

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

RALPH COLEMAN, ET AL.,)
)
 PLAINTIFFS,)
)
 VS.) NO. CIV S-90-0520 LKK JFM
)
 ARNOLD SCHWARZENEGGER, ET AL.)
) THREE-JUDGE COURT
 DEFENDANTS.)
)

MARCIANO PLATA, ET AL.,)
)
 PLAINTIFFS,)
)
 VS.) NO. C 01-1351 TEH
)
 ARNOLD SCHWARZENEGGER, ET AL.)
)
 DEFENDANTS.)
)

TRANSCRIPT OF PROCEEDINGS

SAN FRANCISCO, CALIFORNIA
FRIDAY, DECEMBER 5, 2008

(APPEARANCES ON FOLLOWING PAGES)

REPORTED BY: JOAN MARIE COLUMBINI, CSR 5435, RPR
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1 **FRIDAY, DECEMBER 5, 2008**

9:15 O'CLOCK A.M.

2
3 **P R O C E E D I N G S**
4

5 **JUDGE HENDERSON:** OKAY. YOU MAY CALL YOUR FIRST
6 WITNESS WHEN YOU'RE READY, COUNSEL.

7 **MR. SPECTER:** PLAINTIFFS CALL JEFFREY BEARD BACK TO
8 TESTIFY.

9 **JUDGE REINHARDT:** WHILE WE'RE WAITING, I NOTE THAT
10 THERE'S NO TIME ALLOTMENT FOR THE WITNESSES HERE, WHICH MAY NOT
11 BE VERY HELPFUL TODAY, ALTHOUGH IT WILL NOT AFFECT THE AMOUNT OF
12 TIME ALLOCATED TO THEM BY THE COURT, BUT THAT WILL NOT COMPLY
13 WITH WHAT WE REQUESTED FOR MONDAY WHEN WE ASKED FOR THE LIST.

14 **JUDGE KARLTON:** TUESDAY. WE ARE NOT HERE MONDAY.

15 **JUDGE REINHARDT:** WE ASKED FOR MONDAY AFTERNOON IT BE
16 SUBMITTED, WE BE SUPPLIED WITH YOUR LIST OF, WE HOPE, AGREED
17 WITNESSES AND TIMES FOR THE REST OF THE TRIAL. THAT MEANS NOT
18 BLANK MINUTES. IT MEANS ACTUAL TIMES ON THE LIST WE EXPECT FROM
19 TWO OF YOU JOINTLY, OR IF THERE ARE BLANKS, AS I SAID WE'LL FILL
20 THEM IN FOR YOU BY TUESDAY OR WEDNESDAY.

21 **JUDGE KARLTON:** THAT'S --

22 **MR. SPECTER:** WE UNDERSTAND, YOUR HONOR, AND WHEN WE
23 SUBMIT OUR TRIAL SCHEDULE ON MONDAY, WE WON'T HAVE THAT SAME
24 OMISSION. TODAY SHOULDN'T BE A PROBLEM. THERE ARE ONLY TWO
25 WITNESSES, RIGHT? ONLY TWO WITNESSES. WE MIGHT EVEN GET DONE

1 EARLY, I HOPE.

2 JUDGE REINHARDT: OKAY. THANK YOU.

3 JUDGE HENDERSON: YOU MAY PROCEED.

4 JUDGE KARLTON: YOU ARE STILL UNDER OATH.

5 THE WITNESS: YES.

6 JEFFREY BEARD

7 HAVING BEEN CALLED AS A WITNESS BY THE PLAINTIFFS WAS

8 PREVIOUSLY DULY SWORN AND EXAMINED AS FOLLOWS:

9 DIRECT EXAMINATION BY MR. SPECTER

10 BY MR. SPECTER

11 Q DR. BEARD, YOU'RE STILL THE SECRETARY OF THE PENNSYLVANIA
12 DEPARTMENT OF CORRECTIONS?

13 A YES, I AM.

14 Q AND I THINK YOU ALLUDED LAST TIME YOU WERE HERE BRIEFLY TO
15 THE FACT THAT THE PENNSYLVANIA PRISON SYSTEM WAS SOMEWHAT
16 OVERCROWDED; IS THAT RIGHT?

17 A YES, WE ARE CURRENTLY SOMEWHAT OVERCROWDED.

18 Q AT WHAT PERCENTAGE OF OPERABLE CAPACITY ARE YOU?

19 A WE ARE AT 113 OR -14 PERCENT OF OPERABLE CAPACITY, MAYBE
20 115 PERCENT RIGHT NOW, WHICH IS ABOUT 6,500 INMATES MORE THAN WE
21 WOULD LIKE TO HAVE IN OUR SYSTEM.

22 Q AND --

23 JUDGE REINHARDT: WHAT DOES THAT TRANSLATE INTO IN
24 DESIGN CAPACITY?

25 THE WITNESS: THAT'S VERY DIFFICULT TO DO, YOUR

1 HONOR, BECAUSE WE REALLY -- THEY'RE APPLES AND ORANGES. IT HAS
2 TO DO WITH HOW MANY INMATES WE FEEL WE CAN HOLD AND TAKE CARE OF
3 IN A PARTICULAR INSTITUTION, TAKE CARE OF THEIR MEDICAL MENTAL
4 HEALTH, FOOD SERVICES, ALL THE VARIOUS NEEDS WE HAVE TO. AND IT
5 REALLY DOESN'T RELATE THEN TO THE DESIGN CAPACITY, BECAUSE MANY
6 OF OUR OLDER FACILITIES WE PUT MILLIONS AND MILLIONS OF DOLLARS
7 IN UPGRADING THE INFRASTRUCTURE, YOU KNOW, ADDING BIGGER
8 KITCHENS AND BIGGER DINING ROOMS AND BIGGER LAUNDRIES AND
9 TREATMENT SERVICE BUILDINGS, AND THINGS LIKE THAT, BIGGER
10 INFIRMARIES SO THAT WE COULD HANDLE THE LARGER POPULATION THERE.

11 **JUDGE KARLTON:** AND YOU'RE TELLING US YOU HAVEN'T
12 ACTUALLY SAT DOWN AND CALCULATED WHAT THE DESIGN CAPACITY,
13 INCLUDING THE UPGRADES ARE; IS THAT WHAT YOU'RE SAYING, YOU JUST
14 HAVEN'T DONE THAT?

15 **THE WITNESS:** NO, BECAUSE WE DON'T LOOK AT THAT
16 ANYMORE. WE LOOK AT -- BECAUSE, YOU KNOW, I HAVE A FACILITY I
17 USED TO WORK IN, I STARTED IN FCI ROCKVIEW BACK MANY YEARS AGO
18 BACK IN 1972, AND THAT FACILITY WAS BUILT TO HOUSE A THOUSAND
19 INMATES. TODAY WE HAVE 2,000 INMATES THERE. BUT WE'VE EXPANDED
20 THE KITCHEN. WE HAVE EXPANDED THE DINING ROOMS IN THAT
21 INSTITUTION. WE BUILT A LARGE THREE-STORY TREATMENT BUILDING,
22 LARGE INFIRMARY, EXPANDED DENTAL CARE, MENTAL HEALTH UNIT. WE
23 BUILT A BRAND NEW RESTRICTED HOUSING UNIT. WE PUT OTHER HOUSING
24 UNITS, WHAT THEY CALL IN-FILL BEDS IN THERE.

25 TODAY THAT FACILITY HAS ABOUT IS 2,100 INMATES IT,

1 AND WE SAY THE OPERABLE CAPACITY OF THAT FACILITY IS ABOUT 1,700
2 INMATES. SO WE ARE ABOUT 400 OVER THE OPERABLE CAPACITY.
3 THAT'S WHY IT'S DIFFICULT TO TRANSLATE, BECAUSE THAT WAS A
4 FACILITY WE BUILT FOR A THOUSAND, BUT WE UPGRADED IT, SO WE NOW
5 CAN HANDLE 1,700, AND WE HAVE 2,100 AND WE'RE OKAY. WE'D LIKE
6 JUST TO HAVE LESS. WE COULD DO A BETTER JOB IF WE HAD A FEW
7 LESS HUNDRED INMATES THERE.

8 DOES THAT HELP EXPLAIN AT ALL, YOUR HONOR?

9 **JUDGE REINHARDT:** YES, THANK YOU.

10 **BY MR. SPECTER**

11 **Q** PENNSYLVANIA RECENTLY ENACTED LEGISLATION AIMED AT
12 CONTROLLING THE PRISON POPULATION; IS THAT RIGHT?

13 **A** YES.

14 **Q** AND YOU WERE INSTRUMENTAL IN GETTING THAT LEGISLATION
15 PASSED; IS THAT RIGHT?

16 **A** THAT'S CORRECT.

17 **Q** CAN YOU EXPLAIN WHAT THAT LEGISLATION IS, PLEASE?

18 **A** WELL, THE LEGISLATION INCLUDES A COUPLE COMPONENTS.

19 FIRST OF ALL, A NUMBER OF YEARS AGO, ABOUT THREE OR
20 FOUR YEARS AGO, I WORKED ON LEGISLATION ON A PROGRAM CALLED
21 STATE INTERMEDIATE PUNISHMENT, AND THAT WAS A PROGRAM THAT WOULD
22 ALLOW JUDGES, WITH THE DA'S AUTHORIZATION, TO SENTENCE PEOPLE TO
23 A FLAT TWO YEARS TO MY DEPARTMENT, INSTEAD OF GETTING, MAYBE A
24 TWO TO FOUR OR A THREE TO SIX-YEAR SENTENCE.

25 THEY WOULD THEN COME TO MY FACILITY. I WOULD GIVE

1 THEM A HIGH QUALITY THERAPEUTIC COMMUNITY FOR ABOUT THE FIRST
2 NINE OR TEN MONTHS. THEY WOULD THEN GO OUT INTO THE COMMUNITY,
3 GET SOME ADDITIONAL DRUG AND ALCOHOL TREATMENT, TRANSITIONAL
4 SERVICES. AND, EVENTUALLY, IF THEY WERE SUCCESSFUL, AT THE END
5 OF THAT TWO YEARS THEY WERE DONE. THERE WAS NO PAROLE OR
6 ANYTHING ELSE. THEY COMPLETED THE PROGRAM. AND THE INCENTIVE
7 FOR THEM WAS INSTEAD OF SERVING TWO YEARS IN JAIL AND THEN TWO
8 YEARS ON PAROLE, THEY ONLY HAD A TWO YEARS, HALF OF WHICH WAS IN
9 JAIL.

10 SO WHAT WE TRIED TO DO -- ONE OF THE THINGS WE TRIED
11 TO DO WAS BUILD ON THAT PROGRAM. ONE OF THE THINGS WE FOUND IS
12 A LOT OF INMATES THAT ARE COMING TO US SHOULD BE ELIGIBLE FOR
13 THAT STATE INTERMEDIATE PUNISHMENT, BUT THEY'RE NOT GETTING IT.

14 ONE OF THE THINGS THE NEW LEGISLATION ALLOWS US TO DO
15 WHEN WE SEE SOMEONE COME IN WHO SHOULD GET STATE INTERMEDIATE
16 PUNISHMENT, WE COULD GO BACK TO THE JUDGE AND DA, GET THEIR
17 AUTHORIZATIONS, AND CONVERT THAT TO THE STATE INTERMEDIATE
18 PUNISHMENT CASE.

19 THAT'S ONE OF THE THINGS WE ARE DOING. SO, YOU KNOW,
20 IT'S BUILDING ON A PREVIOUS POPULATION MANAGEMENT PROGRAM WHICH
21 ALSO GREATLY ENHANCES THE PUBLIC SAFETY BECAUSE IT GIVES THESE
22 PEOPLE WHAT THEY NEED TO KEEP THEM OUT OF PRISON IN THE FUTURE.

23 THE OTHER PART OF THE LEGISLATION WAS A RISK
24 REDUCTION INITIATIVE, AND, BASICALLY, WHAT WE'RE DOING IS
25 INMATES IN CERTAIN NONVIOLENT OR LESS SERIOUS CLASSIFICATIONS,

1 AND THIS IS FOR NONVIOLENT OFFENDERS, ESSENTIALLY, PRIMARILY
2 YOUR PROPERTY AND DRUG OFFENDERS, INSTEAD OF GETTING A TWO TO
3 FOUR-YEAR SENTENCE, THEY WOULD GET TWO MINIMUM SENTENCES. THEY
4 WOULD GET AN 18 MONTHS -- IF IT WAS TWO TO FOUR, THEY WOULD GET
5 AN 18-MONTH RISK REDUCTION SENTENCE AND A TWO-YEAR MINIMUM.

6 THEY WOULD THEN COME TO US, IF THEY GET INVOLVED IN
7 THE PROGRAMS THAT WE SAY THAT THEY SHOULD -- NEED TO BE INVOLVED
8 IN TO MAKE IT LESS LIKELY THAT THEY COME BACK TO PRISON, THEN
9 THEY'RE ELIGIBLE FOR THEIR RELEASE, IF THEY COMPLETE THEIR
10 PROGRAMS AT 18 MONTHS INSTEAD OF 24 MONTHS. SO THE INCENTIVE
11 FOR THE INMATE, YOU ARE TRYING TO GIVE THEM AN INCENTIVE -- THE
12 KEY IS TO INCENTIVIZE PEOPLE TO GET IN PROGRAMS AND COMPLETE
13 PROGRAMS, BECAUSE YOU GET THE BIGGEST BANG FOR THE BUCK WHEN
14 PEOPLE COMPLETE THE PROGRAMS.

15 AND SO THAT'S WHAT THAT PROGRAM IS TRYING TO DO, GET
16 THEM THERE, GET THEM IN THE PROGRAM. AND I THINK PEOPLE
17 UNDERSTAND THAT IT'S NOT HOW LONG SOMEBODY SERVES TIME IN PRISON
18 THAT'S IMPORTANT; WHAT'S IMPORTANT IS THAT YOU ADDRESS THE
19 CRIMINOGENIC FACTORS, AT LEAST WHEN YOU ARE DEALING WITH THESE
20 PROPERTY AND DRUG OFFENDERS.

21 **Q** WHEN YOU SAID IT'S IMPORTANT, DO YOU MEAN IMPORTANT FOR WHAT
22 PURPOSE?

23 **A** IT'S IMPORTANT TO LOWER THEIR RECIDIVISM. IF WE WANT TO
24 IMPROVE PUBLIC SAFETY AND HAVE PEOPLE LESS LIKELY TO COME BACK
25 TO PRISON, THEN WE HAVE TO ADDRESS WHAT WE CALL THE CRIMINOGENIC

1 FACTORS THAT BRING THEM TO PRISON. THOSE FACTORS ARE THINGS
2 LIKE SUBSTANCE ABUSE PROBLEMS, EDUCATION DEFICITS, LACK OF
3 VOCATIONAL SKILLS, CRIMINAL THINKING ISSUES, IMPULSIVITY AND
4 AGGRESSION-TYPE ISSUES. THOSE ARE WHAT WE CALL CRIMINOGENIC
5 FACTORS.

6 SO THE KEY TO THIS WHOLE THING IS WHAT WE CALL
7 EVIDENCE-BASED PROGRAMMING, AND THE BASIS OF EVIDENCE-BASED
8 PROGRAMMING IS WHEN SOMEBODY COMES INTO YOUR SYSTEM, YOU GIVE
9 THEM AN ASSESSMENT, YOU DECIDE WHAT THEIR DEFICITS ARE, YOU
10 KNOW, WHAT'S THEIR EDUCATIONAL, VOCATIONAL LEVELS, WHAT'S THEIR
11 DRUG AND ALCOHOL PROBLEM? DO THEY HAVE A PROBLEM WITH CRIMINAL
12 THINKING? DO THEY HAVE A PROBLEM WITH VIOLENCE? AND THOSE
13 KINDS OF THINGS.

14 THEN YOU DEVELOP A PROGRAM FOR THAT INDIVIDUAL. YOU
15 PUT THE PERSON THROUGH THAT PROGRAM, AND IF THEY SUCCESSFULLY
16 COMPLETE THE PROGRAM, THEN THEY'RE ELIGIBLE TO GET THIS CREDIT
17 WE ARE TALKING ABOUT, AND THEY'RE ALSO MORE LIKELY TO NOT COME
18 BACK TO PRISON IN THE FUTURE BECAUSE YOU'VE ADDRESSED THE
19 REASONS THAT BROUGHT THEM THERE.

20 **Q** SO, ESSENTIALLY, YOU'RE CUTTING THEIR PRISON -- THEIR PRISON
21 SENTENCE. IN SOME SENSE YOU'RE RELEASING THEM EARLY, BUT YOU
22 ARE MORE CONFIDENT THEY WOULD BE LESS LIKELY TO COMMIT NEW
23 CRIMES; IS THAT CORRECT?

24 **A** THAT'S CORRECT.

25 **Q** WERE THERE ANY OTHER COMPONENTS OF THE LEGISLATION --

1 **A** YEAH, THERE WERE TWO OTHER COMPONENTS. THE ONE COMPONENT
2 WAS FOR THIS SAME GROUP OF LESS SERIOUS OFFENDERS WHO WERE
3 ELIGIBLE FOR THE RISK REDUCTION INITIATIVE. THEY ALSO WOULD GET
4 WHAT MIGHT BE TERMED A PRESUMPTIVE PAROLE. IN OTHER WORDS,
5 WHILE PAROLE WAS STILL -- LOOK AT THE CASE. THEY'RE PRETTY WELL
6 PRESUMED TO BE GONE. UNLESS THERE'S SOMETHING VERY ODD ABOUT A
7 PARTICULAR CASE, THEY'RE ALMOST AUTOMATICALLY GOING TO BE
8 PAROLED. SO THAT'S ANOTHER THING. IT'S A LESS OF A THRESHOLD
9 THERE TO GET OUT ON PAROLE.

10 IN THE THIRD COMPONENT OF THIS WAS THAT IF THEY DO
11 WELL WHILE THEY'RE ON PAROLE, THESE LESS SERIOUS OFFENDERS,
12 AGAIN, THEY CAN GET OFF PAROLE AND BE PUT ON WHAT WE CALL
13 ADMINISTRATIVE PAROLE, SO THEY ARE NOT SUPERVISED ANYMORE ON A
14 REGULAR BASIS. IT'S SET AFTER ONE YEAR. IF THEY BEHAVED
15 THEMSELVES, FOLLOWED WHAT THEY'RE SUPPOSED TO DO ON PAROLE.
16 AND, AGAIN, THE INCENTIVE IS FOR THEM TO DO THAT, YOU ARE TRYING
17 TO INCENTIVIZE THE INDIVIDUAL, BECAUSE IF THEY COMPLETE THE
18 PROGRAM, THEY GET OFF OF PAROLE AFTER -- AFTER ONE YEAR.

19 LET ME ADD THAT WE DIDN'T JUST GO PULL THIS OUT OF
20 THE AIR. I'VE SPENT A LOT OF TIME IN THE LAST SEVEN YEARS
21 STUDYING WHAT OTHER STATES HAVE DONE AND LOOKING FOR WAYS THAT
22 WE CAN BETTER MANAGE OUR POPULATION FROM A PUBLIC SAFETY
23 PERSPECTIVE, FROM A POPULATION CONTROL PERSPECTIVE, AND FROM A
24 COST PERSPECTIVE, AND THE KIND OF THINGS THAT WE'RE DOING
25 ACTUALLY IMPROVE ON PUBLIC SAFETY BECAUSE THEY ADDRESS THE

1 PROBLEMS THAT BROUGHT PEOPLE TO JAIL. THEY HELP LOWER YOUR
2 POPULATION, AND THEY SAVE YOU MONEY. THOSE ARE LIKE THE SIDE
3 BENEFITS OF DEALING APPROPRIATELY WITH THESE PEOPLE.

4 SO WHEN WE WERE OUT THERE LOOKING AROUND, ONE OF THE
5 STATES THAT WE SAW WAS NEW YORK, AND NEW YORK HAD DONE A VERY
6 SIMILAR THING BACK ABOUT 11 YEARS AGO IN 1997. THEY CAME OUT
7 WITH A PROGRAM CALLED MERIT TIME, WHERE, ESSENTIALLY, THEY GAVE
8 CREDIT OFF THE SENTENCE FOR INMATES WHO COMPLETED PROGRAMS, AND
9 THEY HAD A PRESUMPTIVE RELEASE FOR THOSE INMATES, AND THEY LET
10 THOSE PEOPLE OFF OF PAROLE AFTER ONE YEAR IF THEY DID WELL.
11 THEY HAVE BEEN DOING THIS, LIKE I SAID, FOR 11 YEARS.

12 THEY DID A STUDY IN 2004, AND WHAT THEY FOUND WAS
13 THAT THE INMATES WHO WENT THROUGH THE MERIT TIME PROGRAM WHO GOT
14 OUT OF JAIL EARLIER BUT WHO COMPLETED THEIR PROGRAMS HAD LOWER
15 RECIDIVISM RATES THAN THE PEOPLE WHO SERVED THEIR WHOLE
16 SENTENCE, THEY ACTUALLY DID BETTER, AND THEY ALSO FOUND THAT
17 THEY SAVED MILLIONS OF DOLLARS, SOMETHING LIKE A QUARTER OF A
18 BILLION DOLLARS DURING THAT TIME PERIOD WITH THAT PROGRAM.

19 ALL DURING THAT TIME PERIOD THE CRIME RATE IN NEW
20 YORK WAS GOING DOWN, AND IT CONTINUED TO GO DOWN. IT WAS NOT AT
21 ALL ADVERSELY AFFECTED. SO I HAD A PROGRAM THAT DIDN'T
22 ADVERSELY AFFECT CRIME RATE, INCENTIVIZED THE INMATES TO
23 COMPLETE PROGRAMS, AND THOSE INMATES WHO DID THAT WENT OUT AND
24 DID BETTER AND WERE LESS LIKELY TO GO BACK TO PRISON. THAT'S
25 HOW WE SORT OF DESIGNED OUR PROGRAM, AND WE TOOK SOME DIFFERENT

1 SLANTS TO IT LIKE ACTUALLY DOING IT AT SENTENCING SO THE
2 VICTIMS -- IT'S TRANSPARENT AT SENTENCING, EVERYBODY KNOWS WHAT
3 THE MINIMUM DATE IS AND SOME OF THOSE THINGS.

4 SOME OF THOSE WERE BUILT INTO IT BECAUSE WHEN WE
5 BUILT OUR -- WENT TO DO THIS LEGISLATION, WE JUST DIDN'T GO OUT
6 AND DO IT ON OUR OWN. WE WENT OUT AND ENGAGED THE VARIOUS
7 INTEREST GROUPS. WE ENGAGED THE DA ASSOCIATION AND VICTIMS, AND
8 PEOPLE LIKE THIS, AND SAID, WOULD YOU WORK WITH US ON THIS, AND
9 BASICALLY GOT AGREEMENT FROM THOSE ORGANIZATIONS, AND THAT'S HOW
10 WE WERE ABLE TO GET IT THROUGH THE LEGISLATION, BECAUSE THERE
11 WASN'T ANYBODY OUT THERE GOING TO THE LEGISLATURE SAYING, WE
12 DON'T WANT YOU TO DO THIS.

13 THAT'S ANOTHER IMPORTANT THING. YOU DO HAVE TO WORK
14 WITH THE VARIOUS COMMUNITY GROUPS OUT THERE, THE STAKEHOLDERS,
15 WHEN YOU ARE TRYING TO DO THESE KIND OF THINGS, WHEN YOU ARE
16 TRYING TO BUILD THESE KIND OF PROGRAMS.

17 **Q** DOES PENNSYLVANIA USE DIVERSION IN ANY WAY?

18 **A** PARDON? DIVERSION?

19 **Q** YES.

20 **A** YES, WE DO. IT'S ONE OF THE POPULATION MANAGEMENT THINGS
21 THAT WE STARTED BACK IN 1997. WE HAVE A PROGRAM THAT'S CALLED
22 RESTRICTIVE INTERMEDIATE PUNISHMENT, AND WHAT THIS PROGRAM
23 ALLOWS IS IT ALLOWS FOR COUNTIES TO GET GRANTS TO DIVERT INMATES
24 FROM BOTH COUNTY JAILS AND FROM STATE PRISONS AND PUT THOSE
25 INMATES -- INSTEAD OF SEND THEM TO THE COUNTY JAILS OR STATE

1 PRISONS, TO PUT THEM IN SUBSTANCE ABUSE TREATMENT PROGRAMS. AND
2 THERE WAS A STUDY DONE ON THAT PROGRAM, WHICH BASICALLY FOUND
3 THAT INMATES WHO WENT THROUGH THE RESTRICTIVE INTERMEDIATE
4 PUNISHMENT PROGRAM HAD LOWER RECIDIVISM RATES THAN PEOPLE WHO
5 WERE SENT TO COUNTY JAILS OR STATE PRISONS.

6 THE OTHER THING THAT WE FOUND WITH THAT PROGRAM IS, I
7 THINK WHEN THEY STARTED, THEY WERE FUNDING AT ABOUT \$15 MILLION
8 A YEAR. I THINK NOW IT'S UP, THOUGH, 18- OR 19 MILLION. I KEEP
9 TRYING TO PUSH IT UP EVEN MORE.

10 WHEN THEY STARTED IT, THAT \$15 MILLION, BECAUSE THEY
11 ONLY SPEND ABOUT \$10,000 A YEAR ON EACH INMATE, WHICH IS FAR
12 CHEAPER THAN PUTTING THEM IN JAIL OR PRISON, THAT 15 MILLION WAS
13 A COST AVOIDANCE OF 30 MILLION IF YOU HAD PUT THEM IN JAIL, AND
14 IT WOULD HAVE BEEN A COST AVOIDANCE OF 45 MILLION IF ALL OF THE
15 PEOPLE HAD GONE TO PRISON. SO THERE WAS SIGNIFICANT COST
16 AVOIDANCE IN THE PROGRAM, AS WELL AS THE FACT THAT THE PEOPLE
17 DID BETTER AND DIDN'T COME BACK.

18 AND, YOU KNOW, I SHOULD SAY THAT PART OF THE REASON
19 THAT DIVERTING PEOPLE IN THE FRONT END, IF THEY ARE LESS SERIOUS
20 OFFENDERS, AND GETTING THEM INTO PROGRAMMING MAKES A WHOLE BUNCH
21 OF SENSE IS THE RESEARCH IS REALLY CLEAR OUT THERE THAT
22 COMMUNITY-BASED PROGRAMMING IS ACTUALLY MORE EFFECTIVE THAN
23 PRISON-BASED PROGRAMMING. YOU CAN STILL -- PRISON-BASED
24 PROGRAMMING CAN BE EFFECTIVE, BUT IT'S MORE EFFECTIVE IF YOU DO
25 IT IN A COMMUNITY.

1 THE OTHER THING THAT YOU ACHIEVE BY DIVERTING THE
2 PERSON ON THE FRONT END IS YOU DON'T TAKE THEM AWAY FROM THEIR
3 COMMUNITY AND THEN CREATE THIS WHOLE PROBLEM THAT WE TALK ABOUT,
4 REENTRY, AND THAT'S THE BIG THING EVERYBODY'S TALKING ABOUT AND
5 HAS BEEN FOR THE PAST FEW YEARS. THESE MILLIONS AND MILLIONS OF
6 PEOPLE THAT ARE GOING BACK, REENTERING INTO THE COMMUNITIES, AND
7 IT'S A VERY DIFFICULT PROCESS, BECAUSE IF THEY HAD A JOB, YOU'VE
8 TAKEN THEM AWAY FROM THEIR JOB. IF THEY HAVE A FAMILY, YOU'VE
9 TAKEN THEM AWAY FROM THEIR FAMILY. YOU'VE TAKEN THEM AWAY FROM
10 THEIR HOUSING. YOU'VE GOT TO NOW NOT ONLY GET THEM BACK OUT,
11 YOU HAVE GOT TO GET THEM A PLACE TO LIVE, GET THEM A JOB, SEE
12 THEY GET THEIR AFTERCARE. WHEREAS, IF YOU COULD HAVE DIVERTED
13 THEM IN THE FIRST PLACE, YOU COULD HAVE AVOIDED ALL THOSE
14 PROBLEMS YOU CREATE.

15 I MIGHT ADD THAT I'M HOPING THIS YEAR TO DO A
16 FORMULA-BASED DIVERSION. IN OTHER WORDS, WHERE WE WILL TELL
17 COUNTIES, IF YOU DIVERT PEOPLE, WE'LL COME UP WITH A NUMBER; IF
18 YOU DIVERT PEOPLE BELOW THIS NUMBER BELOW THE STATE PRISON
19 SYSTEM, I'LL PAY THEM OUT OF MY BUDGET, BECAUSE IT WILL BE
20 CHEAPER FOR ME TO DO IT THAN TO SEND THEM TO ME.

21 **JUDGE KARLTON:** EXCUSE ME, SIR. ONE CONSEQUENCE OF
22 THESE PROGRAMS -- I'M NOT SURE IT MATTERS FOR WHAT WE DO FOR A
23 LIVING, BUT I'M JUST CURIOUS. ONE CONSEQUENCE OF THIS PROGRAM
24 IS THAT YOU WIND UP IN THE PRISONS WITH MANY MORE DANGEROUS
25 PEOPLE, VIOLENT AND SO FORTH. HAS YOUR -- HAS THE COST OF

1 IMPRISONMENT, BECAUSE OF THE NEED TO REGULATE THOSE PEOPLE, GONE
2 UP, OR IS IT ESSENTIALLY THE SAME PER PERSON? DO YOU UNDERSTAND
3 WHAT I'M ASKING?

4 **THE WITNESS:** IT IS MORE COSTLY TO HOUSE THE MORE
5 DANGEROUS -- MORE DANGEROUS PEOPLE, NOT NECESSARILY PEOPLE WHO
6 COMMIT VIOLENT CRIMES, BECAUSE, YOU KNOW, FOR INSTANCE, IN
7 PENNSYLVANIA LIFE IS LIFE, AND WE HAVE 4,000 LIFERS IN OUR
8 STATE. THEY ARE SOME OF OUR BETTER INMATES BECAUSE THEY KNOW
9 THAT'S THEIR HOME. SO JUST BECAUSE THEY'VE COMMITTED A VIOLENT
10 OFFENSE DOESN'T NECESSARILY MAKE THEM MORE DIFFICULT TO MANAGE.

11 BUT THERE ARE CERTAIN VIOLENT OFFENDERS WHO NOT ONLY
12 ARE VIOLENT IN THE COMMUNITY, BUT ARE VIOLENT WITHIN THE PRISON
13 SYSTEM. THOSE PEOPLE ARE MOST COSTLY. THEY ARE MORE DIFFICULT.
14 BUT AS A WHOLE CLASS THERE'S A LOT OF VIOLENT OFFENDERS WHO ARE
15 NOT NECESSARILY MORE COSTLY WHILE IN PRISON. IT'S WHILE THEY
16 ARE IN THE COMMUNITY THAT WE HAVE TO BE CONCERNED ABOUT THEM.

17 **BY MR. SPECTER**

18 **Q** ISN'T IT TRUE THAT WHETHER OR NOT YOU DIVERT THE LOW RISK
19 OFFENDERS, YOU STILL HAVE TO CARE FOR THE -- CARE AND
20 INCARCERATE --

21 **A** ABSOLUTELY. YOU KNOW, I THINK EVERYTHING THAT I'VE EVER
22 TRIED TO DO IN MY STATE, I KNOW THAT WORKING WITH THE EXPERT
23 PANEL, THE STUFF THAT WE DID, THE FOCUS WAS ALWAYS ON THESE LESS
24 SERIOUS OFFENDERS, NOT ON VIOLENT OFFENDERS. THAT IS WHAT I
25 THINK OUR PRISONS ARE FOR. OUR PRISONS ARE TO HOLD AND MANAGE

1 THOSE VIOLENT OFFENDERS TO PROTECT OUR COMMUNITIES.

2 **Q** AND IN ADDITION TO THE SAVING ON THE OPERATING COSTS, WERE
3 YOU ABLE TO SAVE ON CAPITAL CONSTRUCTION COSTS?

4 **A** WELL, CERTAINLY. CERTAINLY, IF YOU CAN EFFECTIVELY CONTROL
5 YOUR POPULATION, YOU NOT ONLY SAVE MONEY BY HAVING A LOWER
6 POPULATION, BUT YOU HAVE THE COST AVOIDANCE OF NOT HAVING TO
7 CONSTRUCT.

8 NEW YORK, FOR EXAMPLE, DID THIS PROGRAM, YOU KNOW, AS
9 I SAID, FOR ABOUT 11 YEARS. THEIR POPULATION IS GOING DOWN AND
10 THEY'RE ACTUALLY TALKING ABOUT CLOSING PRISONS, WHILE MANY OTHER
11 STATES ARE TALKING ABOUT BUILDING PRISONS.

12 **Q** WHAT'S THE PAROLE VIOLATION RATE IN PENNSYLVANIA?

13 **A** THE PAROLE VIOLATION RATE?

14 **Q** THE RATE AT WHICH PAROLE VIOLATORS COME BACK TO PRISON. IN
15 CALIFORNIA YOU'VE HEARD THE FIGURES THAT IT'S BETWEEN 60 AND
16 70 PERCENT OVER THREE YEARS?

17 **A** OUR RECIDIVISM RATE, THE WAY WE MEASURE IT, IS AT ABOUT
18 47 PERCENT. BUT IF WE MEASURED IT MORE THE WAY I THINK
19 CALIFORNIA DOES -- AND THIS IS -- IT'S VERY DIFFICULT TO COMPARE
20 RECIDIVISM RATES BECAUSE EVERYBODY MEASURES IT DIFFERENTLY. I'M
21 VERY FAMILIAR WITH THIS BECAUSE I'M A MEMBER OF THE ASSOCIATION
22 OF STATE CORRECTIONAL ADMINISTRATORS, AND WE HAVE A
23 PERFORMANCE-BASED MEASURES PROJECT WHERE WE'RE TRYING TO GET ALL
24 OF THE STATES TO MEASURE EVERYTHING THE SAME WAY, BECAUSE
25 USUALLY IT'S APPLES AND ORANGES.

1 FOR INSTANCE, WHEN I SAY 47 PERCENT, WE INCLUDE
2 EVERYBODY THAT WALKS THROUGH OUR FRONT DOOR, EVEN PEOPLE WHO
3 AREN'T EVENTUALLY RECOMMITTED BY THE PAROLE BOARD AND EVEN
4 PEOPLE WHO MAY COME BACK TWICE IN ONE YEAR. WHEREAS, SOME
5 STATES WILL ONLY -- IF YOU FAIL, YOU CAN ONLY FAIL ONCE OUT OF
6 THAT COHORT, AND THEY DON'T COUNT PEOPLE UNTIL THEY'RE ACTUALLY
7 ADJUDICATED AS BEING RETURNED. THEY'RE GOING TO SHOW A LOWER
8 RATE BECAUSE OF THAT.

9 WHEN WE APPLY OUR INFORMATION TO THE NATIONAL MODEL,
10 WHICH AS ALASKA HAS, OUR RATE IS 31 PERCENT. I CAN'T TELL YOU
11 WHAT CALIFORNIA'S WOULD BE BECAUSE I WOULD HAVE TO WORK WITH
12 THEIR STATISTICAL PEOPLE TO FIGURE OUT AND GET THEM TO
13 BASICALLY, OKAY, DO IT ACCORDING TO THE NATIONAL RATE AND THEN
14 WHAT WOULD THEY COME OUT TO BE.

15 Q I SEE.

16 A I DON'T KNOW WHAT IT WOULD BE.

17 Q OKAY. HAVE YOU TAKEN EFFORTS TO BRING THAT RATE TO WHERE IT
18 IS NOW; IN OTHER WORDS, TO MAKE IT AS LOW AS POSSIBLE?

19 A YES, I HAVE. I MEAN, ONE OF THE THINGS THAT I WAS VERY
20 FORTUNATE TO TAKE OVER THE DEPARTMENT AFTER WE HAD TWO
21 COMMISSIONERS, ONE WHO CAME IN AND DEALT WITH THE SEVERE
22 OVERCROWDING THAT WE HAD, ANOTHER WHO CAME IN AND DEALT WITH
23 SOME OF THE PROBLEMS WE HAD WITH DRUGS AND SAFETY IN OUR
24 PRISONS. SO I HAD ESSENTIALLY IN 2001 WHEN I TOOK OVER A SAFE
25 PRISON SYSTEM TO OPERATE WITH, AND OVER THE LAST SEVEN YEARS I

1 WORKED VERY HARD TO IMPLEMENT EVIDENCE-BASED PROGRAMS TO GET THE
2 PROPER ASSESSMENT INSTRUMENTS IN PLACE SO WE CAN PROPERLY
3 IDENTIFY WHAT INMATES SHOULD GET WHAT TREATMENT, WHAT INMATES
4 DON'T NEED ANY TREATMENT.

5 BEFORE THIS, THE WAY WE USED TO GET PEOPLE IN
6 TREATMENT IS, YOU KNOW, SOMEBODY SAYS, OKAY, I THINK THIS
7 PROGRAM IS GOOD, OR THAT PROGRAM IS GOOD. AND WHEN YOU PUT LOW
8 RISK PEOPLE, FOR INSTANCE, IN TREATMENT, YOU'RE WASTING YOUR
9 MONEY, BECAUSE THEY'RE PROBABLY GOING TO SUCCEED NO MATTER WHAT
10 YOU DO. AND, IN FACT, IF YOU MIX THEM IN WITH HIGHER RISK
11 PEOPLE, YOU CAN ACTUALLY MAKE LOWER RISK PEOPLE WORSE. SO IT'S
12 HUGE IMPORTANT THAT YOU DO PROPER ASSESSMENTS UP FRONT SO YOU
13 NOT ONLY GET THE RIGHT PEOPLE IN PROGRAMS BUT THE RIGHT PEOPLE
14 IN THE RIGHT PROGRAMS. THAT'S WHAT I HAVE BEEN WORKING ON.

15 IT'S A HARD PROCESS, BECAUSE YOU NOT ONLY HAVE TO GET
16 THE ASSESSMENT PEOPLE PART IN PLACE AND THE PROGRAM PIECE IN
17 PLACE, BUT THEN YOU HAVE TO HAVE A QUALITY CONTROL PIECE BECAUSE
18 THINGS DON'T STAY STAGNANT. WHAT LOOKS GOOD TODAY MAY NOT LOOK
19 GOOD TOMORROW. THERE'S A LOT INVOLVED IN IT. WE HAVE BEEN
20 WORKING VERY HARD OVER THE LAST SIX OR SEVEN YEARS TO GET THAT
21 IN PLACE, AND WE STILL -- WE'RE STILL DEVELOPING AND WORKING ON
22 IT.

23 **Q** YOU PROVIDE -- INSTEAD OF SENDING PAROLE VIOLATERS BACK TO
24 PRISON, DO YOU PUT THEM IN SUBSTANCE ABUSE TREATMENT IF THAT'S
25 CALLED FOR?

1 **A** YES, WE -- ONE OF THE THINGS THAT -- OUR PAROLE BOARD ABOUT
2 TWO OR THREE YEARS AGO ADOPTED A MATRIX BASICALLY, A RISK-BASED
3 MATRIX THAT THEY WOULD LOOK AT THE RISK OF THE INDIVIDUAL, AND
4 THEY WOULD LOOK AT THE OFFENSE THAT THE INDIVIDUAL COMMITTED,
5 THE TECHNICAL OFFENSE THAT THEY COMMITTED THEN LOOK AT THEIR
6 CRIME, AND MAKE A DECISION WHAT TO DO WITH THAT INDIVIDUAL.
7 RATHER THAN JUST SENDING THEM BACK TO JAIL, THEY TRIED TO DIVERT
8 MORE OF THESE TECHNICAL PAROLE VIOLATERS.

9 IN A TWO-YEAR PERIOD FROM 2005 TO 2007, THEY REDUCED
10 OUR TECHNICAL PAROLE VIOLATER RATE, WHICH IS FAR LOWER THAN
11 CALIFORNIA'S TO START WITH. WE ONLY HAD 3,800 TWO YEARS PRIOR,
12 DOWN TO 2,800. SO WE REDUCED ABOUT A THOUSAND TECHNICAL PAROLE
13 VIOLATERS. IT WAS AROUND 900 AND SOME ACTUALLY, OVER THAT
14 TWO-YEAR PERIOD AND DIVERTED THEM INTO PROGRAMS THAT WE
15 OPERATED. IN OTHER WORDS, PAROLE IN PENNSYLVANIA IS SEPARATE
16 FROM CORRECTIONS.

17 SO WE DIVERTED THEM INTO PROGRAMS THAT WE OPERATED,
18 THINGS THAT WE CALL LIKE "HALFWAY BACK" WHERE THEY WOULD GET
19 INTO SUBSTANCE ABUSE, BECAUSE MANY OF THESE PEOPLE WERE
20 VIOLATING -- THEY WERE COMING UP WITH HOT URINES AND THINGS LIKE
21 THAT. THEY WERE HAVING SUBSTANCE ABUSE RELAPSE ISSUES. SO WE
22 WERE GETTING THEM INTO SUBSTANCE ABUSE TREATMENT PROGRAMS RATHER
23 THAN SENDING THEM BACK TO PRISON.

24 WE DEVELOPED A SERIES OF PROGRAMS IN CONJUNCTION WITH
25 PAROLE AND FIND THAT'S BEEN VERY SUCCESSFUL IN REDUCING THE

1 TECHNICAL PAROLE VIOLATER RATE AND FIND A GOOD PERCENTAGE OF
2 THOSE PEOPLE WHO COMPLETE THOSE PROGRAMS STAY OUT. SO, YOU
3 KNOW, WE'RE PLEASED WITH THE DIRECTION THAT WE'VE TAKEN THERE.

4 **Q** NOW, WE'VE JUST DISCUSSED THE FACT THAT THE CALIFORNIA
5 PAROLE VIOLATION RATE IS MUCH HIGHER THAN THE NATIONAL AVERAGE
6 AND IN YOUR STATE, DO YOU BELIEVE IT'S NECESSARY TO REVOKE THAT
7 MANY PAROLEES FOR PUBLIC SAFETY?

8 **A** NO. AND, IN FACT, I THINK THERE'S A POSSIBILITY THAT YOU
9 COULD ADVERSELY AFFECT PUBLIC SAFETY BY REVOKING SO MANY PEOPLE.
10 SOME OF THE RESEARCH I'VE SEEN, SOME OF WHAT WE'VE DONE IN OUR
11 STATE, SHOWS WHEN YOU REVOKE AN INDIVIDUAL THE FIRST TIME,
12 THEY'RE MORE LIKELY TO FAIL THE SECOND TIME; THEN THEY'RE EVEN
13 MORE LIKELY TO FAIL THE THIRD TIME. AND IF YOU ARE REVOKING
14 PEOPLE AND SENDING THEM BACK TO PRISON FOR AN AVERAGE OF FOUR
15 MONTHS AND THEY'RE NOT REALLY ABLE TO GET ANY PROGRAMMING TO
16 ADDRESS WHATEVER THE PROBLEM WAS THAT CAUSED THE REVOCATION,
17 THEN THEY'RE UNLIKELY TO SUCCEED WHEN THEY GO BACK OUT. THE
18 IMPORTANT THING IS YOU FIGURE OUT WHAT THE PROBLEM IS AND
19 INTERVENE WITH THE PROBLEM.

20 NOW, SOME OF THOSE TECHNICAL VIOLATERS SHOULD COME
21 BACK TO PRISON. THEY MAY BE HIGH RISK INDIVIDUALS. THEY MAY
22 HAVE COMMITTED SERIOUS-TYPE OFFENSES, OR THEY MAY BE VIOLENT
23 OFFENDERS THAT YOU ARE VERY CONCERNED ABOUT, AND THEY SHOULD GO
24 BACK TO PRISON.

25 BUT IT DOESN'T SEEM TO ME, LOOKING AROUND THE

1 COUNTRY, LOOKING AT OTHER PEOPLE'S VIOLATION RATE AND SEEING HOW
2 FAR ABOVE THE NATIONAL AVERAGE THAT CALIFORNIA IS, IT WOULD TELL
3 ME THAT THAT MIGHT ACTUALLY BE HINDERING PUBLIC SAFETY BECAUSE
4 YOU ARE GOING TO GET SOME OF THESE INDIVIDUALS THAT ARE JUST
5 GOING TO CHURN THROUGH THE SYSTEM, AND THEY'RE NEVER GOING TO
6 GET BETTER, AND THEY'RE JUST GOING TO KEEP GOING THROUGH AND
7 GOING THROUGH. SO I THINK THE BETTER WAY IS TRY TO FIND SOME
8 WAY TO INTERVENE WITH AT LEAST SOME OF THOSE PEOPLE AND PREVENT
9 THEM FROM GOING BACK IN THE FIRST PLACE.

10 **Q** FROM YOUR RESEARCH DID YOU DISCOVER A METHOD THAT CALIFORNIA
11 WAS USING EARLIER IN THE LAST DECADE ABOUT HOW -- THAT HAD THE
12 EFFECT OF --

13 **A** YEAH, I HAPPENED TO NOTICE, IN LOOKING AT THEIR WEBSITE,
14 THAT IN 1993 THEIR VIOLATION RATE -- THEY WERE VIOLATING, I
15 THINK, 40 PERCENT OF THE AT-RISK POPULATION. I THINK TODAY THEY
16 ARE DOING 50 PERCENT OF THE AT-RISK POPULATION. IF THEY WERE
17 VIOLATING IT TODAY AT THE SAME RATE THEY WERE VIOLATING IN 1993,
18 THEY WOULD HAVE 17,000 LESS VIOLATORS.

19 WHAT THEY APPARENTLY WERE DOING BACK THEN, AND I
20 DON'T KNOW EVERYTHING ABOUT IT, BUT THEY SET TARGETS FOR THE
21 VARIOUS DISTRICTS ON VIOLATIONS, AND AS THE DISTRICTS REDUCED
22 THE NUMBER OF PEOPLE THAT THEY SENT BACK, THEY PROVIDED MORE
23 RESOURCES TO THOSE DISTRICTS SO THEY COULD PROVIDE THE
24 PROGRAMMING AND THE RESOURCES THAT THOSE PEOPLE NEEDED. SO EVEN
25 IF THEY WOULD GO BACK AND DOING WHAT THEY WERE DOING HERE IN

1 1993, PROVIDE THOSE RESOURCES TO INTERDICT, WHICH IS ESSENTIALLY
2 WHAT I SAY WE'RE DOING IN OUR STATE, RIGHT THERE THEY COULD
3 ALMOST DROP 17,000 VIOLATERS JUST WITH THAT ALONE.

4 **Q** NOW, YOU HAVE REVIEWED DOCUMENTS ABOUT THE CDCR'S PLAN TO
5 REFORM PAROLE, CORRECT?

6 **A** YES.

7 **Q** AND THAT INVOLVED THE PILOT PROJECT, CORRECT?

8 **A** I THINK THEY HAVE A PAROLE VIOLATER'S DECISION-MAKING
9 INSTRUMENT THAT THEY'RE LOOKING TO PUT IN PLACE, SOMETHING
10 SIMILAR TO THE INSTRUMENT WE PUT IN PLACE IN PENNSYLVANIA A FEW
11 YEARS AGO.

12 **Q** RIGHT. AND YOU ARE FAMILIAR WITH THE LENGTH OF TIME THEY
13 WANT TO STUDY OR THE LENGTH OF TIME THAT THEY WANT THE PILOT
14 PROJECT TO RUN?

15 **A** FROM WHAT I SAW, DOCUMENTS THAT I SAW, INDICATED THAT THE
16 PILOT PROGRAM WAS TO RUN FOR TWO YEARS.

17 **Q** WHAT DO YOU THINK ABOUT THAT LENGTH OF TIME?

18 **A** I THINK THAT THAT IS PROBABLY LONGER THAN IS NEEDED. WE
19 DIDN'T DO THAT IN PENNSYLVANIA. WE CAME UP WITH A MATRIX AND
20 PILOTED IT OVER -- THE PAROLE DID, PAROLE IS A SEPARATE
21 AGENCY -- OVER A FEW MONTHS, MADE SOME ADJUSTMENTS, AND THEN GOT
22 IT OUT THERE AND GOT IT RUNNING.

23 THIS ISN'T SOMETHING NEW OR DIFFERENT. MANY, MANY
24 STATES HAVE DONE THIS. AS LONG AS CALIFORNIA HAS DEVELOPED
25 THEIR INSTRUMENT ALONG THE LINES OF WHAT OTHER STATES HAVE DONE,

1 I DOUBT A TWO-YEAR STUDY IS GOING TO TEACH THEM A WHOLE BUNCH.
2 IF THEY WANT TO DO ANY KIND OF A THING, WHAT I WOULD SUGGEST
3 THEY DO IS DO A PILOT OVER THREE TO SIX MONTHS, AND WHILE
4 THEY'RE DOING THAT, TRAIN THE OTHER STAFF SO THAT AT THE END OF
5 SIX MONTHS, LET'S SAY, THEY COULD MAKE ANY ADJUSTMENTS THEY
6 WANTED AS A RESULT OF THE PILOT AND THEN BEGIN ROLLING IT OUT ON
7 A MORE STATEWIDE BASIS. I CAN'T IMAGINE WHY THEY WOULD NEED TWO
8 YEARS TO STANDARDIZE IT.

9 **Q** THE EXPERT PANEL ESSENTIALLY MADE THIS RECOMMENDATION FOR
10 THE PAROLE VIOLATION MATRIX, RIGHT?

11 **A** YES.

12 **Q** AND THE EXPERT PANEL MADE THAT RECOMMENDATION ABOUT A YEAR
13 AND A HALF AGO NOW, RIGHT?

14 **A** I THINK IT'S SOMETIME, YEAH, ABOUT A YEAR AND A HALF AGO,
15 BACK EARLY 2007, I THINK.

16 **Q** JUNE OF 2007?

17 **A** JUNE OF 2007.

18 **Q** RIGHT.

19 SO, ESSENTIALLY, IN YOUR OPINION, IT SHOULD HAVE BEEN
20 UP AND RUNNING BY NOW; IS THAT RIGHT?

21 **A** WELL, IF THAT'S WHAT THEY -- YOU KNOW, IF CALIFORNIA HAD
22 CHOSE TO FOLLOW THROUGH WITH THAT RECOMMENDATION, CERTAINLY THEY
23 COULD HAVE DEVELOPED IT, THEY COULD HAVE PILOTTED IT, AND THEY
24 COULD BE A YEAR INTO IT BY NOW.

25 **Q** NOW?

1 **A** OR ALMOST A YEAR INTO IT BY NOW.

2 **Q** RIGHT. YOU UNDERSTAND THAT IF YOU REDUCE THE NUMBER OF
3 PAROLE VIOLATERS WHO ARE SENT BACK TO PRISON, THAT WOULD REDUCE
4 THE IMPACT OF CROWDING ON THE RECEPTION CENTERS, CORRECT?

5 **A** YES.

6 **Q** YESTERDAY JUDGE KARLTON ASKED THE WITNESS BEFORE YOU,
7 DR. AUSTIN, WHETHER THAT WOULD HAVE ANY IMPACT ON THE DELIVERY
8 OF HEALTHCARE SERVICES TO PRISONERS IN THE GENERAL POPULATION,
9 AND AS A CORRECTIONAL PRACTITIONER WHO RUNS A LARGE SYSTEM, I
10 WOULD LIKE YOU TO ALSO ANSWER THAT QUESTION.

11 **A** WELL, I THINK THE ANSWER IS THAT ABSOLUTELY WOULD HAVE A
12 HUGE IMPACT. WHEN I LOOK AT THE CROWDING PROBLEM IN CALIFORNIA,
13 I SEE, REALLY, TWO CROWDING PROBLEMS THAT ARE IMPACTING ON THE
14 MENTAL HEALTHCARE, THE MEDICAL CARE AND EVERYTHING, THE ONE
15 BEING THE GROSS POPULATION, THE OTHER BEING THE HUGE AMOUNT OF
16 PEOPLE COMING INTO THE SYSTEM EVERY YEAR.

17 IF YOU HAVE 140,000 PEOPLE COMING THROUGH -- AND WE
18 ONLY IN OUR STATE HAVE 15,000, ABOUT 15, 16,000 -- YOU HAVE
19 140,000 COMING IN, IT TAKES A HUGE AMOUNT OF RESOURCES, AND FROM
20 EVERYTHING THAT I'VE SEEN WITH THE TRIPLE BUNKING AND THE WELL
21 OVER 200 PERCENT OF CAPACITY OF THEIR RECEPTION CENTERS AND
22 EVERYTHING ELSE, THE IMPACT IS THAT YOU'RE WASTING A HUGE AMOUNT
23 OF RESOURCES ON ALL THESE PEOPLE. IF YOU REDUCE IT, SAY, BY
24 40,000 TO 100,000, YOU NOW, FIRST OF ALL, CAN REDISTRIBUTE SOME
25 OF THOSE RESOURCES TO YOUR POPULATION INSTITUTIONS. AND,

1 SECONDLY, YOU CAN DO A BETTER JOB AT IDENTIFYING THE PEOPLE WITH
2 THE MENTAL HEALTH AND MEDICAL PROBLEMS THAT ARE COMING IN IN THE
3 FIRST PLACE. THERE'S A MUCH GREATER CHANCE YOU ARE GOING TO
4 MISS PEOPLE WHEN YOU HAVE SO MANY PEOPLE COMING IN. SO I THINK
5 FROM THOSE TWO PERSPECTIVES, YOU CAN DO THAT.

6 THEN IF THE RECEPTION NUMBERS ARE COMING DOWN, THE
7 OTHER THING THAT HAPPENS IS YOUR POPULATION SHOULD BE COMING
8 DOWN, TOO, AND AS THAT COMES DOWN, THEN YOU ARE BETTER ABLE TO
9 MOVE PEOPLE TO THE PROPER FACILITIES, WHICH IS A HUGE PROBLEM
10 RIGHT NOW BECAUSE EVERYTHING IS SO CROWDED.

11 SO IT ALL WORKS TOGETHER, AND THAT'S WHY, YOU KNOW,
12 IF I WERE DOING SOMETHING, I WOULD FOCUS ON THE FRONT END AND
13 THE BACK END DIVERSION ALMOST FIRST BECAUSE THEY NOT ONLY IMPACT
14 ON YOUR POPULATION, BUT THEY IMPACT ON THE RECEPTION NUMBERS,
15 AND YOU CAN JUST START GETTING HUGE BENEFITS OPERATIONAL BY
16 REDUCING THOSE NUMBERS.

17 **Q** AND THAT WOULD MEAN THAT PRISONERS WHO NEEDED CLINICAL
18 SERVICES AT PARTICULAR INSTITUTIONS WOULD HAVE A GREATER CHANCE
19 OF GETTING TO THOSE SERVICES IN A TIMELY MANNER; IS THAT RIGHT?

20 **A** CERTAINLY, IF THERE'S LESS POPULATION THERE AND MORE
21 RESOURCES, BECAUSE YOU ARE SAVING YOUR RESOURCES, YES, IT WOULD
22 MEAN THOSE PEOPLE WOULD MORE LIKELY GET THE SERVICES THEY SHOULD
23 GET.

24 **Q** OKAY. NOW, YOU'VE READ DR. AUSTIN'S AUGUST 15TH, 2008
25 REPORT; IS THAT RIGHT?

1 **A** YES.

2 **Q** AND DO YOU THINK THAT THE RECOMMENDATIONS CONTAINED IN THAT
3 REPORT ARE AS AGGRESSIVE AS THE ONES THAT THE EXPERT PANEL MADE?

4 **A** NO. I THINK DR. AUSTIN WAS -- TOOK A MORE CONSERVATIVE
5 APPROACH, WHICH I DON'T DISAGREE WITH, BECAUSE IN THE EXPERT
6 PANEL I BELIEVE IN AT LEAST ONE OF THE RECOMMENDATIONS IT WAS
7 DEALING WITH SOME SECOND STRIKERS WOULD HAVE BEEN DEALT WITH,
8 AND I THINK IN WHAT DR. AUSTIN DID IN HIS IS HE PRETTY MUCH
9 LIMITED ALL HIS NUMBERS TO THE 50 PERCENT CLASS, WHICH IS THIS
10 LESS SERIOUS GROUP, AND IT'S A GROUP I THINK SHOULD BE FOCUSED
11 ON.

12 **Q** AND, IN GENERAL, DO YOU AGREE WITH HIS RECOMMENDATIONS?

13 **A** YES.

14 **Q** OKAY. NOW, THERE'S BEEN A LOT OF DISCUSSION IN THE TRIAL --
15 IN THIS TRIAL ABOUT RELEASING PRISONERS BEFORE THEIR SENTENCES
16 ARE OVER WHEN YOU FIGURE IN THE CREDITS THAT THEY WOULD HAVE HAD
17 BEFOREHAND. WHAT'S YOUR OPINION ABOUT WHAT'S BEEN CALLED
18 ACCELERATED RELEASE OF PRISONERS BEFORE THEIR SENTENCE IS OVER?
19 DO YOU THINK THAT WOULD HAVE AN ADVERSE IMPACT ON PUBLIC SAFETY?

20 **A** WELL, FIRST OF ALL, WHAT KIND OF AN ACCELERATED RELEASE ARE
21 WE TALKING ABOUT? ARE WE TALKING ABOUT AN ACCELERATED RELEASE
22 WHERE PEOPLE GET CREDITS FOR COMPLETING PROGRAMS OR ARE WE
23 TALKING ABOUT A FLAT OUT ACCELERATED RELEASE?

24 **Q** LET'S TALK ABOUT THEM EACH IN TURN.

25 **A** OKAY. LET'S FOCUS ON THE ONE WHERE YOU JUST COME UP AND SAY

1 WE ARE GOING TO CUT FOUR MONTHS OFF THE SENTENCE, AND YOU ARE
2 GOING TO GO HOME FOUR MONTHS EARLY.

3 **Q** RIGHT.

4 **A** THOSE PEOPLE HAVEN'T DONE ANYTHING TO GET THAT. THEY
5 HAVEN'T GOT ANY SPECIAL PROGRAMMING OR ANYTHING ELSE, THEY ARE
6 GOING TO GO HOME FOUR MONTHS EARLY. ESSENTIALLY, THEY ARE GOING
7 TO GET A BUS TICKET AND THE TWO HUNDRED DOLLARS, OR WHATEVER
8 THEY GIVE THEM, AND THEY ARE GOING TO SEND THEM HOME THE SAME AS
9 THEY DO BUT FOUR MONTHS EARLIER.

10 **Q** RIGHT.

11 **A** FROM ALL OF THE RESEARCH THAT I HAVE SEEN OUT THERE, OTHER
12 STATES, AND THERE'S BEEN MANY OTHER STATES THAT HAVE DONE THIS
13 KIND OF THING, CALIFORNIA DID IT, I THINK, THEMSELVES BACK 20
14 SOME YEARS OR SO AGO. SOME BIG CITIES HAVE DONE THESE KINDS OF
15 THINGS. IT DOES NOT HAVE AN ADVERSE EFFECT ON RECIDIVISM, AND
16 IT DOES NOT HAVE AN ADVERSE EFFECT ON THE CRIME RATE. THAT'S
17 WHAT THOSE STUDIES SHOW YOU. YOU RELEASE THESE PEOPLE -- THE
18 BASIC REASON IS, IS BECAUSE ALL YOU ARE DOING IS LETTING
19 SOMEBODY GET OUT OF JAIL FOUR MONTHS EARLIER. THAT'S ALL YOU
20 ARE DOING, SO IT DOESN'T HAVE AN ADVERSE EFFECT.

21 NOW, THAT BEING SAID, IT ALSO DOESN'T FIX YOUR
22 OVERALL STRUCTURAL PROBLEM BECAUSE YOU HAVE TO CONSTANTLY BE
23 LEAVING PEOPLE OUT EARLY, AND IF YOU DO NOTHING ELSE, IT ALSO
24 PROBABLY DOESN'T ENHANCE PUBLIC SAFETY. SO WHAT I WOULD PREFER
25 TO SEE, IF YOU WERE GOING TO GO AND SAY WE ARE GOING TO TAKE

1 FOUR MONTHS OFF OF SOMEBODY'S SENTENCE AND LET THEM OUT, I WOULD
2 PREFER TO SEE THAT THERE BE FUNDING PROVIDED TO THE COUNTIES OR
3 TO STATE PAROLE TO PROVIDE RESOURCES SO THAT THE PERSON ISN'T
4 JUST COMING BACK WITH THE \$200, BUT SO YOU CAN FOCUS ON GETTING
5 THEM A PLACE TO LIVE, GETTING A JOB, GETTING INTO ANY AFTERCARE
6 LIKE SUBSTANCE ABUSE PROGRAMMING THEY NEED TO GET INTO. IF YOU
7 DO THAT KIND OF THING, COUPLED WITH LEAVING THEM OUT FOUR MONTHS
8 EARLY, THE RESEARCH WOULD SAY THAT YOU ARE GOING TO GET BETTER
9 RECIDIVISM RATES. YOU ARE GOING TO HAVE LESS CRIME AND LESS
10 VICTIMIZATION. SO THAT'S IF YOU DO THAT.

11 **Q** RIGHT.

12 **A** AND, LIKE I SAID, IF YOU DON'T GIVE THE SERVICES, IT
13 PROBABLY ISN'T GOING TO HURT ANYTHING, BUT IT ISN'T GOING TO
14 HELP ANYTHING OR FIX THE LONG TERM PROBLEM.

15 NOW, LEAVING SOMEBODY OUT EARLY THAT YOU'RE GIVING
16 CREDIT TO BECAUSE THEY'VE DONE SOMETHING THAT I THINK WOULD HELP
17 THE PUBLIC SAFETY, AND THAT WOULD HELP THE PUBLIC SAFETY
18 BECAUSE, NUMBER ONE, YOU ARE GETTING THEM INTO THE PROGRAMS THEY
19 NEED TO GET INTO TO MAKE IT LESS LIKELY THEY ARE GOING TO COME
20 BACK TO PRISON, SO YOU ARE GOING TO LOWER RECIDIVISM RATES.

21 SO, BY JUST GIVING SOMEBODY A CREDIT -- I THINK IN
22 THE ONE BUDGET DOCUMENT I SAW THERE'S A PROPOSAL TO GIVE CREDIT
23 FOR FOUR MONTHS FOR EVERY PROGRAM A PERSON COMPLETES, BUT IT HAS
24 TO BE A SUBSTANTIAL EVIDENCE-BASED PROGRAM, RIGHT. IT CAN'T
25 JUST BE ANY PROGRAM.

1 YOU PUT THEM IN A SUBSTANTIAL PROGRAM, GIVE THEM THAT
2 FOUR MONTHS, THEN LET THEM OUT FOUR MONTHS EARLY FOR DOING THAT,
3 THAT PERSON IS GOING TO HAVE A LOWER RECIDIVISM RATE BASED ON
4 WHAT WE'VE SEEN, LIKE WITH THE MERIT TIME PROGRAM I TALKED ABOUT
5 IN OTHER STUDIES AROUND THE COUNTRY.

6 **Q** NOW, AS YOU KNOW, WITH CALIFORNIA'S OVERCROWDING, THE
7 GOVERNOR, THE SECRETARY AND MANY PEOPLE HAVE MENTIONED THAT WITH
8 THIS KIND OF OVERCROWDING, IT'S DIFFICULT TO DEVELOP PROGRAMS
9 THAT ARE NECESSARY BECAUSE THERE'S NO SPACE AND ALL THE OTHER
10 PROBLEMS ASSOCIATED WITH OVERCROWDING. IT'S BEEN DESCRIBED AS A
11 CATCH-22 SITUATION. WHAT'S YOUR REACTION TO THAT?

12 **A** WELL, MY REACTION IS, YOU KNOW, YOU'RE RIGHT THAT YOU CAN'T
13 START OFF AND DO MEANINGFUL PROGRAMMING TODAY. IT'S GOING TO BE
14 VERY DIFFICULT TO DO IN ANY LARGE AMOUNT OF WAYS BECAUSE OF THE
15 LOCKDOWNS, BECAUSE OF THE LACK OF SPACE, AND THE SEVERE
16 OVERCROWDING AND EVERYTHING LIKE THAT.

17 SO IT'S GOING TO BE DIFFICULT TO GET THAT UP AND
18 RUNNING, BUT THERE'S OTHER THINGS YOU CAN DO. I MEAN, YOU CAN
19 CERTAINLY GET THAT PAROLE VIOLATION INSTRUMENT IN PLACE AND TRY
20 TO REDUCE ON THE BACK END THE PAROLE VIOLATORS THAT ARE COMING
21 BACK INTO THE SYSTEM. YOU CERTAINLY CAN LIMIT PAROLE
22 SUPERVISION FOR LESS SERIOUS OFFENDERS. YOU CERTAINLY CAN COME
23 UP WITH SOME KIND OF A PROGRAM TO FUND COUNTIES ON A FORMULA
24 BASIS TO DIVERT PEOPLE ON THE FRONT END, AND JUST DOING THOSE
25 TWO THINGS ALONE WILL HAVE A HUGE REDUCTION IN THE RECEPTION

1 CENTERS AND WILL BEGIN BRINGING THE POPULATION DOWN.

2 AND THE OTHER THING IS -- AND I SAW THIS IN ANOTHER
3 BUDGET DOCUMENT THAT I THINK THAT WE'RE PROPOSING, AND IT'S
4 SOMETHING THE EXPERT PANEL HAD RECOMMENDED. YOU CAN ALSO MAKE
5 SOME CHANGES IN HOW THEY AWARD THAT RIP CREDIT THEY HAVE RIGHT
6 NOW SO IT'S AWARDED MORE DIRECTLY ACROSS THE BOARD, THAT SORT OF
7 GOOD TIME CREDIT THAT YOU CAN DO WITHOUT HAVING THE PROGRAMS.

8 SO THOSE PIECES CAN ALL BE DONE RIGHT NOW AND THEN
9 CAN BEGIN GENERATING SPACE WITHIN THE SYSTEM SO YOU CAN GET THE
10 PROGRAMS UP AND RUNNING, AND THEN YOU CAN GIVE THE CREDITS FOR
11 THE PEOPLE THAT COMPLETE THE PROGRAMS. SO THAT'S HOW YOU WOULD
12 BUILD ON THAT. IT WOULD BE VERY DIFFICULT TO, OBVIOUSLY, GIVE A
13 WHOLE BUNCH OF CREDITS FOR PROGRAMS RIGHT NOW WHEN YOU REALLY
14 CAN'T DO MEANINGFUL PROGRAMS RIGHT NOW, OR AT LEAST A LOT OF
15 THEM.

16 **Q** RIGHT.

17 NOW, DR. AUSTIN HAD TESTIFIED THAT A MODEST
18 ACCELERATION -- ACCELERATED RELEASE OF PRISONERS COULD CAUSE A
19 .3 PERCENT INCREASE IN ARRESTS. YOU ARE FAMILIAR WITH THAT?

20 **A** YES.

21 **Q** ASSUMING FOR THE MOMENT THAT SUCH A RELEASE WOULD CAUSE SUCH
22 AN INCREASE IN ARRESTS, IS THERE A WAY THE STATE COULD ELIMINATE
23 EVEN THAT SMALL INCREASE?

24 **A** YES.

25 **Q** HOW?

1 **A** BY PROVIDING SERVICES TO THOSE PEOPLE WHO ARE COMING OUT IN
2 THE FORM OF EDUCATION, VOCATIONAL TRAINING, JOB, HOUSING,
3 SUBSTANCE ABUSE, THOSE THINGS I SAID.

4 THE WAY YOU WOULD ADDRESS THAT, YOU KNOW, ASSUMING
5 THERE WOULD BE AN ADVERSE IMPACT AND THAT IMPACT ONLY OCCURS IF
6 IT DOES BECAUSE THE AT-RISK GROUP IS BIGGER, YOU KNOW, YOU'VE
7 JUST SHIFTED IT. IT REALLY ISN'T MORE CRIME, IT'S JUST MORE
8 CRIME HAPPENING HERE INSTEAD OF HAPPENING DOWN THE ROAD WHEN THE
9 PERSON WOULD HAVE GOT OUT ANYWAY. BUT YOU COULD ELIMINATE THE
10 POTENTIAL FOR THAT BY SEEING THAT PROPER SERVICES ARE PROVIDED
11 TO PEOPLE. ALL THE RESEARCH WOULD SAY IF YOU DO THAT, THOSE
12 PEOPLE ARE GOING TO BE LESS LIKELY TO FAIL IF YOU PROVIDE THOSE
13 SERVICES.

14 **Q** AND IF YOU PROVIDED THE SERVICES, IN YOUR OPINION, WOULD
15 THAT DO MORE THAN COMPENSATE FOR THE .3 PERCENT INCREASE?

16 **A** I THINK IT WOULD. I HAVE NO DOUBT THAT THE INCREASE IS
17 REALLY GOING TO BE QUITE SMALL WHEN YOU LOOK AT THE TOTAL AMOUNT
18 OF ARRESTS THAT YOU ARE DEALING WITH IF YOU ONLY HAVE A .3. THE
19 EXAMPLE WOULD BE EVEN IF YOU HAD A .5, A HALF A PERCENT, IF A
20 PARTICULAR JURISDICTION HAD 200 ARRESTS IN A MONTH AND IT'S A
21 HALF A PERCENT MORE, WHICH IS A LITTLE MORE THAN WHAT AUSTIN
22 SAID IN HIS THING, NOW YOU HAVE 201 ARRESTS. SO THE NUMBER IS
23 RELATIVELY SMALL, BUT IF YOU PROVIDE THE SERVICES, IF THAT EVEN
24 OCCURS, BUT THE NUMBERS -- IF YOU PROVIDE THE SERVICES, THEN
25 THAT -- YOU WOULD TAKE IT, AND YOU WOULD HAVE LESS THAN THE 200

1 THAT YOU WERE HAVING IN THE FIRST PLACE, BECAUSE YOU ARE
2 PROVIDING SERVICES TO THE PEOPLE THAT ARE COMING OUT WHICH YOU
3 AREN'T PROVIDING NOW.

4 **Q** SO IF THIS COURT WERE TO ORDER THE STATE TO REDUCE ITS
5 PRISON POPULATION AND THEY CHOSE A METHOD SUCH AS RELEASING
6 PRISONERS BEFORE THEIR SENTENCES WERE OVER, THEY WOULD -- THE
7 STATE WOULD HAVE THE CHOICE ABOUT WHETHER TO FUND THE SERVICES
8 THAT YOU ARE TALKING ABOUT OR NOT. IT'S ESSENTIALLY A POLITICAL
9 DECISION, WOULD YOU AGREE?

10 **A** I GUESS THAT'S CORRECT, THEY WOULD, YES.

11 **Q** OKAY. YOU SAW THE GOVERNOR'S NOVEMBER SPECIAL SESSION
12 BUDGET PROPOSAL?

13 **A** YES.

14 **Q** AND DO YOU AGREE THAT THE POPULATION-REDUCING MEASURES IN
15 THAT BUDGET PROPOSAL ARE SOMETHING THAT'S APPROPRIATE FOR THE
16 STATE TO DO?

17 **A** ABSOLUTELY. THEY ARE THINGS THAT WE HAVE BEEN TALKING ABOUT
18 IN -- AT LEAST THREE OF THE PROPOSALS THERE COME RIGHT DIRECTLY
19 PRETTY MUCH FROM THE EXPERT PANEL, THE ONE BEING TO LIMIT THE
20 SUPERVISION, PAROLE SUPERVISION OF THE LESS SERIOUS OFFENDERS,
21 THE OTHER BEING TO PROVIDE THE FOUR MONTHS CREDIT FOR PEOPLE WHO
22 COMPLETE EVIDENCED-BASED PROGRAMS, THE OTHER BEING TO MAKE SOME
23 ADJUSTMENTS TO THE -- THAT GOOD TIME CREDIT THAT'S BEING AWARDED
24 NOW SO YOU CAN PROVIDE THE FULL CREDIT TO PEOPLE IN JAILS AND
25 THINGS LIKE THAT. THOSE ARE THREE OF THE THINGS MENTIONED IN

1 THERE. THEY'RE RIGHT FROM THE EXPERT PANEL.

2 THE FOURTH THING WAS TO REDEFINE IN PROPERTY CRIMES
3 THE AMOUNT. APPARENTLY, THE AMOUNT TO BECOME A FELONY FOR A
4 PROPERTY CRIME HASN'T BEEN ADJUSTED SINCE 1982, AND, OBVIOUSLY,
5 YOU KNOW, THERE'S BEEN HUGE INFLATION SINCE 1982, SO YOU ARE
6 PROBABLY GETTING A WHOLE BUNCH MORE PEOPLE TODAY THAT ARE BEING
7 CALLED FELONY OFFENDERS SIMPLY BECAUSE THAT HASN'T BEEN
8 ADJUSTED. I THINK THAT MAKES A LOT OF SENSE.

9 THAT GETS TO LOOKING AT THE WHOLE SENTENCING ISSUE,
10 WHICH IS ANOTHER THING WE HAVEN'T REALLY TOUCHED ON. THAT'S
11 ANOTHER AREA THAT COULD BE LOOKED AT, AND THOSE KINDS OF
12 THOUGHTFUL THINGS COULD BE DONE AND PROBABLY MAKE SOME
13 ADDITIONAL THINGS.

14 SO I THINK ALL OF THOSE RECOMMENDATIONS SEEM LIKE
15 REALLY, REALLY GOOD, FINE RECOMMENDATIONS THAT THEY HAVE THERE.
16 HOPEFULLY, THAT WILL GET DONE.

17 Q WELL, THE SPECIAL SESSION ENDED -- NEVER MIND. I DON'T WANT
18 TO TESTIFY HERE.

19 YOU KNOW ABOUT AB 900, CORRECT?

20 A YES.

21 Q THAT'S A PRISON CONSTRUCTION AUTHORIZATION BILL?

22 A YES, I THINK IT CALLS FOR 8,000 IN-FILL BEDS AND 8,000
23 REENTRY BEDS ESSENTIALLY.

24 Q RIGHT. DO YOU THINK THAT EVEN IF THE LEGISLATURE DECIDED TO
25 FUND IT, WHICH IT HASN'T SO FAR, DO YOU THINK THAT WOULD SOLVE

1 CALIFORNIA'S OVERCROWDING CRISIS?

2 **A** I DON'T THINK SO, NO. I DON'T THINK IT WOULD FOR A NUMBER
3 OF REASONS.

4 FIRST OF ALL, CALIFORNIA, OVER THE PAST TEN YEARS OR
5 MORE, 20 YEARS, HAS BEEN SPENDING BILLIONS OF DOLLARS ON
6 CONSTRUCTION AND NEVER HAVE GOTTEN THERE. THEY'RE IN WORSE
7 SHAPE TODAY THAN WHEN THEY STARTED DOING THAT. YOU KNOW, IT
8 TAKES SO LONG TO BUILD IN THE FIRST PLACE, YOU KNOW, YOU ARE NOT
9 GOING TO SEE ANY IMPACT FOR THREE OR FOUR YEARS AND GOSH KNOWS
10 HOW LONG IT'S GOING TO TAKE TO GET ALL 16,000 OF THOSE BEDS IF
11 YOU DID IT. IT'S GOING TO BE HUGELY COSTLY TO THE SYSTEM IF YOU
12 DO THAT. SO THE TIME YOU HAVE IS ALSO A PROBLEM.

13 THE OTHER PROBLEM I HAVE WITH AB 900 IS WITH THE
14 IN-FILL BEDS, AS I'VE THINK TESTIFIED LAST TIME. I THINK THESE
15 BIG MEGA INSTITUTIONS ARE VERY DIFFICULT TO MANAGE. I REALIZE
16 THEY HAVE THEM, AND THEY ARE GOING TO HAVE TO OPERATE WITH THEM,
17 HOPEFULLY WITH LOWER POPULATIONS, BUT THE IN-FILL BEDS, ALL
18 YOU'RE DOING IS YOU'RE PUTTING A NEW HOUSING UNIT IN THIS
19 MASSIVELY OVERCROWDED INSTITUTION, AND MOVING INMATES FROM UGLY
20 BEDS TO NOW A NICER BED, BUT YOU HAVEN'T DONE ANYTHING WITH THE
21 INFRASTRUCTURE'S ABILITY TO HANDLE THOSE EXTRA INMATES.

22 I THINK PERSONALLY THAT CALIFORNIA SHOULD BE LOOKING
23 AT BUILDING NEW INSTITUTIONS IN THE 2- TO 3,000 MAN RANGE.
24 THAT'S WHERE THE MONEY SHOULD BE SPENT RATHER THAN ON IN-FILL
25 BEDS.

1 THEN IF THEY GET CONTROL OF THEIR POPULATION DOWN THE
2 ROAD AND THEY BUILD SOME OF THESE NEWER INSTITUTIONS, WHICH ARE
3 GOING TO BE MORE COST EFFECTIVE TO RUN, THEN MAYBE THEY COULD
4 LOOK AT CLOSING SOME OF THE OLDER FACILITIES. THEY HAVE SOME
5 SIGNIFICANT PROBLEMS, TOO.

6 THE OTHER PROBLEM WITH AB 900 WITH THE REENTRY BEDS,
7 THEY'RE TALKING ABOUT 8,000 REENTRY BEDS. I THINK THE CONCEPT
8 IS A GREAT CONCEPT TO HAVE THESE REENTRY FACILITIES IN THE
9 COUNTIES FOR THESE PEOPLE TO GO BACK TO. I THINK IT'S A GREAT
10 CONCEPT.

11 BUT THEY'RE GOING TO HAVE A HECK OF A HARD TIME
12 SITING THESE PLACES. I'M GOING TO BE VERY SURPRISED IF THEY ARE
13 ABLE TO SITE ALL 8,000 BEDS AND APPROPRIATELY SITE THEM. FOR
14 INSTANCE, MANY OF THEM ARE GOING TO NEED TO BE CITED TO THE LOS
15 ANGELES AREA BECAUSE THAT'S WHERE MOST OF THE INMATES ARE GOING
16 BACK TO. I THINK THAT'S A HUGE PROBLEM FINDING SITING. I KNOW
17 WE HAVE THOSE PROBLEMS IN PENNSYLVANIA.

18 THOSE ARE SOME OF THE PROBLEMS I SEE WITH AB 900 THE
19 WAY IT'S CURRENTLY CONSTRUCTED.

20 **Q** SO YOU'VE TESTIFIED ABOUT A LOT OF DIFFERENT THINGS THAT
21 YOUR STATE IS DOING AND THAT OTHER STATES HAVE DONE TO CONTROL
22 OR REDUCE THEIR POPULATION. IS THE PROBLEM FIGURING OUT -- IS
23 THE PROBLEM WITH CALIFORNIA'S OVERCROWDING CRISIS THE FACT THAT
24 THERE AREN'T SAFE WAYS TO REDUCE THE POPULATION?

25 **A** NO. IN MY OPINION, IT IS NOT -- YOU KNOW, THAT'S NOT THE

1 PROBLEM OUT HERE IN CALIFORNIA. THERE ARE MANY SAFE WAYS TO DO
2 IT, MANY WAYS THAT OTHER PEOPLE HAVE BEEN DOING IT.

3 YOU KNOW, THERE'S A LOT OF RESEARCH OUT THERE. THE
4 CALIFORNIA DEPARTMENT OF CORRECTIONS HAS THEMSELVES TRIED TO DO
5 IT. I KNOW SOME OF THEIR PRIOR SECRETARIES WERE TRYING TO PUT
6 INTO PLACE CERTAIN PROGRAMS TO REDUCE THEIR POPULATIONS. I
7 THINK THEY TRIED TO PUT A PAROLE VIOLATION MATRIX IN PLACE WHEN
8 SECRETARY HICKMAN WAS HERE AT ONE TIME.

9 TO ME IT SEEMS THAT THIS IS ALL ABOUT THE POLITICAL
10 WILL, THAT WHEN IT COMES UP TO GETTING IT DONE, GETTING THE
11 LEGISLATURE TO PASS THIS, THAT'S WHERE IT STOPS, AND THAT'S
12 WHERE IT DOESN'T HAPPEN. AND THAT'S REALLY UNFORTUNATE BECAUSE
13 NOT ONLY ARE THEY CAUSING HUGE PROBLEMS WITHIN THEIR
14 INSTITUTIONS, BUT THEY'RE COSTING THE TAXPAYERS, AND THEY'RE
15 GOING TO COST THE TAXPAYERS MUCH, MUCH MORE MONEY THAN THEY HAVE
16 TO, AND THIS IS AT A TIME WHEN NONE OF US CAN REALLY AFFORD
17 THESE ADDITIONAL COSTS ANYWHERE IN THE COUNTRY.

18 **Q** AND BY "COSTS," DO YOU INCLUDE THE FACT THAT IT COULD BE
19 SAFER THAN IT IS NOW?

20 **A** ABSOLUTELY. I REALLY BELIEVE IF THEY WOULD ADOPT SOME OF
21 THESE THINGS, THEY WOULD NOT ONLY REDUCE THEIR POPULATION, BUT
22 THEY WOULD SEE THEIR RECIDIVISM RATES COMING DOWN, PARTICULARLY
23 AS THEY GOT THEIR PROGRAMS GOING, PARTICULARLY AS THEY GOT MORE
24 RESOURCES OUT THERE IN THE COMMUNITY AND IN THE LONG RUN. THE
25 STATE WOULD BECOME SAFER FOR THE PUBLIC, AND THE CONSEQUENCE IS

1 YOU WOULD ALSO SAVE MONEY, AND, YOU KNOW, THAT'S A WIN-WIN
2 SITUATION AS FAR AS I'M CONCERNED FOR EVERYBODY.

3 **Q** AND PRISONERS WOULD RECEIVE ADEQUATE HEALTHCARE?

4 **A** IF YOU GET THE POPULATION DOWN TO THE POINTS IN THESE
5 FACILITIES WHERE THEY CAN MANAGE THAT, YES, THEY SHOULD GET
6 ADEQUATE HEALTHCARE, MENTAL HEALTHCARE, WHATEVER CARE, PROPER
7 PROGRAMMING, EVERYTHING SHOULD BE ABLE TO BE HANDLED AND YOU CAN
8 GET THE POPULATION DOWN TO A MANAGEABLE LEVEL.

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

10 **JUDGE REINHARDT:** DR. BEARD, I ASK YOU A MORE
11 SPECIFIC QUESTION. THE POLITICAL WILL IS SOMEWHAT OUT OF OUR
12 FIELD, BUT WE'VE HAD TESTIMONY IN PHASE ONE THAT OVERCROWDING IS
13 THE CAUSE OF INADEQUATE, UNCONSTITUTIONAL HEALTHCARE AND MEDICAL
14 CARE. I'M NOT SUGGESTING EVERYBODY AGREES ON THAT, BUT WE'VE
15 HAD SOME TESTIMONY TO THAT EFFECT.

16 I LISTENED TO YOUR TESTIMONY ABOUT THE FACT THAT WE
17 COULD IMPROVE SAFETY WITH THESE REFORMS. MY QUESTION IS: IS
18 WHAT YOU WERE SAYING -- AND I WASN'T CLEAR ON THIS -- THAT IF WE
19 JUST LEFT THE CONDITIONS AS THEY ARE, THAT THE OVERCROWDING
20 ITSELF WOULD MAKE SOCIETY LESS SAFE BECAUSE THE PEOPLE WHO COME
21 OUT OF THE PRISONS ULTIMATELY, HAVING BEEN SUBJECTED TO
22 OVERCROWDING, THAT THEY ARE MORE LIKELY TO COMMIT CRIMES AS A
23 RESULT OF THE CONDITIONS THEY EXPERIENCE IN PRISON? IS THAT IN
24 ITSELF A CAUSE OF MORE CRIME WHEN THEY COME OUT? AND IF THEY
25 HAD THEIR PRISON EXPERIENCE IN A MORE CONSTRUCTIVE ENVIRONMENT,

1 THEY WOULD BE LESS LIKELY TO COMMIT CRIMES WHEN THEY COME OUT?
2 IS THAT A PART OF WHAT YOU'RE SAYING OR NOT?

3 **THE WITNESS:** I THINK HOW I WOULD ANSWER THAT, YOUR
4 HONOR, IS THAT, FIRST OF ALL, WITH THE LOWER RISK INMATES THAT
5 ARE IN PRISON, THEY ARE PROBABLY BEING HARMED. THEY ARE
6 PROBABLY GETTING WORSE WITH THE ENVIRONMENT THAT THEY'RE IN,
7 ASSOCIATING WITH THE HIGHER RISK PEOPLE AND WITH THE
8 OVERCROWDING, WITH THE VIOLENCE, THOSE LOWER RISK PEOPLE ARE
9 PROBABLY GOING TO BE MORE LIKELY TO REOFFEND.

10 THERE'S A LOT OF RESEARCH WHICH SHOWS IF YOU MIX
11 LOWER RISK PEOPLE WITH HIGHER RISK PEOPLE, THEY GET WORSE. THE
12 OTHER THING THE RESEARCH SHOWS IS THAT WHILE THE HIGHER RISK
13 PEOPLE MAY NOT GET WORSE, THEY DON'T GET BETTER, AND SO BY NOT
14 PROVIDING THE APPROPRIATE PROGRAMMING TO INDIVIDUALS WHILE
15 THEY'RE IN PRISON, YOU DO NOT REDUCE THEIR LIKELIHOOD OF
16 COMMITTING OFFENSES. SO I GUESS THAT'S WHAT I'M SAYING. I
17 MEAN, YES, I'M SAYING THE PUBLIC IS ADVERSELY AFFECTED BECAUSE
18 SOME PEOPLE ARE GETTING WORSE AND THEN ANOTHER GROUP OF PEOPLE
19 AREN'T GETTING ANY BETTER.

20 **JUDGE REINHARDT:** THANK YOU.

21 **JUDGE HENDERSON:** DOES CCPOA COUNSEL HAVE ANY
22 QUESTIONS?

23 **MS. LEONARD:** NO, YOUR HONOR.

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

25 **MR. MELLO:** GOOD MORNING, YOUR HONORS.

1 **BY MR. MELLO**

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

3 **A** GOOD MORNING.

4 **Q** HAS THERE BEEN A SPIKE IN THE PENNSYLVANIA POPULATION SINCE
5 I TOOK YOUR DEPOSITION IN SEPTEMBER OF 2008?

6 **A** HAS THERE BEEN A SPIKE?

7 **Q** UH-HUH.

8 **A** YES.

9 **Q** DO YOU KNOW THE REASONS FOR THAT SPIKE?

10 **A** WELL, FIRST OF ALL, OUR POPULATION HAS BEEN GROWING, LIKE
11 EVERYBODY'S POPULATION, FOR -- SINCE, YOU KNOW, THE LATE 1970'S,
12 THE EARLY 1980'S, AND WHAT WE HAVE BEEN DOING IS WORKING ON THE
13 THINGS THAT WE CAN CONTROL THAT GROWTH, AND WE HAVE BEEN
14 BRINGING DOWN THE RATE OF GROWTH BY SOME OF THE THINGS THAT
15 WE'VE TALKED ABOUT; WORKING WITH PAROLE TO REDUCE PAROLE
16 VIOLATORS, THE RESTRICTIVE INTERMEDIATE PUNISHMENT PROGRAMS THAT
17 DIVERT PEOPLE. WE HAVE BEEN BRINGING DOWN THE RATE OF GROWTH.
18 WE STILL HAVEN'T GOT IT WHERE IT IS FLAT OR GOING DOWN, BUT
19 WE'VE GOT THE RATE OF GROWTH DOWN.

20 **Q** AND, SECRETARY BEARD, IS INCAPACITATION ONE OF THE THINGS
21 ACCOMPLISHED -- I MEAN, IT'S ONE OF THE MEANS THAT AFFECTS CRIME
22 RATES, CORRECT?

23 **A** INCAPACITATION?

24 **Q** YES.

25 **A** WELL, A CERTAIN AMOUNT OF INCAPACITATION CAN AFFECT CRIME

1 RATES, YES. THERE'S BEEN SOME STUDIES OUT THERE THAT INDICATE
2 FOR EVERY TEN PERCENT INCREASE IN INCARCERATION RATE, YOU CAN
3 GET A TWO TO FOUR PERCENT DECREASE IN CRIME RATE, BUT THAT SAME
4 RESEARCH SAYS THAT ONCE YOU REACH A CERTAIN POINT OF INCAR --
5 YOUR INCARCERATION RATE GETS TO A CERTAIN POINT, AND THAT POINT
6 IS BETWEEN LIKE ABOUT 360 AND 470 PER HUNDRED THOUSAND, IT'S
7 WHAT THEY CALL AN INFLEXION POINT, THAT ACTUALLY INCARCERATING
8 MORE PEOPLE CAN BE COUNTERPRODUCTIVE.

9 AND, OF COURSE, CALIFORNIA SITS AT THE HIGH END OF
10 THAT INFLEXION RATE. I THINK THEIR LATEST NUMBERS I SAW ON
11 THEM, THEY'RE LIKE 473 OR 475 PER HUNDRED THOUSAND, SOMETHING IN
12 THAT RANGE. SO THEY ARE RIGHT AT THE VERY TOP OF THE INFLECTION
13 POINT.

14 SO IF YOU MEAN CAN CALIFORNIA LOCK UP MORE PEOPLE AND
15 MAKE IT SAFER? IT DOESN'T APPEAR THEY CAN, BASED ON OTHER
16 STUDIES THAT HAVE BEEN DONE OUT THERE. IT APPEARS THERE'S OTHER
17 THINGS THEY COULD DO THAT WOULD HAVE MUCH MORE IMPACT FOR THE
18 SAME COSTS, AND JUST LOCKING UP MORE PEOPLE PROBABLY ISN'T GOING
19 TO HAVE MORE IMPACT. IN FACT, IT MAY BE HURTING THE CRIME RATE
20 BECAUSE OF THOSE PEOPLE THAT YOU HAVE CHURNING THAT I TALKED
21 ABOUT ON THE BACK END, THAT MAY ACTUALLY BE MAKING THE CRIME
22 RATE WORSE.

23 **Q** SO AS I UNDERSTAND IT, THE TOP OF THAT INFLEXION RATE OR
24 POINT IS ABOUT 470 --

25 **A** SOMEWHERE IN THAT RATE.

1 **Q** AND CALIFORNIA --

2 **A** RIGHT ABOUT AT THE TOP OF THAT RATE.

3 **Q** SECRETARY BEARD, YOU NEVER EVALUATED WHETHER CALIFORNIA CAN
4 PROVIDE ADEQUATE MEDICAL AND MENTAL HEALTH CARE WITHOUT A
5 REDUCTION IN THE PRISON POPULATION, DID YOU?

6 **A** NO, I NEVER WENT AND VISITED ALL -- I ONLY VISITED ONE
7 INSTITUTION AS I TESTIFIED TO.

8 **Q** YOU NEVER EVALUATED WHETHER CALIFORNIA CAN PROVIDE ADEQUATE
9 MEDICAL AND MENTAL HEALTHCARE ABSENT A REDUCTION IN ITS
10 POPULATION, CORRECT?

11 **JUDGE KARLTON:** THAT'S WHAT YOU JUST ASKED.

12 **MR. MELLO:** OH, REALLY? IT'S BEEN A LONG WEEK. I
13 APOLOGIZE.

14 **JUDGE REINHARDT:** I'M NOT SURE HE ANSWERED.

15 **THE WITNESS:** MY ANSWER WOULD BE I HAVEN'T PERSONALLY
16 EVALUATED IT, BUT I REVIEWED A LOT OF INFORMATION, AND I THINK
17 WE TALKED ABOUT THIS IN MY TESTIMONY BEFORE THE LAST TIME, THAT
18 I REVIEWED A LOT OF REPORTS BY A LOT OF EXPERTS, AND THAT'S WHAT
19 I DO IN MY JOB NOW TO RUN MY SYSTEM. SO FROM REVIEWING THOSE
20 REPORTS, I WOULD CONCLUDE THAT OVERCROWDING IS THE PRIME CAUSE
21 FOR THE MENTAL HEALTH AND MEDICAL PROBLEMS, AND THE ONLY WAY TO
22 REALLY ADDRESS THAT IS TO LOWER THE POPULATION.

23 **MR. MELLO:** I DIDN'T MEAN TO GO BACK TO PHASE ONE, SO
24 I APOLOGIZE.

25 **JUDGE REINHARDT:** IT'S NOT PHASE ONE. PHASE TWO IS

1 ARE THERE ALTERNATIVE METHODS OF SOLVING THE PROBLEM.

2 **MR. MELLO:** CORRECT. THAT'S MY NEXT QUESTION.

3 **BY MR. MELLO**

4 **Q** MY NEXT QUESTION IS: HAVE YOU -- YOU'VE NEVER EVALUATED
5 WHETHER CALIFORNIA CAN FIX THE DELIVERY OF MEDICAL AND MENTAL
6 HEALTHCARE BY MEANS OTHER THAN REDUCING THE POPULATION, CORRECT?

7 **A** FROM WHAT I KNOW ABOUT THE WAYS THAT YOU CAN ADDRESS THIS
8 PROBLEM, AND, LIKE I SAID, OVER THE LAST SEVEN YEARS I HAVE BEEN
9 INTIMATELY LOOKING AT ALL OF THIS, BECAUSE I HAVE BEEN TRYING TO
10 GET A HANDLE AND CONTROL OUR OWN POPULATION, THERE IS ONLY A FEW
11 THINGS THAT YOU CAN DO TO GET THE POPULATION DOWN. ONE IS YOU
12 BUILD MORE FACILITIES, AND WE'VE TALKED ABOUT THE PROBLEMS
13 INVOLVED WITH THAT. AND THE OTHER THING IS TO DO SOMETHING TO
14 LOWER THE ACTUAL POPULATION ITSELF, EITHER DIVERT OR REDUCE
15 LENGTH OF STAY.

16 **Q** DURING YOUR DEPOSITION ON SEPTEMBER 26TH AT PAGE 166, LINES
17 14 THROUGH 20, I ASKED YOU, SECRETARY BEARD -- PARDON ME. I
18 ASKED YOU:

19 "HAVE YOU EVER EVALUATED WHETHER CALIFORNIA
20 MUST TAKE STEPS TO FIX THE DELIVERY OF MEDICAL
21 CARE AND MENTAL HEALTHCARE IN ITS PRISONS BY
22 MEANS OTHER THAN REDUCING POPULATION?"

23 "ANSWER: I HAVEN'T PERSONALLY EVALUATED
24 THAT, NO."

25 SECRETARY BEARD, DO YOU RECALL THE CALIFORNIA'S

1 THREE-YEAR RECIDIVISM RATE FOR ALL FELONS RELEASED TO PAROLE?

2 **A** NOT EXACTLY, NO. I LOOKED AT THAT SOME TIME AGO, AND I
3 DON'T RECOLLECT WHAT IT IS.

4 **Q** I BELIEVE MR. SPECTER DISCUSSED THE THREE-YEAR RECIDIVISM
5 RATES FOR PAROLE VIOLATERS BEING IN THE 60 TO 70 PERCENT RANGE.
6 DO YOU BELIEVE THAT TO BE TRUE?

7 **A** FROM WHAT I'VE HEARD, IT SOUNDS LIKE THAT'S FAIRLY ACCURATE.

8 **Q** AND SECRETARY BEARD, DO YOU BELIEVE THAT THE APPROPRIATE
9 SUPERVISION OF PAROLEES BY PAROLE OFFICERS CAN REDUCE RECIDIVISM
10 RATES?

11 **A** WHEN YOU SAY "APPROPRIATE," IT DEPENDS HOW YOU DEFINE
12 "APPROPRIATE" BECAUSE SUPERVISION ALONE DOES NOT NECESSARILY
13 HELP REDUCE THE LIKELIHOOD OF PAROLE VIOLATIONS. YOU REALLY
14 NEED TO HAVE SUPERVISION WITH PROGRAMMING, WITH EVIDENCE-BASED
15 PROGRAMMING, TO DO IT. SO WHEN YOU SAY -- IF YOU MEAN, YOU
16 KNOW, BY GETTING PEOPLE THE PROPER PROGRAMS AND STUFF, THE
17 ANSWER IS YES.

18 **Q** SO, SECRETARY BEARD, YOU DO BELIEVE THAT APPROPRIATE
19 SUPERVISION AND PROGRAMMING OF PAROLEES CAN REDUCE RECIDIVISM,
20 CORRECT?

21 **A** IF IT'S DONE APPROPRIATELY, YES.

22 **Q** AND YOU BELIEVE THAT PROGRAMS THAT DIVERT OFFENDERS FROM
23 PRISON, LIKE DRUG TREATMENT PROGRAMS, CAN REDUCE RECIDIVISM,
24 CORRECT?

25 **A** YES.

1 Q AND, SECRETARY BEARD, DO YOU KNOW WHETHER THERE ARE ENOUGH
2 PAROLE OFFICERS IN CALIFORNIA TO SUPERVISE CURRENT LEVELS OF
3 PAROLEES IN CALIFORNIA?

4 A I DID NOT LOOK AT WHAT THE ACTUAL PERCENTAGE AND CASELOADS
5 ARE OF PAROLE OFFICERS, NO.

6 Q SECRETARY BEARD, YOU TESTIFIED THAT PENNSYLVANIA INCREASED
7 THE CAPACITY, THE OPERABLE CAPACITY, OF ITS PRISONS BY
8 INCREASING INFRASTRUCTURE, SPACE GENERALLY, TREATMENT SPACE, AND
9 THE LIKE, CORRECT?

10 A YES.

11 Q DO YOU KNOW WHETHER OTHER STATES HAVE INCREASED CAPACITY IN
12 A SIMILAR MANNER?

13 A NOT SPECIFICALLY, NO. I HAVEN'T REALLY LOOKED AT WHAT OTHER
14 STATES HAVE DONE DIRECTLY IN THAT, THE WHOLE INFRASTRUCTURE
15 THING. I WOULD ASSUME MANY STATES HAVE DONE THAT, BUT I DON'T
16 KNOW.

17 Q DO YOU BELIEVE THAT CALIFORNIA COULD INCREASE ITS OPERABLE
18 CAPACITY IN A SIMILAR MANNER AS PENNSYLVANIA DID?

19 A I THINK THE PROBLEM THAT I -- OR THE CONCERN I WOULD HAVE IS
20 THE FACT THAT YOU ARE DEALING WITH THESE MEGA PRISONS. IN THE
21 FIRST PLACE, THE PRISONS ARE SO LARGE THAT, YOU KNOW, EVEN IF
22 YOU WERE TO PUT IN THE INFRASTRUCTURE AND EVERYTHING SO YOU CAN
23 HANDLE THINGS, IT'S STILL VERY, VERY DIFFICULT TO MANAGE, AND
24 THAT IN AND OF ITSELF CAN BE A PROBLEM.

25 JUDGE KARLTON: IN THAT REGARD, WHEN YOU INCREASE

1 CAPACITY, SPACE, THAT IS HAVE BETTER BEDS, YOU'VE GOT TO HAVE --
2 I WAS ABOUT TO TELL YOU INSTEAD OF ASK YOU. DO YOU ALSO TO HAVE
3 TO HAVE AN INCREASE IN ALL OF THE SUPPORT FACILITIES, MEDICAL,
4 MENTAL, GUARDS FIRST OF ALL AND AS YOU SAY FOOD SERVICES,
5 LAUNDRY, ET CETERA?

6 **THE WITNESS:** YES, ABSOLUTELY, YOUR HONOR. I MEAN,
7 YOU KNOW, WHILE WE HAVE PUT IN-FILL BEDS IN SOME OF OUR OLDER
8 INSTITUTIONS, AS I TESTIFIED TO, WE ALSO BUILT OTHER FACILITIES
9 TO TAKE CARE OF THESE OTHER -- THESE OTHER THINGS SO WE COULD
10 PROPERLY DEAL WITH THE INMATES AND SO CALIFORNIA COULD DO THAT,
11 THEY COULD BUILD IN-FILL BEDS. THEY COULD ALSO BUILD LARGE
12 TREATMENT BUILDINGS AND BIGGER KITCHENS AND BIGGER DINING ROOMS.

13 THAT'S NOT THE WAY I WOULD GO ABOUT IT, SIMPLY
14 BECAUSE THEY'RE SO LARGE THAT IT'S VERY DIFFICULT TO MANAGE A
15 FACILITY OF THAT SIZE, AND THAT IN AND OF ITSELF COULD CAUSE
16 PROBLEMS, BUT BEING THAT THEY HAVE THOSE LARGE FACILITIES,
17 CERTAINLY THEY COULD DO THAT. CERTAINLY, IF THEY WANT TO SPEND
18 MILLIONS OF DOLLARS TO UPGRADE THESE OLDER FACILITIES, THEY
19 COULD DO THAT.

20 **JUDGE KARLTON:** SIR, THE --

21 **JUDGE REINHARDT:** I'M SORRY. GO AHEAD.

22 **JUDGE KARLTON:** WE'VE HAD TESTIMONY ABOUT SHORTFALL
23 IN PRISON GUARDS PRESENTLY. I'VE NOT UNDERSTOOD WHY THAT IS SO,
24 BUT I WANT YOU TO ASSUME FOR A MOMENT THAT THAT IS THE CASE.
25 HOW DOES THAT RELATE TO THE NEEDS IF YOU IN-FILL? VERY BAD

1 QUESTION. DO YOU UNDERSTAND WHAT I'M ASKING YOU?

2 **MR. MELLO:** YOUR HONOR, MAY I, JUST FOR THE RECORD
3 AND RESPECTFULLY, INTERPOSE AN OBJECTION THAT I BELIEVE THAT MAY
4 MISSTATE THE RECORD IN THE CASE.

5 **JUDGE KARLTON:** OKAY. THAT'S NOTED.

6 ASSUME THAT FOR A MOMENT, SIR.

7 **THE WITNESS:** WELL, IF YOU PUT A NEW HOUSING UNIT IN,
8 IT DEPENDS HOW YOU'RE SUPERVISING THOSE OTHER INMATES, YOU MAY
9 BE ABLE TO MOVE THE STAFF JUST OVER TO THAT OTHER PLACE BECAUSE
10 NOW THIS IS GOING TO BE PROGRAM SPACE. SO IT DOESN'T
11 NECESSARILY INCREASE YOUR STAFFING NEEDS. YOU'D HAVE TO TAKE A
12 LOOK AT THE FACILITY.

13 WHAT I WOULD SAY IS GENERALLY, THOUGH, ONE OF THE
14 REASONS WHY I LIKE THE IDEA OF BUILDING NEWER INSTITUTIONS AND
15 SEPARATE ONES IS BECAUSE YOU CAN BUILD THEM MUCH CHEAPER. THEY
16 CAN BE MUCH MORE COST EFFICIENT. THE OLDER FACILITIES REQUIRE
17 MORE STAFF TO OPERATE THEM.

18 **JUDGE KARLTON:** AT LEAST SOME OF THE TESTIMONY THAT
19 WE'VE HEARD, DESPITE MR. MELLO'S OBJECTIONS, TALKS ABOUT TWO
20 GUARDS IN HUGE GYMNASIUMS WITH THREE-LEVEL BUNKS AND SO FORTH.
21 YOU COULDN'T JUST MOVE THAT BECAUSE IT'S INADEQUATE, NOW YOU'D
22 STILL HAVE TO STAFF UP EVEN IF YOU BUILT THESE NEW FACILITIES?

23 **THE WITNESS:** YES, IF YOU BUILT NEW HOUSING UNITS,
24 YOU WOULD PROBABLY NEED MORE THAN TWO OFFICERS TO REPLACE, TO DO
25 THE SUPERVISION OF WHAT'S BEING DONE IN THOSE LARGE -- LARGE

1 GYMS. I'VE READ SOME OF THAT, TOO. I'VE ALSO HEARD THEY HAVE
2 DONE A BETTER JOB AT FILLING SOME OF THEIR CORRECTION OFFICER
3 POSITIONS MORE RECENTLY.

4 **JUDGE KARLTON:** IS THERE -- I JUST REALIZED I DON'T
5 THINK ANYBODY HAS EVER TOLD US: IS THERE A FORMULA FOR HOW MANY
6 GUARDS YOU NEED PER PRISONER, OR IS THAT SORT OF AS BEST YOU CAN
7 DO OR WHAT --

8 **THE WITNESS:** NO, THERE'S NOT A SPECIFIC FORMULA.
9 THERE'S A NUMBER OF THINGS THAT YOU HAVE TO TAKE INTO ACCOUNT.
10 NUMBER ONE, WHAT'S THE SECURITY LEVEL OF THE INSTITUTION? THE
11 HIGHER THE SECURITY LEVEL, THE MORE STAFF YOU NEED; THE LOWER
12 THE SECURITY LEVEL, THE LESS STAFF YOU NEED.

13 THE OTHER THING IS WHAT IS THE DESIGN, HOW IS THE
14 FACILITY DESIGNED? WHAT IS THE LAYOUT OF THE FACILITY? SOME
15 FACILITIES, PARTICULARLY OLDER FACILITIES, ARE SO CHOPPED UP, OR
16 THEY HAVE MULTIPLE TIERS, THESE HIGH FOUR, FIVE-TIER HIGH CELL
17 BLOCKS, THEY REQUIRE A LOT MORE STAFF THAN THE NEWER HOUSING
18 UNITS THAT ARE MORE A BUTTERFLY-SHAPED UNIT WHERE AN OFFICER CAN
19 STAND IN THE MIDDLE AND BASICALLY SEE EVERYTHING, WHERE YOU
20 CAN'T IN THESE OLDER HOUSING UNITS.

21 WHAT YOU HAVE TO DO IS DECIDE WHAT A PARTICULAR
22 FACILITY NEEDS. YOU HAVE TO GO INTO THAT FACILITY AND EVALUATE
23 EACH LOCATION IN THAT FACILITY BASED ON THE CONSTRUCTION OF THE
24 FACILITY AND BASED ON THE SECURITY LEVEL OF THAT FACILITY, AND
25 THEN YOU DECIDE WHAT THE MANPOWER -- WE DO THAT IN OUR

1 INSTITUTIONS, AND EVERY THREE YEARS GO BACK AND REEVALUATE THAT
2 AND COME UP WITH A MANPOWER FOR THAT FACILITY BASED ON JUST WHAT
3 I SAID, BY LOOKING AT THOSE THINGS.

4 AND IF PROGRAMS -- YOU KNOW, PROGRAMS THEY COULD
5 DRIVE IT AS WELL. YOU KNOW, YOU HAVE MORE PROGRAMS, YOU MAY
6 NEED MORE STAFF TO SUPERVISE SOME OF THE PROGRAMS. SO ALL OF
7 THAT HAS TO BE TAKEN INTO ACCOUNT TO DECIDE WHAT THE STAFFING OF
8 A GIVEN FACILITY IS.

9 **BY MR. MELLO**

10 **Q** SECRETARY BEARD, ARE YOU AWARE OF CALIFORNIA'S PROGRAMS --
11 PROGRAM TO TRANSFER INMATES OUT OF STATE TO REDUCE SOME OF THOSE
12 NON-TRADITIONAL BEDS?

13 **A** I AM, YES.

14 **Q** AND ARE YOU AWARE THAT THEY'RE ON TRACK TO TRANSFER
15 APPROXIMATELY 8,000 INMATES OUT OF STATE?

16 **A** EIGHT THOUSAND, YES. I THINK THEY'RE UP TO 6,000 OR SO THE
17 LAST I LOOKED.

18 **Q** OKAY. SECRETARY BEARD, I BELIEVE YOU TESTIFIED THAT
19 PENNSYLVANIA SYSTEM IS OPERATING AT 114 TO 115 OF OPERABLE --
20 PERCENT OF OPERABLE CAPACITY, CORRECT?

21 **A** YES, YES.

22 **Q** SECRETARY BEARD, DO YOU KNOW WHAT PERCENTAGE OVER OPERABLE
23 CAPACITY CALIFORNIA PRISONS ARE OPERATING AT?

24 **A** I DON'T BECAUSE I'VE NEVER GONE OUT AND EVALUATED WHAT THEIR
25 OPERABLE CAPACITY IS, AND I AM NOT AWARE THAT I'VE READ ANYTHING

1 THAT ANYBODY HAS EVER DONE THAT.

2 MR. MELLO: THANK YOU. NOTHING FURTHER.

3 JUDGE HENDERSON: INTERVENORS?

4 MR. MITCHELL: YES, THANK YOU.

5 CROSS-EXAMINATION BY MR. MITCHELL

6 BY MR. MITCHELL

7 Q GOOD MORNING.

8 A GOOD MORNING.

9 Q BILL MITCHELL FOR THE DEFENDANT INTERVENORS, SECRETARY.

10 A HI.

11 Q THE LEGISLATION YOU SPOKE ABOUT ON DIRECT EXAMINATION WITH
12 MR. SPECTER, HAS THAT ALREADY PASSED, OR IS THAT PENDING?

13 A IT HAS PASSED.

14 Q DO YOU HAVE OTHER LEGISLATION THAT'S ALSO PENDING IN THE
15 STATE OF PENNSYLVANIA?

16 A NOT RIGHT NOW, NOT POPULATION REDUCTION KIND OF LEGISLATION,
17 NO. WE JUST PASSED -- THE PACKAGE JUST WAS SIGNED INTO LAW,
18 AND, ACTUALLY, SOME OF IT STARTED TO TAKE EFFECT. IT WAS ABOUT
19 60 -- A LITTLE OVER 60 DAYS AGO.

20 Q DO YOU HAVE ANY PENDING LEGISLATION THAT HOUSE SPEAKER
21 O'BRIEN IS PREPARING THAT WOULD CONTAIN ANY EARLY RELEASE
22 PROVISIONS?

23 A ANY WHAT?

24 Q EARLY RELEASE PROVISIONS.

25 A WELL, WHAT YOU'RE TALKING ABOUT, SPEAKER O'BRIEN, IS HOUSE

1 BILL 4, WHICH I WORKED WITH HIM ON THAT. THAT'S PART OF THE
2 PACKAGE OF BILLS THAT HAS PASSED AND BEEN SIGNED INTO LAW.

3 **Q** YOUR PRISON POPULATION IS GOING IN PENNSYLVANIA RIGHT NOW,
4 CORRECT?

5 **A** YES.

6 **Q** MR. MELLO ASKED YOU A QUESTION ABOUT A SPIKE IN THE PRISON
7 POPULATION. IN FACT, IN OCTOBER, IS IT TRUE THAT THERE WAS AN
8 INCREASE IN THE PRISON POPULATION IN PENNSYLVANIA OF OVER A
9 THOUSAND INMATES?

10 **A** YES.

11 **Q** MR. MELLO ASKED YOU WHAT THE CAUSE OR THE REASON FOR THE
12 SPIKE WAS, IN YOUR OPINION. DO YOU HAVE AN EXPLANATION AS TO
13 WHY YOU'RE SEEING A SPIKE?

14 **A** WELL, THE SPIKE THAT OCCURRED OCCURRED BEFORE THE GOVERNOR
15 PUT A PAROLE MORATORIUM ON FOR TWO MONTHS. IT'S BEEN TAKEN OFF
16 AT THAT PARTICULAR POINT, AND HE DID THAT BECAUSE TWO PAROLEES
17 IN A TWO-MONTH PERIOD OF TIME -- AND THESE WERE VIOLENT
18 OFFENDERS, NOW; THEY HAD BEEN IN PRISON FOR VIOLENT OFFENSES AND
19 HAD BEEN RELEASED ON PAROLE -- SHOT TWO PHILADELPHIA POLICE
20 OFFICERS IN A TWO-MONTH PERIOD OF TIME, AND THE PEOPLE IN
21 PHILADELPHIA FROM WHERE THE GOVERNOR CAME FROM WERE CONCERNED,
22 AND HE'S RESPONSIBLE FOR PUBLIC SAFETY. I THINK HE FELT HE
23 NEEDED TO PUT A MORATORIUM ON UNTIL HE COULD HAVE AN EXPERT,
24 DR. GOLDCAMP FROM TEMPLE UNIVERSITY, TAKE A LOOK AT THE PAROLE
25 SYSTEM AND THE CORRECTION SYSTEM AND SEE IF WE WERE DOING WHAT

1 WE SHOULD BE DOING. AND DR. GOLDCAMP HAS RELEASED HIS SECOND
2 REPORT AND BASICALLY FOUND BOTH THE CORRECTIONS AND PAROLE
3 SYSTEM ARE FOLLOWING BEST PRACTICES AND STATE OF THE ART IN
4 DEALING WITH PAROLEES, AND HE RECOMMENDED THE RESTORATION OF
5 PAROLE IN PENNSYLVANIA. HE MADE SOME OTHER RECOMMENDATIONS THAT
6 COULD MAYBE HELP IMPROVE THINGS.

7 YOU KNOW THAT'S SOMETHING WE ARE ALWAYS TRYING TO DO.
8 AS I SAID ON THE DIRECT EXAMINATION, WE'RE NOT THERE AND WE'RE
9 NEVER GOING TO BE THERE PERFECTLY. THIS IS A MOVING THING. YOU
10 GOT TO CONSTANTLY KEEP WORKING TO GET BETTER, AND WE DO THAT.
11 WE'RE OUT THERE LOOKING AT THE RESEARCH, SEEING WHAT OTHER
12 PEOPLE ARE DOING. WE'RE RESEARCHING OUR OWN STUFF VERY CLOSELY
13 TO MAKE SURE WE HAVE THE IMPACTS WE WANT TO HAVE. I THINK
14 DR. GOLDCAMP SAW THAT, AND THAT'S WHY HE WAS NOT CONCERNED WITH
15 THE SYSTEM THAT WE HAVE IN PLACE.

16 I'M HOPING OVER THE NEXT TWO OR THREE MONTHS THAT THE
17 SPIKE THAT WE HAD, THAT LITTLE BUBBLE OF EXTRA INMATES, WILL
18 COME BACK DOWN, AND, YOU KNOW, WE'LL STILL KEEP GROWING BECAUSE
19 WE WERE GROWING, BUT, HOPEFULLY, NOW THIS NEW LEGISLATION THAT
20 WE HAVE WILL HELP MODERATE THAT SOME AS WELL AS THAT STARTS
21 TAKING EFFECT.

22 **Q** ASIDE FROM THE SPIKE DUE TO THE MORATORIUM, PRISON
23 POPULATION HAS BEEN GROWING BY ABOUT 200 INMATES PER MONTH?

24 **A** NO, IT -- THAT'S NOT TRUE. IT DEPENDS WHAT PERIOD OF TIME
25 YOU LOOK AT. THESE THINGS VARY. OUR LATEST LOOK, IF YOU LOOK

1 OVER THE LAST YEAR OR SO, HAS BEEN ABOUT 150 A MONTH, IF YOU
2 DON'T TAKE THAT SPIKE INTO ACCOUNT.

3 THE GROWTH RATE WAS ABOUT 150 A MONTH, AND PART OF
4 THAT -- LET ME SAY PRIOR TO THAT IT WAS 120 A MONTH. THE YEAR
5 PRIOR TO THAT IT WENT TO ABOUT 150 A MONTH AFTER THE SHOOTING OF
6 THE FIRST POLICE OFFICER, BECAUSE PAROLE, WHICH IS A SEPARATE
7 AGENCY, SLIGHTLY CHANGED THEIR PRACTICES AS A RESULT OF THE
8 FIRST SHOOTING, AND WERE RELEASING LESS PEOPLE.

9 BUT, AGAIN, THE PEOPLE THAT WE'RE TALKING ABOUT HERE
10 ARE VIOLENT OFFENDERS AND NOT THE PEOPLE THAT WE'RE TALKING
11 ABOUT DIVERTING, NOT THESE LESS SERIOUS PROPERTY AND DRUG
12 OFFENDERS.

13 **Q** YOU HAVE RECENTLY ASKED FOR MONEY FROM THE LEGISLATURE TO
14 BUILD THREE NEW PRISONS, CORRECT?

15 **A** YES.

16 **Q** AND EXPAND OTHERS?

17 **A** YES. THAT'S PART OF OUR WHOLE STRATEGY TO DEAL WITH THE
18 CONTINUING GROWTH IN THE POPULATION. BUT, ACTUALLY, I'M
19 HOPEFUL, AND I'VE TOLD THE LEGISLATURE IF THEY PASS THAT
20 LEGISLATION -- WHAT I TOLD THE LEGISLATURE, IF THEY DIDN'T PASS
21 THE LEGISLATION, I NEEDED THREE NEW PRISONS, AND THEN IN 2012 I
22 NEEDED ONE NEW PRISON A YEAR EACH YEAR THEREON; AND IF THEY DID
23 PASS THE LEGISLATION, I COULD PROBABLY GET AWAY WITH ONE OR TWO
24 NEW PRISONS AND PUT OFF THE OUT YEAR CONSTRUCTION OF PRISONS.

25 THAT'S WHAT I TOLD THEM. IT WAS PART OF WHAT I USED

1 TO HELP GET THE LEGISLATION THROUGH, THAT THEY COULD HELP
2 MODERATE GROWTH ENOUGH, AND PERHAPS EVEN FLATTEN THE GROWTH OUT,
3 BY PASSING THAT LEGISLATION, AND WE'RE STILL ON TRACK TO DO
4 THIS. THIS PAROLE MORATORIUM PUT A LITTLE BUBBLE THERE AS SOON
5 AS WE GET THAT OUT. WE'RE STILL ON TRACK TO, HOPEFULLY, NOT
6 HAVE TO BUILD MORE THAN TWO NEW PRISONS.

7 **Q** BUT WITH THE OPENING OF SCI PITTSBURGH IN 2005, YOU HAVE A
8 TOTAL OF 27 PRISONS RIGHT NOW IN PENNSYLVANIA, CORRECT?

9 **A** YES.

10 **Q** NOW, YOU'VE EMBARKED ON PLANS AND HAVE NEW LEGISLATION
11 LOOKING FOR ALTERNATIVE PUNISHMENT FOR LOW-LEVEL NONVIOLENT
12 OFFENDERS, CORRECT?

13 **A** ARE YOU TALKING ABOUT THE LEGISLATION?

14 **Q** YES.

15 **A** THE RISK REDUCTION INITIATIVE AND STUFF?

16 **Q** THAT'S HOW YOU ARE SEEKING TO CONTROL YOUR PRISON
17 POPULATION, IS TO COME UP WITH INTERMEDIATE SANCTIONS, LESSER --

18 **A** YES.

19 **Q** -- ALTERNATIVES TO PRISON FOR YOUR LOW-LEVEL VIOLATERS,
20 CORRECT?

21 **A** RIGHT. WE ARE LOOKING AT A NUMBER OF THINGS. INCREASING
22 FRONT END DIVERSION, WHICH I TALKED ABOUT, TRYING TO DO SOME
23 FORMULA-BASED THINGS.

24 WE ARE LOOKING AT LEGISLATION, LOOKING AT THE STOCK
25 POPULATION, REDUCING LENGTH OF STAY WITHIN THE SYSTEM, AT THE

1 BACK END. WE'RE WORKING WITH THE PAROLE BOARD ON THE TECHNICAL
2 PAROLE VIOLATORS. IT WAS A MULTI-FACETED THING WE WERE LOOKING
3 AT.

4 **Q** WHAT PERCENTAGE OF YOUR PRISON POPULATION IN PENNSYLVANIA IS
5 VIOLENT OFFENDERS?

6 **A** PROBABLY -- PROBABLY ABOUT 60 PERCENT, I THINK.

7 **JUDGE KARLTON:** MAY I INTERRUPT FOR JUST A MOMENT?
8 I'M REALLY PUZZLED. EXPERTS KEEP COMING IN AND TELLING US THAT
9 THE CRIME RATE IS REDUCING ALL OVER THE COUNTRY, GOING DOWN
10 EVERYWHERE, YET, AT THE SAME TIME, THE PRISON POPULATIONS ARE
11 INCREASING. I MEAN, I GATHER IT'S MOSTLY JUDGES' FAULT, BUT I
12 DON'T KNOW. HOW IS THAT POSSIBLE?

13 **THE WITNESS:** WELL, THE REASON THAT THE PRISON
14 POPULATIONS ARE GOING UP IS BECAUSE OF THE LAWS THAT WE'VE
15 PASSED OVER THE YEARS. WE DID IT IN PENNSYLVANIA. WE HAVE
16 MANDATORY SENTENCES. SO FOR CERTAIN CRIMES, YOU HAVE THESE
17 MANDATORY SENTENCES.

18 WE JUST PASSED A LAW THAT IF YOU POINT -- IF YOU
19 SHOOT A GUN AT A POLICE OFFICER, IT'S A MANDATORY TEN YEARS,
20 JUST THAT ALONE. AND BEFORE IT WAS A MANDATORY FIVE YEARS. SO
21 THAT'S NOT GOING TO AFFECT OUR POPULATION FOR THE FIRST FIVE
22 YEARS, BECAUSE THAT ALREADY EXISTED, BUT AS WE GET IN THE OUT
23 YEARS, WE ARE GOING TO SEE MORE OF A PROBLEM. SO IT'S THESE
24 SENTENCES THAT ARE PUTTING PEOPLE IN JAIL FOR LONGER AND LONGER
25 PERIODS OF TIME, YOUR HONOR.

1 **JUDGE KARLTON:** I'M HAPPY TO SAY IT'S NOT THE JUDGES;
2 IT'S THE LEGISLATORS.

3 **BY MR. MITCHELL**

4 **Q** YOU ARE FAMILIAR WITH SOME OF THE STUDIES THAT JOHN
5 PETERSILIA HAS PRODUCED, CORRECT?

6 **A** I'VE READ SOME OF DR. PETERSILIA'S STUDIES, YES.

7 **Q** ONE OF THOSE WAS, I BELIEVE, "UNDERSTANDING CALIFORNIA
8 CORRECTIONS"?

9 **A** I DON'T KNOW IF I READ THAT SPECIFIC ONE. IF I DID, IT WAS
10 SOME TIME AGO.

11 **Q** GENERALLY SPEAKING, PRISON POPULATION INCREASES ARE
12 ATTRIBUTABLE TO INCREASES IN THE POPULATION OF THE COMMUNITIES
13 THAT HAVE THE PRISONS, CORRECT? AS POPULATION GOES UP,
14 CRIMINALS -- THE NUMBER OF CRIMINALS GO UP, AND PRISON
15 POPULATION GOES UP, CORRECT?

16 **A** AS YOU EXPAND THE AT-RISK POPULATION, YOU KNOW, YES, YOU
17 WOULD GET MORE PEOPLE THAT WOULD GO TO JAIL.

18 **Q** NOW, YOU INDICATED THAT YOU'RE TRYING TO MODEL SOME OF YOUR
19 PROGRAMS AFTER WHAT WAS DONE IN NEW YORK?

20 **A** YES.

21 **Q** TO LOWER THEIR PRISON POPULATION?

22 **A** YES.

23 **Q** PRIOR TO NEW YORK LOWERING THEIR PRISON POPULATION, THEY HAD
24 THE STRICTEST, OR PERHAPS ONE OF THE STRICTEST, LAWS OR SERIES
25 OF LAWS DEALING WITH DRUG OFFENDERS, CORRECT?

1 **A** THE ROCKEFELLER LAWS.

2 **Q** SO THEY HAD A HUGE PRISON POPULATION OF DRUG OFFENDERS?

3 **A** YES.

4 **Q** THAT THEY COULD INSTITUTE NEW POLICIES AND PROCEDURES AND
5 PROGRAMS FOR AND REDUCE THAT POPULATION, BOTH FROM THE PRISON
6 AND AT THE FRONT END DIVERTING THEM?

7 **A** THAT'S CORRECT.

8 **Q** DOES PENNSYLVANIA HAVE A SIMILAR POPULATION THAT IT CAN WORK
9 WITH THAT ARE DRUG OFFENDERS?

10 **A** ABOUT 33 PERCENT OF THE PEOPLE THAT WE RECEIVE IN OUR SYSTEM
11 EVERY YEAR COMES IN WITH 12 MONTHS OR LESS TO SERVE, AND THE
12 VAST MAJORITY OF THOSE PEOPLE WOULD BE LESS SERIOUS OFFENDERS.
13 SO WHILE THE STOCK POPULATION HAS MORE VIOLENT OFFENDERS BECAUSE
14 THEY STAY FOR LONGER PERIODS OF TIME, WE HAVE A HUGE AMOUNT OF
15 THESE SHORTER SENTENCED PEOPLE, THESE PROPERTY AND DRUG
16 OFFENDERS, THAT ARE CHURNING THROUGH OUR SYSTEM, WHICH IS WHY
17 WE'RE FOCUSING ON TRYING TO DEAL WITH THOSE PEOPLE AND TRYING TO
18 REDUCE THE RECIDIVISM RATES AMONG THOSE PEOPLE.

19 **Q** DID PENNSYLVANIA HAVE SIMILAR STRICT DRUG LAWS?

20 **A** NOT AS STRICT AS WHAT NEW YORK HAD, NO, NOTHING NEAR WHAT
21 THE ROCKEFELLER LAWS DID. I CAN'T SIT AND TELL YOU A
22 COMPARISON. I JUST KNOW WE DO HAVE MANDATORY SENTENCES, AND
23 THEY HAVE BEEN APPLIED TO SOME DRUG OFFENSES, AND THAT DOES
24 DRIVE SOME OF THE POPULATION, BUT NOT AS SERIOUS AS WHAT NEW
25 YORK'S WAS.

1 Q NOW, IN PENNSYLVANIA YOU HAVE A SEPARATE BOARD OF PROBATION
2 AND PAROLE SEPARATE FROM THE DEPARTMENT OF CORRECTIONS?

3 A YES.

4 Q AND INMATES MUST SEEK PAROLE; THEY DON'T HAVE AUTOMATIC
5 PAROLE LIKE WE HAVE IN CALIFORNIA, CORRECT?

6 A THAT'S CORRECT. IT'S A DISCRETIONARY RELEASE.

7 Q INMATES HAVE TO APPLY FOR PAROLE AND COME UP WITH AN
8 EMPLOYMENT AND HOUSING PLAN TO GET PERMISSION TO BE RELEASED
9 FROM PRISON, CORRECT?

10 A THEY'RE SUPPOSED TO HAVE A HOME PLAN. MANY OF THEM GET
11 RELEASED, AND THEY DON'T HAVE JOBS, BUT YES.

12 Q YOU'RE SEEKING TO CHANGE THAT TO SOME DEGREE WITH SOME OF
13 YOUR NEW PROPOSALS TO GIVE PAROLEES A MORE DEFINITE LESSER TERM,
14 KNOWING THAT THEY WILL GET OUT AT A CERTAIN POINT IN THE EVENT
15 THAT THEY --

16 A THOSE PEOPLE DEFINED IN THAT LESS SERIOUS GROUP, YES.

17 Q SO YOU ARE SEEKING TO BECOME MORE OF A DETERMINATE
18 SENTENCING TYPE OF PROGRAMMING RATHER THAN THE INDETERMINATE
19 THAT YOU HAVE NOW?

20 A IT STILL ISN'T GOING LIKE YOUR DETERMINATE. THEY'RE STILL
21 GOING TO HAVE A MINIMUM AND A MAXIMUM SENTENCE, WITH THE
22 EXCEPTION OF THAT STATE INTERMEDIATE PUNISHMENT PROGRAM THAT I
23 TOLD YOU ABOUT, WHICH IS A FLAT TWO YEARS.

24 Q GOING BACK TO THE PRISON POPULATION IN PENNSYLVANIA, I SAW
25 ONE STATISTIC THAT SAID YOU WERE THE THIRD FASTEST PRISON

1 POPULATION RISING STATE BEHIND FLORIDA AND NORTH CAROLINA AMONG
2 THE TEN LARGEST POPULATION STATES. DO YOU REMEMBER SEEING A
3 STATISTICAL LIKE THAT?

4 **A** NO, NO. I KNOW AT ONE TIME WE DID HAVE SOME FAIRLY DRAMATIC
5 GROWTH AT SOME PERIODS ALONG THE WAY. YOU KNOW, THESE GROWTH
6 PATTERNS DO SEEM TO FLUCTUATE. SOMETIMES IT LOOKS LIKE YOU ARE
7 GOING TO FLATTEN OUT, AND ALL OF A SUDDEN IT TAKES OFF AGAIN.
8 IT REALLY DEPENDS WHAT TIME PERIOD YOU ARE TALKING ABOUT. THAT
9 MAY HAVE BEEN ACCURATE DURING THAT PARTICULAR TIME PERIOD.
10 PROBABLY WOULDN'T BE ACCURATE TODAY. BUT IT WAS PROBABLY
11 ACCURATE AT WHATEVER TIME PERIOD THAT WAS.

12 **Q** STATISTICS SHOW FROM THE DEPARTMENT OF CORRECTIONS THAT OF
13 5,434 PAROLEES THAT WERE RECOMMITTED IN 2006, 70 PERCENT OF
14 THOSE WERE SENT BACK TO TECHNICAL PAROLE VIOLATIONS.

15 **A** THAT'S --

16 **Q** IS THAT ABOUT CORRECT?

17 **A** BACK BEFORE THEY GOT THE MATRIX RUNNING AND EVERYTHING, YES,
18 THEY WERE, PROBABLY AROUND 70 PERCENT WERE TECHNICAL VIOLATORS.
19 ABOUT 3,800 OR SO OF THOSE PEOPLE IT SEEMS TO ME WERE PROBABLY
20 TECHNICAL VIOLATORS.

21 **Q** SO YOUR PAROLE MATRIX HAS BEEN IMPLEMENTED FOR ABOUT TWO
22 YEARS?

23 **A** PAROLE'S PAROLE MATRIX HAS BEEN IN PLACE FOR ABOUT TWO OR
24 THREE YEARS.

25 **Q** DOES PENNSYLVANIA HAVE THE SAME OR SIMILAR PROBLEMS WITH

1 PRISON GANGS THAT CALIFORNIA HAS?

2 **A** NO.

3 **Q** DOES PENNSYLVANIA USE DORMITORY-STYLE HOUSING FOR ITS
4 INMATES?

5 **A** VERY LITTLE. WE HAVE DORMITORIES, YES, BUT WE ARE MOSTLY
6 CELLS, AND THE INSTITUTIONS -- THERE'S MAYBE A DORMITORY IN EACH
7 OF OUR FACILITIES, A SMALLER DORMITORY OR TWO, TO HANDLE THE
8 MINIMUM SECURITY INMATES. BUT SHORT OF THAT, WE -- EVERYTHING
9 ELSE IS CELLS.

10 **Q** WHAT ARE THE SIZE OF YOUR DORMITORY FOR MINIMUM SECURITY IN
11 THIS CASE?

12 **A** PROBABLY THE BIGGEST WE HAVE RUNS ABOUT 190, 200, I THINK.

13 **Q** WE'VE BRIEFLY DISCUSSED PREVIOUSLY THE SB 618 PROGRAM THAT'S
14 BEING IMPLEMENTED DOWN IN SAN DIEGO. YOU ARE FAMILIAR WITH
15 THAT, SIR?

16 **A** I AM FAMILIAR WITH THAT, YES.

17 **Q** DO YOU AGREE THAT IS A -- THAT TYPE OF PROGRAM HAS GREAT
18 POTENTIAL FOR REDUCING RECIDIVISM?

19 **A** ABSOLUTELY. I WOULD FULLY SUPPORT A PROGRAM LIKE THAT 618
20 IN SAN DIEGO. IT'S AN EXCELLENT PROGRAM. I MEAN, THEY'RE DOING
21 THE RISK AND NEEDS RIGHT UP FRONT IN THE COUNTY. I'M HOPING --
22 THEY EVEN HAVE THAT AVAILABLE FOR THE JUDGE. IT'S GREAT IF YOU
23 CAN DO THAT KIND OF ASSESSMENT SO THE JUDGE HAS IT AT
24 SENTENCING.

25 AND THEY'RE WORKING CLOSELY WITH THE CALIFORNIA

1 DEPARTMENT OF CORRECTIONS, GETTING THESE PEOPLE AND DEVELOPING A
2 REENTRY PROGRAM RIGHT UP FRONT, GETTING THEM THROUGH THEIR
3 PROGRAMS IN THE PRISON, GETTING THEM BACK OUT, KEEPING THEM
4 LOCALLY. THEY DON'T EVEN GO TO THE RECEPTION CENTERS. I THINK
5 THEY GO AND DO THE RECEPTION CENTER WORK IN COUNTY JAIL. THEN
6 THEY SEND THEM TO THE PRISON THAT'S A LOCAL PRISON. THEN THEY
7 KEEP IN CLOSE CONTACT WITH THEM. THEY ACTUALLY TRANSPORT BACK
8 OUT. THEY GIVE THEM THESE SERVICES WE TALKED ABOUT. I'M FULLY
9 SUPPORTIVE OF A PROGRAM LIKE THAT.

10 **Q** YOU WOULD AGREE THEN THAT THAT IS A WAY TO ENSURE PUBLIC
11 SAFETY WHILE REDUCING THE PRISON POPULATION?

12 **A** THAT IS CERTAINLY ONE WAY THAT CAN IMPROVE PUBLIC SAFETY AND
13 REDUCE THE PRISON POPULATION, NO QUESTION THAT FITS IN WITH THE
14 KINDS OF THINGS THE EXPERT PANEL TALKED ABOUT, THE KINDS OF
15 THINGS DR. AUSTIN TALKED ABOUT, AND THE KINDS OF THINGS THAT I
16 WOULD SUPPORT.

17 **Q** ONE OF THE THINGS YOU WOULD NOT SUPPORT IS SIMPLE EARLY
18 RELEASE WITHOUT ANY PROGRAMMING OR WITHOUT ANY INCREASE IN
19 RESOURCES TO PROVIDE FOR THE INDIVIDUALS BEING RELEASED TO THE
20 COMMUNITY CORRECT?

21 **A** I WOULD SAY THAT'S GENERALLY SOMETHING THAT I DON'T CARE FOR
22 THAT AS MUCH, BECAUSE IT DOESN'T IMPROVE PUBLIC SAFETY. BUT AS
23 WE TALKED ABOUT, I THINK ADDRESSING MY DIRECT, THE RESEARCH SAYS
24 IT DOESN'T REALLY HURT PUBLIC SAFETY. IT DOESN'T INCREASE THE
25 CRIME RATE, DOESN'T INCREASE RECIDIVISM. BUT I REALLY PREFER

1 PROGRAMS THAT ARE DOING THINGS TO HELP IMPROVE THINGS RATHER
2 THAN JUST KEEP THE STATUS QUO. SO I WOULD BE MORE SUPPORTIVE OF
3 THESE OTHER PROGRAMS THAT WE TALKED ABOUT THAN JUST EARLY OR
4 JUST DIRECT RELEASE OF INMATES, YES.

5 **Q** AT YOUR DEPOSITION AT PAGE 70, YOU STATED -- I WANT TO KNOW
6 IF YOU STILL AGREE WITH THIS, SPEAKING ABOUT EARLY RELEASE
7 PROGRAMS, OR SIMPLE EARLY RELEASE TO LOWER THE PRISON
8 POPULATION, AT LINE NINE:

9 "I DON'T AGREE WITH THOSE KIND OF PROGRAMS,
10 YOU KNOW. I THINK IT SENDS A HORRIBLE MESSAGE
11 TO THE PUBLIC THAT WE CAN'T, YOU KNOW, MEET OUR
12 NEEDS OF WHAT WE'RE DOING."

13 **A** RIGHT. I STILL AGREE WITH THAT. I THINK IT SENDS A BAD
14 MESSAGE TO THE PUBLIC. I THINK IT SENDS A BAD MESSAGE TO THE
15 VICTIM. BUT ON THE OTHER SIDE, IT DOESN'T HURT THE CRIME RATE
16 OR THE RECIDIVISM RATE BECAUSE YOU ARE ONLY LETTING SOMEBODY OUT
17 A FEW MONTHS EARLY. BUT I WOULD PREFER, AS I SAID ON DIRECT, TO
18 DO THIS WITH SERVICES, IF YOU ARE GOING TO DO IT, OR DO IT IN
19 SOME OTHER DIFFERENT WAY.

20 **Q** AS YOU SAID ON DIRECT, AND I THINK YOU SAID ALSO AT YOUR
21 DEPOSITION, IT CERTAINLY DOESN'T ENHANCE PUBLIC SAFETY, CORRECT?

22 **A** NO, IT DOESN'T TO DO THAT. I AGREE WITH THAT.

23 **Q** IN FACT, WHILE IT DOES NOT INCREASE THE RECIDIVISM RATES OR
24 THE CRIME RATE, YOU ARE AWARE THAT THERE HAVE BEEN STUDIES THAT
25 INDIVIDUALS WHO ARE RELEASED EARLY WILL COMMIT MORE CRIMES

1 DURING THAT WINDOW PERIOD THAN THEY WOULD HAVE BEEN IN CUSTODY
2 HAD THEY NOT BEEN RELEASED EARLY, CORRECT?

3 **A** NO, I'M NOT FAMILIAR WITH PROGRAMS -- WITH THINGS THAT SAY
4 THAT. WHAT I THINK I'M FAMILIAR WITH IS WHAT DR. AUSTIN WAS
5 PROPOSING OR SAYING WAS A POSSIBILITY IN HIS REPORT WHERE, IF
6 YOU LET MORE PEOPLE OUT, YOU INCREASE THE AT-RISK POPULATION
7 EVEN IF THE CRIME RATE DOESN'T GO UP AND THE RECIDIVISM RATES
8 DOESN'T GO UP; YOU MIGHT HAVE A SLIGHT INCREASE IN THE OVERALL
9 NUMBERS CRIME BECAUSE YOU HAVE MORE PEOPLE THAT ARE POTENTIALLY
10 AT RISK. THAT'S WHAT I WOULD SAY IS A POSSIBILITY, WHICH CAN BE
11 MITIGATED BY PROVIDING SERVICES AND RESOURCES.

12 **Q** HAVE YOU SEEN AN ARTICLE ENTITLED, "RELEASING INMATES EARLY
13 HAS A COSTLY HUMAN TOLL," DEALING WITH EARLY RELEASE FROM L.A.
14 COUNTY JAIL AND THE ADDITIONAL CRIMES COMMITTED?

15 **A** NO.

16 **Q** FOR THE RECORD, THAT'S DEFENDANT'S EXHIBIT 1212.

17 SIR, WERE YOU AWARE OF THE EARLY PAROLE OF JAIL
18 INMATES IN PHILADELPHIA THAT SHOWED SUBSTANTIAL NUMBER OF CRIMES
19 COMMITTED BY THAT POPULATION BACK IN 1986 WHEN THEY WERE EARLY
20 RELEASED?

21 **A** NO, I'M NOT FAMILIAR WITH THAT STUDY.

22 **Q** WOULD IT CHANGE YOUR OPINION IF YOU WERE TO KNOW THAT WHEN
23 9,732 INMATES IN PHILADELPHIA WERE RELEASED EARLY DUE TO
24 OVERCROWDING, THAT THEY COMMITTED 79 MURDERS, 90 RAPES, 701
25 BURGLARIES, 959 ROBBERIES AND 2,215 DRUG CRIMES DURING THE TIME

1 THAT THEY SHOULD HAVE BEEN REMAINED IN CUSTODY? WOULD THAT
2 CHANGE YOUR OPINION?

3 **A** I WOULD HAVE TO LOOK AT THE STUDY AND SEE WHAT IT
4 SPECIFICALLY SAYS AND LOOK AT THE WHOLE THING AND WHAT THEY WERE
5 COMPARING IT AGAINST TO KNOW WHETHER IT WOULD HAVE ANY IMPACT ON
6 MY OPINION.

7 **MR. MITCHELL:** THANK YOU. I HAVE NO FURTHER
8 QUESTIONS.

9 **JUDGE HENDERSON:** REDIRECT.

10 **REDIRECT EXAMINATION BY MR. SPECTER**

11 **BY MR. SPECTER**

12 **Q** FIRST QUESTION ABOUT THE PAROLEES WHO SHOT TWO POLICE
13 OFFICERS THAT YOU TESTIFIED ABOUT. DID THAT HAVE ANYTHING TO DO
14 WITH OVERCROWDING OR EARLY RELEASE OR ANYTHING ASSOCIATED WITH
15 SOMETHING OTHER THAN THE NORMAL PAROLE SYSTEM?

16 **A** NO. IN FACT, THE ONE OFFENDER WAS SERVING A SIX TO
17 TWELVE-YEAR SENTENCE AND HAD SERVED TEN OF THE TWELVE YEARS WHEN
18 HE HAD BEEN RELEASED. SO HE CERTAINLY WASN'T RELEASED EARLY.
19 HE WAS RELEASED FAR OVER HIS MINIMUM SENTENCE, AND I THINK THE
20 CONCERN IN THE COMMUNITY WAS, WAS PAROLE PROPERLY SUPERVISING
21 THIS PERSON WHEN HE WAS RELEASED. THAT WAS THE CONCERN.

22 **Q** YOU ARE AWARE FROM YOUR PARTICIPATION IN THE EXPERT PANEL OF
23 THE -- WELL, FROM -- ARE YOU AWARE FROM YOUR PARTICIPATION AS A
24 MEMBER OF THE EXPERT PANEL ABOUT WHETHER OR NOT CALIFORNIA
25 PRISONERS HAVE -- THERE ARE ENOUGH CALIFORNIA PRISONERS WITH

1 SUBSTANCE ABUSE NEEDS TO BENEFIT FROM SUBSTANCE ABUSE
2 PROGRAMMING THAT WOULD HAVE AN EFFECT ON REDUCING THE
3 POPULATION?

4 **A** ABSOLUTELY. YOU KNOW, TYPICALLY, WHAT YOU FIND IS CLOSE TO
5 70 PERCENT OF THE INMATES IN A PRISON SYSTEM, AND I DON'T THINK
6 CALIFORNIA IS ALL THAT DIFFERENT, HAVE SUBSTANCE ABUSE NEEDS.
7 AND WE'VE DONE STUDIES ON SOME OF OUR THERAPEUTIC COMMUNITIES,
8 AND ACTUALLY NOT US, BUT WE WORKED IN PARTNERSHIP WITH
9 PROFESSORS WHO HAVE DONE STUDIES FROM UNIVERSITIES AND FOUND
10 THAT OUR SUBSTANCE ABUSE PROGRAMS SUBSTANTIALLY REDUCED THE
11 RECIDIVISM RATES FOR PEOPLE WHO GOT INVOLVED IN THOSE PROGRAMS.

12 SO VERY HIGH PERCENTAGE OF INMATES HAVE A NEED FOR
13 SUBSTANCE ABUSE PROGRAMS. THOSE PROGRAMS HAVE SHOWN TO BE
14 EFFECTIVE IN REDUCING RECIDIVISM.

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

16 **MR. MELLO:** NOTHING FURTHER HERE.

17 **MR. MITCHELL:** AND NOTHING FURTHER.

18 **JUDGE HENDERSON:** THANK YOU FOR REAPPEARING,

19 DR. BEARD. YOU'RE EXCUSED.

20 **THE WITNESS:** THANK YOU. THANK YOU.

21 **JUDGE HENDERSON:** OKAY. WE'LL TAKE OUR MORNING

22 RECESS FOR 15 MINUTES. COURT'S ADJOURNED.

23 (RECESS TAKEN.)

24 **JUDGE HENDERSON:** YOU MAY CALL YOUR NEXT WITNESS,

25 COUNSEL.

1 **MR. GALVAN:** THANK YOU. PLAINTIFFS CALL JAMES
2 GILLIGAN, M.D.

3 **JAMES GILLIGAN**

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

6 **THE CLERK:** PLEASE HAVE A SEAT AND STATE AND SPELL
7 YOUR FULL NAME FOR THE RECORD.

8 **THE WITNESS:** MY NAME IS JAMES GILLIGAN, SPELLED
9 G-I-L-L-I-G-A-N.

10 **MR. GALVAN:** YOUR HONOR, DR. GILLIGAN'S
11 QUALIFICATIONS ARE SET FORTH IN HIS REPORT, WHICH IS COLEMAN
12 DOCUMENT NUMBER 3170, WHICH WE OFFER INTO EVIDENCE AT THIS TIME.
13 WE ALSO OFFER HIS REBUTTAL REPORT, WHICH IS COLEMAN DOCUMENT
14 3172.

15 IF I MAY QUICKLY LAY THE FOUNDATION FOR HIS
16 EXPERTISE?

17 DR. GILLIGAN IS A BOARD CERTIFIED PSYCHIATRIST AND
18 PROFESSOR AT NEW YORK UNIVERSITY. HE HAS 40 YEARS OF EXPERIENCE
19 IN MENTAL HEALTH TREATMENT IN PRISON, JAILS, MENTAL HOSPITALS,
20 CIVIL MENTAL HOSPITALS, COURT CLINICS, AND COMMUNITY MENTAL
21 HEALTH, AND HIS EXPERIENCE IN ESTABLISHING AND RUNNING THE
22 MASSACHUSETTS PRISON MENTAL HEALTH SERVICES UNDER FEDERAL COURT
23 SUPERVISION AND SERVING AS MEDICAL DIRECTOR OF THE MENTAL HEALTH
24 IN MASSACHUSETTS. HIS SCIENTIFIC RESEARCH FOCUSES ON THE CAUSES
25 AND PREVENTION OF VIOLENCE, INCLUDING IN CALIFORNIA AND

1 INTERNATIONALLY. HE HAS BEEN QUALIFIED AS AN EXPERT IN NUMEROUS
2 PROCEEDINGS REGARDING CORRECTIONAL MENTAL HEALTH AND FORENSIC
3 PSYCHIATRY.

4 AT THIS TIME, THE PLAINTIFFS ASK THE COURT FIND THAT
5 DR. GILLIGAN IS AN EXPERT IN PRISON PSYCHIATRY AND THE PROVISION
6 OF MENTAL HEALTHCARE IN PRISONS, THE CAUSES AND PREVENTION OF
7 VIOLENCE AND THE RELATIONSHIP BETWEEN MENTAL ILLNESS AND
8 VIOLENCE.

9 **JUDGE HENDERSON:** WE FIND HE IS SO QUALIFIED.

10 **DIRECT EXAMINATION BY MR. GALVAN**

11 **BY MR. GALVAN**

12 **Q** DR. GILLIGAN, YOU WERE ASKED TO FORM AN OPINION ABOUT THE
13 IMPACT ON PUBLIC SAFETY OF A PRISON POPULATION REDUCTION THAT
14 COULD INCLUDE PRISONERS WITH MENTAL ILLNESS. WHAT DID YOU
15 CONCLUDE?

16 **A** CONCLUDED THAT INCLUDING MENTALLY ILL PRISONERS IN THAT
17 GROUP WOULD POSE NO INCREASED RISK TO PUBLIC SAFETY. THIS IS
18 BASED ON RESEARCH DONE THROUGHOUT THE UNITED STATES AND OTHER
19 COUNTRIES, AS WELL AS SPECIFICALLY IN CALIFORNIA. THERE ARE
20 MANY STUDIES ABOUT RECIDIVISM AMONG MENTALLY ILL AND
21 NON-MENTALLY ILL PAROLEES, AND THE CONSENSUS FROM THESE STUDIES
22 CONSISTENTLY IS THAT THE MENTALLY ILL ARE EITHER NO MORE LIKELY
23 TO COMMIT VIOLENT CRIMES AFTER DISCHARGE, OR ARE SIGNIFICANTLY
24 LESS LIKELY TO COMMIT VIOLENT ACTS WHEN THEY RETURN TO THE
25 COMMUNITY, AS COMPARED WITH NON-MENTALLY ILL PAROLEES.

1 Q WHEN YOU USE THE WORD "RECIDIVISM," HOW DO YOU USE THAT
2 WORD? WHAT DO YOU MEAN BY THAT?

3 A "RECIDIVISM" IS A TERM THAT COULD REFER TO A HUGE VARIETY OF
4 DIFFERENT OUTCOMES. I THINK A DISTINCTION NEEDS TO BE MADE
5 BETWEEN A REVOCATION OF PAROLE FOR, QUOTE, TECHNICAL VIOLATIONS
6 OF PAROLE CONDITIONS, SUCH AS A MENTALLY ILL PAROLEE MISSING AN
7 APPOINTMENT WITH A PSYCHIATRIST, AS COMPARED WITH REVOCATION OF
8 PAROLE BECAUSE THE PAROLEE HAS COMMITTED A NEW CRIME, EITHER A
9 VIOLENT CRIME OR PROPERTY CRIME OR WHATEVER. SO IT'S A TERM
10 THAT'S AMBIGUOUS AND IS OFTEN, I THINK, MISUSED AS IF IT ALWAYS
11 REFERRED TO THE SAME THING.

12 ONE DISTINCTION BETWEEN THE MENTALLY ILL PAROLEES AND
13 THE NON-MENTALLY ILL IN CALIFORNIA SPECIFICALLY, IS THAT THE
14 MENTALLY ILL PAROLEES ARE SIGNIFICANTLY -- THAT'S STATISTICALLY
15 SIGNIFICANTLY LESS LIKELY TO RETURN TO PRISON BECAUSE OF A NEW
16 OFFENSE, THAT IS OF COMMITTING AN ACT THAT COULD BE REGARDED AS
17 A CRIME OR PROSECUTED AS A CRIME, AS COMPARED THE NON-MENTALLY
18 ILL PAROLEES. WHEN THEY DO COMMIT A CRIME, THEY ARE NO MORE
19 LIKELY THAN THE NON-MENTALLY ILL TO COMMIT A VIOLENT CRIME.

20 Q IN THE MATERIAL YOU LOOKED AT REGARDING CALIFORNIA MENTALLY
21 ILL PAROLEES, WERE THERE PARTICULAR TYPES OF REASONS THEY TENDED
22 TO RETURN TO PRISON?

23 A YES. THE MENTALLY ILL PAROLEES WERE SIGNIFICANTLY MORE
24 LIKELY THAN THOSE NON-MENTALLY ILL TO BE RETURNED FOR PURELY
25 TECHNICAL VIOLATIONS, RATHER THAN BEHAVIOR THAT, UNDER OTHER

1 CONDITIONS, WOULD BE IN ANY WAY CONSIDERED CRIMINAL.

2 **Q** ARE THERE ANY EXAMPLES OF TECHNICAL VIOLATIONS WHICH ARE
3 PARTICULARLY SUSCEPTIBLE?

4 **A** I'M SORRY. COULD YOU REPEAT?

5 **Q** ARE THERE ANY EXAMPLES OF TECHNICAL VIOLATIONS TO WHICH
6 PAROLEES WITH MENTAL ILLNESS ARE PARTICULARLY SUSCEPTIBLE OR
7 MORE LIKELY TO COMMIT?

8 **A** YES. WHEN I MENTIONED JUST SIMPLY MISSING AN APPOINTMENT OR
9 IN SOME OTHER WAY NOT COMPLYING WITH TREATMENT, WHICH IS -- BY
10 THE WAY, THAT'S A CONDITION WHICH HAS BEEN REPEATEDLY DESCRIBED
11 BY OFFICIALS WITHIN THE PAROLE DEPARTMENT IN CALIFORNIA AS VERY
12 FREQUENTLY A PRODUCT OF THE MENTAL ILLNESS ITSELF, THAT IS, THE
13 MENTALLY ILL PAROLEE IS TOO DISORGANIZED OR TOO PARANOID,
14 WHATEVER IT MIGHT BE, TO PARTICIPATE IN THE TREATMENT, YOU KNOW,
15 EXACTLY AS REQUIRED.

16 **Q** WERE YOU ALSO ASKED TO LOOK AT THE LINKS BETWEEN MENTAL
17 ILLNESS AND VALID PREDICTERS OF FUTURE VIOLENCE?

18 **A** YES. AS I SAID, WITHIN THE PAROLE POPULATION, THE MENTALLY
19 ILL ARE NO MORE LIKELY THAN THE NON-MENTALLY ILL TO COMMIT
20 FUTURE VIOLENCE. THERE'S ACTUALLY SOME EVIDENCE THAT THE MORE
21 SEVERELY MENTALLY ILL PAROLEES ARE ACTUALLY LESS LIKELY THAN THE
22 NON-MENTALLY ILL, THEY'RE JUST TOO DISORGANIZED OR SOCIALLY
23 WITHDRAWN.

24 THE MORE IMPORTANT POINT, THOUGH, I THINK IN RESPONSE
25 TO YOUR QUESTION, IS THAT THE PREDICTERS OF FUTURE VIOLENCE,

1 THAT IS, THE RISK FACTORS THAT PREDICT VIOLENCE IN THE FUTURE,
2 ARE THE SAME BOTH FOR THE MENTALLY ILL AND NON-MENTALLY ILL
3 PAROLEES.

4 FOR EXAMPLE, FUTURE RISK FACTORS THAT PREDICT
5 VIOLENCE ARE AGE, SEX, SUBSTANCE ABUSE, ACCESS TO WEAPONS, PRIOR
6 CRIMINAL HISTORY, CERTAIN KINDS OF PERSONALITY DISORDERS, WHICH
7 ARE NOT AXIS I MENTAL DISORDERS, AND I WOULD SAY THE GENERAL
8 CATEGORY OF SOCIOECONOMIC HARDSHIP, POVERTY, HOMELESSNESS,
9 THINGS OF THAT SORT.

10 **Q** YOU WERE ALSO ASKED FOR AN OPINION ABOUT HOW CALIFORNIA
11 COULD IMPROVE UPON THE STATUS QUO REGARDING PUBLIC SAFETY AND
12 THE CURRENT FLOW OF MENTALLY ILL PAROLEES FROM THE PRISON
13 SYSTEM. WHAT DID YOU CONCLUDE WITH REGARD TO THAT?

14 **A** THAT ONE OF THE MOST IMPORTANT THINGS THE STATE OF
15 CALIFORNIA COULD DO WOULD BE TO REDUCE THE CHURNING OF PAROLEES
16 AND DISPROPORTIONATELY, THAT MEANS MENTALLY ILL ONES, FROM THE
17 COMMUNITY AND INTO THE PRISON AND BACK AGAIN, SORT OF SHORT
18 PERIODS IN EACH PLACE, WHICH DISRUPTS EVERY KIND OF
19 REINTEGRATION INTO THE THERAPEUTIC OR REHABILITATIVE ACTIVITY
20 AND SO ON.

21 THE MAIN THINGS I'D EMPHASIZE, THOUGH, IN TERMS OF
22 PRACTICES THAT WOULD IMPROVE PUBLIC SAFETY WOULD BE TO MAKE SURE
23 THAT EVERY PAROLEE LEAVING THE PRISON, THERE WAS A SIGNIFICANT
24 PRERELEASE PLANNING, STARTING, HOPEFULLY, MONTHS BEFORE THEY
25 LEAVE; SECONDLY, ASSURING THEY HAVE ACCESS TO CARE WHEN THEY

1 RETURN TO THE COMMUNITY; THIRDLY, MAKING SURE THEY HAD ACCESS TO
2 TREATMENT FOR DUAL DIAGNOSIS PROBLEMS, THAT IS, PEOPLE WHO ARE
3 BOTH MENTALLY ILL AND HAVE SUBSTANCE ABUSE PROBLEMS, TO MAKE
4 SURE THEY CAN ACTUALLY GET THAT TREATMENT, AND, FOURTHLY, TO
5 INCREASE, I'D SAY, COORDINATION WITH COMMUNITY MENTAL HEALTH
6 PROVIDERS TO GET THEM INVOLVED IN THE TREATMENT PROCESS WITH A
7 RETURNED PAROLEE.

8 **Q** YOU REFERRED EARLIER TO STATEMENTS OF CALIFORNIA OFFICIALS
9 REGARDING THE CHURNING PHENOMENON. WERE THERE ANY PARTICULAR
10 STATEMENTS FROM HIGH LEVEL OFFICIALS?

11 **A** ABSOLUTELY. I COULD MENTION THE -- WELL, MR. KERNAN'S
12 COMMENTS THAT WE HAVE ON VIDEO.

13 **Q** WHAT WERE --

14 **A** AND MR. TILTON.

15 **Q** WHEN YOU MENTION MR. TILTON'S COMMENTS, WE CAN PLAY THAT FOR
16 THE COURT. IF YOU LOOK -- OR YOU CAN TELL ME, ALSO. WHAT IS
17 THE SIGNIFICANCE, BEFORE WE DO THAT, OF WHAT YOU SAW FROM
18 MR. TILTON?

19 **A** WELL, THE SIGNIFICANCE IS THAT THE MENTALLY ILL WHO ARE IN
20 PRISON ARE, IN MANY CASES, THERE SIMPLY BECAUSE ACCESS TO MENTAL
21 HEALTH HAS NOT BEEN MADE -- MENTAL HEALTHCARE HAS NOT BEEN MADE
22 AVAILABLE IN THE COMMUNITY. IN OTHER WORDS, THE PRISONS IN
23 CALIFORNIA, AS IN MANY OTHER STATES, HAVE A SIGNIFICANT NUMBER
24 OF PRISONERS WHO ARE IN PRISON PRIMARILY BECAUSE THEY ARE
25 MENTALLY ILL AND THEY CAN'T GET TREATMENT ELSEWHERE. SO THE

1 PRISONS ARE BEING TREATED AS THE DE FACTO MENTAL HOSPITAL
2 SYSTEM.

3 **Q** I'D LIKE TO SHOW YOU THAT STATEMENT AND ASK YOU IF IT'S THE
4 ONE YOU WERE REFERRING TO. COULD WE LOOK AT, ROLL, PLAINTIFF'S
5 EXHIBIT 361, 361? PLAINTIFF'S EXHIBIT 361? IT WILL NEED SOUND.

6 (VIDEO PLAYED.)

7 **BY MR. GALVAN**

8 **Q** IS THAT THE VIDEO YOU WERE REFERRING TO?

9 **A** YES.

10 **Q** YOU MENTIONED A STATEMENT BY SCOTT KERNAN, MR. KERNAN. I'D
11 LIKE TO SHOW YOU THAT AND ASK YOU IF THAT'S THE ONE YOU ARE
12 REFERRING TO. THAT IS P 360.

13 WE CAN COME BACK TO THAT. I'M GOING TO MOVE FORWARD
14 TO ONE OF THE OTHER THINGS THAT YOU WERE ASKED TO OPINE ABOUT.

15 YOU WERE ALSO ASKED TO WRITE A -- I'M SORRY -- YOU
16 WERE ALSO ASKED TO WRITE A SECOND REPORT, A REBUTTAL REPORT,
17 REGARDING THE IMPACTS OF A POPULATION REDUCTION ON COMMUNITY
18 MENTAL HEALTH SERVICES IN CALIFORNIA. HOW DID YOU GO ABOUT
19 FORMING YOUR OPINIONS IN THAT AREA?

20 **A** WELL, FIRST OF ALL, I REVIEWED THE ACTUAL CLASSIFICATION OF
21 PRISONERS AS TO THEIR MENTAL HEALTH STATUS AND THE NUMBERS
22 INVOLVED, AND IT APPEARED TO ME THAT IT WOULD BE VERY EASY TO
23 EXAGGERATE THE IMPACT OF DISCHARGING MENTALLY ILL PRISONERS ON
24 THE COUNTY AND MENTAL HEALTH SYSTEM IF THE ONE DOESN'T ACTUALLY
25 LOOK AT THE RELATIVELY SMALL NUMBERS INVOLVED.

1 COULD WE LOOK AT FIGURE ONE, WHICH SHOWS THE NUMBER
2 OF PAROLEES DISCHARGED IN RECENT YEAR, 2006, I BELIEVE?

3 (DOCUMENT DISPLAYED.)

4 **THE WITNESS:** WHAT THAT SHOWS IS THAT IN 2006 THERE
5 WERE ROUGHLY 135,000 RELEASES TO PAROLE, OF WHICH ABOUT
6 20 PERCENT, OR ROUGHLY 27,000, WERE OF PEOPLE WHO HAD BEEN
7 CLASSIFIED IN NEED OF MENTAL HEALTH SERVICES WITHIN THE CDCR.
8 OF THOSE, THE VAST MAJORITY, ALMOST 24,000, WERE AT THE LOWEST
9 LEVEL OF MENTAL ILLNESS OF A 3CMS GROUP, WHICH IS CLASSIFIED AS
10 REALLY NOT NEEDING ANY INPATIENT TREATMENT, OR EVEN PARTICULARLY
11 INTENSIVE OUTPATIENT TREATMENT. THESE ARE PEOPLE THAT COULD
12 EASILY BE HANDLED IN A COMMUNITY MENTAL HEALTH SYSTEM WITH
13 APPOINTMENTS, YOU KNOW, FROM EVERY ONE TO THREE MONTHS, MAYBE
14 ONE APPOINTMENT. MANY OF THEM WON'T EVEN NEED CONTINUING
15 TREATMENT.

16 THE NEXT MORE SEVERELY DISTURBED ARE THE EOP, OR
17 ENHANCED OUTPATIENT POPULATION, WHICH IS ABOUT 2,400 OF THIS
18 GROUP. BUT THESE ARE ALSO CLASSIFIED AS PEOPLE WHO DO NOT NEED
19 INPATIENT TREATMENT. THEY DON'T NEED MENTAL HOSPITALIZATION.
20 THEY SPECIFICALLY ARE PEOPLE WHO ARE MANAGEABLE ON AN OUTPATIENT
21 BASIS. SO THESE ARE PEOPLE THAT MIGHT BE PATIENTS IN A
22 COMMUNITY MENTAL HEALTH CLINIC.

23 THERE'S A MUCH SMALLER NUMBER OF THAT, A LITTLE OVER
24 600, WHO NEED EITHER A CRISIS BED OR A DMH HOSPITALIZATION.
25 THAT'S OF THE ENTIRE 135,000 WHO WERE DISCHARGED UNDER THE

1 STATUS QUO IN 2006.

2 IF WE LOOKED AT A SPECIFIC -- IF WE COULD LOOK AT
3 FIGURE TWO, WE COULD SEE WHAT THIS WOULD AMOUNT TO IF WE WERE
4 TALKING ABOUT, SAY A RELEASE OF 30,000 PEOPLE INTO PAROLE TO
5 JUST TO DECREASE THE PRISON POPULATION BY THAT MUCH.

6 WHAT YOU CAN SEE IS THAT THE NUMBER OF PEOPLE WHO
7 WOULD NEED INPATIENT TREATMENT IN THIS GROUP, THE CRISIS BED AND
8 DMH, AT THE TOP WOULD BE ABOUT 143 PEOPLE, AND ONLY A LITTLE
9 OVER 500 WOULD NEED EVEN REGULAR OUTPATIENT TREATMENT OF THE EOP
10 GROUP.

11 NOW, I WOULD MENTION THAT THE COUNTY MENTAL HEALTH
12 SYSTEM IN CALIFORNIA AS IT IS NOW OPERATING HAS APPROXIMATELY
13 658,000 PATIENTS. THAT'S 658,000. OF THOSE OVER 43,000 NEED
14 24-HOUR-A-DAY CARE. SO WHAT WE'RE TALKING ABOUT IS ADDING TO
15 THAT POPULATION OF 24,000 MAYBE 140 WHO WOULD NEED OUTPATIENT
16 CARE, AND OF THE 658,000, WE'RE TALKING ABOUT, MAYBE 6,000 THAT
17 WOULD BE, YOU KNOW, AN INCREASED POPULATION, AGAIN, THE VAST
18 MAJORITY OF WHOM WOULD NEED ONLY MINIMAL MENTAL HEALTH CARE.

19 SO I EMPHASIZE THAT BECAUSE I THINK IT'S IMPORTANT
20 NOT TO EXAGGERATE THE IMPACT OR THE STRESS THE DIFFICULTY THAT
21 THE COUNTY AND STATE MENTAL HEALTH SYSTEMS WOULD HAVE IF THESE
22 MENTALLY ILL PAROLEES WERE ACTUALLY BEING TAKEN CARE OF BY THE
23 MENTAL HEALTH SYSTEM RATHER THAN BEING PLACED IN PRISON, WHICH
24 ARE, OF COURSE, THE WORST POSSIBLE LOCATION FOR SOMEONE WHO'S
25 MENTALLY ILL.

1 Q IN DOING IN THE ANALYSIS, DID YOU CONDUCT A COUNTY-BY-COUNTY
2 REVIEW?

3 A NO, I LOOKED JUST AT THE STATE -- STATE FIGURES AS A WHOLE.

4 Q ARE YOU SAYING THAT, IN YOUR OPINION, THE CALIFORNIA
5 COMMUNITY MENTAL HEALTH SYSTEM HAS ALL THE FUNDING THAT IT
6 NEEDS?

7 A NO. I MEAN, I DON'T PRETEND TO BE AN EXPERT ON THAT
8 SUBJECT, BUT FROM WHAT I HAVE BEEN TOLD, WHAT I'VE READ, I
9 CONTINUALLY HEAR THAT THE COUNTY MENTAL HEALTH SYSTEM IS
10 UNDERFUNDED AND UNDERSTAFFED, ACCORDING AT LEAST TO THE JUDGMENT
11 OF THE PEOPLE WHO WORK IN THAT SYSTEM.

12 Q AND IN LOOKING AT THE STATEMENTS IN THE DEFENSE EXPERT
13 REPORTS ON COMMUNITY MENTAL HEALTH, DID YOU FORM ANY OPINIONS
14 ABOUT THEIR DISCUSSION OF THE RESOURCE PROBLEMS?

15 A THE REPRESENTATIVES FROM THE COUNTY MENTAL HEALTH SYSTEM.

16 Q I'M THINKING PARTICULARLY OF THE DEFENSE EXPERTS.

17 A YES.

18 Q MS. BATAILLE AND THE COUNTY EXPERTS?

19 A THEY WERE MAKING THE POINT REPEATEDLY THAT THEY FELT THE
20 COUNTIES' MENTAL HEALTH SYSTEM, SINCE IT IS UNDERFUNDED, COULD
21 NOT AFFORD TO TREAT MORE PATIENTS. WHAT I WOULD -- WHAT I THINK
22 IS WORTH NOTICING, THOUGH, IS THAT ACTUALLY WHAT THE STATE OF
23 CALIFORNIA IS DOING NOW WITH THIS POPULATION OF MENTALLY ILL
24 PAROLEES IS VASTLY MORE EXPENSIVE THAN TAKING CARE OF THEM
25 WITHIN THE MENTAL HEALTH SYSTEM WOULD BE.

1 FOR EXAMPLE, A CRUDE ESTIMATE OF THE COST TO THE
2 STATE OF EACH INMATE IN A PRISON, THE COST OF HAVING THAT PERSON
3 IN PRISON IS AT LEAST \$43,000 A YEAR. NOW MY UNDERSTANDING IS
4 THAT INPATIENT HOSPITAL IN A MENTAL HOSPITAL, THE HIGHEST LEVEL,
5 THE MOST INTENSIVE LEVEL OF INPATIENT CARE IN THIS STATE IS MORE
6 ON THE ORDER OF \$30,000. I MEAN, IN OTHER WORDS, IT'S NOT JUST
7 THAT TREATING THE MENTALLY ILL IN PRISONS IS NOT JUST -- IT'S
8 INEFFECTIVE AND INAPPROPRIATE AS A MENTAL HEALTH SETTING.
9 PRISONS ARE NOT MENTAL HEALTH HOSPITALS. THESE ARE THE WORST
10 POSSIBLE ENVIRONMENTS FOR THE MENTALLY ILL.

11 IT'S ALSO TRUE IT COSTS MORE MONEY TO HAVE THEM
12 THERE. THE STATE IS SPENDING MUCH MORE MONEY TO HAVE PEOPLE IN
13 A MUCH WORSE ENVIRONMENT. AS FAR AS THE EXPENSE PART OF IT
14 GOES, IT SEEMS TO ME THE QUESTION IS NOT WHETHER THE STATE CAN
15 AFFORD TO TREAT THE MENTALLY ILL WITHIN THE MENTAL HEALTH
16 SYSTEM, RATHER THAN THE PRISONS, IT'S CAN THE STATE AFFORD NOT
17 TO DO THAT. I MEAN, THIS IS A HUGE DRAIN ON PUBLIC RESOURCES
18 WHICH IS TOTALLY COUNTERPRODUCTIVE.

19 **Q** WHAT DID YOU FIND IN THE DEFENSE REPORTS TO TAKE ACCOUNT OF
20 THE STATUS QUO IN YOUR FIGURE ONE, THAT THESE COUNTIES ARE NOW
21 RECEIVING THIS FLOW OF 26-, 27,000 MENTALLY ILL PAROLEES EACH
22 YEAR?

23 **A** THESE ARE PEOPLE WHO WIND UP IN THE COMMUNITY, I MEAN,
24 PRESUMABLY, THE COUNTY MENTAL HEALTH SYSTEMS ARE ALREADY HAVING
25 TO DEAL WITH.

1 BUT LET ME QUALIFY THAT. THAT'S THE WAY IT SHOULD
2 BE.

3 WHAT IS HAPPENING IS THAT THE MENTALLY ILL PAROLEES
4 ARE BEING DENIED ACCESS, AS I UNDERSTAND IT, ARE BEING DENIED
5 ACCESS TO MENTAL HEALTH TREATMENT IN THE COUNTY SYSTEM PRECISELY
6 BECAUSE THEY'RE PAROLEES.

7 SO THE PAROLE DEPARTMENT, OF COURSE, HAS PAROLE
8 OUTPATIENT CLINICS, BUT I'VE SEEN MANY REPORTS FROM WITHIN THE
9 PAROLE DEPARTMENT ITSELF STATING THAT PAROLE OFFICERS CANNOT GET
10 THEIR PAROLEES PLACED FOR INPATIENT TREATMENT IN THE MENTAL
11 HEALTH SYSTEM AND, THEREFORE, HAVE TO RETURN THEM TO PRISON FOR
12 TREATMENT, FOR MENTAL HEALTH TREATMENT; IN OTHER WORDS, THEY ARE
13 FORCED INTO A POSITION OF USING THE PRISONS AS IF THEY WERE
14 MENTAL HOSPITALS, WHICH I CAN'T REPEAT TOO OFTEN THEY ARE NOT.

15 **MR. GALVAN:** THANK YOU. NO FURTHER QUESTIONS UNTIL
16 REDIRECT.

17 **JUDGE HENDERSON:** ANYTHING FROM CCPOA? I ASSUME YOU
18 HAVE NO QUESTIONS OF THIS WITNESS?

19 **MS. LEONARD:** NO, YOUR HONOR.

20 **JUDGE HENDERSON:** OKAY. CROSS?

21 **MR. LEWIS:** GOOD MORNING, YOUR HONORS. KYLE LEWIS
22 FOR THE STATE DEFENDANTS.

23 **CROSS-EXAMINATION BY MR. LEWIS**

24 **BY MR. LEWIS**

25 **Q** GOOD MORNING, DR. GILLIGAN.

1 **A** GOOD MORNING.

2 **Q** REGARDING YOUR QUALIFICATIONS, YOU WERE LAST EMPLOYED AS --
3 IN TERMS OF IN WORKING IN A CORRECTIONAL SYSTEM, YOU WERE LAST
4 EMPLOYED IN 1992 AS THE MEDICAL DIRECTOR OF RIDGEWATER STATE
5 HOSPITAL IN MASSACHUSETTS; IS THAT CORRECT?

6 **A** THAT'S THE LAST TIME I WORKED IN AN ADMINISTRATIVE POSITION.
7 I HAVE, HOWEVER, WORKED AS A RESEARCHER, AS A CONSULTANT, AS A
8 SUPERVISOR, TEACHER, YOU KNOW, MANY DIFFERENT ROLES IN PRISON
9 SYSTEMS SINCE THEN.

10 **Q** PARDON ME. HAVE YOU EVER SINCE 1992 BEEN EMPLOYED BY A
11 STATE AGENCY OR A STATE CORRECTIONS DEPARTMENT TO WORK IN A
12 PRISON HOSPITAL OR IN AN ADMINISTRATIVE SETTING FOR PRISON
13 MENTAL HEALTH CARE?

14 **A** NO, NO.

15 **Q** HAVE YOU EVER TOURED A CDCR FACILITY?

16 **A** NO, I HAVE NOT TOURED THEM.

17 **Q** AND HAVE YOU EVER BEEN IN ANY OF THE STATE MENTAL HOSPITALS
18 IN THE STATE OF CALIFORNIA OPERATED BY THE DEPARTMENT OF MENTAL
19 HEALTH?

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

21 **Q** AT YOUR DEPOSITION IT WAS YOUR TESTIMONY THAT YOU UNDERSTOOD
22 PLAINTIFFS WERE PROPOSING TO HAVE THE COURT ORDER AN IMMEDIATE
23 RELEASE OF 15,000 OFFENDERS, CORRECT?

24 **MR. GALVAN:** OBJECTION. IT MISSTATES THE TESTIMONY.

25 THE DEPOSITION IS 300 PAGES LONG.

1 **MR. LEWIS:** VERY WELL. COULD WE PLEASE PULL UP PAGE
2 42?

3 **BY MR. LEWIS**

4 **Q** DOCTOR, IF YOU COULD LOOK AT YOUR SCENE TO YOUR RIGHT?

5 **JUDGE KARLTON:** THERE'S NOTHING GOING ON AT THE
6 MOMENT, BUT SOMEDAY THERE WILL BE.

7 **BY MR. LEWIS**

8 **Q** IF YOU COULD -- I'LL READ THAT LINE.

9 "I THINK WHAT I'M TRYING TO GET AT IS, DID
10 ANYONE EVER INFORM YOU THAT PLAINTIFFS HAVE
11 INDICATED IN INTERROGATORY RESPONSES THE
12 PROPOSAL TO HAVE THE COURT ORDER AN IMMEDIATE
13 RELEASE OF 15,000 OFFENDERS?

14 "ANSWER: WELL, I'VE CERTAINLY HEARD THAT
15 FIGURE."

16 DO YOU RECALL BEING TOLD ABOUT A 15,000 PERSON
17 RELEASE POSSIBLY?

18 **JUDGE KARLTON:** IMMEDIATE RELEASE.

19 **THE WITNESS:** PARDON ME?

20 **JUDGE KARLTON:** IMMEDIATE RELEASE. THE QUESTION IS
21 WHETHER YOU RECALL NOW.

22 **THE WITNESS:** YEAH, I DON'T RECALL THE DISTINCTION,
23 FOR EXAMPLE, BETWEEN IMMEDIATE OR SPREAD OVER A CERTAIN PERIOD
24 OF TIME.

25 **MR. LEWIS:** VERY WELL.

1 **THE WITNESS:** BUT I'VE HEARD FIGURES OF 15,000. I
2 DON'T REMEMBER EXACTLY WHERE, BUT MY UNDERSTANDING IS WE'RE
3 TALKING ABOUT SOMETHING ON THAT ORDER.

4 **BY MR. LEWIS**

5 **Q** AND DO YOU REMEMBER OR DO YOU RECALL TESTIFYING THAT THERE
6 WOULD BE A PROPORTIONAL NUMBER OF COLEMAN CLASS MEMBERS WITHIN
7 THAT 15,000 OFFENDER RELEASE?

8 **A** YEAH, I MEAN, THAT'S BEEN MY ASSUMPTION. THAT'S BEEN MY
9 UNDERSTANDING.

10 **Q** ARE YOU AWARE THAT PLAINTIFFS ARE NOW SEEKING A PRISONER
11 RELEASE ORDER TO ENCOMPASS A RELEASE OF OVER 50,000 INMATES?

12 **MR. GALVAN:** OBJECTION. MISSTATES THE EVIDENCE.

13 **MR. LEWIS:** IT'S STATED IN THEIR OPENING TRIAL BRIEF,
14 YOUR HONOR.

15 **JUDGE KARLTON:** OVER A PERIOD OF TIME.

16 **MR. LEWIS:** OVER A PERIOD OF TIME, BUT IT IS STILL
17 50,000, YOUR HONOR.

18 **MR. GALVAN:** FURTHER, IT MISCHARACTERIZES WHAT WE'RE
19 SEEKING. IT'S NOT A RELEASE. IT'S A POPULATION REDUCTION,
20 WHICH COULD BE ACHIEVED MANY DIFFERENT WAYS SHORT OF RELEASE.

21 **JUDGE HENDERSON:** AND THE QUESTION IS DOES
22 DR. GILLIGAN RECALL THAT?

23 **MR. LEWIS:** IS HE AWARE THAT THE PLAINTIFFS ARE NOW
24 SEEKING OR HAVE ASKED FOR A RELEASE OR POPULATION REDUCTION THAT
25 WILL RESULT IN THE RELEASE OR REDUCTION OF 50,000 PEOPLE AS

1 OPPOSED TO 15,000.

2 **JUDGE HENDERSON:** I AM GOING TO ALLOW IT. ARE YOU
3 AWARE OF THAT?

4 **BY MR. LEWIS**

5 **Q** ARE YOU AWARE OF THAT, DOCTOR?

6 **A** I HAVEN'T HEARD THAT PARTICULAR FIGURE, BUT I WILL TAKE IT
7 INTO ACCOUNT AS WE TALK.

8 **Q** SO IF THE PLAINTIFFS WERE SEEKING A RELEASE OF 50,000, WOULD
9 SUCH RELEASE ALSO INCLUDE A PROPORTIONAL NUMBER OF COLEMAN CLASS
10 MEMBERS?

11 **A** THAT'S NOT FOR ME TO DECIDE. THAT'S FOR OTHER PEOPLE TO
12 DECIDE. WHAT I WAS TRYING TO SHOW WITH THE FIGURES I SHOWED WAS
13 SIMPLY WHAT THE EFFECT WOULD BE IF IT WERE PROPORTIONAL.

14 **Q** VERY WELL. THEREFORE, A PROPOSED RELEASE ORDER OF OVER
15 50,000 OFFENDERS WOULD POTENTIALLY PLACE MORE MENTALLY ILL
16 INMATES IN CALIFORNIA COMMUNITIES THAN YOU ACCOUNTED FOR IN
17 EITHER YOUR AUGUST 15TH OR AUGUST 27TH, 2008 REPORTS; ISN'T THAT
18 CORRECT?

19 **A** IF YOU ARE TALKING ABOUT 50,000, THAT WOULD BE MORE THAN I
20 HAD TALKED ABOUT. IT STILL COULD BE DISCUSSED.

21 **Q** THAT WOULD BE MORE THAN THE 140 YOU WERE TALKING ABOUT IN
22 YOUR DIRECT TESTIMONY A FEW MINUTES AGO?

23 **A** SURE. THE 140 WAS BASED ON 30,000, SO MAYBE THAT WOULD
24 RAISE IT TO, OH, MAYBE 240.

25 **Q** THANK YOU.

1 YOU ACKNOWLEDGE THAT THERE ARE SOME OFFENDERS WITHIN
2 CALIFORNIA -- WITHIN THE -- I'M SORRY -- THE CALIFORNIA PRISON
3 SYSTEM WHO HAVE MENTAL ILLNESS AND DO POSE A RISK OF DANGER TO
4 THEMSELVES AND OTHERS IN THE COMMUNITY BASED ON THEIR CONDUCT,
5 CORRECT?

6 **A** I WOULD ASSUME THAT WOULD BE THE CASE, SURE.

7 **Q** IF THESE MENTALLY ILL OFFENDERS DO POSE THAT RISK, YOU
8 RECOMMEND THEY DO NOT BE RELEASED INTO THE COMMUNITY, CORRECT?

9 **A** IT DEPENDS WHAT YOU MEAN BY "THE COMMUNITY." IF WE'RE
10 REGARDING THE MENTAL HEALTH SYSTEM AS PART OF THE COMMUNITY, THE
11 MENTAL HEALTH SYSTEM AS IT EXISTS OUTSIDE OF PRISON, THEN I
12 WOULD EXPECT THAT MANY OF THESE INDIVIDUALS COULD BE PERFECTLY
13 APPROPRIATELY AND SAFELY MANAGED, INDEED, IN, SAY, THE MENTAL
14 HEALTH SYSTEM.

15 **Q** SO IF YOU KNEW OF INMATES THAT POSED A RISK OF DANGER TO
16 THEMSELVES OR OTHERS IN THE COMMUNITY, YOU WOULD RECOMMEND
17 THEY'D BE RELEASED INTO, SAY, COMMUNITY MENTAL HEALTH CARE?

18 **A** WELL, YES, IN THE SENSE THAT I WOULD -- WHEN I TALKED ABOUT
19 PRERELEASE PLANNING, THAT'S PART OF WHAT I HAD IN MIND.

20 I MEAN, I WOULD THINK THAT ANY WELL-RUN PRISON MENTAL
21 HEALTH SYSTEM WOULD HAVE AS PART OF ITS JOB THE TASK OF
22 EVALUATING DEPARTING INMATES OR PEOPLE SCHEDULED FOR RELEASE
23 INTO THE COMMUNITY AS TO WHETHER OR NOT THEY WERE DANGEROUS TO
24 OTHERS OR THEMSELVES BY REASON OF MENTAL ILLNESS AND TO THEN
25 MAKE APPROPRIATE TREATMENT REFERRAL PLANS. I MEAN, THAT'S WHAT

1 I DID IN MASSACHUSETTS. I WOULD ASSUME PEOPLE WOULD DO THAT IN
2 CALIFORNIA.

3 **Q** AND YOU TESTIFIED AT YOUR DEPOSITION THAT 70 PERCENT OF THE
4 MENTALLY ILL AND NON-MENTALLY ILL PRISONERS IN CDCR HAVE SOME
5 KIND OF SUBSTANCE ABUSE DISORDER, CORRECT?

6 **A** IT'S VERY HIGH WITH BOTH GROUPS, SURE.

7 **Q** DID YOU TESTIFY TO THAT? DO YOU RECALL THAT FIGURE?

8 **A** I DON'T RECALL TESTIFYING TO IT, BUT I WOULD AGREE WITH THAT
9 ASSUMPTION. IT'S A HIGH LEVEL OF SUBSTANCE ABUSE, BOTH WITHIN
10 THE NON-MENTALLY ILL PRISONERS AND THE MENTALLY ILL PRISONERS.
11 SUBSTANCE ABUSE ITSELF, AS I SAID, IS A RISK FACTOR IN AND OF
12 ITSELF.

13 **Q** THANK YOU.

14 YOU ALSO TESTIFIED THAT PRISONERS, BOTH MENTALLY ILL
15 AND NON-MENTALLY ILL, WHO HAVE BEEN CONVICTED OF A CRIME
16 INVOLVING GREAT BODILY HARM TO ANOTHER PERSON DEMONSTRATE
17 GREATER RISK THAT THEY WILL BE VIOLENT TOWARDS THEMSELVES OR
18 OTHERS IN THE FUTURE, CORRECT?

19 **A** YES.

20 **Q** AND YOU ALSO TESTIFIED THAT PRISONERS WHO HAVE A HISTORY OF
21 VIOLENCE OR SUBSTANCE ABUSE REGARDLESS OF THEIR MENTAL ILLNESS
22 OR LACK THEREOF ARE MORE LIKELY TO COMMIT VIOLENCE, CORRECT?

23 **A** YES, THEY ARE MORE LIKELY THAN PEOPLE IN THE SAME CLASS THAT
24 ARE NOT SUBSTANCE ABUSERS.

25 **Q** BASED ON YOUR TESTIMONY, AT LEAST 70 PERCENT OF THE MENTALLY

1 ILL OFFENDERS WHO MAY BE RELEASED FROM CDCR FACILITIES ARE
2 LIKELY TO COMMIT VIOLENCE, CORRECT?

3 **A** NO. I'M SAYING THEY ARE SIMPLY MORE LIKELY TO DO SO THAN
4 THE MENTALLY ILL WHO ARE NOT SUBSTANCE ABUSERS, BUT THE ACTUAL
5 OCCURRENCE OF VIOLENCE, YOU COULD EXPECT, WOULD BE QUITE LOW IN
6 BOTH GROUPS. I'M TALKING ABOUT A RELATIVE DIFFERENCE BETWEEN
7 SUBSTANCE-ABUSING MENTALLY ILL AND NON-SUBSTANCE-ABUSING
8 MENTALLY ILL. THE VAST MAJORITY OF THEM NEVER COMMIT ANY
9 VIOLENCE.

10 **Q** REGARDLESS, IT'S STILL 70 PERCENT OF THE BOTH MENTALLY ILL
11 AND NON-MENTALLY ILL HAVE A SUBSTANCE ABUSE DISORDER, WHICH YOU
12 TESTIFIED WILL INDICATE A GREATER RISK OF VIOLENCE?

13 **A** YEAH, BUT THE QUESTION IS GREATER RISK THAN WHO? I'D SAY,
14 YES, THEY ARE MORE LIKELY TO COMMIT ACTS OF VIOLENCE THAN PEOPLE
15 WHO ARE NOT SUBSTANCE ABUSERS. BUT IN AND OF ITSELF, THIS IS
16 ONE RISK FACTOR AMONG MANY. MY POINT IS IT'S THE SUBSTANCE
17 ABUSE THAT'S THE RISK FACTOR, NOT THE MENTAL ILLNESS.

18 **Q** NOW, ACCORDING TO THE DIAGNOSTIC AND STATISTICAL MANUAL OF
19 MENTAL ILLNESS, FOURTH EDITION, ALSO KNOWN AS DSM-IV, I BELIEVE,
20 COMMON AXIS II DISORDERS INCLUDE PERSONALITY DISORDERS THAT
21 MIGHT ENCOMPASS ANTI-SOCIAL PERSONALITY DISORDERS, NARCISSISTIC
22 PERSONALITY DISORDERS, AVOIDANT PERSONALITY DISORDERS, TO NAME A
23 FEW, CORRECT?

24 **A** YES.

25 **Q** IN FACT, AN AXIS II PERSONALITY DISORDER IS THE MOST COMMON

1 PSYCHIATRIC DIAGNOSIS IN PRISONS AND JAILS, CORRECT?

2 **A** AXIS II, I WOULD AGREE.

3 **Q** AND YOU ALSO TESTIFIED THAT A SUBSTANTIAL PORTION OF THE
4 PRISON POPULATION HAVE AN AXIS II PERSONALITY DISORDER, CORRECT?

5 **A** NOW, THERE I'M TALKING ABOUT PRIMARILY THE NON-MENTALLY ILL
6 PRISONERS. TO BE CLEAR WITH YOU ABOUT THIS, WHAT I'M SAYING
7 ABOUT THE MENTALLY ILL PRISONERS, PEOPLE IN PRISON AND ARE
8 MENTALLY ILL.

9 THOSE WHO ARE DANGEROUS TO THEMSELVES OR OTHERS BY
10 REASON OF THEIR MENTAL ILLNESS, IN MY EXPERIENCE, HAVE GENERALLY
11 HAD AN AXIS II DISORDER IN ADDITION TO THEIR PSYCHOTIC DISORDER;
12 HOWEVER, THERE ARE MENTALLY ILL PEOPLE IN THE PRISONS -- I MEAN,
13 I HAVE CERTAINLY ABUNDANT EVIDENCE FROM CALIFORNIA FIGURES, AND
14 I KNOW THIS FROM MY OWN EXPERIENCE IN THE MASSACHUSETTS PRISON
15 SYSTEM, MENTALLY ILL PEOPLE WIND UP IN PRISON WHO ARE NOT
16 NECESSARILY PARTICULARLY DANGEROUS TO OTHERS, BUT WIND UP IN
17 PRISON BECAUSE OF THE FAILINGS OF THE MENTAL HEALTH SYSTEM. IN
18 OTHER WORDS, THE PRISONS HAVE BECOME THE DE FACTO MENTAL HEALTH
19 CARE SYSTEM IN CALIFORNIA AND THROUGHOUT THE UNITED STATES.

20 **Q** DO THE ANTI-SOCIAL PERSONALITY DISORDERS THAT WE TALKED
21 ABOUT, DO THEY DIMINISH THE CAPACITY OF A PERSON TO HOLD DOWN A
22 JOB OR DO A STEADY JOB, DO A STEADY WORK?

23 **A** YEAH, THEY OFTEN INTERFERE WITH PEOPLE'S BEHAVING IN SUCH A
24 WAY AS TO MAINTAIN REGULAR EMPLOYMENT.

25 **Q** SO DOES EITHER HAVING AN AXIS II PERSONALITY DISORDER OR NOT

1 BEING ABLE TO HOLD A JOB CONSTITUTE AN INDEPENDENT RISK FACTOR
2 FOR VIOLENT BEHAVIOR?

3 **A** I WOULD SAY SO, YES.

4 **Q** IS IT EITHER-OR OR BOTH?

5 **A** BOTH. I MEAN, THEY COULD BE -- THEY FUNCTION INDEPENDENTLY
6 OF EACH OTHER AS RISK FACTORS. I WOULD ADD ALL OF THOSE RISK
7 FACTORS ARE ACTUALLY MORE PREDICTIVE OF VIOLENCE THAN MENTAL
8 ILLNESS AS SUCH.

9 **Q** TURNING TO AXIS I DISORDERS, WOULD YOU AGREE THOSE ARE
10 SERIOUS MENTAL DISORDERS, LIKE SCHIZOPHRENIA, THAT REQUIRE
11 ONGOING MEDICATION AND TREATMENT AND A WHOLE HOST OF REMEDIES?

12 **A** WELL, THEY CERTAINLY REQUIRE ONGOING TREATMENT. NOW THE
13 QUESTION OF HOW INTENSIVE THAT TREATMENT NEEDS TO BE CAN VARY
14 ENORMOUSLY.

15 I MEAN, FOR EXAMPLE -- I MEAN I MYSELF, YOU KNOW,
16 CURRENTLY STILL MANAGE THE TREATMENT OF PEOPLE I'VE SEEN SINCE I
17 WAS A FIRST YEAR RESIDENT. I MIGHT SEE THEM ONCE EVERY THREE
18 MONTHS. THEY ARE STABLE IN THE COMMUNITY. THE ONGOING
19 RELATIONSHIP STABILIZES THEM. BUT, IN OTHER WORDS, THIS IS NOT
20 NECESSARILY EXTREMELY LABOR INTENSIVE.

21 **Q** SO SCHIZOPHRENIA IS A MORE SERIOUS LIFELONG ILLNESS?

22 **A** YES. IN THAT SENSE IT'S COMPARABLE TO HIGH BLOOD PRESSURE,
23 DIABETES OR OTHER MEDICAL CONDITIONS THAT REQUIRE LIFELONG
24 TREATMENT.

25 **Q** AND SCHIZOPHRENIA CAN ALSO AFFECT THE ABILITY OF A PERSON TO

1 HOLD DOWN A JOB OR HAVE STEADY EMPLOYMENT?

2 **A** YES. IT OFTEN INTERFERES WITH THE CAPACITY TO HOLD DOWN A
3 JOB.

4 **Q** AND IF A SCHIZOPHRENIC OFFENDER IS RELEASED ON PAROLE
5 WITHOUT A JOB WAITING FOR THEM, WITHOUT SUPPORT STRUCTURE,
6 FAMILY, OR PLACE TO STAY, THEY COULD WIND UP ON THE STREET,
7 CAN'T THEY?

8 **A** EXACTLY. I MEAN, THAT'S PRECISELY WHY I THINK PRERELEASE
9 PLANNING IS SO IMPORTANT, INCLUDING, FOR EXAMPLE, GETTING SOCIAL
10 SECURITY PAYMENTS. IF SOMEBODY CAN'T HOLD DOWN A JOB, THEY MAY
11 NEED SOCIAL SECURITY INCOME SUPPLEMENTS.

12 **Q** AND THESE KINDS OF SCHIZOPHRENIC OFFENDERS CAN UNFORTUNATELY
13 ALSO END UP DECEASED, CAN'T THEY?

14 **A** YES.

15 **Q** BECAUSE THEY EITHER GET PREYED UPON BY OTHERS, THEY COMMIT
16 SUICIDE, OR SOMETIMES DON'T TAKE CARE OF THERE OWN SELVES?

17 **A** THOSE ARE CERTAINLY THE RISKS ONE WOULD BE MOST CONCERNED
18 ABOUT IN TREATING THIS POPULATION.

19 **Q** AND SCHIZOPHRENIC OFFENDERS SUCH AS THESE CAN ALSO
20 MATRICULATE IN LOCAL HOSPITALS FOR A VARIETY OF EMERGENCY
21 MEDICAL CARE NEEDS, CORRECT?

22 **A** YES.

23 **Q** AND BECAUSE SCHIZOPHRENIA IS A CHRONIC CONDITION, ANY
24 COMMUNITY SUPPORT FOR OFFENDERS RELEASED WITH THIS ILLNESS WOULD
25 HAVE TO BE A VERY LONG COMMITMENT, WOULDN'T IT?

1 **A** YES. AS I SAID, MOST PEOPLE WITH THAT PARTICULAR ILLNESS
2 ARE GOING TO NEED TREATMENT PROBABLY THROUGHOUT THEIR LIFETIME,
3 BUT THE INTENSITY OF IT CAN VARY ENORMOUSLY. AS I SAID, I SEE
4 PEOPLE NOW THAT, YOU KNOW, I MAY SPEND A SHORT AMOUNT OF TIME
5 ONCE EVERY THREE MONTHS, AND THEY'RE PERFECTLY STABLE.

6 **Q** AND YOU TESTIFIED THAT MENTALLY ILL OFFENDERS SHOULD BE
7 DIVERTED AWAY FROM PRISON AND TOWARDS MENTAL HEALTH CARE AND
8 MENTAL HEALTH DEPARTMENTS SUCH AS THE ONES IN LOCAL COUNTIES OR
9 DEPARTMENT OF MENTAL HEALTH FOR CARE, CORRECT?

10 **A** I THINK THAT WOULD BE A GOOD IDEA. I THINK IT WOULD IMPROVE
11 THE QUALITY OF CARE AND THE SAFETY OF THE PUBLIC.

12 **Q** YET YOU ARE -- YOU ARE NOT AWARE IF THERE IS ANY COUNTY IN
13 THE STATE OF CALIFORNIA THAT PROVIDES SUCH DIVERSIONARY MEDICAL
14 CARE TO MENTALLY ILL OFFENDERS, ARE YOU?

15 **A** WELL, MY UNDERSTANDING IS THEY SPECIFICALLY EXCLUDE
16 PAROLEES.

17 **JUDGE KARLTON:** WE ARE TALKING ABOUT DIVERTING THEM,
18 SO THEY NEVER GO INTO PRISON, I THINK THAT WAS THE QUESTION.

19 **MR. LEWIS:** YES, YOUR HONOR. THANK YOU.

20 **THE WITNESS:** I SEE. ASK THE QUESTION AGAIN, PLEASE.

21 **BY MR. LEWIS**

22 **Q** YOU ARE NOT AWARE IF THERE'S ANY COUNTY IN THE STATE THAT
23 PROVIDES SUCH DIVERSIONARY MENTAL HEALTH CARE TO MENTALLY ILL
24 OFFENDERS, ARE YOU?

25 **A** NO, I'M NOT.

1 **Q** AND YOU ARE NOT AWARE OF THE AVAILABILITY OF FUNDING OR
2 RESOURCES TO HANDLE THE INCREASED STRAIN OF THESE DIVERSION
3 PROGRAMS OR GREATER LOCAL MENTAL HEALTH PROGRAMS ON THE LOCAL
4 COMMUNITIES, ARE YOU?

5 **A** NO.

6 **Q** DO YOU AGREE THAT SOMETIMES PEOPLE COME INTO PRISON BECAUSE
7 THEY MAY BE TOO DISORGANIZED TO EVER MAKE AN APPOINTMENT WITH A
8 PAROLE AGENT TO GET THEIR CARE?

9 **JUDGE KARLTON:** NOW YOU ARE CONFUSING ME, EVEN IF YOU
10 DON'T CONFUSE THE DOCTOR. YOU ARE NOW TALKING ABOUT PAROLEES,
11 NOT DIVERSIONARY --

12 **MR. LEWIS:** YES, YOUR HONOR.

13 **JUDGE KARLTON:** ALL RIGHT.

14 **BY MR. LEWIS**

15 **Q** WOULD YOU AGREE THAT SOMETIMES THERE MIGHT BE SOME PAROLEES
16 WHO ARE TOO DISORGANIZED BECAUSE OF SOME OF THEIR AXIS DISORDERS
17 TO MAKE AN APPOINTMENT WITH A PAROLE AGENT SO THEY CAN'T EVEN
18 GET CARE?

19 **A** SURE.

20 **Q** AND THEY'RE OFTEN SICK WHEN THEY COME IN BECAUSE THEY CAN'T
21 GET ACCESS TO CARE IN THE COMMUNITY?

22 **A** YEAH, I WOULD EXPECT THAT.

23 **Q** AND SO EVEN IF THE CARE IS AVAILABLE, THERE'S NO GUARANTEE
24 THAT THESE MENTALLY ILL OFFENDERS WHO HAVE BEEN RELEASED FROM
25 PRISON WILL CHOOSE TO OBTAIN THE MENTAL HEALTH CARE FROM THEIR

1 LOCAL COMMUNITY PROVIDERS, IS THERE?

2 **A** NO, SOMETIMES THEY DO NOT.

3 **Q** SO A PERSON COULD SIMPLY CHOOSE NOT TO GET MEDICAL CARE --
4 OR MENTAL CARE -- I'M SORRY -- MENTAL HEALTH CARE?

5 **A** YES, BUT IF THEY WERE MAKING THAT CHOICE BECAUSE OF THEIR
6 MENTAL HEALTHNESS, IT MIGHT BE APPROPRIATE FOR A PSYCHIATRIST TO
7 EVALUATE THEM AS TO WHETHER OR NOT THEY MIGHT NEED INVOLUNTARY
8 TREATMENT, THAT IS, TREATMENT TO BE COMMITTED TO A HOSPITAL
9 BECAUSE THEY'RE MENTAL ILLNESS PRECLUDED THEM OF BEING AWARE OF
10 THEIR NEED FOR TREATMENT.

11 **JUDGE KARLTON:** IN ANY EVENT, DOCTOR, I THINK YOU
12 HAVE SAID SEVERAL TIMES -- WELL, I KNOW YOU HAVE -- SEVERAL
13 TIMES THAT PRISONS ARE THE WORST PLACE FOR SERIOUSLY MENTALLY --
14 MENTAL ILLNESS. YOU'VE GOT A GUY WHO'S BEEN PAROLED. HE'S BEEN
15 IN PRISON FOR HOWEVER LONG, HE'S PAROLED, HE'S REACHED THE PLACE
16 WHERE THEY HAVE GOT TO LET HIM GO OR WHATEVER. HE'S OUT ON THE
17 STREET. HE'S AS ILL AS THE QUESTION SUGGESTS. YOUR VIEW IS
18 SENDING HIM BACK TO PRISON IS NOT AN APPROPRIATE THING TO DO?

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

20 **JUDGE KARLTON:** IS IT APPROPRIATE FROM SOCIETY'S
21 POINT OF VIEW BECAUSE IT REDUCES THE RISK OF CRIME, VIOLENT --
22 LET'S START WITH VIOLENT -- VIOLENT CRIME?

23 **THE WITNESS:** WELL, LET ME SAY I DON'T THINK IT WOULD
24 BE APPROPRIATE COMPARED WITH A BETTER SOLUTION, WHICH WOULD
25 BE -- I MEAN, I DON'T KNOW WHAT MIGHT BE COMPARABLE IN

1 CALIFORNIA.

2 FOR EXAMPLE, IN MASSACHUSETTS WE SET UP A COURT
3 CLINIC SYSTEM WHERE EACH OF THE STATE DISTRICT COURTS WOULD HAVE
4 A COURT CLINIC SO THE COURT COULD REFER SOMEBODY WHO WAS
5 ARRAIGNED FOR -- BECAUSE OF BEING CHARGED WITH A CRIME FOR
6 PSYCHIATRIC EVALUATION AND COULD BE DIVERTED IMMEDIATELY OUT OF
7 THE CRIMINAL JUSTICE SYSTEM INTO THE MENTAL HEALTH SYSTEM,
8 DEPENDING ON THE -- YOU KNOW, THE OUTCOME OF THE EVALUATION.

9 **BY MR. LEWIS**

10 **Q** ARE YOU AWARE OF ANY SIMILAR COURTS LIKE THE ONE YOU ARE
11 DESCRIBING HERE IN CALIFORNIA?

12 **A** NO, NO, I'M NOT. THAT'S WHY I SAY I'M SPEAKING OF WHAT MY
13 OWN EXPERIENCE WAS AND WHAT WOULD STRIKE ME AS AT LEAST A
14 PERFECTLY FEASIBLE ALTERNATIVE. I THINK IT WOULD BE PREFERABLE
15 IN TERMS OF BOTH THE NEEDS OF THE MENTALLY ILL AND PROTECTING
16 THE PUBLIC.

17 **Q** SO IF YOU'RE AWARE THAT SOME OF THOSE COURTS OR COURTS
18 SIMILAR TO THAT OPERATE IN THE STATE OF CALIFORNIA IN SOME
19 COUNTIES, YOU WOULD SEE THAT AS A POSITIVE DEVELOPMENT OR A GOOD
20 THING?

21 **A** YES.

22 **Q** HAVE YOU EVER VISITED A PAROLE OUTPATIENT CLINIC?

23 **A** NO, I HAVE NOT. I JUST READ ABOUT THEM.

24 **Q** HAVE YOU EVER PERFORMED AN INDEPENDENT ANALYSIS OF THE
25 SERVICES PROVIDED BY A CDCR PAROLE OUTPATIENT CLINIC?

1 **A** NO.

2 **Q** YOU HAVEN'T PERFORMED AN INDEPENDENT ANALYSIS OF CDCR'S
3 PRERELEASE PLANNING PROGRAMS, HAVE YOU?

4 **A** NOT MY OWN INDEPENDENT ONE, NO, JUST REVIEWED WHAT'S BEEN
5 REPORTED.

6 **Q** AND YOU'VE NEVER PERFORMED ANY INDEPENDENT ANALYSIS OF THE
7 MENTAL HEALTH STAFFING NEEDED TO PROVIDE TIMELY MEDICAL -- OR
8 TIMELY COMPETENT MENTAL HEALTH SERVICES TO THE PRESENT
9 POPULATION OF MENTALLY ILL PAROLEES IN CALIFORNIA, HAVE YOU?

10 **A** I'M NOT QUITE SURE WHAT YOU'RE REFERRING TO EXACTLY. SAY IT
11 AGAIN.

12 **Q** HAVE YOU EVER PERFORMED AN INDEPENDENT ANALYSIS OF THE
13 STAFFING NEEDED TO PROVIDE COMPETENT MENTAL HEALTH CARE TO THE
14 CURRENT MENTALLY ILL PAROLEE POPULATION IN CALIFORNIA?

15 **A** NO, NOT SPECIFICALLY LIMITED TO CALIFORNIA. I MEAN, I'M
16 JUST RELYING ON MY LIFELONG EXPERIENCE OF HAVING TO ARRANGE, YOU
17 KNOW, FOR APPROPRIATE STAFFING FOR TREATMENT OF MENTALLY ILL
18 POPULATION WHO GET INTO TROUBLE WITH THE LAW.

19 **Q** BUT YOU HAVEN'T DONE IT SPECIFICALLY?

20 **A** I HAVEN'T DONE IT SPECIFICALLY WITH RESPECT TO CALIFORNIA.

21 **Q** THANK YOU.

22 **A** NO.

23 **Q** YOU'VE TESTIFIED THAT THERE IS PROBLEMS WITH ACCESS TO
24 MENTAL HEALTHCARE IN VERY RURAL OR VERY POOR COMMUNITIES,
25 CORRECT?

1 **A** AGAIN? SAY IT --

2 **Q** I'M SORRY.

3 YOU'VE TESTIFIED THAT THERE ARE PROBLEMS WITH ACCESS
4 TO MENTAL HEALTH CARE IN RURAL OR VERY POOR COMMUNITIES,
5 CORRECT?

6 **A** I DON'T RECALL REFERRING SPECIFICALLY TO POOR COMMUNITIES.
7 I UNDERSTAND THAT IN RURAL COMMUNITIES IT CAN OFTEN BE DIFFICULT
8 FOR MENTAL HEALTH INSTITUTIONS, WHETHER INPATIENT OR OUTPATIENT,
9 TO HIRE SUFFICIENT NUMBERS OF MENTAL HEALTH PROFESSIONALS. THE
10 DIFFICULTIES IN THE POOR COMMUNITY MIGHT BE DUE MORE TO WHETHER
11 THE POOR HAVE ENOUGH MONEY TO PAY FOR WHATEVER TREATMENT THEY
12 NEED THAT THEY NEED TO PAY FOR OUT OF THEIR OWN POCKET.

13 **Q** VERY WELL. COULD YOU PLEASE PULL UP PAGE 72, LINE 14?
14 WE'LL CONTINUE ON TO PAGE 73, LINE 6.

15 DOCTOR, I'M GOING TO READ THIS, AND I'D LIKE YOU TO
16 READ ALONG WITH ME, IF POSSIBLE.

17 "NOW, IS YOUR UNDERSTANDING AS A
18 PSYCHIATRIST AND AS AN EXPERT IN THIS CASE THAT
19 THERE IS ANY SORT OF SHORTAGE OF PSYCHIATRISTS
20 WITHIN THE UNITED STATES TO SERVE MENTALLY ILL
21 PATIENTS OF ANY SORT?

22 "ANSWER: YOU MEAN WITHIN THE PRISONS OR JUST
23 IN THE COMMUNITY IN GENERAL?

24 "IN GENERAL.

25 "ANSWER: WITHIN THE COMMUNITY IN GENERAL, I

1 DO NOT BELIEVE THAT -- I WANT TO SAY THAT
2 WHATEVER SHORTAGES OF ACCESS TO MENTAL
3 HEALTHCARE EXIST, AND THEY DO EXIST IN SOME
4 COMMUNITIES, ARE DUE TO AFTER AN OVERALL
5 NATIONAL SHORTAGE OF PSYCHIATRISTS. I MEAN, I
6 THINK THERE ARE MARKED DISCREPANCIES IN ACCESS
7 TO THE MENTAL HEALTHCARE IN SOME COMMUNITIES,
8 EITHER VERY RURAL COMMUNITIES OR VERY POOR
9 COMMUNITIES. IT'S PART OF A LARGER PROBLEM, I
10 THINK, IN AMERICA, SORT THE FINANCING OF
11 HEALTHCARE IN GENERAL."

12 DOCTOR, DO YOU REMEMBER MAKING THAT STATEMENT AT YOUR
13 DEPOSITION REGARDING THE POOR COMMUNITIES?

14 **A** NOT SPECIFICALLY, BUT IT CERTAINLY SEEMS CONSISTENT WITH
15 WHAT I REMEMBER. WHAT I WAS TRYING TO SAY JUST NOW, AS TO BE A
16 LITTLE BIT CLEAR, WHAT I MEANT ABOUT THE DISTINCTION BETWEEN
17 RURAL AND POOR --

18 **JUDGE KARLTON:** COUNSEL, I DON'T UNDERSTAND WHAT YOU
19 HAVE JUST DONE. PLAINTIFFS DON'T OBJECT. NOBODY OBJECTS. THIS
20 HAPPENS ALL THE TIME, BUT AT SOME POINT I'M GOING TO GET
21 FRUSTRATED. DO YOU THINK THAT WAS IMPEACHING, OR WHAT WAS IT
22 THAT YOU WERE READING?

23 **MR. LEWIS:** NO, YOUR HONOR. I WAS TRYING TO REFRESH
24 HIS RECOLLECTION, AND MY QUESTIONS WILL DEVELOP IT.

25 **THE WITNESS:** I WAS JUST SAYING IN EITHER OF THOSE

1 SETTINGS, YOU MIGHT HAVE MORE TROUBLE THAN USUAL IN HIRING
2 PEOPLE. PARTICULARLY POOR COMMUNITIES WOULD HAVE AN ADDITIONAL
3 PROBLEM. GETTING ACCESS EVEN TO, QUOTE, FREE CARE SOMETIMES
4 COSTS MONEY, JUST TO GET TO THE CLINIC, AND POOR PEOPLE
5 SOMETIMES JUST CAN'T AFFORD IT.

6 **BY MR. LEWIS**

7 **Q** ARE THESE PROBLEMS SOMETIMES THE RESULT OF A GAP OF
8 DISTRIBUTION OF PSYCHIATRISTS WHO PREFER TO WORK IN LARGE CITIES
9 OR AFFLUENT NEIGHBORHOODS, AS OPPOSED TO DISADVANTAGED OR
10 IMPOVERISHED NEIGHBORHOODS?

11 **A** ABSOLUTELY. I THINK THAT CAN BE ONE FACTOR THAT CONTRIBUTES
12 TO THE MALDISTRIBUTION OF MENTAL HEALTH CARE IN AMERICA AND IN
13 CALIFORNIA.

14 **Q** ISN'T IT TRUE THAT A LARGE PORTION OF THE CDCR POPULATION
15 AND, THUS, A CORRESPONDINGLY LARGE PORTION OF THE MENTALLY ILL
16 POPULATION IS ALSO DRAWN FROM IMPOVERISHED AREAS?

17 **A** I WOULD SAY.

18 **Q** ARE YOU AWARE THAT CALIFORNIA OFFENDERS MUST BE PAROLED TO
19 THEIR COUNTY OF COMMITMENT UPON RELEASE FROM PRISON?

20 **A** THAT WOULDN'T SURPRISE ME. I KIND OF WOULD ASSUME THAT.

21 **Q** SO IF A MENTALLY ILL PERSON COMMITS A CRIME IN AN
22 IMPOVERISHED AREA, HE OR SHE WILL BE RETURNED TO AN AREA LACKING
23 MENTAL HEALTH CARE SERVICES?

24 **JUDGE REINHARDT:** YOU ARE TALKING ABOUT IMPOVERISHED
25 COUNTIES.

1 **MR. LEWIS:** IMPOVERISHED COUNTIES, YES, SIR.

2 **THE WITNESS:** NOT NECESSARILY TOTALLY LACKING, BUT
3 LET'S SAY IN RELATIVE TERMS, PRESUMABLY -- IT WOULDN'T SURPRISE
4 ME IF THEY HAD A LESS RICH ARRAY OF RESOURCES.

5 **BY MR. LEWIS**

6 **Q** SO SOME OF THE IMPOVERISHED AREAS FROM WHICH CDCR DRAWS ITS
7 POPULATION MAY NOT HAVE VERY GOOD ACCESS TO MENTAL HEALTHCARE,
8 CORRECT?

9 **A** AS COMPARED WITH THOSE WHO ARE MORE AFFLUENT, MORE CENTRALLY
10 LOCATED IN MORE POPULAR LOCATIONS.

11 **Q** IF THEY DON'T HAVE MENTAL HEALTHCARE, I GUESS, ON THE
12 OUTSIDE, THEY COULD POSSIBLY COME IN THEN WITH SOME MENTAL
13 HEALTH ISSUES?

14 **A** YOU MEAN COME INTO THE PRISON?

15 **Q** YES.

16 **A** OH, ABSOLUTELY.

17 **Q** AT YOUR DEPOSITION PAGE 38, LINE 6 THROUGH 12 YOU WERE ASKED
18 THE FOLLOWING:

19 **JUDGE KARLTON:** NOW, I'M GOING TO STOP THIS. I WANT
20 TO KNOW WHY YOU ARE READING IT BEFORE YOU DO IT. WE'RE JUST
21 SPENDING A LOT OF TIME, IT SEEMS TO ME. JUST TELL ME WHAT
22 YOU'RE DOING.

23 **MR. LEWIS:** YOUR HONOR, I'M GOING TO ASK HIM ABOUT --
24 NOW I'M GOING TO ASK ABOUT THE 15,000 PERSON RELEASE HE WAS
25 INFORMED ABOUT EARLIER THAT WAS SUPPOSED TO BE PART OF HIS

1 DEPOSITION TESTIMONY, AND, OBVIOUSLY, AS WE'VE TALKED ABOUT
2 BEFORE, HE TESTIFIED HE DIDN'T KNOW ABOUT 50,000, SO WE ARE
3 TRYING TO EXTRAPOLATE OUT THE NUMBERS NOW, YOUR HONOR.

4 **JUDGE KARLTON:** WHAT IS THIS ABOUT? WHY DON'T YOU
5 ASK HIM FIRST AND FIND OUT WHETHER HE AGREES WITH YOU. WE DON'T
6 NEED TO DO THIS YET.

7 **MR. LEWIS:** THANK YOU, YOUR HONOR.

8 **JUDGE HENDERSON:** AS BEST I CAN TELL.

9 **MR. LEWIS:** THANK YOU, YOUR HONOR.

10 **BY MR. LEWIS**

11 **Q** DOCTOR, DO YOU RECALL TESTIFYING THAT THERE WAS --

12 **JUDGE KARLTON:** IT'S HOPELESS. DO WHAT YOU WANT.

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

14 **JUDGE KARLTON:** ASK THE QUESTION. DON'T ASK ABOUT
15 WHAT HE TESTIFIED. ASK THE QUESTION, AND SEE WHAT HIS ANSWER
16 IS, AND SEE WHETHER YOU HAVE TO GO THROUGH ALL OF THIS.

17 **JUDGE REINHARDT:** WHAT IS IT YOU WANT TO KNOW?

18 **JUDGE KARLTON:** WHAT DO YOU WANT TO KNOW?

19 **MR. LEWIS:** YOUR HONOR, I'M GOING TO RESTRUCTURE MY
20 QUESTION TO COMPLY WITH YOU. THANK YOU.

21 **BY MR. LEWIS**

22 **Q** DOCTOR, DO YOU KNOW OF ANY GOOD EVIDENCE THAT DEMONSTRATES A
23 LIKELY INCREASE IN THE RISK OF DANGER TO THE PUBLIC RESULTING
24 FROM A PRISONER RELEASE ORDER OF 15,000 PEOPLE?

25 **A** NO.

1 Q WHAT ARE SOME OF THE FACTORS THAT WOULD INDICATE A GREATER
2 RISK OF VIOLENCE AMONG PEOPLE RELEASED FROM PRISON; COULD IT BE
3 ATTACHED TO ECONOMIC FACTORS?

4 A WELL, ABSOLUTELY, BUT LET ME PUT IT IN CONTEXT. WHAT WE
5 HAVE BEEN TALKING ABOUT SO FAR, WE HAVE BEEN FOCUSING MOSTLY ON,
6 YOU KNOW, INDIVIDUALS, AS TO WHETHER THEY AS INDIVIDUALS WOULD
7 BE LIKELY TO BE INCREASED RISK OF DANGER TO THE PUBLIC, BUT THE
8 FACT IS THE INCREASES AND DECREASES IF WE TAKE, SAY, THE MURDER
9 RATE AS AN INDEX OF DANGER TO THE PUBLIC, INCREASES AND
10 DECREASES IN THE MURDER RATE HAVE LITTLE OR NOTHING TO DO IN
11 AMERICA -- I'M LOOKING BACK OVER THE LAST CENTURY AND MORE --
12 WITH THE NUMBERS OF PEOPLE IN PRISONS. THEY ARE MUCH MORE
13 AFFECTED BY LARGE SOCIAL CONDITIONS OFTEN OF AN ECONOMIC NATURE.

14 FOR EXAMPLE, DURING THE GREAT DEPRESSION, THE MURDER
15 RATE IN AMERICA SKYROCKETED TO THE HIGHEST LEVEL IT HAD EVER
16 BEEN UP TO THAT POINT. THE MURDER RATE THEN WENT DOWN ONCE
17 ROOSEVELT GOT ELECTED AND THE NEW DEAL GOT STARTED AND PEOPLE
18 STARTED GETTING EMPLOYED AND MORE HOPE.

19 ACTUALLY, I SHOULD MENTION BOTH SUICIDE AND HOMICIDE.
20 THEY BOTH SKYROCKETED AND CAME DOWN JUST AS ABRUPTLY. THAT HAD
21 NOTHING TO DO WITH THE NUMBER OF PEOPLE IN EITHER PRISONS OR
22 MENTAL HEALTH HOSPITALS, NOR WITH THE RATE OF MENTAL ILLNESS, OR
23 THE PERCENT OF THE POPULATION THAT WAS MENTALLY ILL.

24 THE MAIN FACTORS THAT AFFECT PUBLIC SAFETY ARE NOT
25 THIS POPULATION OR WHETHER WE PUT THEM IN PRISON OR IN MENTAL

1 HOSPITALS OR SOME OTHER TREATMENT. THE MAIN FACTORS THAT AFFECT
2 PUBLIC SAFETY ARE MUCH LARGER SORT OF POLITICAL AND ECONOMIC
3 FACTORS THAT COULD BE UNDERSTOOD HISTORICALLY.

4 **Q** SO THEY COULD BE RELATED TO ECONOMIC FACTORS, AGE
5 DISTRIBUTION IN THE POPULATION, LEVEL OF RACIAL DISCRIMINATION
6 PRESENCE IN THE SOCIETY?

7 **A** SURE, ALL THOSE THINGS. MANY OF THEM ARE MUCH MORE
8 IMPORTANT THAN WHETHER OR NOT A SPECIFIC INDIVIDUAL IS MENTALLY
9 ILL. I MEAN, THAT'S A POOR PREDICTER OF VIOLENCE. THESE OTHER
10 THINGS CAN BE POWERFUL PREDICTERS OF VIOLENCE.

11 **Q** IN REACHING YOUR CONCLUSION ABOUT THE LEVEL OF VIOLENCE THAT
12 MAY RESULT FROM THE RELEASE OF 15,000 OR 50,000 OFFENDERS FROM
13 CDCR FACILITIES, DID YOU EVER PERFORM AN ANALYSIS OF THE
14 ECONOMIC FACTORS, AGE DISTRIBUTION IN THE POPULATION, OR LEVEL
15 OF DISCRIMINATION SPECIFIC TO CALIFORNIA?

16 **A** NOT SPECIFIC TO CALIFORNIA. I KNOW A LOT ABOUT THIS ON A
17 NATIONAL LEVEL, AND I CERTAINLY KNOW IT IN MASSACHUSETTS.

18 **Q** BUT YOU DIDN'T DO IT SPECIFICALLY FOR CALIFORNIA?

19 **A** NO. I MEAN, FOR EXAMPLE, ASSESSING THE SOCIOECONOMIC STATUS
20 OF CALIFORNIA PRISON INMATES, NO, I DID NOT DO AN INDEPENDENT
21 ANALYSIS OF THAT SORT OF THING.

22 **Q** YOU ASSUME THAT THERE ARE PUBLIC MENTAL HEALTH HOSPITALS,
23 MENTAL HEALTH CENTERS AND MENTAL HEALTH CLINICS IN CALIFORNIA
24 COMMUNITIES WHERE PAROLEES CAN ACCESS MENTAL HEALTH CARE, DON'T
25 YOU?

1 **A** NO. MY UNDERSTANDING IS PAROLEES WERE EXCLUDED FROM ACCESS
2 TO THE COUNTY MENTAL HEALTH SYSTEM, AND THAT WAS PART OF THE
3 PROBLEM.

4 **Q** DO YOU KNOW HOW MANY PUBLIC MENTAL HEALTH HOSPITALS THERE
5 ARE IN CALIFORNIA?

6 **A** I HAVE A MAP THAT SHOWS SEVERAL RIGHT HERE, BUT I'VE SEEN
7 ATASCADERO AND ALL THE OTHERS.

8 **Q** DO YOU KNOW THE TOTAL CAPACITY OF CALIFORNIA'S PUBLIC MENTAL
9 HEALTH HOSPITALS?

10 **A** I DON'T KNOW WHAT IT IS CURRENTLY. I COULD LOOK IT UP. I
11 JUST DON'T KNOW IT OFF THE TOP OF MY HEAD.

12 **Q** DID YOU CONSIDER THAT IN REACHING YOUR OPINIONS TODAY?

13 **A** NO.

14 **Q** DID YOU CONSIDER THE AMOUNT OF SERVICES AVAILABLE TO
15 MENTALLY ILL PERSONS IN GENERAL FROM THE CALIFORNIA MENTAL
16 HEALTH SYSTEM?

17 **A** NO. WHAT I'M TRYING TO GET AT IS, THAT IF THE EXISTING
18 RESOURCES ARE INADEQUATE TO TREAT THE MENTALLY ILL IN
19 CALIFORNIA, THEN IT WOULD BE BOTH MORE EFFECTIVE FROM A CLINICAL
20 STANDPOINT AND MORE ECONOMICAL FROM A FINANCIAL STANDPOINT FOR
21 THE STATE OF CALIFORNIA TO DIVERT SOME OF ITS FINANCE RESOURCES
22 FROM THE PRISON TO THE MENTAL HEALTH AND PERHAPS ADDING
23 RESOURCES TO BOTH THE COUNTY AND THE STATE MENTAL HEALTH
24 PROVIDING SYSTEM.

25 **Q** WOULD YOU AGREE THERE'S A RISK OF RECIDIVISM THAT EXISTS

1 WITH THE RELEASE OF 15,000 OR 50,000 INMATES?

2 **A** WELL, I MEAN, ANY TIME AN INMATE IS RELEASED, THERE'S A RISK
3 OF RECIDIVISM, SURE.

4 **Q** WOULD YOU ALSO AGREE THERE'S A RISK THAT A RELEASED OFFENDER
5 MAY COMMIT AN ACT OF BODILY HARM ON ANOTHER PERSON WHILE ON
6 PAROLE?

7 **A** THERE IS ALSO THAT RISK.

8 **MR. LEWIS:** THANK YOU, DR. GILLIGAN.

9 I HAVE NO FURTHER QUESTIONS, YOUR HONORS.

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

11 ANYTHING FROM INTERVENORS?

12 **MS. FUENTES:** GOOD MORNING, I'M THERESA FUENTES FROM
13 SANTA CLARA COUNTY ON BEHALF OF DEFENDANT INTERVENORS.

14 **CROSS-EXAMINATION BY MS. FUENTES**

15 **BY MS. FUENTES**

16 **Q** DR. GILLIGAN, DO YOU AGREE THAT MENTALLY ILL PRISONERS WHO
17 WILL BE RELEASED OR DIVERTED FROM PRISON UNDER A POPULATION
18 REDUCTION WILL NEED ACCESS TO SOME SORT OF MENTAL HEALTH
19 TREATMENT IN THE COMMUNITY?

20 **A** I WOULD THINK SO, AND I WOULD CERTAINLY RECOMMEND IT.

21 **Q** THAT WOULD BE WHETHER THEY'RE 3CMS OR EOP; IT WOULD JUST
22 DEPEND ON THE LEVEL OF TREATMENT THAT THEY NEED?

23 **A** YES. THE IMPORTANT THING I WANT TO EMPHASIZE IS SIMPLY HOW
24 HIGHLY VARIABLE THAT IS, AS I WAS TRYING TO SAY, FROM THE MOST
25 INTENSIVE TO THE LEAST INTENSIVE.

1 Q I THINK YOU SAID, IN YOUR OPINION, THE 3CMS WOULD NEED MAYBE
2 SOME APPOINTMENTS WITH MENTAL HEALTH PROFESSIONALS AND ACCESS TO
3 MEDICATIONS?

4 A I WOULD ASSUME THAT MOST OR ALL OF THEM WOULD NEED THAT AT
5 SOME POINT, BUT I WOULD ALSO NOT BE SURPRISED IF MANY OF THEM
6 DID NOT NEED IT ON -- ON AN ONGOING BASIS.

7 Q BUT YOU DON'T HAVE ANY IDEA WHAT THE ACTUAL NUMBERS WOULD BE
8 OF WHO WOULD NEED MEDICATIONS IN THE COMMUNITY?

9 A I DON'T THINK ANYBODY COULD PREDICT THAT IN ADVANCE. I JUST
10 THINK THE APPROPRIATE THING THE MENTAL HEALTH SYSTEM COULD DO IS
11 TO RESPOND TO WHATEVER THE NEED WOULD TURN OUT TO BE.

12 Q IT WOULD DEPEND ON WHAT THEIR NEEDS ARE OUT IN THE
13 COMMUNITY?

14 A THESE COULD VARY FROM ONE TIME TO ANOTHER EVEN WITHIN THE
15 SAME PERSON, OF COURSE.

16 Q AND DO YOU AGREE THAT THE MENTALLY ILL RELEASED PRISONERS
17 WOULD NEED SOME SORT OF HOUSING, ACCESS TO HOUSING?

18 A I WOULD -- WELL, I WOULD CERTAINLY RECOMMEND IT. I DON'T
19 RECOMMEND HOMELESSNESS FOR ANYBODY.

20 Q AND SOME SORT OF SUPPORT STRUCTURE AS PART OF THEIR
21 TREATMENT REGIMEN?

22 A AGAIN, THE NEED FOR THIS WOULD VARY ENORMOUSLY. I THINK ALL
23 INMATES LEAVING PRISONS, WHETHER THEY'RE MENTALLY ILL OR NOT,
24 REALLY, THEY BENEFIT, AND PUBLIC SAFETY BENEFITS FROM THEIR
25 HAVING A LOT OF HELP IN GETTING REINTEGRATED INTO THE COMMUNITY

1 WITH ADEQUATE HOUSING, EMPLOYMENT, OR AT LEAST INCOME, A BASE,
2 AND SO FORTH.

3 **Q** OKAY. AND DO YOU AGREE THAT CALIFORNIA COUNTIES DO NOT
4 CURRENTLY HAVE FUNDS OR RESOURCES TO PROVIDE ANY OF THOSE TYPE
5 OF SERVICES TO PRISONERS WHO WOULD BE DIVERTED OR RELEASED UNDER
6 A POPULATION REDUCTION?

7 **A** I DON'T KNOW HOW THIS RELATES TO THEIR RESOURCES. MY
8 UNDERSTANDING, THOUGH, IS THAT THEY, THE PAROLEES, ARE SIMPLY
9 EXCLUDED FROM ACCESS TO THE COUNTY MENTAL HEALTH SYSTEMS.
10 THAT'S WHY THE PAROLE OFFICERS OFTEN HAVE TO SEND THEM BACK TO
11 PRISON.

12 **Q** SO THEY ARE NOT RECEIVING TREATMENT IN THE COMMUNITY, IS
13 THAT WHAT YOU'RE SAYING?

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

15 **Q** SO WHAT ABOUT MENTALLY ILL INDIVIDUALS WHO ARE DIVERTED OR
16 ARE NOT ABLE TO BE SENT TO PRISON BECAUSE OF A POPULATION CAP,
17 WHAT ABOUT THOSE?

18 **A** WELL, IF THE COUNTY MENTAL HEALTH SYSTEM WOULD THEN AGREE TO
19 PROVIDE THEM TREATMENT, I WOULD THINK THAT WOULD BE THE
20 APPROPRIATE RESPONSE.

21 **Q** WHAT IF THE COUNTIES DON'T HAVE ANY FUNDS OR RESOURCES TO
22 PROVIDE THE TREATMENT?

23 **A** WELL, I WOULD SAY THAT WOULD CREATE A SITUATION THAT THE
24 CITIZENS OF CALIFORNIA WOULD HAVE TO DEAL WITH. I MEAN, THAT'S
25 WHY CALIFORNIA HAS A GOVERNMENT AND A LEGISLATURE AND AN

1 EXECUTIVE BRANCH AND SO ON. THAT'S WHAT THEY EXIST FOR.

2 **Q** WELL, DO YOU AGREE IT WOULD IMPACT PUBLIC SAFETY IF THERE
3 WERE MENTALLY ILL INDIVIDUALS, OFFENDERS WHO WERE UNABLE TO
4 ACCESS ANY SORT OF MENTAL HEALTH TREATMENT IN THE COMMUNITY?

5 **A** WELL, I THINK IT -- THERE WOULD BE AN ADVERSE EFFECT ON
6 PUBLIC SAFETY IF ANY RELEASED PRISON INMATE DID NOT HAVE ACCESS
7 TO THE SERVICES THEY NEEDED IN THE COMMUNITY. THAT WOULD
8 INCLUDE THE MENTALLY ILL AND THE NON-MENTALLY ILL, ALL OF WHOM
9 NEED ONE KIND OF SERVICE OR ANOTHER.

10 BUT WHAT I'M TRYING TO GET AT IS RIGHT NOW THE
11 RESOURCES OF THE STATE -- AND, OBVIOUSLY, THEY'RE ALWAYS FINITE,
12 THEY'RE LIMITED RESOURCES -- ARE DISPROPORTIONATELY PUT AT THE
13 SERVICE OF THE PRISON SYSTEM, IN PART BECAUSE THE PRISON SYSTEM
14 IS TAKING CARE OF PEOPLE THAT THE MENTAL HEALTH SYSTEM 50 YEARS
15 AGO WOULD HAVE TAKEN CARE OF DIRECTLY.

16 IF WE ARE GOING TO -- IF THE PRISON POPULATION IS
17 GOING TO DECREASE AND A CERTAIN NUMBER OF MENTALLY ILL PEOPLE
18 WILL BE IN THE COMMUNITY, THIS MIGHT BE AN HISTORICAL TIME FOR
19 THE STATE AND OTHER STATES IN THIS COUNTRY TO THINK OF
20 REDISTRIBUTING RESOURCES FROM THE PRISON SYSTEM BACK INTO THE
21 MENTAL HEALTH SYSTEM.

22 **JUDGE REINHARDT:** DOCTOR, ARE YOU SAYING IT'S MORE
23 DANGEROUS FOR THE SAFETY OF THE COMMUNITY TO CONTINUE THE PRISON
24 SYSTEM THE WAY IT IS THAN TO RELEASE THESE PEOPLE WITH ADEQUATE
25 TREATMENT?

1 **THE WITNESS:** ABSOLUTELY. I REALLY THINK -- I THINK
2 THE STATUS QUO IS MORE DANGEROUS THAN RELEASING PEOPLE, ASSUMING
3 THAT, YOU KNOW, THE CITIZENS OF THIS STATE AND THE MENTAL HEALTH
4 PROFESSIONALS AND SO ON ARE WILLING TO RESPOND TO THIS, YOU
5 KNOW, IN WAYS THAT ARE APPROPRIATE AND NECESSARY. AGAIN, I'VE
6 INDICATED FROM THE FIGURES THAT I PROJECTED ONTO THE SCREEN WHAT
7 A RELATIVELY SMALL NUMBER OF PEOPLE WE'RE TALKING ABOUT IN A
8 MENTAL HEALTH SYSTEM THAT IS ALREADY TAKING CARE OF AT LEAST
9 658,000 PATIENTS.

10 **JUDGE KARLTON:** LET ME FOLLOW UP FROM JUDGE
11 REINHARDT'S QUESTION. WHAT WE'RE DOING NOW, IN YOUR VIEW, IS
12 DANGEROUS FOR PUBLIC SAFETY, IN YOUR VIEW?

13 **THE WITNESS:** YES, THAT'S WHAT I'M TALKING ABOUT.

14 **JUDGE KARLTON:** AND YOUR VIEW, AS I UNDERSTAND IT, IS
15 EVEN A RELEASE OF AS MANY AS 50,000 PEOPLE, GIVEN THE RELATIVELY
16 SMALL NUMBER OF MENTAL HEALTH PEOPLE WHO WOULD BE RELEASED JUST
17 IF YOU JUST FOLLOW THE AVERAGE, WILL NOT HAVE A SUBSTANTIAL
18 INCREASE IN THE DANGER TO THE PUBLIC WHICH EXISTS TODAY?

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

20 **JUDGE KARLTON:** BUT THAT IF THE STATE WERE TO DIVERT
21 FUNDS FROM THE PRISONS TO THE COMMUNITY, AMONG OTHER REASONS
22 BECAUSE THEY WOULD NOT NEED AS MUCH FUNDS FOR MENTAL HEALTH IN
23 THE COMMUNITY IN THE PRISONS, THAT WOULD, IN YOUR VIEW, HAVE A
24 SUBSTANTIAL BENEFICIAL -- I DON'T KNOW SUBSTANTIAL -- A
25 BENEFICIAL EFFECT ON PUBLIC SAFETY?

1 **THE WITNESS:** YES.

2 **JUDGE KARLTON:** IS THERE ANY WAY FOR YOU TO
3 QUANTIFY -- AND THE ANSWER MAY BE NO, I UNDERSTAND THAT. IS
4 THERE ANY WAY FOR YOU TO QUANTIFY THE BENEFIT IN TERMS OF COST?

5 **THE WITNESS:** YES, I MEAN, I COULD AT LEAST REFER TO
6 SOME FIGURES THAT I THINK WOULD BE RELEVANT IN MAKING SUCH AN
7 ASSESSMENT. I ALSO MENTIONED A CRUDE ESTIMATE OF THE COST TO
8 THE STATE FOR EACH PRISONER IN THE PRISON SYSTEM IS COSTING
9 ROUGHLY \$43,000 PER YEAR. THAT MAY ACTUALLY BE AN
10 UNDERESTIMATE.

11 THE FIGURES THAT I'VE HEARD WITH RESPECT TO REALLY
12 FULL SCALE INPATIENT MENTAL HOSPITAL TREATMENT ARE MORE ON THE
13 ORDER OF \$30,000. AND FOR OUTPATIENT TREATMENT I'VE HEARD
14 FIGURES -- AGAIN, I'M TALKING ABOUT IN CALIFORNIA -- ARE FIGURES
15 OF AVERAGES OF MAYBE \$4,500 A YEAR, WHICH IS ROUGHLY ONE-TENTH
16 AS MUCH AS IT COST TO KEEP SOMEBODY IN PRISON.

17 SO WHAT I'M SAYING IS I'M VERY AWARE AND VERY
18 SENSITIVE TO THE FACT THAT ANY STATE'S RESOURCES FINANCIALLY ARE
19 LIMITED. THEY'RE FINITE. WHAT I'M TRYING TO SAY IS I THINK THE
20 KIND OF CHANGE THAT WE'RE TALKING ABOUT HERE, NOT ONLY WOULD BE
21 BETTER FOR THE MENTALLY ILL, WOULD NOT ONLY BE, I THINK, AN
22 IMPROVEMENT IN PUBLIC SAFETY, IT WOULD ACTUALLY SAVE THE
23 TAXPAYERS MONEY.

24 **BY MS. FUENTES**

25 **Q** WELL, DO YOU AGREE THERE'S NO GUARANTEE THAT THE COUNTIES

1 WILL RECEIVE THE FUNDINGS TO PROVIDE THOSE SERVICES?

2 **A** I UNDERSTAND THAT. THAT'S ALWAYS THE RISK IN A DEMOCRACY.

3 **Q** SO THE RESULT MAY VERY WELL BE THAT THERE ARE JUST MORE
4 UNTREATED OFFENDERS IN THE COMMUNITY?

5 **A** IF THE STATE DECIDED THAT'S WHAT THE STATE WANTED, THAT'S
6 WHAT THE STATE WOULD GET.

7 **MS. FUENTES:** THANK YOU.

8 **JUDGE HENDERSON:** REDIRECT.

9 **REDIRECT EXAMINATION BY MR. GALVAN**

10 **BY MR. GALVAN**

11 **Q** ON CROSS THERE WAS A LOT OF DISCUSSION OF RISK IN VARIOUS
12 WAYS. ARE MENTALLY ILL OFFENDERS MORE RISKY THAN OTHER
13 OFFENDERS WHEN THEY'RE RELEASED?

14 **A** NO.

15 **Q** WHY NOT?

16 **A** THE LIKELIEST EXPLANATION IS THAT PEOPLE SUFFERING FROM THE
17 SEVERE MENTAL DISORDERS, THE AXIS I DISORDERS, WHICH IS WHAT
18 WE'RE PRIMARILY TALKING ABOUT HERE, ARE MORE LIKELY TO BE
19 SOCIALLY WITHDRAWN THAN THEY ARE TO BE SOCIALLY AGGRESSIVE.
20 THEY'RE MORE LIKELY TO BE DISORGANIZED THAN THEY ARE TO BE
21 CAPABLE OF CARRYING OUT A -- YOU KNOW, A COMPLEX CRIME, YOU
22 KNOW, LIKE ROBBING A BANK OR WHATEVER, AND I MEAN, EVEN PEOPLE
23 WHO ARE VERY PARANOID ARE MORE LIKELY TO RESPOND WITH FEAR AND
24 WITHDRAWAL THAN THEY ARE WITH ATTACK.

25 SO I THINK IT'S -- I REALIZE IT'S SOMEWHAT

1 COUNTERINTUITIVE. MOST PEOPLE ARE SURPRISED WHEN THEY HEAR WHAT
2 THE RESEARCH HAS SHOWN, IS THAT MENTALLY ILL OFFENDERS ARE
3 ACTUALLY EITHER NO MORE DANGEROUS OR IN MANY CONTEXTS
4 SIGNIFICANTLY LESS DANGEROUS THAN THE NON-MENTALLY ILL PAROLEES
5 OR DISCHARGED PRISONERS, BUT THE FACT IS I THINK THERE ARE
6 UNDERSTANDABLE REASONS WHY THAT'S THE CASE.

7 **Q** THERE WAS ALSO DISCUSSION ON CROSS REGARDING DIAGNOSTIC
8 CATEGORIES IN THE DSM-IV AND THE DISTRIBUTION BETWEEN AXIS I AND
9 AXIS II. AND I KNOW IN WORKING ON YOUR REPORT YOU LOOKED AT THE
10 COLEMAN PROGRAM GUIDE WHICH HAS THE CLASS DEFINITION. DOES THE
11 COLEMAN -- THE LIST OF DIAGNOSES YOU SAW FOR THE COLEMAN CLASS
12 DEFINITION, DOES IT INCLUDE AXIS II DISORDERS?

13 **A** NO, IT SPECIFICALLY DOES NOT. IT IS LIMITED TO AXIS I.

14 **Q** AND AXIS II DISORDERS, I THINK YOU'VE WRITTEN, ARE VERY
15 COMMONLY -- OR THEY ARE MODAL -- THEY'RE MODAL IN PRISON. WHAT
16 DOES THAT WORD "MODAL" MEAN?

17 **JUDGE KARLTON:** FIRST OF ALL, DO YOU AGREE THEY ARE
18 MODAL?

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

20 **BY MR. GALVAN**

21 **Q** WHAT DOES MODAL MEAN?

22 **A** IT'S THE -- IF YOU WERE DRAWING A NORMAL DISTRIBUTION CURVE,
23 IT WOULD BE THE TOP OF THE CURVE. THAT PRISONERS ARE -- THE
24 AVERAGE PRISONER YOU SEE IN PRISONS IS LIKELY TO HAVE A
25 PERSONALITY DISORDER.

1 NOW, LET ME BE CLEAR ABOUT THIS DIAGNOSTIC CATEGORY.
2 IT'S A DESCRIPTION OF PERSONALITY PATTERNS, OR YOU MIGHT SAY
3 CHARACTER PATTERNS. IT'S SOMETIMES CALLED A PERSONALITY
4 DISORDER, SOMETIMES A CHARACTER DISORDER.

5 CHARACTER -- YOU KNOW, THE GREEK WORD FOR CHARACTER
6 IS ETHOS. OUR WORD IS ETHICS. CHARACTER DISORDERS IS FAILURE
7 OF CHARACTER. THESE ARE PEOPLE DEFINED IN TERMS OF, YOU MIGHT
8 SAY, A FAILURE OF MORAL DEVELOPMENT AND ARE ALMOST BY DEFINITION
9 PEOPLE WHO ENGAGE IN CRIMINAL BEHAVIOR.

10 I MEAN, THE WAY DSM-IV DEFINES ANTI-SOCIAL
11 PERSONALITY DISORDER IS ESSENTIALLY A DESCRIPTION OF A CAREER
12 CRIMINAL, SO IT'S HARDLY SURPRISING THAT MOST OF THE PEOPLE IN
13 PRISONS WOULD -- COULD BE DESCRIBED ACCORDING TO THAT CONCEPT OF
14 CHARACTER.

15 **Q** SO IF THIS WERE A VERY BIG ROOM AND I TOOK THE WHOLE PRISON
16 POPULATION, 172,000, AND I PUT THE COLEMAN CLASS MEMBERS ON THAT
17 SIDE AND I PUT THE NON-COLEMAN CLASS MEMBERS ON THAT SIDE --

18 **JUDGE KARLTON:** IT WOULD BE VERY CROWDED.

19 **MR. GALVAN:** THAT'S THE POINT.

20 **BY MR. GALVAN**

21 **Q** AND I PUT A WALL BETWEEN THEM. IF WE WERE ON -- I DON'T
22 REMEMBER WHAT SIDE I PUT THE NON-COLEMAN CLASS MEMBERS ON.
23 LET'S SAY THAT SIDE, THE RIGHT SIDE FROM WHERE YOU ARE -- WE
24 WENT INTO THAT GROUP AND WE MEASURED THE PREVALENCE OF AXIS II
25 DISORDERS IN THE NON-MENTALLY ILL, NON-COLEMAN CLASS MEMBERS,

1 WHAT WOULD WE FIND?

2 **A** I WOULD THINK, I MEAN, BASED ON 40 YEARS OF EXPERIENCE
3 WORKING WITH PEOPLE IN THESE POPULATIONS, THAT THE VAST MAJORITY
4 OF THEM COULD BE -- HOW DO I SAY? THEY WOULD MEET THE CRITERIA
5 FOR THE DIAGNOSIS OF AXIS II DISORDER AND OFTEN WOULD BE MORE
6 THAN ONE.

7 **Q** WE'RE TALKING ABOUT NON-COLEMAN SIDE OF THE ROOM?

8 **A** YES.

9 **Q** IF THEN WE WENT TO THE COLEMAN SIDE OF THE ROOM WHERE THE
10 MENTALLY ILL PEOPLE ARE, WOULD WE FIND ANY DIFFERENT INCIDENCE
11 OF AXIS II THERE?

12 **A** YES, I THINK IT WOULD BE MUCH LOWER. THE TWO KINDS OF
13 DIAGNOSIS CAN COEXIST. I WOULD SAY, WHEN THEY DO, YOU ARE
14 LIKELY TO BE DEALING WITH A MORE DANGEROUS PERSON, BUT MANY
15 MENTALLY ILL PEOPLE DON'T MEET THE --

16 **Q** SO IF I UNDERSTAND YOUR TESTIMONY, THE NON-MENTALLY ILL,
17 NON-COLEMAN SIDE OF THE ROOM, WE WERE GOING TO FIND MORE
18 AXIS II?

19 **A** YES.

20 **Q** AND WE ARE GOING TO FIND LESS AXIS II ON THE MENTALLY ILL
21 SIDE?

22 **A** YES. I THINK MOST PSYCHIATRISTS WOULD AGREE WITH THAT. I
23 DON'T THINK I'M FAR OUT IN SAYING THAT.

24 **Q** SO IF YOU WERE DESIGNING A DIVERSION PROGRAM TO MAXIMIZE
25 PUBLIC SAFETY AND YOU CONSIDERED AXIS II A RISK FACTOR, YOU

1 WOULDND'T GET ANY BENEFIT BY ADDING A FILTER FOR COLEMAN CLASS
2 MEMBERSHIP?

3 **A** NO.

4 **Q** THERE'S ALSO SOME TESTIMONY ABOUT SCHIZOPHRENIA ON
5 CROSS-EXAMINATION, AND, YOU KNOW, THE VARIOUS PROBLEMS THAT GO
6 WITH THAT IN TERMS OF EMPLOYABILITY. IS SCHIZOPHRENIA A COMMON
7 DIAGNOSIS AMONG THE AXIS I, OR IS IT UNCOMMON?

8 **A** NO. THE LIFETIME PREVALENCE OF SCHIZOPHRENIA IN THE
9 POPULATION AS A WHOLE IS GENERALLY CONSIDERED TO BE ABOUT ONE
10 PERCENT, AND THE -- IN PRISONS THE PERCENTAGE OF PEOPLE WITH
11 AXIS I DISORDERS, THAT WOULD INCLUDE MORE THAN JUST
12 SCHIZOPHRENIA, ALSO MOOD DISORDERS AND SO FORTH, IS PROBABLY
13 ABOUT FOUR PERCENT. THERE'S A HIGHER AVERAGE, BUT STILL WE ARE
14 TALKING ABOUT FOUR PERCENT VERSUS THE REMAINING 96 PERCENT.

15 **JUDGE KARLTON:** SIR, I DON'T UNDERSTAND. I HAVE BEEN
16 TOLD, AND I HAVE BEEN BEHAVING ACCORDINGLY, THAT THE COLEMAN
17 CLASS CONSTITUTES ABOUT 20 OR GREATER, 20 TO 30, PERCENT OF THE
18 PRISON POPULATION. NOW YOU ARE TELLING ME IT'S FOUR PERCENT.

19 **THE WITNESS:** OKAY, NO, NO. I'M SORRY I WAS
20 CONFUSING YOU BY NOT BEING SPECIFIC ENOUGH -- OR ALL OF THE
21 WHOLE COURT.

22 SCHIZOPHRENIA ALONE IS CERTAINLY THE -- IT IS
23 RELATIVELY RARE AMONG MENTAL ILLNESSES. IF YOU ARE CONSIDERING
24 ALL THE AXIS I DIAGNOSES, THEY CERTAINLY WOULD BE MORE THAN ONE
25 PERCENT. IF YOU ADD THEM ALL TOGETHER IN THE POPULATION, YOU

1 WOULD BE TALKING ABOUT NOT ONE PERCENT AS SCHIZOPHRENIA, BUT
2 PROBABLY SOMEWHERE BETWEEN FOUR AND FIVE PERCENT. IF YOU
3 MULTIPLY THAT BY FOUR, YOU GET THE -- ROUGHLY THE PERCENTAGE OF
4 THE PRISON POPULATION THAT'S MENTALLY ILL, WHICH WOULD -- YOU
5 KNOW, IT'S GENERALLY CONSIDERED AS SOMEWHERE BETWEEN 15 AND
6 20 PERCENT.

7 **BY MR. GALVAN**

8 **Q** SO IF WE TOOK THAT 15 TO 20 PERCENT, THAT'S THE COLEMAN
9 POPULATION IN THE PRISON, THE PORTION THAT ARE DIAGNOSED WITH
10 SCHIZOPHRENIA WOULD BE FAIRLY SMALL?

11 **A** YES. THAT'S RIGHT.

12 **Q** WHEN YOU -- IN YOUR CAPACITIES IN MASSACHUSETTS AS A
13 PRACTITIONER OF CORRECTIONAL MENTAL HEALTH, DID YOU HAVE
14 OCCASION TO TESTIFY IN PROCEEDINGS TO PREVENT RELEASE OF PERSONS
15 BASED ON MENTAL HEALTHNESS?

16 **A** OH, FREQUENTLY.

17 **Q** THESE WERE INDIVIDUAL PEOPLE?

18 **A** YES.

19 **Q** IN YOUR SYSTEM YOU HAD A MEANS OF GETTING SOMEONE CIVILLY
20 COMMITTED ON THE WAY OUT THE DOOR FROM PRISON?

21 **A** ABSOLUTELY.

22 **Q** AND IN FORMING YOUR OPINIONS IN THIS CASE, HAVE YOU REVIEWED
23 THE PROVISIONS OF THE CALIFORNIA MENTALLY DISORDERED OFFENDERS
24 ACT?

25 **A** YES.

1 Q WHAT'S YOUR UNDERSTANDING OF THE POWERS THAT IT GIVES THE
2 CORRECTIONS DEPARTMENT?

3 A WELL, THE CORRECTIONS DEPARTMENT DOES HAVE WAYS UNDER THE
4 LAW OF ASSESSING PRISONERS WHO ARE SCHEDULED FOR RELEASE FROM
5 PRISON AS TO WHETHER OR NOT THEY SHOULD BE CONSIDERED DANGEROUS
6 TO THEMSELVES OR OTHERS BY REASON OF MENTAL ILLNESS. IF THAT IS
7 THE DETERMINATION, THERE ARE MEANS AVAILABLE TO HAVE THEM --
8 WELL, I'LL SAY TO PETITION THE COURT TO COMMIT THEM FOR
9 TREATMENT INVOLUNTARILY IF THEY DON'T AGREE TO DO IT VOLUNTARILY
10 FOR INPATIENT MENTAL HOSPITALIZATION, BOTH FOR THEIR TREATMENT
11 AND FOR THE SAFETY OF THE PUBLIC.

12 Q AND I KNOW IN YOUR DEPOSITION THERE WAS SOME QUESTIONS ABOUT
13 DID YOU KNOW THE EXACT NAME OF THE LANTERMAN-PETRIS-SHORT ACT.
14 ARE YOU GENERALLY AWARE THAT THE 50 STATES ADOPTED CIVIL
15 COMMITMENTS STATUTES?

16 A OH, YES.

17 Q AND CALIFORNIA HAS ONE?

18 A YES.

19 Q ARE YOU AWARE THAT THE DEPARTMENT CAN, ON A SHOWING OF
20 PROBABLE CAUSE, TAKE AN ABOUT-TO-BE-RELEASED PERSON AND SEND
21 THEM TO THE CIVIL COMMITMENT PROCESS?

22 A YES.

23 Q REGARDING THE KNOWN RISK FACTORS THAT YOU'VE TESTIFIED
24 ABOUT, SUCH AS PRIOR VIOLENCE AND SUBSTANCE ABUSE, DO YOU HAVE
25 OPINIONS ABOUT THE USE OF ANY KINDS OF RISK AND NEEDS TOOLS WHEN

1 CONTEMPLATING EITHER DIVERSIONARY STRATEGIES OR RELEASE
2 STRATEGIES?

3 **MR. LEWIS:** OBJECTION, YOUR HONOR. IT'S BEYOND THE
4 SCOPE OF THE CROSS. RISK NEEDS WERE NEVER ADDRESSED.

5 **MR. GALVAN:** THE CROSS SPENT A LOT OF TIME ON RISK
6 FACTORS, SUBSTANCE ABUSE, PRIOR HISTORY OF VIOLENT FELONIES.

7 **MR. LEWIS:** BUT NOT RISK AND NEEDS ANALYSIS, NOT THE
8 TOOLS.

9 **JUDGE HENDERSON:** I WILL ALLOW IT, COUNSEL. REPEAT
10 THE QUESTION.

11 **MR. GALVAN:** YES. THANK YOU.

12 **BY MR. GALVAN**

13 **Q** IN YOUR WORK IN GENERAL, DO YOU HAVE AN OPINION ABOUT THE
14 USE OF TOOLS, ACTUARIAL TOOLS, TO MEASURE RISK AND NEEDS IN
15 PREDICTING -- DEALING WITH CORRECTIONAL POPULATIONS?

16 **A** YES. I KNOW THESE TOOLS ARE AVAILABLE. THEY'RE, I MEAN,
17 CONTINUALLY BEING CREATED AND PERFECTED, AND IN MANY CASES THEY
18 ARE -- AND AN ATTEMPT, I THINK, TO KIND OF SYSTEMATIZE, THE KIND
19 OF THING WE USED TO DO JUST CLINICALLY IN ASSESSING PEOPLE
20 FOR -- YOU KNOW, PRIOR TO THEIR DISCHARGE FROM PRISON. BUT
21 DOING IT ON AN ACTUARIAL BASIS CAN ALSO IMPROVE THE PREDICTIVE
22 POWER OF THE PRERELEASE, YOU KNOW, PLANNING WHICH IS WHAT I
23 RECOMMENDED EARLIER IN MY TESTIMONY.

24 **Q** THERE WAS SOME CROSS-EXAMINATION ABOUT DID YOU KNOW THE
25 TOTAL CAPACITY OF THE DEPARTMENT OF MENTAL HEALTH STATE HOSPITAL

1 SYSTEM AND IN FORMING YOUR OPINION, EVEN IF YOU DIDN'T CONSIDER
2 THE TOTAL CAPACITY, DID YOU CONSIDER THE 800 EMPTY BEDS AT
3 COALINGA STATE HOSPITAL?

4 **A** AT COALINGA, YES, ABSOLUTELY.

5 **Q** AND HOW DID THE PRESENTATION OF THOSE BEDS AFFECT YOUR
6 OPINION?

7 **A** WELL, IT SEEMS TO ME THAT THERE CLEARLY ARE MORE THAN ENOUGH
8 BEDS AVAILABLE FOR WHAT THE PROJECTED NEED FOR THEM WOULD BE
9 BASED ON THE CHARTS THAT I SHOWED ON THE SCREEN.

10 **Q** THEN THERE WAS ALSO CROSS-EXAMINATION REGARDING WHETHER YOU
11 DID AN INDEPENDENT STUDY OF THE STAFFING NEEDS FOR THE PAROLE
12 OUTPATIENT CLINIC SYSTEM, AND YOU TESTIFIED YOU DIDN'T. DID YOU
13 REVIEW DOCUMENTS FROM THE CORRECTIONS DEPARTMENT OF THEIR OWN
14 ANALYSES?

15 **A** YES.

16 **Q** OKAY. I'D LIKE TO SHOW ONE OF THOSE IF I COULD, P 715,
17 P 715.

18 (DOCUMENT DISPLAYED.)

19 **BY MR. GALVAN**

20 **Q** AND IN YOUR SCIENTIFIC WORK, DO YOU FIND THAT EXPERTS LIKE
21 YOURSELF GENERALLY FIND IT A USEFUL THING TO REVIEW THE
22 DOCUMENTS BY WHICH AN AGENCY OR CORRECTIONS DEPARTMENT HAS
23 QUANTIFIED ITS NEEDS AND RESOURCES?

24 **A** YES, THAT'S A GOOD PLACE TO BEGIN.

25 **Q** DO YOU REMEMBER LOOKING AT THE DOCUMENT THAT'S ON THE SCREEN

1 NOW, WHICH IS PLAINTIFF'S EXHIBIT 715, WITH THE TITLE "DIVISION
2 OF ADULT PAROLE OPERATIONS"?

3 (INTERRUPTION BY THE COURT REPORTER.)

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

5 **BY MR. GALVAN**

6 **Q** JUST FOR THE COURT REPORTER, DO YOU REMEMBER LOOKING AT THIS
7 DOCUMENT ON THE SCREEN RIGHT NOW, P 715, DIVISION OF ADULT
8 PAROLE OPERATIONS?

9 **A** MM-HMM. YES, I DO.

10 **Q** IF WE COULD TURN IN A FEW PAGES IN THIS DOCUMENT, PLEASE, TO
11 PAGE 4?

12 IF WE COULD ZOOM INTO THE CHART, PLEASE?

13 DO YOU REMEMBER REVIEWING THAT, HOW THE MENTALLY ILL
14 PAROLE POPULATION BROKE DOWN IN CALIFORNIA PAROLE --

15 **A** YES.

16 **Q** IF WE GO TO THE CHART ON THE NEXT PAGE, PLEASE, PAGE 5? DO
17 YOU REMEMBER LOOKING AT THESE STAFFING RATIOS FOR THE PAROLE
18 OUTPATIENT CLINIC?

19 **A** YES, I DO.

20 **Q** IN YOUR OPINION, DO THEY NEED MORE HELP?

21 **A** I'M SORRY? WHAT?

22 **Q** DO THEY NEED MORE HELP?

23 **MR. LEWIS:** LACK OF FOUNDATION, OBJECTION.

24 **MR. GALVAN:** I WITHDRAW THE QUESTION.

25

1 **BY MR. GALVAN**

2 **Q** IN YOUR OPINION, ARE THEY ADEQUATELY STAFFED?

3 **MR. LEWIS:** SAME OBJECTION.

4 **JUDGE HENDERSON:** OVERRULED.

5 IS THE QUESTION WHETHER, AFTER REVIEWING THIS
6 DOCUMENT AND THESE CHARTS, IS IT HIS OPINION THAT THEY'RE
7 ADEQUATELY STAFFED OR INADEQUATELY STAFFED; IS THAT YOUR
8 QUESTION?

9 **MR. GALVAN:** YES, YOUR HONOR.

10 **THE WITNESS:** MY OPINION, LOOKING AT THESE NUMBERS,
11 WOULD BE THAT THEY ARE INADEQUATE CURRENTLY. I WOULD LIKE TO
12 SEE THEM BEEFED UP.

13 **MR. GALVAN:** IF WE COULD LOOK -- IF WE COULD ZOOM OUT
14 ON THAT PAGE AND ZOOM BACK IN THREE PARAGRAPHS DOWN, PLEASE?
15 THE PARAGRAPH THAT STARTS "EACH YEAR," JUST THAT EACH YEAR
16 PARAGRAPH?

17 **THE WITNESS:** YEAH.

18 **BY MR. GALVAN**

19 **Q** THIS PARAGRAPH, FOR THE RECORD, SAYS:

20 "EACH YEAR OVER 6,000 PAROLEES SUFFERING
21 FROM SERIOUS MENTAL ILLNESS ARE RETURNED TO
22 PRISON FOR PERIODS RANGING FROM A FEW MONTHS UP
23 TO ONE FULL YEAR OR LONGER IF THEY RECEIVE A NEW
24 TERM. THIS IS PRIMARILY DUE TO TECHNICAL
25 VIOLATIONS OR OTHER CRIMINAL BEHAVIOR, BUT CAN

1 RESULT FROM THEIR MENTAL ILLNESS. MANY OF THE
2 PROBLEMS EXHIBITED BY THESE INDIVIDUALS, WHEN
3 NON-COMPLIANT WITH THEIR PAROLE CONDITIONS, ARE
4 RELATED TO THE DISORGANIZATION PRODUCED BY THEIR
5 MENTAL ILLNESS."

6 DID YOU CONSIDER THAT STATEMENT BY THE CDCR IN
7 REACHING YOUR OPINIONS?

8 **A** ABSOLUTELY. I WOULD GIVE A LOT OF WEIGHT TO THAT.

9 **Q** IF WE COULD LOOK AT P 757 AS WELL? DO YOU RECALL LOOKING AT
10 THESE TYPES OF BUDGET PLANNING DOCUMENTS LIKE THIS BUDGET CHANGE
11 PROPOSAL?

12 **A** YOU KNOW, I'M -- I CAN'T SAY I'M AS FAMILIAR -- I
13 REVIEWED -- I REVIEWED DOZENS, IF NOT HUNDREDS, OF DOCUMENTS
14 OVER THE PAST FEW MONTHS. THIS I'M VERY FAMILIAR WITH WHAT YOU
15 WERE JUST SHOWING. THIS I DON'T RECALL AS SPECIFICALLY.

16 **Q** IF WE --

17 **A** I MAY WELL HAVE REVIEWED IT THIS SUMMER, BUT I -- YOU KNOW.

18 **Q** IF WE MOVE FORWARD IN THAT DOCUMENT TO THE -- JUST,
19 ACTUALLY, THE NEXT PAGE THAT HAS TEXT? AND THE FIRST PARAGRAPH,
20 JUST BY WAY OF REFRESHING YOUR RECOLLECTION, DO YOU RECALL THIS
21 MATERIAL ABOUT THE -- THE SENTENCE HERE, "THE CALIFORNIA
22 DEPARTMENT OF CORRECTIONS AND REHABILITATION IS REQUESTING FOUR
23 PERMANENT FULL-TIME POSITIONS AND NO FUNDS FOR FISCAL YEAR
24 '07/'08, AND \$6,000,037 FOR FY '08/'09, ONGOING TO ENHANCE
25 MENTAL HEALTH REHABILITATIVE AND STABILIZATION SERVICES FOR THE

1 MENTALLY ILL OFFENDER ADULT POPULATION. AND FOR FY '08/'09,
2 FUNDING WILL BE PROVIDED OUT OF THE \$50 MILLION APPROPRIATED FOR
3 INMATE AND PAROLE PROGRAMS IN AB 900.

4 **THE WITNESS:** OKAY. I WOULD THINK --

5 **JUDGE KARLTON:** WELL, YOU READ IT. APPARENTLY, HE
6 WANTS TO KNOW WHETHER YOU READ IT BEFORE.

7 **BY MR. GALVAN**

8 **Q** OR WHETHER YOU HAVE A PRESENT RECOLLECTION NOW AS --

9 **JUDGE REINHARDT:** HE'S READ IT NOW. SO WHY DON'T YOU
10 ASK HIM SOMETHING ABOUT IT.

11 **MR. GALVAN:** I'LL SHIFT TO A WHOLE OTHER AREA, YOUR
12 HONOR.

13 **BY MR. GALVAN**

14 **Q** DO YOU RECALL IN GENERAL THE TOPIC OF AB 900, ASSEMBLY BILL
15 900?

16 **A** YES, THAT WE --

17 **JUDGE REINHARDT:** PRISON REFORM, IS THAT THE TOPIC
18 YOU ARE INTERESTED IN, THE GENERAL TOPICS?

19 **MR. GALVAN:** NO, MORE SPECIFICALLY, THE STRATEGIES IN
20 AB 900 TO ENHANCE SERVICES FOR MENTALLY ILL PAROLEES.

21 **THE WITNESS:** THAT THEY'RE ALREADY STEPS INCLUDED IN
22 AB 900 TO SOLVE SOME OF THESE PROBLEMS.

23 **BY MR. GALVAN**

24 **Q** REGARDING THE CROSS-EXAMINATION ON -- OF IMPOVERISHED AREAS
25 AND THE DIFFICULTIES IN RECRUITMENT, IN YOUR PROFESSIONAL

1 EXPERIENCE, ARE THERE DIFFICULTIES IN RECRUITING CLINICIANS TO
2 WORK IN PRISONS?

3 **A** YES.

4 **Q** HOW WOULD YOU COMPARE THOSE DIFFICULTIES TO THE DIFFICULTIES
5 EXPERIENCED IN GETTING PEOPLE TO WORK IN IMPOVERISHED AREAS?

6 **A** I WOULD SAY THEY'RE MUCH GREATER. THEY'RE MUCH GREATER. AS
7 HARD AS IT IS TO GET PEOPLE WORKING IN IMPOVERISHED AREAS, I
8 WOULD SAY IT'S STILL MUCH EASIER THAN TO GET PEOPLE TO WORK IN
9 PRISONS.

10 I MEAN, I SAY -- AGAIN, I SAY THAT ON THE BASIS OF
11 HAVING BEEN -- WHERE MY JOB WAS TO, YOU KNOW, HIRE AND FIRE AND
12 RECRUIT MENTAL HEALTH PROFESSIONALS IN A VARIETY OF SETTINGS,
13 AND WE HAD NOT NEARLY AS MUCH TROUBLE IN EVEN -- SOME OF THE
14 POORER AREAS OF BOSTON THAN WE DID GETTING PEOPLE TO WORK IN THE
15 PRISONS.

16 **Q** WHY?

17 **A** PRISONS ARE SCARY TO MOST PEOPLE.

18 **JUDGE KARLTON:** AND THE POPULATION AREN'T REALLY NICE
19 FOLKS, AND YOU GOT CUSTODY TO DEAL WITH AND --

20 **THE WITNESS:** AND THE LIST IS ENDLESS. I MEAN, THEY
21 ARE IN MANY PLACES DEGRADING TO WALK INTO. STAFF ARE
22 HUMILIATED. I HAD STAFF MEMBERS OF MINE WHO WOULD BE STRIP
23 SEARCHED. THE DIFFICULTIES ARE TREMENDOUS. THERE ARE REAL
24 DANGERS. I HAD STAFF MEMBERS WHO, YOU KNOW, GOT BROKEN JAWS AND
25 BROKEN NOSES, ATTEMPTED RAPES.

1 **MR. LEWIS:** OBJECTION. WE ARE GETTING IRRELEVANT
2 HERE, YOUR HONOR.

3 **JUDGE REINHARDT:** TEDIOUS.

4 **MR. LEWIS:** THANK YOU.

5 **MR. GALVAN:** ONE FINAL AREA.

6 **BY MR. GALVAN**

7 **Q** JUDGE KARLTON ASKED YOU SOME QUESTIONS ABOUT THE
8 COST/BENEFIT ANALYSIS. DO YOU RECALL REVIEWING THE UCLA REPORTS
9 ON THE TRANSITIONAL CASE MANAGEMENT PROGRAM AND PRERELEASE
10 PLANNING?

11 **MR. LEWIS:** OBJECTION. BEYOND SCOPE. TRANSITIONAL
12 CASE MANAGEMENT WAS NEVER RAISED, YOUR HONORS.

13 **BY MR. GALVAN**

14 **Q** DO YOU RECALL READING THE STUDY ABOUT THE TRANSITIONAL CASE
15 MANAGEMENT PROGRAM THAT SPECIFICALLY FOUND THAT EVERY DOLLAR
16 SPENT ON THAT PROGRAM --

17 **MR. LEWIS:** PARDON ME, COUNSEL. I BELIEVE THERE'S AN
18 OBJECTION. I'M SORRY IF I DIDN'T HEAR A RESPONSE, YOUR HONOR.

19 **JUDGE HENDERSON:** HE'S POSING ANOTHER QUESTION NOW.

20 **JUDGE KARLTON:** I RAISED THE QUESTION OF
21 COST/BENEFIT. IT'S NOT CLEAR TO ME IT INVITES OTHER QUESTIONS
22 OF COUNSEL, I SUPPOSE.

23 **JUDGE REINHARDT:** WHAT'S THE NEW QUESTION?

24 **JUDGE HENDERSON:** THAT'S THE NEW QUESTION.
25

1 **BY MR. GALVAN**

2 **Q** DO YOU RECALL REVIEWING THE UCLA STUDY OF THE PRERELEASE
3 PLANNING PROGRAM, KNOWN AS TRANSITIONAL CASE MANAGEMENT, THAT
4 FOUND THAT EVERY DOLLAR SPENT ON THAT PROGRAM SAVED MORE MONEY
5 IN REDUCING THE DAYS IN PRISON BY GETTING MENTALLY ILL PAROLEES
6 HOOKED UP WITH THEIR APPOINTMENTS?

7 **A** YES. PARTICIPATING IN MENTAL HEALTH TREATMENT INCREASES THE
8 LIKELIHOOD THAT PAROLEES WILL SUCCESSFULLY ADJUST IN THE
9 COMMUNITY AND NOT HAVE TO BE RETURNED TO PRISON. IN FACT, THERE
10 ARE MANY DIFFERENT STUDIES SHOWING THE LONG RUN BENEFIT TO THE
11 TAXPAYER FAR OUTWEIGHS THE COST OF ANY NUMBER OF PROGRAMS THAT
12 ENHANCE THE TREATMENT OF PRISONERS, WHETHER THEY'RE MENTALLY ILL
13 OR NON-MENTALLY ILL.

14 **MR. GALVAN:** NO FURTHER QUESTIONS. THANK YOU.

15 **JUDGE HENDERSON:** RE-CROSS.

16 **MR. LEWIS:** NONE, YOUR HONOR.

17 **MS. FUENTES:** NO, YOUR HONOR.

18 **JUDGE HENDERSON:** THANK YOU VERY MUCH FOR APPEARING,
19 DR. GILLIGAN, AND WE ARE RECESSED FOR THE DAY UNTIL NEXT TUESDAY
20 AT 9:15. I'LL REMIND COUNSEL TO GET US THE WITNESS LISTS AND
21 ACCURATE ESTIMATES OF TIME NEXT MONDAY.

22 (PROCEEDINGS ADJOURNED.)

23

24

25

I N D E XPLAINTIFF'S WITNESSESPAGEVOL.JEFFREY BEARD

DIRECT EXAMINATION BY MR. SPECTER	1546	8
CROSS-EXAMINATION BY MR. MELLO	1581	8
CROSS-EXAMINATIONM BY MR. MITCHELL	1591	8
REDIRECT EXAMINATION BY MR. SPECTER	1605	8

JAMES GILLIGAN, M.D.

DIRECT EXAMINATION BY MR. GALVAN	1608	8
CROSS-EXAMINATION BY MR. LEWIS	1618	8
CROSS-EXAMINATION BY MS. FUENTES	1642	8
REDIRECT EXAMINATION BY MR. GALVAN	1648	8

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CERTIFICATE OF REPORTER

I, JOAN MARIE COLUMBINI, OFFICIAL REPORTER FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN CIV S-90-0520 LKK JPM, RALPH COLEMAN, ET AL V. ARNOLD SCHWARZENEGGER, AND C 01-1351 TEH, MARCIANO PLATA V. ARNOLD SCHWARZENEGGER, WERE REPORTED BY ME, CERTIFIED SHORTHAND REPORTER, AND WERE THEREAFTER TRANSCRIBED UNDER MY DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY ME AT THE TIME OF FILING.

THE VALIDITY OF THE REPORTER'S CERTIFICATION OF SAID TRANSCRIPT MAY BE VOID UPON DISASSEMBLY AND/OR REMOVAL FROM THE COURT FILE.

/S/ JOAN MARIE COLUMBINI

JOAN MARIE COLUMBINI, CSR 5435, RPR

FRIDAY, DECEMBER 5, 2008