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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)

REPORTED BY: JOAN MARIE COLUMBINI, CSR 5435, RPR
KATHERINE WYATT, CSR 9866, RMR
OFFICIAL COURT REPORTERS, U.S. DISTRICT COURT

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24 (APPEARANCES CONTINUED ON NEXT PAGE)

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19 **FOR SONOMA COUNTY** COUNTY OF SONOMA
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21 **BY: ANNE L. KECK, ESQUIRE**

PROCEEDINGS; TUESDAY, NOVEMBER 18, 2008

1
2
3 **THE CLERK:** CALLING CIVIL CASE C01-1351, PLATA VERSUS
4 SCHWARZENEGGER; CALLING CIVIL CASE NO. CIV S-90-0520, COLEMAN
5 VERSUS SCHWARZENEGGER.

6 APPEARANCES, COUNSEL.

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

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

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

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

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

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

24 **MR. MITCHELL:** GOOD MORNING, YOUR HONORS. BILL
25 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 WORSENERD.

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 BY 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** WOULDNT 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** WOULDNT 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.)

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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 COLUMBINI, CSR, RPR
KATHERINE WYATT, CSR, RMR
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