

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

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**TRANSCRIPT OF PROCEEDINGS**

SAN FRANCISCO, CALIFORNIA  
TUESDAY, DECEMBER 9, 2008

(APPEARANCES ON FOLLOWING PAGES)

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 OFFICIAL COURT REPORTERS, U.S. DISTRICT COURT

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1 **TUESDAY, DECEMBER 9, 2008**

**9:20 O'CLOCK A.M.**

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

3  
4 **JUDGE HENDERSON:** OKAY. LET'S GET GOING. CALL YOUR  
5 NEXT WITNESS.

6 **MR. MELLO:** GOOD MORNING, YOUR HONORS. PAUL MELLO  
7 FOR DEFENDANTS. DEFENDANTS ARE CALLING MATTHEW CATE, THE  
8 SECRETARY FOR THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND  
9 REHABILITATION, AND HE'S IN THE HALLWAY. WE ARE GETTING HIM.

10 **MR. SPECTER:** HE FLED THE JURISDICTION.

11 **MATTHEW L. CATE,**

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

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

16 **THE WITNESS:** MATTHEW L. CATE. M-A-T-T-H-E-W, LAST  
17 NAME IS C-A-T-E.

18 **MR. MELLO:** YOUR HONORS, SECRETARY CATE HAS SUBMITTED  
19 A TRIAL AFFIDAVIT IN THIS MATTER. IT'S MARKED AS DEFENDANT'S  
20 EXHIBIT 1000. ON NOVEMBER 17TH, DEFENDANTS SUBMITTED MINOR  
21 REVISIONS TO THAT TRIAL AFFIDAVIT TO CORRECT A FEW EXHIBIT  
22 NUMBERS. SECRETARY CATE'S EDUCATIONAL AND PROFESSIONAL  
23 BACKGROUND ARE SUMMARIZED IN PARAGRAPHS 2 TO 4 OF THAT TRIAL  
24 AFFIDAVIT.

25 ///

**DIRECT EXAMINATION BY MR. MELLO**

1  
2 **BY MR. MELLO**

3 **Q** GOOD MORNING, SECRETARY CATE.

4 **A** GOOD MORNING.

5 **Q** WHEN WERE YOU APPOINTED AS THE SECRETARY OF THE CALIFORNIA  
6 DEPARTMENT OF CORRECTIONS AND REHABILITATION?

7 **A** MAY 16TH OF THIS YEAR.

8 **Q** OKAY. IMMEDIATELY PRIOR TO THAT POINT, WHAT POSITION DID  
9 YOU HOLD?

10 **A** I WAS THE INSPECTOR GENERAL FOR THE STATE OF CALIFORNIA.

11 **Q** AND CAN YOU GENERALLY DESCRIBE WHAT YOUR RESPONSIBILITIES  
12 WERE IN THAT POSITION?

13 **A** I WAS -- AS INSPECTOR GENERAL, I WAS RESPONSIBLE FOR THE  
14 OVERSIGHT OF THE DEPARTMENT OF CORRECTIONS AND REHABILITATION,  
15 INCLUDING AUDITING ITS SYSTEMS, INVESTIGATING MISCONDUCT BY  
16 SENIOR PERSONNEL, AND OVERSEEING THE OFFICER DISCIPLINE PROCESS.

17 **Q** AND YOU SERVED ON THE CALIFORNIA REHABILITATION OVERSIGHT  
18 BOARD, ALSO REFERRED TO AS CROB, FROM 2007 UNTIL YOUR  
19 APPOINTMENT, CORRECT?

20 **A** I'M ACTUALLY STILL A MEMBER OF THE REHABILITATION OVERSIGHT  
21 BOARD. I SERVED AS ITS CHAIR IN MY CAPACITY AS THE INSPECTOR  
22 GENERAL, AND I'M CURRENTLY A MEMBER OF THE BOARD IN MY CAPACITY  
23 AS SECRETARY.

24 **Q** WHAT WERE YOUR RESPONSIBILITIES AS CHAIRMAN OF CROB?

25 **A** I LEAD THE BOARD, AND ITS RESPONSIBILITIES WERE TO OVERSEE

1 THE REHABILITATIVE EFFORTS THAT WERE UNDERWAY AT CDCR AND THEN  
2 TO REPORT ON THE QUALITY OF THOSE EFFORTS TO THE LEGISLATURE  
3 BIANNUALLY.

4 **Q** AND HOW, IF AT ALL, HAS YOUR, OTHER THAN YOUR POSITION AS  
5 CHAIRMAN OF THAT BOARD, HAS YOUR ROLE CHANGED WITH RESPECT TO  
6 CROB NOW AS SECRETARY OF THE DEPARTMENT?

7 **A** I'M SIMPLY ONE OF THE MEMBERS OF THE BOARD AS OPPOSED TO  
8 BEING ITS CHAIR.

9 **Q** AS PART OF YOUR DUTIES SINCE MAY OF 2006, YOU'VE BECOME  
10 FAMILIAR WITH THE ACTIVITIES OF THE DEPARTMENT BEFORE YOUR  
11 APPOINTMENT, CORRECT?

12 **A** YES, OF COURSE.

13 **Q** AND AS PART OF YOUR DUTIES AS BOTH THE INSPECTOR GENERAL AND  
14 SINCE BECOMING SECRETARY OF THE DEPARTMENT, YOU WERE AND BECAME  
15 FAMILIAR WITH THE ACTIVITIES OF THE PLATA RECEIVER?

16 **A** THAT'S TRUE, YES.

17 **Q** AS WELL AS THE COLEMAN SPECIAL MASTERS?

18 **A** YES.

19 **Q** OKAY. CDCR PUBLISHES WEEKLY POPULATION REPORTS, CORRECT?

20 **A** WE DO.

21 **Q** OKAY. LET'S PULL UP DEFENDANTS' 1203.

22 (DOCUMENT DISPLAYED.)

23 **BY MR. MELLO**

24 **Q** SECRETARY CATE, DOES THIS APPEAR TO BE PORTIONS OF THE  
25 AUGUST 27, 2008 POPULATION REPORT?

1 **A** IT DOES.

2 **Q** OKAY. AND THE REPORT SHOWS THAT AS OF AUGUST 27TH, 2008,  
3 CDCR'S TOTAL INMATE POPULATION WAS 172,057, CORRECT?

4 **A** THAT'S CORRECT.

5 **Q** ARE ALL OF THOSE 172,057 INMATES HOUSED IN CDCR PRISONS?

6 **A** NO.

7 **Q** OKAY. HOW MANY AS OF AUGUST 27TH, 2008 WERE HOUSED IN CDCR  
8 PRISONS?

9 **A** AS YOU CAN SEE FROM THE REPORT, 156,352 AT THAT TIME.

10 **Q** OKAY. AND WHERE ARE THE OTHER ALMOST 16,000 INMATES IN  
11 CDCR'S CUSTODY HOUSED?

12 **A** CDCR ALSO RUNS A CAMP PROGRAM, WHICH ARE UNLOCKED PROGRAMS,  
13 COMMUNITY CORRECTIONAL FACILITIES, AND WE HAVE A NUMBER OF  
14 INMATES THAT ARE IN OUT-OF-STATE FACILITIES. DMH HOLDS A SMALL  
15 NUMBER OF -- DEPARTMENT OF MENTAL HEALTH HAS A NUMBER OF OUR  
16 INMATES, AND THERE'S A SMATTERING OF INMATES IN LOCKED COMMUNITY  
17 PROGRAMS.

18 **Q** WHAT ARE COMMUNITY CORRECTIONAL CENTERS OR FACILITIES?

19 **A** THEY'RE LOW CUSTODY FACILITIES, TYPICALLY FOR INMATES  
20 SERVING NO MORE THAN 18 TO 24 MONTHS WHO HAVE COMMITTED AN  
21 OFFENSE THAT ALLOWS THEIR CUSTODY LEVEL TO BE SUCH THAT THEY CAN  
22 BE APPROPRIATELY HOUSED IN THAT LESS SECURE FACILITY. THEY'RE  
23 RUN BY EITHER TYPICALLY A PRIVATE PRISON OR A COMMUNITY  
24 CONTRACTING WITH A -- DOING THE -- I'M SORRY -- A  
25 COMMUNITY-LIKE, CITY OR COUNTY, OR PRIVATE PRISON RUNNING THOSE

1 FACILITIES.

2 **Q** AND I BELIEVE YOU TESTIFIED THOSE ARE LOW LEVEL, LOW RISK  
3 OFFENDERS, CORRECT?

4 **A** THAT'S RIGHT.

5 **Q** AND ARE THOSE FACILITIES OVERPOPULATED OR OVERCROWDED?

6 **A** NO.

7 **Q** OKAY. AND YOU BRIEFLY MENTIONED THE CAMPS. WHAT ARE THE  
8 CAMPS?

9 **A** THE CAMPS ARE, AS I SAID, THEY'RE A PROGRAM THAT CDCR RUNS  
10 TO TRAIN INMATES FOR FIREFIGHTING AND TO HANDLE OTHER  
11 EMERGENCIES IN CALIFORNIA, AND AS THE NAME IMPLIES, THEY'RE  
12 CAMPS WITH DORM SETTINGS, AND INMATES ARE TRAINED AND EXERCISED  
13 IN THESE VOCATIONS, AND IN SOME CAMPS THEY ALSO RECEIVE DRUG AND  
14 ALCOHOL TREATMENT.

15 **Q** DO THE CAMPS ALSO HOUSE LOW LEVEL, LOW RISK OFFENDERS?

16 **A** THEY DO.

17 **Q** AND ARE INDIVIDUALS WHO HAVE BEEN CONVICTED OF SEX CRIMES OR  
18 ARSON OR KIDNAPPING OR CRIMES OF THAT SORT ALLOWED IN CAMPS?

19 **A** NO, THEY WOULD BE INELIGIBLE.

20 **Q** AND DO YOU HAVE ANY IDEA WHAT IMPACT, IF ANY, A PRISON  
21 RELEASE ORDER THAT TARGETED LOW LEVEL, LOW RISK OFFENDERS WOULD  
22 HAVE ON THE POPULATIONS OF COMMUNITY CORRECTION CENTERS?

23 **A** IN GENERAL, WE HAVE DIFFICULTY FILLING THE AVAILABLE SLOTS  
24 IN CAMPS AND IN THE COMMUNITY CORRECTIONAL FACILITIES AND  
25 MODIFIED COMMUNITY CORRECTIONAL FACILITIES. SO I GUESS IT WOULD



1 EXACERBATE THAT ISSUE.

2 **Q** DO YOU HAVE ANY IDEA WHAT, IF ANY, IMPACT A PRISON RELEASE  
3 ORDER THAT TARGETED LOW LEVEL, LOW RISK OFFENDERS WOULD HAVE ON  
4 YOUR FIRE CAMPS?

5 **A** SAME IMPACT.

6 **Q** ARE YOU FAMILIAR WITH CDCR PRISON CENSUS DATA REPORT AS OF  
7 JUNE 30TH, 2008, WHICH I'LL PUT UP, WHICH IS DEFENDANT'S TRIAL  
8 EXHIBIT 1255?

9 **A** YES.

10 (DOCUMENT DISPLAYED.)

11 **BY MR. MELLO**

12 **Q** I'LL TAKE YOU TO TABLE ONE OF THAT REPORT. WHAT DOES TABLE  
13 ONE TELL US ABOUT THE COMPOSITION OF CDCR'S INMATE POPULATION?

14 **A** WELL, IT SETS OUT THE VARIOUS PERCENTAGES OF INMATES WHO ARE  
15 RETURNED FOR ONE OF FOUR REASONS AS OF JUNE 30TH, 2008. AND  
16 IT -- AT THAT TIME 63.5 PERCENT OF CDCR INMATES WERE THERE AS A  
17 RESULT OF A NEW ADMISSION. ANOTHER 25.2 PERCENT WERE PAROLE  
18 VIOLATORS. AND "WNT" STANDS FOR WITH NEW TERM. IT MEANS THEY  
19 HAVE BEEN CONVICTED OF A NEW OFFENSE. AND THEN 9.2 PERCENT  
20 WOULD BE PAROLE VIOLATORS WHO WERE RETURNED TO CUSTODY WITHOUT A  
21 NEW OFFENSE. AND THEN, AGAIN, THE SMALL 2.1 PERCENT WERE THOSE  
22 WHO WERE STILL PENDING REVOCATION.

23 **Q** SECRETARY CATE, THERE'S BEEN TESTIMONY -- A LOT OF TESTIMONY  
24 WITH RESPECT TO THE TERM TECHNICAL PAROLE VIOLATORS. DOES THAT  
25 11.3 OR -- PARDON ME -- 11.3 PERCENT, IS THAT THE PERCENT OF

1 TECHNICAL PAROLE VIOLATORS ON THAT CHART?

2 **A** WELL, I HAVEN'T BEEN PRIVY TO ALL THE TESTIMONY.

3 **Q** RIGHT.

4 **A** BUT I CAN TELL YOU THAT NATIONWIDE THE GENERAL UNDERSTANDING  
5 OF A TECHNICAL VIOLATION IS CONDUCT COMMITTED BY A PAROLEE  
6 THAT'S MISCONDUCT BECAUSE OF THEIR PAROLE STATUS BUT THAT WOULD  
7 BE LEGAL FOR -- OR AT LEAST NOT A CRIMINAL VIOLATION FOR SOMEONE  
8 WHO WAS NOT ON PAROLE.

9 SO FOR EXAMPLE, ASSOCIATING WITH A KNOWN GANG MEMBER  
10 OR BEING UNDER THE INFLUENCE OF ALCOHOL, SOMETHING LIKE THAT, IS  
11 TYPICALLY -- MISSING AN APPOINTMENT WITH YOUR PAROLE AGENT.  
12 THOSE ARE THINGS THAT WITH -- FROM WHICH ONE COULD BE REVOKED  
13 BUT A CITIZEN WHO'S NOT ON PAROLE COULD NOT. THAT'S MY  
14 UNDERSTANDING OF A TECHNICAL PAROLE VIOLATION.

15 OF THE PERCENTAGES YOU SEE HERE, THERE WILL BE A  
16 BLEND OF THOSE WHO ARE RETURNED FOR TECHNICAL VIOLATIONS AS I'VE  
17 JUST DEFINED THEM, AND THOSE WHO ARE RETURNED FOR -- BASED UPON  
18 A DETERMINATION BY THE PAROLE AGENT OR DETERMINATION BY THE  
19 BOARD THAT THEY HAVE COMMITTED A FELONY OR MISDEMEANOR OFFENSE  
20 BUT THEY DIDN'T GO THROUGH TRIAL. SO I GUESS THE ANSWER IS --  
21 SHORT ANSWER IS IT'S A MIX OF BOTH PROBABLY.

22 **Q** BUT THE VAST MAJORITY OF THOSE INDIVIDUALS WHO ARE RETURNED  
23 ARE NOT FOR TECHNICAL VIOLATIONS, CORRECT?

24 **A** THAT'S TRUE.

25 **THE CLERK:** TEN MINUTES, COUNSEL.

1           **MR. MELLO:** THANK YOU.

2           **THE CLERK:** FIVE MINUTES.

3           **MR. MELLO:** FIVE MINUTES?

4 **BY MR. MELLO**

5 **Q** DOES CDCR'S PRISON CENSUS DATA REPORTS REPORT OR KEEP  
6 INFORMATION REGARDING THE OFFENSES FOR WHICH INMATES ARE SERVING  
7 TIME IN CDCR INSTITUTIONS?

8 **A** YES.

9 **Q** OKAY. WE'LL LOOK AT TABLE 3 OF 1255. AS OF JUNE 30TH,  
10 2008, WHAT PERCENTAGE OF CDCR'S INMATES WERE IN CUSTODY FOR  
11 CRIMES AGAINST PERSONS?

12 **A** 52.6 PERCENT.

13 **Q** WHAT PERCENTAGE OF INMATES ARE IN CUSTODY FOR EITHER  
14 HOMICIDE, ROBBERY, OR BURGLARY?

15 **A** MY RECOLLECTION IS IT'S ABOUT A THIRD.

16 **Q** OKAY. WHAT CATEGORY OF OFFENSES -- WHAT'S THE SINGLE MOST  
17 SIGNIFICANT SOURCE OF INCREASE IN POPULATION BETWEEN '97 AND  
18 2007?

19 **A** CRIMES AGAINST PERSON SHOWED THE GREATEST INCREASE DURING  
20 THAT TIME PERIOD.

21 **Q** OKAY. DO YOU KNOW WHAT ROLE CONVICTIONS FOR DRUG OFFENSES  
22 PLAYED IN THE INCREASE IN THE PRISON POPULATION BETWEEN 1997 AND  
23 2007?

24 **A** FROM MY RECOLLECTION LOOKING AT THE DATA IS, AS OUR  
25 POPULATION WENT UP, THE PERCENTAGE OF INMATES SENT TO PRISON FOR

1 DRUG CRIMES DECREASED.

2 **Q** DO YOU KNOW ANY OF THE REASONS FOR THAT?

3 **A** I WOULD IMAGINE THAT --

4 **JUDGE KARLTON:** NO, YOU CAN'T IMAGINE. GIVE US YOUR  
5 BEST JUDGMENT.

6 **THE WITNESS:** RIGHT. POOR USE OF TERM THERE.

7 MY BEST JUDGMENT IS THAT DRUG COURTS, PROP 36, THOSE  
8 KIND OF ACTIVITIES HAVE MADE THE DIFFERENCE.

9 **BY MR. MELLO**

10 **Q** DO YOU HAVE AN UNDERSTANDING OF WHAT PERCENTAGE OF FELONY  
11 CONVICTIONS IN CALIFORNIA RESULT IN A PRISON SENTENCE?

12 **A** I'M SORRY. COULD YOU REPEAT THAT?

13 **Q** DO YOU KNOW WHAT PERCENTAGE OF FELONY CONVICTIONS IN  
14 CALIFORNIA RESULT IN A PRISON SENTENCE?

15 **A** ABOUT 20 PERCENT.

16 **Q** AND DO YOU KNOW WHAT PERCENTAGE OF FELONS ARE SENTENCED TO  
17 PRISON BY STATE COURTS NATIONWIDE, HOW WE COMPARE NATIONALLY?

18 **A** I KNOW WE ARE FAR LESS. I DON'T RECALL THE EXACT NUMBER  
19 NATIONWIDE. BETWEEN 40 AND 50 PERCENT, AS I RECALL, BUT, AGAIN,  
20 I'M NOT QUITE SURE.

21 **Q** DO YOU KNOW WHETHER CALIFORNIA'S AVERAGE PRISON SENTENCE IS  
22 BELOW NATIONAL AVERAGE AS WELL?

23 **A** IT IS.

24 **Q** AND I'VE HEARD THAT -- OR, STRIKE THAT.

25 DOES IT SOUND RIGHT TO YOU THAT THE AVERAGE PRISON

1 SENTENCE IS APPROXIMATELY 47 MONTHS IN CALIFORNIA?

2 **A** YES.

3 **Q** AND DOES IT SOUND RIGHT TO YOU THAT THE AVERAGE PRISON  
4 SENTENCE NATIONALLY IS ABOUT 57 MONTHS?

5 **A** YES.

6 **Q** OKAY. IT'S ALSO TRUE -- OR IS IT TRUE THAT CALIFORNIA  
7 INMATES ALSO SERVED LESS TIME IN PRISON THAN PRISONERS  
8 NATIONALLY, CORRECT?

9 **A** THAT'S TRUE.

10 **Q** AND THEY SERVE APPROXIMATELY EIGHT MONTHS ON AVERAGE LESS  
11 THAN THE NATIONAL AVERAGE, CORRECT?

12 **A** CORRECT.

13 **Q** SECRETARY CATE, TO YOUR UNDERSTANDING, WHAT IS THE SINGLE  
14 MOST SIGNIFICANT FACTOR THAT ACCOUNTS FOR CALIFORNIA'S LARGE  
15 PRISON POPULATION?

16 **A** I THINK CALIFORNIA'S LARGE POPULATION OF CITIZENS, OF  
17 RESIDENTS IS PROBABLY THE LARGEST FACTOR.

18 **Q** AND, AGAIN, THERE'S BEEN TESTIMONY IN THIS CASE THAT CRIME  
19 RATES HAVE GONE DOWN NATIONALLY. DO YOU BELIEVE THAT TO BE TRUE  
20 AS WELL?

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

22 **Q** DESPITE THAT FACT THE CALIFORNIA PRISON POPULATION HAS  
23 INCREASED OVER TIME, CORRECT?

24 **A** IT HAS.

25 **Q** OKAY. AND IS THAT INCREASE IN PRISON POPULATION DUE MOSTLY

1 TO INCREASE IN POPULATION IN THE STATE OF CALIFORNIA?

2 **MR. SPECTER:** OBJECTION. LACKS FOUNDATION, CALLS FOR  
3 EXPERT OPINION AND BEYOND COMPETENCE OF THIS WITNESS.

4 **JUDGE HENDERSON:** IT'S CONSISTENT WITH THE TESTIMONY  
5 HE'S GIVEN. HE MAY GIVE HIS BEST UNDERSTANDING.

6 **THE WITNESS:** I KNOW CALIFORNIA'S POPULATION HAS BEEN  
7 GROWING ABOUT TWO PERCENT A YEAR, AND THE PRISON POPULATION OVER  
8 THE LAST TEN YEARS HAS GROWN AT ABOUT ONE PERCENT.

9 **BY MR. MELLO**

10 **Q** AND, SECRETARY CATE, HAS THE DEPARTMENT UNDER YOUR  
11 LEADERSHIP BEGAN TAKING STEPS, OR ALREADY BEGUN TAKING STEPS  
12 WHEN YOU CAME ON BOARD, TO ADDRESS THE CROWDING PROBLEM?

13 **A** YES.

14 **Q** WHAT MEASURES HAVE YOU TAKEN AND ARE YOU TAKING?

15 **A** WELL, AS YOU SAID, I THINK THE DEPARTMENT UNDERTOOK MANY OF  
16 THESE BEFORE I WAS APPOINTED. I THINK THE MOST SIGNIFICANT ARE  
17 THE PAROLE REFORM. WE NOW HAVE A VALIDATED RISK ASSESSMENT  
18 TOOL, MEANING WE CAN ASSESS THE RISK OF PAROLEES WHO ARE  
19 RETURNING TO THE COMMUNITY, AND WITH THAT WE'VE ESTABLISHED A  
20 PAROLE VIOLATION DECISION MAKING INSTRUMENT, WHICH ALLOWS AGENTS  
21 AND THE BOARD OF PAROLE HEARING DEPUTY COMMISSIONERS TO MAKE  
22 BETTER INFORMED DECISIONS ABOUT WHICH PAROLEES SHOULD BE  
23 RETURNED TO THE COMMUNITY FOR PROGRAM AND WHICH SHOULD BE  
24 RETURNED TO CUSTODY. I THINK THAT'S GOING TO HELP OUR  
25 POPULATION.

1 WE ARE INCREASING OUR EFFORTS TOWARDS UTILIZING OUR  
2 PROGRAMS IN PRISONS, OUR REHABILITATIVE PROGRAMS, AND HAVE SHOWN  
3 GREAT SUCCESS, AT LEAST IN THE LAST SIX MONTHS OF INCREASING THE  
4 UTILIZATION OF THOSE PROGRAMS. AND WE'RE ADDING DRUG TREATMENT  
5 BEDS AS WELL FOR THAT PURPOSE. AND, FINALLY, WE ARE SENDING, AT  
6 THIS POINT, ABOUT 5,600 -- WE'VE SENT 5,600 INMATES OUT OF STATE  
7 WHICH HAS RESULTED IN CLEARING ABOUT 17 GYMS AND SIX DAYROOMS.

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

9 **MR. MELLO:** COUPLE MORE?

10 **BY MR. MELLO**

11 **Q** HAVE THERE ALSO BEEN EFFORTS TOWARD -- DIRECTED TOWARDS  
12 CONSTRUCTION?

13 **A** OH, YES. WE HAVE SUBMITTED FOUR WHAT WE CALL IN-FILL  
14 PROJECTS, BUT THEY'RE BASICALLY PRISON EXPANSION PROJECTS, TO  
15 THE DEPARTMENT OF FINANCE. DEPARTMENT OF FINANCE HAS FORWARDED  
16 THREE OF THOSE TO THE JOINT LEGISLATIVE BUDGET COMMITTEE FOR  
17 REVIEWED AS WELL.

18 THE NORTHERN CALIFORNIA REENTRY FACILITY HAS BEEN  
19 SUBMITTED TO THE LEGISLATURE FOR THEIR REVIEW. WE'RE WAITING  
20 FOR EITHER A -- THE GO-AHEAD FROM THE ATTORNEY GENERAL'S OFFICE  
21 THAT WE CAN GET A CLEAN BOND OPINION OR A FIX FROM THE  
22 LEGISLATURE TO ASSEMBLY BILL 900, WHICH WOULD ALLOW US TO BEGIN  
23 THOSE CONSTRUCTION PROJECTS.

24 WE'RE ALSO WORKING WITH COMMUNITIES TO GET AN OPTION  
25 OR PURCHASE LAND ON WHICH WE CAN BUILD APPROXIMATELY 3,000

1 REENTRY BEDS. THAT PROCESS IS GOING ON THROUGH -- I THINK IT'S  
2 SIX DIFFERENT -- EXCUSE ME -- 12 DIFFERENT COMMUNITIES AT THIS  
3 TIME. SO I THINK THOSE ARE THE PRIMARY EFFORTS.

4 **Q** AND ARE YOUR -- ARE CDCR'S EFFORTS TO REDUCE ITS INMATE  
5 POPULATION DRIVEN BY THE EFFORT TO REACH A PARTICULAR POPULATION  
6 NUMBER?

7 **A** NO. WE'RE TRYING TO USE THE BEST CORRECTIONAL PRACTICE AND  
8 SCIENCE TO REDUCE OUR POPULATION SAFELY, BUT THERE'S NO  
9 PARTICULAR NUMBER THAT WE'RE TRYING TO REACH. I MEAN, I THINK  
10 THAT THE ADMINISTRATION'S GOAL AND MY GOAL IS TO GET RID OF WHAT  
11 WE CALL NON-TRADITIONAL BEDS OR BAD BEDS, MEANING BEDS IN GYMS  
12 OR BEDS IN DAYROOMS. THEY MAKE OUR BUSINESS MORE DIFFICULT.

13 **Q** HAVE YOU BEEN SUCCESSFUL IN ELIMINATING SOME OF THOSE  
14 NON-TRADITIONAL BEDS?

15 **A** LARGELY THROUGH OUR OUT-OF-STATE PROGRAM, WE HAVE BEEN ABLE  
16 TO REDUCE OUR NUMBER FROM APPROXIMATELY 20,000 TO JUST UNDER  
17 14,000 NOW.

18 **Q** AND ARE YOU FAMILIAR WITH THE JANUARY BUDGET PROPOSAL WHICH  
19 AGAIN HAPPENED BEFORE YOU WERE EVEN SECRETARY WITH RESPECT TO  
20 CDCR?

21 **A** YES.

22 **Q** AND WHAT WAS THAT BUDGET PROPOSAL, TO YOUR UNDERSTANDING?

23 **A** AS IT RELATED TO CDCR, THERE WAS -- WELL, THE GOVERNOR  
24 PROPOSED A TEN PERCENT ACROSS-THE-BOARD CUT TO DEAL WITH THE  
25 BUDGET PROBLEMS IN CALIFORNIA, AND THE SOLUTION FROM CDCR AT



1 THAT TIME WAS THE RELEASE OF 22,000 NON-SERIOUS, NONVIOLENT  
2 INMATES BEFORE THEIR TERMS EXPIRED.

3 **Q** WAS THAT BUDGET PROPOSAL ADOPTED?

4 **A** NO, IT WAS TAKEN OUT IN WHAT'S KNOWN AS THE MAY REVISION TO  
5 THE BUDGET.

6 **Q** MR. SECRETARY, TO YOUR KNOWLEDGE, HAS THE PROJECTED BUDGET  
7 DEFICIT FOR THE STATE OF CALIFORNIA INCREASED SINCE  
8 JANUARY 2008?

9 **A** IT HAS.

10 **Q** AND DID THE GOVERNOR RECENTLY CONVENE A SPECIAL SESSION OF  
11 THE LEGISLATURE TO ADDRESS THIS INCREASED BUDGET DEFICIT OR  
12 PROJECTED DEFICIT?

13 **A** HE CONVENED A SPECIAL SESSION OF THE LAST LEGISLATURE WHICH  
14 ENDED NOVEMBER 30TH, AND THERE'S BEEN TALK OF ANOTHER SPECIAL  
15 SESSION. I'M NOT SURE IF IT'S BEEN OFFICIALLY CONVENED, THOUGH.

16 **Q** OKAY. ARE YOU FAMILIAR THAT THERE WAS A BUDGET PROPOSAL --  
17 STRIKE THAT.

18 WHAT WAS THE FOCUS OF THAT LAST SESSION, TO YOUR  
19 KNOWLEDGE, ECONOMICALLY?

20 **A** WELL, THE FOCUS WAS TO CUT THE BUDGET OR RAISE REVENUE, DO  
21 SOMETHING TO BALANCE CALIFORNIA'S FISCAL SITUATION, AND, I MEAN,  
22 SO ALL DEPARTMENTS TOOK PART.

23 **Q** OKAY. IS IT YOUR UNDERSTANDING THAT THE PROJECTED DEFICIT  
24 FOR '07/'08, '08/'09 AND '09/'10 IS BIGGER THAN EVEN  
25 ANTICIPATED?

1 **A** YES, THAT'S TRUE.

2 **MR. MELLO:** THANK YOU. NOTHING FURTHER.

3 **JUDGE HENDERSON:** ANYTHING FROM INTERVENORS WITH THIS  
4 WITNESS?

5 **MR. MITCHELL:** NO, YOUR HONOR. NO QUESTIONS.

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

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

8 **BY MR. SPECTER**

9 **Q** GOOD MORNING.

10 **A** GOOD MORNING.

11 **Q** SHORTLY AFTER YOU BECAME SECRETARY, YOU GAVE AN INTERVIEW TO  
12 THE RADIO STATION KQED; DO YOU RECALL THAT?

13 **A** I DO.

14 **Q** AND I ASKED YOU ABOUT THIS AT YOUR DEPOSITION. YOU SAID:

15 "WHEN YOU ARE INCARCERATING 10,000 A MONTH  
16 AND RELEASING 10,000 A MONTH, 120,000 A YEAR,  
17 WHICH IS JUST AN EXTRAORDINARY NUMBER, IT IS A  
18 BURDEN ON OUR STAFF, AND MISTAKES GET MADE, AND  
19 THAT'S JUST ANOTHER REASON FOR TRYING TO HANDLE  
20 OUR OVERCROWDING."

21 THAT'S WHAT YOU SAID, RIGHT?

22 **A** I DID.

23 **Q** AND YOU BELIEVE THAT TO BE TRUE?

24 **A** I DO.

25 **Q** AND WHEN YOU WERE INSPECTOR GENERAL, YOU WOULD PUT OUT PRESS

1 RELEASES, CORRECT?

2 **A** CORRECT.

3 **Q** AND IN APRIL OF 2006, YOU PUT OUT A PRESS RELEASE ABOUT AN  
4 AUDIT THAT YOU HAD DONE; IS THAT CORRECT?

5 **A** I'M SURE IT IS. I DON'T KNOW WHICH ONE YOU ARE REFERRING  
6 TO.

7 **Q** IT'S THE AUDIT YOU DID OF ALL THE OTHER AUDITS TO DETERMINE  
8 WHAT PERCENTAGE OF RECOMMENDATIONS THE CDCR HAD COMPLIED WITH;  
9 DO YOU RECALL THAT?

10 **A** YES, WE CALLED IT THE ACCOUNTABILITY AUDIT.

11 **Q** RIGHT. IN THAT PRESS RELEASE YOU SAID:

12 "SEVERELY HAMPERING THE DEPARTMENT'S ABILITY  
13 TO ADDRESS ITS PROBLEM, THE INSPECTOR GENERAL  
14 NOTED, IS AN INMATE POPULATION THAT HAS PRISONS  
15 STRAINING AT ALMOST DOUBLE THE DESIGN CAPACITY."

16 DO YOU RECALL THAT?

17 **A** YES.

18 **Q** AND THAT STATEMENT IS TRUE NOW AS WELL, ISN'T IT?

19 **A** IT IS. OVERPOPULATION MAKES EVERYTHING WE DO MORE  
20 DIFFICULT.

21 **Q** AND YOU ALSO SAID IN THAT SAME PRESS RELEASE:

22 "AS THE INMATE POPULATION INCREASES,  
23 CONTROLLING VIOLENCE, OFFERING EDUCATION,  
24 DELIVERING HEALTHCARE, MANAGING OVERCROWDING,  
25 AND CONTROLLING COSTS BECOME MORE DIFFICULT."

1 DO YOU RECALL SAYING THAT?

2 **A** YES.

3 **Q** THAT'S TRUE NOW AS WELL, CORRECT?

4 **A** IT IS.

5 **Q** AND IT'S YOUR POSITION THAT OVERCROWDING NEEDS TO BE REDUCED  
6 BECAUSE IT MAKES EVERYTHING EASIER TO DO IN A PRISON, CORRECT?

7 **A** YES.

8 **Q** AND BECAUSE IT MAKES EVERYTHING EASIER, IT WILL HAVE AN  
9 IMPACT ON THE RECEIVER'S ABILITY TO PROVIDE HEALTHCARE TO  
10 PRISONERS, CORRECT?

11 **A** I THINK IT WILL BE. OBVIOUSLY, THAT'S FEWER DOCTORS THAT  
12 NEED TO BE RECRUITED, FOR EXAMPLE, AND LESS CLINICAL SPACE THAT  
13 WOULD HAVE TO BE BUILT, LESS MONEY THAT WOULD NEED TO BE SPENT  
14 ON THOSE EXAMINATIONS, ET CETERA.

15 **Q** SO THE ANSWER TO MY QUESTION IS YES?

16 **A** YES.

17 **Q** OKAY. NOW, YOU BELIEVE YOUR CHARGE AS SECRETARY IS TO  
18 ENSURE THAT ANY STRATEGY THE CDCR EMPLOYS TO REDUCE THE PRISON  
19 POPULATION DOES NOT CAUSE MORE VICTIMIZATION IN SOCIETY; IS THAT  
20 ACCURATE?

21 **A** THAT'S ONE OF THEM, YES.

22 **Q** AND YOU BELIEVE THAT THE MEASURE THAT YOU USE IN EVALUATING  
23 WHETHER CDCR'S STRATEGIES ARE SAFE IS THEIR EFFECT ON THE  
24 OVERALL CRIME RATE, TRUE?

25 **A** I THINK THAT'S PROBABLY PART OF THE CALCULUS.

1 Q IT'S THE MAIN CALCULUS, ISN'T IT?

2 A IT'S DEFINITELY A VERY IMPORTANT CALCULUS, YES.

3 Q AND WHEN YOU RECOMMEND MEASURES TO REDUCE THE POPULATION TO  
4 THE GOVERNOR, YOU DO THAT BELIEVING THAT IT WOULDN'T HAVE AN  
5 ADVERSE EFFECT ON THE CRIME RATE; ISN'T THAT TRUE?

6 A TAKEN AS -- YES, TAKEN AS A WHOLE, TO THE EXTENT YOU CAN  
7 REDUCE PRISON POPULATION, PROVIDE ADDITIONAL PROGRAMMING, AND  
8 HOPEFULLY REDUCE RECIDIVISM THAT WAY, AND RELEASE THOSE INMATES  
9 WHO YOU BELIEVE ARE AT LEAST RISK, OR NOT INCARCERATE THOSE  
10 INMATES YOU BELIEVE ARE AT LEAST RISK TO THE COMMUNITY, THOSE  
11 ARE THE KINDS OF CONSIDERATIONS YOU WANT TO THINK ABOUT, YEAH.

12 Q WHEN YOU MAKE A RECOMMENDATION TO THE GOVERNOR, DO YOU MAKE  
13 A RECOMMENDATION TO THE GOVERNOR BELIEVING THAT IT WOULD MAKE  
14 THE COMMUNITY MORE DANGEROUS?

15 A NO.

16 Q SO WHEN YOU MAKE RECOMMENDATIONS TO THE GOVERNOR, YOU  
17 BELIEVE IT WOULD MAKE THE COMMUNITY JUST AS SAFE OR SAFER,  
18 CORRECT?

19 A WELL, IT DEPENDS ON THE CIRCUMSTANCES. WE'RE ALSO  
20 CONSTRAINED RIGHT NOW BY OUR BUDGET, AND WE HAVE BEEN FOR THE  
21 LAST TWO YEARS, AND SO YOU WANT TO DO THE BEST YOU CAN WITH THE  
22 MONEY THAT YOU HAVE TO SPEND. SO I MEAN, OBVIOUSLY, THE SAFEST  
23 THING IS INCARCERATE EVERYONE. STATE WOULD NEVER BE ABLE TO  
24 AFFORD THAT, NOR SHOULD IT.

25 Q OKAY. NOW, AS YOU TESTIFIED BEFORE, DEPARTMENT RELEASES

1 OVER 10,000 PRISONERS A MONTH, CORRECT?

2 **A** CORRECT.

3 **Q** AND AT THE TIME OF YOUR DEPOSITION, WHICH WAS IN LATE  
4 AUGUST, SOME PRISONERS WERE OVERDUE FOR RELEASE BECAUSE THERE  
5 WASN'T SUFFICIENT STAFF TO PROCESS THEIR PAPERWORK, CORRECT?

6 **A** THAT'S TRUE.

7 **Q** RIGHT. ABOUT 50 PERCENT OF THE PRISONERS HAVE WALKED OUT OF  
8 PRISON HAVING DONE NOTHING BUT LIE ON THEIR BUNK AND WALK ON THE  
9 YARD, TRUE?

10 **A** TRUE.

11 **Q** IT'S UNREASONABLE TO BELIEVE YOU EXPECT THESE PRISONERS ARE  
12 GOING TO COME OUT ANY DIFFERENT THAN HOW THEY CAME IN, EXCEPT  
13 FOR PERHAPS HAVING LEARNED HOW TO BE A BETTER CRIMINAL, CORRECT?

14 **A** THAT'S TRUE.

15 **Q** SOME OF THE PRISONERS RELEASED ARE RELEASED DIRECTLY FROM  
16 SEGREGATION UNITS, CORRECT?

17 **A** CORRECT.

18 **Q** THOSE PRISONERS, WHILE THEY ARE IN THE SEGREGATION UNITS,  
19 WHEN THEY'RE OUT OF THEIR CELL, THEY'RE IN SHACKLES AND ESCORTED  
20 EVERYWHERE THEY GO BECAUSE YOU BELIEVE THEY'RE CONSIDERED  
21 DANGEROUS, RIGHT?

22 **A** CORRECT.

23 **Q** AND SO WHEN THEY GET RELEASED, THEY'RE TAKEN TO THE GATE IN  
24 THOSE SHACKLES AND ESCORTS, CORRECT?

25 **A** CORRECT.

1 **Q** AND THE NEXT -- AND WHEN THEY'RE -- WHEN THEY'RE RELEASED,  
2 THEY GET \$200 MINUS THE COST OF THE BUS FARE, AND THEY'RE  
3 DROPPED OFF AT THE BUS STATION, CORRECT?

4 **A** THEY'RE GIVEN FUNDS. SOME INMATES WHO ARE SERIOUS AND  
5 VIOLENT ARE ACTUALLY PICKED UP BY A PAROLE AGENT AND TAKEN TO  
6 THEIR COMMUNITY, BUT OTHERWISE YOUR STATEMENT IS CORRECT.

7 **Q** AND YOU DON'T BELIEVE THAT IT'S SAFE -- THAT THAT SITUATION  
8 IS SAFE FOR THE COMMUNITY, DO YOU?

9 **A** THAT'S WHY WE HAVE BEEN ASKING COMMUNITIES TO PARTNER WITH  
10 US ON OUR REENTRY PROGRAMS.

11 **JUDGE KARLTON:** SO THE ANSWER IS YES, THAT THAT  
12 PRESENT SYSTEM IS NOT AS SAFE AS YOU COULD MAKE IT?

13 **THE WITNESS:** THAT'S RIGHT. RIGHT.

14 **MR. SPECTER:** THANK YOU.

15 **BY MR. SPECTER**

16 **Q** AND YOU BELIEVE THAT THE STATE HAS AN OBLIGATION TO MAKE  
17 SURE THAT PRISONERS ARE REINTEGRATED SAFELY INTO THEIR  
18 COMMUNITIES, CORRECT?

19 **A** TO THE EXTENT POSSIBLE, YES.

20 **Q** BUT AT THE PRESENT TIME, YOU CAN'T SATISFY THAT OBLIGATION,  
21 CAN YOU?

22 **A** NOT TO THE EXTENT THAT WE WOULD LIKE, NO.

23 **Q** AND YOU BELIEVE THAT THE STATE HAS AN OBLIGATION TO DO THAT  
24 IN A HURRY, DON'T YOU, YOUR WORD?

25 **A** I DO.

1 Q BUT YOU DON'T HAVE ANY PARTICULAR TIMEFRAME IN MIND, DO YOU?

2 A AS FAST AS POSSIBLE IS THE TIMEFRAME.

3 Q RIGHT. OKAY.

4 NOW, WHEN YOU TOOK OVER AS SECRETARY, YOU HAD WHAT'S  
5 CALLED AN INTEGRATED STRATEGY TO REDUCE OVERCROWDING, CORRECT?

6 A THAT'S TRUE.

7 Q AND THAT WAS IN THE -- THAT WAS DEVELOPED IN THE SPRING OR  
8 EARLY SUMMER OF THIS YEAR, RIGHT?

9 A RIGHT.

10 Q AND YOU PRESENTED THAT STRATEGY TO THE GOVERNOR, AND HE  
11 APPROVED IT, CORRECT?

12 A CORRECT. WELL, TO THE GOVERNOR'S OFFICE.

13 Q GOVERNOR'S OFFICE. AND IT WAS ONE OF YOUR TOP PRIORITIES  
14 WHEN YOU BECAME SECRETARY, RIGHT?

15 A RIGHT.

16 Q BECAUSE THAT -- BECAUSE IT WAS A TOP PRIORITY OF YOURS TO  
17 REDUCE CROWDING, CORRECT?

18 A CORRECT.

19 Q AND AT YOUR DEPOSITION IN AUGUST OF THIS YEAR, YOU TESTIFIED  
20 THAT THIS INTEGRATED STRATEGY WAS THE DEPARTMENT'S PRIMARY  
21 RESPONSE TO THE OVERCROWDING CRISIS; DO YOU RECALL THAT?

22 A YES.

23 Q IS IT STILL THE DEPARTMENT'S PRIMARY RESPONSE TO REDUCING  
24 THE OVERCROWDING?

25 A I'M NOT SURE WHAT YOU MEANT OR I MEANT BY THAT BACK THEN,



1 BUT THAT'S OUR PLAN. IT IS STILL OUR PLAN.

2 Q OKAY.

3 A IT'S BEEN CHANGED BY CIRCUMSTANCES OVER THE COURSE OF SIX  
4 MONTHS A LITTLE BIT, BUT ON THE WHOLE IT'S STILL OUR PLAN.

5 Q OKAY. BUT THE PLAN DOESN'T HAVE ANY LEVEL TO MEET, ANY  
6 POPULATION LEVEL TO MEET, DOES IT?

7 A YOU MEAN A POPULATION GOAL?

8 Q YES.

9 A TO REACH TO? NO.

10 Q OKAY. SO PART OF THE PLAN -- THERE ARE SEVERAL COMPONENTS  
11 TO THE PLAN. YOU OUTLINED THEM IN RESPONSE TO MR. MELLO'S  
12 QUESTIONS. PART OF THE PLAN WAS THE CONSTRUCTION OF NEW PRISON  
13 BEDS, RIGHT?

14 A RIGHT.

15 Q THAT HAD TWO OR AT LEAST TWO MAJOR SUBPARTS. ONE IS THE  
16 RECEIVER'S TEN THOUSAND BEDS, RIGHT?

17 A THREE SUBPARTS, IF YOU INCLUDE THE RECEIVER, THE IN-FILL  
18 PROJECTS, OR THE PRISON EXPANSION AND REENTRY.

19 Q RIGHT. I WON'T ARGUE WITH YOU ABOUT THE CLASSIFICATION OF  
20 MY SUBPARTS, BUT THAT'S RIGHT.

21 SO THE RECEIVER'S TEN THOUSAND BEDS, CORRECT, WAS ONE  
22 OF THE COMPONENTS OF THE PLAN?

23 A WE WERE -- WE ADDED THE RECEIVER'S TEN THOUSAND, ASSUMING  
24 THAT HE WOULD BE GIVEN THE AUTHORITY TO BUILD THEM.

25 Q AND HE HAS NOT BEEN GIVEN THAT AUTHORITY, THE FUNDS TO BUILD

1 THOSE BEDS, CORRECT?

2 **A** THAT'S CORRECT.

3 **Q** AND YOU, THROUGH -- YOU'RE A DEFENDANT IN THE PLATA CASE,  
4 YOU KNOW THAT, RIGHT?

5 **A** YES.

6 **Q** AND THROUGH -- YOU, THROUGH YOUR ATTORNEY, HAVE GONE TO  
7 JUDGE -- THE COURT --

8 **JUDGE KARLTON:** JUDGE HENDERSON.

9 **BY MR. SPECTER**

10 **Q** THE SINGLE JUDGE COURT IN PLATA AND OPPOSED THE  
11 AUTHORIZATION FOR THE RECEIVER TO RECEIVE \$250 MILLION TO  
12 CONTINUE HIS WORK ON THOSE FUNDS, CORRECT?

13 **A** THAT'S TRUE.

14 **Q** OKAY. YOU ARE AWARE THAT JUDGE HENDERSON ISSUED AN ORDER  
15 FOR THAT 250 -- FOR THE STATE TO PROVIDE THAT \$250 MILLION,  
16 CORRECT?

17 **A** YES.

18 **Q** AND YOU, THROUGH YOUR ATTORNEYS, PETITIONED THE NINTH  
19 CIRCUIT FOR A STAY OF THAT ORDER?

20 **A** THAT'S TRUE.

21 **Q** AND THE NINTH CIRCUIT GRANTED THAT STAY, CORRECT?

22 **A** THAT'S TRUE.

23 **Q** OKAY. THE OTHER PART OF THE CONSTRUCTION PROJECTS WERE THE  
24 IN-FILL AND REENTRY BEDS, CORRECT?

25 **A** THAT'S RIGHT.

1 **Q** AND BECAUSE THE LEGISLATURE REFUSED, THERE'S WHAT WE CALL --  
2 OR WHAT YOU CALL CLEAN-UP LEGISLATION, CORRECT, THAT WAS BEING  
3 PROPOSED IN THE LEGISLATURE?

4 **A** THAT'S RIGHT.

5 **Q** AND THAT WAS TO FIX CERTAIN TECHNICAL PROBLEMS THAT HAVE  
6 PREVENTED THE MONEY FROM BEING ACTUALLY USED FOR THE PURPOSE BY  
7 WHICH IT WAS INTENDED TO BE --

8 **JUDGE KARLTON:** I THINK HE MEANS AB 900. IS THAT  
9 WHAT YOU MEAN, SIR?

10 **MR. SPECTER:** YES. THANK YOU, YOUR HONOR.

11 **BY MR. SPECTER**

12 **Q** IS THAT RIGHT?

13 **A** I'M SORRY. THE QUESTION ABOUT AB 900?

14 **Q** THE CLEAN-UP LEGISLATION WAS TO ALLOW THE FUNDS THAT WERE  
15 APPROPRIATED IN AB 900 TO ACTUALLY BE SPENT, CORRECT?

16 **A** CORRECT.

17 **JUDGE KARLTON:** WAIT A MINUTE. I THOUGHT AB 900 WAS  
18 THE BOND MEASURE; IS THAT RIGHT?

19 **THE WITNESS:** THAT'S RIGHT.

20 **JUDGE KARLTON:** SO IT WASN'T A QUESTION OF MONEY THAT  
21 HAD BEEN ALLOCATED; IT WAS AN AUTHORIZATION TO SELL BONDS.

22 **THE WITNESS:** CORRECT, AND --

23 **BY MR. SPECTER**

24 **Q** BUT THEY CAN'T SELL THE BONDS BECAUSE OF TECHNICAL PROBLEMS;  
25 IS THAT CORRECT, MR. CATE?

1 **A** CORRECT.

2 **Q** AND THE CLEAN-UP LEGISLATION WAS TO, QUOTE, FIX THOSE  
3 TECHNICAL PROBLEMS, CORRECT?

4 **A** THAT'S RIGHT.

5 **Q** AND BECAUSE THE CLEAN-UP LEGISLATION FAILED, THE STATE  
6 CANNOT PAY FOR THE CONSTRUCTION OF THE ADDITIONAL COUNTY JAILS  
7 REENTRY FACILITIES AND IN-FILL PROJECTS; ISN'T THAT RIGHT?

8 **A** NO.

9 **Q** CAN YOU PULL UP --

10 **JUDGE KARLTON:** I DON'T KNOW WHETHER THAT MEANS NO,  
11 IT'S NOT CORRECT, OR NO, YOU CAN'T PAY FOR IT.

12 **THE WITNESS:** IT ACTUALLY MEANS NO IN PART TO YOUR  
13 QUESTION. YOU NAMED A NUMBER OF DIFFERENT FACILITIES, AND THE  
14 ATTORNEY GENERAL -- IF I COULD JUST CLARIFY. THE ATTORNEY  
15 GENERAL HAS INDICATED THAT THE JAIL FACILITIES CAN BE BUILT BY  
16 THE SHERIFF. HE ISSUED THAT CLEAN BOND -- HE INDICATED THAT A  
17 CLEAN BOND OPINION COULD BE ISSUED IN THIS LAST MONTH OR SO.  
18 WE'RE STILL WAITING FOR A RESPONSE ON THE REST.

19 **BY MR. SPECTER**

20 **Q** OKAY. AND YOU DESCRIBED THE FAILURE OF THE LEGISLATURE TO  
21 PASS THE CLEAN-UP LEGISLATION AS A MAJOR SETBACK TO YOUR  
22 STRATEGY TO REDUCE OVERCROWDING; DID YOU NOT?

23 **A** I PROBABLY DID, AND IT WAS -- AND THAT'S WHY WE'RE  
24 CONTINUING TO SEEK THOSE FIXES.

25 **Q** NOW, IN YOUR VIEW, PAROLE REFORM IS ANOTHER PART OF THE

1 INTEGRATED STRATEGY, CORRECT?

2 **A** CORRECT.

3 **Q** AND YOU BELIEVE IT CAN BE DONE SAFELY AND REDUCE THE PRISON  
4 POPULATION AT THE SAME TIME, CORRECT?

5 **A** IF DONE CORRECTLY, YES.

6 **Q** RIGHT. BUT YOU DON'T KNOW HOW MUCH THE PRISON POPULATION  
7 WILL BE REDUCED BY THE PAROLE REFORMS, DO YOU?

8 **A** I THINK WE ESTIMATED 8,000 AVERAGE DAILY POPULATION IN OUR  
9 PRISON OVERCROWDING PLAN, BUT MY BELIEF IS YOU NEED TO DO THE  
10 CORRECT REFORMS AND LET THE POPULATION LEVEL WHERE IT WILL AS A  
11 RESULT OF DOING THE RIGHT THING AND PAROLE.

12 **Q** AND THE RIGHT THING, ACCORDING TO YOUR DEPARTMENT, IS TO DO  
13 A TWO-YEAR PILOT PROJECT ON THIS PAROLE REFORM, CORRECT?

14 **A** WE'RE ACTUALLY DOING A 90-DAY PILOT PROJECT IN FOUR  
15 DISTRICTS, THEN WE ARE GOING TO ROLL OUT TO THE REMAINDER AT  
16 THAT TIME. WE'LL CONTINUE TO STUDY IT OVER THE REMAINING TWO  
17 YEARS, BUT WE'RE GOING FORWARD IN LESS THAN 90.

18 **Q** CAN YOU PULL UP DEFENDANT'S EXHIBIT 1198, PLEASE, AND GO TO  
19 THE SECOND PAGE?

20 (DOCUMENT DISPLAYED.)

21 **BY MR. SPECTER**

22 **Q** THIS IS A MEMO DATED SEPTEMBER 30TH, 2008, FROM THOMAS  
23 HOFFMAN. WHO IS THOMAS HOFFMAN?

24 **A** HE'S OUR DIRECTOR OF PAROLE.

25 **Q** OKAY. AND YOU SEE THE -- RIGHT UNDER THE LITTLE CHART

1 THERE, IT SAYS "THIS PILOT PROGRAM"?

2 **A** CORRECT.

3 **Q** COULD YOU READ THAT FIRST SENTENCE, PLEASE?

4 **A** "THIS PILOT PROGRAM WILL REMAIN IN EFFECT  
5 FOR A 24-MONTH PERIOD FROM NOVEMBER 3, 2008  
6 THROUGH NOVEMBER 3, 2010, AT WHICH TIME IT WILL  
7 LAPSE BY OPERATION OF LAW OR WILL BE PROMULGATED  
8 THROUGH THE ADMINISTRATIVE PROCEDURE ACT."

9 **Q** THANK YOU.

10 **A** BUT I THINK THAT'S JUST A MATTER OF SEMANTICS. THE POINT IS  
11 IS THAT WE'RE GOING TO BE ROLLING OUT THE ENTIRE THING AT 90  
12 DAYS AND THEN STUDYING IT AND MAKING CHANGES ALONG THE WAY  
13 DURING THE COURSE OF THE TWO-YEAR PERIOD.

14 **Q** OKAY. AS OF THE END OF AUGUST, WHICH IS WHEN THE COURT HAS  
15 HELD THAT WE STOP TALKING ABOUT THE CONDITIONS, THERE WAS ABOUT  
16 4,788 OUT-OF-STATE TRANSFER BEDS -- PEOPLE IN OUT-OF-STATE BEDS,  
17 CORRECT?

18 **A** THAT'S RIGHT.

19 **Q** NOW, IN THE GOVERNOR'S SPECIAL SESSION FOR THE NOVEMBER 2008  
20 LEGISLATIVE SPECIAL SESSION, HE RECOMMENDED VARIOUS PRISON  
21 POPULATION REDUCING MEASURES, CORRECT?

22 **A** CORRECT.

23 **Q** AND THOSE -- DID YOU RECOMMEND THAT HE MAKE THOSE PROPOSALS?

24 **A** I DEFINITELY WAS CONSULTED AND TOOK PART IN THAT  
25 DECISION-MAKING PROCESS. I BROUGHT SOME OF THOSE IDEAS FORWARD.

1 SOME WERE IDEAS THAT OTHER STAKEHOLDERS HAD BROUGHT FORWARD THAT  
2 WE ADOPTED. SOME WERE IDEAS THAT HAD BEEN BANDIED AROUND  
3 BEFORE.

4 **Q** DID YOU BELIEVE THAT -- DID YOU TELL THE GOVERNOR THAT ANY  
5 OF THOSE PROPOSALS SHOULDN'T BE PUT FORWARD BECAUSE YOU DIDN'T  
6 BELIEVE THEY WERE SAFE FOR THE COMMUNITY?

7 **A** I'M SORRY. CAN YOU REMIND ME WHICH PROPOSALS WE'RE TALKING  
8 ABOUT AGAIN?

9 **Q** THE NOVEMBER 2008 BUDGET PROPOSALS.

10 **A** OKAY.

11 **JUDGE KARLTON:** DID YOU RECOMMEND HE NOT ADOPT ANY OF  
12 THEM BECAUSE THEY ADVERSELY AFFECTED PUBLIC SAFETY?

13 **THE WITNESS:** NO. I RECOMMENDED, IN LIGHT OF THE  
14 BUDGET CRISIS WE WERE IN, THIS WAS THE BEST WE COULD DO.

15 **BY MR. SPECTER**

16 **Q** THOSE RECOMMENDATIONS INCLUDED NO PAROLE SUPERVISION FOR  
17 OFFENDERS WITHOUT A CONVICTION FOR A NON-SERIOUS, NONVIOLENT, OR  
18 SEXUAL CRIME, CORRECT?

19 **A** AND THOSE WHO HAD -- IT WAS THOSE WHO WERE NOT CONVICTED FOR  
20 NON-SERIOUS, NONVIOLENT, NON-SEX, BUT YOU ALSO HAVE TO HAVE  
21 NEVER BEEN CONVICTED OF A SERIOUS, VIOLENT OR SEX CRIME IN YOUR  
22 PAST.

23 **Q** CORRECT. AND IT ALSO INCLUDED UP TO FOUR MONTHS FOR EACH  
24 PROGRAM SUCCESSFULLY COMPLETED BY A PRISONER, CORRECT?

25 **A** CORRECT.

1 Q AND SO IF A PRISONER COMPLETED FOUR PROGRAMS, HE COULD GET A  
2 YEAR OFF OF HIS SENTENCE UNDER THAT SCHEME IF IT WAS ENACTED,  
3 CORRECT?

4 A WELL, THE DETAILS OF WHETHER THERE WOULD BE A CAP ON THE  
5 AMOUNT OF CREDITS YOU COULD EARN WERE TO BE DETERMINED AT A  
6 LATER DATE, BUT YOU COULD EARN UP TO THREE MONTHS CREDIT FOR AS  
7 YOU DESCRIBED.

8 Q FOUR MONTHS, I THINK.

9 A OR FOUR MONTHS, RIGHT.

10 Q IT WOULD ALSO PROVIDE THAT PRISONERS WOULD GET DAY-FOR-DAY  
11 CREDIT, THOSE WHO WERE ELIGIBLE FOR IT, FOR OBEYING THE PRISON  
12 RULES, CORRECT?

13 A CORRECT.

14 Q THIS WOULD RESULT IN EARLIER RELEASE OF SOME PRISONERS,  
15 RIGHT?

16 A NO. IT WOULD RESULT IN THEM SERVING LESS TIME, BUT THEY  
17 WOULD SERVE THE TIME PRESCRIBED BY LAW.

18 Q THEY WOULD GET OUT OF PRISON LESS -- THEY WOULD GET OUT OF  
19 PRISON EARLIER, WOULDN'T THEY?

20 A EARLIER THAN THEY WOULD HAVE BEEN, YES.

21 Q OKAY. AND YOU ALSO -- THE GOVERNOR ALSO PROPOSED  
22 DAY-FOR-DAY CREDIT FOR PRISONERS WHO ARE IN JAIL AWAITING THEIR  
23 TRANSFER TO STATE PRISON, CORRECT?

24 A CORRECT.

25 Q AND THIS WOULD RESULT IN PRISONERS GETTING OUT OF PRISON



1 EARLIER THAN THEY OTHERWISE WOULD HAVE, RIGHT?

2 **A** THAT'S RIGHT.

3 **Q** AND IT ALSO WOULD HAVE PROVIDED ADDITIONAL CREDIT FOR  
4 PRISONERS WHO ARE WAITING FOR AN ASSIGNMENT TO A CONSERVATION  
5 CAMP, CORRECT?

6 **A** CORRECT.

7 **Q** AND THIS WOULD RESULT IN EARLIER RELEASE OF SOME PRISONERS,  
8 CORRECT?

9 **A** EARLIER RELEASE, YES.

10 **Q** AND HOW MANY CREDITS -- WHAT'S THE RATIO OF CREDITS THAT  
11 PRISONERS IN CONSERVATION CAMPS GET NOW?

12 **A** TWO FOR ONE.

13 **Q** SO THIS WOULD GIVE THEM POSSIBLY -- THOSE WHO ARE WAITING TO  
14 GET INTO CONSERVATION CAMPS, WAS YOUR INTENT TO GIVE THOSE  
15 PRISONERS TWO-FOR-ONE CREDITS?

16 **A** YES.

17 **Q** SO THEY WOULD GET TWO-FOR-ONE CREDITS EVEN THOUGH THEY  
18 WEREN'T WORKING IN THE CAMP; IS THAT RIGHT?

19 **A** BECAUSE THEY ARE IN THE PROCESS OF BEING TRAINED AND GOING  
20 TO THE CAMPS, YES.

21 **Q** AND YOU ALSO -- OR, I'M SORRY, THE GOVERNOR ALSO PROPOSED  
22 INCREASING THE STATUTORY MONETARY THRESHOLD FOR DETERMINING  
23 WHETHER PROPERTY CRIMES COULD BE PROSECUTED AS GRAND THEFT,  
24 CORRECT?

25 **A** CORRECT.

1 Q THAT'S BECAUSE THE STATUTORY LIMIT HASN'T BEEN RAISED  
2 SOMEWHERE IN THE 20 YEARS, CORRECT?

3 A I'M NOT SURE OF THE NUMBER OF YEARS, BUT FOR MANY YEARS,  
4 YES.

5 Q IT HASN'T CAUGHT UP WITH INFLATION, IN OTHER WORDS, RIGHT?

6 A THAT'S RIGHT.

7 Q AND THIS WOULD RESULT IN LESS OFFENDERS COMING TO STATE  
8 PRISON; ISN'T THAT RIGHT?

9 A IT WOULD.

10 Q AND THE NOVEMBER SPECIAL SESSION ENDED WITHOUT ANY  
11 LEGISLATIVE ACTION ON THESE PROPOSALS; ISN'T THAT CORRECT?

12 A THAT'S RIGHT.

13 Q NOW, BEFORE THE SPECIAL SESSION, YOU MENTIONED, WHEN YOU  
14 WERE ON DIRECT EXAMINATION WHEN YOU WERE ASKED, THAT THERE WAS A  
15 MAY REVISION TO THE GOVERNOR'S BUDGET IN 2008, CORRECT?

16 A CORRECT.

17 Q AND YOU WERE CONSULTING THE GOVERNOR ABOUT THAT MAY REVISION  
18 WHEN IT WAS ANNOUNCED, CORRECT, OR BEFORE IT WAS ANNOUNCED,  
19 CORRECT?

20 A YES.

21 Q AND THAT INCLUDED --

22 A YEAH. I WAS GOING TO SAY NOT AS THE SECRETARY, BUT I DID IN  
23 MY ROLE AS THE INSPECTOR GENERAL, I DID CONSULT, I THINK, ONCE.

24 Q AND THAT BUDGET PROPOSAL CONTAINED A PROPOSAL TO PROVIDE FOR  
25 SUMMARY PAROLE, CORRECT?

1 **A** THAT'S RIGHT.

2 **Q** TELL THE COURT WHAT THAT IS.

3 **A** IN ESSENCE, THAT PROVIDES THAT SOME PAROLEES WOULD BE PUT ON  
4 A BANKED CASELOAD; IN OTHER WORDS, THEY WOULD NOT BE ACTIVELY  
5 SUPERVISED BY AN AGENT AND, AS A RESULT, COULDN'T BE RETURNED  
6 FOR A TECHNICAL VIOLATION.

7 **Q** AND THAT WOULD HAVE ALLOWED THE DEPARTMENT TO ALLOCATE ITS  
8 RESOURCE -- PAROLE RESOURCES IN A DIFFERENT MANNER, CORRECT?

9 **A** THAT'S TRUE.

10 **JUDGE KARLTON:** HOPEFULLY, IN A MORE RATIONAL MANNER.

11 **THE WITNESS:** I THINK THAT PAROLE RESOURCES COULD BE  
12 BETTER ALLOCATED, YES.

13 **BY MR. SPECTER**

14 **Q** AND IN A MORE EFFECTIVE MANNER AS WELL.

15 **A** YES.

16 **Q** OKAY. AND THE LEGISLATURE DIDN'T ENACT THAT MEASURE EITHER,  
17 DID IT?

18 **A** THEY DID NOT.

19 **Q** NOW, YOU SUBMITTED A TRIAL AFFIDAVIT IN THIS CASE, RIGHT?

20 **A** I DID.

21 **Q** AND AS A LAWYER, YOU UNDERSTOOD THAT IT WAS GOING TO BE YOUR  
22 DIRECT TESTIMONY IN THIS COURT?

23 **A** I THINK AS A LAYMAN I WOULD HAVE UNDERSTOOD THAT.

24 **Q** OKAY. AS A LAWYER AND A FORMER INSPECTOR GENERAL, YOU  
25 UNDERSTAND HOW IMPORTANT IT IS TO PRESENT THE COURT WITH ALL THE

1 RELEVANT FACTS SO IT CAN MAKE AN APPROPRIATE DECISION?

2 **A** I THINK ALL THE RELEVANT FACTS THAT SHOULD COME FROM SOMEONE  
3 IN MY POSITION, YES.

4 **Q** OKAY. SO IN YOUR AFFIDAVIT YOU SAID -- JUST GIVE ME A  
5 SECOND HERE. ONE NUMBER I DIDN'T WRITE DOWN.

6 ON PARAGRAPH 29 OF THAT RE- -- YOU WERE RELYING ON  
7 THE SPRING -- I'LL GIVE IT TO YOU A SECOND. IT'S ON PAGE 12.

8 **A** OKAY.

9 **Q** YOU WERE RELYING ON SPRING POPULATION, SPRING 2008  
10 POPULATION, PROJECTIONS, AND YOU SAID THAT THE FACTORS BEHIND  
11 THE SPRING POPULATION PROJECTIONS WHICH WOULD LEAD TO A  
12 REDUCTION; IS THAT RIGHT?

13 **A** CORRECT.

14 **Q** YOU SAID THAT IT WOULD RESULT IN A DRAMATIC REVERSAL IN THE  
15 PROJECTED POPULATION TREND, RIGHT?

16 **A** THAT'S TRUE.

17 **Q** AND THE REVERSAL WAS THAT -- WAS FROM GOING UP; IN OTHER  
18 WORDS, YOU WERE SUGGESTING THAT THE TREND WAS GOING DOWN  
19 DRAMATICALLY, CORRECT?

20 **A** THE FALL 2007 PROJECTION HAD THE POPULATION OF THE PRISONS  
21 GOING UP DRAMATICALLY, AND THE SPRING PROJECTIONS HAD THEM GOING  
22 DOWN, AND THE DIFFERENCE WAS THE DRAMATIC REVERSAL I WAS  
23 REFERRING TO HERE.

24 **Q** OKAY. NOW I'D LIKE YOU TO PULL UP PLAINTIFF'S 781, PLEASE.  
25 CAN YOU GO TO PAGE 12? AND BLOW THE CHART UP, PLEASE? CAN YOU

1 MAKE -- OKAY. MAYBE WE HAVE DIFFERENT PAGE NUMBERS. GO TO  
2 CHART C, PLEASE, I THINK IT WOULD BE ON ONE OF THE NEXT PAGES.  
3 YEAH, THERE YOU GO.

4 (DOCUMENT DISPLAYED.)

5 **BY MR. SPECTER**

6 **Q** SO THIS IS A CHART THAT COMPARES THE SPRING 2008 PROJECTIONS  
7 TO THE FALL 2008 PROJECTIONS; DO YOU SEE THAT?

8 **A** I DO.

9 **Q** AND YOU SEE THAT ALL OF THE -- WHILE THE SPRING POPULATION  
10 PROJECTIONS HAVE THE NUMBERS GOING DOWN, THE FALL PROJECTIONS  
11 HAVE THE POPULATION GOING UP, RIGHT?

12 **A** WELL, IT DEPENDS WHAT YOU'RE REFERRING TO. BETWEEN 2009 AND  
13 2013, THEY WOULD GO DOWN SLIGHTLY. 2014 THEY'D BLIP BACK UP A  
14 LITTLE BIT.

15 **Q** SO, IN OTHER WORDS, IT'S NOT GOING DOWN. THERE'S NO  
16 DRAMATIC REDUCTION IN THE POPULATION UNDER THE FALL PROJECTIONS,  
17 RIGHT?

18 **A** THEY'RE SLIGHTLY HIGHER THAN THE SPRING'S PROJECTION, BUT  
19 STILL DRAMATICALLY LOWER THAN THE FALL OF THE PREVIOUS YEAR.

20 **Q** NOW, YOU MENTIONED IN RESPONSE TO MR. MELLO'S QUESTIONS THAT  
21 A NUMBER OF -- A NUMBER OF CRIMES AGAINST THE PERSON WERE  
22 HOMICIDE, BURGLARY, AND WHAT WAS THE OTHER CRIME THAT YOU HAD?

23 **A** I THINK MR. MELLO'S QUESTION WAS THE PERCENTAGE OF  
24 CALIFORNIA INMATES WHO WERE SERVING TIME FOR MURDER, ROBBERY OR  
25 BURGLARY.

1 Q OKAY. AND BURGLARY MAKES UP THE GREATEST PERCENTAGE OF  
2 CRIMES IN THAT CATEGORY, CORRECT?

3 A I'M SORRY.

4 Q BURGLARY MAKES UP THE GREATEST PERCENTAGE OF CRIMES IN THE  
5 PRISON SYSTEM -- IN THAT CATEGORY WITHIN THE PRISON SYSTEM,  
6 CORRECT?

7 A I'M NOT SURE ABOUT THAT. I KNOW THAT WE HAVE A LOT OF  
8 INMATES DOING LIFE FOR MURDER ALSO.

9 Q SO YOU ALSO MENTIONED THAT THERE WERE PART OF THE -- PART OF  
10 YOUR STRATEGY TO REDUCE THE POPULATION IS THROUGH REHABILITATIVE  
11 PROGRAMS IN PRISON, CORRECT?

12 A THAT'S RIGHT.

13 Q BUT YOU ARE HAVING TROUBLE DOING THAT BECAUSE OF THE  
14 OVERCROWDING; ISN'T THAT RIGHT?

15 A AS I SAID EARLIER, THE OVERCROWDING MAKES EVERYTHING MORE  
16 CHALLENGING FOR THE CORRECTIONAL ADMINISTRATOR, YOU KNOW, THE  
17 EXAMPLE BEING THAT THE RECEIVER NEEDS A CERTAIN SPACE TO DO  
18 CLINICAL WORK, AND OUR PROGRAM, FOR EXAMPLE, WANTS THAT SAME  
19 SPACE FOR VOCATIONAL EDUCATION PROGRAM. THEN YOU'VE GOT TO TRY  
20 TO FIND SPACE FOR BOTH SOMEWHERE. THAT'S A CHALLENGE.

21 Q IN TERMS OF THAT PART OF YOUR PLAN TO REDUCE OVERCROWDING,  
22 YOU CAN'T TELL ME -- YOU DO NOT KNOW HOW MANY PRISON -- HOW  
23 MANY -- HOW MUCH OF THE POPULATION CAN BE REDUCED BY WHAT DATE,  
24 DO YOU?

25 A I CAN TELL YOU THAT WHAT OUR PLANS ARE IN EACH OF THOSE

1 CATEGORIES. I CAN'T TELL YOU EXACTLY WHAT THE RESULT WOULD BE  
2 IN THE RECIDIVISM CATEGORY, BUT I CAN TELL YOU THAT WE KNOW  
3 ACADEMIC PROGRAMS REDUCE RECIDIVISM WHEN -- BY FIVE PERCENT AND  
4 VOCATIONAL BY TWELVE PERCENT, AND YOU CAN EXTRAPOLATE FROM THERE  
5 YOU MIGHT SEE SOME RESULT AS A RESULT OF THOSE PROGRAMS. I  
6 DON'T HAVE THOSE NUMBERS IN FRONT OF ME.

7 **Q** AS YOU SIT HERE TODAY, YOU CAN'T TELL THE COURT, BECAUSE OF  
8 THOSE PROGRAMS, HOW MUCH THE PRISON POPULATION WILL BE REDUCED  
9 AND BY WHEN?

10 **A** I DON'T KNOW HOW MANY PEOPLE ARE GOING TO COMMIT CRIMES AND  
11 HOW MANY OF THOSE CRIMES THE PROSECUTORS ARE GOING TO PROSECUTE  
12 AND HOW MANY OF THOSE SUCCESSFUL PROSECUTIONS WILL RESULT IN A  
13 PRISON SENTENCE. I JUST DON'T RECALL THE INTAKE.

14 **MR. SPECTER:** NO FURTHER QUESTIONS. MAYBE I DO. I'M  
15 DONE, YOUR HONOR.

16 **JUDGE HENDERSON:** DOES CCPOA HAVE ANY QUESTIONS?

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

18 **JUDGE HENDERSON:** OKAY. REDIRECT?

19 **MR. MELLO:** NO, YOUR HONOR.

20 **JUDGE HENDERSON:** OKAY. THANK YOU.

21 **JUDGE KARLTON:** SIR, MAYBE I MISUNDERSTOOD, BUT FROM  
22 YOUR ANSWERS TO MR. MELLO, YOU HAD INDICATED THAT REDUCING THE  
23 NUMBER OF PRISONERS WITH LOW LEVEL OR LOW RISK WOULDN'T AFFECT  
24 IN ANY SIGNIFICANT WAY THE POPULATION IN THE PRISON INSTITUTIONS  
25 BECAUSE THOSE PEOPLE WERE ALREADY IN CAMPS OR COMMUNITY

1 INSTITUTIONS OR OTHERWISE. DID I UNDERSTAND THAT CORRECTLY OR  
2 INCORRECTLY?

3           **THE WITNESS:** THERE'S A NUANCE THERE THAT I DON'T  
4 THINK I EXPRESSED. WE KNOW THAT OUR CAMPS, OUR COMMUNITY  
5 PROGRAMS ARE ALL LEVEL ONE AND TWO INMATES. SO THEY'RE GOING TO  
6 GET -- THEY'RE GOING TO BE HIT THE GREATEST -- THE GREATER  
7 PERCENTAGE WOULD COME FROM THOSE AREAS. THERE ARE STILL INMATES  
8 IN THE PRISONS WHO MIGHT BE ELIGIBLE WHO ARE LOW LEVEL AND WHO  
9 ALSO HAPPEN TO BE IN THE PRISON, UNFORTUNATELY -- FOR EXAMPLE,  
10 MANY OF OUR LEVEL TWO INMATES ARE ACTUALLY SERVING LIFE, SO  
11 WOULD PROBABLY NOT BE SUITED FOR THAT KIND OF PROGRAM. SO THERE  
12 WOULD BE A BLENDED REDUCTION, PERHAPS, FROM THE PRISONS, BUT  
13 PRIMARILY I THINK FROM THE CAMPS AND THE CCF'S.

14           **JUDGE KARLTON:** IS IT CORRECT OR INCORRECT THAT YOUR  
15 BEST JUDGMENT, AS YOU SIT HERE TODAY -- YOU KNOW, I UNDERSTAND  
16 AN AWFUL LOT OF WHAT WE'RE DOING IS AS BEST WE CAN -- IS IT YOUR  
17 UNDERSTANDING THAT IF THIS COURT WERE TO ISSUE AN ORDER LIMITING  
18 THE NUMBER OF PERSONS IN THE PRISON SYSTEM, AND THE STATE'S  
19 APPROACH WAS TO ATTEMPT TO ACHIEVE THAT BY REDUCING THE LOW  
20 LEVEL AND LOW RISK, THAT STILL WOULD NOT HAVE AN EFFECT IN THE  
21 PRISON SYSTEM BECAUSE MOST OF THOSE PEOPLE ARE NOT IN THE PRISON  
22 SYSTEM TO BEGIN WITH -- NOT ALL, BUT MOST ARE NOT IN THE PRISON  
23 SYSTEM TO BEGIN WITH?

24           **THE WITNESS:** I THINK THAT'S -- THE OTHER -- THAT'S  
25 TRUE, AND THE OTHER PART THAT I THINK -- BUT IT'S NOT -- THAT'S



1 NOT THE ONLY PLACE WE WOULD SEE REDUCTIONS.

2 I THINK THROUGH PAROLE REFORM, WHICH I'M MOST  
3 INTERESTED IN, FRANKLY, BECAUSE I THINK IT'S AN AREA THAT WE CAN  
4 REALLY DO A LOT OF GOOD IN, WE WOULD SEE A SIGNIFICANT REDUCTION  
5 IN THE CHURNING OF OUR INMATES AT OUR RECEPTION CENTERS.

6 **JUDGE KARLTON:** OKAY. I DON'T KNOW WHETHER MY  
7 QUESTION INVITES QUESTIONS FROM COUNSEL. MR. MELLO?

8 **MR. MELLO:** NO.

9 **JUDGE KARLTON:** MR. SPECTER? NOT ONLY, THAT HE  
10 DOESN'T EVEN CARE.

11 **MR. SPECTER:** PARDON ME?

12 **JUDGE HENDERSON:** WE WERE WONDERING IF JUDGE  
13 KARLTON'S QUESTIONS PROMPTED FURTHER QUESTIONS FROM YOU?

14 **MR. SPECTER:** ACTUALLY, I WAS JUST LOOKING AT ONE OF  
15 THE EXHIBITS TO SEE WHETHER THAT IS TRUE OR NOT, AND IF I COULD  
16 HAVE JUST A SECOND, I WILL LET YOU KNOW.

17 **JUDGE HENDERSON:** LET US KNOW WHEN YOU FINISH.

18 **JUDGE REINHARDT:** WHILE YOU ARE WAITING, MAYBE I  
19 CAN -- YOUR TESTIMONY BASICALLY IS YOU COULD SAFELY REDUCE THE  
20 POPULATION THROUGH PAROLE REFORMS?

21 **THE WITNESS:** WE BELIEVE THAT THROUGH EFFECTIVE  
22 PAROLE REFORMS WE COULD SAFELY REDUCE THE POPULATION OF THE  
23 ENTIRE SYSTEM, WHICH WOULD INCLUDE THE CAMPS AND COMMUNITY  
24 CORRECTIONAL FACILITIES, AS WELL AS MARGINALLY IN THE PRISONS,  
25 ESPECIALLY IN THE RECEPTION CENTERS, BY AN AMOUNT -- I THINK IN

1 OUR PLAN WE SAID WE ESTIMATED ABOUT 8,000 OVER THE ENTIRE  
2 SYSTEM, RECOGNIZING THAT THAT'S ACTUALLY A REDUCTION OF ABOUT  
3 PROBABLY 20,000 INDIVIDUALS, BECAUSE EACH OF THE PAROLEES ONLY  
4 SERVES ON AVERAGE ABOUT FOUR MONTHS. SO YOU'D CYCLE -- TO GET  
5 AN AVERAGE REDUCTION OF 8,000, YOU'VE GOT TO REDUCE YOUR PAROLE  
6 INTAKE BY, YOU KNOW, 24,000 OR SO.

7 **JUDGE REINHARDT:** AND ARE THOSE PAROLE REFORMS  
8 PRESENTLY BEING INSTITUTED?

9 **THE WITNESS:** YES. THOSE ARE THE REFORMS THAT I  
10 MENTIONED. USING THE RISK ASSESSMENT TOOL AND THE PAROLE  
11 VIOLATION DECISION MAKING INSTRUMENT, I THINK ARE KIND OF BEST  
12 PRACTICES IN THIS AREA. WE'VE ALSO PROPOSED MORE SWEEPING  
13 CHANGES, AS A RESULT OF THE BUDGET CRISIS, WHICH HAVE NOT BEEN  
14 ADOPTED.

15 **JUDGE REINHARDT:** AND WOULD THOSE MORE SWEEPING  
16 CHANGES -- WOULD REDUCE THE PRISON POPULATION FURTHER?

17 **THE WITNESS:** IN THE SAME KIND OF CALCULUS. AGAIN,  
18 YOU WOULD HAVE TO NOT REVOKE THREE FOR EVERY ONE PERSON, THAT  
19 WOULD BE NOT -- THAT WOULD REDUCE OUR PRISON POPULATION, BUT  
20 THERE WOULD BE SOME ADDITIONAL PERCENTAGE OF REDUCTION IN THE  
21 PRISON POPULATION. I JUST DON'T KNOW EXACTLY WHAT THAT WOULD BE  
22 AS I SIT HERE.

23 **JUDGE REINHARDT:** THANK YOU.

24 **JUDGE HENDERSON:** MR. SPECTER?  
25

1 **BY MR. SPECTER**

2 **Q** WELL, JUST TO LET THE COURT KNOW BACKGROUND INFORMATION, THE  
3 CLASSIFICATION OF PRISONERS IS DIVIDED INTO LEVELS ONE THROUGH  
4 FOUR, CORRECT?

5 **A** THAT'S RIGHT.

6 **Q** WITH ONE BEING THE LOWEST AND FOUR BEING THE HIGHEST, RIGHT?

7 **A** THAT'S RIGHT.

8 **Q** THERE ARE THOUSANDS OF LEVEL ONE PRISONERS IN THE CALIFORNIA  
9 PRISON SYSTEM, AREN'T THERE?

10 **A** ON ANY GIVEN DAY THERE ARE, YES.

11 **Q** AND THERE'S ANOTHER 6,000 OR SO IN COMMUNITY CORRECTIONAL  
12 CENTERS, RIGHT?

13 **A** THAT'S RIGHT.

14 **Q** AND THOSE ARE LEVEL ONE CRIMINAL CUSTODY, TOO, RIGHT?

15 **A** THEY ARE.

16 **Q** AND YOU MENTIONED IN RESPONSE TO MR. MELLO'S QUESTIONS ABOUT  
17 THE CONSERVATION CAMPS THAT -- YOU IMPLIED THAT YOU ARE HAVING  
18 TROUBLE FILLING THOSE SPOTS?

19 **MR. MELLO:** OBJECTION. MISSTATES HIS TESTIMONY.

20 **MR. SPECTER:** THAT'S WHAT I WAS ASKING.

21 **JUDGE HENDERSON:** YES, YOU CAN ANSWER THAT. IS  
22 THAT -- WAS THAT YOUR TESTIMONY?

23 **THE WITNESS:** I THINK MY TESTIMONY WAS IN THOSE AREAS  
24 THERE ARE LOW LEVEL INMATES WHERE -- OUR LOW LEVEL INMATES, OUR  
25 COMMUNITY CORRECTIONAL CENTERS, WHICH YOU'VE DISCUSSED, AS WELL

1 AS CAMPS, MY OPERATIONAL PEOPLE HAVE INFORMED ME THAT THERE'S A  
2 DIFFICULTY IN FILLING THOSE POSITIONS AT SOME TIMES.

3 THOSE INMATES ARE KIND OF WANTED EVERYWHERE BECAUSE  
4 THEY ALSO SERVE IN THE MINIMUM SUPPORT FACILITIES, WHICH ARE --  
5 WHICH ARE OUTSIDE THE WALLS OF EVERY PRISON AND PROVIDE, AS YOU  
6 KNOW, THE CLEAN-UP CREW AND DO ALL THE YARD WORK AND LANDSCAPING  
7 AND THOSE KINDS OF THINGS. SO THERE'S A NEED FOR LEVEL ONE  
8 INMATES IN THOSE FACILITIES AS WELL.

9 **BY MR. SPECTER**

10 **Q** SO EVEN THOUGH YOU HAVE THE NEED, THE GOVERNOR PROPOSED  
11 INCREASING THE CREDIT FOR PEOPLE WHO ARE ON THE WAITING LIST TO  
12 GET INTO THE CONSERVATION CAMPS, RIGHT?

13 **A** THAT'S TRUE.

14 **Q** AND THAT WOULD REDUCE THEIR LENGTH OF STAY WHEN THEY GOT  
15 INTO THE CAMP, RIGHT?

16 **A** THAT'S RIGHT.

17 **Q** AND ALSO -- YOU KNOW, WE TALKED ABOUT LEVEL ONES, BUT THERE  
18 ARE LEVEL TWO PRISONERS AS WELL, AND THAT'S SORT OF THOUGHT OF  
19 NOT AS LOW AS ONE, BUT MEDIUM IS THOUGHT OF AS LEVEL THREE,  
20 CORRECT?

21 **A** THEY ARE HIGHER THAN ONE AND LESS THAN THREE, YES.

22 **Q** WHAT DOES THAT MAKE THEM, LOW OR LOW HIGH?

23 **JUDGE KARLTON:** IT MAKES THEM TWO.

24 **MR. SPECTER:** WELL, GOOD POINT.

25

1 **BY MR. SPECTER**

2 **Q** THERE ARE THOUSANDS MORE LEVEL TWO PRISONERS IN THE SYSTEM  
3 AS WELL; ISN'T THAT RIGHT, MR. CATE?

4 **A** THAT'S RIGHT. THERE'S THOUSANDS OF INMATES SERVING LIFE  
5 FOR -- WITH THE POSSIBILITY OF PAROLE WHO ARE LEVEL TWO INMATES  
6 AND ARE IN PRISONS. THERE ARE OTHERS WHO ARE LEVEL TWO  
7 INMATES -- THE REST OF THE LEVEL TWO INMATES ARE SPREAD  
8 THROUGHOUT THE SYSTEM IN THE CAMPS AND IN CCF'S OR IN  
9 CORRECTIONAL FACILITIES THEMSELVES.

10 **Q** RIGHT. AND, TYPICALLY, THE NON-LIFE PRISONERS HAVE A  
11 RELATIVELY SHORT TIME BEFORE THEY'RE RELEASED, RIGHT?

12 **A** THAT'S RIGHT.

13 **MR. SPECTER:** OKAY. NO FURTHER QUESTIONS. THANK  
14 YOU.

15 **MR. MELLO:** NOTHING, YOUR HONOR. THANK YOU.

16 **JUDGE HENDERSON:** OKAY. THANK YOU VERY MUCH FOR  
17 TESTIFYING TODAY, SIR.

18 **THE WITNESS:** THANK YOU.

19 **JUDGE HENDERSON:** CALL YOUR NEXT WITNESS.

20 **MR. MELLO:** WE'RE RETRIEVING THE WITNESS. IT'S KATHY  
21 JETT.

22 **KATHRYN JETT,**  
23 HAVING BEEN CALLED AS A WITNESS BY THE DEFENDANTS WAS FIRST  
24 DULY SWORN AND EXAMINED AS FOLLOWS:

25 **THE WITNESS:** KATHRYN JETT, AND I'M THE

1 UNDERSECRETARY OF --

2 **THE CLERK:** SPELL IT, PLEASE.

3 **THE WITNESS:** K-A-T-H-R-Y-N, JETT, J-E-T-T.

4 **MS. JOHNSON:** UNDERSECRETARY JETT HAS SUBMITTED A  
5 TRIAL AFFIDAVIT IN THIS MATTER WHICH IS DEFENDANT'S EXHIBIT  
6 1004. HER EDUCATIONAL AND PROFESSIONAL BACKGROUND IS SUMMARIZED  
7 IN PARAGRAPHS 2 THROUGH 5 OF THAT AFFIDAVIT.

8 **DIRECT EXAMINATION BY MS. JOHNSON**

9 **BY MS. JOHNSON**

10 **Q** GOOD MORNING, MS. JETT.

11 **A** GOOD MORNING.

12 **Q** YOU ARE THE UNDERSECRETARY OF PROGRAMS FOR THE CALIFORNIA  
13 DEPARTMENT OF CORRECTIONS AND REHABILITATION, CORRECT?

14 **A** YES, I AM.

15 **Q** WHEN WERE YOU APPOINTED UNDERSECRETARY OF PROGRAMS FOR CDCR?

16 **A** SEPTEMBER '07.

17 **Q** IMMEDIATELY PRIOR TO YOUR APPOINTMENT AS UNDERSECRETARY OF  
18 PROGRAMS, WHAT WAS YOUR POSITION?

19 **A** I WAS CHAIRING THE GOVERNOR'S STRIKE TEAM ON REHABILITATION.

20 **Q** WHAT IS YOUR PRINCIPAL TASK AS UNDERSECRETARY OF PROGRAMS?

21 **A** YES. MY PRINCIPAL TASK IS IMPLEMENTING AN EVIDENCE-BASED  
22 REHABILITATION SYSTEM THAT'S BASED ON THREE SOURCE DOCUMENTS:  
23 GOVERNOR'S STRIKE TEAM, THE DECEMBER REPORT; THE EXPERT PANEL  
24 THAT WAS RELEASED IN JUNE OF '07; AND THE PROVISIONS OF ASSEMBLY  
25 BILL AB 900.

1 Q AND USING THOSE THREE DOCUMENTS, HAS THE CDCR DEVELOPED ITS  
2 OWN PLAN?

3 A YES, WE HAVE.

4 Q OKAY. LOOKING AT DEFENDANT'S TRIAL EXHIBIT 1184, IS THAT  
5 THE CDCR'S ADULT PROGRAMS REHABILITATIVE PROGRAMMING REFORM  
6 PROJECT WORK PLAN?

7 A YES, IT IS.

8 Q AND IS THAT THE WORK PLAN THAT YOU ARE WORKING AS  
9 UNDERSECRETARY OF PROGRAMS TO IMPLEMENT?

10 A YES, IT IS.

11 Q WHAT DOES THE WORK PLAN PROVIDE FOR?

12 A THE WORK PLAN INTEGRATES OVER 200 TASKS THAT WERE  
13 RECOMMENDED TO THE DEPARTMENT THROUGH VARIOUS SOURCES. IT  
14 DEVELOPS A CASE MANAGEMENT SYSTEM THAT WAS RECOMMENDED BY THE  
15 EXPERT PANEL THAT IS DESIGNED TO ASSESS THE RISK AND NEEDS OF  
16 EACH OFFENDER AS THEY COME INTO OUR INSTITUTIONS, DEVELOP CASE  
17 MANAGEMENT PLANS FOR EACH OFFENDER; ALSO DELIVER PROGRAMS,  
18 MEASURE INDIVIDUAL PROGRESS, AND PREPARE THE OFFENDERS FOR  
19 REENTRY AND EVENTUALLY REINTEGRATING BACK INTO THE COMMUNITY.

20 Q ONE OF THE ELEMENTS THAT YOU IDENTIFIED WAS A RISK AND NEEDS  
21 ASSESSMENT?

22 A CORRECT.

23 Q CAN YOU EXPLAIN THAT FIRST ELEMENT, RISK AND NEEDS  
24 ASSESSMENT?

25 A SURE. THE RISK AND NEEDS ASSESSMENT IS BEING DELIVERED

1 THROUGH AN INSTRUMENT THAT'S EVIDENCE BASED CALLED COMPAS. IT'S  
2 A CORRECTIONAL OFFENDER PLACEMENT MANAGEMENT AND ASSESSMENT  
3 INSTRUMENT THAT HELPS US LOOK AT THE INDIVIDUAL'S CRIMINOGENIC  
4 NEEDS AS WELL AS THEIR RISK TO REOFFEND. THAT ASSISTS US IN  
5 GUIDING THEM THROUGH OUR INSTITUTIONAL SETTINGS TO DELIVER  
6 PROGRAMS THAT MEET THEIR NEEDS AND FOLLOW THEM ON OUT TO PAROLE  
7 TO MAKE CERTAIN THAT THEY'RE CONTINUING TO ADDRESS THEIR  
8 CRIMINOGENIC NEEDS.

9 **Q** YOU'VE USED THE TERM "CRIMINOGENIC NEED." COULD YOU EXPLAIN  
10 FOR THE COURT WHAT THAT MEANS?

11 **A** SURE. CRIMINOGENIC NEED WOULD BE THE DEFICITS THAT THE  
12 INDIVIDUAL HAS THAT IS CONTRIBUTING TO THEIR CRIMINAL ACTIVITY.  
13 COULD BE SUBSTANCE ABUSE. IT COULD BE A LEARNING PROBLEM,  
14 MENTAL HEALTH PROBLEM, PROBLEMS WITH EMPLOYMENT OR EDUCATION.

15 **Q** WHAT IS THE STATUS OF THE IMPLEMENTATION OF THIS COMPASS  
16 INSTRUMENT?

17 **A** WE CURRENTLY HAVE PLACED THE COMPASS INSTRUMENT IN ALL OF  
18 OUR RECEPTION CENTERS, AND WE'RE ALSO COMPASSING EVERY  
19 INDIVIDUAL AS THEY'RE EXITING OUR INSTITUTIONS.

20 **Q** CAN YOU EXPLAIN THE SECOND ELEMENT YOU MENTIONED, A CASE  
21 MANAGEMENT PLAN?

22 **A** CERTAINLY. A CASE MANAGEMENT PLAN IS ACTUALLY AN INSTRUMENT  
23 THAT IS AUTOMATED AND ACCOMPANIES THE COMPASS RISK ASSESSMENT.  
24 IT'S A PLAN THAT WE WOULD IDENTIFY THE PRIORITIES OF PROBLEMS  
25 THAT THE OFFENDER HAS AND MOVE THEM THROUGH OUR INSTITUTIONS AND



1 PLACE THEM INTO PROGRAMS THAT ARE EVIDENCE BASED AND DESIGNED TO  
2 ADDRESS THAT PROBLEM OR THAT CRIMINOGENIC NEED.

3 **Q** WHAT STAGES IS THE CDCR'S EFFORT TO IMPLEMENT CASE  
4 MANAGEMENT AT?

5 **A** I WOULD SAY AT ITS INFANCY. IN THE PAST YEAR WE'VE  
6 DEVELOPED THE PLAN. WE'VE BEEN ABLE TO UTILIZE A PLAN THAT IS  
7 AUTOMATED WITHIN THE COMPASS. WE ARE CURRENTLY IN A RECEPTION  
8 CENTER, DEI, AND WE'VE COMPLETED A PILOT THERE IN TRAINING, AND,  
9 FOR THE FIRST TIME, CC1'S TO ADMINISTER THOSE PLANS. BY  
10 FEBRUARY '09 WE WILL HAVE CC1'S TRAINED IN ALL 12 OF OUR  
11 RECEPTION CENTERS.

12 **JUDGE KARLTON:** TELL ME WHAT A CC1 IS, PLEASE.

13 **THE WITNESS:** I'M SORRY. CORRECTIONAL COUNSELOR ONE.

14 **BY MS. JOHNSON**

15 **Q** WHAT IS THE FUNCTION OF A CC1?

16 **A** THEY WILL BE THE CASE MANAGER FOR THE OFFENDERS. THIS IS A  
17 BRAND NEW TASK FOR THAT CLASSIFICATION.

18 **Q** WHAT IS THE PROOF PROJECT?

19 **A** THE PROOF PROJECT IS AN ACTUAL -- IT'S A SERIES OF SITES  
20 THAT ARE BOTH RECEPTION CENTERS, AN INSTITUTION REENTRY  
21 ENVIRONMENT, AND A PAROLE ENVIRONMENT, AND IT'S A TEST SITE THAT  
22 WE'RE USING TO TEST WHAT INDIVIDUALS WITHIN THE CORRECTIONAL  
23 SYSTEM SHOULD BE DELIVERED WHAT SERVICES TO THE INMATE WITH A  
24 PARTICULAR FOCUS ON CASE MANAGEMENT.

25 **Q** WHAT IS YOUR ROLE IN THE THIRD ELEMENT YOU TALKED ABOUT,

1 WHICH IS DELIVERY OF THE PROGRAMS?

2 **A** YEAH. OUR INTEGRATED MASTER PLAN, ACTUALLY, HAS DESIGNED  
3 AND IDENTIFIED SIX PROGRAMS THAT WERE RECOMMENDED THROUGH THE  
4 EXPERT PANEL REPORT. SO OUR RESPONSIBILITY IS TO DELIVER THOSE  
5 PROGRAMS WITHIN A PRISON SETTING IN ALL 33 INSTITUTIONS.

6 WE'RE RIGHT NOW AT OUR PROOF SITE, WHICH IS SOLANO  
7 STATE PRISON. IN THAT PRISON WE WILL HAVE FULL CASE MANAGEMENT.  
8 WE WILL BE ASSIGNING INMATES TO PROGRAMS THAT MEET THEIR  
9 CRIMINOGENIC RISKS. AND WE'LL ALSO BE STARTING UP NEW PROGRAMS  
10 AT SOLANO, WHICH IS CRIMINAL THINKING AND ANGER MANAGEMENT.

11 **Q** CDCR CURRENTLY HAS REHABILITATIVE PROGRAMS IN PLACE,  
12 CORRECT?

13 **A** CORRECT, CORRECT.

14 **Q** AND HAS IT MADE EFFORTS TO IMPROVE THE UTILIZATION -- WELL,  
15 FIRST OF ALL, HAS IT MADE EFFORTS TO ASSESS THE UTILIZATION OF  
16 EXISTING PROGRAMS THAT ARE IN PLACE?

17 **A** YEAH. OUR PLAN -- AS WE MOVE FORWARD TO IMPLEMENT THE PLAN,  
18 IT BECAME VERY APPARENT THAT WE WERE NOT UTILIZING THE EXISTING  
19 PROGRAMS WE HAVE. THE CORRECTIONAL SYSTEM CURRENTLY HAS  
20 EDUCATION, VOCATIONAL, AND SUBSTANCE ABUSE PROGRAMS. WHEN WE  
21 LOOKED AT THE UTILIZATION OF THOSE PROGRAMS IT WAS VERY, VERY  
22 POOR. PROBABLY ABOUT 40 PERCENT WAS ON AVERAGE THAT A PROGRAM  
23 WAS BEING USED.

24 SO IN OUR PHASE ONE -- WE HAVE SEVERAL PHASES OF  
25 IMPLEMENTATION -- WE'VE REQUIRED ALL INSTITUTIONS TO IMPROVE

1 THEIR UTILIZATION OF EXISTING PROGRAMS.

2 AS OF APRIL WE BEGAN TO DO SOME BASELINE MEASURES.  
3 WE HAVE BEEN ABLE TO INCREASE THE UTILIZATION OF ACADEMIC  
4 PROGRAMS BY ABOUT 34 PERCENT, AND FOR VOCATIONAL PROGRAMS ABOUT  
5 40 PERCENT.

6 **Q** WHAT IMPEDIMENTS TO UTILIZATION DID YOU IDENTIFY THROUGH THE  
7 ASSESSMENT PHASE?

8 **A** IT WAS RATHER BALANCED. THERE WAS ABOUT 50 PERCENT OF THE  
9 PROBLEMS HAD TO DO WITH CUSTODY, AND THESE WOULD BE  
10 GANG-INVOLVED ISSUES. AND THE OTHER 50 PERCENT TENDED TO BE  
11 ADMINISTRATIVE OR ACADEMIC, THINGS SUCH AS NOT BUDGETING FOR  
12 SUBSTITUTE TEACHERS OR DELIVERING PROGRAMS FOUR DAYS A WEEK  
13 WHERE WE COULD EASILY EXPAND THAT TO FIVE DAYS A WEEK.

14 ON THE CUSTODY SIDE, IT WAS GANG ISSUES, WHERE THE  
15 GANGS WERE REALLY INTIMIDATING OTHER INMATES AND TRYING TO  
16 CONTROL WHO WAS GETTING INTO THE ACTUAL PROGRAMS.

17 **Q** WHAT DID CDCR DO TO IMPROVE THE UTILIZATION OF EXISTING  
18 PROGRAMS IN THE FACE OF GANG ACTIVITY?

19 **A** WE CONDUCTED A PROJECT THAT WAS -- ON THE CUSTODY SIDE THAT  
20 WAS CALLED OPERATION CHANGING TIDES THAT WENT INTO AN  
21 INSTITUTION, IDENTIFIED WHO WERE THE GANG -- THE GANG CALLERS,  
22 THE SHOT CALLERS, IF YOU WILL, AND WENT IN, IDENTIFIED THOSE  
23 INDIVIDUALS, REMOVED THEM FROM THE YARDS SO THAT INMATES WERE  
24 MORE FREE THEN TO VOLUNTEER AND GO INTO PROGRAMS.

25 **Q** WERE LOCKDOWNS HAVING AN IMPACT ON PROGRAMMING?

1 **A** ABSOLUTELY. LOCKDOWNS, I THINK I'VE LEARNED, IS JUST A  
2 CONDITION OF THE ENVIRONMENT. THEY OCCUR BECAUSE OF TB, BUT  
3 THEY ALSO OCCUR BECAUSE THE GANGS WERE CONTROLLING YARDS. SO  
4 THEY KNEW HOW TO CREATE A SITUATION THAT WOULD LOCK AN  
5 INSTITUTION DOWN.

6 THOSE HAVE SEEMED TO BE LESS, OR AT LEAST MY  
7 EXPERIENCE IS LESS. I DON'T HAVE DATA TO SUPPORT THAT, BUT WHAT  
8 I DO HAVE ARE THE PROVIDERS THAT ARE SERVING OUR INMATES THAT  
9 THERE'S LESS COMPLAINTS. THEY FEEL THE WARDEN IS DOING A BETTER  
10 JOB AT GETTING, YOU KNOW, LOWER LEVEL PROGRAMS OPENED, ISOLATING  
11 THE REAL TROUBLEMAKERS VERSUS CLOSING THE ENTIRE INSTITUTION  
12 DOWN.

13 SO THERE'S MUCH MORE OF AN EFFORT TO -- WHEN THERE IS  
14 A LOCKDOWN, TO GET THE PROGRAMMING INMATES BACK TO PROGRAM.

15 **Q** YOU MENTION --

16 **JUDGE KARLTON:** I'M SORRY. DURING A LOCKDOWN, YOU  
17 ARE NOW SENDING PEOPLE TO PROGRAMMING; IS THAT WHAT YOU'RE  
18 SAYING?

19 **THE WITNESS:** NO SIR. WHAT THEY'RE DOING IS -- WHAT  
20 THEY'RE DOING IS JUST IDENTIFYING AND ISOLATING THE PROBLEM, AND  
21 THEN GOING INTO OTHER INSTITUTIONS OR LOWER LEVEL YARDS AND  
22 OPENING UP THE YARDS SO INMATES COULD GO TO PROGRAM.

23 **BY MS. JOHNSON**

24 **Q** YOU MENTION WARDENS. DO THE WARDENS HAVE A ROLE IN INMATE  
25 PARTICIPATION IN PROGRAMS?

1 **A** THEY DO. I THINK THIS IS SOMETHING THAT WE'RE TRYING TO  
2 REALLY EDUCATE THE WARDENS ON. IT'S ANOTHER SECOND PHASE OF  
3 WHAT WE CALL TRACK ONE WHERE WE'RE SETTING UP WHAT ARE  
4 PERFORMANCE MEASURES FOR WARDENS.

5 WE GO OUT TO THE INSTITUTION WITH OUR EDUCATIONAL  
6 VOCATIONAL STAFF, AND USUALLY CHIEF DEPUTY SECRETARY OF  
7 PROGRAMS, AND IDENTIFY FOR THEM WHAT MEASURES WE ARE GOING TO BE  
8 LOOKING AT IN TERMS OF ATTENDANCE, AND HELP THEM OVERCOME AND  
9 IDENTIFY BARRIERS THAT ARE IMPEDING INMATES' ATTENDANCE IN  
10 PROGRAM.

11 **Q** ARE YOU WORKING WITH THEM TO BUILD A SYSTEM OF IN-CUSTODY  
12 INCENTIVES?

13 **A** YEAH, THE WARDENS HAVE MET AND THEY'VE COME UP WITH A SERIES  
14 OF RECOMMENDATIONS OF THINGS THAT ARE WITHIN OUR CURRENT  
15 AUTHORITY TO INCENTIVIZE PROGRAMS, THINGS LIKE ALLOW INMATES  
16 THAT ARE PROGRAMMING TO ACCESS NIGHT YARD, FIRST IN LINE FOR  
17 CHOW, GETTING MORE, AS THEY CALL IT, ZOO-ZOOS AND WHAM-WHAMS,  
18 WHICH ARE PACKAGES THAT THEY GET INTO THE INSTITUTION.

19 SO LOOKING AT HOW WE CAN REALLY SET UP SOME REWARDS  
20 FOR INMATES THAT BEHAVE WELL AND PARTICIPATE IN THE PROGRAMS.

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

22 **BY MS. JOHNSON**

23 **Q** HAS CDCR MADE ANY IMPROVEMENTS IN SUBSTANCE ABUSE PROGRAMS?

24 **A** VERY MUCH SO. WE HAVE BEEN ABLE TO RELOCATE SUBSTANCE ABUSE  
25 PROGRAMS THAT WERE IN YARDS THAT WERE EXPERIENCING LOCKDOWNS

1 INTO LOWER LEVEL YARDS. WE HAVE BEEN ABLE TO EXPAND OUR  
2 COMMUNITY SUBSTANCE ABUSE CAPACITY BY 1,800 DRUG TREATMENT  
3 SLOTS.

4 WE'RE CURRENTLY -- BY THE END OF DECEMBER, WE WOULD  
5 HAVE INCREASED OUR CAPACITY FOR PROGRAMS RIGHT AROUND, PROBABLY  
6 ABOUT 60,000 SQUARE FOOT THROUGH MODULARS THAT HAVE BEEN  
7 DEVELOPED AND THAT ARE BEING PLACED ON EIGHT DIFFERENT  
8 INSTITUTIONS IN THE PRISON SYSTEM, AND WE'LL BE SERVING AN  
9 ADDITIONAL 2,000 INMATES WITH THOSE TREATMENT SLOTS WITH THE  
10 IN-CUSTODY ENVIRONMENT AND ABOUT AN ADDITIONAL 1,300 INMATES OR  
11 PAROLEES IN THE COMMUNITY ---

12 Q THE 1,300, IS THAT AFTERCARE?

13 A THAT'S AFTERCARE, YES. THANK YOU.

14 Q WHAT DOES CDCR HAVE PLANNED FOR THE FIFTH ELEMENT YOU  
15 MENTIONED, THE PREPARATION FOR REENTRY INTO THE COMMUNITY?

16 A THERE'S A COUPLE OF THINGS THAT WE'RE LOOKING -- ONE IS A  
17 PROGRAM THAT'S A LIFE SKILLS PROGRAM THAT WILL BE GIVEN TO  
18 ALL -- ALL OF THE INMATES THAT AREN'T PROGRAMMABLE; IN OTHER  
19 WORDS, THEY'RE MEDIUM -- THERE'S HIGH, MEDIUM AND LOW RISK TO  
20 REOFFEND. WE'LL BE FOCUSING OUR REHAB ON THE MEDIUM TO HIGH  
21 RISK. THE LOW RISK TO REOFFEND WILL BE DELIVERED A LIFE SKILLS  
22 TRACK THAT IS BASICALLY ADDRESSING FAMILY ISSUES, FINANCIAL  
23 ISSUES, AND TRYING TO GET THEIR CRIMINAL PROBLEMS CLEARED UP ON  
24 THE OUTSIDE.

25 WE'VE ALSO DEVELOPED A REENTRY CASE PLAN THAT'S

1 SPECIFIC TO ENGAGING THEM WITH THEIR PAROLE AGENT TO PLACE THEM  
2 INTO AFTERCARE PROGRAMS ONCE THEY DEPART THE INSTITUTIONS.

3 **Q** DO YOU HAVE ANY PRISON-TO-EMPLOYMENT PROGRAMS IN THE WORKS?

4 **A** YES, THERE'S -- AB 900 REQUIRED A PRISON-TO-EMPLOYMENT  
5 PROGRAM. WE'VE ADOPTED A TEXAS MODEL BASED ON WHAT THE REHAB  
6 STRIKE TEAM RECOMMENDED. WE ARE CALLING THAT "NEW START." THAT  
7 HAS BEEN FULLY APPROVED THROUGH BUDGET PROCESS, AND WE ARE  
8 CURRENTLY HIRING POSITIONS TO FILL THAT PROGRAM.

9 WE ALSO HAVE AN INTERAGENCY AGREEMENT IN PROCESS WITH  
10 THE CALIFORNIA WORKFORCE DEVELOPMENT, CWDS, THAT ARE LOCALLY  
11 BASED, THAT WILL PRIORITIZE SERVICES TO GET OUR INMATES JOBS  
12 WHEN THEY DEPART. THEY'LL BE ASSISTING US IN ASSESSING WHAT IS  
13 THE ACTUAL JOB MARKET FOR WHERE THE OFFENDERS ARE RETURNING TO  
14 MAKE CERTAIN THAT WE'RE DELIVERING THOSE VOCATIONAL AND TRAINING  
15 PROGRAMS WITHIN OUR INSTITUTION.

16 **Q** WHAT IS YOUR ROLE WITH RESPECT TO PROPOSED REENTRY  
17 FACILITIES?

18 **A** PREDOMINANTLY IN THE PROGRAMMATIC DESIGNS. WE'VE DESIGNED A  
19 SERIES OF PROGRAMS THAT WOULD OPERATE WITHIN A REENTRY  
20 ENVIRONMENT. I ALSO ASSIST IN TALKING WITH COMMUNITIES ABOUT  
21 THE OFFENDER POPULATION, THE FACT THAT THEY ARE RETURNING TO  
22 COMMUNITIES, TRY TO DEAL WITH SOME OF THE COMMUNITY RESISTANCE  
23 TO THESE PROGRAMS, AND BY AND LARGE TO SECURE PROGRAMS FOR THE  
24 OFFENDERS ONCE THEY GO OFF ON TO PAROLE.

25 **Q** YOU MENTIONED PAROLE. DO YOU HAVE ANY ROLE WITH RESPECT TO

1 PAROLE?

2 **A** I DON'T HAVE DIRECT AUTHORITY OVER THE PROGRAMS IN PAROLE,  
3 BUT WE WORK COLLABORATIVELY WITH THE PAROLE DIVISION ON  
4 PROCURING PROGRAMS FOR PAROLE.

5 WE'RE IN THE PROCESS NOW OF SORT OF OVERHAULING SOME  
6 OF THE PAROLE PROGRAMS, TRYING TO GET PROCUREMENT TO BE MORE  
7 EVIDENCE-BASED AND, IN THE SAME CASE MANAGEMENT FASHION, TRYING  
8 TO GET THE RIGHT PAROLEE TO THE RIGHT PROGRAM THAT'S GOING TO  
9 ADDRESS THEIR CRIMINOGENIC NEED.

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

11 **MS. JOHNSON:** JUST A FEW MORE QUESTIONS.

12 **BY MS. JOHNSON**

13 **Q** DO YOU HAVE ANY ROLE WITH OFFENDERS AFTER THEY ARE  
14 DISCHARGED FROM PAROLE?

15 **A** I DON'T HAVE A ROLE WITH THE OFFENDER ONCE THEY'RE  
16 DISCHARGED, BUT I DO, IN MY CAPACITY, HAVE A ROLE IN TERMS OF  
17 BUILDING SYSTEMS TO RELATE TO COMMUNITIES. BY AND LARGE THE  
18 STATE HAS SORT OF PUT ASIDE PAROLEES AS A STATE PROBLEM, SO  
19 THERE'S VERY FEW PROGRAMS OR PLANNING GROUPS IN A COMMUNITY THAT  
20 WELCOMES PAROLEES INTO THE SYSTEM.

21 SO PART OF MY RESPONSIBILITY IS TO COMMUNICATE WITH  
22 COMMUNITIES, AND IN THAT VEIN WE ARE SETTING UP SEVEN REGIONS.  
23 WE WILL BE HIRING SEVEN REGIONAL ADMINISTRATORS IN THE COMING  
24 MONTHS TO HOUSE THOSE REGIONS, TO BEGIN A DIALOGUE WITH  
25 COMMUNITIES ON AN ONGOING BASIS ABOUT THE NEED FOR SERVICES FOR



1 PAROLEES, AND TO TRY AND DEAL WITH -- TRY TO OVERCOME  
2 COMMUNITIES' PERCEPTION THAT EITHER INMATES NEVER RETURN TO  
3 COMMUNITIES OR THAT'S NOT THEIR COMMUNITY THEY'RE RETURNING TO,  
4 AND THAT WILL BE THE PRIMARY TASK OF THE REGIONAL  
5 ADMINISTRATORS, WILL BE TO ENGAGE COMMUNITIES IN ACCEPTING  
6 PAROLEES AND IN FINDING SERVICES FOR THE PAROLEES.

7 **Q** IS IT YOUR UNDERSTANDING THAT THERE ARE SUFFICIENT SERVICES  
8 IN THE COMMUNITIES TODAY TO SERVE THE EXISTING PAROLE  
9 POPULATION?

10 **A** NO. I MEAN, WE'RE DISCHARGING SOME 10,000 PAROLEES A MONTH,  
11 AND IT'S -- THERE'S CLEARLY NOT ENOUGH THAT WE HAVE UNDER OUR  
12 CONTRACTS TO SECURE PROGRAMS FOR THOSE OFFENDERS.

13 **Q** THESE EFFORTS THAT YOU'VE DESCRIBED RELATING TO  
14 REHABILITATIVE PROGRAMMING, HOW DO THEY RELATE TO THE REDUCTION  
15 OF THE PRISON POPULATION?

16 **A** THESE ARE PROGRAMS THAT HAVE BEEN RESEARCHED IN OTHER  
17 STATES. THEY'RE EVIDENCE-BASED PROGRAMS THAT ARE DESIGNED TO  
18 REDUCE RECIDIVISM. SO THROUGH DELIVERY OF PROGRAMS IN A CUSTODY  
19 SETTING, INDIVIDUALLY TAILORING THOSE PROGRAMS TO THE OFFENDER  
20 NEEDS, THEN OUTCOME OVER TIME WOULD BE THAT THE OFFENDERS --  
21 THAT WE WOULD REDUCE THE RECIDIVISM AND THE CHURNING OF INMATES  
22 COMING BACK INTO THE SYSTEM.

23 **Q** IS THERE A SPECIFIC POPULATION LEVEL YOU ARE ATTEMPTING TO  
24 ACHIEVE THROUGH THESE REHABILITATIVE PROGRAMMING MEASURES?

25 **A** NO.

1 **Q** WOULD YOU RECOMMEND IMPLEMENTING THE REHABILITATIVE  
2 PROGRAMMING MEASURES FOR THE PURPOSE OF ACHIEVING A PARTICULAR  
3 POPULATION LEVEL WITH ANY PARTICULAR TIME PERIOD?

4 **A** IF I UNDERSTAND YOUR QUESTION, NO. I THINK MY FOCUS IS  
5 REALLY IN GETTING EVIDENCE-BASED PROGRAMS IN PLACE IN THE  
6 INSTITUTIONS WITH THE OVERALL GOAL OF REDUCING RECIDIVISM.

7 **Q** IS PROPER IMPLEMENTATION OF THE REHABILITATIVE MEASURES YOU  
8 DESCRIBED IMPORTANT FOR A SAFE REDUCTION IN THE PRISON  
9 POPULATION?

10 **A** YES, IT IS. I THINK MOST OF THE EVIDENCE POINTS TO IF  
11 YOU -- JUST THROWING PROGRAMS AT AN INMATE ISN'T GOING TO REALLY  
12 RESULT IN A REDUCTION OF RECIDIVISM. IT HAS TO BE THE RIGHT  
13 PROGRAM AT THE RIGHT TIME FOR THAT INMATE FOR IT TO BE  
14 EFFECTIVE.

15 **MS. JOHNSON:** NO FURTHER QUESTIONS.

16 **JUDGE HENDERSON:** ANYTHING FROM INTERVENORS?

17 **MR. MITCHELL:** NO QUESTIONS.

18 **JUDGE HENDERSON:** CROSS-EXAMINATION.

19 **MS. EVENSON:** GOOD MORNING, MS. JETT. GOOD MORNING,  
20 YOUR HONORS.

21 **JUDGE KARLTON:** IDENTIFY YOUR NAME, COUNSEL.

22 **MS. EVENSON:** REBEKAH EVENSON FROM PRISON LAW OFFICE.

23 **CROSS-EXAMINATION BY MS. EVENSON**

24 **BY MS. EVENSON**

25 **Q** MS. JETT, HAVE YOU EVER WORKED IN A PRISON?

1 **A** NO, I HAVEN'T.

2 **Q** AND CAN YOU TELL ME WHAT'S YOUR EDUCATIONAL BACKGROUND?

3 **A** I HAVE A HIGH SCHOOL DIPLOMA, AND I HAVE -- I'M, IN FACT, A  
4 RECOVERING ADDICT WHO WENT THROUGH TREATMENT IN THE '70'S, CAME  
5 TO CALIFORNIA AFTER I WAS RECRUITED FOR ONE OF THE -- AN  
6 EXEMPLARY PROGRAM IN PENNSYLVANIA, WHERE WE WERE ABLE TO DEAL  
7 WITH A LOT OF ETHNIC MINORITIES. CALIFORNIA WAS HAVING  
8 DIFFICULTY WITH THAT, RECRUITED A NUMBER OF US TO COME TO THE  
9 STATE. WHEN I CAME HERE IN 1977, IN FACT, I WORKED FOR THE  
10 DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS.

11 **Q** NOW, MS. JETT, YOUR RESPONSIBILITIES AS UNDERSECRETARY OF  
12 PROGRAMS INCLUDE IMPLEMENTING THE RECOMMENDATIONS OF THE EXPERT  
13 PANEL, RIGHT?

14 **A** CORRECT.

15 **Q** AND IT'S THE DEPARTMENT'S POSITION THAT THE EXPERT PANEL  
16 RECOMMENDATIONS SHOULD BE FOLLOWED, RIGHT?

17 **A** IT WAS THE DEPARTMENT'S POSITION THAT THE EXPERT PANEL  
18 PROVIDED US A BLUEPRINT FOR IMPLEMENTING PROGRAMS. WE ADOPTED  
19 ALL BUT ONE RECOMMENDATION OF THE EXPERT PANEL.

20 **Q** I'D LIKE TO READ FROM YOUR DEPOSITION FROM AUGUST 28TH,  
21 2008, PAGE 23, LINE 1.

22 "QUESTION: IT'S THE DEPARTMENT'S POSITION  
23 THAT THE EXPERT PANEL RECOMMENDATION SHOULD BE  
24 FOLLOWED?

25 "ANSWER: YES."

1 **A** MM-HMM.

2 **Q** NOW, ONE OF THE EXPERT PANEL'S RECOMMENDATIONS WAS THE  
3 INCENTIVES TO CREATE -- TO PARTICIPATE IN PROGRAMS YOU  
4 DISCUSSED, CORRECT?

5 **A** CORRECT.

6 **Q** AND THE DEPARTMENT CURRENTLY PROVIDES, IN ACCORDANCE WITH  
7 STATE LAW, GOOD TIME CREDITS FOR INMATES WHO ENGAGE IN WORK  
8 PROGRAMS AND EDUCATION PROGRAMS; ISN'T THAT RIGHT?

9 **A** CORRECT.

10 **Q** AND THE PURPOSE OF THAT GOOD TIME CREDIT IS TO PROVIDE AN  
11 INCENTIVE TO PARTICIPATE IN THE EDUCATION AND WORK PROGRAMS,  
12 RIGHT?

13 **A** CORRECT.

14 **Q** THAT'S BECAUSE EDUCATION AND WORK PROGRAMS, AS YOU JUST  
15 TESTIFIED, CAN REDUCE RECIDIVISM AND REDUCE CRIME, RIGHT?

16 **A** YES. ARE YOU SPEAKING OF BRIDGING, THOUGH? I'M TRYING TO  
17 GRASP WHAT YOU'RE REFERRING TO.

18 **Q** I'M SPEAKING OF IN GENERAL, THE GOOD TIME CREDITS THAT  
19 EXIST. NOW, ONE OF THEM IS BRIDGING, AND CERTAINLY THERE ARE  
20 OTHER CREDITS FOR WORK PROGRAMS, CORRECT?

21 **A** YES, I WAS JUST TRYING TO FOLLOW WHAT YOU'RE REFERRING TO.

22 **Q** OKAY. AND NOW, MS. JETT, YOU ARE NOT AWARE OF ANY INCREASE  
23 IN CRIME RESULTING FROM ANY OF THE GOOD TIME CREDIT PROGRAMS IN  
24 EXISTENCE IN CDCR; IS THAT RIGHT?

25 **MS. JOHNSON:** LACKS FOUNDATION.

1                   **JUDGE HENDERSON:** OVERRULED. ARE YOU AWARE?

2                   **THE WITNESS:** NO.

3 **BY MS. EVENSON**

4 **Q** NOW, MS. JETT, YOU'VE TESTIFIED THAT ONE OF YOUR  
5 RESPONSIBILITIES ALSO INCLUDED OVERSEEING THE PROGRAMMING IN THE  
6 REENTRY FACILITIES THAT WERE PLANNED AS A RESULT OF AB 900,  
7 CORRECT?

8 **A** CORRECT.

9 **Q** IT'S YOUR POSITION THAT 130 PERCENT OF DESIGN CAPACITY IS  
10 THE MAXIMUM LEVEL OF CROWDING AT WHICH YOU COULD PROVIDE DIRECT  
11 SUPERVISION IN THE REENTRY FACILITIES, CORRECT?

12 **A** I HAVE NO OPINION ON THE DESIGN CAPACITY. MY FOCUS IN  
13 REENTRY IS DELIVERY OF PROGRAMS IN THOSE SETTINGS. AND THE  
14 MAXIMUM IS 500 IN SETTINGS. SO THOSE -- THAT'S SORT OF THE  
15 METRIC I'M USING TO DESIGN THE PROGRAMMING.

16 **Q** SO IT'S YOUR OPINION THAT THE REENTRY FACILITY SHOULD BE AT  
17 A HUNDRED PERCENT OF DESIGN CAPACITY?

18 **A** THAT'S NOT MY OPINION. IT'S HOW I'M APPROACHING THE DESIGN.  
19 I DON'T HAVE AN OPINION IN TERMS OF DESIGN CAPACITY. THAT'S NOT  
20 MY EXPERTISE.

21 **Q** OKAY. I'D LIKE TO TURN YOUR ATTENTION TO PAGE 41 OF YOUR  
22 DEPOSITION, LINE 17.

23                   "QUESTION: BUT 130 WOULD BE THE MAXIMUM  
24                   LEVEL OF OVERCROWDING --

25                   "ANSWER: YEAH.

1 "QUESTION: -- UNDER WHICH YOU COULD PROVIDE  
2 THE APPROPRIATE PROGRAMMING?

3 "ANSWER: THAT WE COULD PROVIDE DIRECT  
4 SUPERVISION, WHICH DOESN'T REALLY HAVE ANYTHING  
5 TO DO WITH PROGRAMMING, BUT IT HAS TO DO WITH  
6 THE CUSTODY MODEL WITHIN A REENTRY."

7 **A** YES, I THINK THAT WAS A DIFFERENT DISCUSSION. BUT, YES, IT  
8 WOULD LEND ITSELF -- OUR CURRENT INSTITUTIONS ARE NOT REALLY  
9 DESIGNED FOR A DIRECT SUPERVISORY MODEL.

10 **Q** SO 130 PERCENT OF DESIGN CAPACITY IS THE MAXIMUM LEVEL OF  
11 CROWDING UNDER WHICH YOU COULD PROVIDE THE APPROPRIATE LEVEL OF  
12 SUPERVISION, CORRECT?

13 **A** YOU KNOW, I REALLY DON'T HAVE THAT OPINION. I DON'T HAVE A  
14 PERSPECTIVE ON DESIGN CAPACITY.

15 **Q** OKAY. I'LL TURN YOUR ATTENTION TO THE NEXT PAGE, PAGE 42 OF  
16 THE DEPOSITION, LINE 1:

17 "QUESTION: SO 130 PERCENT OF DESIGN  
18 CAPACITY, IN YOUR VIEW, IS THE MAXIMUM LEVEL OF  
19 OVERCROWDING AT WHICH YOU COULD PROVIDE  
20 APPROPRIATE CUSTODY SUPERVISION?

21 "ANSWER: THAT IS DIRECT SUPERVISION, WHICH  
22 IS A MODEL OF CUSTODY SUPERVISION. THAT'S THE  
23 CONTEXT THAT WE'RE TALKING ABOUT THIS IN."

24 **A** RIGHT, WHICH IS A LITTLE DIFFERENT. THAT'S VERY DIFFERENT  
25 THAN PROGRAMMING. IT'S A MODEL OF SUPERVISION WHERE THE

1 FACILITY IS DESIGNED FOR MORE INTERACTION BETWEEN THE STAFF AND  
2 THE INMATES, LESS BARRIERS AND SO FORTH, BUT THAT'S NOT  
3 NECESSARILY PROGRAM DESIGN. THAT'S SOMETHING SEPARATE.

4 **Q** YOU'VE TESTIFIED HERE TODAY THAT CDCR CAN REDUCE ITS PRISON  
5 POPULATION BY PROVIDING EVIDENCE-BASED PROGRAMS THAT REDUCE  
6 RECIDIVISM, CORRECT?

7 **A** CORRECT.

8 **Q** BUT AS OF AUGUST WHEN I TOOK YOUR DEPOSITION, CDCR HAD NO  
9 SYSTEM TO PUT THE RIGHT INMATE IN THE RIGHT PROGRAM; ISN'T THAT  
10 RIGHT?

11 **A** AS OF AUGUST WE WERE PROBABLY STILL IMPLEMENTING WITH  
12 TEACHERS AT THAT POINT AND HAD NOT DONE OUR PILOT FIELD TEST AT  
13 THAT STAGE, WHICH WAS AUGUST, CORRECT, IS THAT YOU'RE --

14 **Q** IF I COULD REFRESH YOUR RECOLLECTION, AT THAT TIME YOU  
15 ACTUALLY DID HAVE A PROOF PROJECT --

16 **A** RIGHT.

17 **Q** -- IN PLACE AT SOLANO.

18 I'D LIKE TO TURN YOUR ATTENTION TO PAGE 174 OF YOUR  
19 DEPOSITION, LINE 20.

20 "THE WITNESS: AGAIN, WHERE I'M AT WITH  
21 PROGRAMS RIGHT NOW, IT WOULDN'T MATTER -- HOW AM  
22 I GOING TO SAY? WE HAVE NO SYSTEM DESIGNED IN  
23 INSTITUTIONS TO DELIVER THE RIGHT INMATE TO THE  
24 RIGHT PROGRAM."

25 NOW, ONE THING THAT AB 900 WOULD HAVE DONE WAS TO

1 CLEAR UP PROGRAM SPACE THAT'S NOW BEING USED FOR HOUSING SO YOU  
2 COULD DO PROGRAMMING, CORRECT?

3 **A** THAT'S -- I GUESS I'M NOT CLEAR WHAT YOUR QUESTION IS.

4 **Q** ONE THING THAT AB 900 WOULD HAVE DONE WOULD BE TO CLEAR  
5 UP -- BUILD IN-FILL BEDS THAT WOULD CLEAR UP PROGRAM SPACE WHICH  
6 IS NOW BEING USED FOR HOUSING SO YOU COULD DO PROGRAMMING IN  
7 THAT SPACE; ISN'T THAT RIGHT?

8 **A** I THINK THAT WAS THE INTENT OF AB 900; HOWEVER, WE HAVE GONE  
9 A SLIGHTLY DIFFERENT DIRECTION, COMBINED WITH, YOU KNOW, THE  
10 5,000 CURRENTLY OUT-OF-STATE INMATES THAT WE HAVE, WHICH HAS  
11 FREED UP SOME 17 GYMNASIUMS AND, YOU KNOW, NINE OR TEN DAYROOMS,  
12 THAT IS PROVIDING SPACE.

13 BUT MORE SO WE HAVE MOVED INTO WHAT IS AN INTEGRATED  
14 PROGRAM DESIGN WHEREBY WE'RE USING THE MODULARS, WHICH ARE ABOUT  
15 EACH ONE ABOUT 6,700 SQUARE FOOT, DESIGNED WITH OFFICE SPACE AND  
16 OPEN ROOMS TO DO CLASSROOMS, AS AN ENVIRONMENT WHERE WE COULD  
17 BOTH PROVIDE THE DRUG TREATMENT, BUT WE COULD ALSO PROVIDE SOME  
18 OF THE NEW PROGRAMS, THINKING FOR CHANGE, ANGER MANAGEMENT-TYPE  
19 PROGRAMS. SO WE ARE NOT REALLY DEPENDENT ON OTHER SPACE AT THIS  
20 STAGE.

21 **Q** AT THIS STAGE YOU HAVE ABOUT EIGHT MODULES, CORRECT?

22 **A** CORRECT.

23 **Q** AND THERE ARE STILL APPROXIMATELY 14,000 UGLY BEDS OR  
24 NON-TRADITIONAL BEDS; ISN'T THAT RIGHT?

25 **A** I BELIEVE. I'M NOT SURE OF THE NUMBER, BUT I KNOW THAT



1 THERE'S STILL BEDS THAT WE'RE TAKING DOWN, YES.

2 **Q** THERE ARE STILL NON-TRADITIONAL BEDS THAT ARE BEING USED,  
3 ISN'T THAT RIGHT, ABOUT 14,000?

4 **A** YES, I'M NOT SURE OF THE NUMBER. YOU ARE CORRECT IN THAT  
5 THERE ARE NON-TRADITIONAL BEDS.

6 **Q** I WOULD LIKE TO PLAY A SHORT CLIP FOR YOU. THIS IS TAKEN  
7 FROM THE GOVERNOR'S WEBSITE.

8 (VIDEO PLAYED.)

9 **BY MS. EVENSON**

10 **Q** WHY DON'T WE DO THAT WITH SOUND, THE FULL THING?

11 (VIDEO PLAYED.)

12 **JUDGE HENDERSON:** THIS REFORM MEASURE IS AB 900?

13 **MS. EVENSON:** THAT'S CORRECT. I MEAN, I CAN ASK THE  
14 WITNESS BUT --

15 **THE WITNESS:** WELL, I THINK AT THE TIME THAT I HAD  
16 JUST, I THINK, COME BACK FROM CCI OR CCW, ONE OF THE  
17 INSTITUTIONS THAT HAD AND TOURED WITH THE GOVERNOR TRIPLE BUNK  
18 ENVIRONMENTS. THIS IS BEFORE I WENT IN AS UNDERSECRETARY OF  
19 PROGRAMS. ONCE I GOT INTO THE INSTITUTIONS, WE DID TAKE UP A  
20 DIFFERENT TACT IN TERMS OF BUILDING ALTERNATIVE SPACE.

21 **Q** BUT TODAY, MS. JETT, THE DEPARTMENT HASN'T BROKEN GROUND ON  
22 ANY NEW CONSTRUCTION UNDER AB 900, ANY NEW IN-FILL BEDS; ISN'T  
23 THAT RIGHT?

24 **A** IN-FILL BEDS, YES.

25 **Q** OKAY.

1 **A** WE HAVE LAID EIGHT MODULARS DOWN. THAT GIVES US ROUGHLY AN  
2 ADDITIONAL 6,000 SQUARE FOOT TO PROVIDE PROGRAMS IN THAT WE  
3 HAVEN'T HAD IN THE PAST.

4 **Q** IN EIGHT INSTITUTIONS?

5 **A** CORRECT.

6 **Q** AND ARE ALL OF THOSE PRISON SETTINGS OR SOME OF THOSE CAMPS  
7 AND OTHER CORRECTIONAL --

8 **A** THERE'S NO CAM- -- THERE IS ONE CAMP SETTING IN PHASE TWO.  
9 I DON'T THINK THERE'S A CAMP SETTING IN PHASE ONE. THE FIRST  
10 2,000 ARE ALL IN BEDS, WITH AN EXCEPTION OF ONE, WHICH IS IN LEO  
11 CHESNEY, WHICH IS A COMMUNITY FACILITY.

12 **Q** SO OUT OF 33 OF YOUR PRISONS -- SORRY, YOUR HONOR.

13 OUT OF 33 OF YOUR PRISONS, THERE ARE NOW SEVEN  
14 MODULES?

15 **A** NO. THAT'S -- LEO CHESNEY WAS ACTUALLY A NINTH, SO IT'S IN  
16 EIGHT PRISON SETTINGS.

17 **Q** OUT OF 33 PRISON SITES THERE ARE EIGHT MODULES?

18 **A** RIGHT. THESE ARE ADDITIONAL. WE'RE IN 22 PRISONS.

19 **JUDGE KARLTON:** NOW I AM TOTALLY CONFUSED. WHEN YOU  
20 SAY YOU ARE IN 22 PRISONS, TELL ME WHAT YOU MEAN.

21 **THE WITNESS:** WE CURRENTLY HAVE OVER 9,000 SLOTS TO  
22 TREAT DRUG TREATMENT IN 22 PRISONS.

23 **JUDGE KARLTON:** OKAY. AND THAT -- I DON'T  
24 UNDERSTAND. DOES THAT INCLUDE THE EIGHT OR PERHAPS NINE  
25 MODULES, OR IN ADDITION TO THE EIGHT OR NINE MODULES?

1           **THE WITNESS:** IT DOES NOT INCLUDE THE EIGHT MODULARS,  
2 THE EIGHT MODULARS BRING US UP TO OVER 12,000 SLOTS.

3 **BY MS. EVENSON**

4 **Q** AND YET STILL, AS OF AUGUST OF 2008, AT LEAST 50 PERCENT OF  
5 ALL PRISONERS DON'T PARTICIPATE IN ANY REHABILITATIVE PROGRAM OR  
6 WORK PROGRAMS OR WORK ASSIGNMENT DURING THEIR ENTIRE PRISON  
7 TERM; ISN'T THAT RIGHT?

8 **A** I BELIEVE SO.

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

10 **BY MS. EVENSON**

11 **Q** NOW, A KEY ELEMENT OF ENSURING THAT THE RIGHT INMATE GETS  
12 INTO THE RIGHT PROGRAM IS ASSESSING THE PROGRAM NEEDS OF EACH  
13 INMATE, RIGHT?

14 **A** CORRECT.

15 **Q** AND THE FIRST STEP IN ASSESSING NEEDS IS THE COMPASS  
16 ASSESSMENT TOOL?

17 **A** CORRECT.

18 **Q** AND THE SECOND STEP IS ADMINISTERING A SECONDARY ASSESSMENT;  
19 ISN'T THAT RIGHT?

20 **A** CORRECT.

21 **Q** AND THE REHABILITATIVE PROGRAMS THEMSELVES, THE SIX  
22 EVIDENCE-BASED PROGRAMS THAT YOU DESCRIBED, THOSE PROGRAMS  
23 AREN'T EVEN GOING TO BE ON LINE IN ALL THE CDCR INSTITUTIONS  
24 UNTIL 2012; ISN'T THAT RIGHT?

25 **A** I THINK THAT'S THE DATE WHERE WE WOULD HAVE ALL 33

1 INSTITUTIONS ON LINE, YES.

2 **Q** AND WHEN I SPOKE WITH YOU IN AUGUST, YOU HADN'T EVEN  
3 SELECTED SOME OF THE EVIDENCE-BASED PROGRAMS THAT YOU WERE  
4 PLANNING TO ROLL OUT IN THE PRISONS, INCLUDING A SEX OFFENDER  
5 PROGRAM; ISN'T THAT RIGHT?

6 **A** EXCLUSIVELY THE SEX OFFENDER PROGRAM. WE'VE SELECTED THE  
7 OTHER PROGRAMS. SEX OFFENDERS, WE'RE WORKING WITH NIC RIGHT  
8 NOW, TRYING TO GET SOME TECHNICAL ASSISTANCE IN DEVELOPING AND  
9 LOCATING THE APPROPRIATE PRISONS TO SET FOR THOSE PROGRAMS.

10 **Q** SO THE OTHER PROGRAMS, ASIDE FROM SEX OFFENDERS, SHOULD ROLL  
11 OUT BY 2012, BUT THERE ISN'T EVEN A SCHEDULE FOR ROLLING OUT THE  
12 SEX OFFENDER PROGRAM IN ALL OF THE PRISONS; IS THAT RIGHT?

13 **A** AT THIS STAGE, THERE'S NOT.

14 **Q** NOW, YOU SAY THAT THE PROGRAMS, ONCE THEY'RE IMPLEMENTED,  
15 WILL HAVE DRAMATIC RESULTS IN REDUCING THE PRISON POPULATION,  
16 BUT SITTING HERE TODAY, YOU DON'T KNOW WHAT THAT REDUCTION WILL  
17 BE, DO YOU?

18 **A** NO.

19 **MS. EVENSON:** NOTHING FURTHER.

20 **JUDGE HENDERSON:** REDIRECT?

21 **MS. JOHNSON:** DOES CCPOA --

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

23 **MS. JOHNSON:** WE HAVE NOTHING FURTHER, YOUR HONOR.

24 **JUDGE HENDERSON:** OKAY.

25 **JUDGE KARLTON:** ONE QUESTION. MY NOTES DON'T MAKE

1 SENSE TO ME, BUT I THINK I KNOW WHAT I MEANT.

2 THE COMPAS ASSESSMENT IS BEING DONE IN RECEPTION  
3 CENTERS?

4 **THE WITNESS:** CORRECT.

5 **JUDGE KARLTON:** AND WE HAVE BEEN TOLD OVER AND OVER  
6 AGAIN BY EVERY WITNESS, PLAINTIFF AND DEFENDANT, THAT THE  
7 RECEPTION CENTERS ARE THE MOST OVERCROWDED AND THE LEAST ABLE TO  
8 DO ANYTHING. ARE YOU TELLING US THAT DESPITE THAT FACT, SOMEHOW  
9 OR OTHER THE COMPASS PROGRAM IS BEING ADMINISTERED TO EVERY  
10 INCOMING INMATE?

11 **THE WITNESS:** AT THIS MOMENT IT'S NOT TO EVERY  
12 INCOMING INMATE, BUT IT IS BEING ADMINISTERED IN RECEPTION  
13 CENTER AS REQUIRED BY AB 900. AB 900 REQUIRED US TO ASSESS  
14 EVERY INMATE UPON RECEPTION AND TO USE THAT ASSESSMENT TO PLACE  
15 THEM INTO PROGRAM.

16 **JUDGE KARLTON:** THAT'S NOT BEING DONE BECAUSE OF THE  
17 OVERCROWDING.

18 **THE WITNESS:** WELL, IN LARGE PART IT'S NOT BEING  
19 DONE, SIR, BECAUSE WE'RE STILL TRAINING THAT CLASSIFICATION THAT  
20 HERETOFORE HAS NOT DELIVERED THAT AS A PART OF THEIR JOB.

21 **JUDGE KARLTON:** I THINK YOU'VE ANSWERED MY QUESTION.

22 **THE WITNESS:** THANK YOU.

23 **JUDGE HENDERSON:** THANK YOU FOR TESTIFYING, MS. JETT.  
24 YOU'RE EXCUSED.

25 WE'LL TAKE A 15-MINUTE RECESS AT THIS TIME.

1 (RECESS TAKEN.)

2 JUDGE HENDERSON: OKAY. YOU MAY CALL YOUR NEXT  
3 WITNESS, COUNSEL.

4 MR. LEWIS: GOOD MORNING, YOUR HONOR. KYLE LEWIS FOR  
5 THE STATE DEFENDANTS.

6 DEFENDANTS NOW CALL THOMAS HOFFMAN.

7 THOMAS HOFFMAN,

8 CALLED AS A WITNESS FOR THE DEFENDANT HEREIN, HAVING BEEN FIRST  
9 DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

10 THE WITNESS: YES, I DO.

11 THE CLERK: STATE YOUR FULL NAME FOR THE RECORD.

12 THE WITNESS: THOMAS GEORGE HOFFMAN.

13 H-O-F-F-M-A-N.

14 DIRECT EXAMINATION

15 BY MR. LEWIS:

16 Q. GOOD MORNING, MR. HOFFMAN.

17 MR. LEWIS: YOUR HONOR, DEFENDANTS HAVE SUBMITTED A  
18 TRIAL AFFIDAVIT FOR MR. HOFFMAN PREVIOUSLY IDENTIFIED AS EXHIBIT  
19 1005, AND I ASK THE COURT TO TAKE IT UNDER SUBMISSION AT THIS  
20 TIME.

21 JUDGE HENDERSON: IT WILL BE DONE.

22 BY MR. LEWIS:

23 Q. MR. HOFFMAN, ARE YOU CURRENTLY EMPLOYED BY THE STATE OF  
24 CALIFORNIA?

25 A. YES, SIR.

1 Q. WHAT DEPARTMENT DO YOU WORK FOR?

2 A. CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION.

3 Q. WHAT IS YOUR CURRENT POSITION WITH CDCR?

4 A. I'M THE DIRECTOR OF THE DIVISION OF ADULT PAROLE OPERATIONS.

5 Q. PLEASE INFORM THE COURT OF YOUR PRIOR WORK BEFORE ASSUMING  
6 THE ROLE AS DIRECTOR OF PAROLE OPERATIONS?

7 A. FROM 1975 TO 1994 I WORKED FOR THE CITY OF INGLEWOOD POLICE  
8 DEPARTMENT. I WENT FROM OFFICER TO CAPTAIN THERE.

9 I LEFT INGLEWOOD P.D. IN APRIL OF 1994 TO JOIN THE  
10 WEST SACRAMENTO P.D. AS THE THEN CAPTAIN. ULTIMATELY BECAME THE  
11 DEPUTY CHIEF OF POLICE. I RETIRED IN APRIL OF 2004 AS AN  
12 INTERIM CHIEF OF POLICE.

13 Q. AND HOW LONG HAVE YOU HELD THE POSITION AS DIRECTOR OF THE  
14 DEPARTMENT -- OR THE DIVISION OF PAROLE OPERATIONS?

15 A. TWENTY-EIGHT MONTHS.

16 Q. HOW MANY PAROLEES ARE CURRENTLY UNDER THE SUPERVISION OF THE  
17 DIVISION OF PAROLE OPERATIONS?

18 A. ABOUT 125,000.

19 Q. AND ARE THESE PAROLEES BROKEN DOWN INTO DIFFERENT  
20 CLASSIFICATIONS OR SERVICE CLASSIFICATIONS?

21 A. THEY ARE BROKEN -- YES, THEY ARE BROKEN DOWN INTO GROUPS  
22 BASED ON THEIR NEEDS. MENTAL ILLNESSES IS A GROUP. THERE'S  
23 SEXUAL OFFENDERS THAT WE SUPERVISE SPECIFICALLY, GANGSTERS,  
24 SECOND STRIKERS. YOU KNOW, I'LL SAY THE GENERIC POPULATION.  
25 ALL OF THEM ARE ORGANIZED IN A WAY THAT REVOLVES AROUND FIRST

1 AND FOREMOST THEIR NEEDS AND THE RISKS THAT THEY REPRESENT TO  
2 OUR SOCIETY.

3 AND THEN, SECONDARILY, THE FREQUENCY BY WHICH AGENTS  
4 ARE REQUIRED TO CONTACT THEM AND/OR DRUG TEST THEM.

5 **Q.** THE COURT HAS HEARD THAT PAROLEES ARE SENT BACK TO PRISON  
6 FOR VARIOUS REASONS. COULD YOU DESCRIBE VERY BRIEFLY HOW THE  
7 PAROLE REVOCATION PROCESS WORKS? WHAT HAPPENS TO SEND A PAROLEE  
8 BACK TO PRISON?

9 **A.** TWO THINGS PREDOMINANTLY RESULT IN PAROLEES GETTING INVOLVED  
10 IN THE REVOCATION PROCESS: CONTACT WITH LOCAL LAW ENFORCEMENT  
11 THAT BRINGS THEM TO THEIR ATTENTION AND THEN SUBSEQUENTLY TO  
12 OURS AND/OR OBSERVED MISCONDUCT BY PAROL AGENTS FREQUENTLY  
13 VIOLATING TERMS AND CONDITIONS OF PAROLE. LIKE, THEY THROW A  
14 DIRTY DRUG TEST, OR THEY ARE FOUND IN POSSESSION OF SOMETHING  
15 THEY ARE NOT SUPPOSED TO BE FOUND IN POSSESSION OF, OR ANY  
16 NUMBER OF THINGS.

17 THEN THERE'S A REPORT THAT'S WRITTEN BY THE AGENT AND  
18 FORWARDED TO THE SUPERVISOR. THEN BASED ON THE RECOMMENDATIONS  
19 OF THE AGENT, WHETHER OR NOT IT'S FOR SOME SORT OF REMEDIAL OR  
20 NON-CUSTODIAL RESPONSE, OR IT CAN ABOUT HALF OF THE TIME MOVE  
21 TOWARDS THE REVOCATION PROCESS, WHICH IS CONTROLLED BY THE BOARD  
22 OF PAROLE HEARINGS.

23 **Q.** AND DOES THE BOARD OF PAROLE HEARINGS FALL UNDERNEATH THE  
24 DIVISION OF PAROLE OPERATIONS?

25 **A.** NO, SIR.



1 Q. SO IT'S A SEPARATE ENTITY WITHIN CDCR APART FROM YOUR  
2 OPERATIONS?

3 A. YES, SIR.

4 Q. DO YOU KNOW HOW MANY PAROLE -- I'M SORRY, HOW MANY PAROLE  
5 VIOLATIONS THERE ARE IN A GIVEN YEAR, ROUGHLY?

6 A. IN 2007 THERE WERE A LITTLE OVER 187,000. I THINK  
7 HISTORICALLY 180,000 IS NOT -- WOULD NOT BE AN OVERSTATEMENT.

8 Q. AND OF THAT, SAY, 180,000, HOW MANY -- OR APPROXIMATELY HOW  
9 MANY --

10 JUDGE KARLTON: I'M SORRY. MAY I INTERRUPT? I JUST  
11 WANDERED. MY FAULT.

12 125,000 PAROLEES ROUGHLY?

13 THE WITNESS: YES, SIR.

14 JUDGE KARLTON: PRODUCING ABOUT 187,000 VIOLATIONS?

15 THE WITNESS: YES, SIR.

16 JUDGE KARLTON: YOU'RE DOING A GREAT JOB.

17 BY MR. LEWIS:

18 Q. OF THOSE APPROXIMATELY 180,000, HOW MANY ARE ACTUALLY  
19 RETURNED OR HOW MANY PAROLEES ARE ACTUALLY RETURNED TO  
20 INCARCERATION IN CDCR PER YEAR?

21 A. ABOUT 68,000 WOULD BE A PRETTY GOOD ESTIMATE.

22 Q. AND THERE HAS BEEN TESTIMONY REGARDING TECHNICAL; VIOLATIONS  
23 OF PAROLE. WHAT ARE TECHNICAL VIOLATIONS?

24 A. THAT WOULD BE AN OFFENSE A NON-PAROLEE COULD NOT BE RETURNED  
25 TO CUSTODY FOR. IT WOULD BE SOMETHING LIKE SOMEBODY WHO IS,

1 I'LL SAY, A FREE CITIZEN COULDN'T BE PLACED CUSTODY FOR  
2 ABSCONDING, OR FOR SIMPLE POSSESSION OF ALCOHOL, OR FOR NOT  
3 OBEYING THE DIRECTIVES OF A PAROLE AGENT. NOT A MISDEMEANOR AND  
4 NOT A FELONY. TERMS AND CONDITIONS OF PAROLE PREDOMINANTLY.

5 **Q.** ARE THERE SOME TECHNICAL VIOLATIONS THAT MUST BE REFERRED TO  
6 THE BOARD OF PAROLE HEARINGS?

7 **A.** TECHNICAL VIOLATIONS COMMITTED BY CERTAIN MEMBERS OF THE  
8 PAROLEE POPULATION. 1192 OR 667 COMMITMENT OFFENSES, YES, THEY  
9 ARE MANDATORILY REFERRED TO THE BOARD.

10 **Q.** WHICH YOU SAY 1192 OR 667 OFFENSES, COULD YOU DESCRIBE WHAT  
11 THOSE ARE FOR THE COURT?

12 **A.** TWO SECTIONS IN THE PENAL CODE THAT DEFINE CRIMES THAT ARE  
13 EITHER SERIOUS AND/OR SERIOUS AND VIOLENT.

14 **Q.** AND OF THE TECHNICAL VIOLATIONS THAT YOUR DIVISION SEES, DO  
15 YOU HAVE ANY IDEA ABOUT WHAT THE APPROXIMATE PERCENTAGE OF THOSE  
16 THAT MUST BE REFERRED TO THE BOARD IS?

17 **A.** WE MANDATORILY REFER ABOUT 50 PERCENT OF THE TOTAL  
18 VIOLATIONS THAT COME TO OUR ATTENTION TO THE BOARD OF PAROLE  
19 HEARINGS.

20 **JUDGE REINHARDT:** I THOUGHT TECHNICAL VIOLATIONS YOU  
21 SAID WERE ACTIONS FOR WHICH ORDINARY CITIZENS NOT ON PAROLE  
22 COULD NOT BE SENT TO PRISON FOR.

23 **THE WITNESS:** YES, SIR.

24 **JUDGE REINHARDT:** AND THESE TWO CATEGORIES ARE  
25 SERIOUS CRIMES?

1           **THE WITNESS:** NO, SIR. IF A PAROLEE HAS A COMMITMENT  
2 OFFENSE THAT FALLS UNDER THE DEFINITION OF 1192 AND/OR 667, 2616  
3 OF THE CALIFORNIA REGS DEMAND THAT WE REFER THOSE VIOLATIONS TO  
4 THE BOARD FOR CONSIDERATION.

5           **JUDGE REINHARDT:** WHATEVER VIOLATION IT IS, LIKE NOT  
6 CALLING IN ON A PARTICULAR DAY?

7           **THE WITNESS:** I'M SORRY, YOUR HONOR.

8           **JUDGE KARLTON:** WHATEVER THE VIOLATION IS, YOU MUST  
9 REFER TO THE PAROLE AGENCY.

10          **THE WITNESS:** PER 2616, YES.

11          **JUDGE REINHARDT:** IF HE DOESN'T SHOW UP FOR AN  
12 APPOINTMENT?

13          **THE WITNESS:** THAT COULD BE.

14 **BY MR. LEWIS:**

15 **Q.** DO YOU HAVE AN IDEA ABOUT, APPROXIMATELY, HOW MANY TECHNICAL  
16 VIOLATIONS OF PAROLE ARE REFERRED TO THE BOARD OF PAROLE  
17 HEARINGS BY YOUR AGENTS EACH YEAR?

18 **A.** THERE'S A NUMBER -- PURE TECHNICAL, ONLY A TECHNICAL  
19 VIOLATION. IN 2007 ABOUT 17,000 PURE TECHNICAL VIOLATIONS.

20 **Q.** AND DO YOUR PAROLE AGENTS HAVE THE ABILITY TO SIMPLY STOP  
21 RESPONDING TO TECHNICAL PAROLE VIOLATIONS?

22 **A.** NO, SIR. WE RESPOND TO ANY VIOLATION THAT COMES TO OUR  
23 ATTENTION, TECHNICAL OR CRIMINAL.

24 **Q.** DOES THE LARGE NUMBER OF PAROLEES SUPERVISED BY CDCR  
25 SOMETIMES AFFECT YOUR DIVISION'S ABILITY TO MANAGE THE PAROLE

1 POPULATION?

2 **A.** I DON'T KNOW QUITE HOW TO ANSWER THAT. IF YOU COULD --

3 **Q.** DO YOU HAVE A HARD TIME MAKING SURE THAT ALL OF YOUR  
4 PAROLEES GET THE SERVICES THEY NEED OR GET THE PROGRAMS THAT  
5 THEY NEED BECAUSE OF THE HIGH NUMBER OF PAROLEES THAT YOU HAVE?

6 **A.** I DON'T KNOW THAT WE COULD EVER HAVE ENOUGH PROGRAMS FOR A  
7 POPULATION OF THIS SIZE. WE ARE WORKING HARD TO EXPAND THE  
8 PROGRAM LEVEL, BUT THERE ARE TIMES WHEN PAROLEES COULD MERIT  
9 FROM TREATMENT AND TREATMENT IS NOT AVAILABLE.

10 **Q.** HAS THE DIVISION OF PAROLE OPERATIONS RECENTLY IMPLEMENTED A  
11 RISK AND NEEDS ASSESSMENT TO ASSIST IN BETTER MANAGING ITS  
12 PAROLEE POPULATION?

13 **A.** YES. OVER THE LAST TWO YEARS WE HAVE TAKEN A NUMBER OF  
14 STEPS TO, MOST IMPORTANTLY, BRING OURSELVES INTO A POSITION  
15 WHERE WE ARE BASING OUR DECISIONS ON RISKS AND NEEDS AND USING  
16 EVIDENCE-BASED PRACTICES TO DRAW OUR CONCLUSIONS ABOUT WHAT'S  
17 THE BEST OUTCOME FOR A GIVEN PAROLEE AND/OR A GIVEN PAROLEE  
18 INVOLVED IN THE REVOCATION PROCESS.

19 THAT INCLUDES THE COMPASS REENTRY PROCESS, WHICH IS  
20 ADMINISTERED TO ABOUT 60 PERCENT OF ALL PAROLEES THAT -- OR ALL  
21 INMATES THAT ARE DISCHARGED FROM CDCR ON TO PAROLE.

22 **Q.** YOU MENTIONED THE COMPASS. SO HOW IS THE COMPASS TOOL USED  
23 TO BENEFIT THE PAROLEE POPULATION?

24 **A.** IT'S EVIDENCE-BASED VALIDATED PROCESS BY WHICH WE ASSESS THE  
25 RISK THAT THE PAROLEE REPRESENTS BASED ON THEIR CRIMINAL HISTORY

1 AND NEEDS OF THAT INDIVIDUAL; BE IT EDUCATION, DRUG, ANGER  
2 MANAGEMENT, SOCIAL SKILLS, EDUCATION.

3 AND THIS RATHER EXTENSIVE DOCUMENT IS INCLUDED IN THE  
4 PRE-PAROLE PLAN PACKAGE THAT GOES TO THE PAROLE AGENT AND HIS  
5 SUPERVISOR PRIOR TO THE INMATE BEING RELEASED AND ON PAROLE. IT  
6 PROVIDES US WITH AN OPPORTUNITY TO DEVELOP A PAROLE PLAN THAT IS  
7 INDIVIDUAL SPECIFIC AND SENSITIVE TO THE NEEDS AND RISKS OF EACH  
8 INDIVIDUAL.

9 **Q.** IS THERE A RISK THAT A PAROLEE WILL REOFFEND EVEN IF THEY  
10 USE THIS TOOL, EVEN IF YOU USE THIS TOOL?

11 **A.** OH, ABSOLUTELY. YES.

12 **Q.** THE COURT HAS HEARD TESTIMONY FROM OTHER -- THAT OTHER  
13 STATES USE A PAROLE VIOLATIONS TOOL. HAS CDCR IMPLEMENTED A  
14 PAROLE VIOLATIONS TOOL?

15 **A.** YEAH. WE ARE REALLY EXCITED ABOUT IT. WE HAVE BEEN WORKING  
16 ON OUR PAROLE VIOLATION INSTRUMENT WITH THE CENTER FOR EFFECTIVE  
17 PUBLIC POLICY SINCE JULY OF 2007.

18 WE WENT THROUGH A VERY DETAILED, INVOLVED PROCESS TO  
19 BUILD A TOOL THAT'S SENSITIVE TO THE UNIQUE ENVIRONMENT OF  
20 CALIFORNIA PAROLE.

21 WE NOW HAVE THAT TOOL IN A PILOT -- IN A PILOT  
22 CAPACITY IN FOUR UNITS, ONE IN EACH OF OUR FOUR REGIONS, AND WE  
23 ARE ACTIVELY USING IT NOW.

24 AND A REAL GOOD ADVANTAGE TO THE TOOL IS WE HAVE ALSO  
25 EMBEDDED THE CALIFORNIA STATIC RISK ASSESSMENT INTO THE PVDMI

1 PROCESS. SO WHEN WE ARE FACED WITH A DECISION ABOUT A RESPONSE  
2 TO A VIOLATION OR COMMISSION OF A NEW CRIME, WE ARE CONSIDERING  
3 THE RISKS THAT THE SPECIFIC PAROLEE REPRESENTS TO OUR  
4 COMMUNITIES AND, ALSO, WE ARE -- WE HAVE DETERMINED THE RISK OF  
5 THE INCIDENT VIOLATIONS.

6 SO IT'S A TWO-FOLD DECISION-MAKING PROCESS THAT LENDS  
7 ITSELF TO GUIDING THE AGENTS TOWARDS CONSISTENT AND  
8 PROPORTIONATE RESPONSES TO VIOLATIONS.

9 IT'S A PART OF AN OVERARCHING AGENDA THAT SAYS WE  
10 WANT TO MOVE OURSELVES TOWARDS POLICY-DRIVEN RESPONSES TO  
11 VIOLATIONS OF PAROLE AND COMMISSIONS OF NEW CRIMES SO THAT WE  
12 CAN HAVE A CONSISTENT AND PREDICTABLE AND PROPORTIONATE RESPONSE  
13 TO VIOLATIONS FROM ONE END OF OUR STATE TO THE NEXT.

14 **Q.** WILL THE PVDMI, OR PAROLE VIOLATIONS TOOL THAT YOU ARE  
15 DESCRIBING, WILL IT HELP POSSIBLY PUSH PAROLEES TOWARDS  
16 ALTERNATIVE SANCTIONS PROGRAMS OR REMEDIAL PROGRAMS RATHER THAN  
17 SEND THEM BACK TO PRISON?

18 **A.** YES, BECAUSE WHAT IT DOES IS IT GUIDES OUR AGENTS. AS WE  
19 SIT HERE TODAY, THERE'S ABOUT 2400 AGENTS MAKING THESE DECISIONS  
20 THIS MORNING. IT GUIDES OUR AGENTS AND THEIR SUPERVISORS  
21 THROUGH A VERY THOUGHTFUL STRUCTURED PROCESS SO THAT THE FULL  
22 RANGE OF ALTERNATIVES AND APPROPRIATE RESPONSES TO VIOLATIONS  
23 AND COMMISSIONS OF NEW CRIMES ARE CONSIDERED IN EACH INSTANCE.

24 **Q.** WHAT KINDS OF REMEDIAL PROGRAMS ARE AVAILABLE TO PAROLEES?

25 **A.** IT RUNS THE GAMUT. THERE'S ABOUT 100 MILLION IN PROGRAMS

1 FUNDED VIA CDCR IN PAROLE. THEY INCLUDE SUCH THINGS AS THE DAY  
2 REPORTING CENTERS AND LITERACY LABS AND DRUG TREATMENT PROGRAMS  
3 AND RESIDENTIAL MULTI-SERVICE CENTERS AND CARE FOR THE MENTALLY  
4 ILL.

5 THEN WE ALSO WORK VERY CLOSELY -- SOMETIMES AN UPHILL  
6 BATTLE, BUT VERY CLOSELY WITH LOCAL COMMUNITIES AND PRIVATE  
7 SERVICE PROVIDERS TO EXPAND THE MENU OF SERVICE THAT WE CAN  
8 OFFER THIS LARGE POPULATION OF PAROLEES.

9 **Q.** HAVE OTHER STATES DEMONSTRATED POSITIVE IMPACTS FROM THE USE  
10 OF A PAROLE VIOLATIONS TOOL?

11 **A.** THE CENTER FOR EFFECTIVE PUBLIC POLICY, WHO ARE THE FOLKS  
12 THAT HAVE HELPED US BUILD OURS, HAVE HELPED 33 STATES AND/OR  
13 COUNTY PAROLE AND PROBATION OPERATIONS UNDERTAKE A PROCESS, AS I  
14 SAID, MORE COMMONLY REFERRED TO AS POLICY-DRIVEN RESPONSES TO  
15 VIOLATIONS. ONE OF THE OUTCOMES IS FREQUENTLY THE DEVELOPMENT  
16 OF A DECISION-MAKING INSTRUMENT OF ONE KIND OR ANOTHER.

17 STATES LIKE TEXAS, NEW JERSEY, KANSAS, OHIO, FLORIDA  
18 HAVE ALL ENGAGED IN THIS PROCESS AND ALL OF THEM HAVE SEEN A  
19 REDUCTION IN THE USE OF THE REVOCATION PROCESS AND IN THE PAROLE  
20 ENVIRONMENT, A REDUCTION IN PRISON POPULATIONS AND BETTER  
21 OUTCOMES FROM THE PAROLEES.

22 **Q.** DO YOU BELIEVE THAT THE USE OF THE CALIFORNIA PAROLE TOOL  
23 WILL EVENTUALLY RESULT IN LESS RECIDIVISM AND FEWER PAROLE  
24 REVOCATIONS IN CALIFORNIA?

25 **A.** ABSOLUTELY, ABSOLUTELY.

1 Q. IN YOUR OPINION, WILL THE USE OF A RISK AND NEEDS ASSESSMENT  
2 AND THE PAROLE TOOL RESULT IN A DIFFERENT KIND OF CDCR  
3 POPULATION AFTER SOME TIME?

4 A. YES. IT WILL PROVIDE US WITH AN OPPORTUNITY TO BRING -- AND  
5 THIS IS A HUGE STEP FORWARD FOR OUR STATE. WE WILL BRING  
6 SCIENCE AND EVIDENCE-BASED PRACTICES TO WHAT HAS HISTORICALLY  
7 BEEN A CLINICAL DECISION ABOUT RISK. THE RESEARCH VALIDATES  
8 THAT THE CLINICAL DECISION OR CONCLUSION ABOUT RISK, YOU GET IT  
9 RIGHT ABOUT 50/50, 50 PERCENT OF THE TIME.

10 WHEN YOU INTRODUCE A VALIDATED EVIDENCE BASED TOOL,  
11 YOU BRING THAT THRESHOLD UP TO ABOUT 70 PERCENT. IF YOU ALSO  
12 HAVE TALENTED PROFESSIONALS, YOU CAN CONTINUE TO BUMP THAT RATIO  
13 UP WHERE THE DECISION CAN BE RIGHT IN EXCESS OF 70 PERCENT OF  
14 THE TIME, RECOGNIZING YOU ARE NEVER GOING TO GET 100 PERCENT.

15 THE CLERK: TIME IS UP, COUNSEL.

16 MR. LEWIS: IF I MIGHT ASK A FEW MORE QUESTIONS, YOUR  
17 HONORS?

18 JUDGE REINHARDT: LET ME ASK ONE BEFORE YOU CONTINUE,  
19 COUNSEL.

20 IN ANSWERING THE LAST TWO QUESTIONS YOU USED THE WORD  
21 "EVENTUALLY" AND THEN IN ANOTHER INSTANCE "AFTER SOME TIME."

22 IS THERE ANYTHING WITHIN YOUR OWN EXPERIENCE OR  
23 LOOKING AT PROGRAMS FROM OTHER STATES THAT CAN TELL YOU  
24 CONCRETELY OR SEMI-CONCRETELY WHEN THESE CHANGES -- WHEN YOU'LL  
25 START SEEING THESE CHANGES?



1           **THE WITNESS:** OTHER STATES, YOU KNOW, LIKE KANSAS AND  
2 TEXAS, ILLINOIS SEE THE CHANGES QUICKLY. THE CAVEAT FOR  
3 CALIFORNIA IS, WE ARE THE GORILLA IN THE CROWD.

4           OHIO, AS AN EXAMPLE. OHIO HAS ABOUT 37,000 PAROLEES  
5 THAT THEY SUPERVISE. THEY HAVE JUST RECENTLY COME OUT WITH,  
6 JUST IN THE LAST WEEK, THE MOST EXTENSIVE REVIEW OF THE  
7 DECISION-MAKING INSTRUMENT PROCESS EVER AND IT VALIDATED THAT  
8 THEY'VE EXPERIENCED SIGNIFICANT REDUCTIONS IN REVOCATIONS AND  
9 THE USE OF INCARCERATION IN THIS PROCESS VERY QUICKLY.

10           **JUDGE KARLTON:** WHAT DOES "VERY QUICKLY" MEAN? A  
11 YEAR? SIX MONTHS? WHAT DOES IT MEAN? I UNDERSTAND THAT YOU  
12 DON'T HAVE A PRECISE NUMBER, BUT ROUGH.

13           **THE WITNESS:** YOU ARE GOING TO SEE THE CHANGE  
14 VIRTUALLY IMMEDIATELY, RECOGNIZING THAT IT WILL TAKE -- AND THIS  
15 IS WHY -- I'M NOT TRYING TO AVOID THE QUESTION BUT, YOU KNOW,  
16 WHEN YOU -- WHEN WE RUN THROUGH 70,000 OR 80,000 VIOLATIONS, THE  
17 IMPACT OF HAVING A STRUCTURED DECISION-MAKING INSTRUMENT AND  
18 ALTERNATIVE SANCTIONS WILL BE RECOGNIZED QUICKLY.

19           I GUESS ONE WAY TO ANSWER YOUR QUESTION, YOUR HONOR,  
20 IS WE ARE USING THIS TOOL RIGHT NOW IN FOUR OF OUR UNITS. IN  
21 THE FIRST COUPLE OF WEEKS WHEN WE -- OUR AGENTS USED THE TOOL,  
22 THEY AGREED WITH THE TOOL -- AND THIS WAS ABOUT 113 CASES. THEY  
23 AGREED WITH THE TOOL ALL BUT SIX TIMES, AND THEN THE OUTCOME  
24 THAT THAT TOOL RECOMMENDED.

25           AND I THINK WHAT YOU WILL SEE -- I KNOW WHAT YOU WILL

1 SEE QUICKLY IS CONSISTENCY AND CONTINUITY IN THESE RESPONSES AND  
2 A NEW FOCUS. THIS IS -- SOME OF THIS IS CULTURAL, BUT A NEW  
3 FOCUS ON RECOGNIZING THAT WHAT PAROLE IS ABOUT IS HELPING FOLKS  
4 TO SAFELY AND EFFECTIVELY TRANSITION BACK INTO SOCIETY WHENEVER  
5 WE CAN MAKE THAT HAPPEN.

6 **JUDGE REINHARDT:** HOW LONG WILL IT TAKE BEFORE IT'S  
7 IN EFFECT STATE WIDE?

8 **THE WITNESS:** WE WILL HAVE THIS -- THE PLAN IS TO  
9 HAVE THE PVDMI STATE WIDE BEFORE THE END OF NEXT YEAR.

10 OUR STRATEGY AT THE MOMENT -- AND, OBVIOUSLY, ALL OF  
11 THIS IS, WE COULD -- WE COULD ACCELERATE THIS, BUT THE PLAN  
12 RIGHT NOW IS THAT BEGINNING IN FEBRUARY WE WILL BEGIN TO ROLL  
13 THIS TOOL OUT IN FOUR DISTRICTS EVERY 30 TO 45 DAYS. THERE'S 25  
14 DISTRICT IN OUR STATE SYSTEM. SO WE WOULD ROLL FOUR OUT EVERY  
15 30 OR 45 DAYS. RIGHT NOW PROJECTING THAT BY OCTOBER, MAYBE  
16 NOVEMBER -- OCTOBER SEEMS TO BE A PRETTY COMFORTABLE DATE FOR  
17 US -- THAT WE WOULD HAVE THE TOOL UP AND OUR AGENTS TRAINED AND  
18 EVERYBODY USING IT BY THEN.

19 **JUDGE KARLTON:** AND THE BUDGET CRISIS AND THE  
20 APPARENT DETERMINATION THAT ONE WAY OR ANOTHER EVERY AGENCY IS  
21 GOING TO HAVE TO TAKE A HIT WILL DELAY THAT TO SOME DEGREE, AND  
22 YOU DON'T KNOW HOW MUCH THAT WILL BE BECAUSE IT DEPENDS ON HOW  
23 BADLY YOU ARE HIT?

24 **THE WITNESS:** YOUR HONOR, I DON'T BELIEVE THAT IT  
25 WILL -- IT WILL DELAY THE IMPLEMENTATION OF THE USE OF THE

1 PVDMI, THE PAROLE VIOLATION METRICS.

2           YOU KNOW, THERE COULD BE SOME IMPLICATIONS ON THE  
3 AVAILABILITY OF PROGRAMMING. AND, OBVIOUSLY, ONE OF THE KEY  
4 STRENGTHS OF A STRUCTURED DECISION-MAKING PROCESS IS THAT THERE  
5 IS AN EFFECTIVE AND A ROBUST MENU OF PROGRAMS AVAILABLE,  
6 SOMETHING WE ARE WORKING HARD TO ALSO BUILD EITHER BY OUR OWN  
7 RESOURCES AND/OR WORKING CLOSELY WITH COMMUNITIES TO MAKE THE --  
8 HELP US HAVE THAT AVAILABLE TO OUR PAROLEE POPULATION.

9           **JUDGE KARLTON:** IT SEEMS TO ME -- AND I'M NOT A  
10 PROFESSIONAL AND YOU WILL HAVE TO TELL ME WHETHER I'M RIGHT --  
11 THAT IMPLEMENTATION OF THIS PROGRAM AND THE REDUCTION OF SENDING  
12 PEOPLE BACK TO PRISON AND ALL THE REST WOULD ULTIMATELY BE A  
13 SIGNIFICANT SAVINGS TO THE STATE; IS THAT RIGHT OR WRONG?

14           **THE WITNESS:** YES, SIR. THAT ASSUMPTION WOULD BE  
15 CORRECT. RETURNING OF -- FEWER PEOPLE GOING THROUGH THE  
16 INSTITUTIONAL PROCESS WOULD SAVE MONEY.

17 **BY MR. LEWIS:**

18 **Q.** MR. HOFFMAN, WERE YOU SCHEDULED TO RETIRE FROM CDCR ON  
19 NOVEMBER 1ST, 2008?

20 **A.** YES, SIR.

21 **Q.** WHY DID YOU CHOOSE TO STAY IN YOUR POSITION AS THE DIRECTOR  
22 OF THE DIVISION OF PAROLE OPERATIONS?

23 **A.** THIS IS THE ULTIMATE HONOR OF A 35-YEAR CAREER. I BELIEVE  
24 IN CDCR AND DAPO. I BELIEVE WE HAVE POSITIONED OURSELVES WELL,  
25 REALLY WELL, TO REALLY MAKE A DIFFERENCE IN WHAT I SEE AS ONE OF

1 THE MOST COMPLICATED, INTERESTING SOCIAL DEBATES OF OUR TIME.

2 I BELIEVE WE CAN MAKE A DIFFERENCE AND THAT WE ARE  
3 POSITIONED TO DO THAT NOW. AND I DIDN'T -- I DIDN'T WANT TO  
4 LEAVE AND NOT BE PART OF THAT.

5 AND MY WIFE TOLD ME IF I RETIRED, SHE WOULD BE MAD AT  
6 ME, SO...

7 **MR. LEWIS:** YOUR HONOR, IT IS DEFENDANTS' REQUEST  
8 THAT MR. HOFFMAN'S AFFIDAVIT, EXHIBIT 1005, BE MOVED INTO  
9 EVIDENCE AT THIS TIME.

10 **JUDGE HENDERSON:** IT WILL BE.

11 (DEFENDANTS' EXHIBIT 1005 RECEIVED IN  
12 EVIDENCE)

13 **MR. LEWIS:** THANK YOU, YOUR HONOR. NO FURTHER  
14 QUESTIONS.

15 **JUDGE HENDERSON:** INTERVENORS?

16 **DIRECT EXAMINATION**

17 **MR. MITCHELL:** BILL MITCHELL FOR THE DEFENDANT  
18 INTERVENORS.

19 **BY MR. MITCHELL:**

20 **Q.** MR. HOFFMAN, GOOD MORNING.

21 **A.** GOOD MORNING.

22 **Q.** SIR, IN THE DEVELOPMENT OF THE RISK ASSESSMENT TOOL AND THE  
23 DECISION-MAKING INSTRUMENT, YOU HAVE WORKED LONG, LONG HOURS AND  
24 A LOT OF TIME IN DEVELOPING THAT INSTRUMENT, TAKING INTO  
25 CONSIDERATION A NUMBER OF DIFFERENT FACTORS, INCLUDING RISK

1 ASSESSMENT THAT INVOLVES THE RECIDIVISM FACTOR OF THOSE WHO COME  
2 OUT ON PAROLE?

3 **A.** YES, SIR.

4 **Q.** THERE HAS BEEN SOME TESTIMONY IN THIS CASE LOOKING TOWARDS  
5 EARLY RELEASE OF A GROUP OF PRISON INMATES THAT ARE, LACK OF A  
6 BETTER TERM, CALLED LOW RISK; MEANING THE NON-VIOLENT, NON-SEX  
7 OFFENDERS. ARE YOU AWARE OF THOSE PROPOSALS?

8 **A.** YES, SIR.

9 **Q.** WHAT PERCENTAGE OF THE PRISON POPULATION ARE YOUR NON-SEX,  
10 NON-VIOLENT OFFENDERS?

11 **A.** I DON'T KNOW THAT FIGURE OFF THE TOP MY HEAD. I'M SORRY.

12 **Q.** OKAY. ARE YOU AWARE OF THE RECIDIVISM RATES THAT ARE  
13 ASSOCIATED WITH THAT GROUP OF NON-SEX, NON-VIOLENT OFFENDERS?

14 **A.** THE CALIFORNIA STATIC RISK ASSESSMENT TOOL SAYS THAT ABOUT  
15 22 PERCENT OF THE POPULATION WOULD BE LOW RISK, 17 TO  
16 22 PERCENT.

17 **Q.** TWENTY-TWO PERCENT OF THE PRISON POPULATION WOULD BE LOW  
18 RISK?

19 **A.** YES.

20 **Q.** OKAY. AND THEN WOULD THAT BE YOUR CRIMINALS OR YOUR  
21 OFFENDERS, YOUR INMATES WHO COMMITTED PROPERTY AND DRUG AND  
22 NON-VIOLENT CRIMES?

23 **A.** CAN INCLUDE THAT, AND IT CAN INCLUDE SOME PEOPLE WITH A  
24 VIOLENT PAST. THERE ARE PEOPLE WITH A VIOLENT HISTORY THAT WILL  
25 SCORE LOW RISK IN THESE TOOLS.

1 Q. ARE YOU AWARE OF THE RECIDIVISM RATES THAT ARE MEASURED BY  
2 CDCR FOR YOUR PROPERTY, DRUG AND NON-VIOLENT OFFENDERS?

3 A. IN THE LOW RISK POPULATION, ABOUT 17 PERCENT OF THEM WILL  
4 RECIDIVATE.

5 Q. ABOUT 17 PERCENT?

6 A. YES, SIR.

7 Q. NOW, THERE'S BEEN SOME TESTIMONY IN THIS CASE THAT OF THE  
8 GROUP THAT IS BEING LOOKED AT FOR EARLY RELEASE FROM PRISON,  
9 THAT APPROXIMATELY 25 PERCENT OF THAT GROUP, OR THAT POPULATION,  
10 WILL COMMIT NEW CRIMES WITHIN THE FIRST FOUR MONTHS OF RELEASE.

11 NOW, IF --

12 JUDGE KARLTON: DO YOU AGREE WITH THAT NUMBER?

13 THE WITNESS: I HAVE A NUMBER OF 17 PERCENT IN MY  
14 MIND THAT WILL RECIDIVATE IN THE LOW RISK POPULATION.

15 JUDGE REINHARDT: IN THE FIRST FOUR MONTHS?

16 THE WITNESS: ACTUALLY, I THINK -- AND DR. CHAPMAN  
17 COULD BE HELPFUL HERE, BUT I BELIEVE THAT'S A PREDICTIVE VALUE  
18 OF THREE YEARS; THAT WITHIN THE SUBSEQUENT THREE YEARS, THEY  
19 WOULD RECIDIVATE VIOLENTLY OR THEY WOULD RECIDIVATE AT ALL.  
20 ABOUT 17 PERCENT OF THE TOTAL LOW RISK POPULATION WOULD  
21 RECIDIVATE, ABOUT 4 PERCENT OF THAT GROUP VIOLENTLY.

22 Q. SO ABOUT 4 PERCENT OF THE LOW RISK POPULATION WILL COMMIT  
23 VIOLENT CRIMES WHEN THEY RECIDIVATE?

24 A. ACTUALLY, IT'S A LITTLE LESS THAN THAT. IT'S 4 PERCENT.  
25 17 PERCENT THAT WOULD RECIDIVATE.

1           WHAT WE ARE TRYING TO DO IS -- NOT TRYING TO. WHAT  
2 WE ARE DOING IS MITIGATING RISK AND TRYING TO, THROUGH SCIENCE  
3 AND RESEARCH, BREAK DOWN THE POPULATION TO A LOW, MODERATE, HIGH  
4 VIOLENT, HIGH DRUG, HIGH PROPERTY CLASSIFICATIONS.

5           **JUDGE REINHARDT:** YOUR FIGURES COME TO LESS THAN  
6 1 PERCENT, YOU SAY? YOU SAY 4 PERCENT OF 17?

7           **THE WITNESS:** YES, SIR.

8           **JUDGE REINHARDT:** SO THE ANSWER TO MR. MITCHELL'S  
9 QUESTION WOULD BE 1 PERCENT, LESS THAN 1 PERCENT?

10          **THE WITNESS:** AND I'M DOING THOSE NUMBERS OFF THE TOP  
11 OF MY HEAD. I'M PRETTY SURE THEY ARE ACCURATE.

12 **BY MR. MITCHELL:**

13 **Q.** IF I CAN CLARIFY JUST A MOMENT?

14           WHAT PERCENTAGE OF THE LOW RISK POPULATION WOULD BE  
15 EXPECTED TO COMMIT VIOLENT CRIMES IF THEY WERE RELEASED?

16 **A.** ABOUT 4 PERCENT.

17          **JUDGE KARLTON:** FOUR PERCENT OF THE TOTAL POPULATION  
18 OR 4 PERCENT OF THE 17 PERCENT THAT'S GOING TO RECIDIVATE IN ANY  
19 EVENT?

20          **THE WITNESS:** FOUR PERCENT OF THE GROUP THAT WILL  
21 RECIDIVATE WILL RECIDIVATE VIOLENTLY.

22          **JUDGE KARLTON:** THAT'S LESS THAN 1 PERCENT OF THE  
23 TOTAL NUMBER.

24          **THE WITNESS:** ASSUMING I HAVE GOT IT RIGHT, THAT IT'S  
25 THE 17 PERCENT -- I WOULD WANT TO CHECK THAT TO BE ENTIRELY

1 ACCURATE, BUT I DO KNOW THAT 4 PERCENT THAT GROUP WOULD  
2 RECIDIVATE VIOLENTLY, OR THAT'S WHAT OUR RISK TOOL IS TELLING  
3 US.

4 **BY MR. MITCHELL:**

5 **Q.** THERE HAS BEEN TESTIMONY THAT APPROXIMATELY 10,000 PAROLEES  
6 ARE COMING OUT OF CDCR INSTITUTIONS AT THIS TIME, IS THAT  
7 CORRECT?

8 **JUDGE KARLTON:** A MONTH.

9 **BY MR. MITCHELL:**

10 **Q.** A MONTH?

11 **A.** YES, SIR. YES, SIR.

12 **Q.** WHAT HAS THE EXPERIENCE BEEN IN THE FIELD IN PAROLE WITH  
13 YOUR AGENTS IN FINDING SUITABLE TREATMENT, HOUSING AND  
14 EMPLOYMENT FOR THIS 10,000 THAT ARE COMING OUT EACH MONTH?

15 **A.** IT IS A CHALLENGE AND IT REALLY IS COMMUNITY-TO-COMMUNITY.  
16 SOME PLACES IT'S EASIER TO DO THAN OTHERS, BUT IT'S A  
17 DAY-TO-DAY CHALLENGE.

18 **Q.** IF WE WERE TO INCREASE THE NUMBER COMING OUT BY 25 PERCENT,  
19 ADDING ANOTHER 2500 TO THE 10,000 THAT ARE COMING OUT, DO YOU  
20 HAVE AN OPINION AS TO THE ABILITY OF THE COMMUNITY RESOURCES TO  
21 ABSORB FOR TREATMENT, HOUSING AND EMPLOYMENT CONSIDERATIONS THAT  
22 ADDITIONAL PAROLEE POPULATION?

23 **A.** I DON'T THINK I WOULD BE ABLE TO PREDICT WHAT THE  
24 COMMUNITIES WOULD DO. I COULD TELL YOU THAT THE DIVISION OF  
25 ADULT PAROLE OPERATIONS WOULD NEED ADDITIONAL RESOURCES TO



1 HANDLE, SOUNDS LIKE ABOUT 2500 MORE PAROLEES A MONTH COMING INTO  
2 OUR SYSTEM.

3 **Q.** ADDITIONAL RESOURCES IN WHAT REGARD? WHAT WOULD YOU NEED;  
4 MORE PAROLE AGENTS, MORE HOUSING, MORE WHAT?

5 **A.** YEAH, WE WOULD NEED -- YES. OUR -- PAROLE IS FINANCED AT 70  
6 TO 1. EVERY 70 PAROLEES THAT COME INTO PAROLE, WE GET AN AGENT  
7 FOR THE -- YOU KNOW, NON-SPECIALIZED CASE LOADS.

8 BUT, YES, WE WOULD NEED ADDITIONAL AGENTS SO THAT WE  
9 CAN MAINTAIN CASE LOADS WHERE WE ARE. WE NEED MORE SUPERVISORS.  
10 I MEAN, YOU JUST RUN THROUGH THE WHOLE GAMUT OF PERSONNEL AND  
11 LOGISTICS AND, OF COURSE, ADDING THAT NUMBER OF PAROLEES INTO  
12 THE COMMUNITIES EACH MONTH WOULD FURTHER STRESS AN ALREADY  
13 STRESSED INFRASTRUCTURE FOR PROGRAMMING.

14 **Q.** THANK YOU, MR. HOFFMAN. NO FURTHER QUESTIONS.

15 **THE COURT:** REDIRECT?

16 **JUDGE KARLTON:** CROSS.

17 **JUDGE HENDERSON:** I'M SORRY, IT WOULD BE CROSS.

18 THANK YOU, JUDGE.

19 **MR. GALVAN:** ERNEST GALVAN FOR THE PLAINTIFFS.

20 **CROSS EXAMINATION**

21 **BY MR. GALVAN:**

22 **Q.** GOOD MORNING, MR. HOFFMAN.

23 **A.** GOOD MORNING.

24 **Q.** MR. HOFFMAN, YOU WERE JUST TESTIFYING ABOUT THE RESOURCES  
25 YOU WOULD NEED IF YOU HAD MORE PAROLEES TO CARE OF.

1           IN YOUR TRIAL AFFIDAVIT YOU CITED THAT THIS DOCUMENT,  
2 THE FINAL REPORT OF THE U.C.L.A. EVALUATION OF THE MENTAL HEALTH  
3 SERVICES CONTINUING PROGRAM -- AND IF I COULD ZOOM ON THE CHART  
4 AT THE TOP THERE -- AND JUST ASK SOME FOUNDATIONAL QUESTIONS.

5                           (DOCUMENT DISPLAYED)

6           THE MENTAL HEALTH SERVICES CONTINUUM PROGRAM IS THE  
7 PROGRAM THAT DOES PRE-RELEASE APPOINTMENTS AND BENEFITS PLANNING  
8 FOR THE MENTALLY ILL PEOPLE ABOUT TO BE RELEASED FROM PRISON; IS  
9 THAT RIGHT?

10 **A.** YES.

11 **Q.** AND YOUR DEPARTMENT COMMISSIONED U.C.L.A. TO STUDY THE  
12 EFFECTIVENESS OF THAT PROGRAM, IS THAT RIGHT?

13 **A.** YES, SIR.

14 **Q.** AND THEN WHAT WE HAVE UP IS PART OF ONE OF THEIR REPORTS  
15 THAT THEY PROVIDED TO YOU, IS THAT RIGHT? JUST A PAGE FROM ONE  
16 OF THEM.

17 **A.** YES, SIR.

18 **Q.** OKAY. AND THIS IS AN EXHIBIT NUMBER, DEFENDANTS' 1205.  
19 IT'S ONE OF THE EXHIBITS TO YOUR AFFIDAVIT, SIR.

20           AND PART OF THEIR JOB WAS TO TELL YOU WHETHER OR NOT  
21 IT WAS COST EFFECTIVE TO INVEST IN ALL THIS PRE-RELEASE PLANNING  
22 FOR THE PEOPLE ABOUT TO PAROLE, IS THAT RIGHT?

23           AND SO AS PART OF THE BASIS, THEY MADE THIS CHART FOR  
24 YOU. ESTIMATED DAILY PAROLE COST ON THE SIDE THERE, ABOUT \$10.  
25 ESTIMATED DAILY INCARCERATION COST FOR A PERSON AT THE ENHANCED

1 OUTPATIENT LEVEL OF CARE AT THE B.O.P., ABOUT \$94?

2 **A.** YES, SIR.

3 **Q.** ABOUT TEN TIMES MORE TO KEEP SOMEBODY IN PRISON THAN TO TAKE  
4 CARE OF THEM ON PAROLE, IS THAT RIGHT?

5 **A.** IN THIS INSTANCE, YES, SIR.

6 **Q.** YOU WERE TESTIFYING EARLIER ABOUT THE PROPORTION OF THE  
7 VIOLATIONS THAT YOU HAVE TO REFER TO THE BOARD OF PAROLE  
8 HEARINGS FOR FORMAL PROCEEDINGS UNDER A REGULATION THAT YOU  
9 REFERRED TO AS 2616, TITLE 15?

10 **A.** YES, SIR.

11 **Q.** AND THAT'S ALSO KNOWN AS THE ROBIN REGAN REGULATION, IS THAT  
12 RIGHT?

13 **A.** YES, SIR, IT IS.

14 **Q.** AND THAT'S ONE OF THOSE LAWS -- OR REGULATIONS THAT WE GOT  
15 IN CALIFORNIA BECAUSE THERE WAS A HIGH PROFILE MURDER AND  
16 SOMEONE DID A CAMPAIGN TO MAKE THAT REGULATION, IS THAT RIGHT?

17 **MR. LEWIS:** OBJECTION. LACKS FOUNDATION.

18 **JUDGE KARLTON:** CAN YOU TELL US IF THAT WAS THE  
19 MOTIVATION?

20 **THE WITNESS:** THAT IS HOW IT'S BEEN CHARACTERIZED TO  
21 ME. I WAS IN LAW ENFORCEMENT AT THE TIME. I WASN'T TRACKING  
22 THE DISCUSSION, BUT THAT'S HOW IT'S BEEN TOLD TO ME.

23 **BY MR. GALVAN:**

24 **Q.** SO YOUR ANSWER IS YES?

25 **A.** YES.

1 Q. AND THAT'S JUST A REGULATION, CORRECT, ADMINISTRATIVE  
2 REGULATION?

3 A. YES, SIR.

4 Q. AND YOUR ADMINISTRATIVE AGENCY CAN CHANGE REGULATIONS  
5 THROUGH A FORMAL PROCESS, IS THAT RIGHT?

6 A. WE CAN CHANGE A REGULATION, THAT'S TRUE. THIS IS A  
7 REGULATION BY THE BOARD -- OR OF THE BOARD, NOT OF DAPO.

8 Q. AND ARE YOU AWARE THAT SENATOR GEORGE RUNNER AUTHORED AN  
9 INITIATIVE THAT WAS ON THE BALLOT THIS LAST NOVEMBER,  
10 PROPOSITION 6, THE SO-CALLED SAVE NEIGHBORHOODS ACT, THAT WOULD  
11 HAVE MADE 2616, THE ROBIN REGAN REGULATION A STATUTE?

12 A. YES, SIR.

13 Q. AND ARE YOU AWARE THAT THE VOTERS TURNED DOWN THAT  
14 PROPOSITION? THEY VOTED IT DOWN?

15 A. YES, SIR.

16 Q. TO YOUR KNOWLEDGE, CALIFORNIA IS ONE OF TWO STATES, RIGHT,  
17 THAT TRIES TO PUT EVERYBODY RELEASED FROM PRISON ON PAROLE?

18 A. CURRENTLY WE ARE THE ONLY STATE. WE WERE IN COMPANY WITH  
19 THE STATE OF ILLINOIS AND ILLINOIS HAS NOW RATCHETED BACK.

20 I THINK AS WE SIT HERE TODAY, THERE ARE ABOUT  
21 84 PERCENT OF THE PEOPLE THAT COME OUT OF AN ILLINOIS  
22 INSTITUTION WOULD GO ON TO WHAT YOU AND I SEE AS FORMAL PAROLE.

23 Q. AND SHORTLY AFTER YOU WERE APPOINTED, YOU WENT TO ILLINOIS  
24 TO STUDY WHAT THEY WERE DOING THERE IN PAROLE REFORM, IS THAT  
25 RIGHT?

1 **A.** I WENT THERE WITH DR. PETERSILIA, YES, SIR.

2 **Q.** AND DR. PETERSILIA IS JOAN PETERSILIA, THE HEAD OF THE  
3 CENTER FOR EVIDENCE BASED CORRECTIONS AT U.C. IRVINE, IS THAT  
4 RIGHT?

5 **A.** YES, SIR.

6 **Q.** AND SHE HAS BEEN FREQUENTLY RETAINED BY THE DEPARTMENT OF  
7 CORRECTIONS AS A CONSULTANT TO STUDY AND ADVISE THEM ON THEIR  
8 PROGRAMS?

9 **A.** YES, SIR. AND I TALK TO HER FREQUENTLY.

10 **Q.** AND SHE ASSISTED YOU WITH THE DEVELOPMENT OF THE PAROLE  
11 VIOLATIONS DECISION-MAKING INSTRUMENT, IS THAT RIGHT?

12 **A.** YES, SIR. SHE IS A VERY CLOSE CONFIDANTE.

13 **Q.** AND SO FOR THE -- THE STATUS QUO IN CALIFORNIA RIGHT NOW IS  
14 THAT EVERY MONTH -- EVERY MONTH YOU GET ABOUT 10,000 NEW  
15 PAROLEES, IS THAT RIGHT?

16 **A.** YES, SIR.

17 **Q.** AND YOU HAVE TO SUPERVISE THEM ALL FOR UP -- FOR ROUGHLY  
18 THREE YEARS FOR EACH ONE, IS THAT RIGHT?

19 **A.** WELL, MINIMALLY 13 MONTHS. MANY OF THEM ARE ON PAROLE FOR  
20 UP TO, YOU KNOW, 48 MONTHS, YES.

21 **JUDGE KARLTON:** EXCUSE ME, MR. GALVAN.

22 WE HEAR A LOT ABOUT PROBATION HAVING BANKED CASES.  
23 DOES PAROLE HAVE BANKED CASES?

24 **THE WITNESS:** NO, YOUR HONOR, NOT AT THE MOMENT,  
25 ALTHOUGH THERE ARE ONGOING DISCUSSIONS ABOUT ENGAGING IN THAT

1 CLASSIFICATION.

2 **BY MR. GALVAN:**

3 **Q.** AND IT'S YOUR VIEW THAT MAINTAINING SUPERVISION ON THE LOW  
4 RISK END OF THAT 10,000 GROUP DOES NOT DO ANYTHING TO PROMOTE  
5 PUBLIC SAFETY, IS THAT RIGHT?

6 **A.** NO, SIR. WHAT I WOULD SAY IS THAT THE SCIENCE AND EVIDENCE,  
7 AND THERE'S LOTS OF IT ALL ACROSS THIS NATION, DOES SUPPORT A  
8 CONCLUSION THAT THERE IS A PERCENTAGE OF THE PAROLE POPULATION  
9 THAT SHOULDN'T BE SUPERVISED OR SUPERVISED VERY LITTLE; THAT AT  
10 THE LOW END OF THE SPECTRUM SUPERVISION IS COUNTER PRODUCTIVE.

11 **Q.** WHY IS SUPERVISION COUNTER PRODUCTIVE AT THE LOW END OF THE  
12 SPECTRUM?

13 **A.** I GUESS THE WAY TO DESCRIBE IT, YOU INTRODUCE LOW END  
14 OFFENDERS TO HIGH RISK CAREER CRIMINALS AND GANGSTER TYPES, THE  
15 TENDENCY IS THAT THE LOW END FOLKS ARE MORE -- I WILL SAY MORE  
16 MOTIVATED -- NOT MOTIVATED, BUT MORE INFLUENCED BY THEM THAN THE  
17 REVERSE. BASICALLY, YOU POISON THE POOL.

18 **Q.** WHAT DOES FRONT LOADING PAROLE MEAN?

19 **A.** IT'S A CONCEPT THAT SAYS -- AND THERE'S A LOTS OF RESEARCH  
20 BEHIND THIS AS WELL, AND WE ARE VERY MUCH INTERESTED IN THIS;  
21 THAT SAYS IF YOU CAN GET TO THE PAROLEE QUICKLY, AND IF YOU --  
22 REALLY, IN THE FIRST WEEKS AFTER THEY ARE RELEASED AND GET THEM  
23 STABILIZED, HOUSING, HOPEFULLY A JOB, EDUCATIONAL, INCOME,  
24 SIMPLE THINGS LIKE DRIVERS LICENSE, SOCIAL SECURITY CARDS, AND  
25 THEN YOU DO THAT WELL IN THE FIRST 90 DAYS, RECIDIVISM RATES ARE

1 IMPACTED IMMEDIATELY.

2 **Q.** AND IT'S YOUR VIEW, ISN'T IT, THAT THE DIVISION OF ADULT  
3 PAROLE OPERATIONS, YOUR AGENCY, CANNOT ADOPT A FRONT LOADING  
4 STRATEGY IF YOU KEEP SUPERVISING EVERYONE WHO IS RELEASED, IS  
5 THAT CORRECT?

6 **A.** I DON'T KNOW THAT I WOULD WANT TO HAVE IT THAT BLACK AND  
7 WHITE. I THINK THERE ARE OPPORTUNITIES TO FRONT LOAD CERTAIN  
8 GROUPS OF PAROLEES IN THIS POPULATION AND BE MORE EFFECTIVE IN  
9 THAT WAY.

10 I WOULDN'T WANT TO SAY THAT IT JUST CAN'T HAPPEN IN  
11 ANY REGARD.

12 **JUDGE KARLTON:** IN ANY EVENT, IF YOU HAD 2500 MORE  
13 PAROLEES A MONTH, IT WOULD MAKE IT THAT MUCH MORE DIFFICULT TO  
14 ADOPT A FRONT LOADING PROGRAM.

15 **THE WITNESS:** YES, SIR. IT WOULD COMPROMISE OUR  
16 CAPACITY, AND THIS IS ONE OF OUR LONG-TERM -- OUR ULTIMATE GOAL  
17 IS TO REDUCE RECIDIVISM IN A SUSTAINABLE WAY.

18 AND, AGAIN, THE SCIENCE SAYS THAT REDUCING RECIDIVISM  
19 IN A SUSTAINABLE WAY IS ALL ABOUT SUPERVISING THE MID AND HIGH  
20 RANGE OFFENDERS EFFECTIVELY.

21 **BY MR. GALVAN:**

22 **Q.** AND WHAT DO YOU DO WITH THE LOW RANGE OFFENDERS?

23 **A.** WELL, AS WE HAVE DISCUSSED -- THERE ARE DISCUSSIONS ABOUT  
24 THIS. YOU KNOW, THERE'S OPPORTUNITIES TO BANK CASES.

25 THERE'S -- OBVIOUSLY, THE VAST MAJORITY OF STATES IN OUR NATION

1 DON'T SUPERVISE THE LOWER RISK OFFENDERS AT ALL. SOME STATES  
2 ARE AS LOW AS 40 OR 50 PERCENT.

3 OHIO, FOR EXAMPLE. THERE IS A REALLY CONTEMPORARY  
4 THOUGHTFUL REPORT THAT'S OUT THAT I FOUND IT A LITTLE DIFFICULT  
5 TO READ SOME OF IT BECAUSE IT WAS VERY TECHNICAL, BUT THEY  
6 SUPERVISE ABOUT 50 PERCENT OF THE PEOPLE THAT COME OUT OF THEIR  
7 INSTITUTIONS. THERE MAY BE SOME MERIT IN DISCUSSING THAT.

8 **JUDGE REINHARDT:** DO YOU KNOW WHETHER IN THAT STUDY  
9 IF IT SAID ANYTHING ABOUT THE EFFECT ON THE CRIME RATE OF  
10 SUPERVISING ONLY 50 PERCENT?

11 **THE WITNESS:** I WOULD -- I'D HATE TO QUOTE THAT.  
12 WHAT I HAVE READ, AND THIS UNFORTUNATELY -- NOT THAT I'M ANY  
13 EXPERT, BUT I REALLY DO LOVE THE ACADEMIC ASPECTS OF THE  
14 DISCUSSION, THE SCIENCE ABOUT HUMAN BEHAVIOR.

15 SUPERVISING THE MID AND HIGH RANGE POPULATIONS  
16 EFFECTIVELY HAS RESULTED IN A DECREASE IN PART ONE CRIMES.  
17 STATES HAVE REPORTED THAT REPEATEDLY. AND TO INCLUDE STATES  
18 THAT I THINK WE WOULD SEE AS COMPARATIVE IN SIZE AND SOCIAL  
19 AGENDA, LIKE TEXAS. ILLINOIS ALSO IS CHANGING WHAT THEY ARE  
20 DOING, TRYING TO REDUCE THE TOTAL POPULATION OF FOLKS THAT ARE  
21 ON PAROLE.

22 SO IT'S -- THIS ISN'T -- THIS ISN'T SOMETHING THAT  
23 WOULD BE ENTIRELY UNTESTED, IF DONE THOUGHTFULLY AND WITH THE  
24 SCIENCE AND EVIDENCE THAT WE CAN USE.

25 (DOCUMENT DISPLAYED)



1 **BY MR. GALVAN:**

2 **Q.** GOING BACK TO THE STATUS QUO OF WHAT YOU CAN DO RIGHT NOW.  
3 I HAVE PUT UP A PAGE OF YOUR DEPOSITION FROM AUGUST, AND IF WE  
4 COULD -- IF I COULD DIRECT YOUR ATTENTION TO LINES 10 THROUGH  
5 19. I ASKED YOU:

6 **"QUESTION:** IS THE RETENTION OF TOO MANY  
7 PEOPLE UNDER SUPERVISION ONE OF THE OBSTACLES TO  
8 FRONT LOADING SUPERVISION THE WAY YOU HAVE  
9 DEFINED IT?

10 **"ANSWER:** I GUESS THE SHORT ANSWER WOULD BE  
11 YES, IT IS. AGAIN, LOTS OF THINGS GO INTO THAT  
12 ANSWER, BUT, OBVIOUSLY, IF YOU HAD A SMALLER  
13 POPULATION AND THE CASE LOADS WERE SMALLER AND  
14 THERE WERE MORE SERVICES, YOU KNOW, AT THE  
15 COMMUNITY LEFT AND SO FORTH, YOU COULD FRONT  
16 LOAD PEOPLE MORE EFFECTIVELY, YES, SIR."  
17 YOUR FRONT RATIO OF --

18 **JUDGE REINHARDT:** IS THAT A QUESTION?

19 **MR. GALVAN:** NO, NO, SIR.

20 **JUDGE REINHARDT:** YOU DIDN'T ASK HIM WHETHER HE STILL  
21 AGREES WITH THAT.

22 **JUDGE KARLTON:** I WOULD LIKE TO KNOW. DO YOU STILL  
23 AGREE WITH THAT?

24 **THE WITNESS:** YES, SIR. THERE'S ALWAYS LOTS OF  
25 CAVEATS BECAUSE IT'S SUCH A COMPLEX DISCUSSION AND THERE'S SO

1 MANY VARIABLES, BUT IN VERY SIMPLISTIC TERMS IF YOU HAD FEWER  
2 PEOPLE, YOU KNOW, YOU COULD SUPERVISE THEM PERHAPS BETTER.

3 BUT THAT COUNTS ON LOTS OF THINGS. IT COUNTS ON  
4 COMMUNITIES ALLOWING SERVICES TO BE PROVIDED IN THEIR TOWNS AND  
5 THE NIMBIISM AND ALL THAT GOES WITH THIS.

6 THIS IS NOT A PROBLEM THAT CAN BE SOLVED SIMPLY BY  
7 HAVING FEWER PAROLEES UNDER THE SUPERVISION OF THE STATE. IT'S  
8 A STATE-WIDE SYSTEMATIC ISSUE ABOUT PROGRAMMING AND PAROLEES AND  
9 REENTRY. AND WE HAVE A BIG, BIG PIECE OF THAT RESPONSIBILITY,  
10 BUT WE CANNOT SOLVE IT ALONE. AND THAT'S WHAT I WAS TRYING TO  
11 SAY IN THAT ANSWER.

12 **BY MR. GALVAN:**

13 **Q.** YOUR CURRENT AGENT-TO-PAROLEE RATIO FOR THE GENERAL  
14 POPULATION PAROLEE IS 70 TO 1, CORRECT?

15 **A.** FOR PURPOSES OF FUNDING, YES. THE REALITY IS IT CAN BE --  
16 IT CAN BE GREATER THAN THAT AT THE UNIT LEVEL.

17 **Q.** AND THE NATIONAL AVERAGE IS CLOSER TO 50 TO 1, IS THAT  
18 CORRECT?

19 **A.** I DON'T KNOW WHAT THE NATIONAL AVERAGE IS. I DO KNOW THAT  
20 THE ASSOCIATION OF PAROLE AND PROBATION AUTHORITIES IS CLOSE TO  
21 PUBLISHING A STUDY THAT SAYS, I BELIEVE THE NUMBER IS 53 -- AT  
22 53 TO 1. BEYOND THAT YOU START HAVING A BREAKDOWN IN THE  
23 EFFECTIVENESS OF THE AGENT RELATIONSHIP.

24 **Q.** YOU WORKED WITH DR. PETERSILIA ON A PROGRAM CALLED "EARNED  
25 DISCHARGE," IS THAT CORRECT?

1 **A.** YES, SIR.

2 **Q.** AND "EARNED DISCHARGE" IS AN INCENTIVE PROGRAM THAT REWARDS  
3 A PAROLEE WHO MEETS CERTAIN GOALS WITH DISCHARGE AT SIX MONTHS,  
4 IS THAT RIGHT?

5 **A.** YES. IT IS PART OF THAT -- WHAT WE HOPE TO BE A SHIFT  
6 TOWARDS MORE INCENTIVE-BASED PHILOSOPHY WITH THE PAROLEE  
7 POPULATION.

8 **Q.** AND IT'S YOUR VIEW THAT THE EVIDENCE SHOWS THAT WHEN YOU  
9 PROVIDE INCENTIVES FOR PAROLEES, LIKE THE CHANCE TO GET OFF  
10 PAROLE EARLIER, THEY BEHAVE BETTER AND REVOCATIONS GO DOWN; IS  
11 THAT RIGHT?

12 **A.** THE SCIENCE SUPPORTS THAT CONCLUSION, YES.

13 **Q.** AND THE REVOCATIONS GO DOWN NOT BECAUSE YOU ARE NOT CATCHING  
14 THEM, BUT BECAUSE THEY BEHAVE BETTER, RIGHT?

15 **A.** I WOULD SAY IT'S PROBABLY A LITTLE OF BOTH, BUT, YOU KNOW,  
16 WE ARE, AFTER ALL, DEALING WITH HUMAN BEINGS AND I THINK  
17 GENERALLY A POSITIVE RELATIONSHIP MOTIVATES PEOPLE MORE THAN  
18 PURELY A NEGATIVE PUNITIVE ONE.

19 "EARNED DISCHARGE" WAS BASED IN PART ON THE PAROLEE  
20 STEPPING UP AND DOING WHAT IT IS THEY NEED TO DO TO BE  
21 LAW-ABIDING FOLKS IN OUR SOCIETY.

22 **Q.** AND YOU DID A PILOT IN ORANGE COUNTY LAST YEAR OF "EARNED  
23 DISCHARGE," IS THAT RIGHT?

24 **A.** YES, SIR.

25 **Q.** AND YOU HAD DR. STEVE CHAPMAN, AT THE CDCR OFFICE OF

1 RESEARCH, STUDY THE POPULATION GROUP THAT YOU USED FOR THAT  
2 "EARNED DISCHARGE" PILOT, IS THAT RIGHT?

3 **A.** I DON'T KNOW THAT I UNDERSTAND THE QUESTION, BUT OUR  
4 RESEARCH TEAM, DR. CHAPMAN AND, ALSO, DR. PETERSILIA AND THE  
5 CENTER FOR EVIDENCE BASED CORRECTIONS WAS INVOLVED IN THE  
6 DEVELOPMENT OF AND IN THE SUBSEQUENT MONITORING OF THAT PROCESS.

7 **Q.** AND YOU GOT A REPORT BACK FROM DR. CHAPMAN THAT CONFIRMED  
8 WHAT YOU EXPECTED AS TO THE VERY -- TO THE LOW RATES OF  
9 RECIDIVISM, AND SPECIFICALLY VIOLENT RECIDIVISM, IN THE GROUP  
10 THAT YOU HAD SELECTED FOR EARNED DISCHARGE, IS THAT RIGHT?

11 **A.** I DON'T RECALL THE REPORT COMING TO THAT CONCLUSION. THE  
12 EARNED DISCHARGE PROGRAM WAS REALLY -- ULTIMATELY BECAME THE  
13 BIRTH PLACE OF THE DISCUSSIONS ABOUT SUMMARY PAROLE. AND,  
14 REALLY, NO PAROLEES WERE DISCHARGED VIA THE EARNED DISCHARGE  
15 PROGRAM FOR THE COURSE OF THAT PILOT.

16 BUT INSTEAD -- AND I STILL THINK IT WAS A VERY  
17 WORTHWHILE AND FASCINATING DISCUSSION. THAT PROJECT ENDED UP IN  
18 A WIDESPREAD, STATE-WIDE REALLY, DISCUSSION ABOUT SUMMARY  
19 PAROLE, A/K/A BANK CASES AND THEIR -- ITS ROLE IN THE PAROLE  
20 MANAGEMENT IN OUR STATE.

21 **JUDGE KARLTON:** I'M SORRY. I DON'T QUITE UNDERSTAND.  
22 THE CONCLUSIONS THAT YOU REACHED CONCERNING THIS  
23 PILOT PROGRAM IN ORANGE COUNTY SUPPORTED THE NOTION OF SUMMARY  
24 PROBATION FOR AT LEAST CERTAIN PERSONS, NO?

25 **THE WITNESS:** YOUR HONOR, AS I SIT HERE, I'M NOT --

1 OF COURSE, MAYBE BECAUSE I HAVE GOT SO MANY REPORTS IN MY MIND  
2 I'M NOT TRACKING WHAT THE RECOMMENDATIONS WERE IN THAT  
3 PARTICULAR REPORT. I THINK I WOULD BE MISLEADING THE COURT TO  
4 SAY THAT.

5 WHAT I WAS SAYING TO THE COURT IS WE BEGAN THE PILOT  
6 WITH A GOAL OF HAVING AN EARNED DISCHARGE PROCESS; THAT IF A  
7 PAROLEE BEHAVED AND, YOU KNOW, HOUSING AND SO FORTH, AT 180 DAYS  
8 WE WOULD REFER THEM TO THE BOARD AND THE BOARD WOULD DISCHARGE  
9 THEM.

10 THAT CONCEPT WAS NOT WIDELY EMBRACED BY OUR STAKE  
11 HOLDERS -- COUNTY SHERIFFS, D.A.S, POLICE CHIEFS -- AND IN  
12 RESPONSE TO THAT, AND I THINK A VERY WORTHWHILE SOCIAL  
13 DISCUSSION, THE -- AN ALTERNATIVE WAS SUGGESTED, THAT THE STATE  
14 OF CALIFORNIA ENTERTAIN THE IDEA OF EITHER BANKING CASE LOADS OR  
15 SUMMARY PAROLE, VERY SIMILAR PROCESSES. AND SO THAT, THAT  
16 DISCUSSION SPARKED BY THIS PILOT CONTINUES TODAY.

17 **Q.** IF I COULD SHOW YOU PAGE 83 OF YOUR DEPOSITION. FOCUSING  
18 YOUR ATTENTION TO LINES -- STARTING AT LINES 21 AND THEN WE WILL  
19 MOVE TO THE NEXT PAGE.

20 I ASKED YOU REGARDING THAT STUDY:

21 **"QUESTION:** WHAT RESULT DID YOU GET?"

22 YOU ANSWERED:

23 **"ANSWER:** BASICALLY THAT OUR GENERAL

24 HYPOTHESIS IS TRUE. THE LOWER END OFFENDER

25 POPULATION WILL GENERALLY REOFFEND AT ABOUT

1 17 PERCENT OF THE POPULATION."

2 AND THEN MOVING TO THE NEXT PAGE, LINES 1 THROUGH 5.

3 I ASKED YOU:

4 "QUESTION: HOW MUCH OF THAT RECIDIVISM AT  
5 17 PERCENT WOULD INVOLVE VIOLENT CRIME?"

6 YOU SAID:

7 "ANSWER: FLOATS. THREE TO FOUR PERCENT AND  
8 THAT'S CONSISTENT WITH THE FINDINGS OF THE  
9 WASHINGTON STUDY."

10 **A.** AND THIS IS BACK TO THE DISCUSSION WE HAD EARLIER ABOUT THE  
11 STATIC RISK ASSESSMENT AND ITS VALIDITY IN OUR POPULATION.

12 AND WE -- WE NOW HAVE A STATIC RISK ASSESSMENT TOOL.  
13 IT IS VALIDATED TO THE CALIFORNIA POPULATION, WHICH IS A HUGE  
14 STEP FORWARD.

15 **Q.** IN 2007 YOU ISSUED -- YOU AND SECRETARY TILTON ISSUED A  
16 MEMORANDUM TO STOP THE PRACTICE OF RETURNING PAROLEES TO CUSTODY  
17 FOR PURPOSES OF PSYCHIATRIC TREATMENT, IS THAT RIGHT?

18 **A.** YES, SIR.

19 **Q.** AND IT'S YOUR VIEW THAT STOPPING THAT PRACTICE WAS  
20 CONSISTENT WITH PUBLIC SAFETY, WASN'T IT?

21 **A.** YES, SIR. AND IT ALSO HAD TO DO WITH THE -- THERE WAS A  
22 DISCUSSION ABOUT THE FACT WE DIDN'T WANT TO RETURN INMATES INTO  
23 A FACILITY THAT WAS ALREADY BEEN DEEMED UNCONSTITUTIONALLY --  
24 UNABLE TO PROVIDE A CONSTITUTIONAL LEVEL OF CARE. IT SEEMED  
25 ALMOST COUNTER INTUITIVE.

1 Q. BUT IT'S TRUE THAT ONE OF YOUR STAFF HAS ESTIMATED THAT  
2 ABOUT 6,000 PAROLEES ARE RETURNED TO PRISON EACH YEAR DUE TO  
3 TECHNICAL VIOLATIONS OR OTHER CRIMINAL BEHAVIOR THAT CAN RESULT  
4 FROM THEIR MENTAL ILLNESS, IS THAT RIGHT?

5 A. I DON'T HAVE THAT NUMBER ON MY RADAR, BUT IT DOESN'T SOUND  
6 LIKE IT WOULD BE TOO WRONG.

7 Q. I'M SORRY. I MISSED THE LAST PART OF YOUR ANSWER.

8 A. IT DOESN'T SOUND LIKE IT WOULD BE WAY OFF. I MEAN, THERE'S  
9 ABOUT 23,000 OR SO INMATES -- OR PAROLEES THAT ARE EITHER EOP OR  
10 TRIPLE CMS. SO THAT FIGURE SOUNDS LIKE IT COULD BE ABOUT RIGHT.

11 Q. SO YOU AGREE THAT THERE ARE STILL MENTALLY ILL PAROLEES  
12 RETURNED TO PRISON FOR TECHNICAL VIOLATIONS THAT COULD BE  
13 PREVENTED WITH BETTER ACCESS TO SERVICES; HOUSING, DRUG  
14 TREATMENT, MENTAL HEALTH CARE AND THINGS LIKE THAT?

15 A. I DON'T KNOW THAT I WOULD WANT TO JUMP TO THAT CONCLUSION.  
16 THERE ARE FOLKS WHO PROGRAMS WOULD BE BENEFICIAL AND PROGRAMS  
17 AREN'T AVAILABLE.

18 IT'S A STATE-WIDE STRUGGLE FOR US. WE WORK ON THAT  
19 LITERALLY EVERY DAY, LITERALLY.

20 Q. IN YOUR WORK ON THE PROBLEM OF HOW TO DEAL WITH PAROLE  
21 REVOCATIONS, YOU HAVE COME TO THE VIEW, HAVEN'T YOU, THAT A  
22 LARGE PERCENTAGE OF YOUR POPULATION, PERHAPS 70 PERCENT, JUST  
23 CHURNS THROUGH THE SYSTEM THROUGH REPEATED VIOLATIONS. THEY  
24 CYCLE IN AND THEY CYCLE OUT FOR AN AVERAGE TERM OF FOUR MONTHS,  
25 ISN'T THAT RIGHT?

1 **A.** THE AVERAGE TERM IS ABOUT 4.2 MONTHS FOR A REVOCATION AND  
2 OUR RECIDIVISM RATES DO RUN ABOUT 70 PERCENT.

3 **Q.** AND THEN A PERSON WHO CHURNS THROUGH THAT FOR 36 MONTHS, OR  
4 THREE YEARS -- OR FOUR YEARS BECAUSE THEY GET THE EXTRA YEAR  
5 ADDED ON FOR THEIR VIOLATION TIME, THEN THEY DISCHARGE FROM ALL  
6 SUPERVISION BY OPERATION OF LAW, IS THAT CORRECT?

7 **A.** THAT'S THE REALITY AT THE MOMENT.

8 **Q.** AND YOU DISCHARGE ABOUT 56,000 PEOPLE A YEAR, IS THAT RIGHT?

9 **A.** ON AVERAGE ABOUT THAT NUMBER, YES, SIR.

10 **Q.** AND IT'S YOUR VIEW, ISN'T IT, THAT IF YOU TAKE A PERSON  
11 THROUGH THAT HISTORY, WHERE THEY CHURN THROUGH THEIR WHOLE TIME  
12 ON PAROLE, THEY DO THE WHOLE TIME IN PRISON, OUT OF PRISON, THAT  
13 ALL YOU ARE DOING IS POSTPONING FUTURE VICTIMIZATION AND CRIME?  
14

15 **A.** THAT'S TRUE. AND I WOULD SAY THAT, YOU KNOW, IT'S IMPORTANT  
16 TO UNDERSTAND THAT OUR CULTURE IS IN THE MIDST OF A HUGE CHANGE.  
17 WE ARE PART OF A SYSTEM THAT WAS ABOUT -- ALL THROUGH THE  
18 CRIMINAL JUSTICE SYSTEM IN CALIFORNIA FOR THE ALMOST 34 YEARS I  
19 HAVE BEEN PART OF IT IS LARGELY PUNITIVE. CERTAINLY THE CDCR  
20 AND DAPO SIDE OF THE EQUATION WAS LARGELY PUNITIVE. AND NOW WE  
21 ARE.

22 IT'S A FASCINATING EXPERIENCE TO WATCH REBUILDING A  
23 REHABILITATIVE SIDE OF OUR OBLIGATION, BOTH INSIDE AND OUT OF  
24 THE INSTITUTIONS.

25 WITH THAT COMES THE STRUGGLE THAT WE HAVE AT THE



1 COMMUNITY LEVEL FOR COUNCILS AND BOARDS AND SO FORTH TO PROVIDE  
2 USE PERMITS SO WE CAN PROVIDE REHABILITATIVE PROGRAMS FOR THIS  
3 POPULATION, BUT IT -- THE MECHANISMS AND THE WILL AND THE TOOLS  
4 TO DO IT ARE IN PLACE.

5 **Q.** AND SO YOUR ANSWER TO THE QUESTION ABOUT WHETHER IT'S YOUR  
6 VIEW THAT THIS CHURNING PATTERN JUST POSTPONES VICTIMIZATION AND  
7 CRIME IS YES, IS THAT RIGHT?

8 **A.** MY PERSONAL OPINION IS YES. WE KNOW IT'S NOT WORKING. I  
9 MEAN, AT 70 PERCENT I THINK EVERYBODY UNDERSTANDS WE -- AND THIS  
10 IS ONE OF THE REASONS I'M FLATTERED TO BE ANY PART OF THE  
11 DISCUSSION. WE ALL KNOW WE NEED TO CHANGE THE WAY WE ARE  
12 THINKING ABOUT THIS PROCESS AND WE ARE ALL ENGAGED IN THAT,  
13 INCLUDING PAROLE.

14 **Q.** THANK YOU. NO FURTHER QUESTIONS.

15 **JUDGE REINHARDT:** DOES THE CCPOA HAVE ANY QUESTIONS  
16 OF THIS WITNESS?

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

18 **THE COURT:** THANK YOU, COUNSEL.

19 REDIRECT?

20 **MR. LEWIS:** YES, YOUR HONOR. THANK YOU. VERY  
21 BRIEFLY. THANK YOU.

22 **REDIRECT EXAMINATION**

23 **BY MR. LEWIS:**

24 **Q.** MR. HOFFMAN, THERE WAS TESTIMONY REGARDING THAT THERE WOULD  
25 BE A POSSIBLE PRISONER RELEASE ORDER IN THIS CASE.

1 IF THIS PRISONER RELEASE ORDER INCLUDED MENTALLY ILL  
2 PAROLEES, WHAT SERVICES DO MENTALLY ILL PAROLEES NEED THAT YOU  
3 CURRENTLY ATTEMPT TO PROVIDE THROUGH DAPO RESOURCES?

4 **A.** IT RUNS THE GAMUT FROM CLINICAL PSYCHOLOGISTS INSIDE OUR  
5 UNITS, TO COUNSELORS, TO PROVIDING MEDICATIONS, TO GETTING THEM  
6 TO SERVICES OUTSIDE OF OUR UNITS, TO LOCAL SERVICES.

7 AS WE SPEAK, WE ARE WORKING HARD WITH LOCAL SERVICE  
8 PROVIDERS IN CITIES AND COUNTIES ACROSS THE STATE TO PROVIDE  
9 THESE SERVICES. WE HAVE GOT ABOUT \$9.6 MILLION THAT WE ARE  
10 WORKING HARD TO GET VENDORS AND PROVIDERS LINED UP FOR.

11 **Q.** AND IF ADDITIONAL MENTALLY ILL PAROLEES WERE RELEASED IN THE  
12 COMMUNITY AS A RESULT OF A PRISONER RELEASE ORDER, COULD CDCR  
13 PROVIDE THE NEEDED SERVICES FOR THIS INCREASED POPULATION WITH  
14 ITS CURRENT RESOURCES?

15 **A.** NO. THE SAME LOGIC WOULD HOLD TRUE; THAT THIS POPULATION,  
16 WHICH IS, OBVIOUSLY AND UNDERSTANDABLY, WORK EXTENSIVE AND  
17 SERVICE INTENSIVE WOULD NEED -- WE WOULD NEED ADDITIONAL AGENTS  
18 AND, AGAIN, ADDITIONAL PROGRAMMING RESOURCES TO DO -- TO TAKE  
19 CARE OF THEM, OR AT LEAST TRY TO.

20 **Q.** AND IF THESE ADDITIONAL MENTALLY ILL PAROLEES DO NOT RECEIVE  
21 THE SERVICES, ARE YOU CONCERNED AND, IN YOUR OPINION, IS THERE A  
22 RISK OF INCREASED RECIDIVISM AMONG THEM?

23 **A.** AGAIN, THE SCIENCE WOULD SUPPORT THAT CONCLUSION, YES.

24 **MR. LEWIS:** NO FURTHER QUESTIONS, YOUR HONOR. THANK  
25 YOU.



1 THE SCIENCE, AS I READ IT.

2 **MR. GALVAN:** THANK YOU. NO FURTHER QUESTIONS.

3 **MR. LEWIS:** NOTHING, YOUR HONORS.

4 **THE COURT:** OKAY. THANK YOU FOR TESTIFYING, MR.  
5 HOFFMAN, AND YOU ARE EXCUSED.

6 **THE WITNESS:** THANK YOU, SIR.

7 (WITNESS EXCUSED.)

8 **THE COURT:** AND WE WILL TAKE A ONE-HOUR RECESS FOR  
9 LUNCH. COURT IS ADJOURNED.

10 (WHEREUPON AT 12:07 P.M. PROCEEDINGS  
11 WERE ADJOURNED FOR NOON RECESS.)

12 **JUDGE HENDERSON:** OKAY, COUNSEL. YOU MAY CALL YOUR  
13 NEXT WITNESS.

14 **MS. WOODWARD:** GOOD AFTERNOON, YOUR HONORS. I'M  
15 CAROL WOODWARD, COUNTY COUNSEL FOR SAN MATEO COUNTY. I'LL CALL  
16 AS MY NEXT WITNESS SAN MATEO COUNTY SHERIFF GREG MUNKS.

17 **JUDGE HENDERSON:** OKAY.

18 **GREGORY MUNKS,**  
19 HAVING BEEN CALLED AS A WITNESS BY THE DEFENDANT INTERVENORS  
20 WAS FIRST DULY SWORN AND EXAMINED AS FOLLOWS:

21 **THE CLERK:** PLEASE STATE AND SPELL YOUR FULL NAME FOR  
22 THE RECORD.

23 **THE WITNESS:** MY NAME IS GREGORY MUNKS. SPELLED  
24 G-R-E-G-O-R-Y. LAST NAME IS MUNKS, M-U-N-K-S.

25 **MS. WOODWARD:** GOOD AFTERNOON, SHERIFF MUNKS.

1           YOUR HONORS, WE HAVE PREVIOUSLY EXCHANGED WITH THE  
2 PARTIES AN EXPERT REPORT FROM SHERIFF MUNKS AND ALSO AN EXPERT  
3 DECLARATION AND SEVERAL EXHIBITS. I DO HAVE FOR THE COURT  
4 COPIES OF THE REPORT, AND I'M SORRY TO TELL YOU THE DECLARATION  
5 IS STILL ON ITS WAY. IT'S JUST BEING COPIED NOW.

6           **JUDGE KARLTON:** THAT'S ALL RIGHT. WE HAVE THE  
7 DOCUMENTS.

8           **MS. WOODWARD:** WOULD THE COURT LIKE THE REPORT?

9           **JUDGE HENDERSON:** NO THANKS.

10          **MS. WOODWARD:** THANK YOU.

11                           **DIRECT EXAMINATION BY MS. WOODWARD**

12 **BY MS. WOODWARD**

13 **Q** SHERIFF MUNKS, WOULD YOU TELL US HOW YOU'RE EMPLOYED?

14 **A** I'M SHERIFF OF SAN MATEO COUNTY.

15 **Q** HOW LONG HAVE YOU BEEN IN THAT POSITION?

16 **A** APPROXIMATELY TWO YEARS.

17 **Q** PRIOR TO THAT, WHAT WAS YOUR EMPLOYMENT?

18 **A** FOR THE PREVIOUS 13-1/2 YEARS TO THAT I WAS UNDERSHERIFF,  
19 SAN MATEO COUNTY.

20 **Q** HAVE YOU WORKED ELSEWHERE IN LAW ENFORCEMENT?

21 **A** YES, I SPENT ABOUT TEN YEARS WITH THE CITY OF PALO ALTO  
22 POLICE DEPARTMENT, AND PREVIOUS TO THAT I WAS A DEPUTY SHERIFF  
23 WITH SAN MATEO COUNTY FOR THREE TO FOUR YEARS.

24 **Q** HOW LONG HAVE YOU WORKED IN LAW ENFORCEMENT ALTOGETHER?

25 **A** THIRTY-ONE YEARS.

1 Q LET ME TALK FOR A MOMENT ABOUT THE SAN MATEO COUNTY  
2 SHERIFF'S DEPARTMENT. WHAT DOES YOUR SHERIFF'S DEPARTMENT DO?

3 A WE PROVIDE LAW ENFORCEMENT SERVICES TO THE UNINCORPORATED  
4 PORTIONS OF SAN MATEO COUNTY. WE PROVIDE COURT SECURITY IN ALL  
5 THE COURTS, SUPERIOR COURT FOR SAN MATEO COUNTY. I AM THE LEVY  
6 AGENT FOR THE COUNTY, ENFORCING ALL THE COURT ORDERS OF THE  
7 COUNTY. WE DO INVESTIGATIVE SERVICES AT SAN FRANCISCO AIRPORT  
8 AND THROUGH A NUMBER OF TASK FORCES THAT WE WORK ON WITH FEDERAL  
9 AND STATE PARTNERS. WE ALSO PROVIDE ALL THE CUSTODIAL SERVICES  
10 FOR THE COUNTY. SO I OPERATE ALL THE ADULT CORRECTION  
11 FACILITIES IN SAN MATEO COUNTY.

12 Q HOW MANY EMPLOYEES DOES THE SHERIFF'S OFFICE HAVE?

13 A APPROXIMATELY 640.

14 Q AND WHAT'S YOUR BUDGET THIS YEAR FOR THE SHERIFF'S OFFICE  
15 OPERATIONS?

16 A IT'S AROUND \$140 MILLION.

17 Q AND YOU PREPARE AND OVERSEE THAT BUDGET?

18 A YES.

19 Q IN YOUR YEARS IN LAW ENFORCEMENT, HAVE YOU HAD AN  
20 OPPORTUNITY TO SEE ALL AREAS OF POLICING IN THE LOCAL LEVEL?

21 A YES.

22 MS. WOODWARD: YOUR HONORS, I WOULD OFFER SHERIFF  
23 MUNKS AS A NONRETAINED EXPERT IN LAW ENFORCEMENT.

24 JUDGE HENDERSON: WE FIND HIM SO QUALIFIED.

25

1 **BY MS. WOODWARD**

2 **Q** SHERIFF MUNKS, LET'S TALK FOR A MOMENT ABOUT THE SAN MATEO  
3 COUNTY JAILS. WHAT JAILS DO YOU OPERATE?

4 **A** I OPERATE THE MAGUIRE CORRECTIONAL FACILITY, WHICH IS OUR  
5 MAIN JAIL, PRIMARILY A MEN'S FACILITY, IN REDWOOD CITY; OUR  
6 WOMEN'S CORRECTIONAL CENTER, WHICH IS OUR WOMEN'S FACILITY, ALSO  
7 IN REDWOOD CITY. WE HAVE WHAT WE CALL THE MEDIUM SECURITY  
8 TRANSITIONAL FACILITY, WHICH IS LOCATED -- COLOCATED WITH THE  
9 WOMEN'S CORRECTIONAL CENTER ON MAPLE STREET IN REDWOOD CITY.  
10 THAT'S ALSO WHERE WE OPERATE OUR ALTERNATIVE SENTENCING BUREAU,  
11 AGAIN, AT THE MAPLE STREET COMPLEX.

12 **Q** AND HOW MANY BOOKINGS EACH YEAR DO YOU HAVE INTO YOUR JAILS?

13 **A** WE GET ABOUT 18,000 BOOKINGS PER YEAR.

14 **Q** NOW, THERE'S A -- WE'VE HEARD TESTIMONY ABOUT A TERM CALLED  
15 "RATED CAPACITY." DO YOU UNDERSTAND WHAT THAT TERM MEANS?

16 **A** YES.

17 **Q** WHAT IS RATED CAPACITY?

18 **A** RATED CAPACITY IS THE NUMBER OF BEDS AUTHORIZED BY THE  
19 CALIFORNIA STANDARDS AUTHORITY FOR OUR FACILITIES BASED ON A  
20 NUMBER OF FACTORS, SOME OF WHICH INCLUDE THE SIZE OF THE  
21 FACILITY, YOU KNOW, THE SQUARE FOOTAGE, THINGS LIKE THAT.

22 **Q** OKAY. DOES THIS TAKE INTO ACCOUNT TITLE 15 REQUIREMENTS FOR  
23 INMATES?

24 **A** YES, TITLE 15, TITLE 24.

25 **Q** WHAT IS THE RATED CAPACITY FOR YOUR JAILS ALL COMBINED?

1 **A** COMBINED MY RATED CAPACITY IS 834.

2 **Q** OKAY. AND WHAT IS YOUR AVERAGE DAILY POPULATION IN YOUR  
3 JAILS?

4 **A** RIGHT NOW, AS OF YESTERDAY, IT WAS 1131.

5 **Q** AND DOES IT STAY ABOUT THAT LEVEL MOST OF THE TIME?

6 **A** YES.

7 **Q** DO YOU KNOW OFFHAND WHAT PERCENTAGE OVER THE RATED CAPACITY  
8 YOUR JAILS USUALLY OPERATE?

9 **A** WE HAVE BEEN IN THE -- RECENT TIMES BEEN AT APPROXIMATELY  
10 140 PERCENT OF OUR RATED CAPACITY.

11 **Q** NOW, BESIDES THE CONCEPT OF RATED CAPACITY FOR JAILS, IS  
12 THERE ALSO A CONCEPT CALLED FUNCTIONAL CAPACITY?

13 **A** YES.

14 **Q** HOW DO YOU UNDERSTAND THAT?

15 **A** MY UNDERSTANDING IS THAT THE FUNCTIONAL CAPACITY IS  
16 GENERALLY FIVE TO TEN PERCENT BELOW THE RATED CAPACITY.

17 **Q** EXPLAIN TO ME WHY -- I'M SORRY. WHAT IS THE FUNCTIONAL  
18 CAPACITY? WHAT'S THE --

19 **A** FUNCTIONAL CAPACITY IS WHERE THE JAILS SHOULD BE AT AT A  
20 POPULATION LEVEL IN ORDER TO RUN PROPERLY. IT TAKES ACCOUNT  
21 HAVING THE ROOM FOR CLASSIFICATION, BEING ABLE TO MOVE INMATES  
22 AROUND, KEEP THEM SEPARATED BASED ON CLASSIFICATION, BASED ON  
23 NEEDS, BASED ON GANG AFFILIATION.

24 IT ALSO PROVIDES FOR THE PROPER MAINTENANCE AND  
25 UPKEEP OF THE FACILITY. WHEN IT'S ABOVE THAT NUMBER, IT'S



1 DIFFICULT TO EMPTY CELLS OUT IF YOU NEED TO PAINT, CHANGE  
2 CARPET, DO THINGS LIKE THAT.

3 **Q** OKAY. NOW, IN YOUR OPINION, ARE YOUR JAILS CURRENTLY  
4 OVERCROWDED?

5 **A** YES.

6 **Q** DO THEY EXCEED THE FUNCTIONAL CAPACITY THAT YOU JUST  
7 DISCUSSED?

8 **A** YES.

9 **Q** DO THEY EXCEED THE RATED CAPACITY FROM THE STATE?

10 **A** YES.

11 **Q** NOW, WHAT PROBLEM IS THERE IN HAVING AN OVERCROWDED JAIL?

12 **A** THERE'S A NUMBER OF PROBLEMS. I'VE DESCRIBED SOME OF THEM.  
13 THE INABILITY TO PROPERLY SEPARATE AND SEGREGATE INMATES BASED  
14 ON CLASSIFICATION. HAVING TO KEEP INMATES IN AREAS THAT  
15 AREN'T -- WEREN'T ORIGINALLY DESIGNED FOR HOUSING. THAT CREATES  
16 PROBLEMS FOR US.

17 **Q** WILL YOU GIVE ME AN EXAMPLE OF THAT?

18 **A** WELL, IN SOME OF OUR HOUSING UNITS WE'VE HAD TO CONVERT  
19 PROGRAM SPACE TO HOUSING SPACE, AND THAT PROGRAM SPACE WAS  
20 DESIGNED FOR CLASSES, FOR TREATMENT, FOR THINGS LIKE THAT. THAT  
21 CREATES A PROBLEM FOR US TWO WAYS, ONE OF WHICH WE'RE NOT ABLE  
22 TO PROVIDE THOSE SERVICES BECAUSE THE AREA'S UTILIZED FOR  
23 HOUSING, AND, SECONDLY, SINCE THEY WEREN'T DESIGNED FOR HOUSING  
24 TO BEGIN WITH, THEY DON'T HAVE TOILET FACILITIES AND THINGS LIKE  
25 THAT, SO WE ARE NOT ABLE TO LOCK THE DOORS OF THOSE FACILITIES,

1 SO IT CREATES A SAFETY PROBLEM.

2 WE HAVE AN INCREASING PERCENTAGE OF GANG MEMBERS THAT  
3 ARE IN OUR FACILITIES. THAT CREATES SAFETY CONCERNS. IF YOU  
4 HAVE RIVAL GANG MEMBERS IN THE SAME HOUSING UNIT, THEY HAVE A  
5 TENDENCY TO FIGHT EACH OTHER.

6 **Q** SHERIFF, IF YOU COULD SLOW DOWN A LITTLE BIT? THE ACOUSTICS  
7 ARE PRETTY DIFFICULT HERE. JUST SLOW DOWN A LITTLE BIT AND TELL  
8 ME ABOUT THE GANGS.

9 **A** OKAY. I WAS DESCRIBING SOME OF THE PROBLEMS WITH OPERATING  
10 THE JAIL WHEN IT IS OVERCROWDED, AND KEY TO THAT IS SAFETY. AND  
11 AS OUR POPULATION OF GANG MEMBERS HAS INCREASED, AND AS OUR  
12 POPULATION OR THE PERCENTAGE OF OUR POPULATION OF MENTALLY ILL  
13 FOLKS INCREASES, IT CREATES INMATE MANAGEMENT PROBLEMS, SOME OF  
14 WHICH ARE DUE TO THE FACT THAT RIVAL GANG MEMBERS NEED TO BE  
15 SEPARATED, LIKE GANG MEMBERS CAN'T BE CONCENTRATED TOO MUCH IN  
16 ONE HOUSING UNIT.

17 SO TO THE EXTENT WE CAN'T MOVE PEOPLE AROUND THE  
18 FACILITY AS IT WAS DESIGNED TO BE RUN, THAT CREATES PROBLEMS FOR  
19 US.

20 **Q** OKAY. NOW, WHAT IS THE SAN MATEO COUNTY SHERIFF'S OFFICE  
21 DOING ABOUT OVERCROWDING IN THE JAILS?

22 **A** WELL, WE HAVE A PROCESS UNDERWAY NOW, WE ARE EMBARKED ON A  
23 JAIL PLANNING PROCESS. WE PLAN TO BUILD A NEW FACILITY. ONE OF  
24 THE PROBLEMS WITH OUR SYSTEM, WHICH IS DIFFERENT THAN SOME OTHER  
25 SYSTEMS, WE'VE LOST CAPACITY OVER THE LAST 15 YEARS. WE'VE HAD

1 TO CLOSE SOME FACILITIES THAT WERE EITHER OUTDATED OR DUE TO  
2 BUDGET CONSTRAINTS. SO WE'VE HAD A NET LOSS OF BEDS, SO OUR  
3 SYSTEM HAS LOST CAPACITY.

4 OUR POPULATION HAS ACTUALLY STAYED FAIRLY CONSTANT  
5 OVER THAT PERIOD OF TIME. WE HAVE A LOW INCARCERATION RATE IN  
6 OUR COUNTY. WE ARE NOT -- OUR POPULATION HAS NOT SEEN A  
7 INCREASE LIKE SOME OTHER SYSTEMS HAVE. SO, WE'RE PLANNING TO  
8 BUILD A NEW FACILITY WHICH WILL HELP ALLEVIATE OVERCROWDING.

9 **Q** WHEN -- I'M SORRY.

10 **A** ABOUT A YEAR AGO WE FORMED A MULTIDISCIPLINARY REENTRY --

11 **MR. SANGSTER:** EXCUSE ME, YOUR HONOR. ED SANGSTER  
12 FOR THE PLAINTIFFS. I THINK AT THIS POINT THE ANSWER IS  
13 NON-RESPONSIVE TO THE QUESTION. THE QUESTION WAS ABOUT IMPACTS  
14 ON OVERCROWDING.

15 **JUDGE HENDERSON:** POSE ANOTHER QUESTION.

16 **BY MS. WOODWARD**

17 **Q** LET ME ASK YOU, WHEN DO YOU EXPECT THE NEW JAIL TO BE  
18 COMPLETED?

19 **A** I JUST CAME FROM A MEETING WHERE THEY TOLD ME 2014, BUT I'M  
20 PUSHING REALLY HARD FOR SOMETIME IN 2011.

21 **Q** WHEN THE NEW JAIL IS COMPLETED, WILL YOU HAVE ENOUGH BEDS TO  
22 TAKE CARE OF YOUR CURRENT OVERCROWDING SITUATION?

23 **A** YES.

24 **Q** OKAY. WILL YOU HAVE A LOT OF EXTRA BEDS BEYOND THE  
25 POPULATION THAT YOU EXPECT?

1 **A** I ANTICIPATE THAT IF OUR POPULATION STAYS THE SAME, I WOULD  
2 HAVE ABOUT A HUNDRED BEDS.

3 **Q** EXTRA?

4 **A** YES.

5 **Q** OKAY. NOW, IS THERE ANYTHING ELSE THAT THE COUNTY IS  
6 DOING -- THAT THE SAN MATEO SHERIFF IS DOING TO ADDRESS THE  
7 CURRENT OVERCROWDING SITUATION?

8 **A** YES.

9 **Q** WHAT IS THAT?

10 **A** WE ARE WORKING CLOSELY WITH OUR CRIMINAL JUSTICE PARTNERS TO  
11 IDENTIFY INMATES THAT ARE SUITABLE AND ELIGIBLE FOR EARLY  
12 RELEASE OR MODIFIABLE SENTENCES INTO COMMUNITY-BASED PROGRAMS.

13 **Q** DO YOU HAVE SOME ALTERNATIVES TO INCARCERATION GOING ON  
14 RIGHT NOW?

15 **A** YES.

16 **Q** CAN YOU GIVE US SOME EXAMPLES OF THOSE ALTERNATIVES?

17 **A** SURE. STARTING FROM THE VERY BEGINNING OF THE PROCESS,  
18 WE -- OUR COUNTY LAW ENFORCEMENT UTILIZED CITE AND RELEASE  
19 WHENEVER POSSIBLE NONVIOLENT MISDEMEANORS. WE ARE HIGHLY  
20 ENCOURAGED TO CITE AND RELEASE AND NOT COME TO JAIL TO BEGIN  
21 WITH.

22 AS A MATTER OF FACT, I'VE INSTITUTED WHAT'S CALLED A  
23 JAIL ACCESS FEE. SO I CHARGE LOCAL POLICE AGENCIES OR THOSE  
24 MISDEMEANOR ARRESTS THAT EXCEED A THREE-YEAR AVERAGE AS A  
25 DISINCENTIVE FOR BOOKING MISDEMEANORS.

1 Q OKAY. ANY OTHER PROGRAMS?

2 A YEAH. I HAVE A LIMIT ON WARRANT ARRESTS. I WON'T ACCEPT  
3 WARRANT ARRESTS FOR SEVENTY-FIVE HUNDRED DOLLARS OR LESS.  
4 THERE'S A PROGRAM CALLED FIRST CHANCE WHICH TAKES FIRST TIME  
5 DRUNK DRIVERS, AND, RATHER THAN BOOKING THEM INTO JAIL, THEY GO  
6 TO FIRST CHANCE. THAT PROGRAM GETS ABOUT 3,000 BOOKINGS PER  
7 YEAR.

8 Q ALL RIGHT.

9 A I HAVE WHAT'S CALLED A SHERIFF'S WORK PROGRAM, WHICH IS A  
10 OUT-OF-CUSTODY ALTERNATIVE TO JAIL FOR NONVIOLENT PEOPLE  
11 SENTENCED TO COUNTY JAIL. SO RIGHT NOW I'VE GOT ABOUT 450  
12 PEOPLE IN THAT PROGRAM.

13 SO ROUGHLY 50 PERCENT OF PEOPLE THAT ARE SENTENCED TO  
14 COUNTY JAIL IN SAN MATEO COUNTY ACTUALLY DO THEIR TIME OUTSIDE  
15 OF THE COUNTY JAIL.

16 Q FIFTY PERCENT?

17 A FIFTY PERCENT, YES.

18 Q ARE THERE A GOOD NUMBER OF INMATES IN YOUR JAIL RIGHT NOW  
19 WHO COULD TAKE PART IN THESE ALTERNATIVE SENTENCING PROGRAMS  
20 THAT ARE NOT TAKING ADVANTAGE OF THEM?

21 A WELL, WHAT WE'VE DONE SINCE LAST YEAR AT THIS TIME WHEN OUR  
22 POPULATION WAS EVEN HIGHER THAN IT IS NOW, AND IT WAS AT A -- WE  
23 WERE VERY CLOSE TO OUR MAXIMUM BED CAPACITY WHERE WE WOULD HAVE  
24 TO START PUTTING PEOPLE ON THE FLOOR OR RELEASE THEM, WE HAVE  
25 BEEN WORKING WITH THIS INTERDISCIPLINARY GROUP TO IDENTIFY EVERY

1 INMATE THAT'S ELIGIBLE FOR SOME SORT OF SENTENCE MODIFICATION  
2 AND THAT WOULD BE ELIGIBLE AND AMENABLE TO SOME SORT OF  
3 TREATMENT PROGRAM IN THE COMMUNITY.

4 WE WERE SUCCESSFUL IN IDENTIFYING A NUMBER OF PEOPLE,  
5 GETTING THOSE FOLKS OUT OF CUSTODY. NOW WE ARE LEFT WITH A VERY  
6 SMALL NUMBER OF PEOPLE. WE TRACK IT ON A MONTHLY BASIS THAT,  
7 WERE THERE BEDS AVAILABLE IN THE COMMUNITY, WE COULD MOVE THEM  
8 OUT AS WELL.

9 Q HOW MANY --

10 A THAT NUMBER HOVERS AROUND 15.

11 Q FIFTEEN?

12 A YES.

13 Q FIFTEEN INMATES COULD GO OUTSIDE OF THE JAIL, BUT THEY CAN'T  
14 BE ACCOMMODATED?

15 A IF THERE WERE GREATER CAPACITY IN THE COMMUNITY.

16 Q RIGHT.

17 A TODAY THERE'S -- THAT NUMBER MIGHT VARY 10 TO 20, I MEAN  
18 BETWEEN 10 AND 20. BUT, ROUGHLY, IT RUNS AROUND 15 THAT I COULD  
19 GET OUT OF CUSTODY TODAY INTO PROGRAMS.

20 Q AND THAT'S ALL?

21 A THAT'S ALL.

22 Q OKAY. NOW, THERE'S BEEN -- THE PLAINTIFFS IN THIS CASE HAVE  
23 ASKED THAT THE POPULATION OF THE STATE PRISONS BE REDUCED BY  
24 SOME 50,000 INMATES. HAVE YOU BEEN ABLE TO FORM AN OPINION  
25 ABOUT WHAT EFFECT ON PUBLIC SAFETY IN SAN MATEO COUNTY A

1 PRISONER RELEASE ORDER OF THAT MAGNITUDE WOULD HAVE?

2 **A** YES.

3 **Q** WHAT IS YOUR OPINION?

4 **A** MY OPINION IS THAT THAT WOULD HAVE A DETRIMENTAL EFFECT ON  
5 PUBLIC SAFETY IN MY COMMUNITY.

6 **Q** WHY IS THAT?

7 **A** I BASE THAT OPINION ON THE FACT THAT OUR JAIL SYSTEM IS SO  
8 SEVERELY OVERCROWDED THAT ANY INCREASE IN NUMBERS OF INMATES  
9 INTO MY SYSTEM WOULD CREATE A -- A GREATER CRISIS FOR US.

10 **Q** IN YOUR OPINION, WOULD A PRISONER RELEASE ORDER OF THAT  
11 MAGNITUDE HAVE ANY EFFECT ON THE ALTERNATIVE PROGRAMS YOU  
12 MENTIONED?

13 **A** WELL, THE SYSTEM AS IT IS NOW OPERATES ON A VERY, WHAT I  
14 WOULD CALL, THIN MARGIN. I MEAN, I AM LITERALLY BUMPING UP  
15 AGAINST MY MAXIMUM CAPACITY OF BEDS. OUR SYSTEM IN THE  
16 COMMUNITY OF PROVIDING OUTPATIENT, IF YOU WILL, OR  
17 OUT-OF-CUSTODY PROGRAMS IS ALREADY AT A MAXIMUM POINT.

18 AS I STATED EARLIER, THERE ARE MORE PEOPLE CURRENTLY  
19 IN MY SYSTEM THAT COULD BENEFIT FROM AN OUT-OF-CUSTODY PROGRAM  
20 THAN THERE IS CAPACITY IN THOSE PROGRAMS. SO THAT FACT, COUPLED  
21 WITH THE FACT THAT THE COUNTY JAIL IS AN INTEGRAL PART OF THE  
22 TOTAL CRIMINAL JUSTICE SYSTEM IN OUR COUNTY, IT'S A NECESSARY  
23 OPTION FOR JUDGES WHEN CONSIDERING SENTENCING, IT'S A NECESSARY  
24 OPTION FOR LOCAL LAW ENFORCEMENT WHEN THEY ARREST SOMEONE AND  
25 WANT TO GET THAT PERSON OFF THE STREET AND OUT OF THE COMMUNITY.

1 SO IT'S NECESSARY FOR ME TO HAVE CAPACITY IN ORDER TO ACCEPT  
2 THOSE NEW COMMITMENTS AND THOSE NEW BOOKINGS.

3 **Q** OKAY.

4 **A** SO, AGAIN, ANY SIGNIFICANT INCREASE IN THE NUMBER OF PEOPLE  
5 IN MY SYSTEM WOULD PRECLUDE ME FROM BEING ABLE TO PERFORM THOSE  
6 TWO NECESSARY FUNCTIONS AS PART OF THE CRIMINAL JUSTICE SYSTEM.

7 **Q** WOULD IT MAKE ANY DIFFERENCE IF THE PRISONER RELEASE ORDER  
8 TOOK PLACE OVER A LONG PERIOD OF TIME, SAY, TWO YEARS?

9 **A** WELL, CERTAINLY -- YES, I WOULD THINK SO. THE LONGER IT'S  
10 SPREAD OUT, THE LESS DRAMATIC, IF YOU WILL, OR THE LESS  
11 IMMEDIATE IT WOULD SEEM TO ME, THE IMPACT WOULD BE FELT.

12 **JUDGE HENDERSON:** EXCUSE ME, COUNSEL.

13 SHERIFF, HAVE YOU MADE ANY ASSUMPTIONS, IF THERE WERE  
14 SUCH A RELEASE ORDER, AS TO THE NUMBER OF PEOPLE THAT WOULD COME  
15 INTO YOUR COUNTY --

16 **THE WITNESS:** YES, YOUR HONOR. WE LOOKED AT THE  
17 NUMBERS FIRST BASED ON A 70,000 AND THEN BASED ON 50,000, AND  
18 OUR -- AGAIN, THEY'RE BROAD ASSUMPTIONS. WE ACCOUNT FOR ABOUT  
19 1.5 PERCENT OF THE STATE PRISON POPULATION FROM OUR COUNTY. SO  
20 WE WERE LOOKING AT -- IF IT WERE 70,000, WE WERE LOOKING AT  
21 AROUND A THOUSAND WOULD BE SAN MATEO COUNTY BOUND, AND THEN  
22 PROPORTIONATELY LESS BASED ON THE NUMBER OF RELEASES.

23 **BY MS. WOODWARD**

24 **Q** OKAY. AND HAVE YOU FORMED AN OPINION ABOUT WHETHER SOME OF  
25 THOSE THOUSAND OR LESS PRISON RELEASEES WOULD END UP IN YOUR



1 JAILS AT SOME POINT?

2 **A** AGAIN, WE MADE ASSUMPTIONS BASED ON RECIDIVISM RATES FOR  
3 INDIVIDUALS COMING OUT OF STATE PRISON WITH OUR OWN RECIDIVISM  
4 RATES IN OUR SYSTEM, AND YES, WE DID.

5 **Q** SO YOU BELIEVE THAT SOME WOULD END UP IN YOUR JAIL?

6 **A** YES.

7 **Q** DO YOU HAVE A SENSE OF HOW MANY, SAY, OF THE ONE THOUSAND  
8 INMATES INTO YOUR COMMUNITY, HOW MANY OF THOSE WOULD YOU EXPECT  
9 TO SEE BACK IN YOUR JAIL?

10 **A** WELL, AGAIN, JUST APPLYING THOSE BROAD ASSUMPTIONS, IF THERE  
11 WERE A THOUSAND WITH A 70 PERCENT RECIDIVISM RATE, AT SOME POINT  
12 IN THE FUTURE 700 OF THOSE THOUSAND WOULD REOFFEND.

13 **Q** NOW, THERE'S ALSO BEEN TESTIMONY IN THIS CASE ABOUT POSSIBLY  
14 CLOSING THE PRISON DOORS IN THAT THERE WOULD BE A CAP ON THE  
15 PRISON POPULATION SO THAT, FOR INSTANCE, THERE WOULD NOT BE THE  
16 ABILITY FOR YOU TO SEND YOUR STATE-SENTENCED INMATES UP TO THE  
17 PRISON. HAVE YOU HAD A CHANCE TO FORM AN OPINION ABOUT WHAT  
18 EFFECT THAT OPTION WOULD HAVE ON YOUR COUNTY?

19 **A** YES.

20 **Q** WHAT IS YOUR OPINION?

21 **A** THAT THAT, TOO, WOULD CREATE A SIGNIFICANT PROBLEM WITH OUR  
22 SYSTEM. WE HAVE A NUMBER OF WAYS AND PLACES THROUGH WHICH  
23 PEOPLE ENTER OUR SYSTEM, AND THERE'S A NUMBER OF WAYS THAT  
24 PEOPLE LEAVE OUR SYSTEM, ONE OF WHICH IS TO STATE PRISON, AND WE  
25 SEND ABOUT 30 TO 35 PEOPLE A WEEK TO STATE PRISON. AND, SO, IF

1 WE WEREN'T ABLE TO SEND THOSE PEOPLE, THAT NUMBER WOULD QUICKLY  
2 BACK UP INTO OUR SYSTEM AND ADD TO OUR ALREADY OVERCROWDED  
3 POPULATION.

4 **MS. WOODWARD:** YOUR HONORS, AT THIS TIME, I WOULD ASK  
5 THAT THE COURT ACCEPT THE EXHIBITS THAT HAVE BEEN MARKED  
6 DEFENDANT INTERVENOR 221, WHICH IS THE DECLARATION OF SHERIFF  
7 MUNKS, AND 213, 214, 215 AND 216. THERE HAVE BEEN NO WRITTEN  
8 OBJECTIONS. PERHAPS PLAINTIFFS MOVE TO OBJECT AT THIS TIME?

9 **MR. SANGSTER:** JUST A MOMENT. I'M SORRY. I DON'T  
10 HAVE 216.

11 **JUDGE REINHARDT:** WHILE YOU'RE WAITING, SHERIFF, DO  
12 YOU HAVE A CAP ON YOUR JAIL?

13 **THE WITNESS:** NO, SIR.

14 **JUDGE REINHARDT:** WHAT'S BEEN THE EFFECT OF A CAP?

15 **JUDGE KARLTON:** IF YOU KNOW.

16 **THE WITNESS:** WHAT WOULD BE THE EFFECT?

17 **JUDGE REINHARDT:** NO, WHAT HAS BEEN THE EFFECT?

18 **JUDGE KARLTON:** HE DOESN'T HAVE ONE.

19 **THE WITNESS:** I DON'T HAVE ONE, SIR.

20 **JUDGE REINHARDT:** OH, YOU DON'T HAVE ONE?

21 **THE WITNESS:** NO.

22 **JUDGE REINHARDT:** OKAY. THANK YOU.

23 **MR. SANGSTER:** YOUR HONORS, PLAINTIFFS HAVE NO  
24 OBJECTIONS TO THE EXHIBITS.

25 **JUDGE HENDERSON:** THOSE EXHIBITS WILL BE ADMITTED AT

1 THIS TIME.

2 DEFENDANT INTERVENORS' EXHIBITS 213, 214,  
3 215, 216, 221 RECEIVED IN EVIDENCE.)

4 **MS. WOODWARD:** THANK YOU, YOUR HONORS. THAT'S ALL I  
5 HAVE.

6 **JUDGE HENDERSON:** ALL RIGHT. DOES THE STATE HAVE ANY  
7 QUESTIONS?

8 **MR. LEWIS:** NO QUESTIONS, YOUR HONOR.

9 **JUDGE HENDERSON:** OKAY.

10 **CROSS-EXAMINATION BY MR. SANGSTER**

11 **MR. SANGSTER:** THANK YOU. ED SANGSTER FOR THE  
12 PLAINTIFFS.

13 **BY MR. SANGSTER**

14 **Q** SHERIFF MUNKS, YOU WERE TALKING ABOUT THE IMPACT THIS WOULD  
15 HAVE TO -- I WANT TO TRY TO PUT IN PERSPECTIVE THROUGH SOME OF  
16 THESE QUESTIONS THE ACTUAL CONTENT OF YOUR PAROLEE POPULATION.  
17 FIRST OF ALL, HOW MANY PAROLEES ARE THERE CURRENTLY IN SAN MATEO  
18 COUNTY?

19 **A** YOU KNOW, I DO NOT HAVE THAT NUMBER.

20 **Q** OKAY. WELL, YOU SAID THAT THERE WERE 18,000 BOOKINGS INTO  
21 YOUR JAIL. IS THAT JUST FOR MAGUIRE CORRECTIONAL CENTER, OR IS  
22 THAT TOTAL?

23 **A** THAT'S TOTAL. WE HAVE ALL OF OUR BOOKINGS AT MAGUIRE, BOTH  
24 MEN AND WOMEN.

25 **Q** IN A GIVEN YEAR, HOW MANY OF THOSE BOOKINGS ARE PAROLEES?

1 **A** I WOULD ESTIMATE, I BELIEVE WE GET AROUND 30 TO 50 A MONTH,  
2 PAROLEES.

3 **Q** SO ABOUT 360 A YEAR?

4 **A** YEAH.

5 **Q** THREE HUNDRED SIXTY OUT OF EIGHTEEN THOUSAND ARE PAROLEES  
6 THAT ARE BEING BOOKED BACK INTO PRISON -- INTO YOUR JAILS?

7 **A** YES.

8 **Q** OF THE 360 --

9 **JUDGE KARLTON:** NOW I'M -- THESE ARE PAROLEES FROM  
10 THE STATE PRISON SYSTEM THAT ARE COMING BACK THROUGH YOU --

11 **THE WITNESS:** NO, SIR. THESE WOULD BE PAROLEES, NEW  
12 ARRESTS COMING IN THROUGH THE BOOKING PROCESS EITHER FOR  
13 TECHNICAL VIOLATIONS OR NEW VIOLATIONS.

14 **JUDGE KARLTON:** THAT'S WHAT I WAS ABOUT TO ASK YOU.  
15 SO THAT IF WE WERE -- NOT WE, BUT IF THE STATE WERE TO ELIMINATE  
16 TECHNICAL VIOLATIONS BEING RETURNED TO PRISON, DO YOU HAVE ANY  
17 ESTIMATE OF WHAT PERCENTAGE OF THE 360 WOULD THEN NOT SHOW UP IN  
18 YOUR JAIL?

19 **THE WITNESS:** I ACTUALLY HAVE A NUMBER IF YOU WOULD  
20 LIKE TO ME TO READ IT FROM THIS.

21 **MR. SANGSTER:** I WOULD. THAT'S ACTUALLY MY NEXT  
22 QUESTION, YOUR HONOR.

23 **THE WITNESS:** OKAY. THE AVERAGE IN '06 WAS 487, '07  
24 WAS 481. THOSE ARE THE PAROLEES THAT WERE ARRESTED, AND MY  
25 UNDERSTANDING IS ROUGHLY HALF OF THOSE ARE TECHNICAL VIOLATIONS.

1 **BY MR. SANGSTER**

2 **Q** SO APPROXIMATELY, LET'S CALL IT, 250 A YEAR ARE ARRESTS FOR  
3 TECHNICAL VIOLATIONS?

4 **A** YES.

5 **Q** OKAY. THAT'S OUT OF THE 18,000 TOTAL BOOKINGS INTO YOUR  
6 JAIL?

7 **A** CORRECT.

8 **Q** SO IT'S A FAIRLY SMALL PERCENTAGE OF THE TOTAL BOOKINGS INTO  
9 YOUR JAIL, CORRECT?

10 **A** CORRECT.

11 **Q** HOW LONG DO THE PAROLEES WHO ARE ARRESTED FOR TECHNICAL  
12 VIOLATIONS STAY IN YOUR JAILS?

13 **A** THEIR AVERAGE LENGTH OF STAY IS ABOUT FOUR DAYS.

14 **Q** RIGHT. SO OF THE 200, WHATEVER THE NUMBER IS, ROUGHLY HALF  
15 OF YOUR 480 PAROLEES, ABOUT HALF OF THOSE STAY FOUR DAYS?

16 **A** YES.

17 **Q** HOW ABOUT THE LENGTH OF TIME FOR THE PAROLEES WHO ARE  
18 ARRESTED AND STAY LONGER THAN FOUR DAYS?

19 **A** WELL, THEY WOULD BE BLENDED INTO OUR AVERAGE LENGTH OF STAY  
20 WHICH IS AROUND 21 DAYS FOR OUR TOTAL POPULATION.

21 **JUDGE KARLTON:** THEY'RE JUST NEW -- THEY'VE JUST  
22 COMMITTED NEW CRIMES?

23 **THE WITNESS:** YES, SIR.

24 **JUDGE KARLTON:** SO YOU JUST TREAT THEM THE WAY YOU  
25 TREAT ANY OF YOUR PEOPLE?

1           **THE WITNESS:** YES, SIR. OTHER THAN THE FACT THEY  
2 AREN'T ELIGIBLE FOR RELEASE LIKE OTHER PEOPLE.

3 **BY MR. SANGSTER**

4 **Q** SO MY NEXT QUESTION IS, WHAT'S THE AVERAGE LENGTH OF STAY  
5 FOR YOUR GENERAL POPULATION?

6 **A** ABOUT 21 DAYS.

7 **Q** SO THESE 450, HALF OF THEM STAY IN YOUR JAILS FOR FOUR DAYS,  
8 AND THE OTHER HALF STAY FOR ON AVERAGE ABOUT 21 DAYS?

9 **A** YES, BUT THEY BOTH CONTRIBUTE TO THAT 21-DAY NUMBER. SO THE  
10 TECHNICAL VIOLATORS WHO STAY FOR FOUR DAYS, THEY GO RIGHT AWAY  
11 BACK TO THE STATE. THEY CONTRIBUTE TO THE LOW END OF OUR LENGTH  
12 OF STAY. THE OTHER ONES WHO TEND TO PICK UP THE NEW CHARGES AND  
13 HAVE A PAROLE VIOLATION ARE THE ONES THAT CONTRIBUTE TO THE  
14 OTHER SIDE OF THAT 21-DAY AVERAGE.

15 **Q** SO ALTHOUGH YOUR JAIL -- I'M SORRY. WERE YOU DONE?

16           ALTHOUGH YOUR JAIL IS OVERCROWDED, A VERY, VERY SMALL  
17 PERCENTAGE OF THAT OVERCROWDING IS ATTRIBUTABLE TO PAROLEES WHO  
18 HAVE BEEN ARRESTED AND RETURNED TO YOUR JAIL, CORRECT?

19 **A** YEAH.

20 **Q** YOU REFERRED TO A MAXIMUM BED CAPACITY, BUT I DON'T THINK  
21 YOU SAID WHAT THAT CAPACITY IS.

22 **A** IN THE MAGUIRE CORRECTIONAL FACILITY I BELIEVE IT'S 107.

23 **Q** WHAT'S YOUR MAXIMUM BED CAPACITY FOR YOUR JAIL SYSTEM?

24 **A** I DON'T KNOW IF I HAVE THAT NUMBER. I COULD QUICKLY FIGURE  
25 IT FOR YOU. IT'S 1107 FOR THE MEN. IT'S ABOUT 160 FOR THE

1 WOMEN, 46 FOR THE MEDIUM SECURITY TRANSITIONAL FACILITY, AND 16  
2 FOR WEEKEND OR DORM. WHATEVER THAT EQUALS WOULD BE OUR MAXIMUM  
3 BED.

4 **Q** A LITTLE OVER 1,300?

5 **A** THAT SOUNDS ABOUT RIGHT.

6 **Q** YOU FUNCTIONED DURING 2007 WITH AN ACTUAL AVERAGE DAILY  
7 CAPACITY -- EXCUSE ME -- 2007, YOU FUNCTIONED WITH AN AVERAGE  
8 DAILY POPULATION OF 1,200?

9 **A** THAT'S CORRECT.

10 **Q** ALL RIGHT. SO YOU TEND TO RUN ABOUT 170 INMATES BELOW YOUR  
11 MAXIMUM CAPACITY?

12 **A** THAT SOUNDS ABOUT RIGHT.

13 **Q** ALL RIGHT. NOW, YOU PROVIDED TO THE COURT AN ESTIMATE OF  
14 WHAT YOU THOUGHT IT WAS GOING TO COST SAN MATEO COUNTY IF THERE  
15 WAS A PRISONER RELEASE ORDER, AND I WANT TO TALK TO YOU ABOUT  
16 SOME OF THE ASSUMPTIONS THAT UNDERLIE THAT ESTIMATE.

17 FIRST OF ALL, YOU WERE ESTIMATING \$9 MILLION, RIGHT?

18 **A** I ESTIMATED THAT IF I HAD TO SEND 200 INMATES OUT OF COUNTY,  
19 IT WOULD COST US ABOUT \$9 MILLION.

20 **Q** SO YOU WERE TALKING ABOUT SENDING 200 INMATES OUT OF THE  
21 COUNTY?

22 **A** YES.

23 **Q** TWO HUNDRED INMATES ON AVERAGE EVERY DAY?

24 **A** YES.

25 **Q** ALL RIGHT. YOU CURRENTLY HAVE 480 ARRESTED PAROLEES IN AN

1 ENTIRE YEAR, BUT YOUR COST IMPACT ANALYSIS THAT YOU DID FOR THIS  
2 COURT ASSUMES YOU ARE SENDING 200 PER DAY, AND THAT'S 200 PER  
3 DAY OVER AN ENTIRE YEAR, CORRECT?

4 **A** IT IS 200 PER DAY EVERY DAY.

5 **Q** SO EVEN THOUGH THE PAROLEES ONLY STAY ON AVERAGE EITHER FOUR  
6 DAYS FOR THE TECHNICAL VIOLATIONS OR 21 DAYS FOR OTHER KINDS OF  
7 CRIMES, YOU'RE ASSUMING THAT YOU'RE GOING TO BE FACED WITH AN  
8 INCREASE OF 200 INMATES PER DAY FOR 365 DAYS A YEAR?

9 **A** WELL, I WAS TALKING ABOUT THE NET COST OF OPERATING, YOU  
10 KNOW, MY SYSTEM IN A SAFE WAY.

11 **Q** I'M JUST TRYING TO FOCUS ON --

12 **A** OKAY.

13 **Q** -- ON WHAT THE IMPACT OF PAROLEES IS GOING TO BE ON YOUR  
14 JAIL SYSTEM. ALL RIGHT? AND I'M JUST TRYING TO DRILL DOWN ON  
15 THAT A LITTLE BIT.

16 SO GIVEN THE FACT THAT YOU ONLY HAVE 480 PAROLEE  
17 ARRESTS A YEAR RIGHT NOW, GIVEN THE FACT THAT HALF OF THOSE ARE  
18 ONLY IN YOUR JAIL FOR FOUR DAYS ON AVERAGE, WOULD YOU TELL THE  
19 COURT HOW YOU CAME UP WITH 200 AVERAGE DAILY POPULATION INCREASE  
20 OF 200 OVER THE COURSE OF A YEAR?

21 **JUDGE KARLTON:** WELL, IT'S MORE THAN THAT, BECAUSE  
22 IT'S FILLING ALL THE BEDS THAT HE'S GOT AND THEN SENDING 200  
23 PEOPLE AWAY.

24 **MR. SANGSTER:** THAT'S MY NEXT QUESTION, YOUR HONOR.  
25



1 **BY MR. SANGSTER**

2 **Q** WE ALREADY KNOW THERE'S 170 EMPTY BEDS ON AVERAGE, SO I'M  
3 JUST TRYING TO -- I'M TRYING TO FIGURE OUT HOW WE GET TO THE --

4 **JUDGE KARLTON:** HOW DID YOU GET TO THE 200 A DAY?  
5 MAYBE THAT'S THE SIMPLEST THING TO DO.

6 **THE WITNESS:** FIRST OF ALL, I THINK YOU ARE REFERRING  
7 TO A MEMO THAT WAS PREPARED, CUMULATIVE MEMO FROM THE COUNTY.

8 **BY MR. SANGSTER**

9 **Q** I'M REFERRING TO YOUR DECLARATION THAT YOU SUBMITTED IN  
10 CONNECTION WITH YOUR TESTIMONY HERE.

11 **A** IS IT OKAY IF I REFER TO THAT?

12 **Q** ABSOLUTELY. WOULD YOU LIKE A COPY OF IT?

13 **A** I THINK I HAVE MY -- MY DECLARATION HERE. WHAT PAGE IS IT?

14 **JUDGE REINHARDT:** HE ASKED WHAT --

15 **BY MR. SANGSTER**

16 **Q** PARAGRAPH 16 -- EXCUSE ME. I GAVE YOU THE WRONG PARAGRAPH.  
17 NO, I DIDN'T. THAT'S THE ONE WHERE YOU REFER TO 200 INMATES.

18 **A** MM-HMM. AGAIN, THAT ESTIMATE WAS BASED ON THE ASSUMPTIONS  
19 THAT I REFERRED TO EARLIER, THAT IF THERE WERE A THOUSAND EARLY  
20 RELEASED INMATES TO OUR COUNTY. SO I WASN'T BASING IT ON OUR  
21 CURRENT EXPERIENCE WITH THOSE PAROLEES THAT WE HAVE, AND  
22 APPLYING THE 70 PERCENT RECIDIVISM RATE, SO IT WAS WHAT I WOULD  
23 CHARACTERIZE AS A KIND OF A, YOU KNOW, ASSUMPTION BASED ON NOT  
24 HARD FACTS THAT WE'RE DEALING WITH. IT WAS BASED ON WHAT WOULD  
25 HAPPEN IF A THOUSAND PEOPLE WERE RELEASED FROM STATE PRISON WITH

1 A 70 PERCENT RECIDIVISM RATE WHEN YOU TALK ABOUT BOOKINGS VERSUS  
2 INMATE POPULATION. IT'S TWO DIFFERENT THINGS.

3 YOU TAKE THOSE 480 OR WHATEVER PEOPLE THAT ARE BOOKED  
4 OVER THE COURSE OF THE YEAR, HALF OF THEM ARE IN FOR FOUR DAYS.  
5 THE OTHER HALF ARE IN FOR MANY MORE DAYS, SOME OF WHICH ARE IN  
6 FOR OVER A YEAR. SO THAT IS SOMEWHAT OF A CUMULATIVE NUMBER  
7 THAT GROWS UPON ITSELF. SO IT'S NOT AS THOUGH THOSE NUMBERS ARE  
8 JUST COMING AND GOING. SOME COME, AND SOME GO, AND SOME STAY.

9 Q MY QUESTION IS --

10 A WHEN WE DID THIS CALCULATION WE DIDN'T DO IT BASED ON THE  
11 NUMBERS THAT YOU ARE REFERRING TO NOW. WE DID IT BASED ON THOSE  
12 GROSS NUMBERS OF THE WHAT-IF SCENARIO OF A THOUSAND RELEASED.

13 Q WHAT I'M DOING NOW IS TESTING WHETHER YOUR METHODOLOGY IS  
14 CONSISTENT WITH YOUR CURRENT EXPERIENCE. DO YOU AGREE IT'S NOT  
15 CONSISTENT WITH YOUR CURRENT EXPERIENCE?

16 A WELL --

17 Q THAT'S A YES OR NO QUESTION, SIR.

18 A COULD YOU REPEAT IT, PLEASE?

19 Q WOULD YOU AGREE THAT THE METHOD YOU USED TO CALCULATE 200  
20 INMATES PER DAY FOR A WHOLE YEAR IS NOT CONSISTENT WITH YOUR  
21 CURRENT EXPERIENCE WITH PAROLEES?

22 A YES.

23 Q SO YOU'VE CHANGED YOUR ASSUMPTIONS FOR THE PURPOSES OF THIS  
24 DECLARATION?

25 A NO. I BASED MY ASSUMPTIONS FOR THE PURPOSES OF THE

1 DECLARATION ON THOSE KIND OF GROSS ASSUMPTIONS ON A THOUSAND  
2 INMATES, 700 -- OR 70 PERCENT RECIDIVISM RATES, 700 NEW  
3 OFFENDERS IN MY COMMUNITY, AND TRIED TO BE CONSERVATIVE. IF I  
4 WERE TO DO THAT PROCESS AGAIN, UTILIZING THE NUMBERS THAT YOU'VE  
5 TALKED ABOUT, I MAY COME UP WITH A DIFFERENT NUMBER.

6 **Q** I'M TRYING TO STICK WITH THE NUMBERS YOU USED, SIR.

7 **A** OKAY.

8 **Q** I THINK WE'LL MOVE ON.

9 **JUDGE KARLTON:** WELL, BEFORE YOU MOVE ON, YOU ARE  
10 AWARE THAT THE 70 -- I'M SORRY -- THAT THE PAROLE VIOLATERS  
11 REPRESENT A SIGNIFICANT NUMBER OF WHAT ARE CALLED TECHNICAL  
12 VIOLATERS, DO YOU NOT?

13 **THE WITNESS:** YES, SIR.

14 **JUDGE KARLTON:** AND IF THE TECHNICAL VIOLATERS WERE  
15 NOT REARRESTED AND NOT GOING BACK TO PRISON, THAT WOULD  
16 SUBSTANTIALLY REDUCE THE 70 PERCENT RECIDIVISM RATES THAT YOU'RE  
17 TALKING ABOUT, CORRECT?

18 **THE WITNESS:** YES, THAT WOULD.

19 **JUDGE KARLTON:** THE ANSWER IS YES. THAT'S NOT BRAIN  
20 SURGERY.

21 **THE WITNESS:** I WANTED TO MAKE SURE I UNDERSTOOD THE  
22 QUESTION.

23 **JUDGE KARLTON:** DO YOU HAVE -- NEVER MIND. GO AHEAD.

24 **BY MR. SANGSTER**

25 **Q** THE NUMBERS YOU SUBMITTED TO THE COURT WERE BASED ON 70,000

1 INMATES RELEASED ESSENTIALLY ALL AT ONCE, CORRECT?

2 **A** YES.

3 **Q** HAVE YOU ATTEMPTED TO CALCULATE WHAT THE IMPACT WOULD BE IF  
4 THE RELEASE OF PRISONERS OR THE POPULATION REDUCTION, WHATEVER  
5 IT WAS, OCCURRED OVER A PERIOD OF YEARS?

6 **A** WE HAVE NOT ATTEMPTED TO QUANTIFY THAT OR COST THAT. AS I  
7 STATED EARLIER, I THINK THAT WOULD LESSEN THE IMPACT.

8 **Q** RIGHT. POTENTIALLY, IT COULD ELIMINATE THE IMPACT FOR YOU,  
9 CORRECT, BECAUSE YOU DO HAVE CAPACITY IN YOUR JAILS?

10 **A** WELL, I WOULD ARGUE THAT I DON'T HAVE CAPACITY IN MY JAILS.

11 **Q** IT WOULD -- AT ANY RATE, IT WOULD LESSEN THE IMPACT ON YOUR  
12 JAILS?

13 **A** YES.

14 **Q** IF YOU ADDED 200 INMATES TO YOUR AVERAGE DAILY POPULATION,  
15 THAT WOULD BRING YOU BACK TO THE LEVEL THAT YOU EXPERIENCED IN  
16 2007?

17 **A** WELL --

18 **Q** YES OR NO, SIR.

19 **A** NO.

20 **Q** HOW CLOSE --

21 **A** IF I HAD A HUNDRED --

22 **Q** HOW CLOSE WOULD IT COME?

23 **A** ABOUT HALF, HALFWAY THERE.

24 **Q** HALFWAY THERE, MEANING HALF THE -- YOU MEAN YOU'D HAVE ABOUT  
25 A HUNDRED INMATES OVER YOUR LEVEL THAT YOU EXPERIENCED IN 2007?

1 **A** YEAH. LAST YEAR AT THIS TIME I WAS ROUGHLY A HUNDRED  
2 INMATES MORE THAN I AM NOW.

3 **Q** SO NOW YOU GOT 1,130, AND YOU SAID THAT'S YOUR NORMAL,  
4 1,130?

5 **A** RIGHT. NOW, THAT'S WHAT WE'RE OPERATING UNDER. YOU KNOW,  
6 IF YOU LOOK AT IT ON AN ANNUAL BASIS, IT GOES UP AND DOWN.

7 **Q** OKAY.

8 **A** BUT IF YOU LOOK AT OUR SYSTEM OVER THE LAST 15 YEARS, IT --  
9 I MEAN, WE'RE FAIRLY CONSTANT SYSTEM OF BETWEEN A THOUSAND  
10 SOMETHING ON THE LOW END AND 12--SOMETHING ON THE HIGH END. NOT  
11 TALKING ABOUT HUGE SWINGS.

12 **MR. SANGSTER:** THAT'S ALL THE QUESTIONS I HAVE, YOUR  
13 HONOR.

14 **JUDGE HENDERSON:** DOES CCPOA COUNSEL HAVE ANYTHING?

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

16 **JUDGE HENDERSON:** OKAY. REDIRECT?

17 **MS. WOODWARD:** YES, YOUR HONORS. JUST BRIEFLY.

18 **REDIRECT EXAMINATION BY MS. WOODWARD**

19 **BY MS. WOODWARD**

20 **Q** SHERIFF MUNKS, WHEN MR. SANGSTER REFERRED TO THE MAXIMUM  
21 CAPACITY OF YOUR JAIL AND INDICATED YOU HAD EXTRA BEDS, DO YOU  
22 HAVE -- ARE YOU ABLE TO SAY THAT YOU ARE OPERATING PROPERLY AT  
23 THAT LEVEL OF MAXIMUM CAPACITY?

24 **A** NO.

25 **Q** WOULD YOU EXPLAIN THAT?

1           **JUDGE KARLTON:** HE'S DONE IT SEVERAL TIMES, BECAUSE  
2 IF YOU FILL THE BEDS, YOU CAN'T MOVE PEOPLE WHEN IT'S  
3 APPROPRIATE TO DO SO.

4           **THE WITNESS:** YES, SIR.

5           **MS. WOODWARD:** OKAY. THAT'S ALL I HAVE. THANK YOU,  
6 YOUR HONORS.

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

8           OKAY. THANK YOU, SHERIFF MUNKS, FOR TESTIFYING.  
9 YOU'RE EXCUSED.

10           YOU MAY CALL YOUR NEXT WITNESS.

11           **MS. BARLOW:** GOOD AFTERNOON, YOUR HONORS. KIMBERLY  
12 HALL BARLOW, JONES & MAYER, ON BEHALF OF THE INTERVENORS, LAW  
13 ENFORCEMENT INTERVENORS, CALLING LIEUTENANT STEPHEN M. SMITH.

14                           **STEPHEN M. SMITH,**

15 HAVING BEEN CALLED AS A WITNESS BY THE DEFENDANT INTERVENORS  
16 WAS FIRST DULY SWORN AND EXAMINED AS FOLLOWS:

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

19           **THE WITNESS:** STEPHEN MICHAEL SMITH, S-M-I-T-H.  
20 S-T-E-P-H-E-N.

21           **MS. BARLOW:** IF IT'S CONVENIENT FOR THE COURT, I HAVE  
22 COPIES OF LIEUTENANT SMITH'S DECLARATION.

23                           **DIRECT EXAMINATION BY MS. BARLOW**

24 **BY MS. BARLOW**

25 **Q** GOOD AFTERNOON, LIEUTENANT SMITH.

1 **A** GOOD AFTERNOON.

2 **Q** COULD YOU PLEASE STATE YOUR TITLE AND DUTIES?

3 **A** I'M A LIEUTENANT WITH LOS ANGELES COUNTY SHERIFF'S  
4 DEPARTMENT, AND I WORK IN THE CUSTODY SUPPORT SERVICES UNIT.

5 **Q** WHAT DO YOU DO IN THAT CAPACITY?

6 **A** I PROVIDE SUPPORT FOR THE TWO SITTING CHIEFS AND THE  
7 ASSISTANT SHERIFF AND THE SHERIFF IN MATTERS RELATED TO CUSTODY.  
8 WE DO DEATH REVIEWS. WE DO DATA ANALYSIS AND ANY OF THE OTHER  
9 PROJECTS AS THEY COME UP, MAINLY INVOLVING POLICY.

10 **Q** JUST VERY BRIEFLY SUMMARIZE YOUR BACKGROUND AND EMPLOYMENT  
11 AND EDUCATION, PLEASE.

12 **A** SURE. I HAVE AN AA DEGREE FROM COMMUNITY COLLEGE, AND I  
13 TOOK SEVERAL BUSINESS COURSES TOWARD ACCOUNTING, AND THOSE TYPE  
14 OF COURSES, TOWARDS A BUSINESS DEGREE. MY JOB TITLE? I'M  
15 SORRY.

16 **Q** HOW LONG HAVE YOU BEEN WITH THE SHERIFF'S DEPARTMENT?

17 **A** I'M SORRY. I HAVE BEEN WITH THE SHERIFF'S DEPARTMENT FOR  
18 JUST ABOUT 24 YEARS.

19 **Q** YOU'VE SERVED IN VARIOUS CAPACITIES IN THE SHERIFF'S  
20 DEPARTMENT?

21 **A** YES, I'VE WORKED IN PAROLE, AND IN CUSTODY ENVIRONMENT, AND  
22 IN DETECTIVE DIVISION AS WELL.

23 **Q** CAN YOU TELL US HOW MANY PRISONERS ARE PROCESSED THROUGH LOS  
24 ANGELES COUNTY JAIL SYSTEM EVERY YEAR?

25 **A** BETWEEN 170,000 AND 180,000.

1 **Q** DOES LOS ANGELES COUNTY JAIL SYSTEM HAVE ANY COURT-IMPOSED  
2 CAPS ON ITS POPULATION?

3 **A** YES, IT DOES.

4 **Q** CAN YOU EXPLAIN THOSE, PLEASE?

5 **A** THE MOST RECENT CAP SAYS WE WILL NOT HAVE ANY FLOOR  
6 SLEEPERS. THERE'S ALSO A CAP AT MEN'S CENTRAL JAIL, A SPECIFIC  
7 CAP THAT'S JUST OVER 5,000 INMATES, I BELIEVE, FOR THAT  
8 FACILITY. BUT OUR WORKING CAPACITY, OR THE NUMBER WE TRY TO  
9 MAINTAIN OUR INMATE POPULATION AT, IS ABOUT 19,600.

10 **Q** NOW, IS THERE A REASON THAT YOU MAINTAIN THAT CAPACITY,  
11 19,600?

12 **A** YES, WE TRY TO KEEP THAT NUMBER BECAUSE IT ALLOWS US TO --  
13 WITH THE BEDS THAT WE HAVE CURRENTLY, WE NEED ABOUT A TEN  
14 PERCENT VACANCY FACTOR FOR THE NORTHPOINT SYSTEM TO WORK. THE  
15 NORTHPOINT SYSTEM IS OUR CLASSIFICATION SYSTEM THAT WE USE.

16 **Q** AND HOW DOES THE VACANCY FACTOR HELP YOU USE THAT POINT  
17 SYSTEM?

18 **A** YOU HAVE TO KEEP DISSIMILAR POPULATION APART, POPULATIONS  
19 THAT WILL FIGHT, POPULATIONS THAT REQUIRE -- THAT HAVE SPECIFIC  
20 NEEDS, AND ALSO KEEP VICTIM POPULATIONS AWAY FROM THE MORE  
21 AGGRESSIVE POPULATION. IT ALSO ALLOWS YOU TO KEEP THEM  
22 CLASSIFIED BASICALLY ALONG, YOU KNOW, THE MEDIUMS, HIGHS, AND  
23 LOWS.

24 **Q** SO DO YOU USE THAT SYSTEM TO ALLOW YOU TO, SAY, SEGREGATE  
25 MENTALLY ILL PATIENTS FROM -- OR MENTALLY ILL INMATES FROM OTHER



1 INMATES?

2 **A** THEY ARE ALSO PUT INTO THAT MATRIX AS WELL. THERE ARE  
3 SEVERAL DIFFERENT POPULATIONS, INCLUDING THE MENTALLY ILL THAT  
4 REQUIRE SPECIAL HOUSING. MEDICAL PATIENTS ARE COHORTED OFTEN TO  
5 ALLOW FOR MEDICAL RESOURCES TO BE BROUGHT TO THOSE PATIENTS IN  
6 AN EFFICIENT MANNER THAT PROTECTS THE PATIENT.

7 **Q** IN ADDITION TO USING ANY ADDITIONAL BEDS FOR THOSE REASONS,  
8 DO YOU ALSO HAVE TO DO UPGRADES AND MAINTENANCE ON BEDS THAT  
9 MIGHT OTHERWISE BE AVAILABLE?

10 **A** SURE. AT ANY GIVEN TIME, WE HAVE SEVERAL BEDS THAT ARE JUST  
11 COMPLETELY UNAVAILABLE FOR ONE REASON OR ANOTHER. SOME OF THEM  
12 ARE JUST -- IT CAN BE SOMETHING AS SIMPLE AS A BROKEN TOILET OR  
13 DOOR THAT DOESN'T WORK, AND THEN YOUR ONGOING MAINTENANCE.  
14 WE'RE RETROFITTING CERTAIN PARTS OF THE JAIL RIGHT NOW TO MAKE  
15 THE JAIL ADA COMPLIANT. AND THEN JUST SIMPLE MAINTENANCE  
16 PROJECTS, PAINTING, YOU KNOW, FIXING PIPES, THOSE TYPES OF  
17 THINGS.

18 **Q** WE HEARD TESTIMONY FROM A WITNESS EARLIER IN THIS CASE THAT  
19 INDICATED THAT LOS ANGELES COUNTY HAD 2,500 UNUSED BEDS THAT  
20 COULD BE USED IF WE JUST HAD THE STAFF FOR THEM; IS THAT TRUE?

21 **A** NOT TO MY KNOWLEDGE, NO.

22 **Q** ARE ALL YOUR JAIL FACILITIES OPEN?

23 **A** ALL OF OUR JAIL FACILITIES ARE OPEN CURRENTLY, WITH THE  
24 EXCEPTION OF CIVIL GRAND INSTITUTE, WHICH IS ACTUALLY CLOSED.

25 **Q** WHY IS IT CLOSED?

1 **A** IT IS NOT INHABITABLE AT THIS TIME. IT'S GOING TO BE --  
2 ACTUALLY IT'S SLATED TO BE RAZED, I BELIEVE, AND A NEW FACILITY  
3 PUT THERE.

4 **Q** WHY ISN'T IT INHABITABLE?

5 **A** LAST TIME I WAS THERE -- IT HAS ISSUES, EVERYTHING FROM  
6 ASBESTOS, AND THE GATES SIMPLY DON'T WORK, THE TOILETS,  
7 PLUMBING, THE -- I BELIEVE THE CHILLER DOESN'T WORK, THE AIR  
8 CONDITIONING, THOSE TYPE OF THINGS. THE INFRASTRUCTURE IS JUST  
9 NOT THERE.

10 **Q** IS IT SEISMICALLY SOUND?

11 **A** IT'S VERY QUESTIONABLE AS FAR AS THAT GOES.

12 **Q** NOW, IS THERE A PLAN PRESENTLY IN LOS ANGELES COUNTY TO  
13 CONSTRUCT ADDITIONAL JAIL BEDS?

14 **A** YES, THERE IS.

15 **Q** COULD YOU DESCRIBE THE PLAN?

16 **A** THE PLAN IS STILL A WORK IN PROGRESS. THERE'S QUITE OF BIT  
17 OF WORK TOWARD THAT. THERE'S ABOUT 170 -- I'M SORRY --  
18 \$760 MILLION, ABOUT THREE-QUARTERS OF A BILLION DOLLARS, SET  
19 ASIDE FOR BUILDING NEW FACILITIES WITHIN L.A. COUNTY JAIL. THEY  
20 WILL MAINLY REPLACE EXISTING STRUCTURES. AND WE'RE HOPING TO  
21 GET MODEST GAIN OF BETWEEN ONE AND TWO THOUSAND BEDS OUT OF THAT  
22 CONSTRUCTION EFFORT.

23 **Q** WILL THAT BE ENOUGH BEDS TO MEET LOS ANGELES COUNTY'S  
24 CURRENT JAIL NEEDS?

25 **A** NO.

1 **Q** HOW MANY WILL IT BE SHORT?

2 **A** APPROXIMATELY FIVE THOUSAND BEDS, A LITTLE OVER 5,000 BEDS,  
3 I BELIEVE, MINIMUM.

4 **Q** NOW, AS A RESULT OF THE ORDER AND CAPACITY ISSUES, DOES THE  
5 SHERIFF'S DEPARTMENT TAKE CERTAIN STEPS TO MAINTAIN ITS  
6 POPULATION BELOW ITS CAP?

7 **A** YES, WE DO.

8 **Q** AND I KNOW THAT CHIEF YIM SUBMITTED IN HIS DECLARATION A  
9 NUMBER OF THOSE. SO SETTING ASIDE THOSE THAT CHIEF YIM REFERRED  
10 TO IN HIS DECLARATION, ARE THERE EARLY RELEASES THAT OCCUR AS A  
11 RESULT OF THE CAPS?

12 **A** YES, THERE ARE.

13 **Q** COULD YOU DESCRIBE WHAT THOSE ARE?

14 **A** RIGHT NOW MEN DO ABOUT 70 PERCENT OF THEIR TIME, AND WOMEN  
15 DO ABOUT 10 PERCENT OF THEIR TIME, AND THOSE INDIVIDUALS WHOSE  
16 SENTENCES ARE AT THAT LEVEL FOR THE MOST PART ARE RELEASED.  
17 THERE ARE SOME EXCEPTIONS TO THAT, BUT, FOR THE MOST PART,  
18 SOMEONE WHO SERVES 70 PERCENT OF THEIR TIME, IF THEY'RE MALE, OR  
19 10 PERCENT OF THEIR TIME IF THEY'RE FEMALE, ARE RELEASED.

20 **Q** SO THAT WOULD BE IN ADDITION TO ANY PROGRAMS LIKE CITE AND  
21 RELEASE, AND DUI, DETOXIFICATION, AND SO ON, CORRECT?

22 **A** YES, ABSOLUTELY.

23 **Q** COULD YOU TELL THE COURT HOW MANY, IF ANY, PRETRIAL  
24 DETAINEES WERE RELEASED EARLY IN 2007 AS A RESULT OF CAPACITY  
25 LIMITATIONS?

1 **A** THERE WERE JUST UNDER 10,000 THAT WERE RELEASED; 9,959, I  
2 BELIEVE.

3 **Q** HOW ABOUT SENTENCED INMATES IN THE COUNTY FACILITIES, HOW  
4 MANY OF THOSE WERE RELEASED EARLY IN 2007 DUE TO CAPACITY  
5 LIMITS?

6 **A** THERE WERE JUST UNDER 41,000, 40,830, IN THAT NEIGHBORHOOD.

7 **Q** SO JUST IN 2007, ABOUT 50,000 PEOPLE WERE RELEASED EARLY  
8 FROM LOS ANGELES COUNTY JAILS?

9 **A** YES.

10 **Q** NOW, LIEUTENANT SMITH, HAVE THERE BEEN IMPACTS TO PUBLIC  
11 SAFETY IN THE COMMUNITY AS A RESULT OF THE EXISTING EARLY  
12 RELEASES IN LOS ANGELES COUNTY?

13 **A** YES.

14 **Q** COULD YOU DESCRIBE WHAT THOSE ARE?

15 **A** ANY TIME ANYONE IS RELEASED EARLY, YOU ARE GOING TO HAVE AN  
16 IMPACT ON PUBLIC SAFETY, PEOPLE THAT ARE -- IF YOU ARE NOT  
17 INCARCERATED, YOU HAVE THE ABILITY TO COMMIT CRIMES THAT YOU  
18 WOULD NOT OTHERWISE HAVE, BECAUSE THOSE INDIVIDUALS WOULD NOT BE  
19 IN THE COMMUNITY AVAILABLE. THE VICTIMS WOULD NOT BE AVAILABLE  
20 TO THE SUSPECTS. IF FOR NO OTHER REASON THAT ONE IMPACT ALONE,  
21 YOU ARE GOING TO HAVE AN IMPACT NO MATTER HOW WELL YOU TRY TO  
22 MANAGE THAT.

23 **Q** ARE YOU FAMILIAR WITH A LOS ANGELES TIMES STORY ENTITLED,  
24 "RELEASING INMATES EARLY HAS A COSTLY HUMAN TOLL"?

25 **MS. EVENSON:** OBJECTION. CALLS FOR HEARSAY. WE

1 PREVIOUSLY INFORMED COUNSEL WE HAVE OBJECTIONS TO THE  
2 INTRODUCTION OF AN L.A. TIMES ARTICLE AS HEARSAY.

3 **MS. BARLOW:** I'M SIMPLY GOING TO ASK HIM TO CONFIRM  
4 THE NUMBERS PUBLISHED IN THIS REPORT.

5 **JUDGE HENDERSON:** HAS THIS BEEN OFFERED INTO  
6 EVIDENCE?

7 **MS. BARLOW:** NOT YET, YOUR HONOR.

8 **MS. EVENSON:** WE WOULD OBJECT TO ANY QUESTIONS ASKING  
9 THIS WITNESS TO READ NUMBERS OUT OF AN L.A. TIMES ARTICLE.

10 **MS. BARLOW:** I'M NOT ASKING HIM TO DO THAT, YOUR  
11 HONOR.

12 **JUDGE HENDERSON:** LET'S PROCEED.

13 **BY MS. BARLOW**

14 **Q** IF WE COULD -- THE REPORT INDICATES THAT 16,000 INMATES,  
15 MORE THAN TEN PERCENT OF THOSE RELEASED EARLY, WERE REARRESTED  
16 AND CHARGED WITH NEW CRIMES WHILE THEY WERE SUPPOSED TO BE  
17 INCARCERATED; IS THAT ACCURATE?

18 **MS. EVENSON:** OBJECTION. CALLS FOR HEARSAY.

19 **JUDGE HENDERSON:** SUSTAINED. GO ON.

20 **BY MS. BARLOW**

21 **Q** TO YOUR KNOWLEDGE, LIEUTENANT SMITH, IS IT CORRECT THAT TEN  
22 PERCENT --

23 **JUDGE HENDERSON:** WAIT. IF WE ARE DOING HIS  
24 KNOWLEDGE, LET'S DO IT.

25 **MS. BARLOW:** THAT'S WHAT I'M DOING --

1           **JUDGE HENDERSON:**  DON'T READ FROM OFF A PAPER.

2           **JUDGE KARLTON:**  TAKE THIS OFF THE SCREEN.  IF YOU  
3 WANT TO ASK HIM A QUESTION ABOUT HOW MANY PEOPLE, YOU CAN ASK  
4 HIM DIRECTLY, AND IF HE KNOWS, HE CAN SAY THAT, AND IF HE  
5 DOESN'T KNOW, HE CAN SAY THAT.

6 **BY MS. BARLOW**

7 **Q**    TO YOUR KNOWLEDGE, SIR, APPROXIMATELY HOW MANY OF THE EARLY  
8 RELEASED INMATES WERE REARRESTED AND CHARGED WITH NEW CRIMES  
9 DURING EARLY RELEASE PERIOD --

10           **MS. EVENSON:**  OBJECTION.  LACKS --

11 **BY MS. BARLOW**

12 **Q**    -- FOR THE PERIOD OF TIME IN 2003 AND 2004?

13           **JUDGE KARLTON:**  NOW.

14           **MS. EVENSON:**  OBJECTION.  LACKS FOUNDATION.

15           **JUDGE KARLTON:**  LAY A FOUNDATION FIRST.  I DON'T KNOW  
16 HOW HE KNOWS.

17 **BY MS. BARLOW**

18 **Q**    LIEUTENANT SMITH, DID YOU DO AN ANALYSIS OF THE NUMBERS OF  
19 CRIMES THAT WERE COMMITTED BY EARLY RELEASEES?

20           **JUDGE KARLTON:**  DID YOU PERSONALLY, APPARENTLY; IS  
21 THAT WHAT YOU ARE SAYING?

22           **MS. BARLOW:**  NO, DID THE DEPARTMENT DO AN ANALYSIS.

23           **THE WITNESS:**  THE DEPARTMENT DID DO AN ANALYSIS.

24 **BY MS. BARLOW**

25 **Q**    IS THAT PART OF YOUR JOB, TO DO DATA ANALYSIS?

1 **A** IT IS, BUT THIS WAS NOT OUR PROJECT. IT WAS DONE BY DATA  
2 SYSTEMS BUREAU WHO WORKED FOR US.

3 **Q** DID YOU VERIFY THE ANALYSIS THAT WAS DONE BY DATA SYSTEMS  
4 BUREAU?

5 **A** YES, WE DID.

6 **JUDGE KARLTON:** WHO IS DATA SYSTEMS BUREAU?

7 **THE WITNESS:** THEY WORK FOR US, YOUR HONOR. THEY ARE  
8 THE INDIVIDUALS WHO DO DATA COLLECTION FOR THE SHERIFF'S  
9 DEPARTMENT.

10 **JUDGE KARLTON:** I'M SORRY. GO AHEAD, SAY IT AGAIN.

11 **THE WITNESS:** I'M SORRY, SIR. THEY ARE THE  
12 INDIVIDUALS, THEY WORK FOR THE SHERIFF'S DEPARTMENT, AND THEY DO  
13 ALL DATA ANALYSIS FOR THE DEPARTMENT RELATING TO CRIME TRENDS --

14 **JUDGE KARLTON:** THEY ARE EMPLOYEES OF THE SHERIFF'S  
15 DEPARTMENT?

16 **THE WITNESS:** YES, SIR, THEY ARE.

17 **JUDGE KARLTON:** OKAY. AND THEIR JOB IS TO DO  
18 STATISTICAL ANALYSES?

19 **THE WITNESS:** YES, SIR.

20 **JUDGE KARLTON:** THANK YOU.

21 **MS. BARLOW:** THANK YOU, YOUR HONOR.

22 **BY MS. BARLOW**

23 **Q** TO YOUR KNOWLEDGE, CAN YOU ESTIMATE THE PERCENTAGE OF THOSE  
24 RELEASED EARLY DURING THE PERIOD IN QUESTION?

25 **JUDGE KARLTON:** SHE DOESN'T MEAN THAT. WHAT IN DATA

1 SYSTEMS DETERMINED CONCERNING THE NUMBER OF REARRESTS OF PERSONS  
2 WHO WERE RELEASED EARLY? THAT'S WHAT YOU WANT TO ASK, ISN'T IT?

3 **MS. BARLOW:** THANK YOU, YOUR HONOR.

4 **THE WITNESS:** THE ONLY THING THAT I REMEMBER ABOUT  
5 THAT THING, YOUR HONOR, IS -- I HAVE TO COUCH IT THIS WAY, IS  
6 THAT WE DID AN ANALYSIS, WE CONFIRMED THAT THE NUMBERS WERE  
7 ACCURATE IN THE REPORT AS GIVEN, AND THAT SINCE WE HAD -- OUR  
8 OWN DEPARTMENT HAD PROVIDED THOSE NUMBERS TO THE TIMES, OUR  
9 BIG -- THE FOCUS OF WHAT WE DID WAS TO VALIDATE THE NUMBERS WERE  
10 ACCURATE, BUT I DO NOT REMEMBER THE NUMBERS PERSONALLY.

11 **BY MS. BARLOW**

12 **Q** WOULD IT REFRESH YOUR RECOLLECTION, LIEUTENANT SMITH --

13 **JUDGE KARLTON:** JUST A MINUTE.

14 **MS. BARLOW:** I'M SORRY, SIR?

15 **JUDGE KARLTON:** JUST A MINUTE.

16 LET ME TRY AND UNDERSTAND WHAT YOU'RE SAYING. YOU'VE  
17 GOT THESE FOLKS IN THE BUSINESS OF DOING STATISTICAL ANALYSES  
18 FOR THE SHERIFF'S DEPARTMENT.

19 **THE WITNESS:** YES, SIR.

20 **JUDGE KARLTON:** AND YOU ASK THOSE FOLKS TO MAKE A  
21 JUDGMENT CONCERNING HOW MANY PEOPLE WHO WERE EARLY RELEASED  
22 COMMITTED OTHER CRIMES DURING THEIR EARLY RELEASE?

23 **THE WITNESS:** YES, SIR.

24 **JUDGE KARLTON:** NOT JUST OTHER CRIMES, BUT  
25 SPECIFICALLY BY VIRTUE OF THEIR EARLY RELEASE?



1           **THE WITNESS:** YES, SIR.

2           **JUDGE KARLTON:** AS YOU SIT HERE NOW, YOU HAVE NO -- I  
3 GATHER YOU HAVE NO RECOLLECTION ABOUT THE NUMBERS?

4           **THE WITNESS:** THAT'S CORRECT, YOUR HONOR.

5           **JUDGE KARLTON:** BUT THOSE NUMBERS WERE TURNED OVER TO  
6 SOME REPORTER SOMEWHERE, AND IT APPEARED IN AN ARTICLE?

7           **THE WITNESS:** YES, SIR.

8           **JUDGE KARLTON:** AND YOU SOMEHOW OR OTHER CHECKED THAT  
9 ARTICLE TO BE SURE THAT IT WAS ACCURATE?

10          **THE WITNESS:** YES, SIR, WE WERE ASKED TO LOOK INTO  
11 THAT.

12          **JUDGE KARLTON:** YOU PERSONALLY OR SOMEBODY DID?

13          **THE WITNESS:** MY UNIT WAS ASKED TO LOOK INTO IT.  
14 SERGEANT BLANKS WHO WORKS FOR ME --

15          **JUDGE KARLTON:** SO ALL YOU KNOW IS WHAT SERGEANT  
16 BLANKS TOLD YOU?

17          **THE WITNESS:** AND WE WENT OVER THE TIMES AT THE TIME.

18          **JUDGE KARLTON:** THAT'S THE PROBLEM. I DON'T KNOW  
19 WHAT "WE" MEANS. DID YOU PERSONALLY --

20          **THE WITNESS:** SERGEANT BLANKS AND I WENT OVER THE  
21 NUMBERS.

22          **JUDGE KARLTON:** I DON'T KNOW WHY I'M DOING YOUR WORK.  
23 I'M JUST TRYING TO GET THIS DONE SO WE CAN GET OUT OF HERE  
24 BEFORE JULY THE 5TH. YOU WENT OVER THE NUMBERS WITH SERGEANT  
25 BLANKS AND CONCLUDED WHAT?

1           **THE WITNESS:** THAT THE NUMBERS WERE ACCURATE AS  
2 REPORTED.

3           **JUDGE KARLTON:** ALL RIGHT. YOU MAY PROCEED.

4           **MS. BARLOW:** THANK YOU, YOUR HONOR.

5 **BY MS. BARLOW**

6 **Q** DO YOU HAVE A COPY OF THE ARTICLE IN FRONT OF YOU,  
7 LIEUTENANT SMITH?

8 **A** I DO NOT. I HAVE AN ARTICLE, BUT I DON'T HAVE IT WITH ME.

9           **MS. BARLOW:** MAY I APPROACH, YOUR HONOR?

10          **JUDGE HENDERSON:** YOU MAY.

11 **BY MS. BARLOW**

12 **Q** WOULD IT REFRESH YOUR RECOLLECTION TO REVIEW THE NUMBERS IN  
13 THE REPORT?

14          **JUDGE HENDERSON:** ANY PARTICULAR PART OF THE REPORT?

15          **MS. BARLOW:** YES, ON PAGE 1.

16          **JUDGE KARLTON:** THE QUESTION IS WHETHER -- THAT'S  
17 STILL NOT IN EVIDENCE, TAKE IT DOWN. IT'S REALLY VERY  
18 IRRITATING.

19                 SIR, WHEN YOU READ IT, DOES IT REFRESH YOUR  
20 RECOLLECTION, THE ANSWER TO THAT QUESTION IS YES OR NO. DO YOU  
21 NOW REMEMBER WHAT THE NUMBER IS, OR ARE YOU JUST READING IT OFF  
22 OF THE PIECE OF PAPER?

23          **THE WITNESS:** TO BE HONEST, YOUR HONOR, AS I ALWAYS  
24 AM, IT ONLY REFRESHES MY MEMORY ONLY WITH LOOKING AT THE  
25 NUMBERS. I DON'T HAVE AN INDEPENDENT RECOLLECTION OF THE

1 NUMBERS.

2 **JUDGE KARLTON:** GO AHEAD. DO YOU THINK YOU CAN --

3 **BY MS. BARLOW**

4 **Q** TO THE BEST OF YOUR KNOWLEDGE, LIEUTENANT SMITH, IS IT TRUE  
5 OUT OF 16,000 INMATES --

6 **JUDGE KARLTON:** MA'AM, HE JUST FINISHED SAYING HE  
7 DOESN'T REMEMBER WHAT THE NUMBERS ARE; ALL HE KNOWS IS THAT THIS  
8 IS WHAT WAS WRITTEN AND THAT WHAT WAS WRITTEN WAS, AT THE TIME,  
9 SOMETHING THAT HE HAD VERIFIED.

10 **THE WITNESS:** YES, SIR. WE VALIDATED IT.

11 **JUDGE KARLTON:** NOW THE QUESTION IS WHETHER OR NOT  
12 IT'S ADMISSIBLE AS PRIOR RECORDED RECOLLECTION, AND THE ANSWER  
13 IS NO, BECAUSE IT'S NOT HIS RECORDED RECOLLECTION. IT'S -- I  
14 DON'T BELIEVE -- WELL, I DON'T SEE HOW -- YOU MUST BE PREPARED  
15 FOR THIS OBJECTION. NO?

16 **MS. BARLOW:** LET ME JUST TAKE A MINUTE, YOUR HONOR.

17 **BY MS. BARLOW**

18 **Q** DO YOU RECALL THE APPROXIMATE NUMBER OF PERSONS WHO WERE  
19 REARRESTED DURING THE EARLY RELEASE PERIOD FOR SERIOUS OR  
20 VIOLENT CRIMES?

21 **JUDGE KARLTON:** NOT WHAT'S WRITTEN. DO YOU RECALL?

22 **THE WITNESS:** I RECALL THERE WERE 16 MURDERS THAT  
23 WERE ARRESTED DURING THAT PERIOD.

24 **BY MS. BARLOW**

25 **Q** OKAY. FROM JUST MURDERS?

1 **A** FOR MURDERS.

2 **Q** DO YOU RECALL THE APPROXIMATE PERCENTAGE OF THOSE WHO WERE  
3 RELEASED EARLY WERE REARRESTED DURING THE EARLY RELEASE PERIOD?

4 **A** I BELIEVE IT WAS ABOUT TEN PERCENT.

5 **Q** AND OF THOSE DO YOU RECALL ABOUT WHAT PERCENTAGE WERE  
6 ARRESTED FOR SERIOUS LIFE-THREATENING CRIMES?

7 **A** NO, MA'AM, I DON'T.

8 **Q** OKAY. AS A RESULT OF THE PUBLICATION OF THIS ARTICLE, DID  
9 THE SHERIFF'S DEPARTMENT TAKE ANY STEPS TO REASSESS ITS EARLY  
10 RELEASE PROGRAMS?

11 **JUDGE KARLTON:** NOT AS A RESULT OF THIS ARTICLE, BUT  
12 AS A RESULT OF THE STUDY DID YOU DO ANYTHING?

13 **THE WITNESS:** YES, SIR. AS A RESULT OF THE STUDY WE  
14 DID, WE WENT BACK AND LOOKED AT IT. IT PROVIDED A REAL FIRST  
15 GLIMPSE OF WHAT WAS OCCURRING.

16 **BY MS. BARLOW**

17 **Q** WERE ADDITIONAL STEPS TAKEN TO TRY TO REDUCE THE IMPACTS TO  
18 THE COMMUNITY?

19 **A** YES.

20 **Q** ALL RIGHT.

21 **A** SOME OF THESE WERE -- WE HAD LOOKED AT HOW WE WERE DEALING  
22 WITH CERTAIN GANG MEMBERS AND HOW WE DEALT WITH THOSE. WE  
23 LOOKED AT DOING SOME ADDITIONAL ASSESSMENTS THROUGH SOME OTHER  
24 TOOLS. WE FOUND THAT ALL THE TOOLS THAT EXISTED WERE SIMPLY TOO  
25 CUMBERSOME TO GET THROUGH GIVEN THE NUMBER OF RELEASES THAT WE

1 HAD ON AN ONGOING BASIS.

2 **Q** IS IT FAIR TO SAY THAT YOU DID AGREE, AFTER LOOKING AT THE  
3 DATA, THAT THERE WAS, IN FACT, A NEGATIVE IMPACT TO PUBLIC  
4 SAFETY FROM THE EARLY RELEASES?

5 **A** YES, EVERYONE IN THE DEPARTMENT IS WELL AWARE OF THAT.

6 **Q** AND SO YOU'RE ATTEMPTING TO REASSESS THAT IN TERMS OF HOW  
7 YOU CHOOSE THOSE TO BE RELEASED?

8 **A** WE WERE TRYING TO MITIGATE TO THE LARGEST EXTENT POSSIBLE  
9 THE DAMAGE TO THE COMMUNITY BY AN EARLY RELEASE.

10 **Q** IN YOUR OPINION, LIEUTENANT SMITH, ARE YOU ABLE TO  
11 COMPLETELY MITIGATE IMPACTS TO THE COMMUNITY OF THOSE EARLY  
12 RELEASE PROGRAMS?

13 **A** NO.

14 **Q** WHY NOT?

15 **A** THERE SIMPLY IS NOT ENOUGH MONEY AND ALTERNATIVES THAT EXIST  
16 TO TAKE CARE OF THE PROBLEMS THAT ARE INHERENT. ALL ASSESSMENT  
17 TOOLS, NO MATTER HOW GOOD THEY ARE, ARE VIEWED IN LARGE, YOU  
18 KNOW, NUMBERS AND NEVER CAN REALLY TAKE INTO ACCOUNT ALL ASPECTS  
19 OF THE PEOPLE THAT YOU'RE RELEASING.

20 **JUDGE REINHARDT:** MAY I ASK YOU A QUESTION? ARE  
21 THESE PEOPLE WHO ARE EARLY RELEASED PEOPLE WHO HAVE BEEN  
22 SENTENCED TO COUNTY JAIL?

23 **THE WITNESS:** YES, SIR.

24 **JUDGE REINHARDT:** AND THE MAXIMUM SENTENCE IS A YEAR?

25 **THE WITNESS:** YES, SIR, IT IS.

1           **JUDGE REINHARDT:** ARE THESE PEOPLE WHO COMMITTED  
2 MISDEMEANORS?

3           **THE WITNESS:** YES, SIR, THEY WOULD BE, OR WOBBLERS  
4 THAT WERE SENTENCED TO THE COUNTY JAIL.

5           **JUDGE REINHARDT:** SO THESE PEOPLE WHO ARE RELEASED  
6 EARLY HAVE BEEN UP UNTIL THIS TIME MINOR CRIMINALS?

7           **THE WITNESS:** I WOULD NOT CHARACTERIZE THEM THAT WAY.

8           **JUDGE REINHARDT:** THE OFFENSE FOR WHICH THEY ARE --

9           **THE WITNESS:** EVEN THAT IS --

10          **JUDGE REINHARDT:** ARE MISDEMEANORS?

11          **THE WITNESS:** THEY A LOT OF TIMES PLED TO  
12 MISDEMEANORS IN LIEU OF A FELONY CHARGE, AS WE'RE ALL AWARE OF.  
13 SO A LOT OF THEM ARE NOT JUST YOUR -- YOU KNOW, IT'S NOT CANNERY  
14 ROW. A LOT OF THESE ARE ACTUAL --

15          **JUDGE REINHARDT:** ALL THEY HAVE BEEN CONVICTED OF ARE  
16 MISDEMEANORS?

17          **THE WITNESS:** YES, SIR, THAT'S TRUE.

18          **JUDGE REINHARDT:** AND THEN THEY GOT OUT OF COUNTY  
19 JAIL?

20          **THE WITNESS:** YES, SIR.

21          **JUDGE REINHARDT:** AND A LARGE NUMBER OF THEM HAD  
22 COMMITTED MURDERS?

23          **JUDGE KARLTON:** TEN PERCENT.

24          **THE WITNESS:** TEN PERCENT HAVE COMMITTED OTHER  
25 CRIMES, YES, SIR. THE MURDERS, THERE'S BEEN 16 MURDERS. SOME

1 OF THOSE WERE, AND I'M NOT SURE OF THE EXACT NUMBER, BUT SOME OF  
2 THOSE WERE PREEXISTING MURDER CONVICTIONS THAT THEY WERE  
3 ARRESTED FOR AFTER THE FACT.

4 **JUDGE KARLTON:** SO THEY DIDN'T COMMIT THEM  
5 AFTERWARDS; THEY JUST WERE DISCOVERED AFTERWARDS?

6 **THE WITNESS:** YES, SIR.

7 **JUDGE KARLTON:** DO YOU KNOW HOW MANY COMMITTED  
8 CRIMES -- I'M NOT SURE IT MATTERS, BUT HOW MANY COMMITTED  
9 CRIMES?

10 **THE WITNESS:** NO, SIR, I DON'T KNOW THE EXACT NUMBER.  
11 WE KNOW THERE WERE SEVERAL.

12 **JUDGE KARLTON:** HOW LONG BEFORE THE YEAR, ASSUMING  
13 THEY WERE ALL SENTENCED FOR A YEAR, WHICH IS PROBABLY NOT THE  
14 CASE AS WELL, RIGHT?

15 **THE WITNESS:** RIGHT.

16 **JUDGE KARLTON:** HOW OFTEN -- HOW LONG BEFORE THEY ARE  
17 SENTENCED WERE THEY RELEASED?

18 **THE WITNESS:** IT VARIED. THEY WERE DOING ABOUT TEN  
19 PERCENT OF THEIR TIME AT THAT TIME, SO ON A YEAR, YOU DID ABOUT  
20 24 DAYS.

21 **JUDGE REINHARDT:** I THOUGHT --

22 **THE WITNESS:** SO, IF YOU GOT SENTENCED TO ONE YEAR,  
23 YOU COULD BE OUT AS MUCH AS 300 DAYS EARLY.

24 **JUDGE REINHARDT:** I THOUGHT YOU SAID THE MEN DID  
25 70 PERCENT OF THEIR TIME AND THE WOMEN 10 PERCENT?

1           **THE WITNESS:** THAT'S WHAT WE'RE DOING NOW, YOUR  
2 HONOR. AT THE TIME THE ARTICLE WAS WRITTEN, MEN WERE DOING TEN  
3 PERCENT OF THEIR TIME. ONE OF THE THINGS WE WERE ABLE TO DO WAS  
4 INCREASE THE LENGTH OF INCARCERATION TO THE 70 PERCENT MARK.

5           **JUDGE KARLTON:** SO THESE PEOPLE WERE GETTING OUT IN  
6 24 DAYS AND COMMITTING ANOTHER CRIME, AND HAD THEY BEEN HELD 40  
7 DAYS INSTEAD OF 24, THEY WOULD GET OUT, AND THEY'D PROBABLY  
8 COMMIT ANOTHER CRIME.

9           **THE WITNESS:** THAT'S TRUE, YOUR HONOR. I MEAN,  
10 THERE'S NOTHING THAT -- THE ONLY THING IS THEIR OPPORTUNITY HAS  
11 JUST BEEN INCREASED BY US RELEASING THEM EARLY, BUT THEIR  
12 NATURAL TENDENCY TO COMMIT CRIMES, ESPECIALLY DURING THEIR  
13 YOUNGER YEARS, IS -- AS YOU KNOW, THE LONGER YOU KEEP THEM IN,  
14 YOU JUST REDUCE THEIR CHANCE OF COMMITTING THE CRIME, BUT ONCE  
15 THEY WERE OUT, THEY'RE GOING TO REOFFEND PROBABLY IN SIMILAR  
16 NUMBERS. THERE'S SOME INDICATION, SOME OF THE STUDIES, THAT IF  
17 THEY'RE IN FOR SLIGHTLY LONGER PERIODS OF TIME, THEY TEND TO NOT  
18 REOFFEND AS QUICKLY.

19 **BY MS. BARLOW**

20 **Q** IN FACT, LIEUTENANT SMITH, DIDN'T YOUR ANALYSIS OF THIS DATA  
21 DEMONSTRATE THAT THERE WERE -- THERE WAS A HIGHER PERCENTAGE OF  
22 THOSE RELEASED EARLY THAT WERE REARRESTED WITHIN 90 DAYS THAN  
23 THOSE THAT DIDN'T GET RELEASED EARLY?

24 **A** THAT WAS ACTUALLY THE DATA THAT WAS CRUNCHED BY THE L.A.  
25 TIMES, NOT THE DEPARTMENT.



1 Q DID YOUR DEPARTMENT CONCUR WITH THAT DATA?

2 A THERE WAS NOTHING TO ARGUE IT, NO.

3 Q OKAY. NOW, LET'S TALK ABOUT MENTALLY ILL POPULATION IN LOS  
4 ANGELES COUNTY JAIL. THERE ARE MENTALLY ILL PERSONS IN THE  
5 JAIL, ARE THERE NOT?

6 A YES.

7 Q CAN YOU GIVE US ABOUT APPROXIMATELY WHAT PERCENTAGE OF THE  
8 JAIL POPULATION HAS MENTAL HEALTH NEEDS?

9 A ABOUT 11 PERCENT ARE TREATED CURRENTLY. WE BELIEVE THE  
10 NUMBER MAY BE 16 PERCENT.

11 Q WHAT DOES THAT WORK OUT IN AVERAGE DAILY POPULATION?

12 A BETWEEN 2- AND 3,000 INMATES.

13 Q ARE SERVICES PROVIDED TO THOSE INMATES IN THE LOS ANGELES  
14 COUNTY JAIL?

15 A YES, THEY ARE.

16 Q WHAT KINDS OF SERVICES?

17 A THE DEPARTMENT OF MENTAL HEALTH PROVIDES A VARIETY OF  
18 SERVICES, EVERYTHING FROM MEDICATION AND VERBAL, YOU KNOW, WORK  
19 GROUPS, AND THOSE TYPE OF THINGS, ALL THE WAY THROUGH A FORENSIC  
20 INPATIENT AREA FOR THOSE ACUTELY MENTALLY ILL.

21 Q IS MENTAL HEALTH ABLE TO PROVIDE ALL THE SERVICES THAT THE  
22 MENTALLY ILL IN LOS ANGELES COUNTY JAILS NEED?

23 A NOT AT THIS TIME.

24 Q ARE THERE PROGRAMS THAT YOU TRY TO USE FOR THE MOST SEVERELY  
25 MENTALLY ILL?

1 **A** YES.

2 **Q** WHAT ARE THOSE?

3 **A** ONE OF THE PROGRAMS THAT WE'RE WORKING ON RIGHT NOW IS  
4 CALLED THE ARM PROGRAM, ALTERNATIVE RESOURCE MANAGEMENT, WHICH  
5 IS TRYING TO GET INDIVIDUALS THAT REQUIRE A HIGH DEGREE OF  
6 MEDICAL OR MENTAL HEALTHCARE, OR A COMBINATION OF THAT, INTO  
7 COMMUNITY PROGRAMS WHERE THEY CAN BE BETTER TREATED.

8 **Q** AND IS THAT A HIGH PERCENTAGE, LOW PERCENTAGE? HOW MUCH OF  
9 THAT, OF YOUR POPULATION --

10 **A** WE'VE ONLY GOTTEN ABOUT 400 PEOPLE THROUGH THAT PROGRAM  
11 RIGHT NOW.

12 **Q** IS IT DIFFICULT TO PLACE PEOPLE IN THESE PROGRAMS?

13 **A** IT'S DIFFICULT TO GET THEM INTO THE COMMUNITY -- THE  
14 COMMUNITY PROGRAMS. THEY'RE NOT AS MANY PROGRAMS AS ARE REALLY  
15 NEEDED, SO THE PROGRAMS TEND TO CHERRY PICK INDIVIDUALS.  
16 INDIVIDUALS WHO REQUIRE ASSISTANCE WITH ACTIVITIES OF DAILY  
17 LIVING OR WHO REQUIRE MEDICATION, THOSE TYPE OF THINGS, ARE  
18 PRECLUDED FROM A LOT OF THE PROGRAMS. SO PLACEMENT IS DIFFICULT  
19 FOR THAT POPULATION.

20 **Q** NOW, LIEUTENANT SMITH, THE PLAINTIFFS HAVE ASKED THE COURT  
21 TO ISSUE AN ORDER THAT WOULD REDUCE THE PRISON POPULATION BY  
22 VARIOUS METHODS BY JUST UNDER 52,000 PRISONERS OVER TWO YEARS.  
23 HAVE YOU DONE AN ASSESSMENT OF HOW MANY OF THOSE PRISONERS WOULD  
24 BE DIVERTED, RELEASED, OR REMOVED FROM PAROLE IN LOS ANGELES  
25 COUNTY?

1 **A** YES.

2 **Q** HOW MANY?

3 **A** WE BELIEVE THAT OUR POPULATION WOULD PROBABLY BE ABOUT  
4 16,400 OF THOSE.

5 **Q** AND THAT'S BECAUSE LOS ANGELES COUNTY SENDS WHAT PERCENTAGE  
6 OF PRISONERS TO CDCR?

7 **A** ABOUT 31 PERCENT. IT VARIES, BUT IT'S BETWEEN 31,  
8 33 PERCENT.

9 **Q** AND IF LOS ANGELES COUNTY WERE TO TAKE ON, WHETHER THROUGH  
10 RELEASE, OR DIVERSION, OR ENDING OF PAROLE, AN ADDITIONAL 16,400  
11 FELONS, EX-FELONS, WOULD YOU EXPECT IMPACTS FROM THAT IN LOS  
12 ANGELES COUNTY?

13 **A** YES, WE WOULD.

14 **Q** WHAT WOULD THOSE BE?

15 **A** JUST CONSERVATIVELY, LOOKING AT THE RETURN-TO-CUSTODY RATE,  
16 THAT IN TWO YEARS 67-1/2 PERCENT, USING CDCR'S NUMBER, RETURN TO  
17 CUSTODY. WE WOULD EXPECT TO SEE ABOUT 11,000 OF THOSE BACK  
18 THROUGH THE COUNTY JAIL IN ONE FORM OR ANOTHER. THEY WOULD TEND  
19 TO BE SECOND AND THIRD STRIKE INDIVIDUALS, WHICH TRADITIONALLY  
20 SERVE OR HAVE LONGER AVERAGE LENGTH OF STAY BECAUSE THEY TEND TO  
21 FIGHT THEIR CASES MORE AGGRESSIVELY, AND THAT WOULD HAVE A  
22 PRETTY DEVASTATING IMPACT ON OUR SENTENCED POPULATION BECAUSE IT  
23 WOULD IMPACT THE NUMBER OF BEDS AVAILABLE FOR THEM.

24 WE BELIEVE IT WOULD EXACERBATE AN ALREADY PROBLEMATIC  
25 SITUATION IN L.A. COUNTY BECAUSE WE WOULD HAVE TO TAKE ON THE

1 BURDEN OF THE STATE. IT'S NOT THAT THESE PEOPLE WOULD GO AWAY  
2 OR THAT THEY WOULD -- THAT THEY WOULD BE PICKED UP BY SOME  
3 PROGRAM THAT EXISTS CURRENTLY. THEY WOULD MORE LIKELY END UP IN  
4 THE COUNTY JAIL FOR NEW CRIMES.

5 **Q** SO YOU SAID THAT WOULD IMPACT YOUR SENTENCED POPULATION.  
6 HOW SPECIFICALLY DO YOU BELIEVE IT WOULD IMPACT YOUR SENTENCED  
7 POPULATION?

8 **A** WE BELIEVE WE WOULD PROBABLY EITHER GO DOWN -- WELL, WE  
9 FIGURED THAT BEFORE, WHEN WE DID AN ANALYSIS, IT WOULD DROP US  
10 DOWN TO THE TEN PERCENT MARK AGAIN. WITH THE NEW NUMBER AT  
11 52,000, IT PROBABLY PUTS US AT A SENTENCE AS BASICALLY BEING  
12 PRESENTENCED AT THAT POINT.

13 **Q** SO DOES THAT MEAN YOU DON'T THINK YOU WOULD HAVE ROOM FOR  
14 INDIVIDUALS TO STAY IN CUSTODY THAT HAVE BEEN SENTENCED TO  
15 COUNTY CUSTODY?

16 **A** THE SENTENCED INDIVIDUALS, FOR THE MOST PART, WOULD BE  
17 RELEASED IF -- THERE WOULD BE CERTAIN THINGS THAT WE'VE SEEN THE  
18 JUDGES DO, WHAT WE EUPHEMISTICALLY CALL A BACA SENTENCE. THE  
19 JUDGES, BECAUSE THEY DON'T WANT THEIR SENTENCE TO BE OVERTURNED,  
20 A LOT OF TIMES WILL SIMPLY DEFER SENTENCING SOMEONE UNTIL A  
21 LATER DATE, UNTIL THE TIME THEY WANTED THEM TO SERVE. SO IF  
22 THEY WANTED THEM TO DO 90 DAYS OR 180 DAYS IN CUSTODY, THEY  
23 SIMPLY RESCHEDULE SENTENCING FOR THAT TIME.

24 **Q** BUT ASSUMING THAT THAT RELEASE ORDER, HOWEVER IT'S DONE,  
25 RESULTS IN THAT IMPACT, WHERE ARE YOU GOING TO PUT THE PEOPLE?

1 **A** WE DON'T HAVE ANY ROOM FOR THEM. THERE'S SIMPLY NO ROOM IN  
2 THE INN. I JUST MEAN THERE'S NO ROOM THERE TO PUT THEM.

3 **Q** IS THE INABILITY TO KEEP SENTENCED INDIVIDUALS IN COUNTY  
4 CUSTODY, IN YOUR VIEW, WOULD THAT HAVE A NEGATIVE IMPACT ON  
5 PUBLIC SAFETY, SEPARATE AND APART FROM EARLY RELEASES AND SO ON?

6 **A** ONE OF THE ADVANTAGES OF HAVING PEOPLE INCARCERATED AND  
7 HAVING TO DO SENTENCES IS THEY TEND TO TAKE ON OTHER THINGS.  
8 THEY WILL GO INTO PROGRAMS THAT HELP THEM. A LOT OF THE  
9 PROGRAMS REQUIRE A CERTAIN PERIOD OF TIME TO BE EFFECTIVE. AND  
10 SO WHEN YOU DON'T HAVE A SENTENCE HANGING OVER SOMEONE'S HEAD,  
11 THEY SIMPLY WON'T GO INTO THE PROGRAMS. THEY WILL OPT TO DO THE  
12 24 DAYS AND I'M OUT, VERSUS THE SIX MONTHS AND GETTING TREATMENT  
13 AT THE COUNTY LEVEL FOR MY PROBLEMS, WITH DOMESTIC VIOLENCE AND  
14 THOSE TYPE OF PROGRAMS.

15 **Q** CAN'T YOU JUST PUT THEM ON PROBATION INSTEAD?

16 **A** AGAIN, THE REALITY IS A LOT OF THOSE PROGRAMS ARE INTENSIVE  
17 AND REALLY WORK BEST IN THE ENVIRONMENT WITH THE PERSON WHERE  
18 THERE'S SOME REALISTIC MEANS OF KEEPING THE PERSON IN THE  
19 PROGRAM.

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

21 **MS. BARLOW:** THANK YOU.

22 **BY MS. BARLOW**

23 **Q** NOW, YOU'VE HEARD ABOUT THE FOUR METHODS THAT ARE PROPOSED  
24 TO BRING ABOUT THAT 52,000 REDUCTION. LET ME JUST SUMMARIZE  
25 THEM. A BETTER PAROLE INSTRUMENT TO REDUCE TECHNICAL VIOLATIONS

1 AND THOSE PRISONERS BEING SENT BACK TO PRISON; DIVERSION OF  
2 NONVIOLENT LOW RISK OFFENDERS FROM PRISON BY KEEPING THEM IN  
3 COMMUNITIES; REDUCING THE LENGTH OF SENTENCE FOR NONVIOLENT, LOW  
4 RISK OFFENDERS BY AN AVERAGE OF FOUR MONTHS; AND REMOVE FROM  
5 PAROLE OFFENDERS WITHOUT VIOLATIONS AFTER 12 MONTHS IF THEY'VE  
6 SATISFIED THE TERMS OF THEIR PAROLE FOR THAT PERIOD.

7           NOW, THOSE FOUR OPTIONS ARE PROPOSED WITHOUT ANY  
8 ADDITIONAL PROGRAMMING TO BE OFFERED IN THE COMMUNITIES OR IN  
9 THE PRISONS, AND THE OPINION HAS BEEN OFFERED THAT'S NOT GOING  
10 TO HAVE ANY SIGNIFICANT NEGATIVE IMPACT ON PUBLIC SAFETY; DO YOU  
11 AGREE WITH THAT?

12 **A** NO.

13 **Q** WHY NOT?

14 **A** NUMBER ONE, I DON'T THINK THERE ARE EXISTING PROGRAMS IN THE  
15 COMMUNITY THAT WILL BE ABLE TO ABSORB THESE INDIVIDUALS.  
16 TRADITIONALLY, WHEN WE DO RELEASES, WE DO THEM FOR FINANCIAL  
17 REASONS, BECAUSE WE'RE EITHER UNWILLING TO PAY THE FREIGHT, IF  
18 YOU WILL, FOR THE INDIVIDUALS TO KEEP THEM INCARCERATED OR TO DO  
19 THOSE THINGS.

20           THERE'S NO BELIEF ON MY PART THAT THE STATE WILL  
21 PROVIDE ADDITIONAL MONIES IN ANY KIND OF MEANINGFUL WAY THAT  
22 WILL CONTINUE THE PROGRAMS ON FOR ANYTHING OTHER THAN THE  
23 IMMEDIATE -- THE NEAR FUTURE.

24           IT'S NOT DISSIMILAR TO SOME OF THE THINGS WE SAW WITH  
25 THE MENTALLY ILL IN CALIFORNIA WHERE WE CLOSED A LOT OF THE

1 INSTITUTIONS YEARS AGO BECAUSE WE BELIEVED THAT MEDICATIONS AND  
2 PROGRAMS IN THE COMMUNITY WOULD PICK THAT POPULATION UP AND  
3 EVERYONE WHO'S BEEN AROUND THAT HAS SEEN THAT THAT'S NOT BEEN  
4 THE CASE, AND NOW WE DON'T EVEN HAVE THE ABILITY TO HELP THOSE  
5 INDIVIDUALS.

6 **MS. BARLOW:** I HAVE NOTHING FURTHER, THANK YOU.

7 **MR. LEWIS:** NO QUESTIONS, YOUR HONOR.

8 **JUDGE HENDERSON:** CROSS-EXAMINATION.

9 **CROSS-EXAMINATION BY MS. EVENSON**

10 **BY MS. EVENSON**

11 **Q** GOOD AFTERNOON, LIEUTENANT SMITH. I'M REBEKAH EVENSON.

12 **A** GOOD AFTERNOON.

13 **Q** I HAVE A COUPLE OF QUESTIONS FOR YOU. YOU MENTIONED BRIEFLY  
14 THAT IN YOUR ROLE AT THE JAIL, YOU HAVE SOME RESPONSIBILITY FOR  
15 DEALING WITH THE MENTALLY ILL; IS THAT RIGHT?

16 **A** YES.

17 **Q** AND YOU'D AGREE THAT INCARCERATION IS NOT THE APPROPRIATE  
18 WAY TO DEAL WITH THE MENTALLY ILL; ISN'T THAT RIGHT?

19 **A** IN MOST CASES I BELIEVE THAT'S TRUE.

20 **Q** YOU TESTIFIED EARLIER THAT THERE WERE APPROXIMATELY 50,000  
21 EARLY RELEASES, I BELIEVE IT'S IN THE PERIOD BETWEEN 2002 AND  
22 2007; IS THAT RIGHT?

23 **A** NO, IT WAS FOR 2007.

24 **Q** JUST 2007 ALONE?

25 **A** YES.

1 Q AND DURING THAT TIME, THOSE EARLY RELEASES WERE DONE WITHOUT  
2 ANY CLASSIFICATION SYSTEM OR RISK ASSESSMENT INSTRUMENT BEING  
3 APPLIED TO DETERMINE WHO WAS EARLY RELEASED; IS THAT RIGHT?

4 A THAT'S CORRECT. THERE WAS A PROCESS IN PLACE, BUT THERE WAS  
5 NOT AN ASSESSMENT TOOL THAT WAS USED.

6 Q SO YOU MENTIONED THAT DURING THAT TIMEFRAME THERE WERE 16  
7 ARRESTS FOR MURDERS; IS THAT RIGHT?

8 A THAT WAS ACTUALLY THE PREVIOUS PERIOD. THAT GOES BACK TO  
9 THE TIMEFRAME OF THE L.A. TIMES ARTICLE.

10 Q SO --

11 A GO AHEAD.

12 Q SO THE 16 ARRESTS FOR MURDER WASN'T FOR 2007 ALONE?

13 A NO, MA'AM. IT WASN'T FOR 2007 AT ALL.

14 Q THAT WAS FOR THE PRIOR FIVE YEARS; IS THAT RIGHT?

15 A YES.

16 Q AND OF THOSE ARRESTS, NOT ALL THOSE PEOPLE WERE CONVICTED;  
17 IS THAT RIGHT?

18 A THAT IS TRUE.

19 Q DO YOU KNOW WHAT NUMBER WERE CONVICTED?

20 A NO, MA'AM, I DON'T KNOW THE EXACT NUMBER.

21 Q AND SOME OF THOSE MURDERS WERE ACTUALLY COMMITTED, YOU  
22 TESTIFIED EARLIER, PRIOR TO THE TIME PERIOD DURING WHICH THEY  
23 WERE EARLY RELEASED; IS THAT RIGHT?

24 A YES, THEY WERE DISCOVERED DURING THAT TIMEFRAME.

25 Q DO YOU KNOW HOW MANY THERE WERE THAT WERE COMMITTED PRIOR?



1 **A** I BELIEVE THE NUMBER WAS SEVEN, BUT I'M NOT POSITIVE.

2 **Q** OKAY. NOW, DURING THE TIMEFRAME -- THE L.A. TIMES ARTICLE  
3 COVERED THAT TIMEFRAME FROM, I BELIEVE IT WAS 2002 TO 2007;  
4 ISN'T THAT RIGHT?

5 **MS. BARLOW:** I'M SORRY. I DIDN'T HEAR THE QUESTION.

6 **BY MS. EVENSON**

7 **Q** THE TIMEFRAME WAS 2002 TO 2007; IS THAT RIGHT?

8 **A** NO. THE ARTICLE ACTUALLY CAME OUT IN 2006, IN MAY OF 2006.

9 **Q** SO IT WAS COVERING A PERIOD OF ABOUT FOUR YEARS?

10 **A** YES, APPROXIMATELY.

11 **Q** AND YOU TESTIFIED ABOUT 2007 THE NUMBER OF EARLY RELEASES  
12 WAS 50,000?

13 **A** YES, IN 2007.

14 **Q** FOR THE ENTIRE LAST DECADE CRIME RATES HAVE BEEN CONTINUING  
15 TO DROP, HAVEN'T THEY?

16 **A** WE'VE SEEN THEM DROPPING.

17 **Q** OKAY. NOW, THE ANALYSIS THAT YOU DID OF THE IMPACTS OF A  
18 PRISONER RELEASE ORDER ON THE L.A. COUNTY SYSTEM WHERE YOU  
19 INDICATED A CERTAIN PERCENTAGE WOULD BE COMING BACK -- OF  
20 PAROLEES WOULD BE COMING BACK THROUGH THE JAIL, THAT ANALYSIS  
21 ASSUMED THAT THE RECIDIVISM RATES FOR THE PEOPLE WHO WERE EARLY  
22 RELEASED WOULD BE THE SAME, THAT 67.5 PERCENT FIGURE, AS THE  
23 RECIDIVISM RATE WOULD BE FOR THE PRISONERS HAD THEY BEEN PAROLED  
24 AT THE NORMAL PAROLE DATE; ISN'T THAT RIGHT?

25 **A** YES.

1 Q AND THAT'S BECAUSE WE KNOW THAT THE RECIDIVISM RATE IS GOING  
2 TO REMAIN RELATIVELY CONSTANT REGARDLESS OF WHEN SOMEONE IS  
3 RELEASED?

4 A I DON'T AGREE WITH THAT --

5 Q I'D LIKE TO --

6 A -- ANALYSIS.

7 Q DRAW YOUR ATTENTION TO YOUR DEPOSITION, PAGE 28, LINES THREE  
8 THROUGH SEVEN. I CAN READ IT TO YOU.

9 A OKAY.

10 Q IT SAYS:

11 "WE KNOW THAT THE RECIDIVISM RATES OR THE  
12 RETURN-TO-JAIL RATE, OR RETURN RATE, YOU KNOW,  
13 HOWEVER YOU PARSE IT OUT, IS GOING TO REMAIN  
14 RELATIVELY CONSTANT REGARDLESS OF WHEN SOMEONE  
15 IS RELEASED."

16 DO YOU RECALL THAT TESTIMONY?

17 A SOMETHING ALONG THAT LINE, YES.

18 Q YOU ALSO TESTIFIED THAT SOME INDIVIDUALS -- SOME -- DO WE  
19 HAVE THE RIGHT PAGE UP? PAGE 28, LINE THREE THROUGH SEVEN --  
20 NO, THAT'S NOT.

21 YOU ALSO TESTIFIED DURING YOUR DEPOSITION THAT AND  
22 TODAY, AGAIN, THAT DURING SOME TIMEFRAME WOMEN WERE BEING  
23 RELEASED AFTER 10 PERCENT OF THEIR SENTENCE AND MEN WERE DOING  
24 70 PERCENT OF THEIR SENTENCE, RIGHT?

25 JUDGE KARLTON: THAT'S WHAT THEY'RE DOING NOW?

1                   **THE WITNESS:** THAT'S WHAT THEY'RE DOING NOW, YES,  
2 SIR.

3 **BY MS. EVENSON**

4 **Q** AND YOU DON'T KNOW OF ANY DIFFERENCE IN THE RECIDIVISM RATES  
5 FOR PEOPLE WHO DO 10 PERCENT VERSUS 70 PERCENT; ISN'T THAT  
6 RIGHT?

7 **A** NO, WE DON'T TRACK THAT INFORMATION.

8 **Q** NOW, OF THE 67.5 PERCENT RECIDIVISM RATE, YOU DON'T KNOW  
9 WHAT PROPORTION OF THOSE ARE TECHNICAL PAROLE VIOLATORS, DO YOU?

10 **A** I BELIEVE THE NUMBER IS ABOUT A THIRD AND TWO-THIRDS. IT'S  
11 ABOUT TWO-THIRDS FOR TECHNICAL VIOLATIONS.

12 **Q** SO OF THE 67.5 PERCENT WHO WOULD RETURN TO YOUR CUSTODY, DID  
13 YOU ASSUME THAT TWO-THIRDS ARE TECHNICAL VIOLATORS?

14 **A** YES.

15 **Q** AND WHAT PERCENTAGE OF THOSE WHO YOU ESTIMATE WOULD RETURN  
16 TO YOUR CUSTODY WOULD BE SECOND OR THIRD STRIKERS?

17 **A** I'M NOT SURE.

18 **Q** YOU TESTIFIED EARLIER THAT YOUR CONCERN -- ONE OF YOUR MAJOR  
19 CONCERNS ABOUT A POPULATION REDUCTION PLAN THAT COUNSEL  
20 EXPLAINED TO YOU WOULD BE THAT THERE WOULDN'T BE ENOUGH MONEY TO  
21 RUN THE MENTAL HEALTH PROGRAMS, THE DRUG TREATMENT PROGRAMS, AND  
22 THE OTHER KIND OF PROGRAMS YOU WANT TO PROVIDE TO DETAINEES IN  
23 L.A. COUNTY; IS THAT RIGHT?

24 **A** THAT'S TRUE.

25 **Q** AND THAT'S THE STATUS QUO TODAY; ISN'T THAT RIGHT?

1 **A** YES, I BELIEVE IT IS.

2 **Q** NOW, DO YOU UNDERSTAND -- HAS ANYONE TOLD YOU THAT REDUCING  
3 THE PRISON POPULATION -- LET ME START OVER.

4 IF SOME OF THE SAVINGS THAT THE STATE WERE ABLE TO  
5 REALIZE FROM REDUCING ITS PRISON POPULATION, SOME OF ONE BILLION  
6 SAVINGS COULD BE REDIRECTED TO COUNTIES LIKE L.A. COUNTY, THAT  
7 WOULD AMELIORATE YOUR CONCERNS, WOULDN'T IT?

8 **A** I DON'T BELIEVE THAT WOULD HAPPEN, SO I DON'T BELIEVE  
9 THAT -- THE PROBLEM IS IF, IN FACT, YOU COULD FORCE THEM TO DO  
10 IT, YES. IF YOU THINK THAT -- IF YOU ARE ASKING ME IF I THINK  
11 THEY WOULD DO IT, I HAVE NO BELIEF THEY HAVE ANY INTENTION OF  
12 DOING THAT IN THE LONG PERIOD BASED ON MY HISTORY WITHIN L.A.  
13 COUNTY AND, IN PARTICULAR, WITH THE SHERIFF'S DEPARTMENT.

14 **Q** IF THEY WERE FORCED TO, THOUGH, YOUR ANSWER WAS YES,  
15 CORRECT?

16 **A** IF IT WERE SUFFICIENT FUNDING FOR ALL THE PROGRAMS, I  
17 BELIEVE THERE WOULD BE BENEFITS, YES.

18 **Q** IN FACT, IT WOULD IMPROVE PUBLIC SAFETY, WOULDN'T IT?

19 **A** IN SOME RESPECTS IT WOULD MAKE IT BETTER.

20 **Q** LIEUTENANT SMITH, I'D LIKE TO SHOW YOU WHAT'S BEEN MARKED AS  
21 DEFENDANT INTERVENOR EXHIBIT NO. 613. CAN WE PULL THAT UP? FOR  
22 YOUR CONVENIENCE, LET ME PROVIDE SOME COPIES TO THE COURT.

23 (DOCUMENT DISPLAYED.)

24 **THE WITNESS:** IT'S PRETTY SMALL.

25

1 **BY MS. EVENSON**

2 **Q** DO YOU HAVE A COPY OF THAT? WOULD YOU LIKE TO SEE A FULL  
3 COPY AS WELL?

4 **A** EITHER WAY. IF YOU HAVE A FULL COPY OF THIS, THAT WOULD BE  
5 FINE.

6 **MS. EVENSON:** MAY I APPROACH, YOUR HONOR?

7 **JUDGE HENDERSON:** YOU MAY.

8 **THE WITNESS:** THANK YOU.

9 **BY MS. EVENSON**

10 **Q** THIS DOCUMENT APPEARS TO BE A PROFILE OF THE INMATE  
11 RECEPTION CENTER DAILY STATISTICS FROM AUGUST 22, 2008. DO YOU  
12 RECOGNIZE THIS DOCUMENT?

13 **A** YES.

14 **Q** FROM L.A. COUNTY, CORRECT?

15 **A** YES, IT IS.

16 **Q** I'D LIKE JUST TO DRAW YOUR ATTENTION TO THE LINE THAT SAYS:  
17 "GRAND TOTAL OF BEDS," IT'S ABOUT HALFWAY DOWN THE PAGE. AND IT  
18 SHOWS THAT OF REGULAR BEDS, THE CAPACITY GRAND TOTAL IS 22,369,  
19 THE FUNCTIONAL BEDS TOTAL IS 21,842, THE OCCUPIED TOTAL IS  
20 19,774, AND THE AVAILABLE BEDS TOTAL IS 2,625.

21 **A** YES.

22 **Q** IS THIS AN ACCURATE DESCRIPTION OF THE SNAPSHOT OF THE  
23 POPULATION ON THE DATE FOR WHICH IT'S LISTED?

24 **A** THE POPULATION ON THAT DATE, THE INMATE COUNT?

25 **Q** YES.

1 **A** YES, IT'S 19,774.

2 **Q** IT'S AN ACCURATE DESCRIPTION OF THE INMATE POPULATION?

3 **A** OF THE INMATE POPULATION, YES.

4 **Q** NOW, I'D LIKE TO DRAW YOUR ATTENTION TO A LINE ON THE TOP,  
5 THE TOP CHART UP THERE. IT SHOWS THE NUMBER OF BOOKINGS. THE  
6 TOTAL NUMBER OF BOOKINGS, I BELIEVE IT'S ON THAT DAY, IS 407; IS  
7 THAT RIGHT?

8 **JUDGE KARLTON:** WHERE WOULD WE -- I SEE, YES.

9 **BY MS. EVENSON**

10 **Q** BOOKINGS TOTALS, DO YOU SEE THAT?

11 **A** YES, IT IS.

12 **Q** THAT'S THE DATE -- THAT'S THAT DAY'S BOOKING TOTAL; IS THAT  
13 RIGHT?

14 **A** YES.

15 **Q** NOW, YOU TESTIFIED EARLIER THERE ARE IN THE RANGE OF 170- TO  
16 180,000 BOOKINGS PER YEAR IN THE L.A. COUNTY JAILS; IS THAT  
17 RIGHT?

18 **A** YES.

19 **Q** AND THAT AMOUNTS TO SOMEWHERE IN THE RANGE OF 450 TO 500  
20 BOOKINGS PER DAY, RIGHT?

21 **A** THEY DON'T COME IN IN THAT FASHION. THEY WOULD AVERAGE  
22 ABOUT THAT. THEY COME IN ANYWHERE FROM 300 TO 1,100 IN ONE  
23 24-HOUR PERIOD OR ONE EVENING.

24 **Q** SO THE RANGE MIGHT BE AS MUCH AS 700 FROM THE LOW TO THE  
25 HIGH?

1 **A** YES.

2 **Q** IN A GIVEN DAY?

3 NOW, YOU MENTIONED EARLIER THAT YOUR ESTIMATE OF THE  
4 IMPACT FROM A PRISON POPULATION REDUCTION IS BASED ON THE  
5 67.5 PERCENT RECIDIVISM RATES, RIGHT?

6 **A** YES, ON THE RETURN-TO-CUSTODY RATE.

7 **Q** AND DO YOU UNDERSTAND THAT THIS RETURN-TO-CUSTODY RATE IS --  
8 ACTUALLY INVOLVES RETURNS TO PRISON OVER A THREE-YEAR PERIOD?

9 **A** IT'S A TWO-YEAR -- THE STUDY THAT I SAW IN THE CDCR  
10 PUBLISHED QUARTERLY REPORT, IT SAYS RETURN TO CUSTODY WITHIN TWO  
11 YEARS.

12 **Q** OKAY. THE PARTIES HAVE PREVIOUSLY IDENTIFIED THAT FIGURE AS  
13 BEING A THREE-YEAR RETURN-TO-CUSTODY RATE, BUT FOR PURPOSES OF  
14 THIS LINE OF QUESTIONING, LET ME JUST DO WITH THE TWO-YEAR RATE.

15 **A** OKAY.

16 **Q** ASSUMING YOU ARE CORRECT IT WAS TWO YEARS AND NOT THREE,  
17 YOUR ASSUMPTION THEN ABOUT THE 11,000 INDIVIDUALS WHO WOULD COME  
18 BACK TO CUSTODY IN L.A. COUNTY, THAT'S 11,000 OVER A TWO-YEAR  
19 PERIOD, RIGHT?

20 **A** YES.

21 **Q** AND 11,000 PEOPLE OVER A TWO-YEAR PERIOD IS ABOUT 20 PEOPLE  
22 A DAY; ISN'T THAT RIGHT?

23 **A** THAT'S CORRECT.

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

25

1           **THE WITNESS:** THE ONLY THING IS THEY WON'T COME IN 20  
2 IN A DAY, AS YOU RELEASE THEM. WE KNOW THEY RETURN TO  
3 CUSTODY -- THEY TEND TO RETURN TO CUSTODY QUICKER RATHER THAN  
4 LATER. THAT'S THE TIMEFRAME THAT'S USED, BUT THEY DON'T FALL  
5 EVENLY ACROSS THAT SPECTRUM.

6 **BY MS. EVENSON**

7 **Q** NOR WILL THE POPULATION REDUCTION OCCUR ALL AT ONCE; ISN'T  
8 THAT RIGHT? THE POPULATION REDUCTION BEING PROPOSED IS A  
9 TWO-YEAR POPULATION REDUCTION, CORRECT?

10 **A** SO DEPENDING ON HOW THEY WERE RELEASED, THAT'S HOW WE WOULD  
11 EXPECT TO SEE THEM COME BACK.

12 **Q** BUT ASSUMING THERE WAS A RELEASE OVER A PERIOD OF TWO YEARS,  
13 YOU WOULD EXPECT IN THE FOLLOWING TWO YEARS AN AVERAGE RETURN OF  
14 APPROXIMATELY 20 INMATES PER DAY?

15 **A** AN AVERAGE, YES.

16           **MS. EVENSON:** THANK YOU.

17           **JUDGE HENDERSON:** ANYTHING FROM CCPOA?

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

19           **JUDGE HENDERSON:** REDIRECT?

20           **MS. BARLOW:** THANK YOU, YOUR HONOR.

21           COULD WE PUT UP EXHIBIT DI 501?

22           (DOCUMENT DISPLAYED.)

23           **REDIRECT EXAMINATION BY MS. BARLOW**

24 **BY MS. BARLOW**

25 **Q** SIR, GOING BACK TO THE NUMBER OF TECHNICAL PAROLE VIOLATORS



1 VERSUS NEW OFFENDERS OR PAROLEES WHO ARE ARRESTED FOR NEW  
2 OFFENSE, DID YOU REVIEW THE CDCR DATA FOR 2007?

3 **A** I DID REVIEW SOME OF THE DATA, YES, FOR THE -- OFF THEIR  
4 WEBSITE.

5 **Q** DO YOU KNOW THE APPROXIMATE NUMBER OF TOTAL FELONS THAT WERE  
6 SENT TO CDCR IN 2007?

7 **A** I DON'T REMEMBER THE EXACT NUMBER, NO.

8 **Q** DO YOU RECALL THE PERCENTAGE OF THE TOTAL FELONS SENT TO  
9 CDCR THAT WERE PAROLE VIOLATERS WITH NEW TERMS?

10 **A** I'M TRYING TO REMEMBER THE DATA. I BELIEVE IT WAS -- THERE  
11 WAS 14.7 AND 51.9 PERCENT, I BELIEVE, WAS THE BREAKDOWN.

12 **Q** I'M SORRY?

13 **A** I THOUGHT THAT THE BREAKDOWN OF THE 67.5 PERCENT, IS THAT  
14 WHAT YOU'RE REFERRING TO?

15 **Q** NO. I'M ASKING ABOUT THE NUMBER OF FELONS COMMITTED TO CDCR  
16 FROM LOS ANGELES COUNTY.

17 **A** NO, I DON'T KNOW.

18 **MS. BARLOW:** SINCE HE DOESN'T SEEM TO HAVE IT UP  
19 THERE, YOUR HONOR, MAY I APPROACH THE WITNESS?

20 **JUDGE HENDERSON:** YOU MAY.

21 **JUDGE KARLTON:** COUNSEL HAS JUST SHOWN YOU A  
22 DOCUMENT. HAVE YOU SEEN THAT DOCUMENT BEFORE, SIR?

23 **THE WITNESS:** IT WAS IN THE TABLE OF THE ANALYSIS,  
24 YES.

25 **JUDGE KARLTON:** ALL RIGHT.

1                   **MS. BARLOW:** ALL RIGHT.

2 **BY MS. BARLOW**

3 **Q** SO, LOOKING AT THAT TABLE, DOES THAT REFRESH YOUR  
4 RECOLLECTION ABOUT THE TOTAL NUMBER OF FELONS COMMITTED TO CDCR  
5 FROM LOS ANGELES COUNTY IN 2007?

6 **A** YES.

7 **Q** WHAT WAS THAT NUMBER?

8 **A** TWENTY-TWO THOUSAND.

9 **Q** I DON'T THINK WE ARE LOOKING AT THE SAME PAGE.

10                   WHAT PAGE DO YOU HAVE UP? TRY NINE, BATES NINE.

11                   SIR, ON PAGE 9, IS THAT THE PAGE THAT DEALS WITH  
12 TOTAL FELON COMMISSIONS?

13                   **JUDGE HENDERSON:** I THINK YOU ARE WAITING FOR THE  
14 SCREEN. DO YOU HAVE THE DOCUMENTS?

15 **BY MS. BARLOW**

16 **Q** IT'S BATES NUMBER 9 AT THE BOTTOM, FROM LOS ANGELES COUNTY?

17 **A** PAGE 10, PAGE 11, PAGE 20?

18 **Q** I'M SORRY. YOU SAID IT WAS 22,000?

19 **A** YES.

20 **Q** ALL RIGHT.

21 **A** THAT'S WHAT I SAID.

22 **Q** NOW, TAKE A LOOK AT THE --

23                   I'LL TRY ON THE ELMO, YOUR HONOR, IF YOU DON'T MIND,  
24 SINCE WE'RE HAVING TROUBLE SEEING THIS.

25                   SO THESE ARE TOTAL FELON ADMISSIONS CALENDAR YEAR

1 2007, LOS ANGELES?

2           **JUDGE KARLTON:** IF YOU'VE ASKED HIM SOMETHING THAT  
3 YOU WANT ANSWERED, WE CAN'T HEAR YOU, MA'AM.

4           **MS. BARLOW:** I'M SORRY, YOUR HONOR.  
5 IT'S TURNED THE WRONG WAY.

6 **BY MS. BARLOW**

7 **Q** SO THE TOTAL NEW FELON ADMISSIONS FOR 2007 FROM LOS ANGELES  
8 COUNTY WAS 22,800, SO ON, CORRECT?

9 **A** RIGHT.

10           **JUDGE KARLTON:** TWENTY-TWO THOUSAND THREE HUNDRED  
11 ELEVEN.

12           **THE WITNESS:** THREE HUNDRED ELEVEN.

13 **BY MS. BARLOW**

14 **Q** JUST SO YOU CAN SEE THE TOP OF THIS, THIS IS FELON NEW  
15 ADMISSIONS. LOS ANGELES COUNTY WOULD HAVE HAD 14,843 NEW FELON  
16 ADMISSIONS TO CDCR?

17 **A** YES.

18 **Q** AND THAT REPRESENTS WHAT PERCENTAGE OF THE TOTAL?

19 **A** ABOUT A THIRD, 31.6 PERCENT.

20 **Q** SO THEN THE PAROLE VIOLATORS WERE ONE-THIRD. THAT WAS  
21 TWO-THIRDS; IS THAT CORRECT?

22           **JUDGE KARLTON:** I THOUGHT IT WAS VICE VERSA.

23           **THE WITNESS:** I THOUGHT IT WAS VICE VERSA.

24           **JUDGE KARLTON:** IT IS VICE VERSA.

25

1 **BY MS. BARLOW**

2 **Q** THESE ARE NEW FELON ADMISSIONS?

3 **JUDGE KARLTON:** RIGHT, 14,000.

4 **MS. BARLOW:** OUT OF 22?

5 **JUDGE KARLTON:** NO, IT SAYS THE PERCENTAGE IS 31.

6 **MS. BARLOW:** THAT'S THE PERCENTAGE OF PRISONERS  
7 COMMITTED TO CDCR, NEW FELONS, FROM LOS ANGELES COUNTY. IT IS  
8 NOT THE TOTAL FROM LOS ANGELES COUNTY.

9 **JUDGE KARLTON:** I'M SORRY. TELL ME AGAIN WHAT YOU  
10 JUST SAID, BECAUSE I MISSED IT.

11 **MS. BARLOW:** THE PERCENTAGE THAT'S SHOWN THERE IS THE  
12 PERCENTAGE OF NEW FELONS ADMISSIONS FROM LOS ANGELES COUNTY FROM  
13 CDCR. IN OTHER WORDS, CDCR RECEIVED 31 PERCENT OF ITS NEW  
14 ADMISSIONS FROM LOS ANGELES COUNTY?

15 **JUDGE KARLTON:** OKAY.

16 **BY MS. BARLOW**

17 **Q** NOW, REFERRING TO THIS TABLE WHICH IS THE PAROLE VIOLATERS  
18 RETURNED WITH A NEW TERM?

19 **A** YES.

20 **Q** HOW MANY PAROLE VIOLATERS WERE RETURNED FROM A NEW TERM FROM  
21 LOS ANGELES COUNTY TO CDCR IN 2007?

22 **A** 7463.

23 **Q** ARE THOSE TECHNICAL PAROLE VIOLATERS?

24 **A** YES, THOSE WOULD BE THE TECHNICAL.

25 **Q** ALL OF THEM?

1 **A** THAT'S MY UNDERSTANDING. THAT WAS A LITTLE BIT BACKWARDS  
2 MYSELF.

3 **Q** YOU WERE ASKED ABOUT THE 21,841 FUNCTIONAL BEDS?

4 **A** YES.

5 **Q** WOULD LOS ANGELES COUNTY SHERIFF'S DEPARTMENT BE ABLE TO  
6 OPERATE EFFECTIVELY IF YOU FILLED EVERY BED?

7 **A** NO.

8 **Q** WOULD YOU HAVE GREATER VIOLENCE IN THE JAIL?

9 **A** YES. AND WE HAVE HAD THAT VIOLENCE.

10 **Q** WHAT OTHER KINDS OF IMPACTS MIGHT YOU HAVE IF YOU FILLED  
11 EVERY BED?

12 **A** WE WOULD EXPECT TO HAVE THE KIND OF VIOLENCE THAT WE'VE HAD  
13 IN THE PAST WHERE WE EXCEEDED OUR ABILITY TO HAVE THE INMATES  
14 HOUSED PROPERLY.

15 **Q** SO WOULD YOU EXPECT GREATER VICTIMIZATION OF AT-RISK  
16 PRISONERS?

17 **A** YES, WE WOULD SEE MURDERS. WE WOULD SEE AN INCREASE IN THE  
18 MURDERS, INCREASED INMATE-ON-INMATE VIOLENCE.

19 **Q** WOULD IT CREATE A GREATER RISK TO YOUR SECURITY SHERIFF'S  
20 DEPARTMENT PERSONNEL?

21 **A** YES.

22 **Q** AND ALSO TO THE INMATES?

23 **A** YES. WHEN YOU PUT MORE AND MORE PEOPLE ON TOP OF EACH  
24 OTHER, YOU HAVE INCREASED VIOLENCE.

25 **JUDGE REINHARDT:** WOULD YOU EXPECT THE SAME RESULTS

1 WITH OVERCROWDING IN A PRISON?

2 **THE WITNESS:** YES, SIR.

3 **JUDGE REINHARDT:** IT WOULD BE MORE DANGEROUS FOR THE  
4 PRISONERS, THE STAFF, AND YOU WOULD HAVE MORE CRIME COMMITTED IN  
5 THE PRISONS?

6 **THE WITNESS:** YES, SIR.

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

8 **MS. BARLOW:** THANK YOU.

9 **BY MS. BARLOW**

10 **Q** SO MAY I ASK YOU, LIEUTENANT SMITH, IF YOU -- IF LOS ANGELES  
11 COUNTY -- BECAUSE YOU ASKED ABOUT THE SPACING OUT OF THESE  
12 RELEASES. IF LOS ANGELES COUNTY WERE TO RECEIVE AN ADDITIONAL  
13 2,500 PAROLEES EITHER THROUGH EARLY RELEASE OR DIVERSION OR  
14 BEING RELIEVED OF PAROLE PER MONTH -- I'M SORRY -- 2,500 PER  
15 MONTH STATEWIDE -- THAT'S 750 LOS ANGELES COUNTY, CORRECT? WHAT  
16 DOES THAT TRANSLATE TO YOU IN TERMS OF CRIME?

17 **A** WELL, THEY ARE GOING TO COMMIT ADDITIONAL CRIMES. I MEAN,  
18 WHEN THEY'RE OUT, NO MATTER WHO YOU USE, THEY'RE GOING TO  
19 CONTINUE THEIR CRIMINAL LIFESTYLE, AT LEAST A LARGE PORTION OF  
20 THEM ARE. AND IF YOU REDUCE THE PENALTIES ASSOCIATED WITH  
21 CERTAIN BEHAVIORS, IT'S NOT GOING TO REDUCE THE BEHAVIOR; IT'S  
22 ONLY GOING TO -- IT'S -- LIKE IF YOU TELL YOUR KID THERE'S  
23 SANCTIONS, AND THEN THE SANCTIONS ARE NEVER IMPOSED OR THEY'RE  
24 ONLY PARTIALLY IMPOSED, EVEN CHILDREN UNDERSTAND THAT CONCEPT.

25 **Q** OKAY. AND IF YOU HAD -- YOU TOOK OUT THE TECHNICAL PAROLE

1 VIOLATERS, THE STATISTICS TELL US AT LEAST 50 PERCENT OF FELONS  
2 ARE GOING TO REOFFEND, FORGETTING THE TECHNICAL VIOLATIONS,  
3 PAROLE VIOLATIONS. WHAT DOES THAT MEAN TO YOU IN TERMS OF THE  
4 NUMBER OF CRIMES?

5 **A** WELL, YOU CAN FIGURE THE MOST CONSERVATIVE NUMBER I'VE EVER  
6 HEARD IS THAT FOR EVERY CRIME THAT SOMEBODY IS ARRESTED FOR,  
7 THERE ARE PROBABLY EIGHT UNREPORTED, ON AVERAGE, CRIMES. THAT'S  
8 NOT INCONSISTENT WITH THE DATA EVEN FOR PART ONE CRIMES WHERE  
9 THE SOLVE RATE IS ABOUT 22 PERCENT. SO YOU ARE GOING TO HAVE  
10 MULTIPLE CRIMES COMMITTED IN THE COMMUNITY BY THE PEOPLE SIMPLY  
11 BY THE VIRTUE OF THE FACT THAT THEY'RE THERE AND ABLE TO  
12 REOFFEND; WHEREAS, IF THEY WERE INCARCERATED --

13 **JUDGE REINHARDT:** ARE THESE CRIMES THAT WILL  
14 OTHERWISE BE COMMITTED TWO OR THREE MONTHS LATER?

15 **THE WITNESS:** THEY WOULD BE, EXCEPT THEY ARE GOING TO  
16 CONTINUALLY -- THIS IS ONE OF THE THINGS WE'VE SEEN, TOO, IS AS  
17 WE -- BECAUSE THE SENTENCES ARE SHORTER, THEY'RE SIMPLY OUT FOR  
18 LONGER PERIODS OF TIME DURING THEIR CRIME-PRONE YEARS. BUT,  
19 YES, THEY'RE GOING TO TEND TO DO THE SAME THING. THERE'S A  
20 QUESTION ABOUT WHETHER IT WOULD BE MORE OR THE SAME THERE.  
21 CERTAINLY WOULDN'T BE LESS OF IT, THOUGH. IN OTHER WORDS, IF  
22 YOU ONLY TAKE SOMEBODY OUT OF --

23 **JUDGE REINHARDT:** TAKE THESE 16 MURDERS YOU TOLD US  
24 ABOUT. ASSUMING THEY DID OCCUR AND ASSUMING THEY OCCURRED  
25 WITHIN THE PERIOD IN WHICH THEY WERE RELEASED, THEY WOULD HAVE

1 OCCURRED IN ANY EVENT?

2 **THE WITNESS:** WELL --

3 **JUDGE REINHARDT:** MAYBE MORE.

4 **THE WITNESS:** THE TYPE OF BEHAVIOR, THE VICTIM WOULD  
5 HAVE BEEN CHANGED. A LOT OF CRIMES ARE CRIMES OF OPPORTUNITY,  
6 SO THE SHOOTING OF THE INDIVIDUAL -- ONE OF THE INDIVIDUALS WAS  
7 SHOT BECAUSE HE HAPPENED TO BE THERE. HE WAS AN AVAILABLE  
8 VICTIM WHEN THE INDIVIDUAL HAD HIS OPPORTUNITY TO COMMIT THE  
9 CRIME.

10 **JUDGE REINHARDT:** THAT INDIVIDUAL, YOU THINK, WOULD  
11 NOT HAVE HAD AN OPPORTUNITY TO COMMIT A SIMILAR CRIME --

12 **THE WITNESS:** I THINK THE SUSPECT WOULD HAVE. THE  
13 SUSPECT CERTAINLY WOULD HAVE. BUT IF HE WERE INCARCERATED FOR  
14 LONGER PERIODS OF TIME, EACH TIME HE'S OUT WOULD BE LESS OF THE  
15 AGGREGATE TIME. IN OTHER WORDS, IF HE'S ONLY OUT FOR -- LET'S  
16 SAY THEY HAVE A FIVE-YEAR WINDOW TO COMMIT CRIMES, AND AS YOU  
17 INCREASE THE WINDOW, IF YOU BELIEVE THAT THEY'RE GOING TO  
18 CONTINUE TO ACT IN A CRIMINAL MANNER, YOU ARE GOING TO HAVE --  
19 OVER A PERIOD OF TIME, YOU'RE GOING TO HAVE MORE INCIDENCES.  
20 THEY'RE GOING TO TEND TO DO THE SAME THING. IT'S JUST THEY ARE  
21 GOING TO BE OUT MORE TO DO THOSE THINGS DURING THOSE CRIME-PRONE  
22 YEARS.

23 **JUDGE REINHARDT:** YOU ARE TALKING ABOUT TWO OR THREE  
24 MONTHS EARLIER. NOW, YOU'RE ASSUMING THAT THE NEXT TIME HE'S  
25 ARRESTED FOR MURDER AND SENT TO PRISON, THAT HE WILL GET OUT TWO



1 OR THREE MONTHS EARLIER THEN, TOO?

2           **THE WITNESS:** JUST DEPENDS ON THE WAY IT WORKS.  
3 WHETHER OR NOT -- NOT FOR MURDER, BUT I'M SAYING FOR ALL TYPES  
4 OF CRIMES. IF THAT'S THE SENTENCING GUIDELINES OR THE TERMS ARE  
5 SMALLER, YOU ARE JUST GOING TO HAVE MORE OPPORTUNITY DURING  
6 THOSE CRIME-PRONE YEARS.

7           **JUDGE KARLTON:** YOU ARE AWARE -- OR ARE YOU AWARE  
8 THAT THE STATISTICAL STUDIES THAT WE'VE HEARD ABOUT SUGGEST THAT  
9 WHILE THAT'S NOT AN UNLIKELY CLINICAL JUDGMENT, IT PROBABLY  
10 DOESN'T ACCORD WITH WHAT HAPPENS IN THE REAL WORLD. ARE YOU  
11 AWARE THAT WE'VE HEARD TESTIMONY OF THAT NATURE?

12           **THE WITNESS:** I'M AWARE YOU'VE HEARD TESTIMONY OF  
13 THAT NATURE.

14           **JUDGE KARLTON:** YOU JUST DON'T BELIEVE IT.

15           **THE WITNESS:** I DON'T BELIEVE IT, AND SO OTHER PEOPLE  
16 THAT WE'VE TALKED TO AS WELL ARE OF SIMILAR OPINION.

17           **JUDGE KARLTON:** HOPEFULLY, WE WILL HEAR FROM THOSE  
18 FOLKS. BUT YOUR BASIS IS THIS IS WHAT I SEE, I THINK THIS IS  
19 WHAT I SEE?

20           **THE WITNESS:** THIS IS WHAT WE SEE, YES, SIR.

21           **MS. BARLOW:** THANK YOU, YOUR HONOR. NOTHING FURTHER.

22           **JUDGE HENDERSON:** LET ME -- REALLY, THIS HAS COME UP  
23 BEFORE, AND I'M HAVING TROUBLE GRASPING THE CONCEPT. I'M  
24 LOOKING AT THE L.A. TIMES ARTICLE THAT MS. BARLOW --

25           **JUDGE REINHARDT:** WHICH IS NOT IN EVIDENCE.

1           **JUDGE HENDERSON:** OKAY. HYPOTHETICALLY.

2           **THE WITNESS:** YES, SIR.

3           **JUDGE HENDERSON:** JUST TO USE -- SOMEONE SAYS, OKAY,  
4 WE GOT TO DO WHAT WE GOT TO DO, AND THEY HAVE BEEN RELEASED  
5 EARLY AND WHAT THEY GOT TO DO IS GO TO RIVAL GANG'S TURF, AND  
6 THEY DRIVE BY, AND THEY SHOOT SOMEONE.

7           **THE WITNESS:** YES.

8           **JUDGE HENDERSON:** YOU'RE SAYING THEY GOT OUT EARLY,  
9 AND I DON'T UNDERSTAND IT. I'M ASSUMING IF THIS PERSON HAD  
10 GOTTEN OUT FOUR MONTHS LATER, HE'D HAVE SAID, WE GOT TO DO WHAT  
11 WE GOT TO DO, AND WOULD HAVE GOTTEN IN THE CAR AND WOULD HAVE  
12 SHOT SOMEONE.

13           **JUDGE KARLTON:** OR IF IT WAS THAT DATE THEY GOT TO  
14 DO, SOME OTHER GANG MEMBER WOULD HAVE GOTTEN IN THE CAR AND SHOT  
15 SOMEBODY.

16           **THE WITNESS:** I WOULD AGREE WITH THAT. I THINK THERE  
17 IS -- THEY ARE GOING TO CONTINUE TO COMMIT CRIME. THE ONLY  
18 THING I'M SAYING IS, AS YOU INCREASE THEIR OPPORTUNITY TO DO  
19 THAT BECAUSE YOU ARE SHORTENING THE SENTENCE, YOU ARE JUST  
20 GIVING THEM MORE OPPORTUNITY TO COMMIT ADDITIONAL CRIMES.

21           **JUDGE REINHARDT:** YOU'RE WORRIED ABOUT THE CUMULATIVE  
22 LENGTH OF TIME THEY WILL SPEND IN JAIL AS OPPOSED TO THE AMOUNT  
23 OF TIME THEY ARE NOT IN JAIL OR IN PRISON, THAT OVER THEIR  
24 LIFETIME, INSTEAD OF SPENDING 30 YEARS IN PRISON, THEY'RE ONLY  
25 GOING TO SPEND 29, AND, THEREFORE, THEY MAY BE ABLE TO KILL ONE

1 MORE PERSON?

2           **THE WITNESS:** KIND OF. I MEAN, IN OUR PARLANCE, THEY  
3 ARE DOING LIFE ON THE INSTALLMENT PLAN, YOU KNOW, SO A LOT OF  
4 THE CRIMINALS ARE CAREER CRIMINALS. SO EVERY OPPORTUNITY THEY  
5 ARE OUT, THEY ARE GOING TO COMMIT ADDITIONAL CRIMES. AND SO AS  
6 THEY HAVE MORE AND MORE OPPORTUNITY OR TIME OUT, BECAUSE WE'VE  
7 REDUCED THEIR SENTENCES --

8           **JUDGE REINHARDT:** BUT IT'S REALLY ONLY THE TIME OUT  
9 YOU ARE CONCERNED ABOUT, HOW MUCH TIME ARE THEY IN, HOW MUCH  
10 TIME ARE THEY OUT.

11           **THE WITNESS:** I THINK THE TWO ARE RELATED, BUT, YES,  
12 I SEE WHAT YOU'RE SAYING.

13           **JUDGE REINHARDT:** AND THE ODDS ARE IF THEY GET OUT  
14 FOUR MONTHS EARLY AND THEY ARE GOING TO COMMIT THAT NEXT CRIME,  
15 THEY ARE GOING TO GO IN FOUR MONTHS -- THEY ARE GOING TO GO  
16 IN --

17           **JUDGE KARLTON:** FOUR MONTHS EARLIER.

18           **THE WITNESS:** HOPEFULLY. THAT ASSUMES, REMEMBER,  
19 22 PERCENT. SO THEY ARE GOING TO COMMIT A FEW CRIMES BEFORE WE  
20 GET THEM.

21           **JUDGE REINHARDT:** THAT WOULD BE TRUE WHETHER THEY  
22 COME OUT EARLY OR LATE.

23           **JUDGE KARLTON:** AND THE WHOLE NOTION ABOUT ALL OF  
24 THESE UNREPORTED CRIMES, THERE'S NO WAY TO EVEN MEASURE THAT.  
25 THAT'S AN ESTIMATE BASED UPON ONE'S GUTS AND GOLLY.

1           **JUDGE REINHARDT:** BUT, ALSO, IF YOU ASSUME THAT  
2 THEY'RE GOING TO GO BACK WITHIN SIX MONTHS, THEY'RE GOING TO  
3 COMMIT ONE OF THOSE -- SAY THEY ARE GOING TO COMMIT FIVE CRIMES  
4 AND GET CAUGHT ONCE WITHIN THE FIRST SIX MONTHS THEY START, IT'S  
5 REALLY NOT GOING TO MAKE A LOT OF DIFFERENCE WHETHER THEY START  
6 FOUR MONTHS EARLIER OR FOUR MONTHS LATER, AS FAR AS THE AMOUNT  
7 OF CRIMES THAT ARE COMMITTED.

8           **THE WITNESS:** I THINK THE ONLY DIFFERENCE IS, AGAIN,  
9 IT'S THE CUMULATIVE --

10           **JUDGE REINHARDT:** IT'S THE CUMULATIVE EFFECT OVER A  
11 LIFETIME?

12           **THE WITNESS:** YEAH. I WOULD NEVER ARGUE WITH YOU. I  
13 AGREE WITH WHAT YOU'RE SAYING.

14           **JUDGE REINHARDT:** YOU CAN ARGUE WITH ME.

15           **THE WITNESS:** I WOULDN'T. I DON'T DISAGREE WITH YOU  
16 ON THAT. THE ONLY THING IS AT THE END THEY ARE JUST GOING TO  
17 HAVE MORE OPPORTUNITY BECAUSE WE'VE SHORTENED THE SENTENCE  
18 LENGTH. I MEAN, THAT'S THE IDEA, REALLY, OF THREE STRIKES, IS  
19 IF THEY ARE NOT OUT, THEY ARE NOT AVAILABLE TO COMMIT CRIMES.

20           **JUDGE REINHARDT:** WELL, THERE'S LOTS OF WAYS --

21           **JUDGE KARLTON:** THAT PERSON RIGHT THERE, MS. TILLMAN,  
22 SHE'S VERY DANGEROUS.

23           **THE WITNESS:** WOULD YOU LIKE ME TO TAKE HER NOW, YOUR  
24 HONOR?

25           **JUDGE HENDERSON:** OKAY. THANK YOU, COUNSEL.

1           **MS. BARLOW:** THANK YOU, COUNSEL.

2           STATE DEFENDANTS HAVE ANYTHING FURTHER?

3           **MR. LEWIS:** NO QUESTIONS, YOUR HONOR.

4           **JUDGE HENDERSON:** RECROSS.

5                           **RECROSS-EXAMINATION BY MS. EVENSON**

6 **BY MS. EVENSON**

7 **Q**   LIEUTENANT SMITH, YOU TESTIFIED THAT YOU COULDN'T OPERATE  
8 YOUR JAIL IF -- AT THE 21,800 MARK WHICH IS THE -- IF YOU HAD  
9 ACTUALLY FILLED ALL 21,000 OF THOSE AVAILABLE BEDS; IS THAT  
10 RIGHT?

11 **A**   WE START TO HAVE PROBLEMS AT THAT LEVEL, YES, SIGNIFICANT  
12 PROBLEMS. THE JAIL IS STILL GOING TO OPERATE. IT'S NOT LIKE WE  
13 GET TO JUST STOP.

14 **Q**   YOU WOULD HAVE SIGNIFICANT PROBLEMS EVEN IF YOU WERE AT A  
15 HUNDRED PERCENT OF YOUR CAPACITY?

16 **A**   ABSOLUTELY. A HUNDRED PERCENT OF YOUR CAPACITY IS REALLY A  
17 MISNOMER. THE INDIVIDUALS THAT DID THE NORTH POINT  
18 CLASSIFICATION SYSTEM SAID, YOU'RE AT A HUNDRED PERCENT CAPACITY  
19 WHEN YOU ARE AT 90 PERCENT. YOU NEED A TEN PERCENT VACANCY  
20 FACTOR TO JUST FACILITATE MOVEMENT, AND THOSE TYPE OF ISSUES  
21 BECAUSE OF THE MARGINS.

22                   **JUDGE KARLTON:** THAT WOULD BE TRUE, FOR INSTANCE, OF  
23 THE STATE SYSTEM, BUT IT'S AT 200 PERCENT?

24                   **THE WITNESS:** ABSOLUTELY TRUE, YOUR HONOR.

25

1 **BY MS. EVENSON**

2 **Q** YOU ANTICIPATED MY QUESTION, WHICH IS, IF YOU IMAGINE THAT  
3 THE L.A. COUNTY JAIL WERE ACTUALLY AT 200 PERCENT OF CAPACITY,  
4 IF YOU WERE AT THAT -- IF YOUR JAIL POPULATION WAS THAT HIGH,  
5 YOU'D HAVE TO START RELEASING PEOPLE, WOULDN'T YOU?

6 **A** AND IF I HAD SOMEONE TO RELEASE THEM TO AT THE CITY LEVEL,  
7 WE WOULD RELEASE THEM TO THE CITY LEVEL.

8 **Q** BUT IF YOU WERE -- YOU'RE RELEASING -- YOU'RE RELEASING  
9 PEOPLE EARLY NOW WHEN YOU ARE JUST BELOW A HUNDRED PERCENT OF  
10 CAPACITY, RIGHT?

11 **A** YES.

12 **Q** AND IF YOU WERE AT 200 PERCENT OF CAPACITY, YOU WOULD BE  
13 EARLY RELEASING PEOPLE, WOULDN'T YOU?

14 **A** I WORKED IN THE JAILS WHEN WE WERE BEFORE THE CAP, SO I KNOW  
15 WHAT THE SITUATION LOOKS LIKE WHEN YOU ARE AT THAT LEVEL.

16 **Q** AND YOU WOULD BE RELEASING PEOPLE IF YOU WERE AT THAT LEVEL  
17 EVEN THOUGH YOU'D KNOW THAT THERE MIGHT BE CRIME COMMITTED BY  
18 THOSE RELEASEES; ISN'T THAT RIGHT?

19 **MS. BARLOW:** BEYOND THE SCOPE OF REDIRECT.

20 **JUDGE HENDERSON:** OVERRULED, COUNSEL.

21 **THE WITNESS:** I'M SORRY, MA'AM?

22 **BY MS. EVENSON**

23 **Q** YOU'RE RELEASING PEOPLE NOW?

24 **A** YES.

25 **Q** EVEN THOUGH YOU KNOW THAT --

1 **A** THERE WOULD BE NEGATIVE IMPACTS, YES.

2 **Q** WE WERE BOTH TALKING AT THE SAME TIME, SO I DIDN'T EVEN HEAR  
3 WHAT YOU SAID.

4 **A** I AGREED WITH YOU.

5 **Q** YOU AGREED WITH ME BEFORE MY SENTENCE WAS FINISHED.

6 YOU'RE RELEASING PEOPLE EARLY NOW EVEN THOUGH YOU  
7 BELIEVE THAT MORE CRIME IS COMMITTED BY THOSE INDIVIDUALS WHO  
8 ARE RELEASED EARLY?

9 **A** YES.

10 **MS. EVENSON:** NOTHING FURTHER.

11 **JUDGE HENDERSON:** OKAY. LET'S TAKE A 15-MINUTE  
12 RECESS. COURT'S ADJOURNED.

13 THANK YOU FOR TESTIFYING.

14 (RECESS TAKEN.)

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

17 **MS. WOODWARD:** YOUR HONOR, BEFORE THE NEXT WITNESS,  
18 MAY I JUST CLARIFY ONE THING?

19 WITH THE WITNESS SHERIFF GREG MUNKS, WHO WAS EARLIER  
20 THIS AFTERNOON, I HAD AN ADDITIONAL EXHIBIT, NO. 222, WHICH I  
21 UNDERSTAND THERE IS NO -- NO OBJECTION TO ADMITTING, AND I WOULD  
22 OFFER THAT NOW.

23 **JUDGE HENDERSON:** 222.

24 **MS. WOODWARD:** THIS IS THE REPORT OF SHERIFF MUNKS.

25 **JUDGE HENDERSON:** THAT WILL BE ADMITTED AT THIS TIME.

1 (DEFENDANTS' EXHIBIT222 RECEIVED IN  
2 EVIDENCE)

3 **MS. WOODWARD:** THANK YOU, YOUR HONOR.

4 **MS. BARLOW:** THANK YOU, YOUR HONORS. GOOD AFTERNOON  
5 AGAIN.

6 THE DEFENDANT INTERVENORS WOULD CALL RICHARD WORD TO  
7 THE STAND, PLEASE.

8 **RICHARD WORD,**

9 CALLED AS A WITNESS FOR THE DEFENDANT HEREIN, HAVING BEEN FIRST  
10 DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

11 **THE CLERK:** STATE YOUR FULL NAME FOR THE RECORD.

12 **THE WITNESS:** RICHARD LAWRENCE WORD, W-O-R-D.

13 **MS. BARLOW:** THANK YOU, MR. WORD -- CHIEF WORD.

14 **DIRECT EXAMINATION**

15 **Q.** COULD YOU STATE YOUR CURRENT JOB TITLE?

16 **A.** YES. POLICE CHIEF WITH THE CITY OF VACAVILLE, CALIFORNIA.

17 **Q.** AND YOU ARE AN INTERVENOR IN THIS CASE?

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

19 **Q.** AN INTERVENOR IN THIS CASE?

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

21 **Q.** COULD YOU JUST FOR THE COURT VERY BRIEFLY SUMMARIZE YOUR  
22 EDUCATIONAL AND WORK EXPERIENCE?

23 **A.** YES. I HAVE A BACHELOR OF SCIENCE DEGREE IN BUSINESS  
24 ADMINISTRATION AND A MASTER OF PUBLIC ADMINISTRATION DEGREE FROM  
25 GOLDEN GATE UNIVERSITY.



1 BEEN IN LAW ENFORCEMENT FOR 24 YEARS, 20 OF THOSE  
2 YEARS WITH THE OAKLAND POLICE DEPARTMENT. I ROSE THROUGH THE  
3 RANKS AND BECAME CHIEF THERE IN 1999 AND SERVED AS CHIEF FOR  
4 FIVE YEARS UNTIL NOVEMBER OF 2004.

5 I THEN LEFT AND SINCE NOVEMBER OF 2004, I HAVE BEEN  
6 CHIEF OF POLICE FOR THE CITY OF VACAVILLE.

7 **Q.** HOW BIG IS VACAVILLE?

8 **A.** WE HAVE ABOUT 96,000 POPULATION, GIVE OR TAKE. I HAVE 183,  
9 I BELIEVE, STAFF, BOTH SWORN AND NON-SWORN, CIVILIAN.

10 **Q.** SO IT'S SMALLER THAN OAKLAND, IS THAT FAIR TO SAY?

11 **JUDGE KARLTON:** I'M SORRY. I MISSED THE FIRST --

12 **MS. BARLOW:** I WAS ASKING HOW BIG VACAVILLE WAS, YOUR  
13 HONOR.

14 **BY MS. BARLOW:**

15 **Q.** NOW, HAVE YOU HAD ANY AFFILIATION WITH THE CALIFORNIA POLICE  
16 CHIEFS ASSOCIATION?

17 **A.** YES, I HAVE.

18 **Q.** AND COULD YOU DESCRIBE THAT QUICKLY?

19 **A.** I HAVE BEEN ON THEIR BOARD, I BELIEVE, SINCE 2002. IN 2007  
20 I WAS THE PRESIDENT OF THE CALIFORNIA POLICE CHIEFS ASSOCIATION.  
21 I'M STILL AN EXECUTIVE BOARD MEMBER AS THE IMMEDIATE PAST  
22 PRESIDENT.

23 **MS. BARLOW:** ALL RIGHT. NOW, WE HAVE PROVIDED THE  
24 COURT WITH A -- WITH EXTRA COPIES OF CHIEF WORD'S DECLARATION.  
25 I DO WANT TO ADVISE THE COURT THAT WE FILED AN ERRATA TODAY TO

1 CORRECT A TYPOGRAPHICAL ERROR ON PAGE FIVE, PARAGRAPH 13, WHERE  
2 IT SAYS THERE WERE 2005 ARRESTS IN 2007. THAT SHOULD BE 205.  
3 IT'S CORRECTLY REFLECTED IN PARAGRAPH 12.

4 **BY MS. BARLOW:**

5 **Q.** ALL RIGHT, CHIEF WORD. IN YOUR CAREER IN GENERAL AND YOUR  
6 JOB, YOUR CURRENT JOB IN PARTICULAR, DO YOU STUDY, ASSESS AND  
7 TRY TO ADDRESS PUBLIC REACTION TO CRIME AND CRIME RATES?

8 **A.** SURE. YES.

9 **Q.** OKAY. AND WHY DO YOU DO THAT?

10 **A.** WELL, IT'S IMPORTANT IN MY CAPACITY, I HAVE SEEN AS BOTH  
11 CHIEF AND CAPTAIN, LIEUTENANT, SERGEANT, OFFICER, THAT YOU NEED  
12 THE PUBLIC'S PARTICIPATION AND HELP AND ASSISTANCE TO SOLVE  
13 CRIME. YOU NEED THEM TO REPORT CRIME, TO SERVE AS WITNESSES IN  
14 SOME INSTANCES. AND WITHOUT THEM WE SIMPLY WOULD NOT BE  
15 EFFECTIVE AS POLICE OFFICERS AND POLICE AGENCIES.

16 **Q.** AND IN ADDITION TO DOING THAT AS PART OF YOUR JOB, DO YOU  
17 DISCUSS THAT WITH OTHER POLICE CHIEFS AND OTHER LAW ENFORCEMENT  
18 OFFICIALS IN YOUR COMMUNITY?

19 **A.** YES.

20 **Q.** ARE YOU FAMILIAR AS THE CHIEF OF POLICE OF VACAVILLE WITH  
21 THE COMMUNITY RESOURCES THAT ARE AVAILABLE IN SOLANO COUNTY FOR  
22 MENTAL HEALTH CARE?

23 **A.** LARGELY. I AM KNOWLEDGEABLE OF THAT, YES.

24 **Q.** WHAT ABOUT DRUG TREATMENT?

25 **A.** YES.

1 Q. AND ALCOHOL ABUSE?

2 A. SOME, YES.

3 Q. ALL RIGHT. DOMESTIC VIOLENCE COUNSELING?

4 A. YES. WE PROVIDE SOME COUNSELING. THE POLICE DEPARTMENT  
5 FUNDS THAT IN VACAVILLE.

6 Q. OKAY. AND SO AS PART OF THAT, YOU ARE FAMILIAR WITH WHAT  
7 RESOURCES ARE AVAILABLE IN THE COMMUNITY TO AID PROBATIONERS,  
8 PAROLEES, ET CETERA?

9 A. YES.

10 Q. NOW, WHILE YOU WERE THE CHIEF OF POLICE IN OAKLAND AND IN  
11 YOUR VARIOUS CAPACITIES WITH THE OAKLAND POLICE DEPARTMENT  
12 BEFORE THAT, DID YOU DO THE SAME THING THAT YOU DO IN VACAVILLE?  
13 YOU STUDY, YOU TALK ABOUT, YOU ASSESS, YOU INVOLVE THE  
14 COMMUNITY?

15 A. YES.

16 Q. AND JUST SO THE COURT IS CLEAR, WHERE IS VACAVILLE? WHAT  
17 COUNTY IS IT LOCATED IN?

18 A. IT'S IN THE COUNTY OF SOLANO.

19 Q. NOW, DOES VACAVILLE HAVE ITS OWN JAIL?

20 A. IT DOES NOT.

21 Q. SO WHEN YOU MAKE ARRESTS OF SOMEONE WHO IS GOING TO STAY IN  
22 CUSTODY FOR WHATEVER REASON, WHERE DO THEY GO?

23 A. THEY GO TO THE COUNTY JAIL, THE COUNTY OF SOLANO'S JAIL IN  
24 FAIRFIELD, CALIFORNIA.

25 Q. AND DO YOU KNOW WHAT THE CAPACITY OF SOLANO COUNTY'S JAIL

1 FACILITIES IS?

2 **A.** I BELIEVE IT'S 1,084.

3 **Q.** NOW, ARE YOU AWARE OF WHETHER PRISONERS HAVE BEEN RELEASED  
4 EARLY, WHETHER PRETRIAL OR POST SENTENCE, FROM SOLANO COUNTY  
5 JAIL OVER THE PAST YEAR?

6 **A.** YES. THE SHERIFF, SHERIFF GARY STANTON TOLD ME THAT --

7 **MR. SANGSTER:** OBJECTION, YOUR HONOR. HEARSAY.

8 **JUDGE HENDERSON:** IT WOULD BE HEARSAY.

9 **MS. BARLOW:** I'M SORRY?

10 **JUDGE HENDERSON:** IT WOULD BE HEARSAY.

11 **MS. BARLOW:** YES, YOUR HONOR. HE, AS AN EXPERT  
12 WITNESS, IS ENTITLED TO RELY ON HEARSAY. IT'S JUST LAYING A  
13 FOUNDATION FOR HIS OPINIONS.

14 **THE COURT:** I WILL ALLOW IT AS FOUNDATIONAL.

15 **MS. BARLOW:** THANK YOU, YOUR HONOR.

16 **BY MS. BARLOW:**

17 **Q.** I'M SORRY. COULD YOU FINISH YOUR ANSWER, CHIEF?

18 **A.** SHERIFF GARY STANTON, THE SOLANO COUNTY SHERIFF, HAS TOLD ME  
19 THAT THEY ROUTINELY ACCELERATE RELEASES OF INMATES.

20 **Q.** HAVE YOU ALSO SEEN THE CSA DATA THAT SHOW YOU THAT THOSE  
21 RELEASES ARE OCCURRING FOR BOTH PRETRIAL AND POST TRIAL OR POST  
22 SENTENCE DETAINEES?

23 **A.** YES.

24 **Q.** DO YOU HAVE AN APPROXIMATION OF THE NUMBER OF PEOPLE  
25 RELEASED EARLY FROM SOLANO COUNTY JAIL IN 2007?

1           **MR. SANGSTER:** OBJECTION. HEARSAY.

2 **BY MS. BARLOW:**

3 **Q.** IF YOU KNOW.

4           **MR. SANGSTER:** OBJECTION. HEARSAY.

5           **JUDGE KARLTON:** HOW WOULD HE KNOW?

6           HOW WOULD YOU KNOW? DO YOU KNOW THE ANSWER TO THAT  
7 QUESTION?

8           **THE WITNESS:** I HAVE SEEN THE DATA. I BELIEVE IT'S  
9 OVER --

10           **MR. SANGSTER:** YOUR HONOR, I COULDN'T HEAR YOUR  
11 RULING, IF THERE WAS ONE.

12           **JUDGE HENDERSON:** WELL, I ASSUME IT'S CONTINUING  
13 FOUNDATIONAL. IF IT ISN'T --

14           **MR. SANGSTER:** I THINK IT'S GOING BEYOND FOUNDATIONAL  
15 AS TO WHAT THE DETAILS ARE OF THE HEARSAY THAT'S BEEN PROVIDED  
16 TO HIM.

17           **MS. BARLOW:** HE HAS SAID HE HAS SEEN THE DATA  
18 HIMSELF, YOUR HONOR. IT'S NOT HEARSAY.

19           **JUDGE HENDERSON:** OVERRULED -- WELL, THAT DOES NOT  
20 MAKE IT NOT HEARSAY.

21           **JUDGE KARLTON:** IT'S HEARSAY, BUT IT'S THE KIND OF  
22 HEARSAY THAT AN EXPERT CAN RELY ON.

23           **MS. BARLOW:** YES. AND IT'S A PUBLIC RECORD AS WELL.

24           **JUDGE KARLTON:** THAT'S TRUE.

25 **A.** I BELIEVE WHEN I LOOKED AT THE DATA, IT WAS OVER 4,000 THAT

1 HAD THEIR SENTENCES -- THEY WERE RELEASED EARLY.

2 **BY MS. BARLOW:**

3 **Q.** THANK YOU, CHIEF.

4 NOW, HOW MANY PAROLEES ARE CURRENTLY AT SOLANO  
5 COUNTY, DO YOU KNOW?

6 **A.** ABOUT 2000.

7 **Q.** AND HAVE YOU SEEN THE CDCR STATISTICS FOR 2007 THAT TELL YOU  
8 HOW MANY PAROLEES WERE RELEASED INTO SOLANO COUNTY IN 2007?

9 **A.** I DID SEE THAT DATA.

10 **Q.** AND DO YOU RECALL THE APPROXIMATE NUMBER?

11 **A.** IT'S OVER A THOUSAND. I'M NOT SURE OF THE EXACT NUMBER.  
12 I'M SORRY.

13 **Q.** NOW, IF YOU HAVE ABOUT 2,000 PAROLEES IN SOLANO COUNTY, CAN  
14 YOU GIVE US AN ESTIMATE OF HOW MANY OF THEM LIVE OR WORK IN  
15 VACAVILLE?

16 **A.** WE PROBABLY HAVE ABOUT A THIRD IN VACAVILLE.

17 **Q.** AND SO THAT WOULD BE ABOUT 666?

18 **A.** YES.

19 **Q.** NOW, IN 2007 YOUR DEPARTMENT MADE A NUMBER OF ARRESTS OF  
20 PAROLEES FOR VIOLATIONS AND FOR NEW CRIMES, CORRECT?

21 **A.** YES.

22 **Q.** AND WHAT IS THAT NUMBER?

23 **A.** IT WAS 205.

24 **Q.** IN VACAVILLE?

25 **A.** YES.

1 Q. SO OUT OF PERHAPS 666 PAROLEES IN VACAVILLE IN THAT YEAR,  
2 YOU MADE ARRESTS OF 205 OF THEM?

3 A. YES.

4 Q. ABOUT 30 PERCENT?

5 A. YES.

6 Q. NOW, YOU DISCUSS IN YOUR DECLARATION, SO I WON'T ASK YOU TO  
7 REPEAT IT, THE FACT THAT YOUR DEPARTMENT DOES COMPLIANCE CHECKS  
8 ON A QUARTERLY BASIS FOR PAROLEES AND PROBATIONERS AND YOU ARE  
9 ALSO LOOKING AT GANG MEMBERS.

10 CAN YOU TELL ME WHY YOU DO THAT?

11 A. WELL, IN MY EXPERIENCE AND THE EXPERIENCE OF MY OFFICERS, WE  
12 HAVE SEEN WHERE THEY ARE OFTEN RESPONSIBLE FOR A LOT OF CRIME  
13 THAT'S OCCURRING IN THE CITY, BOTH PROPERTY CRIME AND CRIMES  
14 AGAINST PEOPLE. AND THIS IS A -- AN EFFICIENT, TARGETED,  
15 FOCUSED WAY OF KEEPING A LID ON CRIME.

16 Q. NOW, WHEN YOU TALK ABOUT TOTAL NUMBER OF ARRESTS, THE TOTAL  
17 NUMBER OF ARRESTS WOULD INCLUDE EVERYTHING FROM A MINOR  
18 FIRST-TIME PETTY THEFT TO A MURDER, CORRECT?

19 A. SURE.

20 Q. DO YOU HAVE OCCASION TO -- STRIKE THAT.

21 IS THE REASON THAT YOU TARGET PAROLEES, PROBATIONERS  
22 AND GANG MEMBERS BECAUSE THEY COMMIT A HIGH VOLUME OF THE MORE  
23 SERIOUS CRIMES?

24 A. YES.

25 Q. NOW, LET'S TALK ABOUT THE IMPACTS FROM A PRISONER RELEASE

1 ORDER.

2 THE PLAINTIFFS HAVE PROPOSED AN ORDER THAT WOULD  
3 REDUCE THE PRISON POPULATION OVER THE NEXT TWO YEARS BY 52,000  
4 PRISONERS AND PRESUMABLY KEEP IT CAPPED AT ABOUT TWO-THIRDS OF  
5 ITS CURRENT POPULATION WITH NO ADDITIONAL RESOURCES OR  
6 PROGRAMMING.

7 AND THE PLAINTIFFS -- OR SHOULD I SAY ONE OF THE  
8 EXPERTS, AT LEAST, HAS OPINED THAT THAT WOULD HAVE NO  
9 SIGNIFICANT IMPACT ON PUBLIC SAFETY.

10 DO YOU AGREE WITH THAT, CHIEF WORD?

11 **A.** ABSOLUTELY NOT.

12 **Q.** WHY NOT?

13 **A.** I CAN'T SEE HOW THAT'S GOOD PUBLIC POLICY OR GOOD FOR PUBLIC  
14 SAFETY TO RELEASE THOUSANDS OF INMATES, ESPECIALLY NOW WHEN  
15 POLICE DEPARTMENTS ACROSS THE STATE ARE LOSING OFFICERS.

16 I HAVE LOST SOME. I JUST SPOKE TO A SACRAMENTO  
17 CAPTAIN WHO IS LOSING HUNDREDS.

18 THIS IS A HORRIBLE TIME TO DO THAT, TO INCREASE OUR  
19 PAROLEE NUMBERS IN OUR COMMUNITIES WITH FEWER POLICE OFFICERS.  
20 THERE IS AN EXISTING LACK OF SERVICES, AND WITH NO PROGRAMMING I  
21 THINK THAT'S A RECIPE FOR DISASTER.

22 **Q.** IN YOUR DECLARATION YOU OFFERED AN OPINION THAT A 25 PERCENT  
23 REDUCTION IN THE PRISON POPULATION STATE-WIDE WOULD RESULT IN  
24 100 ADDITIONAL PAROLEES IN VACAVILLE.

25 WITH THE INCREASE TO 30 PERCENT, THAT WOULD BE ABOUT



1 168 PAROLEES ADDITIONAL IN VACAVILLE?

2 **A.** ROUGHLY, YES.

3 **Q.** NOW, IN YOUR OPINION AND BASED UPON YOUR KNOWLEDGE OF THE  
4 COMMUNITY -- JAIL RESOURCES AND COMMUNITY RESOURCES, CAN  
5 VACAVILLE ABSORB THAT LEVEL OF RELEASEES, WHETHER THEY ARE  
6 DIVERTED OR RELEASED OR TAKEN OFF PAROLE?

7 **A.** I MEAN, I SUSPECT MANY WOULD BE HOMELESS. WE DON'T HAVE THE  
8 SERVICES. I IMAGINE MANY ARE NOT EMPLOYABLE OR NOT JOB READY.  
9 IN MY EXPERIENCE, MANY USE DRUGS IN PRISON.  
10 SMUGGLING IS SOMETHING THAT OCCURS IN THE PRISONS AND SO YOU  
11 WOULD HAVE SUBSTANCE ABUSE THAT WOULD CONTINUE UPON THEIR  
12 RELEASE. ALCOHOLISM. I MEAN, THE WHOLE LIST OF ISSUES WOULD  
13 CONTINUE.

14 AND I THINK THAT RECIDIVISM NOW, IF IT'S 70 PERCENT  
15 OVER THREE YEARS, THAT WOULD CERTAINLY CONTINUE. I THINK YOU  
16 WOULD STILL HAVE THIS LIFE SENTENCE THAT THEY WOULD SERVE,  
17 QUOTE, ON THE INSTALLMENT PLAN. IT WOULD SIMPLY CONTINUE.

18 **Q.** NOW, YOU SAID THAT MANY OF THEM WOULDN'T BE JOB READY. IS  
19 THERE A LOT OF JOBS AVAILABLE FOR PAROLEES AND EX-FELONS IN  
20 VACAVILLE, TO YOUR KNOWLEDGE?

21 **A.** NO. I WISH THERE WERE MORE, BUT THERE AREN'T ENOUGH, NO.

22 **Q.** YOU WOULD LIKE TO SEE THEM GET EMPLOYED AND GET BACK INTO  
23 THEIR COMMUNITIES, CORRECT?

24 **A.** SURE.

25 **Q.** BUT THAT'S NOT HAPPENING?

1 **A.** NO, IT'S NOT.

2 **Q.** AND WHAT IS THE -- YOU SAID SOME OF THEM ARE COMING OUT OF  
3 PRISON USING DRUGS OR USING ALCOHOL. HOW DOES THAT IMPACT  
4 THEIR -- THEIR RISK WHEN THEY COME OUT?

5 **A.** IT TENDS TO INCREASE THEIR RISK AND LIKELIHOOD OF  
6 REOFFENDING.

7 **Q.** NOW, WHEN SOMEONE HAS GONE TO STATE PRISON, IN YOUR  
8 EXPERIENCE FOR BOTH OAKLAND AND VACAVILLE, ABOUT HOW MANY TIMES  
9 HAVE THEY BEEN CONVICTED OF A SERIOUS CRIME BEFORE THEY END UP  
10 IN STATE PRISON?

11 **MR. SANGSTER:** LACKS FOUNDATION. PERSONAL KNOWLEDGE.

12 **MS. BARLOW:** BASED ON HIS EXPERIENCE. IF HE CAN'T  
13 ANSWER IT, HE WILL TELL YOU THAT.

14 **JUDGE HENDERSON:** I WILL ALLOW IT.

15 **A.** IN MY EXPERIENCE PEOPLE THAT WIND UP IN STATE PRISON WORK  
16 HARD TO GET THERE. THEY COMMIT MANY OFFENSES. THEY SPEND MANY  
17 TIMES IN -- OR TIME, I SHOULD SAY, IN THE COUNTY JAIL BEFORE  
18 THEY WIND UP IN STATE PRISON.

19 **BY MS. BARLOW:**

20 **Q.** NOW, THERE HAS BEEN SOME TESTIMONY THAT MANY OF THOSE FOLKS  
21 IN STATE PRISON ARE LOW RISK, NON-VIOLENT MERE DRUG OFFENDERS.

22 DOES THAT CHANGE YOUR OPINIONS ABOUT THERE BEING  
23 NEGATIVE IMPACTS TO PUBLIC SAFETY IF YOU RELEASE THEM?

24 **A.** NO.

25 **Q.** WHY?

1 **A.** MANY -- IN OUR STATE PRISONS THERE IS A DRUG CONNECTION TO  
2 MANY. I HAVE SEEN THAT IN VACAVILLE AND IN OAKLAND.

3 AND TO SAY THAT THEY ARE LOWER RISK, THAT MIGHT  
4 REFLECT THEIR COMMITMENT OFFENSE, BUT NOT THE OFFENSES THAT THEY  
5 HAVE COMMITTED AND MAYBE THEY WEREN'T ARRESTED FOR THOSE.

6 I HAVE SEEN, QUOTE, LOW RISK OFFENDERS IN OAKLAND  
7 THAT UPON THEIR RELEASE, THEY IMMEDIATELY ENGAGE IN THE DRUG  
8 MARKET. AND IN ONE STUDY WE DID IN OAKLAND WE FOUND THAT  
9 50 PERCENT OF OUR HOMICIDE VICTIMS OR SUSPECTS WERE ON PAROLE OR  
10 PROBATION.

11 SO THEY MAY NOT BE VIOLENT OFFENDERS, BUT I CAN TELL  
12 YOU, MANY ARE VICTIMIZED. MANY ARE VICTIMS OF VIOLENT CRIME  
13 BECAUSE THEY ARE ENGAGING IN THE DRUG TRADE.

14 **Q.** SO DOES THE FACT THAT THERE ARE ILLICIT DRUGS INVOLVED RAISE  
15 THE RISK OF VIOLENCE IN YOUR MIND?

16 **A.** SURE.

17 **Q.** OVER AND ABOVE JUST WHATEVER THEIR OFFENSE COMMITMENT WAS?

18 **A.** YES.

19 **Q.** OKAY. SO WOULD YOU CONSIDER -- OR DO YOU CONSIDER DRUG USE  
20 A VICTIMLESS CRIME, CHIEF WORD?

21 **A.** NO.

22 **Q.** WHY NOT?

23 **A.** BECAUSE THERE ARE MANY, MANY PEOPLE IMPACTED BY DRUG USE,  
24 NOT JUST THE USER, BUT FAMILIES, SPOUSES, NEIGHBORS; THAT MANY  
25 OF THESE DRUG USERS STEAL TO SUPPORT THEIR CRIMES.

1           IT HAS THIS HORRIBLE EFFECT THAT EXTENDS BEYOND THE  
2 DRUG USER INTO NEIGHBORHOODS WHERE PEOPLE ARE FEARFUL. THEY  
3 HAVE SEEN THE DRUG USERS.

4           I HAVE SEEN THAT IN OAKLAND WHERE, UNFORTUNATELY,  
5 THEY LEARN TO LIVE AROUND DRUG USERS. THERE IS THIS CODE THAT  
6 EXISTS OFTEN WHERE THEY DON'T REPORT, BUT DRUG USERS ARE ALLOWED  
7 TO OPERATE IN CERTAIN NEIGHBORHOODS.

8           IT'S NOT GOOD FOR A COMMUNITY, SUCH AS OAKLAND, WHEN  
9 YOU NEED WITNESSES TO COME FORWARD AND TO REPORT CRIME. IT  
10 TENDS TO GET WORSE AND THEY LOSE CONFIDENCE IN THE POLICE AND  
11 THE POLICE OFFICERS OFTEN LOSE CONFIDENCE IN THEIR ABILITY TO  
12 IMPACT CRIME.

13 **Q.** SO DOES AN INCREASE IN CRIME IN GENERAL, BUT VIOLENT CRIME  
14 IN PARTICULAR, HAVE AN IMPACT, YOU SAID, ABOUT A FEAR OR LACK OF  
15 CONFIDENCE IN THE COMMUNITY?

16 **A.** YEAH. I HAVE SEEN THAT IMPACT, WHERE THERE IS VIOLENT  
17 CRIME. THERE IS CHRONIC CRIME, AND THE POLICE ARE STRUGGLING TO  
18 ABATE THAT CRIME.

19           THE COMMUNITY WILL LOSE CONFIDENCE IN POLICE OFFICERS  
20 AND THE POLICE DEPARTMENT'S ABILITY TO STEM THAT TIDE, IF YOU  
21 WILL. AND OFFICERS DO, TOO, ALSO LOSE CONFIDENCE IN THEIR  
22 ABILITY TO HAVE AN IMPACT.

23 **Q.** AND IS THE -- DOES THAT FEAR TRANSLATE INTO AN INCREASE IN  
24 REPORTED CRIMES, A DECREASE IN REPORTED CRIMES? DOES IT CHANGE  
25 PEOPLE'S BEHAVIOR ABOUT WHETHER OR NOT THEY REPORT CRIMES?

1 **A.** SURE. THERE IS A DECREASE WHEN THERE IS FEAR. WHEN THERE  
2 IS A DECREASE IN REPORTING THEN, OF COURSE, CRIME IS LIKELY TO  
3 CONTINUE.

4 **Q.** SO YOU MAY HAVE AN INCREASE IN CRIME, BUT THE REPORTED CRIME  
5 GOES DOWN BECAUSE PEOPLE ARE AFRAID?

6 **A.** OF COURSE.

7 **Q.** NOW, I WOULD JUST LIKE TO TALK TO YOU BRIEFLY ABOUT WHETHER  
8 THE INCREASE IN CRIME, AND PARTICULARLY VIOLENT CRIME, HAS AN  
9 IMPACT BEYOND THE ECONOMICS AND THE FEAR THAT YOU TALKED ABOUT.

10 DOES IT HAVE AN IMPACT ON THE BUSINESSES AND OTHERS  
11 IN THE COMMUNITY?

12 **A.** SURE.

13 **MR. SANGSTER:** OBJECTION. LACKS FOUNDATION, PERSONAL  
14 KNOWLEDGE. LACKS FOUNDATION, EXPERTISE. IRRELEVANT.

15 **JUDGE HENDERSON:** OVERRULED.

16 **MS. BARLOW:** THANK YOU.

17 **A.** IT CERTAINLY HAS AN IMPACT ON THE BUSINESS COMMUNITY. I  
18 HAVE TALKED TO BUSINESS OWNERS. I HAD ONE TELL ME -- HE OWNED A  
19 DONUT SHOP AND THEY WOULD OVERRUN HIS DONUT SHOP IN EAST  
20 OAKLAND. SO HE ASKED IF WE WOULD TAKE IT OVER AS A POLICE  
21 RESOURCE CENTER, AND WE DID.

22 **BY MS. BARLOW:**

23 **Q.** NOW, JUST BRIEFLY, I UNDERSTAND THAT THE CITY OF VALLEJO IS  
24 ALSO IN SOLANO COUNTY?

25 **A.** YES.

1 Q. AND VALLEJO HAS HAD SOME RECENT FINANCIAL TROUBLES, HAS IT  
2 NOT?

3 A. EXTREME, YES.

4 Q. AND HOW HAS THAT IMPACTED THE POLICE FORCE IN VALLEJO, TO  
5 YOUR KNOWLEDGE?

6 MR. SANGSTER: LACKS FOUNDATION. CALLS FOR HEARSAY.

7 JUDGE KARLTON: AT THIS POINT EVERYTHING THAT YOU  
8 WOULD BE SAYING WOULD BE ANECDOTAL, WHAT PEOPLE HAD TOLD YOU AND  
9 SO FORTH.

10 MS. BARLOW: WITH RESPECT, YOUR HONOR, AGAIN, IT'S A  
11 PUBLIC RECORD, THAT THEY HAVE LAID OFF 30 PERCENT OF THEIR  
12 POLICE FORCE.

13 JUDGE KARLTON: THAT'S TRUE, AND YOU CAN ASK US TO  
14 TAKE JUDICIAL NOTICE OF THAT. YOU ARE ASKING THIS WITNESS TO DO  
15 SOMETHING ELSE.

16 MS. BARLOW: THIS IS JUST FOUNDATIONAL, YOUR HONOR.  
17 I WILL ASK HIM TO ASSUME IT, HOW IS THAT, AND WE WILL INTRODUCE  
18 THAT EVIDENCE SEPARATELY.

19 BY MS. BARLOW:

20 Q. CHIEF WORD, IF THE FACTS SHOW AND WE INTRODUCE DOCUMENTS TO  
21 SHOW THAT VALLEJO HAD LAID OFF 30 PERCENT OF ITS POLICE FORCE  
22 DUE ITS BUDGET CRISIS, HOW DOES THAT AFFECT THE ENTIRE CRIME  
23 PICTURE IN YOUR COUNTY, IN THE WHOLE COUNTY?

24 A. I THINK THAT 30 PERCENT NUMBER, BY THE WAY, IS HIGHER NOW.  
25 I THINK THEY HAVE FEWER POLICE OFFICERS THAN WE DO AND THEY HAVE

1 THREE TIMES THE CRIME.

2 SO IT'S NOT GOOD FOR THE COUNTY IF RESOURCES -- FOR  
3 EXAMPLE, THE COUNTY SHERIFF EXPENDS MORE OF HIS TIME NOW IN  
4 VALLEJO THAN HE WOULD OTHERWISE IN OTHER CITIES IN THE COUNTY  
5 ASSISTING OTHER AGENCIES. SO I THINK IT HAS A NEGATIVE IMPACT  
6 ACROSS THE COUNTY BECAUSE THE SHERIFF'S RESOURCES ARE NOW MORE  
7 SO FOCUSED IN VALLEJO.

8 **Q.** NOW, IF YOU HAVE ADDITIONAL CRIMES COMMITTED BECAUSE YOU  
9 HAVE ADDITIONAL OFFENDERS IN THE COMMUNITY THAT AREN'T GETTING  
10 APPROPRIATE TREATMENT AND SO ON, ARE THOSE ALL GOING TO RESULT  
11 IN ARRESTS?

12 **A.** NO.

13 **Q.** WHY NOT?

14 **A.** MUCH -- THERE IS MANY CRIMES COMMITTED WHERE AN OFFENDER IS  
15 NOT CAPTURED. MAYBE A REPORT IS NOT MADE. MAYBE A CRIME IS  
16 COMMITTED, A REPORT IS MADE, BUT THE OFFENDER SIMPLY GETS AWAY.

17 **Q.** AND IF YOU INCREASE THE NUMBER OF CRIMINALS IN THE COMMUNITY  
18 AND INCREASE THE NUMBER OF CRIMES, BUT YOU DON'T INCREASE THE  
19 NUMBER OF OFFICERS, DOES THAT INCREASE THE RISK THAT YOU WON'T  
20 CATCH THOSE CRIMINALS?

21 **A.** I THINK SO, YES.

22 **Q.** WOULD YOU MEASURE THE IMPACT TO SOCIETY OF A PRISONER  
23 RELEASE ORDER BY THE NUMBER OF ARRESTS THAT RESULT OR BY THE  
24 NUMBER OF CRIMES THAT ARE COMMITTED?

25 **A.** A BETTER MEASURE IS -- ONE MEASURE IS CRIME, BETTER THAN

1 ARREST.

2 POLICE DEPARTMENTS IN CALIFORNIA, THEIR NUMBERS ARE  
3 DROPPING NOW. SO YOU PROBABLY HAVE FEWER ARRESTS TODAY AND WITH  
4 MORE -- WITH THIS RELEASE, POTENTIAL RELEASE, I THINK YOU WILL  
5 HAVE MORE CRIME AND EVEN FEWER ARRESTS.

6 Q. THANK YOU VERY MUCH, CHIEF. I HAVE NO FURTHER QUESTIONS --  
7 OH, I TAKE THAT BACK. I APOLOGIZE. I MISSED ONE PAGE.

8 MS. BARLOW: HOW AM I DOING ON TIME?

9 THE CLERK: TEN MORE MINUTES.

10 MS. BARLOW: OKAY. TEN MORE MINUTES.

11 BY MS. BARLOW:

12 Q. JUST QUICKLY, I WANT TO SUMMARIZE FOR YOU THE PROPOSAL AND  
13 ASK IF YOU YOU AGREE WITH THIS.

14 "CALIFORNIA CAN REDUCE PRISON ADMISSIONS AND  
15 REDUCE LENGTH OF STAY IN A SAFE AND PRACTICAL  
16 MANNER IN FOUR WAYS.

17 "ONE, PROVIDE EVIDENCE-BASED PROGRAMMING AND  
18 SUPERVISION TO TECHNICAL PAROLE VIOLATORS  
19 INSTEAD OF RETURNING THEM TO PRISON.

20 "TWO, DIVERT LOW LEVEL OFFENDERS TO  
21 PROBATION AND PAROLE INSTEAD OF PRISON.

22 "THREE, PROVIDE MORE AVENUES FOR PRISONERS  
23 TO EARN GOOD TIME CREDITS FOR RELEASE TOWARDS  
24 GOOD BEHAVIOR.

25 "FOUR, PROVIDE MORE AVENUES FOR EARLY



1 DISCHARGE FROM PAROLE."

2 THAT'S THE MECHANISM BY WHICH THE PLAINTIFFS PROPOSE  
3 TO REDUCE THE PRISON POPULATION BY 52,000 PEOPLE.

4 DO YOU AGREE THAT THAT CAN BE DONE SUCCESSFULLY  
5 WITHOUT PROGRAMMING?

6 **MR. SANGSTER:** OBJECTION. LACKS FOUNDATION,  
7 EXPERTISE. WITNESS HAS NOT BEEN QUALIFIED TO TESTIFY ON PRISON  
8 MANAGEMENT ISSUES.

9 **MS. BARLOW:** IF I MAY, YOUR HONOR, IN HIS DECLARATION  
10 HE MANAGED THE OAKLAND JAIL FOR A SIGNIFICANT PERIOD OF TIME. I  
11 WOULD BE HAPPY TO GO BACK OVER THAT, IF YOU WOULD LIKE.

12 **JUDGE HENDERSON:** THIS QUESTION DOESN'T --

13 **MR. SANGSTER:** THIS HAS TO DO WITH THE STATE PRISON  
14 SYSTEM.

15 **JUDGE HENDERSON:** THIS IS A STATE PRISON SYSTEM.

16 **MS. BARLOW:** NO, SIR. IT HAS TO DO WITH THE  
17 PROGRAMMING IN THE COMMUNITIES.

18 **JUDGE KARLTON:** WELL, IT HAS TO DO WITH RELEASING  
19 PEOPLE FROM PRISON, MA'AM.

20 **MS. BARLOW:** YES, YOUR HONOR. AND THE QUESTION I  
21 ASKED HIM --

22 **JUDGE KARLTON:** THERE HAS BEEN A RULING. WE ARE NOT  
23 ARGUING. THERE HAS BEEN A RULING.

24 **MS. BARLOW:** I HAVE NOTHING FURTHER.

25 **THE COURT:** DO THE STATE DEFENDANTS HAVE ANYTHING OF

1 THIS WITNESS?

2 **MR. LEWIS:** NOTHING, YOUR HONOR.

3 **THE COURT:** OKAY. CROSS-EXAMINATION.

4 **MR. SANGSTER:** THANK YOU, YOUR HONOR. ED SANGSTER  
5 FOR THE PLAINTIFFS.

6 **CROSS EXAMINATION**

7 **BY MR. SANGSTER:**

8 **Q.** CHIEF WORD, I WANT TO GO BACK TO SOME OF YOUR TESTIMONY AND  
9 TRY AND PUT IN PERSPECTIVE THE IMPACT THAT PAROLEES ARE HAVING  
10 ON YOUR POLICE FORCE RIGHT NOW.

11 IS IT CORRECT THAT IN 2007 YOUR DEPARTMENT MADE 3700  
12 ARRESTS?

13 **A.** THAT'S ABOUT RIGHT, YES, SIR.

14 **Q.** IS IT CORRECT THAT ONLY 205 OF THOSE ARRESTS WERE ARRESTS OF  
15 PAROLEES?

16 **A.** THAT'S CORRECT.

17 **Q.** SO ABOUT FIVE TO SIX PERCENT OF ALL THE ARRESTS MADE BY YOUR  
18 DEPARTMENT WERE ARRESTS OF PAROLEES?

19 **A.** I BELIEVE THAT'S CORRECT, YES, SIR.

20 **Q.** WERE SOME OF THOSE ARRESTS OF PAROLEES ARRESTS FOR TECHNICAL  
21 VIOLATIONS?

22 **A.** YES.

23 **Q.** WHAT PERCENTAGE OF THEM WERE FOR TECHNICAL VIOLATIONS, CHIEF  
24 WORD?

25 **A.** I DON'T HAVE THAT NUMBER.

1 Q. WELL, WOULD YOU AGREE SOMEWHERE AROUND 50 PERCENT?

2 A. IT'S APPROXIMATELY CORRECT, I BELIEVE, YES.

3 Q. ALL RIGHT. ARE YOU ABLE TO SAY HOW MANY OF THE 205 ARRESTS  
4 WERE ARRESTS FOR NEW CRIMES?

5 A. NO.

6 Q. OKAY. YOU TALKED ABOUT DOING COMPLIANCE CHECKS IN  
7 VACAVILLE?

8 A. YES.

9 Q. I WANT TO TURN YOUR ATTENTION TO THE COMPLIANCE CHECKS.  
10 YOUR COMPLIANCE CHECKS INCLUDE, BUT ARE NOT  
11 EXCLUSIVELY FOCUSED ON PAROLEES, IS THAT CORRECT?

12 A. YES.

13 Q. ABOUT 25 PERCENT OF THE WORK ASSOCIATED IN THESE COMPLIANCE  
14 CHECKS IS DIRECTED TOWARDS PAROLEES?

15 A. WELL, WE TARGET PAROLEES, PROBATIONERS AND VALIDATED GANG  
16 MEMBERS, SO MAYBE A THIRD.

17 Q. SO MAYBE A THIRD -- A THIRD OF THE PEOPLE TARGETED IN THE  
18 COMPLIANCE CHECKS ARE PAROLEES?

19 A. YES.

20 Q. THESE COMPLIANCE CHECKS TAKE ABOUT ONE TO TWO DAYS OF TIME,  
21 IS THAT CORRECT?

22 A. WHEN WE DO AN ORGANIZED, AS WE SAY, SWEEP OR COMPLIANCE  
23 CHECK WITH AGENCIES FROM THROUGHOUT THE COUNTY AND FEDERAL  
24 AGENCIES, WE USUALLY SPEND A DAY OR TWO, BUT THERE'S A COUPLE OF  
25 WEEKS OF PLANNING AND PREPARATION BEFORE THAT.

1 Q. LET'S JUST BREAK IT DOWN A LITTLE BIT.

2 A. OKAY.

3 Q. THE ACTUAL TIME SPENT OUT DOING THE COMPLIANCE CHECKS IS  
4 ABOUT ONE TO TWO DAYS, IS THAT ACCURATE?

5 A. WELL, LET ME BE CLEAR. WHEN WE DO AN ORGANIZED SWEEP, THERE  
6 ARE DAY-TO-DAY CHECKS, STOPS, DETENTIONS, ARRESTS OF PAROLEES  
7 MADE BY OFFICERS EVERY DAY IN VACAVILLE.

8 Q. YEAH, BUT I'M TALKING ABOUT THE COMPLIANCE CHECKS YOU  
9 REFERRED TO.

10 A. THESE SWEEPS, YEAH. IT TAKES ONE OR TWO DAYS TO ACTUALLY GO  
11 OUT AND DO THE CHECKS, BUT THERE'S PRIOR WORK DONE BEFORE YOU  
12 CAN GO OUT AND DO THAT.

13 Q. AND WE ARE GOING DO GET TO THAT, CHIEF WORD. I JUST WANT TO  
14 TAKE THINGS ONE STEP AT A TIME.

15 SO IN WORKING UP TO THIS, THE PREPARATION, HOW MANY  
16 PEOPLE ARE INVOLVED IN PREPARATION FOR THE COMPLIANCE CHECKS?

17 A. ONE OR TWO OFFICERS.

18 Q. ALL RIGHT. HOW MUCH TIME DO THEY SPEND GETTING READY FOR  
19 THESE QUARTERLY COMPLIANCE CHECKS?

20 A. THEY SPEND HOURS OVER A TWO-WEEK PERIOD GATHERING DATA.

21 Q. SO YOU HAVE GOT ONE TO TWO OFFICERS SPENDING HOURS GETTING  
22 READY FOR THESE COMPLIANCE CHECKS?

23 A. YES.

24 Q. WHAT PERCENTAGE OF THE 205 ARRESTS THAT YOUR DEPARTMENT MADE  
25 IN 2007 WERE MADE DURING THE COMPLIANCE CHECKS?

1 **A.** THAT -- I DIDN'T BREAK THAT DATA OUT, BUT I CAN GET THAT  
2 RATHER EASILY.

3 **Q.** LET'S GO WITH YOUR BEST -- DO YOU HAVE SOME SENSE OF WHAT  
4 PERCENTAGE IT WAS?

5 **A.** I BELIEVE WE MADE LAST YEAR 200 ARRESTS DURING OUR SWEEPS,  
6 COMPLIANCE CHECKS. BUT THAT WOULD INCLUDE PAROLEES AND  
7 PROBATIONERS, GANG MEMBERS AND OTHERS DURING THE COURSE OF THESE  
8 COMPLIANCE CHECKS.

9 **Q.** MY QUESTION IS: DO YOU HAVE SOME SENSE OF WHAT PERCENT OF  
10 YOUR 205 ANNUAL ARRESTS WERE MADE DURING THESE QUARTERLY  
11 COMPLIANCE CHECKS?

12 **A.** NO, I'D HAVE TO RESEARCH THAT.

13 **Q.** DO YOU THINK IT'S AS HIGH AS A THIRD OF ALL THE ARRESTS YOU  
14 MADE OF PAROLEES WERE MADE OCCURRING THE COMPLIANCE CHECKS?

15 **MS. BARLOW:** CALLS FOR SPECULATION.

16 **JUDGE HENDERSON:** DO YOU HAVE TO SPECULATE TO ANSWER  
17 THAT QUESTION? WE DON'T WANT YOU TO SPECULATE.

18 **THE WITNESS:** YEAH, I DON'T HAVE AN EXACT ANSWER.  
19 I'M SORRY.

20 **JUDGE KARLTON:** WELL, YOU WOULDN'T DO THE COMPLIANCE  
21 CHECKS IF YOU DIDN'T THINK THEY WERE PRODUCTIVE.

22 **THE WITNESS:** THAT'S RIGHT, SIR.

23 **JUDGE KARLTON:** SO IT'S NOT UNREASONABLE FOR THE  
24 COURT TO BELIEVE THAT A SIGNIFICANT -- STRIKE THAT.

25 IS IT UNREASONABLE FOR THE COURT TO INFER THAT AT

1 LEAST SOME SIGNIFICANT PORTION OF THE PAROLE OR ARREST WERE THE  
2 RESULT OF THESE COMPLIANCE CHECKS?

3 **THE WITNESS:** THAT'S REASONABLE TO INFER.

4 **BY MR. SANGSTER:**

5 **Q.** SO A SIGNIFICANT PERCENTAGE OF THE 205 PAROLE ARRESTS MADE  
6 BY YOUR DEPARTMENT WERE MADE OVER THE COURSE OF FOUR TO EIGHT  
7 DAYS?

8 **A.** NO. I WOULDN'T -- I WOULDN'T SAY THAT, NO, SIR.

9 **Q.** YOUR DEPARTMENT IS NOT THE ONLY DEPARTMENT OR THE ONLY FORCE  
10 THAT'S INVOLVED IN THESE COMPLIANCE CHECKS, CORRECT? YOU HAVE  
11 PAROLE OFFICERS INVOLVED?

12 **A.** A FEW, TYPICALLY, YES.

13 **Q.** DID THE PAROLE OFFICERS MAKE ANY OF THE ARRESTS THAT YOU  
14 HAVE COUNTED IN THE 205 ARRESTS?

15 **A.** THEY PARTICIPATE IN THE ARRESTS.

16 **Q.** WHAT PERCENTAGE OF THE ARRESTS WERE MADE BY PAROLE OFFICERS  
17 PARTICIPATING IN THESE 205 ARRESTS?

18 **A.** NOT MANY. IT'S JUST A FEW OFFICERS, FEW PROBATION OFFICERS,  
19 AND WE MAY HAVE AS MANY AS 70, 80 TOTAL OFFICERS PARTICIPATING.

20 **Q.** OKAY. NOW, I WOULD LIKE TO TURN YOUR ATTENTION TO THE  
21 OPINIONS YOU GAVE ABOUT A HYPOTHETICAL RELEASE ORDER. YOU SAID  
22 YOU CONCLUDED THAT THERE WERE ABOUT -- THERE WOULD BE ABOUT 100  
23 ADDITIONAL PAROLEES IN VACAVILLE.

24 OKAY. DO YOU KNOW WHAT I'M TALKING ABOUT NOW?

25 **A.** I THOUGHT IT WAS HIGHER. MAYBE 168, I THOUGHT, WAS THE

1 FIGURE IF THE RELEASE WERE 52,000.

2 **Q.** YOU THOUGHT IT WOULD BE 168 ADDITIONAL PAROLEES?

3 **A.** YES.

4 **MR. SANGSTER:** YOUR HONOR, MAY I APPROACH?

5 **JUDGE HENDERSON:** YOU MAY.

6 **BY MR. SANGSTER:**

7 **Q.** CHIEF WORD, I WANT TO INVITE YOUR ATTENTION TO YOUR  
8 DECLARATION AT PARAGRAPH 21.

9 (WHEREUPON, DOCUMENT WAS TENDERED  
10 TO THE WITNESS.)

11 **Q.** DO YOU HAVE THAT IN FRONT OF YOU, SIR?

12 **A.** I DO, YES, SIR.

13 **Q.** SO IS THE CORRECT NUMBER 100?

14 **A.** IT ASSUMED THAT 25 PERCENT WOULD BE RELEASED EARLY, AND I  
15 THOUGHT MISS BARLOW'S QUESTION ASSUMED A HIGHER RELEASE ORDER, A  
16 HIGHER PERCENTAGE.

17 **Q.** WELL, THE DECLARATION THAT YOU HAVE GAVE TO THE COURT ABOUT  
18 THE IMPACT ON YOUR DEPARTMENT, IN THAT DECLARATION YOU ESTIMATED  
19 THAT IT WOULD BE 100 -- PERHAPS 100 ADDITIONAL PAROLEES IN  
20 VACAVILLE, CORRECT?

21 **MS. BARLOW:** MISSTATES THE TESTIMONY, YOUR HONOR.  
22 THAT'S IF 25 PERCENT.

23 **JUDGE HENDERSON:** IT CORRECTLY STATES PARAGRAPH 21.

24 **MS. BARLOW:** IT'S QUALIFIED, THOUGH, IS THE POINT.

25 **JUDGE HENDERSON:** I UNDERSTAND THAT.

1 **A.** THAT'S WHAT I TESTIFIED TO, ASSUMING 25 PERCENT WERE  
2 RELEASED EARLY.

3 **BY MR. SANGSTER:**

4 **Q.** OKAY. SO IF I SPREAD THOSE 100 ADDITIONAL ARRESTS OVER TWO  
5 YEARS, WE ARE TALKING ABOUT 50 PAROLE ARRESTS A YEAR? EITHER 50  
6 OR 80, DEPENDING ON WHICH NUMBER YOU ARE PICKING?

7 **A.** WELL, YOU'RE SPEAKING OF ARRESTS, AND I -- THIS SPEAKS TO  
8 PEOPLE RELEASED AND NOT ARRESTS NECESSARILY.

9 **Q.** OKAY. I MISSPOKE. SO YOU ARE TALKING ABOUT AN ADDITIONAL  
10 50 PAROLEES A YEAR TO 80 PAROLEES A YEAR, CORRECT?

11 **A.** YES. ASSUMING THIS IS CORRECT, 25 PERCENT ARE RELEASED  
12 EARLY.

13 **Q.** THANK YOU. AND YOU GOT 52 OFFICERS ASSIGNED TO PATROL,  
14 CORRECT?

15 **A.** I DID. NOT ANY LONGER.

16 **Q.** HOW MANY DO YOU HAVE NOW?

17 **A.** FORTY-EIGHT.

18 **Q.** SO --

19 **A.** AND MY STAFFING IS FROZEN.

20 **Q.** SO IF YOU ASSUME A 25 PERCENT REDUCTION IN THE PRISON  
21 POPULATION AND YOU ASSUME THAT THAT REDUCTION IS SPREAD OUT OVER  
22 TWO YEARS, THOSE 48 OFFICERS WOULD HAVE TO DEAL WITH THE ISSUES  
23 CREATED BY ABOUT FOUR ADDITIONAL PAROLEES A MONTH, IS THAT  
24 RIGHT?

25 **A.** YOU ASSUME -- NO, IT'S NOT CORRECT.



1 Q. IN WHAT RESPECT IS IT INCORRECT, SIR?

2 A. THEY DO A LOT MORE AND I'M HAVING -- I HAVE FEWER PEOPLE  
3 DOING MORE WORK, SIR.

4 Q. I'M NOT TALKING ABOUT ADJUSTING YOUR WORK FORCE DOWN. I'M  
5 TRYING TO GET SOME SENSE OF HOW MANY OFFICERS YOU HAVE TO DEAL  
6 WITH THE NUMBER OF PAROLEES IN YOUR TOWN?

7 A. I HAVE A DECLINING NUMBER.

8 Q. IT'S CURRENTLY AT 48?

9 A. AND DECLINING, YES, SIR.

10 Q. SO --

11 JUDGE HENDERSON: I THOUGHT YOU SAID IT'S FROZEN.

12 THE WITNESS: AS PEOPLE LEAVE, YOUR HONOR, I CANNOT  
13 BACKFILL.

14 BY MR. SANGSTER:

15 Q. WELL, I DON'T KNOW WHAT IT'S GOING TO DECLINE TO, SO LET'S  
16 JUST STICK WITH THE 48.

17 SO THOSE 48 OFFICERS WOULD HAVE TO DEAL WITH  
18 APPROXIMATELY FOUR ADDITIONAL PAROLEES PER MONTH?

19 A. I DON'T UNDERSTAND FOUR PER MONTH. I'M SORRY.

20 Q. I'M TRYING TO BREAK DOWN YOUR -- YOUR CONCLUSION ABOUT THE  
21 IMPACT ON YOUR POLICE FORCE.

22 JUDGE HENDERSON: I THINK THE MATH -- 48 ARE  
23 RELEASED. YOU DIVIDE 12 MONTHS INTO THAT, THAT'S FOUR A MONTH.  
24 IS THAT WHAT YOU DON'T UNDERSTAND?

25 THE WITNESS: OKAY.

1           **JUDGE KARLTON:** I THINK THAT'S -- THAT'S WHAT YOU ARE  
2 SAYING?

3           **MR. SANGSTER:** YES.

4           **MS. BARLOW:** WITH RESPECT, YOUR HONOR, THE 48 DOESN'T  
5 MATCH ANY NUMBER THAT IS IN EVIDENCE.

6           **JUDGE HENDERSON:** WELL, WE ARE ALONG THAT ROAD, SO  
7 LET'S CONTINUE.

8 **BY MR. SANGSTER:**

9 **Q.** SO IS THAT ACCURATE, SIR, THAT YOUR --

10           **JUDGE KARLTON:** WELL, THE MATH IS ACCURATE.

11           **MR. SANGSTER:** WELL, I'M TRYING TO -- THE MATH -- THE  
12 MATH IS WHAT IT IS, BUT I'M TRYING TO SEE IF THE WITNESS IS  
13 GOING TO TELL ME THAT THE MATH SOMEHOW DOES NOT ACCURATELY  
14 REFLECT THE IMPACT ON HIS FORCE.

15 **BY MR. SANGSTER:**

16 **Q.** DOES THE MATH ACCURATELY REFLECT THE IMPACT ON YOUR FORCE?

17 **A.** IT DOES NOT.

18 **Q.** IN WHAT RESPECT DOES IT NOT?

19 **A.** YOU ARE ASSUMING A PAROLEE -- I DON'T MATCH OFFICERS TO  
20 PAROLEES IN SOME RATIO, SOME NEAT RATIO. I WISH IT WERE THAT  
21 NEATLY DONE, BUT IT'S NOT DONE THAT WAY, AND IT CAN'T BE.

22 **Q.** BUT YOU ARE -- YOUR OFFICERS DEAL WITH MANY THINGS OTHER  
23 THAN PAROLEES?

24 **A.** ABSOLUTELY.

25 **Q.** AND THE VAST MAJORITY OF THE ARRESTS THEY HAVE TO MAKE ARE

1 NOT OF PAROLEES?

2 **A.** BUT THE IMPACT OF A PAROLEE'S ACTIVITIES EXTEND FAR BEYOND  
3 SIMPLY MAKING AN ARREST. THEY GO -- THEY DO A LOT TO GO TO  
4 STATE PRISON. THEY COMMIT CRIMES FOR WHICH THEY ARE NOT  
5 ARRESTED FOR.

6 SO THE IMPACT IS SIMPLY BEYOND ONE OFFICER, ONE  
7 PAROLEE, AND ONE ARREST.

8 **Q.** AND THAT IMPACT IS GOING TO BE GENERATED BY ABOUT FOUR  
9 ADDITIONAL PEOPLE A MONTH?

10 **A.** I THINK THE IMPACT GOES BEYOND FOUR ADDITIONAL PEOPLE PER  
11 MONTH.

12 **Q.** IN EVALUATING THE IMPACT OF A PRISONER RELEASE ORDER OR  
13 ANYTHING THAT WOULD RESULT IN POPULATION REDUCTION, ONE OF THE  
14 THINGS YOU WOULD WANT TO KNOW IS THE CHARACTERISTICS OF THE  
15 PEOPLE BEING RELEASED, IS THAT CORRECT?

16 **A.** YES, SIR.

17 **Q.** BECAUSE THE CHARACTERISTICS OF THE PEOPLE BEING RELEASED  
18 WOULD HAVE A SUBSTANTIAL IMPACT ON THEIR LIKELIHOOD TO REOFFEND;  
19 THAT'S YOUR EXPERIENCE?

20 **A.** YES, SIR.

21 **Q.** YOU'D WANT TO KNOW IF THEY WERE CLEAN AND SOBER?

22 **A.** YES.

23 **Q.** YOU'D WANT TO KNOW IF THEY HAD HOUSING?

24 **A.** YES.

25 **Q.** YOU'D WANT TO KNOW IF THEY HAD FAMILY SUPPORT?

1 **A.** YES.

2 **Q.** WHETHER THEY HAD THE ABILITY TO READ?

3 **A.** YES, SIR.

4 **Q.** YOU WOULD WANT TO KNOW WHAT THEIR JOB PROSPECTS WERE?

5 **A.** YES.

6 **Q.** AND UNTIL YOU KNOW THOSE THINGS, YOU CAN'T QUITE FULLY  
7 ANALYZE WHAT THE IMPACT OF A RELEASE OF A GROUP OF PAROLEES IS  
8 GOING TO BE, RIGHT?

9 **A.** I WOULD SAY SO, YES. AND THERE'S SOME OTHER FACTORS, BUT,  
10 YES, YOU ARE RIGHT.

11 **Q.** ARE THERE THINGS THAT CAN BE DONE FOR PRISONERS AFTER THEY  
12 HAVE BEEN RELEASED FROM PRISON TO MITIGATE THE IMPACT ON PUBLIC  
13 SAFETY?

14 **A.** I THINK THERE ARE SOME THINGS THAT CAN BE DONE, YES, SIR.

15 **Q.** WHAT?

16 **A.** FOR THE LONGER TERM, IT MAY TAKE SOME SORT OF TRANSITION.  
17 THEY USED TO CALL THEM HALFWAY HOUSES. I THINK SOME SORT OF  
18 TRANSITION WOULD HELP.

19 IN OAKLAND, I MENTIONED THIS TO YOU BEFORE, WE  
20 LAUNCHED A POLICE AND CORRECTIONS TEAM WHERE WE WOULD MEET WITH  
21 PAROLEES UPON THEIR RELEASE TO MAKE SURE THEY WERE INFORMED OF  
22 SOME LOCAL SERVICES AVAILABLE. WE ALSO MET WITH FAMILIES, BUT I  
23 THINK HAVING -- PRIOR TO RELEASE, I THINK PRISONERS NEED A PLAN,  
24 A PAROLE PLAN AND I THINK THAT'S LACKING, TOO.

25 **Q.** AND THAT HELPS THEM SUCCEED IN THE COMMUNITY?

1 **A.** I THINK SO. IT'S BEEN MY EXPERIENCE.

2 **MR. SANGSTER:** THAT'S ALL THE QUESTIONS I HAVE, YOUR  
3 HONOR.

4 **JUDGE HENDERSON:** ANYTHING FROM CCPOA?

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

6 **REDIRECT EXAMINATION**

7 **BY MS. BARLOW:**

8 **Q.** OKAY. CHIEF, YOU INDICATE IF THE RELEASE ORDER IS 52,000  
9 THERE WOULD BE 168 ADDITIONAL PAROLEES RELEASED TO YOUR SPECIFIC  
10 COMMUNITY TO VACAVILLE -- NOT THE WHOLE COUNTY, JUST TO  
11 VACAVILLE -- OVER THAT TWO-YEAR PERIOD?

12 **A.** YES.

13 **Q.** AND THAT'S SEVEN PER MONTH. BUT THAT DOESN'T MATTER. IT'S  
14 THE CUMULATIVE IMPACT, CORRECT?

15 **JUDGE KARLTON:** MA'AM, ARE YOU TESTIFYING? I WILL  
16 HAVE YOU SWORN.

17 **MS. BARLOW:** NO.

18 **BY MS. BARLOW:**

19 **Q.** IS IT THE CUMULATIVE IMPACT, CHIEF WORD, OR IS IT JUST THIS  
20 PARTICULAR PAROLEE TODAY?

21 **A.** IT IS A CUMULATIVE IMPACT. IT'S BEYOND SIMPLY ONE PERSON  
22 AND ONE CRIME OR ONE POLICE OFFICER, YES.

23 **Q.** IS IT ALSO THE CUMULATIVE IMPACT OF THE NUMBER OF CRIMES THE  
24 PAROLEES --

25 **JUDGE KARLTON:** MA'AM, YOU HAVE GOT TO -- WELL, GO

1 AHEAD. JUST DO IT. LET'S GET IT OVER WITH.

2 **MS. BARLOW:** HE IS AN EXPERT, YOUR HONOR, BUT I'LL BE  
3 HAPPY TO --

4 **JUDGE KARLTON:** LET'S GET IT OVER WITH. GO AHEAD.

5 **BY MS. BARLOW:**

6 **Q.** IN TERMS OF THE INFORMATION YOU WOULD WANT TO KNOW, THE  
7 CHARACTER, THE STATUS AND SO ON, YOU HAVE A FAIR IDEA OF WHAT  
8 YOU ARE DEALING WITH WHEN YOU HAVE PAROLEES COMING BACK INTO  
9 VACAVILLE, CORRECT?

10 **A.** SURE.

11 **Q.** ARE A LARGE NUMBER OF THEM SUBSTANCE ABUSERS?

12 **A.** YES.

13 **Q.** ARE A LARGE NUMBER OF THEM GAINFULLY EMPLOYED?

14 **A.** NO.

15 **Q.** ARE A LARGE NUMBER OF THEM SAFELY HOUSED WITH LOVING  
16 FAMILIES?

17 **A.** NO.

18 **Q.** SO YOU DON'T REALLY NEED A LOT OF SPECIFIC INFORMATION TO  
19 KNOW THAT 168 OF THEM ARE GOING TO CAUSE A PROBLEM FOR YOUR  
20 COMMUNITY, CORRECT?

21 **A.** THAT'S CORRECT.

22 **MS. BARLOW:** I HAVE NOTHING FURTHER, YOUR HONOR.

23 **REXCROSS EXAMINATION**

24 **BY MR. SANGSTER:**

25 **Q.** CHIEF WORD, HOW MANY PAROLEES ARE RELEASED INTO VACAVILLE

1 EVERY MONTH?

2 **A.** I DON'T HAVE THE EXACT NUMBERS NOW. I'M NOT SURE.

3 **Q.** DO YOU HAVE AN APPROXIMATE NUMBER?

4 **A.** WOW, THERE ARE --

5 **Q.** I COULDN'T HEAR YOU, I'M SORRY.

6 **A.** I WOULD HAVE TO GUESS. I WON'T GUESS.

7 **Q.** I DON'T WANT YOU TO GUESS.

8 DO YOU HAVE ANY KNOWLEDGE ABOUT HOW MANY PEOPLE ON  
9 PAROLE ARE RELEASED FROM PAROLE? IN OTHER WORDS, THEIR PAROLE  
10 IS TERMINATED EVERY MONTH?

11 **A.** IT'S A -- I BELIEVE IT'S A HIGH PERCENTAGE OF THOSE ON  
12 PAROLE, MORE THAN HALF.

13 **MR. SANGSTER:** THAT'S ALL THE QUESTIONS I HAVE, YOUR  
14 HONOR.

15 **JUDGE HENDERSON:** OKAY. THANK YOU, CHIEF WORD. YOU  
16 ARE EXCUSED.

17 **THE WITNESS:** THANK YOU.

18 (WITNESS EXCUSED.)

19 **JUDGE HENDERSON:** OKAY. THAT LOOKS LIKE WE HAVE OUR  
20 WITNESSES FOR THE DAY. OKAY. WE WILL RESUME TOMORROW AT 9:15.

21 LET ME SHARE WITH YOU, AND MY COLLEAGUES SHOULD  
22 SUPPLEMENT THIS, THE COURT'S THINKING AT THIS POINT. WE ARE  
23 STILL HOPEFUL OF FINISHING BY DECEMBER 19TH, BUT IT'S NOT CLEAR  
24 FOR A NUMBER OF REASONS, INCLUDING AT LEAST ONE OF THE DAYS YOU  
25 PRESENTED CONTEMPLATES 11 HOURS OF TESTIMONY AND THAT AIN'T

1 GOING TO HAPPEN, AS WE KNOW.

2 SO AT THIS POINT WE ARE ASSUMING THAT WE ARE GOING TO  
3 NEED SOME TIME, PERHAPS AS MUCH AS A WEEK, BEYOND DECEMBER 19TH.  
4 IF THAT HAPPENS, I AM THE MOST FORTUNATE ONE UP HERE BECAUSE I  
5 HAVE A HALF A CASELOAD. JUDGE REINHARDT HAS TO GET BACK TO LOS  
6 ANGELES AND TAKE CARE OF HIS OTHER JOB, AS DOES JUDGE KARLTON.

7 WHAT WE WILL DO IS HAVE THEM CHECK THEIR CALENDAR AND  
8 WE WILL CONSULT AND FIND A PERIOD OF TIME TO FINISH THE CASE.  
9 AT THIS POINT WE SIMPLY DON'T KNOW WHEN THAT WILL BE, BUT YOU  
10 SHOULD KNOW THAT WE EXPECT YOU TO BE AVAILABLE. WE ARE NOT  
11 GOING TO NEGOTIATE THE TIME WE COME BACK. WE WANT TO MAKE THAT  
12 CLEAR.

13 **JUDGE KARLTON:** AND YOU MUSTN'T ASSUME THAT WE WILL  
14 BE ABLE TO GIVE YOU A WEEK. IT MAY BE A DAY HERE AND A DAY  
15 THERE, AND YOU GUYS ARE JUST GOING TO HAVE TO BE READY TO GO.

16 **MR. SANGSTER:** YOUR HONOR, JUST TO ADVISE THE COURT,  
17 I MEAN, WE -- I AM IN THE PROCESS OF WORKING ON STIPULATIONS AS  
18 TO TESTIMONY OF A NUMBER OF WITNESSES. WE CURRENTLY HAVE, I  
19 THINK, AGREEMENTS ON TWO WITNESSES. I EXPECT AGREEMENTS ON  
20 PROBABLY SIX TO EIGHT TOTAL.

21 MY ESTIMATE IS IT'S GOING TO SHAVE A DAY OFF OF THE  
22 TIME, AND --

23 **JUDGE KARLTON:** THE MORE, THE MERRIER.

24 **JUDGE HENDERSON:** WE CERTAINLY ENCOURAGE THAT.

25 **MR. SANGSTER:** I UNDERSTAND THAT, AND I KNOW YOU



1 CAN'T PLAN AROUND THAT.

2 I THINK IN TERMS OF THE THINKING, WHAT'S GOING TO  
3 HAPPEN IS A NUMBER OF THESE WITNESSES ARE NOT GOING TO BE CALLED  
4 AS SCHEDULED. AND THE 11-HOUR DAY IS NOT GOING TO BE 11 HOURS.  
5 AND, OBVIOUSLY, WE WON'T KNOW UNTIL WE GET THAT --

6 **JUDGE KARLTON:** I PROMISE YOU IT WOULDN'T BE ANYHOW.

7 **MR. SANGSTER:** I UNDERSTAND, BUT I THINK WE ARE GOING  
8 TO LOSE WITNESSES BY THE TIME WE GET THERE.

9 **JUDGE REINHARDT:** THE SOONER YOU CAN LET US KNOW THAT  
10 YOU WILL BE IN A POSITION REASONABLY TO CONCLUDE ON THE 19TH,  
11 THE BETTER IT WILL BE FOR EVERYONE.

12 TO ME, FROM LOOKING AT THE LIST, AS IF WHAT YOU ARE  
13 DOING IS ABSOLUTELY CORRECT, THAT IT'S NOT -- SHOULDN'T BE  
14 NECESSARY TO HEAR A LOT OF TESTIMONY FROM A FAIR NUMBER OF  
15 PEOPLE ON THAT LIST.

16 SO I CERTAINLY, FOR ONE, AM STILL HOPEFUL THAT WE ARE  
17 GOING TO CONCLUDE THIS ON THE 19TH AND THAT EVERYONE ELSE IS  
18 GOING TO MAKE EVERY EFFORT TO SEE THAT WE CONCLUDE THIS ON THE  
19 19TH.

20 THAT MAY NOT INCLUDE FINAL ARGUMENT, WHICH WE ARE  
21 PLANNING ON HEARING THAT. WOULD BE EASY TO FIND A DAY TO DO. A  
22 LOT EASIER THAN FINDING A TIME TO HAVE TRIAL DAYS.

23 SO I HOPE EVERYONE WILL CONTINUE TO MAKE EVERY EFFORT  
24 TO CONCLUDE THIS BY THE 19TH, AND WE WILL BE HAPPY TO BE OF  
25 WHATEVER ASSISTANCE WE CAN IN PERSUADING YOU TO DO THAT.

1           **JUDGE KARLTON:** LET ME ADD ABOUT THIS QUESTION. IT'S  
2 CONTEMPLATED THAT WE ARE GOING TO HAVE FROM YOU FOLKS PROPOSED  
3 FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND I WOULD LIKE AT  
4 SOME POINT, DOESN'T HAVE TO BE TODAY OBVIOUSLY, SOME IDEA ABOUT  
5 HOW LONG THAT'S GOING TO TAKE TO GATHER TOGETHER.

6           BUT I THINK JUDGE REINHARDT'S POINT IS QUITE SERIOUS.  
7 YOU FOLKS OUGHT TO KNOW, AT LEAST FOR THIS JUDGE, FINAL ARGUMENT  
8 MAY BE VERY IMPORTANT IN OUR DECIDING WHAT WE ARE GOING TO DO,  
9 AND THAT SHOULD BE A -- AN IMPORTANT POINT IN YOUR PREPARATION.

10          **JUDGE REINHART:** THAT DOESN'T SEEM LIKELY THAT WON'T  
11 BE BY THE 19TH, BUT THAT'S NOT A PROBLEM. WE CAN THEN FIND A  
12 MUTUALLY CONVENIENT DATE FOR THAT KIND OF ARGUMENT.

13          **JUDGE KARLTON:** SURE.

14          **MR. SPECTER:** THAT'S FINE, YOUR HONORS.

15           I WOULD JUST ASK THAT IF YOU -- WHEN YOU DON'T  
16 NEGOTIATE WITH US AND YOU JUST TELL US WHAT DAYS WE ARE GOING TO  
17 HAVE IF WE HAVE TO GO PAST THE 19TH -- I AGREE WITH MY  
18 CO-COUNSEL, BY THE WAY, THAT I THINK WE MIGHT BE ABLE TO MAKE  
19 IT. I CERTAINLY HOPE WE DO -- THAT YOU LET US KNOW AS EARLY AS  
20 POSSIBLE WHAT THE FINAL ARGUMENT DAY WOULD BE.

21           BECAUSE WE HAVE THOUGHT, JUDGE KARLTON, THAT YOU  
22 MIGHT WANT PROPOSED FINDINGS AND CONCLUSIONS, WE HAVE ALREADY  
23 STARTED THE PROCESS OF WORKING ON THEM AND WE -- THE MORE  
24 ADVANCE -- THE MORE WE KNOW WHAT THE SCHEDULE IS, THE HARDER WE  
25 WORK, OR WHAT.

1           **JUDGE KARLTON:** I HOPE THAT YOUR PROPOSED FINDINGS  
2 WILL CITE TO THE APPROPRIATE EVIDENCE TO HELP US ORGANIZE WHAT  
3 IS REALLY A VERY DIFFICULT BODY OF EVIDENCE.

4           **MR. SPECTER:** IF THEY DIDN'T, THEY WOULDN'T BE VERY  
5 HELPFUL TO YOU.

6           **JUDGE KARLTON:** THEY WOULD NOT.

7           **JUDGE REINHART:** IF WE FINISH BY THE 19TH, WE CAN  
8 AGREE UPON A TIME FOR CLOSING ARGUMENT THAT'S CONVENIENT TO  
9 EVERYBODY. THAT MAY NOT BE SO EASY TO FIND A DATE THAT'S  
10 CONVENIENT, BUT WE CAN WORK -- WORK SOMETHING OUT THAT EVERYONE  
11 IS AGREEABLE TO FOR THE CLOSING ARGUMENT.

12           IF THERE IS MORE TESTIMONY, THAT'S GOING TO BE MUCH  
13 MORE DIFFICULT. IT'S GOING TO BE VERY DIFFICULT FOR THE THREE  
14 OF US TO FIND A DATE. WE WILL LET YOU KNOW AS SOON AS WE FIND  
15 IT, BUT YOU MAY NOT LIKE IT.

16           **MR. SPECTER:** WELL, I WILL LIKE IT. I DON'T KNOW IF  
17 ANYBODY ELSE WILL.

18           BUT IN THE BEGINNING OF THE TRIAL YOU MENTIONED THE  
19 GLIMMER OF A POSSIBILITY OF GOING INTO THE NEXT WEEK. I WOULD  
20 RATHER GET IT OVER WITH AND THEN --

21           **JUDGE KARLTON:** CAN'T PROMISE YOU THAT AT ALL.

22           **MR. SPECTER:** OKAY.

23           **JUDGE REINHART:** YOU MEAN, MORE DAYS THAN THE WEEK OF  
24 THE 18TH OR 19TH?

25           **MR. SPECTER:** I DON'T THINK THAT'S POSSIBLE.

1           **JUDGE REINHART:** I DON'T THINK THAT'S VERY REALISTIC.  
2 CHRISTMAS EVE IS, WHAT, WEDNESDAY NIGHT THE NEXT WEEK?

3           **MR. SPECTER:** CHRISTMAS EVE?

4           **JUDGE REINHARDT:** YES.

5           **MR. SPECTER:** YES.

6           **JUDGE REINHART:** I ASSUME YOU ARE NOT PROPOSING WE DO  
7 THIS CHRISTMAS EVE.

8           **MR. SPECTER:** I'M JEWISH. I DON'T CARE.

9           **JUDGE REINHART:** OR HANUKKAH, THE SAME DAY OR THE DAY  
10 BEFORE MAYBE.

11           **MR. SPECTER:** I WOULD RATHER BE HOME ON CHRISTMAS  
12 EVE, BUT THERE IS NO PROHIBITION AGAINST WORKING ON HANUKKAH, AS  
13 YOU PROBABLY KNOW.

14           **JUDGE REINHART:** YOU'RE ONLY TALKING ABOUT TWO DAYS.  
15 WITH THE TRAVEL PROBLEMS --

16           **MR. SPECTER:** I UNDERSTAND. I'M JUST RAISING --

17           **JUDGE REINHARDT:** LET'S SEE WHAT WE CAN DO ON THE  
18 19TH.

19           **JUDGE KARLTON:** LET'S ALL WORK VERY HARD TO GET IT  
20 DONE BY THE 19TH.

21           **JUDGE HENDERSON:** WE WILL DO OUR BEST TO ACCOMMODATE  
22 YOU. IF WE DON'T, THE REASON I SAID IT THE WAY I DID, IS THAT I  
23 DON'T WANT ALL OF THESE PLAYERS TO GO OUT AND START MAKING  
24 COMMITMENTS. THAT'S WHAT WON'T WORK.

25           SO I'M JUST SAYING BE AVAILABLE. WE WILL DO

1 EVERYTHING WE CAN TO MAKE IT WORK.

2 **MR. SPECTER:** THAT SOUNDS GOOD. THANK YOU VERY MUCH.

3 **JUDGE HENDERSON:** OKAY.

4 (WHEREUPON AT 4:07 P.M. FURTHER PROCEEDINGS  
5 IN THE ABOVE-ENTITLED CAUSE WAS ADJOURNED  
6 UNTIL WEDNESDAY, DECEMBER 10, 2008 AT 9:15  
7 A.M.)

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**CERTIFICATE OF REPORTER**

WE, JOAN MARIE COLUMBINI AND DEBRA L. PAS, OFFICIAL REPORTERS FOR THE UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS IN CIV S-90-0520 LKK JPM P, RALPH COLEMAN, ET AL V. ARNOLD SCHWARZENEGGER AND C 01-1351 TEH, MARCIANO PLATA V. ARNOLD SCHWARZENEGGER, WERE REPORTED BY US, CERTIFIED SHORTHAND REPORTERS, AND WERE THEREAFTER TRANSCRIBED UNDER OUR DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS AS BOUND BY US AT THE TIME OF FILING.

THE VALIDITY OF THE REPORTER'S CERTIFICATION OF SAID TRANSCRIPT MAY BE VOID UPON DISASSEMBLY AND/OR REMOVAL FROM THE COURT FILE.

/S/ JOAN MARIE COLUMBINI

JOAN MARIE COLUMBINI, CSR 5435, RPR

S/ DEBRA L. PAS

DEBRA L. PAS, CSR 11916, CRR, RMR, RPR

TUESDAY, DECEMBER 9, 2008

**JOAN MARIE COLUMBINI, CSR, RPR  
DEBRA L. PAS, CSR, CRR, RMR, RPR  
OFFICIAL COURT REPORTERS, USDC, 415-255-6842**