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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
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

APPEARANCES :**FOR PLAINTIFFS**

PRISON LAW OFFICE
 1917 FIFTH STREET
 BERKELEY, CALIFORNIA 94710
SARA NORMAN, ESQUIRE
ALISON HARDY, ESQUIRE
DONALD SPECTER, ESQUIRE
REBEKAH EVENSON, ESQUIRE

ROSEN, BIEN & GALVAN, LLP
 315 MONTGOMERY STREET, TENTH FLOOR
 SAN FRANCISCO, CALIFORNIA 94104

BY: MICHAEL W. BIEN, ESQUIRE

FOR CCPOA

CARROLL, BURDICK & MCDONOUGH
 44 MONTGOMERY STREET, SUITE 400
 SAN FRANCISCO, CALIFORNIA 94104

BY: NATALIE LEONARD, ESQUIRE

FOR DEFENDANTS

STATE OF CALIFORNIA
 DEPARTMENT OF JUSTICE
 OFFICE OF THE ATTORNEY GENERAL
 1300 I STREET, SUITE 125
 P.O. BOX 944255
 SACRAMENTO, CALIFORNIA 94244

BY: LISA A. TILLMAN, ESQUIRE

STATE OF CALIFORNIA
 DEPARTMENT OF JUSTICE
 OFFICE OF THE ATTORNEY GENERAL
 455 GOLDEN GATE AVENUE, SUITE 11000
 SAN FRANCISCO, CALIFORNIA 94102

BY: KYLE A. LEWIS, ESQUIRE

HANSON BRIDGETT
 425 MARKET STREET, 26TH FLOOR
 SAN FRANCISCO, CALIFORNIA 94105

BY: PAUL MELLO, ESQUIRE

S. ANNE JOHNSON, ESQUIRE

(APPEARANCES CONTINUED ON FOLLOWING PAGE)

APPEARANCES (CONTINUED):

1
2
3 **FOR DISTRICT ATTORNEY** THE DISTRICT ATTORNEY'S OFFICE
4 **INTERVENORS** COUNTY OF RIVERSIDE
5 **BY: WILLIAM E. MITCHELL, ESQUIRE**
6

7 **FOR LEGISLATOR** AKIN, GUMP, STRAUSS, HAUER & FELD, LLP
8 **INTERVENORS** 580 CALIFORNIA STREET, 15TH FLOOR
9 **BY: STEVE KAUFHOLD, ESQUIRE**
10

11 **FOR LAW ENFORCEMENT** JONES & MAYER
12 **INTERVENORS** 3777 NORTH HARBOR BOULEVARD
13 **BY: KIMBERLY HALL BARLOW, ESQUIRE**
14

15 **FOR COUNTY INTERVENORS** OFFICE OF THE COUNTY COUNSEL
16 COUNTY OF SANTA CLARA
17 70 WEST HEDDING STREET
18 **BY: THERESA FUENTES, ESQUIRE**
19

20 **FOR SONOMA COUNTY** COUNTY OF SONOMA
21 **INTERVENORS** 575 ADMINISTRATION DRIVE, ROOM 105A
22 **BY: ANNE L. KECK, ESQUIRE**
23

24 **FOR THE COUNTY OF** OFFICE OF MICHAEL P. MURPHY
25 **SAN MATEO** COUNTY COUNSEL, SAN MATEO COUNTY
INTERVENORS: HALL OF JUSTICE AND RECORDS
400 COUNTY CENTER, 6TH FLOOR
REDWOOD CITY, CALIFORNIA 94063-1662
BY: CAROL L. WOODWARD, ESQUIRE

- - - -

P R O C E E D I N G S

1
2 **FEBRUARY 3, 2009**

10:03 A.M.

3
4 **JUDGE REINHARDT:** GOOD MORNING AGAIN, EVERYBODY. WE
5 ARE HERE FOR THE REMAINDER OF THE ORAL ARGUMENTS.
6
7 COUNSEL.

REBUTTAL ARGUMENT

8 **MR. BIEN:** GOOD MORNING, YOUR HONORS. WE WILL DIVIDE
9 UP THE REBUTTAL AS WE DID BEFORE. MR. SPECTER WILL ADDRESS THE
10 PUBLIC SAFETY ISSUES.

11 **JUDGE KARLTON:** THE WHAT ISSUES?

12 **MR. BIEN:** THE PUBLIC SAFETY ISSUES. I WILL ADDRESS
13 THEM ONLY TO THE EXTENT -- AN IMPORTANT ISSUE WHICH I WANT TO
14 ADDRESS IS THE ISSUE OF THE RELEASE OF THE MENTALLY ILL INTO
15 THE COMMUNITIES, WHICH HAS BEEN A THEME BOTH BY THE DEFENDANTS
16 AND INTERVENORS, THAT SOMEHOW -- SOMEHOW IT IS BETTER FOR THE
17 MENTALLY ILL -- FOR THE PRISONERS TO REMAIN IN PRISON AND
18 REMAIN IN THE CONDITIONS THEY ARE IN RATHER THAN GOING INTO THE
19 COMMUNITY. AND, YOU KNOW, THE EVIDENCE IN THIS RECORD IS TO
20 THE CONTRARY AND THE PRISONS REMAINING PATHOGENIC FOR THE
21 MENTALLY ILL.

22 THERE ARE ENVIRONMENTS WHERE MENTAL ILLNESS IS BEING
23 EXACERBATED. THE DEMAND FOR MENTAL ILLNESS IS UP. EXPERTS
24 TESTIFIED THAT PRISONERS WOULD DO BETTER EVEN WITH NO RESOURCES
25 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

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

WEDNESDAY, FEBRUARY 4, 2009