRISONMENT IN CALIFORNIA TO
21 COMMUNITY CORRECTIONAL CENTERS, CORRECT?

22 **A** YES.

23 **Q** AND CREATING A NEW STATE/LOCAL PARTNERSHIP?

24 **A** YES.

25 **Q** AND ALSO CREATING A CALIFORNIA SENTENCING COMMISSION?

1 **A** YES.

2 **Q** IN THE ENTIRETY OF THIS REPORT IN 2006, THERE WAS NO
3 RECOMMENDATION FOR ANY EARLY RELEASE PROCEDURES IN THIS REPORT,
4 WAS THERE?

5 **A** THAT'S CORRECT, BECAUSE THE LEGISLATIVE LEADERSHIP WAS
6 INTERESTED IN PROPOSALS THAT COULD BE PUT FORWARD IMMEDIATELY,
7 THAT WERE PRACTICAL, WERE VETTED BY A NATIONAL TEAM OF EXPERTS,
8 AND SO WE DIDN'T SPEND A LOT OF TIME LOOKING AT EARLY RELEASE
9 PER SE. WE WERE LOOKING FOR, YOU KNOW, WHAT IS SOMETIMES
10 REFERRED TO AS THE LOW HANGING FRUIT IN THE SITUATION.

11 **MR. MITCHELL:** THANK YOU, DR. KRISBERG.

12 **JUDGE REINHARDT:** DOCTOR, I HAVE A QUESTION. YOU
13 KNOW, WHATEVER WE DO, WHATEVER WE TRY TO CONCLUDE ABOUT THE
14 EFFECT OF THINGS IS SPECULATIVE. IT'S SPECULATIVE AS TO WHAT
15 PEOPLE WILL DO IF THEY'RE RELEASED EARLY, HOW MANY CRIMES
16 THEY'LL COMMIT. WE ARE NOT TALKING ABOUT A GROUP THAT HAS
17 ALREADY BEEN RELEASED. SO WE'RE GOING TO SPECULATE ABOUT HOW
18 MANY CRIMES THEY WILL COMMIT DURING THE EARLY PERIOD. OR WE
19 HAVE TO SPECULATE ABOUT HOW MANY CRIMES THEY WILL COMMIT AND
20 WHEN IF THEY'RE NOT RELEASED EARLIER.

21 **THE WITNESS:** RIGHT.

22 **JUDGE REINHARDT:** SO IT'S ALL SPECULATIVE, BUT IF WE
23 ARE GOING TO SPECULATE, HOW -- ARE YOU CAPABLE OF GIVING US
24 SPECULATION OR IS IT -- EXCUSE ME. I SHOULDN'T ASK YOU. IS
25 THERE SOMEBODY WHO CAN TELL US OVER HOW LONG A PERIOD THE SAME

1 NUMBER OF CRIMES WILL HAVE BEEN COMMITTED?

2 **JUDGE KARLTON:** LET'S NOT USE THE WORD "SPECULATE."
3 OUR BEST JUDGMENT.

4 **JUDGE REINHARDT:** HOW MANY CRIMES WILL BE COMMITTED
5 BY THE GROUP RELEASED EARLY AND THE GROUP NOT RELEASED EARLY IF
6 THERE'S AN EARLY RELEASE, OVER WHAT PERIOD WILL IT EQUAL OUT, IF
7 THAT'S WHAT YOU'RE TELLING US? IT INVOLVES THE QUESTION OF IF
8 THE POPULATION IS REDUCED WILL THERE BE FEWER PEOPLE COMING OUT
9 LATER? HOW DO WE FIND OUT? I ASSUME YOU TELL US THERE WILL BE
10 MORE CRIMES COMMITTED DURING THE PERIOD OF EARLY RELEASE.

11 AT SOME POINT, WILL THE TOTAL NUMBER OF CRIMES TO
12 HAVE BEEN COMMITTED, WHETHER THERE'S EARLY RELEASE OR NOT BE THE
13 SAME, AND WHEN WOULD THAT BE?

14 **THE WITNESS:** I MEAN, IT'S A VERY -- WHAT YOU ARE
15 ASKING FOR IS TO DO A STUDY WHICH WOULD INVOLVE KNOWING EXACTLY
16 WHO THOSE CURRENT INMATES ARE AND KNOWING SOMETHING ABOUT THEIR
17 RISK LEVELS.

18 BUT I WANT TO REITERATE TO YOU THAT THE EXPERT PANEL,
19 WHICH CONSISTED OF PROBABLY THE TOP NAMES IN CORRECTIONS IN THIS
20 COUNTRY, CONCLUDED NOT ONLY THAT IT WAS ESSENTIAL TO RELEASE TO
21 REDUCE THE POPULATION, BUT CAME UP WITH A PLAN THAT WAS PUT
22 TOGETHER BY MIKE JACOBSON, WHO'S BEEN THE HEAD OF CORRECTIONS IN
23 NEW YORK CITY, AND OTHERS, THAT WE VIRTUALLY UNANIMOUSLY AGREED
24 TO, WHICH INDICATED THAT BY MODEST GOOD TIME CREDIT EXPANSIONS,
25 THAT IS RETURNING WHERE THEY WERE WHEN GOVERNOR WILSON WAS THE

1 GOVERNOR, MODEST PAROLE REFORMS, AND I WOULD ADD SOME VERY
2 PRUDENT DIVERSION, YOU KNOW.

3 FOR EXAMPLE, WE HAVE 17,000 PEOPLE WHO ENTER
4 CALIFORNIA PRISONS WHO ARE PROBATION VIOLATORS. THEY STAY AN
5 AVERAGE OF EIGHT MONTHS. MOST PROBATION LEADERS IN THIS STATE
6 WOULD SAY WITH ADEQUATE RESOURCES, WE COULD MANAGE THEM IN THE
7 COUNTIES, BECAUSE THE MOST SERIOUS CRIME THEY COMMITTED WAS A
8 PROBATION VIOLATION.

9 SO I THINK OUR CONCLUSION WAS SOME COMBINATION OF
10 THOSE STRATEGIES WOULD MORE THAN DO THE JOB AND WOULD FREE UP
11 THE DOLLARS THAT WOULD PAY FOR THE --

12 **JUDGE REINHARDT:** DOCTOR, I DON'T WANT TO INTERRUPT
13 YOU, BUT ONE OF THE ISSUES WE'RE REQUIRED TO CONSIDER IS THE
14 EFFECT ON PUBLIC SAFETY. NOW, THAT DOESN'T MEAN WHAT'S WISE
15 PENAL POLICY, AND IT DOESN'T MEAN WHAT'S THE EFFECT GOING TO BE
16 ON PEOPLE IN THE PRISON. WE HAVE TO TRY TO EVALUATE WHAT THE
17 EFFECT IS GOING TO BE ON THE COMMUNITY IF THESE PROGRAMS ARE
18 ADOPTED. AND, AS I UNDERSTOOD YOUR TESTIMONY EARLIER, THE SAME
19 NUMBER OF CRIMES WOULD BE COMMITTED, ONLY OVER A DIFFERENT
20 PERIOD OF TIME?

21 **JUDGE KARLTON:** LET ME --

22 **JUDGE REINHARDT:** MY QUESTION IS QUITE CLEAR.

23 **JUDGE KARLTON:** I DON'T THINK --

24 **JUDGE REINHARDT:** DO YOU --

25 **JUDGE KARLTON:** RIGHT NOW WE ARE RELEASING 10,000

1 INMATES A MONTH, APPARENTLY?

2 **THE WITNESS:** THAT'S CORRECT.

3 **JUDGE KARLTON:** IF WE ORDER A QUICK RELEASE, WE ARE
4 GOING TO INCREASE THAT TO SOME NUMBER, 12,500 OR WHATEVER.
5 THOSE PEOPLE WOULD ALL BE COMMITTING THE SAME CRIMES THAT THEY'D
6 BE COMMITTING IF THEY WERE LET LOOSE SEVERAL MONTHS LATER, BUT
7 AT THE TIME WE RELEASE THEM, WE ARE NOW HAVING -- I THINK THIS
8 IS WHAT JUDGE REINHARDT IS SAYING.

9 **JUDGE REINHARDT:** A SURGE WE CALL IT.

10 **JUDGE KARLTON:** WE'RE HAVING A SURGE. ISN'T THAT
11 RIGHT, OR IS IT RIGHT?

12 **THE WITNESS:** IT MIGHT BE A VERY SHORT PERIOD OF
13 TIME, BUT IT WOULD DEPEND UPON WHETHER OR NOT PAROLE OFFICERS
14 WHO WOULD BE SUPERVISING THESE FOLKS WOULD BE GETTING
15 APPROPRIATE TRAINING TO DO THAT AND THE RIGHT STEPS WERE TAKEN
16 TO SUPERVISE THEM, THAT SURGE WOULD VIRTUALLY DISAPPEAR, I
17 THINK.

18 **JUDGE REINHARDT:** ALL RIGHT. LET'S ASSUME THERE'S --
19 NOTHING'S GOING TO CHANGE AS FAR AS PAROLE OFFICERS, AS FAR AS
20 COMMUNITY SERVICES, THAT THEY'LL RECEIVE THE SAME AMOUNT OF
21 PAROLE OR LESS TRAINING OR SUPERVISION IF THEY'RE RELEASED
22 EARLIER. LET'S ASSUME CONDITIONS ARE THE SAME AS THEY ARE NOW
23 AND AS THEY WOULD BE IF THEY WERE RELEASED THREE MONTHS LATER.

24 THE QUESTION IS, JUDGE KARLTON PUT MORE SQUARELY, OR
25 MORE SPECIFICALLY, IF INSTEAD OF RELEASING 10,000 PEOPLE NEXT

1 MONTH, YOU RELEASED 12,000, AND, THEREFORE, THERE WILL BE MORE
2 CRIME COMMITTED IN THAT PARTICULAR MONTH, THAT'S -- BECAUSE YOU
3 ARE HAVING A LARGER GROUP RELEASED WITHIN ONE MONTH OR WITHIN
4 TWO MONTHS, THE CRIME THAT WOULD HAVE BEEN CREATED -- COMMITTED
5 LATER IS BEING COMMITTED EARLIER. BUT, AS I UNDERSTOOD YOUR
6 TESTIMONY, OVER SOME PERIOD OF TIME IT WOULD BE THE SAME TOTAL
7 NUMBER OF CRIMES COMMITTED?

8 **THE WITNESS:** THAT'S CORRECT.

9 **JUDGE REINHARDT:** OVER WHAT PERIOD OF TIME WOULD THAT
10 BE? IS THERE A WAY TO TELL WITH THE KIND OF PROPOSAL FOR EARLY
11 RELEASE, IS THERE A WAY TO DETERMINE WITHIN WHAT PERIOD OF TIME
12 THE TOTAL NUMBERS OF CRIMES WOULD BE THE SAME?

13 **THE WITNESS:** I BELIEVE THAT THAT NUMBER COULD BE
14 CALCULATED. I MEAN, OBVIOUSLY, I CAN'T DO IT HERE, BUT I THINK,
15 DEPENDING -- IF YOU COULD TELL ME HOW MANY PEOPLE, WHO THEY ARE,
16 WHAT THEIR BACKGROUNDS ARE, WHAT THEIR RISK LEVELS ARE, I THINK
17 ONE COULD COME UP WITH A PRETTY GOOD ESTIMATE OF THAT NUMBER
18 ALONE.

19 AGAIN, I SEE NO REASON TO ACCEPT THE PREMISE THAT YOU
20 WOULD MAKE SUCH AN ORDER WITH NOTHING BEING DONE, BECAUSE,
21 AGAIN, WE KNOW THAT JUST SIMPLY BETTER SUPERVISION WOULD --
22 MIGHT WIPE OUT THAT NET INCREASE.

23 **JUDGE REINHARDT:** WITHOUT THE TIME -- LET ME ASK YOU,
24 IS IT YOUR TESTIMONY THAT WITH AN EARLY RELEASE PROGRAM AND
25 WITHOUT CHANGING THE PAROLE SYSTEM OR THE AID IN THE COMMUNITY,

1 IS IT YOUR TESTIMONY THAT ALTHOUGH THERE WOULD BE MORE CRIME IN
2 A PARTICULAR EARLY PERIOD, THAT OVER A LONGER PERIOD OF TIME,
3 THE NUMBER OF CRIMES COMMITTED WOULD BE THE SAME?

4 **THE WITNESS:** YES. THE NUMBER OF CRIMES COMMITTED
5 ATTRIBUTED TO PAROLEES WOULD BE THE SAME.

6 **JUDGE KARLTON:** AND IN THIS REGARD, THE SUGGESTION
7 THAT WE CAN ORDER OTHER THINGS IS NOT CLEAR TO ME. MAYBE WE
8 CAN, WE'LL TALK, IF WE EVER GET TO FINAL ARGUMENT, WHICH I
9 DOUBT, WE COULD TALK ABOUT ALL OF THAT.

10 **JUDGE REINHARDT:** WE KEEP ASKING QUESTIONS.

11 **JUDGE KARLTON:** BUT THERE'S NO EVIDENCE THAT THIS
12 STATE HAS THE SLIGHTEST INTEREST IN REDUCING CRIME BY DOING THE
13 KINDS OF THINGS THAT YOUR PANEL AND EVERY PRECEDING PANEL,
14 EXCEPT ONE FOUND BY MR. MITCHELL, HAS SUGGESTED. SO IF WE JUST
15 SAY TO THE STATE, CUT ANOTHER 2,500 PEOPLE LOOSE, THEY MAY WELL
16 JUST SAY, FINE, WE'LL JUST LET THEM OUT AND THEY'LL KILL HOWEVER
17 MANY PEOPLE THEY WANT TO KILL.

18 **THE WITNESS:** WELL, FIRST OF ALL, JUDGE, I DON'T
19 DETECT THAT ATTITUDE ON THE PART OF OUR CORRECTIONAL LEADERSHIP.
20 AND THE OTHER THING I HAVE TO TELL YOU IS I HAVE BEEN WORKING IN
21 A NUMBER OF COUNTIES, AND WHAT IS GOING ON IN CALIFORNIA IN
22 SEVERAL COUNTIES IS A REALIZATION AT THE COUNTY LEVEL THAT THEY
23 BEAR A RESPONSIBILITY FOR PAROLEES.

24 SO WHAT WE'RE SEEING IS TREMENDOUS INNOVATION TAKING
25 PLACE IN A NUMBER OF PLACES IN WHICH OFFICIALS, INCLUDING IN

1 THIS COUNTY, ARE FORMING REENTRY COUNCILS, ARE SCRUTINIZING THE
2 FULL RANGE OF SERVICES BEING OFFERED LOCALLY, BECAUSE TIP
3 O'NEILL USED TO SAY ALL REENTRY -- ALL POLITICS IS LOCAL.
4 REENTRY AND SUCCESS OF INMATES IS ULTIMATELY A LOCAL ISSUE.

5 THE KINDS OF THINGS THAT PEOPLE NEED TO SUCCEED ALL
6 HAPPEN NOT BECAUSE OF, YOU KNOW, ULTIMATELY STATE POLICY, BUT
7 WHAT GOES ON IN THEIR COMMUNITIES. AND WHAT IS CERTAINLY
8 HAPPENING IN THIS STATE ACROSS THIS STATE IS AN INTEREST IN THE
9 PART OF BOARDS OF SUPERVISORS, SHERIFFS, PROBATION, AND POLICE
10 IN SHORING UP THE LOCAL LEVEL RESPONSE TO THIS.

11 SO I'M ACTUALLY VERY ENCOURAGED THAT AS WE LOOK
12 AROUND THE STATE, WE ARE SEEING LOTS OF MODELS OF COMMUNITIES
13 TAKING GREATER RESPONSIBILITY FOR THIS AND SUCCEEDING.

14 **JUDGE KARLTON:** AND THAT RAISES THE NEXT QUESTION,
15 WHICH IS, WE'RE GOING TO GET SOME MORE EVIDENCE FROM COUNTIES
16 WHICH SAY THAT IF WE JUST CUT PEOPLE LOOSE, THOSE PROGRAMS WILL
17 BE OVERWHELMED.

18 **JUDGE REINHARDT:** I THINK IT'S NOT REALLY A QUESTION
19 OF WHAT THE MOTIVE IS, WHETHER IT'S DISINTEREST OR WHETHER IT'S
20 LACK OF FUNDS, WHICH THERE IS IN THIS STATE, AS YOU KNOW, A REAL
21 LACK OF FUNDS FOR ALL KINDS OF ISSUES, EDUCATION, WELFARE,
22 EVERYTHING, NOT JUST PRISONS. IT'S NOT JUST -- WHETHER THERE'S
23 A DESIRE OR NOT REALLY DOESN'T MATTER. WHAT MATTERS IS, I THINK
24 WE HAVE TO ASSUME THAT THERE AREN'T GOING TO BE EXTRA FUNDS TO
25 IMPROVE THESE OTHER CONDITIONS.

1 AND I'M SURE THE COUNTIES ALSO HAVE A GREAT DESIRE TO
2 DO WHAT THEY CAN, WHETHER THEY ARE ABLE TO, AS JUDGE KARLTON
3 SAID. WE'VE HAD TESTIMONY FROM COUNTIES ALREADY THAT THEY SAY
4 THEY'RE NOT ABLE TO DO THIS FOR PAROLEES, THAT THEIR PROGRAMS
5 CAN'T BE ADJUSTED TO THAT.

6 BUT I THINK FROM THE ANSWERS TO THE QUESTIONS WE'RE
7 GETTING, WE CAN'T ASSUME PROGRAMS WILL BE IMPROVED OR THERE WILL
8 BE MONEY AVAILABLE.

9 **THE WITNESS:** HERE'S WHAT I WOULD SAY, JUDGE, IF I
10 WAS THE HEAD OF THE DEPARTMENT OF CORRECTIONS, OR IF I WAS THE
11 SHERIFF, WHAT I WOULD ASSUME IS THAT I COULD PUT IN PLACE THOSE
12 PROGRAMS FASTER AND CHEAPER THAN TRYING TO BUILD ADDITIONAL
13 CAPACITY TO ADDRESS THIS ISSUE. SO I THINK THE ISSUE IS HOW
14 FAST CAN I GET IT DONE AND WHAT WOULD BE THE COST, BECAUSE THE
15 COST OF GETTING THESE PROGRAMS IN PLACE WOULD BE A FRACTION OF
16 CONSTRUCTION AND OPERATION OF ADDITIONAL CAPACITY.

17 **JUDGE REINHARDT:** WELL, AS AN ALTERNATIVE, WHICH IS
18 DO NOTHING AND LEAVE PEOPLE IN PRISONS WITH THE GROWING
19 POPULATION.

20 **JUDGE KARLTON:** WHICH AFFECTS ADVERSELY, WE ARE TOLD,
21 PUBLIC SAFETY AS WELL, BECAUSE WE SEND LOW LEVEL PEOPLE IN TO
22 MIX WITH HABITUAL CRIMINALS AND OTHER BAD GUYS, AND THEY COME
23 OUT WORSE OFF.

24 **THE WITNESS:** IT WAS THE OPINION OF THE EXPERT PANEL,
25 AGAIN, THESE NATIONALLY RENOWNED FOLKS THAT I WAS PRIVILEGED

1 WORK WITH, THAT THE SEVERE OVERCROWDING IN CALIFORNIA PRISONS IS
2 LEADING TO TREMENDOUS LEVELS OF VIOLENCE, IS INHIBITING THE
3 CAPACITY TO DELIVER REHABILITATION SERVICES.

4 SO I THINK REDUCING THE CROWDING AND CUTTING DOWN ON
5 THE VIOLENCE AND ACTUALLY INTRODUCING REHABILITATION SHOULD
6 BRING THAT CALIFORNIA RECIDIVISM RATE DOWN TO MUCH MORE WHAT
7 WE'RE SEEING IN OTHER STATES, WHICH IS A MUCH, MUCH SMALLER
8 RECIDIVISM LEVEL.

9 **JUDGE HENDERSON:** NOTHING FURTHER FROM --

10 **MR. SANGSTER:** NO, YOUR HONOR.

11 **JUDGE HENDERSON:** OKAY. THANK YOU FOR TESTIFYING,
12 DR. KRISBERG. WE'LL TAKE A 15-MINUTE RECESS AT THIS TIME.

13 (RECESS TAKEN.)

14 **JUDGE HENDERSON:** CALL THE NEXT WITNESS, COUNSEL.

15 **MS. KECK:** GOOD MORNING, YOUR HONORS. ANN KECK,
16 DEPUTY COUNTY COUNSEL ON BEHALF OF THE SONOMA COUNTY
17 INTERVENORS, AND I WOULD LIKE TO CALL DAVID BENNETT TO THE
18 STAND.

19 **JUDGE HENDERSON:** STEP FORWARD AND BE SWORN IN,
20 MR. BENNETT.

21 **DAVID BENNETT,**

22 CALLED AS A WITNESS FOR THE DEFENDANTS HEREIN, HAVING BEEN
23 FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

24 **THE WITNESS:** I DO.

25 **THE CLERK:** PLEASE HAVE A SEAT. STATE AND SPELL YOUR

1 FULL NAME FOR THE RECORD.

2 **THE WITNESS:** DAVID BENNETT, B-E-N-N-E-T-T.

3 **MS. KECK:** YOUR HONOR, AS AN INITIAL HOUSEKEEPING
4 MATTER, I WANTED TO CASE TO THE COURTS' ATTENTION THAT WE JUST
5 YESTERDAY FILED A DIFFERENT EXHIBIT C TO MR. BENNETT'S EXPERT
6 REPORT FILED ON OCTOBER 15TH. WE REALIZED FOR THE FIRST TIME
7 THAT WE HAD FILED A DRAFT REPORT RATHER THAN A FINAL REPORT.

8 SO WHAT I HAVE DONE -- WE FILED THEM WITH THE COURT.
9 WE HAVE ALSO PROVIDED COPIES TO THE COURT CLERK, AS WELL AS
10 COURTESY COPIES TO THE COURT, OF EACH OF HIS TWO REPORTS WITH
11 THE ATTACHMENTS, ONE DATED AUGUST 15, THE SECOND ONE DATED
12 OCTOBER 16TH.

13 AND ACCORDING TO THE COURTS' PROCESS, WE WOULD LIKE
14 TO MOVE THEM INTO EVIDENCE. I HAVE RECEIVED NO OBJECTIONS TO
15 ANY PORTION OF HIS REPORTS AT THIS TIME.

16 **JUDGE HENDERSON:** MAY I ASSUME THERE IS NONE?

17 **MS. KECK:** PARDON ME, YOUR HONOR?

18 **JUDGE HENDERSON:** I WAS SPEAKING TO PLAINTIFFS.

19 **MS. EVERSON:** NO, YOUR HONOR.

20 **THE COURT:** OKAY. THEY WILL BE ADMITTED AT THIS
21 TIME.

22 (DEFENDANTS' EXHIBIT C RECEIVED IN EVIDENCE)
23
24
25

DIRECT EXAMINATION

BY MS. KECK:

Q. MR. BENNETT, CAN YOU PLEASE BRIEFLY EXPLAIN YOUR BACKGROUND AND EXPERTISE IN THE CORRECTIONS AREA?

A. I'M A CRIMINAL JUSTICE CONSULTANT. I BEGAN MY CAREER WORKING IN SALT LAKE COUNTY, WHERE I ENCOUNTERED AN OVERCROWDED JAIL AND BEGAN A PROGRAM TO MANAGE THE LOCAL COUNTY JAIL POPULATION. I RAN THAT PROGRAM FOR FIVE YEARS, ACTUALLY BECAME A MODEL, AND THEN I BEGAN CONSULTING.

AND FOR THE LAST 30 YEARS I HAVE BEEN TRAVELING AMERICA. I HAVE WORKED WITH SEVERAL HUNDRED COUNTIES IN 40 STATES ON JAIL OVERCROWDING, JAIL POPULATION MANAGEMENT, JAIL PLANNING ISSUES.

WHEN I BEGAN MY CONSULTING CAREER, I DID WORK FOR THE UNITED STATES DEPARTMENT OF JUSTICE ON THE JAIL OVERCROWDING JAIL DETAINEE PROJECT WHERE WE WORKED WITH ROUGHLY 75 COUNTIES THROUGHOUT THE UNITED STATES.

DURING THE COURSE OF MY CAREER, I HAVE DONE A LOT OF CONSULTING WORK FOR THE NATIONAL INSTITUTE OF CORRECTIONS, WHICH IS PART OF THE JUSTICE DEPARTMENT, AND I AM THE AUTHOR OF THE *JAIL CAPACITY FORECAST WORKBOOK* THAT THE JUSTICE DEPARTMENT PROVIDES TO COUNTIES GOING THROUGH THE JAIL PLANNING PROCESS.

Q. WHEN YOU PROVIDE CONSULTANT SERVICES TO COUNTIES, WHAT TYPES OF SERVICES DO YOU PROVIDE TO THEM?

A. WELL, IT VARIES, BUT MY BASIC WORK IS TO GO INTO A

1 JURISDICTION AND PUT TOGETHER A MASTER PLAN; TO SPEND TIME WITH
2 THE LOCAL OFFICIALS, THE JUDGES, THE PROSECUTORS, THE DEFENSE
3 ATTORNEYS, PROBATION OFFICERS, LAW ENFORCEMENT; AND TO COLLECT
4 DATA; TO TAKE A LOOK AT WHAT HAPPENS TO DEFENDANTS FROM THE
5 POINT OF ARREST ON THROUGH ADJUDICATION; TO GO AHEAD AND
6 UNDERSTAND WHO IT IS THAT'S BEING HELD IN A COUNTY JAIL.

7 THAT PROCESS TAKES ABOUT SIX MONTHS. AT THE
8 CONCLUSION OF THAT, I GENERALLY CONDUCT A FULL-DAY CRIMINAL
9 JUSTICE SYMPOSIUM WHERE WE TRY TO SHUT DOWN THE COURTS FOR THAT
10 DAY AND HAVE ALL OF THE LOCAL OFFICIALS COME AND TAKE A LOOK AT
11 THEIR CRIMINAL JUSTICE SYSTEM, TO TAKE A LOOK AT HOW THE SYSTEM
12 IS FUNCTIONING WHERE THERE MIGHT BE DELAYS AND PROBLEMS, AND TO
13 CONSIDER A SERIES OF RECOMMENDATIONS TO BETTER MANAGE THE
14 CRIMINAL JUSTICE SYSTEM.

15 Q. APPROXIMATELY HOW MANY COUNTIES ACROSS THE UNITED STATES
16 HAVE YOU PROVIDED SUCH CONSULTING SERVICES TO?

17 A. AT ONE LEVEL OR ANOTHER UP OVER A COUPLE HUNDRED COUNTIES.

18 Q. AND HAVE YOU PROVIDED SERVICES TO ANY COUNTIES IN
19 CALIFORNIA?

20 A. I HAVE WORKED IN EIGHT COUNTIES IN CALIFORNIA.

21 Q. DID SONOMA COUNTY ENGAGE YOU AS AN EXPERT CONSULTANT WITH
22 RESPECT TO ITS CRIMINAL JUSTICE SYSTEM?

23 A. YES, THEY DID.

24 Q. WHAT HAVE YOU DONE FOR SONOMA COUNTY?

25 A. AS I EXPLAINED EARLIER, I CONDUCTED MY NORMAL PROCESS AND I

1 WENT AHEAD AND PUT TOGETHER A MASTER MANUAL. I CONDUCTED A
2 FULL-DAY CRIMINAL JUSTICE SYMPOSIUM IN AUGUST OF 2007.

3 SINCE THAT TIME I HAVE BEEN WORKING WITH COUNTY
4 OFFICIALS TO IMPLEMENT THE RECOMMENDATIONS THAT CAME OUT OF THAT
5 STUDY. WE ARE IN THE PROCESS OF MAKING SIGNIFICANT CHANGES IN
6 THE DAY-TO-DAY OPERATION OF SONOMA COUNTIES CRIMINAL JUSTICE
7 SYSTEM.

8 **Q.** COULD YOU PERHAPS BRIEFLY EXPLAIN TO THE COURT THE TYPES OF
9 REFORMS THAT YOU RECOMMENDED FOR SONOMA COUNTY AND THAT IT'S
10 CURRENTLY ENGAGED IN?

11 **A.** SONOMA COUNTY, NOT UNLIKE A LOT OF OTHER COUNTIES IN
12 AMERICA, HAS A VERY INEFFICIENT CRIMINAL JUSTICE PROCESS, AND WE
13 HAVE DOCUMENTED THAT PROCESS. WE HAVE DOCUMENTED THE IMPACT
14 THAT THE INEFFICIENCIES HAVE ON JAIL POPULATION, BUT MORE
15 IMPORTANTLY, DOCUMENTED THE IMPACT THAT THE INEFFICIENCIES HAVE
16 ON THE OVERALL CRIMINAL JUSTICE SYSTEM PROCESS.

17 I HAVE BEEN WORKING WITH THE COURT THAT'S TAKEN THE
18 LEADERSHIP IN THIS ROLE, AS WELL AS WITH ALL OF THE KEY AGENCIES
19 OF THE SYSTEM, AND WE ARE PUTTING IN PLACE -- IT KICKS OFF
20 JANUARY 5TH -- AN EARLY CASE RESOLUTION PROGRAM.

21 RATHER THAN HAVING ALL CASES THAT ENTER SONOMA COUNTY
22 SPREAD OUT AMONGST FIVE DIFFERENT FELONY DEPARTMENTS AND FIVE
23 DIFFERENT DEPARTMENTS HANDLING THE FRONT END OF THE SYSTEM AND
24 THEN THE CASES PROCEEDING AS THEY WILL THROUGH THE PROCESS, WE
25 ARE CENTRALIZING THAT. WE ARE GOING TO TAKE ALL NEW FELONY

1 ARRESTS. THEY ARE GOING TO ALL COME INTO ONE COURTROOM. THE
2 DISTRICT ATTORNEY AND THE PUBLIC DEFENDER HAVE ASSIGNED SENIOR
3 COUNSEL TO THAT COURTROOM, AND THE GOAL IS TO RESOLVE THE CASES
4 EARLIER.

5 THE MANTRA IS *SAME JUSTICE SOONER* AND WE HAVE
6 COMMITMENTS FROM THE LOCAL OFFICIALS TO DO THAT, SO THAT WE CAN
7 ACHIEVE THE ADJUDICATION THAT WOULD BE SOUGHT -- THAT WOULD BE
8 ACHIEVED ANYWAY, BUT AT A MUCH EARLIER POINT IN TIME.

9 SO THAT WE ARE ADDING THE CREDIBILITY BACK INTO THE
10 SYSTEM. WE ARE REDUCING WHAT HAS BECOME EPIDEMIC IN THAT
11 JURISDICTION OF PROBLEMS OF FAILURES TO APPEAR, OF INDIVIDUALS
12 GETTING REARRESTED WHILE CASES ARE BEING RESOLVED. WE ARE ABLE
13 TO TELL VICTIMS AND WITNESSES OF CRIME THAT THE CASE HAS BEEN
14 RESOLVED AND THE DEFENDANT HAS BEEN SENTENCED.

15 SO THAT'S THE GOALS OF THE PROGRAM. I HAVE BEEN VERY
16 SUCCESSFUL IN SETTING THAT MODEL UP IN OTHER JURISDICTIONS AND
17 IT BEGINS THE 5TH OF JANUARY IN SONOMA COUNTY.

18 **Q.** AND WHAT WOULD YOU DESCRIBE AS BEING THE ULTIMATE RESULT OF
19 THAT, OF THAT PROGRAM?

20 **A.** THE OVERALL GOAL IS TO CHANGE BEHAVIOR, TO CHANGE
21 DEFENDANTS' BEHAVIOR.

22 THE GOAL IS THAT THE BEHAVIOR THAT CAUSED THE
23 INDIVIDUAL TO COME IN CONTACT WITH THE SYSTEM IN THE FIRST PLACE
24 DOESN'T HAPPEN AGAIN. WHEN WE ARE ABLE TO DO THAT SUCCESSFULLY
25 AT THE LOCAL LEVEL, AND WHAT WE ARE GOING TO SEE IN SONOMA

1 COUNTY IS A REDUCTION IN THE NUMBER OF PEOPLE HEADING INTO THE
2 CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, BECAUSE
3 WE ARE DEALING WITH THE INDIVIDUALS. WE ARE TAKING CARE OF THE
4 ADJUDICATION PROCESS.

5 ALONG THE WAY WE ARE ALSO PUTTING IN PLACE SOME NEW
6 PROGRAMS. WE ARE PUTTING IN SOME INNOVATIVE PROGRAMS SO THAT
7 WHEN IT COMES TIME FOR PUNISHMENT OF THE OFFENDERS, WE CAN
8 PUNISH THEM IN A MORE EFFECTIVE MANNER THAT WILL IMPACT THE
9 NUMBER OF PEOPLE THAT ULTIMATELY GO ON TO THE PRISON SYSTEM.

10 Q. DID SONOMA COUNTY ALSO ENGAGE YOU TO TESTIFY AS AN EXPERT
11 WITH RESPECT TO A PRISONER RELEASE ORDER IN THIS CASE?

12 A. YES.

13 Q. CAN YOU DESCRIBE FOR THE COURT GENERALLY WHAT TYPE OF
14 INFORMATION YOU RELIED UPON IN FORMULATING AN OPINION IN THIS
15 MATTER?

16 A. WELL, I HAVE DONE A LOT OF READING. I HAVE READ, I BELIEVE,
17 ALL OF THE EXPERT REPORTS THAT HAVE BEEN ENTERED INTO EVIDENCE
18 IN THIS CASE. I HAVE READ A LOT OF THE BACKGROUND DOCUMENTATION
19 OF THE PREVIOUS STUDIES THAT HAVE BEEN DONE FOR THE STATE OF
20 CALIFORNIA.

21 THROUGHOUT MY CAREER -- CALIFORNIA, OF COURSE, IS A
22 VERY LARGE STATE AND I HAVE ALWAYS KEPT UP ON WHAT'S HAPPENING
23 IN CALIFORNIA AND MY WORK WITHIN THE EIGHT COUNTIES THAT I HAVE
24 WORKED IN WITHIN THE STATE.

25 SO I FEEL PRETTY COMFORTABLE THAT I'VE ABSORBED -- I

1 HAVE READ AND ABSORBED A LOT OF INFORMATION ABOUT THE ISSUES IN
2 THIS CASE.

3 **Q.** DO YOU UNDERSTAND THAT THE PLAINTIFFS IN THIS CASE ARE
4 SEEKING AN ORDER THAT WOULD REQUIRE THE STATE TO REDUCE ITS
5 PRISON POPULATION BY APPROXIMATELY ONE-THIRD, AN AMOUNT OF ABOUT
6 52,000 INMATES, WITHIN A PERIOD OF TWO YEARS?

7 **A.** YES.

8 **Q.** IN YOUR OPINION, WHAT WOULD BE THE EFFECT OF A PRISON
9 POPULATION CAP ON PUBLIC SAFETY AND LOCAL CRIMINAL JUSTICE
10 SYSTEMS?

11 **A.** I DON'T THINK I'M OVERSTATING IT WHEN I SAY IT WOULD BE
12 ABSOLUTELY DEVASTATING. THE CRIMINAL JUSTICE SYSTEM, AS IT'S
13 STRUCTURED TODAY, RELIES UPON INTEGRITY.

14 ALREADY THERE HAS BEEN A LOT OF INTEGRITY IN THE
15 CRIMINAL JUSTICE PROCESS; NOT JUST IN CALIFORNIA, BUT IN MANY
16 JURISDICTIONS THROUGHOUT THE UNITED STATES. WE OPERATE WITH A
17 SYSTEM OF RULES, AND IN THIS INSTANCE A STATE AND A SYSTEM OF
18 LAWS.

19 WHEN AN INDIVIDUAL IS CONVICTED AND THE COURT DULY
20 DELIBERATES AND SENTENCES AN OFFENDER TO TIME, WHETHER IT'S TIME
21 IN A COUNTY JAIL OR TIME IN A STATE PRISON, AND THEN SIMPLY
22 USING SOME TYPE OF FORMULA, EITHER A SHERIFF OF A COUNTY JAIL OR
23 THE SECRETARY OF THE DEPARTMENT OF CORRECTIONS RELEASES THAT
24 INDIVIDUAL EARLY WITHOUT THERE BEING ANY RELATIONSHIP BETWEEN
25 EITHER THE INDIVIDUAL'S BEHAVIOR OR THEIR WORK OUT IN THE

1 COMMUNITY, THEN WHAT IS AT STAKE HERE IS THE OVERALL INTEGRITY
2 OF THE PROCESS.

3 WE CAN'T BUILD ENOUGH BEDS AND LOCK ENOUGH PEOPLE UP
4 FOR A LONG ENOUGH PERIOD OF TIME TO IMPACT THE CRIME RATES. WE
5 HAVE TO RELY UPON THE INTEGRITY OF THE PROCESS. AND SO SIMPLY
6 RELEASING INDIVIDUALS FROM PRISON EARLY IS GOING TO HAVE A
7 SIGNIFICANT IMPACT UPON THAT INTEGRITY ISSUE AND ON EVERYTHING
8 THAT WE ARE DOING IN THE CRIMINAL JUSTICE SYSTEM.

9 Q. BUT DO YOU BELIEVE THAT IT'S POSSIBLE TO REDUCE THE PRISON
10 POPULATION SAFELY AND EFFECTIVELY?

11 A. ABSOLUTELY.

12 Q. AND HOW -- HOW WOULD YOU SAY THAT COULD BE DONE?

13 A. A WELL-THOUGHT-OUT PLAN NEEDS TO BE IMPLEMENTED, A PLAN THAT
14 HAS THREE PRIMARY AREAS, THAT COVERS THREE PRIMARY AREAS.

15 FIRST OF ALL, THE INTRODUCTION INTO THE SYSTEM, THE
16 EXPANSION, THE USE OF PROGRAMS THAT ARE BASED ON EVIDENCE-BASED
17 PRACTICES.

18 SECOND OF ALL, THE USE OF A RISK AND NEEDS ASSESSMENT
19 IN ORDER TO SET PAROLE SUPERVISION CONDITIONS.

20 AND, FINALLY, THE IMPLEMENTATION. I KNOW THERE HAS
21 BEEN SOME WORK IN THIS AREA, BUT IT HAS NOT BEEN IMPLEMENTED.
22 THE IMPLEMENTATION OF A STRUCTURED SANCTIONS PROCESS FOR BOTH
23 PROBATION AND PAROLE VIOLATORS.

24 Q. I WOULD LIKE TO HAVE YOU EXPLAIN MORE OF EACH OF THESE TO
25 THE COURT IN TURN, SO LET ME ADDRESS YOUR ATTENTION TO THE FIRST

1 PART OF THE PLAN THAT YOU JUST STATED, THE PROGRAMS NEED TO BE
2 INSTITUTED.

3 COULD YOU EXPLAIN FOR THE COURT WHAT YOU MEAN BY THAT
4 AND WHAT WOULD BE THE IMPACT OF THAT RECOMMENDATION?

5 **JUDGE REINHARDT:** CAN I ASK YOU ONE QUESTION HERE?

6 WHEN YOU SAY COULD YOU REDUCE THE POPULATION WITH
7 YOUR PROGRAMS, ARE YOU -- ARE YOU SAYING YOU COULD REDUCE IT BY
8 50,000? AND IF SO, OVER HOW LONG A PERIOD?

9 **THE WITNESS:** YOUR HONOR, I DON'T HAVE A NUMBER OR A
10 TIME PERIOD. I'M PROPOSING A PROCESS AND A STRUCTURE IN WHICH
11 TO REDUCE THAT PRISON POPULATION.

12 A LOT OF WORK IS GOING TO HAVE TO BE DONE IN ORDER TO
13 PUT IN PLACE THE SPECIFICITY AND AS I CONTINUE TALKING, TO PUT
14 IN PLACE THE NEEDED PARTNERSHIP BETWEEN THE STATE OF CALIFORNIA
15 AND ITS COUNTIES TO CARRY THIS OUT.

16 **JUDGE KARLTON:** FOLLOWING JUDGE REINHARDT'S QUESTION,
17 IS THERE ANY WAY THAT YOU UNDERSTAND THAT WE CAN REDUCE THE
18 POPULATION SO AS TO AFFECT THE ABILITY OF THE SYSTEM TO PROVIDE
19 ADEQUATE MEDICAL AND MENTAL HEALTH HEALTHCARE WITHOUT RELEASING
20 PEOPLE?

21 **THE WITNESS:** MY UNDERSTANDING OF THE OVERCROWDING
22 SITUATION IN THE PRISON SYSTEM IS THAT IT ABSOLUTELY WILL
23 REQUIRE THE RELEASE OF INMATES IN THE FACILITIES IN ORDER TO BE
24 ABLE TO PROVIDE THAT LEVEL OF CARE THAT'S REQUIRED.

25 **JUDGE KARLTON:** SO THAT SOME FORM OF A PRISON RELEASE

1 ORDER WILL BE REQUIRED SOMEHOW?

2 **THE WITNESS:** YES. WHAT I'M TALKING ABOUT HERE THIS
3 MORNING, AND AS I WALK INTO THE THREE PARTS OF THIS PLAN, IS NOT
4 JUST A RELEASE ORDER, BUT THE DEVELOPMENT AND THE INTRODUCTION
5 OF A PLAN THAT A BYPRODUCT WILL BE A MANAGED PRISON POPULATION.

6 **JUDGE KARLTON:** GO AHEAD.

7 **BY MS. KECK:**

8 **Q.** LET ME DIRECT YOUR ATTENTION TO THE FIRST PART OF THE PLAN
9 THAT YOU MENTIONED, WHICH IS THE PROGRAMS NECESSARY TO SUPPORT
10 THE RELEASE.

11 COULD YOU PLEASE EXPLAIN TO THE COURT WHAT IT IS YOU
12 MEAN BY THAT?

13 **A.** IT'S A COMBINATION OF PROGRAMS. RIGHT NOW THERE ARE SOME
14 PROGRAMS THAT CDCR OFFERS. THERE'S VERY LITTLE INCENTIVE FOR
15 PRISONERS TO PARTICIPATE IN THE PROGRAMS.

16 THERE'S NO LINKAGE WHATSOEVER WITH THE PROGRAMS THAT
17 THEY PARTICIPATE IN WHILE IN THE INSTITUTION, AND THEY ARE
18 RELEASED BACK OUT INTO THE COMMUNITY.

19 THERE IS NO STRUCTURED PROCESS FOR MAKING SURE THAT
20 THE BASIC ISSUES THAT WE ARE DEALING WITH IN A CORRECTIONAL
21 SYSTEM ARE BEING ADDRESSED; THE ALCOHOL, DRUG, MENTAL HEALTH
22 ISSUES; THE LACK OF EDUCATION AND THE PROBLEMS WITH EMPLOYMENT
23 ISSUE; THE HOUSING ISSUES.

24 THERE IS NO PUTTING TOGETHER OF A PLAN. THERE IS
25 HOLDING INDIVIDUALS IN THE PRISON SYSTEM AND RELEASING THEM.

1 THERE'S INDIVIDUALS THAT VIOLATE THEIR PAROLE. THEY COME BACK
2 IN AND SIMPLY ROTATE BACK THROUGH THE SYSTEM AGAIN.

3 WE ARE NOT USING EVIDENCE-BASED PRACTICES IN ORDER TO
4 PROPERLY ADDRESS THE INDIVIDUAL'S BASIC SENSE OF NEEDS.

5 SPECIFICALLY, ONE OF THE PRIMARY FUNCTIONS THAT I'M
6 RECOMMENDING, AGAIN IDEALLY WITH A PARTNERSHIP BETWEEN THE STATE
7 AND THE COUNTIES, IS TO PUT IN PLACE A COMMUNITY CORRECTIONS
8 PLAN, A COMMUNITY CORRECTIONS PLAN THAT STEPS OFFENDERS DOWN
9 FROM PRISON BACK OUT INTO THE COMMUNITY; THAT ALLOWS THEM TO
10 PARTICIPATE IN PROGRAMS WITHIN THE INSTITUTION AND THEN THEY ARE
11 LINKED WITH PROGRAMS DIRECTLY INTO THE COMMUNITY, WHERE WE ARE
12 MOVING THE INDIVIDUALS THROUGH A PROCESS.

13 THAT'S DEVELOPING PROGRAMS BASED UPON EVIDENCE-BASED
14 PRACTICES.

15 Q. AND SO WHAT YOU JUST DESCRIBED IS A SYSTEM, BASICALLY
16 CONTINUING PROGRAMS THAT WOULD START IN THE PRISON AND THEN GO
17 OUT IN THE COMMUNITY?

18 A. EXACTLY. THE RESEARCH IS VERY CLEAR ON THIS, THAT EVEN IN A
19 SYSTEM WHERE YOU HAVE VERY GOOD PROGRAMS WITHIN THE INSTITUTION,
20 UNLESS THERE IS A SPECIFIC LINKAGE WITH -- AND IT'S FORMALLY
21 KNOWN AS REENTRY.

22 UNLESS THERE IS A SPECIFIC LINKAGE WITH THAT
23 INDIVIDUAL'S RELEASE BACK OUT INTO THE COMMUNITY, THE PROGRAMS
24 ARE FOR NAUGHT.

25 AND THAT'S WHAT WE HAVE HERE IN THE STATE OF

1 CALIFORNIA. WE HAVE SOME PROGRAMS. INDIVIDUALS DON'T
2 NECESSARILY HAVE AN INCENTIVE TO PARTICIPATE IN THEM, BUT THEN
3 THERE ISN'T THE LINKAGE WHEN THEY ARE RELEASED BACK OUT INTO THE
4 COMMUNITY.

5 Q. LET ME DRAW YOUR ATTENTION TO THE SECOND ELEMENT THAT YOU
6 MENTIONED, WHICH THE PAROLE SUPERVISION ISSUE AND PROBATION
7 SUPERVISION.

8 COULD YOU EXPLAIN TO THE COURT WHAT YOUR
9 RECOMMENDATIONS ARE IN THAT REGARD?

10 A. IN THE LAST FEW YEARS, FINALLY, WE HAVE SOME VALIDATED RISK
11 AND NEEDS INSTRUMENTS THAT ARE AVAILABLE TO HELP US IN
12 CORRECTIONS. THOSE RISK AND NEEDS INSTRUMENTS NEED TO BE
13 APPLIED TO EACH AND EVERY OFFENDER RELEASED ON PAROLE.

14 INDIVIDUALS THAT ARE RELEASED, THE LEVEL OF
15 SUPERVISION, THE PROGRAMS THAT THEY RECEIVE NEED TO BE BASED ON
16 THE RESULTS OF THAT RISK AND NEEDS ASSESSMENT, ALONG WITH WHAT'S
17 HAPPENED WITHIN THE INSTITUTION.

18 THERE ARE GOING TO BE INDIVIDUALS WHO ARE RELEASED ON
19 PAROLE WHO NEED A MINIMAL AMOUNT OF ATTENTION AND/OR CAN BE
20 RELEASED WITHOUT PAROLE. SHORT PERIOD OF TIME, RELEASE, DONE.

21 THERE ARE GOING TO BE OTHER INDIVIDUALS THAT NEED
22 INTENSIVE SUPERVISION AND NEED IT FOR A LONGER PERIOD OF TIME.
23 IF WE ARE GOING TO BE SUCCESSFUL WITH THE GOAL THAT I STATED
24 EARLIER OF THE -- THAT THE BEHAVIOR THAT CAUSED THE INDIVIDUAL
25 TO COME IN CONTACT WITH THE SYSTEM IN THE FIRST PLACE DOESN'T

1 HAPPEN AGAIN, THEN WE NEED TO INDIVIDUALLY TAILOR HOW WE HANDLE
2 AND ADDRESS THAT SPECIFIC INDIVIDUAL'S NEEDS AND PROBLEMS.

3 **Q.** ARE THERE EXAMPLES CURRENTLY IN THE STATE OF CALIFORNIA
4 WHERE THIS TYPE OF INDIVIDUAL ASSESSMENT AND ADDRESSING THE
5 SPECIFIC NEEDS OF THE POPULATION IS BEING CONDUCTED CURRENTLY?

6 **A.** WELL, SONOMA COUNTY IS IN THE PROCESS OF IMPLEMENTING THE
7 USE OF A RISK AND NEED ASSESSMENT THROUGHOUT ITS ENTIRE SYSTEM.
8 IT COMES ONLINE THIS NEXT WEEK ON THE JUVENILE SYSTEM, AND IN
9 MARCH ON THE ADULT SYSTEM, WITH THAT RISK AND NEEDS ASSESSMENT
10 AS BEING APPLIED TO THE INDIVIDUALS IN THE LOCAL CRIMINAL
11 JUSTICE SYSTEM TO HELP DETERMINE, EITHER AT THE JUVENILE LEVEL
12 OR THE ADULT LEVEL, THE LEVEL OF SUPERVISION AND THE PROGRAMS
13 THAT THE INDIVIDUALS ARE GOING TO BE INVOLVED WITH.

14 CDCR HAS DONE SOME DIFFERENT THINGS WITH RISK AND
15 NEEDS ASSESSMENTS. IT'S IN THE PROCESS. IT'S GROWING. IT'S
16 HAPPENING. IT JUST HASN'T BEEN FULLY IMPLEMENTED AND THERE
17 HASN'T BEEN THAT FORMAL LINKAGE WITH THE LEVEL AND AMOUNT OF
18 SUPERVISION OF INDIVIDUALS RELEASED ON PAROLE.

19 **Q.** AND WHEN YOU TALK ABOUT THERE BEING STRUCTURED SANCTIONS, IS
20 THE ONLY SANCTIONS YOU ARE REFERRING TO JUST A RETURN TO PRISON
21 IF THERE IS A VIOLATION OF PAROLE OR IS IT SOMETHING MORE?

22 **A.** WE NEED TO DO A LOT MORE. WHAT WE HAVE LEARNED -- AND WE
23 KNEW THIS ALL ALONG, BUT DRUG COURT HAS TAUGHT IT TO US AGAIN.

24 IT'S NOT THE SEVERITY OF THE SANCTION THAT'S
25 IMPORTANT. WHAT'S IMPORTANT IS THE CERTAINTY AND THE IMMEDIACY

1 OF IT. THAT AN OFFENDER WHO IS OUT, EITHER ON PROBATION OR
2 PAROLE, THAT THERE IS AN UNDERSTANDING, THERE ARE CERTAIN RULES,
3 THERE ARE CERTAIN CONDITIONS THAT HAVE TO BE FOLLOWED. THERE
4 HAS TO BE THE ABILITY TO MONITOR THOSE CONDITIONS AND THEN THERE
5 HAS TO BE THE CONSEQUENCE FOR THEIR ACTIONS.

6 WE DON'T JUST SIMPLY WAIT TILL THE LEVEL OF FAILURE
7 RISES TO THE LEVEL, WHETHER A ZERO TOLERANCE PROGRAM IS IN PLACE
8 OR PROBATION AND PAROLE OFFICERS HAVE SOME DISCRETION AS TO WHEN
9 TO VIOLATE THE OFFENDER, VIOLATE THEM AND SIMPLY RETURN THEM TO
10 PRISON, HAVE THEM HELD ON WHAT THE DATA TELLS US AN AVERAGE OF
11 120 DAYS, CIRCULATE THEM THROUGH THE PROCESS BACK OUT AGAIN.

12 WE NEED TO HAVE MEANINGFUL, IMMEDIATE, CERTAIN
13 SANCTIONS. AND IT DOESN'T HAVE TO BE A RETURN TO PRISON. WE
14 CAN DEVELOP SANCTIONS AT THE LOCAL LEVEL. WE CAN KEEP
15 INDIVIDUALS LOCALLY IN THIS PARTNERSHIP BETWEEN THE STATE OF
16 CALIFORNIA AND IT'S COUNTIES. WE CAN HAVE A MORE EFFECTIVE
17 SANCTION WITHOUT INTERRUPTING INDIVIDUAL'S LIVES AND RETURNING
18 THEM TO PRISON.

19 **Q.** WHY WOULD A PRISON POPULATION REDUCTION PLAN THAT CONTAINS
20 THE THREE ELEMENTS YOU DESCRIBE SIGNIFICANTLY LOWER PRISON
21 POPULATION? WHY DO YOU BELIEVE THEY WOULD BE EFFECTIVE?

22 **A.** BECAUSE WE ARE INTERRUPTING THE CYCLE OF CRIME. WE ARE
23 BECOMING INVOLVED WITH THE INDIVIDUAL, WITH THEIR ISSUES AND
24 WITH THEIR PROBLEMS.

25 NO LONGER ONE SIZE FITS ALL. NO LONGER SIMPLY TAKING

1 A LOOK AT THE DEFENDANT'S PRIOR CRIMINAL HISTORY, TAKING A LOOK
2 AT THE INSTANT OFFENSE AND COMING UP WITH A SENTENCE THAT IS
3 THEN ADMINISTERED AND THE INDIVIDUAL HELD FOR SOME MAGIC PERIOD
4 OF TIME AND THEN RELEASED ON PAROLE.

5 WE ARE BEGINNING THE PROCESS OF HAVING INDIVIDUALS
6 EARN THEIR WAY TO BE RELEASED, OF STEPPING THEM DOWN OUT OF THE
7 INSTITUTION BACK OUT INTO THE COMMUNITY.

8 WE ARE PUTTING IN PLACE A SYSTEM THAT HAS THE
9 NECESSARY ACCOUNTABILITY, HAS THE NECESSARY CONSEQUENCES, AND IS
10 TRULY A MUCH BETTER SYSTEM IN PRESERVING PUBLIC SAFETY.

11 Q. ABSENT THIS TYPE OF A PLAN, WHAT WOULD BE THE EFFECT OF A
12 PRISONER RELEASE ORDER ON COUNTIES IF THERE WAS A POPULATION CAP
13 THAT WAS INSTITUTED AS THE PLAINTIFF SO REQUESTS?

14 A. HERE IS MY CONCERN. THE SYSTEM IS ALREADY BROKEN. THERE IS
15 NO QUESTION ABOUT IT. WE CAN TAKE A LOOK AT THE HIGH CRIME RATE
16 OF PEOPLE WHO ARE RELEASED ON PAROLE COMING BACK INTO THE
17 INSTITUTION.

18 WHETHER THIS IS A SHORT TERM BLIP, I HAVE -- I CAN'T
19 -- I DON'T FULLY UNDERSTAND THE MATH THAT HAS GONE INTO THE
20 RECOMMENDATION OF A SHORT TERM EXPEDITED RELEASE OF OFFENDERS
21 BACK OUT INTO THE COMMUNITY THAT'S GOING TO BRING THE OVERALL
22 PRISON POPULATION DOWN TO MORE MANAGEABLE LEVELS.

23 BUT BE THAT AS IT MAY, WHEN WE ARE TALKING ABOUT THE
24 RELEASE UNDER THIS CURRENT BROKEN SYSTEM, OF ONE-THIRD OF ITS
25 POPULATION BACK OUT INTO THE COMMUNITY, WE ARE GOING TO HAVE

1 PROBLEMS. WE ARE GOING TO HAVE INCREASED RECIDIVISM, INCREASED
2 PRESSURE COMING BACK IN.

3 AND HERE IS MY CONCERN. ONCE AGAIN, THREE SPECIFIC
4 ISSUES.

5 ONE IS, WE HAVE GOT A TERRIBLY OVER TAXED LOCAL
6 CRIMINAL JUSTICE SYSTEM. AND THIS IS BEFORE THE BUDGET CUTS OF
7 THE LAST SIX MONTHS OR YEAR HAVE TAKEN HOLD.

8 WE HAVE NOT ENOUGH JUDGES ON THE BENCH. CLEARLY, NOT
9 ENOUGH PROSECUTORS, PUBLIC DEFENDERS, PROBATION OFFICERS TO DO
10 THE BUSINESS OF THE LOCAL CRIMINAL JUSTICE SYSTEM. IT IS
11 ALREADY STRETCHED AS THIN AS IT POSSIBLY CAN THROUGHOUT THE
12 STATE AND IN MOST JURISDICTIONS THROUGHOUT THE COUNTRY.

13 NOW THAT WE HAVE HAD THIS ECONOMIC TURNDOWN, WE HAVE
14 HAD BUDGET CUTS, WE HAVE HAD ALL OF THAT IMPACT AND THAT
15 TIGHTENING ON THE CRIMINAL JUSTICE SYSTEM AND, YET, WE STILL
16 HAVEN'T FELT WHAT I HAVE FEAR IS ALREADY IN THE PIPELINE, AND
17 THAT'S AN INCREASE IN THE CRIME RATE. THAT'S AN INCREASE IN
18 CRIMES THAT ARE COMMITTED AS A RESULT OF THE THIS ECONOMIC
19 TURNDOWN AND WE, WITH TODAY'S SYSTEM, DON'T HAVE THE RESOURCES
20 AT THE LOCAL LEVEL TO HANDLE IT.

21 I AM CONCERNED ON THE INTEGRITY ISSUE THAT I SPOKE
22 ABOUT EARLIER. WITH OUR LOCAL PRETRIAL SERVICES PROGRAMS THAT
23 RELEASE INDIVIDUALS FROM JAIL PRIOR TO TRIAL, OUR LOCAL
24 PROBATION EFFORTS ARE GOING TO BE COMPROMISED BECAUSE
25 INDIVIDUALS -- BECAUSE OF JAIL OVERCROWDING, BECAUSE OF HAVING

1 TO RELEASE INDIVIDUALS AND NOT HAVE THE APPROPRIATE SERVICES IN
2 THE COMMUNITY. THEY DON'T EXIST TODAY.

3 SECOND POINT, TO THAT ISSUE OF THE INSTITUTIONS.
4 THIRTY-TWO OF CALIFORNIA'S COUNTY JAILS ARE UNDER SOME TYPE OF A
5 CAP. THE LARGEST HORROR STORY THROUGHOUT AMERICA OF JAIL
6 OVERCROWDING IS RIGHT HERE IN THIS STATE, IN LOS ANGELES COUNTY.
7 THE NUMBER OF PRISONERS THAT ARE TURNED OUT BY THE LOS ANGELES
8 COUNTY SYSTEM REFLECT THAT BROKEN SYSTEM I SPOKE ABOUT EARLIER,
9 THAT LACK OF INTEGRITY.

10 WITH SUCH A RETURN OF 50,000 PRISONERS BACK TO THE
11 COMMUNITIES OF CALIFORNIA WITHOUT THE IMPLEMENTATION OF A PLAN
12 SUCH AS I HAVE PROPOSED, WILL TAX THE LOCAL SYSTEMS BEYOND
13 BELIEF. THEY CANNOT HANDLE THE INCREASED NUMBERS OF
14 INDIVIDUALS. THE RESULT BEING MORE OF THE SAME. MORE
15 INDIVIDUALS RELEASED, NOT HAVING THE CONSEQUENCES, NOT HAVING
16 THE ACCOUNTABILITY, HAVING INCREASED RECIDIVISM, INCREASED
17 CRIME, INDIVIDUALS RETURNING BACK TO THE SYSTEM.

18 AND FINALLY, OUR PROGRAMS. CALIFORNIA HAS LED THE
19 NATION WITH THE IMPLEMENTATION OF PROGRAMS IN LIEU OF
20 INCARCERATION. WE CAN GO BACK INTO THE EARLY 1900S IN SONOMA
21 COUNTY WITH THE CALIFORNIA HUMAN DEVELOPMENT CORPORATION TO
22 TODAY, THE WORK THAT IT DOES IN THE LOCAL CRIMINAL JUSTICE
23 SYSTEM. I WOULD LOVE TO CHALLENGE ANYBODY IN THIS COURTROOM TO
24 COME SPEND A DAY WITH THE STAFF OF THAT PROGRAM AND SEE HOW --
25 IT'S NOT THE DOLLARS THEY GET PAID. IT'S THE HEART THAT THEY

1 BRING TO THEIR WORK. IT'S THE WORK THAT THEY GET UP IN THE
2 MORNING FOR THAT THEY ARE EXCITED TO DO, TO WORK WITH THE
3 CLIENTS OF THE CRIMINAL JUSTICE SYSTEM.

4 THE PROBLEM IS, THERE IS NOT ENOUGH SLOTS. THEY
5 DON'T EXIST. AND THOSE PROGRAMS, THOSE NETWORKS ARE BECOMING
6 TAXED AND STRAINED TO THE BREAKING POINT. AND UNLESS THOSE
7 PROGRAMS ARE EXPANDED, UNLESS MORE SLOTS BECOME AVAILABLE, THE
8 IMPLEMENTATION OF A RELEASE ORDER IS GOING TO FAIL AND IT'S
9 GOING TO HIT HARDEST ON THE LOCAL CRIMINAL JUSTICE SYSTEMS.

10 Q. THERE HAVE BEEN SOME EXPERTS THAT HAVE TESTIFIED IN THIS
11 PROCEEDING THAT THERE WOULD BE -- IF A PRISONER RELEASE ORDER
12 WERE TO BE ENTERED, EVEN WITHOUT INCREASING PAROLE SUPERVISION,
13 EVEN WITHOUT A STRUCTURED SANCTIONS POLICY, AND EVEN WITHOUT
14 INCREASING THE FUNDING OR RESOURCES AVAILABLE TO THE COMMUNITIES
15 TO DO COMMUNITY OUTPUT, THAT A RELEASE ORDER WOULD NOT EFFECT
16 PUBLIC SAFETY NOR LEAD TO AN INCREASE IN RECIDIVISM OR A CHANGE
17 IN -- YEAH, LEAD TO AN INCREASE IN RECIDIVISM. DO YOU AGREE
18 WITH THAT?

19 A. I DO NOT. THE SYSTEM IS BROKEN TODAY AND BECAUSE IT'S SO
20 BROKEN IS WHY WE HAVE THE RECIDIVISM PROBLEMS THAT WE HAVE IN
21 THE LOCAL CRIMINAL JUSTICE SYSTEMS.

22 SUCH A PLAN SIMPLY RESHUFFLES THE DECK. IT SIMPLY
23 CONTINUES TO TURN INDIVIDUALS OUT OF THE INSTITUTION WITHOUT THE
24 NECESSARY LEVELS OF SUPERVISION AND PROGRAMMING TO CHANGE
25 BEHAVIOR. AND WHEN WE DO THAT, WE ADD THAT TO TODAY'S ALREADY

1 BROKEN SYSTEM WITH RESOURCES STRETCHED BEYOND THEIR MEANS, THIS
2 RESHUFFLING OF THE DECK WILL JUST COMPOUND THE PROBLEMS AND NOT
3 BRING ABOUT THE CHANGES IN BEHAVIOR THAT I SPOKE ABOUT AT THE
4 BEGINNING.

5 **JUDGE REINHARDT:** MAY I ASK YOU, YOU BELIEVE THAT
6 THESE THREE STEPS WOULD RESOLVE THE PROBLEM. WHAT IS STOPPING
7 THE STATES AND THE COUNTIES FROM IMPLEMENTING THOSE THREE STEPS?

8 **THE WITNESS:** THAT'S A GREAT QUESTION. I DON'T KNOW.
9 I DON'T KNOW WHY THERE HASN'T BEEN A LOOK AT -- WE HAVE
10 CERTAINLY OF ENOUGH STUDIES.

11 THE STATE HAS BEEN -- BEEN THE BENEFICIARY OF SOME OF
12 THE BEST EXPERTS IN THIS COUNTRY PUTTING TOGETHER STUDIES AND
13 DOCUMENTING THE NATURE OF THE PROBLEM.

14 THEY STARTED TO IMPLEMENT PIECES OF THIS, BUT THEY
15 HAVEN'T GRASPED THE WHOLE PROBLEM. THEY HAVEN'T MADE THE
16 COMMITMENT THAT NEEDS TO BE MADE TO TRULY CHANGING BEHAVIOR.
17 TRULY GETTING OUT IN FRONT OF THIS PROBLEM.

18 IT WAS TOO EASY FOR TOO LONG TO EITHER -- WHEN TIMES
19 WERE GOOD TO JUST BUILD PRISONS. WHEN THEY WEREN'T SO GOOD,
20 JUST OVERCROWD THEM.

21 THIS PLAN FORCES THE SYSTEM TO COME TO GRIPS WITH ITS
22 ISSUES AND PUT IN PLACE MEANINGFUL CHANGES THAT WILL HAVE A
23 LASTING BENEFIT.

24 **JUDGE REINHARDT:** AND ALL OF THESE STEPS REQUIRE THE
25 EXPENDITURE OF SUBSTANTIAL SUMS OF MONEY BY THE STATE AND THE

1 COUNTIES.

2 **THE WITNESS:** IT DOES, BUT IT'S MY OPINION THAT THE
3 STATE IS ALREADY SPENDING SUBSTANTIAL AMOUNTS OF DOLLARS IN ITS
4 INEFFECTIVE BROKEN CRIMINAL JUSTICE AND CORRECTIONS SYSTEM; THAT
5 BY REPRIORITIZING ITS DOLLARS, BY RETARGETING AND WORKING ON
6 UPSTREAM ISSUES SO THAT WE GET OUT AHEAD OF THE PROBLEM, THAT'S
7 THE ONLY WAY THAT WE ARE GOING TO BE ABLE TO SOLVE THIS PROBLEM
8 WITHOUT CATASTROPHE.

9 **JUDGE REINHARDT:** AND HOW LONG IF YOUR STEPS WERE IN
10 EFFECT -- ARE YOU SAYING IF THESE STEPS WERE IN EFFECT, THEN
11 50,000 PRISONERS COULD BE RELEASED?

12 **THE WITNESS:** I'M SAYING THAT IF THIS PLAN WERE
13 ADOPTED BY THE STATE OF CALIFORNIA, THAT THE POPULATION COULD BE
14 BROUGHT DOWN IN A SYSTEMATIC WAY WITHOUT HAVING TO ENTER A
15 RELEASE ORDER.

16 **JUDGE KARLTON:** I THOUGHT YOU JUST SAID -- NEVER
17 MIND.

18 **BY MS. KECK:**

19 **Q.** PERHAPS YOU SHOULD CLARIFY TO THE COURT. ARE YOU
20 RECOMMENDING AS PART OF YOUR PROGRAM THAT THERE BE A POPULATION
21 CAP OR OTHER GENERAL RELEASE ORDER ENTERED WITH RESPECT TO THE
22 STATE PRISON POPULATION?

23 **A.** I UNDERSTAND IT'S A \$64,000 QUESTION HERE THIS MORNING.

24 **JUDGE REINHARDT:** WELL, TO ANSWER THE COURT, THE
25 CAP -- IF YOUR PROGRAM WOULD BRING IT DOWN, WHAT HARM WOULD

1 THERE BE TO A CAP, IF THAT WOULD BE THE EFFECT ANYWAY?

2 **THE WITNESS:** THE ISSUE -- AND THE ISSUE I THINK THAT
3 JUDGE KARLTON WAS REACTING TO WAS MY COMMENT EARLIER ABOUT
4 WITHIN THE INSTITUTIONS, THE PROVIDING OF THE NECESSARY
5 CONSTITUTIONAL MEDICAL AND MENTAL HEALTH SERVICES CAN'T BE
6 PROVIDED WITH TODAY'S OVERCROWDING.

7 IT'S GOING TO TAKE SOME TIME TO IMPLEMENT MY PLAN.
8 IT'S GOING TO TAKE SOME TIME TO PUT THIS IN PLACE, THE OVERALL
9 PLANNING PROCESS AS WELL AS THE IMPLEMENTATION, ONCE THE
10 PLANNING HAS BEEN DONE.

11 AND SO WE ARE KIND OF BETWEEN A ROCK AND A HARD SPOT
12 RIGHT NOW BECAUSE WE HAVE THE OVERCROWDING AT THE LEVEL THAT WE
13 HAVE. WE HAVE THE DIFFICULTIES WITHIN THE INSTITUTION, AND WE
14 DON'T HAVE THE MECHANISMS IN THE COMMUNITY TO HAVE -- TO
15 IMPLEMENT A RELEASE ORDER IN SUCH A WAY THAT IT'S NOT GOING TO
16 IMPACT THE LOCAL SYSTEMS.

17 **BY MS. KECK:**

18 **Q.** WOULD A POPULATION CAP BY ITSELF BE SUFFICIENT TO BOTH
19 RESOLVE THE PROBLEMS AT THE OVERCROWDING AT THE STATE PRISON
20 LEVEL AS WELL AS ADDRESS THE CONCERNS IN THE COMMUNITY?

21 **A.** WELL, CLEARLY, A POPULATION CAP WILL ADDRESS THE
22 OVERCROWDING IN THE STATE PRISON.

23 WHETHER -- DEPENDING UPON HOW THE CAP IS IMPLEMENTED,
24 EITHER THE FRONT DOOR IS GOING TO BE CLOSED OR THE BACK DOOR IS
25 GOING TO OPEN UP. IN ANY EVENT, IT'S GOING TO HAVE A NEGATIVE

1 IMPACT ON THE LOCAL COUNTY JAILS, BECAUSE RIGHT NOW INDIVIDUALS
2 SENTENCED TO STATE PRISON MOVE IN AND OUT OF THE COUNTY JAIL
3 VERY QUICKLY.

4 IN SONOMA COUNTY 1200 PEOPLE LAST YEAR MOVED THAT
5 ROUTE FROM COUNTY JAIL INTO CDCR.

6 **JUDGE REINHARDT:** YOU ARE SAYING THAT A CAP WOULD NOT
7 HAVE AN ADVERSE EFFECT IF THE STATES AND COUNTIES WOULD ADOPT
8 YOUR THREE STEPS?

9 **THE WITNESS:** CORRECT.

10 **JUDGE REINHARDT:** WHICH THEY CAN DO?

11 **THE WITNESS:** CORRECT.

12 **BY MS. KECK:**

13 **Q.** AND PERHAPS IT WOULD BE MORE PRECISE TO SAY THAT, MR.
14 BENNETT, DID YOU PROVIDE SOME SPECIFIC IMPLEMENTATION PROGRAMS
15 IN THE EXPERT REPORT DATED AUGUST 15?

16 **A.** YES.

17 **Q.** AND ARE THESE THE THREE ELEMENTS THAT WE JUST DISCUSSED OR A
18 SUMMARY OF THOSE SPECIFIC RECOMMENDATIONS THAT YOU HAD MADE?

19 **A.** THEY ARE, WITH ONE EXCEPTION THAT I HAVE LEFT OFF SO FAR
20 HERE THIS MORNING. AND THIS GETS TO THE HEART OF WHAT WE ARE
21 DOING.

22 ULTIMATELY A SENTENCING COMMISSION NEEDS TO BE
23 CONVENED AND TAKE A LOOK AT THE DISPARITY OF SENTENCES AT THE
24 LOCAL LEVEL INTO THE STATE PRISON SYSTEM. IT IS -- THE
25 DISPARITY IS SHOCKING.

1 WHEN WE ARE TALKING ABOUT LONG TERM SYSTEMIC CHANGE,
2 CALIFORNIA NEEDS TO A A LOOK AT THIS PROBLEM. IT NEEDS TO
3 UNDERSTAND WHERE THE SENTENCING SCHEME IS BROKEN IN THIS SYSTEM,
4 HOW IT OPERATES DIFFERENTLY THROUGHOUT THE STATE AND THEN
5 OVERALL SENTENCING GUIDELINES NEED TO BE DEVELOPED.

6 **Q.** YOU DO UNDERSTAND, MR. BENNETT, THAT THIS COURT DOES NOT
7 HAVE THE POWER TO ORDER THE LEGISLATURE TO CHANGE THE SENTENCING
8 GUIDELINES, IS THAT CORRECT?

9 **A.** I DO UNDERSTAND THAT. HOWEVER, WHEN WE ARE TALKING ABOUT
10 LONG TERM SYSTEMIC CHANGES, THESE STEPS NEED TO BE TAKEN.

11 **MS. KECK:** THANK YOU.

12 **THE COURT:** OKAY. WE ARE GOING TO TAKE OUR LUNCH
13 RECESS AT THIS TIME. THE COURT IS ADJOURNED FOR AN HOUR.

14 (WHEREUPON AT 12:17 P.M. PROCEEDINGS
15 WERE ADJOURNED FOR NOON RECESS.)

16 **JUDGE HENDERSON:** I GUESS BEFORE WE GO INTO CROSS,
17 ANYTHING FROM STATE DEFENDANTS?

18 **MR. LEWIS:** NO QUESTIONS, YOUR HONOR.

19 **THE COURT:** OKAY, CROSS-EXAMINATION.

20 **MS. EVENSON:** GOOD AFTERNOON, YOUR HONOR. GOOD
21 AFTERNOON, MR. BENNETT. REBECCA EVENSON FOR PLAINTIFFS.

22 **CROSS-EXAMINATION BY MS. EVENSON**

23 **BY MS. EVENSON**

24 **Q.** MR. BENNETT, YOUR LAWYER ASKED YOU WHAT THE EFFECT WOULD BE
25 OF REDUCING THE POPULATION BY 52,000 OVER TWO YEARS, AND YOU

1 SAID IT WOULD BE ABSOLUTELY DEVASTATING. WHEN YOU SAID THAT,
2 YOU DIDN'T MEAN IT WOULD BE ABSOLUTELY DEVASTATING TO REDUCE THE
3 POPULATION USING THE METHODS THAT YOU DESCRIBED IN YOUR REPORT,
4 RIGHT?

5 **A.** CORRECT.

6 **MS. EVENSON:** NOTHING FURTHER.

7 **JUDGE KARLTON:** MR. BENNETT, ONE THING THAT YOU SAID
8 WAS ABSOLUTELY NECESSARY WAS A PROGRAM, ADEQUATE PROGRAM,
9 PRERELEASE PROGRAM IN THE PRISONS, IS THAT RIGHT?

10 **THE WITNESS:** YES.

11 **JUDGE KARLTON:** ARE YOU AWARE THAT ALMOST NO ADEQUATE
12 PROGRAMMING IS GOING ON BECAUSE THERE IS NO SPACE?

13 **THE WITNESS:** CORRECT.

14 **JUDGE KARLTON:** SO IN ORDER TO OBTAIN THE PROGRAM
15 THAT YOU ARE TALKING ABOUT, YOU HAVE GOT TO RELEASE ENOUGH
16 PEOPLE AT LEAST TO GET THE SPACE?

17 **THE WITNESS:** IT'S A DIFFICULT CONFLICT BECAUSE OF
18 THAT ISSUE, AND TAKING A LOOK AT THE PICTURES FROM THE
19 INSTITUTIONS OF THE INCREDIBLE OVERCROWDING IN SPACES THAT ARE
20 SUPPOSED TO BE PROGRAM SPACES. IT'S A VERY DIFFICULT, DAUNTING
21 TASK AHEAD.

22 **JUDGE KARLTON:** I'M GLAD YOU THINK YOU HAVE A
23 DAUNTING TASK. WHAT DO WE DO? WE HAVE GOT TO LET PEOPLE OUT
24 JUST TO GET THE SPACE TO GET THE PROGRAMMING THAT YOU SAY IS
25 NECESSARY TO MAKE THIS WORK.

1 **THE WITNESS:** WHAT I WOULD LIKE, IN THE BEST OF ALL
2 POSSIBLE WORLDS, AND I REALIZE THE COURT HAS BEEN WORKING ON
3 BOTH OF THESE CASES FOR A LONG PERIOD OF TIME, BUT IN AN IDEAL
4 WORLD, TO BE ABLE TO EITHER DIRECT OR TO HAVE A COMMITMENT FROM
5 THE STATE OF CALIFORNIA TO WORK WITH ITS COUNTIES ON PUTTING
6 TOGETHER A PLAN THAT IS CERTAIN AND IMMEDIATE, JUST LIKE WHEN I
7 TALK ABOUT WITH SANCTIONS UPON DEFENDANTS, TO PUT TOGETHER A
8 PLAN THAT IS CERTAIN AND IMMEDIATE AND -- BECAUSE THEY ARE
9 RELEASING PEOPLE NOW. THEY ARE RELEASING THEM THROUGH THIS
10 PAROLE PROCESS, SANCTIONING PEOPLE FOR 120 DAYS, DOING NOTHING,
11 ROLLING THEM THROUGH THE SYSTEM AND BACK OUT AGAIN, THAT IF
12 THERE WERE PROGRAMS IN THE COMMUNITY THAT THEY WERE ROLLING THEM
13 TO, WE COULD START TO HAVE AN IMPACT.

14 **JUDGE KARLTON:** SO THAT YOU WOULD, AS A FIRST STEP,
15 MODIFY THE PROGRAM THAT EXISTS NOW, WHICH IS SIMPLY TO TAKE
16 TECHNICAL VIOLATORS, HAVE THEM SIT IN PRISON FOR THREE OR FOUR
17 MONTHS WITHOUT ANYTHING BEING DONE, AND THEN LETTING THEM BACK
18 OUT. THAT CLEARLY SIMPLY MAKES NO SENSE.

19 **THE WITNESS:** CORRECT.

20 **JUDGE KARLTON:** ALL RIGHT.

21 **JUDGE HENDERSON:** ALL RIGHT. THANK YOU VERY MUCH FOR
22 TESTIFYING. IF WE HAD KNOWN IT WOULD BE THIS SHORT, WE WOULD
23 HAVE DONE THIS BEFORE LUNCH. THANK YOU VERY MUCH. YOU ARE
24 EXCUSED.

25 **THE WITNESS:** THANK YOU.

1 **THE COURT:** YOU MAY CALL YOUR NEXT WITNESS.

2 **MS. WHELAN:** YOUR HONORS, WE RECALL DR. PABLO
3 STEWART.

4 **JUDGE HENDERSON:** YOU ARE STILL UNDER OATH.

5 **MS. WHELAN:** FOR THE RECORD, WE PREVIOUSLY OFFERED
6 BOTH OF DR. STEWART'S EXPERT REPORTS INTO EVIDENCE IN THIS CASE,
7 INCLUDING COLEMAN DOCKET NUMBERS 3217, WHICH WAS HIS NOVEMBER 9
8 --

9 **JUDGE KARLTON:** OTHER THAN TAKING OUR TIME, WHY ARE
10 YOU REPEATING IT?

11 **MS. WHELAN:** SORRY, JUST FOR THE RECORD. I CAN MOVE
12 ON.

13 **JUDGE KARLTON:** I'M SORRY, I DIDN'T MEAN TO SPEAK
14 SHARPLY. EXCUSE ME.

15 **DIRECT EXAMINATION BY MS. WHELAN**

16 **BY MS. WHELAN**

17 **Q.** DR. STEWART, ONE OF THE ISSUES THAT YOU EVALUATED IN THIS
18 CASE WAS WHETHER OTHER RELIEF, MEANING RELIEF OTHER THAN
19 POPULATION REDUCTION MEASURES, COULD SUCCEED IN REMEDYING THE
20 CONSTITUTIONAL VIOLATIONS IN THE DELIVERY OF MEDICAL AND MENTAL
21 HEALTH CARE. WHAT DID YOU CONCLUDE?

22 **A.** I CONCLUDED THAT, DUE TO THE EXTREME NATURE OF THE
23 OVERCROWDING, WHICH NEGATIVELY IMPACTS ALL ASPECTS OF THE MENTAL
24 HEALTH AND MEDICAL CARE SYSTEM THAT IS CURRENTLY CAUSING COLEMAN
25 CLASS MEMBERS NEEDLESS SUFFERING, AS WELL AS DEATH, THAT THE

1 ONLY REMEDY THAT WOULD HELP THE SYSTEM TO MOVE INTO
2 CONSTITUTIONAL COMPLIANCE WOULD BE A POPULATION REDUCTION.

3 **Q.** AND COULD YOU EXPLAIN THE SPECIFIC FINDINGS YOU MADE THAT
4 LED YOU TO THAT CONCLUSION?

5 **A.** THERE WAS A COUPLE FINDINGS THAT LED ME TO THAT CONCLUSION.
6 THERE WERE TWO OF THOSE THAT -- EXCUSE ME, THIS SOUNDS A LITTLE
7 FUNNY FROM HERE. IS THIS ALL RIGHT?

8 **JUDGE KARLTON:** IT'S ALL RIGHT FOR ME.

9 **JUDGE HENDERSON:** IT'S OKAY.

10 **THE WITNESS:** EXCUSE ME.

11 TWO OF THE FINDINGS THAT I BASE THAT OPINION ON WERE
12 ALSO TWO OF THE FINDINGS THAT I BASED MY OPINIONS THAT
13 OVERCROWDING IS A PRIMARY CAUSE OF THE CONSTITUTIONAL
14 VIOLATIONS, AND THAT IS THE PERSISTENCE OF THE VIOLATIONS AFTER
15 YEARS OF VERY CLOSE COURT MONITORING.

16 AND, ALSO, THE SPECIAL MASTER HAS STATED IN SEVERAL
17 PLACES THAT THE PROGRESS THAT WAS MADE EARLY ON IN THE COLEMAN
18 MATTER HAS BEEN UNDERMINED BY CURRENT POPULATION PRESSURES THAT
19 EXIST.

20 **BY MS. WHELAN**

21 **Q.** AND DEFENDANTS ARGUE IN THIS CASE THAT THEY HAVE PLANS TO
22 FIX ALL OF THESE PROBLEMS. HAVE YOU HAD AN OPPORTUNITY TO
23 REVIEW THOSE PLANS?

24 **A.** YES, I HAVE.

25 **Q.** CAN YOU EXPLAIN BRIEFLY WHY YOU DO NOT THINK THOSE PLANS

1 WILL ADEQUATELY SOLVE THE CRISIS?

2 **A.** WELL, THE MAIN REASON IS THAT THESE PLANS WILL TAKE YEARS TO
3 IMPLEMENT, IF THEY ARE EVEN ABLE TO BE IMPLEMENTED AT ALL, GIVEN
4 THE CURRENT DEGREE OF THE POPULATION PRESSURES.

5 SO THE COLEMAN CLASS MEMBERS ARE SUFFERING NOW.
6 THEY'RE -- AND ANY PLANS THAT WOULD COME ONLINE YEARS DOWN IN
7 THE FUTURE WOULDN'T DO ANYTHING TO ADDRESS THAT ISSUE.

8 SO IT'S MY OPINION THAT THE ONLY REMEDY, SINCE
9 OVERCROWDING, IN MY OPINION, IS THE PRIMARY CAUSE OF THE
10 CONSTITUTIONAL VIOLATIONS, THAT ANY REMEDY WOULD NECESSARILY
11 NEED TO INCLUDE A POPULATION REDUCTION.

12 **Q.** YOU DISCUSS IN YOUR REPORT YOUR BELIEF THAT THE STATE MUST
13 MAKE SUBSTANTIAL REDUCTIONS IN THE PRISONER POPULATION. DO YOU
14 HAVE AN OPINION ABOUT WHAT TARGET POPULATION SHOULD BE ACHIEVED
15 FROM A MEDICAL AND A MENTAL HEALTH PERSPECTIVE?

16 **A.** FROM A MEDICAL AND A MENTAL HEALTH PERSPECTIVE, AND -- I
17 HAVE RUN JAIL MEDICAL SITUATION PROGRAMS, AND MENTAL HEALTH
18 PROGRAMS NECESSARILY NEED TO BE RUN AT UNDER 100 PERCENT SO
19 YOU'RE ABLE TO RESPOND TO THE GIVEN NEEDS OF A SYSTEM ON ANY
20 GIVEN DAY. YOU NEED TO MOVE PEOPLE QUICKLY INTO A MENTAL HEALTH
21 CRISIS BED. YOU NEED TO MOVE SOMEONE TO AN ACUTE CARE BED.

22 SO ANY POPULATION REDUCTION THAT WOULD OCCUR WOULD
23 HAVE TO BE OF SUFFICIENT QUANTITY TO ALLOW THE MENTAL HEALTH
24 UNITS TO EXIST AT LESS THAN 100 PERCENT OF DESIGN CAPACITY.

25 **Q.** YOU ALSO STATE IN YOUR AUGUST 15 REPORT THAT COLEMAN CLASS

1 MEMBERS SHOULD BE INCLUDED IN ANY POPULATION REDUCTION MEASURES.

2 CAN YOU EXPLAIN WHY YOU REACHED THAT CONCLUSION?

3 **A.** I REACHED THAT CONCLUSION FOR SEVERAL REASONS. ONE, TO ME,
4 IT'S VERY OBVIOUS. THE COLEMAN CLASS MEMBERS ARE BEING RELEASED
5 FROM THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION
6 EVERY DAY. THOUSANDS OF COLEMAN CLASS MEMBERS ARE RELEASED FROM
7 PRISON EVERY YEAR.

8 IF YOU TAKE THE NUMBER THAT I REVIEWED FOR
9 APPROXIMATELY 130,000 DISCHARGES FROM THE CDCR IN A GIVEN YEAR
10 AND ASSUMING A 21 PERCENT INCIDENCE OF THE COLEMAN CLASS
11 MEMBERS, THAT'S 25,000 PEOPLE, GIVE OR TAKE, OF COLEMAN CLASS
12 MEMBERS THAT ARE CURRENTLY BEING RELEASED FROM THE CDCR.

13 AND AN ADDITIONAL ASPECT IS, YOU KNOW, THERE IS THIS
14 NOTION THAT EXISTS THAT SOMEHOW THE MENTALLY ILL, AND THAT'S HOW
15 I HEAR IT REFERRED TO, AS THE MENTALLY ILL OR SOMEHOW -- SOMEHOW
16 POSE A RISK TO THE SAFETY IN THE COMMUNITY OR GREATER RISK OF
17 COMMITTING VIOLENCE. AND, FIRST OF ALL, THERE IS NO -- THERE IS
18 NO COHORT OF THE MENTALLY ILL.

19 WITHIN THIS BIG GROUP, THERE IS ANY NUMBER OF
20 DIFFERENT TYPES OF MENTALLY ILL PEOPLE. AND IT'S VERY CLEAR
21 FROM MY PERSONAL EXPERIENCE, AS WELL AS REVIEWING THE
22 LITERATURE, THAT PEOPLE WHO ARE RECEIVING PROPER MENTAL HEALTH
23 TREATMENT POSE NO GREATER RISK TO THE COMMUNITY AS NOT.

24 **Q.** AND IN TERMS OF THE RELIEF THAT PLAINTIFFS ARE SEEKING HERE,
25 WHICH IS APPROXIMATELY A 50,000 PRISONER POPULATION REDUCTION

1 OVER THE COURSE OF TWO YEARS, COULD YOU EXPLAIN WHAT EFFECT THAT
2 WOULD HAVE ON THE COLEMAN CLASS?

3 **A.** WELL, IF WE TAKE JUST THE 50,000 NUMBER, AND GIVEN THAT
4 APPROXIMATELY 21 PERCENT ARE COLEMAN CLASS MEMBERS, THE CDCR
5 POPULATION, THEN THAT MEANS OUT OF THIS 50,000 REDUCTION, 10,000
6 WOULD BE COLEMAN CLASS MEMBERS. AND OUT OF THE COLEMAN CLASS
7 MEMBERS, THE OVERWHELMING MAJORITY, 85 PERCENT, ARE IN THE 3CMS
8 LEVEL. SO THAT WOULD CORRESPOND TO 8,500 PEOPLE FROM THE 3CMS.

9 AND THE 3CMS LEVEL CURRENTLY IN THE DEPARTMENT OF
10 CORRECTIONS RECEIVE, QUITE FRANKLY, MINIMAL CARE. THEY ARE SEEN
11 OCCASIONALLY FOR MEDICATIONS. THEY MAY HAVE A CASE MANAGER
12 VISIT. AND THAT WOULD TRANSLATE TO THE COMMUNITY AS NEEDING
13 SIMILAR LEVELS OF TREATMENT, MEDICATION MANAGEMENT POSSIBLY,
14 MAYBE SOME SORT OF CASE MANAGEMENT SERVICES. THAT WOULD BE THE
15 EXTENT THAT THEY WOULD NEED.

16 **Q.** WHAT ABOUT IN TERMS OF CLASS MEMBERS AT THE ENHANCED
17 OUTPATIENT OR DMH LEVELS OF CARE?

18 **A.** AGAIN, LOOKING AT THE NUMBERS THAT CURRENTLY EXIST, THE EOP
19 LEVEL OF CARE IS 13 PERCENT OF THE COLEMAN CLASS, AND IN A
20 50,000 PRISONER REDUCTION, THAT WOULD MEAN 1,300 PEOPLE. AND
21 THAT WOULD BE 1,300 PEOPLE POSSIBLY RELEASED -- WOULD BE
22 RELEASED OVER A PERIOD OF TWO YEARS.

23 CURRENTLY, IN THE STATE OF CALIFORNIA, LOOKING AT THE
24 DMH WEBSITE FOR ITS MOST CURRENT DATA, THERE'S OVER 658,000
25 PEOPLE RECEIVING MENTAL HEALTH SERVICES AT THE COUNTY LEVEL, AND

1 OUT OF THOSE 658,000 PEOPLE, OVER 69,000 RECEIVE ANY SORT OF DAY
2 SERVICES, DAY TREATMENT-TYPE LEVEL THAT IS ROUGHLY EQUIVALENT TO
3 THE EOP.

4 WE ARE TALKING 650 PEOPLE ADDED TO THAT COHORT OF
5 OVER 69,000 IN A GIVEN YEAR. I THINK THAT THEY CAN BE
6 INCORPORATED INTO THE CURRENT SYSTEM AS IT EXISTS, EVEN WITHOUT
7 ANY AUGMENTATION.

8 AND THEN IF YOU LOOK AT THE DMH LEVEL OF CARE, AGAIN,
9 THAT'S AROUND TWO PERCENT OF THE COLEMAN CLASS. THAT
10 CORRESPONDS IN THIS 50,000 PRISONER REDUCTION NUMBER TO 200
11 PEOPLE.

12 NOW, ASSUMING THAT ONCE THEY ARE RELEASED FROM PRISON
13 OVER THE COURSE OF TWO YEARS THESE 200 PEOPLE WOULD CONTINUE TO
14 REQUIRE INITIATE CARE, AND I DON'T THINK YOU CAN NECESSARILY
15 ASSUME THAT, ONCE THEY ARE REMOVED FROM THE VERY DIFFICULT
16 CONDITIONS THAT THEY ARE IN NOW, IT'S VERY REASONABLE TO SUSPECT
17 THAT THEIR MENTAL HEALTH CONDITIONS WOULD IMPROVE.

18 BUT EVEN ASSUMING 200, WE ARE TALKING ABOUT 100
19 ADDITIONAL PEOPLE OVER THE STATE OF CALIFORNIA IN A GIVEN YEAR
20 THAT CURRENTLY TREATS OVER 43,000 PEOPLE IN INPATIENT CARE IN A
21 GIVEN YEAR, THAT'S 100 IN A SYSTEM THAT CURRENTLY TREATS 43,000.

22 Q. YOU ALSO STATE IN YOUR AUGUST 15, 2008 REPORT THAT IF THE
23 STATE INCREASES RESOURCES TO IMPROVE MENTAL HEALTH SERVICES ON
24 PAROLE AND IN THE COMMUNITIES, IT WOULD ACTUALLY IMPROVE PUBLIC
25 SAFETY. CAN YOU EXPLAIN WHAT YOU MEAN?

1 **A.** WELL, IN THINKING ABOUT WHAT THE STATE CURRENTLY DOES AND
2 WHAT THE STATE COULD DO TO ENHANCE PUBLIC SAFETY, THERE ARE
3 THINGS THAT THEY COULD DO PRIOR TO RELEASE. THE CURRENT PROGRAM
4 GUIDE, THE REVISED PROGRAM GUIDE THAT DETERMINES WHAT SORT OF
5 CARE PEOPLE GET IN THE COLEMAN CLASS STATES THAT PRERELEASE
6 PLANNING SHOULD OCCUR PRIOR TO A PERSON'S RELEASE.

7 NOW, I AGREE. THAT'S A VERY GOOD THING. THAT SHOULD
8 BE CONTINUED. THAT SHOULD BE AUGMENTED. AND PRERELEASE
9 PLANNING MEANS PREPARING PEOPLE FOR RELEASE, ESTABLISHING
10 CLINICAL CONNECTIONS ON THE OUTSIDE PRIOR TO RELEASE, MECHANISMS
11 TO ENSURE THAT PEOPLE DO REALIZE THESE OUTPATIENT APPOINTMENTS.
12 IT ALSO INCLUDES A PROVISION FOR A 30-DAY SUPPLY OF MEDICATION.

13 AGAIN, THESE ARE VERY IMPORTANT THINGS THAT THE STATE
14 IS DOING, AND I THINK IF THEY CONTINUE TO DO THAT AND ENSURE
15 THAT WOULD HAPPEN, THAT WOULD GO TOWARD IMPROVING COMMUNITY
16 SAFETY.

17 AND, FINALLY, I KNOW THIS EXISTS NOW, BUT IT
18 CERTAINLY COULD BE IMPROVED, AND THAT IS HELPING COLEMAN CLASS
19 MEMBERS APPLY FOR BENEFITS, EITHER SOCIAL SECURITY BENEFITS,
20 VETERANS ADMINISTRATION BENEFITS, THAT WOULD THEN GIVE THEM A
21 SOURCE OF INCOME TO PROVIDE FOR OUTPATIENT CARE PRIOR TO BEING
22 RELEASED. THOSE ARE THE THINGS THAT CAN OCCUR PRIOR TO RELEASE.

23 AND THEN IF YOU LOOK AT THOSE THINGS THAT CAN OCCUR
24 AFTER RELEASE, THERE IS A CURRENT SYSTEM OF PAROLE OUTPATIENT
25 CLINIC THAT CERTAINLY COULD BE AUGMENTED, THAT CERTAINLY COULD

1 RECEIVE HELP IN IMPROVING THEIR ABILITY TO CARE FOR PAROLEES.
2 THEY'RE EXAMPLES THAT EXIST WHERE A PAROLE OUTPATIENT CLINIC AND
3 CONTRACT FOR LOCAL PROVIDERS TO PROVIDE DAY SERVICES, CASE
4 MANAGEMENT SERVICES. AND THIS SORT OF THINKING CAN BE DONE VERY
5 CREATIVELY TO HAVE THE PAROLE OUTPATIENT TAKE ADVANTAGE OF THE
6 INFRASTRUCTURE THAT ALREADY EXISTS IN PROVIDING MENTAL HEALTH
7 CARE IN THE COMMUNITY.

8 **Q.** AND IN TERMS OF THE COMMUNITIES THEMSELVES WHERE PEOPLE MAY
9 EITHER RETURN OR BE DIVERTED THROUGH A RELEASE ORDER, WHAT KIND
10 OF INFRASTRUCTURE AND SERVICES EXIST IN COMMUNITY MENTAL HEALTH
11 TODAY?

12 **A.** WELL, AS I MENTIONED EARLIER, BASED ON THE MOST CURRENT DATA
13 FROM DMH, THERE ARE OVER 658,000 PEOPLE RECEIVING MENTAL HEALTH
14 CARE AT THE COUNTY LEVEL THROUGHOUT THE STATE IN A GIVEN YEAR.
15 THAT IS SUPPORTED BY A COMPREHENSIVE NETWORK OF OUTPATIENT
16 CLINICS, DAY TREATMENT CENTERS, DAY HOSPITALS, CASE MANAGEMENT
17 PROGRAMS AS WELL AS INITIATE PROGRAMS THAT ARE ALREADY IN PLACE.

18 NOTHING NEEDS TO BE RECREATED. IT'S ALREADY THERE.
19 IT CERTAINLY COULD RECEIVE HELP. IT CERTAINLY COULD ALWAYS
20 BENEFIT FROM INCREASED RESOURCES. BUT THE SYSTEM IS ALREADY IN
21 PLACE.

22 AND, AGAIN, WE LOOKED AT THE NUMBERS IN THIS
23 10,000 -- IN THE 50,000 REDUCTION, PRISONER POPULATION
24 REDUCTION, 10,000 OF THEM BEING COLEMAN CLASS MEMBERS,
25 THEORETICALLY, THAT WOULD BE 8,500 AT THE OUTPATIENT LEVEL,

1 ANOTHER 1,300 AT MAYBE THE DAY TREATMENT LEVEL, AND 200 AT THE
2 INPATIENT, AGAIN, SPREAD OUT OVER TWO YEARS IN A SYSTEM THAT
3 TREATS 658,000.

4 Q. THE INTERVENORS IN THIS CASE, SOME OF THEM HAVE EXPRESSED
5 CONCERNS ABOUT PROVIDING CARE TO THE ADDITIONAL PEOPLE WHO WOULD
6 EITHER REMAIN IN THE COMMUNITIES THROUGH DIVERSION PROGRAMS, OR
7 WHO MIGHT OTHERWISE RETURN TO THE COUNTIES THROUGH POPULATION
8 REDUCTION MEASURES.

9 YOU HAVE EXTENSIVE EXPERIENCE IN COMMUNITY MENTAL
10 HEALTH. DO YOU THINK THOSE CONCERNS ARE WARRANTED?

11 A. WELL, YOU KNOW, AGAIN, LOOKING AT IT FROM THE PERSPECTIVE OF
12 A COMMUNITY MENTAL HEALTH PROVIDER, AS I WAS AND I CONTINUE TO
13 BE, YOU CERTAINLY ARE PROTECTIVE OF YOUR CURRENT CLIENTS. YOU
14 ARE PROTECTIVE OF WHAT YOU ARE DOING NOW, AND ANY POTENTIAL
15 INCREASE IN PATIENT POPULATION WOULD GET YOUR ATTENTION.

16 SO I CAN UNDERSTAND THEIR INITIAL CONCERN, BUT I,
17 QUITE FRANKLY, THINK IT'S OVERSTATED.

18 AND, YOU KNOW, THE BENEFIT -- ONE OF THE BENEFITS,
19 HOPEFULLY, NOT THE ONLY ONE, OF BEING AROUND A LONG TIME IS THAT
20 YOU SEE THINGS COME AND GO, AND THIS IS THE MOST CURRENT
21 MANIFESTATION OF THE COMMUNITY MENTAL HEALTH PROTESTING THAT,
22 OH, THIS NEW COHORT OF PATIENT IS GOING TO RUIN OUR SYSTEM.

23 YOU KNOW, I FIRST SAW THIS IN THE LATE '70'S, EARLY
24 '80'S WITH THE VIETNAM VETERAN POPULATION. COMMUNITY MENTAL
25 HEALTH WAS COMPLAINING ALL THESE PEOPLE WERE TOO SICK, THEY

1 ABUSE DRUGS, THEY ARE GOING TO BE TOO VIOLENT, WE DON'T HAVE
2 ENOUGH SERVICES FOR THEM, AND IF WE ARE FORCED TO TREAT THEM,
3 BOY, ALL HELL IS GOING TO BREAK LOOSE. WELL, IT DIDN'T. AND
4 THAT WAS THE FIRST EXAMPLE.

5 YOU KNOW, THERE HAS BEEN OTHER EXAMPLES THROUGHOUT MY
6 CAREER WHERE THE COMMUNITY MENTAL HEALTH MAKES A WHOLE BIG FUSS
7 ABOUT TREATING PEOPLE THAT HAVE CONCURRENT SUBSTANCE ABUSE
8 PROBLEMS. YOU KNOW, THE SAME EXAMPLES ARE GIVEN. IT'S GOING TO
9 OVERWHELM OUR SYSTEM. WE DON'T HAVE ENOUGH RESOURCES; THEY ARE
10 TOO VIOLENT; WE CAN'T CARE FOR THEM ADEQUATELY; PUBLIC SAFETY IS
11 GOING TO GO DOWN THE TUBES. AND, IN FACT, IT DIDN'T.

12 RIGHT NOW THE STANDARD OF CARE IS THAT PEOPLE WITH
13 MENTAL HEALTH AND SUBSTANCE ABUSE PROBLEMS ARE TREATED
14 CONCURRENTLY IN THE COMMUNITY MENTAL HEALTH SYSTEM.

15 SO I CAN UNDERSTAND ON ONE LEVEL. I CAN UNDERSTAND
16 THEIR DEGREE OF CONCERN, AS I WOULD BE. BUT I THINK IT'S, QUITE
17 FRANKLY, OVERSTATED.

18 **Q.** AND DEFENDANTS HAVE ARGUED IN THIS CASE THAT THE REDUCTION
19 THAT PLAINTIFFS SEEK, AGAIN APPROXIMATELY 50,000 OVER THE COURSE
20 OF TWO YEARS, WILL NOT BENEFIT THE COLEMAN CLASS. DO YOU AGREE
21 WITH THAT?

22 **A.** I WHOLEHEARTEDLY DISAGREE WITH THAT.

23 **Q.** AND CAN YOU EXPLAIN WHY?

24 **A.** A SIGNIFICANT REDUCTION, IF WE LOOK AT 50,000 AS AN EXAMPLE,
25 50,000 PEOPLE REDUCED FROM THE CURRENT CDCR POPULATION WOULD

1 HAVE A SIGNIFICANT IMPACT ON THE COLEMAN CLASS.

2 JUST FOR EXAMPLE, THERE ARE GENERAL POPULATION YARDS
3 AT SALINAS VALLEY STATE PRISON THAT HAVE BASICALLY BEEN IN
4 LOCKDOWN FOR SEVERAL YEARS BECAUSE THERE'S TOO MANY INMATES AND
5 THERE'S NOT ENOUGH GUARDS TO SAFELY GUARD THEM. SO THEY LOCK
6 EVERYBODY UP IN THEIR CELLS, AND AMONG THAT GROUP OF PEOPLE THAT
7 ARE LOCKED DOWN ARE COLEMAN CLASS MEMBERS, THAT, WHEN I
8 INTERVIEWED, TALKED ABOUT THE EXTREME STRESS AND THE WORSENING
9 OF THEIR MENTAL ILLNESS BECAUSE OF THEIR BEING LOCKED DOWN.

10 ANOTHER IMMEDIATE RELIEF THAT WOULD BE ACCRUED FOR
11 COLEMAN CLASS MEMBERS, IF THERE WERE THE 50,000 INMATE
12 POPULATION REDUCTION WOULD BE, HOPEFULLY, THE ELIMINATION OF
13 THESE HORRIBLE DORMITORIES THAT EXIST IN DAYROOMS, IN GYMS, IN
14 CORRIDORS AND HALLWAYS WHERE COLEMAN CLASS MEMBERS ARE CURRENTLY
15 HOUSED.

16 AND I CERTAINLY OBSERVED, AND IT WAS CONFIRMED BY THE
17 SPECIAL MASTER, THAT THERE'S SO MANY PEOPLE THAT IT EXACERBATES
18 THE PEOPLE THAT STARTED OFF WITH MENTAL ILLNESS, AND IT CREATES
19 NEW MENTAL ILLNESS. SO ANY POPULATION REDUCTION WOULD HAVE --
20 IMMEDIATELY HAVE A BENEFICIAL EFFECT ON THE COLEMAN CLASS.

21 **Q.** AND WHAT ABOUT IN TERMS OF DEFENDANT'S PLANS TO FIX SOME OF
22 THESE PROBLEMS, HOW WOULD THE REDUCTION AFFECT THOSE PLANS?

23 **A.** WELL --

24 **MS. TILLMAN:** OBJECTION. ASKED AND ANSWERED.

25 **JUDGE HENDERSON:** OVERRULED.

1 **THE WITNESS:** LOOK AT THE DIFFERENT ASPECTS OF THE
2 PLANS, THE BED PLANS, FOR EXAMPLE, THE CONSTRUCTION PLANS. THE
3 POPULATION AT LARGE FEEDS IN TO THE SYSTEM THAT THEN REQUIRES
4 INPATIENT CARE.

5 SO IF YOU LOOK AT THE NUMBERS FOR MENTAL HEALTH
6 CRISIS BED REFERRALS FROM JULY AND AUGUST OF THIS YEAR, A
7 SIGNIFICANT NUMBER WERE FROM 3CMS AND, ALSO, OVER 40 PERCENT AND
8 AROUND 10 PERCENT GIVE OR TAKE WERE FROM THE GENERAL POPULATION.

9 IF YOU LOWER THE GENERAL POPULATION, IF YOU LOWER THE
10 NUMBERS, THERE ARE LESS PEOPLE THAT WOULD BE REQUIRING MENTAL
11 HEALTH CRISIS BEDS, AND THEN MENTAL HEALTH CRISIS BEDS ARE THEN
12 FEEDING INTO THE INTERMEDIATE CARE FACILITIES WHICH THEN FEED
13 INTO THE ACUTE CARE. IT WOULD HAVE THIS CASCADING POSITIVE
14 EFFECT BY LOWERING POPULATION.

15 AND IT MAY, QUITE FRANKLY, BE THE ONLY REMEDY THAT'S
16 GOING TO HELP THE STATE MEET THEIR REQUIREMENTS FOR ADEQUATE
17 NUMBER OF BEDS AT DIFFERENT LEVELS OF CARE.

18 **BY MS. WHELAN**

19 **Q.** YOU ALSO TALKED ABOUT RECEPTION CENTERS BEING A PROBLEM BUT
20 COULD YOU TALK ABOUT HOW A REDUCTION MAY ASSIST THOSE, AS WELL
21 AS THE MAIN LINE INSTITUTIONS?

22 **A.** THE RECEPTION CENTERS -- THE RECEPTION CENTER THAT I TOURED
23 WAS DVI. AND IT WAS -- I DON'T HAVE THE RIGHT ADJECTIVE HOW
24 CROWDED IT WAS. I BELIEVE IT WAS OPERATING AT OVER 200 PERCENT
25 DESIGN CAPACITY.

1 PEOPLE WERE STUCK THERE. THEY COULDN'T MOVE OUT OF
2 THE RECEPTION CENTER. IT WAS EOPS -- I BELIEVE THERE WAS 5- TO
3 700 EOPS IN THE RECEPTION CENTERS THAT ARE WAITING TO BE PLACED
4 BECAUSE THERE'S JUST TOO MANY PEOPLE. A POPULATION REDUCTION
5 WOULD HELP THAT.

6 I MEAN -- AND THE COURT IS VERY AWARE BY THEIR
7 APPROVAL OF THIS RECEPTION CENTER EOP PROGRAM. IT RECOGNIZES
8 HOW PEOPLE ARE GETTING STUCK THERE BECAUSE THERE'S JUST, QUITE
9 FRANKLY, TOO MANY PEOPLE. SO, AGAIN, AN OVERALL POPULATION
10 REDUCTION WOULD HELP RELIEVE THAT. IF THAT WERE RELIEVED, THEN
11 THE STAFF THAT ARE CURRENTLY IN THE RECEPTION CENTERS, WHICH ARE
12 VERY STAFF-INTENSIVE PROGRAMS, COULD BE REDEPLOYED TO AREAS
13 WHERE THERE'S STAFF SHORTAGES. SO THAT WOULD AGAIN HAVE ANOTHER
14 POSITIVE EFFECT ON THE COLEMAN CLASS.

15 Q. WHAT ABOUT IN TERMS OF ACCESS TO CARE IN THE MAINLINE
16 INSTITUTIONS AS WELL?

17 A. AGAIN, AS I WAS SAYING, THERE'S JUST TOO MANY PEOPLE TRYING
18 TO ACCESS CARE. THERE'S TOO MANY 3CMS. THERE'S GP INMATES THAT
19 ARE TRYING TO ACCESS MENTAL HEALTH CRISIS BEDS, WHICH THEN HAVE
20 THIS CASCADING EFFECT ON THE ENTIRE SYSTEM. SO THE POPULATION
21 REDUCTION WOULD SIGNIFICANTLY IMPROVE THE CARE PROVIDED TO
22 COLEMAN CLASS MEMBERS.

23 Q. AND IN TERMS OF THE WAITING LISTS THAT CURRENTLY EXIST FOR
24 CARE, ARE YOU FAMILIAR WITH THOSE LISTS?

25 A. YES, I AM.

1 Q. AND CAN YOU TALK ABOUT HOW THOSE MAY ALSO BE AFFECTED BY A
2 REDUCTION THAT WE ARE TALKING ABOUT IN THIS CASE?

3 A. IF WE JUST CONSIDER THE EOP WAITING LIST, THERE'S
4 APPROXIMATELY 1,000 PEOPLE WAITING FOR EOP PLACEMENTS. ON THIS
5 50,000 REDUCTION, AGAIN, 13 PERCENT EOPS, THAT EQUATES TO 1,300
6 PEOPLE. OVER THE COURSE OF TWO YEARS, WHERE MY UNDERSTANDING
7 THIS REDUCTION WOULD OCCUR, YOU WOULD BE ABLE TO ONCE AND FOR
8 ALL ELIMINATE THE WAITING LIST FOR THE EOP.

9 RIGHT NOW THERE'S -- WHEN I DID MY TOURS OF SALINAS
10 VALLEY AND THE VACAVILLE PSYCHIATRIC PROGRAMS, THERE WERE OVER
11 160, 170 PEOPLE WAITING FOR INTERMEDIATE CARE BEDS. THERE WAS,
12 ON A GIVEN DAY THAT I WAS TOURING THE VACAVILLE PSYCHIATRIC
13 PROGRAM, THERE WAS AN ADDITIONAL 15 PEOPLE WAITING FOR ACUTE
14 CARE PLACEMENT.

15 SO IF WE WOULD REDUCE THE NUMBERS ACCORDINGLY, WE
16 WOULD ONCE AND FOR ALL BE ABLE TO CATCH UP ON THE WAITING LIST,
17 AND, AS I SAID, HOPEFULLY CREATE THESE MENTAL HEALTH PROGRAMS
18 THAT ARE RUNNING NOT AT 100 PERCENT, BUT SOMEWHAT LESS, SO THAT
19 THEY WOULD BE ABLE TO RESPOND TO THE NEEDS OF THE SYSTEM ON A
20 GIVEN DAY, RATHER THAN HAVING TO HOUSE PEOPLE IN THESE MOHUS
21 OHUS AND AD-SEG OVERFLOWS BECAUSE THEY CAN'T ACCESS APPROPRIATE
22 LEVELS OF CARE.

23 MS. WHELAN: THANK YOU, DR. STEWART.

24 THE COURT: ANYTHING FROM CCPOA?

25 MS. LEONARD: NO, YOUR HONOR.

1 **THE COURT:** CROSS-EXAMINATION?

2 **MS. TILLMAN:** THANK YOU, YOUR HONOR.

3 **CROSS EXAMINATION**

4 **BY MS. TILLMAN:**

5 **Q.** GOOD AFTERNOON, DOCTOR.

6 **A.** GOOD AFTERNOON.

7 **Q.** I WANTED TO MAKE SURE YOU HAD YOUR WATER IN PLACE BEFORE WE
8 STARTED.

9 **A.** YES, THANK YOU.

10 **Q.** DOCTOR, YOU HAVE NO INDEPENDENT OPINION, DO YOU, ON THE
11 NUMBER OF INMATES THAT NEED TO BE REMOVED FROM THE DEPARTMENT OF
12 CORRECTIONS AND REHABILITATION IN ORDER TO HELP THE DEPARTMENT
13 OF CORRECTIONS AND REHABILITATION ACHIEVE THE CONSTITUTIONAL
14 REQUIREMENTS OF AN ADEQUATE MEDICAL CARE SYSTEM, CORRECT?

15 **A.** WELL, NO, THAT'S NOT CORRECT. AS I JUST TESTIFIED, IT'S MY
16 OPINION THAT A POPULATION REDUCTION WOULD HAVE TO BE OF A
17 SIGNIFICANT NUMBER TO ALLOW THE MENTAL HEALTH UNITS WITHIN THE
18 CDCR TO OPERATE AT LESS THAN 100 PERCENT CAPACITY. THAT IS MY
19 OPINION.

20 **Q.** BUT YOU ACTUALLY DON'T KNOW WHAT PARTICULAR NUMBER OF
21 INMATES WOULD HAVE TO BE RELEASED IN ORDER TO ACHIEVE THOSE
22 CONSTITUTIONAL REQUIREMENTS, DO YOU?

23 **A.** I DON'T HAVE A PARTICULAR NUMBER IN MIND, NO.

24 **Q.** AND, IN FACT, YOU HAVE NO INDEPENDENT OPINION AS TO WHAT IS
25 THE APPROPRIATE CAPACITY FOR THE DELIVERY OF MENTAL HEALTH CARE

1 WITHIN THE DEPARTMENT OF CORRECTIONS AND REHABILITATION, DO YOU?

2 **JUDGE KARLTON:** SAME QUESTION, SAME ANSWER. HOW IS
3 THE QUESTION DIFFERENT, MISS TILLMAN?

4 **MS. TILLMAN:** I BELIEVE WE ARE ADDRESSING CAPACITY AS
5 OPPOSED TO THE NUMBER OF INMATES THAT NEED TO BE RELEASED.

6 **THE WITNESS:** CAN YOU SAY THE QUESTION AGAIN, PLEASE,
7 BECAUSE I THOUGHT IT WAS THE SAME QUESTION ALSO?

8 **BY MS. TILLMAN:**

9 **Q.** IN FACT, YOU HAVE NO INDEPENDENT OPINION, DO YOU, AS TO WHAT
10 IS THE APPROPRIATE CAPACITY FOR THE DELIVERY OF CONSTITUTIONALLY
11 ADEQUATE MENTAL CARE, DO YOU?

12 **A.** HOW IS THAT DIFFERENT FROM POPULATION CAPACITY? I DON'T
13 UNDERSTAND.

14 **Q.** IN TERMS OF CAPACITY, WE'RE ASKING DO YOU HAVE AN OPINION AS
15 TO WHAT THE MAXIMUM OPERABLE CAPACITY OF THE DEPARTMENT OF
16 CORRECTIONS AND REHABILITATION IS FOR CONSTITUTIONALLY ADEQUATE
17 MENTAL HEALTH CARE TO BE DELIVERED?

18 **A.** SORRY, I BELIEVE I ALREADY ANSWERED. I DON'T HAVE A
19 PARTICULAR NUMBER IN MIND. BUT MY OPINION IS THAT THE
20 POPULATION WOULD HAVE TO BE AT A LEVEL WHERE THE MENTAL HEALTH
21 UNITS WERE ABLE TO BE RUN AT LESS THAN 100 PERCENT OF CAPACITY.

22 **Q.** ISN'T IT CORRECT THAT IN YOUR DEPOSITION, YOU MENTIONED
23 MAXIMUM OPERABLE CAPACITY OF 140 TO 140 PERCENT TO SECURELY
24 HOUSE AND PROVIDE EFFECTIVE PROGRAMMING FOR CDCR INMATES?

25 **MS. WHELAN:** OBJECTION. CAN WE HAVE THE PAGE

1 REFERENCE?

2 **MS. TILLMAN:** THAT WOULD BE THE SEPTEMBER '08
3 DEPOSITION AT PAGE 206, LINES 1 THROUGH 24.

4 **THE WITNESS:** AND YOUR QUESTION, PLEASE?

5 **MS. TILLMAN:** I'M WAITING FOR PLAINTIFF COUNSEL TO
6 CHECK THE CITE.

7 (BRIEF PAUSE.)

8 **JUDGE KARLTON:** ARE YOU OBJECTING, MA'AM, OR NOT?
9 YOU DON'T HAVE THE DEPOSITION.

10 **MR. BIEN:** YOU CAN PUT IT UP.

11 **BY MS. TILLMAN**

12 **Q.** AND WE ARE LOOKING AT 206 OF YOUR DEPOSITION FROM
13 SEPTEMBER 2008 WHERE YOU INDICATED THE MAXIMUM OPERABLE CAPACITY
14 IS DEFINED AS 140 TO 145 PERCENT. DO YOU RECALL THAT TESTIMONY?

15 **A.** YES.

16 **Q.** AND YOU RELIED UPON THE FINDING OF THE INDEPENDENT REVIEW
17 PANEL FOR THAT 140 TO 145 PERCENT MAXIMUM OPERABLE CAPACITY
18 NUMBER, CORRECT?

19 **A.** I REMEMBER SPEAKING OF THAT, YES.

20 **Q.** AND YOU OPINED THAT THE RECOMMENDATION THAT WAS INDICATED IN
21 THAT INDEPENDENT REVIEW PANEL REPORT WAS PROVIDED BY WARDENS WHO
22 PARTICIPATED IN THE STUDIES OF THAT PANEL, CORRECT?

23 **A.** I DON'T SEE IT IN THE PAGE HERE, BUT I BELIEVE SO.

24 **JUDGE KARLTON:** IT SAYS WHATEVER IT SAYS, MA'AM.
25

1 **BY MS. TILLMAN**

2 **Q.** EVEN AT THE MAXIMUM OPERABLE CAPACITY OF 140 TO 145 PERCENT,
3 THE DEPARTMENT OF CORRECTIONS AND REHABILITATION WILL STILL HAVE
4 TO OBTAIN AN ADEQUATE NUMBER OF COMPETENT MENTAL HEALTH
5 CLINICIANS TO STAFF THE FACILITIES, CORRECT?

6 **A.** YES.

7 **Q.** AND YOU HAVE NO OPINION TODAY, DO YOU, AS TO WHAT PARTICULAR
8 NUMBER OF MENTALLY ILL INMATES CAN BE SERVED IN AN ADEQUATE
9 FASHION WITH THE EXISTING MENTAL HEALTH BEDS, STAFF, INFORMATION
10 TECHNOLOGY, PHARMACY, RECORD KEEPING AND MANAGEMENT SERVICES
11 AVAILABLE WITHIN THE DEPARTMENT OF CORRECTIONS AND
12 REHABILITATION, DO YOU?

13 **A.** IF I HAVE A NUMBER IN MIND OF THE PEOPLE THAT CAN CURRENTLY
14 BE TREATED AT A CONSTITUTIONAL LEVEL OF CARE GIVEN THE CURRENT
15 STATE OF THE STAFF, TREATMENT BASE, ET CETERA ET CETERA?

16 **Q.** I THINK THE QUESTION WAS YOU HAVE NO OPINION AS TO WHAT
17 PARTICULAR NUMBER OF MENTALLY ILL INMATES CAN BE SERVED IN AN
18 ADEQUATE FASHION WITH THE EXISTING MENTAL HEALTH BEDS, STAFF,
19 INFORMATION TECHNOLOGY, PHARMACY, RECORDKEEPING, AND MANAGEMENT
20 SERVICES CURRENTLY AVAILABLE WITHIN THE DEPARTMENT OF
21 CORRECTIONS AND REHABILITATION, DO YOU?

22 **A.** I DO NOT HAVE A NUMBER IN MIND, NO, YOU ARE CORRECT.

23 **Q.** NOW, AT THE TIME OF YOUR DEPOSITION IN SEPTEMBER 2008, YOU
24 WERE NOT AWARE OF ANY PLANS FOR A REDUCTION OF EVEN JUST 15,000
25 INMATES, CORRECT?

1 **A.** I'M SORRY. COULD YOU SAY THAT AGAIN, PLEASE?

2 **Q.** AT THE TIME OF YOUR DEPOSITION IN AUGUST 2008, YOU WERE NOT
3 AWARE THAT PLAINTIFFS HAD PROPOSED AN IMMEDIATE REDUCTION OF
4 15,000 INMATES FROM THE DEPARTMENT OF CORRECTIONS' POPULATION,
5 CORRECT?

6 **A.** I'M SORRY. I WASN'T AWARE THAT THE PLAINTIFFS HAD REQUESTED
7 AN IMMEDIATE 15,000 POPULATION REDUCTION?

8 **Q.** CORRECT.

9 **A.** I'M NOT FAMILIAR WITH THAT NUMBER.

10 **Q.** ASSUMING A REDUCTION OF THE CDCR PRISON POPULATION BY EVEN
11 JUST 15,000 INMATES, WOULDN'T IT BE CORRECT THAT YOU HAVE NO
12 OPINION AS TO WHAT PARTICULAR NUMBER OF COLEMAN CLASS INMATES
13 SHOULD BE A PART OF THAT 15,000 RELEASE TO ENSURE THAT THE ORDER
14 AND THE RELEASE EFFECTIVELY ADDRESSES THE IMPEDIMENT TO A
15 CONSTITUTIONALLY ADEQUATE MENTAL HEALTH CARE SYSTEM?

16 **A.** BASED ON THIS 15,000 NUMBER THAT I HAVEN'T HEARD OF? I'M
17 NOT SURE.

18 **Q.** SO YOU HAVE NO OPINION, IS THAT CORRECT?

19 **A.** I'M NOT SURE WHAT YOUR QUESTION IS.

20 **JUDGE KARLTON:** ASSUME THAT SOMEBODY HAS SUGGESTED
21 IMMEDIATELY 15,000. DO YOU HAVE AN OPINION AS TO WHAT
22 PERCENTAGE OF THOSE PEOPLE SHOULD BE COLEMAN CLASS CLIENTS SO AS
23 TO AMELIORATE THE PRESENT CONDITIONS?

24 **THE WITNESS:** IT'S MY OPINION, YOUR HONOR, THAT THE
25 COLEMAN CLASS SHOULD BE INCLUDED IN THE POPULATION REDUCTION AT

1 THE RELATIVE PERCENTAGE THAT THEY ARE OF THE OVERALL POPULATION.

2 JUDGE KARLTON: AND EACH INCREMENT IS HELPFUL EVEN IF
3 IT DOESN'T SOLVE THE PROBLEM?

4 THE WITNESS: I BELIEVE SO, YES, YOUR HONOR.

5 MS. TILLMAN: MAY I READ FROM HIS DEPOSITION AT PAGE
6 240, LINE 21, TO 241, LINE 2?

7 (DOCUMENT DISPLAYED)

8 BY MS. TILLMAN

9 Q. YOU WERE ASKED AT YOUR DEPOSITION IN SEPTEMBER 2008.

10 "QUESTION: OF THE 15,000 INMATES, WHAT
11 NUMBER WOULD HAVE TO BE COLEMAN CLASS MEMBERS IN
12 ORDER TO ENSURE THAT THE RELEASE ORDER
13 EFFECTIVELY ADDRESSES THE OVERCROWDING THAT
14 CAUSES IMPEDIMENTS TO CONSTITUTIONALLY ADEQUATE
15 MENTAL HEALTH CARE?"

16 JUDGE KARLTON: EVEN IF THE PLAINTIFFS DON'T
17 OBJECT -- GO AHEAD, GO AHEAD.

18 MS. TILLMAN:

19 "ANSWER: I DON'T HAVE A PARTICULAR NUMBER
20 IN MIND."

21 BY MS. TILLMAN

22 Q. IN FACT, SIR, THE REMOVAL OR REDUCTION OF INMATES WILL NOT
23 IMMEDIATELY RESULT IN CONSTITUTIONAL COMPLIANCE, WILL IT?

24 A. THE REDUCTION OF THE OVERALL POPULATION OF THE CDCR, IN MY
25 OPINION, IS THE ONLY WAY THAT YOUR CLIENT CAN EVEN HAVE A CHANCE

1 OF ACHIEVING -- PROVIDING CONSTITUTIONALLY ADEQUATE CARE.

2 **Q.** YOU WOULD CALL IT THE FIRST STEP OR FIRST INTERVENTION, BUT
3 WORK WOULD STILL REMAIN TO BE DONE, CORRECT?

4 **A.** WHAT I HAVE TESTIFIED TO IS THAT OVERCROWDING IS A PRIMARY
5 CAUSE OF THE CONSTITUTIONAL VIOLATIONS. SO AS IT IS A PRIMARY
6 CAUSE, IT NECESSARILY WOULD NEED TO BE THE PRIMARY REMEDY. BUT
7 IT'S NOT THE ENTIRE REMEDY.

8 YOUR CLIENT WOULD STILL HAVE TO PROVIDE ADEQUATE
9 NUMBER OF BEDS, STAFF, TREATMENT SPACE, SMALL MANAGEMENT YARDS,
10 ET CETERA, ET CETERA.

11 **Q.** I UNDERSTAND YOU HAVE TESTIFIED THAT YOU SUPPORT THE RELEASE
12 OF COLEMAN CLASS MEMBERS AS PART OF ANY PRISONER RELEASE ORDER,
13 CORRECT?

14 **A.** YES.

15 **Q.** AND NOW THE COLEMAN CLASS, AS YOU HAVE DESCRIBED, HAS
16 ESSENTIALLY INMATES WITH SERIOUS MENTAL DISORDERS, CORRECT?

17 **A.** SOME OF THEM DO, YES.

18 **Q.** THESE ARE PEOPLE WHO WILL HAVE AXIS I DISORDER, RIGHT?

19 **JUDGE KARLTON:** THEY ARE ALL AXIS 1, CORRECT?

20 **THE WITNESS:** THAT'S CORRECT, YOUR HONOR.

21 **BY MS. TILLMAN:**

22 **Q.** AND THEY WILL HAVE A GLOBAL ASSESSMENT FUNCTION OF LESS THAN
23 50, CORRECT?

24 **A.** NOT ALL OF THEM.

25 **Q.** MANY?

1 **A.** NO. THE MAJORITY OF THEM -- IF YOUR CLIENT IS APPROPRIATELY
2 USING THE REVISED PROGRAM GUIDE, THEN THE OVERWHELMING MAJORITY
3 OF COLEMAN CLASS MEMBERS WOULD HAVE A GLOBAL ASSESSMENT OF
4 FUNCTIONING GREATER THAN 50.

5 **Q.** IN THE INMATES WHO PRESENTLY RECEIVE COORDINATED CLINICAL
6 CASE MANAGEMENT SERVICES, THAT'S THE LOWEST LEVEL OF SERVICE
7 AVAILABLE WITHIN THE DEPARTMENT OF CORRECTIONS, IF THOSE
8 INDIVIDUALS ARE RELEASED TO THE COMMUNITY, ISN'T IT YOUR OPINION
9 THAT THESE INDIVIDUALS WHO RECEIVE THIS CORRECTIONAL CLINICAL
10 CASE MANAGEMENT CARE WILL STILL NEED TREATMENT THAT PARALLELS
11 WHAT THEY RECEIVE WITHIN THE STATE PRISONS?

12 **A.** SOME OF THEM CERTAINLY WILL. SOME OF THEM WILL NEED THE
13 SAME LEVEL OF CARE, WHICH IS MEDICATION MANAGEMENT, MAYBE AN
14 OCCASIONAL COUNSELOR VISIT IS WHAT THEY GET CURRENTLY, IF THEY
15 ARE LUCKY IN THE CDCR.

16 HOWEVER, THERE -- IN MY OPINION, THERE WOULD BE A
17 NUMBER OF THE 3CMS MEMBERS WHO, ONCE REMOVED FROM THE STRESS OF
18 AN OVERCROWDED PRISON SITUATION, MAY NOT REQUIRE ANY MENTAL
19 HEALTH CARE AT ALL.

20 **Q.** AND THERE ARE THOSE MEMBERS OF WHAT YOU CALL THE 3C, THE
21 COORDINATED CLINICAL CASE MANAGEMENT SERVICES GROUP, WHO WOULD
22 ACTUALLY NEED ASSISTANCE IN ACCESSING COMMUNITY MENTAL HEALTH
23 SERVICES, SUBSTANCE ABUSE TREATMENT IN THE COMMUNITY, HOUSING IN
24 THE COMMUNITY, BENEFITS AND EMPLOYMENT IN THE COMMUNITY,
25 CORRECT?

1 **A.** YES.

2 **Q.** AND THEN THE NEXT HIGHER STEP OF CARE, THE ENHANCED
3 OUTPATIENT PROGRAM, PATIENTS WITHIN THE DEPARTMENT OF
4 CORRECTIONS WILL POSSIBLY -- WILL NEED TREATMENT PERHAPS, DAY
5 TREATMENT PROGRAMS YOU CALL THEM, RIGHT?

6 **A.** POSSIBLY.

7 **Q.** AND SOME ENHANCED OUTPATIENT PROGRAM PATIENTS WILL ACTUALLY
8 NEED EVEN MORE CARE THAN THAT IN THE COMMUNITY; THEY WILL NEED
9 BOARD AND CARE HOUSING OR OTHER RESIDENTIAL FACILITIES, CORRECT?

10 **A.** WELL, SEE, AGAIN, YOU ARE FALLING INTO THAT TRAP OF
11 CONSIDERING DIFFERENT CATEGORIES AS ALL THE SAME. THE EOP LEVEL
12 OF CARE, SOME OF THEM WOULD REQUIRE DAY SERVICES. SOME OF THEM
13 MAY REQUIRE ONLY OUTPATIENT SERVICES. SOME MAY REQUIRE BOARD
14 AND CARE HOMES. OTHERS THAT ARE CURRENTLY AT THE EOP LEVEL OF
15 CARE MAY REQUIRE NO MENTAL HEALTH CARE.

16 I ENCOUNTERED IN MY TOURS, SPEAKING WITH STAFF, THAT
17 BECAUSE OF HOW BAD THE 3CMS SYSTEM CURRENTLY IS, THEY MAINTAIN
18 THEIR PATIENTS AT THE EOP LEVEL BECAUSE IF THEY GO TO THE 3CMS,
19 THEY WILL GET NOTHING. AND SO THERE ARE PEOPLE THAT ARE
20 CURRENTLY BEING HELD AT THE EOP LEVEL OF CARE THAT TECHNICALLY
21 COULD BE TREATED AT A LOWER LEVEL OF CARE.

22 **Q.** AND WOULDN'T YOU AGREE THAT THERE ARE SOME ENHANCED
23 OUTPATIENT PROGRAM PATIENTS WITHIN THE DEPARTMENT OF CORRECTIONS
24 WHO ARE AWAITING INPATIENT CARE AND SO NEED, ACTUALLY, INPATIENT
25 CARE IF THEY ARE RELEASED TODAY, CORRECT?

1 **A.** YES.

2 **Q.** AND AS PART OF THE CARE OF A PERSON WITH A SERIOUS MENTAL
3 DISORDER, A COLEMAN PATIENT, YOU WOULD EXPECT THAT SOME OF THESE
4 COLEMAN PATIENTS WOULD, BECAUSE THEY HAVE A SERIOUS MENTAL
5 DISEASE, EXPERIENCE EPISODES OF ILLNESS THAT REQUIRES
6 PSYCHIATRIC HOSPITAL STAYS, CORRECT?

7 **A.** THERE WILL BE A CERTAIN POPULATION OF ANY COLEMAN CLASS
8 MEMBERS THAT WILL REQUIRE HOSPITALIZATION, YES.

9 **Q.** AND YOU DON'T KNOW WHAT PERCENTAGE OF COLEMAN CLASS MEMBERS
10 WHO ARE PRESENTLY HOUSED IN INPATIENT INTERMEDIATE CARE AND
11 INPATIENT ACUTE CARE SETTINGS WOULD NEED TO BE HOUSED IN SIMILAR
12 SETTINGS IN THE COMMUNITY IF THEY WERE SUBJECT TO A PRISONER
13 RELEASE ORDER TODAY, DO YOU?

14 **A.** WELL, I -- I HAVE A PRETTY GOOD ESTIMATE. AS I MENTIONED
15 EARLIER, THE PEOPLE WHO ARE CURRENTLY HOUSED IN DMH LEVEL OF
16 CARE, WHICH IS INTERMEDIATE CARE, AS WELL AS ACUTE CARE, MAKE UP
17 TWO PERCENT OF THE COLEMAN CLASS. SO IF WE ARE LOOKING AT A
18 50,000 POPULATION REDUCTION, AND IF WE INCLUDED COLEMAN CLASS IN
19 THE SAME PERCENTAGE THAT THEY EXIST IN THE OVERALL CDCR
20 POPULATION, THAT'S 200 PEOPLE OVER THE COURSE OF A COUPLE YEARS.
21 SO THAT WOULD BE MY ANSWER TO YOUR QUESTION. INTERMEDIATE.

22 **MS. TILLMAN:** I WOULD LIKE TO DRAW THE COURT'S
23 ATTENTION TO PAGE 282 OF THE DEPOSITION OF DR. STEWART ON
24 DECEMBER 18, 2008. THAT'S PAGE 282, LINES 12 THROUGH 22.

25

1 **BY MS. TILLMAN**

2 **Q.** AND YOU WERE ASKED AT THAT DEPOSITION:

3 "QUESTION: CAN YOU PROVIDE ME WITH A GOOD
4 FAITH ESTIMATE OF THE PERCENTAGE OF THESE
5 COLEMAN CLASS MEMBERS WHO ARE PRESENTLY HOUSED
6 IN INTERMEDIATE CARE AND ACUTE CARE SETTINGS AND
7 WHO WOULD NEED TO BE HOUSED IN SIMILAR SETTINGS
8 IN THE COMMUNITY IF THEY ARE SUBJECT TO A
9 PRISONER RELEASE ORDER?"

10 THERE WAS AN OBJECTION.

11 "VAGUE AND AMBIGUOUS, ASSUMES FACTS NOT IN
12 EVIDENCE."

13 AND THE WITNESS STATED:

14 "ANSWER: I DON'T HAVE A PARTICULAR NUMBER
15 IN MIND.

16 "SIR, YOU ALSO -- LET ME STRIKE THAT.

17 "SIR, YOU DON'T KNOW WHAT PERCENTAGE OF THE
18 COLEMAN POPULATION WILL NEED ONGOING MEDICATION
19 SUPPORT THROUGHOUT THEIR LIVES, DO YOU?"

20 **A.** I DO NOT KNOW WHAT PERCENTAGE OF THE COLEMAN CLASS WOULD
21 NEED ONGOING MEDICATION MANAGEMENT?

22 **Q.** CORRECT. THAT'S THE QUESTION.

23 **A.** AGAIN, I DON'T HAVE A PARTICULAR NUMBER IN MIND. I CAN
24 ESTIMATE IT BASED ON THE PERCENTAGE OF PEOPLE AT DIFFERENT
25 LEVELS OF CARE.

1 Q. NOW, YOU WOULD AGREE THAT SOME PORTION OF THE COLEMAN CLASS
2 MEMBERS HAVE CO-OCCURRING SUBSTANCE ABUSE ISSUES, CORRECT?

3 A. CORRECT.

4 Q. AND YOU WOULD AGREE THAT EVEN JUST A REDUCTION OF -- WELL,
5 LET ME STRIKE THAT.

6 YOU HAVE ALREADY TESTIFIED TODAY THAT THE REDUCTION
7 BY 50,000 INMATES WITH SOME PORTION OF THAT 50,000 INCLUDING
8 COLEMAN CLASS MEMBERS, WOULD REQUIRE THE AUGMENTATION OF CURRENT
9 COMMUNITY MENTAL HEALTH SYSTEMS TO CARE FOR THESE MENTALLY ILL
10 INDIVIDUALS, WOULDN'T IT?

11 A. NO. I BELIEVE MY TESTIMONY WAS THAT BASED ON THE LARGE
12 NUMBER THAT ARE CURRENTLY TREATED IN THE COMMUNITY MENTAL HEALTH
13 SYSTEM, 658,000, THAT THE ADDITION OF A RELATIVELY SMALL NUMBER
14 THAT WE ARE TALKING ABOUT HERE COULD BE ADEQUATELY TREATED GIVEN
15 CURRENT -- THE CURRENT SYSTEM. AND I BELIEVE I ALSO SAID THAT I
16 BELIEVE THAT THE SYSTEM COULD BE AUGMENTED ALSO, BUT I BELIEVE
17 THAT THEY CAN BE TREATED WITHOUT ANY AUGMENTATION.

18 Q. ISN'T THAT CORRECT THAT EVEN JUST THE ROUGHLY 15,000 INMATES
19 FROM THE DEPARTMENT OF CORRECTIONS AND REHABILITATION, WITH SOME
20 PORTION OF THAT 15,000 CONSISTING OF COLEMAN CLASS MEMBERS,
21 WOULD REQUIRE AN AUGMENTATION OF THE CURRENT HEALTH SYSTEMS IN
22 THE COMMUNITIES TO CARE FOR THESE MENTALLY ILL INDIVIDUALS?

23 A. I DON'T BELIEVE THAT.

24 Q. I WOULD LIKE TO READ FROM YOUR DEPOSITION, PAGE 236. AND
25 THIS IS THE SEPTEMBER 2008 DEPOSITION. 236 LINE 17 THROUGH 236

1 LINE SEVEN.

2 (DOCUMENT DISPLAYED)

3 Q. AT PAGE 236, LINE 17 YOU WERE ASKED:

4 "QUESTION: DO YOU HAVE ANY OPINIONS
5 REGARDING ANY SORT OF PROTOCOL THAT SHOULD BE
6 FOLLOWED IF THERE IS AN IMMEDIATE REDUCTION OF
7 15,000 INMATES WITH SOME PORTION OF THOSE
8 CONSISTING OF COLEMAN CLASS MEMBERS?

9 "ANSWER: A PROTOCOL REGARDING WHAT?

10 "QUESTION: TO PROVIDE ANY SORT OF MENTAL
11 HEALTH CARE TO COLEMAN CLASS MEMBERS WHO ARE
12 RELEASED?

13 "ANSWER: ANY INCREASE OF MENTALLY ILL
14 INDIVIDUALS IN THE COMMUNITY WOULD NECESSARILY
15 REQUIRE AN AUGMENTATION OF THE CURRENT SYSTEMS
16 THAT EXIST IN THE COMMUNITY TO DEAL WITH
17 MENTALLY ILL INDIVIDUALS, AND THAT WOULD BE
18 COMMUNITY MENTAL HEALTH. IT WOULD BE IN THE
19 AREA OF PAROLE AND MENTAL HEALTH. THOSE AREAS
20 WOULD CERTAINLY NEED AUGMENTATION."

21 NOW, SIR, YOU HAVE NO OPINION, DO YOU, ON WHETHER OR
22 NOT THE PAROLE OUTPATIENT CLINICIANS ARE SUFFICIENT -- I'M
23 SORRY, ON WHETHER OR NOT THE PAROLE OUTPATIENT CLINICS ARE
24 SUFFICIENT IN NUMBER AND STAFF TO HANDLE A RELEASE ORDER OF EVEN
25 JUST 15,000 INMATES WITH SOME 20 PERCENT OF THAT GROUP

1 CONSISTING OF COLEMAN PATIENTS, CORRECT?

2 **A.** I TESTIFIED TODAY. I SAID THAT THE PAROLE OUTPATIENT CLINIC
3 COULD CERTAINLY BENEFIT FROM AUGMENTATION.

4 **Q.** YOU ARE NOT FAMILIAR WITH WHAT NUMBER OF PAROLE OUTPATIENT
5 CLINICS ARE CURRENTLY AVAILABLE, ARE YOU?

6 **A.** I AM NOT.

7 **Q.** AND EVEN WITH A RELEASE ORDER CONSISTING OF ONLY 15,000
8 INMATES WITH SOME 20 PERCENT OF THAT GROUP CONSISTING OF COLEMAN
9 PATIENTS, YOU WOULD RECOMMEND THAT THE COUNTIES RECEIVING A
10 LARGER PORTION OF, SAY, THAT 20 PERCENT, OR 3,000 OF THE 15,000
11 RELEASED GROUP, RECEIVE AUGMENTED RESOURCES, RIGHT?

12 **A.** I AGREE THAT THEY CERTAINLY COULD BENEFIT FROM AUGMENTED
13 RESOURCES. THERE IS NO QUESTION ABOUT THAT.

14 **JUDGE KARLTON:** I TAKE IT THAT'S TRUE EVEN IF YOU
15 DON'T GIVE THEM AN EXTRA SINGLE PERSON FROM OUT OF THE PRISONS.

16 **THE WITNESS:** ABSOLUTELY RIGHT, YOUR HONOR. THEY
17 COULD BENEFIT FROM AUGMENTED RESOURCE THIS AFTERNOON.

18 **BY MR. TILLMAN:**

19 **Q.** NOW, YOU ARE NOT AWARE OF ANY COUNTY IN THE STATE OF
20 CALIFORNIA THAT LACKS THE RESOURCES TO SUPPORT A COUNTY HOSPITAL
21 FOR THE CARE OF THE INDIGENT, ARE YOU?

22 **A.** CAN YOU SAY THAT QUESTION AGAIN, PLEASE?

23 **Q.** YOU ARE NOT AWARE OF ANY COUNTY IN THE STATE OF CALIFORNIA
24 THAT LACKS RESOURCES TO SUPPORT A COUNTY HOSPITAL FOR THE CURE
25 OF THE INDIGENT, ARE YOU?

1 **JUDGE HENDERSON:** LACKS RESOURCES? WHAT DOES THAT
2 MEAN? LACKS MONEY --

3 **MS. TILLMAN:** WOULD IT HELP IF I REPHRASED. CAN I
4 REPHRASE?

5 **JUDGE HENDERSON:** I DIDN'T UNDERSTAND.

6 **BY MS. TILLMAN:**

7 **Q.** YOU ARE NOT AWARE OF ANY COUNTY IN THE STATE OF CALIFORNIA
8 THAT DOES NOT HAVE A COUNTY HOSPITAL TO PROVIDE CARE FOR THE
9 INDIGENT, CORRECT?

10 **A.** I AM NOT AWARE OF THAT. YES, YOU ARE CORRECT.

11 **Q.** AND SO YOU HAVE NOT HAD THE CHANCE TO REVIEW THE REPORT OF
12 MR. GRAVES WHERE IT'S INDICATED THAT THERE ARE ONLY 19 PUBLIC
13 HOSPITALS STATE WIDE FOR THE CARE OF THE INDIGENT, CORRECT?

14 **A.** I HAVEN'T REVIEWED THAT REPORT.

15 **Q.** YOU HAVE MENTIONED THE NEED TO ENSURE PAROLEE ACCESS TO
16 VETERANS ADMINISTRATION BENEFITS.

17 DO YOU ACTUALLY KNOW THE NUMBER OF COLEMAN CLASS
18 MEMBERS WHO ARE ELIGIBLE AND COULD ACCESS THOSE MENTAL HEALTH
19 PROGRAMS WITHIN THE VETERANS ADMINISTRATION?

20 **A.** I DO NOT.

21 **Q.** YOU REALLY DON'T KNOW THE RECIDIVISM RATES OF THE COLEMAN
22 CLASS MEMBERS, DO YOU?

23 **A.** THE ACTUAL RECIDIVISM RATE? I KNOW THAT OVER 100,000 --
24 130,000 PEOPLE ARE COMING AND GOING EVERY YEAR.

25 **Q.** WHEN YOU SPEAK OF 130,000, IS THAT A RECIDIVISM RATE THAT

1 YOU ARE REFERRING TO?

2 **A.** THAT'S THE NUMBER OF RELEASES. AND SINCE THE POPULATION IS
3 SLOWLY GOING UP OVER THE YEARS, I WOULD IMAGINE THEY HAVE THAT
4 MANY ADMISSIONS ALSO.

5 **MS. TILLMAN:** IF I MIGHT DIRECT THE COURT'S ATTENTION
6 TO PAGE 270 OF DR. STEWART'S DEPOSITION IN SEPTEMBER, 2008, LINE
7 17 THROUGH 23.

8 (BRIEF PAUSE.)

9 **MS. WHELAN:** OKAY.

10 **BY MS. TILLMAN:**

11 **Q.** AND THERE YOU WERE ASKED:

12 "QUESTION: DO YOU HAVE ANY UNDERSTANDING AS
13 TO THE RECIDIVISM RATES OF COLEMAN CLASS
14 MEMBERS?

15 "ANSWER: NOT OF COLEMAN CLASS MEMBERS."

16 DOCTOR, YOU DON'T KNOW IF COLEMAN CLASS MEMBERS WITH
17 CO-OCCURRING SUBSTANCE ABUSE ISSUES HAVE A HIGHER RATE OF
18 RECIDIVISM, DO YOU, THAN THE GENERAL POPULATION OF CDCR INMATES?

19 **A.** NO.

20 **Q.** NOW, YOU HAVE RECOMMENDED THE DIVERSION OF MENTALLY ILL
21 OFFENDERS AWAY FROM STATE PRISON, CORRECT?

22 **A.** YES.

23 **Q.** AND THAT DIVERSION WOULD BE IN THE FORM OF PROGRAMS WITH
24 SUPERVISED MENTAL HEALTH CARE, CORRECT?

25 **A.** THAT WOULD BE PART OF IT.

1 Q. YOU HAVE NEVER TOURED ANY SUCH FACILITIES, HAVE YOU?

2 A. I'M VERY FAMILIAR WITH THOSE. I HAVE TOURED MANY PROGRAMS
3 THAT PROVIDE MENTAL HEALTH CARE THAT INCLUDE PAROLEES IN THAT
4 POPULATIONS.

5 MS. TILLMAN: IF I MIGHT DIRECT THE COURT'S ATTENTION
6 TO PAGE 274 OF THE SEPTEMBER, 2008 DEPOSITION OF DR. STEWART,
7 PAGE 274 LINES 22 THROUGH 23.

8 MS. WHELAN: JUST THOSE TWO LINES? I DON'T THINK
9 THAT GIVES -- SHOWS ANYTHING.

10 JUDGE KARLTON: WE ARE GOING TO HAVE TO LOOK AT IT --
11 YOUR OBJECTION IS IT'S NOT IMPEACHING?

12 MS. WHELAN: IT'S NOT IMPEACHING.

13 MS. TILLMAN: I BELIEVE IT IS.

14 JUDGE KARLTON: HANG ON. JUDGE HENDERSON IS GOING TO
15 LOOK AT IT IF YOU PUT IT UP AND MAKE A DECISION FOR ALL OF US
16 WHETHER OR NOT IT CAN BE READ INTO THE RECORD.

17 MS. TILLMAN: THANK YOU.

18 (DOCUMENT DISPLAYED)

19 JUDGE HENDERSON: NOT THAT. HAVE YOU TOURED SUCH
20 FACILITIES?

21 MS. TILLMAN: I PUT IT IN CONTEXT. I THINK IF WE GO
22 TO THE PREVIOUS QUESTION AT LINE 6 THROUGH -- AND THE ANSWER
23 GOES THROUGH 21 ON THE SAME PAGE.

24 (BRIEF PAUSE.)

25 JUDGE HENDERSON: OKAY. YOU MAY ANSWER.

1 **JUDGE KARLTON:** EXCEPT START AT THE TOP SO THAT IT
2 MAKES SENSE.

3 **MS. TILLMAN:** THANK YOU, YOUR HONOR.

4 **BY MS. TILLMAN:**

5 **Q.** STARTING AT LINE 6 ON PAGE 274, THE QUESTION:

6 **"QUESTION:** ALL THAT I'M SAYING IS THAT YOU
7 INDICATE AT PARAGRAPH 145, QUOTE, IF A DIVERSION
8 OF INDIVIDUALS WITH MENTAL ILLNESS FROM PRISON
9 CAN BE DONE WITHOUT ADVERSELY AFFECTING PUBLIC
10 SAFETY, WHAT DIVERSION PROGRAMS ARE YOU
11 REFERENCING IN THAT STATEMENT?

12 **"ANSWER:** PROGRAMS THAT WOULD ORDER PEOPLE
13 INTO TREATMENT, PROGRAMS THAT WOULD INCLUDE CASE
14 MANAGEMENT SERVICES, SUPPORTIVE HOUSING
15 SERVICES, MEDICATION MANAGEMENT SERVICES, WHERE
16 THE MENTAL HEALTH CARE WOULD BE SUPERVISED AND
17 NOT JUST LEFT UP TO THE INDIVIDUAL. THESE SORTS
18 OF SUPERVISED MENTAL HEALTH PROGRAMS HAVE BEEN
19 SHOWN TO ENSURE THAT PEOPLE REMAIN COMPLIANT
20 WITH THE TREATMENT AND STAY OUT OF TROUBLE WITH
21 THE CRIMINAL JUSTICE SYSTEM.

22 **"QUESTION:** HAVE YOU TOURED SUCH FACILITIES?

23 **"ANSWER:** NO."

24 **JUDGE HENDERSON:** I'M NOT SURE. HIS ANSWER WAS THAT,
25 "I HAVE TOURED MANY FACILITIES WHICH INCLUDE." SO I'M NOT SURE

1 THAT --

2 JUDGE KARLTON: WE WILL DECIDE WHETHER IT MAKES ANY
3 DIFFERENCE.

4 JUDGE HENDERSON: YEAH.

5 BY MS. TILLMAN:

6 Q. OKAY. IN FACT, DOCTOR, YOU HAVE NOT ACTUALLY ANY KNOWLEDGE
7 OF WHETHER OR NOT SUCH DIVERSION PROGRAMS ARE AVAILABLE WITHIN
8 ANY COUNTY OF THE STATE OF CALIFORNIA, ARE YOU?

9 A. THE PROGRAMS THAT ARE DESCRIBED THERE ARE AVAILABLE. I KNOW
10 THEY ARE AVAILABLE IN SAN FRANCISCO COUNTY.

11 THESE ARE PROGRAMS THAT ARE WIDELY AVAILABLE,
12 MEDICATION MANAGEMENT, CASE MANAGEMENT PROGRAMS. THESE ARE
13 AVAILABLE IN MOST COUNTIES THAT I'M FAMILIAR WITH.

14 Q. GOING BACK TO YOUR DEPOSITION OF SEPTEMBER, 2008, PAGE 274,
15 LINE 24. YOU WERE ASKED THAT SAME QUESTION. GOING ONTO PAGE
16 275, YOUR ANSWER IS AT LINE WHAT.

17 (DOCUMENT DISPLAYED)

18 Q. YOU WERE ASKED --

19 MS. TILLMAN: MAY I READ IT?

20 MR. BIEN: YES, GO AHEAD.

21 BY MS. TILLMAN:

22 Q. (READING)

23 "QUESTION: ARE YOU AWARE OF THE
24 AVAILABILITY OF SUCH DIVERSION PROGRAMS WITHIN
25 ANY COUNTY OF CALIFORNIA?

1 **"ANSWER: I AM NOT AWARE."**

2 DOCTOR, ISN'T THAT CORRECT THAT YOU HAVE NOT SEEN ANY
3 SUCH PROGRAMS IN THE UNITED STATES?

4 **A.** IN THE UNITED STATES?

5 **Q.** YES.

6 **A.** I AM NOT AWARE OF A PARTICULAR PROGRAM AS DESCRIBED THAT WE
7 JUST READ THAT HAS ALL THOSE ELEMENTS.

8 WHAT MY TESTIMONY WAS IS THAT I'M VERY AWARE THAT THE
9 DIFFERENT ELEMENTS OF THESE PROGRAMS EXIST THROUGHOUT THE STATE
10 OF CALIFORNIA. I'M NOT AWARE OF A PARTICULAR PROGRAM. YOU ARE
11 ABSOLUTELY CORRECT.

12 **Q.** SO EVEN WITH THIS FIRST INTERVENTION, AS YOU HAVE CALLED IT,
13 OF REDUCING THE POPULATION OF THE DEPARTMENT OF CORRECTIONS AND
14 REHABILITATION, THERE WOULD STILL NEED TO BE DONE ADDITIONAL
15 STEPS TO IMPROVE THE MENTAL HEALTH CARE PROVIDED TO THE
16 DEPARTMENT OF CORRECTIONS PATIENTS, CORRECT?

17 **A.** YES.

18 **Q.** AND EVEN WITH THIS FIRST STEP OR FIRST INTERVENTION OF
19 POPULATION REDUCTION BY WAY OF A RELEASE, THE RELEASE SHOULD BE
20 ACCOMPANIED BY AUGMENTED COMMUNITY RESOURCES FOR PAROLEES IN
21 ORDER TO ENSURE THEIR SUCCESSFUL REINTEGRATION INTO SOCIETY,
22 CORRECT?

23 **A.** I BELIEVE THAT'S ABSOLUTELY TRUE; THAT THE PAROLEES COULD
24 BENEFIT FROM AUGMENTED SERVICES TO HELP THEIR CHANCES OF --
25 DECREASE THEIR CHANCES OF BEING RETURNED TO PRISON.

1 **MS. TILLMAN:** THANK YOU. NOTHING FURTHER.

2 **THE COURT:** NOTHING FROM INTERVENORS?

3 **MS. WANG:** TERESA WANG FOR THE DEFENDANT INTERVENORS.

4 **DIRECT EXAMINATION**

5 **BY MS. WANG:**

6 **Q.** GOOD AFTERNOON, DR. STEWART.

7 **A.** GOOD AFTERNOON.

8 **Q.** I JUST HAVE A COUPLE QUESTIONS FOR YOU.

9 DURING YOUR DIRECT TESTIMONY, YOU REFERRED TO THE
10 CONCERNS OF COMMUNITY MENTAL HEALTH CARE PROVIDERS ABOUT A
11 POTENTIAL PRISONER RELEASE ORDER AS POSSIBLY OVERSTATED, IS THAT
12 CORRECT?

13 **A.** YES.

14 **Q.** AND YOU CITED AS AN EXAMPLE YOUR WORK WITH RETURNING VIETNAM
15 VETERANS AND THE COMMUNITY MENTAL HEALTH CARE PROVIDERS CONCERNS
16 ABOUT THAT?

17 **A.** YES, I DID.

18 **Q.** AND YOU WOULD AGREE, WOULDN'T YOU, THAT THERE ARE A
19 DIFFERENT SET OF CONCERNS THAT WOULD CONFRONT A COMMUNITY MENTAL
20 HEALTH CARE PROVIDER IN TERMS OF AN VETERAN POPULATION VERSUS A
21 RETURNING CRIMINAL OFFENDER POPULATION?

22 **A.** NOT NECESSARILY.

23 **Q.** DO YOU BELIEVE THAT THERE ARE CONCERNS ABOUT COORDINATING
24 WITH PROBATION, PAROLE, CORRECTIONAL OFFICERS THAT WOULDN'T BE
25 ENCOUNTERED WITH A RETURNING VETERAN POPULATION?

1 **A.** THE NEED TO COORDINATE. OBVIOUSLY, WITH PAROLE WAS NOT AN
2 ISSUE WHEN I REFERRED TO THE VETERAN POPULATION. YES, YOU ARE
3 CORRECT.

4 **Q.** AND YOU WOULD AGREE THAT INADEQUATELY TREATING EVEN ONE
5 MENTALLY ILL OFFENDER WHO WAS RETURNING TO THE COMMUNITY MENTAL
6 HEALTH CARE PROGRAM OR DIVERTED INTO THE COMMUNITY MENTAL HEALTH
7 CARE PROGRAM COULD HAVE POTENTIALLY ADVERSE EFFECTS ON PUBLIC
8 SAFETY, WOULDN'T YOU?

9 **A.** I'M SORRY. COULD YOU SAY THAT AGAIN, PLEASE?

10 **Q.** SURE. YOU WOULD AGREE THAT INADEQUATELY TREATING EVEN ONE
11 MENTALLY ILL OFFENDER WHO WAS RETURNING TO THE COMMUNITY
12 HEALTHCARE PROGRAM OR DIVERTED INTO THE COMMUNITY MENTAL HEALTH
13 CARE PROGRAM COULD HAVE POTENTIALLY ADVERSE EFFECTS ON PUBLIC
14 SAFETY, WOULDN'T YOU?

15 **A.** I AGREE, BUT I WOULD HOPE THAT THE KNOWLEDGE OF THAT IS
16 KNOWN BY MORE THAN JUST ME. IT'S KNOWN BY THE COMMUNITY MENTAL
17 HEALTH PEOPLE, WHOSE RESPONSIBILITY IT IS TO TREAT INDIVIDUALS
18 IN THEIR COUNTY, AND THAT THEY WOULDN'T GO OUT OF THEIR WAY TO
19 PROVIDE INADEQUATE CARE. THEY WOULD DO WHAT THEY COULD IN A
20 CREATIVE WAY USING THE RESOURCES THEY HAVE AVAILABLE TO THEM NOW
21 TO PROVIDE ADEQUATE CARE TO ENHANCE PUBLIC SAFETY.

22 **Q.** BUT YOU AGREE THAT THESE -- THESE COMMUNITY HEALTHCARE
23 PROGRAMS ARE QUITE UNDER FUNDED, DON'T YOU?

24 **A.** I DON'T THINK I SAID THEY WERE QUITE UNDER FUNDED.

25 **Q.** HOW ABOUT UNDER FUNDED?

1 **A.** I THINK THAT THEY LACKED CREATIVITY IN HOW TO DO THEIR JOB
2 BETTER.

3 **JUDGE KARLTON:** THE QUESTION IS JUST FUNDING. ARE
4 YOU SAYING THAT YOU THINK THAT THE FUNDING WOULD BE ADEQUATE IF
5 THEY WERE SMARTER ABOUT HOW TO SPEND IT?

6 **THE WITNESS:** I BELIEVE THAT, YOUR HONOR.

7 **JUDGE KARLTON:** OH, ALL RIGHT.

8 **BY MS. WANG:**

9 **Q.** HOWEVER IN PARAGRAPH 135 OF YOUR SECOND REPORT, YOU DO SAY
10 THAT -- YOU ACKNOWLEDGE THAT THESE PROGRAMS ARE UNDER FUNDED, IS
11 THAT CORRECT?

12 **A.** YEAH. AND I THINK WE HAVE SAID IT HERE TODAY MANY TIMES.
13 CERTAINLY, IT WOULD BE MY -- IF I COULD DECIDE THAT, THE
14 COMMUNITY MENTAL HEALTH PROGRAMS COULD RECEIVE ENHANCED FUNDING.

15 **MS. WANG:** NO FURTHER QUESTIONS, YOUR HONOR.

16 **THE COURT:** REDIRECT?

17 **MS. WHELAN:** NOTHING FURTHER.

18 **THE COURT:** OKAY. THANK YOU FOR REAPPEARING,
19 DR. STEWART.

20 **THE WITNESS:** THANK YOU, YOUR HONOR.

21 **JUDGE HENDERSON:** YOU ARE EXCUSED.

22 (WITNESS EXCUSED.)

23 **JUDGE HENDERSON:** YOU MAY CALL YOUR NEXT WITNESS.

24 **MS. FUENTES:** GOOD AFTERNOON, YOUR HONORS. THERESA
25 FUENTES FROM THE COUNTY OF SANTA CLARA.

1 THE DEFENDANT INTERVENORS CALL GARY GRAVES TO THE
2 STAND.

3 MS. MORRIS: YOUR HONOR, BEFORE MR. GRAVES STARTS
4 TESTIFYING, I WOULD LIKE TO MAKE AN OBJECTION TO HIS TRIAL
5 DECLARATION WHICH WAS SUBMITTED AND APPEARS TO BE SOMETHING OF A
6 SUPPLEMENTAL REPORT, PARTICULARLY TO THE EXTENT THAT IT OPINES
7 ON PUBLIC SAFETY, WHICH WAS NOT ONE OF THE SUBJECTS LISTED IN
8 THE EXPERT DISCLOSURE THAT HE WOULD BE TESTIFYING REGARDING.

9 JUDGE HENDERSON: DO YOU WANT TO RESPOND TO THAT?

10 MS. FUENTES: YES, YOUR HONOR.

11 MR. GRAVES IS A HYBRID EXPERT AND FACT WITNESS, AND
12 HIS DECLARATION CONTAINS SOME FACTUAL INFORMATION AND, ALSO,
13 SOME INFORMATION AND HIS OPINIONS, HIS EXPERT OPINION ON PUBLIC
14 SAFETY.

15 HIS ORIGINAL EXPERT REPORT ALSO ADDRESSES THE ISSUES
16 OF PUBLIC SAFETY AND IMPACTS TO THE COUNTY IN GENERAL.

17 THE COURT: WE WILL FOLLOW THE SAME RULE WE HAVE
18 BEEN. THE OBJECTION IS PRESERVED.

19 GARY GRAVES,
20 CALLED AS A WITNESS FOR THE DEFENDANT HEREIN, HAVING BEEN FIRST
21 DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

22 GARY GRAVES: GARY GRAVES, G-R-A-V-E-S.

23 MS. FUENTES: MR. GRAVES HAS SUBMITTED AN EXPERT
24 REPORT AND DECLARATION, WHICH HAVE BEEN MARKED AS --

25 JUDGE KARLTON: WE HAVE ALL AGREED THAT THOSE MATTERS

1 ARE BEFORE THE COURT. THEY WILL BE RECEIVED AT THE END WHEN WE
2 GO THROUGH ALL THE OBJECTIONS. PLEASE DON'T DO THIS ANY MORE.

3 EVERYBODY. BELIEVE US. WE KNOW THAT THEY HAVE BEEN
4 TENDERED.

5 I'M SORRY. I DON'T MEAN TO SPEAK SHARPLY, BUT THIS
6 IS JUST DRIVING ME CRAZY.

7 **MS. FUENTES:** OKAY. I WAS JUST POINTING OUT FOR THE
8 RECORD WHERE HIS EXPERT REPORT DECLARATION CAN BE FIND AND THE
9 EXHIBITS THAT ARE REFERENCED IN THAT REPORT.

10 **DIRECT EXAMINATION**

11 **BY MS. FUENTES:**

12 **Q.** MR. GRAVES, WHERE ARE YOU CURRENTLY EMPLOYED?

13 **A.** SANTA CLARA COUNTY.

14 **Q.** WHAT IS YOUR CURRENT POSITION AT SANTA CLARA COUNTY?

15 **A.** CURRENTLY I AM THE ACTING COUNTY EXECUTIVE.

16 **Q.** AND CAN YOU BRIEFLY SUMMARIZE YOUR EDUCATION AND BACKGROUND?

17 **A.** I HAVE A B.A. IN ECONOMICS AND POLITICAL SCIENCE FROM
18 BUCKNELL UNIVERSITY, A MASTER'S IN PUBLIC ADMINISTRATION FROM
19 THE STATE UNIVERSITY OF NEW YORK AT ALBANY. I HAVE ALSO BEEN
20 TRAINED AT THE HARVARD EXECUTIVE MANAGEMENT PROGRAM.

21 CURRENTLY, AS I SAID, I AM THE ACTING COUNTY
22 EXECUTIVE FOR SANTA CLARA COUNTY. I HAVE BEEN WITH THE COUNTY
23 FOR APPROXIMATELY 25 YEARS. I HAVE -- I STARTED THERE AS THE
24 BUDGET DIRECTOR IN 1984, BECAME A DEPUTY COUNTY EXECUTIVE IN
25 APPROXIMATELY 1997, DURING THAT TIME ALSO MAINTAINING

1 RESPONSIBILITY FOR RESOURCE ALLOCATION, AND BECAME THE ASSISTANT
2 COUNTY EXECUTIVE I BELIEVE IN 2002.

3 PRIOR TO THAT I WAS -- WORKED FOR THE NEW YORK CITY
4 OFFICE OF MANAGEMENT AND BUDGET, WHERE I WAS THE PRINCIPAL
5 BUDGET ANALYST FOR APPROXIMATELY FIVE YEARS RESPONSIBLE FOR
6 POLICE SERVICES.

7 Q. WHEN DID YOU BECOME THE ACTING COUNTY EXECUTIVE?

8 A. NOVEMBER 1ST OF THIS YEAR.

9 Q. CAN YOU BRIEFLY DESCRIBE YOUR DUTIES AS THE ACTING COUNTY
10 EXECUTIVE AND PRIOR TO THAT AS THE ASSISTANT COUNTY EXECUTIVE?

11 A. OBVIOUSLY, AS THE ACTING COUNTY EXECUTIVE, I AM RESPONSIBLE
12 FOR THE MANAGEMENT OF SANTA CLARA COUNTY AND ALL OF THE
13 FUNCTIONS AND RESPONSIBILITIES WITHIN THAT. I REPORT DIRECTLY
14 TO THE BOARD OF SUPERVISORS AND AM RESPONSIBLE FOR CARRYING OUT
15 THE BOARD'S DIRECTIVES REGARDING POLICIES. ALSO, RESPONSIBLE
16 FOR THE MANAGEMENT OF THE COUNTY'S BUDGET.

17 AS THE ASSISTANT COUNTY EXECUTIVE, I WAS FOCUSED ON
18 THE INTERNAL MANAGEMENT, THE DAY-TO-DAY OPERATIONS OF THE
19 COUNTY. I HAD SPECIFIC RESPONSIBILITY FOR THE OVERSIGHT OF THE
20 BUDGET PROCESS, RESOURCE ALLOCATION, AND SEVERAL DEPARTMENTS,
21 INCLUDING FACILITIES AND FLEET, PROCUREMENT AND, ALSO, A VARIETY
22 OF OTHER SPECIAL PROJECTS.

23 Q. WHAT IS SANTA CLARA COUNTY'S POPULATION?

24 A. THE POPULATION CURRENTLY IS APPROXIMATELY 1.7 MILLION.

25 Q. AND HOW IS THAT COMPARED TO OTHER CALIFORNIA COUNTIES IN

1 TERMS OF THE SIZE OF THE POPULATION?

2 **A.** CURRENTLY I BELIEVE WE WERE THE SIXTH LARGEST COUNTY IN THE
3 STATE OF CALIFORNIA.

4 **Q.** WHAT IS SANTA CLARA COUNTY'S TOTAL BUDGET?

5 **A.** THE TOTAL BUDGET IS APPROXIMATELY \$4 BILLION. THE GENERAL
6 FUND BUDGET IS APPROXIMATELY 2.2 BILLION.

7 **Q.** CAN YOU JUST EXPLAIN WHAT THE GENERAL FUND IS?

8 **A.** THE GENERAL FUND IS SORT OF THE GENERAL RESPONSIBILITIES OF
9 THE COUNTY, INCLUDING ALL NON-SPECIAL REVENUE OR ENTERPRISE
10 FUNDS. SO IT INCLUDES THINGS LIKE THE MAJOR CORE FUNCTIONS OF
11 THE COUNTY; SOCIAL SERVICES, PUBLIC SAFETY, HEALTH, ANY
12 ADMINISTRATIVE FUNCTIONS OF THE COUNTY.

13 AND IN TERMS OF -- TO GO BEYOND THAT, THE HOSPITAL,
14 OUR HOSPITAL SYSTEM IS A SEPARATE FUND. SO THAT'S IN ADDITION
15 TO THAT, AS WELL AS SPECIAL REVENUE FUNDS; THINGS LIKE ROADS,
16 LIBRARY, PARKS AND RECREATION, THAT KIND OF THING.

17 **Q.** SOMEWHAT IS THE COUNTY'S CURRENT FISCAL SITUATION?

18 **A.** THE COUNTY'S CURRENT FISCAL SITUATION IS RATHER DIRE. WE
19 JUST ON TUESDAY MADE A PRESENTATION TO THE BOARD INDICATING A
20 PROJECTED DEFICIT IN THE CURRENT YEAR OF \$220 MILLION. THIS
21 WILL BE THE EIGHTH CONSECUTIVE YEAR OF DEFICITS WITHIN THE
22 COUNTY. WE ARE PROJECTING DEFICITS INTO THE FUTURE.

23 WE HAVE CLOSED GAPS OVER THOSE EIGHT YEARS OF
24 APPROXIMATELY \$1.2 BILLION, HAVE IMPLEMENTED REDUCTIONS OR WILL
25 IMPLEMENT REDUCTIONS IN DEPARTMENTS SPECIFICALLY TOTALING ABOUT

1 600 MILLION.

2 SO WE ARE REALLY OPERATING VERY MUCH AT THE MINIMUM
3 LEVEL IN TERMS OF MANY OF THE SERVICES THAT WE ARE REQUIRED TO
4 PROVIDE.

5 Q. WHAT SERVICES HAVE BEEN CUT?

6 A. REDUCTIONS REALLY HAVE BEEN IMPLEMENTED IN EVERY SERVICE
7 AREA WITHIN THE COUNTY; PUBLIC SAFETY, SOCIAL SERVICES, HEALTH
8 THE ADMINISTRATION, THE GENERAL GOVERNMENT DEPARTMENT. EVERY
9 DEPARTMENT HAS TO REDUCE THEIR LEVEL OF SERVICE BECAUSE COUNTIES
10 REALLY HAVE NO REVENUE RAISING AUTHORITY, SO THE ONLY OPTIONS WE
11 HAVE WHEN THERE IS A GAP BETWEEN REVENUES AND EXPENDITURES IS
12 REDUCING EXPENDITURES. THAT'S REALLY THE ONLY OPTION WE HAVE.

13 Q. HAS THERE BEEN ANY CUTS TO THE MENTAL HEALTH DEPARTMENT'S
14 BUDGET?

15 A. THERE HAS BEEN SIGNIFICANT CUTS IN MENTAL HEALTH. IN SANTA
16 CLARA COUNTY MENTAL HEALTH IS A PRIOR AND AS A RESULT OF THAT, A
17 LOT OF DISCRETIONARY FUNDING HAS BEEN ALLOCATED WHEN FUNDING HAS
18 BEEN AVAILABLE.

19 AND, OBVIOUSLY, WHEN WE ARE -- OUR RESOURCES ARE
20 LIMITED. WE HAVE TO GO TO THOSE PLACES WHERE DISCRETIONARY
21 FUNDS EXIST. SO MENTAL HEALTH HAS BEEN AN AREA THAT HAS
22 RECEIVED PRETTY SIGNIFICANT CUTS.

23 Q. BY "SIGNIFICANT," WHAT NUMBERS ARE YOU TALKING ABOUT?

24 A. I WOULD SAY OVER THE LAST EIGHT YEARS, WITHOUT HAVING THE
25 DETAIL IN FRONT OF ME, MENTAL HEALTH REDUCTIONS HAVE EXCEEDED

1 \$30 MILLION. WE HAVE BEEN FORCED TO REALLY LOOK AT THE -- AT
2 THE CLIENTS THAT WE CAN SERVE. SO THE LESS ACUTE CLIENTS WE NO
3 LONGER CAN SERVE.

4 IN FACT, OVER THE LAST EIGHT YEARS I BELIEVE THAT WE
5 HAVE BEEN FORCED TO NO LONGER PROVIDE SERVICES TO ROUGHLY 4,000
6 CLIENTS AS A RESULT OF THE FACT THAT WE HAVE HAD TO -- OR FOCUS
7 OUR -- OUR SERVICES ON THOSE THAT ARE MORE ACUTELY ILL.

8 **Q.** DOES THE STATE'S CURRENT BUDGET CRISIS IMPACT THE COUNTY AT
9 ALL?

10 **A.** IT ABSOLUTELY DOES. I MEAN, COUNTIES ARE REALLY AGENTS OF
11 THE STATE. WE REALLY ARE THE SERVICE PROVIDERS FOR MANY STATE
12 PROGRAMS.

13 IN FACT, ABOUT 35 PERCENT OF OUR REVENUE COMES FROM
14 THE STATE. SO ANY TIME THE STATE IS IN A REDUCTION MODE, THE
15 IMPLICATIONS ARE SIGNIFICANT FOR COUNTIES. SPECIFICALLY, EVEN,
16 OBVIOUSLY, TO A MUCH GREATER EXTENTS THAN CITIES.

17 SO WHEN THE STATE IS LOOKING AT A DEFICIT, AS YOU
18 PROBABLY HAVE READ ABOUT, OF \$28 BILLION, THE IMPLICATIONS TO US
19 ARE VERY GRAVE, ESPECIALLY AFTER WE HAVE BEEN THROUGH EIGHT
20 YEARS OF REDUCTIONS.

21 **Q.** CAN YOU TELL US BRIEFLY, GENERALLY, HOW THE COUNTY IS
22 FUNDED?

23 **A.** COUNTIES RELY FOR MORE THAN HALF OF THE REVENUE FROM THE
24 STATE AND FEDERAL GOVERNMENT. IN OUR CASE, IN SANTA CLARA
25 COUNTY, WE GET ABOUT 55 PERCENT OF OUR REVENUES FROM THE STATE

1 AND FEDERAL GOVERNMENT.

2 AS A RESULT OF THAT, IN MANY WAYS WE REALLY DON'T
3 DETERMINE OUR OWN PRIORITIES AS A RESULT OF THAT AND OUR OWN
4 DESTINY.

5 SO THE REST OF THOSE FUNDS THAT WE RECEIVE ARE THINGS
6 LIKE PROPERTY TAX. THE OTHER 45 PERCENT INCLUDE THINGS LIKE
7 PROPERTY TAX, FEES, AND OTHER REVENUES THAT INCLUDE THINGS LIKE
8 MEDICAID TYPE OF REVENUE.

9 SO IN GENERAL THE CRITICAL ISSUE FOR US IS THAT, YOU
10 KNOW, OVER HALF OF OUR REVENUES ARE COMING FROM STATES AND
11 FEDERAL GOVERNMENTS AND DECISIONS ABOUT THOSE REVENUES REALLY
12 ARE BEING MADE OUTSIDE OF THE COUNTY SEAT, IN EFFECT.

13 **Q.** SO HOW MUCH DISCRETION DOES THE COUNTY HAVE IN DETERMINING
14 HOW MUCH MONEY TO ALLOCATE TOWARDS CERTAIN PROGRAMS AND
15 SERVICES?

16 **A.** THE AMOUNT OF DISCRETION THAT THE LOCAL BOARD OF SUPERVISORS
17 HAS REALLY HAS DECLINED. I MEAN, AT THIS POINT IN TIME OUT OF
18 OUR \$2.2 BILLION BUDGET, WE BELIEVE THAT THERE'S ROUGHLY
19 \$500 MILLION THAT THE BOARD HAS IN TERMS OF DISCRETION.

20 SO WHEN WE ARE LOOKING AT A REDUCTION THIS YEAR, AS I
21 HAVE INDICATED, OF 220 MILLION, THAT'S REALLY A DRAMATIC IMPACT
22 ON OUR ABILITY TO PROVIDE SERVICES.

23 OBVIOUSLY, WHEN YOU LOOK AT 220 AS IT RELATES TO THE
24 TOTAL BUDGET OF 2.2 BILLION, IT DOESN'T SEEM AS LARGE, BUT WHEN
25 WE ARE REALLY LOOKING AT WHAT WE DO CONTROL, IT IS A VERY

1 SIGNIFICANT IMPACT. OBVIOUSLY, AFTER EIGHT YEARS OF HAVING TO
2 REDUCE BUDGETS, WE ARE REALLY DOWN TO VERY FEW CHOICES.

3 Q. AND WHAT TYPE OF PROGRAMS AND SERVICES DOES THE COUNTY USE
4 WITH ITS DISCRETIONARY GENERAL FUND DOLLARS?

5 A. WELL, THOSE DOLLARS ARE REALLY FOCUSED ON PUBLIC SAFETY
6 BECAUSE THE WAY IN WHICH COUNTIES ARE FUNDED, HEALTH, SOCIAL
7 SERVICES, THINGS ALONG THOSE LINES ARE OFTEN SIGNIFICANTLY
8 REIMBURSED BY STATE AND FEDERAL DOLLARS.

9 PUBLIC SAFETY IS DEFINED REALLY AS A LOCAL
10 RESPONSIBILITY, SO THE MAJORITY OF THOSE DISCRETIONARY FUNDS DO
11 FLOW INTO THAT PARTICULAR FUNCTIONAL AREA.

12 AT THE SAME TIME THE OTHER -- WHAT DISCRETIONARY
13 FUNDING IS LEFT REALLY IS ALLOCATED BASED ON THE BOARD'S
14 PRIORITIES.

15 IN OUR COUNTY THE BOARD HAS SET AS A VERY STRONG
16 PRIORITY THE FUNDING OF OUR SAFETY NET. SO WE ARE LOOKING AT
17 ALLOCATING AS MUCH FUNDING AS POSSIBLE TO ENHANCE MENTAL HEALTH,
18 DRUG AND ALCOHOL, PUBLIC HEALTH, THOSE KINDS OF SERVICES.

19 Q. IS THAT WHAT YOU MEAN BY SAFETY NET?

20 A. YES. THAT'S WHAT WE MEAN BY THE SAFETY NET.

21 Q. THE AMOUNT OF MONEY THAT YOU PUT INTO THE SAFETY NET
22 SERVICES, IS IT ENOUGH TO COVER THE SERVICES THAT ARE NEEDED BY
23 THE RESIDENTS OF SANTA CLARA COUNTY?

24 A. WELL, CLEARLY, AT THIS POINT WE DON'T BELIEVE THAT IT IS.

25 WHEN YOU LOOK AT WAITING LISTS IN PROGRAMS LIKE DRUG AND

1 ALCOHOL, YOU LOOK AT THE FACT THAT WE NO LONGER ARE ABLE TO
2 SERVE ALL OF THE RESIDENTS THAT REALLY PRESENT THEMSELVES FOR
3 THINGS LIKE MENTAL HEALTH SERVICES, OBVIOUSLY, THOSE ARE THE
4 AREAS WHERE WE HAVE GREAT CONCERNS IN TERMS OF THE OVERALL
5 HEALTH AND WELFARE OF OUR COMMUNITY.

6 AND WHAT HAPPENS IS -- IS THAT BY NOT BEING ABLE TO
7 REALLY ALLOCATE FUNDING TO THINGS LIKE PREVENTION AND TO TREAT
8 THE PEOPLE THAT PERHAPS AREN'T AS SICK, WE END UP SEEING THOSE
9 PEOPLE PRESENT THEMSELVES IN OUR MORE ACUTE ENVIRONMENTS LIKE,
10 FOR INSTANCE, THE EMERGENCY ROOM OR EMERGENCY MENTAL HEALTH
11 FACILITY AND EVEN IN OUR JAIL, BECAUSE THESE ARE THE PEOPLE THAT
12 MAY BE OFFENDING BECAUSE THEY DECOMPENSATE BECAUSE THEY ARE NOT
13 GETTING THE SERVICES THAT THEY NEED.

14 Q. AND THESE ARE PEOPLE THAT ARE OUT IN THE COMMUNITY THAT ARE
15 NOT GETTING SERVICES? YOU'RE SAYING YOU SEE THEM IN YOUR JAILS
16 AND IN THE EMERGENCY ROOMS?

17 A. ABSOLUTELY. AT THIS POINT THAT'S EXACTLY WHAT WE ARE
18 SEEING.

19 Q. SO WHAT HAPPENS WHEN THE COUNTY HAS TO ALLOCATE MONEY
20 TOWARDS JAILS AND EMERGENCY ROOMS AND TREATING MORE ACUTELY ILL
21 INDIVIDUALS?

22 A. WELL, TO THE EXTENT TO WHICH THOSE REQUIREMENTS -- BECAUSE
23 THOSE ARE MANDATES THAT WE HAVE, WE HAVE -- WE HAVE TO PROVIDE
24 THOSE SERVICES. WE HAVE TO -- WHEN INDIVIDUALS ARE BROUGHT TO
25 US BY THE CITY POLICE DEPARTMENTS INTO OUR JAIL, WE HAVE TO

1 HOUSE THEM. WHEN KIDS ARE BROUGHT INTO THE JUVENILE HALL, WE
2 HAVE TO HOUSE THEM. AND SAME THING WITH ACUTE MENTAL HEALTH.

3 WE DON'T HAVE A LOT OF CHOICE IN THOSE SITUATIONS.
4 SO AS THOSE POPULATIONS INCREASE, WE ARE FORCED TO REDUCE OUR
5 ALLOCATION OF FUNDING TO PROGRAMS LIKE PREVENTION. AND SO BY --
6 AND OTHER TYPES OF SERVICES SIMILAR TO THAT.

7 SO IN THOSE KINDS OF CIRCUMSTANCES, WE ARE OFTEN
8 FACED WITH THIS CONTRADICTION BECAUSE WE KNOW THAT FUNDING
9 PREVENTION MAKES SENSE. HOWEVER, WHEN THE RESOURCES ARE
10 DECLINING, WE HAVE TO MEET OUR MANDATES, AND THOSE MANDATES ARE
11 REALLY TAKING CARE OF THE ABSOLUTELY MOST SICK OR PEOPLE THAT
12 HAVE BROKEN THE LAW.

13 SO OUR DISCRETION REALLY HAS DECLINED SUBSTANTIALLY
14 AND WE ARE LEFT WITH VERY FEW CHOICES, AS I INDICATED BEFORE.

15 Q. YOU MENTIONED MANDATED SERVICES. ARE THOSE SERVICES THAT
16 ARE REQUIRED BY SOME TYPE OF LAW TO PROVIDE?

17 A. YES. THOSE ARE THINGS THAT ARE EITHER IN STATUTE OR THERE'S
18 A MANDATE THAT HAS BEEN PUT IN EFFECT BY THE STATE THAT REQUIRES
19 EITHER A CERTAIN SERVICE BE PROVIDED, AN ENTITLEMENT, OR A
20 CERTAIN TYPE OF SERVICE WHERE THE SERVICE LEVEL MIGHT BE --
21 THERE MAY BE SOME VARIATION IN THE SERVICE LEVEL, BUT WE HAVE TO
22 PROVIDE THAT PARTICULAR SERVICE.

23 Q. ARE THOSE MANDATED SERVICES, DOES THE STATE PROVIDE FUNDING
24 FOR THOSE SERVICES?

25 A. THE STATE PROVIDES FUNDING IN SOME CASES, BUT IN MANY CASES

1 THOSE MANDATES ARE NOT FULLY FUNDED.

2 AN EXAMPLE THAT YOU MIGHT BE FAMILIAR WITH IS THE
3 PROP 36, OR WHAT'S KNOWN AS THE SACPA PROGRAM, DRUG SERVICES FOR
4 INMATES. THAT WAS AN INITIATIVE THAT WAS PASSED SEVERAL YEARS
5 AGO IN WHICH THERE WAS FUNDING ATTACHED TO IT BEFORE A LIMITED
6 AMOUNT OF TIME. WHAT'S HAPPENED IS IS THAT BECAUSE WE BELIEVE
7 THAT THIS IS A PROGRAM THAT WORKS BECAUSE IT -- IT REALLY TAKES
8 INMATES, POTENTIAL INMATES, AND PUTS THEM INTO TREATMENT AS
9 OPPOSED TO JUST BEING PUT INTO -- INTO THE JAIL. THAT'S A
10 SITUATION THAT WE THINK MAKES SENSE BECAUSE THESE INDIVIDUALS
11 ARE GETTING TREATMENT FOR REALLY WHAT IS AN ILLNESS.

12 THE COUNTY HAS, IN FACT, ALLOCATED DISCRETIONARY
13 DOLLARS IN THE PLACE OF REALLY WHAT SHOULD BE FUNDING FROM THE
14 STATE, BECAUSE THIS WAS AN INITIATIVE PASSED BY THE PEOPLE. AT
15 THIS POINT IN TIME, YOU KNOW, THE COUNTY IS PUTTING BETWEEN A
16 HALF AND TWO-THIRDS OF THE FUNDING FOR THIS PROGRAM WHICH WAS,
17 IN FACT, SOMETHING THAT WAS THRUST UPON US THROUGH THIS PROP 36
18 INITIATIVE.

19 SO, YOU KNOW, FROM AN OVERALL PERSPECTIVE, YOU KNOW,
20 OUR COUNTY HAS SEEN POSITIVE RESULTS FROM THIS PROGRAM. OUR
21 COMPLETION RATE IS AMONG THE HIGHEST IN THE STATE AT AROUND
22 56 PERCENT.

23 AND SO THIS IS JUST AN EXAMPLE OF A PROGRAM WHERE WE
24 ARE BEING FORCED TO PUT DISCRETIONARY FUNDING INTO THAT PROGRAM
25 INSTEAD OF GETTING THE FULL FUNDING FROM THE STATE.

1 Q. AND BY SACPA, YOU MEAN THE SUBSTANCE ABUSE AND CRIME
2 PREVENTION ACT OF 2000?

3 A. THAT'S WHAT I MEAN, YEAH.

4 Q. AND YOU SAID THAT PROGRAM IS SUCCESSFUL IN SANTA CLARA
5 COUNTY?

6 A. IT IS. WE BELIEVE IT'S SUCCESSFUL, AND THE COURT AND
7 ADMINISTRATION HAVE REALLY GOTTEN TOGETHER AND ARE COMMITTED TO
8 THE PROGRAM BECAUSE IT DOES TAKE INMATES OUT OF THE PRISON --
9 OUT OF OUR JAIL SYSTEM AND PUTS THEM INTO TREATMENT, WHICH WE
10 THINK IS A MUCH MORE REASONABLE WAY. IT POTENTIALLY OFFERS THEM
11 THE ABILITY TO REHABILITATE, AS OPPOSED TO RECIDIVATE.

12 Q. AND DID YOU SAY THAT THE STATE PROVIDES ONLY ABOUT ONE-THIRD
13 OF THE FUNDING FOR THAT PROGRAM?

14 A. ONE-THIRD OF THE FUNDING THAT'S REALLY REQUIRED TO MAKE THAT
15 PROGRAM WORK.

16 Q. AND THE COUNTY ALLOCATES ITS OWN DISCRETIONARY MONEY TO MAKE
17 UP THE DIFFERENCE?

18 A. THAT'S CORRECT.

19 Q. IS THE COUNTY ABLE TO SERVE ALL OF THE PEOPLE WHO WOULD
20 BENEFIT FROM THAT PROGRAM?

21 A. WHAT HAPPENS IS, IS THAT, YOU KNOW, AS INDIVIDUALS COME
22 THROUGH THAT PROGRAM BASED ON THE MANDATE, YOU KNOW, THERE ARE
23 ISSUES IN TERMS OF HOW LONG THEY MAY HAVE TO WAIT TO ACTUALLY
24 GET INTO TREATMENT, BECAUSE THERE AREN'T ENOUGH RESOURCES TO
25 TREAT EVERYBODY IN THE TIME FRAME THAT WE WOULD LIKE TO SEE.

1 AND SO THERE ARE WAITING LISTS. THERE ARE -- INMATES ARE
2 SPENDING MORE TIME IN JAIL THAN THEY SHOULD BECAUSE THEY HAVE TO
3 WAIT FOR A BED TO BECOME AVAILABLE.

4 AND WHAT'S OF GREATER CONCERN IS THE FACT THAT THE
5 STATE CONTINUES TO REDUCE THE RESOURCES ALLOCATED TO THE SACPA
6 PROGRAM. SO AT THIS POINT IN TIME WE DON'T HAVE THE FLEXIBILITY
7 TO CONTINUE TO ALLOCATE THOSE DISCRETIONARY RESOURCES, SO WE ARE
8 BEING FORCED TO REDUCE THE BEDS AVAILABLE FOR THAT PROGRAM.

9 Q. SO WHAT HAPPENS WHEN THE COUNTY HAS TO APPLY ITS OWN FUNDS
10 TOWARDS THE SACPA PROGRAM?

11 A. WELL, BASICALLY WHAT IT MEANS IS THAT THAT'S FUNDING THAT IS
12 NOT ABLE TO BE ALLOCATED TO OTHER IMPORTANT PREVENTION PROGRAMS,
13 WHETHER THEY BE IN MENTAL HEALTH OR SOCIAL SERVICES, WRAP-AROUND
14 SERVICES, WHATEVER THEY MIGHT BE.

15 OBVIOUSLY, WHEN WE HAVE TO COVER A MANDATE, THOSE
16 FUNDS ARE NOT AVAILABLE FOR LOCAL PRIORITIES.

17 Q. SO FOR THE -- WHAT ABOUT THE PEOPLE WHO ARE NOT OFFENDING?
18 ARE THEY ABLE TO ACCESS SERVICES?

19 A. OF COURSE, THAT'S ANOTHER ISSUE. THE ISSUE OF THE FACT THAT
20 MUCH OF THE MONEY THAT'S BEING PUT FORWARD NOW, EVEN THROUGH
21 THINGS LIKE THE MENTAL HEALTH SERVICES ACT AND OTHER NEW
22 FUNDING, IS REALLY BEING ALLOCATED TO OR COMING FROM THE STATE
23 IN THE FORM OF PROGRAMS IN THE CRIMINAL JUSTICE AREA. SO YOUR
24 AVERAGE PERSON WHO MIGHT HAVE A SUBSTANCE ABUSE ISSUE OR MENTAL
25 HEALTH ISSUE, THERE IS LESS BEDS OR THERE'S LESS SERVICES

1 AVAILABLE. AND WE ARE CONCERNED BECAUSE THAT REALLY IS AN
2 EQUITY ISSUE AS WE SEE IT.

3 **Q.** DID YOU FORM AN OPINION AS TO WHAT IMPACT, IF ANY, A STATE
4 PRISONER POPULATION REDUCTION WOULD HAVE ON THE COUNTY OF SANTA
5 CLARA?

6 **A.** I DID.

7 **Q.** AND WHAT WAS YOUR OPINION?

8 **A.** OBVIOUSLY, WE HAVE GREAT CONCERNS ABOUT IF, IN FACT, THESE
9 INDIVIDUALS WERE TO COME INTO OUR COMMUNITY IN TERMS OF OUR
10 ABILITY TO EITHER PROVIDE SERVICES OR TO THE EXTENT TO WHICH,
11 IF, IN FACT, THERE WAS A CAP AND WE WERE UNABLE TO TRANSPORT
12 THESE PRISONERS INTO THE STATE SYSTEM, HOW THAT WOULD IMPACT OUR
13 JAIL SYSTEM AND OUR ABILITY TO PROVIDE SERVICES.

14 **Q.** WILL THE COUNTY SUFFER ANY TYPE OF HARDSHIP IF THE PRISONERS
15 WERE RELEASED INTO THE COMMUNITY?

16 **A.** CERTAINLY WITHOUT ADDITIONAL RESOURCES, WE THINK WE ARE
17 DEFINITELY AT RISK. I MEAN, EVEN THOUGH WE ARE NOT UNDER COURT
18 ORDER, OUR JAIL IS GETTING VERY CLOSE TO BE FULL. WE HAVE VERY
19 LITTLE FLEXIBILITY AND WE BELIEVE THAT TO ANY EXTENT IN WHICH
20 THERE WOULD BE ADDITIONAL INMATES OR ADDITIONAL INDIVIDUALS WHO
21 WOULD BE COMING INTO THE COMMUNITY OR THAT WE COULD NOT TRANSFER
22 TO THE STATE, THAT THAT WOULD CREATE A VERY DIFFICULT SITUATION
23 FOR US.

24 **Q.** WOULD YOUR OPINION CHANGE IF THE STATE WERE TO PROVIDE THE
25 COUNTIES WITH FUNDING TO PAY FOR SERVICES FOR RELEASED

1 PRISONERS?

2 **A.** I --

3 **MS. MORRIS:** COULD YOU SPEAK UP? I'M HAVING A HARD
4 TIME HEARING YOU.

5 **BY MS. FUENTES:**

6 **Q.** WOULD YOUR OPINION CHANGE IF THE STATE WERE TO PROVIDE
7 COUNTIES WITH FUNDING TO PAY FOR SERVICES AND PROGRAMS FOR
8 RELEASED PRISONERS?

9 **A.** I THINK CLEARLY THE IMPACT OF ADDITIONAL RESOURCES IN TERMS
10 OF LOOKING AT WAYS THAT WE CAN ADDRESS THIS PROBLEM, YOU KNOW,
11 CERTAINLY WOULD MAKE A DIFFERENCE. WHAT THAT DIFFERENCE WOULD
12 BE IS SORT OF HARD TO DETERMINE AT THIS POINT IN TIME.

13 CLEARLY, OUR CONCERN IS, AND WE HAVE SEEN THIS BEFORE
14 WITH REALIGNMENT PROGRAMS, YOU KNOW, WHERE THE STATE HAS, IN
15 FACT, PROVIDED FUNDING UP FRONT AND THEN HAVE LEFT US WITH A
16 PROGRAM IN PLACE AND THEN ELIMINATED THE FUNDING.

17 THE LEVEL OF TRUST BETWEEN THE COUNTY AND THE STATE
18 IS PROBABLY AT AN ALL TIME LOW. WE JUST DON'T TRUST THE STATE.
19 THEY HAVE NOT MADE GOOD ON THEIR PROMISES. SO FROM THAT
20 PERSPECTIVE, YOU KNOW, WE WOULD LOOK AT THIS, YOU KNOW, VERY
21 CAREFULLY. I THINK THAT THAT REALLY WOULD BE A MAJOR CONCERN
22 FOR US.

23 **Q.** DO YOU HAVE ANY OTHER CONCERNS?

24 **A.** WELL, I THINK THAT WHEN WE LOOK AT THE CAPACITY OF OUR
25 SYSTEMS IN TERMS OF MENTAL HEALTH PROVIDERS, DRUG AND ALCOHOL

1 PROVIDERS, TO ACTUALLY BE IN A POSITION TO HAVE ENOUGH
2 RESOURCES, LITERALLY, TO PROVIDE THE SERVICE, YOU KNOW, THAT
3 DEFINITELY IS A CONCERN AS WELL.

4 WE JUST ARE -- WE AT THIS POINT ARE UNSURE DEPENDING
5 ON HOW EITHER A RELEASE OR A -- A CAP WOULD WORK, HOW THAT WOULD
6 IMPACT OUR SYSTEM'S ABILITY TO TREAT THESE INDIVIDUALS.

7 Q. OKAY. THANK YOU.

8 THE COURT: ANYTHING FROM STATE DEFENDANTS?

9 MR. LEWIS: NO QUESTIONS, YOUR HONOR.

10 THE COURT: CROSS-EXAMINATION?

11 MS. MORRIS: MARIE MORRIS FROM ROSEN, BIEN AND GALVAN
12 ON BEHALF OF THE PLAINTIFFS.

13 JUDGE REINHARDT: COULD YOU SPEAK UP A LITTLE BIT?

14 MS. MORRIS: CERTAINLY.

15 CROSS EXAMINATION

16 BY MS. MORRIS:

17 Q. MR. GRAVES, YOUR EXPERTISE IS IN BUDGETING AND RESOURCE
18 ALLOCATION, CORRECT?

19 A. THAT'S CERTAINLY WHERE I HAVE SPENT MOST OF MY CAREER, YES.

20 Q. YOU DON'T HAVE ANY EDUCATION OR TRAINING IN CRIMINAL
21 JUSTICE, DO YOU?

22 A. I DON'T HAVE AN EDUCATION, BUT I HAVE SPENT SEVERAL YEARS
23 OVERSEEING THAT OPERATION FROM A MANAGEMENT PERSPECTIVE.

24 Q. NOT WITHIN THE CRIMINAL JUSTICE SYSTEM, BUT IN TERMS OF
25 COUNTY MANAGEMENT?

1 **A.** THAT'S CORRECT.

2 **Q.** OKAY. AND YOUR RESUME DOESN'T LIST ANY EMPLOYMENT WITH ANY
3 MENTAL HEALTH SERVICES PROVIDERS, IS THAT CORRECT?

4 **A.** THAT'S CORRECT.

5 **Q.** OR WITH ANY PUBLIC HEALTHCARE PROVIDER?

6 **A.** THAT'S CORRECT.

7 **Q.** OR WITH ANY SUBSTANCE ABUSE TREATMENT PROVIDER?

8 **A.** THAT'S CORRECT.

9 **Q.** OR WITH ANY HOMELESS OR HOUSING SERVICES PROVIDER?

10 **A.** THAT'S CORRECT.

11 **Q.** OR WITH A CORRECTIONAL FACILITY OR SYSTEM?

12 **A.** THAT'S CORRECT.

13 **Q.** YOU KNOW THAT THE VIOLENT CRIME RATE IN SANTA CLARA COUNTY
14 HAS DECREASED SINCE 1997, DON'T YOU?

15 **A.** IN TERMS OF ITS DECREASE FROM WHEN TO WHEN?

16 **Q.** FROM 1997 TO THE PRESENT.

17 **A.** I DON'T KNOW THAT AND, CERTAINLY, THAT'S NOT BEEN WHAT'S
18 REPORTED IN TERMS OF WHERE THE CRIME RATE HAS BEEN MOVING IN THE
19 LAST SEVERAL MONTHS.

20 **Q.** OKAY. TO BE FAIR, I ONLY HAVE STATISTICS THROUGH 2006.

21 **MS. MORRIS:** AND IF YOU COULD GO AHEAD AND PUT UP THE
22 CRIME RATE STATISTICS FOR SANTA CLARA COUNTY?

23 **JUDGE HENDERSON:** ARE YOU BOTH TALKING ABOUT THE SAME
24 THING? YOUR QUESTION ASKED ABOUT VIOLENT CRIME RATE. YOUR
25 ANSWER WAS CRIME RATE. I ASSUME THOSE ARE DIFFERENT CRIMES.

1 **MS. FUENTES:** I WOULD LIKE TO IMPOSE AN OBJECTION
2 THAT THE EXPERT IS NOT QUALIFIED. HE IS NOT AN EXPERT OF
3 CRIMINAL JUSTICE.

4 **JUDGE HENDERSON:** SHE IS ASKING HIS KNOWLEDGE OF THIS
5 FACT FOR NOW.

6 **MS. MORRIS:** AND THIS IS IMPEACHMENT ON HIS ASSERTION
7 IN HIS TRIAL DECLARATION ABOUT THE IMPACT ON PUBLIC SAFETY OF
8 RELEASING PEOPLE WITHOUT APPROPRIATE SERVICES AND HOUSING.

9 (DOCUMENT DISPLAYED)

10 **JUDGE KARLTON:** IS THIS AN EXHIBIT?

11 **MS. MORRIS:** THIS WILL BE AN IMPEACHMENT EXHIBIT.

12 **JUDGE KARLTON:** IS IT IN EVIDENCE NOW?

13 **MS. MORRIS:** IT IS NOT CURRENTLY IN EVIDENCE.

14 **JUDGE KARLTON:** DO YOU HAVE ANYTHING ABOUT THIS
15 DOCUMENT? HAVE YOU EVER SEEN IT?

16 **MS. FUENTES:** I DON'T HAVE A COPY OF THIS EITHER.

17 **THE WITNESS:** I HAVE NOT SEEN THIS DOCUMENT BEFORE.

18 **JUDGE HENDERSON:** IF HE HASN'T SEEN, IT'S REALLY HARD
19 TO IMPEACH HIM ON IT.

20 **JUDGE KARLTON:** AND NOBODY IS TESTIFYING TO THE TRUTH
21 OF THE DOCUMENT.

22 **MS. MORRIS:** THIS IS -- I COULD REQUEST JUDICIAL
23 NOTICE FOR THIS. THIS IS A -- FROM THE -- THE ATTORNEY
24 GENERAL'S -- CALIFORNIA ATTORNEY GENERAL'S CRIMINAL JUSTICE
25 STATISTICS CENTER. I CAN PASS IT.

1 **MS. FUENTES:** YOUR HONOR, I OBJECT TO THE DOCUMENT.
2 I STILL DON'T HAVE A COPY OF IT AND THE WITNESS HASN'T SEEN IT.

3 **JUDGE HENDERSON:** YOUR OFFER IS THAT THIS DOCUMENT
4 DID IMPEACH MR. GRAVES?

5 **MS. MORRIS:** MR. GRAVES IN HIS DECLARATION STATES
6 THAT:

7 "RELEASING PAROLEES WITHOUT HOUSING,
8 SUBSTANCE ABUSE, MENTAL HEALTH AND HEALTHCARE
9 SERVICES WILL HAVE A SIGNIFICANT NEGATIVE
10 IMPACTS TO PUBLIC SAFETY."
11 AND SO I WANT TO EXPLORE WITH HIM THE EFFECT THAT
12 RELEASING PAROLEES HAS IN THE PAST HAD ON PUBLIC SAFETY.

13 **JUDGE HENDERSON:** EXPLORING WITH HIM IS DIFFERENT
14 FROM IMPEACHING HIM.

15 **JUDGE KARLTON:** I SUPPOSE YOU CAN ASK HIM A QUESTION,
16 BUT IF HE HAS NEVER SEEN THE DOCUMENT AND HE DOESN'T KNOW ABOUT
17 IT. I DON'T KNOW...

18 **JUDGE HENDERSON:** WELL, LET'S SEE WHERE YOU ARE
19 GOING. EXPLORE WITH HIM THIS.

20 **BY MS. MORRIS:**

21 **Q.** ARE YOU AWARE OF HOW MANY VIOLENT CRIMES THERE WERE IN
22 1997 --

23 **A.** NO.

24 **Q.** -- IN SANTA CLARA COUNTY?

25 **A.** ARE YOU ASKING ME IF BEFORE I HAVE SEEN THIS DOCUMENT WAS I

1 AWARE OF THE NUMBER OR BY LOOKING AT THIS DOCUMENT CAN I TELL
2 YOU THE NUMBER?

3 **Q.** WERE YOU AWARE OF THE NUMBER PREVIOUS TO LOOKING AT THIS
4 DOCUMENT?

5 **A.** NO.

6 **Q.** DOES THE 9,307 NUMBER SEEM LIKE LIKELY TO BE CORRECT TO YOU
7 FROM YOUR KNOWLEDGE IN THE COUNTY GOVERNMENT?

8 **MS. FUENTES:** OBJECTION, YOUR HONOR.

9 **A.** NO, THAT --

10 **JUDGE HENDERSON:** YOU CAN ANSWER THAT.

11 **A.** NO. I AM NOT FAMILIAR WITH THAT SORT OF LEVEL OF DETAIL
12 THAT YOU ARE REFERRING TO.

13 **BY MS. MORRIS:**

14 **Q.** SO YOU ARE NOT ACTUALLY FAMILIAR WITH THE CRIME RATES IN SAN
15 MATEO -- SORRY, SANTA CLARA COUNTY?

16 **A.** NOT SPECIFICALLY.

17 **Q.** OKAY.

18 **JUDGE REINHARDT:** WHY DON'T YOU ASK HIM ON WHAT BASIS
19 HE HAS STATED THAT THE CRIME RATE HAS BEEN INCREASING?

20 **JUDGE KARLTON:** ACTUALLY, ANSWER JUDGE REINHARDT'S
21 QUESTION. WE DON'T HAVE TO PUT IT THROUGH THE WITNESS.

22 I MEAN, IF YOU DIDN'T KNOW WHAT IT WAS IN THE PAST,
23 HOW CAN YOU KNOW IT'S GOING UP NOW?

24 **THE WITNESS:** I THINK THE OPINION THAT I WAS PUTTING
25 FORWARD WAS THAT IF, IN FACT, THERE WAS A SIGNIFICANT ADDITIONAL

1 NUMBER OF INDIVIDUALS COMING FROM THE STATE SYSTEM, THAT THAT
2 WOULD BE A LOGICAL EXPECTATION THAT WE WOULD HAVE.

3 **JUDGE KARLTON:** FIRST OF ALL, SIR, WHAT YOU SAID WAS
4 THAT IT'S GOING UP IN THE LAST COUPLE OF MONTHS. LET'S TAKE
5 THAT FIRST AND THEN WE WILL TALK ABOUT LOGIC LATER.

6 DO YOU HAVE ANY BASIS FOR YOUR OPINION THAT THE CRIME
7 RATE IS RISING IN THE LAST COUPLE OF MONTHS?

8 **THE WITNESS:** I'M NOT FAMILIAR -- THAT WASN'T WHAT I
9 THOUGHT THAT I HAD SAID. I THOUGHT IN MY DECLARATION, NO
10 EXPECTATION --

11 **JUDGE KARLTON:** I'M TALKING ABOUT WHAT YOU SAID HERE.
12 OKAY. THE ANSWER IS NO, YOU DON'T HAVE ANY.

13 **BY MS. MORRIS:**

14 **Q.** DO YOU HAVE ANY BASIS BESIDES YOUR THOUGHTS FOR YOUR
15 ASSERTION IN YOUR DECLARATION THAT THE RELEASE OF PAROLEES WOULD
16 LEAD TO AN INCREASE IN -- WOULD HAVE A NEGATIVE IMPACT ON PUBLIC
17 SAFETY?

18 **A.** AGAIN, THE OPINION THAT I PUT FORWARD WAS THAT THE
19 EXPECTATION IF, IN FACT, THERE WAS A RELEASE OF INDIVIDUALS THAT
20 HAD NOT RECEIVED SERVICES THAT -- AND HAD VERY LITTLE REASON OR
21 OPPORTUNITY FOR EMPLOYMENT, THAT KIND OF THING, OUR EXPECTATION
22 WOULD BE THAT WOULD HAVE AN IMPACT ON PUBLIC SAFETY.

23 **Q.** DO YOU HAVE ANY BASIS FOR THAT EXPECTATION? THAT'S MY
24 QUESTION.

25 **A.** IN FACT? NO. I DON'T HAVE A SPECIFIC FACT TO PUT FORWARD,

1 NO.

2 Q. THANK YOU.

3 I WOULD LIKE TO GO OVER A COUPLE OF THE NUMBERS IN
4 THE REPORT THAT YOU SUBMITTED. YOU STARTED -- YOU HAD A COUPLE
5 OF DIFFERENT ESTIMATES FOR A POPULATION REDUCTION MEASURE FROM
6 THE PRISONS, AND ONE OF YOUR NUMBERS WAS 3500 --

7 A. THAT'S CORRECT.

8 Q. -- CORRECT?

9 AND THIS -- MY UNDERSTANDING IS THAT YOU GOT THIS
10 USING THE LEGISLATIVE ANALYSTS OFFICE DOCUMENT REGARDING A
11 SUPERVISION TRANSFER THAT THEY PUT FORWARD DURING THE BUDGETING
12 PROCESS THIS SPRING, CORRECT?

13 A. THAT'S CORRECT.

14 Q. AND THE LAO, THE LEGISLATIVE ANALYSTS OFFICE, THEY SUCCEEDED
15 THAT 71,000 PEOPLE, PAROLEES, BE TRANSFERRED FROM STATE PAROLE
16 TO COUNTY SUPERVISION, CORRECT?

17 A. YES.

18 Q. AND SO YOU USED THE NUMBER OF 3.6 PERCENT, WHICH IS THE
19 PROPORTION OF PRISONERS IN CDCR THAT COME FROM SANTA CLARA
20 COUNTY, AND APPLIED THAT 3.6 PERCENT TO THE 71,000, IS THAT
21 CORRECT?

22 A. I BELIEVE THAT'S CORRECT.

23 Q. AND THAT'S HOW YOU CAME UP WITH THE 3,500?

24 A. UMM, I THINK THAT IN THAT PARTICULAR CASE -- I DON'T KNOW
25 THAT IT WAS 3.6 PERCENT NOW THAT I'M THINKING.

1 THERE WERE TWO ESTIMATES THAT WE WERE MAKING. ONE
2 WAS IF THERE WAS A POPULATION CAP. AND OUR DEPARTMENT OF
3 CORRECTIONS, WE ASKED THEM TO GIVE US AN ESTIMATE IF THERE WAS A
4 POPULATION CAP WHAT, IN FACT, WOULD BE THE IMPACT.

5 AND I THINK IN TERMS OF THE PAROLE REALIGNMENT, I
6 THINK WE USED A DIFFERENT -- A DIFFERENT PERCENTAGE. GENERALLY
7 SANTA CLARA COUNTY IS 5 PERCENT. WE USED 5 PERCENT AS THE
8 PERCENTAGE FIGURE. SO I THINK IN THE CASE OF THE PAROLE
9 REALIGNMENT, WE WERE JUST USING THAT FIGURE TO COME UP WITH A
10 GENERAL ROUGH ESTIMATE SO THAT WE COULD CALCULATE WHAT THE
11 IMPACTS WOULD BE.

12 **JUDGE KARLTON:** WAIT. 5 PERCENT OF WHAT? OF THE
13 TOTAL POPULATION OF CALIFORNIA?

14 **THE WITNESS:** IN TERMS OF DETERMINING THE IMPACT OF
15 PAROLE REALIGNMENT? YES. 5 PERCENT IS THE NUMBER THAT WE
16 GENERALLY USE. THAT'S THE FIGURE THAT'S APPLICABLE TO SANTA
17 CLARA COUNTY; 5 PERCENT OF POPULATION, 5 PERCENT OF THE BUDGET,
18 WHATEVER IT MIGHT BE. 5 PERCENT IS WHAT OUR SHARE IS GENERALLY.

19 **JUDGE KARLTON:** MR. GRAVES, I DON'T UNDERSTAND YOUR
20 TESTIMONY. PLEASE FORGIVE ME.

21 YOU HAVE GOT THE NUMBER 5 PERCENT AS IT RELATES TO
22 SOMETHING. WHAT DOES IT RELATE TO?

23 **THE WITNESS:** RELATES TO THE POPULATION.

24 **JUDGE KARLTON:** ALL RIGHT.

1 **BY MS. MORRIS:**

2 **Q.** THE POPULATION OF SANTA CLARA COUNTY TO THE POPULATION OF
3 CALIFORNIA?

4 **A.** THAT'S CORRECT.

5 **Q.** OKAY. THAT 71,000 THAT YOU STARTED AT, THAT WAS NOT
6 PROPOSED BY THE PLAINTIFFS AT ANY POINT TO YOUR KNOWLEDGE, WAS
7 IT?

8 **A.** NO.

9 **Q.** THAT ACTUALLY CAME FROM THE LAO, STATE GOVERNMENT OFFICE?

10 **A.** THAT'S CORRECT.

11 **Q.** OKAY. AND THAT'S ALSO A PROPOSAL ABOUT PAROLE REALIGNMENT,
12 CORRECT?

13 **A.** THAT'S CORRECT.

14 **Q.** SO THAT'S ABOUT TRANSFERRING RESPONSIBILITY FOR SUPERVISION
15 OF PEOPLE IN THE COMMUNITY, CORRECT?

16 **A.** THAT'S CORRECT.

17 **Q.** SO IT'S NOT PARTICULARLY ABOUT ADDING ADDITIONAL PEOPLE INTO
18 THE COMMUNITY?

19 **A.** WELL, I BELIEVE THAT THEIR PROPOSAL WAS A WAY IN WHICH TO
20 REDUCE THE JAIL POPULATION AT THE STATE LEVEL, SO THAT'S WHY WE
21 BELIEVED THAT IT WAS A PARALLEL CIRCUMSTANCE SUBSTANCES.

22 WHAT WE WERE SIMPLY TRYING TO DO WAS PROVIDE
23 INFORMATION ABOUT WHAT THE IMPACT THAT WOULD BE, AND THAT WAS
24 SOMETHING THAT WE BELIEVED WAS PARALLEL TO WHAT IS BEING
25 DISCUSSED IN THIS CASE.

1 IT CERTAINLY WAS NOT, AS YOU INDICATED, A PROPOSAL
2 FROM THE PLAINTIFFS, BUT IT WAS AN EXAMPLE OF A WAY IN WHICH TO
3 REDUCE JAIL POPULATION.

4 Q. BUT IT WOULD NOT -- THE SIMPLE EFFECT OF TRANSFERRING --

5 JUDGE KARLTON: SIR, YOU UNDERSTAND THAT PAROLEES ARE
6 PEOPLE WHO ARE OUTSIDE OF THE PRISON?

7 THE WITNESS: I DO UNDERSTAND THAT.

8 JUDGE KARLTON: SO WHEN YOU TALK ABOUT TRANSFERRING
9 PAROLE SUPERVISION, YOU ARE TALKING ABOUT TRANSFERRING
10 SUPERVISION OF PEOPLE WHO ARE NO LONGER IN PRISON.

11 THE WITNESS: THAT'S CORRECT.

12 JUDGE KARLTON: AND YOU THINK THAT'S PARALLEL TO WHAT
13 WE ARE CONCERNED WITH HERE?

14 THE WITNESS: WELL, THE LAO'S PROPOSAL WAS A WAY IN
15 WHICH TO RELEASE PEOPLE FROM THE STATE PRISON ON TO PAROLE.

16 JUDGE KARLTON: OKAY.

17 BY MS. MORRIS:

18 Q. OKAY. I WOULD LIKE TO LOOK A LITTLE BIT AT THE 1500 NUMBER,
19 SORT OF THE BOTTOM END OF YOUR ESTIMATION.

20 THAT WAS BASED ON AN ASSUMPTION OF A RELEASE OF
21 40,000 PEOPLE FROM CDCR, CORRECT?

22 A. YES.

23 Q. AND YOU MULTIPLIED THAT 40,000. THAT'S WHERE YOU MULTIPLIED
24 IT BY 3.6, CORRECT?

25 A. THAT'S CORRECT.

1 Q. AND THAT'S HOW YOU CAME UP WITH THE 1500?

2 A. YES.

3 Q. I ACTUALLY WANT TO GO TO A DIFFERENT NUMBER. LET'S LOOK AT
4 WHAT PLAINTIFF'S PROPOSAL ACTUALLY IS, WHICH IS THAT AS IT
5 APPLIES TO CDCR, PLAINTIFFS ARE PROPOSING A PHASED REDUCTION OF
6 THE POPULATION IN CDCR BY 52,000 INMATES.

7 SO I HAVE -- I HAVE TAKEN THAT 52,000, MULTIPLIED IT
8 BY 3.6 PERCENT, AS I WAS UNDERSTANDING THAT WAS YOUR
9 METHODOLOGY, AND I CAME UP WITH 1,872; DOES THAT SOUND ABOUT
10 RIGHT TO YOU?

11 A. THAT SOUNDS ABOUT RIGHT.

12 Q. OKAY. AND UNDER PLAINTIFF'S PROPOSAL THAT WOULD BE DONE
13 OVER THE COURSE OF 24 MONTHS. SO I DIVIDED THAT 1872 BY 24 AND
14 I CAME UP WITH 78 SOMETHING -- I CAME UP WITH 78, OKAY?

15 A. UH-HUH.

16 Q. SO WHAT WE ARE PROPOSING IS AN ADDITION OF 78 PAROLEES
17 RETURNING TO SANTA CLARA COUNTY EVERY MONTH, OKAY.

18 SO I WOULD JUST LIKE TO WALK THROUGH SOME OF THE
19 THINGS WE TALKED ABOUT -- YOU TALK ABOUT IN YOUR REPORT USING
20 THAT NUMBER.

21 FIRST OF ALL, YOU TESTIFIED THAT THE POPULATION OF
22 SANTA CLARA COUNTY IS 1.7 MILLION ABOUT?

23 A. THAT'S CORRECT.

24 Q. SO AN ADDITION OF 78 PEOPLE EVERY MONTH FROM CDCR, THAT
25 WOULD ACTUALLY INCREASE THE POPULATION BY -- MY ESTIMATE IS

1 .004 PERCENT; DOES THAT SOUND RIGHT?

2 **A.** IF YOU LOOK AT IT THAT WAY, YES.

3 **JUDGE REINHARDT:** 004 PERCENT PER MONTH?

4 **MS. MORRIS:** UH-HUH.

5 **BY MS. MORRIS:**

6 **Q.** DO YOU KNOW HOW MANY PAROLEES THERE ARE IN SANTA CLARA
7 COUNTY TODAY?

8 **A.** NOT OFF THE TOP OF MY HEAD, NO.

9 **Q.** DO YOU USUALLY KNOW HOW MANY THERE ARE IN SANTA CLARA
10 COUNTY?

11 **A.** THAT'S NOT A NUMBER THAT I NORMALLY KEEP TRACK OF ON A
12 WEEKLY BASIS AS I WOULD, FOR INSTANCE, OUR JAIL POPULATION.

13 **Q.** OKAY. DO YOU KNOW IF IT'S THE SAME NUMBER OF PAROLEES
14 COMING BACK TO SANTA CLARA COUNTY EVERY SINGLE MONTH?

15 **A.** NO, I WOULDN'T KNOW THAT.

16 **Q.** SO YOU WOULDN'T KNOW IF THERE WERE, SAY, 300 OR 400 OR 500
17 COMING BACK ANY PARTICULAR MONTH?

18 **A.** NOT UNLESS I LOOKED AND PURSUED THAT INFORMATION.

19 **Q.** BUT YOU DON'T LOOK AND PURSUE THAT INFORMATION?

20 **A.** NOT NORMALLY, NO.

21 **Q.** OKAY. UNDER CALIFORNIA LAW PERSONS WHO ARE SENT FROM SANTA
22 CLARA COUNTY TO CDCR, THEY ARE GOING TO PAROLE BACK TO SANTA
23 CLARA COUNTY IN GENERAL, CORRECT?

24 **A.** YES.

25 **Q.** AND PAROLE VIOLATORS WHO ARE IN SANTA CLARA COUNTY AND ARE

1 SENT BACK TO CDCR FOR A PAROLE VIOLATION, THEY ARE GOING TO BE
2 SENT BACK TO SANTA CLARA COUNTY AFTER THEY FINISH THEIR
3 REVOCATION TERM, CORRECT?

4 **A.** YES.

5 **Q.** AND PEOPLE IN CDCR FROM OTHER COUNTIES ARE GENERALLY NOT
6 GOING TO BE RETURNED TO SANTA CLARA COUNTY, CORRECT?

7 **A.** AS FAR AS I KNOW, YES.

8 **Q.** DO YOU UNDERSTAND THAT AS TO THOSE PEOPLE THAT ARE IN CDCR,
9 PLAINTIFFS'S PROPOSAL WOULD ONLY RESULT IN PEOPLE BEING RELEASED
10 A FEW MONTHS EARLY?

11 **A.** I HAVE A GENERAL SENSE OF WHAT YOUR PROPOSAL IS, YES.

12 **Q.** AND DO YOU UNDERSTAND THAT AS FAR AS PEOPLE WHO ARE IN CDCR,
13 THE PROPOSAL IS ONLY TO RELEASE PEOPLE A FEW MONTHS EARLY?

14 **A.** I DON'T KNOW SPECIFICALLY HOW MANY MONTHS EARLY, BUT I -- I
15 UNDERSTAND THAT GENERALLY THE PROPOSALS HAVE BEEN PEOPLE TOWARDS
16 THE END OF THEIR TERM.

17 **Q.** SO YOU WOULD UNDERSTAND, ALSO, THAT PLAINTIFFS ARE NOT
18 PROPOSING THAT PEOPLE WHO WOULD NOT BE PAROLING EVER BE
19 RELEASED, CORRECT?

20 **A.** YES.

21 **Q.** SO THESE 78 ADDITIONAL PAROLEES THAT WE HAVE BEEN TALKING
22 ABOUT, THOSE ARE PEOPLE THAT WOULD BE RETURNING TO SANTA CLARA
23 COUNTY AT SOME POINT IN THE RELATIVELY NEAR FUTURE IN ANY EVENT,
24 CORRECT?

25 **A.** YES.

1 Q. YOU MAKE THE CLAIM IN YOUR EXPERT REPORT THAT THE RELEASE OF
2 THE CDCR PRISONERS WOULD OVERWHELM SANTA CLARA COUNTY'S
3 CORRECTIONAL FACILITIES.

4 AT THE TIME THAT YOU WROTE YOUR REPORT, SANTA CLARA
5 COUNTY HAD 643 EMPTY BEDS, CORRECT?

6 A. THAT IS CORRECT.

7 Q. AND TODAY THERE ARE MORE THAN 900 EMPTY BEDS, AREN'T THERE?

8 A. TODAY I BELIEVE THAT THE LAST FIGURE THAT I SAW WAS -- I
9 BELIEVE IT WAS AROUND 700. IT WAS CAPACITY. I THINK OUR
10 POPULATION, THE LAST I LOOKED, WAS AROUND 4600.

11 MS. MORRIS: OKAY. COULD YOU PUT UP THE DAILY
12 POPULATION STATISTICS? OR I CAN DISTRIBUTE THEM.

13 MS. FUENTES: CAN WE HAVE SOME FOUNDATION FOR THIS
14 DOCUMENT?

15 MS. MORRIS: THIS IS THE SANTA CLARA COUNTY
16 DEPARTMENT OF CORRECTIONS WEBSITE DAILY POPULATION.

17 MS. FUENTES: WHICH DAY?

18 MS. MORRIS: TODAY.

19 (WHEREUPON, DOCUMENT WAS TENDERED

20 TO THE COURTS, COUNSEL AND THE WITNESS.)

21 MS. MORRIS: WE WOULD LIKE TO MARK THIS AS
22 EXHIBIT 841.

23 JUDGE HENDERSON: IT WILL BE SO MARKED FOR
24 IDENTIFICATION.

25

1 (PLAINTIFFS' EXHIBIT 841 MARKED FOR
2 IDENTIFICATION)

3 **JUDGE KARLTON:** DO YOU WANT TO MOVE IT IN, MA'AM,
4 BECAUSE YOU ARE GOING TO ASK SOME QUESTIONS ABOUT IT?

5 **MS. MORRIS:** YES. I WOULD LIKE TO MOVE IT INTO
6 EVIDENCE, PLEASE.

7 **JUDGE HENDERSON:** IT WILL BE ADMITTED AT THIS TIME.
8 (PLAINTIFFS' EXHIBIT 841 RECEIVED IN
9 EVIDENCE)

10 **BY MS. MORRIS:**

11 **Q.** SORRY. IT'S NOT GOING TO BE SHOWN ON THE BIG SCREEN, BUT WE
12 CAN ALL LOOK AT IT.

13 ARE YOU FAMILIAR WITH THE DOCUMENT THAT HAS BEEN NOW
14 IDENTIFIED AS EXHIBIT 841?

15 **A.** IT'S NOT A -- THAT'S NOT THE FORM THAT I SEE THIS
16 INFORMATION IN. I DON'T GO TO THE WEBSITE TO GET THIS
17 INFORMATION. INFORMATION IS PRESENTED TO ME ON A WEEKLY BASIS.

18 **Q.** DO YOU HAVE ANY REASON TO BELIEVE THIS IS NOT FROM THE SANTA
19 CLARA COUNTY WEBSITE?

20 **A.** THE ONLY THING I WOULD SAY IS THIS IS DIFFERENT FROM THE
21 INFORMATION THAT I WOULD SEE, SO I DON'T KNOW EXACTLY WHAT THE
22 BASIS FOR THIS IS. IF THERE IS SOME ADDITIONAL INMATE
23 POPULATION THAT'S NOT INCLUDED, I DON'T KNOW THAT.

24 **JUDGE HENDERSON:** WHEN YOU SAY "DIFFERENT," DO YOU
25 MEAN FORMAT OR THE NUMBERS THAT YOU SEE?

1 **THE WITNESS:** THE NUMBERS. AS I INDICATED, I BELIEVE
2 THE NUMBERS -- AND, AGAIN, I LOOKED AT THIS ON MONDAY. I WOULD
3 SAY THAT THE NUMBERS THAT I WAS LOOKING AT WAS SOMEWHERE BETWEEN
4 4500 -- 4550 AND 4600.

5 SO THIS SURPRISES ME, BUT, OBVIOUSLY, IT'S ON THE
6 WEBSITE. SO, AGAIN, I DON'T KNOW IF INFORMATION THAT'S
7 PRESENTED THERE IS DIFFERENT FROM WHAT I SEE.

8 **BY MS. MORRIS:**

9 **Q.** OKAY. BUT YOU BELIEVE THAT THIS IS --

10 **A.** I BELIEVE, CERTAINLY, THAT IF THIS IS ON THE WEBSITE, THAT
11 THAT'S CERTAINLY WHAT'S BEEN REPORTED.

12 AND ALL I COULD TELL YOU ASK THAT IT IS SLIGHTLY
13 DIFFERENT. I MEAN, WE ARE NOT TALKING ABOUT A SUBSTANTIAL
14 DIFFERENCE, BUT IT IS SLIGHTLY DIFFERENT FROM THE INFORMATION
15 THAT I SAW EARLIER THIS WEEK.

16 **Q.** AND THE INFORMATION THAT YOU SAW EARLIER THIS WEEK, YOU
17 THINK WAS AROUND --

18 **A.** 4550 TO 4600 WAS THE NUMBER THAT I RECALL.

19 **Q.** AND THE TOTAL CAPACITY OF THE SANTA CLARA COUNTY
20 CORRECTIONAL FACILITIES IS 5,380, CORRECT?

21 **A.** THAT'S CORRECT.

22 **Q.** SO WHETHER IT'S -- WHETHER IT'S WHAT THE WEBSITE SAYS OR
23 WHAT YOU RECALL FROM EARLIER THIS WEEK, YOU ARE IN THE RANGE OF
24 700 TO 900 EMPTY BEDS CURRENTLY?

25 **A.** THAT IS CORRECT.

1 Q. BUT IT'S IMPORTANT TO HAVE FREE BEDS IN THE PRISON -- IN THE
2 JAIL SYSTEM, ISN'T IT?

3 A. IT IS. GENERALLY, THE EXPECTATION IS THAT 15 PERCENT
4 VACANCY RATE IS NECESSARY BECAUSE OF ISSUES AROUND THINGS LIKE
5 CLASSIFICATION. INMATES CAN'T ALL BE HOUSED IN THE SAME
6 LOCATIONS. SO IT'S IMPORTANT TO HAVE THAT FLEXIBILITY, YES.

7 Q. OKAY. YOU STATED DURING YOUR DEPOSITION THAT YOUR ASSERTION
8 THAT THE JAIL SYSTEM WOULD BE OVERWHELMED WAS BASED, IN PART, ON
9 AN ASSUMPTION THAT EVERY SINGLE PERSON WHO WAS RELEASED FROM
10 CDCR WOULD SPEND SOME TIME IN THE SANTA CLARA COUNTY
11 CORRECTIONAL FACILITIES, CORRECT?

12 A. I DON'T RECALL SAYING THAT. I THINK THAT THE ASSUMPTIONS
13 THAT WE MADE WERE BASED ON A SIGNIFICANT RELEASE AT ONE TIME OR
14 BASED ON A CAP THAT WOULD PREVENT US FROM TRANSPORTING PEOPLE TO
15 THE STATE SYSTEM.

16 Q. SO IF THERE WAS A PHASED RELEASE OF SOMEWHERE AROUND 78
17 PEOPLE PER MONTH, DO YOU THINK THAT WOULD OVERWHELM THE JAIL
18 SYSTEM?

19 A. I THINK THE CONCERN THERE, OBVIOUSLY, WOULD BE THE
20 CUMULATIVE EFFECT. YOU KNOW, CLEARLY 78 PEOPLE, YOU KNOW, IN
21 ONE MONTH IS NOT GOING TO OVERWHELM US, BUT THE CUMULATIVE
22 EFFECT, I THINK, IS CERTAINLY WHAT WE WOULD BE CONCERNED ABOUT.

23 AS I INDICATED BEFORE, YOU KNOW, IN TERMS OF THE
24 KINDS OF DEFICITS AND THE KINDS OF PRESSURES THAT WE ARE FACING
25 IN OUR SITUATION, ANY KIND OF INCREASE IN THE DEMAND FOR SERVICE

1 OR IN THE NEED TO HOUSE ADDITIONAL INDIVIDUALS IS GOING TO HAVE
2 AN IMPACT. THERE IS NO QUESTION ABOUT THAT IN MY MIND.

3 **THE CLERK:** FIVE MINUTES, COUNSEL.

4 **BY MS. MORRIS:**

5 **Q.** SANTA CLARA RENT OUT BEDS TO OTHER ENTITIES, THE FEDERAL AND
6 STATE GOVERNMENT, CORRECT?

7 **A.** THAT IS CORRECT.

8 **Q.** AND SOME OTHER COUNTIES?

9 **A.** MENTAL HEALTH BEDS TO OTHER COUNTIES.

10 **Q.** AND IT'S ABOUT 400 BEDS TOTAL THAT THEY ARE RENTING OUT?

11 **A.** 400 IS AROUND THE CENSUS. THAT WAS THE LAST INFORMATION
12 THAT I SAW. IT IS NOT ABSOLUTELY RECENT, BUT I THINK THAT'S IN
13 THE BALLPARK.

14 **Q.** AND SANTA CLARA COUNTY HAS CLOSED SOME OF ITS JAIL BEDS,
15 HASN'T IT?

16 **A.** THAT'S CORRECT.

17 **Q.** APPROXIMATELY FIVE HOUSING UNITS?

18 **A.** I THINK THAT'S CORRECT, YES.

19 **Q.** OKAY. MR. GRAVES, YOU THINK THAT SANTA CLARA COUNTY HAS
20 MORE EFFECTIVE SUBSTANCE ABUSE TREATMENT PROGRAMS FOR PEOPLE
21 THAT ARE IN CONTACT WITH THE CRIMINAL JUSTICE SYSTEM THAN CDCR
22 DOES, CORRECT?

23 **A.** YES.

24 **Q.** AND YOU THINK YOU DO A GOOD JOB WITH DIVERSION PROGRAMS,
25 LIKE PROP 36, USING THOSE INSTEAD OF JAIL, CORRECT?

1 A. YES.

2 Q. AND THAT THOSE OFFER THE POSSIBILITY OF REHABILITATION AND
3 HAVE -- AND THAT WOULD HAVE A POSITIVE IMPACT ON PUBLIC SAFETY,
4 CORRECT?

5 A. YES.

6 Q. OKAY. HAS THE COUNTY ASKED FOR ADDITIONAL MONIES FOR PROP
7 36?

8 A. YES.

9 Q. AND WHAT HAPPENED?

10 A. WE DIDN'T RECEIVE THEM.

11 Q. YOU ESTIMATED THAT 70 PERCENT OF ALL PEOPLE COMING OUT OF
12 CDCR HAVE SUBSTANCE ABUSE PROBLEMS THAT WOULD BENEFIT FROM
13 TREATMENT, CORRECT?

14 A. YES.

15 Q. YOU DON'T KNOW HOW MANY PAROLEES CURRENTLY ACCESS SUBSTANCE
16 ABUSE TREATMENT THROUGH THE COUNTY PROVIDERS, DO YOU?

17 A. HOW MANY CURRENT PAROLEES?

18 Q. UH-HUH.

19 A. NO, I DON'T KNOW THAT.

20 Q. OKAY. AND YOU DON'T KNOW WHAT PERCENTAGE OF PAROLEES
21 CURRENTLY ACCESS SUBSTANCE ABUSE TREATMENT THROUGH THE COUNTY
22 PROVIDERS?

23 A. I DON'T KNOW THAT.

24 Q. ASSUMING THAT THE 70 PERCENT IS CURRENT, SOME OF THEM WOULD
25 BE LIKELY TO GET HELP THROUGH NON-COUNTY PROVIDERS, WOULDN'T

1 THEY?

2 **A.** I'M NOT SURE THAT -- I CAN ANSWER THAT IN TERMS OF WHAT
3 MEANS THAT THEY WOULD HAVE.

4 GENERALLY SPEAKING, THIS POPULATION, MY ASSUMPTION
5 WOULD BE, WOULD BE PURSUING SERVICES THROUGH THE PUBLIC SECTOR.

6 **JUDGE KARLTON:** WELL, THROUGH THE PUBLIC SECTOR, BUT
7 YOU KNOW THAT PAROLE SUPERVISION IS DONE PRESENTLY BY THE STATE.

8 **THE WITNESS:** YES.

9 **JUDGE KARLTON:** AND IF THERE ARE PAROLE SUBSTANCE
10 ABUSE PROGRAMS, THAT'S PROVIDED BY THE STATE.

11 **THE WITNESS:** IF THEY -- IF THOSE PROGRAMS ARE
12 AVAILABLE, THEN, CERTAINLY, THEY COULD ACCESS THEM THROUGH
13 THERE.

14 **BY MS. MORRIS:**

15 **Q.** AND THERE'S ALSO N.A., CORRECT?

16 **A.** UH-HUH. YES.

17 **Q.** AND A.A. AND THERE ARE SOME PRIVATE PROVIDERS AS WELL.
18 AREN'T THERE?

19 **A.** THERE -- I'M SURE THERE'S PRIVATE PROVIDERS. AGAIN, THE
20 ISSUE IS THE MEANS OF THE INDIVIDUAL THAT IS COMING OUT OF THE
21 STATE SYSTEM. I THINK THAT'S REALLY THE QUESTION.

22 **Q.** BUT YOU DON'T HAVE ANY SPECIFIC INFORMATION ABOUT HOW MANY
23 PEOPLE CURRENTLY OR IN THE FUTURE WOULD ACCESS NON-COUNTY
24 PROVIDERS FOR SUBSTANCE ABUSE TREATMENT?

25 **A.** ALL I CAN TELL YOU IS THAT THE DEMAND CURRENTLY EXCEEDS THE

1 SUPPLY. SO ANY ADDITIONAL PEOPLE, EVEN IF THEY WERE ONE, THEN
2 THAT WOULD PRESENT A PROBLEM FOR US.

3 Q. OKAY. AND YOU ALSO THINK THAT SANTA CLARA COUNTY DOES A
4 GOOD JOB OF PROVIDING MENTAL HEALTH CARE TO THOSE PEOPLE THAT IT
5 PROVIDES SERVICES TO, DON'T YOU?

6 A. YES.

7 Q. BUT THERE AREN'T CURRENTLY ENOUGH RESOURCES?

8 A. THAT'S CORRECT.

9 Q. YOU STATED THAT SANTA CLARA COUNTY HAS GOTTEN MONEY THROUGH
10 THE MENTAL HEALTH SERVICES ACT, CORRECT?

11 A. YES.

12 Q. ISN'T IT TRUE THAT 50 PERCENT OF THE MENTAL HEALTH SERVICES
13 PROVIDER -- SERVICES ACT FUNDS ARE DEDICATED TO FULL SERVICE
14 PARTNERSHIPS?

15 A. I BELIEVE THAT'S CORRECT.

16 Q. OKAY. AND THOSE ARE THE INTENSIVE SERVICES THAT THE PEOPLE
17 WHO ARE THE MOST IN NEED OF ASSISTANCE NEED TO ACCESS, CORRECT?

18 A. YES.

19 Q. OKAY. AT THE SAME TIME THAT SANTA CLARA COUNTY HAS BEEN
20 RECEIVING THESE ADDITIONAL FUNDS THROUGH THE MENTAL HEALTH
21 SERVICES ACT, SANTA CLARA COUNTY HAS BEEN CUTTING THE OTHER
22 FUNDING, THE DISCRETIONARY GENERAL FUND FUNDING, FOR THE MENTAL
23 HEALTH SERVICES IN THE COUNTY, CORRECT?

24 A. YES.

25 Q. SO IF SOME OF THAT MONEY HAD NOT BEEN TAKEN AWAY, THERE

1 WOULD BE MORE MONEY AVAILABLE, WOULDN'T THERE NOT?

2 **A.** THERE WOULD HAVE BEEN, YES.

3 **Q.** OKAY.

4 **A.** AND THEREIN LIES THE PROBLEM.

5 **Q.** YOU DON'T KNOW HOW MANY PAROLEES CURRENTLY ACCESS MENTAL
6 HEALTH HEALTHCARE THROUGH THE COUNTY SERVICES, DO YOU?

7 **A.** NO.

8 **Q.** AND YOU DON'T KNOW WHAT PERCENTAGE OF PAROLEES CURRENTLY
9 ACCESS MENTAL HEALTHCARE THROUGH THE COUNTY?

10 **A.** NO.

11 **Q.** YOU -- ACTUALLY, YOU ALSO DON'T HAVE ANY ESTIMATES AS TO
12 WHAT PERCENTAGE OF PEOPLE COMING OUT OF CDCR BECOME HOMELESS, DO
13 YOU?

14 **A.** NO. I THINK THE INFORMATION THAT I PROVIDED WAS BASED ON A
15 SURVEY THAT WE DO ON AN ANNUAL BASIS THAT INDICATED THAT ROUGHLY
16 10 PERCENT OF THE PEOPLE WHO WERE SURVEYED INDICATED THAT THEIR
17 LAST -- THE LAST PLACE THAT THEY HAD SLEPT WAS IN A JAIL. SO
18 THAT IS THE NUMBER THAT WE ARE ASSUMING IN TERMS OF THE
19 POTENTIAL IMPACT.

20 **Q.** SO YOU ARE ASSUMING -- MY UNDERSTANDING OF THAT IS THAT
21 10 PERCENT OF THE HOMELESS PEOPLE CAME FROM CRIMINAL JUSTICE?

22 **A.** YES.

23 **Q.** THAT'S NOT TO SAY THAT 10 PERCENT OF THE PEOPLE COMING OUT
24 OF CRIMINAL JUSTICE ARE HOMELESS, CORRECT?

25 **A.** THAT'S CORRECT.

1 Q. OKAY.

2 A. I THINK THE POINT THAT IS IMPORTANT THERE IS THAT THE ISSUE
3 IS, IS -- TO THE EXTENT TO WHICH THE HOMELESS POPULATION IS
4 INCREASING, THAT, AGAIN, IS ANOTHER STRAIN ON OUR -- ON THE
5 SERVICES THAT WE PROVIDE THAT WE DON'T HAVE THE SERVICES TO
6 SUPPORT.

7 Q. YOU ALSO DON'T HAVE ANY ESTIMATES OF WHAT PERCENTAGE OF
8 PEOPLE COMING OUT OF PRISON OR OUT OF CDCR ARE REQUESTING PUBLIC
9 ASSISTANCE, CORRECT?

10 A. NO, I DON'T HAVE THAT INFORMATION.

11 Q. AND YOU DON'T HAVE ANY ESTIMATE AS TO HOW MANY PEOPLE THAT
12 MIGHT BE RELEASED IN A PRISONER RELEASE ORDER WOULD BE
13 REQUESTING PUBLIC ASSISTANCE OR BECOME HOMELESS?

14 A. I DON'T HAVE THAT SPECIFIC INFORMATION. AGAIN, THE ISSUE IS
15 TO THE EXTENT TO WHICH ANY OF THOSE INDIVIDUALS WERE TO TRY TO
16 PURSUE SERVICES, THAT'S WHERE OUR CONCERNS ARE.

17 Q. YOU DON'T HAVE ANY ESTIMATES TO WHAT PERCENT OF PEOPLE
18 COMING OUT OF CDCR ARE UNINSURED FOR MEDICAL INSURANCE, CORRECT?

19 A. I DON'T HAVE ANY SPECIFIC INFORMATION, BUT MY ASSUMPTION
20 WOULD BE IT WOULD BE A SIGNIFICANT NUMBER.

21 Q. BUT YOU DON'T HAVE ANY SPECIFIC INFORMATION?

22 A. I DON'T HAVE ANY FACTS TO BACK THAT UP.

23 Q. AND YOU DON'T HAVE ANY ESTIMATES AS TO WHAT PERCENT OF
24 PEOPLE COMING OUT OF CDCR ARE UNINSURED AND ACCESSING COUNTY
25 PUBLIC HEALTH?

1 **A.** CORRECT.

2 **JUDGE KARLTON:** HE DOESN'T KNOW IF PUBLIC HEALTH ARE
3 BEING ACCESSED. HE DOESN'T KNOW HOW MANY -- GO AHEAD AND
4 ANSWER. I'M JUST GETTING FRUSTRATED. GO AHEAD.

5 **A.** THAT'S CORRECT.

6 **BY MS. MORRIS:**

7 **Q.** AND YOU DON'T HAVE ANY ESTIMATE OF HOW MANY PEOPLE WHO MIGHT
8 BE RELEASED IN AN ORDER -- IN A POPULATION REDUCTION ORDER, HOW
9 MANY OF THOSE WOULD BECOME -- WOULD BE UNINSURED AND NEED TO
10 ACCESS PUBLIC HEALTH?

11 **A.** THAT'S CORRECT.

12 **Q.** NO FURTHER QUESTIONS. THANK YOU.

13 **JUDGE HENDERSON:** LET'S TAKE OUR AFTERNOON RECESS FOR
14 15 MINUTES. COURT IS ADJOURNED.

15 (WHEREUPON THERE WAS A BRIEF
16 RECESS IN THE PROCEEDINGS.)

17 **JUDGE HENDERSON:** PROCEED WHEN YOU'RE READY, COUNSEL.

18 **MS. FUENTES:** YOUR HONOR, WAS THERE A RULING ON
19 WHETHER OR NOT THE CRIMINAL JUSTICE STATISTICS CENTER DOCUMENT
20 IS ADMITTED INTO EVIDENCE?

21 **MR. BIEN:** I COULDN'T HEAR.

22 **MS. FUENTES:** I ASKED WHETHER OR NOT THERE WAS A
23 RULING ON WHETHER OR NOT THE CRIMINAL JUSTICE STATISTICS
24 DOCUMENT WAS ADMITTED INTO EVIDENCE?

25 **JUDGE HENDERSON:** I BELIEVE WE ADMITTED IT, DIDN'T

1 WE?

2 **REDIRECT EXAMINATION BY MR. FUENTES**

3 **BY MS. FUENTES**

4 **Q** I WOULD LIKE TO ASK YOU, MR. GRAVES, A QUESTION ABOUT THAT
5 DOCUMENT. DO YOU STILL HAVE IT THERE?

6 **A** THIS ONE? IT WAS ON THE SCREEN, BUT --

7 **MS. FUENTES:** MAY I APPROACH THE WITNESS?

8 **JUDGE HENDERSON:** YOU MAY.

9 **BY MS. FUENTES**

10 **Q** MR. GRACE, WHEN YOU WERE TALKING ABOUT THE CRIME RATE IN
11 SANTA CLARA COUNTY, YOU MENTIONED THAT YOU THOUGHT IT HAD GONE
12 UP. WERE YOU REFERRING TO PROPERTY CRIMES OR VIOLENT CRIMES?

13 **MS. MORRIS:** I'M SORRY. I CAN'T HEAR.

14 **JUDGE HENDERSON:** REPEAT THE QUESTION.

15 **BY MS. FUENTES**

16 **Q** MR. GRACE, WHEN YOU WERE ASKED THE QUESTION ABOUT CRIME
17 DECREASING IN SANTA CLARA COUNTY AND YOU SAID YOU THOUGHT IT
18 INCREASED, WHAT TYPE OF CRIMES WERE YOU REFERRING TO?

19 **JUDGE REINHARDT:** I THOUGHT HE SAID VIOLENT CRIMES,
20 DIDN'T HE?

21 **MS. FUENTES:** I DON'T THINK IT WAS CLEAR, YOUR HONOR.
22 THAT'S WHY I'M TRYING TO CLARIFY.

23 **JUDGE REINHARDT:** EITHER HE SAID VIOLENT OR HE
24 DIDN'T. I THOUGHT THAT'S WHAT HE SAID, AND I THINK THE QUESTION
25 THEN WAS -- I ASKED HIM ABOUT IT -- MAYBE THE QUESTIONER

1 MISUNDERSTOOD, TOO, BUT I THINK SHE SAID YOU SAID VIOLENT
2 CRIMES.

3 **JUDGE HENDERSON:** I REMEMBER POINTING OUT THAT
4 PLAINTIFF'S COUNSEL WAS TALKING ABOUT CRIMES, AND HE WAS TALKING
5 ABOUT VIOLENT CRIMES, AND HE AGREED.

6 **BY MS. FUENTES**

7 **Q** IS THAT CORRECT?

8 **A** THAT CERTAINLY -- I MEAN, BECAUSE I HADN'T SEEN THE
9 DOCUMENT, I THOUGHT WE WERE TALKING ABOUT CRIMES IN GENERAL. I
10 WASN'T BEING SPECIFIC IN TERMS OF VIOLENT OR --

11 **JUDGE REINHARDT:** NOT WITH THE DOCUMENT, BUT DO YOU
12 RECALL WHAT YOUR TESTIMONY WAS ORIGINALLY WHEN YOU SAID --

13 **THE WITNESS:** I WAS REFERRING TO JUST CRIME IN
14 GENERAL. I WASN'T REFERRING TO SPECIFICS, BECAUSE I -- AGAIN,
15 THIS ISN'T THE KIND OF DATA THAT I'M LOOKING AT ON A REGULAR
16 BASIS.

17 YOU KNOW, CLEARLY, FOR US, THE CONCERN THAT WE HAVE,
18 YOU KNOW, IS REGARDING, YOU KNOW, PROPERTY CRIMES, ESPECIALLY IN
19 THIS ECONOMIC ENVIRONMENT, AND THAT'S -- I THINK WHEN WE LOOK
20 AT, YOU KNOW, THE CRIME STATISTICS, AND, YOU KNOW, EVEN THESE
21 CRIME STATISTICS THROUGH 2006, CERTAINLY DEMONSTRATE THAT
22 PROPERTY CRIMES HAVE INCREASED, AT THE SAME TIME RECOGNIZING
23 THAT -- I THINK, AS THE OTHER POINT BEING MADE, THAT VIOLENT
24 CRIMES WERE DECREASING.

25 BUT IN THIS ECONOMIC ENVIRONMENT, ESPECIALLY, IT SORT

1 OF EXACERBATES THE CONCERN WE HAVE AROUND A RELEASE OF
2 ADDITIONAL INDIVIDUALS, IF THEY HAVE A PROPENSITY IN THAT
3 DIRECTION, THAT PROPERTY CRIME RISING IS AN ISSUE AND IS A
4 CONCERN.

5 **BY MS. FUENTES**

6 **Q** AND THEN THE DOCUMENT YOU ARE LOOKING AT, YOU'RE SAYING IT
7 SHOWS THAT PROPERTY CRIMES HAVE INCREASED FROM 1997 TO 2006?

8 **MS. MORRIS:** OBJECTION. LACK OF FOUNDATION. HE
9 TESTIFIED HE WASN'T FAMILIAR WITH THIS DOCUMENT.

10 **JUDGE KARLTON:** THE ATTORNEY IS ASKING THE WITNESS TO
11 READ THE DOCUMENT, BECAUSE, AFTER ALL, WE CAN'T.

12 **THE WITNESS:** YES. ACCORDING TO THE DOCUMENT, THE
13 PROPERTY CRIMES HAVE INCREASED BETWEEN 1997 AND 2006.

14 **MS. FUENTES:** THANK YOU.

15 **JUDGE HENDERSON:** I'M CONFUSED. WE'VE LET THIS
16 DOCUMENT IN, AND I'M WONDERING IF IT'S NOT A MISTAKE. IT WAS
17 LET IN FOR THE PURPOSE OF HAVING THIS WITNESS LOOK AT IT AND SAY
18 THAT SOUNDS RIGHT.

19 **MS. FUENTES:** I THOUGHT IT WAS LET IN BECAUSE THEY
20 ASKED HIM QUESTIONS ABOUT IT TO PROVE THAT THE CRIME RATES HAD
21 GONE DOWN IN SANTA CLARA COUNTY.

22 **JUDGE HENDERSON:** LET'S GO ON.

23 **JUDGE REINHARDT:** I DON'T THINK IT MAKES A LOT OF
24 DIFFERENCE.

25 **JUDGE HENDERSON:** IT DOESN'T. GO ON. GO ON. WE'RE

1 OKAY.

2 **BY MS. FUENTES**

3 **Q** ARE YOU -- DO YOU RECEIVE INFORMATION REGARDING THE DAILY
4 POPULATION AT THE DEPARTMENT OF CORRECTION?

5 **A** I DON'T RECEIVE IT ON A DAILY BASIS. I RECEIVE IT ONCE A
6 WEEK ON MONDAY.

7 **Q** AND ARE YOU FAMILIAR WITH WHETHER THE POPULATION IN THE JAIL
8 CHANGES ON A DAY-TO-DAY BASIS?

9 **A** YES, I AM FAMILIAR WITH THAT.

10 **Q** AND WHEN YOU RENDERED YOUR OPINIONS IN YOUR EXPERT REPORT
11 AND YOU WERE TALKING ABOUT THE IMPACTS TO SANTA CLARA COUNTY ON
12 A RELEASE OF PRISONERS, YOU WEREN'T JUST REFERRING TO -- WERE
13 YOU JUST REFERRING TO THE NUMBER OF PEOPLE THAT WOULD BE
14 RELEASED, OR ARE YOU REFERRING ALSO TO A POPULATION CAP?

15 **MS. MORRIS:** I'M SORRY. I CAN'T HEAR AGAIN.

16 **BY MS. FUENTES**

17 **Q** IN YOUR OPINIONS PROVIDED IN YOUR REPORT, WERE THEY BASED ON
18 A POPULATION RELEASE FROM STATE PRISON, OR WAS IT ALSO BASED ON
19 A POPULATION CAP?

20 **A** WELL, WHAT WE WERE LOOKING AT WERE BOTH OF THOSE AS
21 POTENTIAL OUTCOMES. AND SO, TO THE EXTENT TO WHICH, YOU KNOW,
22 ONE OR THE OTHER OR BOTH ARE ORDERED, OBVIOUSLY, THE IMPACTS
23 WILL RESULT. IF THERE'S SOME KIND OF A RELEASE, PLUS A
24 POPULATION CAP, YOU KNOW, THAT OBVIOUSLY WOULD PRESENT
25 SIGNIFICANT -- MORE PROBLEMS TO US BASED ON THE FACT THAT WE

1 WOULD HAVE PEOPLE COMING INTO THE COMMUNITY, ADDITIONAL PEOPLE;
2 PLUS, WE WOULD NOT HAVE THE ABILITY TO TRANSFER PEOPLE FROM OUR
3 SYSTEM INTO THE STATE SYSTEM.

4 **Q** AND THAT RAISES A CONCERN FOR THE COUNTY?

5 **A** THAT DOES RAISE A CONCERN.

6 **Q** WHY?

7 **A** WELL, AGAIN, BECAUSE OF THE CUMULATIVE EFFECT AND THE FACT
8 THAT OUR SYSTEMS RIGHT NOW ARE SO GREATLY STRAINED, WE -- YOU
9 KNOW, IT APPEARS THAT WE HAVE SOME FLEXIBILITY, BUT THAT
10 FLEXIBILITY, YOU KNOW, CLEARLY WILL DISAPPEAR VERY QUICKLY IF,
11 IN FACT, WE ARE UNABLE TO TRANSFER PRISONERS TO THE STATE
12 SYSTEM.

13 **MS. FUENTES:** NOTHING FURTHER, THANK YOU.

14 **JUDGE HENDERSON:** RECROSS?

15 **RECROSS-EXAMINATION BY MS. MORRIS**

16 **BY MS. MORRIS**

17 **Q** MR. GRAVES, IN YOUR REPORT YOU STATE THAT SANTA CLARA COUNTY
18 IS VERY EFFECTIVE AT MANAGING ITS JAIL POPULATION, CORRECT?

19 **A** WE ARE EFFECTIVE BECAUSE WE HAVE BEEN VERY PROACTIVE.

20 **Q** AND PART OF THAT BEING PROACTIVE MEANS DEVELOPING DIVERSION
21 PROGRAMS, CORRECT?

22 **A** THAT'S CORRECT.

23 **MS. MORRIS:** NO FURTHER QUESTIONS.

24 **MS. FUENTES:** NOTHING FURTHER.

25 **JUDGE HENDERSON:** THANK YOU FOR APPEARING AND

1 TESTIFYING, MR. GRAVES. YOU'RE EXCUSED.

2 YOU MAY CALL YOUR NEXT WITNESS.

3 **MS. FUENTES:** YOUR HONOR, DEFENDANT INTERVENORS HAD
4 PLANNED TO CALL CHARLENE SILVA, WHO IS A HEALTH DIRECTOR AT SAN
5 MATEO COUNTY. THE PARTIES HAVE REACHED A STIPULATION THAT WOULD
6 ELIMINATE THE NEED FOR HER TO TESTIFY LIVE TODAY.

7 **JUDGE REINHARDT:** DO YOU WANT TO TALK TO THEM ABOUT
8 HAVING WITNESSES AVAILABLE?

9 **JUDGE KARLTON:** DOES THAT MEAN THERE ARE NO MORE
10 WITNESSES TODAY?

11 **MS. FUENTES:** THAT'S CORRECT, YOUR HONOR.

12 **JUDGE KARLTON:** THE IDEA OF GETTING THE STIPULATIONS
13 WAS SO WE WOULD BE ABLE TO TAKE UP A NEW WITNESS, NOT THAT WE'D
14 BREAK EARLY.

15 **MS. FUENTES:** YOUR HONOR, THE TIME THAT WAS ALLOTTED
16 FOR THESE WITNESSES, THE TOTAL TIME TODAY WAS SEVEN HOURS AND
17 FIFTY-FIVE MINUTES. SO, ORIGINALLY, YESTERDAY WHEN WE REACHED
18 THE STIPULATION, WE THOUGHT IT WOULD TAKE THE ENTIRE DAY OR
19 MORE.

20 **JUDGE REINHARDT:** YESTERDAY WE BROKE AN HOUR EARLY,
21 TOO.

22 **JUDGE KARLTON:** WE CAN'T DO THIS, FOLKS.

23 **JUDGE REINHARDT:** IT'S JUST A GENERAL RULE WHOEVER IS
24 ON SHOULD BE PREPARED WITH THE NEXT WITNESS IN CASE ANYTHING
25 HAPPENS, WHATEVER IT IS.

1 **JUDGE KARLTON:** BETTER THAT THAT WITNESS BE
2 INCONVENIENCED THAN THIS COURT KEEP BREAKING EARLY AND NOT BEING
3 ABLE TO DISPOSE OF THE CASE. I'M NOT TALKING TO YOU PERSONALLY.
4 I'M TALKING TO ALL OF YOU.

5 I THINK WE ARE GOING TO ESTABLISH A RULE THAT YOU ARE
6 TO -- WHOEVER IS PUTTING ON WITNESSES, THERE BE ONE MORE WITNESS
7 PREPARED TO BE PUT ON THAN YOU THINK YOU NEED TO, AND IF THAT
8 WITNESS IS INCONVENIENCED, I'M TERRIBLY SORRY, BUT WE'VE GOT TO
9 GET THIS DONE.

10 **JUDGE REINHARDT:** AND THAT'S GOING TO BE THAT
11 WITNESS'S OPPORTUNITY TO TESTIFY, AND IF THE WITNESS ISN'T HERE
12 WHEN THE WITNESS IS DUE, THAT'S THE WAY IT GOES.

13 **JUDGE HENDERSON:** COURT IS ADJOURNED UNTIL 9:15
14 TOMORROW.

15 **JUDGE KARLTON:** WE GOT TO TALK ABOUT SOMETHING ELSE.
16 WE WERE IN THE MIDST OF A CROSS-EXAMINATION OF DR. AUSTIN. YOUR
17 CROSS-EXAMINATION, HOW MUCH MORE DO YOU HAVE; DO YOU KNOW?

18 **MS. BARLOW:** YES, YOUR HONOR. I BELIEVE I HAVE ABOUT
19 A HALF AN HOUR.

20 **JUDGE KARLTON:** YOU HAVE ABOUT A HALF HOUR?

21 **MS. BARLOW:** YES.

22 **JUDGE KARLTON:** IS ANYBODY ELSE QUESTIONING?

23 **MR. MELLO:** THEN IT WOULD BE REDIRECT.

24 **JUDGE HENDERSON:** HOW MUCH DO YOU GUYS HAVE?

25 **MS. EVENSON:** WE'VE ESTIMATED ABOUT 15 MINUTES BASED

1 ON THE CROSS SO FAR.

2 **JUDGE KARLTON:** SO MAYBE A HALF HOUR.

3 I THINK, I'M NOT SURE, I'M ASKING, WAS DR. AUSTIN'S
4 HOUR INCLUDED IN THE ESTIMATE TO GET US TO THE 19TH OR NOT?

5 **MS. BARLOW:** I BELIEVE IT WAS, YOUR HONOR.

6 **JUDGE KARLTON:** OH, OKAY. OKAY. GREAT.

7 **JUDGE HENDERSON:** THANK YOU, COUNSEL.

8 **MS. EVENSON:** HE'S SCHEDULED ON THE 18TH.

9 **MS. BARLOW:** HE'S SCHEDULED ON THE 18TH, AND WE DID
10 INCLUDE THAT TIME, YOUR HONOR.

11 (PROCEEDINGS ADJOURNED.)

12

13

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25

I N D E XPLAINTIFFS' WITNESSESPAGEVOL.BARRY KRISBERG, PH.D.

DIRECT EXAMINATION BY MR. SANGSTER	2099	11

CROSS-EXAMINATION BY MS. TILLMAN	2118	11

CROSS-EXAMINATION BY MR. MITCHELL	2144	11

PABLO STEWART

DIRECT EXAMINATION BY MS. WHELAN	2207	11

CROSS-EXAMINATION BY MS. TILLMAN	2221	11

DIRECT EXAMINATION BY MS. WANG	2241	11

DEFENANTS' WITNESSESDAVID BENNETT

DIRECT EXAMINATION BY MS. KECK	2183	11

CROSS-EXAMINATION BY MS. EVENSON	2204	11

GARY GRAVES

DIRECT EXAMINATION BY MS. FUENTES	2245	11

CROSS-EXAMINATION BY MS. MORRIS	2259	11

REDIRECT EXAMINATION BY MS. FUENTES	2283	11

RECROSS-EXAMINATION BY MS. MORRIS	2287	11

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PLAINTIFF'S EXHIBITSIDENVOL.EVIDVOL.

841	2273	11	2273	11

DEFENDANT'S EXHIBITS

C			2182	11

CERTIFICATE OF REPORTER

WE, JOAN MARIE COLUMBINI AND KATHERINE WYATT, OFFICIAL REPORTERS FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN CIV S-90-0520 LKK JPM, RALPH COLEMAN, ET AL V. ARNOLD SCHWARZENEGGER AND C 01-1351 TEH, MARCIANO PLATA V. ARNOLD SCHWARZENEGGER, WERE REPORTED BY US, CERTIFIED SHORTHAND REPORTERS, AND WERE THEREAFTER TRANSCRIBED UNDER OUR DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY US AT THE TIME OF FILING.

THE VALIDITY OF THE REPORTER'S CERTIFICATION OF SAID TRANSCRIPT MAY BE VOID UPON DISASSEMBLY AND/OR REMOVAL FROM THE COURT FILE.

/S/ JOAN MARIE COLUMBINI

JOAN MARIE COLUMBINI, CSR 5435, RPR

S/ DEBRA L. PAS

DEBRA L. PAS, CSR 11916, CRR, RMR, RPR

THURSDAY, DECEMBER 11, 2008

**JOAN MARIE COLUMBINI, CSR, RPR
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OFFICIAL COURT REPORTERS
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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
AND FOR THE NORTHERN DISTRICT OF CALIFORNIA
UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES PURSUANT
TO SECTION 2284, TITLE 28 UNITED STATES CODE

RALPH COLEMAN, ET AL.,)
)
 PLAINTIFFS,)
)
 VS.) NO. CIV S-90-0520 LKK JFM
)
 ARNOLD SCHWARZENEGGER, ET AL.)
) THREE-JUDGE COURT
 DEFENDANTS.)
)

MARCIANO PLATA, ET AL.,)
)
 PLAINTIFFS,)
)
 VS.) NO. C 01-1351 TEH
)
 ARNOLD SCHWARZENEGGER, ET AL.)
)
 DEFENDANTS.)
)

TRANSCRIPT OF PROCEEDINGS

SAN FRANCISCO, CALIFORNIA
FRIDAY, DECEMBER 12, 2008

(APPEARANCES ON FOLLOWING PAGES)

REPORTED BY: JOAN MARIE COLUMBINI, CSR 5435, RPR
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1 **FRIDAY, DECEMBER 12, 2008**

9:20 O'CLOCK A.M.

2
3 **P R O C E E D I N G S**
4

5 **MR. MITCHELL:** GOOD MORNING, YOUR HONORS. ONE QUICK
6 QUESTION BEFORE WE GET STARTED.

7 WE HAVE TWO WITNESSES SCHEDULED THIS MORNING,
8 DISTRICT ATTORNEY BONNIE DUMANIS FROM SAN DIEGO AND ROD PACHECO
9 FROM RIVERSIDE COUNTY. BOTH ARE DEFENDANT INTERVENOR PARTIES IN
10 THIS ACTION. I WAS WONDERING, DOES THE WITNESS EXCLUSION ORDER
11 APPLY TO THEM PRIOR TO THEIR TESTIMONY?

12 **JUDGE HENDERSON:** NO ONE HAS EVER MADE A WITNESS
13 EXCLUSION ORDER. THERE'S NOT ONE EXISTING AT THIS TIME.

14 **MR. SPECTER:** YES, THERE IS, YOUR HONOR.

15 **JUDGE KARLTON:** I HAVE NO RECOLLECTION OF IT.

16 **JUDGE REINHARDT:** I DO. I REMEMBER.

17 **JUDGE HENDERSON:** OKAY.

18 **JUDGE REINHARDT:** YOU SAID THAT WE ALWAYS DO THAT.

19 **JUDGE HENDERSON:** OKAY. I MAY HAVE. I DON'T
20 REMEMBER. BUT THAT'S THE RULE.

21 **MR. MITCHELL:** I ASSUMED THERE WAS A WITNESS
22 EXCLUSION ORDER. I WAS JUST WONDERING, DOES IT APPLY TO PARTY
23 DEFENDANTS WHO HAVE INTERVENED IN THIS ACTION?

24 **JUDGE HENDERSON:** YES, IT WOULD.

25 **MR. MITCHELL:** THANK YOU, YOUR HONOR.

1 **MS. BARLOW:** THANK YOU VERY MUCH, YOUR HONOR. THE
2 LAW ENFORCEMENT INTERVENORS CALL JERRY DYER TO THE STAND.

3 **JUDGE HENDERSON:** STEP FORWARD AND BE SWORN IN, SIR.

4 **JERRY DYER,**
5 HAVING BEEN CALLED AS A WITNESS BY THE DEFENDANTS WAS FIRST
6 DULY SWORN AND EXAMINED AS FOLLOWS:

7 **THE CLERK:** STATE AND SPELL YOUR FULL NAME FOR THE
8 RECORD.

9 **THE WITNESS:** MY NAME IS JERRY DYER. FIRST NAME IS
10 J-E-R-R-Y. LAST NAME IS D-Y-E-R.

11 **MS. BARLOW:** JUST ONE QUICK NOTATION FOR THE COURT.
12 WE DID FILE AN AMENDED DECLARATION FOR MR. DYER, CHIEF DYER,
13 YESTERDAY WITH A VERY MINOR CHANGE IN PARAGRAPH 23, AND WE ADDED
14 NUMBERING AND PAGE NUMBERS TO MAKE IT EASIER FOR THE COURT TO
15 REFERENCE THE PARTICULAR SECTIONS, AND SO I HAVE COPIES OF THOSE
16 HERE.

17 THE AMENDED REPORT WAS SENT TO COUNSEL YESTERDAY, AND
18 I DID ADVISE MS. EVENSON IN COURT BEFORE WE LEFT HERE YESTERDAY
19 THAT THE CHANGES WOULD BE MADE. UNFORTUNATELY, THERE WERE TWO
20 MINOR OMISSIONS THAT WERE ACCIDENTAL FROM THIS VERSION THAT WERE
21 IN THE ORIGINAL VERSION OF THE REPORT. ONE WAS A SINGLE
22 SENTENCE THAT APPEARS AT THE BEGINNING OF PARAGRAPH 23 --

23 **MR. SPECTER:** EXCUSE ME, YOUR HONOR, BUT BEFORE
24 MS. BARLOW GETS TO TALK ABOUT WHAT SHOULD OR SHOULD NOT BE IN
25 THE NEW REPORTS, I HAVE A -- EXCUSE ME, MAY I USE THE MIC SO THE

1 JUDGES CAN HEAR?

2 I HAVE A STRONG OBJECTION TO HER SUBMITTING A REVISED
3 REPORT AS -- IN SUCH AN UNTIMELY MANNER. WE GOT NOTICE THAT IT
4 WAS -- I GOT NOTICE -- AND SHE KNEW I WAS GOING TO BE THE ONE TO
5 CROSS-EXAMINE MR. DYER. I GOT NOTICE AT 6:07 P.M. BY AN E-MAIL
6 AND THEY FILED THE DECLARATION -- THE AMENDED REPORT SHORTLY
7 THEREAFTER, MAKING --

8 **JUDGE HENDERSON:** LET ME INTERRUPT YOU. LET'S TALK
9 ABOUT PREJUDICE, NOT JUST TIME. WHAT --

10 **JUDGE REINHARDT:** I WOULD SAY --

11 **MR. SPECTER:** IT MAKES SUBSTANTIVE CHANGES.

12 **JUDGE REINHARDT:** I WOULD ALSO SAY, I DON'T THINK
13 IT'S A LEGITIMATE OBJECTION THAT SHE GAVE IT TO MS. EVENSON, WHO
14 IS ONE OF YOUR ASSOCIATES RATHER THAN TO YOU.

15 **MR. SPECTER:** MY OBJECTION IS THAT THE REPORTS WERE
16 DUE ON SEPTEMBER 15TH.

17 **JUDGE REINHARDT:** OKAY, THAT'S A LEGITIMATE
18 OBJECTION, BUT NOT THAT -- MS. EVENSON IS AN ABLE REPRESENTATIVE
19 OF YOURS.

20 **MS. BARLOW:** MAY I --

21 **MR. SPECTER:** I WASN'T -- I WASN'T -- ANYWAY, MY
22 OBJECTION --

23 **JUDGE REINHARDT:** LET'S GET TO THE MERITS.

24 **MR. SPECTER:** MY OBJECTION IS THAT IT'S UNTIMELY. MY
25 OBJECTION IS ALSO THAT IT'S PREJUDICIAL.

1 **JUDGE REINHARDT:** HOW IS IT PREJUDICIAL?

2 **MR. SPECTER:** BECAUSE THEY ARE MAKING SUBSTANTIVE
3 CHANGES TO THE REPORT AFTER THE DEPOSITION. THEY ARE TRYING TO
4 CLEAR UP AN ERROR THAT HE MADE IN HIS ORIGINAL REPORT.

5 **JUDGE KARLTON:** IF EVERYBODY AGREES THAT IT'S AN
6 ERROR -- YOU KNOW, YOU PEOPLE ALL THINK THAT YOU'RE ACHIEVING
7 SIGNIFICANT IMPEACHMENT WHEN YOU SHOW SOMEBODY SAID SOMETHING
8 CARELESSLY. I DON'T KNOW ABOUT MY COLLEAGUES, I THINK MOST OF
9 THAT IS A WASTE OF TIME, BUT I -- YOU KNOW, IT'S YOUR CASE; YOU
10 DO WHATEVER YOU WANT TO DO.

11 BUT, MS. BARLOW, I NOW HAVE A DIFFERENT QUESTION --

12 **MS. BARLOW:** YES.

13 **JUDGE KARLTON:** -- WHICH IS THAT IT ASSERTS THAT
14 THERE IS A SUBSTANTIVE CHANGE. YOU HAD INDICATED THAT THERE WAS
15 SIMPLY AN ERROR IN THE TYPING OR SOMETHING.

16 **MS. BARLOW:** WELL, THE CHANGE THAT WAS MADE, YOUR
17 HONOR, WAS TO WHAT APPEARS IN THE COPY YOU HAVE IN FRONT OF YOU,
18 THE VERY FIRST SENTENCE OF PARAGRAPH 23. THE SENTENCE THAT I
19 WAS ABOUT TO READ TO YOU WHEN MR. SPECTER INTERRUPTED WAS
20 ACTUALLY IN THE ORIGINAL REPORT, AND IT WAS DELETED
21 INADVERTENTLY WHEN THEY MADE THE AMENDED DOCUMENT --

22 **JUDGE KARLTON:** NO, NO. YOU MISUNDERSTOOD.
23 MR. SPECTER IS SAYING THE SO-CALLED AMENDED REPORT IS
24 SUBSTANTIVELY DIFFERENT.

25 **MS. BARLOW:** AND IT IS IN ONE VERY MINOR RESPECT,

1 YOUR HONOR. AND, AGAIN, THIS WAS RAISED AT THE DEPOSITION. THE
2 WITNESS INDICATED IT APPEARED TO BE AN ERROR AND HE WAS GOING TO
3 CHECK ON IT. SO THE ONE CHANGE IS, INSTEAD OF SAYING
4 UNEMPLOYMENT IS 2.5 TIMES HIGHER IN FRESNO THAN IN COMPARABLE
5 SIZE CITIES IN CALIFORNIA, IT WAS SUPPOSED TO SAY 2.5 PERCENT
6 HIGHER THAN UNEMPLOYMENT RATE IN CALIFORNIA AS A WHOLE. AND
7 THAT WAS THE ONLY SUBSTANTIVE CHANGE THAT WAS MADE.

8 **JUDGE REINHARDT:** IS THAT THE ONLY SUBSTANTIVE
9 CHANGE, MR. SPECTER?

10 **MR. SPECTER:** THAT'S THE MAJOR SUBSTANTIVE CHANGE.

11 **JUDGE REINHARDT:** YOU KNOW, IT DOESN'T SEEM TO ME HE
12 MADE A MISTAKE ABOUT THE UNEMPLOYMENT RATE IS HARDLY CRITICAL OF
13 THE ISSUES IN THIS CASE.

14 **MR. SPECTER:** I DON'T MIND IF YOU STRIKE THAT. I
15 THINK THE WHOLE THING IS IRRELEVANT. IT SHOULD BE STRICKEN.
16 BUT, I MEAN, WE MADE A MOTION --

17 **JUDGE REINHARDT:** WE ARE NOT STRIKING ANYTHING.
18 WE'VE LISTENED TO A LOT OF IRRELEVANT TESTIMONY.

19 **JUDGE KARLTON:** BOY, IF WE STRUCK ALL THE IRRELEVANT
20 TESTIMONY IN THIS CASE, WE'D HAVE BEEN DONE LAST WEEK.

21 **MR. SPECTER:** I MEAN, IF YOU DON'T STRIKE IT, I HAVE
22 TO DEAL WITH IT. SO THAT'S ALL I'M SAYING.

23 **JUDGE KARLTON:** THEN DEAL WITH IT.

24 **JUDGE REINHARDT:** DEAL WITH IT.

25 IS IT A VERY CONTROVERSIAL ISSUE, WHAT THE

1 UNEMPLOYMENT RATE IN FRESNO IS?

2 MR. SPECTER: NO.

3 JUDGE HENDERSON: IT'S NOT GOING TO INFORM MY RULING.

4 MR. SPECTER: IN THAT CASE, I UNDERSTAND. THAT'S
5 FINE.

6 JUDGE HENDERSON: OKAY. LET'S PROCEED.

7 MS. BARLOW: THANK YOU.

8 THE SENTENCE THAT SHOULD HAVE BEEN AT THE BEGINNING
9 OF PARAGRAPH 23 THAT WAS OMITTED WAS VERY SHORT:

10 "FRESNO HAS THE GREATEST CONCENTRATION OF
11 URBAN POVERTY IN THE NATION."

12 I'M NOT SURE WHY MY STAFF THOUGHT THAT WAS SUPPOSED
13 TO BE DELETED. THAT WAS IN THE ORIGINAL REPORT.

14 JUDGE REINHARDT: THAT'S NOT GOING TO MATTER
15 TREMENDOUSLY EITHER TO THE OUTCOME OF THIS CASE.

16 MS. BARLOW: IT WAS IN THE ORIGINAL REPORT, YOUR
17 HONOR. I JUST WANTED TO LET YOU KNOW.

18 FINALLY, ON PAGE 7, THE SECOND LINE UNDER INCIDENT
19 NUMBER 3, THE WORD "NOT" WAS INADVERTENTLY OMITTED IN THE
20 AMENDED VERSION, AND THEY'RE CORRECTING THAT TODAY.

21 SO WITH THAT, IF I MAY PROCEED?

22 JUDGE HENDERSON: YOU MAY.

23 DIRECT EXAMINATION BY MS. BARLOW

24 BY MS. BARLOW

25 Q CHIEF DYER, COULD YOU STATE YOUR JOB TITLE FOR THE RECORD,

1 PLEASE?

2 **A** POLICE CHIEF, CITY OF FRESNO.

3 **Q** AND COULD YOU JUST BRIEFLY DESCRIBE YOUR BACKGROUND,
4 EDUCATION FOR THE COURT?

5 **A** I HAVE BEEN THE POLICE CHIEF SINCE AUGUST 1ST OF 2001, AND I
6 HAVE BEEN EMPLOYED WITH THE FRESNO POLICE DEPARTMENT SINCE 1979,
7 MAY 1ST OF 1979. I CURRENTLY HAVE A BACHELOR OF SCIENCE DEGREE
8 IN CRIMINOLOGY FROM FRESNO STATE UNIVERSITY AND A MASTER'S
9 DEGREE IN MANAGEMENT FROM CAL POLY POMONA.

10 DURING THE COURSE OF MY CAREER I WORKED A VARIETY OF
11 ASSIGNMENTS AND WORKED MY WAY UP THROUGH THE RANKS IN VARIOUS
12 TACTICAL ASSIGNMENTS, NARCOTICS SUPERVISOR, SWAT SUPERVISOR,
13 DISTRICT COMMANDER, DEPUTY CHIEF, ASSISTANT CHIEF. SO A VARIETY
14 OF ASSIGNMENTS OVER THE YEARS THAT'S GIVEN ME A GREAT DEAL OF
15 EXPERIENCE.

16 **Q** DO YOU HAVE ANY AFFILIATION WITH THE CALIFORNIA POLICE
17 CHIEFS ASSOCIATION?

18 **A** I'M CURRENTLY THE PRESIDENT OF THE CALIFORNIA POLICE CHIEFS
19 ASSOCIATION THAT REPRESENTS SOME 338 POLICE CHIEFS IN THE STATE
20 OF CALIFORNIA.

21 **MS. BARLOW:** FOR THE COURT'S REFERENCE, IN THE MORE
22 DETAILED DESCRIPTION OF CHIEF DYER'S BACKGROUND AND EDUCATION
23 ARE IN PARAGRAPHS 1 THROUGH 13 OF THE REPORT.

24 BY MS. BARLOW

25 **Q** IN YOUR CAPACITY AS CHIEF, CHIEF DYER, AND IN YOUR EARLIER

1 EMPLOYMENT, HAVE YOU HAD ONGOING AND REGULAR CONTACT WITH
2 PAROLEES IN THE CITY OF FRESNO?

3 **A** YES.

4 **Q** AND CAN YOU JUST SUMMARIZE A LITTLE BIT ABOUT HOW YOU'VE HAD
5 THAT KIND OF CONTACT, IN WHAT CONTEXT?

6 **A** PRIOR TO BEING A CHIEF?

7 **Q** FOR YOUR CAREER.

8 **A** EARLY ON IN MY CAREER, I SPENT FIVE YEARS AS A POLICE
9 OFFICER IN THE CENTRAL POLICING DISTRICT. I WAS ASSIGNED TO
10 CENTRAL. IT WAS THE HIGHEST CONCENTRATION OF PAROLEES IN THE
11 CITY OF FRESNO. SO I DEALT WITH THEM ON A NIGHTLY BASIS.

12 SINCE THAT TIME I WAS ASSIGNED AS A -- TO A STREET
13 NARCOTICS ENFORCEMENT TEAM WHICH DEALT WITH THE SIGNIFICANT
14 NUMBER OF INDIVIDUALS THAT WERE INVOLVED IN DRUGS, TO INCLUDE
15 PEOPLE ON PAROLE. ALSO, WAS THE SERGEANT OF A PAROLE TACTICAL
16 TEAM, AND OUR JOB WAS TO FOCUS ON THOSE INDIVIDUALS THAT WERE
17 CONTRIBUTING TO CRIME WITHIN OUR COMMUNITY, CAREER CRIMINALS.
18 AND ALSO SERVED AS A SERGEANT TO A MAJOR NARCOTICS UNIT DEALING
19 WITH DRUG OFFENDERS AND OFTENTIMES INDIVIDUALS THAT HAD BEEN
20 RELEASED ON PAROLE.

21 THEN AS A -- IN MY CAPACITY AS A STAFF OFFICER, AS A
22 DISTRICT COMMANDER IN THE SOUTHEAST POLICING DISTRICT,
23 FREQUENTLY WAS INVOLVED IN THE ANALYSIS OF CRIME TRENDS THAT
24 WERE OCCURRING WITHIN THAT POLICING DISTRICT TRYING TO DETERMINE
25 WHO, IN FACT, WAS RESPONSIBLE FOR THOSE CRIMES. IT WAS DURING

1 THAT TIME THAT WE REALIZED A LARGE NUMBER OF THOSE INDIVIDUALS
2 COMMITTING CRIMES WERE INDIVIDUALS THAT WERE EITHER ON PROBATION
3 OR PAROLE, INDIVIDUALS WE REFERRED TO AS TEN PERCENTERS. TEN
4 PERCENT OF THE PEOPLE COMMIT A LARGE PERCENTAGE OF CRIME. THOSE
5 WERE THE INDIVIDUALS WE FOCUSED ON.

6 AND THEN LATER AS THE POLICE CHIEF I DEVELOPED WHAT
7 WAS REFERRED TO IN OUR DEPARTMENT AS THE CRIME VIEW SYSTEM, AND
8 THAT IS FREQUENT ANALYSIS OF CRIME WITHIN OUR CITY TO DETERMINE
9 WHO, IN FACT, IS RESPONSIBLE FOR COMMITTING CERTAIN TYPES OF
10 CRIMES, WHAT THEIR MOTIVES ARE, WHAT THEIR -- THE TIMES OF DAY,
11 THE DAYS OF WEEK THAT THEY'RE COMMITTING THOSE CRIMES. SO
12 EXTENSIVE RESEARCH IN TERMS OF ANALYSIS OF CRIME.

13 Q ALL RIGHT. SO EVEN TODAY YOU CONTINUE TO BE INVOLVED IN
14 WHAT'S GOING ON WITH PAROLEES IN YOUR COMMUNITY?

15 A VERY HANDS ON IN THAT ANALYSIS, YES.

16 Q ARE YOU FAMILIAR WITH THE CASELOAD AND SERVICES PROVIDED BY
17 THE PAROLE OFFICERS IN THE CITY OF FRESNO?

18 A I'M SORRY. I DIDN'T HEAR THAT.

19 Q I'M SORRY. ARE YOU FAMILIAR WITH THE CASELOAD AND SERVICES
20 PROVIDED BY PAROLE TO THE PAROLEES IN FRESNO?

21 A YES.

22 Q DO YOU KNOW HOW MANY PAROLEES THERE ARE IN FRESNO AT THE
23 CURRENT TIME?

24 MR. SPECTER: FOUNDATION, YOUR HONOR.

25 JUDGE HENDERSON: LAY A FOUNDATION FOR THIS

1 KNOWLEDGE.

2 **MS. BARLOW:** ALL RIGHT. WELL, WE HAVE CDCR DATA. WE
3 COULD PUT UP EXHIBIT DI 633.

4 (DOCUMENT DISPLAYED.)

5 **JUDGE KARLTON:** IS THAT THE BASIS OF YOUR
6 UNDERSTANDING?

7 **THE WITNESS:** YES.

8 BY MS. BARLOW

9 **Q** DO YOU ALSO HAVE INDEPENDENT UNDERSTANDING OF WHAT THE
10 APPROXIMATE NUMBER IS?

11 **A** YES.

12 **JUDGE KARLTON:** HOW WOULD HE DO THAT? DO YOU THINK
13 HE GOES OUT AND COUNTS PAROLEES EVERY DAY?

14 BY MS. BARLOW

15 **Q** CHIEF DYER, WOULD YOU EXPLAIN HOW YOU KNOW HOW MANY PAROLEES
16 THERE ARE IN FRESNO --

17 **A** WE TRACK THE -- WE STAY IN CLOSE CONTACT WITH THE LOCAL
18 PAROLE OFFICE TO FIND OUT HOW MANY PAROLEES ARE WITHIN OUR
19 JURISDICTION AT ANY GIVEN TIME. THAT NUMBER FLUCTUATES
20 SIGNIFICANTLY.

21 YOU KNOW, ONE OF THE OTHER THINGS THAT WE TRACK IS
22 FIND OUT HOW MANY ADMINISTRATIVE PLACEMENTS HAVE BEEN ALLOWED TO
23 OCCUR WITHIN OUR CITY, MEANING THAT FOLKS HAVE BEEN PLACED FROM
24 OTHER JURISDICTIONS INTO OUR CITY.

25 SO WE DO TRY TO KEEP A VERY CONSISTENT LOOK IN TERMS

1 OF PAROLED PAROLEES WITHIN OUR CITY.

2 **Q** ALL RIGHT. AND --

3 **JUDGE HENDERSON:** LET ME INTERRUPT.

4 WHAT'S AN EXAM OF A PAROLEE BEING PLACED IN YOUR
5 JURISDICTION FROM ANOTHER JURISDICTION? HOW DOES THAT WORK?

6 **THE WITNESS:** A GOOD EXAMPLE MIGHT BE, WE HAD ONE
7 HERE RECENTLY WHERE AN INDIVIDUAL HAD COMMITTED A CRIME IN
8 ANOTHER JURISDICTION. SO THAT WAS HIS COUNTY OF COMMITMENT
9 OFFENSE. HE WAS PLACED INTO PRISON. HE WAS RELEASED TO THAT
10 JURISDICTION, OR WAS GOING TO BE, BUT HE HAD MADE THREATS TO THE
11 PAROLE AGENT, AND SO THEY FELT THAT THAT INDIVIDUAL WOULD BE
12 BETTER SUITED IN ANOTHER JURISDICTION. HE WAS THEN PLACED INTO
13 OUR JURISDICTION.

14 ANOTHER EXAMPLE MIGHT BE WHERE, IF AN INDIVIDUAL
15 COMMITS A HEINOUS CRIME IN ANOTHER COUNTY AND THE VICTIM, THE
16 PREVIOUS VICTIM, COMES FORWARD AND ASKS THAT THAT PERSON NOT BE
17 PLACED BACK INTO THAT JURISDICTION, THEY WILL ADMINISTRATIVELY
18 PLACE THAT INDIVIDUAL INTO ANOTHER COUNTY. SOMETIMES THEY GET
19 PUSHED BACK AND FORTH, BUT, GENERALLY, WE TRY TO MONITOR THAT SO
20 IT DOESN'T BECOME TOO MUCH.

21 **JUDGE HENDERSON:** THANK YOU.

22 BY MS. BARLOW

23 **Q** NOW, IF WE COULD, ON EXHIBIT -- I'M SORRY. YOU EXPLAINED
24 WHY YOU KNOW THE NUMBER. WHAT'S THE NUMBER OF PAROLEES
25 CURRENTLY APPROXIMATELY IN FRESNO?

1 **A** JUST UNDER 5,000 PAROLEES IN THE -- IN FRESNO.

2 **Q** IS THAT THE COUNTY, AND THERE'S A SMALLER NUMBER IN THE
3 CITY?

4 **A** WELL, THAT'S THE COUNTY OF FRESNO. GENERALLY, ABOUT 80 TO
5 85 PERCENT OF THE PAROLEES LIVE WITHIN THE CITY OF FRESNO,
6 ALTHOUGH A MUCH HIGHER NUMBER OF THOSE INDIVIDUALS FREQUENT THE
7 CITY OF FRESNO ON A DAILY BASIS.

8 **Q** ALL RIGHT. AND IF I COULD REFER TO EXHIBIT 633, ON THE LINE
9 THAT IS FOR FRESNO, IF WE COULD HIGHLIGHT THAT?

10 CHIEF, DOES THAT REFLECT ACCURATELY ABOUT WHAT YOU
11 HAD AT THE END OF 2007 IN TERMS OF PAROLEES?

12 **A** YES.

13 **Q** AND THAT'S 3.9 PERCENT OF THE CDCR POPULATION, CORRECT?

14 **A** THAT'S CORRECT.

15 **Q** NOW, DO YOU HAVE AN OPINION BASED UPON YOUR INTERACTION WITH
16 PAROLE OFFICERS AND PAROLEES IN YOUR COMMUNITY AS TO THE
17 ADEQUACY -- I'M SORRY -- THE AMOUNT OF SUPERVISION OF PAROLEES,
18 IF IT'S ADEQUATE?

19 **A** YES.

20 **Q** WHAT IS THAT OPINION?

21 **A** WELL, IT'S -- THE LEVEL OF SUPERVISION OF PAROLE -- PAROLEES
22 IN OUR COMMUNITY IS NOT ADEQUATE. IN FACT, CURRENTLY, EACH
23 PAROLE AGENT SUPERVISES APPROXIMATELY ONE HUNDRED INDIVIDUALS
24 THAT ARE ON PAROLE, ALTHOUGH THAT NUMBER VARIES WITH INDIVIDUALS
25 THAT PERHAPS ARE THIRD STRIKERS. THAT NUMBER WOULD CHANGE IN

1 TERMS OF WHAT THE LEVEL OF SUPERVISION IS.

2 I BELIEVE THE CASELOAD FOR THAT IS -- SEX OFFENDERS
3 ARE SUPERVISED AT A RATIO OF 1-TO-20, AND I BELIEVE THIRD
4 STRIKERS ARE SUPERVISED AT A RATE OF ONE PAROLE AGENT FOR 40
5 PAROLEES.

6 **Q** ALL RIGHT. SO YOU THINK IT'S INADEQUATE. IS THAT BASED
7 UPON FUNDING, STAFFING, THE NUMBER OF PAROLE AGENTS, THE
8 CASELOAD?

9 **A** WELL, THAT NUMBER HAS INCREASED SIGNIFICANTLY OVER THE
10 YEARS, THE RATIO. I CAN REMEMBER WHEN THE NUMBER OF PAROLEES
11 BEING SUPERVISED BY AN AGENT WAS FAR LESS.

12 **Q** NOW, DO YOU HAVE AN OPINION ABOUT THE SERVICES THAT ARE
13 PROVIDED TO PAROLEES IN FRESNO?

14 **A** YES.

15 **Q** WHAT IS THAT OPINION?

16 **A** BASED ON -- BASED ON THE -- MY EXPERIENCE IN FRESNO, THE
17 SERVICES BEING PROVIDED FOR INDIVIDUALS GETTING OUT OF PRISON IS
18 NOT ADEQUATE. THERE ARE NOT ENOUGH FACILITIES FOR TREATMENT,
19 ESPECIALLY FOR THOSE INDIVIDUALS THAT ARE ADDICTED TO DRUGS, NOT
20 ONLY FOR PEOPLE GETTING OUT OF PRISON, BUT FOR PEOPLE THAT ARE
21 ON PROBATION IN OUR COUNTY.

22 AND I'VE ALSO SEEN THAT -- IT'S BEEN MY EXPERIENCE
23 THAT EVEN WITH THE SERVICE PROVIDERS BEING AVAILABLE, MANY OF
24 THE INDIVIDUALS GETTING OUT OF PRISON CHOOSE NOT TO TAKE
25 ADVANTAGE OF THOSE SERVICE PROVIDERS.

1 Q ALL RIGHT. NOW, YOU PUT TOGETHER A PAROLE APPREHENSION TEAM
2 IN FRESNO THAT YOU TALKED ABOUT IN YOUR REPORT WHEN YOU BECAME
3 CHIEF. WHY DID YOU DO THAT?

4 A I RECOGNIZED EARLY ON THAT SUPPRESSION OR ENFORCEMENT WASN'T
5 GOING TO BE THE ANSWER. WE WERE NOT GOING TO ARREST OUR WAY OUT
6 OF OUR CRIME PROBLEM. I STILL BELIEVE THAT, AND I BELIEVE THERE
7 HAS TO BE A BALANCED APPROACH, AND THAT IS STRONG ENFORCEMENT,
8 WHAT YOU REFER TO AS THE HAMMER, BUT THERE ALSO HAS TO BE THE
9 TREATMENT PREVENTION-INTERVENTION SIDE, WHICH WE REFER TO AS THE
10 HOPE. SO IT'S THE HAMMER, THE ENFORCEMENT, THAT PROVIDES AN
11 UNCOMFORTABLE ENVIRONMENT FOR MANY OF THESE INDIVIDUALS TO SEEK
12 TREATMENT. IT PROVIDES THE INCENTIVE FOR THESE INDIVIDUALS TO
13 SEEK TREATMENT, TO SEEK COUNSELING, TO TRY TO CHANGE THEIR LIFE.

14 Q AND YOU TALK ABOUT HOPE. DID YOU ESTABLISH ANY PROGRAMS TO
15 WORK ON THAT SIDE?

16 A WE -- AS PART OF OUR -- I WORKED WITH PAROLE. INITIALLY, WE
17 DID NOT HAVE AN ORIENTATION PROGRAM IN FRESNO. OTHER CITIES
18 DID, AND SO I CONTACTED FOLKS IN THE CALIFORNIA DEPARTMENT OF
19 CORRECTIONS IN SACRAMENTO TO TRY TO DETERMINE WHY WE DID NOT
20 HAVE SOMETHING LIKE THAT IN FRESNO.

21 THEY SAID THERE WAS A LACK OF FUNDING. I SAID I
22 WOULD HELP OUT, PROVIDE WHATEVER RESOURCES WE COULD, AND WE DID.
23 AND TODAY WE HAVE A VERY EFFECTIVE ORIENTATION PROGRAM WHERE ON
24 A VERY FREQUENT BASIS, EITHER EVERY OTHER WEEK OR EVERY WEEK
25 WHEN INDIVIDUALS ARE RELEASED FROM PRISON, THEY COME TO AN

1 ORIENTATION. SERVICE PROVIDERS ARE THERE, WHETHER IT BE FOR JOB
2 SKILLS, JOB PLACEMENT, COUNSELING, ALL OF THOSE THINGS ARE MADE
3 AVAILABLE TO INDIVIDUALS GETTING OUT OF PRISON. AS I SAID
4 EARLIER, MANY OF THEM CHOOSE NOT TO TAKE ADVANTAGE OF THOSE
5 SERVICES.

6 **Q** ALL RIGHT. NOW, YOU MENTIONED THE CRIME VIEW PROGRAM THAT
7 YOU STARTED ALSO. HAS THE DATA AND INTELLIGENCE GATHERED IN
8 THAT PROGRAM ALLOWED YOU TO REACH ANY CONCLUSIONS ABOUT THE ROLE
9 OF PAROLEES IN CRIME IN FRESNO?

10 **A** OUR CRIME VIEW MEETINGS FOR ME -- I'M PARTICIPATING ON A
11 MONTHLY BASIS -- AND THAT IS THAT ALL OF OUR COMMANDERS COME
12 TOGETHER. WE REVIEW VERY DETAILED, TIMELY, ACCURATE CRIME DATA
13 IN TERMS OF WHERE CRIME IS BEING COMMITTED, WHO'S COMMITTING
14 THAT CRIME, AND ONE OF THE THINGS THAT I HAVE EXPERIENCED IN
15 THOSE MEETINGS IS THAT THERE IS A REOCCURRING THEME, AND THAT
16 REOCCURRING THEME IS THERE ARE A LARGE PERCENTAGE OF INDIVIDUALS
17 IN OUR COMMUNITY COMMITTING CRIMES THAT ARE ON PAROLE AND/OR ON
18 PROBATION, AND, SO, THAT IS A REOCCURRING THEME THAT HAS COME
19 UP.

20 OUR FOCUS HAS BEEN ON GANGS, DRUGS, AND PAROLE
21 VIOLATORS, BECAUSE WE KNOW THOSE INDIVIDUALS CONTRIBUTE TO A
22 LARGE PERCENTAGE OF CRIME. WE KNOW IN OUR EXPERIENCE AND IN OUR
23 RESEARCH THAT ABOUT TEN PERCENT OF THE PEOPLE COMMIT A MINIMUM
24 OF 50 PERCENT OF THE CRIMES. SO WE TRY TO TARGET THOSE TEN
25 PERCENTERS, AND PAROLEES AND GANG MEMBERS MAKE UP A LARGE

1 PERCENTAGE OF THAT TEN PERCENT.

2 **JUDGE HENDERSON:** COULD I INTERRUPT, COUNSEL?

3 YOU'VE MENTIONED, I BELIEVE AT LEAST TWICE, CHIEF,
4 THAT TEN PERCENT OF THE SERVICES ARE PEOPLE ARE ON PROBATION OR
5 ON PAROLE, AND YOU'VE MENTIONED -- BUT THEN YOUR FOCUS IS ON
6 PAROLE AND YOU SEEM NOT TO WORRY ABOUT PROBATION. IS THAT A
7 CORRECT PERCEPTION, AND WHY IS THAT, IF SO?

8 **THE WITNESS:** WE ACTUALLY FOCUS ON BOTH. WE DO
9 PROBATION SWEEPS. WE DO PAROLE SWEEPS. WE TARGET THOSE
10 INDIVIDUALS IN OUR COMMUNITY THAT WE BELIEVE TO BE INVOLVED IN
11 CRIME ACTIVITY, PEOPLE THAT ARE NOT IN COMPLIANCE WITH THEIR
12 PAROLE CONDITIONS. AND SO, YES, IT IS BOTH PROBATION AND
13 PAROLE. I'VE PROBABLY FOCUSED MORE HERE ON THE PAROLE SIDE
14 SINCE THIS IS --

15 **JUDGE HENDERSON:** FINE.

16 **MS. BARLOW:** THANK YOU.

17 BY MS. BARLOW

18 **Q** IN YOUR REPORT AT PAGE 3 YOU GAVE A SUMMARY OF THE TYPES OF
19 CRIMES WHICH -- THE COMMITMENT CRIMES FOR PAROLEES RELEASED INTO
20 FRESNO. COULD YOU TELL US WHERE THAT DATA IS DRAWN FROM?

21 **A** WHAT ARE YOU REFERRING TO?

22 **JUDGE KARLTON:** THE LONG LIST ON PAGE 3 OF VARIOUS
23 CRIMES --

24 **MS. BARLOW:** IT'S IN PARAGRAPH 15. IT'S ACTUALLY NOW
25 ON PAGE -- PAGE NUMBERED 4. I APOLOGIZE.

1 **THE WITNESS:** COULD YOU REPEAT THE QUESTION THERE?

2 **JUDGE KARLTON:** SHE WANTS TO KNOW WHERE THAT DATA IS
3 DRAWN FROM.

4 **THE WITNESS:** THAT WAS INFORMATION THAT WAS
5 PROVIDED -- PROVIDED TO OUR DEPARTMENT FROM A LOCAL PAROLE
6 SUPERVISOR, DAN RENAREA (PHONETIC). HE WORKS OUT OF THE FRESNO
7 OFFICE. WE HAD ASKED FOR A SNAPSHOT IN TIME. WE KNEW THAT THIS
8 PRISONER RELEASE ISSUE WAS A VERY SIGNIFICANT ISSUE AND THAT IT
9 MIGHT -- THAT IT MIGHT HAVE A SIGNIFICANT IMPACT ON OUR
10 COMMUNITY. SO WE HAD ASKED FOR WHAT WOULD THAT MEAN IF SOME
11 40,000 -- AT THE TIME THE NUMBER 40,000 WAS BEING DISCUSSED --
12 IF 40,000 INMATES WERE RELEASED INTO OUR COMMUNITY, WHAT WOULD
13 THAT MEAN.

14 AT THAT TIME HE PUT TOGETHER A LOOK AT THREE MONTHS
15 OF RECENT INDIVIDUAL -- INDIVIDUALS THAT WERE RECENTLY RELEASED
16 INTO OUR COMMUNITY, AND THERE WAS ABOUT 120 PER MONTH THAT WERE
17 BEING RELEASED, AND HE PROVIDED US WITH A RAW NUMBER OF WHAT
18 THOSE COMMITMENT OFFENSES WERE FOR THOSE 120. AND BASED ON
19 THOSE RAW NUMBERS OVER THAT THREE-MONTH PERIOD, WE EQUATED THOSE
20 TO PERCENTAGES. SO, FOR EXAMPLE, 12.5 PERCENT OF THE 120 THAT
21 WERE RELEASED HAD AN ORIGINAL COMMITMENT OFFENSE FOR AUTO THEFT.

22 **MS. BARLOW:** OKAY.

23 **THE WITNESS:** THAT'S WHERE WE GOT THAT DATA.

24 **JUDGE REINHARDT:** THIS IS NOT DATA FOR THE KINDS OF
25 PEOPLE WHO WOULD BE RELEASED UNDER PLAINTIFFS' PROPOSAL? THIS

1 IS DATA AS TO THOSE WHO ARE CURRENTLY BEING RELEASED?

2 **THE WITNESS:** YES, SIR. BUT THE ONES THAT WE FOCUSED
3 ON WERE THE -- WHAT HAVE BEEN RECENTLY BEING REFERRED TO AS LOW
4 LEVEL OFFENDERS, DRUG POSSESSION AND PROPERTY CRIMES. THOSE
5 TYPES WERE THE ONES THAT MADE UP THE -- PRIMARILY THE LIST,
6 ALTHOUGH THERE WAS A SMALL PERCENTAGE OF SEX OFFENSES IN THERE
7 AS WELL, BUT THAT WAS KIND OF THE MAKEUP OF WHO HAD BEEN
8 RELEASED IN OUR COMMUNITY.

9 BY MS. BARLOW

10 **Q** SO THE PURPOSE IN PUTTING THIS INFORMATION IN HERE IS JUST
11 TO SORT OF EXPLAIN HOW YOU -- WHAT YOU WERE LOOKING AT WHEN YOU
12 CAME TO YOUR CONCLUSIONS?

13 **JUDGE KARLTON:** HE DIDN'T DO IT FOR THAT PURPOSE. HE
14 APPARENTLY HAD IT DRAWN FOR USE IN THIS TRIAL, CORRECT?

15 **THE WITNESS:** INITIALLY, NOT FOR THE TRIAL. BUT
16 EVENTUALLY WE USED IT FOR THIS TRIAL, YES, SIR.

17 **JUDGE KARLTON:** NO. I WANT TO HONE IN ON WHAT YOU
18 WERE DOING. IT WAS USED FOR PURPOSES OF BEING PREPARED TO COME
19 TO THIS TRIAL AND TESTIFY AS YOU HAVE?

20 **THE WITNESS:** INITIALLY, SIR, IT WAS USED FOR THE
21 SETTLEMENT DISCUSSIONS THAT WE WERE INVOLVED IN, YES.

22 **JUDGE KARLTON:** FINE. BUT IT WAS ALL INVOLVED IN
23 THIS LITIGATION?

24 **THE WITNESS:** YES.

25 **JUDGE KARLTON:** YOU WOULDN'T HAVE DONE IT OTHERWISE?

1 **THE WITNESS:** THAT'S CORRECT. YES.

2 **MS. BARLOW:** THANK YOU.

3 BY MS. BARLOW

4 **Q** YOU MAKE A REFERENCE IN YOUR REPORT TO THOSE BEING SENTENCED
5 AS CAREER CRIMINALS, AND YOU TALKED ABOUT THE TEN PERCENTERS.
6 AND YOU SAID IN YOUR REPORT THAT THOSE BEING SENTENCED TO STATE
7 PRISON ARE CAREER CRIMINALS. WHAT'S THE BASIS FOR THAT OPINION?

8 **A** IT'S BEEN MY EXPERIENCE OVER THE YEARS THAT INDIVIDUALS THAT
9 COMMIT CRIMES ON THEIR FIRST OFFENSE, OR EVEN SECOND OFFENSE,
10 CRIMES SUCH AS BURGLARY, AUTO THEFT, GENERALLY WHAT HAPPENS IS
11 THOSE INDIVIDUALS ARE EITHER DEFERRED INTO SOME FORM OF A
12 TREATMENT PROGRAM, THEY'RE PLACED ON PROBATION, THEY ARE
13 SENTENCED TO LOCAL TIME, BUT, GENERALLY, THOSE INDIVIDUALS ARE
14 NOT SENTENCED TO STATE PRISON. AND IT ISN'T UNTIL THOSE
15 INDIVIDUALS HAVE GONE THROUGH THE SYSTEM SEVERAL TIMES THAT
16 THEY -- A DECISION IS MADE TO SENTENCE THOSE PEOPLE TO PRISON.

17 **Q** NOW, IN YOUR REPORT YOU ALSO TALK ABOUT 10 PERCENT OF
18 OFFENDERS COMMITTING 80 PERCENT OF CRIME, AND YOU REFER TO
19 STUDIES. WERE THERE PARTICULAR STUDIES THAT YOU REFERENCED?

20 **A** THERE WAS DIFFERENT STUDIES -- I DON'T HAVE THEM IN FRONT OF
21 ME, BUT I'VE REFERENCED THEM AND PROVIDED THEM -- THAT WE LOOKED
22 AT, AND WE USED A CONSERVATIVE ESTIMATE INITIALLY, THAT 10
23 PERCENT COMMITTED 50 PERCENT OF THE CRIME. THERE HAVE BEEN SOME
24 STUDIES THAT SHOW THAT UPWARDS OF 80 PERCENT OF THE CRIME,
25 ESPECIALLY FOR THE CRIMES OF BURGLARY AND ROBBERY, 10 PERCENT OF

1 THE PEOPLE COMMIT 80 PERCENT OF THOSE CRIMES AND, YES.

2 JUDGE KARLTON: TEN PERCENT OF THE PEOPLE OR TEN
3 PERCENT OF THE PEOPLE CONVICTED?

4 THE WITNESS: TEN PERCENT OF THE PEOPLE THAT WE COME
5 IN CONTACT WITH AND ARREST ARE RESPONSIBLE FOR THOSE, SO I DON'T
6 KNOW IF THAT HAS BEEN TAKEN FURTHER.

7 JUDGE KARLTON: TEN PERCENT OF THOSE ARRESTED, IN
8 YOUR VIEW, COMMIT UPWARDS OF 80 PERCENT OF THE CRIMES IN YOUR
9 COMMUNITY?

10 THE WITNESS: THAT'S CORRECT.

11 JUDGE HENDERSON: I UNDERSTOOD, AND IT MAY BE THE
12 SAME THING THAT YOU CALL TEN PERCENTERS, THOSE ON PROBATION OR
13 ON PAROLE?

14 THE WITNESS: THEY MAKE UP -- THEY'RE A PART OF THAT
15 TEN PERCENT, YES, SIR.

16 JUDGE HENDERSON: THEY'RE A PART OF IT?

17 THE WITNESS: YES, SIR.

18 BY MS. BARLOW

19 Q ALL RIGHT. AND DID YOU DERIVE THAT INFORMATION FROM
20 "RATIONAL CHOICE AND CRIMINAL BEHAVIOR," THAT 10 PERCENT COMMIT
21 80 PERCENT OF THE CRIME?

22 A WHAT WAS THE QUESTION? I'M SORRY.

23 Q IF WE COULD PUT UP EXHIBIT NO. 636, THE TEN PERCENT OF
24 CRIMINALS RESPONSIBILITY FOR 80 PERCENT. YOU SAID YOU RELIED ON
25 A STUDY. WAS THAT "RATIONAL CHOICE AND CRIMINAL BEHAVIOR"?

1 **A** YES, IT IS.

2 **Q** IS THAT CONSISTENT WITH YOUR EXPERIENCE IN THE FIELD?

3 **A** YES, IT IS.

4 **Q** NOW, YOU ALSO SAY IN YOUR REPORT THAT THE AVERAGE INMATE HAS
5 COMMITTED 12 CRIMES BEFORE THEIR CURRENT ARREST. WHAT WAS THE
6 SOURCE FOR THAT INFORMATION?

7 **A** THERE WAS A RAND STUDY THAT WAS CONDUCTED, AND I BELIEVE IT
8 OCCURRED IN TWO STATES, ONE OF THEM BEING, I BELIEVE, WISCONSIN,
9 THE OTHER NEW JERSEY. AND IN ONE OF THOSE, ONE OF THE STUDIES,
10 IT SHOWED THAT BEFORE AN INDIVIDUAL WAS EVER ARRESTED, AND THIS
11 WAS THE YEAR BEFORE BEING INCARCERATED, THEY HAD COMMITTED 15
12 FELONY CRIMES, AND THERE WAS ANOTHER STUDY THAT STATED THAT THEY
13 HAD COMMITTED 12, AND THAT WAS SELF REPORTED FOR INDIVIDUALS
14 THAT HAD BEEN CONVICTED.

15 **Q** WE'VE HEARD FROM OTHER WITNESSES THAT THOSE NUMBERS ARE
16 HIGHLY INFLATED. DO YOU AGREE WITH THAT?

17 **A** NO, I DO NOT.

18 **Q** AND WHY NOT?

19 **A** I THINK GENERALLY THERE'S -- QUITE OFTEN, I SHOULD SAY, THAT
20 THOSE NUMBERS ARE PROBABLY UNDERREPORTED. AND THERE HAS BEEN
21 OTHER STUDIES THAT SHOW THAT THOSE NUMBERS ARE UNDERREPORTED,
22 THAT IN SOME CASES INDIVIDUALS ARE COMMITTING HUNDREDS OF CRIMES
23 BEFORE THEY'RE EVER APPREHENDED, AND WHAT I PREPARED FOR MY
24 REPORT WAS A VERY CONSERVATIVE ESTIMATE.

25 **Q** ALL RIGHT. THANK YOU.

1 **MS. BARLOW:** NOW, WE DO HAVE, YOUR HONORS, EXHIBIT
2 653 AND 637, IF WE COULD PUT UP THE FIRST PAGE 653?

3 (DOCUMENT DISPLAYED.)

4 **BY MS. BARLOW**

5 **Q** IS THIS ONE OF THE ARTICLES THAT CONTAINS THE DATA YOU
6 RELIED ON FOR THIS INFORMATION?

7 **A** THERE WAS AN NIJ STUDY THAT WAS CONDUCTED THAT SHOWED A
8 LARGE NUMBER OF CRIMES IN ADDITION TO THE RESEARCH THAT WE
9 PROVIDED FROM THE RAND STUDY.

10 **Q** IF WE COULD JUST PUT UP THE NEXT PAGE, SECOND PARAGRAPH
11 UNDER "ANNUAL OFFENDER RATES"?

12 **A** I THINK IT WOULD BE THE NEXT PARAGRAPH.

13 **Q** WELL, THIS ONE -- I'M SORRY.

14 THAT INCLUDED INMATES FROM CALIFORNIA, CORRECT?

15 **A** THAT'S CORRECT.

16 **Q** OKAY. AND THEN, YES, THE PARAGRAPH UNDER "THE TABLE
17 REPRESENTS". OKAY.

18 "WHEN SUMMED ACROSS APPROPRIATE CATEGORIES,
19 THE STUDY FOUND THAT INMATES AVERAGE BETWEEN 187
20 AND 287 CRIMES PER YEAR, EXCLUSIVE OF DRUG
21 DEALS."

22 WAS YOUR CALCULATION ABOUT THE NUMBER OF CRIMES
23 COMMITTED ALSO EXCLUSIVE OF DRUG DEALS?

24 **A** THE RESEARCH THAT I RELIED ON, YES, IT WAS EXCLUSIVE OF DRUG
25 ARRESTS, DRUG CRIMES.

1 Q AND ALSO NUMBER 637?

2 (DOCUMENT DISPLAYED.)

3 BY MS. BARLOW

4 Q IS THIS ALSO ONE OF THE STUDIES -- OR SUMMARIES OF A STUDY
5 THAT YOU RELIED UPON?

6 A YES.

7 Q IF WE COULD GO TO BATES PAGE 200, PARAGRAPH BEGINNING
8 "THIRD"? THIS IS A RECITATION OF THE RAND STUDY SHOWING 15
9 CRIMES EXCLUDING DRUG CRIMES, CORRECT?

10 AND THEN IN THE NEXT TWO PARAGRAPHS DOWN -- I'M
11 SORRY. IS THAT CORRECT, CHIEF?

12 A YES.

13 Q AND ALSO WERE YOU LOOKING AT THE STUDIES REFERENCED HERE
14 FROM NEW JERSEY AND WISCONSIN?

15 A THAT'S CORRECT.

16 THE CLERK: FIVE MINUTES, COUNSEL.

17 BY MS. BARLOW

18 Q NOW, IF YOU COULD TELL US WHY YOU BELIEVE, CHIEF, THAT THE
19 REDUCTION IN PRISON POPULATION OF 52,000 THAT'S PROPOSED IS
20 GOING TO CREATE A PUBLIC SAFETY HAZARD; COULD YOU TELL US WHY
21 THAT IS?

22 JUDGE HENDERSON: FOR FRESNO?

23 MS. BARLOW: I'M SORRY?

24 JUDGE HENDERSON: FOR FRESNO?

25 MS. BARLOW: ACTUALLY, YOUR HONOR, HIS REPORT TALKS

1 ABOUT FRESNO AND THE CENTRAL VALLEY.

2 **JUDGE HENDERSON:** OKAY.

3 **THE WITNESS:** THE -- WHEN INDIVIDUALS ARE RELEASED
4 FROM PRISON, THERE IS A HIGH LIKELIHOOD THAT THEY ARE GOING TO
5 CONTINUE IN THEIR CRIMINAL LIFESTYLE. IN FACT, IN CALIFORNIA I
6 BELIEVE THAT NUMBER IS 70 PERCENT OR GREATER THAT RECIDIVATE.
7 AND WHEN WE LOOK AT IF 52,000 INMATES ARE RELEASED BACK INTO OUR
8 COMMUNITY, DEPENDING ON THAT TIMEFRAME, WE HAVE INFORMATION THAT
9 ABOUT 3.9 PERCENT OF THOSE INDIVIDUALS WOULD MORE THAN LIKELY BE
10 PLACED IN FRESNO COUNTY. OF THOSE, ABOUT 80 PERCENT WOULD COME
11 INTO THE CITY OF FRESNO, MINIMUM MAYBE 80 PERCENT. THAT WOULD
12 BE JUST OVER 1,600 INMATES RELEASED BACK INTO THE CITY OF FRESNO
13 PREMATURELY. IF WE FURTHERED WHAT WE'VE ALREADY SAID, THAT
14 THERE IS A 70 PERCENT LIKELIHOOD THAT THEY WOULD REOFFEND --

15 **JUDGE KARLTON:** NO. THAT THEY WOULD RECIDIVATE.

16 **THE WITNESS:** -- RECIDIVATE. AND IF WE LOOK AT THE
17 FACT THAT THOSE INDIVIDUALS WOULD LIKELY COMMIT AT MINIMUM 12
18 CRIMES BEFORE THEY WERE APPREHENDED, THAT WOULD MEAN THERE WOULD
19 BE A SUBSTANTIAL NUMBER OF CRIMES COMMITTED IN THE CITY OF
20 FRESNO, UPWARDS OF 13,000 CRIMES OVER THAT THREE-YEAR PERIOD.

21 **JUDGE REINHARDT:** THAT WOULD BE COMMITTED PREMATURELY
22 AS OPPOSED TO COMMITTING THEM SEVERAL MONTHS LATER.

23 **THE WITNESS:** YES, SIR. THEY WOULD BE COMMITTED AT
24 SOME POINT DURING THAT THREE-YEAR PERIOD. I DON'T KNOW -- YOU
25 KNOW, I KNOW THAT THERE'S --

1 **JUDGE KARLTON:** THOSE PEOPLE THEY'RE TALKING ABOUT
2 RELEASING ARE GOING TO BE RELEASED A COUPLE OF MONTHS LATER IN
3 ANY EVENT. THEY ARE GOING TO BE IN YOUR COMMUNITY IN EXACTLY
4 THE SAME NUMBERS, IN ANY EVENT, AND THEY ARE GOING TO COMMIT THE
5 SAME NUMBER CRIMES, IF THEY COMMIT CRIMES, IN ANY EVENT.

6 **THE WITNESS:** THAT IS A POSSIBILITY. I DON'T REALLY
7 KNOW --

8 **JUDGE REINHARDT:** WELL, IT'S POSSIBILITY THEY WON'T
9 COMMIT CRIMES AT ALL.

10 **JUDGE KARLTON:** AT ALL.

11 **JUDGE REINHARDT:** ANYTHING IS A POSSIBILITY.

12 **THE WITNESS:** YES, SIR.

13 **JUDGE REINHARDT:** WE'VE GONE THROUGH THIS, SEVERAL
14 DAYS OF TRIAL, THAT ANYTHING IS A POSSIBILITY. BUT BEYOND IT
15 BEING A POSSIBILITY, CAN YOU SAY THAT THIS IS A PROBABILITY, AT
16 LEAST, THAT THEY WILL COMMIT CRIMES AND THAT THEY WILL BE
17 DELAYED OR ADVANCED BY A COUPLE OF MONTHS, BUT YOU WILL HAVE THE
18 SAME NUMBER OF CRIMES IN YOUR COMMUNITY?

19 **THE WITNESS:** I UNDERSTAND THAT, SIR. I DO AGREE
20 THAT THOSE CRIMES WILL BE ACCELERATED.

21 **JUDGE REINHARDT:** THEY WILL BE COMMITTED EARLIER
22 RATHER THAN THREE MONTHS LATER.

23 **THE WITNESS:** THAT'S CORRECT.

24 BY MS. BARLOW

25 **Q** IF I MAY, THE EARLY RELEASE PORTION IS ONLY PART OF THE

1 PROPOSAL. IT'S TO REDUCE 52,000 ENTIRELY, AND THOSE PEOPLE
2 WOULD NOT JUST BE RELEASED INTO YOUR COMMUNITY. THEY WOULD BE
3 STAYING IN YOUR COMMUNITY, AT LEAST SOME OF THEM.

4 THE COURT HAS HEARD TESTIMONY THAT THERE'S GOING TO
5 BE A MINIMAL AND INSIGNIFICANT IMPACT FROM EITHER THE EARLY
6 RELEASE OR THE DIVERSION OR TAKING PEOPLE OFF PAROLE. DO YOU
7 AGREE WITH THAT?

8 **A** NO, I DO NOT.

9 **Q** WHY NOT?

10 **A** WELL, IF YOU ARE ONE OF THE VICTIMS THAT ARE GOING TO BE
11 VICTIMIZED BY ONE OF THESE INDIVIDUALS, THAT IMPACT IS NOT
12 MINIMAL. IT MAY BE MINIMALLY -- OR MINIMAL IN THE EYES OF SOME
13 WHO ARE JUST LOOKING AT STATISTICS AND NOT LOOKING AT THE
14 PERSONAL IMPACT THAT IS OCCURRING TO THESE INDIVIDUALS THAT ARE
15 HAVING THEIR HOMES BROKEN INTO; THE FACT THAT SENIORS MAY HAVE
16 THEIR HOUSES BROKEN INTO; THE IMPACT THAT THAT HAS ON THAT
17 INDIVIDUAL PSYCHOLOGICALLY; THE FACT THAT SOMEBODY HAS INVADED
18 THEIR HOME; SOMEONE HAS, AS I'VE REFERRED TO IN A FEW EXAMPLES,
19 HAD THEIR IDENTITY STOLEN BY THESE INDIVIDUALS; SOMEONE THAT HAS
20 BEEN CARJACKED BY SOMEBODY --

21 **JUDGE REINHARDT:** YOU KNOW, I DON'T THINK IT'S
22 NECESSARY TO RUN THROUGH THE WHOLE RANGE OF CRIMES.

23 **THE WITNESS:** SURE.

24 **JUDGE REINHARDT:** NOR TO SUGGEST THAT PEOPLE ARE
25 INSENSITIVE TO THE VICTIMS OF CRIMES.

1 **THE WITNESS:** RIGHT.

2 **JUDGE REINHARDT:** THAT'S REALLY NOT THE ISSUE.

3 MAYBE WE SHOULD BE SENSITIVE TO THE PEOPLE WHO WILL
4 NOT BE VICTIMIZED OR BURGLARIZED BECAUSE THESE PEOPLE HAVE BEEN
5 SENT BACK TO JAIL THREE MONTHS EARLIER AND THEN THE OTHER PEOPLE
6 ARE NOT GOING TO BE THE VICTIMS. WE ARE SENSITIVE TO THOSE
7 PEOPLE EQUALLY. SO SOME BENEFIT, SOME LOSE. IT'S A QUESTION OF
8 WHICH PEOPLE ARE VICTIMIZED.

9 IF YOU ARE FORTUNATE ENOUGH TO ESCAPE CRIME BECAUSE
10 IT WAS COMMITTED THREE MONTHS EARLIER, YOU'RE THE BENEFICIARY.
11 IF YOU ARE THE VICTIM BY TIME BECAUSE THEY WERE THREE MONTHS
12 EARLIER, YOU'RE THE LOSER. BUT AS YOU TESTIFIED, IT'S THE SAME
13 NUMBER OF VICTIMS THAT WE'RE TALKING ABOUT.

14 **THE WITNESS:** WELL, SIR, I BELIEVE THAT THOSE CRIMES
15 WOULD OCCUR EARLIER.

16 **JUDGE KARLTON:** WE AGREE. EVERYBODY AGREES. I DON'T
17 KNOW -- I THINK EVEN THE PLAINTIFFS MAY AGREE. I DON'T KNOW,
18 BUT THE ISSUE IS -- NEVER MIND. THIS IS JUST RHETORICAL.

19 **MS. BARLOW:** IF I COULD JUST --

20 **JUDGE REINHARDT:** YOU ASKED ABOUT DIVERSION --

21 **JUDGE KARLTON:** THIS IS JUST RHETORIC.

22 **JUDGE REINHARDT:** -- AND NOT HAVING AS MANY PEOPLE
23 UNDER PAROLE. AS I UNDERSTOOD YOUR TESTIMONY, ONE OF THE
24 REASONS FOR THE CRIME IS BECAUSE PAROLE OFFICERS ARE OVERWORKED,
25 THEY HAVE TOO HIGH A CASELOAD, AND THEY CAN'T PROVIDE THE KINDS

1 OF SERVICES THAT WILL HELP PREVENT THE CRIME.

2 NOW, IF YOU GAVE MORE INTENSIVE PAROLE -- THIS IS A
3 QUESTION. IF YOU GAVE MORE INTENSIVE PAROLE TO THE PEOPLE WHO
4 ARE MORE LIKELY TO COMMIT CRIMES AND REDUCED THE PAROLE FOR THE
5 ONES THAT DON'T PRESENT AS SERIOUS A RISK, WOULD THAT BE HARMFUL
6 OR WOULD IT HURT THE COMMUNITY?

7 **THE WITNESS:** THE HIGHER LEVEL OF SUPERVISION AND
8 ACCOUNTABILITY THAT'S PROVIDED TO INDIVIDUALS THAT HAVE BEEN
9 RELEASED FROM PRISON PROVIDES THAT PERSON WITH A HIGHER
10 LIKELIHOOD OF SUCCEEDING BECAUSE IT TAKES AWAY THEIR ANONYMITY.
11 IT ALLOWS FOR FREQUENT DRUG TESTING. IT ALLOWS FOR THEM TO KNOW
12 THEY ARE BEING WATCHED. THEY ARE OPEN TO BEING SEARCHED BY LAW
13 ENFORCEMENT, AND THEREFORE, IT DOES TAKE AWAY THEIR ANONYMITY
14 AND THEIR ABILITY IN SOME CASES TO FEEL THEY CAN GET AWAY WITH
15 CRIME. SO, YES, SUPERVISION AND ACCOUNTABILITY ARE VERY
16 IMPORTANT.

17 **JUDGE REINHARDT:** THE QUESTION REALLY IS, IS IT
18 POSSIBLE, TO USE THE COMMON PHRASE THESE DAYS -- ONE OF THE
19 PLAINTIFFS' PROPOSALS IS TO GIVE MORE SUPERVISION TO THOSE MORE
20 LIKELY TO COMMIT CRIMES AND TO ELIMINATE SUPERVISION FOR THOSE
21 WHO ARE LESS LIKELY, THEREBY ALLOWING THE PAROLE OFFICERS TO
22 GIVE MORE ATTENTION AND SUPERVISION TO THOSE MORE LIKELY TO
23 COMMIT CRIMES. IS THAT GOOD OR BAD?

24 **THE WITNESS:** WELL, OBVIOUSLY, IT WOULD BE GOOD FOR
25 THOSE INDIVIDUALS THAT ARE GOING TO GET MORE SUPERVISION.

1 UNFORTUNATELY, FOR THOSE INDIVIDUALS THAT ARE NOT GOING TO GET
2 SUPERVISED, ALTHOUGH SOME OF THEM MAY NOT REENGAGE IN CRIMINAL
3 ACTIVITY JUST BECAUSE THEY'VE CHOSEN TO CHANGE THEIR LIFE,
4 UNFORTUNATELY, I -- BASED ON MY EXPERIENCE, THE VAST MAJORITY OF
5 THOSE INDIVIDUALS WILL CONTINUE WITH THAT LIFESTYLE IF THEY ARE
6 NOT SUPERVISED ACCORDINGLY OR HELD ACCOUNTABLE.

7 **JUDGE REINHARDT:** DO THEY ALL REQUIRE THE SAME DEGREE
8 OF SUPERVISION?

9 **THE WITNESS:** I DO NOT BELIEVE SO.

10 **JUDGE REINHARDT:** SOME MAY REQUIRE LESS AND SOME
11 MORE?

12 **THE WITNESS:** THAT'S CORRECT, BUT I DO BELIEVE THAT
13 THEY ALL DESERVE SOME LEVEL OF SUPERVISION OR ACCOUNTABILITY.

14 **JUDGE REINHARDT:** ALL FOR THE SAME PERIOD OF TIME?
15 IS IT NECESSARY TO SUPERVISE ALL PAROLEES TO THE SAME DEGREE OR
16 THE SAME AMOUNT OF TIME?

17 **THE WITNESS:** I DON'T BELIEVE SO.

18 **JUDGE KARLTON:** THIS IS A QUESTION FAR REMOVED FROM
19 WHAT OUR CONCERNS ARE, I SUPPOSE, BUT SINCE EVERYBODY IS TALKING
20 ABOUT IT AS IF IT WERE AN ISSUE FOR US, I WANT TO RAISE IT WITH
21 YOU.

22 CALIFORNIA HAS THE HIGHEST RECIDIVISM RATE IN THE
23 UNITED STATES. WITHOUT DOUBT THE SYSTEM THAT WE NOW HAVE FAILS.
24 ISN'T PUBLIC SAFETY GOING TO BE CHANGED, I MEAN EFFECTIVELY
25 IMPROVED, IF WE CHANGE THE UTTERLY FAILED SYSTEM THAT WE'RE NOW

1 USING?

2 **THE WITNESS:** YES, SIR, I AGREE WITH YOU TOTALLY.

3 **JUDGE KARLTON:** NOW, I DON'T KNOW WHAT THAT MEANS.

4 WITH THE GREATEST RESPECT, I SUSPECT YOU DON'T EITHER, BECAUSE
5 NONE OF US DO. THE EXPERTS, THE ACADEMIC EXPERTS THAT WE HAVE
6 HEARD -- WELL, I SHOULDN'T SAY THAT. LET ME EXPLORE SOME OTHER
7 QUESTIONS THAT WERE RAISED BY LAW ENFORCEMENT OFFICERS.

8 THERE IS A PROBLEM, APPARENTLY -- IS THERE IN YOUR
9 VIEW A PROBLEM OF SENDING LOW LEVEL OFFENDERS TO PRISON BECAUSE
10 THEY MIX WITH SERIOUS OFFENDERS AND BECAUSE, BY VIRTUE OF
11 THAT -- I'M SORRY, I'VE FORGOTTEN THE PHRASE USED BY ONE OF YOUR
12 PREDECESSORS -- THEY BECOME MORE RECEPTIVE TO COMMITTING SERIOUS
13 CRIMES? DO YOU BELIEVE THAT TO BE TRUE?

14 **THE WITNESS:** I BELIEVE THAT WHEN INDIVIDUALS, THE
15 LONGER THEY ARE -- IN CASES BY PLACING AN INDIVIDUAL THAT
16 COMMITS A PROPERTY CRIME WITH AN INDIVIDUAL THAT'S COMMITTED
17 ROBBERIES, THERE IS A POTENTIAL FOR THAT PERSON THAT'S COMMITTED
18 ROB- -- BURGLARIES TO PERHAPS ESCALATE THEIR LEVEL OF CRIMES,
19 YES.

20 **JUDGE KARLTON:** IF WE HAVE TO CHANGE THE SYSTEM --
21 ALL RIGHT? YOU'RE THE SECOND LAW ENFORCEMENT OFFICER, THE OTHER
22 FELLOW SAID HE THOUGHT THAT WAS CERTAINLY GOING TO HAPPEN. BUT,
23 IN ANY EVENT, THAT SUGGESTS THAT AT LEAST AT SOME LEVEL THE
24 APPROPRIATE PLACE TO OPERATE IS IN TRYING TO SEGREGATE ONE GROUP
25 OF CRIME -- CRIMINALS FROM ANOTHER. WE CAN'T DO THAT IN TODAY'S

1 PRISONS BECAUSE THEY ARE SO OVERCROWDED, PEOPLE ARE JUST SITTING
2 IN BUNKS, AND THEY DON'T DO ANYTHING.

3 **THE WITNESS:** YES.

4 **JUDGE KARLTON:** THAT'S NOT -- AS A PUBLIC POLICY
5 MATTER -- AGAIN, IT DOESN'T HAVE ANYTHING TO DO WITH WHAT
6 WE'RE -- IT DOESN'T DIRECTLY HAVE ANYTHING TO DO WITH WHAT WE'RE
7 CONCERNED WITH, BUT, YOU KNOW, WE OUGHT TO BE CONCERNED WITH
8 THAT -- THEY CAN'T DO THAT BECAUSE THERE'S NO ROOM IN THE INN.
9 EVERYBODY, APPARENTLY -- WELL, LET ME ASK YOU. DO YOU AGREE IT
10 IS IMPORTANT, IN ATTEMPTING TO REDUCE RECIDIVISM, TO PROVIDE
11 APPROPRIATE PROGRAMMING TO PEOPLE WHO ARE IN PRISON?

12 **THE WITNESS:** ABSOLUTELY.

13 **JUDGE KARLTON:** OKAY. WE CAN'T DO THAT, EVERYBODY
14 AGREES, BECAUSE THERE'S NO PLACE AT THE INN?

15 **THE WITNESS:** YES.

16 **JUDGE KARLTON:** NOW, IF YOU CAN'T CLASSIFY PROPERLY
17 BECAUSE THERE'S NO PLACE AT THE INN, AND YOU CAN'T PROVIDE
18 PROGRAMS BECAUSE THERE'S NO PLACE IN THE INN, INEVITABLY, YOU
19 GET 70 PERCENT RECIDIVISM. DOESN'T THAT SUGGEST THAT WE'VE GOT
20 TO DO SOMETHING THAT, AS A MATTER OF PUBLIC POLICY, AGAIN NOT
21 PERHAPS OUR RESPONSIBILITY, THAT WE'VE GOT TO DO SOMETHING TO
22 PROVIDE A SYSTEM THAT PERMITS FOR PROPER CLASSIFICATION AND FOR
23 PROPER PROGRAMMING?

24 **THE WITNESS:** YES.

25 **JUDGE REINHARDT:** LET ME GO BEYOND JUDGE KARLTON'S

1 QUESTION, BECAUSE HE SUGGESTS IT MAY NOT HAVE ANYTHING TO DO
2 DIRECTLY WITH WHAT WE ARE CONCERNED WITH. BUT I WOULD TAKE IT
3 FROM YOUR TESTIMONY THAT IT DOES HAVE SOMETHING TO DO DIRECTLY
4 WITH WHAT WE'RE CONCERNED WITH, BECAUSE ONE OUR ISSUES IS PUBLIC
5 SAFETY, AND YOU ARE TESTIFYING IN AGREEMENT WITH MANY OTHERS
6 THAT IT'S HARMFUL TO PUBLIC SAFETY TO CONTINUE THE KIND OF
7 SYSTEM WITH OVERCROWDING, WITHOUT THE PROPER PROGRAMMING, AND
8 THAT CAN AFFECT, WITHOUT THE PROPER SEGREGATION, ALL OF THE
9 CONSEQUENCES OF OVERCROWDING, YOU SEEM TO AGREE, IS HARMFUL TO
10 THE PUBLIC SAFETY, AND SO WE HAVE TO WEIGH THAT ALONG WITH THE
11 OTHER IMMEDIATE IMPACTS ON PUBLIC SAFETY.

12 **THE WITNESS:** I WOULD LIKE TO RESPOND, IF I COULD, TO
13 ALL THOSE, IF I CAN REMEMBER THEM ALL.

14 THERE IS A POTENTIAL FOR PEOPLE THAT GET
15 INCARCERATED, THAT COMMIT LOWER LEVEL OFFENSES LIKE AUTO THEFT
16 AND BURGLARY, TO BECOME EDUCATED IN PRISON AND THEN GO OUT AND
17 COMMIT MORE SERIOUS TYPES OF CRIMES.

18 **JUDGE KARLTON:** IT'S ALSO DESCRIBED AS SOMETHING --
19 I'M SORRY, I DON'T REMEMBER.

20 **JUDGE REINHARDT:** LIKE CRIMINALIZING.

21 **JUDGE HENDERSON:** CRIMINALIZING.

22 **THE WITNESS:** BUT GENERALLY WHAT I HAVE FOUND, AT
23 LEAST IN MY EXPERIENCE, THAT PEOPLE GET COMFORTABLE COMMITTING A
24 CERTAIN TYPE OF CRIME. FOR EXAMPLE, IT'S NOT UNCOMMON FOR US TO
25 SEE INDIVIDUALS THAT WE ARREST AND SEND TO PRISON FOR COMMITTING

1 WINDOW SMASH BURGLARIES OF BUSINESSES. WHEN THEY GET OUT, THERE
2 IS A LIKELIHOOD FOR THEM TO GO BACK AND COMMIT BUSINESS
3 BURGLARIES THAT ARE WINDOW SMASHES. THEY KEEP THEIR SAME
4 MOTIVE, MOTIVE OF OPERATION OR MODUS OPERANDI. THEY KEEP THE
5 SAME TYPE OF CRIME, AND FORTUNATELY FOR US IN LAW ENFORCEMENT,
6 THAT HELPS US SOLVE THOSE CRIMES.

7 ON OCCASION THEY DO CHANGE, BUT GENERALLY THEY KEEP
8 THEIR SAME TYPE OF CRIMES THEY COMMIT, BUT THEY BECOME SMARTER
9 AT HOW TO GET AWAY WITH THOSE CRIMES.

10 **JUDGE KARLTON:** I MUST RESPECTFULLY SAY I HAVE BEEN
11 SENTENCING PEOPLE FOR 30 YEARS, AND I WAS IN THE STATE SYSTEM
12 FOR TWO. WE SENT AN ENORMOUS NUMBER OF PEOPLE FOR THE HIGH
13 CRIME OF STUPIDITY.

14 **THE WITNESS:** YES, SIR, I AGREE WITH THAT.

15 **JUDGE KARLTON:** AND, YOU KNOW, PEOPLE -- WELL, ALL
16 RIGHT. I'M SORRY.

17 **JUDGE REINHARDT:** THAT WAS ONLY ONE ASPECT OF IT.

18 THE OTHER ASPECT IS YOU WOULD HOPE IF THINGS WORKED
19 WELL, THAT PEOPLE WOULD COME OUT OF PRISON LESS LIKELY TO COMMIT
20 CRIMES INSTEAD OF MORE LIKELY, AND THAT'S WHY SO MANY OF THE
21 WITNESSES WHO SAID WE WANT AN INTEGRATED PROGRAM WHERE YOU
22 STARTED EDUCATING THEM, YOU KNOW, REHABILITATING THEM IN THE
23 PRISON, AND THEN WHEN THEY GET OUT THERE SHOULD BE COMMUNITY
24 PROGRAMS AVAILABLE. THE OBJECTIVE OF LAW ENFORCEMENT IS TO
25 REDUCE THE NUMBER OF CRIMES COMMITTED. AND WHAT JUDGE KARLTON

1 WAS SAYING WAS THAT THE TESTIMONY IS THAT WITH THE EXTENT OF THE
2 OVERCROWDING, NOT ONLY ARE THEY MIXED WITH OTHER TYPES OF
3 CRIMINALS THEY SHOULDN'T BE, BUT THEY DON'T RECEIVE THE PROGRAMS
4 THAT WILL ALLOW THEM TO BE, OR ENCOURAGE THEM TO BE LAW ABIDING
5 WHEN THEY COME OUT. THEY HAVE NO MORE INTEREST IN BEING LAW
6 ABIDING THAN WHEN THEY WENT IN.

7 **JUDGE KARLTON:** LESS.

8 **JUDGE REINHARDT:** LESS. ONE OF THE REASONS FOR THAT
9 IS WE AREN'T ABLE TO USE THEIR TIME IN PRISON TO TRY TO MAKE
10 THEM MORE LAW ABIDING.

11 **THE WITNESS:** I DO AGREE WITH YOU. IT'S BEEN -- I
12 REALLY BELIEVE THAT WE HAVE TO PROVIDE TREATMENT INSIDE OF THE
13 PRISONS, WHICH WE ALL KNOW TODAY IS NOT OCCURRING, BUT WE ALSO
14 HAVE TO, WHEN THEY GET RELEASED FROM PRISON, PROVIDE THEM A
15 FACILITY THAT THEY CAN REINTEGRATE INTO OUR SOCIETY, SIMILAR TO
16 REENTRY FACILITIES LIKE WE'RE OPENING UP IN FRESNO, AND -- BUT
17 IT HAS TO BE, I BELIEVE, A GRADUAL PROCESS.

18 TO TAKE A PERSON FROM PRISON AND THEN SIMPLY PLACE
19 HIM INTO A COMMUNITY, THAT INDIVIDUAL IS DOOMED FOR FAILURE
20 UNLESS THEY GO THROUGH A PROCESS. AND I BELIEVE THE MOST
21 SUCCESSFUL PROCESS IS SOME FORM OF A REENTRY FACILITY IN LOCAL
22 COMMUNITIES THAT ALLOW FOR THE ONGOING TREATMENT OF THESE
23 INDIVIDUALS AND MONITORING AND THEN GRADUALLY RELEASE THEM INTO
24 OUR COMMUNITIES WITH OTHER SANCTIONS AND ACCOUNTABILITY.

25 **JUDGE KARLTON:** YESTERDAY WE HAD A PERSON FROM SONOMA

1 COUNTY -- WELL, WORKING WITH SONOMA COUNTY TO DEVELOP -- HE
2 ARGUED, AND PERHAPS TRUTHFULLY, TO DEVELOP A MORE RATIONAL
3 CRIMINAL SYSTEM, AT THE END OF WHICH THE CROSS-EXAMINATION WAS,
4 ONE, TELL ME, IF YOU DID ALL THE GOOD THINGS THAT YOU SAID WE
5 COULD DO, WOULD YOU OPPOSE THE PROGRAM AND HE SAID NO. THEN I
6 ASKED HIM, WHY AREN'T WE DOING ALL THESE THINGS, AND HIS ANSWER
7 WAS, I DON'T KNOW.

8 **JUDGE REINHARDT:** WELL, HE ALSO SAID YOU CAN'T TRUST
9 THE STATE.

10 **JUDGE KARLTON:** WELL, THAT'S ANOTHER -- THIS IS
11 SOMEBODY ELSE WHO SAID THAT, WHICH IS PROBABLY TRUE, TOO.

12 WHEN WE -- I DON'T -- I WAS NOW ABOUT TO ASK YOU TO
13 SHARE OUR PAIN, WHICH IS REALLY STUPID.

14 **THE WITNESS:** NO, THANK YOU. I'LL KEEP THE ROBE OFF.

15 **JUDGE KARLTON:** WE ALL AGREE THAT SOMETHING HAS GOT
16 TO BE DONE, AND NOBODY KNOWS HOW TO DO IT.

17 GO AHEAD.

18 **MS. BARLOW:** THANK YOU, YOUR HONOR.

19 BY MS. BARLOW

20 **Q** CHIEF DYER, WAS THERE A SURGE IN PAROLEES RELEASED TO FRESNO
21 IN 2005?

22 **A** I DON'T KNOW WITHOUT LOOKING AT A REFERENCE SHEET. THAT
23 NUMBER DOES FLUCTUATE FROM MONTH-TO-MONTH, YEAR-TO-YEAR. I'D
24 HAVE TO LOOK AT THAT.

25 **Q** RIGHT. DO YOU RECALL IN YOUR DEPOSITION BEING ASKED BY

1 MR. SPECTER ABOUT THE BRIDGING PROGRAM AND THE NUMBER OF
2 PAROLEES BEING RELEASED AS A RESULT OF THAT PROGRAM IN 2005
3 GOING UP?

4 **A** I DO.

5 **Q** OKAY. DID YOU EXPERIENCE ANY NEGATIVE IMPACTS FROM THE
6 ADDITIONAL PAROLEES THAT YOUR COMMUNITY RECEIVED IN 2005?

7 **A** 2005 WAS THE ONLY YEAR IN THE LAST SIX-PLUS YEARS THAT WE
8 HAD AN INCREASE IN VIOLENT CRIME IN OUR CITY. 2002, '3 AND '4
9 WE HAD DECREASES. 2005 WE HAD, I BELIEVE, AN 11-1/2 PERCENT
10 INCREASE IN VIOLENT CRIME IN OUR CITY. AND IN 2006 THAT NUMBER
11 DECREASED, AS WELL AS 2007.

12 **Q** DID YOU ALSO HAVE AN INCREASE IN PROPERTY CRIMES IN 2005?

13 **A** I WOULD --

14 **Q** WOULD IT REFRESH YOUR RECOLLECTION TO PUT THE DATA UP ON
15 THE --

16 **A** IN 2005 WE HAD A SLIGHT -- ACCORDING TO OUR RECORDS, WE HAD
17 A SLIGHT DECREASE, 3.7 PERCENT, IN PROPERTY CRIME IN 2005. IN
18 FACT, WE HAVE BEEN FORTUNATE TO HAVE SIX OUT OF THE LAST SEVEN
19 YEARS DECREASES. UNFORTUNATELY, THIS YEAR WE ARE SEEING A
20 SIGNIFICANT UPTAKE IN PROPERTY CRIME IN OUR CITY.

21 **Q** NOW, WHAT ABOUT THE NUMBER OF FELONY ARRESTS, DID THAT ALSO
22 GO UP IN 2005?

23 **A** THE NUMBER OF FELONY ARRESTS HAS GROWN INCREMENTALLY EACH
24 YEAR SINCE 2001, AND I BELIEVE WE'RE UPWARDS OF 18,000 FELONY
25 ARRESTS A YEAR IN OUR CITY.

1 Q NOW, YOU TESTIFIED THAT THERE WERE, AT LEAST AS OF THE END
2 OF 2007, JUST UNDER 5,000 PAROLEES IN THE ENTIRE COUNTY, ABOUT
3 80 PERCENT OF THOSE IN THE CITY OF FRESNO. HOW MANY PAROLEES
4 DID YOU ARREST IN 2007?

5 A I BELIEVE THE NUMBER, IT WAS OVER ABOUT 6,200, I BELIEVE. I
6 CAN REFER -- 6,453 PAROLEES WERE ARRESTED IN 2007.

7 Q WHAT PERCENTAGE OF YOUR FELONY ARRESTS IN 2007 WAS THAT?

8 A APPROXIMATELY 30 PERCENT.

9 Q NOW, IN TERMS OF THE PROPOSAL TO --

10 JUDGE KARLTON: I'M SORRY. I'M JUST BEING STUPID. I
11 DON'T UNDERSTAND WHAT YOU JUST SAID. THERE ARE 6,000 PLUS OR
12 MINUS PAROLEES IN THE ENTIRE -- SO ENTIRE COUNTY. I'M SORRY. I
13 MISUNDERSTOOD TESTIMONY. I UNDERSTAND NOW. GO AHEAD.

14 MS. BARLOW: HE WAS TALKING ABOUT HOW MANY ARRESTS
15 WERE MADE OF PAROLEES.

16 JUDGE KARLTON: I UNDERSTAND NOW.

17 BY MS. BARLOW

18 Q NOW, YOU TALKED ABOUT REMOVING PEOPLE FROM PAROLE AND HOW
19 YOU COULD PERHAPS REDUCE THE PROVISION OF SOME FOLKS. WHAT'S
20 THE IMPORTANCE OF MAINTAINING PAROLE FROM A LAW ENFORCEMENT
21 PERSPECTIVE?

22 A THE PAROLE STATUS IS A TOOL THAT WE USE IN LAW ENFORCEMENT,
23 BUT I THINK FOR THE INDIVIDUAL ON PAROLE, IT IS A MEASURE OF
24 ACCOUNTABILITY THAT STILL REQUIRES THEM TO DO -- TO PROVIDE
25 PAROLE AGENTS THEIR RECORD OF RESIDENCE, WHERE THEY LIVE.

1 SO THEY ARE NOT ABLE TO HAVE THAT ANONYMITY. IT
2 REQUIRES THEM TO DO DRUG TESTING IN MOST CASES. THERE'S
3 CONDITIONS IN TERMS OF WHO THEY CAN ASSOCIATE OR WHERE THEY CAN
4 BE. ALL OF THOSE THINGS ALLOW THESE FOLKS TO CONTINUE TO BE
5 SUCCESSFUL.

6 THE BENEFIT FOR LAW ENFORCEMENT IS THAT IT ALLOWS US
7 THE OPPORTUNITY WHEN WE HAVE CRIME SPREES, OR SPIKE IN CRIMES,
8 OR CRIME TRENDS THAT ARE ELEVATING, THAT WE CAN THEN LOOK AT
9 THOSE INDIVIDUALS THAT ARE ON PAROLE, PERHAPS WITHIN A GIVEN
10 AREA, PERHAPS THAT HAVE A PRIOR COMMITMENT OFFENSE FOR THE
11 PARTICULAR CRIME WE'RE LOOKING AT, AND TO PAY VISITS TO THOSE
12 INDIVIDUALS, AND TO, IN SOME CASES, REMOVE THEM FROM OUR
13 COMMUNITY IF, IN FACT, THEY ARE IN VIOLATION OF THEIR PAROLE.

14 THE OTHER BENEFIT FOR US, IN THE AREA OF GANGS WE USE
15 IT VERY MUCH, WHENEVER WE HAVE A GANG SHOOTING OR A SERIES OF
16 SHOOTINGS AND THERE'S RETALIATION THAT'S GOING TO OCCUR, WE WILL
17 THEN LOOK AT THOSE INDIVIDUALS THAT ARE IN GANGS OR PEOPLE ON
18 PAROLE, AND WE WILL GO OUT AND TAKE AWAY THEIR ANONYMITY SO
19 THERE IS NO RETALIATION. SO IT'S A VERY EFFECTIVE TOOL FOR US
20 IN LAW ENFORCEMENT.

21 **JUDGE REINHARDT:** YOU COMBINED TWO THINGS, GANGS AND
22 PAROLE. YOU SAID FOR THE GANGS YOU CAN LOOK AT THE PEOPLE IN
23 GANGS, WHETHER OR NOT THEY ARE ON PAROLE.

24 **THE WITNESS:** YES, WE TRY TO TARGET THOSE -- WHEN I
25 SAY "TARGET THOSE INDIVIDUALS," THOSE ARE THE INDIVIDUALS WE

1 LOOK AT IN ORDER TO --

2 JUDGE REINHARDT: TO INVESTIGATE?

3 THE WITNESS: TO INVESTIGATE, TO PAY A VISIT TO, TO
4 FREQUENT THOSE NEIGHBORHOODS, WHATEVER THE CASE MAY BE.

5 JUDGE REINHARDT: SO THAT'S PART OF A GANG PROGRAM
6 THAT YOU HAVE IN YOUR CITY?

7 THE WITNESS: YES. WE HAVE A VERY, VERY EFFECTIVE
8 GANG PROGRAM THAT WE TRY TO BALANCE WITH SUPPRESSION AND
9 PREVENTION-INTERVENTION, YES.

10 MS. BARLOW: JUST A COUPLE MORE.

11 BY MS. BARLOW

12 Q YOU MENTIONED SOME ECONOMIC IMPACTS FROM CRIME IN YOUR
13 COMMUNITY. DID YOU RELY, IN PART, UPON ANY STUDY THAT WAS DONE
14 IN FRESNO REGARDING THAT ISSUE?

15 MR. SPECTER: I OBJECT TO THIS LINE OF QUESTIONING.
16 HE'S NOT AN ECONOMIST. THERE'S NO FOUNDATION HE HAS ANY
17 EXPERTISE IN THIS AREA.

18 JUDGE HENDERSON: I WILL SUSTAIN THE FOUNDATIONAL
19 OBJECTION WITHOUT PREJUDICE.

20 MS. BARLOW: THEY MADE A MOTION IN LIMINE TO EXCLUDE
21 HIS TESTIMONY ON THE SAME GROUNDS, WHICH WAS ALREADY DENIED BY
22 THE COURT.

23 JUDGE KARLTON: I DON'T KNOW WHY WE DENIED IT, BUT
24 YOU GOT A RULING NOW.

25 JUDGE REINHARDT: ARE YOU SURE WE DIDN'T RESERVE IT?

1 **MS. BARLOW:** NO, IT WAS DENIED, YOUR HONOR.

2 BY MS. BARLOW

3 **Q** COULD YOU EXPLAIN, CHIEF DYER, IN YOUR EXPERIENCE, WHAT THE
4 RELATIONSHIP BETWEEN CRIME --

5 **JUDGE KARLTON:** NO, MA'AM. THE OBJECTION WAS
6 SUSTAINED WITHOUT PREJUDICE. THAT MEANS LAY A FOUNDATION.

7 **MS. BARLOW:** THAT'S WHAT I'M TRYING TO DO, YOUR
8 HONOR.

9 **JUDGE KARLTON:** EXCUSE ME. I MISUNDERSTOOD.

10 BY MS. BARLOW

11 **Q** DO YOU HAVE ANY EXPERIENCE, CHIEF DYER, THAT HELPS YOU TO
12 DETERMINE THE RELATIONSHIP BETWEEN CRIME IN YOUR COMMUNITY AND
13 ECONOMIC IMPACTS TO THE COMMUNITY?

14 **A** YES.

15 **Q** COULD YOU EXPLAIN WHAT THAT IS?

16 **A** WELL, TWO AREAS, ONE BEING THAT OF EXPERIENCE BACK IN THE
17 '90'S, LATE '80'S AND '90'S, WE EXPERIENCED A SIGNIFICANT
18 INCREASE IN CRIME IN OUR COMMUNITY. IN FACT, CRIME WAS OUT OF
19 CONTROL. AND WE KNOW THAT IT WAS ALSO DURING THAT TIME, AS WE
20 SPOKE WITH CITIZENS IN OUR COMMUNITY, THAT THERE WAS AN
21 INCREDIBLE AMOUNT OF FEAR THAT FOLLOWED AS A RESULT OF THAT
22 CRIME. CRIME RATES, THE MEDIA COVERAGE OF THAT CRIME, AND
23 PEOPLE WERE FEARFUL TO COME OUTDOORS. PEOPLE WERE FEARFUL TO
24 WALK IN THEIR NEIGHBORHOODS. PEOPLE WERE FEARFUL TO GO OUT INTO
25 SHOPPING CENTERS, ESPECIALLY DURING THE EVENING HOURS.

1 AND SO THERE WAS A DIRECT IMPACT BETWEEN CRIME AND
2 FEAR AND, ULTIMATELY, A PERSON'S ABILITY TO GO OUT AND TO SPEND
3 MONEY AND -- IMPACTS OUR TAX BASE IN THE CITY OF FRESNO. AND WE
4 WERE LATER ABLE TO CONFIRM THAT FEELING WITH A STUDY THAT WE
5 COMMISSIONED A COUPLE YEARS AGO.

6 **MR. SPECTER:** I RENEW MY OBJECTION, YOUR HONOR. HE'S
7 MAKING ECONOMIC CONCLUSIONS WITHOUT ANY BASIS OR EXPERTISE OR
8 FACTUAL BASIS TO SHOW THAT THOSE CONCLUSIONS ARE RELIABLE.

9 **JUDGE HENDERSON:** I'M GOING TO RULE THAT THE
10 OBJECTION GOES TO THE WEIGHT OF THIS, WHETHER IT'S ONE POUND OR
11 ONE MILLIGRAM.

12 **MS. BARLOW:** I UNDERSTAND.

13 **MR. SPECTER:** PARDON ME, YOUR HONOR.

14 **JUDGE HENDERSON:** THE OBJECTION GOES TO THE WEIGHT OF
15 THIS TESTIMONY.

16 **MR. SPECTER:** OKAY.

17 BY MS. BARLOW

18 **Q** ARE THERE ALSO STUDIES THAT SUPPORT THE NOTION THAT FEAR AND
19 CRIME LEAD TO ECONOMIC DOWNTURNS IN COMMUNITIES?

20 **A** THAT'S CORRECT.

21 **Q** AND THAT'S BEEN YOUR ACTUAL EXPERIENCE IN FRESNO?

22 **JUDGE REINHARDT:** I GUESS WE COULD ALL AGREE CRIME IS
23 NOT GOOD FOR SOCIETY IN MANY, MANY RESPECTS.

24 **JUDGE KARLTON:** WE'LL STIPULATE TO THAT.

25 **JUDGE REINHARDT:** AND HAS AN ADVERSE EFFECT ON THE

1 COMMUNITY WHEN WE HAVE CRIME.

2 **MS. BARLOW:** IF I COULD JUST ASK THE WITNESS TO
3 AUTHENTICATE THIS REPORT THAT WAS PREPARED FOR THE CITY ON THAT
4 ISSUE.

5 BY MS. BARLOW

6 **Q** MR. DYER?

7 **A** YES.

8 **MS. BARLOW:** IF WE COULD PUT UP EXHIBIT 641, THE
9 FIRST PAGE, 228. I'M SORRY. HERE. I'LL PUT THE FIRST PAGE UP
10 ON THE ELMO.

11 (DOCUMENT DISPLAYED.)

12 BY MS. BARLOW

13 **Q** IS THAT THE REPORT THAT YOU TALKED ABOUT?

14 **A** YES.

15 **Q** AND THAT WAS DONE FOR THE CITY OF FRESNO?

16 **A** YES. WE WERE CONSIDERING A PUBLIC SAFETY SALES TAX, AND WE
17 WANTED TO DEMONSTRATE THE IMPACT BETWEEN INCREASING LEVELS OF
18 OFFICERS AND DECREASED CRIME TO THAT OF INCREASED ECONOMIC
19 GROWTH.

20 **Q** ALL RIGHT.

21 **JUDGE KARLTON:** DID YOU GET YOUR INCREASE, SALES TAX
22 INCREASE?

23 **THE WITNESS:** WE DIDN'T GO FORTH WITH IT. NO, WE DID
24 NOT.

25 **JUDGE KARLTON:** AND YOU DIDN'T BECAUSE YOU FIGURED IT

1 COULDN'T PASS?

2 **THE WITNESS:** THAT'S CORRECT.

3 **JUDGE KARLTON:** THAT TELLS US A LOT ABOUT HOW PEOPLE
4 WANT CRIME PREVENTED BUT ARE ABSOLUTELY UNWILLING TO MAKE IT
5 HAPPEN.

6 **THE WITNESS:** ABSOLUTELY TRUE.

7 BY MS. BARLOW

8 **Q** I'M SORRY. YOU HAD PUT UP THE OTHER PAGE, AND I HAD YOU
9 SWITCH IT. SORRY.

10 **A** I BELIEVE IT IS PAGE 10.

11 **Q** I BELIEVE IT IS PAGE 10. IF YOU COULD JUST HIGHLIGHT THAT
12 AREA?

13 **MR. SPECTER:** I'M GOING TO ALSO OBJECT TO THIS LINE
14 OF QUESTIONING BECAUSE IT'S IRRELEVANT, YOUR HONOR. THE
15 QUESTIONS BEFORE YOU ARE ABOUT PUBLIC SAFETY. THE PLRA DOESN'T
16 SAY ANYTHING ABOUT ECONOMIC IMPACT.

17 **MS. BARLOW:** IT'S LARGELY FOUNDATIONAL, YOUR HONOR.

18 **JUDGE HENDERSON:** TO WHAT? TO PUBLIC SAFETY?

19 **MS. BARLOW:** WELL, ONE OF THE THINGS THAT THE CHIEF
20 WOULD TESTIFY TO, I'LL MAKE AN OFFER OF PROOF, IS THAT FEAR
21 LEADS TO A REDUCTION IN REPORTING OF CRIME.

22 **JUDGE REINHARDT:** THAT'S NOT WHAT HE'S TESTIFYING
23 ABOUT.

24 **JUDGE KARLTON:** THIS DOESN'T HAVE ANYTHING TO DO WITH
25 THAT. YOU CAN ASK HIM DIRECTLY --

1 **MS. BARLOW:** IT DOES, YOUR HONOR. IT TALKS ABOUT
2 CRIME LEADING TO MISTRUST AND FEAR, WHICH, IN TURN, LEADS TO --

3 **JUDGE KARLTON:** WHATEVER.

4 **JUDGE HENDERSON:** DOES CRIME LEAD TO MISTRUST AND
5 FEAR?

6 **THE WITNESS:** ABSOLUTELY.

7 **JUDGE HENDERSON:** AND DOES THAT LEAD TO SOMETHING
8 BEYOND THAT? AND IF SO, WHAT IS IT?

9 **THE WITNESS:** IN MANY COMMUNITIES IT LEADS TO PEOPLE
10 NOT LEAVING THEIR HOMES, NOT GOING OUT AND FREQUENTING SHOPPING
11 MALLS.

12 **JUDGE KARLTON:** SHE WANTS YOU TO SAY IT LEADS TO --

13 **JUDGE REINHARDT:** AN ECONOMIC DOWNTURN, ALMOST AS BAD
14 AS WHAT WE'RE SUFFERING NOW.

15 **JUDGE KARLTON:** SHE WANTS YOU TO TELL US THAT
16 SOMETHING WE DON'T KNOW, THAT THAT WILL --

17 **MS. BARLOW:** I ONLY WANT HIM TO TELL YOU WHAT HE
18 THINKS IS THE TRUTH, YOUR HONOR.

19 **JUDGE KARLTON:** YEAH, RIGHT. WHETHER OR NOT THAT
20 LEADS TO THE REDUCTION OF REPORTING CRIME IN YOUR VIEW.

21 **THE WITNESS:** DOES IT LEAD TO A REDUCTION IN
22 REPORTING OF CRIME?

23 **JUDGE KARLTON:** I THINK THAT'S WHAT SHE WAS TRYING TO
24 GET AT.

25 **MS. BARLOW:** FEAR IN THE COMMUNITY.

1 **THE WITNESS:** I BELIEVE THERE IS COUPLE OF AREAS
2 WHERE A LACK OF TRUST AND FEAR IN A COMMUNITY CAN LEAD TO A
3 REDUCED REPORTING. GENERALLY, THAT MIGHT BE WHERE ILLEGAL
4 IMMIGRANTS ARE AFRAID TO REPORT CRIME BECAUSE THEY ARE AFRAID OF
5 BEING DEPORTED.

6 BUT, ALSO, THERE ARE THOSE INDIVIDUALS OUT THERE -- I
7 KNOW WE EXPERIENCED IT IN THE '90'S. WE HAD SO MANY PROPERTY
8 CRIMES THAT WERE OCCURRING THAT WE FINALLY REALIZED THAT PEOPLE
9 WERE NOT REPORTING CRIME TO US BECAUSE IT WAS OCCURRING SO OFTEN
10 AND IT WASN'T WORTH IT EVEN FOR THEIR INSURANCE BECAUSE THEIR
11 DEDUCTIBLE WAS SO HIGH.

12 SO WE KNOW THE NUMBER OF CRIMES REPORTED AREN'T
13 ALWAYS ACCURATE IN THAT SENSE.

14 **MS. BARLOW:** NOW, QUICKLY, YOUR HONORS, THERE WAS
15 RAISED AN OBJECTION TO SOME SUMMARIES THAT ARE IN CHIEF DYER'S
16 REPORT OF CERTAIN CRIMES THAT OCCURRED AS A RESULT OF PAROLEES
17 IN THE COMMUNITY.

18 **JUDGE HENDERSON:** ARE THOSE OBJECTIONS IN WRITING?

19 **MS. BARLOW:** THEY ARE IN WRITING, YOUR HONOR, AND
20 I -- WE HAVE INCLUDED IN OUR EXHIBITS THE REDACTED COPIES OF THE
21 REPORTS IN QUESTION. I HAVE --

22 **JUDGE KARLTON:** WELL, DO YOU CONCEDE THE OBJECTION IS
23 WELL TAKEN?

24 **MS. BARLOW:** WELL, NO, I DON'T, YOUR HONOR,
25 BECAUSE --

1 **JUDGE KARLTON:** ALL RIGHT.

2 **MS. BARLOW:** THAT'S PART OF --

3 **JUDGE KARLTON:** I DON'T NEED A SPEECH. I NEED A YES
4 OR A NO. I'LL ASK FOR A SPEECH WHEN I GET -- EXCUSE ME. I'M
5 SORRY. WE HAVE BEEN AT THIS A LOT OF DAYS AND SOMETIMES I LOSE
6 MY TEMPER. I APOLOGIZE.

7 **MS. BARLOW:** IT'S OKAY, YOUR HONOR. IN YOUR POSITION
8 I MIGHT DO THE SAME.

9 **JUDGE REINHARDT:** I WON'T LOSE MY TEMPER.

10 **JUDGE KARLTON:** YOU WANT TO OFFER THESE IF THE
11 OBJECTIONS ARE SUSTAINED, IS THAT WHAT YOU WANT TO DO?

12 **MS. BARLOW:** ALL I WANTED TO DO WAS HAVE HIM
13 AUTHENTICATE THAT THOSE ARE, IN FACT, THE REPORTS HE SUMMARIZED
14 IN HIS EXPERT REPORT.

15 **MR. SPECTER:** I'LL STIPULATE TO THAT. I'LL STIPULATE
16 TO THE AUTHENTICITY OF THOSE DOCUMENTS. BUT I STILL OBJECT TO
17 THE ADMISSION OF THE DOCUMENTS. THEY'RE BEING OFFERED FOR THE
18 TRUTH, AND THEY'RE DOUBLE HEARSAY.

19 **MS. BARLOW:** IF I MAY?

20 BY MS. BARLOW

21 **Q** CHIEF DYER, ARE THESE REPORTS PREPARED BY YOUR -- WE'RE
22 REFERRING TO THE REPORTS IN EXHIBIT DI 624 -- PREPARED BY YOUR
23 OFFICERS IN THE ORDINARY COURSE OF THEIR DUTIES?

24 **A** THAT'S CORRECT.

25 **Q** AND THESE ARE OFFICIAL REPORTS OF THE FRESNO POLICE

1 DEPARTMENT?

2 **A** YES.

3 **Q** SO THESE ARE OFFICIAL RECORDS?

4 **A** YES, THEY ARE.

5 **Q** AND YOUR OFFICERS HAVE A LEGAL DUTY TO ACCURATELY RECORD AND
6 REPORT WHAT THEY OBSERVE AND WHAT THEY'RE TOLD DURING
7 INVESTIGATIONS?

8 **A** THAT'S CORRECT.

9 **MS. BARLOW:** THEY'RE OFFICIAL RECORDS, YOUR HONOR.
10 WE WOULD OFFER THEM.

11 **JUDGE KARLTON:** ALL OF THESE OBJECTIONS WILL BE -- IF
12 WE EVER GET THERE, WILL BE RESOLVED WHEN WE TRY AND FIGURE OUT
13 WHAT TO DO.

14 **JUDGE HENDERSON:** AND THEY WILL BE ADMITTED AT THIS
15 TIME WITH THAT UNDERSTANDING.

16 **MS. BARLOW:** THANK YOU, YOUR HONOR.

17 **JUDGE KARLTON:** NO, THEY ARE NOT ADMITTED OVER
18 OBJECTION, BECAUSE WE ARE GOING TO DECIDE WHETHER THE OBJECTION
19 IS GOOD OR NOT.

20 **JUDGE HENDERSON:** I STAND CORRECTED.

21 **MS. BARLOW:** I DO HAVE UNREDACTED COPIES FOR THE
22 COURT IF YOU WOULD LIKE THEM.

23 **JUDGE KARLTON:** GO AHEAD.

24 BY MS. BARLOW

25 **Q** FINALLY, CHIEF DYER, YOU MENTION IN YOUR REPORT THAT YOU

1 BELIEVE THAT NOT ONLY WILL FRESNO HAVE SIGNIFICANT IMPACTS FROM
2 THE PROPOSED RELEASE ORDER, BUT THAT OTHER CENTRAL VALLEY CITIES
3 WILL HAVE ALSO SIMILAR IMPACTS. CAN YOU TELL US WHAT IS THE
4 BASIS FOR YOUR BELIEF THAT THE OTHER CENTRAL VALLEY CITIES WILL
5 SUFFER COMPARABLE TO FRESNO?

6 **A** THERE IS A LOT OF SIMILARITIES BETWEEN CITIES THAT ARE
7 ADJACENT TO ONE ANOTHER IN THE CENTRAL VALLEY, WHETHER THAT BE
8 STOCKTON, MODESTO, MERCED, VISALIA. WE HAVE HISTORICALLY HAD
9 HIGH CONCENTRATION OF POVERTY, HIGH CONCENTRATION OF
10 UNEMPLOYMENT. WE HAVE A HIGH FREQUENCY OF METHAMPHETAMINE USE
11 AND PRODUCTION. AND THE DEMOGRAPHICS ARE VERY SIMILAR IN MANY
12 OF OUR CITIES.

13 SO WHEN THAT IS TAKEN INTO CONSIDERATION, WE KNOW
14 THAT -- AND JUST THE CONVERSATIONS THAT I HAVE HAD AS THE
15 PRESIDENT OF THE CALIFORNIA POLICE CHIEFS, IN SPEAKING WITH
16 CHIEFS THROUGHOUT THE STATE, AND OUR ASSOCIATION FRESNO/MADERA
17 CHIEFS ASSOCIATION, WE KNOW THAT THE IMPACT BASED ON ALL THAT
18 INFORMATION IS GOING TO BE VERY SIMILAR TO WHAT WE SEE IN
19 FRESNO, ALTHOUGH FRESNO WILL BE ON A MUCH GREATER SCALE BECAUSE
20 OF OUR POPULATION DENSITY.

21 **Q** ALL RIGHT. AND DO YOU WORK WITH THE OTHER CENTRAL VALLEY
22 CITIES ON A REGULAR BASIS?

23 **A** I DO.

24 **Q** IN WHAT CAPACITY?

25 **A** IN MY CAPACITY, NUMBER ONE, AS THE PRESIDENT OF CALIFORNIA

1 POLICE CHIEFS, I INTERACT FREQUENTLY WITH A NUMBER OF CHIEFS
2 THROUGHOUT THE STATE, BUT ALSO CENTRAL VALLEY. AND, ALSO, I AM
3 THE -- CURRENTLY I'M THE CHAIR OF THE CENTRAL VALLEY HIDTA, HIGH
4 INTENSITY DRUG TRAFFICKING AREA, AND THAT IS FROM BAKERSFIELD TO
5 SACRAMENTO, AND SO I FREQUENTLY MEET WITH CHIEFS AND SHERIFFS
6 AND FEDERAL AND STATE OFFICIALS REGARDING DRUG TRAFFICKING AND
7 OTHER TYPES OF SIMILAR CONCERNS.

8 **JUDGE REINHARDT:** MAY I ASK YOU A QUESTION ABOUT YOUR
9 TESTIMONY ABOUT THE VALLEY? I HAD THE IMPRESSION FROM WHAT YOU
10 WERE TESTIFYING TO THAT YOU THINK THE PROBLEMS IN FRESNO ARE
11 WORSE THAN THE PROBLEMS IN THE REST OF THE STATE; THAT YOU HAVE
12 THE HIGHEST PROBLEM RATES FOR VARIOUS REASONS.

13 YOU'RE PRESIDENT OF THE STATEWIDE CHIEFS OF POLICE
14 ASSOCIATION. WOULD THAT EXPERIENCE -- WITH THAT EXPERIENCE,
15 WOULD YOU TESTIFY THAT -- I MEAN, IS IT YOUR BELIEF THAT THE
16 OTHER AREAS IN THE STATE ARE -- AT LEAST WILL HAVE AT LEAST NO
17 GREATER IMPACT THAN THERE WILL BE IN FRESNO?

18 **JUDGE KARLTON:** IF THERE'S RELIEF --

19 **THE WITNESS:** I THINK IT'S GOING TO DEPEND ON
20 JURISDICTION. SOME JURISDICTIONS ARE POSITIONED VERY WELL WHERE
21 THEY DO NOT HAVE VERY MUCH CRIME, THEREFORE, THEY WOULD NOT.

22 **JUDGE REINHARDT:** MY QUESTION IS THE OPPOSITE. ARE
23 YOU SATISFIED THAT THERE WILL BE NO OTHER AREA THAT WILL HAVE A
24 GREATER ADVERSE IMPACT?

25 **THE WITNESS:** I COULDN'T SAY THAT. I CAN TELL YOU

1 THAT -- I WOULD SAY THAT FRESNO WOULD HAVE ONE OF THE GREATER
2 IMPACTS, JUST BASED ON THE NUMBER OF PAROLEES THAT WE ARE -- OR
3 INDIVIDUALS THAT WE ARREST AND SEND TO PRISON. WE'RE GOING TO
4 GET ABOUT FOUR PERCENT OF THOSE PEOPLE RELEASED.

5 **JUDGE REINHARDT:** NO, NO. I DON'T NEED ALL THE
6 EXPLANATIONS. THE QUESTION REALLY IS, BECAUSE YOU ARE HEAD OF
7 THE STATEWIDE CHIEFS OF POLICE, AND YOU HAVE TESTIFIED YOU HAVE
8 SERIOUS PROBLEMS IN FRESNO, THE UNEMPLOYMENT, ALL OF THE THINGS
9 THAT LEAD TO CRIME, AND YOU'VE TESTIFIED TO THE LARGE NUMBER OF
10 PAROLEES YOU GET, I HAVE THE IMPRESSION AS YOU WERE TESTIFYING
11 THAT YOU THOUGHT YOURS WERE AT LEAST -- YOURS WERE AT LEAST, IF
12 NOT THE MOST SERIOUS PROBLEM, THAT AT LEAST THERE WERE NO OTHER
13 AREAS THAT HAD MORE SERIOUS PROBLEMS THAN YOURS.

14 **THE WITNESS:** YOU KNOW, I COULDN'T SAY THAT. FOR
15 EXAMPLE, THE CITY OF STOCKTON, THEY GOT SOME SERIOUS ISSUES.
16 RIVERSIDE HAS SOME SERIOUS ISSUES.

17 **JUDGE REINHARDT:** EVERYBODY HAS SERIOUS ISSUES. YOU
18 HAVE SERIOUS ISSUES.

19 **THE WITNESS:** WE HAVE SERIOUS ISSUES, TOO. THE ONE
20 I'M MOST FAMILIAR WITH, YOUR HONOR, IS FRESNO, AND I DO BELIEVE
21 WE WOULD HAVE SIGNIFICANT ISSUES IN FRESNO AS A RESULT OF IT.

22 **JUDGE REINHARDT:** SO YOU ARE NOT TESTIFYING THAT
23 FRESNO'S PROBLEMS ARE MORE SERIOUS THAN ANYBODY ELSE'S?

24 **THE WITNESS:** NO. WE WOULD BE AT THE HIGH END OF THE
25 SPECTRUM, BUT THERE MAY BE OTHERS THAT ARE IN WORSE SHAPE THAN

1 WE WOULD BE. HOPEFULLY NOT.

2 JUDGE KARLTON: ALL THINGS ARE POSSIBLE.

3 BY MS. BARLOW

4 Q FINALLY, CHIEF, THE -- YOU TALKED ABOUT UNEMPLOYMENT. THE
5 CURRENT UNEMPLOYMENT RATE IN FRESNO IS 11.4 PERCENT; IS THAT
6 CORRECT?

7 A THE MOST RECENT STUDY, I BELIEVE IN THE LAST MONTH OR SO,
8 SHOWED IT AT ABOUT 11.4 PERCENT UNEMPLOYMENT.

9 MS. BARLOW: WE DO HAVE AN EXHIBIT, YOUR HONOR,
10 THAT'S PUBLIC RECORD FROM EDD THAT SHOWS BOTH THE CURRENT FRESNO
11 AND STATE, AND WE'LL OFFER THAT AS A PUBLIC RECORD AT AN
12 APPROPRIATE TIME.

13 AT THIS POINT, I HAVE NOTHING FURTHER.

14 JUDGE HENDERSON: ANYTHING FROM STATE DEFENDANTS?

15 MR. LEWIS: YES, YOUR HONOR. GOOD MORNING. KYLE
16 LEWIS FOR THE STATE DEFENDANTS.

17 DIRECT EXAMINATION BY MR. LEWIS

18 BY MR. LEWIS

19 Q GOOD MORNING, CHIEF DYER.

20 A GOOD MORNING, SIR.

21 Q CHIEF, IN YOUR REPORT YOU WROTE THAT FOR EVERY ONE CRIME
22 THAT A PERSON IS CAUGHT FOR, THEY MIGHT COMMIT AS MANY AS 12
23 ADDITIONAL CRIMES?

24 A THAT'S CORRECT.

25 Q WOULD YOU AGREE THAT WHILE A PERSON IS IN PRISON, THEY ARE

1 INCAPACITATED IN THE SENSE --

2 **JUDGE KARLTON:** SIR, IF YOU THINK WE DON'T UNDERSTAND
3 THAT, THEN YOUR CONTEMPT FOR THE COURT IS SHOCKING. OBVIOUSLY,
4 PEOPLE IN PRISON ARE NOT COMMITTING CRIMES OUTSIDE OF PRISON.

5 **MR. LEWIS:** YES, YOUR HONOR. I'M ATTEMPTING TO LAY A
6 FOUNDATION FOR MY FURTHER QUESTIONS.

7 BY MR. LEWIS

8 **Q** WHILE A PERSON IS IN PRISON, THEY ARE INCAPACITATED AND NOT
9 ABLE TO COMMIT CRIMES OUTSIDE OF PRISON, CORRECT?

10 **A** YES, SIR.

11 **Q** IF A PERSON IS ON THE STREETS AND GETS CAUGHT FOR ONLY ONE
12 OF THEIR CRIMES AND THERE'S 12 OTHER ONES OUT THERE THAT HAVE
13 BEEN COMMITTED, WOULD YOU SAY THOSE AGGREGATE CRIMES AFFECT
14 PUBLIC SAFETY?

15 **A** YES, SIR.

16 **Q** IF A PERSON IS RELEASED FROM PRISON EARLY, AS IN THIS CASE
17 THERE ARE -- THERE'S A PRISONER RELEASE ORDER ON THE TABLE
18 POTENTIALLY FOR RELEASE OF A VARIETY OF OFFENDERS OVER A
19 24-MONTH PERIOD -- IF A PERSON IS RELEASED EARLY FROM PRISON, DO
20 THEY HAVE AN OPPORTUNITY TO COMMIT ADDITIONAL CRIMES BEFORE THEY
21 WOULD HAVE OTHERWISE?

22 **JUDGE KARLTON:** SIR -- I'M SORRY, GENTLEMEN. I DON'T
23 WANT TO -- BUT THIS IS ABSURD. THIS ISN'T EVEN YOUR FINAL
24 ARGUMENT. THIS IS SELF-EVIDENT STUFF.

25 **MR. LEWIS:** YOUR HONOR, I'M ASKING THE WITNESS ABOUT

1 A STATEMENT THAT WAS MADE IN HIS REPORT AND AS EXPERTISE AS A
2 POLICE CHIEF OF A LARGE CITY IN CALIFORNIA.

3 **JUDGE REINHARDT:** THAT PEOPLE WHO ARE NOT IN PRISON
4 ARE ABLE TO COMMIT CRIMES --

5 **JUDGE KARLTON:** AND PEOPLE THAT ARE --

6 **JUDGE REINHARDT:** THEY WOULDN'T BE ABLE TO COMMIT IF
7 THEY'RE IN PRISON.

8 **JUDGE KARLTON:** WE GOT THAT. WE UNDERSTOOD THAT.

9 **MR. LEWIS:** THANK YOU, YOUR HONOR.

10 BY MR. LEWIS

11 **Q** CHIEF DYER, WOULD AN EARLY RELEASE OF PRISONERS ALLOW FOR AN
12 ADDITIONAL OPPORTUNITY TO COMMIT CRIME?

13 **A** YES, SIR.

14 **Q** DURING THE WINDOW THAT THE PRISONERS WOULD HAVE BEEN
15 RELEASED, THE THREE-MONTH WINDOW THEY MIGHT HAVE BEEN RELEASED
16 EARLY, COULD THEY HAVE COMMITTED AN ADDITIONAL 12 CRIMES FOR
17 EVERY ONE THEY WERE CAUGHT FOR?

18 **JUDGE KARLTON:** ANYTHING IS POSSIBLE.

19 **MR. SPECTER:** OBJECTION TO THE WORD "ADDITIONAL."
20 IT'S VAGUE FOR ALL THE REASONS JUDGE REINHARDT --

21 **JUDGE REINHARDT:** HE ALREADY TESTIFIED THAT, YES,
22 THEY WOULD COMMIT CRIMES DURING THAT PERIOD, AND IF THEY WEREN'T
23 RELEASED, THEN THEY WOULD COMMIT THEM THREE MONTHS LATER.

24 **JUDGE KARLTON:** YOU KNOW, WE ARE REALLY ANXIOUS TO
25 LET YOU PUT ON YOUR CASE. THIS IS SUCH A COMPLICATED PROBLEM,

1 BUT TO STATE THE OBVIOUS, AND THEN RESTATE IT, AND THEN RESTATE
2 IT, AND THEN -- IT'S JUST A PROFOUND WASTE OF TIME. THIS IS
3 CUMULATIVE. YOU GOT ANYTHING NEW THAT YOU WANT TO ASK?

4 **MR. LEWIS:** THANK YOU, YOUR HONOR. I'LL BE SEATED
5 NOW.

6 CROSS-EXAMINATION? DO YOU WANT TO TAKE BREAK? OKAY.
7 WE'LL TAKE A 15-MINUTE RECESS.

8 (RECESS TAKEN.)

9 **JUDGE HENDERSON:** YOU MAY PROCEED WITH CROSS WHEN YOU
10 ARE READY, COUNSEL.

11 **MR. SPECTER:** THANK YOU, YOUR HONOR.

12 **CROSS EXAMINATION**

13 **BY MR. SPECTER:**

14 **Q.** GOOD MORNING, MR. DYER.

15 **A.** GOOD MORNING, MR. SPECTER.

16 **Q.** AS I UNDERSTAND YOUR POSITION, IT'S THAT A PRISONER RELEASE
17 ORDER WOULD RESULT IN MORE PAROLEES IN YOUR CITY AND COUNTY FOR
18 SOME PERIOD OF TIME, CORRECT?

19 **A.** THAT'S CORRECT.

20 **Q.** AND THIS WOULD DRAMATICALLY INCREASE THE CRIME IN YOUR
21 COMMUNITY, IS THAT RIGHT?

22 **A.** THAT'S CORRECT.

23 **Q.** AND SO YOU WOULD EXPECT THAT AS THE NUMBER OF PAROLEES
24 INCREASE, THE CRIME RATE WOULD INCREASE, RIGHT?

25 **A.** GENERALLY, YES.

1 Q. BUT THAT HASN'T HAPPENED, HAS IT? IN FACT -- WELL, LET ME
2 ASK YOU THIS. BETWEEN 2003 AND 2007 -- REMEMBER WE WENT THROUGH
3 THIS DURING YOUR DEPOSITION?

4 A. YES.

5 Q. (CONTINUING) -- THERE WAS A 28 PERCENT INCREASE IN THE
6 NUMBER OF PAROLEES AND CRIME WENT DOWN DURING THAT PERIOD,
7 RIGHT?

8 A. ALL BUT 2005.

9 Q. RIGHT. AND SO WHAT I DID -- YOU ESTIMATE THAT THERE ARE
10 GOING TO BE ABOUT 1900 PAROLEES FROM A PRISONER RELEASE ORDER,
11 RIGHT?

12 A. THAT WAS BASED ON THE INITIAL NUMBER OF 40,000, YES.

13 Q. SO WE'LL TAKE AROUND 2000 WOULD BE A FAIR ESTIMATE? YES?

14 A. YES.

15 Q. OKAY.

16 MR. SPECTER: COULD WE PLEASE HAVE THE FIRST TABLE?

17 (DOCUMENT DISPLAYED)

18 BY MR. SPECTER:

19 Q. SO, MR. DYER, THIS IS A CHART BASED ON THE NUMBER OF
20 PAROLEES, NEW ADDITIONAL PAROLEES WHICH ARE RELEASED TO THE
21 COUNTY OF FRESNO, AND IT ALSO HAS THE VIOLENT CRIME RATES.

22 MS. BARLOW: I'M SORRY, YOUR HONOR. I'M GOING TO
23 OBJECT. I DON'T KNOW WHERE THIS DOCUMENT CAME FROM. I'VE NEVER
24 SEEN IT BEFORE. I DON'T KNOW WHO PREPARED IT. I DON'T KNOW
25 WHERE IT CAME FROM.

1 **MR. SPECTER:** WE PREPARED IT, YOUR HONOR.

2 **MS. BARLOW:** IT ALSO MISSTATES THE EVIDENCE. THE
3 CDCR DATA DOES NOT SHOW 5992 PAROLEES RELEASED IN 2007 TO FRESNO
4 COUNTY. SO I DON'T KNOW THAT ANY OF THESE NUMBERS ARE ACCURATE.

5 **MR. SPECTER:** I'M GOING TO ASK HIM TO MAKE CERTAIN
6 ASSUMPTIONS AND WE CAN WORRY ABOUT THE ACCURACY OF THE
7 ASSUMPTIONS AT A LATER POINT.

8 **JUDGE HENDERSON:** PROCEED. AND YOU CAN REVISIT IT,
9 COUNSEL, ON REDIRECT.

10 **MR. SPECTER:** IF YOU CAN HIGHLIGHT THE ROWS 94 TO 95,
11 PLEASE? BOTH ROWS?

12 **BY MR. SPECTER:**

13 **Q.** BETWEEN 94 AND 95 THERE WERE AN ADDITIONAL 2068 PAROLEES
14 RELEASED TO FRESNO --

15 **MS. BARLOW:** EXCUSE ME, COUNSEL. CAN I HAVE A HARD
16 COPY THAT CHART?

17 (WHEREUPON DOCUMENT WAS TENDERED
18 TO COUNSEL.)

19 **JUDGE KARLTON:** MR. SPECTER, THIS WHOLE LINE OF
20 QUESTIONING MAY BECOME JUST IRRELEVANT. WHERE DID YOU GET THE
21 FIGURES THAT YOU PUT INTO THIS CHART?

22 **MR. SPECTER:** WE'RE PREPARED TO SUBMIT THAT THESE ARE
23 ALL FROM THE STATE ATTORNEY GENERAL'S OFFICE WEBSITE AND THE
24 CDCR WEBSITE. AND ALL THE WE DID WAS PUT IT ON A SPREADSHEET
25 AND HAVE IT DO SOME CALCULATIONS.

1 **JUDGE KARLTON:** ALL RIGHT.

2 **BY MR. SPECTER:**

3 **Q.** SO IF YOU SEE 94 AND 95 AND YOU TRUST MY MATH, THERE ARE AN
4 ADDITIONAL 2,068 PAROLEES IN FRESNO. YET, BETWEEN THOSE TWO
5 TIMES VIOLENT CRIME WENT DOWN 7.14 PERCENT AND PROPERTY CRIME
6 WENT DOWN 6.09 PERCENT. DO YOU SEE THAT, MR. DYER?

7 **A.** YES.

8 **Q.** AND THE SAME THING BETWEEN 2002 AND 2007. THERE ARE AN
9 ADDITIONAL 2,148 PAROLEES IN FRESNO, AND VIOLENT CRIME WENT DOWN
10 ALL THE YEARS EXCEPT FOR 2005, DIDN'T IT?

11 **MR. MELLO:** YOUR HONOR, PAUL MELLO FOR THE STATE
12 DEFENDANTS.

13 I WOULD JUST LIKE TO INTERPOSE AN ADDITIONAL
14 OBJECTION FOR LACK OF FOUNDATION.

15 ARE ALL OF THESE HYPOTHETICAL QUESTIONS IN LIGHT OF
16 THE FACT THAT NONE OF THIS DATA HAS BEEN ESTABLISHED FOR THE
17 COURT AND FOR THE PARTIES?

18 **JUDGE REINHARDT:** I THOUGHT IT WAS ALL ON THE
19 ASSUMPTION THAT THESE WERE ACCURATE.

20 **MR. SPECTER:** RIGHT.

21 **JUDGE KARLTON:** YOU ARE GOING TO SUPPLY US WITH SOME
22 KIND OF PROOF THAT YOU DIDN'T JUST MAKE THOSE NUMBERS UP?

23 **MR. SPECTER:** I WAS GOING TO SUPPLY THEM WITH IT
24 FIRST AND IF THEY OBJECTED, WE'LL PUT THE PERSON WHO PREPARED IT
25 ON THE STAND AND SHE CAN EXPLAIN EXACTLY IT HOW IT WENT.

1 BUT I HOPE WHEN THEY GET TO QUESTION HER, THEY CAN --
2 THERE WON'T BE ANY MORE OBJECTIONS, JUST LIKE WE HAVE DONE IN
3 OTHER EXHIBITS THAT THEY HAVE REQUESTED THAT WE...

4 **JUDGE HENDERSON:** PROCEED.

5 **BY MR. SPECTER:**

6 **Q.** SO MY QUESTION WAS, MR. DYER, EVEN THOUGH THERE WAS AN
7 INFLUX OF PAROLEES ABOUT THAT -- DURING THAT TIME, THERE WERE --
8 CRIME WENT DOWN IN ALL THE YEARS EXCEPT 2005, ISN'T THAT RIGHT?

9 **A.** YES.

10 **Q.** OKAY. SO, IN FACT, YOU HAVE A PAGE ON THE FRESNO WEBSITE,
11 DO YOU NOT, THE POLICE DEPARTMENT WEBSITE?

12 **A.** YES.

13 **Q.** AND YOU CLAIM THAT FRESNO HAS ENJOYED THE LOWEST CRIME IN 43
14 YEARS, ISN'T THAT RIGHT?

15 **A.** THAT'S CORRECT.

16 **Q.** ALL RIGHT. SO NOW I WOULD LIKE TO SHOW YOU A POWERPOINT
17 DEMONSTRATION, WHICH IS ALL WE DO ON THESE POWERPOINTS IS THE
18 SPREADSHEET MAKES SOME OF THESE CHARTS INTO GRAPHS.

19 (DOCUMENT DISPLAYED)

20 **JUDGE KARLTON:** AGAIN, YOU ARE GOING TO SOMEHOW OR
21 OTHER EITHER SATISFY THE DEFENDANTS OR PUT THE PERSON ON THE
22 STAND?

23 **MR. SPECTER:** YES, YOUR HONOR.

24 **MR. MELLO:** YOUR HONORS, PAUL MELLO ONE LAST TIME.

25 CAN WE JUST HAVE A STANDING OBJECTION FOR LACK OF

1 FOUNDATION WITH RESPECT TO ALL OF THESE SO I DON'T HAVE TO KEEP
2 ON OBJECTING?

3 **MS. BARLOW:** AND JOIN.

4 **JUDGE HENDERSON:** YES.

5 **BY MR. SPECTER:**

6 **Q.** SO THIS CHART, THE PINK LINE ARE THE NEW PAROLEES AND IT'S
7 ADJUSTED FOR POPULATION, AND THE DARKER LINE IS THE VIOLENT
8 CRIME RATE.

9 SO AS YOU SEE -- DO YOU SEE, MR. DYER --

10 **JUDGE REINHARDT:** COUNSEL, THIS JUST CONFIRMS MY
11 THEORY OF STATISTICS, ECONOMIC STATISTICS, BECAUSE UNDER THIS
12 THEORY WE OUGHT TO GIVE THEM AS MANY PAROLEES AS POSSIBLE AND WE
13 WILL REALLY DROP THE CRIME RATE.

14 **MR. SPECTER:** HE MADE THE SAME POINT DURING THE
15 DEPOSITION.

16 **THE WITNESS:** YOU READ MY DEPOSITION.

17 **JUDGE REINHARDT:** THAT SHOWS YOU WHAT THE FIGURES ARE
18 WORTH.

19 **MR. SPECTER:** IT DOES REBUT HIS POINT, YOUR HONOR --

20 **JUDGE REINHARDT:** YOU ARE DOING THE RIGHT THING.

21 **MR. SPECTER:** OKAY. IT'S GOOD TO KNOW.

22 **JUDGE REINHARDT:** I'M SAYING WHAT YOU ARE PROVING IS
23 QUITE CLEAR; THAT THE MORE PAROLEES YOU HAVE, THE LESS CRIME
24 RATE.

25 **MR. SPECTER:** I DON'T PRETEND THAT THERE IS A CAUSAL

1 RELATIONSHIP, BUT MR. DYER DOES, I THINK.

2 AND IF YOU WOULD NOW GO TO THE PROPERTY CRIME RATE
3 FOR FRESNO?

4 (DOCUMENT DISPLAYED)

5 **MR. MELLO:** OBJECTION. VAGUE AS TO "NEW PAROLEE
6 RATES," "PROPERTY CRIME RATES." I DON'T UNDERSTAND WHAT THAT
7 MEANS. I DON'T KNOW IF THE WITNESS DOES.

8 **JUDGE HENDERSON:** DO YOU UNDERSTAND THE QUESTION,
9 CHIEF DYER?

10 **THE WITNESS:** NO, I DO NOT.

11 **BY MR. SPECTER:**

12 **MR. SPECTER:** YOU KNOW WHAT THE CRIME RATES ARE, MR.
13 DYER, DON'T YOU?

14 **A.** WHAT THE CRIME RATES ARE?

15 **Q.** YOU KNOW WHAT A CRIME RATE IS?

16 **JUDGE KARLTON:** WHAT THE TERM MEANS.

17 **A.** OH, YES, I DO.

18 **BY MR. SPECTER:**

19 **Q.** AND YOU KNOW THAT CRIME RATES ARE SEGREGATED INTO TWO
20 CATEGORIES, VIOLENT CRIME AND PROPERTY CRIME?

21 **A.** THAT'S CORRECT.

22 **Q.** THE YELLOW CHART THERE IS A -- THE YELLOW LINE IS AN
23 ILLUSTRATION OF THE PROPERTY CRIME RATE TAKEN FROM THE ATTORNEY
24 GENERAL'S DATA; DO YOU UNDERSTAND THAT?

25 **A.** YES.

1 Q. THE PAROLEE RATE, NEW PAROLEE RATE IS A FUNCTION OF THE
2 NUMBER OF PAROLEES IN FRESNO ADJUSTED FOR THE POPULATION. SO AS
3 IT SAYS, IT'S A RATE PER 100,000 OF THE POPULATION.

4 SO WHAT WE DID, WE WANTED TO DO IS TO MAKE SURE --

5 MS. BARLOW: I'M GOING TO OBJECT AGAIN TO FOUNDATION,
6 YOUR HONOR.

7 JUDGE KARLTON: YOU HAVE GOT A STANDING -- YOU'VE GOT
8 A STANDING OBJECTION. YOU DON'T HAVE TO KEEP SAYING IT.

9 JUDGE REINHARDT: I DON'T UNDERSTAND. WHEN YOU SAY
10 "NEW PAROLEE RATE" --

11 MR. SPECTER: THAT'S THE ADDITIONAL PAROLEES WHO ARE
12 ENTERING THE COUNTY.

13 JUDGE REINHARDT: SO THAT'S NOT THE TOTAL NUMBER OF
14 PAROLEES IN THE COUNTY, WHICH WOULD BE THE SAME SORT OF THING.

15 A. WELL, THOSE ARE THE NUMBERS RELEASED, IS THAT CORRECT.

16 BY MR. SPECTER:

17 Q. RELEASED.

18 A. THAT MEANS IT COULD BE THE SAME PERSON RELEASED FIVE TIMES
19 THAT YEAR, YES.

20 Q. IT COULD BE.

21 A. IT IS.

22 Q. TOTAL FELONS PAROLED AND REPAROLED FROM AN INSTITUTION BY
23 REGION AND COUNTY.

24 A. YES.

25 Q. RIGHT.

1 **JUDGE REINHARDT:** YOU CAN BE PAROLED FROM PRISON FIVE
2 TIMES IN ONE YEAR?

3 **THE WITNESS:** YES, SIR. WE HAVE CURRENTLY -- IN 2007
4 I THINK WE HAD 5,000 PAROLEES IN FRESNO COUNTY. WE ARRESTED
5 6,453, MEANING THAT WE ARRESTED THE SAME PAROLEES IN MANY CASES
6 OVER AND OVER. IN FACT, THE EXAMPLE I GAVE --

7 **JUDGE REINHARDT:** NO, NO. I UNDERSTAND THE PAROLEES,
8 BUT HAVE THEY BEEN PAROLED BETWEEN EACH ARREST?

9 **JUDGE KARLTON:** OR ARE THEY BEING PUT ON PROBATION OR
10 WHATEVER?

11 **THE WITNESS:** YOU CAN ARREST SOMEONE AND THEY WILL DO
12 TWO MONTHS IN PRISON AND THEN BE REPAROLED.

13 **JUDGE REINHARDT:** FIVE TIMES IN A YEAR?

14 **THE WITNESS:** YES.

15 **JUDGE REINHARDT:** WELL, WHAT KIND OF A SYSTEM IS
16 THAT? I MEAN...

17 **JUDGE KARLTON:** THEY HAVE GOT NO PLACE TO PUT THEM.

18 **JUDGE REINHARDT:** DOES THAT MAKE SENSE TO PUT THOSE
19 PEOPLE IN PRISON FOR TWO MONTHS AT A TIME?

20 **THE WITNESS:** IN MANY RESPECTS, BECAUSE THEY ARE NOT
21 COMMITTING CRIME DURING THOSE TWO MONTHS, YES.

22 **JUDGE REINHARDT:** THERE IS NOTHING BETTER YOU CAN DO
23 WITH THEM THAN SEND THEM TO PRISON FOR TWO MONTHS? I MEAN, THE
24 WHOLE IDEA IS THE PRISON SYSTEM.

25 **THE WITNESS:** I THINK UNDER THE CURRENT SYSTEM THERE

1 MAY NOT BE, BUT THERE CERTAINLY COULD BE, YES.

2 JUDGE REINHARDT: DO YOU HAVE FIGURES FOR THE TOTAL
3 NUMBER OF PAROLEES?

4 MR. SPECTER: YES.

5 BY MR. SPECTER:

6 Q. AND I WAS GOING TO ASK MR. DYER IF HE KNOWS, AND I BELIEVE
7 HE DOES, THAT THE TOTAL NUMBER OF PAROLEES IN FRESNO HAS
8 INCREASED OVER THE YEARS, HAS IT NOT, MR. DYER?

9 A. HAS INCREASED?

10 Q. YES. LIVING IN YOUR COUNTY. I MEAN, IT'S GONE FROM ABOUT
11 4,000 IT'S NOW UP ABOUT 5,000, RIGHT?

12 A. I WOULD HAVE TO TAKE A LOOK AT THAT. I THOUGHT THE NUMBER
13 WAS FAIRLY CONSISTENT AND MAY HAVE EVEN DECREASED.

14 MR. SPECTER: OKAY. WE WILL WE WILL PROVIDE THAT
15 INFORMATION TO THE COURT.

16 BY MR. SPECTER:

17 Q. I BELIEVE THAT -- WELL, ANYWAY, I BELIEVE THAT THE CHARTS
18 THAT WE HAVE BEEN SHOWING YOU SHOW THAT THE NUMBER OF PAROLEES
19 IN THE COUNTY HAS INCREASED --

20 MR. MELLO: OBJECTION. COUNSEL IS TESTIFYING.

21 MS. BARLOW: AGREED. ARGUMENTATIVE.

22 JUDGE REINHARDT: LET ME ASK ONE MORE QUESTION.

23 YOU ARE SAYING THAT THE NUMBER OF PAROLEES ISN'T
24 INCREASING? AND SO THAT RELEASING THE PAROLEES EARLIER IS NOT
25 GOING TO REALLY CHANGE THE NUMBER OF PAROLEES?

1 **THE WITNESS:** THE NUMBER OF PAROLEES IN OUR COMMUNITY
2 FROM MONTH-TO-MONTH, YEAR-TO-YEAR CHANGES. I DON'T KNOW WHAT
3 THOSE TOTALS NUMBERS ARE TODAY VERSUS WHAT HE IS REFERRING TO IN
4 1995. I DON'T KNOW WHAT THOSE -- WHAT 1995 WAS.

5 I DON'T HAVE THOSE -- I THINK THAT'S WHAT HE IS
6 ASKING ME, DID IT CHANGE BETWEEN 1995 AND 2007.

7 **BY MR. SPECTER:**

8 **Q.** YES.

9 **A.** I DON'T KNOW BECAUSE I DON'T KNOW WHAT 1995 WAS. OTHER THAN
10 WHAT YOU SHOWED ME HERE, THAT WAS I THINK 6,000 OR --

11 **Q.** ALMOST 6,000 IN 2007.

12 **A.** SO IF THAT'S THE CASE THERE WERE 6,000 IN '95. TODAY
13 THERE'S 5,000. SO IT WOULD HAVE GONE DOWN.

14 **Q.** WELL, OKAY. I WON'T ARGUE WITH YOU ABOUT THE FIGURES SINCE
15 I DON'T HAVE THE TABLE HERE, BUT --

16 **A.** OKAY.

17 **Q.** -- WE WILL PROVIDE THAT TO THE COURT LATER.

18 **MS. BARLOW:** MOVE TO STRIKE, YOUR HONOR, AS
19 ARGUMENTATIVE.

20 **JUDGE REINHARDT:** HE SAID HE IS GOING TO PROVIDE IT
21 TO THE COURT LATER.

22 **JUDGE HENDERSON:** OVERRULED.

23 **MR. MELLO:** WITHOUT THE OPPORTUNITY FOR --

24 **JUDGE KARLTON:** OVERRULED. SIT DOWN. LET'S GET THIS
25 DONE.

1 **MR. MELLO:** THANK YOU, YOUR HONOR.

2 **BY MR. SPECTER:**

3 **Q.** IN YOUR -- WELL, YOU TESTIFIED ON DIRECT EXAMINATION THAT
4 FRESNO DOESN'T HAVE ALL THE RESOURCES IT NEEDS TO PROVIDE THE
5 SERVICES TO THE PAROLEES IN YOUR CITY, RIGHT?

6 **A.** IT'S MY BELIEF THAT THERE'S INSUFFICIENT TREATMENT
7 FACILITIES IN FRESNO, YES.

8 **Q.** BUT YOU HAVEN'T REQUESTED MORE RESOURCES FROM THE STATE
9 GOVERNMENT FOR THESE RESOURCES IN THE LAST THREE YEARS, HAVE
10 YOU?

11 **A.** NO. I PERSONALLY HAVE NOT, NO.

12 **Q.** AND YOU HAVEN'T REQUESTED IT FROM YOUR COUNTY BOARD OF
13 SUPERVISORS EITHER, HAVE YOU?

14 **A.** NO, I HAVE NOT.

15 **Q.** THE JAIL IN YOUR COUNTY IS UNDER SOME SORT OF COURT ORDER TO
16 RELEASE PRISONERS AT 100 PERCENT OF CAPACITY, ISN'T THAT RIGHT?

17 **A.** YES.

18 **Q.** AND SINCE 1995 THE SHERIFF HAS RELEASED OVER 26,210
19 PRISONERS, IS THAT RIGHT?

20 **A.** I DON'T KNOW THAT TO BE THE NUMBER, BUT I KNOW YOU SHARED
21 THAT WITH ME.

22 **Q.** RIGHT. IT WAS FROM THE SHERIFF'S OWN RESPONSES TO THE
23 INTERROGATORIES. DO YOU REMEMBER THAT?

24 **MS. BARLOW:** ASSUMES FACTS NOT IN EVIDENCE.

25

1 **BY MR. SPECTER:**

2 **Q.** AND YOU DIDN'T EVEN KNOW THAT THE SHERIFF HAD RELEASED THAT
3 MANY PRISONERS FROM JAIL UNTIL I SHOWED YOU THAT FIGURE, DID
4 YOU?

5 **MS. BARLOW:** ASSUMES FACTS NOT IN EVIDENCE. LACKS
6 FOUNDATION.

7 **JUDGE HENDERSON:** IS THAT CORRECT, CHIEF DYER?

8 **JUDGE KARLTON:** PLEASE READ THE -- IF THERE IS AN
9 ARGUMENT ABOUT WHETHER IT'S ACCURATE, THE THING TO DO IS TO GET
10 THE INTERROGATORY AND READ IT TO THE COURT, AND THEN IT'S IN
11 EVIDENCE, AND THESE PEOPLE WILL STOP OBJECTING. OTHERWISE, THEY
12 ARE NOT -- THEY ARE NOT INAPPROPRIATELY OBJECTING, MR. SPECTER.

13 **MR. SPECTER:** YES, YOUR HONOR. OKAY. LET'S MOVE ON.

14 **BY MR. SPECTER:**

15 **Q.** YOU HAVE IN YOUR REPORT INFORMATION PROVIDED TO -- WELL,
16 YOUR REPORT, THE SUBSTANTIVE PORTIONS OF YOUR REPORT WERE
17 WRITTEN BY YOUR CHIEF DEPUTY, ISN'T THAT RIGHT?

18 **A.** THAT'S CORRECT.

19 **Q.** AND YOU HAVE IN YOUR REPORT THAT SOME INFORMATION ABOUT HOW
20 THIS INCREASE OF PAROLEES INTO YOUR COUNTY WOULD AFFECT THE
21 SUPERIOR COURT, CORRECT?

22 **A.** THAT'S CORRECT.

23 **Q.** AND THAT WAS INFORMATION THAT A SUPERIOR COURT JUDGE TOLD TO
24 YOUR CHIEF DEPUTY, IS THAT CORRECT?

25 **A.** THAT'S CORRECT.

1 Q. AND THEN YOUR CHIEF DEPUTY TOLD IT TO YOU, RIGHT?

2 A. PLACED IT IN THE REPORT, YES.

3 Q. PLACED IT IN THE REPORT. BUT NEITHER YOU OR YOUR CHIEF
4 DEPUTY DID ANYTHING TO VERIFY THIS INFORMATION, DID YOU?

5 A. THAT'S CORRECT.

6 MR. SPECTER: I MOVE TO STRIKE THAT PORTION OF HIS
7 REPORT --

8 MS. BARLOW: WITH RESPECT, YOUR HONOR --

9 MR. SPECTER: -- AS HEARSAY.

10 MS. BARLOW: I'M SORRY. COULD I RESPOND?

11 JUDGE HENDERSON: I THOUGHT YOU WERE.

12 MS. BARLOW: HE IS AN EXPERT YOUR HONOR. HE IS
13 ENTITLED TO RELY ON HEARSAY STATEMENTS AS THE BASIS FOR HIS
14 OPINIONS THAT THERE WILL BE AN IMPACT TO HIS CITY AND IN HIS
15 COUNTY AND TO HIS OPERATIONS. THAT'S ALL IT'S OFFERED FOR, IS
16 FOUNDATION.

17 JUDGE REINHARDT: I THOUGHT IT WAS OFFERED TO SHOW
18 WHAT THE EFFECT ON THE JUDICIAL SYSTEM WOULD BE. ISN'T THAT THE
19 POINT YOU ARE OBJECTING TO?

20 MR. SPECTER: I CAN'T HEAR YOU, YOUR HONOR.

21 JUDGE REINHARDT: ARE YOU OBJECTING TO THE PART THAT
22 SHOWS YOU THE EFFECT ON THE JUDICIAL SYSTEM?

23 MR. SPECTER: YOUR HONOR, HE HAS NO EXPERTISE IN
24 THAT. THERE IS NO FOUNDATION FOR IT, AND IT'S BASED ON ONE
25 STATEMENT THAT A JUDGE MADE TO SOMEBODY UNDER HIS COMMAND.

1 **THE WITNESS:** THAT'S NOT TOTALLY TRUE.

2 **JUDGE HENDERSON:** TELL US WHAT'S TOTALLY TRUE.

3 **THE WITNESS:** I HAVE HAD CONVERSATIONS WITH A NUMBER
4 OF NUMBER OF JUDGES WITHIN OUR COUNTY REGARDING HOW THE -- WE DO
5 NOT HAVE ENOUGH JUDGES AND COURTS TO HANDLE THE CURRENT CASE
6 LOADS. WE KNOW THAT FOR CERTAIN.

7 WE HAVE ADDED VERY FEW JUDGES OVER THE YEARS IN
8 FRESNO AND, YET, THE CASELOAD INCREASES. SO WE KNOW THAT ANY
9 ADDITIONAL WORKLOAD IS GOING TO OVERBURDEN IT FURTHER. THAT IS
10 FIRSTHAND EXPERIENCE THROUGH CONVERSATIONS THAT I HAVE HAD.

11 THIS WAS A RECENT CONVERSATION FOR THE PURPOSE OF
12 THIS REPORT.

13 **JUDGE REINHARDT:** IF THE CRIME RATE GOES DOWN -- WE
14 ALL KNOW THAT THERE'S A PROBLEM WITH NOT ENOUGH JUDGES
15 EVERYWHERE. AND IF THE CRIME RATE GOES DOWN BECAUSE WE HAVE
16 MORE PAROLEES, THAT WOULD BE GOOD FOR THE COURT, WOULDN'T IT?

17 **THE WITNESS:** I DON'T KNOW. I'D HAVE TO ANALYZE
18 THAT.

19 **MR. SPECTER:** ANYWAY --

20 **JUDGE REINHARDT:** I GUESS THERE ARE A LOT OF WAYS WE
21 COULD REDUCE THE NUMBER OF CRIMINAL CASES AND THAT CERTAINLY
22 WOULD MAKE THE JOB OF JUDGES EASIER.

23 **JUDGE KARLTON:** IT'S IN AND WHATEVER VALUE WE WILL
24 PLACE ON IT, WE WILL PLACE ON IT. WE HAVE ESTABLISHED THE
25 SOURCE AND THE NATURE. LET'S GO.

1 **MR. SPECTER:** RIGHT.

2 **BY MR. SPECTER:**

3 **Q.** AND THE SAME THING APPLIES TO THE DISTRICT ATTORNEY. THAT'S
4 BASED ON A STATEMENT THE DISTRICT ATTORNEY MADE TO YOU. YOU
5 DIDN'T DO ANY INDEPENDENT VERIFICATION OF HER STATEMENTS OR
6 CONDUCT A STUDY OR YOU NEVER WORKED IN THE DISTRICT ATTORNEY'S
7 OFFICE.

8 **JUDGE REINHARDT:** WE ARE GOING TO HAVE ENOUGH
9 DISTRICT ATTORNEYS HERE LATER. YOU CAN GO THROUGH IT WITH THEM.

10 **MR. SPECTER:** I WAS TRYING TO MAKE IT QUICK.

11 **JUDGE REINHARDT:** YOU KNOW, I THINK WE CAN -- THIS IS
12 ALL ACCEPTED FOR THE WEIGHT AND WHEN WE DECIDE THAT, WE WILL
13 CONSIDER WHETHER THE -- HAVING SOME HUNDRED MORE PAROLEES IS
14 GOING TO MAKE THE JOB OF TRIAL JUDGES MORE DIFFICULT.

15 **MR. SPECTER:** YES, YOUR HONOR.

16 **JUDGE REINHARDT:** OKAY.

17 **BY MR. SPECTER:**

18 **Q.** GOING BACK TO THE JAIL, THE SHERIFF RECENTLY RELEASED 72
19 PRISONERS FROM THE JAIL, ISN'T THAT RIGHT?

20 **A.** YES.

21 **Q.** AND THAT WAS BECAUSE SHE DIDN'T BELIEVE SHE HAD RECEIVED
22 ENOUGH FUNDS FROM THE COUNTY, CORRECT?

23 **MS. BARLOW:** I'M SORRY. I CAN'T HEAR YOU MR.
24 SPECTER. CAN YOU SPEAK UP?

25

1 **BY MR. SPECTER:**

2 **Q.** THAT'S BECAUSE THE SHERIFF BELIEVED SHE DIDN'T HAVE ENOUGH
3 FUNDS FROM THE COUNTY TO OPERATE THE JAIL AT THAT LEVEL, IS THAT
4 RIGHT?

5 **MS. BARLOW:** CALLS FOR SPECULATION AS TO WHAT THE
6 SHERIFF BELIEVED.

7 **JUDGE HENDERSON:** LAY A FOUNDATION.

8 **BY MR. SPECTER:**

9 **Q.** THAT'S WHAT SHE SAID TO YOU, ISN'T THAT CORRECT?

10 **A.** THAT'S WHAT SHE SAID TO ME, AND PUBLICLY THAT FUNDING WASN'T
11 PROVIDED SUFFICIENTLY ENOUGH TO ALLOW HER TO HAVE ENOUGH
12 CORRECTIONAL OFFICERS IN THE JAIL. THEREFORE, SHE HAD TO CLOSE
13 DOWN A FLOOR.

14 **Q.** AND SUBSEQUENT TO THAT, THE COUNTY BOARD OF SUPERVISORS, DID
15 THEY GIVE HER ANY ADDITIONAL FUNDS TO RUN THE JAIL?

16 **A.** THEY DID PROVIDE ADDITIONAL FUNDS.

17 **Q.** NOW, AS YOU SAID BEFORE, THE SHERIFF IS RELEASING PRISONERS
18 ONCE THE JAIL REACHES 100 PERCENT OF CAPACITY, RIGHT?

19 **A.** YES.

20 **Q.** AND, YET, YOU ARE HERE OPPOSING A POPULATION RELEASE ORDER
21 FROM PRISONS AND YOU KNOW THAT THE POPULATION OF THE PRISONS IS
22 CLOSE TO 200 PERCENT OF CAPACITY, CORRECT?

23 **A.** TO MY KNOWLEDGE, FRESNO COUNTY HAS NOT RELEASED INMATES
24 BASED ON THAT HUNDRED PERCENT CAPACITY IN MANY YEARS.

25 THE FIGURES YOU PROVIDED WERE PRIMARILY FROM THE 90'S

1 WHEN THEY -- PRIOR TO THEM CONSTRUCTING A NEW JAIL.

2 Q. I SEE. AND YOU TOURED SOME OF THE PRISONS, HAVE YOU NOT?

3 A. I HAVE.

4 Q. AND YOU SAW SOME OF THE OVERCROWDED CONDITIONS?

5 A. I HAVE.

6 MS. BARLOW: IT'S BEYOND THE SCOPE OF HIS
7 DESIGNATION.

8 JUDGE KARLTON: WELL, ACTUALLY, I RAISED THE QUESTION
9 WITH HIM.

10 MR. SPECTER: THIS IS GOING TO BE RESPONSIVE TO SOME
11 OF THE THINGS JUDGE REINHARDT WAS ASKING HIM.

12 BY MR. SPECTER:

13 Q. I'M GOING TO ASK YOU TO MAKE CERTAIN ASSUMPTIONS, CHIEF.

14 PLEASE ASSUME THAT THE COURTS WERE TO FIND THAT
15 OVERCROWDING IS THE PRIMARY CAUSE OF THE CONSTITUTIONAL
16 VIOLATIONS REGARDING HEALTHCARE, OKAY?

17 A. OKAY.

18 Q. AND ALSO ASSUME THAT THE CONSTITUTIONAL VIOLATIONS ARE
19 CAUSING SERIOUS HARM TO PRISONERS, SERIOUS INJURY AND SOMETIMES
20 DEATH, OKAY?

21 A. OKAY.

22 Q. ALSO ASSUME THAT THE STATE CANNOT EXPAND ITS CAPACITY
23 THROUGH BUILDING MORE PRISONS, CORRECT -- I MEAN, ASSUME THAT,
24 PLEASE, OKAY?

25 A. OKAY.

1 Q. SO IN YOUR OPINION, UNDER THESE CIRCUMSTANCES, SHOULD THE --
2 ANY REDUCTION OF THE POPULATION OCCUR, PRISON POPULATION OCCUR?

3 MS. BARLOW: I'M SORRY, YOUR HONOR. THIS IS WELL
4 BEYOND THE SCOPE OF DESIGNATION OF HIS.

5 JUDGE KARLTON: ACTUALLY, IT CORRESPONDS TO QUESTIONS
6 BOTH JUDGE REINHARDT AND I HAVE ASKED.

7 YOU MAY ANSWER, SIR. IT'S JUST ANOTHER VARIANCE IN
8 WHAT WE HAVE ALREADY DISCUSSED, BUT...

9 A. THE QUESTION OF ME IS -- AND I WILL STATE THIS IN MY BELIEF,
10 EXPERIENCE, OPINION.

11 WHETHER OR NOT AN INDIVIDUAL BELONGS IN PRISON OR A
12 LOCAL JAIL OR ANOTHER FACILITY THAT KEEPS HIM OUT OF OUR
13 COMMUNITY IS THE ANSWER.

14 WHETHER OR NOT THEY REMAIN IN PRISON -- OBVIOUSLY,
15 THE PRISONS ARE FULL, BUT THAT DOESN'T MEAN THERE CANNOT BE
16 OTHER INSTITUTIONS THAT WOULD HOUSE THOSE INDIVIDUALS AND KEEP
17 OUR COMMUNITY SAFE AT A LESSER EXPENSE THAN PRISONS.

18 Q. WELL, ASSUME THERE ARE NOT THOSE OTHER SPACES. THEN WHAT
19 WOULD YOU DO? WHAT WOULD YOU --

20 JUDGE KARLTON: THIS IS NOT FEASIBLE, COUNSEL.

21 MR. SPECTER: OKAY. FINE.

22 BY MR. SPECTER:

23 Q. ASSUMING THAT THE COURT WERE TO ISSUE AN ORDER TO REDUCE THE
24 POPULATION, WHAT MEASURES WOULD YOU RECOMMEND BE DONE, BE TAKEN?

25 A. IF THERE WERE A PRISONER RELEASE ORDER?

1 Q. HOW IN YOUR OPINION SHOULD IT BE STRUCTURED?

2 MR. MELLO: OBJECTION. CALLS FOR A LEGAL CONCLUSION.

3 JUDGE REINHARDT: WELL, I THOUGHT ONE OF THE THINGS
4 WE ARE TRYING TO EXPLORE IN THIS PHASE IS, ARE THERE
5 ALTERNATIVES TO A PRISONER RELEASE ORDER? WHAT ARE THE REMEDIES
6 IF WE FIND A VIOLATION? WHAT SHOULD BE DONE?

7 IT DOESN'T HAVE TO BE A PRISONER RELEASE ORDER. AND
8 HERE WE HAVE ONE OF THE THINGS WE ARE SUPPOSED TO CONSIDER IS
9 LAW ENFORCEMENT. IS THERE SOME REASON THAT YOU DON'T WANT US TO
10 HEAR WHAT MIGHT SOLVE THIS PROBLEM?

11 I ASSUME THE STATE IS GOING TO HAVE AN ARGUMENT AT
12 SOME POINT ABOUT HOW WE CAN SOLVE THIS PROBLEM WITHOUT THE
13 PRISONER RELEASE ORDER. OR IF THERE IS A PRISONER RELEASE
14 ORDER, WHAT HAS THE LEAST IMPACT ON LAW ENFORCEMENT?

15 MR. MELLO: I BELIEVE THE HYPOTHETICAL ASSUMED A
16 PRISONER RELEASE ORDER. IT DIDN'T ASK FOR ALTERNATIVES TO A
17 PRISONER RELEASE ORDER. THAT'S NUMBER ONE.

18 AND, NUMBER TWO, I BELIEVE THAT THERE IS ALREADY
19 EVIDENCE AS TO THE ALTERNATIVES IN THE RECORD IN THE CASE THAT
20 WERE SET FORTH BY DEFENDANTS AND SOME OF THE DEFENDANT
21 INTERVENOR WITNESSES.

22 JUDGE REINHARDT: THERE MAY BE EVIDENCE, BUT, YOU
23 KNOW, WHAT WE HAVE TO CONSIDER IS WHAT -- WHAT IS GOOD FOR LAW
24 ENFORCEMENT? WHAT HAS THE LEAST IMPACT ON LAW ENFORCEMENT?

25 JUDGE KARLTON: AND THE FACT THAT THERE'S SOME

1 EVIDENCE DOESN'T REALLY DEMONSTRATE, DESPITE PROFESSOR
2 MARQUARDT, THAT EVEN THOUGH WE DON'T HAVE TO CONCLUSIVELY DECIDE
3 SOMETHING, THAT SOME THINGS ARE MORE LIKELY THAN OTHERS.

4 SIR, CAN YOU ANSWER THE QUESTION?

5 **THE WITNESS:** I THINK I CAN.

6 **JUDGE KARLTON:** I DIDN'T ASK THIS QUESTION, BUT AS I
7 SAID, YOU HAVE TO SHARE OUR PAIN. BUT, APPARENTLY, MR. SPECTER
8 DOESN'T CARE WHETHER YOU SHARE OUR PAIN OR NOT.

9 THE QUESTION IS: IF YOU HAD YOUR DRUTHERS, IF YOU
10 HAD TO DO SOMETHING BECAUSE THE CONSTITUTION REQUIRED YOU TO
11 ABOUT THE FACT THAT THE PRISONS ARE IN THE CONDITION THEY ARE
12 IN, WHAT WOULD YOU DO?

13 **THE WITNESS:** I WOULD AVOID A PRISONER RELEASE ORDER
14 AT ALL COSTS AND IF THERE WAS GOING TO BE A NEED TO DOWNSIZE THE
15 PRISON POPULATION, I WOULD DO EVERYTHING IN MY POWER TO TRY TO
16 DO IT AT THE FRONT END THROUGH DIVERSION. AND THAT IS DIVERTING
17 THE NUMBER OF INDIVIDUALS THAT ARE SENT FROM LOCAL JURISDICTIONS
18 TO PRISON, BUT STILL HAVING THE FUNDING AT THE LOCAL
19 JURISDICTION TO PUT THOSE INDIVIDUALS IN FACILITIES THAT ARE
20 CONTROLLED BY LOCAL GOVERNMENT FOR THE PURPOSE OF TREATMENT,
21 PREVENTION, REHABILITATION.

22 BUT I DO NOT BELIEVE THE ALTERNATIVE IS TO SIMPLY
23 ALLOW THEM TO REMAIN IN THE COMMUNITIES AND COMMIT CRIMES. I
24 DON'T THINK THAT IS FAIR TO THE COMMUNITY. IT'S NOT FAIR TO THE
25 INDIVIDUAL.

1 BUT I DO THINK LOCAL DIVERSION OVER A PERIOD OF TIME
2 COULD BE AN ALTERNATIVE IN LIEU OF RELEASING PRISONERS EARLY
3 FROM PRISON.

4 **BY MR. SPECTER:**

5 **Q.** AND A LOCAL DIVERSION, WOULD YOU SAY THAT WOULD IMPROVE
6 PUBLIC SAFETY IF THEY WERE PROVIDED PROGRAMS?

7 **A.** IT WOULD HAVE THE POTENTIAL TO, IF THE FACILITIES WERE IN
8 PLACE AND IF IT WAS DONE OVER A PERIOD OF TIME.

9 THE FEAR WOULD BE NOT TO TRY TO ACCELERATE IT TO THE
10 POINT WHERE LARGE NUMBERS OF PEOPLE WOULD SOMEHOW BE FORCED INTO
11 INADEQUATE TREATMENT PROGRAMS AND FACILITIES. THAT WOULD BE THE
12 CONCERN.

13 **Q.** OKAY. NO FURTHER QUESTIONS, YOUR HONOR.

14 **THE COURT:** ANYTHING FROM -- NOTHING FROM -- OH,
15 ANYTHING FROM CCPOA?

16 **MS. LEONARD:** NO, YOUR HONOR.

17 **THE COURT:** REDIRECT?

18 **MS. BARLOW:** JUST VERY BRIEFLY, YOUR HONOR.

19 **REDIRECT EXAMINATION**

20 **BY MS. BARLOW:**

21 **Q.** CHIEF DYER, DO YOU MEET REGULARLY WITH THE DISTRICT
22 ATTORNEY'S OFFICE REGARDING THE CASES YOU SEND TO THEM FOR
23 FILING?

24 **A.** YES.

25 **Q.** AND SO YOU HAVE A PRETTY FAIR UNDERSTANDING, DO YOU NOT, OF

1 HOW MUCH STAFF THEY HAVE AND HOW MANY CASES THEY ACTUALLY FILE
2 FOR YOU?

3 **A.** I DO.

4 **Q.** WHAT'S YOUR CURRENT RATE OF NON-FILING ON CHARGES YOU SEND
5 TO THE DISTRICT ATTORNEY'S OFFICE?

6 **A.** AS OF LAST MONTH, IT WAS 27 PERCENT OF THE CASES THAT WE HAD
7 FILED THAT WAS FELONIES AND MISDEMEANORS THAT WERE NOT FILED
8 UPON.

9 WHEN YOU REMOVE THE -- THE NON-SIGNIFICANT
10 MISDEMEANORS, SUCH AS DRIVING ON A SUSPENDED LICENSE AND SO
11 FORTH, THAT NCF RATE IS MUCH HIGHER.

12 **Q.** SO WOULD YOU ANTICIPATE THAT ASSUMING MORE CRIME WAS
13 COMMITTED IN THE COMMUNITY, AS YOU HAVE PREDICTED AS A RESULT OF
14 AN ORDER, AND YOU WERE ABLE TO APPREHEND THOSE CRIMINALS, THAT
15 WOULD YOU NEED TO SEND MORE CASES FOR FILING TO THE DISTRICT
16 ATTORNEY'S OFFICE?

17 **A.** ARE YOU ASKING IF THERE WAS NO PAROLE?

18 **Q.** RIGHT. IF WE HAD -- NO. IF THERE WAS AN ORDER ENTERED AND
19 THEY --

20 **A.** WELL, TWO THINGS COULD HAPPEN. IF -- IF INDIVIDUALS WERE
21 RELEASED BACK INTO OUR COMMUNITY EARLY AND THEY REOFFEND, THE
22 OPTION FOR THE DISTRICT ATTORNEY IS TO NOT FILE THOSE CASES AND
23 ALLOW THEM TO SIMPLY HAVE THEIR PAROLE VIOLATED AND SENT BACK TO
24 PRISON, WHICH HAPPENS FREQUENTLY IN OUR COMMUNITIES BECAUSE OF
25 AN OVERBURDENED D.A. SYSTEM.

1 BUT IF THEY DID NOT HAVE PAROLE, THEN, YES, THAT
2 WOULD CAUSE THEM TO HAVE TO TAKE FORTH THAT NEW CASE. SO IT
3 WOULD INCREASE, OBVIOUSLY, THE WORKLOAD OF OUR DISTRICT
4 ATTORNEYS SIGNIFICANTLY.

5 Q. WOULD YOU EXPECT A CHANGE IN THE WAY OF THE CASES ARE
6 SELECTED FOR PROSECUTION AS A RESULT?

7 JUDGE KARLTON: NOW, THAT IS BEYOND THE SCOPE OF HIS
8 EXPERTISE.

9 BY MS. BARLOW:

10 Q. DO YOU DISCUSS AND MEET REGULARLY WITH THE D.A. --

11 JUDGE KARLTON: I HAVE HEARD ALL THAT STUFF.

12 MS. BARLOW: ALL RIGHT. I HAVE NOTHING FURTHER.
13 THANK YOU, YOUR HONOR.

14 THE COURT: ANYTHING FROM THE STATE DEFENDANTS?

15 MR. MELLO: NO.

16 MR. LEWIS: NOTHING, YOUR HONOR.

17 THE COURT: ANY FURTHER CROSS?

18 MR. SPECTER: NO.

19 JUDGE HENDERSON: THANK YOU, CHIEF DYER, FOR
20 TESTIFYING.

21 CALL YOUR NEXT WITNESS?

22 MR. MITCHELL: DISTRICT ATTORNEY RODRIC PACHECO,
23 RIVERSIDE COUNTY.

24

25

1 **RODRIC PACHECO,**
2 CALLED AS A WITNESS FOR THE DEFENDANT HEREIN, HAVING BEEN FIRST
3 DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

4 **THE WITNESS:** I DO.

5 **THE CLERK:** STATE YOUR NAME AND SPELL YOUR FULL NAME
6 THE RECORD.

7 **THE WITNESS:** RODRIC ANTHONY PACHECO. R-O-D-R-I-C,
8 A-N-T-H-O-N-Y, P-A-C-H-E-C-O.

9 **DIRECT EXAMINATION**

10 **BY MR. MITCHELL:**

11 **Q.** GOOD MORNING. BILL MITCHELL WITH THE DEFENDANT INTERVENORS.

12 MR. PACHECO, SIR, GOOD MORNING. COULD YOU BRIEFLY
13 GIVE US A SYNOPSIS OF YOUR SERVICE, YOUR PUBLIC SERVICE, YOUR
14 CAREER AND YOUR EDUCATION?

15 **A.** SURE. I GRADUATED FROM THE UNIVERSITY OF CALIFORNIA AT
16 RIVERSIDE IN 1980. I THEN WENT TO THE UNIVERSITY OF SAN DIEGO
17 SCHOOL OF LAW, GRADUATING IN 1983.

18 I CLERKED A COUPLE OF SUMMERS WITH A FIRM CALLED
19 SPRAGUE, MILLIGAN AND BESWICK IN THE CITY OF SAN BERNADINO. DID
20 CIVIL WORK AND CRIMINAL DEFENSE.

21 I THEN PASSED THE BAR DECEMBER 13, 1983. SOUGHT
22 EMPLOYMENT AS A DEPUTY DISTRICT ATTORNEY AND WAS HIRED AT THE
23 RIVERSIDE COUNTY DEPUTY DISTRICT ATTORNEY'S OFFICE AND STARTED
24 MAY 21ST, 1984.

25 I SERVED AS A DEPUTY DISTRICT ATTORNEY UNTIL

1 DECEMBER 2ND, 1996, WHEN I ASSUMED OFFICE AS A STATE ASSEMBLYMAN
2 FOR THE WESTERN PORTION OF THE RIVERSIDE COUNTY, 64TH ASSEMBLY
3 DISTRICT. I SERVED THREE TERMS, TWO YEARS APIECE.

4 I THEN RETURNED TO THE DISTRICT ATTORNEY'S OFFICE IN
5 RIVERSIDE COUNTY DECEMBER 2ND, 2002. CAME BACK AS A CHIEF
6 DEPUTY DISTRICT ATTORNEY. IT'S A SENIOR MANAGEMENT POSITION. I
7 MOVED UP. I WAS PROMOTED WITHIN, WHAT WAS IT, ABOUT NINE MONTHS
8 TO A YEAR TO ASSISTANT DISTRICT ATTORNEY, WHICH WAS THE SECOND
9 HIGHEST POSITION IN THE OFFICE.

10 THEN RAN FOR AND WON THE ELECTION IN JUNE OF 2006 FOR
11 DISTRICT ATTORNEY. ASSUMED OFFICE JANUARY 1ST OF 2007 AS THE
12 ELECTED DISTRICT ATTORNEY.

13 Q. DURING YOUR TIME, APPROXIMATELY 12 YEARS OR MORE, AS A LINE
14 PROSECUTOR, DID YOU BECOME FAMILIAR WITH AND EXPERIENCED IN ALL
15 ASPECTS OF CRIMINAL JUSTICE FROM THE PROSECUTION STANDPOINT FROM
16 THE INVESTIGATION OF CASES, CASE PROCESSING, NEGOTIATING
17 SETTLEMENTS, GOING THROUGH TRIALS AND SENTENCING DETERMINATIONS?

18 A. YES.

19 Q. DID YOU LEARN THE DISTINCTIONS BETWEEN PROBATION AND PRISON
20 AND WHAT MAKES SOMEONE ELIGIBLE FOR EITHER OF THOSE?

21 A. YES.

22 Q. DID YOU BECOME FAMILIAR WITH WHEN PROBATION WOULD BE
23 APPROPRIATE AS OPPOSED TO PRISON?

24 A. YES.

25 Q. DURING YOUR EXPERIENCE AS AN ADMINISTRATOR IN THE DISTRICT

1 ATTORNEY'S OFFICE AND NOW AS A DISTRICT ATTORNEY, ARE YOU
2 FAMILIAR WITH RUNNING A LARGE PROSECUTION OFFICE?

3 **A.** YES. OUR OFFICE IS THE -- IN TERMS OF PERSONNEL, IS THE
4 THIRD LARGEST IN THE STATE OF CALIFORNIA AND ABOUT THE TENTH IN
5 THE NATION.

6 **Q.** AS THE DISTRICT ATTORNEY OF RIVERSIDE COUNTY, ARE YOU
7 RESPONSIBLE NOT ONLY FOR BUDGET, HIRING AND FIRING OF PEOPLE,
8 BUT ALSO ALLOCATING RESOURCES TO WHERE THEY WILL BEST SERVE
9 PUBLIC SAFETY?

10 **A.** ALL OF THOSE THINGS AND MANY MORE.

11 **Q.** AS THE DISTRICT ATTORNEY, ARE YOU INVOLVED IN DEALING WITH
12 ISSUES THAT TOUCH UPON RECIDIVISM, EARLY RELEASES OF INMATES
13 FROM JAILS, ISSUES SUCH AS THAT?

14 **A.** YES. BECAUSE OF THE NATURE AND DYNAMICS OF OUR PARTICULAR
15 COUNTY, YES.

16 **Q.** CAN YOU TELL US WHAT YOUR LEGISLATIVE EXPERIENCE, WHAT THAT
17 BROUGHT TO THE TABLE FOR YOU AS FAR AS PUBLIC SAFETY ISSUES ARE
18 CONCERNED?

19 **A.** I SERVED ON A NUMBER OF COMMITTEES WHEN I WAS IN THE STATE
20 LEGISLATURE. THE EDUCATION COMMITTEE I SERVED AS A
21 VICE-CHAIRMAN. AT ONE POINT I SERVED AS A VICE-CHAIRMAN ON THE
22 TRANSPORTATION COMMITTEE. SERVED ON THE PUBLIC SAFETY
23 COMMITTEE. SERVED ON THE BUDGET COMMITTEE.

24 THE BUDGET COMMITTEE IS A VERY LARGE COMMITTEE IN THE
25 STATE ASSEMBLY AND IS BROKEN DOWN INTO SUBCOMMITTEES. THE

1 SUBCOMMITTEES DEAL WITH DIFFERENT SPECIALTIES OR AREAS OF THE
2 BUDGET. THE SUBCOMMITTEE THAT I SAT ON DEALT WITH STATE
3 AGENCIES. SO I WAS VERY FAMILIAR WITH THINGS THAT STATE
4 AGENCIES WERE DOING, BOTH IN TERMS OF PROCUREMENT AND PRACTICES
5 AND THINGS LIKE THAT.

6 PROBABLY VOTED ON SEVERAL THOUSAND BILLS A YEAR AND
7 WERE FAMILIAR WITH SEVERAL THOUSAND BILLS A YEAR.

8 HAD A LOT OF EXPERIENCE WORKING WITH A GOVERNOR PETE
9 WILSON IN HIS LAST TWO YEARS ON CORRECTIONAL ISSUES THAT
10 IMPACTED OUR COUNTY IN RIVERSIDE.

11 I WORKED ON A NUMBER OF ISSUES WITH GOVERNOR DAVIS'
12 STAFF AND GOVERNOR DAVIS HIMSELF AS WELL AND, OF COURSE, THE
13 LEGISLATORS BOTH IN THE SENATE AND ASSEMBLY.

14 Q. WERE YOU INVOLVED AT ALL WITH PRISON CONSTRUCTION ISSUES?

15 A. YES. IN MY FIRST TERM WE HAD AN ESCAPE, I BELIEVE IT WAS
16 APRIL OF 1997, FROM ONE OF OUR PRISONS IN RIVERSIDE COUNTY
17 CALLED CALIFORNIA REHABILITATION CENTER.

18 I THEN WORKED CLOSELY WITH THE GOVERNOR'S STAFF,
19 GOVERNOR WILSON'S STAFF TO ENGAGE IN CONSTRUCTION OF FACILITIES
20 AT THAT PARTICULAR PRISON TO LESSEN THE CHANCES OF ESCAPE.

21 Q. IN YOUR EFFORTS AS THE ELECTED DISTRICT ATTORNEY, DO YOU
22 ATTEMPT TO STAY INFORMED REGARDING ISSUES THAT MIGHT IMPACT YOUR
23 EFFECTIVE PROVISION OF PROSECUTORIAL SERVICES TO THE COUNTY OF
24 RIVERSIDE?

25 A. YES. IT'S CRITICAL THAT I DO THAT, SO THAT WE CAN SEE

1 TRENDS COMING AND THEN PREPARE FOR THEM, BOTH WITH PERSONNEL AND
2 OTHER RESOURCES AND, ALSO, WITH STRUCTURING OR RESTRUCTURING OUR
3 OFFICE, WHICH HAS BEEN FAIRLY CONSTANT SINCE THE TIME I STARTED
4 THERE IN 1984. OFFICE HAS GROWN QUITE A BIT.

5 **MR. MITCHELL:** I ASK THAT THE WITNESS BE ACCEPTED BY
6 THE COURT AS EXPERT IN THE AREA OF PROSECUTORIAL ENFORCEMENT OF
7 THE LAWS AND CRIMINAL JUSTICE.

8 **JUDGE HENDERSON:** HE WILL BE.

9 **MR. MITCHELL:** THANK YOU.

10 **BY MR. MITCHELL:**

11 **Q.** MR. PACHECO, DID YOU BECOME AWARE AT SOME POINT THAT A THREE
12 JUDGE PANEL HAD BEEN CONVENED IN ORDER TO CONSIDER A PRISONER
13 RELEASE ORDER IN THE STATE OF CALIFORNIA?

14 **A.** YES, I DID.

15 **Q.** WHEN YOU BECAME AWARE OF THAT, WHAT ACTIONS DID YOU TAKE AND
16 WHY?

17 **A.** I'M TRYING TO REMEMBER THE SEQUENCE OF IT. I MAY JUMBLE
18 THAT A LITTLE BIT, BUT BASICALLY I SPOKE TO A NUMBER OF OTHER
19 ELECTED DISTRICT ATTORNEYS. I SOUGHT THEIR COUNSEL, GUIDANCE.
20 PROVIDED MY OWN SUGGESTIONS.

21 WE FORMED A GROUP THAT AGREED TO INTERVENE IN THIS
22 LAWSUIT. WE DID THAT BECAUSE WE WERE CONCERNED ABOUT THE
23 RELEASE, DRAMATIC RELEASE OF TENS OF THOUSANDS OF STATE INMATES
24 IN AN EARLY RELEASE PROGRAM AND, ALSO, A CAP THAT MAY BE CREATED
25 ON THE PRISON SYSTEM ITSELF.

1 Q. AND HAVE YOU STUDIED OR RESEARCHED ARTICLES AND/OR STUDIES
2 THAT EXAMINED THE TOPICS OF EARLY RELEASE, OVERCROWDING IN THE
3 PRISON AND RECIDIVISM ISSUES?

4 A. YES.

5 Q. HAVE YOU FORMED AN OPINION AS TO WHETHER OR NOT A PRISONER
6 RELEASE ORDER WOULD HAVE AN ADVERSE IMPACT ON PUBLIC SAFETY?

7 A. I HAVE NOT ONLY ON PUBLIC SAFETY, BUT ALSO THE OPERATION OF
8 THE CRIMINAL JUSTICE SYSTEM AS WELL, AT LEAST IN RIVERSIDE
9 COUNTY.

10 Q. NOW, IN RIVERSIDE COUNTY ARE THE JAILS OPERATING UNDER A
11 POPULATION CAP AT THIS TIME?

12 A. THEY ARE. IT'S A FEDERAL CONSENT DECREE, I BELIEVE, THAT
13 DATES BACK TO 1993. THE POPULATION IS CAPPED AT ABOUT 3640 BEDS
14 THAT CAN BE FILLED OR PRISONERS THAT CAN EXIST IN THAT JAIL AT
15 ANY ONE TIME.

16 Q. AND WHAT EFFORTS ARE BEING MADE IN RIVERSIDE COUNTY TO
17 RESOLVE THE PROBLEMS THAT ARISE FROM THE POPULATION CAP?

18 A. WELL, JAIL CONSTRUCTION FOR ONE. THERE IS A -- THE BOARD OF
19 SUPERVISORS IS PROCEEDING IN THE CONSTRUCTION OF AN EXTREMELY
20 LARGE HUB JAIL THAT WOULD HOUSE, APPROXIMATELY, 7200 JAIL
21 INMATES. THAT IS ESTIMATED TO COST WELL OVER \$500 MILLION IN
22 ITS CONSTRUCTION.

23 THE LAND HAS BEEN PURCHASED. THE ARCHITECT, I
24 BELIEVE, HAS ALSO BEEN SELECTED AND THEY ARE CURRENTLY HOLDING
25 HEARINGS IN RIVERSIDE COUNTY ESPECIALLY AS OF LATE.

1 THERE ARE OTHER THINGS BEING DONE AS WELL. SOME OF
2 THEM POSITIVE. SOME OF THEM NOT SO POSITIVE.

3 **Q.** ARE THE OVERCROWDING ISSUES IN RIVERSIDE COUNTY, DO THEY
4 RESULT IN INDIVIDUALS BEING EARLY RELEASED FROM THE COUNTY JAIL
5 AT THIS TIME?

6 **A.** A FEW YEARS AGO -- I DON'T KNOW IF THIS WAS DONE WHILE I WAS
7 IN SACRAMENTO --

8 **MR. SANGSTER:** OBJECTION. NONRESPONSIVE.

9 **JUDGE HENDERSON:** HOW DO WE KNOW IT WAS DONE A FEW
10 YEARS AGO?

11 **JUDGE KARLTON:** GO AHEAD.

12 **THE WITNESS:** THANK YOU.

13 **A.** A FEW YEARS AGO THE SHERIFF, THEN-SHERIFF BOB DOYLE, STARTED
14 AN EARLY RELEASE PROGRAM. I'M NOT SURE WHEN THAT BEGAN BECAUSE
15 I WAS GONE FOR SIX YEARS IN SACRAMENTO.

16 BUT I KNOW OF AT LEAST A FEW YEARS AGO THEY LET OUT A
17 FEW HUNDRED THE FIRST YEAR, A FEW THOUSAND THE SECOND YEAR, AND
18 LAST YEAR 6,001 INMATES WERE EARLY RELEASED IN RIVERSIDE COUNTY.

19 **Q.** WHAT TYPE OF ADVERSE IMPACTS HAS THAT HAD ON THE
20 ADMINISTRATION OF JUSTICE IN RIVERSIDE COUNTY?

21 **A.** WELL, IT'S HAD A -- WE HAVE A LOT OF DYNAMICS IN RIVERSIDE
22 COUNTY. THIS HAS EXACERBATED THOSE DYNAMICS AND CREATED NEW
23 ONES.

24 FOR EXAMPLE, WE HAVE SEEN THAT THE FAILURES TO APPEAR
25 ON THE PRISONERS THAT ARE EARLY RELEASED HAVE BECOME MORE

1 FREQUENT AND MORE ROUTINE. AND CASES GET CONTINUED, THOSE CASES
2 GET CONTINUED AND CLOG THE SYSTEM. OUR SYSTEM IS ALREADY
3 CONGESTED, BUT IT BECAUSE MORE CONGESTED WHEN YOU HAVE FOLKS
4 FAILING TO APPEAR ON EARLY RELEASES.

5 WE HAVE SEEN CRIME INCREASE IN VARIOUS CATEGORIES,
6 IDENTITY THEFT. RIVERSIDE COUNTY IS THE -- I BELIEVE NATIONWIDE
7 THE NUMBER TWO REGION IN THE NATION FOR IDENTITY THEFT OFFENSES,
8 THAT IS A FAIRLY RECENT OCCURRENCE, AND OTHER THINGS SUCH AS
9 THAT.

10 ALSO, SUCH NEW OFFENSES THAT WOULD NOT HAVE BEEN
11 COMMITTED HAD THEY NOT BEEN EARLY RELEASED AS WELL.

12 Q. THERE HAS BEEN A PROPOSAL OR ONE ASPECT OF A PROPOSAL FOR A
13 PRISONER RELEASE ORDER IN THIS CASE WHERE THE POPULATION OF THE
14 STATE PRISON SYSTEM WOULD BE SET AT 130 PERCENT OF DESIGN
15 CAPACITY, WHICH WOULD SET A POPULATION OF APPROXIMATELY 104,000
16 TO BE ACHIEVED WITHIN TWO YEARS.

17 ONE WAY OF ACHIEVING THAT WOULD BE JUST TO RELEASE
18 INMATES EARLIER THAN THE COMPLETION OF THEIR TERMS. THIS COULD
19 RESULT IN OVER A TWO-YEAR PERIOD, HYPOTHETICALLY IF IT DOES, AN
20 INCREASE OF APPROXIMATELY 2500 PAROLEES BEING RELEASED EARLY
21 EACH MONTH.

22 ARE YOU AWARE OF THAT PROPOSAL?

23 A. YES.

24 Q. ARE YOU AWARE THAT THAT MAY INCREASE THE NUMBER OF PAROLEES
25 BEING RETURNED TO RIVERSIDE COUNTY ON A MONTHLY BASIS?

1 **A.** YES.

2 **Q.** IN LOOKING AT THE MATH AND THE PERCENTAGE OF PAROLEES THAT
3 COME TO RIVERSIDE AT THIS TIME, BEING APPROXIMATELY 6.6 PERCENT
4 BASED UPON CDCR STATS FROM 2007, IS IT YOUR UNDERSTANDING THAT
5 RIVERSIDE MAY SEE AN ADDITIONAL 150 TO 165 PAROLEES BEING
6 RETURNED TO RIVERSIDE EACH MONTH IF AN EARLY RELEASE PROPOSAL
7 LIKE THAT TOOK PLACE?

8 **A.** I KNOW WE WILL HAVE A SIGNIFICANT NUMBER OF PAROLEES THAT
9 ARE RELEASED BACK TO RIVERSIDE COUNTY THROUGH THE EARLY RELEASE
10 PROGRAM. I'M NOT SO GOOD WITH MATH. THAT'S WHY I'M A LAWYER.
11 BUT THOSE FIGURES SOUND ABOUT RIGHT.

12 **Q.** WOULD YOU HAVE AN OPINION AS TO WHETHER OR NOT AN INCREASE
13 IN THE NUMBER OF PAROLEES COMING TO RIVERSIDE WOULD HAVE AN
14 ADVERSE BEING IMPACT ON PUBLIC SAFETY IN THE AREA OF OCCURRENCE
15 OF NEW CRIMES?

16 **A.** I WOULD.

17 **Q.** WHAT WOULD THAT OPINION BE?

18 **A.** I THINK WE HAVE SEEN -- WE DON'T HAVE TO SPECULATE SO MUCH,
19 IF AT ALL.

20 WE HAVE SEEN IN OTHER JURISDICTIONS, LIKE FLORIDA,
21 ILLINOIS, PHILADELPHIA, LOS ANGELES, WHERE EARLY RELEASE
22 PROGRAMS HAVE BEEN INSTITUTED EITHER ON A STATE-WIDE LEVEL OR ON
23 A LOCAL LEVEL -- LIKE, FOR EXAMPLE, LOS ANGELES -- THAT EARLY
24 RELEASE PROGRAMS HAVE CERTAIN EFFECTS.

25 ONE IS TO REDUCE THE POPULATION OR TO REDUCE THE

1 GROWTH IN THE POPULATION IN CUSTODIAL FACILITIES.

2 THE OTHER EFFECTS THEY TEND TO HAVE ARE TO SHOW
3 INCREASES IN CRIME, VIOLENT CRIME AS WELL AS NON-VIOLENT CRIME.
4 THEY TEND TO SPIKE AND GO UP IN VARIOUS PERCENTAGES. MORE
5 PEOPLE ARE VICTIMIZED. MORE PEOPLE ARE INJURED. SOME ARE EVEN
6 MURDERED.

7 THOSE STATISTICS, WHILE IN SMALLER NUMBERS IN CERTAIN
8 INSTANCES, ARE STILL SIGNIFICANT TO ME. IT WOULD BE A DRASTIC
9 STEP, A FORM OF EARLY RELEASE PROGRAM OR CAP ON THE SYSTEM.

10 Q. THERE HAS BEEN TESTIMONY IN THIS CASE TO INDICATE THAT THE
11 INCREASE IN THE NUMBER OF CRIMES COMMITTED BY INDIVIDUALS WHO
12 ARE EARLY RELEASED WOULD BE SUBSTANTIALLY INSIGNIFICANT AND
13 AMOUNT TO LESS THAN 1 PERCENT OF OVERALL ARRESTS IN A PARTICULAR
14 AREA; ARE YOU AWARE OF THOSE?

15 A. I AM.

16 Q. IS IT STILL YOUR OPINION THAT IT WOULD BE AN ADVERSE IMPACT
17 ON PUBLIC SAFETY IN THE COMMUNITY EVEN THOUGH THE NUMBER OF NEW
18 CRIMES COMMITTED BY THIS EARLY RELEASE POPULATION IS SO
19 SIGNIFICANTLY SMALL, LESS THAN ONE PERCENT?

20 A. ASSUMING THAT ACTUALLY IS THE ANSWER, THAT IS A CORRECT
21 GUESS SO TO SPEAK, THAT THE NUMBERS ARE NOT LARGER THAN THAT, IT
22 WOULD STILL BE A SIGNIFICANT IMPACT ON PUBLIC SAFETY.

23 Q. WHY IS THAT?

24 A. WELL, I WOULD COMPARE IT TO SOME OF THE FINDINGS THAT THIS
25 COURT HAS MADE REGARDING THE PRISON SYSTEM. THIS COURT

1 IDENTIFIED THAT AT LEAST DURING A CERTAIN TIME PERIOD THAT THERE
2 WERE 34 DEATHS IN THE PRISON SYSTEM THAT WERE -- THAT THEY WERE
3 EXTREMELY CONCERNED ABOUT. I SHARE THAT CONCERN THAT THE COURT
4 HAD.

5 THAT'S A RELATIVELY SMALL NUMBER. YOU COULD SAY
6 STATISTICALLY INSIGNIFICANT, TO USE THAT PHRASE FROM SOMEBODY
7 ELSE. BUT IT'S A SIGNIFICANT -- THOSE ARE SIGNIFICANT ACTIONS
8 ON HUMAN BEINGS.

9 IN ANOTHER STUDY THERE WAS 23 MURDERS THAT THEY
10 BELIEVED WERE A RESULT OF -- I BELIEVE THAT WAS MR. AUSTIN.
11 THAT'S A STATISTICALLY INSIGNIFICANT NUMBER, BUT STILL 23 PEOPLE
12 WERE MURDERED AS A RESULT OF THE EARLY RELEASE PROGRAM.

13 I THINK BOTH OF THOSE THINGS ARE BAD AND ABHORRENT
14 AND SHOULD BE AVOIDED.

15 Q. YOU WROTE IN YOUR DECLARATION THAT THE FIRST RULE IN TRYING
16 TO FIX SOME OF THE PROBLEMS IN THE CRIMINAL JUSTICE SYSTEM IS TO
17 DO NO HARM.

18 IN YOUR OPINION, WHAT CAN BE DONE TO RESOLVE THE
19 OVERCROWDING ISSUE AND PROTECT PUBLIC SAFETY AT THE SAME TIME OR
20 CAN IT BE DONE?

21 A. I THINK IT CAN BE DONE. IF THE COURT DOESN'T MIND ME
22 EXPOUNDING A LITTLE BIT, IT'S A RATHER LONG ANSWER.

23 NUMBER ONE, I THINK THE COURT'S ACTION IN APPOINTING
24 A RECEIVER WAS PROVIDENTIAL, TO USE THAT TERM. THEY WERE
25 RIGHTFULLY VERY FRUSTRATED WITH CDCR, CALIFORNIA DEPARTMENT OF

1 CORRECTIONS AND REHABILITATION, AND THEY TOOK AN EXCEPTIONAL
2 STEP, WHICH WAS A GOOD STEP.

3 THE RECEIVER, AS I UNDERSTAND, HAS MADE SIGNIFICANT
4 PROGRESS IN RESOLVING MANY OF THE CONSTITUTIONAL VIOLATIONS IN
5 THE STATE PRISON SYSTEM. VIOLATIONS THAT I WOULD SAY, IN MY
6 OPINION, ARE NOT RELATED OR WOULD NOT BE SOLVED BY AN EARLY
7 RELEASE PROGRAM OR A CAP IN THE STATE PRISON SYSTEM.

8 SO THAT'S ONE PART OF IT. THE OTHER PART OF IT IS
9 THERE NEED TO BE SOME LEGISLATIVE FIXES TO AB 900, WHICH WAS A
10 BILL PASSED, I BELIEVE, LAST YEAR THROUGH THE LEGISLATURE SIGNED
11 BY THE GOVERNOR INTO LAW. I UNDERSTAND THERE IS ONE PART THAT
12 RECENTLY WHERE THE ATTORNEY GENERAL CERTIFIED THAT BONDS COULD
13 BE RELEASED FOR THE CONSTRUCTION OF REENTRY FACILITIES IN
14 VARIOUS PARTS OF CALIFORNIA, WHICH WOULD AID THOSE INDIVIDUALS.
15 IT WOULD ALSO INCREASE THE SIZE AND CAPACITY OF CDCR, WHICH
16 WOULD BE A GOOD THING AND RELIEVE OVERCROWDING.

17 IN ADDITION TO THAT, THOUGH, THERE ARE A NUMBER OF
18 OTHER THINGS THAT I THINK I WOULD ENCOURAGE SOMEONE TO DO. AND
19 THAT IS, THE DEPARTMENT OF CORRECTIONS NEEDS TO HAVE A MUCH MORE
20 SIGNIFICANT OPERATION WHEN IT COMES TO PAROLE AND THE DELIVERY
21 OF ASSISTANCE TO PEOPLE WHO ARE ON PAROLE.

22 CURRENTLY THEY ARE OVERWHELMED WITH THE NUMBER OF
23 FOLKS THAT ARE ON PAROLE AND, IN MY OPINION, CANNOT MEANINGFULLY
24 PROVIDE ASSISTANCE IN ANY SIGNIFICANT WAY TO THESE INDIVIDUALS
25 THAT ARE BEING RELEASED FROM PRISON ON A DAILY BASIS.

1 SO THOSE, THOSE -- THAT SYSTEM, THAT DELIVERY SYSTEM,
2 IF YOU WILL, FROM PAROLE NEEDS TO BE IMPROVED AND FUNDED.

3 THE LOCAL PROBATION DEPARTMENTS, RIVERSIDE COUNTY TO
4 USE AS ONE EXAMPLE, ARE OVERWHELMED. THE PROBATION -- DEPUTY
5 PROBATION OFFICERS IN OUR COUNTY ROUTINELY HAVE OVER 800-PLUS
6 FOLKS ON THEIR INDIVIDUAL CASE LOADS. THEY CANNOT MEANINGFULLY
7 ASSIST THOSE PEOPLE WHILE THEY ARE ON PROBATION.

8 WHEN YOU FAIL TO ASSIST THESE FOLKS THAT ARE IN GREAT
9 NEED FOR SERVICES, JOB TRAINING, DRUG TREATMENT, ET CETERA, THEY
10 TEND TO REOFFEND. WHEN THEY REOFFEND, SOME OF THE OFFENSES ARE
11 TECHNICAL VIOLATIONS, A DIRTY TEST, A DRUG TEST. OR THEY ARE
12 VERY SIGNIFICANT. UP TO AND INCLUDING MURDER. THAT DOESN'T
13 HELP THE SYSTEM ANY. IT DOESN'T HELP THE INDIVIDUAL THAT'S ON
14 PAROLE OR PROBATION.

15 THERE ARE OTHER THINGS THAT CAN BE DONE AS WELL. THE
16 CONSTRUCTION OF NEW PRISONS, THAT NEEDS TO OCCUR. I BELIEVE
17 THIS COURT HAS ENCOURAGED THE LEGISLATURE AND THE GOVERNOR TO DO
18 THAT, TO CONSTRUCT AT LEAST SEVEN NEW PRISON FACILITIES
19 THROUGHOUT THE STATE OF CALIFORNIA TO INCREASE CAPACITY. THAT
20 NEEDS TO BE DONE.

21 AS OUR POPULATION GROWS IN CALIFORNIA, OF COURSE, THE
22 POPULATION IN OUR STATE PRISONS WILL GROW, AS THE POPULATIONS IN
23 OUR SCHOOLS AND THE POPULATIONS THAT UTILIZE TRANSPORTATION
24 SYSTEMS, ET CETERA.

25 SO THOSE ARE ALL THINGS THAT SHOULD BE DONE AND CAN

1 BE DONE AND ARE IN VARIOUS PHASES OF BEING DONE.

2 **Q.** DO YOU BELIEVE THAT INCREASING THE FUNDING TO PROBATION
3 SERVICES CAN INCREASE THE EFFECTIVENESS OF PROBATION AND LEAD TO
4 AN ACTUAL REDUCTION IN THE NUMBERS THAT ARE GOING INTO PRISON?

5 **A.** ABSOLUTELY. IF YOU HAVE MORE PROBATION OFFICERS -- I MEAN,
6 IT'S A FAIRLY SIMPLISTIC, YOU KNOW, FORMULA, I GUESS.

7 BUT WHEN YOU HAVE MORE PROBATION OFFICERS, THEY HAVE
8 MORE TIME TO SPEND WITH THE FOLKS THAT ARE ON PROBATION; TO HELP
9 THEM FIND JOBS, TO HELP COUNSEL THEM, TO CHOOSE A BETTER PATH
10 RATHER THAN THE WRONG ONE. AND RECIDIVISM CAN AND SHOULD GO
11 DOWN IN THOSE INSTANCES.

12 WHEN DO YOU THE OPPOSITE, WHEN YOU DON'T PROVIDE
13 SUFFICIENT OR MEANINGFUL FUNDING FOR THOSE PROGRAMS, THEN
14 RECIDIVISM WILL GO UP.

15 **Q.** IT'S BEEN PROPOSED THAT ALTERNATIVE SANCTIONS IN THE FORM OF
16 LESSER ALTERNATIVES THAN CUSTODY SHOULD BE APPLIED TO TECHNICAL
17 PAROLE VIOLATORS; THOSE THAT AREN'T ARRESTED FOR COMMITTING NEW
18 CRIMES, THOSE THAT ARE MERELY ARRESTED OR TAKEN INTO CUSTODY FOR
19 VIOLATING TERMS OF THEIR PAROLE.

20 DO YOU AGREE THAT TECHNICAL PAROLE VIOLATORS,
21 ALTERNATIVE SANCTIONS MIGHT BE WARRANTED FOR A PERCENTAGE OF
22 THAT POPULATION?

23 **A.** DEPENDS ON WHAT THE SANCTIONS ARE. IT IS IMPORTANT THAT
24 THEY FOLLOW THE RULES GIVEN TO THEM BY THE DEPARTMENT OF
25 CORRECTIONS WHILE THEY ARE ON PAROLE. IT DEPENDS.

1 NEW OFFENSES ARE DIFFERENT, OF COURSE, AND YOU ARE
2 NOT ASKING ME ABOUT THAT, BUT IT DEPENDS ON WHAT THOSE
3 ALTERNATIVE SANCTIONS ARE.

4 I THINK WHATEVER PATH IS TAKEN, THE ULTIMATE GOAL IS
5 TO MAKE SURE THAT THIS PERSON IS A LAW ABIDING PRODUCTIVE MEMBER
6 OF SOCIETY. SO WHATEVER PATH GETS US THERE EFFECTIVELY IS
7 PROBABLY A GOOD IDEA.

8 **Q.** IT'S COME UP DURING THIS TRIAL THAT THERE IS A PRACTICE
9 AMONG DISTRICT ATTORNEYS OFFICES OF ALLOWING A PAROLE VIOLATION
10 TO TAKE PLACE IN LIEU OF PROSECUTION ON A NEW CRIME. ARE YOU
11 AWARE OF THOSE ALLEGATIONS?

12 **A.** YES. YOU APPRISED ME OF THOSE, I BELIEVE, YESTERDAY.

13 **Q.** AND TO YOUR KNOWLEDGE, DOES THAT OCCUR?

14 **A.** WELL, I MEANT IN MY TIME SINCE --

15 **MR. SANGSTER:** OBJECTION, YOUR HONOR. I'M GOING TO
16 OBJECT, UNLESS HE IS ANSWERING BASED ON HIS PERSONAL KNOWLEDGE.

17 IF IT'S THE HEARSAY HE HEARD FROM SOMEBODY ELSE, IT'S
18 NOT PROPER EVEN FOR AN EXPERT.

19 **JUDGE KARLTON:** IT'S PERFECTLY PROPER FOR YOU TO
20 DISCUSS WHAT GOES ON IN RIVERSIDE.

21 **THE WITNESS:** I WOULD BE HAPPY TO DO THAT. THANK
22 YOU, YOUR HONOR.

23 **A.** SINCE I STARTED IN 1984, IT HAS NEVER BEEN THE PRACTICE OF
24 THE RIVERSIDE COUNTY DISTRICT ATTORNEYS OFFICE TO DO THAT.

25 ONE, IT WAS NEVER A POLICY DECISION BY THE OFFICE.

1 IT WAS NEVER A PRACTICE THAT WAS INSTITUTED BY THE OFFICE. AND
2 IN ADDITION TO THAT, IT'S NOT POSSIBLE.

3 PEOPLE THAT ARE ARRESTED AND A PAROLE HOLD IS PLACED
4 ON THEM ARE IN CUSTODY. THAT REQUIRES OUR OFFICE TO FILE, WHEN
5 THEY ARE IN CUSTODY, WITHIN 48 HOURS.

6 WE HAVE NO MECHANISM TO GET ANY INFORMATION FROM THE
7 DEPARTMENT OF CORRECTIONS AS TO WHETHER OR NOT THEY WERE
8 VIOLATED LATER. SO WE MAKE A DECISION AT THAT TIME WHETHER OR
9 NOT THEY HAVE COMMITTED A CRIME BEYOND A REASONABLE DOUBT AND
10 WHETHER OR NOT WE CAN PROVE IT BEYOND A REASONABLE DOUBT.

11 IT'S IRRELEVANT, AND ALWAYS HAS BEEN IN RIVERSIDE
12 COUNTY, WHETHER THEY HAVE A PAROLE HOLD OR A PAROLE VIOLATION OR
13 WHATEVER. WE FILE IT. I'M AWARE OF NO COUNTY THAT DOES IT
14 DIFFERENTLY.

15 Q. EXCUSE ME ONE MOMENT. I LOST MY TRAIN OF THOUGHT.

16 OH, IN CONSIDERING THE ISSUES THAT THIS COURT MUST
17 ADDRESS, THE IDEA OF A POPULATION CAP ON THE STATE PRISON, AND
18 OVER AND ABOVE A RELEASE OF INDIVIDUALS EARLY FROM PRISON, THE
19 IMPACT THAT A POPULATION CAP MIGHT HAVE ON THE ADMINISTRATION OF
20 JUSTICE, PROSECUTION OF CASES IN RIVERSIDE COUNTY. IF THERE WAS
21 A CAP ON THE STATE PRISON SYSTEM, DO YOU ANTICIPATE THAT THERE
22 MIGHT BE A BACKLOG OF STATE PRISON INMATES IN THE COUNTY JAIL
23 UNABLE TO BE TRANSPORTED TO PRISON BECAUSE OF THE POPULATION
24 CAP?

25 A. YES, AS WELL AS MANY OTHER MANIFESTATIONS OF THAT CAP.

1 Q. IF THAT DID MATERIALIZE WHERE THE NUMBER OF PRISON INMATES
2 BEING COMMITTED FROM RIVERSIDE COUNTY COULD NOT BE TRANSPORTED
3 IN A TIMELY MANNER TO CDCR INSTITUTIONS, WHAT WOULD THAT DO TO
4 FURTHER IMPACT AND ADVERSELY AFFECT RIVERSIDE COUNTY JAIL AND
5 CRIME IN THE COMMUNITY?

6 A. WELL, IT WOULD IMPACT OUR PUBLIC SAFETY AND IT WOULD IMPACT
7 THE OPERATION OF OUR CRIMINAL JUSTICE SYSTEM.

8 IT WOULD IMPACT PUBLIC SAFETY BECAUSE THE NUMBER OF
9 PEOPLE THAT ARE IN OUR JAILS WOULD -- THE COMPOSITION OF OUR
10 JAILS WOULD CHANGE.

11 TODAY ABOUT 80 PERCENT OF THE FOLKS IN OUR JAIL
12 SYSTEM IN RIVERSIDE COUNTY ARE PRETRIAL DETAINEES, THOSE FOLKS
13 WAITING FOR TRIAL. THE REST ARE FOLKS THAT HAVE BEEN SENTENCED
14 OR BEING HELD FOR A VARIETY OF SMALL THINGS. THEY MAY BE
15 WITNESSES, FOR EXAMPLE, THAT ARE BEING HELD, THINGS LIKE THAT.

16 IF YOU INCLUDE FOLKS THAT ARE SENTENCED TO STATE
17 PRISON BUT THAT CANNOT GO, THEN ALL OF THOSE FOLKS WILL QUICKLY
18 BE CROWDED OUT.

19 OUR JAIL CONSTRUCTION IN RIVERSIDE COUNTY HAS NOT
20 KEPT UP WITH OUR ASTRONOMICAL GROWTH. RIVERSIDE COUNTY'S
21 POPULATION IS THE FASTEST GROWING POPULATION IN THE STATE OF
22 CALIFORNIA, AND THE SECOND FASTEST GROWING IN THE NATION AND HAS
23 BEEN FOR MANY YEARS.

24 WE HAVE GONE -- WHEN I STARTED IN 1984, WE HAD ABOUT
25 500,000 PEOPLE IN THE COUNTY, AND NOW WE HAVE OVER 2.1 MILLION.

1 OUR COUNTY HAS GROWN DRAMATICALLY.

2 IF A CAP IS CREATED, IF THAT DOMINO FALLS, THEN IT
3 TILL HIT OTHER DOMINOES. THE OTHER DOMINO THAT IT HITS IN OUR
4 COUNTY, IS OUR JAIL WILL SOON BE FILLED WITH FOLKS THAT ARE
5 WAITING OR SERVING THEIR SENTENCE FOR STATE PRISON COMMITMENTS.
6 IT WILL THEN NOT HAVE THE OPPORTUNITY -- OUR JAIL SYSTEM WILL
7 NOT HAVE THE OPPORTUNITY TO HAVE PEOPLE SERVING TIME. THOSE
8 PEOPLE WILL BE EARLY RELEASED EVEN MORE THAN THEY ALREADY ARE IN
9 OUR COUNTY.

10 IN ADDITION TO THAT, THE FOLKS THAT ARE PRETRIAL
11 DETAINEES WILL AT SOME POINT BE RELEASED EVEN MORE THAN THEY
12 ALREADY ARE. THOSE FOLKS WILL COMMIT NEW CRIMES THAT WOULD NOT
13 HAVE BEEN COMMITTED BEFORE BECAUSE THEY WOULD HAVE BEEN IN
14 CUSTODY.

15 IN ADDITION TO THAT, OUR JAIL COMPOSITION HAS ALREADY
16 CHANGED RATHER DRAMATICALLY OVER THE LAST TEN YEARS. IT HAS
17 BECOME MUCH MORE SERIOUS OFFENDERS THAT ARE BEING HELD FOR
18 PRETRIAL DETAINEES.

19 THE JAIL SYSTEM WILL HAVE TO START RELEASING GANG
20 MEMBERS THAT ARE BEING PROSECUTED FOR ATTEMPTED MURDER AND
21 MURDER AND SEXUAL PREDATORS, ET CETERA. THOSE FOLKS TEND TO
22 COMMIT VERY VIOLENT ACTS ON THE POPULATION. SO THAT WILL BE
23 IMPACTED.

24 IT WILL SLOW DOWN THE COURT SYSTEM EVEN MORE THAN
25 IT'S ALREADY CONGESTED. THE COURT SYSTEM IN RIVERSIDE COUNTY

1 HAS BEEN DESCRIBED AS HAVING CULTURE CONTINUANCES THAT ALL OF US
2 ARE TRYING TO BREAK. THIS WILL ONLY EXACERBATE THAT NOW THAT
3 PEOPLE WHO ARE NORMALLY IN CUSTODY THAT HAD A MOTIVE OR
4 INCENTIVE TO GO TO TRIAL ARE NOW OUT OF THAT CUSTODY AND HAVE
5 LITTLE INCENTIVE TO GO TO TRIAL.

6 SHOULD INCREASE OUR FAILURES TO APPEAR AS WELL,
7 INCREASE THE NUMBER OF CONTINUANCES THOSE CASES HAVE. THAT WILL
8 ALSO INCREASE THE NUMBER OF WARRANTS THAT ARE PUT INTO OUR
9 SYSTEM. THAT WILL ALSO INCREASE THE NUMBER OF OFFICERS THAT
10 NEED TO SERVE THOSE WARRANTS. IF WE FAIL TO SERVE THOSE
11 WARRANTS, THEN WHEN THEY ARE FINALLY ARRESTED YEARS LATER, THERE
12 IS A LEGITIMATE DUE PROCESS MOTION THAT WILL BE FILED AND THOSE
13 CASES CAN AND PROBABLY WILL BE DISMISSED.

14 SO THERE ARE MANY DOMINOES THAT WILL FALL WITH A CAP
15 IN OUR STATE PRISON SYSTEM, AT LEAST IN RIVERSIDE COUNTY.

16 **Q.** CAN YOU GIVE US A SPECIFIC OR A CASE EXAMPLE OF HOW AN EARLY
17 RELEASE SYSTEM NOW IS IMPACTING CRIME IN RIVERSIDE?

18 **A.** THERE'S A NUMBER OF EXAMPLES I WOULD GIVE. FORGIVE ME IF I
19 DON'T RECALL THE EXACT NAMES OF THE INDIVIDUALS, BUT IN ONE
20 INSTANCE WE HAVE A CASE WHERE A WOMAN WAS -- OR IS BEING
21 PROSECUTED FOR A GRAND THEFT TYPE OF OFFENSE, AN EMBEZZLEMENT
22 OFFENSE. SHE IS A PERFECT CANDIDATE FOR EARLY RELEASE FROM OUR
23 JAIL SYSTEM. SHE HAS BEEN EARLY RELEASED. EVERY TIME SHE IS
24 EARLY RELEASED AFTER HER INITIAL ARRAIGNMENT, SHE FAILS TO
25 APPEAR AT THE PRELIMINARY HEARING. AT SOME POINT SHE GETS

1 ARRESTED, IS BROUGHT BACK IN, ARRAIGNED AND EARLY RELEASED
2 AGAIN. IT HAS TAKEN US ABOUT SEVEN YEARS AND WE STILL HAVEN'T
3 GOTTEN HER TO PRELIMINARY HEARING.

4 THERE IS ANOTHER CASE WHERE AN INDIVIDUAL --
5 RELATIVELY RECENTLY IN THE LAST, I THINK, YEAR OR SO, WHO WAS
6 RELEASED AND COMMITTED NEW -- A NEW CRIME. ACTUALLY, FAILED TO
7 APPEAR ABOUT TWO DAYS BEFORE HE COMMITTED AN ATTEMPTED MURDER.
8 HE IS A GANG MEMBER. HE WAS LATER PROSECUTED FOR THAT AND WAS
9 GIVEN 12 YEARS IN STATE PRISON. THAT'S A CRIME THAT NEVER WOULD
10 HAVE OCCURRED IF HE HAD STAYED IN CUSTODY IN HIS ORIGINAL CASE,
11 WHICH WAS A LOW LEVEL FELONY. BUT OUR JAIL SYSTEM KICKED HIM
12 AND RELEASED HIM EARLY AND HE FAILED TO APPEAR A NUMBER OF TIMES
13 AND THEN WOULD GET PICKED UP ON A WARRANT AND THEN FINALLY
14 COMMITTED A NEW OFFENSE.

15 THOSE TWO ANECDOTES ARE BECOMING MORE COMMON AND NOT
16 SO ANECDOTAL, BUT MORE ROUTINE.

17 **Q.** HOW DO EARLY RELEASES AND POPULATION REDUCTION ORDERS, HOW
18 DO THEY IMPACT THE INTEGRITY OF THE CRIMINAL JUSTICE SYSTEM?

19 **A.** WELL --

20 **MR. SANGSTER:** OBJECTION. VAGUE AND AMBIGUOUS.

21 **JUDGE KARLTON:** YOU MAY ANSWER.

22 **THE WITNESS:** THANK YOU.

23 **A.** IF THE COURT DOESN'T MIND, I HAVE FOUR CHILDREN AND, YOU
24 KNOW, IF --

25 **MR. SANGSTER:** OBJECTION. NONRESPONSIVE.

1 **JUDGE HENDERSON:** PROCEED, MR. PACHECO.

2 **THE WITNESS:** THANK YOU.

3 **A.** WE HAVE VARIOUS PUNISHMENTS THAT WE IMPOSE ON THEM WHEN THEY
4 VIOLATE THE RULES OF THE HOUSE, SO TO SPEAK. IF THEY DO NOT
5 FEEL SOME CONSEQUENCES, THEY TEND TO REPEAT THOSE OFFENSES WITH
6 GREATER FREQUENCY.

7 IT'S NO DIFFERENT. THEY ARE HUMAN BEINGS, LIKE
8 ADULTS. IF YOU FAIL TO LIVE UP TO THE CONSEQUENCES YOU CLAIM,
9 THEY WILL SUFFER.

10 CRIMINALS WILL REPEAT THOSE OFFENSES AND MORE. THEY
11 WILL IDENTIFY THAT THE SYSTEM CANNOT AND WILL NOT HOLD THEM
12 ACCOUNTABLE. IF YOU TELL SOMEBODY YOU ARE GOING TO STATE PRISON
13 FOR TWO YEARS, THAT YOU ARE SENTENCED TO STATE PRISON AND THEY
14 DON'T GO, THEY ARE EARLY RELEASED AND THEY DON'T EVEN ACTUALLY
15 TAKE A BUS TO STATE PRISON, THAT'S GOING TO SEND A VERY POWERFUL
16 MESSAGE AND DIMINISH THE ABILITY OF THE SYSTEM TO CORRECT ITS
17 MOST DIFFICULT MEMBERS OF SOCIETY.

18 IT HAS ANOTHER EFFECT. AT SOME POINT THE PUBLIC WHO
19 SEES THIS PROBLEM, SPIKES IN CRIME AND OTHER -- SOME OF THE
20 PROBLEMS I HAVE MENTIONED, WILL LOSE CONFIDENCE IN THE SYSTEM
21 AND THAT WILL HAVE A DELETERIOUS EFFECT AS WELL. THOSE ARE JUST
22 SOME OF THE PROBLEMS.

23 **JUDGE REINHARDT:** COUNSEL, IT'S NOW ALMOST DOUBLE THE
24 TIME YOU ESTIMATED.

25 **MR. MITCHELL:** ONE MORE QUESTION?

1 **JUDGE REINHARDT:** SURE.

2 **BY MR. MITCHELL:**

3 **Q.** DESPITE THE CONGESTION IN THE COURTS AND IN THE JAILS IN
4 RIVERSIDE COUNTY AND THE GROWTH OF THE POPULATION IN RIVERSIDE
5 COUNTY BEEN SUCCESSFUL IN MAINTAINING A LOWERING CRIME RATE. TO
6 WHAT DO YOU ATTRIBUTE THAT?

7 **A.** CAN YOU REPEAT THAT? I'M SORRY.

8 **Q.** CRIME RATES FOR VIOLENT CRIME ESPECIALLY HAVE CONSISTENTLY
9 BEEN GOING DOWN IN RIVERSIDE COUNTY, IS THAT CORRECT?

10 **A.** THEY HAVE.

11 **Q.** HOW DO YOU ACCOUNT FOR THAT?

12 **JUDGE REINHARDT:** MAYBE BECAUSE IT'S THEY HAVE SUCH
13 AN EXCELLENT DISTRICT ATTORNEY.

14 **THE WITNESS:** THEY HAVE BEEN GOING DOWN LONGER THAN I
15 WAS THERE, YOUR HONOR.

16 **A.** I WOULD MAKE TWO OBSERVATIONS, AND I'M SURE THERE ARE MANY
17 OTHER REASONS AS WELL.

18 ONE, THE DISTRICT ATTORNEYS OFFICE IN RIVERSIDE
19 COUNTY SINCE JANUARY OF 1983 HAS BEEN A VERY AGGRESSIVE
20 PROSECUTORIAL AGENCY, ESPECIALLY ON VIOLENT CRIME. THE FORMER
21 DISTRICT ATTORNEY MADE THAT ONE OF THE HALLMARKS OF HIS TENURE,
22 AND HE HAS BEEN VERY AGGRESSIVE. THAT'S THE CULTURE IN WHICH I
23 WAS RAISED AS A PROSECUTOR AND IN WHICH YOU WERE RAISED. SO OUR
24 OFFICE HAS ALWAYS TAKEN THAT VERY SERIOUSLY AND TAKEN GREAT
25 STEPS TO PUSH THAT VIOLENT CRIME DOWN.

1 THE OTHER THING I WOULD POINT TO IS SOMETHING THAT IS
2 MENTIONED IN PERIODICALS AND ARTICLES FROM COLUMNISTS AND THINGS
3 LIKE THAT THAT I HAVE SEEN WITH MY OWN EYES, AND THAT IS THE
4 EFFECT OF THREE STRIKES. THE THREE STRIKES LAW IN CALIFORNIA.

5 OUR VIOLENT CRIME RATE IS ABOUT HALF OF WHAT IT WAS
6 IN 1993, APPROXIMATELY. THAT BEGAN GOING DOWN ALMOST AS SOON AS
7 THE LAW WAS PASSED IN MARCH OF 1994 AND THEN REAFFIRMED BY THE
8 VOTERS IN NOVEMBER OF '94. THAT HAS HAD A DRAMATIC EFFECT. WE
9 SEE IT WITH THE INDIVIDUALS WHEN THE OFFICE MAKES -- OR THE
10 INDIVIDUALS IN OUR OFFICE MAKE DECISIONS TO PROSECUTE THE THREE
11 STRIKES CASES. THEY HAVE LONG LISTS OF CRIMES THAT THEY HAVE
12 COMMITTED. WITH THOSE FOLKS OUT OF THE COMMUNITY, THEY ARE NOT
13 REOFFENDING IN THE COMMUNITY AND SO OUR CRIME RATE TENDS TO GO
14 DOWN.

15 IN OUR OFFICE WE TEND TO FOCUS ON PEOPLE WITH VIOLENT
16 CRIME IN THEIR HISTORY, AS WELL AS THE CURRENT OFFENSE IN ORDER
17 TO DISCOURAGE THEM FROM COMMITTING MORE CRIMES IN OUR COMMUNITY.

18 Q. ARE YOU AWARE OF EVIDENCE THAT INDICATES THAT AGGRESSIVE
19 PROSECUTORIAL STRATEGIES, SUCH AS ARE EMPLOYED IN RIVERSIDE, ARE
20 EFFECTIVE IN REDUCING VIOLENT CRIMES?

21 JUDGE KARLTON: SIR --

22 JUDGE REINHARDT: YOU HAVE --

23 JUDGE HENDERSON: YOU NOW HAVE MORE QUESTIONS AND
24 DOUBLED YOUR TIME ESTIMATE.

25 MR. MITCHELL: TRYING TO TAKE ADVANTAGE. THANK YOU.

1 NO FURTHER QUESTIONS.

2 **THE COURT:** ANYTHING FROM THE STATE DEFENDANTS?

3 **MR. LEWIS:** NOTHING, YOUR HONOR.

4 **THE COURT:** CROSS-EXAMINATION?

5 **MR. SANGSTER:** YES, YOUR HONOR. ED SANGSTER FOR THE
6 PLAINTIFFS.

7 **CROSS EXAMINATION**

8 **BY MR. SANGSTER:**

9 **Q.** MR. PACHECO, WHEN YOU WERE TESTIFYING, YOU WERE TALKING
10 ABOUT EARLY RELEASES CAUSING FAILURES TO APPEAR.

11 ARE YOU EQUATING EARLY RELEASES WITH PRETRIAL
12 RELEASES?

13 **A.** YES. THE EARLY RELEASES IN RIVERSIDE COUNTY.

14 **Q.** SO WHEN YOU ARE TALKING ABOUT AN EARLY RELEASE AND THE
15 IMPACT ITS HAVING, YOU ARE TALKING ABOUT THE RELEASE ON SOMEBODY
16 WHO HAS NOT YET BEEN SENTENCED, IS THAT CORRECT?

17 **JUDGE KARLTON:** NOT YET BEEN CONVICTED.

18 **BY MR. SANGSTER:**

19 **Q.** EXCUSE ME. NOT YET BEEN CONVICTED.

20 **A.** IT INCLUDES THAT GROUP, AS WELL AS POTENTIALLY THE GROUP
21 THAT WOULD BE INCLUDED IF THE COURT ORDERED A -- AS YOU HAVE
22 REQUESTED.

23 **Q.** HOW LONG HAS YOUR JAIL BEEN IN THE WORKS, THE NEW JAIL?

24 **A.** UMM, THE NEW JAIL BECAME THE NUMBER ONE PRIORITY FOR THE
25 BOARD OF SUPERVISORS IN FEBRUARY OF 2007.

1 Q. AND HAS CONSTRUCTION STARTED ON THAT JAIL YET?

2 A. NO, BUT THE LAND -- I'M SORRY, BEING NONRESPONSIVE. NO,
3 CONSTRUCTION HAS NOT STARTED.

4 Q. SO THE LAND HAS BEEN PURCHASED, BUT CONTRACTS HAVEN'T YET
5 BEEN LET FOR THE JAIL?

6 A. THE LAND HAD BEEN PURCHASED. THE PROJECT HAS BEEN PLANNED.
7 I BELIEVE THE ARCHITECT HAS BEEN HIRED. THEY ARE GOING THROUGH
8 PUBLIC HEARINGS NOW, WITH THE COMMENSURATE OBJECTIONS BY LOCAL
9 FOLKS, AND THEY ARE MOVING EXPEDITIOUSLY. THE MONEY HAS BEEN
10 SET ASIDE, THE \$350 MILLION-PLUS HAS BEEN IN THE BANK FOR SOME
11 TIME.

12 Q. WHAT'S THE ESTIMATED DATE FOR COMPLETION OF THIS JAIL THAT
13 BECAME A PRIORITY IN FEBRUARY OF '07?

14 A. ACCORDING TO THE FACILITIES MANAGEMENT DIRECTOR AND THE
15 OTHER OFFICIALS I HAVE SPOKEN TO ABOUT THE JAIL, HAD MANY
16 CONVERSATIONS, THE PROJECTED COMPLETION DATE IS 2012.

17 Q. SO FIVE YEARS FROM THE TIME IT BECAME A PRIORITY UNTIL THE
18 TIME IT'S EXPECTED TO BE COMPLETED, IS THAT RIGHT?

19 A. APPROXIMATELY. IT MIGHT BE TOWARDS THE END OF 2012, SO IT
20 MIGHT BE A LITTLE MORE THAN FIVE YEARS.

21 Q. ONE OF THE THINGS YOU REFERRED TO IN YOUR TESTIMONY WAS THE
22 PRISON CONSTRUCTION ASSOCIATED WITH AB 900 WAS AN ALTERNATIVE TO
23 A PRISONER RELEASE ORDER IN THIS CASE; DO YOU REMEMBER THAT?

24 A. YES, SIR.

25 Q. AND AS OF TODAY, NO FUNDS HAVE BEEN AUTHORIZED FOR THE

1 CONSTRUCTION OF THAT PRISON, IS THAT CORRECT?

2 **JUDGE KARLTON:** NOT ONLY THAT, BUT NO BONDS HAVE BEEN
3 SOLD YET.

4 **THE WITNESS:** NO BONDS HAVE BEEN SOLD YET, THAT'S
5 CORRECT.

6 **BY MR. SANGSTER:**

7 **Q.** AND THE LEGISLATURE STILL HAS NOT ENACTED THE CLEAN-UP
8 LEGISLATION THAT'S BEEN DISCUSSED FOR CLOSE TO A YEAR?

9 **A.** MY UNDERSTANDING IT'S TWO ISSUES; ONE OF WHICH IS THE
10 LEGISLATURE, THE OTHER OF WHICH IS THE ATTORNEY GENERAL'S
11 OFFICE.

12 **Q.** I WAS ASKING ABOUT THE LEGISLATURE.

13 **A.** I'M SORRY. COULD YOU REPEAT THE QUESTION?

14 **Q.** IS IT TRUE THAT THE CLEAN-UP LEGISLATION NECESSARY TO GET AB
15 900 GOING HAS BEEN IN PROCESS FOR CLOSE TO A YEAR AND HASN'T YET
16 PASSED?

17 **A.** WELL, LEGISLATION HAS NOT PASSED. I'M NOT SURE IT'S
18 NECESSARY. THERE'S A DISAGREEMENT ABOUT THAT.

19 **JUDGE KARLTON:** AND TO -- NEVER MIND. JUST GO.

20 **BY MR. SANGSTER:**

21 **Q.** OKAY. YOU TALKED ABOUT THE NEED TO INCREASE REHABILITATION
22 EFFORTS BY THE STATE?

23 **A.** YES, SIR.

24 **Q.** THAT NEED HAS BEEN AN APPARENT FOR SOME TIME?

25 **A.** IT HAS.

1 Q. THAT'S BEEN APPARENT TO THE LEGISLATURE FOR SOME TIME?

2 A. I BELIEVE SO YES, SIR.

3 Q. THE LEGISLATURE HAS FAILED TO INCREASE THE REHABILITATION
4 PROGRAMS DURING THAT TIME?

5 A. THEY HAVE IN SOME SMALL INSTANCES, BUT NOT A GENERAL
6 OVERHAUL OF THOSE SYSTEMS, CORRECT.

7 Q. SO THE LEGISLATURE HAS BEEN AWARE OF AN ALTERNATIVE TO A
8 PRISONER RELEASE ORDER, BUT HAS FAILED TO ACT ON IT?

9 A. CAN I GET SOME CLARIFICATION ON THE LEGISLATURE? WHAT YOU
10 MEAN BY THE LEGISLATURE? EVERY MEMBER OF THE LEGISLATURE?

11 JUDGE KARLTON: THE BODY AS A WHOLE.

12 THE WITNESS: I WOULDN'T SAY THAT THE BODY AS A WHOLE
13 WAS AWARE OF ALL OF THOSE CONDITIONS AND, THEREFORE, FAILED TO
14 ACT. INDIVIDUAL MEMBERS MAY HAVE BEEN AND WERE.

15 JUDGE KARLTON: BUT THAT'S THE WAY THE LEGISLATURE
16 ALWAYS WORKS. MAYBE IT DOESN'T ANY MORE. THIRTY YEARS AGO WHEN
17 I HAD SOMETHING TO DO WITH IT IT DID.

18 THE WAY THE LEGISLATURE USED TO WORK, AND MAYBE IT
19 DOESN'T ANY MORE, WERE THAT SPECIFIC COMMITTEES BECAME THE
20 CONDUIT FOR ALL LEGISLATION AND THE MEMBERS OF THOSE COMMITTEES
21 WERE EXPECTED TO ACT FOR THE LEGISLATURE AS A WHOLE IN MAKING
22 DECISIONS ABOUT WHAT OUGHT TO BE DONE FOR THE PUBLIC.

23 WAS THAT NOT YOUR EXPERIENCE WHEN YOU WERE IN THE
24 LEGISLATURE, SIR?

25 THE WITNESS: THAT WAS NOT MY EXPERIENCE, YOUR HONOR.

1 IT WAS DIFFERENT.

2 **JUDGE KARLTON:** HOW DID IT WORK THEN? EVERYBODY HAD
3 TO BECOME EXPERT IN EVERYTHING?

4 **THE WITNESS:** WELL, IN 1996 TO 2002 WHEN I SERVED,
5 INDIVIDUAL MEASURES WOULD BE DRIVEN BY INDIVIDUALS.

6 AND SO, FOR EXAMPLE, THE LAST PRISON CONSTRUCTED IN
7 THE STATE OF CALIFORNIA WAS APPROVED WHILE I WAS IN THE
8 LEGISLATURE. I BELIEVE THAT'S CORCORAN 2. THAT WAS DRIVEN BY
9 AN ASSEMBLYMAN OUT OF THE CENTRAL VALLEY.

10 IT WAS NOT, TO BE QUITE CANDID WITH YOU, THE WILL OF
11 THE MAJORITY OF THAT BODY THAT THAT PRISON GET CONSTRUCTED. IN
12 FACT, I BELIEVE THERE WAS SIGNIFICANT OPPOSITION TO IT, BUT
13 BECAUSE OF THE WORK THAT HE DID BOTH WITH THE THEN GOVERNOR
14 WILSON -- EXCUSE ME, NOT GOVERNOR WILSON, GOVERNOR DAVIS AND
15 OTHER MEMBERS, THAT MEASURE PASSED AND THE PRISON WAS
16 CONSTRUCTED.

17 SO IT WASN'T THE COMMITTEE, IF YOU WILL, THAT WAS
18 ACTING. IT WAS AN INDIVIDUAL. SO WE HAVE SEEN PERFORMANCE DONE
19 AT LEAST DURING MY TIME ON THAT BASIS.

20 **JUDGE REINHARDT:** I DON'T QUITE UNDERSTAND. IF THE
21 LEGISLATURE IS NOT AWARE OF THIS PROBLEM, WHAT DOES IT TAKE TO
22 MAKE THE LEGISLATURE AWARE OF THE PROBLEM?

23 **THE WITNESS:** I BELIEVE YOU HAVE MADE THEM AWARE OF
24 THE PROBLEM, AND I WOULD DARE SAY THAT 120 OF THEM ARE NOW AWARE
25 OF THE PROBLEM.

1 BUT IN 1996 TO 2002 WHEN I WAS THERE, I WOULD NOT SAY
2 THAT THE OVERWHELMING MAJORITY OF FOLKS WERE AWARE THAT THERE
3 WAS A SIGNIFICANT PROBLEM.

4 JUDGE REINHARDT: SINCE THEY HAVE BECOME AWARE
5 BECAUSE OF THIS COURT, WHAT HAVE THEY DONE TO SOLVE THE PROBLEM.

6 THE WITNESS: AB 900 WAS, I BELIEVE, A FAIRLY RARE
7 OCCURRENCE. THE MAJORITY, AT LEAST WHEN I WAS THERE, WAS
8 OPPOSED TO PRISON CONSTRUCTION.

9 SO ALLOWING A BILL TO PASS THAT ALLOWED PRISON
10 CONSTRUCTION, AB 900 PRISON FACILITIES WAS A SIGNIFICANT STEP BY
11 THE LEGISLATURE. I THINK IT WAS THIS COURT THAT SPURRED THEM TO
12 DO IT, TO BE QUITE FRANK WITH YOU, AND OVERCAME THEIR NATURAL
13 INCLINATION AGAINST PASSING SUCH A BILL.

14 JUDGE KARLTON: NOTHING HAS BEEN DONE. THE MONEY HAS
15 NOT BEEN ALLOCATED, FUNDING HAS NOT -- NEVER MIND. GO AHEAD.

16 JUDGE REINHARDT: WELL, FOR INSTANCE, YOU DID TALK
17 ABOUT THE NEED FOR MORE PAROLE AND PROBATION OFFICERS. I DON'T
18 REMEMBER WHICH FIGURES YOU USED FOR PAROLE OR PROBATION, BUT
19 WITH THAT BEING AN IMPORTANT ALTERNATIVE, HAS ANYTHING BEING
20 DONE TO PROVIDE ADDITIONAL FUNDING FOR THAT?

21 THE WITNESS: IN THE LEGISLATURE?

22 JUDGE REINHARDT: YES.

23 THE WITNESS: I'M NOT AWARE OF ANYTHING RECENTLY IN
24 THAT RESPECT.

25 IN FACT, I BELIEVE THAT THE FUNDING HAS GONE THE

1 WRONG WAY FOR THOSE, THOSE AGENCIES.

2 BUT THERE ARE -- I'M SORRY, I'M ADDING. THERE ARE
3 OTHER ISSUES DEALING WITH THAT, AND THAT IS THE INADEQUACY AND
4 EFFECTIVENESS THAT GOES ON IN THAT ORGANIZATION. THAT HAS
5 NOTHING TO DO WITH THE LEGISLATURE.

6 **JUDGE REINHARDT:** CAN THE COURT COUNT ON ALL THOSE
7 PROBLEMS BEING CORRECTED, FUNDING COMING FORWARD, THE CDCR WHICH
8 IS QUITE CRITICAL OF OPERATING MORE EFFICIENTLY.

9 **THE WITNESS:** THE COURT IDENTIFIED A NUMBER OF
10 CONSTITUTIONAL VIOLATIONS IN ITS ORDERS AND IN ITS OPINIONS. IT
11 IS MY OPINION THAT THE OVERWHELMING MAJORITY OF THOSE VIOLATIONS
12 HAVE LITTLE, IF ANYTHING, TO DO WITH OVERCROWDING. MAYBE ONE OR
13 TWO OF THEM DO.

14 IF I MAY GIVE AN EXAMPLE TO THE COURT? A FACTUAL
15 EXAMPLE THAT WAS CITED BY THE COURT WAS A DENTIST THAT WAS NOT
16 SANITARY AND WAS USING THE SAME GLOVES TO LOOK IN THE MOUTHS OF
17 PRISONER AFTER PRISONER. THAT'S NOT AN OVERCROWDING ISSUE;
18 THAT'S A MALPRACTICE ISSUE.

19 **JUDGE REINHARDT:** I'M ASKING YOU REALLY ABOUT
20 PHASE 2. I'M SURE YOU ARE FAMILIAR WITH WHERE WE ARE IN THIS
21 TRIAL.

22 **THE WITNESS:** YES, SIR.

23 **JUDGE REINHARDT:** THE FIRST PHASE, WHICH I GATHER YOU
24 ARE NOT HERE TO TESTIFY ABOUT SINCE WE ARE IN PHRASE 2, WAS
25 ABOUT WHETHER OVERCROWDING WAS A CAUSE.

1 BUT NOW LOOKING AT THE REMEDY PHASE, THAT'S WHAT I
2 WAS REALLY ASKING YOU ABOUT. AND I WANT TO SEE WHAT HOPE THERE
3 IS FOR SOME REMEDY. YOU SAY THERE ARE ALTERNATIVES TO PRISONER
4 RELEASE ORDERS. THAT'S A VERY BROAD TERM.

5 BUT YOUR SUGGESTIONS WERE, I THOUGHT, THAT WE NEEDED
6 MORE PAROLE OFFICERS, MORE PROBATION OFFICERS, BUILD MORE
7 PRISONS. ARE ANY OF THOSE THINGS IMMEDIATE PROSPECTS? WHAT IS
8 THE STATUS OF ANY OF THOSE THINGS?

9 JUDGE KARLTON SAID YOU SEEM TO AGREE THAT THERE
10 HASN'T BEEN ANYTHING DONE OTHER THAN TO PASS PROPOSITION -- AB
11 900. NO FUNDING HAS BEEN MADE AVAILABLE.

12 **THE WITNESS:** IF I MAY?

13 **JUDGE REINHARDT:** YES, PLEASE.

14 **THE WITNESS:** I DON'T BELIEVE IT'S A QUESTION OF A
15 LACK OF CAPACITY OR, AS THE COURT HAS MENTIONED IN ONE OF ITS
16 DOCUMENTS, TRAINED INCAPACITY IN THE LEGISLATURE.

17 THE LEGISLATURE CAN ACT VERY QUICKLY. IN MY FIRST
18 YEAR THERE THERE WAS A \$1 BILLION TAX CUT IN A MATTER OF HOURS
19 THAT WAS PASSED.

20 **JUDGE KARLTON:** CUTTING TAXES THEY ARE VERY GOOD AT.
21 IT'S A QUESTION OF RAISING MONEY AND SPENDING IT IN WAYS THAT
22 ARE PERCEIVED NOT TO GET VOTES.

23 **THE WITNESS:** I SAW THAT DONE AS WELL, YOUR HONOR.
24 IN THE EXPENDITURE PART WE HAD NUMEROUS BILLS THAT WOULD COME UP
25 AT THE LAST MINUTE. THE LEGISLATURE CAN ACT VERY QUICKLY AND

1 HANDLE THOSE MATTERS.

2 TO ANSWER THE COURT'S QUESTION, I BELIEVE THE COURT'S
3 INTERVENTION CAN RESOLVE MANY, IF NOT MOST, OF THE
4 CONSTITUTIONAL VIOLATIONS THROUGH ITS USE OF THE RECEIVER, AND
5 THAT CAN BE DONE. AND THOSE ARE NOT NECESSARILY CONNECTED TO
6 THE OVERCROWDING.

7 JUDGE KARLTON: THE RECEIVER SAID HE NEEDS -- I'M
8 SORRY, I DON'T REMEMBER. \$8 MILLION, \$8 BILLION, WHATEVER THE
9 NUMBER IS.

10 THE WITNESS: 8 BILLION.

11 JUDGE KARLTON: AND THAT HE NEEDED SEVERAL MILLION
12 DOLLARS IN THE NEXT YEAR, AND THE LEGISLATURE HAS NOT PROVIDED
13 ANY OF THAT MONEY. THAT'S THE REAL WORLD, ISN'T IT?

14 THE WITNESS: YES.

15 JUDGE KARLTON: SO WHATEVER THE ABSTRACT
16 POSSIBILITIES ARE -- AND WHETHER WE HAVE AS MUCH CONFIDENCE AS
17 YOU DO IS ANOTHER MATTER, BUT WHATEVER THE ABSTRACT
18 POSSIBILITIES ARE, THERE IS A REAL WORLD OUT THERE.

19 THE WITNESS: I DON'T KNOW THAT YOU -- THE COURT AND
20 I ARE THAT FAR APART ABOUT THE LEGISLATURE.

21 JUDGE REINHARDT: AS YOU UNDOUBTEDLY KNOW, ALSO, WHEN
22 JUDGE HENDERSON'S RECEIVER ASKED FOR A COMPARATIVELY SMALL
23 AMOUNT OF MONEY TO GET STARTED, THE STATE REFUSED TO PAY AND
24 APPEALED TO THE NINTH CIRCUIT.

25 SO HOW CAN WE HAVE ANY CONFIDENCE THAT THE STATE

1 WANTS TO IMPLEMENT THIS?

2 **JUDGE KARLTON:** OR ANYTHING.

3 **THE WITNESS:** SO MUCH OF WHAT OCCURS IN SACRAMENTO,
4 AGAIN, BASED ON MY EXPERIENCE IN SACRAMENTO, DEALS WITH THE
5 MANNER IN WHICH YOU DO SOMETHING AS OPPOSED TO THE SUBJECT
6 MATTER. THE SUBJECT MATTER CAN EVOKE VARIOUS EMOTIONS AND
7 THINGS LIKE THAT THAT CAN OPERATE AS OBSTACLES, BUT IT'S THE
8 MANNER IN WHICH I WOULD USE THE CURRENT DISCUSSIONS OR LACK
9 THEREOF THAT ARE GOING ON BEYOND THE GOVERNOR AND BUDGET
10 PROBLEMS. THEY CAN'T SEEM TO MEET OR REACH A MEANINGFUL
11 RESOLUTION, AND I BELIEVE IT'S BECAUSE OF THE MANNER OF THE
12 DISCUSSIONS THAT ARE PRECLUDING THAT RESOLUTION.

13 **BY MR. SANGSTER:**

14 **Q.** SO IF THIS COURT SAYS "PRETTY PLEASE," YOU THINK ALL THE
15 SOLUTIONS WOULD BE FORTHCOMING?

16 **A.** I WOULDN'T SUGGEST THAT, COUNSEL.

17 **MR. SANGSTER:** I HAVE NO FURTHER QUESTIONS, YOUR
18 HONOR.

19 **JUDGE HENDERSON:** REDIRECT?

20 **MR. MITCHELL:** NO REDIRECT.

21 **JUDGE HENDERSON:** OKAY. THANK YOU VERY MUCH.

22 **THE WITNESS:** THANK YOU.

23 (WITNESS EXCUSED.)

24 **JUDGE HENDERSON:** OKAY. WE ARE GOING TO RECESS FOR
25 LUNCH.

1 IT SEEMS WORTH OBSERVING THAT WE HAVE WHAT APPEARS TO
2 BE SEVEN HOURS AND 45 MINUTES OF TESTIMONY LINED UP FOR ONE,
3 TWO, THREE, FOUR, FIVE, SIX, SEVEN WITNESSES. WE HAVE FINISHED
4 TWO. WE ARE NOT LIKELY TO FINISH, AND WE ENCOURAGED YOU TO HAVE
5 PEOPLE READY. I CAN'T IMAGINE -- TAKE THAT IN MIND.

6 **JUDGE REINHARDT:** OR TO STIPULATE TO THEIR TESTIMONY.

7 **JUDGE HENDERSON:** OR STIPULATE TO THEIR TESTIMONY.

8 BUT ANYWAY, COURT IS IN RECESS FOR AN HOUR.

9 DO YOU HAVE SOMETHING?

10 **MS. WOODWARD:** YES, YOUR HONOR. I WAS GOING TO
11 MENTION TO THE COURT THAT THE TESTIMONY OF MR. BOSCH IS GOING TO
12 COME IN BY STIPULATION IN LIEU OF LIVE TESTIMONY, WHICH WE
13 REACHED LAST NIGHT. I'M SORRY WE DIDN'T REACH IT SOONER.

14 **JUDGE HENDERSON:** OKAY. THANK YOU.

15 **MS. WOODWARD:** SO HE IS NOT ON THE LIST ANY MORE
16 TODAY.

17 **MR. SANGSTER:** AS IS THE TESTIMONY OF MISS JOHNSON.

18 **MS. WOODWARD:** I'M SORRY. THAT'S CORRECT.
19 MISS JOHNSON ALSO HAS BEEN SUBMITTED IN LIEU OF LIVE TESTIMONY.
20 SHE IS THIS AFTERNOON.

21 **JUDGE HENDERSON:** I DON'T SEE A MISS JOHNSON ON THIS
22 LIST.

23 **MS. WOODWARD:** SHE MAY ALREADY HAVE BEEN TAKEN OFF.

24 **JUDGE HENDERSON:** IT'S NOT ON THE LIST WE WERE GIVEN.
25 OKAY COURT IS ADJOURNED FOR AN HOUR.

1 (WHEREUPON AT 12:06 P.M. PROCEEDINGS

2 WERE ADJOURNED FOR NOON RECESS.)

3 **THE REPORTER:** GOOD AFTERNOON.

4 **JUDGE HENDERSON:** BEFORE WE START, AND WE'LL DO THAT
5 IN JUST A MINUTE, COUNSEL, WE COLLECTIVELY UP HERE HAVE VERY
6 SERIOUS CALENDARING PROBLEMS AFTER THE 19TH. WE'RE GOING TO ASK
7 YOU TO GIVE US ANOTHER, WHEN WE RECONVENE NEXT WEEK, WHAT WE
8 THINK WOULD BE A MORE REALISTIC SCHEDULE FOR THE REST OF THE
9 TRIAL. WITH THE ESTIMATES TODAY, EVEN TAKING INTO ACCOUNT THE
10 QUESTIONING BY THE COURT, ARE NOT AS HELPFUL AS THEY MIGHT BE,
11 SO WE ARE GOING TO ASK YOU TO DO THAT. RECALL THAT NEXT WEEK WE
12 HAVE TWO MORE DAYS, THE 18TH AND THE 19TH. AFTER THAT WE HAVE
13 DIRE PROBLEMS IF WE DON'T FINISH.

14 WE ARE GOING TO HAVE TO LOOK AT OUR CALENDARS, WHICH
15 ARE OBVIOUSLY DIFFERENT FROM EACH OTHER'S, AND PATCH TOGETHER A
16 SCHEDULE THROUGH THE HOLIDAYS, AND WE'RE GOING TO INSIST THAT
17 YOU BE AVAILABLE UNTIL WE CAN FIGURE OUT WHAT THAT IS. AND ONE
18 FURTHER THING YOU SHOULD KNOW THAT, FOR TODAY, WE ARE GOING TO
19 END AT 4:15.

20 SO, WITH THAT, YOU CAN BEGIN, MR. MITCHELL.

21 **JUSTICE REINHARDT:** IF YOU WOULD GET THE SCHEDULES IN
22 ON WEDNESDAY IN WRITTEN FORM, AND THEN, AS JUDGE HENDERSON SAID,
23 IF WE DON'T FINISH ON THE 19TH, UNDER YOUR SCHEDULES IT DOESN'T
24 LOOK LIKE IT SHOULD TAKE MORE THAN ANOTHER DAY OR TWO AT THE
25 MOST.

1 **JUDGE KARLTON:** I DON'T AGREE WITH THAT, BUT GO
2 AHEAD.

3 **JUSTICE REINHARDT:** LOOKING AT YOUR SCHEDULES, I
4 DON'T THINK IT'S GOING TO TAKE MORE THAN A DAY OR TWO ONCE YOU
5 REALLY ELIMINATE THE ONES YOU CAN ELIMINATE. IT WOULD BE NICE
6 TO HEAR FROM EVERY DISTRICT ATTORNEY IN EVERY COUNTY THAT THEY
7 ARE GOING TO SUFFER MORE OR LESS THAN ONE IN THE OTHER COUNTY,
8 OR EVERY SHERIFF CAN TELL US THAT, BUT REALLY, I THINK IF WE
9 COULD JUST GET REPRESENTATIVE TESTIMONY, THEN I THINK WE CAN --
10 IF WE DON'T FINISH ON THE 19TH, I THINK WE CAN FINISH IN A DAY
11 OR TWO.

12 WHAT JUDGE HENDERSON IS SAYING IS DON'T MAKE ANY
13 PLANS OVER THE HOLIDAYS BECAUSE WE EXPECT ALL OF YOU TO BE HERE
14 ON WHATEVER DAY OR SO WE CAN WORK OUT TO FIND A DAY OR TWO OVER
15 THE HOLIDAYS. SO I HOPE NOBODY IS GOING ANYWHERE BECAUSE WE
16 EXPECT YOU HERE IF YOU DON'T FINISH.

17 **MR. MELLO:** ONE QUESTION OF CLARIFICATION, YOUR
18 HONOR. DID YOU SAY YOU WANT NEXT WEDNESDAY THE SCHEDULE OR NEXT
19 MONDAY?

20 **JUDGE HENDERSON:** I SAID MONDAY.

21 **JUSTICE REINHARDT:** I'M SORRY. I THOUGHT YOU DIDN'T
22 GIVE THEM A DAY.

23 **JUDGE HENDERSON:** WEDNESDAY IS FINE.

24 **MR. MELLO:** THANK YOU, YOUR HONOR.

25 **JUDGE HENDERSON:** YES, YOU MAY BEGIN, MR. MITCHELL.

1 **MR. MITCHELL:** THANK YOU, YOUR HONOR. WE CALL SAN
2 DIEGO COUNTY DISTRICT ATTORNEY BONNIE DUMANIS TO THE STAND.

3 **BONNIE DUMANIS,**
4 HAVING BEEN CALLED AS A WITNESS BY THE DEFENDANT INTERVENORS
5 WAS FIRST DULY SWORN AND EXAMINED AS FOLLOWS:

6 **THE CLERK:** STATE AND SPELL YOUR FULL NAME FOR THE
7 RECORD.

8 **THE WITNESS:** MY NAME IS BONNIE DUMANIS, B-O-N-N-I-E,
9 D-U-M-A-N-I-S.

10 **DIRECT EXAMINATION BY MR. MITCHELL**

11 **BY MR. MITCHELL**

12 **Q** COULD YOU BRIEFLY TELL US YOUR LEGAL EXPERIENCE AND OFFICIAL
13 POSITIONS THAT YOU HAVE HELD?

14 **A** DO YOU WANT MY EDUCATIONAL BACKGROUND OR JUST THE LEGAL
15 EXPERIENCE?

16 **Q** HOW ABOUT BOTH?

17 **A** OKAY. I GOT MY UNDERGRADUATE DEGREE IN 1973 FROM THE
18 UNIVERSITY OF MASSACHUSETTS IN AMHERST WITH A SPECIAL BA IN
19 SOCIOLOGY. I WENT TO WESTERN STATE UNIVERSITY, GRADUATED IN
20 1976. IT'S NOW KNOWN AS THOMAS JEFFERSON. BECAME A DEPUTY DA.
21 WORKED IN THE DISTRICT ATTORNEY'S OFFICE AS A DEPUTY DA FROM
22 1978 UNTIL 1990, WHEN I WAS APPLY TO THE COURT AS A JUVENILE
23 COURT, SUPERIOR COURT JUVENILE COURT REFEREE. SERVED THERE FOR
24 FOUR YEARS, WHEN I WAS ELECTED TO THE MUNICIPAL COURT IN SAN
25 DIEGO. TOOK OFFICE IN 1995, RAN FOR THE SUPERIOR COURT IN 1998,

1 WAS ELECTED TO THE SUPERIOR COURT, WHERE I WAS ELECTED AND THEN
2 APPOINTED, AND THEN THE COURT UNIFIED.

3 I SERVED ON THE SUPERIOR COURT UNTIL, I'M NOT SURE
4 EXACTLY WHEN, BUT I RAN FOR DISTRICT ATTORNEY AND WAS ELECTED.
5 IN JANUARY OF '03 I TOOK OFFICE. AS A JUDGE IN THE SUPERIOR
6 COURT AND IN THE MUNICIPAL COURTS, I STARTED THE DRUG COURT IN
7 DOWNTOWN SAN DIEGO AND SPENT FIVE YEARS OUT OF THE TEN YEARS ON
8 THE JUVENILE COURT.

9 Q AS A PROSECUTOR DID YOU GAIN -- BECOME EXPERIENCED IN ALL
10 ASPECTS OF CRIMINAL JUSTICE FROM A PROSECUTION POINT OF VIEW,
11 FROM INVESTIGATION OF CASES THROUGH NEGOTIATING SETTLEMENT,
12 PRESENTING TRIALS AND THROUGH SENTENCING?

13 A YES, I PRETTY MUCH HANDLED THE GAMUT.

14 Q ALL TYPES OF CASES FROM --

15 A FROM CHILD SUPPORT, WELFARE FRAUD, TO MURDERS, RAPES,
16 ROBBERIES, AND EVERYTHING IN BETWEEN.

17 Q AND FROM A JUDICIAL EXPERIENCE, DID YOU HAVE THAT SAME TYPE
18 OF WIDE RANGES OF CASES THAT YOU HANDLED, AND WHAT WERE THEY?

19 A YES, I DID TRIALS FOR COUPLE OF YEARS, BUT A LOT OF WHAT I
20 DID WAS CALENDARS THAT INVOLVED THE RESOLUTION OF CASES, THE
21 SENTENCING OF DEFENDANTS, AND I WAS ALWAYS IN CRIMINAL AND
22 HANDLED EVERYTHING FROM THE MISDEMEANOR CALENDAR TO THE FELONY
23 CALENDAR, AND IN THE JUVENILE COURT WE -- I HANDLED ABOUT A
24 THOUSAND CASES A YEAR.

25 Q WHAT'S THE SIZE OF THE SAN DIEGO COUNTY DISTRICT ATTORNEY'S

1 OFFICE, THE OFFICE THAT YOU NOW MANAGE?

2 **A** WE HAVE ROUGHLY 310 DEPUTY DISTRICT ATTORNEYS, 150
3 INVESTIGATORS THAT ARE SWORN PEACE OFFICERS, ABOUT A THOUSAND
4 EMPLOYEES TOTAL.

5 **Q** THE SECOND LARGEST PROSECUTION OFFICE IN THE STATE?

6 **A** YES, IT IS.

7 **Q** I TAKE IT YOU'VE BECOME FAMILIAR WITH MANY OF THE ISSUES
8 THAT CONFRONT THE PROSECUTION OF CRIMINAL CASES IN THE CRIMINAL
9 JUSTICE SYSTEM, THE ISSUES THAT RANGE FROM OVERCROWDING OF YOUR
10 JAILS TO RECIDIVISM AND ISSUES SUCH AS THAT?

11 **A** YES.

12 **Q** AT SOME POINT YOU BECAME AWARE THAT THE THREE-JUDGE PANEL IN
13 THIS CASE WAS CONVENED IN ORDER TO DETERMINE WHETHER OR NOT A
14 PRISONER RELEASE ORDER SHOULD ISSUE TO REMEDY THE OVERCROWDING
15 THAT EXISTS, OR TO DETERMINE WHETHER OR NOT OVERCROWDING IS A
16 PRIMARY CAUSE OF THE CONSTITUTIONAL VIOLATIONS OF INADEQUATE
17 HEALTHCARE AND MENTAL HEALTHCARE IN THE PRISONS; YOU ARE AWARE
18 OF THAT?

19 **A** YES.

20 **Q** YOU UNDERSTAND THESE PROCEEDINGS ARE HERE TO DETERMINE
21 WHETHER OR NOT A PRISONER RELEASE ORDER SHOULD ISSUE SHOULD THEY
22 DETERMINE THAT OVERCROWDING IS A PRIMARY CAUSE OF THE
23 VIOLATIONS?

24 **A** YES. AS THE DISTRICT ATTORNEY AND THE PRESIDENT OF THE
25 CALIFORNIA DISTRICT ATTORNEYS' ASSOCIATION, I AM VERY CONCERNED

1 WITH THE PUBLIC SAFETY IMPLICATIONS OF A PRISON RELEASE ORDER.

2 **Q** HAVE YOU FORMED AN OPINION AS TO WHETHER OR NOT AN
3 ACCELERATED RELEASE OF PRISONERS SUCH AS HAS BEEN PROPOSED IN
4 THIS CASE WOULD HAVE AN ADVERSE IMPACT ON CRIMINAL JUSTICE AND
5 THE ADMINISTRATION OF JUSTICE AND PUBLIC SAFETY IN THE COMMUNITY
6 OF SAN DIEGO?

7 **A** YES, I HAVE FORMED AN OPINION.

8 **Q** WHAT IS THAT OPINION?

9 **A** THE OPINION IS THAT IT WOULD BE ADVERSE. I THINK THAT WE
10 WILL SEE MORE CRIMES BEING COMMITTED. WE WILL ALSO SEE
11 PRISONERS THAT ARE COMING OUT OF PRISON WITH NO RESOURCES, AND
12 THEY WILL BE SET UP FOR FAILURE. AND I SEE AN IMPACT ON OUR
13 CURRENT PROGRAM WHICH IS SB 618, THAT HAS BEEN THUS FAR VERY
14 SUCCESSFUL, AND WHICH I THINK REALLY PROVIDES A GOOD FRAMEWORK
15 AND TEMPLATE FOR HOW WE CAN SUCCEED IN STOPPING THE REVOLVING
16 DOOR.

17 **Q** BASED UPON YOUR EXPERIENCE AS A PROSECUTOR AND YOUR JUDICIAL
18 EXPERIENCE, DO YOU BELIEVE THAT THERE ARE VIABLE ALTERNATIVES TO
19 REDUCING CROWDING IN THE PRISONS OTHER THAN A RELEASE ORDER?

20 **A** YES, I DO.

21 **Q** WHAT ARE SOME OF THOSE?

22 **A** WELL, I KNOW THAT THE DEPUTY DISTRICT ATTORNEY, LISA
23 RODRIGUEZ, SPOKE WITH YOUR HONORS EARLIER THIS WEEK, I BELIEVE,
24 ABOUT OUR PROGRAM SB 618. I THINK THAT PROGRAM HAS BEEN WELL
25 RESEARCHED AND HAS ALL THE FUNDAMENTALS THAT EXPERTS ACROSS THE

1 NATION SAY ARE NECESSARY IN TERMS OF STOPPING PEOPLE FROM
2 REVOLVING IN THE CRIMINAL JUSTICE SYSTEM, AND A LOT OF THAT
3 COMES FROM MY EXPERIENCE AS A DRUG COURT JUDGE AS WELL IN THE
4 JUVENILE COURT. AND SO I CAN GO THROUGH THE ENTIRE PROCESS, IF
5 YOU LIKE.

6 **JUDGE KARLTON:** IT'S BEEN DONE ONCE, MA'AM. YOU
7 DON'T HAVE TO DO IT AGAIN.

8 **MR. MITCHELL:** THANK YOU, YOUR HONOR.

9 **BY MR. MITCHELL**

10 **Q** DO YOU BELIEVE THAT THE SB 618, IF FULLY IMPLEMENTED AND
11 EXPANDED, COULD REALIZE A SIGNIFICANT REDUCTION IN THE PRISON
12 POPULATION OVER A PERIOD OF TIME?

13 **A** YES, I DO, AND PART OF THE REASON WHY IT WOULD SIGNIFICANTLY
14 REDUCE, I THINK, THE POPULATION IS BECAUSE IN THE LOCAL AREA,
15 FOR INSTANCE RIGHT NOW, THE ASSESSMENT THAT OCCURS BY PROBATION
16 AND A LOCAL REPRESENTATIVE FROM THE DEPARTMENT OF CORRECTIONS
17 AND REHABILITATION PUTS THAT AT THE FRONT END.

18 SO AT THE FRONT END WE'RE ACTUALLY DOING THE
19 CLASSIFICATION. WE ARE ASSESSING THEM FOR DRUG TREATMENT, FOR
20 MENTAL HEALTH, FOR ALL OF THOSE THINGS THAT THEY'RE GOING TO
21 NEED IN PRISON. AND, MOST IMPORTANTLY, WE HAVE THE
22 PARTICIPATION OF THE PRISONER IN THAT PROCESS, SO THEY HAVE THIS
23 LIFE PLAN THAT GOES WITH THEM.

24 BUT THE KEY TO THIS WHOLE THING IS THEY THEN DON'T
25 HAVE TO SPEND SO MUCH TIME IN THE RECEPTION CENTERS IN THE

1 DEPARTMENT OF CORRECTIONS WHERE THEY LANGUISH WITHOUT
2 PROGRAMMING, WHERE THEY ARE FORCED TO FIT INTO A POPULATION THAT
3 MIXES THE REAL VIOLENT PEOPLE WITH THOSE WHO AREN'T NECESSARILY
4 VIOLENT, AND IT FORCES THEM TO JOIN GANGS AND DO ALL THOSE
5 THINGS, AND THAT'S WHERE PEOPLE ARE HURT MORE SIGNIFICANTLY.

6 SO IT'S THAT PORTION THAT IS REALLY -- EXCUSE ME --
7 CRITICAL. BUT ALSO PROGRAMMING IN THE PRISON IS CRITICAL AS
8 WELL AS THE CASE MANAGEMENT SYSTEM WHERE YOU HAVE SOMEONE THAT
9 IS FOLLOWING THEM FROM THE PRISON SYSTEM, AS WELL AS SOMEBODY
10 FROM THE COMMUNITY THAT COMES IN TO FOLLOW THEM BEFORE -- IF YOU
11 RELEASE PRISONERS AS THEY DO NOW.

12 **MR. SANGSTER:** YOUR HONOR, I OBJECT AT THIS POINT.
13 IT'S LONG SINCE NON-RESPONSIVE, AND THIS IS CUMULATIVE. THIS IS
14 THE SAME STUFF COVERED BY MS. RODRIGUEZ EARLIER.

15 **JUSTICE REINHARDT:** WHEN WAS THIS BILL PASSED?

16 **THE WITNESS:** THE BILL WAS PASSED, I BELIEVE, IN
17 2005, AND WE BEGAN THE PROGRAM IN 2006.

18 **JUSTICE REINHARDT:** HOW MANY PEOPLE -- YOU ARE NOT
19 THE ONLY ONE COVERED BY THIS?

20 **THE WITNESS:** YES, WE ARE ONLY COUNTY COVERED BY
21 THIS.

22 **JUSTICE REINHARDT:** NO, NO, THE BILL, UNDER THE BILL.

23 **THE WITNESS:** UNDER THE BILL, YOUR HONOR, YES, YOU'RE
24 CORRECT. THREE COUNTIES ARE ALLOWED TO DO IT. WE ORIGINALLY
25 ATTEMPTED TO GET ALL COUNTIES. IT WAS THE LEGISLATURE THAT

1 DETERMINED THAT WE SHOULD START WITH THREE COUNTIES, BUT THERE
2 IS THE AVAILABILITY THAT THREE COUNTIES COULD DO IT RIGHT NOW.

3 **JUDGE KARLTON:** THERE'S ONLY ONE COUNTY DOING IT NOW?

4 **JUSTICE REINHARDT:** IT'S NOW BEEN AT LEAST THREE
5 YEARS SINCE WE'VE HAD THIS PROGRAM AND YOU COVERED 200 PEOPLE?

6 **THE WITNESS:** RIGHT NOW WE HAVE MORE THAN 400 PEOPLE
7 IN THE PROGRAM AT VARIOUS ASPECTS. ONLY, I BELIEVE, A LITTLE
8 OVER 70 HAVE ACTUALLY COME OUT OF CUSTODY AT THIS POINT. BUT AS
9 WE PLANNED, WE ARE TRYING TO INCREASE THE NUMBERS. WE STARTED
10 OUT SMALL, AGAIN, TO WORK OUT ALL THE PROBLEMS, AND WE INTEND TO
11 INCREASE, OF COURSE, AS TIME GOES ON.

12 **JUSTICE REINHARDT:** ARE YOU FROM MASSACHUSETTS
13 ORIGINALLY?

14 **THE WITNESS:** I PARK THE CAR IN THE HARVARD YARD. I
15 CERTAINLY AM, YOUR HONOR.

16 **JUSTICE REINHARDT:** THE REASON I WAS ASKING YOU THE
17 QUESTION, OF COURSE, IS WE'RE TALKING ABOUT A SOLUTION TO A
18 CONSTITUTIONAL PROBLEM THAT EXISTS CURRENTLY, AND IF, IN THREE
19 YEARS, THIS PROGRAM HAS BEEN APPLIED TO ONLY 400 PEOPLE AND ONLY
20 70 OF WHOM HAVE COME OUT OF PRISON, THAT -- HOW LONG DO YOU
21 THINK IT WOULD TAKE FOR A STATEWIDE PROGRAM TO REALLY BE
22 IMPLEMENTED THAT WOULD SOLVE THIS PROBLEM?

23 **JUDGE KARLTON:** ASSUMING THAT THE LEGISLATURE WOULD
24 EVER PROVIDE THE FUNDS.

25 **THE WITNESS:** WELL, WE DON'T GET ANY FUNDS FROM THE

1 LEGISLATURE IN SAN DIEGO RIGHT NOW. OUR FUNDS COME FROM THE
2 FUNDS FROM THE DEPARTMENT OF CORRECTIONS AND REHABILITATION,
3 BECAUSE, IN ESSENCE, WE ARE DOING THEIR JOB IN THE LOCAL
4 COMMUNITY.

5 **JUDGE KARLTON:** BUT FOR THE CDCR TO BE ABLE TO PAY
6 FOR THE ENTIRE COMMUNITY FOR ALL THE STATES, THEY WOULD HAVE TO
7 GET THE MONEY FROM THE LEGISLATURE BECAUSE THEY DON'T HAVE FUNDS
8 TO DO THAT NOW. THEY MAY HAVE ONE OR TWO, I DON'T THINK THEY
9 GOT TWO EITHER, BUT FOR ONE ANYHOW.

10 **THE WITNESS:** THEY MAY. I THINK THEY COULD PROBABLY
11 TAKE IT FROM THEIR BUDGET BECAUSE WE'RE DOING THEIR FUNCTIONS.

12 WHAT YOUR HONOR IS ASKING, I THINK, IS -- I THINK NOW
13 THAT WE HAVE THE TEMPLATE -- WHY IT TOOK SO LONG, PART OF IT WAS
14 THE PROCESS OF PUTTING IT TOGETHER WITH THE COMMUNITY AND
15 WORKING -- THIS WAS A FIRST TIME IT EVER HAPPENED.

16 AND NOW WE HAVE THE TEMPLATE, AND WE KNOW WHAT WE'RE
17 DOING, AND WE COULD TAKE THAT ACROSS THE STATE, I THINK, VERY
18 EASILY. IT STILL IS GOING TO TAKE SOME TIME, AND, YOU KNOW, THE
19 HOPE WOULD BE THAT WE COULD ALSO GET PROGRAMMING WITHIN THE
20 DEPARTMENT OF CORRECTIONS, AND PERHAPS THE COURT COULD ORDER
21 THAT PROGRAMMING, BUT I THINK WE COULD DO -- WITHIN A TWO-YEAR
22 PERIOD I THINK WE COULD DO IT.

23 **JUDGE KARLTON:** MA'AM, WE HAVE BEEN TOLD OVER AND
24 OVER AGAIN TWO THINGS. ONE, THAT THE SYSTEM IS SO OVERCROWDED
25 THAT THERE'S NO PRACTICAL WAY TO PROVIDE ADEQUATE PROGRAMMING IN

1 THE PRISONS. IN LIGHT OF THAT, IT'S NECESSARY TO GET PEOPLE OUT
2 OF PRISONS JUST TO PROVIDE SPACE FOR PROGRAMMING. NEVER MIND.
3 I MADE THE SPEECH.

4 GO AHEAD. ASK YOUR QUESTION, MR. MITCHELL.

5 **BY MR. MITCHELL**

6 **Q** WHAT EFFORTS ARE THE DISTRICT ATTORNEYS DOING TO EXPAND
7 SB 618 OR OTHER ALTERNATIVES TO REDUCE PRISON POPULATION?

8 **A** WELL, WE HAVE HAD --

9 **MR. SANGSTER:** OBJECT, YOUR HONOR. I OBJECT ON
10 SB 618 TO THE EXTENT IT'S ALREADY BEEN COVERED BY ANOTHER
11 WITNESS FROM THIS COUNTY. IF IT'S THE OTHER ALTERNATIVES, FINE.

12 **JUDGE KARLTON:** THE QUESTION NOW IS WHAT ARE DISTRICT
13 ATTORNEYS DOING STATEWIDE, AND THAT IS A NEW TOPIC.

14 YOU MAY ANSWER, MA'AM, PLEASE.

15 **THE WITNESS:** ALTHOUGH SB 618 IS THE ONLY PRISON
16 REENTRY PROGRAM RIGHT NOW, THERE ARE TWO OTHER REENTRY PROGRAMS
17 AT THE LOCAL LEVEL WHICH HELP IN CUTTING OFF THE SUPPLY, SO TO
18 SPEAK, TO THE PRISON. KAMALA HARRIS IN SAN FRANCISCO HAS THE
19 BACK-ON-TRACK PROGRAM, WHICH TAKES YOUNGER OFFENDERS AND HOOKS
20 THEM UP WITH JOBS, AND I THINK IT'S GOODWILL INDUSTRIES, AND
21 ALSO HAS THEM APPEAR BEFORE THE COURT. I THINK JUDGE HENDERSON
22 IS FAMILIAR WITH THAT PROGRAM.

23 **JUDGE HENDERSON:** I SAT ON THAT COURT FOR A NUMBER OF
24 YEARS, YES.

25 **THE WITNESS:** AND IT'S VERY SUCCESSFUL.

1 AS WELL AS IN SANTA BARBARA, THERE IS A REENTRY
2 PROGRAM THAT WORKS WITH THE COMMUNITY IN THE LOCAL AREA, AS
3 WELL.

4 SINCE I HAVE BECOME THE PRESIDENT, WE HAVE A NEW
5 COMMITTEE THAT WAS FORMED JUST A COUPLE OF MONTHS AGO FOR
6 REENTRY. KAMALA HARRIS AND CHRISTIE STANLEY, THE ELECTED
7 DISTRICT ATTORNEYS OF BOTH OF THOSE AREAS, ARE THE CHAIRS, THE
8 COCHAIRS, OF THAT COMMITTEE, AND WE HAVE ALREADY SCHEDULED IN
9 JANUARY OF THIS YEAR FOR OUR WINTER RETREAT A WORKSHOP ON
10 REENTRY.

11 AND WE'VE ALSO HEARD FROM ABOUT THREE OR FOUR
12 COUNTIES ALREADY IN SAN DIEGO, AT LEAST ONE OF WHICH HAS COME
13 AND OBSERVED US IN SAN DIEGO, THAT ARE ACTUALLY INTERESTED IN
14 THE SB 618 PROGRAM.

15 WHEN WE BEGAN THE SB 618, WE STARTED -- JUDGE
16 MILLIKEN, WHO WAS THE PRESIDING JUDGE OF THE JUVENILE COURT AT
17 THE TIME THAT I HAD SERVED THERE, WE WENT TO THE BOARD OF
18 DIRECTORS OF THE CALIFORNIA DISTRICT ATTORNEYS' ASSOCIATION FOR
19 THEIR SUPPORT ON SB 618, AND TO A PERSON THEY EMBRACED THE
20 PROGRAM AND THE CONCEPT OF TRYING TO KEEP PEOPLE FROM GOING BACK
21 TO PRISON AND FOCUS OUR RESOURCES VERY MUCH LIKE THE DRUG COURT
22 IN THAT AREA.

23 SO WE ARE MOVING ALONG. THAT HAS BEEN ONE OF THE
24 MAJOR FOCUSES OF MY PRESIDENCY AS THE CALIFORNIA DISTRICT
25 ATTORNEYS' ASSOCIATION AND ONE THAT I WOULD LIKE TO SEE, OF

1 COURSE, SUCCEED.

2 **BY MR. MITCHELL**

3 **Q** AN ISSUE CAME UP DURING THESE PROCEEDINGS WHERE IT WAS
4 INDICATED IF THERE WERE INCREASED FUNDING PROVIDED TO PROBATION,
5 LOCAL PROBATION OFFICES AROUND THE STATE, THAT THEY COULD COME
6 UP WITH MORE EFFECTIVE EVIDENCE-BASED PROGRAMS THAT WOULD PROVE
7 INSTRUMENTAL IN KEEPING PEOPLE OUT OF PRISON IF THEY WERE FULLY
8 FUNDED. DO YOU AGREE WITH THAT OPINION?

9 **A** YES, I THINK NATIONWIDE THERE HAVE BEEN -- AND JUST IN
10 CALIFORNIA, OVER 15 STUDIES THAT BASICALLY HAVE ALL THE
11 COMPONENTS OF SB 618 IN IT. WE KNOW WHAT WE NEED TO DO. WE
12 JUST HAVE TO DO IT.

13 **JUDGE KARLTON:** AND WE'VE KNOWN IT FOR YEARS.

14 **THE WITNESS:** I THINK THAT'S ACCURATE, YOUR HONOR.

15 **JUDGE KARLTON:** AND WE HAVEN'T DONE IT FOR YEARS.

16 **THE WITNESS:** WELL, SOME PEOPLE HAVEN'T DONE IT.

17 **JUDGE KARLTON:** THE STATE OF CALIFORNIA HASN'T DONE
18 IT.

19 **THE WITNESS:** I AGREE. IT'S -- WHAT WAS THE PHRASE?
20 TRAINED INCAPACITY. I CALL IT BUREAUCRACY, BUT IT IS TRUE THAT
21 WE'VE EVEN EXPERIENCED IN OUR TIME DOING THIS DIFFICULTIES IN
22 WINDING OUR WAY THROUGH THE BUREAUCRACY OF THE DEPARTMENT OF
23 CORRECTIONS AND REHABILITATION IN MAKING THINGS HAPPEN.

24 **JUDGE REINHARDT:** AS ONE OF THE LOCAL WITNESSES TOLD
25 US YESTERDAY, YOU JUST CAN'T TRUST THE STATE.

1 **THE WITNESS:** WELL, I DON'T KNOW THAT I WANT TO GO
2 THAT FAR.

3 **JUDGE REINHARDT:** THAT WAS ONE COUNTY HEARD FROM.

4 **THE WITNESS:** IT'S -- I CAN UNDERSTAND THIS COURT'S
5 FRUSTRATION WITH WHAT HAS HAPPENED IN THE PAST, AND, CERTAINLY,
6 WE ARE CONCERNED ABOUT THE MEDICAL SITUATION WITH THE PRISONERS
7 AND, CERTAINLY HAVE READ A LOT OF INFORMATION, THE COURT ORDER
8 AND THAT SORT OF THING, AND SO I -- AS YOUR HONOR SAID, IT HAS
9 BEEN MANY, MANY YEARS, I KNOW, AND SO I UNDERSTAND THE
10 FRUSTRATION. I ONLY HOPE THAT THE COURT WILL CONSIDER THAT THE
11 ANSWER TO THE FRUSTRATION ISN'T RELEASING PRISONERS WITHOUT
12 GIVING THEM THE TOOLS TO DO WHAT THEY NEED TO DO. OTHERWISE, WE
13 ARE GOING TO SET THEM UP FOR FAILURE, AND WE WILL HAVE MORE
14 CRIME.

15 **BY MR. MITCHELL**

16 **Q** IF THERE WERE INCREASED EFFECTIVE PROGRAMS AVAILABLE THROUGH
17 PROBATION ON THE LOCAL LEVEL, WOULD JUDGES BE INCLINED TO
18 UTILIZE THOSE AND AVOID SENDING INDIVIDUALS AMENABLE TO
19 REHABILITATION TO PROBATION RATHER THAN PRISON?

20 **A** YES. AS A FORMER JUDGE AND FAMILIAR WITH THE CRIMINAL
21 JUDGES IN SAN DIEGO, AND WATCHING IT NOW AS WELL, WE DON'T
22 GENERALLY SEND SOMEONE THAT HASN'T FAILED ON PROBATION ABOUT
23 FOUR TIMES, FOUR TO FIVE TIMES, TO PRISON NOW LOCALLY. IF WE
24 HAD ADDITIONAL PROGRAMS, WE CERTAINLY WOULD PUT THEM IN THE
25 ADDITIONAL PROGRAMS, BUT WE HAVE RIGHT NOW ONLY ONE THOUSAND

1 SPOTS FOR REHABILITATION, BASICALLY, FOR SUBSTANCE ABUSE,
2 AVAILABLE TO US IN THE COMMUNITY, AND THAT'S FOR ADULT PROBATION
3 FOR PAROLE PROGRAMS, AS WELL AS FOR WOMEN'S PROGRAMS WITH
4 CHILDREN.

5 SO IF WE HAD A LOT OF PRISONERS THAT CAME OUT INTO
6 THE COMMUNITY, WE WOULD HAVE NO, VIRTUALLY NO SERVICES TO
7 PROVIDE THEM WITHOUT A PERIOD OF TIME FOR TRYING TO SET THOSE
8 PROGRAMS UP.

9 **Q** YOU PROVIDED OR CREATED SOME CHARTS THAT INDICATE WHAT THAT
10 IMPACT ON THE PROGRAM SB 618 WOULD BE OF EARLY RELEASE; IS THAT
11 CORRECT?

12 **A** YES, I DID.

13 **Q** AND I'M SHOWING YOU WHAT'S BEEN MARKED AS DI 513 --

14 **MR. SANGSTER:** OBJECTION, YOUR HONOR. CUMULATIVE.
15 MS. RODRIGUEZ WAS ASKED AND TESTIFIED ABOUT THE IMPACT OF THIS
16 ON 618.

17 **MR. MITCHELL:** I BELIEVE THERE WAS SOME CONFUSION AS
18 TO WHAT THE ACTUAL 618, AND MS. DUMANIS, AS A CREATOR OF SB 618,
19 HAS TAKEN THE STEPS TO CLARIFY WHAT THE ACTUAL IMPACT WOULD BE.

20 **JUDGE HENDERSON:** PROCEED.

21 **THE WITNESS:** AS YOU LOOK AT THIS DIAGRAM, WHAT IT
22 SHOWS YOU IS THE DIFFERENCE BETWEEN A REGULAR INMATE AND INMATE
23 THAT COMES TO THE COURT FROM SB 618, AND, AS YOU SEE IN THE
24 REGULAR INMATE, THEY RECEIVE THEIR PRESENTENCING, PROBATION DOES
25 A REPORT, BUT THAT REPORT DOESN'T HAVE ANY ASSESSMENTS, REALLY,

1 AND THERE'S A SENTENCING HEARING. IN SB 618 THERE'S AN
2 ASSESSMENT, THERE'S A LIFE PLAN, AND THAT ASSESSMENT INCLUDES
3 RISK AND NEEDS.

4 AND I THINK THAT'S ONE OF THE THINGS THAT IS VERY
5 IMPORTANT IN SB 618, AND THAT IS, WE OFTEN TEND TO LOOK AT THE
6 CRIME TO DETERMINE WHETHER OR NOT WHAT THE PERSON PLED GUILTY
7 TO -- OR THE HIGHEST CHARGE THAT THEY'VE DONE AND WHETHER OR NOT
8 THAT MAKES THEM A HIGH RISK, WHEN, IN FACT, WHAT YOU NEED TO
9 LOOK AT IS THE CRIMINOGENIC FACTORS AND THEIR CRIMINAL THINKING
10 IN TERMS OF WHETHER THEY'RE A HIGH RISK. AND NOT EVERYBODY IS A
11 HIGH RISK WITH HIGH NEEDS. SOME PEOPLE ARE A LOW RISK WITH LOW
12 NEEDS, WHICH MEANS THEY DON'T NEED A LOT OF PROGRAMMING.

13 SO WE LEARN THAT ABOUT THE INMATE FROM THE BEGINNING,
14 AND WE HAVE THIS PLAN THAT GOES WITH THEM TO THE DEPARTMENT OF
15 CORRECTIONS.

16 IN THE PLAN RIGHT NOW THE WAY A PRISONER WOULD BE
17 HANDLED, THAT PRISONER WOULD GO TO THE CORRECTIONS -- TO THE
18 RECEPTION CENTER AND WOULD THEN LANGUISH FOR ABOUT 90 DAYS
19 BEFORE THEY GO ON TO POSSIBLE PROGRAMMING.

20 IN OUR PROGRAM, THE CASE MANAGER IS ASSIGNED IN THE
21 PRISONS. THEY WORK TO MAKE SURE THAT THESE PEOPLE GET THE
22 PROGRAMS AND THEY FOLLOW THEM. THEY NEED SOME ACCOUNTABILITY IN
23 THIS PROCESS. THEY -- IN THE REGULAR PROCESS, THE INMATE AWAITS
24 RELEASE FROM PRISON, OFTENTIMES NOT HAVING ANY PROGRAMMING, AND
25 OUR -- SIX MONTHS BEFORE OUR CASE MANAGER FROM THE COMMUNITY

1 COMES IN AND HELPS THEM PREPARE SOCIAL SECURITY, DRIVER'S
2 LICENSE, ALL THOSE KINDS OF THINGS THAT ARE NEEDED ONCE THEY GET
3 OUT. AND RIGHT NOW THE INMATE WITHOUT THE PROGRAMMING IS
4 RELEASED WITH \$200 AND A BUS TICKET, AND THEY ARE RELEASED OUT
5 INTO THE COMMUNITY AND IN PAROLE.

6 ON SB 618 THEY ARE MET RIGHT AT THE DOOR OF THE
7 PRISONS. THEY PICK UP THE INMATE, AND THEY TAKE THAT INMATE TO
8 A RESIDENCE, GET THEM INTO PROGRAMMING AND HAVE THEM
9 ACCOUNTABLE.

10 AND AS YOU CAN SEE, THESE TWO --

11 **MR. SANGSTER:** YOUR HONOR, I OBJECT TO THIS NARRATIVE
12 ANSWER. COUNSEL REPRESENTED THE PURPOSE OF THIS WAS TO CLARIFY
13 ISSUES IN 618, AND WE ARE COVERING EXACTLY THE SAME PRESENTATION
14 MS. RODRIGUEZ GAVE US.

15 **THE WITNESS:** I'M GETTING TO THE POINT WHERE IT DOES
16 THAT, IF YOUR HONORS WOULD ALLOW ME TO PROCEED.

17 **JUDGE HENDERSON:** GO ON, BUT LET ME SAY BEFORE, AND
18 THIS IS NOT PERSONAL TO YOU, BUT ONE REASON WE ARE ASKING FOR
19 NEW MORE REALISTIC ESTIMATES, WE CAN'T MANAGE A TRIAL. YOU
20 ESTIMATED 15 MINUTES. YOU ARE TEN MINUTES OVER, YOU WERE TWICE
21 OVER ON -- WE CAN'T DO OUR JOBS OF MANAGING A TRIAL DURING A
22 HOLIDAY WITH THIS KIND OF --

23 **MR. MITCHELL:** I CAN FINISH IN FIVE MINUTES IF I'M
24 ALLOWED TO, YOUR HONOR.

25 **THE WITNESS:** THE BOTTOM LINE IS WHAT IT SHOWS IS

1 THAT THE POOL OF PEOPLE, BOTH THOSE THAT HAVE RECEIVED NO
2 PROGRAMMING AND HAVE NO PLANNING, ARE GOING TO FUNNEL INTO THE
3 VERY SAME PROGRAMS THAT WE HAVE NOW. SO THOSE 1,000 SPOTS THAT
4 ARE -- AND THE RESOURCES FOR VOCATION, EMPLOYMENT, MEDICAL, AND
5 REHAB, HOUSING, AND MENTAL HEALTH, ARE GOING TO BE -- BOTH SETS
6 OF PEOPLE ARE GOING TO GO IN THERE, AND IF YOU STOP THE PERSON
7 BEFORE THEY HAVE FINISHED THEIR PROGRAMMING IN PRISON, IT ALSO
8 SETS THEM UP FOR FAILURE.

9 **BY MR. MITCHELL**

10 **Q** SHOWING YOU QUICKLY DI 514, DOES THIS ILLUSTRATE SOME OF
11 THOSE IMPACTS THAT YOU'RE DISCUSSING?

12 **A** YES, IT DOES. THE IMMEDIATE IMPACTS ARE WHAT I THINK THE
13 COURT IS INTERESTED IN, AND THAT IS -- THAT, AS I SAID,
14 INSUFFICIENT TIME TO COMPLETE AND PREPARE FOR THEIR RELEASE,
15 PUTTING THEM INTO THE POPULATION, NOT HAVING ENOUGH PEOPLE IN
16 OUR SB 618 TO TAKE ON THAT POPULATION IN SAN DIEGO, AND NOT
17 ENOUGH COMMUNITY RESOURCES THAT WILL BE AVAILABLE.

18 **MR. MITCHELL:** THANK YOU.

19 **THE WITNESS:** THERE WAS ONE OTHER SLIDE.

20 **MR. SANGSTER:** THERE'S NO QUESTION PENDING.

21 **JUDGE KARLTON:** HE'S TRYING TO DO WHAT HE PROMISED TO
22 DO.

23 **THE WITNESS:** OKAY.

24 **JUDGE KARLTON:** YOU'RE BEING --

25 **MR. MITCHELL:** THANK YOU, YOUR HONOR.

1 **JUDGE HENDERSON:** STATE DEFENDANT HAVE ANY QUESTIONS?

2 **MR. MELLO:** NO QUESTIONS.

3 **JUDGE HENDERSON:** CROSS-EXAMINATION.

4 **MR. SANGSTER:** NO CROSS, YOUR HONOR.

5 **JUDGE HENDERSON:** WE'RE GAINING TIME. OKAY. THANK
6 YOU VERY MUCH.

7 **THE WITNESS:** THANK YOU VERY MUCH.

8 **MS. FUENTES:** GOOD AFTERNOON. THERESA FUENTES FROM
9 SANTA CLARA COUNTY. THE DEFENDANT INTERVENORS CALL DR. NANCY
10 PENA TO THE STAND.

11 **NANCY PENA,**
12 HAVING BEEN CALLED AS A WITNESS BY THE DEFENDANT INTERVENORS,
13 WAS FIRST DULY SWORN AND EXAMINED AS FOLLOWS:

14 **THE WITNESS:** NANCY DANE PENA.

15 **JUDGE KARLTON:** SPELL YOUR LAST NAME, MA'AM.

16 **THE WITNESS:** P-E-N-A.

17 **DIRECT EXAMINATION BY MS. FUENTES**

18 **BY MS. FUENTES**

19 **Q** DR. PENA, WHERE ARE YOU CURRENTLY EMPLOYED?

20 **A** SANTA CLARA COUNTY.

21 **Q** WHAT IS YOUR CURRENT POSITION?

22 **A** I'M THE DIRECTOR OF MENTAL HEALTH DEPARTMENT FOR SANTA CLARA
23 VALLEY HEALTH AND HOSPITAL SYSTEM.

24 **Q** CAN YOU BRIEFLY DESCRIBE YOUR EDUCATION AND PROFESSIONAL
25 BACKGROUND?

1 **A** YES, I HAVE A PH.D. IN CLINICAL PSYCHOLOGY, WHICH I RECEIVED
2 FROM CALIFORNIA SCHOOL OF PROFESSIONAL PSYCHOLOGY IN 1980. I
3 HAVE BEEN WORKING IN PUBLIC MENTAL HEALTH SINCE ABOUT 1978.

4 **Q** HOW LONG HAVE YOU BEEN EMPLOYED WITH THE COUNTY OF SANTA
5 CLARA?

6 **A** SINCE 1985.

7 **Q** CAN YOU BRIEFLY DESCRIBE WHAT YOUR ROLE IS, WHAT YOUR DUTIES
8 HAVE BEEN WITH THE COUNTY OF SANTA CLARA?

9 **MS. TILLMAN:** IF I COULD ASK THE WITNESS TO RAISE HER
10 VOICE.

11 **THE WITNESS:** AND I CAN'T HEAR YOU VERY WELL.

12 **MS. FUENTES:** THE ACOUSTICS ARE --

13 **THE WITNESS:** THANK YOU. CAN YOU SAY IT AGAIN?

14 **JUDGE KARLTON:** WHAT DO YOU DO FOR A LIVING?

15 **THE WITNESS:** I AM THE DIRECTOR OF MENTAL HEALTH, AND
16 THAT'S THE PUBLIC MENTAL HEALTH SYSTEM IN SANTA CLARA COUNTY. I
17 HAVE BEEN IN THAT ROLE SINCE 2000. PRIOR TO THAT, I WAS THE
18 DEPUTY DIRECTOR FOR FOUR YEARS, AND PRIOR TO THAT, ALL THE WAY
19 BACK TO 1985, I WAS RESPONSIBLE FOR CHILDREN'S SERVICES,
20 INTENSIVE CHILDREN'S SERVICES, AND ACUTE PSYCHE SERVICES.

21 **BY MS. FUENTES**

22 **Q** OKAY. HOW MANY MENTALLY ILL PERSONS DOES THE COUNTY SERVE
23 THROUGH YOUR DEPARTMENT?

24 **A** APPROXIMATELY 17,000 TO 19,000 A YEAR.

25 **Q** DOES THAT NUMBER REPRESENT EVERYBODY THAT SEEKS MENTAL

1 HEALTH TREATMENT IN THE COUNTY?

2 **A** NO. WE ESTIMATE ON AVERAGE ABOUT 30 PERCENT OF THOSE WHO
3 CALL FOR SERVICES OR SEEK SERVICES ACTUALLY ARE SCREENED IN TO
4 RECEIVE SERVICE.

5 **Q** SO ARE YOU SAYING YOU'RE ONLY ABLE TO PROVIDE SERVICES TO
6 30 PERCENT OF THE PEOPLE WHO SEEK THEM?

7 **A** YES.

8 **Q** AND --

9 **JUDGE KARLTON:** ONLY ABLE TO OR ONLY CHOOSE TO? DO
10 YOU HAVE RESOURCES TO DO MORE BUT DON'T DO IT?

11 **THE WITNESS:** WE DO NOT HAVE RESOURCES.

12 **JUDGE KARLTON:** I DO NOT KNOW WHAT SCREENING -- WHAT
13 ARE YOU SCREENING FOR THAT GETS 30 PEOPLE IN AND 70 PERCENT OF
14 THE PEOPLE OUT?

15 **THE WITNESS:** WE SCREEN ON TWO CRITERIA, ONE BEING
16 FINANCIAL AND INSURANCE, ABILITY TO PAY, BUT, PRIMARILY, WHETHER
17 OR NOT THEY HAVE OTHER RESOURCES. AND THEN THE OTHER CRITERIA
18 IS THEIR PSYCHIATRIC NEED. AND SO AS OUR RESOURCES DIMINISH, WE
19 BECOME MORE RESTRICTIVE IN TERMS OF PSYCHIATRIC NEED, ATTENDING
20 TO THOSE WHO HAVE MOST EMINENT AND URGENT NEED.

21 **JUDGE REINHARDT:** WHEN YOU SAY THE RESOURCES ARE
22 DIMINISHED, DO YOU MEAN FINANCIAL RESOURCES?

23 **THE WITNESS:** CORRECT.

24 **JUDGE REINHARDT:** IF THE COUNTY WERE TO GIVE YOU MORE
25 MONEY, YOU WOULD SEE MORE PEOPLE?

1 **THE WITNESS:** CORRECT. CONCEIVABLY, IF INFLATION IS
2 NOT CONSUMING RESOURCES, BUT THAT IS CONCEIVABLE, YES.

3 **BY MS. FUENTES**

4 **Q** DO YOU HAVE THE CAPACITY -- TO FOLLOW UP ON JUDGE
5 REINHARDT'S QUESTION, DO YOU HAVE THE CAPACITY TO SEE MORE
6 PEOPLE IF YOU HAD THE MONEY TO DO SO?

7 **A** IF WE HAD MORE RESOURCES, YES, WE DO. UNFORTUNATELY, IT'S
8 NOT GOING IN THAT DIRECTION RIGHT NOW IN OUR COUNTY.

9 **Q** WHICH DIRECTION IS IT GOING IN?

10 **A** THE RESOURCES THAT WE HAVE ARE THOSE THAT ARE PROVIDED BY
11 THE COUNTY GENERAL FUND, AND THOSE ARE DISCRETIONARY DOLLARS,
12 AND THOSE ARE BEING ELIMINATED PRETTY MUCH STEADILY FOR THE LAST
13 SIX YEARS.

14 **Q** HAVE YOU HAD ANY CUTS THIS YEAR?

15 **A** YES. ACTUALLY, THIS PAST WEEK -- THIS WEEK, I BELIEVE IT
16 WAS THE 12TH, WE RECEIVED ANOTHER -- THE BOARD APPROVED A
17 REDUCTION OF ABOUT FOUR MILLION OUT OF MY DEPARTMENT AS A RESULT
18 OF THE STATE BUDGET, IMPACT OF THE STATE BUDGET ON OUR
19 DEPARTMENT.

20 **Q** AND HOW MUCH HAVE YOUR CUTS BEEN SO FAR ALTOGETHER THIS
21 FISCAL YEAR?

22 **A** UP UNTIL THIS PAST WEEK, THERE HAD BEEN 45 MILLION REMOVED
23 OUT OF OUR DEPARTMENT BUDGET, AND WITH THIS ADDITIONAL
24 FOUR MILLION -- WE ARE COMING BACK FOR A MID-YEAR REVIEW THE END
25 OF JANUARY.

1 I HAVE TO ALSO RECONCILE AN EIGHT MILLION DOLLAR
2 SHORTFALL. I HAVE -- AND THEN I ALSO HAVE A TARGET THAT I HAVE
3 BEEN ASSIGNED OF 22-1/2 MILLION TO BE EFFECTIVE JULY 1, 2009.

4 **JUDGE REINHARDT:** YOU SAY THIS IS BECAUSE -- YOU SAID
5 IMPACT. IT WAS AN IMPACT OR IMPASSE, DID YOU MEAN?

6 **THE WITNESS:** IMPACT.

7 **JUDGE REINHARDT:** IMPACT OF THE STATE BUDGET, AND WE
8 DON'T HAVE A BUDGET?

9 **THE WITNESS:** THIS WAS THE BUDGET THAT WAS PASSED IN
10 SEPTEMBER, AND NOW WE'RE BACK IN SESSION AGAIN, IS MY
11 UNDERSTANDING, AND THERE WILL LIKELY BE ANOTHER IMPACT AS A
12 RESULT OF THAT THAT COMES TO THE COUNTIES. AND THEN WE'RE
13 USUALLY DIRECTED BY THE COUNTY EXECUTIVE TO ASSESS WHAT THAT
14 IMPACT IS AND TO PROVIDE REMEDIES, WHICH ARE USUALLY REDUCTIONS.

15 **BY MS. FUENTES**

16 **Q** CAN YOU TELL US GENERALLY WHAT KIND OF SERVICES THE MENTAL
17 HEALTH DEPARTMENT PROVIDES?

18 **A** THE COUNTY PROVIDES EVERYTHING FROM EMERGENCY PSYCHIATRIC
19 SERVICE, TO OUTPATIENT CARE, TO INPATIENT CASE MANAGEMENT,
20 RESIDENTIAL TREATMENT, ALL THE WAY TO LONG-TERM SKILLED NURSING,
21 AND, ACTUALLY, STATE HOSPITAL CARE, WHICH WE'RE REQUIRED TO
22 PURCHASE FROM THE STATE.

23 **Q** AND, GENERALLY, YOU HAD MENTIONED THAT YOU HAVE TO TRIAGE.
24 WHAT DID YOU MEAN BY THAT, AND WHO'S ABLE TO ACCESS SERVICES
25 FROM THE COUNTY?

1 **A** WELL, WE HAVE SEVERAL POPULATIONS THAT WE ARE REQUIRED TO
2 ADDRESS. THE ENTITLEMENT POPULATIONS THAT WE ARE REQUIRED TO
3 SERVE IN OUR CONTRACT WITH THE STATE DEPARTMENT OF MENTAL HEALTH
4 ARE MEDICAID BENEFICIARIES, THE COUNTY PROGRAMS, THE MANAGED
5 CARE, MENTAL HEALTH MANAGED CARE, PROGRAMS FOR MEDICAID
6 BENEFICIARIES.

7 SO MEDICAID BENEFICIARIES COME TO THE COUNTY FOR
8 THEIR MENTAL HEALTH SERVICES. THAT'S ONE POPULATION ENTITLED
9 FOR SERVICES, IF THEY MEET OUR MEDICAL NECESSITY CRITERIA.

10 THE SECOND POPULATION THAT'S AN ENTITLEMENT GROUP IS
11 SPECIAL EDUCATION STUDENTS WHO ARE ENTITLED UNDER SPECIAL
12 EDUCATION LAW TO RECEIVE MENTAL HEALTH SERVICES, AND THAT IS
13 ANOTHER MANDATE THAT WE FULFILL THROUGH THE COUNTY PUBLIC
14 SYSTEM.

15 WE ARE REQUIRED FOR THOSE WHO COME TO US UNDER LPS,
16 LANTERMAN-PETRIS-SHORT, WHERE THEY'RE UNDER INVOLUNTARY
17 DETENTION. WE ALSO MUST SERVE THEM IF THEY COME TO OUR
18 EMERGENCY ROOM.

19 AND THEN WITH THE RESOURCES THAT ARE REMAINING, WE
20 ARE THE SAFETY NET FOR THOSE WHO ARE UNINSURED OR UNABLE TO
21 PURCHASE INSURANCE.

22 **Q** ARE YOU AWARE OF THE NEEDS OF THE MENTALLY ILL INDIVIDUALS
23 COMING FROM THE COUNTY JAIL?

24 **A** YES.

25 **Q** WHAT ARE THOSE NEEDS?

1 **A** SIGNIFICANT. I DO NOT RUN THE CUSTODY HEALTH AND MENTAL
2 HEALTH SERVICES; HOWEVER, WE DO HAVE A RELATIONSHIP. IT IS PART
3 OF THE HEALTH AND HOSPITAL SYSTEM THAT I WORK FOR, SO IT'S A
4 SISTER DEPARTMENT IN THE AGENCY I WORK FOR, AND WE ARE FAMILIAR
5 WITH THE NEEDS OF THE POPULATION THERE.

6 THE MENTAL HEALTH NEEDS ARE ACTUAL FULLY FUNDED
7 THROUGH MY BUDGET, WHICH GOES TO THE DEPARTMENT OF CUSTODY
8 HEALTH SERVICES, AND THEY PROVIDE THE MENTAL HEALTHCARE. ABOUT
9 20 PERCENT OF THE POPULATION IN OUR JAIL SYSTEM ARE RECEIVING
10 PSYCHIATRIC MEDICATION SERVICES AND CONSIDERED TO BE MENTAL
11 HEALTH CLIENTS.

12 **Q** WHAT ARE THEIR NEEDS ONCE THEY'RE RELEASED FROM JAIL; DO YOU
13 KNOW?

14 **A** WELL, ALL OF THOSE WHO ARE RECEIVING MEDICATION PRESCRIBED
15 FROM THE CUSTODY SETTING ARE IN NEED OF ONGOING MENTAL HEALTH
16 TREATMENT, AND SO I WOULD SAY A HUNDRED PERCENT OF THOSE WHO
17 RECEIVE CARE IN THE JAIL SYSTEM ARE IN NEED OF CARE AS THEY
18 EXIT.

19 **Q** DO THEY NEED ANYTHING BESIDES MEDICATIONS, IN YOUR OPINION?

20 **A** YES.

21 **Q** WHAT IS THAT?

22 **A** CASE MANAGEMENT, MEANING CONNECTING WITH SERVICES AND
23 FACILITATION OF LINKAGE TO SERVICE, AS WELL AS ASSISTANCE IN
24 OTHER AREAS OF THEIR LIVES. OUTPATIENT THERAPY, RESIDENTIAL
25 TREATMENT, SUBSTANCE ABUSE TREATMENT. ABOUT 75 PERCENT ALSO

1 HAVE CONCURRENT CONDITIONS WHERE THEY HAVE A MENTAL HEALTH AND A
2 SUBSTANCE ABUSE PROBLEM.

3 **Q** YOU SAID RESIDENTIAL. DID YOU MEAN HOUSING OR --

4 **A** ACTUALLY HOUSING IS A HUGE NEED, BUT I WAS SPEAKING ABOUT
5 RESIDENTIAL TREATMENT, WHICH IS TREATMENT FOR THOSE WHO REALLY
6 REQUIRE 24-HOUR CARE.

7 **Q** BUT YOU ALSO SAY THEY DO NEED HOUSING?

8 **A** YES. HOUSING IS A HUGE NEED.

9 **Q** OKAY. DO YOU HAVE ANY INFORMATION AS TO WHETHER STATE
10 PRISONERS WOULD HAVE THOSE SAME TYPES OF NEEDS THAT YOU'RE
11 SEEING FROM PEOPLE FROM THE COUNTY JAIL?

12 **A** THE INFORMATION THAT I HAVE IS REALLY FROM TWO SOURCES, BOTH
13 OF THEM COMING FROM THE CDCR; ONE, IN CONVERSATIONS THAT I'VE
14 HAD RECENTLY IN THE LAST YEAR WITH REPRESENTATIVES FROM CDCR AS
15 WE HAVE WORKED ON A COLLABORATIVE RELATIONSHIP FOR THE COUNTY TO
16 SERVE PAROLEES IN OUR MENTAL HEALTH SYSTEM. AND THE OTHER IS A
17 DOCUMENT THAT WAS PRESENTED BY CDCR IN THE PAST YEAR OR SO.

18 IT DOES APPEAR, IN FACT, IN SPEAKING TO THEM AND
19 LOOKING AT THEIR DATA, THAT THEY DO HAVE A SIMILAR POPULATION OR
20 A SIMILAR LEVEL OF NEED IN THE POPULATION THAT WE DO IN OUR JAIL
21 POPULATION.

22 **Q** SO THAT WOULD BE MEDIATION AND SUPPORT AND HOUSING AND ALL
23 THE THINGS THAT YOU'VE MENTIONED?

24 **A** AND A HIGH INCIDENCE OF CONCURRENT PROBLEMS WITH SUBSTANCE
25 ABUSE AND MENTAL ILLNESS.

1 Q ARE YOU AWARE OF WHETHER ANY STATE PAROLEES USE THE COUNTY
2 MENTAL HEALTH SYSTEM?

3 A YES. AS A MATTER OF FACT, WHEN WE WERE DIALOGUING ABOUT THE
4 POSSIBILITY OF THE CDCR CONTRACTING WITH THE COUNTY TO PROVIDE
5 SERVICES FOR PAROLEES WHO NEEDED A HIGHER LEVEL OF CARE THAN
6 THEIR OUTPATIENT SYSTEM COULD PROVIDE, WE WERE DISCUSSING WHAT
7 THEY WANTED TO PURCHASE, AND THAT INCLUDED SOME THERAPEUTIC
8 HOUSING, MEANING SUPPORTED HOUSING WITH TREATMENT, AND INTENSIVE
9 TREATMENT BEYOND OUTPATIENT.

10 WE DISCUSSED THE NEED OF THEIR POPULATION TO UTILIZE
11 EMERGENCY AND INPATIENT CARE. EXCUSE ME. AND WE DISCUSSED THE
12 POTENTIAL FOR THEM TO REIMBURSE US FOR ACUTE INPATIENT CARE.

13 THEY PROVIDED US WITH A LIST OF APPROXIMATELY ONE
14 HUNDRED PAROLEES WHO ARE RECEIVING -- WERE ENROLLED IN THEIR
15 OUTPATIENT SERVICES, AND WE CROSSED THOSE WITH OUR DATABASE AND
16 DETERMINED THAT 60 PERCENT -- OR 60 OUT OF A HUNDRED OF THE
17 CLIENTS THAT THEY SERVED HAD ALSO BEEN SERVED IN OUR SYSTEM
18 THROUGH OUR EMERGENCY DEPARTMENT OR OUR JAIL, MENTAL HEALTH UNIT
19 OR INPATIENT CARE.

20 Q WHAT DID YOU ATTRIBUTE THAT TO, THE 60 PERCENT USING YOUR
21 JAIL OR YOUR EMERGENCY FACILITY?

22 A THE ACUITY OF THEIR CONDITIONS, AND IT DOES APPEAR THAT THEY
23 DO HAVE A CLIENT POPULATION WHICH WAS REALLY THE REASON WHY THEY
24 WERE COMING TO US, THAT THEY CANNOT MEET THEIR NEEDS WITH JUST
25 OUTPATIENT SERVICES.

1 Q IN YOUR OPINION, WHAT, IF ANYTHING, HAPPENS TO MENTALLY ILL
2 INDIVIDUALS WHO DO NOT HAVE THEIR NEEDS MET?

3 A WELL, AS ANYBODY WHO HAS A HEALTH CONDITION THAT'S
4 UNTREATED, THERE'S A HIGH LIKELIHOOD OF DETERIORATION. AND WE
5 DO SEE THAT WITH INDIVIDUALS WHO HAVE SERIOUS MENTAL ILLNESS,
6 THAT THEY DO HAVE A DETERIORATION OF THEIR MENTAL CONDITION OR
7 THEIR STATUS, THEIR MENTAL STATUS IT'S OFTEN CALLED. SO YOU
8 WILL SEE AN IMPACT ON THEIR BEHAVIOR, THEIR JUDGMENT, THEIR USE
9 OF SUBSTANCES TO SEEK IN THEIR OWN ATTEMPTS TO ADDRESS THEIR
10 SYMPTOMS. BUT, BASICALLY, AN INCREASE IN PROBLEMATIC SYMPTOMS
11 THAT GET IN THE WAY OF THEIR BEING ABLE TO FUNCTION EFFECTIVELY
12 IN SOCIETY.

13 Q HAVE YOU SEEN AN INCREASED USE IN PSYCHIATRIC CRISIS AND
14 URGENT CARE IN THE COUNTY IN THE LAST YEAR?

15 A IN THE LAST YEAR IN URGENT CARE WE HAVE ACTUALLY A NEW
16 SERVICE THAT WE'VE JUST CREATED, AND THE REASON THAT WE CREATED
17 THAT SERVICE IS THAT WE WERE RECOGNIZING THAT WE HAD A
18 SIGNIFICANT NUMBER OF PEOPLE WHO WERE SEEKING SERVICE IN OUR
19 EMERGENCY ROOM. IT'S NOT UNLIKE WHAT IS HAPPENING IN THE
20 HEALTHCARE ARENA AS WELL, WHERE INDIVIDUALS WHO DON'T HAVE
21 INSURANCE, SO THEY DON'T HAVE A BENEFIT, WILL GO TO AN EMERGENCY
22 ROOM FOR THEIR SERVICE.

23 SO WE WERE FINDING THAT WE WERE USING A VERY
24 EXPENSIVE SERVICE TO MEET THE NEEDS OF A POPULATION THAT WAS
25 USING US AS THEIR SAFETY NET. SO WE CREATED URGENT CARE

1 ADJACENT TO OUR SAFETY NET. IT IS ACTUALLY JUST A FEW MONTHS
2 OLD, AND AS WE HAVE OPENED THAT, WE HAVE SEEN A SIGNIFICANT
3 INCREASE IN THE NUMBER OF PEOPLE WHO ARE COMING TO US.

4 WE'VE RESTRICTED THE USE OF THE URGENT CARE ONLY TO
5 POLICE JURISDICTION TO BEGIN WITH BECAUSE WE REALLY HAVE BEEN
6 ATTEMPTING TO RESPOND TO THE COMMUNITY DEMAND FOR SERVICES, AND
7 PARTICULARLY FROM THE POLICE AND LAW ENFORCEMENT.

8 **Q** DO YOU BELIEVE THAT UNTREATED MENTALLY ILL INDIVIDUALS IN
9 THE COMMUNITY POSE A RISK TO PUBLIC SAFETY?

10 **A** I BELIEVE THEY CAN -- YES, I DO BELIEVE THEY CAN.

11 **Q** AND WHY IS THAT?

12 **A** BECAUSE WHEN INDIVIDUALS HAVE MENTAL -- MENTAL CONDITIONS OR
13 PSYCHIATRIC CONDITIONS, THEY OFTEN HAVE SIGNIFICANT IMPAIRMENT
14 IN JUDGMENT. THEY HAVE BEHAVIOR THAT IS OFTEN IMPULSIVE OR
15 DISINHIBITED.

16 SO IT IS NOT UNCOMMON TO SEE INDIVIDUALS WHO HAVE
17 UNTREATED MENTAL ILLNESS IN THE COMMUNITY WITH BEHAVIOR THAT IS
18 EITHER UNSAFE TO THEMSELVES OR OTHERS OR PERCEIVED TO BE SUCH,
19 THAT THERE IS CONCERN ABOUT THEIR SAFETY OR THE SAFETY OF
20 OTHERS. AND, IN FACT, THERE ARE INSTANCES OF INDIVIDUALS WHO DO
21 HARM OTHERS AS A RESULT OF DECOMPENSATION OR PSYCHIATRIC
22 ILLNESS.

23 **Q** DO YOU SEE -- IN YOUR OPINION, IS THERE A RELATIONSHIP
24 BETWEEN POLICE INVOLVEMENT AND PSYCHIATRIC DECOMPENSATION?

25 **A** IS THERE A RELATIONSHIP?

1 Q YES.

2 A WELL, THE RELATIONSHIP THAT I'M AWARE OF IS THAT WHEN THE
3 PUBLIC IS CONCERNED ABOUT THE BEHAVIOR OF INDIVIDUALS, WHETHER
4 IT BE FROM ANTI-SOCIAL BEHAVIOR OR BIZARRE BEHAVIOR IN THE
5 COMMUNITY, THE POLICE ARE THE ONES WHO ARE CALLED AND ASKED TO
6 INTERVENE, AND OFTENTIMES THEY ARE RESPONDING TO SITUATIONS
7 WHERE THEY'RE DEALING WITH INDIVIDUALS WHO HAVE MENTAL
8 ILLNESSES, AND THIS IS WHAT HAS BEEN REPORTED TO US BY LAW
9 ENFORCEMENT AND REQUESTED OF US BY LAW ENFORCEMENT AS WE HAVE
10 TRIED TO RESPOND TO THEIR NEEDS.

11 Q I'M SORRY. WHAT HAS LAW ENFORCEMENT REQUESTED?

12 A ADDITIONAL SERVICES FOR THOSE IN THE COMMUNITY, IN
13 PARTICULAR, TO IMMEDIATE URGENT RESPONSE, MOBILE RESPONSE.

14 I THINK IDEALLY LAW ENFORCEMENT IN OUR AREA WOULD
15 LOVE IF WE COULD HAVE SERVICES SIMILAR TO WHAT THEY HAVE IN SAN
16 DIEGO, THE PSYCHIATRIC EMERGENCY RESPONSE, WHERE MENTAL HEALTH
17 PROFESSIONALS ARE PARTNERED WITH POLICE. WE JUST DON'T HAVE
18 THAT CAPACITY TO BE ACTUALLY IN THE FIELD RESPONDING WITH POLICE
19 OFFICERS IN THE COMMUNITY.

20 Q DID YOU FORM AN OPINION AS TO WHAT IMPACT, IF ANY, STATE
21 PRISONER POPULATION REDUCTION WOULD HAVE ON THE COUNTY OF SANTA
22 CLARA?

23 A DID I FORM AN OPINION?

24 Q YES.

25 A YES.

1 Q WHAT IS THAT OPINION?

2 A THAT IT WOULD BE A NEGATIVE IMPACT ON OUR COMMUNITY AND, I
3 WOULD SAY, MOST COMMUNITIES IN CALIFORNIA.

4 Q WHY IS THAT?

5 A BECAUSE WE DO NOT HAVE IN OUR LOCAL COMMUNITIES THE
6 RESOURCES TO BE ABLE TO RESPOND TO THE NEEDS OF THIS POPULATION.
7 WE JUST DO NOT HAVE THE CAPACITY TO RESPOND TO THE INFLUX OF ANY
8 NEW POPULATION RIGHT NOW. AND, UNFORTUNATELY, WE ARE
9 EXPERIENCING SOCIAL CONDITIONS RIGHT NOW IN CALIFORNIA, IF NOT
10 THE WHOLE COUNTRY, WHERE THERE ARE MORE AND MORE INDIVIDUALS WHO
11 ARE IN AN ECONOMIC SITUATION WHERE THEY NEED TO RELY ON THE
12 PUBLIC SERVICE SECTOR TO GET THEIR NEEDS MET.

13 Q WELL, THERE ARE SOME EXPERTS THAT HAVE TESTIFIED IN THIS
14 CASE THAT BELIEVE THAT SOME OF THE CONCERNS OF THE COUNTIES ARE
15 OVERSTATED. WOULD YOU AGREE WITH THAT?

16 A NO.

17 Q AND WHY NOT?

18 A BECAUSE WE HAVE EVIDENCE IN TERMS OF THE RECIDIVISM RATES,
19 MEANING INDIVIDUALS WHO HAVE MENTAL ILLNESS, TEND TO HAVE
20 RECIDIVISM RATES THAT ARE FAIRLY SIGNIFICANT, SO THEY'RE
21 RETURNING TO CUSTODY SETTINGS. THEY'RE CONTINUING TO HAVE
22 CONTACT WITH LAW ENFORCEMENT IN THE COMMUNITY, AND WE ARE NOT
23 REALLY ABLE TO PROVIDE THE LEVEL OF INTERVENTION THAT IS REALLY
24 NEEDED, I THINK, TO AVOID THAT.

25 I DO BELIEVE IT'S AVOIDABLE. I JUST DON'T BELIEVE WE

1 HAVE THE RESOURCES TO PROVIDE THE KIND OF SUPPORT AND SERVICES
2 THAT ARE NEEDED TO AVOID THAT.

3 **MS. FUENTES:** THANK YOU.

4 **MR. LEWIS:** NOTHING, YOUR HONOR.

5 **JUDGE HENDERSON:** OKAY. CROSS-EXAMINATION.

6 **CROSS-EXAMINATION BY MS. MORRIS**

7 **MS. MORRIS:** MARIA MORRIS. GOOD AFTERNOON, DR. PENNA.
8 MARIA MORRIS FOR PLAINTIFFS.

9 **BY MS. MORRIS**

10 **Q** THE CURRENT BUDGET FOR THE SANTA CLARA COUNTY DEPARTMENT OF
11 PUBLIC HEALTH, ACCORDING TO YOUR DECLARATION, IS \$250 MILLION?

12 **A** CORRECT.

13 **Q** AND IN FISCAL YEAR 2006, IT WAS \$190 MILLION, CORRECT?

14 **A** I DO NOT HAVE THAT IN FRONT OF ME, BUT IT SOUNDS ABOUT
15 RIGHT, YES.

16 **Q** YOU USED ESTIMATES IN YOUR REPORT OF BETWEEN 1,500 AND 3,500
17 PEOPLE RETURNING TO SANTA CLARA COUNTY; DO YOU RECALL THAT?

18 **A** YES.

19 **Q** AND THESE WERE ESTIMATES THAT WERE JUST GIVEN TO YOU; YOU
20 DID NOT CALCULATE THEM, CORRECT?

21 **A** CORRECT.

22 **Q** IN YOUR DECLARATION YOU EXPLAINED THAT THE 3,500 NUMBER YOU
23 GOT FROM USING THE STATE LEGISLATIVE ANALYSIS PROPOSAL TO
24 RELEASE 71,000 ADULT OFFENDERS FROM STATE TO LOCAL PRISON,
25 RESULTING IN APPROXIMATELY 3,500 INDIVIDUALS COMING TO SANTA

1 CLARA COUNTY, AND YOU CITE TO THE COUNTY EXHIBIT R. DOES THAT
2 SOUND FAMILIAR TO YOU?

3 **A** YES.

4 **Q** HOW DID YOU BECOME AWARE THAT THE LAO WAS PROPOSING TO
5 RELEASE 71,000 PEOPLE FROM STATE TO LOCAL PRISONS?

6 **A** I BELIEVE THROUGH COUNSEL.

7 **Q** OKAY. DID THEY JUST TELL YOU ABOUT IT?

8 **A** I'M ASSUMING THAT IT WAS IN THE CONTEXT OF DESCRIBING TO ME
9 THE CASE IN THE CASE THAT I WOULD BE ASKED TO TESTIFY ABOUT.

10 **Q** OKAY. DO YOU UNDERSTAND THAT THAT'S A PAROLE REALIGNMENT
11 PROPOSAL THAT WAS MADE?

12 **A** I AM AWARE THAT THERE IS A PAROLE REALIGNMENT PROPOSAL THAT
13 WAS MADE IN ADDITION TO THIS PARTICULAR CASE, YES.

14 **Q** BUT THAT -- THAT THE LAO REPORT WAS A PAROLE REALIGNMENT
15 PROPOSAL; DO YOU RECALL THAT?

16 **A** I UNDERSTAND THAT IF YOU ARE TELLING ME NOW.

17 **Q** BUT YOU DIDN'T UNDERSTAND IT AT THE TIME?

18 **A** IT MAY BE, VERY WELL.

19 **Q** OKAY. DO YOU UNDERSTAND THE DIFFERENCE BETWEEN RELEASING
20 PRISONERS AND TRANSFERS OF SUPERVISION OF PAROLEES?

21 **A** TRANSFERRING SUPERVISION OF PAROLEES, I BELIEVE I
22 UNDERSTAND.

23 **Q** WHAT WOULD TRANSFERRING SUPERVISION MEAN?

24 **A** I AM ASSUMING THAT YOU ARE TALKING ABOUT TRANSFERRING
25 SUPERVISION FROM THE STATE AND STATE PAROLE SYSTEM TO A LOCAL --

1 A LOCAL OR ANOTHER JURISDICTION.

2 Q THAT'S MY UNDERSTANDING AS WELL. SO THOSE ARE PEOPLE THAT
3 ARE ALREADY IN THE COMMUNITY, CORRECT?

4 A I WOULD ASSUME.

5 Q OKAY. I'D LIKE TO -- WITHDRAWN.

6 DO YOU UNDERSTAND THAT UNDER CALIFORNIA LAW, WHEN
7 PEOPLE COME OUT OF THE CDCR, THEY'RE RETURNED TO THE COUNTY THAT
8 THEY WERE SENT TO CDCR FROM?

9 A I'M SORRY. I COULDN'T HEAR YOU.

10 Q DO YOU UNDERSTAND THAT UNDER CALIFORNIA LAW, WHEN PEOPLE
11 COME OUT OF CDCR, THEY'RE GENERALLY RETURNED TO THE COUNTY FROM
12 WHICH THEY WERE SENT TO CDCR FROM?

13 A YES, I AM AWARE OF THAT.

14 Q AND DO YOU UNDERSTAND THAT, AS TO THOSE PEOPLE IN CDCR,
15 PLAINTIFF'S PROPOSAL WOULD ONLY RESULT IN THEM BEING RELEASED A
16 FEW MONTHS EARLY?

17 A I DO UNDERSTAND THAT.

18 Q AND YOU UNDERSTAND THAT PLAINTIFFS ARE NOT PROPOSING THAT
19 PEOPLE WHO WOULD NOT OTHERWISE BE PAROLED BE RELEASED; DO YOU
20 UNDERSTAND THAT AS WELL?

21 A I DO UNDERSTAND THAT.

22 Q OKAY. SO YOU UNDERSTAND THEN THAT UNDER PLAINTIFFS'
23 PROPOSAL, THE PEOPLE THAT WOULD BE RELEASED TO SANTA CLARA
24 COUNTY WOULD JUST BE PEOPLE WHO WOULD BE COMING BACK TO SANTA
25 CLARA COUNTY A FEW MONTHS LATER REGARDLESS OF THIS LITIGATION?

1 **A** I DO UNDERSTAND THAT. I HAVE READ THAT.

2 **Q** OKAY. PLAINTIFFS HAVE PROPOSED A RELEASE OF 52,000 PEOPLE
3 FROM CDCR, AND 3.6 PERCENT OF THAT, WHICH IS THE SANTA CLARA
4 COUNTY PROPORTION OF THE PRISONERS, WOULD BE 1,872 PEOPLE. AND
5 PLAINTIFFS HAVE PROPOSED THIS BE DONE OVER TWO YEARS; EVERY
6 MONTH A GROUP OF PEOPLE BEING RELEASED. SO THAT BREAKS DOWN TO
7 AN AVERAGE OF 78 PEOPLE PER MONTH.

8 **A** I UNDERSTAND THAT.

9 **Q** OKAY. AND YOU ESTIMATE THAT 20 PERCENT OF THE PEOPLE COMING
10 OUT OF CDCR WOULD BE MENTALLY ILL, CORRECT?

11 **A** I ESTIMATE THAT, YES.

12 **Q** SO 20 PERCENT OF 78 IS ROUGHLY 15 PEOPLE PER MONTH, CORRECT?

13 **A** IF YOU SAY SO, I WILL ACCEPT YOUR MATH.

14 **Q** OKAY. YOU DON'T KNOW THE BREAKDOWN OF LEVELS OF NEED FOR
15 MENTAL HEALTHCARE AMONG THE PEOPLE IN CDCR AROUND COMING OUT OF
16 CDCR, CORRECT?

17 **A** NO, I DO NOT.

18 **Q** AND YOU DON'T KNOW THE BREAKDOWN OF LEVELS OF MENTAL
19 HEALTHCARE NEED AMONG THE MENTALLY ILL PAROLEES THAT ARE ALREADY
20 IN YOUR COMMUNITY, CORRECT?

21 **A** I DON'T.

22 **Q** YOU DON'T KNOW HOW MANY OF THE PEOPLE -- OF THE PAROLEES
23 THAT ARE ALREADY IN SANTA CLARA COUNTY THAT ARE MENTALLY ILL,
24 HOW MANY OF THEM NEED A HIGH LEVEL OF CARE OR A LOW LEVEL OF
25 CARE; YOU DON'T KNOW THAT INFORMATION, DO YOU?

1 **A** NO, NOT OTHER THAN -- AND I WASN'T GIVEN PRECISE STATISTICS
2 ABOUT IT THAN -- OTHER THAN WHAT THE CDCR HAS EXPLAINED TO US IN
3 TERMS OF THEIR CASELOAD IN OUR COMMUNITY AND THE NEED THAT
4 THEY'RE ATTEMPTING TO MEET.

5 **Q** OKAY. WHEN THEY WERE TALKING TO YOU ABOUT THE NEED THAT
6 THEY WERE ATTEMPTING TO MEET WITH YOUR ASSISTANCE, THEY WERE
7 TALKING ABOUT THE MOST SEVERELY MENTALLY ILL PEOPLE, WEREN'T
8 THEY?

9 **A** YES.

10 **Q** WAS THAT LIST OF 100 INDIVIDUALS YOU MENTIONED, WAS THAT A
11 GROUP OF THE PEOPLE FOR WHOM THEY WERE LOOKING FOR SERVICES
12 THROUGH YOU?

13 **A** YES.

14 **Q** SO THOSE WOULD HAVE BEEN SOME OF THE MOST SEVERELY MENTALLY
15 ILL PAROLEES ALREADY, CORRECT?

16 **A** I AM ASSUMING, BUT I DON'T RECALL IF THEY ACTUALLY STATED
17 THAT TO ME, BUT I'M ASSUMING THAT'S THE POPULATION THEY WERE
18 TALKING ABOUT.

19 **Q** OKAY. ALL RIGHT.

20 YOU SAID THAT CURRENTLY YOUR DEPARTMENT SERVES 17,000
21 TO 19,000 CLIENTS PER YEAR?

22 **A** CORRECT.

23 **Q** BUT YOU DON'T KNOW EXACTLY HOW MANY?

24 **A** IT CHANGES EVERY YEAR.

25 **Q** IT CHANGES EVERY YEAR. OKAY. SO THAT'S BETWEEN ROUGHLY

1 1,400 AND 1,600 CLIENTS EVERY MONTH?

2 **A** NO. IN TERMS OF WHO WE SERVE? WE -- OF THE 17- TO 19,000,
3 WE HAVE SORT OF AN -- THAT'S OUR ANNUAL NUMBER SERVED, BUT AT
4 ANY ONE TIME WE CAN BE SERVING UP TO 12,000 INDIVIDUALS WHO ARE
5 OPEN AND RECEIVING ONGOING SERVICES.

6 SO YOU HAVE PEOPLE ENROLLING AND DISCHARGING, AND
7 THAT ADDS TO THE DYNAMIC CAPACITY THAT WE HAVE IN A YEAR, AND
8 THEN WE HAVE A STATIC CASELOAD AT A MOMENT IN TIME.

9 **Q** OKAY. ALL RIGHT. YOU SAID THAT CURRENTLY YOUR DEPARTMENT
10 CAN SERVE ONLY ABOUT 30 PERCENT OF THE PEOPLE WHO CALL AND ASK
11 FOR SERVICES, CORRECT?

12 **A** YES.

13 **Q** SO THAT MEANS IF YOU GOT 17- TO 19,000 PEOPLE THAT YOU ARE
14 SERVING, AND THAT'S ABOUT 30 PERCENT, MY CALCULATION IS THAT
15 THAT'S ABOUT 35,000 PEOPLE IN SANTA CLARA COUNTY WHO ARE GOING
16 UNTREATED EVERY YEAR, CORRECT?

17 **JUDGE KARLTON:** OR GOING TO SOMEPLACE ELSE WHERE THEY
18 COULD GET INSURED AID OR SO FORTH.

19 **THE WITNESS:** OR SO FORTH, YES.

20 **BY MS. MORRIS**

21 **Q** SO SOME OF THEM ARE UNTREATED, AND SOME OF THEM MAY BE
22 SEEKING OUT SERVICES ELSEWHERE?

23 **A** CORRECT.

24 **Q** AND YOU SAID THAT YOUR DEPARTMENT PERFORMS A TRIAGE THAT'S
25 FINANCIAL AND BASED ON PSYCHIATRIC NEED?

1 **A** YES.

2 **Q** OKAY. IS YOUR STAFF TRAINED IN HOW TO DO INTAKE SCREENINGS?

3 **A** YES.

4 **Q** AND DO YOU DO OUTCOME STUDIES TO SEE WHAT HAPPENS WITH SOME
5 OF THE PEOPLE WHO ARE NOT ACCEPTED INTO YOUR SERVICES?

6 **A** I'M NOT SURE WE WOULD BE ABLE TO DO THAT. HOW WOULD WE HAVE
7 THE STATISTICS? WE DON'T HAVE CONTACT WITH THOSE PEOPLE, SO I
8 DON'T KNOW WHAT KIND OF OUTCOME STUDY WE COULD DO.

9 **JUDGE KARLTON:** THE ANSWER IS, AS OF NOW, FORGETTING
10 THE QUESTION, WHETHER THAT'S A LACK OF IMAGINATION, THE QUESTION
11 IS WHETHER YOU ARE PERFORMING AS SUCH A STUDY. AND THE ANSWER
12 IS NO?

13 **THE WITNESS:** CORRECT.

14 **BY MS. MORRIS**

15 **Q** SO, YOU DON'T KNOW HOW MANY OF THOSE PEOPLE BECOME HOMELESS,
16 THE PEOPLE THAT YOU SAY NO TO?

17 **A** NO, I DO NOT, NO.

18 **JUDGE HENDERSON:** NOT HAVING STUDIED IT, YOU DON'T
19 KNOW ANYTHING ABOUT IT?

20 **JUDGE KARLTON:** PLEASE DON'T ASK HER FIVE QUESTIONS
21 ABOUT WHAT SHE DIDN'T KNOW. IT'S ESTABLISHED THEY DIDN'T DO A
22 STUDY.

23 **BY MS. MORRIS**

24 **Q** SO YOU DON'T KNOW THE PUBLIC SAFETY OUTCOME OF THOSE PEOPLE
25 YOU SAY NO TO?

1 **A** OF -- BASED ON A STUDY OF INDIVIDUALS THAT WE'VE TURNED
2 AWAY, WHICH WAS YOUR QUESTION, I DO NOT.

3 **Q** OKAY.

4 **A** I MEAN, IF YOU WOULD LIKE ME TO SPEAK TO IT, I DO KNOW ABOUT
5 PEOPLE WHO REPEATEDLY COME TO OUR SYSTEM AND ARE EVENTUALLY
6 HOSPITALIZED, OR THEY WILL COME BACK. SO IF THEY COME BACK
7 AFTER REPEATED ATTEMPTS TO GET IN, IT'S USUALLY AT A HIGHER
8 LEVEL OF CARE.

9 **Q** BUT IF THEY DON'T COME BACK, YOU DON'T KNOW THAT?

10 **A** I DO NOT.

11 **Q** SO IF THERE WERE 15 PEOPLE RETURNING TO SANTA CLARA COUNTY A
12 FEW MONTHS EARLIER EVERY MONTH FOR THE NEXT COUPLE OF YEARS AND
13 THEY NEEDED MENTAL HEALTHCARE OR THEY FELT THEY NEEDED MENTAL
14 HEALTHCARE, THEY, TOO, WOULD GO THROUGH YOUR SCREENING PROCESS,
15 CORRECT, IF THEY CALLED?

16 **A** IF THEY WERE INSTRUCTED TO OR ELECTED TO, YES.

17 **Q** AND YOU COULDN'T TURN THEM AWAY JUST FOR BEING A PAROLEE,
18 CORRECT?

19 **A** IF THEY WERE ENROLLED IN THE PAROLE OUTPATIENT SERVICE, WE
20 WOULD REFER THEM THERE.

21 **Q** I'M SORRY. I DIDN'T UNDERSTAND THAT ANSWER.

22 **A** IF THEY WERE CLIENTS OF THE PAROLE OUTPATIENT SERVICES, WE
23 WOULD TURN THEM AWAY BACK TO THEIR PAROLE OUTPATIENT SERVICE.

24 **Q** IS THAT BECAUSE YOU BELIEVE THEY'RE GETTING APPROPRIATE
25 TREATMENT THROUGH THE PAROLE OUTPATIENT CLINIC?

1 **A** THAT WOULD MEAN THEY WERE IN TREATMENT. I WOULDN'T HAVE A
2 JUDGMENT ABOUT WHETHER IT WAS APPROPRIATE.

3 **Q** IF THEY WEREN'T GETTING TREATMENT THROUGH A PAROLEE
4 OUTPATIENT CLINIC, THEY WOULD JUST GO THROUGH THE SCREENING,
5 JUST THE WAY EVERYONE ELSE DOES?

6 **A** THEY WOULD.

7 **Q** AND IF THEY WERE SUFFICIENTLY SICK, ESSENTIALLY, THEN THEY
8 WOULD GET ACCEPTED INTO YOUR PROGRAMS, AND IF THEY WERE NOT,
9 THEY'D BE TURNED AWAY?

10 **A** IF THEY HAD INSURANCE, THEY WOULD BE TURNED AWAY. IF THEY
11 WERE SUFFICIENTLY SICK WITH NO INSURANCE, THEY WOULD BE
12 ACCEPTED.

13 **Q** OKAY. SO, ESSENTIALLY, THEY WOULD BE TREATED LIKE EVERYBODY
14 ELSE OF THE 55 OR SO THOUSAND PEOPLE THAT CALL YOU EVERY YEAR?

15 **A** THEY WOULD BE.

16 **Q** OKAY. YOU DON'T KNOW HOW MANY PAROLEES THERE ARE IN SANTA
17 CLARA COUNTY NOW, DO YOU?

18 **A** I DO NOT.

19 **Q** AND YOU DON'T KNOW HOW MANY ARE ACCESSING DMH SERVICES NOW
20 IN SANTA CLARA COUNTY?

21 **A** I DO NOT.

22 **Q** SANTA CLARA COUNTY -- DURING YOUR DEPOSITION, YOU DISCUSSED
23 TWO LEVELS OF CARE PROVIDED BY DMH AS AN OUTPATIENT MODEL OF
24 CARE AND A FULL SERVICE PARTNERSHIP MODEL, CORRECT?

25 **MS. FUENTES:** EXCUSE ME, YOUR HONOR. THE QUESTION IS

1 A LITTLE VAGUE. I THINK THE WITNESS MIGHT THINK DMH MIGHT BE
2 THE STATE DEPARTMENT AS OPPOSED TO COUNTY. MAYBE SHE COULD
3 CLARIFY?

4 **BY MS. MORRIS**

5 **Q** IN FACT, I WAS TALKING ABOUT THE COUNTY DEPARTMENT OF MENTAL
6 HEALTH, AND YOU WERE AS WELL?

7 **A** I HAVE BEEN UP TO NOW.

8 **Q** AS HAVE I.

9 **A** OKAY.

10 **Q** YOUR OUTPATIENT SERVICE IS A TRADITIONAL CASE MANAGEMENT
11 MODEL INVOLVING PSYCHIATRIC MEDICATION AND MINIMAL CASE
12 MANAGEMENT, CORRECT?

13 **A** THE OUTPATIENT SERVICE, YES.

14 **Q** AND THAT'S WHAT YOU PROVIDE FOR; THAT'S SORT OF THE BULK OF
15 WHAT YOUR DEPARTMENT DOES, CORRECT?

16 **A** NO, I WOULDN'T SAY IT'S THE BULK, BUT IN OUTPATIENT SERVICES
17 IT'S THE BULK OF OUTPATIENT.

18 **Q** AND THAT'S MAYBE AN HOUR OF CASE MANAGEMENT A MONTH, AND
19 MAYBE SOMETIMES SEEING A PSYCHIATRIST; IS THAT --

20 **A** VIRTUALLY ALWAYS SEEING A PSYCHIATRIST. ALMOST A HUNDRED
21 PERCENT OF OUR CLIENTS ARE ON PSYCHIATRIC MEDICATION IN THE
22 ADULT SYSTEM.

23 **Q** SO THAT COULD BE ONCE-A-MONTH PSYCHIATRY OR --

24 **A** USUALLY IT'S ONCE EVERY SIX WEEKS TO TWELVE WEEKS, ACTUALLY.

25 **Q** OKAY. AND THEN THE FULL SERVICE PARTNERSHIP IS A

1 COMPREHENSIVE MULTI-DISCIPLINARY APPROACH THAT HAS HOUSING AND
2 24-HOUR ACCESS TO TREATMENT AND CASE MANAGEMENT AND FUNDING THAT
3 CAN BE USED FOR BENEFITS FOR HOUSING OR HELPING WITH EMPLOYMENT,
4 CORRECT?

5 **A** CORRECT.

6 **Q** AND THESE KINDS OF SERVICES, THESE FULL SERVICE
7 PARTNERSHIPS, THOSE ARE NOT INTENDED FOR PEOPLE WHO CAN BE
8 SERVED IN THE OUTPATIENT MODEL OF TREATMENT, CORRECT?

9 **A** CORRECT.

10 **Q** AND IT'S AN EXPENSIVE WAY OF CARING FOR PEOPLE, CORRECT?

11 **A** YES, YES.

12 **Q** IT COSTS APPROXIMATELY \$19,000 A YEAR IN SANTA CLARA COUNTY?

13 **A** APPROXIMATELY, YES.

14 **Q** HOWEVER, THIS IS LESS EXPENSIVE THAN EMERGENCY CARE, ISN'T
15 IT?

16 **A** FREQUENT EMERGENCY CARE, YES.

17 **Q** IT'S USED ON A SMALL NUMBER OF PEOPLE, CORRECT?

18 **A** EXCUSE ME?

19 **Q** IT'S USED FOR A FAIRLY SMALL NUMBER OF PEOPLE?

20 **A** CORRECT.

21 **Q** SANTA CLARA HAS ONLY BETWEEN 300 AND 350 OF THESE SPACES?

22 **A** YES.

23 **Q** AND 175 PEOPLE OF THOSE -- 175 OF THOSE ARE FOR PEOPLE
24 COMING OUT OF THE JAIL SYSTEM; IS THAT CORRECT?

25 **A** YES.

1 Q AND YOU HAVE CURRENTLY BETWEEN 2,000 AND 2,500 PEOPLE IN
2 NEED OF ONGOING PSYCHIATRIC SERVICES LEAVING THE COUNTY JAIL
3 EVERY YEAR, CORRECT?

4 A THAT'S WHAT WE HAVE ESTIMATED, YES.

5 Q OKAY. AND YOU THINK THOSE PEOPLE HAVE, IN GENERAL, THE SAME
6 LEVEL OF NEED AS PEOPLE THAT WOULD BE COME OUT OF CDCR? THAT'S
7 YOUR ESTIMATION?

8 A THAT IS THE ESTIMATION, YES.

9 Q THOSE 175 BEDS AREN'T JUST FOR THE PEOPLE COMING OUT OF THE
10 JAIL, BUT THEY ARE ALSO FOR PEOPLE INVOLVED WITH THE CRIMINAL
11 JUSTICE SYSTEM IN SANTA CLARA COUNTY THAT ARE NOT GOING TO JAIL,
12 CORRECT, IF THEY MEET THE OTHER CRITERIA?

13 A MOST OF THEM ARE, IF NOT CURRENTLY INCARCERATED WHEN THEY'RE
14 REFERRED, THEY HAVE RECENTLY BEEN INCARCERATED.

15 Q OKAY. SO TAKING THAT 2,000 A YEAR FIGURE, AND YOU'VE ONLY
16 GOT 175 BEDS, SO THAT'S ONLY SPACE FOR LESS THAN TEN PERCENT OF
17 THE PEOPLE THAT ARE COMING OUT OF THE JAIL SYSTEMS, CORRECT?

18 A IN THIS LEVEL OF SERVICE, YES.

19 Q AND SO THE OTHER PEOPLE THAT ARE COMING OUT THE JAIL SYSTEM
20 THAT HAVE ONGOING PSYCHIATRIC NEEDS, THEY'RE EITHER BEING
21 TREATED AS OUTPATIENTS OR GETTING TREATMENT SOMEWHERE ELSE OR
22 THEY'RE GOING UNTREATED, CORRECT?

23 A CORRECT.

24 Q WOULD YOU LIKE TO HAVE MORE FSP'S, FULL SERVICE
25 PARTNERSHIPS?

1 **A** WOULD I LIKE TO HAVE MORE CAPACITY TO SERVE THEM?

2 **Q** MM-HMM.

3 **A** YES, I WOULD.

4 **Q** YOU HAD DISCUSSIONS WITH THE STATE REGARDING CONTRACTING FOR
5 SOME OF THESE SAME TYPES OF SERVICES FOR STATE PAROLEES,
6 CORRECT?

7 **A** CORRECT.

8 **Q** AND OUT OF -- IT WAS SPECIFICALLY FOR THE FULL SERVICE
9 PARTNERSHIP POSITIONS?

10 **A** YES, AND THERAPEUTIC HOUSING COMBINED.

11 **Q** OKAY. IN SEPTEMBER OF THIS YEAR, YOU WERE CLOSE TO HAVING
12 AN AGREEMENT FOR 30 OF THESE SLOTS FOR THE STATE, CORRECT?

13 **A** YES.

14 **Q** AND AT THAT TIME YOU HAD BEEN IN DISCUSSION WITH THE STATE
15 ABOUT THIS POSSIBLE CONTRACT FOR ABOUT SIX MONTHS?

16 **A** WE HAD BEEN IN DISCUSSION FOR ABOUT SIX MONTHS?

17 **Q** MM-HMM.

18 **A** I CAN'T RECALL EXACTLY, BUT IT WAS AT LEAST SIX MONTHS.

19 **Q** OKAY. AND AT THAT POINT, WHEN THE CONTRACT WAS CLOSE TO
20 DONE, YOU THOUGHT THAT IT WOULD TAKE APPROXIMATELY -- IT MIGHT
21 TAKE APPROXIMATELY SIX MONTHS TO GET ANOTHER OF THESE -- TO GET
22 THESE 30 BEDS READY AND GOING, CORRECT?

23 **A** CORRECT.

24 **Q** AND YOU THOUGHT THAT TEN OF THEM WERE GOING TO BE READY BY
25 NOVEMBER?

1 **A** CORRECT. THAT'S WHAT I STATED.

2 **Q** I'M SORRY?

3 **A** THAT'S WHAT I STATED; THEY'RE NOT READY, BUT THAT WAS OUR
4 PLAN.

5 **Q** OKAY. AND YOU THINK -- YOU THOUGHT THAT WAS GOING TO BE
6 POSSIBLE --

7 **A** I DID.

8 **Q** WAS IT JUST A CONTRACTING PROBLEM?

9 **A** MULTIPLE PROBLEMS HAVE OCCURRED, BUT THE CONTRACT ISN'T
10 SIGNED, AND THE FACILITY ISN'T READY, AND WE'VE HAD FREEZES
11 BECAUSE OF BUDGET CUTS, AND THEY HAD PROBLEMS BECAUSE OF THE
12 STATE BUDGET SITUATION. SO THERE HAVE BEEN HANG-UPS ALONG THE
13 WAY.

14 **Q** THE STATE'S GOING TO BE PAYING FOR THE FULL SERVICE BEDS --

15 **A** YES.

16 **Q** -- WHEN IT HAPPENS, CORRECT? ARE THEY GOING TO BE PAYING
17 THE \$19,000, ROUGHLY?

18 **A** YES.

19 **Q** ARE YOU AWARE THAT THAT IS APPROXIMATELY \$24,000 LESS PER
20 YEAR THAN THE AVERAGE COST OF \$43,000 PER FOR INCARCERATING
21 SOMEONE?

22 **MS. FUENTES:** OBJECTION. LACK OF FOUNDATION.

23 **JUDGE HENDERSON:** ARE YOU AWARE OF IT, YES OR NO?

24 **JUDGE KARLTON:** THERE'S BEEN NO DISPUTE ABOUT THAT
25 FIGURE. IT IS ESTIMATED THAT, AT LEAST AS FAR AS MENTALLY ILL

1 PRISONERS ARE CONCERNED, IT FIGURES ABOUT \$43,000. ARE YOU
2 AWARE OF THAT, MA'AM?

3 **THE WITNESS:** I DO BELIEVE I AM AWARE OF THAT. I'VE
4 HEARD THAT FIGURE.

5 **JUDGE REINHARDT:** ARE YOU AWARE OF THE DIFFERENCE
6 BETWEEN 43,000 AND 19,000?

7 **THE WITNESS:** I SURE HOPE SO, BUT I'M GETTING OLD.

8 **MS. MORRIS:** I WOULD HAVE SKIPPED THAT ONE.

9 **BY MS. MORRIS**

10 **Q** WHEN YOU WERE WRITING YOUR REPORT AND OPINING THAT SANTA
11 CLARA COUNTY COULDN'T ABSORB AN INFLUX OF MENTALLY ILL PAROLEES,
12 YOU BELIEVED THAT A LARGE OR SOME SUBSTANTIAL PROPORTION OF THE
13 MENTALLY ILL PAROLEES WOULD NEED CARE AT AN EQUIVALENT OF THE
14 FULL SERVICE PARTNERSHIP LEVEL, CORRECT?

15 **A** I AM ASSUMING THAT.

16 **Q** HOWEVER, THE PEOPLE THAT ARE -- ONLY NINE PERCENT OF THE
17 PEOPLE THAT ARE COMING OUT OF THE JAIL RIGHT NOW, OF THE
18 MENTALLY ILL PEOPLE COMING OUT OF THE JAIL, ARE RECEIVING THAT
19 LEVEL OF CARE?

20 **A** ONLY -- EXCUSE ME?

21 **Q** ABOUT NINE PERCENT?

22 **A** NINE PERCENT?

23 **Q** MM-HMM.

24 **A** THAT'S A CAPACITY ISSUE AND NOT RELATED TO THE NEED.

25 **Q** BUT THAT IS THE SITUATION RIGHT NOW?

1 **A** YOU'RE SPEAKING ABOUT THE SLOTS, THE 175 SLOTS THAT WE HAVE
2 FOR THIS LEVEL OF CARE?

3 **Q** YES.

4 **A** CORRECT.

5 **Q** OKAY. YOUR FIGURES ON RECIDIVISM CAME FROM THE STATE,
6 CORRECT?

7 **A** YES.

8 **Q** AND THEY CAME FROM THE -- WHAT'S BEEN MARKED SANTA CLARA
9 COUNTY'S EXHIBIT O, THE CDCR DIVISION OF ADULT PAROLE
10 OPERATIONS, MENTALLY ILL PAROLEE POPULATION REPORT OF MARCH 28,
11 2008; IS THAT --

12 **A** YES.

13 **Q** ACCORDING TO THAT CHART, THE EOP -- THE RECIDIVISM RATE FOR
14 PEOPLE WHO ARE AT THE EOP LEVEL OF CARE DROPS 12 PERCENTAGE
15 POINTS, FROM 75 PERCENT TO 63 PERCENT, IF THERE'S ANY PAROLE
16 OUTPATIENT CLINIC CONTACT, CORRECT?

17 **A** I DO NOT HAVE IT IN FRONT OF ME, UNFORTUNATELY, AND I JUST
18 CANNOT ANSWER.

19 (DOCUMENT DISPLAYED.)

20 **MS. MORRIS:** MAY I APPROACH THE WITNESS?

21 **JUDGE HENDERSON:** YOU MAY.

22 **BY MS. MORRIS**

23 **Q** IS THIS DOCUMENT THAT YOU ARE LOOKING AT, WHICH WAS MARKED
24 AS PLAINTIFF'S -- OR AS SANTA CLARA COUNTY'S EXHIBIT O AND IS
25 NAMED, "THE DIVISION OF ADULT PAROLE OPERATIONS MENTALLY ILL

1 PAROLEE POPULATION," MARCH 28TH, 2008, IS THIS THE DOCUMENT YOU
2 RELIED ON TO DETERMINE THE RECIDIVISM RATES THAT YOU TALK ABOUT
3 IN YOUR REPORT?

4 **A** YES.

5 **MS. FUENTES:** EXCUSE ME, YOUR HONOR. JUST FOR THE
6 RECORD, IT'S NOW MARKED AS DEFENDANT INTERVENOR EXHIBIT 323.

7 **JUDGE KARLTON:** THANK YOU, MA'AM.

8 **MS. MORRIS:** SORRY, I WAS USING THE WRONG LIST.

9 **BY MS. MORRIS**

10 **Q** IF YOU TURN TO PAGE 4 OF THIS DOCUMENT, THERE IS A CHART IN
11 THE MIDDLE OF THE PAGE THAT TALKS ABOUT RECIDIVISM RATES OF
12 MENTALLY ILL PAROLEES, DO YOU SEE THAT?

13 **A** YES.

14 **Q** AND FOR EOP, WHICH ARE THE PORTION OF THE PAROLE -- WELL,
15 THE PORTION OF THE CDCR POPULATION AT A HIGHER LEVEL OF MENTAL
16 HEALTHCARE, IT GIVES A RECIDIVISM RATE FOR PAROLEES WITHOUT POC
17 CONTACT PRIOR TO THE PAROLEE BEING RETURNED TO CUSTODY OF
18 75 PERCENT; DO YOU SEE THAT?

19 **A** YES.

20 **Q** AND FOR PAROLEES WITH POC CONTACT PRIOR TO BEING RETURNED TO
21 CUSTODY, THAT RATE DROPS TO 63 PERCENT, CORRECT?

22 **A** CORRECT.

23 **Q** SO, IN FACT, THE RECIDIVISM RATE DROPS BY 12 PERCENTAGE
24 POINTS JUST WITH CONTACT WITH PAROLEE OUTPATIENT CLINICS,
25 CORRECT?

1 **A** IT APPEARS SO.

2 **Q** AND, SIMILARLY, FOR THE 3CMS, THE LOWER LEVEL OF MENTAL
3 HEALTHCARE IN CDCR, THAT RATE DROPS FROM 77 PERCENT WITHOUT POC
4 CONTACT TO 54 PERCENT WITH POC CONTACT?

5 **A** CORRECT.

6 **Q** SO THAT IS A DROP OF 23 PERCENTAGE POINTS JUST WITH POC --
7 WITH PAROLE OUTPATIENT CLINIC CONTACT?

8 **A** YES.

9 **Q** WOULD YOU EXPECT THAT IF SOME OF THESE PEOPLE WERE ABLE TO
10 ACCESS FULL SERVICE PARTNERSHIPS, THAT THAT RECIDIVISM RATE
11 WOULD DROP EVEN FARTHER?

12 **A** YOU KNOW, I REALLY DON'T KNOW, BECAUSE I'M NOT SURE THAT
13 THIS EOP POPULATION IS WHAT WE ARE TALKING ABOUT IN TERMS OF
14 POPULATION THAT WOULD BE IN A FULL-SERVICE PARTNERSHIP. I JUST
15 DON'T KNOW IF THEY HAVE THE SAME LEVEL OF PSYCHIATRIC ILLNESS OR
16 NEED.

17 **Q** OKAY. WOULD YOU EXPECT FOR WHOEVER -- WHATEVER PAROLEES
18 ENTERED INTO A FULL SERVICE PARTNERSHIP PROGRAM BEING ELIGIBLE
19 FOR IT, WOULD YOU EXPECT THEIR RECIDIVISM RATE TO DROP AS WELL?

20 **A** I WOULD.

21 **Q** OKAY. ONE LAST QUESTION.

22 IN YOUR REPORT YOU TALK ABOUT A SNAPSHOT THAT WAS
23 TAKEN OF -- A METAPHORICAL SNAPSHOT OF 175 MENTALLY ILL INMATES
24 IN THE MAIN JAIL IN SANTA CLARA COUNTY.

25 **A** YES.

1 Q YOU DON'T KNOW ANYTHING ABOUT HOW THOSE PARTICULAR 175
2 MENTALLY ILL --

3 JUDGE HENDERSON: YOU LOST A THOUSAND DOLLARS,
4 BECAUSE JUDGE KARLTON SAID HE WAS GOING TO GIVE A THOUSAND
5 DOLLARS TO THE FIRST ATTORNEY WHO SAID "ONE MORE QUESTION" AND
6 ACTUALLY ASKED ONE MORE, BUT HE PROBABLY WON'T DO IT NOW. GO
7 ON.

8 MR. MELLO: I HAVE ONE MORE QUESTION.

9 BY MS. MORRIS

10 Q YOU DON'T KNOW HOW THOSE PARTICULAR 175 MENTALLY ILL INMATES
11 WERE CHOSEN, CORRECT?

12 A I DO NOT.

13 Q SO YOU DON'T KNOW IF THEY WERE THE MOST ILL OR THE MOST
14 RECIDIVISTIC OR WHATEVER?

15 A NO, IT WAS A SAMPLE THAT THEY LOOKED AT OUT OF THE OPEN
16 CASELOAD, BUT I DON'T KNOW ANYTHING FURTHER BEYOND THAT.

17 MS. MORRIS: NO FURTHER QUESTIONS.

18 JUDGE HENDERSON: ANYTHING FROM CCPOA?

19 MS. LEONARD: NO, YOUR HONOR.

20 JUDGE HENDERSON: ANY REDIRECT?

21 MS. FUENTES: I HAVE ONE QUESTION.

22 THE WITNESS: DO I GET PAID A THOUSAND --

23 REDIRECT EXAMINATION BY MS. FUENTES

24 JUDGE HENDERSON: OFFER LAPSED UPON MY ANNOUNCEMENT.

25

1 **BY MS. FUENTES**

2 **Q** THE NUMBERS MS. MORRIS MENTIONED, THAT THE RESULT OF THE
3 RELIEF THAT THEY'RE SEEKING WOULD BE 15 MENTALLY ILL PAROLEES
4 RETURNING TO SANTA CLARA COUNTY, IS THAT A PROBLEM FOR SANTA
5 CLARA COUNTY, IF YOU HAD 15 PER MONTH MENTALLY ILL PAROLEES
6 COMING INTO THE COUNTY?

7 **A** YES, IT IS A PROBLEM. AS I THINK I STATED IN MY REPORT, WE
8 HAVE HAD TO ELIMINATE OUR WAITING LIST ONCE WE HIT 500. WE
9 DECIDED WE WOULD NO LONGER HAVE A WAITING LIST. SO FOR US TO
10 ADD ANOTHER 15 INDIVIDUALS, ALONG WITH EVERY OTHER POPULATION
11 THAT IS NOW APPEARING TO BE COMING TO OUR DOOR MORE AND MORE
12 FREQUENTLY, I THINK THAT WHAT WE ARE EXPECTING TO EXPERIENCE IS
13 A GREATER AND GREATER POOL OF NEED THAT IS GETTING LESS AND LESS
14 ACCESS TO SERVICES.

15 I BELIEVE THAT THAT IS A PROBLEM, BECAUSE I THINK IT
16 CREATES CONDITIONS IN THE COMMUNITY THAT WILL INEVITABLY LEAD TO
17 SEVERE NEGATIVE IMPACT ON PUBLIC SAFETY. THAT'S MY OPINION.

18 **MS. FUENTES:** THANK YOU.

19 **RECROSS-EXAMINATION BY MS. MORRIS**

20 **BY MS. MORRIS**

21 **Q** IF THOSE 15 PAROLEES RETURNED FOUR MONTHS FROM NOW INSTEAD
22 OF TODAY, WOULD THAT BE ESSENTIALLY THE SAME PROBLEM?

23 **A** IF THEY RETURNED FOUR MONTHS FROM NOW AS OPPOSED TO TODAY,
24 IT WOULD BE A PROBLEM ON THAT DAY, AS OPPOSED TO EVERY MONTH
25 THAT WE DEAL WITH 15, BUT IT WOULD BE -- ARE YOU SAYING WOULD

1 THE PROBLEM CHANGE?

2 Q RIGHT.

3 A IT JUST DEPENDS ON HOW YOU LIKE YOUR PROBLEMS, DRAWN OUT OR
4 ONE BIG DOSE.

5 JUDGE KARLTON: THE ANSWER IS IT'S THE SAME PROBLEM
6 YOU'VE GOT NOW OR THREE MONTHS FROM NOW OR WHENEVER THEY'RE
7 RELEASED, RIGHT?

8 THE WITNESS: YEP.

9 JUDGE KARLTON: SEE HOW SIMPLE THE QUESTION IS?

10 JUDGE HENDERSON: THANK YOU VERY MUCH FOR TESTIFYING,
11 MS. PENNA. YOU'RE EXCUSED. YOU MAY CALL YOUR NEXT WITNESS.

12 MS. WANG: GOOD AFTERNOON, YOUR HONORS. THERESA WANG
13 FOR THE LEGISLATOR INTERVENORS. THE LEGISLATOR INTERVENORS CALL
14 FORMER ASSEMBLY MEMBER TODD SPITZER TO THE STAND.

15 TODD SPITZER

16 HAVING BEEN CALLED AS A WITNESS BY THE DEFENDANT INTERVENOR WAS
17 FIRST DULY SWORN AND EXAMINED AS FOLLOWS:

18 THE CLERK: STATE AND SPELL YOUR FULL NAME FOR THE
19 RECORD.

20 THE WITNESS: TODD, T-O-D-D, SPITZER, S-P-I-T-Z-E-R.

21 DIRECT EXAMINATION BY MS. WANG

22 BY MS. WANG

23 Q GOOD AFTERNOON, MR. SPITZER.

24 A GOOD AFTERNOON.

25 Q CAN YOU BRIEFLY DESCRIBE FOR ME YOUR EDUCATIONAL BACKGROUND

1 AND WORK HISTORY?

2 **A** MY EDUCATIONAL BACKGROUND, I HAVE A BACHELOR'S DEGREE FROM
3 UCLA, A MASTER'S DEGREE FROM THE UNIVERSITY OF CALIFORNIA
4 BERKELEY, MY LAW DEGREE FROM THE UNIVERSITY OF CALIFORNIA
5 HASTINGS COLLEGE OF THE LAW.

6 I HAVE A POST CERTIFICATE FROM THE STATE OF
7 CALIFORNIA AS A PEACE OFFICER. I WAS A PEACE OFFICER FOR LOS
8 ANGELES POLICE DEPARTMENT FOR TEN YEARS FROM 1990 TO 2000.

9 I HAVE BEEN A PROSECUTOR IN THE ORANGE COUNTY
10 DISTRICT ATTORNEY'S OFFICE FROM -- SIX YEARS FROM 1990 TO 1996,
11 A COUNTY SUPERVISOR FOR SIX YEARS AFTER THAT, BEEN A MEMBER OF
12 THE STATE LEGISLATURE FOR SIX YEARS, AND NOW I'M A PROSECUTOR
13 AGAIN IN THE ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE.

14 **Q** AND FROM WHAT TIME DID YOU SERVE AS ASSEMBLYMAN?

15 **A** I WAS IN THE STATE LEGISLATURE FROM 1992 TO NOVEMBER 30TH OF
16 THIS YEAR. I'M SORRY, 2002 TO NOVEMBER 30TH OF THIS YEAR.

17 **Q** DURING YOUR TIME IN THE CALIFORNIA STATE ASSEMBLY DID YOU
18 SERVE ON ANY COMMITTEES?

19 **A** YES, I WAS A MEMBER OF THE PUBLIC SAFETY COMMITTEE FOR FOUR
20 YEARS AND FOR THE LAST ABOUT YEAR AND A HALF, COULD BE TWO
21 YEARS, I WAS THE CHAIRMAN OF THE SELECT COMMITTEE THAT OVERSEES
22 OUR STATE PRISONS.

23 **Q** AND WHAT WERE YOUR RESPONSIBILITIES IN THAT POSITION AS HEAD
24 OF THE SELECT COMMITTEE?

25 **A** I WAS THE ONLY REPUBLICAN TO CHAIR A COMMITTEE. MY

1 RESPONSIBILITIES WERE MORE ON PAPER THAN IN ACTUALITY. SO WHAT
2 I TOOK ON AS MY JOB WAS TO DO THE BEST I COULD AS A MEMBER OF
3 THE MINORITY PARTY TO TRY TO OVERSEE THE SUCCESSFUL DRAFTING AND
4 PASSAGE OF LEGISLATION THAT WOULD HELP DEAL WITH OUR PRISON
5 OVERCROWDING SYSTEM, AND ALSO WORK AND NEGOTIATE WITH ALL THE
6 PARTIES, MANY OF THEM PRESENT AND PART OF THIS LITIGATION, TO
7 TRY TO SEE IF WE COULD CRAFT, IN CONJUNCTION WITH THE
8 LEGISLATURE AND THE DEPARTMENT OF CORRECTIONS AND THE
9 ADMINISTRATION, REMEDIES TO HELP WITH OUR PRISON OVERCROWDING
10 AND RECIDIVISM PROBLEM WITHOUT AN EARLY RELEASE FROM STATE
11 PRISON OR INTERVENTION BY THE FEDERAL COURT.

12 **Q** AND WHEN YOU REFER TO THAT LEGISLATION, ARE YOU SPEAKING OF
13 ASSEMBLY BILL 900?

14 **A** AB 900 WAS PROBABLY THE KEY CENTRAL LEGISLATION THAT WE
15 ENDED UP IN EFFECTUATING AND PASSING, ALTHOUGH THERE'S OBVIOUSLY
16 OTHER ANCILLARY PIECES OF LEGISLATION THAT ADMITTEDLY WAS
17 PROBABLY THE KEY PIECE OF LEGISLATION THAT I PUT ALL MY EGGS IN
18 THAT BASKET, YES.

19 **Q** WHAT IS AB 900?

20 **A** AB 900 WAS LEGISLATION, ABOUT A \$7 BILLION PACKAGE, THAT WAS
21 DESIGNED TO HELP WITH INCREASED CAPACITY IN OUR COUNTY JAILS,
22 BUILD ADDITIONAL CAPACITY IN OUR STATE PRISON SYSTEM TO
23 ALLEVIATE OVERCROWDING, TO BUILD REENTRY FACILITIES IN LOCAL
24 COMMUNITIES IN ORDER TO ALLOW INMATES WHO WERE COMING BACK IN
25 PROBABLY THEIR LAST 12 TO 18 MONTHS OF INCARCERATION, TO SERVE

1 THEIR TIME IN THE LOCAL COMMUNITIES, WHAT I WOULD CALL INTENSIVE
2 REHABILITATION.

3 THOSE ARE PROBABLY THE PRIMARY COMPONENTS OF THAT
4 LEGISLATION.

5 **Q** IS AB 900 AN ALTERNATIVE TO A PRISONER RELEASE ORDER?

6 **A** I THINK THAT AS A LEGISLATOR AND LOOKING AT IT FROM, I
7 THINK, THE PERSPECTIVE OF THE LEGISLATURE I WAS SERVING WITH, WE
8 WERE VERY AWARE OF THE THREAT OF LITIGATION AND THE THREAT OF AN
9 EARLY RELEASE ORDER AS A RESULT OF ANY LITIGATION, AND WE WERE
10 DEEPLY MOTIVATED TO DO WHAT WE COULD AS MEMBERS OF THE
11 LEGISLATURE TO PASS LEGISLATION IN AB 900 SO THAT WE WOULD NOT
12 HAVE EARLY RELEASE.

13 BUT IN ALL FAIRNESS, IT WASN'T ALWAYS ABOUT EARLY
14 RELEASE. IT WAS ALWAYS ABOUT TRYING TO DO THE RIGHT THING. WE
15 HAVE A TERRIBLE OVERCROWDING PROBLEM IN CALIFORNIA. WE ALL KNOW
16 THAT. I HAVE BEEN IN MANY OF OUR PRISONS, AND IT'S, IN MY
17 OPINION, RELATIVELY INHUMANE.

18 SECONDLY, WE HAVE TO DO A MUCH BETTER JOB AT HOW WE
19 ARE DEALING WITH PRISONERS WHILE THEY'RE IN CUSTODY, AND OUR
20 RECIDIVISM RATE IS COMPLETELY UNACCEPTABLE. SO IT WASN'T JUST
21 SAYING, HEY, HOW DO WE STOP EARLY RELEASE. IT WAS INTENDED TO
22 BE A COMPREHENSIVE PACKAGE TO SAY ONCE AND FOR ALL THAT WE WERE
23 NOT GOING TO ACCEPT THE STATUS QUO OF HOW WE DEAL WITH PRISONS
24 AND INCARCERATION, REHABILITATION IN THE STATE OF CALIFORNIA.

25 **Q** HAVE THE BEDS AUTHORIZED BY AB 900 BEEN BUILT YET?

1 **A** TO MY KNOWLEDGE, THERE HAS BEEN NO NEW CONSTRUCTION ON ANY
2 OF OUR EXISTING PRISONS IN CALIFORNIA. IT'S ALSO MY
3 UNDERSTANDING THAT THERE ARE SOME REENTRY FACILITIES, ONE HERE
4 IN SAN FRANCISCO. I BELIEVE SANTA BARBARA HAS ONE. BUT AS
5 ALLOWED BY AB 900, I BELIEVE THE ANSWER IS NO.

6 **Q** WHY NOT?

7 **A** WELL, BELIEVE ME, I HAVE WRITTEN ABOUT THIS. I HAVE OPINED
8 ABOUT IT. I FINGERPOINTED A LOT AT THIS. I KNOW THE BENCH IS
9 VERY FRUSTRATED. I KNOW MANY OF THE PARTY LITIGANTS ARE
10 FRUSTRATED. I AM VERY FRUSTRATED.

11 IN MY OPINION, WHEN WE PASSED AB 900, I BELIEVE IN
12 MAY OF 2007, IT WAS WITH THE UNDERSTANDING IT WAS GOING TO BE
13 IMPLEMENTED FORTHWITH. IT IS COMPLETELY UNACCEPTABLE TO ME,
14 ALTHOUGH I'M NOW A RETIRED LEGISLATOR, THAT AB 900 HAS NOT BEEN
15 SUCCESSFULLY IMPLEMENTED. IT'S UNACCEPTABLE.

16 **JUDGE KARLTON:** THE QUESTION IS WHY WAS IT NOT
17 IMPLEMENTED?

18 **THE WITNESS:** I WOULD ARGUE, YOUR HONOR, THERE'S
19 SEVERAL FACTORS. I BELIEVE THE CALIFORNIA DEPARTMENT OF
20 CORRECTIONS HAS DRAGGED ITS FEET ON THE IMPLEMENTATION OF AB
21 900. AND I BELIEVE THAT THE ATTORNEY GENERAL OF THE STATE OF
22 CALIFORNIA, JERRY BROWN, HAS NOT PLAYED THE KIND OF LEADERSHIP
23 ROLE THAT IS NECESSARY TO ENSURE THAT HIS OFFICE, WHICH IS
24 RESPONSIBLE FOR ISSUING A CLEAN BOND OPINION AT SOME POINT WITH
25 RESPECT TO THE AB 900 BONDS, THAT THAT OPINION AND THE WORK

1 RELATED THERETO TO HONE DOWN TO THE SATISFACTION OF THE
2 LEGISLATURE SO THAT AB 900 COULD BE IMPLEMENTED.

3 IN OTHER WORDS, WHEN WE PASSED AB 900, WE BELIEVED
4 THAT IT WAS GOING TO BE IMPLEMENTED FORTHWITH. NOTHING HAPPENED
5 FOR ALMOST A YEAR. THEN WE WERE TOLD BY THE ADMINISTRATION
6 DURING OUR SETTLEMENT NEGOTIATIONS, WHICH WERE SANCTIONED BY
7 THIS COURT, AND I WAS PARTY TO THAT, WE WERE TOLD PRETTY MUCH
8 HAPHAZARDLY AND BY QUITE SURPRISE THAT AB 900 COULD NOT BE
9 IMPLEMENTED BECAUSE THE ATTORNEY GENERAL HAD NOT ISSUED A CLEAN
10 BOND OPINION. MUCH TO MY CHAGRIN AND SHOCK AND SURPRISE, THAT
11 WAS NOT DISCLOSED BY THE ADMINISTRATION --

12 JUDGE REINHARDT: BY "THE ADMINISTRATION," YOU MEAN
13 JERRY BROWN, THE ATTORNEY GENERAL?

14 THE WITNESS: BY THE GOVERNOR'S OFFICE. THE
15 GOVERNOR'S OFFICE NEVER TOLD US THAT THERE WERE ANY PROBLEMS
16 WITH THE IMPLEMENTATION OF AB 900 SUBSEQUENT TO THE TIME THAT
17 THE LEGISLATURE PASSED AB 900. AND WHEN WE WERE IN SETTLEMENT
18 NEGOTIATIONS, AND I FOUND OUT THAT FACT, I --

19 MS. TILLMAN: OBJECTION, YOUR HONOR. I BELIEVE THE
20 SETTLEMENT DISCUSSIONS ARE NOT TO BE DISCLOSED DURING THIS
21 PROCEEDING.

22 JUDGE REINHARDT: WELL, HE'S NOT TALKING ABOUT WHAT
23 HAPPENED BETWEEN THE PARTIES. HE'S TALKING ABOUT WHAT HE WAS
24 TOLD. BY WHOM WERE YOU TOLD THIS? IF HE LEARNED SOMETHING FROM
25 THE GOVERNOR OR THE ATTORNEY GENERAL --

1 **JUDGE KARLTON:** THAT WOULD BE DIFFERENT. THAT'S
2 OUTSIDE OF --

3 **JUDGE HENDERSON:** DID YOU LEARN THIS FROM THE
4 GOVERNOR SEPARATELY?

5 **THE WITNESS:** I LEARNED IT FROM THE GOVERNOR'S LEGAL
6 COUNSEL, ANDREA HOCH.

7 **JUDGE KARLTON:** YOU LEARNED IT IN THE COURSE OF THE
8 SETTLEMENT NEGOTIATIONS?

9 **THE WITNESS:** NO, NO, OUTSIDE THE SETTLEMENT
10 NEGOTIATIONS.

11 **JUDGE HENDERSON:** OKAY. PROCEED.

12 **THE WITNESS:** AND SO I LEARNED THAT OUTSIDE THE
13 SETTLEMENT NEGOTIATIONS AND BROUGHT THAT TO THE SETTLEMENT
14 DISCUSSIONS, AND I WON'T, OF COURSE, TALK ABOUT THAT.

15 **JUDGE REINHARDT:** YOU CAN'T.

16 **THE WITNESS:** HOWEVER, IT WAS -- I THINK IT WAS AN
17 AMAZING DECLARATION THAT THERE WAS SOME FACTS, SOME LEGAL
18 HURDLE, THAT WAS INHIBITING THE ABILITY TO FLOAT AND LEVERAGE
19 THE AB 900 BONDS WITHOUT COMING BACK TO THE LEGISLATURE AT THE
20 EARLIEST POSSIBLE MOMENT AND TELLING US THAT WE HAD A PROBLEM.
21 IT'S KIND OF LIKE NASA, YOU HAVE A PROBLEM. NO ONE TOLD US.
22 BECAUSE I WAS HIGHLY MOTIVATED TO GET MOVING AS QUICKLY AS
23 POSSIBLE.

24 SO THEN I SAT DOWN WITH THE ATTORNEY GENERAL
25 ONE-ON-ONE, NOT IN THE SETTLEMENT NEGOTIATIONS. IT WAS DURING

1 THE PEACE OFFICER MEMORIAL CEREMONY, AND THE ATTORNEY GENERAL
2 AND I HAD SOME TIME TO HAVE A CONVERSATION, AND I TALKED TO THE
3 ATTORNEY GENERAL, AND I EXPLAINED TO HIM THAT THE IMPLEMENTATION
4 OF AB 900 WAS CRITICAL, AND IT WAS LAGGING, AND I FELT IT WAS
5 IRRESPONSIBLE. AND I ASKED HIM AND IMPORED UPON HIM TO TAKE A
6 LEADERSHIP ROLE IN AB 900. HE TOLD ME HE WOULD GO BACK TO HIS
7 OFFICE AND TALK TO HIS MANAGEMENT, DEPUTIES, PERSONNEL, AND THAT
8 HE WOULD GET BACK TO ME.

9 SUBSEQUENT TO THAT -- THEN AFTER, I THINK EVERYBODY
10 WELL KNOWS, AND IT'S PART OF THE RECORD, THERE WAS SOME
11 QUOTE/UNQUOTE CLEAN-UP LEGISLATION TO AB 900, WHICH THE
12 LEGISLATURE DID NOT PASS, AND THE REASON -- THAT WAS THE SAME
13 NIGHT THAT MR. KELSO'S REQUEST FOR RECEIVER BEDS WAS PART OF THE
14 PACKAGE. AND I INQUIRED THAT NIGHT OF MS. HOCH OF THE
15 GOVERNOR'S OFFICE WHETHER OR NOT JERRY BROWN HAD ISSUED ANY KIND
16 OF DECLARATION THAT THE AB 900 FIX, NOW WE ARE CALLING IT THE
17 CLEAN-UP TO AB 900, WHETHER EVERYBODY IN THE CHAIN OF COMMAND
18 WAS SATISFIED THAT IF WE PASSED THIS LEGISLATION, THE CLEAN-UP
19 LEGISLATION TO AB 900, THE ORIGINAL AB 900, WOULD THIS GET
20 AB 900 OFF THE DIME, BECAUSE I WANTED TO VOTE FOR MR. KELSO'S
21 BEDS, BUT I ALSO WANTED TO KNOW I WAS GETTING THE BENEFIT OF THE
22 BARGAIN OF AB 900 ALMOST A YEAR LATER.

23 THE ATTORNEY GENERAL DID NOT CALL ME BACK. THEY
24 TRIED TO PUT ME IN TOUCH WITH A DEPUTY ATTORNEY GENERAL OR
25 ASSISTANT ATTORNEY GENERAL, AND I MADE IT VERY CLEAR THAT WAS

1 NOT GOOD ENOUGH. I WANTED TO KNOW FROM THE ATTORNEY GENERAL
2 HIMSELF IF HE WAS GOING TO -- IF HE WAS SATISFIED THAT THE
3 AB 900 FIX WOULD ACTUALLY MOVE AB 900 FORWARD, AND I NEVER GOT
4 AN ANSWER TO THAT QUESTION. AND THAT IS WHY WE DID NOT PASS THE
5 AB 900 FIX, BECAUSE I MADE IT CLEAR TO MY CAUCUS THAT WE WERE
6 NOT GOING TO FASHION AN AB 900 FIX AND GIVE MR. KELSO HIS BEDS
7 UNLESS WE KNEW WE WERE GOING TO GET THE FUNDING FOR AB 900,
8 BECAUSE, AGAIN -- AND I KNOW NOW I'M BEING REDUNDANT --

9 **JUDGE KARLTON:** DON'T BE.

10 **THE WITNESS:** DON'T BE. I'M SORRY. THEN I'LL STOP.

11 **BY MS. WANG**

12 **Q** YOU MENTIONED MR. KELSO'S BEDS. IS PERMITTING MR. KELSO,
13 THE RECEIVER, TO CONTINUE HIS WORK ALSO AN ALTERNATIVE TO A
14 PRISONER RELEASE ORDER?

15 **A** I BELIEVE IT WAS AUGUST OF THIS YEAR. THE ANSWER IS YES.
16 IN AUGUST OF THIS YEAR, I ATTENDED A PRESS CLUB MEETING IN
17 SACRAMENTO. I DID THIS WHEN MR. SILLEN WAS THE RECEIVER, AND HE
18 SPOKE IN SACRAMENTO, AND I DID IT WHAT -- MR. KELSO WAS THE
19 RECEIVER. I PERSONALLY WENT TO THE SACRAMENTO PRESS CLUB TO
20 HEAR THEM SPEAK. MR. KELSO WAS UNEQUIVOCAL THAT IF HE GOT
21 HIS -- LET ME REPHRASE THAT. MR. KELSO WAS UNEQUIVOCAL IN
22 RESPONSE TO A QUESTION.

23 **MR. BIEN:** OBJECTION, CALLS FOR HEARSAY.

24 **JUDGE KARLTON:** NOT FOR THE TRUTH OF THE MATTER.

25 IT'S WHAT WAS SAID WHICH INFLUENCED THIS WITNESS'S CONDUCT,

1 APPARENTLY. YOU MAY ANSWER. I ASSUME THAT'S RIGHT.

2 **THE WITNESS:** IT'S FOR THE EFFECT IT HAD ON ME, YOUR
3 HONOR. THANK YOU.

4 SO I SAT THERE AND HEARD MR. KELSO INDICATE THAT THE
5 QUESTION WAS SOMETHING TO THE EFFECT OF, DOES THE NUMBER -- THE
6 POPULATION IN PRISON -- DOES THE NUMBER OF INMATES HAVE AN
7 IMPACT ON WHETHER OR NOT YOU BELIEVE YOU CAN DELIVER
8 CONSTITUTIONAL HEALTHCARE? AND MR. KELSO SAYS, I CAN DELIVER
9 CONSTITUTIONAL HEALTHCARE IRRESPECTIVE OF THE NUMBER OF INMATES
10 THAT ARE PRESENTLY HOUSED OR WILL BE HOUSED IN THE FUTURE IN OUR
11 PRISON SYSTEM. AND I SAT THERE LITERALLY DUMBFOUNDED, BECAUSE
12 THAT WAS NOT THE THEORY OR THE LINE I HAD ALWAYS BEEN TOLD AS A
13 MEMBER OF THE STATE LEGISLATURE.

14 I WAS ALWAYS TOLD THAT THERE WAS A RELATIONSHIP
15 BETWEEN THE NUMBER OF INMATES AND THE ABILITY TO DELIVER
16 CONSTITUTIONAL HEALTHCARE.

17 AND SO WHEN I HEARD THAT, THAT COMPLETELY
18 CORROBORATED AND WENT TO THE HEART OF THE MATTER FOR ME THAT IF
19 WE DID AB 900 FIX, WITH ITS COMPONENTS THAT I'VE ALREADY
20 OUTLINED, AND WE DID, MR. KELSO, ON BEHALF OF THE COURT, THE
21 RECEIVER BEDS, THAT ALL THOSE TAKEN TOGETHER WOULD -- WE WOULD
22 HAVE THE ABILITY TO DEAL WITH BOTH OVERCROWDING, REHABILITATION,
23 AND THE ABILITY TO DEAL WITH THE CONSTITUTIONAL ISSUES OF THE
24 DELIVERY OF HEALTHCARE.

25 **JUDGE REINHARDT:** MR. SPITZER, SUPPOSE YOU HAD BEEN

1 TOLD, AS WE HAVE, BY EVERY EXPERT THAT'S COME IN TO TESTIFY FROM
2 ACROSS THE COUNTRY, THAT THE OVERCROWDING IS THE PRIMARY CAUSE
3 OF THE CONSTITUTIONAL VIOLATION, AND THAT IT IS NOT ONLY
4 RELEVANT, BUT THE ACTUAL MAJOR CAUSE OF THE NUMBER OF PEOPLE IN
5 PRISON?

6 **JUDGE HENDERSON:** EVERY PLAINTIFFS' EXPERT.

7 **JUDGE REINHARDT:** WE HAVE ONE PERSON WHO SAID
8 ANYTHING IS POSSIBLE. BUT DISCOUNTING HIM, EVERY NATIONAL
9 EXPERT, ALL OF WHOM SERVED CALIFORNIA, BEEN APPOINTED BY THIS
10 GOVERNOR, PREVIOUS GOVERNOR, ALL OF WHOM ARE NATIONALLY
11 RECOGNIZED EXPERTS, WOULD THAT PUT YOU BACK ORIGINALLY WHERE YOU
12 WERE ORIGINALLY, TO THE UNDERSTANDING THAT OVERCROWDING DOES
13 HAVE AT LEAST AN EXTREMELY SUBSTANTIAL EFFECT ON THE ABILITY TO
14 DELIVER CONSTITUTIONALLY ADEQUATE HEALTHCARE?

15 **MR. MELLO:** IF I MAY RESPECTFULLY INTERPOSE AN
16 OBJECTION FOR THE RECORD, THAT THAT MISSTATES EVIDENCE IN THE
17 CASE.

18 **JUDGE REINHARDT:** CERTAINLY.

19 **JUDGE KARLTON:** YOU MAY.

20 **THE WITNESS:** YOUR HONOR, I'D ANSWER THE QUESTION FOR
21 THE RECORD, THERE'S TWO MAJOR INCIDENTS THAT OCCURRED THAT
22 INFLUENCED ME. ONE WAS MR. KELSO'S COMMENTS THAT I TESTIFIED
23 TO. THE OTHER WAS A LETTER TO SENATOR MACHADO FROM JUDGE
24 HENDERSON WITH RESPECT TO WHAT HIS OPINION WAS ABOUT THE PASSAGE
25 OF THE RECEIVER BEDS AND WHAT, IF ANY, IMPACT THAT WOULD HAVE ON

1 THE PENDING LITIGATIONS, YOU KNOW, THE PENUNDRA TO PENUNDRA OF
2 CASES THAT ARE LITIGATED, BEING LITIGATED AND HAVE BEEN
3 LITIGATED.

4 I TOOK THOSE TWO REPRESENTATIONS, ONE FROM JUDGE
5 HENDERSON AND ONE FROM MR. KELSO, TO SAY TO ME AS A MEMBER OF
6 THE LEGISLATURE AT THAT TIME THAT, IF WE PASS THE RECEIVER BEDS
7 AND IF WE DID THE AB 900 FIX, THAT TAKEN TOGETHER, THOSE WOULD
8 ADDRESS THE CONSTITUTIONAL ISSUES AND WOULD NOT RESULT IN EARLY
9 RELEASE.

10 **JUDGE KARLTON:** MEANWHILE, OF COURSE, NEITHER HAS
11 BEEN DONE.

12 **THE WITNESS:** NEITHER? I'M SORRY, YOUR HONOR.

13 **JUDGE KARLTON:** NEITHER AB 900 CLEAN-UP BILL, NOR THE
14 BEDS FOR THE RECEIVER, NEITHER HAVE BEEN DONE.

15 **THE WITNESS:** YOU ARE ABSOLUTELY CORRECT, AND I
16 TESTIFIED AS SUCH. THAT'S WHY I, IF I MAY, YOUR HONOR, IN MY
17 OPINION, THERE'S ONE -- ONE LYNCHPIN THAT WILL UNBREAK THE LOG
18 JAM ON WHETHER OR NOT WE MOVE FORWARD IN THE STATE OF CALIFORNIA
19 TOWARDS A REMEDY SHORT OF EARLY RELEASE. AND IF I MAY, FOR THE
20 RECORD, IT'S SIMPLE.

21 IF THE ATTORNEY GENERAL WOULD COME FORWARD AND TELL
22 US WHY TO DATE HE'S BEEN UNWILLING TO ISSUE A CLEAN BOND OPINION
23 ON AB 900 AND TELL THAT TO THE LEGISLATURE, THAT WOULD END THE
24 CRISIS, AND THE LEGISLATURE WOULD MOVE FORWARD.

25 WE WERE PREPARED TO VOTE THAT NIGHT FOR THE AB 900

1 FIX AND FOR MR. KELSO'S BEDS, AND BUT FOR THE FACT WE COULD NOT
2 GET AN ANSWER, A LEGITIMATE ANSWER AND REPRESENTATION FROM THE
3 ATTORNEY GENERAL, THAT IS WHY WE HAVE NOT VOTED TO FIX AB 900.

4 **JUDGE KARLTON:** MR. SPITZER, YOU CAN SPEAK ABOUT WHY
5 YOU DIDN'T VOTE FOR IT, AND I'LL ACCEPT YOUR REPRESENTATION THAT
6 THAT'S WHY YOU DIDN'T. YOU CAN'T SPEAK FOR ANYBODY ELSE'S
7 REASON FOR NOT. THEY MAY BE JUST PEOPLE WHO WANT TO SAY NO TO
8 ANY SOLUTION. THEY MAY BE PEOPLE, LIKE IN THE PRESENT BUDGET
9 CRISIS, WHO ARE UNWILLING TO BITE THE BULLET. THERE MAY BE ALL
10 KINDS OF REASONS THAT PEOPLE ARE NOT DOING IT. WHAT WE KNOW IS
11 IT'S NOT BEING DONE, CORRECT?

12 **THE WITNESS:** CORRECT.

13 **JUDGE HENDERSON:** CAN I ASK YOU, MR. SPITZER, IN YOUR
14 SIX YEARS IN THE ASSEMBLY IS THAT --

15 **THE WITNESS:** YES, SIR.

16 **JUDGE HENDERSON:** IS THIS BEHAVIOR BY THE ATTORNEY
17 GENERAL UNUSUAL, OR DOES THIS HAPPEN -- HAS THIS HAPPENED IN
18 OTHER BOND MEASURES, WHERE YOU JUST DON'T GET AN OPINION, OR IS
19 THIS UNUSUAL?

20 **THE WITNESS:** YOUR HONOR, WITH RESPECT TO BOND
21 OPINIONS, THERE'S CLEARLY A POINT IN TIME WHERE A BOND OPINION
22 IS ISSUED. BUT I WILL CONTRAST THE BEHAVIOR, FOR EXAMPLE, OF
23 JERRY BROWN AS AGAINST BILL LOCKYER. MR. LOCKYER WAS A
24 PROACTIVE AGENT WHEN HE WAS AN ATTORNEY GENERAL, JUST LIKE HE IS
25 AS THE TREASURER.

1 AS YOU KNOW, WE ARE GOING THROUGH A CRISIS, AND
2 MR. LOCKYER IS PLAYING A SIGNIFICANT ROLE IN TRYING TO RESOLVE
3 THE ISSUE IN THE STATE OF CALIFORNIA. WHEN I MET WITH THE
4 ATTORNEY GENERAL EARLIER IN THE YEAR AND HE INDICATED TO ME THAT
5 HE WAS GOING TO GO BACK AND GET BRIEFED AND THEN DECIDE WHAT, IF
6 ANY, ROLE HE WAS GOING TO TAKE, AND THEN THE LEGISLATURE NEVER
7 HEARD FROM THE ATTORNEY GENERAL, AND TO DATE HAS NOT HEARD FROM
8 THE ATTORNEY GENERAL, I AM BESIDE MYSELF WHY THE TOP LAW
9 ENFORCEMENT OFFICER IS NOT TAKING A PROACTIVE ROLE IN TRYING TO
10 DEAL WITH THE PRISON OVERCROWDING CRISIS. AS THIS BENCH KNOWS,
11 THE ATTORNEY GENERAL IS THE LITIGATOR ON CRIMINAL CASES IN THE
12 STATE OF CALIFORNIA. THE ATTORNEY GENERAL'S DEPUTIES ARE THE
13 ONES THAT ARGUE ON APPEAL WHETHER OR NOT SOMEBODY SHOULD REMAIN
14 INCARCERATED.

15 **JUDGE REINHARDT:** I THINK WE DO KNOW WHAT THE
16 ATTORNEY GENERAL DOES, AND I THINK MR. LOCKYER IS GOING TO BE
17 GRATEFUL FOR YOUR ENDORSEMENT. I THINK YOU MADE YOUR POINT
18 ABOUT JERRY BROWN, AND I DON'T KNOW --

19 **JUDGE KARLTON:** OBVIOUSLY, THE ENTIRE PRISON PROBLEM
20 RESTS UPON HIS LAP.

21 **JUDGE REINHARDT:** WELL, THERE ARE A LOT OF OTHERS.
22 YOU'VE CERTAINLY EXPLAINED HIS -- PART OF HIS ROLE, WHICH IS --
23 IN THIS CASE, AND THERE ARE OTHERS WHO, AS JUDGE KARLTON POINTS
24 OUT REGULARLY, ARE RESPONSIBLE AS WELL.

25 **JUDGE KARLTON:** OR IRRESPONSIBLE.

1 **JUDGE REINHARDT:** I DON'T KNOW. NO POINT ASKING YOU
2 HOW DO WE GO FROM HERE, BECAUSE NOBODY KNOWS WHETHER ANYTHING IS
3 EVER GOING TO HAPPEN THE WAY --

4 **JUDGE KARLTON:** WHAT WE'RE FACED WITH IS A
5 POTENTIAL -- WELL, AN UNCONSTITUTIONAL CONDITION, WHICH IS --
6 POTENTIALLY IN THIS CASE WILL BE RESOLVED AS A PRIMARY CAUSE
7 BEING OVERCROWDING. MEANWHILE ALL OF THESE POLITICAL JUDGMENTS
8 AND POLITICAL MACHINATIONS ARE GOING ON, AND PEOPLE ARE NOT
9 RECEIVING THE CARE THAT THEY REQUIRE.

10 THERE'S NO GUARANTEE AS YOU SIT HERE, YOU'RE OUT OF
11 THE LEGISLATURE NOW, BUT THERE IS NO GUARANTEE THAT ANYBODY WILL
12 DO ANYTHING UNLESS THIS COURT DOES SOMETHING EXTREMELY SERIOUS.

13 **JUDGE REINHARDT:** YOU KNOW, THE PROBLEM IS YOU CAN
14 TELL US WHAT THE LEGISLATURE OUGHT TO DO AND WHETHER OR NOT --

15 **JUDGE KARLTON:** AND WHAT THE ATTORNEY GENERAL OUGHT
16 TO DO.

17 **JUDGE REINHARDT:** WHO KNOWS WHETHER ANY OF THEM ARE
18 GOING TO DO ANYTHING. AS ONE OF THE WITNESSES FROM THE COUNTY
19 SAID YESTERDAY, A COUNTY, AND I SAID THIS BEFORE. ONE OF THE
20 WITNESSES FROM THE COUNTY SAID, WE CAN'T TRUST STATE. WELL,
21 THAT IS ONE OF THE THINGS THAT SEEMS TO BE COMING OUT OF THIS
22 TRIAL, WHETHER IT IS THE ATTORNEY GENERAL, THE LEGISLATURE,
23 WHOEVER HAPPENS TO BE RESPONSIBLE.

24 AS YOU KNOW THE STATE'S ON APPEAL NOW TRYING TO BLOCK
25 JUDGE HENDERSON IN HIS CASE FROM GETTING MONEY TO TRY TO SOLVE

1 THIS PROBLEM. WHY SHOULD WE HAVE ANY EXPECTATION THAT ANYBODY
2 IS GOING TO REALLY DO ANYTHING IN THE FORESEEABLE FUTURE --

3 **THE WITNESS:** YOUR HONOR, I APPRECIATE THE QUESTION.
4 I CAN SAY --

5 **JUDGE REINHARDT:** -- WITHOUT A COURT ORDER?

6 **THE WITNESS:** WELL, I CAN SAY THIS: ON THE NIGHT THE
7 QUESTION WAS PRESENTED ON THE CLEAN UP ON AB 900 AND THE KELSO
8 BEDS, THE LEGISLATURE WAS PREPARED AND THE VOTES WERE THERE FOR
9 THAT VOTE, BUT FOR THE FACT THAT WE DID NOT KNOW WHETHER OR NOT
10 THE ATTORNEY GENERAL, BUT FOR THE FACT WE PASSED THE CLEAN-UP,
11 WAS GOING TO SAY THAT THAT WAS ADEQUATE. SO I CAN ONLY
12 REPRESENT THE FOLLOWING: THERE WAS A MOMENT IN TIME WHEN THE
13 VOTES WERE THERE.

14 NOW, UNDER THE PRESENT CONDITION STATE, IT IS
15 SPECULATION, AND WE ALL KNOW IT'S SPECULATION ABOUT WHAT, IF
16 ANYTHING, THE LEGISLATURE IS GOING TO DO OR NOT DO. BUT I CAN
17 TELL YOU THIS, NO ONE IN THE STATE LEGISLATURE WANTS TO BE
18 RESPONSIBLE FOR THE EARLY RELEASE OF PRISONERS IN THE STATE OF
19 CALIFORNIA.

20 **JUDGE KARLTON:** AND IF WE TELL THEM THAT THEY WILL
21 BE, THEY'LL SAY, IT'S NOT US, IT'S THOSE CRAZY GUYS IN BLACK
22 ROBES. THAT'S WHAT THEY ARE GOING TO DO, BECAUSE THAT'S
23 THEIR -- THAT'S THEIR LIFE. THAT'S WHAT THEY'RE SUPPOSED TO DO,
24 I GOT TO GET ELECTED, LET SOMEBODY ELSE --

25 **JUDGE REINHARDT:** IT'S NOT JUST THE LEGISLATURE.

1 IT'S OTHER PUBLIC OFFICIALS WHO WILL SAY THAT.

2 **JUDGE KARLTON:** OF COURSE.

3 **JUDGE REINHARDT:** BECAUSE THEY HAVE POLITICAL
4 AMBITIONS.

5 **JUDGE KARLTON:** IT'S ALWAYS SOMEBODY ELSE'S
6 RESPONSIBILITY.

7 **THE WITNESS:** JUDGES, I AGREE, AND I'M WORRIED NOW
8 THAT IF COURT WILL ORDER THIS REMEDY, THAT'S EXACTLY WHAT WILL
9 HAPPEN. THE LEGISLATORS WILL STAND UP AND SAY THEY PASSED AB
10 900 SO THEY WILL HAVE CLEAN HANDS, AND THEY WILL BE ABLE TO
11 POINT THE FINGER AT THE COURT. IT'S THE LEGISLATURE'S
12 RESPONSIBILITY TO SOLVE THIS PROBLEM.

13 **JUDGE KARLTON:** YOU HAVE NO IDEA, I THINK, BECAUSE, I
14 DON'T SUSPECT ANYBODY WHO ISN'T SITTING WHERE JUDGE HENDERSON
15 AND JUDGE REINHARDT AND I ARE SITTING, THE RELUCTANCE WITH WHICH
16 WE WILL DO AS THE PLAINTIFFS HAVE ASKED. I DON'T THINK THEY
17 UNDERSTAND EITHER. BUT THERE COMES A POINT IN WHICH -- YOU
18 KNOW, I'VE ASKED ALMOST EVERY WITNESS FROM THE DEFENSE SIDE,
19 TELL ME WHAT YOU THINK I OUGHT TO DO.

20 **THE WITNESS:** I CAN TELL YOU FOR -- FIRST, IF YOU LET
21 ME, I WOULD SAY ONE THING. EITHER ON THE COURT'S OWN MOTION,
22 ORDER THE PARTIES HAVE THE ATTORNEY GENERAL TO COME HERE UNDER
23 OATH AND ANSWER THE QUESTION, WHAT IS IT GOING TO TAKE FOR YOU
24 TO ISSUE -- WHAT IS YOUR ISSUE WITH AB 900?

25 I MEAN, WE CAN'T GET HIM TO DO IT AT THE REQUEST OF

1 THE LEGISLATORS, SO HE SHOULD BE COMPELLED TO COME HERE UNDER
2 SUBPOENA AND TELL US WHY HE HAS BEEN OUT OF ACTION, MISSING IN
3 ACTION ON THE WHOLE ISSUE OF AB 900, AND I THINK ONCE YOU GET AN
4 ANSWER TO THAT QUESTION, ASSUMING HE SAYS, IF I HAD A THROUGH Z,
5 I WOULD BE WILLING TO ISSUE A CLEAN BOND OPINION, THEN THERE ARE
6 NO MORE BUMPS IN THE ROAD, AND ONLY THE LEGISLATURE WILL BE TO
7 BLAME IF IT DOESN'T TAKE THESE REMEDIES INTO EFFECT.

8 **JUDGE REINHARDT:** AFTER WE DO THAT, WE HAVE TO
9 SUBPOENA EACH MEMBER OF THE LEGISLATURE AND FIND OUT WHY THEY
10 DON'T DO THINGS.

11 **JUDGE KARLTON:** RIGHT.

12 **JUDGE REINHARDT:** WE CAN'T OPERATE THAT WAY, I'M
13 AFRAID.

14 **JUDGE KARLTON:** YOU MAY NOT RECALL, BUT A COLLEAGUE
15 OF JUDGE HENDERSON'S AND MYSELF IN LOS ANGELES SAID HE WANTED
16 THE ATTORNEY GENERAL PERSONALLY TO BE PRESENT, AND HE SAID SOME
17 OTHER VERY BAD THINGS, BUT HE SAID THAT AS WELL, AND THAT FELLOW
18 IS NOW ON THE HOUSE JUDICIARY COMMITTEE, THAT FORMER ATTORNEY
19 GENERAL, AND HE'S NEVER FORGOTTEN THAT HE HAD TO GO TO LOS
20 ANGELES BECAUSE SOME CRAZY FEDERAL JUDGE ORDERED HIM TO.

21 **JUDGE REINHARDT:** ANYWAY IT'S -- YOU KNOW, IT'S NOT
22 EASY TO FIND OUT WHO TO BLAME, AND EVERYBODY BLAMES SOMEONE
23 ELSE, BUT THE END RESULT IS THE STATE DOESN'T DO ANYTHING, AND
24 WE CAN'T COME TO A DECISION ON THE BASIS THAT MAYBE POLITICIANS
25 WILL BE MORE INTERESTED IN SAFETY THAN THEY ARE IN ELECTION. WE

1 CAN'T ASSUME THAT, AND WE JUST HAVE TO, YOU KNOW, ASSUME THAT
2 AFTER ALL THESE YEARS WHEN NOBODY HAS ACTUALLY DONE ANYTHING,
3 THAT WE HAVE TO ACT ON THE BASIS THAT NOBODY IS GOING TO DO
4 ANYTHING.

5 AND, AS YOU KNOW, IN ADDITION TO THAT, ALL THESE
6 THINGS DO COST MONEY, ASIDE FROM THE BOND MONEY. EVERYTHING
7 COSTS MONEY. THERE'S NO MONEY TO SPEND FOR ANYTHING THESE DAYS.
8 WE ARE GOING TO CUT EDUCATION. WE ARE GOING TO CUT BASIC RIGHTS
9 TO PEOPLE. BASIC ENTITLEMENTS AND HEALTH WE ARE GOING TO CUT
10 BENEFITS FOR. WHY WOULD ANYBODY THINK THEY ARE GOING TO SPEND
11 MORE MONEY FOR PRISONERS?

12 **THE WITNESS:** YOUR HONOR, THE ANSWER TO THAT QUESTION
13 IS I THINK THAT THE LEGISLATURE HAD THE POLITICAL WILL, BUT JUST
14 LIKE THE COURTS WHO HAS CHARGED MR. KELSO AND OTHER RECEIVERS
15 WITH CERTAIN DUTIES -- AND YOU WANT TO KNOW, FOR EXAMPLE, THERE
16 WAS A CHANGE IN THE RECEIVER, MR. SILLEN AND MR. KELSO, BECAUSE
17 THE COURT AT SOME TIME FELT THEY NEEDED TO MAKE A CHANGE FOR
18 CERTAIN REASONS. SAME THING HERE. THE LEGISLATURE NEEDS TO
19 KNOW IT'S GETTING WHAT IT BARGAINED FOR WHEN IT MAKES ITS VOTE.

20 **JUDGE KARLTON:** YOU KNOW, SIR --

21 **THE WITNESS:** YES, SIR.

22 **JUDGE KARLTON:** -- THE FACT OF THE MATTER IS -- I
23 SHOULDN'T SAY THAT. WE HAVE HAD REPEATED TESTIMONY THAT THE
24 STATE PRISONS ARE CRIMINOGENIC. THEY PRODUCE CRIMINALS. THEY
25 ARE A DANGER TO PUBLIC SAFETY.

1 NOW, IF I WERE A LEGISLATOR AND I WAS TOLD THAT WHAT
2 I WAS RESPONSIBLE FOR IS PRODUCING CRIMINALS, I'D DO SOMETHING
3 ABOUT IT. NOW, I FIND -- I'M SORRY. IT'S NOT YOUR DOING. I
4 MEAN, IT IS YOURS TOO, BUT, YOU KNOW --

5 **JUDGE REINHARDT:** NO MORE THAN ANYONE ELSE'S IN THE
6 LEGISLATURE.

7 I THINK SOME PEOPLE HAVE TRIED HARD AND SOME HAVEN'T,
8 AND YOU KNOW WHO THEY ARE.

9 **MS. WANG:** IF I COULD? IF I MAY, YOUR HONORS?

10 **JUDGE HENDERSON:** PROCEED.

11 **BY MS. WANG**

12 **Q** SO ASSUMING FOR THE MOMENT THAT THE COURT IS SERIOUSLY
13 CONSIDERING ISSUING A PRISONER RELEASE ORDER, WHAT EFFECT WOULD
14 SUCH A MEASURE HAVE ON PUBLIC SAFETY?

15 **A** I'M REALLY CONCERNED ABOUT THE FACT THAT THE INMATES -- NOW
16 I'M BACK IN COURT DEALING WITH A LOT OF THESE INDIVIDUALS WHO
17 HAVE PRISON PRIORS, 667(A) PRIORS, FIVE-YEAR PRIORS
18 667.(5)(B)(1) PRIORS. THEY HAVE BEEN OUT OF THE JOINT. IT'S
19 NOT ALL DRUG POSSESSION. IT'S NOT PEOPLE CHURNING THROUGH
20 BECAUSE THEY KEEP GOING BACK FOR DRUGS. THEY ARE GOING BACK FOR
21 VIOLENT FELONIES AND SERIOUS FELONIES.

22 WHAT I'M VERY CONCERNED ABOUT WHEN WE HAVE THEM AS A
23 CAPTIVE AUDIENCE, WE ARE NOT INFLUENCING THEIR BEHAVIOR. IF YOU
24 LET THEM OUT EARLY, YOU CUT INTO THE TIME YOU TRY TO INFLUENCE
25 THEM.

1 **JUDGE KARLTON:** SIR, THE PROBLEM WITH THAT IS WE HAVE
2 BEEN TOLD REPEATEDLY THERE'S NO SPACE FOR PROGRAMMING WITHIN THE
3 PRISON, SO THEY ARE NOT -- THEY CERTAINLY ARE GETTING AN
4 EDUCATION, BUT IT'S NOT THE EDUCATION THAT SENSIBLE PEOPLE WOULD
5 WANT.

6 **THE WITNESS:** BUT, YOUR HONOR, WE KNOW NOW THE
7 DEPARTMENT OF CORRECTIONS IS CUTTING PAROLE TO 13 MONTHS IN MOST
8 INSTANCES. THE REENTRY FACILITIES WERE SUPPOSED TO GRAB A LOT
9 OF THOSE BODIES AND TAKE THEM INTO THE COMMUNITY WHERE THEY ARE
10 GOING TO BE RELEASED ON PAROLE AND DO WHAT ALL THE MODELS HAVE
11 SHOWN, THAT WHEN YOU ARE BEING TREATED CLOSE TO THE COMMUNITY
12 YOU ARE GOING TO EVENTUALLY BE RETURNED TO AND YOUR FAMILY AND
13 CHILDREN ARE THERE, YOUR PROBABILITY OF SUCCESS IS GREATER. SO
14 I THINK THE MODEL IS A VERY GOOD MODEL.

15 WE ALSO HAVE DONE SUBSTANTIAL NUMBER OF OUT-OF-STATE
16 TRANSFERS. THAT'S HELPED ALLEVIATE A LOT OF THE GYM DAYBEDS SO
17 THAT WE COULD HAVE THAT ROOM. BUT ARE WE THERE YET? OF COURSE
18 NOT.

19 THAT'S WHY I AM SAYING WE NEEDED AB 900, AND WE NEED
20 AB 900 TO GET TO THE POINT WHERE WE DON'T HAVE TO JUST DO A
21 BLANKET RELEASE.

22 I MEAN, L.A. COUNTY UNDER THIS SCENARIO IS LOOKING AT
23 30,000 INMATES AT ONE TIME COMING BACK INTO THAT COMMUNITY. HOW
24 IN THE WORLD IS L.A. COUNTY GOING TO DEAL WITH THAT? IN ONE
25 FELL SWOOP? I MEAN, THE IMPACT ON COUNTIES, EVEN PHASED IN, IS

1 GOING TO BE SUBSTANTIAL.

2 AND AS YOU KNOW, AND AS WE ALL KNOW, SOCIAL SERVICES
3 AND MENTAL HEALTH SERVICES ARE PASSED THROUGH THROUGH
4 REALIGNMENT MONEY. IT'S NOT GENERAL FUND MONEY. IT'S GENERALLY
5 STATE MONEY. IF THE STATE IS NOT GOING TO FUND IT, YOU ARE
6 GOING TO HAVE THOUSANDS OF PAROLEES IN THE COMMUNITY WHO HAVE
7 ABSOLUTELY NO SAFETY NET, AND THEY WILL COMMIT CRIMES. THEY ARE
8 COMMITTING CRIMES, ONE, BECAUSE SOME HAVE A PROPENSITY, IT'S A
9 LIFESTYLE, AND OTHERS BECAUSE THEY ARE RECEIVING NO SERVICES.

10 SO IF WE ARE GOING TO DO IT, WE BETTER FIGURE OUT HOW
11 TO DO IT AND HOW TO DO IT SMART, AND WHAT I'M AFRAID OF IS -- WE
12 HAVE A HORRIBLE TRACK RECORD OF DOING IT SMART. SO THE QUESTION
13 BECOMES, IF WE DO IT -- THAT'S WHY, I KNOW WE CAN'T TALK ABOUT
14 THE SETTLEMENT, BUT I WAS VERY PROUD OF THE WORK WE DID IN THE
15 SETTLEMENT DISCUSSIONS BECAUSE THERE WAS --

16 **JUDGE KARLTON:** AND THAT DIDN'T TAKE EITHER. AB 900
17 HASN'T TAKEN. MR. KELSO'S BEDS HASN'T TAKEN. THE SETTLEMENT
18 HASN'T TAKEN, AND HERE WE ARE.

19 **THE WITNESS:** MR. KELSO'S BEDS, THOUGH, YOUR HONOR,
20 WILL TAKE. THERE ARE THE VOTES FOR IT. WE HAVE NO OBJECTION AS
21 LONG AS WE KNOW WE GET AB 900. I MEAN, I KNOW THE COURT -- I
22 THINK THE COURTS KNOW, AND THE RECORD PROBABLY IS REplete WITH
23 THIS, I MEAN, I'VE WRITTEN EXTENSIVELY ABOUT MY FRUSTRATION
24 DATING BACK A YEAR AND A HALF AGO. IT'S UNACCEPTABLE.

25 I HAVE BEEN ON YOUR TEAM, YOU KNOW, AND I HAVE BEEN

1 TRYING TO DRIVE THIS ISSUE. BUT I KNOW MY COLLEAGUES WILL NOT
2 VOTE -- IT'S KIND OF LIKE THE AUTO BAILOUT. PEOPLE ARE NOT
3 GOING TO VOTE UNTIL THEY KNOW WHAT IT MEANS. WE DON'T KNOW WHAT
4 AB 900 MEANS, AND THE ATTORNEY GENERAL NEEDS TO TELL US HE'S
5 OKAY WITH IT.

6 **JUDGE REINHARDT:** YOU SEE, TO TAKE AUTO BAILOUT, THE
7 PRESIDENT TOLD THE MINORITY WHAT HE WANTED. ALMOST EVERYBODY
8 AGREED, EXCEPT A FEW PEOPLE, YOU KNOW, IN ONE OF THE HOUSES.
9 YOU KNOW, YOU DON'T KNOW THAT WON'T HAPPEN WITH THE PRISONS.
10 YOUR HOUSE WAS REASONABLE ON THE AUTO BAILOUT BILL, THE HOUSE OF
11 REPRESENTATIVES, LIKE THE ASSEMBLY, BUT THEY COULDN'T DELIVER
12 THE SENATE. SO YOU DON'T KNOW WHAT THE SENATE IS GOING TO DO,
13 THE STATE SENATE.

14 **JUDGE KARLTON:** AND YOU DON'T KNOW WHAT EVEN YOUR
15 COLLEAGUES, YOUR PAST COLLEAGUES, WILL DO NOW THAT THE STATE IS
16 IN ABSOLUTE FINANCIAL DISASTER.

17 **JUDGE REINHARDT:** BUT LET ME SAY ONE THING TO YOU,
18 WHATEVER HAPPENS IN THIS TRIAL, WHAT IT'S ALL -- WHEN ALL THE
19 EVIDENCE IS OVER AND THE TESTIMONY IS OVER, OR WE COME TO SOME
20 KIND OF DECISION, THE BEST SOLUTION TO THE PROBLEM AND THE ONE
21 THAT WE WANT IS WHAT YOU TALKED ABOUT.

22 **JUDGE KARLTON:** FOR THE LEGISLATURE --

23 **JUDGE REINHARDT:** WE STILL WANT A SETTLEMENT BETWEEN
24 ALL THE PARTIES WHO ARE INVOLVED IN OUR PRIOR EFFORTS TO GET A
25 SETTLEMENT. I MEAN, THAT'S STILL THE BEST SOLUTION, AND IF YOU

1 HAVE ANY IDEAS -- YOU DON'T HAVE TO TELL THEM NOW, BUT IF YOU
2 HAVE ANY IDEAS ABOUT WHETHER A SETTLEMENT CAN BE BROUGHT ABOUT
3 IN THIS CASE, YOU'LL BE A HERO. YOU'LL BE THE OPPOSITE OF THE
4 PERSON YOU THINK IS PREVENTING THIS FROM GOING FORWARD.

5 **THE WITNESS:** YOUR HONOR, IF I COULD, FOR THE RECORD,
6 I THINK THIS PART -- I JUST WANT TO SAY THIS BEFORE I'M EXCUSED;
7 AND THAT'S THE FOLLOWING: IF THE COURT MAKES AN EARLY RELEASE
8 ORDER, IT ABSOLUTELY PROVIDES THE ULTIMATE EXCUSE FOR THE
9 LEGISLATURE AND THE PUBLIC NOT TO DO ANYTHING.

10 **JUDGE KARLTON:** YOU ARE RIGHT ABOUT THAT.

11 **THE WITNESS:** SO WHAT HAPPENS IS ANY POTENTIAL
12 PROGRESS THAT WE MAY HAVE MADE AND ANY HOPE THAT WE HAVE TO
13 ACTUALLY REFORM CORRECTIONS AND BE A MODEL, AS OPPOSED TO, YOU
14 KNOW, AN EXAMPLE NO ONE WANTS TO FOLLOW, WHICH WE OBVIOUSLY ARE
15 IN THAT STATE TODAY, THEN WE ARE GOING TO LOSE ANY
16 OPPORTUNITY -- WHICH IS WHY I RESPECT THE FACT THAT THE COURT
17 GAVE TIME WHEN I STOOD WHERE MS. WANG IS NOW AND ASKED FOR SOME
18 MORE TIME, AND YOU WERE KIND ENOUGH TO GIVE IT TO ME TO TRY TO
19 CONTINUE TO WORK --

20 **JUDGE KARLTON:** WE WEREN'T BEING KIND. WE THOUGHT,
21 WE STILL THINK, THAT'S THE APPROPRIATE RESULT. WE JUST AT SOME
22 POINT HAVE TO GIVE UP.

23 **THE WITNESS:** IF THE COURT ORDERS THIS, YOUR HONOR,
24 IF THE COURT ORDERS THIS REMEDY, I AM ABSOLUTELY CONFIDENT WE
25 WILL NEVER EVER GET BACK THE PSYCHE OF THINKING OF CORRECTIONS

1 DIFFERENTLY IN THE STATE OF CALIFORNIA, AND WE WILL MOVE AWAY
2 FROM A REHABILITATION MODEL TO A MODEL JUST LIKE YOU SAID, YOUR
3 HONOR, WE GIVE UP, AND WE ARE JUST GOING TO CHURN MORE INMATES
4 IN AND OUT BECAUSE WE ARE GOING TO PUT THEM IN THE SYSTEM. THEY
5 ARE GOING TO GET OUT AND THEY ARE GOING TO DO WHATEVER, AND THEY
6 WILL PROBABLY GO BACK AND THE SYSTEM WILL NEVER IMPROVE.

7 THAT'S WHY I THOUGHT, WOW, WE FINALLY HAVE AN
8 OPPORTUNITY, BUT WE JUST NEED THE RIGHT LEADERSHIP. THERE'S
9 SOME PLAYERS IN THIS ALGORITHM WHO HAVE NOT STEPPED UP TO
10 PARTICIPATE IN THE SIGNIFICANT WAY THAT THEY NEED TO
11 PARTICIPATE, AND I'D IMPORE THE COURT TO HEAR FROM THEM BEFORE
12 THE COURT ORDERS A REMEDY. I JUST THINK IT'S IMPORTANT TO HEAR
13 FROM SOME OF THE MOST CRITICAL ACTORS WHO CAN ACTUALLY INFLUENCE
14 THIS WHO HAVE BEEN SILENT, AND THAT'S WHY I CAME TODAY TO
15 TESTIFY.

16 **JUDGE REINHARDT:** IT'S CERTAINLY NOT SOLELY THE
17 ATTORNEY GENERAL. I MEAN, I DON'T -- I'M NOT AGREEING OR
18 DISAGREEING WITH YOUR STATEMENTS AS TO HIS RESPONSIBILITY, BUT
19 THERE ARE CERTAINLY A LOT OF OTHER PARTIES THAT ARE GOING TO
20 HAVE TO AGREE TO SOME SOLUTION, AND I DON'T KNOW THAT WE CAN
21 SUBPOENA THEM ALL IN HERE TO DISCUSS IT, BUT WE CAN -- WE'VE
22 GIVEN ONE OPPORTUNITY FOR SETTLEMENT DISCUSSION. MAYBE IF THE
23 PARTIES KNOW THE ALTERNATIVE IS A PRISON RELEASE ORDER AND THAT
24 THAT'S VERY CLEAR, MAYBE WITH A LITTLE MORE DISCUSSION, YOU CAN
25 SOLVE IT. WHAT I THINK YOU'RE SAYING IS SOME OF THE PLAYERS

1 WILL BE HAPPY TO HAVE US DO THAT BECAUSE THEN THEY CAN SAY, ALL
2 RIGHT, THE COURT DID IT, MAYBE THAT'S WHAT THEY WANT. I THINK,
3 IN FACT, I KNOW SOME WHO DO WANT THAT.

4 **THE WITNESS:** I AGREE. I AGREE WITH THAT.

5 **JUDGE HENDERSON:** LET ME ASK A QUESTION, MR. SPITZER,
6 AND I MAY SHOW MY NAIVETE. CERTAINLY IN THE STATE COURT SYSTEM,
7 IF A JUDGE SITS ON A RULING TOO LONG, THEY DON'T GET PAID. IS
8 THERE ANY DEVICE THAT WILL GET THE ATTORNEY GENERAL TO DO WHAT I
9 PERCEIVE IS HIS JOB, WHICH IS TO RENDER AN OPINION ON THE BOND?
10 IS THERE ANYTHING THAT CAN --

11 **THE WITNESS:** YOU KNOW, YOUR HONOR, I'M GLAD YOU
12 ASKED ME THAT QUESTION. I MEAN, I THINK THE ATTORNEY GENERAL
13 HONESTLY IS TRYING TO DO EVERYTHING HE CAN RIGHT NOW TO STAY OUT
14 OF HARM'S WAY ON ANY CONTROVERSIAL ISSUES BECAUSE OF HIS
15 POLITICAL FUTURE AND AMBITION.

16 THIS IS A TOUGH ISSUE. STEPPING UP ON THE
17 CORRECTIONS ISSUE AND TAKING A POSITION IS A HUGE POLITICAL
18 RISK. I MEAN, I'M BACK IN THE DA'S OFFICE. WHEN I TALK ABOUT
19 REENTRY FACILITIES IN MY COMMUNITY IN THE CITY I LIVE IN, I WENT
20 TO THE CITY COUNCIL TO ADVOCATE FOR REENTRY FACILITIES, I
21 THOUGHT THEY WERE GOING TO RUN ME OUT OF TOWN BECAUSE I THINK A
22 REENTRY FACILITY IS THE RIGHT THING TO DO.

23 SO DID I PUT MYSELF IN HARM'S WAY? ABSOLUTELY. BUT
24 ISN'T THAT WHAT THIS IS ALL ABOUT IN THE END, TO TAKE THE RISK?

25 SO I'M NOT SAYING THE ATTORNEY GENERAL HAS TO SAY HE

1 WILL ISSUE A CLEAN BOND OPINION. ALL THE ATTORNEY GENERAL NEEDS
2 TO SAY TO THE LEGISLATURE IS, THESE ARE THE FACTORS I NEED IN
3 THE LEGISLATION FOR THE AB 900 FIX, CLEAN-UP, AND IF IT CONTAINS
4 THESE PROVISIONS, I'M MORE THAN LIKELY OR I'M MORE LIKELY THAN
5 NOT GOING TO ISSUE A BOND OPINION TO WALL STREET SO WE CAN
6 LEVERAGE THESE BONDS. THAT'S ALL WE NEED. THAT'S ALL WE NEED,
7 YOUR HONOR.

8 **MS. WANG:** MR. SPITZER, I JUST HAVE A FEW MORE
9 QUESTIONS TO WRAP UP.

10 **JUDGE HENDERSON:** MORE THAN ONE THOUGH, RIGHT?

11 **BY MS. WANG**

12 **Q** JUST TO BE CLEAR, WHAT IS MARCY'S LAW, OTHERWISE KNOWN AS
13 THE CRIME VICTIMS BILL OF RIGHTS OF 2008?

14 **A** MARCY'S LAW WAS PASSED BY THE VOTERS IN THE LAST GENERAL
15 ELECTION HERE IN THE STATE. THE CONSTITUTION NOW IN THE STATE
16 OF CALIFORNIA HAS BEEN AMENDED. THE PEOPLE OF THE STATE OF
17 CALIFORNIA HAVE NOW SAID IN THE CALIFORNIA CONSTITUTION THAT
18 EARLY RELEASE IS NOT A REMEDY THAT CAN BE USED IN THE STATE OF
19 CALIFORNIA, AND THAT THE LEGISLATURE, BY CONSTITUTIONAL LAW, IS
20 NOW STATUTORILY -- ACTUALLY CONSTITUTIONALLY REQUIRED TO FULLY
21 FUND OUR PRISON SYSTEM IN ORDER TO STOP ANY POTENTIAL EARLY
22 RELEASE, AND THE VOTERS PASSED THAT BY A SEVEN PERCENT MARGIN ON
23 THE NOVEMBER 4TH BALLOT.

24 **MS. WANG:** I GUESS I ONLY HAD ONE FURTHER QUESTION.

25 **JUDGE REINHARDT:** TOO BAD YOU PASSED UP THE CHANCE TO

1 GET A THOUSAND DOLLARS.

2 MS. WANG: I KNOW. THANK YOU ANYWAY.

3 JUDGE KARLTON: NO, IT'S BEEN WITHDRAWN.

4 JUDGE HENDERSON: IT'S BEEN WITHDRAWN.

5 MS. WANG: THANK YOU, MR. SPITZER, NO FURTHER
6 QUESTIONS.

7 JUDGE KARLTON: STATE DEFENDANTS HAVE ANYTHING?

8 MR. MELLO: NO, YOUR HONOR.

9 JUDGE HENDERSON: CROSS-EXAMINATION?

10 MR. BIEN: NO, YOUR HONOR.

11 JUDGE HENDERSON: WOULD YOU -- OKAY. THANK YOU VERY
12 MUCH, MR. SPITZER.

13 MS. FUENTES: YOUR HONOR, WE SHOULD HAVE MR. GARNER
14 HERE, BUT I WAS WONDERING IF WE COULD TAKE A BREAK FIRST.

15 JUDGE HENDERSON: OKAY. WE'LL TAKE A 15-MINUTE
16 RECESS.

17 (RECESS TAKEN.)

18 MS. FUENTES: THE DEFENDANT INTERVENORS CALL
19 MR. ROBERT GARNER TO THE STAND.

20 ROBERT GARNER,
21 CALLED AS A WITNESS FOR THE DEFENDANT INTERVENORS HEREIN,
22 HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS
23 FOLLOWS:

24 THE WITNESS: I DO.

25 THE CLERK: PLEASE HAVE A SEAT.

1 STATE AND SPELL YOUR FULL NAME FOR THE RECORD.

2 **THE WITNESS:** MY NAME IS ROBERT GARNER, R-O-B-E-R-T,
3 G-A-R-N-E-R.

4 **DIRECT EXAMINATION**

5 **BY MS. FUENTES:**

6 **Q.** MR. GARNER, WHERE ARE YOU CURRENTLY EMPLOYED?

7 **A.** SANTA CLARA COUNTY.

8 **Q.** AND WHAT IS YOUR POSITION THERE?

9 **A.** I'M DIRECTOR OF THE DEPARTMENT OF ALCOHOL AND DRUG SERVICES.

10 **Q.** HOW LONG HAVE YOU HAD THAT POSITION?

11 **A.** AS IT'S EVOLVED, ABOUT 38 YEARS.

12 **Q.** CAN YOU BRIEFLY DESCRIBE YOUR EDUCATION AND PROFESSIONAL
13 BACKGROUND?

14 **A.** YES. I HAVE A B.A. FROM STANFORD UNIVERSITY AND OVER THE
15 COURSE OF THE 38 YEARS HAVE TAKEN A LOT OF CLASSES AND COURSES,
16 BUT THERE IS NO ADVANCED DEGREE. JUST THE TRAINING AS A
17 PROFESSION.

18 **Q.** AND WHAT POSITIONS HAVE YOU HAD IN THE COUNTY OF SANTA
19 CLARA?

20 **A.** WELL, IT STARTED WITH JUST BEING AN ANALYST IN THE COUNTY
21 EXECUTIVE'S OFFICE. I WAS ASSIGNED TO THIS AREA OF DRUG ABUSE
22 COORDINATION, THAT EVOLVED INTO WHAT IT IS TODAY, WHICH ALCOHOL
23 AND DRUG COMBINED.

24 FOR A SHORT TIME I WAS THE COUNTY'S ADMINISTRATOR
25 GUARDIAN, THE PUBLIC ADMINISTRATOR GUARDIAN FOR ABOUT A YEAR AND

1 A HALF, AND I STARTED AND FOR A SHORT TIME HEADED THE OFFICE OF
2 CRIMINAL JUSTICE PLANNING FOR THE COUNTY.

3 Q. ARE YOU CURRENTLY INVOLVED WITH ANY PROFESSIONAL
4 ASSOCIATIONS?

5 A. YES. THERE'S THE STATE ASSOCIATION OF COUNTY AND ALCOHOL
6 AND DRUG PROGRAM ADMINISTRATORS, WHICH IS THE OFFICIAL STATE
7 TITLE OF MY JOB.

8 Q. OKAY. HOW MANY DRUG AND ALCOHOL CLIENTS DOES THE COUNTY
9 SERVE THROUGH YOUR DEPARTMENT?

10 A. IT'S ABOUT 8,000 A YEAR.

11 Q. DOES THE COUNTY HAVE A DRUG TREATMENT COURT?

12 A. YES, IT DOES. IT HAS SEVERAL OF THEM.

13 Q. CAN YOU EXPLAIN THOSE, PLEASE?

14 A. YES. IT'S A STANDARD MODEL WHERE UNDER THE LAW THERE, IT'S
15 POSSIBLE FOR THE COURT TO HAVE DIVERSION FROM INCARCERATION INTO
16 TREATMENT AND OTHER ACTIVITIES. IF THE CLIENT ATTENDS AND IS
17 SUCCESSFUL, HE WOULD ESSENTIALLY DISCHARGE HIS OBLIGATION.

18 WE HAVE STAFF IN THESE COURTS. WE DO THE
19 ASSESSMENTS. THEY ARE ALL DIFFERENT. THERE'S WHAT'S CALLED
20 PROPOSITION 36 COURT. THAT'S A SPECIFIC STATE LAW THAT HAS
21 CERTAIN REQUIREMENTS. THERE IS A DRUG DEPENDENCY COURT THAT'S
22 LINKED TO THE CHILD WELFARE SYSTEM. THERE IS A MENTAL HEALTH
23 COURT FOR INDIVIDUALS WHO HAVE AN ALCOHOL, DRUG AND MENTAL
24 HEALTH PROBLEM, THINGS LIKE THAT.

25 Q. AND ARE THESE COURTS GENERALLY DIVERSIONARY FROM KEEPING

1 PEOPLE OUT OF COUNTY JAIL?

2 **A.** YES, THEY ARE.

3 **Q.** AND DO YOU KNOW HOW MANY OF THE 8,000, APPROXIMATELY,
4 CLIENTS THAT YOU HAVE COME FROM THOSE COURTS?

5 **A.** I DON'T KNOW HOW MANY COME FROM THE COURTS, BUT WE HAVE OVER
6 70 PERCENT ARE CLIENTS WHO ARE IN SOME WAY A CRIMINAL JUSTICE
7 LINK. THEY ARE EITHER FROM THE DRUG COURT OR THEY HAVE SOME
8 KIND OF A CRIMINAL JUSTICE OBLIGATION. THEY ARE ON PROBATION OR
9 PAROLE OR SOMETHING LIKE THAT.

10 **Q.** DOES THE COUNTY PROVIDE SERVICES TO PAROLEES?

11 **A.** YES, WE DO.

12 **Q.** AND HOW ELSE ARE CLIENTS -- HOW ELSE DO CLIENTS COME TO YOU
13 FROM THE CRIMINAL JUSTICE IF THEY DON'T COME FROM THE COURTS?

14 **A.** YOU MAY HAVE A CLIENT ON PROBATION AND THE PROBATION
15 DEPARTMENT STRONGLY RECOMMENDS THAT THEY ENGAGE IN TREATMENT.

16 YOU MIGHT HAVE SOMEONE WHO IS ON STATE PAROLE, BUT
17 NOT COMING THROUGH A PAROLE PROGRAM. SO THERE ARE LOTS OF WAYS
18 OUTSIDE OF HAVING A SPECIFIC REFERRAL FROM THE COURT.

19 **Q.** AND HOW MUCH IS YOUR DEPARTMENT'S BUDGET?

20 **A.** JUST OVER \$50 MILLION.

21 **Q.** HAVE YOU HAD ANY CUTS THIS YEAR?

22 **A.** YES. WE HAD ONE IN MID YEAR AS A RESULT OF THE STATE BUDGET
23 BEING LATE OF ABOUT 800,000 AND IN THE UPCOMING YEAR THAT STARTS
24 JULY 1 WE HAVE A REDUCTION TARGET OF \$9 MILLION.

25 **Q.** THAT'S FOR FISCAL YEAR 2010?

1 **A.** YES.

2 **Q.** GENERALLY, WHAT KIND OF SERVICES DOES YOUR DEPARTMENT
3 PROVIDE?

4 **A.** IT PROVIDES A WHOLE CONTINUUM OF SERVICES BEGINNING ON ONE
5 SIDE WITH PREVENTION -- WHAT IS KNOWN AS PREVENTION,
6 SCHOOL-BASED AND COMMUNITY-BASED, THINGS LIKE THAT.

7 IT HAS WHAT'S CALL EARLY INTERVENTION, SORT OF THE
8 INITIAL SIGNS OF DRUG USE AND TRYING TO INVOLVE YOURSELVES EARLY
9 SO IT DOESN'T PROGRESS.

10 A RANGE OF TREATMENT, EVERYTHING FROM WHAT'S CALLED
11 LOW LEVEL, MAYBE OUTPATIENT COUNSELING, LOW LEVEL COUNSELING ON
12 THROUGH RESIDENTIAL TREATMENT, METHADONE MAINTENANCE. WE HAVE
13 SPECIALTY PROGRAMS FOR PREGNANT ADDICTS, PARENTING ADDICTS,
14 ADOLESCENT TREATMENT AND THINGS LIKE THAT.

15 **Q.** HOW ARE THESE SERVICES PAID FOR?

16 **A.** A VARIETY OF FUNDING SOURCES; MOST OF THEM PUBLIC, STATE AND
17 FEDERAL WITH SOME COUNTY GENERAL FUND. SMALL AMOUNT OF
18 INSURANCE AND CLIENT FEES.

19 **Q.** AND WHAT ABOUT THE FUNDING FOR THOSE PROGRAMS?

20 **A.** EXCUSE ME?

21 **Q.** WHERE DOES THE FUNDING COME FROM FOR THOSE PROGRAMS?

22 **JUDGE KARLTON:** THAT'S WHAT HE JUST SAID.

23 **A.** STATE AND FEDERAL AND COUNTY, AND THEN SOME CLIENT FEES,
24 VERY LITTLE INSURANCE.

25

1 **BY MS. FUENTES:**

2 **Q.** AND FROM THE STATE AND THE FEDERAL WHAT DO THEY FUND? IS
3 THERE ANYTHING IN PARTICULAR?

4 **A.** SOMETIMES THEY ARE SPECIFIC GRANTS FOR THINGS. THERE IS A
5 GRANT, FOR EXAMPLE, THAT FUNDS A PART OF A SPECIFIC DRUG COURT.
6 THE FEDERAL MONEY COMES IN A BLOCK GRANT AND PARTS OF THE BLOCK
7 GRANT WILL BE FOR, AS AN EXAMPLE, PREVENTION OR HIV SERVICES,
8 AND A CERTAIN PART OF ALL THAT FUNDING IS DISCRETIONARY.

9 **JUDGE REINHARDT:** WHAT PERCENTAGE ROUGHLY COMES FROM
10 THE STATE?

11 **THE WITNESS:** I'M GOING TO HAVE TO GUESS --

12 **JUDGE KARLTON:** NOT GUESS, YOUR BEST ESTIMATE.

13 **THE WITNESS:** THANK YOU. I'M SORRY. MY BEST
14 ESTIMATE IS SIX TO EIGHT MILLION OF THE FIFTY.

15 **JUDGE REINHARDT:** THANK YOU.

16 **BY MS. FUENTES:**

17 **Q.** AND WHAT PERCENTAGE OF YOUR BUDGET IS THAT?

18 **A.** TWELVE TO WHATEVER TIMES TWO WOULD BE.

19 **Q.** AND HOW MUCH OF YOUR BUDGET IS COUNTY DISCRETIONARY FUNDS,
20 DO YOU KNOW?

21 **A.** WE HAVE ABOUT \$20 MILLION OF THE 50 MILLION IS COUNTY
22 GENERAL FUND.

23 **Q.** AND DO YOU KNOW WHAT THE BULK OF THAT MONEY PAYS FOR IN YOUR
24 DEPARTMENT?

25 **A.** WELL, WE USE IT ACROSS ALL OF THE SERVICES. SO I CAN'T

1 REALLY ANSWER THAT ANY MORE SPECIFICALLY THAN THAT.

2 **Q.** DOES THE COUNTY -- WHAT IS THE COUNTY'S CURRENT CAPACITY TO
3 PROVIDE DRUG AND ALCOHOL SERVICES TO PEOPLE WHO NEED THEM?

4 **A.** WELL, AS I SAY, WE TREAT ABOUT 8,000 CLIENTS A YEAR. WE
5 HAVE WAITING LISTS IN ALL OF THE TREATMENT MODALITIES.

6 WE DON'T REALLY CONSCIOUSLY TURN PEOPLE AWAY. WHAT
7 HAPPENS IS IF THEY CAN'T GET IN, THEY DON'T STAY AND KEEP
8 TRYING. SO -- BUT WE ACTUALLY SEE 8,000 A YEAR ROUGHLY.

9 **Q.** CAN YOU EXPLAIN THAT A LITTLE BIT? YOU SAY THEY COME IN,
10 BUT THEY KEEP TRYING?

11 **A.** SURE. WE HAVE WAITING LISTS FOR THOSE WHO APPLY AND ARE --
12 WE AREN'T ABLE TO ACTUALLY ACCEPT THEM IN THE MOMENT. BUT
13 ADDICTION AND DEPENDENCE IS A CHRONIC AND RELAPSING BRAIN
14 DISEASE, AND THESE ARE CLIENTS WHO ARE NOT HIGHLY MOTIVATED TO
15 START WITH.

16 SO TO BE ON A WAITING LIST AND STAY THERE, THEY HAVE
17 TO CALL IN REGULARLY, FOR EXAMPLE, AND THEY AREN'T REAL GOOD AT
18 THAT. SO THEY GET LOST AND THE WORD GETS OUT THAT YOU CAN'T GET
19 IN OR THEY TRY OUR PHONE SYSTEM AND CAN'T GET THROUGH AND THEN
20 THEY STOP TRYING.

21 SO MY GUESS IS THAT, YOU KNOW, WHEN YOU LOOK AT THE
22 WAITING LIST, IT'S THE WAITING LIST OF THOSE WHO ARE STRONG
23 ENOUGH OR HAVE ENOUGH INCENTIVE TO WANT TO KEEP TRYING UNTIL
24 THEY GET IN. AND MY GUESS IS THOSE NEEDING IT WHO AREN'T IN IS
25 A GREATER NUMBER.

1 Q. AND WHAT HAPPENS TO THE PEOPLE WHO DON'T PUT THEMSELVES ON
2 THE WAITING LIST? WHAT DO THEY DO, DO YOU KNOW?

3 A. WELL, IT'S, YOU KNOW, A CHRONIC RELAPSE IN CONDITION AND IT
4 GETS WORSE WITHOUT TREATMENT. AND SO I WOULD SAY FOR THE VAST
5 MAJORITY OF THEM WHO CONTINUE TO USE, THEY GET WORSE IN THEIR
6 ADDICTION.

7 THEY CERTAINLY ARE IN RISK OF ARREST BECAUSE IT'S A
8 CRIMINAL ACT BY DEFINITION. THEY AREN'T TAKING CARE OF
9 THEMSELVES, SO YOU GET A WHOLE RANGE OF ATTENDANT HEALTH
10 PROBLEMS; THINGS LIKE THAT.

11 Q. DO YOU KNOW IF THE COUNTY'S JAIL POPULATION HAS BEEN REDUCED
12 AT ALL IN LIGHT OF THE DIVERSIONARY DRUG COURT PROGRAMS THAT WE
13 JUST DISCUSSED?

14 A. YES. ACTUALLY, AFTER PROPOSITION 36, WHICH WAS A STATE
15 INITIATIVE FOR ESSENTIALLY DRUG DIVERSION FROM JAIL, WE WERE
16 ABLE TO SHOW, AND I THINK EVERYONE IN THE CRIMINAL JUSTICE
17 SYSTEM AGREED, THAT THE JAIL POPULATION HAD BEEN REDUCED ABOUT
18 21 PERCENT AS A RESULT OF THAT.

19 AND THERE WERE -- THERE WERE OTHER DIVERSION PROGRAMS
20 GOING ON. SO IT'S HARD TO ISOLATE IT, BUT I THINK THERE WAS
21 COMMON AGREEMENT THAT WAS THE CAUSE OF IT.

22 Q. SO DO YOU THINK THE PROPOSITION 36 PROGRAM IN SANTA CLARA
23 COUNTY IS SUCCESSFUL?

24 A. I THINK SO.

25 Q. HOW MUCH FUNDING DO YOU RECEIVE FROM THE STATE FOR YOUR

1 PROPOSITION 36 PROGRAM?

2 **A.** ABOUT 6 MILLION A YEAR. ABOUT A QUARTER OF THAT AND A
3 LITTLE MORE GOES TO PROBATION AND THE REST GOES INTO TREATMENT.

4 **Q.** IS THAT ENOUGH TO SERVE ALL THE CLIENTS THAT ARE ELIGIBLE
5 FOR PROP 36?

6 **A.** NO. WE HAVE TO SPEND A GREAT DEAL MORE THAN THAT. LAST I
7 CHECKED IT WAS ABOUT \$8 MILLION OF MONEY FROM OUR OTHER FUNDING
8 SOURCES TO TREAT PROPOSITION 36 CLIENTS, BECAUSE THE PROP 36
9 FUNDING WASN'T ADEQUATE TO MEET THEIR NEEDS.

10 **Q.** DOES THE COUNTY HAVE THE ABILITY TO PROVIDE IMMEDIATE
11 TREATMENT TO PRISONERS WHO MAY BE RELEASED UNDER A PRODUCT?

12 **A.** I'M SORRY. I COULDN'T HEAR ALL THAT.

13 **Q.** YOU ARE AWARE THAT THIS COURT IS CONSIDERING WHETHER TO
14 ISSUE A PRISONER RELEASE ORDER, CORRECT?

15 **A.** YES.

16 **Q.** WOULD THE COUNTY IMMEDIATELY BE ABLE TO PROVIDE TREATMENT TO
17 PRISONERS WHO ARE SUBJECT TO THAT RELEASE?

18 **A.** NO.

19 **Q.** WHY NOT?

20 **A.** AS I SAID, WE ARE FULL AND HAVE WAITING LISTS. SO UNLESS
21 THERE ARE RESOURCES TO EXPAND TREATMENT, THEY WOULD HAVE TO GET
22 IN LINE, WAIT.

23 **Q.** DO YOU BELIEVE THAT THE INABILITY OF THE COUNTY TO
24 IMMEDIATELY TREAT THE INDIVIDUALS WOULD POSE A RISK TO PUBLIC
25 SAFETY?

1 **A.** I THINK SO. FROM MY EXPERIENCE, THESE INDIVIDUALS -- THIS
2 IS A POPULATION THAT'S HEAVILY INVOLVED IN CRIMINAL ACTIVITY.
3 NOT JUST THE CRIME OF DRUG USE AND RELATED THINGS, BUT THE CRIME
4 RELATED TO THAT, WHICH IS PROPERTY CRIME PRIMARILY AND THINGS
5 LIKE THAT. SO THEY ARE CERTAINLY AT RISK FOR REARREST.

6 **Q.** DID YOU FORM AN OPINION AS TO WHAT IMPACT, IF ANY, A
7 PRISONER POPULATION REDUCTION WOULD HAVE ON THE COUNTY OF SANTA
8 CLARA?

9 **A.** YES. IF THEY END UP IN THE COUNTY, FROM ALL OF THE EVIDENCE
10 I HAVE SEEN AND HAVING TALKED TO OFFICIALS, IT'S, AGAIN, ABOUT
11 TWO-THIRDS, OR 70 PERCENT, OF THE INMATE POPULATION HAVE SERIOUS
12 DRUG AND ALCOHOL PROBLEMS. SO WHATEVER NUMBER COMES TO THE
13 COUNTY, THAT PERCENTAGE, I WOULD EXPECT, TO BE ACTIVELY USING
14 AND WOULD BE AT RISK AS I DESCRIBED.

15 **Q.** WHAT PERCENTAGE -- IN YOUR OPINION, WHAT PERCENTAGE OF
16 PEOPLE BEING RELEASED FROM JAIL WOULD HAVE SUBSTANCE ABUSE OR
17 DRUG ABUSE PROBLEMS?

18 **JUDGE KARLTON:** FROM JAIL OR FROM PRISON?

19 **A.** FROM PRISON?

20 **BY MS. FUENTES:**

21 **Q.** FROM PRISON, YES.

22 **MR. SANGSTER:** OBJECTION. PERSONAL KNOWLEDGE,
23 EXPERTISE.

24 **BY MS. FUENTES:**

25 **Q.** IF YOU KNOW. DO YOU KNOW?

1 **A.** NO, I DON'T KNOW. NO ONE DOES.

2 **Q.** DO YOU HAVE AN OPINION AS TO WHAT PERCENTAGE OF INDIVIDUALS
3 RELEASED FROM PRISON WOULD HAVE -- WOULD HAVE SUBSTANCE ABUSE OR
4 DRUG ABUSE PROBLEMS?

5 **MR. SANGSTER:** LACKS FOUNDATION. PERSONAL KNOWLEDGE.
6 EXPERTISE.

7 **JUDGE REINHARDT:** DIDN'T HE JUST ASK IF HE KNEW.

8 **JUDGE KARLTON:** THAT'S THE SAME QUESTION I THINK.

9 **JUDGE HENDERSON:** HOW DOES THAT DIFFER FROM THE
10 PREVIOUS QUESTION?

11 **MS. FUENTES:** I'M ASKING HIM IF HE KNOWS BASED ON HIS
12 OPINION, HIS EXPERTISE.

13 **JUDGE HENDERSON:** WELL, HOW DOES IT DIFFER FROM THE
14 PREVIOUS QUESTION OF WHETHER HE KNEW?

15 **BY MS. FUENTES:**

16 **Q.** ALL RIGHT. WELL, LET'S ASK IT THIS WAY.

17 DO YOU KNOW IN THE COUNTY JAIL WHAT PERCENTAGE OF
18 INDIVIDUALS HAVE SUBSTANCE ABUSE PROBLEMS?

19 **A.** ABOUT 70 PERCENT.

20 **Q.** AND DO YOU HAVE ANY REASON TO BELIEVE THAT THAT WOULD BE THE
21 SAME PERCENTAGE IN THE STATE PRISON POPULATION?

22 **JUDGE KARLTON:** THAT --

23 **A.** I'M ASSUMING IT WOULD BE THE SAME. A CRIMINAL JUSTICE
24 POPULATION GENERALLY IS ABOUT THAT FIGURE.

25 **MR. SANGSTER:** MOVE TO STRIKE. NONRESPONSIVE.

1 SPECULATION.

2 JUDGE HENDERSON: I'M GOING TO ALLOW IT. IT GOES TO
3 THE WEIGHT OF HIS BELIEF AND EXPERIENCE.

4 BY MS. FUENTES:

5 Q. SO THE PLAINTIFFS HAVE BEEN PROPOSING A RELEASE OF 52,000
6 PRISONERS OVER A PERIOD OF TWO YEARS. IF 52,000 WERE RELEASED
7 OVER A PERIOD OF TWO YEARS AND LET'S ASSUME 70 PERCENT OF THOSE
8 HAD SUBSTANCE ABUSE PROBLEMS, WOULD THE COUNTY BE ABLE TO
9 PROVIDE SERVICES TO THOSE INDIVIDUALS?

10 JUDGE REINHARDT: TO ALL 52,000?

11 JUDGE KARLTON: HE ALREADY SAID THAT THE ANSWER IS NO
12 TO ANY NUMBER.

13 A. THE ANSWER IS NO.

14 JUDGE KARLTON: HOW MANY TIMES DO YOU WANT TO ASK
15 THAT QUESTION, COUNSEL, BEFORE YOU CAUSE THE COURT TO SAY
16 SOMETHING UNPLEASANT.

17 MS. FUENTES: WELL, THANK YOU. YOU ANSWERED THE
18 QUESTION FOR HIM.

19 BY MS. FUENTES:

20 Q. THE ANSWER IS NO?

21 A. YES.

22 Q. OKAY.

23 A. YES, THE ANSWER IS NO.

24 JUDGE HENDERSON: AND IT WAS NO EARLIER WHEN SHE
25 ASKED YOU THE SAME QUESTION, RIGHT?

1 **BY MS. FUENTES:**

2 **Q.** AND, IN YOUR OPINION, IF THE COUNTY HAD TO PROVIDE -- THERE
3 ARE CERTAIN MANDATED SERVICES THAT HAVE TO BE PROVIDED TO
4 CRIMINAL JUSTICE OFFENDERS, IS THAT RIGHT?

5 **A.** THERE'S SOME, YES.

6 **Q.** AND WHAT ARE THOSE MANDATED SERVICES?

7 **A.** THERE IS A MANDATE UNDER PROPOSITION 36 THAT ANY CLIENT WHO
8 IS ELIGIBLE HAS TO BE OFFERED TREATMENT, AND SO THAT'S A
9 MANDATED SERVICE.

10 THE OTHER MANDATES ARE REALLY TIED TO GRANTS WHERE
11 THERE'S A FUNDING REQUIREMENT. THE FUNDING IS FOR A SPECIFIC
12 POPULATION OR A SPECIFIC SERVICE.

13 **Q.** DOES THE COUNTY ALSO SERVE PEOPLE WHO ARE NOT CRIMINAL
14 JUSTICE OFFENDERS?

15 **A.** YES.

16 **Q.** AND WOULD THERE BE ANY IMPACT TO THOSE PEOPLE'S ABILITY TO
17 OBTAIN SERVICES IF THE COUNTY WERE TO PROVIDE SERVICES -- DEVOTE
18 ITS RESOURCES MORE TO CRIMINAL JUSTICE OFFENDERS?

19 **A.** YES. TO THE EXTENT THAT MORE OF THE CLIENTS ARE CRIMINAL
20 JUSTICE CLIENTS AND COMPETING FOR A FIXED NUMBER OF TREATMENT
21 SLOTS, THEN THOSE WHO ARE NOT CRIMINAL JUSTICE CLIENTS WOULD
22 HAVE A HARDER TIME GETTING IN.

23 **Q.** WHAT IF THERE WERE A POPULATION CAP IMPOSED ON THE STATE
24 PRISON AND THE COUNTY JAILS WERE NOT ABLE TO SEND PRISONERS TO
25 THE STATE PRISON. WOULD THAT HAVE ANY IMPACT ON YOUR DRUG AND

1 ALCOHOL DEPARTMENT?

2 **A.** YES, IT WOULD. BECAUSE THEN YOU WOULD HAVE A SITUATION
3 WHERE ACTIVELY USING DRUG ADDICTS WHO ARE ARRESTED STAY ON THE
4 STREET BASICALLY OR THEY END UP IN A COUNTY JAIL SITUATION.
5 THEN WE GET, YOU KNOW, DIVERSION FROM OUR OWN COUNTY SYSTEM.
6 BUT IF WE DON'T HAVE RESOURCES, THEN THEY AREN'T IN TREATMENT.

7 **Q.** THANK YOU.

8 **A.** YOU ARE WELCOME.

9 **THE COURT:** ANYTHING FROM STATE DEFENDANTS?

10 **MR. MELLO:** NO, YOUR HONOR.

11 **THE COURT:** OKAY. CROSS-EXAMINATION.

12 **CROSS EXAMINATION**

13 **BY MR. SANGSTER:**

14 **Q.** ED SANGSTER FOR THE PLAINTIFFS.

15 MR. GARNER, I WANT TO FOCUS ON THE 70 PERCENT FIGURE.

16 **MR. SANGSTER:** AND JUST FOR THE COURTS' INFORMATION,
17 I'M GOING TO CROSS EXAMINE HIM ON ONE ISSUE THAT WAS NOT COVERED
18 IN DIRECT, BUT IS PART OF THE DECLARATION THAT WAS SUBMITTED.

19 **JUDGE HENDERSON:** OKAY.

20 **BY MR. SANGSTER:**

21 **Q.** YOU TALKED ABOUT 70 PERCENT OF THE PEOPLE COMING OUT OF
22 PRISON HAVING DRUG AND ALCOHOL PROBLEMS, AND YOUR ESTIMATES WERE
23 BASED ON THAT 70 PERCENT FIGURE, CORRECT?

24 **A.** YES.

25 **Q.** THESE ARE THE MONETARY ESTIMATES OF HOW MUCH IT WOULD COST

1 THE COUNTY?

2 **A.** YES.

3 **Q.** DO YOU KNOW WHAT PERCENTAGE OF INMATES COMING OUT OF THE
4 PRISON CURRENTLY USE YOUR AGENCY'S SERVICES?

5 **A.** CURRENTLY COMING OUT? I DON'T KNOW.

6 **Q.** WELL, DO YOU HAVE -- DO YOU KNOW WHAT PERCENTAGE OF THE
7 PEOPLE COMING OUT OF THE PRISONS AT THIS POINT ARE USING YOUR
8 AGENCY'S SERVICES?

9 **JUDGE KARLTON:** HE JUST SAID NO.

10 **MR. SANGSTER:** HE SAID HE DIDN'T KNOW THE NUMBER, SO
11 I'M ASKING.

12 **A.** NO.

13 **JUDGE HENDERSON:** YOUR FIRST QUESTION WAS WHAT
14 PERCENTAGE COMING OUT. THE SECOND ONE WAS WHAT?

15 **MR. SANGSTER:** I INTENDED TO ASK AS A FIRST QUESTION
16 WHAT NUMBER, AND I GUESS I DIDN'T AND ASKED TWO QUESTIONS THE
17 SAME. SO I APOLOGIZE.

18 **BY MR. SANGSTER:**

19 **Q.** YOUR COST ESTIMATE IS BASED ON CERTAIN ASSUMPTIONS ABOUT THE
20 TIMING OF THE RELEASE?

21 **A.** YES AND NO. THE COST IS BASED ON THE ACTUAL COST OF
22 TREATING A CRIMINAL JUSTICE POPULATION IN THE COUNTY. IF IT'S
23 TIED TO THE STATE RELEASE, THEN YOU ARE RIGHT, I DON'T KNOW HOW
24 MANY AT ANY GIVEN TIME. SO IN THAT SENSE THE ANSWER IS NO. I
25 WOULDN'T KNOW.

1 Q. DO YOU KNOW WHETHER THE LENGTH OF TIME SERVED IN STATE
2 PRISONS EFFECTS THE NEED FOR SERVICES BY YOUR AGENCY WHEN THE
3 PEOPLE ARE RELEASED?

4 A. NO, I DON'T KNOW.

5 Q. IS IT TRUE THAT THE COSTS THAT YOUR AGENCY WILL INCUR AS A
6 RESULT OF TREATING PAROLEES WILL BE INCURRED AT SOME POINT
7 ANYWAY REGARDLESS OF WHEN THEY ARE RELEASED?

8 A. I DON'T KNOW THAT. I'M ASSUMING A CERTAIN NUMBER WOULD END
9 UP IN YOUR SYSTEM OVER TIME ANY WAY, YES.

10 Q. DO YOU HAVE ANY REASON TO BELIEVE THE PERCENTAGE, WHATEVER
11 IT IS, WOULD BE DIFFERENT IF THIS COURT REDUCED THE PRISONERS
12 SENTENCES BY THREE MONTHS?

13 A. I DON'T KNOW.

14 Q. YOU TALKED IN YOUR DECLARATION ABOUT CERTAIN FINANCIAL
15 IMPACTS TO THE COUNTY, AND I WANT TO ASK YOU A LITTLE BIT MORE
16 ABOUT THE REIMBURSEMENTS.

17 YOU SAID YOU GOT \$6 MILLION TO \$8 MILLION FROM THE
18 STATE. HOW MUCH DO YOU GET FROM THE FEDERAL GOVERNMENT?

19 A. THE COUNTY IS ABOUT 20 MILLION AND IF THE STATE IS SIX TO
20 EIGHT -- I'D HAVE TO LOOK AT THE NUMBERS, YOU UNDERSTAND THAT'S
21 AN OPINION -- SO THE REST IS A COMBINATION OF FEDERAL AND THEN
22 FEES AND INSURANCE.

23 Q. AND DOES THE COUNTY GET ANY REIMBURSEMENTS FROM THE STATE
24 FOR PROVIDING SERVICES TO PAROLEES?

25 A. YES. THERE IS STATE PROGRAM UNDER STATE PAROLE IN THE BAY

1 AREA. IT'S CALLED THE BAY AREA SERVICES NETWORK, WHERE WE HAVE
2 A CONTRACT WITH STATE PAROLE, ROUGHLY \$1 MILLION. THEY SEND US
3 THE CLIENTS WHO ARE ON PAROLE AND WE PROVIDE THE TREATMENT WITH
4 THOSE FUNDS.

5 **Q.** SO WHAT PERCENTAGE OF THE MONEY THAT YOU SPEND TREATING
6 PAROLEES NOW GETS REIMBURSED BY THE STATE?

7 **A.** ALL I'M SURE OF -- ALL I KNOW ABOUT THAT AMOUNT OF ROUGHLY
8 \$1 MILLION THAT'S INVOLVED IN THE CONTRACT WITH PAROLE.

9 WHAT I DO NOT KNOW IS HOW MANY PEOPLE ON PAROLE JUST
10 COME INTO THE SYSTEM.

11 **JUDGE KARLTON:** SETTING ASIDE THOSE FOLKS WHO WANDER
12 IN, CAN YOU TELL US WHAT PERCENTAGE OF THE COST OF TREATING
13 THOSE PERSONS IN THIS BAY AREA SYSTEM IS PAID FOR BY THE STATE?

14 **THE WITNESS:** ALL OF THE BASIC CLIENTS ARE STATE
15 FUNDED. THEY'RE A STATE PAROLE CONTRACT.

16 **JUDGE KARLTON:** SO 100 PERCENT.

17 **THE WITNESS:** YES.

18 **BY MR. SANGSTER:**

19 **Q.** WHEN YOU WERE PROVIDING THE COURT WITH AN ESTIMATE OF THE
20 FINANCIAL IMPACT ON THE COUNTY, WERE YOU TAKING INTO ACCOUNT THE
21 FACT THAT THE COUNTY CURRENTLY GETS REIMBURSED FOR SERVICES
22 PROVIDED TO PAROLEES?

23 **A.** YES. I LOOKED AT THE TOTAL COST. IT WASN'T A REVENUE
24 ISSUE. IT'S WHAT IS THE COST OF PROVIDING TREATMENT IN SANTA
25 CLARA COUNTY. AND WE DIVIDED IT BY THE NUMBER OF TREATMENT

1 EPISODES AND THEN WE GET A COST PER TREATMENT EPISODE. THAT'S
2 HOW I ARRIVED AT IT.

3 **Q.** I'M STILL TRYING TO DRILL DOWN A LITTLE BIT AND FIGURE OUT,
4 THAT'S THE TOTAL COST. SO THAT -- BUT THE COUNTY GETS
5 REIMBURSED A PORTION OF THAT TOTAL COST?

6 **JUDGE KARLTON:** THE COUNTY GETS 100 PERCENT OF THE
7 PEOPLE ON THE STATE CONTRACT.

8 **THE WITNESS:** THAT'S RIGHT.

9 **JUDGE KARLTON:** AND AS TO OTHER PEOPLE THAT YOU MAY
10 BE TREATING, YOU DON'T KNOW WHO THEY ARE, YOU DON'T KNOW HOW
11 MANY, IF ANY.

12 **THE WITNESS:** I THINK WE HAVE TWO DIFFERENT ISSUES.
13 ONE IS THE COST ISSUE, WHICH I EXPLAINED HOW WE
14 ARRIVED AT THAT. WHO PAYS FOR IT? IN THIS CASE UNDER BASIN
15 IT'S 100 PERCENT STATE FUNDING THROUGH STATE PAROLE.

16 **BY MR. SANGSTER:**

17 **Q.** ALL RIGHT. SO THE STATE PAYS FOR THE PAROLEES THAT YOU
18 TREAT?

19 **A.** UNDER THAT CONTRACT, YES.

20 **MR. SANGSTER:** NO FURTHER QUESTIONS.

21 **THE COURT:** ANYTHING FROM CCPOA?

22 **MS. LEONARD:** NO, YOUR HONOR.

23 **THE COURT:** REDIRECT?

24 **MS. FUENTES:** NO, YOUR HONOR. I HAVE NO REDIRECT.

25 **JUDGE HENDERSON:** OKAY. THANK YOU VERY MUCH,

1 MR. GARNER. YOU ARE EXCUSED.

2 (WITNESS EXCUSED.)

3 **JUDGE KARLTON:** THAT'S IT.

4 **JUDGE HENDERSON:** IS THAT IT?

5 AGAIN, REMEMBER TO GET US THOSE NEW ESTIMATES BY
6 WEDNESDAY AND WE WILL RESUME THIS TRIAL NEXT THURSDAY AT 9:15.
7 COURT IS ADJOURNED.

8 (WHEREUPON AT 3:42 P.M. FURTHER PROCEEDINGS
9 IN THE ABOVE-ENTITLED CAUSE WAS ADJOURNED
10 UNTIL THURSDAY, DECEMBER 18, 2008 AT 9:15
11 A.M.)
12
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I N D E X

DEFENDANT INTERVENOR WITNESSES

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CERTIFICATE OF REPORTER

WE, JOAN MARIE COLUMBINI AND DEBRA L. PAS, OFFICIAL REPORTERS FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN CIV S-90-0520 LKK JPM, RALPH COLEMAN, ET AL V. ARNOLD SCHWARZENEGGER AND C 01-1351 TEH, MARCIANO PLATA V. ARNOLD SCHWARZENEGGER, WERE REPORTED BY US, CERTIFIED SHORTHAND REPORTERS, AND WERE THEREAFTER TRANSCRIBED UNDER OUR DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY US AT THE TIME OF FILING.

THE VALIDITY OF THE REPORTER'S CERTIFICATION OF SAID TRANSCRIPT MAY BE VOID UPON DISASSEMBLY AND/OR REMOVAL FROM THE COURT FILE.

/S/ JOAN MARIE COLUMBINI

JOAN MARIE COLUMBINI, CSR 5435, RPR

S/ DEBRA L. PAS

DEBRA L. PAS, CSR 11916, CRR, RMR, RPR

MONDAY, DECEMBER 15, 2008

**JOAN MARIE COLUMBINI, CSR, RPR
DEBRA L. PAS, CSR, CRR, RMR, RPR
OFFICIAL COURT REPORTERS - USDC
415-255-6842**

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
AND FOR THE NORTHERN DISTRICT OF CALIFORNIA
UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES PURSUANT
TO SECTION 2284, TITLE 28 UNITED STATES CODE

RALPH COLEMAN, ET AL.,)
)
 PLAINTIFFS,)
)
 VS.) NO. CIV S-90-0520 LKK JFM
)
 ARNOLD SCHWARZENEGGER, ET AL.)
) THREE-JUDGE COURT
 DEFENDANTS.)
)

MARCIANO PLATA, ET AL.,)
)
 PLAINTIFFS,)
)
 VS.) NO. C 01-1351 TEH
)
 ARNOLD SCHWARZENEGGER, ET AL.)
)
 DEFENDANTS.)
)

TRANSCRIPT OF PROCEEDINGS

SAN FRANCISCO, CALIFORNIA
THURSDAY, DECEMBER 18, 2008

(APPEARANCES ON FOLLOWING PAGES)

REPORTED BY: JOAN MARIE COLUMBINI, CSR 5435, RPR
DEBRA L. PAS, CSR 11916, CRR, RMR, RPR
OFFICIAL COURT REPORTERS, U.S. DISTRICT COURT

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BY: CAROL L. WOODWARD, ESQUIRE

1 **THURSDAY, DECEMBER 18, 2008**

9:22 O'CLOCK A.M.

2
3 **P R O C E E D I N G S**
4

5 **JUDGE HENDERSON:** OKAY. GOOD MORNING. ARE WE READY
6 TO GO?

7 **MR. SANGSTER:** YES, YOUR HONOR. ED SANGSTER FOR THE
8 PLAINTIFFS.

9 IF I MAY ADDRESS THE COURT BRIEFLY REGARDING THE
10 WITNESS SCHEDULE?

11 **JUDGE HENDERSON:** CERTAINLY.

12 **MR. SANGSTER:** THERE ARE TWO WITNESSES ON THE COURT'S
13 LIST THAT IT RECEIVED AS TO WHOM THERE HAVE NOW BEEN
14 STIPULATIONS REACHED CONCERNING THEIR TESTIMONY. THE
15 STIPULATIONS HAVE BEEN AGREED ON, BUT THERE WAS NOT ENOUGH TIME
16 TO FILE THEM, SO THOSE WILL BE FILED LATER TODAY OR TONIGHT BUT
17 THE WITNESSES ARE MICHAEL JAMES AND DUANE BAY.

18 **JUDGE HENDERSON:** OKAY.

19 **JUDGE REINHARDT:** EXCUSE ME. ONE MINUTE. WHAT ARE
20 THE NAMES AGAIN?

21 **MR. SANGSTER:** MICHAEL JAMES AND DUANE BAY.

22 **JUDGE HENDERSON:** B-A-Y.

23 **MR. SANGSTER:** B-A-Y.

24 **JUDGE HENDERSON:** GREAT. THANK YOU.

25 I WAS JUST ASKED. THIS IS TODAY'S LIST, AND JUST

1 GIVE US A BEST ESTIMATE, WHEN DO YOU THINK WE WILL FINISH?

2 MR. SANGSTER: THIS CASE?

3 JUDGE HENDERSON: YES.

4 MR. SANGSTER: TOMORROW BEFORE NOON.

5 JUDGE HENDERSON: OKAY.

6 MR. SANGSTER: YOUR HONOR, A LOT OF PEOPLE SPENT A
7 LOT OF TIME OVER THE LAST 48 HOURS REACHING STIPULATIONS ON
8 TESTIMONY, AND THE COURT'S RECORD HAS, I THINK, PROBABLY SIX OR
9 SEVEN WITNESSES RESOLVED. SO I THINK EVERYBODY MADE AN EFFORT
10 TO GET THIS THING --

11 JUDGE HENDERSON: YOU OBVIOUSLY DID.

12 MR. SANGSTER: MY ESTIMATE IS NOON TOMORROW.

13 JUDGE HENDERSON: OKAY. MUCH APPRECIATED. WE WON'T
14 KNOW WHAT TO DO WITH OUR TIME.

15 JUDGE KARLTON: I'LL FIGURE IT OUT.

16 JUDGE REINHARDT: WE CAN READ ALL THE THINGS THAT
17 HAVE BEEN SUBMITTED.

18 MR. SANGSTER: I GUESS THE OTHER ISSUE THAT DID COME
19 UP, WHEN IT BECAME APPARENT THAT THE SCHEDULE WAS GOING TO BE
20 ABBREVIATED IS THAT COUNSEL DID NOT WANT TO BE FACED WITH A
21 REQUEST FOR CLOSING ARGUMENTS TOMORROW.

22 JUDGE HENDERSON: OH, NO.

23 MR. SANGSTER: THAT'S FINE.

24 JUDGE HENDERSON: WE'LL GIVE YOU A DATE FOR CLOSING
25 ARGUMENT.

1 **JUDGE REINHARDT:** WE MIGHT BE WILLING TO DISCUSS IT
2 WITH YOU.

3 **MR. SANGSTER:** CURRENTLY, WE THINK WE HAVE THREE
4 WITNESSES ON -- THE DEFENSE HAS THREE WITNESSES -- OR TWO
5 WITNESSES, THE PLAINTIFFS HAVE A REBUTTAL WITNESS, FOR TOMORROW.
6 SO EVEN IF SOMEBODY FROM TODAY SLOPS OVER, I DON'T SEE ANY
7 CHANCE WE ARE NOT GOING TO FINISH TOMORROW.

8 **JUDGE HENDERSON:** THANK YOU. YOU MAY BEGIN. CALL
9 YOUR WITNESS WHEN YOU ARE READY.

10 **MR. LEWIS:** GOOD MORNING, YOUR HONORS. KYLE LEWIS ON
11 BEHALF OF THE STATE DEFENDANTS. DEFENDANTS NOW CALL GALE
12 BATAILLE.

13 **GALE BATAILLE**
14 HAVING BEEN CALLED AS A WITNESS BY THE DEFENDANTS WAS FIRST
15 DULY SWORN AND EXAMINED AS FOLLOWS:

16 **THE CLERK:** STATE AND SPELL YOUR FULL NAME FOR THE
17 RECORD.

18 **THE WITNESS:** MY NAME IS GALE BATAILLE, G-A-L-E, LAST
19 NAME B-A-T-A-I-L-L-E.

20 **MR. LEWIS:** GOOD MORNING, MS. BATAILLE.
21 FOR THE COURT'S KNOWLEDGE MS. BATAILLE'S EXPERT
22 REPORTS WERE FILED AND MARKED AS TRIAL EXHIBIT 1025 AND 1026,
23 AND HER QUALIFICATIONS ARE SET FORTH IN HER CURRICULUM VITAE
24 WHICH IS EXHIBIT A TO 1025.

25 ///

DIRECT EXAMINATION BY MR. LEWIS

BY MR. LEWIS

Q MS. BATAILLE, WHAT IS YOUR CURRENT POSITION?

A CURRENTLY, I'M A CONSULTANT WITH SEVERAL STATEWIDE ORGANIZATIONS, THE CALIFORNIA MENTAL HEALTH DIRECTORS ASSOCIATION AND THE CALIFORNIA INSTITUTE FOR MENTAL HEALTH.

Q ARE YOU ALSO A MEMBER OF A JUDICIAL COUNCIL COMMITTEE?

A YES. I SERVE ON THE CALIFORNIA JUDICIAL COUNCIL'S CRIMINAL JUSTICE AND MENTAL HEALTH TASK FORCE, WHICH IS CHARGED WITH COMING UP WITH SOME BETTER SOLUTIONS TO THE CRIMINALIZATION OF MENTALLY ILL FOLKS IN THIS STATE.

Q AND IN THE COURSE OF THAT COMMITTEE AND THOSE OTHER CONSULTANCIES YOU WORK ON, WHAT ARE YOUR DUTIES GENERALLY?

A IN TERMS OF THE JUDICIAL COUNCIL COMMITTEE, I ACTUALLY SERVE ON TWO TASK FORCES WITHIN THE COMMITTEE, ONE OF THEM ON CO-OCCURRING DISORDERS, AND THE OTHER ON REENTRY OR EARLY POST-ADJUDICATION SERVICES.

WITH THE CALIFORNIA MENTAL HEALTH DIRECTORS ASSOCIATION, MY PRIMARY ROLE WITH THEM IS AS CONSULTANT ON CRIMINAL JUSTICE POLICY ISSUES.

Q AND PRIOR TO YOUR WORK WITH THOSE ORGANIZATIONS, DID YOU WORK FOR ANY MENTAL HEALTH DEPARTMENT IN THE STATE OF CALIFORNIA?

A I WORKED FOR THREE MENTAL HEALTH DEPARTMENTS AND ONE PRIVATE NONPROFIT AGENCY. I SERVED AS DEPUTY DIRECTOR FOR ALCOHOL, DRUG

1 ABUSE AND MENTAL HEALTH SERVICES FOR NINE YEARS IN CONTRA COSTA
2 COUNTY. I SERVED AS MENTAL HEALTH DIRECTOR FOR SOLANO COUNTY,
3 AND I SERVED AS MENTAL HEALTH DIRECTOR IN SAN MATEO COUNTY.
4 EARLY IN MY EXPERIENCE I RAN A SMALL RESIDENTIAL TREATMENT
5 FACILITY IN ALAMEDA COUNTY.

6 **Q** WHAT IS YOUR EDUCATIONAL BACKGROUND?

7 **A** I HAVE A BA WITH HONORS IN PSYCHOLOGY FROM OBERLAND SCHOOL,
8 AND I HAVE A MASTER'S DEGREE IN SOCIAL WORK FROM SAN FRANCISCO
9 STATE UNIVERSITY.

10 **Q** YOU WERE RETAINED AS AN EXPERT FOR DEFENDANTS IN THIS CASE
11 REGARDING THE POTENTIAL EFFECTS OF A CALIFORNIA PRISONER RELEASE
12 ORDER ON COUNTY-BASED COMMUNITY MENTAL HEALTH SYSTEMS AND
13 MENTALLY ILL PERSONS THAT IT SERVES, CORRECT?

14 **A** YES, I HAVE -- WAS.

15 **Q** AND WHAT IS YOUR OPINION REGARDING THE POTENTIAL IMPACT OF A
16 PRISONER RELEASE ORDER ON CALIFORNIA'S COUNTY-BASED MENTAL
17 HEALTH SYSTEMS AND THE PERSONS IT SERVICES?

18 **A** MY OPINION IS THAT A -- PARTICULARLY ANY KIND OF ACCELERATED
19 RELEASE ORDER WOULD HAVE A DETRIMENTAL IMPACT, NOT ONLY ON THE
20 INDIVIDUALS RELEASED, BUT ON THE COUNTY, AND, I WOULD ASSUME,
21 STATE PAROLE OUTPATIENT SYSTEMS UNLESS THERE IS SUBSTANTIAL
22 AVAILABILITY OF INCREASED FUNDING AND INCREASED SERVICES, AS
23 WELL AS, REALLY, THE CAPACITY TO PLAN AND FULLY EXECUTE THOSE
24 SERVICES.

25 I CAN SAY MORE, BUT CALIFORNIA'S MENTAL HEALTH SYSTEM

1 AT THIS POINT IS REALLY IN A CRISIS IN TERMS OF ITS CAPACITY TO
2 SERVE THE INDIVIDUALS WITH SERIOUS MENTAL ILLNESS THAT ARE
3 ALREADY IN THE MENTAL HEALTH SYSTEMS OR SEEKING SERVICES, AND
4 THAT INCLUDES CHILDREN AND YOUTH AS WELL AS ADULTS AND OLDER
5 ADULTS.

6 **Q** AND WITHOUT THE ADDITIONAL RESOURCES OR PLANNING THAT YOU
7 DESCRIBE, ARE YOU CONCERNED THAT THERE WILL BE ADVERSE
8 CONSEQUENCES FOR EITHER THE RELEASED PRISONERS WITH MENTAL
9 ILLNESSES OR MEMBERS OF THE PUBLIC WHO HAVE MENTAL ILLNESS?

10 **A** YES, I AM CONCERNED ABOUT THAT, THE IMPACT ON RELEASED
11 PRISONERS. I THINK WE'VE LEARNED SOME LESSONS IN THE LAST,
12 HOPEFULLY, 30 YEARS.

13 WHEN WE LOOK AT WHO CONSTITUTES THE MAJORITY OF THE
14 HOMELESS POPULATION IN THIS STATE AND NATIONALLY, AT LEAST A
15 THIRD OF THEM HAVE SERIOUS MENTAL ILLNESS, AND USUALLY THEY HAVE
16 CO-OCCURRING SUBSTANCE ABUSE DISORDERS. AND I'VE SEEN
17 STATISTICS THAT 25 TO A THIRD PERCENT EASILY HAVE HAD EXPERIENCE
18 IN AND OUT OF THE JUSTICE SYSTEM. SO MANY OF THOSE FOLKS WHO --
19 ARE ALREADY PEOPLE THAT HAVE CYCLED THROUGH THE CRIMINAL JUSTICE
20 SYSTEM.

21 IN TERMS OF THE -- LET ME SEE IF I GET THE SECOND
22 PART OF THE QUESTION. IN TERMS OF MENTAL HEALTH SYSTEMS AND THE
23 FOLKS WHO ACCESS THEM IN CALIFORNIA, WE ALREADY HAVE A SITUATION
24 WHERE THERE ARE VARIABLE RESOURCES AROUND THIS STATE, BUT IN
25 MANY SYSTEMS, THERE IS NOT THE CAPACITY TO SERVE IN A TIMELY

1 MANNER PEOPLE WITH VERY SERIOUS MENTAL ILLNESSES WHO NOW SEEK
2 SERVICES. AND SOMETIMES THERE ARE WAITING LISTS. MANY PEOPLE
3 SIMPLY ARE NOT ABLE TO BE SERVED IN THE PUBLIC SYSTEM AS THEY --
4 IF THEY ARE ASSESSED AS NOT HAVING THE HIGHEST LEVEL NEED.
5 OTHERS WHO EVEN HAVE HIGH LEVEL NEEDS MAY NEED TO WAIT FOR, YOU
6 KNOW, SEVERAL MONTHS TO GET AN APPOINTMENT WITH A PSYCHOLOGIST
7 OR PSYCHIATRIST. SO THERE'S REALLY A CAPACITY ISSUE CURRENTLY
8 IN THE MENTAL HEALTH SYSTEM.

9 **Q** IN YOUR EXPERT REPORT, YOU ASSUME A PRISONER RELEASE ORDER
10 ON ROUGHLY THE LEVEL OF 15,000 OFFENDERS?

11 **A** YES.

12 **Q** ARE YOU AWARE THE PLAINTIFFS HAVE NOW ASKED FOR A PRISONER
13 RELEASE ORDER THAT COULD SEEK UP TO 52,000 EARLY OFFENDERS BEING
14 RELEASED OVER A 24-MONTH PERIOD?

15 **A** YES, I AM.

16 **Q** WITHOUT ADDITIONAL PLANNING AND RESOURCES YOU MENTIONED
17 EARLIER IN YOUR OPINION, WOULD A PRISONER RELEASE ORDER OF THE
18 50,000 MAGNITUDE STILL RESULT IN THE ADVERSE CONSEQUENCES YOU
19 DESCRIBED?

20 **A** IN MY OPINION, I DESCRIBED WHAT I FELT WERE SIGNIFICANT
21 ADVERSE CONSEQUENCES FOR A LOWER LEVEL RELEASE. THEREFORE, IF
22 THERE IS A 50,000-PLUS RELEASE OF PRISONERS, I WOULD EXPECT THAT
23 THE CONSEQUENCES AND THE CONCERNS WOULD BE GREATER.

24 **Q** IN FORMING YOUR OPINIONS, YOU ASSUME THAT APPROXIMATELY
25 20 PERCENT OF A PRISONER RELEASE ORDER WOULD BE COLEMAN CLASS

1 MEMBERS PENCILING OUT TO ABOUT 10,000 OFFENDERS, CORRECT?

2 **A** YES, I DID.

3 **Q** ARE THERE ANY OTHER ANTICIPATED CHARACTERISTICS THAT MAY BE
4 PRESENT IN THE MENTALLY ILL OFFENDER POPULATION THAT CONCERN YOU
5 IN TERMS OF THEIR FACTORS AND THEIR BACKGROUND OR THEIR HISTORY?

6 **A** THE MENTALLY ILL OFFENDER POPULATION IN -- AND THIS IS
7 REALLY VERY COMMON KNOWLEDGE THAT'S BEEN DOCUMENTED IN RESEARCH,
8 BUT IS ALSO DOCUMENTED BY FOLKS WHO WORK WITH THIS POPULATION,
9 HAS A EXTRAORDINARILY HIGH RATE OF SUBSTANCE ABUSE.

10 THE STATE DIRECTOR OF MENTAL HEALTH RECENTLY IN A
11 STATE JUDICIAL COUNCIL MEETING SAID HE THOUGHT IT WAS
12 90 PERCENT. I WOULD SAY THE MOST CONSERVATIVE RESEARCH SHOWS
13 SOMEWHERE IN THE NEIGHBORHOOD OF 70 TO 75 PERCENT.

14 WHEN YOU COMBINE SERIOUS MENTAL ILLNESS AND SUBSTANCE
15 ABUSE, YOU HAVE -- FIRST OF ALL, IT -- SUBSTANCE ABUSE TENDS TO
16 BE A HUGE FACTOR IN ADDITIONAL PSYCHIATRIC CRISES AND WILL CAUSE
17 DECOMPENSATION IN THE MENTAL HEALTH POPULATION. IN ADDITION,
18 SUBSTANCE ABUSE IS CLEARLY, AND I THINK THIS IS COMMON
19 KNOWLEDGE, IS CLEARLY A HUGE FACTOR IN CRIMES THAT ARE
20 COMMITTED.

21 **Q** DOES A CO-OCCURRING SUBSTANCE ABUSE OR USE DISORDER CAUSE A
22 MENTALLY ILL PERSON TO REQUIRE MORE SERVICES OR CARE?

23 **A** THAT IS PROBABLY THE MOST CHALLENGING POPULATION THAT WE
24 SERVE IN PUBLIC MENTAL HEALTH, AND, FRANKLY, WE ARE REALLY JUST
25 BEGINNING TO TOUCH EFFECTIVELY SERVING THAT POPULATION. WHAT WE

1 DO KNOW -- AND THIS IS THROUGH THE INITIAL SUBSTANCE ABUSE AND
2 MENTAL HEALTH SERVICES ADMINISTRATION, AND MANY OTHER RESEARCH
3 STUDIES IS, IS THAT SIMPLY SETTING UP A SYSTEM FOR TREATING
4 SUBSTANCE ABUSE AND HAVING ANOTHER SYSTEM FOR TREATING MENTAL
5 ILLNESS AND EXPECTING THOSE INDIVIDUALS TO GO BACK AND FORTH
6 BETWEEN THOSE SYSTEMS SEEKING CARE DOESN'T WORK WELL AT ALL.
7 MANY OF THEM JUST SIMPLY DO NOT GET CARE. SO WE NEED TO
8 INTEGRATE, PARTICULARLY FOR THE MOST SERIOUSLY MENTAL ILL FOLKS,
9 WHICH, WITHIN THE CALIFORNIA PRISON SYSTEM, IS THE EOP
10 POPULATION, YOU NEED TO REALLY PROVIDE SERVICES THAT ARE
11 INTEGRATED TO BE EFFECTIVE.

12 **Q** IN YOUR EXPERIENCE, DO PERSONS EXITING THE CRIMINAL JUSTICE
13 SYSTEM EITHER IN JAIL OR PRISON, DO THEY SEEK SERVICES FROM
14 PUBLIC MENTAL HEALTH ORGANIZATIONS?

15 **MR. GALVAN:** OBJECTION. NO FOUNDATION.

16 **JUDGE HENDERSON:** LAY A FOUNDATION, COUNSEL.

17 **MR. LEWIS:** THANK YOU, YOUR HONOR.

18 **BY MR. LEWIS**

19 **Q** IN YOUR 27 YEARS AS WORKING IN VARIOUS LEVELS OF COUNTY
20 ORGANIZATIONS, DID YOU EVER HAVE A CHANCE TO STUDY OR OBSERVE
21 THE NUMBER OF PERSONS EXITING THE CRIMINAL JUSTICE SYSTEM THAT
22 MIGHT BE USING YOUR VARIOUS COUNTY SERVICES?

23 **A** I HAVE NEVER DONE A FORMAL STUDY, BUT IT IS CERTAINLY WITHIN
24 MY EXPERIENCE THAT INDIVIDUALS WHO ARE ON STATE PAROLE DO SEEK
25 SERVICES PERIODICALLY IN THE PUBLIC MENTAL HEALTH SYSTEM.

1 ACTUALLY, MANY OF THEM, WE WILL ONLY FIND OUT LATER, ACTUALLY
2 ARE ON PAROLE, SO WE DON'T NECESSARILY KNOW WHEN THEY COME IN
3 THE DOOR BECAUSE THEY SOMETIMES WOULD PREFER TO USE THE PUBLIC
4 MENTAL HEALTH SYSTEM THAN PAROLE OUTPATIENT. IT DEPENDS ON THE
5 INDIVIDUAL.

6 **Q** DO YOU HAVE AN OPINION REGARDING, I GUESS, THE AMOUNT OF
7 SUPERVISION OR TREATMENT SERVICES THAT SHOULD BE MADE AVAILABLE
8 TO THE MOST HIGHLY NEEDING CRIMINAL MENTALLY ILL OFFENDERS
9 COMING OUT, SUCH AS THE EOP OR HIGH LEVELS OF CARE YOU
10 DESCRIBED?

11 **A** YES, I DO. THE EOP POPULATION -- AND THEN THERE IS SOME
12 MORE SEVERELY DISTURBED POPULATIONS THAT REALLY REQUIRE
13 INTENSIVE INPATIENT CARE. BUT THE EOP POPULATION IN GENERAL
14 NEEDS STRUCTURED CARE AND NEEDS CARE THAT DOESN'T DEPEND ON THEM
15 VOLUNTARILY REMEMBERING AND KEEPING APPOINTMENTS AND VOLUNTARILY
16 GOING OUT AND FINDING THEIR OWN HOUSING. THEY REALLY NEED WHAT
17 WE TEND TO CALL IN MENTAL HEALTH INTENSIVE WRAPAROUND SERVICES.
18 ACTUALLY, THAT'S BEEN RECOGNIZED IN THE WORK THAT WAS DONE IN
19 CALIFORNIA, REALLY FOLLOWING UP ON -- EXCUSE ME -- THE AB 900
20 PRISON REFORM LEGISLATION.

21 THERE HAVE BEEN SEVERAL BILLS THAT HAVE BEEN
22 INTRODUCED, AND VETOED, I THINK BECAUSE OF FINANCIAL ISSUES, BUT
23 WERE INTRODUCED BY SENATOR STEINBERG THAT REALLY FUNDED THOSE
24 KINDS OF INTENSIVE WRAPAROUND SERVICES, AND THEY ARE -- THEY
25 PROBABLY COST ON AN AVERAGE PER INDIVIDUAL \$15 TO \$30,000 A YEAR

1 AND REALLY NEED 24-HOUR AVAILABILITY OF CARE.

2 **Q** ARE YOU FAMILIAR WITH CDCR'S MENTAL HEALTH PAROLEE
3 OUTPATIENT CLINICS?

4 **A** YES, I WOULD NOT SAY I HAVE, YOU KNOW -- I HAVEN'T GONE IN
5 AND OUT OF THOSE CLINICS A LOT, BUT I AM FAMILIAR WITH THE
6 SYSTEM.

7 **Q** BASED ON YOUR EXPERIENCE, ARE THE PAROLEE OUTPATIENT CLINICS
8 ABLE TO MEET THE NEEDS OF AN ADDITIONAL 10,000 PERSONS THAT MAY
9 BE RELEASED AS A RESULT OF THIS PRISONER RELEASE ORDER REQUIRING
10 MENTAL HEALTHCARE?

11 **A** NO. WHAT I CAN COMMENT ON AT THIS POINT IS THAT VERY MUCH
12 WITHIN MY EXPERIENCE, AND PARTICULARLY WHEN I WAS DIRECTOR IN
13 SOLANO COUNTY AND IN SAN MATEO COUNTY IN THE LAST 18 YEARS, IT
14 WAS NOT AT ALL UNCOMMON FOR PAROLE OUTPATIENT CLINICS TO ATTEMPT
15 TO REFER INDIVIDUALS WHO NEEDED MORE INTENSIVE CARE TO OUR
16 SYSTEM.

17 IT WAS ALSO NOT UNCOMMON FOR THEM TO SAY TO A
18 PAROLEE, AS BY SELF-REPORT THAT WE HEARD FROM THE PAROLEE, GO ON
19 OVER TO COUNTY MENTAL HEALTH AND SEE IF YOU CAN GET IN THE DOOR.
20 IT WAS COMMONLY KNOWN AND HAPPENS.

21 **Q** DOES THIS LACK OF ACCESS BY PAROLEES TO PAROLEE OUTPATIENT
22 CARE CAUSE YOU CONCERN IN TERMS OF THE EFFECTS IT MIGHT HAVE ON
23 COUNTY HEALTH SYSTEMS?

24 **A** YES, IT DOES. AND LET ME GIVE A LITTLE BIT MORE SPECIFICS.

25 THE ADULT OUTPATIENT PAROLE SYSTEM HAS DONE VARIOUS

1 REPORTS. THE ONE THAT I'VE MOST RECENTLY SEEN WAS, I BELIEVE,
2 MARCH OF 2008, AND THAT REPORT DISCUSSES BOTH RATES OF
3 RECIDIVISM FOR THE COLEMAN CLASS OF MENTALLY ILL PRISONERS AND
4 PAROLEES, AND IT ALSO LAYS OUT STAFFING RATIOS THAT ARE
5 CURRENTLY IN THOSE CLINICS. AND HAVING WORKED IN COUNTY MENTAL
6 HEALTH SYSTEMS FOR, AS I SAID, 28 YEARS, I'M VERY FAMILIAR WITH
7 WHAT ARE GENERALLY ACCEPTED CASELOAD OF STAFFING, AND I, QUITE
8 FRANKLY, WAS A BIT SURPRISED AT THE KINDS OF RATIOS THAT
9 CURRENTLY EXIST.

10 FOR EXAMPLE, I BELIEVE THAT THERE IS -- FOR EVERY 570
11 PAROLEES WHO ARE ALREADY CLASSIFIED AS MENTALLY ILL, THERE'S ONE
12 PSYCHIATRIST. SO IT'S A ONE TO ABOUT A 570 RATIO CASELOAD.
13 SIMILAR KIND OF SIZE FOR PSYCHOLOGISTS. AND A ONE TO, I THINK,
14 170, -75 FOR SOCIAL WORKERS WHO WOULD HELP TO MANAGE THE CASES.
15 THAT IS DRAMATICALLY HIGHER THAN ANY CASELOAD THAT CAN
16 EFFECTIVELY WORK WITH FOLKS, IN MY EXPERIENCE, IN THE PUBLIC
17 MENTAL HEALTH SYSTEM.

18 ONE OF THE THINGS THAT REPORT DOCUMENTS IS THAT THERE
19 IS AN INCREASE IN RECIDIVISM RATE IF THERE IS NOT IMMEDIATE
20 CONTACT WITH TREATMENT AND INTENSIVE FOLLOW-UP. SO -- THERE'S
21 BEEN A UCLA RESEARCH STUDY ON THE PAROLE OUTPATIENT CONTINUUM
22 THAT BASICALLY DOCUMENTS THAT AS THE FREQUENCY OF CONTACT AND
23 THE IMMEDIACY OF CONTACT GOES UP, THE RECIDIVISM RATE DROPS, AND
24 THE REVERSE IS TRUE.

25 Q AND DO COUNTY MENTAL HEALTH-BASED SYSTEMS HAVE THE CAPACITY

1 TO MEET AN ADDITIONAL INFLUX OF MENTALLY ILL OFFENDERS THAT
2 MIGHT NOT BE ABLE TO GET CARE AT THE POC'S?

3 **A** I WOULD SAY THAT THAT IS ABSOLUTELY NOT WITHIN THE CAPACITY
4 OF COUNTY MENTAL HEALTH SYSTEMS CURRENTLY. I'VE ALREADY STATED
5 THAT COUNTY MENTAL HEALTH SYSTEMS ARE STRUGGLING WITH BEING ABLE
6 TO MEET THE CAPACITY OF THE MOST SERIOUSLY MENTALLY ILL
7 POPULATION CURRENTLY, AND THAT IS NOT -- LET ME JUST ADD THAT'S
8 NOT JUST A MATTER OF HAVING ENOUGH MONEY TO DO IT, BUT LITERALLY
9 WHETHER THERE ARE ENOUGH TRAINED PROFESSIONALS OUT THERE TO
10 BRING IN -- EVEN IF WE HAD THE MONEY, THERE ARE NOT ENOUGH
11 PSYCHIATRISTS IN THE STATE, AND THAT'S ONE OF THE MOST CRITICAL
12 SHORTAGES FOR NURSES IN THE MENTAL HEALTH SYSTEM. THERE ARE
13 SIGNIFICANT VACANCY RATES.

14 I'M FAIRLY FAMILIAR WITH THAT BECAUSE I'VE ALSO DONE
15 WORK ON WHAT WE CALL THE WORKFORCE CAPACITY CRISIS IN
16 CALIFORNIA.

17 **Q** IN ADDITION TO NOT HAVING STAFFING, ARE THERE ALSO FUNDING
18 PROBLEMS FOR LOCAL COUNTY MENTAL HEALTH SYSTEMS?

19 **A** YES. I'M NOT GOING TO -- UNLESS YOU WANT ME TO, I WON'T GO
20 INTO ALL THE FUNDING STREAMS THAT FUND THE PUBLIC MENTAL HEALTH
21 SYSTEM, BUT JUST TO SAY THAT ONE OF THE KEY STREAMS OF FUNDING
22 IS BASED ON CALIFORNIA'S SALES TAX AND VEHICLE LICENSE FEES, AND
23 WE ALL KNOW WHAT'S GOING ON IN THE ECONOMY RIGHT NOW. THAT'S
24 TAKEN A NOSEDIVE AND, FRANKLY, HAS NOT GROWN OVER THE LAST
25 DECADE AND A HALF SINCE THAT'S BEEN IN PLACE TO KEEP UP WITH

1 WHAT THE ACTUAL COST OF DOING BUSINESS OVER THAT TIME IS.

2 **Q** IN ONE OF YOUR EXPERT REPORTS YOU HIGHLIGHT THE IMPORTANCE
3 OF ADEQUATE PLANNING TO HAVE MENTAL HEALTH SERVICES IN PLACE
4 PRIOR TO A RELEASE OF COLEMAN CLASS MEMBERS. WHAT WOULD SUCH
5 PLANNING ENTAIL?

6 **A** I DID CITE THAT, AND, IN MY OPINION, DOING ADEQUATE PLANNING
7 MEANS ASSESSING -- AND I THINK THERE'S SOME DATA TO HELP WITH
8 THIS, BUT ASSESSING WHERE THE ANTICIPATED RELEASES WILL BE
9 GROUPED, I GUESS, IF YOU WANT TO SAY THAT, SO THAT, FOR EXAMPLE,
10 WE KNOW THAT L.A., RIVERSIDE, SAN BERNADINO AND SAN DIEGO
11 COUNTY, IF YOU TAKE THOSE FOUR COUNTIES TOGETHER, THEY WOULD
12 HAVE OVER 50 PERCENT OF THE RELEASED PAROLEES IN THE STATE.
13 CURRENTLY DUE, AND ONE CAN ANTICIPATE THAT ANY ADDITIONAL,
14 RELEASE WOULD HAVE A SIMILAR KIND OF PERCENTAGE IMPACT.

15 AND SO WE REALLY NEED TO LOOK AT THOSE LARGER
16 COUNTIES AND WHAT IT WOULD TAKE FOR THEM TO HAVE CAPACITY TO
17 WORK WITH A PAROLE OUTPATIENT SYSTEM AND PROVIDE SERVICES THAT
18 MAY NOT BE FEASIBLE WITHIN THE CURRENT PAROLE OUTPATIENT SYSTEM.
19 SO THAT'S ONE PART OF THE PLANNING. IT ALSO SIMPLY TAKES TIME
20 TO, BASED ON YOUR ASSESSMENT OF THE NEEDS, TO -- IT TAKES TIME
21 TO DETERMINE WHAT PROGRAMS NEED TO COME UP AND TO PUT THEM IN
22 PLACE. AND I THINK THAT IF I'VE HAD A FAULT AS A MENTAL HEALTH
23 DIRECTOR IN MY CAREER IT'S BECAUSE I HAVE ALWAYS BEEN OVERLY
24 OPTIMISTIC ABOUT HOW QUICKLY WE CAN BRING PROGRAMS UP AND
25 OPERATIONAL.

1 BUT I BELIEVE IT WOULD BE OPTIMISTIC, IN MY USUALLY
2 OPTIMISTIC FRAME, TO HAVE A PLAN AND PROGRAMS UP AND OPERATING
3 ANY MORE QUICKLY, AND THIS IS ASSUMING THE FINANCING IS THERE
4 AND GUARANTEED, BUT I THINK IT WOULD BE OPTIMISTIC IF WE SAID IT
5 WOULD TAKE A YEAR TO 18 MONTHS, AND, FRANKLY, I HAVE A GRAVE
6 CONCERN THAT EVEN WITH THE BEST PLANS AND EVEN WITH FINANCING,
7 WE WOULD NOT BE ABLE TO FILL THE STAFFING NEEDS THAT ARE
8 REQUIRED. THE STATE PRISON SYSTEM HAS STRUGGLED WITH THAT. THE
9 COUNTY MENTAL HEALTH SYSTEMS IN CALIFORNIA ABSOLUTELY STRUGGLE
10 WITH THAT.

11 **Q** YOU MENTION CALIFORNIA'S CURRENT BUDGET IMPASSE AND CRISIS.
12 ARE YOU AWARE OF ANY POTENTIAL REDUCTIONS TO MENTAL HEALTH
13 SERVICES OR FUNDINGS THAT ARE BEING CONSIDERED?

14 **A** I AM AWARE THAT THERE ARE VARIOUS DISCUSSIONS AFOOT IN THE
15 LEGISLATURE TO TRY TO TAKE SOME OF THE DESIGNATED MENTAL HEALTH
16 FUNDING THAT DOES EXIST THROUGH FUNDING THAT CAME THROUGH
17 PROP 63. I THINK THAT, YEAH, THERE ARE DISCUSSIONS GOING ON.

18 **Q** IN YOUR EXPERIENCE, DO MENTALLY ILL PERSONS SOMETIMES BECOME
19 HOMELESS?

20 **A** I THINK -- ABSOLUTELY. I THINK WE KNOW THAT AT LEAST A
21 THIRD OF THE MENTALLY ILL -- OF THE HOMELESS POPULATION HAS
22 MENTAL ILLNESS, AND MANY, MANY POLICY AND RESEARCH STUDIES
23 REALLY TIE THAT TO THE PROCESS OF DEINSTITUTIONALIZING, THE
24 CLOSING OF STATE HOSPITALS, AND THE FAILURE IN CALIFORNIA AND
25 NATIONALLY TO PUT SERVICES IN PLACE, PARTICULARLY HOUSING, AND

1 TREATMENT SERVICES THAT WOULD KEEP THOSE FOLKS OFF THE STREET.

2 **Q** HOW LONG DOES IT TAKE TO SET UP THOSE KINDS OF SERVICES, IN
3 YOUR EXPERIENCE?

4 **A** WELL, I MEAN, ONE OF THE ISSUES WITH TREATMENT SERVICES, I
5 THINK I'VE ADDRESSED A COUPLE OF TIMES, YOU HAVE TO HAVE THE
6 STAFF TO PROVIDE THE TREATMENT. AND CURRENTLY, PARTICULARLY
7 WITH PSYCHIATRY, NURSING, AND SOCIAL WORK, THERE SIMPLY ARE NOT
8 ENOUGH STAFF BEING PRODUCED IN CALIFORNIA, AND IT'S NOT BEEN
9 FEASIBLE TO RECRUIT VERY MANY FOLKS FROM OUT OF THE STATE
10 BECAUSE OF THE COST OF LIVING. THAT'S ONE AREA.

11 IN ADDITION, QUITE FRANKLY, THE PUBLIC MENTAL HEALTH
12 SYSTEM HAS NOT HAD ITS PRIMARY FOCUS -- REALLY, I THINK WE HAVE
13 BEEN LOOKING AT THAT MORE IN THE LAST FEW YEARS, BUT I DON'T
14 BELIEVE THAT ALL OF THE STAFF THAT EXIST IN THE SYSTEM RIGHT NOW
15 ARE NECESSARILY TRAINED IN PROVIDING THE MOST EFFECTIVE
16 EVIDENCE-BASED PRACTICES FOR A POPULATION THAT HAS CRIMINAL
17 JUSTICE EXPERIENCE. SO THAT'S AN ISSUE.

18 AND I JUST LOST THE SECOND PART OF YOUR QUESTION.
19 I'M SORRY.

20 **Q** YOU ARE RIGHT. I DID ASK IT EARLIER. THANK YOU.

21 COULD A PRISONER RELEASE ORDER THAT RELEASES SOME
22 MENTALLY ILL OFFENDERS CAUSE MEMBERS OF THE GENERAL PUBLIC TO
23 LOSE THEIR ACCESS TO MENTAL HEALTHCARE?

24 **A** I BELIEVE IT COULD HAVE A VERY SIGNIFICANT EFFECT ON THE
25 ACCESS THAT THE GENERAL PUBLIC HAS TO THE ALREADY UNDERFUNDED

1 MENTAL HEALTH SYSTEM, AND THAT IS BECAUSE IN A COMMUNITY THE
2 PUBLIC MENTAL HEALTH SYSTEM HAS AN ABSOLUTE OBLIGATION TO
3 RESPOND TO PEOPLE WITH SERIOUS MENTAL ILLNESS, INCLUDING
4 CHILDREN, BUT ALSO TO BE RESPONSIVE WHEN THERE IS A -- WHEN AN
5 INDIVIDUAL POSES A DANGER TO HIM OR HERSELF OR OTHERS, AND SO
6 THE PUBLIC MENTAL HEALTH SYSTEM REALLY ACTS AS A LOCAL SAFETY
7 NET FOR THAT KIND OF RISK MANAGEMENT IN A COUNTY.

8 AND I THINK IT WOULD BE ABSOLUTELY PREDICTABLE AND
9 EXPECTED THAT IF THERE WERE, YOU KNOW, AN INFLUX OF FOLKS WHO
10 NEEDED CARE AND WERE DEEMED TO POSE A HIGHER RISK OF ANY KIND OF
11 DANGER TO SELF OR OTHERS, THE PUBLIC MENTAL HEALTH SYSTEM WOULD
12 BE UNDER TREMENDOUS PRESSURE FROM THEIR GOVERNING BODY, WHICH IS
13 THE BOARD OF SUPERVISORS, TO PRIORITIZE THOSE FOLKS. THAT MEANS
14 OTHER FOLKS DON'T GET SERVICES.

15 **Q** DO YOU HAVE AN OPINION REGARDING THE NEED TO PLAN AND
16 PROVIDE FOR RESOURCES FOR THE SUPERVISION AND TREATMENT,
17 REHABILITATION FOR THESE MENTALLY ILL OFFENDERS AND WHAT WOULD
18 HAPPEN IF IT ISN'T PROVIDED?

19 **JUDGE KARLTON:** THERE ARE TWO QUESTIONS. TAKE THEM
20 ONE AT A TIME, COUNSEL.

21 **MR. LEWIS:** THANK YOU, YOUR HONOR. I REALIZE THAT.

22 **BY MR. LEWIS**

23 **Q** IF THE PLANNING AND RESOURCES THAT YOU'RE DISCUSSING
24 REGARDING SUPERVISION AND TREATMENT REHABILITATION NEEDS OF BOTH
25 THE PUBLIC AND MENTALLY ILL OFFENDERS AREN'T PROVIDED, WHAT ARE

1 YOU AFRAID ABOUT? WHAT'S GOING TO HAPPEN?

2 **A** I'M CONCERNED, I GUESS, FROM A VARIETY OF PERSPECTIVES. ONE
3 IS I THINK IT WILL CAUSE HARM TO THE INDIVIDUALS THAT ARE
4 RELEASED INTO THE COMMUNITY. YOU KNOW, THEY ARE PERPETRATORS.
5 THAT'S WHY THEY ARE IN THE PRISON SYSTEM. BUT THEY ALSO ARE
6 OFTEN VICTIMS. AND I BELIEVE THAT UNTREATED, OR INADEQUATELY
7 TREATED, THOSE INDIVIDUALS WILL, IN ALL LIKELIHOOD -- FOR SURE
8 THEY WILL BE ON THE STREETS MORE. I THINK THERE IS A RISK OF
9 SUICIDE AND DEATH, BUT IN ADDITION TO THAT, MY EXPERIENCE IS
10 THAT LOCAL POLICE JURISDICTIONS AND THE SHERIFF'S DEPARTMENT AND
11 COUNTIES END UP HAVING TO PUT THOSE PEOPLE IN LOCAL JAILS FOR A
12 VARIETY OF OFFENSES.

13 AND RIGHT NOW WE HAVE A SITUATION IN CALIFORNIA WHERE
14 JAILS ARE -- MOST JAILS ARE DRAMATICALLY OVERCROWDED AND QUITE
15 FRANKLY TREATMENT OF MENTALLY ILL INDIVIDUALS IN JAIL IS NOT
16 ADEQUATE AND HAS NOT BEEN DEEMED ADEQUATE IN MANY, MANY
17 JURISDICTIONS. SO I THINK IT BACKS UP THE LOCAL JAIL SYSTEM.
18 AND IF THERE IS ANY KIND OF CAP OR REDUCTION IN THE ABILITY OF
19 JAILS TO MOVE PEOPLE INTO THE STATE PRISON SYSTEM, THEN YOU'VE
20 GOT -- WHAT YOU'VE DONE IS ESSENTIALLY TRANSFERRED A SIGNIFICANT
21 PROBLEM TO THE LOCAL LEVEL, AND THE LOCAL LEVEL DOES NOT HAVE
22 RESOURCES OR CAPACITY TO RESPOND TO THAT. I KNOW THAT -- I
23 WON'T CITE COUNTIES, BUT I KNOW VERY SPECIFICALLY OF COUNTY
24 JAILS WHERE THEY ARE FAR IN EXCESS OF THEIR CAPACITY. SO THAT
25 WAS PART ONE.

1 IN TERMS OF THE GENERAL PUBLIC AND -- I THINK THAT
2 WAS ANOTHER PART OF THE QUESTION. YOU KNOW, THERE IS CONCERN --
3 I HAVE TWO KINDS OF CONCERNS. ASIDE FROM IT PUSHING FOLKS WHO
4 NEED CARE TO A POINT WHERE THEY CAN'T GET CARE IN THE GENERAL
5 PUBLIC, THERE IS ALSO, AND I DON'T THINK IT'S QUANTIFIABLE
6 EASILY, BUT THERE IS SOME INCREASED RISK -- AND I'VE JUST LOOKED
7 AT SOME RECENT STATISTICS FROM THE BUREAU OF JUSTICE STATISTICS
8 DIVISION WHERE THERE IS -- THERE IS SOME DOCUMENTATION THAT
9 THERE IS ACTUALLY INCREASED RISK OF VIOLENT RECIDIVISM.

10 NOW I HAVE BEEN AN ADVOCATE ALL MY LIFE, OR ALL MY
11 PROFESSIONAL CAREER, FOR BEING ABLE TO PLACE INDIVIDUALS IN THE
12 COMMUNITY WHO HAVE MENTAL ILLNESS, AND THE RESPONSIBILITY OF
13 COMMUNITY TO TREAT AND CARE FOR THOSE INDIVIDUALS, AND I HAVE
14 CERTAINLY ADVOCATED THAT THE GENERAL MENTALLY ILL POPULATION IS
15 NO MORE RISK OF VIOLENCE IN YOUR COMMUNITY THAN ANYONE ELSE IN
16 THE GENERAL POPULATION.

17 SO I WANT TO BE REALLY CLEAR THAT I THINK, WITH
18 ADEQUATE TREATMENT AND WITH ADEQUATE SUPERVISION, INDIVIDUALS
19 CAN BE PLACED IN THE COMMUNITY AND CAN BE CARED FOR IN A WAY
20 THAT DOESN'T DRAMATICALLY RAISE COMMUNITY RISK. WITHOUT
21 ADEQUATE TREATMENT, PARTICULARLY SUBSTANCE ABUSE TREATMENT,
22 COMBINED WITH PSYCHIATRIC TREATMENT, THERE IS SOME INCREASED
23 RISK.

24 AND PART OF MY CONCERN IS THAT WE'VE HAD A VERY
25 DIFFICULT TIME IN CALIFORNIA REALLY GETTING COMMUNITIES TO

1 ACCEPT PSYCHIATRIC TREATMENT IN THE COMMUNITY. YOU KNOW, I CAN
2 TELL YOU MANY STORIES, AND I WON'T, BUT PERSONAL EXPERIENCE
3 WHERE I'VE HAD -- IN ONE SITUATION WHERE AN ENTIRE CITY COUNCIL
4 WAS THREATENED WITH RECALL OVER AN EFFORT TO PUT A HOMELESS/
5 MENTALLY ILL PROGRAM IN THE COMMUNITY. WHEN YOU ADD THAT THE
6 INDIVIDUAL HAS HAD SOME CRIMINAL JUSTICE HISTORY, IT'S
7 DRAMATICALLY MORE DIFFICULT TO SITE THOSE PROGRAMS WHEN YOU'VE
8 GOT A COMMUNITY THAT'S NOT WILLING TO ACCEPT WHAT I THINK IS
9 REALLY A COMMUNITY RESPONSIBILITY, AND YOU DON'T HAVE ADEQUATE
10 PLANS AND SERVICES IN PLACE, I THINK THERE IS INCREASED RISK.

11 IF FOLKS DON'T GET TREATMENT, THERE'S AN INCREASED
12 RISK OF RECIDIVISM, AND THERE IS SOME INCREASED RISK OF
13 RECIDIVISM THAT IS HARMFUL BASED ON HARMFUL ACTS.

14 **MR. LEWIS:** THANK YOU, MS. BATAILLE. NO FURTHER
15 QUESTIONS, YOUR HONORS.

16 **JUDGE HENDERSON:** INTERVENORS?

17 **MS. FUENTES:** NO QUESTIONS, YOUR HONOR.

18 **JUDGE HENDERSON:** CROSS-EXAMINATION.

19 **MR. GALVAN:** THANK YOU, YOUR HONORS. ERNEST GALVAN
20 FOR THE PLAINTIFFS.

21 **CROSS-EXAMINATION BY MR. GALVAN**

22 **BY MR. GALVAN**

23 **Q** GOOD MORNING, MS. BATAILLE.

24 **A** GOOD MORNING.

25 **Q** THE PRINCIPAL BASIS FOR YOUR OPINIONS IS YOUR EXPERIENCE AS

1 A MENTAL HEALTH DIRECTOR AND AS A PROFESSIONAL FOR 28 YEARS IN
2 THE FIELD; IS THAT RIGHT?

3 **A** WELL, ACTUALLY, IT'S MORE LIKE -- I HATE TO ADMIT, IT'S MORE
4 LIKE 35 TO 37 YEARS. I HAVE BEEN IN COUNTY MENTAL HEALTH AS
5 DIRECTOR OR DEPUTY DIRECTOR FOR 28 YEARS.

6 **Q** MOST RECENTLY IN SAN MATEO WHERE YOU RETIRED AS MENTAL
7 HEALTH DIRECTOR IN JANUARY 2008?

8 **A** YES.

9 **Q** SAN MATEO HAD A GOOD MENTAL HEALTH PROGRAM?

10 **A** I THINK IT'S RECOGNIZED AS ONE OF THE BETTER ONES IN THE
11 STATE, AND IN THE COUNTRY, ACTUALLY.

12 **Q** YOU HAD A RANGE OF SERVICES TAILORED TO YOUR RANGE OF
13 CLIENTS?

14 **A** YES, WE DID.

15 **Q** SO YOU HAD ONE LEVEL OF SERVICE CALLED THE INTENSIVE LEVEL
16 OF SERVICE?

17 **A** THAT WOULD BE A NONTECHNICAL NAME FOR IT, YES.

18 **Q** WHAT'S THE TECHNICAL NAME?

19 **A** WELL, ONE TECHNICAL NAME THAT WE'RE USING NOW IN CALIFORNIA
20 IS CALLED FULL-SERVICE PARTNERSHIPS.

21 **Q** COULD YOU DESCRIBE FOR THE COURT BRIEFLY WHAT THAT LEVEL OF
22 SERVICE ENTAILED?

23 **A** YES. IT IS -- IT IS A SERVICE WHERE WE REALLY TAILOR THE
24 TREATMENT SERVICES TO THE INDIVIDUAL NEEDS OF THE PARTICIPANT OR
25 THE CLIENT. THE STAFFING RATIO IS GENERALLY ONE-TO-TEN OR

1 ONE-TO-15 AT THE MOST. YOU MAKE SURE THAT THERE IS CRISIS
2 RESPONSE CAPABILITY. WE DON'T WAIT FOR INDIVIDUALS TO COME INTO
3 A CLINIC. YOU GO OUT AND MEET AND WORK WITH THEM WHEREVER THEY
4 ARE.

5 SUPPORTED EMPLOYMENT SERVICES IS CRITICAL. HOUSING
6 SERVICES, AND IT'S NOT JUST GETTING SOMEBODY AN APARTMENT, BUT
7 REALLY DOING WHATEVER IT TAKES TO WORK WITH THEM ON KEEPING
8 THEIR LIVING SITUATION IS VERY CRITICAL. AND THEN, CLEARLY,
9 TREATMENT SERVICES. SO ALL OF THOSE THINGS ARE PART OF WHAT ONE
10 DOES.

11 Q THEN YOU ALSO HAD AN OUTPATIENT LEVEL OF SERVICE?

12 A YES, WE DID.

13 Q COULD YOU DESCRIBE THAT FOR THE COURT, PLEASE?

14 A OUTPATIENT CARE BASICALLY INCLUDED CASE MANAGEMENT SERVICES,
15 PSYCHIATRIC SERVICES, NURSING SERVICES AND THERAPEUTIC SERVICES.
16 AND, AGAIN, YOU WOULD TAILOR THE MIX OF THOSE SERVICES DEPENDING
17 ON THE NEED OF THE PERSON. I WOULD SAY THAT PROBABLY, AND I'M
18 ESTIMATING HERE, BUT I THINK PROBABLY 95 PERCENT OF THE ADULT
19 OUTPATIENT TREATMENT SYSTEM CLIENTS REQUIRE PSYCHIATRIC
20 MEDICATIONS AND NEED MONITORING FOR THAT.

21 THE INTENSITY OF THERAPEUTIC SERVICES REALLY DEPENDS.
22 AND SOME OF THOSE ARE INDIVIDUALS, SOME OF THOSE ARE GROUPS.
23 THAT REALLY DEPENDS ON THE PARTICULAR NEEDS OF THE INDIVIDUAL.

24 I WOULD SAY, IN GENERAL, THERE HAS NEVER BEEN
25 SUFFICIENT STAFFING TO PROVIDE THE INTENSITY OF THE THERAPEUTIC

1 AND THE CASE MANAGEMENT SERVICES THAT I THINK FOLKS WOULD SAY
2 WAS APPROPRIATE. WE'VE ALWAYS BEEN LOW ON THAT. THAT'S IN ONE
3 OF THE BEST SYSTEMS, IN ONE OF THE BEST STAFF SYSTEMS.

4 **Q** THEN YOU ALSO HAD AN LPS CONSERVATORSHIP LEVEL OF CARE?

5 **A** LPS CONSERVATORSHIP IS A LEGAL STATUS, AND THE CARE WOULD
6 DEPEND ON WHAT THE INDIVIDUAL CONSERVATEE NEEDED. SO SOME OF
7 THOSE INDIVIDUAL CONSERVATEES ARE ACTUALLY PLACED IN 24-HOUR
8 FACILITIES, SUBACUTE SKILLED NURSING KINDS OF FACILITIES. SOME
9 ARE IN THE COMMUNITY, AND YOU CLEARLY HAVE TO PROVIDE CASE
10 MANAGEMENT AND SOMEWHAT MORE INTENSIVE SERVICES FOR THAT GROUP,
11 AND, CLEARLY, THE HOUSING OF -- THE HOUSING SERVICES FOR THOSE
12 FOLKS IS VERY IMPORTANT.

13 **Q** THEN YOU HAD THE IMD LEVEL, WHICH I BELIEVE STANDS FOR
14 INSTITUTIONS FOR MENTALLY DISABLED, SUBACUTE?

15 **A** THAT'S SUBACUTE SKILLED NURSING, IMD. I KIND OF GROUPED
16 THEM TOGETHER FOR YOU.

17 **Q** YOU HAD SOME CONTRACTS WITH PRIVATE PROVIDERS FOR THE BEDS
18 FOR THOSE IMD'S?

19 **A** YES. ALL OF THE IMD BEDS THAT SAN MATEO COUNTY USED ARE
20 PRIVATELY CONTRACTED.

21 **Q** YOU HAVE A FACILITY CALLED CORDILLERAS UNDER CONTRACT,
22 60-BEDS, SOMEWHERE IN THERE?

23 **A** CORDILLERAS.

24 **Q** SOME OF THOSE BEDS ARE LOCKED; IS THAT RIGHT?

25 **A** YES. THERE'S A COMBINATION OF LOCKED BEDS AND SOME

1 RESIDENTIAL BOARD AND CARE BEDS IN THE FACILITY.

2 **Q** WHEN YOU WERE THERE, IS IT CORRECT TO SAY THE SAN MATEO
3 MENTAL HEALTH SYSTEM SERVED ABOUT 10,000 CLIENTS IN A GIVEN
4 YEAR?

5 **A** SOMEWHAT MORE THAN THAT. TEN TO 11,000.

6 **Q** TEN TO 11,000?

7 **A** MM-HMM.

8 **Q** TO BREAK DOWN THE LEVELS OF CARE, IS IT CORRECT TO SAY ABOUT
9 25 PERCENT WERE THE INTENSIVE LEVEL?

10 **A** YOU KNOW, WHEN YOU TALK ABOUT INTENSIVE LEVEL, IF YOU ARE
11 SAYING 25 PERCENT THAT HAD SOME ACUTE INPATIENT CARE, I WOULD
12 NOT SAY 25 PERCENT AT ANY POINT IN TIME RECEIVED THE INTENSIVE
13 LEVEL.

14 THE FULL SERVICE PARTNERSHIP LEVEL THAT WE TALKED
15 ABOUT, WE HAD, AT THE TIME I LEFT, JUST SLIGHTLY OVER A HUNDRED
16 SLOTS --

17 **Q** OKAY.

18 **A** -- FOR 10,000-PLUS CLIENTS --

19 **Q** WHEN YOU WERE --

20 **A** -- IN THE ADULT SYSTEM.

21 **Q** WHEN YOU WERE PREPARING YOUR BUDGET FOR SAN MATEO COUNTY AND
22 YOU HAD TO LAY OUT FOR THE BOARD OF SUPERVISORS HOW MANY PEOPLE
23 YOU SERVED AT EACH LEVEL OF CARE, ABOUT 25 PERCENT WERE IN THE
24 INTENSIVE LEVEL; IS THAT RIGHT?

25 **A** I'M TRYING TO REMEMBER THE STATISTIC, AND I DON'T KNOW WHAT

1 YOU ARE REFERRING TO. THAT WOULD SEEM CORRECT. I DON'T HAVE
2 THAT STATISTIC IN MY HEAD OFF THE TOP --

3 **MR. GALVAN:** COULD WE, MR. JONES, PUT UP THE SAN
4 MATEO BUDGET DOCUMENT?

5 **JUDGE REINHARDT:** "IT WOULD SEEM CORRECT," ISN'T THAT
6 GOOD ENOUGH?

7 **MR. GALVAN:** YES, YOUR HONOR.

8 **BY MR. GALVAN**

9 **Q** TWENTY-FIVE PERCENT WOULD SEEM CORRECT?

10 **A** TWENTY-FIVE PERCENT WOULD SEEM CORRECT IF YOU THINK ABOUT
11 WHAT CONSTITUTES THAT 25 PERCENT. I'VE JUST SAID OF THAT
12 25 PERCENT, THE MOST INTENSIVE LEVEL, WITH THE LOW STAFFING
13 RATIO, THE FULL-SERVICE PARTNERSHIPS ARE -- THE LAST I COUNTED,
14 AND IT'S BEEN A YEAR, THERE WERE ONLY ABOUT A HUNDRED OF THOSE
15 FOR ADULTS.

16 ALSO REMEMBER THAT THE EOP LEVEL OF CARE IN THE
17 STATE, AT LEAST IN TERMS OF THINKING ABOUT --

18 **MR. GALVAN:** MOVE TO STRIKE AS NON-RESPONSIVE, YOUR
19 HONOR.

20 **JUDGE REINHARDT:** PUT UP THE CHART. I'M SORRY. SHE
21 SAID -- YOU ASKED HER WHAT SHE REPORTED TO THE BOARD OF
22 SUPERVISORS. YOU SAID, WASN'T IT 25 PERCENT? SHE SAID IT SEEMS
23 CORRECT. NOW IF YOU WANT TO PROVE IT TO HER, GO AHEAD.

24 (DOCUMENT DISPLAYED.)
25

1 **BY MR. GALVAN**

2 **Q** COULD WE FOCUS ON THE TOP, TOP ROW THERE?

3 DO YOU REMEMBER THESE CHARTS FROM WHEN YOU WERE THE
4 HEAD OF THE --

5 **A** YES, I DO. I DO.

6 **Q** SO IS IT FAIR TO SAY THAT ABOUT 2,400 YOU REPORTED TO THE
7 BOARD AS AT THE INTENSIVE LEVEL OF SERVICE IN FISCAL YEAR
8 '05/'06?

9 **A** THAT'S CORRECT.

10 **Q** AND THEN ABOUT 75 PERCENT OF YOUR CLIENTS WERE AT THE
11 OUTPATIENT LEVEL; IS THAT CORRECT?

12 **A** YES, BUT LET ME CLARIFY.

13 OUTPATIENT COULD BE ONE CONTACT WITH AN EMERGENCY OR
14 HOT LINE. THE 25 PERCENT WOULD GET SOMEBODY IN THE 25 PERCENT
15 LEVEL MAYBE THREE DAYS OF HOSPITALIZATION, AND MOST OF THE TIME
16 THEY'RE REALLY GETTING OUTPATIENT SERVICES. SO IT'S VERY
17 DIFFICULT TO QUANTIFY AT THIS HIGH LEVEL.

18 IT IS NOT CORRECT TO ASSUME THAT IN SAN MATEO,
19 25 PERCENT OF EVERYONE IN THAT CURRENT SYSTEM COULD GET A REALLY
20 INTENSIVE LEVEL OF CARE. THAT'S ANYBODY WHO DURING THE COURSE
21 OF THE YEAR TOUCHED A 24-HOUR FACILITY.

22 **Q** OKAY. AND THAT'S ABOUT 25 PERCENT OF YOUR 10,000, 11,000?

23 **A** TOUCHED A 24-HOUR FACILITY OR RECEIVED FULL SERVICE
24 PARTNERSHIP, YES, THAT'S CORRECT.

25 **Q** SO USING ROUND NUMBERS, ABOUT 2,500 PEOPLE EXPERIENCED SOME

1 SERVICES AT THE INTENSIVE LEVEL?

2 **A** YES.

3 **Q** OUT OF YOUR 10,000, ABOUT 7,500 PEOPLE EXPERIENCED SOME
4 SERVICES AT THE OUTPATIENT LEVEL?

5 **A** THAT SOUNDS CORRECT, AND OF THOSE MANY OF THOSE ARE CHILDREN
6 AND YOUTH.

7 **Q** AND A FEW HUNDRED RECEIVED SOME SERVICES AT THE LPS LEVEL OR
8 IMD LEVEL?

9 **A** YES, THAT NUMBER IS FAIRLY CONSISTENT, AND THAT IS NOT A
10 DIFFERENT LEVEL. THAT IS A DIFFERENT LEGAL STATUS. THOSE
11 INDIVIDUALS MIGHT BE RECEIVING OUTPATIENT CARE. THEY MIGHT ALSO
12 BE RECEIVING INPATIENT CARE. THAT'S JUST HOW MANY FOLKS IN A
13 YEAR WERE ON AN LPS CONSERVATORSHIP.

14 **Q** OKAY. WE'RE DONE WITH THIS CHART.

15 IN REACHING YOUR OPINIONS FOR THIS TRIAL, YOU DIDN'T
16 TOUR ANY OF THE STATE PRISONS, DID YOU?

17 **A** NO, I DID NOT TOUR PRISONS FOR THIS, NO.

18 **Q** AND YOU HAVEN'T BEEN IN ANY STATE PRISONS WITHIN THE LAST
19 FEW YEARS, HAVE YOU?

20 **A** NOT WITHIN THE LAST COUPLE OF YEARS, NO.

21 **Q** IN FACT, YOU'VE ONLY BEEN TO ONE STATE PRISON, SAN QUENTIN?

22 **A** ACTUALLY, I KNOW YOU ASKED ME THAT IN MY DEPOSITION, AND,
23 ACTUALLY, I WASN'T THINKING AT THAT TIME, BUT I'VE ALSO BEEN IN
24 VACAVILLE BECAUSE I WAS DIRECTOR OF MENTAL HEALTH IN SOLANO
25 COUNTY.

1 Q AND YOU DON'T HOLD YOURSELF OUT AS AN EXPERT ON ANYTHING
2 ABOUT THE INTERNAL OPERATION OF THE PRISONS, DO YOU?

3 A NO. AND THAT ISN'T WHAT I WAS RETAINED FOR.

4 Q YOU ARE NOT PROVIDING THE COURT WITH ANY OPINIONS AT ALL
5 ABOUT MENTAL HEALTHCARE IN THE PRISONS; IS THAT RIGHT?

6 A THAT'S NOT MY INTENTION, NO.

7 Q I'D LIKE TO READ YOU A SHORT STATEMENT AND ASK YOU IF YOU
8 AGREE WITH IT.

9 "SOME PEOPLE MAY ARGUE THAT THE BASIC
10 BUILDING BLOCKS OF AN EFFECTIVE MENTAL HEALTH
11 SYSTEM ARE LACKING IN MANY COMMUNITIES, AND,
12 THEREFORE, EFFORTS TO REDUCE THE
13 OVERREPRESENTATION OF PEOPLE WITH MENTAL ILLNESS
14 IN THE CRIMINAL JUSTICE SYSTEM ARE FUTILE. THIS
15 ARGUMENT IS NOT PERSUASIVE. EVEN THEN, MOST
16 UNDERFUNDED MENTAL HEALTH SYSTEMS CAN WORK TO
17 IMPROVE SERVICES TO INDIVIDUALS WITH THE
18 GREATEST NEED, INCLUDING THE GROUP OF PEOPLE
19 WITH SERIOUS AND PERSISTENT MENTAL DISORDERS WHO
20 HAVE FREQUENT INTERACTION WITH THE CRIMINAL
21 JUSTICE SYSTEM. SUCH EFFORTS REQUIRE CLOSE
22 COLLABORATION BETWEEN THE MENTAL HEALTH AND
23 CRIMINAL JUSTICE SYSTEMS."

24 DO YOU AGREE WITH THAT STATEMENT?

25 A IF THE SUMMATION OF THE STATEMENT IS THAT LOCAL SYSTEMS,

1 EVEN THOUGH THEY ARE UNDERRESOURCED AND UNDERFUNDED, COULD
2 IMPROVE SERVICES TO FOLKS INVOLVED IN THE CRIMINAL JUSTICE
3 SYSTEM THROUGH COLLABORATION, ABSOLUTELY. THAT'S WHAT MANY,
4 MANY CALIFORNIA SYSTEMS ARE TRYING TO DO, AND THAT'S ACTUALLY
5 WHAT WE ARE TRYING TO HELP PROVIDE INPUT ON THROUGH THE STATE
6 JUDICIAL COUNCIL. MENTAL HEALTH COURTS, COLLABORATIONS WITH
7 PROBATION DEPARTMENTS, ALL OF WHICH WE WERE ABLE TO DO IN SAN
8 MATEO COUNTY, AND WITH LOCAL POLICE DEPARTMENTS, ABSOLUTELY
9 IMPROVE SERVICES. THEY DON'T ABSOLUTELY, THOUGH, ADDRESS A LACK
10 OF CAPACITY TO PROVIDE SERVICES TO EVERYONE WHO NEEDS THEM,
11 INCLUDING THE MOST SERIOUSLY MENTALLY ILL.

12 **Q** YOU TESTIFIED ABOUT HOW COUNTY MENTAL HEALTH PRIORITIZES
13 SERVICES AND HOW, IF THERE'S A PRISONER RELEASE ORDER, THERE'S
14 THE DANGER THEY WOULD PRIORITIZE SERVICES TO THE RELEASED
15 MENTALLY ILL PRISONERS AT THE EXPENSE OF THE GENERAL PUBLIC?

16 **A** YES, I DID.

17 **Q** AND YOU KNOW THAT 10,000 PEOPLE PER MONTH ARE RELEASED RIGHT
18 NOW FROM CALIFORNIA PRISONS TO THE COMMUNITIES?

19 **A** YES, I DO.

20 **Q** AND YOU KNOW THAT USING THE 20 PERCENT ESTIMATE, ABOUT 2,000
21 OF THEM ARE PERSONS WITH MENTAL ILLNESS MEMBERS OF THE COLEMAN
22 CLASS?

23 **A** THAT ARE NEWLY RELEASED EACH MONTH.

24 **Q** THAT ARE NEWLY RELEASED EACH MONTH.

25 **A** BECAUSE THE TOTAL PAROLE OUTPATIENT SYSTEM MONTHLY AVERAGE

1 IS MORE LIKE 22,5-, 23,000 OF MENTALLY ILL, SO YOU ADD -- SO
2 IT'S 2,000 A MONTH NEW WITHIN THAT SYSTEM.

3 **Q** YES. YOU ARE AWARE THAT 2,000 A MONTH NEW COME INTO YOUR
4 COMMUNITIES?

5 **A** YES.

6 **Q** FROM THE PRISON SYSTEM?

7 **A** YES.

8 **Q** DO THE MENTAL HEALTH DIRECTORS PRIORITIZE THEM FOR SERVICE
9 NOW?

10 **A** CURRENTLY, IN CALIFORNIA THERE'S SOME VARIABILITY, BUT,
11 TRADITIONALLY, IN CALIFORNIA, IT'S BASICALLY OPERATED AS A
12 PARALLEL SYSTEM. SO THAT, IN GENERAL, PAROLEES RECEIVE THEIR
13 CARE, AND HAVE RECEIVED THEIR CARE, FROM THE PAROLE OUTPATIENT
14 SYSTEM.

15 THE PROBLEM, I THINK, THAT CDCR, AND IS BECOMING MORE
16 RECOGNIZED, IS THE PAROLE OUTPATIENT SYSTEM DOES NOT PROVIDE THE
17 FULL RANGE OF INTENSIVE SERVICES THAT ARE NEEDED FOR THE HIGHEST
18 RISK PAROLEES. THAT'S WHY CDCR IS ATTEMPTING TO DEVELOP
19 SERVICES VIA COUNTIES AND CONTRACT AGENCIES TO PROVIDE THAT FULL
20 SERVICE PARTNERSHIP, THAT INTENSIVE LEVEL OF CARE.

21 **JUDGE KARLTON:** I'M NOT SURE YOU'VE ANSWERED THE
22 QUESTION. THE QUESTION WAS ABOUT 10,000 PEOPLE ARE BEING
23 RELEASED OF WHICH ABOUT 20-PLUS PERCENT ARE COLEMAN CLASS
24 MEMBERS. DOES THE COMMUNITY TODAY PRIORITIZE IN FAVOR OF THOSE
25 PEOPLE AS AGAINST POPULATION IN GENERAL?

1 **THE WITNESS:** THANK YOU, YOUR HONOR. THE ANSWER IS
2 GENERALLY, NO, NOT THE PUBLIC MENTAL HEALTH SYSTEM.

3 **BY MR. GALVAN**

4 **Q** AND YOU ARE AWARE THAT OTHER STATES, INCLUDING TEXAS AND
5 PENNSYLVANIA, HAVE USED POPULATION CAPS TO REDUCE THEIR PRISON
6 POPULATIONS, AREN'T YOU?

7 **A** I JUST MISSED -- SAY THAT AGAIN, A LITTLE MORE SLOWLY.

8 **Q** YOU ARE AWARE THAT OTHER STATES, INCLUDING TEXAS AND
9 PENNSYLVANIA, HAVE USED POPULATION CAPS TO REDUCE THEIR PRISON
10 POPULATION, AREN'T YOU?

11 **A** I -- NOT SPECIFICALLY AWARE OF WHAT PENNSYLVANIA DID. I DO
12 KNOW THAT OTHER STATES HAVE USED POPULATION CAPS, YES.

13 **Q** IN YOUR STUDY FOR PREPARING FOR YOUR TESTIMONY TODAY, YOU
14 DIDN'T FIND ANY EVIDENCE, DID YOU, THAT PENNSYLVANIA, TEXAS, OR
15 ANY OTHER STATE STOPPED SERVING CHILDREN IN ITS COMMUNITY MENTAL
16 HEALTH SYSTEM BECAUSE OF THE POPULATION REDUCTIONS?

17 **A** I'M HAVING TROUBLE WITH THAT QUESTION. I DID NOT DELVE
18 INTO, NOR HAVE I SEEN -- I HAVE NOT SEEN THE PENNSYLVANIA
19 RESEARCH. PERHAPS I SHOULD HAVE. BUT I HAVEN'T -- I'M REALLY
20 GROUNDING MY TESTIMONY ON WHAT I KNOW IS CURRENTLY AVAILABLE IN
21 CALIFORNIA'S PUBLIC MENTAL HEALTH SYSTEM, AND THE CAPACITY
22 AROUND THAT, AND THE UNDERCAPACITY TO SERVE ADEQUATELY, AS
23 EVIDENCED BY RECIDIVISM RATES IN THE PAROLE OUTPATIENT SYSTEM.

24 **Q** AS YOU SIT HERE TODAY, YOU HAVE NO EVIDENCE THAT ANY OTHER
25 STATE THAT HAS REDUCED ITS PRISON POPULATION THROUGH A CAP HAS

1 HAD TO STOP SERVING MEMBERS OF THE GENERAL PUBLIC IN ITS
2 COMMUNITY MENTAL HEALTH SYSTEM, DO YOU?

3 **MR. LEWIS:** OBJECTION. LACK OF FOUNDATION.

4 **JUDGE HENDERSON:** ASK IF SHE HAS ANY SUCH EVIDENCE.

5 **JUDGE KARLTON:** JUST ASK WHETHER SHE'S AWARE. EITHER
6 SHE IS OR SHE ISN'T.

7 **THE WITNESS:** I AM NOT AWARE OF SPECIFIC EVIDENCE,
8 ALTHOUGH TEXAS HAS A SYSTEM THAT I HOPE CALIFORNIA DOES NOT WANT
9 TO EMULATE.

10 **MR. GALVAN:** MOVE TO STRIKE THE LATTER PART AS
11 NON-RESPONSIVE.

12 **JUDGE HENDERSON:** OVERRULED.

13 **BY MR. GALVAN**

14 **Q** YOUR ASSUMPTIONS ABOUT THE IMPACT OF A RELEASE INCLUDED THE
15 GENERAL 20 PERCENT ASSUMPTION OF CLASS MEMBERSHIP, MENTAL
16 ILLNESS AMONG ANY GIVEN COHORT OF CALIFORNIA PRISONERS, RIGHT?

17 **A** YES.

18 **Q** AND YOU FURTHER NOTED THAT ABOUT 15 PERCENT OF THAT SMALLER
19 NUMBER, 15 PERCENT OF THE 20 PERCENT, WOULD BE AT THE ENHANCED
20 OUTPATIENT LEVEL OF CARE?

21 **A** YES.

22 **Q** ABOUT 85 PERCENT WOULD BE AT 3CMS, OR CCCMS, LEVEL OF CARE?

23 **A** YES. AS SOMEONE IS CLASSIFIED IN THE PRISON, THAT'S WHAT
24 CARRIES THROUGH WHEN THEY'RE PLACED IN OUTPATIENT PAROLE STATUS.
25 ALTHOUGH, I WOULD SAY AT LEAST DR. STEWART QUESTIONED WHETHER

1 THAT WAS ENTIRELY ACCURATE WITHIN THE PRISON BECAUSE HE TALKED
2 ABOUT THERE BEING FOLKS IN THE PRISON WHO WERE UNDERCLASSIFIED.

3 Q REGARDLESS OF DR. STEWART, YOU USED THOSE NUMBERS IN
4 REACHING YOUR OPINIONS, CORRECT?

5 A I DID. I DID.

6 Q AND YOU'VE GONE OVER THE -- YOUR AWARENESS THAT WE'RE
7 SEEKING A REDUCTION OF 52,000 PRISONERS OVER TWO YEARS, THAT'S
8 RIGHT?

9 A YES.

10 Q SO APPLYING THOSE PERCENTAGES, 20 PERCENT TO 52,000, YOU GET
11 ABOUT 10,400, RIGHT?

12 A YES. THAT'S APPROXIMATELY WHAT I WOULD ASSUME.

13 Q OKAY. STRETCHING IT OVER TWO YEARS, 5,200 PER YEAR, RIGHT?

14 A YES.

15 Q OKAY.

16 A YEAH, I WOULD ASSUME THAT. YEAH, I WOULD.

17 Q YOU ARE AWARE THAT, ACCORDING TO THE STATE DEPARTMENT OF
18 MENTAL HEALTH'S CLIENT AND SERVICE INFORMATION SYSTEM, THE
19 COUNTY MENTAL HEALTH SYSTEM SERVED OVER 658,000 PERSONS IN
20 FISCAL '05, '06?

21 A YES, I AM. THAT'S ANY CONTACT. THAT COULD BE A SINGLE
22 CONTACT TO A 24-HOUR LINE.

23 Q BUT IT'S ALSO YOUR OPINION THAT USING THAT BIG STATEWIDE
24 AGGREGATE DATA IS NOT AS HELPFUL AS IT COULD BE TO THE COURT; IS
25 THAT RIGHT?

1 **A** YES, IT IS MY OPINION.

2 **Q** IT'S BETTER TO FOCUS ON THE COUNTY BY COUNTY IMPACT, RIGHT?

3 **A** I THINK YOU NEED TO LOOK AT BOTH, BUT I THINK THAT IN TERMS
4 OF WHERE SERVICES ARE GROUNDED IS COUNTY BY COUNTY, AND THERE
5 ARE AREAS OF THE STATE THAT ARE PARTICULARLY STRUGGLING WITH
6 RESOURCES, INCLUDING THE ABILITY TO ATTRACT STAFF. THOSE HAPPEN
7 TO BE IN THE AREAS THAT SOME OF THE PRISONS ARE IN CALIFORNIA.

8 **Q** YOUR DIRECT EXPERIENCE IS THREE COUNTIES, CONTRA COSTA,
9 SOLANO, AND SAN MATEO, RIGHT?

10 **A** AND ALAMEDA.

11 **Q** AND ALAMEDA?

12 **A** YES.

13 **Q** AND MOST RECENTLY SAN MATEO?

14 **A** YES.

15 **Q** SO LET'S LOOK AT THE IMPACT ON SAN MATEO. SO YOU ARE AWARE
16 THAT WHEN THOSE PRISONERS COME OUT EVERY MONTH, 10,000 OR SO,
17 ONE PERCENT OF THEM GO TO SAN MATEO; IS THAT RIGHT?

18 **A** YES. YES.

19 **Q** ONE PERCENT IS A GOOD EASY NUMBER TO WORK WITH.

20 SO USING OUR 5,200 PER YEAR THAT A POPULATION
21 REDUCTION WOULD CAUSE TO EITHER GO TO SAN MATEO A LITTLE EARLIER
22 OR BE DIVERTED AND STAY IN SAN MATEO, ONE PERCENT IS 520 PER
23 YEAR; IS THAT RIGHT?

24 **A** MM-HMM.

25 **Q** OKAY. AND THEN DIVIDING THAT BY -- I'M SORRY, 520 OVER THE

1 TWO YEARS. I EXAGGERATED.

2 **A** OVER THE TWO YEARS, BUT ARE YOU ASSUMING THAT THAT'S A
3 CONSTANT NUMBER, BECAUSE, YOU KNOW, I THINK THERE WILL BE
4 POPULATION BULGES THAT COME AND GO.

5 **Q** FOR --

6 **A** BECAUSE IT DEPENDS ON HOW PEOPLE MOVE OFF OF PAROLE AS WELL,
7 CORRECT?

8 **JUDGE KARLTON:** WE KNOW THAT 10,000 A MONTH ARE BEING
9 RELEASED, AND COUNSEL IS SUGGESTING TO YOU THAT WE USE THE SAME
10 SYSTEM. THERE'S NO REASON TO THINK IT WON'T BE.

11 **BY MR. GALVAN**

12 **Q** I'M GOING TO USE THE SAME WAY OF ESTIMATING IMPACT.

13 **JUDGE KARLTON:** JUST A MINUTE. IS THAT A REASONABLE
14 ASSUMPTION?

15 **THE WITNESS:** I THINK THAT'S REASONABLE WITH THE
16 PROVISIO THAT, YOU KNOW, THAT -- I DON'T KNOW THE POPULATION CAN
17 BE ASSUMED TO BE STEADY, SO YOU HAVE CAPACITY ISSUES AT TIME TO
18 TIME. THAT'S ALL.

19 **JUDGE KARLTON:** I KNOW YOU CAN'T KNOW THAT. I'M JUST
20 SAYING AS A REASONABLE ASSUMPTION. I'M TRYING TO UNDERSTAND
21 WHAT IT IS YOU'RE SAYING, MA'AM.

22 **THE WITNESS:** YES, YOUR HONOR.

23 **JUDGE KARLTON:** AS A REASONABLE ASSUMPTION, IT IS NOT
24 UNREASONABLE AND, INDEED, MOST LIKELY THAT ANY INCREASE CAUSED
25 BY ORDER OF THIS COURT WOULD FOLLOW THE PATTERN THAT HAS EXISTED

1 UP UNTIL NOW?

2 **THE WITNESS:** I THINK THAT'S A REASONABLE ASSUMPTION,
3 YOUR HONOR.

4 **BY MR. GALVAN**

5 **Q** SO GOING BACK TO THE 520 NEW PAROLEES OF ANY KIND, MENTALLY
6 ILL, NOT MENTALLY ILL, JUST THE WHOLE GROUP, OVER TWO YEARS --
7 I'M GOING TO CUT THAT BY A YEAR, 260, WHICH IS HALF -- EACH YEAR
8 SAN MATEO WOULD GET 260 NEW PAROLEES OF ANY KIND; IS THAT RIGHT?
9 IN ADDITION TO WHAT THEY NORMALLY GET; IS THAT RIGHT?

10 **A** YES. FOLLOWING THAT LOGIC, YES.

11 **Q** DIVIDING 260 BY 12 MONTHS, WE GET A RATE OF 22 PER MONTH
12 EXTRA PAROLEES IN SAN MATEO, RIGHT?

13 **A** OKAY. I'M NOT QUITE FOLLOWING YOUR LOGIC, BECAUSE I THINK
14 YOU -- THAT'S ASSUMING THAT 22 GO OFF EVERY MONTH.

15 **Q** NO. I WOULD LIKE -- WHAT I WOULD LIKE TO DO -- I WANT TO
16 USE YOUR METHODOLOGY. YOUR METHODOLOGY IN YOUR REPORTS, AND
17 TELL ME IF I'M WRONG, WAS TO EXAMINE THE IMPACT OF PEOPLE
18 ARRIVING, AND PUTTING ASIDE FOR THE SAKE OF SIMPLICITY AND
19 EVERYONE UNDERSTANDS, THE IMPACT OF PEOPLE LEAVING PAROLE,
20 CORRECT?

21 **A** WHAT I THINK YOU NEED TO LOOK AT IS AN ESTIMATE OF HOW MANY
22 ADDITIONAL OVER ANY POINT IN TIME WOULD BE ON THE PAROLE SYSTEM,
23 AND I'M JUST TRYING TO FOLLOW THE LOGIC TRAIN WITH YOU. SO IF
24 YOU'RE INCREASING THE NUMBER OF FOLKS ON PAROLE OVER A ONE-YEAR
25 PERIOD, THEN I WOULD THINK YOU DON'T JUST ASSUME THAT THERE'S

1 ONLY 22 ON ANY SINGLE MONTH. I THINK YOU HAVE A CUMULATIVE
2 EFFECT YOU'RE INCREASING THE TOTAL NUMBER OF PEOPLE.

3 **JUDGE KARLTON:** BUT A CERTAIN NUMBER ARE GOING OFF
4 AND ALL KINDS OF THINGS ARE GOING ON?

5 **THE WITNESS:** YEAH, YEAH, YEAH.

6 WHY DON'T YOU CONTINUE WITH YOUR LOGIC, AND I'LL -- I
7 THINK I KNOW WHERE YOU ARE DRIVING, WHICH -- I WON'T MAKE THE
8 ASSUMPTION. I'LL LET YOU LEAD ME TO THE ASSUMPTION, SIR.

9 **BY MR. GALVAN**

10 **Q** SO WHEN SAN MATEO GETS ITS 260 EXTRA PAROLEES PER YEAR, IT
11 IS REASONABLE TO PROJECT THAT THOSE WILL DIVIDE UP BY THE MONTHS
12 INTO 22 PER MONTH, CORRECT?

13 **A** I'M GOING TO HAVE TO SAY I WILL FOLLOW YOUR LOGIC. I DON'T
14 NECESSARILY AGREE THAT'S THE EXACT NUMBER.

15 **Q** IS 260 DIVIDED BY 12 ROUGHLY 22?

16 **A** I UNDERSTAND THAT. BUT I DON'T BELIEVE --

17 **JUDGE HENDERSON:** HOW ABOUT MEDIAN NUMBER OVER THE
18 YEAR OR SOMETHING THAT?

19 **THE WITNESS:** THAT'S WHAT I'M TRYING TO GET AT, YOUR
20 HONOR.

21 **MR. GALVAN:** ESTABLISHING THAT IT'S THE MEDIAN NUMBER
22 OVER THE YEAR IS GOING TO BE 22 PER MONTH OF ALL PAROLEES OF ANY
23 DIAGNOSIS, AND THEN APPLYING THE ONE-FIFTH PROPORTION,
24 20 PERCENT PROPORTION, OF COLEMAN CLASS MEMBERS, THEN IT'S FAIR
25 TO SAY THAT SAN MATEO COULD EXPECT AN EXTRA FOUR TO FIVE COLEMAN

1 CLASS MEMBERS PER MONTH AS A RESULT OF A 52,000 OVER A TWO-YEAR
2 POPULATION REDUCTION, CORRECT?

3 **A** I AM NOT COMFORTABLE WITH FOLLOWING THAT TRAIN OF LOGIC WITH
4 YOU, AND I WILL TELL YOU WHY. BECAUSE I DON'T BELIEVE THAT
5 PEOPLE NEED ONE MONTH OF CARE. I THINK YOU'RE INCREASING -- IF
6 YOU SAID TO ME OVER THE COURSE OF A YEAR, THERE ARE 260
7 ADDITIONAL COLEMAN CLASS MEMBERS ON TOP OF THE EXISTING GROUP OF
8 OUTPATIENT PAROLEES, AND OF THAT 260, 20 PERCENT OF THEM ARE
9 LIKELY TO NEED COLEMAN LEVEL CARE --

10 **MR. GALVAN:** OBJECTION. NON-RESPONSIVE AND
11 MISCHARACTERIZES THE EVIDENCE. THE 260 ARE THE TOTAL NUMBER OF
12 PAROLEES. I'LL MOVE ON FROM THIS AREA.

13 **BY MR. GALVAN**

14 **Q** WHEN YOU WERE WORKING IN YOUR SECOND REPORT ON THIS MATTER,
15 YOU REACHED OUT TO YOUR COLLEAGUES IN THE CALIFORNIA MENTAL
16 HEALTH DIRECTORS ASSOCIATION FOR HELP; IS THAT RIGHT?

17 **A** I REACHED OUT FOR TWO SPECIFIC --

18 **Q** I'M SORRY. IT'S A YES OR NO QUESTION, MA'AM. YOU REACHED
19 OUT FOR HELP?

20 **A** AFTER MY -- AFTER MY EXPERT OPINION, YES, I HAD A
21 CONVERSATION WITH THEM, BUT IT WAS AFTER THE EXPERT OPINION WAS
22 RENDERED.

23 **Q** TO BE MORE PRECISE, AFTER YOUR FIRST EXPERT OPINION, AFTER
24 HAVING WRITTEN YOUR SECOND REBUTTAL REPORT, YOU REACHED OUT TO
25 HELP FOR THEM; IS THAT RIGHT?

1 **A** SPECIFICALLY ASKING FOR --

2 **Q** YES OR NO. JUST YES OR NO, MA'AM.

3 **A** I CAN ONLY GIVE YOU A YES, BUT, AND IT IS A YES, BUT.

4 **Q** YOU ARE PRESENTLY A CONSULTANT TO THE CALIFORNIA MENTAL
5 HEALTH DIRECTORS ASSOCIATION?

6 **A** YES, I AM.

7 **Q** AND YOU HELPED THEM WRITE THEIR POSITION PAPERS ON
8 CORRECTION REFORM; IS THAT RIGHT?

9 **A** YES, I DID.

10 **Q** YOU HELPED WRITE THEIR POSITION PAPER ON THE LEGISLATIVE
11 ANALYST'S OFFICE PROPOSAL TO REALIGN 70,000 PAROLEES TO COUNTY
12 PROBATION; IS THAT RIGHT?

13 **A** YES, I DID.

14 **Q** AND YOU HAVE -- YOU TAKE SOME OF THE CREDIT FOR DEFEATING
15 THAT PROPOSAL, RIGHT?

16 **A** I TAKE NO CREDIT.

17 **Q** OKAY. AND THE CALIFORNIA MENTAL HEALTH DIRECTORS
18 ASSOCIATION --

19 **JUDGE KARLTON:** HOW ABOUT RESPONSIBILITY?

20 **THE WITNESS:** I WAS ONE OF A GROUP OF PROBABLY 25 OR
21 30 INDIVIDUALS WHO WERE WORKING WITH A CSAC COMMITTEE, AND THAT
22 POSITION WAS CSAC'S POSITION, SO I WAS ONE VOICE IN THAT.
23 THAT'S WHY I DIDN'T TAKE CREDIT. I AGREED WITH THE POSITION, I
24 WILL SAY THAT, AND THE CONCERN WAS --

25 **JUDGE KARLTON:** NOBODY ASKED YOU, MA'AM.

1 **BY MR. GALVAN**

2 **Q** THE MENTAL HEALTH DIRECTORS ASSOCIATION IS A REGISTERED
3 LOBBYING ASSOCIATION; IS THAT RIGHT?

4 **A** YES, IT IS.

5 **Q** WHEN YOU WERE ASKING FOR HELP, YOU SPECIFICALLY ASKED FOR
6 HELP FROM THREE PEOPLE, CORRECT? DON KINGDON IS ONE OF THEM?

7 **A** YES.

8 **Q** HE'S THE ASSISTANT DIRECTOR OF THE ASSOCIATION?

9 **A** YES.

10 **Q** AND NANCY PENA, P-E-N-A, IS ANOTHER?

11 **A** PENA? SHE IS A MENTAL HEALTH DIRECTOR IN CALIFORNIA.

12 **Q** YOU ASKED FOR HER HELP?

13 **A** I ASKED TO DISCUSS AN ISSUE ON VALDIVIA WITH THEM.

14 **Q** AND PATRICIA RYAN, THE EXECUTIVE DIRECTOR, YOU ASKED HER FOR
15 HELP?

16 **A** I ASKED TO HAVE A CONVERSATION.

17 **MR. GALVAN:** COULD WE LOOK AT BAT 551, MR. JONES,
18 WHICH IS GOING TO BE MARKED AS PA 43?

19 (DOCUMENT DISPLAYED.)

20 **BY MR. GALVAN**

21 **Q** YOU ASKED HER FOR HELP IN AN E-MAIL ON OR ABOUT AUGUST 21ST;
22 IS THAT RIGHT?

23 **A** I DON'T REMEMBER THE DATE, BUT THAT COULD EASILY BE CORRECT.

24 **Q** IF WE COULD ZOOM IN ON THE MIDDLE PORTION, ORIGINAL MESSAGE,
25 UNDER "THANKS, PAT"? DOWN TO THE VERY BOTTOM THERE.

1 DO YOU RECALL SENDING A MESSAGE WITH THAT SUBJECT
2 LINE, "REALLY WOULD LIKE BRIEF TIME TO TALK RE: COLEMAN ISSUES"?

3 **A** YES, I DO.

4 **Q** YOUR QUESTION TO THEM, AND I'LL JUST READ IT INTO THE RECORD
5 WAS:

6 "HI, PAT AND DON. AS I GET DEEPER INTO
7 ASSERTIONS RELATED TO THE COLEMAN SUIT, I
8 ANTICIPATE INCREASED PRESSURES AND QUESTIONS
9 ABOUT THE ROLE AND RESPONSIBILITY OF COUNTY
10 PUBLIC MENTAL HEALTH SYSTEMS TO SERVE PAROLEES.
11 I HAVE TO DO RESPONSES TO SEVERAL PLAINTIFFS'
12 EXPERT WITNESS REPORTS BY THE END OF WEDNESDAY
13 AUGUST 27 AND WOULD LIKE A CHANCE TO DISCUSS
14 SOME OF THESE ISSUES WITH YOU, ESPECIALLY OUR
15 POSITION THAT COUNTY MENTAL HEALTH IS NOT
16 RESPONSIBLE FOR TREATMENT OF INDIVIDUALS WHO ARE
17 ON ACTIVE PAROLE STATUS, ASIDE FROM THE
18 PROHIBITION UNDER MHSA. I THINK I WILL BE
19 CHALLENGED ON THIS AND WILL NEED TO IDENTIFY
20 CODE CITATIONS, HISTORY, ET CETERA, AND THIS IS
21 IN LIGHT OF CONTINUED, ALTHOUGH PERHAPS
22 WEAKENING, ASSERTIONS FROM CDCR ABOUT OUR
23 RESPONSIBILITY TO TREAT ALL OF OUR RESIDENTS."
24 WHEN YOU WERE ASKING FOR HELP WITH "OUR POSITION,"
25 WERE YOU ASKING FOR THAT HELP -- WAS "OUR POSITION" THE MENTAL

1 HEALTH DIRECTOR'S ASSOCIATION OR YOUR POSITION AS CDCR'S EXPERT
2 IN THIS CASE?

3 **A** I WAS ATTEMPTING TO GET CLARIFICATION AS TO THE
4 HISTORICAL -- WHEN I SAID THERE HAVE BEEN HISTORICALLY TWO
5 PARALLEL SYSTEMS, THE ADULT OUTPATIENT PAROLE SYSTEM AND THE
6 PUBLIC MENTAL HEALTH SYSTEM, WHAT I WAS ATTEMPTING TO GET WAS
7 CLARIFICATION ABOUT THE CONSISTENCY ACROSS CALIFORNIA, FRANKLY,
8 THAT PUBLIC MENTAL HEALTH SYSTEMS GENERALLY HAVE NOT ACCEPTED
9 ACTIVE PAROLEES INTO THE PUBLIC MENTAL HEALTH SYSTEM, OTHER THAN
10 FOR CRISIS PSYCHIATRIC EMERGENCY CARE, AND SO THAT'S THE, QUOTE,
11 POSITION I WAS REFERRING TO.

12 **Q** AND --

13 **A** THAT'S REALLY HISTORICAL PRACTICE.

14 **Q** YOU WERE ASKING THEM FOR SOME CODE CITATIONS. DID YOU FIND
15 ANY CODE CITATIONS?

16 **A** THERE ARE -- NO, IT'S REALLY PRACTICE AND NOT CODE
17 CITATIONS.

18 **Q** SO AS YOU SIT HERE TODAY, YOU STILL DON'T KNOW OF ANY
19 AUTHORITY IN THE LAW FOR COUNTY MENTAL HEALTH DIRECTORS TO DENY
20 SERVICE TO PAROLEES, DO YOU?

21 **A** TO MY KNOWLEDGE, THERE IS NOT LEGAL AUTHORITY. THERE IS
22 HISTORICAL PRECEDENT AND PRACTICE.

23 **JUDGE KARLTON:** THERE'S ALSO HISTORICAL -- NEVER
24 MIND. GO AHEAD.

25

1 **BY MR. GALVAN**

2 **Q** AND YOU ARE AWARE, AREN'T YOU, THAT THERE HAS BEEN TESTIMONY
3 IN THIS TRIAL THAT PAROLEES, THOUSANDS OF THEM, ARE RETURNED TO
4 PRISON EACH YEAR BECAUSE THEY CAN'T GET ACCESS TO MENTAL HEALTH
5 SERVICES IN THE COMMUNITY?

6 **A** I HAVE NOT HEARD THE TESTIMONY FOR THE TRIAL, BUT I WOULD
7 NOT BE SURPRISED AT THAT BEING TESTIMONY.

8 **Q** SO YOU WOULDN'T BE SURPRISED IF IT WERE TRUE THAT THOUSANDS
9 OF PAROLEES ARE RETURNED TO PRISON EACH YEAR BECAUSE THEY CANNOT
10 ACCESS CARE IN THE COMMUNITY?

11 **A** MY UNDERSTANDING IS THAT THERE IS CERTAINLY A FACTOR IN
12 RETURNING THAT HAS TO DO WITH LACK OF ACCESS TO TREATMENT, BOTH
13 SUBSTANCE ABUSE AND MENTAL HEALTH TREATMENT. MENTAL HEALTH --
14 AND I WOULD REMIND YOU THERE ARE MANY PEOPLE IN CALIFORNIA THAT
15 ARE SERIOUSLY MENTALLY ILL THAT DO NOT HAVE ACCESS TO ADEQUATE
16 TREATMENT, INCLUDING PEOPLE INVOLVED IN THE CRIMINAL JUSTICE
17 SYSTEM.

18 **Q** AND YOU'VE SAID IN YOUR REPORTS THAT UNDER THE REALIGNMENT
19 STATUTE, YOUR COUNTY MENTAL HEALTH OBLIGATION IS TO PROVIDE
20 SERVICES TO THE EXTENT RESOURCES ARE AVAILABLE, CORRECT?

21 **A** YES, I DID. I DID.

22 **Q** AND RESOURCES ARE LIMITED, CORRECT?

23 **A** RESOURCES ARE PROBABLY ABOUT 50 PERCENT OF WHAT THE NEED IS.

24 **Q** OKAY. WHEN RESOURCES ARE LIMITED YOU EMPLOY TRIAGE TO
25 DECIDE WHERE TO USE YOUR RESOURCES, RIGHT?

1 **A** YES, THAT IS WHAT SYSTEMS DO.

2 **Q** AND ONE ELEMENT OF YOUR TRIAGE SYSTEM IS TO ASK WHETHER THE
3 PATIENT HAS OTHER RESOURCES TO GET CARE, CORRECT?

4 **A** YES.

5 **Q** FOR EXAMPLE, IF A PATIENT HAS PRIVATE INSURANCE, YOU MIGHT
6 NOT SERVE THEM DIRECTLY, BUT HELP LINK THEM UP WITH THEIR
7 INSURANCE; IS THAT RIGHT?

8 **A** YES, ABSOLUTELY.

9 **Q** AND WHEN A PAROLEE COMES IN FOR SERVICE AND PARTICIPATES IN
10 YOUR -- IN COUNTY MENTAL HEALTH TRIAGE, ONE OF THE DECISIONS
11 MADE IS THAT THAT PERSON HAS ANOTHER RESOURCE FOR SERVICE,
12 CORRECT?

13 **A** YES, YES.

14 **Q** AND THAT RESOURCE FOR SERVICE IS THE PAROLE OUTPATIENT
15 CLINIC, CORRECT?

16 **A** RIGHT. AS I SAID, PRACTICE HAS BEEN THAT GENERALLY PEOPLE
17 WHO ARE ON PAROLE ARE -- GO TO THE PAROLE OUTPATIENT SYSTEM.
18 THEY DON'T GENERALLY COME, WITH SOME EXCEPTIONS, TO THE PUBLIC
19 MENTAL HEALTH SYSTEM WHILE THEY WERE ON PAROLE.

20 **Q** IF A PAROLEE COMES TO THE MENTAL HEALTH SYSTEM OR COMMUNITY
21 MENTAL HEALTH SYSTEM, AND THEY NEED SOMETHING BEYOND POC CARE,
22 THEY NEED SOME KIND CRISIS CARE, YOU STILL HAVE TO TRIAGE THEM,
23 RIGHT?

24 **A** IF AN INDIVIDUAL REQUIRES PSYCHIATRIC EMERGENCY SERVICES,
25 YES, YOU HAVE TO TRIAGE ANYONE WHO COMES IN.

1 Q AND IF AFTER THE PSYCHIATRIC EMERGENCY SERVICES, THEY NEED
2 CONTINUED HIGH LEVEL SERVICES, DOES COUNTY MENTAL HEALTH
3 CONTINUE TO SERVE THEM?

4 A I WOULD ANSWER THAT THE PRACTICE HAS TYPICALLY BEEN THAT,
5 NO, AND LET ME CLARIFY ONE PIECE. THE -- CURRENTLY, IN
6 CALIFORNIA, THE MOST INTENSIVE LEVEL OF CARE, WHICH IS THE
7 FULL-SERVICE PARTNERSHIPS, ARE FUNDED THROUGH THE MENTAL HEALTH
8 SERVICES ACT, AND THAT SPECIFICALLY PRECLUDES PAROLEES, SO THAT
9 THERE REALLY ISN'T CAPACITY IN TERMS OF THE FUNDING THAT IS
10 AVAILABLE FOR THOSE MOST INTENSIVE SERVICES TO SERVE PAROLEES.

11 Q SO, THEREFORE, A MENTAL HEALTH DIRECTOR WHO FELT HE HAD TO
12 PRIORITIZE RELEASED PRISONERS WOULD NOT HAVE THE OPTION OF
13 PRIORITIZING THEM FOR SERVICES FUNDED BY THE MENTAL HEALTH
14 SERVICES ACT, CORRECT?

15 A NOT, NO.

16 Q HE WOULD HAVE TO CONTINUE SERVING THE GENERAL PUBLIC,
17 CORRECT?

18 A YES, YES, OF WHOM THERE ARE MORE THAN -- MORE PEOPLE THAN
19 SERVICES ARE AVAILABLE.

20 Q AND ISN'T IT CORRECT, TO YOUR KNOWLEDGE, THAT THE MENTAL
21 HEALTH SERVICES ACT FUNDING CONSTITUTES ABOUT 1.5 BILLION OUT OF
22 OVER \$5 BILLION IN THE COMMUNITY MENTAL HEALTH BUDGET?

23 A THAT SOUNDS CORRECT, YES.

24 Q ISN'T IT YOUR UNDERSTANDING THAT ABOUT 3.8 BILLION COMES
25 FROM THE REALIGNMENT FUNDS; ISN'T THAT CORRECT?

1 **A** NO. IT'S A COMBINATION OF REALIGNMENT AND MEDICAID. ABOUT
2 HALF OF THAT IS ACTUALLY MEDICAID. FEDERAL MEDICAID, FEDERAL
3 MEDICAID DOLLARS. REALIGNMENT PULLS THE MEDICAID MATCH IN.

4 **Q** YOU WROTE IN YOUR REPORTS ABOUT THE BRONZAN-MCCORQUODALE
5 ACT, IS THAT --

6 **A** YES, SIR.

7 **Q** AND THE BRONZAN-MCCORQUODALE ACT IS THE REALIGNMENT ACT,
8 CORRECT?

9 **A** YES. THOSE ARE THE AUTHORS OF THE LEGISLATION.

10 **Q** YOU ARE AWARE OF THAT ONE SECTION OF THE REALIGNMENT ACT
11 SAYS THAT FOR PURPOSES OF ORGANIZING OUTREACH AND TREATMENT
12 OPTIONS, TO THE EXTENT RESOURCES ARE AVAILABLE, THE TARGET
13 POPULATION INCLUDES, BUT IS NOT LIMITED TO, PERSONS ARRESTED OR
14 CONVICTED OF CRIMES; AREN'T YOU?

15 **A** THAT IS ALWAYS PART OF THE TARGET POPULATION. IT HAS NOT
16 TYPICALLY BEEN INTERPRETED TO MEAN PAROLEES, BECAUSE THERE ARE
17 RESOURCES FOR PAROLEES.

18 **Q** WHAT ARE THOSE RESOURCES FOR PAROLEES, TO YOUR KNOWLEDGE?

19 **A** I'M SORRY. SAY THAT AGAIN.

20 **Q** WHEN YOU SAY THERE ARE RESOURCES FOR PAROLEES, WHAT
21 RESOURCES FOR PAROLEES DID YOU, AS A COUNTY MENTAL HEALTH
22 DIRECTOR, EXPECT THEM TO ACCESS WHEN THEY HAD A NEED FOR CARE
23 BEYOND WHAT THE PAROLE OUTPATIENT CLINIC COULD PROVIDE?

24 **A** COUNTY MENTAL HEALTH SYSTEMS DID NOT IN GENERAL PROVIDE
25 INTENSIVE SERVICES TO PAROLEES. I KEEP SAYING THAT. BUT I'M

1 NOT SAYING IT'S A GOOD THING. I'M SAYING WHAT HAS BEEN THE
2 CASE.

3 **Q** THE QUESTION WAS SLIGHTLY DIFFERENT. THE QUESTION IS WHEN
4 YOU WERE A COUNTY MENTAL HEALTH DIRECTOR --

5 **A** MM-HMM.

6 **Q** YOU TESTIFIED A MOMENT AGO THAT PAROLEES -- YOU DIDN'T
7 CONSIDER THEM TO BE WITHIN THAT STATUTE I READ YOU BECAUSE THEY
8 HAD ACCESS TO OTHER SERVICES, RIGHT? YOU JUST TESTIFIED TO
9 THAT, CORRECT?

10 **A** I WOULD -- WHAT I WOULD TESTIFY TO, IS THAT THE
11 UNDERSTANDING?

12 **JUDGE KARLTON:** NO, MA'AM, THAT'S NOT THE QUESTION.

13 **THE WITNESS:** ALL RIGHT. LET ME TRY TO HEAR THE
14 QUESTION BETTER. CAN YOU REPEAT THE QUESTION, PLEASE?

15 **BY MR. GALVAN**

16 **Q** YOU TESTIFIED THAT YOU DID NOT CONSIDER PAROLEES TO BE
17 WITHIN THE DEFINITION FROM THE ACT THAT I READ YOU BECAUSE THEY
18 HAD ACCESS TO OTHER SERVICES? YES OR NO?

19 **A** YES.

20 **Q** OKAY. WHAT WAS YOUR UNDERSTANDING AS TO WHAT -- WHEN YOU
21 WERE A MENTAL HEALTH DIRECTOR, TO WHAT THEIR ACCESS TO SERVICES
22 ACTUALLY WAS IF THEY HAD A NEED FOR CARE GREATER THAN WHAT THE
23 PAROLE OUTPATIENT CLINIC COULD PROVIDE?

24 **A** MY UNDERSTANDING, AS A MENTAL HEALTH DIRECTOR, WAS THAT WAS
25 SPECIFICALLY THE STATE OF CALIFORNIA'S RESPONSIBILITY, TO

1 PROVIDE WHATEVER SERVICES WERE NECESSARY TO INDIVIDUALS WHO WERE
2 ON STATE PAROLE, AND THAT IT WAS NOT A RESPONSIBILITY OF THE
3 PUBLICLY FUNDED MENTAL HEALTH SYSTEM.

4 **JUDGE KARLTON:** MA'AM, THE QUESTION WAS NOT WHOSE
5 RESPONSIBILITY IT WAS, NOR ANY OF THE OTHER THINGS YOU JUST
6 MENTIONED. DID YOU HAVE A UNDERSTANDING THAT THERE WERE OTHER
7 MENTAL HEALTH FACILITIES AVAILABLE TO PAROLEES WHO NEEDED MORE
8 THAN POC? YES OR NO.

9 **THE WITNESS:** YES.

10 **JUDGE KARLTON:** AND WHAT WERE THEY?

11 **THE WITNESS:** THEY WERE POC AND ANY STATE DEPARTMENT
12 OF MENTAL HEALTH FACILITIES, SUCH AS SUBACUTE CARE OR -- THAT
13 WAS BASICALLY IT. AND PERHAPS CONTRACTED SERVICES THROUGH THE
14 STATE DEPARTMENT OF CORRECTIONS.

15 **BY MR. GALVAN**

16 **Q** DID YOU TAKE ANY STEPS WHEN YOU WERE A MENTAL HEALTH
17 DIRECTOR TO CONFIRM THAT, YOUR UNDERSTANDING THAT THOSE PATIENTS
18 COULD GET INTO THE DEPARTMENT OF MENTAL HEALTH HOSPITALS WAS
19 ACTUALLY TRUE?

20 **A** NO. WE STRUGGLED TO GET JAIL -- JAIL INMATES INTO STATE
21 MENTAL HEALTH FACILITIES.

22 **Q** AS TO PEOPLE ON PAROLE, DID YOU TAKE ANY STEPS TO CONFIRM
23 WHETHER IT WAS ACTUALLY TRUE THAT THEY HAD ACCESS TO OTHER
24 SERVICES DIRECT THROUGH THE DEPARTMENT OF MENTAL HEALTH? YES OR
25 NO?

1 **A** THAT WAS NOT MY FOCUS, NO.

2 **Q** AND -- READING FROM YOUR OPINION, I MEAN YOUR FIRST REPORT,
3 YOU WROTE THAT YOUR OPINION IS THAT THE RECEIVER'S CONSOLIDATED
4 HEALTHCARE -- HEALTH FACILITIES, HEALTHCARE FACILITIES,
5 CONSOLIDATED HEALTHCARE FACILITIES ARE A, QUOTE, MORE REASONABLE
6 AND CONSIDERED ALTERNATIVE TO THE IMPACT OF OVERCROWDING THAN A
7 POTENTIAL PRISONER RELEASE. IS THAT STILL YOUR OPINION TODAY?

8 **A** I -- IF THAT WERE CARRIED FORWARD, I DO BELIEVE IT WOULD
9 PROVIDE BETTER CARE WITHIN THE PRISON, BUT YOU STIPULATED TO ME
10 THAT'S NOT MY AREA OF EXPERT OPINION.

11 **Q** I'M SORRY. SO YOU DON'T HAVE ANY OPINION TODAY AS TO
12 WHETHER THE CONSOLIDATED FACILITIES --

13 **A** I HAVE AN OPINION. I HAVE AN OPINION.

14 **Q** IT'S WHAT I READ, ISN'T IT?

15 **A** YES.

16 **Q** OKAY. AND YOU ASSUMED THAT THE CONSOLIDATED HEALTHCARE
17 FACILITIES WOULD BE BUILT IN A COUPLE OF YEARS, CORRECT?

18 **A** I BELIEVE IT WAS PROJECTED TO TAKE, I THINK, THREE TO FIVE
19 YEARS.

20 **Q** YOUR SENSE WHEN YOU WROTE YOUR REPORTS IS THAT THE STATE IS
21 QUITE COMMITTED TO BUILDING THE HEALTHCARE FACILITIES, CORRECT?

22 **A** AT THE TIME I WROTE THE INITIAL OPINION, I BELIEVE THAT
23 THERE WAS SOME LEVEL OF COMMITMENT ON THE PART OF THE STATE.

24 **Q** WHEN YOU WROTE THE ORIGINAL OPINION, YOUR SENSE WAS THAT THE
25 STATE IS MOVING RAPIDLY TOWARDS BUILDING THE CONSOLIDATED

1 HEALTHCARE FACILITIES, CORRECT?

2 **A** MY UNDERSTANDING WAS THAT THERE WERE ACTIVE DISCUSSIONS
3 GOING ON. I DON'T MAKE ASSUMPTIONS ABOUT HOW RAPIDLY THE STATE
4 MOVES OR DOESN'T MOVE.

5 **Q** CAN WE -- I WILL JUST READ YOU FROM YOUR DEPOSITION RATHER
6 THAN PUTTING IT UP.

7 "QUESTION: DID YOU MAKE ANY ASSUMPTION
8 ABOUT WHEN THESE 5,000 BEDS WOULD BE OPEN?

9 "ANSWER: I BELIEVE, BUT I CANNOT RECOLLECT
10 EXACTLY, THAT THERE WERE SOME PROJECTIONS WITHIN
11 THE NEXT COUPLE OF YEARS THEY WERE TRYING TO GET
12 THEM DEVELOPED."

13 FURTHER DOWN:

14 "MY SENSE IS THAT THEY ARE COMMITTED TO
15 GETTING THIS DONE, BUT BEYOND THAT, I KNOW IT'S
16 TOUGH TO DO IN-FILL, AND IT'S TOUGH TO DO
17 CONSTRUCTION. MY SENSE IS THAT THE STATE IS
18 MOVING RAPIDLY FOR THE STATE."

19 **A** THAT'S WHAT I SAID, YES.

20 **Q** IF YOU LEARNED NOW THAT THE STATE IS NOW SAYING THAT THEY
21 WILL NOT BUILD THE CONSOLIDATED HEALTHCARE FACILITIES, WOULD YOU
22 WANT TO KNOW WHAT THE STATE HAS PROPOSED INSTEAD FOR THE COLEMAN
23 CLASS?

24 **A** I WOULD BE INTERESTED.

25 **Q** OKAY. AND YOU TESTIFIED YOU CURRENTLY REPRESENT THE HEALTH

1 DIRECTORS ASSOCIATION ON A NUMBER OF COMMITTEES, CORRECT?

2 **A** I THINK I CITED SEVERAL COMMITTEES, YES.

3 **Q** DID YOU LEARN IN YOUR WORK FOR THE HEALTH DIRECTORS
4 ASSOCIATION THAT THE STATE IS NOW FIGHTING THE 5,000 BEDS FOR
5 THE COLEMAN CLASS?

6 **A** I AM AWARE THAT THAT HAS HAPPENED, YES.

7 **Q** AND SINCE YOU ARE INTERESTED, DID YOU FIND OUT WHAT
8 REASONABLE ALTERNATIVES THE STATE IS PROPOSING IN LIEU OF THE
9 RECEIVER'S BEDS?

10 **A** IN THE LAST SEVERAL MONTHS I HAVE NOT PURSUED THAT QUESTION.

11 **Q** DID YOUR ATTORNEYS PROVIDE YOU WITH ANY INFORMATION ON THAT
12 QUESTION?

13 **A** NOT THAT I RECALL SPECIFICALLY. I BELIEVE THAT THEY ARE
14 REALLY MAKING EFFORTS TO DO MORE IN-FILL AND ALSO TO USE AN
15 EXISTING STATE MENTAL HOSPITAL FACILITY.

16 **Q** I'M SORRY. WHICH EXISTING STATE MENTAL HOSPITAL FACILITY IS
17 THAT?

18 **A** I'M SORRY? WHAT?

19 **Q** WHICH EXISTING STATE MENTAL HOSPITAL FACILITY?

20 **A** I DIDN'T SAY, BUT IF YOU WERE ASKING ME THE QUESTION, I CAN
21 SAY WHAT I'M AWARE OF AS A POSSIBILITY.

22 **JUDGE KARLTON:** ANYTHING IS POSSIBLE. ACTUALLY, WE
23 HAD SOMEBODY WHO SAID ANYTHING IS NOT POSSIBLE. BUT --

24 **BY MR. GALVAN**

25 **Q** WOULD YOU CHANGE YOUR OPINION NOW ABOUT REASONABLE

1 ALTERNATIVES NOW THAT YOU KNOW THE CONSOLIDATED HEALTHCARE
2 FACILITIES ARE NOT GOING FORWARD?

3 **A** MY BELIEF IS THAT THERE IS CAPACITY IN THE STATE IN
4 POTENTIALLY THE STATE MENTAL HOSPITAL SYSTEM THAT MIGHT BE USED
5 FOR THAT. I'M NOT CLAIMING THAT IS MY AREA OF EXPERTISE. I AM
6 AWARE OF THE CAPACITY.

7 **Q** YOU WOULD NOT DRAW THE CONCLUSION, WOULD YOU, THAT
8 INDIVIDUALS WITH MENTAL ILLNESS MAY BE BETTER OFF IN PRISON THAN
9 IN THE COMMUNITY?

10 **A** I WOULD DRAW THE CONCLUSION THAT IT REALLY DEPENDS ON WHERE
11 IN THE COMMUNITY. IF ONE IS HOMELESS AND IS SERIOUSLY PSYCHOTIC
12 AND USING DRUGS, I DON'T THINK THAT'S A GOOD SITUATION IN THE
13 COMMUNITY. IF ONE IS IN THE PRISON, I'M CERTAINLY NOT GOING TO
14 BE AN ADVOCATE FOR EXISTING CONDITIONS IN THE PRISON, BUT AT
15 LEAST ONE HAS HOPEFULLY A BED AND IS RECEIVING MEDICATIONS AND
16 IS UNDER SOME SUPERVISION.

17 **JUDGE KARLTON:** IF THAT ISN'T TRUE, IF THAT ISN'T
18 TRUE, WHAT IS YOUR ANSWER?

19 **THE WITNESS:** MY ANSWER IS THAT BOTH ARE REALLY
20 TERRIBLE SITUATIONS.

21 **BY MR. GALVAN**

22 **Q** HYPOTHETICALLY, IF YOU ASSUME THAT THE -- THAT THIS COURT
23 HAS DECIDED THAT THERE MUST BE A POPULATION REDUCTION --
24 HYPOTHETICALLY?

25 **A** YES.

1 Q AND THAT THE COURT IS GOING TO ORDER A CAP HYPOTHETICALLY,
2 POPULATION CAP? AND PLEASE FURTHER ASSUME THAT NO ADDITIONAL
3 RESOURCES ARE PROVIDED TO COMMUNITIES FOR MENTAL HEALTHCARE, AND
4 ASSUME THAT ONE OF THE METHODS THAT THE STATE, YOUR CLIENT,
5 CHOOSES TO USE --

6 JUDGE KARLTON: NOT HER CLIENT. I SEE. BECAUSE
7 SHE'S BEEN CALLED BY THE STATE. ALL RIGHT.

8 BY MR. GALVAN

9 Q ASSUME ONE OF THE METHODS THE STATE CHOOSES TO USE IS PAROLE
10 A CERTAIN PERCENTAGE OF THE POPULATION SEVERAL MONTHS EARLIER
11 THAN THEY WOULD OTHERWISE BE PAROLED, IS IT YOUR OPINION THAT
12 UNDER THOSE CONDITIONS, THE MENTALLY ILL SHOULD BE EXCLUDED FROM
13 THAT POPULATION REDUCTION PLAN?

14 A MY POSITION HAS BEEN AND CONTINUES TO BE THAT IT IS
15 CRITICALLY IMPORTANT THAT WE PLAN FOR AND PROVIDE THE
16 APPROPRIATE -- IT MAY NOT BE WHAT WE ALL WANT IN THE WORLD, BUT
17 SOME LEVEL OF APPROPRIATE CARE FOR MENTALLY ILL PEOPLE THAT ARE
18 COMING OUT OF THE CORRECTIONAL SYSTEM. I THINK WE HAVE A
19 RESPONSIBILITY. AND I THINK THAT THERE HAVE BEEN DEMONSTRATED
20 OVER AT LEAST 30 YEARS WHAT THE CONSEQUENCES ARE OF NOT TREATING
21 THESE FOLKS IN THE COMMUNITY.

22 Q SO UNDER THE ASSUMPTION I STATED THEN, IT IS YOUR OPINION
23 THAT THE MENTALLY ILL SHOULD BE INCLUDED IN SUCH A POPULATION
24 REDUCTION PLAN?

25 A I DIDN'T STATE AN OPINION ONE WAY OR THE OTHER ON THAT.

1 **Q** DO YOU HAVE AN OPINION ONE WAY OR ANOTHER ON THAT?

2 **A** I CAN -- YOU ARE GOING TO FIND THIS SOMEWHAT NON-RESPONSIVE.
3 I THINK WE HAVE A RESPONSIBILITY, AND I THINK THE STATE HAS A
4 RESPONSIBILITY, TO PLAN FOR THOSE INDIVIDUALS THAT WE KNOW NEED
5 SUPERVISION AND A LEVEL OF CARE IN THE COMMUNITY. OTHERWISE, WE
6 ARE SETTING THEM UP FOR SERIOUS CONSEQUENCES AND WE ARE SETTING
7 COMMUNITIES UP FOR THAT.

8 **JUDGE REINHARDT:** DO YOU KNOW WHETHER THE STATE IS
9 NOW FULFILLING THAT RESPONSIBILITY FOR THE PAROLEES IT IS
10 RELEASING?

11 **THE WITNESS:** I DON'T BELIEVE THAT IT'S ADEQUATE, NO.

12 **JUDGE REINHARDT:** SO WHENEVER THE PAROLEES ARE
13 RELEASED INTO THE COMMUNITY, THERE ARE THE PROBLEMS YOU HAVE
14 DESCRIBED?

15 **THE WITNESS:** YES, I HAVE, YES. SO IF YOU ADD MORE
16 INDIVIDUALS INTO THE COMMUNITY --

17 **JUDGE REINHARDT:** NO, I DIDN'T ASK YOU THAT QUESTION.

18 **THE WITNESS:** OKAY. SORRY.

19 **JUDGE REINHARDT:** WE COULD GET INTO A LONG DISCUSSION
20 ABOUT WHETHER THREE OR FOUR MONTHS CHANGES THE PROBLEM, AND WE
21 ARE NOT GOING TO DO THAT, AT LEAST NOT FROM ME, MAYBE FROM ONE
22 OF COUNSEL. BUT I JUST WANTED TO ASK YOU WHETHER IT'S YOUR
23 POSITION THAT THE STATE IS NOW FAILING TO PROVIDE WHAT'S
24 NECESSARY TO THE PAROLEES THEY RELEASE INTO THE COMMUNITY.

25 **THE WITNESS:** IT IS MY POSITION THAT THE STATE IS

1 NOW -- IS NOT PROVIDING APPROPRIATE SERVICES, AND I THINK THE
2 STATE WOULD PROBABLY AGREE WITH ME, IN THE COMMUNITY.

3 **JUDGE KARLTON:** AND, IN ANY EVENT, UNDER THE FEDERAL
4 STATUTES, IT PROBABLY WOULD VIOLATE FEDERAL LAW TO DISCRIMINATE
5 AGAINST THE MENTALLY ILL IN THEIR RELEASE POLICY, WOULDN'T IT?
6 YOU MAY NOT KNOW THAT.

7 **THE WITNESS:** I WOULD UNDERSTAND THAT WOULD BE THE
8 CASE, YES, SIR.

9 **JUDGE KARLTON:** IT'S AN IMPOSSIBLE SITUATION.

10 **BY MR. GALVAN**

11 **Q** IT'S YOUR OPINION A CAP WOULD HURT LOCAL COMMUNITIES BECAUSE
12 THEY WOULD HAVE TO SERVE OFFENDERS THAT WOULD HAVE OTHERWISE
13 BEEN SENT TO STATE PRISON, CORRECT?

14 **A** WHAT I HAVE SAID IS THERE IS NOT ADEQUATE CAPACITY AT THIS
15 POINT, AND THAT IF ONE INCREASES THE DEMAND, PARTICULARLY FOR
16 VULNERABLE PEOPLE, YOU HAVE EVEN LESS CAPACITY. SO WE HAVE A
17 CONUNDRUM. WE HAVE A PROBLEM THAT WE NEED TO ADDRESS.

18 **JUDGE REINHARDT:** DO YOU HAVE ANY IDEA HOW TO ADDRESS
19 THE PROBLEM IF THE STATE IS NOT GOING TO SPEND ANY MORE MONEY?

20 **THE WITNESS:** I DON'T HAVE ANY GREAT ANSWERS. I
21 BELIEVE THAT THERE IS A NEED TO TAKE A LOOK AT THE SYSTEMS AS
22 THEY NOW EXIST AND THAT THERE MAY BE SOME WAYS -- THINKING ABOUT
23 THE REPORT FROM THE -- THE EXPERT OPINION THAT CAME OUT WHEN THE
24 AB 900 LEGISLATION WAS PASSED, THERE ARE SOME RECOMMENDATIONS
25 WITHIN THAT THAT HAVE TO DO WITH ASSESSING FOLKS WITH LOWER

1 LEVEL NEEDS AND FOLKS WITH HIGHER LEVEL NEEDS AND REALLY TYING
2 THE RESOURCES TO THOSE.

3 I DON'T THINK THERE IS AN EASY ANSWER HERE. I MEAN,
4 IF YOU ASK ME AS SOMEONE WHO HAS DEDICATED THEIR LIFE TO HAVING
5 MORE ADEQUATE SERVICES FOR PEOPLE WITH SERIOUS MENTAL ILLNESS,
6 WE NEED ADDRESS THAT FOR PAROLEES. WE NEED ADDRESS IT FOR
7 PEOPLE THAT COULD BECOME INVOLVED IN THE CRIMINAL JUSTICE
8 SYSTEM. BUT I DON'T THINK THERE ARE ANY EASY ANSWERS. I THINK
9 RESOURCES ARE PART OF IT. REALLY HAVING SOME PERIOD OF TIME TO
10 ENGAGE IN VERY FOCUSED PLANNING, MAYBE.

11 **JUDGE REINHARDT:** YOU DON'T THINK THE STATE HAS HAD A
12 REASONABLE PERIOD OF TIME TO DO THAT WITH ALL OF THE REPORTS
13 THAT HAVE BEEN ISSUED BY EXPERTS, BY THE DEUKMEJIAN COMMISSION?
14 I DON'T KNOW HOW MANY ORDERS HAVE BEEN ISSUED BY MY TWO
15 COLLEAGUES HERE. AND THE STATE?

16 **JUDGE KARLTON:** AND HERE WE ARE.

17 **JUDGE REINHARDT:** YEAH, HERE WE ARE. WHAT IS A
18 REASONABLE PERIOD OF TIME? FROM WHEN TO WHEN? HASN'T THE STATE
19 ALREADY HAD A REASONABLE PERIOD OF TIME?

20 **THE WITNESS:** I BELIEVE, FROM WHAT I HAVE SEEN FROM
21 THE STATE, AT LEAST IN THE LAST COUPLE OF YEARS THAT THERE
22 ARE -- HAVE BEEN -- THERE HAS BEEN MORE PLANNING THAT IS MORE
23 EFFECTIVE THAN I'VE SEEN IN -- PRIOR TO THAT, AND I THINK
24 THERE ACTUALLY -- THERE ARE SOME PLANS AFOOT, INCLUDING
25 NEGOTIATING, FRANKLY, WITH COUNTIES TO PROVIDE SOME MORE

1 INTENSIVE SERVICES.

2 **JUDGE KARLTON:** AND THE TRUTH IS, AS I -- MAYBE YOU
3 DON'T KNOW -- THAT ALMOST EVERYTHING THAT'S BEEN DONE IN THE
4 MENTAL HEALTH FIELD FOR PRISONERS IS THE RESULT OF ORDERS FROM
5 THE COURT. YOU ARE AWARE OF THAT?

6 **THE WITNESS:** I AM AWARE OF THAT, YES.

7 **JUDGE KARLTON:** AND THE MOST LIKELY WAY OF GETTING
8 THE STATE TO DO ANYTHING, WHICH MAY NOT BE POSSIBLE AT ALL, IS
9 FOR THE COURT TO PUT THE STATE ON THE CROSS.

10 **MR. LEWIS:** RESPECTFULLY, YOUR HONOR, I MUST OBJECT
11 TO THAT AS BEYOND THE WITNESS'S --

12 **JUDGE KARLTON:** YOUR OBJECTION IS WELL NOTED.

13 **MR. LEWIS:** THANK YOU.

14 **JUDGE KARLTON:** I'M ASKING YOU. IS THERE ANY HOPE OF
15 THE STATE DOING ANYTHING IF THIS COURT DOESN'T REQUIRE THE STATE
16 TO DO SOMETHING?

17 **THE WITNESS:** MY BELIEF IS THAT THE STATE IS IN THE
18 PROCESS NOW AND IS MAKING PROPOSALS NOW TO DO SOMETHING, BECAUSE
19 I THINK THAT THERE HAS BEEN A CUMULATIVE EFFECT OF THESE YEARS
20 THAT YOU ALL HAVE BEEN STRUGGLING WITH THIS ISSUE AS THE COURT.

21 **JUDGE REINHARDT:** ARE ANY OF THE PROPOSALS OF WHICH
22 YOU ARE AWARE, DO ANY OF THEM INVOLVE THE STATE EXPENDING MORE
23 MONEY?

24 **THE WITNESS:** ONLY ONE, YOUR HONOR, AND THAT IS THAT
25 THERE IS MONEY THAT WAS IDENTIFIED WITHIN AB 900 FOR INTENSIVE

1 SERVICES TO THE EOP POPULATION, AND I AM AWARE THAT THE STATE
2 HAS ACTUALLY IDENTIFIED SOME ADDITIONAL RESOURCES TO GO OUT AND
3 DO SOME CONTRACTS WITH COUNTIES OR PRIVATE NONPROFIT AGENCIES TO
4 PROVIDE THOSE SERVICES. SO THAT -- I MEAN, I THINK THAT IS THE
5 GOOD NEWS IN THIS, IS THAT THEY ALREADY ARE DOING THAT, AND I
6 THINK WITH A LITTLE BIT MORE TIME, THEY WOULD BE ABLE, NOT TO
7 PUT EVERYTHING THAT'S NEEDED WITHIN THE EXISTING DOLLARS, BUT TO
8 PUT SOME REALLY CORE MISSING SERVICES IN. YES.

9 JUDGE REINHARDT: HAVE YOU RECEIVED ANY OF THOSE
10 FUNDS YET?

11 JUDGE KARLTON: SHE'S NO LONGER DIRECTOR.

12 THE WITNESS: WHEN I WAS IN SAN MATEO UP UNTIL A YEAR
13 AGO, WE HAD BEGUN THE DISCUSSION OF THAT, AND I DO UNDERSTAND
14 THAT THERE ARE SEVERAL COUNTIES THAT ARE VERY CLOSE TO SIGNING
15 CONTRACTS.

16 MR. GALVAN: NO FURTHER QUESTIONS, YOUR HONORS.

17 JUDGE HENDERSON: ANYTHING FROM CCPOA?

18 MS. LEONARD: NO, YOUR HONOR.

19 JUDGE HENDERSON: REDIRECT?

20 MR. LEWIS: NO, YOUR HONOR.

21 JUDGE HENDERSON: THANK YOU VERY MUCH FOR APPEARING
22 AND TESTIFYING. YOU ARE EXCUSED. AND WE'LL TAKE A 15-MINUTE
23 RECESS.

24 (RECESS TAKEN.)

25 THE CLERK: COURT IS BACK IN SESSION.

1 **JUDGE HENDERSON:** ALL RIGHT. YOU MAY CALL YOUR NEXT
2 WITNESS.

3 **MS. BARLOW:** THANK YOU, YOUR HONOR.

4 PLAINTIFFS' WITNESS, DR. JAMES AUSTIN, IS RESUMING
5 THE STAND. CONTINUED CROSS EXAMINATION.

6 **THE COURT:** I REMIND YOU YOU ARE STILL UNDER OATH,
7 SIR.

8 **THE WITNESS:** YES, SIR.

9 **JAMES AUSTIN,**
10 CALLED AS A WITNESS FOR THE PLAINTIFF HEREIN, HAVING BEEN
11 PREVIOUSLY SWORN, RESUMED THE STAND AND TESTIFIED FURTHER AS
12 FOLLOWS:

13 **CROSS-EXAMINATION RESUMED**

14 **BY MS. BARLOW:**

15 **Q.** GOOD MORNING, DR. AUSTIN.

16 **A.** GOOD MORNING.

17 **Q.** I JUST WANT TO COVER A COUPLE OF QUICK QUESTIONS WITH
18 RESPECT TO SOME OF YOUR PROPOSALS.

19 NOW YOU INDICATED THAT DIVERSION COULD EQUAL UP TO A
20 YEAR LESS OF TIME SERVED FOR SOME OF THE DIVERTERS OR OFFENDERS
21 THAT YOU ARE PROPOSING, CORRECT?

22 **A.** I'M SORRY. I DIDN'T HEAR THE FIRST PART OF YOUR QUESTION.

23 **MS. EVENSON:** COULD YOU SPEAK LOUDER, PLEASE?

24 **MS. BARLOW:** I'M SORRY. I THOUGHT I WAS SPEAKING
25 QUITE LOUDLY, BUT I WILL SPEAK LOUDER.

1 BY MS. BARLOW:

2 Q. YOU INDICATED THAT DIVERSION COULD EQUAL UP TO A YEAR OF
3 TIME LESS SERVED'S BY THOSE OFFENDERS THAT GET DIVERTED UNDER
4 YOUR PROPOSAL, CORRECT?

5 A. NO, I DON'T THINK I'M SAYING THAT.

6 Q. IN YOUR AUGUST 15, '08 REPORT, PARAGRAPHS 59 AND 60 --

7 A. IS THAT THE DIVERSION OF THE SHORT-TERM SENTENCE PEOPLE?

8 Q. THIS IS THE DIVERSION, SIR, THAT YOU ARE REFERRING TO, I
9 BELIEVE.

10 A. WELL, I THINK THERE ARE TWO DIVERSION RECOMMENDATIONS; ONE
11 IS DIVERSION OF THE TECHNICAL PAROLE VIOLATORS.

12 Q. THAT IS NOT THE ONE I'M TALKING ABOUT, SIR.

13 A. THE OTHER ONE IS PEOPLE THAT ARE SENTENCED 24 MONTHS OR
14 LESS. THAT'S THEIR SENTENCE FOR CERTAIN CRIMES.

15 SO, YES, THEY ARE BASICALLY SERVING, IT LOOKS LIKE,
16 ABOUT AN AVERAGE OF ABOUT SEVEN MONTHS IN THE CDCR.

17 Q. BUT YOU COULD DIVERT SOMEBODY FOR UP TO A YEAR UNDER YOUR
18 PROPOSAL, CORRECT?

19 A. THEY COULD AVOID AS MUCH OF A YEAR OF INCARCERATION.

20 Q. THANK YOU.

21 AND YOU HAVE INDICATED THAT THAT PARTICULAR
22 METHODOLOGY, THE DIVERSION ONE, WOULD ULTIMATELY REDUCE AN
23 APPROXIMATELY \$12,500 -- 12,500 POPULATION REDUCTION?

24 A. APPROXIMATELY, UNDER THOSE CIRCUMSTANCES THAT ARE DISCUSSED
25 IN THE PRIOR MODEL, YES.

1 Q. AND I THINK I HEARD YOU CORRECTLY LAST TIME INDICATE THAT
2 YOU REALLY CAN'T GET TO THE REDUCTION OF 52,000 PRISONERS UNLESS
3 YOU REACH INTO, FOR EARLY RELEASE, THE SECOND STRIKERS AND MAYBE
4 EVEN SOME LIFERS, CORRECT?

5 A. THE 50,000 CAN BE ACHIEVED. I WOULD SAY YOU DON'T HAVE TO
6 GO TO THE LIFERS TO GET THE 50,000 -- THE 50,000 POPULATION
7 REDUCTION.

8 BUT THE PEOPLE THAT ARE SPECIFIED IN THE MODEL, YOU
9 WOULD HAVE TO GO BEYOND THAT GROUP AND THAT WOULD INCLUDE SECOND
10 STRIKERS.

11 Q. OKAY. SO IF THERE IS A CAP IMPOSED ON THE STATE PRISON
12 SYSTEM SEPARATE AND APART FROM ANY RELEASE OR DIVERSION ORDER,
13 WE'D HAVE TO BE ABLE TO TAKE SECOND STRIKERS OUT IN ORDER TO
14 REACH THAT CAP, THE CAP THAT'S PROPOSED BY PLAINTIFFS, CORRECT?

15 A. THE WAY I WOULD PHRASE IT IS THAT THE SECOND STRIKERS ARE
16 COMING OUT NOW, SO THERE IS NO CHANGE IN THE NUMBER OF SECOND
17 STRIKERS BEING RELEASED TO THE COMMUNITY.

18 THE ONLY THING THAT WOULD CHANGE FOR SECOND STRIKERS,
19 WOULD BE THEY WOULD SERVE A SMALLER PROPORTION OF THEIR
20 SENTENCE, BECAUSE THEY ARE MANDATED NOW TO SERVE 80 PERCENT OF
21 THEIR SENTENCES.

22 Q. LET'S TALK ABOUT YOUR REDUCTION IN LENGTH OF SENTENCE.

23 JUDGE KARLTON: CAN I INTERRUPT FOR A MOMENT?

24 ARE YOU, THEREFORE, TELLING US THAT FOR US TO BE
25 SUCCESSFUL, WE HAVE TO IN SOME WAY VOID A PORTION OF

1 CALIFORNIA'S SENTENCING LAW?

2 **THE WITNESS:** TO REACH THE NUMBER OF 50,000, YES.
3 YOU WOULD HAVE TO MODIFY THE SENTENCING LAW.

4 **JUDGE REINHARDT:** YOU WOULD HAVE TO RELEASE THEM
5 EARLIER THAN THEY ARE NOW BEING RELEASED? ARE THEY NOW BEING
6 HELD FOR THE FULL -- IS IT 15 YEARS FOR THE SECOND STRIKER?

7 **THE WITNESS:** EIGHT. THEY ARE ACTUALLY DOING MORE
8 THAN THE 80 PERCENT. SO PART OF THE RECOMMENDATIONS WOULD TAKE
9 CARE OF THAT PROBLEM. THEY ARE DOING MORE THAN 80 PERCENT. THE
10 50 PERCENT ARE DOING MORE THAN THE 50 PERCENT. SO THE
11 RECOMMENDATIONS DEAL WITH THAT ISSUE AND YOU WOULD GO UNDER THAT
12 --

13 **JUDGE REINHARDT:** YOU SAID DOING MORE THAN THE
14 80 PERCENT OR LESS -- WAIT. THE STATUTE SAYS 15 YEARS, CORRECT?

15 **JUDGE KARLTON:** IT SAYS 80 PERCENT.

16 **JUDGE REINHARDT:** THE STATUTE SAYS 80 PERCENT OF 15
17 YEARS?

18 **THE WITNESS:** YES, YOUR HONOR, BECAUSE SECOND
19 STRIKERS HAVE TO DO 80 PERCENT OF THE SENTENCE THAT'S IMPOSED.

20 **JUDGE KARLTON:** 15 YEARS OR MORE.

21 **JUDGE REINHARDT:** ALL RIGHT. LET'S SAY THE MINIMUM
22 IS 15 YEARS, RIGHT?

23 **THE WITNESS:** NO.

24 **JUDGE REINHARDT:** NO, OKAY.

25 **THE WITNESS:** SECOND STRIKERS DO NOT HAVE A 15 YEAR.

1 THEY ARE MORE IN THE FIVE TO EIGHT YEAR RANGE IN GENERAL.

2 **JUDGE REINHARDT:** AND IS IT IN THAT STATUTE, THE
3 SECOND STRIKE STATUTE, THAT SAYS THEY GET 80 PERCENT OR IS THERE
4 A SEPARATE STATUTE THAT SAYS 80 PERCENT?

5 **THE WITNESS:** YOUR HONOR, I'M NOT FAMILIAR WITH THE
6 EXACT, BUT IT'S IN THE STATUTE THAT REQUIRES THEM TO DO 80 --
7 THE SECOND STRIKERS BASICALLY FOR THE SENTENCE THAT IS IMPOSED,
8 THEY DOUBLE THE SENTENCE AND THEN THEY HAVE TO DO 80 PERCENT OF
9 THAT SENTENCE THAT'S IMPOSED, LESS THE JAIL CREDITS THAT THEY
10 RECEIVE FROM THE COURT.

11 **JUDGE REINHARDT:** DO THEY GET ANY PRISONS CREDITS?

12 **THE WITNESS:** I'M SORRY, YOUR HONOR?

13 **JUDGE REINHARDT:** DO THEY GET ANY PRISON CREDITS?
14 OKAY. I WILL FIND OUT SOME OTHER WAY.

15 **THE WITNESS:** THAT'S OKAY. I DIDN'T HEAR THE
16 QUESTION. I WILL ANSWER IT.

17 **JUDGE REINHARDT:** YOU ARE NOT THE ONE TO ASK THE
18 QUESTION, I DON'T THINK. IT'S A QUESTION OF WHAT THE STATUTES
19 ARE. I CAN FIND OUT THE ANSWER TO THAT. OKAY.

20 HOW MUCH WOULD THE REDUCTION BE BELOW THE 80 PERCENT?

21 **THE WITNESS:** I WOULD -- BASICALLY THE REDUCTION
22 WOULD GO SOMEWHERE IN THE NEIGHBORHOOD FROM 80 PERCENT SERVED TO
23 SOMETHING LIKE 65 TO 70 PERCENT SERVED.

24 SO IT WOULD -- IT WOULD NOT GO DOWN TO THE 50 PERCENT
25 LEVEL, BUT YOU WOULD BE IN THAT RANGE OF SERVING 65 TO

1 70 PERCENT OF THE SENTENCE IMPOSED RATHER THAN THE 80 PERCENT.

2 AND YOU WOULD ALSO -- IF I JUST MIGHT ADD. THE OTHER
3 PART IS -- IS THAT BECAUSE OF THE ANOMALIES OF THE WORK
4 INCENTIVE PROGRAMS, PEOPLE DON'T GET THE FULL BENEFIT OF THAT.
5 IT'S KIND OF COMPLICATED, BUT THE RECOMMENDATION WOULD DEAL WITH
6 THAT, ALSO.

7 SO THAT, THAT'S WHAT THE -- BUT THE OVERALL EFFECT
8 WERE TO TAKE THAT 80 PERCENT DOWN TO SOMEWHERE IN THE RANGE OF
9 65 TO 70 PERCENT OF SENTENCE IMPOSED.

10 **JUDGE REINHARDT:** AND DOES THAT ANSWER THE -- WHEN
11 YOU SAY THAT'S WHAT YOU WOULD HAVE TO DO, IS THAT THE ONLY WAY
12 YOU CAN END UP WITH A A CAP OR ARE THERE OTHER ALTERNATIVES
13 RELATING TO TAKING PEOPLE IN TO THE PRISON?

14 **THE WITNESS:** THERE ARE OTHER ALTERNATIVES. YOU
15 KNOW, BASICALLY THE WAY I WOULD APPROACH IT IS THE STATE OR THE
16 COURT WOULD DECIDE WHAT IS THE APPROPRIATE POPULATION SIZE AND
17 ONCE -- ONCE WE KNOW WHAT THAT IS, THEN WE CAN LOOK AT THE
18 VARIOUS WAYS OF ACHIEVING THAT EITHER THROUGH THE DIVERSION OR
19 CHANGING THE LENGTH OF STAY.

20 SO THERE'S A LOT OF THINGS THAT ARE ON THE TABLE THAT
21 COULD BE LOOKED AT THAT COULD GET YOU TO THE 50,000.

22 AND WHEN I SAY THE SECOND STRIKERS, IT IS
23 CONCEIVABLE, I GUESS, THAT COULD YOU AVOID THE SECOND STRIKERS,
24 BUT YOU WOULD HAVE TO DO SOME THINGS DIFFERENTLY. IT ALL
25 DEPENDS ON WHAT THE NUMBER IS THAT THE COURT COMES UP WITH.

1 **JUDGE REINHARDT:** YOU WERE GIVEN THE NUMBER, I THINK,
2 FROM COUNSEL. TAKING THAT NUMBER, ARE YOU SAYING THERE ARE
3 OTHER WAYS TO ACHIEVE THAT NUMBER, OTHER THAN BY INCLUDING THE
4 SECOND STRIKERS?

5 **THE WITNESS:** THERE ARE OTHER WAYS, BUT I WOULD -- I
6 WOULD --

7 **JUDGE REINHARDT:** THEY ARE NOT YOUR RECOMMENDATION?

8 **THE WITNESS:** NO, BECAUSE --

9 **JUDGE REINHARDT:** YOU DON'T HAVE TO GIVE ME AN
10 EXPLANATION. I'M SAYING, THERE ARE OTHER WAYS OF REACHING THE
11 CAP WITHOUT RELEASING THE SECOND STRIKERS.

12 **THE WITNESS:** THERE ARE OTHER WAYS.

13 **JUDGE REINHARDT:** THEY ARE NOT THE WAYS THAT YOU
14 WOULD RECOMMEND.

15 **THE WITNESS:** THAT'S CORRECT, SIR.

16 **MS. BARLOW:** THANK YOU, YOUR HONOR.

17 **BY MS. BARLOW:**

18 **Q.** ALL RIGHT. SPECIFIC, DR. AUSTIN, OF THE REDUCTION IN LENGTH
19 OF SENTENCE THAT YOU RECOMMEND. INITIALLY IN YOUR TESTIMONY
20 LAST TIME YOU DESCRIBED THIS OPTION AS A RECOMMENDATION THAT,
21 QUOTE:

22 "THE STATE INCREASE THE NUMBER OF CREDITS
23 THAT PRISONERS CAN EARN FOR PARTICIPATION IN
24 PROGRAMS OR BEING IN COMPLIANCE WITH A CASE
25 MANAGEMENT PLAN."

1 THEN LATER IN YOUR TESTIMONY YOU SAID THERE WAS
2 ACTUALLY NO NEED TO ADD PROGRAMMING FOR THIS FORM -- REFORM TO
3 BE IMPLEMENTED, CORRECT?

4 **A.** YES, THAT'S CORRECT.

5 **Q.** SO YOU ARE NOT ACTUALLY RECOMMENDING INCREASED CREDITS FOR
6 ACHIEVING PROGRAMMING. YOU ARE JUST RECOMMENDING REDUCTION IN
7 SENTENCE PERIOD, CORRECT?

8 **A.** NO. AGAIN, THE -- THERE IS NO CHANGE IN THE SENTENCE. I
9 DON'T WANT TO BE PICKY, BUT THE SENTENCES ARE STAYING THE SAME.

10 **Q.** YOU ARE RECOMMENDING THAT THEY BE RELEASED SOONER THAN THEY
11 OTHERWISE WOULD BE? THEIR SENTENCES BE SHORTENED, YES? THEIR
12 LENGTH OF STAY BE SHORTENED?

13 **A.** THE LENGTH OF STAY WOULD BE REDUCED, AND IT COULD BE REDUCED
14 BY REWARDING PRISONERS FOR EITHER PARTICIPATION IN PROGRAMS, AS
15 IS BEING RECOMMENDED BY THE GOVERNOR NOW, AND/OR BEING COMPLIANT
16 WITH A CASE MANAGEMENT PLAN.

17 IT'S IMPORTANT THAT I STATE THAT THERE ARE
18 SIGNIFICANT NUMBERS OF PRISONERS THAT ARE LOW RISK IN THE
19 CALIFORNIA PRISON SYSTEM WHO DON'T REQUIRE TO COMPLETE A
20 PROGRAM, BUT WHAT THEY ARE REQUIRED TO DO IS COMPLY WITH RULES
21 AND REGULATIONS. THEY WOULD ALSO BE REWARDED FOR THAT KIND OF
22 BEHAVIOR.

23 **Q.** NOW, SIR, YOU ESTIMATE THAT THE REDUCTION OF POPULATION BY
24 DIVERSION OF 12,500, AND THERE WOULD BE ADDITIONAL ARRESTS AT
25 THE RATE OF 26 PERCENT FOR THAT GROUP.

1 AND THEN YOU ALSO INDICATED THAT THE -- FOR THE GROUP
2 THAT YOU WOULD SHORTEN THEIR LENGTH OF STAY, THAT THERE WOULD
3 ALSO BE REOFFENSE AND REARREST RIGHTS FOR THAT GROUP.

4 AND YOU HAVE INDICATED IN YOUR REPORT THAT EACH OF
5 THOSE IS LESS THAN ONE PERCENT ARREST RATE.

6 BUT WOULDN'T IT BE FAIR TO SAY THAT WE SHOULD
7 AGGREGATE ALL OF THE ARRESTS FOR EACH OF THE FOUR GROUPS OF
8 PEOPLE YOU ARE RECOMMENDING TO COME UP WITH WHAT THE ARREST RATE
9 IS AND NOT SINGLE THEM OUT BY PROPOSED ALTERNATIVE?

10 **A.** YEAH. WHEN THE FINAL PROPOSAL IS DEVELOPED, YOU COULD DO A
11 CALCULATION THAT PUTS IT ALL TOGETHER.

12 WHAT'S IMPORTANT, AGAIN, TO UNDERSTAND THOUGH. LET'S
13 SAY THE STATE DECLINES TO DO THE DIVERSION OF THE SHORT-TERM
14 PRISONERS. THEN THEY BECOME ELIGIBLE FOR THE CREDIT TIME
15 BECAUSE THEY ARE NOT BEING DIVERTED. THEY ARE COMING INTO THE
16 PRISON SYSTEM. SO YOU PICK UP A LOT OF GAINS.

17 AND I DON'T WANT TO BE COMPLICATED, BUT WHEN YOU GET
18 THE VARIOUS -- THESE RECOMMENDATIONS GOING, THEY ALL NEED TO BE
19 PUT TOGETHER, BUNDLED TOGETHER, SO YOU CAN SEE WHAT WE CALL THE
20 INTERACTIVE EFFECTS. YOU CAN'T PUT THEM SEPARATELY,
21 SIDE-BY-SIDE. THE WHOLE THING HAS TO BE PACKAGED, AND THEN
22 ESTIMATED, AND THEN YOU CAN COME UP WITH WHAT YOU THINK ARE THE
23 CALCULATIONS OF AVERTED, ARRESTS AND THINGS LIKE THAT.

24 **Q.** AND YOU HAVEN'T DONE THAT IN YOUR REPORT, HAVE YOU?

25 **A.** I HAVE NOT DONE THAT, NO.

1 Q. ALL RIGHT. LET'S TALK FOR A MOMENT ABOUT THE PROPOSAL TO
2 REDUCE THE LENGTH OF PAROLE FOR COMPLIANT PAROLEES.

3 ISN'T IT TRUE, SIR, THAT YOU HAVE OPINED THAT THAT
4 PROPOSAL WOULD HAVE A NEGLIGIBLE EFFECT ON THE PRISON
5 POPULATION?

6 A. I DON'T KNOW IF I OPINED THAT --

7 Q. WELL, IT'S IN PARAGRAPH 52 OF YOUR NOVEMBER 9, 2007 REPORT.
8 YOU SAY -- YOU ARE SPEAKING OF THE PROPOSAL TO END PAROLE FOR
9 CERTAIN PAROLEES WHO COMPLETE 13 MONTHS OF SUCCESSFUL PROPOSAL.

10 "AS I STATED IN THAT PRIOR DECLARATION, THAT
11 PLAN WILL HAVE A NEGLIGIBLE EFFECT ON THE PRISON
12 POPULATION."

13 A. YEAH. I DON'T THINK IT WOULD HAVE ANY IMPACT ON INCREASE.
14 IT WOULD PROBABLY LOWER THE PRISON POPULATION BASED ON THE
15 EXPERIENCE IN OTHER COURTS. I JUST WANTED TO MAKE THAT CLEAR.

16 Q. YOU WENT ON TO SAY, SIR.

17 "EVEN IF THEY WERE READMITTED TO TECHNICAL
18 VIOLATIONS, THEIR SHORT PERIOD OF IMPRISONMENT,
19 THREE MONTHS OR LESS, WOULD HAVE VIRTUALLY NO
20 EFFECT ON THE CURRENT 170,000 PRISON
21 POPULATION."

22 CORRECT?

23 A. IT WOULD NOT AGGRAVATE IT, NO.

24 Q. NOW, YOU ALSO INDICATED IN BOTH YOUR REPORT AND IN YOUR
25 TESTIMONY THAT, QUOTE:

1 "WE GET A LOWER REVOCATION RATE BECAUSE WE
2 HAVE CREATED AN INCENTIVE FOR THE PAROLEES TO
3 CONFORM AND BEHAVE."

4 DON'T YOU REALLY JUST GET A LOWER REVOCATION RATE
5 BECAUSE THEY ARE NOT ON PAROLE, SO THEY CAN'T BE REVOKED?

6 **A.** WELL, THAT STATEMENT IS, AGAIN, BASED ON THE RESEARCH WE
7 HAVE BEEN DOING IN NEVADA. WE HAVE BEEN VERY SUCCESSFUL IN THAT
8 STATE WHERE WE INSTITUTED THIS POLICY AND REVOCATION RATES
9 DROPPED. THE THREE-YEAR RECIDIVISM RATES DIDN'T CHANGE.

10 **Q.** DIDN'T CHANGE?

11 **A.** THEY DID NOT CHANGE. WE DID FOLLOW-UP ANALYSIS OF THAT.
12 THE PAROLE OFFICIALS THINK IT'S GREAT. IT PROVIDES AN
13 INCENTIVE, LIKE ANYONE ELSE, TO CONFORM. SO IT SEEMS TO WORK
14 PRETTY WELL.

15 **Q.** NOW, I JUST WANT TO MAKE SURE I HAVE THE NUMBERS CORRECT,
16 BECAUSE WE KEEP HEARING THAT SOMETHING LIKE TWO-THIRDS OF THE
17 PEOPLE BEING RETURNED TO PRISON ARE ON TECHNICAL VIOLATIONS,
18 BUT, IN FACT, IT'S 21 PERCENT, RIGHT?

19 **A.** I DON'T RECALL THE 21 PERCENT. I BELIEVE THERE IS
20 130-SOME-THOUSAND ADMISSIONS, AND THERE IS ABOUT SOME 65,000 TO
21 70,000 TECHNICAL VIOLATORS COMING IN EACH YEAR.

22 **Q.** YOUR EARLIER TESTIMONY, SIR, INDICATED THAT OF THE
23 APPROXIMATELY 69,000 REVOCATIONS OF PAROLE, 14,500 WERE PURELY
24 TECHNICAL. THAT'S 21 PERCENT, RIGHT?

25 **A.** WELL, THOSE ARE -- BUT THE 14,000 IS FOR PURELY, PURELY

1 TECHNICAL --

2 Q. THAT'S WHAT I ASKED. PURELY TECHNICAL, 21 PERCENT, RIGHT?

3 A. NO. I JUST WANT TO, IF I MAY. THE 67,000 ARE CALLED
4 TECHNICAL PAROLE VIOLATORS BY THE STATE OF CALIFORNIA. THEY ARE
5 COMING IN BECAUSE THEIR PAROLE STATUS HAS BEEN REVOKED.

6 Q. BUT OF THAT NUMBER ONLY 21 PERCENT ARE PURELY TECHNICAL.
7 THE OTHERS HAVE COMMITTED A NEW CRIME OR BEEN RETURNED FOR A NEW
8 CRIME, CORRECT?

9 A. NO THAT'S NOT CORRECT. YOU CAN SAY THEY HAVE BEEN ARRESTED,
10 BUT --

11 Q. I'M JUST TELLING YOU WHAT YOU SAID BEFORE, SIR. ARE YOU
12 SAYING IT DIFFERENT NOW?

13 A. I'M SAYING -- I'M TELLING YOU WHAT I'M SAYING NOW, YES,
14 WHICH IS THEY HAVE BEEN ARRESTED. I'M NOT SAYING THEY HAVE
15 COMMITTED CRIMES.

16 Q. YOU INDICATE IN YOUR REPORT THAT THE DIVERSION OF TECHNICAL
17 PAROLE VIOLATORS THAT YOU RECOMMEND WOULD REDUCE THE POPULATION
18 BY, QUOTE, AT LEAST 6500 OR AS MUCH AS 9500 AT ANY GIVEN TIME.

19 HOWEVER, IN TESTIMONY BEFORE THIS COURT YOU SAID IT
20 WAS 10 TO 15,000 INMATES. WHICH IS CORRECT?

21 A. CAN YOU POINT TO THE...

22 Q. CERTAINLY. YOUR REPORT IS PARAGRAPH 55 OF YOUR AUGUST 15TH
23 REPORT.

24 A. WHAT PARAGRAPH IS IT?

25 Q. 55.

1 A. OH. THAT'S THE CDCR EXPERT PANEL ESTIMATE.

2 Q. WELL?

3 A. THAT'S THE ESTIMATE THAT WAS PRODUCED BY OUR EXPERTS, CDCR.

4 Q. AND YOU DISAGREE WITH THAT?

5 A. NO. JUST THAT THAT NUMBER WAS BASED ON DIFFERENT NUMBERS
6 THAT WE HAD GOTTEN FROM THE DEPARTMENT OF CORRECTIONS.

7 AS PART OF MY WORK IN THIS TRIAL, WE GOT UPDATED
8 NUMBERS FROM THE DEPARTMENT. THEY RAN NEW RUNS FOR ME, SO...

9 Q. ACTUALLY, SIR, WHERE IS THAT DATA? I HAVEN'T SEEN THAT DATA
10 IN ANY REPORT YOU HAVE ISSUED; THIS HIGHER NUMBER, THE 10 TO
11 15,000.

12 A. WHERE ARE YOU SHOWING THE 10,000 TO 15,000.

13 Q. YOU TESTIFIED TO THAT, SIR, LAST TIME. I CAN QUOTE YOUR
14 TESTIMONY, IF YOU WOULD LIKE. THIS IS ON PAGE 126 OF THE COURT
15 REPORTER'S TRANSCRIPT OF PROCEEDINGS FROM DECEMBER THE 4TH. AND
16 THIS WAS IN RESPONSE TO A QUESTION FROM THE COURT ABOUT WHETHER
17 THE REDUCTION HE PROPOSED WAS MODERATE OR NOT.

18 "THE WITNESS: WELL, FOR CITIES. IT'S A LOT
19 EASIER TO REDUCE THAT POPULATION THAN IF I GO TO
20 RHODE ISLAND, WHICH I THINK HAS AN INCARCERATION
21 RATE OF 185 PER 100,000.

22 "SO THAT'S MY POINT. I GUESS, YES, IT'S
23 SIGNIFICANT. IT'S LARGE.

24 "IF YOU ARE ASKING AND WHEN I SAY MODERATE,
25 THE NUMBER ONE THING THAT WILL WORK HERE -- I

1 MEAN, THE TECHNICAL VIOLATION THING TO ME IS,
2 THAT BUYS YOU, DEPENDING ON HOW YOU DO IT,
3 10,000 TO 15,000 INMATES RIGHT THERE."

4 **A.** CAN I SEE IT?

5 **Q.** I JUST READ RIGHT OUT OF THE TRANSCRIPT, SIR. THAT'S WHAT
6 YOU TESTIFIED PREVIOUSLY. I THINK THE RECORD SPEAKS FOR ITSELF.

7 I'M JUST ASKING YOU --

8 **JUDGE HENDERSON:** WE DON'T HAVE A QUESTION. WHY
9 DON'T YOU -- LET'S SEE THE QUESTION AND THE ANSWER.

10 **MS. BARLOW:** I'M SORRY, YOUR HONOR.

11 **JUDGE HENDERSON:** YOU READ HIS ANSWER. THE QUESTION
12 THAT PROMPTED IT MIGHT BE HELPFUL.

13 **MS. BARLOW:** IT WAS ACTUALLY A COUPLE OF QUESTIONS,
14 THE FIRST ONE WAS FROM JUDGE KARLTON.

15 **"QUESTION:**EXCUSE ME, DOCTOR. WHATEVER THE
16 REASON, THERE IS A VERY LARGE NUMBER OF PEOPLE
17 IN THE CALIFORNIA SYSTEM. AND THE QUESTION IS
18 WHETHER A REDUCTION OF SOME 52,000 OVER A COUPLE
19 OF YEARS OR WHATEVER IS, I'M SORRY, A MODERATE
20 LOWERING OF THE PRISON POPULATION."

21 **"THE WITNESS:** WELL, STATISTICALLY IT'S
22 ABOUT A 30 PERCENT OR SO DECLINE. SO THAT'S
23 SUBSTANTIAL, THAT'S LARGE.

24 "FOR EXAMPLE, I'M WORKING IN THE STATE OF
25 LOUISIANA, WHICH HAS THE HIGHEST INCARCERATION

1 RATE IN THE WORLD.

2 "JUDGE HENDERSON: I THOUGHT D.C. DID, BUT
3 THAT'S ALL RIGHT.

4 "THE WITNESS: WELL, FOR CITIES," ET CETERA.

5 SO THAT'S THE ENTIRE CONTEXT OF THE QUESTION. THE
6 POINT WAS THAT THE WITNESS TESTIFIED 10,000 TO 15,000 WOULD BE
7 REDUCED.

8 JUDGE REINHARDT: WHAT WAS THE QUESTION THAT ELICITED
9 THAT RESPONSE?

10 MS. BARLOW: HIS REPORT INDICATES IT'S 6500 TO 9500.
11 I'M TRYING TO FIND OUT WHAT THE REAL NUMBER IS, SIR.

12 JUDGE REINHARDT: I STILL DON'T UNDERSTAND WHAT THE
13 QUESTION WAS.

14 THE WITNESS: JUST FOR THE RECORD, THE 6500 TO 9500
15 IS FROM THE EXPERT PANEL REPORT. I WAS PART OF THE PANEL, BUT
16 THAT'S NOT MY REPORT.

17 I MEAN, I SUPPORT THAT NUMBER. I THINK WE ARE
18 TALKING SOMETHING IN THAT RANGE, BUT YOU KNOW THE DEVIL IS IN
19 THE DETAILS.

20 JUDGE KARLTON: IN ANY EVENT, THERE IS NO REASON TO
21 -- WELL, I MEAN IF THIS COURT -- NEVER MIND. GO AHEAD.

22 MS. BARLOW: I'M JUST TRYING TO SEE HOW WE GET TO THE
23 NUMBERS, YOUR HONOR.

24 JUDGE KARLTON: THAT MAY BE UP TO THE STATE OF
25 CALIFORNIA.

1 **MS. BARLOW:** IT MAY.

2 **BY MS. BARLOW:**

3 **Q.** NOW, LET'S JUST TALK MAINLY ABOUT IMPACTS ON LOCAL JAIL
4 CROWDING OF THE PROPOSALS YOU HAVE MADE.

5 IT'S TRUE, IS IT NOT, SIR, THAT ONE OF THE THINGS
6 THAT DROVE ADMISSIONS UP OF TECHNICAL PAROLE VIOLATORS TO THE
7 STATE PRISONS IN THE 80'S WAS A DECISION BY THE BOARD OF PRISON
8 TERMS TO ACCOMMODATE LOCAL COUNTY OFFICIALS BY ADMITTING PAROLE
9 VIOLATORS WHO OTHERWISE WOULD HAVE REMAINED IN THE LOCAL JAIL
10 PENDING REVOCATION HEARING, AND THIS WAS DONE TO REDUCE THE JAIL
11 POPULATION AND JAIL OVERCROWDING?

12 **A.** YES, THAT WAS PART OF THE REASON.

13 **Q.** NOW, IT'S ALSO TRUE, ISN'T IT, SIR, THAT UNDER YOUR
14 PROPOSALS THE RESULT WOULD BE THAT MORE PEOPLE WILL BE HELD IN
15 THE JAILS?

16 **A.** NO, IT WOULD NOT.

17 **Q.** ALL RIGHT. I WOULD LIKE TO REFER TO THE WITNESS'S
18 DEPOSITION VOLUME 2, PAGE 425, LINES -- IT'S PAGE 425. THE
19 QUESTION BEGINS AT LINE 11.

20 **"QUESTION:**SO YOU DON'T BELIEVE THERE WOULD

21 BE A NEED FOR A CAP ON THE STATE PRISON

22 POPULATION?"

23 AND THEN MISS EVENSON INTERJECTED AN OBJECTION,
24 MISCHARACTERIZES THE TESTIMONY.

25 **"THE DEPONENT:** THE CAP IS REALLY THE

1 ARTIFACT OF THE ADMISSION AND RELEASE STRING.
2 SO I THINK YOU SAID IF THEY PUT A CAP, THERE
3 WOULD BE A BACKUP IN THE COUNTY JAIL SYSTEM
4 BECAUSE OF THAT CAP, RIGHT? AND THAT WOULD NOT
5 HAPPEN. THERE IS NO NEED FOR THAT
6 MATHEMATICALLY. THE SAME NUMBER OF PEOPLE GO IN
7 AND THE SAME NUMBER OF PEOPLE GO OUT. ACTUALLY,
8 IF WE DIVERT PEOPLE, THERE WOULD BE MORE PEOPLE
9 BEING HELD IN THE COUNTY."

10 **A.** THERE WOULD BE MORE PEOPLE UNDER SUPERVISION.

11 **MS. EVENSON:** OBJECTION. THAT ISN'T WHAT HE JUST
12 SAID. CAN YOU JUST FINISH HIS SENTENCE THAT YOU WERE READING
13 FOR THE RECORD?

14 **BY MS. BARLOW:**

15 **Q.** (READING)

16 "BUT THERE WOULD BE NO CHANGE. THERE WOULD
17 BE NO NEED TO BACK UP PEOPLE IN THE COUNTY JAILS
18 BECAUSE OF THE PRISON POPULATION CAP."
19 THAT'S WHAT YOU TESTIFIED, RIGHT?

20 **A.** RIGHT.

21 **Q.** BUT THERE WOULD BE MORE PEOPLE HELD IN THE JAILS UNDER YOUR
22 DIVERSION PROPOSAL? THAT'S WHAT YOU JUST --

23 **A.** WHEN I SAY HELD, THEY ARE IN THE SUPERVISION OF THE COUNTY.
24 I DIDN'T SAY HELD IN THE JAILS. HELD IN THE COUNTY. THAT'S
25 WHAT I MEANT BY THAT.

1 Q. OKAY. WELL, YOU SAID JAILS, SIR. SO NOW YOU ARE SAYING YOU
2 MEAN -- MEANT SOMETHING ELSE?

3 MS. EVENSON: OBJECTION. ARGUMENTATIVE.
4 MISCHARACTERIZES THE TESTIMONY.

5 JUDGE HENDERSON: SUSTAINED.

6 BY MS. BARLOW:

7 Q. NOW, IF WE HAVE A CAP ON THE STATE PRISON POPULATION AT
8 APPROXIMATELY 103,000, WHICH IS WHAT THE PLAINTIFFS HAVE
9 REQUESTED OF THIS COURT, AND WE HAVE JAILS ALL OVER THE STATE
10 RELEASING PEOPLE EARLY BECAUSE OF LACK OF CAPACITY, RIGHT? YOU
11 ARE AWARE OF THAT?

12 A. I'M AWARE OF A REPORT THAT SAYS THEY ARE RELEASING PEOPLE
13 EARLY, YES.

14 Q. OKAY. SO IF YOU ASSUME, SIR, THAT 32 OUT OF THE 58 COUNTIES
15 ARE OPERATING UNDER EITHER CSA, CAPACITY CAPS OR COURT IMPOSED
16 CAPS?

17 A. OKAY.

18 Q. AND WE HAVE 103,000 POPULATION CAP AT THE STATE PRISON
19 LEVEL --

20 A. YES.

21 Q. -- IT'S YOUR BELIEF THAT NONE OF THOSE PEOPLE ARE GOING TO
22 BE SITTING IN COUNTY JAIL MORE THAN THEY ARE TODAY?

23 A. THAT'S CORRECT.

24 JUDGE REINHARDT: WHAT IS THE REASON FOR THAT?

25 THE WITNESS: UMM, AGAIN, WHAT WE ARE DOING IS WE ARE

1 -- ALL WE ARE DOING IS CHANGING THE PERIOD OF TIME THAT THEY ARE
2 IN THE STATE PRISON SYSTEM. SO IT'S NOT CHANGING THE NUMBER OF
3 PEOPLE THAT ARE GOING INTO THE SYSTEM OR THE NUMBER OF PEOPLE
4 GOING OUT OF THE PRISON SYSTEM.

5 SO THE JAILS NOW EXPERIENCE THOSE PEOPLE COMING OUT
6 OF THE PRISON SYSTEM WHO GET VIOLATED AND THEN THEY GO INTO THE
7 PRISON SYSTEM. SO THAT FLOW IS NOT CHANGED AT ALL. IT'S LIKE
8 -- THE WAY I TRIED TO DESCRIBE IT, IT'S LIKE YOU HAVE A RIVER.
9 YOU HAVE A DAMN. THE DAMN ARE THE LENGTH OF STAY. CALIFORNIA
10 HAS A HIGH DAMN NOW.

11 WATER SPILLS OVER THAT DAMN NOW. THAT'S THE PEOPLE
12 GOING INTO THE JAILS.

13 WE TAKE THAT DAMN DOWN A LITTLE BIT. WHEN YOU TAKE
14 IT DOWN, THERE IS THIS SURGE OF WATER, BUT THEN AT SOME POINT IT
15 EQUALIZES AGAIN AND THE FLOW IS EXACTLY WHAT IT IS CURRENTLY.

16 SO IT'S NOT GOING TO CHANGE THE NUMBER OF PEOPLE. IT
17 HAPPENS OVER, LIKE, A YEAR TO TWO YEARS. EVERYTHING IS THEN
18 BROUGHT BACK TO WHERE IT IS RIGHT NOW IN TERMS OF THE FLOW OF
19 PEOPLE.

20 THE EXPERIENCE OF THE PRISONER IS CHANGED, BUT THE
21 FLOW OF PEOPLE HAS NOT CHANGED. SO THAT MEANS THE BOOKINGS AND
22 REARREST RATES ARE EXACTLY WHAT THEY ARE TODAY.

23 **JUDGE KARLTON:** THE FACT OF THE MATTER IS AT LEAST
24 DURING THE YEAR OR TWO THERE IS A SIGNIFICANT IMPACT ON JAIL
25 POPULATION.

1 **THE WITNESS:** IT'S NOT -- YOUR HONOR, THE TABLE THAT
2 I SHOWED SAID THERE IS THIS SURGE. AND I TALK ABOUT THAT SURGE
3 AND I CALCULATE THE INCREASE IN BOOKINGS INTO THE JAIL, AND IT'S
4 LESS THAN ONE PERCENT OR ABOUT ONE PERCENT, SOMETHING LIKE THAT.
5 SO THAT'S THE AMOUNT.

6 AND I DO A LOT OF WORK WITH JAILS AND --

7 **JUDGE REINHARDT:** BUT YOU ALSO SAID, AS I UNDERSTOOD
8 IT, THAT IT WOULD GO BACK TO WHERE IT WAS. IF THE PRISON
9 POPULATION IS REDUCED, WOULDN'T IT GO TO A LOWER RATE AFTER THE
10 POPULATION WAS REDUCED?

11 IN OTHER WORDS, YOU WOULDN'T HAVE THE SAME NUMBER OF
12 PEOPLE COMING OUT, THAT YOU GET OF A POPULATION, SAY, 103,000 AS
13 YOU WOULD HAVE COMING OUT IF THE POPULATION WERE 160,000 OR
14 170,000.

15 **THE WITNESS:** YOUR HONOR, THE WAY IT WORKS, YOU HAVE
16 THE BASIC EQUATION. I'M TRYING TO EXPLAIN THIS.

17 SAY, YOU HAVE, I DON'T KNOW, A HUNDRED -- LET'S SAY,
18 YOU HAVE 50,000 PEOPLE COMING IN TO A PRISON SYSTEM A YEAR AND
19 THEY SPEND THREE YEARS. THAT MEANS 50,000 TIMES THREE IS A
20 PRISON POPULATION OF 150,000.

21 IF YOU CUT IT TO TWO YEARS, SAME NUMBER OF PEOPLE
22 GOING IN, 50,000, TWO YEARS, YOU NOW HAVE A PRISON POPULATION OF
23 100,000. SAME NUMBER OF PEOPLE GOING OUT. SAME PEOPLE GETTING
24 ARRESTED. SAME PEOPLE GOING TO THE JAILS.

25 ALL YOU HAVE CHANGED IS THE POOL THAT THEY ARE IN.

1 THEY ARE SERVING TWO YEARS INSTEAD OF THREE YEARS. SO THE BASIC
2 MATH IS ADMISSIONS TIMES LENGTH OF STAY PRODUCES A PRISON
3 POPULATION.

4 SO YOU CAN HAVE, WE WILL TALK ABOUT SOME STATES
5 PROBABLY LATER ON. ILLINOIS, FOR EXAMPLE, HAS A LENGTH OF STAY
6 OF 1.2 YEARS. MICHIGAN HAS A LENGTH OF STAY OF FOUR YEARS.
7 THEY HAVE DIFFERENT NUMBERS OF PEOPLE COMING IN. THEY PRODUCE
8 ABOUT THE SAME POPULATION, BUT VERY DIFFERENT PHILOSOPHY,
9 PURPOSE ABOUT WHO COMES IN AND HOW LONG THEY STAY.

10 BUT YOU ARE NOT CHANGING THE -- IT'S VERY IMPORTANT
11 PEOPLE UNDERSTAND YOU ARE NOT CHANGING THE NUMBER OF PEOPLE THAT
12 ARE COMING OUT OF THE PRISON SYSTEM.

13 NOW, THERE WOULD BE A CHANGE IN MY POLICY OF THAT ON
14 A DIVERSION OF THE TECHNICAL VIOLATORS. THEY WOULD NOT BE GOING
15 IN AND OUT FOR TWO OR THREE MONTHS. THAT'S DONE PURPOSELY TO
16 UNCLOG THE RECEPTION CENTERS. SO THOSE PEOPLE -- IF YOU GET
17 THOSE PEOPLE NOT GOING BACK INTO PRISON FOR TWO TO THREE MONTHS,
18 THEN THE TOTAL RELEASES OUT OF THE PRISON SYSTEM WOULD DROP BY
19 ABOUT 30,000. THAT WOULD BE A GREAT THING BECAUSE NOW YOU HAVE
20 GOT A RECEPTION CENTER PROCESS THAT WOULD WORK PROPERLY.

21 **JUDGE REINHARDT:** WELL, SO THE ANSWER IS YES. YOU
22 WOULD HAVE FEWER PEOPLE COMING OUT MONTHLY, ANNUALLY --

23 **THE WITNESS:** YES.

24 **JUDGE REINHARDT:** -- IF YOUR PROGRAM WERE ADOPTED.

25 **THE WITNESS:** THAT'S CORRECT, YOU WOULD BECAUSE OF

1 THE TECHNICALS.

2 AND THAT'S THE ONLY THING THAT'S UNIQUE ABOUT
3 CALIFORNIA IS THIS TECHNICAL, THAT FLOW THING. IF YOU LOOK AT
4 THE NEW COURT COMMITMENTS AND THE PEOPLE THAT COME TO THE COURTS
5 AND GET CONVICTED FOR A NEW CRIME AS A PAROLE VIOLATOR, THAT
6 FLOW LOOKS PRETTY GOOD. THAT LOOKS PRETTY TYPICAL OF A STATE
7 THAT I WORK WITH. BUT IT'S THAT TECHNICAL THING THAT'S CAUSING
8 THIS HUGE FLOW OF PEOPLE OUT.

9 BUT ON THE LENGTH OF STAY ISSUE, AGAIN, NO EFFECT ON
10 THE NUMBER OF PEOPLE BEING RELEASED OR EXPERIENCING PRISON NOW.
11 SAME NUMBERS GO IN. SAME NUMBERS COME OUT. SAME NUMBERS WOULD
12 GET ARRESTED AND BOOKED INTO THE JAILS. IT HAS NO IMPACT ON THE
13 JAILS AT ALL. THE COURT'S -- YOU KNOW, IT'S INCONSEQUENTIAL.

14 JUDGE REINHARDT: THANK YOU.

15 BY MS. BARLOW:

16 Q. SO YOU ARE SAYING, SIR, THAT EVEN THOUGH YOUR PROPOSAL IS TO
17 DIVERT 12,500 CRIMINALS ON THE FRONT END FROM COMING INTO STATE
18 PRISON --

19 A. WAS THAT NEW COURT COMMITMENTS YOU ARE TALKING ABOUT? SHORT
20 SENTENCES?

21 Q. YES.

22 AND YOU ARE ALSO PROPOSING TO DIVERT, SAY, 14,000,
23 10,000 TECHNICAL PAROLE VIOLATORS FROM COMING BACK INTO CUSTODY
24 IN -- AT THE PRISON SYSTEM AT LEAST, THEY ARE JUST GOING TO BE
25 IN THE WIND? THEY ARE NOT GOING TO BE IN THE COUNTY JAILS? YOU

1 ARE NOT GOING TO DIVERT THEM TO ANY KIND OF COUNTY JAIL CUSTODY
2 PROGRAM?

3 **A.** THE TECHNICAL PAROLE VIOLATORS NOW GO IN AND SPEND ABOUT 30
4 DAYS IN THE COUNTY JAIL WAITING FOR THEIR HEARINGS TO BE TAKEN
5 CARE OF.

6 IF WE DIVERT THEM THROUGH THE PROCESS, AGAIN, WHICH
7 THE STATE OF CALIFORNIA IS NOW BEGINNING TO IMPLEMENT, WHICH IS
8 A VIOLATION MATRIX, THEY WOULD PROBABLY SPEND LESS TIME IN THE
9 COUNTY JAILS. THEY WOULDN'T BE SPENDING THAT FULL 30 DAYS.
10 SOME MIGHT NOT EVEN GO GOT COUNTY JAILS.

11 SO THE COUNTIES WOULD GET RELIEF ON THAT. AND,
12 AGAIN, WE ARE DIVERTING PEOPLE THAT THE DEPARTMENT WOULD SAY WE
13 CAN HANDLE. WE CAN HANDLE THEM IN DIFFERENT WAYS.

14 AND SO THAT'S AN EXAMPLE WHERE THE BOOKINGS INTO THE
15 JAIL WOULD BE REDUCED --

16 **Q.** THAT'S FINE --

17 **A.** -- FOR THE -- FOR THE PEOPLE.

18 **Q.** THAT'S NOT WHAT THE DEPARTMENT IS SAYING THOUGH, SIR. THEY
19 ARE NOT SAYING THEY CAN HANDLE THOSE PEOPLE.

20 **A.** I'M NOT AWARE OF THOSE STATEMENTS.

21 **Q.** ALL RIGHT. LET'S TALK A MINUTE ABOUT THE -- YOUR
22 CALCULATIONS THAT LESS THAN ONE PERCENT IMPACT.

23 YOU CORRECTED YOUR ARREST FIGURES FOR LOS ANGELES
24 COUNTY -- I'M JUST USING THAT ONE BECAUSE THAT'S WHAT I HAVE, I
25 THINK -- TO 390,829 ARRESTS, CORRECT?

1 A. YES.

2 Q. YOU CUT IT IN HALF, RIGHT?

3 A. YES.

4 Q. NOW, I JUST DID SOME SIMPLE MATH HERE. AND I'M NOT -- DON'T
5 PROFESS TO BE A MATHEMATICIAN. I KNOW YOU'RE A STATISTICIAN AND
6 MATHEMATICIAN AND ALL THOSE THINGS, SO PLEASE CORRECT ME IF I'M
7 WRONG.

8 FOUR MONTHS WORTH OF THAT, ONE QUARTER OF A YEAR OF
9 THOSE ARRESTS IS 97,707; DOES THAT SOUND RIGHT TO YOU?

10 A. I DON'T KNOW. I DON'T KNOW WHAT YOU ARE REFERRING TO.

11 Q. YOU HAD AN ANNUAL NUMBER OF ARRESTS FOR LOS ANGELES COUNTY
12 OF 390,829 IN YOUR CHARTS. AND THAT'S THE STARTING POINT OF HOW
13 YOU CALCULATED YOUR LESS THAN ONE PERCENT, RIGHT?

14 A. CORRECT.

15 Q. SO NOW I'M ASKING IF WE TAKE ONE QUARTER OF A YEAR, THE FOUR
16 MONTHS THAT YOU ARE TALKING ABOUT DOING THIS DOUBLING -- DOUBLE
17 RELEASES, RIGHT? IF WE TAKE FOUR MONTHS OF THAT WHOLE ARREST
18 DATA, WE GET 97,707 ARRESTS, RIGHT?

19 A. NO. I DON'T KNOW WHAT YOU ARE DOING THERE.

20 JUDGE REINHARDT: ONE PROBLEM IS THAT FOUR MONTHS IS
21 NOT A QUARTER OF A YEAR.

22 JUDGE HENDERSON: IT'S A THIRD OF A YEAR.

23 MS. BARLOW: I'M SORRY. A THIRD OF A YEAR.

24 BY MS. BARLOW:

25 Q. THEN IT'S MORE THAN THAT, RIGHT? IT'S 130,000?

1 A. A THIRD OF 390 IS WHATEVER IT IS.

2 Q. 130,000, RIGHT, GIVE OR TAKE? IS THAT FAIR?

3 A. I DON'T KNOW IF -- IT'S A THIRD. WHATEVER THE THIRD IS, IS
4 WHAT IT IS.

5 Q. NOW, I JUST WANT TO ASK YOU, IF WE TOOK OUT THE JUVENILE
6 ARRESTS THAT YOU SAID YOU INCLUDED IN THAT FIGURE AND THE
7 MISDEMEANOR ARRESTS, BECAUSE ALL THESE PEOPLE ARE GOING TO BE
8 FELONY ARRESTS, RIGHT?

9 A. NO.

10 Q. NO?

11 A. NO.

12 Q. IF THEY ARE ON PAROLE AND THEY GET ARRESTED, IT'S A FELONY?

13 A. NO. YOU CAN BE ARRESTED FOR A MISDEMEANOR.

14 Q. I WANT YOU TO ASSUME THEY ARE ALL FELONIES.

15 A. I DON'T WANT TO ASSUME THAT. WHY WOULD I ASSUME THAT?

16 Q. IF YOU ARREST SOMEBODY ON PAROLE FOR A PAROLE VIOLATION,
17 IT'S A FELONY; ARE YOU AWARE OF THAT?

18 A. I'M NOT AWARE OF THE WAY YOU ARE -- NO. IF I'M ARRESTED FOR
19 TRESPASSING --

20 Q. AND YOU ARE ON PAROLE, YES.

21 A. IS THE TRESPASSING A FELONY?

22 Q. IF YOU ARE ON PAROLE AND YOU GET ARRESTED FOR A VIOLATION OF
23 PAROLE, THAT'S A FELONY.

24 A. THAT'S A FELONY. BUT YOU HAVE TO UNDERSTAND WHAT WE ARE
25 LOOKING AT -- YOU ARE TRYING TO GET RID OF ALL THE MISDEMEANOR

1 ARRESTS, WHICH IS THE BULK OF THE ARRESTS, BOTH OF PAROLEES AND
2 ITS CITIZENS IN GENERAL.

3 Q. DON'T YOU AGREE, SIR --

4 A. AND THAT --

5 Q. -- THAT WE SHOULD BE --

6 A. IT DOESN'T --

7 Q. -- RECONSIDERING THE SERIOUS CRIMES?

8 JUDGE KARLTON: MA'AM, MA'AM, MA'AM. LET THE WITNESS
9 ANSWER AND THEN YOU CAN ASK ANY QUESTION YOU LIKE.

10 A. IF YOU LOOK AT THE ATTORNEY GENERAL'S REPORT, THERE IS NOT A
11 CATEGORY THAT SAYS "PAROLEE ARRESTED, FELONY." THAT'S NOT A
12 CATEGORY THEY USE. THEY USE THINGS LIKE BURGLARY, ROBBERY,
13 THINGS LIKE THAT.

14 BY MS. BARLOW:

15 Q. THAT'S WHAT I'M TRYING TO GET A SENSE OF, SIR. HOW MANY
16 FELONIES -- YOU THINK THE MISDEMEANORS AREN'T IMPORTANT, SO
17 LET'S TALK ABOUT FELONIES.

18 HOW MANY OF THESE PEOPLE ARE GOING TO COMMIT
19 FELONIES?

20 A. WELL, THE DATA THAT THE DEPARTMENT PROVIDED TO ME DOES NOT
21 GIVE A -- I TAKE THAT BACK. THERE IS A CODE THERE, THAT I GUESS
22 ONE COULD TRY AND DETERMINE ACCORDING TO CALIFORNIA LAW IS THAT
23 A FELONY LEVEL ARREST OR NOT, BUT I HAVE NOT CALCULATED THAT.

24 Q. SO YOU DON'T KNOW HOW MANY OF THESE FOLKS WOULD, IN FACT, BE
25 ARRESTED FOR FELONIES?

1 **A.** I DON'T KNOW THAT NUMBER, NO.

2 **Q.** NOW, LET'S TALK ABOUT THE CAREER CRIMINAL VERSUS THE
3 NON-CAREER CRIMINAL.

4 **A.** OKAY.

5 **Q.** YOUR TESTIMONY LAST TIME WAS IT COULD BE UP TO 20 PERCENT?
6 10 TO 20 PERCENT OF THE CRIMINALS THAT WE HAVE ARE, QUOTE,
7 CAREER CRIMINALS, RIGHT?

8 **A.** TECHNICALLY THAT'S -- WHAT I SAID WAS THAT BASED ON THE RAND
9 STUDIES OF CALIFORNIA, THEY ESTIMATED SOMEWHERE IN THE
10 NEIGHBORHOOD OF 15 TO 20 PERCENT OF THE PERSONS BEING SENTENCED
11 TO CALIFORNIA PRISONS BACK IN THE 1970'S WERE PEOPLE THAT
12 COMMITTED LARGE NUMBERS -- THEY SELF-REPORTED LARGE AMOUNTS OF
13 CRIMES AND THEY CALLED THEM THE CAREER CRIMINALS.

14 **Q.** OKAY. IN RESPONSE TO A QUESTION FROM MISS JOHNSON AT YOUR
15 PRIOR TESTIMONY --

16 **JUDGE REINHARDT:** WHICH PRIOR TESTIMONY?

17 **MS. BARLOW:** ON DECEMBER THE 4TH.

18 **BY MS. BARLOW:**

19 **Q.** JUST ONE SECOND, LET ME FIND THE PAGE. I BELIEVE IT'S PAGE
20 227, STARTING AT LINE 16.

21 **"QUESTION:** LET'S TALK A MOMENT ABOUT HIGH
22 RISK OFFENDERS. YOU SAID ONLY 10 PERCENT OF
23 OFFENDERS ARE HIGH RISK. DO YOU REMEMBER THAT?

24 **A.** YES.

25 **Q.** (READING)

1 **"ANSWER:** IN THAT NEIGHBORHOOD; 10, 10, 15.

2 IT DEPENDS ON THE STATE. TEN MAYBE AS MANY AS
3 20."

4 **Q.** SO 10 TO 20 PERCENT?

5 **JUDGE HENDERSON:** IS HIGH RISK THE SAME AS CAREER
6 CRIMINAL?

7 **JUDGE KARLTON:** I THOUGHT THEY ARE THE SAME.
8 DID YOU UNDERSTAND HIGH RISK TO EQUATE WITH CAREER
9 CRIMINAL? MAYBE THEY DO. I DON'T KNOW.

10 **THE WITNESS:** WELL, THE HIGH RISK WOULD REFER TO
11 PEOPLE IF THEY ARE RELEASED FROM PRISON ARE VERY LIKELY TO
12 RECIDIVATE. THE CAREER CRIMINAL IS --

13 **JUDGE KARLTON:** THEY ARE GETTING RELEASED.

14 **THE WITNESS:** WELL, THERE ARE CAREER CRIMINALS THAT
15 AREN'T EVEN BEING CAUGHT. AND SO, YEAH.

16 WELL, I WILL LET HER. GO HEAD.

17 **BY MS. BARLOW:**

18 **Q.** WOULD YOU AGREE THAT THE CAREER CRIMINALS ARE THE HIGHEST
19 RISK? CAN WE AGREE TO THAT?

20 **A.** YES.

21 **JUDGE HENDERSON:** BUT CAN WE HAVE A RULE THAT IF YOU
22 ARE GOING TO IMPEACH, USE THE SAME TERMINOLOGY. IT MAY BE
23 DIFFERENT, "HIGH RISK" AND "CRIMINAL."

24 SO IF YOU ARE GOING TO ASK A QUESTION --

25 **MS. BARLOW:** I WILL CERTAINLY TRY, YOUR HONOR.

1 **JUDGE HENDERSON:** -- IMPEACH WITH THE SAME LANGUAGE.

2 **MS. BARLOW:** I WASN'T AWARE THAT THE WITNESS WAS
3 GOING TO MAKE A DISTINCTION ABOUT THAT.

4 **JUDGE KARLTON:** AND I'M NOT AWARE OF WHAT WE ARE
5 TALKING ABOUT.

6 I HAD UNDERSTOOD, BUT I MAY BE WRONG, THAT YOU WERE
7 NOT ADVOCATING THE RELEASE OF PERSONS FOUND TO BE CAREER
8 CRIMINALS WITHIN THE MEANING OF THE CALIFORNIA STATUTE. IS THAT
9 RIGHT OR WRONG, SIR?

10 **THE WITNESS:** I WAS TALKING ABOUT HIGH RISK PEOPLE,
11 PEOPLE THAT ARE LIKELY TO RECIDIVATE.

12 **JUDGE KARLTON:** I UNDERSTAND. BUT THIS IS ALL
13 LEADING TO A GREAT DEAL OF CONFUSION. ANSWER MY QUESTION, IF
14 YOU CAN.

15 **THE WITNESS:** YES, SIR.

16 **JUDGE KARLTON:** ARE YOU ADVOCATING AS PART OF YOUR
17 PROGRAM THE RELEASE OF CAREER CRIMINALS?

18 **THE WITNESS:** NO. I WOULD NOT ADVOCATE THE RELEASE
19 OF A CAREER CRIMINAL.

20 **JUDGE KARLTON:** WHERE ARE YOU GOING, MA'AM?

21 **BY MS. BARLOW:**

22 **Q.** DO YOU KNOW HOW MANY CRIMES HAVE BEEN COMMITTED BY EACH OF
23 THE INDIVIDUALS THAT ARE SENTENCED TO STATE PRISON ON AVERAGE
24 PRIOR TO THEIR BEING SENTENCED TO STATE PRISON?

25 **A.** WELL, THERE'S -- HOW MANY HAVE BEEN COMMITTED? IS THAT WHAT

1 YOU ARE ASKING?

2 Q. UH-HUH.

3 A. I WOULD SAY THE CORRECT ANSWER, NO ONE KNOWS. AGAIN, IF YOU
4 BASE IT ON THE RESEARCH OF THE RAND CORPORATION, THE VAST
5 MAJORITY OF PEOPLE THAT COME TO PRISON COMMIT VERY FEW CRIMES
6 BEFORE COMING TO PRISON, AND A SMALL NUMBER HAVE COMMITTED A LOT
7 OF CRIMES.

8 BUT THAT STUDY HAS BEEN REVIEWED WITH SOME SKEPTICISM
9 BY A NUMBER OF SCHOLARS, BUT THAT'S BASICALLY WHAT THAT RESEARCH
10 SHOWS; THAT MOST PRISONERS COMMIT VERY FEW CRIMES PER YEAR.

11 Q. LET'S TALK ABOUT SOME SPECIFIC CRIMES. THE RAND STUDY, YOU
12 AGREE, INDICATED THAT IN CALIFORNIA THE -- THOSE WHO COMMIT
13 ROBBERY HAVE AN ANNUAL OFFENSE RATE OF 50, RIGHT? FIFTY
14 ROBBERIES. BURGLARY HAS AN ANNUAL OFFENSE RATE OF 102.

15 A. AGAIN, LET ME RESTATE -- YOU ARE TAKING THE AVERAGE, OKAY.
16 AND THE NATIONAL ACADEMY OF SCIENCES DID A REANALYSIS OF THAT
17 DATA.

18 AND RAND CORPORATION AGREES WITH THIS ANALYSIS; THAT
19 MOST OF THE PRISONERS ARE DOING -- THE PRISONERS SAID THEY HAD
20 COMMITTED NO CRIMES, ONE OR TWO OR THREE CRIMES.

21 THEN THEY HAD THESE PEOPLE OUT THERE SAYING THEY WERE
22 COMMITTING HUNDREDS OF CRIMES A YEAR BASED ON SELF-REPORT
23 SURVEYS TO INTERVIEWS AT THE RECEPTION CENTERS.

24 THAT'S HOW THIS WAS DONE. IT'S SELF-REPORT BY
25 PRISONERS TO RESEARCHERS. AND THEY GET THIS INCREDIBLY SKEWED

1 REACTION OR RESULT, WHICH IS THAT FIVE OR TEN PERCENT SAY THEY
2 ARE COMMITTING RUNS HUNDREDS OF CRIMES A YEAR, BUT THE VAST
3 MAJORITY IS SAYING THEY ARE DOING NONE, ONE, TWO OR THREE.

4 SO WHEN YOU GIVE THAT 50, YOU KNOW, THAT'S A
5 STATISTICAL THING YOU ARE DOING, WHICH IS SUGGESTING THEY ARE
6 ALL DOING 50 TO 100 CRIMES. NO, IT'S JUST THE OPPOSITE. THE
7 VAST MAJORITY ARE INVOLVED ONLY IN EPISODIC CRIMES.

8 THE RAND CORPORATION CONCLUDED THAT YOU COULD LOWER
9 PRISON POPULATIONS ACROSS THE COUNTRY BY JUST FOCUSING ON THOSE
10 HIGH END CAREER CRIMINALS. AND THAT WAS THEIR ORIGINAL
11 PROPOSAL.

12 THEY THEN IN A SUBSEQUENT STUDY FOUND THEY COULDN'T
13 DO THAT BECAUSE THE PEOPLE THEY THOUGHT THAT WERE COMMITTING 50
14 TO 100, 200 CRIMES PER YEAR, IN FACT, WHEN RELEASED DID NOT.
15 AND THEY RECANTED THEIR FINDINGS AND SAID THE CAREER CRIMINAL
16 CANNOT BE PREDICTED BASED ON THEIR RESEARCH METHODS.

17 **JUDGE KARLTON:** SIR, WE HAVE HEARD FROM TWO LAW
18 ENFORCEMENT FOLKS NUMBERS LIKE 12 CRIMES ARE COMMITTED BEFORE
19 ANYBODY IS ARRESTED. IS THERE, AS FAR AS YOU KNOW, ANY RESEARCH
20 THAT SUPPORTS THAT ASSERTION?

21 **THE WITNESS:** NO.

22 **JUDGE KARLTON:** OKAY.

23 **THE WITNESS:** OKAY.

24 **MS. BARLOW:** COULD WE PUT UP --

25 **JUDGE REINHARDT:** ARE ALL THOSE FIGURES, THE HIGH

1 ONES AND THE LOW ONES, BASED ON WHAT THE PEOPLE ON THEIR WAY TO
2 PRISON SAY THEY DID?

3 **THE WITNESS:** THEY ARE BASED EXCLUSIVELY ON AN
4 INTERVIEW THAT LITERALLY WAS DONE WITH RAND AND DEJULIO DID.
5 THEY INTERVIEWED PRISONERS COMING TO THE RECEPTION CENTERS AND
6 THEY ASKED THEM IN THE LAST 18 MONTHS HOW MANY OF THESE
7 FOLLOWING CRIMES DID YOU COMMIT.

8 **JUDGE REINHARDT:** AND THEN YOU SAY WHEN THEY WERE
9 RELEASED, THEY DIDN'T COMMIT CRIMES, AT LEAST THAT WE KNOW
10 ABOUT. WHAT ABOUT THE TWO, TWO TO THREE? THE ONES WHO SAID, I
11 ONLY COMMITTED ONE OR TWO CRIMES. IS THERE ANY DATA AS TO WHAT
12 THEY DID WHEN THEY GOT OUT?

13 I MEAN, IS THERE ANY REASON TO BELIEVE THEIR
14 STATEMENTS ARE ANY MORE RELIABLE THAN THE ONES WHO SAID I
15 COMMITTED 50 CRIMES?

16 **THE WITNESS:** THEY DID NOT FIND THAT THERE WAS A
17 CORRELATION BETWEEN WHAT THEY THOUGHT WERE HIGH AND LOW BASED ON
18 THE SELF-REPORT DATA.

19 **JUDGE REINHARDT:** IN OTHER WORDS, ALL OF THIS IS
20 PRETTY WORTHLESS.

21 **THE WITNESS:** SOME HAVE REACHED THAT CONCLUSION, YOUR
22 HONOR.

23 **JUDGE KARLTON:** DO YOU HAVE AN OPINION AS TO WHETHER
24 IT IS OF ANY USE AT ALL?

25 **THE WITNESS:** MY OPINION IS IT'S NOT. AND IT'S ALSO

1 THE OPINION OF OTHER SCHOLARS WHO HAVE DONE REANALYSIS OF THE
2 DATA.

3 MS. BARLOW: IF WE COULD PUT UP THE EXHIBIT? THIS
4 IS --

5 MS. EVENSON: IS THIS AN EXHIBIT, COUNSEL?

6 MS. BARLOW: IT IS AN EXHIBIT, YES.

7 MS. EVENSON: WHAT EXHIBIT IS IT?

8 MS. BARLOW: IT IS -- LET'S SEE. IT'S DI-6 -- SHOOT.
9 I DON'T SEEM TO HAVE THE REFERENCE RIGHT HERE.

10 MS. EVENSON: WHAT IS THE NAME OF THE DOCUMENT?

11 MS. BARLOW: THIS IS FROM "MAKING CONFINEMENT
12 DECISIONS."

13 A. IS THAT FROM MR. ZEDLEWSKI?

14 BY MS. BARLOW:

15 Q. ED ZEDLEWSKI, NATIONAL INSTITUTE OF JUSTICE. YOU ARE
16 FAMILIAR WITH THAT, RIGHT?

17 A. VERY FAMILIAR WITH IT.

18 MS. BARLOW: IF YOU COULD PUT TABLE 1 UP ON THE
19 SCREEN?

20 JUDGE KARLTON: WELL, THERE SEEMS TO BE SOME DOUBT AS
21 TO WHETHER IT'S --

22 MS. BARLOW: IT IS AN EXHIBIT, YOUR HONOR. IT HASN'T
23 BEEN ADMITTED YET, BUT IT IS --

24 JUDGE KARLTON: WELL, NOTHING HAS BEEN ADMITTED. WE
25 STILL HAVE TO GO THROUGH THAT YET. COUNSEL WANTS TO KNOW WHAT

1 THE EXHIBIT NUMBER IS.

2 MS. BARLOW: IT'S UP ON THE SCREEN, AND I WILL GIVE
3 HER THE NUMBER, YOUR HONOR. SORRY. THE COPY I HAVE DOESN'T
4 HAVE IT ON.

5 MR. SPECTER: WITHOUT THE EXHIBIT NUMBER, THEN WE
6 CAN'T...

7 MS. BARLOW: IF YOU GIVE ME A MOMENT, THEN I WILL GET
8 IT FROM THE LIST.

9 JUDGE KARLTON: IF YOU FOLKS AGREE THAT IT IS AN
10 EXHIBIT --

11 MS. EVENSON: I DON'T KNOW IF IT IS AN EXHIBIT OR
12 WHETHER IT'S BEEN OBJECTED TO.

13 JUDGE REINHARDT: IT DOESN'T MATTER IF IT'S BEEN
14 OBJECTED TO. EVERYTHING HAS BEEN OBJECTED TO.

15 JUDGE HENDERSON: CAN YOU SHOW HER THE ONE YOU ARE
16 LOOKING AT?

17 MS. BARLOW: YES. IT'S DI-653. MY APOLOGIES FOR NOT
18 HAVING THAT IMMEDIATELY AVAILABLE.

19 MS. EVENSON: YOU HAVEN'T PROVIDED IT.

20 MS. BARLOW: I HAVE PROVIDED IT. YOU HAVE BEEN
21 PROVIDED WITH DISKS AND PDFS OF ALL OF THESE DOCUMENTS.

22 WE ARE JUST GOING TO LOOK AT THIS ONE TABLE THAT YOU
23 WILL SEE ON YOUR SCREEN.

24 IF WE COULD PUT UP TABLE 1, PLEASE?

25 (DOCUMENT DISPLAYED)

1 **BY MS. BARLOW:**

2 **Q.** SO THIS IS A TABLE SHOWING INMATE ANNUAL OFFENSE RATES.

3 THIS IS FROM THE RAND CORPORATION, RIGHT?

4 **A.** YES.

5 **Q.** AND IF WE LOOK AT THE COLUMN FOR CALIFORNIA, IT INDICATES

6 INMATE ANNUAL OFFENSE RATES FOR ROBBERY WERE 50. THAT'S 50

7 AVERAGE --

8 **A.** YES, THAT'S CORRECT.

9 **Q.** -- CORRECT?

10 AND FOR BURGLARY 102?

11 **A.** THAT IS CORRECT.

12 **Q.** ASSAULT, EIGHT. MISCELLANEOUS VEHICLE THEFT, 30.

13 MISCELLANEOUS THEFT 222. FORGERY --

14 **JUDGE REINHARDT:** THIS IS PER PRISON, IS THAT RIGHT?

15 **MS. BARLOW:** YES, YOUR HONOR, ON AVERAGE.

16 **JUDGE REINHARDT:** PEOPLE ARE PRETTY BUSY.

17 **BY MS. BARLOW:**

18 **Q.** DRUG DEALS IS A PRETTY HIGH NUMBER.

19 BUT ISN'T IT TRUE, SIR, THAT SOME STUDIES IN TAKING

20 OUT DRUG DEALS STILL COME UP WITH AN AVERAGE 12 TO 15 ATTORNEY

21 CRIMES PER ARRESTEE ON AVERAGE?

22 **A.** USING THESE NUMBERS?

23 **Q.** USING VARIOUS STUDIES, WISCONSIN, WASHINGTON D.C., THE RAND

24 STUDY, CALIFORNIA, TEXAS, MICHIGAN.

25 **A.** CAN I ADD SOMETHING HERE?

1 Q. IS IT TRUE OR ISN'T IT, SIR?

2 A. WELL, THESE NUMBERS ARE WHAT YOU ARE BASING IT ON. THE
3 ACTUAL -- WHEN YOU LOOKED AT REPORTED CRIMES TO ARRESTS, IT'S
4 NOT AT THAT LEVEL AT ALL. IT VARIES. IT CAN BE AS HIGH AS
5 EIGHT-TO-ONE, TWO-TO-ONE, REPORTED CRIMES TO ARREST.

6 I WAS JUST GOING TO ADD THAT THERE IS AN INTERESTING
7 STUDY BY PROFESSOR ZIMMERING AT THE UNIVERSITY OF CALIFORNIA.
8 HE TOOK THESE NUMBERS AND -- BASICALLY WHAT HE DID IS HE TOOK
9 THESE NUMBERS OF CRIMES BEING COMMITTED PER YEAR AND HE APPLIED
10 IT TO THE INCREASE IN THE PRISON POPULATION. AND HE SAID IF YOU
11 USE THESE NUMBERS AND APPLY IT, THE COUNTRY WOULD HAVE RUN OUT
12 OF CRIME IN THE MID 1980'S, WHICH JUST KIND OF POINTED OUT THAT
13 THESE NUMBERS ARE FICTITIOUS. THEY DON'T MAKE ANY SENSE.

14 Q. WELL, SIR, YOU TESTIFIED LAST TIME THAT EVEN IN YOUR OWN
15 ILLINOIS STUDY, YOU REPORT THE NUMBER OF CRIMES FOR HIGH RISK
16 INMATES IN EXCESS OF 250 PER YEAR?

17 A. I TESTIFIED THAT?

18 Q. YES, SIR, YOU DID.

19 A. COULD YOU READ THAT TO ME?

20 Q. IT'S FROM YOUR *CRIME AND DELINQUENCY REPORT*. DO YOU NOT
21 RECALL THAT?

22 A. OKAY. WHAT PAGE?

23 Q. THIS IS EXHIBIT 785, DI-785.

24 JUDGE REINHARDT: IS THE EXHIBIT HIS STUDY?

25 MS. BARLOW: YES, SIR.

1 **JUDGE REINHARDT:** THANK YOU.

2 **JUDGE KARLTON:** AND WHAT PAGE DO YOU WANT TO REFER
3 HIM TO?

4 **MS. BARLOW:** OF THE PUBLICATION, IT'S PAGE 454. AND
5 THAT BEARS BATES STAMP AT THE BOTTOM 03658.

6 **BY MS. BARLOW:**

7 **Q.** NOW, YOU SAY IN HERE, DO YOU NOT, SIR:

8 "A MINORITY OF OFFENDERS ARE HIGH RISK
9 INMATES WHO SHOULD BE INCARCERATED BEYOND THEIR
10 CURRENT SENTENCE LENGTHS BECAUSE THEY ARE VERY
11 LIKELY TO COMMIT LARGE NUMBERS OF CRIMES UPON
12 RELEASE, IN EXCESS OF 250 PER YEAR."
13 RIGHT?

14 **A.** NO. I'M SUMMARIZING GREENWOOD AND ABRAMSON, WHICH IS THE
15 RAND STUDY.

16 **Q.** SO YOU DON'T AGREE WITH THAT?

17 **A.** PARDON?

18 **Q.** YOU DON'T AGREE WITH THAT?

19 **A.** NO. I'M JUST -- THAT'S THE LITERATURE REVIEW, PART OF THE
20 STUDY, AND I'M CITING WHAT THEY -- WHAT THEY SAID. THAT'S WHY
21 IT'S -- THEY ARE REFERENCED. IT IS THE RAND STUDY.

22 **Q.** WELL, DO YOU KNOW, SIR, WHAT IS THE AVERAGE AMOUNT OF CRIME
23 THAT EACH PERSON IN PRISON HAS COMMITTED OR WOULD COMMIT IN A
24 YEAR?

25 **A.** WELL, AGAIN, I DON'T THINK CRIMINOLOGISTS HAVE A -- YOU

1 KNOW, BESIDES FOLLOWING THEM AND OBSERVING THAT, I DON'T THINK
2 ANYONE HAS A GOOD HANDLE ON IT.

3 BUT THE NUMBERS THAT GREENWOOD AND ABRAMSON CAME UP
4 WITH HAS BEEN SHOWN TO BE EXCESSIVE. THE NATIONAL ACADEMY OF
5 SCIENCES DID A REANALYSIS AND SAID THEY WERE EXCESSIVE.

6 THEY DON'T MAKE SENSE GIVEN THE AMOUNT OF
7 INCARCERATION THAT'S INCREASED. IF THESE WERE THE ACTUAL
8 NUMBERS THAT PRISONERS WERE COMMITTING, AGAIN, WE WOULD HAVE RUN
9 OUT OF CRIME.

10 SO THAT HASN'T HAPPENED, SO SOMETHING, OBVIOUSLY, IS
11 VERY WRONG WITH THESE ESTIMATES. AND IT'S NOT IS SOME --

12 Q. ALL RIGHT. IS --

13 A. IF I MIGHT.

14 IT'S LIMITED TO THESE HIGH END OFFENDERS THAT WERE
15 SAYING THAT THEY WERE COMMITTING HUNDREDS OF CRIMES A YEAR.
16 THAT'S THE PROBLEM EVERYONE THINKS WITH THE DATA.

17 Q. SIR. I'M -- I'M NOT SURE YOU ARE AWARE BECAUSE YOU,
18 OBVIOUSLY, YOU WEREN'T HERE, BUT THERE HAS BEEN TESTIMONY IN
19 THIS CASE THAT AT LEAST IN ONE JURISDICTION AS MUCH AS 25
20 PERCENT OF FELONY ARRESTS IN A SINGLE YEAR WERE OF PEOPLE ON
21 PAROLE.

22 DOES THAT HAVE ANY IMPACT ON YOUR CONCLUSIONS THAT
23 YOU ARE GOING TO HAVE LESS THAN A ONE PERCENT IMPACT ON ARRESTS
24 IF YOU EARLY RELEASE?

25 A. I'D HAVE TO SEE, YOU KNOW, THE DATA AND THE ANALYSIS TO

1 COMMENT ON IT.

2 **Q.** I WOULD LIKE TO MOVE ON TO COST SAVINGS, BECAUSE YOU HAVE
3 INDICATED THAT WE ARE GOING TO SAVE BILLIONS OF DOLLARS A YEAR
4 IF WE DO THE PROGRAM YOU RECOMMEND.

5 **A.** I ESTIMATED YOU WOULD SAVE APPROXIMATELY \$1 BILLION A YEAR.

6 **Q.** A BILLION DOLLARS A YEAR, RIGHT?

7 **A.** AND THAT WAS ALSO THE ESTIMATE OF THE EXPERT PANEL.

8 **Q.** NOW, I THINK THE STATE IS NOW PROJECTING IS IT, WHAT,
9 \$45 BILLION DEFICIT NEXT YEAR?

10 YOU TESTIFIED THAT DOING WHAT YOU RECOMMEND ACTUALLY
11 GENERATES MONEY. IT DOESN'T GENERATE MONEY. IT JUST STOPS YOU
12 FROM SPENDING MONEY YOU DON'T ALREADY HAVE, RIGHT?

13 **A.** IT WOULD DEPEND ON HOW THE STATE CHOOSES TO USE THOSE
14 AVERTED COSTS.

15 **Q.** WELL, IF WE HAVE GOT A \$45 BILLION DEFICIT, WE SAVE A
16 BILLION, WE JUST HAVE A \$44 BILLION DEFICIT, RIGHT?

17 **MS. EVENSON:** OBJECTION. BEYOND THE SCOPE AND
18 ARGUMENTATIVE.

19 **MS. BARLOW:** HE DID TALK ABOUT SAVINGS.

20 **JUDGE REINHARDT:** IT'S A BILLION DOLLARS ONE WAY OR
21 THE OTHER. WHAT'S THE DIFFERENCE?

22 **BY MS. BARLOW:**

23 **Q.** OKAY. THAT BILLION DOLLAR SAVINGS DOESN'T TAKE INTO ACCOUNT
24 AT ALL ANY OF THE COSTS OF THE CRIMES THAT GET COMMITTED DURING
25 AN EARLY RELEASE OR ON DIVERSION OR AFTER RELEASE FROM PAROLE

1 EARLY; ANY OF THOSE, RIGHT?

2 **A.** IT DOES TAKE THAT INTO ACCOUNT.

3 **Q.** IT DOES?

4 **A.** YES.

5 **Q.** AND HOW DID YOU CALCULATE THAT? I DIDN'T SEE THAT IN YOUR
6 REPORT.

7 **A.** WELL, THOSE COSTS -- THOSE COSTS OF VICTIMIZATION ARE
8 OCCURRING NOW. SO THE CALIFORNIA DATA THAT I'M USING IS LOOKING
9 AT PEOPLE THAT ARE BEING RELEASED NOW BY THE DEPARTMENT AND IT
10 REFLECTS ON PEOPLE BEING ARRESTED AND WHAT THOSE COSTS ARE BEING
11 ARRESTED, ET CETERA.

12 IF YOU ADOPT MY POLICIES, THOSE SAME COSTS OCCUR,
13 JUST THAT THE TIMING OF EVERYTHING IS CHANGING SLIGHTLY.

14 SO THERE IS NO DIFFERENCE IN THE NUMBER OF PEOPLE
15 BEING ARRESTED. THERE IS NO DIFFERENCE IN THE VICTIMIZATION
16 GOING ON.

17 I THINK THE LAST TIME I TALKED, YOUR HONOR, I MIGHT
18 GET VICTIMIZED INSTEAD OF YOU, BUT, YOU KNOW, IT'S STILL GOING
19 TO BE THAT ONE VICTIMIZATION.

20 SO IT'S A ZERO SUM GAME BECAUSE WE ARE JUST MODESTLY
21 MOVING AROUND, YOU KNOW, THE PERIOD OF INCARCERATION.

22 **Q.** WELL, DIDN'T YOU INDICATE IN YOUR STUDY FROM ILLINOIS THAT
23 IF YOU ACCELERATE THE RATE OF RELEASE, THAT YOU ACCELERATE OR
24 INCREASE THE HARM TO THE COMMUNITY?

25 **A.** WELL, THE REPORT -- THERE WERE TWO REPORTS I DID IN

1 ILLINOIS, BUT THE FIRST ONE WAS TRYING TO GET AT THAT ISSUE
2 BECAUSE THAT WAS A CONCERN, OBVIOUSLY.

3 IF WE START -- AND THAT WAS THE CONCERN OF GOVERNOR
4 THOMPSON AND HIS STAFF. THEY DID WHAT IS CALLED FORCED RELEASE
5 AT THAT TIME. WAS THEIR HARM TO PUBLIC SAFETY AND --

6 Q. WELL, SIR --

7 JUDGE HENDERSON: LET HIM FINISH HIS ANSWER.

8 A. MY CONCLUSION, FINAL ANALYSIS IS, NO, THERE WAS NO HARM TO
9 PUBLIC SAFETY; THAT THE PROGRAM WAS COST EFFECTIVE.

10 BASED ON THAT, THE LEGISLATURE CHANGED THE SENTENCING
11 LAWS. ABOUT SIX YEARS LATER THEY DOUBLED THE AMOUNT OF TIME
12 SERVED.

13 I DID ANOTHER STUDY, SAME RESULTS. AND THEN RECENTLY
14 THEY HAVE ADDED MORE GOOD TIME.

15 AND SO ILLINOIS IS PROBABLY A GOOD EXAMPLE TO LOOK
16 AT, JUST LIKE CALIFORNIA. BOTH STATES WENT FROM INDETERMINATE
17 TO DETERMINATE. ILLINOIS OVER A PERIOD OF YEARS ADJUSTED ITS
18 SENTENCING LAWS TO REDUCE THE PERIOD OF STAY. NET RESULT TODAY
19 IS THEIR CRIME RATE IS THE SAME AS CALIFORNIA'S. BOTH OF THEM
20 HAVE COME DOWN, BUT ILLINOIS HAS AN INCARCERATION RATE ABOUT
21 ONE-THIRD THAT OF CALIFORNIA. SO WHAT ILLINOIS HAS DONE HAS
22 WORKED PRETTY WELL FOR THEM.

23 BY MS. BARLOW:

24 Q. SIR, YOU SAID IN YOUR REPORT AND I QUOTE:

25 "ASSUMING THAT RELEASED INMATES HAVE A

1 CERTAIN PROBABILITY OF COMMITTING NEW CRIME,
2 ACCELERATING THE NUMBER OF RELEASES INCREASED
3 THE AMOUNT OF CRIME BEYOND THE LEVELS ONE WOULD
4 HAVE EXPERIENCED HAD EARLY RELEASE NOT EXISTED."
5 ARE YOU TELLING US RIGHT NOW YOU THAT DIDN'T REALLY
6 MEAN THAT OR THAT'S NOT WHAT IT REALLY SAYS?

7 MS. EVENSON: COUNSEL, WHERE ARE YOU READING FROM,
8 PLEASE?

9 MS. BARLOW: THIS IS PAGE 408 OF HIS ILLINOIS STUDY
10 BATES STAMPED 3612.

11 JUDGE HENDERSON: THE QUESTION IS, ARE YOU SAYING YOU
12 DIDN'T REALLY MEAN THAT OR SOMETHING ELSE?

13 MS. BARLOW: HE HAS JUST TOLD YOU THAT THAT'S NOT
14 WHAT REALLY HAPPENED. YEAH. THAT'S THE QUESTION.

15 JUDGE HENDERSON: DO YOU HAVE THE QUESTION IN MIND?

16 BY MS. BARLOW:

17 Q. DID I QUOTE YOU ACCURATELY, SIR?

18 A. YES, YOU DID.

19 MS. EVENSON: CAN HE PLEASE FINISH?

20 MS. BARLOW: YOU CAN DO THAT ON REDIRECT, COUNSEL.

21 MS. EVENSON: YOU ARE QUOTING HIM OUT OF CONTEXT.

22 MS. BARLOW: I READ THE ENTIRE SENTENCE.

23 MS. EVENSON: COULD YOU READ THE CONTEXT OF IT,
24 PLEASE?

25 MS. BARLOW: I THINK YOU CAN DO THAT.

1 **JUDGE KARLTON:** MA'AM, MA'AM. YOU DON'T ARGUE WITH
2 COUNSEL. COUNSEL HAS OBJECTED. WHAT IS THE OBJECTION?

3 **MS. EVENSON:** THE OBJECTION IS THAT IT IS INCOMPLETE.
4 AND TO COMPLETE THE QUESTION, THE ENTIRE PASSAGE NEEDS TO BE
5 READ INTO THE RECORD.

6 **JUDGE HENDERSON:** READ THE ENTIRE PASSAGE FOR
7 COMPLETENESS.

8 **MS. BARLOW:** WELL, AND I DON'T KNOW IF SHE MEANS THE
9 ENTIRE PARAGRAPH OR THE ENTIRE PAGE.

10 **JUDGE HENDERSON:** TELL US WHAT YOU MEAN.

11 **MS. EVENSON:** THE FOLLOWING SENTENCE.

12 **THE COURT:** WHO YOU READ THAT, PLEASE?

13 **MS. BARLOW:** IT'S ALREADY TESTIFIED TO.

14 **BY MS. BARLOW:**

15 **Q.** (READING)

16 "USING THIS METHOD IT WAS ESTIMATED THAT
17 LESS THAN ONE PERCENT, 4500 ARRESTS, OF ALL
18 SIMILARLY RECORDED ARRESTS FOR ALL OF ILLINOIS
19 WERE ATTRIBUTED TO EARLY RELEASE FROM 1980 TO
20 1983."

21 HE HAS ALREADY SAID THAT. I'M NOT TRYING TO CHANGE
22 THAT.

23 **JUDGE KARLTON:** THANK YOU, MA'AM.

24 **MS. BARLOW:** YOU ARE WELCOME.

25

1 **BY MS. BARLOW:**

2 **Q.** MOVING ON TO THE NEXT PAGE OF YOUR REPORTS FROM YOUR
3 ILLINOIS STUDY. THIS IS PAGE 409, BATES 3613.

4 **MS. BARLOW:** IF WE COULD PUT THE LAST TWO PARAGRAPHS
5 ON THAT PAGE UP, PLEASE?

6 (DOCUMENT DISPLAYED)

7 **BY MS. BARLOW:**

8 **Q.** AND I WOULD JUST LIKE TO READ THIS TO YOU, IF I COULD, SIR.

9 "HOWEVER IN THE EYES OF POLICE, PROSECUTORS,
10 JUDGES AND THE PUBLIC, EARLY RELEASE WAS
11 ANYTHING BUT A SUCCESS. POLICE AND PROSECUTORS
12 WORKED TO IMPROVE CONVICTION RATES AND JUDGES
13 FOLLOWED THE NEWLY ENACTED LAWS THAT REQUIRE
14 LONGER SENTENCES. MOREOVER, A CONFUSED AND
15 OFTEN ANGRY PUBLIC FINDS IT DIFFICULT TO
16 UNDERSTAND WHY THOUSANDS OF INMATES ARE BEING
17 DISCHARGED EARLY WHILE CITIZENS CONTINUE TO BE
18 VICTIMIZED AT INTOLERABLE LEVELS AND THEY TAKE
19 ALSO COMFORT IN KNOWING THAT THESE PRISONERS
20 WOULD HAVE BEEN RELEASED WITHIN A FEW MONTHS IN
21 THE EARLY RELEASE PROGRAM.

22 "WHEN VIEWED AS A LONG TERM SOLUTION TO
23 PRISON CROWDING, EARLY RELEASE IS A POOR
24 SUBSTITUTE FOR A MORE PERMANENT, RATIONAL AND
25 COST EFFECTIVE SENTENCING POLICY. IT PROVIDES

1 AN EXCESSIVE AMOUNT OF DISCRETION FOR
2 CORRECTIONAL ADMINISTRATORS, VIOLATES PRINCIPLES
3 OF EQUITY AND CERTAINTY IN SENTENCING AS ASSUMED
4 BY THE COURT, AND INCREASES THE ALREADY LOW
5 REGARD HELD FOR THE CRIMINAL JUSTICE SYSTEM BY
6 THE PUBLIC."

7 DO YOU STILL AGREE WITH THAT, SIR?

8 **A.** YES. AND I JUST WANT TO ADD --

9 **Q.** I DON'T HAVE A QUESTION PENDING NOW. YOU HAVE ANSWERED MY
10 QUESTION. THANK YOU.

11 **MS. EVENSON:** OBJECTION.

12 **JUDGE HENDERSON:** IT CAN BE REVIEWED. YOU CAN GET TO
13 IT ON REDIRECT, COUNSEL.

14 **MS. EVENSON:** YES.

15 **JUDGE KARLTON:** IF YOU FEEL COMPELLED. THERE IS
16 NOTHING WRONG. GO AHEAD.

17 **BY MS. BARLOW:**

18 **Q.** SO YOU AGREE THAT EARLY RELEASE --

19 **JUDGE KARLTON:** MA'AM, HE AGREES WITH THE ENTIRE
20 SENTENCE.

21 **JUDGE REINHARDT:** HE AGREES IT'S A BETTER SOLUTION
22 THAN EARLY RELEASE, WHICH IS TO CHANGE OUR CRIMINAL LAWS OR OUR
23 SENTENCING LAWS, OR YOU CAN BUILD PRISONS OR DO ALL KINDS OF
24 THINGS.

25 BUT GIVEN THE PRESENT CIRCUMSTANCES, WHAT'S THE BEST

1 SOLUTION?

2 **MS. BARLOW:** WELL, I APPRECIATE THAT, YOUR HONOR,
3 BUT --

4 **JUDGE KARLTON:** YOU DON'T APPRECIATE IT. PLEASE GO
5 FORWARD.

6 **MS. BARLOW:** I DO. I'M TRYING TO.

7 **BY MS. BARLOW:**

8 **Q.** BUT YOU AGREE, SIR, THAT EARLY RELEASE IS ONLY A SHORT-TERM
9 REMEDY FOR OVERCROWDING, RIGHT?

10 **A.** I'M SORRY?

11 **Q.** EARLY RELEASE IS ONLY A SHORT-TERM REMEDY FOR OVERCROWDING,
12 RIGHT?

13 **A.** YES. IT'S NOT A POLICY THAT I ENDORSE.

14 **Q.** AND, IN FACT, YOU CHARACTERIZED IT IN THIS STUDY AS AN
15 EMERGENCY ONLY OPTION, CORRECT?

16 **A.** YEAH. IN THE CIRCUMSTANCE, THE DIRECTOR OF CORRECTIONS, HE
17 NOTED TWO YEARS BEFORE THEY HAD A VERY BLOODY PRISON RIOT WHERE
18 THEY LOST STAFF. STAFF WERE KILLED AND HE SAID HE DID NOT WANT
19 TO TOLERATE A CROWDED PRISON SYSTEM BECAUSE IT WAS DANGEROUS AND
20 THEY HAD JUST GONE THROUGH A PRISON RIOT. AND HE --

21 **Q.** AND DID YOU -- I'M SORRY. I DIDN'T MEAN TO INTERRUPT. I
22 THOUGHT YOU WERE FINISHED. I APOLOGIZE. GO AHEAD AND FINISH.

23 **A.** HE THOUGHT, YOU KNOW, THE BEST WAY WOULD BE FOR THE
24 LEGISLATURE TO CORRECT IT; BUT IF THEY DON'T CORRECT IT, HE HAD
25 NO CHOICE BUT TO USE WHAT POWERS HE HAD TO KEEP THE PRISON

1 SYSTEM SAFE. AND THAT'S WHY HE DID IT.

2 Q. ALL RIGHT. WOULD YOU AGREE WITH ME, SIR, THAT ASSESSING THE
3 COSTS OF EARLY RELEASE MUST GO BEYOND SIMPLY CALCULATING THE
4 RECIDIVISM RATE FOR THE RELEASEES?

5 A. YES.

6 Q. WE HAVE TO CONSIDER THE HARM TO THE COMMUNITY, THE LOSS AND
7 DAMAGE CAUSED BY EARLY RELEASE CRIME AND SO ON, CORRECT?

8 A. YES.

9 Q. NOW, IN YOUR STUDY ON PAGE 478 YOU SAID:

10 "AS THE EARLY RELEASE WINDOW EXPANDS, SO
11 DOES THE AMOUNT OF CRIME ATTRIBUTABLE TO THE
12 EARLY RELEASE PROGRAM."

13 AND YOU GO ON TO TALK ABOUT MEDIAN DAYS.

14 "IN 1980 ONLY ONE-TENTH OF THE FELONY
15 ARRESTS WERE ATTRIBUTED TO EARLY RELEASE
16 COMPARED TO FIVE-TENTHS OF ONE PERCENT IN 1982."

17 SO IT'S TRUE THAT AS THE MORE PEOPLE YOU EARLY
18 RELEASE, THE HIGHER THE RATES GO, RIGHT?

19 MS. EVENSON: OBJECTION. YOU ARE MISREAD THE QUOTE
20 THAT YOU WERE READING, COUNSEL.

21 MS. BARLOW: I'M SORRY. I DON'T THINK I DID.

22 MS. EVENSON: YOU SAID ONE-TENTH OF FELONY ARRESTS.
23 YOU MEANT ONE-TENTH OF ONE PERCENT.

24 MS. BARLOW: I APOLOGIZE.

25

1 **BY MS. BARLOW:**

2 **Q.** ONLY ONE-TENTH OF ONE PERCENT OF THE FELONY ARRESTS WERE
3 ATTRIBUTABLE TO EARLY RELEASE COMPARED TO FIVE-TENTHS OF ONE
4 PERCENT IN 1982.

5 SO IT'S MAGNIFIED FIVE FOLD AS YOU INCREASE THE EARLY
6 RELEASE, CORRECT?

7 **A.** TECHNICALLY WHAT'S GOING ON, THIS IS THE INCREASE DURING THE
8 TIME THAT YOU CHANGED THE POLICY. AND ONCE THE EFFECT OF THE
9 POLICY HAVE TAKEN AHOLD, THEN THIS INCREASE DOES OCCUR.

10 BUT, YES, I'M SAYING IT'S LESS THAN ONE PERCENT OF
11 THE ARRESTS. IN ILLINOIS COULD BE ATTRIBUTED AND AS YOU
12 INCREASE, YOU KNOW, THE AMOUNT OF TIME THAT PEOPLE ARE BEING --
13 HAVING THEIR TIME REDUCED, YOU HAVE AN INCREASE.

14 **JUDGE KARLTON:** AND, SIR, IF WE WERE TO ORDER THE
15 COUNTY -- THE STATE TO RELEASE 150,000 OR 145,000 OR SOME NUMBER
16 LIKE THAT, IT'S STILL LESS THAN ONE PERCENT IN YOUR VIEW?

17 **THE WITNESS:** RELEASE IN THEIR VIEW --

18 **JUDGE KARLTON:** THEY ARE TALKING ABOUT A HUNDRED
19 AND --

20 **MR. SPECTER:** FIFTY, YOUR HONOR.

21 **MS. BARLOW:** 52,000.

22 **JUDGE KARLTON:** 52,000.

23 **THE WITNESS:** I HAVEN'T DONE THAT CALCULATION, YOUR
24 HONOR. BUT BASED ON ALL THE WORK THAT I HAVE DONE ELSEWHERE, IT
25 WOULD REPRESENT A VERY SMALL FRACTION, SOMEWHERE IN THE

1 ONE PERCENT RANGE PROBABLY.

2 YOU KNOW, AGAIN, A LOT DEPENDS ON HOW YOU DO IT. AND
3 YOU COULD JUST DO IT ON A RANDOM BASIS WITHOUT RISK ASSESSMENT,
4 WITHOUT KIND OF PROPERLY PREPARING THE SYSTEM FOR THIS. YOU
5 COULD HAVE SOME ADVERSE AFFECTS, BUT I'M CONFIDENT THAT YOU
6 COULD DO IT AND NOT HAVE ANY IMPACT, NEGATIVE IMPACT ON CRIME
7 RATES OR PUBLIC SAFETY. THAT'S MY OPINION.

8 JUDGE REINHARDT: AND YOU ARE ALSO SAYING THERE ARE
9 BETTER WAYS TO DO THIS.

10 THE WITNESS: YES. I MEAN, THE --

11 JUDGE REINHARDT: THAT WOULD REQUIRE THE STATE TO
12 PASS LEGISLATION.

13 THE WITNESS: IN MY OPINION, YES. THERE NEEDS TO BE
14 SOME CHANGES IN THE SENTENCING LAWS, BUT THERE WOULD ALSO HAVE
15 TO BE SOME CHANGES IN WHICH THE CDCR OPERATES AND PREPARES
16 PRISONERS FOR RELEASE AND THE PAROLE DIVISION DOES ITS WORK.

17 THERE'S A NUMBER OF ADMINISTRATIVE CHANGES. AND,
18 AGAIN, THESE ARE PRETTY WELL DETAILED IN THE EXPERT PANEL
19 REPORT.

20 JUDGE REINHARDT: THE STATE HAS BEEN ADVISED HOW IT
21 COULD AVOID A PRISON RELEASE ORDER BY THE EXPERTS IT APPOINTED?

22 THE WITNESS: I'M SORRY, YOUR HONOR?

23 JUDGE REINHARDT: THE STATE HAS BEEN ADVISED HOW IT
24 COULD AVOID A PRISONER RELEASE ORDER BY THE EXPERTS IT HAS
25 APPOINTED?

1 **THE WITNESS:** HOW IT COULD AVOID? I DON'T --

2 **JUDGE REINHARDT:** WHAT IT COULD DO TO SOLVE THE
3 PROBLEM WITHOUT A PRISONER RELEASE ORDER?

4 **THE WITNESS:** WELL, THE EXPERT PANEL -- THE EXPERT
5 PANEL --

6 **JUDGE REINHARDT:** HAS ADVISED THE STATE.

7 **THE WITNESS:** THAT IT DID NEED TO CHANGE SENTENCING
8 LAWS.

9 **JUDGE KARLTON:** RIGHT. AND JUDGE REINHARDT SAID, THE
10 EXPERT PANEL HAS ADVISED THE STATE AS TO WHAT IT OUGHT TO DO.

11 **THE WITNESS:** YES.

12 **JUDGE KARLTON:** AND IF THE STATE HAD ADOPTED ALL OF
13 THOSE RECOMMENDATIONS, WE WOULDN'T BE HERE TODAY.

14 **THE WITNESS:** ABSOLUTELY.

15 **JUDGE REINHARDT:** AND THE STATE HAS CHOSEN NOT TO DO
16 THAT, TO ADOPT THOSE RECOMMENDATIONS.

17 **THE WITNESS:** THAT'S AN INTERESTING POINT, YOUR
18 HONOR, BECAUSE --

19 **JUDGE REINHARDT:** WELL IT DOESN'T, DOES IT?

20 **THE WITNESS:** IT WAS THEN SECRETARY TILTON, WHO -- I
21 HAVE A COPY OF HIS LETTER, WHO THEN ENDORSED ALL THE
22 RECOMMENDATIONS.

23 THE ONLY QUESTION HE HAD WAS THE ESTIMATES THAT WERE
24 BEING PROVIDED, AND THEY HAD ME COME IN AND GO OVER THE
25 ESTIMATES AND REAFFIRM THEM.

1 BUT I HAVE IN MY POSSESSION A LETTER FROM SECRETARY
2 TILTON ENDORSING ALL THE RECOMMENDATIONS OF THE EXPERT PANEL.

3 **JUDGE KARLTON:** AND THE STATE HASN'T DONE IT?

4 **THE WITNESS:** THAT'S CORRECT.

5 **BY MS. BARLOW:**

6 **Q.** THANK YOU. IF I COULD GET BACK TO THESE RATES HERE, JUST A
7 COUPLE MORE QUESTIONS.

8 YOU INDICATE IN YOUR REPORT THAT:

9 "THE NUMBER OF ARRESTS GENERATED BY EARLY
10 RELEASE WAS HIGHEST IN 1982 AT A PERIOD DURING
11 WHICH BOTH THE RELEASE RATE AND LENGTH OF THE
12 WINDOW WERE GREATEST."

13 SO THE MORE YOU RELEASE AND THE LONGER A PERIOD OF
14 TIME THEY GET LET OUT EARLY, THE HIGHER THE CRIME RATE OR ARREST
15 RATE GOES, RIGHT? THE ARREST RATE, RIGHT? I DON'T WANT TO
16 CONFUSE YOU BECAUSE WE KNOW THAT THERE IS MORE CRIME THAN
17 ARRESTS.

18 **A.** DURING THAT IMPLEMENTATION PERIOD?

19 **Q.** RIGHT. SO AND ILLINOIS, JUST TO MAKE SURE WE PUT THIS ALL
20 THIS IN CONTEXT, RELEASED 21,000 PRISONERS OVER THREE YEARS,
21 RIGHT?

22 **A.** IN THAT TIME PERIOD. IT'S DONE A LOT MORE SINCE THEN
23 OBVIOUSLY.

24 **Q.** WE ARE TALKING ABOUT WHAT'S HERE IN YOUR REPORT.

25 AND YOU DID AN ANALYSIS THAT INDICATED THAT THOSE

1 4,000-PLUS ARRESTS RESULTED IN 30,610 CRIMES FROM -- DURING THE
2 EARLY RELEASE PERIOD, CORRECT?

3 **A.** NO. WHAT I'M DOING THERE, I'M ESTIMATING USING A PROCEDURE
4 THAT WAS SUGGESTED BY PROFESSOR BLOOMSTEIN, WHO WAS AN ADVISOR
5 TO THE PROJECT.

6 SO WHAT I'M DOING, I'M TAKING AN APPROACH THAT PEOPLE
7 SUGGESTED TO ME TO TRY AND ESTIMATE THE AMOUNT OF CRIMES.

8 **Q.** THAT'S WHAT I THOUGHT I SAID, BUT --

9 **JUDGE KARLTON:** NO, YOU DIDN'T.

10 **A.** YOU ARE KIND OF SAYING THESE CRIMES DID OCCUR. WE HAVE NO
11 IDEA IF THESE CRIMES DID OCCUR.

12 AND I WAS JUST GOING TO ADD, IN MY 1993 REPORT WE
13 ACTUALLY WENT IN TO THESE ARRESTS AND AUDITED THEM AND FOUND
14 THAT THE CRIMES WERE NOT OCCURRING IN A LARGE NUMBER OF THEM.

15 SO THE METHODOLOGY TO DETERMINE HOW MUCH CRIME THEY
16 WERE COMMITTING WAS FLAWED. WE DID THE BEST WE COULD, BUT IT'S
17 NOT ANYWHERE CLOSE TO WHERE YOU COULD SAY THAT THIS NUMBER OF
18 ARRESTS ARE PRODUCING THIS AMOUNT OF CRIMINAL ACTIVITY.

19 **BY MS. BARLOW:**

20 **Q.** YOU DID ESTIMATE, THOUGH, BASED ON YOUR ANALYSIS AT THE TIME
21 THAT THOSE 4,511 EARLY RELEASEES GENERATED 30,610 CRIMES, HALF
22 OF WHICH WERE NOT REPORTED TO THE POLICE, RIGHT?

23 **A.** I DID NOT SAY THEY GENERATED. I SAID BASED ON THIS
24 ESTIMATION PROCEDURE.

25 **Q.** ALL RIGHT. IT SAYS:

1 "THIS ESTIMATED TECHNIQUE PRODUCED A TOTAL
2 OF 30,610 CRIMES OF WHICH" --

3 **JUDGE KARLTON:** MA'AM, HE HAS ALREADY SAID HE USED
4 SOMEBODY ELSE'S METHOD AND ATTEMPTED TO DETERMINE THE NUMBER OF
5 CRIMES THAT WOULD BE PERMITTED. HE CAME TO THAT NUMBER. THREE
6 YEARS LATER HE DID A STUDY THAT DIDN'T OCCUR.

7 WHAT MORE DO YOU WANT? I KNOW YOU DON'T LIKE HIS
8 ANSWER. THAT'S HIS ANSWER.

9 **BY MS. BARLOW:**

10 **Q.** WELL, WHEN YOU DID THIS ESTIMATION, YOU DID NOT ADD ANY --
11 MAKE ANY ADJUSTMENTS FOR THE POSSIBILITY THAT THERE WERE
12 MULTIPLE OFFENDERS INVOLVED, RIGHT? AND THAT WOULD HAVE
13 INCREASED THE AMOUNT OF CRIME YOU PROJECTED, CORRECT?

14 **A.** I THINK ON PAGE 495 I TALKED ABOUT, QUOTE.

15 "IF WE HAD USED THE ESTIMATE OF BLOOMSTEIN
16 PICONE" -- WHICH IS WHAT I'M REFERRING TO --
17 "FOR MULTIPLE OFFENDERS THE AMOUNT OF CRIME
18 ATTRIBUTABLE TO EARLY RELEASE WOULD HAVE
19 DOUBLED" --

20 **Q.** DOUBLED, RIGHT?

21 **A.** SO I DID TAKE IT INTO ACCOUNT.

22 **Q.** NOW, YOU ALSO -- WHEN YOU DID YOUR CALCULATION OF COST
23 SAVINGS AS A RESULT OF THE ILLINOIS RELEASE -- EARLY RELEASE
24 PROGRAM, YOU ESTIMATED THAT THE SAVINGS WAS \$1,400 PER INMATE?

25 **MS. EVENSON:** COUNSEL, WHERE ARE YOU READING FROM?

1 **A.** I THINK ON PAGE 496, FIRST PARAGRAPH, IT SAYS SAVINGS WAS
2 APPROXIMATELY \$1,505 PER RELEASED EARLY INMATE.

3 **BY MS. BARLOW:**

4 **Q.** WOULD YOU TAKE A LOOK AT THE -- I'M SORRY. WHICH PAGE WAS
5 THAT, SIR?

6 **A.** PARDON?

7 **Q.** WHICH PAGE IS IT?

8 **A.** IT'S ON PAGE 496 OF THE REPORT. IT'S THE FIRST PARAGRAPH
9 SUMMARY ASSAULT, THE LAST STATEMENT.

10 **Q.** BUT THE TABLE ABOVE THAT ACTUALLY HAS THE OTHER NUMBER,
11 RIGHT, ON THAT PAGE?

12 **A.** YES, I SEE THAT. THEY ARE PROBABLY, YOU KNOW -- IT'S ABOUT
13 THE SAME; 1,480, 1,505.

14 **Q.** IT'S AROUND \$1,500 PER, RIGHT?

15 AND IN REACHING THAT CONCLUSION YOU TRIED TO
16 CALCULATE THE -- SOME ECONOMIC COSTS ASSOCIATED WITH THE CRIMES
17 THAT WOULD BE OR WERE COMMITTED, CORRECT?

18 **A.** YES.

19 **Q.** ALL RIGHT. AND YOU FIGURED WHAT THAT COST WOULD BE AND THEN
20 YOU SUBTRACTED THE AMOUNT OF INSURANCE PROCEEDS THAT PEOPLE WERE
21 ABLE TO RECOVER TO COVER THEFTS AND DAMAGE AND SO ON, RIGHT?

22 **A.** I DON'T KNOW IF IT WAS IN THIS STUDY OR THE SUBSEQUENT ONE.

23 **Q.** IT'S ON PAGE 493.

24 **A.** 493?

25 **Q.** UH-HUH.

1 A. OKAY. SO, YEAH. WHAT WE ARE DOING HERE IS WE ARE TAKING
2 DATA FROM -- THIS IS IMPORTANT, FROM THE NATIONAL CRIME SURVEY.

3 SO THIS IS WHAT'S CALLED IN OUR LANGUAGE AN
4 ECOLOGICAL FALLACY, WHERE YOU TAKE INFORMATION FROM SOMETHING
5 ELSE AND YOU APPLY IT TO PEOPLE THAT MAY OR MAY NOT BE IN THAT
6 OTHER DATA SET.

7 SO WE ARE TAKING THAT VICTIM LOSSES FROM NCSS AND
8 APPLYING IT TO -- TO THESE CRIMES BASED ON WHAT'S IN THE
9 NATIONAL CRIME SURVEY VICTIM LOSSES.

10 Q. RIGHT. BUT WHAT I'M ASKING YOU, SIR, IS --

11 A. AND THAT CRIME SURVEY -- YEAH, THEY ESTIMATE THAT 36 PERCENT
12 OF ALL THOSE LOSSES ARE RECOVERED BY THE VICTIM.

13 Q. AND THAT INCLUDED COVERAGE BY -- FOR MEDICAL CLAIMS AND
14 INSURANCE COVERAGE, RIGHT?

15 A. RIGHT.

16 Q. SO, BUT THAT WAS A LOSS TO SOMEBODY. IT MAY NOT HAVE BEEN
17 JUST A LOSS TO THE VICTIM, IF AN INSURANCE COMPANY, FOR EXAMPLE,
18 HAD TO PAY, RIGHT?

19 A. YES. THE INSURANCE COMPANY WOULD HAVE REIMBURSED THEM.

20 Q. NOW, YOU TESTIFIED PREVIOUSLY THAT CALIFORNIA HAD ONE OF THE
21 LOWER RECIDIVISM RATES IN THE '60S AND THE '70S, AND THAT IS
22 PART OF WHY WE HAD SUCH A LOW PRISON POPULATION AT THE TIME?

23 A. NO, THAT'S NOT WHY YOU HAD A LOW PRISON POPULATION AT THE
24 TIME, BUT YOU DID HAVE A LOW RECIDIVISM RATE.

25 Q. NOW, YOU ARE AWARE, THOUGH, THAT INDEX CRIME DOUBLED IN

1 CALIFORNIA? THE RATE OF INDEX CRIMES COMMITTED IN CALIFORNIA
2 DOUBLED FROM 1965 TO 1975?

3 **A.** I WILL TAKE IT AT YOUR WORD. I KNOW IT INCREASED
4 DRAMATICALLY.

5 **Q.** AND THAT INCREASE IS PART OF WHAT FUELED LAWS ABOUT
6 DETERMINATE SENTENCING, AND USE A GUN GO TO JAIL, AND SECOND AND
7 THIRD STRIKES AND SO ON, RIGHT?

8 **MS. EVENSON:** OBJECTION. CALLS FOR INSPECTION.

9 **JUDGE HENDERSON:** SUSTAINED.

10 **BY MS. BARLOW:**

11 **Q.** AFTER THOSE LAWS WERE PASSED, THE CRIME -- VIOLENT CRIME
12 RATES WENT DOWN, RIGHT? THOSE INDEX CRIMES?

13 **A.** THE CRIME RATES STARTED. THEY PEAKED IN CALIFORNIA AND
14 ELSEWHERE ABOUT 1980. AND THEN IN 1994, 1995 THEY STARTED TO
15 DECLINE.

16 **Q.** NOW, ARE YOU FAMILIAR WITH THE -- WITH STEVEN LEAVITT?
17 STEVEN LEAVITT?

18 **A.** STEVEN LEAVITT? I THINK --

19 **Q.** UNIVERSITY OF CHICAGO?

20 **A.** YEAH. HE'S THE ONE THAT TALKED ABOUT THE RELATIONSHIP
21 BETWEEN ABORTION AND CRIME?

22 **Q.** WELL, THAT'S NOT WHAT I'M ASKING ABOUT.

23 **A.** WELL --

24 **JUDGE HENDERSON:** ARE YOU FAMILIAR WITH HIM, IS THE
25 QUESTION.

1 **BY MS. BARLOW:**

2 **Q.** ARE YOU FAMILIAR WITH HIM?

3 **A.** I'M FAMILIAR WITH HIM.

4 **Q.** NOW, LEAVITT FOUND THAT SLOWING THE PRISON POPULATION BY 13
5 TO 19 PERCENT CAUSED AN INCREASE IN VIOLENT CRIME OF EIGHT --
6 APPROXIMATELY 8 PERCENT AND IN PROPERTY CRIMES OF APPROXIMATELY
7 6 PERCENT.

8 DO YOU DISAGREE WITH THAT?

9 **A.** YES.

10 **Q.** LET'S TALK ABOUT A POPULATION CAP HERE. IS IT TRUE, SIR,
11 THAT YOU WOULD NOT RECOMMEND THAT THE COURT SET A CAP
12 ARTIFICIALLY WITHOUT CHANGING ADMISSION AND RELEASE PRACTICES?

13 **A.** WELL, I WOULD -- YEAH, I WOULD -- YOU WOULD HAVE TO CHANGE
14 -- YES, THE SENTENCING RELEASE PRACTICES, YEAH. THE SAME THINGS
15 I HAVE RECOMMENDED, THOSE ARE THE THINGS THAT YOU WANTED TO --

16 **JUDGE KARLTON:** THE QUESTION IS MORE PROFOUND. IF WE
17 DON'T ORDER THOSE THINGS, SHOULD WE HAVE A PRISON RELEASE ORDER?

18 **JUDGE REINHARDT:** I DIDN'T UNDERSTAND --

19 **JUDGE KARLTON:** OR WE CAN'T --

20 **THE WITNESS:** YOU WOULD HAVE CHAOS, CHAOS AT THAT
21 POINT.

22 **JUDGE REINHARDT:** DO YOU BELIEVE THAT'S UP TO THE
23 COURT OR TO THE STATE IF --

24 **BY MS. BARLOW:**

25 **Q.** I BELIEVE YOU INDICATED --

1 **JUDGE REINHARDT:** (CONTINUING) -- THERE IS A CAP?
2 WHO IS -- I MEAN, I DON'T KNOW WHETHER YOU ARE CAPABLE OF
3 ANSWERING THIS QUESTION, BUT IF THERE IS A PRISONER RELEASE
4 ORDER, WHETHER THAT SHOULD BE LEFT UP TO THE STATE TO CREATE THE
5 CHAOS OR THE COURT HAS TO TELL THE STATE HOW TO DO IT?

6 I THINK THAT'S REALLY A QUESTION FOR US, BUT IF YOU
7 HAVE GOT AN OPINION ON IT, YOU CAN CERTAINLY EXPRESS IT.

8 **A.** MY OPINION IN CALIFORNIA, COMPARED TO OTHER STATES I WORK
9 IN, IS I THINK THE COURT HAS TO ORDER IT AND WOULD THEN FORCE --
10 THAT WOULD FORCE THE STATE, YOU KNOW, TO MAKE THE CHANGES IT
11 NEEDS TO CHANGE TO AVOID THE CHAOS.

12 **Q.** DO YOU RECALL TESTIFYING, SIR, THAT WITHOUT A CHANGE IN
13 POLICIES AND PRACTICES, A POPULATION CAP WOULD CREATE A BIG
14 PROBLEM?

15 **JUDGE KARLTON:** HE JUST SAID CHAOS.

16 **BY MS. BARLOW:**

17 **Q.** CAP, POPULATION CAP. I'M SORRY.

18 **A.** IT WOULD BE A CHAOTIC SITUATION.

19 **Q.** AND YOU WOULD NOT WANT TO HAVE THE COURT ISSUE AN ORDER THAT
20 WOULD RESULT IN A SUDDEN DROP IN THE POPULATION OR LARGE
21 RELEASE, CORRECT?

22 **A.** WELL, WOULD NOT RECOMMEND THAT. AGAIN, I'M HOPING. I WOULD
23 ASSUME THAT A REASONABLE PLAN WOULD BE DEVELOPED THAT WOULD MEET
24 THAT CAP REQUIREMENT.

25 I THINK THAT'S VERY DOABLE. THAT'S BEEN DONE IN

1 OTHER PLACES AND COULD BE DONE HERE.

2 Q. WELL, YOU THINK -- YOU AGREE, SIR, THAT IT TAKES SOME TIME
3 TO PUT TOGETHER A REASONABLE PLAN, CORRECT?

4 A. IT WOULD NOT TAKE LONG IN CALIFORNIA TO DO THIS, NO.

5 Q. NOW, DO YOU AGREE THAT IF THE COURT WERE TO ESTABLISH SOME
6 KIND OF LIMITATION ON THE PRISON POPULATION EITHER BY A CAP OR
7 SOME OTHER MEANS, THAT THERE SHOULD BE PERIODIC MONITORING OF
8 THAT AND SEE HOW IT'S AFFECTING NOT ONLY THE POPULATION, BUT THE
9 CRIME RATES AND THE PROVISION OF MEDICARE AND MENTAL HEALTH CARE
10 IN THE PRISONS?

11 A. YES, I WOULD AGREE WITH YOU.

12 JUDGE REINHARDT: YOU MEAN, YOU WANT THE COURT TO
13 RETAIN JURISDICTION --

14 MS. BARLOW: I THINK THAT'S WHAT HE WANTS, SIR.

15 BY MS. BARLOW:

16 Q. NOW, YOU WOULD YOU HAVE TO SEE THE SPECIFICS OF ANY PROPOSED
17 ORDER TO DETERMINE WHETHER IT WOULD OR WOULDN'T NEGATIVELY
18 IMPACT PUBLIC SAFETY, CORRECT?

19 A. I'M SORRY. I JUST WANT TO MAKE SURE I UNDERSTOOD THE
20 QUESTION.

21 Q. YOU WOULD HAVE TO LOOK AT THE SPECIFICS OF AN ORDER TO
22 DETERMINE IF IT WOULD OR WOULD NOT HAVE A NEGATIVE SAFETY
23 IMPACT?

24 A. WELL, THE WAY I WOULD SEE IT HAPPENING, THE COURT MIGHT
25 ORDER, THIS IS THE CAP AND WOULD GIVE THE STATE, YOU KNOW, 30 TO

1 60 DAYS TO COME BACK WITH THE PLAN THAT WILL MEET THAT CAP.
2 THAT'S PROBABLY ENOUGH TIME NECESSARY TO DEVELOP THE PLAN --

3 **JUDGE REINHARDT:** THE QUESTION IS, WOULD YOU THEN
4 WANT TO HAVE THE COURT MONITOR THAT PLAN TO SEE HOW IT'S
5 WORKING? WOULD YOU LIKE TO HELP US BY MONITORING IT AND BEING
6 AN EXPERT THAT THE COURT RETAINS TO SEE THAT THE PLAN IS BEING
7 IMPLEMENTED PROPERLY BY THE STATE, IS THE WAY I UNDERSTAND THE
8 QUESTION.

9 **MS. BARLOW:** THAT'S NOT WHAT I'M ASKING ACTUALLY,
10 BUT, CERTAINLY, THE COURT IS FREE TO ASK THAT QUESTION IF IT
11 WISHES TO.

12 **JUDGE REINHARDT:** I THOUGHT THAT WAS PRETTY CLOSE.
13 YOU ASKED HIM IF HE WOULD REVIEW THE PLAN PERIODICALLY TO SEE IF
14 IT WAS WORKING.

15 **BY MS. BARLOW:**

16 **Q.** YOU INDICATED IN YOUR DEPOSITION THAT YOU WOULD HAVE TO SEE
17 THE SPECIFICS OF AN ORDER BEFORE YOU COULD SAY ONE WAY OR THE
18 OTHER THAT IT WOULD HAVE A NEGATIVE IMPACT ON PUBLIC SAFETY; DO
19 YOU REMEMBER THAT?

20 **A.** WELL, I DON'T KNOW IF I SAID THAT OR NOT, BUT WHAT I'M
21 SAYING IS THAT IF THE COURT ORDERS A POPULATION LIMIT, THEN THE
22 NEXT PLAN IS, OKAY, HOW DO WE ACHIEVE THAT AND HOW DO WE ACHIEVE
23 THAT SAFELY AND IN A REASONABLE MANNER? AND THAT'S WHEN THE
24 PLAN IS PUT TOGETHER.

25 THEN THE PLAN, I ASSUME, WOULD GO BACK TO THE COURT

1 FOR ITS REVIEW AND YOU WOULD PUT IN PLACE PROPER CONTROLS TO
2 MAKE SURE THAT THAT PLAN IS BEING IMPLEMENTED OR NEEDS TO BE
3 MODIFIED TO MAKE SURE THAT THINGS ARE GOING AS INTENDED.

4 SO THAT'S A WAY IT -- THAT'S USUALLY THE WAY I WORK.
5 YOU KNOW, I'M USUALLY -- I'M NOT WORKING IN THIS KIND OF A
6 SITUATION. USUALLY THE STATE HAS -- WE NEED TO LOWER OUR
7 POPULATION OR WE NEED TO DO THIS, SHOW US HOW TO DO IT. I COME
8 UP WITH A PLAN. THEY LOOK AT THEIR LAWS AND POLICIES, THEY MAKE
9 ADJUSTMENTS AND THEN WE GO FORWARD WITH A PARTNERSHIP. THAT'S
10 HOW IT WORKS BEST.

11 Q. SO YOU WOULD NEED TO HAVE THE SPECIFICS BEFORE YOU COULD
12 DEFINITELY OPINE ABOUT EFFECTS ON PUBLIC SAFETY?

13 A. YES.

14 Q. NOW, IF YOU REMEMBER WHEN I DEPOSED YOU THE SECOND TIME, I
15 DIDN'T -- I WASN'T THERE FOR THE FIRST ONE.

16 A. I DO REMEMBER YOU.

17 Q. YES, I'M SURE YOU DO.

18 AND I ASKED YOU TO MAKE SOME ASSUMPTIONS: THAT THERE
19 WAS A POPULATION CAP IMPOSED BY THE COURT OF 103,000, AND THAT
20 THE COUNTY JAILS WERE ESSENTIALLY FULL, AND TO TELL ME THEN
21 UNDER THOSE CIRCUMSTANCES DO YOU THINK THIS WOULD BE AN IMPACT
22 TO PUBLIC SAFETY. AND YOU DIDN'T WANT TO ANSWER MY QUESTION
23 THEN. YOU TOLD ME THAT WAS A SILLY ASSUMPTION TO MAKE.

24 I'M ASKING YOU NOW, IF THERE IS A CAP IMPOSED BY THE
25 COURT OF 103,000, THE COUNTY JAILS ARE FULL AND RELEASING PEOPLE

1 ALREADY EARLY BECAUSE THEY DON'T HAVE CAPACITY, IT'S STILL YOUR
2 OPINION THAT THERE IS GOING TO BE NO NEGATIVE IMPACT ON PUBLIC
3 SAFETY?

4 **A.** IF THEY ADOPT MY RECOMMENDATIONS. IF THEY DON'T ADOPT THE
5 RECOMMENDATIONS, THEN THERE WOULD BE A PROBLEM.

6 **MS. BARLOW:** I HAVE NOTHING FURTHER.

7 **THE COURT:** LET'S TAKE OUR ONE HOUR LUNCH RECESS.
8 COURT IS ADJOURNED.

9 (WHEREUPON AT 12:26 P.M. PROCEEDINGS

10 WERE ADJOURNED FOR NOON RECESS.)

11 **JUDGE HENDERSON:** OKAY. YOU MAY PROCEED, COUNSEL.

12 **JUSTICE REINHARDT:** WE HAVE CROSS AND DIRECT --

13 **JUDGE HENDERSON:** EXCUSE ME. WE JUST HAD DEFENDANT
14 INTERVENOR CROSS.

15 **MS. EVENSON:** THE STATE DID THEIR CROSS-EXAMINATION
16 WHEN HE WAS LAST HERE.

17 **THE COURT:**

18 **JUDGE HENDERSON:** OKAY. THAT'S RIGHT. REDIRECT THEN.

19 **MS. EVENSON:** REBEKAH EVENSON FOR PLAINTIFFS.

20 **REDIRECT EXAMINATION BY MS. EVENSON**

21 **BY MS. EVENSON**

22 **Q** GOOD AFTERNOON, DR. AUSTIN.

23 **A** GOOD AFTERNOON.

24 **JUDGE KARLTON:** I LIKE WHAT HE SAID. HE DIDN'T SAY
25 "GOOD AFTERNOON"; HE SAID "AFTERNOON."

1 **BY MS. EVENSON**

2 **Q** DR. AUSTIN, WHEN YOU TESTIFIED JUST NOW, YOU MENTIONED THAT
3 YOU DON'T ENDORSE EARLY RELEASE. WHEN YOU'RE TALKING ABOUT
4 EARLY RELEASE, ARE YOU REFERRING TO GOOD TIME CREDITS?

5 **A** NO, I'M NOT.

6 **JUSTICE REINHARDT:** WHEN YOU SAY YOU DON'T ENDORSE
7 IT, I THOUGHT YOU MEANT THAT WAS NOT YOUR FIRST CHOICE, AS
8 COMPARED TO NO CHANGE IN THE PRISONS.

9 **THE WITNESS:** CORRECT. I SAY EARLY RELEASE IS --

10 **JUSTICE REINHARDT:** YOU ENDORSE IT.

11 **THE WITNESS:** IT'S SORT OF LIKE CRISIS MANAGEMENT
12 APPROACH TO SOLVING A PROBLEM. GOOD TIME CREDITS SHOULD NOT BE
13 EQUATED TO EARLY RELEASE. IT'S NORMAL IN MOST STATES' SYSTEMS
14 THAT YOU HAVE GOOD TIME CREDITS. THAT'S PART OF THE LAW, PART
15 OF THE PROCESS THEY USE TO REGULATE THE PRISONER POPULATION.

16 **BY MS. EVENSON**

17 **Q** IN YOUR EXPERT REPORTS, YOU CALCULATED AN ESTIMATE OF THE
18 IMPACTS OF A PRISON POPULATION REDUCTION BASED ON DATA THAT YOU
19 RECEIVED FROM CDCR. IS THE DATA YOU RECEIVED RELIABLE TO
20 SUPPORT THE CONCLUSIONS THAT WERE IN YOUR REPORT?

21 **A** YES, IT IS.

22 **Q** IN ANALYZING THE DATA, DR. AUSTIN, YOU ASSUMED THAT
23 PRISONERS WHOSE LENGTH OF STAY WAS SHORTENED WOULD HAVE THE SAME
24 RECIDIVISM RATE -- WOULD HAVE THE SAME RECIDIVISM RATE AS
25 CURRENT PAROLEES, AND, UNDER THAT SCENARIO, THERE WOULD BE LESS

1 THAN ONE PERCENT INCREASE IN ARRESTS, RIGHT?

2 **A** YES.

3 **Q** AND YOU DID THE CALCULATION ON -- YOU REDID THE CALCULATION
4 ON THE STAND USING THE CORRECTED FIGURE 8 FROM YOUR REPORT, AND
5 STILL FOUND INCREASE IS IN THE RANGE OF .3 -- 3/10THS OF ONE
6 PERCENT, RIGHT?

7 **A** CORRECT.

8 **Q** THE MODEL SHOWING 3/10THS OF ONE PERCENT INCREASE, THAT
9 ASSUMES THAT THE RECIDIVISM RATES FOR THE RELEASEES, OR THE
10 GROUP OF WHOSE LENGTH OF STAY IS SHORTENED, IS THE SAME AS THE
11 RECIDIVISM RATE AS THE CURRENT RELEASEES, RIGHT?

12 **A** THAT'S CORRECT.

13 **Q** BUT IF THE GROUP WHO WAS SUBJECTED TO THE SHORTENED LENGTH
14 OF STAY, THE NEW GROUP OF -- OR THE SHORTENED LENGTH OF STAY
15 GROUP, IF THAT GROUP DIDN'T INCLUDE HIGH-RISK PRISONERS, WHAT
16 WOULD THAT DO TO YOUR MODEL?

17 **A** IT WOULD REDUCE THE RECIDIVISM RATE, AND, THEREFORE, REDUCE
18 THE ESTIMATED NUMBER OF ARRESTS THAT WOULD OCCUR DUE TO THE
19 POLICY ONCE IT WAS BEING IMPLEMENTED.

20 SO, BASICALLY, IF YOU HAVE ANY KIND OF SCREENING
21 GOING ON THERE, YOU PULL OUT THE HIGH RISK PEOPLE. THEY WOULD
22 NOT BE BENEFITING FROM THE REDUCTIONS, AND, THEREFORE, MY
23 ESTIMATE WOULD ACTUALLY BE LOWER THAN WHAT IT IS RIGHT NOW?

24 **JUSTICE REINHARDT:** LOWER FROM THE .3?

25 **THE WITNESS:** YES.

1 **BY MS. EVENSON**

2 **Q** WHEN YOU WERE HERE LAST, JUDGE KARLTON ASKED YOU A QUESTION
3 ABOUT WHETHER YOUR PROPOSED POPULATION REDUCTION METHODS WOULD
4 IMPACT RECEPTION CENTERS ONLY, OR WHETHER IT WOULD ALSO HAVE A
5 BROADER IMPACT ON THE OTHER CDCR PRISONS. DO YOU HAVE A
6 RESPONSE TO THAT QUESTION?

7 **MS. BARLOW:** ASKED AND ANSWERED.

8 **MS. EVENSON:** LET ME JUST REPHRASE.

9 **BY MS. EVENSON**

10 **Q** AT THE TIME YOU SAID YOU WOULD HAVE TO GIVE IT FURTHER
11 THOUGHT. DO YOU HAVE A RESPONSE TO THAT QUESTION?

12 **A** YES. YES, AND, BASICALLY, I THINK YOU ASKED, YOUR HONOR,
13 THE EXTENT THAT THIS WOULD EFFECT THE 3CMS AND THE EOP
14 POPULATIONS, CURRENTLY THERE ARE ABOUT 33-, 34,000 IN THOSE TWO
15 CATEGORIES.

16 I LOOKED AT THE CHARACTERISTICS SINCE MY LAST
17 TESTIMONY OF THE 3CMS AND EOP -- THE BIG GROUP IS 3CMS GROUP --
18 TO SEE IF THEIR RISK CHARACTERISTICS ON RECIDIVISM RATE LOOK
19 DIFFERENT THAN OTHER INMATES. THEY DO NOT. THEY ARE MATERIALLY
20 THE SAME.

21 SO BASED ON THAT ASSUMPTION, PLUS TAKING INTO ACCOUNT
22 THAT APPROXIMATELY TEN PERCENT OF THAT POPULATION IS IN THE
23 AD-SEG UNITS AND, THEREFORE, PROBABLY WOULD NOT BENEFIT FROM A
24 REDUCTION IN LENGTH OF STAY, I'M ESTIMATING THAT THE POPULATION
25 OF ABOUT 33,000 WOULD DROP DOWN TO 26,500, SOMETHING LIKE THAT.

1 SO THERE WOULD BE A REDUCTION IN THOSE POPULATIONS, PRETTY MUCH
2 COMMENSURATE TO THE REDUCTION IN NON-3CMS/EOP POPULATIONS, WITH
3 SOME CAVEATS FOR AD-SEG POPULATIONS.

4 THE OTHER POINT I WOULD MAKE IS THE DIVERSION OF
5 TECHNICAL VIOLATORS AND THE DIVERSION OF SHORT SENTENCES, THAT
6 THAT WILL GREATLY BENEFIT THE RECEPTION CENTERS. SO THAT WOULD
7 CLEAR UP THAT CLOGGING THERE. THE LENGTH OF STAY ON THE GOOD
8 TIME CREDITS WOULD AFFECT THE OUTSIDE FACILITIES. ONCE THE
9 INMATES GO THROUGH RECEPTION AND ARE RESIDING, THEY WOULD
10 BENEFIT THERE. SO THE POPULATIONS WOULD BE DROPPING AT BOTH THE
11 RECEPTION CENTERS AND AT THE NON-RECEPTION CENTER FACILITIES.

12 **Q** AND WOULD THE REDUCTION IN THE POPULATION IMPACT THE WAIT
13 LIST FOR EOP AND 3CMS BEDS?

14 **A** IT APPARENTLY WOULD, BECAUSE I UNDERSTAND THE CAPACITY NOW
15 IS ABOUT 28,500, ROUGHLY. SO WITH THE POPULATION REDUCTION OF
16 6- TO 7,000, IT WOULD DROP DOWN 26,000, SO YOU WOULD HAVE EXCESS
17 BED CAPACITY FOR THE 3CMS. IT WOULD BE LIKE 90, 91 PERCENT
18 CROWDED.

19 SO MY ASSUMPTION THEN IS THAT THE WAITING LIST WHICH
20 WE NOW HAVE WOULD EVAPORATE AT SOME POINT.

21 **MS. EVENSON:** THANK YOU, DR. AUSTIN.

22 **THE COURT:** ANYTHING FURTHER? OKAY. THANK YOU FOR
23 REAPPEARING, DR. AUSTIN. YOU'RE EXCUSED. CALL YOUR NEXT
24 WITNESS.

25 **MS. BARLOW:** GOOD AFTERNOON, YOUR HONORS. THE LAW

1 ENFORCEMENT INTERVENORS CALL CHIEF ALEXANDER YIM TO THE STAND.

2 **ALEXANDER R. YIM,**

3 HAVING BEEN CALLED AS A WITNESS BY THE DEFENDANT INTERVENORS

4 WAS FIRST DULY SWORN AND EXAMINED AS FOLLOWS:

5 **THE CLERK:** STATE YOUR FULL NAME AND SPELL YOUR LAST
6 NAME.

7 **THE WITNESS:** ALEXANDER R. YIM. A-L-E-X-A-N-D-E-R.
8 R. LAST NAME Y-I-M.

9 **DIRECT EXAMINATION BY MS. BARLOW**

10 **MS. BARLOW:** THANK YOU, CHIEF YIM.

11 **BY MS. BARLOW**

12 **Q** COULD YOU STATE YOUR JOB TITLE, PLEASE, AND BY WHOM YOU ARE
13 EMPLOYED?

14 **A** DIVISION CHIEF WORKING FOR L.A. COUNTY SHERIFF'S DEPARTMENT.

15 **Q** WHICH DIVISION ARE YOU CHIEF OF?

16 **A** CORRECTIONAL SERVICES DIVISION.

17 **Q** DOES LIEUTENANT STEPHEN SMITH WORK FOR YOU?

18 **A** HE ACTUALLY WORKS FOR -- THERE'S TWO DIVISIONS WITHIN THE
19 CUSTODY ENVIRONMENT FOR L.A. COUNTY SHERIFF'S DEPARTMENT.
20 LIEUTENANT SMITH WORKS FOR BOTH DIVISIONS.

21 **MS. BARLOW:** FOR THE COURT'S BENEFIT THE CHIEF'S
22 EDUCATION, BACKGROUND AND EXPERIENCE ARE DETAILED IN PARAGRAPHS
23 ONE THROUGH SEVEN OF HIS DECLARATION.

24 **BY MS. BARLOW**

25 **Q** COULD YOU JUST FOR THE COURT DESCRIBE BRIEFLY YOUR EDUCATION

1 BACKGROUND AND EXPERIENCE?

2 **A** TWENTY-SIX YEAR VETERAN OF THE SHERIFF'S DEPARTMENT, HAVE A
3 BACHELOR OF SCIENCE DEGREE ISSUED BY CAL STATE UNIVERSITY LONG
4 BEACH.

5 **Q** AND YOU HAVE BEEN IN VARIOUS CAPACITIES WITH THE LOS ANGELES
6 SHERIFF'S DEPARTMENT?

7 **A** THAT'S CORRECT. PROBABLY 22 YEARS OF THAT AS PATROL,
8 DETECTIVE DIVISION. SHORTER TIME, OBVIOUSLY, FOR THE CUSTODY
9 ENVIRONMENT.

10 **Q** AND WHEN WERE YOU PROMOTED TO CHIEF OF YOUR DIVISION?

11 **A** APRIL OF 2008.

12 **Q** ARE YOU OPERATING THE LOS ANGELES COUNTY JAILS UNDER A
13 COURT-ORDERED CAP PRESENTLY?

14 **A** PARDON ME? I'M SORRY.

15 **Q** ARE THE LOS ANGELES COUNTY JAILS OPERATING UNDER A
16 COURT-ORDERED CAP?

17 **A** YES.

18 **Q** YOU TAKE VARIOUS STEPS TO ENSURE THAT YOU CAN MANAGE YOUR
19 POPULATION, CORRECT?

20 **A** YES.

21 **Q** NOW, SOME OF THOSE PROGRAMS HAVE BEEN DESCRIBED AS EARLY
22 OUTS OR EARLY RELEASE, AND OTHERS YOU HAVE A CBAC PROGRAM? YOU
23 ALSO HAVE PROGRAMS THAT ALLOW FOR PROGRAMMING OR REFERRAL,
24 CORRECT?

25 **A** THAT'S CORRECT.

1 Q ALL RIGHT. SO WE'LL TRY TO GET INTO SOME OF THOSE.

2 FIRST OF ALL, WHEN YOU FIRST BEGAN AS CHIEF, ABOUT
3 HOW MUCH TIME WERE SENTENCED INMATES SPENDING IN CUSTODY?

4 A WELL, IN APRIL OF 2008, THEY WERE DOING AT LEAST 70 PERCENT,
5 THE MALES, AND FOR FEMALES AT LEAST TEN PERCENT.

6 Q BUT YOU'RE AWARE THAT THERE WAS A PERIOD OF TIME WHEN MALES
7 WERE ONLY DOING ABOUT TEN PERCENT, CORRECT?

8 A THAT'S CORRECT. THAT'S WHEN I ARRIVED IN DIVISION AS
9 COMMANDER IN 2004.

10 Q IT'S MY UNDERSTANDING THAT WOMEN CURRENTLY SERVE ABOUT TEN
11 PERCENT OF THEIR SENTENCES; IS THAT RIGHT?

12 A AT LEAST TEN PERCENT, YES.

13 Q NOW, SINCE 1993, HOW MANY INMATES HAVE BEEN RELEASED EARLY
14 FOR LACK OF CAPACITY IN THE LOS ANGELES COUNTY JAILS?

15 A I THINK THE FIGURE WAS 770,000.

16 Q AND CAN YOU GIVE ME OR ADVISE THE COURT WHAT PERCENTAGE OF
17 THE PRISONERS CURRENTLY IN YOUR JAIL POPULATION ARE SERVING OUT
18 LOCAL SENTENCES VERSUS PRETRIAL DETAINEES?

19 A USUALLY AVERAGE AROUND 10 TO 12 PERCENT.

20 Q SO 10 TO 12 PERCENT ARE SERVING OUT SENTENCES?

21 A THAT'S CORRECT.

22 Q AND, THEREFORE, THE REMAINDER ARE PRETRIAL DETAINEES?

23 A THAT'S CORRECT.

24 Q ARE THERE DIFFERENCES, TO YOUR UNDERSTANDING, BETWEEN THE
25 POPULATIONS THAT YOU HOUSE IN YOUR JAIL AND THE STATE PRISON

1 POPULATION AS A WHOLE?

2 **A** I BELIEVE THEY ARE YOUNGER. THEY SERVE A SHORTER PERIOD OF
3 TIME. I THINK THE AVERAGE LENGTH OF STAY IS AROUND 42 DAYS.
4 AND, GENERALLY SPEAKING, THEY ARE IN -- INTO THE COUNTY JAIL
5 MORE THAN ONCE BEFORE THEY GO TO STATE PRISON.

6 **Q** LET'S TALK ABOUT YOUR ALTERNATIVES TO CUSTODY PROGRAMS THAT
7 YOU EMPLOY TO MAINTAIN YOUR JAIL CAPS. THE CBAC PROGRAM IS
8 COMMUNITY-BASED ALTERNATIVES TO CUSTODY?

9 **A** THAT'S CORRECT.

10 **Q** OR COMMITMENT, RATHER, RIGHT?

11 **A** THAT'S CORRECT.

12 **Q** YOU MENTION THAT IN YOUR REPORT. DO YOU CONSIDER THAT AN
13 EARLY-RELEASE PROGRAM?

14 **A** NO, I DON'T CONSIDER THAT EARLY RELEASE. I CONSIDER THAT AN
15 ALTERNATIVE TO DOING YOUR TIME IN A JAIL BED.

16 **Q** OKAY. THAT'S ABOUT A -- FIVE PERCENT OF YOUR POPULATION ARE
17 IN THAT PROGRAM, THE CBAC PROGRAM?

18 **A** LET'S SEE. TODAY? AS OF YESTERDAY IT WAS ABOUT A THOUSAND
19 OUT OF THE 18,600 INMATES.

20 **Q** OKAY. NOW, YOU REFER TO A SPECIFIC INCIDENT INVOLVING A
21 CBAC COMMITTEE, I GUESS WE WOULD CALL THEM, WHERE THEY WERE OUT
22 ON THAT ALTERNATIVE PROGRAM. WAS THAT SOME SORT OF MONITORING
23 PROGRAM; DO YOU RECALL?

24 **A** I CAN'T REMEMBER WHAT COMMUNITY-BASED ALTERNATIVE CUSTODY
25 PROGRAM HE WAS ON, BUT I BELIEVE IT WAS WORK RELEASE.

1 Q AND THAT INMATE COMMITTED MURDER WHILE HE WAS ON WORK
2 RELEASE?

3 A THAT'S CORRECT.

4 Q OTHERWISE YOU AREN'T REALLY AWARE OF ANY NEGATIVE IMPACTS
5 FROM THAT PARTICULAR PROGRAM, THE CBAC PROGRAM?

6 A YES.

7 Q OKAY. I'M SORRY. I DIDN'T PHRASE THAT VERY WELL, DID I?

8 JUDGE REINHARDT: THAT WAS A PERFECT QUESTION. YOU
9 AREN'T AWARE? HE SAID, YES, I'M NOT AWARE.

10 BY MS. BARLOW

11 Q OKAY. LET'S TALK ABOUT OTHER THAN THE CBAC PROGRAM. FIRST
12 I WANT YOU TO DESCRIBE A LITTLE BIT THE KIND OF PROGRAMMING YOU
13 HAVE TO DO FOR YOUR LOS ANGELES COUNTY JAIL INMATES.

14 WHAT KIND OF PROGRAMMING DO YOU DO IN THE LOS ANGELES
15 COUNTY?

16 A WE HAVE EDUCATIONAL PROGRAMS. WE HAVE POSITIVE DECISION
17 MAKING, MORAL RECOGNITION, DRUG AND ALCOHOL PROGRAMMING,
18 DOMESTIC VIOLENCE PROGRAMMING AND PROGRAMMING FOR VETERANS TO
19 NAME A FEW. THERE'S OTHERS.

20 Q AND THE PURPOSE OF THOSE PROGRAMS?

21 A I BELIEVE TO REHABILITATE THE INMATES WHILE THEY ARE IN
22 CUSTODY.

23 Q OKAY. NOW, IS IT EASIER -- OR -- STRIKE THAT.

24 ARE YOU ABLE TO PROGRAM ALL THE PRETRIAL FOLKS, OR
25 CAN YOU ONLY DO PROGRAMMING EFFECTIVELY WITH THE SENTENCED

1 POPULATION?

2 **A** I BELIEVE THERE'S A SMALL PROPORTION OF PEOPLE THAT ARE
3 PRESENTENCE THAT ARE INVOLVED IN SOME OF OUR PROGRAMS, BUT IT'S
4 REALLY TARGETED AT THE SENTENCED POPULATION.

5 **Q** OKAY. NOW, WHEN YOU BECAME CHIEF IN APRIL OF THIS YEAR,
6 WERE YOU AWARE THAT THERE HAD BEEN SOME DATA ANALYSIS DONE THAT
7 SHOWED SOME RATHER NEGATIVE IMPACTS FROM THE EARLY RELEASE AS IT
8 WAS PREVIOUSLY CONSTITUTED AT THE LOS ANGELES COUNTY SHERIFF
9 DEPARTMENT?

10 **A** I WAS AWARE OF AN L.A. TIMES ARTICLE, BUT THE ACTUAL NUTS
11 AND BOLTS OF THAT ARTICLE, NO, I WAS NOT.

12 **Q** OKAY. SO YOU WEREN'T AWARE THAT THE DEPARTMENT HAD ACTUALLY
13 DONE AN ANALYSIS OF THAT DATA, CORRECT?

14 **A** I WAS AWARE THAT L.A. TIMES REQUESTED INFORMATION FROM THE
15 SHERIFF'S DEPARTMENT.

16 **Q** NOW, SINCE YOUR DEPOSITION WAS TAKEN IN AUGUST, DID YOU
17 BECOME AWARE OF THE DATA ANALYSIS THAT WAS DONE BY YOUR
18 SHERIFF'S DEPARTMENT?

19 **A** YES.

20 **Q** AND CAN YOU DESCRIBE TO YOUR UNDERSTANDING WHAT THAT DATA
21 ANALYSIS INVOLVED?

22 **MR. HEATHER:** YOUR HONOR, OBJECTION ON PROBABLY FOUR
23 OF FIVE GROUNDS. LACK OF FOUNDATION. I THINK THE TESTIMONY
24 WOULD BE INCONSISTENT WITH THREE OF THE PRIOR RULINGS IN THIS
25 COURT, ONE OF WHICH I AM AWARE OF FROM THE RECORD AND TWO OF

1 WHICH I MAY HAVE --

2 JUDGE HENDERSON: YOU ONLY NEED TO WIN ON ONE, AND
3 LACK OF FOUNDATION WILL DO IT.

4 MR. HEATHER: THE LACK OF FOUNDATION IS --

5 JUDGE HENDERSON: NO. FINE. YOU PROBABLY OUGHT TO
6 STOP TALKING NOW.

7 BY MS. BARLOW

8 Q COULD YOU EXPLAIN, CHIEF YIM, WHAT YOU KNOW ABOUT THE WAY
9 DATA ANALYSIS WAS PREPARED AND HOW YOU KNOW IT?

10 JUDGE KARLTON: IT APPEARS, TO THIS JUDGE, AND I
11 DON'T WANT TO SPEAK FOR THE PANEL, THAT WHAT YOU'RE SEEKING TO
12 DO IS GET BEFORE THE COURT AN ANALYSIS THAT THE CHIEF HAD
13 NOTHING TO DO WITH BUT HE'S READ SINCE COMING ABOARD. AM I
14 RIGHT?

15 MS. BARLOW: YES, YOUR HONOR. AS PART OF HIS -- AS
16 PART OF THE SCOPE AND DUTIES OF BECOMING THE CHIEF.

17 JUDGE KARLTON: SO HE'S READ IT. WHAT DIFFERENCE
18 DOES IT MAKE? THE QUESTION IS WHETHER IT'S PROPERLY BEFORE US.
19 I BELIEVE HE READ IT. YOU DID READ IT?

20 THE WITNESS: YES, SIR.

21 JUDGE KARLTON: I BELIEVE YOU DID.

22 THE WITNESS: THANK YOU.

23 JUDGE KARLTON: SO WHAT?

24 MS. BARLOW: LIEUTENANT SMITH --

25 JUDGE KARLTON: YOU ARE GOING ON BEYOND THAT. GO

1 AHEAD.

2 **MS. BARLOW:** LIEUTENANT SMITH HAS ALREADY TESTIFIED
3 TO THE MANNER IN WHICH THE DATA WAS PREPARED AND ANALYZED, YOUR
4 HONOR.

5 **JUDGE KARLTON:** SO WHY ARE WE ASKING HIM?

6 **THE WITNESS:** I AM JUST TRYING TO LAY FOUNDATION FOR
7 HOW HE KNOWS ABOUT THE DATA. WE'VE ALREADY LAID FOUNDATION FOR
8 THE DATA ITSELF. I'M GOING TO HAVE HIM TESTIFY ABOUT WHAT THE
9 DATA SHOWED.

10 **JUDGE HENDERSON:** HOW DO YOU KNOW ABOUT THE DATA? GO
11 RIGHT TO IT. DO YOU KNOW ABOUT THE DATA?

12 **THE WITNESS:** YES. AFTER READING IT.

13 **JUDGE HENDERSON:** THAT'S YOUR COMPLETE KNOWLEDGE OF
14 IT?

15 **THE WITNESS:** YES, YOUR HONOR.

16 **BY MS. BARLOW**

17 **Q** DID YOU REVIEW THE DATA WITH LIEUTENANT SMITH?

18 **A** THAT'S CORRECT.

19 **Q** DID YOU REVIEW THE UNDERLYING DATA?

20 **A** I'M SORRY?

21 **Q** DID YOU REVIEW THE --

22 **JUDGE KARLTON:** NO, WE ARE NOT GOING TO DO THIS. I'M
23 SORRY. EXCUSE ME.

24 **JUDGE HENDERSON:** GO ON. GO ON.

25 **JUDGE KARLTON:** SIR, ASKING QUESTIONS -- IF IT IS

1 BEFORE US, IT'S BEFORE US. HE'S GOT NOTHING MORE TO DO WITH IT.
2 YOU MAY PROCEED. I PROMISE YOU YOU CAN ARGUE TO YOUR HEART'S
3 CONTENT, IF WE EVER GET TO FINAL ARGUMENT, BUT HE SIMPLY SAID I
4 READ IT. THAT'S SO WHAT. HE'S READ IT. IF HE HAS DONE
5 SOMETHING IN RESPONSE TO IT, FINE, ASK HIM WHAT HE'S DONE.

6 **MS. BARLOW:** I WOULD LIKE TO LAY THE FOUNDATION FOR
7 WHAT WAS DONE, YOUR HONOR, AS A RESULT.

8 **JUDGE KARLTON:** MAY I RULE?

9 **JUDGE HENDERSON:** YES, PLEASE.

10 **JUDGE KARLTON:** GO ON TO THE NEXT QUESTION.

11 **MS. BARLOW:** THAT'S FINE.

12 **BY MS. BARLOW**

13 **Q** IN THE ANALYSIS OF CRIME STATISTICS, CAN YOU TELL ME WHAT
14 THE NUMBER OF EARLY RELEASEES WAS FOR THE PERIOD FROM 2002 TO
15 2006?

16 **JUDGE KARLTON:** ACCORDING TO THIS DOCUMENT.

17 **THE WITNESS:** APPROXIMATELY 148,000.

18 **BY MS. BARLOW**

19 **Q** OF THAT 148,000, LIEUTENANT SMITH PREVIOUSLY TESTIFIED THAT
20 A LITTLE OVER TEN PERCENT WERE REARRESTED WHILE ON EARLY
21 RELEASE. IT'S FOUNDATION.

22 **MR. HEATHER:** OBJECTION, YOUR HONOR. IT'S HEARSAY.
23 HE HAS NO PERSONAL KNOWLEDGE OF THESE FACTS. HE IS CALLED AS AN
24 EXPERT. AND NOT ONLY DID HE NOT DISCUSS THIS IN HIS DEPOSITION,
25 BUT HE MADE NO REFERENCE TO IT IN HIS TRIAL TRANSCRIPT -- IN HIS

1 TRIAL DECLARATION. AND, IN FACT, IN BOTH HIS DEPOSITION AND HIS
2 TRIAL DECLARATION -- AND CAN YOU PUT UP PAGE 48 OF HIS
3 DEPOSITION --

4 **MS. BARLOW:** YOUR HONOR, THIS IS INAPPROPRIATE IN AN
5 OBJECTION.

6 **MR. HEATHER:** HE STATES, YOUR HONOR, THAT HE IS AWARE
7 OF ONLY A SINGLE MURDER AND A SINGLE INCIDENT IN WHICH AN EARLY
8 RELEASEE HAS HAD A NEGATIVE IMPACT ON PUBLIC SAFETY, AND HE IS
9 AWARE OF NO STUDY, NO REPORT IN WHICH THERE ARE INSTANCES OF
10 OTHER EXAMPLES OF NEGATIVE IMPACT ON PUBLIC SAFETY, AND THIS IS
11 KIND OF RUDIMENTARY SANDBAGGING FOR HIM.

12 **JUDGE HENDERSON:** DON'T DO THAT, COUNSEL.

13 **MR. HEATHER:** FOR HIM TO COME IN HERE NOW --

14 **JUDGE HENDERSON:** DON'T DO THAT, COUNSEL.

15 **MR. HEATHER:** I APOLOGIZE.

16 **JUDGE KARLTON:** WE HAVE A LOT OF TROUBLE WITH LAWYERS
17 NOT LISTENING TO THE COURT.

18 **MR. HEATHER:** I APOLOGIZE.

19 **JUDGE KARLTON:** I'M AFRAID IT'S GETTING LATER, AND WE
20 ARE GETTING IRRITATED. NOTHING PERSONAL, COUNSEL.

21 **MR. HEATHER:** SORRY.

22 **JUDGE HENDERSON:** SIT DOWN. YOU MADE YOUR OBJECTION.
23 I'M SUSTAINING IT. BUT DO NOT MAKE TALKING OBJECTIONS ANYMORE.
24 RELEVANT, WHATEVER IT IS. LET'S NOT HAVE THESE SPEECHES.

25 THE OBJECTION IS SUSTAINED.

1 **MS. BARLOW:** MAY I ATTEMPT TO LAY FOUNDATION FOR
2 THE --

3 **JUDGE KARLTON:** THE OBJECTION WAS SUSTAINED.

4 **MS. BARLOW:** I UNDERSTAND THAT, YOUR HONOR. IT'S AN
5 OFFICIAL RECORD OF HIS DEPARTMENT, AND HE'S IN CHARGE OF THE
6 DEPARTMENT.

7 **JUDGE KARLTON:** I KNOW YOU HAVE TERRIBLE TROUBLE
8 HEARING. THE OBJECTION WAS SUSTAINED. GO ON.

9 **BY MS. BARLOW**

10 **Q** DO YOU KNOW HOW MANY PEOPLE ON EARLY RELEASE BETWEEN 2002
11 AND 2006 WERE ARRESTED FOR SERIOUS CRIMES, CHIEF YIM?

12 **MR. HEATHER:** SAME OBJECTION.

13 **JUDGE KARLTON:** THE OBJECTION IS SUSTAINED. I'M
14 SORRY. I JUST CAN'T STAND IT.

15 **MS. BARLOW:** YOUR HONORS, IF I WASN'T GIVEN AN
16 OPPORTUNITY TO RESPOND TO THE OBJECTIONS, HE IS AN EXPERT AND
17 ENTITLED TO RELY UPON THE DATA COMPILED BY HIS SUBORDINATES, AND
18 THE DOCUMENTS THAT ARE OFFICIAL RECORDS OF --

19 **JUDGE HENDERSON:** YOUR OBJECTION IS PRESERVED FOR
20 APPELLATE RECORD, COUNSEL. LET'S GO.

21 **MS. BARLOW:** THANK YOU, YOUR HONOR.

22 **BY MS. BARLOW**

23 **Q** CHIEF YIM, TO YOUR KNOWLEDGE, WERE STEPS TAKEN TO CHANGE THE
24 RELEASE POLICIES AS A RESULT OF THE DATA SHOWING THAT THERE WAS
25 HARM TO THE COMMUNITY AS A RESULT OF THOSE RELEASES?

1 **A** YES.

2 **Q** WHAT WERE THOSE STEPS?

3 **A** THE MALE POPULATION IS NOW DOING AT LEAST 70 PERCENT.
4 FEMALE POPULATION REMAINS AT TEN PERCENT. AND THERE WAS AN
5 ADDITIONAL CHECK IMPLEMENTED PRIOR TO RELEASING ANYBODY EARLY.

6 **Q** BUT EVEN THOSE STEPS DON'T ALWAYS STOP PEOPLE FROM
7 COMMITTING CRIMES WHILE THEY WERE ON EARLY RELEASE, CORRECT?

8 **A** THAT'S CORRECT.

9 **Q** NOW, YOU REFER TO THE MENTALLY ILL IN YOUR JAILS. DO YOU
10 HAVE A LARGE POPULATION OF MENTALLY ILL IN THE LOS ANGELES
11 COUNTY JAILS?

12 **A** THAT'S CORRECT.

13 **Q** AND COULD YOU -- I KNOW COUNSEL ASKED YOU AT YOUR DEPOSITION
14 WHETHER YOU THOUGHT THEY BELONGED IN JAIL.

15 **A** WELL, THE ACUTE AND THE SUB ACUTE PROBABLY WOULD BE A
16 BETTER -- SECURE, BUT NOT A JAIL ENVIRONMENT SO THAT THEY COULD
17 RECEIVE TREATMENT, MORE OUT OF CELL TIME, THINGS OF THAT NATURE.

18 **Q** DO YOU TRY TO PLACE THOSE PEOPLE IN PROGRAMS SO THEY ARE NOT
19 IN THE JAIL WHERE POSSIBLE?

20 **A** WELL, THE ACTUAL HANDLING OF THE MENTALLY ILL WITHIN L.A.
21 COUNTY JAIL IS HANDLED BY DEPARTMENT OF MENTAL HEALTH. I
22 BELIEVE THEY MAKE EVERY ATTEMPT TO DO THAT. I CAN'T REALLY
23 SPEAK FOR THEM.

24 **Q** OKAY. NOW, DO YOU BELIEVE THAT ALL MENTALLY ILL PEOPLE WHO
25 COMMIT CRIMES SHOULD NOT BE IN JAIL?

1 **A** WELL, IF SOMEBODY IS FUNCTIONING, TECHNICALLY MENTALLY ILL
2 BUT FUNCTIONING, AND TAKING THEIR MEDICATION, AND IS ABLE TO
3 FUNCTION, YOU KNOW, APPROPRIATELY, AND HAS COMMITTED A VIOLENT
4 CRIME, I THINK THEY BELONG IN JAIL.

5 **MS. BARLOW:** I HAVE NOTHING FURTHER, YOUR HONOR.

6 **JUDGE HENDERSON:** ANYTHING FROM STATE DEFENDANTS?

7 **MS. TILLMAN:** NOTHING, YOUR HONOR. THANK YOU.

8 **JUDGE HENDERSON:** CROSS.

9 **CROSS-EXAMINATION BY MR. HEATHER**

10 **BY MR. HEATHER**

11 **Q** GOOD AFTERNOON. MY NAME IS FRED HEATHER FROM K&L GATES ON
12 BEHALF OF PLAINTIFFS.

13 CHIEF, I AM GOING TO ASK YOU JUST A FEW QUESTIONS YOU
14 DISCUSSED ON DIRECT, I BELIEVE. I HAD SOME TROUBLE HEARING.

15 BUT THE DIFFERENCES OF THE POPULATION IN THE L.A.
16 COUNTY JAILS -- AND I DIDN'T HEAR YOU MENTION THAT ONE
17 DIFFERENCE, WHICH I THINK YOU TESTIFIED ABOUT BEFORE, IS THAT
18 THE L.A. COUNTY JAILS HAVE A FAIRLY HIGH PROPORTION OF GANG
19 MEMBERS AS COMPARED WITH THE POPULATION OF OTHER COUNTIES; IS
20 THAT CORRECT?

21 **A** I DON'T KNOW WHAT OTHER --

22 **MS. BARLOW:** I'M SORRY. THE POPULATION OF OTHER
23 COUNTIES?

24 **JUDGE KARLTON:** THAT'S WHAT HE SAYS.

25 **MS. BARLOW:** THE QUESTION WAS THE STATE VERSUS THE

1 COUNTIES.

2 **BY MR. HEATHER**

3 **Q** I'M ASKING YOU, IS IT YOUR OPINION, SIR, THAT THE GANG
4 POPULATION OF THE L.A. COUNTY JAILS IS A FACTOR THAT IS
5 DIFFERENT THAN THE POPULATION OF THAT OF OTHER COUNTIES?

6 **MS. BARLOW:** BEYOND THE SCOPE.

7 **THE WITNESS:** COULD YOU REPEAT THAT?

8 **MR. HEATHER:** LET ME REPHRASE IT.

9 **BY MR. HEATHER**

10 **Q** DO YOU RECALL STATING IN YOUR DECLARATION THE FOLLOWING
11 STATEMENT, AND I CAN PROVIDE A COPY OF MY READING IT TO YOU IF
12 MY READING IT DOES NOT REFRESH YOUR RECOLLECTION:

13 "ALTHOUGH THE OVERALL LOS ANGELES COUNTY
14 POPULATION JAIL IS LIKELY MORE VIOLENT THAN MANY
15 COUNTY JAILS DUE TO THE LARGE NUMBER OF GANG
16 MEMBERS."

17 DO YOU RECALL MAKING THAT STATEMENT?

18 **A** YES.

19 **Q** OKAY. SO THE POPULATION OF THE L.A. COUNTY JAILS IS MORE
20 VIOLENT THAN OTHER COUNTIES, IN PART BECAUSE L.A. COUNTY HAS A
21 HIGH POPULATION OF GANG MEMBERS WITHIN THE JAIL; IS THAT
22 CORRECT?

23 **A** YES.

24 **Q** OKAY. NOW, YOU DISCUSSED ON DIRECT THE FACT THAT THERE WERE
25 A NUMBER OF PROGRAMS THAT WERE ALTERNATIVES TO INCARCERATION OR

1 EARLY RELEASE PROGRAMS, AND I THINK THEY INCLUDED THERE'S BOOK
2 AND RELEASE PROCEDURES WHERE PEOPLE ARE NOT INCARCERATED AT ALL,
3 CORRECT?

4 **A** YES.

5 **Q** ELECTRONIC MONITORING? THE MEN DO AN AVERAGE OF 70 PERCENT,
6 THE WOMEN AN AVERAGE OF TEN PERCENT, AND THEY'RE RELEASED, THAT
7 PERCENTAGE BEFORE THEIR NORMAL RELEASE DATE. AND IT WAS YOUR
8 TESTIMONY IN YOUR DEPOSITION THAT IN YOUR DECLARATION THAT IT IS
9 YOUR VIEW THAT OTHER THAN THE ONE MURDER OF WHICH YOU WERE AWARE
10 WHEN YOU TESTIFIED, YOU DO NOT BELIEVE THAT THERE WERE ANY
11 NEGATIVE IMPACTS TO PUBLIC SAFETY FROM ANY OF THOSE EARLY
12 RELEASE PROGRAMS OR ALTERNATIVES TO INCARCERATION; IS THAT
13 CORRECT?

14 **MS. BARLOW:** OBJECTION. MISSTATES TESTIMONY OF THE
15 WITNESS, BOTH IN DEPOSITION AND IN THE REPORT.

16 **MR. HEATHER:** IS THAT CORRECT?

17 **JUDGE HENDERSON:** WAS THAT A CORRECT STATEMENT OR WAS
18 IT NOT?

19 **THE WITNESS:** YES.

20 **JUDGE KARLTON:** YES, IT WAS A CORRECT STATEMENT?

21 **THE WITNESS:** YES.

22 **BY MR. HEATHER**

23 **Q** AND I BELIEVE YOU ALSO TESTIFIED IN BOTH YOUR DEPOSITION AND
24 IN YOUR DECLARATION THAT THAT VIEW WAS A VIEW THAT WAS SHARED BY
25 SHERIFF LEE BACA AND THE OTHER SENIOR MEMBERS OF THE SHERIFF'S

1 DEPARTMENT; IS THAT CORRECT? LET ME REPHRASE THAT.

2 I BELIEVE YOU TESTIFIED THAT NO SENIOR MEMBER OF THE
3 SHERIFF'S DEPARTMENT OF LOS ANGELES COUNTY WAS OF THE VIEW THAT
4 THESE EARLY RELEASE PROGRAMS OR ALTERNATIVES TO INCARCERATION
5 SHOULD BE TERMINATED BECAUSE OF A NEGATIVE IMPACT ON PUBLIC
6 SAFETY; IS THAT WHAT YOU STATED UNDER OATH?

7 MS. BARLOW: INCORRECTLY STATES --

8 JUDGE HENDERSON: WAS IT WHAT YOU STATED? IT WAS OR
9 IT WASN'T.

10 THE WITNESS: I DON'T RECALL EXACTLY SAYING THAT.

11 JUDGE HENDERSON: THERE WE GO.

12 MR. HEATHER: AGAIN, I'LL READ IT TO YOU. I CAN
13 PROVIDE A COPY MOMENTARILY.

14 JUDGE KARLTON: WHAT ARE YOU READING FROM?

15 BY MR. HEATHER

16 Q FROM PARAGRAPH 21 OF YOUR TRIAL DECLARATION, CHIEF YIM,
17 DATED OCTOBER 30TH. YOU STATE -- AND I'LL READ THAT PARAGRAPH
18 IN IT IS ENTIRETY, IT'S ONLY THREE SENTENCES.

19 "THESE PROGRAMS," AND WE'RE TALKING ABOUT THE EARLY
20 RELEASE PROGRAMS.

21 MS. BARLOW: THAT'S INCORRECT.

22 BY MR. HEATHER

23 Q (READING)

24 "THESE PROGRAMS HAVE ASSISTED ME IN
25 MAINTAINING CAP COMPLIANCE. THERE IS ONE

1 INSTANCE WHERE AN INMATE WAS RELEASED TO A CBAC
2 PROGRAM AND COMMITTED A MURDER. IN THAT ONE
3 INSTANCE, THESE PROGRAMS HAVE CREATED HARM TO
4 PUBLIC SAFETY IN LOS ANGELES COUNTY. TO MY
5 KNOWLEDGE, NONE OF THE SENIOR PEOPLE CURRENTLY
6 IN THE SHERIFF'S DEPARTMENT RECOMMEND THAT ANY
7 OF THESE PROGRAMS BE TERMINATED BECAUSE OF A
8 PERCEIVED THREAT TO PUBLIC STATEMENT (SIC)."
9 DO YOU RECALL MAKING THAT STATEMENT UNDER OATH IN
10 YOUR DECLARATION?

11 **MS. BARLOW:** YOUR HONOR, HE'S MISCHARACTERIZING AND
12 LEAVING OUT AN IMPORTANT PART. HE'S TALKING THE FIVE PERCENT
13 ALTERNATIVE PROGRAMS, NOT THE RELEASE.

14 **JUDGE HENDERSON:** READ THE REST. TELL HIM WHAT ELSE
15 TO READ FOR COMPLETENESS.

16 **MS. BARLOW:** STARTING FROM PARAGRAPH 17.

17 **MR. HEATHER:** I'LL READ THE ENTIRE THING, YOUR HONOR.

18 "APPROXIMATELY FIVE PERCENT OF L.A. COUNTY
19 INMATES ARE GOVERNED BY ALTERNATIVE PROGRAMS
20 SUCH AS ELECTRONIC MONITORING, CONFINING PEOPLE
21 OUTSIDE THE JAIL FACILITIES WITH WHATEVER
22 RESTRICTIONS THE MONITORING PROGRAM HAS. THE
23 WORK RELEASE PROGRAM IS A FREE PROGRAM AND IT
24 DOES NOT COST THE INMATE OR THE COUNTY ANY
25 FUNDS.

1 "WE SUPPLY A FORCE OF 660 COUNTY INMATES WHO
2 ARE DEEMED LOW RISK TO 152 WORK SITES THROUGHOUT
3 THE COUNTY. THESE INMATES DO NOT RETURN TO JAIL
4 FACILITIES AFTER THE WORK DAY BECAUSE THEY ARE
5 IN A PROGRAM WHERE THEY ARE ALLOWED TO LIVE
6 OUTSIDE THE JAIL FACILITIES.

7 "IF YOU TALK TO THE RECIPIENTS OF THE FREE
8 LABOR, THEY WILL SAY THE PROGRAM IS WORKING
9 WELL. IF YOU LOOK AT THE NONCOMPLIANCE RATE,
10 THE INMATES THAT DO NOT SHOW UP, THERE MAY BE AN
11 ARGUMENT THAT THE PROGRAM IS NOT WORKING AS WELL
12 AS IT SHOULD BE.

13 "THE ELECTRONIC MONITORING PROGRAM ALLOWS
14 PEOPLE WHO BELONG IN JAIL, THE HIGH RISK SERIOUS
15 FELONS, TO HAVE A BED IN THE JAIL SYSTEM. IT
16 ALSO PROVIDES A MECHANISM FOR LOW RISK INMATES
17 WHO WERE DOING LITTLE TO NO JAIL TIME IN PRIOR
18 YEARS, SUCH AS 2004, TO PAY THEIR DEBT TO
19 SOCIETY BUT OUTSIDE THE JAIL SYSTEM. WEEKENDERS
20 SERVE THEIR JAIL SYSTEM -- SENTENCE ON WEEKENDS
21 IN OUR FACILITIES. THAT HELPS THE CAP SITUATION
22 BY NOT HAVING THEM TAKE UP BEDS DURING THE WEEK.
23 IF THERE ARE NO FREE BEDS WHEN THE WEEKEND
24 ARRIVES, THE WEEKENDERS CANNOT COME IN.

25 "DURING THE WEEK IT GIVES ME SOME DISCRETION

1 TO IMPOSE SOME JAIL PUNISHMENT, BUT IT GIVES ME
2 THE DISCRETION NOT TO HAVE THEM CAUSE A CAP
3 PROBLEM.

4 "STATION TRUSTEES ARE INMATE WORKERS
5 PROVIDED TO OUR 23 PATROL STATIONS. IT IS FREE
6 LABOR WITH THE INMATES BEING HOUSED AT THE
7 INDIVIDUAL PATROL STATIONS. STATION TRUSTEES
8 BEDS ARE NOT CONSIDERED JAIL BEDS FOR PURPOSES
9 OF CAP COMPLIANCE. THESE PROGRAMS HAVE ASSISTED
10 ME IN MAINTAINING CAP COMPLIANCE."

11 AND THEN THE COMPLETION OF THE PARAGRAPH THAT I READ
12 EARLIER.

13 **MS. BARLOW:** AND I WANT TO RENEW THE OBJECTION.
14 THAT'S NOT EARLY RELEASE.

15 **JUDGE HENDERSON:** OVERRULED. DO YOU STILL AGREE WITH
16 THAT STATEMENT?

17 **THE WITNESS:** YES. I DO.

18 **MS. BARLOW:** FINE.

19 **BY MR. HEATHER**

20 **Q** DO YOU STILL BELIEVE NONE OF THE SENIOR PEOPLE CURRENTLY IN
21 THE SHERIFF'S DEPARTMENT RECOMMEND THAT ANY OF THESE PROGRAMS BE
22 TERMINATED BECAUSE OF A PERCEIVED THREAT TO PUBLIC SAFETY?

23 **JUDGE KARLTON:** TO THE DEGREE THAT YOU KNOW.

24 **THE WITNESS:** WE DO THIS TO MAINTAIN OUR CAP. AS FAR
25 AS WHAT IT -- HOW IT AFFECTS THE COMMUNITIES, THAT IS NOT PART

1 OF THE DECISION MAKING. I HAVE NEVER BEEN ORDERED BY A SENIOR
2 MEMBER OF THE SHERIFF'S DEPARTMENT TO DISCONTINUE THESE PROGRAMS
3 BECAUSE WE ARE UNDER FEDERAL COURT DECREE TO KEEP OUR POPULATION
4 DOWN. THAT'S THE PURPOSE OF THOSE COMMUNITY BASED ALTERNATIVES
5 TO CUSTODY --

6 **BY MR. HEATHER**

7 **Q** SO ALL THOSE STATEMENTS WERE TRUE, TO THE BEST OF YOUR
8 KNOWLEDGE, AT THE TIME YOU MADE THEM?

9 **A** YES.

10 **Q** AND THEY ARE TRUE TODAY, TO THE BEST OF YOUR KNOWLEDGE?

11 **A** BEST OF MY KNOWLEDGE, YES.

12 **Q** THANK YOU, CHIEF.

13 BY THE WAY, IS LIEUTENANT SMITH WHAT YOU WOULD
14 CONSIDER A SENIOR OFFICER OF THE SHERIFF DEPARTMENT?

15 **A** MIDDLE MANAGEMENT.

16 **Q** OKAY. NOT A SENIOR OFFICERS?

17 **A** NO.

18 **Q** AND YOU ARE?

19 **A** YES, I GUESS THEY ARE. MAY I HAVE JUST A MOMENT, YOUR
20 HONOR?

21 **JUDGE REINHARDT:** YOU HAVE BEEN UNDER COURT DECREE,
22 FEDERAL COURT DECREE, SINCE 1970'S?

23 **THE WITNESS:** I BELIEVE IT WAS IN THE '80'S, YOUR
24 HONOR, AND THEN WE HAD A JUDGE PREGERSON IMPOSED AN ADDITIONAL
25 DEPOPULATION EFFORT BACK IN '06.

1 **MR. HEATHER:** I HAVE NO FURTHER QUESTIONS. THANK
2 YOU.

3 **JUDGE HENDERSON:** ANYTHING FROM CCPOA?

4 **MS. LEONARD:** NO, YOUR HONOR?

5 **JUDGE HENDERSON:** REDIRECT?

6 **MS. BARLOW:** THANK YOU, YOUR HONOR.

7 **REDIRECT EXAMINATION BY MS. BARLOW**

8 **BY MS. BARLOW**

9 **Q** CHIEF YIM, WHEN YOU WERE TALKING ABOUT THE FACT THAT YOU --
10 OTHER THAN THE ONE MURDER THAT YOU REFERRED TO, YOU WEREN'T
11 AWARE OF NEGATIVE IMPACTS FROM THE CBAC PROGRAM. YOU'RE REALLY
12 JUST TALKING ABOUT THOSE PROGRAMS, NOT THE EARLY RELEASE,
13 CORRECT?

14 **A** THAT'S CORRECT.

15 **Q** AND YOU MADE CHANGES IN THE WAY THAT TIME WAS SERVED BY
16 SENTENCED INMATES BECAUSE YOU BELIEVED THAT THE EARLY RELEASE
17 PROGRAM HAD CAUSED AN IMPACT TO PUBLIC SAFETY, CORRECT?

18 **A** THAT'S CORRECT.

19 **Q** AND THE TESTIMONY THAT YOU GAVE AT YOUR DEPOSITION THAT
20 SINCE NOW MALE PRISONERS DO 70 PERCENT OF THEIR TIME, YOU ARE
21 MORE COMFORTABLE WITH THAT PROGRAM THAN WHAT EXISTED PREVIOUSLY,
22 CORRECT?

23 **A** THAT'S CORRECT.

24 **Q** NOW, IN ALSO IN THE DEPOSITION YOU INDICATED TO COUNSEL THAT
25 THE MORE PEOPLE YOU RELEASE AND THE EARLIER YOU RELEASE THEM,

1 THE MORE RISK THERE IS TO THE PUBLIC, CORRECT?

2 **A** YES.

3 **Q** ALL RIGHT. AND DID YOU COME TO THAT OPINION FOR ANY
4 PARTICULAR REASON? I MEAN, WHAT IS IT THAT LEADS YOU TO BELIEVE
5 THAT?

6 **JUDGE KARLTON:** TWENTY-EIGHT YEARS AS BEING --

7 **THE WITNESS:** YEAH. AS A POLICE OFFICER, I THINK THE
8 ULTIMATE GOAL WOULD BE A HUNDRED PERCENT OF THEIR SENTENCE, AND
9 THE LIKELIHOOD OF THEM REOFFENDING, IT GOES UP THE LESS TIME
10 THEY SERVE.

11 **JUDGE REINHARDT:** IF THEY STAY IN JAIL PRISON LONGER
12 THAN THEIR SENTENCE, WE WOULD ALSO BE SAFER, RIGHT? IF WE COULD
13 KEEP EVERYBODY IN PRISON FOR LIFE, THE CRIME RATE WOULD GO DOWN?

14 **THE WITNESS:** I USED TO BELIEVE JUST LOCKING THEM UP
15 WAS THE SOLUTION, BUT I THINK OFFERING THEM PROGRAMS WHILE
16 THEY'RE IN CUSTODY AND WHEN THEY GET OUT IS A BETTER SOLUTION.

17 **JUDGE REINHARDT:** DO YOU KNOW WHETHER IN PRISON, IF
18 YOU LET THEM OUT THREE OR FOUR MONTHS EARLIER, THEY WOULD HAVE
19 LESS -- THEY WOULD HAVE NOT COMPLETED THE PROGRAMS THAT THEY'RE
20 SUPPOSED TO COMPLETE?

21 **THE WITNESS:** I DON'T UNDERSTAND YOUR QUESTION.

22 **JUDGE REINHARDT:** WELL, ARE YOU SAYING -- IS IT YOUR
23 TESTIMONY THAT IF THEY WERE LET OUT OF PRISON THREE OR FOUR
24 MONTHS EARLIER, THEY WOULD NOT HAVE COMPLETED THE PROGRAMS?

25 **THE WITNESS:** NO, I'M NOT SMART ENOUGH TO REACH THAT

1 CONCLUSION, YOUR HONOR.

2 **JUDGE KARLTON:** AND IF THE CONDITIONS IN THE PRISONS
3 NOW ARE SUCH THAT, IN FACT, PROGRAMMING FOR THE MAJORITY OF
4 PRISONERS DOESN'T REALLY EXIST, I MEAN IT'S THERE IN THEORY, BUT
5 NOBODY CAN DO ANYTHING, YOU WOULD REGARD THAT AS A THREAT TO
6 PUBLIC SAFETY?

7 **THE WITNESS:** IF YOU ARE GOING TO RELEASE THEM TO THE
8 STREET PRIOR TO THAT PROGRAMMING, YES.

9 **JUDGE REINHARDT:** BUT IF THEY ARE NOT GOING TO HAVE
10 THE PROGRAM WHEN THEY ARE THERE AT ALL, IT'S A THREAT TO RELEASE
11 THEM WITHOUT THE PROGRAMS?

12 **THE WITNESS:** RIGHT.

13 **JUDGE KARLTON:** AND THAT WOULD BE TRUE WHETHER YOU
14 RELEASED THEM EARLY OR RELEASED THEM LATE?

15 **THE WITNESS:** RIGHT.

16 **JUDGE REINHARDT:** AND IF YOU COULD GIVE PROGRAMS IN
17 THE PRISONS, IF YOU COULD GET MORE SPACE, YOU WOULD WANT TO DO
18 THAT?

19 **THE WITNESS:** YES, SIR. SHERIFF BACA HAS DONE IT
20 ALREADY SINCE '96.

21 **JUDGE REINHARDT:** I WAS SURPRISED ABOUT THE PROGRAMS
22 HE DESCRIBED, BECAUSE I KNOW IF YOU HAVE PRISONERS -- WELL,
23 DETAINEES, WHATEVER YOU CALL THEM, IN JAIL, YOU HAVE THEM
24 SLEEPING ON THE FLOOR BECAUSE THERE WASN'T ENOUGH SPACE.

25 **THE WITNESS:** NOT ANY LONGER.

1 **JUDGE REINHARDT:** NOT ANY LONGER?

2 **THE WITNESS:** NO, SIR.

3 **JUDGE REINHARDT:** BUT YOU DO HAVE SPACE FOR PROGRAMS?

4 **THE WITNESS:** YES, SIR, WE DO.

5 **JUDGE REINHARDT:** AND ONE OF THE WAYS YOU DO THAT IS
6 BY RELEASING PEOPLE FROM JAIL?

7 **THE WITNESS:** THAT LEADS TO THAT AVAILABILITY, YES,
8 BUT IT'S A MATTER OF WILL. SHERIFF BACA HAS TAKEN MONEY OUT OF
9 HIS BUDGET, PERSONNEL DEDICATED OUT OF HIS BUDGET, AND IT'S JUST
10 THE WILL TO CREATE THESE PROGRAMS.

11 **JUDGE KARLTON:** BUT YOU CAN'T DO IT AT ALL IF YOU
12 DON'T HAVE ANY SPACE?

13 **THE WITNESS:** IT'S VERY HARD, YOUR HONOR.

14 **JUDGE REINHARDT:** IF THE STATE DOESN'T HAVE THE WILL
15 TO DO THIS, IT'S NOT GOING TO GET DONE, RIGHT?

16 **THE WITNESS:** YOUR HONOR, I'M JUST A DEPUTY SHERIFF
17 FOR L.A. COUNTY.

18 **BY MS. BARLOW**

19 **Q** CHIEF, DO YOU BELIEVE THAT IF 52,000 PRISONERS WERE RELEASED
20 INTO THE COMMUNITIES, EITHER THROUGH DIVERSION OR SHORTENING OF
21 SENTENCES, OR BY REMOVING THEM FROM PAROLE AND LOWERING PRISON
22 POPULATION, THAT WILL HAVE A NEGATIVE IMPACT ON PUBLIC SAFETY IN
23 LOS ANGELES?

24 **MR. HEATHER:** OBJECTION. BEYOND THE SCOPE.

25 **JUDGE HENDERSON:** SUSTAINED.

1 **MS. BARLOW:** WELL, HE WAS ASKED ABOUT THE SAFETY OF
2 THE RELEASE PROGRAMS, YOUR HONOR.

3 **BY MS. BARLOW**

4 **Q** DO YOU BELIEVE THAT THAT RELEASE WOULD HAVE AN IMPACT ON
5 YOUR PROGRAMMING?

6 **JUDGE KARLTON:** MA'AM -- I'M SORRY. GO AHEAD.

7 **JUDGE HENDERSON:** GO ON.

8 **MR. HEATHER:** SAME OBJECTION.

9 **JUDGE HENDERSON:** I THINK WHAT HE WAS GOING TO SAY,
10 IT'S IMPROPER PROCEDURE FOR YOU TO RULE ON THE OBJECTION AND
11 MOVE FORWARD WITHOUT THE COURT'S PARTICIPATION.

12 **MS. BARLOW:** MY APOLOGIES. I DIDN'T MEAN TO DO THAT,
13 YOUR HONOR. I APOLOGIZE.

14 **JUDGE KARLTON:** THE OBJECTION NOW IS IT'S BEYOND
15 SCOPE OF REDIRECT.

16 **MS. BARLOW:** THIS IS REDIRECT. HE WAS ASKING ABOUT
17 THE CBAC PROGRAM.

18 **JUDGE KARLTON:** I MEAN RECROSS. EXCUSE ME. AND
19 NOBODY TALKED ABOUT RELEASES FROM PRISON EXCEPT TO THE EXTENT
20 THAT MY QUESTIONS IMPLIED THAT. THE OBJECTION IS SUSTAINED.

21 **MS. BARLOW:** WITH RESPECT, I SHOULD BE ABLE TO FOLLOW
22 UP ON THE COURTS' QUESTION AS WELL.

23 **JUDGE KARLTON:** OBJECTION IS SUSTAINED. YOU MAY
24 PROCEED.

25 **MS. BARLOW:** THANK YOU, YOUR HONOR.

1 **BY MS. BARLOW**

2 **Q** CHIEF YIM, THE PROGRAMMING THAT YOU DO PROVIDE, ARE YOU
3 GOING TO BE ABLE TO CONTINUE TO DO THAT IF YOU ARE HAVING TO
4 RELEASE MORE PEOPLE EARLY?

5 **A** I'M SORRY. YOU ARE SAYING?

6 **Q** THE PROGRAMMING THAT'S PROVIDED TO YOUR SENTENCED INMATES,
7 ARE YOU GOING TO BE ABLE TO CONTINUE TO DO THAT IF YOU HAVE TO
8 LET THEM GO AND HOLD MORE PRETRIAL DETAINEES?

9 **A** I THINK IT WOULD BE VERY DIFFICULT IF WE DIDN'T HAVE THE
10 ROOM.

11 **MS. BARLOW:** THANK YOU. I HAVE NOTHING FURTHER.

12 **JUDGE KARLTON:** IN THAT REGARD, CHIEF, I DON'T KNOW
13 WHAT TO MAKE OF IT, YOU'RE SAYING THAT THE AVERAGE PERSON WHO'S
14 IN YOUR JAIL IS SERVING 40 DAYS?

15 **THE WITNESS:** FORTY-TWO DAYS, YES, SIR.

16 **JUDGE KARLTON:** FORTY-TWO DAYS. AND BELIEVE THAT
17 EVEN THOUGH IT'S 42 DAYS, YOU ARE ABLE TO PROVIDE SOME BENEFITS
18 BY VIRTUE OF PROGRAMMING?

19 **THE WITNESS:** YOUR HONOR, ONE DAY OF PROGRAMMING IS
20 BETTER THAN NOTHING.

21 **JUDGE KARLTON:** OKAY. I THINK THAT ANSWERS THE
22 QUESTION.

23 **MR. HEATHER:** NOTHING FURTHER. THANK YOU.

24 **JUDGE HENDERSON:** ANY FURTHER CROSS?

25 **MR. HEATHER:** NO, YOUR HONOR.

1 **JUDGE HENDERSON:** THANK YOU, CHIEF.

2 **THE WITNESS:** HAVE A WONDERFUL CHRISTMAS.

3 **JUDGE HENDERSON:** YOU, TOO.

4 OKAY. YOU MAY CALL YOUR NEXT WITNESS.

5 **MS. BARLOW:** LAW ENFORCEMENT INTERVENORS CALL SHERIFF
6 SHERIFF ADAM CHRISTIANSON.

7 **ADAM CHRISTIANSON,**
8 HAVING BEEN CALLED AS A WITNESS BY THE DEFENDANT INTERVENORS
9 WAS FIRST DULY SWORN AND EXAMINED AS FOLLOWS:

10 **THE CLERK:** PLEASE STATE AND SPELL YOUR FULL NAME FOR
11 THE RECORD.

12 **THE WITNESS:** MY NAME IS SHERIFF ADAM
13 C-H-R-I-S-T-I-A-N-S-O-N.

14 **DIRECT EXAMINATION BY MS. BARLOW**

15 **BY MS. BARLOW**

16 **Q** THANK YOU, SHERIFF. YOU ARE SHERIFF OF WHAT COUNTY?

17 **A** STANISLAUS COUNTY.

18 **Q** HOW LONG HAVE YOU BEEN SHERIFF OF STANISLAUS COUNTY?

19 **A** SINCE JUNE OF 2006.

20 **MS. BARLOW:** FOR THE COURT'S REFERENCE, PARAGRAPHS
21 ONE THROUGH TWELVE OF THE DECLARATION OF THE WITNESS CONTAIN
22 DETAILED BACKGROUND AND EMPLOYMENT HISTORY.

23 **BY MS. BARLOW**

24 **Q** SHERIFF CHRISTIANSON -- I'M GOING TO ASK YOU PUT UP DI 619.

25 COULD YOU JUST -- WHILE HE'S PUTTING THAT UP, COULD YOU JUST

1 GIVE US A BRIEF SUMMARY OF YOUR BACKGROUND AND HISTORY?

2 **A** YES, MA'AM. I HAVE BEEN IN W ENFORCEMENT FOR 20 YEARS.

3 OVER THE COURSE OF THAT 20 YEARS, I HAVE WORKED BOTH AS POLICE

4 OFFICER AND DEPUTY SHERIFF. I'VE HELD SUPERVISORY AND COMMAND

5 LEVEL POSITIONS THROUGHOUT THE ORGANIZATION UP TO AND INCLUDING

6 THE RANK OF LIEUTENANT. I HAVE BEEN IN CHARGE OF MULTIPLE

7 SPECIALTY TEAMS. ALSO DID TIME IN HOMELAND SECURITY DOING

8 EMERGENCY RESPONSE PLANNING. AND IN 2005 WAS WHEN I ELECTED TO

9 RUN FOR SHERIFF.

10 **Q** OKAY. DO WE HAVE THE -- I'M STILL WAITING FOR THAT, SO I'LL

11 MOVE ON. WE'LL COME BACK TO IT.

12 NOW, ARE YOU, AS SHERIFF, ARE YOU INVOLVED IN ANY

13 PROFESSIONAL ORGANIZATIONS?

14 (DOCUMENT DISPLAYED.)

15 **JUDGE KARLTON:** IT'S UP NOW.

16 **MS. BARLOW:** THANK YOU.

17 **BY MS. BARLOW**

18 **Q** THIS IS DEFENDANT'S -- DEFENDANT INTERVENOR'S EXHIBIT 619.

19 IS THIS YOUR CURRICULUM VITAE, SHERIFF CHRISTIANSON?

20 **A** YES, MA'AM.

21 **Q** THANK YOU.

22 ARE YOU ON -- AFFILIATED WITH ANY PROFESSIONAL

23 ASSOCIATIONS IN YOUR CAPACITY AS SHERIFF?

24 **A** I AM AFFILIATED WITH MULTIPLE PROFESSIONS, MOST

25 PREDOMINANTLY CALIFORNIA STATE SHERIFFS' ASSOCIATION.

1 Q ARE YOU ON THE BOARD OF DIRECTORS OF THE CALIFORNIA STATE
2 SHERIFFS' ASSOCIATION?

3 A YES, MA'AM.

4 Q NOW, THE ASSOCIATION DOESN'T -- PERFORMS A NUMBER OF
5 FUNCTIONS, I THINK WE'VE ALREADY HAD SOME TESTIMONY ABOUT THAT,
6 BUT DOES ONE OF THE THINGS THE ASSOCIATION DO IS COMPILE DATA
7 FROM SHERIFF'S DEPARTMENTS ALL OVER THE STATE?

8 A YES.

9 Q AND DO THEY COMPILE DATA REGARDING JAIL CAPACITIES AND CAP
10 ORDERS AND SO ON?

11 A YES, THEY DO.

12 Q AND SINCE YOU HAVE BEEN ON THE BOARD, ARE YOU FAMILIAR WITH
13 THE WAY THOSE ARE PREPARED?

14 A YES, I AM.

15 Q COULD YOU DESCRIBE FOR THE COURT HOW THOSE REPORTS ARE
16 PREPARED BY THE STATE SHERIFFS' ASSOCIATION?

17 A IN THIS PARTICULAR CASE, STAFF AT THE STATE SHERIFFS'
18 ASSOCIATION, LED BY THE EXECUTIVE DIRECTOR AND THE LEGISLATIVE
19 REPRESENTATIVES, ASKED THE 85 SHERIFFS TO COMPILE DATA SPECIFIC
20 TO EACH ONE OF THEIR AGENCIES. THAT DATA WAS FORWARDED TO THE
21 STATE SHERIFFS' ASSOCIATION OFFICES IN SACRAMENTO WHERE THE DATA
22 WAS COMPILED AND PUBLISHED BACK OUT TO THE SHERIFF.

23 Q ALL RIGHT. SO OTHER THAN DATA ERRORS THAT MAY HAVE COME
24 FROM WITHIN A DEPARTMENT, THEN WHAT THE REPORT SHOWS IS A
25 SUMMARY OF ALL THE DATA THAT WAS RECEIVED FROM THE SHERIFFS

1 AROUND THE STATE?

2 **A** THAT IS CORRECT. AND MOST OF THE DATA, ESPECIALLY WITH
3 REGARD TO JAIL BEDS AND THOSE TYPES OF THINGS IS STRAIGHT FROM
4 CSA. MOST OF IT WAS ACCURATE.

5 **Q** THE CSA IS CORRECTIONS STANDARDS AUTHORITY?

6 **A** YES, MA'AM.

7 **Q** IF WE COULD ASK THAT EXHIBIT DI 774 BE PUT UP?

8 (DOCUMENT DISPLAYED.)

9 **BY MS. BARLOW**

10 **Q** AND THIS COMPILATION YOU WERE TALKING ABOUT, DOES THAT
11 HAPPEN ON AN ANNUAL BASIS? THAT HAPPENS ON AN ANNUAL BASIS?

12 **A** IT DOES, YES.

13 **Q** THIS IS DI 774, IF YOU COULD --

14 **MR. SANGSTER:** YOUR HONOR, I'M GOING TO OBJECT. THIS
15 IS BEYOND THE SCOPE OF THE WITNESS'S DISCLOSED TESTIMONY. THE
16 COURT ORDERED A DECLARATION BE FILED, AND THIS WAS NOT PART OF
17 THE WITNESS'S DECLARATION.

18 **MS. BARLOW:** WITH RESPECT, WE WERE TOLD WE WOULD BE
19 ALLOWED LIVE TESTIMONY IN ADDITION TO THAT. I DON'T KNOW WHAT
20 WOULD BE THE POINT OF HAVING LIVE TESTIMONY IF THEY CAN ONLY SAY
21 WHAT'S IN THE DECLARATION.

22 **JUDGE HENDERSON:** GO ON. PROCEED.

23 **MS. BARLOW:** HE'S JUST AUTHENTICATING THE DOCUMENT.

24 **BY MS. BARLOW**

25 **Q** IF YOU COULD TAKE A LOOK AT THIS DOCUMENT, SIR, DOES THIS

1 APPEAR TO YOU TO BE THE 2007 COMPILATION OF CSSA DATA?

2 **A** YES, IT IS.

3 **Q** IN PARTICULAR, IF WE COULD REFER TO -- THIS IS PAGE 3025
4 THROUGH 3029, I BELIEVE. SO THIS DATA SHOWS COURT-ORDERED CAPS
5 AND CAPACITIES?

6 **A** IT DOES.

7 **Q** AND IT ALSO SHOWS EARLY RELEASES FROM JAILS, CORRECT?

8 **A** YES, MA'AM.

9 **Q** ALL RIGHT. THANK YOU.

10 NOW, IN YOUR JAIL -- HOW BIG IS YOUR JAIL, BY THE
11 WAY? STANISLAUS COUNTY JAIL, HOW BIG IS IT?

12 **A** I HAVE THREE FACILITIES IN STANISLAUS COUNTY. A PRIMARY
13 JAIL, A PUBLIC SAFETY CENTER, WHICH IS OUR NEWEST FACILITY, AND
14 AN HONOR FARM WHICH IS LOCATED IN THE WEST PART OF THE COUNTY.

15 **Q** AND YOU OPERATE UNDER JAIL CAP, DO YOU NOT?

16 **A** I DO.

17 **Q** WHAT DO YOU DO TO COMPLY WITH THAT JAIL CAP?

18 **A** UNDER THE COURT ORDER, STANISLAUS VERSUS RODRIGUEZ, I HAVE A
19 COURT ORDERED CAP OF 1,492. IN ORDER TO STAY UNDER THAT CAP,
20 THERE'S A NUMBER OF DIFFERENT JAIL ALTERNATIVES, PROGRAMS THAT
21 WE PARTICIPATE IN SO THAT WE CONTROL OUR DAILY INMATE
22 POPULATION.

23 **Q** AND WHAT KINDS OF PROGRAMS ARE THEY?

24 **A** I HAVE A HOST OF PROGRAMS THAT ARE ATTACHED TO VARIOUS
25 DISCIPLINES IN THE COMMUNITY, SUCH AS EDUCATION, FAITH-BASED

1 CHARITABLE, CIVIC, BUSINESS. PRIMARILY, IT FOCUSES ON
2 VOCATIONAL OPPORTUNITIES, EDUCATION, JOB TRAINING. AND THEY'RE
3 ALL -- THERE ARE ALSO SOME PROGRAMS THAT INVOLVE PARENTING
4 SKILLS, CHILD CARE, DRUG REHABILITATION, MENTAL HEALTH, OR
5 MENTALLY ILL OFFENDER SERVICES. AND, AGAIN, THOSE ARE ALL
6 PARTNERSHIPS WITH OTHER DISCIPLINES IN THE COUNTY.

7 **Q** NOW, DO YOU HAVE AN OPINION AS TO WHETHER THE PROGRAMS IN
8 YOUR JAIL CAN BE EXPANDED BEYOND WHAT YOU OFFER NOW?

9 **A** THEY COULD BE IF THERE WERE ADDITIONAL FUNDING OPPORTUNITIES
10 AVAILABLE SO THAT I COULD HIRE THE STAFF AND THE INFRASTRUCTURE
11 I NEED TO SUPPORT EXPANSION OF THOSE PROGRAMS.

12 **Q** DO YOU SEE ANY MONEY COMING TO YOU RIGHT NOW TO DO THAT?

13 **A** OH, NO. THE STATE HAS TAKEN MONEY AWAY FROM ME. AND RIGHT
14 NOW I'M LOOKING AT POTENTIALLY CUTTING SERVICES TO THE COMMUNITY
15 AND A REDUCTION IN FORCE BECAUSE OF OUR CURRENT BUDGET CRISIS.

16 **JUDGE REINHARDT:** I'M SORRY. I MISSED SOMETHING
17 HERE. YOU GAVE US FIGURES FOR THE NUMBER OF PEOPLE THAT HAVE TO
18 BE RELEASED DUE TO A CAP ON JAIL POPULATION?

19 **THE WITNESS:** YES, YOUR HONOR.

20 **JUDGE REINHARDT:** NOW, THOSE PEOPLE ARE NOT GETTING
21 THE PROGRAMS YOU OFFER?

22 **THE WITNESS:** WHAT I TRY TO DO, YOUR HONOR, IS I TRY
23 TO TAKE THOSE PEOPLE THAT I'M FORCED TO EARLY RELEASE AND GET
24 THEM INTO PROGRAMS THAT ARE OUT-OF-CUSTODY PROGRAMS.

25 **JUDGE REINHARDT:** AND THE ONES WHO ARE IN JAIL DO OR

1 DO NOT GET THOSE PROGRAMS?

2 **THE WITNESS:** THEY DO, YOUR HONOR. I HAVE MULTIPLE
3 PROGRAMS THAT ARE AVAILABLE TO THOSE WHO ARE IN MY CUSTODY.

4 **JUDGE REINHARDT:** SO WHETHER THEY ARE IN OR OUT, THEY
5 GET THE PROGRAM?

6 **THE WITNESS:** WE OFFER THOSE SERVICES, YES, SIR.

7 **BY MS. BARLOW**

8 **Q** NOW, SHERIFF, DO YOU KNOW HOW MANY -- WHAT PERCENTAGE OF
9 YOUR BOOKINGS LAST YEAR WERE OF PAROLEES?

10 **A** I DO.

11 **Q** WHAT WAS THAT PERCENTAGE?

12 **A** IN 2007, I BELIEVE WE RELEASED -- OR WE SENT APPROXIMATELY
13 1,800 BACK TO CDCR.

14 **Q** DO YOU KNOW WHAT PERCENTAGE OF YOUR TOTAL BOOKINGS WERE
15 REPRESENTED BY PAROLEES?

16 **JUDGE KARLTON:** THAT'S WHAT HE SAID, I THOUGHT.

17 **MS. BARLOW:** HE SAID THERE WERE 1,800 SENT BACK. I
18 WAS ASKING FOR THE PERCENTAGE.

19 **THE WITNESS:** I DON'T KNOW WHAT PERCENTAGE OF MY
20 TOTAL BOOKINGS, NO, NOT WITHOUT LOOKING IT UP. I CAME HERE
21 TODAY WITH A LOT OF NUMBERS. SO I'LL TRY KEEP THEM STRAIGHT.

22 **BY MS. BARLOW**

23 **Q** IT'S OKAY.

24 NOW, THE PLAINTIFFS' PROPOSAL IS THAT THE COURT
25 DIVERT OR RELEASE 52,000 PRISONERS FROM STATE PRISON. AND THE

1 CDCR DATA TELLS ME THAT STANISLAUS COUNTY GETS .14 OF THOSE?

2 **A** CORRECT.

3 **Q** OKAY. SO DO YOU BELIEVE THAT THAT --

4 **JUDGE REINHARDT:** HOW MANY IS 1.4?

5 **MS. BARLOW:** IT WORKS OUT TO 728, YOUR HONOR.

6 **JUDGE REINHARDT:** SEVEN HUNDRED TWENTY-EIGHT, THAT'S
7 OVER TWO YEARS?

8 **MS. BARLOW:** YES, YOUR HONOR.

9 **JUDGE REINHARDT:** THANK YOU.

10 **BY MS. BARLOW**

11 **Q** DO YOU BELIEVE, SIR, THAT THE REINTRODUCTION OF THESE FOLKS
12 INTO YOUR COMMUNITY, 728 OF THEM OVER A TWO-YEAR PERIOD, OVER
13 AND ABOVE WHAT YOU HAVE NOW AND WHAT'S COMING OUT ON A REGULAR
14 BASIS, IS GOING TO HAVE AN IMPACT ON YOUR ABILITY TO PERFORM LAW
15 ENFORCEMENT SERVICES IN STANISLAUS COUNTY?

16 **A** YES, I DO.

17 **Q** COULD YOU DESCRIBE WHAT YOU BELIEVE THAT IMPACT WILL BE?

18 **A** WELL, I BELIEVE THERE'S CERTAINLY AN OPERATIONAL IMPACT FOR
19 ME. IF I HAVE TO SUDDENLY BECOME RESPONSIBLE FOR ADDITIONAL
20 PEOPLE WHO REQUIRE SOME TYPE OF REHABILITATIVE OR VOCATIONAL
21 SERVICES, CERTAINLY THERE'S AN IMPACT TO THE COMMUNITY BECAUSE
22 WE KNOW THAT A CERTAIN NUMBER ARE GOING TO REOFFEND, ALTHOUGH I
23 THINK THERE'S SOME DEBATE ABOUT EXACTLY WHAT THAT NUMBER IS.
24 BUT, CERTAINLY, BASED UPON OUR EXPERIENCE AND OUR NUMBERS AND
25 THE STAFFING LEVELS WE HAVE BASED UPON, YOU KNOW, THE OPERATION

1 AND THEN THE BOOKINGS AND THE INMATES WHO COME THROUGH THE
2 SYSTEM, WE KNOW THAT THERE'S GOING TO BE A CERTAIN PERCENTAGE
3 THAT ARE GOING TO COME BACK TO US.

4 **Q** NOW, DO YOU KNOW -- YOU SAID YOU SENT 1,800 PAROLEES BACK TO
5 PRISON LAST YEAR. DO YOU KNOW HOW MANY PAROLEES YOU HAD?

6 **A** WELL, I CAN TELL YOU WHAT I HAVE RIGHT NOW TODAY.

7 **Q** OKAY.

8 **A** AND WE CAN, YOU KNOW, FACTOR THAT OUT OR AVERAGE THAT OUT
9 OVER A TWO-YEAR PERIOD OF TIME. BUT RIGHT NOW, TODAY,
10 12 PERCENT OF MY INMATE POPULATION ARE PAROLEES. I THINK THAT
11 WORKS OUT TO BE 152 OUT OF 1270. THAT'S THE NUMBER OF PEOPLE I
12 HAVE IN CUSTODY TODAY.

13 **JUDGE KARLTON:** AND THOSE ARE PEOPLE YOU HAVE IN
14 CUSTODY BY VIRTUE OF HAVING BEEN VIOLATED FOR ONE REASON OR
15 ANOTHER?

16 **THE WITNESS:** CORRECT, YOUR HONOR, OR THEY'VE PICKED
17 UP A NEW OFFENSE.

18 **JUDGE KARLTON:** OKAY. CAN YOU TELL ME HOW MANY -- DO
19 YOU KNOW HOW MANY ARE NEW OFFENSES AND HOW MANY ARE TECHNICAL
20 VIOLATIONS?

21 **THE WITNESS:** OUT OF 152 WE DIDN'T BREAK THAT DAWN.

22 **JUDGE KARLTON:** FAIR ENOUGH.

23 **BY MS. BARLOW**

24 **Q** NOW, YOU SAID THERE WOULD BE AN IMPACT. ARE YOU ABLE TO
25 QUANTIFY THE IMPACT OF THE ADDITIONAL 728 PAROLEES THAT YOU

1 WOULD RECEIVE?

2 **A** WELL, IF YOU BREAK IT DOWN OVER THE TWO-YEAR TIME PERIOD,
3 THAT'S ABOUT 30 A MONTH BASED UPON THE, YOU KNOW, THE 70 PERCENT
4 RECIDIVISM RATE. POTENTIALLY, I'M GOING TO SEE 21 OF THE 30
5 COME BACK TO ME. IF WE SPREAD THAT OUT, IF YOU BREAK IT CLEAR
6 DOWN, I THINK IT ENDS UP BEING .5 PER DAY FOR THE TWO-YEAR
7 PERIOD OF TIME.

8 MOST OF THESE FOLKS DON'T STAY FOR ONE DAY, SO
9 THERE'S GOING TO BE AN IMPACT ON MY ABILITY TO HOUSE THEM. AND
10 IF YOU HAVE TO HOUSE THEM BECAUSE THEY ARE REPEAT OFFENDERS OR
11 THE OFFENSES THEY'VE COMMITTED ARE MORE SEVERE THAN MY LOWER
12 RISK INMATE POPULATION, I'M GOING TO HAVE TO ACCELERATE OR
13 POTENTIALLY INCREASE MY EARLY RELEASE NECESSITY SO THAT I'M NOT
14 IN VIOLATION OF THE COURT-ORDERED CAP.

15 **Q** OKAY. NOW, DO YOU KNOW WHAT PERCENTAGE OF FOLKS IN YOUR
16 JAILS TODAY ARE THERE FOR FELONY ARRESTS AS OPPOSED TO
17 MISDEMEANORS?

18 **A** I DO. AS OF TODAY, 90 PERCENT ARE FELONIES, AND THE REST
19 ARE BROKEN DOWN INTO MISDEMEANANTS AND THE PAROLEES I TOLD YOU
20 ABOUT, AND THERE'S ABOUT EIGHT PERCENT OF MY POPULATION TODAY
21 ARE MENTALLY ILL OFFENDERS.

22 **Q** IS THAT NORMAL, OR DO YOU -- I MEAN, IS IT -- EIGHT PERCENT
23 IS ABOUT YOUR NORMAL FOR MENTALLY ILL OFFENDERS?

24 **A** IT RUNS ANYWHERE FROM EIGHT PERCENT TO TEN PERCENT, BUT WE
25 KNOW THAT ABOUT 44 PERCENT RIGHT NOW ARE RECEIVING SOME TYPE OF

1 SERVICES THROUGH THE BEHAVIORAL HEALTH AND RECOVERY SERVICES,
2 OUR PARTNERSHIP WITH THE COUNTY, THE COURTS IN STANISLAUS
3 COUNTY, BECAUSE WE HAVE A MENTALLY ILL COURT PROGRAM WHERE WE
4 ARE ACTIVELY ENGAGED IN TRYING TO PROPERLY SUPERVISE, PROVIDE
5 SERVICES AND MEDICATE THESE FOLKS SO THAT I DON'T GET THEM BACK
6 THROUGH THE JAIL SYSTEM AGAIN.

7 **Q** NOW, I KNOW IN YOUR REPORT -- DECLARATION, YOU WERE
8 CONCERNED ABOUT AN AVERAGE DAILY POPULATION INCREASE?

9 **A** CORRECT.

10 **Q** AND THERE WAS SOME SUGGESTION THAT THAT MIGHT BE AS HIGH AS
11 100 TO 200 PER DAY?

12 **A** CORRECT.

13 **Q** HOW DO YOU -- HOW CAN YOU ASSESS WHAT THE IMPACT TO YOUR
14 DAILY POPULATION IS?

15 **A** WELL, I SAT DOWN WITH MY CORRECTION STAFF, THE DIVISION
16 CAPTAIN AND MY LIEUTENANTS, THE MANAGERS, AND WE TOOK
17 STATISTICAL DATA FOR THE LAST 3 YEARS BASED UPON THE NUMBER OF
18 BOOKINGS WE RECEIVED THAT INVOLVED PAROLEES OR STATE PRISON
19 INMATES WHO EITHER WERE BACK ON A TECHNICAL VIOLATION OR A NEW
20 OFFENSE, AND THEN WE TOOK THAT AND LOOKED AT THE DATA WHERE WE
21 SENT THEM BACK TO DVI.

22 SO IT WAS A STATISTICAL AVERAGE BASED ON THOSE THREE
23 YEARS WHERE WE THOUGHT THAT, BASED UPON -- AND I THINK WE WERE
24 USING THE NUMBER 40,000 -- IF THERE WERE 40,000 RELEASED, HOW
25 MANY POTENTIALLY WOULD WE SEE BACK IN STANISLAUS COUNTY. THAT'S

1 HOW WE CAME TO THOSE NUMBERS THAT WE REFERRED TO OR THAT WERE
2 REFERRED TO IN MY DECLARATION.

3 **Q** SO THOSE AVERAGE DAILY POPULATION INCREASES REPRESENT LESS
4 THAN TEN PERCENT OF WHAT'S PROPOSED TO BE RELEASED BACK INTO
5 YOUR COUNTY?

6 **A** YES.

7 **Q** OKAY. NOW, IF THERE IS A CAP IMPOSED BY THE COURT ON THE
8 PRISON POPULATION AND YOU ALREADY HAVE A CAP ON YOUR COUNTY JAIL
9 POPULATION, WHAT WILL YOU DO WITH THOSE PRISONERS WHO YOU WOULD
10 OTHERWISE SEND TO STATE PRISON THAT YOU CAN'T SEND?

11 **A** I WOULD SUSPECT I WOULD HAVE NO OTHER CHOICE BUT TO KEEP
12 THEM IN MY CUSTODY. AND, AGAIN, AS PREVIOUSLY MENTIONED, I
13 WOULD HAVE TO ACCELERATE OR CHANGE MY EARLY RELEASE CRITERIA SO
14 THAT, AGAIN, I DON'T BUMP UP AGAINST MY COURT-ORDERED CAP.

15 **Q** SO IS THAT PART OF HOW YOU ARRIVED AT THE POTENTIAL IMPACTS
16 BECAUSE OF A LONGER STAY?

17 **A** THAT, AND THE FACT THAT RIGHT NOW WE HAVE A JAIL
18 OVERCROWDING PROBLEM, AND I HAVE FACILITIES THAT WERE BUILT IN
19 THE '50'S THAT ARE FAILING, AND WE ARE IN THE PROCESS OF TRYING
20 TO EXPAND OUR FACILITIES.

21 WE JUST COMPLETED A NEEDS ASSESSMENT. WE ARE IN THE
22 PROGRAMMING PHASE RIGHT NOW WITH A FIRM CALLED KRAUT AND SEIDA
23 (PHONETIC). THEY CAME IN AND LOOKED AT EVERYTHING AND PROVIDED
24 US WITH A VERY CLEAR PICTURE OF THE NUMBER OF BEDS THAT I NEED
25 TO MEET CAPACITY OR DEMAND, IN ADDITION TO THE NUMBER OF STAFF

1 THAT I NEED TO ENSURE THAT THOSE FACILITIES ARE A SAFE AND
2 SECURE ENVIRONMENT FOR BOTH THE INMATES AND OUR STAFF.

3 SO RIGHT NOW, TODAY, THOSE -- THE TOTAL -- THE TOTAL
4 AMOUNT OF BEDS THAT I NEED IMMEDIATELY ARE 420 MEDIUM TO MAXIMUM
5 SECURITY BEDS, BUT THE WHOLE PROGRAM GOES UP -- BUMPS ME UP TO
6 2,200 BEDS TO MEET THE CURRENT DEMAND.

7 JUDGE KARLTON: I'M SORRY. I'VE FORGOTTEN, WHAT DO
8 YOU HAVE NOW?

9 THE WITNESS: RIGHT NOW I'M CAPPED AT 1,492.

10 JUDGE KARLTON: AND THE SUGGESTION BY THESE PEOPLE
11 WHO STUDIED YOUR PROGRAM IS YOU GOT TO GO UP TO --

12 THE WITNESS: TWENTY TWO HUNDRED.

13 JUDGE REINHARDT: DID THEY TELL YOU HOW TO GET THE
14 MONEY?

15 THE WITNESS: WELL, YOUR HONOR, CONCRETE AND STEEL IS
16 VERY EXPENSIVE, SO IT'S A PHASED -- THAT'S WHY IT'S A PHASED
17 PROJECT, AND IN PHASE ONE WE ARE LOOKING AT 420 MEDIUM TO
18 MAXIMUM SECURITY BEDS.

19 JUDGE KARLTON: AND HAVE THEY TOLD YOU HOW TO GET THE
20 MONEY FOR THEM?

21 THE WITNESS: NO, YOUR HONOR, THEY HAVEN'T. THIS IS
22 GOING TO BE A CHALLENGE.

23 BY MS. BARLOW

24 Q ASSUMING YOU GET THE MONEY FOR THAT, SHERIFF, WHAT TIMEFRAME
25 ARE YOU LOOKING AT IN TERMS OF BUILDING THAT OUT?

1 **A** I HOPE TO HAVE THE PROJECT COMPLETED WITHIN THREE YEARS, BUT
2 GIVEN OUR CURRENT ECONOMIC CLIMATE AND THE ECONOMIC UNCERTAINTY,
3 I'M PROBABLY GOING TO PUMP THAT TO FOUR OR FIVE BEFORE WE GET IT
4 DONE.

5 **Q** SO IN THE MEANTIME, IF THERE'S A PRISONER RELEASE ORDER, AND
6 YOU GET 728 OVER TWO YEARS AND THEY DO REOFFEND --

7 **A** TO SOME EXTENT THERE WILL BE AN IMPACT, YES, AND WE WILL
8 HAVE TO MITIGATE THAT.

9 **Q** AND THIS 2,200 BED RECOMMENDATION DIDN'T TAKE INTO ACCOUNT
10 ANY ADDITIONAL PRISONERS FROM A PRISON POPULATION REDUCTION, DID
11 IT?

12 **A** NO. THAT WASN'T EVEN PART OF THE DESIGN OR PROCESS IN WHAT
13 WE'RE DOING NOW.

14 **Q** OKAY. NOW, WITH RESPECT TO THOSE PROGRAMS THAT YOU TALKED
15 ABOUT, ESPECIALLY FOR THE MENTALLY ILL, WOULD YOU EXPECT AN
16 IMPACT TO THOSE PROGRAMS FROM A PRISON RELEASE ORDER IN THIS
17 CASE?

18 **A** WELL, CERTAINLY I HAVE ALREADY BEEN IMPACTED. THE STATE'S
19 BUDGET ELIMINATED A ONE-MILLION-DOLLAR GRANT THAT WE RECEIVED
20 FOR THE MENTALLY ILL OFFENDER GRANT PROGRAM, AND JUST BECAUSE
21 THE FUNDING GOES AWAY DOESN'T MEAN THE PROBLEM GOES AWAY. SO
22 WHAT I DID WAS I FOUND A WAY, USING EXISTING APPROPRIATIONS, TO
23 MAINTAIN STRENGTH OF THE PROGRAM BECAUSE IT IS SO IMPORTANT. IT
24 DIRECTLY IMPACTS OUR DAILY INMATE POPULATION AND RECIDIVISM IN
25 THAT PARTICULAR GROUP OF OFFENDERS.

1 Q AND YOU SAID 44 PERCENT OF THOSE ARE --

2 A RIGHT NOW ARE RECEIVING SOME TYPE OF MENTAL HEALTHCARE
3 SERVICES BECAUSE OF OUR PARTNERSHIPS WITH THE COURTS, PROBATION,
4 AND THE MENTAL -- THE MENTAL HEALTH, FOR EXAMPLE, IN STANISLAUS
5 COUNTY, WHICH IS STANISLAUS BEHAVIORAL HEALTH AND RECOVERY
6 SERVICES PROGRAM.

7 Q NOW, IF YOU -- I'M SORRY. STRIKE THAT.

8 YOU MENTIONED THAT THE CURRENT BUDGET SITUATION MAY
9 INVOLVE HAVING TO CUT BACK ON YOUR STAFFING?

10 A THE CURRENT BUDGET SITUATION IS BLEAK. THE COUNTY ISSUED MY
11 BASE ALLOCATION IN THE CURRENT FISCAL YEAR WITH A THREE PERCENT
12 REDUCTION BUILT IN. THEY JUST TOLD US LAST TUESDAY AT
13 5:00 O'CLOCK I HAVE TO CUT ANOTHER 2.8 PERCENT OF MY BUDGET. MY
14 OVERALL OPERATING BUDGET IS \$93 MILLION. THEY'RE ASKING ME TO
15 CUT MONEY FROM MY BUDGET THAT I SIMPLY DON'T HAVE. THE ONLY WAY
16 TO MEET THAT EXPECTATION IS START CUTTING SERVICES TO THE
17 COMMUNITY OR COME UP WITH A REDUCTION-IN-FORCE POLICY.

18 THE LAST THING I WANT TO DO IS REDUCE MY ABILITY TO
19 PROPERLY HOUSE AND MAINTAIN PEOPLE WHO POTENTIALLY POSE A RISK
20 OR THREAT TO THE PUBLIC. SO, UNFORTUNATELY, THAT MEANS THE
21 OPERATIONS SIDE OF THE HOUSE IS WHERE IT'S GOING TO GET THAT
22 FIRST. THAT USUALLY INVOLVES CIVILIAN STAFF AND, HOPEFULLY NOT,
23 DEPUTY SHERIFFS.

24 Q WOULD THAT REDUCTION, DO YOU THINK, IMPAIR YOUR ABILITY TO
25 RESPOND TO ANY ADDITIONAL CRIME WHICH COULD RESULT FROM AN EARLY

1 RELEASE?

2 **A** ABSOLUTELY. EVERY DAY IS A CHALLENGE, AND THERE'S ALWAYS
3 GOING TO BE THE CHALLENGE IN MITIGATING PUBLIC SAFETY AND
4 FINDING SOLUTIONS ON HOW TO PROTECT THE COMMUNITY.

5 **JUDGE REINHARDT:** ANY CUT TO YOUR BUDGET FOR ANY SIDE
6 IS GOING TO AFFECT PUBLIC SAFETY?

7 **THE WITNESS:** YES, SIR.

8 **MS. BARLOW:** IF I COULD JUST TAKE A MOMENT?

9 (PAUSE IN PROCEEDINGS.)

10 **BY MS. BARLOW**

11 **Q** NOW, SHERIFF, DO YOU HAVE A COPY OF YOUR REPORT THERE IN
12 FRONT OF YOU, OR YOUR DECLARATION, RATHER?

13 **A** I DO.

14 **Q** IF YOU COULD REFER TO EXHIBIT 2, COULD YOU TELL US WHAT THIS
15 IS?

16 **A** WHAT --

17 **Q** EXHIBIT 2 OF YOUR DECLARATION? IF YOU DON'T HAVE IT, I
18 CAN --

19 **A** I'M LOOKING AT THE DECLARATION. I'M TRYING TO FIND EXHIBIT
20 NUMBER 2.

21 **MS. BARLOW:** MAY I APPROACH, YOUR HONOR?

22 **JUDGE HENDERSON:** YOU MAY.

23 **THE WITNESS:** THAT WOULD HELP. THANK YOU.

24 **BY MS. BARLOW**

25 **Q** COULD YOU DESCRIBE WHAT EXHIBIT 2 IS AND HOW IT WAS

1 PREPARED?

2 **A** THIS WAS DONE AT MY DIRECTION. AGAIN, THE CAPTAIN IN CHARGE
3 OF MY ADULT DETENTION DIVISION, WHICH WAS CORRECTIONS, AND MY
4 LIEUTENANTS, AND I ASKED THEM TO COME UP WITH WHAT THEY THOUGHT
5 WOULD BE THE IMPACTS WITH REGARD TO ANY DECISION ON A PRISONER
6 RELEASE ORDER, AND THIS WAS THEIR IMPACT REPORT TO ME.

7 **Q** DID YOU REVIEW THE REPORT WITH THEM?

8 **A** I DID. I ACTUALLY SAT DOWN AND WORKED WITH THEM ON IT.

9 **Q** AND DO YOU CONCUR IN THE ASSESSMENT THAT THEY MADE?

10 **A** ABSOLUTELY.

11 **Q** EXHIBIT 3 TO YOUR DECLARATION?

12 **A** COULD YOU MAYBE FIND THAT ONE AGAIN? CAN YOU DIRECT ME TO
13 IT SO WE DON'T WASTE THE COURT'S TIME?

14 **MS. BARLOW:** MAY I APPROACH, YOUR HONOR?

15 **THE WITNESS:** THANK YOU.

16 **BY MS. BARLOW**

17 **Q** COULD YOU DESCRIBE WHAT EXHIBIT 3 IS?

18 **A** YEAH. THESE ARE THE RECOMMENDATIONS THAT WE WANTED TO
19 SUBMIT, BECAUSE I BELIEVE THAT PARTNERSHIPS ARE VERY IMPORTANT
20 AND THAT PARTNERSHIPS ARE A CRITICAL PART OF SOLUTIONS. AND SO
21 I WANTED TO PROVIDE SOME SOLUTIONS THAT I THOUGHT WOULD WORK IN
22 MITIGATING WHAT'S BEFORE THE COURT.

23 **Q** OKAY. CAN I GET THE DECLARATION BACK?

24 **A** I FOUND IT IN MINE, THANK YOU.

25 **Q** THANKS.

1 IS IT FAIR TO SAY, SHERIFF CHRISTIANSON, THAT THE
2 SIZE OF THE PROPOSED ORDER OF 52,000 PRISONERS CAUSES YOU
3 GREATER CONCERN THAN EVER BEFORE?

4 **A** IT DOES.

5 **Q** AND DO YOU BELIEVE THAT YOU HAVE THE RESOURCES TO HANDLE THE
6 IMPACTS FROM THAT?

7 **A** I DON'T.

8 **Q** DO YOU BELIEVE YOUR COMMUNITY HAS THE RESOURCES TO HANDLE
9 THE IMPACTS FROM THAT?

10 **A** NO, I DO NOT.

11 **MS. BARLOW:** THANK YOU. I HAVE NOTHING FURTHER.

12 **MS. TILLMAN:** NO QUESTIONS, YOUR HONOR. THANK YOU.

13 **JUDGE HENDERSON:** THANK YOU. CROSS?

14 **MR. SANGSTER:** THANK YOU, YOUR HONOR. ED SANGSTER
15 FOR THE PLAINTIFFS.

16 **CROSS-EXAMINATION BY MR. SANGSTER**

17 **BY MR. SANGSTER**

18 **Q** I WANT TO FOLLOW UP ON A COUPLE OF POINTS.

19 FIRST OF ALL, YOU WERE ASKED HOW MANY BOOKINGS THERE
20 WERE OF PAROLEES?

21 **A** YES.

22 **Q** IN 2007 THAT WAS ABOUT 1,800?

23 **A** YES, SIR.

24 **Q** AND THE TOTAL NUMBER OF ARRESTS, YOU DIDN'T KNOW THE
25 PERCENTAGE, BUT THE TOTAL NUMBER OF BOOKINGS IN 2007 WAS 26,000?

1 **A** THAT SOUNDS ABOUT RIGHT, WITHOUT REFERRING BACK TO THE
2 DOCUMENTATION.

3 **Q** SO YOUR PAROLEE BOOKINGS WERE LESS THAN TEN PERCENT OF YOUR
4 TOTAL BOOKINGS?

5 **A** CORRECT.

6 **Q** NOW, ON DIRECT, YOU WERE ANSWERING QUESTIONS UNDER THE
7 ASSUMPTION THAT THERE WOULD BE 728 INMATES RETURNED TO YOUR
8 COUNTY. THAT'S A DIFFERENT NUMBER THAN YOU USED IN YOUR TRIAL
9 DECLARATION, RIGHT?

10 **A** IT WAS.

11 **Q** WHAT NUMBER DID YOU USE IN YOUR TRIAL DECLARATION?

12 **A** AGAIN, IN SITTING DOWN WITH MY CAPTAINS AND MY STAFF, WE
13 BASED OUR NUMBERS ON THE NUMBER OF ACTIVE -- OR THE NUMBER OF
14 BOOKINGS INVOLVING PAROLEES OR PEOPLE WHO HAD BEEN TO PRISON AND
15 THE NUMBER WE SENT BACK.

16 WHAT YOU REFER TO AS 728 IS WHAT CDCR IS TELLING ME
17 THAT STANISLAUS COUNTY HAS RECEIVED BACK, THE 1.4 PERCENT THAT
18 WAS REFERRED TO EARLIER.

19 **Q** RIGHT. IN YOUR TRIAL DECLARATION, YOU EXPRESSED THE OPINION
20 THAT A PRISONER RELEASE ORDER WOULD RESULT IN 200 TO 400
21 PAROLEES COMING BACK -- ADDITIONAL PAROLEES COMING BACK TO YOUR
22 COUNTY?

23 **A** CORRECT.

24 **Q** WHAT DID YOU DO TO ARRIVE AT THE 200 TO 400 NUMBER?

25 **A** WE LOOKED AT THE NUMBER OF PAROLEES THAT WE WERE TRACKING

1 THAT WERE COMING BACK OR REOFFENDING THAT WE ACCEPTED INTO OUR
2 SYSTEM, AND EITHER ON NEW OFFENSES OR TECHNICAL VIOLATIONS, AND
3 THEN THOSE THAT WERE SENT BACK.

4 **Q** SO DID YOU USE THE SAME PROCESS TO COME UP WITH THE 200 TO
5 400 ESTIMATE AS YOU DID TO COME UP WITH THE 758 ESTIMATE?

6 **A** CLEARLY NOT. THE NUMBERS ARE DIFFERENT.

7 **Q** WHICH IS MORE RELIABLE?

8 **A** WELL, IT DEPENDS ON WHOSE DATA YOU ARE LOOKING AT, WHETHER
9 WE ARE USING OUR DATA AND METHODOLOGY OF COMING UP WITH AN
10 ESTIMATE OR CDCR'S NUMBER AND THEIR METHODOLOGY OF COMING UP
11 WITH A NUMBER. EITHER WAY THERE'S A NUMBER. WE JUST HAVE TO
12 MEET IN THE MIDDLE.

13 **Q** THE NUMBER YOU USED FROM YOUR OWN PERSONAL EXPERIENCE --
14 EXCUSE ME. THE NUMBER YOU CAME UP WITH FROM YOUR PERSONAL
15 EXPERIENCE IN STANISLAUS COUNTY WAS 200 TO 400?

16 **A** CORRECT. THAT'S WHAT I SAID IN THE DECLARATION. THAT WAS
17 BASED UPON THAT THREE YEARS' WORTH OF DATA THAT WE LOOKED AT IN
18 THE NUMBER OF PAROLEES THAT WENT BACK TO CDCR.

19 **Q** I WANT TO TALK ABOUT HOW YOU GET FROM THE 200 TO 400 UP TO
20 THE AVERAGE DAILY POPULATION INCREASE IN YOUR JAIL. OKAY?

21 THE AVERAGE DAILY POPULATION INCREASE IN YOUR JAIL
22 THAT YOU PROJECT IS 100 TO 200?

23 **A** REPEAT THE QUESTION.

24 **Q** PART OF IT WAS JUST TRANSITIONING, TELLING YOU WHERE I WAS
25 GOING. I'M GOING TO TALK TO YOU ABOUT THE AVERAGE DAILY

1 POPULATION INCREASE.

2 **A** THAT WE POTENTIALLY SEE BECAUSE OF A RELEASE ORDER?

3 **Q** YES.

4 **A** OKAY.

5 **Q** THE NUMBER IS 100 TO 200, RIGHT?

6 **A** OKAY.

7 **Q** SO, IN A SENSE -- IN ESSENCE, YOU'RE SAYING ONE OUT OF EVERY
8 TWO PAROLEES IS GOING TO END UP IN YOUR JAIL AND INCREASE YOUR
9 AVERAGE DAILY POPULATION?

10 **A** WELL, WHETHER YOU BASE THE NUMBERS ON OUR STATISTICS OR
11 CDCR'S STATISTICS, WE KNOW THAT WE'RE GOING TO GET A CERTAIN
12 NUMBER OF PEOPLE BACK IN THE COMMUNITY.

13 **Q** WELL, AGAIN, I'M JUST FOCUSING ON THE OPINION YOU GAVE UNDER
14 PENALTY OF PERJURY WHEN YOU SUBMITTED YOUR DECLARATION FOR THIS
15 CASE.

16 **MS. BARLOW:** BASED ON A 40,000 PERSON PRISONER
17 RELEASE ORDER.

18 **BY MR. SANGSTER**

19 **Q** CAME UP WITH -- OKAY. I WANT TO FIND OUT -- I WANT TO
20 EXPLORE HOW YOU COME UP WITH ROUGHLY ONE OUT OF EVERY TWO
21 PAROLEES ENDING UP INCREASING YOUR AVERAGE DAILY POPULATION?

22 **JUDGE KARLTON:** LET'S STOP THERE. DO YOU AGREE IT'S
23 ONE OUT OF EVERY TWO?

24 **THE WITNESS:** I WOULD, YOUR HONOR, I THINK THAT'S A
25 REASONABLE ESTIMATE.

1 **JUDGE KARLTON:** ALL RIGHT. NOW YOU CAN GO AHEAD.

2 **BY MR. SANGSTER**

3 **Q** HOW LONG ARE PAROLEES IN YOUR JAIL?

4 **A** DEPENDS UPON WHY THEY ARE IN MY CUSTODY.

5 **Q** ON AVERAGE, HOW LONG ARE YOUR INMATES IN YOUR JAIL ON
6 AVERAGE, GENERAL POPULATION?

7 **A** IT'S ALL OVER THE BOARD. IT DEPENDS UPON WHETHER OR NOT
8 THEY HAVE REOFFENDED AND THEIR CRIMINAL HISTORY --

9 **JUDGE KARLTON:** NO. HE'S SAYING FORGETTING ABOUT
10 PAROLEES. GENERALLY, HOW MANY PEOPLE? HOW LONG DOES YOUR
11 GENERAL POPULATION REMAIN IN JAIL? IS THAT YOUR QUESTION,
12 COUNSEL?

13 **MR. SANGSTER:** YES, SIR.

14 **THE WITNESS:** I DON'T HAVE A SPECIFIC ANSWER FOR YOU,
15 YOUR HONOR, I DON'T HAVE THOSE STATISTICS.

16 **BY MR. SANGSTER**

17 **Q** IT'S LESS THAN A YEAR, CORRECT?

18 **A** AGAIN, I CAN TELL YOU THAT RIGHT NOW, TODAY, 90 PERCENT OF
19 MY INMATES ARE IN ON FELONY CHARGES. WHERE THEY COME OUT OF THE
20 SYSTEM, THERE'S A NUMBER OF DIFFERENT CONTRIBUTING FACTORS, FROM
21 THE NEW OFFENSE OR REOFFENSE, FROM WARRANTS, TO THE COURT'S
22 DECISION, TO PROBATION'S DECISION. THERE'S A NUMBER OF
23 DIFFERENT THINGS THAT -- OR DIRECTIVES THAT DICTATE TO US HOW
24 LONG THEY STAY.

25 **Q** SO THE -- I GUESS THE BOTTOM LINE IS YOU JUST DON'T KNOW?

1 **A** YOU ARE ABSOLUTELY CORRECT. WE DON'T TRACK THAT DATA.

2 **Q** ALL RIGHT. SO TAKING YOUR ESTIMATE OF 200 TO 400, HOW DID
3 YOU GET TO THE 100 TO 200 PER AVERAGE DAILY POPULATION INCREASE?

4 **A** WE BASE THAT AMOUNT ON THE NEW NUMBERS THAT CDCR WAS GIVING
5 US ABOUT WHAT THEIR STATISTICS WERE. AT THE TIME WE LOOKED AT
6 OUR NUMBERS WE DIDN'T HAVE THEIRS.

7 **Q** OKAY. BUT -- I KNOW WHAT NUMBERS YOU LOOKED AT. I WANT YOU
8 TO TELL THE COURT HOW YOU GOT THERE. WHAT PROCESS DID YOU
9 FOLLOW?

10 **A** WE TOOK THREE YEARS' WORTH OF OUR DATA, AND WE PROJECTED
11 WHAT WE THOUGHT WOULD COME BACK TO STANISLAUS COUNTY BASED ON
12 THE KNOWN NUMBERS THAT WE HAVE, AND THAT'S HOW WE THOUGHT WE
13 WOULD GET ANYWHERE FROM 200 TO 400 PER YEAR BACK IN STANISLAUS
14 COUNTY.

15 **Q** THEN YOU TOOK SOME SET OF NUMBERS TO COME UP WITH A 100 TO
16 200 INCREASE IN THE AVERAGE DAILY POPULATION, AND WHAT I WANT TO
17 FIND OUT IS HOW YOU GOT FROM THE 200 TO 400 COMING BACK TO YOUR
18 COUNTY, TO INCREASING YOUR AVERAGE DAILY POPULATION BY 100 TO
19 200?

20 **MS. BARLOW:** ASKED AND ANSWERED.

21 **JUDGE HENDERSON:** OVERRULED. CAN YOU TELL US THAT,
22 SHERIFF?

23 **THE WITNESS:** AGAIN, MR. SANGSTER, I'M NOT SURE THAT
24 I UNDERSTAND WHERE YOU'RE GOING. I GAVE YOU A SET OF NUMBERS
25 BASED UPON WHAT MY STAFF PULLED TOGETHER IN A DECLARATION.

1 **JUDGE KARLTON:** IS YOUR ANSWER --

2 **THE WITNESS:** CDCR GIVES US NEW NUMBERS. HERE WE
3 ARE.

4 **JUDGE KARLTON:** IS YOUR ANSWER, THAT'S WHAT MY STAFF
5 CAME UP WITH, AND I REALLY CAN'T TELL YOU HOW THEY CAME UP WITH
6 THAT NUMBER?

7 **THE WITNESS:** THAT WOULD BE APPROPRIATE, YOUR HONOR.

8 **MR. SANGSTER:** NO FURTHER QUESTIONS, YOUR HONOR.

9 **JUDGE KARLTON:** I HAVE -- MAY NOT HAVE ANYTHING TO DO
10 WITH ANYTHING, BUT I'M NOT CLEAR.

11 IF IT IS CORRECT THAT YOU ESTIMATED 100 TO 200 BASED
12 ON YOUR OWN NUMBERS AND DOUBLE THAT BASED UPON CDCR'S NUMBERS --
13 IS THAT ESSENTIALLY RIGHT?

14 **THE WITNESS:** THE LOWER NUMBERS, YOUR HONOR, ARE
15 BASED UPON WHAT CDCR IS TELLING US COMES BACK. OUR HIGHER
16 NUMBERS ARE BASED UPON WHAT WE -- BASED UPON WHAT WE SENT BACK.

17 **JUDGE KARLTON:** I THINK IT'S VICE VERSA.

18 **THE WITNESS:** OKAY.

19 **JUDGE KARLTON:** THIS IS NOT UNIMPORTANT. I'M REALLY
20 TRYING TO UNDERSTAND. I HAD UNDERSTOOD THAT IT WENT UP BECAUSE
21 CDCR'S NUMBERS WERE GREATER THAN YOURS. IS THAT WRONG OR RIGHT,
22 IF YOU KNOW? IF YOU DON'T, YOU KNOW --

23 **THE WITNESS:** WHAT I'M GOING OFF OF, YOUR HONOR, IS
24 THAT 1.4 PERCENT. THAT'S WHAT THEY'RE TELLING US CAME BACK. IT
25 SEEMS THOSE NUMBERS ARE MORE ACCURATE THAN OURS.

1 **JUDGE KARLTON:** AND IF THOSE NUMBERS INDICATE A
2 HIGHER RETURN, DOES THAT MEAN -- I'M ASKING YOU, NOT TELLING
3 YOU -- DOES THAT MEAN THAT THERE ARE A SUBSTANTIAL NUMBER OF
4 PAROLEES THAT YOU DON'T SEE BECAUSE YOU DIDN'T EVEN KNOW THEY
5 WERE BEING RETURNED TO THE COUNTY?

6 **THE WITNESS:** YES, YOUR HONOR, THAT WOULD BE A FACTOR
7 AS WELL.

8 **JUDGE HENDERSON:** YOU SAID 1.4. DID YOU MEAN THAT,
9 OR DID YOU MEAN .14?

10 **THE WITNESS:** 1.4 PERCENT OF CDCR'S POPULATION COMES
11 BACK TO STANISLAUS COUNTY.

12 **JUDGE HENDERSON:** OKAY.

13 **REDIRECT EXAMINATION BY MS. BARLOW**

14 **MS. BARLOW:** ONE QUICK FOLLOW-UP QUESTION, YOUR
15 HONOR.

16 **BY MS. BARLOW**

17 **Q** CHIEF, WHEN YOU DID THE ANALYSIS AND CALCULATIONS THAT ARE
18 REFLECTED IN YOUR DECLARATION, THAT WAS ON THE ASSUMPTION THAT
19 THE RELEASE ORDER WOULD BE 40,000, NOT 52, CORRECT?

20 **A** THAT'S CORRECT.

21 **MS. BARLOW:** I HAVE NOTHING FURTHER.

22 **JUDGE HENDERSON:** THANK YOU FOR TESTIFYING, SHERIFF
23 CHRISTIANSON. YOU ARE EXCUSED.

24 **THE WITNESS:** THANK YOU, YOUR HONOR.

25 **JUDGE HENDERSON:** CALL YOUR NEXT WITNESS.

1 **MS. BARLOW:** LAW ENFORCEMENT INTERVENORS CALL SHERIFF
2 MARTIN RYAN.

3 **MARTIN RYAN**
4 HAVING BEEN CALLED AS A WITNESS BY THE DEFENDANT INTERVENORS
5 WAS FIRST DULY SWORN AND EXAMINED AS FOLLOWS:

6 **THE CLERK:** SPELL AND STATE YOUR FULL NAME FOR THE
7 RECORD.

8 **THE WITNESS:** MY NAME IS MARTIN RYAN. FIRST NAME
9 M-A-R-T-I-N. LAST NAME IS RYAN, R-Y-A-N.

10 **DIRECT EXAMINATION BY MS. BARLOW**
11 **BY MS. BARLOW**

12 **Q** THANK YOU, SHERIFF.

13 WHAT COUNTY ARE YOU SHERIFF OF?

14 **A** I'M THE SHERIFF/CORONER OF AMADOR COUNTY.

15 **Q** HOW BIG IS AMADOR COUNTY?

16 **A** WE HAVE A POPULATION OF 38,000, INCLUDING THE STATE PRISON
17 POPULATION, AND SQUARE MILES ABOUT 640.

18 **MS. BARLOW:** FOR THE COURT'S REFERENCE, THE WITNESS'S
19 DECLARATION, PARAGRAPHS 1 THROUGH 9, CONTAIN A SUMMARY OR DETAIL
20 OF HIS BACKGROUND, AND DEFENDANT'S EXHIBIT 623 IS HIS CURRICULUM
21 VITAE.

22 DO YOU HAVE ANY OBJECTION TO THAT?

23 **MR. SANGSTER:** NO OBJECTIONS.

24 **MS. BARLOW:** THANK YOU.
25

1 **BY MS. BARLOW**

2 **Q** COULD YOU DESCRIBE, SHERIFF, JUST BRIEFLY YOUR HISTORY AND
3 BACKGROUND FOR THE COURT?

4 **A** CERTAINLY. I STARTED MY CAREER IN 1975 AS THE CHIEF
5 INVESTIGATOR FOR THE AMADOR COUNTY DISTRICT ATTORNEY'S OFFICE.
6 I THEN WENT TO THE CALIFORNIA DEPARTMENT OF JUSTICE, WHERE I
7 SPENT THE NEXT 25 YEARS WORKING MY WAY UP THE RANKS THROUGH THAT
8 TIME. SPENT THE LAST SEVEN YEARS AS THE CHIEF OF THE ATTORNEY
9 GENERAL'S BUREAU OF INVESTIGATION. RETIRED IN 2005 FROM THAT
10 POSITION TO RUN FOR SHERIFF OF AMADOR COUNTY.

11 **JUDGE REINHARDT:** YOU FORGET TO ASK HIM WHERE HE WENT
12 TO SCHOOL.

13 **JUDGE KARLTON:** SHE'S GOING TO.

14 **MS. BARLOW:** NO, IT'S IN THE CV, I THINK.

15 **JUDGE REINHARDT:** IT WASN'T IN THE OTHERS?

16 **MS. BARLOW:** I JUST WANTED A SUMMARY, YOUR HONOR.

17 **JUDGE KARLTON:** LET'S GO ON.

18 **BY MS. BARLOW**

19 **Q** COULD YOU DESCRIBE WHAT YOUR DUTIES ARE AS SHERIFF/CORONER
20 OF AMADOR COUNTY?

21 **A** YES. I'M RESPONSIBLE FOR PUBLIC SAFETY FOR THE COUNTY. I'M
22 ALSO SERVING AS THE CORONER; RESPONSIBLE FOR CRIMINAL
23 INVESTIGATIONS; THE JAIL FACILITY; CIVIL PROCESS SERVING; AND
24 GENERAL LAW ENFORCEMENT.

25 **Q** ALL RIGHT. NOW -- SO, DO YOU WORK WITH THE POLICE

1 DEPARTMENTS THAT ARE WITHIN YOUR CITY -- WITHIN YOUR COUNTY,
2 RATHER?

3 **A** YES, VERY MUCH SO.

4 **Q** DO YOU PROVIDE SERVICES FOR ANY OF THE CITIES WITHIN THE
5 COUNTY, OTHER THAN GENERAL COUNTY?

6 **A** WE HAVE TWO CONTRACT CITIES THAT WE PROVIDE SERVICE TO.

7 **Q** AND THOSE ARE WHICH CITIES?

8 **A** THE CITIES OF PLYMOUTH AND THE CITY OF AMADOR CITY.

9 **Q** YOU HAVE A JAIL FACILITY IN AMADOR COUNTY?

10 **A** YES.

11 **Q** WHAT IS YOUR JAIL CAPACITY, RATED CAPACITY?

12 **A** OUR RATED CAPACITY IS 76 BEDS; 65 MALE BEDS, 11 FEMALE BEDS.

13 **Q** NOT VERY BIG, IS IT?

14 **A** NO, MA'AM.

15 **Q** OKAY. AT THE PRESENT TIME DO YOU KNOW WHAT PERCENTAGE OF
16 PEOPLE ARE BEING HELD IN YOUR JAIL ON FELONY CHARGES OR -- ON
17 FELONY CHARGES? SORRY.

18 **A** THE LAST NUMBER I HAD WAS 80 PERCENT WERE FELONS AWAITING
19 SENTENCING OR SENTENCED.

20 **Q** AND THEN ARE YOU AT OR ABOVE CAPACITY, OR ARE YOU BELOW
21 CAPACITY WITH RESPECT TO EITHER --

22 **A** WE GENERALLY, ON AVERAGE, HISTORICALLY RUN BETWEEN 10 TO
23 15 PERCENT ABOVE CAPACITY. THEN, IN ADDITION TO THAT, ANOTHER
24 TEN PERCENT ON AVERAGE ARE ON OUR WORK RELEASE, HOME ELECTRONIC
25 MONITORING, OTHER METHODS TO KEEP THEM OUT OF THE FACILITY.

1 Q AND, CURRENTLY, ARE YOU ABOVE CAPACITY FOR YOUR FEMALE
2 INMATES?

3 A AS OF TODAY, WE HAVE 11 FEMALE BEDS, I HAVE 23 FEMALES IN
4 THE FACILITY.

5 Q HAVE YOU HAD TO TAKE STEPS TO ADDRESS THE OVERAGE, IF YOU
6 WILL?

7 A WE HAVE -- AS I SAID EARLIER, WE DO HOME ELECTRONIC
8 MONITORING, WORK FURLOUGH PROGRAMS, CITATION-RELEASE, SHERIFF'S
9 PAROLE, ALL THE AVENUES THAT ARE AVAILABLE TO US WE TRY TO
10 UTILIZE.

11 Q OKAY. DO YOU EVER EXPAND THE WOMEN PRISONERS INTO ANOTHER
12 PORTION OF THE JAIL IF THEY GET TOO BIG?

13 A REGULARLY. THAT'S THE PROBLEM WE HAVE. WE HAVE SO MANY
14 HOUSING UNITS. NORMALLY, THE FEMALES TAKE UP ONE. THEY ARE NOW
15 TAKING UP TWO. SO WE ARE COMPACTING THE MALE PRISONERS INTO THE
16 THREE REMAINING AREAS.

17 Q DOES THAT IMPACT YOUR ABILITY TO SEGREGATE YOUR PRISONERS
18 FOR SAFETY REASONS?

19 A ABSOLUTELY.

20 Q LET'S TALK ABOUT YOUR STAFFING. YOU'RE -- FOR THE JAIL AT
21 LEAST. WE'LL JUST TALK ABOUT THAT FOR A MINUTE.

22 WHAT'S YOUR CURRENT STAFFING LEVEL AT THE JAIL? ARE
23 YOU AT WHAT YOUR AUTHORIZED POSITIONS ARE, OR ARE YOU BELOW?

24 A WE ARE DOWN IN THOSE POSITIONS. I WAS AUTHORIZED 20
25 CORRECTIONAL OFFICERS. I'M DOWN A COUPLE OF POSITIONS THERE.

1 I'M DOWN TWO EXTRA HELP TRANSPORT OFFICERS. I'M DOWN TWO
2 SERGEANT POSITIONS OUT OF SIX.

3 **Q** ARE THERE -- DO YOU KNOW WHAT THE REASON IS THAT YOU ARE
4 DOWN OFFICERS?

5 **A** I'M SORRY?

6 **Q** WHAT'S THE REASON THAT YOU ARE DOWN?

7 **A** RETIREMENTS. THE BUDGET IS SUCH WE HAVE BEEN FROZEN FOR ANY
8 VACANCIES THAT OCCUR, AS WELL AS POSITIONS THAT HAVE BEEN
9 DEFUNDED BY THE BOARD OF SUPERVISORS.

10 **JUDGE KARLTON:** I'M SORRY. DEFUNDED BY?

11 **THE WITNESS:** THE BOARD OF SUPERVISORS.

12 **BY MS. BARLOW**

13 **Q** AND IN YOUR VIEW, IS THE CAPACITY OF YOUR JAIL ADEQUATE FOR
14 YOUR NEEDS?

15 **A** NO, MA'AM, IT'S NOT. AS A MATTER OF FACT, THE RECENT JAIL
16 NEEDS ASSESSMENT WE DID IN OUR EFFORTS TO ACQUIRE ASSEMBLY BILL
17 900 FUNDING FOR LOCAL JAIL FACILITY RATED OUR NEED AT 165 BEDS
18 FOR THE YEAR 2010.

19 **Q** ONE HUNDRED SIXTY-FIVE BEDS?

20 **A** YES, MA'AM.

21 **Q** SO THAT'S 90 SOME MORE THAN YOU ALREADY HAVE, RIGHT?

22 **A** THAT'S CORRECT.

23 **Q** AND I'M ASSUMING THAT IF YOU HAD ADDITIONAL BEDS, YOU
24 WOULDN'T NEED TO USE SOME OF THE ALTERNATIVE PROGRAMS YOU TALKED
25 ABOUT?

1 **A** HOPEFULLY, FOR A WHILE UNTIL WE GET CAUGHT UP WITH
2 POPULATION, YES.

3 **Q** AND IF YOU HAD THOSE ADDITIONAL BEDS -- WELL, FIRST OF ALL,
4 HOW LONG DO YOU THINK IT MIGHT BE BEFORE YOU GET THOSE
5 ADDITIONAL BEDS?

6 **A** IT'S IFFY AT THIS POINT. PART OF ASSEMBLY BILL 900 PROCESS
7 WAS PARTICIPATION IN A REENTRY FACILITY IN ORDER TO BE QUALIFIED
8 TO EVEN GET CONSIDERED FOR THE LOCAL JAIL CONSTRUCTION FUNDS.
9 WE DID GET CONDITIONAL FUNDING BASED UPON OUR PARTICIPATION IN
10 REENTRY WITH SAN JOAQUIN AND CALAVERAS COUNTIES, BUT THE CONCERN
11 FOR THE BOARD NOW, THE 25 PERCENT MATCH OF OUR \$30 MILLION
12 PROJECT, WHEN THEY ARE IN THE PROCESS OF LAYING PEOPLE OFF,
13 WHERE THAT MONEY IS GOING TO COME FROM.

14 **Q** SO EVEN IF YOU -- EVEN IF ALL THE AB 900 WENT FORWARD, YOU
15 MIGHT NOT BE ABLE TO MEET YOUR MATCH?

16 **A** THAT IS A VERY REAL POSSIBILITY.

17 **Q** OKAY. SO OUTSIDE OF THE JAIL ARE YOU DOWN IN YOUR STAFFING
18 AT ALL?

19 **A** YES, WE ARE.

20 **Q** AND WHAT KIND OF -- AT WHAT LEVEL ARE YOU DOWN?

21 **A** I HAVE AN ALLOCATED NUMBER OF DEPUTY SHERIFFS AT 32. I
22 HAVE -- BY THE END OF THIS YEAR, I'M GOING TO HAVE, I BELIEVE,
23 FIVE VACANCIES IN THOSE AREAS. WITH THAT, AGENCY WIDE, AT THE
24 END OF THE YEAR, I'M GOING TO BE DOWN 15 POSITIONS OUT OF 116,
25 ASSUMING NO FURTHER CUTS.

1 Q CAN YOU ASSUME NO FURTHER CUTS?

2 A WHAT'S THAT?

3 Q CAN YOU ASSUME NO FURTHER CUTS?

4 A NO, BECAUSE WE DON'T KNOW YET WHAT THE STATE OF CALIFORNIA
5 IS GOING TO DO TO OUR FUNDING SOURCES.

6 Q OKAY. NOW, YOU GET A PARTICULAR KIND OF FUNDING FOR A SMALL
7 COUNTY, RIGHT, CALLED RURAL CRIMES FUNDING?

8 A WE GET A HALF MILLION DOLLARS ANNUALLY, ALONG WITH THE OTHER
9 36 SMALLEST COUNTIES IN THE STATE, TO ASSIST US WITH OUR RURAL
10 CRIME ISSUES, A HALF MILLION DOLLARS.

11 Q IS THAT RURAL CRIMES FUNDING ON THE CHOPPING BLOCK FOR THE
12 CURRENT BUDGET?

13 A VERY MUCH SO. IN ALL THE NEGOTIATIONS WE HAVE BEEN
14 FOLLOWING, IT IS ZERO BALANCE AND OUT.

15 Q SO IF THAT MONEY IS LOST, WHAT KIND OF AN IMPACT IS THAT
16 GOING TO HAVE ON YOUR STAFFING?

17 A WE ARE IN DEEP TROUBLE. I HAVE A \$14-MILLION BUDGET THAT'S
18 BEING CUT REGULARLY AS WE SPEAK NOW. THAT'S A HALF MILLION
19 DOLLARS OUT OF THAT 14, IN ADDITION TO THE \$300,000 IN COPS
20 MONIES THAT WE GET AS WELL THAT'S ALSO UNDER ATTACK, AND I COULD
21 BE DOWN 800,000.

22 Q LET'S TALK AGAIN ABOUT THE AB 900 REENTRY PROGRAM. IN
23 CONNECTION WITH THAT PROGRAM, DID YOU ASSIST IN PREPARING A
24 PROPOSAL TO CDCR WITH RESPECT TO THE CREATION OF A REENTRY
25 PROGRAM?

1 **A** YES.

2 **Q** AND YOU SAID THAT WAS JOINTLY WITH AMADOR -- I'M SORRY --
3 WITH SAN JOAQUIN AND CALAVERAS COUNTIES; IS THAT CORRECT?

4 **A** THAT'S CORRECT.

5 **Q** HOW IS THAT -- EXACTLY WHAT WAS THE PROCESS BY WHICH YOU
6 WERE ASSESSING WHAT YOU WOULD NEED TO DO TO CREATE A REENTRY
7 FACILITY?

8 **MR. SANGSTER:** OBJECTION. IRRELEVANT. OBJECTION.
9 IRRELEVANT.

10 **JUDGE HENDERSON:** GO ON. YOU CAN ANSWER.

11 **THE WITNESS:** THE REASON FOR THE REENTRY WAS TO TRY
12 TO GET SOME TRAINING AND COUNSELING TO PEOPLE COMING OUT OF CDCR
13 THAT WOULD BE RETURNING TO THE THREE COUNTIES SO THEY WOULD BE
14 BETTER PREPARED TO ENTER SOCIETY AND BE SUCCESSFUL, THEREBY
15 CUTTING DOWN THE RECIDIVISM RATE.

16 **MR. SANGSTER:** MOVE TO STRIKE. NON-RESPONSIVE.

17 **JUDGE HENDERSON:** OVERRULED.

18 **BY MS. BARLOW**

19 **Q** WILL YOU MEET WITH CDCR AND EVALUATE DATA TO DETERMINE WHAT
20 THE NEEDS MIGHT BE OF PEOPLE COMING BACK INTO A REENTRY
21 FACILITY?

22 **A** YES.

23 **Q** DID THEY PROVIDE YOU WITH WHAT'S CALLED COMPAS ASSESSMENT
24 DATA AS PART OF THAT PROCESS?

25 **A** YES, THEY DID.

1 **Q** IF WE COULD PUT UP DI 647?

2 **MR. SANGSTER:** YOUR HONOR, WE HAVE -- I UNDERSTAND
3 SOME OF THE OBJECTIONS ARE RESERVED, BUT WE'VE OBJECTED TO THIS
4 ON THE GROUNDS IT'S HEARSAY AND AN IMPROPER COMPILATION. THE
5 UNDERLYING DATA WAS NEVER PROVIDED.

6 **MS. BARLOW:** THESE ARE REPORTS FROM CDCR, AND
7 MR. LEWIS HAS INDICATED TO ME THESE ARE OFFICIAL RECORDS OF
8 CDCR, YOUR HONOR. IF WE NEED TO CALL SOMEBODY OR GET A
9 DECLARATION, I GUESS WE CAN DO THAT, BUT THAT SEEMS --

10 **MR. SANGSTER:** THE DEFENDANTS HAVE ACTUALLY AGREED
11 THAT THESE ARE ONLY TO BE CONSIDERED FOR A LIMITED PURPOSE.

12 **MS. BARLOW:** THAT'S ALL I'M ASKING HIM ABOUT.

13 **JUDGE KARLTON:** LET'S FIND OUT WHAT THE LIMITED
14 PURPOSE IS.

15 **MR. SANGSTER:** THE LIMITED PURPOSE IS TO SHOW THERE
16 IS, IN FACT, A RISK ASSESSMENT PROGRAM IN PLACE.

17 **JUDGE HENDERSON:** WOULD YOU AGREE WITH THAT?

18 **MS. BARLOW:** THAT'S NOT WHAT THIS WITNESS GOT THEM
19 FOR.

20 **JUDGE HENDERSON:** HE SAID THERE WAS AN AGREEMENT THAT
21 THESE WOULD BE INTRODUCED FOR A LIMITED PURPOSE. HE STATED HIS
22 UNDERSTANDING. DO YOU DISAGREE?

23 **MS. BARLOW:** NOBODY ASKED ME ABOUT SUCH AN AGREEMENT,
24 YOUR HONOR. IT'S THE FIRST I HEARD OF IT.

25 **JUDGE HENDERSON:** WHO DID YOU ENTER INTO THE

1 AGREEMENT WITH?

2 **MR. SANGSTER:** MAY I LET MS. EVENSON RESPOND ON THIS,
3 YOUR HONOR? I KNOW IT'S MY WITNESS, BUT SHE'S THE ONE WHO
4 HANDLED THIS.

5 **JUDGE HENDERSON:** OKAY.

6 **MS. EVENSON:** JUST BRIEFLY, YOUR HONOR. DEFENDANTS
7 OFFERED THIS SAME EXHIBIT, AND PLAINTIFFS OBJECTED, AND IN THE
8 MEET AND CONFER PROCESS, AND I BELIEVE A FINAL DOCUMENT WAS
9 FILED WITH THE COURT, WITH RESPECT TO THE OBJECTIONS, AND THE
10 RESPONSES TO OBJECTIONS TO DEFENDANT'S EXHIBITS, AND IN THAT
11 DOCUMENT MY UNDERSTANDING IS THAT DEFENDANTS AGREED TO THE USE
12 OF THESE DOCUMENTS ONLY FOR THE VERY LIMITED PURPOSE TO SHOW
13 THAT THEY WERE DOING THE RISK ASSESSMENT, BUT NOT FOR THE TRUTH
14 OF THE MATTERS CONTAINED IN THEM.

15 **MS. BARLOW:** I AM NOT OFFERING THEM FOR THE TRUTH OF
16 THE MATTERS CONTAINED IN THEM, YOUR HONOR.

17 **JUDGE HENDERSON:** ARE YOU OFFERING THEM TO SHOW THEY
18 ARE DOING THE RISK ASSESSMENT?

19 **MS. BARLOW:** NO, YOUR HONOR. IT HAS TO DO WITH AB
20 900 REENTRY AND HOW HE FORMED HIS OPINIONS IN THIS MATTER, THE
21 INFORMATION THAT HE WAS USING.

22 **JUDGE KARLTON:** I DON'T UNDERSTAND. MS. EVENSON SAID
23 "THE DEFENDANTS." BUT YOU SAY YOU DIDN'T KNOW ANYTHING ABOUT
24 IT.

25 **JUDGE REINHARDT:** SHE SAID THE STATE.

1 **JUDGE KARLTON:** NO, SHE DIDN'T. SHE SAID "THE
2 DEFENDANTS."

3 **MS. BARLOW:** YOUR HONOR, I'VE NEVER SEEN SUCH A
4 STIPULATION. I HAVE NEVER BEEN ASKED TO AGREE TO ONE. THAT MAY
5 HAVE BEEN ENTERED INTO WITH RESPECT TO PHASE ONE. I DON'T KNOW.

6 **MR. LEWIS:** YOUR HONOR, IF I MIGHT? KYLE LEWIS FOR
7 THE STATE DEFENDANTS.

8 THIS DOCUMENT THAT'S UP RIGHT NOW IS ACTUALLY NOT A
9 DEFENDANT DOCUMENT. THIS IS DEFENDANT INTERVENOR DOCUMENT.

10 COMPAS DATA WAS RELEASED. IT WAS RELEASED TO SHOW
11 THE CAPABILITIES OF THE SYSTEM. THERE IS NO INDICATION THAT
12 IT'S INACCURATE FOR ANY REASON WHATSOEVER. IT WAS VERIFIED BY
13 TOM HOFFMAN. IT IS IN HIS AFFIDAVIT.

14 BUT THIS INFORMATION RIGHT HERE THAT IS BEING RELIED
15 UPON APPARENTLY BY THE WITNESS IS IN THE CONTROL OF THE WITNESS
16 AND THE DEFENDANT INTERVENOR, NOT THE STATE. THIS IS A
17 COMPLETELY DIFFERENT EXHIBIT THAN THAT WAS --

18 **JUDGE KARLTON:** ARE YOU TELLING ME THAT THE STATE
19 DOESN'T VERIFY THIS IS A DOCUMENT OF THE STATE?

20 **MR. LEWIS:** IT'S NOT A STATE DEFENDANT --

21 **JUDGE KARLTON:** I BELIEVE THAT. IT'S LATE IN THE
22 AFTERNOON, AND I'M REALLY STARTING TO LOSE IT.

23 SIR, DO YOU -- ARE YOU NOT PREPARED TO SAY THAT THIS
24 DOCUMENT WAS PREPARED BY THE STATE?

25 **MR. LEWIS:** THIS DOCUMENT RIGHT HERE, TO MY

1 KNOWLEDGE, WAS NOT PREPARED BY THE STATE. THIS DOESN'T EVEN
2 HAVE OUR -- THE EXHIBIT NUMBER ON IT IS NOT OUR EXHIBIT NUMBER.

3 **JUDGE HENDERSON:** LET'S TAKE THIS OFF THE SCREEN AND
4 MOVE ON.

5 **BY MS. BARLOW**

6 **Q** SHERIFF RYAN, DID YOU RECEIVE THIS DOCUMENT FROM CDCR?

7 **A** YES, MA'AM.

8 **Q** AND WHAT WAS THE PURPOSE OF THE DOCUMENT, TO YOUR
9 UNDERSTANDING?

10 **A** IT WAS RECEIVED IN CONNECTION WITH THE REENTRY FACILITY TO
11 TRY TO IDENTIFY RISK ASSOCIATED WITH THOSE COMING OUT OF THE
12 FACILITY THAT THE REENTRY PIECE WOULD HAVE TO IDENTIFY AND
13 TREAT.

14 **Q** SO FOR PURPOSES OF PLANNING WHAT YOU WOULD DO IN A REENTRY
15 FACILITY, THAT'S WHY YOU GOT THE DATA?

16 **A** THE SORT OF SERVICES THAT WOULD BE REQUIRED, YES.

17 **Q** OKAY. AND THEN DID YOU RECEIVE FURTHER DATA LATER?

18 THAT DOCUMENT, YOUR HONOR, ON 647 WAS FROM AUGUST OF
19 '07.

20 IS THAT CORRECT?

21 **A** TO THE BEST OF MY RECOLLECTION, YES.

22 **Q** AND DID YOU RECEIVE ADDITIONAL DATA OF A SIMILAR NATURE FROM
23 CDCR AFTER THAT DATE?

24 **A** I RECEIVED TWO ADDITIONAL COMPAS ASSESSMENTS IN 2008.

25 **Q** OKAY.

1 COULD WE PUT UP 468, PLEASE?

2 JUDGE HENDERSON: ARE WE GOING TO HAVE THE SAME
3 PROBLEM?

4 MS. BARLOW: I JUST WANT TO HAVE HIM IDENTIFY IT,
5 YOUR HONOR. WE CAN ARGUE ABOUT ITS ADMISSIBILITY LATER.

6 JUDGE KARLTON: I'M GOING TO ASK AGAIN. 648 -- PUT
7 IT UP SO HE CAN LOOK AT IT. IT SEEMS TO ME WHAT -- WELL, NEVER
8 MIND.

9 MR. LEWIS: THIS DOES APPEAR TO BE A COMPAS
10 ASSESSMENT, YOUR HONOR, BUT IT IS NOT INFORMATION PRODUCED BY
11 THE STATE DEFENDANTS IN THE COURSE OF DISCOVERY.

12 JUDGE KARLTON: I BELIEVE THAT. MY QUESTION IS
13 DIFFERENT. IS THIS A DOCUMENT PRODUCED BY THE STATE?

14 MR. LEWIS: YES, IT IS, YOUR HONOR.

15 JUDGE KARLTON: AND YOU GOT IT FROM THE STATE?

16 THE WITNESS: YES, YOUR HONOR.

17 MS. BARLOW: MAY I PROCEED? THANK YOU, YOUR HONOR.

18 BY MS. BARLOW

19 Q AND WAS THIS DATA ALSO PART OF HOW YOU WERE EVALUATING WHAT
20 TO DO WITH THE FOLKS WHO MIGHT END UP IN A REENTRY FACILITY IN
21 AMADOR COUNTY?

22 A YES, MA'AM.

23 Q DID YOU USE THIS DATA, AS WELL AS THE PRIOR DATA, IN
24 FORMULATING SOME OF YOUR OPINIONS ABOUT THE IMPACT OF A PRISON
25 RELEASE ORDER?

1 **JUDGE KARLTON:** THAT'S BEGGING TO HAVE THAT TESTIMONY
2 STRICKEN.

3 YOU USED THIS DATA TO MAKE YOUR DECISIONS ABOUT WHAT
4 YOU NEEDED TO DO, RIGHT?

5 **THE WITNESS:** YOUR HONOR, I USED ALL THREE REPORTS
6 COMBINED, YES, SIR.

7 **JUDGE KARLTON:** ALL RIGHT. NOW WE HAVE A PROBLEM.

8 **MS. BARLOW:** IF WE COULD PUT UP 649, PLEASE?

9 **MR. SANGSTER:** SAME OBJECTION, YOUR HONOR.

10 **JUDGE HENDERSON:** PROCEED. YOU'LL HAVE A RUNNING
11 OBJECTION ON THIS AREA.

12 **JUDGE KARLTON:** LET'S FIND OUT WHAT THE STATE SAYS.

13 **MR. LEWIS:** YES, YOUR HONOR. IT APPEARS TO BE A CDCR
14 DOCUMENT, BUT IT WAS NOT PRODUCED BY THE STATE DEFENDANTS.

15 **JUDGE KARLTON:** BUT YOU RECEIVED THIS DOCUMENT FROM
16 CDCR?

17 **THE WITNESS:** YES, YOUR HONOR.

18 **MS. BARLOW:** FINALLY, IF WE COULD PUT UP 650?

19 (DOCUMENT DISPLAYED.)

20 **BY MS. BARLOW**

21 **Q** NOW, THIS IS A -- PURPORTS TO BE, AND I'LL ASK MR. LEWIS TO
22 CONFIRM, STATEWIDE SUMMARY OF COMPAS RISK ASSESSMENT DATA,
23 CORRECT?

24 **A** YES, MA'AM.

25 **Q** AND YOU USED JUST THE PORTION RELATING TO AMADOR COUNTY IN

1 YOUR OPINIONS, CORRECT?

2 **A** THAT'S CORRECT.

3 **Q** ALL RIGHT.

4 **MS. BARLOW:** DO YOU WANT HIM TO CONFIRM THIS IS A
5 STATE DOCUMENT, YOUR HONOR?

6 **JUDGE KARLTON:** I THINK THIS HAS COME IN BEFORE, HAS
7 IT NOT? NO? BUT THERE'S NO OBJECTION, SO LET'S GO ON.

8 **MR. SANGSTER:** THERE WAS AN OBJECTION, YOUR HONOR. I
9 THOUGHT I HAD A STANDING OBJECTION.

10 **JUDGE HENDERSON:** I HAVE SAID HE HAD A STANDING
11 OBJECTION.

12 **JUDGE KARLTON:** I DIDN'T UNDERSTAND THERE WAS AN
13 OBJECTION.

14 **MR. LEWIS:** YOUR HONOR, IF I COULD CLARIFY? THIS WAS
15 A DOCUMENT THAT WAS PRODUCED. IT IS ON STATE DEFENDANTS'
16 CURRENT EXHIBIT LIST. THIS IS ONE OF THE COMPAS DOCUMENTS. THE
17 OTHER ONES WERE NOT PRODUCED BY THE STATE DEFENDANTS.

18 **JUDGE KARLTON:** WE'LL HAVE TO SORT IT OUT IN DUE
19 COURSE, MA'AM. YOU MAY PROCEED.

20 **BY MS. BARLOW**

21 **Q** NOW, WITHOUT KNOWING THAT THE STATE PRODUCED THESE, BUT
22 WITHOUT BEING ABLE TO TELL -- SAY PERSONALLY THAT THE DATA IN
23 THEM IS CORRECT, WHAT DID YOU USE THE DATA FOR?

24 **A** I TRIED TO TAKE A LOOK AT WHAT THE NUMBERS WERE FOR AMADOR
25 COUNTY WITH REGARDS TO THE RISK THAT WE COULD EXPECT FROM PEOPLE

1 RELEASED FROM STATE PRISON INTO OUR COMMUNITY AND THE SORT OF
2 SUPPORT MECHANISMS THAT THEY WOULD NEED.

3 **Q** OKAY. AND DID YOU USE OTHER DATA IN TRYING TO ASSESS WHAT
4 KIND OF IMPACTS THERE WOULD BE?

5 **A** THE OTHER DATA HAPPENED TO BE THE STAFFING LEVELS OF THE
6 OTHER AGENCIES THAT WOULD BE IMPACTED BY THE RELEASE.

7 **Q** AND YOUR HISTORY WITH PAROLEES IN GENERAL, IS THAT SOMETHING
8 YOU ALSO CONSIDERED?

9 **A** YES, MA'AM.

10 **Q** DO YOU KNOW HOW MANY PAROLEES YOU HAD IN AMADOR COUNTY IN
11 APPROXIMATELY 2007/2008 TIMEFRAME?

12 **A** WHEN I CHECKED THE WEBSITE, THE NUMBERS FOR JUNE --

13 **MR. SANGSTER:** EXCUSE ME, YOUR HONOR. LACKS
14 FOUNDATION, PERSONAL KNOWLEDGE AND THE ANSWER WAS
15 NON-RESPONSIVE.

16 **JUDGE HENDERSON:** WHOSE WEBSITE DID YOU CHECK?

17 **THE WITNESS:** IT WAS CDCR'S AND PAROLE'S WEBSITE,
18 YOUR HONOR.

19 **JUDGE HENDERSON:** WE'VE ALLOWED THIS IN THE PAST. GO
20 ON.

21 **BY MS. BARLOW**

22 **Q** GO AHEAD. YOU CAN ANSWER THE QUESTION. WHAT DID YOU
23 DETERMINE FROM THAT?

24 **A** I LOST MY TRAIN OF THOUGHT NOW.

25 **Q** HOW MANY PAROLEES DID YOU HAVE IN AMADOR COUNTY?

1 **A** WE HAD, ACCORDING TO THE JUNE '07 REPORT, 151 PAROLEES.

2 **Q** AND HOW MANY PAROLEES WERE ARRESTED IN AMADOR COUNTY IN
3 2007?

4 **A** WE HAD A TOTAL OF 74 ARRESTS.

5 **Q** AND HOW MANY OF THOSE PAROLEES -- HOW MANY PAROLEES TOTAL
6 WERE ARRESTED ON NEW CHARGES IN 2007?

7 **A** THERE WERE 43.

8 **Q** NOW, HAVE YOU COME TO A CONCLUSION ABOUT HOW MANY PERSONS
9 YOU WOULD GET BACK INTO AMADOR COUNTY, EITHER THROUGH DIVERSION,
10 EARLY RELEASE, OR ANY OF THE OTHER METHODOLOGIES PROPOSED BY
11 PLAINTIFFS, IF 52,000 PEOPLE ARE REDUCED FROM THE PRISON
12 POPULATION?

13 **A** BASED ON OUR ONE PERCENT OF THE STATE PRISON POPULATION, I
14 EXPECT TO GET 52.

15 **JUDGE HENDERSON:** DO YOU HAVE ONE PERCENT OF THE
16 STATE'S PRISON POPULATION, SIR?

17 **THE WITNESS:** YES, YOUR HONOR.

18 **JUDGE HENDERSON:** AMADOR COUNTY HAS ONE PERCENT?

19 **THE WITNESS:** (NODS HEAD.)

20 **JUDGE HENDERSON:** I'M JUST ASKING.

21 **THE WITNESS:** YES, YOUR HONOR.

22 **JUDGE HENDERSON:** OKAY.

23 **BY MS. BARLOW**

24 **Q** THAT'S 52 ADDITIONAL TO THE 150 OR SO YOU HAVE NOW?

25 **A** THAT WOULD BE MY UNDERSTANDING, YES.

1 Q AND DO YOU EXPECT THAT 52 PEOPLE RELEASED INTO YOUR
2 COMMUNITY, ON TOP OF WHAT YOU ALREADY HAVE, OVER THE SPACE OF
3 TWO YEARS IS GOING TO HAVE AN IMPACT ON LAW ENFORCEMENT OR CRIME
4 IN THE COMMUNITY?

5 A ABSOLUTELY. THAT'S A 25 PERCENT INCREASE OVER TWO YEARS IN
6 OUR CURRENT PAROLEE POPULATION.

7 Q TWENTY-FIVE PERCENT INCREASE OVER TWO YEARS?

8 A YES.

9 Q I'M SURE PLAINTIFFS' COUNSEL IS GOING TO ASK YOU, SO I'M
10 JUST GOING TO ASK YOU MYSELF. FIFTY-TWO PEOPLE DOESN'T SEEM
11 LIKE THAT MANY PEOPLE, SHERIFF.

12 JUDGE HENDERSON: THAT'S NOT A BASIS FOR YOU
13 QUESTIONING, TO ANTICIPATE --

14 JUDGE KARLTON: I MEAN, IF YOU HAVE A QUESTION, YOU
15 CAN ASK.

16 MS. BARLOW: I'M ASKING. I'M JUST ASKING.

17 JUDGE HENDERSON: THE EDITORIAL, YOU DON'T HAVE TO DO
18 THAT.

19 MS. BARLOW: I APOLOGIZE.

20 BY MS. BARLOW

21 Q COULD YOU EXPLAIN TO THE COURT WHY YOU THINK THERE WILL BE
22 AN IMPACT EVEN IF IT'S ONLY 52 PEOPLE?

23 A BASED ON THE RESOURCES AVAILABLE TO DEAL WITH THAT
24 POPULATION, NOT ONLY WITHIN MY PARTICULAR AGENCY, BUT AS FAR AS
25 THE DISTRICT ATTORNEY, THE COURT'S BEHAVIORAL HEALTH, PROBATION,

1 ALL THE PEOPLE THAT WILL BE IMPACTED, THEY'RE SHORT STAFFED AND
2 LOSING STAFF AS WE SPEAK, AND WE DON'T HAVE ENOUGH, REALLY, TO
3 HAVE A GOOD HANDLE ON THE NUMBER OF PEOPLE WE HAVE CURRENTLY.

4 **Q** SO IF YOU GOT 52 CUMULATIVELY, WHAT KIND OF RECIDIVISM RATE
5 WOULD YOU EXPECT FOR THEM?

6 **A** BASED ON THE DATA THAT I LOOKED AT, WE ARE LOOKING AT ABOUT
7 60 PERCENT RECIDIVISM OF THOSE PEOPLE.

8 **Q** SO 60 PERCENT OF 52, WHAT DOES THAT DO TO YOUR JAIL
9 POPULATION?

10 **A** CONSIDERING 10 TO 15 PERCENT OVER ALREADY, NOT KNOWING WHAT
11 THE POPULATION IS GOING TO DO IN THE NEXT TWO YEARS DURING THE
12 COURSE OF THIS, WE ARE GOING TO BE EXCESSIVELY OVER. I WOULD
13 EXPECT THAT MY NUMBER OF FELON POPULATION, THE PERCENTAGE WOULD
14 GO UP OVER 80 PERCENT. WE WOULD BE RELEASING MORE AND MORE
15 SIGNIFICANT OFFENDERS IN THE COMMUNITY.

16 **Q** SHERIFF, DID YOU MEAN TO SAY .1 PERCENT OF THE POPULATION --

17 **A** I'M SORRY .1 PERCENT. I APOLOGIZE.

18 **Q** ONE-TENTH OF ONE PERCENT?

19 **JUDGE HENDERSON:** OKAY. THANK YOU.

20 **BY MS. BARLOW**

21 **Q** BACK UP. HOW EXACTLY WAS THE COMPAS DATA THAT WAS SPECIFIC
22 TO AMADOR COUNTY RELEVANT TO YOUR ASSESSMENT OF THE IMPACTS?

23 **A** WHAT I DID WAS I TOOK THE DATA, TOOK THE PERCENTAGES THAT
24 CAME OUT OF THERE THAT I COULD ANTICIPATE AND APPLIED THAT TO
25 OUR NUMBERS. USING THAT, I CAME UP WITH AN APPROXIMATION OF THE

1 NEEDS OF THOSE INDIVIDUALS, AND ALSO THE RECIDIVISM RISK.

2 **Q** SO YOU WERE -- AND IF I'M WRONG TELL ME. YOU WERE
3 ANTICIPATING THAT PEOPLE THAT MIGHT GET RELEASED EARLY THROUGH A
4 CAP OR OTHER KIND OF ORDER WOULD BE SIMILAR TO WHAT CDCR WAS
5 PROPOSING TO GO INTO REENTRY FACILITIES?

6 **A** THAT IS CORRECT. I KNOW THAT EVEN WITHOUT THE REENTRY
7 FACILITIES, THE PEOPLE THAT ARE GETTING RELEASED CURRENTLY,
8 BASICALLY, GET A BUS TICKET AND \$200. THEY HAVE NO REENTRY,
9 WHICH WOULD BE VERY SIMILAR TO WHAT WE ARE LOOKING AT WITH THIS
10 POPULATION, IF I UNDERSTAND IT CORRECTLY.

11 **Q** OKAY. AND DID THAT DATA INFORM YOUR DECISION ABOUT HOW MUCH
12 OF AN IMPACT YOU MIGHT HAVE?

13 **A** IT DID, IN A LOT OF DIFFERENT AREAS.

14 **Q** AND IS THAT DESCRIBED IN YOUR DECLARATION?

15 **A** YES, MA'AM, IT IS.

16 **MS. BARLOW:** I HAVE NOTHING FURTHER. THANK YOU.

17 **JUDGE HENDERSON:** OKAY. ANYTHING FROM STATE
18 DEFENDANT?

19 **MR. LEWIS:** NOTHING, YOUR HONOR. THANK YOU.

20 **JUDGE HENDERSON:** OKAY. CROSS-EXAMINATION.

21 **MR. SANGSTER:** THANK YOU, YOUR HONOR. ED SANGSTER
22 FOR THE PLAINTIFFS.

23 **JUDGE KARLTON:** WILL YOU LIFT THAT MICROPHONE, SIR?
24 THANK YOU.

25 **MS. BARLOW:** I APOLOGIZE FOR BEING SO SHORT.

CROSS-EXAMINATION BY MR. SANGSTER

BY MR. SANGSTER

Q IS THE 52 PEOPLE BASED ON ONE PERCENT OR .1 PERCENT?

A .1 PERCENT.

Q OKAY. YOU SAID THAT YOUR JAIL IS REGULARLY OVERCAPACITY BY 10 TO 15 PERCENT. WHAT KINDS OF PROBLEMS DOES THAT CREATE FOR YOU?

A IT CREATES CLASSIFICATION -- NOT CLASSIFICATION, BUT SEGREGATION ISSUES FOR US. IT CREATES SAFETY ISSUES, NOT ONLY FOR STAFF, BUT INMATES ALIKE. IT CAUSES US DIFFICULTY WITH REGARDS TO PROVIDING PROGRAMMING. IT CAUSES US PROBLEMS IN STAFFING WHEN WE HAVE TO PULL PEOPLE OUT TO TRANSPORT TO COURT. THERE'S A LOT OF --

Q SO YOU START ENCOUNTERING SAFETY ISSUES AT 10 TO 15 PERCENT ABOVE RATED CAPACITY?

A THEY ARE AGGRAVATED AT THAT LEVEL. THEY ARE ALWAYS EXISTING IN A FACILITY. THERE'S ALWAYS A DANGER INVOLVED.

Q OKAY. YOU TALKED ABOUT THE NUMBER OF ARRESTS THAT WERE MADE OF PAROLEES. WHAT WAS THAT NUMBER?

A THE NUMBER WAS 74 FOR 2007.

Q AND HOW MANY PEACE OFFICERS IN AMADOR COUNTY MAKE ARRESTS, THAT IS, ARE BOOKED INTO THE AMADOR COUNTY JAIL?

A I'VE GOT 50 STAFF, INCLUDING MYSELF. THE POLICE DEPARTMENT IN IONE HAS SEVEN, INCLUDING THE CHIEF. THE POLICE DEPARTMENT IN JACKSON HAS 11, INCLUDING THE CHIEF. AND I BELIEVE THE

1 POLICE DEPARTMENT IN SUTTER CREEK HAS EIGHT, INCLUDING THE
2 CHIEF. AND HIGHWAY PATROL IS ALSO THERE.

3 Q ALL RIGHT. SO YOU'VE GOT ROUGHLY 70 PEOPLE, PLUS THE
4 HIGHWAY PATROL, MAKING ARRESTS THAT ARE BOOKED INTO AMADOR
5 COUNTY JAILS?

6 A ASSUMING WE ARE FULLY STAFFED, THAT IS CORRECT. ACTUALLY,
7 SOME OF THOSE ARE NOT -- SOME OF THOSE OFFICERS THAT WE HAVE ARE
8 ASSIGNED TO COURT RESPONSIBILITY, OR ASSIGNED TO ADMINISTRATION,
9 OR ASSIGNED TO A NARCOTICS TASK FORCE.

10 Q WHAT I WANT TO GIVE THIS COURT IS SOME SENSE OF HOW MANY
11 PEOPLE ARE MAKING THE ARRESTS IN AMADOR COUNTY.

12 A PATROL STAFF -- EXCUSE ME. PATROL STAFF IS ALLOCATED AT 32
13 LESS COURT SECURITY STAFF. I WOULD SAY 30, 30 DEPUTIES ON THE
14 ROAD CERTAIN SHIFTS.

15 Q SO 50 PEOPLE MAKING THE ARRESTS, PLUS THE HIGHWAY PATROL?

16 A THAT'S MY BEST ESTIMATE, YES, SIR.

17 Q IN THE COURSE OF THE YEAR, THOSE 50 PEOPLE ARRESTED 74
18 PAROLEES?

19 A YES, SIR.

20 Q DID THE 74 PAROLEES INCLUDE ARRESTS BY PAROLE AGENTS?

21 A I DIDN'T SEE ANY ON THE PRINTOUT. I TAKE THAT BACK. I
22 BELIEVE THERE WAS ONE.

23 Q WELL, YOU TOLD THE COURT ON DIRECT THAT THERE WERE 43
24 ARRESTS OF PAROLEES DURING THE COURSE OF THE YEAR, AND I TAKE IT
25 THAT'S 43, WHICH THE ROUGHLY 50 OFFICERS --

1 **A** THOSE ARE 43 OF THE 74 ON FRESH CHARGES IN ADDITION TO
2 THE --

3 **Q** IS THE NUMBER 43 OR 23?

4 **A** THE NUMBER IS 43.

5 **Q** IN 2007 THE NUMBER IS 43?

6 **A** YES.

7 **Q** I'D LIKE TO SHOW YOU A COPY OF YOUR DECLARATION.

8 **MS. BARLOW:** WE ISSUED AN ERRATA TO THE DECLARATION
9 THAT COUNSEL WAS NOTIFIED ABOUT.

10 **MR. SANGSTER:** I'M SORRY.

11 **JUDGE HENDERSON:** SHE SAID SHE ISSUED AN ERRATA WHICH
12 WAS SERVED TO YOU THAT WOULD CORRECT, I ASSUME, WHATEVER YOU
13 WERE ABOUT TO DO.

14 **MR. SANGSTER:** OKAY.

15 **BY MR. SANGSTER**

16 **Q** DO YOU REMEMBER SEEING AN ERRATA -- SIGNING SOMETHING, SIR,
17 THAT CORRECTED YOUR DECLARATION FROM 23 TO 43?

18 **A** I DON'T RECALL IF I SIGNED IT OR NOT. THERE'S A DISCUSSION
19 ABOUT IT WITH COUNSEL, BUT I DON'T RECALL IF IT SIGNED IT.

20 **Q** AT ANY RATE, THE TOTAL NUMBER OF ARRESTS OF PAROLE --

21 **JUDGE KARLTON:** YOU MIGHT AS WELL DO WHATEVER YOU
22 WERE GOING TO DO, AND THEN COUNSEL WILL DEMONSTRATE THE ERRATA
23 SHEET.

24 **MR. SANGSTER:** AT 20 ARRESTS, YOUR HONOR. I THINK
25 I'M GOING TO MOVE ON. IT'S A DIFFERENCE BETWEEN 23 AND 43 --

1 **JUDGE REINHARDT:** IT'S NOT EARTHSHAKING, RIGHT?

2 **MR. SANGSTER:** PARDON ME?

3 **JUDGE REINHARDT:** IT'S NOT GOING TO BE DECISIVE IN
4 THIS CASE.

5 **MR. SANGSTER:** THAT'S -- I JUST WANTED TO GET THE
6 CORRECT NUMBER.

7 **JUDGE REINHARDT:** GO AHEAD. THAT'S FINE.

8 **BY MR. SANGSTER**

9 **Q** AT ANY RATE, HOW MANY TOTAL ARRESTS ARE BOOKED INTO AMADOR
10 COUNTY JAIL?

11 **A** WE HAD -- I DID THE FELONY COUNT THE OTHER DAY. I HAVE 876
12 FELONIES IN 2007.

13 **Q** HOW MANY TOTAL ARRESTS?

14 **A** I DON'T HAVE THAT NUMBER OFF THE TOP OF MY HEAD.

15 **Q** ARE YOU ABLE TO TELL US WHETHER IT'S -- THE TOTAL NUMBER IS
16 DOUBLE THE NUMBER OF FELONY ARREST?

17 **A** I CANNOT.

18 **Q** AT ANY RATE, THE NUMBER OF PAROLEE ARRESTS WAS A VERY SMALL
19 PERCENTAGE OF THE BOOKING OF THE TOTAL ARRESTS; YOU WOULD AGREE
20 WITH THAT?

21 **A** THE 74 ARRESTS REPRESENT, I BELIEVE, EIGHT AND A HALF
22 PERCENT OF THE TOTAL FELONY ARRESTS, YES.

23 **Q** ALL RIGHT. JUST THE FELONY ARRESTS?

24 **A** CORRECT.

25 **Q** NOW, IN YOUR DECLARATION YOU TALKED ABOUT THE IMPACT ON THE

1 LOCAL PROSECUTORS.

2 **A** RIGHT.

3 **Q** THERE'S SEVEN CRIMINAL PROSECUTORS?

4 **A** I JUST TALKED TO THE DA, AND HE'S DOWN TO SIX WITH THE
5 BUDGET CUTS.

6 **Q** AND SO THEY ARE DOING -- AT LEAST AT THE TIME YOU SIGNED
7 YOUR DECLARATION TWO MONTHS AGO, THEY WERE DOING CLOSE TO 400
8 CASES APIECE?

9 **A** THAT'S CORRECT.

10 **Q** AND SO IF EVERY NEW CRIME COMMITTED BY A PAROLEE WAS
11 PROSECUTED, THOSE PROSECUTIONS WOULD AMOUNT TO ABOUT ONE PERCENT
12 OF THE PROSECUTORS' CASELOAD?

13 **MS. BARLOW:** ASSUMES FACTS NOT IN EVIDENCE, THAT THEY
14 ARE ALL GOING TO BE ARRESTED EACH TIME THEY COMMIT A CRIME.

15 **JUDGE KARLTON:** IT'S NOT AN OBJECTION.

16 **MS. BARLOW:** IT ASSUMES FACTS NOT IN EVIDENCE.

17 **JUDGE HENDERSON:** OVERRULED. YOU MAY ANSWER THE
18 QUESTION.

19 **THE WITNESS:** WOULD YOU REPEAT THE QUESTION, SIR?

20 **BY MR. SANGSTER**

21 **Q** THERE'S ABOUT 3,000 PROSECUTIONS ONGOING AT ANY ONE TIME,
22 RIGHT?

23 **A** THAT'S CORRECT.

24 **Q** AND EVEN IF YOU -- EVEN IF EVERY SINGLE PAROLEE WAS
25 PROSECUTED ALL AT THE SAME TIME, THE PROSECUTIONS OF PAROLEES

1 WOULD BE TAKING UP LESS THAN ONE PERCENT OF THE PROSECUTORS'
2 CASELOAD, RIGHT?

3 **A** ASSUMING THEY ONLY COMMIT ONE.

4 **Q** ASSUMING WHAT?

5 **A** ASSUMING THEY ONLY COMMIT ONE CRIME AND ARRESTED ONCE, YES.

6 **Q** YOU ALSO TALKED ABOUT THE IMPACT ON PROBATION IN YOUR
7 DECLARATION. THERE ARE 14 PROBATION OFFICERS?

8 **A** THEY HAVE BEEN CUT TO 11.

9 **Q** OKAY. YOU HAVE -- HOW MANY PEOPLE ARE ON PROBATION IN
10 AMADOR COUNTY RIGHT NOW?

11 **A** I DO NOT HAVE THAT NUMBER.

12 **Q** DO YOU REMEMBER TELLING THE COURT IN YOUR DECLARATION THAT,
13 AT LEAST WHEN THERE WERE 14 OF THEM, THERE WERE 300 CASES PER
14 PROBATION OFFICER?

15 **A** THAT NUMBER, IT WAS THE NUMBER I GAVE YOU AT THE TIME, YES.

16 **Q** ALL RIGHT. SO NOW IT'S GONE UP BECAUSE YOU HAVE FEWER
17 PROBATION OFFICERS?

18 **A** RIGHT. THEY ARE DISTRIBUTING THE 900 ADDITIONAL THROUGH 11
19 PEOPLE.

20 **Q** THE NUMBER OF PEOPLE ON PROBATION IN YOUR COUNTY DWARFS THE
21 NUMBER OF PEOPLE ON PAROLE, DOESN'T IT?

22 **A** THAT'S A FAIR STATEMENT, YES.

23 **MR. SANGSTER:** THAT'S ALL THE QUESTIONS I HAVE FOR
24 THIS WITNESS, YOUR HONOR.

25 **JUDGE HENDERSON:** ANYTHING FROM CCPOA?

1 **MS. LEONARD:** NO, YOUR HONOR.

2 **JUDGE HENDERSON:** REDIRECT?

3 **REDIRECT BY MS. BARLOW**

4 **BY MS. BARLOW**

5 **Q** JUST SO I CAN CLEAR THIS UP FOR THE RECORD, SHERIFF, WE HAD
6 DISCUSSION ABOUT THAT 23 NUMBER, AND IT WAS AN ERROR ON MY PART,
7 AND I ISSUED AN ERRATA. I DIDN'T ASK YOU TO SIGN ANYTHING,
8 RIGHT?

9 **A** NO, I DON'T HAVE A RECOLLECTION THAT YOU DID.

10 **Q** BUT THE CORRECT NUMBER IS 43?

11 **A** THE CORRECT NUMBER IS 43. THE NUMBER 23 WAS DRAWN FROM THE
12 WRONG DATABASE.

13 **Q** OKAY.

14 **A** IT GAVE FAULTY INFORMATION.

15 **MS. BARLOW:** GREAT. THANK YOU VERY MUCH. I HAVE
16 NOTHING FURTHER.

17 **JUDGE HENDERSON:** THANK YOU FOR APPEARING AND
18 TESTIFYING, SIR. YOU'RE EXCUSED. OKAY.

19 I ASSUME THAT'S IT.

20 **MR. SPECTER:** ISN'T THAT ENOUGH?

21 **JUDGE KARLTON:** NO.

22 **MR. SANGSTER:** MR. MACINTOSH I THOUGHT WAS ON
23 SCHEDULE FOR TODAY, AND THEN THERE IS AN EVIDENTIARY ISSUE
24 THAT --

25 **JUDGE KARLTON:** MR. MACINTOSH IS NOT ON ANY LIST,

1 SIR.

2 **JUDGE REINHARDT:** NOT ON OUR LIST.

3 WE'LL, WE'RE HERE. IS MR. MACINTOSH HERE?

4 **MR. SANGSTER:** SOMETHING HAS CHANGED, YOUR HONOR, AND
5 I WASN'T AWARE OF IT.

6 I GUESS THAT'S IT. I HAD ONE MORE WITNESS ON THE
7 LIST, BUT THERE IS AN EVIDENTIARY ISSUE THAT MS. BARLOW AND I
8 WOULD LIKE TO BRING TO THE COURT'S ATTENTION.

9 **JUDGE HENDERSON:** OKAY.

10 **MS. BARLOW:** I'LL LET YOU --

11 **MR. SANGSTER:** WE HAVE A WITNESS COMING TOMORROW
12 SCHEDULED FROM ORANGE COUNTY. THERE'S A FAIRLY NARROW
13 EVIDENTIARY ISSUE THAT'S GOING TO DETERMINE WHETHER THE WITNESS
14 COMES OR NOT, AND YOUR HONORS EARLIER SAID TO BRING TO YOUR
15 ATTENTION WHETHER --

16 **JUDGE KARLTON:** JUST TELL US WHAT THE PROBLEM IS.

17 **MR. SANGSTER:** OKAY. THE WITNESS IS COMING TO TRY
18 AND AUTHENTICATE THE TRANSCRIPT OF A SPEECH GIVEN BY THE ORANGE
19 COUNTY SHERIFF TO THE BOARD OF SUPERVISORS. THE WITNESS DIDN'T
20 GIVE THE SPEECH. IT'S OUR POSITION THAT THERE'S NO FOUNDATION
21 FOR THIS AS AN OFFICIAL RECORD, AND SO WE'VE ENDED UP IN AN
22 IMPEDIMENT, AND THE SOLE ISSUE -- WE HAD OFFERED TO STIPULATE TO
23 THIS WITNESS'S TESTIMONY WITHOUT OBJECTION -- WELL, NO, THERE
24 WAS -- THAT WAS THE OBJECTION, AND SO WE'RE FACED WITH THIS
25 WITNESS COMING FOR THIS --

1 **JUDGE KARLTON:** WHY WOULD IT BE RELEVANT THAT THE
2 SHERIFF MADE A SPEECH TO THE BOARD OF SUPERVISORS?

3 **MS. BARLOW:** IT'S THE RECORD, YOUR HONOR, AND THE
4 RECORD CONTAINS DATA -- THE OFFICIAL RECORD FROM THE SHERIFF'S
5 DEPARTMENT CONTAINS DATA ABOUT CRIMES THAT OCCURRED DURING EARLY
6 RELEASE IN ORANGE COUNTY. THAT'S WHAT THEY DON'T WANT YOU TO
7 SEE.

8 **JUDGE KARLTON:** AND YOU ARE NOT CALLING THE SHERIFF
9 OR SOMEBODY TO DEMONSTRATE THESE DOCUMENTS; YOU JUST WANT TO
10 INTRODUCE A SPEECH?

11 **MS. BARLOW:** NO, IT'S NOT A SPEECH, ACTUALLY, YOUR
12 HONOR. IT'S A POWERPOINT PRESENTATION THAT WAS PREPARED TO GO
13 ALONG WITH THE SPEECH, AND IT'S -- FORMS THE BASIS OF ANOTHER
14 WITNESS'S OPINIONS FROM ORANGE COUNTY, BECAUSE OF IMPACTS OF
15 EARLY RELEASE THAT HAD OCCURRED PREVIOUSLY. IT'S A PUBLIC
16 RECORD AND --

17 **JUDGE KARLTON:** NOT EVERYTHING THAT'S SAID TO THE
18 BOARD OF SUPERVISORS QUALIFIES IT -- QUALIFIES AS A PUBLIC
19 RECORD IN THE SENSE THAT, YES, THAT OCCURRED.

20 **MS. BARLOW:** YES.

21 **JUDGE KARLTON:** THE QUESTION IS WHETHER IT'S TRUE OR
22 NOT.

23 **MS. BARLOW:** WELL, YOUR HONOR, THE WITNESS WOULD
24 TESTIFY, IF CALLED, THAT THE DATA IN -- THE EARLY RELEASE DATA
25 WAS FROM INFORMATION DERIVED FROM THE SHERIFF'S DEPARTMENT'S

1 RECORDS. IT WAS COMPILED BY SHERIFF'S DEPARTMENT STAFF.

2 JUDGE HENDERSON: WHO IS THIS PERSON?

3 MS. BARLOW: MR. DOSTAL IS THE EXECUTIVE DIRECTOR OF
4 THE SHERIFF'S DEPARTMENT. HE HANDLES THE FINANCIAL MATTERS FOR
5 THE SHERIFF'S DEPARTMENT.

6 JUDGE REINHARDT: I ASSUME IT'S THE FORMER SHERIFF'S
7 SPEECH.

8 MS. BARLOW: WELL, IT'S STILL THE SHERIFF'S
9 DEPARTMENT, YOUR HONOR. IT HAPPENS TO HAVE A DIFFERENT SHERIFF
10 NOW.

11 JUDGE REINHARDT: IT DOESN'T MATTER WHOSE SPEECH IT
12 IS. IT'S THE FORMER SHERIFF.

13 MS. BARLOW: YES, IT WAS THE FORMER SHERIFF'S, YOUR
14 HONOR. IT WAS PRIOR TO THE EXPANSION OF THE MUSIC FACILITY, AND
15 IT'S PART OF WHAT LED TO THE EXPANSION --

16 JUDGE REINHARDT: PRIOR TO RESIGNATION OF THE SHERIFF
17 OR HIS REMOVAL.

18 MS. BARLOW: YES, YOUR HONOR.

19 JUDGE KARLTON: COULD WE TALK FOR JUST A MOMENT? I
20 THINK I'M JUST VERY TIRED, AND I'VE STOPPED THINKING.

21 (DISCUSSION HELD OFF THE RECORD.)

22 JUDGE REINHARDT: WHAT IS IT YOU WANT TO INTRODUCE?
23 IS IT JUST THE SPEECH OR YOU WANT TO INTRODUCE A POWERPOINT?

24 MS. BARLOW: IT'S A WRITTEN DOCUMENT, YOUR HONOR,
25 THAT WAS PREPARED BY THE SHERIFF'S DEPARTMENT IN THE ORDINARY

1 COURSE OF SHERIFF'S DEPARTMENT OFFICIALS TO PRESENT TO THE BOARD
2 OF SUPERVISORS INFORMATION ABOUT EARLY RELEASE CRIME STATISTICS
3 THAT LED TO A REQUEST TO EXPAND THE COUNTY'S JAILS FACILITIES.
4 IT FORMS THE BASIS FOR ANOTHER WITNESS'S, MR. JAMES, TESTIMONY,
5 AS TO WHY HE BELIEVES THERE WILL BE NEGATIVE IMPACTS IF THERE IS
6 A PRISON RELEASE ORDER.

7 **JUDGE REINHARDT:** BECAUSE HE HEARD THIS OR READ THIS
8 REPORT OR --

9 **MS. BARLOW:** YES, YOUR HONOR.

10 **MR. SCHUMANN:** HE COULDN'T HAVE READ IT BECAUSE IT'S
11 A POWERPOINT.

12 **MS. BARLOW:** IT'S A PRINTOUT OF THE POWERPOINT, YOUR
13 HONOR.

14 **JUDGE KARLTON:** OKAY. AND HE'S READ THE PRINTOUT?

15 **MS. BARLOW:** AND HE'S ALSO REVIEWED THE UNDERLYING
16 DATA.

17 **JUDGE KARLTON:** WHY DON'T YOU JUST CALL HIM?

18 **MS. BARLOW:** WE STIPULATED TO HIM BECAUSE I EXPECTED
19 WE WOULD HAVE TO AUTHENTICATE THE DOCUMENT THROUGH MR. DOSTAL.
20 IT'S HIS DECLARATION THAT IT'S ATTACHED TO.

21 **JUDGE KARLTON:** WHO IS COMING IN TO TALK ABOUT
22 WHATEVER IT IS YOU ARE GOING TO TALK ABOUT, NOT MR. DOSTAL, BUT
23 THE NEXT GUY?

24 **MS. BARLOW:** MR. JAMES HAS BEEN SUBMITTED ON HIS
25 DECLARATION.

1 **JUDGE KARLTON:** OKAY. SO HE'S NOT COMING IN; YOU
2 JUST WANT HIM, WHATEVER HIS TESTIMONY IS.

3 **MS. BARLOW:** HE RELIED ON THE DOCUMENT.

4 **JUDGE KARLTON:** NO, NO. I'M WITH YOU.

5 **MS. BARLOW:** YES.

6 **JUDGE KARLTON:** I'M JUST ASKING, IS HE COMING IN?

7 **MS. BARLOW:** NO.

8 **JUDGE KARLTON:** WON'T YOU STIPULATE THAT HE
9 REVIEWED -- YOU WON'T, I GATHER. HOW CAN YOU -- DOES HE SAY IN
10 HIS DECLARATION THAT'S ADMITTED INTO EVIDENCE THAT HE REVIEWED
11 THE DOCUMENT AND IT REFLECTS WHAT THE UNDERLYING DATA SAYS?

12 **MS. BARLOW:** MR. DOSTAL'S DECLARATION REFERS TO IT,
13 AND I OFFERED, IN LIGHT OF THE FOUNDATIONAL OBJECTION THAT
14 COUNSEL HAD, AS TO WHETHER OR NOT IT WAS A PUBLIC RECORD.

15 **JUDGE KARLTON:** FORGETTING --

16 **MS. BARLOW:** AN OFFICIAL RECORD. WE OFFERED TO
17 PROPOSE AN ADDITIONAL --

18 **JUDGE KARLTON:** I'M JUST ASKING A DIFFERENT QUESTION.

19 **MS. BARLOW:** OKAY.

20 **JUDGE KARLTON:** APPARENTLY, MR. JAMES, HIS
21 DECLARATION SAYS HE'S LOOKED AT THIS DOCUMENT AND HE'S LOOKED AT
22 THE DATA THAT WAS THE BASIS OF THIS DOCUMENT; IS THAT RIGHT?

23 **MS. BARLOW:** NO, YOUR HONOR. HE REFERS TO THE
24 PROBLEMS FROM EARLY RELEASE PREVIOUSLY AS PART OF THE BASIS FOR
25 HIS OPINION.

1 **JUDGE KARLTON:** I THOUGHT YOU JUST TOLD ME --

2 **MS. BARLOW:** YES, HE REFERS TO THE DOCUMENT IN HIS
3 DECLARATION. IT'S NOT ATTACHED TO HIS DECLARATION. IT WAS TO
4 BE AUTHENTICATED BY THE OTHER WITNESS.

5 **JUDGE KARLTON:** HE LOOKED AT THE DOCUMENT?

6 **MS. BARLOW:** YES.

7 **JUDGE KARLTON:** HE LOOKED AT THE UNDERLYING DATA?

8 **MS. BARLOW:** YES.

9 **JUDGE KARLTON:** AND HE'S PREPARED TO SAY THE
10 UNDERLYING DATA WHICH WAS DRAWN FROM THE SHERIFF'S DEPARTMENT IS
11 ACCURATELY REFLECTED IN THE DOCUMENT?

12 **MS. BARLOW:** MR. DOSTAL IS PROPOSED SAY THAT.

13 **JUDGE KARLTON:** MR. JAMES NEVER LOOKED AT THE
14 UNDERLYING --

15 **MS. BARLOW:** HE DIDN'T LOOK AT THE UNDERLYING DATA;
16 MR. DOSTAL DID.

17 **JUDGE KARLTON:** I'M TOO TIRED TO UNDERSTAND. I'LL DO
18 WHATEVER YOU SAY.

19 **MS. BARLOW:** ONE SUGGESTION THAT COUNSEL HAD WAS THAT
20 WE -- I CAN SUBMIT A SUPPLEMENTAL DECLARATION FROM MR. DOSTAL
21 EXPLAINING THE MANNER IN WHICH THE DATA WAS COMPILED AND
22 PREPARED, AND WE CAN RESOLVE IT THAT WAY. I WANTED TO DO THAT
23 BY STIPULATION, BUT COUNSEL THOUGHT WE SHOULD BRING THIS ISSUE
24 TO THE COURT.

25 **JUDGE KARLTON:** IF SHE PREPARES A DECLARATION FROM

1 MR. DOSTAL, OR WHOEVER, AND SAYS, I LOOKED AT THE DOCUMENT, I
2 LOOKED AT THE UNDERLYING DATA, THE DOCUMENT REPRESENTS A CORRECT
3 COMPILATION OF THE UNDERLYING DATA, WOULD YOU STILL OBJECT?

4 MR. SANGSTER: PROBABLY NOT, YOUR HONOR.

5 JUDGE KARLTON: WHY DON'T YOU JUST DO THAT?

6 MS. BARLOW: I WOULD BE HAPPY TO, YOUR HONOR.

7 JUDGE KARLTON: ALL RIGHT.

8 MS. BARLOW: THANK YOU.

9 JUDGE KARLTON: I DON'T KNOW WHAT I JUST DID BUT. . .

10 JUDGE HENDERSON: SO, WE HAVE HOW MANY WITNESSES
11 TOMORROW?

12 MS. BARLOW: YOUR HONOR, I BELIEVE THERE ARE -- I
13 HAVE ONE WITNESS, AND I BELIEVE THERE IS ONE -- I HAVE ONE
14 WITNESS TOMORROW, AND I BELIEVE IF -- SINCE WE'VE RESOLVED
15 MR. DOSTAL, AND I BELIEVE THERE IS A REBUTTAL WITNESS. IS THAT
16 IT.

17 MR. SANGSTER: THREE WITNESSES.

18 MS. BARLOW: THREE WITNESSES.

19 MS. JOHNSON: YOUR HONORS, THERE MAY BE --

20 JUDGE HENDERSON: THREE ALL TOGETHER OR THREE PLUS
21 HER ONE?

22 MR. SANGSTER: MY UNDERSTANDING IS THREE TOTAL.

23 JUDGE REINHARDT: THE STATE HAS HOW MANY?

24 MS. JOHNSON: PLAINTIFFS ARE SEEKING TO ADMIT AN
25 EXHIBIT 842 THAT WAS PREPARED BY SOMEONE IN THEIR OFFICE, WHICH

1 WE OBJECT TO ON NUMEROUS GROUNDS, INCLUDING HEARSAY. IF THEY
2 CONTINUE TO CONTINUE TO ATTEMPT TO ADMIT THAT DOCUMENT, WE ASK
3 THEY PRESENT THE PERSON WHO PREPARED THE DOCUMENT, WHICH IS A
4 COMPLEX DATA COMPILATION, SEVERAL PAGES TO TESTIFY.

5 **JUDGE HENDERSON:** I JUST HAD NODDING FROM MR. BIEN
6 INDICATING THEY ARE PREPARED TO DO THAT.

7 **MR. BIEN:** YES.

8 **JUDGE KARLTON:** IS THAT ONE OF THE THREE WITNESSES?

9 **MR. SANGSTER:** NO, I'M SORRY, YOUR HONOR. THAT'S A
10 FOURTH.

11 **JUDGE KARLTON:** THAT'S A FOURTH. BUT IF WE CAN DO
12 THE SAME THING, WE ARE DOING WITH MR. DOSTAL.

13 **MS. JOHNSON:** YOUR HONORS, WE WANT TO QUESTION THIS
14 WITNESS LIVE. IT IS THEIR OWN AGENT; IT'S NOT A THIRD PARTY.

15 **MR. BIEN:** THAT'S FINE.

16 **JUDGE KARLTON:** THIS GUY IS AN AGENT OF THE SHERIFF'S
17 DEPARTMENT, APPARENTLY.

18 **MS. JOHNSON:** THIS IS PLAINTIFF'S COUNSEL'S AGENT,
19 YOUR HONOR. IT WAS SOMEONE IN THEIR OFFICE. IT WAS A DOCUMENT
20 PREPARED BY PLAINTIFFS' COUNSEL.

21 **JUDGE REINHARDT:** ALL RIGHT. SO WE HAVE THAT WITNESS
22 AND SENATOR RUNNER, I ASSUME? AND WHO IS THE THIRD WITNESS?

23 **MS. BARLOW:** DON MEYER, YOLO COUNTY CHIEF PROBATION
24 OFFICER.

25 **JUDGE REINHARDT:** THAT'S IT?

1 **MR. MELLO:** AREN'T PLAINTIFFS CALLING SHERIFF
2 HENNESSY?

3 **JUDGE KARLTON:** WHAT?

4 **MR. BIEN:** AND SHERIFF HENNESSY.

5 **JUDGE REINHARDT:** FROM SAN FRANCISCO?

6 **MR. BIEN:** HE'S THE REBUTTAL WITNESS FOR PLAINTIFF.

7 **JUDGE KARLTON:** THAT'S FOUR WITNESSES NOW.

8 **JUDGE REINHARDT:** THAT'S NOT BAD. IT WILL BE
9 INTERESTING.

10 **JUDGE HENDERSON:** OKAY. COURT IS ADJOURNED.

11 (PROCEEDINGS ADJOURNED.)

I N D E X

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CERTIFICATE OF REPORTERS

WE, JOAN MARIE COLUMBINI AND DEBRA L. PAS, OFFICIAL REPORTERS FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN CIV S-90-0520 LKK JPM, RALPH COLEMAN, ET AL V. ARNOLD SCHWARZENEGGER AND C 01-1351 TEH, MARCIANO PLATA V. ARNOLD SCHWARZENEGGER, WERE REPORTED BY US, CERTIFIED SHORTHAND REPORTERS, AND WERE THEREAFTER TRANSCRIBED UNDER OUR DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY US AT THE TIME OF FILING.

THE VALIDITY OF THE REPORTER'S CERTIFICATION OF SAID TRANSCRIPT MAY BE VOID UPON DISASSEMBLY AND/OR REMOVAL FROM THE COURT FILE.

/S/ JOAN MARIE COLUMBINI

JOAN MARIE COLUMBINI, CSR 5435, RPR

S/ DEBRA L. PAS

DEBRA L. PAS, CSR 11916, CRR, RMR, RPR

THURSDAY, DECEMBER 18, 2008

**JOAN MARIE COLUMBINI, CSR, RPR
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OFFICIAL COURT REPORTERS
415-255-6842**

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
AND FOR THE NORTHERN DISTRICT OF CALIFORNIA
UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES PURSUANT
TO SECTION 2284, TITLE 28 UNITED STATES CODE

RALPH COLEMAN, ET AL.,)
)
PLAINTIFFS,)
)
VS.) NO. CIV S-90-0520
)
ARNOLD SCHWARZENEGGER, ET AL.)
) THREE-JUDGE COURT
DEFENDANTS.)
)

MARCIANO PLATA, ET AL.,)
)
PLAINTIFFS,)
)
VS.) NO. C 01-1351 TEH
)
ARNOLD SCHWARZENEGGER, ET AL.)
)
DEFENDANTS.)
)

TRANSCRIPT OF PROCEEDINGS

SAN FRANCISCO, CALIFORNIA
FRIDAY, DECEMBER 19, 2008

**REPORTED BY: JOAN MARIE COLUMBINI, CSR 5435
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**BY: PAUL MELLO, ESQUIRE
S. ANNE JOHNSON, ESQUIRE**

**FOR DISTRICT ATTORNEY
INTERVENORS**

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BY: WILLIAM E. MITCHELL, ESQUIRE

**FOR LEGISLATOR
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BY: TERESA WANG, ESQUIRE

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BY: THERESA FUENTES, ESQUIRE

**FOR SONOMA COUNTY
INTERVENORS**

COUNTY OF SONOMA
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BY: ANNE L. KECK, ESQUIRE

(APPEARANCES CONTINUED ON NEXT PAGE)

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BY: CHAD STEGEMAN, ESQ.

- - - -

P R O C E E D I N G S

DECEMBER 19, 2008

9:20 A.M.

JUDGE HENDERSON: OKAY. IF YOU ARE READY TO BEGIN,
YOU MAY CALL YOUR NEXT WITNESS, COUNSEL.

MR. STEGEMAN: GOOD MORNING, YOUR HONORS. MY NAME IS
CHAD STEGEMAN FROM AKIN, GUMP, STRAUSS, HAUER AND FELD ON BEHALF
OF THE LEGISLATOR INTERVENORS, AND WE CALL TO THE STAND SENATOR
GEORGE RUNNER.

SENATOR GEORGE RUNNER,
CALLED AS A WITNESS FOR THE DEFENDANT HEREIN, HAVING BEEN FIRST
DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

THE WITNESS: I DO.

THE CLERK: PLEASE HAVE A SEAT. STATE AND SPELL YOUR
FULL NAME.

THE WITNESS: GEORGE RUNNER. G-E-O-R-G-E.
R-U-N-N-E-R.

DIRECT EXAMINATION

BY MR. STEGEMAN:

Q. GOOD MORNING, SENATOR.

A. GOOD MORNING.

Q. CAN YOU PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND
TRAINING?

A. I WENT TO A LOCAL HIGH SCHOOL IN MY DISTRICT. GRADUATED THE
UNIVERSITY OF REDLANDS, BACHELOR OF SCIENCE IN BUSINESS

1 ADMINISTRATION, AND DID SOME GRADUATE WORK WITH AZUA PACIFIC
2 UNIVERSITY SPECIALIZING IN NON-PROFIT ORGANIZATIONS.

3 **Q.** AND CAN YOU GIVE US A BRIEF EMPLOYMENT HISTORY SINCE YOU
4 GRADUATED COLLEGE?

5 **A.** I WAS INVOLVED IN LOCAL CHURCH WORK. THEN FOUNDED A PRIVATE
6 SCHOOL, DID THAT FOR A NUMBER OF YEARS AND ENDED UP
7 CEO/EXECUTIVE DIRECTOR OF THAT PROGRAM, AND DID THAT UP TIL MY
8 FULL-TIME EMPLOYMENT WITH THE LEGISLATURE, BEING ELECTED TO THE
9 LEGISLATURE.

10 **Q.** CAN YOU GIVE US A HISTORY OF YOUR PARTICIPATION IN
11 CALIFORNIA POLITICS?

12 **A.** SURE. I WAS FIRST ELECTED TO THE LANCASTER CITY COUNCIL IN
13 1992 AND SERVED THERE AS A COUNCIL MEMBER.

14 THEN IN THAT CITY YOU ROTATED AND BECAME VICE MAYOR
15 AND THEN MAYOR.

16 RAN FOR THE STATE LEGISLATURE IN 1996. WAS ELECTED
17 TO THE ASSEMBLY IN 1996. SERVED THERE FOR MY SIX-YEAR TERM. I
18 WAS OUT FOR TWO AND THEN WAS ELECTED TO THE CALIFORNIA STATE
19 SENATE.

20 **Q.** DURING YOUR TENURE AS A CALIFORNIA ASSEMBLY MEMBER, WERE YOU
21 A MEMBER OF ANY COMMITTEES?

22 **A.** VARIOUS COMMITTEES A MEMBER OF. MOST SIGNIFICANTLY IN
23 REGARDS TO SOME OF THE ISSUES HERE I WOULD GUESS WOULD BE THE
24 ISSUES OF INVOLVEMENT AS MEMBER OF APPROPRIATIONS, BUT ALSO VICE
25 CHAIR OF BUDGET DURING FOUR OF THOSE YEARS.

1 SO INVOLVED WITH NEGOTIATIONS, ISSUES WITHIN THE
2 BUDGET PROCESS DURING THOSE FOUR YEARS.

3 Q. AND IN THE NEGOTIATIONS AND YOUR EXPERIENCE WITH THE BUDGET
4 ON THAT COMMITTEE, DID YOU EVER HAVE TO ADDRESS PRISON OR
5 CORRECTIONS ISSUES OR EXPENDITURES?

6 A. CERTAINLY. YOU KNOW, IT IS A SIGNIFICANT PART, BOTH IN
7 REGARDS TO EXPENDITURES AND POLICY DISCUSSIONS. SO, CERTAINLY,
8 THAT WAS A PART OF THE DISCUSSIONS THAT WOULD TAKE PLACE DURING
9 THAT TIME.

10 Q. AND IN YOUR EXPERIENCE AS A SENATOR, DO YOU PARTICIPATE OR
11 SIT ON ANY COMMITTEES?

12 A. YES. I AM ALSO SITTING ON APPROPRIATIONS IN THERE. I AM
13 ALSO ON BANKING AND FINANCE, IN ENVIRONMENTAL QUALITY. THEN
14 ALSO, IN FACT, IN THIS LAST TWO WEEKS SERVING ON A BUDGET
15 SUBCOMMITTEE TO WHICH CORRECTIONS IS A PART OF.

16 Q. DO YOU HOLD ANY POSITIONS WITH THE REPUBLICAN PARTY?

17 A. WITHIN THE SENATE, I AM THE CAUCUS CHAIR. I HAVE SERVED IN
18 THAT ROLE FOR THE LAST FOUR YEARS, WAS RECENTLY REELECTED TO
19 THAT ROLE FOR THE REPUBLICAN SENATE.

20 Q. WHEN DID YOU FIRST BECOME INTERESTED IN THE CALIFORNIA
21 CORRECTIONAL SYSTEM?

22 A. WELL, MY FIRST EXPOSURE, I GUESS, AND INVOLVEMENT WAS WHEN I
23 WAS ON THE CITY COUNCIL, THE PRISON IN THE ANTELOPE VALLEY,
24 WHICH IS THE ONLY PRISON IN L.A. COUNTY, WAS BUILT AND WAS
25 OPENED. AND SO WE HAD INVOLVEMENT ON A LOCAL LEVEL BECAUSE THE

1 -- THAT PRISON SITS IN THE CITY OF LANCASTER. SO CERTAINLY WAS
2 FAMILIAR WITH WORKING WITH THE OPERATIONAL ASPECTS OF THE PRISON
3 AND, AGAIN, THE THINGS THAT TAKE PLACE IN PRISONS AND INVOLVED
4 WITH THE LEGISLATURE AT THAT TIME IN THE OPENING OF THAT PRISON.
5 THAT WOULD BE IN THE -- PROBABLY 1994, IN THAT TIME.

6 SO THAT WAS MY FIRST EXPOSURE, I GUESS, TO
7 INVOLVEMENT WITHIN THE PRISON SYSTEM AND PARTICULARLY, I GUESS,
8 AS A LOCAL ELECTED OFFICIAL.

9 Q. DO YOU KNOW WHAT A PRISONER RELEASE ORDER IS IN THE CONTEXT
10 OF THIS LITIGATION?

11 A. I'M FAMILIAR WITH THE FACT THAT THERE'S A DISCUSSION THAT IS
12 TAKING PLACE.

13 Q. CAN YOU DESCRIBE SOME ALTERNATIVES TO A PRISONER RELEASE
14 ORDER?

15 A. YES. I THINK THERE ARE MANY OPTIONS THAT COULD BE LOOKED
16 AT. CERTAINLY, I'M CONCERNED ABOUT THE FACT.

17 AND THE REASON WHY I THINK ALTERNATIVES NEED TO TAKE
18 PLACE IS I DO BELIEVE THAT THERE IS A PUBLIC RISK THAT WOULD
19 TAKE -- COULD TAKE -- WILL TAKE PLACE WHEN IT IS THAT WE WOULD
20 HAVE THE EARLY RELEASE, PREMATURE RELEASE OF INDIVIDUALS PRIOR
21 TO FULFILLING THEIR WHOLE TERM.

22 THE ALTERNATIVES THAT I BELIEVE WOULD BE OUT THERE
23 WOULD BE CERTAINLY LOOKING AT THE INVOLVEMENT, BOTH THE COST AND
24 THE RESPONSIBILITY THE STATE OF CALIFORNIA TAKES ON FOR THOSE
25 WHO ARE IN OUR PRISON SYSTEMS THAT I BELIEVE ARE OF FEDERAL

1 RESPONSIBILITY.

2 SO I BELIEVE ONE OF THE ISSUES THAT CERTAINLY COULD
3 HELP US RELIEVE OUR SITUATION IS BOTH -- WHETHER IT BE REVENUE
4 FROM THE FEDERAL GOVERNMENT TO HELP OFFSET SOME OF THE COSTS SO
5 THAT WE COULD DO THE KINDS OF THINGS WE NEED TO DO IN THE
6 PRISONS IN ORDER TO MAKE THEM A MORE SUCCESSFUL PLACE FOR
7 REHABILITATION OR TAKING RESPONSIBILITY. ACTUALLY, TAKING
8 CONTROL OF A NUMBER OF PRISONERS; THAT I BELIEVE INMATES THAT
9 ARE CLEARLY RESPONSIBILITY FOR THE FEDERAL GOVERNMENT. THAT
10 CERTAINLY WOULD BE ONE OF THE ALTERNATIVES.

11 I BELIEVE THERE IS OTHER ALTERNATIVES THAT ARE
12 CERTAINLY OUT THERE, SUCH AS A MORE ROBUST PROGRAM DEALING MORE
13 SUCCESSFULLY WITH OUR PAROLEES.

14 I THINK CALIFORNIA HAS A VERY DIFFICULT AND BROKEN
15 PAROLE SYSTEM. THE NUMBERS THAT AT LEAST I'M AWARE OF SHOW THAT
16 CALIFORNIA IS THE ONLY STATE THAT ACTUALLY SENDS MORE
17 INDIVIDUALS TO PRISON FROM PAROLE THAN WE DO FROM COURT. AND AS
18 A RESULT OF THAT, A LOT OF OUR PRISON ISSUES IN REGARDS TO BEDS,
19 LACK OF BEDS AT TIMES OR BEDS IN BAD PLACES IS A RESULT OF A
20 BROKEN PAROLE SYSTEM.

21 I BELIEVE THAT ONE OF THE WAYS THAT WE CAN HELP TAKE
22 CARE OF THAT IS TO CHANGE THE PAROLE. I HAVE INTRODUCED
23 LEGISLATION THAT WOULD CREATE KIND OF A MIDDLE GROUND FOR
24 REVOCATION SO THAT RATHER THAN GOING BACK TO PRISON, YOU WOULD
25 FIND YOURSELF UNDER HOUSE ARREST WITH GPS MONITORING.

1 THOSE KIND OF ISSUES, THEN, WOULD HELP YOU THEN
2 SUCCEED, BE MORE SUCCESSFUL. IF YOU WERE THEN IN KIND OF A DRUG
3 REHAB PROGRAM OR LIVING WITH FAMILY OR WERE ACTUALLY WORKING,
4 RATHER THAN GOING BACK TO PRISON FOR A FEW MORE MONTHS, LOSING
5 ALL THAT CONTACT. I BELIEVE THAT'S A MORE SUCCESSFUL PROGRAM.

6 THE OTHER ISSUE IS I THINK WE HAVE TO HAVE A MORE
7 ROBUST, BETTER REHABILITATION SYSTEM. THE FACT IS THAT I DON'T
8 THINK WE PREPARE INDIVIDUALS WELL ENOUGH WHEN THEY GO BACK INTO
9 SOCIETY.

10 WE ALSO OFFER THIS -- IN FACT, DISCUSSED THIS WEEK AN
11 ADDITIONAL PROGRAM, WHICH IS A MORE AGGRESSIVE MENTORING SYSTEM
12 PROGRAM. I THINK THAT WE NEED TO HELP INMATES LEARN HOW TO LIVE
13 SUCCESSFULLY OUTSIDE, AND I THINK THAT THERE ARE A LOT OF WAYS
14 WE CAN DO THAT. CERTAINLY, A MENTORING PROGRAM IS AN IMPORTANT
15 PART OF THAT.

16 SO I THINK THERE'S LOTS OF ALTERNATIVES THAT WE HAVE
17 TO GO TO THAT CAN BE FAR MORE SUCCESSFUL AND LESS OF A THREAT TO
18 SOCIETY.

19 **Q.** NOW, YOU MENTIONED THERE WERE PRISONERS THAT WERE THE
20 RESPONSIBILITY OF THE FEDERAL SYSTEM. CAN YOU DESCRIBE WHAT YOU
21 MEAN BY THAT?

22 **A.** WELL, RIGHT NOW, OBVIOUSLY, CALIFORNIA IS UNIQUE IN TERMS OF
23 ITS, I GUESS, LOCATION. AS A RESULT OF THAT, WE DO HAVE A LARGE
24 PORTION OF THOSE WHO ARE HERE IN THE UNITED STATES ILLEGALLY,
25 WHO HAVE FOUND THEMSELF THEN COMMITTING CRIMES AND, THEREFORE,

1 IN PRISON. AND WE IN CALIFORNIA CERTAINLY HAVE A LARGE NUMBER
2 OF THOSE.

3 I THINK ONE NUMBER FROM THE FEDERAL GOVERNMENT THAT
4 I'M AWARE OF WAS AROUND 30,000 INMATES. ANOTHER -- I THINK I
5 HEARD SENATOR FEINSTEIN TALK ABOUT THE FACT THAT THERE ARE ABOUT
6 22,000 WHO ARE ON ICE HOLDS IN CALIFORNIA STATE PRISONS.

7 SO I THINK THAT THAT'S A DISPROPORTIONAL NUMBER THAT
8 WE HAVE COMPARED TO OTHER STATES. AND, AGAIN, THAT FALLS
9 DIRECTLY ON THE SHOULDERS AND RESPONSIBILITIES.

10 THAT IS SOME REIMBURSEMENT FOR THE FEDERAL
11 GOVERNMENT, BUT IT IS INCREDIBLY MEAGER AND DOES NOT GO NEARLY
12 TO THE COST OF WHAT IT IS THAT WE HAVE.

13 Q. YOU MENTIONED THAT PAROLE IS BROKEN?

14 A. UH-HUH.

15 Q. CAN YOU DESCRIBE ANY STEPS THE LEGISLATURE HAS TAKEN IN
16 RECENT -- IN THE LAST COUPLE WEEKS, FOR INSTANCE, TO ADDRESS
17 PAROLE ISSUES OR PAROLE REFORM?

18 A. WELL, I GUESS I WILL DIVIDE THAT INTO TWO DIFFERENT PARTS.
19 ONE IS, LIKE I SAID, THIS WEEK WE HAVE INTRODUCED IN THE PAST,
20 LAST YEAR AND THIS WEEK IT WAS DEBATED IN REGARDS TO LEGISLATION
21 THAT WOULD CREATE SOME KIND OF A PLACE TO WHERE REVOCATIONS
22 WOULDN'T -- THOSE WHO WERE REVOCATED WOULDN'T NECESSARILY GO
23 BACK TO PRISONS; THAT THERE COULD BE A HOUSE ARREST PROGRAM,
24 MONITORING LIMITED ACCESS SO THAT RELATIONSHIPS COULD STILL
25 CONTINUE.

1 WE, IN OUR ESTIMATE -- OR, ACTUALLY, IN THE
2 LEGISLATIVE ANALYST'S ESTIMATE WAS THAT THAT WOULD AFFECT ABOUT
3 15,000 CURRENT PAROLEES WOULD BE SUCCESSFUL IN THAT PROGRAM AND
4 OPENING UP -- IN FACT, THE NUMBER THAT THE AO HAD IDENTIFIED WAS
5 IT WOULD PROBABLY OPEN UP ABOUT 35,000 TO 40,000 BEDS IN CURRENT
6 PRISONS IF THAT WOULD ACTUALLY BE IMPLEMENTED. SO THAT'S
7 CERTAINLY AN ISSUE THAT'S BEING TALKED ABOUT. I THINK IT HAS
8 SOME GOOD AND BROAD SUPPORT AT THAT POINT.

9 I THINK THE PROBLEM THAT WE HAVE RIGHT NOW IN THE
10 STATE OF CALIFORNIA IS ONE OF THE ISSUES WE ARE TRYING TO DO IS
11 SOLVE OUR BUDGET CRISIS WITH CORRECTIONS SAVINGS, AND I THINK
12 THAT THAT IS, INDEED, A MISTAKE.

13 I DON'T DOUBT THAT WE COULD HAVE MORE SUCCESSFUL,
14 MORE EFFICIENT AND EFFECTIVE CORRECTION PROGRAMMING AND EVEN
15 SAVE SOME MONEY, BUT I THINK IT CANNOT BE AT THE LOSS OF
16 PROGRAMS FOR REHABILITATION AND OTHER KIND OF SYSTEMS THAT WILL
17 PROTECT THE PUBLIC.

18 ONE IN PARTICULAR THAT WAS PASSED THIS WEEK -- I WENT
19 TO THE -- IT PASSED YESTERDAY AND HAS BEEN SENT DOWN TO THE
20 GOVERNOR IS THE TRUNCATING OF PAROLE TIME -- THE LEGISLATURE
21 PASSED, I DID NOT SUPPORT IT, I THINK IT HAS OTHER PROBLEMS
22 ATTACHED TO IT -- WHICH AUTOMATICALLY SHORTENED -- WHICH WILL
23 AUTOMATICALLY SHORTEN PAROLE TO SIX MONTHS, AND IT WILL BE
24 APPLIED TO ALL SERIOUS AND NON-VIOLENT OFFENDERS, WHICH IS ABOUT
25 75,000 OUT OF THE 120,000 PAROLEES THAT WE HAVE. AND WHAT THE

1 IDEA IS THAT IF THEY HAVE SUCCESSFULLY GONE THROUGH PAROLE,
2 SUCCESS BEING MEASURED THAT THEY ARE NOT IN REVOCATION, THEY
3 WOULD THEN BE IMMEDIATELY RELEASED FROM PAROLE. WE ESTIMATE --
4 WE ARE WORKING WITH CORRECTIONS. WE ESTIMATE THAT THAT WOULD
5 PROBABLY BE AN IMMEDIATE RELEASE OF ABOUT 50,000 PAROLEES WHO
6 WOULD THEN LEAVE SUPERVISION.

7 NOW, AND THE WAY THE OTHER PART OF THAT ISSUE WOULD
8 BE APPLIED, AND THAT IS ALL INMATES COMING OUT OF PRISON RIGHT
9 NOW WOULD BE UNDER THAT SAME REQUIREMENT OR RULE AND SO,
10 THEREFORE, IF THEY SUCCESSFULLY SERVE SIX MONTHS WITHOUT ANY
11 KIND OF A -- WITHOUT BEING UNDER REVOCATION, THEN THEY WOULD BE
12 IMMEDIATE RELEASED.

13 AGAIN, I THINK THAT IS A BACKWARDS SYSTEM. I THINK
14 IT'S A WAY TO SAVE MAYBE SOME MONEY SHORT TERM, MAYBE FOR THE
15 STATE. I THINK IT SHIFTS COSTS BACK TO THE COUNTIES WHO WOULD
16 THEN END UP HAVING TO FIND THESE INDIVIDUALS AND PUT THEM
17 THROUGH A LOCAL JUSTICE SYSTEM.

18 BUT I THINK THE WORSE THING THAT IT DOES IS IT
19 DOESN'T HELP THE PAROLEE SUCCEED. YOU ARE TAKING INDIVIDUALS
20 AND RATHER THAN INVESTING TIME, MENTORING THOSE KIND OF PROGRAMS
21 AND HELPING THEM SUCCEED IN THEIR ADJUSTMENT BACK TO SOCIETY,
22 YOU ARE TRUNCATING IT. AND AS A RESULT OF THAT, I THINK THAT'S
23 OF GREAT CONCERN IN REGARDS TO BOTH THEN THE PUBLIC SAFETY, HOW
24 SUCCESSFUL THESE INDIVIDUALS CAN BE WHEN THEY COME BACK INTO
25 SOCIETY, BUT, ALSO, WHAT THAT DOES TO THOSE INDIVIDUALS,

1 POTENTIAL VICTIMS OUT THERE AS A RESULT OF THEM NOT BEING
2 PREPARED.

3 Q. NOW, SENATOR, ARE YOU FAMILIAR WITH ASSEMBLY BILL 900?

4 A. YES.

5 Q. WOULD YOU SAY THAT IS AN ALTERNATIVE TO A PRISONER RELEASE
6 ORDER?

7 A. ABSOLUTELY. YES. ASSEMBLY BILL 900 WAS DONE ALMOST TWO
8 YEARS AGO NOW AS A RESULT OF THE GOVERNOR'S IDENTIFICATION THAT
9 WE, INDEED, HAD SOME CROWDING ISSUES AND NEEDED TO GET SOME
10 THINGS STRAIGHTENED OUT IN REGARDS TO BEDS WITHIN THE PRISONS.

11 THE LEGISLATURE IN A BIPARTISAN PASSION PASSED THAT.
12 IT WAS A SERIES OF REPLACING WHAT WE WOULD CALL BAD BEDS, BEDS
13 THAT WERE IN PLACES LIKE HALLWAYS, CLASSROOMS, THAT HAVE TWO
14 PROBLEMS.

15 NUMBER ONE, THE PROBLEM IS THAT IT DOES NOT PROVIDE
16 -- IT TAKES THE SPACE AWAY THAT SHOULD BE THERE FOR
17 REHABILITATION AND, IN ADDITION TO THAT, IT PUTS INMATES IN
18 UNSAFE PLACES AND, THEREFORE, PUTS AT RISK THE EMPLOYEES WHO ARE
19 WORKING IN THOSE CONDITIONS.

20 SO AB 900 WAS TO GO AHEAD AND TAKE CARE OF SOME OF
21 THOSE BEDS AND DO THE IN-FILL, IF YOU WILL, FOR THOSE BEDS.

22 THE OTHER ISSUE THAT IT IS, IT CREATES ANOTHER KIND
23 OF A SYSTEM OF REENTRY, WHICH THE CONCEPT IS TO MOVE INMATES
24 CLOSER TO WHERE IT IS THAT THEY ARE GOING TO BE RELEASED WITH
25 MORE INTENSIVE PROGRAMMING IN THE LAST PARTS OF THEIR

1 INCARCERATION. THEORY BEING THAT IF THEY ARE THEN GOING THROUGH
2 THAT, THAT THEY WILL BE MORE SUCCESSFUL THEN IN THEIR RELEASE.
3 SO THAT ALSO CREATED A NUMBER OF BEDS IN THAT PROCESS.

4 SO THAT'S WHAT AB 900 DID. IT ALSO, I THINK, CREATED
5 -- IT ALSO ADDED SOME ADDITIONAL DOLLARS FOR SOME -- I BELIEVE
6 DEALING WITH SOME BEDS AND SOME PROGRAMMING, PROBABLY JUST BEDS,
7 AND FACILITIES FOR SOME ISSUES WITHIN HEALTHCARE ISSUES, MENTAL
8 HEALTH AND, I THINK, SOME DENTAL SOME OF THOSE ISSUES WERE ALSO
9 PART OF THAT. THAT WAS THE PACKAGE THAT WAS IN 900.

10 Q. HAS AB 900 BEEN IMPLEMENTED?

11 A. NO. PARTS OF IT HAVE BEEN. THERE'S BEEN SOME GENERAL FUND
12 DOLLARS THAT HAVE BEEN MADE AVAILABLE IN SOME SMALL PORTION, MY
13 UNDERSTANDING IS; BUT OVERALL, NO.

14 THERE HAVE BEEN SOME DISCUSSIONS IN REGARDS TO THE
15 ABILITY, BECAUSE OF THE CHANGES THAT HAVE TAKEN PLACE IN REGARDS
16 TO SOME OF THE LANGUAGE IN AB 900, THERE IS AN OPINION THAT HAS
17 BEEN, AT LEAST, THOUGHT. AND I GUESS I HAVE GOT TO BE HONEST
18 WITH YOU, I HAVE NEVER SEEN A WRITTEN OPINION THAT SAID THIS.
19 AND IT'S UNCLEAR EXACTLY WHERE, FOR INSTANCE, THE ATTORNEY
20 GENERAL IS ON THE ISSUE. TO ME, IT'S UNCLEAR. THAT HAS MADE IT
21 SO THAT THE ABILITY TO SELL THOSE BONDS HAVE BEEN IMPEDED.

22 NOW OVER THE LAST FEW MONTHS MY UNDERSTANDING IS THAT
23 THE BOND PORTION RELATING TO THE REENTRY FACILITIES HAS BEEN
24 CLARIFIED AND THAT THERE SEEMS TO BE THE ABILITY TO GO OUT AND
25 SELL BONDS IN ORDER TO GET THOSE FACILITIES BUILT AND MOVE

1 FORWARD WITH THOSE.

2 THE ONES THAT IT SOUNDS TO ME THAT ARE NOW AT LEAST
3 BEING -- NEEDING THE CLEAN-UP LANGUAGE, IS RELATED TO THE IDEA
4 OF THE IN-FILL BEDS. MY UNDERSTANDING IS THAT'S BECAUSE WITHIN
5 THE LEGISLATION ITSELF, IT DESIGNATED A LEVEL OF BED THAT WAS
6 NECESSARY. AND I THINK IT IDENTIFIED A LOWER LEVEL BED, WHEN IN
7 REALITY THE NEED IS A HIGHER LEVEL BED. AS A RESULT OF THAT,
8 THERE WAS CONCERN THAT THE LANGUAGE WOULD NOT -- CREATED A
9 PROBLEM WHEN YOU ACTUALLY WERE GOING TO SELL THOSE BONDS AND
10 WHAT YOU WERE ACTUALLY GOING TO CONSTRUCT.

11 NOW, AS OF YESTERDAY THE LEGISLATURE -- THERE WAS
12 NUMEROUS ATTEMPTS THROUGH THE YEAR TO DO THE CLEAN UP LANGUAGE
13 THAT WAS NECESSARY IN ORDER TO MOVE THE WHOLE BOND FORWARD OR
14 MOVE THE SELLING OF THAT BOND FORWARD. ALL THOSE,
15 UNFORTUNATELY, BECAUSE THE ATTEMPTS TO TRY TO REFERENCE OTHER
16 THINGS FAILED, BUT THIS -- DURING THIS LAST WEEK AND AS OF
17 YESTERDAY, THE LEGISLATURE DID PASS THE CLEAN-UP TO AB 900, AND
18 THAT, APPARENTLY, AS FAR AS WHAT THEY ARE TELLING US, WHAT THE
19 ADMINISTRATION IS TELLING US NOW, IS -- OPENS THE DOOR FOR THOSE
20 BONDS TO BE SOLD.

21 Q. GREAT. WOULD YOU CONSIDER AN INCREASE IN THE NUMBER OF
22 OUT-OF-STATE TRANSFERS OF INMATES TO BE ANOTHER ALTERNATIVE TO
23 PRISONER RELEASE ORDER?

24 A. I THINK, AGAIN, LOOKING AT OTHER ALTERNATIVES, SUCH AS OTHER
25 LOCATIONS, I THINK ARE REASONABLE ISSUES FOR US TO LOOK AT. I

1 THINK THAT ANY RELIEF THAT WE CAN CREATE, AND THAT CERTAINLY, I
2 THINK, IS A REASONABLE ALTERNATIVE THAT NEEDS TO BE EXPLORED.

3 I'M NOT FAMILIAR RIGHT NOW WITH WHAT THE NUMBER IS.
4 I HAVE JUST NOT HEARD IT LATELY IN REGARDS TO HOW MANY ARE
5 ACTUALLY OUT OF STATE RIGHT NOW, BUT I THINK THAT IS A
6 REASONABLE ISSUE FOR US TO LOOK AT. IT IS A WAY FOR US TO ALSO
7 LOOK AT HOW IT IS THAT WE CAN MAINTAIN PRISON POPULATION WITHOUT
8 HAVING TO LOOK AT THE ALTERNATIVE OF EARLY RELEASE.

9 Q. ALL RIGHT. THANK YOU, SENATOR. I HAVE NO FURTHER QUESTIONS
10 AT THIS TIME.

11 THE COURT: STATE DEFENDANTS, ANYTHING?

12 MR. MELLO: NO, YOUR HONOR.

13 THE COURT: CROSS-EXAMINATION?

14 MR. HEATHER: THANK YOU, YOUR HONOR.

15 CROSS EXAMINATION

16 BY MR. HEATHER:

17 Q. SENATOR RUNNER, IF I --

18 JUDGE REINHARDT: DO YOU WANT TO GIVE YOUR NAME FOR
19 THE RECORD?

20 MR. HEATHER: FRED HEATHER FROM K&L GATES.

21 BY MR. HEATHER:

22 Q. SENATOR, IS IT CORRECT WHEN AB 900 WAS PASSED, IN ORDER FOR
23 IT TO BE FULLY IMPLEMENTED THERE WOULD NEED TO BE WHAT I BELIEVE
24 YOU TERMINATE AN AB 900 FIX ALSO PASSED BY THE LEGISLATURE THAT
25 WOULD ALLOW THE SALE OF SOME \$7 BILLION IN BONDS, IS THAT

1 CORRECT?

2 **A.** NO. WHEN IT WAS PASSED, IT WOULD -- WHEN IT WAS FIRST
3 PASSED, THAT WAS NOT IDENTIFIED AS A NEED. IT WAS ONLY
4 SUBSEQUENT TO THE FACT THAT THERE APPEARED TO BE SOME CHANGES IN
5 REGARDS TO THE KINDS OF BEDS THAT WERE BEING LOOKED AT THAT
6 REQUIRED THEN THE FIXED AB 900.

7 SO FOR MONTHS, MAYBE EVEN A YEAR AFTER THE PASSAGE OF
8 900, THE ASSUMPTION WAS THAT EVERYTHING WAS OKAY TO MOVE
9 FORWARD.

10 **Q.** AND AB 900 WAS LEGISLATION THAT WAS PROPOSED IN RESPONSE TO
11 A CONCERN BY YOU AND PERHAPS OTHER LEGISLATURES THAT ABSENT SUCH
12 LEGISLATION, THIS COURT MAY ACT TO DETAIL WITH THE PRISON
13 OVERCROWDING PROBLEM IN CALIFORNIA, IS THAT CORRECT?

14 **A.** YOU KNOW, I THINK MY RECOLLECTION IS THAT IT WAS A CONCERN
15 THAT WE HAD THAT, A, WE HAD A SAFETY ISSUE; THAT WE HAD INMATES
16 THAT WERE IN PLACES THAT THEY SHOULDN'T BE IN REGARDS TO, YOU
17 KNOW, THE HALLWAYS, THE GYMNASIUMS, THOSE KIND OF PLACES. AND
18 AS A RESULT OF THAT, THERE WAS NOT EFFECTIVE -- IT IMPEDED THE
19 ABILITY TO DO THE KINDS OF PROGRAMMING THAT WAS NECESSARY.

20 THERE WAS ALWAYS A CONCERN BACK THERE, YES, THAT WE
21 HAD SEEN TOO MANY EXAMPLES OF STATE -- OF COUNTY JAIL SYSTEMS
22 WHERE THE FEDERAL COURT HAD STEPPED IN AND PUT CAPS AND LIMITED
23 THEN THE POPULATIONS.

24 AND SO, YES, ONE OF THE ISSUES THAT WE WERE CONCERNED
25 ABOUT, WHY IS IT WE NEEDED TO MOVE FORWARD, WAS IN ORDER TO BE A

1 PREVENTIVE STEP IN THAT PROCESS.

2 **Q.** OKAY. SO BY IMPLEMENTING AND FIXING ULTIMATELY AB 900 SO
3 THAT THE FUNDING WOULD BE AVAILABLE TO DO WHAT AB 900
4 CONTEMPLATES, YOU BELIEVE THAT THAT WOULD BE AN ALTERNATIVE TO
5 THIS COURT TAKING ACTION, IS THAT CORRECT?

6 **A.** YES.

7 **Q.** AND THE FIX FOR AB 900, I BELIEVE, WAS CONTAINED IN SB 1750,
8 IS THAT CORRECT?

9 **A.** WELL, AT ONE TIME IT WAS. THAT WAS A BILL GIVEN AT ONE
10 TIME. I THINK THAT'S A BILL THAT I BELIEVE I AUTHORED. WE HAD
11 LANGUAGE IN THERE. THAT WAS A BILL THAT I HAD AUTHORED.

12 SINCE THEN THE ATTEMPTS TO FIX 900 HAVE COME THROUGH
13 OTHER VARIOUS LEGISLATIVE TOOL PIECES SINCE -- LIKE I SAID, UP
14 TO YESTERDAY. AND I DO NOT KNOW THE BILL NUMBER FOR YESTERDAY'S
15 FIX THAT WAS ACTUALLY THEN PASSED BY THE LEGISLATURE AND SENT TO
16 THE GOVERNOR.

17 **Q.** BECAUSE IN YOUR TRIAL DECLARATION, SENATOR RUNNER, YOU
18 REFERRED TO SB 1705 AND THAT THAT WOULD PROVIDE THE FIX TO AB
19 900?

20 **A.** UH-HUH.

21 **Q.** AND IN PARAGRAPH 16 OF YOUR DECLARATION YOU STATED:

22 "AS AN ALTERNATIVE TO A PRISONER RELEASE
23 ORDER, THIS COURT SHOULD MAKE WHATEVER ORDER IS
24 LAWFUL AND NECESSARY IN ORDER FOR AB 900 TO BE
25 FULLY IMPLEMENTED PRIOR TO ISSUING ANY PRISONER

1 RELEASE ORDER."

2 AND THAT WAS SIGNED ON OCTOBER 30TH.

3 **A.** RIGHT.

4 **Q.** THAT WAS YOUR POSITION AT THAT TIME?

5 **A.** RIGHT.

6 **Q.** NOW, ARE YOU SAYING THAT BETWEEN OCTOBER 30TH AND TODAY
7 THERE HAS BEEN A DIFFERENT PIECE OF LEGISLATION --

8 **A.** YES.

9 **Q.** (CONTINUING) -- THAT HAS BEEN INTRODUCED?

10 **A.** YES.

11 **Q.** YOU DON'T RECALL THE BILL NUMBER?

12 **A.** YES.

13 **Q.** AND THAT BILL HAS BEEN PASSED BY THE FULL LEGISLATURE?

14 **A.** YES.

15 **Q.** AND THAT PROVIDES FOR HOW MANY DOLLARS WORTH OF BONDS TO BE
16 ISSUED?

17 **A.** WELL, IT'S -- MY UNDERSTANDING IS THAT IT'S THE FULL FIX FOR
18 AB 900.

19 NOW, I HAVE GOT TO ALSO -- THERE IS -- AN ASSUMPTION
20 HAS DEVELOPED SINCE THEN ALSO THAT NOT ALL \$8 BILLION OF THE 900
21 BOND WAS ACTUALLY IN QUESTION ANY MORE; THAT THE PORTION OF THE
22 DOLLARS THAT COULD BE USED FOR REENTRY FACILITIES WAS, INDEED,
23 NOT IMPEDED BY THE NEEDED LANGUAGE TO FIX.

24 SO SUBSEQUENT -- SINCE THE DISCUSSIONS OF OCTOBER,
25 THERE HAS BEEN, I THINK, THROUGH MY UNDERSTANDING WITH THE

1 ATTORNEY GENERAL'S OFFICE AND ALSO WITH THE GOVERNOR'S OFFICE,
2 THROUGH NEGOTIATIONS THAT HAVE BEEN GOING ON WITH THE SHERIFFS,
3 THAT THEY NOW BELIEVE THAT THE PORTION OF 900 DIDN'T NEED TO BE
4 FIXED THAT DEALT WITH THE ISSUE OF REENTRY FACILITIES.

5 NOW, THE PORTION THAT STILL DIDN'T NEED TO BE FIXED
6 WAS THE PORTION OF CORRECTING WHAT WE WOULD CALL THE BAD BEDS,
7 THE IN-FILL. THAT PORTION STILL NEEDED TO BE FIXED. AND THAT'S
8 THE -- AND SO THE FIX THAT WAS DONE YESTERDAY FIXED THAT, THAT
9 PARTICULAR PORTION.

10 I CAN'T TELL -- I DO NOT RECALL HOW MANY DOLLARS WENT
11 TO THE REENTRY FACILITIES AND HOW MANY DOLLARS THEN WENT TO THE
12 EXISTING BEDS IN THE PRISONS.

13 Q. DO YOU KNOW WHAT THE TOTAL DOLLAR AMOUNT OF THAT FIX WAS?

14 A. WELL, AGAIN, THE TOTAL AMOUNT WOULD BE IN THE ORIGINAL 900.
15 WE DIDN'T CHANGE ANY AMOUNTS IN THE FIX. THE TOTAL AMOUNT IN
16 900 WAS, I THINK, 7.5 OR \$8 BILLION, SOMEWHERE IN THAT
17 NEIGHBORHOOD.

18 Q. DOES THE LEGISLATION THAT WAS PASSED YESTERDAY COMPEL ANYONE
19 TO ISSUE THOSE BONDS -- MAKE THE EFFORT TO SELL THOSE BONDS
20 FORTHWITH, OR ARE THERE OTHER STEPS THAT HAVE TO BE TAKEN BEFORE
21 AN ATTEMPT IS MADE TO SELL THOSE BONDS?

22 A. THE FIX THAT WAS DONE YESTERDAY ENABLES THE NORMAL PROCESS
23 FOR THE SALE OF BONDS TO MOVE FORWARD.

24 JUDGE KARLTON: ASSUMING THAT THE GOVERNOR SIGNS IT.

25 THE WITNESS: ASSUMING THAT THE GOVERNOR SIGNS IT.

1 **JUDGE KARLTON:** DO WE KNOW IF THERE IS ANY INDICATION
2 THAT THE GOVERNOR WILL SIGN IT?

3 **THE WITNESS:** THE INDICATION RIGHT NOW IS THAT THE
4 GOVERNOR IS NOT COMPELLED TO SIGN A PORTION OF WHAT WAS DONE
5 YESTERDAY. HE CAME OUT AND SAID THAT HE DID NOT LIKE A SERIES
6 OF ISSUES THAT WERE DONE IN REGARDS TO SOME OF THE BUDGET FIXES,
7 BUT HE DID NOT -- HE DID NOT MAKE A STATEMENT IN REGARDS TO
8 THOSE PARTICULAR ISSUES, IN REGARDS TO THAT PARTICULAR BILL OF
9 900.

10 **JUDGE REINHARDT:** DIDN'T HE SAY HE WAS GOING TO VETO
11 THE BILL?

12 **THE WITNESS:** I THINK THE GOVERNOR SAID -- AGAIN, I
13 DON'T THINK -- I LISTENED TO THE GOVERNOR, HIS STATEMENT. I
14 THINK THE GOVERNOR SAID HE WAS NOT GOING TO SIGN THE BUDGET
15 PORTIONS OF THE BILL.

16 WE PASSED -- I THINK THERE WERE 14 OR 15 BILLS THAT
17 WENT TO THE GOVERNOR. AND I'M UNCLEAR AS TO WHETHER OR NOT HE
18 -- AND AS HE WENT THROUGH HIS DIALOGUE IN REGARDS TO HIS
19 CONCERNS, THEY WERE NOT RELATIVE TO THIS ISSUE.

20 **JUDGE REINHARDT:** BUT IS THIS FIX IN A PORTION OF THE
21 BILL?

22 **THE WITNESS:** NO. THE 900 FIX WAS IN A SEPARATE
23 BILL.

24 **JUDGE KARLTON:** AS WE SIT HERE TODAY, WE DON'T -- OF
25 COURSE, THE GOVERNOR ISN'T COMPELLED TO DO ANYTHING. LET'S

1 START THERE.

2 **THE WITNESS:** RIGHT.

3 **JUDGE KARLTON:** AS WE SIT HERE NOW, WE DON'T KNOW --
4 AFTER SEVERAL YEARS, TWO, THREE YEARS OF THE LEGISLATURE HAVING
5 DIFFICULTY PASSING 900, WE NOW ARE UNCERTAIN THAT THE GOVERNOR
6 IS GOING TO SIGN AT LEAST THE SIGNIFICANT PORTION OF IT.

7 **THE WITNESS:** WELL, I THINK WHAT WE KNOW TODAY IS THE
8 LEGISLATURE HAS ACTED ON THE 900 FIX. THAT'S WHAT WE KNOW
9 TODAY.

10 NOW, I CAN'T TELL YOU WHAT THE GOVERNOR IS GOING TO
11 DO. I CAN'T TELL YOU WHAT THE MIX OF THAT IS IN THE REST OF THE
12 BILLS THAT ARE BEFORE HIM.

13 BUT I CAN TELL YOU THAT THE LEGISLATURE HAS NOW ACTED
14 AS IT HAS NOT DONE IN THE PAST IN A 900 FIX.

15 **JUDGE KARLTON:** AND AT LEAST -- WELL, EVEN IF THE
16 GOVERNOR WERE TO SIGN THAT, WHICH IS -- SIGN THE LEGISLATION,
17 WHICH IS APPARENTLY NOT CLEAR, WE THEN HAVE TO GET A CLEAN BILL,
18 OR WHATEVER IT'S CALLED, FROM THE ATTORNEY GENERAL, WHO HAS SO
19 FAR BEEN RELUCTANT TO SAY ANYTHING ABOUT AB 900.

20 **THE WITNESS:** MY UNDERSTANDING THAT THIS IS, INDEED,
21 THE LANGUAGE THAT HAS BEEN WORKED ON BETWEEN THE ADMINISTRATION
22 AND THE ATTORNEY GENERAL'S OFFICE.

23 **JUDGE KARLTON:** AND HAVE YOU EVER HAD AN EXPERIENCE
24 IN WHICH PEOPLE CHANGED THEIR MIND?

25 **THE WITNESS:** OFTEN.

BY MR. HEATHER:

Q. SENATOR, YOU SAID THAT THE BOND ISSUE WILL NOW GO THROUGH THE NORMAL PROCESS. DOES PUBLIC WORKS HAVE TO PASS ON THE ABILITY TO ISSUE BONDS?

A. WELL, AGAIN, I'M NOT GOING TO PRETEND TO BE UNDERSTANDING ABOUT WHAT HAPPENS IN THE TERMS OF THE PROCESS THAT TAKES PLACE FOR THE BOND TO BE ISSUED, BUT I THINK, CLEARLY, THE HURDLE THAT HAD BEEN IDENTIFIED IN REGARDS TO THE LANGUAGE THAT THE LEGISLATURE WAS NOT PASSING HAS BEEN NOW PASSED.

Q. ARE YOU AWARE THAT PUBLIC WORKS HAS STATED THAT NO NEW BONDS WILL BE ABLE TO BE ISSUED AT THIS TIME?

A. YES. I BELIEVE THAT IS A VERY -- THAT IS A TEMPORARY SITUATION WHICH WILL BE QUICKLY RELIEVED.

Q. SENATOR, LET ME TURN MY ATTENTION TO SOME OTHER ASPECTS OF THIS CASE.

I BELIEVE YOU -- IS IT YOUR VIEW THAT RECIDIVISM IN THE STATE OF CALIFORNIA IS A THREAT TO PUBLIC SAFETY?

A. YES.

Q. AND IT IS YOUR VIEW THAT OVERCROWDING IS THE CHIEF CAUSE OF RECIDIVISM?

MR. STEGEMAN: OBJECTION. THAT'S BEYOND THE SCOPE OF THE DIRECT AND HIS TESTIMONY.

JUDGE HENDERSON: OVERRULED.

JUDGE KARLTON: THAT MEANS THAT YOU HAVE TO ANSWER SIR.

1 **THE WITNESS:** I'M SORRY.

2 **A.** REPEAT THE QUESTION, PLEASE.

3 **BY MR. HEATHER:**

4 **Q.** SENATOR, IT'S YOUR BELIEF, IS IT NOT, THAT RECIDIVISM IS
5 CHIEFLY CAUSED BY OVERCROWDING?

6 **A.** RECIDIVISM IS CHIEFLY CAUSED BY OVERCROWDING. I BELIEVE
7 THAT THE -- THAT OVERCROWDING IS A -- IS A FACTOR IN, IN MAKING
8 CALIFORNIA HAVE A HIGHER RECIDIVISM RATE.

9 **Q.** DO YOU RECALL STATING IN YOUR DECLARATION THAT CALIFORNIA'S
10 EXTRAORDINARILY HIGH RECIDIVISM RATE IS LARGELY THE CAUSE OF
11 CURRENT CROWDING CONDITIONS?

12 **A.** IF THAT'S WHAT I SAID, YEAH. I GUESS WE CAN -- I MEAN,
13 WHETHER I SAID CHIEFLY OR ADDITIVE, IT CERTAINLY IS A PART OF
14 THE PROBLEM.

15 **Q.** AND ADDING MORE BEDS WITHOUT ADDING THE REHABILITATIVE
16 ASPECTS OF AB 900 OR SOME OTHER SOLUTION, NAMELY EDUCATION, THE
17 ABILITY TO MONITOR PEOPLE WHEN THEY ARE ON PAROLE, ASSIST THEM
18 WITH JOBS, ASSIST THEM WITH DRUG TREATMENT, ASSIST THEM IN
19 COUNSELING, SIMPLY ADDING MORE BEDS, THERE IS NO STUDY YOU ARE
20 AWARE OF, IS THERE, THAT SAYS THAT THAT ALONE WOULD REDUCE THE
21 RATE OF RECIDIVISM IN CALIFORNIA?

22 **A.** I DON'T -- YOU ARE RIGHT. I WOULD SAY IF YOU SIMPLY ADDED
23 BEDS, YOU PROBABLY WOULD NOT CHANGE. YOU WOULD JUST BE MOVING
24 -- I ASSUME THE IDEA THERE IS YOU ARE JUST MOVING PEOPLE FROM
25 HALLWAYS TO CELLS.

1 Q. AND IT IS YOUR VIEW, IS IT NOT, THAT ABSENT THE ISSUANCE OF
2 NEW BONDS THROUGH AB 900 OR OTHER SOURCES OF FUNDING TO PROVIDE
3 THE REHABILITATIVE SERVICES THAT THAT LEGISLATION CALLS FOR, IT
4 HAS BEEN YOUR VIEW, HAS IT NOT, THAT THERE ARE ADEQUATE SERVICES
5 AVAILABLE FOR REHABILITATION, BUT THAT YOUR VIEW IS THAT THEY
6 ARE NOT BEING PROPERLY ALLOCATED AND USED AT THIS TIME, IS THAT
7 CORRECT?

8 A. I BELIEVE THAT THERE ARE SERVICES THAT ARE INADEQUATE AND
9 FACILITIES IS A PART OF THAT PROBLEM.

10 MR. HEATHER: I'M SORRY. COULD YOU READ THAT BACK?
11 (WHEREUPON THE RECORD WAS READ
12 AS REQUESTED.)

13 BY MR. HEATHER:

14 Q. ALL RIGHT. BUT I BELIEVE IT HAS ALSO BEEN YOUR VIEW THAT
15 THE EXISTING SERVICES THAT HAVE BEEN AVAILABLE HAVE NOT BEEN
16 ADEQUATELY UTILIZED, IS THAT CORRECT?

17 A. I'M STRUGGLING WITH THE IDEA "QUALITY UTILIZED." I DO
18 BELIEVE, FOR INSTANCE, AND ONE OF THE ISSUES IN AB 900 WAS THE
19 WHOLE CONCEPT OF REENTRY FACILITIES, WHICH THE WHOLE PREMISE OF
20 THAT KIND OF PROGRAM WAS A FACILITIES ROOTED IN THE IDEA OF
21 HELPING INMATES SUCCEED THROUGH AGGRESSIVE PROGRAMMING IN THOSE
22 FACILITIES.

23 SO, YOU KNOW, THOSE WERE MORE THAN JUST BEDS. THOSE
24 WERE ALSO PROGRAM-ORIENTED FACILITIES.

25 Q. SENATOR, IF THE GOVERNOR DOES NOT SIGN THE LEGISLATION THAT

1 WAS JUST PASSED FOR AB 900 OR OTHER IMPEDIMENTS DEVELOP THAT
2 PREVENT THAT LEGISLATION FROM BEING FULLY IMPLEMENTED, THEN THE
3 LEGISLATURE WOULD BE FREE TO GO BACK AND MAKE ANOTHER EFFORT TO
4 DEAL WITH WHAT YOU CONSIDER THE CRISIS IN THE PRISON SYSTEM, IS
5 THAT CORRECT?

6 **A.** YES. YES. THE LEGISLATURE OUGHT TO CONTINUE TO DEAL WITH
7 WHAT IT IS THAT WE BELIEVE SHOULD BE DONE IN ORDER TO HELP THE
8 MORE SUCCESSFUL SYSTEM.

9 **Q.** UNTIL YESTERDAY, AT LEAST WITH RESPECT TO AB 900, THE
10 LEGISLATURE HAS NOT TAKEN ADEQUATE ACTION TO FIX AB 900 OR ALLOW
11 THE SALE OF BONDS?

12 **A.** THE LEGISLATURE FAILED IN ITS ATTEMPTS TO MOVE THAT BILL
13 FORWARD.

14 **Q.** AND I BELIEVE IT'S BEEN YOUR TESTIMONY THAT DURING THAT TIME
15 OF FAILURE, AB 900 WAS NOT A MONEY PROBLEM, IT WAS A POLICY
16 PROBLEM; DO YOU RECALL --

17 **A.** YES, YES. IT WAS NOT A MONEY PROBLEM. IT WAS A POLICY
18 PROBLEM, BUT NOT IN THE SENSE OF THE POLICY OF AB 900.

19 THE FACT IS THAT THERE WAS EFFORTS TO ALWAYS LINK AB
20 900 FIXES TO OTHER ISSUES THAT WERE UNRELATED TO THE 900.

21 **Q.** GIVEN OUR INABILITY TO PREDICT THE FUTURE AND WHETHER THIS
22 LEGISLATION WILL BE FULLY IMPLEMENTED OR NOT, LET ME ASK YOU,
23 YOU DO BELIEVE THAT YOUR HIGHEST DUTY AS A LEGISLATURE IS TO
24 UPHOLD AND DEFEND THE CONSTITUTION OF THE UNITED STATES,
25 CORRECT?

1 **A.** I DO.

2 **Q.** AND YOU DO UNDERSTAND THAT THERE HAVE BEEN ORDERS IN THIS
3 COURT WHICH HAVE FOUND CERTAIN CONDITIONS IN THE PRISONS OF THE
4 STATE OF CALIFORNIA TO BE UNCONSTITUTIONAL, IS THAT CORRECT?

5 **A.** I UNDERSTAND THAT.

6 **Q.** AND, YET, YOU HAVE SAID THAT YOU PERSONALLY DON'T AGREE WITH
7 THOSE DECISIONS?

8 **A.** THAT'S CORRECT.

9 **Q.** AND CAN YOU TELL ME -- AND YOU ARE NOT SURE, GIVEN YOUR
10 DISAGREEMENT WITH THE DECISIONS OF THIS COURT, WHETHER YOU ARE
11 OBLIGATED AS A LEGISLATURE TO IMPLEMENT CHANGES THAT WOULD BE
12 NECESSARY TO FIX THE CONDITIONS WHICH THIS COURT HAS FOUND TO BE
13 UNCONSTITUTIONAL, IS THAT CORRECT?

14 **A.** NO, I DON'T BELIEVE THAT WOULD BE CHARACTERIZING HOW I WOULD
15 FEEL. I BELIEVE WHAT WE -- I FEEL LIKE I MAY DISAGREE WITH THE
16 CONCEPT THAT WE HAVE AN UNCONDITIONAL OR UNCONSTITUTIONAL LEVEL
17 OF CARE.

18 I MAY DISAGREE WITH THAT OPINION AND I DON'T HAVE ANY
19 DIFFICULTY USING WHATEVER FORUMS THAT ARE NECESSARY IN ORDER TO
20 DEBATE AND DISCUSS AND APPEAL THAT PROCESS BECAUSE I -- I
21 DISAGREE WITH IT.

22 AND I CERTAINLY ALSO WOULD SAY THAT, QUITE FRANKLY
23 EVEN IF IT -- EVEN IF THAT WAS THE FINDING THAT WHEN THAT TOOK
24 PLACE NUMBERS OF YEARS AGO, THAT CERTAINLY IT IS IRRELEVANT
25 TODAY GIVING THE FACT THAT THE STATISTICS ARE SO OVERWHELMING OF

1 THE IMPROVEMENT THAT'S TAKEN PLACE WITHIN THE CURRENT SYSTEM.

2 Q. ONE LAST QUESTION, SENATOR. I THINK I CAN DO THIS IN ONE
3 QUESTION.

4 IN LIGHT OF YOUR VIEW THAT -- AND PRIOR TESTIMONY
5 THAT AB 900 WAS PROPOSED BECAUSE OF THE CONCERN THAT THIS COURT
6 MIGHT OTHERWISE ACT, AND BECAUSE AB 900 WAS INTENDED TO ADDRESS
7 THE PROBLEMS IN THE LACK OF REHABILITATION IN THE PRISON SYSTEM
8 THAT CONTRIBUTE TO RECIDIVISM AND A THREAT TO PUBLIC SAFETY, AND
9 GIVEN THAT THERE IS NO CERTAINTY AS WE TALK TODAY ABOUT WHETHER
10 OR NOT THE LEGISLATION THAT WAS PASSED YESTERDAY WILL, IN FACT,
11 LEAD TO THE SALE OF BONDS SUFFICIENT TO PROVIDE THE FACILITIES
12 AND SERVICES THAT AB 900 CONTEMPLATES, IS IT MORE LIKELY THAT --
13 IS IT MORE LIKELY THAT THE COMPULSION ON THE LEGISLATURE TO DO
14 SOMETHING WILL BE GREATER IF THIS COURT DOES ACT THAN IF IT
15 FAILS TO ACT AND THIS CASE GOES AWAY?

16 MR. STEGEMAN: OBJECTION. THAT'S A COMPOUND
17 QUESTION.

18 MR. HEATHER: I WILL WITHDRAW IT. NO FURTHER
19 QUESTIONS.

20 THE WITNESS: THANK YOU.

21 THE COURT: CCPOA HAVE ANYTHING OF THE SENATOR?

22 MS. LEONARD: NO, YOUR HONOR.

23 THE COURT: REDIRECT?

24 MR. STEGEMAN: I HAVE JUST A COUPLE OF ADDITIONAL
25 QUESTIONS.

REDIRECT EXAMINATION

BY MR. STEGEMAN:

Q. SENATOR, YOU MENTIONED THAT PORTIONS OF AB 900 CAN BE IMPLEMENTED AT THIS TIME.

COULD THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION AND THE RECEIVER IMPLEMENT THAT PORTION OF AB 900 THAT CONSTRUCTS REENTRY FACILITIES?

A. I'M UNCLEAR TO THE RELATIONSHIP THAT THE RECEIVER WOULD HAVE IN THAT DECISION, BUT I -- YEAH, I WOULD BELIEVE THAT ISSUES CAN -- THAT CONSTRUCTION AND PLANS CAN MOVE FORWARD NOW.

AND THAT PORTION OF IT THAT -- IN MY UNDERSTANDING THAT IS ABLE TO BE DONE IS CURRENTLY IN PROGRESS. NEGOTIATIONS ARE GOING ON WITH COUNTIES IN REGARDS TO THOSE REENTRY FACILITIES, WHICH IS THAT PORTION OF THE FUNDING.

Q. AND A PRIMARY FOCUS OF THESE REENTRY FACILITIES IS REHABILITATIVE, EDUCATIONAL, JOB PLACEMENTS --

A. THE WHOLE PURPOSE --

Q. (CONTINUING) -- IS THAT CORRECT?

A. THE WHOLE PURPOSE OF THAT KIND OF FACILITY IS TO MOVE THE INMATE CLOSER TO WHERE IT IS THAT THEY ARE GOING TO BE RELEASED IN ORDER TO THEN BEGIN TO CREATE RELATIONSHIPS WITH SERVICES AND TRAINING IN ORDER THEN TO HAVE SUCCESSFUL INTEGRATION TO SOCIETY.

Q. THANK YOU, SENATOR. WE HAVE NO FURTHER QUESTIONS.

JUDGE KARLTON: SENATOR?

1 **THE WITNESS:** YES.

2 **JUDGE KARLTON:** WE HAVE BEEN TOLD SEVERAL TIMES THAT
3 IT'S APPROXIMATELY FIVE YEARS FROM THE DATE THAT YOU AGREE TO
4 START DOING SOMETHING FOR ANYTHING TO BE BUILT. ARE YOU AWARE
5 OF THAT?

6 **THE WITNESS:** I GUESS I'M NOT AWARE OF THAT.

7 **JUDGE KARLTON:** SETTING ASIDE WHAT THE RECEIVER MIGHT
8 DO BECAUSE THE COURT WOULD OVERRULE STATE LAW, BUT IT WOULD
9 REQUIRE PLANNING AND GOING BACK AND GETTING THE PLANNING DONE --
10 WELL, THERE ARE JUST ALL THESE REASONS.

11 **THE WITNESS:** I WOULD DISAGREE WITH THAT,
12 PARTICULARLY TWO AREAS.

13 ONE IS THE -- AGAIN, YOU CAN PROBABLY TALK TO PEOPLE
14 WHO WOULD BE MORE HELPFUL, PARTICULARLY ON THE ISSUE OF THE
15 LOCAL FACILITIES BECAUSE THAT WAS A BIG -- MY UNDERSTANDING IS
16 THAT THE COUNTIES -- THERE ARE A NUMBER OF COUNTIES THAT ARE
17 READY TO MOVE VERY QUICKLY IN REGARDS TO BUILDING OF THEIR
18 FACILITIES.

19 THE OTHER ISSUE WE ARE TALKING ABOUT IS THE IN-FILL
20 COMPLETION.

21 **JUDGE KARLTON:** THAT'S ACTUALLY WHAT I WAS TALKING
22 ABOUT.

23 **THE WITNESS:** NO. THE IN-FILL SHOULD NOT BE THE --
24 SHOULD NOT HAVE THAT KIND OF A TIME DELAY. YOU ARE TALKING
25 ABOUT WITHIN EXISTING FACILITIES. YOU ARE NOT ACQUIRING

1 PROPERTIES. I DON'T BELIEVE IT WOULD TAKE THAT LONG.

2 JUDGE KARLTON: OKAY. LET'S ASSUME -- LET'S SET THAT
3 ASIDE.

4 YOU DON'T BELIEVE IT'S SO, BUT YOU, OBVIOUSLY, HAVE
5 NOT DONE ANY WORK TO FIND OUT HOW LONG IT WILL TAKE, IS THAT
6 FAIR TO SAY?

7 THE WITNESS: NO. I HAVE ACTUALLY HAD CONVERSATIONS
8 WITH CONTRACTORS --

9 JUDGE KARLTON: NOT THE PEOPLE THAT YOU HAVE TO WORRY
10 ABOUT. YOU HAVE TO WORRY ABOUT THE VERY ELABORATE SYSTEM THAT
11 THE STATE OF CALIFORNIA HAS TO BUILD ANYTHING.

12 THE WITNESS: I HAVE CONVERSATIONS WITH CONTRACTORS
13 WHO HAVE WORKED IN THAT SYSTEM, WHO BELIEVE THEY COULD DO A MUCH
14 FASTER PRODUCT DELIVERY IN THE SAME. I HAVE HAD THOSE
15 CONVERSATIONS WITH CORRECTIONS.

16 JUDGE KARLTON: ALL RIGHT. AS TO THE REENTRY
17 FACILITIES, AT LEAST IN THEORY, THE IDEA WAS TO GET THEM AS
18 CLOSE TO THE CITIES THAT THEY WOULD BE RELEASED IN AS YOU COULD.

19 THE WITNESS: UH-HUH.

20 JUDGE KARLTON: ARE YOU AWARE THAT THERE HAS BEEN
21 SIGNIFICANT DIFFICULTIES IN THE CITY, IN THE LARGE STATES --
22 STRIKE THAT.

23 IN THE STATES CONTAINING LARGE CITIES LOCATING AND
24 CITING THE SO-CALLED REENTRY FACILITIES?

25 THE WITNESS: YES. I UNDERSTAND THAT THAT'S ALWAYS A

1 HURDLE. IN FACT, I TOURED A FACILITY IN NEVADA WHICH WAS VERY
2 CLOSE TO DOWNTOWN. I WAS IMPRESSED THAT THE CITY AND COUNTY
3 ACTUALLY DID THAT AND MOVED FORWARD WITH THAT PROGRAM.

4 **JUDGE KARLTON:** THEY MANAGED TO DO IT.

5 AND ARE YOU AWARE THAT EVEN IN RELATIVELY RURAL
6 COUNTIES, THERE IS DIFFICULTY PLACING THE -- SITING THE REENTRY
7 FACILITIES IF THEY WERE TO BE BUILT NEAR THE POPULATION CENTERS
8 OF THE MORE RURAL COUNTIES?

9 **THE WITNESS:** I GUESS, GENERALLY SPEAKING, I'M AWARE
10 THAT IT IS ALWAYS A CHALLENGE TO SITE A FACILITY.

11 **JUDGE KARLTON:** ALL RIGHT. THANK YOU. NO FURTHER
12 QUESTIONS.

13 MY QUESTIONS ARE MY QUESTIONS OF COUNSEL. HANG ON,
14 YOU ARE NOT FIRST.

15 **MR. HEATHER:** SORRY.

16 **MR. STEGEMAN:** NO FURTHER QUESTIONS, YOUR HONOR.
17 THANK YOU.

18 **MR. HEATHER:** I HAVE ONE QUESTION, YOUR HONOR.

19 **RECROSS EXAMINATION**

20 **BY MR. HEATHER:**

21 **Q.** SENATOR, THIS IS INFORMATION I HAVE JUST RECEIVED. I WANT
22 TO SEE IF IT'S CORRECT.

23 IS IT TRUE THAT THE AB 900 FIX IS -- IS, QUOTE,
24 DOUBLE JOINTED TO THE REVENUE PACKAGE OF BILLS ENACTED
25 YESTERDAY, WHICH THE GOVERNOR HAS SAID HE IS GOING TO VETO AND,

1 THEREFORE, HE WILL VETO THIS LEGISLATION.

2 **A.** MY UNDERSTANDING IS THAT IT -- THE WAY THAT THE LANGUAGE
3 WAS, THAT 900 -- IF THOSE REVENUE BILLS DID NOT GO INTO EFFECT
4 -- QUITE FRANKLY, I'M NOT SURE.

5 THERE WAS A -- THERE WAS A GREAT DEAL OF CONFUSION
6 DURING SOME OF THE DEBATE AS TO WHETHER OR NOT THOSE WERE DONE,
7 THOSE WERE JOINED IN THAT WAY.

8 IN FACT, I ASKED THE SPECIFIC QUESTION ON THE FLOOR,
9 WHETHER OR NOT THAT WAS, INDEED, TAKING PLACE. AND THE ANSWER
10 THAT I GOT FROM THE AUTHOR WAS, IT WAS UNCLEAR AS TO WHETHER IT
11 WAS ACTUALLY IN THE BILL OR WHETHER OR NOT THE BONDS WOULDN'T BE
12 SOLD SIMPLY BECAUSE THE REVENUES, BACK TO THE DISCUSSION THAT
13 YOU HAD EARLIER IN REGARDS TO THE ABILITY FOR THE BONDS TO BE
14 SOLELY BECAUSE OF THE PUBLIC WORKS. SO I -- SORRY, I GUESS I'M
15 UNCLEAR.

16 I GUESS THE POINT THAT I WOULD WANT TO MAKE IS THAT,
17 CLEARLY, THE HURDLE IN THE PAST HAS BEEN THE LEGISLATURE'S SIDE
18 IS GETTING THAT BILL OUT. CLEARLY THE LEGISLATURE HAS DONE
19 THAT.

20 **JUDGE KARLTON:** IT'S DONE SOMETHING.

21 **A.** CLEARLY, THE LEGISLATURE HAS DONE THAT.

22 CLEARLY, IF THERE IS AN ISSUE BETWEEN THE GOVERNOR
23 AND THEN THIS -- THE PACKAGE OF BILLS THAT HAVE BEEN SENT TO HIM
24 AND HE VETOES THE BILLS OR VETOES A BILL, AS A RESULT OF THAT
25 THE 900 CAN'T BE DONE, CLEARLY THE LEGISLATURE NO LONGER HAS A

1 PROBLEM WITH THE IMPLEMENTATION OF THE 900 FIX LANGUAGE. AND
2 THAT WILL BE RESOLVED, BECAUSE EVENTUALLY IT WILL BE RESOLVED IN
3 REGARDS TO WHAT ITS PROBLEMS ARE WITH THE OTHER REVENUE ISSUES
4 AND BILLS IN THE STATE BUDGET.

5 Q. ALTHOUGH THERE WILL BE OTHER LEGISLATURES SITTING WHEN THE
6 NEW DEBATE OCCURS?

7 A. NO, NO. THIS IS THE CURRENT LEGISLATURE THAT SITS.

8 Q. OKAY. NO FURTHER QUESTIONS. THANK YOU.

9 MR. STEGEMAN: NO FOLLOW-UP.

10 JUDGE HENDERSON: THANK YOU FOR TESTIFYING.

11 (WITNESS EXCUSED.)

12 MS. BARLOW: GOOD MORNING, YOUR HONORS. THE LAW
13 ENFORCEMENT INTERVENORS CALL CHIEF DON MEYER TO THE STAND.

14 DONALD MEYER,
15 CALLED AS A WITNESS FOR THE DEFENDANT HEREIN, HAVING BEEN FIRST
16 DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

17 THE WITNESS: DON MEYER.

18 MS. BARLOW: COULD YOU SPELL YOUR LAST NAME FOR THE
19 COURT REPORTER.

20 THE WITNESS: M-E-Y-E-R.

21 MS. BARLOW: THANK YOU.

22 DIRECT EXAMINATION

23 BY MS. BARLOW:

24 Q. CHIEF MEYER, COULD YOU TELL THE COURT WHAT YOUR TITLE IS,
25 PLEASE?

1 **A.** CHIEF PROBATION OFFICER OF YOLO COUNTY.

2 **MS. BARLOW:** AND FOR THE COURT'S REFERENCE, THE
3 EXPERIENCE AND BACKGROUND OF THE WITNESS ARE CONTAINED IN
4 PARAGRAPHS 1 THROUGH 14 OF HIS DECLARATION. THE CURRICULUM
5 VITAE IS ALSO AN EXHIBIT, DI-622.

6 ANY OBJECTION, COUNSEL?

7 **MS. SANGSTER:** MS. BARLOW, I CAN'T HEAR WHAT YOU ARE
8 SAYING.

9 **MS. BARLOW:** I'M ASKING IF YOU OBJECT TO THE
10 ADMISSION IF HIS CURRICULUM VITAE.

11 **MR. SANGSTER:** NO.

12 **MS. BARLOW:** THANK YOU.

13 **MS. SANGSTER:** YOUR HONOR, I WOULD APPRECIATE IT IF
14 COUNSEL WOULD SPEAK CLOSER TO THE MICROPHONE.

15 **MS. BARLOW:** I'M SORRY. THAT'S FINE. I WOULD BE
16 HAPPY TO DO THAT. I WAS GETTING SOME FEEDBACK, SO I STEPPED
17 BACK A LITTLE BIT.

18 **BY MS. BARLOW:**

19 **Q.** CHIEF, HOW MANY YEARS HAVE YOU BEEN DOING PROBATION
20 SERVICES?

21 **A.** HOW MANY YEARS? FORTY-TWO.

22 **Q.** ALL RIGHT. BEYOND THAT, LET'S JUST GET RIGHT TO THE MEAT OF
23 THIS.

24 WHAT KIND OF A PROBATION CASELOAD DOES THE YOLO
25 COUNTY PROBATION DEPARTMENT CARRY?

1 **A.** ON THE ADULT SIDE, WE HAVE ABOUT A THOUSAND OR SO CURRENTLY
2 THAT ARE CONVICTED FELONS ON PROBATION.

3 **Q.** I'M SORRY. HOW MANY?

4 **A.** PARDON?

5 **Q.** HOW MANY?

6 **A.** ABOUT A THOUSAND.

7 **Q.** OKAY. AND ON THE JUVENILE SIDE?

8 **A.** THERE WOULD BE EIGHT -- A LITTLE OVER 800.

9 **Q.** OKAY. YOUR CASELOAD AS OF TWO MONTHS AGO WAS 3,728?

10 **A.** I'M JUST TALKING ABOUT THE ACTIVE ONES WE SUPERVISE. IT
11 DOESN'T INCLUDE THE 20 TO 100 THAT WE DON'T SEE AT ALL.

12 **Q.** OKAY. WHAT'S YOUR TOTAL CASELOAD THAT INCLUDES THOSE THAT
13 ARE ON PROBATION THAT YOU DON'T SUPERVISE?

14 **A.** ADULT AND JUVENILE?

15 **Q.** YES.

16 **A.** ABOUT 5,000.

17 **Q.** OKAY. AND THE ADULT POPULATION IS ABOUT HOW MUCH?

18 **A.** IT'S ALMOST 4,000 AS OF TODAY.

19 **Q.** OKAY. NOW, HOW MANY -- LET'S JUST TALK ABOUT THE ADULT
20 POPULATION FOR A MOMENT. HOW MANY OF THE ADULTS THAT ARE ON
21 PROBATION, WHETHER SUPERVISED OR NOT, ARE FELONS?

22 **A.** ALL BUT PROBABLY FIVE OR SIX.

23 **Q.** AND YOU JUST INDICATED THAT THEY ARE NOT ALL ACTIVELY
24 SUPERVISED. YOU HAVE GOT ABOUT A THOUSAND THAT ARE BEING
25 ACTIVELY SUPERVISED, OR LESS THAN THAT?

1 A. CORRECT.

2 Q. AND WHY ARE YOU NOT ACTIVELY SUPERVISING ALL 4,000 OF THEM?

3 A. WE HAVE APPROXIMATELY 10 PROBATION OFFICERS AND ONE VACANT
4 POSITION FOR ALL THOSE CASES. FOUR OF THOSE ARE MANDATED TO
5 SUPERVISE PROPOSITION 36 CASES. IT'S CATEGORICAL MONEY. THE
6 REMAINING SIX ARE FOR ALL THE REMAINDER OF THE CASES.

7 SO THAT'S ABOUT 300 PROP 36 CASES, AND THAT WOULD BE
8 ABOUT 3700 OTHER CASES, AND THEN WE CHOOSE TO SUPERVISE THE
9 HIGHEST RISK.

10 Q. OKAY. NOW, WE HAVE HEARD BEFORE ABOUT BANKED --

11 A. YES.

12 Q. -- CASE LOADS.

13 IS THAT WHAT YOU ARE TALKING ABOUT, THE ONES THAT
14 AREN'T BEING SUPERVISED?

15 A. YES.

16 Q. NOW, DO YOU ALSO HAVE A PORTION OF YOUR CASELOAD THAT IS,
17 WHAT WE SAY, IN THE WIND OR UNACCOUNTED FOR?

18 A. YEAH. SOMEWHERE BETWEEN SEVEN AND 800 WARRANTS AT ANY GIVEN
19 TIME.

20 Q. AND SO YOU DON'T KNOW WHERE THOSE PROBATIONERS ARE?

21 A. CORRECT.

22 Q. NOW, YOU PUT IN YOUR DECLARATION --

23 MS. BARLOW: AND I BELIEVE IT'S PARAGRAPH 26 FOR
24 COUNSEL'S REFERENCE.

25 MR. SANGSTER: I COULDN'T HEAR YOU, COUNSEL.

1 **MS. BARLOW:** IT'S PARAGRAPH 26, FOR COUNSEL'S
2 REFERENCE.

3 **BY MS. BARLOW:**

4 **Q.** THAT YOLO COUNTY SENT 404 PEOPLE TO PRISON IN 2007?

5 **A.** YES.

6 **Q.** OKAY. NOW, I THINK THERE WAS A LITTLE CONFUSION ABOUT THAT
7 PARAGRAPH AND WHAT IT MEANS TO SAY. SO HOW MANY TECHNICAL
8 PAROLE -- SORRY, PROBATION VIOLATIONS DID THE DEPARTMENT DO IN
9 2007?

10 **A.** IT WAS ABOUT 41 PERCENT OF THAT TOTAL, WHATEVER THAT NUMBER
11 IS, 160 SOMETHING.

12 **Q.** AND THAT'S FOR PEOPLE WHO WENT TO PRISON?

13 **A.** YEAH, JUST FOR DIRTY URINE TEST, NOT COMPLETING TREATMENT
14 PROGRAMS, NOT DOING SOME OF THE SPECIAL CONDITIONS OF PROBATION.

15 **Q.** NOW, WAS THAT ALL OF THE PEOPLE WHO VIOLATED PROBATION --

16 **A.** NO.

17 **Q.** (CONTINUING) -- THAT WENT TO PRISON?

18 **A.** NO.

19 **Q.** DO YOU KNOW WHAT PROPORTION IT IS?

20 **A.** YEAH. IT'S ABOUT 27 PERCENT WENT TO PRISON.

21 **Q.** SO YOU HAD A MUCH LARGER NUMBER OF ACTUAL PROBATION
22 VIOLATIONS, YOU JUST SENT 27 PERCENT OF THEM TO PRISON?

23 **A.** CORRECT.

24 **Q.** WE HAVE HEARD ABOUT TECHNICAL VIOLATIONS QUITE A BIT.

25 PERHAPS YOU COULD EXPLAIN TO THE COURT FOR PROBATION VIOLATION

1 WHY YOU WOULD SEND A TECHNICAL PROBATION VIOLATOR TO PRISON?

2 **A.** IT'S USUALLY SOMEONE THAT HAS HAD THEIR PROBATION VIOLATED
3 ANYWHERE FROM TWO TO FOUR TIMES FOR A VARIETY OF REASONS.
4 AGAIN, DIRTY TESTS, THEY HAVEN'T DONE NOT TREATMENT PROGRAMS
5 THAT THE COURT HAD ORDERED THEM TO, OR THEY ABSCONDED AND WE
6 COULDN'T FIND THEM, OR THEY MAY HAVE BEEN INVOLVED IN A NEW
7 CRIME AND THE D.A. PLEA BARGAINED THAT OUT AND THEY FILE A
8 TECHNICAL VIOLATION BASED ON THE NEW ARREST, BUT NOT THE
9 CONVICTION.

10 **Q.** NOW, DO YOU CONSIDER THOSE WHO GET SENT TO PRISON FOR
11 VIOLATING PROBATION ON A TECHNICAL VIOLATION LOW RISK?

12 **A.** NO.

13 **Q.** WHY NOT?

14 **A.** ANYBODY THAT WE SENT TO PRISON, IF YOU RISK THEM OUT, THEY
15 ARE GOING TO SCORE IN THE MODERATE HIGH, HIGH AREA, AND THEY
16 FAIL JUST ABOUT EVERY PROGRAM OR THEY SIMPLY REFUSE TO COME IN.
17 THEY WON'T SEE THE PROBATION OFFICER, GET INVOLVED IN ANY SORT
18 OF MEANINGFUL REHABILITATION.

19 **Q.** NOW, ONE OF THE THINGS YOUR DEPARTMENT DOES IS WRITE
20 PRESENTENCE REPORTS, CORRECT?

21 **A.** YES.

22 **JUDGE HENDERSON:** CAN I GO BACK A MINUTE?

23 **MS. BARLOW:** OF COURSE.

24 **JUDGE HENDERSON:** YOU DON'T CONSIDER THEM LOW RISK,
25 BUT YOU DO CONSIDER THEM FOR THOSE SAME REASONS HIGH RISK OR HOW

1 DO YOU CONSIDER THEM?

2 **THE WITNESS:** YOU MEAN, THE ONES THAT GO TO PRISON?

3 **JUDGE HENDERSON:** THE ONES THAT YOU SEND BACK FOR
4 TECHNICAL VIOLATIONS.

5 **JUDGE KARLTON:** YOU MEAN THE PROBATIONS, THEY HAVEN'T
6 BEEN TO PRISON YET.

7 **JUDGE HENDERSON:** I MISUNDERSTOOD. THANK YOU.

8 **THE WITNESS:** YES.

9 **BY MS. BARLOW:**

10 **Q.** SO JUST TO CLARIFY THERE. THEY ARE FELONS, BEEN PLACED ON
11 PROBATION, HAVE VIOLATED SEVERAL TIMES AND THEN YOU SEND THEM TO
12 PRISON?

13 **A.** YES.

14 **Q.** AND YOU DON'T CONSIDER THEM LOW RISK?

15 **A.** NO.

16 **Q.** YOUR DEPARTMENT WRITES REPORTS?

17 **A.** YES.

18 **Q.** AND THAT'S PART OF ITS STATUTORY TASK, CORRECT?

19 **A.** YES.

20 **Q.** AND THOSE REPORTS CONTAIN WHAT?

21 **A.** THE SUMMARY OF THE OFFENSE OR THE VIOLATION, ANY OTHER
22 PERTINENT FACTORS; WHAT THE STATUTES REQUIRE US TO COVER, YOU
23 KNOW, WHERE THEY LIVE, WHO THEY LIVE WITH, IF THEY ARE EMPLOYED,
24 IF THEY PAID RESTITUTION, AND AN EVALUATION AS TO WHAT'S THE
25 MOST APPROPRIATE RECOMMENDATION TO KEEP AND WHETHER TO KEEP THEM

1 IN THE COMMUNITY OR NOT.

2 Q. ABOUT HOW MANY FELONS ARE KEPT IN THE COMMUNITY VERSUS SENT
3 TO PRISON?

4 A. OH, PROBABLY 95 PERCENT, AT LEAST. MOST OF THE FELONS ARE
5 KEPT AT THE LOCAL LEVEL.

6 Q. SO IT WOULD NOT BE TYPICAL FOR YOU TO SEND A PROBATION
7 VIOLATION -- A PROBATIONER WHO VIOLATES TO PRISON ON A FIRST
8 VIOLATION?

9 A. VERY UNUSUAL.

10 Q. OKAY. NOW, AMONG YOUR POPULATION OF PROBATIONERS DO YOU
11 HAVE SOME WHO REQUIRE RESIDENTIAL CARE?

12 A. YES.

13 Q. AND WHAT DO YOU DO WITH THEM?

14 A. WE HAVE A LIST OF A RESIDENTIAL CARE, AND IT'S MAINLY
15 SALVATION ARMY IN THE BAY AREA HERE, AS A MATTER OF FACT. AND
16 THEY ARE IN JAIL AND THEY HAVE COMMITTED THAT THEY WANT TO GET
17 SOME SORT OF TREATMENT. SO IN ORDER TO -- ONE OF THE REASONS
18 THEY WANT TO GO THERE, SOME OF THEM, IS TO GET OUT OF JAIL, TO
19 START TREATMENT. SO WE THEN TRANSPORT THEM AND SUPERVISE THEM.

20 Q. NOW, ARE THERE ENOUGH BEDS THAT YOU CAN PLACE SOMEBODY IN A
21 RESIDENTIAL FACILITY AS SOON AS THEY REQUEST IT?

22 A. NO.

23 Q. IS THERE A WAITING TIME THAT YOU NORMALLY HAVE TO --

24 A. YES, GENERALLY FROM A WEEK TO TWO WEEKS.

25 Q. OKAY. NOW, LET'S TALK ABOUT -- AGAIN, WE KEEP HEARING ABOUT

1 PROPOSALS HERE TO DIVERT AND RELEASE LOW RISK PRISONERS FROM
2 PRISON. SO LET'S TALK ABOUT HOW THEY GET TO PRISON.

3 ABOUT WHAT PERCENTAGE OF PEOPLE WHO GO TO PRISON DO
4 YOU DEAL WITH AS PROBATIONERS BEFORE THEY EVER GET SENT TO
5 PRISON?

6 **A.** MY BEST ESTIMATE WOULD BE ABOUT 90 PERCENT OF THEM, AS HIGH
7 AS 90.

8 **Q.** SO FOR SOMEONE TO GO TO PRISON ON, LET'S SAY, A PROPERTY
9 CRIME, WOULD THEY HAVE BEEN THROUGH THE PROBATION SYSTEM BEFORE?

10 **A.** YEAH, MAYBE AS EARLY STARTING ON THE JUVENILE SIDE AND THEY
11 HAVE A RELATIVELY LONG HISTORY. IT'S UNUSUAL TO RECOMMEND A
12 PROPERTY CRIME GO TO PRISON THE FIRST TIME.

13 **Q.** SO WHEN SOMEBODY DOES GO TO PRISON AND IT'S FOR A PROPERTY
14 CRIME, CAN WE ASSUME THAT THEY HAVE ALREADY BEEN THROUGH THE
15 SYSTEM SEVERAL TIMES?

16 **A.** YES.

17 **JUDGE KARLTON:** SET ASIDE ASSUME. WE CAN CONCLUDE
18 THAT IT'S LIKELY THEY'VE GONE THROUGH THE SYSTEM SEVERAL TIMES.

19 **THE WITNESS:** YES.

20 **MS. BARLOW:** THANK YOU, YOUR HONOR.

21 **BY MS. BARLOW:**

22 **Q.** AND, AGAIN, THOSE WHO DO GET SENT TO PRISON -- WE ARE NOT
23 TALKING NOW ABOUT PROBATIONERS, BUT PRISONERS -- DO YOU CONSIDER
24 THOSE THAT ARE IN PRISON LOW RISK?

25 **A.** NO.

1 Q. NOW, PROPERTY CRIMES HAVE A PRETTY LOW CLEARANCE RATE,
2 CORRECT?

3 A. PROBABLY SINGLE DIGIT. IF YOU LOOK AT, I THINK, THE DOJ AND
4 THE FBI STATS, IT'S LESS THAN 10 PERCENT.

5 Q. SO WHAT THAT MEANS IS THAT MOST PROPERTY CRIMES DON'T EVEN
6 GET INVOLVED, IS THAT RIGHT?

7 A. CORRECT.

8 Q. NOW, DO YOU SOMETIMES HAVE PEOPLE WHO ARE ON FELONY
9 PROBATION AND PAROLE AT THE SAME TIME?

10 A. THAT'S A POSSIBILITY, YES.

11 Q. NOW, LET'S TALK ABOUT PART OF THE PLAINTIFFS' PROPOSAL THAT
12 INVOLVES DIVERSION. THE PROPOSAL IS TO DIVERT FROM -- PEOPLE
13 FROM BEING SENT TO PRISON BACK INTO THE LOCAL COMMUNITIES. I
14 BELIEVE THE NUMBER THAT'S PROPOSED IS ABOUT 12,500. AND THEY
15 ARE REFERRED TO IN THE PLAINTIFFS' EXPERT ANALYSTS AS LOW RISK.

16 DO YOU BELIEVE THAT THE PEOPLE THAT ARE PROPOSED TO
17 BE DIVERTED INTO THE COMMUNITY AWAY FROM PRISON ARE, IN FACT,
18 LOW RISK?

19 A. NO --

20 MR. SANGSTER: OBJECTION, YOUR HONOR -- EXCUSE ME.
21 OBJECTION, YOUR HONOR. LACKS FOUNDATION. HER HYPOTHETICAL
22 PRESUPPOSES AN AWARENESS OF WHAT THE PLAINTIFFS' EXPERTS CALL
23 HIGH RISK. THERE HAS BEEN NO FOUNDATION THAT THIS WITNESS IS
24 AWARE OF THAT.

25 JUDGE KARLTON: SETTING ASIDE YOUR EXPERT'S

1 DETERMINATION, DO YOU HAVE AN OPINION AS TO WHETHER THEY ARE LOW
2 RISK?

3 **THE WITNESS:** YES, SIR. THEY MIGHT BE LOW LEVEL
4 CRIMES, BUT THEY ARE NOT LOW RISK.

5 **BY MS. BARLOW:**

6 **Q.** WOULD IT BE -- LET ME STRIKE THAT.

7 THE TOTAL PROPOSED REDUCTION IS 52,000 PRISONERS. DO
8 YOU BELIEVE, SIR, THAT THERE ARE 52,000 LOW RISK PRISONERS IN
9 THE STATE OF CALIFORNIA?

10 **A.** AWARE?

11 **Q.** DO YOU BELIEVE THERE ARE 52,000 LOW RISK PRISONERS IN THE
12 --

13 **JUDGE KARLTON:** NOW IF YOU WANTED TO OBJECT THAT IT
14 CALLS FOR SPECULATION.

15 **MR. SANGSTER:** OBJECTION. LACKS FOUNDATION. CALLS
16 FOR SPECULATION.

17 **JUDGE KARLTON:** YOU CAN ASK HIM WHETHER OR NOT THE
18 PEOPLE HE SENDS FROM YOLO IS, BUT UNLESS YOU HAVE SOME MAGIC WAY
19 OF KNOWING WHAT EVERYBODY ELSE IS DOING.

20 **A.** NO. THE ONES THAT WE SEND TO PRISON WERE, IN OUR
21 ESTIMATION, HIGH RISK AND THEY FAILED PRETTY MUCH EVERYTHING WE
22 PUT THEM THROUGH OR THE CRIME THEY HAVE COMMITTED IS SO SERIOUS
23 AND IT'S MANDATED THEY GO TO PRISON AND THEY ARE NOT ON
24 PROBATION ANYWAY.

25 **BY MS. BARLOW:**

1 Q. NOW, IF SOME OF THESE HIGH RISK PEOPLE THAT WOULD OTHERWISE
2 GO TO PRISON OR GET RELEASED EARLY FROM PRISON END UP BACK WITH
3 YOLO COUNTY, WHAT ARE YOU GOING TO DO WITH THEM?

4 A. PROBABLY BANK THEM.

5 JUDGE KARLTON: WELL, ACTUALLY, YOU ARE NOT GOING TO
6 DO ANYTHING BECAUSE IT'S PAROL'S PROBLEM NOT, YOURS.

7 MS. BARLOW: WELL, WITH RESPECT, YOUR HONOR, I THINK
8 DR. AUSTIN --

9 JUDGE KARLTON: JUST A MINUTE.
10 IS THAT RIGHT, SIR?

11 THE WITNESS: THEY WOULD NOT GO ON A PROBATION
12 CASELOAD. THEY WOULD GO ON PAROLE.

13 JUDGE KARLTON: AND IF PEOPLE ARE DIVERTED, WOULD
14 THEY BE ON YOUR CASELOAD OR ON PAROL, OR THAT WOULD BE SOMETHING
15 THAT YOU WORKED OUT?

16 THE WITNESS: YOU KNOW I'M NOT SURE. IF THEY ARE
17 DIVERTED AT THE LOCAL LEVEL, THEY WOULD BE ON OUR CASE LOAD. IF
18 IT'S FROM THE STATE, IT WOULD BE ON A PAROLE CASELOAD.

19 JUDGE KARLTON: OKAY.

20 BY MS. BARLOW:

21 Q. SO IF WE ASSUME THAT A DIVERSION ORDER WOULD HAVE THESE
22 PEOPLE PLACED ON PROBATION RATHER THAN PROPOSAL, THEY WOULD BE
23 ON YOUR CASELOAD?

24 A. YES.

25 Q. AND IF YOU GOT THEM, YOU SAID YOU WOULD BANK THEM?

1 A. YES.

2 Q. WHY?

3 A. WE GET APPROXIMATELY FOUR NEW CASES OF CONVICTED FELONS
4 EVERY DAY, AND THERE ARE TWO THAT SUCCESSFULLY COMPLETE
5 PROBATION OUT THE OTHER AGAIN.

6 SO WE JUST DON'T HAVE THE RESOURCES. SO ALMOST ALL
7 THE NEW CASES THAT COME IN, UNLESS WE TAKE SOMEBODY ELSE THAT'S
8 HIGH RISK AND MOVE THEM TO A BANK LOAD, THEY ARE GOING TO BE
9 BANKED.

10 Q. SO YOU ARE SUPERVISING ONLY HIGH RISK PEOPLE NOW, AND R AND
11 YOU CAN'T REALLY DO ANY MORE, IS THAT WHAT YOU ARE SAYING?

12 A. YES. THAT'S BEEN THE CASE FOR AT LEAST A DECADE, IF NOT
13 LONGER.

14 Q. OKAY. NOW, YOU MENTIONED YOUR CURRENT STAFFING IN TERMS OF
15 PROBATION OFFICERS. ARE YOU EXPECTING ANY REDUCTION IN THAT
16 STAFFING?

17 A. YES. WE ARE GOING TO -- WE ARE GOING TO LOSE TWO P.O.
18 POSITIONS FROM THE ADULT DIVISION GOING TO THE JUVENILE DIVISION
19 BECAUSE THE MONEY IS CATEGORIAL ON JUVENILE AND WE GET REVENUE
20 IF WE FILL THEM.

21 AND I SUSPECT WE MAY LOSE ANOTHER FOUR TO SIX IF THE
22 -- IN THE STATE BUDGET AND COUNTY BUDGET. WE MAY BE DOWN TO
23 ZERO OR ONE PROBATION OFFICER TO SUPERVISE THE 4,000 PEOPLE.

24 Q. AND WHY CAN'T YOU JUST MOVE SOME OF THE PEOPLE THAT ARE
25 SUPERVISING THE PROP 36 PEOPLE?

1 **A.** IT'S CATEGORICAL MONIES. IT'S ONLY -- THEY ARE ONLY TO
2 SUPERVISE THOSE CASES REFERRED TO THEM. THE MONEY ONLY ALLOWS
3 THEM TO SUPERVISE PROP 36 CASES.

4 **Q.** SO YOU CAN'T MOVE THAT MONEY TO HAVE PEOPLE BEING SUPERVISED
5 THAT ARE HIGH RISK FELONS?

6 **A.** UNLESS WE WANT TO RETURN THE MONEY TO THE STATE.

7 **Q.** LET'S TALK A LITTLE ABOUT THE DIFFERENCE BETWEEN THE
8 JUVENILE CASELOAD AND HOW YOU MANAGE THEM AND THE ADULT
9 CASELOAD. YOU MENTIONED THAT MORE RESOURCES ARE DEVOTED TO
10 JUVENILES IN YOUR DECLARATION, COULD YOU --

11 **A.** YES.

12 **Q.** -- EXPLAIN TO THE COURT?

13 **A.** YES.

14 **Q.** HOW MUCH -- WHAT'S THE DIFFERENCE?

15 **A.** WELL, WE HAVE ACTUALLY RESOURCES THAT -- A NUMBER OF
16 SUBVENTION MONIES THAT HAVE COME FROM THE STATE AND SOME FROM
17 THE FEDS, AND NOT MUCH KIND OF GENERAL FUND, BUT IT ALLOWS US TO
18 GET INTO EVIDENCE-BASED PROGRAMS IN A BIG WAY. WE JUST FINISHED
19 OUR FIRST YEAR OF THAT AND IT'S RESULTED IN DEVELOPING PROGRAMS
20 AND RISK NEEDS ASSESSMENTS AND CASE MANAGEMENT SYSTEMS.

21 AND AS A RESULT OF THAT, WE REDUCED THE JUVENILE HALL
22 POPULATION BY OVER 50 PERCENT, OUT-OF-HOME PLACEMENTS BY AT
23 LEAST A THIRD, AND REDUCED THE NUMBER OF PEOPLE ON JUVENILE
24 PROBATION PROBABLY BY HALF.

25 **Q.** SO THAT PROGRAMMING YOU WERE TALKING ABOUT, THAT WAS JUST

1 FOR YOUR JUVENILE POPULATION?

2 **A.** YES.

3 **Q.** AND IS THAT MONEY REQUIRED TO BE SPENT ON JUVENILES?

4 **A.** YES.

5 **Q.** AND ABOUT HOW MUCH ARE YOU SPENDING ON A JUVENILE IN YOLO
6 COUNTY?

7 **A.** 2700, 2800 PER CASE.

8 **Q.** ALL RIGHT. YOU HAVE -- NOW, YOU HAVE, I THINK YOU SAID,
9 FOUR OR FIVE TIMES MORE, APPROXIMATELY, ADULTS THAN JUVENILES --

10 **A.** YES.

11 **Q.** (CONTINUING) -- ON PROBATION.

12 AND HOW MUCH MONEY IS BEING SPENT ON ADULTS?

13 **A.** LESS THAN \$700.

14 **Q.** EACH?

15 **A.** YES.

16 **Q.** COULD YOU DO MORE IF YOU HAD MORE MONEY?

17 **A.** PARDON?

18 **MR. SANGSTER:** I COULDN'T HEAR THE QUESTION.

19 **BY MS. BARLOW:**

20 **Q.** COULD YOU DO MORE IF YOU HAD MORE MONEY?

21 **A.** YES. THERE'S REAL EVIDENCE FROM WASHINGTON STATE AND
22 MISSOURI AND SOME OTHER STATES THAT HAVE GONE TO EVIDENCE-BASED
23 PROGRAMMING WITH STABLE FUNDING THAT YOU CAN REDUCE PRISON
24 POPULATIONS. PROBATION, JAIL SPACE, ALL THOSE THINGS WITH THE
25 RIGHT TREATMENT. AND CALIFORNIA JUST HASN'T DONE THAT ON THE

1 ADULT SIDE.

2 Q. NOW, ONE OF THE ISSUES THAT HAS BEEN DISCUSSED QUITE A BIT
3 AS WELL IS DOING PROGRAMMING IN PRISON. YOU ARE TALKING ABOUT
4 PROGRAMMING AT THE LOCAL LEVEL, RIGHT?

5 A. AT THE COMMUNITY LEVEL, YES.

6 Q. AND DO YOU BELIEVE THAT PROGRAMMING AT THE LOCAL LEVEL IS
7 MORE EFFECTIVE THAN PROGRAMMING IN PRISON?

8 A. YES, I DO. I THINK THE SOONER YOU START WITH THE
9 PROGRAMMING, THE BETTER IT IS TO REHABILITATE SOMEBODY.

10 THE WAY THE SYSTEM WORKS, IT'S INCREMENTAL. THE
11 DEEPER YOU GO IN THE HARDER IT IS TO GET OUT.

12 AND THE BIG PROBLEM THAT WE HAVE IS THERE REALLY
13 AREN'T ANY QUALITY EVIDENCE BASED PROGRAMS IN MOST COUNTIES FOR
14 ADULTS.

15 Q. WHAT KIND OF PROGRAMS ARE THERE?

16 A. SALVATION ELEMENTARY, N.A.A.A., SOME -- A LITTLE BIT OF
17 MENTAL HEALTH STUFF BUT IT'S LONG WAITING LISTS.

18 Q. NOW, I WANT YOU TO ASSUME THAT WE COULD FIND SOME LOW RISK
19 PEOPLE FROM YOLO COUNTY IN PRISON. JUST ASSUME THAT FOR THE
20 SAKE OF ARGUMENT. AND SOME NUMBER ARE DIVERTED EITHER DIRECTLY
21 INTO THE COMMUNITY WITHOUT SUPERVISION OR TO PROBATION. YOU
22 ALREADY SAID YOU DON'T HAVE ROOM IN PROBATION.

23 IS THERE ROOM IN JAILS FOR THEM IF THEY NEED TO BE
24 CONFINED?

25 A. NO. THERE IS A CONSENT DECREE AND YOLO HAS ONE FOR QUITE A

1 NUMBER OF YEARS. I BELIEVE IT'S WHEN THEY GET TO 85 PERCENT,
2 THEY HAVE TO START RELEASING.

3 Q. AND ARE THEY RELEASING REGULARLY, DO YOU KNOW?

4 A. YES. SOMETIMES ON A DAILY BASIS.

5 Q. NOW, ARE THOSE RELEASES FROM THE COUNTY FACILITY IMPACTING
6 YOUR WORKLOAD AT ALL OR YOUR CASES?

7 A. NO, THEY ARE NOT. YOU MEAN, ARE THEY --

8 Q. I MEAN, IF YOU HAD SOMEBODY IN THE FACILITY AND THEY WERE
9 RELEASED, IS THAT IMPACTING YOUR ABILITY TO GET COMPLIANCE FROM
10 YOUR PROBATIONERS?

11 MR. SANGSTER: I OBJECT. THE QUESTION IS VAGUE AND
12 AMBIGUOUS.

13 JUDGE KARLTON: I DIDN'T UNDERSTAND IT EITHER.

14 MS. BARLOW: I WILL START AGAIN.

15 BY MS. BARLOW:

16 Q. YOU INDICATE THAT PEOPLE ARE CURRENTLY BE RELEASED
17 PRACTICALLY ON A DAILY BASIS FROM THE JAIL?

18 A. CORRECT.

19 Q. ARE SOME OF THOSE PEOPLE THAT HAVE BEEN ARRESTED FOR
20 PROBATION VIOLATIONS?

21 A. YES.

22 Q. DO YOU BELIEVE THAT HAVING THEM RELEASED EARLY BECAUSE OF A
23 CAP IN THE JAIL IS HAVING AN IMPACT ON YOUR ABILITY TO SUPERVISE
24 THEM?

25 A. YES. IF WE COULD GET THEM INTO TREATMENT AND GET THEM CLEAN

1 FIRST, THEY HAVE TO BE CLEAN, AND THEN WE WORK ON GETTING THEM
2 SOBER, CLEAN AND SOBER TOTALLY. IF IT'S A DRUG ISSUE AND ANY
3 OTHER ISSUES, YOU KNOW.

4 AND THE DIFFICULT THING IS THAT WE DON'T HAVE A LOT
5 OF AVAILABILITY OF THOSE PROGRAMS LOCALLY.

6 **JUDGE REINHARDT:** AND THAT CAUSES MORE CRIME.

7 **THE WITNESS:** IT DOES BECAUSE THEY GET DEEPER INTO
8 THE LIFESTYLE. I MEAN, MY EXPERIENCE IN THIS BUSINESS HAS BEEN
9 THAT BEHAVIOR ESCALATES OVER TIME. IT MIGHT START SMALL, BUT IT
10 DOESN'T STAY SMALL. THAT'S PROPERTY OFFENDERS AND CRIMES OF
11 VIOLENCE. IT'S CERTAINLY TRUE WITH DOMESTIC VIOLENCE.

12 **JUDGE REINHARDT:** IT SOUNDS LIKE FROM ALL THE
13 TESTIMONY THE GREATEST CAUSE OF INCREASED CRIME IS THE FAILURE
14 OF THE STATE AND LOCAL COMMUNITIES TO SPEND ENOUGH MONEY ON
15 THESE PROGRAMS.

16 **THE WITNESS:** WELL, IT'S A HUGE ISSUE FOR US, YEAH.
17 IT'S UNFORTUNATE THAT A FELLOW NAMED MARTINSON WROTE A REPORT
18 WAY BACK WHEN SAYING NOTHING WORKS, AND OUR SOCIETY AND CULTURE
19 BOUGHT INTO THAT.

20 AND IT'S TRUE THERE ARE PROGRAMS THAT DO WORK AND
21 THERE'S EVIDENCE AND DATA THAT SHOWS THAT THEY DO, BUT IN
22 CALIFORNIA THEY HAVEN'T BEEN FUNDED.

23 **JUDGE REINHARDT:** SO THE BEST WAY TO REDUCE CRIME
24 WOULD BE TO FUND ALL THESE PROGRAMS?

25 **THE WITNESS:** YOU WOULD HAVE TO HAVE A PRETTY BIG

1 INFUSION OF MONEY TO FUND THE PROGRAMS. MUCH CHEAPER, HOWEVER,
2 THAN SENDING THEM TO PRISON.

3 **BY MS. BARLOW:**

4 **Q.** IF WE DID THAT, IF WE HAD PROGRAMS, SOME SORT OF EITHER
5 STATE-WIDE OR COUNTY-BY-COUNTY THAT'S FUNDED BY THE STATE, THE
6 PROGRAMMING, DO YOU BELIEVE THAT THAT COULD REDUCE THE PRISON
7 POPULATION?

8 **A.** YES.

9 **Q.** BY ABOUT HOW MUCH?

10 **A.** I THINK CONSERVATIVELY ABOUT 30 PERCENT.

11 **Q.** AND HOW LONG WOULD IT TAKE TO PUT TOGETHER A SYSTEM EITHER
12 COUNTY-BY-COUNTY OR STATE-WIDE TO PROVIDE THE KIND OF EVIDENCE
13 BASED PROGRAMMING YOU HAVE DESCRIBED?

14 **A.** I THINK --

15 **JUDGE KARLTON:** PROVIDING THE MONEY IS THERE.

16 **MS. BARLOW:** THAT'S CORRECT.

17 **A.** I WOULD SAY PROBABLY A MINIMUM OF TWO YEARS AND MAXIMUM OF
18 FIVE.

19 **JUDGE REINHARDT:** AND HOW WOULD YOU SUGGEST GOING
20 ABOUT GETTING THAT MONEY?

21 **THE WITNESS:** THAT'S THE -- I THINK SENATOR RUNNER
22 WAS IN HERE, WE HAD TALKS WITH ALL THE LEGISLATORS AND IT'S
23 NEARLY -- BEEN NEARLY IMPOSSIBLE FOR US FOR DECADES. WE JUST
24 HAVE NOT BEEN ABLE TO CONVINCE ANYBODY TO --

25 **JUDGE REINHARDT:** FOR THEM TRYING TO RESOLVE THE

1 PROBLEM AND SEE WHAT THE ALTERNATIVES ARE, WE HAVE NO BASIS FOR
2 THINKING THERE IS GOING TO BE MONEY PROVIDED.

3 **THE WITNESS:** I HAVE NO FAITH THERE IS GOING TO BE
4 MONEY ABSENT SOMEBODY ORDERING THEM TO FUND LOCALS OR THE
5 LEGISLATORS GETTING TOGETHER AND SAYING WE ARE GOING TO MAKE
6 THIS A PRIORITY?

7 **JUDGE REINHARDT:** DO YOU THINK WE OUGHT TO ORDER THEM
8 TO DO THAT?

9 **JUDGE KARLTON:** ASSUMING THAT WE COULD.

10 **JUDGE REINHARDT:** THERE IS NO WAY OF SOLVING IT
11 UNLESS SOMEBODY ORDERS THEM.

12 **THE WITNESS:** THAT WOULD BE GREAT AND IT WOULD REDUCE
13 PRISON, BUT --

14 **JUDGE REINHARDT:** IF WE CAN'T, WE CAN ASSUME THAT
15 IT'S NOT GOING TO BE THERE AND THESE PROGRAMS ARE NOT REASONABLE
16 ALTERNATIVES.

17 **THE WITNESS:** THAT'S CORRECT.

18 **BY MS. BARLOW:**

19 **Q.** CHIEF, GETTING BACK TO THE DIVERSION PROPOSAL FOR JUST A
20 MOMENT. DO YOU BELIEVE IT IS A GOOD IDEA TO DIVERT PEOPLE WHO
21 WOULD OTHERWISE GO TO STATE PRISON INTO -- BACK INTO THE LOCAL
22 COMMUNITIES?

23 **A.** ABSENT ANY EFFECTIVE TREATMENT, NO. I THINK THERE WOULD
24 JUST BE A LOT MORE VICTIMS AND PUBLIC SAFETY IS COMPROMISED.

25 **Q.** NOW, THE PLAINTIFFS HAVE REQUESTED A CAP, A MAXIMUM OF

1 INMATES IN THE STATE PRISON.

2 AND IF A CAP WERE IMPOSED, AND YOU HAVE INDICATED
3 THAT THEY ARE GETTING RELEASED ALREADY FROM THE COUNTY JAIL,
4 WHAT ALTERNATIVE SANCTIONS WOULD BE ABLE TO YOU FOR YOUR
5 PROBATION VIOLATORS IF THERE IS NO ROOM AT THE JAIL AND THERE IS
6 NO ROOM AT THE PRISON?

7 **A.** THERE WOULD BE FEWER, I THINK, WITH THE -- WITH THE PAROLEES
8 OR WHOEVER IS DIVERTED COMING OUT IN THE COMMUNITY, IF THEY END
9 UP TAKING SOME OF THE -- WHAT LITTLE TREATMENT IS AVAILABLE.

10 **Q.** AND WHAT ABOUT SANCTIONS FOR VIOLATING PROBATION? IN OTHER
11 WORDS, SOMETIMES DO YOU SEND THEM BACK TO LOCAL CUSTODY IF THEY
12 VIOLATE PROBATION?

13 **A.** YES. BUT A GOOD PORTION OF THEM GET RELEASED AFTER A PERIOD
14 OF TIME BECAUSE ONLY 15 PERCENT OF THE INMATES AT THE COUNTY
15 JAIL IN YOLO ARE SENTENCED PRISONERS. 85 PERCENT ARE PENDING
16 COURT.

17 **Q.** SO WHAT DO YOU DO BESIDES SENDING SOMEBODY TO PRISON OR JAIL
18 IF THEY VIOLATE THEIR PROBATION?

19 **A.** WELL, THERE ARE WORK PROGRAMS AND WHAT HAPPENS IS THE JAIL
20 CAN ALLOW THEM TO GO DO AN ADULT WORK PROGRAM, WHICH WE OPERATE.
21 YOU CAN ENCOURAGE THEM TO GET INVOLVED IN TREATMENT AND THOSE
22 SORTS OF THINGS.

23 BUT BEYOND THAT THERE AREN'T REALLY ANY SANCTIONS
24 WHERE IF YOU NEED A LOCKED FACILITY OR FACILITY WHERE THEY CAN'T
25 GET AWAY AND GET DRUGS OR CONTINUE THEIR RUN-AWAY BEHAVIOR, IT

1 MAKES IT DIFFICULT.

2 **JUDGE KARLTON:** WELL, IT MAKES IT IMPOSSIBLE.

3 **THE WITNESS:** WELL, OKAY.

4 **BY MS. BARLOW:**

5 **Q.** LET'S TALK FOR A MOMENT ABOUT THE PAROLEES IN YOLO COUNTY.

6 NOW, WHAT'S THE APPROXIMATE NUMBER OF PAROLEES?

7 **A.** ABOUT 800.

8 **Q.** NOW, OBVIOUSLY, THAT'S A MUCH SMALLER NUMBER THAN THE NUMBER
9 OF PROBATIONERS THAT YOU HAVE THERE?

10 **A.** CORRECT.

11 **Q.** ARE THESE COMPARABLE POPULATIONS, THE PAROLEES AND THE
12 PROBATIONERS?

13 **A.** IN THE SENSE THAT THEY MAY HANG OUT TOGETHER, BECAUSE IT'S
14 NOT UNCOMMON FOR US TO COME ACROSS PAROLEES AT PROBATIONER'S
15 HOUSES; BUT WE ALWAYS CONSIDER PAROLEES A MUCH HIGHER RISK.

16 **Q.** AND WHY IS THAT?

17 **A.** BECAUSE OF THEIR PRIOR RECORD AND ALL OF THE THINGS THAT
18 MAKE YOU RISK -- OR ANTI-SOCIAL THINKING; THE DRUG ABUSE, THE
19 ALCOHOL ABUSE THE LONG CRIMINAL HISTORY.

20 **Q.** NOW, YOU PUT IN YOUR DECLARATION THAT THERE WERE 295 NEW
21 PAROLEES RELEASED INTO YOLO COUNTY IN 2007 AND 641 REPAROLED.
22 CAN YOU ADVISE THE COURT WHAT'S THE DIFFERENCE THERE?

23 **A.** WELL, THAT MEANS THE FIRST PAROLE IS THE FIRST TIME THEY
24 WENT TO PRISON AND GOT OUT, AND THE REPAROLE MEANS THAT THEY
25 VIOLATED PAROLE AND THEN WERE SENT OUT AGAIN.

1 Q. TWO-THIRDS OF THOSE PAROLED INTO YOLO COUNTY LAST YEAR HAVE
2 ALREADY BEEN RETURNED TO PRISON AT LEAST ONCE?

3 A. LOOKS THAT WAY, YES.

4 Q. AND DO YOU RECALL WHAT PERCENTAGE OF THE CDCR POPULATION IS
5 FROM YOLO COUNTY?

6 A. SIX-TENTHS OF ONE PERCENT OR SOMETHING LIKE THAT.

7 Q. SO IF A RELEASE ORDER OR CAP IS IMPOSED THAT WOULD REDUCE
8 THE PRISON POPULATION BY 52,000, HOW MANY IS THAT FOR YOLO
9 COUNTY?

10 A. THAT WOULD BE PROBABLY AROUND 300.

11 Q. I THINK YOU SAID 60 FOR EACH 10,000, IS THAT RIGHT?

12 A. YES.

13 Q. SO IF I DO MY MATH, THAT'S ABOUT 312, IS THAT RIGHT?

14 A. YES.

15 Q. OKAY. NOW, WE HAVE HEARD A LOT ABOUT RECIDIVISM AND WHAT IT
16 MEANS AND WHAT IT DOESN'T MEAN.

17 I WOULD LIKE YOU TO ASSUME, IF YOU WOULD, THAT ONLY
18 HALF OF THOSE FOLKS RECIDIVATE AFTER THEY RETURN TO THE
19 COMMUNITY IN, SAY, THE FIRST YEAR OR TWO YEARS.

20 WHAT KIND OF IMPACT MIGHT THAT HAVE TO THE PROGRAMS
21 AND SERVICES THAT YOU PROVIDE AND THAT YOU ACCESS FOR YOUR
22 PROBATIONERS?

23 MR. SANGSTER: OBJECTION. LACKS FOUNDATION. THERE
24 HAS BEEN NO TESTIMONY --

25 JUDGE KARLTON: YOUR BEST ESTIMATE, YOUR BEST

1 ESTIMATE AS TO THE EFFECTS, SIR.

2 **A.** CLEARLY FROM A SYSTEM-WIDE STANDPOINT, THERE WOULD BE JUST
3 SOME MORE COURT HEARINGS, MORE D.A. INVOLVEMENT, MORE PUBLIC
4 DEFENDER. WE WILL HAVE TO WRITE MORE REPORTS.

5 SOME OF THEM MAY GET A GRANT OF PROBATION. THERE
6 WILL BE MORE PEOPLE RELEASED FROM JAIL BECAUSE THEY ARE LIKELY
7 TO BE DETAINED AT THE JAIL AND NOT BE ONE OF THE ONES RELEASED
8 ON A CONSENT DECREE.

9 **BY MS. BARLOW:**

10 **Q.** THERE HAS BEEN TESTIMONY BEFORE THE COURT THAT SHORT
11 SENTENCES ARE NOT VERY EFFECTIVE.

12 IN YOUR VIEW, ARE SHORT SENTENCES TO PRISON FOR
13 PROBATION VIOLATORS OR PAROLE VIOLATORS, DO THEY HAVE ANY
14 MEANINGFUL IMPACTS?

15 **MR. SANGSTER:** OBJECTION. ASSUMES FACTS NOT IN
16 EVIDENCE. MISSTATES THE TESTIMONY.

17 **JUDGE HENDERSON:** MISSTATES IT IN THE SENSE THAT
18 THERE'S NOT BEEN --

19 **MR. SANGSTER:** COUNSEL'S PREFACE TO THE QUESTION
20 PRESUPPOSED TESTIMONY THAT I DON'T BELIEVE HAS BEEN GIVEN IN
21 THIS COURT.

22 **JUDGE KARLTON:** TAKE OUT THE PRE. TAKE OUT THE
23 INTRODUCTION.

24 **BY MS. BARLOW:**

25 **Q.** DO YOU BELIEVE THAT SHORT PRISON STAYS FOR PROBATION

1 VIOLATORS OR PAROLE VIOLATORS DON'T DO ANYTHING?

2 **JUDGE KARLTON:** NOBODY SAYS THAT. GO AHEAD. ANSWER
3 IT.

4 **A.** I THINK THEY DO SOMETHING, AND IT MAKES IT WORSE ACTUALLY.

5 **BY MS. BARLOW:**

6 **Q.** IF SOMEBODY VIOLATES PAROLE AND THEY GO BACK TO PRISON, IS
7 THERE ANY POSITIVE IMPACT FROM THEM BEING IN PRISON?

8 **A.** WHEN I TOURED THE PRISONS WITH THE INTERVENORS SOME TIME
9 AGO, I WAS ACTUALLY SHOCKED ABOUT HOW ALMOST NOTHING POSITIVE IS
10 GOING ON, HOW CROWDED IT WAS.

11 IT'S AN ISSUE THAT -- THAT IT SEEMS LIKE THEY PRODUCE
12 ADDITIONAL CRIMINAL BEHAVIOR.

13 **JUDGE KARLTON:** SEVERAL TIMES DURING THIS TRIAL
14 PRISONS HAVE BEEN CHARACTERIZED AS CRIMINOGENIC. DO YOU AGREE
15 WITH THAT, SIR?

16 **THE WITNESS:** ALL THE STUDIES SAY, THE RESEARCH SAYS
17 IF YOU USE CUSTODY AS YOUR MAJOR SANCTION AND NOTHING ELSE, IT
18 DOES INCREASE CRIMINAL BEHAVIOR, ABSENT ANY EFFECTIVE PROGRAMS
19 IN THE PLACES THAT YOU PUT THEM.

20 IF YOU HAVE GOOD QUALITY EVIDENCE-BASED PROGRAMS, YOU
21 CAN --

22 **THE WITNESS:** GOD WILLING AND THE RIVER DON'T RISE,
23 RIGHT?

24 **BY MS. BARLOW:**

25 **Q.** ARE THERE ANY INCAPACITATION EFFECTS FROM SENDING VIOLATORS

1 TO PRISON?

2 **A.** OH, YES. CLEARLY, YES.

3 **Q.** AND ARE THOSE POSITIVE FOR THE PUBLIC SAFETY?

4 **A.** YES.

5 **JUDGE KARLTON:** THEY ARE IMMEDIATELY POSITIVE.

6 **THE WITNESS:** YEAH. DURING THE TIME THEY ARE THERE,
7 THEY CAN'T COMMIT CRIMES OUT ON THE STREETS.

8 **JUDGE KARLTON:** WE DIDN'T KNOW THAT WITHOUT THAT
9 QUESTION, MA'AM. IT'S REALLY IMPORTANT.

10 **MS. BARLOW:** I'M SORRY, YOUR HONOR. I'M NOT TRYING
11 TO BELABOR IT.

12 **JUDGE KARLTON:** I KNOW. YOU HAVE CONTEMPT FOR US.
13 YOU MAY PROCEED.

14 **MS. BARLOW:** THANK YOU.

15 **BY MS. BARLOW:**

16 **Q.** NOW, WHAT ABOUT THE ABILITY -- YOU SAID SOMETHING ABOUT
17 GETTING THEM CLEAN AND SOBER SO THEY CAN GET INTO PROGRAMMING.

18 IS THERE SOME POTENTIALLY POSITIVE IMPACT FROM
19 INCARCERATION OF VIOLATORS TO GET THEM CLEAN AND SOBER?

20 **A.** YEAH. IT ASSISTS YOU WITH THAT SO THAT THEY THINK A LITTLE
21 BIT CLEARER, BUT YOU HAVE GOT TO GET THEM PRETTY IMMEDIATELY IN
22 A TREATMENT PROGRAM, NOT WAIT MONTHS AND YEARS.

23 **Q.** AND DO THOSE EFFECTIVE PROGRAMS EXIST CURRENTLY IN YOLO
24 COUNTY?

25 **A.** NO.

1 Q. ONE OF THE OTHER ISSUES THAT HAS COME UP QUITE A BIT IS THE
2 IDEA OF PROPERTY CRIMES VERSUS VIOLENT CRIMES.

3 DO YOU BELIEVE THAT PROPERTY CRIMES ARE MINOR IN
4 NATURE? ARE THEY SERIOUS STILL EVEN THOUGH THEY MIGHT NOT
5 INVOLVE THE ACTUAL PHYSICAL INJURY OF A PERSON?

6 A. WELL, FIRST, HOME RESIDENTIAL BURGLARIES ARE STRIKES.
7 THAT'S VERY SERIOUS. MOST OF THEM DON'T INVOLVE SOMEBODY BEING
8 IN THE HOME. THAT'S VERY SERIOUS AND THEY ARE ALMOST -- VERY
9 FEW OF THEM ARE EVER SOLVED, SO IT REALLY HAS A PRETTY
10 DEVASTATING EFFECT ON THE COMMUNITY AND THE VICTIMS THEMSELVES.

11 Q. AND AUTO THEFT, I THINK, IS ONE OF THE ONES THAT KEEPS BEING
12 REFERRED TO.

13 A. YES.

14 Q. AND THAT HAS A PRETTY HIGH RECIDIVISM RATE. DO YOU CONSIDER
15 AUTO THEFT A MINOR CRIME?

16 MR. SANGSTER: YOUR HONOR, I OBJECT. THE QUESTION IS
17 VAGUE AND AMBIGUOUS. CALLS FOR --

18 JUDGE REINHARDT: IT'S NOT VAGUE OR AMBIGUOUS. IT'S
19 TOTALLY UNNECESSARY, WHETHER THIS WITNESS CONSIDERS AUTO THEFT A
20 MAJOR OR MINOR CRIME.

21 IT ISN'T TERRIBLY RELEVANT TO THIS HEARING. EVERYONE
22 CAN HAVE HIS OWN OPINION AS TO WHETHER IT'S A MAJOR OR MINOR
23 CRIME.

24 WE HAVE GOT SO MANY WITNESSES SAYING THE SAME THING,
25 YOU KNOW, FROM COUNTY A TO COUNTY B TO COUNTY C. IF ONE PERSON

1 FROM THE PROBATION OFFICE IN COUNTY A THINKS IT'S SERIOUS,
2 ANOTHER IN COUNTY B THINKS IT'S SERIOUS, I MEAN...

3 **JUDGE KARLTON:** SERIOUS RELEVANT TO WHAT? IT'S
4 CLEARLY NOT AS SERIOUS AS KILLING SOMEONE.

5 **THE WITNESS:** RIGHT.

6 **JUDGE KARLTON:** SO IT ALL ULTIMATELY COMES DOWN TO
7 SOME QUESTION OF, COMPARED TO WHAT? WOULD YOU AGREE WITH THAT,
8 SIR?

9 **THE WITNESS:** YES.

10 **BY MS. BARLOW:**

11 **Q.** NOW, DO YOU DEAL WITH HE MENTALLY ILL PROBATIONERS AS WELL?

12 **A.** WE HAVE A FAIRLY HIGH PERCENTAGE OF THOSE, YES.

13 **Q.** AND IF A RELEASE ORDER INCLUDED THE MENTALLY ILL, ARE THERE
14 MENTALLY ILL PROGRAMS AVAILABLE FOR PEOPLE ON PAROLE OR OFF
15 PAROLE IN YOUR COUNTY?

16 **A.** THE COUNTY ALCOHOL DRUG MENTAL HEALTH PROGRAM WHICH WOULD --
17 HAD SOME PROGRAMS, THEY JUST LAID OFF 30 -- AT LEAST 30 PEOPLE
18 THIS PAST FISCAL YEAR AND THEY MAY HAVE TO LAY OFF SOME MORE.

19 AND THEN THE PRIVATE AGENCIES, IT'S A FEE BASIS
20 USUALLY OR THEY HAVE TO CLAIM MEDICAL, AND THERE'S VERY FEW OF
21 THOSE TO DEAL WITH ADULTS.

22 **Q.** OKAY. AND WE HAVE BEEN TOLD THAT MOST MENTALLY ILL PEOPLE
23 ARE NOT DANGEROUS. IS THAT YOUR EXPERIENCE WITH THE MENTALLY
24 ILL THAT YOU DEAL WITH IN YOLO COUNTY?

25 **A.** DEPENDENT ON THE CATEGORY OF -- PARANOID SCHIZOPHRENICS ARE

1 PRETTY FRIGHTENING FOLKS IF THEY ARE NOT ON MEDICATION AND IF
2 HAVE A HISTORY OF VIOLENCE. THEY OFTEN WILL END UP IN JAIL,
3 HAVE QUITE A FEW CRISES AND GET RELEASED, GET ON PROBATION,
4 VIOLATE, NOT GO TO TREATMENT, NOT TAKE THEIR MEDICATION AND
5 REPEATEDLY VIOLATE AND END UP GOING TO PRISON.

6 **Q.** IS IT YOUR EXPERIENCE THAT MENTALLY ILL OFFENDERS LIKE
7 NON-MENTALLY ILL OFFENDERS WILL GO THROUGH THE PROBATION CYCLE
8 SEVERAL TIMES BEFORE THEY ARE SENT TO PRISON?

9 **A.** YEAH. IT'S NOT SOMEBODY THAT WE WANT TO RECOMMEND TO GO TO
10 PRISON, BECAUSE IT SEEMS TO BE THAT WHAT CAUSES THE -- BEHIND
11 THE CRIMINAL BEHAVIOR IS THEIR MENTAL HEALTH. THEY ARE NOT
12 INHERENTLY CRIMINAL.

13 **Q.** SO IF THEY COME BACK OUT INTO YOUR COMMUNITY AND THERE ARE
14 NO PROGRAMS FOR THEM, WHERE WILL THEY END UP?

15 **A.** IN JAIL.

16 **JUDGE REINHARDT:** AND IF THEY DON'T GET PROPER
17 TREATMENT WHILE THEY ARE IN PRISON, WHERE ARE THEY GOING TO END
18 UP?

19 **THE WITNESS:** I DON'T RUN THE PRISONS.

20 **JUDGE REINHARDT:** I DIDN'T ASK YOU IF YOU RUN THE
21 PRISON.

22 IF THEY DON'T GET THAT TREATMENT, WHEREVER THEY ARE,
23 INCLUDING PRISONS --

24 **JUDGE KARLTON:** AND THEY COME BACK OUT.

25 **THE WITNESS:** IF I CAN SHARE A PERSONAL STORY ABOUT

1 THE MENTALLY ILL.

2 MY COUSIN'S SON DEVELOPED PARANOID SCHIZOPHRENIA IN
3 HIS LATE TEENS. HE IS A BIG GUY. HE GOT INVOLVED IN -- HE
4 ENDED UP BEING IN BOARD/CARE FACILITIES, REALLY BIZARRE
5 BEHAVIOR, SUSPICIOUS OF EVERYTHING, COULDN'T BE AROUND ANYBODY,
6 YOU KNOW, TURNED OFF THE ELECTRICITY ALL THE TIME.

7 HE ROBBED A TACO BELL. NOT WITH A WEAPON, JUST
8 STRONG ARM. HE GOT FELONY PROBATION, FIVE YEARS. HE WOULDN'T
9 TAKE HIS MEDICATION. HE WOULDN'T GO TO TREATMENT. HE WAS
10 VIOLATED A NUMBER OF TIMES, BROUGHT BACK OUT, ENCOURAGED TO GET
11 IN TREATMENT. CAN'T FORCE HIM TO TAKE HIS MEDICATION. CAN'T
12 FORCE HIM TO GO TO TREATMENT. PUT HIM BACK IN JAIL. SO FOUR OR
13 FIVE TIMES.

14 DURING THAT TIME, HE ALSO DID A SECOND ROBBERY OF THE
15 SAME TACO BELL. AND THEN HE WENT TO PRISON. AND HE WAS IN
16 PRISON FOR SEVERAL YEARS, WAS RELEASED, HAD HIS PAROLE VIOLATED
17 FOUR OR FIVE TIMES. HE TERMED OUT. HE IS NOW OUT HOMELESS IN
18 SOUTH SACRAMENTO.

19 **JUDGE KARLTON:** AND HE WILL GO BACK TO PRISON AT SOME
20 POINT.

21 **THE WITNESS:** HE WILL GET ARRESTED AND --

22 **JUDGE KARLTON:** BECAUSE HE DOESN'T GET ANY TREATMENT
23 UP THERE EITHER.

24 **THE WITNESS:** ABSOLUTELY.

25 **JUDGE REINHARDT:** THAT'S A NICE NOTE ON WHICH TO END

1 THIS TRIAL. SO NOBODY HAS A SOLUTION, SO WE MIGHT AS WELL KEEP
2 GOING.

3 **MS. BARLOW:** I JUST HAVE A FEW MORE QUESTIONS YOUR
4 HONOR.

5 **BY MS. BARLOW:**

6 **Q.** NOW, CHIEF, YOU INDICATED IN YOUR DECLARATION THAT YOU DO
7 NOT BELIEVE A CAP SHOULD BE IMPOSED ON THE PRISON POPULATION.
8 CAN YOU TELL THE COURT WHY?

9 **A.** I THINK FROM A PUBLIC SAFETY STANDPOINT AND THE FACT THAT
10 THERE ARE REALLY NO SERVICES AVAILABLE TO THE LOCAL FOLKS, THE
11 LIMITED ONES THAT WE DO USE I THINK WOULD BE SHIFTED TO THE ONES
12 COMING OUT ON PAROLE, IF THEY COULD GET THEM, IF THEY WOULD GO.

13 **JUDGE REINHARDT:** DO YOU FEEL THE SAME WAY ABOUT A
14 CAP ON THE JAIL?

15 **THE WITNESS:** THAT'S SIMILAR, THE SAME THING.

16 **JUDGE REINHARDT:** AND WHAT'S HAPPENING IS ALL THE
17 COUNTIES HAVE CAPS ON THE JAILS. SO THAT MEANS THERE SHOULD BE
18 OVERCROWDING IN THE PRISONS.

19 **THE WITNESS:** WELL, MY IMPRESSION IS THAT MOST OF THE
20 JAILS THAT HAVE CONSENT DECREES, THEY DO NOT HAVE PRETRIAL
21 SERVICES OR OTHER PROGRAMS. THEY DO NOT DO RISK NEEDS
22 ASSESSMENTS ON FOLKS. THEY DON'T SUPERVISE THEM.

23 THAT WHOLE AREA WOULD HELP IMMENSELY WITH JAIL
24 OVERCROWDING, BUT THEN YOU HAVE GOT TO HAVE THOSE PROGRAMS
25 AND ALL THE TREATMENT THAT GOES WITH IT.

1 **JUDGE KARLTON:** AND IN A PERFECT WORLD WE WOULDN'T BE
2 HERE. EVEN IN AN IMPERFECT WORLD, BUT BETTER THAN THE ONE WE
3 HAVE GOT.

4 **THE WITNESS:** YES.

5 **JUDGE REINHARDT:** AND WITH ENOUGH LEADERSHIP AND
6 WILL.

7 **JUDGE KARLTON:** AND WILL, AND MONEY.

8 **JUDGE REINHARDT:** WELL, YOU WOULD HAVE MONEY IF YOU
9 HAD LEADERSHIP AND WILL.

10 **JUDGE KARLTON:** THAT'S TRUE.

11 **MS. BARLOW:** JUST ONE LAST QUESTION.

12 **JUDGE KARLTON:** SORRY. I DIDN'T MEAN TO AGREE WITH
13 YOU.

14 **BY MS. BARLOW:**

15 **Q.** DO YOU BELIEVE THAT THE MODEL THAT YOU HAVE -- THAT'S BEEN
16 USED TO BRING YOUR JUVENILE CUSTODIAL RATE DOWN COULD BE
17 SUCCESSFULLY USED FOR THE ADULT POPULATION?

18 **A.** YEAH. THE SIMILAR -- IF YOU LOOK AT THE WASHINGTON STATE
19 INSTITUTE OF PUBLIC POLICY, AND THERE'S A WHOLE STACK OF THINGS,
20 THERE IS CLEAR EVIDENCE THAT IT DOES REDUCE PRISON, JAIL,
21 PROBATION, PROBATION, PAROLE. AND IT IS ABOUT THE EVIDENCE
22 BASED, NOT COGNITIVE BEHAVIOR PROGRAMS. SO, YES, IT WOULD DO
23 THAT.

24 **Q.** AND THE MODEL IS ALREADY THERE. YOU JUST HAVE TO --

25 **A.** THEY ARE ON THE SHELF. YOU CAN BUY THEM. YOU TRAIN YOUR

1 PEOPLE IN THEM AND YOU STICK TO THE FIDELITY OF THE PROGRAM AND
2 YOU HAVE TO MAKE SURE THAT -- THAT IT'S DONE THE WAY THAT IT
3 WAS -- THE RESEARCH INDICATES THAT IT NEEDS TO BE DELIVERED AND
4 YOU WILL GET GOOD RESULTS.

5 Q. THANK YOU. I HAVE NOTHING FURTHER.

6 JUDGE HENDERSON: ANYTHING FROM STATE DEFENDANTS?

7 MR. MELLO: NO, YOUR HONOR.

8 THE COURT: CROSS-EXAMINATION.

9 CROSS EXAMINATION

10 BY MR. SANGSTER:

11 Q. ED SANGSTER FOR THE PLAINTIFFS. GOOD MORNING, CHIEF MEYER.

12
13 A. GOOD MORNING.

14 Q. YOU TALKED ABOUT THE UNDER FUNDING OF PROBATION AND I WANT
15 TO FOLLOW UP ON THAT. WHAT'S THE SOURCE OF YOUR FUNDING; STATE,
16 COUNTY OR BOTH?

17 A. ADULT OR JUVENILE OR BOTH?

18 Q. ADULT.

19 A. IT'S ALMOST ALL COUNTY GENERAL FUND, EXCEPT PROP 36.

20 Q. AND YOU HAVE BEEN A PROBATION OFFICER IN A NUMBER OF
21 DIFFERENT COUNTIES, CORRECT?

22 A. YES, YES.

23 Q. AND HAS ADEQUATE FUNDING OF PROBATION BEEN A PROBLEM IN ALL
24 OF THOSE COUNTIES?

25 A. YES.

1 Q. HOW LONG HAS IT BEEN A PROBLEM THAT PROBATION SERVICES HAVE
2 NOT BEEN ADEQUATELY FUNDED BY THE COUNTIES?

3 A. IT STARTED INITIALLY WITH PROP 13, BUT THE BIG IMPACT WAS
4 THE COCAINE EPIDEMIC IN THE EARLY 80'S. THAT JUST SWAMPED
5 PROBATION DEPARTMENTS.

6 Q. SO WHAT'S BEEN THE EFFECT OF THE INADEQUATE FUNDING OF
7 PROBATION SERVICES ON RECIDIVISM?

8 A. SAY THAT AGAIN?

9 Q. WHAT'S BEEN THE EFFECT OF THE INADEQUATE FUNDING OF
10 PROBATION SERVICES ON RECIDIVISM?

11 A. OH, IT WOULD MEAN THAT THEY WOULD BE ALLOWED TO ROAM AROUND
12 AND DO WHATEVER THEY DO WITHOUT BEING IN TREATMENT OR
13 SUPERVISION, SO IT GOES UP.

14 Q. IN YOUR OPINION, HAS IT GONE UP SIGNIFICANTLY BECAUSE OF THE
15 INADEQUACY OF PROBATION FUNDING?

16 A. I DON'T KNOW THE EXACT FIGURES, BUT MY GUESS WOULD BE YES.

17 Q. YOU THINK THAT THE STATE OF ADULT PROBATION IN CALIFORNIA IS
18 DISMAL?

19 A. YES.

20 Q. AND THE COUNTY GOVERNMENTS HAVE, WHILE YOU HAVE BEEN A
21 PROBATION OFFICER, ALLOWED THE PROBATION SERVICES TO DETERIORATE
22 TO THAT DISMAL STATE, RIGHT?

23 MS. BARLOW: I'M GOING TO OBJECT THAT COUNSEL
24 PREVIOUSLY INDICATED HE WAS NOT GOING TO ALLOW THE WITNESS TO
25 TESTIFY BEYOND YOLO COUNTY. SO I THINK WE SHOULD STICK TO THAT.

1 **JUDGE HENDERSON:** WHAT'S YOUR OBJECTION?

2 **MS. BARLOW:** THE OBJECTION IS IT'S BEYOND THE SCOPE.

3 **JUDGE KARLTON:** HE HAS NOW ESTABLISHED HE WORKED IN A
4 WHOLE BUNCH OF COUNTIES. YOU HADN'T DONE THAT.

5 **MS. BARLOW:** IT WAS IN THE DECLARATION, YOUR HONOR.

6 **JUDGE KARLTON:** YOU MAY PROCEED, COUNSEL.

7 **JUDGE HENDERSON:** YOU MAY ANSWER THE QUESTION.

8 **A.** REPEAT IT AGAIN.

9 **BY MR. SANGSTER:**

10 **Q.** I HAVE FORGOTTEN IT. I APOLOGIZE IF I END UP REPEATING ONE.

11 YOU HAVE OBSERVED COUNTY GOVERNMENTS ALLOW THE
12 PROBATION SERVICES TO DETERIORATE, RIGHT?

13 **A.** NO, I DON'T KNOW THAT THEY ALLOWED IT. IT'S JUST BECAUSE OF
14 THE WAY THINGS ARE FUNDED.

15 IN PARTICULAR, YOLO COUNTY GETS THE LOWEST PROPERTY
16 TAX RATE OF ANY COUNTY IN THE STATE. IS IT A HIGHER PRIORITY
17 THAN SOME OTHER SERVICES? NO. IN THE CRIMINAL JUSTICE SYSTEM
18 IS IT AT OR NEAR THE BOTTOM? YES.

19 **Q.** WELL, YOU HAVE SEEN PROBATION SERVICES DETERIORATE TO THE
20 POINT WHERE THERE IS ALMOST NO REHABILITATION GOING ON AT THE
21 LOCAL LEVEL, IS THAT CORRECT?

22 **A.** CORRECT.

23 **JUDGE KARLTON:** THAT'S TRUE IN YOUR COUNTY.

24 **THE WITNESS:** YES.

25

1 **BY MR. SANGSTER:**

2 **Q.** WELL, IT'S TRUE OF THE OTHER COUNTIES YOU HAVE BEEN IN AS
3 WELL, RIGHT?

4 **A.** ON THE ADULT SIDE. BUT I HAVE BEEN OUT OF SACRAMENTO FOR
5 FIVE YEARS. I KNOW THEY HAVE DONE SOMETHING, BUT HALF --
6 STATEWIDE I THINK 56 PERCENT OF ALL CONVICTED ADULT FELONS ARE
7 IN BANK LOADS.

8 **Q.** THAT MEANS THEY ARE GETTING NO -- NO PROBATION OVERSIGHT
9 EFFECTIVELY?

10 **A.** EXCEPT WHEN YOU FILE A VIOLATION.

11 **Q.** YOU ARE THE PRESIDENT ELECT OF THE CALIFORNIA PROBATION
12 OFFICERS ASSOCIATION?

13 **A.** YEAH, THE CHIEF PROBATION OFFICERS OF CALIFORNIA.

14 **Q.** I TAKE IT YOU ARE FAMILIAR WITH THE ISSUES THAT ARE BEING
15 ENCOUNTERED STATEWIDE?

16 **A.** I'M LEARNING.

17 **JUDGE KARLTON:** AND IT AIN'T A GREAT EXPERIENCE, IS
18 THAT RIGHT?

19 **THE WITNESS:** WELL, IT'S CHALLENGING AND I ENJOYED IT
20 SO FAR.

21 **BY MS. SANGSTER:**

22 **Q.** I TAKE IT YOU WOULD AGREE THAT THERE ARE MORE CRIMES BEING
23 COMMITTED NOW BECAUSE OF THE UNDER FUNDING OF PROBATION
24 SERVICES?

25 **A.** THAT'S A -- I THINK WE COULD REDUCE THE CRIME RATE, YES, IF

1 WE HAD THE RIGHT SERVICES AT THE LOCAL LEVEL.

2 Q. HOW SIGNIFICANT HAS THE INADEQUATE FUNDING OF PROBATION
3 SERVICES BEEN ON THE LEVELS OF CRIME?

4 A. I DON'T KNOW THAT I CAN ANSWER THAT ONE.

5 Q. DO YOU BELIEVE THAT THE UNDER FUNDING OF PROBATION SERVICES
6 HAS CONTRIBUTED TO THE OVER POPULATION OF THE STATE PRISONS?

7 A. WELL, IF YOU -- IF YOU DON'T GET THEM IN TREATMENT, CLEARLY,
8 AND YOU SEND 30 PERCENT MORE THAN WHAT YOU THINK NEED TO GO,
9 THEN YES.

10 JUDGE REINHARDT: SO THE ANSWER IS YES, RIGHT?

11 THE WITNESS: YEAH.

12 BY MS. SANGSTER:

13 Q. NOW, YOU MENTIONED I THINK IT WAS 168 FELONS SENT TO STATE
14 PRISON FOR VIOLATION OF PROBATION; IS THAT THE RIGHT NUMBER?

15 A. YES.

16 Q. YOU BELIEVED THAT THAT NUMBER COULD BE DRAMATICALLY REDUCED
17 IF PROBATION SERVICES WERE ADEQUATELY FUNDED?

18 A. YES.

19 Q. SO THERE IS, IN YOUR MIND, AN OPTION FOR DRAMATICALLY
20 AFFECTING THE NUMBER OF PEOPLE GOING TO STATE PRISONS THAT'S
21 RIGHT BEFORE THE COUNTY GOVERNMENT AND, THAT'S FUND PROBATION
22 SERVICES?

23 JUDGE KARLTON: THAT ASSUMES THAT THE COUNTY
24 GOVERNMENT HAS ANY MONEY.

25 THE WITNESS: THAT'S THE PROBLEM, IS THEY DON'T HAVE

1 MONEY. WE ARE GOING TO -- WE ARE GOING TO BE 18 MILLION IN THE
2 HOLE NEXT YEAR IN YOLO COUNTY.

3 **BY MS. SANGSTER:**

4 **Q.** BECAUSE THE VOTERS OF YOLO COUNTY WILL NOT VOTE TO INCREASE
5 THE TAXES TO PAY FOR IT, RIGHT?

6 **MS. BARLOW:** CALLS FOR SPECULATION.

7 **JUDGE REINHARDT:** HOW DOES THAT --

8 **JUDGE KARLTON:** THAT'S LIKE THE QUESTIONS ABOUT
9 WHETHER OR NOT PEOPLE ARE INCAPACITATED WHEN THEY ARE IN PRISON.
10 IF THEY DON'T HAVE THE MONEY, THEY DON'T HAVE THE MONEY --

11 **JUDGE REINHARDT:** IF THEY HAVEN'T VOTED FOR THE
12 MONEY, YOU CAN'T RAISE THE TAKES TAXES.

13 **MS. SANGSTER:** THE OPTIONS OF MONEY IS NOT COMING OUT
14 OF A VACUUM, YOUR HONOR. IT'S COMING BECAUSE OF CHOICES THAT
15 PEOPLE ARE MAKING.

16 **JUDGE KARLTON:** IS THAT RIGHT?

17 **MS. BARLOW:** I THINK COUNSEL IS TESTIFYING NOW.

18 **JUDGE REINHARDT:** MAYBE IN ARGUMENT SOMEBODY COULD
19 TELL US HOW YOU GET MORE MONEY.

20 **JUDGE KARLTON:** SOME DAY WILL GET TO THE ARGUMENT,
21 GOD WILLING AND THE RIVER DON'T RISE.

22 ENOUGH. WE WILL GO ON WITH THIS FOREVER. DO YOU
23 HAVE A SENSIBLE QUESTION TO ASK, COUNSEL?

24 **MR. SANGSTER:** YES, I DO, YOUR HONOR.

25 **JUDGE KARLTON:** ALL RIGHT.

1 **BY MR. SANGSTER:**

2 **Q.** I WANT TO TALK ABOUT COMMUNITY CORRECTIONS. THAT WAS ONE OF
3 THE ALTERNATIVES THAT YOU HAVE SUGGESTED TO THIS COURT AS AN
4 ALTERNATIVE FOR AVOIDING A PRISONER RELEASE ORDER. OKAY?

5 **A.** YES.

6 **Q.** AND YOU REFERRED IN YOUR DECLARATION TO A PARTICULAR STATUTE
7 THAT THE LEGISLATURE HAD ENACTED?

8 **A.** YES.

9 **Q.** WHAT'S THAT STATUTE?

10 **A.** 8050 OF THE PENAL CODE.

11 **Q.** DO YOU KNOW HOW LONG AGO THAT WAS ENACTED?

12 **A.** IT'S BEEN 10 TO 20 YEARS, IN THAT RANGE I THINK.

13 **Q.** AND IN YOUR MIND IF THE STATE HAD FUNDED THE COMMUNITY
14 CORRECTIONS ACT, WOULD THAT HAVE HAD AN IMPACT ON CRIME?

15 **A.** IT WOULD HAVE, BUT I THINK INITIALLY ABSENT -- THAT WAS IN
16 WAS AT A TIME WHEN THERE WEREN'T EVIDENCE BASED AND DATA
17 SUGGESTS WHAT YOU REALLY NEED TO DO WITH OFFENDERS.

18 THAT WOULD HAVE BEEN DURING THE TIME THAT YOU
19 WOULDN'T HAVE SEEN THE KIND OF QUALITY YOU WOULD HAVE, PROMISING
20 PRACTICE AND GOOD PROGRAMS. AND YOU WOULD SEE A REDUCTION, BUT
21 PROBABLY NOT AS HIGH AS YOU WOULD WITH THE EVIDENCE BASED.

22 **Q.** RIGHT. BUT THE POINT IS FOR 20 YEARS THERE HAS BEEN A LAW
23 ON THE BOOK THAT WOULD, IN YOUR MIND, SIGNIFICANTLY REDUCE
24 CRIME?

25 **A.** CERTAINLY WOULD HELP.

1 Q. AND THE ONLY THING THAT'S BEEN MISSING IS THE STATE TO
2 PROVIDE FUNDING?

3 A. YES.

4 MR. SANGSTER: NO FURTHER QUESTIONS.

5 JUDGE HENDERSON: OKAY. REDIRECT?

6 MS. SANGSTER: JUST VERY BRIEFLY.

7 JUDGE REINHARDT: YOU SAY THAT EVERY TIME.

8 MS. BARLOW: I'M SORRY, YOUR HONOR. I'M TRYING TO BE
9 BRIEF. WE STIPULATED TO MULTIPLE WITNESSES TO TRY TO SPEED THIS
10 UP.

11 JUDGE REINHARDT: I KNOW. YOU HAVE DONE WELL ON
12 THAT. WE WILL SEE IF YOU ARE JUST BRIEFLY.

13 MS. BARLOW: I WILL.

14 JUDGE REINHARDT: OKAY.

15 REDIRECT EXAMINATION

16 BY MS. BARLOW:

17 Q. NOW THAT COUNSEL HAS ESTABLISHED YOUR STATEWIDE EXPERTISE,
18 DO YOU BELIEVE WE HAVE 52,000 LOW RISK PRISONERS IN STATE
19 PRISON?

20 A. WHAT?

21 Q. 52,000 LOW RISK PRISONERS IN STATE PRISON?

22 MR. SANGSTER: LACKS FOUNDATION.

23 JUDGE HENDERSON: "YES" OR "NO."

24 A. NO.

25

1 **BY MS. BARLOW:**

2 **Q.** THANK YOU.

3 **JUDGE KARLTON:** SIR, I WANT TAKE TO TAKE YOU INTO AN
4 ENTIRELY DIFFERENT SUBJECT MATTER, WHICH WILL INVITE QUESTIONS
5 FROM COUNSEL, I'M SURE.

6 YOLO COUNTY HAS BEEN -- MAYBE YOU DON'T KNOW, IT'S
7 OUTSIDE YOUR FIELD, BUT I ASSUME IT'S COMMON KNOWLEDGE.

8 YOLO COUNTY HAS BEEN HAVING A STRUGGLE TRYING TO FIND
9 AN APPROPRIATE PLACE TO SITE THE REENTRY PROGRAM, CORRECT?

10 **THE WITNESS:** I HAVE BEEN AT SEVERAL OF THOSE
11 MEETINGS, YES.

12 **JUDGE KARLTON:** THE STATE -- THE COUNTY DESPERATELY
13 WANTS TO FIND SUCH A SITE BECAUSE IT WILL PERMIT THEM TO
14 INCREASE THEIR JAIL POPULATION IN A SIGNIFICANT WAY. THAT'S THE
15 CARROT FOR THE STICK, RIGHT?

16 **THE WITNESS:** CORRECT.

17 **JUDGE KARLTON:** AND WHAT'S HAPPENED IS NOW THEY ARE
18 TALKING ABOUT LOCATING A REENTRY PROGRAM AWAY FROM WEST
19 SACRAMENTO, AWAY FROM THE POPULATION CENTERS THAT THE PRISONERS
20 WILL ULTIMATELY RETURN TO, CORRECT?

21 **THE WITNESS:** THAT'S IN MADISON, YEAH, A SMALL
22 COMMUNITY.

23 **JUDGE KARLTON:** AND MADISON IS UP IN ARMS.

24 **THE WITNESS:** WELL, NOT ALL OF THEM, BUT MOST VOCAL,
25 YES.

1 **JUDGE KARLTON:** ALL RIGHT. HAS THAT PROBLEM EVEN
2 BEEN SOLVED YET.

3 **THE WITNESS:** NO, IT HAS NOT.

4 **JUDGE KARLTON:** WELL, OKAY. THAT SAYS WHAT I THINK
5 NEEDS TO BE ESTABLISHED.

6 HAS MY QUESTIONS INVITED QUESTIONS OF COUNSEL?

7 **MS. BARLOW:** NO. THANK YOU, YOUR HONOR.

8 **MR. SANGSTER:** NO, YOUR HONOR.

9 **JUDGE HENDERSON:** THANK YOU FOR TESTIFYING, SIR, YOU
10 ARE EXCUSED.

11 **THE WITNESS:** YOU ARE WELCOME.

12 (WITNESS EXCUSED.)

13 **JUDGE HENDERSON:** AND WE WILL TAKE A 15-MINUTE
14 RECESS.

15 (BRIEF RECESS HELD IN THE PROCEEDINGS.)

16 **JUDGE HENDERSON:** YOU MAY CALL YOUR NEXT WITNESS.

17 **MR. SPECTER:** I BELIEVE THAT WE ARE AT THE END OF THE
18 DEFENDANT'S AND THE INTERVENOR DEFENDANT'S WITNESSES, AND SO WE
19 ARE CALLING OUR SOLE REBUTTAL WITNESS, YOUR HONOR.

20 **JUDGE KARLTON:** BEFORE YOU DO THAT, DO YOU REST,
21 FOLKS?

22 **MR. MITCHELL:** DEFENDANT INTERVENORS REST.

23 **MR. MELLO:** I DON'T BELIEVE PLAINTIFFS HAVE.

24 **JUDGE KARLTON:** IF THEY DIDN'T.

25 **JUDGE REINHARDT:** NO, THEY RESTED.

1 **MR. SPECTER:** YOU ARE RESTING FOR ME?

2 **JUDGE HENDERSON:** WE REST THEM.

3 **JUDGE KARLTON:** ARE YOU RESTING, PLEASE? THAT CAN'T
4 BE A COMPLICATED PROBLEM.

5 **MS. JOHNSON:** WE ARE CALLING -- IF THEY CONTINUE TO
6 PROPOSE AND THE COURT IS GOING TO ALLOW CONSIDERATION OF THIS
7 DOCUMENT, 842, TO COME INTO EVIDENCE WE ARE GOING TO BE CALLING
8 A WITNESS FROM THEIR OFFICE.

9 **JUDGE KARLTON:** THAT'S A REBUTTAL.

10 **MR. SPECTER:** THAT'S OUR REBUTTAL, YOUR HONORS.

11 **JUDGE KARLTON:** JUST TELL ME.

12 **MR. MELLO:** IF PLAINTIFFS HAVE RESTED, THEN WE'VE
13 RESTED.

14 **JUDGE KARLTON:** THANK YOU. REBUTTAL.

15 **MR. SPECTER:** PLAINTIFFS CALL MICHAEL HENNESSEY AS A
16 REBUTTAL WITNESS.

17 **MR. MITCHELL:** BEFORE WE GET STARTED, BILL MITCHELL
18 FOR THE DEFENDANT INTERVENORS. I'D ASK THAT THE COURT, IN AN
19 ATTEMPT TO PERHAPS SHORTEN THESE PROCEEDINGS, SHOULD REQUIRE AN
20 OFFER OF PROOF TO DETERMINE WHETHER OR NOT --

21 **JUDGE HENDERSON:** WE SHOULD HAVE DONE THAT A MONTH
22 AGO. WE ARE NOT GOING TO START THIS ON THE LAST WITNESS,
23 COUNSEL.

24 **MICHAEL HENNESSEY,**
25 HAVING BEEN CALLED AS A WITNESS BY THE PLAINTIFFS WAS FIRST

1 DULY SWORN AND EXAMINED AS FOLLOWS:

2 **THE WITNESS:** MY NAME IS MICHAEL HENNESSEY
3 H-E-N-N-E-S-S-E-Y.

4 **DIRECT EXAMINATION BY MR. SPECTER**

5 BY MR. SPECTER

6 **Q** MR. HENNESSEY, WHAT DO YOU DO?

7 **A** I'M THE SHERIFF OF THE CITY AND COUNTY OF SAN FRANCISCO.

8 **Q** HOW LONG HAVE YOU BEEN THE SHERIFF?

9 **A** TWENTY-NINE YEARS.

10 **Q** WHAT ARE YOUR RESPONSIBILITIES AS THE SHERIFF?

11 **A** PRIMARILY, TO RUN THE COUNTY JAIL SYSTEM, TO PROVIDE
12 SECURITY TO THE COURTROOMS AND OTHER CIVIC BUILDINGS, AND TO
13 ENFORCE CIVIL JUDGMENTS.

14 **Q** WHAT'S THE CAPACITY OF THE JAIL SYSTEM IN SAN FRANCISCO?

15 **A** 2,040.

16 **Q** AND HOW MANY PRISONERS ARE IN THE JAILS NOW?

17 **A** THIS MORNING THERE WERE ABOUT 1930.

18 **Q** AND UNDER YOUR ADMINISTRATION HOW MANY PRISONERS HAVE BEEN
19 IN THE JAILS; DID YOU EVER CALCULATE THAT?

20 **A** WELL OVER A MILLION.

21 **Q** YOU UNDERSTAND THAT THE RELIEF THAT PLAINTIFFS ARE ASKING IN
22 THIS CASE IS TO REDUCE THE PRISON POPULATION BY 52,000 PRISONERS
23 OVER A TWO-YEAR PERIOD, RIGHT?

24 **A** YES.

25 **Q** IN YOUR OPINION, WOULD A REDUCTION OF THIS MANY PRISONERS

1 REQUIRE YOU TO RELEASE PRISONERS IN YOUR JAIL EARLY?

2 **A** I DON'T THINK IT WOULD BE A SIGNIFICANT FACTOR, NO.

3 **Q** DO YOU OPERATE PROGRAMS THAT ARE DESIGNED TO REDUCE THE
4 POPULATION OF YOUR JAILS?

5 **A** YES, MANY.

6 **Q** CAN YOU DESCRIBE SOME OF THE PROGRAMS FOR PRETRIAL
7 DETAINEES, PLEASE?

8 **A** YES. FOR PRETRIAL DETAINEES, WE HAVE AN OWN RECOGNIZANCE
9 PROGRAM WE FUND, WHICH ALLOWS PEOPLE TO GO OUT BASICALLY ON
10 THEIR WORD BECAUSE OF THEIR TIES IN THE COMMUNITY. WE HAVE A
11 CITATION-RELEASE PROGRAM WHICH IS AUTHORIZED UNDER STATE LAW FOR
12 MINOR OFFENDERS, MISDEMEANOR OFFENDERS. WE HAVE AUGMENTED THAT
13 WITH A PROGRAM CALLED THE SECOND LOOK PROGRAM WHICH GOES AND
14 INTERVIEWS ANY MISDEMEANANT THAT WAS NOT CITED OUT TO SEE IF
15 WHATEVER DISQUALIFIED THEM FROM CITATION-RELEASE CAN BE
16 CORRECTED AND THEY CAN BE CITED OUT LATER.

17 WE HAVE A HOMELESS RELEASE PROGRAM TO FIND HOMELESS
18 PEOPLE WHO DO NOT HAVE A HOME, SO, THEREFORE, WE CAN'T HAVE AN
19 ADDRESS TO CITE THEM, BUT WE WORK WITH SOCIAL WORKERS TO
20 IDENTIFY THEM AND BRING THEM INTO CUSTODY.

21 OBVIOUSLY, WE ALSO HAVE A BAIL SYSTEM.

22 **Q** AND DO THOSE PROGRAMS RESULT IN THE RELEASE OF PRISONERS WHO
23 OTHERWISE WOULDN'T HAVE BEEN RELEASED FROM THE JAIL BEFORE THEIR
24 TRIAL?

25 **A** YES. MOST MISDEMEANANTS ARE RELEASED FROM CUSTODY EXCEPT

1 THOSE WHO HAVE A WARRANT FOR THEIR ARREST AND THAT PROHIBITS
2 THEM FROM BEING RELEASED.

3 **Q** AND YOU ALSO HAVE PROGRAMS FOR SENTENCED PRISONERS, DO YOU
4 NOT?

5 **A** YES.

6 **Q** CAN YOU DESCRIBE THOSE, PLEASE?

7 **A** WELL, WE HAVE IN-CUSTODY PROGRAMS, BUT TO PROVIDE EDUCATION
8 AND DRUG TREATMENT, BUT THE PROGRAMS THAT ARE RELATED TO
9 RELEASING PRISONERS, WE OPERATE A COUNTY PAROLE SYSTEM, WHICH
10 CAN EITHER HEAR INDIVIDUAL CASES OR, IN OUR CASE, WE NOW HAVE A
11 STANDING ORDER THAT ALLOWS US TO RELEASE SENTENCED PRISONERS UP
12 TO 30 DAYS EARLY WITHOUT TAKING THEM BEFORE THE COUNTY PAROLE
13 BOARD.

14 WE HAVE A WORK ALTERNATIVE PROGRAM WHICH IS, ASSUMING
15 THE SENTENCING JUDGE DOESN'T OBJECT, A PERSON CAN WORK OFF THEIR
16 SENTENCE BY WORKING EIGHT HOURS A DAY DOING STREET CLEANING AND
17 THINGS LIKE THAT. FOR EACH DAY THEY WORK, THEY GET CREDIT FOR
18 ONE DAY IN JAIL.

19 WE HAVE ELECTRONIC MONITORING PROGRAMS WHERE PEOPLE
20 ARE EITHER FORCED TO STAY IN THEIR HOME EXCEPT WHEN THEY ARE
21 SPECIFICALLY PERMITTED TO GO OUT OF THEIR HOME. WE HAVE ALSO A
22 VERSION OF THAT WHERE PEOPLE WEAR GPS MONITORING WHICH ALLOW
23 THEM TO GO TO WORK, AND WE CAN MONITOR THEIR WHEREABOUTS.

24 I THINK THOSE ARE THE PRIMARY ONES.

25 **JUDGE REINHARDT:** ARE THESE ALL MISDEMEANANTS?

1 **THE WITNESS:** NO. ALMOST OF ALL OF OUR SENTENCED
2 PRISONERS HAVE BEEN CONVICTED OF FELONIES. THEY HAVE HAD THEIR
3 STATE PRISON SUSPENDED, AND THEY'VE BEEN PUT IN COUNTY JAIL AS A
4 CONDITION OF PROBATION, BUT IT'S MOSTLY FELONY COMMITMENTS.

5 **BY MR. SPECTER**

6 **Q** TO SOMEWHAT STATE THE OBVIOUS, THESE PROGRAMS PUT MORE
7 OFFENDERS IN THE COMMUNITY; IS THAT RIGHT?

8 **A** YES. TODAY I HAVE 300 PEOPLE SERVING THEIR SENTENCES WHO
9 ARE NOT IN CUSTODY.

10 **Q** AND HAVE YOU FOUND THAT THE IMPLEMENTATION OR THE OPERATION
11 OF THESE PROGRAMS HAS REDUCED THE SAFETY TO THE COMMUNITY?

12 **A** NO, I DON'T BELIEVE IT HAS.

13 **Q** JAIL PRISONERS RECEIVE GOOD TIME CREDITS AGAINST THEIR
14 PRISON SENTENCE; ISN'T THAT RIGHT?

15 **A** YES, SENTENCES ARE REDUCED BY APPROXIMATELY ONE-THIRD.

16 **Q** RIGHT. AND THEY'RE ALSO -- THEY ALSO GET CREDITS AGAINST
17 THEIR JAIL SENTENCE AS WELL, CORRECT, IF THEY'RE SENTENCED TO
18 JAIL FOR A MISDEMEANOR AS A CONDITION OF PROBATION?

19 **A** YES. THAT'S GOOD TIME, WORK TIME CREDIT. APPROXIMATELY
20 ONE-THIRD OF THEIR SENTENCE IS REDUCED, ASSUMING THEY DO NOT
21 HAVE DISCIPLINARY INFRACTIONS WHILE IN CUSTODY.

22 **Q** RIGHT. THAT'S FOR BOTH PRETRIAL AND POST-SENTENCE
23 CONFINEMENT, CORRECT?

24 **A** THEY ACCUMULATE THE CREDITS BASED ON BOTH PRETRIAL AND THEIR
25 SENTENCE TIME, BUT IT ONLY APPLIES, OBVIOUSLY, TO SENTENCED

1 PRISONERS.

2 **Q** NOW, THERE WAS A COURT PROCEEDING SEVERAL YEARS AGO WHICH
3 PUT A CAP ON THE SAN FRANCISCO COUNTY JAIL, RIGHT?

4 **A** YES.

5 **Q** AND DID YOU EVER HAVE TO RELEASE PRISONERS BEFORE THEIR
6 SENTENCE WAS COMPLETED AS A RESULT OF THAT CAP?

7 **A** YES.

8 **Q** AND HOW DID YOU DO THAT?

9 **A** JUDGE ORRICK HAD APPOINTED A SPECIAL MASTER WHO WAS
10 OVERSEEING OUR COUNTY JAIL POPULATION FOR, OH, A DECADE OR MORE,
11 AND HE GAVE US -- GAVE ME AUTHORITY TO RELEASE PRISONERS AS
12 NEEDED TO MEET OUR CAPACITY ON A SCALE WHICH WAS FIRST TO
13 RELEASE SENTENCED PRISONERS TEN PERCENT BEFORE THEIR RELEASE
14 DATE. IF THAT DIDN'T CURE THE DEFECT, THEN 20 PERCENT BEFORE
15 THE RELEASE DATE, AND CONTINUING ON AT TEN PERCENT INTERVALS
16 UNTIL THE SENTENCED POPULATION OR THE OVERALL JAIL POPULATION
17 WAS ATTAINED.

18 **Q** AND JUST WHO WAS THE SPECIAL MASTER IN THAT CASE?

19 **A** IT WAS ALLAN BREED.

20 **Q** SO THIS CONSENT OR THIS JUDGMENT FROM JUDGE ORRICK RESULTED
21 IN THE EARLY RELEASE OF PRISONERS. ABOUT HOW MANY PRISONERS
22 WERE RELEASED ON THIS PROGRAM?

23 **A** WELL, VIRTUALLY EVERY SENTENCED PRISONER OVER A NUMBER OF
24 YEARS, SO SEVERAL THOUSAND.

25 **Q** OKAY. AND WAS THERE A PUBLIC OUTCRY FROM THE EARLY RELEASE

1 OF THESE SENTENCED PRISONERS?

2 **A** NO. THERE WAS CONCERN, AND THERE WAS SOME INVESTIGATIVE
3 REPORTER LOOKING AT IT, BUT THERE WASN'T ANY PARTICULAR PUBLIC
4 OUTCRY.

5 **Q** NOW, OF THE OFFENDERS WHO WERE RELEASED UNDER THIS PROGRAM,
6 DO YOU KNOW OF ONE WHO EVER COMMITTED A SERIOUS CRIME DURING THE
7 PERIOD WHEN THEY WOULD OTHERWISE HAVE BEEN INCARCERATED?

8 **A** NO.

9 **Q** NOW, JUST MOVING AWAY FROM THE EARLY RELEASE PROGRAM THAT
10 WAS IMPLEMENTED IN THE PAST, IN TERMS OF RELEASING PRISONERS
11 TODAY, DO YOU DO ANYTHING DIFFERENTLY FOR MENTALLY ILL
12 PRISONERS?

13 **A** WE HAVE HAD A CASE MANAGEMENT PROGRAM FOR MENTALLY ILL
14 OFFENDERS ON EITHER LOCAL PRISONERS OR STATE PAROLEES. THE
15 FUNDING, HOWEVER, FOR THAT PROGRAM NO LONGER EXISTS.

16 **Q** WHEN IT WAS OPERATING WAS IT EFFECTIVE?

17 **A** YES. THE PEOPLE -- THE PEOPLE WHO HAD SERIOUS AND
18 PERSISTENT MENTAL ILLNESSES WHO WERE INVOLVED IN THE CRIMINAL
19 JUSTICE SYSTEM WHO HAD CASE MANAGERS WERE ALMOST NEVER
20 REARRESTED.

21 **Q** YOU HAVE A PROGRAM IN YOUR JAIL CALLED NOVA, RIGHT?

22 **A** YES.

23 **Q** N-O-V-A, WHAT DOES THAT STAND FOR?

24 **A** IT STANDS FOR THE NO VIOLENCE ALLIANCE.

25 **Q** WHAT KIND OF OFFENDERS ARE ELIGIBLE FOR THIS PROGRAM?

1 **A** THIS IS A PROGRAM DESIGNED TO PROVIDE CASE MANAGEMENT
2 SERVICES EXCLUSIVELY TO PRISONERS WITH VIOLENT CRIMINAL RECORDS.

3 **Q** WHEN YOU SAY "VIOLENT CRIMINAL RECORDS," WHAT KIND OF
4 OFFENSES DO YOU TAKE IN THAT PROGRAM?

5 **A** WELL, MOST ANY KIND, BUT CURRENTLY ON THE PROGRAM WE HAVE
6 PEOPLE FOR ASSAULT WITH A DEADLY WEAPON, MURDER, RAPE,
7 KIDNAPPING, BATTERY, DOMESTIC VIOLENCE.

8 **Q** THANK YOU. CAN YOU PLEASE DESCRIBE WHAT THAT PROGRAM DOES
9 AND WHAT ITS PURPOSE IS AND HOW IT OPERATES?

10 **A** YES, WE IDENTIFY PEOPLE THROUGH OUR CLASSIFICATION SYSTEM
11 WHO HAVE A VIOLENT RECORD WHO ARE GOING TO BE GETTING OUT AND
12 ASK THEM IF THEY WOULD LIKE TO BE PART OF A CASE MANAGEMENT
13 PROGRAM. SO WE PROVIDE THEM WITH A CASE MANAGER WHO SEES WHAT
14 TYPES OF HELP OR ASSISTANCE THEY NEED, AND THEN WE HAVE A
15 FLEXIBLE FUND WHICH WE CAN DRAW ON TO PROVIDE SERVICES SUCH AS
16 HOUSING, DRUG TREATMENT, EMPLOYMENT, TRAINING, EDUCATION, WORK
17 CLOTHES, OR THINGS LIKE THAT.

18 **JUDGE KARLTON:** WHERE DOES THE MONEY COME FROM?

19 **THE WITNESS:** INITIALLY, IT CAME DIRECTLY FROM OUR
20 BOARD OF SUPERVISORS, AND THEN, SINCE THAT TIME, WE HAVE BEEN
21 CONTRACTED WITH THE STATE OF CALIFORNIA TO PROVIDE THESE
22 SERVICES TO A GROUP OF STATE PAROLEES.

23 **BY MR. SPECTER**

24 **Q** SO HOW MANY STATE PAROLEES ARE IN -- ARE THEY FROM SAN
25 QUENTIN, THE NEAREST PRISON?

1 **A** MOST OF THEM ARE FROM SAN QUENTIN. WE HAVE HAD PEOPLE FROM
2 SOLEDAD AND ELSEWHERE. WE GO INTO THE PRISONS THEMSELVES AND
3 INTERVIEW PEOPLE AND SIGN THEM UP, AND WHEN THEY GET OUT, WE
4 PROVIDE THE CASE MANAGEMENT FOR THEM.

5 **Q** JUST SO IT'S CLEAR IN THE RECORD, YOU PROVIDE -- THIS NOVA
6 PROGRAM BOTH WORKS FOR PAROLEES FROM THE STATE PRISON SYSTEM AND
7 FROM THE COUNTY JAIL; IS THAT CORRECT?

8 **A** YEAH. WE HAVE A CONTRACT WITH CDCR TO PROVIDE THIS SERVICE.

9 **Q** OKAY. AND HOW LONG HAS THIS PROGRAM BEEN OPERATING?

10 **A** THE LOCAL VERSION OF IT HAS BEEN OPERATING ABOUT 2-1/2
11 YEARS, AND THE STATE VERSION OF IT HAS BEEN OPERATING FOR ABOUT
12 A YEAR AND A HALF.

13 **Q** AND HAS IT BEEN SUCCESSFUL IN REDUCING --

14 **A** WELL, YES, WE'VE DONE A STUDY ON IT. WE HAVE HAD AN
15 EVALUATION DONE ON THE PROGRAM.

16 **Q** DID YOU DO THAT STUDY OR AN INDEPENDENT PERSON DO THE STUDY?

17 **A** WE HAD AN INDEPENDENT CONTRACTOR COME IN AND DO THE STUDY.

18 **Q** OKAY. WHAT WERE THE RESULTS OF THE STUDY?

19 **A** THE RESULTS SHOWED THAT -- AND WE DID, OBVIOUSLY, A
20 COMPARISON GROUP WHO HAD SIMILAR BACKGROUNDS -- AND OF THE
21 COMPARISON GROUP ABOUT 68 PERCENT WERE REARRESTED WITHIN THE
22 FIRST YEAR, AND OF THE NOVA GROUP IT WAS 36 PERCENT. SO WE
23 PRETTY MUCH CUT REARRESTS IN HALF AND THAT WAS JUST ARRESTS.
24 THE CONVICTIONS, THE STUDY GROUP HAD ABOUT A 20 PERCENT
25 CONVICTION RATE AND THE NOVA GROUP HAD ABOUT A FIVE PERCENT

1 CONVICTION RATE.

2 **Q** THAT WAS FOR VIOLENT OFFENDERS, CORRECT?

3 **A** THE PARTICIPANTS ARE ALL VIOLENT OFFENDERS. ALMOST NONE OF
4 THE NEW CRIMES WERE VIOLENT CRIMES.

5 **Q** WHAT IS THE COST OF THE PROGRAM FOR BOTH THE PRISONERS AND
6 THE COUNTY JAIL?

7 **A** WE SPEND ABOUT \$3,000 PER PARTICIPANT FOR EACH PARTICIPANT
8 AS A GROUP. THE CDCR PEOPLE ARE A LITTLE MORE INTENSIVE. WE
9 SPEND ABOUT \$4,000 PER PERSON FOR THE CDCR PARTICIPANTS PER
10 PERSON PER YEAR.

11 **Q** THANK YOU.

12 **JUDGE REINHARDT:** IS THIS A PILOT PROGRAM BY THE
13 STATE?

14 **THE WITNESS:** YES, IT IS A PILOT PROGRAM, YOUR HONOR,
15 THAT THE STATE PUT OUT A REQUEST FOR PROPOSALS FOR
16 INTER-GOVERNMENTAL PARTNERSHIPS FOR CRIME REDUCTION, AND WE
17 PROPOSED THIS BECAUSE WE'D ALREADY BEEN RUNNING IT, OUR LOCAL
18 VERSION. SO WE WERE GRANTED \$1.2 MILLION FROM THE STATE TO TAKE
19 STATE PAROLEES AND PUT THEM IN THIS PROGRAM.

20 **JUDGE REINHARDT:** IS IT AVAILABLE TO OTHER COUNTIES?

21 **THE WITNESS:** NO, AT THIS POINT, NO, IT'S JUST A SAN
22 FRANCISCO PROGRAM.

23 **JUDGE REINHARDT:** ARE YOU SUPPOSED TO REPORT BACK ON
24 THE SUCCESS OF THE PILOT PROGRAM?

25 **THE WITNESS:** YES.

1 BY MR. SPECTER

2 Q DO YOU HAVE ANY AGREEMENTS WITH THE CDCR TO HOUSE ANY STATE
3 PRISONERS FOR REENTRY PURPOSES?

4 MS. BARLOW: I'M SORRY, COUNSEL. I COULDN'T HEAR
5 YOUR QUESTION.

6 BY MR. SPECTER

7 Q DO YOU HAVE ANY AGREEMENTS WITH THE CDCR TO HOUSE ANY
8 PRISONERS FOR REENTRY PURPOSES?

9 A YES, WE HAVE A CONTRACT THAT WAS NEGOTIATED WITH -- BETWEEN
10 ME AND OUR DISTRICT ATTORNEY AND CDCR TO SET UP A REENTRY
11 PROGRAM FOR STATE PRISONERS TO SERVE THEIR LAST 12 MONTHS IN THE
12 SAN FRANCISCO COUNTY JAIL, OR THEY WOULD BE PROVIDED WITH
13 IN-CUSTODY SERVICES, AND THEN THE DISTRICT ATTORNEY WOULD SET UP
14 A POST-RELEASE REENTRY COURT PROGRAM AND PROVIDE SERVICES POST
15 RELEASE.

16 Q AND THE AIM OF THAT IS TO REDUCE THE RECIDIVISM OF THESE
17 OFFENDERS; IS THAT CORRECT?

18 A YES, AND IT WOULD ALSO HAVE THE BENEFIT OF REDUCING STATE
19 PRISON POPULATION SOMEWHAT.

20 Q RIGHT. WHEN DID YOU SIGN THAT AGREEMENT OR CONTRACT?

21 A WE SIGNED THE CONTRACT ABOUT 60 DAYS AGO.

22 Q HOW MANY PRISONERS ARE IN YOUR JAIL FOR THIS PURPOSE?

23 A NONE AT THIS POINT.

24 Q OKAY. DO YOU KNOW WHY NOT? HAVE YOU ASKED FOR THEM?

25 A WE WERE ACTUALLY SET TO START THIS MONTH, BUT WE WERE CALLED

1 BY A REPRESENTATIVE OF CDCR WHO SAID THEY DIDN'T CURRENTLY HAVE
2 FUNDING FOR IT SO THEY WOULD HOPE TO START IN JULY WHEN THEY GOT
3 A NEW BUDGET.

4 Q JULY OF '09?

5 A JULY OF '09, YES, THAT'S CORRECT.

6 Q DO YOU INCARCERATE ANY PAROLEES WHO HAVE BEEN ARRESTED FOR
7 PAROLE VIOLATIONS WITHOUT A NEW CRIME IN YOUR JAIL?

8 A WE DON'T ACCEPT PAROLEES TO BE BOOKED INTO OUR CUSTODY WHO
9 HAVE NO LOCAL CHARGES.

10 Q OKAY. DO YOU KNOW WHAT HAPPENS TO THESE PAROLEES WHO ARE
11 ARRESTED?

12 A THEY ARE EITHER TAKEN TO A STATE FACILITY, SUCH AS SAN
13 QUENTIN OR DVI, DEUEL VOCATIONAL INSTITUTE. ON SOME OCCASIONS
14 THEY HAVE BEEN TAKEN TO THE ALAMEDA COUNTY JAIL, AND ON SOME
15 OCCASIONS I HAVE BEEN TOLD THEY HAVE JUST BEEN RELEASED.

16 Q WHAT'S THE REASON FOR THEM JUST BEING RELEASED?

17 A I WAS TOLD BY A PAROLE OFFICER THAT IT WAS JUST TOO TIME
18 CONSUMING TO DRIVE ALL THE WAY TO DVI AND BACK.

19 Q DVI IS IN TRACY, CALIFORNIA, RIGHT?

20 A YES, IT'S IN TRACY.

21 Q TWO MORE QUESTIONS.

22 YOU KNOW THAT THESE PROCEEDINGS ARE BEING HELD
23 BECAUSE THE COURTS, JUDGE KARLTON, JUDGE HENDERSON, IN THEIR
24 RESPECTIVE CASES HAVE HELD THAT THE CONDITIONS IN THE STATE
25 PRISONS ARE UNCONSTITUTIONAL BECAUSE OF INADEQUATE HEALTHCARE?

1 **A** YES, THAT'S WHAT I HAVE BEEN TOLD.

2 **Q** NOW, ASSUMING -- I WANT YOU TO ASSUME THAT OVERCROWDING IS
3 THE PRIMARY CAUSE OF THESE CONSTITUTIONAL VIOLATIONS AND THE
4 STATE CAN'T REDUCE CROWDING BY EXPANDING THE CAPACITY OF THE
5 PRISON SYSTEM. WHAT DO YOU THINK THE COURT SHOULD DO IN THIS IN
6 THESE -- IN THAT CIRCUMSTANCE?

7 **MR. MITCHELL:** OBJECT, YOUR HONOR, AS CALLING FOR
8 IMPROPER OPINION ON HIS PART, LACK OF FOUNDATION.

9 **MS. JOHNSON:** WAS NOT DISCLOSED AS AN EXPERT OR
10 TREATED AS AN EXPERT.

11 **JUDGE KARLTON:** HE'S A REBUTTAL WITNESS. THE
12 OBJECTION IS OVERRULED. YOU MAY PROCEED.

13 **MS. JOHNSON:** WE WERE REQUIRED TO DISCLOSE REBUTTAL
14 EXPERT WITNESSES, YOUR HONOR.

15 **JUDGE HENDERSON:** YOU MAY ANSWER THAT QUESTION,
16 SHERIFF.

17 **THE WITNESS:** WELL, MY EXPERIENCE HAS BEEN THAT
18 PEOPLE SHOULD STAY WITHIN THEIR CAPACITY, SO I WOULD EXPECT THAT
19 CDCR WOULD HAVE TO FIND A WAY TO STAY WITHIN THEIR CAPACITY
20 OR -- EXPAND THEIR CAPACITY OR STAY WITHIN THEIR CAPACITY.

21 **MR. SPECTER:** THANK YOU, NO FURTHER QUESTIONS.

22 **JUDGE HENDERSON:** CCPOA?

23 **MS. LEONARD:** NO, YOUR HONOR.

24 **JUDGE HENDERSON:** CROSS?

25 **MR. MELLO:** MR. MITCHELL IS GOING TO GO FIRST FOR

1 DEFENDANTS.

2 JUDGE HENDERSON: OKAY.

3 CROSS-EXAMINATION BY MR. MITCHELL

4 BY MR. MITCHELL

5 Q GOOD MORNING, SHERIFF HENNESSEY.

6 A GOOD MORNING.

7 Q BILL MITCHELL, DEFENDANT INTERVENORS.

8 SIR, SAN FRANCISCO COUNTY JAIL HAD TO GO THROUGH A
9 FEDERAL COURT TRIAL IN ORDER TO LOWER ITS POPULATION, DIDN'T IT?

10 A YES.

11 Q ARE YOU CURRENTLY WORKING UNDER A COURT-ENFORCED CAP AT THIS
12 TIME?

13 A NO.

14 Q YOUR WEBSITE LISTS THE CAPACITY OF YOUR COUNTY JAILS AS
15 2,200, BUT YOU TESTIFIED HERE TODAY IT WAS 2,040. CAN YOU
16 EXPLAIN THE DISTINCTION OR THE DIFFERENCE?

17 A NO, NOT REALLY. THE WEBSITE MUST BE INCORRECT.

18 Q SO YOUR CAPACITY IS 2,040?

19 A YES.

20 Q AT THIS TIME ARE YOU AWARE OF WHAT THE PERCENTAGE OF
21 PRETRIAL DETAINEES IS IN YOUR COUNTY JAIL?

22 A IT'S GENERALLY BETWEEN 75 AND 80 PERCENT.

23 Q WHAT PERCENTAGE IS SENTENCED PRISONERS?

24 A THE REMAINDER.

25 Q SO YOU ARE NOT HOUSING ANY FEDERAL PRISONERS? YOU ARE NOT

1 HOUSING ANY OTHER TYPE OF INMATES OTHER THAN PRETRIAL DETAINEES
2 AND SENTENCED PRISONERS?

3 **A** THAT'S CORRECT. WE OCCASIONALLY -- WE WILL OCCASIONALLY
4 HAVE PEOPLE -- OR REGULARLY HAVE PEOPLE WHO HAVE HAD THEIR LOCAL
5 CHARGES DROPPED BUT HAVE A PAROLE HOLD, AND THERE WILL BE A CDCR
6 PERSON WHO HAS YET TO BE PICKED UP.

7 **Q** WHAT PERCENTAGE OF YOUR PRETRIAL DETAINEES HAVE PAROLE HOLDS
8 OR 3056 HOLDS?

9 **A** A VERY SMALL PERCENTAGE. I'M NOT SURE. BUT I WOULD GUESS
10 NO MORE THAN TEN PERCENT.

11 **Q** THE NUMBER OF PAROLEES IN YOUR COUNTY, ARE YOU AWARE OF HOW
12 MANY PAROLEES YOU HAVE IN YOUR COUNTY?

13 **A** YES, GENERALLY, IT IS IN BETWEEN 2,000 AND 2,500.

14 **Q** THE CDCR STATS SHOW THAT ABOUT 1,800 PAROLEES WERE REPAROLED
15 BACK TO SAN FRANCISCO IN 2007. ARE YOU AWARE OF THAT FIGURE?

16 **A** NO.

17 **Q** WOULD THAT FIGURE REPRESENT THOSE PAROLEES WHO HAVE VIOLATED
18 THEIR PAROLE AND THEN WERE RERELEASED BACK TO SAN FRANCISCO?

19 **A** I DON'T KNOW. THAT'S WHAT IT SOUNDS LIKE.

20 **Q** YOU INDICATED THAT YOU HAVE A PROGRAM DESIGNED TO REDUCE
21 VIOLENCE THAT COUNSELS AND PROVIDES CASE MANAGERS TO BOTH
22 PROBATION, SENTENCED, FELONY DEFENDANTS, AND TO PAROLEES COMING
23 OUT OF STATE PRISON; IS THAT CORRECT?

24 **A** THAT'S CORRECT.

25 **Q** PERHAPS I MISUNDERSTOOD, BUT ARE THERE ACTUALLY AT THIS TIME

1 PAROLEES THAT ARE INVOLVED IN THAT PROGRAM?

2 **A** YES.

3 **Q** HOW MANY?

4 **A** I THINK TODAY WE HAVE 75.

5 **Q** THAT'S BEEN ONGOING FOR ABOUT A YEAR AND A HALF?

6 **A** THAT'S CORRECT.

7 **Q** YOU INDICATED THERE WAS A STUDY THAT WAS DONE OF RECIDIVISM
8 FOR INDIVIDUALS INVOLVED IN THIS PROGRAM?

9 **A** YES. YES.

10 **Q** WHO CONDUCTED THAT STUDY?

11 **A** PARDON ME?

12 **Q** WHO CONDUCTED THE STUDY?

13 **A** AN ORGANIZATION CALLED PENDERGRASS & AND ASSOCIATES.

14 **Q** HAS IT BEEN PUBLISHED?

15 **A** YES.

16 **Q** WHERE?

17 **A** I DON'T KNOW. I MEAN, IT WAS -- IT'S IN WRITING. IT'S IN A
18 BINDER. IT WASN'T PUBLISHED IN ANY TRADE MAGAZINE OR ANYTHING
19 LIKE THAT. IT'S AVAILABLE TO THE PUBLIC.

20 **Q** IT IS AVAILABLE TO THE PUBLIC?

21 **A** YES.

22 **Q** IF I CONTACTED YOU LATER, YOU COULD SEND ME A COPY?

23 **A** I WOULD BE HAPPY TO.

24 **Q** THANK YOU.

25 YOU ARE AWARE, I'M SURE, THAT SAN FRANCISCO CITY AND

1 COUNTY HAS THE HIGHEST VIOLENT CRIME RATE OF ALL THE COUNTIES IN
2 THE STATE OF CALIFORNIA, AREN'T YOU?

3 **A** NO.

4 **Q** DOES IT SURPRISE YOU TO LEARN THAT IT'S THE HIGHEST VIOLENT
5 CRIME RATE AS OF 2006 IN THE BUREAU OF JUSTICE STATISTICS?

6 **A** YES, IT WOULD SURPRISE ME.

7 **Q** DO YOU MAKE ATTEMPTS AS A SHERIFF TO DESIGN AND IMPLEMENT
8 PROGRAMS TO PROVIDE FOR PUBLIC SAFETY?

9 **A** YES.

10 **Q** AND IN DOING THAT, DO YOU LOOK TO MEASURES OF WHAT LEVEL OF
11 SERVICES YOU ARE PROVIDING TO THE COUNTY? DO YOU LOOK FOR
12 RESULTS?

13 **A** YES.

14 **Q** NOW, IF THE VIOLENT CRIME RATE IS THE HIGHEST AND IT'S BEEN
15 GOING UP IN SAN FRANCISCO OVER THE LAST FEW YEARS ACCORDING TO
16 THE DPS STATISTICS, WOULD THAT INDICATE TO YOU THAT PERHAPS THE
17 MEASURES YOU ARE EMPLOYING AREN'T ACTUALLY WORKING?

18 **A** NO.

19 **Q** WHY NOT?

20 **A** WELL, ASSUMING THAT YOUR SUPPOSITION IS CORRECT, I WOULD
21 NEVERTHELESS SUGGEST THAT THE PROGRAMS THAT WE HAVE HAVE KEPT
22 THE RATE OF INCREASE LOWER THAN IT WOULD HAVE BEEN WITHOUT THOSE
23 PROGRAMS.

24 **Q** HOW MANY SENTENCED PRISONERS' PROBATION ARE INVOLVED IN YOUR
25 PROGRAM?

1 **A** WHICH PROGRAM? ALL OF THEM?

2 **Q** THE STOP THE VIOLENCE WITH THE CASE MANAGERS.

3 **A** TWO HUNDRED FIFTY MINUS SEVENTY-FIVE. ONE HUNDRED
4 SEVENTY-FIVE APPROXIMATELY.

5 **Q** DO YOU KNOW WHAT PERCENTAGE OF THE PAROLEES THAT COME OUT OF
6 STATE PRISON THAT RETURN TO SAN FRANCISCO ARE HOMELESS?

7 **A** NO, I DON'T.

8 **Q** WOULD YOU AGREE THAT HOMELESSNESS IS A FACTOR THAT PLAYS A
9 VERY LARGE ROLE IN PAROLEES REOFFENDING AND BEING RECOMMITTED
10 BACK INTO PRISON EITHER FOR PAROLE VIOLATIONS OR FOR NEW CRIMES?

11 **A** YES.

12 **Q** ARE YOU AWARE OF STUDIES THAT HAVE SHOWN THAT BETWEEN 50 AND
13 60 PERCENT -- EXCUSE ME ONE MOMENT. LET ME GET THE FIGURE
14 RIGHT -- THAT 30 TO 50 PERCENT OF THE PAROLEES ARE ESTIMATED TO
15 BE HOMELESS IN SAN FRANCISCO?

16 **A** I'M NOT AWARE OF THAT STUDY, NO.

17 **Q** YOU MENTION THAT DUE TO THE CAP ON THE JAIL, THERE WAS EARLY
18 RELEASES THAT HAD TO TAKE PLACE, AND DID YOU SAY THAT THERE WERE
19 THOUSANDS OF EARLY RELEASES?

20 **A** YES.

21 **Q** WERE THESE INDIVIDUALS THAT YOU PLACED EARLY ON TO COUNTY
22 PAROLE OR WERE THEY SIMPLY RELEASED FROM THE JAIL WITHOUT
23 SUPERVISION?

24 **A** THERE WERE A NUMBER OF CATEGORIES. SOME WERE RELEASED ON
25 COUNTY PAROLE. SOME WERE RELEASED TEN PERCENT EARLY, FOR

1 EXAMPLE, WITHOUT ANY SUPERVISION. AND THERE IS A PENAL CODE
2 SECTION WHICH ALLOWS THE SHERIFF TO RELEASE PEOPLE FIVE DAYS
3 EARLY FROM A SENTENCE IF THE PRISONER COUNT IS LARGER THAN THE
4 BED COUNT, AND WE'VE USED THAT ON OCCASION. YOU HAVE TO GET A
5 SUPERIOR COURT ORDER, AND THOSE PEOPLE ARE ALSO RELEASED WITHOUT
6 SUPERVISION.

7 Q DO YOU KEEP RECORDS ON THOSE THAT YOU EARLY RELEASE?

8 A RECORDS OF WHAT KIND?

9 Q WELL, WHEN THEY'RE RELEASED.

10 A YES.

11 Q AND DO YOU KEEP RECORDS OF IF AND WHEN THEY MAY GET
12 REARRESTED?

13 A NO, WE DON'T HAVE A RESEARCH CAPABILITY OF FOLLOWING THAT.

14 Q SO THEN YOU WOULDN'T BE ABLE TO DETERMINE WHAT THEIR
15 RECIDIVISM RATE IS THEN?

16 A OF THAT GROUP, NO.

17 Q SO ANYONE THAT'S EARLY RELEASED, YOU COULDN'T TELL US IF
18 THEY REOFFENDED AND WERE BOOKED BACK INTO THE JAIL?

19 A NOT UNLESS THEY ARE PART OF A PROGRAM WHERE IT'S AN
20 EVALUATION.

21 Q THE EARLY RELEASES DUE TO YOUR CAP ON YOUR JAIL HAVE BEEN
22 TAKING PLACE FOR HOW MANY YEARS NOW?

23 A THEY ARE NOT TAKING PLACE AT ALL NOW, BUT THEY TOOK PLACE
24 FOR THREE OR FOUR YEARS PRIOR TO US OPENING A NEW JAIL TWO YEARS
25 AGO. SO I GUESS THEY WERE PROBABLY TAKING PLACE FROM IN THE

1 EARLY -- IN THEIR EARLY YEARS OF 2000.

2 **Q** NOW, THE PAROLE SERVICES THAT SAN FRANCISCO IS NOW PROVIDING
3 AND SOME OF THE NEW MEASURES THAT YOU HAVE SPOKEN ABOUT, CDCR IS
4 ACTIVELY INVOLVED AND ENGAGED WITH SAN FRANCISCO CITY AND COUNTY
5 IN TRYING TO INCREASE PROGRAMS FOR PAROLEES, CORRECT?

6 **A** YES, IN TWO SPECIFIC PROGRAMS, YES.

7 **Q** AND FROM YOUR ACTIVE INVOLVEMENT IN THOSE PROGRAMS, IT'S
8 BEEN CLEAR TO YOU THAT THE CDCR AUTHORITIES ARE ON EASILY
9 ATTEMPTING TO REDUCE THE RECIDIVISM OF THE PAROLEES, CORRECT?

10 **MR. SPECTER:** THAT CALLS FOR STATE OF MIND OF THE --

11 **JUDGE HENDERSON:** I CAN'T HEAR YOU, COUNSEL.

12 **MR. SPECTER:** OBJECTION. THAT CALLS FOR STATE OF
13 MIND OF OTHER PEOPLE. IT WOULD BE SPECULATIVE.

14 **JUDGE KARLTON:** IT ASKS WHAT HIS EVALUATION OF THE
15 RELATIONSHIP IS, AND THAT'S AN APPROPRIATE QUESTION.

16 **THE WITNESS:** YES, YOUR HONOR. I WOULD SAY THAT CDCR
17 HAS BEEN VERY SOLICITOUS IN WORKING WITH MY DEPARTMENT ON THESE
18 REENTRY PROGRAMS AND HAS BEEN VERY ENTHUSIASTIC IN GETTING THE
19 PROGRAMS STARTED AND FUNDED AND PERSONS PLACED IN IT, EXCEPT
20 WHEN THEY RUN OUT OF MONEY.

21 BY MR. MITCHELL

22 **Q** THE CASE MANAGER PROGRAM THAT YOU SAY -- THEY'RE INTENDING
23 TO START IN JULY OF 2009 NOW?

24 **A** THAT'S THE CURRENT PROPOSAL THAT I HAVE BEEN TOLD, YES.

25 **Q** THAT TYPE OF PROGRAM YOU WOULD -- WOULD YOU BELIEVE WOULD

1 HOLD GREAT POTENTIAL FOR GOOD RESULTS? I MEAN, IF YOU GOT THAT
2 KIND OF SOCIAL WORKER TYPE, CASE MANAGER ACTIVELY INVOLVED WITH
3 INDIVIDUALS WITH HOUSING WITH EMPLOYMENT AND ASSISTING THEM TO
4 BE SUCCESSFUL ON PAROLE, IT'S GOING TO REDUCE RECIDIVISM, RIGHT?

5 **A** IT SHOULD, YES.

6 **MR. MITCHELL:** I HAVE NO FURTHER QUESTIONS.

7 **JUDGE HENDERSON:** STATE DEFENDANTS?

8 **MR. MELLO:** NO FURTHER QUESTIONS.

9 **JUDGE HENDERSON:** REDIRECT?

10 **MR. SPECTER:** NO, YOUR HONOR.

11 **JUDGE HENDERSON:** THANK YOU, SHERIFF, FOR APPEARING
12 AND TESTIFYING.

13 **THE WITNESS:** THANK YOU.

14 **JUDGE HENDERSON:** YOU'RE EXCUSED.

15 **MS. EVENSON:** GOOD MORNING, YOUR HONORS. AS COUNSEL
16 INDICATED EARLIER, PLAINTIFFS ARE PROPOSING TO INTRODUCE AN
17 EXHIBIT. WE MARKED IT AS P 842. WE PROVIDED COPIES OF THIS THE
18 BEGINNING OF THE WEEK TO DEFENSE COUNSEL AND PROVIDED TO THEM --
19 THIS IS A COMPILATION OF DATA THAT'S PUBLICLY AVAILABLE ON STATE
20 GOVERNMENT WEBSITES, WHICH WE PUT INTO EXCEL SPREADSHEETS AND
21 THEN INTO GRAPHS COMPARING PAROLEES AND CRIME RATES IN
22 CALIFORNIA AND IN SELECTED CALIFORNIA COUNTIES, AND WE ARE
23 OFFERING THIS AS A REBUTTAL EXHIBIT.

24 WE PROVIDED THE DATA UNDERLYING IT AND ALL THE
25 SOURCES OF THE DATA TO ALL COUNSEL, AND WE UNDERSTAND THAT

1 THERE'S AN OBJECTION. WE HAVEN'T RECEIVED ANY WRITTEN
2 OBJECTIONS, BUT WE WERE ASKED TO BRING THE MEMBER OF OUR STAFF
3 WHO ACTUALLY COMPILED THE DATA TO COURT TO ANSWER QUESTIONS,
4 ALTHOUGH WE ARE NOT QUITE SURE WHAT THE OBJECTIONS ARE.

5 WE MADE HER AVAILABLE ALSO EARLIER IN THE WEEK, AND
6 DEFENSE COUNSEL QUESTIONED HER FOR ABOUT AN HOUR, BUT WE HAVEN'T
7 HEARD THE PRECISE OBJECTIONS.

8 **MS. JOHNSON:** THAT'S NOT TRUE, YOUR HONOR.

9 **JUDGE KARLTON:** THAT DOESN'T MATTER.

10 **MS. JOHNSON:** THE OBJECTION -- THE FIRST OBJECTION TO
11 CONSIDER, THIS IS HEARSAY. THERE IS NO EXCEPTION FOR ATTORNEY
12 WORK PRODUCT FOR THE HEARSAY RULE. THIS IS NOT A PUBLIC RECORD.
13 IT'S NOT AN OFFICIAL PUBLICATION.

14 **JUDGE KARLTON:** IT'S A COMPILATION. DO YOU HAVE --
15 YOU HAVE AN OBJECTION TO THE MANNER IN WHICH IT WAS DONE?

16 **MS. JOHNSON:** YES, YOUR HONOR, WE DO HAVE OBJECTIONS
17 TO THAT. BUT IT IS NOT A PROPER COMPILATION THAT CAN BE
18 CONSIDERED BY THIS COURT AS EVIDENCE. IT IS NOT -- IT DOES NOT
19 FALL WITHIN ANY KNOWN HEARSAY EXCEPTION. IT IS ATTORNEY WORK
20 PRODUCT DONE UNDER THE DIRECTION OF DON SPECTER AND REBEKAH
21 EVENSON.

22 **JUDGE KARLTON:** THAT OBJECTION IS OVERRULED. IF YOU
23 HAVE AN OBJECTION TO THE FACT THAT IT HAS BEEN COMPILED
24 INAPPROPRIATELY, PLEASE PROCEED.

25 **MS. JOHNSON:** WELL, YOUR HONOR, FIRST OF ALL, IT'S A

1 COMPILATION. COMPILATIONS ARE NOT LAY TESTIMONY. THIS HAS NOT
2 BEEN COMPILED BY --

3 **JUDGE KARLTON:** MA'AM, I REALLY HAVE A LOT OF
4 PROBLEMS WITH PEOPLE WHO DON'T UNDERSTAND THAT THE COURT HAS
5 RULED.

6 IF YOU HAVE OBJECTIONS TO THE MANNER OF COMPILATION
7 AND, ALSO, AS TO WHETHER OR NOT IT ACTUALLY REFLECTS THE
8 SOURCES, THAT'S APPROPRIATE, AND I WILL MORE THAN HAPPILY HEAR
9 YOUR QUESTION IF THAT IS YOUR BASIS. OTHERWISE, I AM TOLD --

10 WELL, ACTUALLY, YOU ARE RIGHT ABOUT ONE OTHER THING,
11 AND THAT IS THAT IT ISN'T THEIR BURDEN, IT'S YOUR BURDEN, TO PUT
12 THE WITNESS ON TO SAY HOW IT WAS DONE AND WHAT IT IS. YOUR
13 TESTIMONY AS TO WHAT IT IS IS INSUFFICIENT.

14 **MS. EVENSON:** WE ARE PREPARED TO DO THAT, YOUR HONOR,
15 UNDERSTANDING THERE'S AN OBJECTION. SO WE'LL CALL NOOR DAWOOD
16 TO THE STAND.

17 **NOOR DAWOOD**
18 HAVING BEEN CALLED AS A WITNESS BY THE PLAINTIFFS WAS FIRST
19 DULY SWORN AND EXAMINED AS FOLLOWS:

20 **THE CLERK:** STATE AND SPELL YOUR FULL NAME FOR THE
21 RECORD.

22 **THE WITNESS:** MY NAME IS NOOR DAWOOD, N-O-O-R
23 D-A-W-O-O-D.

24 ///

25 ///

DIRECT EXAMINATION BY MS. EVENSON

BY MS. EVENSON

Q GOOD MORNING, MS. DAWOOD.

I WOULD LIKE TO APPROACH THE WITNESS AND SHOW HER
WHAT'S BEEN MARKED AS 842.

BEFORE WE BEGIN, MS. DAWOOD, ARE YOU FAMILIAR WITH
THE EXCEL PROGRAM?

A YES, I AM.

Q AND HAVE YOU WORKED WITH EXCEL BEFORE?

A YES, I HAVE.

Q CAN YOU DESCRIBE HOW LONG -- HOW MANY YEARS YOU'VE WORKED
WITH THE EXCEL PROGRAM?

A SURE. SINCE I WAS VERY YOUNG, MAYBE IN MIDDLE SCHOOL, I
LEARNED HOW TO USE IT. BUT IN COLLEGE I WORKED AS A RESEARCH
ASSISTANT AND AS HEAD RESEARCH ASSISTANT IN VARIOUS PSYCHOLOGY
LABS AT STANFORD UNIVERSITY, AND I HAD TO CHART DATA AND PUT US
INTO GRAPHS THEN.

AND THEN SINCE MY TIME AT THE PRISON LAW OFFICE, I
HAVE BEEN ASKED ON VARIOUS OCCASIONS SINCE BEGINNING THERE TO DO
PROJECTS WHERE I HAD TO USE EXCEL AND CHART GRAPHS.

Q YOU GRADUATED FROM STANFORD UNIVERSITY?

A YES.

Q WHEN WAS THAT?

A THAT WAS IN 2004.

Q AND YOU ARE CURRENTLY EMPLOYED AT THE PRISON LAW OFFICE?

1 **A** YES.

2 **Q** WHEN DID YOU START WORKING AT THE PRISON LAW OFFICE?

3 **A** I STARTED THERE IN JUNE 2005.

4 **Q** AND AS PART OF YOUR DUTIES AT THE PRISON LAW OFFICE, DID YOU
5 COMPILE THE DOCUMENT THAT HAS BEEN MARKED AS P 842?

6 **A** YES.

7 **Q** I WOULD LIKE TO TURN YOUR ATTENTION TO THE LAST PAGE OF THE
8 DOCUMENT. DID YOU WRITE THAT PAGE?

9 **A** YES, I DID.

10 **Q** AND CAN YOU DESCRIBE WHAT IT IS?

11 **A** THE SOURCES PAGE.

12 **Q** YES.

13 **A** YES. THIS PAGE LISTS THE VARIOUS SOURCES FROM WHICH I TOOK
14 DATA AND PUT IT INTO AN EXCEL SPREADSHEET, AND THESE ARE ALL
15 SOURCES THAT ARE PUBLIC RECORDS FROM VARIOUS GOVERNMENT
16 WEBSITES.

17 **Q** IS THERE ONE DOCUMENT HERE THAT WASN'T AVAILABLE ON A
18 WEBSITE?

19 **A** YES.

20 **Q** WHAT WAS THAT?

21 **A** THAT WAS CRIME DATA BETWEEN THE YEARS OF 1990, AND THE
22 DOCUMENT SPANS TO 1999. BUT ONLINE THE DATA WAS ONLY AVAILABLE
23 STARTING IN 1997, SO I HAD TO REQUEST FROM THE STATE DEPARTMENT
24 OF JUSTICE FOR THEM TO SEND ME DATA PRIOR TO 1997. SO THAT'S A
25 DOCUMENT THAT I HAVE.

1 Q AND HOW DID YOU GET THAT DOCUMENT?

2 A I'M SORRY?

3 Q HOW DID YOU GET THE DATA FROM 1990 TO '99?

4 A SOMEONE AT THE DEPARTMENT OF JUSTICE E-MAILED ME THAT
5 DOCUMENT, AND I COPIED THE DATA DIRECTLY FROM THAT DOCUMENT INTO
6 THE EXCEL SPREADSHEET.

7 Q CAN YOU DESCRIBE HOW YOU CREATED THE GRAPHS THAT APPEAR ON
8 EXHIBIT P 842?

9 A SURE. SO FIRST I LOOKED AT CRIME DATA, SPECIFICALLY VIOLENT
10 CRIME RATE PER HUNDRED THOUSAND OF THE POPULATION STATEWIDE FOR
11 COUNTIES, AND ALSO THE PROPERTY CRIME RATE FOR STATEWIDE AND
12 COUNTIES PER HUNDRED THOUSAND OF THE POPULATION, AND I PUT
13 THAT -- I COPIED EACH DATA SET FROM THE DOCUMENTS THAT I HAD
14 GOTTEN FROM THE DEPARTMENT OF JUSTICE INTO A GRAPH.

15 AND THEN I LOOKED AT PAROLEE DATA, BOTH THE NEW
16 RELEASES ANNUALLY FOR THE STATE AND FOR COUNTIES, AND ALSO THE
17 PAROLEE CENSUS, THE TOTAL PAROLE POPULATION ANNUALLY FOR THE
18 STATE AND COUNTIES, AND I COPIED THAT DATA INTO A GRAPH. THE
19 TOTAL PAROLE CENSUS WAS NOT AVAILABLE PRIOR TO 2003 FOR
20 COUNTIES, SO I JUST USED 2003 TO 2007 FOR COUNTIES IT WAS
21 AVAILABLE FOR THE STATE.

22 I ALSO USED THE -- LOOKED AT THE POPULATION OF
23 CALIFORNIA AND THE POPULATION IN COUNTIES ANNUALLY FOR THE YEARS
24 I LOOKED AT AND PASTED THAT INTO A GRAPH -- INTO THE EXCEL
25 SPREADSHEET AS WELL, AND I HAD TO DO THAT BECAUSE THE PAROLEE --

1 THE NEW AND TOTAL PAROLEE RATE WAS NOT CALCULATED, SO -- PER
2 HUNDRED THOUSAND AS THE CRIME RATE WAS. SO I ENTERED A
3 CALCULATION IN THE -- A FORMULA INTO THE EXCEL SPREADSHEET WHICH
4 CALCULATED THAT FOR ME.

5 AND THEN EXCEL HAS AN AUTOMATIC GRAPH MAKER, AND I
6 USED THAT TO MAKE -- TO TURN THAT DATA INTO CHARTS -- INTO
7 GRAPHS.

8 Q AND AFTER YOU ENTERED ALL OF THE DATA THAT YOU SAY YOU
9 RECEIVED FROM WEBSITES OR FROM GOVERNMENT AGENCIES INTO THE
10 EXCEL SPREADSHEETS, DID YOU DO ANYTHING TO ENSURE IT WAS
11 ACCURATE?

12 A YES, I WENT BACK AND DOUBLE CHECKED EVERY NUMBER THAT I HAD
13 USED.

14 Q AND IS EXHIBIT P 842 A PRODUCT OF THAT PROCESS?

15 A YES.

16 MS. EVENSON: I HAVE NOTHING FURTHER. THANK YOU.

17 CROSS-EXAMINATION BY MS. JOHNSON

18 BY MS. JOHNSON

19 Q MS. DAWOOD, DO I HAVE THAT RIGHT?

20 A YES.

21 Q YOU HAVE A BACHELOR'S IN DEVELOPMENTAL PSYCHOLOGY; IS THAT
22 CORRECT?

23 A YES.

24 Q IS THAT SIMILAR TO CHILD PSYCHOLOGY?

25 A YES.

1 Q IS THAT THE ONLY DEGREE THAT YOU HAVE?

2 A YES.

3 Q HAVE YOU EVER BEEN EMPLOYED TO DO DATA COMPILATION OTHER
4 THAN BY THE PRISON LAW OFFICE AND DURING YOUR UNDERGRADUATE
5 STUDIES?

6 A NO.

7 Q AND YOU TOOK A STATISTICS CLASS IN COLLEGE, RIGHT?

8 A YES.

9 Q COULD WE LOOK AT THE FIRST PAGE OF P 842, PLEASE, THE SECOND
10 VERSION? VERSION TWO. THERE WAS TWO VERSIONS OF THIS, CORRECT?

11 A I'M SORRY?

12 Q YOU CREATED TWO VERSIONS OF THIS P 842. THERE WAS A FIRST
13 VERSION. THEN YOU CORRECTED DATA JUST A COUPLE OF NIGHTS AGO,
14 CORRECT?

15 A WE CORRECTED SOURCES.

16 Q YOU ACTUALLY CHANGED POPULATION DATA, CORRECT?

17 A OH, BECAUSE OF THE UPDATE, YES. BECAUSE THE DEPARTMENT OF
18 FINANCE, I -- WHEN I WAS CHANGING THE SOURCES, I SAW THAT ONE OF
19 THE DEPARTMENT FINANCE CHARTS WITH POPULATION WAS DIFFERENT, SO
20 I CALLED THE DEPARTMENT OF FINANCE, AND THEY TOLD ME JUST THAT
21 DAY THEY HAD UPDATED THEIR CHARTS TO REFLECT 2008 DATA, AND WHEN
22 THEY DO THAT, THEY GO BACK AND CHANGE THE ESTIMATES FOR PRIOR
23 YEARS. SO I UPDATED THE DATA TO REFLECT THAT.

24 Q SO WE ARE GOING TO LOOK AT THE SECOND VERSION, THE FIRST
25 PAGE, PLEASE. THIS CHART SAYS "CALIFORNIA, PAROLEES AND VIOLENT

1 CRIME RATE, 1990 THROUGH 2007," CORRECT?

2 **A** YES.

3 **Q** AND ON THE RIGHT-HAND SIDE THERE'S KIND OF A -- I'LL CALL IT
4 MAGENTA COLOR THAT SAYS "TOTAL NUMBER OF PAROLEES PER 100,000 OF
5 CALIFORNIA POPULATION," RIGHT?

6 **A** YES.

7 **Q** AND THAT MATCHES -- THAT'S A LEGEND TO EXPLAIN THE MAGENTA
8 LINE, CORRECT?

9 **A** YES.

10 **Q** AND THEN THE SECOND ITEM IN THE LEGEND SAYS, "VIOLENT CRIME
11 RATE," WHICH IS KIND OF A PURPLE COLOR, I'LL SAY. DO YOU AGREE
12 WITH THAT?

13 **A** I'LL SAY IT'S BLUE.

14 **Q** OKAY. BLUE. "VIOLENT CRIME RATE PER 100,000 OF CALIFORNIA
15 POPULATION," AND THAT'S TO REPRESENT -- THAT'S THE LEGEND FOR
16 THE BLUE LINE ON THE CHART, RIGHT?

17 **A** YES.

18 **Q** OKAY.

19 **JUDGE REINHARDT:** I'M A LITTLE CONFUSED BY FIRST AND
20 SECOND. THE PAGE WE HAVE IS THE FIRST PAGE, RIGHT?

21 **MS. JOHNSON:** THE FIRST PAGE OF THE SECOND VERSION.
22 THEY HAD SENT US A PRIOR VERSION --

23 **JUDGE REINHARDT:** THAT'S WHAT WE RECEIVED.

24 **MS. JOHNSON:** I'M HOPING YOU RECEIVED THE UPDATED
25 VERSION.

1 **JUDGE REINHARDT:** YES. I ASSUME SO. THAT'S WHAT I'M
2 TRYING TO FIND OUT. WE ARE TALKING ABOUT THE FIRST PAGE OF THE
3 SECOND VERSION?

4 **MS. JOHNSON:** THAT'S CORRECT, WHICH I BELIEVE IS THE
5 EXHIBIT BEING OFFERED IN EVIDENCE. I JUST WANTED TO CLARIFY FOR
6 OUR DISPLAYER THAT THEY HAVE TWO VERSIONS. I WANTED TO MAKE
7 SURE HE UNDERSTOOD TO PRESENT THE SECOND VERSION.

8 **JUDGE REINHARDT:** OKAY.

9 **MS. JOHNSON:** OKAY.

10 BY MS. JOHNSON

11 **Q** SO THE PAROLEES AND VIOLENT CRIME RATE -- SO THE
12 MAGENTA-COLORED ONE IS KIND OF THE HIGHER LINE, AND THAT
13 REPRESENTS THE TOTAL NUMBER OF PAROLEES PER 100,000 OF
14 CALIFORNIA POPULATION, CORRECT?

15 **A** YES.

16 **Q** THERE'S A HORIZONTAL AXIS ON THIS CHART WHICH IS SOMETIMES
17 CALLED THE X AXIS IN GRAPHS, RIGHT?

18 **A** YES.

19 **Q** AND THE X AXIS REPRESENTS THE YEARS '90 THROUGH 2007,
20 CORRECT?

21 **A** YES.

22 **Q** THIS CHART ACTUALLY HAS TWO Y AXES, CORRECT, WHICH ARE THE
23 VERTICAL AXES?

24 **A** RIGHT.

25 **Q** RIGHT. SO THE TOTAL NUMBER OF PAROLEES PER 100,000 IS

1 ACTUALLY CORRELATING TO THE LEFT Y AXIS, AND YOU INDICATED THAT
2 BY TOTAL PAROLEE RATE ON THE LEFT-HAND SIDE, CORRECT?

3 **A** RIGHT.

4 **Q** SO WHEN YOU WANT TO READ THIS CHART, YOU DON'T WANT TO
5 CORRELATE -- WHEN YOU ARE READING LEFT TO RIGHT, YOU NEED TO
6 MAKE SURE WHEN YOU ARE READING THE TOTAL NUMBER OF PAROLEES THAT
7 YOU ARE NOT READING THE RIGHT-HAND Y AXIS, RIGHT? THAT WOULD
8 MAKE IT LOOK LIKE TOTAL NUMBER OF PAROLEES PER 100,000 WAS OVER
9 ONE THOUSAND PER 100,000 IN 2007, CORRECT?

10 **A** RIGHT.

11 **Q** OKAY. SO WHAT YOU NEED TO DO IS YOU NEED TO READ BACK OVER
12 TO THE LEFT-HAND SIDE AND SEE THAT, ACTUALLY, THE TOTAL NUMBER
13 OF PAROLEES IS SOMEWHERE BETWEEN 325 AND 350 PER 100,000,
14 CORRECT?

15 **A** IN WHAT YEAR DID YOU SAY?

16 **Q** JUST THE ENDPOINT 2007?

17 **A** YES.

18 **Q** LOOKING AT ENDPOINT --

19 **A** BETWEEN 125 --

20 **JUDGE KARLTON:** PLEASE STOP FOR JUST A MOMENT.

21 YOU MAY PROCEED. I FRANKLY, MA'AM, DON'T UNDERSTAND
22 WHAT YOU'RE SAYING. I'M HOPEFUL --

23 **MS. JOHNSON:** I'M TRYING TO MAKE IT CLEAR. I THINK
24 THE CHART ITSELF IS CONFUSING, YOUR HONORS. THAT'S WHAT I WAS
25 TRYING TO SEE, IF WE COULD DRAW FROM TESTIMONY A WAY TO

1 UNDERSTAND THE CHART BETTER. IT'S NOT UNUSUAL TO SEE A DOUBLE-Y
2 AXIS CHART.

3 BY MS. JOHNSON

4 Q SO THE TOTAL NUMBER OF PAROLEES -- LET'S TAKE TWO DATA
5 POINTS. LET'S TAKE THE FIRST DATA POINT AND LAST DATA POINT,
6 BECAUSE THOSE ARE THE EASIER TO -- TO SEE.

7 A OKAY.

8 Q WE'RE GOING TO LOOK AT THE TOTAL NUMBER OF PAROLEES PER
9 100,000 OF CALIFORNIA POPULATION, AND WE ARE GOING TO TAKE THE
10 FIRST DATA POINT, WHICH IS FOR 1990, AND WE ARE GOING TO TAKE
11 THE LAST DATA POINT, WHICH IS FOR 2007, AND I -- JUST GOING TO
12 STEP THROUGH HOW WE READ THAT LINE FOR TO CLARIFY FOR THE COURT.

13 THE FIRST DATA POINT FOR 1990 WHICH IS THE MAGENTA
14 LINE, THE GENERALLY HIGHER LINE, INDICATES SOMEWHERE BETWEEN 225
15 AND 250 PAROLEES FOR THE WHOLE STATE OF CALIFORNIA PER 100,000
16 POPULATION, CORRECT?

17 A YES.

18 Q OKAY. NOW, THE LAST DATA POINT WHICH IS ON THE 2007 LINE,
19 THE FURTHEST MOST RIGHT LINE INDICATES SOMEWHERE BETWEEN 325 AND
20 350 PAROLEES FOR THE ENTIRE STATE OF CALIFORNIA PER 100,000
21 POPULATION, CORRECT?

22 A YES.

23 Q OKAY.

24 JUDGE REINHARDT: NOW I'M LOST. I THOUGHT IT WAS 350
25 FOR EACH HUNDRED THOUSAND PEOPLE IN CALIFORNIA.

1 **JUDGE KARLTON:** THAT'S WHAT SHE JUST SAID.

2 **JUDGE REINHARDT:** NO. SHE SAID THE TOTAL POPULATION.

3 **JUDGE KARLTON:** NO, NO, NO. PER THOUSAND.

4 **MS. JOHNSON:** PER 100,000. IT'S IN THE LEGEND RIGHT
5 THERE. I'M SORRY. I MIGHT HAVE MISSPOKEN. I DIDN'T MEAN TO
6 MISSPEAK.

7 **JUDGE KARLTON:** I DIDN'T HEAR YOU IF YOU DID.

8 BY MS. JOHNSON

9 **Q** WE WERE TALKING ABOUT RATES. I THINK YOU HAVE PUT THE RATES
10 IN SIMILAR TERMS. SO THE RATE OF PAROLEES IS IN EQUIVALENT
11 TERMS AS THE RATE OF VIOLENT CRIME, CORRECT? IT'S A NUMBER PER
12 100,000, CORRECT?

13 **A** YES.

14 **Q** OKAY. SO THE RATE OF PAROLEES IN 1990 IN CALIFORNIA WAS A
15 LITTLE OVER 225 PER 100,000, AND IN 2007 IT WAS A LITTLE OVER
16 325 PER 100,000, CORRECT?

17 **A** RIGHT.

18 **Q** RIGHT. NOW, THE VIOLENT CRIME RATE, WHICH IS WHAT YOU WOULD
19 IDENTIFY AS THE BLUE LINE, WHICH IS THE GENERALLY LOWER LINE ON
20 THE CHART, IS TRACKED TO THE RIGHT-HAND Y AXIS, RIGHT?

21 **A** RIGHT.

22 **Q** AND THAT RIGHT-HAND Y AXIS STARTS AT 400, AND IT GOES TO
23 1,200; IT'S BASICALLY THE TOP HALF OF THE LEFT-HAND Y AXIS,
24 ISN'T IT?

25 **A** YES.

1 Q SO, IN REALITY, EVEN THOUGH THE CHART MAKES IT SEEM AS IF
2 THE VIOLENT CRIME RATE IS LOWER THAN THE PAROLEE RATE, THE
3 REALITY IS THE VIOLENT CRIME RATE IS HIGHER IN EVERY POINT ON
4 THAT CHART THAN THE PAROLEE RATE, CORRECT?

5 MS. EVENSON: OBJECTION. ARGUMENTATIVE AND WAY
6 BEYOND THE SCOPE. MY UNDERSTANDING WAS THE WITNESS WAS OFFERED
7 TO AUTHENTICATE THE MEANS FOR COMPILING THE DOCUMENT.

8 JUDGE KARLTON: PART OF THE PROBLEM IS WE DON'T
9 UNDERSTAND IT WITHOUT THIS PRECISE CROSS-EXAMINATION. I DEFER
10 TO MY COLLEAGUES, BUT I BELIEVE THAT OBJECTION SHOULD BE
11 OVERRULED.

12 JUDGE HENDERSON: YES.

13 JUDGE KARLTON: PLEASE PROCEED, MA'AM.

14 BY MS. JOHNSON

15 Q OKAY. SO THE VIOLENT CRIME RATE PER 100,000 OF CALIFORNIA,
16 EVEN THOUGH VISUALLY ON THIS CHART LOOKS AS IF IT'S LOWER THAN
17 THE NUMBER OF PAROLEES, IS ACTUALLY NUMERICALLY HIGHER, CORRECT?

18 A CORRECT.

19 Q SO THE VIOLENT CRIME RATE IN CALIFORNIA, LOOKING AT THE
20 BLUE, JUST STARTING THROUGH THE SAME THING WE DID FOR THE RATE
21 OF PAROLEES, LET'S START IN 1990, THE FIRST DATA POINT, AND WE
22 NEED TO READ THAT DATA POINT, NOT TO THE NUMBER THAT'S RIGHT
23 THERE AT IT, THE 225 NUMBER --

24 JUDGE HENDERSON: ON THE OTHER SIDE, OVER THERE
25 AROUND 1,100. I THINK HELPING US UNDERSTAND THIS, WHICH I

1 DIDN'T, IS FINE, BUT YOU ARE NOW ARGUING, IT SEEMS TO ME --

2 **MS. JOHNSON:** I'M TRYING TO CLARIFY.

3 **JUDGE KARLTON:** DO ME A FAVOR. LET HER DO IT.

4 **JUDGE HENDERSON:** GO ON. WE DO UNDERSTAND, WHICH WE
5 DIDN'T BEFORE YOU RAISED THIS, THAT THE BLUE LINE RELATES TO THE
6 GRAPH ON THE RIGHT, OR WHATEVER WE CALL IT; THE MAGENTA LINE
7 RELATES TO THE GRAPH ON THE LEFT.

8 **JUDGE KARLTON:** RIGHT.

9 **MS. JOHNSON:** OKAY.

10 BY MS. JOHNSON

11 **Q** AND THE -- SO THE VIOLENT CRIME RATE PER 100,000 IN 1990 WAS
12 SOMEWHERE BETWEEN 7- AND 800 PER 100,000; IS THAT CORRECT? NO,
13 I'M SORRY. I MIS- -- I'M SORRY.

14 THE VIOLENT CRIME RATE WAS SOMEWHERE BETWEEN 1,000
15 AND 1,100 IN 1990, CORRECT?

16 **A** RIGHT.

17 **Q** AND THEN THE VIOLENT CRIME RATE WAS AROUND 500 PER 100,000
18 IN 2007, CORRECT?

19 **A** RIGHT.

20 **Q** AND THAT NUMBER, 500, IS HIGHER THAN ANY POINT ON THE
21 PAROLEE LINE, CORRECT?

22 **A** RIGHT.

23 **MS. JOHNSON:** SO IF WE COULD, YOUR HONORS --

24 BY MS. JOHNSON

25 **Q** IF THE X -- IF THE Y AXIS HADN'T BEEN SPLIT UP INTO TWO

1 DIFFERENT SIDES OF THIS CHART AND HAD JUST BEEN DONE ON A
2 CONTINUOUS CHART FROM, LET'S SAY, 100 TO 1,200, THE VIOLENT
3 CRIME RATE LINE WOULD ACTUALLY AT EVERY POINT BE HIGHER THAN THE
4 PAROLEE LINE, CORRECT?

5 **A** RIGHT.

6 **MS. JOHNSON:** OKAY. JUST TO CLARIFY THAT POINT, I
7 WOULD LIKE TO DEMONSTRATE THAT WITH THE WITNESS.

8 **JUDGE HENDERSON:** DEMONSTRATE WHAT SHE JUST ADMITTED
9 WAS CORRECT?

10 **MS. JOHNSON:** I'M NOT SURE UNLESS YOU SEE IT VISUALLY
11 IT'S GOING TO BE CLEAR WHAT I MEAN.

12 **JUDGE KARLTON:** BEFORE YOU DO THAT, WHY DID YOU MAKE
13 IT TWO Y AXES?

14 **THE WITNESS:** SURE. I'M HAPPY TO EXPLAIN THAT.

15 THE INTENTION OF FORMING THESE CHARTS WAS TO COMPARE
16 HOW THE PAROLEE RATE CHANGED WITH HOW THE VIOLENT CRIME RATE
17 CHANGED. WERE WE TO HAVE THE Y AXIS, JUST ONE Y AXIS, GOING
18 FROM 0 TO 1,200, OR, IN SOME CASES, IN CERTAIN COUNTIES WHERE
19 THEY HAVE VERY HIGH CRIME RATES, FROM 0 TO 1,500 OR ALMOST
20 2,000, WE WOULDN'T BE ABLE TO ACTUALLY SEE THE CHANGE IN THESE
21 LINES. THEY WOULD LOOK ALMOST FLAT, ESPECIALLY THE PAROLEE
22 RATE.

23 **JUDGE KARLTON:** THAT WOULD REFLECT THE REALITY.

24 **THE WITNESS:** THAT WOULD REFLECT THE DIFFERENCE
25 BETWEEN THE TWO RATES. THAT WOULD NOT REFLECT HOW THE TWO RATES

1 CHANGED OVER TIME.

2 **JUDGE REINHARDT:** ANOTHER WAY TO DO THIS IS IN BARS,
3 WOULD THAT SOLVE THE PROBLEM? IF SHE DID IT IN BARS --

4 **MS. JOHNSON:** YOUR HONORS, THIS IS NOT MY EVIDENCE,
5 AND I AM NOT PREPARED TO SAY HOW SHE CAN FIX THE PROBLEM.

6 **JUDGE REINHARDT:** THERE ARE VARIOUS WAYS TO SHOW
7 FIGURES. SOMETIMES THEY'RE MISLEADING, SOMETIMES THEY ARE NOT,
8 BUT THEY ARE THE SAME FIGURES. I'M JUST WONDERING IF WE
9 TRANSLATED THESE INTO BARS --

10 **MS. JOHNSON:** I'M ACTUALLY NOT GOING TO CLAIM TO BE
11 AN EXPERT IN DATA COMPILATION.

12 **JUDGE KARLTON:** YOU'VE DONE A REMARKABLE JOB.

13 **MS. JOHNSON:** IF I COULD JUST PROCEED, I THINK IT
14 WILL MAKE IT CLEARER TO REPRESENT VISUALLY WHAT WE WERE JUST
15 TALKING ABOUT VERBALLY, YOUR HONORS.

16 **JUDGE KARLTON:** DO YOU HAVE ONE OF THOSE MICROPHONES,
17 MADAM CLERK, THAT SHE CAN SPEAK INTO WHILE MOVING AROUND?
18 MOBILES, I THINK THEY'RE CALLED.

19 BY MS. JOHNSON

20 **Q** OKAY. ALSO, JUST TO QUICKLY POINT OUT, ON THE LEFT-HAND
21 CHART, YOU DID THE SCALE IN 25 POINT INCREMENTS AND ON THE
22 RIGHT-HAND CHART YOU DID IT IN 100 POINT INCREMENTS, CORRECT?

23 **A** RIGHT.

24 **Q** THE USE OF THE DIFFERENT SCALE OF INCREMENTS IS GOING TO
25 MAKE THE DIFFERENCE IN THE POINTS LOOK DIFFERENT VISUALLY, ISN'T

1 IT?

2 **A** NOT THE POINTS. THE POINTS DON'T LOOK DIFFERENT VISUALLY.

3 **Q** I'M SORRY. YOU ARE RIGHT.

4 THE SLOPE IS GOING TO LOOK DIFFERENT USING THE
5 DIFFERENT INCREMENTS, ISN'T IT?

6 **A** NO.

7 **Q** WELL, ISN'T THAT WHAT YOU JUST SAID, BECAUSE IT MADE IT --
8 IF YOU USE A LARGER SCALE, IT MAKES THE LINE LOOK RELATIVELY
9 FLAT, SO YOU WANT TO USE A SMALLER SCALE?

10 **A** I'M SORRY. I THOUGHT YOU WERE REFERRING TO THE INCREMENTS
11 BETWEEN THE NOTED DATA POINTS ON THE LEFT-HAND SIDE, THE NOTED
12 SCALE.

13 **Q** RIGHT. I'M TALKING ABOUT ON THE LEFT-HAND SIDE, YOU GO 100,
14 125, 150, 175, WHICH HAS MORE DETAIL AND -- THAN THE RIGHT-HAND
15 SIDE, WHICH YOU GO IN 100 POINT INCREMENTS?

16 **A** THAT DOESN'T CHANGE HOW THE LINES APPEAR OR THE POINTS ON
17 THE LINES. THE REASON WHY I DID THAT IS BECAUSE THE SPACE
18 BETWEEN 100 AND 400 IS MUCH SMALLER THAN BETWEEN 400 AND 1200.
19 SO JUST TO PROVIDE FURTHER DETAIL.

20 **Q** OKAY. THE TOTAL NUMBER OF PAROLEES I'M GOING TO REPRESENT
21 IN A PURPLISH COLOR. WE'LL REPRESENT THE TOTAL NUMBER OF CRIME
22 RATE IN A BLUISH COLOR. I'M GOING TO PICK THREE DATA POINTS.
23 I'M GOING TO PICK THE TWO END ONES AND THE MOST SEVERE ONE IN
24 THE MIDDLE, SO WE CAN GET A GENERAL SLOPE IF NOT THE CURVE OF
25 THE LINE. I'LL POINT OUT ON HERE WHERE I WANT TO PUT IT. IF

1 YOU AGREE THAT SEEMS FAIRLY ACCURATE, A ROUGH REPRESENTATION,
2 LET ME KNOW, OKAY?

3 LET'S TAKE THE TOTAL NUMBER OF PAROLEES PER 100,000.
4 IN 1990 THAT WAS A LITTLE OVER 225; CORRECT?

5 **A** SURE.

6 **Q** ON MY CHART HERE, I'VE ROUGHED UP, THERE'S A 200 TO 300,
7 WHICH IS THE SAME SCALE WE ARE USING ON THE RIGHT-HAND SIDE,
8 RIGHT? SO THERE'S 200 TO 300, SO I'D SAY 225 IS ABOUT RIGHT
9 HERE. SO I PUT THE 225 FOR 1990 ABOUT RIGHT HERE, CORRECT?

10 **A** MAYBE A LITTLE HIGHER.

11 **Q** OKAY. HOW ABOUT RIGHT THERE?

12 **A** OKAY.

13 **Q** OKAY. THAT'S THE TOTAL NUMBER OF PAROLEES.

14 AND THEN IT LOOKS LIKE IT PEAKED AROUND 2000, IT
15 LOOKS LIKE; WOULD YOU AGREE WITH THAT?

16 **A** YEAH.

17 **Q** SO IF I PICK A POINT AROUND 2000, AND IT PEAKED AT AROUND
18 350, WOULD YOU BASICALLY AGREE WITH THAT? I KNOW WE ARE WORKING
19 WITH ROUGH NUMBERS. THAT WOULD BE ABOUT RIGHT HERE, CORRECT?

20 **A** CORRECT.

21 **Q** ABOUT 350.

22 AND THEN THE LAST DATA POINT IS 2007, AND THAT WAS
23 3- -- SOMEWHERE JUST ABOVE 325, RIGHT?

24 **A** RIGHT.

25 **Q** OKAY. AND I -- 2007 WE'LL PUT IT RIGHT HERE. I DID ONLY

1 2006. 2007 WILL COME RIGHT HERE. ABOUT 325, WOULD YOU AGREE
2 THAT'S ABOUT ABOVE 325?

3 **A** YES.

4 **Q** SO JUST AS A ROUGH, THE PAROLEE LINE WOULD LOOK LIKE THIS
5 CONNECTING THESE THREE POINTS, ROUGHLY, CORRECT?

6 **A** MM-HMM.

7 **JUDGE KARLTON:** THAT'S YES, MA'AM?

8 **THE WITNESS:** OH, YES.

9 BY MS. JOHNSON

10 **Q** NOW, THE TOTAL NUMBER OF VIOLENT CRIMES ON THIS SINGLE Y
11 AXIS IS GOING TO BE ABOVE THE TOTAL NUMBER OF PAROLEES, AND THAT
12 IS -- WE'RE STARTING AT ABOUT 1,100 IN 1990; IS THAT RIGHT?

13 **A** MAYBE ABOVE 1,100. 1,150.

14 **Q** 1,150 IN 1990.

15 AND THE LOWEST POINT -- WELL, ACTUALLY, LET'S PICK
16 THE -- IT KIND OF BREAKS THERE AROUND 1999; IS THAT RIGHT? YOU
17 SEE LIKE A LITTLE BREAK?

18 **A** YES.

19 **Q** AND THAT'S AROUND 600?

20 **A** YES.

21 **Q** WOULD YOU AGREE WITH THAT?

22 SO YOU WANT TO JUST SAY 1999 IS AROUND 600, SO THAT
23 WOULD BE AROUND HERE, RIGHT? ABOUT? 1999, 600, A LITTLE BIT
24 HERE. WOULD YOU AGREE WITH THAT?

25 **A** YES.

1 Q AND THEN THE LAST DATA POINT IS 500 IN 2007. THE LAST DATA
2 POINT, 500. OKAY. THAT'S WHAT THIS -- SO THE CRIME RATE
3 ACTUALLY LOOKS SOMETHING LIKE THAT USING A SINGLE Y AXIS,
4 CORRECT?

5 A YES.

6 Q SO IF YOU HAD USED A SINGLE Y AXIS, WHAT I'VE JUST DRAWN IS
7 WHAT THIS CHART WOULD ACTUALLY LOOK LIKE, CORRECT?

8 A YES.

9 MS. JOHNSON: OKAY. COULD WE MARK THIS, YOUR HONORS?
10 IT'S GOING TO BE DEFENDANT'S 1332.

11 JUDGE HENDERSON: IT WILL BE MARKED AS DEFENDANT'S
12 1332 FOR IDENTIFICATION.

13 (DEFENDANT'S EXHIBIT 1332 MARKED FOR
14 IDENTIFICATION.)

15 BY MS. JOHNSON

16 Q THIS ISSUE OF USING TWO Y AXES INSTEAD OF A SINGLE J AXIS IS
17 FOUND IN EVERY SINGLE ONE OF YOUR CHARTS, IS IT NOT?

18 A YES.

19 Q SO WE COULD GO THROUGH THIS PROCESS, AND WE'RE GOING TO FIND
20 IN EVERY SINGLE ONE OF YOUR CHARTS THAT EVEN THOUGH YOU VISUALLY
21 REPRESENTED THAT THE CRIME RATE IS ACTUALLY LOWER THAN THE
22 PAROLE RATE, THE CRIME RATE IS ACTUALLY HIGHER, AND IF YOU DID A
23 SINGLE Y AXIS, IT WOULD SHOW UP ON THE CHART THAT WAY SO THE
24 LINES DON'T ACTUALLY INTERSECT?

25 A YES.

1 Q OKAY.

2 MS. JOHNSON: I HAVE ANOTHER EXAMPLE I COULD GIVE IF
3 THE COURT NEEDS ANY FURTHER CLARIFICATION.

4 JUDGE KARLTON: I DON'T.

5 JUDGE HENDERSON: NO, I DON'T.

6 MS. JOHNSON: WITH RESPECT TO THE FRESNO COUNTY
7 THOUGH OR SAN DIEGO COUNTY -- I LEFT MY THINGS RIGHT HERE.

8 JUDGE REINHARDT: DO YOU HAVE ANY -- ARE YOU
9 CHALLENGING IN ANY WAY THE ACCURACY OF THE DATA?

10 MS. JOHNSON: THE DATA IS NOT IN EVIDENCE, YOUR
11 HONOR, AND WE HAVEN'T HAD AN OPPORTUNITY TO GO THROUGH ALL THE
12 DATA POINTS. THE DATA -- THE UNDERLYING DATA ITSELF IS NOT IN
13 EVIDENCE. THIS IS HER REPRESENTATION OF WHAT THE UNDERLYING
14 DATA IS. THERE WERE 48 PAGES OF THIS DOCUMENT.

15 JUDGE REINHARDT: ALL RIGHT.

16 MS. JOHNSON: AND WE HAVEN'T HAD A CHANCE TO VERIFY
17 EVERY SINGLE DATA POINT.

18 JUDGE REINHARDT: THAT'S A DIFFERENT OBJECTION. I'M
19 TRYING TO FIND OUT WHAT YOUR OBJECTION IS TO THE FORM IN WHICH
20 THIS IS PRESENTED AND YOU THINK IT'S MISLEADING.

21 JUDGE KARLTON: YEAH.

22 JUDGE REINHARDT: OKAY.

23 JUDGE KARLTON: THAT IS RIGHT, RIGHT?

24 MS. JOHNSON: I DO BELIEVE IT IS MISLEADING, YOUR
25 HONORS. I BELIEVE EVERY SINGLE ONE OF THESE 48 CHARTS IS

1 VISUALLY MISLEADING.

2 **JUDGE KARLTON:** WITH THE EXCEPTION OF -- WITH THE
3 EXCEPTION OF THE DATA, WHATEVER THE DATA IS, YOU BELIEVE THE
4 CHARTS AS CREATED AND AS TENDERED TO THE COURT MISLEAD AS TO
5 WHAT -- THAT IS, IF YOU VISUALLY EXAMINE THEM WITHOUT
6 UNDERSTANDING THAT THESE TWO AXES MAKE THE DIFFERENCE, YOU
7 BELIEVE IT TO BE MISLEADING.

8 **MS. JOHNSON:** I DO, YOUR HONOR.

9 **JUDGE REINHARDT:** OKAY. THAT'S FINE. IS THERE
10 ANYTHING ELSE?

11 **MS. JOHNSON:** ONE OTHER THING.

12 BY MS. JOHNSON

13 **Q** YOU TALK ABOUT -- A COUPLE OF OTHER THINGS.

14 ON THE SAN DIEGO CHART, YOU -- IF WE CAN PULL UP THE
15 SAN DIEGO? IT IS AROUND PAGE 21, I THINK.

16 **JUDGE KARLTON:** PAROLEES AND VIOLENT CRIME RATE?

17 BY MS. JOHNSON

18 **Q** THE PAROLEES AND VIOLENT CAME RATE, NOT THE NEW PAROLEES.

19 IF WE GO TO THE PAROLEES AND VIOLENT CAME RATE, WHICH IS A
20 COUPLE PAGES AHEAD OF THIS ONE, I THINK, MEANING IT'S PRIOR. GO
21 BACK.

22 **JUDGE KARLTON:** RIGHT THERE.

23 **MS. JOHNSON:** THERE WE GO, PAROLEES AND VIOLENT CRIME
24 RATE.

25

1 BY MS. JOHNSON

2 Q IF YOU LOOK AT THIS CHART HERE, THE SCALE ON THE Y AXIS ON
3 THE LEFT-HAND SIDE SAYS 100 TO 400, AND THE SCALE ON THE Y AXIS
4 ON THE RIGHT-HAND SIDE SAYS 200 TO A THOUSAND. THE NUMBERS,
5 HOWEVER, ON -- LET'S SEE IF I'VE GOT THIS RIGHT.

6 WE FIGURED OUT THE NUMBER OF PAROLEES TRACKED TO THE
7 LEFT-HAND SIDE, RIGHT? AND THE CRIME RATE TRACKS TO THE
8 RIGHT-HAND SIDE. SO THE CRIME RATE IS ACTUALLY SOMEWHERE
9 BETWEEN 400 AND 500 ON THIS CHART, RIGHT?

10 A YES.

11 Q BUT THE LEFT-HAND Y AXIS ENDS AT 400?

12 A YES.

13 Q SO WOULD IT REALLY HAVE BEEN THAT HARD TO JUST BUMP THAT
14 CHART UP A COUPLE MORE POINTS TO CAPTURE THE 400 TO 500 RANGE SO
15 THAT THE CRIME RATE WOULD HAVE BEEN INDICATED ABOVE THE NUMBER
16 OF PAROLEES RATHER THAN BELOW?

17 A I'M SORRY. WHAT ARE YOU ASKING?

18 Q I'M ASKING, WHY YOU WOULD END YOUR LEFT-HAND AXIS AT 400
19 WHEN YOUR NEXT -- WHEN THE DATA POINT YOU'RE COMPARING IT TO FOR
20 VIOLENT CRIME IS IN THE 400 RANGE?

21 A I DID THAT BECAUSE I WANTED AT ALL CHARTS TO BE CONSISTENT.
22 SO ALL THE CHARTS FOR PAROLEES VERSUS CRIME RATE HAVE A SPAN ON
23 THE LEFT-HAND SIDE OF 300 AND A SPAN ON THE LEFT -- ON THE
24 RIGHT-HAND SIDE OF 800. I JUST KEPT THEM ALL CONSISTENT. I
25 DIDN'T WANT TO CHANGE FROM ONE --

1 Q CONSISTENT, IF SOMEWHAT, PERHAPS, MISLEADING.

2 WITH RESPECT TO THE NEW PAROLEE NUMBERS, YOU HAVE
3 DEFINITIONS AT THE END OF YOUR CHART. YOU DEFINE TOTAL
4 PAROLEES -- ACTUALLY, YOU DON'T DEFINE NEW PAROLEES. YOUR
5 CHARTS SAY "NEW PAROLEES AND VIOLENT CRIME RATE," BUT YOUR
6 DEFINITIONS DON'T INCLUDE A DEFINITION OF NEW PAROLEE.

7 A THE HEADING OF EACH CHART IS EITHER "PAROLEES" OR "NEW
8 PAROLEES."

9 Q RIGHT. BUT WHAT I'M -- IN YOUR DEFINITIONAL SECTION YOU
10 DON'T DEFINE WHAT A NEW PAROLEE IS?

11 A OH, I SEE. YES. I'M SORRY. THIS IS FROM A PREVIOUS
12 VERSION. IT SHOULD SAY "NEW PAROLEES" INSTEAD OF "TOTAL
13 PAROLEES AND RERELEASES TO PAROLE."

14 Q WHERE DID YOU GET THE DEFINITION FOR TOTAL PAROLEES AND
15 RERELEASES TO PAROLE, THE DEFINITION ITSELF, NOT THE NUMBERS,
16 THE DEFINITION FROM?

17 A THIS IS FROM THE CHART THAT I TOOK THIS DATA FROM.

18 Q WHICH CHART IS THAT?

19 A SOURCE NUMBER SEVEN AND SIX.

20 Q SOURCE NUMBER FOR STATEWIDE OR COUNTY? YOU HAVE --

21 A I'M SORRY. STATEWIDE IT'S SIX, AND COUNTY IT'S ALSO SIX AND
22 SEVEN.

23 Q SO THAT WOULD BE CALIFORNIA DEPARTMENT OF CORRECTIONS AND
24 REHABILITATION CALIFORNIA PRISONERS AND PAROLEES, 1990 AND 2007;
25 IS THAT CORRECT?

1 **A** YES. I'M SORRY. IT'S ONLY SIX IN THE COUNTY CHARTS, NOT
2 SEVEN.

3 **Q** IS THE TITLE OF THE SOURCE THAT I JUST READ TO YOU ACCURATE?

4 **A** YES.

5 **Q** OKAY. CALIFORNIA PRISONERS AND PAROLEES, IS IT YOUR
6 UNDERSTANDING THAT TOTAL PAROLEES AND RERELEASES TO PAROLE IS
7 DEFINED IN THAT DOCUMENT SOMEWHERE?

8 **A** NO, IT'S NOT. BUT THE HEADING I BELIEVE SAYS SOMETHING LIKE
9 PAROLED OR REPAROLED INDIVIDUALS.

10 **Q** SO YOU DIDN'T GET THAT DEFINITION FROM THE DOCUMENT ITSELF,
11 CORRECT?

12 **A** NO, NOT THE ENTIRE DEFINITION.

13 **Q** YOU JUST KIND OF INTERPRETED THE DOCUMENT TO COME UP WITH
14 WHAT YOU THOUGHT THE DEFINITION WAS?

15 **A** I DIDN'T TAKE ANY INTERPRETATION. I TOOK THOSE WORDS
16 PAROLED OR REPAROLED. IT WAS A CDC DOCUMENT. SO I SAID FROM A
17 CDCR INSTITUTION. AND THEN I HAD DONE PER A HUNDRED THOUSAND OF
18 THE COUNTY OR STATEWIDE POPULATION, SO I ADDED THAT PIECE ON.

19 **Q** BUT YOU WROTE, QUOTE:

20 "THE DEFINITION IS, QUOTE, INDIVIDUALS
21 PAROLED OR REPAROLED FROM A CDCR INSTITUTION TO
22 THE STATE OR IDENTIFIED COUNTY PER 100,000 OF
23 THE COUNTY OR STATEWIDE POPULATION IN A GIVEN
24 YEAR."

25 SO YOU ADDED THE "PER 100,000," BUT YOU'RE SAYING --

1 WHERE DID YOU GET THE DEFINITIONS "INDIVIDUALS PAROLED OR
2 REPAROLED FROM A CDCR INSTITUTION TO THE STATE OR IDENTIFIED
3 COUNTY"?

4 **A** THE PAROLED OR REPAROLED SECTION WAS IN THAT DOCUMENT.

5 **Q** WAS THE --

6 **A** I ADDED THE WORD "INDIVIDUALS."

7 **Q** SO DO YOU KNOW WHETHER THE INFORMATION YOU WERE LOOKING AT
8 FOR PAROLES AND REPAROLES IS ACTUALLY INSTANCES OF PAROLE SUCH
9 THAT AN INDIVIDUAL COULD BE COUNTED MULTIPLE TIMES IN A GIVEN
10 YEAR OR IF IT'S JUST AN INDIVIDUAL?

11 **MS. EVENSON:** OBJECTION.

12 **THE WITNESS:** I BELIEVE IT'S --

13 **MS. EVENSON:** BEYOND THE SCOPE.

14 **JUDGE HENDERSON:** OVERRULED.

15 **THE WITNESS:** I BELIEVE THAT IT'S INSTANCES OF
16 PAROLE, AND THAT'S WHAT I INTENDED BY THIS DEFINITION.

17 **JUDGE KARLTON:** WHY DO YOU BELIEVE THAT?

18 **THE WITNESS:** BECAUSE DON AND REBEKAH EXPLAINED TO ME
19 WHAT THAT MEANT.

20 BY MS. JOHNSON

21 **Q** "DON AND REBEKAH" BEING PLAINTIFFS' COUNSEL IN THIS MATTER?

22 **A** YES.

23 **MS. JOHNSON:** OKAY. I DON'T HAVE ANY FURTHER
24 QUESTIONS, YOUR HONOR. WE RENEW OUR OBJECTIONS TO THIS PIECE OF
25 EVIDENCE, SUCH THAT IT IS.

1 **JUDGE HENDERSON:** WE'LL RULE THAT THIS IS ADMISSIBLE
2 AS A WAY OF SHOWING THE FIGURES THAT PLAINTIFFS WISH TO SHOW --

3 **JUDGE KARLTON:** HOW MUCH WEIGHT TO BE GIVEN IS
4 SOMETHING --

5 **JUDGE HENDERSON:** IT'S A MATTER OF WEIGHT. THE
6 OBJECTIONS GO TO THE WEIGHT.

7 I AM ALSO, UNLESS MY COLLEAGUES HAVE TROUBLE WITH
8 THIS, I'M GOING TO ALLOW DEFENSE COUNSEL TO INTRODUCE A BAR
9 GRAPH OR SOMETHING THAT --

10 **JUDGE KARLTON:** IF YOU WANT.

11 **JUDGE HENDERSON:** IF YOU WANT. YOU DON'T HAVE TO. I
12 THINK THERE WOULD BE A GREATER WORRY IF IT WERE A JURY. I THINK
13 WE'RE GOING TO BE ABLE TO SEE -- BEFORE YOU POINTED IT OUT, IT
14 WAS MISLEADING. BUT I THINK NOW THAT WE UNDERSTAND WHAT THEY'RE
15 TRYING TO DO, I THINK THE COURT CAN SORT THAT OUT. BUT WE
16 INVITE YOU TO INTRODUCE BARS OR OTHER CHARTS THAT SHOW THE SAME
17 DATA IN A DIFFERENT FORM.

18 **MS. BARLOW:** IF I MAY, YOUR HONOR, ON BEHALF OF AT
19 LEAST MY CLIENTS, I NEVER RECEIVED A COPY OF THE UNDERLYING DATA
20 THAT I COULD REVIEW FROM PLAINTIFFS' COUNSEL EVEN THOUGH I
21 REQUESTED IT.

22 **JUDGE HENDERSON:** I'LL ASK COUNSEL TO FURNISH THAT.

23 **MS. EVENSON:** I'M SORRY?

24 **JUDGE HENDERSON:** I'LL ASK YOU TO FURNISH THAT TO --

25 **MS. EVENSON:** YES, YOUR HONOR. WE E-MAILED IT TO

1 MS. BARLOW, AND SHE INDICATED SHE COULDN'T OPEN THE E-MAIL SO, I
2 PROVIDED HER WITH HARD COPIES IN COURT TODAY.

3 **MS. BARLOW:** I'M SORRY, YOUR HONOR. I MEAN THE
4 ACTUAL UNDERLYING DATA. THIS IS JUST A SUMMARY THAT THEY
5 PREPARED OF THE UNDERLYING DATA. IT IS NOT THE UNDERLYING DATA.

6 **JUDGE HENDERSON:** AS I UNDERSTAND, THE UNDERLYING
7 DATA IS PUBLIC RECORD.

8 **MS. JOHNSON:** THERE ARE ELEMENTS OF IT THAT ARE VERY
9 DIFFICULT TO FIND, ACTUALLY. THERE ARE SOME THAT ARE NOT THAT,
10 AS SHE TESTIFIED, THEY CALLED, AND THEY WERE SENT TO HER. WE
11 RECEIVED THOSE FROM PLAINTIFFS' COUNSEL, SO THEY OBVIOUSLY
12 SHOULD MAKE THEM AVAILABLE TO THE OTHER PARTIES.

13 **MS. EVENSON:** WE HAVE MADE THAT AVAILABLE TO ALL
14 COUNSEL. WE CAN REPROVIDE IT.

15 **JUDGE HENDERSON:** OKAY. REPROVIDE IT.

16 OKAY. WE ARE GOING TO TAKE A LUNCH RECESS AT THIS
17 POINT, AND WE'RE GOING TO GET OUR CALENDARS TOGETHER AND DISCUSS
18 DATES.

19 **JUDGE KARLTON:** I WANT TO NOTE SOMETHING. IS THERE
20 ANY FURTHER EVIDENCE FROM ANYBODY FOR ANYTHING?

21 **MR. SANGSTER:** THERE'S AN EVIDENTIARY ISSUE, YOUR
22 HONOR, THAT I NEED MAKE A MOTION. IT CAN BE DONE AFTER LUNCH.
23 IF YOU WANT, I CAN --

24 **JUDGE REINHARDT:** MAKE IT NOW.

25 **MR. SANGSTER:** MR. MCINTOSH WAS LISTED AS A WITNESS

1 AND PROVIDED A TRIAL DECLARATION AND DID NOT TESTIFY, AND WE
2 MOVE TO STRIKE THE DECLARATION.

3 **MS. FUENTES:** THERESA FUENTES FOR THE COUNTY
4 INTERVENORS.

5 GIVEN THIS COURT'S RULING STRIKING THE SURVEY THAT
6 MR. MCINTOSH PREPARED, WE DECIDED NOT CALL HIM AS A WITNESS.

7 **JUDGE KARLTON:** SO YOU ARE SATISFIED TO STRIKE THE
8 AFFIDAVIT?

9 **MS. FUENTES:** IN LIGHT OF THE RULING EXCLUDING THE
10 SURVEY QUESTION.

11 **JUDGE HENDERSON:** MOTION WILL BE GRANTED.

12 **MS. WANG:** YOUR HONORS, TERESA WANG ON BEHALF OF THE
13 LEGISLATOR INTERVENORS.

14 IN VIEW OF YOUR QUESTION JUST NOW, WE WILL BE
15 SUBMITTING A SUPPLEMENTAL TRIAL AFFIDAVIT OF FORMER ASSEMBLYMAN
16 SPITZER FOLLOWING UP ON HIS TESTIMONY LAST FRIDAY BEFORE THE
17 COURT.

18 **JUDGE KARLTON:** WHY?

19 **JUDGE HENDERSON:** WHY? HE TESTIFIED. WHAT WOULD BE
20 SUPPLEMENTAL?

21 **JUDGE KARLTON:** BY THE WAY, LET'S GET HER OFF THE
22 STAND.

23 **JUDGE HENDERSON:** YES. YOU CAN STEP DOWN.

24 **MS. WANG:** FORMER ASSEMBLYMAN SPITZER SPOKE WITH THE
25 ATTORNEY GENERAL FOLLOWING HIS TESTIMONY IN COURT ON FRIDAY

1 REGARDING SOME OF HIS CONCERNS ABOUT FOLLOW-UP ON AB 900, AND WE
2 WOULD JUST LIKE TO ENTER SOME -- A SUPPLEMENTAL AFFIDAVIT
3 CHRONICLING THAT CONVERSATION.

4 **JUDGE KARLTON:** YOU'D WANT TO QUESTION HIM AND SO
5 FORTH? NO.

6 **JUDGE HENDERSON:** OKAY. MOTION IS DENIED.

7 **MS. WANG:** THANK YOU, YOUR HONOR.

8 **JUDGE KARLTON:** ALL RIGHT.

9 **JUDGE HENDERSON:** OKAY. WE ARE GOING TO RECESS FOR
10 AN HOUR AND COME BACK AND TALK ABOUT DATES FOR CLOSING ARGUMENT.
11 YOU SHOULD GIVE US --

12 **JUDGE KARLTON:** ALSO FOR BRIEFING.

13 **JUDGE HENDERSON:** BRIEFING AND FINDINGS OF FACT. YOU
14 SHOULD GIVE US A SENSE OF HOW LONG YOU THINK IT WOULD TAKE TO
15 GET US FINDINGS OF FACT, WHETHER YOU WANT TO GIVE YOUR ARGUMENT
16 BEFORE YOU DO THAT OR AFTER.

17 **MR. SPECTER:** I WANT TO PROPOSE A SUGGESTION FOR YOU
18 TO CONSIDER DURING YOUR LUNCH BREAK, THAT'S ALL, BECAUSE IT HAS
19 TO DO WITH THE VERY FACTS THAT YOU'RE CONCERNING.

20 **JUDGE HENDERSON:** OKAY.

21 **MR. SPECTER:** THAT IS, IN TERMS OF ARGUMENT, I WAS
22 GOING TO PROPOSE THAT SINCE THERE ARE GOING TO BE FINDINGS OF
23 FACT AND CONCLUSIONS OF LAW, WHICH, HOPEFULLY, FROM OUR POINT OF
24 VIEW, WILL BE AS EXHAUSTIVE AND METICULOUS AS THEY CAN, THE
25 ARGUMENT, I WOULD SUGGEST, WOULD BE -- AT THE ARGUMENT I WOULD

1 LIKE TO ANSWER THE QUESTIONS THAT YOU HAVE REGARDING THE
2 PROPOSALS AND THE FINDINGS AND THE RELIEF.

3 SO I KNOW, JUDGE HENDERSON, IN MANY OF YOUR LAW AND
4 MOTION MOTIONS YOU PROVIDE QUESTIONS TO THE PARTIES TO ARGUE,
5 AND IF IT'S SOMETHING THAT YOU WOULD CONSIDER DOING HERE, I
6 THINK IT WOULD BE MOST USEFUL FOR US TO DIRECT OUR ENERGIES TO
7 TO ANSWERING YOUR QUESTIONS THAN US GIVING A SPEECH ABOUT KIND
8 OF SUMMARIZING THE ARGUMENTS. THAT'S ALL.

9 **JUDGE HENDERSON:** OKAY. WE ARE ADJOURNED FOR AN
10 HOUR.

11 (LUNCHEON RECESS TAKEN.)

12 **JUDGE HENDERSON:** WE ARE GOING TO BEGIN WITH THE
13 DIFFICULT TASK OF SCHEDULING THE REST OF THIS MATTER. LET'S
14 BEGIN BY HEARING FROM COUNSEL AS TO YOUR ESTIMATES OF HOW LONG
15 IT WILL TAKE YOU TO GET US FINDINGS OF FACT, PROPOSED FINDINGS
16 OF FACT.

17 **MR. MELLO:** MR. SPECTER, COUNSEL HAVE MET AND
18 CONFERRED. THIS IS PAUL MELLO FOR DEFENDANTS.

19 **MR. SPECTER:** DON SPECTER.

20 **MR. MELLO:** WE HAVE COME UP WITH A PROPOSAL TO DO
21 FINDINGS OF FACT AND CONCLUSIONS OF LAW TO THE COURT BY
22 JANUARY 23RD.

23 **JUDGE HENDERSON:** OKAY.

24 **MR. MELLO:** AND THEN WITH A PROPOSED ARGUMENT, I
25 BELIEVE -- TELL ME IF I'M WRONG -- HAVING ARGUMENT THE WEEK OF

1 FEBRUARY 3RD, IF IT WORKS WITH THE COURT.

2 JUDGE KARLTON: NOTHING WORKS.

3 JUDGE REINHARDT: I MEANT TO BRING MY CALENDAR IN.

4 JUDGE KARLTON: WE CAN SEND ONE OF THEM IN.

5 JUDGE REINHARDT: DO YOU WANT TO GO GET MY CALENDAR?

6 JUDGE KARLTON: LET ME ASK YOU ANOTHER QUESTION.

7 MR. SPECTER HAS SUGGESTED THAT WE PROVIDE YOU WITH
8 QUESTIONS ABOUT THE THINGS THAT ARE TROUBLING US. MY FIRST
9 RESPONSE IS EVERYTHING IS TROUBLING ME. I CAN'T SPEAK FOR MY
10 COLLEAGUES.

11 MR. SPECTER: ANYTHING IS POSSIBLE AND EVERYTHING IS
12 TROUBLING YOU, RIGHT?

13 JUDGE KARLTON: THAT'S RIGHT. AND MAYBE, THE JUDGES
14 HAVE THOUGHT WE COULD GET TOGETHER SOMETIME IN THE NEXT WEEK OR
15 TWO, GOD WILLING AND THE RIVER DON'T RISE, AND SEND YOU A LIST.

16 BUT WHAT WE ARE CONCERNED WITH IS THAT YOU GUYS WILL
17 THEN THINK THAT'S ALL YOU'VE GOT TO TALK ABOUT. AND WE DON'T
18 HAVE ANY IDEA THAT WE EVEN KNOW ALL THE THINGS THAT ARE
19 TROUBLING US.

20 MR. SPECTER: WELL, CAN I ELABORATE ON WHAT MY IDEA
21 WAS?

22 MY IDEA IS THAT YOU WOULD SEND US THAT LIST AFTER YOU
23 SAW OUR PROPOSED FINDINGS AND CONCLUSIONS OF LAW, WHICH THAT
24 WILL DISTILL SOME OF THE LEGAL ISSUES AND SOME OF THE EVIDENCE.

25 AND, YOU KNOW, THERE ARE LOTS OF SORT OF ISSUES OF

1 FIRST IMPRESSION IN THIS CASE. SO I THOUGHT THAT IT WOULD BE A
2 --

3 JUDGE KARLTON: THAT'S A POSSIBILITY, TOO.

4 MR. SPECTER: THAT WOULD BE THE MOST USEFUL FOR YOU
5 AND US.

6 JUDGE KARLTON: MR. MELLO, DO YOU AN ISSUE?

7 MR. MELLO: I WOULD NOT BE OPPOSED TO RECEIVING
8 PROPOSED QUESTIONS IN THE REPORT. HOWEVER, I WOULD LIKE TO MAKE
9 A CLOSING STATEMENT.

10 JUDGE HENDERSON: BOTTOM LINE, WE WILL DO THAT.

11 MR. MELLO: SO A TYPICAL CLOSING STATEMENT I WOULD
12 LIKE TO DO, BUT, OF COURSE, IF THE COURT HAS QUESTIONS, WE WILL
13 TRY TO ADDRESS THOSE, AND I HAVE SEEN THIS COURT ASK QUESTIONS.

14 JUDGE KARLTON: SOME OF THESE THINGS ARE SO
15 INTIMATELY TIED, AT LEAST IN MY MIND, THAT I DON'T -- I HAVE
16 PROBLEMS TRYING TO SEGREGATE THINGS OUT.

17 I'M VERY WORRIED IF I SAY TO YOU -- OBVIOUSLY, ONE OF
18 MY CONCERNS IS WE ARE TALKING ABOUT PUBLIC SAFETY AND WHETHER
19 YOU THINK SO OR NOT, SIR, IT'S A SERIOUS ISSUE IN THIS CASE.
20 BUT THAT IS TIED, AT LEAST IN MY MIND, TO THE FACT THAT THE
21 PRESENT -- THE BEST EVIDENCE IS THAT THE PRESENT PRISON SYSTEM
22 IS CRIMINOGENIC ITSELF. AND I'M NOT CLEAR -- I'M NOT AT ALL
23 CLEAR HOW YOU PARSE OUT THOSE QUESTIONS.

24 SO I HAVE THIS FEAR THAT I'M GOING TO ASK YOU A
25 QUESTION AND YOU ANSWER IT BECAUSE YOU ARE GOOD LAWYERS AND YOU

1 WON'T REALLY GET WHAT'S SO TROUBLING.

2 **MR. SPECTER:** I HAVE NEVER KNOWN YOU TO BE SHY ABOUT
3 ASKING US WHAT IS TROUBLING YOU.

4 BUT THAT'S WHAT I SEE THE -- I WOULD RATHER HAVE AN
5 ARGUMENT LIKE THAT WHERE IT'S MORE OF A DIALOGUE ABOUT THE
6 QUESTIONS THAT ARE TROUBLING YOU THAN ME GIVING A SPEECH
7 SUMMARIZING THE EVIDENCE THAT I HAVE ALREADY PROVIDED TO YOU IN
8 WRITTEN FORM. OTHERS MAY HAVE DIFFERENT STYLES --

9 **JUDGE REINHARDT:** THERE IS NO REASON YOU CAN'T DO
10 BOTH.

11 **MR. SPECTER:** THAT'S TRUE.

12 **MR. MELLO:** THAT'S WHAT I WAS SUGGESTING.

13 **JUDGE REINHARDT:** RIGHT. YOU WOULD HAVE A CLOSING
14 ARGUMENT, BUT IT WOULD NOT BE JUST LIKE A CLOSING ARGUMENT TO A
15 JURY. IT WOULD BE -- WE ARE COMBINED, THE COURT HERE, AND SO IT
16 WOULD INCLUDE QUESTIONS FROM THE COURT DURING THE ARGUMENT.

17 **MR. SPECTER:** YES, YOUR HONOR.

18 **JUDGE REINHARDT:** SO IT WOULD BE THAT KIND OF A MIX
19 BETWEEN THE CLOSING ARGUMENT AND AN APPELLATE ARGUMENT.

20 **JUDGE KARLTON:** MET ME ASK ANOTHER QUESTION -- EXCUSE
21 ME, GO AHEAD.

22 **MR. SPECTER:** NO, NO.

23 **JUDGE KARLTON:** WE THINK -- WE ARE TROUBLED. I WANT
24 YOU TO KNOW, WE ARE TROUBLED IN EVEN HOW TO WRITE AN OPINION
25 THAT MAKES ANY SENSE.

1 PROBABLY BY FEBRUARY -- AS AN EXAMPLE, JUST ONE
2 EXAMPLE JUDGE REINHARDT RAISED AT LUNCH. BY FEBRUARY SHOULD WE
3 NOT KNOW WHETHER THE GOVERNOR IS SIGNING AB 900 WHAT DIFFERENCE
4 THAT MAKES IN THE CASE -- I'M ASKING YOU, NOT TELLING YOU.

5 **MR. SPECTER:** THAT'S -- I WOULD OBJECT TO THAT
6 QUESTION AS SPECULATIVE.

7 **JUDGE REINHARDT:** IT MAY BE DIFFERENT FROM THE WAY IT
8 IS TODAY. IT MAY NOT BE THIS BILL. IT MAY BE ANOTHER BILL AND
9 MAYBE THERE WILL NEVER BE A BILL.

10 **MR. SPECTER:** AND YOU CAN ALWAYS ASK US FOR -- I
11 MEAN, YOU COULD PROBABLY TAKE JUDICIAL NOTICE OF THE FACT THAT
12 THE GOVERNOR SIGNS THE BILL AND --

13 **JUDGE REINHARDT:** BUT IT'S SOMETHING THAT WILL HAVE A
14 SIGNIFICANT IMPACT, AT LEAST FOR US TO CONSIDER.

15 TO WHAT EXTENT DOES AB 900 AFFECT THE ANSWER TO THESE
16 QUESTIONS?

17 **MR. SPECTER:** RIGHT.

18 **JUDGE REINHARDT:** AND IT WILL BE EASIER TO ANSWER IF
19 WE KNOW THE BOND ISSUE HAS BEEN CLEARED UP, ALTHOUGH THAT MAY
20 NOT BE THE END OF THE PROBLEM.

21 BUT, CERTAINLY, ONE OF THE ISSUES IS GOING TO BE --
22 IF WE GET TO PHASE TWO, ONE OF THE ISSUES IS GOING TO BE IS
23 THERE AN ALTERNATIVE REMEDY? I ASSUME STATE WILL SAY, WELL, AB
24 900 PROVIDES A SOLUTION, YOU KNOW, TO --

25 **MR. SPECTER:** IT SEEMS TO ME, YOUR HONOR, IF THE

1 EVIDENCE HAS BEEN -- WE HAVE CLOSED THE EVIDENCE AND WE WILL
2 ARGUE FROM THE EVIDENCE THAT EXISTS IN THE RECORD AND TAKE INTO
3 ACCOUNT ANY NEW DEVELOPMENTS. I DON'T SEE -- WE CAN'T RETRY THE
4 CASE.

5 **JUDGE KARLTON:** OH, GOD, NO.

6 **MR. SPECTER:** SO WE CAN ADDRESS THOSE QUESTIONS IN
7 ARGUMENT BASED ON THE RECORD.

8 **JUDGE REINHARDT:** AND IN YOUR BRIEFS, BUT IT'S GOING
9 TO BE UNREALISTIC NOT TO CONSIDER, YOU KNOW, THE -- RIGHT NOW AB
10 900, ASIDE FROM WHAT IT DOES, WHICH YOU SHOULD ADDRESS, HOW IT
11 SOLVES IT OR DOESN'T. RIGHT NOW IT'S -- YOU KNOW, THE BONDS
12 AREN'T BEING SOLD, CAN'T BE SOLD.

13 I DON'T THINK WE CAN ASSUME WHEN WE WRITE OUR OPINION
14 THAT WILL BE THE STATUS OR THAT WE CAN IGNORE THAT.

15 **MR. SPECTER:** EVEN IF YOU CAN'T IGNORE IT, I MEAN,
16 PART OF -- THIS IS VEERING INTO ARGUMENT A LITTLE BIT, SO IF YOU
17 WANT ME TO STOP, I WILL.

18 **JUDGE REINHARDT:** NO, NO, NO, NO. WE ARE NOT GOING
19 TO BE ABLE TO PRETEND THAT IT HASN'T BEEN PASSED AND CLEARED UP
20 IF IT HAS BEEN.

21 **MR. SPECTER:** NO, I UNDERSTAND THAT. BUT THE EFFECTS
22 OF THAT, EVEN IF THE GOVERNOR SIGNS CLEAN-UP LEGISLATION IN
23 JANUARY, THE EFFECTS OF THAT ARE GOING TO BE SO LONG TERM -- I
24 MEAN, IT'S NOT GOING TO CLEAR IT UP.

25 **JUDGE KARLTON:** THOSE ARE ALL THINGS THAT YOU TALK

1 ABOUT IN ARGUMENT.

2 **MR. SPECTER:** I KNOW.

3 **JUDGE REINHARDT:** NO, NO. THAT'S SOMETHING -- OF
4 COURSE, I MEAN, BUT YOU ARE GOING TO HAVE TO AT SOME POINT
5 ANSWER THOSE QUESTIONS.

6 **MR. SPECTER:** YEAH, AND EVEN AFTER YOU ISSUE AN
7 OPINION ONE WAY OR THE OTHER, SOMETHING ELSE MIGHT HAPPEN, TOO.
8 THAT'S WHY JUNCTIONS CAN, ARE SORT OF LIVING DOCUMENTS.

9 **JUDGE KARLTON:** BUT WE ARE IN A DIFFERENT POSITION
10 THAN IF YOU WERE COMING TO ME OR TO JUDGE HENDERSON IN OUR
11 UNDERLYING CASE, BECAUSE YOU CAN JUST SAY, JUDGE, DO SOMETHING.

12 WE ARE THREE OF US. OUR CALENDARS ARE VERY
13 DIFFICULT. YOU KNOW, IT JUST DOESN'T -- YOU KNOW, OF COURSE,
14 WE'LL RESPOND, BUT THE REALITY IS THAT IT'S MUCH MORE DIFFICULT.

15 **MR. SPECTER:** THAT'S WHAT CONGRESS INTENDED I THINK.

16 **JUDGE REINHARDT:** WELL, THERE ARE OTHER RELATED
17 QUESTIONS, FOR INSTANCE, THAT AT SOME POINT YOU SHOULD ADDRESS.

18 FOR EXAMPLE, WE HAVE HAD A LOT OF TESTIMONY ABOUT
19 PROGRAMS THAT WOULD RESOLVE -- EITHER RESOLVE THE PROBLEM OR
20 EVEN IF THERE WERE A PRISONER RELEASE ORDER, IT WOULD BE
21 NECESSARY. I THINK WE NEED TO KNOW FROM EACH SIDE WHAT THEY
22 TAUGHT OF THOSE PROGRAMS AND WHETHER THEY CAN BE FUNDED.

23 AND ONE QUESTION MIGHT BE FOR THE BRIEFS, DOES THE
24 COURT HAVE THE AUTHORITY TO TELL THE STATE EITHER TO SPEND MONEY
25 OR TO DIVERT MONEY THAT THEY SAVE FROM KEEPING PEOPLE IN PRISON,

1 CAN THAT MONEY BE DIVERTED TO THE COUNTIES, AND HOW MUCH IS
2 NECESSARY?

3 I MEAN WE HAVE NO IDEA HOW MUCH IS NECESSARY AT THE
4 MOMENT. THIS ARE FIGURES THAT MAY -- FIGURES ABOUT THE COST OF
5 KEEPING PEOPLE IN PRISON AND THE COST OF PROVIDING THESE
6 PROGRAMS.

7 I MEAN, THOSE ARE THE KINDS OF THINGS THAT AT SOME
8 POINT WE WOULD LIKE TO HAVE YOUR HELP WITH.

9
10 **JUDGE KARLTON:** AT LUNCH, FOR INSTANCE, WE HAD A
11 BRIEF DISCUSSION ABOUT WHAT THE EVIDENCE WAS CONCERNING HOW MUCH
12 IT COSTS -- JUST A BASIC QUESTION, HOW MUCH IT COSTS TO KEEP A
13 PRISONER IN PRISON? AND IT TURNS OUT I HAVE A RECOLLECTION
14 THAT'S DIFFERENT THAN ONE OF MY COLLEAGUE'S RECOLLECTIONS. SO
15 SOMEBODY HAS GOT TO TELL US THAT.

16 THAT'S WHY I AGREE WITH YOU, WE HAVE GOT TO HAVE THE
17 FINAL ARGUMENT AFTER FINDINGS OF FACT. BUT I DON'T THINK THAT
18 THERE IS A LOT OF EVIDENCE -- THERE ARE SOME PROGRAMS OUT THERE
19 THAT SAN DIEGO PROGRAM, THE SAN FRANCISCO PROGRAM THAT WE JUST
20 HEARD ABOUT, THE PROPOSAL FROM THE COUNTIES ABOUT DIVERTING
21 PEOPLE.

22 I DON'T THINK WE HAVE -- MAYBE I'M WRONG. MAYBE WHEN
23 YOU GO THROUGH THE EVIDENCE, IT IS THERE, BUT I DON'T THINK WE
24 HAVE A LOT OF EVIDENCE ABOUT WHAT THE COST OF THOSE PROGRAMS ARE
25 INSTEAD OF, GEE, THEY ARE GOOD PROGRAMS. MAYBE IT'S IN THERE.

1 I'M NOT SAYING IT ISN'T, BUT I -- I'M CONCERNED THAT WE MAY NOT
2 HAVE A FACTUAL BASIS.

3 **MR. SPECTER:** AND I UNDERSTAND THAT. I THINK THAT
4 OUR PROPOSED FORM OF RELIEF WILL TRY TO TAKE THAT INTO ACCOUNT.

5 **JUDGE KARLTON:** ALL RIGHT.

6 **JUDGE REINHARDT:** WELL, AND THEN MAYBE THE COUNTIES
7 MAY HAVE ONE IDEA -- I MEAN, AT ONE POINT YOU GET THE IMPRESSION
8 THE COUNTIES WOULD WELCOME FUNDING FOR THESE PROGRAMS.

9 **MR. SPECTER:** THEY ARE DYING FOR IT.

10 **JUDGE REINHARDT:** WELL, ARE THEY WILLING TO --

11 **JUDGE KARLTON:** EXCEPT, BUT THEY AREN'T WILLING TO
12 TRUST THE STATE, AND THERE IS A REASON FOR THAT, TOO,
13 APPARENTLY.

14 **MR. SPECTER:** RIGHT.

15 **JUDGE REINHARDT:** ARE THEY WILLING TO TAKE MORE
16 PAROLEES IF THEY GET THE FUNDING FOR THESE PROGRAMS?

17 **MR. SPECTER:** RIGHT.

18 **JUDGE REINHARDT:** AND THEY WOULDN'T HAVE TO TRUST THE
19 STATE IF IT WERE PART OF AN ORDER TO DIVERT FUNDS.

20 **JUDGE KARLTON:** IF WE CAN DO THAT.

21 **MR. SPECTER:** THAT'S IF YOU CAN DO THAT, AND THAT'S
22 WHAT WE WILL ADDRESS IN THE BRIEFS. I DON'T HAVE A -- I DON'T
23 WANT TO GIVE YOU AN ANSWER RIGHT NOW.

24 **JUDGE KARLTON:** SECOND WEEK IN FEBRUARY. ANY DAY BUT
25 MONDAY OR TUESDAY. I WILL JUST MAKE IT HAPPEN.

1 **MR. MELLO:** I BELIEVE WE ACTUALLY SAID THE FIRST
2 WEEK.

3 **JUDGE KARLTON:** FIRST WEEK, THANK YOU.

4 **JUDGE REINHARDT:** WE WILL TRY TO DO THE FIRST WEEK.
5 WEDNESDAY LOOKS POSSIBLE.

6 **JUDGE KARLTON:** TENTATIVELY THE 4TH OF FEBRUARY. I
7 SAY "TENTATIVELY" BECAUSE, YOU KNOW, I SAID I WILL PUT ANYTHING
8 ASIDE, BUT THERE MAY BE THINGS I CAN'T, SO I DON'T KNOW.

9 **MR. BIEN:** EXCUSE ME, YOUR HONOR. JUST A COUPLE OF
10 OTHER HOUSEKEEPING DETAILS.

11 YOU ASKED IF ALL THE EVIDENCE WAS IN, AND I HAVE JUST
12 BEEN CHECKING ON THE LOGISTICS OF THE PHYSICAL COPIES OF THE
13 EXHIBITS AND THE STATE OF THE OBJECTIONS AND JUST A COUPLE OF
14 THINGS WHICH I HAVE TALKED TO COUNSEL ABOUT.

15 WE HAVE STILL SOME ONGOING WITHDRAWAL OF EXHIBITS AND
16 NEGOTIATIONS, AND WE WOULD LIKE TO HAVE TILL EARLY NEXT WEEK TO
17 RESOLVE THAT AND TRY TO GIVE A FINAL LIST OF EXHIBITS BY ALL
18 PARTIES AND FINAL LIST OF OBJECTIONS WITH THE HOPE THAT WE WILL
19 MAKE IT AS CLEAR AND AS LIMITED AS WE CAN.

20 IN ADDITION, AT THAT POINT WE HAVE A NEW DISK THAT
21 WOULD UPDATE THE LISTS AND THE ACTUAL EXHIBITS.

22 WE ALSO WANTED TO ASK THE COURT'S PREFERENCE AS TO
23 DEPOSITION EXCERPTS AND HOW -- IF THE COURT WOULD LIKE THE
24 PARTIES TO SUBMIT THEM IN HARD COPY.

25 **JUDGE KARLTON:** I BELIEVE THAT ANY DEPOSITION THAT

1 YOU ARE RELYING ON WAS IN EVIDENCE READ INTO THE RECORD, ISN'T
2 THAT RIGHT?

3 **MR. BIEN:** THAT WAS --

4 **JUDGE KARLTON:** ONLY FOR IMPEACHMENT?

5 **MR. BIEN:** FOR ONE, RIGHT. AND THERE WERE SEVERAL
6 WHERE, FOR EXAMPLE, THE -- THERE WERE SEVERAL REPRESENTATIVE
7 PLAINTIFFS THAT WE HAVE AGREED WOULD COME IN BY DEPOSITION, MR.
8 COLEMAN AND SOME OTHER ONES. AND THERE IS A FEW OTHER WITNESSES
9 THAT DIDN'T TESTIFY THAT WE WERE SUBMITTING EXCERPTS.

10 AND WE CAN SUBMIT THEM -- OUR PROPOSAL, IF THE COURT
11 WOULD PREFER, WE WOULD JUST SUBMIT THEM IN THE HARD COPY OF THE
12 ACTUAL PAGES, TO GET BOTH PARTIES TOGETHER SUBMITTING THEM LIKE
13 THAT.

14 **JUDGE KARLTON:** THAT'S FINE. I DON'T CARE.

15 **JUDGE HENDERSON:** I'M A HARD COPY KIND OF GUY.

16 **MR. BIEN:** OKAY. SO DON'T WE DO THAT. WE WILL PUT
17 BOTH SIDES' CROSS DESIGNATIONS TOGETHER WITH THE REGULAR IN ONE
18 SET.

19 **MS. BARLOW:** IF I MAY, YOUR HONOR, WITH RESPECT TO
20 THE TIME FOR THE EXHIBITS. GIVEN THAT IT'S FRIDAY AFTERNOON AND
21 SOME OF US HAVE A WAYS TO GO, AS I KNOW YOU DO AS WELL, AT LEAST
22 SOME OF YOU DO --

23 **JUDGE HENDERSON:** MONDAY WILL BE TIME ENOUGH.

24 **MS. BARLOW:** WELL, WE WONDERED IF WE COULD PERHAPS
25 HAVE UNTIL WEDNESDAY, YOUR HONOR.

1 **JUDGE KARLTON:** OF COURSE, OF COURSE. GOES WITHOUT
2 SAYING.

3 **MR. BIEN:** WE WILL GET EVERYTHING IN.

4 **JUDGE KARLTON:** WHATEVER YOU NEED. BETWEEN NOW AND
5 THE FINDINGS -- PROPOSED FINDINGS OF FACT WHATEVER YOU GUYS
6 NEED, JUST SEND US A NOTE AND SAYING, WE HAVE ALL AGREED THAT
7 IT'S WEDNESDAY, THAT IT'S FRIDAY, THAT IT'S TWO WEEKS FROM
8 TUESDAY. THAT'S FINE.

9 **MS. BARLOW:** PERFECT. THANK YOU, YOUR HONOR.

10 **JUDGE REINHARDT:** ONE OTHER THING TO KEEP IN MIND IN
11 PREPARING WHATEVER YOU ARE PREPARING. THIS CASE HAS BEEN TRIED
12 ON THE ASSUMPTIONS BY THE DEFENSE THAT THE BURDEN OR WHATEVER
13 HAPPENED WITH ANY KIND OF POTENTIAL RELEASE ORDER WOULD BE THE
14 AMOUNT OF PRISONERS REQUESTED BY THE PLAINTIFFS. SO ALL THE
15 TESTIMONY HAS BEEN WHAT WOULD THE EFFECT BE OF GRANTING
16 PLAINTIFFS' FULL RELIEF.

17 IT'S POSSIBLE THAT SOME OF THE DEFENSE MIGHT WANT TO
18 GIVE US THEIR IDEAS AT LEAST ABOUT IF THERE WERE AN ORDER, WHAT
19 SHOULD THE NUMBER BE AND WHAT WOULD THE EFFECT OF THAT BE,
20 RATHER THAN JUST LIMITING YOURSELF TO THE IDEA THAT THAT
21 PRISONER RELEASE ORDER WOULD GRANT PLAINTIFFS FULL RELIEF.

22 **JUDGE KARLTON:** AND I'M CONCERNED, JUST ONE OF THE
23 THOUSANDS OF THINGS THAT I'M CONCERNED ABOUT, THE 130 NUMBER,
24 130 PERCENT IS CONTRARY TO EVERYBODY'S TESTIMONY AS TO WHAT YOU
25 NEED, WHICH IS 95 PERCENT.

1 I GATHER THAT WE WENT TO THE 130 PERCENT BECAUSE THE
2 WITNESS SAID HE THOUGHT THAT WAS POLITICALLY POSSIBLE. I DON'T
3 KNOW THAT -- I MEAN, AS SERIOUS A THING AS WE ARE GOING TO DO,
4 WE ARE GOING TO HOPE THAT IT WILL SOMEHOW OR OTHER SOLVE THIS
5 PROBLEM.

6 **JUDGE REINHARDT:** SOMEBODY SAID 140 PERCENT.

7 **JUDGE KARLTON:** I THOUGHT THEY SAID 130, WHATEVER IT
8 IS.

9 **MR. MELLO:** I THINK, UNFORTUNATELY -- AND I THINK
10 IT'S ONE OF THE THINGS THAT THE BRIEFING IS GOING TO HAVE TO DO,
11 AS I BELIEVE A LOT OF THOSE PERCENTAGES ARE APPLES AND ORANGES;
12 OPERABLE CAPACITY, DESIGN CAPACITY. AND SO A LOT OF THE NUMBERS
13 DON'T MATCH UP.

14 WHEN SHERIFF HENNESSY SAID 95 PERCENT OR
15 85 PERCENT -- I'M SORRY, I DON'T KNOW REMEMBER -- I DON'T KNOW
16 IF THAT'S DESIGN CAPACITY. AND WE HAVE HAD TESTIMONY ABOUT
17 OPERABLE CAPACITY FROM EXPERTS IN THE CASE. SO I THINK THAT'S
18 ONE OF THE CONFUSING ASPECTS.

19 **JUDGE KARLTON:** MANY IS CONFUSING.

20 **MR. MELLO:** WE WILL ADDRESS IT IN OUR BRIEFING AND I
21 BELIEVE IN ARGUMENT. IT'S APPLES AND ORANGES.

22 **JUDGE REINHARDT:** FOR INSTANCE, THERE IS ALSO -- WE
23 HAVE BEEN ASSUMING THAT THIS SHOULD TAKE PLACE OVER TWO YEARS
24 BECAUSE THAT'S WHAT THE PLAINTIFF HAS SAID.

25 **JUDGE KARLTON:** WE ARE NOT BOUND BY WHAT THE

1 PLAINTIFFS THINK.

2 **JUDGE REINHARDT:** AND IT MAY BE THAT SOME OF THIS
3 WILL HAVE TO BE DISCUSSED AGAIN AFTER WE COME TO A CONCLUSION
4 AND A PARTIAL ORDER WHERE WE MAY NEED MORE INFORMATION ONCE IT'S
5 CLEAR THAT IF WE JUST HAVE AN ORDER, WE DON'T KNOW YET WHAT FORM
6 THAT ORDER WOULD BE, WHETHER IT JUST REACHES A GENERAL
7 CONCLUSION. AND IT MAY BE AT THAT POINT MAY NEED A CHANCE TO
8 GET ADJUSTED TO WHATEVER THAT ORDER IS AND GIVE US SOME
9 SPECIFICS TO FILL IN FIGURES OR OTHER MATTERS.

10 **JUDGE KARLTON:** AND ALONG THAT SAME LINE, EVEN IF
11 THERE WERE A RELEASE ORDER, THERE IS A WHOLE QUESTION ABOUT
12 WHAT -- WHAT THE APPROPRIATE ROLL OF THE COURT IS VERSUS THE
13 ROLE OF THE STATE.

14 AND SPEAKING FOR MYSELF AND NOT MY COLLEAGUES, I'M
15 VERY TROUBLED BY THAT. YOU KNOW, I DON'T HAVE A RECEIVER AND IT
16 ISN'T JUST BECAUSE I'M LAZY. IT'S GOT SOMETHING TO DO WITH MY
17 PERCEPTION OF WHO IS RESPONSIBLE FOR WHAT.

18 AND EVEN IF THERE WERE AN ORDER, WOULD IT BE
19 APPROPRIATE TO TURN TO THE STATE AND SAY, TELL US, FIRST OF ALL,
20 WHAT IT IS YOU WANT US TO DO. YOU DON'T WANT US TO DO ANYTHING.
21 ASSUME THAT THAT'S LOST, THAT THERE IS GOING TO BE SOMETHING.
22 IS IT APPROPRIATE AT LEAST TO FIRST TURN TO THE STATE AND SAY,
23 TELL US WHAT YOU THINK YOU CAN DO AND WHAT YOU OUGHT TO DO?

24 **JUDGE REINHARDT:** WELL, TO PUT IT MAY BE MORE
25 SPECIFICALLY. SUPPOSE WE DECIDED THERE SHOULD BE A CAP.

1 WITHOUT EVEN DECIDING WHAT THE CAP IS, THERE SHOULD BE A CAP.
2 THEN I THINK WHAT JUDGE KARLTON WAS SAYING, ISN'T IT APPROPRIATE
3 TO SAY TO THE STATE, HOW CAN YOU ACHIEVE THIS CAP AND IN WHAT
4 AMOUNT OF TIME? WHAT ARE THE WAYS TO GET THERE? VARIOUS PEOPLE
5 HAVE GIVEN US WAYS.

6 SO THAT MIGHT NOT BE THE FINAL ORDER, BUT IT MIGHT BE
7 AN ORDER THAT GIVES THE STATE THE OPPORTUNITY TO DO WHAT JUDGE
8 KARLTON SAYS; THAT IF WE ARRIVED AT AN ORDER RATHER THAN TELLING
9 THE STATE HOW TO MEET IT, TO LET THE STATE TELL US HOW THEY ARE
10 GOING TO MEET IT.

11 **JUDGE KARLTON:** IF AT ALL.

12 **MR. MELLO:** I JUST WANT TO MAKE SURE I HEARD YOU
13 CORRECTLY. A POTENTIALITY WOULD BE TO ORDER A CAP, BUT NOT TELL
14 US WHAT THAT CAP IS? BECAUSE THAT SEEMS LIKE THAT WOULD BE
15 DIFFICULT TO...

16 **JUDGE REINHARDT:** YES, THAT WOULD BE, BUT IT MIGHT BE
17 TO FIRST GIVE YOU AN OPPORTUNITY -- I WOULD HOPE THAT YOU WOULD
18 GIVE US ENOUGH INFORMATION IN THE BRIEFS AND FINDINGS AND OUR
19 DISCUSSIONS TO ALLOW US TO ARRIVE AT A CAP, IF WE DECIDED THERE
20 SHOULD BE A CAP.

21 **MR. MELLO:** OKAY. I JUST WANTED TO MAKE SURE I
22 HEARD.

23 **JUDGE REINHARDT:** PREFERABLY WE WOULD BE ABLE TO TELL
24 YOU IN THE FIRST ORDER WHAT THE CAP IS, IF WE DECIDE THERE
25 SHOULD BE A CAP. THEN WE WOULD ASK YOU TO TELL US HOW YOU WOULD

1 PROPOSE TO MEET IT RATHER THAN TELLING YOU INITIALLY.

2 **JUDGE KARLTON:** I'M NOT SAYING IT'S -- IT'S
3 IMPORTANT. I'M NOT SAYING ANY OF THAT IS FIXED -- TO SAY THE
4 LEAST, IT'S FIXED.

5 BUT ONE THING THAT I WOULD LIKE TO HEAR FROM THE
6 PARTIES IS IN LIGHT OF THE TOTALITY OF THE CIRCUMSTANCES, IS IT
7 REALISTIC FOR US TO TURN TO THE STATE -- IF WE FIND THAT A CAP
8 IS NECESSARY, IS IT REALISTIC TO TURN TO THE STATE AND HOPE THAT
9 THE STATE CAN PROVIDE US WITH A MEANINGFUL WAY OF PROCEEDING?
10 AND IS THAT AN APPROPRIATE THING TO DO? AND THOSE ARE BOTH
11 VERY, I THINK, DIFFICULT PROBLEMS.

12 **MR. MELLO:** OKAY. I THINK I UNDERSTAND.

13 **JUDGE KARLTON:** YOU UNDERSTAND WHERE WE ARE.

14 **JUDGE REINHARDT:** THAT'S ONLY IF WE GET TO THAT
15 STAGE. I ASSUME BEFORE WE GET TO THAT STAGE, WE ARE GOING TO
16 GET ARGUMENTS ABOUT WHY EVEN IF THERE IS A VIOLATION THERE ARE
17 ALTERNATIVE WAYS OF MEETING THAT VIOLATION WITHOUT A CAP.

18 **JUDGE KARLTON:** ALL OF THOSE THINGS ARE UP IN THE --
19 WELL, I HAVE SAID IT. EVERYBODY OUGHT TO UNDERSTAND AT LEAST
20 THIS JUDGE THINKS IT'S A VERY COMPLICATED ISSUE.

21 **JUDGE REINHARDT:** AND EVEN THOUGH WE HAVE A TERM THAT
22 SAYS PRISONER RELEASE ORDER, THAT DOESN'T MEAN THAT ISSUING --
23 IT'S A VERY, VERY BROAD DEFINITION OF PRISONER RELEASE ORDER.
24 IT DOESN'T MEAN THAT THERE IS GOING TO BE AN ORDER THAT SAYS
25 RELEASE PRISONERS. THERE COULD BE OTHER WAYS OF MEETING A

1 PRISONER RELEASE ORDER.

2 IT JUST HAPPENS TO BE AN UNFORTUNATE LABEL FOR ANY
3 ACTION THE COURT CAN TAKE, BUT IT DOESN'T NECESSARILY INVOLVE
4 THE RELEASE OF PRISONERS PURSUANT TO AN ORDER. THAT MAY BE
5 SOMETHING THAT'S UP TO THE STATE, HOW TO MEET AN ORDER.

6 **JUDGE KARLTON:** LET ME SAY THAT ONE OF THE THINGS
7 THAT IS TROUBLING ME IS ASKING THE STATE IF PROPOSITION 9 SAYS
8 THAT YOU CAN'T RELEASE ANYBODY IN ORDER TO DEAL WITH
9 OVERCROWDING, THE STATE I ASSUME IS BOUND BY STATE LAW.

10 **JUDGE REINHARDT:** UNLESS THERE IS FEDERAL LAW THAT
11 OVERRIDES IT, SUCH AS A COURT ORDER.

12 **JUDGE KARLTON:** WELL, THAT'S RIGHT. IF THE COURT
13 ORDERS IT, IT'S ENTIRELY DIFFERENT AND MAYBE THAT'S THE WAY WE
14 DEAL WITH IT, IS SAYING EVEN ASSUMING THE LIMITATIONS OF
15 PROPOSITION NINE, THE COURT IS GOING TO DO SOMETHING, THIS IS
16 THE BEST THAT THE COURT OUGHT TO DO. MAYBE THAT'S THE WAY TO
17 PROCEED.

18 BUT YOU SEE HOW COMPLICATED ALL OF THE PROBLEMS ARE.
19 AND THEY ALL TEND TO AT LEAST IN MY MIND PULL AGAINST ONE
20 ANOTHER. IT'S VERY -- WELL...

21 **JUDGE REINHARDT:** AND IT WILL ALL GET SOLVED THIS
22 SPRING, AT LEAST AT THIS LEVEL.

23 **JUDGE KARLTON:** ALL RIGHT.

24 **JUDGE HENDERSON:** OKAY. SO WE WILL GET YOUR PROPOSED
25 FINDINGS OF FACT AND CONCLUSIONS OF LAW BY JANUARY 23RD. WE

1 TENTATIVELY HAVE FEBRUARY 4TH, DEPENDING UPON THE JUDGES' --
2 MINE IS OKAY, BUT DEPENDING ON MY COLLEAGUES' CALENDARS, AND I
3 ASSUME WE WOULD GO TO THE 5TH OR THE 6TH. SO SAVE ALL THREE OF
4 THOSE DAYS AND WE WILL LET YOU KNOW WHICH ONE IT IS FOR CLOSING
5 ARGUMENT.

6 **JUDGE KARLTON:** AND, YOU KNOW, WITHOUT SUGGESTING
7 THAT ANYBODY HAS DONE ANYTHING WRONG, YOUR OWN ESTIMATES OF HOW
8 LONG IT'S GOING TO TAKE TO ARGUE HAVEN'T BEEN GREAT BOTH WAYS.
9 BUT YOU MIGHT GIVE US SOME INDICATION OF HOW LONG YOU THINK IT'S
10 GOING TO TAKE TO PRESENT YOUR FINAL ARGUMENT.

11 **MR. SPECTER:** SO YOU ARE GOING TO ISSUE AN ORDER
12 TELLING US THE DATE AND TIME OF THE ORAL ARGUMENT?

13 **JUDGE KARLTON:** EXACTLY.

14 **JUDGE REINHARDT:** AND WHY DON'T WE TRY TO ALL GET
15 TOGETHER AND FIGURE OUT IN ADVANCE HOW YOU PLAN ON DIVIDING THE
16 ARGUMENT AND HOW LONG YOU THINK IT WILL TAKE AND SEND US YOUR
17 PROPOSED SCHEDULE, AS LONG AS IT'S ALL WITHIN A DAY.

18 **MR. MITCHELL:** REGARDING AN ISSUE OF HOW WE ARE GOING
19 TO DIVIDE UP ARGUMENTS, THERE IS GOING TO BE A REQUEST -- I
20 GUESS I'M MAKING THE REQUEST NOW FOR THE INTERVENORS TO HAVE
21 SEPARATE ARGUMENTS AND IF THE --

22 **JUDGE REINHARDT:** DID YOU SAY SEPARATE ARGUMENT OR
23 ARGUMENTS?

24 **MR. MITCHELL:** SEPARATE ARGUMENTS FOR THE
25 INTERVENORS.

1 **JUDGE REINHARDT:** NO, NO, THE QUESTION ISN'T CLEAR.
2 ARE YOU PROPOSING MORE THAN ONE ARGUMENT FOR THE INTERVENORS?

3 **MR. MITCHELL:** YES, ONE FOR EACH OF THE FIVE GROUPS,
4 WHICH WOULD BE FIVE SEPARATE DEFENDANT INTERVENOR ARGUMENTS.

5 **JUDGE REINHARDT:** WELL, THAT'S PROBABLY LARGELY GOING
6 TO BE UP TO AND THE STATE TO DETERMINE HOW YOU WANT TO DIVIDE AN
7 AMOUNT OF TIME.

8 **JUDGE KARLTON:** I DON'T KNOW.

9 **JUDGE REINHARDT:** WELL, NO, I --

10 **JUDGE KARLTON:** THAT'S SOMETHING WE HAVE GOT TO TALK
11 ABOUT.

12 **JUDGE REINHARDT:** FIRST THING IS TO GIVE US A
13 PROPOSED SCHEDULE. YOU ALL GET TOGETHER AND TELL US HOW YOU
14 THINK IT OUGHT TO BE DONE, AND THEN WE CAN CONSIDER THAT AND
15 THEN YOU WILL HEAR BACK.

16 **MR. MITCHELL:** VERY WELL. THANK YOU.

17 **JUDGE KARLTON:** ANOTHER TROUBLE IS YOU GET FIVE, SIX
18 ARGUMENTS, YOU GET SIX ARGUMENTS TO ANSWER AND WE WILL BE
19 HERE -- WE WILL HAVE ANOTHER TRIAL.

20 **JUDGE REINHARDT:** FIGURE OUT HOW YOU WOULD ALL DO IT.
21 I MEAN, IT'S NOT SO HARD. I MEAN, THE AMOUNT OF TIME CAN BE
22 USED IN VARIOUS WAYS. IT WILL ALL WORK OUT ONCE YOU GET
23 TOGETHER.

24 **MR. MITCHELL:** WE WILL FIGURE IT OUT.

25 **JUDGE HENDERSON:** WHEN YOU MAKE THOSE ESTIMATES, THE

1 SYSTEM DOESN'T WORK IF YOU SAY, "WE DON'T REALLY KNOW, SO WE ARE
2 GOING TO ASK FOR TWICE AS MUCH AS WE NEED SO THEY DON'T CUT US
3 OFF." IT'S NOT GOING TO WORK. GIVE US -- AS AN OFFICER OF THE
4 COURT, GIVE US YOUR BEST ESTIMATE. WE ARE GOING TO LET YOU
5 TALK.

6 **JUDGE REINHARDT:** I DON'T THINK THERE IS GOING TO BE
7 ANY TROUBLE HAVING IT WORK BECAUSE THE COURT OF APPEALS IS VERY
8 SIMPLE. YOU HAVE A CERTAIN AMOUNT OF TIME. YOU DIVIDE IT HOW
9 YOU WANT. AND IT DOESN'T MATTER WHETHER YOU -- IF YOU DON'T TO
10 GO OVER, YOU WON'T HAVE AN AUDIENCE.

11 I THINK YOU FIGURE IF YOU HAVE GOT A DAY AND YOU ARE
12 GOING TO DIVIDE IT UP. THERE WON'T BE A PROBLEM. AND IF YOU
13 GIVE US A SCHEDULE THAT SAYS, EIGHT HOURS WORTH OF ARGUMENT,
14 WE'LL SEND YOU ONE BACK THAT GIVES YOU LESS TIME. I DON'T THINK
15 THERE'S GOING TO BE A PROBLEM BECAUSE YOU TAKE MORE TIME THAN
16 YOU ARE ALLOTTED, YOU WON'T. OKAY.

17 **JUDGE HENDERSON:** OKAY. COURT IS ADJOURNED.

18 (WHEREUPON AT 2:57 P.M. FURTHER PROCEEDINGS
19 IN THE ABOVE-ENTITLED CAUSE WAS ADJOURNED.)
20
21
22
23
24
25

I N D E XDEFENDANT'S WITNESSESPAGEVOL.SENATOR GEORGE RUNNER

DIRECT EXAMINATION BY MR. STEGEMEN	2723	14
CROSS-EXAMINATION BY MR. HEATHER	2735	14
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RECROSS EXAMINATION BY MR. HEATHER	2751	14

DONALD MEYER

DIRECT EXAMINATION BY MS. BARLOW	2754	14
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REDIRECT EXAMINATION BY MS. BARLOW	2792	14

PLAINTIFF'S WITNESSESMICHAEL HENNESSEY

DIRECT EXAMINATION BY MR. SPECTER	2796	14
CROSS-EXAMINATION BY MR. MITCHELL	2808	14

NOOR DAWOOD

DIRECT EXAMINATION BY MS. EVENSON	2818	14
CROSS-EXAMINATION BY MS. JOHNSON	2821	14

DEFENDANT'S EXHIBITIDENVOL.EVIDVOL.

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CERTIFICATE OF REPORTERS

WE, JOAN MARIE COLUMBINI AND DEBRA L. PAS, OFFICIAL REPORTERS FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN CIV S-90-0520 LKK JPM, RALPH COLEMAN, ET AL V. ARNOLD SCHWARZENEGGER AND C 01-1351 TEH, MARCIANO PLATA V. ARNOLD SCHWARZENEGGER, WERE REPORTED BY US, CERTIFIED SHORTHAND REPORTERS, AND WERE THEREAFTER TRANSCRIBED UNDER OUR DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY US AT THE TIME OF FILING.

THE VALIDITY OF THE REPORTER'S CERTIFICATION OF SAID TRANSCRIPT MAY BE VOID UPON DISASSEMBLY AND/OR REMOVAL FROM THE COURT FILE.

/S/ JOAN MARIE COLUMBINI

JOAN MARIE COLUMBINI, CSR 5435, RPR

S/ DEBRA L. PAS

DEBRA L. PAS, CSR 11916, CRR, RMR, RPR

MONDAY, DECEMBER 22, 2008

**JOAN MARIE COLUMBINI, CSR, RPR
DEBRA L. PAS, CSR, CRR, RMR, RPR
OFFICIAL COURT REPORTERS - USDC
415-255-6842**

VOLUME 15

PAGES 2867 - 3098

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES PURSUANT
TO SECTION 2284, TITLE 28 UNITED STATES CODE

RALPH COLEMAN, ET AL,)

PLAINTIFFS,)

VS.)

ARNOLD SCHWARZENEGGER, ET AL,)

DEFENDANTS.)

NO. CIV S-90-0520 LKK JFM

THREE-JUDGE COURT

MARCIANO PLATA, ET AL,)

PLAINTIFFS,)

VS.)

ARNOLD SCHWARZENEGGER, ET AL,)

DEFENDANTS.)

NO. C 01-1351 TEH

TRANSCRIPT OF PROCEEDINGS

SAN FRANCISCO, CALIFORNIA
FEBRUARY 3, 2009

(APPEARANCES ON FOLLOWING PAGE)

REPORTED BY: DEBRA L. PAS, CSR 11916, CRR, RMR, RPR

OFFICIAL REPORTER - US DISTRICT COURT

COMPUTERIZED TRANSCRIPTION BY ECLIPSE

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- - - -

P R O C E E D I N G S

FEBRUARY 3, 2009

10:03 A.M.

THE CLERK: CALLING CIVIL CASE NO. C01-1351 PLATA
VERSUS SCHWARZENEGGER. CALLING CIVIL CASE NO. S-90-0520,
COLEMAN VERSUS SCHWARZENEGGER.

APPEARANCES, PLEASE, COUNSEL.

MR. SPECTER: DONALD SPECTER FROM THE PRISON LAW
OFFICE FOR THE PLAINTIFFS.

MR. BIEN: MICHAEL BIEN, ROSEN, BIEN & GALVAN, FOR
THE COLEMAN PLAINTIFF CLASS.

MS. LEONARD: NATALIE LEONARD, CARROLL, BURDICK &
MCDONOUGH FOR THE CALIFORNIA CORRECTIONAL PEACE OFFICERS
ASSOCIATION.

MR. MELLO: PAUL MELLO, HANSEN BRIDGETT, ON BEHALF OF
THE PLATA DEFENDANTS, ALONG WITH ANNE JOHNSON FROM MY OFFICE.

MR. TILLMAN: GOOD MORNING. LISA TILLMAN ON BEHALF
OF THE COLEMAN DEFENDANTS FROM THE OFFICE OF THE ATTORNEY
GENERAL.

I'M HERE WITH KYLE LEWIS, THE DEPUTY ATTORNEY GENERAL
FROM THE SAME OFFICE.

MS. BARLOW: GOOD MORNING, YOUR HONORS. KIMBERLY
HALL BARLOW, JONES AND MAYER, ON BEHALF OF THE LAW ENFORCEMENT
INTERVENORS.

MR. MITCHELL: GOOD MORNING. BILL MITCHELL WITH THE

1 RIVERSIDE COUNTY DISTRICT ATTORNEY'S OFFICE ON BEHALF OF THE
2 DISTRICT ATTORNEY INTERVENORS.

3 **MR. KAULFORD:** GOOD MORNING, YOUR HONORS. STEVE
4 KAUFHOLD FROM AKIN, GUMP, STRAUSS, HAUER AND FELD FOR THE
5 LEGISLATOR INTERVENORS.

6 **MS. FUENTES:** GOOD MORNING. THERESA FUENTES FROM
7 SANTA CLARA COUNTY FOR THE SANTA CLARA COUNTY INTERVENORS AND
8 THE COUNTY INTERVENORS.

9 **MS. WOODWARD:** GOOD MORNING, YOUR HONOR. CAROL
10 WOODWARD, COUNTY COUNSEL FROM SAN MATEO ON BEHALF OF THE COUNTY
11 INTERVENORS.

12 **MS. KECK:** GOOD MORNING, YOUR HONOR ANN KECK, DEPUTY
13 COUNTY COUNSEL, ON BEHALF OF THE SONOMA COUNTY INTERVENORS.

14 **JUDGE KARLTON:** FOLKS, BEFORE WE GET STARTED WITH THE
15 ARGUMENT IN GENERAL, THE COURT HAS DEVELOPED SOME ANXIETY.

16 MR. MELLO, WOULD YOU COME TO THE MICROPHONE FOR A
17 MOMENT?

18 DURING THE INTERIM, THE COURT HAD DISCOVERED
19 CALIFORNIA CORRECTION PEACE OFFICERS ASSOCIATION VERSUS
20 SCHWARZENEGGER, 163 CAL. APP. 4802.

21 I DON'T KNOW AND SO I'M ASKING YOU, SIR, ARE YOU
22 FAMILIAR WITH THE CASE AND ARE YOU FAMILIAR WITH THE CONTENT?

23 **MR. MELLO:** I AM NOT. I AM SURE THAT I CAN GET
24 FAMILIAR IN SOME TIME, BUT I AM NOT.

25 **JUDGE KARLTON:** I'M GOING TO TELL YOU, SPEAKING FOR

1 MYSELF, ALTHOUGH I SHARED WITH MY COLLEAGUES MY ANXIETY, IT IS
2 NOT CLEAR TO ME THAT YOU CAN TAKE THE POSITION YOU HAVE TAKEN
3 IN THE TRIAL, AND I URGE YOU TO READ THE CASE AND EXPLAIN TO ME
4 HOW THAT IS POSSIBLE. AND I LOOK FORWARD TO YOUR ARGUMENT,
5 INDEED, WHENEVER YOU ARE READ TO RESPOND.

6 MR. MELLO: AND DOES YOUR HONOR MIND POINTING OUT TO
7 MYSELF WHY --

8 JUDGE KARLTON: READ THE CASE. YOU WILL BE SHOCKED.
9 READ THE CASE.

10 MR. MELLO: OKAY. THANK YOU, YOUR HONOR.

11 JUDGE REINHARDT: I'M SAYING THAT THAT SAME
12 SUGGESTION, I ASSUME, APPLIES TO COUNSEL FOR ATTORNEY GENERAL.

13 JUDGE KARLTON: ACTUALLY, YOU'RE RIGHT.

14 ALTHOUGH THE CASE SPECIFICALLY DEALS WITH THE
15 GOVERNOR, IT OCCURRED TO ME, MS. TILLMAN, THAT YOU ALSO
16 REPRESENT THE GOVERNOR.

17 MS. TILLMAN: YES, YOUR HONOR.

18 JUDGE KARLTON: I ASK YOU TO READ THE CASE AS WELL.

19 MS. TILLMAN: I WILL DO SO. THANK YOU.

20 JUDGE REINHARDT: THANK YOU.

21 GOOD MORNING, EVERYBODY.

22 WELCOME AGAIN TO THIS THREE-JUDGE COURT PROCEEDING IN
23 THIS BEAUTIFUL BUILDING AND BEAUTIFUL COURTROOM. THE ARGUMENTS
24 ARE BEFORE A MIXED COURT AND WHAT IS A RATHER UNUSUAL
25 PROCEEDING INFREQUENTLY HELD.

1 SO I THOUGHT WE MIGHT BEGIN BY EXPLAINING THAT THE
2 ARGUMENTS ALSO ARE SOMEWHAT MIXED. THEY ARE IN BETWEEN WHAT
3 YOU WOULD BE DOING IN A DISTRICT COURT AND WHAT YOU WOULD BE
4 DOING IN A COURT OF APPEALS.

5 IN A COURT OF APPEALS, YOU WOULD GET VERY LITTLE TIME
6 TO SPEAK AND MAINLY BE INTERRUPTED AND REQUIRED TO ANSWER
7 QUESTIONS.

8 THAT DOESN'T MEAN WE INTEND TO LIMIT YOUR TIME. WE
9 CERTAINLY WANT TO HAVE A FULL ARGUMENT OF ALL OF THE ISSUES IN
10 THE CASE, BUT I'M SURE YOU HAVE SEEN FROM THE EARLIER
11 PROCEEDINGS THAT WE DO NOT INTEND TO JUST SIT HERE AND LISTEN.

12 WE ARE INTERESTED IN EXPLORING ISSUES WITH YOU DURING
13 THE CLOSING ARGUMENTS. SO WITH THAT WELCOME AND INTRODUCTION,
14 WE ARE READY TO HEAR THE CLOSING ARGUMENTS.

15 **CLOSING ARGUMENT**

16 **MR. SPECTER:** GOOD MORNING AGAIN. MY NAME DONALD
17 SPECTER FROM THE PRISON LAW OFFICE. AS YOU KNOW, I REPRESENT
18 THE PLAINTIFFS IN THIS CASE.

19 **JUDGE KARLTON:** I'M HAVING A LITTLE TROUBLE HEARING
20 YOU, MR. SPECTER.

21 **MR. SPECTER:** IS THIS BETTER?

22 **JUDGE REINHARDT:** A LITTLE BIT. SPEAK UP.

23 **MR. SPECTER:** OKAY.

24 **JUDGE REINHARDT:** THAT'S BETTER.

25 **MR. SPECTER:** I WILL ADDRESS WHETHER OVERCROWDING IS

1 THE PRIMARY CAUSE OF THE CONSTITUTIONAL VIOLATIONS IN THE PLATA
2 CASE.

3 MY COLLEAGUE, MR. BIEN, WILL SPEAK TO THE SAME ISSUE
4 IN THE COLEMAN CASE.

5 I WILL ALSO ADDRESS WHETHER THERE IS OTHER RELIEF
6 THAT COULD RESOLVE THE CONSTITUTIONAL PROBLEMS AND IF NOT,
7 WHETHER THE COURT SHOULD ISSUE A PRISONER RELEASE ORDER AND IF
8 SO, WHAT THAT PRISONER RELEASE ORDER SHOULD LOOK LIKE.

9 AS YOU MENTIONED, JUDGE REINHARDT, THIS IS A MIX OF
10 DISTRICT COURT AND COURT OF APPEAL PROCEEDINGS. AS SUCH, I DO
11 NOT INTEND TO SUMMARIZE LIKE I WOULD IN A TRIAL. THE
12 FINDINGS -- THE EVIDENCE, ESPECIALLY SINCE WE FILED WHAT I
13 THINK COULD EASILY BE CALLED AN EXHAUSTIVE SET OF FINDINGS OF
14 FACT AND CONCLUSIONS OF LAW WHERE --

15 **JUDGE REINHARDT:** COULD YOU TRY ONCE MORE TO FIX THE
16 MICROPHONE?

17 **MR. SPECTER:** OKAY. SO I DON'T PLAN ON SUMMARIZING
18 THE EVIDENCE IN FULL AGAIN HERE TODAY. INSTEAD, I LOOK FORWARD
19 TO ANSWERING THE QUESTIONS THAT YOU MAY POSE.

20 I WOULD LIKE TO EXPLAIN THE SIGNIFICANCE OF CERTAIN
21 RECENT DEVELOPMENTS AND TO RESPOND TO SOME OF THE POINTS MADE
22 IN THE FINDINGS AND CONCLUSIONS SUBMITTED BY MY COLLEAGUES ON
23 THE OTHER SIDE OF THE CASE.

24 YOU MAY RECALL THAT I CONCLUDED MY OPENING STATEMENT
25 WITH THE VIDEO OF GOVERNOR SCHWARZENEGGER DISCUSSING THE

1 HEALTHCARE CRISIS IN CALIFORNIA'S PRISONS AND THE STATE'S
2 RESPONSE TO THAT CRISIS.

3 HE SAID, QUOTE -- I CAN'T DO IT IN THE SAME WAY, BUT
4 HE SAID:

5 "I DON'T BLAME THE COURTS FOR STEPPING IN TO TRY
6 TO SOLVE THE HEALTHCARE CRISIS THAT WE HAVE, THE
7 OVERCROWDING CRISIS THAT WE HAVE, BECAUSE THE FACT OF
8 THE MATTER IS FOR DECADES THE STATE OF CALIFORNIA
9 HASN'T REALLY TAKEN IT SERIOUSLY. IT HASN'T REALLY
10 DONE SOMETHING ABOUT IT."

11 WELL, RECENT DEVELOPMENTS PROVE ONCE AGAIN THAT THE
12 GOVERNOR WAS RIGHT WHEN HE SAID THOSE REMARKS AND THAT THIS
13 COURT MUST AGAIN STEP IN TO TRY TO SOLVE THE HEALTHCARE CRISIS
14 BECAUSE THE STATE IS INCAPABLE OF DOING SO.

15 RECENT ACTIONS TAKEN BY THE DEFENDANTS, IN OUR
16 OPINION, DESTROY TWO KEY COMPONENTS OF THE STATE'S DEFENSE IN
17 THIS CASE AND LEAVE THEM ONLY WITH THE WEAK ARGUMENT THAT
18 PLAINTIFFS HAVE NOT MET THEIR BURDEN OF PROOF.

19 FIRST, CENTRAL TO THE STATE'S DEFENSE IN PLATA HAS
20 BEEN THE RECEIVERSHIP. DEFENDANTS HAVE ARGUED IN THIS
21 PROCEEDING THAT A PRISONER RELEASE ORDER ISN'T NECESSARY
22 BECAUSE THE RECEIVER HAS BEEN AND WILL CONTINUE TO MAKE
23 IMPROVEMENTS.

24 LAST WEEK, HOWEVER, AS YOU PROBABLY KNOW, THE STATE
25 SOUGHT TO TERMINATE THE RECEIVERSHIP IN A MOTION BEFORE

1 JUDGE HENDERSON.

2 SO DEFENDANTS NOW ARGUE THAT THE VERY RELIEF THAT
3 THEY BELIEVE SHOULD SAVE THEM FROM A PRISONER RELEASE ORDER
4 MUST BE ELIMINATED, NOT, NOT BECAUSE PRISONERS ARE RECEIVING
5 ADEQUATE CONSTITUTIONAL CARE, BUT BECAUSE THE RECEIVERSHIP,
6 THEY CLAIM, IS NOT AUTHORIZED BY THE PLRA SEVERAL YEARS AFTER
7 IT WAS FORMED.

8 SINCE, IT HAS BEEN THE DEFENDANT'S POSITION THAT A
9 RECEIVER IS NOT RELIEF WHICH THIS COURT CAN GRANT. THEY CANNOT
10 ALSO ARGUE THAT THIS IS OTHER RELIEF THAT WOULD REMEDY THE
11 CONSTITUTIONAL VIOLATION IN THIS CASE.

12 AND EVEN IF THE COURT WERE TO CONSIDER SUCH
13 INCONSISTENT POSITIONS, THE RECEIVER'S OPINION THAT CROWDING IS
14 THE PRIMARY CAUSE OF THE HARM MAKES IT CLEAR THAT THIS
15 OPERATION ALONE WILL NOT BE SUFFICIENT TO CAUSE THESE GRAVE
16 CONSTITUTIONAL -- TO CURE THESE GRAVE CONSTITUTIONAL PROBLEMS.

17 SECOND --

18 **JUDGE KARLTON:** MR. SPECTER, I RECOGNIZE THAT THERE
19 IS A QUESTION OF INHERENT AMBIGUITY, BUT -- WELL, OKAY. NEVER
20 MIND. I SEE. OKAY, NEVER MIND. GO AHEAD.

21 **MR. SPECTER:** THANK YOU.

22 SECOND, DEFENDANTS, INCLUDING THE GOVERNOR, HAVE
23 ARGUED THAT ADDITIONAL PRISON CONSTRUCTION THROUGH AB900 AND
24 THE RECEIVER'S 10,000-BED PROJECT WILL RESOLVE THE
25 CONSTITUTIONAL VIOLATIONS.

1 THE GOVERNOR, HOWEVER, HAS VETOED LEGISLATION THAT
2 CONTAINED CLEANUP LANGUAGE NECESSARY TO ALLOW THE AB900 PROCESS
3 TO CONTINUE.

4 AND MR. CATE, ALSO A DEFENDANT IN THIS CASE ALONG
5 WITH THE GOVERNOR, BUT MR. CATE, WHO MADE THE RECEIVER'S
6 10,000-BED PROJECT ONE OF THE CORNERSTONES OF HIS PLAN TO
7 REDUCE CROWDING SOUGHT AND OBTAINED A STAY, PENDING APPEAL,
8 FROM THE NINTH CIRCUIT OF AN ORDER DESIGNED TO ENABLE THE
9 RECEIVER TO CONTINUE THAT VERY PROJECT.

10 THESE RECENT ACTIONS MAKE ONE THING PERFECTLY CLEAR.
11 REGARDLESS OF WHETHER CLEANUP LEGISLATION IS EVER ENACTED OR
12 THE RECEIVER IS ABLE TO PREVAIL ON THE APPEAL FROM
13 JUDGE HENDERSON'S ORDER IN WHICH THE STAY WAS ISSUED, THE COURT
14 CAN HAVE NO CONFIDENCE THAT THE STATE OF CALIFORNIA IS CAPABLE
15 OF SUSTAINING A STRATEGY FOR THE YEARS THAT IT'S GOING TO TAKE
16 TO END THE LIFE-THREATENING CONDITIONS THAT HAVE CONTINUED TO
17 EXIST FOR ALMOST TWO DECADES IN COLEMAN AND THE BETTER PART OF
18 ONE IN PLATA.

19 AS I THINK OUR PROPOSED FINDINGS MAKE CLEAR, THERE
20 SHOULD BE LITTLE DISPUTE THAT CROWDING IS THE PRIMARY CAUSE OF
21 CONSTITUTIONAL VIOLATIONS AT ISSUE HERE.

22 EVERYONE, SAVE PERHAPS DR. THOMAS, ACKNOWLEDGES THAT
23 IT ADVERSELY AFFECTS THE OPERATION OF THE PRISON SYSTEM AND
24 HEALTHCARE IN PARTICULAR. THE ONLY QUESTION BEFORE THIS COURT
25 IS WHETHER IT IS THE PRIMARY CAUSE.

1 THE RECEIVER ANSWERED THIS QUESTION AFFIRMATIVELY AND
2 IN NO UNCERTAIN TERMS WHEN HE STATED IN HIS MOST RECENT REPORT
3 THAT:

4 "OVERCROWDING IS AND WILL CONTINUE TO BE THE
5 PRIMARY CAUSE OF THE STATE'S INABILITY TO DELIVER
6 CONSTITUTIONALLY ADEQUATE CARE."

7 THIS STATEMENT CLEARS UP ANY POSSIBLE AMBIGUITY ABOUT
8 HIS POSITION ON THIS CRITICAL ISSUE.

9 MR. KELSO'S OPINION IS CONSISTENT WITH THE OPINION OF
10 EVERY OTHER EXPERT WHO TESTIFIED IN THIS SUBJECT, SAVE ONE,
11 DR. THOMAS.

12 WHAT THIS MEANS IS THAT THERE ARE SIMPLY TOO MANY
13 PRISONERS TO TREAT IN THE SPACE THAT'S AVAILABLE.

14 AT AVENAL, FOR EXAMPLE, THERE ARE 7,525 PRISONERS IN
15 SPACES DESIGNED FOR 2,320. THERE ARE TOO MANY PRISONERS FOR
16 THE PHYSICIANS AND OTHER CLINICAL STAFF TO CARE FOR.

17 THERE IS A 90 PERCENT VACANCY RATE OF THOSE PRIMARY
18 CARE CLINICIANS IN SOME PRISONS, AND OVERALL THERE IS A
19 27 PERCENT VACANCY RATE FOR PRIMARY CARE CLINICIANS IN THE
20 SYSTEM, WHICH IS SIX PERCENTAGE POINTS HIGHER THAN THE VACANCY
21 RATE WAS IN 2006, SHORTLY AFTER THE RECEIVER STARTED.

22 THERE IS NO ROOM TO HOUSE PRISONERS IN THE PRISON
23 WHERE THEY CAN GET THE CARE THEY NEED BECAUSE THERE ARE TOO
24 MANY PEOPLE IN THOSE PRISONS. THERE ARE TOO MANY MEDICAL
25 RECORDS TO BE WRITTEN, STORED AND RETRIEVED IN A TIMELY MANNER.

1 THERE ARE TOO MANY PRISONERS WHO REQUIRE THE DELIVERY OF
2 MEDICATION.

3 AND AS THE GOVERNOR IMPLICITLY ACKNOWLEDGED IN HIS
4 EMERGENCY PROCLAMATION AND THAT THE CURRENT AND FORMER HEADS OF
5 THE PRISON SYSTEMS OF TEXAS, WASHINGTON, MAINE, PENNSYLVANIA,
6 AND MOST SIGNIFICANTLY CALIFORNIA TESTIFIED, OVERCROWDING IS
7 THE PRIMARY CAUSE OF THE CONTINUING CONSTITUTIONAL VIOLATIONS.

8 THE EVIDENCE IS UNCONTRADICTED THAT PRISONERS ARE
9 MURDERED IN THE DORMITORY SO LARGE THAT NO ONE CAN NOTICE, THAT
10 ANOTHER PRISONER BLED TO DEATH IN A GIGANTIC PRISON DOWN IN THE
11 CENTRAL VALLEY AND ANOTHER ONE STARVED WITHOUT ANYONE NOTICING.
12 STARVED TO DEATH WITHOUT ANYONE NOTICING UNTIL IT WAS TOO LATE.

13 THESE PRISONERS SUFFERED FROM MEDICAL PRACTICES WHICH
14 IN THE RECEIVER'S WORDS ARE, "EXTREME DEPARTURES FROM COMMUNITY
15 STANDARDS OF CARE." AND MOST SHOCKINGLY, NOBODY REALLY KNOWS
16 THE FULL EXTENT OF THE SUFFERING.

17 BUT DR. SHANSKY'S UNCONTRADICTED TESTIMONY MAKES IT
18 CLEAR THAT THE RECEIVER'S MOST RECENT DEATH REVIEW REPORTS
19 FOUND OVER 200 INSTANCES OF EXTREME DEPARTURES OF CARE IN OVER
20 200 CASES. AND THAT THOSE EXTREME DEPARTURES FROM CARE ARE
21 JUST THE TIP OF THE ICEBERG.

22 NOW, WHEN TALKING ABOUT DEATHS, IT IS IMPORTANT TO
23 REMEMBER THAT DEATH IS NOT THE CONSTITUTIONAL STANDARD. THE
24 CONSTITUTIONAL STANDARD IS RISK OF HARM.

25 AND EVEN IF IT WERE THE CONSTITUTIONAL STANDARD, I

1 WANT TO REMIND THE COURT THAT EVEN THOUGH THE MORALITY RATE IS
2 GOING DOWN, THE NUMBER OF DEATHS WHICH WERE POSSIBLY
3 PREVENTABLE IS GOING UP AND THE EXTREME DEPARTURES FROM CARE
4 WHICH GIVE RISE TO THE RISK OF HARM, OF SERIOUS INJURY, ARE
5 EXTREMELY PREVALENT IN THE SYSTEM.

6 DEFENDANT'S MAIN POINT SEEMS TO BE THAT SINCE THERE
7 ARE MANY CAUSES OF THESE PROBLEMS, ONE CANNOT BE THE PRIMARY
8 CAUSE. THE COURT CORRECTLY RESOLVED THIS ISSUE IN ITS ORDER
9 DENYING SUMMARY JUDGMENT, HOLDING THAT THE EXISTENCE OF A
10 PRIMARY CAUSE DOES NOT MEAN THAT IT IS THE ONLY CAUSE.

11 IN FACT, THE PLAIN LANGUAGE OF THE PLRA IMPLIES THE
12 EXACT OPPOSITE.

13 DEFENDANT'S OTHER CLAIM IS BASED ON UNREASONABLE
14 INFERENCES THAT THEY DRAW FROM DR. SHANSKY'S TESTIMONY.
15 DR. SHANSKY TESTIFIED THEORETICALLY THAT, QUOTE, IT'S POSSIBLE
16 AND, QUOTE, IT'S CONCEIVABLE TO PROVIDE ADEQUATE MEDICAL CARE
17 IN OVERCROWDED PRISONS.

18 FROM THIS, DEFENDANTS ASK THE COURT TO FIND THAT
19 OVERCROWDING IS NOT THE PRIMARY CAUSE OF THE CONSTITUTIONAL
20 VIOLATION IN CALIFORNIA'S PRISONS.

21 AS THE COURT NOTED SEVERAL TIMES DURING TRIAL,
22 ABSTRACT TESTIMONY THAT SOMETHING IS POSSIBLE OR CONCEIVABLE IS
23 OF LITTLE VALUE.

24 DR. SHANSKY TESTIFIED WITHOUT QUALIFICATION THAT AT
25 THE CURRENT TIME, OVERCROWDING IN CALIFORNIA'S PRISONS IS THE

1 PRIMARY CAUSE OF THE CONSTITUTIONAL VIOLATIONS. DEFENDANTS'
2 UNREASONABLE INFERENCES ARE INCONSISTENT WITH THAT CLEAR AND
3 DIRECT TESTIMONY.

4 DEFENDANTS ALSO POINT TO THE FACT THAT AT SOME
5 PRISONS THERE HAVE BEEN IMPROVEMENTS. THEY NOTE, FOR EXAMPLE,
6 MULE CREEK. AND THE IMPLICATION FROM THEIR FINDINGS IS THAT --
7 THAT THEY WOULD LIKE YOU TO DRAW -- OR THE INFERENCE THAT THEY
8 WOULD LIKE YOU TO DRAW IS BECAUSE MULE CREEK WAS OVERCROWDED
9 AND THERE HAVE BEEN SOME IMPROVEMENTS, OVERCROWDING ISN'T THE
10 PRIMARY CAUSE. THE LOGIC THAT THEY SEEK TO USE FAILS BECAUSE
11 IT IS A FAULTY PREMISE.

12 NO WITNESS EXPRESSED AN OPINION THAT THE MEDICAL CARE
13 AT MULE CREEK IS CONSTITUTIONALLY ADEQUATE, BUT THE EVIDENCE
14 THAT THE DEFENDANTS PRESENTED TO THE COURT SHOWS THAT
15 MULE CREEK IS NOT PROVIDING ADEQUATE CARE.

16 FOR EXAMPLE, DEFENDANT'S EXHIBIT 1084, WHICH IS AN
17 INSPECTION CONDUCTED BY THE OFFICE OF THE INSPECTOR GENERAL,
18 FOUND POOR COMPLIANCE WITH MEDICATION POLICIES, INADEQUATE TB
19 PREVENTION POLICIES, INADEQUATE TREATMENT PLANS, INCLUDING
20 THOSE FOR PATIENTS WITH SERIOUS CHRONIC DISEASES.

21 DEFENDANT'S EXHIBIT 1227, WHICH IS THE RECEIVER'S
22 REPORT ON SPACE ISSUES AT MULE CREEK, STATES THAT PRISONERS ARE
23 NOT RECEIVING TIMELY CARE. THERE IS A BACKLOG OF REQUESTS FOR
24 MEDICAL ATTENTION, CLINIC FUNCTIONS THAT TAKE PLACE IN
25 INAPPROPRIATE AREAS, AND THERE ARE SEVERAL PROBLEMS WITH

1 MEDICATION DISTRIBUTION.

2 ALL THE OVERWHELMING WEIGHT OF THE EVIDENCE SUGGESTS,
3 PROVES THAT OVERCROWDING IS THE PRIMARY CAUSE OF THE CONTINUING
4 CONSTITUTIONAL MEDICAL CARE VIOLATIONS.

5 ASSUMING THAT CROWDING IS THE PRIMARY CAUSE,
6 DEFENDANTS ARGUE THAT A PRISONER RELEASE ORDER IS NOT NECESSARY
7 BECAUSE OTHER RELIEF WILL BE EFFECTIVE IN ACHIEVING THE
8 CONSTITUTIONAL COMPLIANCE.

9 THE BASIS OF THAT ARGUMENT IS THE RECEIVERSHIP,
10 WHICH, AS I HAVE ALREADY EXPLAINED, DEFENDANTS ARE SEEKING TO
11 ABOLISH.

12 IF THEIR MOTION BEFORE JUDGE HENDERSON IS
13 UNSUCCESSFUL, THE QUESTION THEN IS WHETHER THE RECEIVER'S
14 EFFORTS WILL BE SUFFICIENT.

15 BUT IF OVERCROWDING IS THE PRIMARY CAUSE, AS I THINK
16 YOU MUST FIND, THEN IT STANDS TO REASON THAT CROWDING MUST BE
17 ADDRESSED TO REMEDY THE CONSTITUTIONAL VIOLATION.

18 THE OVERWHELMING EVIDENCE AT TRIAL SUPPORTS THIS
19 CONCLUSION MOST NOTABLY FROM THE FORMER SECRETARY OF THE
20 DEPARTMENT OF CORRECTIONS AND REHABILITATION, NOT MISS WOODFORD
21 WHO TESTIFIED HERE, BUT MR. TILTON. SPEAKING IN PART ABOUT
22 HEALTHCARE, HE ADMITTED, QUOTE:

23 "THAT UNTIL I GET OVERCROWDING REDUCED, THEN I
24 DON'T HAVE THE OPPORTUNITY TO PROVIDE THE PROGRAM
25 THAT I BELIEVE IS MY CHARGE."

1 AGAIN, IF PROBLEMS WERE LIMITED TO A SHORTAGE OF
2 CLINICIANS TO TREAT THE PRISONERS, THERE MIGHT BE AN
3 ALTERNATIVE REMEDY, BUT THAT IS NOT THE PROBLEM. THE PROBLEM
4 IS THAT THE ENTIRE SYSTEM IS COLLAPSING BECAUSE OF
5 OVERCROWDING.

6 OVERCROWDING CAUSES LOCKDOWNS WHICH, IN TURN, INHIBIT
7 CARE AND CAUSE ILLNESS. CROWDING CREATES TEXTBOOK SCENARIOS
8 FOR THE SPREAD OF INFECTIOUS DISEASE. CROWDING ITSELF
9 INCREASES MENTAL ILLNESS AND SUICIDE, AS MR. BIEN WILL TALK
10 ABOUT, AND AS THE EXPERTS, CORRECTIONAL -- FORMER CORRECTIONAL
11 EXPERTS TESTIFIED AT LENGTH, CROWDING MAKES THE PRISON
12 IMPOSSIBLE TO MANAGE.

13 ALL OF THE PLAINTIFFS' CORRECTIONAL EXPERTS
14 TESTIFIED THAT CROWDING IS ESSENTIAL TO REMEDY THE
15 CONSTITUTIONAL VIOLATION, AND THERE WAS LITTLE EVIDENCE ON THE
16 OTHER SIDE OF THAT QUESTION.

17 WHEN ASKED WHAT THE COURT SHOULD DO IF CROWDING WAS
18 FOUND TO BE THE PRIMARY CAUSE, SHERIFF HENNESSY TESTIFIED THAT
19 THE POPULATION SHOULD BE REDUCED.

20 THE TESTIMONY OF OTHER CORRECTIONAL ADMINISTRATORS,
21 SUCH AS MR. TILTON AND MR. CATE, THAT CROWDING ITSELF SEVERELY
22 HAMPERS THE CDCR'S ABILITY TO MANAGE THE PRISON LEADS TO THE
23 REASONABLE INFERENCE THAT CROWDING MUST BE REDUCED IF THERE IS
24 TO BE ANY HOPE OF RESOLVING THESE CRITICAL ISSUES.

25 THE TESTIMONY OF DEFENDANTS' HEALTHCARE EXPERTS, DRS.

1 PACKER AND THOMAS, ALSO SUPPORTS PLAINTIFFS' CASE BECAUSE THEY
2 BOTH TESTIFIED THAT THE SYSTEMS THAT THEY WORKED IN HAVE
3 POPULATION CAPS.

4 THAT BRINGS US TO THE QUESTION OF RELIEF.

5 IF YOU FIND, AS I THINK YOU MUST, THAT NO OTHER
6 RELIEF WOULD BE PROVIDING EFFECTIVE REMEDY, YOU MUST --

7 **JUDGE REINHARDT:** COUNSEL, LET ME ASK YOU A QUESTION
8 ABOUT YOUR UNDERSTANDING OF THE TERM "RELIEF." YOU SAID "NO
9 OTHER RELIEF."

10 DO YOU UNDERSTAND THAT TO MEAN TO BE NO OTHER RELIEF
11 THAT MAY BE ORDERED BY THE COURT OR NO OTHER RELIEF IN A
12 BROADER SENSE; THAT THERE IS NOTHING ELSE THAT THE STATE COULD
13 DO TO ABOLISH IT?

14 **MR. SPECTER:** I THINK THE STATUTE MEANT NO OTHER
15 RELIEF THAT COULD BE ORDERED BY THE COURT. I THINK IF THERE
16 WERE CIRCUMSTANCES THAT WOULD AMELIORATE THESE OTHER CROWDING
17 CONDITIONS, YOU MIGHT CONSIDER THEM IN THE APPROPRIATE EXERCISE
18 OF YOUR EQUITABLE JURISDICTION, BUT I DON'T THINK -- I DON'T
19 THINK CONGRESS --

20 **JUDGE REINHARDT:** EXACTLY A LAWYER'S ANSWER.

21 **JUDGE KARLTON:** HE IS A LAWYER.

22 **JUDGE REINHARDT:** I CAN TELL.

23 **MR. SPECTER:** I'D GIVE YOU A MEDICAL ANSWER, BUT I'M
24 NOT QUALIFIED.

25 **JUDGE REINHARDT:** THE STATUTE SAYS THAT WE CAN ISSUE

1 AN ORDER ONLY IF THE COURT FINDS BY CLEAR AND CONVINCING
2 EVIDENCE THAT NO OTHER RELIEF WILL REMEDY THE VIOLATION OF THE
3 FEDERAL RIGHT.

4 NOW, FOR EXAMPLE, I SUPPOSE LEAVING ASIDE THE TIME
5 ELEMENT, YOU COULD SAY, WELL, IF WE BUILT 100 MORE PRISONS,
6 THAT COULD REMEDY THE VIOLATION.

7 MR. SPECTER: RIGHT.

8 JUDGE REINHARDT: LEAVING ASIDE THE TIME ELEMENT.

9 MR. SPECTER: THE TIME ELEMENT?

10 JUDGE REINHARDT: YES. THE FACT THAT IT MIGHT TAKE A
11 NUMBER OF YEARS AND THAT THAT MIGHT NOT BE AN ADEQUATE REMEDY.

12 LEAVING THAT ASIDE, LET'S ASSUME IF THE STATE CAME IN
13 AND SAID WE COULD BUILD A THOUSAND PRISONS TOMORROW, WE WILL
14 HAVE THEM ALL SET UP IN WAREHOUSES AND STRING THEM OUT, WOULD
15 THAT BE OTHER RELIEF THAT WOULD REMEDY THE VIOLATION OF THE
16 FEDERAL RIGHT UNDER THE STATUTE THAT SAYS WE CANNOT DO IT
17 UNLESS THERE IS NO OTHER RELIEF?

18 DOES THAT MEAN NO OTHER RELIEF WE CAN ORDER OR NO
19 OTHER RELIEF THAT COULD EXIST IN THE WORLD?

20 MR. SPECTER: WELL, LET ME GIVE YOU A LEGAL ANSWER TO
21 THAT QUESTION.

22 THE STATUTE THAT GUIDES PROSPECTIVE RELIEF IN ANOTHER
23 SECTION, AND IN THAT PROSPECTIVE RELIEF -- I CAN'T REMEMBER THE
24 EXACT LANGUAGE, BUT IT TALKS ABOUT THE TYPE OF INJUNCTIONS,
25 CONSENT DECREES, THOSE TYPE OF THINGS. SO ONE COULD --

1 **JUDGE REINHARDT:** THE SECTION WE WERE READING TALKS
2 ABOUT TERMINATION OF PROSPECTIVE RELIEF.

3 YOU CAN SAY YOU DON'T HAVE A POSITION ON THAT
4 QUESTION IF YOU LIKE.

5 **MR. SPECTER:** WELL, OKAY. I THINK WHAT CONGRESS
6 MEANT WHEN THEY USED THE TERM "RELIEF" IS THAT THEY MEANT COURT
7 ORDERED RELIEF. IF IN YOUR HYPOTHETICAL QUESTION THERE WERE A
8 THOUSAND PRISONS AVAILABLE TO REDUCE CROWDING TOMORROW --

9 **JUDGE KARLTON:** WE COULD ORDER THAT.

10 **MR. SPECTER:** YEAH. I DON'T BELIEVE THAT -- I MEAN,
11 I COULD UNDERSTAND THE COURT THINKING, WELL, MAYBE WE SHOULDN'T
12 ORDER -- ISSUE INJUNCTIVE RELIEF AT THIS POINT BECAUSE THE
13 SITUATION IS GOING TO BE RESOLVED TOMORROW. THAT ISN'T THE
14 CASE TODAY, SO I DON'T REALLY THINK YOU HAVE TO REACH THAT
15 QUESTION.

16 **JUDGE REINHARDT:** I WAS JUST TRYING TO GIVE YOU SOME
17 EXAMPLES. YOU DON'T HAVE TO DEAL WITH THE EXAMPLES. I'M
18 ASKING FOR YOUR CONSTRUCTION IN PARAGRAPH E, WHICH SAYS -- IT
19 REACHES THE HEART OF --

20 **MR. SPECTER:** HERE IT IS, JUDGE. I'VE GOT IT. I'M
21 SORRY TO INTERRUPT YOU.

22 G-9 SAYS:

23 "THE TERM 'RELIEF' MEANS ALL RELIEF IN ANY FORM
24 THAT MAY BE GRANTED OR APPROVED BY THE COURT."

25 **JUDGE REINHARDT:** SO GRANTED OR APPROVED. IN OTHER

1 WORDS, RELIEF THAT'S BEYOND OUR JURISDICTION TO GRANT.

2 MR. SPECTER: RIGHT.

3 JUDGE REINHARDT: IS NOT --

4 JUDGE KARLTON: IS NOT CONTEMPLATED BY THE STATE.

5 JUDGE REINHARDT: RIGHT. IS NOT INCLUDED IN THE
6 STATUTE WHEN IT SAYS WE CAN'T ORDER A RELEASE ORDER UNLESS WE
7 FIND THAT NO OTHER RELIEF WILL REMEDY THE VIOLATION. THAT
8 MEANS NO OTHER RELIEF WE CAN GRANT.

9 MR. SPECTER: YES.

10 JUDGE REINHARDT: OKAY.

11 JUDGE KARLTON: CAN I TURN YOUR ATTENTION TO WHERE I
12 THINK YOU ARE GOING ANYHOW, WHICH IS WHAT FORM OF RELIEF?

13 ALTHOUGH THE PROPOSED FINDINGS OF FACT SUBMITTED BY
14 THE PLAINTIFF IS A REMARKABLE DOCUMENT, AND I WANT YOU TO KNOW
15 I REALLY BELIEVE THAT --

16 MR. SPECTER: THANK YOU.

17 JUDGE KARLTON: -- ONE ASPECT OF IT IS THE REPEATED
18 ASSERTION THAT THE INTERVENOR'S RESPONSES ARE EXAGGERATED.

19 EVEN IF THEY WERE SOMEWHAT EXAGGERATED, AND I'M NOT
20 EVEN SURE THAT'S TRUE, BUT EVEN IF THEY WERE SOMEWHAT
21 EXAGGERATED, THERE IS NO QUESTION THAT THIS WILL HAVE -- IF WE
22 WERE TO ISSUE A PRISONER RELEASE ORDER, IT WOULD HAVE A
23 PROFOUND EFFECT UPON THE LOCAL COMMUNITIES.

24 IS THAT AN APPROPRIATE CONCERN OF THE COURT? THAT'S
25 NUMBER ONE. THAT IS, IS IT SOMETHING WE CAN CONSIDER OR IS IT

1 -- OUR RESPONSE IS, LOOK, THERE IS A CONSTITUTIONAL VIOLATION.
2 WE'VE GOT TO DO WHAT WE'VE GOT TO DO. IT'S UP TO THE STATE AND
3 COUNTIES TO WORK OUT HOW THAT GETS DONE SO AS TO MINIMIZE THE
4 CONSEQUENCES.

5 THAT'S NUMBER ONE.

6 AND NUMBER TWO, IS IT APPROPRIATE FOR THE COURT IF WE
7 REACH THIS POINT TO ORDER THE STATE TO AT LEAST SHARE SOME OF
8 THE SAVINGS THAT IT WILL ACHIEVE? IS THAT AN APPROPRIATE THING
9 FOR THIS COURT TO DO?

10 THOSE ARE TWO SEPARATE QUESTIONS.

11 **MR. SPECTER:** YES, YOUR HONOR. AND I HAVE PREPARED
12 AN ANSWER AS TO THE SECOND ONE, WHICH I HOPE WILL BE
13 PERSUASIVE.

14 ON THE FIRST POINT, I THINK YOU ABSOLUTELY MUST
15 CONSIDER UNDER THE STATUTE ANY POTENTIAL ADVERSE IMPACT ON
16 PUBLIC SAFETY.

17 **JUDGE KARLTON:** NO, NOT POTENTIAL. NOT POTENTIAL.
18 BUT ADVERSE EFFECT UPON PUBLIC SAFETY.

19 **MR. SPECTER:** YOU ARE RIGHT. YOU'RE RIGHT.

20 **JUDGE KARLTON:** THIS IS VERY IMPORTANT.

21 **MR. SPECTER:** YES.

22 **JUDGE KARLTON:** GIVEN THE APPARENTLY UNDISPUTED
23 AGREEMENT PLAINTIFFS, DEFENDANTS, EVERYBODY, THAT THE PRESENT
24 PRISON SYSTEM IS CRIMINOGENIC, IT SEEMS TO ME THAT ARGUMENTS
25 ABOUT PUBLIC SAFETY ARE PROBABLY NOT ALL THAT PERSUASIVE.

1 THAT DOESN'T DENY THE REALITY THAT IF WE RELEASE
2 PEOPLE, IT WILL HAVE A VERY PROFOUND EFFECT, VERY PROFOUND, A
3 VERY PROFOUND EFFECT UPON THE COUNTIES' ABILITY TO FUNCTION.

4 **MR. SPECTER:** RIGHT.

5 **JUDGE KARLTON:** CAN WE CONSIDER THAT? OUGHT WE TO
6 CONSIDER THAT?

7 **MR. SPECTER:** FIRST I WOULD LIKE TO TAKE SOME ISSUE
8 WITH YOUR PREMISE, SINCE THIS IS ARGUMENT.

9 **JUDGE KARLTON:** ALL RIGHT.

10 **MR. SPECTER:** AND THEN I WOULD LIKE TO ANSWER YOUR
11 QUESTION AFTER THAT.

12 **JUDGE KARLTON:** ALL RIGHT.

13 **MR. SPECTER:** ALL OF THE INFORMATION THAT WE
14 PRESENTED TO YOU, AND SOME OF THE INFORMATION THAT THE STATE
15 PRESENTED TO YOU, SUGGESTS THAT A PRISONER RELEASE ORDER WILL
16 NOT HAVE THE KIND OF PROFOUND IMPACT THAT THE INTERVENORS AND
17 IN SOME RESPECTS THE STATE ARE ARGUING.

18 THIS HAS BEEN DONE ACROSS THE COUNTRY, IN CANADA,
19 IT'S BEEN DONE IN MANY COUNTIES THROUGHOUT CALIFORNIA. AND IN
20 NONE OF THOSE COUNTIES, NONE OF THOSE STATES, AND IN CANADA AND
21 IN CITIES HAS THE CRIME RATE INCREASED AS A RESULT OF THAT.

22 AND I THINK DR. AUSTIN SHOWED YOU THAT THE IMPACT OF
23 THE ARRESTS OF PAROLEES -- IN OTHER WORDS, THE ADDITIONAL
24 PEOPLE WHO ARE GOING TO COME OUT -- IS NOT GOING TO BE
25 PROFOUND. IT'S GOING TO BE RELATIVELY, IN MY VIEW,

1 INSIGNIFICANT IN TERMS OF NUMBERS. REMEMBER --

2 **JUDGE REINHARDT:** EVEN IF THAT'S NOT SHOWN, IT'S
3 CLEAR THAT SOME OF THE PEOPLE WOULD BE RELEASED WITHOUT
4 RECEIVING SOME OF THE TREATMENT THAT IS DESIRABLE TO MAKE IT
5 POSSIBLE FOR THEIR REENTRY INTO SOCIETY.

6 **MR. SPECTER:** YES, YOUR HONOR.

7 **JUDGE REINHARDT:** WHICH THE COUNTIES SHOULD -- A
8 BURDEN THE COUNTIES SHOULD UNDERTAKE, AND WHETHER IT -- EVEN
9 MORE THAN WHETHER IT AFFECTS THE CRIME RATE, IT'S WHETHER THAT
10 PEOPLE WHO ARE BEING RELEASED SHOULD BE TRAINED FOR EMPLOYMENT,
11 SHOULD RECEIVE DRUG TREATMENT, SHOULD RECEIVE OTHER TREATMENT
12 THAT ALLOWS THEM BETTER TO INTEGRATE INTO SOCIETY.

13 AND I THINK JUDGE KARLTON'S QUESTION, HOWEVER YOU
14 VIEW IT, IS WHEN WE KNOW THAT IF THE RELEASE ORDER, WHICH IS A
15 VERY BROAD TERM, WOULD RESULT IN SUBSTANTIAL SAVINGS TO THE
16 STATE, ALL RIGHT, THE QUESTION IS, DOES THE COURT HAVE THE
17 AUTHORITY TO DIVERT SOME OF THOSE SAVINGS OUT OF THE PRISON
18 BUDGET TO -- THE STATE IS NOW HELPING THE COUNTIES IN A SENSE.

19 DO WE HAVE THE AUTHORITY TO DIRECT THE STATE TO
20 DIVERT SOME OF THOSE SAVINGS TO THE COUNTIES?

21 **JUDGE KARLTON:** AND TO FOLLOW UP PRECISELY WHAT
22 JUDGE REINHARDT IS ASKING YOU TO EXPLORE, IS IT AN APPROPRIATE
23 CONSIDERATION OF OURS -- AN ARGUMENT CAN BE MADE, IT SEEMS TO
24 ME -- I'M NOT SAYING IT SHOULD BE MADE, BUT CAN BE MADE. LOOK,
25 THAT'S A PROBLEM OF THE STATE AND THE COUNTIES AND THEY ARE

1 GOING TO HAVE TO WORK IT OUT.

2 OUR OBLIGATION IS TO ENSURE ADEQUATE MEDICAL CARE AND
3 ADEQUATE MENTAL HEALTH CARE. THAT CAN BE ACCOMPLISHED ONLY BY
4 RELEASING THE PRISONERS AND WHATEVER HAPPENS AFTER THAT, AS
5 LONG AS IT DOESN'T SIGNIFICANTLY AFFECT PUBLIC SAFETY, THAT'S A
6 PROBLEM OF THE STATE. THAT'S AN ARGUMENT THAT CAN BE MADE.

7 IS IT AN APPROPRIATE ARGUMENT? AND IF IT IS NOT AN
8 APPROPRIATE ARGUMENT, THEN WE COME BACK TO JUDGE REINHARDT'S
9 VERY SERIOUS QUESTION, WHICH IS: ARE WE CAPABLE OF AND SHOULD
10 WE ORDER THE STATE TO SHARE THE SAVINGS?

11 **MR. SPECTER:** I WILL ANSWER YOUR QUESTION DIRECTLY.
12 AFTER I ANSWER IT, I WOULD LIKE TO COME BACK TO THE PREMISE OF
13 THE QUESTION AGAIN.

14 THE ANSWER TO THE QUESTION IS NO, I DON'T BELIEVE YOU
15 SHOULD ORDER FUNDING TO THE COUNTIES. AND LET ME EXPLAIN --

16 AND THE ANSWER TO YOUR QUESTION IS, I THINK THE
17 ARGUMENT THAT YOU MADE IS THE RIGHT ONE AND --

18 **JUDGE KARLTON:** I'M NOT SAYING --

19 **MR. SPECTER:** BUT I AM. I AM --

20 **JUDGE REINHARDT:** MY QUESTION IS: DO WE HAVE THE
21 AUTHORITY TO?

22 **MR. SPECTER:** NO. I DON'T THINK -- I DON'T THINK YOU
23 HAVE THE AUTHORITY TO. I DON'T WANT YOU TO. WE ARE NOT ASKING
24 FOR IT. AND LET ME --

25 **JUDGE KARLTON:** WE ARE NOT BOUND BY WHAT YOU ARE

1 ASKING. ONE OF THE PROBLEMS --

2 JUDGE REINHARDT: NOR DO WE PARTICULARLY CARE WHAT
3 YOU ARE ASKING.

4 THE QUESTION IS: IS THAT THE RIGHT AND PROPER THING
5 TO DO IF YOU GET THE KIND OF ORDER YOU WANT? SHOULDN'T THE
6 COUNTIES HAVE SOME ADDITIONAL FUNDING TO TRY TO DEAL WITH THE
7 PROBLEM YOU HAVE CREATED?

8 AND I'M NOT SURE WHY YOU DON'T WANT THE COUNTIES TO
9 HAVE THE BENEFIT OF THE SAVINGS.

10 JUDGE KARLTON: HE IS SAYING WE DON'T HAVE THE
11 REPORT.

12 JUDGE REINHARDT: HE SAID, "I DON'T WANT YOU TO."

13 MR. SPECTER: NO, I DON'T WANT YOU TO ORDER IT
14 BECAUSE I'M NOT SURE YOU HAVE -- I DON'T THINK YOU HAVE THE
15 AUTHORITY TO DO IT.

16 DO I WANT IT PERSONALLY? YES. I THINK EVERYBODY IN
17 THIS ROOM PROBABLY WANTS IT.

18 JUDGE REINHARDT: I'M NOT SURE THAT YOU REPRESENT THE
19 STATE.

20 MR. SPECTER: WELL, I'M NOT SAYING WHAT THEY ARE --
21 REGARDLESS OF THAT, I PERSONALLY THINK IT WOULD BE A RATIONAL
22 THING FOR THE STATE TO DO IF THE STATE IS CONCERNED ABOUT
23 PUBLIC SAFETY.

24 BUT, REMEMBER, THIS CASE IS BEING APPEALED DIRECTLY
25 TO THE SUPREME COURT AND THE SUPREME COURT HAS SAID ON MANY

1 OCCASIONS THAT THE COURT MUST INTRUDE AS LITTLE AS POSSIBLE
2 ONTO STATE CONCERNS, ESPECIALLY ONES SUCH AS CRIMINAL JUSTICE
3 POLICY.

4 AND THE MOST NARROW REMEDY IS FOR YOU TO ORDER THEM
5 TO REDUCE THE POPULATION TO AN ACCEPTABLE LEVEL, AND THEN HOW
6 IT DOES THAT AND WHAT LEVEL OF PUBLIC SAFETY THE STATE WANTS TO
7 SUPPORT THROUGH FUNDING IS A MATTER UP TO THE STATE.

8 **JUDGE REINHARDT:** WELL, WE ARE SUPPOSED TO CONSIDER
9 THE EFFECTS ON THE PUBLIC SAFETY. AND SO IT'S NOT ENOUGH TO
10 SAY RELEASE, HAVE A CAP WHICH WOULD RESULT IN THE RELEASE OF
11 PRISONERS.

12 IF THE STATE SAID, WELL, WE'RE GOING TO RELEASE THE
13 40,000 MOST DANGEROUS PRISONERS, THAT WOULD HAVE A FAR GREATER
14 EFFECT ON PUBLIC SAFETY THAN IF THEY DID IT THROUGH SOME PAROLE
15 REFORM EXPERIENCES.

16 I DON'T SEE HOW WE CAN ANSWER THE QUESTION OF THE
17 EFFECT ON PUBLIC SAFETY WITHOUT KNOWING HOW THE STATE WOULD
18 IMPLEMENT THIS ORDER.

19 **JUDGE KARLTON:** I DON'T WANT TO KEEP INTERRUPTING
20 YOU, BUT THIS IS REALLY THE -- IN MY VIEW, A CRUX QUESTION.

21 I DON'T THINK THAT THERE IS ANY DOUBT THAT WE CAN SAY
22 SOMETHING TO THE STATE IN CONSIDERING A RELEASE ORDER, IF
23 THAT'S WHAT WE ORDER; THAT YOU CONSIDER RELEASING THOSE PERSONS
24 WHO ARE THE LEAST LIKELY TO REPRESENT A DANGER TO THE PUBLIC.

25 I THINK WE CAN SAY YOU'VE GOT TO RELEASE DRUG ADDICTS

1 RATHER THAN MURDERERS. I THINK WE CAN SAY THAT.

2 MR. SPECTER: YOU CAN SAY, LIKE JUDGE REINHARDT
3 IMPLIED, WHATEVER YOU THINK IS APPROPRIATE.

4 MY ADVICE IS THAT YOU ORDER THE STATE TO COME UP WITH
5 A PLAN. THE STATE WILL COME UP WITH A PLAN IN CONSULTATION
6 WITH THE PARTIES.

7 IF ANY PARTY BELIEVES THAT THERE ARE OBJECTIONS TO
8 THAT PLAN -- IN OTHER WORDS, THE COUNTY INTERVENORS BELIEVE
9 THAT IT COULD BE DONE IN A SAFER, MORE APPROPRIATE WAY -- THAT
10 WOULD BE THE APPROPRIATE TIME TO RAISE THAT OBJECTION. IT
11 WOULD ALSO BE THE APPROPRIATE TIME FOR THE COURT TO CONSIDER
12 THE OTHER ISSUES.

13 THE STATE TAKES AS ONE OF ITS FIRST RESPONSIBILITIES,
14 IT SAYS, PUBLIC SAFETY. SO WOULDN'T THE APPROPRIATE WAY TO
15 HANDLE THIS BE TO GIVE THE STATE THE OPPORTUNITY TO PROVIDE A
16 PLAN THAT IT BELIEVES WILL BE CONSISTENT WITH ITS VIEW OF
17 PUBLIC SAFETY?

18 JUDGE REINHARDT: WELL, I'M NOT SURE. WE MAY BE
19 GETTING A LITTLE BIT AHEAD, BUT NOT NECESSARILY. BECAUSE IN
20 ORDER TO DECIDE, ONE SHOULD LOOK TO THE FUTURE AND SEE WHAT IT
21 MEANS. AND IF WE ARE CONSIDERING THE PUBLIC SAFETY AS AN
22 ISSUE, WE HAVE TO KNOW WHAT THE STATE WOULD DO.

23 WE CAN'T SAY STEP ONE, FOR EXAMPLE, YES, THIS COULD
24 BE DONE IN A MANNER THAT WOULD PROTECT THE PUBLIC SAFETY OR
25 WOULD NOT HAVE CONSIDERATION OF THAT.

1 AND THIS IS ALL AN ABSTRACT THEORETICAL DISCUSSION,
2 BUT SUPPOSE WE WERE TO CONCLUDE, YES, WE HAVE HEARD A LOT OF
3 TESTIMONY AND THIS COULD BE DONE IN A WAY THAT DOES NOT AFFECT
4 THE PUBLIC SAFETY. AND THEN WE SAY TO THE STATE, WELL, TELL US
5 HOW YOU WANT TO DEAL WITH IT.

6 **MR. SPECTER:** RIGHT.

7 **JUDGE REINHARDT:** AND THE STATE SAYS, WELL, WE WANT
8 TO RELEASE ALL THE AXE MURDERERS WE CAN FIND, WHICH MAY SOUND
9 IRRATIONAL. BUT AT TIMES THE STATE HAS NOT BEEN ENTIRELY
10 RATIONAL.

11 **JUDGE KARLTON:** INDEED, IF YOU READ MY
12 CORRESPONDENCE, I GET A LETTER A WEEK FROM SOMEBODY WHO IS
13 DOING A LIFE TERM FOR MURDER WHO SAYS, WE ARE THE LEAST LIKELY
14 PEOPLE IN THE WORLD TO RECIDIVATE.

15 **MR. SPECTER:** AND IT'S NOT IN EVIDENCE, BUT THAT'S,
16 IN FACT, TRUE.

17 **JUDGE REINHARDT:** ANYWAY, TO GET BACK -- SO YOUR
18 POINT IS WE COULD SAY THAT IT COULD BE DONE.

19 **MR. SPECTER:** YES.

20 **JUDGE REINHARDT:** BUT WE HAVE A RESPONSIBILITY FOR
21 PUBLIC SAFETY, WHATEVER WE ORDER. AND IF WE ORDER A CAP AND
22 THEN THE STATE DECIDES WE ARE GOING TO DO THIS IN A WAY THAT'S
23 DANGEROUS TO THE PUBLIC SAFETY, YOU SAY THAT THAT COMES UP AT
24 THE FINAL STAGE OF THE PROCEEDING AFTER WE HAVE ORDERED A CAP
25 AND ORDERED THE STATE TO REPORT BACK WITH A PLAN.

1 AND THEN THE OTHER PARTIES WOULD OBJECT, THAT IT
2 DOESN'T PROTECT THE PUBLIC SAFETY SUFFICIENTLY. AND THEN WHAT?
3 THEN DO WE HAVE THE AUTHORITY TO TELL THE STATE HOW TO DO IT?

4 **MR. SPECTER:** I DIDN'T BRIEF THAT QUESTION. I
5 DON'T -- I DON'T KNOW AT THAT POINT.

6 YOU KNOW, I THINK AT THIS POINT THAT THE COURSE OF
7 ACTION THAT WE HAVE SUGGESTED IS THE RIGHT ONE.

8 IF, IN FACT, THE STATE DOESN'T COME UP WITH AN
9 ADEQUATE PLAN AND YOU FIND THAT THEY'VE BEEN GIVEN THE
10 OPPORTUNITY TO COME UP WITH AN ADEQUATE PLAN, AND THERE ARE
11 WAYS IN WHICH IT CAN BE DONE SAFELY AND THE STATE CHOOSES NOT
12 TO DO THAT, THEN I MAY VERY WELL REVISE MY ANSWER ABOUT YOUR
13 AUTHORITY.

14 **JUDGE KARLTON:** JUDGE JACK WEINSTEIN OF THE EASTERN
15 DISTRICT OF NEW YORK AND I'VE HAD THIS ONGOING CONVERSATION.
16 HIS VIEW OF CASES LIKE THIS IS IF THE COURT ORDERS THE REMEDY,
17 IT DOESN'T DO ANYTHING ELSE; AND IF SOMEBODY THINKS THAT THOSE
18 WHO HAVE BEEN ORDERED TO REMEDY FAIL, THEY CAN BRING AN ORDER
19 IN CONTEMPT.

20 YOU KNOW, I HAVE SAID NO, THAT'S NOT THE RIGHT WAY.
21 WELL, OBVIOUSLY, I'VE GOT A SPECIAL MASTER AND BEEN WORKING AT
22 IT FOR A LOT OF YEARS.

23 **JUDGE REINHARDT:** BUT YOUR ANSWER IS YOU WOULD LIKE
24 TO CONSIDER REVISING YOUR ANSWER WHEN WE GET TO THE --

25 **MR. SPECTER:** WHEN WE SEE WHAT THE DEFENDANT IS GOING

1 TO DO.

2 JUDGE REINHARDT: SHOULD WE EVER REACH THAT POINT.

3 MR. SPECTER: YES, YOUR HONOR.

4 JUDGE REINHARDT: ALL RIGHT.

5 MR. SPECTER: AND I WANT TO MAKE A COUPLE OF POINTS
6 ABOUT THIS. IT'S IMPORTANT TO REMEMBER THAT THE STATE IS
7 TRYING TO HAVE IT BOTH WAYS IN THEIR ARGUMENT.

8 THEY ARE SAYING THAT IT WOULD BE DANGEROUS TO LET OUT
9 PRISONERS. THEY ARE ALSO SAYING THAT THERE ARE THESE METHODS
10 BY WHICH PUBLIC SAFETY CAN BE IMPROVED. AND THEY ARE ALSO
11 SAYING THAT THE COURT SHOULDN'T ORDER THEM TO PROVIDE FUNDING
12 TO THE LOCAL COMMUNITIES TO MINIMIZE THE EFFECT ON PUBLIC
13 SAFETY.

14 IT SEEMS TO ME THAT IF THIS IS A DECISION THAT'S
15 GOING TO BE LEFT UP TO THE STATE, IN OTHER WORDS, TO DETERMINE
16 HOW MUCH FUNDING THEY'RE GOING TO BE PROVIDING FOR PUBLIC
17 FUNDING TO THE LOCAL COMMUNITIES, THEN IT SHOULD NOT BE A
18 FACTOR IN DECIDING WHETHER OR NOT POPULATION WITH THESE ORDERS
19 SHOULD ISSUE.

20 ON THE OTHER HAND, I STRONGLY URGE THE COURT -- ONE
21 OF THE CASES THAT THE DEFENDANTS CITED, ANDERSON VERSUS
22 REDMOND, IS A CASE OUT OF DELAWARE, I BELIEVE, IN WHICH THE
23 DISTRICT COURT WAS FACED WITH A SIMILAR SITUATION ON A MUCH
24 SMALLER SCALE.

25 AND IT FOLLOWED THE COURSE OF ACTION THAT WE ARE

1 SUGGESTING, WHICH IS THAT THE COURT ORDER THE STATE TO REDUCE
2 ITS PRISON POPULATION. AND THEN IT WENT ON TO FIND THAT THERE
3 WERE VARIOUS METHODS BY WHICH THE STATE COULD DO THIS IN A SAFE
4 AND COST-EFFECTIVE MANNER.

5 AND AT THIS STAGE OF THE PROCEEDINGS, THAT'S WHAT I
6 THINK THE APPROPRIATE COURSE OF ACTION WOULD BE FOR THE COURT.

7 **JUDGE HENDERSON:** SHOULD WE HAVE TO HAVE AN
8 EVIDENTIARY HEARING NOW IF WE MAKE THAT FINDING, THAT THEY
9 COULD IT IN A CERTAIN WAY. WHAT EXPERTISE WOULD WE BRING TO
10 BEAR TO DO THAT?

11 **MR. SPECTER:** WELL, I'M TALKING ABOUT NOW. WE
12 PRESENTED YOU WITH EVIDENCE --

13 **JUDGE KARLTON:** NO, NO. ASSUME -- YOU'RE MISSING
14 JUDGE HENDERSON'S POINT.

15 **MR. SPECTER:** OKAY.

16 **JUDGE KARLTON:** ASSUMING THAT THE STATE PRESENTS A
17 PLAN. PLAINTIFFS SAY OR THE COUNTIES SAY OR SOMEBODY SAY, IT'S
18 INADEQUATE FOR REASON A, B OR C. WHAT DO WE DO THEN?

19 **MR. SPECTER:** THEN I THINK, YOU KNOW, YOU MAY HAVE TO
20 HAVE AN EVIDENTIARY HEARING IF IT CAN'T BE RESOLVED OTHERWISE.
21 WE DON'T KNOW WHAT POLICY CHOICES THE STATE IS GOING TO MAKE.
22 WE DON'T KNOW WHAT THE FACTS ARE GOING TO BE. WE DON'T KNOW
23 WHAT THE COUNTIES' ARGUMENTS ARE GOING TO BE.

24 BUT I DO THINK THAT --

25 **JUDGE REINHARDT:** YOU SUGGEST FOR NOW WE ASSUME THAT

1 IT WOULD -- IF WE ARE SAYING THAT CERTAIN STEPS CAN BE TAKEN,
2 THEY ARE NOT NECESSARILY INVOLVED IN OPENING THE GATES.

3 MR. SPECTER: YES, YOUR HONOR.

4 JUDGE REINHARDT: BUT CONSTITUTE A PRISONER RELEASE
5 ORDER, IN THE BROAD SENSE OF THE WORD, WHICH MAY JUST MEAN
6 CHANGING RULES GOVERNING PAROLE OR PROGRAMS IN PRISON.

7 MR. SPECTER: RIGHT.

8 JUDGE REINHARDT: IF WE DO THAT NOW, WE SHOULD JUST
9 WAIT AND SEE. WE SHOULD ASSUME THAT THE STATE COULD COME UP
10 WITH A REASONABLE WAY TO IMPLEMENT THAT, AND THAT WE SHOULD
11 THEN HAVE THE REPORT BACK OR HOPE THAT SHOULD WE ORDER THAT,
12 THAT EVERYONE WILL LOOK AT IT AND SAY WHAT A WONDERFUL SOLUTION
13 THIS AT THE SAME TIME.

14 MR. SPECTER: WELL, HOWEVER UNLIKELY THAT APPEARS TO
15 ME --

16 JUDGE REINHARDT: WELL, IT MAY NOT BE. THE STATE'S
17 OWN REPORTS LAY OUT WHAT COULD BE DONE.

18 MR. SPECTER: RIGHT. AND NOT ONLY THAT, BUT IF IT'S
19 DONE IN CONSULTATION WITH OTHER PARTIES, THERE MAY NOT BE AS
20 MUCH DISAGREEMENT ON THAT AS THERE HAS BEEN ON THESE ISSUES
21 HERE TODAY.

22 SO I THINK THE SUPREME COURT MAKES IT PRETTY CLEAR
23 THAT YOU HAVE TO GIVE THE STATE THE FIRST OPPORTUNITY TO DO
24 THESE THINGS. AND ONCE YOU HAVE GIVEN THEM THAT OPPORTUNITY,
25 THEN YOUR ROLE SORT OF SWITCHES IF IT'S NOT ADEQUATE.

1 **JUDGE HENDERSON:** AND DO WE ORDER THE STATE TO
2 CONSULT WITH THE PLAINTIFFS OR DO WE ASSUME THAT THEY WILL DO
3 IT?

4 **MR. SPECTER:** I THINK YOU BETTER ORDER THEM TO DO IT.
5 IT WOULD SOLVE A LOT OF PROBLEMS.

6 AND WHAT WE HAVE ALSO SUGGESTED IN OUR MOTION, IF THE
7 STATE BELIEVES IT A GOOD IDEA AFTER YOUR ORDER ISSUES, IS THAT
8 ON REQUEST OF THE STATE YOU APPOINT AN INDEPENDENT EXPERT UNDER
9 RULE 706 OR 703 --

10 **JUDGE KARLTON:** THERE IS SOMETHING TO BE SAID THAT
11 THERE ARE ENOUGH EXPERTS TRYING TO GET THE STATE -- NEVER MIND.
12 GO AHEAD. NEVER MIND. WHETHER ANOTHER EXPERT WOULD MAKE ANY
13 DIFFERENCE AT SOME POINT, NOT CLEAR AT ALL.

14 **MR. SPECTER:** CAN I THAT ADDRESS THAT THOUGH?

15 THERE IS NO QUESTION THAT THERE IS ENOUGH REPORTS OUT
16 THERE WITH IDEAS IN IT THAT WE DON'T NEED ANOTHER ONE OF THOSE.

17 WHAT WOULD BE HELPFUL, IN MY VIEW, AND I HOPE THE
18 STATE WOULD AGREE, IS SOMEBODY TO HELP CRUNCH THE NUMBERS,
19 HELP -- SOMEBODY WHO IS EXPERIENCED IN WORKING OUT THESE KIND
20 OF DETAILS WHO WOULD PROVIDE --

21 **JUDGE REINHARDT:** IF YOU BOTH AGREE THAT WOULD BE
22 HELPFUL, IT WOULD BE NO PROBLEM.

23 **JUDGE KARLTON:** SURE.

24 **MR. SPECTER:** THAT WOULD BE GOOD.

25 I'M ALMOST OUT OF THE TIME. I WAS GOING TO TAKE -- I

1 DIDN'T FINISH --

2 JUDGE HENDERSON: DON'T FEEL COMPELLED TO STOP AT
3 YOUR ESTIMATE.

4 MR. SPECTER: SO THEN I WILL GO A LITTLE BIT.

5 OKAY. LET ME TELL YOU A LITTLE BIT ABOUT WHY I
6 BELIEVE THAT THE EVIDENCE SHOWS THAT A PRISONER RELEASE ORDER
7 WOULD NOT HAVE AN ADVERSE EFFECT ON PUBLIC SAFETY.

8 AND I THINK YOU CAN DRAW THAT FACTUAL FINDING FROM
9 BASICALLY THE UNDISPUTED EVIDENCE IN THE CASE. AND THAT IS, AS
10 I MENTIONED BEFORE --

11 JUDGE REINHARDT: WHEN YOU SAY "A PRISONER RELEASE
12 ORDER WOULD NOT HAVE AN ADVERSE EFFECT," WHAT TYPE OF PRISONER
13 RELEASE ORDER ARE YOU REFERRING TO? A "PRISONER RELEASE ORDER"
14 IS A VAST AND BROAD TERM.

15 MR. SPECTER: I'M REFERRING TO A PRISONER RELEASE
16 ORDER WHICH INCORPORATES MANY, IF NOT ALL, OF THE PROPOSALS
17 THAT THE STATE, THROUGH THE GOVERNOR, HAS ALREADY MADE TO
18 REDUCE THE PRISON POPULATION, SUCH AT DIVERSION, ENHANCED
19 CREDIT EARNING PROCESSES, PAROLE REFORM, PROGRAMS IN BOTH THE
20 COMMUNITY AND IN THE PRISON WHICH HAVE THE EFFECT OF WHAT WE
21 CALL EVIDENCE-BASED PROGRAMS WHICH HAVE BEEN EFFECTIVE REDUCING
22 CRIME.

23 ALL OF THOSE MECHANISMS WHICH THE GOVERNOR HAS
24 PROPOSED, WHICH THE EXPERT PANEL HAS ENDORSED, WHICH OUR
25 EXPERTS HAVE ALSO ENDORSED. I THINK THAT THE EVIDENCE IS

1 OVERWHELMING THAT ALL THE OF THOSE METHODS WOULD BE ABLE TO
2 REDUCE THE POPULATION SIGNIFICANTLY WITHOUT AFFECTING PUBLIC
3 SAFETY.

4 **JUDGE REINHARDT:** THE PROBLEM IN DISCUSSING THIS
5 ISSUE, EVEN BETWEEN THE PARTIES, IS THAT WE SOMETIMES LOSE
6 TRACK OF THE FACT THAT A PRISONER RELEASE ORDER IS NOT AN ORDER
7 TO RELEASE PRISONERS.

8 **JUDGE KARLTON:** IT MAY BE, IN ADDITION TO EVERYTHING
9 ELSE.

10 **JUDGE REINHARDT:** IT COULD BE, BUT IT'S NOT. WHEN WE
11 SAY A "PRISONER RELEASE ORDER," WE ARE NOT TALKING ABOUT
12 NECESSARILY ABOUT AN ORDER TO RELEASE PRISONERS.

13 FOR INSTANCE, IN THE STATE'S RESPONSE TO OUR QUESTION
14 ABOUT THE GOVERNOR'S BUDGET AND WHAT THE GOVERNOR THOUGHT WAS
15 PROPER FOR THE STATE, THEY SAY, WELL, HE DIDN'T SAY RELEASE
16 PRISONERS. BUT WHAT HE DID SAY WERE THINGS THAT CONTEMPLATE --
17 THAT CONSTITUTE A PRISONER RELEASE ORDER.

18 **JUDGE KARLTON:** WITHIN THE MEANING OF THE PLRA.

19 **MR. SPECTER:** YOU'RE EXACTLY RIGHT, YOUR HONOR.
20 THAT'S AN UNFORTUNATE PHRASE THAT THEY USE TO DEFINE --

21 **JUDGE REINHARDT:** PEOPLE READING A DECISION ORDERING
22 A PRISONER RELEASE ORDER ASSUME THAT THE ORDER SAYS, OPEN THE
23 DOORS, RELEASE PRISONERS. THAT'S NOT, I ASSUME, WHAT YOU'RE
24 TALKING ABOUT WHEN YOU SAY THAT IT WOULD NOT PROVIDE A RISK TO
25 THE PUBLIC SAFETY.

1 **MR. SPECTER:** THAT'S EXACTLY RIGHT. A MORE ACCURATE
2 TERM MIGHT BE A POPULATION REDUCING ORDER. ANY METHOD BY WHICH
3 THE POPULATION OF THE PRISON IS REDUCED IS WHAT WE ARE SEEKING.

4 WE ARE AGNOSTIC ON THE MANNER IN WHICH THAT IS DONE.
5 WHAT WE HAVE TRIED TO PRESENT TO YOU IN EVIDENCE ARE WAYS IN
6 WHICH TO ASSURE YOU THAT THESE POPULATION REDUCING MEASURES CAN
7 BE DONE SAFELY.

8 **JUDGE REINHARDT:** WELL, YOU'RE NOT ALL THAT AGNOSTIC
9 BECAUSE YOU WANT US TO PUT IN THE ORDER THAT WHEN THE STATE
10 COMES UP WITH A PLAN, THEY HAVE TO CONSULT WITH YOU, BECAUSE
11 YOU WOULDN'T WANT THEM TO CONSULT WITH YOU IF YOU DIDN'T HAVE
12 ANY VIEWS.

13 **MR. SPECTER:** FAIR ENOUGH.

14 LET ME TELL YOU WHY THAT I BELIEVE THE EVIDENCE SHOWS
15 THAT THESE POPULATION REDUCING MEASURES CAN BE DONE SAFELY.

16 FIRST OF ALL, AS JUDGE KARLTON MENTIONED, PRISONS IN
17 THEIR CURRENT CONDITION ARE THEMSELVES CRIMINOGENIC. IN OTHER
18 WORDS, THEY ARE THEMSELVES ENHANCING CRIME.

19 SECOND OF ALL, THERE IS NO DISPUTE IN THE RECORD THAT
20 THE LENGTH OF INCARCERATION HAS AN EFFECT ON THE CRIME RATE.
21 THEREFORE, IF PRISONERS WERE TO GET A FEW MORE MONTHS' WORTH OF
22 CREDIT, THERE WOULD BE NO EFFECT ON THE CRIME RATE WHETHER THEY
23 STAYED IN PRISON A FEW MONTHS EARLIER OR LONGER.

24 THIRD, THE NUMBER OF PAROLEES. I THINK WE HAVE
25 PROVED WITHOUT CONTRADICTION THAT THE NUMBER OF PAROLEES IN THE

1 COMMUNITY IS NOT CORRELATED WITH THE CRIME RATE. IN FACT, IN
2 MANY COMMUNITIES SUCH AS FRESNO, FOR EXAMPLE, THE NUMBER OF
3 PAROLEES HAS INCREASED WHILE THE POLICE CHIEF IS BOASTING THAT
4 THE CRIME RATE HAS DROPPED TO ITS LOWEST LEVEL IN 40 SOME-ODD
5 YEARS.

6 AGAIN -- AND PART OF THE REASON FOR THIS IS THAT
7 PAROLEES MAKE UP A VERY, VERY SMALL FRACTION OF THE NUMBER OF
8 PEOPLE WHO ARE ARRESTED.

9 IN CALIFORNIA THERE ARE 1.5 MILLION ARRESTS AND OUT
10 OF THAT ONLY ABOUT 90,000, OR 6 PERCENT, ARE PAROLEES. AND
11 THOSE INCLUDE ARRESTS FOR PAROLE VIOLATIONS, WHICH ARE NOT
12 NECESSARILY CRIMES, AND FOR MISDEMEANORS.

13 SO WHEN ONE MEASURES THE IMPACT OF SOME MORE
14 PRISONERS ON A COMMUNITY, I BELIEVE, YOUR HONOR, IT'S
15 APPROPRIATE TO SAY THAT THE COUNTIES' AND INTERVENOR'S CONCERNS
16 ARE EXAGGERATED BECAUSE IT'S A FAIRLY SMALL NUMBER WE ARE
17 TALKING ABOUT.

18 AND I REALLY -- IF IT DID -- YOU KNOW, YOU MENTIONED
19 SEVERAL TIMES IN THE TRIAL ABOUT THE EFFECT OF THE ORDER AND
20 THE RESPONSIBILITY THAT YOU BEAR IN DECIDING WHAT THE ORDER IS
21 AND ISN'T.

22 I HAVE ALSO A RESPONSIBILITY AS AN OFFICER OF THE
23 COURT AND AS A CITIZEN OF CALIFORNIA IN MAKING A PROPOSAL. AND
24 I BELIEVE THE EVIDENCE SHOWS THAT I WOULDN'T BE UP HERE ARGUING
25 THAT IF WE WERE GOING TO -- IF WE ASKED FOR A RELEASE OF 52,000

1 PRISONERS OVER, YOU KNOW, A COURSE OF TWO YEARS AND IT WAS
2 GOING TO HAVE A PROFOUND EFFECT ON PUBLIC SAFETY, I'M NOT SURE
3 I WOULD BE HERE TODAY.

4 I THINK WHAT THE EVIDENCE SHOWS IS THAT THE RELEASE
5 OF PRISONERS WILL CHANGE THE TIME AND CIRCUMSTANCES OF THE
6 OFFENSE, BUT NOT THE NUMBER OF THE OFFENSES.

7 AND WHAT'S INSTRUCTIVE WHEN YOU READ THE LAW
8 ENFORCEMENT INTERVENOR'S FINDINGS, PROPOSED FINDINGS AND
9 CONCLUSIONS WHICH WERE FILED ON FRIDAY, IT'S VERY INSTRUCTIVE
10 BECAUSE THEY MAKE MUCH OF THE FACT THAT IF THESE PRISONERS WERE
11 RELEASED IN AN ACCELERATED WAY, QUOTE, EARLY, THEY WILL COMMIT
12 CRIMES. SO THERE IS NO DOUBT ABOUT THAT. WE AGREE WITH THAT.

13 BUT NOWHERE DO THEY CONTRADICT THE EVIDENCE THAT THE
14 TOTAL NUMBER OF CRIMES OVER TIME WILL NOT INCREASE OR THAT THE
15 CRIME RATE WILL NOT INCREASE.

16 AND, IN FACT, EVEN THEIR PROPOSED FINDINGS SUPPORT
17 THIS CONCLUSION, SINCE THEY SAY THAT THE OFFENDERS WILL RETURN
18 TO PRISON AT THE SAME EXACT RATE AS THEY DO NOW.

19 AND PERHAPS THE MOST -- THESE ARE ALL STATISTICS AND
20 THEY ARE SOMEWHAT DRY, BUT I THINK VERY MEANINGFUL. BUT IF
21 THERE WAS EVER ANY DOUBT ABOUT THESE STATISTICS, I THINK THE
22 MOST PERSUASIVE EVIDENCE ON THIS SUBJECT COMES FROM THE PEOPLE
23 WHO HAVE DONE IT BEFORE.

24 YOU HAVE HEARD FROM FOUR EXPERIENCED CORRECTIONAL
25 ADMINISTRATORS WHO DO OR HAVE DIRECTED FIVE DIFFERENT

1 CORRECTIONAL SYSTEMS. AND THEY TESTIFIED, WITHOUT DISPUTE,
2 THAT THE PRISONER POPULATIONS CAN BE REDUCED WITHOUT ANY
3 ADVERSE EFFECT ON PUBLIC SAFETY.

4 OF THESE, DR. BEARD, MR. LEHMAN AND SHERIFF
5 HENNESSEY'S TESTIMONY SUPPORT THE NOTION THAT POPULATIONS CAN
6 BE REDUCED WITHOUT SUCH AN EFFECT.

7 AND THERE IS NO EVIDENCE THAT THE EXPERIENCE IN
8 PENNSYLVANIA, WASHINGTON OR SAN FRANCISCO WOULD BE ANY
9 DIFFERENT IF THE COURT WERE TO MAKE THESE ORDERS.

10 IN ADDITION, DR. KRISSBERG'S TESTIMONY SOMEWHAT FLEW
11 UNDER THE RADAR IN THE PROPOSED FINDINGS AND CONCLUSIONS; NOT
12 OURS, BUT THE OTHER SIDE'S. AND HE STUDIED WHAT ACTUALLY
13 HAPPENED WHEN JURISDICTIONS ACCELERATED THE RELEASE OF
14 PRISONERS.

15 AND AS I MENTIONED BEFORE, THERE ARE 24 COUNTIES HE
16 STUDIED, NINE STATES, CANADA, PHILADELPHIA, AND THE CRIME RATE
17 DIDN'T INCREASE IN ONE OF THEM. NOW, I THINK THAT TELLS YOU A
18 LOT ABOUT THE IMPACT OF RELEASING PRISONERS.

19 DR. AUSTIN SUPPORTED THE RELEASE. HE HAS DONE THIS
20 BEFORE IN MANY OTHER JURISDICTIONS. HE LAID OUT A ROAD MAP FOR
21 HOW THE STATE COULD DO IT, IF IT SO CHOOSES. AND EACH ONE OF
22 THE MEASURES THAT HE USES ARE SIMILAR TO THOSE OF GOVERNOR AND
23 THE GOVERNOR'S OWN EXPERT PANEL.

24 NOW, THE LAW ENFORCEMENT INTERVENORS PARTICULARLY,
25 AND ALL OF THE DEFENDANTS AND DEFENDANT INTERVENORS TO A

1 CERTAIN EXTENT, MAINTAIN INCONSISTENT POSITIONS.

2 ON THE ONE HAND THEY SAY YOU SHOULDN'T RELEASE
3 PRISONERS BECAUSE THAT WOULD HAVE AN OVERWHELMINGLY BAD EFFECT
4 ON PUBLIC SAFETY. AND ON THE OTHER HAND, THEY ALL SAY THERE
5 ARE PROGRAMS THAT YOU CAN DO THAT CAN BE DONE SAFELY TO REDUCE
6 THE PRISON POPULATION.

7 AND THEY ARE LISTED IN, YOU KNOW, THINGS SUCH AS DRUG
8 COURT, SENATE BILL 618 IN SAN DIEGO, INTENSIVE PAROLE AND
9 PROBATION SUPERVISION, MENTAL HEALTH SERVICES AND THE LIKE.

10 NOW, THOSE ARE UNDER THE DEFINITION OF A PRISONER
11 RELEASE ORDER. UNDER THE PLRA, THOSE WOULD BE PRISONER RELEASE
12 ORDERS IF YOU ORDERED THAT.

13 AND I BELIEVE THEY ALSO STAND FOR THE PROPOSITION
14 THAT YOU CAN IMPLEMENT PROGRAMS FOR PRISONERS THAT WOULD BOTH
15 REDUCE THE CROWDING AND NOT HAVE ANY -- WELL, NOT ONLY WILL IT
16 NOT HAVE IMPACT ON PUBLIC SAFETY, BUT I THINK THE EVIDENCE IS
17 UNCONTRADICTED THAT IT WILL IMPROVE PUBLIC SAFETY.

18 **JUDGE HENDERSON:** I WAS BOTHERED WITH THIS IN THE
19 TRIAL AND I CONTINUE TO BE BOTHERED.

20 THE GOVERNOR SAID TWICE, TO MY KNOWLEDGE, LAST WEEK,
21 YOU AIN'T GOING TO GET ANY MONEY FROM THE GOVERNOR, THE
22 CONTROLLER, OR THE LEGISLATURE.

23 SO WHAT DO WE DO WITH THESE WONDERFUL PROGRAMS IF
24 THERE IS NO MONEY FOR IT? AND CAN WE ORDER MONEY FOR IT?

25 THIS IS ALL ABOUT MONEY IN MY VIEW. HOW DO WE DEAL

1 WITH THAT?

2 **MR. SPECTER:** WELL, IF I UNDERSTAND YOUR QUESTION
3 CORRECTLY, YOU ARE REFERRING TO THE GOVERNOR'S STATEMENTS THAT
4 HE WASN'T GOING TO SPEND MONEY FOR THE 10,000-BED PROJECT. IS
5 THAT WHAT YOU ARE --

6 **JUDGE HENDERSON:** I READ IT BEYOND THAT. BUT, YEAH,
7 NOT GOING TO SPEND MONEY FOR...

8 **MR. SPECTER:** FOR ALL THESE OTHER. WELL, FIRST OF
9 ALL --

10 **JUDGE REINHARDT:** ARE YOU FAMILIAR WITH THE
11 GOVERNOR'S STATEMENTS?

12 **MR. SPECTER:** PARDON ME?

13 **JUDGE REINHARDT:** ARE YOU FAMILIAR WITH THE
14 GOVERNOR'S STATEMENTS THAT JUDGE HENDERSON IS REFERRING TO?

15 **MR. SPECTER:** GENERALLY, YES.

16 **JUDGE REINHARDT:** AND DID YOU READ THEM AS JUDGE
17 HENDERSON? I'M ASKING A NAIVE QUESTION, UNINFORMED QUESTION.

18 JUDGE HENDERSON READS THOSE STATEMENTS AS APPLYING TO
19 ANY FUNDING UNDER ANY CIRCUMSTANCES FOR THESE TYPES OF ACTIONS,
20 AND TO SOME EXTENT THAT COULD BE CORRECTED WITH THE STATEMENT
21 THAT WE COULD REDUCE THE AMOUNT OF THE BUDGET THAT COULD BE
22 SPENT ON PRISON REFORM.

23 OR DO YOU READ THE STATEMENTS THAT THE GOVERNMENT
24 MADE AS REFERRING ONLY TO GIVING THE MONEY TO THE RECEIVER FOR
25 THOSE PROGRAMS?

1 **MR. SPECTER:** MY RECOLLECTION --

2 **JUDGE REINHARDT:** I REALLY SHOULDN'T BE ASKING YOU.

3 I SHOULD BE ASKING THE STATE, WHO REALLY REPRESENTS THE
4 GOVERNOR --

5 **JUDGE KARLTON:** GOD KNOWS THEY DO.

6 **JUDGE REINHARDT:** -- WHAT THE GOVERNOR MEANS BY THOSE
7 STATEMENTS.

8 **MR. SPECTER:** YES, YOUR HONOR. BUT SINCE I'M HERE, I
9 WILL ANSWER.

10 **JUDGE REINHARDT:** OF COURSE.

11 **MR. SPECTER:** I READ THE GOVERNOR'S REMARKS IN A MORE
12 NARROW SENSE, THAT HE WASN'T GOING TO GIVE ANY MONEY TO
13 MR. KELSO FOR HIS PROJECT. I DON'T KNOW WHETHER THAT'S
14 CORRECT. I WOULD HAVE TO REREAD THEM, BUT THAT'S MY
15 RECOLLECTION.

16 THE OTHER IMPORTANT POINT ABOUT THIS --

17 **JUDGE REINHARDT:** CAN I JUST SUGGEST THAT WHEN THE
18 STATE GIVES ITS PRESENTATION, SOMEBODY TRY TO TELL US WHETHER
19 THE GOVERNOR'S POSITION RELATES JUST TO THE RECEIVER OR TO
20 EXPENDITURE OF FUNDS.

21 **JUDGE KARLTON:** I HAD ANOTHER QUESTION ALONG THE LINE
22 THAT'S DEALING WITH THAT.

23 THE STATE HAS THIS INCREDIBLY SERIOUS FINANCIAL
24 PROBLEM. ALL THE STATES DO, BUT CALIFORNIA IS WHAT I'M TALKING
25 ABOUT. APPARENTLY, TEXAS DOESN'T, WHICH IS VERY STRANGE.

1 BUT ANYHOW, ONE THING THAT THE STATE MIGHT SAY -- I
2 DON'T KNOW WHO SPEAKS FOR THE STATE, BUT SOMEBODY SOME DAY WHO
3 ACTUALLY SPEAKS FOR THE STATE COULD SAY, LOOK, WE ARE BROKE.
4 YES, WE WILL SAVE A LOT OF MONEY BY RELEASING PRISONERS. BUT
5 YOU KNOW WHAT? THAT'S MONEY THAT WE NEED TO DEAL WITH THIS
6 INCREDIBLE DEFICIT THAT WE HAVE.

7 IS THAT AN APPROPRIATE CONCERN OF THIS COURT OR,
8 AGAIN, IS IT -- YOU KNOW, YOU CAN LOCK UP THE WHOLE POPULATION
9 IF YOU WANT TO AS LONG AS YOU CAN PAY FOR IT AND IF YOU CAN'T
10 PAY FOR IT, YOU'VE GOT TO LET THEM GO.

11 **MR. SPECTER:** WELL, IT DEPENDS WHAT YOU MEAN BY
12 "CONCERN." OF COURSE, IT'S AN APPROPRIATE MATTER THAT YOU
13 SHOULD THINK ABOUT AND BE CONCERNED ABOUT. ANY RESPONSIBLE
14 PERSON WOULD.

15 WHETHER IT'S A DECISION THAT YOU CAN MAKE, I THINK
16 ESSENTIALLY HOW TO ALLOCATE MONEY IN THE STATE IS A POLITICAL
17 DECISION.

18 **JUDGE REINHARDT:** THAT'S THE QUESTION YOU'RE GOING TO
19 RESERVE FOR LATER.

20 **MR. SPECTER:** YOU GOT ME.

21 BUT I REALLY DO THINK THAT, YOU KNOW, AS THE EVIDENCE
22 SHOWS, THAT IF YOU REDUCE THE POPULATION BY 50,000, YOU WOULD
23 SAVE APPROXIMATELY A BILLION DOLLARS A YEAR.

24 NOW, ONE COULD ALLOCATE THIS MONEY TO THE COUNTIES,
25 AS I WOULD RECOMMEND IF I WERE THE DECIDER ON THESE ISSUES, OR

1 THEY COULD SAY, NO, PUBLIC SAFETY ISN'T AS IMPORTANT AS SOME
2 OTHER PROGRAM, WHATEVER IT MAY BE. THERE ARE LOTS OF THEM IN
3 CALIFORNIA.

4 AND SO I THINK, IN ESSENCE, THE SUPREME COURT HAS
5 DIRECTED THAT THE STATE GETS TO MAKE THAT CHOICE, BUT IT IS A
6 CHOICE THAT THE STATE MAKES. THE STATE DECIDES THE LEVEL OF
7 PUBLIC SAFETY THAT IT WANTS FOR ITS CITIZENS AND IF IT WANTS TO
8 SPEND 80 PERCENT OF ITS REVENUE ON PUBLIC SAFETY, THEN THAT'S
9 WHAT IT DOES. IF IT WANTS TO SPEND 20 PERCENT --

10 **JUDGE REINHARDT:** WE ARE BACK TO WHERE WE STARTED.
11 BUT THEN LET'S ASSUME WE CONCLUDE IF THEY DON'T SPEND MONEY ON
12 THEM AND JUST RELEASE THEM, THEN THAT IS A THREAT TO PUBLIC
13 SAFETY. BUT IF THEY DO IT PROPERLY, IT'S NOT.

14 **MR. SPECTER:** RIGHT.

15 **JUDGE REINHARDT:** SO THAT'S WHY YOU WANT TO RESERVE
16 YOUR ANSWER.

17 **MR. SPECTER:** WELL, I AM STILL GOING TO RESERVE IT
18 BECAUSE I BELIEVE THAT THE POLITICAL FORCES WILL NOT ALLOW THE
19 GOVERNOR TO RELEASE 50,000 AXE MURDERERS.

20 **JUDGE REINHARDT:** NO. HE WILL TELL THEM TO KEEP THEM
21 LOCKED UP.

22 **MR. SPECTER:** RIGHT. AND SO HE WILL HAVE TO RELEASE
23 SOME.

24 **JUDGE REINHARDT:** WELL, THEN MAYBE WE CAN'T RELEASE
25 SOME.

1 **MR. SPECTER:** HUH?

2 **JUDGE REINHARDT:** MAYBE WE CAN'T. MAYBE THEN IT'S
3 TOO GREAT A THREAT TO THE PUBLIC SAFETY.

4 **MR. SPECTER:** NO, THAT IS NOT TRUE. THE EVIDENCE
5 SHOWS THAT YOU CAN RELEASE --

6 **JUDGE REINHARDT:** NO. I SAID DESPITE YOUR ARGUMENTS
7 ABOUT THE EVIDENCE. IF THE COURT IS NOT PERSUADED THAT SOMEHOW
8 THE MORE PRISONERS YOU RELEASE, THE GREATER THREAT TO THE
9 PUBLIC SAFETY, IF WE WERE NOT PERSUADED BY THAT ARGUMENT, THEN,
10 ON THE OTHER HAND, WE MIGHT SAY, WELL, WE CAN'T RELEASE ANY
11 BECAUSE IT'S TOO GREAT A THREAT TO THE PUBLIC SAFETY.

12 **JUDGE KARLTON:** DR. AUSTIN SAID, IF YOU RECALL, AT
13 CROSS-EXAMINATION, DOCTOR, YOU'VE GOT THIS PLAN WHICH IS
14 REALITY TERRIFIC AND WILL TAKE CARE OF ALL THESE PROBLEMS, BUT
15 IF THE PLAN WERE NOT EXECUTED, YOU WOULD OPPOSE THE PROGRAM,
16 THE RELEASE OF PRISONERS, BECAUSE IT WOULD BE CHAOTIC.

17 AND I DON'T KNOW THAT HE AGREED WITH THE FIRST
18 STATEMENT, BUT HE DID SAY IT WOULD BE CHAOTIC.

19 **MR. SPECTER:** I THINK THAT'S WHAT HE MEANT BY THAT.
20 WHAT I'M TAKING YOUR QUESTION TO MEAN IS THAT HE WOULDN'T -- I
21 RECALL THAT DISCUSSION AND I BELIEVE HE WAS REFERRING TO THE
22 FACT THAT IF YOU OPEN THE DOOR TO LET 52,000 PEOPLE OUT, LIKE
23 SOME OF THE PEOPLE HAVE CHARACTERIZED WHAT WE ARE TRYING TO DO,
24 WHICH WE ARE NOT, THEN IT WOULD BE A CHAOTIC SITUATION.

25 BUT IF YOU DO IT IN A, QUOTE, SCIENTIFIC WAY, I THINK

1 IT WOULDN'T BE CHAOTIC AND IT WOULD BE SAFE.

2 BUT, YOU KNOW, THE EVIDENCE, JUDGE, TO GET BACK TO
3 YOUR EARLIER POINT -- I'M SORRY TO KEEP GOING BACK TO THE
4 EVIDENCE, BUT THE EVIDENCE IS THAT WITHOUT A DIME MORE TO THE
5 LOCAL COMMUNITIES, THIS WOULD NOT HAVE AN ADVERSE IMPACT ON
6 PUBLIC SAFETY. WITHOUT A DIME. SO I THINK --

7 JUDGE KARLTON: YOUR ARGUMENT IS WE OUGHT TO JUST
8 OPEN THE PRISON AND LET EVERYBODY OUT BECAUSE IT'S NOT GOING TO
9 AFFECT PUBLIC SAFETY AT ALL.

10 MR. SPECTER: NO. MY ARGUMENT IS THAT IF YOU DO IT
11 IN THE METHODS THAT WE'VE DESCRIBED AND PUT FORWARD, IT
12 WOULDN'T HAVE ANY IMPACT ON PUBLIC SAFETY.

13 JUDGE KARLTON: THAT'S THE PROBLEM.

14 MR. SPECTER: IT'S A CIRCLE. I UNDERSTAND.

15 JUDGE REINHARDT: SUPPOSE THE STATE DOESN'T WANT TO
16 DO IT.

17 MR. SPECTER: PARDON ME?

18 JUDGE REINHARDT: WHAT IF THE STATE DOESN'T WANT TO
19 DO IT THE WAY YOU DESCRIBED, THEN IT IS A THREAT TO PUBLIC
20 SAFETY.

21 MR. SPECTER: THEN WE'LL HAVE TO DEAL WITH THAT IN
22 THE EVIDENTIARY HEARING ON THE INJUNCTION. I CAN'T SAY
23 ANYMORE. I DON'T HAVE A BETTER ANSWER FOR YOU ON THAT.

24 JUDGE HENDERSON: LET ME ASK YOU ABOUT THE EVIDENCE.
25 YOU MENTIONED THIS SEVERAL TIMES RECENTLY HERE, 50,000 AND

1 53,000.

2 WHAT EVIDENCE IN THE RECORD ESTABLISHES THAT
3 130 PERCENT OF THE TIME THAT THAT IS THE MAGIC NUMBER AT THOSE
4 CONSTITUTIONAL LEVELS OF MEDICAL AND MENTAL HEALTH THAT CAN BE
5 PROVIDED? WHAT IN THE RECORD GIVES THIS NUMBER?

6 MR. SPECTER: SURE. WELL, WE TOOK THAT NUMBER FROM
7 THE DEFENDANTS' OWN DOCUMENTS AND THEIR OWN DEPOSITION
8 TESTIMONY. THEY HAD A FACILITIES MASTER PLAN, WHICH IS A
9 DOCUMENT WHICH THEY USED TO PLAN THEIR CONSTRUCTION OF
10 FACILITIES OVER A FIVE-YEAR PERIOD. THEY USED THE 130 PERCENT
11 FIGURE IN THAT DOCUMENT.

12 MISS HYSEN, WHO IS IN CHARGE OF THE CONSTRUCTION,
13 TESTIFIED AT DEPOSITION THAT SHE BELIEVED 130 PERCENT WAS
14 APPROPRIATE. THE STRIKE TEAM WHICH THE STATE FORMED, WHICH
15 MR. LEHMAN WHO TESTIFIED HERE WAS PART OF, ENDORSED THE 130
16 PERCENT NUMBER.

17 AND EVERY EXPERT WHO TESTIFIED, DR. BEARD,
18 MISS WOODFORD, MR. LEHMAN, DR. STEWART, DR. HANEY, THEY ALL
19 BELIEVED THAT 130 PERCENT WOULD ALLOW THE STATE SUFFICIENT ROOM
20 TO RUN THEIR MEDICAL SYSTEM --

21 JUDGE KARLTON: WITH ALL DUE RESPECT, IT HAS BEEN
22 TROUBLING FROM THE DAY THIS CASE ENDED.

23 WHAT I REALLY UNDERSTAND IS YOU NEED 96 PERCENT OF --
24 OR I THINK THAT WAS THE NUMBER -- OF DESIGN CAPACITY TO BE ABLE
25 TO PUT PEOPLE IN APPROPRIATE CLASSIFICATION, MUCH LESS GIVE

1 THEM TREATMENT.

2 MY BEST UNDERSTANDING OF WHAT THE TESTIMONY IS, IS
3 THE 130 PERCENT IS A KIND OF RECOGNITION OF THE POLITICAL
4 REALITY. AND THAT IS VERY TROUBLING.

5 AGAIN, IS THAT SOMETHING THAT WE OUGHT TO CONSIDER,
6 CAN CONSIDER, SHOULD CONSIDER?

7 MR. SPECTER: WELL, YOUR HONOR, I THINK IT'S
8 IMPORTANT -- IT'S SOMETHING -- YOU CAN CONSIDER THE TESTIMONY
9 OF OTHER FORMER HEADS OF CORRECTIONS ABOUT WHAT THEY BELIEVE IS
10 APPROPRIATE. I THINK THAT'S SOMETHING THAT'S VERY PERSUASIVE
11 AND CREDIBLE.

12 SECOND OF ALL, IF YOU READ OUR PROPOSAL CAREFULLY,
13 AND YOU MIGHT HAVE MISSED IT IN ALL THE WORDS, WE ARE URGING
14 130 PERCENT FOR, YOU KNOW, SYSTEM-WIDE, BUT THAT THE
15 SPECIALIZED PROGRAMS HAVE TO BE BELOW THEIR PERCENTAGE.

16 JUDGE KARLTON: WHAT THAT REALLY MEANS -- I WANT YOU
17 TO STOP AND THINK ABOUT WHAT WE ARE ORDERING IF WE WERE TO DO
18 WHAT YOU SUGGESTED.

19 THAT MEANS THERE WOULD BE MEDICAL FACILITIES AND
20 MENTAL HEALTH FACILITIES WHICH WOULD BE AT 95 PERCENT OR LESS
21 AND THERE WOULD BE OTHER PRISONS WHICH WOULD BE UP TO
22 200 PERCENT AGAIN, AND WE WOULD HAVE BAD BEDS AGAIN.

23 THE ONLY THING IS WE WOULD BE PROTECTING THE CLASS
24 MEMBERS. AND MAYBE THAT'S THE APPROPRIATE THING TO DO. I
25 MEAN, THAT'S WHAT THIS CASE IS ABOUT, BUT IT WOULD BE -- IT

1 WOULD BE DIFFICULT FOR ME TO SAY YES, AND THE HELL WITH
2 EVERYBODY ELSE.

3 MR. SPECTER: WELL, AGAIN, I THINK THAT'S -- THAT'S A
4 VERY IMPORTANT CONCERN AND I THINK THAT IS A CONCERN THAT WOULD
5 NEED TO BE ADDRESSED IN THE STATE'S PLAN. BECAUSE IF -- YOU'RE
6 RIGHT. IF THEY WANTED TO OVERFLOW -- OVERCROWD ONE INSTITUTION
7 IN ORDER TO UNDERCROWD ANOTHER, I THINK THAT WOULD BE A
8 PROBLEM.

9 AND I WOULD HOPE THAT AFTER THIS TESTIMONY AND IF WE
10 WERE ABLE TO GET THE KIND OF ORDER FROM YOU WHICH WE ARE
11 SEEKING, THAT THAT WOULDN'T HAPPEN; BUT IF THEY DO, WE WILL
12 ADDRESS IT.

13 JUDGE REINHARDT: LET ME ASK YOU THE QUESTION. WHAT
14 IS YOUR CO-COUNSEL GOING TO ARGUE? THERE ARE AREAS --

15 JUDGE KARLTON: HE'S GOING TO DO THE MENTAL HEALTH.

16 JUDGE REINHARDT: WELL, THE PROBLEM WE ARE TALKING
17 ABOUT IN GENERAL SO FAR.

18 BUT DOES HE HAVE ANY PARTICULAR SUBJECTS, OTHER THAN
19 THE FACT THAT IT'S MENTAL HEALTH INSTEAD OF ORDINARY HEALTH?

20 JUDGE KARLTON: PHYSICAL HEALTH.

21 MR. SPECTER: NO, NOT -- I CAN PROVIDE YOU SOME --

22 JUDGE REINHARDT: LET HIM JUST --

23 JUDGE KARLTON: LET MR. BIEN --

24 JUDGE REINHARDT: MAYBE WE WILL TAKE A MORNING RECESS
25 BEFORE THAT. I WANT YOU TO BE PREPARED TO ANSWER THE QUESTION

1 YOU ARE RAISING WITH COUNSEL.

2 (WHEREUPON THERE WAS A RECESS IN THE PROCEEDINGS
3 FROM 11:12 UNTIL 11:33 A.M.)

4 **JUDGE KARLTON:** MR. BIEN, I WANT YOU TO KNOW ALL
5 THREE JUDGES ARE VERY CONCERNED ABOUT THIS 130, 96, WHERE ALL
6 THOSE NUMBERS COME FROM, WHETHER THEY MAKE ANY DIFFERENCE, WHAT
7 THEY REALLY MEAN. I WOULD LIKE YOU TO HELP US, IF YOU WILL.

8 **CLOSING ARGUMENT**

9 **MR. BIEN:** WE OFFERED TESTIMONY, YOUR HONOR, THAT --
10 AND VERY POWERFUL TESTIMONY FROM THE INTERVENORS IN RUNNING
11 THEIR OWN CORRECTIONAL FACILITIES AS TO HOW DIFFICULT IT WAS
12 FOR THEM TO MANAGE A CORRECTIONAL FACILITY APPROPRIATELY
13 WITHOUT EMPTY SPACE. WE HEARD THAT 90 PERCENT IS FULL,
14 95 PERCENT IS FULL OR 85 PERCENT IS FULL.

15 AND THE REASON IS, TO MANAGE A CORRECTIONAL FACILITY
16 APPROPRIATELY ONE REQUIRES FLEXIBILITY IN CLASSIFICATION TO
17 MOVE PEOPLE, THE APPROPRIATE SECURITY LEVEL, APPROPRIATE
18 FACILITY FOR HEALTHCARE, MENTAL HEALTH CARE.

19 IN LOOKING AT HOW CALIFORNIA HAS BEEN MANAGING ITS
20 SYSTEM AND AT HOW OTHER STATES HAVE MANAGED THEIR SYSTEMS, THE
21 EVIDENCE SHOWS THAT ONE CAN MANAGE CALIFORNIA'S SYSTEM AT A
22 LEVEL ABOVE 100 PERCENT OF DESIGN CAPACITY DESPITE THIS,
23 BECAUSE DESIGN CAPACITY, AS WE UNDERSTAND, IS A SINGLE CELLING
24 CAPACITY. AND THERE IS SOME DOUBLE CELLING THAT HAS BEEN
25 DESIGNED IN. THERE'S SOME DOUBLE CELLING THAT IS TOLERABLE.

1 WE ARE AT SUCH AN EXTREME NOW, YOUR HONOR, BEYOND ALL
2 -- BEYOND THE HISTORY OF CORRECTIONAL OPERATIONS. WE PUT ON
3 TESTIMONY --

4 JUDGE KARLTON: WE KNOW THAT. WE KNOW THAT. THE
5 PROBLEM IS YOU WANT -- LET'S PUT THE -- I'M SORRY. I DON'T
6 MEAN TO BE -- WELL, MAYBE I AM. IT'S A VERY SERIOUS PROBLEM.

7 OUR CONCERN IS PROVIDING ADEQUATE MEDICAL AND MENTAL
8 HEALTH. MISTER -- I'M DOING WELL. THAT OTHER FELLOW.

9 MR. SPECTER: SPECTER.

10 MR. BIEN: THAT GUY (INDICATING).

11 (LAUGHTER.)

12 JUDGE KARLTON: YEAH, THAT GUY. ACKNOWLEDGED THAT
13 YOUR PROPOSAL RECOGNIZES THE NEED FOR MORE LIMITED SPACE FOR
14 MENTAL HEALTH AND PHYSICAL HEALTH FACILITIES, ALTHOUGH WE
15 HAVEN'T BEEN TOLD EXACTLY WHAT THAT MEANS.

16 I DO NOT KNOW, CONTRARY TO WHAT COUNSEL HAS SAID,
17 THAT THE 130 IS SUPPORTABLE IN ANY FASHION OTHER THAN SAYING
18 THE BEST WE CAN GET. BUT IT IS CLEAR THAT IF IT'S 130 OVERALL
19 AND WE'RE TRYING TO ENSURE ADEQUATE MEDICAL AND MENTAL HEALTH,
20 IT MEANS THEY GET SOME OTHER FIGURE -- 95, 96 PERCENT,
21 WHATEVER -- AND WE ARE BACK WITH 200 PERCENT FOR EVERYBODY
22 ELSE.

23 MR. BIEN: WELL, LET ME GIVE YOU SOME NUMBERS THAT
24 WILL REASSURE YOU ABOUT THAT.

25 OUR REFERENCE TO SPECIALIZED MEDICAL MENTAL HEALTH

1 PROGRAMS, AT THE MOMENT -- UNFORTUNATELY, FOR THE PLATA
2 CLASS -- THERE ARE NO SPECIALIZED BEDS FOR MEDICAL CARE,
3 BESIDES THE CTC'S, THE CORRECTIONAL TREATMENT CENTERS, AND
4 THERE ARE ONLY A COUPLE HUNDRED OF THOSE BEDS.

5 SO WE ARE TALKING ABOUT -- THE ONLY SPECIALIZED BEDS
6 THAT NOW EXIST ARE THE MENTAL HEALTH SPECIALIZED BEDS. THERE
7 ARE CURRENTLY --

8 JUDGE KARLTON: OF WHICH THERE ARE PRESENTLY
9 SOMETHING LIKE 400 OR 500 SHORT.

10 MR. BIEN: THERE'S 4,000 EOP BEDS RIGHT NOW. THERE
11 NEEDS TO BE 5,000. AND THERE ARE, YOU KNOW, SEVERAL HUNDRED
12 MENTAL HEALTH CRISIS BEDS THAT ARE PART OF THOSE CTC'S. AND
13 THEN THERE ARE THE DMH BEDS, AGAIN, ONLY IN THE HUNDREDS.

14 SO EVEN IF THOSE BEDS WERE KEPT AT 95 PERCENT --
15 AND, BY THE WAY, RIGHT NOW THEY ARE ALREADY, MANY OF THEM ARE
16 KEPT --

17 JUDGE KARLTON: OVER?

18 MR. BIEN: EXCEPT FOR THE EOP. EOPS ARE OVERCROWDED.
19 THEY ARE SUPPOSED TO BE KEPT AT 150 PERCENT NOW UNDER THE
20 CURRENT STANDARDS.

21 SO, IN OTHER WORDS, WE ARE NOT TALKING ABOUT A
22 TREMENDOUS NUMBER OF BEDS THAT WOULD BE AT THE 95 PERCENT IN
23 SPECIALIZED MEDICAL PROGRAMS.

24 ASSUMING FOR A MOMENT THAT THE SURPRISE THAT HAPPENED
25 IN THE MIDDLE OF OUR TRIAL DIDN'T HAPPEN AND THAT WE WERE GOING

1 TO BE BUILDING 10,000 ABSOLUTELY NECESSARY MEDICAL MENTAL
2 HEALTH BEDS, THOSE WERE ALSO PLANNED NOT TO BE OVERCROWDED.
3 AND I THINK WE WOULD AGREE AND YOU WOULD AGREE, RECEIVER AND
4 MEDICAL PEOPLE AND THE STATE OFFICIALS THAT WORKED ON THOSE
5 BEDS ALSO WOULD AGREE THAT THOSE SHOULD NOT BE OVERCROWDED.

6 BUT WE ARE NOT CONTEMPLATING -- AND WE THINK, WE
7 AGREE, IT WOULD BE INAPPROPRIATE TO BE OPERATING ANY FACILITIES
8 AT 200 PERCENT, BUT WE THINK AT 130 PERCENT THERE WOULD STILL
9 BE -- WHILE THERE MIGHT BE SOME FACILITIES THAT COULD OPERATE A
10 LITTLE HIGHER THAN THAT, IT WOULD STILL BE AN OPERABLE
11 CAPACITY.

12 **JUDGE REINHARDT:** WELL, THERE ARE TWO QUESTIONS HERE
13 I THINK.

14 ONE, JUDGE KARLTON ASKED A QUESTION AS TO: IS THERE
15 EVIDENCE TO SUPPORT ANY PARTICULAR FIGURE?

16 AND, SECONDLY, THE QUESTION IS: SHOULD THERE BE A
17 LIMIT, FOR EXAMPLE? JUST SUPPOSE WE SIT AT 130 PERCENT. ARE
18 YOU SUGGESTING THE STATE COULD PUT 200 PERCENT AT SOME PLACES
19 AND GET -- END UP WITH AN AVERAGE OF 130? SHOULD THERE THEN BE
20 SOME -- ANOTHER FIGURE THAT SAYS NO PARTICULAR INSTITUTION OR
21 FACILITY MAY EXCEED "X" PERCENT? IS THAT PART OF YOUR
22 PROPOSAL?

23 **MR. BIEN:** I THINK THAT'S RIGHT.

24 WELL, FIRST, I THINK THERE IS EVIDENCE AS TO THE
25 130 PERCENT. MR. SPECTER MENTIONED IT.

1 I WOULD ALSO POINT OUT THAT THE DUKMAJIAN COMMISSION,
2 THE INDEPENDENT REVIEW PANEL, DISCUSSED THIS CAPACITY. THEY
3 CAME UP WITH 145 PERCENT --

4 JUDGE KARLTON: BUT, MR. BIEN, WITH ALL DUE RESPECT
5 TO THE DUKMAJIAN COMMISSION, WHICH I THINK DESERVES A LOT OF
6 RESPECT, AS BEST I CAN TELL, IT'S NOT THAT ANYBODY IS SAYING
7 THAT WORKS WELL. IT'S THAT PEOPLE ARE SAYING, WE CAN DO THAT.
8 IT'S A POLITICAL JUDGMENT, NOT A -- NOT A CUSTODIAL JUDGMENT,
9 NOT A MEDICAL JUDGMENT.

10 AM I WRONG ABOUT IT? I WILL BE HAPPY TO BE TOLD I'M
11 WRONG ABOUT IT.

12 MR. BIEN: I THINK THAT EVERYONE OPERATING IN THE
13 PRISON SYSTEM IS UNDER -- ESPECIALLY IN CALIFORNIA FOR THE LAST
14 10, 20 YEARS HAS BEEN OPERATING UNDER TREMENDOUS POLITICAL AND
15 ECONOMIC PRESSURE TO OVERCROWD THE PRISONS AND THEY HAVE MADE
16 AND BEEN PUT IN -- MADE HORRIFIC, TERRIBLE DECISIONS ABOUT
17 OVERCROWDING.

18 AS THE RECEIVER IN HIS REPORT TO JUDGE HENDERSON
19 POINTED OUT, THEY JUST CHANGED THE DEFINITION AGAIN AND AGAIN
20 AS TO WHAT WAS THE MAXIMUM CAPACITY, WHAT WAS THE SAFE
21 CAPACITY, WENT UP AND UP AND UP AND WITHOUT REGARD FOR --
22 CERTAINLY, FOR HEALTHCARE, MENTAL HEALTHCARE, OR THE SAFETY OF
23 THEIR OWN CORRECTIONAL OFFICERS OR STAFF OR PRISONERS.

24 YES, THEY ARE UNDER TREMENDOUS PRESSURE. YOU KNOW, I
25 DON'T THINK THAT ANYONE CAN GUARANTEE THAT 130 PERCENT, BINGO,

1 IS GOING TO BE PERFECT MENTAL HEALTHCARE, JUST LIKE WE ARE NOT
2 ARGUING THAT A POPULATION REDUCTION IN AND OF ITSELF IS GOING
3 TO SOLVE THE PROBLEMS. THIS IS A COMPLEX SYSTEM --

4 **JUDGE REINHARDT:** WELL, LET ME ASK YOU A SIMPLE
5 QUESTION. DID YOUR EXPERTS OR ANY OF THEM TESTIFY THAT "X"
6 PERCENTAGE IS THE SAFE PERCENTAGE OR A MINIMUM SAFE PERCENTAGE
7 OR, AS JUDGE KARLTON IS SUGGESTING, THEY TESTIFIED ESSENTIALLY
8 THIS IS THE PRACTICAL LEVEL YOU CAN EXPECT TO GET IN A
9 POLITICAL SYSTEM?

10 WAS THERE ANY TESTIMONY BY EXPERTS THAT THIS IS, IN
11 FACT -- I MEAN, NOBODY KNOWS ANYTHING, OF COURSE, BUT DID ANY
12 OF THE EXPERTS SAY, "IN MY OPINION THIS IS A REASONABLY SAFE
13 PERCENTAGE."

14 **MR. BIEN:** I THINK THAT MANY OF THE EXPERTS, BOTH THE
15 CORRECTIONAL EXPERTS AND THE OTHER MENTAL HEALTH EXPERTS, DID
16 CONSIDER THESE ISSUES AND DID OFFER OPINIONS ON THE SUBJECT.
17 AND WE'VE SUMMARIZED IT IN OUR FINDINGS IN A SECTION ABOUT
18 130 PERCENT.

19 I HAVE TO SAY THAT YOU ARE TALKING ABOUT A PROCESS.
20 WE HAVE 33 DIFFERENT INSTITUTIONS. WE HAVE INSTITUTIONS BUILT
21 IN THE 19TH CENTURY. WE HAVE INSTITUTIONS BUILT IN THE LAST 10
22 YEARS. THERE ARE DIFFERENT UNITS WITH DIFFERENT MISSIONS.
23 JUST LIKE WE ARE TALKING ABOUT MEDICAL AND MENTAL HEALTH UNITS,
24 THERE'S ALSO CAMPS AND THERE'S ALSO LOW SECURITY AND HIGH
25 SECURITY.

1 THE ACTUAL NUMBER THAT WE HAVE GIVEN AS A TARGET FOR
2 THE WHOLE SYSTEM IS THE BEST JUDGMENT OF OUR EXPERTS, WHO ARE
3 CORRECTIONAL EXPERTS FROM AROUND THE COUNTRY, AS TO A NUMBER BY
4 WHICH THEY THINK THE KIND OF MEDICAL AND MENTAL HEALTH
5 PROGRAMMING IS POSSIBLE.

6 WOULD IT BE BETTER AT A LOWER NUMBER? YES. THERE IS
7 NO QUESTION IT WOULD BE BETTER AT A LOWER NUMBER, BUT WE ARE
8 NOT ASKING -- WE THINK THAT THE PRESSURE OF THE REALITIES OF
9 THE SYSTEM HAVE TO BE TAKEN INTO ACCOUNT HERE.

10 I MEAN, I CAN'T SAY THAT -- THESE ARE -- THE MEN AND
11 WOMEN WHO TESTIFIED WHO RAN SYSTEMS ALSO WERE REPORTING TO
12 GOVERNORS AND STATE LEGISLATURES. I MEAN, THERE IS NO
13 SEPARATION FROM THE POLITICAL PRESSURE HERE.

14 **JUDGE KARLTON:** YOU KNOW, ONE OF THE SCARY THINGS
15 ABOUT WHAT I'M HEARING YOU SAY IS IT MAY BE THAT YOU ARE
16 SUGGESTING THAT THIS THREE-JUDGE COURT THAT HAS A VERY SPECIFIC
17 AND LIMITED FUNCTION IS GOING TO GO ON FOREVER, LIKE JUDGE
18 HENDERSON AND MYSELF. WELL, WE WILL TRY 130 PERCENT. IF THAT
19 DOESN'T WORK OUT, WE'LL COME BACK TO THE COURT AND SAY, HOW
20 ABOUT 120 PERCENT? AND IF THAT DOESN'T WORK, WE WILL TRY 119.

21 I MEAN, THAT'S -- IF THERE IS ONE THING THAT THE PLRA
22 DOESN'T CONTEMPLATE, I THINK, IT'S SOME CONTINUING --

23 **JUDGE REINHARDT:** I CAN ASSURE YOU, THIS THREE-JUDGE
24 COURT IS NOT GOING TO GO ON THAT WAY. JUDGE HENDERSON AND
25 JUDGE KARLTON CAN SPEND THE REST OF THEIR LIVES WITH THIS

1 PROBLEM, BUT...

2 JUDGE HENDERSON: NOT WITHOUT YOU.

3 JUDGE REINHARDT: I THINK THIS IS A VERY IMPERFECT
4 SCIENCE AND THESE ARE ESTIMATES, AND I'M WILLING TO ACCEPT
5 ESTIMATES AND NOT BE ASSURED BEYOND A REASONABLE DOUBT THAT
6 IT'S REALLY GOING TO WORK.

7 WE HAVE HAD A LOT OF EXPERTS WHO HAVE GIVEN US THEIR
8 VIEWS. I THINK JUDGE KARLTON IS RIGHT, THAT THEY ARE
9 INFLUENCED TO SOME EXTENT BY LIVING IN A POLITICAL WORLD. OF
10 COURSE, WE ARE ABOVE POLITICS.

11 JUDGE KARLTON: OH, YES.

12 JUDGE REINHARDT: WE WON'T BE INFLUENCED BY THAT AND
13 WE'LL DO THE BEST WE CAN. AND IF IT DOESN'T WORK OUT, THERE
14 WILL BE ANOTHER CASE SOME DAY.

15 MR. BIEN: AND I THINK THAT IN DEFENDANTS' PROPOSED
16 FINDINGS AND CONCLUSIONS OF LAW THEY SAID THAT WE DIDN'T MEET
17 OUR BURDEN OF PROVING BY CLEAR AND CONVINCING EVIDENCE THAT
18 130 PERCENT WAS GOING TO SOLVE ALL THE MEDICAL AND MENTAL
19 HEALTH PROBLEMS.

20 JUDGE KARLTON: AND YOU ARE WILLING TO CONCEDE THAT?

21 MR. BIEN: WELL, THAT IS NOT OUR BURDEN. THE CLEAR
22 AND CONVINCING EVIDENCE STANDARD APPLIES TO THE PROOF OF
23 PRIMARY CAUSE AND NO OTHER RELIEF.

24 THEN WE ARE AT A STAGE WHERE WE'RE LOOKING AT WHAT IS
25 AN APPROPRIATE INJUNCTION? WHAT IS AN APPROPRIATE REMEDY? AND

1 THERE WE ARE IN AN AREA WHERE WE HAVE ALL LIVED FOR TOO MANY
2 YEARS.

3 AND IN TERMS OF TIME, WHAT I'M HERE TO SAY IS THE WAY
4 WE CAN BRING THESE CASES TO A CONCLUSION, WHAT WE HAVE PROVEN
5 IN THIS TRIAL IS THE ONLY POSSIBLE WAY IS TO ISSUE THE ORDER
6 WE'RE REQUESTING. WE MUST GET THE POPULATION UNDER CONTROL.

7 WE HAVE TRIED EVERYTHING ELSE, AND JUDGE HENDERSON
8 AND JUDGE KARLTON HAVE TRIED EVERYTHING ELSE. THERE IS NO
9 OTHER WAY OF DOING IT. THERE IS NO OTHER POSSIBLE RELIEF,
10 WHETHER WE CALL IT RELIEF UNDER THE PLRA OR WE CALL IT SOME
11 OTHER EVENT.

12 WE HAVE PROVEN NOT ONLY THAT THE -- THAT THESE
13 PRISONS ARE CRIMINOGENIC, BUT THEY ARE PATHOGENIC. THEY ARE
14 GENERATING DISEASE AT THIS LEVEL OF OVERCROWDING.

15 AND JUDGE KARLTON POINTED US TO THE CCPOA DECISION.
16 THE GOVERNOR SAYS THE PRISONS ARE GENERATING DISEASE. THEY ARE
17 DANGEROUS FOR PUBLIC SAFETY. WE PUT THAT EVIDENCE IN THE
18 RECORD HERE MANY TIMES FROM THE GOVERNOR, BUT WE PUT IT IN THE
19 RECORD FROM OUR OWN EXPERTS, WHO ARE SAYING THAT THIS LEVEL OF
20 OVERCROWDING IS CREATING INCREASED VIOLENCE, STRESS, MENTAL
21 ILLNESS. IT'S INCREASING THE DEMAND FOR MEDICAL SERVICES,
22 MENTAL HEALTH SERVICES. IT'S GENERATING DISEASE. IT MUST BE
23 REDUCED. AND THAT'S THE ONLY WAY WE CAN SOLVE THESE PROBLEMS.

24 WHEN WE TALK ABOUT THIS NUMBER OF 130 PERCENT, WHERE
25 IS THE EVIDENCE IN THE RECORD THAT THERE IS SOME OTHER NUMBER?

1 WHERE IS DEFENDANT SHOWING OF SOME NARROWER RELIEF? WHERE IS
2 THEIR SHOWING THAT THESE PROBLEMS CAN BE SOLVED IN ANY OTHER
3 WAY?

4 ON THE MENTAL HEALTH SIDE WE HAVE ROBIN DEZEMBER --

5 **JUDGE REINHARDT:** WELL, DIDN'T THE INDEPENDENT REVIEW
6 PANEL RECOMMEND 145 PERCENT?

7 **MR. BIEN:** THEY DID. AND THE EVIDENCE THAT WE
8 INTRODUCED IS THAT FROM -- BY CHANCE, ROBIN DEZEMBER HAD A
9 DIFFERENT HAT THEN. HE WAS CHAIR OF THAT -- HE WAS THEIR CHAIR
10 OF THAT EXECUTIVE STAFF. I FORGOT HIS TITLE. AND HE TESTIFIED
11 AT HIS DEPOSITION, WHICH IS IN EVIDENCE, THAT THAT GROUP WAS A
12 GROUP OF WARDENS AND THAT THEY DID NOT TAKE INTO ACCOUNT THE
13 DELIVERY OF MEDICAL AND MENTAL HEALTHCARE IN THEIR ANALYSIS.
14 THAT WAS NOT SOMETHING THAT WAS BEFORE THEM.

15 AND WE INTRODUCED -- THE LOWER NUMBER COMES FROM
16 CONSIDERATION OF THOSE FACTORS AND, IN ADDITION, FROM
17 CONSIDERATION OF THE MORE RECENT ANALYSIS BY THE DEPARTMENT OF
18 ITS OWN CAPACITY BY -- BY DEBRA HYSEN AND OTHERS WHO WERE
19 RESPONSIBLE FOR PLANNING THE IN-FILL BEDS AND OTHER PROGRAMS.
20 THEY KNOW WHAT TO DO. THEY KNOW --

21 **JUDGE KARLTON:** NO. I MEAN, THE TRUTH OF THE MATTER
22 IS THAT WE ARE HERE BECAUSE THERE IS OVERWHELMING EVIDENCE THAT
23 THEY DON'T KNOW WHAT TO DO OR HOW TO DO IT. I MEAN, THAT'S
24 WHERE WE ARE. IF I WERE TO RELY UPON THE DEPARTMENT, WE COULD
25 ALL GO HOME.

1 **MR. BIEN:** WE ARE ASKING YOU TO DO A DIFFICULT THING,
2 JUDGE KARLTON.

3 I THINK FOR ALL OF US WHO HAVE LIVED THROUGH BROKEN
4 PROMISES AND DESTROYED PLANS AND IN THE MIDDLE OF THIS TRIAL
5 HAVE A DEFENSE BASED ON THE -- WE ARE GOING TO THROW ALL THE
6 MENTAL HEALTH PROBLEMS INTO THE RECEIVER'S HANDS AND THEN BE
7 TOLD THAT WE'VE CHANGED OUR MIND, OF COURSE, OUR FAITH IN THIS
8 SYSTEM IS BROKEN. AND I UNDERSTAND THAT YOURS IS AND THAT MINE
9 IS, TOO.

10 BUT WE ARE ASKING YOU, AND OUR POSITION IS THAT WE
11 MUST RECORD ALL THAT INFORMATION, MAKE THE FINDINGS ABOUT WHAT
12 WE HAVE LEARNED ABOUT WHAT'S GOING ON IN THE PRISONS, THE
13 APPROPRIATE CAPACITY, THE EFFECTS OF OVERCROWDING, MAKE THE
14 APPROPRIATE FINDINGS ABOUT PUBLIC SAFETY, MAKE THE APPROPRIATE
15 FINDINGS ABOUT WHAT WE HAVE LEARNED ABOUT THE BROKEN
16 RELATIONSHIP BETWEEN OUR STATE AND COUNTY GOVERNMENTS, THE
17 BROKEN RELATIONSHIP BETWEEN D.A.'S AND THE DEPARTMENT OF
18 CORRECTIONS AND PAROLE.

19 I MEAN, WE CAN'T SOLVE ALL THOSE PROBLEMS. YOU DON'T
20 HAVE THE POWER TO SOLVE ALL THOSE PROBLEMS.

21 AND THESE ARE PROBLEMS THAT, APPARENTLY, OUR PUBLIC
22 OFFICIALS ARE WELL AWARE OF. THEY HAVE TESTIFIED ABOUT THEM,
23 ARE PERFECTLY FINE TO LIVE WITH DESPITE THE RISK TO PUBLIC
24 SAFETY, DESPITE BUDGET CRISIS.

25 WE CAN'T SOLVE THEM. YOU DON'T HAVE THE POWER TO

1 SOLVE THEM.

2 HOWEVER, THERE'S SOMETHING THAT WE CAN DO, AND WE ARE
3 ASKING YOU TO DO, THAT CAN MOVE THE STATE OF CALIFORNIA FORWARD
4 AND, HOPEFULLY, HELP EVERYONE.

5 ONE IS, MAKE THE FINDINGS ABOUT WHAT WAS TRIED IN
6 THIS CASE. THIS CASE WAS AN INVALUABLE LESSON FOR ALL OF US ON
7 THE DYSFUNCTION OF THE STATE OF CALIFORNIA AT THIS VERY MOMENT.
8 AND THE EVIDENCE WAS UNDISPUTED THAT OUR LEADERSHIP IS UNABLE
9 TO MAKE DECISIONS ABOUT THE FUNDAMENTAL THINGS THAT GOVERN THE
10 RELATIONSHIP BETWEEN COUNTIES AND THE STATE, ABOUT HEALTHCARE
11 IN THE COUNTIES, ABOUT WHO IS RESPONSIBLE FOR PROVIDING THINGS.
12 THAT'S TRUE.

13 ON THE OTHER HAND, THE SUPREME COURT HAS MADE CLEAR
14 THAT OUR PUBLIC OFFICIALS MUST BE GIVEN THE OPPORTUNITY TO STEP
15 FORWARD AND TO ADDRESS THIS PROBLEM.

16 ONCE YOU MAKE THE FINDINGS, WE URGE YOU TO ALLOW THE
17 STATE TO COME UP WITH THEIR PLAN IN CONSULTATION WITH THE
18 INTERVENORS, PLAINTIFFS' COUNSEL. AND I CAN TELL YOU THAT THEY
19 HAVE BEEN DOING THIS PLAN. THEY HAVE A PLAN. THE GOVERNOR
20 WENT FORWARD IN THE BUDGET. HE'S DONE IT FIVE TIMES SINCE
21 2006. THEY HAVE A PLAN TO DO EXACTLY WHAT WE ARE TALKING
22 ABOUT.

23 MR. AUSTIN --

24 **JUDGE REINHARDT:** YOU SAY THE GOVERNOR'S BUDGET
25 CONTAINS THE PLAN THAT WOULD SOLVE YOUR PROBLEM?

1 **MR. BIEN:** THE GOVERNOR'S BUDGET AND THE DEPARTMENT
2 OF CORRECTIONS HAS ANALYZED EACH OF THE VERY MEASURES THAT WE
3 HAVE PUT FORWARD AS PROPOSALS. THEY HAVE LOOKED AT CHANGES IN
4 PAROLE, WHICH THEY ARE IMPLEMENTING. SOME OF THEM THEY ARE NOT
5 IMPLEMENTING, BUT THEY HAVE STUDIED THEM ALL.

6 THEY HAVE LOOKED AT CHANGES IN CREDITS. THEY HAVE
7 LOOKED AT CHANGES IN SENTENCING AND CHANGING THE DEFINITIONS OF
8 VARIOUS CRIMES TO AFFECT WHO IS IN PRISON.

9 **JUDGE KARLTON:** LET'S TALK ABOUT THAT FOR A MOMENT.
10 IT'S SO FAR DOWN THE LINE, MAYBE WE SHOULDN'T BE TALKING ABOUT
11 IT, BUT IT APPEARS CLEAR THAT UNDER THE PLRA UNDER APPROPRIATE
12 CIRCUMSTANCES THE COURT CAN ORDER A WAIVER OF STATE LAW.

13 DOES THAT INCLUDE, IN YOUR VIEW, REDEFINING THE LEVEL
14 OF CRIME? USING THE EXAMPLE THAT'S BEEN TALKED ABOUT IN THE
15 TRIAL, ABOUT RAISING THE AMOUNT BEFORE IT BECOMES -- OF A THEFT
16 BEFORE IT BECOMES A FELONY? DO WE HAVE THE POWER TO DO THAT
17 YOU THINK?

18 **MR. BIEN:** AT THIS STAGE I DO NOT THINK YOU DO.

19 **JUDGE REINHARDT:** WE ARE TALKING ABOUT WAY DOWN THE
20 LINE. ASSUMING THAT THERE IS A CAP, ASSUMING THE STATE SAYS,
21 WE ARE NOT INTERESTED IN DEVELOPING OUR OWN PLAN.

22 **MR. BIEN:** I THINK THAT THE POWER OF THIS COURT WOULD
23 BE, AT THE LEAST, IN AREAS SUCH AS, YOU KNOW, REDEFINING A
24 CRIME.

25 YOU KNOW, THE MODELS THAT WE HAVE SEEN IN TERMS OF

1 CAPS IS REALLY THE MODEL THAT WE ARE SUGGESTING, WHICH IS THE
2 COURT SAYS YOU CANNOT OPERATE YOUR PRISONS AT THIS CAPACITY.
3 PEOPLE ARE DYING. IT'S UNSAFE. IT'S BAD FOR PUBLIC SAFETY.

4 **JUDGE REINHARDT:** LET'S GET TO THE POINT. YOU ARE UP
5 TO THE POINT IN JUDGE KARLTON'S QUESTION WHERE THERE IS A CAP.
6 THE STATE HASN'T COME UP WITH A PLAN. THE GOVERNOR HAS
7 SUGGESTED A PLAN.

8 DOES THE COURT HAVE THE AUTHORITY --

9 **JUDGE KARLTON:** BUT THE LEGISLATURE HAS DONE NOTHING.

10 **JUDGE REINHARDT:** DOES THE COURT HAVE THE AUTHORITY
11 TO ORDER THE GOVERNOR'S PLAN INTO EFFECT?

12 **MR. BIEN:** I THINK IT DOES. I THINK AT THAT POINT
13 WHEN, IF THE STATE OF CALIFORNIA IS COMING FORWARD. I MEAN,
14 APPARENTLY, THAT'S THE ONLY WAY THEY OPERATE THESE DAYS.

15 AS JUDGE KARLTON AND JUDGE HENDERSON WILL TELL YOU,
16 JUDGE REINHARDT, THEY WANT TO DO SOMETHING VOLUNTARILY, THEY
17 COME TO THE COURT AND SAY, "PLEASE ORDER ME TO DO THIS." I
18 JUST DON'T KNOW WHY, BUT THAT'S WHAT THEY DO.

19 SO, APPARENTLY, THE STATE THINKS THAT THAT'S HOW
20 THINGS SHOULD OPERATE. THEY CAN'T DO ANYTHING ON THEIR OWN.

21 **JUDGE REINHARDT:** THE QUESTION IS: IS THE AUTHORITY
22 -- ASSUME FROM YOUR VIEW OF LIFE --

23 **MR. BIEN:** I THINK IF THE GOVERNOR OF THE STATE OF
24 CALIFORNIA AND THE HEAD OF THE DEPARTMENT OF CORRECTIONS COMES
25 AND SAYS, IN ORDER TO COMPLY WITH THIS ORDER TO ESTABLISH

1 CONSTITUTIONAL MEDICAL MENTAL HEALTHCARE IN THESE PRISONS AND
2 TO ACHIEVE THE POPULATION LEVEL THAT YOU HAVE REQUESTED, THAT I
3 REQUEST AN ORDER WAIVING STATE LAW "X," I THINK THAT YOU HAVE
4 THE AUTHORITY TO DO THAT. UNDER THE PLRA IT SAYS YOU DO
5 EXPRESSLY.

6 BUT I THINK THAT THE -- AND THAT, UNFORTUNATELY, MAY
7 BE SOMETHING THAT HAPPENS.

8 **JUDGE REINHARDT:** THAT'S WAY DOWN THE LINE.

9 **MR. BIEN:** HOPEFULLY, NOT TOO FAR DOWN THE LINE. I
10 THINK THAT, YOU KNOW --

11 **JUDGE KARLTON:** I DON'T THINK YOU UNDERSTAND HOW
12 RELUCTANT WE ARE -- NEVER MIND. GO AHEAD.

13 **MR. BIEN:** WELL --

14 **JUDGE REINHARDT:** WELL, SOME MORE THAN OTHERS.

15 **MR. BIEN:** YOU KNOW, I THINK THAT -- I DO UNDERSTAND
16 HOW RELUCTANT YOU ARE AND YOU HAVE TO UNDERSTAND HOW RELUCTANT
17 I AM, TOO.

18 I WOULD LIKE TO GET -- WE HAVE CLIENTS, AS WE SIT
19 HERE IN THIS -- AS JUDGE REINHARDT SAID, IN ONE OF THE MOST
20 BEAUTIFUL COURTROOMS IN THE WORLD, IF NOT THE COUNTRY HERE, I
21 HAVE CLIENTS WHO ARE GOING TO DIE IN THE NEXT COUPLE OF DAYS --

22 **JUDGE REINHARDT:** WHEN I SAID WE HAVE A LOT, I WASN'T
23 TALKING ABOUT TIME. I WAS TALKING ABOUT PROCESS. WE TALKED
24 ABOUT IF YOU WERE TO PREVAIL ON SOME OF THE ISSUES, THE FIRST
25 STEP WOULD BE PROBABLY THE ISSUE OF CAPPING. I HAVE TO TELL

1 THE STATE TO COME UP WITH A PLAN.

2 WHEN I SAID DOWN THE LINE, I'M TALKING ABOUT AT THAT
3 POINT WE WOULD CONSIDER SOME OF THE ISSUES THAT WE ARE NOW
4 DISCUSSING IN THEORY NOW BECAUSE THEY MIGHT NEVER ARISE.

5 SO I DON'T MEAN IT'S GOING TO TAKE A YEAR, SIX
6 MONTHS, WHATEVER. IT'S AT THE NEXT STAGE OF THE PROCEEDINGS
7 SHOULD WE REACH IT.

8 MR. BIEN: THAT'S CORRECT, YOUR HONOR, AND WE THINK
9 IT WOULD BE PREMATURE TO REACH THAT QUESTION NOW.

10 JUDGE REINHARDT: ALL RIGHT. NOW, WHAT'S YOUR NEXT
11 SUBJECT?

12 MR. BIEN: I THINK IN TERMS OF PRIMARY CAUSE AND AS
13 TO THE MENTALLY ILL, WE HAVE COVERED IT.

14 I WILL SAY THAT IN TERMS OF WHAT YOU WILL HEAR, I
15 ASSUME, FROM THE DEFENDANTS IS THAT SOMEHOW -- THERE'S JUST TWO
16 THINGS I WOULD LIKE TO ADDRESS.

17 ONE IS THAT SOMEHOW THE COLEMAN CLASS IS NOT AFFECTED
18 BY OVERCROWDING. I THINK THAT WE HAVE MADE THE CASE THAT THE
19 COLEMAN CLASS IS AFFECTED IN EVERY WAY AND EVERY DAY BY
20 OVERCROWDING; NOT JUST THE 5,000 THAT DEFENDANTS ADMIT ARE IN
21 THESE BAD BEDS, BUT THE COLEMAN CLASS MEMBERS WHO ARE HOUSED
22 THROUGHOUT THE PRISONS.

23 AND I THINK THAT ONE THING THAT'S IMPORTANT TO
24 REMEMBER HERE IS THAT BOTH THE COLEMAN AND PLATA CLASSES ARE
25 FLUID CLASSES. EVERY DAY THEIR MEMBERSHIP CHANGES.

1 ANYONE MAY NEED MEDICAL OR MENTAL HEALTHCARE AT A
2 PARTICULAR MOMENT, BUT ONE THING THAT I THINK WE DIDN'T
3 EMPHASIZE THAT I WOULD LIKE TO BRING TO YOUR ATTENTION IS THAT
4 ONE HALF OF THE SUICIDES THAT OCCUR ARE OF NON, QUOTE, COLEMAN
5 CLASS MEMBERS. IN OTHER WORDS, AT THE TIME THAT THEY WERE --
6 THEY KILLED THEMSELVES, THEY HAD NOT BEEN IDENTIFIED.

7 THE SUICIDE PREVENTION MEASURES THAT ARE MANDATED BY
8 COLEMAN APPLY TO EVERYONE. THEY APPLY TO ALL PEOPLE IN THE
9 PRISONS.

10 THE MEDICAL PROVISIONS APPLY TO EVERYONE. THE
11 SCREENING PROVISIONS FOR MEDICAL AND MENTAL HEALTHCARE APPLY TO
12 EVERYONE.

13 THE IDEA THAT SOMEHOW WE CAN PICK OUT THE COLEMAN
14 CLASS OR THE PLATA CLASS AND JUST DO A REMEDY FOR THEM IS A
15 FICTION. THERE IS NO SUCH GROUP. IF YOU LEFT THE PRISONS
16 OVERCROWDED AND REMOVED THE MOST SERIOUSLY ILL, FOR EXAMPLE, OF
17 THE COLEMAN AND PLATA CLASSES, THAT WOULD NOT SOLVE THE
18 PROBLEMS OF OVERCROWDING BECAUSE IF YOU STILL LEFT THAT
19 CROWDING, YOU LEFT THOSE HORRIBLE RECEPTION CENTERS, YOU LEFT
20 THE CHURNING OF PAROLE VIOLATORS THROUGH, THE SAME PATHOGENIC
21 SITUATION WOULD REMAIN. THE SAME CRIMINOGENIC SITUATIONS WOULD
22 REMAIN. THE SAME PROBLEMS WOULD REMAIN.

23 THE REMEDY MUST BE BROAD. IN OTHER WORDS, IT HAS TO
24 BE A NARROWLY TAILORED REMEDY, BUT IT WILL NOT WORK -- THE
25 EVIDENCE SHOWS IT WILL NOT WORK UNLESS THERE IS A GENERAL

1 REDUCTION IN THE POPULATION.

2 JUDGE KARLTON ASKED, YOU KNOW, IS IT GOING TO HELP
3 THE COLEMAN CLASS TO HAVE THIS GENERAL REDUCTION? WE PROVED
4 THROUGH MR. AUSTIN AND THROUGH VARIOUS OTHER MEANS THAT IT WILL
5 HELP. THE WAIT LIST WILL GO WAY, WAY DOWN. IF 8,000 OR 9,000
6 COLEMAN CLASS MEMBERS -- IF THE REDUCTION IS FIFTY, FOR
7 EXAMPLE, OVER TWO YEARS, APPROXIMATELY, 8,000 OR 9,000 COLEMAN
8 CLASS MEMBERS WILL BE REMOVED FROM THE PRISONS. THAT WILL HAVE
9 A TREMENDOUS EFFECT, IF YOU LOOK AT THE STATISTICS, ON THE
10 ABILITY TO DELIVER CARE. WILL IT SOLVE ALL THE PROBLEMS? NO.

11 AND I THINK THAT'S THE OTHER DEFENSE YOU ARE GOING TO
12 HEAR. YOU KNOW, NOT ONE EXPERT FOR THE PLAINTIFF SAID THAT IF
13 YOU DO THE POPULATION REDUCTION, IT WILL BE CONSTITUTIONAL. OF
14 COURSE NOT. WE ARE GOING TO NEED -- UNFORTUNATELY, WE ARE
15 GOING TO STILL NEED SOME CONSTRUCTION OF SOME BEDS. WE ARE
16 STILL GOING TO NEED CLINICIANS TO BE HIRED.

17 THERE'S STILL GOING TO BE CHALLENGES, AS MR. KEATING
18 POINTED OUT, BECAUSE WHEN YOU BUILD A PRISON IN THE MIDDLE OF
19 NOWHERE, PEOPLE TEND NOT TO LIKE TO WORK THERE.

20 ALL THOSE CHALLENGES ARE GOING TO PERSIST. BUT IT
21 DOESN'T MEAN THAT WE SHOULDN'T DO THIS POPULATION REDUCTION.
22 WITHOUT THE POPULATION REDUCTION, WE WILL NEVER END THESE
23 CASES.

24 JUDGE REINHARDT: YOU MEAN THAT WE CANNOT ORDER A
25 REMEDY THAT WILL SOLVE THE CONSTITUTIONAL PROBLEM?

1 **MR. BIEN:** THIS REMEDY WILL BE A STEP. WITHOUT THIS
2 REMEDY, THE CONSTITUTIONAL PROBLEMS WILL PERSIST.

3 **JUDGE REINHARDT:** AND WITH THE REMEDY, THE
4 CONSTITUTIONAL PROBLEMS WILL PERSIST ALSO.

5 **MR. BIEN:** NO. I THINK THAT WE'LL BE ON A -- THEY
6 WILL PERSIST UNTIL THE REMEDY IS IMPLEMENTED AND UNTIL THE REST
7 OF THE ORDERS ARE COMPLIED WITH.

8 BUT THE EVIDENCE IS UNDISPUTED -- DR. PACKER AGREES
9 WITH THIS, EVEN MR. DEZEMBER AGREES WITH THIS -- THAT YOU HAVE
10 TO BRING THE POPULATION DOWN, THAT THERE WILL BE AN IMMEDIATE
11 BENEFIT.

12 ARE WE GOING TO SOLVE EACH AND EVERY PROBLEM THROUGH
13 THIS POPULATION REDUCTION? NO. AND I THINK THAT THAT IS --
14 THERE HASN'T BEEN ONE PLAN IN ANY OF THESE CASES THAT ANYONE
15 EVER THOUGHT WAS GOING TO SOLVE EACH AND EVERY PART OF THE
16 PROBLEM.

17 **JUDGE KARLTON:** THE ANSWER -- NOT THE ANSWER. THE
18 STATE OF THE EVIDENCE, AS I UNDERSTAND IT, MR. BIEN, TELL ME,
19 IS THAT YOU CAN'T SOLVE THE PROBLEM WITHOUT SOLVING THE
20 OVERCROWDING, BUT OVERCROWDING IN AND OF ITSELF WILL NOT SOLVE
21 THE PROBLEM.

22 **JUDGE REINHARDT:** THAT'S WHAT I UNDERSTAND YOU TO BE
23 SAYING.

24 **MR. BIEN:** THAT'S CORRECT.

25 **JUDGE REINHARDT:** BUT WHAT I'M ASKING YOU IS, ISN'T

1 THE COURT'S OBLIGATION TO GO BEYOND THAT AND SOLVE THE
2 CONSTITUTIONAL PROBLEMS?

3 MR. BIEN: I THINK SO. BUT THE THREE-JUDGE COURT, I
4 THINK, MUST ADDRESS THE OVERCROWDING, AND THEN THE --

5 JUDGE KARLTON: GOES BACK TO US.

6 MR. BIEN: AND THEN JUDGE KARLTON AND JUDGE HENDERSON
7 WILL --

8 THE COURT: THAT'S WHAT I'M ASKING YOU. WHERE DO YOU
9 GET THE IDEA THAT THAT THIS THREE-JUDGE COURT SHOULDN'T RESOLVE
10 THE CONSTITUTIONAL PROBLEM IN ITS ENTIRETY?

11 JUDGE KARLTON: BECAUSE THE STATUTE DEALS WITH
12 OVERCROWDING.

13 MR. BIEN: AS MUCH AS I AGREE THAT WE ARE NOT ASKING
14 THE THREE-JUDGE COURT TO REMAIN FOREVER, I THINK THAT TO THE
15 EXTENT THE THREE-JUDGE COURT'S ORDERS -- WE THINK THERE NEEDS
16 TO BE A CAP, NOT JUST A REDUCTION.

17 JUDGE REINHARDT: WHEN YOU ARE TALKING ABOUT THE --
18 THAT THAT WILL SOLVE THE OVERCROWDING PROBLEM, BUT WILL LEAVE
19 THE CONSTITUTIONAL PROBLEM --

20 MR. BIEN: WELL --

21 JUDGE REINHARDT: -- PARTLY SOLVE, NOT ENTIRELY
22 SOLVE. THERE ARE OTHER THINGS YOU THINK ARE NECESSARY TO SOLVE
23 THE CONSTITUTIONAL PROBLEM.

24 WHAT I'M ASKING YOU IS: DO YOU READ THE STATUTE AS
25 SAYING THAT THE THREE-JUDGE COURT'S AUTHORITY STOPS WHEN IT

1 REDUCES THE OVERCROWDING PROBLEM AND LEAVES THE CONSTITUTIONAL
2 PROBLEM STILL EXISTING?

3 **MR. BIEN:** YOU ARE GOING A LITTLE DOWN THE ROAD. I
4 THINK THAT THE -- TO ME, I GUESS I'D SAY YES.

5 **JUDGE REINHARDT:** NO, I'M NOT GOING DOWN THE ROAD.

6 **MR. BIEN:** I GUESS I WOULD SAY YES.

7 **JUDGE REINHARDT:** YOU SAID THE RELIEF YOU ARE ASKING
8 FOR IS TO RESOLVE THE OVERCROWDING PROBLEM AND THAT THAT WILL
9 LEAVE MORE PROBLEMS THAT PREVENT -- THAT RESULT IN THE
10 CONSTITUTIONAL PROBLEM CONTINUING.

11 AND I ASKED: UNDER THE PLRA, WHAT IS THE OBLIGATION
12 OF THE THREE-JUDGE COURT? IS IT ONLY TO SOLVE OVERCROWDING OR
13 IS IT TO RESOLVE THE CONSTITUTIONAL PROBLEM?

14 **MR. BIEN:** WELL, THE REMEDY IS NOT ADDRESSED MERELY
15 AT OVERCROWDING. OVERCROWDING IS THE PRIMARY CAUSE OF THE
16 CONSTITUTIONAL PROBLEMS.

17 SO TO THE EXTENT THAT OVERCROWDING NEEDS TO BE
18 ADDRESSED, THE THREE-JUDGE COURT HAS SPECIAL POWER TO DO THAT.

19 **JUDGE REINHARDT:** RIGHT. THAT I UNDERSTAND. WE ARE
20 ALL IN AGREEMENT THAT WE CAN RESOLVE THE OVERCROWDING PROBLEM.
21 ASSUMING THERE'S AN OVERCROWDING PROBLEM, THE THREE-JUDGE COURT
22 HAS THE AUTHORITY TO RESOLVE THAT.

23 NOW, WHAT I'M ASKING YOU IS: IS THE THREE-JUDGE
24 COURT LIMITED TO RESOLVING OVERCROWDING AND LEAVING THE
25 CONSTITUTIONAL VIOLATION IN EFFECT? OR IS THE THREE-JUDGE

1 COURT'S OBLIGATION TO RESOLVE THE OVERCROWDING AND MAKE -- AND
2 CURE THE CONSTITUTIONAL PROBLEM?

3 JUDGE HENDERSON: LET ME BE A LITTLE MORE SPECIFIC,
4 IF I CAN, STEVE.

5 JUDGE REINHARDT: SURE.

6 JUDGE HENDERSON: FOR EXAMPLE, YOU SAID WE ARE STILL
7 GOING TO NEED CONSTRUCTION. CAN THE THREE-JUDGE COURT DEAL
8 WITH THAT PROBLEM? WE ARE GOING TO NEED -- THAT'S A STATE
9 CONSTITUTIONAL PROBLEM. CAN THE THREE-JUDGE COURT ORDER THE
10 CONSTRUCTION AS A PART OF THE REMEDY?

11 JUDGE REINHARDT: I JUST WANT TO KNOW WHAT WE ARE
12 SUPPOSED TO DO.

13 MR. BIEN: I THINK AGAIN -- NOW WE ARE TALKING ABOUT
14 DOWN THE ROAD. I'M GOING TO PUT ASIDE THE QUESTION THAT IS NOW
15 BEFORE THE NINTH CIRCUIT, WHICH IS WHETHER THE APPEAL ALREADY
16 PERMITS ANY COURT TO ORDER CONSTRUCTION OF ANYTHING.
17 APPARENTLY, THE --

18 JUDGE REINHARDT: WELL, THE PLRA SAYS THAT WE CAN
19 ORDER THIS. SO LEAVE THAT ONE ASIDE. IT SAYS:

20 "WHILE NOTHING IN THIS SECTION SHALL BE CONSTRUED
21 TO AUTHORIZE THE COURTS IN EXERCISING THEIR REMEDIAL
22 POWERS TO ORDER THE CONSTRUCTION OF PRISONS."

23 WHATEVER THAT MEANS, THAT'S PART OF WHAT WE ARE DOING
24 I THINK. WHETHER SOMEONE ELSE CAN, SOME OTHER COURT CAN, BUT
25 AS FAR AS OUR THREE-JUDGE COURT, I'M ASSUMING THAT WE CAN'T DO

1 THAT; BUT, AS YOU SAID, WHETHER SOME OTHER AUTHORITY CAN DO IT
2 MAY BE PART OF AN ISSUE BEFORE THE NINTH CIRCUIT OR WHATEVER.

3 SO LET'S LEAVE ASIDE CONSTRUCTION. THERE ARE OTHER
4 THINGS YOU SAY MAY BE NECESSARY.

5 **MR. BIEN:** I THINK THAT TO THE EXTENT THAT YOU HAVE
6 THE PRISONER RELEASE ORDER LANGUAGE, WHICH IS SO BROAD, THAT IF
7 WE COME DOWN THE ROAD AND THERE IS SOMETHING THAT NEEDS TO BE
8 DONE THAT'S A PRISONER RELEASE ORDER, THEN THE DISTRICT JUDGES
9 BY THEMSELVES WILL NOT BE ABLE TO DO THAT.

10 **JUDGE REINHARDT:** YOU KNOW, I'M ONLY ASKING THIS
11 QUESTION BECAUSE YOU RAISED IT. YOU SAID TO US, YOU GIVE US
12 THIS PRISONER RELEASE ORDER AND IT WILL NOT SOLVE THE
13 CONSTITUTIONAL PROBLEM. I DIDN'T SAY IT. YOU SAID IT.

14 AND THAT LEAVES TWO THINGS THAT HAVE TO BE DONE IN
15 ORDER TO RESOLVE THE CONSTITUTIONAL PROBLEM.

16 **MR. BIEN:** WHAT I MEANT TO SAY, YOUR HONOR, IS THE
17 POPULATION REDUCTION IS A NECESSARY, BUT NOT SUFFICIENT REMEDY
18 FOR ALL THE VIOLATIONS.

19 **JUDGE REINHARDT:** ABSOLUTELY. THAT'S WHAT YOU SAID.

20 **JUDGE KARLTON:** SEVERAL TIMES.

21 **JUDGE REINHARDT:** IT IS NOT A SUFFICIENT REMEDY TO
22 SOLVE THE CONSTITUTIONAL PROBLEM. AND I SAID, WHY SHOULDN'T WE
23 THEN SOLVE THE CONSTITUTIONAL PROBLEM? IS THAT OUR OBLIGATION?
24 IS THAT OUR AUTHORITY?

25 **MR. BIEN:** TO THE EXTENT THE PRISONER RELEASE ORDER

1 IS NECESSARY TO SOLVE THE CONSTITUTIONAL VIOLATIONS, I THINK IT
2 WOULD BE --

3 **JUDGE REINHARDT:** THAT'S NOT THE QUESTION. THE
4 QUESTION IS: WE ALL ASSUME THAT WE ARE HERE TO ISSUE A
5 PRISONER RELEASE ORDER, WHICH YOU TELL US DOES NOT RESULT IN A
6 CONSTITUTIONAL PROBLEM.

7 SO I SAID, ONCE WE ARE HERE, ASSUMING WE ARE GOING TO
8 ISSUE A PRISONER RELEASE ORDER AND IT DOESN'T SOLVE THE
9 CONSTITUTIONAL PROBLEM, UNDER THE PLRA IS IT OUR OBLIGATION OR
10 DO WE HAVE THE AUTHORITY TO GO AHEAD AND SOLVE THE
11 CONSTITUTIONAL PROBLEM?

12 **MR. BIEN:** I WOULD HAVE TO SAY THAT IT'S SO -- THAT
13 THE ANSWER IS NO; THAT FIRST YOU NEED TO ALLOW THE REMEDIES TO
14 PROCEED IN THE DISTRICT COURT, TWO SEPARATE DISTRICT COURTS.
15 THAT THESE DISTRICT COURTS HAVE THE POWER. THEY HAVE THE --
16 THEY HAVE THE ABILITY TO SOLVE THESE PROBLEMS.

17 BUT FOR OVERCROWDING, THESE CASES, IN OUR OPINION,
18 WOULD BE RESOLVED, AND THE -- THE OVERCROWDING IS THE REASON
19 THAT WE ARE A DOZEN YEARS DOWN IN COLEMAN AND IT'S OUR
20 CONTENTION THAT ONCE OVERCROWDING IS RESOLVED AND BROUGHT UNDER
21 CONTROL, THAT THE SEPARATE REMEDIES WILL BE ABLE TO SOLVE THE
22 PROBLEM.

23 **JUDGE REINHARDT:** OKAY. DO YOU HAVE ANYTHING ELSE?

24 **MR. BIEN:** I THINK -- I THINK THAT WHEN WE FOCUS
25 ON -- I GUESS I THINK THAT THE REMEDY THAT WE ARE SUGGESTING

1 WILL ADDRESS THE PROBLEMS AND I THINK THAT -- THAT IT IS -- WE
2 ARE AT SUCH AN EXTREME LEVEL, UNPRECEDENTED LEVEL OF
3 OVERCROWDING, THAT THE PICTURES YOU SAW, THE VIDEOS YOU SAW
4 REALLY ONLY GIVE A TOUCH FOR HOW HORRIFIC THE CONDITIONS ARE.

5 THESE CONDITIONS MUST BE RESOLVED AND THEY MUST BE
6 RESOLVED PROMPTLY. IT CAN BE RESOLVED SAFELY. IT CAN BE
7 RESOLVED IN A WAY THAT WILL BOTH BENEFIT THE CITIZENS OF
8 CALIFORNIA AND IMPROVE PUBLIC SAFETY. IT CAN BE RESOLVED IN A
9 MANNER THAT WILL ACTUALLY SAVE MONEY. THIS IS THE FIRST REMEDY
10 THAT WE HAVE EVER ADVOCATED THAT ACTUALLY WILL COST -- SAVE
11 MONEY TO THE STATE IN THE MIDST OF A FINANCIAL CRISIS.

12 STATES ALL ACROSS THE COUNTRY ARE DOING EXACTLY WHAT
13 WE ARE SAYING RIGHT NOW AS A MATTER OF FISCAL WISDOM. IT
14 DOESN'T -- WHAT WE ARE DOING IN CALIFORNIA JUST DOESN'T WORK.
15 IT DOESN'T WORK FOR PUBLIC SAFETY. IT DOESN'T WORK FOR OUR
16 BUDGET. IT DOESN'T WORK FOR THE PRISONERS, WHICH IS THE REASON
17 WE ARE HERE. THEY ARE SUFFERING AND DYING AS A RESULT OF
18 FAILED PUBLIC POLICY. WE NEED TO MOVE FORWARD.

19 AND I REALLY HAVE NOTHING ELSE. THANK YOU.

20 **JUDGE REINHARDT:** ALL RIGHT. THANK YOU VERY MUCH. I
21 GUESS THERE IS NOTHING FURTHER FROM THE PLAINTIFFS AT THIS
22 POINT. WE WILL --

23 **JUDGE HENDERSON:** THE CCPOA.

24 **JUDGE REINHARDT:** ALL RIGHT. SO WE WILL HEAR FROM
25 THE INTERVENORS AFTER LUNCH, AND THEN WE WILL HEAR FROM THE

1 DEFENDANTS AND DEFENDANT INTERVENORS.

2 ALL RIGHT. THE COURT WILL TAKE AN HOUR'S RECESS.

3 (WHEREUPON AT 12:12 P.M. PROCEEDINGS

4 WERE ADJOURNED FOR NOON RECESS.)

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P R O C E E D I N G S

FEBRUARY 23, 2009

1:15 P.M.

(WHEREUPON, PROCEEDINGS WERE RESUMED
AFTER NOON RECESS.)

JUDGE HENDERSON: CCPOA.

THE COURT: YES, YOUR HONOR.

JUDGE REINHARDT: WHICH SIDE ARE YOU ON TODAY?

MS. LEONARD: THE SIDE WHERE WE HAVE ALWAYS BEEN.

IF YOU CAN'T HEAR ME, LET ME KNOW. IN MY CASE, AT MY
TOWERING HEIGHT, I HAVE A MICROPHONE RIGHT OVER MY HEAD.

CLOSING ARGUMENT

MS. LEONARD: SO FIRST OF ALL, MAY IT PLEASE THE
COURT, WE WOULD LIKE TO THANK YOU FOR ALLOWING US TO INTERVENE
IN THIS PROCEEDING AND TO GIVE THE VIEWS THAT WE CAN OF BEING
INSIDE THE PRISONS EVERY DAY.

I'M PLEASED TO KNOW THAT MOST OF WHAT I WAS GOING TO
SAY WAS COVERED BY THE PLAINTIFFS AND I THINK ALREADY WELL
UNDERSTOOD BY THIS COURT.

WE INTERVENED PRIMARILY TO TALK ABOUT THE CONDITIONS.
AND THIS IS A CASE WHERE WE KNOW THE SIDE THAT WE ARE ON, AND
WE ARE ON THE RIGHT SIDE. WE TRIED EVERYTHING THAT WE CAN TO
DEAL WITH OVERCROWDING IN EVERY SITUATION POSSIBLE, TO NO
AVAIL.

IT'S BEEN VERY CONFUSING AND WE'VE EFFECTUALLY BEGUN

1 TO TALK ABOUT A CALDRON OF CONTRADICTION IN WHICH THE STATE
2 MAKES ITS DECISIONS.

3 MR. SPECTER VERY CLEARLY COVERED THE CASE OF THE
4 RECEIVER. THE RECEIVER HAS BEEN THE PANACEA IN THIS CASE, YET
5 THERE IS A PENDING MOTION TO DISSOLVE THE RECEIVERSHIP WE ARE
6 TRYING TO CREATE. FOR TRYING, FOR EXAMPLE, TO CREATE --

7 JUDGE REINHARDT: DO YOU MEAN THE ACTUAL PANACEA OR
8 THE STATE HAS SAID HE IS A PANACEA?

9 MS. LEONARD: THE STATE HAS SAID HE IS A PANACEA, BUT
10 HE ALSO HAS BIG PLANS. SIMILARLY, THIS MORNING JUDGE KARLTON
11 MENTIONED THE CCPOA VERSUS SCHWARZENEGGER, A CASE IN WHICH WE
12 HAD SOME INVOLVEMENT.

13 AND I'M GOING TO DO SOMETHING I'VE NEVER DONE BEFORE.
14 I HAVEN'T BROUGHT THE BLACKBERRY UP HERE TO TAKE A CALL. I'M
15 GOING TO READ YOU A QUOTE FROM THAT CASE. HERE WE HAVE HEARD
16 THE STATE TESTIFY THAT OVERCROWDING IS SOMETHING THAT THEY CAN
17 DEAL WITH AND THAT ONE COULD IMAGINE A SYSTEM IN WHICH
18 CONSTITUTIONAL MEDICAL AND MENTAL HEALTH CARE IS DELIVERED IN A
19 SYSTEM OF OVERCROWDING AND THE RISK OF PUBLIC SAFETY IS JUST
20 TOO GREAT.

21 HOWEVER, THE TRIAL COURT IN THAT CASE INDICATED THAT:

22 "THE OVERCROWDING IS A CRISIS CREATING CONDITIONS
23 OF EXTREME PERIL TO THE SAFETY OF PERSONS AND
24 PROPERTY WITHIN THE STATE WHICH ARE OR ARE LIKELY
25 WILL BE BEYOND THE CONTROL OF ANY SINGLE COUNTY OR

1 CITY IN CALIFORNIA."

2 JUDGE REINHARDT: IS THAT THE TRIAL COURT OR COURT OF
3 APPEALS?

4 JUDGE KARLTON: THAT'S THE COURT OF APPEALS.

5 MS. LEONARD: THE COURT OF APPEALS.

6 WITH THAT BEING ONE OF THE REQUIREMENTS TO ALLOW THAT
7 PROCLAMATION TO STAND.

8 NOW, AS TO WHETHER OR NOT IT SHOULD STAND AS A
9 PROCEDURAL ISSUE, BUT AS I UNDERSTAND IT, THAT WAS THE STATE'S
10 REPRESENTATION AT THAT TIME.

11 AND PERHAPS THE OVERCROWDING CONDITION HAS BECOME
12 MORE CONTROLLABLE FOR THE STATE, BUT WE WOULD BE UNCLEAR AS TO
13 HOW THAT WOULD HAPPEN BECAUSE NOW THE POPULATION IS LARGER THAN
14 IT WAS AT THE TIME THAT THIS CASE WAS FILED AND AT THE TIME THE
15 CASE WAS ARGUED.

16 WHEN I BEGAN, MY INTENTION IN THIS ARGUMENT WAS TO
17 TALK TO THE DEFENDANTS' CONTENTION THAT THE EXPERTS MAY NOT
18 HAVE SEEN ENOUGH OF THE CDCR SYSTEM, MAY HAVE COME ON THE BEST
19 DAY, MAY NOT HAVE VISITED ENOUGH PRISONS.

20 AND WE TRIED TO SHOW YOU IN THIS CASE THAT WE PICKED
21 SIX REPRESENTATIVE MEMBERS, BUT WE REALLY COULD HAVE PLUCKED
22 ANY ONE OF OUR 28,000 MEMBERS AND THEY WE HAVE SEEN THE SAME
23 THING THAT THE EXPERTS SAW IN THIS CASE.

24 I DON'T KNOW THAT I SHOULD TAKE THE COURT'S TIME TO
25 RECOUNT SOME OF THOSE VIGNETTES OR SOME OF THOSE STORIES

1 BECAUSE I THINK YOU ARE WELL AWARE AND YOU UNDERSTAND THE
2 SITUATION IN WHICH WE TOIL.

3 SO I THINK WHAT WE REALLY CAME TO SAY IS THAT
4 OVERCROWDING PERMEATES EVERY ASPECT OF CARE FROM PREVENTION --
5 FROM THE MOMENT THEY ARRIVE, TO THE MOMENT THEIR ISSUES ARE
6 TREATED, TO THE MOMENT THEY DEPART.

7 JUST LIKE ANY COMPLEX PROBLEM, THIS COULD HAVE ANY
8 NUMBER OF SOLUTIONS, BUT WE CAN'T BELIEVE THAT THE STATE IS
9 WILLING TO ACT. WE HAVE LEARNED THAT THE STATE NEEDS THE
10 LEADERSHIP OF THE FEDERAL COURT. IT NEEDS THE GUIDANCE OF THE
11 FEDERAL COURT. IT NEEDS THE OVERSIGHT OF THE FEDERAL COURT TO
12 DO THE RIGHT THINGS.

13 WE SPEND OUR DAYS TRYING TO DO THE RIGHT THING ON
14 SHIFTS AS LONG AS 16 HOURS. TO GIVE YOU AN EXAMPLE, IF WE WERE
15 TO HAVE A 16-HOUR SHIFT TODAY, OUR ORAL ARGUMENT WOULD EXTEND
16 UNTIL MIDNIGHT. ANYONE INTERESTED IN THAT? I DON'T THINK SO.

17 SO WE ASK FOR YOUR GUIDANCE. WE ASK FOR YOUR
18 SUPPORT. WE ASK TO HAVE INPUT INTO THE SOLUTION AS IT'S GIVEN
19 AND WE ASK FOR IT NOW. THANK YOU.

20 JUDGE REINHARDT: THANK YOU, COUNSEL.

21 JUDGE HENDERSON: THANK YOU, COUNSEL.

22 **CLOSING ARGUMENT**

23 MR. MELLO: GOOD AFTERNOON, YOUR HONORS. PAUL MELLO
24 OF HANSEN BRIDGETT.

25 JUDGE KARLTON: MR. MELLO, WHO DO YOU REPRESENT?

1 **MR. MELLO:** I REPRESENT THE STATE OF CALIFORNIA, THE
2 NAMED DEFENDANTS IN THE PLATA CASE.

3 **JUDGE KARLTON:** AND HOW IS IT THAT YOU ARE
4 REPRESENTING THE STATE HERE AND TAKING POSITIONS WHICH ARE
5 CLEARLY CONTRADICTED BY THE STATE'S DECLARATION OF AN EMERGENCY
6 PROCLAMATION CONFIRMED BY THE STATE COURTS, BECAUSE THERE WAS
7 AN EMERGENCY OF SUCH A CHARACTER AS TO REQUIRE AND SUPPORT THE
8 GOVERNOR'S EMERGENCY PROCLAMATION?

9 **MR. MELLO:** YOUR HONOR, YOU CITED AND I LOOKED AT
10 BRIEFLY THE CASE, THE CCPOA CASE THAT THIS COURT BROUGHT UP AT
11 THE BEGINNING --

12 **JUDGE KARLTON:** THERE IS SOMETHING WRONG WITH THE
13 MICROPHONE AGAIN.

14 **MR. MELLO:** CAN YOU NOT HEAR ME?

15 **JUDGE KARLTON:** I'M HAVING TROUBLE.

16 **THE CLERK:** I HAVE NO CONTROL.

17 **JUDGE KARLTON:** IS IT ON?

18 **THE CLERK:** YES, IT IS ON.

19 **JUDGE KARLTON:** ALL RIGHT. GO AHEAD.

20 **MR. MELLO:** LET ME TRY AGAIN.

21 YOU CITED THAT CASE. WE HAVE LOOKED AT THAT CASE.
22 I NOW KNOW THE CASE OR KNOW OF THE CASE. THAT CASE UPHELD THE
23 GOVERNOR'S AUTHORITY TO ISSUE AN EMERGENCY PROCLAMATION.

24 IN THAT CASE THE GOVERNOR ISSUED AN EMERGENCY
25 PROCLAMATION WITH RESPECT TO OVERCROWDING IN 29 OF 33

1 INSTITUTIONS. IT DIRECTLY RELATED TO THE USE OF BAD BEDS IN 29
2 OF 33 INSTITUTIONS.

3 IT UPHELD THE EMERGENCY PROCLAMATION WITH RESPECT TO
4 THAT PROVISION. THAT EMERGENCY PROCLAMATION DOES NOT DIRECTLY
5 RELATE TO THE ISSUES IN THIS COURT.

6 **JUDGE KARLTON:** AS I SOMETIMES SAY TO LAWYERS WHO ARE
7 NOT NEARLY AS EXPERIENCED AS YOU ARE, IT ISN'T ENOUGH TO HAVE A
8 DISTINCTION. IT'S NECESSARY TO HAVE A DISTINCTION THAT MAKES A
9 DIFFERENCE. THE EXISTENCE OF THE CROWDING IS A STATED POLICY
10 OF YOUR CLIENT.

11 **MR. MELLO:** UNDERSTOOD.

12 **JUDGE KARLTON:** THAT -- MY INITIAL --

13 **MR. MELLO:** I CAN SPEAK MORE TO THAT ISSUE IF YOU
14 WOULD LIKE, YOUR HONOR. THIS IS NOT AN OVERCROWDING LAWSUIT.
15 THAT RELATES TO OVERCROWDING.

16 PLAINTIFFS MUST PROVE BY CLEAR AND CONVINCING
17 EVIDENCE IN THIS CASE THAT OVERCROWDING IS THE PRIMARY CAUSE OF
18 THE UNCONSTITUTIONAL DELIVERY OF MEDICAL CARE.

19 **JUDGE KARLTON:** YOU ARE PREPARED TO SAY THAT THERE IS
20 THIS TERRIFIC OVERCROWDING THAT THE GOVERNOR HAS RECOGNIZED,
21 INDICATED THAT IT IS DANGEROUS BY VIRTUE OF THE OVERCROWDING,
22 THAT IT CREATES MEDICAL CONDITIONS BY VIRTUE THEREOF, AND
23 THREATENS THE SAFETY OF PEOPLE, BUT THAT SOMEHOW OR OTHER THAT
24 DOES NOT RELATE TO THIS CASE?

25 **MR. MELLO:** WHAT I'M PREPARED TO SAY IS THAT THE

1 RECORD THAT IS BEFORE THIS THREE-JUDGE PANEL, WHICH I
2 BELIEVE -- I'M A LITTLE BIT CONFUSED BY, BECAUSE I BELIEVE THAT
3 THE RECORD CLOSED ON DECEMBER 19TH AND WE'VE NOW HAD ADDITIONAL
4 ITEMS MOVED INTO EVIDENCE BY PLAINTIFFS' COUNSEL WHICH
5 DEFENDANTS HAVEN'T HAD AN OPPORTUNITY TO REBUT.

6 I'M UNCLEAR AS TO WHAT THE RECORD IS IN FRONT OF THIS
7 COURT. WE'VE HEARD CITATIONS TO THE RECEIVER'S TENTH REPORT,
8 WHICH THIS COURT VERY SPECIFICALLY TOLD US WHEN DISCOVERY CUT
9 OFF, VERY SPECIFICALLY TOLD US WHEN THE CONDITIONS WERE FIXED,
10 AND VERY SPECIFICALLY TOLD US THAT THE ONLY THING THAT CAN BE
11 CONSIDERED AFTER AUGUST 30TH, 2008 WAS EVIDENCE FROM THE
12 RECEIVER'S NINTH REPORT, NOT HIS TENTH REPORT, AND IF THERE
13 WERE ANY DEVELOPMENTS IN THE LEGISLATURE. AND, UNFORTUNATELY,
14 THERE HAVEN'T BEEN ANY.

15 I'VE HEARD EVIDENCE WITH RESPECT TO THE GOVERNOR'S
16 VETO. I WOULD LIKE TO SPEAK TO THAT. LET'S TALK ABOUT THE
17 VETO. THE VETO DID, IN FACT -- THE GOVERNOR DID, IN FACT, VETO
18 THE FIX FOR AB900. AND WHY IS THAT? THAT IS BECAUSE THE
19 PACKAGE OF BILLS THAT WENT TO THE GOVERNOR WAS LINKED, MEANING
20 HE COULDN'T PICK AND CHOOSE WHICH ONES HE HAD TO VETO OR NOT
21 VETO. THEY WERE LINKED. AND THOSE PACKAGE OF BILLS DID NOT
22 ADDRESS THE FISCAL CRISIS AND ECONOMIC EMERGENCY WITH RESPECT
23 TO THE BUDGET. HE HAD NO CHOICE, AND THAT'S WHAT HE HAS SAID.

24 **JUDGE REINHARDT:** I THINK THAT POSITION WAS MADE
25 CLEAR AT THE LAST HEARING. AS I RECALL, IT DOESN'T SOUND NEW

1 TO ME.

2 MR. MELLO: WELL, I DON'T BELIEVE HE VETOED IT AT THE
3 LAST HEARING. IT HAPPENED AFTERWARDS.

4 JUDGE REINHARDT: WELL, I THOUGHT SOMEBODY EXPLAINED
5 THAT.

6 MR. MELLO: THE VETOES HAPPENED SUBSEQUENTLY TO THE
7 LAST TIME WE WERE TOGETHER, YOUR HONOR.

8 JUDGE REINHARDT: I REMEMBER HEARING THAT IT WAS NOT
9 BECAUSE OF THE -- BECAUSE HE DISAPPROVED OF THE PROVISIONS
10 RELATING TO THAT, BUT BECAUSE IT WAS A -- MAYBE I IMAGINED IT.
11 I THOUGHT I HEARD THAT IN COURT, THAT THE STATE WAS SAYING IT
12 WAS NOT HE DISAPPROVED OF IT.

13 MR. MELLO: CORRECT, BUT IT IS BEING USED AS SOME
14 SORT OF EVIDENCE THAT THE GOVERNOR DOESN'T WANT TO FIX THE
15 AB900.

16 JUDGE KARLTON: NO, NO.

17 JUDGE REINHARDT: IT'S NOT VERY PERSUASIVE --

18 JUDGE KARLTON: THE QUESTION -- GO AHEAD. IT DOESN'T
19 MATTER. I DON'T KNOW WHETHER OR NOT YOU CAN ARGUE AS A MATTER
20 OF LAW, WHETHER YOU CAN ARGUE CONTRARY TO THE GOVERNOR'S STATED
21 POSITION. THAT'S THE FIRST QUESTION.

22 DO YOU HAVE THE AUTHORITY TO CONTRADICT THE
23 GOVERNOR'S FINDINGS OF FACT WHICH UNDERLIE THE PROCLAMATION?

24 MR. MELLO: THE EMERGENCY PROCLAMATION THAT
25 UNDERLIES -- THAT YOU ARE SPEAKING TO DOES NOT SAY AS THIS

1 COURT MUST FIND THAT OVERCROWDING IS A PRIMARY CAUSE OF THE
2 UNCONSTITUTIONAL DELIVERY OF MEDICAL CARE.

3 **JUDGE KARLTON:** LET'S START AT THE BEGINNING.

4 DO YOU ACKNOWLEDGE THAT THERE IS OVERCROWDING WHICH
5 CREATES DANGERS OF -- I'M SORRY. I HAVE FORGOTTEN THE
6 LANGUAGE. BUT GIVES RISE TO DANGERS OF HEALTH, DANGERS FOR
7 BOTH --

8 **MR. MELLO:** THE GOVERNOR OF THE STATE OF CALIFORNIA
9 ACKNOWLEDGED THAT AND THAT'S WHY HE ISSUED AN EMERGENCY
10 PROCLAMATION --

11 **JUDGE KARLTON:** DO YOU ACKNOWLEDGE THAT THAT IS TRUE
12 IN THIS CASE?

13 **MR. MELLO:** THERE IS OVERCROWDING. THAT'S --

14 **JUDGE KARLTON:** I'M ASKING A DIFFERENT QUESTION. LET
15 ME FIND THE LANGUAGE.

16 **JUDGE HENDERSON:** EMERGENCY SERVICE, THAT MAKES CLEAR
17 THAT IN SITUATIONS OF EXTREME PERIL TO THE PUBLIC WELFARE THE
18 STATE MAY EXERCISE.

19 **JUDGE KARLTON:** RIGHT. SPECIFICALLY THE GOVERNOR
20 PROCLAMATION FOUND THAT THE SEVERE PRISON OVERCROWDING CAUSED
21 SUBSTANTIAL RISK TO THE HEALTH AND SAFETY OF THE MEN AND WOMEN
22 WHO WORK INSIDE THESE PRISONS AND THE INMATES WHO ARE HOUSED
23 THEREIN.

24 DO YOU ACKNOWLEDGE THAT?

25 **MR. MELLO:** OF COURSE. IT IS THE EMERGENCY

1 PROCLAMATION --

2 JUDGE KARLTON: DO YOU ACKNOWLEDGE THE FACT?

3 MR. MELLO: YES. IT'S IN THE EMERGENCY PROCLAMATION.

4 I HAVE ACKNOWLEDGED THE FACT. I DO NOT ACKNOWLEDGE NOR HAVE
5 PLAINTIFFS PROVED THAT THAT OVERCROWDING IS THE PRIMARY CAUSE
6 OF THE UNCONSTITUTIONAL DELIVERY OF THE HEALTHCARE AND THAT A
7 PRISONER RELEASE ORDER IS THE ONLY RELIEF THAT WILL REMEDY.

8 JUDGE REINHARDT: THOSE ARE TWO DIFFERENT THINGS.

9 MR. MELLO: I AGREE.

10 JUDGE REINHARDT: LET'S TAKE THE FIRST.

11 DO YOU ACKNOWLEDGE THAT THE OVERCROWDING IS A CAUSE
12 OF ILLNESSES, WHATEVER, I DON'T KNOW -- UNFORTUNATELY, I DIDN'T
13 BRING IT IN, BUT THAT THE OVERCROWDING IS THE CAUSE OF THE
14 HEALTH PROBLEMS IN THE PRISON?

15 MR. MELLO: THAT OVERCROWDING IS THE --

16 JUDGE REINHARDT: I'M NOT ASKING YOU WHETHER IT'S THE
17 PRIMARY CAUSE.

18 MR. MELLO: WHETHER IT CONTRIBUTES?

19 JUDGE REINHARDT: WELL, WHETHER --

20 JUDGE KARLTON: WELL, WHAT I READ WAS THAT THE
21 GOVERNOR'S PROCLAMATION FOUND THAT SEVERE PRISON OVERCROWDING
22 CAUSED -- CAUSED SUBSTANTIAL RISK TO THE HEALTH AND SAFETY OF
23 THE MEN AND WOMEN WHO WORKED INSIDE THE PRISONS AND THE INMATES
24 HOUSED IN THEM.

25 OR THE PROCLAMATION FURTHER FOUND THAT THERE WAS AN

1 INCREASED SUBSTANTIAL RISK TO THE HEALTH AND SAFETY OF CDCR
2 STAFF, INMATES AND THE PUBLIC.

3 MR. MELLO: THAT'S WHAT THE EMERGENCY PROCLAMATION
4 SAYS.

5 JUDGE KARLTON: NO.

6 JUDGE REINHARDT: SO YOU ACKNOWLEDGE THAT THE
7 OVERCROWDING IS A CAUSE?

8 MR. MELLO: CORRECT.

9 JUDGE REINHARDT: AND YOUR ONLY DISAGREEMENT IS IT'S
10 NOT THE PRIMARY CAUSE?

11 MR. MELLO: CORRECT. I MEAN, THAT STATEMENT IS IN
12 EVIDENCE. THEY MOVED FOR IT INTO EVIDENCE BEFORE. WE ARE NOT
13 DISPUTING THE EMERGENCY PROCLAMATION AND WHAT IT SAYS.

14 WHAT WE ARE DISPUTING IS WHETHER PLAINTIFFS MET THEIR
15 BURDEN UNDER THE PLRA.

16 JUDGE REINHARDT: SHOWING THAT IT'S THE PRIMARY
17 CAUSE?

18 MR. MELLO: CORRECT. AND THAT A PRISONER RELEASE
19 ORDER IS THE ONLY FIX.

20 JUDGE KARLTON: THAT'S A SEPARATE QUESTION.

21 JUDGE REINHARDT: THAT'S A SEPARATE ISSUE. WE ONLY
22 GET TO THE PRISONER RELEASE ORDER IF IT'S THE PRIMARY CAUSE.

23 MR. MELLO: OF COURSE.

24 JUDGE REINHARDT: SO THE ISSUE, AS FAR AS YOU'RE
25 CONCERNED, IS THAT IT IS A CAUSE OF THE HEALTH PROBLEMS IN THE

1 PRISONS.

2 MR. MELLO: WE'VE NEVER DISPUTED THAT OVERCROWDING --

3 JUDGE REINHARDT: AND YOUR ONLY ISSUE IS WHETHER IT'S
4 A PRIMARY CAUSE AS OPPOSED TO A CAUSE?

5 MR. MELLO: YES.

6 JUDGE REINHARDT: AND THE GOVERNOR'S POSITION IS THAT
7 IT'S A CAUSE, NOT A PRIMARY CAUSE.

8 MR. MELLO: WELL, THE GOVERNOR'S POSITION IS SPELLED
9 OUT IN THE EMERGENCY PROCLAMATION.

10 JUDGE REINHARDT: NO, OUR CURRENT GOVERNOR, AT THIS
11 POINT.

12 MR. MELLO: AT THIS POINT -- WELL, LET ME BACK UP.
13 THE EMERGENCY PROCLAMATION WAS SIGNED IN 2006. IT
14 WAS BASED UPON CURRENT CONDITIONS.

15 JUDGE KARLTON: RIGHT. IT'S WORSE NOW. THERE ARE
16 MORE PRISONERS.

17 MR. MELLO: I DON'T BELIEVE THAT'S TRUE. I BELIEVE
18 THAT DEFIES THE RECORD IN THIS CASE, THAT IT'S WORSE NOW.

19 JUDGE KARLTON: NO, SIR. AT THE TIME THAT THE
20 GOVERNOR ANNOUNCED THE PROCLAMATION, THERE WERE 166,148
21 PRISONERS. THERE ARE MORE NOW. IS THAT RIGHT?

22 MR. MELLO: THERE MAY BE MORE PRISONERS UNDER THE
23 CARE OF CDCR. HOWEVER, THE QUESTION IS HOW MANY PRISONERS?
24 BECAUSE WE ARE FOCUSED ON THE 33 ADULT INSTITUTIONS IN STATE,
25 HOW MANY PRISONERS ARE NOW IN ADULT INSTITUTIONS?

1 AND I BELIEVE THAT THE POPULATION IN IN-STATE ADULT
2 INSTITUTIONS HAS GONE DOWN AND ONE OF THE REASONS IT'S GONE
3 DOWN, I BELIEVE, YOUR HONOR, IS BECAUSE OF THE EMERGENCY
4 PROCLAMATION WHICH ALLOWED --

5 **JUDGE KARLTON:** THERE ARE ONLY 8,000 PEOPLE WHO HAVE
6 BEEN SHIPPED OUT. THERE ARE ONLY 8,000 PEOPLE.

7 **MR. MELLO:** I BELIEVE THE EVIDENCE BEFORE THIS COURT
8 IS THAT THE POPULATION IS LOWER NOW AS OF AUGUST 30, 2008 IN
9 THE IN-STATE INSTITUTIONS THAN IT WAS AT THE TIME OF THE
10 EMERGENCY PROCLAMATION.

11 **JUDGE KARLTON:** ALL RIGHT.

12 **MR. MELLO:** AND I BELIEVE THAT THE EMERGENCY
13 PROCLAMATION WAS SIGNED IN 2006, AND THAT IT WAS BASED UPON THE
14 CONDITIONS THEN.

15 THAT BEING SAID -- AND I DON'T DISPUTE THAT THE
16 GOVERNOR HAS NOT REPEALED THE EMERGENCY PROCLAMATION, SO
17 MR. SPECTER AND MR. BIEN DON'T NEED TO COME UP AND SAY THAT.
18 IT'S STILL IN EFFECT.

19 **JUDGE KARLTON:** BUT IT JUST DOESN'T MATTER.

20 **MR. MELLO:** NO. THE GOVERNOR HAS NEVER SAID THAT AND
21 I'M NOT SAYING THAT.

22 I'M SAYING THAT PLAINTIFFS HAVE A VERY HIGH AND
23 EXACTING BURDEN TO MEET HERE AND THEY HAVEN'T MET IT.

24 **JUDGE REINHARDT:** IT WOULD SEEM TO ME, MR. MELLO,
25 THAT IF THE GOVERNOR HAD DECLARED A STATE OF EMERGENCY BECAUSE

1 OF EXTREME PERIL TO LIFE, PROPERTY AND RESOURCES OF THE STATE
2 DUE TO OVERCROWDING AND THAT YOU NEED THIS TO PROTECT THE
3 HEALTH AND SAFETY OF THE PEOPLE, INCLUDING THE INMATES, IT'S
4 PRETTY HARD -- IT'S A HIGH BURDEN --

5 **MR. MELLO:** RIGHT.

6 **JUDGE REINHARDT:** -- WHEN THAT'S IN EVIDENCE TO SAY
7 THAT THEY HAVE NOT SHOWN THAT THE OVERCROWDING IS A PRIMARY
8 CAUSE OF THIS EXTREME PERIL THAT THE GOVERNOR FOUND.

9 **MR. MELLO:** WELL, CAN WE SPEAK TO THE EVIDENCE THAT
10 WAS PRESENTED AT THE TRIAL IN THIS CASE ON THAT VERY ISSUE?

11 **JUDGE REINHARDT:** THIS IS PART OF THE GOVERNOR'S
12 PROCLAMATION.

13 **MR. MELLO:** RIGHT. AND I THINK WE'VE SPENT A LOT OF
14 TIME --

15 **JUDGE REINHARDT:** I DON'T KNOW THAT THEY NEED ANY
16 MORE THAN THE GOVERNOR'S PROCLAMATION. WHEN THEY FIND THE
17 STATE OF EMERGENCY EXISTS WITH CONDITION OF EXTREME PERIL TO
18 THE SAFETY OF THE PRISONERS AND THE GUARDS, WHAT MORE DO YOU
19 NEED THAN THAT IF HE SAYS THAT THIS CONDITION CREATES IN ITSELF
20 AN EXTREME STATE OF EMERGENCY -- THE STATE OF EXTREME
21 EMERGENCY?

22 **JUDGE KARLTON:** THE PROCLAMATION SAYS -- I MEAN AMONG
23 OTHER THINGS, FOUND -- THE GOVERNOR'S PROCLAMATION FOUND THAT
24 SEVERE PRISON OVERCROWDING CAUSED SUBSTANTIAL RISK TO THE
25 HEALTH AND SAFETY, ET CETERA, ET CETERA.

1 WITH SO MANY INMATES HOUSED TOGETHER IN TRIPLE BUNKS,
2 IN LARGE COMMON AREA, THERE EXISTED AN INCREASED SUBSTANTIAL
3 RISK OF VIOLENCE, AN INCREASED SUBSTANTIAL RISK FOR
4 TRANSMISSION OF INFECTIOUS DISEASES, AN INCREASED SUBSTANTIAL
5 RISK DUE TO LINE OF SIGHT PROBLEMS, ET CETERA, ET CETERA.

6 YOU DON'T THINK THAT THAT SAYS THAT IT'S A PRIMARY
7 CAUSE?

8 **MR. MELLO:** I DON'T BELIEVE IT SAYS THAT. AND I
9 BELIEVE THAT THE ONLY THING THAT THAT SAID WITH RESPECT TO
10 MEDICAL CARE DELIVERY IN THIS CASE IS THAT WITH RESPECT TO THE
11 SPREAD OF DISEASE. THE SAME SPREAD OF DISEASE THAT HAPPENS IN
12 THE HOSPITAL THAT MY WIFE WORKS IN. THE SAME SPREAD OF DISEASE
13 THAT HAPPENS IN THE HALLWAYS OF BART. THAT'S THE ONLY THING
14 THAT I THINK SPEAKS TO THE ISSUE IN THIS CASE WHEN WE TALK
15 ABOUT PRIMARY CAUSE.

16 BUT, CLEARLY, THE COURT -- YOUR HONOR DISAGREES WITH
17 ME. I WOULD BE GLAD TO ADDRESS OTHER FAILINGS IN PLAINTIFFS'
18 CASE, IF YOU WOULD LIKE.

19 **JUDGE KARLTON:** GO RIGHT AHEAD.

20 **MR. MELLO:** FIRST OF ALL, I BELIEVE THIS COURT HAS TO
21 DECIDE WHETHER TO ISSUE A PRISONER RELEASE ORDER. THAT'S WHAT
22 IT WAS CONVENED FOR. THIS COURT MUST DECIDE THAT ON THE RECORD
23 BEFORE THE COURT.

24 AND I BELIEVE MR. BIEN MADE A CRITICAL ADMISSION THAT
25 DEMONSTRATE THAT PLAINTIFFS' REQUESTED RELIEF CANNOT BE MET,

1 THAT THEY CANNOT GET THE RELIEF THEY REQUEST.

2 HE HAS ADMITTED TO THIS COURT, AS THE EVIDENCE SHOWS,
3 THAT A PRISONER RELEASE ORDER WON'T REMEDY THE CONSTITUTIONAL
4 VIOLATION AT ISSUE. THIS IS NOT AN OVERCROWDING CASE. THE
5 PLRA SAYS SPECIFICALLY WHAT THIS COURT MUST FIND.

6 **JUDGE REINHARDT:** GO BACK, BECAUSE I ASKED THAT
7 QUESTION, I BELIEVE.

8 IS IT YOUR POSITION THAT IF WE FIND THAT OVERCROWDING
9 IS A PRIMARY CAUSE, THEN WE DO HAVE THE AUTHORITY TO REMEDY THE
10 ENTIRE CONSTITUTIONAL VIOLATION BY DOING MORE THAN ISSUE A
11 PRISONER RELEASE ORDER?

12 **MR. MELLO:** I BELIEVE THIS COURT WAS CONVENED TO
13 DECIDE WHETHER OR NOT TO ISSUE A PRISONER RELEASE ORDER. IT
14 WAS NOT CONVENED TO DECIDE OTHER ISSUES.

15 **JUDGE REINHARDT:** WELL, I DON'T KNOW WHY IT'S
16 CONVENED, BUT THE STATUTE SAYS THAT WE CAN'T ISSUE A PRISONER
17 RELEASE ORDER UNLESS IT'S DUE TO OVERCROWDING, THAT THE
18 CONSTITUTIONAL VIOLATION IS DUE TO THAT.

19 IT DOESN'T SAY -- I'M NOT SUGGESTING WE WANT TO DO
20 ANY MORE, BUT I DON'T THINK IT SAYS THAT THE COURT CANNOT DO
21 MORE THAN ISSUE A PRISONER RELEASE ORDER.

22 **MR. MELLO:** CAN I BACK UP AND MAKE MY POINT AND THEN
23 COME BACK TO YOUR POINT IF I MAY?

24 THE PLRA SAYS THAT:

25 "THE THREE-JUDGE COURT SHALL ENTER A PRISONER

1 RELEASE ORDER ONLY IF THE COURT FINDS BY CLEAR AND
2 CONVINCING EVIDENCE THAT PRIMARY CAUSE."

3 WHICH YOU FOLKS SEEM TO DISAGREE WITH ME.

4 **JUDGE REINHARDT:** NO, NO. I DON'T DISAGREE WITH YOU.

5 **JUDGE KARLTON:** I DO.

6 **MR. MELLO:** (CONTINUING)

7 "AND NO OTHER RELIEF WILL REMEDY THE VIOLATION OF
8 THE FEDERAL RIGHT."

9 THE VIOLATION OF THE FEDERAL RIGHT THAT MUST BE
10 REMEDIED HERE IS NOT OVERCROWDING. IT'S DELIVERY OF MEDICAL
11 CARE.

12 MR. BIEN TOLD YOU THAT THE PRISONER RELEASE ORDER HE
13 REQUESTS WILL NOT REMEDY IT.

14 **JUDGE KARLTON:** MR. MELLO. MR. MELLO. WE ALL AGREE
15 THAT THIS COURT IS NOT IN THE BUSINESS OF -- THIS THREE-JUDGE
16 COURT -- WELL, AND, ALSO, THE PRECEDING COURT IS NOT IN THE
17 BUSINESS OF SOLVING OVERCROWDING. THAT'S A DIFFERENT LAWSUIT
18 THAT HASN'T BEEN FILED.

19 THE QUESTION THAT IS BEFORE US IS WHETHER OR NOT THE
20 EVIDENCE IS NOT ONLY CLEAR AND CONVINCING, BUT OVERWHELMING
21 THAT THE OVERCROWDING IS THE PRIMARY CAUSE.

22 THE FACT THAT IT BY ITSELF WILL NOT SOLVE THE PROBLEM
23 DOESN'T ANSWER THE QUESTION OF WHETHER IT'S A PRIMARY CAUSE.
24 YOU SEEM TO THINK THAT FOR THERE TO BE A PRIMARY CAUSE IT'S GOT
25 TO SOLVE THE PROBLEM.

1 **MR. MELLO:** OKAY. EVEN IF THAT'S WHAT I THINK, I
2 THINK I'M NOW SPEAKING TO THE SECOND PRONG OF THE FIRST CLEAR
3 AND CONVINCING STANDARD.

4 **JUDGE KARLTON:** LET'S TAKE THE FIRST PRONG. DO YOU
5 AGREE OR DISAGREE -- IT'S VERY DIFFICULT BECAUSE I DON'T KNOW
6 WHO YOU REPRESENT.

7 BUT IF YOU AGREE -- DO YOU AGREE OR DISAGREE THAT THE
8 QUESTION OF PRIMARY CARE DOES NOT MEAN -- PRIMARY CAUSE DOES
9 NOT MEAN THAT FINDING OVERCROWDING AND REDUCING OVERCROWDING
10 WOULD END THE ISSUE; THAT IS, THAT THERE WOULD CONTINUE TO BE
11 OTHER CAUSES WHICH HAVE TO BE ADDRESSED AS WELL?

12 **MR. MELLO:** I THINK WITH RESPECT TO PRIMARY CAUSE,
13 WHETHER IT'S THE PRIMARY CAUSE OR NOT, MY BELIEF, AND I BELIEVE
14 IT WAS IN OUR MOTION IN LIMINE, THAT PRIMARY CAUSE MEANS JUST
15 THE BIGGEST CAUSE. I'M NOT SAYING IT HAS TO BE THE ONLY CASE.

16 **JUDGE KARLTON:** OKAY. SO THAT IF IT TURNS OUT THAT,
17 YES, WE FIND IT'S A PRIMARY CAUSE, YES, WE FIND THAT IT WILL
18 NOT IN ITSELF CURE THE CONSTITUTIONAL DEFECT, WE NONETHELESS
19 HAVE NOT ONLY THE POWER, BUT THE OBLIGATION TO SET A CAP. IS
20 THAT RIGHT?

21 **MR. MELLO:** I DISAGREE.

22 **JUDGE KARLTON:** THAT'S WHAT I'M ASKING.

23 **MR. MELLO:** I BELIEVE THAT IF THIS COURT FINDS, WHICH
24 I THINK IT MUST AND AS MR. BIEN ADMITTED UP HERE A FEW MOMENTS
25 AGO, THAT IT WON'T REMEDY THE CONSTITUTIONAL VIOLATION, THEN IT

1 CAN'T BE A FIX AND YOU DON'T MEET --

2 JUDGE REINHARDT: SIR, IF IT'S THE PRIMARY CAUSE AND
3 THERE ARE TWO OTHER CAUSES --

4 MR. MELLO: CORRECT.

5 JUDGE REINHARDT: -- AND WE CAN ELIMINATE THE PRIMARY
6 CAUSE, THAT BECAUSE THERE ARE OTHER CAUSES WE CAN'T DO
7 ANYTHING?

8 MR. MELLO: I MEAN, THE STATUTE SAYS WHAT THE STATUTE
9 SAYS. IT SAYS NO OTHER RELIEF WILL REMEDY THE VIOLATION OF THE
10 PRESENT -- OF THE -- OTHER THAN A PRISONER RELEASE ORDER.

11 JUDGE REINHARDT: NO OTHER RELIEF THAT THE COURT IS
12 AUTHORIZED TO GRANT.

13 MR. MELLO: WELL, THAT'S NOT WHAT IT SAYS. BUT
14 THAT'S MY UNDERSTANDING.

15 JUDGE REINHARDT: WELL, YOUR UNDERSTANDING, NO OTHER
16 RELIEF, WHETHER OR NOT WE CAN GRANT IT.

17 MR. MELLO: RIGHT. I MEAN, I THINK WHAT THEY MEANT
18 WAS THAT A PRISONER RELEASE ORDER HAD TO CURE THE VIOLATION AND
19 IT'S -- IT'S EVIDENT THAT IT WON'T -- ACCORDING TO PLAINTIFFS,
20 WON'T CURE THE VIOLATION.

21 JUDGE REINHARDT: I THOUGHT WE COULD ONLY DEAL WITH
22 THE OVERCROWDING. YOU'RE SAYING WE CAN DEAL WITH ALL CAUSES?

23 MR. MELLO: NO. I'M SAYING THAT IF A PRISONER
24 RELEASE ORDER WILL NOT REMEDY THE MEDICAL CARE DEFICIENCIES
25 THAT ARE ALLEGED IN THE PLATA CASE.

1 **JUDGE REINHARDT:** THEN WHY WOULD WE BE INVOLVED IN IT
2 IF IT'S ONLY A PRIMARY CAUSE AND THERE ARE OTHER CAUSES?

3 **JUDGE KARLTON:** THAT'S THE MEANING OF THE EXISTENCE
4 OF OTHER CAUSES. YOU MAY NOT BE ABLE TO SOLVE THE PROBLEM OF
5 UNCONSTITUTIONAL CONDITIONS BY ELIMINATING THE PRIMARY CAUSE,
6 BUT IF YOU DON'T ADDRESS THE PRIMARY CAUSE, WE CAN NEVER
7 DELIVER SUFFICIENT CONSTITUTIONAL CARE.

8 **MR. MELLO:** AND I UNDERSTAND THE COURT'S POSITION,
9 BUT I'M SAYING THE STATE'S POSITION IS THAT IF -- IF IT WON'T
10 REMEDY IT, YOU CAN'T ISSUE THE PRISONER RELEASE ORDER.

11 I UNDERSTAND THAT THERE -- THAT IT'S THE COURT'S
12 POSITION THERE ARE MANY CAUSES. I'M NOT SAYING IT'S THE
13 COURT'S POSITION. THERE ARE MANY CAUSES.

14 **JUDGE REINHARDT:** LET'S ASSUME THERE ARE FIVE CAUSES.

15 **MR. MELLO:** CORRECT.

16 **JUDGE REINHARDT:** ARE WE AUTHORIZED TO DEAL WITH THE
17 OTHER FOUR CAUSES IN ADDITION TO OVERCROWDING?

18 **MR. MELLO:** I BELIEVE THIS COURT IS NOT. THE
19 UNDERLYING PLATA AND COLEMAN COURTS MAY BE AUTHORIZED TO DEAL
20 WITH THOSE OTHER ISSUES. LET ME GIVE YOU AN EXAMPLE.

21 AS AN EXAMPLE, ONE OF THE THINGS WE HEARD, THAT THERE
22 WERE LINES FOR MEDICATION, FOR DISTRIBUTING MEDICATION.

23 SOMETHING SHORT OF A PRISONER RELEASE ORDER MIGHT BE,
24 STATE, HAVE TWO LINES FOR MEDICATION. IT MIGHT BE, HIRE MORE
25 PHARMACISTS. IT MIGHT BE, HIRE MORE NURSES TO DISTRIBUTE

1 MEDICATIONS.

2 I DON'T BELIEVE THIS THREE-JUDGE PANEL CAN DO THAT,
3 BUT I BELIEVE THAT JUDGE HENDERSON COULD IN PLATA OR
4 JUDGE KARLTON. AND I DON'T REALLY WANT TO SPEAK TO THE COLEMAN
5 ISSUE.

6 JUDGE REINHARDT: IF WE CAN'T ELIMINATE THE PROBLEM
7 HERE, BUT WE CAN SUBSTANTIALLY REDUCE IT BY DEALING WITH THE
8 OVERCROWDING PROBLEM, THEN THERE ARE OTHER COURTS THAT CAN,
9 COMBINED WITH OURS, RESOLVE THE CONSTITUTIONAL PROBLEM.

10 BUT YOU'RE SAYING TO ME, AS I UNDERSTAND IT, IF WE
11 CAN'T SOLVE IT ALL BY OURSELVES WITHOUT RELYING ON THE OTHER
12 COURTS, THEN WE CAN'T ISSUE AN ORDER.

13 MR. MELLO: THAT'S THE POSITION THE STATE HAS WITH
14 RESPECT TO THE READING OF THE PLRA.

15 JUDGE REINHARDT: THAT JUST DOESN'T MAKE ANY SENSE.
16 I MEAN, THAT CAN'T BE.

17 JUDGE KARLTON: IT'S IMPORTANT, YOU KNOW, TO CONSTRUE
18 STATUTES SO THAT THEY ARE NOT FACIALLY ABSURD. WHAT YOU HAVE
19 JUST SUGGESTED IS FACIALLY ABSURD. SO WE HAVE TO REJECT THAT
20 INTERPRETATION.

21 MR. MELLO: OKAY.

22 JUDGE REINHARDT: LET'S TRY ANOTHER ONE.

23 MR. MELLO: OKAY. AND YOU'VE SAID WE COULD ISSUE --
24 IT'S YOUR OPINION -- OR I DON'T KNOW IF IT'S YOUR OPINION, BUT
25 THIS COURT COULD ISSUE SOMETHING THAT MIGHT BE THE FIRST STEP,

1 TO USE PLAINTIFFS' WORDS, TOWARDS CURING THE CONSTITUTIONAL
2 VIOLATIONS. AND THEN --

3 **JUDGE REINHARDT:** I DON'T KNOW THAT I SAID ANYTHING.
4 I'M ASKING THE QUESTIONS TRYING TO UNDERSTAND THE PARTIES'
5 POSITION ON THE STATUTE. AND I CAN'T BELIEVE YOUR POSITION IS
6 THAT YOU CAN'T ISSUE AN ORDER UNDER THE PLRA UNLESS
7 OVERCROWDING SOLVES THE ENTIRE PROBLEM, WHETHER OR NOT THE ACT
8 CONTEMPLATES IT IS ONLY A PRIMARY CAUSE AND THERE MAY BE OTHER
9 CAUSES.

10 YOU ARE TELLING US, I THINK, THAT IF THERE ARE OTHER
11 CAUSES AND WE CAN'T DEAL WITH THEM, THEN WE CAN'T ISSUE AN
12 ORDER.

13 **JUDGE KARLTON:** ISN'T THIS REALLY A QUESTION OF WHERE
14 REMEDIES LIE?

15 CONGRESS DECIDED FOR BETTER OR WORSE THAT THE
16 ISSUANCE OF A PRISON CAP IS SO SERIOUS THAT IT OUGHT NOT TO BE
17 DONE BY INDIVIDUAL JUDGES.

18 JUDGE HENDERSON IS NOT ABLE TO ISSUE A PRISON CAP
19 ORDER IN HIS CASE. I AM NOT ABLE TO ISSUE A PRISON CAP IN MY
20 CASE. I WOULD BE, BUT FOR THE FACT IS THAT CONGRESS MADE A
21 JUDGMENT, AND IT IS THAT WHEN YOU COME TO THAT ISSUE, IT IS OF
22 SUCH A SERIOUS NATURE AND SUCH AN INTRUSION UPON THE STATE'S
23 ORDINARY PROCESSES THAT IT REQUIRES THREE JUDGES.

24 ISN'T THAT THE RATIONAL EXPLANATION OF HOW WE GOT
25 HERE?

1 **MR. MELLO:** I GUESS. I MEAN, I WOULD BE GLAD TO
2 SPEAK TO OTHER ISSUES IN THE CASE BECAUSE CLEARLY YOU DON'T BUY
3 MY INTERPRETATION OF THE STATUTE. SO I WOULD BE GLAD TO GO TO
4 OTHER REASONS WHY PLAINTIFFS' CLAIMS FAIL IN THIS CASE.

5 **JUDGE REINHARDT:** OKAY.

6 **MR. MELLO:** AND I BELIEVE IT WAS JUDGE HENDERSON OR
7 ONE OF YOU THAT TOUCHED UPON THIS ISSUE, AND THAT IS -- AND
8 JUDGE KARLTON'S SPOKEN TO IT, TOO -- THE 130 PERCENT OF DESIGN
9 BED CAPACITY NUMBER, THE 95 PERCENT AT SPECIALTY CENTERS, WHICH
10 CAME UP FOR THE FIRST TIME, FRANKLY, IN THEIR PROPOSED FINDINGS
11 OF FACT AND CONCLUSIONS OF LAW.

12 AND I THINK THE RECORD -- THERE IS NO EVIDENCE BEFORE
13 THIS COURT TYING DESIGN CAPACITY TO THE CONSTITUTIONAL DELIVERY
14 OF MEDICAL CARE. THERE IS SIMPLY NO EVIDENCE.

15 THERE IS THE DUKMAJIAN REPORTS, THE EXPERT PANEL
16 REPORTS THAT TALK ABOUT PERCENTAGE OF DESIGN BED CAPACITY WITH
17 RESPECT TO THE DELIVERY OF PROGRAMS. THOSE HAVE NOTHING TO DO
18 WITH THE DELIVERY OF CONSTITUTIONALLY ADEQUATE MEDICAL CARE.

19 THERE IS A COMPLETE ABSENCE IN THE RECORD FROM ANY
20 TESTIMONY THAT SAYS -- WELL, LET ME BACK UP.

21 WE'VE HEARD MANY TERMS, DESIGN CAPACITY AND OPERABLE
22 CAPACITY DURING TRIAL, CORRECT? AND PLAINTIFFS' EXPERTS, I
23 BELIEVE SIX OF THEM, TESTIFIED THAT YOU COULD OPERATE
24 CONSTITUTIONALLY ADEQUATE MEDICAL CARE SYSTEMS IN PRISONS THAT
25 WERE OVERCROWDED.

1 AND I BELIEVE THAT FOUR EXPERTS TESTIFIED ABOUT
2 OPERABLE CAPACITY. AND THAT OPERABLE CAPACITY IS THE RELEVANT
3 INDICATOR. THEY DIDN'T SAY THAT IT WAS TIED TO DESIGN
4 CAPACITY. THEY SAID, WHAT IS THE OPERABLE CAPACITY? AT WHAT
5 POPULATION CAN A SYSTEM OPERATE CONSTITUTIONALLY ADEQUATE
6 MEDICAL CARE SYSTEMS?

7 AND THERE IS A COMPLETE ABSENCE IN THE RECORD FROM
8 PLAINTIFFS THAT SAYS WHAT THE OPERABLE CAPACITY OF CDCR'S
9 PRISONS IS, SYSTEM-WIDE, LET ALONE INSTITUTION TO INSTITUTION.

10 LET'S TAKE A HYPOTHETICAL TO ILLUSTRATE THE POINT.
11 IF A JAIL HAD A DESIGN BED CAPACITY OF 20 INMATES, BUT IT ONLY
12 HAD 10 INMATES AND IT ONLY HAD ONE PART-TIME LICENSED
13 VOCATIONAL NURSE, IT DIDN'T HAVE ANY DOCTORS, REGISTERED
14 NURSES, PHYSICIAN'S ASSISTANTS, NURSE PRACTITIONERS, PHARMACY
15 SERVICES, SPECIALTY SERVICES, HOSPITAL SERVICES, WOULD THE
16 POPULATION BE THE SINGLE BIGGEST BARRIER TO CARE TO THOSE 10
17 INMATES?

18 WOULD IT BE THE FACT THAT THERE ARE 10 INMATES IN A
19 PRISON THAT'S DESIGNED FOR 20 INMATES?

20 OR -- AND WOULD THE ONLY WAY TO CURE THE MEDICAL CARE
21 BEING RECEIVED BY THOSE 10 INMATES BE TO GET RID OF NINE OF
22 THOSE INMATES?

23 NO. IT WOULD BE, WHAT IS HAPPENING AND WHAT IS
24 IMPROVING IN CDCR RIGHT NOW. AND THAT IS THE HIRING OF
25 DOCTORS, THE HIRING OF NURSES, THE HIRING OF PHYSICIAN

1 EXTENDERS, NURSE PRACTITIONERS, PHYSICIAN'S ASSISTANTS,
2 IMPROVEMENTS OF PHARMACY SERVICES. THAT WOULD BE THE REASONS.

3 AND THERE IS A COMPLETE ABSENCE OF EVIDENCE AS TO
4 WHAT THE OPERABLE CAPACITY IS WITH RESPECT TO MEDICAL CARE AT
5 CDCR'S INSTITUTIONS FOR THE DELIVERY OF CONSTITUTIONALLY
6 ADEQUATE MEDICAL CARE. THERE IS NO EVIDENCE.

7 THAT'S NOT MY BURDEN TO PUT IN. THEY HAD TO PUT IT
8 IN BY CLEAR AND CONVINCING EVIDENCE. AND I DON'T BELIEVE THIS
9 COURT -- YES.

10 **JUDGE KARLTON:** MR. MELLO, ACTUALLY THIS BRINGS UP --
11 I WON'T SAY IT. THIS IS AN IMPORTANT ISSUE AND I FIND IT
12 TROUBLING, BUT THE SUGGESTION WAS MADE -- AND I CAN'T BELIEVE
13 SERIOUSLY, BUT THE SUGGESTION WAS MADE THAT WE FIND THAT THE
14 OVERCROWDING IS A NECESSARY -- IS THE PRIMARY PURPOSE.

15 AND THEN WE SAY TO THE STATE, YOU TELL US WHAT YOU
16 ARE GOING TO DO AND WHY YOU ARE GOING TO DO IT AND HOW YOU ARE
17 GOING TO DO IT. AND THAT WOULD INCLUDE, I SUPPOSE, IN SOME WAY
18 TYING THE APPROPRIATE LEVEL OF CARE TO THE APPROPRIATE PRISON
19 POPULATION.

20 WHAT THAT SAYS TO ME IS THEY'VE PROVEN THAT THE
21 CONDITIONS ARE SUCH THAT AN ORDER UNDER THE PLRA IS
22 APPROPRIATE, BUT THEY RECOGNIZE THAT IT IS A MULTI --
23 POLYCENTRIC, I THINK IS THE WORD WE USED LAST TIME, PROBLEM
24 THAT IS VERY COMPLEX AND THAT WE OUGHT TO GIVE THE STATE THE
25 FIRST OPPORTUNITY TO DO SO.

1 WHAT IS YOUR POSITION AS TO THE PROPRIETY OF TELLING
2 THE STATE THERE IS NO QUESTION THAT OVERCROWDING IS THE PRIMARY
3 CAUSE? THE QUESTION BECOMES ONE OF SOLUTION AND OF WHAT'S THE
4 PROPER REMEDY, AND THAT WE, AT LEAST INITIALLY, LEAVE TO THE
5 STATE?

6 **MR. MELLO:** OKAY. SO IF I UNDERSTAND IT, IF THE
7 COURT MEANT -- IF THE COURT WAS SATISFIED THAT THE PLRA WAS MET
8 WITH RESPECT TO PRIMARY CAUSE, ONLY REMEDY -- ONLY RELIEF THAT
9 WILL REMEDY -- AND THAT THERE IS NOT A SUBSTANTIAL ADVERSE
10 IMPACT UPON PUBLIC SAFETY --

11 **JUDGE KARLTON:** RIGHT.

12 **MR. MELLO:** -- AND THE ADMINISTRATION OF CRIMINAL
13 JUSTICE, WHICH I CAN ALSO SPEAK TO IF GIVEN THE OPPORTUNITY,
14 THAT I DON'T BELIEVE THEY MEET THAT EITHER; BUT THEN COULD THE
15 COURT FASHION A REMEDY THAT SAYS, STATE, YOU COME UP WITH WHAT
16 THE POPULATION HAS TO BE TO PROVIDE CONSTITUTIONALLY ADEQUATE
17 MEDICAL CARE?

18 I THINK THAT THIS COURT WOULD HAVE TO ISSUE EITHER A
19 -- WOULD HAVE TO ISSUE A PRISONER RELEASE ORDER AND THAT WOULD
20 BE EITHER A CAP OR THE RELEASE OR A REDUCTION PLAN. IT WOULD
21 HAVE TO GIVE THE STATE A NUMBER.

22 I DON'T THINK THAT THIS COURT CAN JUST SAY, REDUCE
23 YOUR POPULATION. I THINK THEY HAVE TO GIVE --

24 **JUDGE KARLTON:** WHY CAN'T WE? I MEAN, I DON'T KNOW.
25 I THINK THAT THIS IS A MUCH MORE DIFFICULT PROBLEM THAN THE

1 PLAINTIFFS DO.

2 BUT WHY CAN'T THE COURT, CONSISTENT WITH THE VIEW OF
3 THE PLRA THAT THE STATE OUGHT TO BE GIVEN AS MUCH ELBOW ROOM,
4 IF YOU WILL, TO COME UP WITH AN APPROPRIATE PLAN, WHY CAN'T WE
5 SAY, IT'S CLEAR THAT THE FIRST -- THAT ALL THE ELEMENTS HAVE
6 BEEN MET, BUT IT IS ESSENTIALLY THE STATE'S RESPONSIBILITY TO
7 DETERMINE WHAT LEVEL OF CARE, WHAT LEVEL OF POPULATION WILL BE
8 NECESSARY TO REDUCE TO SO THAT ALL OF THE OTHER ISSUES, ALL OF
9 THE OTHER CAUSES CAN ALSO BE ADDRESSED BY THE INDIVIDUAL
10 COURTS? WHAT IN THE STATUTE SAYS NO, THAT THAT'S NOT SOMETHING
11 YOU CAN DO?

12 MR. MELLO: WELL, I'LL JUST GO IN REVERSE ORDER, IF I
13 CAN.

14 JUDGE KARLTON: SURE.

15 MR. MELLO: FIRST OF ALL, I THINK JUDGE REINHARDT'S
16 CONCERN OF BEING AROUND THIS THREE-JUDGE PANEL, BEING AROUND
17 FOR A LONG TIME --

18 JUDGE KARLTON: WELL, THAT'S MY CONCERN.

19 MR. MELLO: OKAY, YOUR CONCERN. THEN THAT'S A
20 PROBLEM. BECAUSE YOU THEN ASKED THE STATE -- WHETHER OR NOT
21 THE PLRA AUTHORIZES IT, YOU ASKED THE STATE TO COME UP WITH A
22 PLAN.

23 I DOUBT THAT THE NUMBER THAT THE STATE COMES UP WITH
24 IS GOING TO SATISFY ALL THE PARTIES AND THIS COURT.

25 JUDGE KARLTON: IT MAY NOT SATISFY IT.

1 **MR. MELLO:** RIGHT.

2 **JUDGE KARLTON:** MAY NOT SATISFY IT. BUT, CERTAINLY,
3 AS A FIRST STEP IT WOULD APPEAR TO, AT LEAST ARGUABLY, BE
4 CONSISTENT WITH THE UNDERLYING NOTIONS OF THE PLRA; THAT THIS
5 IS A STATE PROBLEM AND THE FEDERAL GOVERNMENT ONLY COMES IN
6 WHEN IT'S SO DESPERATE THAT -- AND THE STATE'S MANIFESTED AN
7 INCAPACITY TO ADDRESS THE PROBLEM. SEE WHAT I'M SAYING?

8 **MR. MELLO:** I UNDERSTAND WHAT YOU ARE SAYING. BUT I
9 THINK THE COURT WOULD HAVE TO GIVE THE STATE SOME GUIDANCE.
10 EVEN IF IT WAS TIME PARAMETERS, COME UP WITH A PLAN BY "X"
11 DATE. YOU HAVE TO HAVE A PLAN TO REDUCE YOUR POPULATION.

12 I WOULD THINK IT WOULD HAVE TO SAY BY "X" AMOUNT OVER
13 "X" PERIOD OF TIME. I DON'T THINK YOU CAN SAY, GET TO A
14 POPULATION THAT GETS YOU CONSTITUTIONAL.

15 BUT I UNDERSTAND YOUR QUESTION.

16 **JUDGE KARLTON:** NO, NO. IS THERE SOMETHING IN THE
17 STATUTE WHICH SUPPORTS YOUR FEELING? I MEAN -- NEVER MIND WHAT
18 I HAD. IS THERE SOMETHING IN THE STATUTE WHICH SUPPORTS YOUR
19 FEELING?

20 **MR. MELLO:** NO. I THINK THE PRISON LITIGATION REFORM
21 ACT AND THE DEFINITION OF A PRISONER RELEASE ORDER CONTEMPLATES
22 EITHER CAPPING THE PRISONS OR RELEASING PRISONERS, RIGHT?

23 **JUDGE KARLTON:** NO, BUT PART OF THE PROBLEM WITH THE
24 PLRA IS THE EXTRAORDINARY BREADTH OF ORDERS WHICH ARE DESCRIBED
25 AS PRISONER RELEASE ORDERS.

1 THAT'S PART OF -- NOT PART OF THE PROBLEM, BUT PART
2 OF THE REALITY. SO THAT -- AS AN EXAMPLE, ONE THING THAT
3 ARGUABLY WE COULD DO, I'M NOT SUGGESTING WE WOULD, IS SAY YOU
4 CAN'T SEND ANYMORE PAROLE VIOLATORS. THAT WOULD BE A PRISON
5 RELEASE ORDER -- A PRISONER.

6 **MR. MELLO:** IF YOU ISSUED THAT ORDER, YES.

7 **JUDGE KARLTON:** YEAH. NOW, THAT WOULDN'T SET ANY
8 NUMBER. IT WOULD JUST SAY, YOU CAN'T DO THAT. AND THAT WOULD
9 CLEARLY BE -- CLEARLY, I DIDN'T MEAN THAT.

10 THAT WOULD BE APPARENTLY AUTHORIZED BY THE STATUTE
11 AND IT WOULDN'T INVOLVE ANY NUMBER IN PARTICULAR.

12 **MR. MELLO:** YOU'RE RIGHT. I DON'T DISAGREE WITH YOU.

13 IF YOU READ THE STATUTE, IT SAYS THE PRISONER RELEASE
14 ORDER IS BASICALLY ANY ORDER THAT HAS THE PURPOSE OR EFFECT OF
15 REDUCING OR LIMITING THE PRISON POPULATION.

16 **JUDGE KARLTON:** SURE.

17 **MR. MELLO:** AND THAT WOULD HAVE THAT EFFECT. AND
18 YOU'RE RIGHT THAT IT WOULDN'T NECESSARILY SAY, YOU HAVE TO
19 REDUCE YOUR POPULATION BY 52,000 OVER TWO YEARS. IT WOULD JUST
20 SAY, YOU CAN'T ADMIT. THAT WOULD BE A PRISONER RELEASE ORDER.

21 **JUDGE KARLTON:** ARE WE IN A PLACE OF BUSINESS -- I
22 DON'T KNOW WHETHER WE ARE -- WHERE YOU WOULD AGREE THAT IF WE
23 GOT TO THAT PLACE, THE COURT, BECAUSE OF THE ODD NATURE OF --
24 ODD.

25 THE COURT, BECAUSE OF THE NATURE OF THE STATUTE,

1 WOULD BE FREE TO TELL THE STATE, YOU'VE GOT TO REDUCE THE
2 POPULATION. HOW MANY, AND WHAT IS AT LEAST INITIALLY,
3 INITIALLY, YOUR RESPONSIBILITY. COME BACK IN THREE MONTHS, SIX
4 MONTHS, WHATEVER IT WOULD TAKE, AND TELL US HOW YOU ARE GOING
5 TO DO IT.

6 THEY WANT ME TO SAY, AND MAKE SURE YOU TALK TO THE
7 PLAINTIFFS. AND I EXPECT THE COUNTIES AT THAT POINT WOULD SAY,
8 AND US, TOO. AND, CERTAINLY, THAT WOULD BE GOOD PUBLIC POLICY.
9 IT'S NOT CLEAR TO ME THAT THAT WOULD BE NECESSARY. BUT COULD
10 WE DO THAT?

11 **MR. MELLO:** COULD YOU MAKE AN ORDER THAT SAYS COME UP
12 WITH A PLAN IN 12 MONTHS TO REDUCE YOUR PRISON POPULATION? I
13 THREW THAT IN THERE, THE 12 MONTHS.

14 **JUDGE KARLTON:** THAT'S ALL RIGHT. I THINK IT'S MORE
15 COMPLICATED.

16 **MR. MELLO:** I DON'T THINK IT'S SOMETHING WE CAN DO IN
17 60 OR 90 DAYS, OBVIOUSLY.

18 THE QUESTION IS: COULD THIS COURT ISSUE SUCH AN
19 ORDER? YES.

20 EXCEPT THIS COURT WAS CONVENED AND THIS CASE IS ABOUT
21 THE DELIVERY OF CONSTITUTIONAL MEDICAL CARE. SO THERE HAS TO
22 BE A NEXUS BETWEEN POPULATION AND CONSTITUTIONAL CARE. AND
23 RIGHT NOW THERE IS NO NEXUS BEFORE THIS COURT. THERE IS NO
24 RELATIONSHIP OF A NUMBER AND CONSTITUTIONAL CARE.

25 **JUDGE KARLTON:** I UNDERSTAND YOU BELIEVE THAT. I

1 UNDERSTAND YOU BELIEVE THAT. AND I RESPECT THE FACT THAT YOU
2 BELIEVE THAT. I WANT YOU TO ASSUME THAT AT LEAST ONE OF THE
3 JUDGES OF THIS COURT THINKS THAT THAT'S PROBABLY NOT THE CASE.

4 MR. MELLO: I'M SURPRISED.

5 JUDGE KARLTON: THE PROBLEM CONTINUES TO BE WHAT KIND
6 OF ORDER THE COURT IS AUTHORIZED TO ISSUE, WHAT KIND OF ORDER
7 THE COURT SHOULD ISSUE.

8 AND I ASK YOU AGAIN: IN LIGHT OF WHAT SOME FOLKS
9 MIGHT THINK IS AN AMBIGUITY IN THE EVIDENCE, WHETHER THE
10 APPROPRIATE THING TO DO -- IS THAT THERE IS AN AMBIGUITY AS TO
11 THE NUMBER. SOME FOLKS MIGHT THINK THAT. BUT THERE IS NO
12 AMBIGUITY AS TO THE REALITY THAT OVERCROWDING IS A PRIMARY
13 CAUSE.

14 AT THAT POINT THE QUESTION BECOMES -- TO ME, BECOMES
15 WHO OUGHT TO SOLVE THE PROBLEM, THE PLAINTIFFS, THE COUNTIES OR
16 THE STATE? AT LEAST TAKE AN INITIAL COUNT. AND IT SEEMS TO ME
17 IF YOU AGREE WITH ME THAT THE COURT COULD ISSUE SUCH AN ORDER,
18 THAT I THINK CREATES A POSSIBILITY THAT MAYBE MORE CONSISTENT
19 WITH THE NOTIONS THAT UNDERLIE THE ADOPTION OF THE PLRA.

20 ALL RIGHT. I'M SORRY. I'M THINKING OUT LOUD NOW.
21 GO AHEAD.

22 JUDGE REINHARDT: THERE IS NO QUESTION.

23 JUDGE KARLTON: THERE IS NO QUESTION, YOU'RE RIGHT.

24 JUDGE REINHARDT: PROCEED.

25 MR. MELLO: SO, AGAIN -- AND I WILL LEAVE IT BECAUSE

1 CLEARLY AT LEAST ONE OF THE JUDGES OF THIS THREE-JUDGE PANEL
2 DISAGREES WITH ME, BUT I BELIEVE THERE IS NO EVIDENCE THAT SAYS
3 WHAT THE NUMBER IS. AND I DON'T BELIEVE THERE IS ANY EVIDENCE
4 AS TO WHAT THE NUMBER IS OF ANY INSTITUTION EITHER.

5 AND I BELIEVE THAT PLAINTIFFS HAVE TO SHOW BY CLEAR
6 AND CONVINCING EVIDENCE WHAT THE NUMBER HAD TO BE TO PROVIDE
7 CONSTITUTIONAL CARE AND WHAT THE NUMBER HAD TO BE AT EACH
8 INSTITUTION.

9 BUT EVEN IF WE LEAVE THAT ASIDE AND GO TO THE SECOND
10 HALF, LET'S ASSUME PLAINTIFFS HAVE MET THEIR BURDEN OF CLEAR
11 AND CONVINCING EVIDENCE, PRIMARY CAUSE, ONLY FIX. THEN THIS
12 COURT HAS TO GIVE SUBSTANTIAL WEIGHT TO THE ADVERSE IMPACT ON
13 PUBLIC SAFETY.

14 AND THE ONLY NUMBER THAT WE ARE LEFT TO ANALYZE WHEN
15 MAKING THAT IS THE NUMBER PROPOSED BY PLAINTIFFS, WHICH IS THE
16 RELEASE OF 52,000 OVER TWO YEARS. AND RELEASE BEING THE
17 REDUCTION IN THE PRISON POPULATION.

18 **JUDGE REINHARDT:** WE ARE NOT BOUND BY WHAT THE
19 PARTIES WANT. ONCE YOU DECIDE THAT THERE IS A VIOLATION, THAT
20 THE OVERCROWDING IS A PRIMARY CAUSE, AT THAT POINT IT'S UP TO
21 THE COURT TO FASHION A REMEDY WITH THE ASSISTANCE OF THE
22 PARTIES. AND MAYBE, AS JUDGE KARLTON SUGGESTS, ASKING THE
23 STATE FIRST WHAT IT WANTS TO DO TO SOLVING THE PROBLEM.

24 BUT, YOU KNOW, THE IDEA THAT THE 52,000 REDUCTION IN
25 THE POPULATION WILL OCCUR OVER A TWO-YEAR PERIOD IS SIMPLY A

1 PROPOSAL FROM THE PLAINTIFFS.

2 MR. MELLO: UNDERSTOOD. I WASN'T SUGGESTING
3 OTHERWISE.

4 ALL I WAS SUGGESTING IS THAT THE ONLY WAY THAT WE CAN
5 ANALYZE THE EVIDENCE IN THE CASE IS HINGED TO THAT 52,000
6 NUMBER. RIGHT.

7 THAT WAS THE NUMBER THAT PLAINTIFFS' OWN EXPERTS
8 TESTIFIED ABOUT. MR. AUSTIN, AND HE TESTIFIED ABOUT HOW YOU
9 WOULD GET THERE TO 52,000 OVER TWO YEARS. SO THAT'S THE REASON
10 I WAS REFERENCING IT.

11 JUDGE REINHARDT: BUT THE PROBLEM IS I THINK WHAT
12 JUDGE KARLTON SUGGESTED, IS THE STATE SHOULD BE ASKED TO TELL
13 US HOW IT WOULD GET THERE, NOT THAT THEY ARE BOUND BY
14 MR. AUSTIN'S VIEW.

15 JUDGE KARLTON: OR, ALTERNATIVELY, WE FIND OURSELVES
16 IN THE SITUATION IN WHICH THE BEST EVIDENCE IS THE 52,000, AND
17 WE TELL THE STATE THAT APPEARS TO BE THE CASE, WE ARE OPEN TO
18 THE STATE TELLING US WHAT THE ALTERNATIVES ARE IN THE REAL
19 WORLD. AND THAT HAS THE APPEAL OF -- WELL -- OKAY.

20 MR. MELLO: SO THEN THE BURDEN GETS TRANSFERRED TO
21 DEFENDANTS TO PROVE UP PLAINTIFFS' CASE AS TO WHAT THAT NUMBER
22 IS THAT'S REQUIRED FOR CONSTITUTIONAL CARE. AND I BELIEVE THAT
23 FLIES IN THE VERY FACE OF THE PRISONER LITIGATION REFORM ACT.

24 JUDGE HENDERSON: WHAT IF INSTEAD OF THAT WE ARE
25 GOING TO MAKE FINDINGS OF FACT? WHAT IF WE SAY -- WE TAKE INTO

1 ACCOUNT ALL OF THE EVIDENCE AND WE FIND MAYBE TWO TO ONE,
2 WHATEVER, WE FIND THAT 135 PERCENT IS THE NUMBER NECESSARY.
3 YOU KNOW, YOU WILL APPEAL IT, BUT BEYOND THAT, WOULD THAT DO IT
4 TO GET US MOVING FORWARD?

5 **MR. MELLO:** I THINK IT WOULD HAVE TO BE BASED UPON
6 THE RECORD IN THE CASE. AND I UNDERSTAND HOW THE COURT COULD
7 THINK ABOUT CRAFTING SUCH AN ORDER, BUT I THINK IT WOULD -- I
8 WOULD QUESTION WHERE THE COURT WOULD GET TO THAT 135 PERCENT?

9 BECAUSE WHAT YOU'VE HEARD IS, YOU KNOW, REPORTS AND
10 EXPERT PANEL REPORTS THAT WERE DONE WITH RESPECT TO PROGRAMMING
11 AND NOT WITH RESPECT --

12 **JUDGE KARLTON:** FACINORI. FACINORI. IF YOU CAN'T
13 DELIVER A PROGRAM BECAUSE OF OVERCROWDING. AND WE HAVE SO MUCH
14 EVIDENCE ABOUT BEING UNABLE TO DELIVER MENTAL HEALTH CARE
15 BECAUSE THERE AREN'T ENOUGH BEDS, THERE AREN'T ENOUGH
16 PSYCHIATRISTS, THERE AREN'T ENOUGH OF ALL OF THESE THINGS, IT
17 FOLLOWS THAT IF 135 PERCENT IS NECESSARY FOR DELIVERY OF
18 PROGRAMS, IT IS THE MINIMUM NECESSARY FOR AT LEAST MENTAL
19 HEALTH CARE, AND I WOULD ASSUME PHYSICAL AS WELL, AND MAYBE
20 IT'S LESS THAN THAT. THERE ARE SOME OF US WHO SUSPECT IT IS.

21 BUT, I MEAN, IF THAT'S THE BEST EVIDENCE THAT WE'VE
22 GOT, THAT'S THE BEST EVIDENCE WE'VE GOT.

23 **MR. MELLO:** AND I UNDERSTAND. I JUST DON'T BELIEVE
24 THAT THAT EVIDENCE IS, FRANKLY, VERY COMPELLING. PROGRAMMING
25 IS QUITE DIFFERENT THAN MEDICAL CARE. AND I CAN'T SPEAK TO THE

1 COLEMAN ISSUES AND I WON'T EVEN TRY TO, BUT LET ME SPEAK TO THE
2 PLATA ISSUES.

3 THE DELIVERY OF MEDICAL CARE IN PLATA HAS
4 UNDOUBTEDLY -- THERE IS NO DISPUTE THAT IT'S IMPROVED
5 DRAMATICALLY SINCE 2006. THERE IS SIMPLY NO DISPUTE THAT IT'S
6 IMPROVED DRAMATICALLY.

7 AND WHY HAS IT IMPROVED? BECAUSE WE HAVE MORE
8 DOCTORS, MORE NURSES, MORE PHARMACY SERVICES, BETTER. THAT
9 IT'S IMPROVING. THERE IS NO DISPUTE THERE.

10 SO THEN HOW DO WE COME UP WITH A NUMBER, AND IS THAT
11 NUMBER -- THOSE IMPROVEMENTS HAVE OCCURRED IN THE VERY FACE OF
12 POPULATION PRESSURES. THOSE IMPROVEMENTS HAVE OCCURRED.

13 SO HOW COULD WE SAY THAT 135 PERCENT HAS ANY
14 RELEVANCE WHEN THE IMPROVEMENTS HAVE OCCURRED, THE DRAMATIC
15 IMPROVEMENTS HAVE OCCURRED IN THE FACE OF POPULATION PRESSURES?
16 THAT WOULD BE NUMBER ONE.

17 BUT I GUESS I WOULD LIKE TO GET TO THE SECOND HALF OF
18 THE ANALYSIS, IF I MAY, UNLESS THE COURT HAS MORE QUESTIONS.

19 **JUDGE REINHARDT:** I HAVE ONE MORE QUESTION.

20 **MR. MELLO:** SURE.

21 **JUDGE REINHARDT:** WHICH IS, YOU SEEM TO BELIEVE THAT
22 THE REMEDY MUST BE DEVELOPED BY CLEAR AND CONVINCING EVIDENCE.

23 **MR. MELLO:** NO, I DON'T BELIEVE SO.

24 **JUDGE REINHARDT:** OKAY.

25 **JUDGE KARLTON:** OKAY.

1 **MR. MELLO:** I BELIEVE THAT PLAINTIFFS HAVE TO MEET
2 THEIR BURDENS OF PRIMARY CAUSE AND ONLY RELIEF BY CLEAR AND
3 CONVINCING EVIDENCE. BUT I HAVE NOT SUGGESTED IT, NOR DO I
4 BELIEVE THAT THE PLRA PROVIDES THAT.

5 **JUDGE REINHARDT:** ALL RIGHT. NOW, YOUR NEXT POINT.

6 **MR. MELLO:** WELL, I WAS GOING TO GO TO -- AGAIN,
7 WE'RE STUCK WITH THE 52,000 BECAUSE THAT'S WHAT THE EXPERTS AND
8 DEFENDANT INTERVENORS RELIED UPON WHEN THEY CAME UP WITH THEIR
9 ANALYSIS OF THE ADVERSE IMPACTS OF PUBLIC SAFETY.

10 AND I THINK WE NEED TO SPEAK TO THAT NUMBER ONLY
11 BECAUSE THAT'S WHAT THE EXPERTS RELIED UPON IN COMING UP WITH
12 THAT. AND THEY GOT TO THAT 52,000 -- LET'S JUST FOCUS ON
13 DR. AUSTIN, OKAY, PLAINTIFFS' EXPERT.

14 DR. AUSTIN SAID TO GET TO 52,000 IN TWO YEARS, THAT
15 YOU CANNOT ACHIEVE A 52,000 REDUCTION IN TWO YEARS UNLESS YOU
16 APPLIED SHORTENED LENGTH OF SENTENCE TO TWO STRIKERS AND
17 LIFERS.

18 **JUDGE KARLTON:** THIS IS IMPORTANT. IT'S ALL
19 IMPORTANT.

20 I HAD UNDERSTOOD HIM TO SAY THAT THAT WOULD MAKE IT
21 EASIER AND MORE SIMPLE. I DIDN'T THINK HE SAID THAT IT WAS
22 NECESSARY. I THOUGHT --

23 **MR. MELLO:** NO. AND WE CITED TO IT IN OUR PROPOSED
24 FINDINGS OF FACT AND CONCLUSIONS OF LAW, I BELIEVE, THAT HE
25 SPECIFICALLY SAID YOU CANNOT GET TO 52,000 IN TWO YEARS UNLESS

1 YOU DO LIFERS AND SECOND STRIKERS. PERIOD. THAT'S THEIR
2 EXPERTS.

3 **JUDGE REINHARDT:** WHAT I DON'T UNDERSTAND ABOUT THIS
4 ARGUMENT IS WHY YOU THINK WE ARE BOUND JUST BECAUSE THE
5 PLAINTIFFS SAID TWO YEARS.

6 IF WE AGREED, SAY, OKAY, DO IT IN THREE YEARS, WE
7 DON'T HAVE TO ARGUE THIS CASE IN TERMS OF WHAT THE PLAINTIFFS
8 OR THEIR EXPERTS SAY.

9 I MEAN, LET'S ASSUME WE WANT TO REDUCE IT BY 52,000.
10 I'M NOT SUGGESTING THAT WE DO, BUT LET'S ASSUME WE DID. WHY DO
11 WE ONLY LOOK AT WHAT THE EFFECT WOULD BE IN TWO YEARS INSTEAD
12 OF LOOKING AT THE EFFECT IN THREE YEARS ALSO?

13 **MR. MELLO:** BECAUSE THE COURT HAS ANALYZED THE
14 ADVERSE IMPACT ON PUBLIC SAFETY AND THE EVIDENCE WITH RESPECT
15 TO THAT WAS BASED UPON THE 52,000-FIGURE. THERE IS NO EVIDENCE
16 AS TO WHAT IT WOULD BE IF YOU CHOSE A FOUR-YEAR PLAN, A
17 FIVE-YEAR PLAN.

18 **JUDGE KARLTON:** CLEARLY, EVERY TIME THAT WE EXTEND
19 THE PERIOD OF TIME, IT'S FEWER PEOPLE BEING SUBJECT TO RELEASE.

20 **MR. MELLO:** YES.

21 **JUDGE KARLTON:** SO THAT IF THERE IS ANY ENDANGERMENT
22 OF PUBLIC SAFETY, AND THERE ARE PLENTY OF EXPERTS WHO TESTIFIED
23 THERE WOULDN'T BE, BUT IF THERE WERE, IT WOULD BE REDUCED BY
24 THE NUMBER OF PEOPLE. IT WOULD BE REDUCED IF WE EXTENDED IT A
25 YEAR. RIGHT?

1 **MR. MELLO:** CORRECT. IT WOULD BE SOMETHING LESS.
2 THE FIRST IMPACT WOULD BE LESS --

3 **JUDGE KARLTON:** SO JUDGE REINHARDT'S QUESTION, WHICH
4 IS, WHY DO WE CARE? YOU KNOW, WE RESPECT THE PLAINTIFFS, BUT
5 LIKE ALL PLAINTIFFS, THEY ARE OVERREACHING. I DIDN'T SAY THAT.

6 YOU KNOW, WHY WOULD WE FEEL COMPELLED TO SAY IT'S
7 EITHER TWO YEARS OR NOTHING?

8 **MR. MELLO:** WELL, I DON'T THINK THIS COURT WOULD BE
9 COMPELLED, BUT I THINK THE EVIDENCE BEFORE THE COURT IS THAT
10 THERE WOULD BE A SUBSTANTIAL IMPACT ON PUBLIC SAFETY.

11 I THINK THAT THE EVIDENCE WAS MISCHARACTERIZED
12 EARLIER TODAY WITH RESPECT TO THE ADVERSE IMPACT ON PUBLIC
13 SAFETY.

14 I BELIEVE THAT THE EVIDENCE FROM DR. AUSTIN WAS THAT
15 IF YOU SHORTEN SENTENCES BY -- USE THE SHORTENED -- SHORTEN THE
16 LENGTH OF SENTENCE APPROACH TO HELP REDUCE YOUR POPULATION,
17 THAT IN L.A. COUNTY ALONE THERE WOULD BE 1398 ARRESTS IN THE
18 FIRST FOUR MONTHS OF IMPLEMENTATION.

19 I THINK THE EVIDENCE IS THAT AS PART OF A POPULATION
20 REDUCTION STRATEGY AS PROPOSED BY PLAINTIFFS, WHICH THEY CLAIM
21 WILL NOT HAVE AN ADVERSE IMPACT ON PUBLIC SAFETY, THAT IN THE
22 FIRST YEAR OF THE PROPOSAL YOU WOULD HAVE A REDUCTION IN
23 CALIFORNIA'S PRISON POPULATION BY 12,000 INMATES, BUT AT THE
24 SAME TIME YOU WOULD HAVE 10,400 OF THEM REARRESTED.

25 SO YOU WOULD HAVE A 1700 PERSON DELTA. THAT'S WHAT

1 DR. AUSTIN TESTIFIED ABOUT.

2 JUDGE REINHARDT: I'M INTERESTED IN EXPLORING
3 VARIOUS METHODS OF GETTING THROUGH A REDUCTION. I MEAN, THE
4 GOVERNOR HAS PROPOSED SO. HE SAYS YOU ELIMINATE PAROLE FOR A
5 NUMBER OF --

6 JUDGE KARLTON: THIRTY THOUSAND.

7 JUDGE REINHARDT: WHATEVER IT IS. HE WANTS TO
8 ELIMINATE PAROLE, WHICH SHOULD HAVE THE EFFECT OF REDUCING THE
9 PRISON POPULATION, FOR WHOMEVER HE WANTED.

10 HE WANTS TO CHANGE THE AMOUNTS FOR WHAT IS FELONY
11 THEFT, WHICH WOULD ALSO BE -- I DON'T SEE WHY WE ARE STUCK WITH
12 WHAT THE PLAINTIFFS' EXPERTS HAVE SUGGESTED.

13 I WOULD BE INTERESTED IN KNOWING WHAT THE GOVERNOR'S
14 POSITION, THE STATE'S POSITION IS ON METHODS YOU CAN USE TO
15 REDUCE THE PRISON POPULATION.

16 JUDGE KARLTON: WE KNOW THAT THE GOVERNOR HAS
17 PROPOSED IN HIS BUDGET 30,000 FOLKS WHO ARE GOING TO BE
18 RELEASED WITHOUT -- AS I UNDERSTAND, MAYBE I DON'T -- WITHOUT
19 PAROLE.

20 NOW, AS YOU STAND HERE TODAY, ARE YOU PREPARED TO SAY
21 THAT THAT'S NOT THE GOVERNOR'S POSITION; I'M HIS LAWYER AND I
22 WILL TELL YOU WHAT HIS POSITION IS?

23 MR. MELLO: NO. I'M PREPARED TO SAY THAT THE
24 GOVERNOR'S BUDGET PROPOSAL IS THE GOVERNOR'S BUDGET PROPOSAL
25 AND IT SAYS WHAT IT IS. AND IT'S A BUDGET PROPOSAL IN HARSH

1 ECONOMIC TIMES AND IT INCLUDES MANY CHOICES TO REDUCE SPENDING
2 THAT THE GOVERNOR WOULD NOT OTHERWISE MAKE IN A PERFECT WORLD.

3 **JUDGE KARLTON:** IF THIS WERE A PERFECT WORLD, WE
4 WOULDN'T BE HERE.

5 **JUDGE REINHARDT:** WE HAVE TO DEAL WITH THE FACT THAT
6 WE ARE IN AN ECONOMIC CRISIS.

7 **MR. MELLO:** RIGHT.

8 **JUDGE REINHARDT:** ALL OF US. SO WE MIGHT HAVE BETTER
9 WAYS TO REDUCE THE PRISON POPULATION IF THE STATE HAD THE MONEY
10 TO DO IT, BUT THEY DON'T. AND WE HAVE TO DEAL WITH THE WORLD
11 THAT WE ARE IN, THE SAME WORLD THE GOVERNOR IS IN.

12 **MR. MELLO:** RIGHT. AND THAT'S WHY I THINK IT'S
13 IMPORTANT TO ANALYZE THE EVIDENCE WITH RESPECT TO THE ADVERSE
14 IMPACT ON PUBLIC SAFETY. THIS COURT CANNOT ASSUME ANYTHING BUT
15 THE STATUS QUO WITH RESPECT TO THE EARLY RELEASE OR REDUCTION
16 IN THE PRISON POPULATION.

17 **JUDGE KARLTON:** I DON'T UNDERSTAND. I DON'T KNOW
18 WHETHER TO SAY IT'S THE GOVERNOR'S POSITION OR WHOSE POSITION
19 IT IS. THE GOVERNOR HAS TOLD THE LEGISLATURE, IN EFFECT, WE
20 CAN RELEASE 30,000 PEOPLE WITHOUT ENDANGERING PUBLIC SAFETY.

21 MY QUESTION TO YOU, AND I THOUGHT IT WAS
22 JUDGE REINHARDT'S QUESTION TO YOU: ARE YOU BOUND BY THAT? DO
23 YOU AGREE THAT AT LEAST FOR 30,000 PEOPLE, OR WHATEVER THE
24 NUMBER IS --

25 **MR. MELLO:** YEAH, I'M NOT SURE THAT'S THE PROPOSAL I

1 KNOW OF.

2 JUDGE KARLTON: WELL, WHATEVER THE NUMBER IS, THAT
3 THOSE PEOPLE CAN BE RELEASED WITHOUT ANY DANGER TO PUBLIC
4 SAFETY, ENDANGERMENT OF PUBLIC SAFETY?

5 MR. MELLO: WHAT I THINK I WAS TRYING TO SAY IS THE
6 GOVERNOR HAS MADE A BUDGET PROPOSAL, OKAY. HE'S MADE A
7 PROPOSAL THAT REQUIRES TOUGH DECISIONS, DECISIONS HE WOULDN'T
8 WANT --

9 JUDGE REINHARDT: THAT'S --

10 MR. MELLO: NO, NO, NO.

11 JUDGE REINHARDT: WE ALSO HAVE DECISIONS WE WOULDN'T
12 WANT TO MAKE --

13 MR. MELLO: RIGHT. HE IS CUTTING SPENDING ON
14 SCHOOLS. HE'S CONTEMPLATING THINGS HE WOULDN'T OTHERWISE DO,
15 LIKE THIS VERY BUDGET.

16 JUDGE KARLTON: MR. MELLO. MR. MELLO. MY QUESTION
17 IS MUCH NARROWER. I'M TRYING TO FIND OUT WHETHER OR NOT IT IS
18 THE STATE'S POSITION, WHATEVER YOUR PERSONAL VIEWS ARE AND,
19 INDEED, WHATEVER THE ATTORNEY GENERAL'S PERSONAL VIEWS ARE,
20 THAT IT IS THE STATE'S POSITION THAT "X" NUMBER, WHATEVER THAT
21 NUMBER IS, AS PROPOSED IN THE BUDGET PROPOSAL CAN BE RELEASED
22 WITHOUT ANY ENDANGERMENT OF PUBLIC SAFETY.

23 MR. MELLO: I GUESS MY ANSWER TO YOU WOULD BE THAT
24 THE BUDGET PROPOSALS ARE THE BUDGET PROPOSALS. I DON'T KNOW
25 WHICH ONE YOU'RE REFERRING TO. IF YOU'RE REFERRING TO '08-'09,

1 '09-'10. I DON'T KNOW WHAT YOU'RE REFERRING TO.

2 IF YOU ARE REFERRING TO THE MOST RECENT ONE THAT WE
3 SUBMITTED BRIEFING ON, I BELIEVE OUR POSITION IS CLEAR. AND IT
4 SAYS, HERE IS THE BUDGET PROPOSAL. IT DOESN'T PROPOSE THE
5 RELEASE OF PRISONERS, THE SAVINGS THAT WE ARE BEING FORCED TO
6 TRY TO HAVE WITH RESPECT TO PAROLE.

7 **JUDGE KARLTON:** SO YOU ARE PREPARED TO SAY THAT THE
8 GOVERNOR IS PROPOSING TO THE STATE THAT WE ENDANGER PUBLIC
9 SAFETY.

10 **MR. MELLO:** NO, I'M NOT.

11 **JUDGE REINHARDT:** SO YOU WILL AGREE THAT WHATEVER THE
12 GOVERNOR PROPOSED WOULD NOT ENDANGER PUBLIC SAFETY?

13 **MR. MELLO:** HOWEVER MOTIVATED.

14 **JUDGE REINHARDT:** ARE YOU WILLING TO SAY THAT
15 WHATEVER THE GOVERNOR PROPOSED WOULD NOT ENDANGER THE PUBLIC
16 SAFETY?

17 **MR. MELLO:** I AM SURE THAT THE GOVERNOR DID NOT MAKE
18 THE PROPOSAL THAT HE THOUGHT WOULD ENDANGER PUBLIC SAFETY.
19 THAT BEING SAID --

20 **JUDGE REINHARDT:** OKAY. SO WE CAN PROCEED FROM
21 THERE, IS WHATEVER HIS PROPOSAL WAS.

22 **MR. MELLO:** WE CAN PRESUME THAT IT WAS A PROPOSAL
23 THAT WOULD BE DIFFERENT IN THE MAIN REVISE, THAT ISN'T ACTED
24 UPON UNLESS APPROVED BY THE LEGISLATURE.

25 **JUDGE REINHARDT:** I KNOW. SOMETIMES THE GOVERNOR, AS

1 YOU SAID BEFORE, WOULD LIKE THE COURT TO DO WHAT THEY AREN'T
2 ABLE TO DO THEMSELVES. THAT'S ALL CLEAR. IT DOESN'T MATTER.

3 WE ARE TRYING TO FIND OUT -- I DON'T KNOW WHO THE
4 STATE IS, BUT THE GOVERNOR IS THE DEFENDANT IN THIS CASE AND
5 YOU ARE THE GOVERNOR'S LAWYER, I ASSUME.

6 **JUDGE KARLTON:** APPARENTLY.

7 **JUDGE REINHARDT:** AND I ASSUME YOU WERE GOING TO TAKE
8 THE SAME POSITION THAT THE GOVERNOR IS TAKING. AND THE
9 GOVERNOR, AS I UNDERSTAND IT, HAS TOLD THE LEGISLATURE AND THE
10 PUBLIC THAT CERTAIN ACTIONS WILL NOT ENDANGER THE PUBLIC
11 SAFETY.

12 **MR. MELLO:** I DON'T BELIEVE THE -- WELL, I BELIEVE I
13 HAVE ANSWERED YOUR QUESTION. I DON'T BELIEVE THE GOVERNOR
14 WOULD PROPOSE SOMETHING THAT HE THOUGHT WOULD ENDANGER PUBLIC
15 SAFETY. SO I BELIEVE I HAVE ANSWERED THAT QUESTION.

16 **JUDGE REINHARDT:** WHAT IS THE GOVERNOR'S PROPOSAL?
17 HOW MANY PEOPLE WOULD -- YOU KNOW WHAT A PRISONER RELEASE ORDER
18 IS. I'M NOT SAYING HE SAID OPEN THE GATE TO THE PRISONS. I'M
19 SAYING, HOW MANY PEOPLE?

20 **MR. MELLO:** YOUR HONORS, WE SUBMITTED BRIEFING
21 REGARDING THE BUDGET PROPOSAL. IT SAYS WHAT IT SAYS. IT SAYS
22 THAT THE SAVINGS ARE GOING TO BE ACHIEVED PRIMARILY BY REDUCING
23 THE NUMBER OF INDIVIDUALS WHO ARE ON PAROLE SUPERVISION.
24 THAT'S WHAT IT SAYS. IT DOESN'T SAY RELEASE PRISONERS.

25 **JUDGE REINHARDT:** I KNOW THAT. I JUST SAID IT

1 DOESN'T SAY RELEASE PRISONERS. TO WHAT EXTENT WOULD THIS
2 REDUCE THE PRISON POPULATION?

3 NOBODY IS SUGGESTING RELEASING PRISONERS, JUST
4 OPENING THE DOORS. WHAT WE ARE TRYING TO FIND OUT, THE PRISON
5 RELEASE ORDER IS REDUCING THE POPULATION, AND TO WHAT EXTENT
6 WOULD THE GOVERNOR'S PROPOSAL REDUCE THE PRISON POPULATION?

7 MR. MELLO: I DON'T BELIEVE THAT THE GOVERNOR'S
8 PROPOSAL IN THE '09-'10 BUDGET -- AGAIN, IT WAS PRIMARILY WITH
9 RESPECT TO LESS PAROLE SUPERVISION; YOU KNOW, SOME PEOPLE NOT
10 HAVING PAROLE SUPERVISION, SHORTER SUPERVISION.

11 JUDGE REINHARDT: THEREFORE, WE WOULDN'T HAVE
12 PAROLEES RETURNING TO PRISONS.

13 MR. MELLO: PRESUMABLY, THOSE PAROLEES, AS WE HEARD
14 TESTIMONY FROM AT THE TIME OF TRIAL, ARE THE PEOPLE WHO ARE
15 LEAST LIKELY TO REOFFEND AND LEAST LIKELY TO RETURN TO PRISON.
16 SO, THEREFORE, IT'S GOING TO HAVE THE LEAST IMPACT ON THE
17 PRISON POPULATION.

18 JUDGE KARLTON: NOW, MR. MELLO, I THINK WE HAVE
19 REALLY EXHAUSTED THIS. YOU'RE UNABLE OR UNWILLING TO RESPOND.

20 THIS GOES BACK IN A SENSE TO THE OTHER ISSUE, WHICH
21 IS LETTING THE STATE TELL US WHAT WOULD BE APPROPRIATE. THE
22 GOVERNOR MADE A PROPOSAL. WITHIN THE MEANING OF THE PLRA IT IS
23 CLEARLY A PRISONER RELEASE ORDER.

24 MR. MELLO: ISSUED BY THIS COURT AS OPPOSED TO IF THE
25 GOVERNOR UNDER HIS AUTHORITY IS THE CHIEF EXECUTIVE OF

1 CALIFORNIA DID IT ON HIS OWN THROUGH ENACTMENT BY THE
2 LEGISLATURE.

3 **JUDGE KARLTON:** SO THE QUESTION THEN BECOMES -- ONE
4 HOPES AND EXPECTS THAT THE GOVERNOR WOULD NOT PROPOSE SOMETHING
5 WHICH HE THOUGHT WOULD INCREASE PUBLIC -- ENDANGER PUBLIC
6 SAFETY.

7 IF WE SAY, LOOK, STATE, TELL US WHAT TO DO. THERE IS
8 SORT OF, SO TO SPEAK, A BOTTOM LINE, WHICH IS THERE IS AT LEAST
9 THIS NUMBER OF PEOPLE -- MAYBE IT'S NOT SUFFICIENT. I DON'T
10 KNOW. BUT AT LEAST THIS NUMBER OF PEOPLE THAT YOU DON'T HAVE
11 TO WORRY ABOUT, JUDGES. THAT WILL NOT ENDANGER PUBLIC SAFETY.
12 MAYBE EVERYTHING ELSE WILL, THAT WON'T. BUT IT WOULD AT LEAST
13 START WITH THE STATE TELLING US WHAT THE STATE BELIEVES CAN BE
14 DONE.

15 I'M NOT -- I THINK WE'VE EXHAUSTED THIS AND THERE'S
16 PROBABLY NO POINT IN PROCEEDING.

17 **MR. MELLO:** AND I FEAR I WILL REPEAT MYSELF, TOO.
18 IF YOU HAVE ANYTHING ELSE?

19 **JUDGE REINHARDT:** MAYBE SOME LATER TIME IN THESE
20 PROCEEDINGS WE ARE GOING TO ASK YOU TO GO TO THE GOVERNOR AND
21 FIND OUT WHAT HIS PROPOSAL IS TO RELIEVE THE PRISON POPULATION.
22 YOU DON'T HAVE TO DO IT TODAY. IT MAY COME LATER.

23 **MR. MELLO:** I THINK YOU'VE HEARD EVIDENCE AS TO WHAT
24 THE GOVERNOR'S PROPOSAL IS ON THAT: TRANSFERRING PRISONERS OUT
25 OF STATE, HOPEFULLY IMPLEMENTING AB900, AND OTHER THINGS. I

1 BELIEVE YOU'VE HEARD THE PROPOSALS ON THAT.

2 JUDGE REINHARDT: I SUGGEST LATER, IF THERE HAPPENS
3 TO BE A CAP PUT ON THE PRISONS, YOU WILL BE ABLE TO COME BACK
4 AND TELL US --

5 MR. MELLO: WHAT THE NUMBER IS.

6 JUDGE REINHARDT: WELL, MAYBE WHAT THE NUMBER IS OR
7 MAYBE HOW YOU'RE GOING TO GET THAT CAP.

8 WE'LL NOT BE BUILDING PRISONS. IF HE IS GOING TO
9 TELL US BUILD PRISONS, ASK HIM IF HE IS GOT THE MONEY TO BUILD
10 PRISONS.

11 MR. MELLO: I MEAN, THERE ARE MANY OTHER THINGS I
12 WOULD LIKE TO DISCUSS. I BELIEVE THEY WERE IN THE FINDINGS OF
13 FACT AND CONCLUSIONS OF LAW, BUT I WILL GLADLY HAND OVER THE
14 MICROPHONE TO MISS TILLMAN.

15 JUDGE REINHARDT: IF YOU WOULD LIKE TO DISCUSS OTHER
16 THINGS, THAT'S WHAT I WOULD DO.

17 MR. MELLO: WELL, I THINK THIS COURT HAS SAID THAT IT
18 DOESN'T WANT TO HEAR ME TALK ABOUT THE ANALYSIS OF THE 52,000
19 PRISONER REDUCTION BY PLAINTIFFS AND THE ADVERSE IMPACT ON
20 PUBLIC SAFETY. AND I BELIEVE THAT --

21 JUDGE REINHARDT: JUST A MINUTE, MR. MELLO. WE
22 DIDN'T SAY YOU COULDN'T DISCUSS THAT.

23 WE POINTED OUT TO YOU, HOWEVER, THAT THAT'S NOT THE
24 ONLY POSSIBLE PROBLEM. YOU SHOULD CONSIDER, ALSO, NOT THAT
25 THERE ARE 52,000 REDUCTION IN TWO YEARS. YOU SHOULD ALSO THINK

1 ABOUT THE FACT THAT IT MIGHT BE A 40,000 REDUCTION IN THREE
2 YEARS, FOR EXAMPLE.

3 WE DON'T KNOW WHAT IT WOULD BE, BUT WE ONLY TALKED
4 ABOUT THE FACT OF A 52,000 REDUCTION IN TWO YEARS BECAUSE
5 THAT'S WHAT THE PLAINTIFF SAYS.

6 MR. MELLO: I THINK WE NEED --

7 JUDGE REINHARDT: WE HAVE TO LOOK AT THE EFFECT ON
8 PUBLIC SAFETY.

9 MR. MELLO: RIGHT.

10 JUDGE REINHARDT: ONE OF THE PROBLEMS IS WE DON'T
11 KNOW WHAT NATURE OF THE PRISONER RELEASE ORDER IS. WE DON'T
12 KNOW WHAT THE STATE WOULD DO TO COME INTO COMPLIANCE WITH IT.

13 AS I SAID EARLIER, IF THE STATE DECIDED WE ARE GOING
14 TO HAVE TO REDUCE THE POPULATION BY 20,000, SO WE ARE GOING TO
15 REDUCE 20,000 FIRST DEGREE MURDERERS, THEN, AS I SAY, IT MIGHT
16 HAVE SOME REAL EFFECT ON PUBLIC SAFETY.

17 IF THEY SAY WE ARE GOING TO REDUCE THE POPULATION BY
18 LETTING SOME PAROLEES GET OUT A LITTLE EARLY, THAT WOULD HAVE A
19 DIFFERENT EFFECT ON PUBLIC SAFETY.

20 IT'S NOT AN EASY PROBLEM TO RESOLVE AND WE NEED THE
21 STATE'S COOPERATION IN DEALING WITH IT.

22 MR. MELLO: UNDERSTOOD. I THINK, WITHOUT TALKING
23 ABOUT THE 52,000, WE SHOULD THINK A LITTLE BIT ABOUT
24 CALIFORNIA'S PRISON POPULATION THOUGH. WE DON'T INCARCERATE
25 FELONS AT AN UNUSUALLY HIGH RATE. IN FACT, WE ARE ABOUT HALF

1 THE NATIONAL AVERAGE.

2 OUR INCARCERATION RATE IS 470 PER 100,000 INMATES,
3 WHICH IS ABOUT JUST SLIGHTLY ABOVE THE NATIONAL AVERAGE OF 445.
4 WE DON'T KEEP PEOPLE IN PRISON LONGER THAN OTHER FOLKS.

5 THE INCREASE IN THE CALIFORNIA PRISON POPULATION
6 BETWEEN 1997 AND 2007 WAS ALMOST EXCLUSIVELY DUE TO AN INCREASE
7 IN THE NUMBER OF INDIVIDUALS WHO WERE CONVICTED OF CRIMES
8 AGAINST PERSON.

9 AT THE SAME TIME -- BECAUSE WE ARE TALKING ABOUT
10 PEOPLE WITHOUT RISK. AT THE SAME TIME THE NUMBER OF PEOPLE IN
11 PRISON FOR DRUG OFFENSES HAS GONE DOWN SUBSTANTIALY, AND
12 THAT'S IN THE RECORD.

13 A HIGHER PERCENTAGE OF CALIFORNIA'S INMATES THAN IN
14 OTHER STATES HAVE 10 OR MORE ARRESTS BEFORE THEY GO TO PRISON.

15 THERE IS EVIDENCE IN THE COURT AS TO WHAT EARLY
16 RELEASE PROGRAMS DID IN LOS ANGELES COUNTY AND OTHER COUNTIES.

17 THERE IS EVIDENCE IN THE COURT OF A RELATIONSHIP
18 BETWEEN INCARCERATION RATES AND CRIME RATES. I BELIEVE THAT
19 THE RECORD WAS MISSTATED EARLIER.

20 I BELIEVE THAT THERE IS EVIDENCE IN THE RECORD THAT A
21 25 PERCENT REDUCTION IN VIOLENT CRIME THAT HAS OCCURRED IN THE
22 LAST 25 YEARS IS DUE TO INCREASED INCARCERATION, INCREASED
23 PRISON POPULATIONS, MEANING THAT INCAPACITATION HAS AN EFFECT.

24 I BELIEVE THAT THERE WAS EXPERT TESTIMONY RELIED UPON
25 BY ONE OF PLAINTIFFS' EXPERTS, JOE LEHMAN, THAT A 10 PERCENT

1 DECREASE IN THE INCARCERATION RATE LEADS TO A STATISTICALLY
2 SIGNIFICANT 3.3 INCREASE IN CRIME RATES.

3 PLAINTIFFS -- AGAIN, THEIR REQUEST FOR A 52,000
4 REDUCTION WOULD DECREASE THE CRIME RATE BY 25 PERCENT. SO IF A
5 10 PERCENT INCREASES THE CRIMINAL RATE BY 3.3 PERCENT, WHAT
6 DOES A 25 PERCENT DECREASE DO?

7 WHAT IT MEANS IS THAT THERE IS GOING TO BE MORE CRIME
8 AND THAT THERE IS GOING TO BE AN INCREASE IN THE CRIME RATE IF
9 THERE IS A PRISONER RELEASE ORDER.

10 AND THEN WE HAVE SPOKEN ABOUT DR. AUSTIN. IN FACT,
11 SECOND AND THIRD STRIKERS, AND IT'S CITED IN THE RECORD AND
12 IT'S NOT IN DISPUTE. I THINK THAT THE EVIDENCE IS -- AND I
13 WILL LEAVE IT MORE TO THE INTERVENORS -- IS THAT THEY DON'T
14 HAVE THE RESOURCES TO DEAL WITH ADDITIONAL PEOPLE WHO ARE
15 EITHER PAROLED OR DIVERTED. THEY JUST SIMPLY DON'T HAVE THE
16 RESOURCES. THE EVIDENCE IS NOW THEY DON'T HAVE THE RESOURCES.
17 WHAT WOULD HAPPEN IN THE FUTURE?

18 THE EVIDENCE IS THE D.A. -- I WON'T SAY WHAT THE
19 D.A.'S WILL SAY. THE EVIDENCE IS THAT YOU DON'T CATCH A PERSON
20 THE FIRST TIME HE OR SHE COMMITS A CRIME, THE EVIDENCE IS
21 PEOPLE WHO ARE REARRESTED COMMIT MANY MORE CRIMES THAN THEY
22 COMMIT -- MANY MORE CRIMES THAN THE ONE THAT THEY GET CAUGHT
23 FOR. THERE WAS EVIDENCE IN THE RECORD THAT MANY TIMES MORE, 12
24 TIMES MORE.

25 WE TALKED ABOUT THE L.A. COUNTY EARLY RELEASE

1 PROGRAM. THAT WAS A RELEASE BECAUSE OF A POPULATION CAP ON A
2 JAIL SYSTEM, NOT A PRISON SYSTEM. NOT A PRISON SYSTEM COMPOSED
3 OF THE FOLKS THAT I JUST TOLD YOU ABOUT THAT ARE MORE AND MORE
4 FOR VIOLENT CRIMES, THAT LESS AND LESS ARE FOR DRUG OFFENSES.
5 THIS IS JUST FROM A JAIL SYSTEM. THAT BETWEEN 2002 AND 2006
6 THERE WAS, APPROXIMATELY, 10 PERCENT OF THE FOLKS RELEASED
7 EARLY FROM COUNTY JAIL IN L.A. COMMITTED ADDITIONAL CRIMES AND
8 16 WERE ARRESTED FOR MURDER.

9 THE EVIDENCE IS THAT THE -- BEFORE THIS COURT THE
10 EVIDENCE IS THAT THERE ARE POPULATION CAPS ON 32 PRISONS AND
11 THAT THE POLICE DEPARTMENT --

12 JUDGE KARLTON: THIRTY-TWO JAILS.

13 MR. MELLO: THIRTY-TWO COUNTY JAILS OF THE 58
14 COUNTIES.

15 I HAVE TO ADMIT I'M GETTING A LITTLE TIRED. I
16 APOLOGIZE.

17 THAT THERE IS A CAP ON THE 32 OF THE 58. THAT POLICE
18 AND JAIL RESOURCES ARE STRETCHED. THAT POLICE FORCES ARE BEING
19 CUT AS WE SPEAK.

20 WHAT DOES THIS MEAN IF THERE IS A POPULATION
21 REDUCTION? SOMETHING -- 52,000 OR SOMETHING ELSE? WHAT IT
22 MEANS IS THERE WILL BE MORE CRIMINALS ON THE STREET. THERE
23 WILL BE MORE CRIME BECAUSE YOU DON'T CATCH THEM EVERY TIME AND
24 THERE WILL BE LESS POLICE TO CATCH THEM ANYWAYS.

25 IT MEANS THAT THERE WILL BE LESS D.A.'S TO PROSECUTE

1 THEM AND THERE WILL BE LESS SPACE AT THE LOCAL JAILS TO DEAL
2 WITH THEM. AND WE'VE ALREADY HEARD THAT THERE AREN'T THE LOCAL
3 RESOURCES TO DEAL WITH THE PROBLEMS.

4 SO I THINK THAT'S WHAT THE EVIDENCE IS. THE EVIDENCE
5 IS JUST -- IN CLOSING, AND THEN I WILL GLADLY PASS THE MIC ON
6 TO MISS TILLMAN. THE EVIDENCE IS I DON'T BELIEVE THAT THE
7 PRIMARY CAUSE HAS BEEN MET CLEAR AND CONVINCING.

8 I DON'T BELIEVE THE RECORD SUPPORTS THAT THE RELIEF
9 REQUESTED WILL REMEDY IT. I DON'T BELIEVE THAT PLAINTIFFS HAVE
10 PROVEN UP WHAT THE POPULATION HAS TO BE.

11 AND I BELIEVE THAT THE EVIDENCE IS QUITE CLEAR THAT
12 THERE WILL BE A SUBSTANTIAL ADVERSE IMPACT ON PUBLIC SAFETY AND
13 TO THE ADMINISTRATION OF CRIMINAL JUSTICE IF THIS PRISONER
14 RELEASE ORDER IS GRANTED.

15 AND I THANK THE COURT FOR ITS TIME AND FOR THE
16 DISCUSSION. THANK YOU.

17 **JUDGE REINHARDT:** THANK YOU, MR. MELLO.

18 **CLOSING ARGUMENT**

19 **MS. TILLMAN:** GOOD AFTERNOON. MAY IT PLEASE THE
20 COURT AND COUNSEL. THANK YOU FOR THIS OPPORTUNITY TO PRESENT A
21 SEPARATE CLOSING STATEMENT ON BEHALF OF THE COLEMAN DEFENDANTS.

22 AT THE START OF THIS CASE, AS YOU MAY RECALL, THE
23 COLEMAN DEFENDANTS DESCRIBED TO YOU THIS CLOSED CIRCUIT NATURE
24 OF THE MENTAL HEALTH CARE SYSTEM DEVELOPED EVEN IN THE CONTEXT
25 OF INCREASED POPULATION PRESSURES SINCE 1994.

1 THEIR PROVISION OF MENTAL HEALTH CARE TO THAT
2 POPULATION OF INMATES WITH SERIOUS MENTAL DISORDERS NOW
3 INVOLVES AN IDENTIFIED AND ESTABLISHED POPULATION OF INMATES.

4 IT NOW INVOLVES THE CARE OF THOSE PATIENTS IN
5 PROGRAMS OR WHAT THEY CALL LEVELS OF CARE ESTABLISHED BY
6 COURT-APPROVED POLICIES AND PROCEDURES.

7 NOW INVOLVES SEPARATE CLINICAL STAFF, FROM
8 PSYCHIATRISTS TO SOCIAL WORKERS, PROVIDING CARE TO THESE
9 INMATES WITH SERIOUS MENTAL DISORDERS.

10 NOW INVOLVES THE DESIGNATED MENTAL HEALTH CARE BEDS
11 THAT PROVIDE SEPARATE HOUSING, OFTEN SEPARATE DINING AND
12 RECREATION AREAS.

13 **JUDGE KARLTON:** YOU KNOW, MISS TILLMAN, BECAUSE YOU
14 AND I HAVE BEEN THERE, THAT WE'RE OVER 1,000 BEDS -- I'M MAKING
15 THAT NUMBER UP -- BUT RIGHT NOW THAT WE DON'T HAVE FOR MENTALLY
16 ILL PATIENTS. IF WE LET OUT HOWEVER MANY PEOPLE, WE WOULD HAVE
17 THOSE BEDS. WE COULD PROVIDE THEM WITH CARE.

18 **MS. TILLMAN:** I CAN'T AGREE TO THAT, YOUR HONOR. I
19 BELIEVE THE DEFENDANTS' EVIDENCE ESTABLISHES THAT THAT IS NOT
20 THE CASE.

21 IN FACT, AS YOU KNOW, THE FORMER SPECIAL MASTER,
22 MR. KEATING, INDICATED THAT YOU COULD LET OUT 100,000 INMATES
23 AND YOU WOULD STILL NOT HAVE THE APPROPRIATE BEDS WITH THE
24 APPROPRIATE STAFF TO PROVIDE APPROPRIATE CARE.

25 **JUDGE KARLTON:** OF COURSE, BUT WE DON'T HAVE BEDS

1 RIGHT NOW. LITERALLY, THERE WERE TERRIBLY SICK PEOPLE IN
2 GENERAL POPULATION BECAUSE WE DON'T HAVE BEDS. THAT'S THE
3 REALITY. CERTAINLY, THEY NEED APPROPRIATE CARE,
4 PHARMACEUTICALS, ET CETERA.

5 BUT RIGHT NOW THE SITUATION IS THERE ARE TERRIBLY
6 SICK PEOPLE IN -- I AGREE WITH WHOEVER THE DEFENDANTS' EXPERT
7 WAS. THIS ISN'T AS BAD AS AUSCHWITZ, AS IF THAT MATTERED, BUT
8 TERRIBLY SICK PEOPLE WHO DON'T HAVE BEDS. HOW CAN WE PRETEND
9 THAT THAT'S NOT AN OVERCROWDING PROBLEM?

10 MS. TILLMAN: LET'S TAKE A LOOK AT WHERE THOSE PEOPLE
11 ARE LOCATED THEN.

12 WITH ALL DUE RESPECT TO THIS COURT, WHAT WE SEE IN
13 FRONT OF US IS AN ASSERTION BY THE PLAINTIFFS THAT IT'S THE
14 OVERALL POPULATION OF THE DEPARTMENT OF CORRECTIONS AND
15 REHABILITATION THAT IS THE PRIMARY CAUSE FOR THE CONSTITUTIONAL
16 DEFICIENCIES IN THE MENTAL HEALTH CARE SYSTEM; NAMELY, BEDS.

17 YET, WHEN YOU TAKE A LOOK AT WHERE THE PATIENTS ARE
18 LOCATED, WHEN YOU TAKE A LOOK AT WHERE THEY WERE LOCATED IN
19 1994 --

20 JUDGE KARLTON: I KNOW IT'S SO MUCH BETTER NOW, BUT
21 WHAT WE HAVE ARE -- I'M SORRY, I DON'T HAVE THE FIGURE AT MY
22 FINGERTIPS. I THOUGHT I DID, BUT I DON'T.

23 THERE IS A SIGNIFICANT NUMBER -- MAYBE IT'S NOT
24 1,000. I THINK IT IS, BUT WHATEVER IT IS -- FOLKS WHO ARE IN
25 THE GENERAL POPULATION BECAUSE WE DON'T HAVE BEDS FOR THEM.

1 **MS. TILLMAN:** AND SO IS THE APPROPRIATE RESPONSE TO
2 THAT, ASSUMING THAT, INDEED, THE SHEER NUMBER OF PEOPLE WITHIN
3 THE CONFINES AND CUSTODY OF CDCR IS SOMEHOW CAUSING THIS
4 DEFICIENCY IN MENTAL HEALTH BEDS FOR SEVERELY MENTALLY
5 DISORDERED INMATES, ASSUMING THAT TO BE THE CASE -- WHICH
6 DEFENDANTS DON'T AGREE TO, BUT WE'LL ASSUME IT ARGUENDO
7 TODAY -- IS IT TRULY THE APPROPRIATE RELIEF TO GO AHEAD AND
8 RELEASE INMATES?

9 WOULD THAT ACTUALLY ENABLE THE CREATION OF THE VERY
10 BEDS THAT THIS COURT WANTS TO SEE ACTIVATED AS SOON AS
11 POSSIBLE?

12 DEFENDANTS ADMIT THAT THAT IS NOT GOING TO PROVIDE
13 THE REMEDY. PLAINTIFFS' OWN EXPERTS HAVE SAID THAT. YOU SAW
14 DR. HANEY TESTIFY OVER TWO DAYS. YOU SAW DR. STEWART TESTIFY
15 OVER TWO DAYS. EACH OF THEM USED THE SAME WORDS, "IT'S THE
16 FIRST STEP."

17 **JUDGE KARLTON:** OF COURSE.

18 **MS. TILLMAN:** IT'S NOT GOING TO -- DR. HANEY SAYS IT
19 BEST.

20 **JUDGE KARLTON:** OF COURSE.

21 **MS. TILLMAN:** THERE IS NO MAGIC NUMBER. A
22 CONSTITUTIONALLY COMPLIANT SYSTEM WILL NOT MAGICALLY APPEAR.
23 WE WILL STILL NEED BEDS AND STAFF.

24 AND, IN FACT, THE VERY ACTIONS THAT WILL BE NECESSARY
25 TO GET THOSE BEDS, TO GET THOSE STAFF ARE ALREADY UNDERWAY.

1 **JUDGE KARLTON:** ALL RIGHT. GO AHEAD. GO AHEAD.

2 **MS. TILLMAN:** THE COLEMAN DEFENDANTS CONTEND THAT THE
3 PLAINTIFFS CANNOT MEET THEIR BURDEN OF PROVING UPON CLEAR AND
4 CONVINCING EVIDENCE THAT THE OVERALL POPULATION OF THE
5 DEPARTMENT OF CORRECTIONS IS THE PRIMARY CAUSE OF
6 CONSTITUTIONAL DEFICIENCIES IN THE MENTAL HEALTH CARE SYSTEM.

7 FURTHER, PLAINTIFFS CANNOT ESTABLISH THAT A PRISONER
8 RELEASE ORDER WILL RENDER THE MENTAL HEALTH CARE SYSTEM
9 CONSTITUTIONAL.

10 INDEED, EVEN THE PLAINTIFFS ADMIT THAT THE RELIEF
11 NECESSARY TO RENDER THE MENTAL HEALTH CARE SYSTEM
12 CONSTITUTIONAL IS THE VERY ACTION UNDERTAKEN AND ALREADY
13 UNDERWAY BY THE DEFENDANTS, FROM THE STAFFING OF CLINICAL
14 POSITIONS TO THE BUILDING OF THE MENTAL HEALTH CARE BEDS. WE
15 HAVE SEEN THE GROWTH IN THOSE BEDS FROM THE FEW HUNDREDS THAT
16 WERE ONLINE IN 1994 TO OVER 30,000 TODAY ONLINE.

17 THE THIRD ELEMENT AND PERHAPS THE MOST HEART-RENDING
18 ELEMENT OF THIS ISSUE IS, OF COURSE, THE ADVERSE IMPACT TO
19 PUBLIC SAFETY BY A PRISONER RELEASE ORDER, PARTICULARLY ONE
20 INVOLVING THE RELEASE OR -- THE INSTITUTIONALIZATION OF
21 MENTALLY ILL INMATES THAT WILL ADVERSELY IMPACT PUBLIC SAFETY
22 AS WELL AS MENTALLY ILL INMATES THEMSELVES.

23 BECAUSE OF THE VARIOUS ASSIGNMENTS THE COURT NETWORK
24 IS NECESSARY FOR THE ONGOING LIFETIME NEEDS FOR THE PSYCHIATRIC
25 CARE AND SUPPORT OF THESE MENTALLY ILL INMATES IS, AT BEST,

1 SHREDDED AND MORE OFTEN THAN NOT NONEXISTENT IN OUR
2 COMMUNITIES. THE RELEASE OF THE MENTALLY ILL INMATES WILL
3 SERVE TO HARM THEM FURTHER.

4 IN SUM, PLAINTIFFS CANNOT SHOW AND HAVE NOT SHOWN
5 THAT A RELEASE ORDER WILL IN ANY WAY BENEFIT OR ENABLE THE
6 FURTHER DEVELOPMENT OF THE MENTAL HEALTH CARE SYSTEM.

7 KEEP IN MIND THIS MENTAL HEALTH CARE SYSTEM WAS
8 CREATED UPON A MOTIF OF INCLUSION. IT'S A SERVICE MODEL. IT'S
9 NOT ABOUT EXCLUDING THOSE IN NEED.

10 AND, CERTAINLY, PLAINTIFFS CAN'T SHOW THAT A RELEASE
11 WILL BENEFIT THOSE INMATES LITERALLY KEPT APART IN SEPARATE
12 HOUSING, IN STRUCTURED THERAPEUTIC ENVIRONMENTS FOR THEIR OWN
13 SAFETY AND STABILIZATION.

14 THIS PRISONER RELEASE ORDER SOUGHT BY PLAINTIFFS MUST
15 BE DENIED AS INTRUSIVE, UNNECESSARY AND ULTIMATELY AS HARMFUL.

16 WE'VE TALKED ABOUT PRIMARY CAUSE. I DON'T WANT TO GO
17 OVER GROUND THAT WE'VE ALREADY COVERED, BUT LET ME SAY THIS.
18 IT'S MORE THAN A MATTER OF TWO EVENTS HAPPENING AT THE SAME
19 TIME. THERE MUST BE A LINK, A CAUSAL LINK BETWEEN THE TWO
20 EVENTS.

21 AND HERE IS WHERE PLAINTIFFS' PROOF OF PRIMARY CAUSE
22 IN THE COLEMAN CASE FAILS. THERE IS SIMPLY NO CAUSAL LINK
23 BETWEEN THE INCREASE IN THE DEFENDANTS' INMATE POPULATION SINCE
24 THE COLEMAN JUDGMENT IN 1994 AND THE STATUS OF THE MENTAL
25 HEALTH CARE SYSTEM TODAY.

1 PLAINTIFFS CANNOT SHOW THE PRIMARY CAUSE BECAUSE
2 DEFENDANTS HAVE SUCCEEDED IN THE DEVELOPMENT OF A MENTAL HEALTH
3 CARE SYSTEM, EVEN AGAINST THIS BACKDROP OF POPULATION GROWTH.

4 PLAINTIFFS' OWN EXPERT, CRAIG HANEY, WHO TESTIFIED AT
5 THE UNDERLYING COLEMAN TRIAL IN 1994, TESTIFIED BACK THEN THAT
6 THERE WAS AN OVERCROWDING SITUATION. HE TESTIFIED THERE WAS
7 LITERALLY GROUND ZERO, MOONSCAPE, NO MENTAL HEALTH CARE SYSTEM
8 IN A VIABLE FORM AT THE TIME OF THAT TRIAL.

9 HE TESTIFIED THAT ONLY 7.9 PERCENT OF THE POPULATION
10 WAS IDENTIFIED AS NEEDING MENTAL HEALTH CARE. HE TESTIFIED,
11 AND YOU HEARD DEFENDANTS' WITNESSES, ROBIN DEZEMBER AND CINDY
12 RADAUSKY, TESTIFY THAT THIS SAME FAILURE TO RECOGNIZE MENTAL
13 ILLNESS MEANT ALSO THAT THE STATE PRISONS AND STATE HOSPITALS
14 THEMSELVES WERE NOT BUILT WITH THE MENTALLY ILL IN MIND.

15 IN SUM, THERE WAS NO SCREENING FOR MENTAL ILLNESS.
16 THERE WAS NO TREATMENT FOR MENTAL ILLNESS. THERE WERE NO BEDS
17 FOR MENTAL ILLNESS IN A FORM THAT ENABLED COMPREHENSIVE AND
18 UNIFORM CARE. THAT WAS 1994.

19 MOVING FORWARD IN TIME TO 2008, WE HAVE JUST THE
20 REVERSE. THERE HAS LITERALLY BEEN A SEA CHANGE. DEFENDANTS
21 NOT ONLY HAVE WORKED WITH THE COLEMAN SPECIAL MASTER TO CREATE
22 A MENTAL HEALTH CARE SYSTEM. DEFENDANTS RESPECTFULLY SUBMIT
23 THAT THAT MENTAL HEALTH CARE SYSTEM IS NOW IN A FORM THAT IS
24 VIABLE AND IS WORKING TO PROVIDE CARE AND TREATMENT TO MENTALLY
25 ILL INMATES.

1 THERE IS SCREENING AND IDENTIFICATION OF THE MENTALLY
2 ILL. PLAINTIFFS' EXPERT, DR. HANEY, AGREED WITH THAT. THERE
3 IS NOW SOME 20 PERCENT OF THE POPULATION OF CDCR IDENTIFIED AS
4 NEEDING AND GETTING THE CARE THAT THEY REQUIRE.

5 IT'S UNDISPUTED THE COLEMAN COURT HAS APPROVED THE
6 POLICIES AND PROCEDURES NECESSARY TO PROVIDE CONSTITUTIONALLY
7 ADEQUATE CARE.

8 MENTAL HEALTH CARE BEDS, THOSE BEDS HAVE GROWN FROM
9 3200 TO SOME 30,000 SINCE 1994.

10 **JUDGE KARLTON:** AND THERE ARE OVER A THOUSAND PEOPLE
11 WHO DO NOT HAVE MENTAL HEALTH BEDS.

12 **MS. TILLMAN:** AND DEFENDANTS RESPECTFULLY SUBMIT THAT
13 THEIR RECORD IN THIS CASE SHOWS THAT THEY ARE NOT DELIBERATELY
14 INDIFFERENT TO THAT CONCERN OF THIS COURT.

15 THE TESTIMONY HAS BEEN THAT THERE ARE PLANS. THERE
16 IS A COMMITMENT TO PROVIDE THOSE BEDS TO --

17 **JUDGE KARLTON:** YOU KNOW WHAT? WE'VE GOT WHAT? I'M
18 GOING TO MAKE THIS UP, BUT THERE ARE THREE -- I BELIEVE, THREE
19 PLANNED BEDS -- THREE PLANS FOR BEDS, 60 AND 20 AND 90 OR
20 SOMETHING. THEY ARE THREE YEARS AWAY. THERE IS NO -- THEY ARE
21 NOT SHOVEL READY, TO USE THE GOVERNOR'S PHRASE. OH, WE ARE NOT
22 ALLOWED TO QUOTE THE GOVERNOR.

23 THAT'S THE REAL WORLD. AND GETTING THOSE PEOPLE TO
24 BEDS WHERE THEY CAN BE SEGREGATED AND TREATED AND DO ALL THE
25 THINGS THAT THE PLAN CONTEMPLATES SIMPLY REQUIRES THAT THEY BE

1 GIVEN BEDS. AND WE CAN'T SAY, YOU GIVE THEM BEDS AND, YOU
2 KNOW, YOU FOLKS YOU STAND UP FOR THE REST OF YOUR TERM. CAN'T
3 DO THAT.

4 **MS. TILLMAN:** THE TESTIMONY HAS BEEN, FIRST, FOR
5 THOSE PATIENTS IN THE LOWEST LEVEL OF CARE, THE COORDINATED
6 CLINICAL CASE MANAGEMENT PATIENTS, OR TRIPLE CMS, THE VAST
7 MAJORITY OF THOSE PATIENTS ARE HOUSED IN APPROPRIATE AREAS.
8 THEY ARE PROVIDED CARE --

9 **JUDGE KARLTON:** I AGREE. KEEP IN MIND THERE IS NOT A
10 SINGLE PERSON IN THE COLEMAN CLASS THAT HAS NOT BEEN DESIGNATED
11 AS HAVING AN AXIS I ILLNESS. THESE ARE NOT PEOPLE WITH -- NOT
12 CRAZY LIKE YOU AND I. THEY ARE REALLY CRAZY IN WAYS THAT ARE
13 DRAMATICALLY DIFFERENT THAN EVERYBODY ELSE.

14 **MS. TILLMAN:** AND THESE ARE CHRONIC AFFLICTIONS THAT
15 ARE INCURABLE, THAT WILL EXPERIENCE, AS MR. RADAUSKY SAID FROM
16 THE DEPARTMENT OF MENTAL HEALTH, EBBS AND FLOWS AND PERIODS OF
17 TIME WHEN THEY WILL NEED INPATIENT CARE AND OTHER PERIODS OF
18 TIME WHERE A STRUCTURED ENVIRONMENT LIKE THAT WHICH IS PROVIDED
19 BY ENHANCED OUTPATIENT PROGRAM BEDS, WHICH ARE SEPARATE FROM
20 THE GENERAL POPULATION, THEY WILL RECEIVE.

21 BUT GETTING BACK TO THOSE PATIENTS WHO CAN ACTUALLY
22 INTEGRATE AT LEAST IN THE GENERAL POPULATION, WHAT WE SEE ARE
23 THE VAST MAJORITY ARE IN TRADITIONAL HOUSING.

24 THERE HAS BEEN NO CRITICISM OF THE FEW THAT ARE IN
25 NON-TRADITIONAL BEDS. FIND A SPECIAL MASTER. WHAT WE HEAR IS,

1 ADEQUATE CARE CAN AND HAS BEEN DELIVERED, EVEN IN THOSE AREAS
2 OF OUR PRISONS.

3 BUT TO THE EXTENT THAT THIS COURT IS WORRIED ABOUT
4 THOSE BEDS, THIS COURT HAS RECEIVED TESTIMONY FROM SCOTT KERNAN
5 HIMSELF, WHO IS IN CHARGE OF THE OUT-OF-STATE TRANSFER PROGRAM.
6 YOU'VE HEARD ABOUT THE REDUCTION IN THE NON-TRADITIONAL BEDS
7 AND THE FURTHER REDUCTION IN THE NON-TRADITIONAL BEDS IN THE
8 COMING MONTHS.

9 THE POINT IS, THE DEFENDANTS ARE ACTING TO GET RID OF
10 THOSE NON-TRADITIONAL BEDS.

11 MOVING TO THE ENHANCED OUTPATIENT PROGRAM CARE,
12 YOU'VE HEARD EVIDENCE THAT THERE ARE PATIENTS WHO ARE SEPARATED
13 AND GIVEN A PARTICULAR STRUCTURED ENVIRONMENT BECAUSE OF THEIR
14 NEEDS AS ENHANCED OUTPATIENT PROGRAM PATIENTS.

15 YOU ALSO HEARD EVIDENCE THAT TO THE EXTENT THAT THOSE
16 PATIENTS SOMETIMES HAVE TO WAIT IN RECEPTION FOR THOSE
17 PARTICULAR BEDS, THEY ARE GIVEN THAT VERY CARE IN RECEPTION.
18 IN FACT, THE SPECIAL MASTER HAS FOUND THAT THAT TYPE OF CARE IN
19 THE RECEPTION AREAS IS BEING PERFORMED.

20 IF YOU TAKE A LOOK AT THE 20TH ROUND REPORT, YOU WILL
21 FIND THAT THE SPECIAL MASTER IN SEPTEMBER OF 2008 REPORTED THAT
22 AT SAN QUENTIN'S RECEPTION CENTER, THE ENHANCED OUTPATIENT
23 PROGRAM, RECEPTION PROGRAM, DEMONSTRATED CONTINUED POSITIVE
24 GROWTH DURING THIS MONITORING PERIOD, WITH CASE MANAGER
25 CONTACTS IN A PRIVATE SETTING OCCURRING 90 TO 100 PERCENT OF

1 THE TIME. THAT'S AT PAGE 104.

2 JUDGE KARLTON: WHY IS IT THAT THE SPECIAL MASTER'S
3 FINAL CONCLUSION, WHICH IS THAT WHATEVER BENEFITS, WHATEVER
4 PROGRESS WE'VE MADE IN THE LAST 12 YEARS IS LIKELY TO BE
5 OVERWHELMED BY THE OVERPOPULATION. WHY ISN'T THAT A MATTER OF
6 SUFFICIENT CONCERN TO THIS COURT?

7 MS. TILLMAN: I THINK, YOUR HONOR, THE DEFENDANTS
8 WOULD SUBMIT THAT THEY ARE TAKING ACTION TO ADDRESS THOSE
9 CONCERNS OF THIS COURT, AND THAT ACTION INCLUDES PROVIDING CARE
10 EVEN IN SURROUNDINGS THAT PERHAPS ARE NOT COSMETICALLY
11 PLEASING.

12 THE DEFENDANTS WOULD SUBMIT THAT WHETHER IT'S
13 RECEPTION PATIENTS GETTING ENHANCED OUTPATIENT CARE WHILE IN
14 RECEPTION OR WHETHER IT'S PATIENTS WHO CAN ONLY BE PROVIDED
15 APPROPRIATE GROUP THERAPY WHILE PLACED IN A THERAPEUTIC MODULE,
16 THE EIGHTH AMENDMENT IS NOT DETERMINED BY COSMETICS. IT'S
17 DETERMINED BY WHETHER OR NOT CARE IS BEING DELIVERED.

18 AND THROUGHOUT THE MONITORING REPORT WHAT YOU SEE ARE
19 COMMENTS, OBSERVATIONS, FINDINGS AND CONCLUSIONS THAT CARE,
20 INDEED, IS BEING DELIVERED, EVEN IN DIFFICULT CIRCUMSTANCES
21 THAT SOME PEOPLE WOULD LIKE TO SEE IMPROVED.

22 WHAT WE SEE AT THE DEUEL VOCATIONAL INSTITUTION IS,
23 IS THE COURT FINDING -- THE COURT MONITOR FINDING COMPLIANCE
24 WITH RECEPTION CENTER PROTOCOLS, IS FINDING THAT TRANSFER
25 DEADLINES ARE BEING MET OVER 90 PERCENT OF THE TIME FOR

1 ENHANCED OUTPATIENT INMATES.

2 AT HIGH DESERT RECEPTION CENTER, THE SPECIAL MASTER
3 AGAIN FOUND SUBSTANTIAL COMPLIANCE WITH THE PROGRAM GUIDE
4 REQUIREMENTS.

5 SO WHAT WE SEE IS A PICTURE OF IMPROVEMENT, OF GROWTH
6 OF A MENTAL HEALTH CARE SYSTEM.

7 NOW, GRANTED, THE PATIENTS NEEDING HOSPITAL OR
8 INPATIENT CARE, THERE IS NO QUESTION THAT THEY ARE GETTING
9 CARE.

10 YOU HAD THE OPPORTUNITY, YOU HEARD MISS RADAUSKY FROM
11 THE DEPARTMENT OF MENTAL HEALTH SPEAK TO THE TYPE OF CARE THAT
12 THE DEPARTMENT OF MENTAL HEALTH PROVIDES TO THESE INPATIENT
13 MEMBERS OF THE COLEMAN CLASS. THEY ARE HOUSED IN SEPARATE
14 AREAS --

15 **JUDGE KARLTON:** YOU KNOW, MA'AM, EVERY SINGLE
16 IMPROVEMENT, EVERY ONE, IS A RESULT OF A COURT ORDER. SO
17 NEVERMIND THAT THE DEPARTMENT OF MENTAL HEALTH HAS ENORMOUS
18 DIFFICULTY OBEYING THE MOST BASIC ORDERS OF THE COLEMAN COURT,
19 BUT TO SPEAK OF -- NEVER MIND. GO AHEAD. JUST GET IT OVER
20 WITH. GO AHEAD.

21 **MS. TILLMAN:** IF I MIGHT RESPOND, YOUR HONOR. I
22 RECOGNIZE AND I HAVE CAN SEE A CERTAIN LEVEL OF FRUSTRATION.
23 THERE ARE A LOT OF COURT ORDERS THAT HAVE BEEN ISSUED BY THE
24 COLEMAN COURT. AS MUCH AS THAT MIGHT BE INTERPRETED IN SOME
25 FASHION OR ANOTHER, THERE IS NO QUESTION THAT THE DEFENDANTS

1 HAVE BEEN RESPONSIVE TO THOSE COURT ORDERS, HAVE WORKED WITH
2 THE COLEMAN SPECIAL MASTER ON ITEMS SMALL AND LARGE IN THE
3 DELIVERY OF MENTAL HEALTH CARE.

4 PART OF THAT WORK HAS BEEN DOING THE VERY BEST PLANS
5 THAT YOU SEE NOW BEING ACTIVATED, BEING IMPLEMENTED. WHETHER
6 IT'S THE SALINAS VALLEY STATE PRISON INPATIENT BEDS THAT ARE
7 GOING TO BE ACTIVATED IN 2009. ACCORDING TO MISS RADAUSKY,
8 THEY ARE ALMOST DONE. SHE HOPED FOR ACTIVATION IN FEBRUARY
9 2009. THAT'S 64 INPATIENT BEDS.

10 OR WHETHER IT'S THE MENTAL HEALTH CRISIS BEDS THAT WE
11 SAW ACTIVATED IN JUNE 2008 AT THE CALIFORNIA MEDICAL FACILITY.
12 CLEARLY, BED PLANNING IS UNDERWAY. AND ONE OF THE REASONS
13 THOSE BEDS HAVE GOTTEN UNDERWAY AND BED PLANNING IS UNDERWAY IS
14 BECAUSE THE COLEMAN COURT URGED THE DEFENDANTS TO ADOPT A
15 FORECAST METHODOLOGY, A FORECAST METHODOLOGY NOT JUST FOR BEDS,
16 BUT FOR STAFF.

17 THAT'S A CRUCIAL COMPONENT OF PROVIDING FOR THE CARE
18 THAT IS NEEDED, NOT ONLY FOR TODAY, BUT FOR TOMORROW, SO THAT
19 COURT ORDERS WON'T BE NECESSARY.

20 INSTEAD THERE IS AN INTEGRAL MECHANISM WITHIN THE
21 CDCR ADMINISTRATION NOW THAT CAN DETERMINE, BECAUSE OF WORK
22 WITH THE SPECIAL MASTER FROM THE COLEMAN COURT -- CAN DETERMINE
23 WITH VALIDATED METHODOLOGY HOW MANY BEDS ARE GOING TO BE NEEDED
24 IN THE COMING YEARS, WHAT TYPE OF BEDS FOR THE MENTALLY ILL,
25 AND WHAT TYPE OF STAFF WILL BE NECESSARY TO HANDLE THE WORKLOAD

1 EMANATING FROM THAT CARE OF THOSE MENTALLY ILL PATIENTS.

2 AND JUST AS A NOTE. IT HAS TO BE ACKNOWLEDGED BY
3 THIS COURT. ROBIN DEZEMBER SAID IT BEST. THERE HAS BEEN A
4 HUGE IMPROVEMENT IN THE STAFFING OF MENTAL HEALTH BEDS.

5 AS MUCH AS HE DESCRIBED THE RECRUITMENT AND PAY
6 PARITY STRATEGIES THAT WERE ADOPTED WITH THE COURT'S ORDERS AND
7 WITH THE COURT'S HELP, THERE IS NO QUESTION THE DEFENDANTS
8 WORKED HARD TO RECRUIT THE VERY STAFF THAT IT HAS, WORKED HARD
9 TO GET THE POSITIONS ALLOCATED THEY NOW HAVE, TO EXPAND THEIR
10 STAFFING FROM THE HUNDREDS INTO THE THOUSANDS.

11 NOT ONLY HAS CLINICAL STAFFING IMPROVED, BUT THE
12 PICTURE FOR CORRECTIONAL OFFICERS HAS ALSO IMPROVED. WHAT WE
13 SEE IS A MENTAL HEALTH CARE SYSTEM THAT BRINGS TOGETHER NOT
14 ONLY THE CORRECTIONAL OFFICERS AND THE MENTAL HEALTH CARE
15 CLINICIANS, BUT ALSO THE FACILITY MANAGERS, THE PLANT
16 OPERATIONS PEOPLE.

17 THE CORRECTIONAL OFFICERS, WE KNOW FROM SCOTT
18 KERNAN'S TESTIMONY, FORM AN INTEGRAL PART OF THE
19 INTERDISCIPLINARY MENTAL HEALTH SERVICES TEAM, ESCORTING
20 PATIENTS TO THEIR APPOINTMENTS, MONITORING MENTAL HEALTH
21 PATIENTS WHO ARE AT RISK FOR SUICIDES, CONDUCTING ROUNDS ON
22 MENTALLY ILL INMATES, STAFFING RECREATION YARDS, PARTICIPATING
23 IN TREATMENT DISCUSSIONS, LITERALLY WORKING TO DEVELOP THE PLAN
24 TO PREVENT SUICIDES IN ADMINISTRATIVE SEGREGATION UNITS.

25 THE VERY UNITS THAT DO NOT EXPERIENCE THE

1 NON-TRADITIONAL BEDS THIS COURT IS SO WORRIED ABOUT ARE THE
2 UNITS, OF COURSE, THAT, UNFORTUNATELY, EXPERIENCE THE HIGHEST
3 RATE OF SUICIDES.

4 THANKS TO THIS SUCCESS IN STAFFING THE CORRECTIONAL
5 OFFICERS TO THE POINT WHERE A JANUARY ACADEMY WAS CANCELED.
6 AND AS SCOTT KERNAN SAID, THE PRISONS ARE NOW FULL UP WITH
7 CORRECTIONAL OFFICERS. THANKS TO THAT SUCCESS, THE SUICIDE
8 PREVENTION PROGRAM IS BEING IMPLEMENTED THROUGHOUT THE SYSTEM.

9 THE PAY PARITY AND STAFFING SUCCESSES OF THE
10 DEPARTMENT OF CORRECTIONS ARE MATCHED BY THE SAME SUCCESSES AS
11 THE DEPARTMENT OF MENTAL HEALTH. CDCR'S PARTNER IN INPATIENT
12 MENTAL HEALTH CARE NOW HAS A SUFFICIENT NUMBER OF
13 PSYCHIATRISTS, THANKS TO THOSE STRATEGIES.

14 SIMPLY PUT, THERE IS NO REASON TO EXCLUDE THE
15 MENTALLY ILL FROM CARE WITHIN THE DEPARTMENT OF CORRECTIONS AND
16 REHABILITATION BY WAY OF A COURT ORDERED RELEASE WHEN THE
17 RELEASE ITSELF WILL NOT RENDER THE MENTAL HEALTH CARE SYSTEM
18 CONSTITUTIONALLY ADEQUATE, WILL NOT RESULT IN ANY IMPROVEMENTS
19 IN THE MENTAL HEALTH CARE SYSTEM.

20 PLAINTIFFS' OWN EXPERTS, DR. HANEY AND DR. AUSTIN --
21 DR. HANEY AND DR. STEWART SAID IT BEST. A RELEASE IS ONLY THE
22 FIRST STEP. THE HARD WORK OF ADMINISTERING A MENTAL HEALTH
23 CARE SYSTEM, REGARDLESS OF THE NUMBER OF INMATES, REGARDLESS OF
24 THE NUMBER OF PATIENTS, WOULD REMAIN. AND THAT IS ENSURING
25 ADEQUATE STAFFING, ADEQUATE BEDS, ADEQUATE PROGRAMMING.

1 DR. HANEY AGREED, THERE IS NO MAGIC NUMBER. IN FACT,
2 THERE APPEARS TO BE NO EQUILIBRIUM POINT AT ALL. HE ADMITTED
3 EVEN A SYSTEM THAT IS OPERATING BELOW ITS RATED CAPACITY COULD
4 STILL BE CONSTITUTIONALLY DEFICIENT ABSENCE ADEQUATE RESOURCES
5 FOR MENTAL HEALTH CARE.

6 SO IN OTHER WORDS, WE COULD GO THROUGH ALL THE WORK
7 OF RESPONDING TO WHATEVER COURT ORDER FOR A PRISONER RELEASE
8 MIGHT EMANATE FROM THIS COURT ONLY TO FIND THAT THE WORK
9 REMAINS OF BUILDING STAFF, BUILDING BEDS, BUILDING THE
10 ADMINISTRATIVE MACHINES TO ENSURE ADEQUATE HEALTH CARE.

11 IT'S CLEARLY NOT ABOUT POPULATION WITHIN THE
12 DEPARTMENT OF CORRECTIONS. IT'S ABOUT BEDS AND STAFF NEEDED BY
13 ANY HEALTH CARE PROVIDER, BUT CERTAINLY THE LARGEST HEALTH CARE
14 PROVIDER IN THE STATE CORRECTIONAL SYSTEM WITHIN THE
15 UNITED STATES TO CARRY FORTH ITS MISSION OF TREATING THE
16 MENTALLY ILL.

17 THE LEAST INTRUSIVE RELIEF THEN IS TO PERMIT
18 DEFENDANTS TO CONTINUE THEIR ONGOING EFFORTS, HOPEFULLY, UNDER
19 AND WITH THE OVERSIGHT OF THE COLEMAN SPECIAL MASTER.

20 THIS COURT HEARD THE EVIDENCE TIME AND AGAIN FROM
21 DIFFERENT WITNESSES, CINDY RADAUSKY FROM THE DEPARTMENT OF
22 MENTAL HEALTH, ROBIN DEZEMBER FROM THE DEPARTMENT OF
23 CORRECTIONS, SECRETARY CATE, THAT THE MENTAL HEALTH CARE SYSTEM
24 HAS NOT ONLY GROWN IN SIZE AND IN STAFF AND IN COMPLEXITY, BUT
25 MOST IMPORTANTLY IN THE STRENGTH OF ITS MISSION.

1 IT IS NO LONGER IGNORED OR DISREGARDED OR EVEN
2 DISCOUNTED. IT IS PART OF WHAT THE DEPARTMENT OF CORRECTIONS
3 PROVIDES TO ITS INMATES, TO ITS PATIENTS.

4 THE GROWTH THAT WE'VE SEEN IN THE MENTAL HEALTH CARE
5 SYSTEM HAS OCCURRED BECAUSE THE LEAST INTRUSIVE RELIEF, THE
6 ONGOING EFFORTS OF THE DEFENDANTS TO MEET THE MENTAL HEALTH
7 CARE NEEDS OF THESE PATIENTS WITH THE ASSISTANCE OF THE COLEMAN
8 SPECIAL MASTER IS WORKING.

9 THE COLEMAN SPECIAL MASTER HAS BEEN ABLE TO BROKER
10 NEGOTIATIONS ABOUT THE PROGRAM GUIDE. HE HAS BEEN ABLE TO
11 SHARE HIS STAFF'S EXPERTISE IN THE DEVELOPMENT OF A NOW
12 APPROVED COURT ORDERED AND IMPLEMENTED SUICIDE PREVENTION
13 PROGRAM. SHARE HIS STAFF'S EXPERTISE ON FORECAST
14 METHODOLOGIES. SHARE HIS STAFF'S EXPERTISE ON THE VERY
15 TREATMENT MODALITIES THAT WE NOW PROVIDE TO THE MENTALLY ILL BY
16 WAY OF THE PROGRAM GUIDE.

17 A PRISONER RELEASE ORDER WILL NOT ONLY BE INTRUSIVE,
18 IT WILL NOT SERVE THE INTERESTS OF THE MENTALLY ILL OR THE
19 LOCAL COMMUNITIES.

20 HOW WOULD IT SERVE THE MENTALLY ILL INMATE GETTING
21 STABILIZED IN A DESIGNATED MENTAL HEALTH BED, GETTING
22 MEDICATIONS, GETTING FOOD, GETTING SHELTER? HOW WOULD IT SERVE
23 THAT MENTALLY ILL INMATE TO BE RELEASED THREE OR FOUR MONTHS
24 EARLIER FROM THEIR ESTABLISHED DATE? THAT WOULD DEPRIVE THEM
25 OF THREE OR FOUR MONTHS OF TREATMENT THAT MAY WELL STABILIZE,

1 MAY WELL GIVE THEM THE MEDICATIONS NECESSARY TO PUT THEM IN A
2 SPACE, A PLACE WHERE THEY CAN REALLY BE READY TO REINTEGRATE
3 INTO THE COMMUNITY.

4 A MENTALLY ILL INMATE WILL BE -- THE MENTALLY ILL
5 INMATES WILL BE HARMED BY A PRISONER RELEASE ORDER. WE HAVE
6 ALREADY ACKNOWLEDGED THAT EXPERTS ALL AGREE MENTALLY ILL
7 INMATES WITHIN THE COLEMAN CASELOADS DO NOT HAVE AN ILLNESS
8 THAT WILL BE CURED.

9 IT'S A BIOLOGICAL AND METABOLIC DISEASE THAT THESE
10 INMATES HAVE AND THEY WILL EXPERIENCE DECOMPENSATION EVEN UNDER
11 THE BEST OF CIRCUMSTANCES. THEY WILL ALWAYS NEED CARE, WHETHER
12 INSIDE THE PRISON OR OUTSIDE THE PRISON.

13 YOU'VE HEARD PLAINTIFFS' EXPERT, DR. STEWART, SAY
14 THAT THEY WOULD EXPERIENCE THE NEED FOR A WIDE RANGE OF
15 PSYCHOTHERAPEUTIC SUPPORT. SOME MIGHT JUST NEED MEDICATION AND
16 VISITS TO A PSYCHIATRIST TO ENSURE THEIR MEDICATION IS
17 APPROPRIATE. OTHERS MIGHT NEED TO BE IN A BOARDING CARE HOME
18 OR EVEN A HOSPITAL.

19 ALL AGREED, MENTALLY ILL PAROLEES, LIKE OTHER
20 PAROLEES, WOULD NEED SUPPORT IN OBTAINING HOUSING, JOBS, JOB
21 SKILLS AND, MOST IMPORTANTLY, DRUG TREATMENT.

22 THE EVIDENCE CLEARLY ESTABLISHED THAT AT LEAST
23 70 PERCENT OF THE MENTALLY ILL INMATES HAVE A CO-OCCURRING
24 SUBSTANCE ABUSE DISORDER. AND, YET, THERE WAS NO EVIDENCE THAT
25 THE CARE THAT IS REQUIRED BY MENTALLY ILL INMATES ONCE PAROLED

1 ACTUALLY EXISTS IN THE COMMUNITY.

2 RATHER, WHAT WE'VE HEARD IS THE EFFORT OF DEFENDANTS
3 TO STRENGTHEN THAT SYSTEM OF THE PAROLE OUTPATIENT CLINICS, TO
4 WORK WITH LOCAL COMMUNITIES TO CREATE PARTNERSHIPS, BUT IT'S
5 NOT THERE YET.

6 IN FACT, ACCORDING TO NANCY PENA AND GAIL BATAILLE,
7 THERE IS NOT EVEN ENOUGH COMMUNITY SUPPORT FOR THE PRESENT
8 PAROLEE POPULATION, NEVER MIND AN ADDITIONAL NUMBER THAT WOULD
9 BE RELEASED UNDER THE PLAINTIFFS' SOUGHT ORDERS.

10 WHAT WE CONSISTENTLY HEARD FROM BOTH THE PLAINTIFFS'
11 EXPERTS, DR. GILLIGAN AND DR. KRISSBERG, WAS UNIFORM. A
12 PRISONER RELEASE ORDER WILL ONLY BE SUCCESSFUL IF PROPERLY
13 DONE. THEY CONSISTENTLY SAID IT WOULD HAVE TO BE PROPERLY
14 DONE.

15 WHAT DOES THAT MEAN? THAT MEANS PROVIDING COMMUNITY
16 SUPPORT UPON RELEASE, DRUG PROGRAMS, JOB SKILL PROGRAMS,
17 HOUSING PROGRAMS. IN OTHER WORDS, THE VERY SOCIAL SERVICES
18 NETWORK THAT IS SO SHREDDED, SO FLOUNDERING NOW IN OUR PRESENT
19 ECONOMY WOULD HAVE TO BE BUILT UP. AND THE CREATION OF THAT
20 ADDITIONAL COMMUNITY SUPPORT FOR PAROLEES, EVEN WHEN CONSIDERED
21 BY THE EVER OPTIMISTIC GAIL BATAILLE, WOULD TAKE AT LEAST 18
22 MONTHS.

23 THE MENTALLY ILL INMATE WHO IS RELEASED WITHOUT
24 SUPPORT AND CARE, WITHOUT SUPPORT AND HOUSING AND JOB SKILLS
25 AND DRUG TREATMENT WILL NOT SUCCEED.

1 MISS BATAILLE NOTED AT LEAST A THIRD OF THE HOMELESS
2 PEOPLE WE SEE ON THE STREETS TODAY ARE MENTALLY ILL.

3 DR. GILLIGAN NOTED THE MENTALLY ILL ARE THE ONES WHO
4 GET PREYED UPON ON THE STREET BECAUSE THEY HAVE NO SUPPORT.
5 THEY GO TO THE EMERGENCY ROOM OR ARE USUALLY TAKEN TO THE
6 EMERGENCY ROOM WHEN THEY ARE DECOMPENSATING OR WHEN THEY ARE
7 ASSAULTED BY OTHERS.

8 THEY ARE PLACED IN COUNTY JAILS FOR VARIOUS REASONS.
9 AND THEN THEY ARE SIMPLY SOMETIMES FOUND DEAD ON THE STREETS.
10 ALL BECAUSE THEY DON'T HAVE SUPPORT MECHANISMS IN THE COMMUNITY
11 AT THIS TIME TO ENABLE THE CARE OF THESE MENTALLY ILL PAROLEES.

12 IN CONTRAST, THE MENTALLY ILL PAROLEES GET CARE WHILE
13 THEY'RE WITHIN THE DEPARTMENT OF CORRECTIONS. THEY GET
14 STABILIZED. THEY GET SHELTER. THEY GET MEDICATIONS.

15 DEFENDANTS RESPECTFULLY REQUEST THAT IN LIGHT OF
16 PLAINTIFFS' INABILITY TO ESTABLISH THE PRIMARY CAUSE OF ANY
17 CONSTITUTIONAL DEFICIENCIES THE MENTAL HEALTH CARE SYSTEM IS
18 ARISING FROM THE PRISON POPULATION AND BECAUSE OF THE ADVERSE
19 IMPACT ON THE COMMUNITY AND ON THE MENTALLY ILL BY ANY RELEASE
20 ORDER, THAT PLAINTIFFS' REQUEST SHOULD BE DENIED.

21 THANK YOU.

22 **JUDGE REINHARDT:** THANK YOU, COUNSEL.

23 THE COURT WILL TAKE A BRIEF AFTERNOON RECESS.

24 (WHEREUPON THERE WAS A RECESS IN THE PROCEEDINGS

25 FROM 2:55 UNTIL 3:16 P.M.)

1 **JUDGE REINHARDT:** ALL RIGHT.

2 **CLOSING ARGUMENT**

3 **MR. MITCHELL:** GOOD AFTERNOON. BILL MITCHELL FOR THE
4 DISTRICT ATTORNEY DEFENDANT INTERVENORS. I WOULD LIKE TO THANK
5 THE COURT FOR THIS OPPORTUNITY TO ADDRESS THE COURT AND TO MAKE
6 OUR POSITION KNOWN IN CLOSING IN THIS MATTER.

7 I'M NOT GOING TO ADDRESS THE ISSUES ALREADY ADDRESSED
8 BY DEFENDANTS' COUNSEL IN REGARDS TO WHETHER OR NOT THE
9 EVIDENCE HAS ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE THAT
10 OVERCROWDING IS A PRIMARY CAUSE OR THAT NO OTHER RELIEF WOULD
11 REMEDIATE THE CONSTITUTIONAL DEFICIENCIES.

12 IF THIS COURT DETERMINES THAT THE PLAINTIFFS HAVE MET
13 THEIR BURDEN OF PROOF, THAT OVERCROWDING IS A PRIMARY CAUSE OF
14 THE CONSTITUTIONAL VIOLATIONS AND THAT THERE ARE NO ALTERNATIVE
15 REMEDIES OTHER THAN A PRISONER RELEASE ORDER, THEN THE COURT
16 MUST CONSIDER AND GIVE SUBSTANTIAL WEIGHT TO THE IMPACT
17 EVIDENCE OF THE PROPOSED PRISONER RELEASE ORDERS.

18 THE PRISON LITIGATION REFORM ACT LIMITS RELIEF TO
19 THAT WHICH IS NECESSARY TO CORRECT A VIOLATION OF FEDERAL RIGHT
20 OF PARTICULAR PLAINTIFF OR PLAINTIFFS.

21 A PRISONER RELEASE ORDER THAT INVOLVES EARLY RELEASE
22 OF STATE PRISON INMATES, DIVERSION OF STATE PRISON-BOUND FELONS
23 OR THE SETTING OF A POPULATION CAP ON THE PRISON SYSTEM ARE ALL
24 OVERBROAD AND WILL HAVE SUBSTANTIAL ADVERSE IMPACTS ON PUBLIC
25 SAFETY IN THE OPERATION OF LOCAL CRIMINAL JUSTICE SYSTEMS.

1 **JUDGE REINHARDT:** WHAT WOULD NOT BE OVERBROAD IF WE
2 DETERMINE THAT THERE SHOULD BE A PRISONER RELEASE ORDER?

3 **JUDGE KARLTON:** IS THERE ANYTHING?

4 **MR. MITCHELL:** THAT WOULD NOT BE OVERBROAD?

5 **JUDGE KARLTON:** YEAH.

6 **MR. MITCHELL:** ONE SUGGESTION MIGHT BE TO DIRECT
7 ORDERS AT THE PLAINTIFF CLASS MEMBERS, HAVE THEM SEGREGATED
8 INTO FACILITIES WHERE THEIR CONSTITUTIONAL MEDICAL NEEDS AND
9 MENTAL HEALTH CARE NEEDS COULD BE MET AND THAT POPULATION CAPS
10 BE PLACED ON THOSE FACILITIES WHERE THOSE INMATES ARE HOUSED.

11 THAT WOULD BE NARROWLY DRAWN, TAILORED TO REMEDIATE
12 THE CONSTITUTIONAL RIGHTS OF THE AGGRIEVED PLAINTIFF CLASSES
13 AND WOULD NOT IMPACT THE GENERAL POPULATION. AND THE STATE
14 WOULD HAVE TO COME UP WITH A PLAN TO DEAL WITH THE
15 CONSTITUTIONAL VIOLATIONS FOUND BY THESE COURTS, PLATA AND
16 COLEMAN.

17 NOT DEALING WITH THE OVERCROWDING PLAGUING THE ENTIRE
18 CDCR SYSTEM, WHICH IN THE DISTRICT ATTORNEY INTERVENOR'S
19 POSITION IS NOT BEFORE THIS COURT.

20 **JUDGE REINHARDT:** I DON'T QUITE FOLLOW. COULD YOU
21 EXPLAIN AGAIN?

22 WHAT IF WE FOUND THAT OVERCROWDING WAS THE PRIMARY
23 CAUSE OF THE VIOLATION --

24 **MR. MITCHELL:** PRIMARY CAUSE OF THE DEFICIENCIES IN
25 HEALTHCARE AND MENTAL HEALTH CARE FOR THE PLAINTIFF CLASSES,

1 ORDER THE STATE TO SEGREGATE THOSE PLAINTIFF CLASS POPULATIONS
2 INTO SEPARATE FACILITIES AND HAVE CAPS PLACED ON THE NUMBER OF
3 THOSE PLAINTIFF CLASS THAT'S COULD BE PUT INTO THOSE
4 INSTITUTIONS.

5 JUDGE HENDERSON: PUT THE PHYSICAL HEALTH AND MENTAL
6 HEALTH PEOPLE IN SEPARATE FACILITIES?

7 JUDGE KARLTON: WELL, IN SOME INSTITUTIONS.

8 MR. MITCHELL: I ASSUME THEY WOULD BE.

9 JUDGE REINHARDT: I THOUGHT THAT EVERYBODY IS SUBJECT
10 TO THE -- OH, LET'S SAY THE PHYSICAL HEALTH PROBLEM.

11 MR. MITCHELL: IT'S MY UNDERSTANDING -- AND EXCUSE ME
12 FOR INTERRUPTING -- THAT THE PLATA CLASS DEALS WITH THOSE WITH
13 SEVERE OR SERIOUS MEDICAL ILLNESSES. AND COLEMAN DEALS WITH
14 SERIOUS SEVERE MENTAL HEALTH DISORDERS.

15 WE ARE NOT DEALING WITH GENERAL POPULATION INMATES
16 WHO ARE OTHERWISE HEALTHY OR HAVE THE FLU OR COLDS OR MINOR
17 INFECTIONS OF SOME SORT.

18 JUDGE KARLTON: WELL, THE PROBLEM AT LEAST FOR -- I
19 MEAN, IT'S NOT TRUE OF COLEMAN FOR OTHER REASONS, BUT WITH
20 PLATA IS THAT EVERY SINGLE INMATE IS POTENTIALLY -- CAN GET
21 SICK. WE ARE UNABLE PRESENTLY -- OR AT LEAST THE PLAINTIFFS
22 ARGUE, WE ARE UNABLE TO DELIVER ADEQUATE MEDICAL CARE FOR THEM
23 AND THERE IS NO WAY TO SEGREGATE THEM BEFOREHAND.

24 MR. MITCHELL: BUT ONCE THEY WERE IDENTIFIED BY THE
25 MEDICAL STAFF AT THE PARTICULAR PRISON THEY WERE AT AND IT

1 BECAME NECESSARY THAT THEY WERE NEEDED TO BE ATTENDED TO BY A
2 MORE EXPERIENCED OR PROFESSIONAL STAFF, THEY COULD BE
3 TRANSFERRED TO ONE OF THOSE INSTITUTIONS.

4 **JUDGE KARLTON:** I THINK YOU DON'T QUITE UNDERSTAND
5 WHAT THE PROBLEM IS HERE.

6 **JUDGE REINHARDT:** I'M A NEWCOMER TO THIS. SO
7 SOMEBODY GETS SERIOUSLY ILL. HE IS NOT IDENTIFIED, I THOUGHT,
8 IN THE TIMELY MANNER AND HE IS NOT TREATED IN A TIMELY MANNER
9 BECAUSE OF THE OVERCROWDING. IS THAT WRONG?

10 **MR. MITCHELL:** I KNOW WHEN I GET SERIOUSLY ILL, I GO
11 AND I USUALLY HAVE TO WAIT TO GET AN APPOINTMENT.

12 I MEAN, THINGS DON'T HAPPEN OVERNIGHT. IT TAKES
13 EVALUATION BY A NURSING STAFF AND PHYSICIAN'S ASSISTANTS AND
14 IDENTIFYING WHAT THE NATURE OF THE ILLNESS IS AND THEN IT'S
15 ATTENDED TO BY THE MEDICAL STAFF AS IT NEEDS TO BE ATTENDED TO.

16 AND THAT WAS A SUGGESTION OF SOMETHING MORE NARROWLY
17 TAILORED TO THE PLAINTIFF CLASSES. EARLY RELEASE, THE EARLY
18 RELEASE MEASURES BEING PROPOSED, WOULD ENDANGER PUBLIC SAFETY
19 BY INCREASING CRIME AND VICTIMIZATION IN THE COMMUNITIES.

20 THE EARLY RELEASE OF STATE PRISON INMATES PRIOR TO
21 THE EXPIRATION OF THEIR SENTENCE TERMS WILL RESULT IN THE
22 COMMISSION OF NEW CRIMES. THE EVIDENCE HAS SHOWN THAT. SOME
23 OF WHICH WILL BE VIOLENT AND SERIOUS FELONIES.

24 ACCORDING TO THE PLAINTIFFS' EXPERT, DR. JAMES
25 AUSTIN, 25 PERCENT OF THE PRISONERS THAT WOULD BE RELEASED

1 EARLY FROM PRISON WILL BE CAUGHT AND ARRESTED FOR NEW CRIMES
2 WITHIN THE FIRST FOUR MONTHS OF RELEASE.

3 A NUMBER OF NEW CRIMES THAT GO UNSOLVED --

4 **JUDGE REINHARDT:** WHENEVER THEY ARE RELEASED.

5 **MR. MITCHELL:** PARDON?

6 **JUDGE REINHARDT:** WHETHER THEY ARE RELEASED AT THE
7 END OF THEIR TERMS OR SOMEWHAT EARLIER.

8 **MR. MITCHELL:** THEY WILL COMMIT NEW CRIMES. YES,
9 THERE IS A RECIDIVISM RATE OF 25 PERCENT.

10 BUT DR. AUSTIN FOUND, AND HE TESTIFIED AND PUT IT IN
11 HIS REPORT, THAT THERE WILL BE A 25 PERCENT RECIDIVISM RATE IN
12 THAT FIRST FOUR MONTHS OF THAT EARLY RELEASE PERIOD.

13 AND THAT'S WHAT WE ARE TALKING ABOUT HERE. WILL
14 THERE BE AN IMPACT FROM THE COURT'S ORDER THAT PRISONERS BE
15 RELEASED EARLY?

16 **JUDGE REINHARDT:** WELL, LET'S SUPPOSE THEY ARE
17 RELEASED FOUR MONTHS LATER. IT WILL BE AN IDENTICAL IMPACT OR
18 WILL IT BE A DIFFERENT GROUP OF PEOPLE?

19 **MR. MITCHELL:** NO, IT WOULDN'T BE AN IDENTICAL IMPACT
20 BECAUSE THAT WOULD BE --

21 **JUDGE REINHARDT:** A DIFFERENT GROUP OF PEOPLE.

22 **MR. MITCHELL:** THAT WOULDN'T BE AN IMPACT
23 ATTRIBUTABLE TO THE COURT'S ORDER, BECAUSE THEY WOULD BE
24 GETTING OUT AT THE END OF THEIR TERMS.

25 WHAT THE COURT HAS TO TAKE INTO CONSIDERATION IS

1 WHETHER OR NOT ITS ORDER IS GOING TO HAVE AN IMPACT ON
2 INCREASING VICTIMIZATION IN THE COMMUNITIES. AND IF --

3 **JUDGE REINHARDT:** ALL RIGHT. HOLD ON. HOLD ON. I
4 WANT TO SEE IF THE FACTS ARE CORRECT.

5 THE IMPACT OF THE COURT ORDER WOULD BE THAT THERE
6 WOULD BE A DIFFERENT GROUP OF VICTIMS WITH THE SAME NUMBER OF
7 CRIMES.

8 **MR. MITCHELL:** ACCORDING TO DR. AUSTIN AND SOME OF
9 THE OTHER EXPERTS, YES. WE ARE ACCELERATING THE COMMISSION OF
10 CRIMES. YOU WANT TO CALL IT DIFFERENT VICTIMS. IT'S VICTIMS
11 THAT WOULD NOT BE VICTIMS BUT FOR THE EARLY RELEASE.

12 **JUDGE REINHARDT:** AND THE OTHER VICTIMS ARE SAVED.

13 **MR. MITCHELL:** NOT NECESSARILY. YOU ARE ASSUMING
14 THAT THEY GET CAUGHT FOR THEIR FIRST VICTIMS. AND THEY DON'T
15 ALWAYS GET CAUGHT, THAT'S WHAT THE EVIDENCE SHOWS.

16 **JUDGE REINHARDT:** NO, BUT SOMEWHERE THEY WILL GET
17 CAUGHT.

18 **MR. MITCHELL:** WE HOPE SO. IT JUST DOESN'T ALWAYS
19 HOLD TRUE.

20 **JUDGE REINHARDT:** IF IT TOOK THEM 12 MONTHS TO GET
21 CAUGHT AND THEN THEY'RE RELEASED IN DECEMBER, AND IT TOOK THEM
22 12 MONTHS TO GET CAUGHT BUT THEY ARE RELEASED IN JUNE, ALL WE
23 ARE TALKING ABOUT IS A DIFFERENT GROUP OF VICTIMS.

24 **MR. MITCHELL:** AND THE FACT REMAINS, THOUGH, IS THAT
25 THEY ARE OUT OF CUSTODY BECAUSE OF THE COURT ORDER AND CRIMES

1 ARE COMMITTED BY THEM DURING THAT TIME PERIOD. THAT'S
2 ATTRIBUTABLE TO THE COURT'S ORDER AND THAT'S THE IMPACT THAT
3 THE COURT HAS TO TAKE INTO CONSIDERATION.

4 **JUDGE REINHARDT:** THE IMPACT IS THAT A DIFFERENT
5 GROUP OF VICTIMS WILL EXIST. THE SAME NUMBER OF CRIMES WILL
6 OCCUR, BUT THEY WILL BE OUT EARLIER COMMITTING THOSE CRIMES.

7 **JUDGE HENDERSON:** THE IMPACT OF TIMING.

8 **MR. MITCHELL:** I THINK THERE IS A DIFFERENCE, YES.
9 I THINK THERE IS AN INCREASE IN CRIME. IT'S STATISTICALLY
10 INSIGNIFICANT INCREASE IN CRIME, ACCORDING TO DR. AUSTIN, BUT
11 STILL AN INCREASE IN CRIME.

12 THE 1986 STUDY THAT DR. KRISSBERG AND DR. AUSTIN BOTH
13 PARTICIPATED IN SHOWED AN INCREASE IN CRIME. ALTHOUGH WHEN YOU
14 COMPARE IT TO THE OVERALL CRIME RATE IN THE COMMUNITY, THE
15 OVERALL NUMBER OF CRIMES, THEY CALL IT STATISTICALLY
16 INSIGNIFICANT.

17 BUT IT'S NOT INSIGNIFICANT TO THOSE VICTIMS, THE ONES
18 WHO SUFFER THE 23 MURDERS, THE 212 ROBBERIES.

19 **JUDGE REINHARDT:** THOSE 23 MURDERS WOULD OCCUR FOUR
20 MONTHS LATER.

21 **MR. MITCHELL:** WELL, THAT'S SPECULATION, YOUR HONOR.
22 I WOULD SUGGEST THAT'S SPECULATION.

23 **JUDGE REINHARDT:** WHAT YOU'RE SAYING, EVERYTHING IS
24 SPECULATION.

25 **MR. MITCHELL:** NO. THOSE ARE ACTUAL CRIMES THAT ARE

1 COMMITTED. WE KNOW THEY ARE COMMITTED BECAUSE WE HAVE ACTUAL
2 VICTIMS, ATTRIBUTABLE ACTIONS TO INMATES THAT ARE RELEASED
3 EARLY.

4 **JUDGE REINHARDT:** WE TALK ABOUT WHAT THESE PRISONERS
5 WOULD DO. THAT'S -- WHAT HAPPENED BEFORE MAY NOT BE
6 SPECULATION. BUT WHAT HAPPENED BEFORE IS NOT SPECULATION, THE
7 23 VICTIMS.

8 WHETHER THERE WERE A DIFFERENT SET OF 23 VICTIMS FOUR
9 MONTHS LATER MAY BE SPECULATION. WHAT'S GOING TO HAPPEN WITH
10 THESE PARTICULAR PRISONERS WHO WERE RELEASED FOUR MONTHS
11 EARLIER IS ALSO SPECULATION.

12 WE JUST HAVE TO SPECULATE. IF WE THINK THAT ANYBODY
13 THAT GETS OUT -- IN THEORY EVERYONE WHO GETS OUT IS GOING TO
14 COMMIT 12 CRIMES. SO WHETHER THEY GET OUT IN JANUARY AND
15 COMMIT 12 CRIMES OR THEY GET OUT IN JUNE AND COMMIT 12 CRIMES,
16 THEY ARE STILL GOING TO COMMIT 12 CRIMES.

17 **MR. MITCHELL:** EXCEPT THE CRIMES THAT THEY COMMIT
18 WHEN YOU LET THEM OUT IN JANUARY ARE ATTRIBUTABLE TO THE
19 COURT'S PRISONER RELEASE ORDER.

20 **JUDGE REINHARDT:** NO. WHAT'S ATTRIBUTABLE IS THEY
21 OCCUR EARLIER. THESE 12 VICTIMS WOULD NOT HAVE BEEN VICTIMS,
22 BUT THE ONES IN JUNE WHO WOULD HAVE BEEN THE VICTIMS ARE LUCKY
23 AND THEY ARE NOT GOING TO BE THE VICTIMS.

24 **JUDGE KARLTON:** OF COURSE, SOME OF THOSE PEOPLE MAY
25 BE THE VICTIMS IN ANY EVENT. I MEAN, THE GUY WHO KILLS HIS

1 WIFE, KILLS HIS WIFE IN JUNE OR SEPTEMBER WHENEVER HE GETS OUT.

2 MR. MITCHELL: I THINK MINIMIZING AND RATIONALIZING
3 THAT CRIMES LIKE THIS WITH OTHER VICTIMS WILL BE COMMITTED
4 ANYWAY AT A LATER TIME WHEN THEY GET OUT IS SIMPLY THAT. IT'S
5 MINIMIZING AND RATIONALIZING.

6 THE CRIME THAT THE STUDIES HAVE SHOWN WILL ACTUALLY
7 OCCUR; THAT CRIMES WILL BE COMMITTED DURING THAT EARLY RELEASE
8 WINDOW, AND THAT HAS TO BE RECOGNIZED AND TAKEN INTO
9 CONSIDERATION. THOSE VICTIMS ARE REAL VICTIMS.

10 JUDGE REINHARDT: I THINK WE'VE HAD THIS DISCUSSION
11 THROUGHOUT THE TRIAL.

12 MR. MITCHELL: WE HAVE.

13 JUDGE REINHARDT: WE ALL UNDERSTAND EACH OTHER'S
14 VIEWS.

15 MR. MITCHELL: IN FACT, THE PLAINTIFFS' EXPERTS HAVE
16 STATED THAT ALTHOUGH THE PRISON SYSTEM DIRECTLY BENEFITS FROM
17 LOWERED PRISON POPULATIONS, THE PUBLIC ALSO SUFFERS THE
18 INCREASED EFFECTS OF ACCELERATED PRISON RELEASES THAT, IN TURN,
19 CAN JEOPARDIZE PUBLIC SAFETY.

20 THOMAS HOFFMAN FROM CDCR, ADULT PAROLE OPERATIONS,
21 TESTIFIED THAT 4 PERCENT OF THE GROUP OF LOW RISK PAROLEES WHO
22 WOULD BE LET OUT ON EARLY RELEASE ARE GOING TO COMMIT VIOLENT
23 CRIMES.

24 SO WE ARE GOING TO HAVE NOT ONLY COMMISSION OF
25 25 PERCENT OF THOSE RELEASED EARLY, BUT 4 PERCENT OF THOSE,

1 THAT GROUP, AN ESTIMATE BY CDCR'S STATISTICIAN INDICATED THAT
2 4 PERCENT WOULD BE VIOLENT CRIMES. AND THIS WAS BORNE OUT IN
3 THE 1986 STUDY.

4 **JUDGE REINHARDT:** DID HE SAY HOW MANY WOULD COMMIT
5 CRIMES IF THEY WERE LET OUT AT THE END OF THE TERM INSTEAD OF
6 FOUR MONTHS EARLIER?

7 **MR. MITCHELL:** SAME STATISTICS APPLY.

8 AND IN 1986 IN THE ILLINOIS STUDY, THEY SHOWED THAT
9 OUT OF 21,000 INMATES, WHICH IS HALF OF WHAT THE PLAINTIFFS ARE
10 SUGGESTING SHOULD BE RELEASED IN THIS INSTANCE, WITHIN THAT 90
11 DAYS THAT THEY WERE RELEASED EARLY, THERE WERE 4500 NEW
12 ARRESTS, WHICH EQUATED TO, IN ONE ESTIMATE, OF OVER 30,000 NEW
13 CRIMES; BUT 23 HOMICIDES, 32 RAPES, 681 ROBBERIES, 262 ARSONS
14 AND OVER 2400 BURGLARIES ATTRIBUTABLE TO EARLY RELEASE
15 PROGRAMS.

16 DR. AUSTIN, THE PLAINTIFFS' EXPERT, TESTIFIED THAT
17 EARLY RELEASE PROGRAMS ARE ONLY A SHORT-TERM REMEDY FOR
18 OVERCROWDING AND IT'S NOT A POLICY THAT HE ENDORSES. HE
19 SUGGESTS THAT OTHER MEASURES SHOULD BE USED TO LOWER THE PRISON
20 POPULATION.

21 **JUDGE REINHARDT:** LIKE WHAT?

22 **MR. MITCHELL:** PARDON?

23 **JUDGE REINHARDT:** LIKE WHAT?

24 **MR. MITCHELL:** THERE'S PROGRAMS SUCH AS THE SB-618
25 RECIDIVISM REDUCTION PROGRAM THAT'S TAKING PLACE IN SAN DIEGO

1 THAT COULD BE IMPLEMENTED STATE-WIDE. THAT WOULD EFFECTIVELY
2 LOWER THE PRISON POPULATION BY KEEPING PEOPLE FROM COMMITTING
3 NEW CRIMES BY OFFERING --

4 **JUDGE KARLTON:** CAN WE ORDER THE STATE TO DO THAT?
5 SAY, STOP WHATEVER ELSE YOU ARE DOING. EVERY COUNTY IN THE
6 STATE OF CALIFORNIA IS TO EMULATE THE SAN DIEGO PROGRAM. DO WE
7 HAVE THE POWER TO DO THAT?

8 **MR. MITCHELL:** I THINK THAT THE COURT CAN ORDER CDCR
9 TO IMPLEMENT THOSE TYPES OF PROGRAMS, YES, BECAUSE IT'S A
10 PRISONER RELEASE ORDER, BECAUSE IT INDIRECTLY LOWERS THE NUMBER
11 OF INMATES GOING INTO PRISON.

12 **JUDGE HENDERSON:** CAN WE ORDER THE STATE TO PAY FOR
13 IT?

14 **JUDGE KARLTON:** AND ORDER THE STATE TO PAY FOR IT?

15 **MR. MITCHELL:** WELL, I THINK IF THE COURT ORDERS CDCR
16 TO IMPLEMENT THOSE PROGRAMS UNDER THE PRISONER RELEASE ORDER,
17 IT WOULD BE INCUMBENT UPON THE STATE TO FUND THOSE PROGRAMS,
18 YES.

19 I DON'T THINK THE COURT'S ORDERING ADDITIONAL
20 FUNDING, JUST ORDERING THE STATE TO ENGAGE IN A PARTICULAR
21 PROGRAM, SUCH AS INCREASING CONDUCT CREDITS.

22 **JUDGE KARLTON:** COUNTIES ARE GOING TO TELL US THAT IF
23 WE DO THAT, IT'S GOING TO BE AN UNFUNDED MANDATE AND THEY DON'T
24 HAVE THE FUNDS TO TAKE CARE OF IT.

25 **MR. MITCHELL:** CDCR WOULD REALIZE A SAVINGS IN FUNDS

1 BY THE LIMITED NUMBER, LESSER NUMBER OF INMATES GOING TO
2 PRISON. SO THERE WOULD BE FUNDING THERE FOR IT.

3 **JUDGE KARLTON:** THE ONLY PROBLEM WITH THAT IS THE
4 STATE IS BROKE AND ANY DOLLAR THAT THEY SAVE, THEY ARE GOING TO
5 SAY WE NEED TO REDUCE THE DEFICIT.

6 **JUDGE REINHARDT:** YOU KNOW, IT'S AN INTERESTING LEGAL
7 QUESTION. ONE OF THE THINGS THAT I WOULD LIKE TO KNOW THE
8 ANSWER TO IS TO WHAT EXTENT WE CAN ORDER THE STATE TO EXPEND
9 FUNDS FROM -- EITHER IN GENERAL TO CONDUCT PROGRAMS OR FROM ANY
10 SAVINGS THEY MAKE IN REDUCING PRISON POPULATION?

11 AND I WOULD APPRECIATE ANY LEGAL AUTHORITY ANYBODY
12 HAS ON THAT POINT.

13 **JUDGE KARLTON:** AS BEST I CAN TELL, THE FINDINGS OF
14 FACT AND CONCLUSIONS OF LAW PROPOSED BY EVERYBODY DOES NOT
15 ADDRESS THE POWER OF THE COURT TO DO THOSE THINGS, AND THAT IS
16 A PROBLEM FOR US AS TO WHAT WE CAN DO. I MEAN, I KNOW IT'S A
17 LEGAL PROBLEM THAT WE'VE GOT TO SOLVE.

18 **JUDGE REINHARDT:** WELL, WE MAY ASK FOR YOUR HELP IN
19 SOLVING THAT.

20 **JUDGE KARLTON:** WE MAY. WE MAY.

21 **JUDGE REINHARDT:** THE STATE MAY AGREE THAT WE CAN
22 ORDER THEM TO SPEND MONEY OR EVEN SPEND TO INCREASE ITS BUDGET.
23 IF THEY SAY THAT, THAT WOULD BE VERY HELPFUL.

24 **MR. MITCHELL:** THE DIVERSION OF STATE PRISON-BOUND
25 INMATES SUGGESTED BY PLAINTIFFS CONCERNS, THE 24 MONTHS OF LESS

1 CUSTODY, SUPERVISION OR PROGRAMS IN THE LOCAL COMMUNITY.
2 WITHOUT INCREASED FUNDING AND SUPPORT OF SUCH ALTERNATIVES WILL
3 RESULT IN THE COMMISSION OF NEW CRIMES IN LOCAL COMMUNITIES AND
4 INCREASED RECIDIVISM.

5 THE DEFENDANTS THAT FALL INTO THE CATEGORIES THAT
6 IT'S SUGGESTED ARE ELIGIBLE FOR THESE LOW RISK OR NON-SERIOUS
7 OFFENDERS BE COMMITTED TO PROBATIONARY TERMS RATHER THAN
8 PROBATION ALL HAVE LONG CRIMINAL RECORDS AND CRIMINAL BEHAVIOR.

9 THE DISTRICT ATTORNEY INTERVENORS READ IN THE
10 TESTIMONY OF DISTRICT ATTORNEY DUMANIS FROM SAN DIEGO COUNTY
11 AND DISTRICT ATTORNEY PACHECO FROM RIVERSIDE COUNTY.

12 ALMOST WITHOUT EXCEPTION, THE NON-SERIOUS,
13 NON-VIOLENT, NON-SEX OFFENDER DEFENDANTS THAT ARE SENT TO
14 PRISON FROM THOSE COUNTIES AND FROM MOST COUNTIES IN THE STATE
15 OF CALIFORNIA HAVE ALREADY FAILED ON PROBATION THREE, FOUR,
16 FIVE, SIX TIMES AND HAVE NUMEROUS FELONY CONVICTIONS.

17 THESE ARE ONES, INDIVIDUALS, DEFENDANTS THAT ARE NOT
18 AMENABLE TO SUPERVISION OR TREATMENT IN THE LOCAL COMMUNITIES.
19 TO SUGGEST THAT THIS GROUP IS NOW ELIGIBLE OR SUITABLE FOR
20 DIVERSION IS MERELY DUMPING ON THE COUNTIES THAT WHICH PROPERLY
21 BELONGS TO THE STATE.

22 **JUDGE REINHARDT:** WHAT HAPPENS TO THEM IF THEY ARE
23 NOT DIVERTED?

24 **MR. MITCHELL:** THEY GO TO PRISON.

25 **JUDGE REINHARDT:** FOR HOW LONG?

1 **MR. MITCHELL:** SOMETIMES 24 MONTHS, ACCORDING TO
2 THIS, WHICH COULD BE UP TO FOUR YEARS. 24 MONTHS IS ACTUAL
3 TIME.

4 **JUDGE REINHARDT:** WHAT'S THE GENERAL PRACTICE OF
5 THESE PEOPLE THAT WE ARE CONCERNED ABOUT? WHAT WOULD YOU
6 SAY -- HOW LONG WOULD THEY BE SENT TO PRISON FOR?

7 **MR. MITCHELL:** WELL, I KNOW THAT --

8 **JUDGE REINHARDT:** THE PRACTICAL REALITY, THE CLASS
9 YOU ARE TALKING ABOUT, WHAT ARE THEY AS AN AVERAGE SENT TO
10 PRISON FOR?

11 **MR. MITCHELL:** FOUR YEARS OR LESS.

12 **JUDGE REINHARDT:** THE AVERAGE?

13 **MR. MITCHELL:** YES.

14 **JUDGE REINHARDT:** FOUR YEARS OR LESS?

15 **MR. MITCHELL:** OUT OF 4200 INMATES SENT TO PRISON
16 FROM RIVERSIDE COUNTY IN 2007, 3200 WERE FOUR YEARS OR LESS FOR
17 NON-SERIOUS, NON-VIOLENT, NON-SEX OFFENSES. 3200, FOUR YEARS
18 OR LESS.

19 THE ACTUAL TIME THEY ARE SERVING IS TWO YEARS ON A
20 FOUR-YEAR PRISON SENTENCE. SO THEY ARE IN THERE FOR
21 APPROXIMATELY 18 MONTHS TO TWO YEARS.

22 **JUDGE REINHARDT:** THEY KEEP GOING DOWN. YOU SAID
23 FOUR YEARS, NOW WE ARE DOWN TO TWO, NOW 18 MONTHS.

24 **MR. MITCHELL:** I'M TALKING ACTUAL MONTHS.

25 THERE IS A HUGE NUMBER IN OUR PRISON SYSTEM, AND WE

1 HEARD THE EVIDENCE ON THAT, THAT IS CHURNING IN AND OUT, BUT
2 THERE IS NO PROGRAMS AT THE LOCAL LEVEL TO DEAL WITH THEM.

3 **JUDGE KARLTON:** AND THERE WERE NO PROGRAMS AT THE
4 PRISON LEVEL BECAUSE THERE IS NO PLACE --

5 **MR. MITCHELL:** CORRECT. AND THAT'S WHY WE'VE COME UP
6 WITH THE PROGRAM LIKE THE SB-618 PROGRAM TO TRY AND STOP THAT
7 CHURNING, TRY AND STOP THAT RECIDIVISM FROM CONTINUALLY
8 OCCURRING.

9 AND THE DISTRICT ATTORNEYS ARE WORKING TO IMPLEMENT
10 THAT IN OTHER COUNTIES DESPITE WHAT THIS COURT ORDERS AND
11 WHETHER IT INVOLVES THAT OR NOT.

12 **JUDGE HENDERSON:** YOU KNOW, I'M RETURNING BECAUSE IT
13 SEEMS CRITICAL TO ME.

14 I WAS VERY IMPRESSED WITH THE PROGRAM. SO IT'S LIKE
15 ASKING US TO DO SOMETHING THAT WON'T HAPPEN. THAT'S MY
16 CONCERN. I DON'T KNOW WHAT TO DO. IF I ADVOCATE THIS AND SAY
17 WONDERFUL, BUT THE MONEY IS NOT THERE AND IT'S NOT GOING TO BE
18 THERE, IS IT A REMEDY AT ALL OR IS IT ILLUSIONARY?

19 **MR. MITCHELL:** I DON'T KNOW THAT CDCR IS OPPOSED TO
20 IT. I KNOW THAT I SAW IT AS AN ALTERNATIVE IN THE DEFENDANTS'
21 CONCLUSIONS OF LAW AND FINDINGS OF FACT.

22 **JUDGE KARLTON:** BUT THE REALITY -- EXCUSE ME, SIR.
23 THE REALITY IS THAT THE STATE SAYS THREE COUNTIES CAN DO THIS
24 EXPERIMENT AND ONLY ONE HAS DONE IT. WHAT DO WE MAKE OF THAT?
25 WE ARE TALKING ABOUT STATE-WIDE AND ALL THAT THAT WOULD IMPLY.

1 **MR. MITCHELL:** IT'S THE SAME PROBLEM AS
2 JUDGE HENDERSON NOTED IN HIS FINDINGS OF FACT THAT LED TO THE
3 APPOINTMENT OF THE RECEIVER. IT'S A LACK OF LEADERSHIP.

4 AND THERE WAS A LEADER IN SAN DIEGO THAT TOOK IT UPON
5 HERSELF TO GET IT STARTED AND NOW IT'S PROVEN THAT IT WORKS.
6 AND NOW IT'S SOMETHING THAT OTHER DISTRICT ATTORNEYS ARE
7 LOOKING INTO GETTING IMPLEMENTED IN THEIR COUNTIES.

8 SO IT IS A LACK OF LEADERSHIP, A LACK OF INITIATIVE
9 TO GET THINGS OFF THE GROUND AND STARTED.

10 **JUDGE REINHARDT:** IMPLEMENTED WITH STATE FUNDS.

11 **MR. MITCHELL:** IN SAN DIEGO IT'S IMPLEMENTED WITH
12 STATE FUNDS, YES. CDCR FUNDS IT.

13 **JUDGE REINHARDT:** AND YOU WANT LEADERSHIP ON A STATE
14 LEVEL. ARE YOU A CANDIDATE FOR GOVERNOR?

15 **MR. MITCHELL:** I DON'T KNOW THAT WE NEED TO GET INTO
16 THAT AT THIS POINT.

17 **JUDGE REINHARDT:** CAN WE ORDER LEADERSHIP ON A STATE
18 LEVEL? IT WOULD BE WONDERFUL.

19 **MR. MITCHELL:** AND I'M NOT ADVOCATING THAT THIS COURT
20 MAKE THAT ORDER REGARDING SB-618.

21 THE COURT WONDERED WHAT TYPE OF PROGRAM WOULDN'T
22 INVOLVE ADVERSE IMPACTS ON PUBLIC SAFETY, AND THAT'S ONE THAT
23 DOES NOT HAVE ADVERSE IMPACTS ON PUBLIC SAFETY.

24 **JUDGE REINHARDT:** I DON'T THINK THAT WE CAN SAY IT
25 WOULDN'T HAVE AN IMPACT ON PUBLIC SAFETY IF WE HAD LEADERSHIP,

1 THEREFORE, WE ARE GOING TO DO THIS. WE HAVE TO TALK ABOUT
2 WHAT'S REALLY GOING TO HAPPEN.

3 IS THE STATE REALLY GOING TO GIVE US THE MONEY? IF
4 THE STATE WILL COME INTO COURT AND PUT UP A BOND OR SOMEHOW
5 SAY, HERE, WE'VE AUTHORIZED THE MONEY FOR THESE PROGRAMS.
6 THAT'S A DIFFERENT SITUATION. BUT TO SAY THE STATE, IF IT ONLY
7 HAD LEADERSHIP, COULD SOMEHOW AUTHORIZE THE PROGRAM WE ALL KNOW
8 IT'S NOT GOING TO DO, THAT DOESN'T HELP.

9 JUDGE KARLTON: I MEAN, AB900 HAS NOT BEEN CURED IN,
10 WHAT, FOUR YEARS? I'M MAKING THAT UP. TWO YEARS. IT'S NOT
11 LIKE PEOPLE DON'T HAVE GOOD IDEAS. FOR SOME REASON NOTHING
12 HAPPENS. WELL, ONE THING HAPPENS. WE GET MORE AND MORE PEOPLE
13 IN PRISON.

14 BUT, YOU KNOW -- AND THE ARGUMENT ABOUT LETTING THESE
15 FOLKS OUT IS GOING TO CAUSE A PROBLEM, LAW ENFORCEMENT PROBLEM.
16 NOBODY DISPUTES, BEGINNING WITH THE DEFENDANT, THAT THE PRISONS
17 ARE PRESENTLY CRIMINOGENIC.

18 SO WHEN WE SEND THESE PEOPLE TO 18 MONTHS, THEY GO IN
19 AS DRUG USERS OR THEY'VE BOOSTED A CAR OR GOD KNOWS WHAT, WHEN
20 THEY COME OUT THEY'RE GOING TO DO VIOLENT CRIMES.

21 ONE THING, APPARENTLY, IS TRUE. AND, REALLY, THIS IS
22 AN IMPORTANT THING TO BE TALKING TO THE DISTRICT ATTORNEYS
23 ABOUT. IF WHAT WE ARE DOING CLEARLY ENDANGERS PUBLIC SAFETY,
24 AND THAT IS APPARENTLY THE UNDISPUTED EVIDENCE, DON'T WE HAVE
25 TO DO SOMETHING DIFFERENT?

1 **MR. MITCHELL:** AGREED. SOMETHING NEEDS TO BE DONE.
2 AND FOR THE PART -- IF YOU ARE REFERRING TO, DOES THIS COURT
3 NEED TO DO SOMETHING DIFFERENT, THAT THE STATE NEEDS TO DO
4 SOMETHING DIFFERENT. WITH THE BUDGET CONSTRAINTS AND THE
5 RECIDIVISM AND INCREASED CRIME, YEAH, THE STATE DOES NEED TO DO
6 SOMETHING DIFFERENT.

7 **JUDGE KARLTON:** AND IF THE STATE HAS BEEN GIVEN YEARS
8 AND YEARS AND THE ONLY THING THAT THEY HAVE DONE IS PERMIT THE
9 PRISON SYSTEM TO GROW COMPLETELY OUT OF CONTROL, THEN WHAT?

10 I MEAN, THERE IS NO EVIDENCE, THERE IS NO EVIDENCE
11 THAT I CAN TELL OF -- WITH ALL DUE RESPECT TO MISS TILLMAN'S
12 SUGGESTION OTHERWISE, THERE IS NO EVIDENCE THAT THE STATE,
13 WITHOUT FEDERAL COURT PRODDING, WILL DO ANYTHING EXCEPT -- I
14 MEAN, AND THERE'S A PROBLEM OF POLITICAL WILL. NOBODY WANTS TO
15 SAY, OH, I'M SOFT ON CRIME. ALL THOSE REASONS.

16 YOU KNOW, AND JUST TO ECHO JUDGE REINHARDT, THERE ARE
17 AT LEAST SOME POLITICIANS WHO SAY, LET THE COURTS ORDER US TO
18 DO SOMETHING AND THEN WE WON'T BE RESPONSIBLE FOR ANYTHING.
19 YOU KNOW, WE WILL JUST TO HAVE TO DO IT.

20 WHAT CAN WE DO UNDER THESE CIRCUMSTANCES?

21 **MR. MITCHELL:** I THINK THE COURT'S POWER IS FURTHER
22 CONSTRAINED AND LIMITED BY THE FACT THAT ANY ORDER HAS TO BE
23 NARROWLY TAILORED TO RE MEDIATING THE CONSTITUTIONAL VIOLATIONS
24 OF THE TWO PLAINTIFF CLASSES AND NOT CURING ALL THE ILLS OF THE
25 PRISON SYSTEM.

1 **JUDGE KARLTON:** YOU ARE ABSOLUTELY RIGHT. YOU ARE
2 ABSOLUTELY RIGHT. THIS IS -- YOU KNOW, IT'S NOT A -- WE DON'T
3 HAVE A GENERAL WRIT TO GO AND CURE EVERY PROBLEM IN THE WORLD.

4 **JUDGE REINHARDT:** MAYBE YOU ARE RIGHT. ALL WE CAN DO
5 IS ISSUE A PRISONER RELEASE ORDER AND NOT DO THE KINDS OF
6 THINGS YOU ARE TALKING ABOUT, LIKE SEEING THESE PROGRAMS ARE
7 INSTITUTED.

8 **JUDGE KARLTON:** MAYBE THE ANSWER IS IF WE ORDER THE
9 STATE, TELL THEM, LOOK, THERE IS A CAP -- AND I DON'T KNOW WHAT
10 THAT CAP WOULD BE. I SUSPECT THERE IS SOME DISAGREEMENT AMONG
11 US. BUT BE THAT AS IT MAY, AND WE SAY TO THE STATE, THIS IS
12 THE NUMBER OF PEOPLE THAT YOU CAN KEEP IN YOUR PRISONS UNLESS
13 YOU BUILD MORE PRISONS, AND THEN THE STATE WILL BE REQUIRED TO
14 TAKE THE BIT BY THE -- I GUESS YOU DON'T TAKE THE BIT BY THE
15 HORNS.

16 **MR. MITCHELL:** THE HORSE BY THE BIT.

17 **JUDGE KARLTON:** TO TAKE THE BIT AND SAY, THIS IS WHAT
18 WE ARE GOING TO DO. MAYBE THAT'S THE BEST THAT WE CAN DO. AS
19 BAD AS THAT MIGHT BE, MAYBE THAT'S THE BEST WE CAN DO.

20 **MR. MITCHELL:** THAT LEAVES IT UP TO THE STATE TO
21 FIGURE OUT HOW IT'S GOING TO FIX THE PROBLEM.

22 THE LAST POINT I WANTED TO MAKE IS REGARDING THE CAP
23 ON THE PRISON POPULATION IN GENERAL. AND THE EVIDENCE THAT WAS
24 PRESENTED, FOR INSTANCE, AS IN -- IN RIVERSIDE COUNTY JAIL,
25 LIKE MANY OTHER COUNTY JAILS, ALREADY HAVE POPULATION CAPS

1 FORCING THE LOCAL AUTHORITIES TO RELEASE INMATES PRIOR TO THE
2 COMPLETION OF THEIR COURT-ORDERED CUSTODY AND TO RELEASE
3 UNQUALIFIED PRETRIAL DETAINEES WITHOUT BAIL.

4 STATISTICS HAVE SHOWN THAT THIS GROUP OF JAIL INMATES
5 HAS A RECIDIVISM RATE. IN RIVERSIDE IT WAS OVER 28 PERCENT.
6 SHERIFF HENNESSY TESTIFIED THAT EARLY RELEASE MEASURES IN HIS
7 JAIL DIDN'T RESULT IN ANY INCREASED CRIME, BUT ON
8 CROSS-EXAMINATION IT WAS POINTED OUT -- HE POINTED OUT, WELL,
9 THEY DON'T KEEP RECORDS OF THE REARRESTS OF THOSE PEOPLE
10 ANYWAY. SO HIS TESTIMONY REGARDING THAT MATTER, IT WAS REALLY
11 SOMEWHAT WITHOUT MERIT.

12 JUDGE REINHARDT: LET ME ASK YOU A QUESTION. YOU
13 HAVE A CAP IN THE COUNTY JAIL?

14 MR. MITCHELL: YES.

15 JUDGE REINHARDT: WHAT'S THE ALTERNATIVE TO THE CAP?
16 WOULD YOU SAY THAT IF YOU GET TO THE POINT WHERE YOU'VE GOT
17 FIVE PEOPLE IN A CELL BUILT FOR ONE, OR GETS TO BE 10 PEOPLE,
18 AT SOME POINT DOESN'T THERE HAVE TO BE A CAP?

19 MR. MITCHELL: AT SOME POINT THE FACILITIES CAN ONLY
20 HOLD SO MANY, WHETHER YOU HAVE HOT BUNKING OR BOATS INSTEAD OF
21 BEDS.

22 JUDGE REINHARDT: WHERE THE FACILITY CAN'T FUNCTION.

23 JUDGE KARLTON: THAT'S WHERE WE ARE NOW WITH THE
24 PRISON SYSTEM, AS BEST I CAN TELL. WHAT DO WE DO?

25 MR. MITCHELL: THE COURT HEARD FROM THE DISTRICT

1 ATTORNEYS THAT TESTIFIED IN THIS CASE. THEY SHARE YOUR
2 FRUSTRATION.

3 JUDGE KARLTON: THAT'S EASY. I DON'T MEAN THAT
4 BADLY. I MEAN, YOU KNOW --

5 JUDGE REINHARDT: THIS MIGHT BE AN IMPOSSIBLE
6 PROBLEM, BUT HERE WE ARE WITH AN IMPOSSIBLE PROBLEM.
7 OBVIOUSLY, AT SOME POINT THERE HAS TO BE A CAP ON THE PRISON
8 POPULATION, MAYBE FIVE TIMES AS MUCH AS WE NOW HAVE.

9 BUT IN THEORY THERE HAS TO BE A CAP AT SOME POINT.
10 IF -- YOU CAN'T JUST KEEP PUTTING PEOPLE INTO PRISON FOREVER.
11 YOU'VE GOT TO LIMIT IT TO --

12 MR. MITCHELL: WELL, I THINK WHAT'S BEFORE THIS COURT
13 IS THE CONSTITUTIONAL HEALTHCARE AND MENTAL HEALTH CARE AND --

14 JUDGE REINHARDT: YOU SAID -- WE ARE TALKING ABOUT
15 ASSUMING THAT. YOU WERE SAYING, ASSUMING WE REACHED A POINT
16 WHERE IT'S THE -- WHERE IT IS THE PRIMARY CAUSE, WHERE THERE IS
17 NO OTHER REMEDY. NOW WHAT DO YOU DO?

18 JUDGE KARLTON: NOW WHAT DO YOU DO?

19 JUDGE REINHARDT: I DON'T KNOW. YOU SAY, WELL, DON'T
20 YOU DO ANYTHING THAT'S GOING TO CAUSE AN IMPACT ON CRIME. IF
21 YOU DON'T DO ANYTHING, WHAT?

22 JUDGE KARLTON: IT'S GOING TO CAUSE AN IMPACT ON
23 CRIME.

24 MR. MITCHELL: WELL, IT COMES DOWN TO FUNDING AND IT
25 COMES DOWN TO TIME TO EMPLOY PROGRAMS THAT WILL NOT RESULT IN

1 ADVERSE IMPACTS ON PUBLIC SAFETY IN THE CORRECTIONAL JUSTICE
2 SYSTEM.

3 **JUDGE REINHARDT:** AND WHERE DO YOU GET FUNDING FROM
4 THAT? WHAT'S GOING ON IN THE COUNTRY? WHAT'S GOING ON IN THE
5 STATE, THE BUDGET? WHEN CAN YOU EXPECT FUNDING FOR THOSE
6 PROGRAMS?

7 **MR. MITCHELL:** THERE IS FUNDING. IT'S JUST A
8 QUESTION OF PRIORITIES AND WHERE THE MONEY GETS ALLOCATED.
9 THERE IS MONEY THERE FOR PROGRAMS. THERE'S MONEY THERE FOR
10 SERVICES AND IT'S A QUESTION OF WHERE THE STATE ALLOCATES IT.

11 **JUDGE REINHARDT:** IN THE PRISON PROJECT OR ARE WE
12 GOING TO GET FUNDING ELSEWHERE? WE ARE NOT GOING TO CLOSE THE
13 SCHOOLS.

14 **MR. MITCHELL:** THERE'S RESOURCES AVAILABLE AND IT'S A
15 QUESTION OF WHERE THEY GET ALLOCATED. THOSE ARE DECISIONS THAT
16 ARE MADE IN THE LEGISLATURE AND APPROPRIATIONS. AND DECISIONS
17 HAVE TO BE MADE OF WHAT'S MORE IMPORTANT, WHAT DO WE HAVE TO
18 DO?

19 IT'S OFTEN BEEN SAID THAT THE NUMBER ONE PRIORITY FOR
20 THE STATE AND FOR THE LOCAL GOVERNMENTS IS ENSURING PUBLIC
21 SAFETY. AND IF THAT'S TRUE, THEN THOSE FUNDING PRIORITIES HAVE
22 TO BE MADE.

23 **JUDGE REINHARDT:** THAT'S AN ARGUMENT YOU HAVE TO MAKE
24 TO THE GOVERNOR AND THE LEGISLATURE, I WOULD THINK. WHY DON'T
25 YOU COME BACK AND TELL US THAT YOU HAVE GOTTEN THEM -- YOU

1 PERSUADED THEM THAT THEY OUGHT TO DIVERT MONEY FROM THE
2 SCHOOLS. THEY OUGHT TO DIVERT MONEY FROM PEOPLE WHO ARE DYING
3 BECAUSE THEY CAN'T EAT AND ARE LIVING ON THE STREETS. YOU
4 PERSUADE THEM THAT THE PRIMARY PROBLEM IS THE PRISONS. COME
5 BACK WITH THAT MONEY, THEN SURE.

6 MR. MITCHELL: EASIER SAID.

7 JUDGE KARLTON: EXACTLY.

8 MR. MITCHELL: IN CLOSING, THE POTENTIAL ADVERSE
9 CONSEQUENCES OF THE PRISONER RELEASE ORDERS, THE PROPOSED
10 PRISONER RELEASE ORDERS WILL HAVE SUCH ADVERSE IMPACTS ON
11 PUBLIC SAFETY THAT THE COURT SHOULD EITHER DENY THEIR REQUEST
12 FOR A PRISONER RELEASE ORDER OUTRIGHT OR FASHION A MORE
13 NARROWLY TAILORED, LESS INTRUSIVE REMEDY.

14 JUDGE KARLTON: I WANT TO ASK YOU A QUESTION. I SORT
15 OF WANTED TO ASK EVERYBODY. UNFORTUNATELY, YOU TURN OUT TO BE
16 THE VICTIM.

17 CAN THE CONGRESS CREATE A STATUTE WHICH SAYS THERE IS
18 A CONSTITUTIONAL VIOLATION AND YOU CAN'T SOLVE IT?

19 JUDGE REINHARDT: I CAN GIVE YOU A COUPLE OF
20 EXAMPLES.

21 MR. MITCHELL: THERE'S A CONSTITUTIONAL VIOLATION
22 THAT CAN'T BE SOLVED?

23 JUDGE KARLTON: NO. THERE IS A CONSTITUTIONAL
24 VIOLATION, BUT YOU, THE COURTS, ARE PROHIBITED FROM SOLVING IT.

25 JUDGE REINHARDT: YOU HAVEN'T READ THE HABEAS

1 STATUTE.

2 JUDGE KARLTON: WE ARE NOT TALKING ABOUT 254.

3 DOES THE CONGRESS HAVE THE AUTHORITY TO PREVENT THE
4 COURTS FROM ADDRESSING THE CONSTITUTIONAL VIOLATION?

5 MR. MITCHELL: CONSTITUTIONAL RIGHTS, FROM MY
6 UNDERSTANDING OF CONSTITUTIONAL LAW, CAN BE INFRINGED UPON WHEN
7 THERE ARE COMPELLING STATE CIRCUMSTANCES OR CRITERIA OR A
8 RATIONAL BASIS FOR SUCH.

9 AND TO A CERTAIN -- I THINK TO A CERTAIN EXTENT, YES,
10 THERE CAN BE VIOLATIONS OF CONSTITUTIONAL RIGHTS THAT CANNOT BE
11 REMEDIED IN A PARTICULAR PERIOD OF TIME.

12 JUDGE KARLTON: THAT -- USING YOUR EXAMPLE OF
13 REMEDIES, THAT DOESN'T SAY THERE CAN'T BE A REMEDY DEFINES THE
14 CONSTITUTIONAL RIGHT IN THAT FASHION.

15 HERE, THE QUESTION -- APPARENTLY, AT LEAST NOBODY HAS
16 SUGGESTED OTHERWISE. THE CONSTITUTION REQUIRES THAT IF THE
17 STATE IMPRISONS SOMEBODY, IT PROVIDE A MINIMUM OF
18 CONSTITUTIONALLY ADEQUATE MEDICAL CARE. SO THAT'S A
19 CONSTITUTIONAL RIGHT THAT EXISTS.

20 NOW, THE QUESTION IS, CAN THE CONGRESS -- DOES THE
21 CONGRESS HAVE THE POWER TO PREVENT A CO-EQUAL BRANCH OF
22 GOVERNMENT WHICH HAS THE OBLIGATION TO PROTECT CONSTITUTIONAL
23 RIGHTS FROM DOING SO, JUST SAYING YOU CAN'T ADDRESS THAT
24 PROBLEM?

25 MR. MITCHELL: I DON'T KNOW THE ANSWER TO THAT

1 QUESTION.

2 JUDGE KARLTON: THAT MAKES TWO OF US.

3 JUDGE REINHARDT: I DO.

4 JUDGE KARLTON: YOU ONLY THINK YOU DO BECAUSE YOU ARE
5 SMARTER THAN I AM.

6 MR. MITCHELL: THANK YOU.

7 CLOSING ARGUMENT

8 MS. BARLOW: GOOD AFTERNOON, YOUR HONORS. KIMBERLY
9 HALL BARLOW FOR THE LAW ENFORCEMENT INTERVENORS.

10 FIRST, I WANT TO THANK THE COURT FOR ALLOWING US TO
11 PARTICIPATE. AND I KNOW THE COURT HASN'T ALWAYS APPRECIATED MY
12 APPROACH TO THIS CASE AND I CERTAINLY INTENDED NO DISRESPECT TO
13 THE COURT.

14 I RECOGNIZE THE AWESOME RESPONSIBILITY THAT YOU HAVE
15 HERE AND WE WANTED TO PARTICIPATE BECAUSE IT IS SUCH AN AWESOME
16 RESPONSIBILITY. AND, FRANKLY, IT'S ONE THAT MY CLIENTS SHARE
17 WITH YOU.

18 I DON'T WANT TO MAKE LIGHT OF THIS, BUT THE REALITY
19 IS THIS IS A ZERO SUM GAME. YOU HAVE A FIXED NUMBER OF PEOPLE
20 THAT ARE COMMITTING CLAIMS IN THIS STATE. WE DON'T KNOW WHY.
21 WE SPEND A LOT OF TIME TALKING ABOUT WHY THAT IS, BUT THAT'S
22 THE REALITY.

23 THE ONLY QUESTION IS: WHERE DO WE PUT THEM? DO WE
24 KEEP THEM IN PRISONS WHERE THEY GET MAYBE NOT THE LEVEL OF CARE
25 THAT WE WOULD LIKE TO THEM TO GET, OR DO WE LET THEM OUT AND

1 ALLOW THEM TO CONTINUE VICTIMIZING PEOPLE AT A HIGHER RATE,
2 GREATER RATE IN A FASTER WAY?

3 **JUDGE REINHARDT:** IT'S SLIGHTLY DIFFERENT. THE
4 QUESTION IS NOT DO THEY RECEIVE THE LEVEL OF CARE WE WANT THEM
5 TO GET. THE QUESTION IS, IF THEY ARE UNABLE TO PROVIDE THE
6 CONSTITUTIONALLY REQUIRED CARE, WHAT DO YOU DO?

7 **MS. BARLOW:** WELL, WITH RESPECT, YOUR HONOR, I THINK
8 THE EVIDENCE DEMONSTRATED THAT THEY CAN DO THAT --

9 **JUDGE REINHARDT:** THAT'S A DIFFERENT QUESTION. YOU
10 WERE TALKING ABOUT A -- IF YOU WANT TO SHIFT TO THE QUESTION OF
11 IS THERE REALLY A CONSTITUTIONALLY ADEQUATE CARE, THAT'S A
12 DIFFERENT QUESTION.

13 **MS. BARLOW:** WELL, I'M NOT DISPUTING. THE COURT HAS
14 MADE THOSE FINDINGS AND I RECOGNIZE THE COURT'S RULINGS THAT
15 THAT IS NOT REALLY FOR DISPUTE HERE.

16 THE QUESTION IS, WHAT THE CAUSE OF THAT IS, WHAT THE
17 ALTERNATIVES TO A RELEASE ORDER ARE AND, INDEED, WHAT IS A
18 PRISONER RELEASE ORDER THAT THIS COURT HAS THE POWER TO ISSUE.

19 MY CLIENTS, THE LAW ENFORCEMENT REPRESENTATIVES AND
20 OFFICIALS FROM UP AND DOWN THE STATE, FROM LARGE COMMUNITIES,
21 SMALL COMMUNITIES, FROM LOS ANGELES COUNTY, AVENAL COUNTY, THE
22 BIGGEST CONTRIBUTOR AND SMALLER CONTRIBUTOR, THE PROBATION
23 CHIEFS, THEY CAME TO TALK TO YOU.

24 THEY WANTED TO PARTICIPATE IN THIS CASE. THEY CAME
25 TO TALK TO YOU TRUTHFULLY AND EARNESTLY ABOUT THEIR FEARS.

1 NOW, PLAINTIFFS SAY THOSE FEARS ARE EXAGGERATED.

2 AND I KNOW WE'VE TALKED ABOUT THE DIFFERENCE BETWEEN
3 INCREASING AND ACCELERATING CRIME, BUT IT'S VERY IMPORTANT THAT
4 THE COURT RECOGNIZE DR. AUSTIN'S TESTIMONY WAS THERE WILL BE AN
5 INCREASE. HE DEEMS IT STATISTICALLY INSIGNIFICANT.

6 BUT YOU ARE NOT STATISTICIANS AND THE PEOPLE THAT ARE
7 GOING TO BE VICTIMS OF THOSE ADDITIONAL CRIMES ARE NOT
8 STATISTICIANS. AND ALL THEY KNOW IS THEY HAVE BEEN VICTIMIZED.

9 THERE HAS BEEN DISCUSSION ABOUT -- FROM THE LAWYERS
10 AND JUDGES BOTH THAT HAVE BEEN VICTIMIZED BY CRIMES IN THEIR
11 LIVES. SO HAVE I.

12 I WANT YOU TO CONSIDER FOR A MOMENT THE EXPERIENCE OF
13 BEING A VICTIM AND HOW IT FELT TO YOU AND WHETHER IT WOULD HAVE
14 MATTERED TO YOU THAT THAT PERSON SHOULD HAVE BEEN IN PRISON
15 WHEN THE CRIME AGAINST YOU WAS COMMITTED.

16 WE TALKED ABOUT THE NUMBER OF ARRESTS VERSUS THE
17 NUMBER OF CRIMES VERSUS THE NUMBER OF PRISONERS. I HAVE BEEN A
18 VICTIM OF 14 CRIMES, SIX OF THEM SERIOUS VIOLENT CRIMES. OKAY?
19 ONE ARREST.

20 NOW, I'M PROBABLY UNUSUAL, EXCEPT ACCORDING TO
21 DR. AUSTIN, DR. AUSTIN SAYS, KIND OF BLIGHTY I THOUGHT, THE
22 PEOPLE IN THIS COURTROOM ARE A LOT LESS LIKELY TO BE VICTIMIZED
23 BY THESE PEOPLE COMING OUT. AND HE IS NOT PERSONALLY CONCERNED
24 FOR HIMSELF IF YOU ISSUE A PRISONER RELEASE ORDER.

25 **JUDGE HENDERSON:** THE PERSONS IN THIS COURT ARE NOT

1 LIKELY, IS THAT WHAT YOU SAID?

2 MS. BARLOW: HE SAID THAT WE WERE LESS LIKELY BECAUSE
3 WE LIVE IN MORE AFFLUENT AREAS. WE'RE MORE EDUCATED. AND YOU
4 KNOW WHAT? THAT MIGHT BE TRUE. BUT MY CLIENTS DON'T WORK IN
5 AFFLUENT AREAS. THEY WORK IN THE AREAS WHERE CRIME IS HIGH,
6 WHERE GANGS ARE A PROBLEM, WHERE DRUGS ARE A PROBLEM.

7 WE HAD TESTIMONY FROM THE HIGHEST-- FROM THE AUTO
8 THEFT CAPITOL OF THE WORLD, THE METH CAPITAL OF THE WORLD.
9 THEY ARE DEALING WITH THE PEOPLE WHO WILL BE VICTIMS AND THEY
10 ARE THE ONES WHO HAVE TO STAND THERE AND FACE THESE VICTIMS AND
11 TELL THEM THEY DON'T HAVE ENOUGH RESOURCES, AND TELL THEM,
12 YEAH, THIS GUY GOT OUT OF PRISON EARLY BECAUSE THERE IS NO ROOM
13 AT THE INN. AND I CAN'T EVEN KEEP HIM LOCKED IN THE COUNTY
14 JAIL BECAUSE THERE IS NO ROOM THERE EITHER.

15 THE PEOPLE THAT ARE GOING TO BE VICTIMS ARE SPOUSES
16 AND CHILDREN AND NEIGHBORS OF THESE FOLKS, BURGLARS, CHILD
17 ABUSERS, SPOUSAL ABUSERS, DRUNK DRIVERS. THERE WAS EVIDENCE
18 BEFORE YOU THAT ONE OF THE PEOPLE RELEASED EARLY FROM
19 LOS ANGELES COUNTY WAS A DRUNK DRIVER WHO KILLED SOMEBODY.

20 NOW, MAYBE ANOTHER TIME, FOUR MONTHS LATER, HE IS
21 DRIVING DRUNK AND NOBODY IS THERE WHEN HE DRIVES THROUGH THE
22 INTERSECTION. YOU CAN'T SAY. YOU JUST CAN'T SAY THAT THERE IS
23 NO IMPACT. THERE IS AN IMPACT.

24 JUDGE HENDERSON: BUT ISN'T THAT THE NATURE OF THIS
25 PROBLEM? I WAS THINKING THAT WHEN MISS TILLMAN WAS ARGUING

1 THAT SINCE 1994, 2009 WE HAVE MADE PROGRESS. AND JUDGE KARLTON
2 SAID, YES, BUT WE STILL ARE A THOUSAND BEDS SHORT, WHATEVER IT
3 WAS. I TEND TO PERSONALIZE. THERE ARE A THOUSAND PEOPLE WHO
4 DON'T HAVE IT, WHO ARE VICTIMS. AND THAT'S THE NATURE OF THIS.

5 **MS. BARLOW:** BUT MY POINT IS THE IMPACT -- FIRST OF
6 ALL, THERE ARE IMPACTS TO THE PRISONERS, TOO, IF YOU ORDER
7 EARLY RELEASE, ESPECIALLY THE MENTALLY ILL THAT I WILL TALK
8 ABOUT.

9 BUT, FIRST OF ALL, YOU HEARD EVIDENCE THAT NOT ONLY
10 ARE YOU GOING TO HAVE AN ACCELERATED CRIME AND AN INCREASE IN
11 CRIME, WHAT YOU ARE ALSO GOING TO HAVE IS THE CUMULATIVE IMPACT
12 OF THESE PEOPLE GETTING OUT EARLY OVER AND OVER AGAIN.

13 THE TOTAL AMOUNT OF TIME THAT THEY HAVE TO COMMIT
14 CRIMES IN THEIR LIFETIME IS GOING TO BE MUCH GREATER THAN IF
15 YOU ORDERED A CAP.

16 **JUDGE REINHARDT:** IT SOUNDS VERY DRAMATIC, BUT THE
17 PROBLEM IS, YOU KNOW, IF YOU WEREN'T TALKING ABOUT GETTING OUT
18 A FEW MONTHS EARLIER, YOU HAVE THE SAME ARGUMENTS WITH
19 PAROLEES.

20 I REMEMBER A MAN WHO GOT ELECTED PRESIDENT BY TALKING
21 ABOUT A PAROLEE WHO WAS LET OUT ON A WEEKEND PASS. THE PRISON
22 SYSTEM IS THE CRIMINAL SYSTEM.

23 WE DON'T KNOW THAT A TWO-MONTH SENTENCE OR A
24 FOUR-MONTH SENTENCE IS THE IDEAL SENTENCE. SO SOMEBODY WHO
25 GETS A TWO-YEAR SENTENCE INSTEAD GETS AN 18-MONTH SENTENCE, YOU

1 KNOW, IF OUR LAWS WERE A LITTLE LESS HARSH, THEY WOULD HAVE
2 GOTTEN OUT SIX MONTHS EARLIER ANYWAY.

3 SOME OF THEM PROBABLY SHOULD BE IN JAIL FOR LIFE EVEN
4 THOUGH THEY DIDN'T COMMIT THAT TYPE OF CRIME. SOME OF THEM
5 PROBABLY SHOULD BE IN PRISON FOR A TENTH OF THE TIME THAT THEY
6 ARE THERE.

7 HOW DO YOU CONTROL THAT AND WHY IS IT THAT IT'S MAGIC
8 THAT WE'VE GONE TO A PARTICULAR TYPE OF SENTENCING SYSTEM OR
9 PAROLE SYSTEM? YOU CHANGE THE PAROLE SYSTEM EITHER BY AN
10 INITIATIVE OR BY A LAW AND IT LET'S PEOPLE OUT EARLY OR LONGER.

11 YOU KNOW, IT'S NOT ONLY THE PAROLE SYSTEM THAT WE
12 HAPPEN TO HAVE AT THE MOMENT THAT SOMEBODY SAYS -- OR SOMEONE
13 ELSE SAYS IT SHOULD BE DIFFERENT, OR YOU MODIFY IT BECAUSE THE
14 PRISONS CAN'T HOLD THEM.

15 AND IT'S UNFORTUNATE THAT ANYBODY IS A VICTIM, BUT
16 YOU CAN'T PREVENT CRIME BY SAYING, WELL, LET'S SENTENCE THEM TO
17 TWO YEARS AND IF HE GETS OUT IN 18 MONTHS, WELL, THAT'S A
18 TERRIBLE THING. IT'S A VERY HARD THING TO FIX.

19 **MS. BARLOW:** WELL, WITH RESPECT, YOUR HONOR, I THINK
20 THERE WAS TESTIMONY IN THIS CASE THAT THE INCAPACITATION EFFECT
21 OF IMPRISONMENT DOES HAVE A CRIME REDUCING IMPACT.

22 THERE WAS ALSO TESTIMONY THAT AS THEY GET OLDER, THEY
23 START TO SLOW DOWN, RIGHT? SO YOU KEEP LETTING THEM OUT WHEN
24 THEY ARE YOUNG, WELL, THEY ARE GOING TO KEEP ON COMMITTING A
25 LOT OF CRIMES.

1 YOU KEEP THEM IN A LITTLE LONGER, MAYBE THEY DEVELOP
2 SOME MATURITY. MAYBE THEY HAVE AN OPPORTUNITY TO GET SOME
3 PROGRAMMING. IS THERE ENOUGH? ABSOLUTELY NOT.

4 **JUDGE KARLTON:** FROM THIS PARTICULAR SYSTEM, IT IS
5 UNDISPUTED, BOTH THE PLAINTIFFS AND DEFENDANTS AND YOUR CLIENTS
6 EVEN SAID PRISONS ARE CRIMINOGENIC. THEY TAKE PEOPLE WHO ARE
7 NOT VIOLENT CRIMINALS. BY THE TIME THEY LEAVE PRISON THEY ARE
8 VIOLENT CRIMINALS.

9 NOW, SOMEHOW OR OTHER WHEN WE TALK ABOUT PUBLIC
10 SAFETY, AND IT'S A HORRIFICALLY COMPLEX PROBLEM. I DON'T MEAN
11 TO SUGGEST OTHERWISE. IT'S IMPORTANT TO UNDERSTAND WHAT WE ARE
12 DOING NOW IS ANOTHER DISASTER. NOT JUST IN TERMS OF FAILURE TO
13 PROVIDE ADEQUATE, CONSTITUTIONALLY ADEQUATE PHYSICAL AND MENTAL
14 HEALTH, BUT WE ARE, IN FACT, CREATING CRIME.

15 AND AT LEAST, ARGUABLY, IF WE HAD FEWER PEOPLE IN
16 PRISON SO THAT WE COULD PROVIDE PROGRAMMING, AT LEAST IN
17 THEORY, SOME OF THOSE FOLKS MIGHT STRAIGHTEN OUT OR FIND THAT
18 THERE IS A BETTER WAY TO DO THINGS OR WHATEVER.

19 GOD KNOWS WHY PEOPLE CREATE CRIMES, PERFORM CRIMES
20 ANYHOW. BUT, I MEAN, IT ISN'T AS IF WE'VE GOT SOME GOOD SYSTEM
21 NOW THAT WILL PREVENT CRIME AND THAT A COURT ORDER WOULD
22 SOMEHOW OR OTHER DISRUPT THAT SYSTEM. WE HAVE A SYSTEM THAT'S
23 FAILED.

24 **MS. BARLOW:** I CAN'T DISAGREE WITH THAT, YOUR HONOR,
25 AND I THINK THAT WE DO HAVE METHODS THAT WE CAN USE. AND MY

1 CLIENTS, YES, THEY -- I WOULD BE WRONG IF I STOOD UP HERE AND
2 TOLD YOU THAT THEY DIDN'T SAY PRISON IS CRIMINOGENIC. IT IS.

3 THE PROBLEM IS THAT BEFORE WE SEND PEOPLE TO PRISON,
4 THEY'VE ALREADY COMMITTED SO MANY CRIMES AND FAILED SO MANY
5 TIMES THAT -- YOU KNOW, I'M NOT SUGGESTING WE THROW AWAY THE
6 KEY.

7 WHAT I AM SUGGESTING IS THAT THERE ARE WAYS WE CAN
8 REDUCE THE PEOPLE GOING TO PRISON AND WE CAN REDUCE THE AMOUNT
9 OF CRIME, BUT WE HAVE TO DO IT AT THE FRONT END.

10 **JUDGE KARLTON:** LET'S TALK ABOUT THAT. BECAUSE I
11 THINK AN AWFUL LOT OF WHAT YOU WANT TO SAY IS NOT HELPFUL, BUT
12 THIS IS POTENTIALLY VERY HELPFUL.

13 AT LEAST SOME OF YOUR CLIENTS SUGGESTED THAT IF WE
14 JUST GAVE THEM ENOUGH MONEY, THEY COULD DIVERT SOME PERCENTAGE
15 OF PEOPLE FROM PRISON. AND I'M SORRY, I DON'T HAVE THOSE
16 FIGURES IN FRONT OF ME. I DON'T KNOW WHAT THEY SAID. BUT, YOU
17 KNOW, WE CAN FIND IT IN THE RECORD.

18 BUT TO DO THAT, SOMEBODY HAS GOT TO PAY FOR IT. I
19 MEAN, ONE OF THE THINGS THAT GOES ON IS WE KEEP INCREASING
20 PRISON SENTENCES AND ALL THE REST BY INITIATIVE AND NOBODY ASKS
21 CAN WE PAY FOR IT.

22 AND THE ANSWER IS IF, GOD FORBID, YOU EVER TOLD
23 PEOPLE, YOU KNOW, IT COST 10,000 OR WHATEVER IT IS PER
24 PRISONER, THEY WOULD SAY, LET THEM ALL OUT. ANYWAY --

25 **JUDGE REINHARDT:** NO. YOU TELL THEM THEY WERE GOING

1 TO HAVE TO PAY FOR THE PRISONER, THEY WOULDN'T VOTE FOR IT.

2 **JUDGE KARLTON:** MY QUESTION TO YOU IS -- YOUR CLIENTS
3 HAVE SUGGESTED THESE DIVERSIONS, AND I GOT VERY EXCITED AT ONE
4 POINT THEN REALIZED IT'S PROBABLY NOT WITHIN OUR POWER.

5 CAN WE, IN YOUR VIEW, MAINTAIN THE SYSTEM THAT WE
6 HAVE NOW? DO ESSENTIALLY WHAT ONE OF YOUR CLIENTS SUGGESTED,
7 MAINTAIN THE SYSTEM THAT WE HAVE NOW, EXCEPT THAT SOME
8 PERCENTAGE OF PEOPLE WOULD BE DIVERTED BY THESE OTHER PROGRAMS
9 AND ORDER THE STATE TO PAY FOR IT? CAN WE DO THAT?

10 **MS. BARLOW:** I BELIEVE YOU CAN, YOUR HONOR. A
11 PRISONER RELEASE ORDER UNDER THE PLRA IS ANY ORDER THAT HAS THE
12 PURPOSE OR EFFECT OF REDUCING THE PRISON POPULATION.

13 **JUDGE KARLTON:** THAT'S CERTAINLY A PRISONER RELEASE
14 ORDER. THE QUESTION IS WHETHER THE FEDERAL COURTS HAVE THE
15 POWER TO ORDER THE STATE TO PAY FOR A PROGRAM WHICH DOESN'T
16 EXIST AT THE MOMENT; TO SAY, PAY FOR THAT.

17 **MS. BARLOW:** ACTUALLY, THESE PROGRAMS DO EXIST, YOUR
18 HONOR.

19 **JUDGE KARLTON:** SOME OF THEM DO, SOME OF THEM --

20 **MS. BARLOW:** THE COMMUNITY CORRECTIONS ACT IS ALREADY
21 IN EXISTENCE, SB-618, THE MENTAL HEALTH SERVICES ACT.

22 **JUDGE KARLTON:** THAT'S A GOOD POINT. THERE IS A
23 STATE PROGRAM THAT THE STATE HAS ELECTED NOT TO FUND. CAN WE
24 ORDER THE STATE -- IS IT YOUR VIEW THAT WE HAVE THE POWER TO
25 ORDER THE STATE TO FUND THE PROGRAM?

1 **MS. BARLOW:** THAT WOULD BE A PRISONER RELEASE ORDER
2 AND I BELIEVE THE COURT WOULD HAVE THE POWER TO DO THAT.

3 IF THE COURT DOESN'T HAVE THE POWER TO DO THAT, IF
4 THAT'S WHAT YOU CONCLUDE --

5 **JUDGE KARLTON:** I DON'T KNOW.

6 **MS. BARLOW:** -- THEN THE PLRA ONLY GIVES YOU THE
7 POWER TO ISSUE, QUOTE, A REAL RELEASE AND/OR A CAP. AND ALL
8 THESE OTHER PROGRAMS THAT WERE OFFERED TO YOU IN TESTIMONY ARE,
9 IN FACT, VIABLE ALTERNATIVES.

10 **JUDGE REINHARDT:** NOT VIABLE ALTERNATIVES FOR US TO
11 ORDER.

12 **MS. BARLOW:** NO, BUT THEY ARE AVAILABLE ALTERNATIVES,
13 YOUR HONOR. IF YOU CAN'T ORDER THEM --

14 **JUDGE REINHARDT:** YOU KNOW, THE ACT SAYS WE CAN'T
15 ORDER TAX INCREASES.

16 **MS. BARLOW:** NO.

17 **JUDGE REINHARDT:** BUT THAT DOESN'T MEAN WE CAN'T
18 ORDER THE EXPENDITURE OF FUNDS.

19 **MS. BARLOW:** IN FACT, BOTH OF THESE COURTS HAVE
20 ORDERED MANY EXPENDITURES OF FUNDS IN CONNECTION WITH THESE
21 CASES.

22 **JUDGE KARLTON:** IN A VERY DIFFERENT CONTEXT.

23 MR. MELLO, I'M SORRY, IT'S NOT FAIR TO YOU, BUT I'M
24 COMING BACK. I THINK YOU SAID -- NO, I DON'T WANT TO TELL YOU
25 WHAT YOU SAID.

1 TAKING THE PARTICULAR PROGRAM THAT IS BEING REFERRED
2 TO NOW, THE COMMUNITY WHAT? WHAT IS IT CALLED?

3 **MS. BARLOW:** IT'S THE COMMUNITY CORRECTIONS ACT, YOUR
4 HONOR.

5 **JUDGE KARLTON:** CAN WE ORDER THE STATE TO FUND THOSE
6 PROGRAMS? DO WE HAVE THE POWER? PLEASE.

7 **MR. MELLO:** FIRST OF ALL, I BELIEVE THAT WE DID PUT
8 STATEMENTS REGARDING THIS VERY LEGAL ISSUE IN OUR PROPOSED
9 FINDINGS OF FACT AND CONCLUSIONS OF LAW.

10 I BELIEVE WE CITED TO THE RHEM CASE, WHICH IS IN OUR
11 PAPERS, WHICH SAID THAT THIS COURT CANNOT ORDER THE
12 APPROPRIATION OF FUNDS.

13 **JUDGE KARLTON:** THANK YOU.

14 **MR. MELLO:** HOWEVER, I MEAN, IF THE COURT WOULD LIKE
15 MORE BRIEFING ON THE ISSUE AT SOME POINT, BUT I WOULD BE GLAD
16 TO SIT BACK DOWN.

17 **JUDGE REINHARDT:** WHEN YOU SAY APPROPRIATION OF
18 FUNDS, APPROPRIATION --

19 **MR. MELLO:** FRANKLY, I BELIEVE THE CASE WE CITED SAID
20 AND THE ALLOCATION OF FUNDS. I BELIEVE. AND IT IS IN OUR
21 PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW. IT'S ON PAGE
22 51 OF OUR PROPOSALS.

23 **JUDGE REINHARDT:** WHAT'S THE CITATION?

24 **MR. MELLO:** 507 F.2D 333 PINPOINT 341, IT'S A SECOND
25 CIRCUIT CASE. AND IT'S PRE-PLRA, JUST SO YOU KNOW, SO IT

1 COMPLICATES IT A LITTLE BIT. BUT I BELIEVE THAT IT DOES SPEAK
2 TO THIS ISSUE.

3 **JUDGE KARLTON:** THANK YOU VERY MUCH.

4 **MS. BARLOW:** IN ANY EVENT, YOUR HONOR, I THINK THE
5 POINT THAT WE WERE TRYING TO MAKE WAS THAT THE STATUTE SAYS
6 THAT YOU HAVE THE RIGHT TO ISSUE AN ORDER, ANY ORDER THAT HAS
7 THE PURPOSE OR EFFECT OF REDUCING THE PRISON POPULATION.

8 ALL OF THESE ALTERNATIVES THAT WERE TESTIFIED ABOUT,
9 SB-618, SB-718, THE COMMUNITY CORRECTIONS ACT, THE MENTAL
10 HEALTH SERVICES ACT, THESE WERE ALL AVAILABLE AND VIABLE
11 ALTERNATIVES TO ACTUALLY ORDERING RELEASE OF PRISONERS.

12 **JUDGE REINHARDT:** THEY ARE NOT VIABLE UNLESS SOMEBODY
13 CAN FUND THEM.

14 **MS. BARLOW:** WITH RESPECT, YOUR HONOR, THEY ARE
15 EITHER GOING TO PAY FOR IT AT THE FRONT END OR THEY'RE GOING TO
16 PAY FOR IT WHEN THEY GET REARRESTED.

17 **JUDGE KARLTON:** EVERYBODY AGREES WITH THAT, BUT THE
18 STATE TAKES THE VIEW WE ARE GOING TO DO IT AT THE END.

19 **JUDGE REINHARDT:** AS I SAID EARLIER, WE MIGHT WANT
20 FURTHER BRIEFING ON THIS. WHEN THE STATUTE SAYS YOU CAN'T
21 ORDER TAXES, IT COULD HAVE SAID YOU CAN'T ORDER THE EXPENDITURE
22 OF FUNDS. IT DIDN'T SAY THAT. IT SAID YOU CAN'T ORDER TAXES.

23 **MS. BARLOW:** RIGHT.

24 **JUDGE REINHARDT:** SO I THINK THAT THIS IS A LEGAL
25 ISSUE.

1 **JUDGE KARLTON:** I THINK THERE IS A FEDERALISM PROBLEM
2 OVER AND ABOVE WHAT THE STATUTE SAYS. THE STATUTE IS WRITTEN
3 AGAINST THE BACKGROUND AND POWER OF THE COURT.

4 **JUDGE REINHARDT:** I BELIEVE THE FEDERAL COURT ORDERED
5 IT DURING THE SCHOOL INTEGRATION PERIOD. ALL I'M SAYING IS THE
6 ISSUE MAY BE WE WILL ONCE AGAIN BE DEFEATED BY CRIMINALISTS,
7 BUT I'M NOT SO SURE OF THAT IN THESE EVENTS. WE MAY WANT TO
8 HEAR FROM ALL OF YOU ON THAT.

9 IF YOU ALL SAY WE CAN'T ORDER THE STATE TO SPEND ANY
10 MONEY, THEN THAT LIMITS OUR ABILITY TO GIVE THAT KIND OF RELIEF
11 YOU WOULD LIKE AND THE COUNTIES WOULD LIKE AND LAW ENFORCEMENT
12 PEOPLE, THE DISTRICT ATTORNEYS.

13 **JUDGE KARLTON:** ALTHOUGH, AGAIN, IT IS POSSIBLE FOR
14 US TO SAY, STATE, THIS IS AS MANY PEOPLE AS YOU CAN PUT IN
15 PRISON. YOU FIGURE IT OUT AND YOU CAN SPEND THE MONEY IF YOU
16 CHOOSE.

17 IN OTHER WORDS, GIVING THE STATE THE OPPORTUNITY, NOT
18 ORDERING THEM TO DO ANYTHING OTHER THAN TO RELEASE PRISONERS
19 BECAUSE MAYBE THAT'S ALL WE CAN DO. I DON'T KNOW. I REALLY
20 DON'T KNOW.

21 BUT SAYING TO THE STATE, THAT PROBABLY IS NOT THE
22 BEST WAY OF DOING THINGS. AND IT'S UP TO YOU NOW TO PROPOSE A
23 PLAN, MAYBE FUNDING ALL OF THE PROGRAMS THAT YOU ARE TALKING
24 ABOUT OR RELEASING SOME PORTION OF PEOPLE OFF OF PAROLE OR
25 WHATEVER. BUT THAT MAY BE A WAY OF AVOIDING THIS PROBLEM IF IT

1 IS, INDEED, THE PROBLEM THAT MR. MELLO SUGGESTED, WHICH YOU MAY
2 BE RIGHT. I WOULD NOT BE SURPRISED IF HE IS RIGHT.

3 MS. BARLOW: WELL, AND, AGAIN, YOUR HONOR, WE DIDN'T
4 BRIEF THAT ISSUE SPECIFICALLY, BUT I THINK THE STATUTE SAYS
5 WHAT IT MEANT.

6 IF THE ONLY POWER THIS COURT HAD WAS TO ORDER A CAP
7 OR A RELEASE, I THINK THE STATUTE WOULD HAVE SAID THAT. THE
8 DEFINITION OF A PRISONER RELEASE ORDER WOULD BE DIFFERENT.

9 JUDGE KARLTON: MAYBE IT WILL BE THAT CONGRESS JUST
10 DIDN'T THINK ABOUT THE FACT THAT, YOU KNOW, IT'S LIKE THE
11 VIOLENCE AGAINST WOMEN ACT, THEY DIDN'T NOTICE THAT. THEY
12 DIDN'T HAVE THE POWER TO PASS THE STATUTE.

13 MS. BARLOW: THAT DOES HAPPEN, YOUR HONOR. I'M AWARE
14 OF THAT.

15 JUDGE KARLTON: EVERY ONCE IN A WHILE IT HAPPENS.

16 JUDGE REINHARDT: MORE AND MORE THESE DAYS.

17 MS. BARLOW: YES.

18 THE CUMULATIVE IMPACT IS WHAT I WAS TALKING ABOUT,
19 AND I WANT TO MAKE SURE THAT WE DON'T FORGET THAT THERE WAS
20 TESTIMONY HERE THAT AT A TIME WHEN WE ARE REDUCING THE NUMBER
21 OF POLICE OFFICERS ALL OVER THE STATE, THAT WHEN YOU ISSUE A
22 RELEASE ORDER -- FIRST OF ALL, THEY ARE ONLY LIKELY TO GET
23 CAUGHT ONE OUT OF TEN TIMES ALREADY, TO START WITH, AT STATUS
24 QUO.

25 BUT AS OUR NUMBER OF POLICE OFFICERS GO DOWN AND THE

1 NUMBER OF PAROLEES AND PEOPLE WHO OUGHT TO BE IN PRISON AREN'T
2 IN PRISON, ARE STILL IN THE COMMUNITIES, THE LIKELIHOOD OF THEM
3 GETTING CAUGHT IS GOING TO GO DOWN AS WELL FROM WHAT IT IS NOW.
4 SO WE ARE GOING TO HAVE MORE CRIME. THERE ARE GOING TO BE MORE
5 VICTIMS.

6 MY PROBATION CHIEFS I THINK SPOKE VERY COMPELLINGLY
7 ABOUT THE EFFORTS THEY MAKE TO TRY AND STEER THESE PEOPLE INTO
8 BETTER LIVES AND GIVE THEM OPPORTUNITIES TO CHANGE THEIR LIVES
9 AND NOT GO TO PRISON.

10 **JUDGE REINHARDT:** YOU KNOW, AM I WRONG WHEN I KEEP
11 READING THE PAPERS ABOUT ALL THESE POLICE CHIEFS WHO ARE SAYING
12 HOW CRIME RATE IS GOING DOWN THESE DAYS, AND THESE ARE IN
13 PLACES WHERE YOU HAVE CAPS ON THE JAILS? THEY CAN'T KEEP THEM.
14 THEY ARE LETTING THEM GO OUT AND THE CRIME RATE GOES DOWN. IS
15 THAT RIGHT?

16 **MS. BARLOW:** THERE'S NO CORRELATION THERE. THE CRIME
17 RATE IS GOING DOWN, BUT THAT DOESN'T MEAN THAT THE PEOPLE THAT
18 ARE THE MOST LIKELY TO OFFEND, THAT THEIR CRIME RATE IS GOING
19 DOWN. THAT'S NOT HAPPENING.

20 **JUDGE REINHARDT:** THEN IT SHOULD GO UP, IF YOU HAVE
21 MORE AND MORE PEOPLE WHO SHOULD BE IN JAIL OUT ON THE STREETS
22 AND YET THE CRIME RATE IS GOING DOWN.

23 **MS. BARLOW:** MORE PEOPLE AREN'T COMMITTING CRIMES,
24 BUT THE CRIMINALS ARE COMMITTING MORE CRIMES. THAT'S WHY THE
25 CRIME RATE IS GOING DOWN AND YET WE STILL HAVE THESE PEOPLE WHO

1 ARE REOFFENDING OVER AND OVER AND OVER AGAIN.

2 JUDGE REINHARDT: THAT'S AN INTERESTING EXPLANATION.

3 MS. BARLOW: IN ANY EVENT, AS MY CLIENT TOLD YOU, IT
4 TAKES A LOT OF HARD WORK TO GET INTO PRISON HERE. YOU REALLY
5 HAVE TO TRY HARD. AND INTERESTINGLY ENOUGH, ALTHOUGH PRISON
6 MAY BE CRIMINOGENIC, WE ALSO KNOW THAT THE PEOPLE WHO COMMITTED
7 PERHAPS SOME OF THE MOST VIOLENT CRIMES TO GET INTO PRISON IN
8 THE FIRST PLACE MIGHT BE THE LOWEST RISK TO LET OUT.

9 IT'S A CONUNDRUM AND I'M GLAD I'M NOT SITTING IN THE
10 BLACK ROBE OVER THERE TO TRY TO FIGURE IT OUT.

11 BUT ONE THING WE KNOW FOR SURE, THERE ARE NOT 52,000
12 LOW RISK PRISONERS IN THE STATE OF CALIFORNIA. THERE JUST
13 AREN'T. THERE ARE SECOND STRIKERS AND LIFERS THAT YOU HAVE TO
14 GET TO.

15 SO I UNDERSTAND THE COURT'S POSITION THAT THE NUMBER
16 COULD BE LOWER OR THE TIME COULD BE SPREAD OUT, BUT THE REALITY
17 IS THAT THERE AREN'T THAT MANY LOW RISK PEOPLE IN PRISON.
18 THERE AREN'T 30,000. THERE AREN'T 20,000, BECAUSE THEY HAVE TO
19 WORK SO HARD TO GET THERE IN THE FIRST PLACE.

20 JUDGE REINHARDT: DO YOU KNOW UNDER THE GOVERNOR'S
21 PROPOSAL HOW THEY -- TO WHAT EXTENT WOULD IT REDUCE THE PRISON
22 POPULATION?

23 MS. BARLOW: ARE YOU SPEAKING, YOUR HONOR --

24 JUDGE REINHARDT: PAROLE.

25 MS. BARLOW: OF THE PAROLE? WELL, FIRST OF ALL, AS

1 FAR AS THE PAROLE, THE IDEA OF RELEASING PEOPLE WITHOUT PAROLE,
2 AS A PRACTICAL MATTER, WE ARE ALREADY DOING THAT BECAUSE THOSE
3 PEOPLE THAT ARE THE LOWEST RISK ARE THE ONES THAT GO INTO THE
4 BANKS.

5 YOU'RE NOT GOING TO SAVE ANY MONEY. YOU'RE NOT GOING
6 TO SAVE ANYTHING AT ALL BY TAKING THEM OFF PAROLE. YOU'RE ONLY
7 GOING TO DEPRIVE MY CLIENTS OF THE LAW ENFORCEMENT TOOL THAT
8 THEY MAY NEED IF THAT PERSON IS INVOLVED IN A CRIME.

9 BECAUSE THEY ARE NOT GOING TO ACTIVELY SUPERVISED.
10 THEY'RE NOT GETTING ACTIVELY TREATED. WE ARE NOT SPENDING A
11 DIME ON THEM. THEY GET SHOVED INTO A FILE CABINET.

12 THEY ARE ONLY SUPERVISING THAT REALLY HIGH RISK; THE
13 CHILD MOLESTERS, THE VIOLENT CRIMINAL, THE MULTIPLE, MULTIPLE
14 OFFENDERS. THEY ARE NOT SUPERVISING THE -- YOU LET THEM OUT,
15 THERE IS NO SAVINGS THERE.

16 **JUDGE REINHARDT:** YOU ARE SAYING THAT PART OF THE
17 PROPOSAL WILL HAVE NO EFFECT AT ALL.

18 **MS. BARLOW:** I DON'T BELIEVE IT HAS AN EFFECT EXCEPT
19 THAT IT WILL REMOVE A TOOL FROM LAW ENFORCEMENT. IT'S NOT
20 GOING TO HAVE A FINANCIAL BENEFIT TO THE STATE. IT'S ONLY
21 GOING TO HAVE A DETRIMENT TO LAW ENFORCEMENT BECAUSE YOU'RE
22 GOING TO DEPRIVE THEM OF A TOOL.

23 **JUDGE REINHARDT:** WHAT ABOUT THE REST OF THE
24 PROPOSAL?

25 **MS. BARLOW:** WELL, I'M NOT SURE WHICH PART OF THE

1 PROPOSAL . . .

2 **JUDGE REINHARDT:** WELL, ONE WAY IS TO INCREASE THE
3 AMOUNT FOR THEFT.

4 **MS. BARLOW:** YOUR HONOR, I DON'T THINK MY CLIENTS
5 NECESSARILY HAVE A VIEWPOINT ON THAT. THE FACT OF THE MATTER
6 IS, IF YOU ARE ON PAROLE AND COMMIT ONE OF THOSE CRIMES, IT
7 DOESN'T MATTER WHAT THE STATUTORY AMOUNT IS, IT'S GOING TO BE A
8 FELONY.

9 SO I DON'T KNOW THAT THAT'S GOING TO HAVE A HUGE
10 IMPACT UNLESS YOU DECIDE THAT THERE AREN'T GOING TO BE PAROLEES
11 BEING RETURNED TO PRISON FOR PAROLE VIOLATIONS.

12 **JUDGE HENDERSON:** ANY CRIME COMMITTED ON PAROLE IS A
13 FELONY?

14 **MS. BARLOW:** IF YOU COMMIT A CRIME WHILE YOU ARE ON
15 PAROLE, IT'S A FELONY TO VIOLATE THE TERMS OF YOUR PAROLE.

16 **JUDGE REINHARDT:** ONLY BY CRIMINAL CONDUCT?

17 **MS. BARLOW:** I'M SORRY?

18 **JUDGE REINHARDT:** ONLY BY CRIMINAL CONDUCT? YOU SAID
19 TO VIOLATE THE TERMS OF YOUR PAROLE.

20 **MS. BARLOW:** IF YOU WERE ARRESTED FOR A VIOLATION,
21 IT'S A FELONY ARREST. THEY MAY NEVER CHARGE IT AS A FELONY.
22 THEY MAY NOT VIOLATE THAT PERSON, BUT IT IS A FELONY ARREST.

23 AND I THINK THE EVIDENCE WAS THAT REALLY THE NUMBER
24 OF TECHNICAL VIOLATORS OUT OF THAT 70,000 THAT THEY WERE
25 TALKING ABOUT, IT'S ONLY 14,000 WHICH WERE REALLY TECHNICAL.

1 SO THAT'S NOT A VERY BIG NUMBER.

2 MOST OF THOSE PEOPLE THAT ARE GOING BACK TO PRISON
3 FOR VIOLATIONS OF PAROLE ARE GOING BACK BECAUSE OF THE REAL NEW
4 CRIMES.

5 JUDGE REINHARDT: 14,000 IS NOT BAD TO START WITH.

6 MS. BARLOW: WELL, OUT OF 70,000, I'M JUST SAYING.

7 JUDGE REINHARDT: WELL, IF YOU TAKE 14,000, WE ARE
8 PART OF THE WAY THERE.

9 JUDGE KARLTON: AND THAT'S CERTAINLY UP TO THE COURT.
10 BUT THE POINT IS, YOU CAN SPREAD IT OUT, YOU CAN REDUCE THE
11 NUMBER, BUT YOU ARE NEVER GOING TO GET RID OF THE IMPACT.

12 PERHAPS ONE OF THE POINTS THAT I REALLY WANT TO
13 EMPHASIZE HERE IS ABOUT THE MENTALLY ILL. YOU HEARD TESTIMONY
14 FROM ONE WITNESS THAT IF YOU RELEASE MENTALLY ILL PRISONERS AND
15 THEY END UP HOMELESS, THEY ARE GOING TO BE BETTER OFF HOMELESS
16 THAN THEY WOULD BE IN PRISON. AND THAT'S ABSURD. THEY AREN'T
17 GOING TO GET THE TREATMENT THAT THEY NEED.

18 JUDGE KARLTON: THERE IS GOOD REASON TO BELIEVE THEY
19 ARE NOT GOING TO GET TREATMENT IN PRISON EITHER.

20 MS. BARLOW: THEY'RE AT LEAST GETTING SOME TREATMENT
21 NOW, YOUR HONOR. IT MAY NOT BE AS MUCH AS --

22 JUDGE KARLTON: NO, THEY AREN'T. NOT NECESSARILY.
23 THERE ARE PEOPLE -- NEVER MIND. GO AHEAD.

24 MS. BARLOW: THE VAST MAJORITY OF THEM ARE GETTING
25 SOME KIND OF TREATMENT. AND ON THE STREET, BASED UPON THEIR

1 KINDS OF PATHOLOGY THAT MR. CONKLIN DESCRIBED, THEY'RE NOT
2 GOING TO VOLUNTARILY GO OUT AND GET THE TREATMENT THAT THEY
3 NEED. THEY ARE NOT GOING TO STAY ON THEIR MEDICATION. THEY'RE
4 GOING TO END UP HOMELESS AND THEY ARE GOING TO BE VICTIMIZED
5 THEMSELF OR THEY'RE GOING TO REVICTIMIZE SOMEONE ELSE AND THEN
6 END UP RIGHT BACK IN PRISON. SO THIS IS NOT A SOLUTION FOR THE
7 MENTALLY ILL.

8 AND IF YOU TARGETED THE NON-MENTALLY ILL IN ORDER TO
9 PROVIDE BETTER SERVICES TO THE MENTALLY ILL, THEN YOU END UP ON
10 THE OTHER SIDE OF THE PROBLEM BECAUSE YOU ARE NOT NARROWLY
11 TARGETING YOUR REMEDY TO THE PEOPLE WHO ARE SUFFERING THE
12 CONSTITUTIONAL DEPRIVATION.

13 IF YOU PUSH PEOPLE OUT OF PRISON AND THEY REOFFEND
14 AND WE PUT THEM IN THE COUNTY JAIL, YOU ARE GOING TO HAVE TO
15 PUSH SOMEBODY OUT OF THESE COUNTY JAILS. AND WE ARE ALREADY --
16 WE'VE ALREADY GONE FROM AN 80 PERCENT FELONY -- OR 80 PERCENT
17 MISDEMEANOR AND 20 PERCENT FELONS IN COUNTY JAILS TO THE FLIP
18 SIDE OF THAT. THERE IS 80 PERCENT FELONS NOW IN OUR COUNTY
19 JAILS AND ONLY 20 PERCENT MISDEMEANOR. AND THOSE ARE SERIOUS
20 MISDEMEANOR. BECAUSE THEY ARE NOT KEEPING THOSE PEOPLE.
21 THEY'RE ALREADY LETTING OUT PEOPLE THAT ARE AT THE VERY LOWEST
22 RISK. THEY ARE CITING AND RELEASING.

23 THEY ARE NOT EVEN KEEP PEOPLE THAT ARE DUI. THEY ARE
24 LETTING PEOPLE OUT BECAUSE THEY DON'T HAVE ENOUGH ROOM. THEY
25 ARE LETTING PEOPLE OUT EARLY FROM SENTENCES. THEY ARE LETTING

1 PEOPLE OUT EARLY ON PRETRIAL.

2 AND IF YOU PUSH PEOPLE DOWN IN THE SYSTEM, WHICH IS
3 WHAT HAPPENS WITH THE PRISONER RELEASE ORDER, WE DON'T HAVE
4 ANYBODY LEFT AT THE COUNTY LEVEL THAT WE CAN CONSIDER LOW RISK
5 TO LET OUT.

6 SOMEBODY -- IF IT'S NOT THE EARLY RELEASE PRISONER,
7 THE PERSON THAT GETS PUSHED OUT OF THE COUNTY FACILITY BECAUSE
8 THERE IS NO ROOM FOR THEM THERE, THOSE PEOPLE ARE GOING TO
9 REOFFEND, TOO.

10 AND WE KNOW THAT THE PROGRAM AT THE COUNTY LEVEL,
11 WE'VE HAD GREAT SUCCESS AND HAD EVIDENCE ABOUT THE SUCCESS IN
12 ORANGE COUNTY AND THE SUCCESS IN L.A. COUNTY FROM PROGRAMMING.
13 WE ALSO KNOW THAT YOU GET VERY BAD RESULTS FROM EARLY RELEASE
14 FROM THOSE FACILITIES.

15 YOU'VE GOT TESTIMONY IN FRONT OF YOU THAT 3240 PEOPLE
16 FROM ORANGE COUNTY WHO WERE EARLY RELEASED IN A THREE-YEAR
17 PERIOD WERE REARRESTED FOR CRIMES COMMITTED DURING THE EARLY
18 RELEASE PERIOD, AND MANY OF THEM WERE VERY SERIOUS CRIMES.

19 TEN PERCENT OF THE EARLY RELEASES FROM LOS ANGELES
20 COUNTY WEREN'T JUST REARRESTED, BUT THEY WERE REARRESTED FOR
21 CRIMES COMMITTED DURING THEIR EARLY RELEASE PERIOD. AND THE
22 MORE YOU RELEASED THEM, THE HIGHER THE RATE WENT.

23 SO SOMEBODY IS GOING TO END UP BACK IN THE COMMUNITY
24 THAT DOESN'T BELONG THERE, WHETHER IT'S THE PERSON THAT COMES
25 FROM THE PRISON OR THE PERSON THAT GETS PUSHED OUT OF THE

1 COUNTY JAIL.

2 AND MY CLIENTS ARE THE ONES GOING TO HAVE TO DEAL
3 WITH THEM. NOT DR. AUSTIN, WHO DOESN'T HAVE TO LIVE WITH THE
4 RESULTS OF WHAT HE RECOMMENDS. THE MEN AND WOMEN WHO HAVE TO
5 CONSOLE THE VICTIMS, PUT THEIR LIVES ON THE LINE, ADVISE PEOPLE
6 WHO AREN'T LISTENING TO THEM, AND STAND BY HELPLESSLY WHILE
7 MORE PEOPLE ARE VICTIMIZED.

8 WE KNOW THESE PEOPLE ARE GETTING MORE HARD CORE AT
9 THE LOCAL LEVEL. WE SEE IT HAPPENING. IT'S ONLY GOING TO GET
10 WORSE.

11 WITH RESPECT TO DR. AUSTIN AND HIS STUDIES, I JUST
12 HAVE A COUPLE POINTS TO MAKE. WE KNOW THAT THE TOTAL ARREST
13 DOESN'T REALLY TELL US VERY MUCH ABOUT THE CRIME THAT'S BEING
14 COMMITTED. SO HIS ANALYSIS OF THE TOTAL PERCENTAGE OF TOTAL
15 ARRESTS REALLY DOESN'T MEAN ANYTHING, BECAUSE HE IS NOT TALKING
16 ABOUT THE CRIMES THAT ARE COMMITTED. HE IS JUST TALKING ABOUT
17 THE ARRESTS THAT ARE MADE.

18 HE'S ALSO IGNORING THE ACTUAL EVIDENCE OF THE
19 SEVERITY AND NUMBER OF CRIMES THAT HAVE BEEN DOCUMENTED OF
20 THOSE THAT ARE LET OUT EARLY, AND HE'S IGNORING THE EVIDENCE
21 THAT A LARGE NUMBER OF ARRESTEES THROUGHOUT THE STATE ARE
22 EARLY.

23 IN FRESNO COUNTY IN 2007, 30 PERCENT OF FELONY
24 ARRESTS WERE OF PAROLEES. NOT LESS THAN 1 PERCENT.

25 **JUDGE REINHARDT:** I DON'T UNDERSTAND. WHAT DOES THAT

1 SHOW? PEOPLE SHOULDN'T BE PUT ON PAROLE OR SHOULD BE KEPT IN
2 JAIL LONGER THAN THE TERMS?

3 MS. BARLOW: IT MEANS THOSE PEOPLE ARE MORE
4 DANGEROUS, YOUR HONOR, THAN THE REST OF THE PEOPLE. IF --
5 DR. AUSTIN IS TELLING YOU THAT PAROLEES REPRESENT A VERY SMALL
6 FRACTION OF THE TOTAL NUMBER OF ARRESTS.

7 ALL I CAN TELL YOU IS THE DATA BEFORE YOU, THE ACTUAL
8 EVIDENCE, DOES NOT SUPPORT THAT. THIRTY PERCENT OF FELONY
9 ARRESTS IN FRESNO WERE PAROLEES IN 2007. THAT'S BECAUSE THEY
10 COMMIT CRIMES. THAT'S WHAT THEY DO. THAT'S HOW THEY GOT TO BE
11 PAROLEES IN THE FIRST PLACE.

12 YOU HAVE RECEIVED WRITTEN AND ORAL TESTIMONY FROM 13
13 LAW ENFORCEMENT WITNESSES AND I CAN PUT ON ALL 67 OF THEM IF
14 YOU LET ME BECAUSE THEY ALL WOULD HAVE TOLD YOU THE SAME THING.
15 THEIR COMMUNITIES WILL SUFFER HORRIBLE IMPACTS FROM THE RELEASE
16 ORDER.

17 COULD YOU MAKE IT BETTER WITH FUNDING AND
18 PROGRAMMING? YOU ABSOLUTELY COULD. YOU'RE BEING TOLD YOU
19 CAN'T DO THAT. I BELIEVE THAT YOU CAN BECAUSE THAT WOULD HAVE
20 THE INTENT AND EFFECT OF REDUCING THE PRISON POPULATION.

21 WE COULD USE THE JUVENILE MODEL AS AN ABSOLUTE PROOF
22 THAT YOU CAN REDUCE THE AMOUNT OF PEOPLE IN CUSTODY IF YOU
23 PROGRAM THEM. THEY'VE DONE IT WITH THE JUVENILES. THEY CAN DO
24 WITH THE ADULTS.

25 IF YOU REALLY CAN'T MAKE THAT ORDER, THEN YOU HAVE TO

1 LOOK AT THESE AVAILABLE ALTERNATIVES. MAYBE YOU TELL THE STATE
2 THAT THEY CAN CHOOSE ONE OF THOSE OR ALL OF THOSE. IF YOU
3 DON'T FEEL THAT YOU CAN ORDER IT, WE KNOW THAT THOSE
4 ALTERNATIVES ARE AVAILABLE.

5 YOU GET THEM THEIR SERVICES BEFORE THEY GET RELEASED.
6 YOU PROVIDE MORE PROBATION. YOU PROVIDE MORE PROGRAMMING. YOU
7 IMPLEMENT MENTAL HEALTH COURTS AND DRUG COURTS. THERE ARE
8 VIABLE ALTERNATIVES TO A PRISONER RELEASE ORDER THAT HAVE NOT
9 BEEN EXHAUSTED. THEY ARE BEING BUILT AS WE SPEAK.

10 IN SAN DIEGO COUNTY, IN LOS ANGELES COUNTY, IN
11 AMADOR, IN FRESNO, THEY ARE BEING BUILT AS WE SPEAK. WE SHOULD
12 LET THEM BE BUILT BEFORE WE EVEN THINK ABOUT REDUCING THE
13 PRISON POPULATION BY ONE-THIRD. THE RISK TO THE PUBLIC AND THE
14 PRISONERS THEMSELVES IS TOO GREAT.

15 I KNOW YOU STRUGGLE WITH THIS DIFFICULT QUESTION AND
16 I INVITE YOU AND, IN FACT, I BEG YOU TO KEEP ON STRUGGLING WITH
17 IT. BECAUSE IF YOU MAKE A MISTAKE, MANY PEOPLE WILL GET HURT
18 AND PERHAPS WILL DIE.

19 THE ALTERNATIVES ARE AVAILABLE. THE IMPACTS ARE
20 ENORMOUS. PLEASE DO THE RIGHT THING. THANK YOU.

21 **JUDGE HENDERSON:** THANK YOU, COUNSEL.

22 **CLOSING ARGUMENT**

23 **MS. WOODWARD:** GOOD AFTERNOON, YOUR HONORS. I'M
24 CAROL WOODWARD, COUNTY COUNSEL FOR INTERVENOR SAN MATEO COUNTY,
25 AND I'M SPEAKING ON BEHALF OF THE COUNTY INTERVENORS,

1 SAN MATEO, SANTA CLARA AND SANTA BARBARA COUNTIES.

2 ALSO IN THE COURTROOM IS THERESA FUENTES FROM SANTA
3 CLARA COUNTY, WHO WOULD LIKE TO ADDRESS SOME SPECIFIC THINGS TO
4 SANTA CLARA. AND WE WOULD ASK YOU IF IT PLEASES THE COURT THAT
5 WE BE ALLOWED TO --

6 JUDGE REINHARDT: YOU KNOW, THERE ARE A LOT OF
7 COUNTIES AND THE AGREEMENT WAS THAT EXCEPT FOR ONE COUNTY,
8 WHICH FOR SOME REASON I CAN'T IMAGINE MANAGED TO CONVINCE US
9 THEY SHOULD APPEAR SEPARATELY, OTHER THAN THAT, SOMEONE IS
10 SUPPOSED TO SPEAK FOR ALL THE COUNTIES.

11 MS. WOODWARD: THAT'S CORRECT, YOUR HONOR. WE
12 ACTUALLY HAD AN IDEA THAT WE COULD SPLIT THE 15 MINUTES AND WE
13 REALLY DO HAVE ONLY ABOUT THAT MUCH, IF THAT'S SOMETHING THE
14 COURT WOULD ENTERTAIN.

15 JUDGE KARLTON: THAT'S FINE.

16 JUDGE REINHARDT: TAKE 15 MINUTES AND SPLIT IT AND
17 STICK TO IT, YOU MAY DO THAT.

18 MS. WOODWARD: THANK YOU, YOUR HONOR. I WILL TAKE
19 SEVEN-AND-ONE-HALF MINUTES.

20 JUDGE REINHARDT: I WILL WATCH.

21 MS. WOODWARD: OKAY. YOUR HONORS, WHEN THE COUNTIES
22 INTERVENED, THE COURT HAD ALREADY MADE THE DECISION THAT THERE
23 WAS UNCONSTITUTIONAL SITUATIONS IN THE PRISONS, AND WE CAME IN
24 AND HAVE ACTED AS A SOMEWHAT SECONDARY PARTY.

25 WE HAD A SMALL ROLE IN THIS CASE. WE ARE NOT

1 CONCERNED OR WE ARE NOT PRESENTING EVIDENCE ON WHETHER
2 OVERCROWDING IS THE PRIMARY CAUSE OF THE UNCONSTITUTIONALITY OR
3 SOME OF THE OTHER ISSUES.

4 HOWEVER, THE REASON THAT WE INTERVENED WAS BECAUSE WE
5 NOTICED THAT AT THE TIME THAT THE COURT CONVENED THE
6 THREE-JUDGE PANEL, THE PARTIES WERE ASSUMING THAT AND WERE
7 SAYING THAT THE KINDS OF SOCIAL SERVICES THAT THE PEOPLE BEING
8 RELEASED FROM PRISON MIGHT NEED WOULD BEST BE PROVIDED AT THE
9 COUNTY LEVEL. AND WE AGREE WITH THAT.

10 WE THINK WE DO A GOOD JOB, BUT WE WERE VERY CONCERNED
11 BECAUSE WE ARE THE PROVIDERS OF LAST RESORT OF ALL OF THESE
12 SERVICES; MENTAL HEALTH FOR INDIGENTS, DRUG AND ALCOHOL,
13 HEALTHCARE, EMERGENCY SERVICES, HOUSING, HEALTH, JOB TRAINING
14 AND ESPECIALLY JAILS.

15 **JUDGE KARLTON:** MA'AM, I WANT YOU TO ASSUME THAT ALL
16 THREE JUDGES HAVE HEARD THE EVIDENCE AND HAVE ANXIETY
17 CONCERNING THE COUNTIES.

18 LET US ASSUME THE WORST, THAT MR. MELLO'S ANALYSIS IS
19 RIGHT AND WE CANNOT ORDER THE STATE TO SHARE ITS SAVINGS WITH
20 THE COUNTIES. DO YOU THINK THAT THAT MEANS THAT WE OUGHT TO
21 COUNTENANCE CONTINUED UNCONSTITUTIONAL CONDITIONS?

22 **MS. WOODWARD:** NO, YOUR HONOR. I DO NOT THINK SO AT
23 ALL. AND I AM HERE APOLOGIZING FOR NOT HAVING A COMPLETE
24 SOLUTION TO THIS PROBLEM BY ANY MEANS.

25 **JUDGE KARLTON:** YOU AREN'T ALONE.

1 **MS. WOODWARD:** RIGHT. I, AS I'M SURE THE COURT, HAVE
2 LOST SLEEP OVER THIS TRYING TO FIGURE OUT WHAT THE HECK TO DO.
3 AND AS A COUNTY, AS I SAY, WE ARE LOOKING AT THE SITUATION
4 WITHOUT FUNDING.

5 THE COURT HAS ACKNOWLEDGED THE STATE IS UNLIKELY TO
6 PROVIDE FUNDING FOR THESE SOCIAL SERVICES AND, YET, I -- THE
7 MOST THAT WE CAN DO IN THIS CASE PROBABLY IS TO HELP THE COURT
8 TO REMEMBER THAT WE ARE HERE AND WE HAVE THESE ISSUES AND I
9 JUST --

10 **JUDGE REINHARDT:** DO YOU HAVE A SUGGESTION FOR US?

11 **MS. WOODWARD:** WITH REGARD TO HOW TO GET FUNDING TO
12 COME TO THE COUNTIES?

13 **JUDGE REINHARDT:** NO, ABOUT WHAT TO DO.

14 **MS. WOODWARD:** YEAH. WELL, LET ME JUST STATE THAT
15 THE COUNTIES DO NOT HAVE A QUARREL WITH MANY OF THE
16 ALTERNATIVES TO JUST STAYING IN PRISON. WE DON'T HAVE A
17 QUARREL WITH PAROLE REALIGNMENT OR PAROLE -- SORRY, WHERE THE
18 COURT DOES NOT --

19 **JUDGE KARLTON:** PUTTING CERTAIN FOLKS OFF OF PAROLE.

20 **MS. WOODWARD:** EXACTLY. WE AGREE DIVERSION IS A GOOD
21 IDEA IN MANY CASES.

22 WE ALSO CERTAINLY AGREE THAT THESE EVIDENCE-BASED
23 PROGRAMS WORK. WE DO THEM IN OUR JAILS AND THEY WORK VERY
24 WELL.

25 AND THE PROBLEM, OF COURSE, AS THE COURT HAS HEARD IN

1 OUR TESTIMONY, SOME 50 PERCENT OF SAN MATEO COUNTY PRISONERS DO
2 NOT EVER GO TO JAIL. THEY STAY OUTSIDE AND DO THESE OTHER
3 PROGRAMS WITH GOOD SUCCESS.

4 NOW, THE PROBLEM THAT WE HAVE IS THAT IN THE
5 COMMUNITY, AS THE COURT HAS ALREADY HEARD, THERE ARE LONG WAIT
6 LISTS FOR ALL THESE PROGRAMS. OUR CONCERN IS GLOBAL.

7 WE LOOK AT THE PEOPLE WHO ARE GOING TO COME OUT AND
8 WE WORRY ABOUT THEM BECAUSE, AS YOU'VE HEARD ALSO THIS MORNING
9 AND THIS AFTERNOON, THESE PEOPLE WHO ARE COMING OUT OF JAIL
10 WITH MENTAL HEALTH PROBLEMS ARE FACING A LACK OF CONTINUITY OF
11 CARE BECAUSE THE COUNTY HAS A BIG WAIT LIST FOR THAT SORT OF
12 THING.

13 **JUDGE KARLTON:** YOU KNOW, THAT'S WHAT I TRIED TO SAY
14 TO YOU, APPARENTLY QUITE UNSUCCESSFULLY.

15 ASSUME THAT THIS COURT, THESE JUDGES, UNDERSTAND YOUR
16 PROBLEM.

17 **MS. WOODWARD:** YES.

18 **JUDGE KARLTON:** ASSUME THAT WE ARE FACED WITH A
19 CONSTITUTIONAL CONUNDRUM, WHICH IS THAT WE CAN'T ORDER THE
20 STATE TO DO WHAT ANY COMMON SENSE PERSON WOULD THINK WOULD BE
21 APPROPRIATE IF WE LET THEM OUT.

22 WHAT DO WE DO? DO WE -- WE CAN'T -- I MEAN, THE
23 SUGGESTION SEEMS TO BE THAT SOMEHOW OR OTHER WE ARE TO
24 COUNTENANCE SOME UNCONSTITUTIONAL CONDITIONS. THAT CAN'T BE
25 RIGHT.

1 **MS. WOODWARD:** NO. THAT CAN'T BE RIGHT, YOUR HONOR,
2 AND IT ALSO CANNOT BE RIGHT TO DO WHAT WE FEARED INITIALLY,
3 BECAUSE WE UNDERESTIMATED THE COURT, AND I WAS EXTREMELY
4 PLEASED TO HEAR THE COURT THIS MORNING COME OUT WITH EXACTLY
5 THE CONCERN THAT WE HAVE.

6 IT ALSO WOULD NOT BE THE SOLUTION TO SAY, LET'S HAVE
7 THE PEOPLE COME OUT INTO THE COMMUNITY WITHOUT DEALING WITH
8 THAT CONCERN, WITHOUT TAKING CARE OF THE FUNDING PROBLEM OR THE
9 NECESSITY FOR GRADUAL INCREASES.

10 WE HAVE THE INFRASTRUCTURE. THEN, OF COURSE, WE HAVE
11 THE DECOMPENSATION YOU'VE HEARD ABOUT. PEOPLE BEING HOMELESS,
12 THAT SORT THING. THEY COMMIT THE CRIMES, THEY GO BACK TO
13 PRISON AND WE ARE BACK TO WHERE WE STARTED. THAT'S NOT THE
14 SOLUTION EITHER.

15 AS I SAY, I'M SORRY I DON'T HAVE A GOOD SOLUTION OR
16 ANY AT ALL, BUT OUR REASON TO INTERVENE --

17 **JUDGE KARLTON:** WE BELIEVE YOU.

18 **MS. WOODWARD:** THE REASON TO INTERVENE AND THE REASON
19 THAT I'M STANDING HERE IS BECAUSE, IN THE WORDS OF OUR BELOVED
20 FORMER HEALTH DIRECTOR CHARLENE SILVA, WE ARE NOT SAYING WE
21 DON'T WANT THESE PEOPLE TO COME INTO OUR COMMUNITY. WE DO.
22 THEY ARE OUR PEOPLE. THEY ARE OUR FAMILIES. THEY BELONG TO
23 US. THEY SHOULD COME HOME.

24 ALL WE'RE ASKING IS THE COURT HELP US TO FIND A WAY
25 TO SERVE THESE PEOPLE IN A WAY THEY SHOULD BE SERVED.

1 **JUDGE KARLTON:** GOD WILLING AND THE RIVER DON'T RISE.

2 **MS. WOODWARD:** YES, EXACTLY. AN INCOMPLETE SOLUTION,
3 BUT THAT IS WHAT WE ARE ASKING THE COURT.

4 **JUDGE REINHARDT:** THANK YOU.

5 **CLOSING ARGUMENT**

6 **MS. FUENTES:** THANK YOU, YOUR HONORS, FOR LETTING
7 BOTH OF US SPEAK. I'M THERESA FUENTES FROM SANTA CLARA COUNTY.
8 YOUR HONORS, IF YOU ORDER A POPULATION REDUCTION
9 WITHOUT FUNDING TO THE COUNTIES, YOU WILL BE SHIFTING THE
10 PROBLEM TO THE COUNTIES. THE COUNTIES WILL HAVE THE
11 RESPONSIBILITY TO DEAL WITH ALL OF THE PEOPLE --

12 **JUDGE REINHARDT:** DO YOU THINK WE CAN ORDER THE STATE
13 TO GIVE MONEY TO THE COUNTIES FOR PROGRAMS?

14 **MS. FUENTES:** I HOPE YOU CAN. WE WOULD LOVE TO HAVE
15 THE MONEY. WE WOULD LOVE TO HAVE ENFORCEABLE FUNDING.

16 I DON'T HAVE THE ANSWER TO YOUR QUESTION. THE
17 PLAINTIFFS SAY NO, YOU CAN'T ORDER IT. THE STATE SAYS NO, YOU
18 CAN'T ORDER IT.

19 **JUDGE REINHARDT:** WELL, THE PLAINTIFFS WILL
20 RECONSIDER WHEN THEY GET TO THE PRACTICAL PROBLEM.

21 **JUDGE HENDERSON:** ISN'T THAT THE DILEMMA? WE'LL BE
22 ORDERING -- WE WILL BE SHIFTING THE PROBLEM TO THE COUNTIES?

23 **MS. FUENTES:** EXACTLY.

24 **JUDGE HENDERSON:** IF WE DON'T -- IF WE DO THAT, AS
25 JUDGE KARLTON SAID, WE WILL BE CONTINUING -- WELL, WE WOULD BE

1 CONFINED TO THESE UNCONSTITUTIONAL AS IT NOW EXISTS. SO WHAT
2 DO WE DO? WE ARE BUILDING WHAT -- HOW DO WE BALANCE THAT?

3 **MS. FUENTES:** WELL, I THINK FOR THIS COURT AND
4 LOOKING AT THE PUBLIC SAFETY, EVERY SINGLE PROPOSAL THAT THE
5 PLAINTIFFS HAVE PROPOSED FOR SAFELY RELEASING THE POPULATION
6 INVOLVED MONEY.

7 DIVERSION, THAT REQUIRES MONEY. COMMUNITY TREATMENT,
8 THAT REQUIRES MONEY. PAROLE REFORM. ALL OF IT. AND WE'VE
9 HEARD HERE, WE KNOW THAT THE STATE WILL NOT PROVIDE FUNDING.
10 I THINK --

11 **JUDGE KARLTON:** NO, WE DON'T KNOW THAT. SEE, THERE
12 IS A SOMEWHAT MORE SUBTLE POSTURE.

13 EVEN IF WE ASSUME THAT THE STATE -- THAT WE CANNOT
14 ORDER THE STATE TO FUND IT, WE CAN SAY TO THE STATE -- I'M NOT
15 SAYING WE ARE GOING TO, BUT WE CAN SAY TO THE STATE, THIS IS
16 YOUR CAP. YOU FIGURE OUT WHAT TO DO. YOU HAVE A
17 RESPONSIBILITY TO THE COMMUNITIES AND, YOU KNOW, TELL THEM TO
18 GIVE US A PLAN THAT INVOLVES THE SHARING OF SAVINGS. AND THEN
19 IF THEY DON'T DO IT, I DON'T KNOW WHAT WE DO NEXT.

20 **MS. FUENTES:** WELL, THAT'S THE PROBLEM. THAT'S THE
21 DILEMMA WE FACE.

22 THE COUNTIES -- YOU'VE HEARD MR. GRAVES, YOU HAVE TO
23 REMEMBER, TESTIFY THAT WE CAN'T TRUST THE STATE. NUMEROUS
24 TIMES THE STATE PROMISED US FUNDING AND DIDN'T GIVE IT TO US.
25 YOU KNOW, HE GAVE YOU NUMEROUS EXAMPLES.

1 AND, YOU KNOW, YOU CAN ORDER THE STATE TO COME UP
2 WITH A POPULATION REDUCTION. THE STATE CAN SAY, ALL RIGHT,
3 FINE. WE ARE GOING TO RELEASE WHO WE ARE GOING TO RELEASE AND,
4 COUNTIES, YOU DEAL, AND HERE IS NO MONEY AND DO IT. AND EVEN
5 THE PLAINTIFFS HAVE SAID THAT THAT'S NOT THE SAFE WAY OF
6 REDUCING THE POPULATION.

7 SO I JUST THINK THAT, YOU KNOW, THERE MIGHT -- IT
8 MIGHT VERY WELL BE THAT THERE IS NOT A SAFE WAY TO REDUCE THE
9 POPULATION.

10 **JUDGE KARLTON:** WHICH THEN BRINGS US TO A QUESTION
11 THAT I'VE ASKED THE DISTRICT ATTORNEY, WHICH IS: CAN THE
12 CONGRESS PROHIBIT THE FEDERAL GOVERNMENT, THE FEDERAL JUDICIARY
13 FROM RECTIFYING A CONSTITUTIONAL VIOLATION?

14 DO THEY HAVE THE POWER TO SAY WE CAN'T RELEASE THEM
15 BECAUSE RELEASING THEM AD HOC IS DANGEROUS AND YOU CAN'T ORDER
16 THE STATE TO SHARE THE BENEFITS OF THE SAVINGS?

17 **MS. FUENTES:** WELL, THERE IS A REASON THAT THE PLRA
18 SAID THE COURT MUST GIVE SUBSTANTIAL WEIGHT TO THE PUBLIC
19 SAFETY IMPASSE. AND IF THERE IS NOTHING YOU CAN DO UNDER THE
20 PLRA, WELL, THEN THERE ARE -- YOU CAN PURSUE OTHER AVENUES IN
21 THE INDIVIDUAL CASES.

22 **JUDGE KARLTON:** BUT, YOU KNOW, I HAVE BEEN AT IT FOR
23 12 YEARS. SO BEING TOLD THAT WE OUGHT TO PURSUE IT IN SOME WAY
24 IS -- AS WE FALL UPON, IT'S NOT A SYMPATHETIC ARGUMENT.

25 ALL RIGHT. I MEAN, THAT MAY BE ANOTHER UNANSWERABLE

1 QUESTION.

2 THANK YOU, MA'AM. I'M SORRY. I DIDN'T MEAN TO PLAY
3 YOU.

4 **MS. FUENTES:** I UNDERSTAND.

5 I DO WANT TO ADDRESS -- I FEEL LIKE I NEED TO ADDRESS
6 SOME OF THE STATEMENTS MADE BY THE PLAINTIFFS IN THEIR FINDINGS
7 OF FACT. THEY'VE HAD SAID THAT THE COUNTIES HAVE EXAGGERATED
8 THEIR EVIDENCE AND THE IMPACTS TO THE COUNTIES, AND I JUST WANT
9 TO ADDRESS THAT BRIEFLY.

10 I THINK THAT THEY HAVE TO SAY THAT BECAUSE THEY'VE
11 HAD NO EVIDENCE FROM ANY EXPERT THAT REFUTES ANYTHING THAT THE
12 COUNTIES HAVE SAID. THEY HAVE NO TESTIMONY ABOUT HOW COUNTIES
13 ARE FUNDED, HOW COUNTIES ARE RUN, HOW WE GET OUR MONEY.

14 YOU HEARD TESTIMONY FROM THE COUNTIES THAT WE DON'T
15 HAVE ANY DISCRETION ON HOW WE SPEND OUR FUNDS. WE HAVE VERY
16 LITTLE DISCRETION. MORE THAN HALF OF OUR FUNDING COMES FROM
17 STATE AND FEDERAL GOVERNMENT AND WE DON'T HAVE THE AUTHORITY ON
18 HOW TO ALLOCATE IT.

19 PLAINTIFFS HAVE SAID THAT THE STATE AND THE COUNTIES
20 HAVE MADE POLICY DECISIONS NOT TO FUND PROGRAMS, AND I TAKE
21 ISSUE WITH THAT BECAUSE SANTA CLARA COUNTY, FOR ONE, HAS MADE
22 GREAT EFFORTS TO PROVIDE THESE PROGRAMS.

23 THE BOARD OF SUPERVISORS HAS GIVEN -- IT'S A
24 SUBSTANTIAL PRIORITY OF THE BOARD OF SUPERVISORS TO PROVIDE
25 DRUG AND ALCOHOL AND MENTAL HEALTH SERVICES TO RESIDENTS OF

1 SANTA CLARA COUNTY. IN FACT, WE HAVE A VERY SUCCESSFUL
2 PROGRAM, DRUG TREATMENT PROGRAM IN OUR COUNTY. AND THERE IS
3 TESTIMONY THAT WE REDUCED OUR TOTAL JAIL POPULATION BY 20
4 PERCENT BECAUSE OF OUR PROGRAM.

5 THE STATE DOESN'T FUND ALL OF THAT. I THINK THE
6 COUNTY PAYS ONE-HALF, ALMOST ONE-HALF OF THE MONEY ON THE
7 COUNTY'S DISCRETIONARY FUND BECAUSE THE STATE DOESN'T GIVE US
8 ENOUGH MONEY FOR THOSE PROGRAMS.

9 WHAT WILL HAPPEN TO THOSE PROGRAMS IF PAROLEES ARE
10 RELEASED? I DON'T KNOW.

11 **JUDGE REINHARDT:** WHAT WILL HAPPEN IF THE STATE SAYS
12 NEXT YEAR, LOOK, WE DON'T HAVE ENOUGH MONEY?

13 **MS. FUENTES:** WELL, THEY HAVE BEEN DOING THAT
14 GRADUALLY. RIGHT NOW, AS WE SPEAK, THE STATE IS CUTTING
15 FUNDING TO THE COUNTIES. THEY'RE CUTTING A LOT OF FUNDING FOR
16 MENTAL HEALTH AND FOR DRUG AND ALCOHOL. AND WE JUST SERVE LESS
17 AND LESS PEOPLE AND THE WAIT LISTS GET LONGER AND LONGER.

18 A POPULATION REDUCTION WILL JUST REALLY MAKE A BAD
19 SITUATION ENORMOUSLY WORSE. THAT'S KIND OF WHAT WE ARE STUCK
20 WITH.

21 WE HAVE AN EVER INCREASING POT OF FUNDS TO PROVIDE
22 SERVICES, THAT WE HAVE TO PROVIDE SERVICES FOR EVERYBODY IN THE
23 COMMUNITY. AND THE MORE PRISONERS THAT GET RELEASED AND GET
24 PUT ONTO THE COUNTIES, THE LESS SERVICES WE ARE ABLE TO GIVE TO
25 THE GENERAL POPULATION AND THE MORE THE SAFETY NET GETS ERODED.

1 AND THAT'S OUR CONCERN AND THAT'S WHY WE INTERVENED,
2 TO POINT OUT TO THE COURT IT REALLY IS SIGNIFICANT. GRAVE
3 PROBLEMS THAT THE COUNTIES WILL FACE WITH THE PRISON POPULATION
4 ISSUES AND NO FUNDING.

5 **JUDGE REINHARDT:** THERE IS A GRAVE PROBLEM WITH OR
6 WITHOUT THE PRISONER RELEASE ORDER.

7 **MS. FUENTES:** IT'S A PROBLEM NOW, YES, AND WE ARE
8 DOING THE BEST WE CAN.

9 **JUDGE REINHARDT:** IT GETS GRAVER EVERY YEAR.

10 **MS. FUENTES:** AND IT GETS WORSE EVERY YEAR.

11 **JUDGE REINHARDT:** OKAY.

12 **MS. FUENTES:** THANK YOU.

13 **CLOSING ARGUMENT**

14 **MS. KECK:** GOOD AFTERNOON, YOUR HONORS. IT'S ANN
15 KECK, DEPUTY COUNTY COUNSEL OF SONOMA COUNTY. I REPRESENT IN
16 THIS MATTER NOT ONLY THE COUNTY OF SONOMA, BUT SONOMA COUNTY
17 SHERIFF WILLIAM COGBILL, DISTRICT ATTORNEY STEPHAN PASSALACQUA
18 AND CHIEF PROBATION OFFICER WILLIAM OCHS -- PARDON ME, ROBERT
19 OCHS.

20 AND THE REASON THAT THE COURT ALLOWED US TO INTERVENE
21 AS A SEPARATE GROUP WAS BECAUSE MY CLIENTS HAVE A VERY UNIQUE
22 POSITION.

23 **JUDGE KARLTON:** I'M GOING TO INTERRUPT. WE HEARD
24 YOUR CLIENTS. WE HEARD YOUR EXPERT. LET'S TALK ABOUT WHERE WE
25 ARE NOW. YOUR EXPERT REALLY, AS I UNDERSTAND IT, ESSENTIALLY

1 AGREES WITH THE PLAINTIFFS AND WITH THOSE COUNTIES THAT HAVE
2 SUGGESTED ALL OF THESE PROGRAMS.

3 IF THE COURT CANNOT ORDER THE STATE TO SHARE SAVINGS,
4 WHAT ARE WE TO DO? DON'T TELL US ABOUT ALL THE WONDERFUL
5 THINGS YOU ARE DOING. THAT'S BESIDE THE POINT. WHAT DO WE DO?

6 **MS. KECK:** I UNDERSTAND, YOUR HONOR. AND THE REASON
7 THAT WE ARE HERE WAS TO TELL ABOUT THE IMPACTS TO THE LOCAL
8 COMMUNITY --

9 **JUDGE KARLTON:** WE KNOW ABOUT IT. WE BELIEVE IN IT.
10 TELL ME WHAT I'M SUPPOSED TO DO.

11 **MS. KECK:** AS FAR AS I SEE, THERE ARE REALLY ONLY TWO
12 OPTIONS, YOUR HONOR. THE FIRST IS TO ENTER A PRISONER RELEASE
13 ORDER THAT WOULD BE CONSISTENT WITH OUR FINDINGS OF FACT AND
14 PROPOSALS FOR RELIEF, WHICH BASICALLY ORDERS THE COURT TO COME
15 UP WITH A PLAN.

16 **JUDGE KARLTON:** ORDER THE STATE TO COME UP WITH A
17 PLAN?

18 **MS. KECK:** PARDON ME. ORDER THE STATE TO COME UP
19 WITH A PLAN.

20 THE PROBLEM THAT WE GET AT THAT POINT IS THAT THE
21 PLAN ISN'T SUFFICIENT FOR WHATEVER PURPOSES. WHAT KIND OF, I
22 WILL TERM IT A HAMMER. WHAT KIND OF HAMMER CAN THE COURT BRING
23 DOWN IF THE STATE IS UNABLE TO COMPLY WITH THAT? AND THAT'S
24 WHERE WE COME INTO THE PROBLEM.

25 BECAUSE A PRISON POPULATION CAP AND THE NUMBER THAT

1 THE PLAINTIFFS HAVE SUGGESTED IS DEVASTATING, A RELEASE OF A
2 THIRD OF THE PRISON POPULATION WOULD JUST BRING UTTER CHAOS IN
3 THE COMMUNITIES.

4 YOUR HONOR HAS SUGGESTED THAT PERHAPS WE SHOULD HAVE
5 BEEN LOOKING AT DIFFERENT NUMBERS AND DIFFERENT TIMES, WHICH
6 WOULD HAVE MADE US FOCUS ON REALLY A UNIVERSE OF POSSIBILITIES,
7 BUT I WOULD PRESENT TO THE COURT THAT ALTHOUGH THERE HASN'T
8 BEEN TESTIMONY ON THIS, TO ANY GREAT EXTENT, REALLY IT IS A
9 SLIDING SCALE.

10 THERE IS A CERTAIN POINT AT WHICH THE PRISON
11 POPULATION CAP WOULD NOT CAUSE A SIGNIFICANT OR A VERY
12 APPRECIABLE IMPACT ON COMMUNITIES. IT'S CERTAINLY NOT IN THE
13 NATURE OF THE 50,000 THAT THEY REQUESTED. IT'S PROBABLY NOT IN
14 THE NATURE OF THE 35,000 THAT WAS THE SECONDARY POSITION THAT
15 DR. AUSTIN CAPPED -- TALKED ABOUT.

16 WE DON'T HAVE ANY KIND OF TESTIMONY AS TO WHAT WOULD
17 BE A NOMINAL IMPACT -- OR A PRISON RELEASE THAT WOULD HAVE A
18 NOMINAL IMPACT ON PUBLIC SAFETY AND THE OPERATION OF CRIMINAL
19 JUSTICE SYSTEMS.

20 AND I WOULD SUBMIT THAT I WOULD -- CONTRARY, I THINK,
21 TO MAYBE SOME OF THE OTHER COUNTY INTERVENORS, I WOULD SUBMIT
22 THAT IF THE COURT IS UNABLE TO COME UP WITH A FIGURE THAT SHOWS
23 THAT THE IMPACT ON THE COUNTIES WOULD BE NEGLIGIBLE AND THAT
24 THE BENEFIT TO BE DERIVED FROM THAT PRISON POPULATION CAP WOULD
25 OUTWEIGH THOSE BAD EFFECTS, THAT THE COURT SHOULD NOT ENTER ANY

1 KIND OF POPULATION CAP.

2 **JUDGE KARLTON:** SO YOUR VIEW IS THAT THE COURT SHOULD
3 SIMPLY COUNTENANCE AN UNCONSTITUTIONAL CONDITION. NOBODY IN
4 THE COUNTY IS PERMITTED TO SPEAK ON ANY PUBLIC ISSUE. JUST A
5 STATUTE THAT THE STATE PASSED THAT SAID, IN SONOMA COUNTY
6 NOBODY CAN SPEAK ON A PUBLIC ISSUE. AND WE HAVE TO SAY, THAT'S
7 LIFE.

8 **MS. KECK:** AND, YET, YOUR HONOR HAS ASKED THE
9 QUESTION AS TO WHETHER OR NOT CONGRESS CAN ORDER THIS COURT NOT
10 TO ENFORCE A CONSTITUTIONAL RIGHT. AND I WOULD SAY WE NEED TO
11 LOOK TO THE, YOU KNOW, THE SCRUTINY ANALYSIS THAT THE COURTS
12 EMPLOY TO DETERMINE WHETHER OR NOT A LAW CAN CONSTITUTIONALLY
13 INFRINGE ON SOMEONE'S RIGHTS.

14 I MEAN, IN THE JAIL, THE JAIL MANAGEMENT INFRINGES ON
15 CONSTITUTIONAL RIGHTS ON PRACTICALLY A DAILY BASIS. WE READ
16 PEOPLE'S MAIL. WE PREVENT THEM FROM BEING FREE TO LEAVE. BUT
17 THE ANALYSIS APPLIES. IT'S A RATIONAL RELATIONSHIP TEST WITH
18 RESPECT TO GEO-MANAGEMENT ISSUES THAT ALLOWS THE JAIL TO
19 INFRINGE UPON CONSTITUTIONAL RIGHTS IF THEY HAVE A LEGITIMATE
20 INTEREST.

21 CONGRESS HAS GIVEN THIS COURT --

22 **JUDGE KARLTON:** THAT IS NOT THE APPROPRIATE
23 CONSTITUTIONAL ANALYSIS, BUT IT DOESN'T MATTER. JUST GO AHEAD.

24 **MS. KECK:** ASIDE FROM EQUAL PROTECTION ISSUES, WHICH
25 IS STRICTLY -- THE JAIL MANAGEMENT ISSUES ARE SUBJECT TO THE

1 RATIONAL RELATIONSHIP TEST.

2 BUT IF YOU GO AND LOOK AT THE STATUTE, CONGRESS HAS
3 GIVEN DIRECTION TO THIS COURT TO TAKE INTO ACCOUNT PUBLIC
4 SAFETY AND OPERATION OF THE CRIMINAL JUSTICE SYSTEMS.

5 AND SO I BELIEVE IT'S INTENDANT UPON THIS COURT TO GO
6 AND WEIGH THE EFFECTS OF THOSE SYSTEMS VERSUS THE
7 CONSTITUTIONAL VIOLATIONS.

8 **JUDGE REINHARDT:** IT SAYS WE SHOULD CONSIDER THE
9 FEDERAL CIRCUIT ON PUBLIC SAFETY. IT DOESN'T SAY PUBLIC SAFETY
10 OUTWEIGHS THE CONSTITUTION --

11 **MS. KECK:** NO. IT LEAVES TO THIS COURT THE ABILITY
12 TO SAY THAT THE EFFECTS OF PUBLIC SAFETY AND THE OPERATION OF
13 CRIMINAL JUSTICE SYSTEMS ARE MORE WEIGHTY THAN THE SOLVENCY
14 THAT YOU WOULD GET FROM A PRISONER RELEASE ORDER.

15 WE HAVE THE PLAINTIFFS ADMITTING IT'S NOT GOING TO
16 SOLVE THE VIOLATION, BUT IT'S A --

17 **JUDGE KARLTON:** EVERY DAY, EVERY DAY PEOPLE DIE IN
18 THE PRISONS, DIE IN THE PRISONS BECAUSE OF INADEQUATE HEALTH OR
19 MENTAL HEALTH CARE. WHAT OUTWEIGHS THAT?

20 **MS. KECK:** I WISH I COULD COME UP WITH A SOLUTION FOR
21 THAT, YOUR HONOR. THE EVIDENCE SHOWS THAT YOU WOULD LOSE --
22 THE EVIDENCE THAT THE COUNTIES HAVE GIVEN IS THAT IT WOULD BE
23 CATASTROPHIC ON A COUNTY LEVEL, THAT WE WOULD HAVE FAILURE TO
24 PROVIDE SERVICES.

25 DAVID BENNETT SAYS THAT YOU WOULD HAVE A LOSS OF

1 SYSTEM INTEGRITY. WE WOULD BASICALLY LOSE THE ABILITY TO HAVE
2 THE CRIMINAL JUSTICE SYSTEM FUNCTION WELL IN THE COUNTY IF YOU
3 WOULD HAVE A POPULATION CAP THAT WOULD BE SO DEVASTATING THAT
4 IT WOULD OVERWHELM THE SYSTEM. SO WE HAVE, I GUESS, A LOSS OF
5 SYSTEM INTEGRITY --

6 **JUDGE KARLTON:** I EXAGGERATED. IT'S EVERY WEEK
7 PEOPLE DIE.

8 **MS. KECK:** YOUR HONOR, I CERTAINLY DO NOT MEAN TO
9 UNDERMINE THE SEVERITY OF THE CONSTITUTIONAL VIOLATION. THIS
10 COURT HAS REPEATEDLY SAID HOW GRAVE IT CONSIDERS THE SITUATION.

11 I ALSO DO NOT INTEND TO UNDERMINE THE SEVERITY OF THE
12 OVERCROWDING AND THE FAILURE TO TAKE ACTION TO REMEDY THOSE
13 ISSUES.

14 BUT FROM THE EVIDENCE THAT WAS PRESENTED TO THE
15 COURT, IT DOES NOT APPEAR THAT A POPULATION CAP BY ITSELF IS
16 THE MECHANISM TO GO ABOUT RESOLVING THAT, BECAUSE OF THE LACK
17 OF GUARANTEE THAT THERE WOULD BE ANY KIND OF THE REMEDIAL
18 PROCEDURES THAT EVEN PLAINTIFFS ADMIT WOULD BE NECESSARY --

19 **JUDGE REINHARDT:** IF YOU CAN'T SOLVE IT WITHOUT DOING
20 THAT, IT MAY NOT SOLVE IT. BUT YOU HAVE TO DO IT AS YOU'RE
21 GOING TO SOLVE IT.

22 **JUDGE KARLTON:** YOU CAN'T SOLVE IT WITHOUT...

23 **MS. KECK:** I UNDERSTAND. IN FACT, I BELIEVE MY
24 EXPERT, DAVID BENNETT, AGREED THAT THE PROBLEMS ARE IMPOSSIBLE
25 TO SOLVE WITHOUT REDUCING THE -- WITH POPULATION.

1 THE INSTRUCTIONS OF CONGRESS FOR THIS COURT TO LOOK
2 CAREFULLY AT THE PUBLIC SAFETY AND CRIMINAL JUSTICE SYSTEM
3 FACTORS IS I KNOW WHAT IS STUMPING THIS COURT.

4 IF THERE WERE AN EASY ANSWER, EVERY SINGLE ONE OF THE
5 EXPERTS THAT THIS PANEL QUESTIONED WOULD HAVE COME UP WITH THE
6 ANSWER. BECAUSE I KNOW THAT THIS COURT CHALLENGED VIRTUALLY
7 EVERY EXPERT TO SAY, WHAT DO WE DO IF THERE IS NO EASY ANSWER.
8 THERE IS NO EASY ANSWER, AND FAR BE IT FROM ME TO SAY THAT I
9 HAVE COME UP WITH ONE.

10 BUT THE ISSUE IS THAT WE HAVE RESEARCHED AND THE
11 EVIDENCE THAT WE HAVE PUT IN FRONT OF THE COURT IS THAT SIMPLY
12 A POPULATION CAP WOULD BE DEVASTATING ON OUR LOCAL COMMUNITIES.
13 WE WOULD NOT ONLY FAIL TO BE ABLE TO SERVE THE PEOPLE WHO
14 CURRENTLY ARE SERVING, BUT --

15 **JUDGE REINHARDT:** SO WHAT IS THE SUGGESTION? WE DO
16 NOTHING?

17 **MS. KECK:** WELL, YOUR HONOR, AS I SAID, THERE ARE
18 ISSUES THAT RIGHT NOW WE ARE CAUGHT A LITTLE BIT BETWEEN A ROCK
19 AND HARD PLACE BECAUSE WE HAVE A RELEASE OF 50,000 --

20 **JUDGE REINHARDT:** NOT NECESSARILY.

21 **MS. KECK:** OR -- WELL, THEN -- AND MY -- I STARTED
22 OFF IN RESPONDING TO JUSTICE KARLTON'S STATEMENTS BY SAYING
23 THERE IS A SLIDING SCALE HERE. WE HAVE NOT ADDRESSED A
24 UNIVERSE OF POSSIBILITY.

25 FRANKLY, IT WOULD BE DIFFICULT FOR US AS AN

1 INTERVENOR FOR US TO ADDRESS A UNIVERSE OF POSSIBILITIES.

2 BUT THERE ARE OTHER POSSIBILITIES OUT THERE THAT
3 COULD RESULT IN NOT AS DRAMATIC AN IMPACT ON THE COUNTIES AS A
4 RELEASE OF 50,000.

5 **JUDGE REINHARDT:** WHY HAVEN'T THOSE POSSIBILITIES
6 BEEN MADE REALITY? WHAT MAKES YOU THINK THEY ARE GOING TO BE?

7 **MS. KECK:** WELL, THE STATE HAS GONE AND IMPLEMENTED,
8 I KNOW, A NUMBER OF REFORMS. MY EXPERT TESTIFIED THAT THERE
9 HAD BEEN A FEW OF THEM THAT HAVE NOT BEEN COMPLETELY
10 IMPLEMENTED, SOME OF THEM HAVE BEEN. BUT IT MAY BE AWHILE FOR
11 US TO SEE THE RESULTS.

12 **JUDGE REINHARDT:** HOW LONG HAS JUDGE HENDERSON BEEN
13 WAITING?

14 **MS. KECK:** PARDON?

15 **JUDGE REINHARDT:** HOW LONG HAS JUDGE HENDERSON BEEN
16 WAITING?

17 **MS. KECK:** I GUESS HE HAS BEEN WAITING PROBABLY ABOUT
18 EIGHT YEARS NOW.

19 **JUDGE REINHARDT:** HOW LONG HAS JUDGE KARLTON BEEN
20 WAITING?

21 **MS. KECK:** OH, I THINK IT'S PROBABLY ABOUT 17,
22 ALTHOUGH I UNDERSTAND THINGS HAVE BEEN DONE IN THOSE 17 YEARS.

23 **JUDGE REINHARDT:** AND HOW MUCH LONGER SHOULD WE WAIT
24 AND ALLOW THE CONSTITUTIONAL VIOLATION TO CONTINUE?

25 **MS. KECK:** I HAVE NO ANSWER TO THAT QUESTION, YOUR

1 HONOR.

2 JUDGE HENDERSON: DO I UNDERSTAND YOUR ARGUMENT,
3 COUNSEL, THAT PLAINTIFF IS ASKING FOR 52,000 AND DOING NOTHING
4 HERE. AND WE TRY TO FIND A NUMBER. THE TEST FOR US IS HOW
5 IT'S NOW HURTING THE COUNTIES. I KNOW I'M SIMPLIFYING. IS
6 THAT WHAT YOU'RE SUGGESTING?

7 MS. KECK: I GUESS THE ANSWER IS YES. THERE IS A --
8 JUST AS THE COURT WAS ASKING, WHERE DOES IT GET SO BAD IN
9 OVERCROWDING THAT WE HAVE TO ENTER AN ORDER?

10 YOU CAN TO TURN THAT SAME ARGUMENT ON ITS HEAD.
11 WHERE IS THE LINE ON THE SPECTRUM OF CONTINUUM WHERE WE GET A
12 GOOD BALANCE OF HAVING A RELEASE THAT DOES SOMETHING TO EFFECT
13 THE ABILITY TO PROVIDE CONSTITUTIONALLY ADEQUATE MEDICAL AND
14 MENTAL HEALTH CARE?

15 BUT WE DON'T HAVE THE KIND OF SEVERE IMPACTS THAT WE
16 CAN SEE AT THE COUNTY LEVEL.

17 NOW, AGAIN, IT'S VERY DIFFICULT TO TALK ABOUT THE
18 UNIVERSE OF POSSIBILITIES AND TO PRESENT EVIDENCE ON THIS. I'M
19 NOT SURE THERE IS EVIDENCE THAT HAS BEEN PRESENTED THAT THE
20 COURT COULD ADEQUATELY GO AND ASSESS THAT KIND OF LINE DRAWING,
21 THE CONTINUUM DETERMINATION.

22 BUT IN THE UNIVERSE OF POSSIBILITIES, THAT IS THE
23 ISSUE. BUT WE WERE PROVIDED WITH A VERY SPECIFIC REQUEST FOR
24 RELIEF, WHICH WAS THE 50,000, ONE-THIRD PRISON POPULATION
25 RELIEF. AND SO THAT IS WHAT WE HAD TO TAKE TO OUR CLIENTS, AND

1 THAT IS WHAT WE HAD TO GIVE TO OUR EXPERT TO BE ABLE TO PRESENT
2 TO THE COURT.

3 THERE WAS -- ALTHOUGH THERE WAS TESTIMONY ABOUT SOME
4 LESSER NUMBERS, IT WASN'T PROVIDED TO US IN SUFFICIENT TIME TO
5 PREPARE EXPERT REPORTS ON IT OR GET INFORMATION FROM THE COURT.
6 SO WE HAVE NOT ADDRESSED THE SPECTRUM OF CONTINUUM QUESTION AS
7 TO WHETHER OR NOT OR WHERE.

8 AND I'M ASSUMING THAT THERE IS. I'M ASSUMING THAT
9 THERE'S A 5,000 RELEASE OF PRISONERS, WHICH MAY GIVE
10 JUDGE KARLTON HIS 1,000 BEDS, BUT THAT IMPACT ON THE 58
11 COUNTIES PROBABLY WOULD NOT BE THAT GREAT.

12 BUT WHERE BETWEEN THE 5,000 RELEASE AND THE 50,000
13 RELEASE WE COULD GET THE PARTIES TO AGREE IS SOMETHING THAT
14 THERE WAS NO TESTIMONY ABOUT. I'M CERTAINLY NOT GOING --

15 **JUDGE REINHARDT:** THAT'S WHY WE HAVE SETTLEMENT
16 DISCUSSIONS AND NEGOTIATIONS.

17 **MS. KECK:** AND WE DID GO THROUGH ABOUT SEVEN MONTHS
18 OF THOSE, YOUR HONOR.

19 **JUDGE REINHARDT:** THAT WOULD HAVE BEEN A GOOD WAY TO
20 SOLVE THIS PROBLEM.

21 **MS. KECK:** I WHOLEHEARTEDLY AGREE.

22 **JUDGE KARLTON:** IT MAY BE THE ONLY WAY.

23 **MS. KECK:** PARDON ME, YOUR HONOR?

24 AND, YOU KNOW, THIS COURT DOES HAVE ITS HANDS TIED.

25 **JUDGE REINHARDT:** WELL, THEY ARE NOT ALL THAT TIED.

1 **MS. KECK:** WELL, TIED WITH RESPECT FROM THE COUNTY'S
2 PERSPECTIVE, AT LEAST, BECAUSE WE HAVE PEOPLE WHO DO WANT TO
3 PROVIDE DIVERSION SERVICES. WE WANT TO SERVE THESE
4 POPULATIONS. WE SIMPLY DON'T HAVE THE FUNDING AND ABILITY TO
5 DO SO. AND ABSENT THAT, THE IMPACT ON US IS TOO GREAT.

6 **JUDGE HENDERSON:** THANK YOU.

7 I KNOW YOU DON'T SPEAK FOR THE LARGER COUNTIES, BUT
8 ANOTHER DILEMMA -- AND MAYBE YOU HAVE SOME ADVICE ON IT -- IS
9 400 PEOPLE UNDER WHATEVER WE MIGHT DO TO L.A. COUNTY IS NOT
10 SUCH A BIG DEAL. IT WILL SWAMP THE COUNTY UP NEAR THE OREGON
11 BORDER.

12 HOW DO YOU FEEL WITH THAT IN TRYING TO DO SOMETHING
13 THAT'S REASONABLE?

14 **MS. KECK:** WELL, YOUR HONOR, THAT IS A DIFFICULT
15 QUESTION.

16 ONE OF THE THINGS THAT HAS COME UP DURING THE COURSE
17 OF THIS IS THAT IT IS THE OBLIGATION OF THE CDCR TO DETERMINE
18 HOW TO RELEASE, HOW TO PAROLE, ET CETERA.

19 I'M NOT SURE THAT THIS COURT WOULD BE IN A POSITION
20 TO BE ABLE TO MAKE SPECIFIC DETERMINATIONS AS TO WHICH TYPES OR
21 HOW MANY INMATES TO RELEASE TO VARIOUS COUNTIES. AND THE
22 FACTORS THAT YOU HAVE TO GO THROUGH TO ANALYZE THAT, THE RISK
23 NEEDS ASSESSMENT OF THE INMATES, THE POPULATION AND
24 AVAILABILITY OF RESOURCES IN THE COUNTY WOULD, I'M SURE, BE FAR
25 MORE THAN THIS COURT WOULD WANT TO TAKE EVIDENCE ON AND

1 CONSIDER IN THE PROCESS.

2 JUDGE REINHARDT: ALL RIGHT. I THINK WE HAVE GONE AS
3 FAR AS WE CAN GO.

4 THANK YOU VERY MUCH, COUNSEL.

5 MS. KECK: THANK YOU.

6 JUDGE REINHARDT: HOW MANY INTERVENORS ARE LEFT?

7 MS. KECK: ONE.

8 MS. BARLOW: ONE.

9 JUDGE REINHARDT: ALL RIGHT. WHO?

10 MS. KECK: THE LEGISLATOR.

11 JUDGE KARLTON: OH, OKAY.

12 MR. KAUFHOLD: GOOD AFTERNOON, YOUR HONORS.

13 JUDGE REINHARDT: HOW COULD WE FORGET YOU?

14 **CLOSING ARGUMENT**

15 MR. KAUFHOLD: GOOD AFTERNOON, YOUR HONORS. STEVE
16 KAUFHOLD FROM AKIN, GUMP, STRAUSS, HAUER AND FELD FOR THE
17 LEGISLATIVE INTERVENORS.

18 I KNOW THAT THE HOUR IS GETTING LATE. I HAVE NO
19 DESIRE TO REPEAT WHAT THE DEFENDANTS HAVE ALREADY SAID OR THE
20 MATERIAL IN OUR PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF
21 LAW.

22 THERE ARE TWO THINGS THAT I WANTED TO ADDRESS FROM
23 YOUR DISCUSSION THIS MORNING WITH THE PLAINTIFFS' COUNSEL AND,
24 IN PARTICULAR, TO GO BACK, JUDGE REINHARDT, TO KIND OF A
25 HYPOTHETICAL OR A QUESTION THAT YOU RAISED.

1 AND ONE OF THE THINGS THAT CAME UP WAS, SAY THERE ARE
2 FIVE CAUSES OF THE DIFFICULTIES THAT ARE FACED. ONE OF THEM IS
3 OVERCROWDING, BUT THERE'S FOUR OTHER THINGS. AND WHAT I
4 BELIEVE --

5 **JUDGE REINHARDT:** AND OVERCROWDING IS THE PRIMARY
6 CAUSE?

7 **MR. KAUFHOLD:** AND FOR THIS AFTERNOON ONLY, I WILL
8 ASSUME THAT. THAT'S THE PRIMARY CAUSE, YOUR HONOR.

9 **JUDGE REINHARDT:** FOR THE HYPOTHETICAL QUESTION.

10 **MR. KAUFHOLD:** FOR THE HYPOTHETICAL QUESTION, THAT'S
11 RIGHT.

12 I BELIEVE COUNSEL'S RESPONSE WAS, YES, IT'S STILL
13 PROPER TO ENTER A PRISONER RELEASE ORDER IN THE FIRST INSTANCE
14 AS A FIRST STEP. AND WE THINK, YOUR HONOR, THAT IS 100 PERCENT
15 WRONG; THAT THAT PUTS THE CART BEFORE THE HORSE AND THAT THIS
16 COURT HAS AN OBLIGATION UNDER THE PRISONER LITIGATION REFORM
17 ACT TO TAKE THE PRELIMINARY STEPS, WHETHER IT'S DONE BY THE
18 INDIVIDUAL COURTS IN THE UNDERLYING ACTIONS OR, FRANKLY, I'M
19 NOT SO SURE THAT THIS COURTS HANDS ARE AS TIED AS SOME OF THE
20 OTHER PARTIES THOUGHT IN TERMS OF ORDERING OTHER RELIEF SHORT
21 OF A PRISONER RELEASE ORDER.

22 THOSE OTHER FOUR FACTORS NEED TO BE ADDRESSED --

23 **JUDGE KARLTON:** COUNSEL, WHAT WE HAVE BEEN TOLD, AT
24 LEAST BY THE PLAINTIFFS' EXPERTS -- AND AS BEST I CAN TELL,
25 NOBODY REALLY DISAGREES -- IS ALL OF THE OTHER THINGS THAT

1 SHOULD BE DONE AND CAN BE DONE WILL FAIL UNLESS THERE IS A
2 PRISONER RELEASE ORDER.

3 I HAVE MADE ORDERS CONCERNING BEDS. I HAVE MADE
4 ORDERS CONCERNING THE BAY OF PROFESSIONALS. I HAVE MADE ORDERS
5 CONCERNING THE NUMBER OF CUSTODIAL PERSONS. ALL OF THOSE
6 THINGS ARE GOING ON.

7 WHAT THE SPECIAL MASTER HAS TOLD ME WHAT NOBODY ELSE
8 HAS DISAGREED WITH IS ALL THE WONDERFUL PROGRESS THAT MISS
9 TILLMAN THINKS IS GOING TO SOMEHOW OR OTHER JUSTIFY WHERE WE
10 ARE NOW WILL FAIL, ARE IN DANGER OF FAILING BECAUSE
11 OVERCROWDING WILL OVERTAKE EVERYTHING.

12 IT'S NOT THAT THESE THINGS CAN'T BE DONE. IT'S THAT
13 THEY WILL NOT BE EFFECTIVE -- THAT IT APPEARS THAT THEY WILL
14 NOT BE EFFECTIVE UNLESS THERE IS A LIMITATION ON THE NUMBER OF
15 PEOPLE IN THE PRISONS. THAT'S THE PROBLEM.

16 **MR. KAUFHOLD:** I THINK I UNDERSTAND THE PROBLEM, YOUR
17 HONOR, AND THE POINT THAT WE WANT TO MAKE 100 PERCENT CLEAR --
18 AND IT MAY BE THAT WHAT YOUR HONOR IS TELLING ME IS THAT THIS
19 HAS BEEN DONE -- IS THAT IF THERE ARE FIVE REMAINING FACTORS
20 THAT NEED TO BE ADDRESSED AND OVERCROWDING IS ONE OF THEM, WE
21 NEED TO DEAL WITH ONE, TWO, THREE AND FOUR FIRST. THAT'S WHAT
22 THE LITIGATION REFORM ACT REQUIRES.

23 IF YOUR HONOR IS SAYING THAT THEY HAVE ALL BEEN
24 DONE --

25 **JUDGE KARLTON:** LET'S ASSUME THAT THERE HAVE BEEN --

1 AT LEAST IN MY OPINION, AND I SUSPECT IN JUDGE HENDERSON'S CASE
2 AS WELL, THEY HAVE ALL BEEN -- THERE HAVE BEEN ORDERS ON ALL
3 THE OF THEM.

4 **JUDGE REINHARDT:** THE STATUTE SAYS THAT WE CAN'T
5 ISSUE A PRISONER RELEASE ORDER UNLESS CROWDING IS THE PRIMARY
6 CAUSE OF THE VIOLATION AND NO OTHER RELIEF WILL REMEDY THE
7 VIOLATION.

8 NOW, I THINK WE ALL AGREE THAT EVEN IF THERE ARE
9 THREE OR FOUR OTHER CAUSES, SOLVING THOSE WILL NOT REMEDY THE
10 VIOLATION, BECAUSE THERE WOULD STILL BE OVERCROWDING.

11 SO YOUR -- IT'S SAFE TO SAY UNDER YOUR THEORY YOU
12 HAVE TO DO THE OTHER CAUSES FIRST, BUT THAT'S NOT WHAT I SEE
13 THE STATUTE AS SAYING. IT SAYS YOU DO THE OVERCROWDING, IF
14 IT'S A PRIMARY CAUSE, NOT AS LONG AS YOU -- YOU DO IT IF NO
15 OTHER RELIEF WILL REMEDY IT. AND YOUR OTHER CAUSES WILL NOT
16 REMEDY IT AS LONG AS IT'S OVERCROWDING.

17 **JUDGE KARLTON:** AS LONG AS THERE IS OVERCROWDING.

18 **MR. KAUFHOLD:** AND I THINK THE POINT, YOUR HONOR, IS
19 WE ARE VERY CONCERNED ABOUT THOSE TWO ELEMENTS BEING CONFLATED
20 BECAUSE EVEN IF SOMETHING IS THE PRIMARY CAUSE, WE BELIEVE THAT
21 YOU DO NEED TO EXHAUST THOSE OTHER FOUR ISSUES BEFORE YOU WOULD
22 DO A PRISONER RELEASE ORDER BECAUSE WE DON'T KNOW TO A
23 CERTAINTY UNTIL THE OTHER POSSIBILITIES HAVE BEEN KNOCKED OUT
24 WHETHER --

25 **JUDGE KARLTON:** WE DON'T KNOW FOR CERTAINTY ANYTHING.

1 WE CAN MAKE REASONABLE --

2 **JUDGE REINHARDT:** I'M SURE WE DO KNOW IF WE SAY IT'S
3 THE PRIMARY CAUSE. THEN WE DO KNOW THAT THE OTHER CAUSES WILL
4 NOT REMEDY IT.

5 **JUDGE HENDERSON:** WHY ISN'T IT A REASONABLE READING
6 THAT PLAINTIFFS -- I ASSUME THIS IS WHAT PLAINTIFFS HAVE DONE.
7 THAT, BOY, WE ARE NOT MAKING HEADWAY IN PLATA. WE ARE NOT
8 MAKING HEADWAY. JUDGE KARLTON HAS BEEN AT THIS FOR 12 YEARS.
9 WE THINK OVERCROWDING IS THE PRIMARY CAUSE OF OUR TAKING SO
10 LONG. WE ASK YOU TO CONVENE A THREE-JUDGE COURT. HERE WE ARE.

11 WHY ISN'T IT A REASONABLE READING OF THE PLRA TO SAY,
12 THREE-JUDGE COURT, HANDLE THAT PROBLEM. HANDLE THE PRIMARY
13 CAUSE IF YOU FIND IT TO BE SUCH AND THEN LET JUDGE KARLTON AND
14 JUDGE HENDERSON DEAL WITH THOSE OTHERS.

15 **JUDGE REINHARDT:** UNLESS, UNLESS THE STATUTE SAYS
16 THERE IS OTHER RELIEF THAT WILL REMEDY THE VIOLATION. IT
17 DOESN'T SAY REDUCE THE VIOLATION.

18 **MR. KAUFHOLD:** AND THAT IS THE ENTIRE ISSUE THAT WE
19 HAVE, YOUR HONOR.

20 AND, JUDGE HENDERSON, I THINK THIS GETS TO THE POINT
21 THAT YOU ARE MAKING. YOU CAN'T AUTOMATICALLY ASSUME -- EVEN IF
22 YOU ASSUME PRIMARY CAUSE, YOU CAN'T ASSUME THE ABSENCE OF AN
23 ALTERNATIVE OR THERE WOULD ONLY BE ONE PRONG OF THIS TEST. WE
24 CAN'T CONFLATE THE TWO AND WE DON'T KNOW WHETHER THESE
25 ALTERNATIVES WILL WORK UNTIL WE ADDRESS THEM.

1 **JUDGE KARLTON:** COUNSEL, WE DO KNOW. WE DO KNOW.
2 IT'S NOT LIKE -- YOU COME TO THE CASE NEW. I HAVE BEEN AT IT
3 12 YEARS OR WHATEVER IT IS, GOD KNOWS, AND JUDGE HENDERSON HAS
4 BEEN AT IT YEARS AND YEARS. WE HAVE MADE EVERY ORDER THAT A
5 HUMAN BEING CAN THINK OF, AND HERE WE ARE.

6 MY SPECIAL MASTER TELLS ME -- YOU KNOW, COMMON SENSE.
7 MY SPECIAL MASTER TELLS ME THAT WE ARE IN DANGER OF LOSING ALL
8 THE PROGRESS WE MADE ALL THESE YEARS. WHY? BECAUSE OF
9 OVERCROWDING. I MEAN, THAT'S THE END OF THIS FANTASY WORLD.
10 THERE IS A REAL WORLD OUT THERE.

11 YOU KNOW, ANYWAY, I WANT YOU TO ASSUME, SIR, THAT THE
12 COURT HAS NOT BEEN -- HASN'T BEEN ATTEMPTING EVERY OTHER
13 SOLUTION.

14 **MR. KAUFHOLD:** NOT AT ALL, YOUR HONOR, AND I THINK --
15 I CERTAINLY DON'T MEAN TO UNDERSTATE.

16 I THINK MAYBE THE ACCUSATION WOULD BE THAT WE'RE
17 OVERSTATING THE PROGRESS THAT'S BEEN MADE.

18 BUT COMING TO THE CASE AS SOMEONE NEW, TAKING A LOOK
19 AT THE RECORD AS IT STANDS, IT'S A RECORD OF PROGRESS AT THIS
20 POINT. AND OUR POINT IS, DON'T GO TO WHAT CONGRESS HAS SAID IS
21 THE LAST RESORT. IF THERE ARE -- AS COUNSEL HAS SAID, IF YOU
22 GRANT THE RELIEF THAT THEY HAVE ASKED FOR, WE WILL STILL HAVE A
23 HOST OF PROBLEMS.

24 OUR POINT, YOUR HONOR, IS SIMPLY LET'S ADDRESS THE
25 HOST OF OTHER THINGS FIRST. THAT'S WHAT CONGRESS INTENDED.

1 AND IF YOU BELIEVE THAT THAT'S ALREADY BEEN DONE AS BEST AS
2 POSSIBLY CAN, THEN I'M VERY PREPARED TO MOVE ON TO THE SECOND
3 POINT.

4 **JUDGE KARLTON:** MOVE ON TO THE SECOND POINT.

5 **JUDGE REINHARDT:** NOT FOR THAT REASON. NOT FOR THE
6 REASON YOU GAVE, BUT MOVE ON.

7 **MR. KAUFHOLD:** THAT'S MR. SPECTER, COUNSEL'S COMMENT,
8 THAT WE SHOULD SIMPLY ACCEPT THE 50- -- I BELIEVE IT'S 52,000
9 NUMBER AND THAT HE IS AGNOSTIC ABOUT HOW THAT TAKES PLACE.

10 **JUDGE REINHARDT:** I HAVE TO POINT OUT TO HIM HE IS
11 NOT AGNOSTIC IN WHAT HE SAYS.

12 **JUDGE KARLTON:** HE PRETENDS TO BE AGNOSTIC.

13 **JUDGE REINHARDT:** HE WANTS TO PARTICIPATE IN THE
14 SOLUTION, SO HE MUST HAVE SOME VIEW.

15 **MR. KAUFHOLD:** I WOULD THINK SO, TOO, YOUR HONORS.
16 AND IT'S CRITICALLY IMPORTANT TO OUR CLIENTS THAT TO THE EXTENT
17 THAT ANY RELIEF IS ORDERED, THAT IT BE NARROWLY TAILORED; THAT
18 IT BE VERY, VERY TARGETED, PREFERABLY THAT IT BE TARGETED TO
19 THE POINT OF CLASS MEMBERS AND NOT AT THE POPULATION AS A
20 WHOLE.

21 AND I THINK THAT THAT'S ANOTHER THING THAT THE
22 LITIGATION REFORM ACT REQUIRES, IS THAT WHATEVER RELIEF IS
23 CRAFTED BE VERY CAREFULLY TARGETED AT THE AFFECTED INDIVIDUALS
24 AND NOT WITH THE HOPE THAT IF WE TAKE 50,000 PEOPLE OUT OF THE
25 SYSTEM, THAT SOMEHOW IT WILL ALL IMPROVE.

1 **JUDGE REINHARDT:** HOW DO YOU TALK ABOUT THE AFFECTED
2 INDIVIDUALS? IF THE CASE ONLY WENT ON FOR EIGHT YEARS, FIFTEEN
3 YEARS, THOSE INDIVIDUAL CHANGE. THE PEOPLE WHO WERE ILL EIGHT
4 YEARS AGO HAVE EITHER DIED, BEEN RELEASED FROM PRISONS, A LOT
5 OF THEM. THERE'S ANOTHER GROUP WHO ARE NOW IN. THEY ARE NOT
6 INDIVIDUALS ANY MORE. THERE ARE MORE PEOPLE BECOMING ILL IN
7 THE PRISONS BECAUSE OF LACK OF CARE.

8 HOW DO YOU TERM THE CLASS? ISN'T IT A CONSTANTLY
9 CHANGING GROUP OF PEOPLE?

10 **MR. KAUFHOLD:** I THINK IT IS A CONSTANTLY CHANGING
11 GROUP, YOUR HONOR, BUT IT'S NOT NECESSARILY A FAST-SHIFTING
12 IMMEDIATELY CHANGING GROUP. OUR POINT IS --

13 **JUDGE REINHARDT:** THIS CASE ISN'T BEING RESOLVED
14 RAPIDLY. IT'S BEING RESOLVED ON AN AVERAGE OF 10 YEARS.

15 **MR. KAUFHOLD:** THAT'S TRUE, YOUR HONOR, AND SOME
16 FLOW -- I BELIEVE THAT'S A TERM THAT PLAINTIFFS' COUNSEL
17 USED -- IN AND OUT OF THE CLASS OVER THAT PERIOD OF TIME IS TO
18 BE EXPECTED.

19 OUR ONLY POINT IS THAT THE RELIEF THAT IS ORDERED
20 SHOULD BE TARGETED DIRECTLY AT THE AFFECTED INDIVIDUALS AND
21 THAT WAS THE POINT THAT I WANTED TO MAKE, YOUR HONOR.

22 **JUDGE HENDERSON:** EFFECT ON THE COUNTIES, IS THAT
23 WHAT YOU ARE SAYING?

24 **MR. KAUFHOLD:** WELL, I THINK IT WOULD BE GREAT IF
25 EVERYTHING COULD BE SOLVED WITHOUT IMPACTING THE COUNTIES, BUT,

1 FRANKLY, WE ARE HERE TALKING ABOUT TWO PLAINTIFF CLASSES, NOT
2 ABOUT THE COUNTIES.

3 JUDGE REINHARDT: THE POINT, AS I UNDERSTAND THIS
4 CASE -- SOMEBODY ELSE MENTIONED THIS, TOO. THE FACT THAT THE
5 PRISON IS OVERCROWDED -- ASSUME THAT THIS IS THE SOLUTION; THAT
6 THE OVERCROWDING HAS AN EFFECT ON PEOPLE IN THE PRISON WHO THEN
7 -- WHO HAVE HEALTH PROBLEMS.

8 NOW, IN ORDER TO AVOID THE HEALTH PROBLEMS WHICH ARE
9 CAUSED BY OVERCROWDING, YOU HAVE TO REDUCE THE OVERCROWDING.
10 AND THAT'S WHAT AFFECTS THE CLASS OF PEOPLE WHO BECOME ILL OR
11 ARE ILL.

12 MR. KAUFHOLD: I THINK THERE ARE TWO DIFFERENT THINGS
13 THERE, YOUR HONOR, AND IT DEPENDS.

14 IF YOU BELIEVE IT IS OVERCROWDING THAT IS THE DIRECT
15 CAUSE THAT'S MAKING PEOPLE SICK, I UNDERSTAND YOUR POINT.

16 IF THE POINT IS PEOPLE DEVELOP CHRONIC MEDICAL
17 PROBLEMS AND THEY DON'T GET SEEN QUICKLY ENOUGH OR THERE AREN'T
18 ENOUGH SPECIALISTS, THERE ARE DIFFERENT POSSIBILITIES. AND I
19 THINK IT DEPENDS ON WHETHER YOU BELIEVE THAT THE CONDITION
20 THEMSELVES ARE BEING CAUSED BY OVERCROWDING OR WHETHER YOU
21 BELIEVE OVERCROWDING IS PREVENTING PEOPLE FROM RECEIVING CARE
22 FOR THINGS THAT COULD --

23 JUDGE KARLTON: MAYBE BOTH.

24 MR. KAUFHOLD: IT COULD BE BOTH.

25 JUDGE REINHARDT: I DON'T SEE HOW YOU HAVE THIS

1 NARROW TAILORED LIMITED TO THE SPECIFIC PEOPLE.

2 I MEAN, I WOULD BE HAPPY TO CONSIDER THAT KIND OF
3 PROPOSAL IF I ONLY UNDERSTOOD HOW YOU CAN SEGREGATE THAT CLASS,
4 BECAUSE THE THEORY IS IT'S THE OVERCROWDING THAT'S CAUSING THE
5 FAILURE TO TREAT HEALTH PROBLEMS PROPERLY.

6 SO WHAT DO YOU DO BY SEGREGATING THE CLASS? HOW DOES
7 THAT AFFECT YOUR RESOLUTION OF THE PROBLEM IF IT'S CAUSED BY
8 OVERCROWDING?

9 MR. KAUFHOLD: I GUESS IT DEPENDS, YOUR HONOR, ON THE
10 EXTENT TO WHICH IT REALLY IS CAUSED BY OVERCROWDING, BUT ONE
11 THING WOULD BE TO DO SOME SORT OF SEGREGATION ALONG THE LINES
12 THAT COUNSEL MITCHELL SUGGESTED, TO HAVE SPECIALIZED FACILITIES
13 OF THE SORT THAT I BELIEVE JUDGE KARLTON WAS SPEAKING OF
14 EARLIER.

15 JUDGE KARLTON: YOU KNOW WHAT'S HAPPENED. THE
16 RECEIVER ON BEHALF OF BOTH THE PLATA CLASS AND THE COLEMAN
17 CLASS WANTS TO BUILD 10,000 BEDS. THE STATE SAID, FINE, WE
18 WILL GO RIGHT ALONG WITH THAT. AND IN THE MIDDLE OF THE TRIAL
19 THEY SAID, WE ARE NOT GOING TO DO THAT. AND NOW THEY SAY,
20 LET'S GET RID OF THE RECEIVER.

21 IT'S NOT LIKE -- IT'S NOT LIKE THESE SUGGESTIONS HAVE
22 NOT BEEN RAISED AND, INDEED, AT SOME POINT IDENTIFIED -- I
23 MEAN, ADOPTED. WE ARE FACED WITH THE FACT THAT THE STATE HAS
24 NOW INDICATED THEY ARE UNWILLING TO DO THAT.

25 MR. KAUFHOLD: AND I THINK THE ANSWER, YOUR HONOR, WE

1 ARE GOING TO HAVE SHORTLY FROM THE NINTH CIRCUIT. THE ONLY
2 THING THAT I WOULD ADD IS THAT WE ARE NOT A MONOLITHIC GROUP
3 NECESSARILY AND PEOPLE CAN HAVE DIFFERING OPINIONS ON THAT.

4 WE BELIEVE THAT BOTH THE RECEIVER AND SPECIAL MASTER
5 HAVE MADE A LOT OF PROGRESS. WE HAD CITY LEGISLATORS COME IN
6 AND TESTIFY THAT THAT WAS THEIR BELIEF.

7 SO I WOULD NOT WRITE OFF THAT POSSIBILITY, AND I
8 CERTAINLY WOULDN'T TRY TO FORETELL WHAT THE COURT WILL DECIDE
9 WITH RESPECT TO THE CONTINUANCE OF THE RECEIVER'S WORK.

10 **JUDGE KARLTON:** I UNDERSTAND WHAT YOU ARE SAYING. WE
11 HAVE GOT TO DECIDE -- WELL, ALL RIGHT.

12 **MR. KAUFHOLD:** MY ONLY POINT IS, YOUR HONOR, THERE IS
13 ADDITIONAL TIME TO SEE HOW THAT TURNS OUT, AND IT'S NOT LIKE
14 EIGHT JOINDERS DROPPED IN THE MAIL TO THAT MOTION. THAT'S WHAT
15 I'M SAYING.

16 **JUDGE REINHARDT:** AT SOME POINT I GUESS IF THE CASE
17 GOES ON LONG ENOUGH, YOU JUST HAVE TO DECIDE WHAT TO DO AND YOU
18 HAVE TO LOOK AT THE CURRENT CIRCUMSTANCES AT SOME POINT.

19 WE CAN'T SAY, WELL, WITHIN THE NEXT FIVE TO TEN YEARS
20 THE STATE WILL BUILD PRISONS BECAUSE WE ARE GOING TO ELECT A
21 LEADER FOR THEM.

22 AN ASIDE, BARAK OBAMA ISN'T AVAILABLE. SO WHERE IS
23 THIS NEXT MESSIAH GOING TO COME FROM? I KNOW SOME PEOPLE MAY
24 HAVE AN IDEA THAT THEY KNOW WHO HE IS, BUT WE'VE SEEN HIM
25 BEFORE.

1 SO DON'T KNOW WHO IT'S GOING TO BE. THERE ARE A LOT
2 OF PEOPLE WHO ARE INTERESTED, WHETHER THAT PRISON IS GOING TO
3 BE A LEADER OR NOT. AND I DON'T THINK WE CAN WAIT FOR THAT.

4 AND IF HE IS A LEADER, HOW IS HE GOING TO GET TO
5 LEGISLATURE ON BEHALF OF YOUR CLIENTS? THIS IS A DIFFICULT
6 SYSTEM, AND YOU WAIT AWHILE.

7 I THINK JUDGE KARLTON AND JUDGE HENDERSON WERE --
8 HAVE BEEN QUITE PATIENT AND REASONABLE AND THEN AT SOME POINT
9 YOU SAY, WELL, WE CAN'T SPECULATE AS TO WHETHER THE STATE IS
10 GOING TO BECOME REASONABLE. WHEN ARE THEY GOING TO ALLOW THE
11 LEGISLATURE TO KISS AND MAKE UP AND THROW THEIR ARMS AROUND
12 EACH OTHER AND MARCH OFF AND SAY MORE MONEY FOR PRISON?

13 **JUDGE KARLTON:** AND THE TRUTH IS, YOU KNOW -- I
14 MEAN, PART OF THE PROBLEM IS WE NOW ARE FACED WITH THIS
15 ECONOMIC CRISIS. AND I DON'T SEE ANYTHING SUGGESTING THAT
16 WE'RE GOING TO HAVE TONS OF MONEY TO SPEND ON THESE PROGRAMS
17 THAT THE COUNTIES URGE UPON US.

18 **MR. KAUFHOLD:** IT'S A VERY DIFFICULT PROBLEM.

19 THE ONE THING I JUST WOULD ADD, YOUR HONOR, IS WE
20 ACTUALLY DID TRY TO COME TOGETHER TWO YEARS AGO AND IT WORKED
21 AS FAR AS IT WENT UNTIL IT DIDN'T.

22 AND I CAN'T PROMISE YOU WHEN THAT EFFORT WILL BE
23 REINVIGORATED, OTHER THAN TO SAY THAT AS RECENTLY AS DECEMBER,
24 MY CLIENTS AND MANY OTHERS WERE IN THE TRENCHES TRYING AND
25 ACTUALLY PASSED WHAT IS -- THE TESTIMONY, THE SWORN TESTIMONY

1 BEFORE THIS COURT WAS THAT WAS THE LAST STEP TO REAL PROGRESS.
2 AND IT'S BEEN THWARTED, BUT IT DOESN'T MEAN THAT IT'S NOT BEING
3 ACTIVELY PURSUED IN GOOD FAITH.

4 **JUDGE KARLTON:** MAY I ASK YOU A QUESTION? AND IF YOU
5 HAVEN'T RESEARCHED IT, THAT'S PERFECTLY UNDERSTANDABLE.

6 DO YOU AGREE WITH THE PLAINTIFFS OR DEFENDANTS THAT
7 THIS COURT HAS THE POWER TO ORDER THE STATE TO SHARE ANY
8 SAVINGS THAT WOULD COME FROM A PRISONER RELEASE?

9 **MR. KAUFHOLD:** I HAVEN'T BRIEFED THAT, YOUR, HONOR
10 BUT MY PRELIMINARY THOUGHT WOULD BE IT DOESN'T SEEM LIKE THERE
11 ARE LIMITATIONS WITHIN THE PLRA OTHER THAN THOSE SPECIFICALLY
12 STATED, WHICH WERE THE TAXATION AND THE BUILDING OF PRISONS.

13 **JUDGE KARLTON:** IT'S NOT A STATUTORY QUESTION. IT'S
14 A CONSTITUTIONAL QUESTION.

15 **JUDGE REINHARDT:** I WOULD BE INTERESTED IN YOUR VIEW
16 WHEN YOU DO RESEARCH IT. YOU COME FROM A PRETTY GOOD FIRM.
17 YOU COULD PUT SOME GOOD PEOPLE TO WORK ON. I'M NOT AS SURE AS
18 JUDGE KARLTON THAT THERE IS A PROBLEM.

19 **MR. KAUFHOLD:** WE WOULD BE GLAD TO DO THAT, YOUR
20 HONOR.

21 **JUDGE REINHARDT:** WELL, I THINK WE MAY SEND YOU ALL
22 AN ORDER BECAUSE IT'S AN IMPORTANT PART FOR US TO KNOW WHAT WE
23 CAN DO.

24 AND WE HAVE HAD -- THE FEDERAL COURTS HAVE HAD
25 PROBLEMS WITH STATES BEFORE THAT RESISTED ALL KINDS OF FEDERAL

1 ORDERS. THEY ISSUED ORDERS THAT MADE THE STATES INTEGRATE THE
2 SCHOOLS EVEN THOUGH IT COST THEM MONEY. THERE ARE LOTS OF
3 THINGS THAT FEDERAL COURTS HAVE ORDERED STATES TO DO WHICH
4 REQUIRED THE EXPENDITURE OF FUNDS.

5 SO I'M NOT SO SURE WE HAVE A CONSTITUTIONAL
6 LIMITATION. AND OUR AUTHORITY TO SEE THE PROGRAMS WORK,
7 EVERYTHING COSTS MONEY. AND IF WE COULDN'T ORDER THE
8 EXPENDITURES OF FUNDS, FEDERAL COURTS COULDN'T TELL THE STATES
9 ANYTHING.

10 SO I WOULD REALLY BE INTERESTED IN YOUR VIEW. WE'LL
11 TALK ABOUT GETTING AN ORDER TO THE PARTIES TO GIVE US THEIR
12 VIEWS. I KNOW YOU'VE ALL GIVEN US PRELIMINARY VIEWS.

13 AND I APPRECIATE MR. MELLO CALLING OUR ATTENTION TO A
14 PARTICULAR CASE, BUT THAT DOESN'T NECESSARILY ANSWER THE
15 QUESTION.

16 SO WE WILL LET YOU LET YOU KNOW, BUT I THINK -- IT'S
17 CERTAINLY A GOOD QUESTION IN THIS CASE AS TO WHAT WE COULD DO
18 AND IT CERTAINLY WOULD BE A LOT NICER TO BE ABLE TO HAVE THE
19 COUNTIES HAVE SOME PROGRAMS TO TAKE OVER PART OF THE STATE'S
20 PROBLEM. SO YOU'LL PROBABLY HEAR FROM US ABOUT THAT, AND DO A
21 GOOD JOB.

22 **MR. KAUFHOLD:** THANK YOU FOR LETTING US PARTICIPATE,
23 YOUR HONORS.

24 **JUDGE REINHARDT:** THANK YOU. WE HAVE ENJOYED HAVING
25 YOU HERE. AND THAT TAKES CARE OF IT FOR THIS AFTERNOON.

1 TOMORROW MORNING WE WILL HAVE THE PLAINTIFFS' REBUTTAL.
2 (WHEREUPON AT 5:08 P.M. FURTHER PROCEEDINGS
3 IN THE ABOVE-ENTITLED CAUSE WAS ADJOURNED
4 UNTIL WEDNESDAY, FEBRUARY 3, 2009 AT 10:00 A.M.)
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CERTIFICATE OF REPORTER

I, DEBRA L. PAS, OFFICIAL REPORTER FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN C 01-1351 MARCIANO PLATA VS ARNOLD SCHWARZENEGGER AND S-90-0520 RALPH COLEMAN VS ARNOLD SCHWARZENEGGER, WERE REPORTED BY ME, A CERTIFIED SHORTHAND REPORTER, AND WERE THEREAFTER TRANSCRIBED UNDER MY DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY ME AT THE TIME OF FILING.

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/S/ DEBRA L. PAS

DEBRA L. PAS, CSR 11916, CRR, RMR, RPR

TUESDAY, FEBRUARY 3, 2009

VOLUME 16

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UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES PURSUANT
TO SECTION 2284, TITLE 28 UNITED STATES CODE

RALPH COLEMAN, ET AL,)

PLAINTIFFS,)

VS.)

ARNOLD SCHWARZENEGGER, ET AL,)

DEFENDANTS.)

NO. CIV S-90-0520 LKK JFM

THREE-JUDGE COURT

MARCIANO PLATA, ET AL,)

PLAINTIFFS,)

VS.)

ARNOLD SCHWARZENEGGER, ET AL,)

DEFENDANTS.)

NO. C 01-1351 TEH

TRANSCRIPT OF PROCEEDINGS

SAN FRANCISCO, CALIFORNIA
FEBRUARY 4, 2009

(APPEARANCES ON FOLLOWING PAGE)

REPORTED BY: DEBRA L. PAS, CSR 11916, CRR, RMR, RPR

OFFICIAL REPORTER - US DISTRICT COURT

COMPUTERIZED TRANSCRIPTION BY ECLIPSE

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- - - -

P R O C E E D I N G S

FEBRUARY 3, 2009

10:03 A.M.

JUDGE REINHARDT: GOOD MORNING AGAIN, EVERYBODY. WE ARE HERE FOR THE REMAINDER OF THE ORAL ARGUMENTS. COUNSEL.

REBUTTAL ARGUMENT

MR. BIEN: GOOD MORNING, YOUR HONORS. WE WILL DIVIDE UP THE REBUTTAL AS WE DID BEFORE. MR. SPECTER WILL ADDRESS THE PUBLIC SAFETY ISSUES.

JUDGE KARLTON: THE WHAT ISSUES?

MR. BIEN: THE PUBLIC SAFETY ISSUES. I WILL ADDRESS THEM ONLY TO THE EXTENT -- AN IMPORTANT ISSUE WHICH I WANT TO ADDRESS IS THE ISSUE OF THE RELEASE OF THE MENTALLY ILL INTO THE COMMUNITIES, WHICH HAS BEEN A THEME BOTH BY THE DEFENDANTS AND INTERVENORS, THAT SOMEHOW -- SOMEHOW IT IS BETTER FOR THE MENTALLY ILL -- FOR THE PRISONERS TO REMAIN IN PRISON AND REMAIN IN THE CONDITIONS THEY ARE IN RATHER THAN GOING INTO THE COMMUNITY. AND, YOU KNOW, THE EVIDENCE IN THIS RECORD IS TO THE CONTRARY AND THE PRISONS REMAINING PATHOGENIC FOR THE MENTALLY ILL.

THERE ARE ENVIRONMENTS WHERE MENTAL ILLNESS IS BEING EXACERBATED. THE DEMAND FOR MENTAL ILLNESS IS UP. EXPERTS TESTIFIED THAT PRISONERS WOULD DO BETTER EVEN WITH NO RESOURCES BEING RELEASED INTO THE COMMUNITY. THAT TESTIMONY IS IN OUR

1 FINDINGS.

2 DR. GILLIGAN -- MISS TILLMAN SAID THAT DR. GILLIGAN,
3 OUR EXPERT, SAID A RELEASE ORDER MUST BE DONE PROPERLY TO BE
4 EFFECTIVE. WHAT HE SAID WAS, I QUOTE:

5 "I THINK THE STATUS QUO IS MORE DANGEROUS THAN
6 RELEASING PEOPLE."

7 MISS TILLMAN MADE A REFERENCE THAT WE WERE DOING
8 DEINSTITUTIONALIZATION BY ASKING FOR A RELEASE ORDER HERE,
9 IMPLYING THAT SOMEHOW THE PROCESS OF -- THAT TO DEAL WITH THESE
10 HORRIFIC CONSTITUTIONAL VIOLATIONS IN THE PRISONS, WHICH IS
11 ACTUALLY, SOME MIGHT SAY, A PRODUCT OF THE
12 DEINSTITUTIONALIZATION OF THE STATE HOSPITALS A LONG, LONG TIME
13 AGO, SOMEHOW THIS IS EQUIVALENT.

14 IT IS NOT IN ANY WAY, SHAPE OR FORM. THE EVIDENCE IS
15 CLEAR AND WE THINK UNDISPUTED THAT THE PRISONS ARE DANGEROUS
16 AND HARMFUL RIGHT NOW, TODAY, FOR THE MENTALLY ILL.

17 AND THERE IS AN ABANDONED WITNESS HERE THAT I THINK
18 WE NEED TO RECALL. DR. IRA PACKER, THE SINGLE MENTAL HEALTH
19 EXPERT THAT THE STATE RETAINED. HE IS NOT MENTIONED HERE. HE
20 IS NOT MENTIONED IN DEFENDANTS' FINDINGS EXCEPT FOR ONE PASSING
21 REFERENCE. AND THAT IS BECAUSE HE TESTIFIED HONESTLY AND
22 TRUTHFULLY IN A MANNER THAT SUPPORTED THE PLAINTIFFS' CASE IN
23 ALMOST EVERY STAGE.

24 HE TESTIFIED THAT THE CHURNING OF MENTALLY ILL
25 PAROLEES IS DANGEROUS AND MUST BE STOPPED. HE TESTIFIED THAT

1 THE RECEPTION CENTERS ARE UNCONSTITUTIONAL, AND THAT
2 OVERCROWDING IS THE PRIMARY CAUSE OF THAT PROBLEM.

3 THAT IS WHY HE HAS BEEN ABANDONED, BUT HIS TESTIMONY
4 REMAINS IN THIS RECORD. IT IS COMPLETELY CONSISTENT WITH THE
5 TESTIMONY OF OUR EXPERTS.

6 HE TESTIFIED THE WAY THAT THIS PROBLEM SHOULD BE
7 FIXED IS THE WAY THAT HE ADVOCATED AND PRACTICED IN
8 MASSACHUSETTS, WHICH WAS TO DIVERT MENTALLY ILL PRISONERS FROM
9 PRISON WHO DON'T NEED TO GO TO PRISON.

10 THE TESTIMONY IN THIS RECORD IS THAT WE ARE SENDING
11 THOUSANDS OF PAROLEES TO PRISON AS A RESULT OF A FAILURE OF THE
12 COMMUNITY SYSTEM AND THE PAROLE SYSTEM TO PROVIDE MENTAL HEALTH
13 CARE. THEY ARE DOING WORSE AS A RESULT OF THAT.

14 THIS CHURNING MUST BE STOPPED. IT CAN BE STOPPED
15 NOW. THAT IS WHAT THE RECORD IS HERE. AND THE IDEA THAT
16 PEOPLE ARE BETTER OFF TO REMAIN IN THESE ENVIRONMENTS JUST
17 CANNOT BE COUNTENANCED.

18 THERE'S STILL ARGUMENTS MADE THAT THE COURT SHOULD
19 JUST RELY ON OUR ONGOING PROCESSES IN THE COLEMAN AND PLATA
20 CASES AND THAT WE JUST NEED TO WAIT A LITTLE BIT LONGER AND
21 THINGS ARE GOING TO BE FINE.

22 I JUST THINK IT NEEDS TO BE SAID THAT THAT ARGUMENT,
23 JUST LIKE THE WITNESSES WHO TESTIFIED TO THAT AT TRIAL, CINDY
24 RADAUSKY, DR. PACKER, WERE BLOWN OUT OF THE WATER WHEN THEY
25 WERE INFORMED THAT THEIR CLIENTS HAD DECIDED AGAINST THE REMEDY

1 THAT WAS THE FOUNDATION OF THEIR OPINION, DECIDED AGAINST
2 WORKING WITH THE RECEIVER, DECIDED AGAINST BUILDING THE COLEMAN
3 MENTAL HEALTH BEDS WITH THE RECEIVER.

4 THAT THAT ARGUMENT CAN BE MADE AGAIN TODAY, AS IF
5 LIFE GOES ON, THAT WE ARE -- THE REMEDY IS PROCEEDING, IT JUST
6 MUST BE ACKNOWLEDGED.

7 THE REALITY IS BEFORE THIS COURT. THE REALITY IS
8 THAT WE HAVE LOST YEARS AND YEARS IN THIS PROCESS BY THE
9 STATE'S DECISION TO CHANGE ITS MIND ABOUT THE NEED OF PROCESS.

10 IT WAS PLAINTIFFS' POSITION FROM THE BEGINNING THAT
11 WAITING FOR THE RECEIVER AND WAITING FOR AB900 WAS NOT A
12 DEFENSE TO THIS CASE, BUT IT WAS A DEFENSE THAT WAS RAISED BY
13 THE INTERVENORS AND THE DEFENDANTS. WE ARGUED THAT IT WAS TOO
14 LONG AND IT WASN'T GOING TO WORK BECAUSE OF OVERCROWDING
15 ANYWAY. BUT TO COME HERE TODAY AND SAY THAT THIS IS STILL A
16 VIABLE DEFENSE IS JUST RIDICULOUS.

17 THIS COURT ASKED DEFENDANT'S INTERVENORS AT THE LAST
18 DAY OF TRIAL TO PUT FORWARD THEIR OWN REMEDIAL PROPOSALS, TO
19 COME FORWARD WITH SOME NUMBER DIFFERENT THAN 52,000 IN TWO
20 YEARS. NOTHING HAPPENED. NO ONE PUT ON ANY EVIDENCE. NO ONE
21 OFFERED ANY ALTERNATIVES.

22 YESTERDAY, WE HEARD -- WHEN THIS COURT ASKED PEOPLE,
23 WE HEARD FROM MR. MITCHELL, THE D.A.'S, AN IDEA THAT SOMEHOW WE
24 SHOULD IDENTIFY THE COLEMAN AND PLATA CLASS MEMBERS AND BUILD
25 SOME -- I DON'T REALLY UNDERSTAND WHAT HE WAS SAYING.

1 I MEAN, IS HE SAYING IDENTIFY THEM AND MOVE THEM
2 SOMEWHERE AND PROVIDE CARE AND HAVE A CAP? YOU KNOW, IT'S NOT
3 BASED ON EVIDENCE. IT'S NOT BASED ON REALITY. THERE IS NO
4 ALTERNATIVE THAT'S BEEN OFFERED BY THE INTERVENORS OR THE
5 DEFENDANTS.

6 THE IDEA THAT PLAINTIFFS NEVER MADE A CONNECTION
7 BETWEEN DESIGN CAPACITY AND THE DELIVERY OF HEALTHCARE, WHICH
8 WAS MADE BY DEFENDANTS IN THEIR ARGUMENT, AGAIN, IS CONTRARY TO
9 THE EVIDENCE IN THE RECORD.

10 I POINT THE COURT TO OUR FINDINGS AT PAGE 172.
11 MR. DEZEMBER TESTIFIED THAT THERE WAS A DIRECT CONNECTION
12 BETWEEN THE CAPACITY OF THE PRISONS AND DELIVERY OF HEALTHCARE.

13 DR. HANEY, DR. STEWART AND JEANNE WOODFORD, WAYNE
14 SCOTT, MR. LEHMAN ALL TESTIFIED TO THE RATHER OBVIOUS FACT, AND
15 I DON'T SEE ANY TESTIMONY OR EXPERTS THAT SAID TO THE CONTRARY.

16 OBVIOUSLY, ONE NEEDS APPROPRIATE OFFICE AND TREATMENT
17 SPACE, SPECIALIZED BEDS TO DELIVER HEALTHCARE.

18 IN ADDITION THE CONDITIONS, THE HORRIFIC CROWDED
19 CONDITIONS, NOT ONLY THE BAD BEDS, BUT THE CROWDED AD SEG
20 UNITS, THE CROWDED CELL UNITS, THE DOUBLE CELLING WITHOUT
21 EXERCISE, THE LONG LOCKDOWNS, ALL THOSE CONDITIONS PRECLUDE THE
22 DELIVERY OF HEALTHCARE. THAT IS THE DIRECT CONNECTION BETWEEN
23 THE CAPACITY AND HEALTHCARE.

24 **JUDGE KARLTON:** MR. BIEN, LET ME GO BACK TO THE
25 130 PERCENT, 135 PERCENT, WHATEVER, PROBLEM BECAUSE I AM

1 FLUMMOXED BY IT. I DON'T KNOW WHERE WE ARE.

2 EVEN IF WE TALK ABOUT 130 PERCENT AS AN OVERALL
3 AVERAGE, APPARENTLY THE PLAINTIFFS IN THEIR PROPOSED FINDINGS
4 OF FACT AND CONCLUSIONS OF LAW ARGUE THAT THERE HAS TO BE A
5 REDUCED NUMBER OF CAPACITY FOR THOSE WHO ARE BEING TREATED IN
6 MENTAL HEALTH BEDS, AND I ASSUME PHYSICAL BEDS AS WELL. SO
7 THAT MEANS THERE IS MORE THAN 130 PERCENT SOMEWHERE ELSE.

8 IN ADDITION, WE HAVE HEARD TESTIMONY, THAT I TAKE IT
9 NOBODY DISAGREES WITH, THAT THE RECEPTION CENTERS ARE SO
10 OVERCROWDED THAT THEY CANNOT PERFORM THEIR DUTY, WHICH MEANS
11 THAT YOU'VE GOT TO REDUCE THE NUMBER OF PEOPLE THERE. THAT
12 WOULD INDICATE, AGAIN, A GREATER PERCENTAGE THAN 130, 135, 145,
13 TAKE A NUMBER, OUTSIDE.

14 NOW, I THINK THE ARGUMENT THE PLAINTIFFS COULD MAKE,
15 BUT IT'S A FAIRLY CRUEL ONE, IS MR. MELLO'S ARGUMENT. THIS IS
16 NOT A CASE ABOUT OVERCROWDING PER SE. AND THE FACT THAT WE ARE
17 GOING TO DESTROY THE LIVES OF EVERYBODY ELSE IS SOMETHING THIS
18 COURT SHOULDN'T CONSIDER BECAUSE OUR CONSIDERATION IS THE
19 PERSONS IN THE COLEMAN AND PLATA CLASS.

20 WHAT IS YOUR RESPONSE TO ALL OF THAT?

21 **MR. BIEN:** WE THINK THAT THE -- AGAIN, IT MAY NOT
22 HAVE BEEN CLEAR YESTERDAY AND PERHAPS CONFUSED A LITTLE BIT BY
23 MISS TILLMAN'S REFERENCE TO THERE BEING 28,000 TRIPLE C BEDS.
24 THERE ARE NO -- THE TRIPLE C ARE IN -- BY DEFINITION IN THE
25 GENERAL POPULATION. THEY LIVE EVERYWHERE. THEY LIVE IN SHUS,

1 OR AD SEG, OR GENERAL POPULATION, LEVEL I, LEVEL II, LEVEL III.

2 THERE ARE NO SPECIALIZED BEDS AND WE ARE NOT
3 SUGGESTING THERE SHOULD BE SPECIALIZED BEDS FOR TRIPLE C'S.
4 SO WE ARE TALKING 100 PERCENT CAPACITY ONLY FOR DEDICATED
5 SPECIALIZED MENTAL HEALTH PROGRAMS.

6 SO THAT'S NOT GOING TO HAVE THIS TREMENDOUS IMPACT
7 BECAUSE WE ARE TALKING ABOUT, AGAIN, THE EOP. WE NEED -- RIGHT
8 NOW WE NEED 5,000 OF THOSE. WE HAVE 4,000, BUT WITH A
9 POPULATION REDUCTION THAT WE ARE SUGGESTING, WE'RE NOT GOING TO
10 NEED AS MANY EOP BEDS. SO WE DON'T THINK IT'S GOING TO HAVE
11 THAT IMPACT ON ALL THE REST OF THE PROGRAMS.

12 THE RECEPTION CENTERS ARE -- SOME OF THEM ARE
13 OPERATING AT 300 PERCENT TODAY. 300 PERCENT. BUT WHEN WE
14 LOOKED AT THE WHOLE SYSTEM, WHEN OUR EXPERTS LOOKED AT THE
15 WHOLE SYSTEM AND LOOKED AT THE EVIDENCE THAT WE SAW, THIS IS
16 THE BEST THAT THEY COULD DO.

17 AND IT IS NOT A PERFECT NUMBER, BUT WE THINK IT IS A
18 NUMBER WHERE HEALTHCARE CAN BE DELIVERED IN A CONSTITUTIONAL
19 MANNER.

20 IS IT GOING TO BE -- IT'S NOT GOING TO BE LUXURIOUS.
21 IT'S NOT GOING TO BE COMFORTABLE. THERE ARE STILL GOING TO BE
22 -- I AGREE WITH YOUR HONOR. I'M NOT SURE -- THIS IS NOT GOING
23 TO SOLVE EVERY OVERCROWDING PROBLEM, BUT THIS CASE IS NOT --
24 YOU KNOW, THAT'S NOT WITHIN WHAT WE ARE TRYING TO DO HERE.

25 **JUDGE KARLTON:** IS IT YOUR VIEW, THEN, THAT THE COURT

1 CAN PROCEED TO ISSUE AN ORDER WHICH WILL HAVE -- AND I'M NOT
2 SAYING YOU ARE WRONG. I DON'T KNOW. I MEAN, JUST LIKE SO MUCH
3 ELSE IN THIS CASE.

4 PROCEED TO ISSUE AN ORDER WHICH WILL HAVE A SERIOUS
5 EFFECT UPON OVERCROWDING, AT LEAST BY VIRTUE OF THE FACT THAT
6 WE'VE GOT TO MOVE ALL OF THE PEOPLE OUT OF RECEPTION CENTERS
7 JUST TO ALLOW THEM TO FUNCTION, AND THAT'S ONE OF THE
8 CONSEQUENCES AND WE CAN GO AHEAD AND DO THAT AND NOT WORRY
9 ABOUT IT, CLEARLY NOT WORRY ABOUT IT?

10 MR. BIEN: MAYBE I'M NOT FOLLOWING YOUR QUESTION.
11 THE METHOD WE'RE SUGGESTING IS A GRADUAL REDUCTION OVER TIME.
12 THE 130 PERCENT JUST FOR THE ENTIRE SYSTEM.

13 THE RECEPTION CENTERS WOULD BE RELIEVED THROUGH
14 CHANGES IN PAROLE; THAT SOME OF THE VERY CHANGES THAT THE
15 GOVERNOR HAS SUGGESTED WOULD RELIEVE THAT CONGESTION RATHER
16 RAPIDLY.

17 IN OTHER WORDS, IF YOU CHANGED POLICIES ABOUT WHO'S
18 REVOKED AND HOW THEY ARE REVOKED AND WHAT THEIR TERMS ARE, IF
19 YOU GOT AWAY FROM THIS IDEA OF SENDING PEOPLE TO PRISON FOR
20 THREE MONTHS, CIM HAD 95 PERCENT PAROLE VIOLATORS. I MEAN, SO
21 THAT'S A BIG GROUP OF THAT POPULATION THAT'S CLOGGING THE
22 RECEPTION CENTERS.

23 THAT'S WHAT MR. AUSTIN TESTIFIED TO AND MR. HOFFMAN,
24 TOO. IF YOU CAN CHANGE THAT POLICY, WHICH IS A POLICY, THEN
25 YOU CAN RELIEVE A LOT OF THAT RECEPTION CENTER CROWDING.

1 SO THE 130 PERCENT WE ARE ASKING FOR IS AN OVERALL
2 NUMBER FOR THE WHOLE UNIT, AND THEN IT'S ONLY CERTAIN LIMITED
3 BEDS THAT WOULD BE AT A 95 PERCENT.

4 WE ARE NOT ASKING THAT PEOPLE -- WE ARE NOT ASKING
5 THAT CERTAIN PRISONS BE -- WE DON'T THINK THIS IS GOING TO
6 RESULT IN PARTICULAR PRISONS BEING OVERCROWDED BEYOND THEIR
7 CURRENT LEVELS THAT WE THINK WOULD BE INAPPROPRIATE.

8 JUDGE KARLTON: YOU COULDN'T HAVE THEM OVERCROWDED
9 BEYOND THE PRESENT LEVEL.

10 MR. BIEN: AGAIN, WE THINK THAT -- TO THE EXTENT,
11 JUDGE KARLTON, WE THOUGHT YOU WERE SUGGESTING THAT, THAT YOU
12 CAN PUSH PEOPLE INTO OTHER PRISONS AND MAKE IT CROWDED, THAT'S
13 NOT WHAT WE'RE SUGGESTING.

14 WE'RE SUGGESTING THAT THE POPULATION BE BROUGHT DOWN
15 GRADUALLY; THAT IF IT'S MANAGED IN A RATIONAL WAY, THAT THE
16 POPULATION WILL BE REDUCED ACROSS THE BOARD AND THE 130 PERCENT
17 WILL BE AN EFFECTIVE LEVEL TO DELIVER HEALTHCARE.

18 JUDGE HENDERSON: THE 130 IS AN AVERAGE FOR THE
19 OVERALL SYSTEM, NOT EACH PRISON. IS THAT RIGHT? BECAUSE I
20 IMAGINE FROM THE FACT --

21 MR. BIEN: YES.

22 JUDGE HENDERSON: -- THAT SOME PRISONS MIGHT REQUIRE
23 JUST 100 PERCENT. IS THAT CORRECT?

24 MR. BIEN: THAT'S CORRECT. AND IT WOULDN'T A WHOLE
25 PRISON IN TERMS OF SPECIALIZED MENTAL HEALTH PROGRAMS. THEY

1 ARE RATHER LIMITED. THEN TEND TO BE -- AT LEAST THE WAY
2 THEY'RE OPERATED NOW, THEY'RE SPREAD AROUND AT DIFFERENT
3 PRISONS. AND THEY ARE UNITS, THEY ARE NOT WHOLE PRISONS.

4 BUT THE 130 WOULD BE AN AVERAGE AND TO THAT EXTENT WE
5 THINK IT'S MANAGEABLE.

6 JUDGE HENDERSON, YOU HAD A DISCUSSION THAT I THINK
7 SHOULD BE CLARIFIED WITH MISS KECK ABOUT HOW PAROLE MAKES --
8 DOES PAROLE MAKE CERTAIN DECISIONS ABOUT WHICH COUNTIES GET
9 WHICH INMATES AND HOW WOULD THEY MANAGE THAT, BECAUSE YOU MIGHT
10 SEND TOO MANY TO ONE SMALL COUNTY AND TOO FEW TO ANOTHER
11 COUNTY.

12 AND I JUST WANTED TO CLARIFY THAT AT LEAST IN THE
13 CURRENT SYSTEM THERE IS A STATUTE THAT GOVERNS THAT, AND PEOPLE
14 GO BACK TO THE COUNTY THAT SENDS THEM THERE. SO THE COUNTIES
15 KNOW EXACTLY HOW MANY PEOPLE ARE COMING BACK.

16 IT'S ACTUALLY QUITE DIFFICULT TO GET A WAIVER FOR
17 THAT AND SEND SOMEONE TO A DIFFERENT COUNTY. THERE IS A SMALL
18 AMOUNT OF WAIVERS GRANTED, BUT BASICALLY IT'S PROPORTIONAL TO
19 YOUR RATE OF SENDING PEOPLE TO PRISON. AND THAT WAY -- YOU
20 KNOW, L.A. COUNTY DOES GET A BIG CHUNK OF PEOPLE BACK, BUT
21 THAT'S BECAUSE THEY SEND A BIG CHUNK OF PEOPLE IN.

22 SO THAT'S NOT REALLY -- WE DON'T THINK THAT THERE
23 NEEDS TO BE A CHANGE IN THAT POLICY AND WE HAVEN'T PROPOSED A
24 CHANGE. YOU KNOW, SOMETHING MIGHT BE POSSIBLE. I DON'T THINK
25 THAT'S GOING TO BE A PROBLEM. IN OTHER WORDS, NO ONE IS GOING

1 TO SUDDENLY SEND EXTRA PEOPLE TO AMADOR UNDER ANY PROPOSALS WE
2 MADE.

3 THE IDEA THAT SOMEHOW WE SHOULD WAIT, NOT JUST FOR
4 THE PRISONS TO BE FIXED, BUT WAIT FOR THE COUNTIES AND THE
5 STATE TO FIX ALL THEIR PROBLEMS SO THAT THEY WILL BE
6 WELL-SUITED TO RECEIVE THESE NEW PAROLEES, NEW PEOPLE BACK FROM
7 PRISON, THEY WILL WELCOME THEM AND HAVE THESE GREAT PROGRAMS,
8 WAIT FOR A LEADER, AS JUDGE REINHARDT SUGGESTED, THESE ARE -- I
9 MEAN, WE HAVE TO RECALL WHERE WE ARE.

10 THE INTERVENORS MOVED TO INTERVENE IN THIS CASE.
11 THEY, THEMSELVES, ARE THE LEADERS OF THE DISTRICT ATTORNEYS
12 ASSOCIATION, SHERIFFS, PROBATION OFFICERS. THE COUNTIES HAVE
13 GOTTEN TOGETHER. THE REPUBLICAN LEGISLATORS HAVE GOTTEN
14 TOGETHER. THE GOVERNOR'S HERE. THE HEAD OF CC IS HERE. THIS
15 IS THE LEADERSHIP OF THE CRIMINAL JUSTICE SYSTEM.

16 THEY HAVE KNOWN WHAT'S HAPPENING. THEY HAVE DEALT
17 WITH THE STATUS QUO. THEY ARE MAKING PUBLIC SAFETY DECISIONS
18 EVERY DAY, WHICH THEY ARE TELLING YOU ABOUT, TELLING ALL OF US
19 ABOUT.

20 AND THERE IS NO -- THEY HAVE HAD TIME TO PUT ON THEIR
21 ALTERNATIVE REMEDY. THEY HAVE HAD TIME TO SAY, HERE IS MY
22 PLAN, JUDGE. JUST GIVE US ANOTHER SIX MONTHS. WE PUT THIS IN
23 PLACE. IT'S GOING TO BE READY IN SIX MONTHS.

24 THIS PROCEEDING HAS BEEN GOING FOR TWO YEARS. MORE
25 THAN TWO YEARS. THIS VERY PROCEEDING. THERE IS NO BASIS IN

1 THIS RECORD TO WAIT FOR THEM.

2 IN ADDITION, OUR EVIDENCE IS THAT PUBLIC SAFETY WILL
3 NOT BE HARMED BY A PRISONER RELEASE EVEN WITH NO NEW RESOURCES.
4 IT WILL BE BETTER. IT WILL BE WISER TO DO THE THINGS THAT
5 WE'VE ALL SUGGESTED, THAT THEY HAVE SUGGESTED. IT WOULD BE
6 BETTER PUBLIC POLICY.

7 WE ALL KNOW THAT. THEY KNOW THAT. I DON'T THINK
8 THAT IT'S SOMETHING THAT YOU HAVE CAREFULLY CONSIDERED. YOU
9 CAN WEIGH IT. YOU CAN MAKE FINDINGS ABOUT. AND I THINK THAT'S
10 ALL THAT CAN BE DONE.

11 I WOULD LIKE TO TURN IT OVER TO MR. SPECTER, UNLESS
12 THERE IS OTHER QUESTIONS.

13 **REBUTTAL ARGUMENT**

14 **MR. SPECTER:** GOOD MORNING.

15 **JUDGE REINHARDT:** MR. SPECTER, I HAVE A COUPLE OF
16 QUESTIONS FOR YOU.

17 I WENT THROUGH YOUR FINDINGS OF FACT, BUT DO YOU
18 BREAK DOWN HOW YOU CAN GET TO THE 52,000 THAT YOU PROPOSE THE
19 POPULATION BE REDUCED BY?

20 **MR. SPECTER:** THAT'S IN DR. AUSTIN'S REPORT, I
21 BELIEVE, YOUR HONOR.

22 (DISCUSSION HELD OFF THE RECORD.)

23 **MR. SPECTER:** WHAT DR. AUSTIN TESTIFIED WAS THAT WE
24 CAN REDUCE THE -- NOT "WE." I'M SORRY.

25 THE STATE CAN REDUCE THE POPULATION BY 52,000 USING

1 THE OPTIONS SET FORTH IN HIS REPORT; DIVERSION, PAROLE REFORM,
2 GOOD TIME CREDITS, ET CETERA. AND HE TESTIFIED THAT THAT COULD
3 BE DONE SAFELY.

4 HE CERTAINLY HAS BROKEN IT DOWN FOR US AND COULD
5 BREAK IT DOWN, BUT THAT'S NOT IN THE RECORD.

6 **JUDGE REINHARDT:** YOU KNOW, WE'VE TALKED ABOUT, I
7 THINK, ONE PART OF THAT, WHEN THEY SAY SOME PEOPLE GET RELEASED
8 THREE OR FOUR MONTHS EARLY. AND THERE WE'VE HAD SOME
9 DISCUSSIONS BACK AND FORTH ABOUT WHETHER THAT REALLY MEANS AN
10 INCREASE IN CRIME OR JUST A DIFFERENCE IN TIMING.

11 BUT LOOKING AT IT MORE BROADLY, YOU'RE TALKING ABOUT
12 ACTUALLY REDUCING THE POPULATION BY 50,000 SO THAT OVER PERIODS
13 OF TIME THERE ARE GOING TO BEING 50,000 PEOPLE LESS, FEWER IN
14 PRISON AND 50,000 MORE ON THE STREETS.

15 **MR. SPECTER:** EXACTLY.

16 **JUDGE REINHARDT:** AND YOUR EVIDENCE, YOU BELIEVE,
17 SHOWS THAT THE 52,000 EXTRA PEOPLE WHO ARE GOING TO BE ON THE
18 STREETS GENERALLY FROM NOW ON, ONCE WE GET THERE, THOSE 52,000
19 ARE NOT GOING TO IN ANY WAY BE A DANGER TO THE COMMUNITY.

20 **MR. SPECTER:** NOT QUITE. WE DON'T BELIEVE THAT THE
21 COMMUNITY WILL BE IN ANY MORE DANGER FROM THOSE 52,000 PEOPLE
22 BEING THERE THAN THEY ARE NOW. AND THAT DOESN'T MEAN THAT
23 THEY'RE ALL GOING TO BE --

24 **JUDGE REINHARDT:** THEY'RE NOT GOING TO BE ANY EXTRA
25 DANGER TO THE COMMUNITY.

1 **MR. SPECTER:** YES, YOUR HONOR.

2 **JUDGE KARLTON:** I DIDN'T UNDERSTAND THAT,
3 **MR. SPECTER.**

4 **MR. SPECTER:** WELL, IT'S COUNTERINTUITIVE.

5 **JUDGE KARLTON:** YOU GOT THAT RIGHT.

6 **MR. SPECTER:** YES. AND THAT'S WHY -- THAT'S WHY IT'S
7 BEEN A LITTLE DIFFICULT TO EXPLAIN, BUT THE DATA SHOWS THAT
8 THAT'S WHAT THE FACTS ARE.

9 AND BEFORE I EXPLAIN THAT A LITTLE BETTER, I WANT TO
10 CLARIFY SOMETHING. WHEN YOU SAY "ON THE STREETS," THAT DOESN'T
11 MEAN -- DID YOU SAY "ON THE STREET" OR IS THAT MY WORD? IN THE
12 COMMUNITY.

13 **JUDGE REINHARDT:** NO, I SAID ON THE -- I THINK I DID.

14 **JUDGE HENDERSON:** HE SAID "ON THE STREET."

15 **MR. SPECTER:** HE SAID "ON THE STREET," OKAY.

16 **JUDGE REINHARDT:** AS OPPOSED TO BEING IN PRISON,
17 THEY'RE GOING TO BE, YOU COULD SAY, AT LARGE.

18 **MR. SPECTER:** WELL, NO, YOU CAN'T SAY "AT LARGE"
19 BECAUSE SOME OF THEM WILL BE UNDER PAROLE SUPERVISION. SOME OF
20 THEM MAY BE --

21 **JUDGE REINHARDT:** WELL, THEY'RE STILL OUT AND ABOUT
22 IN THE COMMUNITY.

23 **JUDGE KARLTON:** THE PAROLE AGENT IS NOT GOING TO
24 FOLLOW THEM EVERY DAY. THEY ARE GOING TO COMMIT A CRIME.

25 **MR. SPECTER:** I'M NOT DISPUTING THAT.

1 ALL I'M TRYING TO MAKE CLEAR IS THAT THEY ARE NOT
2 GOING TO BE -- SOME OF THEM COULD BE IN COUNTY JAILS, SOME OF
3 THEM COULD BE ON PROBATION, SOME OF THEM COULD BE ON PAROLE,
4 SOME COULD BE IN HALFWAY HOUSES, WORK FURLOUGH PROGRAMS, DAY
5 REPORTING CENTERS, ALL THESE OTHER ALTERNATIVE TYPES OF
6 INCARCERATION --

7 **JUDGE KARLTON:** MR. SPECTER --

8 **MR. SPECTER:** -- WHICH WE DON'T USE NOW --

9 **JUDGE KARLTON:** MR. SPECTER --

10 **MR. SPECTER:** -- AND WHICH ARE AVAILABLE.

11 **JUDGE KARLTON:** THE COUNTIES HAVE PUT ON VERY SERIOUS
12 EVIDENCE. THEY CAN'T BE IN THE COUNTY JAILS BECAUSE IF THEY
13 ARE IN THE COUNTY JAILS, ALL THAT MEANS IS THE COUNTY PEOPLE
14 ARE OUT ON THE STREET. IT'S NOT LIKE THERE ARE PLACES TO PUT
15 THEM.

16 THERE IS NO MONEY FOR THE DAY CENTERS. THAT GETS
17 BACK TO THE VERY SERIOUS PROBLEM THAT WE HAVE RAISED BEFORE,
18 WHETHER WE CAN ORDER THE STATE TO SHARE.

19 **MR. SPECTER:** AND I WANT TO ADDRESS THAT BEFORE I
20 LEAVE TODAY, BUT TO GET BACK -- AND I PROMISE I WILL.

21 **JUDGE KARLTON:** THAT'S ALL RIGHT.

22 **MR. SPECTER:** BUT TO GET BACK TO YOUR POINT. ALL THE
23 DATA SHOWS THAT WITH THE 50,000 PEOPLE LESS IN PRISON, BUT NOT
24 NECESSARILY NOT SUBJECT TO ALTERNATIVE SANCTIONS, THAT THE
25 CRIME RATE WILL NOT INCREASE. ALL THE DATA, ALL THE

1 UNCONTRADICTED EVIDENCE.

2 NOW, THIS IS A VERY IMPORTANT POINT AND IT LEADS TO A
3 LEGAL POINT, AND THAT'S THE PLRA FOR THE FIRST TIME IN OUR
4 HISTORY EXPRESSLY PROVIDED FOR A REDUCTION IN THE PRISON
5 POPULATION, A SANCTION BY CONGRESS THROUGH WHAT THEY CALL A
6 PRISONER RELEASE ORDER, WHICH REALLY SHOULD BE CALLED A PRISON
7 POPULATION REDUCTION ORDER TO AVOID CONFUSION.

8 BUT MY ARGUMENT IS THAT BY SANCTIONING THAT KIND OF
9 POPULATION REDUCTION MEASURE, CONGRESS KNEW THAT THERE WOULD BE
10 MORE OFFENDERS ON THE STREET, IN THE COMMUNITY, THAN THERE
11 WOULD BE IN CUSTODY.

12 AND WHAT IT DID ABOUT THAT, IT DIDN'T SAY, STOP, YOU
13 CAN'T DO THAT, LIKE THEY HAVE DONE IN SOME OTHER INSTANCES.
14 HABEAS 2254, AS MENTIONED YESTERDAY. THEY SAID, WHAT YOU MUST
15 DO IS CONSIDER BEFORE YOU ISSUE SUCH A RELEASE ORDER THE IMPACT
16 ON THE CRIME, BUT ONCE YOU'VE CONSIDERED IT AND WAIVED THAT
17 FACT, THEN YOU CAN DO IT.

18 AND IT SEEMS TO ME THAT BY SETTING UP THAT KIND OF A
19 STRUCTURE, CONGRESS IMPLICITLY RECOGNIZED THAT THERE WOULD BE
20 MORE OFFENDERS ON THE STREET. AND USING THE INTUITIVE NOTION
21 THAT JUDGE KARLTON JUST MENTIONED, THEY PROBABLY THOUGHT THAT
22 THIS WOULD LEAD TO MORE CRIME.

23 EVEN IN THAT INSTANCE, THEY SAID YOU CAN RELEASE
24 PRISONERS.

25 NOW, WE HAVE PROVED, I THINK, THE BEST CASE SCENARIO

1 YOU CAN -- WELL, YOU COULD HAVE, WHICH IS THAT YOU CAN HAVE A
2 REDUCTION IN THE POPULATION WITHOUT AN IMPACT ON CRIME AND A
3 VERY MINOR, ALMOST DI MINIMUS IMPACT ON THE CRIMINAL JUSTICE
4 SYSTEM BECAUSE OF THE ARREST.

5 NOW, CONGRESS DIDN'T SAY -- TO GET BACK TO YOUR
6 QUESTION -- THAT YOU SHOULD CONSIDER THINGS OTHER THAN ITS
7 IMPACT ON THE CRIMINAL JUSTICE SYSTEM.

8 I'M NOT SAYING YOU CAN'T CONSIDER THAT, BUT CONGRESS
9 MADE YOU CONSIDER ITS IMPACT ON THE CRIMINAL JUSTICE SYSTEM,
10 FOR WHATEVER THAT'S WORTH.

11 **JUDGE KARLTON:** IT'S JUST AS LIKELY THAT THE
12 COUNTIES -- THAT THE CONGRESS DIDN'T CONTEMPLATE THE SITUATION
13 THAT WE HAVE IN CALIFORNIA, WHERE ALL OF THE COUNTIES ARE
14 STRUGGLING JUST TO STAY ALIVE, WHERE THE SEVERE BUDGET CUTS ARE
15 GOING TO IMPACT THEIR ABILITY TO DO ANYTHING.

16 CONGRESS WROTE IN A MUCH MORE FAVORABLE ECONOMIC.
17 YOU KNOW, IT WAS BEFORE THE CRASH.

18 **MR. SPECTER:** YEAH, BUT IT WAS ALSO -- THIS PLRA
19 AROSE FROM AN OVERCROWDING CASE IN THE PHILADELPHIA CITY JAIL,
20 WHERE ALL OF THE SAME PROBLEMS -- YOU KNOW, I MEAN GENERALLY
21 SPEAKING -- ARE THERE AS ARE HERE.

22 AND WHAT OTHER SITUATION CAN THERE BE IF, FOR
23 EXAMPLE, THAT WE HAVE PROVED THAT IT WON'T HAVE ANY IMPACT ON
24 CRIME. IT WILL HAVE A SMALL IMPACT ON THE CRIMINAL JUSTICE
25 SYSTEM. WHAT OTHER CONDITION COULD YOU GET TO? WHAT OTHER

1 EVIDENCE COULD THERE BE TO SATISFY A PRISONER -- THE CONDITIONS
2 THAT CONGRESS --

3 **JUDGE REINHARDT:** IF YOUR EVIDENCE IS PERSUASIVE,
4 THAT RELEASING -- THAT HAVING 50,000 PEOPLE MORE ON THE STREET,
5 IN THE BROAD SENSE --

6 **MR. SPECTER:** AND OVER A TWO-YEAR PERIOD OF TIME.

7 **JUDGE REINHARDT:** IT'S GOING TO BE A PERMANENT THING.

8 **MR. SPECTER:** IT IS. YOU'RE RIGHT. BUT IT'S GOING
9 TO BE A GRADUAL --

10 **JUDGE REINHARDT:** YOU GET THERE GRADUALLY, BUT --

11 **JUDGE KARLTON:** NOT SO GRADUALLY. TWO YEARS AIN'T SO
12 GRADUAL.

13 **JUDGE REINHARDT:** WELL, BUT AFTER THAT TWO YEARS,
14 FROM THEN ON THERE ARE GOING TO BE 50,000 FEWER PEOPLE IN
15 PRISON THAN NORMALLY ARE IN PRISON OR THAT WOULD BE OTHERWISE.

16 **MR. SPECTER:** YES, THAT'S RIGHT.

17 **JUDGE REINHARDT:** AND SO --

18 **MR. SPECTER:** BUT WHY IS THAT DIFFERENT THAN --

19 **JUDGE REINHARDT:** WHY IS THAT BAD?

20 **MR. SPECTER:** NO, NO. THINK ABOUT THE OTHER EVIDENCE
21 IN THE CASE.

22 THERE IS EVIDENCE IN THE CASE, AND MISS WOODFORD
23 TESTIFIED ABOUT THIS, ABOUT THE FACT THAT THE STATE ON ITS OWN
24 INCREASED CREDITS.

25 WHAT DOES INCREASED CREDITS DO? INCREASED CREDITS

1 MEANS THAT PRISONERS ARE GOING TO BE RELEASED EARLY. THAT
2 MEANS THERE ARE GOING TO BE LESS PEOPLE IN PRISON, MORE PEOPLE
3 IN THE COMMUNITY. IT HAPPENS ALL THE TIME.

4 **JUDGE KARLTON:** WE ALL AGREE -- WE ALL AGREE THAT
5 THERE IS NO MAGIC NUMBER, THAT THE TERMS THAT PEOPLE SERVE ARE
6 ESSENTIALLY ARBITRARY. THAT DOESN'T MEAN THAT RELEASING PEOPLE
7 FROM THAT EARLIER ARBITRARY NUMBER IS NOT GOING TO HAVE AN
8 IMPACT.

9 AND THE QUESTION THAT JUDGE REINHARDT KEEPS PRESSING
10 IS: CAN YOU SERIOUSLY ARGUE THAT 50,000 FOLKS WHO HAVE
11 COMMITTED CRIMES, ARE BACK IN THE STREET -- PARTICULARLY GIVEN
12 THE FACT THAT WE HAVEN'T BEEN ABLE TO TREAT THEM WHATSOEVER, SO
13 THAT THEY ARE GOING TO GO OUT IN THE STREET AT LEAST AS BAD OFF
14 AS THEY CAME IN. AND IF WE BELIEVE THE EVIDENCE, AND I DO,
15 GIVEN THE CRIMINOGENIC NATURE OF PRISON, THEY ARE GOING TO BE
16 MUCH MORE INCLINED TO COMMIT VIOLENT CRIMES THAN THEY WERE WHEN
17 THEY WENT IN.

18 **MR. SPECTER:** WELL, I CANNOT TAKE AN INTUITIVE NOTION
19 THAT PEOPLE -- IF YOU TAKE OFFENDERS OUT AND PUT THEM ON THE
20 STREET, WE WILL HAVE A LOT OF CRIME. THAT'S THE DEFENSE. ALL
21 I CAN DO WITH THAT -- I CAN'T MAKE IT INTUITIVE, BUT ALL I CAN
22 DO IS TELL YOU ABOUT WHAT THE EVIDENCE IS.

23 AND THE EVIDENCE IS -- THESE ARE IMPORTANT. THE
24 EVIDENCE IS, IS THAT OF ALL THE CRIMES THAT ARE COMMITTED
25 PAROLEES RESULT IN A VERY FEW.

1 THE OTHER EVIDENCE IS, IS THAT NEARLY ALL THE CRIME
2 THAT'S COMMITTED IS COMMITTED IN THE FIRST YEAR, NOT DURING
3 SUBSEQUENT TIMES.

4 SO, YOU KNOW, IT'S SORT OF --

5 **JUDGE REINHARDT:** FIRST YEAR OF WHAT? FIRST YEAR
6 AFTER THEY GET OUT OF PRISON?

7 **MR. SPECTER:** YES, YOUR HONOR.

8 SO THAT'S WHY, FOR EXAMPLE, IN A MORE RATIONAL PAROLE
9 SYSTEM, AND IT'S BEEN ADVOCATED BY SOME OF THE DEFENDANTS'
10 EMPLOYEES, YOU CONCENTRATE YOUR PAROLE SUPERVISION ON HIGH-RISK
11 PAROLEES DURING THE FIRST SIX MONTHS OR YEAR THAT THEY ARE OUT,
12 BECAUSE THAT'S WHEN THEY ARE TRYING TO GET BACK, REINTEGRATE
13 THEM INTO THE COMMUNITY AND THAT'S WHEN THEY ARE MOST AT RISK.
14 IF YOU CAN GET THEM OVER THAT HUMP, THE EVIDENCE SHOWS THAT
15 THEY ARE LESS LIKELY TO COMMIT CRIMES.

16 NOW, THAT'S AN ALLOCATION PROBLEM THAT THE STATE HAS
17 AND, IN FACT, SOME OF THE STATE ACTORS HAVE BEEN ADVOCATING FOR
18 IT.

19 SORRY, YOUR HONOR.

20 **JUDGE HENDERSON:** STAYING WITH INTUITION, MY
21 INTUITION AS I HEARD THAT WAS MAYBE IT'S THE FIRST YEAR WHEN
22 THE CRIMES ARE COMMITTED BECAUSE THEY ARE BACK IN PRISON THEN.
23 THAT'S INTUITIVELY THE ANSWER TO THAT.

24 **MR. SPECTER:** WELL, 70 PERCENT ARE BACK IN PRISON
25 OVER THREE YEARS. YOU KNOW, IT GOES DOWN AFTER A CERTAIN

1 PERIOD OF TIME. AND CERTAIN PEOPLE ARE MORE AT RISK OF GETTING
2 BACK IN PRISON THAN OTHERS. AND CERTAIN PEOPLE ARE MORE AT
3 RISK OF GETTING BACK IN PRISON FOR VIOLENT CRIME --

4 **JUDGE REINHARDT:** SPEAKING OF INTUITION, IT SEEMS TO
5 ME IT'S OBVIOUS. IF WE LOCK EVERYBODY UP WHO EVER COMMITTED A
6 CRIME FOR LIFE, WE WOULD HAVE LESS CRIME.

7 **MR. SPECTER:** RIGHT.

8 **JUDGE REINHARDT:** AND WHENEVER YOU LET PEOPLE OUT,
9 YOU TAKE THE RISK OF MORE CRIME.

10 SO IF WE GIVE PEOPLE PAROLE AT ALL, THERE'S GOING TO
11 BE MORE CRIME THAN IF WE DON'T. SO --

12 **MR. SPECTER:** THAT'S WHY -- I'M SORRY.

13 **JUDGE REINHARDT:** SO IF WE LET THEM OUT EARLIER,
14 THERE IS GOING TO BE MORE CRIME, EXCEPT THAT THEY MAY HAVE
15 OTHERWISE GONE BACK. BUT IF WE ARE GOING TO REDUCE THE PRISON
16 POPULATION, IT SEEMS TO ME OBVIOUS THERE'S GOING TO BE MORE
17 CRIME THAN IF WE HAD 50,000 MORE PEOPLE IN PRISON.

18 **MR. SPECTER:** WELL --

19 **JUDGE REINHARDT:** BUT --

20 **JUDGE KARLTON:** WELL, MORE CRIME IN THE COMMUNITY,
21 BUT THERE WILL BE MORE CRIME IN PRISON OBVIOUSLY.

22 **JUDGE REINHARDT:** THAT'S RIGHT. WE'LL TRANSFER THE
23 CRIMES FROM THE PRISON TO THE COMMUNITY.

24 BUT THEN IN THE LARGER -- YOUR PRISON POPULATION, THE
25 MORE PEOPLE ARE OUT TO COMMIT CRIMES. NOW, THAT DOESN'T

1 MEAN -- I DON'T KNOW WHAT THAT MEANS AS FAR AS --

2 MR. SPECTER: WELL, WHAT IT MEANS IS, IS THAT PEOPLE
3 DON'T COMMIT CRIMES -- YOU KNOW, SOME OF THE LAW ENFORCEMENT
4 INTERVENORS USE THE TERM "CAREER CRIMINALS." THESE ARE CAREER
5 CRIMINALS THAT ARE IN PRISON. WE ONLY SEND THE CAREER
6 CRIMINALS THAT ARE IN PRISON.

7 AND I THINK ABOUT THAT TERM AND I ASKED ONE PERSON AT
8 HIS DEPOSITION WHAT HE MEANT BY THAT. AND I SAID, DO YOU MEAN
9 LIKE, I GO TO WORK, I HAVE A CAREER. I GO TO WORK AND I COMMIT
10 CRIMES EVERY DAY?

11 YOU KNOW, IT'S BEEN SHOWN, AND I THINK DR. AUSTIN
12 TESTIFIED AND MS. BARLOW MADE REFERENCE TO IT YESTERDAY, PEOPLE
13 DON'T COMMIT CRIMES AT THE SAME RATE THROUGH THEIR WHOLE LIFE.
14 MOST OF THE PEOPLE COMMIT CRIMES BETWEEN 18 AND 25 YEARS OLD.

15 ONCE THEY'RE OLDER THAN 25, THE CRIME RATE GOES DOWN.
16 CERTAIN PEOPLE ARE MORE AT RISK OF COMMITTING CRIMES THAN
17 OTHERS.

18 WE ARE NOT SAYING -- THIS IS REALLY IMPORTANT -- THAT
19 YOU SHOULD RANDOMLY -- IF THE DEFENDANTS WANT TO, THEY CAN, BUT
20 IT'S -- WE ARE NOT PROPOSING THAT THE DEFENDANTS RANDOMLY TAKE
21 ALL -- JUST RANDOMLY SELECT 52,000 PEOPLE AND LET THEM OUT.

22 WHAT WE ARE SUGGESTING IS THAT THEY DO THAT IN A
23 MEASURED WAY THROUGH A RISK ASSESSMENT INSTRUMENT WHICH WILL
24 REDUCE THE IMPACT. IT WILL -- AND AS DR. AUSTIN TESTIFIED,
25 THAT IT WOULD REDUCE THE NUMBER OF ARRESTS BECAUSE YOU WILL

1 HAVE LET OUT THE LOWER RISK PEOPLE.

2 AND SO IT'S A -- TO ANSWER YOUR MAIN POINT, IT'S NOT
3 TRUE THAT IF YOU TAKE 50,000 PEOPLE FROM PRISON AND PUT THEM ON
4 THE OUTSIDE, YOU'RE GOING TO HAVE 50,000 -- THEY SAID, YOU
5 KNOW, PRISONERS COMMIT -- EACH CRIMINAL COMMITS 12 CRIMES. YOU
6 KNOW, YOU'RE GOING TO HAVE AN EXPLODING NUMBER OF CRIMES. THAT
7 JUST DOESN'T HAPPEN.

8 JUDGE REINHARDT: WELL, I SUPPOSE EVERY 50,000 PEOPLE
9 WE DON'T LOCK UP IS GOING TO RESULT IN MORE CRIME.

10 JUDGE KARLTON: I MEAN, ONE THING WE COULD DO IS LOCK
11 ALL THOSE PEOPLE UP RIGHT NOW. AT LEAST SOME OF THEM ARE GOING
12 TO COMMIT A CRIME.

13 ACTUALLY YOU, MR. MELLO.

14 (LAUGHTER.)

15 JUDGE REINHARDT: THAT DOESN'T MEAN IT LEADS TO
16 ANY PARTICULAR CONSEQUENCE IN THIS CASE, BUT IT SEEMS OBVIOUS
17 THAT --

18 MR. SPECTER: WHY DOES IT SEEM -- WHAT IS OBVIOUS
19 ABOUT IT?

20 JUDGE REINHARDT: IT'S OBVIOUS TO ME THAT 50,000
21 FEWER PEOPLE IN PRISON, THAT THERE ARE GOING TO BE MORE CRIMES.

22 MR. SPECTER: AND THAT'S AN INTUITIVE NOTION
23 BECAUSE -- AND YOU BELIEVE THAT BECAUSE THOSE PEOPLE HAVE
24 COMMITTED CRIMES IN THE PAST.

25 JUDGE REINHARDT: LISTEN, I BELIEVE IF YOU WENT OUT

1 AND PICKED UP 50,000 PEOPLE OFF THE STREETS OF SAN FRANCISCO
2 AND YOU PUT THEM IN PRISON, YOU WOULD HAVE FEWER CRIMES.

3 MR. SPECTER: RIGHT.

4 JUDGE REINHARDT: JUST ARBITRARILY YOU PICKED THEM
5 OUT, EVEN IF THEY DON'T HAVE RECORDS.

6 JUDGE KARLTON: THAT'S WHAT I SAID.

7 JUDGE REINHARDT: YOU ARE GOING TO HAVE FEWER PEOPLE
8 TO COMMIT CRIMES.

9 JUDGE KARLTON: STARTING WITH YOU (INDICATING).

10 (LAUGHTER)

11 MR. SPECTER: TO GET BACK TO THE LAW.

12 JUDGE REINHARDT: I MEAN, IF -- YOUR EVIDENCE IS
13 PERSUASIVE THAT IF YOU LET 50,000 PEOPLE OUT, THEY ARE NOT
14 GOING TO COMMIT ANY CRIMES.

15 MR. SPECTER: WELL, LOOK. THE OTHER WAY OF ANSWERING
16 YOUR QUESTION ABOUT PICKING UP 50,000 MORE PEOPLE IS THAT
17 DEFENDANT'S OWN EXPERT, THEIR ONLY EXPERT, DR. MARQUART -- WHO
18 I KNOW THERE IS SOME QUESTION ABOUT --

19 JUDGE REINHARDT: IS THIS THE ONE FROM TEXAS?

20 MR. SPECTER: YES.

21 JUDGE KARLTON: ANYTHING IS POSSIBLE, RIGHT?

22 MR. SPECTER: ANYTHING IS POSSIBLE.

23 (CONTINUING) -- TESTIFIED. EVEN HE, WHO HAS STUDIED
24 THIS SOMEWHAT, SAID HE CAN'T TELL YOU THAT THERE'S A DIRECT
25 RELATIONSHIP BETWEEN INCARCERATION RATES AND CRIME.

1 WHAT THAT MEANS, IT'S THE FLIP SIDE OF WHAT YOU SAID.
2 WHAT THAT MEANS IS THAT IF YOU TAKE 50,000 PEOPLE MORE AND PUT
3 THEM IN PRISON, YOU ARE NOT NECESSARILY GOING TO REDUCE THE
4 CRIME RATE. IT MAY NOT BE OBVIOUS, BUT THAT'S WHAT THE DATA --

5 **JUDGE REINHARDT:** THAT'S WHAT HE SAID.

6 **MR. SPECTER:** THAT'S WHAT HE SAID.

7 **JUDGE REINHARDT:** YEAH, WELL...

8 **MR. SPECTER:** OKAY. BUT IT'S THEIR EXPERT. AND OUR
9 EXPERT SAID THE SAME THING.

10 **JUDGE REINHARDT:** WELL, YOU KNOW, THAT'S WHAT I SAID
11 EARLIER IN THE TRIAL. FIGURES ARE NOT TERRIBLY RELIABLE. YOU
12 CAN HAVE FIGURES FOR ANYTHING.

13 **MR. SPECTER:** WELL, YOUR HONOR, THAT'S A POINT I
14 CAN'T DISPUTE, BUT --

15 **JUDGE REINHARDT:** WHOEVER SAID THE LAW IS THE
16 EXPERIENCE, YOU KNOW, YOU DON'T HAVE TO HAVE MUCH EXPERIENCE
17 WITH LIFE TO UNDERSTAND THAT IF YOU LOCK EVERYBODY UP, THERE IS
18 NOT GOING TO BE CRIME. AND THEN IF YOU LET EVERYBODY OUT,
19 THERE IS GOING TO BE CRIME.

20 **MR. SPECTER:** WELL, THAT, I THINK, LEADS INTO MY
21 POINT, WHICH IS THAT THE STATE OF CALIFORNIA HAS AN OBLIGATION.
22 THEY CAN DECIDE KIND OF WHAT PUBLIC SAFETY MEANS IN TERMS OF
23 HOW MANY PEOPLE THEY DECIDE THAT THEY WANT TO LOCK UP AND FOR
24 WHAT, RIGHT?

25 THE LIMIT ON THAT -- THE LIMIT ON THAT IS THE

1 CONSTITUTION. THEY HAVE TO DO IT IN A CONSTITUTIONAL MANNER.
2 AND THE LAW SAYS, THE CONGRESS SAID, THAT IF THEY ARE NOT DOING
3 IT IN A CONSTITUTIONAL MANNER AND THE REASON FOR THAT IS
4 BECAUSE THERE ARE TOO MANY PEOPLE IN PRISON, WHICH OFTEN
5 HAPPENS, THAT'S WHY WE HAVE A LAW ON IT, YOU NEED TO LET
6 PEOPLE -- I MEAN, IT'S IN YOUR DISCRETION TO ISSUE A PRISONER
7 RELEASE ORDER. AND I THINK THAT'S THE SITUATION WE HAVE HERE.

8 IF YOU ARE TALKING ABOUT LIFE AND LAW, THAT'S WHERE
9 WE ARE.

10 **JUDGE REINHARDT:** WELL, I DON'T DISAGREE WITH THAT,
11 THAT WE HAVE AN OBLIGATION. BUT I DON'T KNOW HOW YOU ARE
12 SUPPOSED TO WEIGH THOSE TWO THINGS.

13 YOU KNOW, THERE'S A CONSTITUTIONAL VIOLATION AND THE
14 PRISONS ARE OVERCROWDED, WHICH CAUSES A VIOLATION AND,
15 THEREFORE, UNDER THE CONSTITUTION YOU SHOULD REDUCE THE
16 POPULATION OF THE PRISONS. THAT'S ALL TRUE.

17 AND THEN THEY SAY NOW CONSIDER THE FACT, YOU KNOW,
18 THAT IT'S GOING TO RESULT IN MORE CRIME. WELL, WHAT DO YOU DO
19 WHEN YOU CONSIDER THAT FACT?

20 **MR. SPECTER:** I'M GOING TO GIVE YOU --

21 **JUDGE KARLTON:** IT ACTUALLY ISN'T THAT. AND THIS
22 COMES BACK TO WHAT SEEMS TO ME AN IMPORTANT PIECE OF EVIDENCE,
23 WHICH I DIDN'T LEARN UNTIL I WAS IN THIS TRIAL, WHICH IS
24 AMAZING, WHICH IS KEEPING PEOPLE IN PRISON IS GOING TO MAKE
25 CRIME.

1 AND IT ISN'T CLEAR AT ALL THAT LETTING PEOPLE OUT,
2 EVEN IF IT WERE TO INCREASE CRIME, AND THAT'S -- I MEAN, THE
3 PLAINTIFFS SAY IT WON'T. BUT EVEN ASSUMING THAT, THAT THE
4 INCREASE IN CRIME WOULD BE GREATER BY VIRTUE OF LETTING THEM
5 OUT BEFORE THEY BECOME COMPLETELY CRIME ORIENTED AND HAVE NO
6 OTHER WAY OF DEALING WITH LIFE.

7 AND THAT, IT SEEMS TO ME, WHEN WE START TALKING ABOUT
8 PUBLIC SAFETY, GETS TO BE A TRADE-OFF, THAT -- AT LEAST THERE'S
9 A VERY SERIOUS ARGUMENT, IT TURNS OUT, THAT PUBLIC SAFETY ISN'T
10 GOING TO BE AFFECTED SIMPLY BECAUSE OF THE CONDITION OF THE
11 PRISONERS.

12 **JUDGE REINHARDT:** LET ME ASK YOU ONE OTHER QUESTION
13 RELATED TO IT.

14 WE HEARD SEVERAL TIMES IN ARGUMENT, AND MAYBE IN THE
15 EVIDENCE, THAT PEOPLE AREN'T REALLY SENT TO PRISON UNTIL
16 THEY'VE COMMITTED A FAIR NUMBER OF CRIMES, THAT THEY'VE FLUNKED
17 PROBATION NUMEROUS TIMES. THEY ARE PEOPLE WHO, IN EFFECT, ARE
18 REGULAR CRIMINALS BEFORE THEY GO TO PRISON.

19 IS THERE ANY CONTRARY EVIDENCE TO THAT?

20 **MR. SPECTER:** IS THERE ANY CONTRARY EVIDENCE TO THAT?

21 WELL, I KNOW THAT THE EVIDENCE THAT YOU'VE HEARD IS
22 NOT DATA. IT'S OPINION EVIDENCE. IT'S FROM POLICE CHIEFS,
23 DISTRICT ATTORNEYS, LAW ENFORCEMENT OFFICERS. WHAT THEY DIDN'T
24 DO IS SUPPORT IT WITH DATA SHOWING THAT.

25 AND I DO KNOW, AND YOU CAN LOOK AT -- YOU CAN TAKE

1 JUDICIAL NOTICE OF IT, THAT THERE ARE MANY CRIMES IN THE STATE
2 OF CALIFORNIA WHICH ARE -- YOU KNOW, USE A GUN, GO TO PRISON.
3 THERE ARE MANDATORY PRISON SENTENCES.

4 IT IS TRUE AND I BELIEVE -- GO AHEAD.

5 **JUDGE KARLTON:** NO.

6 **MR. SPECTER:** JERRY HARPER. THERE ARE A LOT MORE
7 PEOPLE -- THERE ARE A LOT OF PEOPLE ON PROBATION AND IF THEY
8 VIOLATE PROBATION, THEN THEY GO TO PRISON.

9 AND ONE OF THE WAYS THAT JERRY POWERS, THE PROBATION
10 OFFICER FROM STANISLAUS COUNTY, SAID YOU COULD REDUCE THE
11 PRISON POPULATION IS IF YOU ACTUALLY GAVE THEM SERVICES ON
12 PROBATION AND HAVE INTENSIVE SUPERVISION, THEN COULD YOU REDUCE
13 THE PROBATION VIOLATIONS, WHICH WOULD THEREBY REDUCE THE PRISON
14 POPULATION. AND WE SUPPORT ALL THAT.

15 **JUDGE KARLTON:** SEE, THIS GOES BACK -- I MEAN, IT'S
16 AS IF THERE IS NO ANSWER BECAUSE IT'S THE SAME -- THERE IS NO
17 MONEY. THERE IS NO MONEY.

18 **MR. SPECTER:** WELL, THERE IS MONEY. I MEAN, I AGREE
19 WITH MR. MITCHELL, THERE IS MONEY. IT'S A POLITICAL DECISION
20 ON WHERE YOU ALLOCATE IT.

21 AND THE QUESTION IS, FOR EXAMPLE -- AND TO GET BACK
22 TO JUDGE REINHARDT'S QUESTION, THE 32 COUNTIES HAVE BEEN
23 OPERATING WITH A POPULATION CAP FOR YEARS AND YEARS AND YEARS.
24 THAT'S THE INTERVENOR'S EVIDENCE.

25 WELL, FOR THE MOST PART THEY RATHER WOULD LIVE WITH

1 THAT CAP THAN SPEND THE MONEY TO BUILD A NEW JAIL. THAT'S
2 WHERE WE ARE -- THAT'S THE SAME SITUATION WHERE WE ARE IN THE
3 STATE.

4 THEY WOULD RATHER FACE THE CONSEQUENCES OF A PRISONER
5 RELEASE ORDER THAN PROVIDE ADEQUATE HEALTHCARE OR BUILD, LIKE
6 YOU SAID IN THE BEGINNING, A THOUSAND NEW PRISONS. IF THEY
7 CAME IN AND SAID WE ARE GOING TO BUILD A THOUSAND NEW PRISONS,
8 WE ARE GOING TO HIRE 200 -- YOU KNOW, 500 MORE DOCTORS, OR
9 WHATEVER IT IS AND, YOU KNOW, THEY DID IT, WE WOULDN'T BE HERE.

10 BUT THE FACT OF THE MATTER IS, THE POLITICS OF THE
11 SITUATIONAL ALLOCATES ONLY A CERTAIN AMOUNT OF MONEY TO
12 CRIMINAL JUSTICE, AND SOME OF THAT IS IN PRISONS AND SOME OF
13 THAT IS POLICE AND DISTRICT ATTORNEYS.

14 THE FACT OF THE MATTER IS THAT YOU CAN'T LOCK UP
15 EVERY SINGLE PERSON WHO COMMITS A FELONY IN THIS STATE. YOU
16 CAN'T DO IT. THERE IS NOT ENOUGH FUNDS. THERE'S NOT SPACE.
17 THERE IS NOT ENOUGH MONEY PROBABLY.

18 SO WHAT WE HAVE IS A FINITE AMOUNT OF RESOURCES IN
19 PRISON AND THE QUESTION -- AND NOW THAT THAT FINITE RESOURCE IS
20 FULL, THE QUESTION --

21 **JUDGE KARLTON:** OVERFULL.

22 **MR. SPECTER:** THANK YOU. OVERFULL.

23 THE QUESTION FOR THE STATE BECOMES: HOW ARE THEY
24 GOING TO ALLOCATE THOSE SCARCE RESOURCES SO AS TO MAKE THE
25 PUBLIC MOST SAFE?

1 AND THAT'S WHAT THEY CAN DO. THAT'S WHAT THE
2 COUNTIES HAVE BEEN DOING. THAT'S WHAT OTHER STATES HAVE BEEN
3 DOING. AND THAT'S WHAT AN ORDER FROM THIS COURT WILL FINALLY
4 FORCE THEM TO DO.

5 WHICH BRINGS ME BACK TO ANSWER YOUR QUESTION ABOUT
6 THE FUNDING, I THINK, WHICH IS THAT YOU ASKED US -- YOU SAID
7 YOU WERE GOING TO ASK US TO PROVIDE YOU WITH AUTHORITY ABOUT
8 HOW THE STATE -- WHETHER THE STATE HAS THE AUTHORITY -- I'M
9 SORRY. I'M GETTING MIXED UP.

10 WHETHER THE COURT HAS THE AUTHORITY TO ORDER THE
11 STATE TO PROVIDE FUNDS. YOU CAN DO THAT AND WE WILL BE HAPPY
12 TO RESPOND --

13 **JUDGE REINHARDT:** YES, WE WILL.

14 **JUDGE KARLTON:** WE ARE GOING TO HAVE TO HAVE
15 BRIEFING.

16 **MR. SPECTER:** BUT LET ME SUGGEST TO YOU -- AND WE
17 WILL ANSWER IT REGARDLESS OF MY ANSWER, OF COURSE, BUT LET ME
18 SUGGEST TO YOU THAT THAT QUESTION IS PREMATURE. AND I WOULD
19 LIKE TO EXPLAIN WHY I THINK THAT.

20 **JUDGE REINHARDT:** WHETHER IT'S PREMATURE OR NOT, WE
21 WOULD STILL LIKE TO KNOW THE ANSWER AND YOU'RE STILL GOING TO
22 GIVE US THE ANSWER.

23 **MR. SPECTER:** THAT'S FINE. BUT WHAT YOU DO WITH IT
24 -- IF IT'S PREMATURE, WHAT YOU DO WITH THAT ANSWER, IT IS
25 RELEVANT. I'M GOING TO SAY IT'S RELEVANT.

1 **JUDGE REINHARDT:** TELL US WHAT THE ANSWER IS AND WHY
2 IT'S PREMATURE, IF THAT WILL MAKE YOU HAPPY.

3 **MR. SPECTER:** MY POINT IS, IF YOU ADOPT OUR
4 SUGGESTION AND ORDER A PLAN, THE STATES COME UP WITH A PLAN,
5 WHAT WE DON'T KNOW IS WHAT THE STATE WILL DO IN RESPONSE TO
6 THAT ORDER. AND IT DOESN'T SEEM TO ME PARTICULARLY APPROPRIATE
7 TO SPECULATE --

8 **JUDGE REINHARDT:** WE ARE NOT SPECULATING. WE WOULD
9 LIKE TO KNOW WHAT OUR AUTHORITY IS.

10 **MR. SPECTER:** I KNOW, AND WE WILL PROVIDE THAT TO
11 YOU.

12 BUT REGARDLESS OF WHAT YOUR AUTHORITY IS, THE STATE
13 WOULD COME UP WITH A PLAN. AND I'M NOT SO SURE IT'S THAT --
14 IT'S THAT LIKELY THAT THE PLAN WILL BE AS INSUFFICIENT AS SOME
15 OF THEIR OTHER PLANS HAVE BEEN IN THE PAST. AND LET ME TELL
16 YOU WHY.

17 THE REASON WHY I SAY THAT IS THE GOVERNOR, AS A
18 DEFENDANT IN THIS CASE, HAS COME UP WITH POPULATION REDUCING
19 PROPOSALS WHICH ARE CONSISTENT WITH THE ONES -- AND HE'S MADE
20 THEM PUBLICLY IN HIS BUDGET PROPOSAL.

21 **JUDGE REINHARDT:** FOR HOW MANY PRISONERS?

22 **MR. SPECTER:** WELL, HIS FIRST ONE WAS TO RELEASE
23 NON-VIOLENT, NON-SERIOUS, NON-SEX OFFENDERS, BLAH, BLAH, BLAH,
24 20 MONTHS EARLIER, WHICH WOULD HAVE REDUCED THE POPULATION BY
25 22,000. THAT SINGLE THING ALONE WOULD HAVE TAKEN 22,000

1 AVERAGE DAILY POPULATION, ACCORDING TO THE GOVERNOR'S FIGURES.

2 OTHER THINGS HE HAS PROPOSED, SUMMARY PAROLE.

3 CERTAIN PEOPLE CAN'T BE RETURNED TO PRISON FOR NON-FELONY

4 OFFENSES OR TECHNICAL -- YOU KNOW, OR TECHNICAL PAROLE

5 VIOLATIONS. HE SAID TO DIVERT SOME OF THESE PEOPLE.

6 THE GOVERNOR HAS SAID WE SHOULD EXPAND GOOD TIME

7 CREDITS. AS YOU HEARD MATT CATE TESTIFY, THAT PROPOSAL WOULD

8 REDUCE THE NUMBER OF PEOPLE IN PRISON. AND HE TALKED ABOUT

9 INCREASING THE STEPS TOWARD THRESHOLD FOR CERTAIN THEFT CRIMES,

10 WHICH WOULD ESSENTIALLY DIVERT PEOPLE FROM PRISON TO PROBATION

11 BY MAKING THEM MISDEMEANORS.

12 **JUDGE KARLTON:** A GREAT MANY OF THOSE THINGS REQUIRE

13 LEGISLATIVE ACTION. I KNOW WHERE YOU ARE GOING. JUST HANG ON

14 A SECOND.

15 WE KNOW THAT THE CHANCES OF THE LEGISLATURE ACTING IN

16 A RATIONAL FASHION ARE NOT VERY GOOD, WHICH MEANS THEN WE COME

17 BACK TO WHETHER THIS COURT CAN ORDER ALL OF THOSE THINGS. EVEN

18 IF THE GOVERNOR SAYS, LOOK, THAT'S OUR PLAN, BUT, YOU KNOW,

19 WE'VE GOT TO GO TO THE LEGISLATURE AND WAIT ANOTHER YEAR WHILE

20 THE LEGISLATURE PIDDLES AROUND. AND WE SAY, NO, WE CAN'T WAIT

21 ANOTHER YEAR.

22 IS IT YOUR VIEW THAT IF THAT OCCURS, THE COURT CAN

23 THEN ORDER THOSE THINGS TO BE DONE AS A WAY OF ACHIEVING THE

24 POPULATION REDUCTION WHICH -- ASSUMING THAT WE THINK THAT IS

25 NECESSARY?

1 **MR. SPECTER:** THE SHORT ANSWER IS A THREE LETTER
2 WORD. YES. AND LET ME EXPLAIN WHY THAT IS IMPORTANT.

3 THE LEGISLATURE IS IN SESSION NOW AND TIMING IS
4 IMPORTANT IN THIS INSTANCE. THEY GO OUT, AS YOU KNOW, IF THEY
5 PASS A BUDGET, WHICH WHO KNOWS WHETHER THAT IS EVER GOING TO
6 HAPPEN. THEY GO OUT OF SESSION IN, YOU KNOW, JULY, AND THEY
7 COME BACK IN AUGUST FOR A MONTH OR SO.

8 SO ALL THAT HAS TO -- IF THEY ARE GOING TO BE -- IF
9 THE LEGISLATURE IS GOING TO BE COOPERATIVE, WE NEED TO FIND
10 THAT OUT NOW, RELATIVELY SPEAKING.

11 SECOND OF ALL, THE ANSWER -- THE REASON I SAY YES IS
12 BECAUSE THE WAY THE SUPREME COURT HAS SET IT OUT IS THAT
13 DEFENDANTS COME UP WITH A PLAN. THEY PRESENT IT TO YOU, WITH
14 OBJECTIONS OR NOT. HOPEFULLY, WE CAN WORK IT OUT, MAYBE NOT.
15 AND THEN REGARDLESS OF WHETHER THE LEGISLATURE -- THE PLAN HAS
16 TO BE APPROVED BY THE COURT AND ORDERED BY THE COURT. AND WE
17 PUT IN OUR PROPOSED FINDINGS A STATEMENT SAYING THAT IF THE
18 STATE NEEDS A WAIVER OF STATE LAW TO ACCOMPLISH THAT PLAN, THAT
19 IT SHOULD PRESENT THOSE REQUESTS TO THE COURT.

20 SO THE WAY I ENVISION IT HAPPENING IS, THE GOVERNOR
21 WOULD -- YOU WOULD -- IF YOU ACCEPT OUR REQUEST, YOU WOULD SAY
22 THIS IS THE CAP, YOU HAVE TO MEET THIS, PRESENT A PLAN. THE
23 GOVERNOR WOULD DEVELOP A PLAN. HE WOULD SEE IF THE LEGISLATURE
24 AGREES WITH IT IN A SPEEDY FASHION.

25 AND THEN IF THEY DON'T, THEN HE WOULD COME TO YOU AND

1 SAY, HERE IS MY PLAN AND WE NEED THE FOLLOWING WAIVERS OF STATE
2 LAW IN ORDER TO ACCOMPLISH IT AND THIS IS WHY.

3 AND THEN MR. KAUFHOLD COULD GET UP AND OBJECT TO
4 THAT.

5 BUT THAT'S THE WAY IT NEEDS TO WORK. THAT'S THE WAY
6 I THINK IT'S SUPPOSED TO WORK.

7 **JUDGE REINHARDT:** DID YOU ANSWER THE QUESTION ABOUT
8 WHETHER WE CAN ORDER THE EXPENDITURE OF STATE FUNDS?

9 **MR. SPECTER:** I ANSWERED IT YESTERDAY.

10 **JUDGE REINHARDT:** I THOUGHT YOU SAID --

11 **JUDGE KARLTON:** HE IS GOING TO DO IT IN WRITING.

12 **MR. SPECTER:** THE REASON I'M SAYING IT'S PREMATURE --
13 AND I FORGOT TO GET TO THAT POINT.

14 THE REASON I'M SAYING IT'S PREMATURE IS BECAUSE I
15 BELIEVE ONCE -- YOU SEE, UP UNTIL NOW EVERYBODY HAS BEEN ABLE
16 TO NOT HAVE TO MAKE THE HARD CHOICES.

17 IF THE COURT ISSUES AN ORDER, IT WILL BE APPARENT
18 THAT HARD CHOICES ARE GOING TO HAVE TO BE MADE AND THE
19 POLITICAL PROCESS CAN -- THE INTERVENORS CAN -- THAT WILL BE
20 THEIR TIME TO PRESSURE THE GOVERNOR AND THE LEGISLATURE TO
21 PROVIDE THE FUNDS.

22 AND IF THEY DO PROVIDE THE FUNDS, YOU DON'T HAVE TO
23 REACH THE ISSUE OF WHETHER THE COURT NEEDS TO DO IT. IF THEY
24 DON'T, THEN YOU NEED TO DECIDE.

25 **JUDGE REINHARDT:** IF THE LEGISLATURE DOES ALL THE

1 THINGS THAT THEY CAN DO AND THE GOVERNOR DID THEM, WE WOULDN'T
2 HAVE HAD TO HAVE A TRIAL AT ALL.

3 JUDGE KARLTON: EXACTLY.

4 MR. SPECTER: THAT'S TRUE. BUT ONCE YOU ISSUE AN
5 ORDER SAYING THEY HAVE TO COME UP WITH A PLAN, THE SCENERY HAS
6 CHANGED.

7 JUDGE REINHARDT: THEN WE ARE IN NIRVANA.

8 MR. SPECTER: HUH?

9 JUDGE REINHARDT: THEN WE ARE IN NIRVANA AS SOON AS
10 WE ISSUE THE ORDER.

11 MR. SPECTER: NO, YOU ARE NOT IN NIRVANA, BUT YOU ARE
12 IN A DIFFERENT PLACE. YOU ARE IN A DIFFERENT PLACE.

13 JUDGE REINHARDT: OKAY. ANYTHING ELSE?

14 MR. SPECTER: YOU UNDERSTAND WHAT I'M SAYING.

15 JUDGE REINHARDT: WHAT?

16 MR. SPECTER: YOU UNDERSTAND WHAT I'M SAYING.

17 A COUPLE MORE POINTS. YOU TALKED ABOUT TWO YEARS
18 ISN'T A MAGIC NUMBER. WELL, THERE ARE -- YOU KNOW, TWO YEARS
19 AND 50,000 PEOPLE. I JUST WANT TO EMPHASIZE THAT YOU HAVE THE
20 AUTHORITY TO ORDER 52,000 PEOPLE RELEASED NOW.

21 WHEN WE GAVE YOU TWO YEARS, WE DIDN'T PICK IT
22 ARBITRARILY. WE ASKED OUR EXPERTS WHETHER OR NOT IT WAS A
23 REASONABLE PERIOD OF TIME IN WHICH TO ACCOMPLISH THIS. THEY
24 SAID IT WAS. AND WE --

25 JUDGE HENDERSON: AS A PRACTICAL MATTER OR A PUBLIC

1 SAFETY MATTER?

2 MR. SPECTER: AS A PUBLIC SAFETY MATTER AND AS A
3 PRACTICAL MATTER.

4 IN FACT, SOME OF THE TESTIMONY YOU HEARD SAID SOME OF
5 THESE PLANS COULD BE DEVELOPED IN A FEW MONTHS, PERIOD. AND
6 THEN IMPLEMENTING THEM WOULD BE DONE OVER TWO YEARS.

7 WE WEREN'T GIVING YOU A NUMBER. YOU KNOW, IF WE
8 WANTED A -- WE WEREN'T PLANNING -- WE WEREN'T NEGOTIATING. I
9 MEAN, WE WEREN'T GIVING YOU A LONE -- WE TRY TO BE REASONABLE
10 AND GIVE YOU A FAIR NUMBER RIGHT NOW, NOT AN UNREALISTIC
11 NUMBER.

12 AND, FINALLY, THERE IS NO EVIDENCE TO THE CONTRARY
13 THAT IT CAN'T BE DONE SAFELY IN TWO YEARS.

14 IN TERMS OF THE 130 PERCENT ISSUE, WE AGREE WITH YOUR
15 COMMENTS YESTERDAY THAT IT'S NOT AN EXACT SCIENCE. BUT WHAT IT
16 IS, IS A CONSENSUS AMONG EXPERTS THAT WE'VE USED AND, AS MR.
17 BIEN SAID, JEANNE WOODFORD, WHO RAN THE PRISON SYSTEM AND WHO
18 WORKED THERE 28 YEARS, THINKS IT'S A REASONABLE NUMBER AND WILL
19 GET US TO WHERE WE WANT TO GO. IT SEEMS TO ME THAT'S A PRETTY
20 RELIABLE PIECE OF EVIDENCE UPON WHICH TO BASE A DECISION.

21 SECONDLY, YOU KNOW, THERE IS NO OTHER NUMBER OUT
22 THERE. THE STATE HAD THE OPPORTUNITY, AS YOU ASKED THEM TO DO
23 SEVERAL TIMES, TO COME UP WITH A NUMBER AND THEY DIDN'T. AND
24 MR. CATE TESTIFIED THAT THEY WANTED TO REDUCE THE POPULATION,
25 BUT HE DIDN'T EVEN HAVE A NUMBER IN MIND IN WHICH HE WANTED TO

1 REDUCE IT TO.

2 SO THE SHORT ANSWER IS THE STATE DOESN'T KNOW HOW
3 MUCH THEY WANT TO REDUCE IT TO AND THEY DON'T WANT, APPARENTLY,
4 TO PRESENT ANY EVIDENCE ABOUT WHAT ANOTHER NUMBER SHOULD BE.

5 SO I THINK THAT WE HAVE SATISFIED OUR BURDEN ON THAT
6 ISSUE, AND THAT THERE IS NO CONTRARY EVIDENCE.

7 SECONDLY, THIS IS AN INJUNCTION. IT'S NOT A MONETARY
8 JUDGMENT. AND AS JUDGE HENDERSON AND JUDGE KARLTON KNOWS,
9 INJUNCTIONS ARE KIND OF LIVING DOCUMENTS. THEY ARE SUBJECT TO
10 MODIFICATION --

11 **JUDGE REINHARDT:** LIKE THE CONSTITUTION.

12 **MR. SPECTER:** EXCEPT IT'S NOT QUITE SO HARD TO AMEND.

13 **JUDGE KARLTON:** ALL YOU NEED IS FIVE MEMBERS OF THE
14 COURT.

15 **MR. SPECTER:** SO IF IT TURNS OUT THAT THIS NUMBER --
16 IT'S OUR BEST ESTIMATE BASED ON THE EVIDENCE. IF IT TURNS OUT
17 THIS NUMBER IS NOT THE BEST NUMBER, BASED ON CHANGED
18 CIRCUMSTANCES OR HOW THINGS DEVELOP, IT CAN BE MODIFIED OVER
19 TIME. AND WE --

20 **JUDGE KARLTON:** THAT'S A VERY IMPORTANT ISSUE FOR US.
21 IN THE UNDERLYING CASES THERE IS A SINGLE JUDGE DOING WHAT
22 JUDGES DO. WHAT WE ARE DOING HERE IS EXTRAORDINARY.

23 AND LET ME ASSURE YOU, YOU KNOW, JUDGE REINHARDT
24 DOESN'T WANT TO COME BACK EVERY THREE MONTHS, OR AT ALL.

25 AND THAT IS, I FIND, TROUBLING. IF IT WERE MY ORDER,

1 I WOULD FEEL COMFORTABLE SAYING IF IT TURNS OUT WE ARE WRONG,
2 WE WILL DO SOMETHING ELSE.

3 IT'S NOT AT ALL CLEAR TO ME WHAT HAPPENS IN A
4 THREE-JUDGE COURT IF WE MAKE A MISTAKE.

5 MR. SPECTER: WELL, I WOULDN'T SAY IT WOULD BE A
6 MISTAKE.

7 JUDGE REINHARDT: WE GET REVERSED.

8 (LAUGHTER.)

9 JUDGE REINHARDT: YOU GET REVERSED FOR OTHER REASONS.

10 JUDGE KARLTON: THE REAL QUESTION HERE IS, YOU KNOW,
11 TRYING TO MAKE GOOD ON OUR DUTY, AND UNDERSTANDING THAT THIS IS
12 A TEMPORARY COURT ESTABLISHED UNDER A VERY PARTICULAR
13 PROCEDURE.

14 MR. SPECTER: RIGHT. AND I AGREE WITH YOU
15 COMPLETELY. BUT I'M GOING TO FALL BACK ON MY OTHER ANSWER.
16 THAT'S A QUESTION THAT'S A LITTLE PREMATURE. IF WE GET TO THAT
17 POINT --

18 JUDGE REINHARDT: LET'S GO ON TO YOUR NEXT POINT.

19 MR. SPECTER: YES, GREAT.

20 JUDGE KARLTON: WAS THERE ANOTHER POINT? GO AHEAD.

21 MR. SPECTER: THERE WAS SOME ARGUMENT YESTERDAY ABOUT
22 WHETHER OR NOT YOU CAN DO A POPULATION WITHOUT INVOLVING SECOND
23 STRIKERS. AND I JUST WANTED TO EMPHASIZE -- AND THEY SAY THE
24 EVIDENCE IS THAT YOU CAN'T.

25 BUT IN THE TRIAL, JUDGE REINHARDT, YOU ASKED THAT

1 VERY QUESTION, WHETHER A PLAN COULD BE DEVELOPED WITHOUT SECOND
2 STRIKERS. AND DR. AUSTIN, AT PAGE 2570 SAYS:

3 "YES, THERE ARE OTHER ALTERNATIVES. IT DEPENDS
4 ON A LOT OF FACTORS. IT DEPENDS ON THE NUMBER THAT
5 COMES UP AND ALL THOSE KIND OF THINGS."

6 JUST WANTED TO CLARIFY THAT POINT.

7 THE OTHER LAST POINT I WANTED TO TALK ABOUT WAS THIS
8 ISSUE OF THE NARROWNESS OF THE ORDER THAT WOULD BE ISSUED.

9 MR. BIEN TALKED ABOUT MR. MITCHELL'S PROPOSAL. I
10 DIDN'T UNDERSTAND IT EITHER. TO CONCENTRATE ALL THE CLASS
11 MEMBERS INTO PARTICULAR PRISONS WHICH AREN'T OVERCROWDED AND
12 THEN TO COMPLETELY OVERCROWD EVERYBODY ELSE, I DON'T THINK THE
13 STATE COULD POSSIBLY OR WANT TO POSSIBLY DO THAT.

14 BUT EVEN IF THEY SOMEHOW DECIDED THAT WAS A GOOD
15 IDEA, IT WOULDN'T RESOLVE THE CONSTITUTIONAL PROBLEMS. AND
16 THAT'S BECAUSE --

17 **JUDGE REINHARDT:** I DON'T THINK WE HAVE TO SPEND TOO
18 MUCH TIME WITH IT.

19 **MR. SPECTER:** OKAY, FINE. GOOD.

20 THE OTHER POINT IS THAT MR. KAUFHOLD MADE THE SAME
21 POINT. AND, YOU KNOW, ONE OF THE IMPLICATIONS OF THAT POINT IS
22 THAT THE COURT ORDERED THAT THE PLATA CLASS MEMBERS AND THE
23 COLEMAN CLASS MEMBERS BE RELEASED FIRST BECAUSE THEY ARE THE
24 ONES THAT ARE SUFFERING THE CONSTITUTIONAL HARM.

25 AND IF THAT IS THEIR POINT, THEN MENTALLY ILL PEOPLE

1 WOULD BE THE ONES, AND THE PEOPLE WHO ARE PLATA CLASS MEMBERS
2 WHO ARE SICK WOULD BE RELEASED. AND THAT'S THE IMPLICATION OF
3 WHAT THEY ARE SAYING.

4 AND I DON'T THINK IT WOULD RESOLVE ALL THE
5 CONSTITUTIONAL OVERCROWDING PROBLEMS, BUT I JUST WANTED TO
6 POINT THAT OUT.

7 JUDGE REINHARDT: THAT'S IT?

8 MR. SPECTER: YES, SIR.

9 JUDGE REINHARDT: THANK YOU. THE INTERVENORS?

10 MS. LEONARD: NO, YOUR HONOR.

11 JUDGE REINHARDT: WELL, IT LOOKS LIKE WE ARE AT THE
12 END OF THE ARGUMENT.

13 I HAVE TWO COMMENTS I WOULD LIKE TO MAKE AND THEN
14 I'LL ASK MY COLLEAGUES TO MAKE WHATEVER COMMENTS THEY HAVE,
15 ALTHOUGH I HOPE THAT MY REMARKS WILL REFLECT MY COLLEAGUES'
16 VIEWS AS WELL. THOUGH, YOU HAVE MAY HAVE NOTED, WE ARE NOT
17 ALWAYS IN COMPLETE AGREEMENT ON ALL OF THE ISSUES, BUT I CAN
18 ASSURE YOU THAT BEFORE THIS IS OVER WE WILL BE IN COMPLETE
19 AGREEMENT BECAUSE THIS CASE IS TOO IMPORTANT FOR US NOT TO.

20 I WANT TO THANK THE LAWYERS FOR THEIR VIGOROUS AND
21 EFFECTIVE PRESENTATIONS. WE MAY HAVE APPEARED TO BE CRITICAL
22 OF YOU SOMETIMES, EVEN HARSH ON OCCASION. AND I WILL DEFER TO
23 JUDGE KARLTON, WHO MAY HAVE A FEW FURTHER REMARKS. BUT I THINK
24 IT'S MORE REFLECTIVE OF OUR FRUSTRATION OVER THE DIFFICULTY, IF
25 NOT THE IMPOSSIBILITY, OF ATTEMPTING TO RESOLVE THE TREMENDOUS

1 PROBLEMS WE ALL FACE THAN IT IS OF YOUR PERFORMANCE. I THINK
2 YOU ALL DID VERY WELL.

3 NOW IS THE TIME, HOWEVER, FOR A DIFFERENT VIEW OF AN
4 ISSUE THAT HAS BEEN HARD FOUGHT IN THE COURTROOM. ALTHOUGH WE
5 ALL BELIEVE IN THE ADVERSARY SYSTEM, IN THE END THE
6 OVERWHELMING PROBLEM OF WHAT TO DO ABOUT THE CRISIS IN OUR
7 PRISON SYSTEM IS BEST RESOLVED THROUGH THE POLITICAL PROCESS.
8 IF WE HAVE TO RESOLVE IT, I ASSURE YOU, WE WILL.

9 IN THAT REGARD, WE WILL SHORTLY GIVE YOU OUR
10 TENTATIVE VIEWS OF THE ISSUES IN THIS PROCEEDING TO PROVIDE YOU
11 WITH SOME GUIDANCE AS TO HOW WE WILL RESOLVE THIS PROBLEM IF WE
12 ARE COMPELLED TO DO SO.

13 PERHAPS THESE VIEWS WILL ENCOURAGE YOU OR IN SOME
14 CASES YOUR CLIENTS TO COME TO YOUR SENSES AND SETTLE THIS
15 PROBLEM IN THE MANNER THAT PROBLEMS OF THIS NATURE SHOULD BE
16 RESOLVED, BY THE LEGISLATIVE AND EXECUTIVE BRANCHES OF
17 GOVERNMENT, NOT BY THE COURTS.

18 YOU HAVE HEARD WITNESSES AND EVEN JUDGES AT TIMES
19 TALK ABOUT A CRISIS OF LEADERSHIP. BELIEVE ME, WE ARE WELL
20 AWARE OF THE INTERVENING ECONOMIC CRISIS THAT NOW CONFRONTS OUR
21 STATE. BUT WITH TRUE POLITICAL LEADERSHIP THERE IS NO CRISIS
22 THAT CANNOT BE OVERCOME.

23 LET ME BE BLUNT. I KNOW, AND MY COLLEAGUES KNOW,
24 MOST OF THOSE WHO MUST PROVIDE THAT LEADERSHIP WELL. I WELL
25 KNOW FROM PERSONAL EXPERIENCES THAT THE GOVERNOR AND THE

1 ATTORNEY GENERAL BOTH HAVE THE CAPACITY TO PROVIDE THAT
2 LEADERSHIP HERE. THEY ARE BOTH EXTREMELY CAPABLE AND
3 KNOWLEDGEABLE INDIVIDUALS. ALL THEY NEED IS THE WILL AND
4 PERHAPS SOME ENCOURAGEMENT FROM ALL OF US, WISDOM TO LAY ASIDE
5 POLITICS AND PERSONAL CONSIDERATIONS.

6 THE PRISON PROBLEM IS SIMPLY TOO IMPORTANT TO THE
7 STATE AND THE PEOPLE FOR US TO TOLERATE FAILURE FOR ANY SUCH
8 REASON.

9 I SHOULD ADD THAT WE HAVE BEEN ENCOURAGED BY THE
10 APPEARANCES IN THE COURTROOM OF SOME OF THE REPUBLICAN
11 LEGISLATORS WHO HAVE APPEARED. THEIR COOPERATION IS ALSO
12 NECESSARY. AND WE BELIEVE THAT THEY, TOO, CAN PROVIDE THE
13 NECESSARY LEADERSHIP.

14 WE ALSO KNOW THAT THE VARIOUS BRANCHES OF GOVERNMENT
15 HAVE NOT WORKED WELL TOGETHER IN CALIFORNIA IN RECENT TIMES.
16 PUT THAT BEHIND YOU AS WELL. DON'T RISK THE PUBLIC SAFETY FOR
17 PARTISAN CONSIDERATIONS.

18 NOW, WE HAVE HEARD MUCH TESTIMONY, AS WELL AS
19 IMPASSIONED PLEADING BY COUNSEL, REGARDING THE PUBLIC SAFETY.
20 THAT ISSUE HAS WEIGHED ON THE MINDS AND HEARTS OF ALL THREE OF
21 US THROUGHOUT THESE PROCEEDINGS. IT WILL CONTINUE TO DO SO IF
22 WE ARE COMPELLED TO RESOLVE THIS LAWSUIT.

23 IF YOU ARE ALL EQUALLY CONCERNED, YOU WILL FIND A
24 SOLUTION THAT IS IN THE BEST INTERESTS OF THE PEOPLE.

25 WE HAVE COME TO THE END OF THE ROAD. NOW IT'S TIME

1 FOR YOU AND YOUR CLIENTS TO DO YOUR JOB. AND THE EVIDENCE
2 BROUGHT FORTH OR NOT BROUGHT FORTH IN THE TRIAL SHOULD GIVE
3 BOTH SIDES REASON TO DO SO.

4 AS TO WHERE WE ARE OTHERWISE, SHOULD WE CONCLUDE THAT
5 OVERCROWDING IS A PRIMARY CAUSE OF THE CONSTITUTIONAL
6 VIOLATIONS, AND WE HEARD MUCH EVIDENCE TO THAT EFFECT, AND
7 SHOULD WE CONCLUDE THAT NO OTHER ORDER THAT WE CAN ISSUE WILL
8 REMEDY THE CONSTITUTIONAL VIOLATIONS, WE WILL, WHILE
9 CONSIDERING THE EFFECT UPON PUBLIC SAFETY, BE REQUIRED TO GIVE
10 THE MOST SERIOUS CONSIDERATION TO ISSUING A PRISONER RELEASE
11 ORDER.

12 NOW, AS ALL THE LAWYERS HERE KNOW, THAT DOES NOT MEAN
13 NECESSARILY AN ORDER TO RELEASE PRISONERS. THE TERM "PRISONER
14 RELEASE ORDER" ENCOMPASSES A FAR BROADER VARIETY OF POSSIBLE
15 ORDERS. ORDERS THAT WILL SERVE TO LIMIT THE PRISON POPULATION
16 OVER A REASONABLE PERIOD OF TIME. ORDERS RANGING FROM THOSE
17 CONTROLLING INTAKE TO ORDERS ADOPTING PLANS FOR ESTABLISHING
18 MORE EFFECTIVE INTERNAL PROGRAMS LEADING TO ACCELERATED RELEASE
19 DATES. AN ORDER, OF COURSE, MAY BE AS SIMPLE AS A POPULATION
20 CAP.

21 WHATEVER THE METHOD, HOWEVER, IF WE MAKE THE
22 DETERMINATIONS THAT I HAVE LISTED ABOVE, WE CANNOT SIMPLY
23 IGNORE THE EGREGIOUS CONSTITUTIONAL VIOLATIONS THAT HAVE LASTED
24 FOR SO LONG. WE CANNOT PERMIT THOSE UNCONSTITUTIONAL
25 CONDITIONS TO CONTINUE INDEFINITELY.

1 JUDGES KARLTON AND HENDERSON HAVE EXHIBITED
2 REMARKABLE PATIENCE. I DOUBT THAT THERE ARE MANY JUDGES WHO
3 WOULD HAVE BEEN SO TOLERANT. 77 ORDERS ARE ENOUGH. WE URGE
4 YOU NOT TO MAKE THIS ISSUE THE 78TH.

5 WITH THOSE WORDS, MAY WE THANK YOU ALL AGAIN. I HOPE
6 THAT THE NEXT TIME WE ARE TOGETHER IT WILL BE SO THAT YOU CAN
7 TELL US THAT CALIFORNIA'S LEADERS HAVE NOT ONLY RECOGNIZED THE
8 SERIOUSNESS OF THE CRISIS, BUT HAVE FINALLY AGREED TO TAKE THE
9 NECESSARY STEPS TO RESOLVE IT; NOT OVER A PERIOD OF FIVE TO TEN
10 YEARS, BUT NOW.

11 IF NOT, IT WILL BE FOR US, PERHAPS AFTER FURTHER
12 EXPLORATION OF SOME OF THE POSSIBLE REMEDIES, TO TELL YOU HOW
13 IT WILL BE RESOLVED.

14 I CANNOT POSSIBLY CONVEY TO YOU THE DEPTH OF OUR
15 RELUCTANCE TO DO IT THAT WAY, BUT IF YOU LEAVE US NO
16 ALTERNATIVE, WE WILL.

17 I THANK YOU ALL ONCE MORE AND NOW I ASK MY COLLEAGUES
18 IF THEY WISH TO ADD ANY ADDITIONAL COMMENTS OF THEIR OWN.

19 JUDGE KARLTON?

20 **JUDGE KARLTON:** JUDGE REINHARDT'S ELOQUENCE COVERS
21 THE ISSUE.

22 THOSE OF YOU WHO HAVE APPEARED IN MY COURT IN COLEMAN
23 KNOW HOW MUCH I BELIEVE THIS IS THE STATE'S RESPONSIBILITY AND
24 THAT WE ACT ONLY WHEN THE STATE HAS DEMONSTRATED AN INABILITY
25 TO COME TO GRIPS WITH THE PROBLEM, AND EVEN THEN RELUCTANTLY.

1 IT IS SO CLEAR THAT THE POLITICAL SITUATION HAS
2 DEFINED AND CREATED THIS CRISIS. AND IT IS CLEAR TO ME, AS
3 JUDGE REINHARDT JUST SO ELOQUENTLY POINTED OUT, THAT IT IS THE
4 POLITICAL BRANCHES THAT HAVE THE RESPONSIBILITY TO SOLVE THE
5 PROBLEM THAT THEY CREATED.

6 AND, AGAIN, AS JUDGE REINHARDT SAID, WE WILL DO OUR
7 DUTY. THAT'S WHAT WE ARE SWORN TO DO, BUT WE DO IT RELUCTANTLY
8 AND ONLY WHEN YOU HAVE DEMONSTRATED THAT THERE IS NOTHING ELSE
9 AND NO OTHER WAY TO PROCEED.

10 I JOIN JUDGE REINHARDT IN HIS PRAISE OF THE LAWYERS.
11 I FEEL COMPELLED TO TELL THE GOVERNOR'S LAWYERS I EXPECT THEM
12 TO REPRESENT THE GOVERNOR AND REPRESENT HIS POSITION. I DON'T
13 EXPECT TO SEE DEVIATIONS FROM THAT POSITION WHICH ARE NOT
14 JUSTIFIED IN SOME WAY. THAT HAS NOT EMERGED CERTAINLY IN THIS
15 TRIAL.

16 **JUDGE REINHARDT:** THANK YOU.

17 JUDGE HENDERSON?

18 **JUDGE HENDERSON:** JUDGE REINHARDT, YOUR REMARKS
19 REFLECT MY COMMENTS AND MY THOUGHTS VERY ELOQUENTLY. AND I
20 WILL JUST FOCUS ON ONE ASPECT OF YOUR COMMENTS ABOUT THE SHEER
21 FRUSTRATION THAT WE FEEL UP HERE AND THE VIGOROUS QUESTIONING I
22 THINK AS A RESULT OF THAT FRUSTRATION.

23 AND I WILL SAY PERSONALLY NOTHING IN MY 29 YEARS ON
24 THE BENCH HAS BEEN MORE FRUSTRATING THAN FEELING DRAGGED AND
25 KICKING AND SCREAMING INTO THE POLITICAL ARENA, INTO THE

1 POLITICAL THICKET IN WHICH WE FIND OURSELVES.

2 I HAVE THOUGHT MANY TIMES ABOUT WHERE WE ARE NOW AND
3 WHERE I AM IN MY CAREER, AND I NOTE THAT I STARTED MY LEGAL
4 CAREER 47 YEARS AGO DEALING WITH STATE -- SOUTHERN STATE
5 INTERPOSITION TO FEDERAL ENFORCEMENT OF CIVIL RIGHTS. AND ALL
6 TOO OFTEN I FEEL I'M ENDING MY CAREER WITH THAT SAME PROBLEM.

7 JUDGE REINHARDT: WELL, LET'S HOPE JUDGE HENDERSON
8 DOESN'T HAVE TO END HIS CAREER THAT WAY. LET'S HOPE IT DOESN'T
9 END FOR A LONG TIME.

10 AGAIN, THANK YOU ALL. WE WILL BE TOGETHER AGAIN,
11 UNFORTUNATELY. BUT FOR THE MOMENT THE COURT WILL STAND IN
12 RECESS.

13 JUDGE KARLTON: NO, NO, BEFORE THAT...

14 (DISCUSSION HELD OFF THE RECORD.)

15 JUDGE REINHARDT: ALL RIGHT. THANK YOU AGAIN. SEE
16 YOU SOON.

17 (WHEREUPON AT 11:13 A.M. FURTHER PROCEEDINGS
18 IN THE ABOVE-ENTITLED CAUSE WERE ADJOURNED.)

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CERTIFICATE OF REPORTER

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WEDNESDAY, FEBRUARY 4, 2009