

1 UNITED STATES DISTRICT COURT
 2 FOR THE EASTERN DISTRICT OF CALIFORNIA
 3 AND FOR THE NORTHERN DISTRICT OF CALIFORNIA
 4 UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES PURSUANT
 5 TO SECTION 2284, TITLE 28 UNITED STATES CODE
 6
 7

8 RALPH COLEMAN, ET AL.,)
 9)
 10 PLAINTIFFS,)
 11)
 12 VS.) NO. CIV S-90-0520 LKK JFM P
 13)
 14 ARNOLD SCHWARZENEGGER, ET AL.)
 15) THREE-JUDGE COURT
 16 DEFENDANTS.)
 17)
 18)
 19)

20 MARCIANO PLATA, ET AL.,)
 21)
 22 PLAINTIFFS,)
 23)
 24 VS.) NO. C 01-1351 TEH
 25)
 26 ARNOLD SCHWARZENEGGER, ET AL.)
 27)
 28 DEFENDANTS.)
 29)
 30)

TRANSCRIPT OF PROCEEDINGS

SAN FRANCISCO, CALIFORNIA
WEDNESDAY, NOVEMBER 19, 2008

(APPEARANCES ON FOLLOWING PAGES)

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

1 **APPEARANCES :**

2 **FOR PLAINTIFFS:**

PRISON LAW OFFICE
1917 FIFTH STREET
BERKELEY, CALIFORNIA 94710

3 **BY: DONALD H. SPECTER, ESQUIRE**
4 **ALISON HARDY, ESQUIRE**
5 **REBEKAH EVENSON, ESQUIRE**

6 ROSEN, BIEN & GALVAN, LLP
7 315 MONTGOMERY STREET, TENTH FLOOR
8 SAN FRANCISCO, CALIFORNIA 94104

9 **BY: MICHAEL W. BIEN, ESQUIRE**
10 **JANE KAHN, ESQUIRE**
11 **AMY WHELAN, ESQUIRE**
12 **MARIA V. MORRIS, ESQUIRE**

13 **FOR CCPOA**

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

14 **BY: NATALIE LEONARD, ESQUIRE**

15 **FOR DEFENDANTS**

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

16 **BY: LISA A. TILLMAN, ESQUIRE**

17 STATE OF CALIFORNIA
18 DEPARTMENT OF JUSTICE
19 OFFICE OF THE ATTORNEY GENERAL
20 455 GOLDEN GATE AVENUE, SUITE 11000
21 SAN FRANCISCO, CALIFORNIA 94102

BY: KYLE A. LEWIS, ESQUIRE

22 **FOR COLEMAN DEFENDANTS**

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

23 **BY: PAUL B. MELLO, ESQUIRE**
24 **S. ANNE JOHNSON, ESQUIRE**
25

1 APPEARANCES (CONTINUED) :

2 **FOR DISTRICT ATTORNEY** THE DISTRICT ATTORNEY'S OFFICE
3 **INTERVENORS** COUNTY OF RIVERSIDE
4 82-675 HIGHWAY 111, FOURTH FLOOR
5 INDIO, CALIFORNIA 92201
6 **BY: WILLIAM E. MITCHELL, ESQUIRE**

7 **FOR LEGISLATOR** AKIN, GUM, STRAUSS, HAUER & FELD, LLP
8 **INTERVENORS** 580 CALIFORNIA STREET, 15TH FLOOR
9 SAN FRANCISCO, CALIFORNIA 94104
10 **BY: STEVE SHEA KAUFHOLD, ESQUIRE**
11 **TERESA WANG, ESQUIRE**

12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS; WEDNESDAY, NOVEMBER 19, 2008

1
2
3 **THE CLERK:** PLEASE STATE YOUR APPEARANCES, COUNSEL.

4 **MR. SPECTER:** DONALD SPECTER, ALISON HARDY FOR THE
5 PLAINTIFFS.

6 **MR. BIEN:** MICHAEL BIEN FOR THE COLEMAN PLAINTIFFS.

7 **JUDGE KARLTON:** YOU DON'T NEED TO GO THROUGH ALL
8 THAT. JUST PEOPLE ANNOUNCE WHEN THEY ARE SPEAKING.

9 **MS. LEONARD:** NATALIE LEONARD, CARROLL, BURDICK &
10 MCDONOUGH.

11 **JUDGE HENDERSON:** WE WILL ASSUME EVERYONE IS HERE.
12 WHY DON'T WE GET GOING?

13 **JUDGE REINHARDT:** COULD WE DO YESTERDAY OVER TODAY?
14 NOW I CAN HEAR.

15 **JUDGE HENDERSON:** YOU MAY CALL YOUR NEXT WITNESS,
16 COUNSEL.

17 **MR. SPECTER:** THANK YOU, YOUR HONOR. PLAINTIFFS CALL
18 DR. JEFFREY BEARD.

19 **JUDGE KARLTON:** YOU VIOLATED THE FIRST RULE. YOU
20 DIDN'T SAY WHO YOU WERE.

21 **MR. SPECTER:** YOU ARE RIGHT. I SINNED AGAIN.

22 DONALD SPECTER FOR THE PLAINTIFFS.

23 **JEFFREY A. BEARD, PH.D.**

24 HAVING BEEN CALLED AS A WITNESS BY THE PLAINTIFFS WAS FIRST
25 DULY SWORN AND EXAMINED AS FOLLOWS:

1 **THE WITNESS:** I DO.

2 **THE CLERK:** SPELL AND STATE YOUR FULL NAME FOR THE
3 RECORD.

4 **THE WITNESS:** JEFFREY A. BEARD. J-E-F-F-R-E-Y,
5 MIDDLE INITIAL A., B-E-A-R-D.

6 **MR. SPECTER:** THANK YOU.

7 YOUR HONORS, JUST A BRIEF NOTE OF INTRODUCTION,
8 DR. BEARD IS NOT A RETAINED WITNESS. WE DID NOT FILE A REPORT
9 FOR HIM, THEREFORE, I'M GOING TO GO INTO SOME MORE DETAIL ABOUT
10 HIS BACKGROUND AND EXPERIENCE THAN WE HAVE BEEN WITH THE REST OF
11 THE WITNESSES.

12 **JUDGE HENDERSON:** FINE. OKAY.

13 **DIRECT EXAMINATION BY MR. SPECTER**

14 **BY MR. SPECTER**

15 **Q** DR. BEARD, WHERE ARE YOU CURRENTLY EMPLOYED?

16 **A** I'M CURRENTLY SECRETARY OF THE PENNSYLVANIA DEPARTMENT OF
17 CORRECTIONS.

18 **Q** WHY DO WE CALL YOU DOCTOR?

19 **A** BECAUSE I HAVE A PH.D. FROM PENN STATE UNIVERSITY.

20 **Q** IN WHAT DISCIPLINE?

21 **A** COUNSELING.

22 **Q** AND ARE YOU A LICENSED PSYCHOLOGIST?

23 **A** I AM.

24 **Q** HOW LONG HAVE YOU BEEN THE SECRETARY OF THE PENNSYLVANIA
25 DEPARTMENT OF CORRECTIONS?

1 **A** I TOOK OVER AS SECRETARY IN -- I WAS CONFIRMED IN FEBRUARY
2 OF 2001.

3 **Q** OKAY. BEFORE THAT HOW LONG -- WELL, IN TOTAL HOW LONG HAVE
4 YOU WORKED FOR THE PENNSYLVANIA DEPARTMENT OF CORRECTIONS?

5 **A** I STARTED WORKING FOR THE PENNSYLVANIA DEPARTMENT OF
6 CORRECTIONS IN JUNE OF 1972, SO THAT'S JUST A LITTLE OVER 36
7 YEARS.

8 **Q** OKAY. AND IF YOU COULD COLLAPSE 36 YEARS INTO JUST A FEW --
9 BRIEF DESCRIPTION OF THE POSITIONS YOU'VE HELD IN THAT
10 DEPARTMENT?

11 **A** WELL, I STARTED OFF AS A PSYCHOLOGIST IN THE SYSTEM; BECAME
12 A DEPUTY SUPERINTENDENT AT THE FIRST INSTITUTION THAT I WORKED
13 IN; WENT FROM THERE AND BECAME A SUPERINTENDENT FOR 3-1/2 YEARS
14 AND OPENED UP A NEW FACILITY.

15 THEN I WAS PROMOTED TO ANOTHER INSTITUTION AS
16 SUPERINTENDENT, IT WAS A LARGER INSTITUTION, AFTER THEY HAD TWO
17 DEVASTATING RIOTS. I REMAINED THERE FOR ABOUT 3-1/2 YEARS. I
18 WAS THEN PROMOTED INTO CENTRAL OFFICE, BECAME A REGIONAL DEPUTY,
19 SECRETARY, EXECUTIVE DEPUTY SECRETARY, AND THEN IN 2001 BECAME
20 THE SECRETARY.

21 **Q** IN YOUR POSITIONS, IN THE POSITIONS AS DEPUTY SUPERINTENDENT
22 ON UP, HAVE YOU BEEN RESPONSIBLE FOR THE DELIVERY OF HEALTHCARE
23 SERVICES TO PRISONERS?

24 **A** YES.

25 **Q** TO MAKE SURE THAT OCCURS?

1 **A** YES. AS THE DEPUTY SUPERINTENDENT FOR TREATMENT AT THE
2 STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, ONE OF MY
3 RESPONSIBILITIES WAS TO OVERSEE NOT ONLY THE HEALTHCARE
4 DEPARTMENT, BUT ALSO THE PSYCHOLOGY DEPARTMENT, MENTAL
5 HEALTHCARE, DENTAL CARE AND THINGS LIKE THAT. THEN, OF COURSE,
6 AS WARDEN OF TWO INSTITUTIONS, I WAS ULTIMATELY RESPONSIBLE FOR
7 THE HEALTH AND MENTAL HEALTHCARE IN THOSE FACILITIES. THEN AS A
8 DEPUTY SECRETARY AND NOW A SECRETARY, I'M ALSO ULTIMATELY
9 RESPONSIBLE AT DIFFERENT LEVELS FOR THOSE CARE -- FOR THOSE
10 TYPES OF CARE.

11 **Q** IN YOUR CURRENT POSITION CAN YOU PLEASE DESCRIBE WHAT
12 ACTIVITIES YOU PURSUE IN TERMS OF HEALTHCARE?

13 **A** IN MY CURRENT POSITION?

14 **Q** YES.

15 **A** WELL, WE CONTRACT FOR OUR MEDICAL CARE AND FOR OUR MENTAL
16 HEALTH CARE, SO I'M REGULARLY INVOLVED IN REVIEWING THE RFP'S
17 AND RESPONSES TO RFP'S THAT GO OUT TO ENSURE WE ARE PROVIDING
18 COMPREHENSIVE MENTAL HEALTH AND MEDICAL CARE TO THE INMATE
19 POPULATION.

20 **Q** SO DO YOU PRACTICE AS A PSYCHOLOGIST?

21 **A** I DON'T. I HAVEN'T PRACTICED SINCE ABOUT 4-1/2 YEARS INTO
22 MY STAY WITH THE PENNSYLVANIA DEPARTMENT OF CORRECTIONS, AND
23 I'VE ACTUALLY -- MY LICENSE IS IN AN INACTIVE STATUS RIGHT NOW
24 BECAUSE OF THAT.

25 **Q** NEVERTHELESS, DO YOU CONSIDER YOURSELF AN EXPERT IN ANY

1 ASPECT OF THE DELIVERY OF HEALTHCARE TO PRISONERS?

2 **A** WELL, I CERTAINLY CONSIDER MYSELF AN EXPERT IN THE VARIOUS
3 THINGS THAT ARE REQUIRED TO MAKE SURE THAT WE'RE DELIVERING
4 CONSTITUTIONALLY ADEQUATE HEALTHCARE TO THE INMATE POPULATION.
5 I'M NOT A PHYSICIAN, SO WHEN IT GETS TO INDIVIDUAL CLINICAL CARE
6 OF AN INDIVIDUAL, THAT'S NOT MY AREA OF EXPERTISE, CERTAINLY.
7 BUT I DO KNOW AND HAVE -- THROUGH MY LONG YEARS OF EXPERIENCE DO
8 KNOW THE VARIOUS ELEMENTS THAT ARE REQUIRED TO PROVIDE PROPER
9 HEALTHCARE AND PROPER MENTAL HEALTHCARE TO THE INMATE
10 POPULATION.

11 **Q** AND COULD YOU BRIEFLY SUMMARIZE YOUR UNDERSTANDING OF THOSE
12 ELEMENTS, PLEASE?

13 **A** WELL, WHEN YOU ARE TALKING ABOUT HEALTHCARE, FIRST OF ALL,
14 YOU HAVE PEOPLE COMING INTO YOUR SYSTEM. YOU HAVE TO IDENTIFY
15 THE VARIOUS MEDICAL PROBLEMS AND MEDICAL NEEDS THAT THOSE
16 INDIVIDUALS HAVE. YOU HAVE TO HAVE PRIMARY CARE PHYSICIANS
17 WORKING FOR YOU IN ADEQUATE NUMBERS SO THEY CAN REVIEW NOT ONLY
18 THE INCOMING PEOPLE, BUT ON AN ONGOING BASIS TAKE CARE OF SICK
19 CALL AND THINGS LIKE THAT.

20 YOU HAVE TO HAVE SPECIALISTS ON CONTRACT SO WHEN A
21 INDIVIDUAL HAS A DERMATOLOGICAL PROBLEM OR ORTHOPEDIC PROBLEM,
22 YOU CAN REFER THEM TO SOME SPECIALIST FOR CARE. YOU HAVE TO
23 HAVE CONTRACTS WITH HOSPITALS SO THAT IF AN INDIVIDUAL NEEDS TO
24 GO OUT FOR SOME KIND OF OPERATION OR WHATEVER, THAT'S AVAILABLE.
25 YOU NEED TO HAVE TERTIARY CARE HOSPITALS FOR PEOPLE WHO NEED

1 HIGHER LEVELS OF CARE. YOU HAVE TO HAVE A PROPER MEDICAL
2 RECORDS SYSTEM IN PLACE SO THAT YOU CAN FOLLOW THE INMATE, YOU
3 CAN PROVIDE CONTINUITY OF CARE, AND THAT IF THEY MOVE FROM ONE
4 INSTITUTION TO ANOTHER INSTITUTION, THE PEOPLE ARE AWARE OF WHAT
5 THEY NEED. YOU HAVE TO HAVE A MEDICATION SYSTEM IN PLACE SO
6 THAT THOSE INDIVIDUALS WHO NEED MEDICATION RECEIVE MEDICATION
7 AND RECEIVE IT IN A TIMELY MANNER. YOU HAVE TO HAVE POLICIES IN
8 PLACE THAT SEE THAT ALL OF THIS CARE IS PROVIDED IN AN
9 APPROPRIATE MANNER TO THE INMATE POPULATION.

10 **Q** DO YOU HAVE TO HAVE ANY QUALITY ASSURANCE PROGRAMS?

11 **A** CERTAINLY. I DID MISS THAT. IN OUR STATE WE DO HAVE A VERY
12 EXTENSIVE QUALITY ASSURANCE PROGRAM THERE. THAT'S REALLY A
13 KEY -- IT'S A KEY NO MATTER WHAT YOU DO, WHETHER YOU'RE
14 PROVIDING MENTAL HEALTH CARE OR WHETHER YOU'RE PROVIDING MEDICAL
15 CARE OR PROVIDING PROGRAMS, BECAUSE IF YOU DON'T HAVE THAT IN
16 PLACE, YOU ARE NOT ABLE TO SEE WHERE YOU ARE DEVELOPING
17 PROBLEMS, MAYBE WHERE YOU ARE NOT DOING WHAT YOU SHOULD BE DOING
18 AND WHERE YOU NEED TO MAKE CHANGES.

19 **Q** WHAT'S THE CURRENT POPULATION OF THE PENNSYLVANIA DEPARTMENT
20 OF CORRECTIONS?

21 **A** WE CURRENTLY HAVE JUST A LITTLE OVER 48,000 INMATES.

22 **Q** HOW MANY PRISONS ARE THOSE INMATES HOUSED IN?

23 **A** THEY'RE HOUSED IN 26 PRISONS AND A BOOT CAMP.

24 **Q** ARE YOU HOUSING PRISONERS OVER DESIGN CAPACITY IN
25 PENNSYLVANIA?

1 **A** WE DON'T USE THE TERM "DESIGN CAPACITY." WE USE "OPERABLE
2 CAPACITY." WE LOOK AT EACH ONE OF OUR FACILITIES AND SEE WHAT
3 THOSE FACILITIES -- NOT ONLY SPACE-WISE BUT JOB-WISE,
4 PROGRAM-WISE, RECEIVER-WISE, WHAT THEY CAN HANDLE, AND WE
5 DETERMINE AN OPERABLE CAPACITY. WE'RE CURRENTLY OPERATING ABOUT
6 5,000 INMATES OVER THAT OPERABLE CAPACITY IN OUR SYSTEM.

7 **Q** AND DOES THAT CONCERN YOU IN ANY WAY IN TERMS OF THE
8 OPERATION OF YOUR SYSTEM?

9 **A** IT CERTAINLY CONCERNS ME. I THINK IT'S NOT HIGH ENOUGH YET
10 THAT WE CAN'T PROVIDE THE BASIC CARE THAT WE NEED TO PROVIDE TO
11 THE INMATES WITHIN THE INSTITUTION, AND WE MONITOR THAT VERY
12 CLOSELY. BUT ANY TIME THAT YOU'RE RUNNING OVER CAPACITY, YOU
13 HAVE MORE INMATES WHO DON'T HAVE JOBS THAT ARE IDLE, YOU HAVE
14 MORE POSSIBILITIES OF HAVING PROBLEMS WITHIN AN INSTITUTION. IT
15 INCREASES THE LEVEL OF RISK EVEN IF YOU ARE ONLY SOMEWHAT OVER
16 CAPACITY.

17 SO, YOU KNOW, MY HOPE AND ONE OF THE DIRECTIONS I'M
18 TAKING IN MY STATE IS TRY TO GET US DOWN TO A POINT WHERE WE GET
19 CLOSER TO THAT OPERABLE CAPACITY.

20 **Q** SO WHAT HAVE YOU DONE TO GET CLOSER TO THE OPERABLE
21 CAPACITY?

22 **A** WELL, ONE OF THE THINGS THAT WE DID IS WE RECENTLY PASSED
23 SOME LEGISLATION THAT HAS A -- REALLY WHAT IS TERMED AN EARNED
24 TIME PROVISION IN IT TO ALLOW CERTAIN NONVIOLENT OFFENDERS TO
25 GET OUT EARLIER, AND WE HAVE ANOTHER PIECE OF THAT, A STATE

1 INTERMEDIATE PUNISHMENT.

2 **MR. MELLO:** YOUR HONORS, PAUL MELLO FOR DEFENDANTS.
3 I'M GOING TO OBJECT. I THINK IT'S A PHASE TWO ISSUE. PAUL
4 MELLO FOR PLATA DEFENDANTS. I BELIEVE THIS IS A PHASE TWO
5 SUBJECT MATTER, AND I OBJECT ON THE BASIS OF RELEVANCE.

6 **JUDGE HENDERSON:** OKAY. I'M GOING TO OVERRULE IT.
7 THE OBJECTION WILL BE PRESERVED.

8 **BY MR. SPECTER**

9 **Q** MR. MELLO INTERRUPTED YOU IN THE MIDDLE -- PURSUANT TO THE
10 JUDGE'S REMARKS. SO DO YOU REMEMBER WHERE YOU WERE IN THE
11 MIDDLE OF THAT?

12 **A** YES. WE HAVE THE EARNED TIME PROVISION THAT WILL HELP. IT
13 WILL INCENTIVIZE INMATES. IT'S IMPORTANT WITH WHAT WE KNOW
14 ABOUT THESE -- SOME OF THE LESS SERIOUS OFFENDERS IS THE
15 IMPORTANT THING ISN'T TO CONFINEMENT THEM FOR LONG PERIODS OF TIME.
16 IN FACT, CONFINEMENT IS NOT SHOWN TO BE EFFECTIVE WITH THAT
17 GROUP OF PEOPLE.

18 THE IMPORTANT THING IS YOU ADDRESS THE CRIMINOGENIC
19 FACTORS THAT BROUGHT THEM TO PRISON IN THE FIRST PLACE. MOST OF
20 THAT -- SUBSTANCE ABUSE ISSUES IS ONE OF THE BIG ONES. THERE'S
21 CRIMINAL THINKING. THERE'S VIOLENCE ISSUES, THINGS LIKE THAT
22 THAT YOU HAVE TO ADDRESS. IF YOU ADDRESS THOSE ISSUES, THEY ARE
23 MORE LIKELY TO GO OUT AND SUCCEED AND NOT COME BACK TO PRISON.

24 SO WE DESIGNED A PACKAGE OF BILLS THAT HELPS
25 INCENTIVIZE THE INMATES TO GO THROUGH THEIR PROGRAMS, AND IF

1 THEY COMPLETE THEIR PROGRAMS, THEY CAN GET OUT A LITTLE BIT
2 EARLIER.

3 WE'VE ALSO DEVELOPED ANOTHER PROGRAM, A STATE
4 INTERMEDIATE PUNISHMENT PROGRAM, THAT WAS DESIGNED SPECIFICALLY
5 FOR SUBSTANCE ABUSE OFFENDERS. THEY COME IN, GET A VERY HIGH
6 QUALITY TREATMENT PROGRAM, EXTENSIVE AFTERCARE. IF THEY
7 COMPLETE THAT SUCCESSFULLY, THEY GET OUT EARLIER THAN THEY WOULD
8 HAVE HAD THEY GONE THROUGH A TRADITIONAL SENTENCE.

9 **Q** YOU HAVE INPATIENT -- YOU HAVE VARIOUS LEVELS OF MENTAL
10 HEALTHCARE, FOR EXAMPLE, IN YOUR FACILITIES, DO YOU NOT?

11 **A** YES, WE DO.

12 **Q** AND ARE THOSE -- EVEN THOUGH YOU'RE ABOVE DESIGN CAPACITY,
13 ARE THOSE LEVELS OF CARE FULL?

14 **A** NO, THEY'RE NOT. IN FACT, THE VERY HIGHEST LEVELS OF CARE
15 WITHIN MY SYSTEM, WE'RE ONLY RUNNING ABOUT 80 PERCENT OF
16 CAPACITY. WE HAVE LICENSED INPATIENT UNITS FOR THOSE PEOPLE
17 THAT ARE COMMITTED TO THOSE UNITS WITHIN OUR INSTITUTIONS, AND
18 WE ALSO RUN A FORENSIC HOSPITAL. WE HAVE BEEN PRETTY
19 CONSISTENTLY RUNNING AT ABOUT 80 PERCENT.

20 PART OF THE REASON I ATTRIBUTE TO THAT, BECAUSE WE DO
21 HAVE ABOUT 19 PERCENT OF OUR OVERALL POPULATION THAT IS MENTALLY
22 ILL, IS BECAUSE WE RECOGNIZE THEM WHEN THEY FIRST COME INTO THE
23 SYSTEM, AND WE HAVE A SPECIAL UNIT TO TRY TO STABILIZE
24 INDIVIDUALS, RATHER THAN LETTING THEM GET WORSE. AND THEN WE
25 HAVE SPECIAL NEEDS UNITS WITHIN ALL OF OUR INSTITUTIONS WHERE WE

1 PLACE THESE INDIVIDUALS SO THAT WE CAN SEE THAT THEY GET THE
2 PROPER CARE AND THEY DON'T DETERIORATE TO THE POINT WHERE THEY
3 HAVE TO GO TO THESE LICENSED UNITS IN OUR FORENSIC HOSPITAL.

4 **Q** SO THE FACT THAT THESE UNITS HAVE SOME VACANCIES, DOES THAT
5 HELP YOU MANAGE YOUR SYSTEM IN AN APPROPRIATE WAY?

6 **A** WELL, IT CERTAINLY DOES, BECAUSE, YOU KNOW, IF I HAVE AN
7 INDIVIDUAL THAT NEEDS SOME PARTICULAR LEVEL OF CARE, I'M ABLE TO
8 PROVIDE THAT CARE TO THEM. IF THOSE UNITS WERE FULL, AND I HAD
9 SOMEBODY THAT NEEDED THE CARE, THEN I COULDN'T. IT WOULD MAKE
10 IT MORE DIFFICULT FOR ME TO MANAGE MY SYSTEM.

11 **Q** SO WOULD IT BE FAIR TO SAY, IN ORDER TO HAVE A PROPERLY
12 FUNCTIONING SYSTEM, YOU NEED A VACANCY RATE IN THOSE KIND OF
13 PROGRAMS?

14 **A** YEAH, I THINK YOU NEED SOME -- I DON'T KNOW THAT WE NEED THE
15 80 PERCENT RATE THAT WE HAVE. CERTAINLY YOU NEED SOME VACANCY
16 RATE BECAUSE IT IS A VARIATION. YOU DO SEE OVER TIME SOMETIMES
17 YOU WILL SLIDE UP A LITTLE BIT, HAVE MORE PEOPLE IN THOSE UNITS,
18 AT OTHER TIMES A LITTLE BIT LESS.

19 YOU KNOW, IT SEEMS A LOT OF TIMES INMATES AROUND THE
20 HOLIDAYS, THEY GET A LOT MORE AGITATED, AND SOMETIMES WE SEE
21 MORE PEOPLE GOING IN AS THE HOLIDAY SEASONS ARE COMING.

22 **Q** YOU HAVE HEARD THE TERM "HOT BUNKING"?

23 **A** I HAVE.

24 **Q** CAN YOU DESCRIBE TO THE JUDGES WHAT YOU UNDERSTAND IT MEANS?

25 **A** WELL, WHERE I FIRST HEARD THE TERM "HOT BUNKING" WAS LIKE

1 WITH SUBMARINES BACK IN WORLD WAR II WHERE WE DIDN'T HAVE ENOUGH
2 BEDS FOR PEOPLE, SO TWO PEOPLE WOULD SHARE THE SAME BED. THAT'S
3 NOT SOMETHING THAT WE DO OR HAVE EVER DONE IN PENNSYLVANIA,
4 DESPITE THE FACT THAT I READ IN ONE OF THE EXPERT'S REPORTS THAT
5 WE DID THAT. I DON'T KNOW WHERE THAT INDIVIDUAL GOT THAT.

6 **Q** NOW, YOU BECAME THE WARDEN OF AN INSTITUTION CALLED CAMP
7 HILL; IS THAT CORRECT?

8 **A** YES.

9 **Q** CAN YOU DESCRIBE THE CIRCUMSTANCES UNDER WHICH YOU BECAME
10 THE WARDEN OF THAT INSTITUTION?

11 **A** WELL, THAT WAS BACK IN 1989 AT A TIME WHEN OUR SYSTEM WAS
12 QUITE OVERCROWDED. WE WERE AT ABOUT 150 OR 160 PERCENT OF OUR
13 CAPACITY. MOST OF OUR INSTITUTIONS WERE HAVING DIFFICULTIES
14 OPERATING. CAMP HILL WAS PARTICULARLY OVERCROWDED, AND THEY HAD
15 TWO VERY SERIOUS RIOTS WITHIN THREE DAYS. A LOT OF PEOPLE WERE
16 HURT. A LOT OF PEOPLE WERE INJURED. AND IT WAS SOME TEN DAYS
17 AFTER THAT RIOT THAT I WAS ASSIGNED TO TAKE OVER THAT FACILITY.

18 **Q** AND DO YOU ATTRIBUTE THE RIOTS IN ANY WAY TO THE
19 OVERCROWDING?

20 **A** ABSOLUTELY. THERE WAS NO QUESTION THAT WE HAD RIOTS,
21 ACTUALLY, NOT ONLY AT CAMP HILL, BUT AT ROCKVIEW AND AT
22 HUNTINGTON, TWO OF OUR OTHER PRISONS, IN THE SAME TIME PERIOD.
23 AND THERE'S ABSOLUTELY NO QUESTION IN MY MIND THAT HAVING TOO
24 MANY INMATES IN THOSE FACILITIES, MAKING IT DIFFICULT TO MANAGE
25 THOSE FACILITIES SAFELY, LED TO THOSE RIOTS.

1 Q OKAY. AND DID THE LEVEL OF OVERCROWDING THAT YOU
2 EXPERIENCED IN PENNSYLVANIA DURING THAT TIME AFFECT THE
3 DEPARTMENT'S ABILITY TO PROVIDE ADEQUATE HEALTHCARE TO
4 PRISONERS?

5 A YOU KNOW, WHEN I LOOK BACK, THE ANSWER IS YES. YOU KNOW,
6 WHEN YOU'RE THERE AND YOU'RE DOING SOMETHING AT A PARTICULAR
7 TIME, YOU THINK YOU ARE DOING A GOOD JOB, BUT WE ACTUALLY HAD A
8 CLASS ACTION LAWSUIT PUT AGAINST US IN 1990, THE AUSTIN SUIT,
9 WHERE THE PLAINTIFFS WERE SAYING THAT WE REALLY WEREN'T
10 PROVIDING ADEQUATE MENTAL HEALTH AND MEDICAL CARE.

11 WHEN I LOOK BACK ON WHAT THEY WERE REQUESTING AND
12 WHAT WE FINALLY AGREED TO DO, BECAUSE WE SETTLED THAT SUIT,
13 THERE'S NO QUESTION THAT THE CARE WE PROVIDE TODAY IS FAR BETTER
14 THAN WHAT WE WERE PROVIDING BACK AT THAT TIME.

15 Q DID THE STATE OF CALIFORNIA EVER ASK YOU TO HELP THEM IN
16 RELATION TO ITS PRISON SYSTEM?

17 A I WAS ASKED TO BE A MEMBER OF THE EXPERT PANEL TO TAKE A
18 LOOK AT DESIGNING A ROAD MAP TO PROGRAMMING WITHIN THE STATE
19 BECAUSE I UNDERSTOOD THAT THEY WANTED TO GET MORE PROGRAMS IN
20 THEIR SYSTEM TO TRY TO REDUCE RECIDIVISM. SO I WAS PART OF THAT
21 PANEL.

22 Q WHEN WAS THAT?

23 A IT WAS BACK A COUPLE OF YEARS AGO.

24 Q 2006, END OF 2006?

25 A THAT WOULD BE ABOUT RIGHT.

1 **JUDGE HENDERSON:** EXCUSE ME. LET ME GO BACK A
2 MINUTE. I MAY HAVE MISSED IT, BUT WHAT WAS THE LEVEL OF
3 OVERCROWDING AT THE TIME OF THE RIOTS YOU JUST REFERRED TO; DO
4 YOU RECALL?

5 **THE WITNESS:** WE WERE AT 150 TO 160 PERCENT OF OUR
6 CAPACITY AT THAT TIME, YOUR HONOR.

7 **BY MR. SPECTER**

8 **Q** DURING THE COURSE OF YOUR PARTICIPATION AS A MEMBER OF WHAT
9 HAS BEEN REFERRED TO AS THE EXPERT PANEL, DID YOU -- WERE YOU
10 PROVIDED WITH INFORMATION ABOUT THE CALIFORNIA PRISON SYSTEM?

11 **A** YES. WE WERE PROVIDED WITH PRETTY MUCH ANYTHING WE ASKED
12 FOR, DATA, INFORMATION, REPORTS. WE ALSO HAD SOME PRESENTATIONS
13 BY MEMBERS OF THEIR STAFF, AND MEMBERS OF THEIR STAFF WERE PART
14 OF THE EXPERT PANEL.

15 **Q** AND THE PRESENTATIONS INCLUDED FROM THE SECRETARY OF THE
16 DEPARTMENT?

17 **A** THE SECRETARY -- SECRETARY TILTON DID ATTEND THE FIRST
18 MEETING THAT WE HAD AS AN EXPERT PANEL, YES.

19 **Q** AND THEY PROVIDED YOU INFORMATION ON HOW OVERCROWDED THEY
20 WERE AND ANY INFORMATION THAT YOU NEEDED TO PERFORM YOUR TASK;
21 IS THAT RIGHT?

22 **A** YES, THAT'S CORRECT.

23 **Q** SO YOU UNDERSTAND THAT CALIFORNIA IS CLOSE TO 200 PERCENT OF
24 DESIGN CAPACITY; IS THAT RIGHT?

25 **A** YES. AT THE TIME THAT WE WERE DOING THAT BACK IN 2006, I

1 THINK THEY WERE OVER 200 PERCENT, AND I THINK NOW THEY'RE DOWN
2 AROUND 190-SOME PERCENT OF CAPACITY.

3 **JUDGE HENDERSON:** LET ME INTERRUPT AGAIN.

4 **MR. SPECTER:** SURE.

5 **JUDGE HENDERSON:** YOU TALK IN PENNSYLVANIA IN TERMS
6 OF OPERABLE CAPACITY AND WE'RE NOW TALKING ABOUT DESIGN. ARE
7 THOSE APPLES AND ORANGES, OR TELL US HOW WE CAN --

8 **THE WITNESS:** WELL, I THINK, YOUR HONOR, PROBABLY
9 MORE COMPARABLE THAN THEY WOULD BE TODAY, BECAUSE BACK AT THAT
10 TIME WE WERE STILL LOOKING AT SINGLE CELLING ALL OF OUR INMATES,
11 AND WE WERE LOOKING AT DESIGN CAPACITY. SINCE THEN WE HAVE
12 BUILT FACILITIES FOR DOUBLE CELLING, AND WE HAVE GONE MORE TO
13 DOUBLE CELLING, AND THAT'S WHY WE WENT TO THIS OPERABLE CAPACITY
14 THING.

15 WE ALSO SPENT MILLIONS OF DOLLARS UPGRADING THE
16 INFRASTRUCTURE AT OLDER INSTITUTIONS SO THAT WE WERE CAPABLE OF
17 PUTTING MORE INMATES THAN THAT INSTITUTION WAS ORIGINALLY
18 DESIGNED FOR. SO THAT'S WHY IT'S NO LONGER APPROPRIATE FOR US
19 TO TALK ABOUT DESIGN CAPACITY.

20 BUT THE 150 OR 60 PERCENT I MENTIONED WAS BASED ON
21 DESIGN CAPACITY AT THAT TIME.

22 **JUDGE HENDERSON:** OKAY.

23 **BY MR. SPECTER**

24 **Q** HOW BIG ARE THE PRISONS IN PENNSYLVANIA IN TERMS OF THE
25 SIZE, OF THE NUMBER OF PRISONERS THAT ARE HOUSED THERE?

1 **A** WE LIKE TO RUN OUR PRISONS AT ABOUT 2,000 INMATES. WE HAVE
2 TWO LARGER PRISONS, THE ONE RUNS IN AROUND 3,200. THE OTHER ONE
3 RUNS AROUND 3,300. THOSE ARE OUR LARGEST TWO PRISONS.

4 EVERYTHING ELSE IS 2,000 OR LESS. I SHOULD SAY 2,500 OR LESS.

5 WE FOUND THAT AS PRISONS GET MUCH HIGHER THAN 3,000,
6 3,500, THEY BECOME VERY, VERY DIFFICULT FOR ONE MANAGEMENT TEAM
7 TO OPERATE.

8 WE DID HAVE A PRISON, GRATERFORD, THAT WAS SEVERELY
9 OVERCROWDED BACK AT THE TIME I TALKED ABOUT IN THE LATE '80'S
10 AND EARLY '90'S. THAT PRISON, WHICH WAS ORIGINALLY DESIGNED FOR
11 2,000 INMATES WAS RUNNING CLOSE TO 4,100 INMATES. IT WAS
12 ACTUALLY OVER A HUNDRED -- TWO HUNDRED PERCENT OF CAPACITY.
13 THAT WAS OUR WORST PRISON, OUR MOST DIFFICULT PRISON. HIGH
14 RATES OF ASSAULTS AND INCIDENTS IN THAT PRISON, VERY DIFFICULT
15 TO MANAGE.

16 WE'VE BROUGHT THAT DOWN TO ABOUT 3,200. NOW WE ARE
17 ABLE TO MANAGE THAT PRISON. BUT THAT'S SORT OF LIKE HITTING THE
18 UPPER LIMITS OF WHERE I WOULD WANT TO RUN A PRISON ABOUT, YOU
19 KNOW, 3,000 TO 3,500. I WOULDN'T WANT TO GO OVER THAT.

20 **Q** SO DURING THE COURSE OF YOUR PARTICIPATION IN THE EXPERT
21 PANEL, YOU BECAME AWARE OF THE SIZE OF THE CALIFORNIA PRISONS;
22 IS THAT CORRECT?

23 **A** YES, I DID.

24 **Q** AND WHAT'S YOUR UNDERSTANDING OF HOW LARGE THEY ARE?

25 **A** WELL, MY UNDERSTANDING IS SOME OF THE PRISONS RUN UPWARDS OF

1 7,000 OR MORE INMATES.

2 **Q** WHAT'S YOUR OPINION ABOUT AN ABILITY TO MANAGE AN
3 INSTITUTION WHICH IS THAT OVERCROWDED AND THAT LARGE?

4 **A** MY OPINION IS IT IS IMPOSSIBLE TO REALLY DO A GOOD JOB WITH
5 PRISONS THAT LARGE. AND THAT COMES FROM EXPERIENCE OF RUNNING A
6 PRISON, THE CAMP HILL PRISON. BEFORE I LEFT THERE, GOT UP TO
7 BETWEEN -- I THINK WE GOT UP TO ABOUT 3,300 INMATES, AND THAT
8 WAS STARTING TO BECOME DIFFICULT AT THAT TIME TO MANAGE THAT
9 PRISON. AND SO I WOULD SAY I WOULDN'T WANT TO HAVE TO RUN A
10 PRISON THAT WAS 7,000 INMATES.

11 **JUDGE KARLTON:** YOU JUST SAID IT'S IMPOSSIBLE TO RUN
12 A PRISON AND DO A GOOD JOB. I'M NOT SURE I KNOW WHAT A GOOD JOB
13 IS IN TERMS OF PRISON. WOULD YOU GIVE ME AN IDEA, IF YOU CAN --

14 **THE WITNESS:** SURE.

15 **JUDGE KARLTON:** -- OF WHAT KINDS OF THINGS YOU CAN'T
16 DO?

17 **THE WITNESS:** WELL, ONE OF THE BIG THINGS IS -- THE
18 KEY, IN MY OPINION, TO RUNNING PRISONS IS THE WARDEN AND HIS
19 TEAM WITHIN THE PRISON. AND THE KEY TO THEM DOING A GOOD JOB IS
20 GOING OUT AND GETTING AROUND THE INSTITUTION, TALKING TO THE
21 INMATES, TALKING TO THE STAFF, TAKING CARE OF THE LITTLE
22 PROBLEMS THAT EXIST WITHIN PRISONS, SEEING THAT THOSE LITTLE
23 PROBLEMS DON'T BECOME BIG PROBLEMS. AND THE BIGGER THE PRISON
24 GETS, THE MORE DIFFICULT IT IS FOR THAT MANAGEMENT TEAM TO
25 REALLY SUCCESSFULLY GO OUT THERE AND TAKE CARE OF THOSE SMALLER

1 PROBLEMS AND PREVENT THEM FROM GETTING BIGGER.

2 I'VE DONE A LOT OF WORK STUDYING PRISON DISTURBANCES
3 AND RIOTS AROUND THE COUNTRY, LOOKED AT SOME OF THE THINGS
4 WITHIN MY OWN STATE, AND WHAT YOU FIND IS WHEN YOU HAVE PROBLEMS
5 LIKE THAT, IT'S ONE OF TWO THINGS. EITHER THE PRISONS ARE SO
6 LARGE THAT THE TEAM CAN'T HANDLE THAT PRISON, OR YOU HAVE A POOR
7 MANAGEMENT TEAM.

8 SO YOU CAN HAVE A SMALLER PRISON, 2,000 INMATES, AND
9 IF YOU HAVE A POOR WARDEN AND POOR DEPUTIES THAT NEVER GET OUT,
10 NEVER TALK TO ANYBODY, YOU CAN HAVE PROBLEMS WITHIN THAT PRISON.
11 SO, FROM MY EXPERIENCE, THAT'S THE BIGGEST THING OF HELPING YOU
12 MANAGE IT.

13 THERE'S A LOT OF OTHER THINGS ABOUT WHETHER YOU HAVE
14 THE CAPABILITY WITHIN THE PRISON. YOU KNOW, IF YOU TAKE A
15 PRISON THAT'S BUILT FOR 4,000 INMATES AND YOU PUT 7,000 INMATES
16 IN THERE, THAT IS EVEN A COMPLICATING PROBLEM THEN. NOT ONLY IS
17 IT SO HUGE THAT YOUR MANAGEMENT TEAM CAN'T DO A GOOD JOB, BUT
18 ALL YOUR SERVICES START SUFFERING WITHIN THAT PRISON. YOU KNOW,
19 YOUR ABILITY TO PROVIDE, SAY, PROPER SANITATION, YOU KNOW,
20 BECAUSE YOUR SHOWERS, THEY'RE OVERUSED, EVERY DAY PEOPLE ARE
21 GOING IN THE SHOWERS AND OUT. YOU DON'T HAVE TIME TO CLEAN THE
22 SHOWERS APPROPRIATELY BECAUSE THEY'RE IN USE ALL THE TIME. OR
23 THE LAUNDRY SERVICES, YOU ARE NOT ABLE TO CLEAN THE CLOTHES AND
24 GET THE CLOTHES BACK TO THE INMATES. YOU KNOW, ALL OF THESE
25 THINGS START SUFFERING WHEN YOU GET SO OVERCROWDED AND SO BIG

1 AND THERE'S ALL THIS DAY-TO-DAY ACTIVITY THAT GOES ON WITHIN A
2 PRISON.

3 YOU KNOW, I THINK PEOPLE SOMETIMES DON'T UNDERSTAND
4 THE COMPLEXITY OF RUNNING THESE PRISONS. THIS IS LIKE RUNNING A
5 CITY. I MEAN, WE HAVE TO PROVIDE WATER. WE HAVE TO PROVIDE
6 SEWAGE. WE HAVE TO PROVIDE JOBS TO PEOPLE. WE HAVE TO PROVIDE,
7 YOU KNOW, THE LAUNDRY SERVICES. WE HAVE TO PROVIDE FOOD.

8 WHEN YOU OVERCROWD PRISONS, THINGS GET USED MORE,
9 THINGS BREAK DOWN A LOT MORE THAN THEY WOULD THAT YOU ARE
10 CONSTANTLY RUNNING OUT THERE FIXING THINGS. YOUR INFRASTRUCTURE
11 SUFFERS. ALL OF THESE THINGS OCCUR AS YOU PUT MORE AND MORE
12 INMATES IN A FACILITY THAT WAS DESIGNED FOR LESS INMATES.

13 **JUDGE KARLTON:** PARTICULARLY IN TERMS OF WHAT THIS
14 LAWSUIT IS ABOUT, IS IT YOUR VIEW THAT IF THE INSTITUTION RUNS
15 MORE THAN 3,200 PEOPLE, PLUS OR MINUS, I UNDERSTAND, THERE IS
16 EFFECTS UPON THE PROVISION OF MEDICAL AND MENTAL HEALTH CARE,
17 AND, IF SO, HOW?

18 **THE WITNESS:** I GUESS WHAT I WOULD SAY WITH THAT IS
19 IT IS POSSIBLE TO HAVE LARGER PRISONS AND TO PROVIDE PROPER
20 MEDICAL AND MENTAL HEALTH CARE IN THOSE PRISONS, BUT THAT'S
21 ASSUMING THAT THOSE PRISONS WERE DESIGNED FOR THE NUMBER OF
22 INMATES THAT YOU HAVE IN THERE. THAT ASSUMES THAT YOU HAVE
23 ENOUGH SPACE IN THOSE PRISONS TO -- YOU KNOW, TO PROVIDE
24 WHATEVER THE CARE NEEDS TO BE DONE, TO INTERVIEW THE INMATES, TO
25 SEE THE INMATES. THAT MAKES THOSE KINDS OF ASSUMPTIONS.

1 AND IT ALSO ASSUMES THAT THE LARGE SIZE OF THE PRISON
2 HAS NOT SERIOUSLY AFFECTED YOUR ABILITY TO RUN THAT PRISON
3 SAFELY, WHICH CAN HAPPEN. AGAIN, AS THAT MANAGEMENT TEAM HAS
4 MORE DIFFICULTY MANAGING THESE LARGER NUMBERS OF PEOPLE, THEN
5 YOUR PRISON COULD BECOME MORE UNSAFE. THERE'S MORE IDLENESS IN
6 THE PRISON AND THINGS -- YOU KNOW, IT COULD MAKE IT THEN
7 DIFFICULT -- FOR INSTANCE, IF YOU RELY A LOT ON LOCKDOWNS TO
8 CONTROL YOUR PRISON, HOW ARE PEOPLE GETTING TO THEIR MENTAL
9 HEALTHCARE? HOW ARE THEY GETTING TO THEIR MEDICAL CARE? HOW
10 ARE THEY GETTING THEIR MEDICATION APPROPRIATELY? THOSE KINDS OF
11 THINGS DO GET IMPACTED.

12 SO I GUESS, TO ANSWER YOUR QUESTION, IT'S POSSIBLE TO
13 DO IT, BUT IT BECOMES THAT MUCH MORE DIFFICULT EVEN IF YOU HAVE
14 THE RESOURCES AND SPACE BECAUSE OF THE OTHER THINGS THAT START
15 OCCURRING THAT START INTERFERING WITH THE ABILITY TO PROVIDE
16 THIS KIND OF CARE.

17 **BY MR. SPECTER**

18 **Q** TO ELABORATE ON THE JUDGE'S QUESTION FOR A BIT, YOU'RE AWARE
19 THAT CALIFORNIA'S PRISONS, LIKE YOU SAID, ARE CLOSE TO
20 200 PERCENT -- BETWEEN 190 TO 200 PERCENT OF CAPACITY, AND WITH
21 THAT LEVEL OF OVERCROWDING, IS IT POSSIBLE TO PROVIDE ADEQUATE
22 HEALTHCARE SERVICES TO PRISONERS?

23 **A** WELL, FROM EVERYTHING THAT I HAVE SEEN, THE REPORTS THAT
24 I'VE LOOKED AT AND REVIEWED FROM THE VARIOUS EXPERTS AND OTHER
25 PEOPLE, I DON'T SEE HOW CALIFORNIA COULD, AS IT CURRENTLY SITS

1 WITH THE NUMBER OF INMATES THEY HAVE, DELIVER PROPER MENTAL
2 HEALTH OR MEDICAL CARE, BECAUSE THEIR PRISONS ARE UNSAFE.

3 AND WHEN I TALK ABOUT UNSAFE, YOU LOOK AT THE NUMBER
4 OF INCIDENTS THAT THEY HAVE. YOU LOOK AT THEIR ASSAULT RATES
5 WITHIN THE PRISON. THE ASSAULT RATES ARE GOING UP, AT LEAST UP
6 THROUGH 2006. THAT'S THE ONLY REPORTS I WAS ABLE TO SEE OFF
7 THEIR WEBSITE. THEIR INCIDENT RATES ARE GOING UP.

8 AND THEN I SORT OF COMPARED IT TO OUR ASSAULT RATES.
9 IT'S LIKE 2-1/2 TIMES, IF YOU BRING IT DOWN COMPARISON-WISE SIZE
10 OF THE INSTITUTION. THEIR HOMICIDE RATE IS EXTREMELY HIGH. YOU
11 LOOK BETWEEN 2000 AND 2006, AND THE AVERAGE IS 11.34 HOMICIDES
12 WITHIN THEIR SYSTEM. IF YOU APPLIED THAT TO MY SYSTEM, WE WOULD
13 HAVE THREE A YEAR. DURING THAT PERIOD OF TIME, WE'VE HAD THREE
14 OVER THAT PERIOD OF TIME, NOT THREE A YEAR. SUICIDE RATES, FROM
15 WHAT I'VE READ AND FROM THE NUMBERS OF THAT I'VE SEEN, THEY'RE
16 JUST ABOUT TWICE WHAT THE NATIONAL AVERAGE IS.

17 ALL OF THOSE THINGS SHOW ME THAT YOU HAVE A SYSTEM
18 THAT ISN'T SAFE. THEY RELY LARGELY ON LOCKDOWNS TO CONTROL
19 THEIR SYSTEM, AND THEY HAVE TO DO THAT. I MEAN, YOU CAN'T HAVE
20 PEOPLE RUNNING AROUND HURTING PEOPLE. BUT, YOU KNOW, I THINK IN
21 2006, THEY HAD 449 LOCKDOWNS, WHICH AVERAGED 12 DAYS A LOCKDOWN.
22 AND THEY HAD 20 OR SO OF THOSE LOCKDOWNS THAT WERE OVER 60 DAYS.
23 THOSE THINGS IMPACT UPON YOUR ABILITY TO PROPERLY DELIVER ANY
24 SERVICE WITHIN AN INSTITUTION, INCLUDING MENTAL HEALTH AND
25 MEDICAL SERVICES.

1 Q AND YOU MENTIONED A LOT OF FACTORS THAT GO INTO THE DELIVERY
2 OF CARE AND THE OPERATION OF THE PRISONS. IN TERMS OF THE MOST
3 IMPORTANT, WHICH ONE IS MOST IMPORTANT IN YOUR MIND?

4 A MOST IMPORTANT?

5 Q IN TERMS OF INHIBITING THE ABILITY OF --

6 A I THINK FROM EVERYTHING THAT I'VE SEEN AND ALL OF THE
7 REPORTS AND INFORMATION THAT I'VE SEEN, I THINK THE BIGGEST
8 INHIBITING FACTOR RIGHT NOW IN CALIFORNIA BEING ABLE TO DELIVER
9 APPROPRIATE MENTAL HEALTH AND MEDICAL CARE IS THE SEVERE
10 OVERCROWDING OF THEIR SYSTEM.

11 Q AND DO YOU BELIEVE THAT THEY ARE GOING TO BE ABLE -- BASED
12 ON YOUR EXPERIENCE IN PENNSYLVANIA AND THE INFORMATION YOU'VE
13 REVIEWED, DO YOU BELIEVE THEY'LL BE ABLE TO PROVIDE ADEQUATE
14 CARE WITHOUT REDUCING THE POPULATION TO A MANAGEABLE LEVEL?

15 A THE ONLY WAY THAT I COULD SEE THAT THAT COULD OCCUR IS IF
16 WE'RE WILLING -- OR IF THEY'RE WILLING TO WAIT FOR MANY YEARS,
17 SPEND HUGE AMOUNTS OF MONEY. AND I'M NOT EVEN SURE THAT THAT
18 WOULD GET THEM THERE, BECAUSE, YOU KNOW, OVER THE LAST 20 YEARS
19 THEY'VE SPENT BILLIONS OF DOLLARS ON CONSTRUCTION AND BUILDING,
20 AND THEY HAVEN'T REALLY BEEN ABLE TO DIG THEIR WAY OUT OF THE
21 HOLE.

22 SO I THINK IT WOULD BE VERY DIFFICULT TO JUST, YOU
23 KNOW, SAY, RELY ON CONSTRUCTION ALONE TO DEAL WITH THIS PROBLEM.
24 I THINK THEY HAVE TO FIND SOME WAY TO FAIRLY SUBSTANTIALLY
25 REDUCE THE INMATE POPULATION.

1 Q AND IN TERMS OF YOUR EXPERIENCE OF TRYING TO BUILD YOUR WAY
2 OUT OF THE PROBLEM, CAN YOU EXPLAIN WHY YOU -- WHY YOU DON'T
3 THINK THAT IS A TIMELY RESPONSE TO THE ISSUES?

4 A WELL, THE REASON I DON'T THINK IT'S A TIMELY RESPONSE IS
5 WHEN I LOOK AT WHAT'S HAPPENED IN MY STATE, AND EVEN SOME OTHER
6 STATES AROUND THE COUNTRY, PEOPLE AREN'T REALLY WILLING TO PUT
7 THE KINDS OF MONEY INTO THAT THAT NEEDS TO BE PUT IN. SO WE'LL
8 HAVE APPROVED PROJECTS TO BUILD A NEW PRISON OR TO BUILD FIVE
9 NEW PRISONS, AND IT'S VERY SLOW COMING BECAUSE EVEN THOUGH THE
10 PROJECT IS APPROVED, SOMEBODY HAS TO RELEASE THE MONEY FOR
11 DESIGN AND SOMEBODY HAS TO RELEASE THE MONEY FOR CONSTRUCTION.

12 SO IN MY EXPERIENCE, YOU KNOW, STATES WANT TO SPEND
13 AS LITTLE AS THEY CAN ON THE PRISON SYSTEMS BECAUSE THERE'S SO
14 MANY OTHER COMPETING THINGS OUT THERE. I MEAN, YOU KNOW, YOU
15 HAVE HEALTHCARE AND EDUCATION, THE ELDERLY AND ALL THESE OTHER
16 IMPORTANT THINGS TO SPEND MONEY ON. SO THEY TEND TO ONLY SPEND
17 WHAT THEY ABSOLUTELY HAVE TO, AND THAT'S WHY I THINK THEY'RE
18 NEVER ABLE TO BUILD THEIR WAY OUT, BECAUSE THEY NEVER REALLY SIT
19 DOWN AND SAY, OKAY, WE GOT TO BUILD 20 NEW PRISONS, OR WHATEVER
20 IT IS.

21 Q WHAT ABOUT ISSUES OF SITING IN THE COMMUNITY?

22 A YOU KNOW, I MEAN, I DON'T KNOW IF BY THAT YOU MEAN THE
23 AB 900.

24 Q NO. I MEAN THE ABILITY OF COMMUNITIES TO ACCEPT PRISONS IN
25 THEIR NEIGHBORHOODS.

1 **A** OKAY. WELL, THERE'S NO QUESTION THAT THAT'S A PROBLEM. WE
2 HAD THAT PROBLEM IN PENNSYLVANIA. YOU HAVE THAT PROBLEM AROUND
3 THE COUNTRY.

4 I HAD -- EXCELLENT EXAMPLE. WE HAD AN OLD PRISON,
5 OVER A HUNDRED YEARS OLD. WE WANTED TO CLOSE IT. WE WANTED TO
6 BUILD A NEW PRISON NEAR IT. IT WAS IN THE PITTSBURGH AREA. WE
7 COULDN'T FIND A SITE NEARBY. WE KEPT GETTING RUN OUT OF TOWN;
8 THERE'S A SCHOOL TOO CLOSE, OR WHATEVER. WE ENDED UP HAVING TO
9 BUILD THAT IN SOME MORE RURAL AREA, FAR REMOVED FROM WHERE WE
10 WANTED TO BUILD IT.

11 AND I THINK YOU ARE GOING TO FIND THE SAME THING
12 HERE, PARTICULARLY, YOU KNOW, IF YOU WANT TO BUILD A LOT OF
13 REENTRY FACILITIES. YOU SHOULD BUILD THOSE REENTRY FACILITIES
14 NEAR YOUR MAJOR METROPOLITAN AREAS WHERE MOST OF YOUR INMATES
15 COME FROM. I THINK IT'S GOING TO BE VERY, VERY DIFFICULT TO
16 SITE THOSE FACILITIES CLOSE TO THOSE AREAS.

17 **Q** COULDN'T THE PROBLEM -- COULD THE PROBLEM OF THE LACK OF
18 HEALTHCARE BE CAUSED BY THE CULTURE OF THE PRISON SYSTEM IN
19 TERMS OF THE CUSTODIAL INTERFERENCE WITH THE DELIVERY OF CARE
20 RATHER THAN OVERCROWDING?

21 **A** WELL, FROM WHAT I CAN SEE, YOU KNOW, THE CULTURE IS A
22 PROBLEM. THERE IS NO QUESTION ABOUT THAT. BUT YOU GOT TO LOOK
23 BACK WHERE DID THIS CULTURE COME FROM. AND AT LEAST FROM WHAT
24 I'VE READ, CALIFORNIA BACK IN THE EARLY 1970'S WAS ONE OF THE
25 MOST PROGRESSIVE SYSTEMS IN THIS NATION, AND THEY WENT FROM

1 BEING ONE OF THE MOST PROGRESSIVE SYSTEMS TO BEING ONE OF THE
2 MOST OVERCROWDED SYSTEMS IN THIS NATION, AND THEY DID THAT
3 BECAUSE OF ALL THE LAWS, AND THE DRUG LAWS, AND ALL THE THINGS,
4 THE MANDATORIES, AND THE TWO STRIKES, AND THREE STRIKES, AND
5 EVERYTHING ELSE THAT DRIVES THAT POPULATION.

6 NOW, IF YOU FIX THE CROWDING PROBLEM, THAT DOESN'T
7 FIX ALL THE PROBLEM. YOU DO HAVE TO DEAL WITH THE CULTURE, BUT
8 YOU HAVE TO REALIZE THAT THE CULTURE GREW OUT OF THE
9 OVERCROWDING.

10 IF I'M RUNNING AN INSTITUTION, IF I'M A WARDEN OF AN
11 INSTITUTION, MY FIRST JOB IS TO SEE THAT THAT INSTITUTION RUNS
12 SAFELY FOR MY STAFF AND FOR MY INMATES, AND IF IT'S NOT RUNNING
13 SAFELY, I'VE GOT TO TAKE THE STEPS THAT I'VE GOT TO TAKE.

14 AND FROM WHAT I CAN SEE, CALIFORNIA, THEY HAVE
15 INMATES COMING IN, SO THEY HAVE TO HAVE BED SPACE. THEY HAVE TO
16 FIND A PLACE TO PUT PEOPLE. THEY ARE HAVING A DIFFICULT TIME
17 CONTROLLING THEIR PRISONS, SO THEY HAVE TO TAKE A STRONG
18 CUSTODIAL APPROACH TO IT. THEY HAVE TO RELY ON THE LOCKDOWNS.
19 THEY HAVE TO RELY ON GUNS, GAS, THOSE KINDS OF THINGS, TO
20 CONTROL THE PRISONS SO THEY'RE SAFE FOR THE STAFF AND FOR THEIR
21 INMATES.

22 IF YOU TRY TO CHANGE THAT CULTURE, YOU CAN'T. YOU
23 CAN'T CHANGE THE CULTURE UNTIL YOU REDUCE THE POPULATION AND CAN
24 MAKE THE INSTITUTION SAFE. BUT THEN YOU DO HAVE TO DEAL WITH
25 THE CULTURE AND TRY TO CHANGE THAT AS WELL.

1 Q I UNDERSTAND. OKAY.

2 YOU'VE COMPARED THE NUMBER OF ADMISSIONS IN
3 CALIFORNIA TO NUMBER OF PEOPLE COMING IN TO PENNSYLVANIA,
4 CORRECT?

5 A YES.

6 Q AND WHAT HAVE YOU LEARNED FROM THAT COMPARISON?

7 A WELL, YOU KNOW, WHEN I TALK --

8 MR. MELLO: OBJECTION. PAUL MELLO AGAIN FOR PLATA
9 DEFENDANTS. THIS IS ALL PHASE TWO. DEFENDANTS OBJECT ON THE
10 BASIS OF RELEVANCE AND OBJECT TO ALL THIS PHASE TWO TESTIMONY
11 AND MOVE TO STRIKE IT. THANK YOU.

12 JUDGE HENDERSON: OVERRULED. AND YOU WILL BE DEEMED
13 TO HAVE A CONTINUING OBJECTION IN THIS AREA, COUNSEL.

14 THE WITNESS: WHEN I --

15 JUDGE KARLTON: BEFORE YOU DO THAT, SIR, MR. MELLO,
16 WILL YOU HELP ME? I DON'T KNOW WHY YOU WOULD EVEN THINK THAT.
17 THE JUDGE'S RULING, OF COURSE, WILL STAND, BUT I WANT TO
18 UNDERSTAND WHAT IT IS THAT YOU THINK THIS -- WHY THIS RELATES TO
19 THE SECOND PHASE RATHER THAN THE FIRST PHASE.

20 MR. MELLO: WE'VE SPENT A GREAT DEAL OF TIME IN THIS
21 PARTICULAR WITNESS'S TESTIMONY DISCUSSING INTAKE, WHAT THEY'RE
22 DOING IN PENNSYLVANIA TO DEAL WITH POPULATION. WE HAVE NOT
23 SPENT ALMOST ANY TIME DISCUSSING THE BARRIERS TO THE DELIVERY OF
24 CONSTITUTIONALLY ADEQUATE MEDICAL AND MENTAL HEALTH CARE.

25 JUDGE KARLTON: I UNDERSTAND WHAT YOU THINK THE

1 TESTIMONY IS. THANK YOU, SIR, FOR HELPING ME UNDERSTAND.

2 **MR. SPECTER:** MAY I CONTINUE?

3 **JUDGE KARLTON:** YES. THE JUDGE'S RULING STANDS. I
4 JUST WANTED TO UNDERSTAND WHY HE THOUGHT THIS WAS PHASE TWO.
5 YOU MAY PROCEED.

6 **MR. SPECTER:** OKAY. THANK YOU, YOUR HONOR.

7 **BY MR. SPECTER**

8 **Q** YOU WERE TALKING ABOUT THE ADMISSIONS AND WHEN -- WELL, I'LL
9 ASK YOU A FOLLOW-UP QUESTION AFTER YOU DO THAT.

10 **A** WELL, YOU KNOW, WHEN I LOOK AT THE CALIFORNIA SYSTEM, NOT
11 ONLY DO THEY HAVE A PROBLEM WITH THE SEVERE OVERCROWDING WITH
12 THE GROSS NUMBER OF INMATES, BUT THEY HAVE A SERIOUS PROBLEM
13 WITH THE THROUGHPUT INTO THE SYSTEM.

14 THEY HAVE A TREMENDOUS AMOUNT OF PEOPLE COMING IN TO
15 THEIR RECEPTION CENTERS. I THINK SOME OF THOSE RECEPTION
16 CENTERS, THE LAST I LOOKED, ARE OVER 300 PERCENT OF CAPACITY?

17 AND WHEN YOU ASK ABOUT THE NUMBERS, THE COMPARISON,
18 THEY GET LIKE SOMEWHERE AROUND 140,000 ADMISSIONS A YEAR. IN
19 PENNSYLVANIA WE'RE ABOUT 28 PERCENT OF THE SIZE OF THEIR SYSTEM.
20 WE ONLY GET 15,000. SO WE ONLY GET LIKE ONE-NINTH THE AMOUNT.

21 NOW, ONE OF THE HUGE REASONS FOR THAT IS THE NUMBER
22 OF TECHNICAL VIOLATORS THEY HAVE COMING BACK IN. BUT THAT
23 THROUGHPUT INTO THE SYSTEM AND THE FACT THOSE PEOPLE STAY FOR
24 SUCH A SHORT PERIOD OF TIME, THEY ALSO DIRECTLY INTERFERE WITH
25 THE ABILITY TO PROVIDE PROPER MENTAL HEALTH AND MEDICAL CARE TO

1 THE INMATE POPULATION.

2 **Q** THAT WAS MY FOLLOW-UP QUESTION. COULD YOU EXPLAIN WHY
3 THAT'S TRUE?

4 **A** BECAUSE WHEN YOU HAVE SUCH HUGE NUMBERS COMING INTO THE
5 SYSTEM AND STAYING FOR, IN SOME CASES, RELATIVELY SHORT PERIODS
6 OF TIME, YOU DON'T HAVE THE CAPACITY TO IDENTIFY PEOPLE WHO HAVE
7 MENTAL HEALTH PROBLEMS AND THEN TO PROPERLY SLOT THOSE PEOPLE
8 WHERE THEY NEED TO GO.

9 AND YOU MAY MISS PEOPLE WHO HAVE MEDICAL PROBLEMS.
10 BECAUSE OF THIS HUGE THROUGHPUT THAT'S COMING IN, YOU MAY MISS
11 PEOPLE WHO HAVE CERTAIN NEEDS AND CERTAIN CARE NEEDS THAT AREN'T
12 BEING DEALT WITH. SO, YOU KNOW, I THINK TO DEAL WITH THE
13 PROBLEM, YOU NOT ONLY HAVE TO REDUCE THE POPULATION BUT TRY TO
14 DO THINGS THAT ALSO DEAL WITH THAT HUGE AMOUNT OF RECEPTIONS
15 THAT THEY GET.

16 **Q** AND YOU MENTION THE FACT YOU HAVE TO PLACE THEM IN OTHER --
17 YOU KNOW, ONCE THEY COME INTO RECEPTION, YOU HAVE TO PUT THEM IN
18 A PRISON IN WHICH THEY STAY FOR THE REST OF THEIR TERM.
19 PENNSYLVANIA USES A CLASSIFICATION SYSTEM; IS THAT CORRECT?

20 **A** YES.

21 **Q** HOW DOES OVER -- WELL, CAN YOU JUST EXPLAIN BRIEFLY -- A
22 WITNESS BEFORE YOU YESTERDAY EXPLAINED WHAT A CLASSIFICATION
23 SYSTEM IS. IF YOU COULD SO THE JUDGES ARE FAMILIAR WITH THAT,
24 BUT IF YOU COULD EXPLAIN WHAT YOU DO IN PENNSYLVANIA?

25 **A** WE CLASSIFY INDIVIDUALS ON SEVERAL GROUNDS. NUMBER ONE, WE

1 LOOK AT THEIR SECURITY LEVEL. WE HAVE WHAT WE CALL A PACK
2 SYSTEM THAT MAKES THEM MINIMUM, MEDIUM, CLOSED, OR MAXIMUM
3 SECURITY. THAT'S ONE OF THE THINGS, WE HAVE TO SLOT THEM TO AN
4 INSTITUTION THAT'S CAPABLE OF DEALING WITH THE SECURITY LEVEL.

5 BUT WE ALSO LOOK AT RISK LEVEL, RISK TO REOFFEND, AND
6 WE LOOK AT THE NEEDS THAT THAT INDIVIDUAL HAS, THE PROGRAMS THAT
7 THAT HAS. WE DO THIS ASSESSMENT WITHIN OUR DIAGNOSTIC CENTER,
8 BECAUSE WE'VE LEARNED THAT LOW RISK PEOPLE, YOU REALLY SHOULDN'T
9 WASTE YOUR RESOURCES ON THEM. THEY'RE GOING TO SUCCEED NO
10 MATTER WHAT YOU DO WITH THEM.

11 YOU'VE GOT TO TARGET MODERATE AND HIGH RISK
12 INDIVIDUALS, AND THEN YOU HAVE TO SEE WHAT OTHER PARTICULAR
13 NEEDS, WHETHER THOSE NEEDS ARE SUBSTANCE ABUSE NEEDS, OR
14 CRIMINAL THINKING NEEDS, OR VIOLENCE ISSUES, SEX OFFENDER
15 ISSUES.

16 AND SO WHEN WE'RE CLASSIFYING SOMEBODY, WE'RE LOOKING
17 TO PUT THEM NOT ONLY IN AN INSTITUTION THAT CAN MEET THEIR
18 SECURITY NEEDS, BUT ALSO AN INSTITUTION THAT CAN MEET THEIR
19 PROGRAM NEEDS.

20 AND THIS -- YOU KNOW, WE ALSO WOULD TAKE INTO ACCOUNT
21 MEDICAL NEEDS. FOR INSTANCE, IF YOU HAD AN INDIVIDUAL WHO
22 REQUIRES NURSING HOME LEVEL OF CARE, THEY HAVE TO GO TO MY ONE
23 INSTITUTION THAT CAN PROVIDE THE NURSING HOME LEVEL OF CARE. IF
24 THEY ARE A MENTAL HEALTH INMATE, THAT HAS TO BE TAKEN INTO
25 ACCOUNT IN CLASSIFYING THEM TO GET THEM TO A FACILITY THAT HAS

1 THE APPROPRIATE FACILITY TO DEAL WITH THAT.

2 SO WE CLASSIFY INDIVIDUALS ON A NUMBER OF GROUNDS
3 BEFORE WE SLOT THEM OUT THERE, WHICH IS ONE OF THE OTHER THINGS
4 THAT HUGE OVERCROWDING CREATES A PROBLEM, BECAUSE YOU HAVE AN
5 INDIVIDUAL WHO NEEDS TO GO TO INSTITUTION A, AND INSTITUTION A
6 IS FULL. SO WHERE DO YOU PUT HIM. YOU KNOW, YOU END UP HAVING
7 TO PUT THEM SOMEWHERE THAT MAYBE IS NOT THE MOST APPROPRIATE FOR
8 THAT INDIVIDUAL.

9 **Q** AND BASED ON THE MATERIALS YOU'VE REVIEWED, HAVE YOU FOUND
10 THAT THAT'S A PROBLEM IN CALIFORNIA?

11 **A** BASED ON THE MATERIALS THAT I'VE REVIEWED FROM THE EXPERTS,
12 OTHER EXPERTS THAT HAVE BEEN TESTIFYING, OR WILL TESTIFY IN THIS
13 CASE, REPORTS FROM THE MASTER AND THE RECEIVER, YES.

14 **Q** YOU KNOW, DURING YOUR DEPOSITION MR. MELLO ASKED YOU ABOUT
15 MORTALITY RATES; DO YOU RECALL THAT DISCUSSION?

16 **A** YES.

17 **Q** AND THERE WAS A STUDY BY BUREAU -- DEPARTMENT OF JUSTICE
18 BUREAU OF JUSTICE STATISTICS WHICH RANKED CALIFORNIA 14TH LOWEST
19 OF ALL THE PRISON SYSTEMS IN THE COUNTRY IN TERMS OF THE
20 MORTALITY RATE. HAVE YOU SEEN THAT STUDY?

21 **A** I DIDN'T SEE THE SPECIFIC -- YES, I DID. I'M SORRY. I DID
22 LOOK AT THAT STUDY SUBSEQUENT TO THE DEPOSITION.

23 **Q** AND WHAT SIGNIFICANCE WOULD YOU PLACE ON THE FACT THAT
24 CALIFORNIA IS THE 14TH LOWEST, IF ANY?

25 **A** IN TERMS OF WHETHER THAT MEANS THEY'RE PROVIDING PROPER CARE

1 OR NOT?

2 **Q** EXACTLY, YES.

3 **A** THAT'S SIMPLY ONE FACTOR YOU WOULD LOOK AT AND WOULD NOT BE
4 A FACTOR THAT WOULD LEAD ME -- THAT ALONE WOULD NOT BE A FACTOR
5 THAT WOULD LEAD ME TO CONCLUDE THEY'RE PROVIDING
6 CONSTITUTIONALLY ADEQUATE CARE.

7 **Q** COULD THE DEMOGRAPHICS OF THE DIFFERENT STATE PRISON
8 POPULATIONS HAVE AN EFFECT ON THE --

9 **A** THERE'S A LOT OF THINGS THAT HAVE THE EFFECT ON THAT.
10 DEMOGRAPHICS CAN HAVE AN EFFECT OF IT. THE AGE OF THE
11 POPULATION.

12 PROBABLY THE BIGGEST THING IS THE AGE DISTRIBUTION OF
13 THE POPULATION. YOU KNOW, YOU COULD HAVE THE SAME AVERAGE AGE
14 POPULATION, BUT YOU MIGHT HAVE A BUNCH OF PEOPLE IN THAT OLDER
15 GROUP THAT COULD DRIVE UP YOUR STATISTICS, FOR INSTANCE. SO YOU
16 HAVE TO REALLY LOOK AND ADJUST IT FOR AGE WHEN YOU'RE LOOKING AT
17 THOSE KIND OF STATISTICS.

18 **JUDGE KARLTON:** SIR, BECAUSE OF THE LENGTHIER
19 SENTENCES THAT CALIFORNIA APPARENTLY IMPOSES, CONTRASTED WITH
20 OTHER PLACES IN THE COUNTRY, I AM TOLD THAT WE HAVE AN AGING
21 POPULATION.

22 **THE WITNESS:** MM-HMM.

23 **JUDGE KARLTON:** NOW, HAVING AN AGING POPULATION, BUT
24 STILL THE 14TH LOWEST, DOESN'T THAT SUGGEST SOMETHING ABOUT
25 MEDICAL CARE AND ITS ADEQUACY? I'M ASKING YOU, NOT TELLING YOU.

1 **THE WITNESS:** CERTAINLY IT'S A PIECE OF INFORMATION,
2 BUT IT'S ONLY ONE PIECE OF INFORMATION. THERE MAY BE OTHER
3 THINGS, LIKE, FOR INSTANCE, IN PENNSYLVANIA OUR RATE IS HIGHER,
4 AND ONE OF THE REASONS OUR RATE IS HIGHER IS BECAUSE IN
5 PENNSYLVANIA LIFE IS LIFE, AND WE HAVE OVER 4,000 LIFERS THAT
6 WILL NEVER GO HOME. YOU CAN'T BE CONSIDERED AFTER SO MANY YEARS
7 IF YOU HAVE A LIFE SENTENCE IN PENNSYLVANIA.

8 SO WHEN WE LOOK AT OUR AGE DISTRIBUTION, WE FIND A
9 HUGE NUMBER OF PEOPLE IN THAT OVER AGE 55 WHERE YOU TEND TO RUN
10 INTO THESE PROBLEMS. WHEN WE THEN TAKE OUR AGE DISTRIBUTION AND
11 ADJUST IT FOR AGE, LOOKING AT THE AVERAGES AROUND THE COUNTRY,
12 OUR DEATH RATE FALLS EXACTLY WHERE IT SHOULD FALL BASED ON
13 ADJUSTING IT FOR AGE.

14 SO WITHOUT REALLY EXAMINING IT CLOSER, CERTAINLY IT'S
15 A FACTOR YOU CAN TAKE A LOOK AT, AND, CERTAINLY THE LOWER THAT
16 IS, THE BETTER, BUT I WOULD WANT TO UNDERSTAND IT BETTER, TOO.

17 THE OTHER THING WE RUN INTO SOME DIFFICULTIES WHEN WE
18 TRY TO MAKE COMPARISONS BETWEEN STATES, IS THE WAY THEY COUNT
19 THINGS. COUNTING RULES CAN BE DIFFERENT. LIKE, FOR INSTANCE, I
20 KNOW THAT WE INCLUDE DEATHS IN OUR COMMUNITY CORRECTION CENTERS
21 IN OUR TOTAL NUMBERS. WE INCLUDE INMATE HOMICIDES, THE FEW THAT
22 WE HAVE WITHIN OUR NUMBERS. OTHER STATES MAY NOT INCLUDE THOSE
23 TWO THINGS, SO THEIR COUNTING RULE MAY BE DIFFERENT THAN OURS.
24 SO ANY TIME YOU TRY TO DRAW COMPARISONS, YOU'VE GOT TO BE VERY,
25 VERY CAREFUL.

1 **BY MR. SPECTER**

2 **Q** DR. BEARD, YOU HAVE BEEN A CORRECTIONS PROFESSIONAL FOR 36
3 YEARS. HAVE YOU EVER TESTIFIED IN A CASE -- IN A PLAINTIFF'S
4 CASE?

5 **A** ON WHAT?

6 **Q** FOR THE PLAINTIFFS.

7 **A** NO.

8 **Q** AND YOU'RE HERE AS A NON-RETAINED EXPERT. THAT MEANS YOU
9 ARE NOT BEING PAID FOR YOUR TESTIMONY, CORRECT?

10 **A** THAT'S CORRECT.

11 **Q** COULD YOU EXPLAIN TO THE COURT WHY YOU ARE -- YOU TOOK THE
12 TIME OUT FROM RUNNING YOUR SYSTEM TO COME TO CALIFORNIA TO
13 TESTIFY TODAY?

14 **A** WELL, IT'S SORT OF -- I GUESS IT'S A COMPLEX ANSWER. MAYBE
15 IT'S NOT A COMPLEX ANSWER.

16 I HAVE GIVEN 36 YEARS TO -- IN TRYING TO SEE THAT WE
17 RUN A SAFE SYSTEM IN PENNSYLVANIA, SAFE FOR INMATES, SAFE FOR
18 STAFF, AND THAT WE PROVIDE THE PROPER CARE, WHATEVER THAT CARE
19 MAY BE, WHETHER IT'S MEDICAL, MENTAL HEALTH, WHATEVER THE CARE
20 IS, TO THE INMATE POPULATION.

21 AND WHEN I CAME OUT HERE TO CALIFORNIA, I MET MANY
22 VERY GOOD PEOPLE THAT WORKED FOR THE CALIFORNIA DEPARTMENT OF
23 CORRECTIONS, PEOPLE WHO WANT TO DO THE RIGHT THING, PEOPLE WHO
24 WANT TO MOVE AHEAD. AND I BEGAN LOOKING AT ALL THESE REPORTS
25 OVER THE LAST 20 YEARS, THE LITTLE HOOVER COMMISSION, THE

1 INDEPENDENT REVIEW PANEL REPORTS, AND I SEE THAT CALIFORNIA HAS
2 THIS PROBLEM THAT HAS JUST BEEN GOING ON AND ON AND ON FOR YEARS
3 AND YEARS AND YEARS, AND NOBODY SEEMS TO BE WILLING TO STEP UP
4 TO THE PLATE AND FIX THE PROBLEM. AND AS A RESULT OF THAT, THEY
5 HAVE HUGELY OVERCROWDING PRISONS. THEY HAVE -- THEY'RE UNABLE
6 TO PROVIDE PROPER CARE IN SOME CASES, MENTAL HEALTH CARE AND
7 MEDICAL CARE WITHIN THOSE PRISONS.

8 AND, MORE IMPORTANTLY, TO ME, AS A FORMER WARDEN IS
9 THE PRISONS AREN'T SAFE. THEY AREN'T SAFE FOR THE STAFF AND THE
10 INMATES, AND THEY HAVE TO RELY ON ALL THESE DIFFERENT UNUSUAL
11 KIND OF THINGS TO CONTROL THOSE PRISONS.

12 I GUESS IF THERE'S ANYTHING THAT I CAN DO TO HELP SEE
13 THAT CALIFORNIA MOVES IN A DIRECTION THAT WILL ALLOW THE PEOPLE
14 THAT WORK WITHIN THE CALIFORNIA DEPARTMENT OF CORRECTIONS TO
15 START RUNNING A GOOD, SAFE SYSTEM AND PROVIDING THE PROPER CARE
16 THEY SHOULD BE PROVIDING TO THOSE PEOPLE THAT ARE PUT INTO OUR
17 CHARGE AND TO BE ENABLED TO DO THE PROGRAMS FOR THE INMATES SO
18 WHEN THOSE INMATES ARE RELEASED, THE PUBLIC SAFETY ISN'T
19 ADVERSELY AFFECTED. I SUPPOSE IF I CAN DO ANYTHING TO HELP IN
20 THAT, THAT'S WHY I'M HERE TODAY.

21 Q THANK YOU. COUPLE MORE QUESTIONS.

22 YOU MENTIONED YOU'VE REVIEWED VARIOUS REPORTS FROM
23 DR. SHANSKY, THE SPECIAL MASTER, THE RECEIVER, MS. WOODFORD,
24 MR. SCOTT AND THE LIKE. DID YOU -- ARE THOSE TYPE OF REPORTS
25 THAT YOU WOULD GENERALLY RECEIVE AS SECRETARY?

1 **A** YES. AS SECRETARY OF CORRECTIONS IN A RELATIVELY LARGE
2 STATE, YOU CAN'T BE EVERYWHERE ALL THE TIME, AND SO YOU HAVE TO
3 RELY ON DATA THAT YOU GET FROM THE INSTITUTIONS. YOU HAVE TO
4 RELY ON REPORTS THAT YOU GET FROM YOUR SUPERINTENDENTS OR, IN MY
5 CASE, I ALSO HAVE MY REGIONAL DEPUTIES THAT GO OUT WITH TEAMS ON
6 A REGULAR BASIS TO REVIEW WHAT'S GOING ON, TO TELL ME WHAT'S
7 GOING ON IN MY PRISONS, AND I VISIT THEM MYSELF AS WELL, BUT I
8 CAN'T BE THERE ALL THE TIME.

9 SO I RELY LARGELY ON THOSE REPORTS, AND WHAT I READ
10 IN THESE EXPERT REPORTS THAT YOU MENTION, THAT'S THE KIND OF
11 INFORMATION THAT, IF I GOT THOSE KINDS OF THINGS, I WOULD BE
12 VERY, VERY CONCERNED ABOUT.

13 I KNOW WAYNE SCOTT. I KNOW JEANNE WOODFORD. THESE
14 PEOPLE ARE CONSUMMATE PROFESSIONALS. THEY HAVE BEEN IN THE
15 BUSINESS FOR OVER 30 YEARS. THE KINDS OF STUFF THEY WRITE IN
16 THEIR REPORTS ARE THE VERY KINDS OF THINGS I COULD SEE ME
17 WRITING IF I WAS WALKING THROUGH THE SAME INSTITUTIONS AND
18 SEEING THE SAME THINGS.

19 **Q** IF THOSE REPORTS REFERRED -- INSTEAD OF REFERRING TO THE
20 DEPARTMENT OF CORRECTIONS IN CALIFORNIA, THEY REFERRED TO THE
21 PENNSYLVANIA DEPARTMENT OF CORRECTIONS, WHAT WOULD BE YOUR
22 REACTION?

23 **A** MY REACTION WOULD BE THAT I WOULD NOT BE SITTING HERE TODAY;
24 I WOULD BE BACK IN PENNSYLVANIA FIXING WHATEVER PROBLEMS I
25 NEEDED TO FIX.

1 **MR. SPECTER:** THANK YOU VERY MUCH FOR YOUR TESTIMONY.

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

3 CROSS-EXAMINATION.

4 **JUDGE KARLTON:** IS CCPOA GOING TO QUESTION?

5 **MS. LEONARD:** NO FURTHER QUESTIONS, YOUR HONOR.

6 THANK YOU.

7 **CROSS-EXAMINATION BY MR. MELLO**

8 **MR. MELLO:** AGAIN, PAUL MELLO FOR DEFENDANTS.

9 **BY MR. MELLO**

10 **Q** GOOD MORNING AGAIN, SECRETARY BEARD.

11 **A** GOOD MORNING.

12 **Q** YOU TESTIFIED THAT YOU HAVE A PH.D. IN COUNSELING. YOU HAVE
13 NO MEDICAL DEGREES, CORRECT?

14 **A** THAT'S CORRECT.

15 **Q** WHEN WAS THE LAST TIME YOU PROVIDED MENTAL HEALTH TREATMENT
16 AS A CLINICIAN, WHAT YEAR?

17 **A** PROBABLY 1974.

18 **Q** WHEN I TOOK YOUR DEPOSITION BACK IN PENNSYLVANIA, SEEMS LIKE
19 YESTERDAY, BUT --

20 **A** YES.

21 **Q** EARLIER, AT THE TIME I TOOK YOUR DEPOSITION, YOU DID NOT
22 KNOW THE PHYSICIAN-TO-INMATE RATIO FOR THE PENNSYLVANIA PRISON
23 SYSTEM, CORRECT?

24 **A** YES.

25 **Q** THAT'S CORRECT, RIGHT?

1 **A** I DIDN'T KNOW IT AT THAT TIME, NO.

2 **Q** DO YOU KNOW IT NOW?

3 **A** THE PHYSICIAN-TO-INMATE RATIO?

4 **Q** YES.

5 **A** OUR PRIMARY CARE PHYSICIANS AND PA'S IS ABOUT 3.14 PER
6 THOUSAND.

7 **Q** DO YOU KNOW WHAT THE RATE IS FOR MENTAL HEALTH CLINICIANS?

8 **A** FOR PSYCHIATRISTS, 1.45 PER THOUSAND.

9 **Q** PSYCHIATRISTS?

10 **A** PARDON?

11 **Q** YOU SAID FOR PSYCHOLOGISTS?

12 **A** PSYCHIATRISTS.

13 **Q** I'M SORRY.

14 **A** WE HAVE FAR MORE PSYCHOLOGISTS, AND I DON'T HAVE THE RATIO
15 OF THE PSYCHOLOGISTS, BUT MOST OF OUR INSTITUTIONS HAVE SIX,
16 SEVEN. DEPENDS ON THE SIZE OR MORE PSYCHOLOGISTS.
17 PSYCHIATRISTS IS 1.45 PER THOUSAND.

18 **Q** YOU'VE NEVER EVALUATED THE DELIVERY OF MEDICAL AND MENTAL
19 HEALTH CARE IN CALIFORNIA'S PRISONS, CORRECT?

20 **A** I HAVE NOT PERSONALLY VISITED ANY OF THE PRISONS TO EVALUATE
21 THAT CARE. I'VE ONLY REVIEWED THE REPORTS THAT WE MENTIONED
22 EARLIER.

23 **Q** INCLUDING TRIAL AFFIDAVITS OF PLAINTIFF'S EXPERTS IN THIS
24 CASE, CORRECT?

25 **A** PARDON?

1 Q INCLUDING THE TRIAL AFFIDAVITS OF PLAINTIFFS' EXPERTS IN
2 THIS CASE, CORRECT? WHEN YOU SAY "THE REPORTS OF THE EXPERTS,"
3 YOU ARE REFERRING TO PLAINTIFFS' EXPERTS, CORRECT?

4 A YES. I HAVE -- YOU MEAN I DIDN'T REVIEW THE DEFENDANTS'
5 EXPERTS?

6 Q I'M JUST ASKING IF YOU REVIEWED PLAINTIFFS' EXPERT REPORTS,
7 CORRECT?

8 A AND DEFENDANTS' EXPERTS REPORTS.

9 Q AND DURING YOUR TESTIMONY, YOU INDICATED THOSE WERE THE
10 TYPES OF THINGS YOU WOULD REVIEW IF YOU WERE -- THOSE ARE THE
11 TYPES OF ITEMS THAT YOU REVIEW IN YOUR POSITION IN PENNSYLVANIA,
12 CORRECT?

13 A THAT'S ONE OF THE KINDS OF THINGS THAT I WOULD BE REVIEWING.
14 INPUTS FROM MY DOCTOR, WE HAVE DOCTORS THAT WORK FOR ME THAT
15 OVERSEE THE HEALTHCARE. I HAVE A PSYCHIATRIST THAT WORKS FOR
16 ME. THEY PROVIDE ME REPORTS. SO THEY MAY NOT BE EXACTLY LIKE
17 THESE REPORTS, BUT THEY'RE SIMILAR. THEY WOULD PROVIDE ME A
18 REPORT IF WE HAVE A DEATH SOMEWHERE, WHETHER THAT DEATH WAS AN
19 APPROPRIATE DEATH OR NOT, THAT KIND OF THING.

20 Q YOU REVIEW EXPERTS' REPORTS, CORRECT?

21 A YES.

22 Q DO YOU REGULARLY REVIEW LITIGATION REPORTS FROM EXPERTS IN A
23 CASE?

24 A NO.

25 Q AND IT'S TRUE THAT YOU'VE NEVER EVALUATED WHETHER

1 DEFICIENCIES EXIST IN THE MEDICAL AND MENTAL HEALTH CARE
2 DELIVERY SYSTEMS IN CALIFORNIA AS WELL, RIGHT?

3 **A** YOU HAVE TO REPHRASE WHAT YOU'RE ASKING THERE.

4 **Q** SURE. YOU HAVE NEVER EVALUATED WHAT, IF ANY, DEFICIENCIES
5 EXIST IN THE MEDICAL AND MENTAL HEALTH CARE SYSTEMS IN
6 CALIFORNIA PRISONS --

7 **A** NO, I HAVE NOT PERSONALLY GONE TO THE PRISONS AND DONE THAT.
8 I'VE ONLY REVIEWED THE REPORTS WE TALKED ABOUT.

9 **Q** AND IN THE LAST TWO YEARS YOU'VE VISITED ONE PRISON,
10 CORRECT?

11 **A** THAT'S CORRECT.

12 **Q** WHICH PRISONS WAS THAT?

13 **A** THAT WAS OLD FOLSOM.

14 **Q** WHEN WAS THAT?

15 **A** A LITTLE OVER A YEAR AGO.

16 **Q** DURING YOUR TESTIMONY, YOUR DIRECT TESTIMONY WITH
17 MR. SPECTER, YOU MENTIONED THE PROBLEMS THAT COULD POSSIBLY
18 EXIST AT RECEPTION CENTERS; DO YOU REMEMBER THAT TESTIMONY?

19 **A** YES.

20 **Q** AND YOU DISCUSS THE FACT THAT IF RECEPTION CENTERS ARE
21 OVERCROWDED, THAT SCREENINGS MIGHT BE MISSED, CORRECT?

22 **A** YES.

23 **Q** ARE YOU AWARE OF ANY INMATE IN A CALIFORNIA PRISON WHO
24 SUFFERED AN ADVERSE MEDICAL OR MENTAL HEALTH CONSEQUENCE AS A
25 RESULT OF A MISSED SCREENING?

1 **A** NO.

2 **Q** WHEN YOU WERE DEPOSED BY ME IN THIS CASE, YOU COULD NOT
3 REMEMBER WHY YOU HAD TOURED FOLSOM PRISON, BUT IT WAS NOT IN
4 CONNECTION WITH EVALUATING THE STATUS OF THE DELIVERY OF MEDICAL
5 OR MENTAL HEALTH CARE, CORRECT?

6 **A** I DID NOT TOUR THAT PRISON TO REVIEW THE MENTAL HEALTH OR
7 MEDICAL CARE. THAT'S CORRECT. IT WAS DONE, I BELIEVE, MORE FOR
8 THE EXPERT PANEL LOOKING AT PROGRAMS AND STUFF.

9 **Q** AS A HIGH RANKING PRISON ADMINISTRATOR, YOU DO NOT SUPPORT
10 THE USE OF ANECDOTAL EVIDENCE TO EVALUATE A PRISON OR PRISON
11 SYSTEM, DO YOU?

12 **A** I CERTAINLY DO NOT SUPPORT ANECDOTAL EVIDENCE, NO.

13 **Q** YOU AGREE THAT A SINGLE EVENT AT AN INSTITUTION DOES NOT
14 NECESSARILY APPLY ACROSS THE ENTIRE SYSTEM, CORRECT?

15 **A** I WOULD AGREE IF IT'S ONLY A SINGLE EVENT, THAT THAT SHOULD
16 NOT APPLY ACROSS THE SYSTEM.

17 **Q** AND YOU TESTIFIED, I BELIEVE, THAT YOU SERVED ON THE EXPERT
18 PANEL, RIGHT?

19 **A** YES.

20 **Q** OKAY. AND THAT EXPERT PANEL LOOKED AT THE EFFECTS OF
21 OVERCROWDING ON PROGRAMMING, NOT MEDICAL AND MENTAL HEALTH CARE,
22 CORRECT?

23 **A** YES.

24 **Q** YOU USE THE TERM "OPERABLE" --

25 **A** EXCUSE ME.

1 Q SURE.

2 A I BELIEVE, AS I THINK BACK ON IT, WHEN WE WERE TALKING ABOUT
3 PROGRAMMING, WE DID GET INTO SOME OF THE MENTAL HEALTH CARE
4 ISSUES AND THE LACK OF BEDS AT CERTAIN ACUITY LEVELS FOR
5 MENTALLY ILL INMATES. I BELIEVE THERE WAS SOME DISCUSSION OF
6 THAT DURING THE REPORT.

7 Q CAN YOU RECALL ANY OF THOSE DISCUSSIONS AS YOU SIT HERE
8 TODAY?

9 A PARDON?

10 Q CAN YOU RECALL ANY OF THOSE DISCUSSIONS --

11 A JUST THE FACT THAT THE ACU- -- THERE WERE INMATES WHO HAD
12 HIGHER ACUITY LEVELS OF MENTAL ILLNESS, AND THERE WASN'T
13 APPROPRIATE BEDS TO PROVIDE CARE FOR THOSE INMATES.

14 Q RIGHT. OKAY. THANK YOU.

15 WE HEARD THE TERM "DESIGN BED CAPACITY" AND "OPERABLE
16 CAPACITY" DURING YOUR DIRECT TESTIMONY, CORRECT?

17 A YES.

18 Q AND YOU TOLD US THAT OPERABLE CAPACITY, YOU HAD A DEFINITION
19 FOR THAT, CORRECT?

20 A YES.

21 Q DO YOU KNOW THAT CALIFORNIA -- OR AT LEAST PLAINTIFFS'
22 COUNSEL USED THE WORD "DESIGN CAPACITY" WITH RESPECT TO
23 CALIFORNIA'S PRISONS; DO YOU KNOW WHAT HE MEANT?

24 A TO THE BEST OF MY UNDERSTANDING, IT WAS WHAT THAT PRISON WAS
25 DESIGNED TO HOLD ORIGINALLY.

1 **Q** AND ARE YOU AWARE THAT CALIFORNIA'S PRISONS' INFRASTRUCTURE
2 WERE DESIGNED TO ACCOMMODATE A POPULATION OF 190 PERCENT OR SO
3 OF DESIGN BED CAPACITY?

4 **A** THAT'S NOT WHAT I'VE READ IN MANY OF THE EXPERT REPORTS THAT
5 I'VE READ.

6 **Q** WHICH ONES?

7 **JUDGE KARLTON:** ASSUMES SOMETHING NOT IN EVIDENCE,
8 COUNSEL. I KNOW THE PLAINTIFFS WANTED TO MAKE THAT OBJECTION.

9 **MR. SPECTER:** YES, THANK YOU, YOUR HONOR. I'M HAVING
10 A LITTLE TROUBLE HEARING YOU, PAUL. I DIDN'T KNOW THE NUMBER.

11 **MR. MELLO:** IT'S INTENTIONAL.

12 I SAID 190. AND IT'S CROSS-EXAMINATION. I BELIEVE I
13 CAN ASK --

14 **JUDGE KARLTON:** A QUESTION THAT HAS NO EVIDENTIARY
15 BASIS, AND TELL HIM THAT'S THE FACT? AS GENEROUS AS I AM --

16 **MR. MELLO:** OKAY.

17 **BY MR. MELLO**

18 **Q** HAVE YOU EVER HEARD THAT INFORMATION?

19 **A** PARDON?

20 **Q** WITHOUT ANY REPRESENTATION OF WHETHER OR NOT IT'S TRUE, HAVE
21 YOU EVER HEARD THAT CALIFORNIA'S PRISONS' INFRASTRUCTURE WAS
22 DESIGNED TO ACCOMMODATE A POPULATION OF 190 DESIGN BED CAPACITY?

23 **A** NO. IN FACT, THAT'S NOT WHAT I READ IN A LOT OF THE EXPERT
24 REPORTS.

25 **Q** AND YOU NEVER DETERMINED THAT THE OPERABLE CAPACITY OF

1 CALIFORNIA'S PRISON SYSTEM, HAVE YOU?

2 **A** NO. AS I TESTIFIED IN A DEPOSITION, IN ORDER TO DO THAT, I
3 WOULD HAVE TO GO OUT AND VISIT EVERY FACILITY. CERTAINLY
4 SOMETHING I'M CAPABLE OF DOING, BUT I WOULD PROBABLY HAVE TO
5 RETIRE FROM MY CURRENT JOB TO HAVE THE TIME TO DO THAT.

6 **Q** RIGHT. SO YOU HAVE NO IDEA WHAT CALIFORNIA'S OPERABLE
7 CAPACITY IS?

8 **A** I HAVE NO IDEA WHAT THE OPERABLE CAPACITY IS, BUT AS I SAID
9 IN THE DEPOSITION, I DID REVIEW THE INDEPENDENT REVIEW PANEL'S
10 REPORT OF 2004 WHERE A GROUP OF EXPERIENCED WARDENS SAID THAT
11 ABOUT 145 PERCENT WOULD BE THE MAXIMUM THAT THE SYSTEM SHOULD GO
12 FOR. AND HAVING MET MANY OF THE STAFF OUT HERE I WOULD THINK
13 THAT A GROUP OF EXPERIENCED WARDENS IN CALIFORNIA WOULD HAVE A
14 PRETTY GOOD HANDLE ON WHAT THE SYSTEM COULD HANDLE.

15 I ALSO SAW THAT THE STRIKE TEAM HAD RECOMMENDED A
16 CAPACITY OF 130 PERCENT. SO THAT WOULD LEAD ME TO CONCLUDE, IF
17 I WENT OUT AND WENT THROUGH ALL OF THE FACILITIES, I WOULD COME
18 OUT SOMEWHERE IN THAT 130 TO 145 PERCENT OF CAPACITY AS AN
19 OPERABLE CAPACITY FOR THE SYSTEM.

20 **Q** BUT YOU HAVE NO IDEA UNLESS YOU ACTUALLY DID IT YOURSELF?

21 **A** THAT'S CORRECT, UNLESS I DID IT MYSELF.

22 **JUDGE KARLTON:** WELL, HE SAID YOU HAVE NO IDEA.

23 **THE WITNESS:** THAT'S TRUE. I'M SORRY, YOUR HONOR. I
24 DO HAVE SOME IDEA BASED ON WHAT MY COMMENTS THAT I JUST MADE TO
25 YOU.

1 **BY MR. MELLO**

2 **Q** YOU BELIEVE THAT CONSTITUTIONALLY ADEQUATE MEDICAL AND
3 MENTAL HEALTH CARE CAN BE PROVIDED IN OVERCROWDED CONDITIONS,
4 CORRECT?

5 **A** I BELIEVE THAT IT CAN BE PROVIDED UP TO CERTAIN LIMITATIONS
6 OF OVERCROWDING, YES.

7 **Q** AND YOU BELIEVE THAT INCREASED NUMBERS OF QUALIFIED AND
8 COMPETENT NURSES, PHYSICIAN'S ASSISTANTS, DOCTORS,
9 PSYCHOLOGISTS, PSYCHIATRISTS WOULD IMPROVE THE QUALITY OF
10 MEDICAL AND MENTAL HEALTH CARE IN CALIFORNIA'S PRISONS, CORRECT?

11 **A** IT MAY. IT DEPENDS WHETHER YOU HAVE ALL OF THE OTHER
12 INFRASTRUCTURE TO SUPPORT THE STAFF.

13 **Q** AND THAT INFRASTRUCTURE WOULD INCLUDE CORRECTIONAL OFFICERS?

14 **A** WELL, THE INFRASTRUCTURE WOULD INCLUDE CORRECTIONAL
15 OFFICERS, BUT IT WOULD ALSO INCLUDE SPACE TO DO EXAMS, PLACES
16 WHERE THERE'S PRIVACY SO IT CAN BE DONE PRIVATELY, YOU KNOW,
17 PLACES THAT ARE, YOU KNOW, SANITARY AND CLEAN. AND ALSO THE
18 ABILITY TO PROVIDE THE PROPER LEVEL OF CARE ONCE YOU DETERMINE
19 WHAT THAT IS.

20 AND, AGAIN, THAT REQUIRES A SPACE. THAT REQUIRES
21 SOMEPLACE TO PUT PEOPLE. AND AT LEAST FROM WHAT I'VE SEEN IN
22 THE REPORTS, THAT SEEMS TO BE A HUGE PROBLEM OUT HERE.

23 AND THEN ALSO, AS I'VE MENTIONED, YOU CAN'T BE HAVING
24 ALL THESE LOCKDOWNS ALL THE TIME, BECAUSE THEN THAT IS GOING TO
25 INTERFERE WITH THE ABILITY TO PROVIDE THE CARE AS WELL, AND THAT

1 GETS BACK TO THE SAFETY OF THE SYSTEM.

2 **Q** AND I BELIEVE --

3 **JUDGE HENDERSON:** EXCUSE ME, MR. MELLO. I FIND THE
4 QUESTION A BIT VAGUE. INCREASED MEDICAL, NURSING, DOCTORS,
5 INCREASED FROM WHAT? FROM WHEN THE SUIT WAS FILED? FROM WHERE
6 WE ARE RIGHT NOW? WHAT DO WE INCREASE ALL OF THAT FROM TO MAKE
7 IT BETTER?

8 **BY MR. MELLO**

9 **Q** SECRETARY BEARD, DO YOU HAVE ANY UNDERSTANDING OF THE
10 INCREASED NUMBER OF CORRECTIONAL OFFICERS SINCE THE APPOINTMENT
11 OF A RECEIVER IN PLATA IN OCTOBER 2005 THROUGH THE END OF
12 AUGUST 2008; DO YOU KNOW WHAT THAT NUMBER IS?

13 **A** I DON'T KNOW WHAT THE INCREASE IS, BUT I KNOW THAT THEY DO
14 HAVE MORE CORRECTIONS OFFICERS TODAY, AND SO THAT IS ONE PROBLEM
15 AREA THAT SHOULD BE OF SOMEWHAT LESS CONCERN.

16 **Q** OKAY. IF THE NUMBER INCREASED BY 2,200, DO YOU BELIEVE THAT
17 WOULD HELP IMPROVE ACCESS TO MEDICAL AND MENTAL HEALTH CARE?

18 **A** WELL, AS YOU SAID, I HAVEN'T GONE OUT AND PERSONALLY LOOKED
19 AT IT, SO I WOULDN'T WANT TO MAKE THAT KIND OF -- I WOULDN'T
20 WANT TO ANSWER THAT QUESTION.

21 **Q** UNDERSTOOD.

22 SO YOU COULDN'T, BASED UPON YOUR EXPERIENCE AND THE
23 REPORTS YOU'VE REVIEWED, EVALUATE WHETHER CARE WOULD IMPROVE IF
24 THE NUMBER OF CORRECTIONAL OFFICERS INCREASED BY 2,200
25 CORRECTIONAL OFFICERS SINCE OCTOBER OF 2005, CORRECT?

1 **A** AS I SAID, THAT WAS ONLY ONE OF THE THINGS I READ ABOUT IN
2 THE REPORTS.

3 **JUDGE KARLTON:** DR. BEARD, WHATEVER THE LEVEL OF
4 IMPROVEMENT, FROM YOUR OWN EXPERIENCE, PROVIDING GREATER NUMBERS
5 OF CORRECTIONAL OFFICERS, PARTICULARLY IF YOU HAVE BEEN SHORT
6 THEM, HAS GOT TO HAVE SOME IMPROVEMENT. THE QUESTION IS WHETHER
7 IT MAKES ANY LONG TERM DIFFERENCE, WHICH IS A DIFFERENT QUESTION
8 MR. MELLO IS ASKING YOU ABOUT. BUT EVEN ONE MORE IS SOME
9 INCREMENTAL BENEFIT, WOULD YOU NOT AGREE?

10 **THE WITNESS:** I WOULD AGREE WITH THAT, YOUR HONOR.

11 **BY MR. MELLO**

12 **Q** AND YOU WOULD AGREE THAT THE HIRING OF 1,400 PHYSICIANS AND
13 NURSES SINCE JULY OF 2007 WOULD HAVE SOME INCREMENTAL VALUE TO
14 THE DELIVERY OF MEDICAL AND MENTAL HEALTH CARE, CORRECT?

15 **A** YES.

16 **Q** AND YOU TESTIFIED THAT YOU BELIEVE PENNSYLVANIA IS CURRENTLY
17 PROVIDING CONSTITUTIONALLY ADEQUATE MEDICAL AND MENTAL HEALTH
18 CARE TO ITS INMATE PATIENTS, CORRECT?

19 **A** YES.

20 **Q** DO YOU KNOW THE AVERAGE AGE OF THE OFFENDERS IN
21 PENNSYLVANIA'S DEPARTMENT OF CORRECTIONS IS 37?

22 **A** YES.

23 **Q** MR. SPECTER ASKED YOU ABOUT IT. IT SOUNDS TO ME LIKE MAYBE
24 SINCE YOUR DEPOSITION, YOU REVIEWED THE DEPARTMENT OF JUSTICE
25 REPORT?

1 **A** YES.

2 **Q** RELATING TO DEATHS?

3 **A** I DID. AND IF I MIGHT SAY, UPON DOING THAT, I HAD FORGOTTEN
4 THAT WE HAD ACTUALLY REVIEWED THAT REPORT AT THE TIME IT CAME
5 OUT, AND THERE HAD BEEN A REPORT BY MY DOCTOR ON IT.

6 **Q** AND IT'S YOUR TESTIMONY THAT A PRISON SYSTEM'S DEATH RATE IS
7 A FACTOR THAT YOU WOULD LOOK TO SEE IF THERE MIGHT BE A PROBLEM
8 IN THE DELIVERY OF MEDICAL AND MENTAL HEALTH CARE, CORRECT?

9 **A** CERTAINLY, YES.

10 **Q** AND ARE YOU AWARE THAT THAT STUDY -- AND I BELIEVE IT'S
11 DEFENDANT'S EXHIBITS 1011 -- FROM THE PERIOD OF 2001 TO 2004
12 RANKED CALIFORNIA'S PRISONS AMONG THE TOP 15 -- I BELIEVE
13 MR. SPECTER SAID 14, SO I COUNTED WRONG -- IN TERMS OF DEATH
14 RATES; IS THAT CORRECT?

15 **A** I BELIEVE SO, YES.

16 **Q** AND ARE YOU AWARE, ACCORDING TO THE SAME REPORT, THAT
17 PENNSYLVANIA WAS IN THE BOTTOM FIVE?

18 **A** YES.

19 **Q** OKAY. AND YOU WERE IN COMPANY WITH LOUISIANA, TENNESSEE,
20 WEST VIRGINIA, AND KENTUCKY?

21 **A** YES.

22 **Q** ARE YOU AWARE THAT, ACCORDING TO OFFICIAL PRISON CENSUS DATA
23 PUBLISHED BY CDCR, THAT THE AVERAGE AGE OF CALIFORNIA INMATES,
24 LIKE PENNSYLVANIA'S, IS 37 YEARS OLD?

25 **A** I AM. BUT, AS I SAID, YOU HAVE TO ADJUST IT FOR THE

1 DISTRIBUTION OF THE AGE WITHIN YOUR POPULATION.

2 **Q** OKAY. I BELIEVE THAT -- DOES PENNSYLVANIA PUBLISH SOMETHING
3 CALLED "POPULATION HIGHLIGHTS, THE ANNUAL STATISTICS REPORT,
4 2006, OF THE PENNSYLVANIA DEPARTMENT OF CORRECTIONS"?

5 **A** I BELIEVE WE DO. WE HAVE A LOT OF STUFF UP ON OUR WEBSITE,
6 YES.

7 **Q** OKAY. I'M GOING TO PULL IT UP.

8 (DOCUMENT DISPLAYED.)

9 **BY MR. MELLO**

10 **Q** HAVE YOU SEEN THAT DOCUMENT?

11 **A** YES.

12 **Q** OKAY. CAN WE GO TO THE NEXT PAGE? THAT'S YOU. AND YOU
13 SIGNED IT?

14 **A** YES.

15 **Q** OKAY. LET'S GO TO THE NEXT PAGE THAT'S HIGHLIGHTED, AND
16 IT'S PAGE -- RIGHT THERE.

17 IT SAYS THE AVERAGE AGE OF DO -- OF A DOC OFFENDER IN
18 2006 WAS 37, AND APPROXIMATELY HALF OF THE OFFENDERS WERE WITHIN
19 THE AGES OF 25 TO 39 YEARS; DO YOU SEE THAT?

20 **A** YES.

21 **Q** IS THAT A TRUE STATEMENT, TO YOUR KNOWLEDGE?

22 **A** I'M ASSUMING IT IS. I DIDN'T CHECK THE STATISTICS. I DON'T
23 PUT THIS DOCUMENT TOGETHER.

24 **Q** THIS IS A PUBLIC DOCUMENT PUT FORTH IN THE REGULAR BUSINESS
25 PRACTICE OF YOUR DEPARTMENT, CORRECT?

1 **A** YES.

2 **Q** AND ACCORDING TO -- ITS MY UNDERSTANDING --

3 **JUDGE KARLTON:** WE DON'T CARE WHAT YOUR UNDERSTANDING
4 IS, SIR.

5 **MR. MELLO:** SURE, SURE.

6 CAN WE GO TO DEFENDANT'S EXHIBIT 1255, TABLE 6? MAY
7 I HAVE A TWO-MINUTE BREAK TO TRY TO FIX THIS, PLEASE?

8 **JUDGE HENDERSON:** YOU MAY.

9 (PAUSE IN PROCEEDINGS.)

10 **MR. MELLO:** OKAY. I'M SORRY.

11 **JUDGE HENDERSON:** OKAY. YOU MAY PROCEED.

12 **BY MR. MELLO**

13 **Q** AGAIN, I BELIEVE YOU TESTIFIED THAT THE DOCUMENT PUT
14 TOGETHER BY YOUR DEPARTMENT INDICATES THAT APPROXIMATELY HALF OF
15 THE OFFENDERS IN YOUR DEPARTMENT ARE AGES 25 TO 39 AND THAT THE
16 AVERAGE AGE WAS 37 YEARS; DO YOU SEE THAT? THAT'S CORRECT?

17 **A** YES.

18 **Q** ACCORDING TO THIS DOCUMENT IF YOU ADD UP THE NUMBERS I
19 BELIEVE IT INDICATES THAT -- AND THIS IS AN OFFICIAL CALIFORNIA
20 PUBLICATION PUT TOGETHER BY CDCR. IT'S AN OFFICIAL BUSINESS
21 RECORD.

22 **JUDGE KARLTON:** WAIT A MINUTE. I'M LOST. I THOUGHT
23 THIS WAS ABOUT PENNSYLVANIA.

24 **MR. MELLO:** NO, THIS IS ABOUT CALIFORNIA NOW, TO MAKE
25 THE COMPARISON.

1 **MR. BIEN:** WHAT EXHIBIT NUMBER IS THIS?

2 **JUDGE KARLTON:** I WAS ABOUT TO ASK.

3 **MR. MELLO:** 1255.

4 **JUDGE HENDERSON:** TABLE 6.

5 **MR. SPECTER:** OBJECT ON RELEVANCE GROUNDS, BECAUSE
6 THE TITLE OF THE DOCUMENT IS -- RELATES TO PAROLEES. SO I DON'T
7 KNOW WHAT THE RELEVANCE --

8 **MR. MELLO:** THEY DIDN'T OBJECT, BUT I'LL WITHDRAW THE
9 QUESTION.

10 **JUDGE KARLTON:** THEY'RE OBJECTING NOW THAT HE SAW IT.

11 **MR. MELLO:** SORRY ABOUT THE DELAY FOR THAT BUILDUP TO
12 NOTHING.

13 **BY MR. MELLO**

14 **Q** JUST IN CLOSING, DR. BEARD, ARE YOU AWARE OF ANY INMATE IN A
15 CALIFORNIA PRISON IN THE LAST THREE YEARS WHO SUFFERED AN
16 ADVERSE MEDICAL OR MENTAL HEALTH CONSEQUENCE AS A RESULT OF THE
17 ALLEGED OVERCROWDING?

18 **A** NO.

19 **MR. MELLO:** THANK YOU.

20 **JUDGE HENDERSON:** DEFENDER INTERVENOR.

21 **MR. MITCHELL:** GOOD MORNING. BILL MITCHELL FOR THE
22 DA INTERVENORS. BRIEF CROSS-EXAMINATION.

23 **JUDGE HENDERSON:** PROCEED.

24 **CROSS-EXAMINATION BY MR. MITCHELL**

25

1 **BY MR. MITCHELL**

2 **Q** GOOD MORNING, DR. BEARD.

3 **A** GOOD MORNING.

4 **Q** GOOD MORNING, SIR.

5 SIR, YOU'VE INDICATED YOU REVIEWED A NUMBER OF
6 REPORTS, THOSE OF MR. SCOTT, THE WOODFORD REPORT, THE STEWART
7 REPORT, THE SHANSKY REPORT. DID YOU REVIEW ANY OF THE
8 DEFENDANTS' EXPERTS' REPORTS?

9 **A** YES.

10 **Q** WAS THAT AFTER YOUR DEPOSITION THAT YOU REVIEWED THOSE?

11 **A** YES.

12 **Q** ARE YOU PRETTY COMFORTABLE THAT YOU'VE REVIEWED ALL THE
13 REPORTS THAT ARE FILED IN THIS CASE?

14 **A** I DON'T KNOW THAT I REVIEWED EVERY REPORT. I REVIEWED A
15 NUMBER OF REPORTS FROM THE RECEIVER, A NUMBER OF REPORTS FROM
16 THE MASTER, DR. SHANSKY'S, DR. STEWART'S, NOT ONLY THEIR
17 ORIGINAL, BUT THEIR FOLLOW-UP REPORTS. JEANNE WOODFORD, HER
18 ORIGINAL AND FOLLOW UP. WAYNE SCOTT, AND THEN DR. THOMAS, AND
19 DR. PACKER FROM THE DEFENDANTS.

20 **Q** AND YOU'VE ALSO REVIEWED THE RECEIVER'S REPORTS?

21 **A** I REVIEWED SOME. I CAN'T SAY I READ EVERY SINGLE WORD, BUT
22 I REVIEWED SOME OF THE RECEIVER'S REPORTS. I BELIEVE THE REPORT
23 ON OVERCROWDING, THEIR EIGHTH AND NINTH REPORT, AND THEIR
24 TURNAROUND PLAN.

25 **Q** SINCE THE TIME OF THE DEPOSITION, YOU DID REVIEW THE NINTH

1 REPORT?

2 **A** YES.

3 **Q** YOU ALSO REVIEWED THE DEUKMEJIAN REPORT, THE LITTLE HOOVER
4 COMMISSION REPORT, THE GOVERNOR'S EMERGENCY PROCLAMATION?

5 **A** I DID.

6 **Q** YOU WERE PART OF THE EXPERT PANEL IN 2006?

7 **A** I WAS.

8 **Q** AND WHO CREATED THE EXPERT PANEL?

9 **A** CALIFORNIA DEPARTMENT OF CORRECTIONS, AS FAR AS I
10 UNDERSTAND.

11 **Q** AS I UNDERSTAND IT, YOU WORKED CLOSELY WITH A LOT OF MEMBERS
12 OF THAT CURRENT -- OR NOT THE CURRENT ONE, BUT THE CALIFORNIA
13 DEPARTMENT OF CORRECTIONS STAFF AT THAT TIME, CORRECT?

14 **A** I DID.

15 **Q** DO YOU STAY IN COMMUNICATION NOW WITH THE CALIFORNIA
16 DEPARTMENT OF CORRECTIONS STAFF?

17 **A** I'VE TALKED TO THE CURRENT SECRETARY.

18 **Q** FROM YOUR EXPERIENCE IN WORKING WITH THE INDIVIDUALS HERE IN
19 CALIFORNIA THAT ARE RESPONSIBLE FOR THE MANAGEMENT OF OUR
20 PRISONS AND THE DELIVERY OF THE HEALTHCARE IN THE PRISONS, I
21 THINK YOU TOLD US IN YOUR TESTIMONY EARLIER THAT GOOD PEOPLE
22 WANT TO MOVE AHEAD TRYING TO FIX THE PROBLEMS; IS THAT CORRECT?

23 **A** THAT'S CORRECT. THAT'S MY ASSESSMENT OF THE PEOPLE THAT I
24 TALKED TO, YES.

25 **Q** THEY STUDY THE PROBLEM. THEY'RE DOING WHAT THEY CAN TO FIX

1 THE PROBLEM. AND YOU'VE ACTUALLY SEEN OVER THE -- AT LEAST THE
2 LAST 18 MONTHS TO TWO YEARS STEADY IMPROVEMENTS IN THE SYSTEM,
3 CORRECT?

4 **A** FROM READING THE REPORTS, THERE DOES SEEM TO BE SOME
5 IMPROVEMENTS OVER THE LAST MONTHS, YES.

6 **Q** IN PENNSYLVANIA THE DEPARTMENT OF CORRECTIONS IS RESPONSIBLE
7 NOT ONLY FOR THE CONDITIONS IN THE 27 PRISONS, BUT ALSO FOR THE
8 COUNTY JAIL SYSTEM, CORRECT?

9 **A** NO, THAT'S NOT CORRECT. WE -- IF YOU WOULD LIKE ME TO
10 EXPLAIN? UNDER THE LAW THERE'S A THING CALLED TITLE 37, AND
11 THERE IS -- WE GO IN AND INSPECT THOSE PRISONS, BUT WE ARE NOT
12 RESPONSIBLE FOR THE OPERATION OF THE -- I MEAN, THE COUNTY
13 JAILS. WE INSPECT THEM, BUT WE'RE NOT RESPONSIBLE FOR THEIR
14 OPERATION.

15 **Q** BUT THE DEPARTMENT OF CORRECTIONS IS RESPONSIBLE TO ENSURE
16 THAT THE JAILS MEET MINIMUM STANDARDS, CORRECT?

17 **A** WE DO DO REPORTS TO SEE THAT THEY MEET CERTAIN STANDARDS,
18 YES.

19 **Q** AND YOU FOUND THAT IN MAINTAINING OR IN EVALUATING THE
20 CONDITIONS OF THE JAILS, THAT SOME DO A VERY GOOD JOB AND SOME
21 DO A VERY POOR JOB, CORRECT?

22 **A** THAT'S CORRECT.

23 **Q** OF THE INSTITUTIONS OR THE JAILS THAT YOU FOUND DID A POOR
24 JOB, YOU SAID THAT -- OR DO YOU RECALL SAYING THAT THE POOR JOB
25 OR THE BAD CONDITIONS USUALLY STEM FROM THINGS SUCH AS

1 OVERCROWDING, LACK OF MAINTENANCE, UNDERSTAFFING, THINGS OF THAT
2 SORT, LACK OF RESOURCES?

3 **A** I'M NOT SURE WHAT DOCUMENT YOU ARE TALKING ABOUT THERE, BUT
4 FROM MY REVIEW OF THE VARIOUS REPORTS THAT ARE DONE BY MY STAFF,
5 OVERCROWDING IS A SIGNIFICANT ISSUE IN SOME OF THE COUNTY JAILS
6 THAT CREATE THE PROBLEM. INFRASTRUCTURE PROBLEMS, SANITATION
7 PROBLEMS, THOSE THINGS ARE PROBLEMS THAT I DO SEE IN THE REPORTS
8 THAT I GET FROM THE COUNTY JAILS IN PENNSYLVANIA THAT ARE NOT
9 DOING WHAT THEY SHOULD BE DOING.

10 **Q** AND IT IS GENERALLY FROM A LACK OF RESOURCES, CORRECT?

11 **A** GENERALLY, IT IS A LACK OF RESOURCES, YES.

12 **Q** AND, GENERALLY, IT'S NOT FOR WANT OF THE PEOPLE IN THE
13 POSITIONS TO WANT TO DO A GOOD JOB AND PROVIDE --

14 **A** I WOULD SAY IN MOST CASES THAT'S CORRECT. EVERY ONCE IN A
15 WHILE YOU RUN INTO SOMEBODY THAT REALLY DOESN'T KNOW WHAT
16 THEY'RE DOING OR ISN'T DOING THE PROPER THING, BUT, GENERALLY,
17 YES, I THINK GENERALLY PEOPLE WANT TO DO THE RIGHT THING, AND IF
18 THEY HAD THE RESOURCES, THEY WOULD.

19 **Q** GENERALLY SPEAKING, THAT'S WHAT YOU'VE SEEN HERE IN
20 CALIFORNIA --

21 **A** FROM THE PEOPLE THAT I'VE TALKED TO, YES.

22 **Q** AND THE LEADERSHIP, CORRECT?

23 **A** YES.

24 **Q** NOW, THE PENNSYLVANIA CORRECTIONAL SYSTEM HAD AN OVERHAUL
25 THAT WAS INSTIGATED IN PART FROM RIOTS THAT TOOK PLACE AND FROM

1 A LAWSUIT THAT WAS FILED, AUSTIN VERSUS DEPARTMENT OF
2 CORRECTIONS?

3 **A** YES, I MENTIONED THAT EARLIER.

4 **Q** AND THAT LED TO A LOT OF REFORM MEASURES BEING PASSED,
5 CORRECT?

6 **A** CERTAINLY DID.

7 **Q** AND THAT LAWSUIT DEALT WITH OVERCROWDING AND THE LACK OF THE
8 PROVISION OF ADEQUATE MEDICAL AND MENTAL HEALTHCARE IN THE
9 PENNSYLVANIA PRISONS, CORRECT?

10 **A** WHAT WAS THE FIRST PART OF YOUR THING?

11 **Q** THAT LAWSUIT DEALT WITH THE LACK --

12 **A** IT DEALT WITH NOT HAVING ENOUGH RESOURCES. I WOULD HAVE TO
13 GO BACK AND READ EXACTLY WHAT THE LAWSUIT SAID. THAT'S A LONG
14 TIME AGO. SO, YOU KNOW, IF YOU ARE READING SOMETHING FROM THAT
15 DOCUMENT -- FROM THAT LAWSUIT, I WOULD ASSUME THAT'S ACCURATE,
16 BECAUSE WE WERE OVERCROWDED AT THE TIME, AND, YOU KNOW, WE
17 WEREN'T PROVIDING THE CARE THAT WE SHOULD HAVE BEEN PROVIDING.

18 **Q** MEDICAL AND MENTAL HEALTH CARE?

19 **A** YES.

20 **Q** AND THAT CASE WAS ULTIMATELY SETTLED?

21 **A** YES.

22 **Q** AND IN THE SETTLEMENT, THE TERMS OF THE SETTLEMENT TO
23 RESOLVE THE ISSUES OF THE LACK OF ADEQUATE MENTAL AND MEDICAL
24 CARE IN PENNSYLVANIA, YOU ADDRESSED -- OR THE SETTLEMENT
25 ADDRESSED APPROXIMATELY FIVE DIFFERENT AREAS, WHICH I THINK YOU

1 ALLUDED TO EARLIER FROM THE MINIMUM NUMBER OF MEDICAL AND MENTAL
2 HEALTH, INCLUDING DENTISTS, TO POLICIES AND PROCEDURES,
3 SUFFICIENT EQUIPMENT AT FACILITIES, QUALITY ASSURANCE PROGRAMS
4 AND MONITORING, CORRECT?

5 **A** YOU ARE READING FROM THAT REPORT. I HAVEN'T READ THAT
6 AUSTIN SUIT FOR 20-SOME YEARS. I WILL JUST HAVE TO SAY IF
7 THAT'S -- IF YOU ARE READING FROM THE REPORT, THEN MAYBE THAT'S
8 ACCURATE. I CAN'T SAY THAT'S ACCURATE WITHOUT SEEING IT.

9 **Q** IF THE SETTLEMENT COVERED PARTICULAR -- SPECIFIC FIVE AREAS
10 THAT REQUIRED IMPROVEMENTS IN THE PROVISION OF MEDICAL AND
11 MENTAL HEALTHCARE --

12 **A** IT PROVIDED FOR VARIOUS IMPROVEMENTS IN MENTAL HEALTH AND
13 MEDICAL CARE. HOW MANY EXACTLY IT WAS AND WHAT ALL THOSE THINGS
14 WERE, I CAN'T -- I CAN'T DIRECTLY RECOLLECT WITHOUT REVIEWING
15 THE DOCUMENT.

16 **Q** IN ANY EVENT, IT LED TO PENNSYLVANIA, IN YOUR OPINION,
17 ACHIEVING CONSTITUTIONAL HEALTHCARE AND MENTAL HEALTH CARE --

18 **A** IT HAD NEVER BEEN PROVEN THAT WE WERE UNCONSTITUTIONAL AT
19 THE TIME, BUT IT CERTAINLY IMPROVED BOTH THE MEDICAL AND MENTAL
20 HEALTHCARE IN PENNSYLVANIA.

21 **Q** THAT WAS ALL DONE WITHOUT A PRISONER RELEASE ORDER, CORRECT?

22 **A** PARDON?

23 **Q** ALL DONE WITHOUT A PRISONER RELEASE ORDER?

24 **A** THAT WAS DONE WITHOUT A PRISONER RELEASE ORDER, THAT'S
25 CORRECT.

1 Q MR. MELLO TOUCHED ON THE DEATH RATES IN PENNSYLVANIA.

2 JUDGE KARLTON: SIR, CAN I INTERRUPT FOR JUST A
3 MOMENT. THAT'S NOT AN UNIMPORTANT POINT.

4 YOU INDICATED THAT -- I THINK YOU INDICATED -- IF I
5 AM MISSTATING, FEEL FREE TO SAY I GOT THAT WRONG -- THAT AT
6 LEAST PART OF THE PROBLEM THAT PENNSYLVANIA FACED WHEN THE SUIT
7 WAS FILED WAS OVERCROWDING; IS THAT RIGHT?

8 THE WITNESS: THAT'S CORRECT.

9 JUDGE KARLTON: BUT YOU ACHIEVED SOMEHOW OR OTHER A
10 SATISFACTORY MENTAL AND MEDICAL HEALTH WITHOUT A PRISONER
11 RELEASE ORDER. DID YOU DO ANYTHING ABOUT REDUCING THE PRISON
12 POPULATION WITHOUT A PRISONER RELEASE ORDER?

13 THE WITNESS: NO. NO. WE DIDN'T REDUCE THE PRISON
14 POPULATION AT THAT TIME. IN ADDITION TO SOME OF THE CHANGES
15 THAT WE MADE IN THE MENTAL HEALTH AND MEDICAL CARE, WE ALSO WENT
16 ON AN AGGRESSIVE CONSTRUCTION PROGRAM AND ADDED A LOT OF CELLS
17 TO THE SYSTEM.

18 AND WE WEREN'T REALLY IN -- AS I RECOLLECT, IN THE
19 POSITION WHERE WE DIDN'T HAVE SPACE TO DO THINGS. IT WAS MORE
20 THAT WE DIDN'T HAVE ENOUGH STAFF TO DO THINGS, THAT THE STAFFING
21 RATIOS WERE NOT SEEMED TO BE APPROPRIATE. AND SO THE --
22 WHATEVER CHANGES WE HAD TO MAKE, EQUIPMENT, PERSONNEL, AND
23 STUFF, WE WERE ABLE TO MAKE IT WITHIN OUR EXISTING SYSTEM TO
24 MEET THE NEEDS OF THE SETTLEMENT.

25 JUDGE KARLTON: ASSUMING THAT CALIFORNIA'S PRISON

1 SYSTEM IS NOT IN THAT DESIRABLE OF SHAPE, DO YOU BELIEVE THAT --
2 DO YOU BELIEVE THAT A CONSTITUTIONALLY SUFFICIENT MEDICAL AND
3 MENTAL HEALTH SYSTEM CAN BE ACHIEVED THROUGH ADDITIONAL
4 BUILDING, UNDERSTANDING THAT WOULD TAKE TIME? BUT SETTING ASIDE
5 THE TIME QUESTION, WOULD YOU AGREE THAT THAT COULD OCCUR?

6 **THE WITNESS:** THEORETICALLY, YES, SIR. YES, YOUR
7 HONOR.

8 **JUDGE KARLTON:** BUT YOU DON'T BELIEVE IT PRACTICALLY?
9 THEORETICALLY, YES; PRACTICALLY, NO. WHY?

10 **THE WITNESS:** WELL, I DON'T BELIEVE IT PRACTICALLY
11 BECAUSE OF THE TIME THAT IT TAKES AND THE COSTS THAT IT TAKES,
12 THE HUGE COSTS THAT IT TAKES TO DO THINGS LIKE THIS. AND AT
13 LEAST FROM MY EXPERIENCE, STATES JUST HAVEN'T BEEN WILLING TO
14 MOVE AHEAD WITH THAT KIND OF THING AND TO DO THAT. SO -- AND
15 CONSTRUCTION, IF YOU START BUILDING TODAY, AT LEAST IN MY STATE,
16 I PROBABLY CAN'T GET A PRISON IN THREE YEARS. IT'S PROBABLY
17 GOING TO BE CLOSER TO FOUR YEARS TO GET A PRISON UP AND RUNNING.
18 AND THEN IF YOU NEED A WHOLE BUNCH OF PRISONS -- YOU KNOW, FOR
19 INSTANCE, ONE OF THE PROBLEMS OR CONCERNS I HAVE ABOUT AB 900 IS
20 THE IN-FILL BACKS, BECAUSE ALL YOU'RE DOING IS BUILDING ANOTHER
21 PLACE FOR THESE PEOPLE TO BE. IT'S STILL AN OVERCROWDED PRISON.

22 SO, YOU KNOW, YOU'D HAVE TO GO OUT AND BUILD A WHOLE
23 BUNCH OF PRISONS TO REALLY DO THIS, AND THAT'S GOING TO TAKE YOU
24 YEARS, BECAUSE YOU ARE GOING TO BE THREE OR FOUR BEFORE YOU GET
25 THE FIRST PRISONS, AND YOU CAN'T BUILD, LIKE, YOU KNOW, 30

1 PRISONS ALL AT ONCE. SO YOU'D BE, LIKE, SEVEN, EIGHT YEARS OUT,
2 NINE YEARS OUT BEFORE YOU GET TO THE PLACE WHERE YOU HAVE THE
3 PROPER THING.

4 THAT'S WHY I THINK THE CONSTRUCTION, IN MY MIND,
5 WHILE CERTAINLY IT SHOULD BE A PART OF ANY PLAN AND SHOULD BE
6 PART OF A PLAN, IF YOU TRY TO RELY ON THAT ALONE, YOU ARE
7 PROBABLY NEVER GOING TO GET THERE, BECAUSE THEY HAVEN'T BEEN
8 ABLE TO GET THERE OVER THE LAST 20 YEARS.

9 **JUDGE KARLTON:** SORRY TO HAVE INTERRUPTED, COUNSEL.

10 **MR. MITCHELL:** THANK YOU.

11 **BY MR. MITCHELL**

12 **Q** REGARDING THE DEATH RATES THAT YOU AND MR. MELLO SPOKE
13 ABOUT, WOULD YOU AGREE THAT THE MAJORITY OF DEATHS RESULT FROM
14 CONDITIONS PRESENT AT THE TIME OF INCARCERATION IN A PRISON
15 SYSTEM?

16 **A** WOULD I AGREE THAT THE MAJORITY OF DEATHS RESULT FROM THE
17 CONDITIONS IN THE PRISON SYSTEM?

18 **Q** NO. CONDITIONS THAT ARE PRESENT IN THE INDIVIDUAL INMATE AT
19 THE TIME OF INCARCERATION.

20 **A** WHERE ARE WE TALKING ABOUT?

21 **Q** THEY COME INTO THE PRISON WITH THEIR DISEASES.

22 **A** WELL, MANY INMATES DO COME IN -- INMATES ARE NOT AS A RULE A
23 HEALTHY PART OF OUR POPULATION. THEY HAVE BAD LIFESTYLES. THEY
24 GET INVOLVED IN A LOT OF THINGS THEY SHOULDN'T GET INVOLVED IN,
25 WHICH DOES DRIVE SOME OF THE HEALTHCARE ISSUES AND PROBLEMS THAT

1 WE SEE IN THE SYSTEM, CERTAINLY.

2 **Q** MANY OF THE SERIOUS CONTAGIOUS DISEASES THAT ARE PRESENT IN
3 THE PRISONS WERE ACQUIRED BY THE INMATES DUE TO IV DRUG USE AND
4 UNSAFE SEX PRACTICES WHILE THEY WERE IN THE COMMUNITY, CORRECT?

5 **A** A LOT OF THE PEOPLE WHO COME IN, THAT'S WHAT WE SEE. WE SEE
6 A LOT OF IT BEING BROUGHT INTO THE SYSTEM FROM PEOPLE HAVING THE
7 UNSAFE SEX PRACTICES AND IV DRUG USE, THAT'S CORRECT.

8 **Q** FOR A GOOD MAJORITY OF THE INMATES COMING INTO THE PRISON
9 SYSTEM, CALIFORNIA INCLUDED, THE FIRST INTENSIVE MEDICAL CARE
10 THEY ARE GETTING IS WHEN THEY COME INTO PRISON, CORRECT?

11 **A** I CAN SPEAK FOR MY STATE, AND THAT'S TRUE FOR MANY OF THE
12 INMATES WHO COME IN. THEY COME FROM A LOT OF OUR INNER CITIES
13 AND THEY HAVEN'T SEEN DOCTORS OR DENTISTS OR ANYTHING ELSE
14 BEFORE THEY'VE COME TO US, THAT'S CORRECT.

15 **Q** DO YOU AGREE THAT PRISONS ARE NOT INCUBATORS FOR DISEASE?

16 **A** I PERSONALLY DO NOT BELIEVE THAT PRISONS ARE INCUBATORS FOR
17 DISEASE. THEY COULD BE IF YOUR POPULATION DENSITIES GET SO
18 INTENSE. LIKE, FOR INSTANCE, IF YOU HAVE A GYMNASIUM THAT YOU
19 TRIPLE BUNK AND PUT HUNDREDS AND HUNDREDS OF PEOPLE IN A CLOSED,
20 DENSE AREA, THAT COULD CERTAINLY SERVE AS SOMEWHAT OF AN
21 INCUBATOR FOR IT, BUT, IN GENERAL, I DON'T BELIEVE THAT PRISONS
22 ARE AN INCUBATOR FOR DISEASE, NO.

23 **Q** WOULD YOU AGREE THAT IF PRISONS INCUBATED AND SPREAD
24 DISEASE, THERE WOULD BE EVIDENCE OF TRANSMISSION TO STAFF AND
25 GENERAL INCREASES IN INFECTIONS AMONG INMATES NOT PREVIOUSLY

1 OBSERVED?

2 **A** WHEN YOU SAY "TRANSMISSIONS TO STAFF," I THINK YOU HAVE TO
3 BE CAREFUL, BECAUSE YOU ARE TALKING ABOUT DISEASES THAT USUALLY
4 CAN ONLY BE TRANSMITTED, AT LEAST THE ONES YOU MENTIONED, BY IV
5 DRUG USE OR UNSAFE SEX PRACTICES. SO IF YOU HAVE THOSE KINDS OF
6 DISEASES, IT'S UNLIKELY YOU ARE GOING TO PASS THAT ON TO THE
7 STAFF.

8 **Q** IN FACT, YOU ARE NOT AWARE THAT THAT PHENOMENON HAS BEEN
9 OBSERVED IN ANY PRISONS, PENNSYLVANIA, CALIFORNIA, AND THERE
10 HAVEN'T BEEN ANY STUDIES --

11 **A** ON WHAT?

12 **Q** ON WHETHER OR NOT PRISONS CONTRIBUTE TO THE SPREAD OF THOSE
13 TYPES OF CONTAGIOUS DISEASES.

14 **A** THE STUDIES THAT ARE OUT THERE DO NOT CONFIRM THAT'S THE
15 CASE, AND, IN FACT, THAT'S SOMETHING THAT -- WE WERE LOOKING AT
16 DOING SOME PRE, POST TESTING TO LOOK INTO THAT VERY MATTER IN
17 OUR STATE BECAUSE WE DON'T BELIEVE IT IS.

18 **Q** JUST IN CLOSING, DO YOU KNOW HOW MUCH PENNSYLVANIA SPENDS
19 PER INMATE ON HEALTHCARE?

20 **A** WE SPEND ABOUT \$4,400 A YEAR. THE LAST YEAR WE DID I THINK
21 WAS 44-SOMETHING, IN OUR LAST BUDGET REPORT FOR EACH INMATE.

22 **Q** ARE YOU AWARE THAT CALIFORNIA IS CURRENTLY SPENDING OVER
23 13,000 PER INMATE?

24 **A** I'M NOT AWARE OF PRECISELY WHAT CALIFORNIA SPENDS ON THEIR
25 INMATES.

1 **MR. MITCHELL:** THANK YOU, DR. BEARD.

2 **JUDGE HENDERSON:** COUNSEL, REDIRECT?

3 **REDIRECT EXAMINATION BY MR. SPECTER**

4 **BY MR. SPECTER**

5 **Q** MR. MITCHELL ASKED YOU QUESTIONS ABOUT THE -- ABOUT WHETHER
6 THE STAFF IN CALIFORNIA WANT TO DO THE RIGHT THING AND PROVIDE
7 THE CARE AND CUSTODY THAT THEIR PRISONERS ARE CONSTITUTIONALLY
8 ENTITLED TO IN PRISONS; DO YOU RECALL THAT DISCUSSION?

9 **A** YES.

10 **Q** DO YOU BELIEVE UNDER THE CURRENT OVERCROWDED CONDITIONS THEY
11 CAN DO THE RIGHT THING?

12 **A** NO.

13 **MR. SPECTER:** NO FURTHER QUESTIONS.

14 **JUDGE HENDERSON:** OKAY. THAT LOOKS LIKE --

15 **JUDGE KARLTON:** LET'S EXCUSE THE WITNESS FIRST.

16 **JUDGE HENDERSON:** THAT'S WHAT I WAS GOING TO SAY. IT
17 LOOKS LIKE WE'RE FINISHED WITH THE TESTIMONY. THANK YOU VERY
18 MUCH FOR APPEARING, MR. BEARD. WE WILL NOW TAKE A 15-MINUTE
19 RECESS.

20 (RECESS TAKEN.)

21 **JUDGE HENDERSON:** OKAY. YOU MAY CALL YOUR NEXT
22 WITNESS WHEN YOU ARE READY, COUNSEL.

23 **MR. SPECTER:** THANK YOU, YOUR HONOR. PLAINTIFFS CALL
24 JOSEPH LEHMAN.

25 **JUDGE HENDERSON:** STEP FORWARD AND BE SWORN IN, SIR.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JOSEPH D. LEHMAN,

HAVING BEEN CALLED AS A WITNESS BY THE PLAINTIFFS WAS FIRST
DULY SWORN AND EXAMINED AS FOLLOWS:

THE WITNESS: I DO.

THE CLERK: SPELL AND STATE YOUR FULL NAME FOR THE
RECORD.

THE WITNESS: JOSEPH D. LEHMAN, L-E-H-M-A-N.

DIRECT EXAMINATION BY MR. SPECTER

BY MR. SPECTER

Q GOOD MORNING, MR. LEHMAN.

A GOOD MORNING.

Q MR. LEHMAN, WHAT'S YOUR CURRENT OCCUPATION?

A I AM THE ADMINISTRATOR OF A PARISH, A CHURCH, IN LAKEWOOD,
WASHINGTON.

Q ARE YOU IN ANY SORT OF TRAINING PROGRAM?

A YES, I AM, IN THE DEACON FORMATION TRAINING PROGRAM, WHICH
IS AN ORDAINED MINISTER'S PROGRAM.

Q BEFORE THAT, YOU WORKED IN CORRECTIONS, DID YOU NOT?

A YES, I DID.

Q AND FOR HOW MANY YEARS?

A APPROXIMATELY 35 YEARS.

Q AND DURING THAT TIME, WERE YOU IN CHARGE OF ANY STATES'
PRISONS SYSTEMS?

A YES, I WAS.

Q WHICH ONES?

1 **A** PENNSYLVANIA, AND MAINE, AND THEN THE STATE OF WASHINGTON.

2 **Q** AND WHICH STATE DID YOU SPEND THE MAJORITY OF YOUR TIME IN
3 CORRECTIONS?

4 **A** IN THE STATE OF WASHINGTON.

5 **Q** HOW MANY YEARS DID YOU WORK THERE?

6 **A** ABOUT 29 YEARS.

7 **Q** AND COULD YOU BRIEFLY DESCRIBE WHAT POSITIONS YOU HELD, JUST
8 BRIEFLY, PLEASE?

9 **A** I WORKED IN ALL PARTS OF THE CORRECTIONS DEPARTMENT,
10 INCLUDING THE COMMUNITY SIDE, THE PRISON SIDE, WORK RELEASE, AND
11 IN MANAGEMENT OF THE SYSTEM.

12 **Q** AND DURING YOUR TIME IN WASHINGTON, WERE YOU RESPONSIBLE FOR
13 THE OPERATION AND/OR MANAGEMENT OF ANY OF THE PRISONS?

14 **A** YES, I WAS.

15 **Q** HOW SO?

16 **A** I WAS, IN FACT, WHAT WE REFER TO AS A COMMAND MANAGER OF A
17 COMPLEX OF THREE PRISONS IN MONROE, WASHINGTON, AND SUBSEQUENTLY
18 I WAS THE DIRECTOR OF DIVISION OF PRISONS.

19 **Q** AND COULD YOU DESCRIBE THE CHRONOLOGY OF -- FIRST, YOU WERE
20 IN WASHINGTON, THEN WHAT STATE DID YOU GO TO IN WHAT CAPACITY?

21 **A** OF COURSE, FIRST I WAS IN WASHINGTON UNTIL ABOUT 1990. I
22 WENT TO PENNSYLVANIA TO HEAD UP THE PENNSYLVANIA DEPARTMENT OF
23 CORRECTIONS. SUBSEQUENTLY, TO THE STATE OF MAINE TO HEAD UP
24 THEIR DEPARTMENT. AND, ULTIMATELY, BACK TO WASHINGTON TO HEAD
25 UP THE DEPARTMENT OF CORRECTIONS IN WASHINGTON STATE.

1 Q I SEE. WHEN YOU BECAME THE SECRETARY OF CORRECTIONS IN
2 PENNSYLVANIA, DID YOU REORGANIZE THAT DEPARTMENT IN ANY WAY THAT
3 AFFECTS THE DELIVERY OF HEALTHCARE?

4 A YES, I DID. WHEN I CAME INTO THE DEPARTMENT OF CORRECTIONS,
5 THERE WAS NOT A CENTRALIZED AUTHORITY. THERE WAS NOT A
6 CENTRALIZED AUTHORITY IN RELATION TO HEALTHCARE, SO I CREATED A
7 DIRECTOR OF HEALTHCARE SERVICES.

8 Q AND DID YOU DO SOMETHING SIMILAR IN WASHINGTON STATE?

9 A YES, I DID. THE SAME SET OF CIRCUMSTANCES. HEALTHCARE
10 EXISTED WITHIN THE PRISON SYSTEM, BUT THERE WAS NO COORDINATION
11 OF THAT HEALTHCARE, NO MEANS OF ENSURING CONTINUITY, SO I
12 CREATED A DIRECTOR OF HEALTHCARE SERVICES IN THE STATE OF
13 WASHINGTON.

14 Q COULD YOU MAYBE -- I'M HAVING TROUBLE HEARING YOU, AND IT'S
15 NOT YOU; IT'S THE ACOUSTICS IN THE ROOM. SO MAYBE YOU COULD
16 JUST STAY AWAY FROM THE MIC JUST A LITTLE BIT.

17 WHEN YOU CREATED THOSE DIVISIONS, DID YOU STILL
18 MAINTAIN ANY RESPONSIBILITY FOR HEALTHCARE?

19 A I WAS CERTAINLY RESPONSIBLE FOR THE PROMULGATION OF THE
20 POLICIES AND PROCEDURES, ULTIMATELY FOR THE POLICIES AND
21 PROCEDURES OF THE HEALTHCARE PROGRAM, AS WELL AS FOR THE
22 OVERSIGHT OF THE DIRECTOR OF HEALTHCARE SERVICES.

23 MS. JOHNSON: YOUR HONORS, EXCUSE ME. I COULDN'T
24 UNDERSTAND ANY OF THAT ANSWER.

25 JUDGE KARLTON: I DON'T KNOW WHAT WE CAN DO. YOU

1 WILL SEE THE JUDGES ARE NOW WEARING WHATEVER THESE THINGS ARE.

2 **JUDGE HENDERSON:** HEADPHONES.

3 **JUDGE KARLTON:** I DON'T KNOW WHAT WE CAN DO ABOUT IT.

4 **MR. SPECTER:** I JUST ASKED THE WITNESS IF YOU COULD
5 MOVE A LITTLE FARTHER BACK AND SPEAK A LITTLE LOUDER, AND MAYBE
6 THAT WILL WORK.

7 **JUDGE REINHARDT:** ARE YOU HAVING TROUBLE GENERALLY
8 HEARING?

9 **MR. SPECTER:** THE LAST WITNESS I HEARD FINE. THIS
10 ONE IS A LITTLE BIT MORE DIFFICULT. MAYBE I COULD BORROW YOUR
11 HEADPHONES.

12 **JUDGE REINHARDT:** YOU OUGHT TO GET SOME. THEY ARE
13 REALLY WONDERFUL.

14 **JUDGE KARLTON:** THEY ARE WONDERFUL. YESTERDAY I
15 COULDN'T HEAR ANYTHING. I HOPE YOU DIDN'T HAVE ANYTHING
16 IMPORTANT --

17 **MS. JOHNSON:** COULD WE ACTUALLY HAVE THAT ANSWER
18 BACK? I LITERALLY COULD NOT HEAR IT.

19 **JUDGE KARLTON:** "I WAS CERTAINLY RESPONSIBLE FOR THE
20 PROMULGATION OF THE POLICIES AND PROCEDURES, ULTIMATELY...OF THE
21 HEALTHCARE PROGRAM AS WELL AS OVERSIGHT OF THE DIRECTOR OF
22 HEALTH SERVICES."

23 **BY MR. SPECTER**

24 **Q** MR. LEHMAN, WHAT WERE THE CIRCUMSTANCES THAT LED TO YOUR
25 APPOINTMENT AS THE SECRETARY OF CORRECTIONS IN PENNSYLVANIA?

1 **A** THERE WERE TWO -- WELL, THERE WERE APPROXIMATELY THREE
2 RIOTS. A RIOT, A PARTICULARLY DEVASTATING RIOT, THAT OCCURRED
3 IN THE CAMP HILL FACILITY IN PENNSYLVANIA, WHICH WAS DESTROYED,
4 GOOD PARTS OF IT DESTROYED BY FIRE. THERE WERE 50 HOSTAGES
5 TAKEN. AND I REPLACED THE COMMISSIONER AT THAT TIME.

6 **Q** I SEE. AND THE PRISONS IN PENNSYLVANIA WERE OVERCROWDED AT
7 THE TIME, CORRECT?

8 **A** THE PRISONS WERE OVERCROWDED, YES.

9 **Q** A LAWSUIT WAS FILED IN PENNSYLVANIA, I BELIEVE IT IS THE
10 AUSTIN LAWSUIT, WHICH CONCERNED INADEQUATE HEALTHCARE AS WELL AS
11 OVERCROWDING; IS THAT RIGHT?

12 **A** THAT IS CORRECT. TWO WEEKS AFTER TAKING THE POSITION, I
13 RECEIVED A LETTER FROM AN ATTORNEY AT THE ACLU INDICATING THEIR
14 INTENTION TO SUE THE DEPARTMENT.

15 **Q** AND DID YOU EVENTUALLY -- AND YOU WERE ONE OF THE NAMED
16 DEFENDANTS IN THAT LAWSUIT?

17 **A** YES.

18 **Q** AND DID YOU RESOLVE THAT LAWSUIT SHORT OF A TRIAL?

19 **A** WE -- ACTUALLY, IT WAS RESOLVED DURING THE TRIAL.

20 **Q** UH-HUH.

21 **A** I -- INITIALLY, WHEN I HAD WORD OF THE DEFICIENCIES RELATIVE
22 TO THE HEALTHCARE, I HIRED TWO EXPERT WITNESSES WHO WERE EXPERTS
23 IN THE FIELD OF HEALTHCARE, INCLUDING MENTAL HEALTH; HAD THEM
24 COME TO THE DEPARTMENT OF CORRECTIONS AND DO ASSESSMENTS, AND
25 THEN MAKE SOME RECOMMENDATIONS ABOUT ACTIONS TO BE TAKEN, WHICH

1 WE DID.

2 **Q** I SEE. AND IN YOUR EXPERIENCE, DID YOU FIND THAT THE
3 OVERCROWDING IN PENNSYLVANIA WAS RELATED IN ANY WAY TO THE
4 INADEQUATE HEALTHCARE?

5 **A** ABSOLUTELY. IT WAS A SYSTEM WHERE THE -- THEY WERE
6 OVERWHELMING DEMAND WITH THE NEED TO PROVIDE SERVICES AND UNABLE
7 TO PROVIDE IT.

8 **Q** COULD YOU MOVE BACK A LITTLE BIT AND TALK A LITTLE LOUDER?
9 I'M STILL HAVING A LITTLE TROUBLE --

10 **A** I'LL WORK AT IT.

11 **Q** OKAY. YOU WERE ABOUT 150 PERCENT OVERCROWDED AT THAT TIME
12 IN PENNSYLVANIA?

13 **A** YES, OVER 150.

14 **Q** THAT'S GREAT.

15 SO WHAT WAS THE FIRST ACTION THAT YOU TOOK TO --
16 WELL, I SHOULD BACK UP.

17 GIVEN THAT OVERCROWDING WAS PRESENTING THESE
18 PROBLEMS, DID YOU TAKE ANY ACTIONS TO REDUCE THE NUMBER OF
19 PRISONERS IN YOUR DEPARTMENT?

20 **A** THE FIRST THING I DID IS I GOT AHOLD OF THE FEDERAL BUREAU
21 OF PRISONS, ASKED FOR THEIR ASSISTANCE AND SHIPPED APPROXIMATELY
22 800 INMATES OUT, OUT OF THE SYSTEM, TO THE FEDERAL SYSTEM.

23 **Q** AND DID YOU TRANSFER THOSE PRISONERS TO THE FEDERAL SYSTEM
24 BECAUSE ALL THE GYMS AND DAYROOMS AND OTHER PROGRAMS AND
25 NON-HOUSING SPACE WAS FULL?

1 **A** NO, WE DID NOT, IN FACT, USE GYMS OR ACTIVITY SPACE FOR
2 HOUSING.

3 **Q** OKAY. LET ME ASK YOU ABOUT ANOTHER TECHNIQUE THAT I'VE
4 HEARD OF BUT NEVER -- WELL, LET ME ASK YOU ABOUT A PRACTICE
5 CALLED HOT BUNKING. IN YOUR EXPERIENCE --

6 **JUDGE KARLTON:** BEFORE YOU GO TO HOT BUNKING, ON WHAT
7 BASIS, IF YOU CAN TELL ME, WAS THE FEDERAL SYSTEM ABLE TO ACCEPT
8 800 STATE PRISONERS?

9 **THE WITNESS:** THE FEDERAL SYSTEM, OF COURSE, HAS A
10 MUCH LARGER SYSTEM THAN PENNSYLVANIA, OR ANY OTHER STATE, AND
11 THEY WERE WILLING TO, IN FACT, DO THAT AND HAD THE ROOM TO DO
12 IT.

13 **JUDGE KARLTON:** SO YOU CALLED THEM AND SAID, GEE,
14 GUYS, YOU GOT SPACE FOR 800 PEOPLE? AND THEY SAY, SURE, JUST
15 SEND THEM ALONG?

16 **THE WITNESS:** IN ACTUALITY, I CALLED THE DIRECTOR,
17 KATHY HAWK, AT THE TIME, ASKED FOR ASSISTANCE, INDICATED THE
18 DIFFICULTIES WE WERE HAVING IN PENNSYLVANIA, INCLUDING THE RIOTS
19 THAT HAD OCCURRED, AND SHE SAID THAT THEY COULD, AND THEY DID.

20 **JUDGE KARLTON:** YOU PAID THEM FOR THAT?

21 **THE WITNESS:** YES.

22 **JUDGE KARLTON:** DO YOU KNOW WHETHER THE FEDERAL
23 SYSTEM PRESENTLY -- I MEAN, AS MANY PEOPLE AS I SEND TO PRISON
24 EVERY DAY, I THINK THE ANSWER IS NO, BUT DO YOU KNOW WHETHER THE
25 FEDERAL SYSTEM CAN ACCEPT PRISONERS TODAY?

1 **THE WITNESS:** I DO NOT KNOW, YOUR HONOR.

2 **BY MR. SPECTER**

3 **Q** IN YOUR OPINION, COULD YOU HAVE PROVIDED -- WELL, YOU
4 EVENTUALLY RESOLVED THE LAWSUIT AND WERE ABLE TO PROVIDE WHAT
5 YOU BELIEVE TO BE CONSTITUTIONALLY ADEQUATE HEALTHCARE; IS THAT
6 RIGHT?

7 **A** THAT'S CORRECT.

8 **Q** AND COULD YOU HAVE PROVIDED THAT ADEQUATE CARE WITHOUT
9 REDUCING THE PRISON POPULATION?

10 **A** DID I PROVIDE THE CARE WITHOUT --

11 **Q** COULD YOU HAVE DONE THAT WITHOUT --

12 **A** NO.

13 **Q** OKAY. NOW, YOU'RE FAMILIAR WITH THE TERM "HOT BUNKING"?

14 **A** YES, I AM.

15 **Q** IT'S BEEN DESCRIBED BEFORE BY MR. -- DR. BEARD, SO I WON'T
16 BOTHER ASKING YOU WHAT IT MEANS AGAIN. BUT HAVE YOU EVER HEARD
17 OF IT BEING DONE IN PRISONS?

18 **A** NO, I HAVE NOT.

19 **Q** AND IT WAS NEVER DONE IN ANY OF THE SYSTEMS, INCLUDING
20 PENNSYLVANIA?

21 **A** IT HAS NEVER BEEN DONE IN ANY SYSTEM THAT I RAN OR AM
22 FAMILIAR WITH.

23 **Q** OKAY. THE STATE OF CALIFORNIA, DID THEY ASK YOU TO
24 PARTICIPATE IN WHAT IS COMMONLY REFERRED TO AS THE EXPERT PANEL?

25 **A** YES, I WAS ASKED TO PARTICIPATE IN THAT ENDEAVOR.

1 Q AND YOU WERE ASKED BY THE STATE OF CALIFORNIA, CORRECT?

2 A THAT'S CORRECT.

3 Q AND THAT PANEL WAS DESIGNED TO PROVIDE RECOMMENDATIONS TO
4 THE STATE FOR IMPROVING PROGRAMMING WITHIN THE DEPARTMENT OF
5 CORRECTIONS AND REHABILITATION; IS THAT CORRECT?

6 A THAT'S SPECIFICALLY REHABILITATIVE PROGRAMMING.

7 Q RIGHT. WHEN WAS THAT?

8 A IT WAS -- THE PANEL WAS PULLED TOGETHER IN DECEMBER OF 2006.
9 IT REALLY ACTUALLY OPERATED IN 2007.

10 Q OKAY. AFTER THAT PANEL COMPLETED ITS WORK, DID THE STATE
11 ASK YOU AGAIN TO PERFORM ANY OTHER SERVICE?

12 A I WAS ASKED TO PARTICIPATE ALONG WITH A COUPLE OTHER
13 INDIVIDUALS, ON WHAT THEY REFERRED TO AS A STRIKE TEAM,
14 GOVERNOR'S STRIKE TEAM, TO ASSIST IN THE IMPLEMENTATION OF THE
15 RECOMMENDATIONS.

16 Q DURING -- WHAT WAS THE FIRST RECOMMENDATION OF THE EXPERT
17 PANEL?

18 A REDUCE OVERCROWDING.

19 Q OKAY. AND WAS THAT BECAUSE THE PANEL BELIEVED THAT WITHOUT
20 A REDUCTION IN OVERCROWDING, IT WOULD BE DIFFICULT, IF NOT
21 IMPOSSIBLE, TO PROVIDE THE PROGRAMMING THE PANEL ALSO
22 RECOMMENDED?

23 A THAT WAS QUITE EVIDENT. IT WAS A PREREQUISITE TO DOING
24 ANYTHING ELSE.

25 Q AND THE SAME LOGIC APPLIES TO PROVIDING MANY HEALTHCARE

1 SERVICES, DOES IT NOT?

2 **A** THAT IS CORRECT.

3 **Q** AND IN THE COURSE OF THIS WORK ON REHABILITATIVE
4 PROGRAMMING, YOU BECAME AWARE OF THE OVERCROWDING IN
5 CALIFORNIA'S PRISONS; IS THAT RIGHT?

6 **A** YES, I DID.

7 **Q** OKAY. AND YOU TOURED SOME OF THE PRISONS IN CONNECTION WITH
8 THAT WORK?

9 **A** IN CONNECTION WITH THE EXPERT PANEL AND THE STRIKE TEAM,
10 YES.

11 **Q** OKAY. WHAT WAS YOUR IMPRESSION FROM THE TOURS AS IT RELATES
12 TO OVERCROWDING?

13 **A** IT WAS IMMEDIATELY EVIDENT, GIVEN NOT ONLY THE TESTIMONY OF
14 THE STAFF THAT WERE PRESENT, BUT THE FACT THAT WE WERE OBSERVING
15 OTHERWISE PROGRAM SPACE, SUCH AS EDUCATION SPACE, FILLED WITH
16 INMATES IN TERMS OF DORMITORIES, AS WELL AS RECREATIONS, GYMS
17 FILLED WITH BEDS AND BUNK BEDS.

18 **Q** AND DID YOU TALK TO ANY STAFF DURING YOUR TOURS?

19 **A** YES, WE HAD CONVERSATIONS WITH THE STAFF, EXTERNAL CUSTODY
20 STAFF, WITHIN THE CELL BLOCKS.

21 **Q** AND DID THEY TELL YOU ANYTHING THAT RELATES TO OVERCROWDING?

22 **A** THEY INDICATED THAT IT WAS A VERY DIFFICULT SITUATION TO BE
23 IN. THEY CERTAINLY RECOGNIZED, AS WE DID, THE OVERCROWDING AND
24 TRIPLE BUNKING AND INDICATED IT WAS A DIFFICULT -- IT WAS
25 DIFFICULT TO OPERATE IN THOSE CIRCUMSTANCES.

1 Q OKAY. AND IN YOUR EXPERIENCE -- YOU KNOW THAT CALIFORNIA'S
2 ABOUT 195, 196 PERCENT OF DESIGN CAPACITY, CORRECT?

3 A YES, I DO.

4 Q IN YOUR EXPERIENCE, HAVE YOU EVER KNOWN OF A CORRECTIONAL
5 SYSTEM THAT WAS THIS HIGH?

6 A NEVER.

7 Q OKAY. IN YOUR EXPERIENCE, HOW DOES OVERCROWDING AFFECT THE
8 DELIVERY OF HEALTHCARE?

9 A WELL, INITIALLY, OVERCROWDING IN AND OF ITSELF CONTRIBUTES
10 TO THE DIFFICULTIES OF HEALTHCARE DELIVERY BY VIRTUE OF THE FACT
11 THAT IT INCREASES THE INCIDENCE OF ILLNESSES, INFECTIOUS
12 DISEASE. IT INCREASES THE AMOUNT OF TENSION, THE LEVEL OF
13 VIOLENCE, CERTAINLY REQUIRING RESPONSES, BOTH IN TERMS OF
14 CUSTODIAL AND MEDICAL.

15 IT IS A SITUATION WHERE THE DEMAND SIGNIFICANTLY
16 OUTSTRETCHES THE ABILITY TO RESPOND TO THE HEALTHCARE NEEDS,
17 BOTH IN TERMS OF TIMING AND ACTUAL SERVICE.

18 Q AND YOU'RE AWARE THAT THE COURTS IN THE TWO CASES THAT WE'RE
19 PRESENT -- OF THIS PRESENT PROCEEDING HAVE EITHER DECLARED OR
20 THERE'S BEEN A STIPULATION TO THE FACT THAT THEY'RE
21 UNCONSTITUTIONAL; IS THAT CORRECT?

22 A YES, I AM.

23 Q THE DELIVERY OF CARE IS NOT ADEQUATE, CORRECT?

24 A YES.

25 Q BASED ON THE INFORMATION YOU RECEIVED ABOUT CALIFORNIA'S

1 PRISON SYSTEM, WHAT'S YOUR OPINION ABOUT WHETHER OVERCROWDING IS
2 THE PRIMARY CAUSE OF THE UNCONSTITUTIONAL HEALTHCARE?

3 **A** I THINK THAT IS THE PRIMARY CAUSE OF THE INABILITY TO
4 PROVIDE THE SERVICES. IT'S OVERWHELMING THE SYSTEM BOTH IN
5 TERMS OF SHEER NUMBERS, IN TERMS OF THE SPACE AVAILABLE, IN
6 TERMS OF PROVIDING HEALTHCARE.

7 MY UNDERSTANDING, FOR EXAMPLE, IS YOU COULD HAVE AN
8 INSTITUTION AT 200 PERCENT CAPACITY, BUT THE HEALTHCARE -- THE
9 PHYSICAL SPACE PROVIDED IS BASED ON THE HUNDRED PERCENT
10 POPULATION AS OPPOSED TO 200 PERCENT. SO IT'S SIMPLY NOT ABLE
11 TO PROVIDE THE SERVICES THAT IS REQUIRED.

12 **Q** OKAY. YOU ARE AWARE THAT THE RECEIVER -- JUDGE HENDERSON
13 APPOINTED A RECEIVER TO IMPROVE THE MEDICAL CARE SYSTEM AND THEN
14 ACTUALLY TO RUN THE MEDICAL CARE SYSTEM IN CALIFORNIA?

15 **A** YES, I AM.

16 **Q** WHAT DO YOU SAY TO THE ARGUMENT THAT THE COURT SHOULD NOT
17 REDUCE THE POPULATION BECAUSE THERE'S THIS RECEIVER WHO'S GOT
18 AUTHORITY TO MAKE IMPROVEMENTS?

19 **A** I THINK YOU HAVE TO ADDRESS THE OVERCROWDING. IT IS SO
20 OVERWHELMING, IT'S OVERWHELMING IN THE SENSE OF NOT -- OF NOT
21 BEING ABLE TO MEET THE IMMEDIATE DEMANDS, BUT IT'S OVERWHELMING,
22 EXASPERATING THE PROBLEM IN THE FIRST PLACE. YOU CANNOT
23 PROVIDE -- IN MY OPINION, YOU CANNOT PROVIDE ADEQUATE HEALTHCARE
24 AND MENTAL HEALTHCARE UNDER THE CURRENT SITUATION OF CROWDING
25 WITHIN THE STATE OF CALIFORNIA.

1 Q IS THAT TRUE EVEN THOUGH THE RECEIVER HAS BEEN ABLE TO HIRE
2 ADDITIONAL BOTH CUSTODIAL AND CLINICAL STAFF?

3 A I UNDERSTAND THAT, BUT THE PROBLEM STILL EXISTS BECAUSE
4 WHERE'S THIS SPACE THAT YOU ARE GOING TO PROVIDE THOSE SERVICES
5 IN? I MEAN, WHERE ARE THE PROVIDERS GOING TO WORK AND HOW --
6 AND, BY THE WAY, THE ACTUAL REPORTS INDICATE THEY ARE NOT ABLE
7 TO PROVIDE THE SERVICES.

8 Q SO WOULD THAT -- WOULD IT BE FAIR TO SAY THAT UNLESS YOU
9 HAVE WHAT WE'VE REFERRED TO AS THE INFRASTRUCTURE TO ALLOW THE
10 CARE TO BE PROVIDED, JUST HIRING STAFF ITSELF ISN'T GOING TO
11 WORK?

12 A IT'S NOT GOING TO -- IT'S NOT GOING TO, GIVEN THE
13 OVERCROWDING.

14 Q NOW, WHEN YOU WERE THE SECRETARY OF THE DEPARTMENT OF
15 CORRECTIONS IN PENNSYLVANIA, THE POPULATION IN THE PRISONS
16 WAS -- IT WAS OVERCROWDED, RIGHT?

17 A ABSOLUTELY.

18 Q DID YOU INFORM THE GOVERNOR OF YOUR STATE, OF THAT STATE, OF
19 THAT PROBLEM?

20 A YES, I DID.

21 Q AND WHAT WAS HIS RESPONSE?

22 A HIS RESPONSE WAS, WELL, WE HAVE TO, IN FACT, ENGAGE IN
23 ACTIVITIES TO, IN FACT, REDUCE THAT POPULATION.

24 Q NOW, IF YOU WERE THE SECRETARY OF CORRECTIONS FOR THE
25 DEPARTMENT OF CALIFORNIA, WHAT WOULD BE THE FIRST THING YOU'D

1 SAY TO THE GOVERNOR?

2 **A** I'D SAY TO THE GOVERNOR, YOU ARE NOT GOING TO PROVIDE
3 ADEQUATE SERVICES TO THIS POPULATION WITHOUT REDUCING THE
4 POPULATION.

5 **Q** OKAY. NOW, TWO LAST QUESTIONS FOR YOU.

6 IN YOUR -- IS IT 35 YEARS OF EXPERIENCE?

7 **A** YES.

8 **Q** -- THIRTY-FIVE YEARS OF EXPERIENCE, HOW MANY TIMES HAVE YOU
9 TESTIFIED ON BEHALF OF PRISONERS?

10 **A** THIS IS THE FIRST.

11 **Q** AND WHY ARE YOU DOING THIS TODAY?

12 **A** I THINK THE SITUATION IN CALIFORNIA IS SO EGREGIOUS -- I
13 MEAN, I'VE WORKED IN SYSTEMS WHERE THERE WAS OVERCROWDING, A
14 LEVEL OF OVERCROWDING. WASHINGTON STATE SYSTEM WAS 150 PERCENT
15 WHEN I TOOK OVER AS SECRETARY. IT WAS 107 WHEN I LEFT. THE
16 PENNSYLVANIA SYSTEM WAS, IN FACT, OVER 150 PERCENT OVERCROWDED.
17 IT WAS DOWN TO OPERATING CAPACITY WHEN I LEFT. YOU HAVE TO DEAL
18 WITH THE OVERCROWDING.

19 **Q** IT'S AS SIMPLE AS THAT?

20 **A** YES.

21 **MR. SPECTER:** THANK YOU. NO FURTHER QUESTIONS.

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

23 DOES CCPOA COUNSEL HAVE ANY QUESTIONS OF THIS
24 WITNESS?

25 **MS. LEONARD:** NO FURTHER QUESTIONS, YOUR HONOR.

1 **JUDGE HENDERSON:** OKAY. CROSS-EXAMINATION.

2 **CROSS-EXAMINATION BY MS. JOHNSON**

3 **MS. JOHNSON:** GOOD MORNING. ANNE JOHNSON ON BEHALF
4 OF THE DEFENDANTS.

5 **BY MS. JOHNSON**

6 **Q** GOOD MORNING, MR. LEHMAN.

7 **A** GOOD MORNING.

8 **Q** MR. LEHMAN, YOU DO NOT HAVE ANY ADVANCED DEGREES OTHER THAN
9 YOUR MASTER'S DEGREE, WITH AN EMPHASIS IN CRIMINAL JUSTICE, DO
10 YOU?

11 **A** THAT'S CORRECT.

12 **Q** YOU DO NOT HAVE ANY DEGREES OR TRAINING IN THE MEDICAL
13 FIELD, CORRECT?

14 **A** NO, I DO NOT.

15 **Q** AND YOU DON'T HAVE ANY DEGREES OR TRAINING IN THE MENTAL
16 HEALTH FIELD, CORRECT?

17 **A** NO, I DO NOT.

18 **Q** AND YOU HAVE NEVER BEEN A CLINICIAN WHO PROVIDED EITHER
19 MEDICAL OR MENTAL HEALTH CARE, HAVE YOU?

20 **A** I HAVE NOT.

21 **Q** YOU HAVE NEVER HELD A POSITION SUCH AS HEALTHCARE MANAGER AT
22 A PRISON, HAVE YOU?

23 **A** I HAVE NOT.

24 **Q** YOU HAVE NEVER HELD A POSITION SUCH AS HEAD OF THE HEALTH
25 DEPARTMENT OR A PRISON SYSTEM, HAVE YOU?

1 **A** I HAVE NOT.

2 **Q** WHEN YOU WERE COMMISSIONER OF THE MAINE DEPARTMENT OF
3 CORRECTIONS, THERE WAS A STAFF PERSON BELOW YOU WHO WAS IN
4 CHARGE OF WORKING TO CREATE HEALTHCARE POLICIES AND PROCEDURES,
5 CORRECT?

6 **A** THAT'S CORRECT.

7 **Q** WHEN YOU WERE SECRETARY OF THE PENNSYLVANIA DEPARTMENT OF
8 CORRECTIONS, YOU CREATED A HEALTH DEPARTMENT THAT WAS RUN BY A
9 FORMER HEALTHCARE MANAGER AT ONE OF THE PRISONS, CORRECT?

10 **A** THAT'S CORRECT.

11 **Q** AND WHEN YOU WERE SECRETARY FOR THE WASHINGTON STATE
12 DEPARTMENT OF CORRECTIONS, YOU DID NOT DIRECTLY MANAGE HEALTH
13 SERVICES YOURSELF, DID YOU?

14 **A** NO, I DID NOT.

15 **Q** IN FACT, WHEN YOU WERE SECRETARY FOR THE WASHINGTON STATE
16 DEPARTMENT OF CORRECTIONS, BOTH MEDICAL AND MENTAL HEALTH
17 SERVICES WERE RUN BY A MEDICAL DIRECTOR WHO WAS A PHYSICIAN,
18 CORRECT?

19 **A** THAT'S CORRECT. A POSITION I ESTABLISHED.

20 **Q** THAT WAS MY NEXT QUESTION.

21 THE HEAD OF THE HEALTH DEPARTMENT FOR THE WASHINGTON
22 STATE DEPARTMENT OF CORRECTIONS WAS RESPONSIBLE FOR CREATING THE
23 POLICIES AND PROCEDURES DEALING WITH HEALTHCARE, CORRECT?

24 **A** THAT'S CORRECT.

25 **Q** THE HEAD OF THE HEALTH DEPARTMENT FOR THE WASHINGTON STATE

1 DEPARTMENT OF CORRECTIONS WAS RESPONSIBLE FOR SETTING UP A
2 SYSTEM TO MONITOR COMPLIANCE WITH THOSE POLICIES AND PROCEDURES,
3 CORRECT?

4 **A** THAT'S CORRECT.

5 **Q** AND THE HEAD OF THE HEALTH DEPARTMENT FOR THE WASHINGTON
6 STATE DEPARTMENT OF CORRECTIONS WHILE YOU WERE SECRETARY WAS
7 RESPONSIBLE FOR OVERSEEING AND PARTICIPATING IN THE HIRING OF
8 HEALTHCARE STAFF, CORRECT?

9 **A** THAT'S CORRECT.

10 **Q** YOU WERE NOT QUALIFIED TO SERVE AS HEAD OF THE HEALTH
11 DEPARTMENT OF THE WASHINGTON STATE DEPARTMENT OF CORRECTIONS
12 WHICH YOU HAD CREATED AS SECRETARY, WERE YOU?

13 **A** CLARIFY THAT, PLEASE.

14 **Q** WOULD YOU HAVE HIRED YOURSELF FOR THAT POSITION?

15 **A** NO, I WOULD NOT.

16 **Q** YOU DO NOT RECALL READING ANY STUDIES OR REPORTS OR BEST
17 PRACTICES MANUALS REGARDING PRISON MEDICAL CARE, DO YOU?

18 **A** I CERTAINLY LOOKED AT LITERATURE IN TERMS OF THE AMERICAN
19 CORRECTIONAL ASSOCIATION AND HEALTHCARE ASSOCIATION. I
20 CERTAINLY DID LOOK AT ARTICLES RELATIVE TO THE APPROPRIATE LEVEL
21 OF CARE FOR AN INMATE POPULATION.

22 **Q** WHEN DID YOU LOOK AT THOSE? WAS THAT AFTER YOUR DEPOSITION
23 IN THIS CASE?

24 **A** NO. I LOOKED AT IT WHILE I WAS HEAD OF THE DEPARTMENT OF
25 CORRECTIONS.

1 Q OKAY. WELL, IF I COULD REFRESH YOUR RECOLLECTION, WHEN I
2 ASKED YOU THE SAME QUESTION AT YOUR DEPOSITION YOU SAID YOU
3 DIDN'T RECALL HAVING READ THOSE TYPES OF ARTICLES.

4 A WELL, THE ARTICLES I DID. I'M SORRY.

5 Q SO YOU SERVED ON THE CALIFORNIA DEPARTMENT OF CORRECTIONS
6 AND REHABILITATION EXPERT PANEL ON ADULT OFFENDER AND RECIDIVISM
7 REDUCTION PROGRAM, CORRECT?

8 A YES, I DID.

9 Q AND THAT TITLE KIND OF SPEAKS FOR ITSELF, DOESN'T IT?

10 A I THINK SO.

11 Q SO THAT EXPERT PANEL DID NOT ADDRESS HEALTHCARE ISSUES IN
12 CALIFORNIA'S PRISONS, DID IT?

13 A NO, IT DID NOT.

14 Q IN YOUR REPORT --

15 **JUDGE KARLTON:** DR. -- I'M SORRY. MR. LEHMAN, DO YOU
16 HAVE TO BE A DOCTOR TO FIGURE OUT THAT YOU GOT TO HAVE THE SPACE
17 TO TREAT PEOPLE IN ORDER TO TREAT THEM EFFECTIVELY?

18 **THE WITNESS:** NO, YOU DO NOT. IN FACT, IT WOULD BE
19 THE SECRETARY'S RESPONSIBILITY TO ASSURE THERE WERE SUFFICIENT
20 SPACE AND ACCESS TO THOSE SERVICES.

21 **BY MS. JOHNSON**

22 Q IN YOUR REPORT THAT YOU PREPARED FOR THIS CASE IN AUGUST OF
23 2008, YOU DID NOT REVIEW -- IN PREPARING THAT REPORT, YOU DID
24 NOT REVIEW ANY OF THE PLATA RECEIVER'S REPORTS, CORRECT?

25 A NO, I DID NOT, AT THAT TIME.

1 **Q** IN PREPARING YOUR REPORT, YOU DID NOT REVIEW ANY OF THE
2 COLEMAN SPECIAL MASTER'S REPORTS, CORRECT?

3 **A** NO, I DID NOT.

4 **Q** IN PREPARING YOUR REPORT, YOU DID NOT KNOW WHAT THE SPACE
5 NEEDS WERE FOR MEDICAL OR MENTAL HEALTHCARE IN CALIFORNIA'S
6 PRISONS, DID YOU?

7 **A** SPECIFICALLY, NO.

8 **Q** YOU DID NOT TOUR A SINGLE ONE OF CALIFORNIA'S 33 PRISONS FOR
9 THE PURPOSES OF PREPARING YOUR OPINION REGARDING THE IMPACT OF
10 OVERCROWDING ON MEDICAL OR MENTAL HEALTHCARE, DID YOU?

11 **A** NOT FOR THOSE PURPOSES, NO.

12 **Q** WHEN YOU PREPARED YOUR REPORT, YOU DID NOT HAVE KNOWLEDGE OF
13 THE STATUS OF MEDICAL CARE DELIVERY IN CALIFORNIA'S PRISONS AS
14 OF AUGUST 2008, DID YOU?

15 **A** I'M SORRY. REPEAT THE QUESTION.

16 **Q** WHEN YOU PREPARED YOUR REPORT, YOU DID NOT HAVE KNOWLEDGE OF
17 THE STATUS OF MEDICAL CARE DELIVERY IN CALIFORNIA'S PRISONS AS
18 OF AUGUST 2008, DID YOU?

19 **MR. SPECTER:** OBJECT AS VAGUE.

20 **JUDGE HENDERSON:** VAGUE? VAGUENESS?

21 **MR. SPECTER:** VAGUE.

22 **JUDGE HENDERSON:** LET ME ASK THE WITNESS. DO YOU
23 UNDERSTAND THE QUESTION?

24 **THE WITNESS:** REPEAT THE QUESTION.
25

1 **BY MS. JOHNSON**

2 **Q** WHEN YOU PREPARED YOUR REPORT --

3 **A** YES.

4 **Q** -- YOU DID NOT HAVE KNOWLEDGE OF THE STATUS OF MEDICAL CARE
5 DELIVERY IN CALIFORNIA'S PRISONS AS OF AUGUST 2008, DID YOU?

6 **A** NO, I DIDN'T. ONLY ABOUT THE OVERCROWDING ITSELF.

7 **Q** WHEN YOU PREPARED YOUR REPORT, YOU DID NOT HAVE KNOWLEDGE OF
8 THE STATUS OF MENTAL HEALTH DELIVERY IN CALIFORNIA'S PRISONS AS
9 OF AUGUST 2008, DID YOU?

10 **A** NO.

11 **Q** YOU DID NOT PREPARE THE FIRST DRAFT OF YOUR REPORT IN THIS
12 CASE, DID YOU?

13 **A** I HAD CONVERSATIONS WITH MR. SPECTER. WE DID TALK ABOUT THE
14 OVERCROWDING. WE TALKED ABOUT THE IMPACT OF THE OVERCROWDING IN
15 THE SYSTEM, PARTICULARLY IN TERMS OF ITS CLASSIFICATION, THE
16 APPROPRIATE HOUSING OF INMATES. ON THAT BASIS THE REPORT WAS
17 DRAFTED.

18 **Q** DID YOU WRITE THE FIRST DRAFT OF YOUR REPORT, MR. LEHMAN?

19 **A** NO. I ASKED MR. SPECTER TO DO THAT BASED ON OUR
20 CONVERSATIONS.

21 **Q** SO IT'S YOUR TESTIMONY THAT PLAINTIFF COUNSEL, MR. SPECTER,
22 WROTE THE FIRST DRAFT OF YOUR REPORT?

23 **A** BASED -- ONCE AGAIN, BASED ON OUR CONVERSATION.

24 **Q** ON PAGE 3 OF YOUR REPORT -- IF WE COULD HAVE THAT UP?

25 (DOCUMENT DISPLAYED.)

1 **BY MS. JOHNSON**

2 **Q** PAGE 3, PARAGRAPH 8, THE REPORT STATES:

3 "PRISON OVERCROWDING IN MANY RESPECTS MAKES
4 THE PRISON CLASSIFICATION SYSTEM MEANINGLESS."

5 **A** YES.

6 **Q** "THE CLASSIFICATION OF INMATES BECOMES NO
7 MORE THAN A DRILL TO FIND AN EMPTY BED."

8 DO YOU SEE THAT?

9 **A** YES, I DO.

10 **Q** YOU DO NOT KNOW HOW MANY INMATES, IF ANY, HAVE BEEN
11 IMPROPERLY CLASSIFIED IN CALIFORNIA'S PRISONS DUE TO
12 OVERCROWDING, DO YOU?

13 **A** HOW MANY INMATES?

14 **Q** HOW MANY.

15 **A** ARE -- NO, I DO KNOW FROM TALKING TO -- VISITING AT A
16 RECEPTION CENTER, VISITING THE STAFF OF THE RECEPTION CENTER,
17 VISITING WITH THE DEPARTMENT OF STAFF WHO WERE RESPONSIBLE FOR
18 ASSIGNMENT OF STAFF SUBSEQUENT TO RECEPTION, THAT THEIR ONLY
19 TASK AND PRIMARY TASK WAS TO FIND AN EMPTY BED. I WAS TOLD
20 THAT.

21 **Q** OKAY. I'D LIKE TO READ FROM YOUR DEPOSITION TRANSCRIPT,
22 PAGE 73, LINES 10 THROUGH 21.

23 (DOCUMENT DISPLAYED.)

24 **BY MS. JOHNSON**

25 **Q** THAT IS -- STARTING AT LINE 10:

1 "ON PAGE 3 OF YOUR REPORT, JUST AGAIN THE
2 NEXT SENTENCE DOWN, YOU WROTE 'PRISON
3 OVERCROWDING IN MANY RESPECTS MAKES THE PRISON
4 CLASSIFICATION SYSTEM MEANINGLESS. THE
5 CLASSIFICATION OF INMATES BECOMES NO MORE THAN A
6 DRILL TO FIND AN EMPTY BED.' DO YOU SEE THAT?"

7 **A** YES, I DO.

8 **Q** ANSWER -- I'M READING FOR RIGHT NOW.

9 **A** I'M SORRY.

10 **Q** "ANSWER: YES.

11 "QUESTION: TO YOUR KNOWLEDGE, HOW MANY
12 INMATES HAVE BEEN IMPROPERLY CLASSIFIED DUE TO
13 OVERCROWDING?

14 "ANSWER: I CAN'T MAKE A QUANTITATIVE
15 JUDGMENT."

16 **MR. SPECTER:** I WOULD LIKE THE NEXT SENTENCE READ, OR
17 THE NEXT TWO -- LINES 22 THROUGH PAGE 74, LINE 5.

18 **JUDGE HENDERSON:** COULD YOU READ THOSE ALSO, COUNSEL?

19 **MS. JOHNSON:** I'M SORRY. I DIDN'T HEAR THOSE.

20 **JUDGE HENDERSON:** REPEAT THE LINES YOU WANT ADDED,
21 MR. SPECTER.

22 **MR. SPECTER:** PAGE 73, LINES 22 TO PAGE 74, LINE 5.

23 **JUDGE HENDERSON:** READ THOSE INTO THE RECORD, IF YOU
24 WOULD.

25 **MS. JOHNSON:** "QUESTION: SO WHAT WAS THE BASIS

1 OF YOUR STATEMENT THAT THE CLASSIFICATION OF
2 INMATES BECOMES NO MORE THAN A DRILL TO FIND AN
3 EMPTY BED IF YOU DON'T EVEN KNOW HOW MANY INMATES
4 HAVE BEEN MISCLASSIFIED?

5 "ANSWER: I OBSERVED THE PROCESS OF THE
6 CLASSIFICATION UNIT, OR RECEPTION CENTER UNIT,
7 RATHER. I HAD CONVERSATION WITH THE PERSON WHO
8 HAD OVERALL RESPONSIBILITY WITHIN THE DEPARTMENT
9 RELATIVE TO CLASSIFICATION."

10 **MR. SPECTER:** THANK YOU.

11 **BY MS. JOHNSON**

12 **Q** ON PAGE 3 OF YOUR REPORT, AGAIN AT PARAGRAPH 8 YOU WROTE:

13 "THE CLASSIFICATION AS A DRILL TO FIND AN
14 EMPTY BED, 'RESULTS IN A GREATER RISK OF
15 VIOLENCE AND THE INAPPROPRIATE HOUSING OF
16 PRISONERS WHO NEED HEALTHCARE SERVICES'."
17 DO YOU SEE THAT?

18 **A** YES.

19 **Q** YOU DO NOT KNOW HOW MANY INMATES WHO NEED HEALTHCARE
20 SERVICES ARE CLASSIFIED INAPPROPRIATELY IN CALIFORNIA'S PRISONS,
21 DO YOU?

22 **A** I CANNOT PUT A NUMBER TO IT, YES.

23 **Q** YOU DO NOT KNOW HOW MANY INMATES WHO NEED HEALTHCARE
24 SERVICES WERE NOT IN APPROPRIATE HOUSING AS OF AUGUST 2008, DO
25 YOU?

1 **A** NO, I DO NOT.

2 **Q** ON PAGE 3 OF YOUR REPORT, PARAGRAPH 9, YOU WROTE:

3 "THE CONCLUSION THE EXPERT PANEL REACHED
4 WITH RESPECT TO REHABILITATION IS EQUALLY
5 APPLICABLE TO HEALTHCARE. THE INCIDENCES OF
6 VIOLENCE AND OTHER NEGATIVE CONSEQUENCES OF
7 OVERCROWDING DEGRADE THE CDCR'S ABILITY TO
8 CONSISTENTLY OPERATE REHABILITATION PROGRAMS IN
9 THE PRISON ENVIRONMENT.

10 "WHILE LOCKDOWNS AND CONTROLLED MOVEMENTS
11 ALLOW THE CDCR TO INCREASE THE SAFETY OF ITS
12 CORRECTIONAL OFFICERS AND PRISONERS, WHEN
13 WARDENS ENACT THE SECURITY MEASURES, THEY CANCEL
14 ALL PROGRAMMING IN THE AFFECTED PRISON AREAS."
15 WHEN YOU PREPARED YOUR REPORT IN THIS CASE, YOU DO
16 NOT KNOW OF EVEN ONE SPECIFIC INSTANCE IN THE PRECEDING YEAR
17 WHERE A PRISONER WAS DENIED MEDICAL HEALTHCARE DUE TO A
18 LOCKDOWN, DID YOU?

19 **A** NO, NOT A SPECIFIC.

20 **Q** WHEN YOU PREPARED YOUR REPORT IN THIS CASE, YOU DID NOT KNOW
21 OF EVEN ONE SPECIFIC INSTANCE IN THE PRECEDING YEAR WHERE A
22 PRISONER WAS DENIED NEEDED MENTAL HEALTHCARE DUE TO A LOCKDOWN,
23 DID YOU?

24 **A** I DID READ A CASE ABOUT A DEVELOPMENTALLY DISABLED INMATE
25 THAT WAS NOT PROVIDED SERVICES. FROM MY EXPERIENCE, IN TERMS OF

1 THE OVERCROWDING, IN TERMS OF THE INCREASED LEVEL OF VIOLENCE
2 AND TENSION, IT WAS MY CONCLUSION THAT THERE WAS NOT SUFFICIENT
3 CAPACITY TO PROVIDE HEALTHCARE RESPONSE TO THAT POPULATION.

4 Q OKAY. I WOULD LIKE TO READ FROM YOUR DEPOSITION ON PAGE 81,
5 LINE 6 THROUGH 14, STARTING ON LINE 6.

6 "OKAY. TO YOUR KNOWLEDGE, IN THE LAST YEAR,
7 HOW MANY SPECIFIC INSTANCES HAVE OCCURRED WHERE
8 A PRISONER WAS DENIED NEEDED MEDICAL --"

9 JUDGE KARLTON: WHAT BASIS IS THERE FOR YOU TO READ
10 IT? IT'S NOT IMPEACHMENT. HE AGREES WITH YOU THAT HE'S SIMPLY
11 EXPRESSING HIS OPINION BASED ON 35 YEARS OF EXPERIENCE, NOT
12 GOING OUT AND ASKING INDIVIDUALS WHETHER OR NOT THEY RECEIVED
13 ADEQUATE MEDICAL CARE. WHY ARE YOU READING THIS?

14 MS. JOHNSON: I WAS READING IT FOR IMPEACHMENT, YOUR
15 HONOR, BECAUSE HE DID NOT ANSWER A SIMPLE "NO" TO THE QUESTION,
16 WHICH IS WHAT HE DID -- HE DOES NOT HAVE INFORMATION ABOUT ANY
17 SPECIFIC INSTANCES WHERE A PRISONER WAS DENIED MENTAL
18 HEALTHCARE.

19 JUDGE KARLTON: I BELIEVE YOU. I ALSO BELIEVE HIM
20 WHEN HE SAID HE DIDN'T DO IT.

21 BY MS. JOHNSON

22 Q ON PAGE 4 OF YOUR REPORT AT PARAGRAPH 10, YOU WROTE --

23 JUDGE KARLTON: I'M SORRY. I SPOKE FOR MYSELF
24 INSTEAD OF --

25 JUDGE HENDERSON: THAT'S FINE.

1 **JUDGE KARLTON:** I KEEP FORGETTING THOSE GUYS ARE
2 THERE.

3 **BY MS. JOHNSON**

4 **Q** "SEVERE OVERCROWDING LIKE THAT
5 AFFECTING CALIFORNIA PRISONS RESULTS IN A LACK
6 OF TREATMENT AND OFFICE SPACE AND DECREASED
7 ACCESS TO HEALTHCARE SERVICES."

8 WHEN YOU PREPARED YOUR REPORT IN THIS CASE, YOU DID
9 NOT KNOW OF EVEN ONE SPECIFIC INSTANCE IN THE PRECEDING YEAR
10 WHERE A PRISONER WAS DENIED ACCESS TO HEALTHCARE SERVICES DUE TO
11 SEVERE OVERCROWDING, DID YOU?

12 **A** I DID NOT KNOW OF A SPECIFIC CASE.

13 **Q** ON PAGE 4 OF YOUR REPORT, AGAIN AT PARAGRAPH 10, YOU WROTE:

14 "OVERCROWDING REDUCES THE OPPORTUNITY FOR
15 PRISONERS TO PROGRAM WHICH CAUSES OBVIOUS
16 IDLENESS."

17 YOU ARE NOT AWARE OF ANY INSTANCES WHERE PRISONER
18 IDLENESS RESULTED IN THE DENIAL OF NEEDED MENTAL HEALTHCARE OR
19 MEDICAL HEALTHCARE, ARE YOU?

20 **A** SPECIFIC CASES AGAIN, NO.

21 **Q** AT TIMES WHEN YOU WERE SECRETARY OF THE WASHINGTON STATE
22 DEPARTMENT OF CORRECTIONS, THE PRISON POPULATION EXCEEDED THE
23 SYSTEM'S DESIGN CAPACITY, CORRECT?

24 **A** THAT'S CORRECT.

25 **Q** AT TIMES WHEN YOU WERE SECRETARY OF THE WASHINGTON STATE

1 DEPARTMENT OF CORRECTIONS, THE PRISON POPULATION EXCEEDED THE
2 PRISON SYSTEM'S OPERATIONAL CAPACITY, CORRECT?

3 **A** THAT'S CORRECT.

4 **Q** IT IS YOUR OPINION THAT THE WASHINGTON STATE DEPARTMENT OF
5 CORRECTIONS WAS STILL PROVIDING ADEQUATE MEDICAL AND MENTAL
6 HEALTHCARE AT THE TIMES THE PRISONS WERE ABOVE EVEN OPERATIONAL
7 CAPACITY WHEN YOU WERE SECRETARY, CORRECT?

8 **A** THAT'S CORRECT.

9 **Q** SO, IN YOUR EXPERIENCE, IT IS POSSIBLE FOR A PRISON SYSTEM
10 THAT IS ABOVE OPERATIONAL CAPACITY TO PROVIDE ADEQUATE MEDICAL
11 AND MENTAL HEALTHCARE, CORRECT?

12 **A** DEPENDING ON THE LEVEL OF CROWDING, THERE IS A SIGNIFICANT
13 DIFFERENCE OF THE LEVEL OF CROWDING IN THE STATE OF CALIFORNIA
14 AND ANY OTHER JURISDICTION THAT I HAVE BEEN INVOLVED IN.

15 **JUDGE KARLTON:** BUT THE QUESTION IS -- LET'S START
16 FROM THE BEGINNING. IT IS POSSIBLE AT SOME LEVEL OF
17 OVERCROWDING TO NONETHELESS PROVIDE ADEQUATE CARE?

18 **THE WITNESS:** AT SOME LEVEL, YES.

19 **JUDGE KARLTON:** BUT YOUR OPINION IS THAT CALIFORNIA'S
20 OVERCROWDING, I TAKE IT THAT -- FEEL FREE TO TELL ME I GOT IT
21 WRONG. I TAKE IT THAT YOUR OPINION IS THAT CALIFORNIA'S SYSTEM
22 IS SO OVERCROWDED THAT THAT IS NOT POSSIBLE?

23 **THE WITNESS:** THAT IS MY OPINION. IT IS -- I DON'T
24 KNOW OF ANOTHER STATE, YOUR HONOR, THAT HAS EXPERIENCED ANYTHING
25 CLOSE TO THIS LEVEL OF OVERCROWDING. IT IS JUST -- IT JUST

1 DOESN'T EXIST.

2 **BY MS. JOHNSON**

3 **Q** WHEN YOU WERE IN PENNSYLVANIA AND YOU HAD THAT LAWSUIT THAT
4 WAS BROUGHT AFTER THE RIOTS -- YOU AND MR. SPECTER SPOKE ABOUT
5 ON DIRECT, YOU RECALL THAT?

6 **A** YES, I DO.

7 **Q** ONE OF THE SOLUTIONS WAS SHIPPING 800 OF THE PRISONERS TO
8 FEDERAL BUREAU OF PRISONS?

9 **A** THAT'S CORRECT.

10 **Q** AND ANOTHER SOLUTION WAS BUILDING FIVE MORE PRISONS IN THREE
11 YEARS?

12 **A** THERE WERE FIVE PRISONS BUILT IN FIVE YEARS, BUT THERE WAS
13 ADDITIONAL OTHER THINGS. WE WENT TO THE LEGISLATURE. WE
14 CREATED NEW SENTENCING LAWS. IT WAS A STATE SIMILAR TO
15 CALIFORNIA. THE SENTENCING GRID IN PENNSYLVANIA AT THE TIME,
16 YOUR HONOR, INITIALLY WAS -- ONLY ALLOWED FOR SENTENCE OF TOTAL
17 CONFINEMENT. WE MODIFIED THE GRID AND ALLOWED MORE INTERMEDIATE
18 SANCTIONS AND NON-TOTAL CONFINEMENT CENTERS.

19 **Q** ONE OF THE SOLUTIONS WAS TO BUILD MORE PRISONS, CORRECT?

20 **A** THAT'S RIGHT.

21 **Q** MR. LEHMAN, JUST TO CLARIFY, YOU WERE PAID BY PLAINTIFFS TO
22 TESTIFY IN THIS CASE, WERE YOU NOT?

23 **A** YES.

24 **JUDGE HENDERSON:** COUNSEL?

25 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CROSS-EXAMINATION BY MR. KAUFHOLD

MR. KAUFHOLD: STEVE KAUFHOLD FOR THE LEGISLATIVE INTERVENORS.

BY MR. KAUFHOLD

Q MR. LEHMAN, I WANT TO ASK JUST REAL QUICKLY ABOUT THE RESOLUTION OF THE AUSTIN CASE THAT YOU TESTIFIED ABOUT EARLIER. WERE YOU STILL THE SECRETARY WHEN THAT CASE WAS RESOLVED?

A YES, I WAS.

Q AND AS PART OF THE RESOLUTION OF THAT CASE, OR AT THE TIME OF THE RESOLUTION, DID YOU BELIEVE THAT THE PENNSYLVANIA SYSTEM WAS OVERCROWDED?

A YES, I DID.

Q AND WHEN YOU --

A AT THE TIME OF THE RESOLUTION OR THE TIME OF THE -- IN EITHER CASE, YES.

Q AND WHEN THE CASE WAS RESOLVED, THE RESOLUTION DID NOT INVOLVE A PRISONER RELEASE ORDER; IS THAT CORRECT?

A THAT'S CORRECT.

MR. KAUFHOLD: NO FURTHER QUESTIONS.

JUDGE HENDERSON: REDIRECT?

MR. SPECTER: I COULDN'T HEAR HIS LAST ANSWER. COULD YOU READ THAT TO ME, PLEASE?

JUDGE KARLTON: THE LAST ANSWERS WAS "YES."

MR. SPECTER: I'M SORRY.

JUDGE KARLTON: "WHEN THE CASE WAS RESOLVED, THE

1 RESOLUTION DID NOT INVOLVE A PRISONER RELEASE
2 ORDER; IS THAT CORRECT?

3 "ANSWER YES."

4 **MR. SPECTER:** THANK YOU.

5 **REDIRECT EXAMINATION BY MR. SPECTER**

6 **BY MR. SPECTER**

7 **Q** WAS THE PRISON POPULATION -- WAS THE CROWDING LOWER THAN IT
8 WAS WHEN THE CASE WAS FILED?

9 **A** I'M SORRY, COUNSEL?

10 **Q** I'LL START -- I'LL BACK UP A LITTLE BIT.

11 SPEAKING OF THE AUSTIN CASE?

12 **A** OKAY.

13 **Q** WHEN IT WAS FILED, YOU WERE AT ABOUT 150 PERCENT OF
14 OVERCROWDING, RIGHT?

15 **A** THAT'S CORRECT.

16 **Q** WHAT WAS THE PERCENT OF OVERCROWDING WHEN IT WAS RESOLVED?
17 WAS IT LOWER OR HIGHER OR WHAT?

18 **A** ACTUALLY, IT WAS RESOLVED WITHIN SEVERAL MONTHS, AND IT WAS
19 RESOLVED ON SPECIFIC COMMITMENTS WE MADE IN TERMS OF BUILDING
20 AND REDUCING THE CROWDING.

21 **Q** OKAY. AND WHEN THE LEVEL OF MEDICAL CARE MET THE
22 REQUIREMENTS OF THE SETTLEMENT -- FIRST, YOU HAD A SETTLEMENT
23 WHICH REQUIRED YOU TO IMPROVE THE MEDICAL CARE SYSTEM; IS THAT
24 RIGHT?

25 **A** THAT'S CORRECT.

1 Q AND THAT TOOK SOME TIME TO EFFECTUATE; IS THAT RIGHT?

2 A THAT'S CORRECT.

3 Q AND DURING TIME WHEN YOU WERE EFFECTUATING THAT, THE
4 POPULATION OF THE PRISON SYSTEM WAS -- THE CROWDING AT LEAST WAS
5 BEING -- WAS REDUCED, RIGHT?

6 A THE CROWDING WAS -- THERE WAS NOT A SPECIFIC TIMELINE
7 RELATIVE TO IT. WE CREATED -- THE AGREEMENT WAS TO CREATE A
8 HEALTHCARE DEPARTMENT.

9 Q RIGHT.

10 A THE AGREEMENT WAS TO FOLLOW THE RECOMMENDATIONS OF THE
11 EXPERTS THAT WE BROUGHT IN AND TO ACQUIRE ADDITIONAL SPACE IN
12 RELATION TO HEALTHCARE THROUGH THE CONSTRUCTION PROGRAM.

13 Q SO WHAT I'M SAYING IS THAT, ISN'T IT TRUE THAT THE
14 CROWDING -- THE LEVEL OF CROWDING WAS REDUCED FROM THE TIME WHEN
15 THE CASE WAS FIRST BROUGHT UNTIL THE TIME WHEN THE MEDICAL --
16 THE PROVISION OF MEDICAL CARE --

17 A YES.

18 Q -- BECAME ADEQUATE?

19 A I'M SORRY. YES.

20 Q OKAY. AND YOU MENTIONED INTERMEDIATE SANCTIONS OR -- IN
21 RESPONSE TO A QUESTIONS BY MS. JOHNSON. DID THOSE INTERMEDIATE
22 SANCTIONS INVOLVE NOT COMING TO PRISON?

23 A YES, IT DID.

24 Q SO THEY WERE SENTENCED FOR THE SAME TYPE OF FELONIES, BUT
25 THE LEGISLATURE, WHOEVER THE AUTHORITY WAS, DECIDED TO SHIFT THE

1 SENTENCING STRUCTURE SO THAT FEWER PEOPLE -- FEWER PEOPLE FOR
2 THOSE CRIMES CAME TO PRISON?

3 **A** THAT'S CORRECT, BECAUSE THE ORIGINAL GRID ONLY PROVIDED FOR
4 TOTAL CONFINEMENT.

5 **Q** I SEE. AND IN SUBSEQUENT DEPOSITION, YOU HAVE REVIEWED
6 REPORTS OF THE RECEIVER AND THE SPECIAL MASTER; IS THAT CORRECT?

7 **A** THAT'S CORRECT.

8 **Q** DO THOSE REPORTS CHANGE YOUR OPINION IN ANY WAY ABOUT THE
9 EFFECT OF OVERCROWDING ON THE DELIVERY OF HEALTHCARE SERVICES?

10 **A** NO. IN FACT, IT ONLY MADE MY OPINION STRONGER. I MEAN,
11 BECAUSE READING THOSE REPORTS, YOU GET THE CLEAR PICTURE OF THE
12 INADEQUACY OF THE SPACE AVAILABLE RELATIVE TO HEALTHCARE.

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

14 THANK, MR. LEHMAN.

15 **JUDGE HENDERSON:** OKAY. AND THANK YOU FOR
16 TESTIFYING, MR. LEHMAN. YOU MAY STEP DOWN, AND YOU'RE EXCUSED.

17 WE WILL TAKE OUR LUNCH RECESS AT THIS TIME FOR ONE
18 HOUR. AND LET ME REMIND THE PARTIES THAT WE NEED ENOUGH
19 WITNESSES TO GO THE REST OF THE DAY. OKAY. COURT IS ADJOURNED.

20 (LUNCHEON RECESS TAKEN FROM 11:55 A.M. UNTIL
21 1:05 P.M.)

22 **JUDGE HENDERSON:** OKAY. COURT IS BACK IN SESSION.

23 YOU MAY PROCEED WHEN YOU'RE READY, COUNSEL.

24 **MS. KAHN:** GOOD AFTERNOON, YOUR HONOR. JANE KAHN ON
25 BEHALF OF PLAINTIFFS. AND WE CALL OUR NEXT WITNESS, DR. CRAIG

1 HANEY.

2 **THE CLERK:** PLEASE STEP UP, AND RAISE YOUR RIGHT
3 HAND.

4 (THEREUPON, THE WITNESS WAS SWORN.)

5 **THE WITNESS:** YES, I DO.

6 **THE CLERK:** PLEASE HAVE A SEAT. SPEAK INTO THE
7 MICROPHONE. MY NAME IS CRAIG WILLIAM HANEY, H-A-N-E-Y.

8 **MS. KAHN:** YOUR HONORS, DR. HANEY'S QUALIFICATIONS
9 ARE SET FORTH IN PARAGRAPHS ONE THROUGH TEN OF THE AUGUST 15TH,
10 2008 REPORT. AND HIS CV IS LOCATED IN APPENDIX A TO THE
11 AUGUST 15, 2008 EXPERT REPORT.

12 WE OFFER THIS REPORT NOW, WHICH IS LOCATED AT COLEMAN
13 DOCKET 3201 AS DR. HANEY'S DIRECT TESTIMONY.

14 DR. HANEY IS A PROFESSOR OF PSYCHOLOGY AT THE
15 UNIVERSITY OF CALIFORNIA AT SANTA CRUZ.

16 HE STUDIED THE PSYCHOLOGICAL EFFECTS OF LIVING AND
17 WORKING IN PRISONS FOR THE PAST 35 YEARS AND HAS ANALYZED PRISON
18 CONDITIONS IN AT LEAST 20 DIFFERENT STATE PRISON SYSTEMS AND IN
19 THE FEDERAL AND INTERNATIONAL PRISON SYSTEMS.

20 HE'S BEEN QUALIFIED AS AN EXPERT IN --

21 **MS. TILLMAN:** OBJECTION TO COUNSEL TESTIFYING.

22 **JUDGE HENDERSON:** PARDON?

23 **MS. TILLMAN:** OBJECTION TO COUNSEL TESTIFYING. I
24 APOLOGIZE. THIS MICROPHONE IS NOT WORKING.

25 **JUDGE HENDERSON:** SHE'S LAYING HIS QUALIFICATIONS.

1 **JUDGE KARLTON:** IT'S ALL IN EVIDENCE, AND SHE'S JUST
2 REPEATING IT. AND IT'S HER TIME, IF SHE THINKS THAT IS A USEFUL
3 THING TO DO, TO SPEND IT ON.

4 **MS. KAHN:** SHORTENING THE TIME, YOUR HONORS.

5 HE'S BEEN QUALIFIED AS AN EXPERT IN NUMEROUS FEDERAL
6 CASES ON PRISON CONDITIONS, INCLUDING IN THE COLEMAN TRIAL.

7 WE NOW OFFER DR. HANEY AS AN EXPERT ON THE PSYCHOLOGY
8 OF IMPRISONMENT AND IMPACT OF PRISON CONDITIONS, INCLUDING
9 OVERCROWDING OF PRISONERS IN THE PRISON SYSTEMS.

10 **JUDGE HENDERSON:** COURT WILL FIND HE IS SO QUALIFIED.

11 THEREUPON --

12 **DR. CRAIG WILLIAM HANEY**

13 WAS CALLED AS A WITNESS ON BEHALF OF THE PLAINTIFFS, AND AFTER
14 HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS
15 FOLLOWS:

16 **DIRECT EXAMINATION**

17 **BY MS. KAHN:**

18 **Q.** DR. HANEY, I WOULD LIKE YOU TO BRIEFLY EXPLAIN WHAT IS
19 OVERCROWDING IN PRISONS AND IN WHAT WAYS DOES OVERCROWDING IN
20 PRISONS EFFECT THE FUNCTIONING OF A PRISON SYSTEM?

21 **A.** OVERCROWDING IN A PRISON SYSTEM CAN BE DEFINED AS A PRISON
22 OR PRISON SYSTEM HOLDING MORE PEOPLE THAN IT HAS THE RESOURCES
23 TO HUMANLY AND SAFELY ACCOMMODATE.

24 SO IT MEANS WHAT IT MEANS IN MOST OTHER CONTEXTS:
25 HAVING TOO MANY PEOPLE IN A PARTICULAR ENVIRONMENT. BUT IN A

1 PRISON SETTING, IT MEANS A COUPLE OF ADDITIONAL THINGS.

2 IN A PRISON ENVIRONMENT, BECAUSE PRISONS ARE TOTAL
3 INSTITUTIONS, THE ENVIRONMENT ITSELF HAS A RESPONSIBILITY FOR
4 PROVIDING FOR AND ADDRESSING THE NEEDS OF PRISONERS IN A MORE
5 COMPLETE OR FULL WAY THAN ALMOST ANY OTHER CONTEXT IN SOCIETY
6 THAN ANY ONE OF US FREE CITIZENS WOULD ENTER.

7 SO WHEN OVERCROWDING OCCURS IN A PRISON SETTING, IT
8 CAN REVERBERATE THROUGHOUT THE ENTIRE SYSTEM. THE SYSTEM HAS THE
9 RESPONSIBILITY OF, AS I SAID, ADDRESSING THE NEEDS OF THE
10 PRISONERS.

11 AND WHEN THOSE NEEDS BEGIN TO BE -- THE PRISON BEGINS
12 TO FAIL TO ADDRESS THOSE NEEDS, THEN THOSE PROBLEMS CAN AN
13 ACCUMULATE OR AGGREGATE IN THE PRISON SYSTEM BECAUSE PRISONERS
14 HAVE NO OTHER WAY, NO OTHER AVENUE, NO OTHER OUTLET TO GET THOSE
15 NEEDS AND THOSE PROBLEMS ADDRESSED.

16 IT'S PARTICULARLY POIGNANT ALSO IN A PRISON SYSTEM
17 BECAUSE PRISONERS WHO LEAVE A SYSTEM THAT IS OVERCROWDED, NOT
18 HAVING HAD THOSE PROBLEMS OR THOSE NEEDS ADDRESSED, ARE
19 OFTENTIMES AT GREATER RISK OF COMING BACK INTO THAT SYSTEM.

20 SO THAT OVER TIME AN OVERCROWDED SYSTEM TENDS TO
21 BECOME SELF-AGGRANDIZING OR SELF-EXACERBATING, IF YOU WILL.
22 THAT IS TO SAY PROBLEMS THAT DON'T GET ADDRESSED AT AN EARLIER
23 POINT IN TIME HAVE A WAY OF INCREASING OR INTENSIFYING OVER
24 TIME.

25 AND SO A SYSTEM THAT IS OVERCROWDED ALMOST BEGETS

1 ADDITIONAL OVERCROWDING, BECAUSE IT FAILS TO ADDRESS THE
2 PROBLEMS OF PEOPLE WHO WERE THERE, SOME PERCENTAGE OF WHOM WILL
3 COME BACK INTO THAT SYSTEM.

4 **Q.** DOES THE DURATION THAT A SYSTEM HAS BEEN OVERCROWDED HAVE AN
5 IMPACT ON THE EFFECT OF OVERCROWDING IN A SYSTEM?

6 **A.** YES, FOR PRECISELY --

7 **MS. TILLMAN:** OBJECTION, VAGUE AND AMBIGUOUS.

8 **JUDGE KARLTON:** I'M SORRY?

9 **MS. TILLMAN:** VAGUE AND AMBIGUOUS.

10 **BY MS. KAHN:**

11 **Q.** DOES THE DURATION OF TIME, THE NUMBER OF YEARS A SYSTEM HAS
12 BEEN OVERCROWDED, IMPACT ON THE EFFECT OF WHEN A SYSTEM IS
13 OVERCROWDED?

14 **A.** YES, IT DOES. AND, AGAIN, FOR EXACTLY THAT REASON.

15 PRISONERS TEND TO STAY IN PRISON FOR A PERIOD OF TIME, AGAIN,
16 UNLIKE OTHER ENVIRONMENTS IN SOCIETY THAT MIGHT BE OVERCROWDED.

17 IF YOU THINK, FOR EXAMPLE, OF A DOCTOR'S OFFICE OR
18 SUBWAY STATION, YOU'RE THERE FOR A BRIEF PERIOD OF TIME, AND THE
19 OVERCROWDING IS SOMETHING THAT YOU CAN ESCAPE FROM OR CAN BE
20 ABATED OVER TIME.

21 IN A PRISON SYSTEM PRISONERS ARE THERE FOR A LONG
22 PERIOD OF TIME. SO IF THEY ARE IN A OVERCROWDED ENVIRONMENT AND
23 NEEDS AND PROBLEMS THEY HAVE ARE NOT BEING SOLVED AND ADDRESSED,
24 THOSE PROBLEMS TEND TO EXACERBATE.

25 SO THERE WAS AN AGGREGATION OF PROBLEMS WITHIN A

1 SYSTEM AT THE TIME THE PRISONERS ARE THERE. AND THEN, THERE'S
2 THIS OTHER DIMENSION THAT I ALLUDED TO A MOMENT AGO, WHICH IS
3 WHEN PRISONERS ARE RELEASED FROM PRISON, IF THEY ARE RELEASED
4 WITH UNMET NEEDS OR PROBLEMS THAT HAVE NOT BEEN RESOLVED OR
5 ISSUES THAT HAVE NOT BEEN ADDRESSED WHILE THEY ARE INCARCERATED,
6 THEY ARE AT RISK OF COMING BACK INTO THE SYSTEM OFTENTIMES WITH
7 THOSE PROBLEMS THE SAME OR HAVING EXACERBATED AFTER THEY ARE
8 RELEASED.

9 SO, AGAIN, THE PERIOD OF TIME THAT THE SYSTEM IS
10 OVERCROWDED MATTERS, BECAUSE THE LONGER THE OVERCROWDING OCCURS,
11 THE LONGER THE SYSTEM OPERATES, AND THE GREATER THE NUMBER OF
12 UNMET NEEDS THAT AGGREGATE OVER TIME, THE WORSE THE SITUATION
13 GETS.

14 AND AS I SAID, AS A RESULT OVERCROWDED, PARTICULARLY
15 SEVERELY OVERCROWDED SYSTEMS, TEND TO BEGAT EVEN MORE
16 OVERCROWDING, BECAUSE THEY ARE NOT SOLVING PROBLEMS THAT OVER
17 TIME EITHER HAVE TO BE SOLVED OR RESULT IN PEOPLE COMING BACK
18 INTO THE PRISON SYSTEM AT HIGHER RATES.

19 **Q.** IN WHAT WAYS IS CALIFORNIA'S PRISON SYSTEM OVERCROWDED?

20 **A.** IT'S OVERCROWDED IN VIRTUALLY EVERY CONCEIVABLE WAY ONE
21 WOULD MEASURE OVERCROWDING. IT'S OVERCROWDED IN THE SENSE OF
22 HAVING FAR TOO FEW SPACES FOR PEOPLE TO BE HOUSED. AND IN A
23 CERTAIN SENSE, THAT'S THE MOST BASIC AND FOCUSED DEFINITION OF
24 OVERCROWDING. SO AS I'M SURE THE COURT KNOWS, THIS SYSTEM HAS
25 BEEN OPERATING AT ROUGHLY 190 PERCENT OF CAPACITY.

1 190 PERCENT OF CAPACITY COMPARATIVELY SPEAKING IS
2 ALMOST AN UNHEARD OF NUMBER, AN UNHEARD OF AMOUNT OF
3 OVERCROWDING OPERATING AT A LEVEL BEYOND PHYSICAL OR DESIGN
4 CAPACITY OF THE SYSTEM.

5 THE PHYSICAL OR DESIGN CAPACITY TAKES INTO ACCOUNT
6 NOT ONLY THE NUMBER OF SPACES THAT ARE AVAILABLE FOR PEOPLE TO
7 LIVE IN, BUT DESIGN CAPACITY ALSO IS CALCULATED ON THE BASIS OF
8 PROGRAMMING IN OTHER NECESSARY SPACE WITHIN THE SYSTEM.

9 SO A SYSTEM THAT IS OPERATING AT 190 PERCENT OF
10 CAPACITY HAS NOT ONLY APPROXIMATELY HALF THE SPACES AVAILABLE
11 FOR PEOPLE TO BE HOUSED IN, BUT IT ALSO HAS APPROXIMATELY HALF
12 OF THE SPACES THAT ARE AVAILABLE TO PROVIDE PROGRAMMING AND
13 OTHER KINDS OF SUPPORT WITHIN THE SYSTEM.

14 CALIFORNIA IS -- SO THE DEPTH OF THE PROBLEM OR THE
15 MAGNITUDE OF THE OVERCROWDING IS ALMOST UNHEARD OF. AND I SAY
16 THAT, WHEN I SAY "ALMOST UNHEARD OF," I MEAN EVEN HISTORICALLY
17 ALMOST UNHEARD OF.

18 IN A PERIOD OF TIME IN THE LAST 30 YEARS WHEN LOTS OF
19 PRISON SYSTEMS HAVE BEEN VERY OVERCROWDED, A LEVEL OF
20 OVERCROWDING OF 190 PERCENT IS REMARKABLE. IT'S NOT
21 UNPRECEDENTED, BUT IT'S REMARKABLE.

22 CALIFORNIA'S OVERCROWDED IN ANOTHER SENSE. AND THAT
23 IS IN THE SENSE THAT THE OVERCROWDING IS WIDESPREAD. IT IS NOT
24 RESTRICTED TO JUST A FEW INSTITUTIONS. IT'S OCCURRED THROUGHOUT
25 THE SYSTEM.

1 SO YOU'RE LOOKING AT INDIVIDUAL PRISONS THAT ARE
2 OPERATING AT 180, 190 OR EVEN OVER 200 PERCENT OF CAPACITY. AND
3 THAT'S ESSENTIALLY ACROSS THE BOARD IN THE SYSTEM. IT'S
4 OVERCROWDED IN A COMPARATIVE SENSE.

5 I KNOW OF NO OTHER LARGE PRISON SYSTEM IN THE UNITED
6 STATES THAT IS AS REMOTELY OVERCROWDED AS CALIFORNIA IS.

7 AS BEST I'VE BEEN ABLE TO DETERMINE, THE ONLY STATE
8 THAT IS AS -- THAT IS EVEN CLOSE TO CALIFORNIA IN TERMS OF
9 EXTENT OF OVERCROWDING IS THE STATE OF ALABAMA, A VERY, VERY
10 SMALL SYSTEM COMPARED TO CALIFORNIA'S.

11 AND IT'S OVERCROWDED IN THE FINAL SENSE IN THAT IT
12 IS -- IT HAS BEEN OVERCROWDED FOR A LONG PERIOD OF TIME. IT
13 BEGAN TO BE OVERCROWDED 10 OR SO YEARS AGO. IT HAS CONTINUED TO
14 OPERATE. IT BEGAN TO BE OVERCROWDED EVEN LONGER THAN THAT AGO,
15 BUT IT BEGAN TO BE SEVERELY OVERCROWDED 10 OR SO YEARS AGO AND
16 HAS CONTINUED TO OPERATE FOR THE LAST FIVE OR SIX YEARS AT A
17 LEVEL OF OVERCROWDING THAT, AS I SAID, IS ROUGHLY 190 PERCENT OF
18 CAPACITY.

19 AND ON ALL OF THOSE MEASURES THAT IS AN EXTRAORDINARY
20 LEVEL OF OVERCROWDING.

21 **Q.** DR. HANEY, WHAT IS YOUR OPINION OF WHETHER OVERCROWDING IN
22 THE CALIFORNIA PRISONS IS THE PRIMARY CAUSE OF THE
23 CONSTITUTIONAL VIOLATIONS IN MEDICAL AND MENTAL HEALTHCARE?

24 **A.** WELL, MY OPINION IS FOR ALL OF THE REASONS THAT I JUST
25 STATED THAT THE LEVEL OF OVERCROWDING IS UNPRECEDENTED IN THAT

1 THERE IS NO QUESTION THAT IT IS THE PRIMARY CAUSE OF THE
2 UNCONSTITUTIONAL PROVISION OF MENTAL HEALTHCARE IN THE SYSTEM.

3 **Q.** IN FORMING YOUR OPINION, IS IT CORRECT THAT YOU RELIED ON
4 KEY DOCUMENTS IN THE CASE PRODUCED BY THE DEFENDANTS AND SPECIAL
5 MASTER AND RECEIVER, AND YOU TOURED EIGHT CALIFORNIA PRISONS?

6 **A.** YES, THAT'S CORRECT.

7 **Q.** DURING YOUR TOURS DID YOU SPEAK WITH PRISON STAFF AND
8 INTERVIEW PRISONERS DURING THE EIGHT PRISON SITE INSPECTIONS?

9 **A.** YES. EVERY ONE OF THE INSPECTIONS THERE WAS A BRIEFING, AND
10 THEN THERE WERE OFFICIALS FROM THE PRISON WHO ACCOMPANIED US
11 THROUGHOUT THE TOUR.

12 **Q.** DO YOU RELY ON THESE TYPE OF INTERVIEWS WITH PRISON STAFF
13 AND PRISONERS IN THE COURSE OF YOUR WORK AS AN EXPERT?

14 **A.** I DO ALL THE TIME.

15 **Q.** DO OTHERS IN YOUR FIELD RELY ON THESE TYPE OF INTERVIEWS
16 WITH STAFF AND PRISONERS?

17 **A.** YES, OF COURSE.

18 **Q.** OKAY. DID YOU ALSO ON YOUR TOURS OF CDCR STAFF PERSONS ON
19 THE LAST FOUR PRISON SITE INSPECTIONS TAKE PHOTOS THAT YOU
20 DIRECTED TO HAVE TAKEN?

21 **A.** YES, WE DIDN'T HAVE A CAMERA IN THE FIRST FOUR, BUT WE DID
22 ON THE SECOND FOUR. AND WE HAD PHOTOGRAPHS THAT WERE TAKEN.

23 **Q.** OKAY. I'D LIKE TO TURN TO THE PRISON SITE INSPECTIONS THAT
24 YOU UNDERTOOK IN THE CASE WHICH FORMED THE BASIS OF YOUR
25 OPINION, AND ASK YOU WHAT YOU SAW DURING THE SITE INSPECTIONS

1 THAT LED YOU TO INCLUDE THAT OVERCROWDING WAS THE PRIMARY CAUSE?

2 **A.** I SAW A SYSTEM AS REFLECTED IN EACH ONE OF THESE INSPECTIONS
3 THAT WAS OVERWHELMED WITH THE SHEER NUMBER OF PEOPLE WHO WERE
4 CONFINED THERE. THESE WERE SYSTEMS THAT WERE CHOKED WITH TOO
5 MANY PRISONERS, NOT ENOUGH SPACE, INSUFFICIENT AMOUNT OF STAFF.

6 IN ALMOST EVERY DIRECTION THAT I TURNED I SAW
7 EVIDENCE AND EXAMPLES OF THIS, OF A SYSTEM OPERATING AT ROUGHLY
8 200 PERCENT OF ITS CAPACITY AND STRAINING UNDER THE WEIGHT OF
9 THAT CAPACITY.

10 UNABLE TO DELIVER SERVICES, UNABLE TO ADDRESS THE
11 NEEDS OF THE PEOPLE WHO WERE IN THE SYSTEM. I SAW AND HEARD FROM
12 INDIVIDUAL PRISONERS AND NUMEROUS STAFF MEMBERS ABOUT ALL OF THE
13 OVERCROWDING-RELATED PROBLEMS THAT THEY WERE CONFRONTING ON A
14 DAILY BASIS, WHETHER IT RANGED FROM THE KIND OF HOUSING THAT
15 PRISONERS WERE FORCED TO LIVE IN IN THE CALIFORNIA SYSTEM,
16 HOUSING IN SOME INSTANCES UNLIKE HOUSING I'VE SEEN ANYWHERE ELSE
17 IN ANY OTHER PRISON SYSTEM. AND I'VE BEEN LOOKING AT PRISONS FOR
18 A LONG TIME.

19 I SAW --

20 **Q.** AND WHAT TYPE OF HOUSING WERE YOU TALKING ABOUT?

21 **A.** I'M TALKING ABOUT PRISONERS LIVING IN CONVERTED OR MAKESHIFT
22 DORMITORIES. PRISONERS STRETCHED OUT IN DOUBLE AND TRIPLE BUNKS
23 AS FAR AS THE EYE CAN SEE. I'M TALKING ABOUT A VERY BIZARRE
24 HOUSING UNIT IN CALIFORNIA INSTITUTION FOR MEN IN THE COLUSA
25 UNIT WHERE THERE'S A DORMITORY HAS BEEN CREATED INSIDE THE

1 HOUSING UNIT IN THE DAYROOM OF THE HOUSING UNIT AND A CHAIN LINK
2 FENCE HAS BEEN PLACED AROUND THE DORMITORY INSIDE THAT HOUSING
3 UNIT.

4 THERE WERE DORMITORIES IN MANY OF THE REGULAR HOUSING
5 UNITS IN THE PRISONS THAT HAD BEEN CONVEYED FROM DAYROOM SPACES.
6 AS YOU PROBABLY KNOW, MOST PRISON HOUSING UNITS HAVE AREAS,
7 DAYROOM AREAS WHERE PRISONERS CAN CONGREGATE DURING THE DAY WHEN
8 THEY ARE NOT IN OTHER ACTIVITIES AND THEY ARE NOT IN THEIR
9 CELLS.

10 IN VIRTUALLY EVERY PRISON I TOURED AND INSPECTED MANY
11 OF THESE DAYROOMS HAD BEEN CONVERTED INTO DORMITORIES. SO THERE
12 WERE DOUBLE AND TRIPLE BUNKS NOW PLACED 20 OR SO ON THE SIDE OF
13 EACH ONE OF THE --

14 **Q.** WHAT OTHER AREAS, DR. HANEY -- EXCUSE ME -- DID YOU SEE
15 WHERE OVERCROWDING HAD IMPACTED THE DELIVERY OF CARE DURING YOUR
16 TOURS?

17 **A.** WHAT OTHER KINDS OF AREAS?

18 **Q.** BESIDES HOUSING?

19 **MS. TILLMAN:** IF I MIGHT JUST ASK MS. KAHN TO GET A
20 LITTLE CLOSER TO THE MICROPHONE. HER VOICE IS NOT CARRYING --

21 **JUDGE HENDERSON:** DO THAT, PLEASE.

22 LET US KNOW IF IT WORKS.

23 **BY MS. KAHN:**

24 **Q.** HOUSING WAS THE FIRST AREA?

25 **A.** HOUSING WAS VERY MUCH CONNECTED TO PROGRAMMING. SO IT'S NOT

1 JUST HOW PEOPLE WERE LIVING, WHAT THEY ARE DOING IN THEIR CELLS,
2 HOW THEY ARE BEING CONFINED IN THEIR CELLS AND WHAT KIND OF
3 CELLS OR DORMITORIES THEY ARE IN, BUT OVERCROWDING HAS A DIRECT
4 IMPACT ON PROGRAMMING.

5 THE LEVELS OF IDLENESS IN THE CALIFORNIA DEPARTMENT
6 OF CORRECTIONS ARE SEVERE AND WIDESPREAD. IT IS THE CASE THAT
7 ROUGHLY FIFTY PERCENT OF THE PRISONERS WHO EXIT THE CALIFORNIA
8 DEPARTMENT OF CORRECTIONS AT ANY GIVEN TIME HAVE NOT
9 PARTICIPATED IN A SINGLE PROGRAM, NOT AN EDUCATIONAL PROGRAM,
10 NOT A VOCATIONAL TRAINING PROGRAM, AND NOT A WORK PROGRAM.

11 SO THEY HAVE BEEN IDLE DURING THEIR ENTIRE PERIOD OF
12 TIME IN THE DEPARTMENT OF CORRECTIONS. AND THAT WAS OBVIOUS IN
13 THE VARIOUS HOUSING UNITS THAT I'VE TOURED.

14 SO PROGRAMMING IS IMPACTED.

15 **JUDGE KARLTON:** THIS IS NOT A CASE IN WHICH THE
16 PLAINTIFFS HAVE CHARGED THAT BY VIRTUE OF OVERCROWDING THERE IS
17 A GENERAL UNCONSTITUTIONAL CONDITION. IT SPECIFICALLY RELATES TO
18 WHETHER OVERCROWDING IS THE PRIMARY CAUSE OF THE FAILURE TO
19 DELIVER CONSTITUTIONALLY-ADEQUATE MENTAL AND PHYSICAL HEALTH.

20 I DON'T WANT TO CUT YOU OFF, BUT I DO WANT TO GET TO
21 WHAT THIS CASE IS ABOUT.

22 **MS. KAHN:** EXACTLY.

23 **JUDGE KARLTON:** WOULD YOU DISCUSS THAT WITH US, SIR?

24 **THE WITNESS:** THOSE THINGS ARE RELATED. THE
25 ENVIRONMENT IN WHICH PEOPLE LIVE IS RELATED TO THEIR MENTAL

1 HEALTH. THE KINDS OF ADVERSE LIVING CONDITIONS THAT I SAW ARE
2 THE KINDS THAT HAVE BEEN ASSOCIATED WITH ADVERSE MENTAL HEALTH
3 CONSEQUENCES IN A NUMBER OF DIFFERENT SETTINGS.

4 IDLENESS IS ALSO SOMETHING WHICH ALSO UNDERMINES
5 PEOPLE'S MENTAL HEALTH. SO WE'RE TALKING ABOUT A SYSTEM WHICH
6 IS CAPABLE OF EITHER GENERATING OR EXACERBATING ADVERSE MENTAL
7 HEALTH CONDITIONS AS A RESULT OF THE GENERAL CONDITIONS OF
8 CONFINEMENT. BUT THERE WERE MANY OTHER MORE SPECIFIC ISSUES
9 THAT I CONFRONTED AND OBSERVED AS I WENT THROUGH THESE
10 INSTITUTIONS THAT SPEAK DIRECTLY TO YOUR HONOR'S POINT.

11 THE ACCESS TO APPROPRIATE LEVELS OF CARE WAS DIRECTLY
12 IMPACTED BY THE LEVEL OF OVERCROWDING. AND THERE WERE EXAMPLES
13 OF THIS IN NUMEROUS DIFFERENT CONTEXTS.

14 THE ABILITY OF THE SYSTEM TO MOVE PEOPLE WHO WERE IN
15 CRISIS, SOMETIMES SUICIDAL OR DECOMPENSATING PRISONERS IN THE
16 MENTAL HEALTH CRISIS BEDS. THESE ARE CRISIS BEDS COVERED BY
17 TITLE 22.

18 THERE'S A CERTAIN SPECIFIED KIND OF BED, KIND OF BED
19 A PERSON WHO IS IN NEED OF A MENTAL HEALTH CRISIS BED ARE TO BE
20 PLACED IN.

21 THERE ARE TIME LINES FOR PLACEMENT OF PEOPLE IN THESE
22 BEDS. EVERYWHERE I WENT IN THE SYSTEM I SAW ALTERNATIVE HOUSING
23 OR WAITING AREAS WHERE PRISONERS WHO WERE WAITING TO GET INTO
24 THESE MENTAL HEALTH CRISIS BEDS WERE BEING HOUSED. NOT FOR
25 HOURS, BUT DAYS AT A TIME.

1 IN SOME INSTANCES IN TERMS OF THE MORE SHORT-TERM
2 CONFINEMENT, THEY WERE BEING HOUSED IN CAGES THAT EXIST IN THE
3 DIFFERENT PARTS OF THE PRISON.

4 SOMETIMES IN HALLWAYS, SOMETIMES ON THE DAYROOM FLOOR
5 OF A PARTICULAR UNIT, THEY WERE HOUSED IN WAITING ROOMS. THEY
6 WERE HOUSED IN OUTPATIENT HOUSING UNIT, UNLICENSED FACILITIES OR
7 CLINICS WITHIN THE PRISON SYSTEM ITSELF, BACKED UP IN THE SYSTEM
8 AWAITING AN OPPORTUNITY TO GET INTO A MENTAL HEALTH CRISIS BED
9 OF THE SORT THAT THEY NEEDED.

10 **JUDGE KARLTON:** LET ME INTERRUPT, AGAIN, SIR. IN YOUR
11 VIEW, IS THE DELAY WHICH YOU ARE DESCRIBING AND THE KIND OF
12 HOUSING UNITS THAT WERE BEING OCCUPIED BY PEOPLE WHO WERE BACKED
13 UP, IF YOU WILL, CONTRIBUTING TO THE MENTAL HEALTH PROBLEMS OF
14 THE POPULATION; OR THEY WERE JUST SICK BEFOREHAND, AND THEY
15 COULDN'T GET TREATMENT, OR BOTH?

16 **THE WITNESS:** I WOULD SAY BOTH, YOUR HONOR. I BELIEVE
17 THAT THESE WERE PEOPLE WHO WERE, BY DEFINITION, SICK, BUT THEY
18 WERE GETTING SICKER AS A RESULT OF THEIR INABILITY TO GET THE
19 APPROPRIATE LEVEL OF CARE.

20 IN SOME INSTANCES THERE WERE EXAMPLES OF PEOPLE WHO
21 STARTED OUT RELATIVELY WELL WHO EITHER HAD NO MENTAL HEALTH
22 BACKGROUND OR WHO WERE AT A LOWER LEVEL OF MENTAL HEALTHCARE
23 NEED. AND I INTERVIEWED AND SAW IN THEIR RECORDS EXAMPLES OF
24 THEM NOT GETTING THE APPROPRIATE LEVEL OF CARE, AND THEN WORKING
25 THEIR WAY TOWARDS MORE AND MORE EXTREME NEEDS, A HIGHER LEVEL OF

1 ACUITY, AND BEING PLACED IN MORE AND MORE DIRE CIRCUMSTANCES AS
2 A RESULT OF THE SYSTEM'S INABILITY TO RESPOND IN AN APPROPRIATE
3 AND TIMELY WAY TO THE NEEDS WHICH THEY HAD. MENTAL HEALTH CARE
4 MENTAL HEALTH CARE MENTAL HEALTH CARE.

5 **JUDGE KARLTON:** I WOULD ASSUME, BUT DON'T KNOW.
6 MAYBE I OUGHT TO ASK YOU THAT, FIRST OF ALL.

7 SIR, IS BEING CONFINED IN A PRISON A FACTOR
8 CONTRIBUTING TO MENTAL ILLNESS, MAYBE?

9 **THE WITNESS:** I WOULD ANSWER YOUR HONOR BY SAYING
10 THAT IT DEPENDS ON THE KIND OF PRISONS. I MEAN, I THINK THE
11 RESEARCH DONE OVER THE LAST 30 OR SO YEARS SUGGESTS THAT BEING
12 CONFINED IN A PRISON AND A WELL-RUN PRISON THAT IS NOT
13 SIGNIFICANTLY OVERCROWDED WHERE YOU'RE PROVIDED PROGRAMMING,
14 WHERE YOU HAVE AN OPPORTUNITY TO ENGAGE IN EDUCATIONAL OR
15 VOCATIONAL TRAINING, AND SO ON AND SO FORTH, THOSE --
16 CONFINEMENT UNDER THOSE KINDS OF CONDITIONS CERTAINLY DOES NOT
17 MAKE PEOPLE MENTALLY ILL OR EXACERBATE PREEXISTING MENTAL
18 ILLNESS.

19 BUT THE MORE SEVERE OR ADVERSE KINDS OF CONDITIONS OF
20 CONFINEMENT CAN, IN FACT, EXACERBATE EITHER PREEXISTING MENTAL
21 ILLNESS OR PREEXISTING PROBLEMS PEOPLE HAVE, WHICH GET WORSE
22 ONCE THEY ARE CONFRONTED WITH THESE KIND OF HARSH CONDITIONS OF
23 CONFINEMENT.

24 **JUDGE KARLTON:** SO IT'S YOUR TESTIMONY -- I THINK I
25 UNDERSTAND YOU TO SAY YOUR TESTIMONY IS THAT PRESENT

1 OVERCROWDING IN CALIFORNIA IS SUCH THAT IT IS LEADING TO MORE
2 SIGNIFICANT ILLNESS THAN ONE WOULD FIND IN A PROPERLY RUN PRISON
3 WITH PROPER POPULATION.

4 **THE WITNESS:** YES. AND ONE WITH AN ADEQUATELY
5 FUNCTIONING MENTAL HEALTHCARE DELIVERY SYSTEM.

6 **BY MS. KAHN:**

7 **Q.** SO, DR. HANEY, SO FAR YOU HAVE TESTIFIED THAT YOU OBSERVED
8 DURING YOUR TOURS HOUSING CONDITIONS THAT WERE EITHER -- YOU
9 TESTIFIED ABOUT HOUSING CONDITIONS AND ACCESS TO MENTAL HEALTH
10 CARE. WERE THERE OTHER THINGS THAT YOU OBSERVED DURING YOUR
11 TOURS THAT YOU FELT WHERE OVERCROWDING IMPACTED ON THE DELIVERY
12 OF HEALTHCARE?

13 **A.** YES, THERE WERE TWO OTHER MAJOR AREAS. ONE HAS TO DO WITH
14 TREATMENT SPACE. THE ABILITY OF CLINICIANS IN THE MENTAL
15 HEALTHCARE DELIVERY SYSTEM TO GARNER APPROPRIATE SPACE IN WHICH
16 TO DO TREATMENT. AND I'M NOT TALKING ABOUT MOVING PEOPLE TO
17 APPROPRIATE LEVELS OF CARE WHICH, IN SOME SENSE, IS A
18 SPACE-RELATED ISSUE. THERE AREN'T ENOUGH BEDS IN THE SYSTEM.

19 BUT I'M TALKING ALSO ABOUT THE ABILITY OF CLINICIANS
20 IN THE SYSTEM TO FIND APPROPRIATE SPACE IN WHICH TO ENGAGE IN
21 THERAPEUTIC ACTIVITY WITH PEOPLE WHO ARE ON THE MENTAL HEALTH
22 CASELOAD.

23 I SAW NUMEROUS EXAMPLES OF THE WAY IN WHICH
24 OVERCROWDING HAS UNDERMINED OR PRECLUDED THE ABILITY OF
25 CLINICIANS TO MAKE USE OF OPPORTUNITIES FOR THERAPY. WE'RE

1 TALKING ABOUT THE ABSENCE OF TREATMENT SPACE IN MANY UNITS,
2 PRISONERS HAVING TO BE TAKEN OUT OF UNITS, OFTENTIMES ESCORTED
3 LONG DISTANCES TO GET TO THE ONLY AVAILABLE TREATMENT SPACE IN
4 THE FACILITY.

5 CLINICIANS CONVERTING CHAPELS OR CLASSROOMS INTO
6 MAKESHIFT CLINICAL SPACES. CONVERTING EVEN A CLOSET OR A
7 STOREROOM INTO AN AREA WHERE A CLINICAL TREATMENT ATTEMPTS TO BE
8 ACCOMPLISHED.

9 I'VE ALREADY ALLUDED TO THE USE OF CAGES. CAGES ARE
10 USED NOT ONLY AS HOLDING AREAS OR HOLDING FACILITIES IN THE
11 CALIFORNIA DEPARTMENT OF CORRECTIONS. BUT FOR PRISONERS WHO
12 WERE IN ADMINISTRATIVE SEGREGATION, THEY ARE THE MOST COMMON
13 FORM OF THERAPEUTIC OR TREATMENT SPACE THAT IS PROVIDED.
14 OFTENTIMES THESE CAGES ARE ARRANGED --

15 **MS. TILLMAN:** I'M GOING TO OBJECT TO THE EXTENT THAT
16 THE USE OF THE TERM "CAGES" IS MISCHARACTERIZING THE EVIDENCE.
17 I BELIEVE THEY ARE EITHER CALLED "HOLDING CELLS," IF THEY ARE
18 USED TO HOLD A PERSON PENDING TRANSFER FOR A SHORT PERIOD OF
19 TIME, OR IN A CASE OF A DIFFERENT TYPE OF SETTING THERE ARE WHAT
20 ARE CALLED "THERAPEUTIC MODULES."

21 I CAN'T TELL FROM HIS TESTIMONY WHAT HE MEANS BY
22 "CAGES."

23 **JUDGE KARLTON:** WELL, YOU CAN FULLY EXAMINE THAT WHEN
24 YOU CROSS-EXAMINE HIM.

25 **THE WITNESS:** THESE, THE CAGES THAT ARE USED FOR

1 THERAPY, IN MY EXPERIENCE ARE INDISTINGUISHABLE FROM THE ONES IN
2 TERMS OF THE PHYSICAL STRUCTURE USED AS HOLDING CAGES. BUT IT'S
3 NOT JUST THE USE OF CAGES FOR THESE THERAPEUTIC ACTIVITIES.

4 THE CAGES ARE OFTENTIMES LOCATED OUT ON THE DAYROOM
5 FLOOR OF AN ADMINISTRATIVE SEGREGATION FACILITY. IN SOME
6 INSTANCES THE CAGES ARE ARRAYED IN ROWS OR SEMICIRCLES IN AREAS
7 THAT LOOK LIKE UTILITY ROOMS.

8 IN ONE OF THE FACILITIES, SALINAS VALLEY, FOR
9 EXAMPLE, THE CAGE -- THESE TREATMENT CAGES ARE IN AN AREA THAT
10 APPEARS TO BE A UTILITY ROOM WHERE THE NOISE THAT IS COMING FROM
11 THE MACHINERY IN THE IMMEDIATE AREA SO IS LOUD THAT IT'S
12 DIFFICULT EVEN TO CONVERSE IN THIS ENVIRONMENT.

13 THESE ARE OFTENTIMES DEGRADING PLACES FOR PRISONERS
14 TO BE PUT IN. THEY WILL TELL YOU THAT.

15 THEY DON'T PROVIDE CONFIDENTIALITY. THEY DON'T
16 PROVIDE THE KIND OF CONFIDENTIALITY THAT IS IMPORTANT IN A
17 CLINICAL OR THERAPEUTIC SETTING.

18 THEY ARE ALSO USED OFTENTIMES FOR SCREENING IN A
19 NUMBER OF THE RECEPTION CENTERS THAT I TOURED AND INSPECTED.
20 THE CAGES ARE USED FOR PSYCHOLOGICAL SCREENING. SO PRISONERS
21 WHO ARE COMING INTO THE PRISON SYSTEM ARE PLACED IN ONE OF THESE
22 CAGES IN THE RECEPTION CENTER, AND THEN THERE'S AN ATTEMPT BY A
23 CLINICIAN TO DO A CLINICAL INTERVIEW.

24 AND, AGAIN, THEY PROVIDE VERY LITTLE IN THE WAY OF
25 PRIVACY, VERY LITTLE IN THE WAY OF DIGNITY, FRANKLY, FOR THE

1 PRISONERS THAT ARE CONFINED THERE.

2 **BY MS. KAHN:**

3 **Q.** THANK YOU, DR. HANEY. AND WHAT WAS THE LAST AREA, GENERAL
4 AREA WHERE YOU OBSERVED OVERCROWDING IMPACTING ON THE DELIVERY
5 OF HEALTHCARE?

6 **A.** STAFFING. THIS IS A PROFOUND IMPACT BY THE LEVEL OF
7 OVERCROWDING IN THE DEPARTMENT OF CORRECTIONS. I MENTIONED AT
8 THE VERY OUTSET THAT OVERCROWDING CAN BE DEFINED AS HAVING TOO
9 MANY PEOPLE FOR THE RESOURCES THAT ARE NEEDED TO ADDRESS THE
10 NEEDS AND THE PROBLEMS OF THE PEOPLE WHO ARE IN THAT
11 ENVIRONMENT.

12 OBVIOUSLY, STAFFING IS AN ISSUE THAT IS IMPLIED BY
13 THAT DEFINITION. SO YOU DON'T JUST NEED SPACE. A LOT OF TIMES
14 YOU THINK OF OVERCROWDING AS JUST TOO MANY PEOPLE CONGESTED IN A
15 PARTICULAR ENVIRONMENT. BUT PARTICULARLY WHEN YOU'RE TALKING
16 ABOUT PRISONERS AND PARTICULARLY WHEN YOU'RE TALKING ABOUT
17 PRISONERS WHO HAVE SIGNIFICANT MENTAL HEALTH NEEDS YOU HAVE TO
18 TAKE INTO ACCOUNT THE ADEQUACY OF THE STAFF WHO IS AVAILABLE TO
19 ADMINISTER TO THOSE NEEDS.

20 AND IN THE CALIFORNIA DEPARTMENT OF CORRECTIONS THERE
21 ARE STAFFING SHORTAGES, STAFFING VACANCIES AT ALL CLINICAL
22 LEVELS. IN ADDITION, THERE ARE SHORTAGES OF ASSOCIATED
23 PERSONNEL WHO ARE NEEDED TO ASSIST IN THE PROVISION OF SERVICES.
24 FOR EXAMPLE, ESCORTS WHO HAVE TO BE PROVIDED FOR PRISONERS BEING
25 TAKEN FROM ONE AREA TO ANOTHER IN ORDER TO RECEIVE TREATMENT OR

1 THERAPY.

2 I HEARD ACCOUNTS OF OVERCROWDING CAUSED STAFF
3 SHORTAGES AND UNDERSTAFFING IN VIRTUALLY EVERY PRISON THAT I
4 VISITED AND WITH WHOM I DISCUSSED THIS ISSUE WITH STAFF.

5 IT'S A PROFOUND PROBLEM. IT COMPETES, REALLY, WITH
6 THE SPACE SHORTAGE AS A CONSEQUENCE OF OVERCROWDING. IT IS
7 WIDESPREAD NOT ONLY IN THE PRISONS THAT I LOOKED AT, BUT I
8 VIEWED DEPARTMENT-WIDE DATA TO SUGGEST THAT IN SOME OF THE
9 PRISONS THAT I DIDN'T VISIT THE PROBLEM IS EVEN GREATER THAN THE
10 ONES THAT I DID SEE.

11 Q. THANK YOU.

12 THE CLERK: YOU HAVE FIVE MINUTES.

13 MS. KAHN: OKAY.

14 CAN WE PLEASE SEE -- I WOULD LIKE TO SHOW EXHIBIT --
15 DEFENDANTS' EXHIBIT 263. I MEAN, PLAINTIFFS' EXHIBIT 263, WHICH
16 IS A CHART THAT WAS CREATED BY ROSEN BIEN AND GALVAN AT THE
17 DIRECTION OF DR. HANEY. AND THIS IS TAB SIX IN YOUR BINDERS.

18 EXHIBIT 263.

19 JUDGE KARLTON: WHILE YOU'RE DOING THAT, DOCTOR,
20 WILL YOU LOOK AT PLAINTIFFS' 237, AND TELL ME ARE THOSE TYPICAL
21 OF THE CAGES THAT YOU'VE BEEN DISCUSSING?

22 THE WITNESS: YES, YOUR HONOR. THOSE ARE TYPICAL. I
23 HAVE TO TELL YOU THAT I'VE SEEN A NUMBER OF THEM THAT ARE
24 ACTUALLY IN WORSE SHAPE THAN THESE, BUT THESE ARE CERTAINLY
25 TYPICAL.

1 **JUDGE KARLTON:** THANK YOU, SIR.

2 **JUDGE HENDERSON:** OKAY.

3 **MS. KAHN:** YOUR HONORS, WE WOULD LOVE TO BE ABLE TO
4 GO THROUGH ALL THESE. WE DON'T HAVE ENOUGH TIME.

5 **JUDGE HENDERSON:** NO, BUT I JUST WANTED TO CLEAR --
6 RESPOND TO THE OBJECTION ABOUT TERMINOLOGY.

7 SO THE RECORD SHOULD REFLECT THAT PLAINTIFFS' 337 IS
8 A PICTURE ENTITLED:

9 "RECEPTION CENTER YARD THREE, CLINIC HOLDING
10 CELLS."

11 AND THOSE ARE THE CELLS THAT DR. HANEY IS REFERRING
12 TO, ALSO, AS HOLDING CAGES.

13 **MS. KAHN:** THANK YOU.

14 **BY MS. KAHN:**

15 **Q.** DR. HANEY, CAN YOU DESCRIBE THIS CHART, PLEASE?

16 **A.** YES. THIS IS A CHART THAT I HAD PREPARED TO TRY TO DOCUMENT
17 AND ADDRESS THE ISSUE OF WHETHER THIS WAS A SYSTEM THAT IN
18 RECENT TIME WAS IMPROVING IN TERMS OF THE DELIVERY OF MENTAL
19 HEALTHCARE OR NOT.

20 AND THIS PARTICULAR PARAGRAPH SPEAKS TO THE ISSUE
21 THAT I WAS TALKING ABOUT EARLIER: ACCESS TO APPROPRIATE LEVELS
22 OF CARE.

23 SO THAT YOU CAN SEE THAT WHAT WE'VE DONE IS TO GRAPH
24 OVER TIME, BEGINNING ABOUT A YEAR -- WELL, ACTUALLY, THIS BEGINS
25 ABOUT TWO YEARS AGO, IN NOVEMBER OF 2006.

1 THE BLUE LINE ON THE TOP SHOWS WHAT ARE CALLED
2 "MENTAL HEALTHCARE REFERRALS."

3 AS YOU MAY KNOW, THE DEPARTMENT MAINTAINS A
4 HEALTHCARE PLACEMENT OVERSIGHT PROGRAM. AND WHAT THIS IS IS AN
5 OFFICE IN SACRAMENTO WHERE INDIVIDUAL PRISONS IN THE DEPARTMENT
6 OF CORRECTIONS THAT ARE IN NEED OF A MENTAL HEALTHCARE BED, A
7 MENTAL HEALTHCARE CRISIS BED CAN CONTACT THE OFFICE AND ASK THE
8 OFFICE TO LOCATE A BED SOMEWHERE IN THE SYSTEM WHERE THEY CAN
9 SEND A PRISONER WHO IS IN CRISIS WHO IS IN NEED OF SUCH A MENTAL
10 HEALTHCARE CRISIS BED, BUT WHERE ONE IS NOT AVAILABLE AT THE
11 PARTICULAR FACILITY THAT PRISONER IS IN.

12 AND THIS CAN BE A FACILITY THAT ACTUALLY HAS ITS OWN
13 MENTAL HEALTHCARE CRISIS BEDS OR WHICH ARE FULL, OR IT COULD BE
14 A FACILITY THAT DOESN'T HAVE MENTAL HEALTHCARE CRISIS BEDS.

15 YOU SEE BEGINNING TWO YEARS AGO, NOVEMBER, 2006,
16 THERE WERE 85 OF THESE. AND THEN, YOU CAN SEE THAT OVER TIME
17 THE NUMBER OF SUCH REFERRALS, THE REQUEST FOR MENTAL HEALTH
18 CRISIS BEDS BY PRISONS THAT EITHER DIDN'T HAVE ANY OR DIDN'T
19 HAVE ANY AVAILABLE HAS INCREASED CONSISTENTLY, AND I WOULD SAY
20 FAIRLY DRAMATICALLY, OVER TIME, REACHING THE HIGH OF 388 IN
21 JUNE, AND DECREASING SOMEWHAT TO 322 IN JULY.

22 WHAT YOU CAN SEE GRAPHED WITH THE RED LINE AT THE
23 BOTTOM IS THE NUMBER OF PLACEMENTS THAT WERE MADE BY THIS
24 OFFICE. AND, AGAIN, THIS IS QUITE OBVIOUS, BUT A FAIRLY
25 CONSISTENT NUMBER OR FLATLINE NOT INCREASING TERRIBLY

1 DRAMATICALLY UNTIL JULY OF 2008.

2 I BELIEVE THE CLEAREST EXPLANATION OF THAT IS A
3 FIFTY-BED MENTAL HEALTH CRISIS BED UNIT AT THE CALIFORNIA
4 MEDICAL FACILITY WENT ONLINE IN JULY, AND SO THERE'S AN INCREASE
5 IN THE NUMBER OF SUCH BEDS THAT HAVE BEEN PROVIDED OR THE NUMBER
6 OF TRANSFERS THAT HAVE BEEN MADE.

7 THIS IS AN EXAMPLE OF THE KIND OF SYSTEM THAT I SAW,
8 A SYSTEM THAT IS IN CRISIS WHERE THE CRISIS IN MANY RESPECTS IS
9 GETTING WORSE, NOT BETTER.

10 AND THIS IS A MEASURE OF UNMET NEED IN THE SYSTEM OF
11 WHICH THERE ARE MANY OTHERS.

12 **MS. KAHN:** YOUR HONORS, IN YOUR BINDER -- WE WON'T
13 HAVE TIME -- AT TABS SEVEN, EIGHT AND NINE ARE -- PLAINTIFFS'
14 TRIAL EXHIBITS SEVEN, EIGHT AND NINE ARE TRIAL EXHIBITS THAT
15 SHOW PLACEMENTS, PHOTOS TAKEN OF ALTERNATIVE PLACEMENTS THAT WE
16 SAW DURING SITE INSPECTIONS.

17 **JUDGE KARLTON:** WHAT IS THE EXHIBIT NUMBER FOR THE --

18 **MS. KAHN:** THE EXHIBIT NUMBER -- I'M SORRY.

19 **JUDGE KARLTON:** NO. NO. NO. FOR THE --

20 **MS. KAHN:** FOR THE PHOTOS?

21 **JUDGE KARLTON:** -- FOR THE CHART?

22 **MS. KAHN:** THE CHART IS EXHIBIT NUMBER 263.

23 **JUDGE KARLTON:** THANK YOU, MA'AM.

24 **MS. KAHN:** AND PHOTOS ARE TRIAL EXHIBIT 341, NUMBER
25 13; TRIAL EXHIBIT 341, NUMBER 17; TRIAL EXHIBIT 377, NUMBER 11;

1 AND TRIAL EXHIBITS 337, NUMBER 28.

2 AND THOSE ARE ALL PHOTOS THAT WERE TAKEN BOTH AT
3 WASCO AND CCI.

4 AND COULD WE PLEASE SEE QUICKLY TRIAL EXHIBIT P264?

5 THIS IS ANOTHER CHART THAT WAS CREATED BY ROSEN BIEN
6 AND GALVAN AT THE DIRECTION OF DR. HANEY. ALSO USED THE CDCR
7 MONTHLY DATA PROVIDED TO THE SPECIAL MASTER AND TO PLAINTIFFS'
8 COUNSEL.

9 264.

10 **JUDGE KARLTON:** I'M SORRY. THIS IS WHAT NUMBER?

11 **MR. BIEN:** 264.

12 **MS. KAHN:** 264. THIS IS TAB NINE. IT'S A CHART OF THE
13 EOP PROGRAM UNMET NEEDS.

14 YOUR HONORS, I'M NOT SURE WE CAN PROJECT THIS.

15 **BY MS. KAHN:**

16 **Q.** DR. HANEY, DO YOU HAVE THIS CHART, THIS EXHIBIT IN FRONT OF
17 YOU, AS WELL? CAN YOU DESCRIBE TO THE COURT WHAT THIS EXHIBIT
18 SHOWS?

19 **A.** THIS PARTICULAR EXHIBIT, THE ONE THAT'S ON THE SCREEN?

20 **Q.** NO, THE EOP UNMET NEED CHART.

21 **A.** YES.

22 DOES THE COURT HAVE THAT AVAILABLE?

23 YES. AGAIN, I WAS INTERESTED IN TRYING TO DEVELOP
24 SOME ANALYSIS OR UNDERSTANDING OF THE MOVEMENT OF THE SYSTEM
25 OVER TIME.

1 I'M AWARE THAT THE COURT ASKED FOR AND RECEIVED
2 ANALYSES OF THE EFFECT OF OVERCROWDING ON THE SYSTEM, BOTH IN
3 TERMS OF THE MEDICAL AND MENTAL HEALTHCARE DELIVERY IN 2007, IN
4 MAY OF 2007.

5 I LOOKED AT THE SYSTEM AFTER THAT. SO I WANTED TO SEE
6 HOW WAS THE SYSTEM CHANGING OVER TIME; HOW IT HAD CHANGED SINCE
7 THOSE ANALYSES HAD BEEN DONE BY THE RECEIVER AND BY THE SPECIAL
8 MASTER.

9 AND SO THIS IS A GRAPH OF EN -- ON THE BLUE LINE AT
10 THE TOP, IT SHOWS THE ENHANCED OUTPATIENT PROGRAM POPULATION,
11 THE NUMBER OF PRISONER PATIENTS IN THE SYSTEM WHO HAVE BEEN
12 IDENTIFIED AS ENHANCED OUTPATIENT OR EOP PRISONERS.

13 AND YOU CAN SEE THAT FROM DECEMBER OF 2006 UNTIL
14 AUGUST OF 2008, THERE HAS BEEN A CONSISTENT, AND I THINK
15 SUBSTANTIAL, INCREASE, ABOUT 900 ADDITIONAL PRISONERS IDENTIFIED
16 AS PART OF THE EOP POPULATION IN THE SYSTEM, REFLECTING AN
17 INCREASING LEVEL OF ACUITY OR NUMBERS OF PEOPLE AT THAT HIGHER
18 LEVEL OF ACUITY IN THE SYSTEM.

19 AND WHAT YOU CAN ALSO SEE GRAPHED ON THE RED LINE ON
20 THE BOTTOM IS THE SYSTEM'S CAPACITY TO HANDLE OR DEAL WITH OR
21 ADDRESS THE NEEDS OF THOSE MENTALLY ILL PRISONERS HAS NOT
22 INCREASED IN ANY REMOTELY COMPARABLE WAY OVER TIME.

23 THE DISPARITY BETWEEN -- IF WE LOOK AT THE VERY END
24 OF THE GRAPHS, THE DISPARITY BETWEEN THE 4,051, WHO ARE IN THE
25 SYSTEM, THE SYSTEM'S CAPACITY TO ADDRESS THEIR NEED, AND THE

1 5,000 PEOPLE WHO NEED THE MENTAL HEALTHCARE PROVIDED IN THE EOP
2 PROGRAM IS A MEASURE OF INDEX OF UNMET NEED.

3 AND THAT GAP, THAT GAP WHICH I'VE DESCRIBED AS UNMET
4 NEED, HAS BEEN INCREASING OVER TIME, NOT DECREASING. AND THAT,
5 TOO, SPEAKS TO THE ISSUE OF OVERCROWDING IN MY OPINION.

6 **Q.** AND HOW DID OVERCROWDING IMPACT THOSE 4,000 THAT COULD BE
7 HOUSED IN EOP PROGRAMS?

8 **A.** WELL, THE OVERCROWDING HAS IMPACTED THOSE PEOPLE, EVEN THE
9 PEOPLE WHO ARE FORTUNATE ENOUGH TO BE IN THE EOP PROGRAM, IN A
10 NUMBER OF DIFFERENT WAYS.

11 I TALKED EARLIER ABOUT TREATMENT SPACE. MANY OF THE
12 EOP PROGRAMS ARE SEVERELY COMPROMISED IN TERMS OF THE AMOUNT OF
13 AVAILABLE TREATMENT SPACE THAT THEY HAVE. SO EVEN THOUGH THERE
14 ARE EOP PROGRAMS, THEY DON'T HAVE A SUFFICIENT AMOUNT OF SPACE
15 IN WHICH TO ENGAGE IN THERAPEUTIC OR TREATMENT ACTIVITIES.

16 THEY ARE IMPACTED BY STAFF SHORTAGES, AS WELL. STAFF
17 SHORTAGES THAT ARE REFLECTED NOT ONLY IN THE ACTUAL VACANCIES,
18 BUT ALSO ON THE BASIS OF THE SPECIAL MASTER'S WORKLOAD STUDY,
19 VACANCIES OR STAFF SHORTAGES WHICH ARE EVEN GREATER THAN THOSE
20 REFLECTED IN THE ACTUAL DEPARTMENT OF CORRECTIONS VACANCIES.

21 THEY'RE IMPACTED, IN ADDITION, BY ANOTHER
22 OVERCROWDING-RELATED ISSUE THAT PLAGUES THE CALIFORNIA SYSTEMS:
23 LOCKDOWNS. LOCKDOWNS ARE USED IN THE CALIFORNIA DEPARTMENT OF
24 CORRECTIONS, I BELIEVE, IN LARGE PART BECAUSE OF THE PROFOUND
25 LEVEL OF OVERCROWDING AT A LEVEL THAT IS UNHEARD OF IN

1 CORRECTIONS DEPARTMENTS ACROSS THE UNITED STATES WITH WHICH I'M
2 FAMILIAR.

3 LOCKDOWNS MEAN THAT PRISONERS, INCLUDING EOP
4 PRISONERS, IF THEY ARE IN A UNIT THAT IS LOCKED DOWN, ARE
5 ESSENTIALLY WITHOUT PROGRAMS DURING THE PERIODS OF TIME THAT THE
6 LOCKDOWN IS IN PLACE.

7 THERE ARE HOUSING UNITS IN THE CALIFORNIA DEPARTMENT
8 OF CORRECTIONS THAT ARE LOCKED DOWN MORE OFTEN THAN THEY ARE
9 UNLOCKED.

10 THERE IS A NOTORIOUS FACILITY IN THE SALINAS VALLEY
11 STATE PRISON WHICH IS LOCKED DOWN ALMOST ALL THE TIME. AND WHERE
12 OBVIOUSLY PRISONERS, SOME OF WHOM ARE ON THE MENTAL HEALTH
13 CASELOAD, ARE NOT RECEIVING ANY TREATMENT, THERAPY OR OTHERWISE,
14 IN THE COURSE OF THE LOCKDOWN.

15 **Q.** THANK YOU, DR. HANEY.

16 SO CAN YOU QUICKLY SUM UP WHY YOU CONCLUDED
17 OVERCROWDING IS THE PRIMARY CAUSE?

18 **A.** I DON'T BELIEVE IN A SYSTEM THIS OVERCROWDED AT THIS
19 MAGNITUDE OF OVERCROWDING WITH OVERCROWDING AS WIDESPREAD AS IT
20 HAS BEEN IN CALIFORNIA FOR AS LONG A PERIOD THAT IT HAS BEEN
21 THAT THERE'S ANY OTHER PLAUSIBLE OR CREDIBLE EXPLANATION FOR THE
22 FAILURE OF THE SYSTEM TO PROVIDE CONSTITUTIONALLY-ADEQUATE
23 MENTAL HEALTHCARE.

24 THE COURT'S BEEN MONITORING THIS ISSUE FOR MANY, MANY
25 YEARS. THERE HAVE BEEN MANY, MANY COURT ORDERS, AND THERE HAVE

1 BEEN MANY ACTIVITIES THAT HAVE BEEN ENGAGED IN IN TRYING TO
2 BRING THIS SYSTEM'S MENTAL HEALTHCARE DELIVERY INTO
3 CONSTITUTIONAL COMPLIANCE.

4 IN THE FACE OF ALL OF THOSE EFFORTS THERE HAS BEEN
5 THIS OVERWHELMING OVERCROWDING PROBLEM OF SUCH A DEGREE,
6 MAGNITUDE AND DURATION THAT IT HAS INCAPACITATED THE SYSTEM'S
7 ABILITY TO DELIVER CONSTITUTIONALLY-ADEQUATE CARE. AND I SAW
8 NUMEROUS EXAMPLES OF IT WHEN I TOURED, AND NUMEROUS EXAMPLES OF
9 IT REFLECTED IN THE DOCUMENTS I REVIEWED.

10 Q. THANK YOU.

11 **JUDGE HENDERSON:** I HAVE A QUESTION THAT GOES BACK,
12 DR. HANEY. IN THE SALINAS PRISON WHICH YOU DESCRIBED AS BEING
13 UNDER LOCKDOWN ALMOST ALL THE TIME, ARE YOU ABLE TO DETERMINE IS
14 THIS BECAUSE OF THE LEVEL OF OVERCROWDING THERE IS MORE SEVERE,
15 OR DO THEY HAVE A WARDEN WHO HOLDS THE LOCKDOWN TRIGGER FASTER,
16 OR DO YOU KNOW?

17 **THE WITNESS:** AS BEST I CAN TELL YOUR HONOR IS THAT
18 PARTICULAR HOUSING, IT'S A LARGE HOUSING UNIT, ABOUT A THOUSAND
19 PRISONERS. WE'RE NOT TALKING ABOUT A SMALL UNIT IN THIS PRISON.
20 IT'S A FACILITY THAT IS LOCKED DOWN, AND IT'S A FACILITY THAT IS
21 BESET WITH A LOT OF CONFLICTS. AND OVERCROWDED SYSTEMS TEND TO
22 RESPOND TO CONFLICTS WITH LOCKDOWNS. AND THAT'S WHAT HAS BEEN
23 HAPPENING IN CALIFORNIA, AND THAT'S WHAT IS HAPPENING IN THAT
24 PARTICULAR PRISON.

25 AND WHAT IT RESULTS IN IS A LARGE NUMBER OF

1 PRISONERS, MANY OF WHOM HAVE MENTAL HEALTHCARE PROBLEMS, BEING
2 LOCKED IN THEIR CELLS AROUND THE CLOCK FOR WEEKS AND MONTHS ON
3 END.

4 **JUDGE HENDERSON:** THANK YOU.

5 CCPOA COUNSEL HAVE ANY?

6 **MS. LEONARD:** NO FURTHER QUESTIONS, YOUR HONOR.

7 **JUDGE HENDERSON:** OKAY.

8 CROSS-EXAMINATION.

9 **CROSS-EXAMINATION**

10 **BY MS. TILLMAN:**

11 **Q.** GOOD AFTERNOON. THIS IS LISA TILLMAN ON BEHALF OF THE
12 COLEMAN DEFENDANTS.

13 GOOD AFTERNOON, DR. HANEY.

14 **A.** GOOD AFTERNOON.

15 **Q.** DR. HANEY, I UNDERSTAND THAT YOU'VE TESTIFIED IN VARIOUS
16 COURTS, INCLUDING FEDERAL COURTS, A NUMBER OF TIMES IN A NUMBER
17 OF DIFFERENT CASES; IS THAT CORRECT?

18 **A.** YES.

19 **Q.** AND YOU'VE EVEN TESTIFIED AS AN EXPERT AT THE UNDERLYING
20 TRIAL OF THE COLEMAN CASE, CORRECT?

21 **A.** YES, I DID.

22 **Q.** YOU'VE TESTIFIED ON CORRECTIONAL ISSUES IN THE RUIZ CASE IN
23 TEXAS, A CLASS ACTION CASE IN TEXAS, CORRECT?

24 **A.** YES. YES.

25 **Q.** IN THE GATES CASE INVOLVING THE CALIFORNIA MEDICAL FACILITY,

1 CORRECT?

2 **A.** YES.

3 **Q.** AND IN THE MADRID CASE INVOLVING SECURE HOUSING UNITS,

4 CORRECT?

5 **A.** YES.

6 **Q.** YOU'VE TESTIFIED IN THOSE CASES AND TODAY ON THE BASES OF

7 YOUR WORK AS A PROFESSOR OF PSYCHOLOGY, CORRECT?

8 **A.** YES.

9 **Q.** AND YOUR EXPERTISE IN PSYCHOLOGY IS WHAT IS CALLED, I

10 BELIEVE, THE SOCIAL COMPARISON THEORY WHERE YOU STUDY HOW PEOPLE

11 ARE INFLUENCED BY EVENTS IN THEIR ENVIRONMENT?

12 **A.** I DO STUDY HOW PEOPLE ARE AFFECTED BY EVENTS IN THEIR

13 ENVIRONMENT. THAT'S NOT TECHNICALLY SOCIAL COMPARISON THEORY,

14 WHICH IS ACTUALLY SOMETHING ELSE.

15 **Q.** YOU'VE NEVER SERVED AS A CORRECTIONAL ADMINISTRATOR, HAVE

16 YOU?

17 **A.** NO, I STUDY PRISON SYSTEMS. I HAVEN'T WORKED IN THEM.

18 **Q.** AND YOU'VE NOT WORKED IN A PRISON SYSTEM AS A PSYCHOLOGIST,

19 EITHER, HAVE YOU?

20 **A.** NO, I HAVEN'T WORKED FOR A PRISON SYSTEM.

21 **Q.** AND YOU ARE NOT A MEDICAL DOCTOR, CORRECT?

22 **A.** CORRECT.

23 **Q.** SO YOU'VE NOT WORKED IN A PRISON STEM PROVIDING MEDICAL

24 CARE.

25 **A.** I HAVEN'T WORKED IN A PRISON SYSTEM AT ALL.

1 Q. AND WHILE YOU DO HAVE A PH.D, YOU ARE NOT -- A PH.D IN
2 PSYCHOLOGY, YOU'RE NOT A LICENSED CLINICAL PSYCHOLOGIST,
3 CORRECT?

4 A. NO, I DON'T PROVIDE TREATMENT OR DO DIAGNOSIS.

5 Q. LIKewise, WHILE YOU DO HAVE A JURIS DOCTORATE DEGREE, YOU
6 HAVE NOT TAKEN THE BAR EXAM AND HAVE NOT PRACTICED LAW?

7 A. NO, I STUDY LEGAL ISSUES. I DON'T PRACTICE LAW OR PRACTICE
8 CLINICAL PSYCHOLOGY.

9 Q. AND WHEN YOU TESTIFIED IN THE UNDERLYING COLEMAN TRIAL IN
10 THE EARLY '90'S, THAT TESTIMONY IN THAT CASE AT THE TIME REALLY
11 FOCUSED ON AN UNIDENTIFIED GROUP OF INMATES THAT NEEDED MENTAL
12 HEALTHCARE, CORRECT?

13 A. IT WAS AN UNDERIDENTIFIED GROUP. I'M NOT SURE THEY WERE
14 UNIDENTIFIED. THEY WERE UNDERIDENTIFIED. THERE WERE CERTAINLY
15 MENTAL PATIENTS WERE IDENTIFIED IN THE DEPARTMENT OF
16 CORRECTIONS, BUT THE QUESTION WAS: HOW MANY OF THEM WERE THERE?

17 Q. AND AT THE TIME OF YOUR TESTIMONY IN THE UNDERLYING TRIAL OF
18 COLEMAN, THERE WAS NO LEVEL OF CARE KNOWN AS THE CORRECTIONAL
19 CASE MANAGEMENT SYSTEM AT THE TIME, CORRECT?

20 A. YES, THAT'S CORRECT. ALL OF THAT IS POST COLEMAN, POST THAT
21 HEARING, POST MY TESTIMONY.

22 Q. AND WHEN YOU SAY "ALL OF THAT," THAT INCLUDES ENHANCED
23 OUTPATIENT PROGRAM LEVEL CARE DID NOT EXIST WHEN YOU TESTIFIED
24 IN THE COLEMAN TRIAL IN THE EARLY '90'S, CORRECT?

25 A. A WHOLE DIFFERENT DESIGNATION FOR MENTALLY ILL PRISONERS IN

1 THOSE DAYS.

2 **Q.** THE REVISED PROGRAM GUIDE OF 2006 OBVIOUSLY DIDN'T EXIST AT
3 THE TIME OF THE TRIAL IN THE EARLY '90'S, CORRECT?

4 **A.** WITHOUT A DOUBT.

5 **Q.** AND, IN FACT, THE 1997 PROVISIONALLY-APPROVED PROGRAM GUIDE
6 DID NOT EXIST AT THAT TIME, CORRECT?

7 **A.** I DON'T EVEN THINK IT WAS A GLIMMER IN ANYONE'S EYE AT THAT
8 TIME.

9 **Q.** NOR WAS PROBABLY THE MENTAL HEALTH TRACKING SYSTEM THAT WE
10 NOW HAVE TODAY, CORRECT?

11 **A.** CERTAINLY NOT THE ONE WE HAVE TODAY.

12 **Q.** SO THERE HAVE BEEN SOME CHANGES TO THE CARE PROVIDED TO
13 MENTALLY ILL INMATES SINCE THE TIME OF YOUR TESTIMONY IN THE
14 UNDERLYING TRIAL OF THE COLEMAN CASE, CORRECT?

15 **A.** YES, THE WHOLE COLEMAN-RELATED SYSTEM AND STRUCTURE AND
16 MONITORING PROCESS AND SO ON, ABSOLUTELY.

17 **Q.** NOW, IN THE PLAINTIFFS' COUNSEL ASKED YOU TO FORM AN OPINION
18 REGARDING WHETHER OVERCROWDING WAS THE PRIMARY CAUSE OF ANY
19 DEFICIENCIES IN THE MENTAL HEALTHCARE SYSTEM. WOULDNT' IT BE
20 CORRECT TO SAY THAT YOU UNDERTOOK THE TASK OF FIRST REVIEWING
21 AVAILABLE LITERATURE IN YOUR FIELD ON THE IMPACT OF
22 OVERCROWDING?

23 **A.** YES, I DID. I MEAN, I WRITE ABOUT THESE ISSUES ALL THE TIME,
24 SO I CERTAINLY CONSULTED THE LITERATURE. BUT IT WAS LITERATURE
25 WITH WHICH I WAS ALREADY FAMILIAR --

1 Q. BECAUSE --

2 A. -- THE FIRST TIME, YES.

3 Q. -- BECAUSE OF YOUR SCHOLARLY WORK WITHIN THE UNIVERSITY OF
4 CALIFORNIA AT SANTA CRUZ, CORRECT?

5 A. YES.

6 Q. AND SOME OF THAT ACADEMIC LITERATURE, SOME OF THOSE
7 SCHOLARLY PUBLICATIONS THAT YOU REVIEWED AS PART OF YOUR WORK IN
8 THIS CASE CONCERNED OTHER CORRECTIONAL SYSTEMS IN OTHER STATES,
9 CORRECT?

10 A. SOME OF IT DID, YES. THE RESEARCH HAS BEEN DONE AT DIFFERENT
11 CORRECTIONAL SYSTEMS ACROSS THE UNITED STATES.

12 Q. AND YOU PROVIDED A DISCUSSION OF THOSE ACADEMIC PUBLICATIONS
13 IN YOUR OWN EXPERT REPORT THAT WAS PROVIDED TO THIS COURT, THE
14 EXPERT REPORT DATED AUGUST, 2008, CORRECT?

15 A. YES. AND A NUMBER OF THE GENERAL EFFECTS OF OVERCROWDING,
16 YES.

17 Q. AND SO, SAY, FROM PAGE 27 OF YOUR EXPERT REPORT, WHERE IT
18 DISCUSSES THE PSYCHOLOGICAL EFFECTS OF OVERCROWDING, THROUGH
19 PAGE 34, IT'S ESSENTIALLY A DISCUSSION OF THE ACADEMIC
20 PUBLICATIONS CONCERNING OVERCROWDING, CORRECT?

21 A. YES.

22 Q. AND YOU ALSO PROVIDED A SCHOLARLY DISCUSSION OF THE
23 BEHAVIORAL EFFECTS OF OVERCROWDING ON PRISONERS IN PRISONS IN
24 OTHER AREAS OF YOUR REPORT, SAY, AT PAGES 34 THROUGH 74,
25 CORRECT?

1 **A.** YES. LET ME MAKE SURE THAT'S RIGHT. I REMEMBER HAVING DONE
2 THAT, BUT COULD YOU GIVE ME THE PARAGRAPHS AGAIN?

3 **Q.** I BELIEVE IT WAS PARAGRAPHS 58 THROUGH 74.

4 **A.** YES.

5 **Q.** OTHER PARTS OF YOUR REPORT CONCERN DATA FROM YOUR TOURS OF
6 THE CALIFORNIA STATE PRISONS AND FROM YOUR REVIEW OF MONITORING
7 REPORTS OF THE CALIFORNIA STATE PRISONS, CORRECT?

8 **A.** YES, AS WELL AS OTHER DOCUMENTS. DIFFERENT REPORTS THAT THE
9 DEPARTMENT OF CORRECTIONS HAS ISSUED, STATISTICAL COMPILATIONS
10 REPORTS, A LOT OF INFORMATION THAT I GOT ACTUALLY AT THE TIME OF
11 THE TOURS. SO EACH TIME WE WENT ON A SITE INSPECTION WE WERE
12 OFTENTIMES GIVEN ADDITIONAL MATERIAL BY THE STAFF AT THE PRISON.
13 AND I RELIED ON THAT, WHEN APPROPRIATE.

14 **Q.** YOUR REPORT IN SOME RESPECTS CAN BE EVENLY SPLIT -- I'M
15 SORRY -- CAN BE -- CAN BE SPLIT BETWEEN ONE PART OF THE REPORT
16 PROVIDES A SCHOLARLY DISCUSSION, OVERVIEW OF VARIOUS SCHOLARLY
17 ARTICLES AND PUBLICATIONS ON THE IMPACT OF OVERCROWDING AND THE
18 OTHER PORTION OF YOUR REPORT DISCUSSES YOUR ACTUALLY FINDINGS ON
19 TOUR AND LOOKING AT MONITORING REPORTS AND LOOKING AT THE
20 CALIFORNIA STATE PRISONS YOURSELF, CORRECT?

21 **A.** I DON'T KNOW WHAT YOU MEAN BY "SPLIT." I MEAN, THERE ARE
22 DIFFERENT SECTIONS OF THE REPORT.

23 **Q.** DIFFERENT SECTIONS.

24 **A.** YES.

25 **Q.** NOW, IN ONE SECTION OF YOUR REPORT THERE IS A DISCUSSION OF

1 THE IMPACT OF OVERCROWDING AND THE USE OF SEGREGATION UNITS. DO
2 YOU RECALL THAT PART OF YOUR REPORT?

3 **A.** YES.

4 **Q.** AND IN THAT DISCUSSION, ISN'T IT CORRECT THAT YOU FOUND THAT
5 WITHIN THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND
6 REHABILITATION SUICIDES ARE ACTUALLY MUCH MORE LIKELY TO OCCUR
7 INSIDE SEGREGATED HOUSING UNITS?

8 **A.** YES, I BELIEVE THE STATISTICS SHOW -- AND THIS IS NOT FROM
9 MY SCHOLARLY REVIEW OF THE LITERATURE. THERE IS A -- DR.
10 PATTERSON DOES A YEARLY ANALYSIS OF THE COMPLETED SUICIDES IN
11 THE DEPARTMENT OF CORRECTIONS. AND I READ THAT REPORT, AND I
12 INCORPORATED HIS FINDINGS, IDENTIFYING ISOLATED SINGLE-CELLED
13 PRISONERS AS BEING MORE LIKELY TO HAVE ENGAGED IN OR COMPLETED
14 SUICIDES.

15 **Q.** AND SEGREGATED HOUSING UNITS ARE SINGLE CELL, CORRECT?

16 **A.** MOSTLY, YES.

17 **Q.** AND WHEN YOU TALK ABOUT DR. RAY PATTERSON, JUST FOR THE
18 BENEFIT OF THOSE WHO AREN'T FAMILIAR WITH SOME OF THE TEAM
19 MEMBERS ON THE COLEMAN SPECIAL MASTER'S TEAM, DR. RAY PATTERSON
20 IS A PSYCHIATRIST ON THE COLEMAN SPECIAL MASTER TEAM, A
21 COURT-APPOINTED EXPERT, CORRECT?

22 **A.** YES. I BELIEVE HE'S A PROFESSOR OF PSYCHIATRY AT
23 GEORGETOWN, BUT HE'S PART OF THE MONITORING TEAM IN THE COLEMAN
24 CASE.

25 **Q.** AND YOU HAVE NO REASON TO IN ANY WAY QUESTION HIS FINDINGS

1 THAT SUICIDES ARE MUCH MORE LIKELY TO OCCUR IN THESE SEGREGATED
2 HOUSING UNITS WHERE THERE ARE SINGLE CELLS, CORRECT?

3 **A.** NO, IT'S NOT A SHOCKING FINDING. I MEAN, IT'S COMMON SENSE.
4 BUT HE DOCUMENTS THE DEGREE TO WHICH IT'S TRUE, YES.

5 **MS. TILLMAN:** IF I MIGHT HAVE A MOMENT.

6 **BY MS. TILLMAN:**

7 **Q.** THERE IS NO DISCUSSION IN DR. PATTERSON'S REPORT UPON YOUR
8 REVIEW OF ANY CONCERNS --

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

10 **BY MS. TILLMAN:**

11 **Q.** WHEN DR. PATTERSON DISCUSSED THE LIKELIHOOD OF SUICIDE
12 WITHIN SEGREGATED HOUSING UNITS, HE FOUND THAT SUICIDE WAS MUCH
13 MORE LIKELY TO OCCUR IN THOSE SEGREGATED HOUSING UNITS THAN
14 OTHER PLACES, OTHER HOUSING UNITS WITHIN THE DEPARTMENT OF
15 CORRECTIONS, CORRECT?

16 **A.** YES, I THINK I JUST ACKNOWLEDGED THAT. THAT'S WHAT THE
17 STATISTICAL ANALYSIS SHOWS, THAT THAT'S A PLACE WHERE A
18 PREDOMINATE LARGE NUMBER OF THOSE EVENTS OCCURRED. AND THAT
19 THAT'S NOT A -- THAT THAT COMPORTS WITH OTHER FINDINGS, AND
20 OTHER STUDIES OF SUICIDES IN CORRECTIONAL ENVIRONMENTS.

21 **Q.** SO, IN ESSENCE, SUICIDE IS GOING TO OCCUR OR IS MORE
22 LIKELY IN THESE SEGREGATED HOUSING UNITS THAN THE TRIPLE-BUNK
23 AREAS, GYMS AND DORMS, CORRECT?

24 **A.** STATISTICALLY SPEAKING, YES, THAT'S CORRECT. THERE'S A
25 REASON FOR THAT, OBVIOUS REASON FOR THAT, OF COURSE, RIGHT?

1 SUICIDE IS AN EVENT WHICH INQUIRIES AN OPPORTUNITY.
2 AND SO PEOPLE WHO ARE SINGLE-CELLED HAVE AN OPPORTUNITY TO,
3 SADLY, ATTEMPT TO TAKE THEIR LIFE IN A WAY WHERE PEOPLE WHO ARE
4 HOUSED WITH OTHER PEOPLE DON'T.

5 SO THAT'S WHAT I THINK MOST EXPERTS IN THIS AREA
6 WOULD ACKNOWLEDGE AS THE EXPLANATION FOR THAT.

7 NOW, THE EVENTS THAT LEAD UP TO SOMEBODY BEING
8 MENTALLY ILL ENOUGH TO WANT TO TAKE THEIR LIFE, HOWEVER, ARE
9 RELATED TO A NUMBER OF DIFFERENT THINGS, MANY OF WHICH I'VE BEEN
10 TALKING ABOUT AND WHICH DR. PATTERSON ACKNOWLEDGES IN HIS
11 ANALYSES OF COMPLETED SUICIDES.

12 **Q.** NOW, WHEN YOU'VE LOOKED AT THE CALIFORNIA DEPARTMENT OF
13 CORRECTIONS AND REHABILITATIONS SUICIDE RATE IN EVALUATING THE
14 IMPACTS OF OVERCROWDING, WOULDN'T YOU AGREE THAT THE SUICIDE
15 RATE IS NOT INCREASED ON A ONE-TO-ONE, OR AS YOU PUT IN IT YOUR
16 DEPOSITION, A MONOTONIC BASIS AS THE CALIFORNIA DEPARTMENT OF
17 CORRECTIONS AND REHABILITATION POPULATION HAS INCREASED?

18 **A.** NO, IT HASN'T. YOU WOULDN'T NECESSARILY EXPECT IT TO, AND
19 IT HASN'T. IT'S VERY, VERY HIGH, AS YOU PROBABLY KNOW, COMPARED
20 TO VIRTUALLY ANY OTHER SYSTEM IN THE COUNTRY, WHICH I THINK
21 INDIRECTLY HAS TO DO WITH THE LEVEL OF OVERCROWDING IN THE
22 SYSTEM. BUT THERE'S NOT A SIMPLE ONE-TO-ONE INCREASE,
23 POPULATION AND SUICIDE RATE AUTOMATICALLY GOES UP. THERE ARE A
24 COMPLICATED SET OF FACTORS INVOLVED.

25 **Q.** AND WHEN YOU SAY THERE'S A COMPLICATED SET OF FACTORS

1 INVOLVED, YOU WOULD AGREE THAT DEMOGRAPHIC FACTORS SUCH AS AGE,
2 RACE CAN BE COSIDERED IN DETERMINING THE SUICIDE RATES AND THEIR
3 CAUSES, CORRECT?

4 **A.** YES, AS WELL AS MANY OTHER THINGS. FOR EXAMPLE, THE
5 ENVIRONMENTAL CONDITIONS UNDER WHICH PRISONERS LIVE. YOU'RE
6 PROBABLY AWARE THAT THERE ARE STUDIES WHICH PROVIDED A DIRECT
7 CONNECTION BETWEEN LEVELS OF OVERCROWDING AND SUICIDE.

8 AND, IN FACT, IN ONE OF DR. PATTERSON'S OWN ARTICLES
9 HE TALKS ABOUT THE IMPORTANCE OF OVERCROWDING AS A POTENTIAL
10 CAUSAL FACTOR IN SUICIDE.

11 SO THAT, TOO, IS AN IMPORTANT CONSIDERATION.

12 **Q.** HOWEVER, YOU WOULD AGREE THAT IT'S IN THE SINGLE CELLS WHERE
13 THE SUICIDE RATE IS THE HIGHEST, ISN'T IT?

14 **JUDGE HENDERSON:** HASN'T THAT BEEN ASKED AND ANSWERED
15 SEVERAL TIMES?

16 **MS. TILLMAN:** IT'S CROSS.

17 **JUDGE HENDERSON:** I KNOW IT'S CROSS. IT'S ALSO --

18 **JUDGE KARLTON:** IT'S CUMULATIVE.

19 **JUDGE HENDERSON:** WE MANAGE TRIALS ON TIME.

20 **MS. TILLMAN:** YOU'VE HEARD IT?

21 **JUDGE HENDERSON:** YES.

22 **JUDGE KARLTON:** IN ANY EVENT, EVEN IF IT BE AN
23 APPROPRIATE OBJECTION OF CROSS, CUMULATIVE IS A PERFECTLY
24 APPROPRIATE OBJECTION. AND IT IS CERTAINLY CUMULATIVE.

25 **MS. TILLMAN:** THANK YOU. I'LL RESPECT THAT.

1 **BY MS. TILLMAN:**

2 **Q.** SUICIDES CAN AND HAVE OCCURRED WITHIN
3 CONSTITUTIONALLY-ADEQUATE SYSTEMS, CORRECT?

4 **A.** YES, SADLY THAT'S A FACT OF LIFE IN PRISON ENVIRONMENTS AND
5 JAIL ENVIRONMENTS, AS WELL.

6 **Q.** I'M SORRY. CAN YOU JUST GET A TEENY BIT CLOSER TO THAT
7 MICROPHONE? THANK YOU.

8 **A.** YES. SO I SAID: YES, IT'S A FACT OF LIFE IN PRISON AND
9 JAIL ENVIRONMENTS, UNFORTUNATELY.

10 **Q.** AND, IN FACT, SOME MENTALLY ILL INMATES MIGHT DECOMPENSATE
11 EVEN WHEN THEY ARE NOT IN AN OVERCROWDED SYSTEM, CORRECT?

12 **A.** YES, THAT'S THE -- I'M NOT A CLINICIAN, BUT I KNOW ENOUGH
13 ABOUT MENTAL ILLNESS TO KNOW PEOPLE SOMETIMES DECOMPENSATE EVEN
14 UNDER THE BEST OF CIRCUMSTANCES.

15 BUT THEY ARE MORE LIKELY TO UNDER THE WORST OF
16 CIRCUMSTANCES.

17 **Q.** YOU'VE MENTIONED THE FACT THAT YOU TOURED EIGHT FACILITIES,
18 CORRECT?

19 **A.** YES.

20 **Q.** AND IN TOURING THESE FACILITIES YOU MET WITH PATIENTS, YOU
21 MET WITH STAFF, YOU MET WITH CLINICIANS, CORRECTIONAL OFFICERS,
22 CORRECT?

23 **A.** YES, SUPERVISORS, THE WARDENS WERE ALWAYS PRESENT, ASSOCIATE
24 WARDENS.

25 **Q.** AND YOU FOUND THAT THE CALIFORNIA DEPARTMENT OF CORRECTIONS

1 AND REHABILITATION STAFF, THE CLINICIANS, THE CORRECTIONAL
2 OFFICERS TO BE FORTHCOMING WITH INFORMATION, DIDN'T YOU?

3 **A.** THEY WERE EXTREMELY FORTHCOMING, YES, AND QUITE COOPERATIVE.
4 AND WE WERE APPRECIATIVE OF THAT.

5 **Q.** AND IN TERMS OF THE PATIENTS THAT YOU MET WITH, SOME WERE
6 SELECTED BY THE PLAINTIFFS, CORRECT?

7 **A.** YES.

8 **Q.** SOME WERE SELECTED BY YOU AS YOU WERE TOURING, RIGHT?

9 **A.** YES.

10 **Q.** AND THE PERSONS OR PATIENTS THAT YOU MET WITH, WHETHER THEY
11 WERE ACTUALLY CASELOAD PATIENTS OR NOT, WERE PERSONS THAT, FOR
12 YOU, SEEMED TO BE EITHER DISTRESSED OR SOMEHOW REPRESENTATIVE OF
13 THE UNIT THAT THEY WERE HOUSED ON, CORRECT?

14 **A.** YES, ALTHOUGH THERE WERE TWO EXCEPTIONS TO THAT. IN ONE
15 INSTANCE, SOME OF THE PEOPLE THAT WERE INTERVIEWED WERE ACTUALLY
16 SELECTED BY DEFENDANT'S EXPERT, AND THOSE SELECTIONS WERE
17 RANDOM. SO I HAD NOTHING TO DO WITH THE IDENTIFICATION OF THOSE
18 PEOPLE.

19 AND THEN, THERE WAS AN INSTANCE IN WHICH A GROUP OF
20 PEOPLE WAS BROUGHT TO US WHO THE PRISON SOMEHOW HAD, I THINK,
21 MISTAKENLY DECIDED OR CONCLUDED THAT WE WANTED TO INTERVIEW.
22 THEY WERE NOT ON OUR LIST, BUT THEY WERE PART OF THE COLEMAN
23 CASE, AND I INTERVIEWED THEM, ANYWAY. AND THEY WERE PRODUCTIVE
24 INTERVIEWS.

25 SO WITH THOSE TWO EXCEPTIONS, IT WAS AS YOU DESCRIBE

1 IT.

2 **Q.** YOUR JOB IN PERFORMING YOUR WORK FOR PLAINTIFFS' COUNSEL IN
3 EVALUATING THE ISSUE OF OVERCROWDING WAS NOT TO DIAGNOSE ANY OF
4 THE PATIENTS THAT YOU MET WITH, CORRECT?

5 **A.** ABSOLUTELY CORRECT.

6 **Q.** AND IT WASN'T TO TREAT ANY OF THESE PATIENTS, CORRECT?

7 **A.** CORRECT.

8 **Q.** YOU RELIED UPON WHAT THE PATIENTS TOLD YOU IN REGARDS TO
9 THEIR EXPERIENCE OF THEIR HOUSING UNIT AND THEIR CARE, CORRECT?

10 **A.** I RELIED ON THAT, IN PART. IT WASN'T ALL I RELIED ON, EVEN
11 WITH RESPECT TO THE PEOPLE I INTERVIEWED. AS YOU KNOW, I HAD AN
12 OPPORTUNITY TO REVIEW RECORDS AT THE INSTITUTION. I ALSO
13 REQUESTED RECORDS, WHICH I REVIEWED SUBSEQUENT TO THE
14 INTERVIEWS. AND IN MOST INSTANCES WHEN APPROPRIATE I HAD AN
15 OPPORTUNITY TO TALK TO EITHER CORRECTIONAL OFFICERS OR CLINICAL
16 STAFF ABOUT A PARTICULAR PRISON PATIENT.

17 **Q.** AND WHEN YOU TOURED THESE FACILITIES AND MET WITH THESE
18 PERSONS, THE INMATES, THE STAFF, YOU'RE VIEWING THESE
19 INSTITUTIONS AS ENVIRONMENTS, WHOLE ENVIRONMENTS TO CONSIDER IN
20 LOOKING AT THE IMPACT OF OVERCROWDING ON THE MENTAL HEALTHCARE
21 SYSTEM, CORRECT?

22 **A.** I'M NOT SURE WHAT YOU MEAN BY "WHOLE ENVIRONMENTS."

23 I CERTAINLY WAS LOOKING AT THE ENVIRONMENT IN WHICH
24 THE PRISONER WAS HOUSED. AND I WAS LOOKING AT -- PARTICULARLY
25 BECAUSE THESE WERE MEMBERS OF THE COLEMAN CLASS, I WAS LOOKING

1 AT THE MENTAL HEALTH DELIVERY SYSTEM TO WHICH THEY HAD ACCESS.

2 SO I MADE A POINT, FOR EXAMPLE, IF THERE WAS A
3 CORRECTIONAL TREATMENT CENTER, OF VIEWING THAT FACILITY. OR IF
4 THERE WAS AN OUTPATIENT HOUSING UNIT I WENT THERE.

5 IN THE CASE OF SALINAS VALLEY I WENT TO THE
6 DEPARTMENT OF MENTAL HEALTH OPERATED FACILITY. BUT I DIDN'T
7 PURPORT TO LOOK AT EVERY SINGLE ASPECT OF THE PRISON. BUT
8 RATHER THE PARTS OF THE PRISON THAT WERE RELEVANT TO THE PEOPLE
9 THAT I WAS INTERVIEWING AND/OR THAT WERE RELEVANT TO THE MENTAL
10 HEALTHCARE DELIVERY SYSTEMS.

11 Q. THOSE PARTS THAT ARE NECESSARY TO ACTUALLY CREATE AN
12 INTEGRATED AND APPROPRIATE MENTAL HEALTHCARE CARE SYSTEM?

13 A. YES. FOR THE MOST PART, YES.

14 Q. NOW, ARE YOU AWARE OF THE TERM "RATED CAPACITY"?

15 A. I'M AWARE OF THE TERM. IT MEANS DIFFERENT THINGS IN
16 DIFFERENT CONTEXTS.

17 Q. I THINK IN YOUR REPORT OF AUGUST, 2008, YOU MENTIONED -- THE
18 RATE OF CAPACITY, AT LEAST IN YOUR REPORT, WAS DEFINED AS:

19 "THE RATIO OF PRISONERS TO THE RATED CAPACITY OF
20 A PARTICULAR FACILITY."

21 DO YOU RECALL THAT?

22 A. YES. IT'S SOMETIMES CALLED "THE RATIO TO DESIGN CAPACITY,"
23 BUT, YES.

24 Q. AND THE CONCEPT WOULD BE THAT THE RATE OF CAPACITY WOULD
25 INCREASE AS YOU HAVE A DECREASED NUMBER OF PRISONERS, CORRECT?

1 **A.** THE DEGREE OF OVERCROWDING WOULD -- IF YOU'RE USING THAT
2 MEASURE, I MEAN, IF YOU'RE USING SIMPLY A MEASURE OF RATIO OF
3 THE NUMBER OF PEOPLE THERE TO DESIGN CAPACITY, THEN, YES. AS
4 YOU DECREASE THE NUMBER OF PRISONERS YOU WOULD DECREASE THAT
5 RATIO, OR THE DEGREE OF OVERCROWDING.

6 THERE ARE OTHER WAYS TO THINK ABOUT IT AND TALK ABOUT
7 IT, BUT THAT'S ONE WAY TO DO IT, YES.

8 **Q.** AND WOULD IT BE CORRECT TO SAY THAT WHEN YOU LOOK AT
9 OVERCROWDING YOU'RE NOT JUST LOOKING AT A FORMULAIC RATIO OF THE
10 NUMBER OF PRISONERS TO THE NUMBER OF CELLS?

11 **A.** WELL, I'M LOOKING AT THAT, AND IN ADDITION LOOKING AT SOME
12 OTHER THINGS. AND THAT'S WHAT I TRIED TO TALK ABOUT EVEN FROM
13 THE VERY OUTSET OF MY TESTIMONY WHEN I SAID IT'S NOT JUST A
14 MATTER OF HOW MANY CELLS ARE THERE AND HOW MANY PRISONERS ARE
15 THERE OR HOW MANY SPACES ARE THERE TO HOUSE PEOPLE AND HOW MANY
16 PRISONERS ARE THERE.

17 YOU HAVE TO LOOK AT ALSO OTHER KINDS OF RESOURCES.
18 IN THE CASE OF MENTAL HEALTHCARE DELIVERY YOU'RE TALKING ABOUT
19 SPACE, THINGS LIKE THINGS I TALKED ABOUT: SPACES FOR TREATMENT,
20 ACCESS TO APPROPRIATE LEVELS OF CARE, STAFFING, AND SO ON.

21 ALL OF THAT HAS TO BE FACTORED INTO UNDERSTANDING THE
22 EXTENT TO WHICH A FACILITY IS OVERCROWDED.

23 **Q.** I THINK YOU SAID IT VERY WELL IN YOUR REPORT AT PARAGRAPH
24 39, PAGE 23 -- I'M GOING TO HAVE IT PUT UP ON THE SCREEN --
25 WHERE IT STARTS:

1 "IT IS IMPORTANT TO NOTE THAT OVERCROWDING IS
2 MEASURED OR UNDERSTOOD AS A FUNCTION OF MORE THAN
3 JUST THE RATIO OF PRISONERS TO THE RATED CAPACITY OF
4 A PARTICULAR FACILITY."

5 AND THERE YOU INDICATE, ISN'T IT CORRECT, THAT:

6 "WHEN PRISON SYSTEMS INCREASE THEIR RATED
7 CAPACITY WITHOUT COMMENSURATE INCREASES IN
8 PROGRAMMING, MEDICAL AND MENTAL HEALTH RESOURCES THEY
9 ARE STILL OVERCROWDED, EVEN THOUGH TECHNICALLY THEY
10 DO NOT HOUSE A GREATER NUMBER OF PRISONERS THAN THEY
11 ARE DESIGNED TO HOLD."

12 IS THAT CORRECT.

13 **A.** YES. YES. A SYSTEM COULD BE OVERCROWDED IN THAT SENSE, YES.
14 INSUFFICIENT RESOURCES GIVEN THE NUMBER OF PEOPLE WHO HAVE TO
15 BE -- WHOSE PROBLEMS AND NEEDS NEED TO BE ADDRESSED.

16 **Q.** SO, AGAIN, YOU'RE LOOKING AT THE WHOLE MENTAL HEALTHCARE
17 SYSTEM, NOT JUST THE NUMBER OF PEOPLE IN THAT SYSTEM?

18 **A.** WELL, YES. THOSE FACTORS HAVE TO BE TAKEN INTO ACCOUNT. I
19 MEAN, IF YOU LOOK AT THE SENTENCE THAT YOU'VE -- THAT FOLLOWS
20 THE ONE THAT'S CUT OFF, I SAID HERE THAT:

21 "CALIFORNIA PRISONS ARE CHRONICALLY AND SEVERELY
22 OVERCROWDED, BOTH IN THE SENSE THAT THEY DO NOT --
23 THAT THEY HOUSE FAR MORE PEOPLE THAN THEY WERE
24 DESIGNED TO HOLD AND BECAUSE THEY DO NOT HAVE
25 REMOTELY ENOUGH PROGRAMMING, MEDICAL, MENTAL

1 HEALTHCARE RESOURCES, STAFF, SPACE, OTHER
2 INFRASTRUCTURE TO HOUSE THE UNPRECEDENTED NUMBERS OF
3 PRISONERS HOUSED IN THEM."

4 SO I CERTAINLY TOOK THOSE THINGS INTO ACCOUNT IN
5 EVALUATING THE SYSTEM IN THAT WAY.

6 **Q.** YOU TOOK INTO ACCOUNT THE AVAILABILITY OF PROGRAMMING IN
7 THEORIES OF THERAPEUTIC PROGRAMMING AND SPACE TO PROVIDE THAT
8 THERAPY?

9 **A.** THERAPEUTIC PROGRAMMING, PROGRAMMING BROADLY SPEAKING. I
10 MEAN, MENTAL HEALTH CRISIS PATIENTS, LIKE ALL PRISONERS, NEED
11 PROGRAMMING OF A VARIETY OF SORTS. AND PART OF THE PROBLEM WITH
12 OVERCROWDING IN THE CALIFORNIA SYSTEM IS NOT ONLY IS THERE NOT
13 THERAPEUTIC PROGRAMMING, THERE IS ALMOST NO OTHER KIND OF
14 PROGRAMMING, EITHER.

15 SO IN MOST SYSTEMS WHERE YOU'RE PROVIDING MENTAL
16 HEALTHCARE AND YOU'RE PROVIDING A PARTICULAR NUMBER OF HOURS OF
17 THERAPEUTIC PROGRAMMING THAT'S DONE IN THE CONTEXT WHERE YOU'RE
18 ALSO ASSUMING THAT THOSE PRISONERS, THOSE MENTALLY ILL PRISONERS
19 ARE GETTING OTHER KINDS OF PROGRAMMING.

20 IN THE CALIFORNIA SYSTEM THEY ARE OVERWHELMINGLY NOT.
21 SO THOSE THINGS HAVE TO BE TAKEN INTO ACCOUNT, AS WELL.

22 SO, TOO, DOES NOT ONLY THE STAFFING VACANCIES, BUT
23 THE CHRONIC UNDERSTAFFING THAT EXISTS THROUGHOUT THE MENTAL
24 HEALTHCARE DELIVERY SYSTEM IN CALIFORNIA. AND I TOOK THAT INTO
25 ACCOUNT, AS WELL.

1 Q. AND THAT'S WHY YOU WROTE IN YOUR REPORT --

2 A. YES.

3 Q. -- THAT YOU NEED TO HAVE A COMMENSURATE INCREASE IN
4 PROGRAMMING, MEDICAL AND MENTAL HEALTH RESOURCES, CORRECT?

5 A. YES, GIVEN THE NUMBER OF PEOPLE WHO ARE IN THE PRISON, THOSE
6 ARE THE SHORTFALLS. SO IT'S NOT JUST THERE ARE TOO FEW CELLS OR
7 TOO FEW PLACES TO HOUSE PEOPLE. IT'S THAT WE DON'T HAVE ENOUGH
8 OF ALL THOSE THINGS, AS WELL, GIVEN THE NUMBER OF PEOPLE WHO ARE
9 IN THE SYSTEM.

10 Q. AND MOVING ON TO THE ISSUE OF HOUSING, FOR THE PURPOSE OF
11 PROVIDING CONSTITUTIONALLY-ADEQUATE MENTAL HEALTHCARE, YOU WOULD
12 AGREE THAT THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND
13 REHABILITATION DOES NOT NEED TO PROVIDE EVERY INMATE WITH THEIR
14 OWN CELL, CORRECT?

15 A. YES. I THINK THAT'S BEEN DECIDED A LONG TIME AGO, BOTH
16 CONSTITUTIONALLY AND BY CORRECTIONAL EXPERTS. THAT'S A MODEL
17 FROM A DIFFERENT TIME AND PLACE, AND IT'S A BYGONE ERA.

18 Q. AND SO PUTTING TWO INMATES IN A CELL THAT MAY HAVE BEEN
19 DESIGNED FOR ONE IS, IN AND OF ITSELF, NOT ENOUGH TO ENDANGER A
20 PRISONER'S MENTAL HEALTH CONDITION, CORRECT?

21 A. NOT NECESSARILY. FOR SOME PRISONERS, IT IS. I MEAN, AND
22 THAT'S -- IT'S -- YOU WANT TO GET CLOSE TO A LINE HERE.

23 I WOULDN'T SUGGEST TO YOU THAT IT'S CONSTITUTIONALLY
24 OR PSYCHOLOGICALLY IMPERMISSIBLE TO PUT TWO PRISONERS IN A CELL
25 DESIGNED FOR ONE.

1 HOWEVER -- AND THE "HOWEVER" IS IMPORTANT HERE --
2 DEPENDS ON THE PRISONERS. DEPENDS ON WHAT ELSE IS GOING ON AT
3 THE PRISON. IT DEPENDS ON THE CELLS. IT DEPENDS ON THE ABILITY
4 OF THAT SYSTEM TO RESPOND TO MENTAL HEALTH PROBLEMS, IF THEY
5 ARISE AS A RESULT OF THAT KIND OF HOUSING OR FOR OTHER REASONS,
6 AND SO ON AND SO FORTH.

7 SO THE "IT DEPENDS" PART IS HUGE IN THAT FORMULATION.

8 **Q.** WHAT YOU'RE REALLY SAYING IS IT'S NOT ABOUT PUTTING TWO
9 PEOPLE IN A CELL DESIGNED FOR ONE. IT'S ABOUT STAFFING. IT'S
10 ABOUT PROGRAMMING SPACE. IT'S ABOUT THE ABILITY TO ACCESS
11 MENTAL HEALTHCARE. IT'S ABOUT THE AVAILABILITY OF PATIENT CARE
12 INFORMATION. IT'S ABOUT THE ABILITY OF THE MENTAL HEALTHCARE
13 SYSTEM TO SCREEN AND DETECT FOR MENTALLY ILL; ISN'T THAT RIGHT?

14 **A.** YES. IT'S ABOUT ALL THOSE THINGS. AND THAT'S WHY I
15 CONCLUDED THAT THE OVERCROWDING HAS IMPAIRED THE ABILITY OF THIS
16 SYSTEM TO PROVIDE ALL OF THOSE THINGS AT A
17 CONSTITUTIONALLY-REQUIRED LEVEL.

18 **Q.** NOW, IN REGARDS TO THE NUMBER OF STAFF AVAILABLE TO PROVIDE
19 MENTAL HEALTHCARE, YOU WOULD DEFER TO A SPECIAL MASTER'S TEAM IN
20 THE COLEMAN CASE AND THEIR ONGOING MONITORING REPORTS REGARDING
21 WHETHER OR NOT PATIENTS ARE RECEIVING CONSTITUTIONALLY-ADEQUATE
22 MENTAL HEALTHCARE, WOULDND'T YOU?

23 **A.** WELL, I WOULD DEFER TO THEM NOT ONLY ON THAT ISSUE, BUT I
24 WOULD DEFER TO THEM ALSO IN TERMS OF THE EVALUATION OF WHETHER
25 OR NOT THOSE STAFFING RATIOS WERE ACCURATELY AND VALIDLY

1 ESTABLISHED.

2 SO, AS I'M SURE YOU KNOW, THERE'S A WORKLOAD STUDY
3 WHICH HAS BEEN COMPLETED WHICH, IN FACT, INDICATES THAT THOSE
4 ORIGINAL STAFFING RATIOS, WHICH THE DEPARTMENT HAS NOT REMOTELY
5 BEGUN TO MEET IN MANY RESPECTS, GROSSLY UNDERSTATE THE STAFFING
6 NEEDS OF THE MENTAL HEALTH DELIVERY SYSTEM IN THE DEPARTMENT.

7 AND THEN, IN ADDITION, AS AGAIN I'M SURE YOU KNOW,
8 THE SPECIAL MASTER HIMSELF HAS PROVIDED A FAIRLY DETAILED
9 CRITIQUE OF EVEN THAT WORKLOAD STUDY SUGGESTING THAT THE
10 WORKLOAD STUDY ITSELF UNDERESTIMATES THE NUMBER OF STAFF MEMBERS
11 WHO ARE NEEDED TO ADEQUATELY PROVIDE CONSTITUTIONAL MENTAL
12 HEALTHCARE IN THE SYSTEM.

13 SO IT'S NOT JUST THE SPECIAL MASTER'S MONITORING
14 REPORTS, BUT IT'S ALL THE OTHER THINGS THE SPECIAL MASTER HAS
15 DONE WHICH UNDERSCORE MY CONCLUSION THAT THIS IS A GROSSLY
16 UNDERSTAFFED SYSTEM.

17 **Q.** YOU HAVE NO REASON TO QUESTION THE SPECIAL MASTER'S FINDING
18 AND RECOMMENDATIONS CONCERNING THE NUMBER OF STAFF POSITIONS
19 NECESSARY TO FULLY IMPLEMENT THE REVISED PROGRAM GUIDE OF 2006,
20 DO YOU?

21 **MS. KAHN:** OBJECTION. IT'S A VAGUE QUESTION. WHAT
22 RECOMMENDATION?

23 **JUDGE KARLTON:** I'M SORRY, MA'AM?

24 **JUDGE HENDERSON:** OBJECTION IS VAGUENESS. WE HAVE NO
25 REASON TO QUESTION -- DO YOU HAVE ANY REASON TO QUESTION THAT?

1 **JUDGE KARLTON:** ASSUMING THAT THERE WAS SUCH A THING.

2 **MS. TILLMAN:** I BELIEVE THE SPECIAL MASTER FILED A
3 REPORT WITH THE COLEMAN COURT.

4 **JUDGE KARLTON:** I'M SORRY. LET ME PUT THIS PUT THIS
5 BACK ON.

6 GO AHEAD.

7 **MS. TILLMAN:** I BELIEVE THE SPECIAL MASTER FILED A
8 REPORT WITH THE COLEMAN COURT SHORTLY BEFORE THE COLEMAN COURT
9 ORDERED SOME 500 ODD POSITIONS.

10 **JUDGE KARLTON:** RIGHT.

11 **MS. TILLMAN:** WE SOUGHT BY THE CALIFORNIA DEPARTMENT
12 OF CORRECTIONS TO FULLY IMPLEMENT THE PROGRAM GUIDE. AND THAT'S
13 WHAT I AM REFERRING TO.

14 **JUDGE KARLTON:** IT'S NOT CLEAR TO ME THAT IT WAS TO
15 FULLY IMPLEMENT THE PROGRAM GUIDE, BUT IT WAS CERTAINLY IN
16 SUPPORT OF THAT.

17 BUT IN ANY EVENT, WHAT'S YOUR QUESTION, AGAIN,
18 BECAUSE I GOT LOST?

19 **JUDGE HENDERSON:** YES.

20 **MS. TILLMAN:** SHALL I TRY AGAIN?

21 **JUDGE HENDERSON:** THE QUESTION WAS: DOES HE HAVE ANY
22 REASON TO QUESTION THE SPECIAL MASTER'S FINDING IN THAT REGARD.

23 **THE WITNESS:** OKAY.

24 **BY MS. TILLMAN:**

25 **Q.** YES.

1 **A.** WELL, IT'S A STARTING POINT. AND I THINK THE SPECIAL MASTER
2 HIMSELF ACKNOWLEDGES IT'S A STARTING POINT. IN ADDITION TO THE
3 POSITIONS WHICH ARE NEEDED IN ORDER TO HELP IMPLEMENT THE
4 PROGRAMMING GUIDE, THERE IS, AS I MENTIONED A MOMENT AGO, A
5 WORKLOAD STUDY THAT SUGGESTS A SHORTFALL IN THE NEIGHBORHOOD OF
6 407 POSITIONS, ADDITIONAL POSITIONS NOT CONTEMPLATED IN EARLIER
7 ALLOCATIONS.

8 AND THEN, THERE IS THE SPECIAL MASTER'S ANALYSIS OF
9 THAT, ANALYSIS SUGGESTING THAT THAT'S AN UNDERSTATEMENT.

10 SO I HAVE NO -- I HAVE CERTAINLY NO REASON TO
11 QUESTION ALL OF THOSE INPUTS FROM THE SPECIAL MASTER WHO HAS
12 BEEN MONITORING THE DELIVERY OF THESE SERVICES FOR A LONG TIME
13 AND WHOSE ANALYSIS APPEARS TO BE SCRUPULOUSLY CAREFUL.

14 **Q.** LIKewise, IN LOOKING AT THE NUMBER OF BEDS THAT ARE REQUIRED
15 BY THE DEFENDANTS TO ENABLE CONSTITUTIONALLY-ADEQUATE MENTAL
16 HEALTHCARE, YOU WOULD DEFER TO THE SPECIAL MASTER'S FINDINGS
17 CONCERNING THE AUGUST 2000 BED PLAN SUBMITTED BY THE DEFENDANTS,
18 WOULDn'T YOU.

19 **A.** WELL, I'D HAVE TO LOOK AT THAT. I DON'T RECALL THAT,
20 OFFHAND. I MEAN, I'VE JUST IDENTIFIED EARLIER IN MY DIRECT
21 TESTIMONY A FAIRLY STAGGERING SHORTFALL OF AVAILABLE BEDS JUST
22 FOR PEOPLE IN THE ENHANCED OUTPATIENT PROGRAM.

23 I'M AWARE THAT THERE ARE BUDGET REQUESTS TO BUILD
24 ADDITIONAL PROGRAMMING SPACE IN THREE OR FOUR FACILITIES FOR THE
25 ENHANCED OUTPATIENT PROGRAMS THAT EXIST AT SALINAS, THE

1 CALIFORNIA STATE PRISON IN SACRAMENTO, MULE CREEK, AND I BELIEVE
2 CMF.

3 AND I'M AWARE THAT THERE ARE LOTS OF PLANS TO BEGIN
4 TO ADDRESS THE LIMITATIONS OF SPACE IN A WAY IN WHICH THE
5 OVERCROWDING IN THIS SYSTEM HAS MADE IT ALMOST IMPOSSIBLE TO
6 DELIVER CONSTITUTIONALLY-ADEQUATE MENTAL HEALTHCARE TO A
7 SIGNIFICANT POPULATION OF PEOPLE IN THE SYSTEM.

8 I'M NOT SURE WHETHER THE SPECIAL MASTER HAS APPROVED
9 THOSE THINGS OR WHAT HIS POSITION IS ON BUILDING PLANS.

10 **Q.** SO YOU'RE NOT -- I'M SORRY. ARE YOU FINISHED?

11 **A.** YES.

12 **Q.** SO YOU'RE NOT AWARE THAT THE COLEMAN COURT ACTUALLY APPROVED
13 THE AUGUST 2000 BED PLAN SUBMITTED BY DEFENDANTS?

14 **A.** I BELIEVE --

15 **MS. KAHN:** OBJECTION.

16 **THE WITNESS:** I DON'T KNOW. YOU ASKED ME ABOUT THE
17 SPECIAL MASTER. I BELIEVE THAT I'VE SEEN THE BED PLAN, AND I
18 BELIEVE THAT IT'S BEEN APPROVED. AND I HAVE NO REASON TO
19 DISPUTE THE DESIRABILITY THAT IS EXPRESSED FOR INCREASING THE
20 BEDS THAT ARE AVAILABLE IN THE MENTAL HEALTHCARE DELIVERY
21 SYSTEM.

22 **BY MS. TILLMAN:**

23 **Q.** AND YOU ACTUALLY DO NOT KNOW WHETHER THERE IS AN OBJECTIVE
24 STANDARD THAT MUST BE MET BY THE CALIFORNIA DEPARTMENT OF
25 CORRECTIONS AND REHABILITATION IN ORDER TO SHOW COMPLIANCE WITH

1 THIS CORE ELEMENT OF A CONSTITUTIONALLY-ADEQUATE MENTAL
2 HEALTHCARE SYSTEM, SUFFICIENT MENTAL HEALTHCARE BEDS FOR THE
3 MENTAL HEALTHCARE POPULATION?

4 **A.** I'M WELL-AWARE THAT THERE ARE -- THAT THE AVAILABILITY OF
5 BEDS IS ONE COMPONENT IN THE DELIVERY OF A
6 CONSTITUTIONALLY-ADEQUATE MENTAL HEALTHCARE SYSTEM.

7 THE SPECIAL MASTER'S ANALYSIS OF OVERCROWDING TALKS
8 ABOUT THE PROVISION OF BEDS AS ONE COMPONENT OF THAT, AS WELL AS
9 STAFFING. AND IT'S CERTAINLY A COMPONENT THAT I TOOK INTO
10 ACCOUNT AS I WENT THROUGH THESE FACILITIES AND REACHED THE
11 CONCLUSIONS I DID ABOUT A YEAR OR SO AFTER THE SPECIAL MASTER'S
12 ANALYSIS OF THESE ISSUES.

13 **Q.** AND YOU RECALL AT PAGE 90 OF YOUR DEPOSITION, LINE 19, YOU
14 WERE ASKED:

15 "ARE YOU AWARE OF WHAT OBJECTIVE STANDARD MUST
16 BE MET BY THE CALIFORNIA DEPARTMENT OF CORRECTIONS
17 AND REHABILITATION IN ORDER TO SHOW COMPLIANCE WITH
18 THE ELEMENTS OF PROVIDING SUFFICIENT MENTAL HEALTH
19 BEDS FOR THE MENTAL HEALTHCARE POPULATION TO SHOW A
20 CONSTITUTIONAL COMPLIANCE?"

21 YOUR ANSWER AT LINE 24:

22 "NO, I'M NOT. I DON'T KNOW HOW TO CALCULATE
23 THAT."

24 YOU WERE THEN ASKED AT PAGE 91, LINE 12:

25 "AND YOU WOULD RELY UPON THOSE REPORTS IN

1 FINDING" -- I THINK YOU'RE REFERRING TO THE SPECIAL
2 MASTER'S REPORTS -- "IN FINDING CONSTITUTIONAL
3 VIOLATIONS WITHIN THE CALIFORNIA PRISON SYSTEM?"

4 AND YOUR ANSWER WAS:

5 "YES."

6 **A.** YOU WANT ME --

7 **MS. KAHN:** OBJECTION, YOUR HONOR. CAN MS. TILLMAN
8 READ THE SENTENCE IN-BETWEEN THOSE TWO SENTENCES, THE QUESTIONS
9 AND ANSWERS?

10 **JUDGE HENDERSON:** READ THAT, PLEASE.

11 **MS. TILLMAN:** I'M SORRY. THERE WAS ANOTHER QUESTION
12 AND ANSWER BETWEEN THOSE TWO. WOULD YOU LIKE THAT READ?

13 **JUDGE HENDERSON:** LET MS. KAHN TELL US. SHE'S ASKED
14 FOR SOMETHING FURTHER TO BE READ.

15 WHAT LINE WOULD YOU LIKE?

16 **MS. KAHN:** STARTING ON PAGE 91 AT THE TOP OF THE PAGE
17 THERE'S A QUESTION THAT SHE SKIPPED.

18 **MS. TILLMAN:** THE PAGE 91, LINE ONE, THERE'S A
19 QUESTION:

20 "ARE YOU AWARE OF WHAT PARTICULAR OBJECTIVE
21 MEASURE MUST BE MET BY THE CALIFORNIA DEPARTMENT OF
22 CORRECTIONS AND REHABILITATION IN SHOWING COMPLIANCE
23 WITH THE CONSTITUTIONAL ELEMENT OF PROVIDING ADEQUATE
24 MEDICAL" -- AND THEN, I SAID -- "I'M SORRY.

25 MEDICATION MANAGEMENT OF THOSE MENTAL HEALTH PATIENTS

1 NEEDING MEDICATIONS FOR THEIR MENTAL ILLNESS?

2 "ANSWER: I DON'T KNOW HOW THE SPECIAL MASTER
3 QUANTIFIES THAT. AS I SAID, I REVIEWED THE SPECIAL
4 MASTER'S REPORTS AND THEIR SUMMARY TO THE EXTENT TO
5 WHICH THEY'RE IN COMPLIANCE," END OF SENTENCE.

6 **JUDGE HENDERSON:** THANK YOU.

7 **BY MS. KAHN:**

8 **Q.** NOW, ON THE ISSUE OF VIOLENCE, VIOLENCE ARISING FROM
9 INMATES, YOU AGAIN LOOK AT THE ENVIRONMENT IN WHICH THOSE
10 INMATES ARE HOUSED, CORRECT?

11 **A.** I'M NOT SURE WHAT YOU MEAN. IN WHAT CONTEXT?

12 **Q.** IF, FOR INSTANCE, THERE WAS A REDUCTION IN THE POPULATION,
13 WOULDN'T YOU AGREE THAT THAT REDUCTION MIGHT NOT ACTUALLY RESULT
14 IN ANY CHANGE IN THE RATE OF VIOLENCE AMONGST INMATES?

15 **A.** IT WOULD DEPEND. IT'S POSSIBLE.

16 **Q.** AND IT WOULD DEPEND --

17 **A.** IT'S POSSIBLE THAT IT WOULD, AND IT'S POSSIBLE THAT IT
18 WOULDN'T.

19 **Q.** AND IT WOULDN'T, FOR EXAMPLE, IF NECESSARY STAFFING WASN'T
20 AVAILABLE TO ADDRESS THE NEEDS OF THE INMATES, CORRECT?

21 **A.** THAT WOULD BE ONE COMPONENT OF THE ANALYSIS THAT YOU WOULD
22 DO TO UNDERSTAND THE VIOLENCE RATES IN A SYSTEM, YES.

23 **Q.** OKAY. YOU'VE HAD A CHANCE TO REVIEW THE 20TH ROUND
24 MONITORING REPORT, CORRECT?

25 **A.** YES.

1 Q. AND IN THAT MONITORING REPORT THERE ARE SITE-BY-SITE
2 EVALUATIONS OF COMPLIANCE WITH THE ELEMENTS OF A
3 CONSTITUTIONALLY-ADEQUATE MENTAL HEALTHCARE SYSTEM, CORRECT?

4 A. YES.

5 Q. AND ONE ELEMENT, OF COURSE, INVOLVES THE APPROPRIATE CARE OF
6 MENTALLY ILL INMATES, INCLUDING PROVIDING THEM WITH APPROPRIATE
7 MEDICATION IN A TIMELY WAY, CORRECT?

8 A. YES.

9 Q. AND DID YOU NOTICE IN THE SPECIAL MASTER'S 20TH ROUND REPORT
10 THAT WAS FILED WITH THIS COURT IN SEPTEMBER, 2008, AT PAGE 58
11 THERE IS A DESCRIPTION OF MULE CREEK STATE PRISON'S MEDICATION
12 MANAGEMENT PROGRAM?

13 A. I DON'T RECALL IT SPECIFICALLY. I WOULDN'T BE SURPRISED TO
14 FIND THERE WAS ONE THERE.

15 Q. DO YOU RECALL THAT REPORT INDICATING, QUOTE:

16 "PHARMACY OPERATIONS WERE TRANSFORMED BY A 100
17 PERCENT INCREASE IN STAFFING AND INSTALLATION OF
18 MAXOR NATIONAL PHARMACY SERVICES CORPORATIONS PAREN
19 (MAXOR'S) END PAREN, NEW MANAGEMENT INFORMATION
20 SYSTEM"?

21 A. YES. NOW THAT YOU'VE REMINDED ME, I REMEMBER HAVING READ
22 THAT.

23 Q. AND THAT'S A POSITIVE SIGN, ISN'T IT, TOWARDS THE
24 DEVELOPMENT AND ESTABLISHMENT OF A CONSTITUTIONALLY-ADEQUATE
25 MENTAL HEALTHCARE SYSTEM AT MULE CREEK?

1 **MS. KAHN:** OBJECTION.

2 MS. TILLMAN, CAN YOU READ THE REST OF THIS QUOTE.

3 **MS. TILLMAN:** THIS GOES ON FOR OVER A PARAGRAPH, YOUR
4 HONORS. I'M HAPPY TO ALLOW MS. KAHN TO ENGAGE IN REDIRECT, IF
5 SHE NEEDS TO.

6 **JUDGE HENDERSON:** LET'S DO IT THAT WAY. THAT'S FINE.

7 **BY MS. TILLMAN:**

8 **Q.** ISN'T IT CORRECT THAT YOU'VE CONCLUDED THAT THE REDUCTION OF
9 THE OVERALL CALIFORNIA DEPARTMENT OF CORRECTIONS REHABILITATION
10 POPULATION IS ONLY THE FIRST STEP TOWARDS A
11 CONSTITUTIONALLY-COMPLIANT MENTAL HEALTHCARE SYSTEM?

12 **A.** YES, IT'S A NECESSARY BUT NOT SUFFICIENT CONDITION. IF
13 THAT'S ALL YOU DID AND YOU STOPPED THERE, THEN THAN WOULDN'T DO
14 IT. BUT I DON'T BELIEVE YOU CAN DO IT WITHOUT DOING THAT,
15 BECAUSE IT IS THE PRIMARY CAUSE OF THE PROBLEMS THAT I'VE BEEN
16 DESCRIBING.

17 **Q.** AND I BELIEVE AT YOUR DEPOSITION AT PAGE 118, AT LINE EIGHT
18 THROUGH 20, YOU SAID IT VERY WELL.

19 LET'S SEE IF WE CAN GET A BETTER RESOLUTION ON THAT.
20 YOU SAID:

21 "IT'S ONE STEP, YES, ABSOLUTELY, AN EXTREMELY
22 IMPORTANT STEP IN MY OPINION. I THINK A NECESSARY,
23 BUT NOT SUFFICIENT CONDITION."

24 YOU WERE ASKED:

25 "BUT EVEN AFTER IMPLEMENTING THAT CONDITION OTHER

1 STEPS MUST BE TAKEN BY DEFENDANTS TO REACH
2 CONSTITUTIONAL COMPLIANCE, RIGHT?

3 "ANSWER: YES. AND WE'VE BEEN TALKING ABOUT
4 STAFFING. WE'VE BEEN TALKING ABOUT PROGRAMMING
5 SPACE. WE'VE BEEN TALKING ABOUT ALL THESE OTHER
6 THINGS THAT ARE PART OF A CONSTITUTIONAL SYSTEM,"
7 CORRECT?

8 **A.** IT'S WHAT I SAID IN THE DEPOSITION. IT'S WHAT I'VE SAID
9 HERE.

10 **MS. TILLMAN:** THANK YOU. NOTHING FURTHER.

11 **JUDGE HENDERSON:** OKAY, COUNSEL.

12 **MS. KAHN:** OKAY.

13 **JUDGE HENDERSON:** ANY INTERVENORS WISH TO
14 CROSS-EXAMINE THIS WITNESS?

15 **MS. JOHNSON:** ANNE JOHNSON FOR THE PLATA DEFENDANTS.
16 SIMILAR TO THE MOTION TO STRIKE WE MADE YESTERDAY
17 WITH RESPECT TO DR. STEWART'S TESTIMONY, THE PLATA DEFENDANTS
18 MOVE TO STRIKE DR. HANEY'S BARE CONCLUSIONS REGARDING MEDICAL
19 CARE AND THE PRIMARY CAUSE OF THE ALLEGED CONSTITUTIONAL
20 VIOLATIONS IN THE PLATA CASE AS LACKING ANY FACTUAL BASIS OR
21 EXPLANATION.

22 WE WOULD NOTE THAT DR. HANEY IS NOT A PHYSICIAN. AND
23 ALL OF HIS TESTIMONY RELATES TO THE COLEMAN MEMBERS AND THE
24 MENTAL HEALTH ISSUES, NOT MEDICAL CARE.

25 **THE COURT:** SIMILAR TO THE RULING YESTERDAY, MOTION'S

1 OVERRULED OR DENIED.

2 **MS. WANG:** TERESA WANG FOR THE LEGISLATOR
3 INTERVENORS, YOUR HONORS.

4 **CROSS-EXAMINATION**

5 **BY MS. WANG:**

6 **Q.** I JUST HAVE A COUPLE OF QUESTIONS FOR YOU, DR. HANEY.

7 ISN'T IT TRUE THAT YOU DO NOT HAVE A DIRECT OPINION
8 ON HOW OVERCROWDING IS THE PRIMARY CAUSE OF ANY ALLEGED
9 DEFICIENCIES IN THE MEDICAL HEALTHCARE PROVISION?

10 **A.** NO, ACTUALLY THAT'S NOT TRUE. I HAVE -- I'VE WRITTEN A
11 200-PAGE REPORT WHICH ADDRESSES ALMOST NOTHING ELSE.

12 **Q.** I'M SORRY. TO CLARIFY, THE MEDICAL HEALTHCARE PROVISION?

13 **A.** I'M SORRY. MEDICAL HEALTHCARE, NO. I THINK I'VE TALKED IN
14 THE REPORT ABOUT THE WAY IN WHICH THE SYSTEM BREAKDOWN IN A
15 SYSTEM THAT IS AS OVERCROWDED AS CALIFORNIA'S SYSTEM EFFECTS THE
16 DELIVERY OF ALL OF THE SERVICES. IT EFFECTS PROGRAMMING. IT
17 EFFECTS PROVISION OF EDUCATIONAL PROGRAMMING. IT EFFECTS
18 MEDICAL, AS WELL AS MENTAL HEALTHCARE.

19 MANY OF THE UNITS THAT I VISITED WHERE MENTAL
20 HEALTHCARE WAS TAKING PLACE ARE ALSO THE UNITS WHERE MEDICAL
21 CARE WAS TAKING PLACE.

22 THEY ARE SEVERELY CONGESTED AND CROWDED, AND
23 PRISONERS REPORTED DIFFICULTIES WITH MEDICAL CARE AS WELL AS
24 MENTAL HEALTHCARE.

25 **Q.** IF I COULD JUST REFER YOU TO PAGE 84 OF YOUR DEPOSITION

1 TAKEN BY MS. TILLMAN EARLIER THIS YEAR.

2 ON PAGE 84, LINE ONE, MS. TILLMAN ASKED:

3 "COULD YOU LET ME KNOW HOW OVERCROWDING IS THE
4 PRIMARY CAUSE OF THE MEDICAL SYSTEM'S FAILURE TO
5 PROVIDE CONSTITUTIONAL LEVELS OF CARE?

6 "ANSWER: WELL, I REALLY ADDRESSED THAT ONLY
7 INDIRECTLY AS PART -- AS OBVIOUSLY MY MAIN FOCUS WAS
8 ON THE PROVISION OF MENTAL HEALTHCARE."

9 AND YOU GO ON TO DISCUSS, DOCTOR, THE INTERSECTION OF
10 YOUR REPORT DISCUSSING THE INTERSECTION BETWEEN MEDICAL AND
11 MENTAL HEALTHCARE.

12 AS IT READS ON THE SCREEN:

13 "I DO DISCUSS IN THE REPORT BRIEFLY HOW THE TWO
14 ARE SOMEWHAT INTERCONNECTED IN THAT PRISONERS WHO ARE
15 RECEIVING INADEQUATE MENTAL HEALTHCARE MAY HAVE -- IT
16 MAY IMPACT THEIR ACCESSING OF THE MEDICAL SYSTEM, AS
17 WELL. THAT PRISONERS WHO ARE BEING INADEQUATELY
18 TREATED MAY BE RELUCTANT TO USE THE MEDICAL SYSTEM,
19 MAY BEGIN TO EXPERIENCE MEDICAL PROBLEMS THAT THEY
20 ARE UNABLE TO RECEIVE ADEQUATE TREATMENT FOR, AND SO
21 ON. BUT IT'S REALLY ONLY THAT CROSSOVER AS A
22 CONNECTION BETWEEN THE TWO SYSTEMS. I DIDN'T LOOK IN
23 ANY PARTICULARLY SYSTEMIC WAY AT THE PROVISION OF
24 MEDICAL SERVICES. I WAS FOCUSING ON MENTAL
25 HEALTHCARE."

1 DO YOU RECALL THAT BEING YOUR TESTIMONY, DOCTOR?

2 **A.** YES.

3 **Q.** AND SO THEN YOU DO AGREE THAT THAT WAS THE FOCUS OF
4 -- THAT YOUR REPORT TOUCHED UPON MEDICAL CARE INSOFAR AS IT
5 INVOLVED INMATES SEEKING MENTAL HEALTHCARE SERVICES WHO MAY HAVE
6 BEEN DISSUADED FROM SEEKING MEDICAL SERVICES?

7 **A.** WELL, THAT WAS PART OF IT, YES. AND I JUST DESCRIBED AN
8 ADDITIONAL PART, WHICH IS THE WAY IN WHICH OVERCROWDED SYSTEMS
9 BEGIN TO FALTER AND FAIL IN THE PROVISION OF ALL SERVICES.

10 AND THEN, I ALSO ADDED A MOMENT AGO THAT IN THE
11 COURSE OF TOURING THESE FACILITIES IT WAS POSSIBLE TO VIEW AND
12 TO TALK TO CLINICAL STAFF ABOUT THE CONGESTED NATURE OF THE
13 MEDICAL TREATMENT AREAS, AS WELL AS THE MENTAL HEALTH AREAS.

14 ONE OF THE DISCUSSIONS THAT WE OFTENTIMES HAD WAS THE
15 WAY IN WHICH BECAUSE OF THE OVERCROWDING IN THE PRISONS THE
16 MENTAL HEALTHCARE SYSTEM WAS COMPETING WITH THE MEDICAL SYSTEM.

17 FOR EXAMPLE, THERE WERE WHAT WERE CALLED "FLEX BEDS"
18 WHICH COULD BE CONVERTED FROM A MEDICAL USE TO A MENTAL HEALTH
19 USE, AND BECAUSE OF THAT THESE KINDS OF BEDS WERE COMPETING WITH
20 ONE ANOTHER.

21 AND THE DIFFICULTY SOMETIMES IN CORRECTIONAL
22 TREATMENT FACILITIES THAT EVEN WHERE THEY HAD ENOUGH ROOMS,
23 ENOUGH AVAILABLE BEDS, BECAUSE ONE OR ANOTHER OF THE SYSTEM,
24 EITHER THE MEDICAL OR THE MENTAL HEALTH SYSTEM WAS OVERCROWDED
25 AT THE TIME, THE OTHER SYSTEM COULDN'T BE ACCOMMODATED AT THAT

1 INSTITUTION.

2 SO THOSE WERE THE OTHER WAYS IN WHICH THEY WERE
3 INTERCONNECTED. AND I DID SEE THEM DURING THE COURSE OF THE
4 TOURS.

5 **Q.** THANK YOU.

6 NO FURTHER QUESTIONS.

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

8 REDIRECT?

9 **MS. KAHN:** I JUST HAVE A COUPLE OF QUESTIONS HERE.
10 MAY I APPROACH THE WITNESS?

11 **JUDGE HENDERSON:** YOU MAY.

12 THIS IS PLAINTIFFS' TRIAL EXHIBIT 477.

13 **MS. TILLMAN:** WHAT IS IT?

14 **MS. KAHN:** COLEMAN MENTAL HEALTH BED PLAN.

15 **REDIRECT EXAMINATION**

16 **BY MS. KAHN:**

17 **Q.** DR. HANEY, MS. TILLMAN A FEW MINUTES AGO WAS ASKING YOU
18 ABOUT THE AUGUST 17 BED PLAN WHICH WAS APPROVED BY THE COURT.
19 AND WHAT I'VE HANDED YOU HERE IS THE NEWEST VERSION OF THAT BED
20 PLAN, WHICH IS THE MENTAL HEALTH BED PLAN DATED JULY 16, 2008.
21 IT'S EXHIBITED 477.

22 HAVE YOU REVIEWED THIS?

23 **A.** YES, I BELIEVE I HAVE.

24 **Q.** OKAY. I'D LIKE TO HAVE YOU TURN TO ATTACHMENT C, WHICH IS
25 AT THE BACK, THE SECOND TO LAST PAGE OF THE EXHIBIT.

1 **A.** YES.

2 **Q.** OKAY. CAN YOU DESCRIBE WHAT THIS CHART IS?

3 **A.** YES.

4 **JUDGE REINHARDT:** WHAT PAGE IS THAT ON?

5 **MS. KAHN:** I'M SORRY, YOUR HONOR. IT'S ATTACHMENT C,
6 WHICH IS THE SECOND TO LAST PAGE OF THIS BED PLAN.

7 **JUDGE REINHARDT:** OKAY.

8 **JUDGE KARLTON:** THE QUESTION WAS:

9 "CAN YOU TELL US WHAT THIS CHART IS?"

10 **BY MS. KAHN:**

11 **Q.** CAN YOU TELL US WHAT THIS CHART IS, DR. HANEY?

12 **A.** YES. IT'S A VERY NEAT CHART DEPICTION OF THE STATUS OF
13 VARIOUS PROPOSED BUILDING PROGRAMS IN THE DEPARTMENT OF
14 CORRECTIONS WITH RESPECT TO THE PROVISION OF TREATMENT SPACE.

15 IT SHOWS THE DATE THAT THE COURT ORDERED IT. AND
16 THEN, AS YOU MOVE TOWARDS THE MIDDLE IT SHOWS THE STATUS. AND
17 THEN, THE VERY FAR RIGHT COLUMN IT SHOWS THE -- THERE'S A
18 COMMENTARY ABOUT WHAT'S HAPPENED TO THE FATE OF THE PROGRAM.

19 **Q.** AND IS IT YOUR UNDERSTANDING THAT THIS IS THE STATUS OF THE
20 AUGUST 17, 2007 BED PLAN?

21 **A.** YES, EXACTLY.

22 MS. TILLMAN ASKED ME ABOUT THIS PLAN AND WHETHER IT
23 WAS APPROVED. AND, OF COURSE, THE PLANS ARE APPROVED. BUT THE
24 GAP BETWEEN THE PLANS AND THE IMPLEMENTATION OF THE PLANS AND
25 CERTAINLY BETWEEN THE PLANS BEING APPROVED AND THE COMPLETION OF

1 THE PLANS IS WIDE AND WIDENING.

2 **Q.** MS. TILLMAN ALSO WAS ASKING YOU QUESTIONS ABOUT ADSEG AND
3 SINGLE CELLING. AND I'D LIKE YOU TO ADDRESS HOW OVERCROWDING
4 AFFECTS PRISONERS WHO ARE HOUSED IN ADSEG ON SINGLE CELL STATUS.

5 **A.** WELL, OVERCROWDING AFFECTS THEM IN A NUMBER OF SIGNIFICANT
6 WAYS. IT OVER -- IT AFFECTS THEM, FIRST OF ALL, IN TERMS OF AN
7 ISSUE THAT I'VE BEEN TALKING ABOUT REPEATEDLY, WHICH IS ACCESS
8 TO TREATMENT SPACE.

9 WHETHER A PRISONER IS SINGLE OR DOUBLE-CELLED IN THE
10 ADMINISTRATIVE SEGREGATION, THEIR ACCESS TO TREATMENT SPACE IS
11 SEVERELY LIMITED BY THE OVERCROWDING THAT PLAGUES THE SYSTEM.

12 THE TREATMENT SPACES ARE AS I'VE DESCRIBED THEM. THE
13 COURT HAS SEEN PICTURES OF THE CAGES WHICH ARE USED. WHAT ARE
14 NOT DEPICTED IN THOSE PHOTOGRAPHS ARE THE LOCATION OF THOSE
15 CAGES IN SOME OF THE ADMINISTRATIVE SEGREGATION UNITS THAT I
16 TOURED.

17 MANY OF THEM OUT ON THE DAYROOM FLOOR OF THE
18 ADMINISTRATIVE SEGREGATION UNITS, SO THAT IF A PRISONER IS
19 ENGAGED IN ALLEGEDLY THERAPEUTIC ACTIVITY, THAT'S WITNESSED BY
20 ALL THE OTHER PRISONERS IN ADMINISTRATIVE SEGREGATION.

21 GROUP THERAPY SOMETIMES TAKES PLACE IN A TINY AREA
22 WHERE IT'S ALMOST IMPOSSIBLE FOR THE CAGES TO FIT IN THE AREA.

23 IN MANY INSTANCES, PRISONERS, EVEN SINGLE-CELLED
24 ADMINISTRATIVE SEGREGATION PRISONERS ARE AFFECTED BY
25 OVERCROWDING BECAUSE OF THE SHORTAGE OF CLINICAL STAFF TO

1 PROVIDE THEM WITH THE TREATMENT OPPORTUNITIES THAT THEY ARE
2 ENTITLED TO.

3 THEY ARE IMPACTED BY OVERCROWDING BECAUSE OF THE
4 SHORTAGE OF ESCORTS. AN ADMINISTRATIVE SEGREGATION PRISONER HAS
5 TO BE ESCORTED BY A CORRECTIONAL OFFICER WHENEVER THEY LEAVE THE
6 ADMINISTRATIVE SEGREGATION UNIT TO GET ACCESS TO THERAPY OR TO
7 GET ACCESS TO ANYTHING OUTSIDE OF THE ADMINISTRATIVE SEGREGATION
8 UNIT.

9 IN ADDITION, THEY ARE IMPACTED BY OVERCROWDING
10 BECAUSE OF THE DIFFICULTIES OF THE ADMINISTRATIVE SEGREGATION
11 UNITS IN PROVIDING THE CONSTITUTIONALLY-MANDATED ACCESS TO
12 EXERCISE.

13 **Q.** HOW IS EXERCISE PROVIDED TO PRISONERS HOUSED IN ADSEG?

14 **A.** WELL, THEY HAVE TO BE INDIVIDUALLY ESCORTED TO THE EXERCISE
15 AREA. MANY OF THEM, THEY TYPICALLY EXERCISE BY THEMSELVES. AND
16 THERE ARE INADEQUATE NUMBER OF THOSE EXERCISE FACILITIES
17 AVAILABLE.

18 AND THERE'S SOMETIMES CALLED "SMALL MANAGEMENT
19 YARDS." THE COURT HAS ORDERED THOSE SMALL MANAGEMENT YARDS TO
20 BE CONSTRUCTED SO THAT PRISONERS WHO ARE IN ADMINISTRATIVE
21 SEGREGATION CAN GET THIS ACCESS.

22 IT'S NOT BEING PROVIDED NOW. AND, IN PART, IT'S NOT
23 BEING PROVIDED BECAUSE THERE'S A RESOURCE SHORTAGE, AN, I
24 BELIEVE, OVERCROWDING-RELATED RESOURCE SHORTAGE.

25 IN SOME INSTANCES ADMINISTRATIVE SEGREGATION UNITS

1 THEMSELVES, EVEN THOUGH THEY ARE ALREADY LOCKED DOWN UNITS ARE
2 LOCKED DOWN EVEN FURTHER.

3 I TOURED AN ADMINISTRATIVE SEGREGATION UNIT IN THE
4 CALIFORNIA CORRECTIONAL INSTITUTION IN TEHACHAPI WHERE THERE HAD
5 BEEN A VIOLENT INCIDENT THAT HAD OCCURRED IN THE BEGINNING OF
6 APRIL OF THIS PAST YEAR.

7 I TOURED THAT UNIT AT THE END OF JULY. THE PRISONERS
8 IN THAT UNIT HAD BEEN LOCKED DOWN AND HAD NOT GOTTEN OUTDOOR
9 EXERCISE BECAUSE THAT UNIT HAD BEEN LOCKED DOWN. THAT
10 ADMINISTRATIVE SEGREGATION UNIT HAD BEEN LOCKED DOWN FROM THE
11 BEGINNING OF APRIL UNTIL THE END OF JULY. SO NOT ONLY WERE THEY
12 NOT GETTING 10 HOURS A WEEK OF OUTDOOR EXERCISE, THEY WERE
13 GETTING NO HOURS A WEEK OF OUTSIDE EXERCISE.

14 LOCKDOWN IS A DIRECT RESULT OF A SYSTEM BEING
15 OVERCROWDED AND OVERWHELMED AND HAVING TOO MANY PEOPLE AND NOT
16 HAVING A WAY TO MANAGE CONFLICTS IN ANY OTHER WAY. AND IT CAN
17 IMPACT EVEN ADMINISTRATIVE SEGREGATION UNITS.

18 **Q.** THANK YOU.

19 NO MORE QUESTIONS.

20 **JUDGE HENDERSON:** OKAY. THANK YOU, COUNSEL.

21 OKAY. WE'RE GOING TO TAKE A 15-MINUTE RECESS.

22 **MS. TILLMAN:** YOUR HONOR, CAN I JUST ASK ONE OR TWO
23 MORE QUESTIONS?

24 **THE COURT:** CERTAINLY. SORRY, MS. TILLMAN.

25 **MS. TILLMAN:** I'LL TRY TO KEEP IT SHORT.

1 **JUDGE HENDERSON:** IT'S YOUR CROSS-EXAMINATION.

2 **RE CROSS-EXAMINATION**

3 **BY MS. TILLMAN:**

4 **Q.** DR. HANEY, YOU'VE MENTIONED CONCERN ABOUT THE USE OF
5 THERAPEUTIC MODULES FOR PROVIDING GROUP THERAPY FOR THE MOST
6 VIOLENT OF THE PATIENTS ON THE MENTAL HEALTH CASELOAD, HAVEN'T
7 YOU?

8 **A.** PATIENTS WHO ARE IN ADMINISTRATIVE SEGREGATION TYPICALLY
9 RECEIVE THERAPEUTIC PROGRAMMING IN THE CAGES THAT WE'VE BEEN
10 TALKING ABOUT.

11 **Q.** HAVE YOU EVER HAD A CONVERSATION WITH COURT-APPOINTED EXPERT
12 DR. METZNER ABOUT THOSE THERAPEUTIC MODULES AND THEIR DESIGN?

13 **A.** I KNOW DR. METZNER. I DON'T KNOW THAT WE'VE EVER TALKED
14 ABOUT THE PARTICULAR THERAPEUTIC MODULES THAT I'VE DESCRIBED IN
15 THE REPORT AND THAT THE COURT HAS PICTURES OF.

16 **Q.** WERE YOU AWARE THAT DR. METZNER PROVIDED THE SPECIFICATIONS
17 FOR DESIGN OF THOSE THERAPEUTIC MODULES?

18 **A.** MS. TILLMAN, I'M FAIRLY CERTAIN DR. METZNER DID NOT PROVIDE
19 THE SPECIFICATIONS FOR THE THERAPEUTIC MODULES THAT I SAW IN THE
20 ADMINISTRATIVE SEGREGATION UNITS THAT I TOURED, SOME OF WHICH
21 THE COURT DOES HAVE PHOTOGRAPHS OF.

22 WE'RE TALKING ABOUT OLD CAGES THAT HAVE NOT BEEN
23 RECENTLY CREATED THAT DR. METZNER CANNOT POSSIBLY HAVE HAD ANY
24 INPUT INTO BECAUSE THEY HAVE BEEN AROUND IN THIS SYSTEM FOR A
25 LONG TIME.

1 Q. SO YOU WOULD APPROVE, THEN, THE USE OF THERAPEUTIC MODULES
2 THAT HAVE BEEN BUILT RECENTLY, SAY IN THE PAST YEAR, PURSUANT TO
3 THE SPECIFICATIONS PROVIDED BY DR. METZNER THEN, WOULDN'T YOU?

4 A. NO, I DIDN'T SAY THAT. AND LET ME TRY TO ADDRESS THIS. I
5 THINK I UNDERSTAND THE CONTEXT OF THIS, AND IF I DON'T I HOPE
6 YOU'LL CORRECT ME.

7 Q. I THINK YOU'VE ANSWERED THE QUESTION, ACTUALLY.

8 MS. KAHN: OBJECTION? CAN THE WITNESS ANSWER THE
9 QUESTION?

10 THE WITNESS: I KNOW THAT DR. METZNER HAS HAD SOME
11 INPUT SOMETIME AGO IN THE CREATION OF THERAPEUTIC MODULES OR
12 CAGES THAT WERE ORIGINALLY INTENDED FOR USE IN A THERAPEUTIC
13 ENVIRONMENT, PSYCHIATRIC SERVICES AS A MATTER OF FACT.

14 WHEN THE ISSUE WAS HOW TO PROVIDE CARE IN A
15 THERAPEUTIC CONTEXT LIKE A PSU FOR PRISONERS WHO ALSO HAD
16 SERIOUS OR SIGNIFICANT SECURITY CONCERNS OR ISSUES. IT'S A HARD
17 PROBLEM. IT'S A DIFFICULT ISSUE TO ADDRESS.

18 Q. YOU DON'T WANT YOUR STAFF TO GET ASSAULTED. THAT'S REALLY
19 WHAT THE ISSUE IS. YOU DON'T WANT THE INMATE PATIENT TO ASSAULT
20 ANOTHER INMATE IN THAT THERAPEUTIC GROUP?

21 A. YES. AND, YET, THERE'S A NEED FOR THE INMATE PATIENT TO
22 HAVE A THERAPEUTIC CONTACT IN AN ENVIRONMENT WHERE THERE ARE
23 OTHER PEOPLE PRESENT.

24 NOW, THIS IS AN ISSUE ABOUT WHICH REASONABLE PEOPLE
25 AND REASONABLE EXPERTS CAN DISAGREE WHETHER IT CAN OR SHOULD BE

1 DONE IN CAGES OR NOT.

2 DR. METZNER'S CONTRIBUTION WAS TO SAY IF IT'S GOING
3 TO BE DONE IN THESE CAGES, THE CAGES SHOULD BE IN A THERAPEUTIC
4 CONTEXT, SHOULD BE OF A PARTICULAR KIND. THEY SHOULD HAVE A
5 PARTICULAR DESIGN.

6 IF THAT'S THE WAY THE DEPARTMENT HAS DECIDED TO
7 APPROACH THIS, THEN THIS IS WHAT THESE EXERCISE OR THESE THERAPY
8 CAGES OUGHT TO LOOK LIKE.

9 THOSE ARE NOT THE CAGES. THOSE ARE NOT THE CAGES
10 THAT I SAW IN THE UNITS THAT WERE BEING USED IN ADMINISTRATIVE
11 SEGREGATION UNITS, IN ALL OF THE PRISONS THAT I LOOKED AT THAT
12 HAD ADSEG UNITS. THOSE ARE NOT THE KINDS OF CAGES WE'RE TALKING
13 ABOUT.

14 AND I DOUBT VERY SERIOUSLY -- AND, OF COURSE, DR.
15 METZNER CAN SPEAK FOR HIMSELF -- THAT HE WOULD APPROVE OF THE
16 KINDS OF CAGES THAT I SAW IN THE ADMINISTRATIVE SEGREGATION
17 UNITS THAT I TOURED AND ABOUT WHICH I WROTE IN MY REPORT.

18 **Q.** NOW, YOU WOULDN'T DISAGREE, WOULD YOU, THAT THE USE OF
19 THERAPEUTIC MODULES HAS BEEN ACCEPTED AS PART OF THE
20 COURT-APPROVED REVISED PROGRAM GUIDE OF 2006?

21 **A.** I THINK IT'S -- I THINK IT'S CONTEMPLATED IN LIEU OF
22 ALTERNATIVE APPROACHES. BUT, AGAIN, WE'RE TALKING -- YOU'RE
23 TALKING ABOUT THIS AS AN ABSTRACTION.

24 I'M TALKING ABOUT THE REALITY OF WHAT THOSE CAGES
25 LOOK LIKE AND WHERE THEY ARE LOCATED, AND WHAT THEY ARE USED

1 FOR.

2 THOSE ARE THE ISSUES ABOUT WHICH I WAS CONCERNED AND
3 ABOUT WHICH I EXPRESSED MYSELF IN MY REPORT.

4 **Q.** AND YOU DON'T DISPUTE THAT IN THE 20TH ROUND MONITORING
5 REPORT SPECIAL MASTER LOPES FOUND THAT SEVERAL CALIFORNIA
6 DEPARTMENT OF CORRECTION REHABILITATION INSTITUTIONS WERE
7 SUBSTANTIALLY COMPLIANT WITH THE REVISED PROGRAM GUIDE AND WITH
8 COURT-ORDERED STANDARDS.

9 **A.** SPECIAL MASTER LOPES FOUND A NUMBER OF THINGS. IRONICALLY,
10 ONE OF THE THINGS THAT HE WAS MOST CONCERNED ABOUT AND, IN FACT,
11 ONE OF THE RECOMMENDATIONS HE MADE HAD TO DO WITH THE USE OF
12 THESE CAGES, HAD TO DO WITH THE USE OF THESE CAGES AS
13 ALTERNATIVE PLACEMENTS IN LIEU OF PUTTING PEOPLE IN MENTAL
14 HEALTH CRISIS BEDS.

15 IT'S THE THIRD RECOMMENDATION. HE'S CONCERNED ENOUGH
16 ABOUT IT TO RECOMMEND THAT THE ACTUAL USE OF THESE THINGS BE
17 VERY CAREFULLY DOCUMENTED.

18 **Q.** I'M JUST REFERENCING, ACTUALLY, PAGE SIX OF THE 20TH ROUND
19 MONITORING REPORT IN THE FIRST INTRODUCTORY STATEMENT WHERE IT
20 SAYS:

21 "OVERALL, THE MONITOR'S REVIEW FOUND THAT
22 SEVERAL CALIFORNIA DEPARTMENT OF CORRECTIONS AND
23 REHABILITATION INSTITUTIONS WERE SUBSTANTIALLY
24 COMPLIANT WITH PROGRAM GUIDE AND COURT-ORDERED
25 STANDARDS," CORRECT?

1 **A.** YES. I'M SURE SEVERAL WERE. THEY WERE NOT THE FACILITIES
2 THAT I SAW. BUT I DON'T DOUBT THAT THERE WERE SEVERAL THAT
3 WERE.

4 **Q.** THANK YOU.

5 NOTHING FURTHER.

6 **JUDGE HENDERSON:** BEFORE WE GET TO REREDIRECT --

7 OKAY.

8 REREDIRECT?

9 **MS. KAHN:** THANK YOU, YOUR HONOR.

10 **REREDIRECT EXAMINATION**

11 **BY MS. KAHN:**

12 **Q.** DR. HANEY, I JUST WANTED TO CLARIFY, MAKE SURE THIS IS THE
13 RECOMMENDATION THAT YOU'RE TALKING ABOUT. THAT THIS IS FROM THE
14 20TH REPORT, THAT SPECIAL MASTER LOPES' THIRD RECOMMENDATION IS
15 THAT:

16 "DEFENDANTS SHALL BE ORDERED TO IMPLEMENT AND
17 MAINTAIN INSTITUTIONAL ELECTRONIC AND MANUAL TRACKING
18 LOGS FOR INMATES WHO HAVE BEEN PLACED INTO
19 ALTERNATIVE HOUSING PENDING MHCB TRANSFERS, AND
20 THE DATES, TIMES AND PLACES OF RETURN TO REGULAR
21 HOUSING FOR INMATE-PATIENTS NOT TRANSFERRED TO AN
22 MHCB. THE TRACKING LOGS SHOULD ALSO INDICATE THE
23 SPECIFIC LEVELS OF CLINICAL MONITORING THAT WERE
24 REQUIRED (SUICIDE WATCH, SUICIDE PRECAUTION, OR
25 PSYCHIATRIC OBSERVATION), AND THE CLINICAL MONITORING

1 THAT OCCURRED. WHEN AN INMATE IS REFERRED TO AN
2 MHCB FOR TREATMENT OF A SUICIDAL THREAT OR BEHAVIOR,
3 AND THE REFERRAL IS RESCINDED OR THE INMATE-PATIENT
4 IS NOT ADMITTED TO AN MHCB, THE INMATE SHALL RECEIVE
5 FOLLOW-UP TREATMENT INCLUDING DAILY CONTACT FOR FIVE
6 CONSECUTIVE DAYS FOLLOWING HIS OR HER RETURN TO
7 REGULAR HOUSING. QUALITY MANAGEMENT FOR
8 IMPLEMENTATION OF DISCHARGE PLANNING, REQUIRED WHEN
9 AN INMATE IS DISCHARGED FROM AN MHCB, SHALL BE
10 IMPLEMENTED FOR THESE INMATES."

11 **MS. TILLMAN:** OBJECTION.

12 **BY MS. KAHN:**

13 **Q.** IS THAT THE RECOMMENDATION YOU WERE REFERRING TO, DR. HANEY?

14 **MS. TILLMAN:** OBJECTION. LEADING THE WITNESS.
15 MISCHARACTERIZES THE WITNESS. IT ADDRESSES ALTERNATIVE HOUSING.
16 IT DOES NOT ADDRESS THERAPEUTIC MODULES.

17 **JUDGE HENDERSON:** I THINK THE PORTION JUST READ, WAS
18 THAT THE PORTION THAT DR. HANEY --

19 **BY MS. KAHN:**

20 **Q.** WAS THIS THE RECOMMENDATION THAT YOU --

21 **A.** YES.

22 **MS. KAHN:** OKAY.

23 THANK YOU.

24 **JUDGE HENDERSON:** OKAY. COURT IS IN RECESS FOR 15
25 MINUTES.

1 **THE WITNESS:** MAY I BE RELEASED?

2 **JUDGE HENDERSON:** OH, I'M SORRY. YES, YOU MAY BE
3 RELEASED.

4 (THEREUPON, A RECESS WAS TAKEN.)

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

6 **JUDGE HENDERSON:** OKAY. YOU MAY CALL YOUR NEXT
7 WITNESS, COUNSEL.

8 **MR. SPECTER:** OKAY, YOUR HONORS. PLAINTIFFS CALL
9 JEANNE WOODFORD.

10 (THEREUPON, THE WITNESS WAS SWORN.)

11 **THE CLERK:** STATE AND SPELL YOUR FULL NAME FOR THE
12 RECORD.

13 **THE WITNESS:** MY NAME IS JEANNE WOODFORD, J-E-A-N-N-E
14 W-O-O-D-F-O-R-D.

15 THEREUPON --

16 **JEANNE WOODFORD**

17 WAS CALLED AS A WITNESS ON BEHALF OF THE PLAINTIFFS, AND AFTER
18 HAVING FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

19 **DIRECT EXAMINATION**

20 **BY MR. SPECTER:**

21 **Q.** MS. WOODFORD, YOU WERE -- YOU KNOW THESE CASES ARE BOTH THE
22 COLEMAN AND PLATA CASES, CORRECT?

23 **A.** YES, I'M AWARE OF BOTH CASES.

24 **Q.** PART OF THE REASON YOU'RE AWARE OF BOTH CASES IS THAT YOU
25 WERE A DEFENDANT AT ONE TIME; IS THAT TRUE?

1 **A.** YES, I WAS A DEFENDANT IN BOTH CASES.

2 **Q.** AND THAT'S BECAUSE YOU WORKED FOR THE CALIFORNIA DEPARTMENT
3 OF CORRECTIONS; IS THAT RIGHT?

4 **A.** THAT IS CORRECT.

5 **Q.** FOR HOW LONG DID YOU WORK FOR THEM?

6 **A.** I WORKED FOR THE DEPARTMENT OF CORRECTIONS FOR A LITTLE OVER
7 27 YEARS.

8 **Q.** AND IS IT TRUE THAT YOU HAVE -- YOU WORKED YOUR WAY UP FROM
9 A CORRECTIONAL COUNSELOR POSITION AT SAN QUENTIN TO THE ACTING
10 SECRETARY OF THE ENTIRE DEPARTMENT OF CORRECTIONS?

11 **A.** I ACTUALLY WORKED MY WAY UP FROM A CORRECTIONAL OFFICER
12 POSITION AT SAN QUENTIN INTO BECOMING THE ACTING SECRETARY OF
13 THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION.

14 **Q.** AND SO DURING -- COULD YOU GIVE US A LITTLE BRIEF SUMMARY OF
15 THAT JOURNEY IN TERMS OF THE POSITIONS YOU'VE HELD?

16 **A.** I STARTED AT SAN QUENTIN IN JUNE OF 1978, TWO WEEKS AFTER
17 GRADUATING FROM SONOMA STATE UNIVERSITY WITH A DEGREE IN
18 CRIMINAL JUSTICE.

19 I WAS A CORRECTIONAL OFFICER FOR ABOUT FIVE YEARS.
20 THEN, I WAS A CORRECTIONAL COUNSELOR I, CORRECTIONAL COUNSELOR
21 II, A CORRECTIONAL COUNSELOR III, A PROGRAM ADMINISTRATOR, A
22 CORRECTIONAL CAPTAIN, AN ASSOCIATE WARDEN, AND THEN A CHIEF
23 DEPUTY WARDEN UNTIL BEING APPOINTED BY GOVERNOR DAVIS IN 1999 AS
24 A WARDEN AT SAN QUENTIN.

25 I WAS THE WARDEN AT SAN QUENTIN UNTIL 2004 WHEN

1 GOVERNOR SCHWARZENEGGER APPOINTED ME CHIEF DIRECTOR CALIFORNIA
2 DEPARTMENT OF CORRECTIONS. AND THEN, ABOUT A YEAR-AND-A-HALF
3 LATER IN JULY OF 2006, I WAS APPOINTED AS THE UNDERSECRETARY OF
4 THE CALIFORNIA DEPARTMENT OF CORRECTIONS.

5 AND DURING MY TIME AS THE UNDERSECRETARY, THE
6 SECRETARY STEPPED DOWN, SO I WAS THE ACTING SECRETARY FOR A
7 SHORT TIME.

8 Q. GREAT. AND YOU LEFT THE UNDERSECRETARY'S POSITION IN JULY OF
9 2007 OR SIX? SEVEN?

10 A. I THINK IT WAS 2007. I'D HAVE TO LOOK AT MY RESUME, BUT I
11 BELIEVE IT WAS JULY, 2007.

12 Q. AND --

13 A. ACTUALLY, IT WAS JULY, 2006. I'M SORRY.

14 Q. OKAY. SO YOU WERE WORKING AT SAN QUENTIN IN THE EARLY
15 1980'S, WERE NOW NOT?

16 A. YES, I WAS.

17 Q. AND AT THAT TIME YOU WERE NOT IN A MANAGEMENT POSITION. YOU
18 WERE WORKING IN THE CELLBLOCKS; IS THAT RIGHT?

19 A. THAT'S CORRECT.

20 Q. AND YOU WERE FAMILIAR WITH A CASE CALLED TOUSSAINT?

21 A. I WAS VERY FAMILIAR WITH A CASE CALLED TOUSSAINT.

22 Q. AND THAT WAS A CASE THAT AROSE OUT OF A JUDGMENT OF THIS
23 COURT, THE DISTRICT COURT OF CALIFORNIA IN THE NORTHERN
24 DISTRICT?

25 A. THAT'S CORRECT.

1 Q. RIGHT. AND IN THAT CASE -- WELL, DURING THAT TIME PERIOD DID
2 YOU SEE THE POPULATION RISE DURING YOUR TIME AT SAN QUENTIN IN
3 THE EARLY '80'S?

4 A. YES, I DID. ACTUALLY, WHEN I STARTED AT SAN QUENTIN THERE
5 WERE CELLBLOCKS THAT WERE COMPLETELY CLOSED. AND THEN, LATER WE
6 BEGAN TO EXPERIENCE LARGE NUMBER OF INMATES COMING INTO THE
7 SYSTEM AS A RESULT OF A CHANGE IN THE SENTENCING LAWS IN
8 CALIFORNIA.

9 Q. I SEE. AND CAN YOU EXPLAIN TO THE COURT WHAT EFFECTS YOU SAW
10 FROM THAT INCREASE IN THE POPULATION AT SAN QUENTIN?

11 A. WELL, WHEN I FIRST STARTED AT THE PRISON IT REALLY REMINDED
12 YOU OF A COLLEGE CAMPUS. YOU SAW INMATES TRAVELING TO SCHOOL AND
13 GOING TO THEIR WORK ASSIGNMENTS, CARRYING BOOKS.

14 THERE WERE VERY ACTIVE PROGRAMS GOING ON INVOLVING
15 INMATES. MOST OF THE INMATES WERE SINGLE-CELLED. THERE WAS NO
16 IDLENESS AT ALL.

17 WITHIN A VERY SHORT AMOUNT OF TIME, THE DETERMINATE
18 SENTENCING ACT BEGAN TO SEND PRISONERS WITHIN THE PRISON SYSTEM.

19

20 SO WITHIN A COUPLE OF YEARS OF ME STARTING THERE, WE
21 STARTED TO RECEIVE MORE AND MORE INMATES INTO THE SYSTEM. AND
22 THESE WERE YOUNGER INMATES WHO WERE SERVING SENTENCES OF 25 TO
23 LIFE AS A RESULT OF THE CHANGE IN THE SENTENCING LAW.

24 SO WE WERE GETTING MORE AND MORE PEOPLE WHO WERE
25 SERVING LONGER AND LONGER SENTENCES. AND BECAUSE THE PURPOSE OF

1 SENTENCING NOW WAS PUNISHMENT, WE SAW MANY PROGRAMS GOING AWAY.

2 SO WE HAD THE IMPACT OF SEVERE OVERCROWDING ALONG
3 WITH VERY LITTLE FOR INMATES TO DO.

4 SO SAN QUENTIN AND FOLSOM WERE THE TWO PRISONS THAT
5 HOUSED INMATES IN SECURITY HOUSING UNITS. AND SAN QUENTIN BEGAN
6 TO GET VERY OVERCROWDED AS WELL OVERGROWING INTO OTHER
7 BUILDINGS, BESIDES THE ORIGINAL ADJUSTMENT CENTER. AND
8 OVERCROWDING CONTINUED IN THOSE UNITS.

9 AS A RESULT WE WERE SUED OVER CONDITIONS OF
10 CONFINEMENT TO INCLUDE OVERCROWDING IN THE CASE THAT YOU
11 REFERRED TO, TOUSSAINT.

12 **Q.** AND YOU UNDERSTAND OR YOU'RE AWARE BECAUSE YOU HELPED COMPLY
13 WITH THE DECREE THAT THE COURT ENTERED A DECREE IN THAT CASE; IS
14 THAT RIGHT?

15 **A.** I WAS INVOLVED INITIALLY IN INTERVIEWING INMATES TO
16 DETERMINE WHY THEY WERE IN LOCK-UP, BECAUSE OUR SYSTEM REALLY
17 DIDN'T KNOW, SOME OF THEM HAD BEEN IN LOCK-UP SO LONG. AND
18 THEN, I BECAME PART OF THE COMPLIANCE EFFORT TO COME INTO
19 COMPLIANCE WITH ALL ASPECTS OF THE CONSENT DECREE.

20 **Q.** WHAT EFFECT DID THE CROWDING THAT YOU JUST REFERRED TO HAVE
21 ON VIOLENCE IN THE INSTITUTION?

22 **A.** THE PRISON BECAME VERY VIOLENT VERY QUICKLY. WE ACTUALLY
23 ALMOST EVERY MORNING WOULD HEAR GUNSHOTS AS STAFF WERE USING
24 GUNS TO QUELL DISTURBANCES AMONG THE INMATE POPULATION. MANY
25 INMATE DEATHS. WE HAD AN INCREASE IN SUICIDES, ACTUALLY.

1 WE HAD DIFFICULTY KEEPING THE UNITS CLEAN. THE NOISE
2 LEVEL OF THE UNITS WERE UNBEARABLE. IT WAS JUST UNBELIEVABLE
3 CIRCUMSTANCES.

4 **Q.** AND COULD YOU ALSO COMMENT ON HOW THE CROWDING AFFECTED THE
5 ABILITY TO DELIVER MEDICAL AND MENTAL HEALTHCARE?

6 **A.** WELL, I WOULD -- IT BECAME VERY DIFFICULT TO KEEP UP WITH
7 MEDICAL CARE. WE PRETTY MUCH HAD THE SAME SYSTEM WE HAVE NOW.
8 INMATES WOULD PUT IN A SICK CALL SLIP, AND IT WOULD BE WEEKS
9 BEFORE THEY WOULD ACTUALLY BE SEEN BY A DOCTOR IN MANY CASES.

10 MENTAL HEALTHCARE WASN'T VERY CLEARLY DEFINED DURING
11 THAT TIME. SO YOU HAD MANY INMATES IN OUR HOUSING UNITS WHO
12 WERE SO SEVERELY MENTALLY ILL AND VERY FEW OF THEM WERE
13 RECEIVING ANY KIND OF TREATMENT AT ALL.

14 NONE OF US, NONE OF THE STAFF WERE REALLY TRAINED ON
15 SIGNS AND SYMPTOMS OF MENTAL HEALTHCARE. THERE WERE VERY FEW
16 DOCTORS THERE.

17 AS A RESULT, SOME INMATES WERE FORCED MEDICATED IN
18 VIOLATION OF THE LAW, AND THERE WAS ACTUALLY CASES FILED ON
19 THAT, SEPARATE AND APART FROM TOUSSAINT.

20 SO IT REALLY WAS UNBELIEVABLE CONDITIONS FOR BOTH
21 STAFF AND INMATES.

22 **Q.** AND AT THAT TIME DO YOU RECALL WHAT THE LEVEL OF
23 OVERCROWDING WAS?

24 **A.** THE LEVEL OF OVERCROWDING IN THE SHU UNITS AT SAN QUENTIN
25 WAS ABOUT AT 140 PERCENT.

1 Q. NOW, LATER ON AFTER THE COLEMAN AND PLATA CASES WERE FILED,
2 AND THEN JUDGMENTS WERE ENTERED, DID YOU BECOME FAMILIAR WITH
3 THOSE AS PART OF YOUR RESPONSIBILITIES AS WARDEN AT SAN QUENTIN?

4 A. YES, I BECAME FAMILIAR WITH BOTH PLATA AND COLEMAN AS THE
5 WARDEN AT SAN QUENTIN.

6 Q. AND CAN YOU EXPLAIN TO THE COURT WHAT DIFFICULTIES, IF ANY,
7 THERE WERE YOU HAD AT SAN QUENTIN IN COMPLYING WITH THOSE
8 DECREES AND WHAT THE CAUSE OF THOSE DIFFICULTIES WERE?

9 A. WELL, IT WAS VIRTUALLY IMPOSSIBLE TO COMPLY WITH BOTH OF THE
10 DECREES, AND THE DIFFICULTY WAS PRIMARILY BECAUSE OF THE
11 OVERCROWDING AT SAN QUENTIN.

12 AND TO DESCRIBE IT, I THINK YOU HAVE TO UNDERSTAND
13 THE THREE MISSIONS THAT SAN QUENTIN HAS. ONE BEING THE
14 RECEPTION CENTER WHERE AT TIMES WE WERE RECEIVING ANYWHERE
15 BETWEEN 100 AND 200 INMATES A DAY.

16 SO WITH THAT KIND OF INTAKE INTO OUR -- INTO SAN
17 QUENTIN AND WITH THE KIND OF OVERCROWDING YOU SPENT YOUR DAY
18 MANAGING WHERE TO HOUSE PEOPLE.

19 MEDICAL STAFF DUE TO VACANCIES AND JUST THE SHEER
20 NUMBERS AND LACK OF SPACE WERE UNABLE TO KEEP UP WITH PHYSICALS
21 OR PROVIDING ANY KIND OF CHRONIC CARE FOLLOW-UP AT THE RECEPTION
22 CENTER POPULATION.

23 INMATES IN THE RECEPTION CENTER WHO WERE DIAGNOSED AS
24 MENTALLY ILL, EITHER AS EOP'S OR TRIPLE CMS WEREN'T RECEIVING
25 REALLY ANY TREATMENT BEYOND IDENTIFYING THAT THEY WERE TRIPLE

1 CMS OR EOP.

2 THERE CERTAINLY WASN'T ANYTHING IN THE RECEPTION
3 CENTER THAT WE WERE DOING TO PREVENT FURTHER DETERIORATION OF
4 PEOPLE'S MENTAL ILLNESS OR TO PREVENT MEDICAL PROBLEMS.

5 ALSO BECAUSE OF THE OVERCROWDING AROUND THE SYSTEM WE
6 WOULD END UP WITH INMATES BACKED UP IN THE RECEPTION CENTER WITH
7 NOWHERE TO SEND THEM, AND THE MORE SEVERELY MENTALLY ILL THE
8 HARDER IT WAS TO GET THEM OUT OF THE RECEPTION CENTER. AND SO
9 WE WOULD HAVE INMATES IN THE RECEPTION CENTER THAT WERE THERE IN
10 EXCESS OF A YEAR, SOME AS LONG AS TWO YEARS.

11 EVEN MORE COMPLEX MEDICAL CASES IT WAS DIFFICULT TO
12 FIND PLACES TO SEND THEM THROUGHOUT THE SYSTEM. AND PARTICULARLY
13 THOSE INMATES WHO ARE DUAL DIAGNOSES AND WHO HAD LENGTHY PRISON
14 TERMS TO DO, SO THEY WERE THE HIGHER SECURITY INMATES, THEY
15 WOULD BACK UP IN THE RECEPTION CENTER.

16 SO YOU WOULD SPEND YOUR TIME AS THE WARDEN TRYING TO
17 FIGURE OUT HOW TO HOUSE PEOPLE APPROPRIATELY. AND YOU WOULD RUN
18 OUT OF SOLUTIONS OFTEN.

19 AND THEN, THE SECOND MISSION OF SAN QUENTIN, OF
20 COURSE, IS DEATH ROW. AND THAT IS REALLY OVER 600 DEATH ROW
21 INMATES THAT ARE HOUSED IN A SECURITY HOUSING UNIT KIND OF
22 SETTING.

23 AT ONE POINT IN TIME, THERE WEREN'T ENOUGH STAFF TO
24 PROVIDE ANY MENTAL HEALTH TREATMENT FOR DEATH ROW INMATES AT
25 ALL. PROVIDING MEDICAL CARE FOR THE DEATH ROW INMATES WAS

1 INCREASINGLY MORE DIFFICULT BECAUSE WE DIDN'T HAVE ENOUGH STAFF
2 TO DO THE MEDICAL ESCORTS TO THE HOSPITAL.

3 AND IN SPITE OF OUR EFFORTS TO TRY TO JUSTIFY MORE
4 POSITIONS WE ACTUALLY WERE CUT POSITIONS FOR MEDICAL ESCORTS FOR
5 DEATH ROW INMATES.

6 THE THIRD MISSION IS THE GENERAL POPULATION, WHICH IS
7 A LARGE GENERAL POPULATION. THE POPULATION AT SAN QUENTIN WOULD
8 GET AS HIGH AS 6200 DURING THE TIME I WAS WARDEN, WITH THE
9 GENERAL POPULATION OVER A COUPLE OF THOUSAND INMATES.

10 AGAIN, DIFFICULTY, EVEN THOUGH THEY COULD GO TO THE
11 INFIRMARY -- I WAS CALLED "INFIRMARY" AT THAT TIME -- LATER
12 BECAME A CTC -- THEMSELVES, BECAUSE OF THE NEED TO PROCESS
13 RECEPTION CENTER INMATES IN THAT SPACE, STAFF OFTEN -- MEDICAL
14 STAFF OFTEN WOULD NOT HAVE THE SPACE TO PROVIDE TREATMENT FOR
15 INMATES IN THE GENERAL POPULATION, EITHER FOR THEIR MEDICAL CARE
16 OR FOR THEIR ONGOING NEEDS IN THE MENTAL HEALTH PROGRAM.

17 **Q.** NOW, MS. WOODFORD, YOU MENTIONED YOU WERE SPENDING A LOT OF
18 TIME TRYING TO PLACE INMATES. DID THAT TAKE TIME? OR HOW DID
19 THAT AFFECT YOUR ABILITY TO COMPLY WITH THE REQUIREMENTS OF THE
20 PLATA POLICIES AND PROCEDURES AND THE COLEMAN POLICIES AND
21 PROCEDURES?

22 **A.** WELL, I THINK IT'S VERY DIFFICULT TO PLAN ANYTHING WHEN YOU
23 SPEND YOUR DAY FIREFIGHTING. AND THAT'S REALLY WHAT YOU WOULD
24 DO WHEN I WAS THE WARDEN AT SAN QUENTIN.

25 AND I SHOULD MENTION THERE WERE TIMES AT SAN QUENTIN

1 WHEN WE WERE DOWN OVER 125 CORRECTIONAL OFFICERS, NOT TO MENTION
2 VACANCIES IN OUR SERGEANT AND LIEUTENANT CATEGORIES, AS WELL.

3 BUT YOU WOULD SPEND YOUR DAY TRYING TO FIGURE OUT HOW
4 TO HOUSE PEOPLE. IT WAS A CRISIS. IT WOULD TAKE SOMETIMES UNTIL
5 MIDNIGHT OR AFTER TO HOUSE THE INTAKE THAT CAME IN THE RECEPTION
6 CENTER THAT DAY.

7 AND YOU WERE HAVING TO MAKE DECISIONS THAT WERE
8 CONTRARY TO GOOD CUSTODY PRACTICES. SO HOUSING INMATES THAT YOU
9 KNEW HAD ENEMY ISSUES OR GANG ISSUES, YOU WOULD HAVE TO HOUSE
10 THEM IN AREAS THAT WEREN'T QUITE APPROPRIATE.

11 YOU WOULD SPEND YOUR TIME TRYING TO -- FOR A
12 SPECIALTY CASES THAT YOU COULDN'T GET TRANSFERRED ON THE PHONE,
13 TRYING TO CALL TO GET HEADQUARTERS TO HELP YOU MOVE PEOPLE TO
14 APPROPRIATE SPACES, TO HAVE THEM TELL YOU THAT THERE WAS NOWHERE
15 TO MOVE THEM.

16 AND I CAN TELL YOU THAT IT GOT TO THE POINT WHERE I
17 WOULD CALL HEADQUARTERS, AND THE ANSWER WOULD BE:

18 "OH, YOU'RE CALLING ABOUT YOUR OVERCROWDING,
19 AGAIN, HUH?"

20 NO ONE HAD ANSWERS FOR THIS OVERCROWDING PROBLEM THAT
21 WAS INTERFERING WITH OUR ABILITY TO COMPLY WITH EITHER COLEMAN
22 OR PLATA.

23 Q. OKAY. DR. BEARD TESTIFIED THIS MORNING. YOU WERE NOT HERE,
24 BUT HE TESTIFIED THAT IN PENNSYLVANIA THEY HAVE A CLASSIFICATION
25 SYSTEM WHICH LOOKS AT NOT ONLY THE PRISONERS' CUSTODY NEEDS, BUT

1 WHAT HE CALLED THE CRIMINOGENIC FACTORS AND THE PRISONERS'
2 MENTAL HEALTH AND MEDICAL NEEDS, AS A CLASSIFICATION SYSTEM.
3 AND THEN, THEY WOULD SEND PRISONERS TO THE APPROPRIATE
4 INSTITUTION BASED ON THOSE FACTORS.

5 WERE YOU ABLE TO CLASSIFY PRISONERS -- WELL, FIRST OF
6 ALL, DO YOU THINK THAT'S A GOOD CORRECTIONAL PRACTICE? IS THAT
7 SOMETHING THAT WOULD KEEP PRISONERS SAFE?

8 **A.** I THINK IT'S AN EXCELLENT CORRECTIONAL PRACTICE.

9 **Q.** OKAY.

10 **A.** AND IF I COULD COMMENT, IT ALSO MAKES BETTER USE OF YOUR
11 CORRECTIONAL SYSTEM. IF YOU ONLY TAKE INTO CONSIDERATION THE
12 SECURITY LEVEL, IT LIMITS YOUR ABILITY TO MOVE INMATES AROUND,
13 AS WELL.

14 **Q.** SO WAS THAT THE CASE IN SAN QUENTIN THAT YOU WEREN'T ABLE
15 TO TAKE INTO ACCOUNT THEIR OTHER NEEDS, NOT TO MENTION WHAT THEY
16 CALL THE CRIMINOGENIC FACTORS?

17 **A.** THAT IS CORRECT. SECURITY ISSUES WERE ALWAYS THE FIRST ISSUE
18 THAT HAD TO BE ADDRESSED. THE LEVEL ONES WENT TO LEVEL ONES.
19 LEVEL TWOS TO LEVEL TWOS. THREES AND FOURS, LEVEL THREES WENT
20 TO LEVEL THREES AND LEVEL FOURS WENT TO LEVEL FOURS.

21 **Q.** YOU ALSO HAD RESPONSIBILITY WHILE YOU WERE AT
22 HEADQUARTERS -- AND BY THAT I MEAN THE TIME YOU SPENT AS THE
23 DIRECTOR OF THE DEPARTMENT OF CORRECTIONS, AND THEN THE
24 UNDERSECRETARY, AND THEN THE ACTING SECRETARY. YOU HAD
25 RESPONSIBILITIES AT THAT TIME FOR MANGAGING THE COMPLIANCE WITH

1 COLEMAN AND PLATA; IS THAT CORRECT?

2 **A.** THAT IS CORRECT.

3 **Q.** AND WERE YOU ABLE TO SPEND SUFFICIENT TIME ON THOSE AREAS TO
4 PROVIDE WHAT YOU THOUGHT WAS AN ADEQUATE RESPONSE TO THE COURT'S
5 ORDERS?

6 **A.** I WOULD HAVE TO SAY THAT IN THOSE POSITIONS THAT YOU JUST
7 DIDN'T HAVE ENOUGH TIME AND ABSOLUTELY DID NOT HAVE SUFFICIENT
8 TIME TO ADDRESS THE ISSUES OF COLEMAN AND PLATA JUST BECAUSE
9 THERE WAS SO MANY ISSUES THAT YOU WERE TRYING TO ADDRESS IN
10 THOSE POSITIONS.

11 **Q.** AND DID YOU BECOME FAMILIAR THROUGH YOUR RESPONSIBILITIES AT
12 HEADQUARTERS WITH THE REQUIREMENTS FROM A SYSTEM LEVEL OF
13 COLEMAN AND PLATA?

14 **A.** THAT'S ABSOLUTELY TRUE. BECAUSE OF OVERCROWDING, WHEN
15 YOU'RE OUT IN THE FIELD AS THE WARDEN, YOU KNOW THAT THE ANSWERS
16 HAVE TO COME FROM SACRAMENTO, BECAUSE OVERCROWDING NEEDED TO BE
17 ADDRESSED IN ORDER TO COME INTO COMPLIANCE WITH THE MANY ISSUES
18 OF COLEMAN AND PLATA.

19 SO AS THE DIRECTOR AND UNDERSECRETARY AND SECRETARY,
20 WE UNDERSTOOD IT WAS OUR RESPONSIBILITY TO TRY TO ADDRESS THOSE
21 ISSUES SO THAT THE PRISONS COULD RUN APPROPRIATELY AND PROVIDE
22 THE CARE AND TREATMENT THAT WAS REQUIRED BY BOTH CASES.

23 **Q.** AND HOW, IF AT ALL, DID THE SYSTEM-WIDE OVERCROWDING AFFECT
24 YOUR ABILITY AT HEADQUARTERS TO MANAGE THE COLEMAN AND PLATA
25 CASES?

1 **A.** IT WAS REALLY CLEAR THAT THERE WERE NO EASY ANSWERS FOR
2 OVERCROWDING. AND THAT IT WAS IMPOSSIBLE TO GET THE MONEY OR THE
3 RESOURCES THAT YOU NEEDED TO ADDRESS THAT ISSUE.

4 AND I WILL SAY, YOU KNOW, WHEN YOU'RE THE WARDEN
5 YOU'RE DEALING WITH IT EVERY DAY. AND YOU SEE THE PEOPLE. AND
6 IT'S ABOUT INDIVIDUALS. AND YOU UNDERSTAND THE IMPACT OF
7 OVERCROWDING ON THE INMATES AND YOUR STAFF AND ON YOU.

8 AND AT HEADQUARTERS IT GETS TO BE A LITTLE MORE
9 ABSTRACT. YOU'RE UP THERE TRYING TO SOLVE THE PROBLEMS. AND I
10 CLEARLY UNDERSTOOD AS BEING OUT THERE IN THE FIELD AS THE WARDEN
11 THINKING THAT HEADQUARTERS WASN'T TRYING TO DO ANYTHING TO HELP
12 YOU AND HOW FRUSTRATED I WAS AS A WARDEN UNDERSTANDING NOW AS
13 THE DIRECTOR HOW DIFFICULT IT WAS TO GET SOLUTIONS, AND THE
14 FIELD NOT THINKING THAT ANY ANSWERS WERE COMING THEIR WAY.

15 SO IT MADE IT HARDER FOR THE FIELD TO ATTRACT GOOD
16 STAFF AND KEEP GOOD STAFF, BECAUSE IT WAS A MORALE ISSUE.

17 SO I EVEN WAS MORE FRUSTRATED AS THE DIRECTOR AND
18 UNDERSECRETARY AND SECRETARY REMEMBERING MY EXPERIENCES AS
19 OPERATIONALLY AS A WARDEN.

20 **Q.** OKAY. AND I THINK YOU ALLUDED TO THIS A LITTLE BIT, BUT YOU
21 MENTIONED THE PROBLEM OF TRANSFERRING PRISONERS FROM ONE PRISON
22 TO ANOTHER IF YOU DON'T HAVE A PLACE FOR THEM.

23 WAS IT DIFFICULT TO TRANSFER PRISONERS TO OTHER
24 PRISONS BECAUSE OF THE OVERCROWDING SITUATION?

25 **A.** IT'S NEARLY IMPOSSIBLE TO TRANSFER INMATES AROUND FOR THE

1 RIGHT REASONS. YOU WOULD HAVE TO TRANSFER INMATES AROUND BECAUSE
2 THERE WERE OPEN BEDS AND YOU NEEDED TO MOVE INMATES INTO THOSE
3 PARTICULAR BEDS.

4 BUT IN TERMS OF TRYING TO ADDRESS MANY OF THE MEDICAL
5 AND PARTICULARLY THE MENTAL HEALTH PROBLEMS, IT WAS IMPOSSIBLE
6 TO MOVE INMATES WHERE THEY NEEDED TO BE.

7 **Q.** AND --

8 **JUDGE KARLTON:** THAT'S BECAUSE THERE WASN'T ANY SPACE
9 BECAUSE OF OVERCROWDING?

10 **THE WITNESS:** THERE WAS NO SPACE BECAUSE OF
11 OVERCROWDING, YES.

12 **BY MR. SPECTER:**

13 **Q.** AND WHEN YOU MENTIONED THE TIMES YOU SPENT DEALING WITH
14 COLEMAN AND PLATA AT HEADQUARTERS, WERE YOU SPENDING JUST A
15 LITTLE BIT OF YOUR TIME ON THESE CASES? WERE THEY AN
16 AFTERTHOUGHT OR SOMETHING DIFFERENT?

17 **A.** THEY CERTAINLY WERE NOT AN AFTERTHOUGHT. I SPEND A GREAT
18 DEAL OF TIME TRYING TO WORK WITH STAFF, DISCUSSING ISSUES WITH
19 DIFFERENT MEMBERS OF THE LEGISLATURE, TRYING TO FIND SOLUTIONS,
20 TALKING TO THE ADMINISTRATION ABOUT POTENTIAL SOLUTIONS, WORKING
21 WITH DEPARTMENT OF MENTAL HEALTH, BECAUSE THEY HAD GREAT
22 CONCERNS IN TERMS OF NOT HAVING ADEQUATE SPACE AND THE
23 APPROPRIATE NUMBER OF BEDS TO PROVIDE THE QUALITY MENTAL
24 HEALTHCARE THAT THEY WANTED TO PROVIDE.

25 I THINK THAT IT WAS A DAILY TOPIC OF DISCUSSION IN

1 MANY, MANY, MANY MEETINGS WITH THE VARIETY OF PEOPLE TRYING TO
2 BRING SOME SOLUTIONS TO THE DEPARTMENT OF CORRECTIONS.

3 **Q.** AND SO, GIVEN ALL THAT EFFORT BOTH ON A INSTITUTION
4 MANAGEMENT INSTITUTION LEVEL AND ON THE HEADQUARTERS LEVEL AS A
5 HIGH LEVEL MANAGER, GIVEN ALL THAT EXPERIENCE AND YOUR
6 EXPERIENCE WITH THE DEPARTMENT OF CORRECTIONS, WHAT DO YOU THINK
7 WAS THE PRIMARY CAUSE OF THE INABILITY TO PROVIDE HEALTHCARE TO
8 PRISONERS?

9 **A.** I ABSOLUTELY BELIEVE THE PRIMARY CAUSE IS OVERCROWDING,
10 BECAUSE WE WOULD COME UP WITH WONDERFUL IDEAS AND HAVE GREAT
11 PLANNING, BUT OVERCROWDING INTERFERED WITH OUR ABILITY TO
12 IMPLEMENT ANY OF THOSE IDEAS, TO BRING RESOLUTION TO ANY OF THE
13 PROBLEMS THAT WE'RE FACING IN BOTH OF THOSE LAWSUITS.

14 AND THE OVERCROWDING WAS EVERY DAY, MORE AND MORE
15 INMATES COMING INTO THE SYSTEM.

16 **Q.** AND WHEN YOU'RE AT THE HEADQUARTERS DID YOU EXPRESS THAT
17 CONVICTION TO ANY OF YOUR SUPERIORS?

18 **A.** YES.

19 **Q.** AND WHO WOULD YOU TALK TO ABOUT THAT?

20 **A.** WELL, I WOULD TALK TO -- WELL, AS THE DIRECTOR I WOULD TALK
21 TO THE UNDERSECRETARY AND SECRETARY ABOUT THAT. THEN, WHEN I WAS
22 THE UNDERSECRETARY AND ACTING SECRETARY I TALKED TO THE
23 GOVERNOR'S STAFF ABOUT THE OVERCROWDED CONDITIONS AND THAT WE
24 NEEDED TO ADDRESS OVERCROWDING IN ORDER FOR US TO BE SUCCESSFUL
25 AT ANY OF THE EFFORTS WE WERE TRYING TO DO, INCLUDING PROVIDING

1 MEDICAL CARE, MENTAL HEALTHCARE AND REHABILITATIVE SERVICES TO
2 INMATES.

3 **JUDGE HENDERSON:** CAN I INTERRUPT YOU?

4 **MR. SPECTER:** SURE.

5 **JUDGE HENDERSON:** I WANT TO MAKE SURE I HAVE THIS
6 TIMELINE. YOU TALKED ALMOST LONGINGLY ABOUT THE GOOD OLD DAYS AT
7 SAN QUENTIN WHEN THERE WAS NOT OVERCROWDING. THAT'S MY
8 CHARACTERIZATION.

9 AND YOU NOW ARE TALKING ABOUT THE OVERCROWDING. WOULD
10 IT BE FAIR TO SAY THAT IN THOSE DAYS OF YOR, I DON'T KNOW IF
11 THERE WERE MEDICAL INADEQUACIES, BUT WOULD YOU, IF YOU WERE
12 ASKED THEN "ARE THEY SOLVABLE" BECAUSE THERE'S NOT OVERCROWDING,
13 WOULD IT HAVE BEEN YOUR VIEW LOOKING BACK THAT THEY ARE SOLVABLE
14 AND THAT BECAUSE OF THE OVERCROWDING THEY ARE NO LONGER
15 SOLVABLE?

16 IS THAT A FAIR SUMMATION?

17 **THE WITNESS:** YES, YOUR HONOR. THAT'S A VERY FAIR
18 SUMMATION.

19 **JUDGE REINHARDT:** YOU GOT UP TO WHEN YOU WERE
20 UNDERSECRETARY. WHEN YOU WERE ACTING SECRETARY TO WHOM DID YOU
21 TALK? WHO WERE YOUR SUPERIORS THEN?

22 **THE WITNESS:** WELL, I WORKED FOR THE GOVERNOR, BUT I
23 DID NOT GET TO HAVE A CONVERSATION WITH THE GOVERNOR UNTIL MY
24 LAST DAY WHEN I STEPPED DOWN AS SECRETARY. SO I WAS TALKING TO
25 HIS CHIEF OF STAFF AND THE CABINET SECRETARY AND HIS LEGAL

1 PERSON, ANDREA HOAK, ABOUT THOSE ISSUES.

2 **JUDGE REINHARDT:** AND THE CHIEF OF STAFF IS SUSAN
3 KENNEDY?

4 **THE WITNESS:** YES, THAT'S CORRECT.

5 **BY MR. SPECTER:**

6 **Q.** AND DID YOU NOT GET TO TALK TO THE GOVERNOR BECAUSE YOU
7 FAILED TO ASK FOR AN APPOINTMENT TO SEE HIM?

8 **MR. MELLO:** PAUL MELLO. CALLS FOR SPECULATION.

9 **JUDGE KARLTON:** WHY DON'T YOU PUT IT THE OTHER WAY?

10 **MR. SPECTER:** SURE.

11 **JUDGE KARLTON:** DID YOU ASK TO SPEAK TO THE GOVERNOR?

12 **MR. MITCHELL:** YES, I DID, ON MORE THAN ONE OCCASION.

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

14 **BY MR. SPECTER:**

15 **Q.** DID YOU ATTRIBUTE ANY OF THE PROBLEMS RECRUITING STAFF WITH
16 OVERCROWDING?

17 **A.** I THINK OVERCROWDING WAS -- IS -- WAS AND IS A GREAT
18 HINDRANCE TO TRYING TO RECRUIT AND RETAIN STAFF.

19 **Q.** YOU'RE AWARE THAT -- WELL, YOU MENTIONED THAT THERE WERE A
20 LOT OF VACANCIES WHEN YOU LEFT THE DEPARTMENT, CORRECTIONAL
21 OFFICER VACANCIES, CORRECT?

22 **A.** YES, THAT'S CORRECT.

23 **Q.** AND YOU'RE AWARE THAT THE CORRECTIONAL OFFICER VACANCIES
24 HAVE GONE DOWN, ARE YOU NOT?

25 **A.** YES, I'VE BEEN TOLD THAT CORRECTIONAL OFFICER VACANCIES HAVE

1 GONE DOWN.

2 **Q.** DOES THAT GIVE YOU CONFIDENCE THAT THOSE CORRECTIONAL
3 OFFICER VACANCIES WILL STAY THAT -- THAT VACANCY RATES WILL BE
4 STABLE OVER TIME?

5 **A.** NO, IT DOES NOT. WHEN THE ECONOMY IS REALLY, REALLY GOOD,
6 IT'S INCREASINGLY MORE DIFFICULT TO RECRUIT AND RETAIN
7 CORRECTIONAL OFFICERS. AND WHEN THE ECONOMY IS BAD, IT'S A
8 LITTLE EASIER.

9 AND THEN, I'M ALSO AWARE OF THE FACT THAT THERE'S
10 SOME CLOSURES GOING ON IN THE JUVENILE JUSTICE SIDE OF THE
11 HOUSE, WHICH HAS BROUGHT STAFF FROM JUVENILE JUSTICE INTO THE
12 PRISON SYSTEM, AS WELL.

13 SO I THINK BECAUSE I WAS THERE 27 YEARS I'VE SEEN US
14 FULLY STAFFED, AND THEN I'VE SEEN THOSE PERIODS WHERE WE'VE HAD
15 GREAT, GREAT DIFFICULTY BRINGING STAFF INTO THE SYSTEM.

16 **THE CLERK:** YOU HAVE FIVE MINUTES, COUNSEL.

17 **MR. SPECTER:** OKAY.

18 **BY MR. SPECTER:**

19 **Q.** YOU TOOK SOME TOURS OF THE INSTITUTIONS, DID YOU NOT?

20 **A.** YES, I DID.

21 **Q.** AND THAT WAS IN THIS YEAR; IS THAT CORRECT?

22 **A.** YES, IN JULY AND AUGUST, I BELIEVE.

23 **Q.** RIGHT. AND ONE OF THE PRISONS YOU TOOK WAS -- YOU TOURED
24 WAS LANCASTER; ISN'T THAT CORRECT?

25 **A.** YES, THAT'S CORRECT.

1 Q. AND I'M GOING TO REFER YOU TO THE PICTURE THAT'S ON SCREEN
2 THAT'S PLAINTIFF'S EXHIBIT 345. COULD YOU DESCRIBE WHAT YOU SEE
3 THERE, PLEASE?

4 A. I SEE A PICTURE OF WHAT LOOKS LIKE A GYMNASIUM WITH TRIPLE
5 BUNKS. LOOKS LIKE IT'S SEVERELY OVERCROWDED.

6 LOOKS LIKE THERE'S BARELY ROOM BETWEEN THE BUNKS.
7 AND IT ALSO LOOKS LIKE IT'S CROWDED TO THE POINT INMATES ARE
8 EXPECTED TO BE ON THEIR BUNKS.

9 Q. AND FROM A CORRECTIONS ADMINISTRATOR'S PERSPECTIVE DO YOU
10 SEE ANY PROBLEMS WITH THAT HOUSING ARRANGEMENT?

11 A. I ABSOLUTELY SEE MANY PROBLEMS, AND I'VE SEEN SCENES LIKE
12 THIS ALL OVER THE DEPARTMENT AS THE DIRECTOR AND UNDERSECRETARY
13 OF THE DEPARTMENT OF CORRECTIONS, AND IN MY OWN EXPERIENCE AS
14 THE WARDEN AT SAN QUENTIN, OVERCROWDING INMATES INTO THE
15 GYMNASIUM THERE.

16 IT'S VERY DIFFICULT TO HAVE OF GOOD LINES OF SIGHT OF
17 THE INMATES. IT'S VERY DIFFICULT TO KNOW WHO THE INMATES ARE IN
18 THESE CROWDED SITUATIONS.

19 I THINK IT'S REALLY HARD ON THE INMATES WHEN THERE
20 ISN'T ROOM FOR THEM TO MOVE AROUND AT ALL, AND THEY SPEND THE
21 MAJORITY OF THEIR DAY ON OR NEAR THEIR BUNKS. YOU END UP WITH
22 VIOLENCE BREAKING OUT IN THESE SITUATIONS.

23 I'VE PERSONALLY EXPERIENCED MORE THAN ONE RIOT AT SAN
24 QUENTIN, AND I KNOW THAT OCCURS AROUND THE DEPARTMENT OF
25 CORRECTIONS. AND, YOU KNOW, STAFF, MANY STAFF DON'T FEEL EVEN

1 COMFORTABLE WALKING AROUND UNITS LIKE THIS BECAUSE THEY ARE SO
2 OVERCROWDED, AND SO IT'S VERY HARD ON INMATES WHO ARE MORE
3 VULNERABLE.

4 AND IT'S REALLY DIFFICULT TO KNOW OFTEN IF THERE'S
5 MEDICAL ISSUES AND PARTICULARLY MENTAL HEALTH ISSUES WHEN YOU'RE
6 THIS CROWDED AND YOU'RE NOT HAVING THAT CONSTANT CONVERSATION
7 AND CONTACT WITH THE INMATES AS A STAFF PERSON.

8 **Q.** AND WHEN YOU TOOK A TOUR IN AUGUST OF 2008, DID YOU SEE
9 UNITS WHERE OR HAD YOU HEARD ABOUT INCIDENTS WHERE THERE
10 WEREN'T ENOUGH STAFF ON THE UNIT?

11 **A.** YES, I HEARD THAT WHEN I WAS AT LANCASTER.

12 BY THE WAY, WHEN WE WALKED IN THE -- WHEN I WALKED IN
13 THE GYM AT LANCASTER -- I DON'T KNOW IF IT WAS THIS GYM, BUT A
14 GYM LIKE THIS -- THERE WAS ONLY ONE OFFICER THERE. AND SHE TOLD
15 ME THAT THERE WAS A SECOND OFFICER ASSIGNED THERE, BUT HE WAS
16 OUT ESCORTING INMATES.

17 SO THIS CLEARLY WAS A SITUATION WHERE THERE WASN'T
18 ENOUGH STAFF IN THE UNIT TO EVEN ATTEMPT TO WALK AROUND IN A
19 BUILDING THIS CROWDED.

20 BUT IN ANOTHER CASE, WE WERE IN AN EOP UNIT, AND I
21 BELIEVE IT WAS AN EOP UNIT AT LANCASTER. AND THE STAFF TOLD US
22 THAT THE DAY BEFORE THEY WERE SO SHORT OF STAFF THAT THERE WAS
23 NO STAFF ON THE FLOOR.

24 AND THAT THE ONE STAFF MEMBER THAT WAS ASSIGNED TO
25 THE UNIT HAD TO GO UP TO THE CONTROL BOOTH AND MONITOR THE

1 INMATES FROM THE CONTROL BOOTH.

2 AND DURING THAT TIME, AN INMATE HAD A MEDICAL
3 EMERGENCY, INJURED HIS FOOT IN HIS CELL. AND THE INMATE HAD TO
4 GET THE ATTENTION OF THE STAFF IN THE CONTROL BOOTH. AND
5 WITHOUT ANYONE TALKING TO HIM ON THE FLOOR, THEY OPENED THE
6 DOOR. THE INMATE TOLD THE STAFF THAT HE'D INJURED HIMSELF, AND
7 THE STAFF SAID:

8 "ARE YOU ABLE TO GET OVER TO THE CTC ON YOUR
9 OWN?"

10 AND HE SAID:

11 "I THINK SO."

12 AND THEY LET HIM OUT OF THE UNIT WITHOUT ANYBODY
13 DOING A PHYSICAL CHECK OF THE INMATE.

14 **Q.** AND WHILE YOU WERE IN THE DEPARTMENT, WAS THERE AN INCIDENT
15 AT THE CALIFORNIA REHABILITATION CENTER INVOLVING INMATE DEATH
16 IN A GYM THAT WAS NOTEWORTHY?

17 **A.** YES. WHILE I WAS -- I BELIEVE I WAS THE DIRECTOR. I MAY
18 HAVE BEEN THE UNDERSECRETARY. BUT I THINK I WAS THE DIRECTOR.
19 THERE WAS A DEATH IN A CROWDED GYM AT CRC THAT WENT ON. IT WAS
20 A HOMICIDE OF AN INMATE, AND IT WENT UNNOTICED BY STAFF FOR
21 SEVERAL HOURS.

22 AN INVESTIGATION WAS ACTUALLY OPENED UP OF THAT CASE,
23 AND I'M SORRY I DON'T KNOW THE OUTCOME OF THE INVESTIGATION.
24 BUT CLEARLY IT'S VERY DIFFICULT TO OBSERVE INMATES APPROPRIATELY
25 IN OVERCROWDED SITUATIONS LIKE THIS.

1 AND YOU CAN HAVE MEDICAL EMERGENCIES THAT GO
2 UNNOTICED BY STAFF AND CAN END UP IN DEATH, AS THE CASE WAS AT
3 CRC.

4 **Q.** SO DID THE TOURS -- WHAT EFFECT, IF ANY, DID THE TOURS HAVE
5 ON YOUR THOUGHTS ABOUT OVERCROWDING AFFECTING THE ABILITY OF THE
6 DEPARTMENT TO PROVIDE ADEQUATE HEALTHCARE?

7 **A.** I'M STILL CONVINCED THAT OVERCROWDING IS A PRIMARY ISSUE
8 THAT INHIBITS THE DEPARTMENT FROM BEING SUCCESSFUL AT PROVIDING
9 BOTH HEALTHCARE OR MENTAL HEALTHCARE FOR INMATES THAT ARE IN THE
10 DEPARTMENT OF CORRECTIONS AND REHABILITATION.

11 **Q.** IN HIS DEPOSITION, MATT CATE TESTIFIED THAT OVERCROWDING
12 MAKES ALL THE OPERATIONS OF A PRISON MORE DIFFICULT, HE SAID,
13 INCLUDING MEDICAL AND MENTAL HEALTHCARE.

14 DO YOU AGREE WITH THAT STATEMENT?

15 **A.** I ABSOLUTELY AGREE WITH SECRETARY CATE. RUNNING A PRISON IS
16 A COORDINATED EFFORT. IN ADDITION TO PROVIDING MENTAL HEALTHCARE
17 AND MEDICAL CARE INMATES HAVE TO BE TAKEN TO THE DINING HALL TO
18 BE FED. THEY NEED TO HAVE THE APPROPRIATE AMOUNT OF EXERCISE.

19 THEY NEED TO BE INVOLVED IN PROGRAMS. AND ALL OF
20 THAT HAS TO BE DONE WITHIN A SHORT AMOUNT OF TIME BECAUSE MOST
21 PRISONS RUN THEIR OPERATIONS DURING DAYLIGHT HOURS, ESPECIALLY
22 THE HIGHER SECURITY ONES.

23 THE MORE OVERCROWDED YOU ARE, THE MORE DIFFICULT IT
24 IS TO MEET THE BASIC, BASIC NEEDS OF INMATES.

25 AND IT EVEN GETS TO BE IMPOSSIBLE TO GET TO THEM

1 THEIR MENTAL HEALTH TREATMENT AND HEALTHCARE EXAMS WHEN YOU'RE
2 TRYING TO DO JUST BASIC OPERATIONS IN AN OVERCROWDED SETTING.

3 **Q.** IN TERMS OF INMATE WELL-BEING, PRISONER WELL-BEING AND THE
4 SAFETY OF PRISONERS, HOW SHOULD A PRISON SYSTEM REALLY BE
5 FUNCTIONING?

6 **A.** WELL, I THINK IT'S THE RESPONSIBILITY OF PRISON
7 ADMINISTRATORS TO DESIGN A SYSTEM THAT ALLOWS INMATES TO HAVE AN
8 APPROPRIATE LIVING ENVIRONMENT, A SYSTEM THAT PROVIDES
9 PREVENTION OF MEDICAL PROBLEMS, AND THAT DOESN'T HAVE A
10 SITUATION WHERE INMATES DECOMPENSATE MENTALLY.

11 WE NEED TO TREAT PEOPLE HUMANELY. YOU KNOW, I THINK
12 THE MOST GLARING EXAMPLE IS THE RECEPTION CENTERS WHERE SUCH A
13 LARGE PERCENT OF OUR POPULATION IS. ABOUT 25 PERCENT OF THE
14 INMATE POPULATION IS IN RECEPTION CENTERS, AND IN THOSE
15 RECEPTION CENTERS WHEN YOU HAVE PEOPLE HOUSED IN BUNKS LIKE THIS
16 (INDICATING).

17 WE ARE PAROLING A LARGE NUMBER OF INMATES EVERY WEEK.
18 SAN QUENTIN OVER 200 A WEEK ARE PAROLED OUT OF A SITUATION LIKE
19 THIS (INDICATING).

20 I THINK JUST ANY CORRECTIONAL ADMINISTRATOR WOULD SAY
21 THAT THIS IS ABSOLUTELY INAPPROPRIATE TO HOUSE HUMAN BEINGS IN
22 THIS KIND OF SITUATION AND RETURN THEM BACK TO OUR SOCIETY WHERE
23 MENTALLY THEY ARE NO BETTER OFF, AND PROBABLY IN WORSE SHAPE AND
24 IN SITUATIONS LIKE THIS WHERE WE HAVE DONE NOTHING TO ASSIST
25 WITH THEIR MEDICAL TREATMENT IN A WAY THAT WOULD BE CONSIDERED

1 APPROPRIATE.

2 **Q.** AND IS IT -- JUST TWO MORE QUESTIONS.

3 IS IT YOUR OPINION THAT WITHOUT A REDUCTION IN
4 OVERCROWDING THAT THE DEPARTMENT OF CORRECTIONS WILL BE UNABLE
5 TO PROVIDE ADEQUATE MEDICAL AND MENTAL HEALTHCARE?

6 **A.** IT'S ABSOLUTELY MY OPINION. AND WITHOUT ADDRESSING THE
7 ISSUE OF OVERCROWDING, THE DEPARTMENT OF CORRECTIONS WILL NEVER
8 BE ABLE TO PROVIDE APPROPRIATE MEDICAL OR MENTAL HEALTHCARE AND
9 SUSTAIN -- SUSTAIN ANY KIND OF QUALITY CONSTITUTIONALLY-ADEQUATE
10 MEDICAL OR MENTAL HEALTHCARE. MEDICAL OR MENTAL HEALTHCARE.

11 **Q.** AND TWO MORE QUESTIONS, MS. WOODFORD.

12 FIRST, HOW MUCH ARE YOU GETTING PAID TO BE HERE
13 TODAY?

14 **A.** I'M NOT BEING PAID TO BE HERE TODAY.

15 **Q.** SO YOU DID ALL THESE TOURS AND REVIEW OF THE DOCUMENTS FOR
16 FREE, BASICALLY? AND WHY DID YOU DO THAT?

17 **A.** I DID IT FOR FREE BECAUSE I TRULY BELIEVE THAT WE CAN DO
18 BETTER THAN WE ARE IN CALIFORNIA. I THINK IT'S UNBELIEVABLE THAT
19 IN THIS STATE THAT WE HAVE THE KIND OF OVERCROWDED CONDITIONS
20 THAT WE HAVE; THAT WE DO LITTLE OR NOTHING TO PREPARE PEOPLE FOR
21 THE RETURN TO SOCIETY IN SPITE OF THE FACT THAT WE PAROLE 10,000
22 PEOPLE A MONTH FROM OUR PRISON SYSTEM.

23 AND I ABSOLUTELY BELIEVE THAT WE MAKE PEOPLE WORSE,
24 AND THAT WE ARE NOT MEETING PUBLIC SAFETY BY THE WAY WE TREAT
25 PEOPLE.

1 AND THAT I BELIEVE OVERCROWDING IS PROHIBITING US
2 FROM PROVIDING QUALITY MEDICAL CARE AND MENTAL HEALTHCARE TO
3 INMATES IN OUR SYSTEM.

4 AND FOR CALIFORNIA TO BE IN THE SHAPE THAT IT'S IN IS
5 JUST UNBELIEVABLE. I MEAN, WE JUST RECENTLY PASSED AN INITIATIVE
6 THAT GIVES CHICKENS APPROPRIATE LIVING SPACE, AND YET WE HAVE
7 PRISONS THAT LOOK LIKE THIS (INDICATING).

8 **MR. SPECTER:** NO FURTHER QUESTIONS, YOUR HONOR.

9 **JUDGE HENDERSON:** DOES CCPOA HAVE ANY QUESTIONS?

10 **MS. LEONARD:** NO FURTHER QUESTIONS OF THIS WITNESS,
11 YOUR HONOR.

12 **THE COURT:** ALL RIGHT.

13 CROSS-EXAMINATION?

14 **MR. MELLO:** GOOD AFTERNOON. PAUL MELLO FOR
15 DEFENDANTS.

16 **CROSS-EXAMINATION**

17 **BY MR. MELLO:**

18 **Q.** GOOD AFTERNOON, MS. WOODFORD.

19 **A.** HI.

20 **Q.** WHEN WAS THE LAST TIME YOU WORKED IN SAN QUENTIN PRISON?

21 **A.** IT'S BEEN ABOUT THREE YEARS. WELL, I LEFT THERE IN FEBRUARY
22 OF 2004.

23 **Q.** OKAY.

24 **A.** SO IT'S BEEN FOUR YEARS.

25 **Q.** FOUR YEARS. ALMOST FIVE?

1 **A.** YES.

2 **Q.** OKAY. AND YOU'VE NEVER BEEN A CLINICIAN WHO PROVIDED MEDICAL
3 OR MENTAL HEALTHCARE, CORRECT?

4 **A.** THAT IS CORRECT.

5 **Q.** AND WHEN YOU WERE THE WARDEN AT SAN QUENTIN THERE WAS A
6 CHIEF MEDICAL OFFICER WHO WAS CHARGED WITH RUNNING MEDICAL
7 SERVICES AT THE PRISON, CORRECT?

8 **A.** YES, THAT IS CORRECT.

9 **Q.** AND WHEN YOU WERE THE WARDEN AT SAN QUENTIN THERE WAS A
10 CHIEF PSYCHIATRIST WHO WAS CHARGED WITH RUNNING THE MENTAL
11 HEALTH SERVICES AT THE INSTITUTION, CORRECT?

12 **A.** YES, THERE WERE. THERE WAS.

13 **Q.** AND WHEN YOU WERE THE DIRECTOR OF THE DEPARTMENT OF
14 CORRECTIONS THERE WAS A STATEWIDE CHIEF MEDICAL OFFICER,
15 CORRECT?

16 **A.** THAT IS CORRECT.

17 **Q.** WHEN YOU WERE THE UNDERSECRETARY OF CDCR A PHYSICIAN WAS THE
18 HEAD OF THE MEDICAL AND MENTAL HEALTHCARE SERVICES OF THE PRISON
19 SYSTEM, CORRECT?

20 **A.** YES, THERE WAS A PHYSICIAN THAT WAS RESPONSIBLE FOR MANAGING
21 THAT AREA, BUT IN ALL OF THE POSITIONS THAT YOU NAMED I STILL
22 HAD RESPONSIBILITY FOR ENSURING THAT PEOPLE RECEIVE MEDICAL AND
23 MENTAL HEALTH SERVICES.

24 **Q.** UNDERSTOOD.

25 YOU TESTIFIED ON DIRECT ABOUT AN EVENT AT CRC, A

1 DEATH AT CRC. WHAT YEAR WAS THAT?

2 **A.** IT WAS EITHER 2005 OR 2006. I'M NOT SURE ABOUT THE YEAR.

3 **Q.** AND I WANT TO NOW ASK YOU QUESTIONS ABOUT YOUR NOVEMBER,
4 2007 REPORT. NOW, I'M GOING TO ASK YOU TO GO TO PAGE TWO,
5 PARAGRAPH SIX OF THAT REPORT.

6 AND IN YOUR REPORT YOU OPINED THAT OVERCROWDING IS
7 THE PRIMARY CAUSE OF THE CONSTITUTIONAL VIOLATIONS IN THE PLATA
8 AND COLEMAN CASES, CORRECT?

9 AND I BELIEVE I'VE ALSO GOT IT ON THE SCREEN TO YOUR
10 RIGHT.

11 **A.** YES.

12 **Q.** OKAY. IN FORMING THE OPINIONS EXPRESSED IN YOUR NOVEMBER,
13 2007 REPORT YOU DID NOT READ ANY OF THE PLATA RECEIVER'S REPORTS
14 OR PLAN OF ACTION, CORRECT?

15 **A.** I'M SORRY. I DIDN'T HEAR THE FIRST PART OF YOUR QUESTION.

16 **Q.** SURE. IN FORMING YOUR OPINIONS EXPRESSED IN YOUR NOVEMBER,
17 2007 REPORT, YOU DID NOT READ ANY OF THE RECEIVER'S REPORTS OR
18 HIS PLAN OF ACTION, RIGHT?

19 **A.** THAT'S CORRECT.

20 **Q.** OKAY. IN FORMING YOUR OPINIONS IN YOUR NOVEMBER, 2007
21 REPORT, YOU HAD NOT VISITED ANY CDCR PRISONS SINCE THE MIDDLE OF
22 2006, CORRECT?

23 **A.** NO, BUT I DID READ THE SERVICE PLAN OF ACTION AND REPORTS
24 FOR MY SUPPLEMENTAL, AND I DID VISIT PRISONS FOR MY SUPPLEMENTAL
25 REPORT.

1 Q. AND I WAS ASKING YOU SPECIFICALLY ABOUT YOUR NOVEMBER, 2007
2 REPORT.

3 AND MY QUESTION IS: AT THE TIME THAT YOU WERE
4 FORMING THE OPINIONS EXPRESSED IN YOUR NOVEMBER, 2007 REPORT YOU
5 HAD NOT VISITED A SINGLE CDCR INSTITUTION SINCE AT LEAST THE
6 MIDDLE OF 2006. THAT'S TRUE, RIGHT?

7 A. THAT IS TRUE.

8 Q. IN FORMING THE OPINIONS EXPRESSED IN YOUR NUMBER OF 2007
9 REPORT, YOU DID NOT KNOW WHETHER THERE HAD BEEN ANY IMPROVEMENTS
10 IN THE DELIVERY OF MEDICAL CARE OR MENTAL HEALTHCARE SINCE YOU
11 LEFT CDCR, RIGHT?

12 A. THAT'S CORRECT.

13 Q. IN FORMING THE OPINIONS EXPRESSED IN YOUR NOVEMBER, 2007
14 REPORT, YOU DID NOT KNOW IF THERE WERE MORE OR FEWER
15 CORRECTIONAL OFFICERS SINCE YOU LEFT THE DEPARTMENT IN 2006,
16 CORRECT?

17 A. NO, I THINK I HAD -- AS I RECALL, I DID KNOW THAT THE
18 DEPARTMENT WAS STILL DOWN MANY CORRECTIONAL OFFICERS AT THAT
19 TIME.

20 Q. I'M SORRY?

21 A. I BELIEVE THAT I KNEW THE DEPARTMENT WAS STILL DOWN MANY
22 CORRECTIONAL OFFICERS AT THAT TIME.

23 Q. BUT DID YOU KNOW WHETHER OR NOT THERE WERE MORE OFFICERS OR
24 LESS OFFICERS THAN WHEN YOU LEFT THE DEPARTMENT?

25 A. NO, I DID NOT KNOW THAT.

1 Q. AND IN FORMING THE OPINIONS EXPRESSED IN YOUR NOVEMBER, 2007
2 REPORT, YOU DID NOT KNOW WHETHER THERE WERE MORE CLINICIANS
3 PROVIDING MEDICAL OR MENTAL HEALTHCARE SINCE YOU LEFT THE
4 DEPARTMENT IN 2006, CORRECT?

5 A. I BELIEVE THAT'S CORRECT.

6 Q. BEFORE SIGNING YOUR NOVEMBER 7, 2000 -- 2000 --

7 MR. MELLO: STRIKE THAT.

8 BY MR. MELLO:

9 Q. BEFORE SIGNING YOUR NOVEMBER, 2007 REPORT, YOU DID NOT
10 REVIEW ANY DOCUMENTS THAT LISTED THE AMOUNT OF CLINICAL SPACE IN
11 CALIFORNIA'S PRISONS, DID YOU?

12 A. NOT THAT I RECALL.

13 Q. OKAY. IN FORMING THE OPINIONS EXPRESSED IN YOUR NOVEMBER,
14 2007 REPORT, YOU DID NOT KNOW THE STATUS OF THE DELIVERY OF
15 MEDICAL AND MENTAL HEALTHCARE AT EACH OF THE 33 PRISONS,
16 CORRECT?

17 A. I DID NOT KNOW THE CURRENT STATUS AT THE TIME THAT I SIGNED
18 IT, BUT I WILL SAY THAT I HAD NOT BEEN GONE FROM THE DEPARTMENT
19 VERY LONG AT THAT POINT, EITHER.

20 Q. RIGHT. I MEAN, THE EVIDENCE WILL SHOW THAT YOU WERE GONE
21 BETWEEN SOMETIME IN 2006 AND SOMETIME IN 2007. THAT'S
22 UNDISPUTED, RIGHT?

23 A. YES, THAT'S CORRECT.

24 Q. THE FIRST DRAFT OF YOUR NOVEMBER, 2007 REPORT WAS PREPARED
25 AND MADE AVAILABLE TO YOU ON AN INTERNET SITE BY PLAINTIFFS'

1 COUNSEL, CORRECT?

2 **A.** THAT'S CORRECT.

3 **Q.** YOU DID NOT HANDWRITE YOUR REPORT, CORRECT?

4 **A.** NO, I ASSISTED IN PREPARING THE REPORT, BUT I DID NOT
5 HANDWRITE IT, THAT'S CORRECT.

6 **Q.** THE FIRST TIME YOU SAW YOUR REPORT WAS WHEN YOU VIEWED IT ON
7 AN INTERNET SITE, CORRECT?

8 **A.** THE FIRST TIME I SAW IT TYPED IS WHEN I REVIEWED IT ON THE
9 INTERNET SITE, THAT'S CORRECT.

10 **Q.** DID YOU EVER SEE IT IN SOME OTHER FORM THAN TYPED PRIOR TO
11 LOOKING AT IT ON THE INTERNET SITE PROVIDED YOU TO BY
12 PLAINTIFFS' COUNSEL?

13 **A.** NO, I DID NOT SEE IT IN WRITTEN FORM. I HAD DISCUSSIONS,
14 OBVIOUSLY, WITH THE PRISON LAW OFFICE IN PREPARING THE REPORT.

15 **Q.** ON PAGE FOUR OF YOUR NOVEMBER, 2007 REPORT AT PARAGRAPH 11,
16 YOU WROTE THAT:

17 "CDCR LACKS A SUFFICIENT NUMBER OF PERSONNEL WHO
18 HAVE THE NECESSARY SKILL AND TRAINING TO MANAGE SUCH
19 A LARGE COMPLEX ORGANIZATION," END QUOTE.

20 **A.** YES.

21 **Q.** WHEN PREPARING YOUR REPORT, THE NOVEMBER, 2007 REPORT, YOU
22 DID NOT KNOW THE EXISTING PHYSICIAN-TO-INMATE RATIO AT CDCR, DID
23 YOU?

24 **A.** DID YOU SAY "PHYSICIAN-TO-INMATE RATIO"?

25 **Q.** YES, I DID.

1 **A.** NO, I DID NOT.

2 **Q.** DID YOU KNOW THE CLINICIAN-TO-INMATE RATIO WITH RESPECT TO
3 MENTAL HEALTHCARE AT THAT TIME?

4 **A.** NO, I DID NOT.

5 **Q.** WHEN PREPARING YOUR NOVEMBER, 2007 REPORT YOU DID NOT KNOW
6 THE EXISTING VACANCY RATE AT ANY OF THE INSTITUTIONS, ALL 33 OF
7 THEM, WITH RESPECT TO PHYSICIANS, NURSE PRACTITIONERS,
8 PHYSICIANS' ASSISTANTS, RN'S, LVN'S PSYCHIATRISTS OR
9 PSYCHOLOGISTS, DID YOU?

10 **A.** I DID NOT KNOW SPECIFIC NUMBERS, BUT I DID KNOW THAT THERE
11 WAS STILL A PROBLEM IN FILLING POSITIONS.

12 **Q.** DID YOU NOTE THAT PROBLEM, EVEN A RANGE, ANYWHERE IN YOUR
13 NOVEMBER, 2007 REPORT?

14 **A.** NOT THAT I RECALL.

15 **Q.** ON PAGE FIVE OF YOUR REPORT AT PARAGRAPH 13, YOU WROTE THAT:

16 "CROWDING CAUSES DELAYS IN MOVING RECEPTION
17 CENTER PRISONERS TO OTHER PRISONS FOR TREATMENT."

18 WHEN YOU PREPARED YOUR REPORT YOU DID NOT KNOW
19 WHETHER CROWDING HAD CAUSED DELAYS IN MOVING OF RECEPTION CENTER
20 PRISONERS TO OTHER PRISONS FOR TREATMENT SINCE YOU LEFT THE
21 DEPARTMENT, CORRECT?

22 **A.** I DID NOT KNOW SPECIFIC EXAMPLES, BUT I BELIEVE I KNEW THAT
23 IT WAS STILL A PROBLEM MOVING INMATES OUT OF RECEPTION CENTERS
24 JUST BECAUSE I KEEP IN CONTACT WITH PEOPLE WHO WORK IN THE
25 DEPARTMENT.

1 Q. BUT YOU CAN'T GIVE US --

2 JUDGE KARLTON: SIR, THERE'S NO QUESTION -- ARE YOU
3 GOING TO PUT ON EVIDENCE THAT, IN FACT, WE'VE BEEN ABLE TO MOVE
4 PEOPLE OUT OF THE RECEPTION CENTERS EFFICIENTLY?

5 THE ANSWER'S "NO," CORRECT?

6 MR. MELLO: YOUR HONOR, I BELIEVE THAT PLAINTIFFS
7 HAVE THE BURDEN IN THIS CASE.

8 JUDGE KARLTON: I UNDERSTAND.

9 MR. MELLO: AND THEY HAVE PROFFERED VARIOUS
10 EXPERTS --

11 JUDGE HENDERSON: DON'T RAISE YOUR VOICE.

12 MR. MELLO: I DIDN'T MEAN TO.

13 JUDGE KARLTON: I'M GOING TO ASK YOU AGAIN: IS THERE
14 GOING TO BE ANY EVIDENCE TENDERED BY THE DEFENDANTS THAT THE
15 BELIEFS OF THIS WITNESS, AND OTHERS LIKE HER, IS INACCURATE?

16 MR. MELLO: WHETHER WE'RE GOING TO PUT ON EVIDENCE?

17 JUDGE KARLTON: THAT THE BELIEFS OF THE WITNESS, AS
18 AN EXAMPLE, ABOUT THE MOVEMENT OF PEOPLE OUT OF THE RECEPTION
19 CENTERS IS INACCURATE?

20 MR. MELLO: I DON'T KNOW, YOUR HONOR. I DON'T BELIEVE
21 THAT THAT'S MY BURDEN IN THIS CASE. I BELIEVE IT'S PLAINTIFFS'
22 BURDEN IN THIS CASE.

23 JUDGE KARLTON: OKAY. ALL RIGHT. YOU'VE ANSWERED THE
24 QUESTION.

25 WE WILL CONTINUE TO SPEND TIME DOING THIS.

1 **BY MR. MELLO:**

2 **Q.** ON PAGE SEVEN, PARAGRAPH 19 OF YOUR NOVEMBER, 2007 REPORT,
3 YOU WROTE THAT OFFICERS WHO ARE -- PARDON?

4 **JUDGE REINHARDT:** MAY I ASK YOU ONE QUESTION?

5 **MR. MELLO:** SURE.

6 **JUDGE REINHARDT:** ABOUT THE PROBLEM WITH THE DATES,
7 YOU'RE NOT QUESTIONING THE ACCURACY OF THE WITNESS'S STATEMENTS
8 AS OF THE YEAR EARLIER. YOU'RE ASKING WHETHER SHE KNEW OF ANY
9 CHANGES BETWEEN THE TIME SHE LEFT WHEN SHE KNEW ALL THESE
10 THINGS, AND ONE YEAR LATER.

11 **MR. MELLO:** WELL, I DON'T BELIEVE THAT PLAINTIFFS
12 HAVE ESTABLISHED THAT SHE KNEW ALL THOSE THINGS WITH ANY
13 SPECIFICITY IN 2006 WHEN SHE LEFT THE DEPARTMENT.

14 **JUDGE REINHARDT:** WELL, YOUR ONLY QUESTION HERE ABOUT
15 WHETHER SHE KNEW ANYTHING A YEAR LATER --

16 **MR. MELLO:** CORRECT. I AM QUESTIONING WHEN SHE --

17 **JUDGE REINHARDT:** CAN I ASK YOU A QUESTION?

18 **MR. MELLO:** I'M SORRY. YES.

19 **JUDGE REINHARDT:** WHAT DATE DO YOU THINK IS RELEVANT
20 FOR OUR JOB IN PHASE I TO DETERMINE WHAT THE PRIMARY CAUSE OF
21 THE HEALTH AND MENTAL HEALTH VIOLATIONS WAS WHEN THE TWO
22 FINDINGS WERE MADE?

23 **MR. MELLO:** I BELIEVE THIS COURT -- AND I HAVEN'T
24 SPOKEN WITH MY CO-COUNSEL. BUT I BELIEVE THIS COURT ESTABLISHED
25 A CUTOFF THAT THE RELEVANT DATE WAS THE END OF AUGUST, 2008.

1 **JUDGE REINHARDT:** NO. NO, FOR EVIDENCE. BUT AS TO
2 THE PHASE I ISSUE, WHAT WAS THE PRIMARY CAUSE OR IS THE PRIMARY
3 CAUSE OF THE VIOLATIONS THAT WERE FOUND IN PLATA AND COLEMAN?

4 WHAT DO YOU THINK THE COURT NEEDS TO ESTABLISH WHAT
5 THE PRIMARY CAUSE IS AS OF 2008 AS OF DATE THE FINDINGS WERE
6 MADE? WHAT IS YOUR POSITION WITH RESPECT --

7 **MR. MELLO:** I BELIEVE THAT THE PLRA IS WRITTEN IN THE
8 PRESENT TENSE WITH RESPECT TO THIS ISSUE. AND I BELIEVE THAT
9 CURRENT CONDITIONS ARE WHAT ARE RELEVANT.

10 I BELIEVE THIS COURT HAS TOLD US THAT WE CANNOT ARGUE
11 ABOUT WHETHER WE ARE CURRENTLY IN CONSTITUTIONAL COMPLIANCE. BUT
12 I BELIEVE THAT THE CURRENT CONDITIONS, THE STATUTE IS WRITTEN IN
13 THE PRESENT TENSE, I BELIEVE. AND I BELIEVE THAT CURRENT
14 CONDITIONS ARE THOSE ITEMS THAT ARE RELEVANT TO THIS JUDGES'
15 DETERMINATION OF WHETHER OR NOT PLAINTIFFS CAN SHOW BY CLEAR AND
16 CONVINCING EVIDENCE THAT OVERCROWDING IS THE PRIMARY CAUSE OF
17 THE ALLEGED DEFICIENCIES RIGHT NOW IN CDCR'S MEDICAL AND MENTAL
18 HEALTHCARE SYSTEMS.

19 AND I BELIEVE THAT THE CURRENT STATUS IS PROBABLY THE
20 MOST IMPORTANT THING, AS OPPOSED TO SOMETHING THAT SHE RECALLS
21 WHEN SHE WAS A WARDEN BACK AT SAN QUENTIN YEARS AGO.

22 I BELIEVE THAT'S IMPORTANT. I BELIEVE THAT THE
23 EVIDENCE ALREADY TO DATE HAS SHOWN THAT THERE HAVE BEEN
24 INCREASES IN MANY, MANY THINGS, BOTH IN MENTAL HEALTH AND IN
25 MEDICAL CARE.

1 AND I BELIEVE THOSE GO TO THE FACT THAT WHILE WE
2 CAN'T PUT ON EVIDENCE THAT CURRENT CONSTITUTIONAL COMPLIANCE IS
3 MET, THAT THAT OVERCROWDING IS NOT THE PRIMARY BARRIER.

4 **JUDGE REINHARDT:** WELL, SHE'S SAYING, I GATHER, THAT
5 THE CONSTITUTIONAL VIOLATION HAD TO EXIST FOR PHASE I PURPOSES;
6 THAT WHAT IS RELEVANT IS WHETHER THERE'S A CONSTITUTIONAL
7 VIOLATION TODAY, NOT WHETHER THERE WAS WHEN THE FINDINGS WERE
8 MADE BY THE COURT. THAT'S REALLY IRRELEVANT. IT'S ONLY WHETHER
9 THERE'S A CONSTITUTIONAL VIOLATION TODAY.

10 **MR. MELLO:** I DON'T BELIEVE IT'S IRRELEVANT, BUT I DO
11 BELIEVE WHAT IS RELEVANT IS THE CURRENT CONDITIONS IN THE
12 SYSTEM.

13 AND I BELIEVE THE EVIDENCE HAS SHOWN AND WILL
14 CONTINUE TO SHOW THAT THAT CURRENT EVIDENCE DOESN'T SHOW THAT
15 OVERCROWDING IS THE PRIMARY BARRIER TO THE UNCONSTITUTIONAL
16 DELIVERY OF MEDICAL AND MENTAL HEALTHCARE.

17 **JUDGE REINHARDT:** OKAY. THANK YOU.

18 **MR. MELLO:** I'VE COMPLETELY FORGOTTEN WHERE I AM. I
19 USUALLY --

20 **JUDGE REINHARDT:** YOU WERE IN ABOUT 2006 OR --

21 **MR. MELLO:** I'M PRETTY SURE I WAS IN 2008.

22 **JUDGE REINHARDT:** THAT'S THE SUPPLEMENTAL REPORT.

23 **MR. MELLO:** OH, YOU ARE RIGHT. I WAS IN 2007. THANK
24 YOU, YOUR HONOR.

25

1 **BY MR. MELLO:**

2 **Q.** THANKS FOR THE CUE.

3 ON PAGE SEVEN, PARAGRAPH 19 OF YOUR NOVEMBER, 2007
4 REPORT YOU WROTE THAT SOME STAFF WORKED BACK-TO-BACK DOUBLE
5 SHIFTS AND WOULD SLEEP IN THEIR CARS IN THE PRISON PARKING LOT
6 INSTEAD OF MAKING A LONG COMMUTE HOME.

7 DO YOU SEE THAT?

8 **A.** YES.

9 **Q.** AND MUCH TO -- I'LL JUST ASK THE QUESTION.

10 IN FORMING THE OPINIONS EXPRESSED IN YOUR NOVEMBER,
11 2007 REPORT, YOU DID NOT KNOW HOW MANY OCCASIONS CORRECTIONAL
12 OFFICERS, IF ANY, HAD ACTUALLY SLEPT IN THEIR CARS TO WORK
13 BACK-TO-BACK SHIFTS IN THE PRECEDING YEAR, DID YOU?

14 **A.** NO, I DID NOT.

15 **Q.** ON PAGE SEVEN, ALSO PARAGRAPH 19 OF YOUR REPORT, YOU WROTE
16 THAT OFFICERS WHO ARE TIRED AND SUFFER FROM LOW MORALE ARE LESS
17 THAN PRODUCTIVE AND DO NOT FULFILL ALL THEIR RESPONSIBILITIES TO
18 PROVIDE FOR THE BASIC NEEDS OF THEIR PRISONERS.

19 DO YOU SEE THAT?

20 **A.** YES.

21 **Q.** IN FORMING THOSE OPINIONS EXPRESSED IN YOUR NOVEMBER, 2007
22 REPORT YOU DID NOT KNOW WHETHER, SINCE YOU HAD LEFT CDCR, THERE
23 HAD BEEN ANY CORRECTIONAL OFFICERS WHO WERE SO TIRED OR WHO
24 SUFFERED SUCH LOW MORALE THAT THEY DID NOT FULFILL THEIR
25 RESPONSIBILITIES TO PROVIDE HEALTHCARE TO INMATES, CORRECT?

1 **A.** I HAD NO SPECIFIC KNOWLEDGE OF THAT AT THAT TIME, YES.

2 **Q.** IN FORMING YOUR OPINIONS EXPRESSED IN THE NOVEMBER, 2007
3 REPORT, YOU DID NOT KNOW WHETHER CORRECTIONAL OFFICERS BEING
4 TIRED AND SUFFERING LOW MORALE LED TO THE DEATHS OR ANY OTHER
5 ADVERSE MEDICAL OR MENTAL HEALTH CONSEQUENCES AS A RESULT OF
6 BEING TIRED, CORRECT?

7 **A.** CORRECT.

8 **Q.** IN FACT, YOU DO NOT KNOW WHETHER THOSE CIRCUMSTANCES THAT
9 YOU DESCRIBE IN YOUR REPORT LED TO THE UNCONSTITUTIONAL DELIVERY
10 OF MEDICAL CARE OR MENTAL HEALTHCARE IN 2006, 2007 OR 2008.

11 **A.** WELL, YOU KNOW, I DISAGREE WITH THAT STATEMENT. I THINK THE
12 GOVERNOR'S OVERCROWDING STATE OF EMERGENCY PROCLAMATION, WOULD
13 LET YOU KNOW THAT OVERCROWDING WAS STILL A SEVERE PROBLEM, AND
14 THAT IT WAS LEADING TO VIOLENCE IN MANY OF THE PRISONS IN THE
15 STATE OF CALIFORNIA.

16 AND SO I THINK I HAD GOOD REASON TO BELIEVE THAT
17 LITTLE HAD CHANGED WHEN I SUBMITTED MY REPORT IN 2007. IT WAS
18 SUCH A SHORT AMOUNT OF TIME FROM THE TIME I LEFT THE PRISON
19 SYSTEM UNTIL THAT DATE. AND GOING THROUGH THE PRISON SYSTEM FOR
20 THE 27 YEARS I WAS THERE AND KNOWING HOW SLOWLY IT TAKES TO FIX
21 ANYTHING AND HOW YOU CAN TAKE ONE STEP FORWARD AND TWO STEPS
22 BACK JUST BECAUSE OF THE OVERCROWDING AND THE NUMBER OF INMATES
23 COMING INTO THE SYSTEM THAT I FELT VERY CONFIDENT THAT WHAT I
24 STATED IN THIS REPORT WAS ACCURATE.

25 **Q.** I'M GOING TO ASK YOU -- I'M GOING TO PULL UP A COUPLE OF

1 PORTIONS OF YOUR TRANSCRIPT.

2 I'D LIKE -- FROM YOUR DEPOSITION LAST DECEMBER, I
3 BELIEVE. PAGE 79, 21 THROUGH 25. 21 THROUGH 25.

4 AND I ASKED YOU:

5 "DO YOU KNOW WHETHER -- WHETHER THAT
6 CIRCUMSTANCES" -- THAT'S A GREAT QUESTION -- "WHETHER
7 THAT CIRCUMSTANCES, OFFICERS BEING TIRED AND
8 SUFFERING FROM LOW MORALE AND BEING LESS PRODUCTIVE,
9 WHETHER THAT LED TO ANY DEATHS IN 2006?"
10 DO YOU SEE THAT?

11 **A.** YES, I DO.

12 **Q.** AND YOU SAID:

13 "I DO NOT KNOW," CORRECT?

14 **A.** THAT IS CORRECT.

15 **Q.** OKAY. AND NOW ON THE NEXT PAGE, PAGE 80, LINES ONE THROUGH
16 FOUR, YOU TESTIFIED WHEN QUESTIONED BY ME THAT:

17 "YOU DO NOT KNOW WHETHER THESE CIRCUMSTANCES LED
18 TO THE UNCONSTITUTIONAL DELIVERY OF MEDICAL CARE OR
19 MENTAL HEALTHCARE IN 2006, 2007."

20 AND YOU SAID:

21 "I DO NOT."

22 **A.** YOU KNOW, I MAYBE MISINTERPRETED YOUR QUESTION. I THOUGHT
23 YOU WERE ASKING ME ABOUT SPECIFIC EVENTS. I DID NOT HAVE ANY
24 DETAILS ABOUT ANY SPECIFIC CASE.

25 **Q.** AND SO YOUR TESTIMONY IS DIFFERENT. YOU BELIEVE THAT THOSE

1 CIRCUMSTANCES LED TO UNCONSTITUTIONAL DELIVERY OF MEDICAL CARE
2 AND MENTAL HEALTHCARE IN 2006, 2007 DESPITE WHAT YOU SAID IN
3 YOUR DEPOSITION?

4 **A.** I DON'T THINK IT'S DIFFERENT THAN WHAT I SAID IN MY
5 DEPOSITION. AGAIN, I THINK THAT IN MY DEPOSITION I THOUGHT YOU
6 WERE ASKING ME ABOUT SPECIFIC CASES. IN THE REPORT THAT I SIGNED
7 I WAS TALKING ABOUT OVERCROWDING AS FROM A MORE GLOBAL
8 PERSPECTIVE.

9 **Q.** WHEN YOU SIGNED YOUR NOVEMBER, 2007 REPORT, YOU HADN'T SEEN
10 THE RECEIVER'S ANALYSIS OF 2006 DEATHS, WHICH IS DEFENDANTS'
11 EXHIBIT 1107, CORRECT?

12 **A.** I DON'T BELIEVE I DID.

13 **Q.** AND THAT'S JUST THE FRONT PAGE. DOES THAT REFRESH YOUR
14 RECOLLECTION?

15 **MR. SPECTER:** OF SOMETHING SHE HASN'T SEEN?

16 **MR. MELLO:** WELL --

17 **THE WITNESS:** I HAVE SEEN THIS. I HAVE REVIEWED THIS,
18 BUT I DON'T KNOW THAT I HAD REVIEWED IT AT THE TIME OF THE
19 DEPOSITION.

20 **BY MR. MELLO:**

21 **Q.** ON PAGE THREE, PARAGRAPH FOUR, OF YOUR AUGUST -- PARDON ME.

22 ON PAGES THREE AND FOUR, PARAGRAPH 8 OF YOUR
23 AUGUST 8, 2000 REPORT --

24 **JUDGE KARLTON:** THERE WASN'T A 2000 REPORT.

25 **MR. MELLO:** DID I MISSPEAK?

1 **JUDGE KARLTON:** YES.

2 **MR. MELLO:** I'M SORRY. LET ME START OVER.

3 THANK YOU.

4 **BY MR. MELLO:**

5 **Q.** ON PAGES THREE AND FOUR, PARAGRAPH 8 OF YOUR AUGUST, 2008
6 REPORT, IT READS:

7 "THIS ALLOWED PRISONERS WITH DIFFERENT POTENTIAL
8 FOR VIOLENCE TO BE MIXED IN HOUSING UNIT -- IN A
9 HOUSING UNIT WHERE THERE WAS SCANT ABILITY TO PROVIDE
10 SUPERVISION."

11 DO YOU SEE THAT?

12 **A.** MY SCREEN JUST WENT BLANK.

13 **Q.** SO THE ANSWER IS "NO"?

14 **A.** OKAY. I'M SORRY. WHICH LINE AGAIN?

15 **Q.** YEAH. I BELIEVE WE'RE IN THE WRONG PLACE.

16 IT'S PARAGRAPH EIGHT.

17 **A.** PARAGRAPH EIGHT?

18 **Q.** YEAH.

19 **A.** YES.

20 **Q.** I'M TALKING ABOUT -- PARDON ME. I'M TALKING ABOUT THE
21 AUGUST, 2008 REPORT. PAGE THREE AND FOUR, PARAGRAPH 8.

22 OKAY. IN THAT REPORT, IT READS THAT:

23 "THIS ALLOWED PRISONERS WITH DIFFERENT POTENTIAL
24 FOR VIOLENCE TO BE MIXED IN A HOUSING UNIT WHERE
25 THERE WAS SCANT ABILITY TO PROVIDE SUPERVISION."

1 DO YOU SEE THAT?

2 **A.** YES.

3 **Q.** WHEN THIS WAS WRITTEN, YOU WERE NOT AWARE OF EVEN A SINGLE
4 SPECIFIC EXAMPLE AT LANCASTER WHERE A CORRECTIONAL OFFICER HAD
5 FAILED TO PROVIDE ASSISTANCE TO A PRISONER WITH A HEALTH ISSUE
6 DUE TO THE MIXING OF POTENTIALLY VIOLENT PRISONERS, WERE YOU?

7 **A.** NOT DUE TO THE MIXING OF POTENTIALLY VIOLENT PRISONERS, NO.

8 **Q.** ON PAGE FOUR, PARAGRAPH NINE OF YOUR REPORT, YOUR AUGUST,
9 2008 REPORT, IT READS:

10 "ADDING TO THE RISK OF HARM IS THE FACT THAT
11 THESE UNITS ARE VERY HOT WITH THE OUTSIDE TEMPERATURE
12 BETWEEN 95 AND 102 DEGREES."

13 DO YOU SEE THAT?

14 **A.** YES.

15 **Q.** YOU WERE NOT AWARE OF ANY SPECIFIC EXAMPLES OF MEDICAL OR
16 MENTAL HEALTH ISSUES ARISING AT CTF CORCORAN OR LANCASTER DUE TO
17 THE INTERIOR TEMPERATURE OF THE HOUSING UNITS, ARE YOU?

18 **A.** I'M NOT AWARE OF SPECIFIC CASES, NO.

19 I NEED TO SAY, THOUGH, THAT WE DID RECEIVE COMPLAINTS
20 FROM INMATES ABOUT HOW HOT IT WAS IN THEIR CELLS.

21 **JUDGE KARLTON:** BUT THAT WAS IN 2006. THERE'S NO
22 REASON TO THINK THAT THAT WAS THE CONDITION IN --

23 **BY MR. MELLO:**

24 **Q.** I'M SORRY. WHEN WAS THAT THAT YOU RECEIVED THOSE COMPLAINTS
25 THAT YOU JUST TESTIFIED ABOUT?

1 **A.** WHEN I TOURED LANCASTER AND CORCORAN.

2 **Q.** IN 2008?

3 **A.** IN 2008.

4 **Q.** AND DESPITE THEM EXPLAINING TO YOU THAT IT WAS HOT AND THAT
5 THEY -- THAT IT WAS HOT, NONE OF THEM TOLD YOU AND YOU DID NOT
6 LEARN OF ANY OF THEM HAVING ADVERSE MEDICAL OR MENTAL HEALTH
7 CONSEQUENCES AS A RESULT OF THOSE TEMPERATURES, CORRECT?

8 **A.** THEY COMPLAINED ABOUT THE DISCOMFORT, BUT I DIDN'T KNOW THE
9 SPECIFIC MEDICAL CASES, NO.

10 **Q.** AND NONE OF THEM WROTE -- IDENTIFIED FOR YOU ANY SPECIFIC
11 MEDICAL CASES, CORRECT?

12 **A.** I DON'T KNOW THAT THAT ACCURATELY DESCRIBES WHAT THEY TALKED
13 ABOUT. WHILE I CAN'T -- YOU KNOW, I CAN'T GIVE YOU SPECIFICS OF
14 A CONVERSATION, I DO THINK THAT THERE WERE COMPLAINTS ABOUT IT
15 AGGRAVATING THEIR MEDICAL CONDITIONS AND THINGS.

16 THERE WERE THOSE KINDS OF GENERAL COMPLAINTS.

17 **Q.** GENERAL COMPLAINTS?

18 **A.** UM-HUM.

19 **Q.** THAT YOU CAN'T REMEMBER AS YOU SIT HERE TODAY, CORRECT?

20 **A.** THAT'S CORRECT.

21 **Q.** ON PAGE 11 OF YOUR AUGUST, 2008 REPORT AT PARAGRAPH 22, IT
22 READS:

23 "AT CTF THE NORTH FACILITY HAD BEEN ON LOCKDOWN
24 FOR ABOUT A MONTH PRIOR TO THE VISIT."

25 DO YOU SEE THAT?

1 **A.** YES.

2 **Q.** YOU'RE NOT AWARE OF ANY SPECIFIC INCIDENTS WHERE A PRISONER
3 BECAME SICK OR WAS DENIED NEEDED MEDICAL OR MENTAL HEALTHCARE
4 DUE TO THIS LOCKDOWN, ARE YOU?

5 **A.** NO, I DON'T KNOW THE SPECIFIC INCIDENT.

6 **Q.** ISN'T IT TRUE THAT INMATES CAN STILL BE ESCORTED TO MEDICAL
7 AND MENTAL HEALTH APPOINTMENTS DURING LOCKDOWNS?

8 **A.** IT IS TRUE THAT THAT CAN HAPPEN, BUT THE STAFF THEMSELVES
9 TOLD US THAT THEY WERE HAVING DIFFICULTY MEETING ALL THE MEDICAL
10 AND MENTAL HEALTH NEEDS OF THE INMATE POPULATION AT SOLEDAD.

11 **Q.** DESPITE BEING TOLD THAT, YOU WERE NOT TOLD OF ANY INMATE
12 SUFFERING ADVERSE MEDICAL OR MENTAL HEALTH CONSEQUENCE AS A
13 RESULT OF THOSE LOCKDOWNS, CORRECT?

14 **A.** WE DID NOT HAVE A DISCUSSION ABOUT ANY PARTICULAR CASES AT
15 SOLEDAD, NO.

16 **Q.** YOU AGREE THAT THE PROVISION OF HOUSING TO INMATES IS
17 DIFFERENT THAN THE PROVISION OF MEDICAL AND MENTAL HEALTHCARE,
18 CORRECT?

19 **A.** I'M SORRY. I DIDN'T HEAR THE FIRST PART OF THAT.

20 **Q.** YOU AGREE THAT THE PROVISION OF HOUSING TO INMATES IS
21 DIFFERENT THAN FROM THE PROVISION OF MEDICAL AND MENTAL
22 HEALTHCARE TO INMATES, CORRECT?

23 **A.** I'M NOT SURE THAT I UNDERSTAND THE QUESTION.

24 **Q.** PULL UP PAGE 90, LINES 17 THROUGH 20 OF YOUR FIRST
25 DEPOSITION.

1 **A.** OKAY. I SEE THAT.

2 **Q.** OKAY. AND I ASKED YOU:

3 "WOULD YOU AGREE THAT THE PROVISION OF HOUSING
4 IS DIFFERENT FROM THE PROVISION OF MEDICAL AND MENTAL
5 HEALTHCARE?"

6 **A.** AGAIN, I WANT TO BE SURE THAT WE'RE TALKING ABOUT THE SAME
7 THING. SO COULD YOU EXPLAIN WHAT YOU MEAN BY THAT?

8 **JUDGE REINHARDT:** I DON'T UNDERSTAND THE QUESTION
9 MYSELF.

10 **MR. MELLO:** OKAY.

11 **JUDGE REINHARDT:** OBVIOUSLY, PROVIDING HOUSING IS
12 DIFFERENT FROM PROVIDING MEDICAL CARE.

13 **MR. MELLO:** OKAY.

14 **JUDGE REINHARDT:** BUT WHERE DOES THAT LEAD US?

15 **MR. MELLO:** UNDERSTOOD. AND I'LL WITHDRAW THE
16 QUESTION. HOW'S THAT?

17 **JUDGE REINHARDT:** OKAY.

18 **BY MR. MELLO:**

19 **Q.** IN YOUR OPINION, IF THE ADULT POPULATION IN CALIFORNIA'S
20 INSTITUTIONS WAS DECREASED BY 40,000 INMATES TOMORROW AND
21 NOTHING ELSE WAS DONE, THE CDCR WOULD NOT BE ABLE TO PROVIDE
22 CONSTITUTIONALLY-ADEQUATE MEDICAL OR MENTAL HEALTHCARE TO ITS
23 INMATES, WOULD IT?

24 **A.** IF THE POPULATION WERE REDUCED AND NOTHING ELSE WAS DONE,
25 MEANING THAT WE DIDN'T HIRE THE APPROPRIATE MEDICAL STAFF AND

1 PROVIDE APPROPRIATE MEDICAL FACILITIES AND ALL THAT, THEN I
2 WOULD AGREE YOU STILL WOULD NOT MEET A CONSTITUTIONAL LEVEL OF
3 CARE.

4 **Q.** AND IN YOUR OPINION, EVEN IF CDCR RELEASED UP TO 40,000 OF
5 THE MOST PHYSICALLY SICK AND MOST ACUTELY MENTALLY ILL INMATES
6 OVER A PERIOD OF TIME AT THE END OF THAT PERIOD CDCR WOULD NOT
7 HAVE A CONSTITUTIONALLY-ADEQUATE MEDICAL AND MENTAL HEALTHCARE
8 SYSTEM UNLESS IT ALSO ADDRESSED OTHER PROBLEMS, SUCH AS ACCESS
9 TO CARE -- HEALTHCARE RECORDS, INFORMATION TECHNOLOGY,
10 CONTINUITY OF CARE, JUST TO NAME A FEW, CORRECT?

11 **A.** MEDICATION MANAGEMENT AND MANY OTHER PROVISIONS OF
12 HEALTHCARE, YES.

13 **Q.** CORRECT?

14 **A.** CORRECT.

15 **MR. MELLO:** NOTHING FURTHER.

16 THANK YOU.

17 **THE WITNESS:** THANK YOU.

18 **JUDGE HENDERSON:** ANY OTHER DEFENDANTS OR
19 INTERVENORS?

20 **MS. WANG:** THE DEFENDANT INTERVENORS HAVE NO FURTHER
21 QUESTIONS, YOUR HONOR.

22 **JUDGE HENDERSON:** THANK YOU, COUNSEL.
23 REDIRECT?

24 **REDIRECT EXAMINATION**

25

1 **BY MR. SPECTER:**

2 **Q.** MR. MELLO ASKED YOU WHETHER BEFORE YOU WROTE YOUR NOVEMBER,
3 2007 REPORT YOU REVIEWED VARIOUS DOCUMENTS FROM THE RECEIVER AND
4 SPECIAL MASTER. SUBSEQUENT TO THAT REPORT, HAVE YOU REVIEWED
5 SUCH DOCUMENTS?

6 **A.** YES, I'VE REVIEWED MANY, MANY DOCUMENTS FROM A VARIETY OF
7 PEOPLE, INCLUDING THE RECEIVER'S STAFF, THE RECEIVER'S OFFICE,
8 AS WELL AS EXPERTS IN THIS CASE.

9 **Q.** AND DO THEY CHANGE YOUR OPINION IN ANY WAY?

10 **A.** NO, THEY DO NOT CHANGE MY OPINION IN ANY WAY.

11 **Q.** THANK YOU, YOUR HONOR. I MEAN, THANK YOU, MS. WOODFORD.

12 **A.** THANK YOU.

13 **MR. SPECTER:** THANK YOU, YOUR HONORS.

14 **JUDGE KARLTON:** MS. WOODFORD, YOU HAD 27 YEARS
15 EXPERIENCE.

16 I'M SORRY. YOU HAD 27 YEARS, PLUS OR MINUS YEARS
17 EXPERIENCE WITH THE DEPARTMENT. GIVEN ALL OF THAT EXPERIENCE AND
18 ALL OF YOUR KNOWLEDGE, DO YOU HAVE ANY REASON TO BELIEVE THAT
19 THE DIFFERENCE BETWEEN YOUR UNDERSTANDING OF HOW THE SYSTEM
20 WORKED AND WHAT THE PROBLEMS WERE IN 2006 WAS SIGNIFICANTLY
21 DIFFERENT THAN WHAT HAPPENED -- THAN IN 2007?

22 **THE WITNESS:** THEY WEREN'T SIGNIFICANTLY DIFFERENT AT
23 ALL, YOUR HONOR.

24 **JUDGE KARLTON:** AND EVEN THOUGH YOU DIDN'T HAVE ANY
25 SPECIFIC INFORMATION ABOUT THAT, WHAT GIVES YOU CONFIDENCE THAT

1 THAT WAS TRUE?

2 **THE WITNESS:** WELL, I WAS ABLE TO TOUR THREE
3 FACILITIES.

4 **JUDGE KARLTON:** BEFORE YOU TOURED THE FACILITIES,
5 MR. MELLO WAS ASKING YOU --

6 **THE WITNESS:** OH, OKAY.

7 **JUDGE KARLTON:** -- QUESTIONS ABOUT YOUR REPORT.

8 **THE WITNESS:** WELL, BECAUSE I FOLLOWED WHAT WAS GOING
9 ON IN THE NEWSPAPER AND READ WHAT THE RECEIVER HAD TO SAY ABOUT
10 THE HEALTHCARE IN THE STATE OF CALIFORNIA.

11 I ALSO FOLLOWED THE STATE'S DISCUSSION ABOUT BUILDING
12 MORE FACILITIES TO REDUCE OVERCROWDING SO THEY CAN MEET THE
13 NEEDS OF INMATES, NONE OF WHICH HAS HAPPENED, OF COURSE.

14 I KNOW THE GOVERNOR ISSUED AN EMERGENCY DECLARATION
15 BECAUSE OF THE OVERCROWDING. AND I STAY IN TOUCH WITH LOTS OF
16 PEOPLE WHO STILL WORK IN THE DEPARTMENT OF CORRECTIONS.

17 **JUDGE KARLTON:** AS A PRACTICAL MATTER, DO YOU BELIEVE
18 THAT THERE WOULD BE A RADICAL CHANGE IN THE CONDITIONS BETWEEN
19 2006 AND 2007 WITHOUT IT BEING BROUGHT TO YOUR ATTENTION JUST AS
20 SOMETHING RATHER REMARKABLE?

21 **THE WITNESS:** IF I UNDERSTAND THE QUESTION, DO I
22 THINK THINGS COULD CHANGE THAT QUICKLY IN THE DEPARTMENT OF
23 CORRECTIONS? BASED ON MY YEARS OF EXPERIENCE, ABSOLUTELY NOT.

24 IT TOOK -- FOR EXAMPLE, THE TOUSSAINT COURT CASE, I
25 THINK IT TOOK US OVER 20 YEARS TO COME INTO COMPLIANCE TO HAVE

1 THAT CASE END. NOTHING MOVES QUICKLY IN THE STATE OF CALIFORNIA.

2 **JUDGE HENDERSON:** OKAY. THANK YOU FOR TESTIFYING, MS.
3 WOODFORD.

4 THANK YOU. YOU MAY STEP DOWN.

5 YOU'RE EXCUSED. AND WE WILL ADJOURN FOR THE DAY.

6 **MR. MELLO:** I BELIEVE MS. LEONARD --

7 **THE COURT:** OH, EXCUSE ME.

8 **MR. MELLO:** -- HAS SOME WITNESS ISSUES, I BELIEVE, WE
9 NEED TO DISCUSS.

10 **MS. LEONARD:** YES, YOUR HONORS. NATALIE LEONARD,
11 CALIFORNIA CORRECTIONAL PEACE OFFICERS.

12 THIS CASE IS GOING VERY QUICKLY. MOST LIKELY DUE TO
13 EXCELLENT JUDICIAL MANAGEMENT. AND WE HAVE BEEN WORKING
14 DILIGENTLY TO GET OUR WITNESSES HERE. WE HAVE SIX WITNESSES IN
15 TOTAL. I CAN PRODUCE FOUR TOMORROW.

16 I AM NOT CERTAIN WHETHER THAT WILL FILL THE DAY. THE
17 REASONS FOR THE OTHER TWO, THE FIRST IS WORKING RIGHT NOW IN A
18 CORRECTIONAL FACILITY UNTIL 10:00 P.M. TONIGHT ON THE
19 CALIFORNIA-ARIZONA BORDER. AND HE'S WILLING TO FLY OUT VERY
20 EARLY TOMORROW, BUT WOULD NOT GET HERE IN TIME WITH THE
21 CONNECTIONS.

22 THE SECOND HAS A SPECIAL NEEDS CHILD THAT REQUIRES
23 SPECIALIZED 24-HOUR CARE. AND WE HAVE THE CARE PROVIDER SET UP
24 FOR FRIDAY MORNING. SO WITH THE COURT'S PERMISSION AND
25 COMPASSION I WOULD LIKE TO BE ABLE TO PRODUCE THOSE TWO ON

1 FRIDAY.

2 **JUDGE HENDERSON:** OKAY.

3 **JUDGE REINHARDT:** ARE YOU THROUGH WITH ALL YOUR
4 WITNESSES?

5 **MR. SPECTER:** WE HAVE ONE MORE WITNESS TOMORROW.

6 **JUDGE KARLTON:** DR. SHANSKY?

7 **MR. SPECTER:** YES. HE'LL START TOMORROW.

8 **JUDGE REINHARDT:** HOW LONG DO YOU EXPECT THAT HE WILL
9 TAKE?

10 **MR. SPECTER:** PARDON ME?

11 **JUDGE REINHARDT:** HOW LONG DO YOU EXPECT THAT HE WILL
12 TAKE?

13 **MR. SPECTER:** WELL, ABOUT A HALF HOUR ON DIRECT, AND
14 THEN CROSS.

15 **JUDGE REINHARDT:** BUT I MEAN, REALISTICALLY, WHAT DO
16 YOU BOTH THINK?

17 **MR. MELLO:** I BELIEVE AN HOUR-AND-A-HALF TO TWO
18 HOURS. HE'S THEIR MEDICAL EXPERT IN PLATA, CROSS.

19 **MR. SPECTER:** SO FROM A 9:15 TO 11:30, NOON.

20 **JUDGE REINHARDT:** AND YOUR FOUR WITNESSES, HOW LONG
21 WILL THEY TAKE?

22 **MS. LEONARD:** WE WILL TAKE THIRTY ON DIRECT AND 15
23 ON REDIRECT, ONLY IF NEEDED.

24 **JUDGE REINHARDT:** SO YOU HAVE FOUR WITNESSES. WON'T
25 THAT TAKE THE AFTERNOON?

1 **MS. LEONARD:** WE MAY. BUT BECAUSE WE HAVE NOT BEEN
2 CERTAIN BECAUSE THE TIMES HAVE NOT BEEN COMPLETELY TO THE
3 PRETRIAL STATEMENT, WE WANTED TO ALERT THE COURT TO THE
4 POSSIBILITY. AND WE UNDERSTAND OUR RESPONSIBILITY TO THIS
5 COURT. ONE OF THE WITNESSES, FOR EXAMPLE, WILL DRIVE IN THE
6 MIDDLE OF THE NIGHT AND PROVIDE CHILDCARE FOR HER FOUR CHILDREN
7 AT HOME.

8 **JUDGE REINHARDT:** BUT YOU HAVE FOUR, AND THERE ARE
9 ONLY TWO THAT MIGHT NOT BE HERE, RIGHT?

10 **JUDGE HENDERSON:** FOUR WILL DEFINITELY BE HERE.

11 **JUDGE REINHARDT:** SOUNDS LIKELY IT WILL TAKE THE
12 WHOLE DAY, BUT IF IT DOESN'T --

13 **MR. MELLO:** AND THAT GETS TO OUR POINT. WE'RE ALSO
14 SURPRISED BY THE SPEED AT WHICH THIS IS GOING, AND WE ONLY HAVE
15 TWO LIVE WITNESSES AVAILABLE ON FRIDAY. IN THE WITNESS LIST WE
16 DID LIST THE FACT THAT WE HAVE THREE WITNESSES TESTIFYING BY WAY
17 OF DEPOSITION.

18 WE OBVIOUSLY WOULD PREFER THAT THAT DEPOSITION
19 TESTIMONY BE READ INTO THE RECORD, BUT WE VERY MUCH REALIZE THAT
20 PROBABLY WON'T HAPPEN FROM THIS COURT. SO I JUST WANT TO POINT
21 OUT WE ONLY HAVE TWO LIVE WITNESSES, ALTHOUGH WE TRIED JUST
22 BECAUSE WE DIDN'T THINK WE WOULD GET THERE ON FRIDAY.

23 **JUDGE REINHARDT:** AND IF YOUR TWO CAME ON FRIDAY THAT
24 WOULD SOLVE YOUR PROBLEM.

25 **JUDGE KARLTON:** I MEAN, I'M VERY SURPRISED WE'RE

1 MOVING ALONG THIS QUICKLY, EITHER. IT'S OBVIOUSLY JUDGE
2 HENDERSON'S --

3 **JUDGE HENDERSON:** AW, SHUCKS, FELLOWS.

4 **JUDGE KARLTON:** BUT WHAT I THINK I'M HEARING -- WELL,
5 LET ME ASK: MS. TILLMAN, ARE YOU DOING ANYTHING ADDITIONAL TO
6 WHAT MR. MELLO IS DOING IN THE WAY OF PRESENTATION OF WITNESSES?

7 **MS. TILLMAN:** I THINK MR. MELLO WAS SPEAKING,
8 ACTUALLY, IN REGARDS TO BOTH PLATA AND COLEMAN. WE HAD SET ASIDE
9 TWO WITNESSES FOR FRIDAY.

10 **JUDGE KARLTON:** THAT'S FINE.

11 **JUDGE REINHARDT:** WHAT ABOUT THE INTERVENORS?

12 **JUDGE KARLTON:** INTERVENORS, ARE YOU PUTTING ON ANY
13 TESTIMONY AS TO THE FIRST PART -- WHAT AM I ASKING?

14 **JUDGE REINHARDT:** FIRST PHASE.

15 **JUDGE KARLTON:** THANK YOU.

16 **MS. WANG:** WE -- ACTUALLY, YOUR HONOR, WE HAD
17 PREVIOUSLY LISTED SENATOR RUNNER AS A WITNESS, BUT IT'S VERY
18 LIKELY THAT IN VIEW OF THE COURT'S RULING ON THE FACT NO
19 EVIDENCE WILL BE PRESENTED ON CONSTITUTIONAL VIOLATIONS THAT ARE
20 CURRENT OR ONGOING THAT WE WILL WITHDRAW SENATOR RUNNER.

21 BUT WE ARE CONFIRMING TODAY, AND WE WILL GET BACK TO
22 THE COURT TOMORROW.

23 **JUDGE KARLTON:** WHAT ABOUT INTERVENORS?

24 **MR. MITCHELL:** INTERVENORS HAVE NOT NOTICED ANY
25 WITNESSES FOR THIS PHASE.

1 **JUDGE KARLTON:** THANK YOU.

2 AND YOU'RE THE SAME.

3 **MS. WANG:** THAT'S CORRECT. NOR HAVE THE COUNTIES AND
4 LAW ENFORCEMENT INTERVENORS.

5 **JUDGE KARLTON:** SO WE MAY BE DONE BY NEXT WEEK.

6 **JUDGE HENDERSON:** WE'RE DARK.

7 **JUDGE KARLTON:** IS THE ALL OF NEXT WEEK THAT WE'RE
8 DARK?

9 **JUDGE REINHARDT:** YES.

10 **JUDGE KARLTON:** OH, OKAY.

11 **MS. TILLMAN:** YOUR HONOR, THIS IS LISA TILLMAN.

12 JUST IN REGARDS TO ADDITIONAL WITNESSES FOR PHASE I,
13 WE HAVE TODD JERUE, CINDY RADAUSKY, WHO ARE AVAILABLE THIS
14 FRIDAY, AND THEN ROBIN DEZEMBER, WHO ARE NOT AVAILABLE THIS
15 FRIDAY.

16 **JUDGE HENDERSON:** OKAY. BUT CAN WE HAVE THE NAMES OF
17 THE WITNESSES WE'RE NOW TALKING ABOUT?

18 WE WILL HAVE FOUR FROM CCPOA. WHO ARE THEY?

19 **MS. LEONARD:** YES, YOUR HONOR. THEY ARE GARY
20 BENSON, KEVIN RAYMOND, ERIC ADELMAN, AND BRENDA GIBBONS (ALL
21 PHONETIC).

22 **JUDGE HENDERSON:** OKAY? PLUS DR. SHANSKY.

23 **MS. LEONARD:** YES, YOUR HONOR.

24 **JUDGE HENDERSON:** OKAY. SO THAT WILL BE TOMORROW,
25 AND WE WILL GO HOWEVER LONG THAT TAKES US. AND THEN, ON FRIDAY

1 WE HAVE TWO ADDITIONAL CCPOA WITNESSES.

2 AND WHO ARE THOSE, COUNSEL?

3 **MS. LEONARD:** THOSE ARE DEBORAH ROLET, AND RUBIN
4 LAYHA (ALL PHONETIC).

5 **JUDGE HENDERSON:** OKAY. AND THEN, WE HAVE TWO FROM
6 DEFENDANTS. WHO ARE THOSE, COUNSEL?

7 **MS. TILLMAN:** THAT WOULD BE -- I'M SORRY.
8 YOUR HONORS, WE HAVE MS. RADAUSKY AND MR. JERUE FOR
9 THIS FRIDAY. AND WE WILL SUBSEQUENTLY SCHEDULE FOR THE
10 FOLLOWING, I GUESS, TWO WEEKS AFTER THAT, MR. DEZEMBER AND
11 EXPERT DR. PACKER.

12 **JUDGE HENDERSON:** OKAY.

13 **JUDGE REINHARDT:** IS THAT IT?

14 **MS. TILLMAN:** I'M SORRY. I MISSED ONE. FOR BOTH
15 PLATA AND COLEMAN, MR. KERNAN, PROBABLY THE FIRST WEEK OF
16 DECEMBER.

17 **JUDGE HENDERSON:** DEZEMBER IN DECEMBER?

18 **MS. TILLMAN:** IT CAN GET CONFUSING.

19 **JUDGE REINHARDT:** WILL THOSE THREE BE -- ONLY TAKE
20 ONE DAY AMONG ALL OF THEM OR MORE THAN THAT?

21 **MR. MELLO:** WE STILL HAVE THE ISSUE WITH RESPECT TO
22 THE EXPERTS, AND THEIR REBUTTAL EXPERT THAT HAVE AVAILABILITY
23 PROBLEMS FOR THAT WHOLE WEEK, I BELIEVE AND WE'RE TALKING ABOUT
24 VIDEO, BUT THAT'S STILL AN ISSUE.

25 **JUDGE KARLTON:** I'M CONFUSED. THE GUY WHO IS GOING

1 TO TESTIFY BY VIDEO MOST LIKELY, WHEN ARE WE SETTING HIM UP FOR?

2 **MR. SPECTER:** WE DON'T KNOW YET. WE'RE TRYING TO
3 FIND OUT HOW HIS SURGERY WENT, AND THEN WE WILL COME BACK TO YOU
4 AND YOU CAN BREAK TIES, IF YOU WANT TO.

5 **MR. MELLO:** YOU GUYS WILL BREAK TIES.

6 **JUDGE HENDERSON:** WILL WE KNOW THAT FRIDAY OR --

7 **MR. SPECTER:** MS. JOHNSON SAYS SHE'S GOING TO CALL
8 HIS STAFF TOMORROW TO SEE HOW THE SURGERY WENT. IF THERE
9 WEREN'T COMPLICATIONS, WE WILL HAVE A BETTER IDEA. IF THERE
10 WERE COMPLICATIONS WE WILL KNOW THAT, TOO. WE WILL BE ABLE TO
11 TELL YOU BY -- IT'S LIKELY, IN MY OPINION -- SORRY. IT'S
12 LIKELY, IN MY OPINION, WE WILL FINISH VERY EARLY THE FIRST WEEK
13 OF DECEMBER. AND THEN, WE WILL HAVE TO DO THOSE REMAINING
14 WITNESSES.

15 MY SUGGESTION IS WE PROBABLY COULD LET YOU GO, AND WE
16 PICK A DAY WHERE WE COME BACK FOR ONE OR TWO WITNESSES BY VIDEO
17 CONFERENCE OR SOMETHING LIKE THAT. BUT WE WILL KNOW MORE LATER.

18 **JUDGE HENDERSON:** OKAY. THANK YOU, COUNSEL.

19 COURT'S ADJOURNED. WE WILL RESUME 9:15 TOMORROW
20 MORNING.

21 (THEREUPON, THIS TRIAL WAS CONTINUED UNTIL
22 THURSDAY, NOVEMBER 20, 2008 AT 9:15 O'CLOCK
23 A.M.)

24

25

I N D E XPLAINTIFF'S WITNESSESPAGEVOL.JEFFREY A. BEARD, PH.D.

DIRECT EXAMINATION BY MR. SPECTER	200	2
CROSS-EXAMINATION BY MR. MELLO	233	2
CROSS-EXAMINATION BY MR. MITCHELL	248	2
REDIRECT EXAMINATION BY MR. SPECTER	259	2

JOSEPH D. LEHMAN

DIRECT EXAMINATION BY MR. SPECTER	260	2
CROSS-EXAMINATION BY MS. JOHNSON	274	2
CROSS-EXAMINATION BY MR. KAUFHOLD	288	2
REDIRECT EXAMINATION BY MR. SPECTER	289	2

DR. CRAIG WILLIAM HANEY

DIRECT EXAMINATION BY MS. KAHN	293	2
CROSS-EXAMINATION BY MS. TILLMAN	319	2
CROSS-EXAMINATION BY MS. WANG	348	2
REDIRECT EXAMINATION BY MS. KAHN	351	2
RECROSS-EXAMINATION BY MS. TILLMAN	356	2
FURTHER REDIRECT EXAMINATION BY MS. KAHN	360	2

JEANNE WOODFORD

DIRECT EXAMINATION BY MR. SPECTER	362	2
CROSS-EXAMINATION BY MR. MELLO	386	2
REDIRECT EXAMINATION BY MR. SPECTER	407	2

CERTIFICATE OF REPORTER

1
2
3
4
5 WE, JOAN MARIE COLUMBINI AND KATHERINE WYATT, OFFICIAL
6 REPORTERS FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF
7 CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN
8 CIV S-90-0520 LKK JPM P, RALPH COLEMAN, ET AL V. ARNOLD
9 SCHWARZENEGGER AND C 01-1351 TEH, MARCIANO PLATA V. ARNOLD
10 SCHWARZENEGGER, WERE REPORTED BY US, CERTIFIED SHORTHAND
11 REPORTERS, AND WERE THEREAFTER TRANSCRIBED UNDER OUR DIRECTION
12 INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND
13 TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY US AT THE TIME OF
14 FILING.

15 THE VALIDITY OF THE REPORTER'S CERTIFICATION OF SAID
16 TRANSCRIPT MAY BE VOID UPON DISASSEMBLY AND/OR REMOVAL FROM THE
17 COURT FILE.

18
19 /S/ JOAN MARIE COLUMBINI

20 JOAN MARIE COLUMBINI, CSR 5435, RPR

21
22 S/ KATHERINE WYATT

23 KATHERINE WYATT, CSR 9866, RMR

24 WEDNESDAY, NOVEMBER 19, 2008

25
**JOAN MARIE COLUMBINI, CSR, RPR
KATHERINE WYATT, CSR, RMR
OFFICIAL COURT REPORTERS - USDC
415-255-6842**